



AGENDA MEMORANDUM
City Council Meeting
January 5, 2015

SUBJECT: Dry Run Creek Improvements
Approve Asbestos Testing and Abatement Services

Prepared By: Mike Cherry, Director of Public Works & City Engineer

Recommended City Council Action

Approve asbestos testing and abatement services with Cardno ATC of Waterloo, Iowa. Asbestos testing fees total \$6,900 and the abatement cost will be determined after testing. Cardno ATC will subcontract the abatement services and invoice the City accordingly.

Summary Statement

The Dry Run Creek Improvements required the acquisition of nine structures that must have asbestos testing and abatement performed prior to demolition. As of December 31, 2014, eight of the properties are owned by the City and ready for asbestos testing and abatement. Demolition of the structures will occur as a component of the Dry Run Creek Improvements project which is scheduled to begin March 30, 2015. Timely asbestos testing and abatement is critical to meet the construction schedule and Cardno ATC's Waterloo employees have a proven record working with the City on other Waverly projects such as the FEMA buyout properties.

Expenditure Required

Table with 2 columns: Description and Amount. Rows include Design, Construction, Property Acquisition, etc. (\$7,100,000), Interest on Bonds, estimated (1,900,000), and Total Cost of the Project (\$9,000,000).

Source of Funds

Table with 2 columns: Description and Amount. Rows include State Tax Increment Financing (\$5,650,000), City of Waverly - Various Funding Sources over Life of Bonds (3,350,000), and Total Financing for the Project (\$9,000,000).

Policy

The proposed Dry Run Creek improvements are consistent with the following official planning documents:

- Waverly Dry Run Creek Improvements Study, January 2013
• City of Waverly Comprehensive Plan Update, October 2011
• City of Waverly Park and Open Space Master Plan, April 2011
• City of Waverly Smart Planning Workshop: Policy Options and Project Designs, October 2010
• Waverly Flood Mitigation Study, April 2009
• City of Waverly Hazard Mitigation Plan Update, June 2009
• City of Waverly Long-Term Community Recovery Strategy, December 2008

## Project Concern

None.

## Alternative

N/A.

## Background Information

The City of Waverly submitted an application for financial assistance under the Flood Mitigation Program established by Iowa Code 418 and administered through the Iowa Homeland Security and Emergency Management Division. This application and supporting documentation showed how the proposed improvements to the Dry Run Creek channel will:

- mitigate future flooding that affects hundreds of residences and businesses,
- reduce or eliminate the cost and impact of flood insurance, and
- provide opportunity for revitalization and redevelopment of historically significant neighborhoods.

On December 4, 2013, the Iowa Flood Mitigation Board approved the City of Waverly's Dry Run Creek Improvements project.

July 17, 2012.....Hazard Mitigation & River Use Commission Reviewed Project and Consultant Selection  
July 23, 2012.....Council Review of Project and Consultant Selection  
Aug. 6, 2012.....Approve Professional Services Agreement  
Aug.-Dec. 2012.....Project Development Activities  
Sept. 11, 2012.....Public Open House #1  
Nov. 1, 2012.....Public Open House #2  
Dec. 3, 2012.....Approve Property Acquisition, Wayne & Alice Brown  
Dec. 17, 2012.....Progress Report to Council & Public Open House #3  
Jan. 28, 2013.....Review the Final Report for the Dry Run Creek Improvements Study  
Feb. 2013.....Begin Seeking State and Federal Funding Assistance  
March 18, 2013.....Approve Application for State Flood Mitigation Program Funding  
Nov. 4, 2013.....Approve Official Application for State Flood Mitigation Program Funding  
Nov. 8, 2013.....Deadline to submit Application for State Flood Mitigation Program Funding  
Nov. 21, 2013.....Flood Mitigation Board Project Presentation  
Dec. 4, 2013.....Flood Mitigation Board Awards Funding  
Jan. 20, 2014.....Approve State Flood Mitigation Program Funding Agreement  
Jan. 20, 2014.....Approve Supplemental Agreement No. 1 to the Professional Services Agreement  
Jan. 20, 2014.....Set Public Hearing for Notice of Intent to Commence Project and Acquire Property  
Jan. 28, 2014.....Neighborhood Project Meeting  
March 3, 2014.....Hold Public Hearing for Notice of Intent to Commence Project and Acquire Property  
CY 2014.....Design and Property Acquisition  
June 26, 2014.....Neighborhood Project Meeting  
July 7, 2014.....Project Status Report to Council  
October 6, 2014.....Approve Easement and Partial Acquisition Strategy and Policy  
December 15, 2014.....Approve Easement and Partial Acquisition Settlements  
January 5, 2015.....Set Public Hearing Date  
**January 5, 2015.....Approve Asbestos Testing and Abatement Services**  
January 22, 2015.....Publish Notice of Letting and Public Hearing  
February 2, 2015.....Hold Public Hearing

