

TO: Michael C. Van Milligen, City Manager
Gus Psihoyos, City Engineer

FROM: Robert Schiesl, Assistant City Engineer

DATE: May 12, 2021

RE: Tiffany Court - Lead Mine Sinkhole Subsidence Remediation Project
Approve Cooperative 28E Agreement with State of Iowa
Approve Tiffany Court Mine Remediation Site Access Agreement

INTRODUCTION

The purpose of this memorandum is to provide background information and request approval of a Cooperative 28E Agreement between the Iowa Department of Agriculture and Land Stewardship (IDALS) and the City of Dubuque for a joint partnership project to remediate the lead mine sinkhole subsidence that developed at 2784 and 2792 Tiffany Court. The City Council is also requested to approve a Site Access Agreement with the property owners on Tiffany Court.

BACKGROUND

In September 2018, a large sinkhole developed on private property (2792 Tiffany Court) which we believe rests on or very near an historically large sub-terrainian crevice (Stewart's Crevice) related to abandoned lead/zinc mining operations of the 1800's, based on historical reference in Samuel Calvin's Geology of Dubuque mapped records of 1858 and 1899.

The subsurface collapse has impacted the nearby residences and has the potential to impact public infrastructure in and on Tiffany Court. City staff have worked with the homeowners, Bob and Barb Freidman, and Steve and Kathleen Abba, providing technical oversight using tried engineered methods of mitigation since the onset of the sinkhole. Unfortunately, remediation and mitigation efforts have been unsuccessful and there continues to be on-going funneling and subsidence.

City staff have also reached out to and developed a collaborative network of technical experts at IDALS; the Iowa Department of Natural Resources ; the Iowa Geological Survey; the U.S. Geological Survey ; the Office of Surface Mining Reclamation and Enforcement ; and the Mine Safety and Health Administration. These various agencies have been a valuable resource in providing technical assistance and guidance to the property owners and City staff.

In November 2019, the City retained a geotechnical engineering consultant to perform a geotechnical investigation and subsurface borings in the vicinity of the mine shaft sinkhole. The objective of the geotechnical investigation was to gather subsurface information to be able to better define the extent and magnitude of the mine shaft sinkhole and the potential impact area of the mine or sub-terrainian crevice. The subsurface information gathered was also used to evaluate and determine if any City infrastructure assets (street, sewer, water) were at risk.

Both the property owners, the Freidmans and the Abbas, have indicated that their respective property owner's insurance does not provide coverage for lead mine sinkhole remediation. The property owners have also reached out to legislative and congressional staff to inquire and request funding assistance at the state and federal levels.

DISCUSSION

In December 2020, Mr. Freidman sent a letter to Governor Kim Reynolds requesting assistance in mitigating the lead mine sinkhole. In February 2021, the Governor issued a letter which authorized IDALS to utilize funds from Iowa's coal regulatory account, pursuant to Iowa Code section 207.21(2)(b), to mitigate the lead mine subsidence located at 2784 and 2792 Tiffany Court.

Following this announcement, IDALS approached the City to inquire if the City would be agreeable to acting as the Local Public Agency and Contracting Authority for the lead mine sinkhole remediation and mitigation project. The City would also jointly assist IDALS with project engineering, design, construction observation, project oversight and administration.

Following the request, the City Attorney's Office worked directly with the State Attorney Generals Office to prepare a Cooperative 28E Agreement between the City and IDALS. The Agreement, to the fullest extent permitted by law, indemnifies and holds harmless each party from and against all claims, losses, damages, liabilities. The Agreement also makes no guarantees about long-term performance of the constructed remediation and mitigation, nor may it be construed to provide any protections to any person or property from future subsidence at 2784 and 2792 Tiffany Court after the remediation and mitigation is completed.

Pursuant to the terms of the 28E Agreement, IDALS will reimburse the City for allowable expenditures up to \$150,000, unless otherwise approved by IDALS, for contracted work performed as specified in the approved engineering design plans that is directly related to the remediation and mitigation of the lead mine subsidence, including, but not limited to, labor, materials, and equipment. Any such additional costs not covered by IDALS shall be the sole responsibility of Property Owners.

