



City of Grand Island

Tuesday, May 02, 2006

Council Session

Item G23

**#2006-143 - Approving License Agreement for Installation of
Monitoring Wells with CNH America, LLC on City Property and
Right-of-Ways**

Staff Contact: Gary R. Mader

Council Agenda Memo

From: Gary R. Mader, Utilities Director
Dale Shotkoski, Asst. City Attorney/Purchasing

Meeting: May 2, 2006

Subject: License Agreement for Installation of Monitoring Wells
with CNH America, LLC

Item #'s: G-23

Presenter(s): Gary R. Mader, Utilities Director

Background

Since the investigation of the Parkview Well Superfund site in the southwest portion of the City began several years ago, Case New Holland (CNH) has been involved as a result of participation in Voluntary Cleanup Program with NDEQ. Primary responsibility for investigation has since shifted to EPA but CNH continues to participate.

Discussion

CNH, with EPA, has continued to work to fully document the extent of the problem. At this time, CNH has requested permission to install nine new ground water monitoring wells in City right-of-way and on some City properties. The purpose of the monitoring wells is to more completely monitor ground water levels. Most of the groundwater level data used so far in the investigations has been from the City's monitoring wells across the area. These readings are taken monthly and posted on the City Web page. CNH requests permission to place nine additional wells to improve the data base.

A map showing the locations of the proposed wells is attached along with the proposed License Agreement.

Alternatives

It appears that the Council has the following alternatives concerning the issue at hand. The Council may:

1. Move to approve

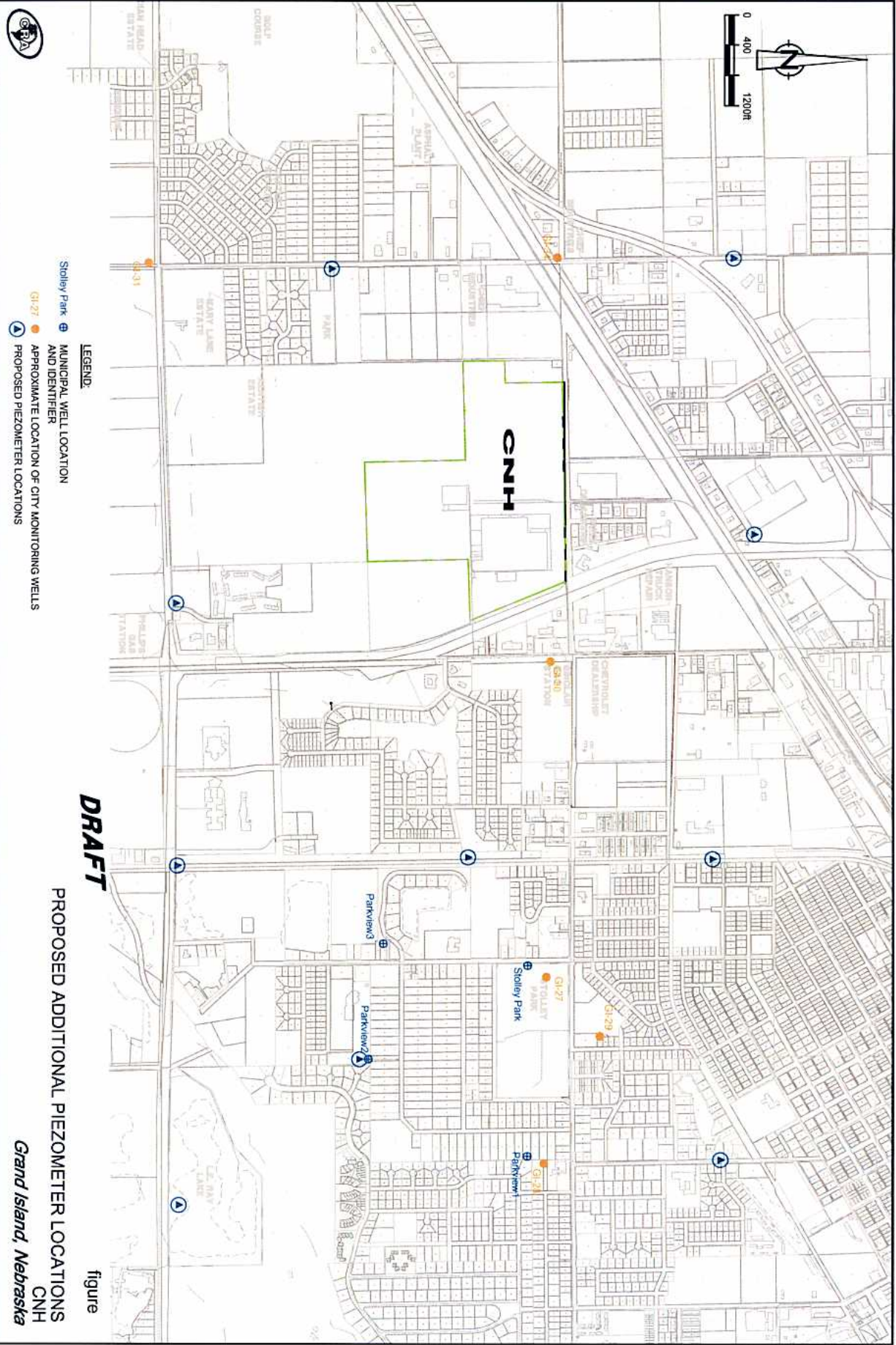
2. Refer the issue to a Committee
3. Postpone the issue to future date
4. Take no action on the issue

