February 24, 2012

1982 Levee Maintenance Agreement Updated 2011 Assessment Schedule

In 1982, the parties located within the industrial park agreed to enter into joint levee project to protect their properties located along the Missouri River. Each of the landowners within the project agreed to grant the City of Council Bluffs a perpetual easement to construct and maintain a levee on their properties.

The area subject to the 1982 Levee Maintenance Agreement and Easement ("Agreement") was divided into ten parcels, and each parcel was accorded a percentage of the completion cost. *See Exhibit B.* The rationale behind the allocation of the cost is unclear, and there is no reference in the Agreement as to how the numbers were reached. However, what is clear is that the Agreement requires that landowners and their successors "shall pay such cost of repairs and maintenance in accordance with the percentages set forth in ... Exhibit B." *Levee Maintenance Agreement and Easement (Agreement)* p. 3.

The Agreement states that any landowner who divides one of the properties shall allocate a percentage of the amount carried by the property to the subdivided property in accordance with §455.56 of the Iowa Code (now codified 468.49). *Agreement* p. 3. The original ten properties have changed hands over time, and there is no evidence that the property owners filed any documents appropriate to meet the requirements of §468.49 upon the transfer of the property with the recording office. Therefore, the City has reviewed the property transactions after the fact and thereby allocated the cost of repairs to the 2011 owners.

CALCULATING BASE ACRES AT TIME OF AGREEMENT

Attached to the Agreement are detailed descriptions of the properties made party to the Agreement, only some of which contain the size of the parcel in acres, making it impossible to retrospectively allocate the percentage due when the property is subsequently subdivided. Therefore, it is necessary to find an "original acreage basis" for each parcel identified in the Agreement, and thereby

allocate away from the "original base acres" the subsequently subdivided acres in the transferring deeds.

The acreage allocated to each parcel within the levee varies greatly depending year and site plan. Therefore, the City has chosen the 1980 HDR map to provide the baseline acreage numbers for the tabulation of percentage of allocation for transfers after the Agreement based their similarity to the corresponding parcels in the 1980 HDR site plan (see below), and because of the contemporaneous nature of the Agreement's creation and the 1980 HDR map.

Exhibit A of Agreement	1980 HDR Site Plan Map Acreage
	19.6
	18.6
	1.73
3.937 acres	3.9
	2.1
	2.1
	10.1
	13.8 + 9.3 = 23.1
2.2 acres	2.2
3.872 acres	3.9
69.1 acres	69.1
0.78 acres	0.8

(*Note that not all of the acreage numbers were included in the Agreement descriptions.)

It should be noted that whichever parcel map is selected to provide the original base acres will produce the same percentage allocation per parcel, because the percent of allocation in the original Agreement bore no relation to the size of the parcel. Rather, it is the accurate determination of the acres that are subdivided away from the parcel that will assure an accurate allocation of the percentage due transfer between the parcel owners.

SUBDIVIDED PARCELS 1980 TO 2011

The accurate calculation of parcel percentage using the 1980 HDR Site Plan requires not only the inclusion of property transactions subsequent to the Agreement, it also requires the inclusion property

transactions prior to the Agreement, but after the 1980 HDR map was completed. Therefore, the City began its analysis from 1980 forward.

	Subdivision of Parcels
Parcel 1	5/22/1981 Cargill to Warren (1.665 acres) & 5/6/1985 Cargill to Warren (1.517 acres)
Parcel 2	None
Parcel 3	None
Parcel 4	None
Parcel 5	None
Parcel 6	None
Parcel 7	None
Parcel 8	None
Parcel 9	None
Parcel 10	None
Parcel 11	D.E.B. (49.7 acres) and Warren (19.14 acres)
Parcel 12	None

2011 OWNERSHIP AND PERCENTAGES

The City's analysis of title search has resulted in the following allocation of property. Properties transferred, but not subdivided are listed under their current ownership.

Parcel #	1980%	1980 Acres	2011 Acres	2011 Owners	2011 Percentages
1	27.58	19.6			
2	9.33	18.6	(19.6+18.6=38.2) =35.018	Cargill	32.43%
3	0.71	1.73			
4	3.67	2.1			
5	0.88	2.1			
6	1.43	3.9	9.83+2.2+1.656+1.517=15.212	Warren "West"	11.22%
7	6.32	10.1			
8	27.18	23.1	33.2	Ameristar	33.50%
9	0.06	2.2	2.2	Added to Warren "West"	
10	0.2	3.9			
11	22.39	69.1	49.7 &	D.E.B. &	D.E.B. = 16.1028% & Warren =6.4%
12	0.25	0.8	2.393	Allocated to whole	0.25% (+ 0.0902% unknown)

The City's calcualtion allocated 99.9098% of the 1980 burden to the current 2011 owners, although some of the burden was left unassignable (0.0902%). The most likely cause for the discrepancy is the City's right-of-way improvements within the industrial park. Parcel 12 has also been subsumed by the I-29 ramp, which now located with in the industiral park. In accordance with the Agreement and §468.49 of the Iowa Code the unassignable percentages were totaled and divided among the property holders now of record. *Agreement* p.3. Therefore, based on the property transactions to date the

current percentages per owner in 2011 are: Ameristar 33.585%; Cargill 32.515%; D.E.B. 16.1878%; Warren Distribution 17.7122%.