The City and IDALS will be responsible for their own respective administrative costs associated with the 28E Agreement, including the costs of administration, resources, and employees' labor on the project.

SITE ACCESS AGREEMENT

Pursuant to the terms of the 28E Agreement, the City developed and acquired signed Site Access Agreements with both property owners, the Freidmans and the Abbas, holding the City and IDLAS harmless in the event of any unforeseen damages resulting from the lead mine sinkhole remediation and mitigation efforts.

The Site Access Agreement states that the property owners have requested full and continuing access to the properties for the City and IDALS to perform investigation, testing, analysis, and if determined necessary by City and IDALS, excavation and construction and such remediation and mitigation work as City and IDALS determine in their sole discretion is appropriate.

The Site Access Agreement also clarifies that the City and IDLAS will be completing the remediation and mitigation work in the interest of public health, safety, general welfare, private property, and to protect public property and infrastructure.

The Site Access Agreement also states and makes no guarantees about long term performance of the constructed remediation and mitigation, nor may it be construed to provide any protections to any person or property from future subsidence at 2784 and 2792 Tiffany Court after the remediation and mitigation is completed.

The Site Access Agreement also acknowledges that IDALS will reimburse the City for allowable expenditures up to \$150,000, unless otherwise approved by IDALS, and any such additional costs not covered by IDALS shall be the sole responsibility of Property Owners.

Costs associated with any damage to public or private property, real or personal, resulting from the remediation work performed is not an eligible reimbursable IDALS expense. The property owners have agreed, and included in the Site Access Agreement, are solely responsible for the repair or replacement of any sidewalks, driveways, or landscaping and the cost thereof which may result from the remediation work and that City and IDALS will have no responsibility for such repair or replacement or any ineligible cost.

RECOMMENDATION

Historically in the past, the City's involvement with lead mine sinkhole remediation repairs were in locations within public right-of-way or on public property. Occasionally, when sinkholes have developed on private property, the City has provided assistance in the form of general guidance or recommendation to the property owner but would have no liability or financial participation in the repair work.

With respect to the large sinkhole that developed on private property (2784 and 2792 Tiffany Court), unfortunately, all tried engineered methods of mitigation efforts to-date have been unsuccessful and there continues to be on-going funneling and subsidence. The subsurface collapse has impacted the nearby home and has the potential to impact public infrastructure, and thus in the interest of public health, safety, and to protect

public property and infrastructure, the City and the State of Iowa have agreed to assist with the remediate the lead mine sinkhole subsidence.

I recommend that the City Council approve and authorized the Mayor to execute the Cooperative 28E Agreement between the Iowa Department of Agriculture and Land Stewardship and the City of Dubuque and execute the Property Owner Site Access Agreements to allow for the remediation and mitigation of the lead mine sinkhole subsidence that developed at 2784 and 2792 Tiffany Court.

BUDGET IMPACT

IDALS will reimburse the City for allowable expenditures up to \$150,000 for work performed that is directly related to the remediation of the lead mine subsidence.

CIP No.	Fund Description	Fund Amount
1002823	Sinkhole Mine Remediation	\$ 150,000.00
Total Project Funding		\$ 150,000.00

If at any point project costs are anticipated to exceed \$150,000, IDALS must approve all additional costs.

ACTION TO BE TAKEN

I request that the City Council approve the attached resolution authorizing the Mayor to execute the Cooperative 28E Agreement between the Iowa Department of Agriculture and Land Stewardship and the City of Dubuque and the Property Owner Site Access Agreements to allow for the remediation and mitigation of the lead mine sinkhole subsidence that developed at 2784 and 2792 Tiffany Court.

cc: Barry Lindahl, Senior Council
Jenny Larson, Director of Finance and Budget
Hugh McCarron, Engineering Technician
Vince Sitzmann, Mike Bourland, IDALS

Attachments

F:\PROJECTS\Tiffany Court Sinkhole - 2019\28E Agreement