City of Carroll

112 E. 5th Street Carroll, Iowa 51401-2799 (712) 792-1000 FAX: (712) 792-0139

MEMO TO: Mike Pogge-Weaver, City Manager MSP-W

FROM: Randall M. Krauel, Director of Public Works RMK

DATE: December 7, 2016

SUBJECT: Alley: Block 10 Original Town
Tier 2 Site & Free Product Assessment
Walgreens Environmental License Agreement

The Tier 2 Site Assessment and Free Product Assessment contracted with Seneca Companies, Inc. for the Alley: Block 10 Original Town requires entry onto private property owned by Walgreen Co. Walgreens has proposed the attached Environmental License Agreement including the conditions of entry permission.

The conditions are detailed in the Agreement. They are generally somewhat typical where the City is responsible for its/agent's negligence that causes Walgreens injury or damage.

RECOMMENDATION: Mayor and City Council consideration and passage and approval of the Resolution approving the Walgreens Environmental License Agreement.

RMK:ds

attachment

RESOLUTION NO. _____

RESOLUTION APPROVING THE WALGREENS ENVIRIONMENTAL LICENSE AGREEMENT FOR THE TIER 2 ASSESSMENT AND FREE PRODUCT ASSESSMENT OF THE ALLEY: BLOCK 10, ORIGINAL TOWN.

WHEREAS, on August 22, 2016, a Tier 2 Site Assessment and Free Product Assessment was added to the Contract with Seneca Companies, Inc. for the Alley: Block 10, Original Town; and,

WHEREAS, performance of the Assessments requires entry onto adjacent property owned by Walgreen Co.; and,

WHEREAS, Walgreen Co. has proposed an Environmental License Agreement for access to their property.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Carroll, Iowa, that the Walgreens Environmental License Agreement is approved; and,

BE IT FURTHER RESOLVED that the Mayor is authorized and directed to execute the Agreement.

Passed and approved on this 12th day of December, 2016.

CITY COUNCIL OF THE
CITY OF CARROLL, IOWA

By_____
Eric P. Jensen, Mayor

ATTEST:

By: _____
Laura A. Schaefer, City Clerk

ENVIRONMENTAL LICENSE AGREEMENT

THIS ENVIRONMENTAL LICENSE AGREEMENT ("License Agreement") is entered into this 12th day of December, 2016, between **WALGREEN CO.**, an Illinois corporation ("Walgreens"), and the City of Carroll, Iowa, an Iowa municipal corporation ("Licensee").

WHEREAS, Walgreens is the owner of that certain property located at 105 E. 6th Street, Carroll, Iowa (the "Property").

WHEREAS, Licensee has requested that Walgreens grant reasonable access to the Property for the purpose of performing the Work (defined below); and

WHEREAS, Walgreens has consented to Licensee having such access to the Property for the sole purpose of performing the Work pursuant to the terms, conditions and limitations set forth in this License Agreement.

NOW, THEREFORE, in consideration of the covenants and conditions set forth in this License Agreement and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged by the parties, Walgreens and Licensee hereby agree as follows:

1. Walgreens hereby grants Licensee a license to access the Property for installation and monitoring of environmental assessment equipment (the "Equipment") at the location indicated on the plan attached hereto as Exhibit "A" and the maintenance thereof on an ongoing basis, to determine the presence, if any, of any Hazardous Substance (defined below) located in, on, under or about the Property and for no other purpose (collectively the "Work"). Licensee shall install and maintain the Equipment in only the locations and manner that Walgreens has approved. Licensee, prior to taking any action which deviates or is different from the Work described in Exhibit "A" shall submit its plans therefore to Jeff Groncki of Walgreens' Facilities Department for his further review and approval or disapproval, which may be conditioned or denied as Walgreens shall determine in its good faith business judgment. Any approval for Work must be given expressly and in writing and requests therefore, including appropriate supporting documentation, shall be submitted to Jeff Groncki at jeff.groncki@walgreens.com. Any plans so approved by Jeff Groncki on behalf of Walgreens hereunder, shall be hereinafter called the "Plans." Once approved, the Work and all Equipment shall be performed and installed in full compliance with the approved Plans.

2. Licensee shall be fully responsible for maintaining the Equipment and for removing the Equipment upon completion of the Work or when requested to do so by Walgreens. Upon such removal of the Equipment, Licensee shall, at its sole cost and expense, restore the affected portions of the Property to the condition prior to the commencement of the Work.

