

Fee \$845

KITTY A. ROUSH REGISTER OF DEEDS
Hannah O. Lawrence Deputy

PERPETUAL DRAINAGE EASEMENT AGREEMENT

This agreement made and entered into by and between HILLS FARM, INC., a corporation created under the laws of the State of Nebraska, hereinafter called "OWNER" and the CITY OF PREMONT, Dodge County, Nebraska, a municipal corporation, hereinafter called the "CITY", WITNESSETH:

Recitals

- A. On the 1st day of December, 1951, the owner filed suit in the District Court of Dodge County, Nebraska against the City and Geo. A. Normel & Co. and other defendants, being case No. 14499, wherein the owner sought damages, injunctive relief and the cancellation of the right of way easement agreement to the City dated April 24, 1951. Said suit and said easement agreement are by reference made a part hereof.
- B. On June 24, 1952, the City, through its Mayor and its Council and at its regular monthly meeting, passed a resolution authorizing and empowering the City to enter into a conditional perpetual drainage easement agreement, which was thereupon made and signed by said City and the owner, which agreement contemplated the granting of a 50 foot right of way to said City extending South of South Street (Stock Yards Road) in Section 26 and running to the Union Diking and Drainage District in Section 35 and Section 36 and thence becoming 75 feet in width, and to run along and contiguous to the North side of said Union Dike Eastward approximately 2200 feet, and thence to go Southeasterly and through the dike and to become 100 feet in width South of the dike and to the Platte River. Said Union Diking and Drainage District, hereinafter referred to as the Union Diking District, objected to said proposed route in its position, contiguous to the North margin of its said dike but has agreed to allow said ditch to be dug and to take its course on a right of way lying northerly 100 feet from the north margin of the right of way of said Diking District.

C. It is therefore agreed by the owner and City as follows:

1. The City shall proceed forthwith to make an accurate survey and plat to be tied into section lines or 40 acre lines of the land platted and providing for a drainage ditch easement right of way over and across the land and through the Union Dike and making a drawing thereof which shall, upon its completion, be identified as exhibit No. 1, ^(See plat no 280) and submitted to the owner for its approval, and upon exhibit No. 1 being approved by the Owner it shall be attached hereto and by reference made a part hereof, which ditch shall be used for the purpose of disposing of and the drainage of storm, surface and industrial waters (but not sanitary sewage) into the Platte River; that upon said legal description being so surveyed, platted and determined it shall be identified as exhibit No. 2, attached to this agreement and by reference made a part hereof. On said exhibits being prepared and submitted to the owner and approved by it, it shall thereupon sign this agreement.

2. On this agreement being signed by the owner and the City, the City shall thereupon construct and dig said drainage ditch in accordance with this agreement.

3. That the Mayor and Council, at a duly and legally called meeting, shall authorize, empower and direct its duly constituted agents to approve and sign this agreement and to do said construction and perform this contract.

4. On said ditch being completed, the District Court, in case No. 14499, on the motion of the owner, the City and Geo. A. Hormel & Co., shall enter up a decree cancelling out said easement agreement of April 24, 1951, and enjoining the City and Geo. A. Hormel & Co. from casting any water of any kind on to the property of Hills Farm, Inc., except into said ditch and to further provide that said ditch shall constitute

the sole and only drainage easement right of way or place for the conducting of said storm, surface and industrial waters across the said property of Hills Farm, Inc. and a finding of no damage due Hills Farm, Inc. or any part thereof.

5. On said order being entered up, each of the parties shall pay their own court costs and one-third share of the court costs of the other defendants who have been dismissed in said case No. 14499.

6. The City at all times during the process of constructing said ditch shall put up temporary fencing so as to enable the owner to pasture the pastures in which said construction is being carried on.

7. The City may remove any of the owner's fencing as an incident to doing its said work but said fencing shall be placed back in its original position after the construction has been completed.

8. The owner hereby grants unto said City upon the conditions herein set forth the right in perpetuity to construct or reconstruct and thereafter to maintain an open ditch, drain, pipe or roadways over and across that part of owner's land and as described and contained in exhibit No. 2.