February 5, 2015.....Bid Opening  
February 16, 2015.....Award Contract  
February 16, 2015.....Approve Construction Services and Administration Agreement with WHKS & Co.  
March 16, 2015.....Approve Construction Contract Documents  
CY 2015-16.....Construction of Dry Run Creek Improvements  
CY 2017.....Dry Run Creek FEMA LOMR

Respectfully submitted,

Phil Jones  
City Administrator

Attachments: Cardno ATC's Proposal for Asbestos Services

December 15, 2014

Mr. Michael Cherry  
**City of Waverly**  
200 1<sup>st</sup> Street NE  
Waverly, IA 505677

Cardno ATC

328 LaPorte Road  
Waterloo, IA 50702

Phone +1 319.233.0441  
Fax +1 319.233.3269  
[www.cardno.com](http://www.cardno.com)

**RE: Proposal for Asbestos Services**  
Dry Run Creek Improvements  
Waverly, Iowa

[www.cardnoatc.com](http://www.cardnoatc.com)

Dear Mr. Cherry:

### 1.0 Introduction

Cardno ATC is pleased to present this proposal to provide pre-demolition asbestos services for the Dry Run Creek Improvements in Waverly, Iowa. As part of this project nine properties will be demolished. However, inspection and abatement activities at the 316 6<sup>th</sup> Street NW property will be delayed until late 2015. The pre-demolition activities will inspect for potential asbestos containing materials, which will subsequently be removed prior to demolition activities. These inspections are required by the State of Iowa DNR prior to demolition of these types of properties. Cardno ATC's proposal includes a field survey by an Iowa-licensed inspector, sampling, laboratory analysis, preparing a survey report with recommendations, contracting a reputable abatement contractor, and performing final visual clearance inspections.

### 2.0 Qualifications and Experience

Cardno ATC's asbestos and hazardous material consulting services include site inspection, hazard assessment, project design, monitoring of abatement contractor activity, and training. Our asbestos group is highly experienced in conducting building surveys, inspections, and assessments as well as designing technical removal and demolition specifications and associated drawings. In addition, Cardno ATC's affiliated laboratories are fully EPA and American Industrial Hygiene Association (AIHA) accredited to analyze industrial hygiene and environmental samples collected from air, water, soils, and solids.

### 3.0 Scope of Services

Cardno ATC will perform the sampling in accordance to standard Iowa regulations at the 9 sites. The sampling will generally include collection and analysis of all identified suspect material. The survey will be performed by an Iowa-licensed Asbestos Inspector and will include the following specific activities:

