

MEMORANDUM

TO: Programs, Projects, and Operations Subcommittee
FROM: Martin P. Cleveland
SUBJECT: Agreement with OMNI on Little Papio R- 14 Replacement
DATE: July 26, 2024

The Little Papio Creek Levee/Channel Project is located between Spaulding Street and Q Street in Omaha, NE and is a federally constructed flood control channel completed in January 1970. The Papio NRD serves as the local project sponsor and is required to operate, maintain, and repair the channel and its appurtenances to keep it in safe operating condition to remain in US Army Corps of Engineers (USACE) Public Law (PL) 84-99 assistance program. The Papio NRD periodically inspects the Little Papio Project culverts and has identified 45 culverts that need to be repaired due to deficiencies. One of the deficient culverts is LP R-14, a 24-inch diameter by 125 ft. long corrugated metal pipe (CMP) located at Station 320+70R as seen on the attached location map. This channel project culvert is owned by Papio NRD.

In 2022, OMG Midwest Inc. doing business as (DBA) Omni Engineering submitted to Papio NRD a redevelopment plan for their asphalt paving plant east of 66th and Grover Street. This submittal is required by USACE channel/levee project guidelines for work within 500 ft. of a channel/levee project. As part of their redevelopment plan, they will be installing a new 36-inch diameter storm sewer, as per their consultant design calculations. This storm sewer would discharge into the Papio NRD's existing Little Papio Channel 24-inch diameter culvert. Rather than rehabilitating (removing/replacing some of the 24-inch diameter culvert and lining entire culvert with cured in place liner), Papio NRD staff have been discussing with the OMG consultant the idea of OMG Midwest Inc. installing a new 36-inch culvert at the same location and the Papio NRD providing OMG Midwest with cost reimbursement for the portion of the replacement cost that is equivalent to the Papio NRD installing a new 24-inch culvert at this location.

The cost estimate for rehabilitation of the existing 24-inch culvert, prepared by Houston Engineering is \$399,566. The new 36-inch culvert alternative cost is \$257,886, with the proposed Papio NRD reimbursement to OMG Midwest Inc. share of \$253,656. OMG Midwest Inc. will pay for upsizing the culvert from 24-inch to 36-inch diameter at a cost of \$4,230. The cost share arrangement with OMG Midwest Inc. will save Papio NRD \$ 145,910 over the planned rehabilitation project estimate and result in a properly sized outlet for the development.

Enclosed is a proposed Cost Share Agreement with OMG Midwest Inc. DBA Omni Engineering for Replacement of Little Papio Creek Levee/Channel Project Drainage Structure LP R-14. The Papio NRD's reimbursement to OMG Midwest Inc. is maximum not to exceed amount of \$253,656.

Management recommends that the Programs, Projects, and Operation Subcommittee recommend to the Board of Directors that the General Manager be authorized to execute the proposed Cost Share Agreement with OMG Midwest Inc. DBA Omni Engineering for Replacement of Little Papio Creek Levee/Channel Project Drainage Structure LP R-14 with a reimbursement maximum not to exceed amount of \$253,656, subject to changes deemed necessary by the General Manager and approval as to form by Papio NRD Legal Counsel.

LITTLE PAPIO CHANNEL CULVERT REPLACEMENT PROJECT

Culvert "LP-L14" - Sta 320+70

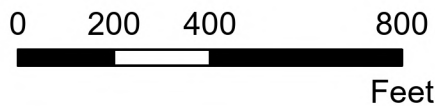


Location
of Culvert

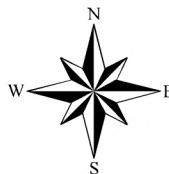
Attachment A

"LP-L14"

1/24/2024



Feet



PAPIO
MISSOURI RIVER
NATURAL RESOURCES DISTRICT

(402) 444-6222 8901 S 154th St, Omaha, NE 68138

COST SHARE AGREEMENT BETWEEN
THE PAPIO-MISSOURI RIVER NATURAL RESOURCES DISTRICT
AND OMG MIDWEST, INC.
FOR THE
CULVERT REPLACEMENT PROJECT

THIS COST SHARE AGREEMENT (the “**AGREEMENT**”) is made and entered into this 17th day of July, 2024 by and between the **PAPIO-MISSOURI RIVER NATURAL RESOURCES DISTRICT**, (hereinafter “**DISTRICT**”) and **OMG MIDWEST INC., d/b/a OMNI ENGINEERING** (hereinafter the “**COMPANY**”).