Recommendation

City Administration recommends that the Council approve the License Agreement.

Sample Motion

Motion to approve the License Agreement with Case New Holland to allow installation of nine monitoring wells.



LEGEND:

- Municipal Well Location and Identifier
- Approximate Location of City Monitoring Wells
- ▲ Proposed Piezometer Locations

DRAFT

PROPOSED ADDITIONAL PIEZOMETER LOCATIONS
 CNH
 Grand Island, Nebraska

figure

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 CNH AMERICA LLC, a limited liability company, 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 and upon city owned property:

Installation of permanent ground level mount and temporary monitoring wells to be placed in the city right-of-way along Cornhusker Highway, North Road, and Harrison Street and along the hike/bike trail between Bock Avenue and U.S. Highway 34, and on the site of Parkview 2 Well in L.E. Ray Park, and in Cedar Hills Park in Grand Island, Nebraska, as shown on the attached drawings.

CNH is also authorized and allowed to use the public right-of-way along Cornhusker Highway, North Road and Harrison Street, and along the hike/bike trail between Bock Avenue and U.S. Highway 34, and on the site of Parkview 2 Well in L.E. Ray Park, and in Cedar Hills Park in Grand Island, Nebraska, for the collection of subsurface soil and water samples.

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. CNH agrees to notify the City forty-eight (48) hours in advance of the locations where they will be drilling.

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, hike/bike trail 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. APPROVAL OF MONITORING WELL LOCATIONS. Prior to the installation of the monitoring wells in the city parks and adjacent to the hike/bike trails, CNH or its agents shall contact Greg Bostelman, Parks Superintendent, at (308) 385-5426 for final location approval. Prior to the installation of monitoring wells in the city right-of-way, CNH or its agents

shall contact Tom Carlson, Engineering Technician Supervisor at (308) 385-5444, extension 261 for final location approval. Tim Luchsinger, Assistant Utilities Director shall be contacted at (308) 390-4802 for approval of all monitoring well locations prior to such installation.

5. 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 June 30, 2008 or until such time as it is terminated as provided hereafter.

6. 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 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 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.

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

8. 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.

9. 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.

10. 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

STATE OF NEBRASKA)
) ss
COUNTY OF HALL)

Before me, a notary public, qualified in said County personally came Jay Vavricek, Mayor of the City of Grand Island, Nebraska, a municipal corporation, known to me to be such officer and the identical person who signed the foregoing License Agreement and acknowledged that the foregoing signature was his voluntary act and deed pursuant to Resolution 2006-____, and that the City's corporate seal was thereto affixed by proper authority.

WITNESS my hand and notarial seal on _____, 2006.

Notary Public

LICENSEE:

CNH AMERICA LLC,
A Limited Liability Company,

By: 

David G. Mueller (Name)

Senior Managing Attorney (Title)

STATE OF Illinois)
) ss
COUNTY OF Lake)

The foregoing document was executed before me on April 25, 2006, by David G. Mueller, of CNH America LLC, a limited liability company, on behalf of the company.

Kathleen Nuzzi

Notary Public



RESOLUTION 2006-143

WHEREAS, Grand Island's Parkview Well Superfund Site has been under investigation by the Environmental Protection Agency (EPA) for several years; and

WHEREAS, CNH American LLC, a limited liability company (CNH) has been working with the EPA to determine the extent of VOC contamination and the downstream effects of the groundwater; and

WHEREAS, CNH was granted authorization in 2003 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, CNH has requested authorization to place additional monitoring wells in the city right-of-way, along the hike/bike trail and within city park property to conduct further water tests; and

WHEREAS, a proposed License Agreement between the City of Grand Island and CNH America LLC authorizing the use of the city right-of-way, hike/bike trails and city park property 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, hike/bike trails and city park property 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.

- - -

Adopted by the City Council of the City of Grand Island, Nebraska, May 2, 2006.

Jay Vavricek, Mayor

Attest:

RaNae Edwards, City Clerk

Approved as to Form	☐ _____
April 27, 2006	☐ City Attorney