- A visual inspection of all accessible interior areas to provide a general understanding of the various types and conditions of accessible ACM that may be present in the areas surveyed. Cardno ATC's report will include tables identifying the locations and estimated quantity of accessible ACM in the areas surveyed.
- The scope of work for a "Pre Renovation Survey" as described in the standard includes some minor exploratory demolition activities in random areas to access potential hidden ACM.
- In accordance to the referenced ASTM standard, and Iowa DNR requirements, samples will be collected of each suspect material. All samples will be analyzed initially by PLM and then submitted for point counts and transmission electron microscopy if requested. The samples will be analyzed by an AIHA accredited laboratory. Cardno ATC currently has an in-house AIHA accredited laboratory that will perform the analysis of the collected samples.
- A report of Cardno ATC's findings including, types of suspect ACM sampled, list of actual types of ACM based on laboratory analysis and tables identifying the location, estimated quantity and general condition of each type of accessible ACM found, representative common areas, and exterior areas surveyed. The report will also include general recommendations regarding removal and additional testing that should be performed.
- Upon completion of the asbestos survey report, Cardno ATC will write bidding documents for the asbestos abatement project at the facility. The scope of work will be determined by the client. The documents will include drawings (not to scale) and/or photos identifying locations of the asbestos containing materials within the buildings. The bidding documents will include the regulations and standards from which the abatement procedures will be based upon including but not limited to contractor requirements, air monitoring requirements, and record keeping requirements.
- Cardno ATC will solicit bids to reputable asbestos abatement companies. In conjunction with approval from the city a contractor will be selected to provide abatement services of the properties. This contractor will be sub-contracted through Cardno ATC.
- Upon completion of the asbestos abatement ATC will inspect the properties to assure all asbestos containing materials have been removed. Once all noted ACMs are properly removed ATC will provide a final clearance letter for each property.



4.0 Cost Proposal

Cardno ATC has established the following cost for this project based on the scope of work.

Asbestos Survey, Report Preparation (First 8 properties)	\$ 5,200.00
Asbestos Abatement (First 8 properties)	\$ TBD*
Final Inspection and Clearance Report (8 properties)	\$ 800.00
Asbestos Survey, Report Preparation (316 6 <sup>th</sup> Street NW)	\$ 800.00
Asbestos Abatement (316 6 <sup>th</sup> Street NW)	\$ TBD*
Final Inspection and Clearance Report	\$ 100.00
<hr/>	
TOTAL FEE (not including Asbestos Abatement)	\$ 6,900.00

\*Please note that the asbestos survey, report, and final visual clearance prices are lump sum. However, since the quantities of asbestos containing materials are unknown, the estimated abatement costs cannot be determined at this time. Therefore, upon completion of the asbestos surveys and solicitation of bids from abatement contractors, an addendum will be submitted for the actual abatement costs.

5.0 Conclusion and Schedule

Cardno ATC will commence field work within five business days after being given notice to proceed. Per the RFP asbestos testing and abatement will be completed by March 6, 2015 for the eight properties indicated, with the property at 316 6<sup>th</sup> Street NW to be completed at a later mutually agreed upon date.

We thank you for taking the time to and effort to consider our proposal. If you have any questions regarding this proposal or require further information or clarification, please do not hesitate to contact me at (319) 233-0441. Thank you again for your consideration.

Sincerely,  
CARDNO ATC

Scott Hanson, PE  
Project Manager  
for Cardno ATC  
Direct Line +1 319 233 0441  
Email: [scott.hanson@cardno.com](mailto:scott.hanson@cardno.com)

Gaylen Hiesterman, CGP  
Operations Manager  
for Cardno ATC  
Direct Line +1 319 233 0441  
Email: [gaylen.hiesterman@cardno.com](mailto:gaylen.hiesterman@cardno.com)

Enc: Client Services Agreement



## CLIENT SERVICE AGREEMENT

This AGREEMENT is made this \_\_\_\_\_ day of \_\_\_\_\_, 2014, by and between City of Waverly \_\_\_\_\_ its employees, officers, directors, subsidiaries, and agents (Client) of Waverly, Iowa \_\_\_\_\_ and ATC GROUP SERVICES, INC. dba CARDNO ATC, its employees, officers, directors, subsidiaries, and agents (Cardno ATC) at Waterloo, Iowa \_\_\_\_\_.