9. The City shall at its sole cost and expense, construct, reconstruct, maintain and keep in repair said open ditch, drain or roadways over and on said easement right of way and keep the same clean and rebuild such portions thereof as may be necessary which shall include all of the land lying within the margins of said right of way such as the shoulders, embankments and slopes; the aforesaid shall be of such character and sufficient size as to make a proper and sufficient outlet forever (subject to the reversion herein expressed) for any drainage area or industry which the City elects to serve as to the escape of surface, storm, waste and industrial water but except sanitary sewage.

- 4 -

10. The construction of said ditch, drain or roadways shall be in such a manner so as to enable the ingress and egress thereto, to be confined to the limits of said right of way, for all purposes including its maintenance and the destruction of weeds growing within the margins of said right of way. The owner shall have the joint right to use the right of way as means of ingress and egress from its lands to a public highway.

11. The City shall install and maintain a pipe or culvert through the Union Dike and equipped with a proper flap or flood gate adequate and sufficient to prevent high water from the Platte River passing and backing up through said pipe and that said construction shall be reinforced and done in such a manner so as to leave the said dike unweakened. Said pipe flap or flood gate shall be laid in such a position and shall be built in such a manner so as to allow the water to escape through the same from the North of said dike and to the South thereof and into and within the margins of said right of way and the City may employ whatever agencies and methods that may be necessary, including pumping equipment, or piping, temporarily or permanently placed on said right of way to cause said water to course as aforesaid at any and all times.

12. The City shall bring in additional borrow dirt and shall place and pile the same along said right of way and shall build up and maintain the same so as to prevent the water escaping out of said ditch except during the time of abnormal rainfall and so as to confine said water to said right of way ditch to its outlet, and particularly along the Burlington borrow pit.

13. The City shall construct and perpetually maintain an adequate crossing of not less than 22 feet in width for cattle and tractor propelled mowing, baling and farming machinery over said ditch and build and maintain an approach fill leading up to the top of the dike and at that point to be designated by owner. The City shall also construct and perpetually maintain an adequate cattle crossing of not less than 16 feet in width

over said ditch and at that point to be designated by owner so as to enable owner to reach its said 100 foot isolated strip.

14. All weeds shall be destroyed twice each year by the City before going to seed, the first time to be not later than July 1 and the second time to be not later than September 15. The owner shall have the right to notify the City not more than 30 days, nor less than 10 days prior to July 1 and September 15 of each year to destroy the weeds, and if said weeds are not destroyed by said dates as is provided for herein the owner may proceed to have said covenant performed and the expense thereof paid by the City.

15. A hog and sheep tight fence shall be installed and perpetually maintained by the City and on the margins of said right of way adjacent to owner's land and so as to fence out said ditch, including gates so as to gate out City roadway at said two crossings and at its entrance, except the construction and maintenance of the fencing South of the Union Dike shall consist of a fence of the same kind and nature as maintained by owner and shall run far enough South or Southeasterly so as to intersect the owner's cross fence.

16. In the event the City fails to perform any of the conditions upon its part to be kept and performed and after a thirty day written notice has been served upon it, by delivery to the City Clerk, the owner may thereupon proceed to have said covenant performed and the expense thereof shall be paid by the City.

17. The City agrees to indemnify and save harmless the said owner from and against all claims, demands, judgments, loss, costs and expenses for injury to or death of any person, or loss of or damage to the property of any person or persons whomsoever, including the parties hereto and their employees, arising from or growing out of, in whole or in part, the construction, maintenance, repair, existence or use of said open

ditch or waterway and pumping plant or lift station, whether the same shall be caused or contributed to by the negligence of said owner, its agents or employees, or otherwise.

18. In the event that the City ceases to use said right of way for the purpose herein expressed and for a continuous period of three years, and by official action of the City Council of said City, said right of way shall be deemed to have been abandoned for the uses or purposes for which said easement is given and on the termination of said easement, the City shall surrender and deliver without cost to said owner, its successors or assigns, possession of the premises herein above described and said easement right of way shall revert to said owner, and the City shall have six months to remove its fencing and improvements thereafter.