3. Licensee shall be responsible for any damage done to the Property or any improvements or facilities from time to time constructed thereon resulting in any manner from the performance of the Work and/or its entry or access onto the Property by Licensee, Licensee's contractors, its or their respective employees, representatives, agents or subcontractors, or any other parties directly or indirectly employed by or acting at the direction or on behalf of any of the foregoing or for whose acts any of the foregoing may be liable (collectively "Licensee's Representatives"). Licensee shall promptly repair to Walgreens' satisfaction all damage to the Property (including all improvements or facilities from time to time constructed thereon) caused by Licensee and/or Licensee's Representatives.

4. (a) Licensee shall obtain at its sole cost and expense all governmental permits and authorizations of whatever nature required by any and all governmental agencies for Licensee's Work at the Property. While on the Property, Licensee shall comply and shall cause all Licensee's Representatives on the Property to comply with all applicable governmental laws and regulations including, without limitation, applicable Environmental Law (defined below). All persons who enter upon the Property pursuant to this License do so at their own risk.

(b) The term "Hazardous Substance" shall mean any hazardous or toxic chemical, waste, byproduct, pollutant, contaminant, compound, product or substance, including, without limitation, asbestos, polychlorinated biphenyls, petroleum (including crude oil or any fraction or by-product thereof), underground storage tanks, and any material the exposure to, or manufacture, possession, presence, use, generation, storage, transportation, treatment, release, disposal, abatement, cleanup, removal, remediation or handling of which is prohibited, controlled or regulated by any Environmental Law.

(c) The term "Environmental Law" shall mean any federal, state, regional, county or local governmental statute, law, regulation, ordinance, order or code or any consent decree, judgment, permit, license, code, covenant, deed restriction, common law, or other requirement presently in effect or hereafter created, issued or adopted, pertaining to protection of the environment, health or safety of persons, natural resources, conservation, wildlife, waste management, and pollution (including, without limitation, regulation of releases and disposals to air, land, water and ground water), including, without limitation, the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended by the Superfund Amendments and Reauthorization Act of 1986, 42 U.S.C. 9601 et seq., Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976 and Solid and Hazardous Waste Amendments of 1984, 42 U.S.C. 6901 et seq., Federal Water Pollution Control Act, as amended by the Clean Water Act of 1977, 33 U.S.C. 1251 et seq., Clean Air Act of 1966, as amended, 42 U.S.C. 7401 et seq., Toxic Substances Control Act of 1976, 15 U.S.C. 2601 et seq., Occupational Safety and Health Act of 1970, as amended, 29 U.S.C. 651 et seq., Emergency Planning and Community Right-to-Know Act of 1986, 42 U.S.C. 11001 et seq., National Environmental Policy Act of 1975, 42 U.S.C. 300(f) et seq., and all amendments as well as any similar state or local statute or code and

replacements of any of the same and rules, regulations, guidance documents and publications promulgated thereunder.

5. Licensee shall not suffer or permit to be enforced against the Property, or any part thereof, any mechanics', materialmen's, contractors' or subcontractors' liens or any claim for damage arising from any work performed by Licensee or Licensee's Representatives, and Licensee shall pay or cause to be paid all of said liens, claims or demands before any action is brought to enforce the same against the Property. Without limitation of Walgreens' rights and remedies, should Licensee fail within ten (10) days of a written request from Walgreens to pay and discharge any lien or claim arising out of the Work or access onto the Property, then Walgreens may, at its option, pay any such lien or satisfy any judgment thereon, and all costs, expenses and other sums incurred by Walgreens in doing so (including but not limited to attorneys' fees) shall be paid to Walgreens by Licensee upon written demand, together with interest thereon at the maximum rate permitted by law.

6. Licensee and Licensee's Representatives shall, in performing the Work and entering the Property, comply with the following requirements: (a) the same shall not interfere with Walgreens' use and operations at the Property; (b) Walgreens' store manager shall be provided reasonable advance written notice prior to any entry onto the property pursuant to this License Agreement (other than for routine, nondestructive readings taken from a monitoring well); (c) Walgreens' requests to Licensee from time to time, regarding the Work and the performance thereof, so as to minimize or avoid any disturbance that may result from the timing, manner or duration thereof, shall be promptly complied with by Licensee and Licensee's Representatives; (d) in no event (except in an emergency) shall access to the Property during the last week of October, or the months of November and December of any year occur, or during any two week period that may from time to time be required by notice to Licensee from Walgreens, to accommodate Walgreens' construction, use or business on or at the Property; and (e) other than the Equipment, no other vehicles or equipment shall be placed at or kept on the Property without Walgreens' express written permission in each instance.