The parties mutually agree as follows:

**DESIGNATED REPRESENTATIVES** Except as expressly specified otherwise in writing, the parties designate the following named individuals as their authorized representatives to provide approvals, directives, and permissions, including changes, and to receive notices or other communications under this agreement at the following addresses:

**CARDNO ATC:** Gaylen Hiesterman

**CLIENT:** City of Waverly

**PROPOSAL NAME/NUMBER:** Asbestos - Dry Run Creek Improvements

**SERVICE ORDER NUMBER:** \_\_\_\_\_

**1. SERVICES TO BE PERFORMED** Cardno ATC shall prepare a proposal and/or a service order for Client. The proposal and/or service order shall describe the work to be performed (Services), the location (Site), fees and/or rates to be charged, certain special conditions of performance including equipment, sampling protocols, and necessary reimbursable expenses. Cardno ATC will be authorized to proceed with the Services (Service Order), when Client indicates its acceptance by signing this Agreement. The proposal, Service Order, this Agreement and any attachments pertaining to thereto shall comprise the Contract Document.

**2. ADDITIONAL SERVICES** If any additional or different Services are required to complete an existing Service Order, these additional Services shall be set forth in a new Service Order satisfying all applicable and appropriate requirements including a separate schedule of fees and Services (Change Order).

**3. COMPENSATION** Client will pay Cardno ATC for Services and expenses in accordance with the Service Order. Cardno ATC will submit periodic invoices to Client together with reasonable supporting documentation requested by Client and a final bill upon completion of its services. Unless otherwise agreed in writing, there shall be no retainage. Payment is due within thirty (30) days regardless of whether Client has been reimbursed by any other party. Cardno ATC may suspend work, withhold reports and vacate the site without liability if payment is not received. Client will indemnify Cardno ATC for all claims concerning the suspension of work for nonpayment regardless of whether the claims are by the Client, someone claiming through the client, or by a third party. Client agrees to pay Cardno ATC's attorney's fees, and all other costs incurred in collecting past due amounts. Cardno ATC may from time to time revise its fees and/or rates and advise client either by general notification, or by specific Service Order.

**4. EXPENSES** Unless otherwise stated in the Service Order, Client agrees to pay Cardno ATC for its reimbursable expenses, in addition to its fees. Reimbursable expenses are expenditures made by Cardno ATC in the interest of the contracted Services. Reimbursable expenses shall be billed, and paid, in accordance

with the schedule included with the Service Order. Cardno ATC will submit a Change Order to Client detailing other reimbursable expenses not outlined in the Service Order, for written authorization prior to billing.

**5. INSURANCE** Cardno ATC agrees that it now carries, and will continue to carry during the performance of any Services under this Agreement, Workers' Compensation and Employer's Liability, Commercial General Liability (including Contractual Liability), Commercial Automobile Liability, Professional Liability and Contractor's Pollution Liability insurance coverage with limits at or above those described below.

- a. Workers' Compensation (statutory)
  - Employer's Liability
    - Each accident \$ 1,000,000
    - Disease - Each Employee \$ 1,000,000
    - Disease - Policy Limit \$ 1,000,000
- b. Commercial General Liability
  - Each Occurrence \$1,000,000
  - Personal and Advertising Injury \$1,000,000
  - General Aggregate \$2,000,000
  - Products and Completed Operations Aggregate \$2,000,000
- c. Commercial Automobile Liability
  - Combined Single Limit \$1,000,000
- d. Errors and Omissions / Professional Liability
  - Each Claim \$1,000,000
  - Annual Aggregate \$1,000,000
- e. Contractor's Pollution Liability
  - Each Claim \$1,000,000
  - Annual Aggregate \$1,000,000

**6. OBLIGATIONS OF CLIENT** Client warrants that all information provided to Cardno ATC concerning the required Services is complete and accurate to the best of Client's knowledge.

