

RESOLUTION 19-37

A RESOLUTION AUTHORIZING EXECUTION OF AN ACCESS AGREEMENT ALLOWING ENVIRONMENTAL TESTING OF THE PITTMAN PARCEL

WHEREAS, there are several abutting parcels of land located between Orchard Street, Depot Street and Main Street which are owned by three members of the Pittman family, and

WHEREAS, the Village has an easement upon these parcels within which easement a fairly large culvert exists which carries the waters of Sequoit Creek, and

WHEREAS, the culvert has exhibited signs of collapsing which has resulted in the Village taking measures to protect the public, and

WHEREAS, the Village Staff has concerns that the collapsing culvert could result in damming of Sequoit Creek which in turn could cause upstream flooding of a large number of properties in the Village, and

WHEREAS, the Village Administrator and Attorney have negotiated an access easement with the Pittmans in the form attached as Exhibit A hereto which will allow the Village to commence testing of the soils on the Pittmans' parcels for any possible environmental contamination as a predicate to repairing or replacing the culvert or taking other action to assure continued unimpeded flow of Sequoit Creek, and

WHEREAS, the Village Board finds that the proposed draft access easement and the testing contemplated thereunder are in the best interests of the Village and its property owners and should be adopted in substantial conformity with the Exhibit A document,

NOW THEREFORE, BE IT RESOLVED by the Village of Antioch, Lake County, Illinois, as follows:

SECTION ONE: The Mayor and Clerk are authorized and directed to execute the Environmental Testing Access Agreement in substantial conformity with the draft attached as Exhibit A hereto.

SECTION TWO: The Administrator is directed to locate an appropriate professional testing firm and provide draft contracts for the environmental testing work to the Village Board for its consideration as soon as practical, to take any other steps necessary as a predicate to the testing process and to continue taking action to secure the site for the public's safety.

SECTION THREE: This resolution shall take effect immediately upon passage.

PASSED BY THE BOARD OF TRUSTEES OF THE VILLAGE OF ANTIOCH, ILLINOIS, ON THIS 10TH DAY OF JUNE, 2019.

ATTEST:


LORI K. ROMINE, VILLAGE CLERK




LAWRENCE M. HANSON, MAYOR

ENVIRONMENTAL TESTING ACCESS AGREEMENT

FOR AND IN CONSIDERATION of the mutual covenants set forth herein, the adequacy and sufficiency of which is hereby expressly admitted, the undersigned parties, being Gail Jean Harris, Sharon Pittman Coleman and Mark R. Pittman (collectively, the "Owners") and the Village of Antioch, an Illinois municipal corporation (the "Village") do hereby state, covenant and agree as follows:

Agreed Statement Of Facts

1. The Owners are the fee simple owners of record of 7 parcels of real estate located east of Main Street, between Orchard Street and Depot Street in the Village of Antioch (hereinafter referred to as "the Property"), which parcels are designated by the Lake County Map Department as the following:

PIN	Common Address
02-08-306-001	845 Main Street
02-08-306-002	0 Depot Street
02-08-306-003	0 Depot Street
02-08-306-004	362 East Depot Street
02-08-306-005	352 East Depot Street
02-08-306-012	845 Main Street
02-08-306-078	0 Main Street

2. A copy of a section of the Map Department's graphical depiction of the Property and surrounding area is attached as Exhibit A.

3. The property was once improved with buildings but at the present time is vacant with a portion of it paved with asphalt and no other improvements.

4. Approximately 40 years ago, the Village installed a culvert under some of the Property pursuant to an Easement Agreement, a true copy of which is attached as Exhibit B.

5. The Exhibit B Easement Agreement remains in full force and effect.

6. The culvert carries water as the conduit duct for a stream known as Sequoit Creek.

7. The culvert recently began to exhibit signs of potential failing through the development of a series of sinkholes.

8. The Village believes that informal initial engineering assessments indicate that the culvert is made of corrugated galvanized metal which has reached the end of its useful life and is in need of replacement.

9. Those assessments also suggest that the culvert is approximately 10 feet in diameter and is buried with the crown of the culvert sitting approximately 6 feet underground.

10. The Exhibit B Easement Agreement, however, provides only a narrow strip of land 15 feet wide, which is an inadequate space in which to perform the work that is likely to be required to excavate, remove and replace the culvert - particularly since the water passing through the culvert will need to be rerouted over the Property.

11. The Village is unaware of the condition of the soils on the Property, and in particular, it is unaware of any possible environmental contamination that it could encounter during the replacement process. The Village is required to adhere to all applicable environmental laws during any construction of this nature.

12. The Owners are also unaware of the condition of these soils.

13. The soil conditions may also dictate the size of any construction easement required for the excavation and replacement of the culvert, as will current OSHA regulations.

14. Conducting the necessary phase(s) of the environmental site review to determine the existence and scope of any possible environmental contamination and soil characteristics may require filing of reports, authorizations or other documents with the Illinois Environmental Protection Agency ("IEPA") and/or United States Environmental Protection Agency ("USEPA"), some of which may need to be signed by the owner(s) of record of the Property.