7. Prior to and at all times after initially entering upon the Property for any purpose, Licensee shall at its sole expense maintain a policy or policies of comprehensive general liability insurance with respect to the Property and the operations of or on behalf of Licensee on or about the Property, including but not limited to personal injury, blanket contractual, broad form property damage and liability coverage, for not less than two million dollars ($2,000,000.00), combined single limit bodily injury, death and property damage liability per occurrence, together with employer's liability, with a Waiver of Subrogation endorsement by the insurance carrier with respect to Walgreens. Licensee's policy of insurance required above shall be primary and shall name Walgreens as an additional insured, and any other insurance carried by Walgreens shall be noncontributing.

8. Licensee hereby indemnifies, defends and holds Walgreens, its successors or assigns, harmless from and against any claim, loss, liability, action, damage, cost,

injury, fine or expense, whether direct or indirect, and including but not limited to attorneys fees, with respect to the Work, the operation of the Equipment on the Property, use or misuse of the Property by Licensee or any of Licensee's Representatives, any act or omission of Licensee or any of Licensee's Representatives, any bodily injury, property damage, accident, fire, loss, theft or other casualty to or involving Licensee or any of Licensee's Representatives while on the Property, and any breach by Licensee of its obligations under this License Agreement. Licensee expressly waives all claims and demands against Walgreens for any loss, damage, injury, accident, fire or other casualty, liability, claim, cost, fine or expense of or to Licensee. The obligations of Licensee to indemnify, defend and hold harmless Walgreens shall survive the expiration of this License Agreement.

9. This License Agreement may not be assigned by Licensee. Subject to the foregoing sentence, this License Agreement shall be binding upon and inure to the benefit of the successors and assigns of the parties hereto. Any assignment shall not relieve Licensee from its obligations under this License Agreement. If Walgreens incurs any expense or cost, including but not limited to attorneys' fees, in connection with any action or proceeding instituted by Walgreens arising from or relating to this License Agreement, Walgreens shall be entitled to recover its expenses and costs (including but not limited to its attorneys fees) from Licensee in such action or proceeding.

10. All test results from the Work or related to the Property shall be promptly provided to Walgreens by Licensee without charge. Walgreens reserves its rights at law or equity in the event that such test results disclose that the Property does not comply with applicable environmental laws or in the event that such test results disclose that further work or remediation is required at the Property. The persons signing this letter on behalf of Licensee warrant and represent that they are duly authorized to so execute this letter on behalf of Licensee and that this letter as so executed by such person is binding and enforceable against Licensee according to its terms.

11. Notices or other communication hereunder shall be in writing and shall be sent certified or registered mail, return receipt requested, or by other national overnight courier company, or personal delivery. Notice shall be deemed given upon receipt or refusal to accept delivery. Each party may change from time to time their respective address for notice hereunder by like notice to the other party. The notice addresses of the parties are as follows:

Walgreens:	Walgreen Co. 104 Wilmot Road, MS #1420 Deerfield, Illinois 60015 Attn.: Real Estate Law Department
With a copy to:	the Property Attn.: Store Manager

Licensee: City of Carroll
112 E.5th Street
Carroll, IA 51401
Attn: Randall M. Krauel

12. The laws of the State in which the Property are located shall govern the interpretation, validity, performance, and enforcement of this License Agreement. Each of the signatories to this License Agreement represents and warrants that he/she has all requisite authority to sign on behalf of, and legally bind, the entity for which he/she is signing.

13. It is intended that each of the covenants, conditions, restrictions, rights and obligations set forth herein shall run with the land and create equitable servitudes in favor of the real property benefited thereby, shall bind every person having any fee, leasehold or other interest therein and shall inure to the benefit of the respective parties and their successors, assigns, heirs, and personal representatives.

14. Walgreens' consent shall not be deemed granted unless and until this letter is so signed and returned (along with the certificate of insurance naming Walgreen Co. as an additional insured referenced in Paragraph 7 above).

15. Each of the signatories to this License Agreement represents and warrants that he/she has all requisite authority to sign on behalf of, and legally bind, the entity for which he/she is signing.

IN WITNESS WHEREOF, the parties hereto have executed this License Agreement as of the date first written above.

