 <p style="text-align: center;">Council Communication Office of the City Manager</p>	Date: January 25, 2016
	Agenda Item No. 10 Roll Call No. <u>6-0107</u> Communication No. <u>16-047</u> Submitted by: Pamela S. Cooksey, P.E., City Engineer

AGENDA HEADING:

Approving and authorizing the execution of the Flood Closure Facility Construction & Maintenance Agreement and Amendment to Agreement for Permanent Easement for Flood Protection Levee System to construct and maintain a levee and flood closure structure crossing the Union Pacific Railroad Company’s (UPR) track.

SYNOPSIS:

Recommend approval of the Flood Closure Facility Construction & Maintenance Agreement between the (UPR), City of Des Moines, Iowa, and Midwestern Railroad Properties, Incorporated, to construct and maintain a levee and flood closure structure crossing the UPR’s track. The proposed flood closure structure at the UPR track crossing of the levee system south of Maury Street consists of constructing a flood swing gate across the track.

FISCAL IMPACT:

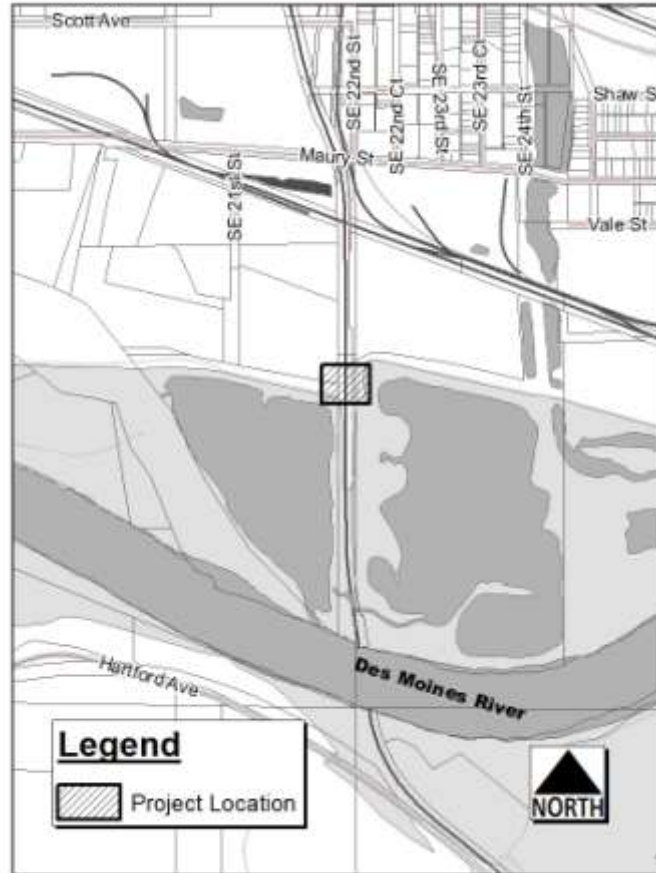
Amount: \$357,412 (Estimated)

Funding Source: 2015-2016 CIP, Page Storm – 6, Flood Mitigation Improvements, SM087.

ADDITIONAL INFORMATION:

On October 12, 2009, by Roll Call No. 09-1833, City Council approved the Project Partnership Agreement to proceed with U.S. Army Corps of Engineers (USACE) construction of the Des Moines and Raccoon Rivers Project that included the Birdland Levee, trail, and downtown closures. As Birdland and Central Place construction was being completed, the USACE began the process to increase the overall project cost to design and construct the Downtown Closure improvements. On August 11, 2014, by Roll Call 14-1211, City Council approved the increase of total project costs. The Downtown Closure improvements consist of improving the flood protection at nine (9) locations where there are openings in the levee system, such as roadways, railroads, and pedestrian/bicycle paths or walkways. These improvements include constructing flood gates, raising Carlisle Road southeast of the Wastewater Reclamation Facility, and narrowing openings by constructing concrete walls and earthen levees reducing the amount of temporary flood protection (sandbags, temporary earthen levee) needed during a flood event.

The proposed closure at the UPR track crossing the Southeast Des Moines levee south of Maury Street (see map below), consists of constructing a flood swing gate across the track.