WHEREAS, the **DISTRICT** is engaged in operating, maintaining, and repairing the Little Papio Creek Levee/Channel (the “**CHANNEL**”); and its appurtenances to keep it in safe operating condition to remain in compliance with the USACE Public Law 84-99 assistance program (the “**PROGRAM**”);

WHEREAS, the **DISTRICT** periodically inspects the **CHANNEL** and has identified LP R-14, a 24-inch diameter corrugated metal pipe (the “**CULVERT**”), as a deficient culvert pursuant to the **PROGRAM** requirements. The general location of the LP R-14 corrugated metal pipe is depicted in Attachment A, attached hereto;

WHEREAS, the **DISTRICT** notified the **COMPANY** that the **DISTRICT** intended to repair the **CULVERT** on the **DISTRICT’s** property;

WHEREAS, in 2022, the **COMPANY** submitted to the **DISTRICT** a redevelopment plan, which included a plan to replace the **CULVERT** with a new 36-inch diameter storm sewer, which would discharge into the **CHANNEL** (the “**CULVERT REPLACEMENT**”);

WHEREAS, the **DISTRICT** has refrained from repairing the **CULVERT** since the **COMPANY** needed a larger pipe to handle storm sewage under its redevelopment plan;

WHEREAS, the **COMPANY** has submitted its planned redevelopment plan, storm sewer plan and storm sewer pipe details to the **DISTRICT'S** engineer for review to determine compliance with the **PROGRAM**;

WHEREAS, the **DISTRICT'S** engineering consultant, Houston Engineering, has determined that the **COMPANY'S** new storm sewer design will be in compliance with the **PROGRAM**;

WHEREAS, the **DISTRICT** and the **COMPANY** desire to share the cost of the **CULVERT REPLACEMENT** to avoid repetitive costs and economic waste; and,

NOW, THEREFORE, in consideration of the foregoing and the following mutual covenants, terms and conditions, the **DISTRICT** and the **COMPANY** agree as follows:

1. **Representations of the DISTRICT.** The **DISTRICT** represents, warrants and covenants to the **COMPANY** as follows:
 - a. The **DISTRICT** is a political subdivision duly created and existing under and pursuant to the laws of the State of Nebraska.
 - b. The **DISTRICT** has full power and authority to enter into this **AGREEMENT** and to carry out its obligations hereunder, and by proper action has duly authorized the execution and delivery of this **AGREEMENT** by its duly authorized officers.
 - c. Neither the execution and delivery of this **AGREEMENT**, nor the fulfillment of or compliance with the terms and conditions hereof, conflicts with or results in a breach of the terms, conditions or provisions of any restriction or any agreement or instrument to which the **DISTRICT** is now a party or by which the **DISTRICT** is bound.

2. **Representations of the COMPANY.** The **COMPANY** represents, warrants and covenants to the **DISTRICT** as follows:

- a. The **COMPANY** is a duly organized under the laws of the State of Delaware.
- b. The **COMPANY** has power to enter into this **AGREEMENT** and by proper action has duly authorized the execution and delivery of this **AGREEMENT** by its duly authorized officers.
- c. The execution and delivery of this **AGREEMENT** will not conflict with or constitute a breach of or default under the laws applicable to the **COMPANY**, its ordinances or any bond, debenture, note or other evidence of indebtedness of the **COMPANY** or any contract, agreement or lease to which the **COMPANY** is a party or by which it is bound.