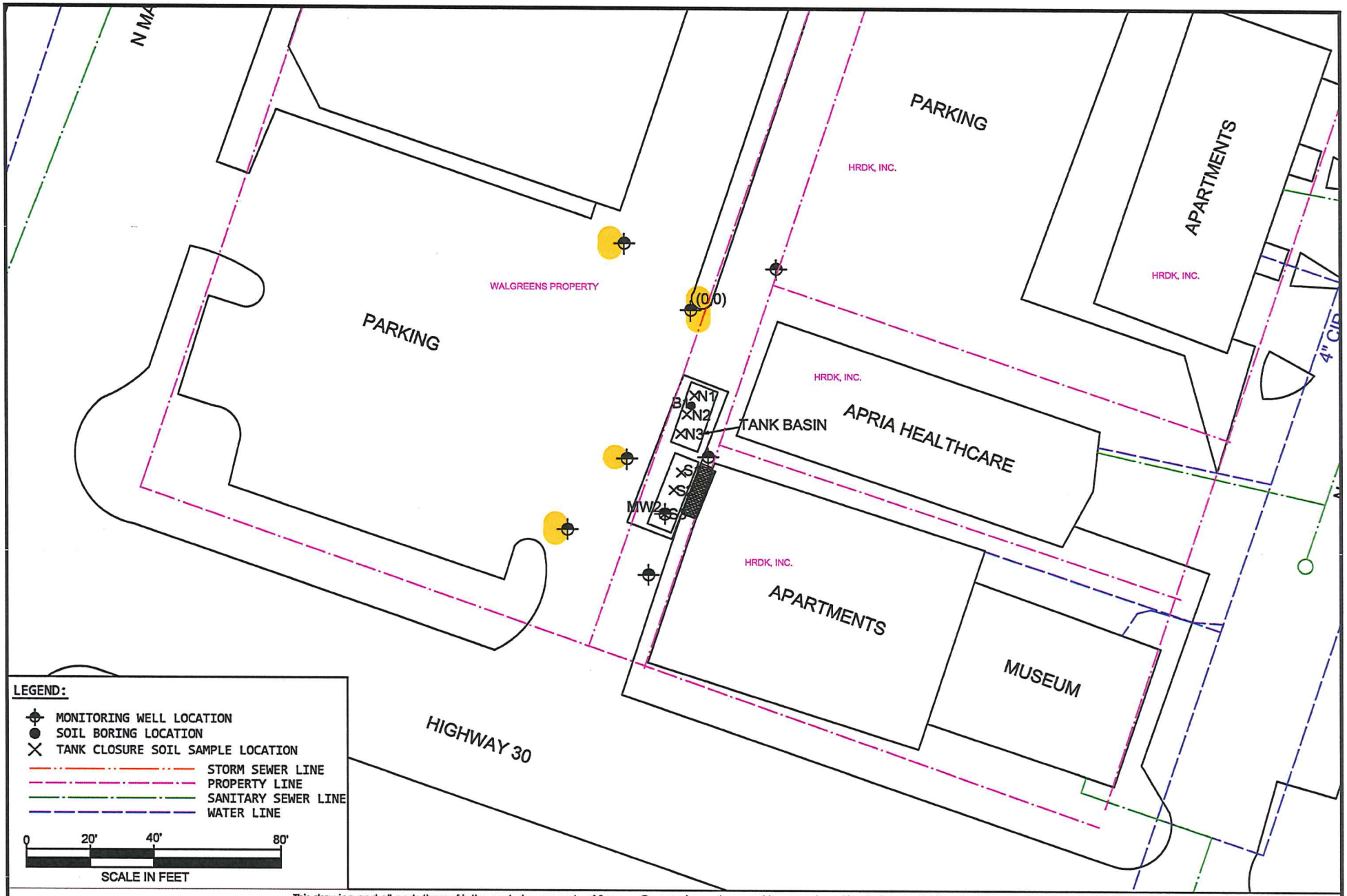
WALGREEN CO.

By: _____
Name: _____
Title: _____

CITY OF CARROLL, IOWA

By: _____
Name: Eric P. Jensen
Title: Mayor

EXHIBIT A



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REV. NO.	DATE:

N W E S

Seneca Companies
The Complete Solution

JOB DESCRIPTION: ABANDONED TANK SITE 105 E 6TH STREET CARROLL, IA	CHECKED BY: JENNIFER BAKER
	SCALE: 1-40
	FILENAME: 6311507
SHEET TITLE: SCALED SITE MAP	PROJECT NO: 6311507
	DATE: 4/15/2016
	DRAWN BY: FLORIANNE RIVERA
	SHEET NO. 01