15. The Village believes that the culvert needs to be replaced in the near future as a collapse could dam up Sequoit Creek and cause serious upstream flooding.

It Is Therefore Agreed As Follows:

A. The foregoing Agreed Statement of Facts is incorporated as a substantive clause of this agreement ("Agreement").

B. Nothing in this Agreement is intended to modify, alter, supersede or otherwise affect the Exhibit B Easement Agreement which shall remain in full force and effect.

C. The Owners hereby grant to the Village and its contractors and subcontractors a temporary, non-exclusive license to enter upon the Property for the sole and limited purpose of conducting, at the Village's sole risk, cost, and expense, soil and environmental testing thereon (the "Inspections"). The Inspections may include invasive testing, such as borings and small-scale excavating. Where the Village's contractors or subcontractors (collectively, "Contractors") perform the actions allowed to the Village herein, the Village shall be liable for the actions of its Contractors as if the Village performed the actions itself.

D. Such license shall continue in force, subject to the Owners' right of revocation described below, until the earlier of the completion of the Inspections or December 31, 2019.

E. The Village agrees that the Inspections shall be performed in a good and workmanlike manner, in accordance with all applicable Laws (as hereinafter defined), and in a manner so as to minimize any disturbance to Owners or any Owner Indemnitees (as hereinafter defined).

F. Prior to performing the Inspections, the Village shall notify the Owners of the start date and the expected length of time to complete the Inspections.

G. The Village agrees that entry upon the Property shall be limited to the extent necessary for the performance of the Inspections and shall otherwise be limited as provided herein.

H. In connection with conducting the Inspections, the Village may bring onto the Property such equipment and machinery, if any, that is reasonably and customarily required in connection with the performance of such Inspections.

I. The Village agrees to maintain equipment and other materials in an orderly manner while they are located on the Property. The Village agrees to remove all debris and trash resulting from the Inspections on at least a daily basis.

J. The Village shall take all appropriate measures for the safety of persons and property on the Property and shall comply with all applicable laws, codes, ordinances, statutes, rules, regulations, and other legal and governmental requirements (collectively, "Laws").

K. Unless the Village and the Owners agree in writing to different conditions, the Village shall restore any damage to the Property resulting from the Inspections, including, but not limited to, repair of surface openings resulting from borings, sealing of asphalt and concrete, and any other associated restoration work.

L. Any and all samples, sample residues, by-products from the sampling process, excavated materials and other wastes derived from the Inspections shall be deemed the property and responsibility of the Village and shall be disposed of at the Village's sole cost in accordance with all applicable Laws. This provision does not, however, obligate the Village to remediate any conditions found to exist on the property; it solely requires removal and proper disposal of samples and other materials removed from under the surface of the soil in the testing process.

M. To the maximum extent permitted by applicable law, the Village shall indemnify, defend, and hold the Owners and their affiliates, successors, and assigns and their respective officers, agents, employees, directors, members, managers, shareholders and partners (collectively, the "Owner Indemnitees"), harmless from and against any and all claims, damages, losses, liabilities, judgments, fines, and penalties arising out of the Inspections ("Losses"). The Village's obligations in this Section M do not include Losses arising from contaminants that exist prior to the Inspections, unless the Village exacerbates such pre-existing contamination by spreading pre-existing contamination to areas where, prior to the spread, the contaminants did not exist or existed in lower concentrations. The Village shall be liable for Losses arising from such exacerbation of pre-existing contamination.

N. Insurance

(i) The Village shall, during the term of this Agreement, maintain the following insurance with companies rated A or better by the current issue of Best's Insurance Reports with the described limits and terms:

(a) Worker's Compensation Insurance for statutory requirements in the State of Illinois and Employers' Liability Insurance with limits of \$1,000,000 for injuries to or death of any one or more persons;

(b) Comprehensive General Liability or Commercial General Liability Insurance, with limits of not less than One Million Dollars (\$1,000,000) combined single limit per occurrence, and not less than Two Million Dollars (\$2,000,000) on a general aggregate basis, for bodily injury, death, and property damage;

(c) Comprehensive Automobile Liability Insurance, including coverage for owned, non-owned, and hired motor vehicles, with combined single limit of liability for bodily injury and property damage of not less than \$1 million per occurrence;

(d) Pollution Legal Liability Insurance with limits of not less than One Million Dollars (\$1,000,000) per incident, and not less than Two Million Dollars (\$2,000,000) in the aggregate, for bodily injury, death, remediation costs, and property damage; and

(ii) But for the Worker's Compensation and Employers' Liability Insurance, each policy of insurance shall:

(a) name the Owners and the Owner Indemnitees as additional insureds;

(b) state that such policy is primary and noncontributing with any insurance carried by Owner;

(c) contain severability of interest clauses.

(iii) A certificate, together with any endorsements to the policy required to evidence the coverage which is to be obtained hereunder, shall be delivered to the Owners promptly after the execution and delivery of this Agreement.

