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Date April 9, 2012.....

**APPROVING AND AUTHORIZING THE EXECUTION OF
NORFOLK SOUTHERN RAILWAY COMPANY PAVED CROSSING AGREEMENTS
FOR THE S.E. 6TH STREET WIDENING PROJECT**

WHEREAS, the Norfolk Southern Railway Company ("Norfolk Southern") owns and operates a railroad upon railroad tracks that proceed in an easterly-westerly direction across Southeast 6th Street between E. Court Avenue and the Des Moines River; and

WHEREAS, there now exists a public street crossing over said railroad tracks at two railroad crossings within S.E. 6th Street (FRA No. 063381P and FRA No. 864232B); and

WHEREAS, by Roll Call 10-474 on March 29, 2010, the City and Norfolk Southern entered into an Agreement for Railroad Crossing Improvement Project ("2010 Agreement") in connection with the S.E. 6th Street Widening - E. Court Avenue to the Des Moines River Project, which included reconstruction of the aforementioned railroad crossings including the installation of a new street-railroad grade crossing, with crossing signals and lights and with associated street drainage improvements upon Norfolk Southern's railroad right-of-way, as well as a new railroad crossing approach within the City street right-of-way; and

WHEREAS, Norfolk Southern has since determined that the railroad lines that cross SE 6th Street are inactive, although no formal Surface Transportation Board ("STB") determination has occurred; and

WHEREAS, the City and Norfolk Southern have negotiated the terms of Paved Crossing Agreements for each crossing that terminate and replace the 2010 Agreement and provide for removal of the two crossings by Norfolk Southern and/or by the City, at Norfolk Southern's discretion and at City expense, to be replaced with paved at-grade vehicular crossings constructed by the City at City expense; and

WHEREAS, the Paved Crossing Agreements further provide that should Norfolk Southern decide or be required by the STB or otherwise to actively operate the lines that cross SE 6th Street, the City will at that time construct a public street-railroad grade crossing, including warning devices, at City expense, and that the City will indemnify Norfolk Southern for its work in relation to the crossings.

NOW, THEREFORE, BE IT HEREBY RESOLVED BY THE CITY COUNCIL OF THE CITY OF DES MOINES, IOWA, that the Paved Crossing Agreements (Norfolk Southern Railway Company, FRA No. 063381P and FRA No. 864232B) for each crossing in connection with the S.E. 6th Street Widening - E. Court Avenue to the Des Moines River Project, copies of which are now on file in the office of the City Clerk, be and are hereby approved; the Mayor and City Clerk are hereby authorized and directed to execute said Agreements for each crossing for and on behalf of the City of Des Moines, Iowa; the Engineering Department is hereby authorized to administer the terms of said Agreements for each crossing; and the Finance Director is authorized to make payment for the City construction

★ **Roll Call Number**

Agenda Item Number

8

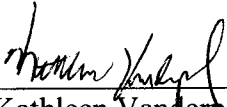
Date April 9, 2012

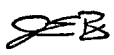
contract and/or to Norfolk Southern for the actual construction cost upon receipt of an invoice acceptable to the Engineering Department.

(Council Letter Number B-176 attached)

Activity ID 06-2009-007

Moved by _____ to adopt.

FORM APPROVED: 
 Kathleen Vanderpool
 Deputy City Attorney

 Funding Source: 2012-13 CIP, Page Street-37, S.E. 6th Street Widening – Court Avenue to the Des Moines River, STR237, TIF Bonds

COUNCIL ACTION	YEAS	NAYS	PASS	ABSENT
COWNIE				
COLEMAN				
GRIESS				
HENSLEY				
MAHAFFEY				
MEYER				
MOORE				
TOTAL				

CERTIFICATE

I, DIANE RAUH, City Clerk of said City hereby certify that at a meeting of the City Council of said City of Des Moines, held on the above date, among other proceedings the above was adopted.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my seal the day and year first above written.

MOTION CARRIED APPROVED
 _____ Mayor

_____ City Clerk