Client agrees to advise Cardno ATC prior to commencement of the Services, and during the work, of any hazardous conditions on or near the Site known to Client. Client understands that Cardno ATC is relying upon the completeness and accuracy of information supplied to it by Client and Cardno ATC will not independently verify such information unless otherwise provided in the Service Order. Client shall be solely responsible for and shall indemnify and hold harmless Cardno ATC for any costs, expenses or damages incurred by Cardno ATC due to Client's failure to follow applicable reporting and governmental requirements. Client will not hold Cardno ATC liable if Cardno ATC's recommendations are not followed and waives any claim against Cardno ATC, and agrees to defend, indemnify and hold Cardno ATC harmless from any claim or liability for injury or loss that results from failure to properly implement Cardno ATC's recommendations.

**7. STANDARD OF CARE** Cardno ATC's Services as defined by the Service Order shall be performed in accordance with generally accepted industry principles and practices, consistent with a level of care and skill ordinarily practiced by the consulting profession currently providing similar services under similar circumstances at the time the Services were provided. Client agrees to give Cardno ATC written notice within one (1) year of any breach or default under this section and to provide Cardno ATC a reasonable opportunity to cure such breach or default, without the payment of additional fees to Cardno ATC, as a condition precedent to any claim for damages.

**8. LIMITATIONS OF METHOD RELIABILITY** The Client recognizes and agrees that all testing and remediation methods have inherent reliability limitations; no method or number of sampling locations can guarantee that a condition will be discovered within the performance of a Service Order as authorized by the Client. The Client further acknowledges and agrees that reliability of testing or remediation methods varies according to the sampling frequency and other variables and that these factors, including cost, have been considered in the Client's selection of Services. Cardno ATC's observations only represent conditions observed at the time of the Site visit. Cardno ATC is not responsible for changes that may occur to the Site after Cardno ATC completes the Services.

**9. INTERPRETATION OF DATA** Cardno ATC shall not be responsible for the interpretation of Cardno ATC data by third parties, or the information developed by third parties from such data. Client recognizes that subsurface conditions may vary from those encountered at the locations where the borings, surveys, or explorations are made by Cardno ATC and that the data interpretations and recommendations of Cardno ATC's personnel are based solely on the information available to them.

**10. THIRD PARTY INFORMATION** Cardno ATC is dependent on information available from various governmental agencies and private database firms to aid in evaluating the history of the Site. Cardno ATC shall not be liable for any such agency's or database firm's failure to make relevant files or documents properly available, to properly index files, or otherwise to fail to maintain or produce accurate or complete records.

**11. SITE ACCESS** Client grants or shall obtain for Cardno ATC a right of entry to all parts of the Site necessary to complete the requested Services and unless otherwise specified in the Service Order, it represents that it has obtained the applicable permits and licenses for the proposed Services. If Client does not own the Site,

Client represents that it has or will obtain prior to the commencement of the Services, the authority and permission of the owner and/or the occupant of the Site. Client acknowledges that due to the nature of some Services unavoidable damage may occur. Client waives its right of recovery for such unavoidable damage, and if Client is not the owner of the Site, Client agrees to indemnify and defend Cardno ATC against any claims by the owner and/or occupant for any such damage.

Unless otherwise specified in the Service Order, Cardno ATC is not liable for damages caused by exploratory demolition or investigation to identify, quantify, or evaluate building materials, systems, and/or components not readily accessible to Cardno ATC during Cardno ATC's performance of the Services. Cardno ATC is not responsible for unforeseen conditions that exist on the Site within building systems that prohibit or deter Cardno ATC from gaining access to building materials, systems, and/or components.

**12. SITE CONTROL** Cardno ATC's testing, observation, or inspection of the work of other parties on a project shall not relieve such parties of their responsibility to perform their work in accordance with applicable plans, specifications and safety requirements. Continuous monitoring by Cardno ATC's employees does not mean that Cardno ATC is observing or verifying all Site work or placement of all materials. Client agrees that Cardno ATC will only make on-Site observations appropriate to the Services provided by Cardno ATC and will not relieve others of their responsibilities to perform the work.