(iv) Any policies required by the provisions of this Section N may be made a part of a blanket policy of insurance with a "per project, per location endorsement" so long as such blanket policy contains all of the provisions required herein and does not reduce the coverage, impair the rights of the Owners and Owner Indemnitees, or negate the requirements of this Agreement.

O. The obligations of the Village under Sections K, M, Q, S, T and U shall survive termination of the license granted hereunder and any termination of this Agreement.

P. If the Village violates this Agreement, Owner may, by written notice to the Village, immediately terminate the license granted hereunder.

Q. The Village shall promptly remove, by payment, bonding, or otherwise, any mechanics', materialmens', or similar liens on the Property in connection with the Inspections. If the Village fails to do so, the Owners may do so at the Village's sole cost, in which event the Village will reimburse the Owners for any and all such sums so expended for such removal immediately upon written demand.

R. All notices, consents, approvals, acceptances, demands, waivers, and other

communications ("Notice") required or permitted hereunder must be in writing and must be sent by (i) personal delivery, (ii) electronic mail, (iii) U.S. certified mail, return receipt requested, or (iv) for next day delivery by a nationally-recognized commercial overnight delivery service that provides evidence of the date of delivery, in any case with all charges prepaid, addressed to the appropriate party at its address listed below.

To The Owners:

Michael Mostow
Quarles & Brady LLP
300 North LaSalle
Suite 4000
Chicago, IL 60654-3422
michael.mostow@quarles.com

Mark R. Pittman
2986 SE Fairway West
Stuart, FL 34997

Sharon Pittman Coleman
300 Brandy Point Drive. #3A
Arbor Vitae, WI 54568
nikanddentismom@hotmail.com

To The Village:

James J. Keim, Village Administrator
874 Main Street
Antioch, IL 60002
jkeim@antioch.il.gov

with a copy to:

Robert J. Long, Village Attorney
Daniels, Long & Pinsel, LLC
19 N. County Street
Waukegan, IL 60085
rlong@dlplawyers.com

All Notices given in accordance with this Section R will be deemed to have been received three (3) business days after having been deposited in any mail depository regularly maintained by the United States Postal Service, if sent by U.S. certified mail; on the date delivered if by electronic mail or personal delivery; or one (1) business day after having been deposited with a nationally recognized overnight delivery service, if sent by overnight delivery, or on the date delivery is refused, as indicated on the return receipt or the delivery records of the delivery service, as

applicable. Notices given by counsel to a party in accordance with the above shall be deemed given by such party.

S. At no cost to the Owners, the Village shall send promptly to the Owners copies of all plans, reports, and data generated in connection with the Inspections ("Property Information"). The Village shall hold, and shall instruct each of its Contractors and Related Parties (as defined below) to hold, as confidential the Property Information and not disclose Property Information to any other person without the prior written consent of the Owners. Notwithstanding anything to the contrary hereinabove set forth, the Village may disclose Confidential Information (1) on a need-to-know basis to its employees, agents, consultants, lawyers, accountants, appraisers, advisors, affiliates, partners, investors, and lenders ("Related Parties"); and (2) to the extent the Village is required to disclose the same pursuant to a court order or Laws. If the Village concludes that it must disclose Property Information pursuant the Freedom of Information Act or similar laws ("FOIA"), the Village will, within two business days of receiving the FOIA request, notify the Owners of the FOIA request and the Village's intention to disclose. Within the time the Village is required by law to disclose the Property Information, the Village will allow the Owners to object to the disclosure, and the Village and the Owners will work together to determine if there is a legal basis to withhold producing the Property Information. If the Village and the Owners disagree, the Village will allow the Owners the opportunity to seek a protective order preventing or modifying the disclosure of Property Information. To the extent available under Laws, the Village will seek extensions to the time to disclose to allow the foregoing process to reach a resolution.

T Any actual repairs to the culvert extending beyond the terms and provisions of the Exhibit B Easement Agreement shall not be undertaken by the Village without the express approval of the Owners in a subsequent agreement.

U. Nothing in this Agreement is intended to modify, alter, supersede or otherwise affect the informal agreement by which the Village has been maintaining the surface of the Property in exchange for the Owners allowing the use of the same for civic functions and vehicle parking from time to time which informal agreement shall remain in full force and effect, subject to safety considerations relating to the culvert. The Village acknowledges that the Owners may terminate or limit the informal agreement at any time.

V. This Agreement may be executed in one or more counterparts each counterpart of which shall constitute an executed agreement.


W. The parties hereto do hereby agree that this Agreement and the rights and obligations of the parties hereto shall be governed by the laws and jurisdiction of the State of Illinois.

(Remainder of Page Left Intentionally Blank. Signature Page Follows Immediately.)

IN WITNESS OF the foregoing agreements and covenants, we have set our hands and seals,
pursuant to due and proper authority on this 12 day of June, 2019:

Owners

Village of Antioch


By: Mayor Lawrence M. Hanson

Witness:


By: Clerk Lori K. Romine