19. This agreement supplements and takes the place of the agreement entered into April 24, 1951 and June 24, 1952.

20. Concurrently with the signing of this agreement by the owner, the City shall pay to owner \$699.85.

21. That the land covered by the agreement of April 24, 1951 may be used by owner immediately for all farming purposes including plowing, planting and taking the harvest therefrom.

22. Nothing contained in this agreement shall be construed to mean or to require the owner to install or maintain fencing the margins of Union Diking & Drainage districts dike or prevent the pasturing of the same by the owner.

IN WITNESS WHEREOF, Hills Farm, Inc., has caused its corporate name to be hereunto signed by its President and its corporate seal to be hereunto affixed this 3rd day of April, 1953, and the City has caused its corporate name also to be hereunto signed by its Mayor and

Clerk and its corporate seal to be also hereunto affixed on said date.

Fred H. Richards, Jr.
Secretary

HILLS FARM, INC.,
By F. H. Richards
President

ATTEST:
L. L. Larsen
City Clerk

THE CITY OF FREMONT, NEBRASKA
By Carl F. Olson
Mayor

STATE OF NEBRASKA)
COUNTY OF DODGE) SS

On this 3rd day of April, 1953, before me, a Notary Public duly commissioned and qualified in and for said County, personally came the above named F. H. Richards, Sr., President, and Fred H. Richards, Jr., Secretary of Hills Farm, Inc., who are personally known to me to be the identical persons whose names are affixed to the above agreement as President and Secretary of said Corporation, and they acknowledged the instrument to be their voluntary act and deed, and the voluntary act and deed of said corporation.

WITNESS my hand and official seal at Fremont, in said County, the date aforesaid.

Charles H. York
Notary Public.

STATE OF NEBRASKA)
COUNTY OF DODGE) SS

On this 6th day of April, 1953, before me, a Notary Public in and for said County and State, personally came the above named Carl F. Olson as Mayor and Leonard L. Larsen as Clerk of the City of Fremont, Nebraska, who are personally known to me to be the identical persons whose names are affixed to the above agreement as Mayor and Clerk of said City, a municipal Corporation, and they acknowledged that they executed the same as their voluntary act and deed of said municipal Corporation and further stated that their said act was duly authorized by the action of the Council of said City at a legally and duly called meeting held on the 31st day of March, 1953.

WITNESS my hand and notarial seal the date aforesaid.

E. Frohlin
Notary Public

PERPETUAL DRAINAGE EASEMENT AGREEMENT

Exhibit No. 2

Description of right of way easement from Hills Farm, Inc. to City of Fremont, Nebraska, for drainage purposes:

1.

A strip of land 75 ft. in width located in Section 35, Township 17 North, Range 8 East of the 6th P.M., Dodge County, Nebraska, and being more particularly described as follows:

Commencing at a point 1916.38' south of the common corner to Section 26 and 35, said point being on the east margin of Section 26 extended southerly and on the assumed east margin of Section 35; Said beginning point also being a point of intersection with a line parallel with, 100 ft. distant from and at a right angle to the North margin (assumed, but not determined by the City Engineer) of the Union Diking and Drainage District right of way; said beginning point also being a point of intersection with a line parallel with, 180 ft. distant from and at a right angle to the center line of said dike fill; thence Northwesterly and on a line which constitutes the South margin of said right of way at an internal angle to the East margin of Section 35, 51 degrees and 40 minutes, a distance of 1825.4 ft. to the East margin of the C.B. & Q. R.R. right of way, hereinafter referred to as the railroad right of way; thence Northeasterly along the said East margin a distance of 80.38 ft. more or less to that point which results in making said right of way, 75 ft. in width; thence at an angle to the right of 108 degrees and 10 minutes and on a line parallel to and 75 ft. distant from said South line of said right of way a distance of 1795.02 ft. more or less and to the East margin of Section 35 (as assumed) thence southerly along said East margin a distance of 95.6 ft. more or less to the point of beginning.

