



City of Grand Island

Tuesday, December 09, 2003

Council Session

Item G39

#2003-375 - Approving License Agreement with CNH Relative to Access to Public Right of Way

Testing of the ground water in south central Grand Island is being done by CNH to determine the origin and extent of contamination in that area of the City which is near several municipal water wells. An agreement has been prepared which would authorize CNH to drill test wells for monitoring ground water quality along the City hike/bike trail and along the City's Blaine street right-of-way between Stolley Park Road and Highway #34.

Permitting CNH to monitor the ground water quality in this area is essential for dealing with the ground water contamination problems in this area of the City. Approval is recommended.

Staff Contact: Doug Walker

* This Space Reserved for Register of Deeds *

LICENSE AGREEMENT

This License Agreement is made by and between the CITY OF GRAND ISLAND, NEBRASKA, a Municipal Corporation, herein referred to as the "City" and NEW HOLLAND NORTH AMERICA, INC., a corporation, its successors and assigns, hereinafter referred to as "CNH."

1. **STATEMENT OF PURPOSE.** The purpose of this License Agreement is to set forth the terms and conditions under which CNH may construct, maintain, repair, and utilize the following described improvement which will infringe upon the public right-of-way:

Installation of permanent ground level mount and temporary monitoring wells to be placed in the city right-of-way along Blaine Street and along the hike/bike trail between Stolley Park Road and U.S. Highway 34 in Grand Island, Nebraska.

CNH is also authorized and allowed to use the public right-of-way along Blaine Street and along the hike/bike trail between Stolley Park Road and U.S. Highway 34 in Grand Island, Nebraska, for the collection of subsurface soil and water samples to determine the presence of contaminants.

2. **CNH'S DUTIES AND RISKS.** It is understood and agreed that CNH may construct, maintain, repair and utilize the above described improvement at the CNH's sole risk provided, however, that the City will provide all available information, through Diggers Hotline or otherwise, regarding subsurface utilities, including, but not limited to sewers, electrical, gas and water. CNH hereby waives any claim for damages against the City, its officers, employees, agents and independent contractors for any damage or injury that may result to said improvement. If the City, in its sole discretion, determines that any part or all of the improvement must be removed or is damaged by the City, its employees, agents or independent contractors working for the City during the course of their employment or duties with the City, CNH agrees to assume and pay all costs relating to the replacement or repair of the improvement.

3. RESTORATION OF PROPERTY. If the construction or maintenance of the improvement identified in Paragraph 1 above requires the excavation of earth, removal of hard surfacing, grass, vegetation, landscaping, or any other disruption of the surface of the public right-of-way or neighboring property, CNH shall restore the surface of the area to the same condition as it existed immediately prior to CNH's work in the area.

4. EFFECTIVE DATE. This License Agreement shall take effect on the date it is executed by the Mayor of the City of Grand Island as dated below. It shall continue until December 31, 2004 or until such time as it is terminated as provided hereafter.

5. TERMINATION. This License Agreement shall terminate upon one or more of the following occurrences:

- (a) The service of sixty (60) days written notice of intention to terminate by any party upon the other party.
- (b) CNH's application for a permit to alter said improvement or any part thereof, unless said permit is for work due to an occurrence as described in Paragraph 3 above and said work has the prior written approval of the City.
- (c) CNH's construction or installation of any structure or improvement of any nature upon the public right-of-way except that described in Paragraph 1 above.

Upon the termination of this License Agreement, CNH shall be required, and hereby agrees, to remove said improvement from the public right-of-way at its own expense and without cost to the City. Said removal to occur no later than sixty (60) days after receipt of the notice of intention to terminate or any of the occurrences set forth in Paragraph 6 above. Should CNH fail to do so, the City may remove or cause the removal of said improvement from the public right-of-way and CNH agrees to reimburse the City for all its costs.

6. SUCCESSORS AND ASSIGNS. This agreement shall be binding upon the parties hereto, their successors and assigns.

7. ENTIRE AGREEMENT. This License Agreement constitutes the entire agreement between the parties notwithstanding any other oral or written agreements to the contrary. This License Agreement shall be amended only in writing executed by all parties hereto.

8. CHOICE OF LAWS. This License Agreement shall be construed in accordance with the laws of the State of Nebraska and the City of Grand Island, Nebraska.

9. CONTENT OF LANGUAGE. Wherever the context of the language in this License Agreement is appropriate, the singular shall apply to the plural and the plural shall apply to the singular.

DATED: _____.

LICENSOR:

CITY OF GRAND ISLAND, NEBRASKA,
A Municipal Corporation,

By: _____
Jay Vavricek, Mayor

Attest: _____
RaNae Edwards, City Clerk

LICENSEE:

NEW HOLLAND NORTH AMERICA,
INC., a corporation,

By: _____
Vice President

STATE OF _____)
) ss
COUNTY OF _____)

The foregoing document was executed before me on _____, 2003, by _____, Vice President of New Holland North America, Inc., a corporation.

Notary Public

RESOLUTION 2003-375

WHEREAS, property owners in the Marylane Subdivision and Kentish Hills Subdivision areas have recently become aware of contaminated private wells on their property; and

WHEREAS, New Holland North America, Inc. (CNH) has been working with the Nebraska Department of Environmental Quality to determine the source of such contamination and the downstream effects of the groundwater; and

WHEREAS, CNH has requested authorization to collect subsurface soil and water samples and authorization to install permanent ground level mount monitoring wells in the city right-of-way along Blaine Street and along the hike/bike trail between Stolley Park Road and U.S. Highway 34; and

WHEREAS, a proposed License Agreement between the City of Grand Island and New Holland North America, Inc. authorizing the use of the city right-of-way for such purposes has been prepared by the City Attorney's office.

NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND COUNCIL OF THE CITY OF GRAND ISLAND, NEBRASKA, that the License Agreement by and between the City and New Holland North America, Inc. authorizing the use of the city right-of-way along Blaine Street and along the hike/bike trail between Stolley Park Road and U.S. Highway 34 to collect subsurface soil and water samples and the installation of permanent ground level mount monitoring wells is hereby approved.

BE IT FURTHER RESOLVED, that the Mayor is hereby authorized and directed to execute such agreement on behalf of the City of Grand Island.

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Adopted by the City Council of the City of Grand Island, Nebraska, December 9, 2003.

RaNae Edwards, City Clerk

Approved as to Form	☐ _____
December 4, 2003	☐ City Attorney