

 <p style="text-align: center;"><b>Council Communication</b> Office of the City Manager</p>	<b>Date:</b>	February 11, 2013
	<b>Agenda Item No.</b>	<b>10</b>
	<b>Roll Call No.</b>	<b><u>13-0184</u></b>
	<b>Communication No.</b>	<b><u>13-073</u></b>
	<b>Submitted by:</b>	<b>Jeb E. Brewer, P.E., City Engineer</b>

**AGENDA HEADING:**

Approving and Authorizing the execution of amendment to the Norfolk Southern Railway Company construction and flagging agreement for the Southeast Connector Project.

**SYNOPSIS:**

Recommend Approval of first amendment to the construction and flagging agreement (Agreement) with Norfolk Southern Railway Company (NSR) for Southeast Connector project. The amendment includes adding Norfolk Southern property not previously included in the Agreement, to ensure the City has right-of-entry to allow construction prior to closing the property transactions covered in the Contract of Purchase.

**FISCAL IMPACT: NONE**

**ADDITIONAL INFORMATION:**

The First Amendment to the Agreement between the City of Des Moines and NSR is required to clarify that NSR is providing right-of-entry to the City and our contractor to construct the Southeast Connector project. The original Agreement did not clearly provide access to property being acquired from the NSR. This amendment also authorizes the City Engineer or his designee to approve and execute any additional minor or unsubstantial amendments or documents that may arise relating to this Agreement, following approval as to form of such documents by the City Legal Department.

On December 17, 2012, by Roll Call No. 12-1913, City Council approved the Construction and Flagging Agreement that included at-grade crossings of the Burlington Northern Santa Fe railroad and the Southeast Connector over the NSR. Also on December 17, 2012, by Roll Call No. 12-1914, City Council approved a Contract of Purchase with NSR for property required for the Southeast Connector. The amendment to the construction and flagging agreement adds the property being acquired by the City from NSR, such that right of entry is available prior to closing the property transactions authorized by Roll Call No. 12-1914.

On August 27, 2012, by Roll Call No. 12-1328, City Council approved Department of Transportation (DOT) Conditional and Preliminary Term Sheet for the TIGER Discretionary Grant for the Southeast Connector Project between SE 14th Street and SE 30th Street. The Term Sheet included an interim milestone of December 7, 2012 for the BNSF and NSR agreements. The milestone date was not met; however, the execution of this amendment and the Contract of Purchase will satisfy the DOT requirement and allow construction of the Southeast Connector to proceed. NSR has indicated that

signed documents will be provided in a timely manner to preserve the Southeast Connector project schedule and funding.

**PREVIOUS COUNCIL ACTION(S):**

Date: December 17, 2012

Roll Call Number: [12-1913](#)

Action: [Approving](#) Norfolk Southern Railway Company Construction and Flagging Agreement for the Southeast Connector Project. ([Council Communication No. 12-628](#)). Moved by Hensley to adopt. Motion Carried 7-0.

Date: December 17, 2012

Roll Call Number: [12-1914](#)

Action: [Approving](#) contract of purchase with Norfolk Southern Railway Company for the Southeast Connector Project, \$756,879. ([Council Communication No. 12-634](#)). Moved by Hensley to adopt. Motion Carried 7-0.

Date: August 27, 2012

Roll Call Number: [12-1328](#) and [12-1329](#)

Action: Items regarding the Southeast Connector Project, SE 14th to SE 30th Street:

(A) [Approving](#) the execution of Department of Transportation Conditional and Preliminary Term Sheet for the TIGER Discretionary Grant. ([Council Communication No. 12-450](#)). Moved by Coleman to adopt. Motion Carried 7-0.

(B) [Authorizing](#) Agreement for Preliminary Engineering Services with Norfolk Southern Railway Company for rail impacts associated with the Southeast Connector. ([Council Communication No. 12-454](#)). Moved by Coleman to adopt. Motion Carried 7-0.

Date: June 25, 2012

Roll Call Number: [12-0963](#)

Action: [Approving](#) supplemental agreements to the Southeast Connector Professional Services Agreement with Kirkham Michael & Associates to provide additional design and construction phase services for the Southeast Connector Projects. ([Council Communication No. 12-327](#)). Moved by Hensley to adopt. Motion Carried 7-0.

Date: November 21, 2011

Roll Call Number: [11-1939](#)

Action: [Approving](#) Iowa Department of Transportation (IDOT) RISE Agreement. ([Council Communication No. 11-711](#)). Moved by Meyer to adopt. Motion Carried 7-0.

**BOARD/COMMISSION ACTION(S): NONE**

**ANTICIPATED ACTIONS AND FUTURE COMMITMENTS: NONE**

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