**13. TEST AND SAMPLING LOCATIONS** Unless otherwise specified in the Service Order, the accuracy of test or sampling locations and elevations will be commensurate only with pacing and approximate measurements or estimates. Client should retain the services of a professional surveyor if greater accuracy is required. Client will furnish a diagram indicating the accurate location of the Site. Sample locations may also be indicated on the diagram. Cardno ATC reserves the right to deviate a reasonable distance from the boring and sampling locations unless this right is specifically revoked by Client in writing at the time the diagram is supplied.

**14. SAMPLES AND EQUIPMENT** Unless otherwise specified in the Service Order or required by law, Cardno ATC will not retain any samples obtained from the Site. At no time does Cardno ATC assume title to the samples; all samples shall remain the property of the Client. Cardno ATC will, however, sign manifests as agent for Client.

All laboratory and field equipment contaminated during Cardno ATC's Services that cannot readily and adequately be cleansed of its hazardous contaminants shall become the property and responsibility of Client. Client shall purchase all such equipment as an expense of the Services, and it shall be turned over to the Client for proper disposal unless otherwise specified in the Service Order.

**15. ENGINEERING AND CONSTRUCTION SERVICES** If the Services requested only require geotechnical engineering, subsurface exploration, construction materials testing, and/or engineering, Cardno ATC assumes that there are no hazardous substances or constituents in the soils or groundwater underlying the Site. Cardno ATC's duties and responsibilities are limited to performing tests and monitoring of specific construction activities as outlined in the Service Order.



Unless otherwise specified in the Service Order, any consulting, testing or monitoring related to environmental conditions, including, but not limited to hazardous waste, soil or groundwater contamination, or air pollutants are not part of Cardno ATC's engineering and construction Services. If it becomes apparent during the field exploration that hazardous substances or constituents may be present, field operations will be terminated without liability.

**16. OPINIONS OF COSTS** Cardno ATC may provide estimates of costs for remediation or construction as appropriate based on available data, designs, or recommendations. However, these opinions are intended primarily to provide information on the range of costs and are not intended for use in firm budgeting or negotiation unless specifically agreed to in writing by Cardno ATC.

**17. SAFETY** Cardno ATC shall not, unless otherwise specified in the Service Order, be responsible for health and safety procedures, construction means, methods, techniques, sequences, or procedures, nor be responsible for the acts or omissions of contractors or other parties on the Site.

**18. UTILITIES** Unless otherwise specified in the Service Order, it is Client's responsibility to mark or furnish the locations of all underground man-made obstructions at all Sites that the Client owns and/or operates. Client shall indemnify, defend and hold harmless Cardno ATC from and against any claims, losses or damages incurred or asserted against Cardno ATC related to Client's failure to mark, protect or advise Cardno ATC of underground structures or utilities.

**19. ROOF CUTS** Unless otherwise specified in the Service Order, if roof cuts/samples are required by the Services, it is the responsibility of the Client to make appropriate repairs. If a roofing contractor or maintenance personnel selected by Client is not on the roof to make repairs at the time samples are obtained, Cardno ATC may make temporary repairs, which may result in additional charges. Cardno ATC personnel are not certified in roofing repair, therefore under no circumstances, shall Cardno ATC be responsible for any water damage to the roofing system, building, or its contents resulting from Cardno ATC's temporary repairs.

**20. HAZARDOUS CONDITIONS OR SUBSTANCES** The Client acknowledges that Cardno ATC has neither created nor contributed to the creation or existence of any hazardous, radioactive, toxic, irritant, pollutant, substance or constituent at the Site. All Site generated hazardous and non-hazardous waste, including used disposable protective gear and equipment, are the property of the Client.

Client agrees to indemnify and hold harmless Cardno ATC against all claims for injury or loss sustained by any party, including the United States, from exposure, release, or the presence of any such hazardous, radioactive, toxic, irritant, pollutant, substance or constituent at the Site. This indemnity includes but is not limited to, Cardno ATC acting as Client's agent to sign waste manifests, allegations that Cardno ATC is a handler, generator, operator, treater or storer, transporter or disposer under any federal, state or local, law, regulation or ordinance, and Client's or third party's violation of federal, state or local, law, regulation or ordinance, related to the handling, storage, or disposal of hazardous substances or constituents at/or introduced to the Site, before or after the completion of the Services.