To construct and maintain the swing gate, a Flood Closure Facility Construction & Maintenance Agreement and an Amendment to Agreement for Permanent Easement for Flood Protection Levee System are required with the UPR.

The Chicago, Rock Island and Pacific Railroad Company, a Delaware corporation, and the City of Des Moines, Iowa entered into an Agreement dated August 15, 1966, granting the City certain easement rights to construct, maintain, repair, renew, use and operate a flood protection levee system, sheet pile cut-off walls, sandbag closures and adjoining structures. A portion of the property is now owned by Midwestern Railroad Properties, Incorporated and a portion is now owned by Iowa Interstate Railroad, Ltd. To construct and maintain the swing gate, an amendment is needed. The City will pay \$1.00 to Midwestern Railroad Properties, Incorporated for the amendment.

The Construction and Maintenance Agreement includes that the City is responsible for train delay costs related to nonscheduled disruptions to railroad operations, except when the delay is due to an emergency flood, signal malfunction, Force Majeure event or work on the Flood Closure Facility approved by UPR.

Per the Construction & Maintenance Agreement, at the City's expense, the UPR has agreed to remove and replace track panel necessary for the flood swing gate construction, estimated cost of \$352,411 (estimated by the UPR).

Per the Construction & Maintenance Agreement, the City will pay \$5,000.00 to the UPR upon execution of the Construction & Maintenance Agreement to cover the UPR's costs to prepare the

Construction & Maintenance Agreement. The City will pay the costs for replacement of the UPR electronic lock for the flood gate should the electronic lock need replacement in the future.

Per the Construction & Maintenance Agreement, the City will pay the UPR the following estimated costs:

\$352,411 (Estimated cost for UPR's work related to Flood Closure Facility)
\$ 5,000 (UPR Agreement preparation fee)
\$ 1 (Midwestern Railroad Properties, Incorporated Permanent Easement)
\$357,412 (Estimated Total Costs payable to the Railroad)

In accordance with the Project Partnership Agreement, the cost to design and construct the flood closure facility is shared between the USACE and the City.

USACE proposes to finalize negotiations with their Contractor in February 2016 and construct the flood swing gate in 2016.

PREVIOUS COUNCIL ACTION(S):

Date: August 11, 2014

Roll Call Number: [14-1211](#)

Action: [Approving](#) increase of total project costs for the design and construction of The Des Moines and Raccoon Rivers Project. ([Council Communication No. 14-391](#)) Moved by Hensley to adopt. Motion Carried 7-0.

Date: March 28, 2011

Roll Call Number: [11-0553](#)

Action: [Increase](#) of total project costs in project partnership agreement with the Department of the Army for construction of the Des Moines and Raccoon Rivers Project for the Birdland Park Levee. ([Council Communication No. 11-176](#)) Moved by Mahaffey to adopt. Motion Carried 7-0.

Date: June 28, 2010

Roll Call Number: [10-1020](#)

Action: [Approving](#) Project Partnership Agreement with the Department of the Army for construction of the Des Moines and Raccoon Rivers Project. ([Council Communication No. 10-411](#)) Moved by Hensley to adopt. Motion Carried 7-0.

Date: March 22, 2010

Roll Call Number: [10-0463](#)

Action: [Increase](#) of total project costs in the Project Partnership Agreement with Department of the Army, for construction of the Des Moines and Raccoon Rivers Project for the Birdland Park Levee,

(increase to \$11.3 Million, Federal share \$7.3 Million, City Share \$4 Million). ([Council Communication No. 10-164](#)) Moved by Mahaffey to adopt. Motion Carried 7-0.

Date: October 12, 2009

Roll Call Number: [09-1833](#) and [09-1834](#)

Action: Items regarding Des Moines and Raccoon Rivers Project: ([Council Communication No. 09-720](#))

- (A) [Approving](#) Project Partnership Agreement with Department of the Army for construction. Moved by Mahaffey to adopt. Motion Carried 7-0.
- (B) [Authorization](#) to proceed with acquisition of the necessary right-of-way and easements. Moved by Mahaffey to adopt. Motion Carried 7-0.

BOARD/COMMISSION ACTION(S): NONE

ANTICIPATED ACTIONS AND FUTURE COMMITMENTS: NONE

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