2.

A strip of land 75 ft. in width and 451.47 ft. in length and a strip of land 100 ft. in width and 658 ft. in length located in Section 36 of said township and range and being more particularly described as follows:

Commencing at the same point as established in aforesaid description No. 1 and on the West margin of Section 36 (assuming it to be a continuation of the East margin of Section 26 extended South); said point also being a point of intersection with a line parallel with, 100 ft. distant from and at a right angle to the North margin (assumed, but not determined by the City Engineer) of the Union Diking and Drainage right of way; said point also being a point of intersection with a line parallel with, 180 ft. distant from and at a right angle to the center line of said dike fill; thence Southeasterly and at an external angle of 128 degrees and 20 minutes to the west margin of Section 36 (as assumed) and on a line which constitutes the South margin of said right of way a distance of 451.47 ft. to the west margin of said 100 ft. right of way; thence at an angle to the right of 46 degrees and along said West margin a distance of 658 ft. more or less to the North bank of the Platte River; thence Easterly along said North bank a distance of 117 ft. more or less and to that point which results in making said right of way, 100 ft. in width; thence Northerly, parallel to and 100 ft.

1653.26
1797.76
1797.02

distant from said West line of said right of way a distance of 776 ft. and to the North margin of the 75 ft. right of way; thence Northwesterly on a line parallel with and 75 ft. distant from the said south margin of said 75 ft. right of way a distance of 577.35 ft. more or less to the West margin of said Section 36; thence southerly along said West margin a distance of 95.6 ft. more or less to the point of beginning.

3.

A strip of land 50 ft. in width and located in Sections 26 and 35 of said township and range and being more particularly described as follows:

Commencing at a point being the intersection of the South margin of South Street (Stock Yard Road) with the East margin of the aforesaid railroad right of way; thence Southeasterly along the said South margin of South Street a distance of 60.4 ft. and to a point which results in making said right of way 50 ft. in width; thence Southerly, parallel with and 50 ft. distant from said East margin of said railroad right of way a distance of 1891.04 ft.; to an intersection with a point of curve of a 48 degree curve to the left, said curve having a radius of 119.31 ft. and connecting with the north margin of said 75 ft. right of way described in description No. 1 hereof; thence Westerly on said North margin a distance of 139.76 ft. to the said East margin of the said railroad right of way; thence Northeasterly and Northerly along said East margin a distance of 1992.48 ft. more or less to the point of beginning.

Exhibit 1 attached to said agreement, being Plat #280, already on record.

June 23, 1953

Mr. Luther H. Roessler, City Engineer,
City Auditorium,
Fremont, Nebraska.

Re: Hills Farm's fence under City contract.

Dear Luther:

We have discussed the type of fence to be erected and maintained under the Hills Farm contract a number of times.

After consulting with my fence experts it is agreeable that the following be erected and maintained by the City. I think it well as you suggested that we reduce this matter to writing which supplements our verbal conversation.

The posts will be wooden, $6\frac{1}{2}$ feet long with a $\frac{1}{2}$ -inch top and pressure treated and placed in the ground $2\frac{1}{2}$ feet and one rod apart.

The fence proper will be made up of woven wire and three strands of barbed wire.

The woven wire fence will be 32 inches with a #9 top and bottom wire and with a #11 stay wire.

The woven wire and the barbed wire will be galvanized and the barbed wire will be standard quality.

The first wire to be strung will be a barbed wire to be run flush with the ground. The woven wire will then be placed immediately above the first barbed wire. The second strand of barbed wire will be placed seven inches above the top of the woven wire and the third strand of barbed wire will be placed seven inches above the second strand of barbed wire.

The above is somewhat different than we verbally discussed but this letter shall take precedence over our verbal discussions.

Thank you.

Very truly yours,

HILLS FARM, INC.

By

Fred H. Richards, Jr., Sec.