**21. RIGHT TO STOP WORK** If, during the performance of a Service Order, any unforeseen hazardous substance, material, element, constituent, condition, or occurrence is encountered which, in Cardno ATC's reasonable judgment significantly affects or may affect the Services provided, the risk involved in providing the Services, or the recommended scope of Services, Cardno ATC may immediately suspend work.

**22. CARDNO ATC AND CLIENT INDEMNIFICATION** Cardno ATC shall indemnify and hold harmless Client against claims, demands, and lawsuits, to the extent arising out of or caused by the negligence or willful misconduct of Cardno ATC, in connection with activities conducted in the performance of the Services.

The Client shall indemnify and hold harmless Cardno ATC from and against claims, demands, and lawsuits, to the extent arising out of or caused by Client's breach of this Agreement or the negligence or willful misconduct of the Client or other contractors retained by Client in connection with activities conducted in the performance of the Services.

If a dispute arises between the parties resulting in litigation, the prevailing party shall be entitled to recover all reasonable costs incurred. Client agrees that all indemnifications granted to Cardno ATC shall also be granted to those subcontractors retained by Cardno ATC for the performance of the Services.

**23. LIMIT OF LIABILITY** Cardno ATC's total liability for all claims or causes of action of any kind including but not limited to negligence, bodily injury or property damage, breach of contract or warranty shall not exceed the amounts recoverable from the insurance limits set forth in this Agreement.

**24. CONSEQUENTIAL DAMAGES** In no event shall either party be liable to the other party for any consequential, incidental, punitive, or indirect damages including but not limited to loss of income, loss of profits, loss or restriction of use of property, or any other business losses regardless if such damages are caused by breach of contract, negligent act or omission, other wrongful act, or whether Cardno ATC shall be advised, shall have other reason to know, or in fact shall know of the possibility of such damages.

**25. WARRANTY** Cardno ATC is not a manufacturer. If any equipment is used or purchased by Cardno ATC for a Service Order the manufacturer's warranties if any on the equipment are solely those of the manufacturer. Cardno ATC makes no other representation, guarantee, or warranty, expressed or implied, in fact or by law, whether of merchantability, fitness for any particular purpose or otherwise, concerning any of the goods or Services which may be furnished by Cardno ATC to Client.

**26. DOCUMENTS** Project-specific documents and data produced by Cardno ATC under this Agreement shall, upon completion of the Service Order become the property of Client upon payment of amounts owed Cardno ATC. Cardno ATC shall have the right, but not the obligation, to retain copies of all such materials.

**27. RELIANCE** Documents and data produced by Cardno ATC are not intended or represented by Cardno ATC to be suitable for use or reliance beyond the scope or purpose for which they were originally prepared, or for anyone except the Client. Any such unauthorized use will be at the Client's or third party's sole risk.

**28. THIRD-PARTY CLAIMS** Client agrees to pay Cardno ATC's costs (including reasonable attorney's fees) for defending Cardno ATC against any claims that a third party or a regulatory agency asserts against Cardno ATC related to the Services that were provided to Client. Claims include legal actions by a third party or a regulatory agency that are based upon the discoveries, findings or conclusions disclosed in documents or reports supplied to Client by Cardno ATC.

**29. SUBPOENAS** The Client is responsible for payment of Cardno ATC's time and expenses resulting from Cardno ATC's response to subpoenas issued by any party, involving any legal or administrative proceeding in which Cardno ATC is not named as a party, in connection with any Services performed under this Agreement. Charges are based on fee schedules in effect at the time the subpoena is served. Cardno ATC shall not object on Client's behalf to any subpoena, but will make reasonable efforts to cooperate with Client if Client chooses to object.