3. **COMPANY's Obligations.**

- a. Shall retain a contractor to construct and install the **CULVERT REPLACEMENT** in accordance with the storm sewer plan and storm pipe details submitted to the **DISTRICT**;
- b. Shall inform the **DISTRICT** in writing of any proposed change to the **CULVERT REPLACEMENT** and obtain the **DISTRICT's** approval of such proposed change prior to commencing any work on the **CULVERT REPLACEMENT**;
- c. As contribution towards the **CULVERT REPLACEMENT, COMPANY** shall contribute Four Thousand Two Hundred and Thirty and 00/100 dollars (\$4,230) (the "**COMPANY CONTRIBUTION**"); and
- d. Shall submit a written invoice(s) for the work performed on the **CULVERT REPLACEMENT** to the **DISTRICT** after the **CULVERT**

REPLACEMENT work is completed.

4. **DISTRICT's Obligations.**

- a. Upon receipt of a written invoices for the work performed on the **CULVERT REPLACEMENT**, the **DISTRICT** shall confirm such invoiced work was completed and pay the amount for the work completed within thirty (30) days from receipt of the invoice.
- b. Notwithstanding anything contained in this **AGREEMENT** to the contrary, it is expressly understood and agreed by the parties that under no circumstances, and in no event, shall the **DISTRICT** pay in excess of Two Hundred Fifty-Three Thousand Six Hundred and Fifty-Six and 00/100 dollars (\$253,656) towards the **CULVERT REPLACEMENT** (the "**DISTRICT CONTRIBUTION**"). In the event that the construction costs for the completion of the **CULVERT REPLACEMENT** exceed the sum of the **COMPANY CONTRIBUTION** and the **DISTRICT CONTRIBUTION**, then the **DISTRICT** and the **COMPANY** shall work together in good faith to consider an amendment to this **AGREEMENT** pursuant to Section 5.
- c. Notwithstanding anything contained in this **AGREEMENT** to the contrary, in the event that the **CULVERT REPLACEMENT** falls out of compliance with the **PROGRAM**, then this **AGREEMENT** shall automatically terminate and be of no further force and effect.

5. **Amendments, Changes and Modifications.** This **AGREEMENT** may be amended, changed, modified, altered or terminated only by written agreement of the **DISTRICT** and the **COMPANY**.

6. **Notices.** All notices or other communication required or desired to be given hereunder shall be deemed duly given when mailed by first class, registered or certified mail, postage prepaid, addressed as follows:

DISTRICT: Pappio-Missouri River Natural Resources District
8901 S. 154th Street
Omaha, NE 68138-6222
Attention: John Winkler, General Manager

With a Copy to: Husch Blackwell LLP
14606 Branch Street Suite 200
Omaha, NE 68154
Attention: Brent Meyer

COMPANY: OMG Midwest Inc.
d/b/a Omni Engineering
14012 Giles Rd., Omaha NE 68138
Attention: Kyle Timmer, Vice President

7. **Assignments.** Neither party may mortgage or otherwise assign its right under this **AGREEMENT** without the written consent of the other.
8. **Waiver.** The failure of one party to require performance of any provision of this **AGREEMENT** shall not affect that party's right to require performance at any time thereafter, nor shall a waiver of any breach or default of this **AGREEMENT** constitute a waiver of any subsequent breach or default or a waiver of the provision itself.
9. **Controlling Law/Venue.** This **AGREEMENT** shall be interpreted in accordance with the laws of the State of Nebraska. Any action brought hereunder shall be brought in the Douglas County District Court in Omaha, Nebraska or in the event of Federal jurisdiction, in the United States District Court for the District of Nebraska.

10. **Integration.** This **AGREEMENT** represents the entire integrated agreement between the **DISTRICT** and the **COMPANY**, and supersedes all prior negotiations, representations or agreements, either written or oral.

11. **No Agency.** Nothing in this **AGREEMENT** shall be construed to create an agency relationship between **COMPANY** and **DISTRICT**. **COMPANY** has no active, implied, or apparent authority, rights, duties, or powers to act for or on behalf of **DISTRICT** or otherwise bind or commit them to any third party.

[Signature page to follow]

IN WITNESS WHEREOF, the parties hereto have set their hands the day and date first above written.

THE DISTRICT:

By: _____
John Winkler, General Manager

THE COMPANY:

By: 

Kyle Timmer, Vice President