**30. TERMINATION OF CONTRACT** This Agreement may be terminated by either party upon seven (7) days written notice provided that any incomplete or unfinished Service Order will remain in effect until completed, unless otherwise agreed to in writing. In the event of termination or suspension, by the Client, Cardno ATC shall be paid for Services performed prior to the termination date plus reasonable termination and suspension expenses.

**31. ASSIGNMENT** Neither the Client nor Cardno ATC may assign, or transfer its benefits, rights, duties, or interest in this Agreement without the written consent of the other party. This Agreement shall be binding on and inure to the benefit of the successors and assigns of the parties.

**32. FORCE MAJEURE** Neither Client nor Cardno ATC shall hold the other responsible for damages or delays in performance caused by uncontrollable events, which could not reasonably have been anticipated or prevented, including but not limited to, acts of God, the public enemy, acts of the Government of the United States or of the several states, or any foreign country, or any of them acting in their sovereign capacity, materially different Site conditions, wars, riots, terrorism, rebellions, sabotage, fires, explosions, accidents, floods, strikes, or other conceded acts of workers, lockouts, or changes in laws, regulations, or ordinances.

**33. GENERAL PROVISIONS** The captions and headings throughout this Agreement are for convenience only and do not define, limit, modify, or add to the meaning of any provision of this Agreement. If any provision of this Agreement is in conflict with any provision of the Service Order, the terms and conditions of this Agreement shall prevail unless the conflict concerns the scope of Services to be provided. If any provision shall to any extent be deemed invalid, it shall be modified if possible to fulfill the intent of the parties as reflected in the original provision and the remainder of this Agreement shall not be affected.

This Contract Document represents the entire understanding between the parties and supersedes any and all prior contracts whether written or oral. Nothing contained in this Contract Document shall be construed to be for the benefit of any persons not a party to this Agreement. No third party beneficiary rights are created.

The validity, interpretation, and performance of this Agreement shall be governed by and construed in accordance with the laws of the state in which the Site is located. Any legal action arising out of this Agreement shall be venued in a court of competent jurisdiction within the state and county of the Site.

No waiver by either party of any default by the other party in the performance of any provision of this Agreement shall operate as or be construed as a waiver of any future default, whether like or different in character.

Cardno ATC is solely responsible for the performance of this Agreement, and no parent, subsidiary or affiliated company, or any of its directors, officers, employees, or agents shall have any legal responsibility whether in contract or tort, including negligence.

**ATC GROUP SERVICES, INC. dba CARDNO ATC**

**BY:** \_\_\_\_\_

**PRINTED NAME:** Gaylen Hiesterman

**TITLE:** Operations Manager

**DATE:** \_\_\_\_\_

**CLIENT:** City of Waverly  
(Person authorized to execute contracts)

**BY:** \_\_\_\_\_

**PRINTED NAME:** \_\_\_\_\_

**TITLE:** \_\_\_\_\_

**DATE:** \_\_\_\_\_



## Resolution 15-04

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF WAVERLY, IOWA, approving asbestos testing and abatement services with Cardno ATC of Waterloo, Iowa for the Dry Run Creek Improvements project.

WHEREAS, asbestos testing fees total \$6,900, and

WHEREAS, the abatement services will be subcontracted and the cost will be determined after testing.

WHEREAS, the Dry Run Creek Improvements project acquired nine structures in which must be tested and abatement performed prior to demolition, and

WHEREAS, inspection and abatement activities at 316 6<sup>th</sup> Street NW will be delayed until late 2015, and

WHEREAS, demolition of the structures is scheduled to begin March 30, 2015

NOW THEREFORE BE IT RESOLVED that the City Council of the City of Waverly, Iowa, approves asbestos testing and abatement services with Cardno ATC of Waterloo, Iowa for the Dry Run Creek Improvements project for \$6,900.

Passed and Adopted this 5th day of January, 2015.

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Charles D. Infelt, Mayor

ATTEST:

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Phil Jones, City Administrator