

Date January 25, 2016

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 TRACK

WHEREAS, On October 12, 2009, by Roll Call 09-1833, the City Council of the City of Des Moines, Iowa, entered into the Project Partnership Agreement with the Department of the Army for the Des Moines and Raccoon Rivers Project, including the Birdland Park Levee, wetland mitigation and downtown closure improvements; and

WHEREAS, on March 22, 2010, by Roll Call 10-463, the City of Des Moines approved the Corps of Engineers request to increase the total project cost to secure American Recovery and Reinvestment Act (ARRA) funding for the Birdland Park levee construction; and

WHEREAS, on June 28, 2010, by Roll Call 10-1020, the City Council of the City of Des Moines, Iowa, entered into the Project Partnership Agreement with the Department of the Army for the Central Place levee portion of the Des Moines and Raccoon Rivers Project; and

WHEREAS, on March 28, 2011, by Roll Call 11-0553, the City of Des Moines approved the Corps of Engineers request to increase the total project cost to account for actual construction costs and the results of the Des Moines River Flow Frequency Study and authorized \$500,000 to cover costs in excess of the Congressionally authorized limit; and

WHEREAS, on August 11, 2014, by Roll Call 14-1211, City Council approved the increase of total project costs for the design and construction of the Des Moines and Raccoon Rivers Project; and

WHEREAS, in order to construct and maintain a flood closure structure crossing the Union Pacific Railroad Company's track, part of the downtown closure improvements of the Des Moines and Raccoon Rivers Project, a Construction & Maintenance Agreement is required between the Union Pacific Railroad Company, City of Des Moines, and Midwestern Railroad Properties, Incorporated, and

WHEREAS, the Agreement provides for reimbursement by the City to Union Pacific Railroad for the actual cost of materials and labor for railroad work associated with the flood closure facility, currently estimated by Union Pacific Railroad at \$352,411; and

WHEREAS, 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 closure, and adjoining structures; and

WHEREAS, a portion of the property is now owned by Midwestern Railroad Properties, Incorporated and a portion is now owned by Iowa Interstate Railroad, Ltd; and

WHEREAS, in order to construct and maintain a flood closure structure crossing the Union Pacific Railroad Company's track, an Amendment to Agreement for Permanent Easement for Flood Protection Levee System is required.

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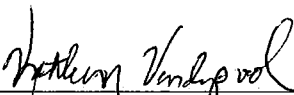
NOW, THEREFORE, BE, AND IT IS HEREBY RESOLVED BY THE CITY COUNCIL OF THE CITY OF DES MOINES, IOWA:

1. That the Construction & Maintenance Agreement between Union Pacific Railroad Company, City of Des Moines, Iowa, and Midwestern Railroad Properties, Incorporated, 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 track, be and are hereby approved, subject to receipt and final review by the Engineering Department and review as to form by the Legal Department.
2. That the Mayor and City Clerk are hereby authorized and directed to execute said Agreements for and on behalf of the City of Des Moines, Iowa, subject to final review by the Engineering and Legal Departments.
3. That the Engineering Department is hereby authorized to administer the terms of said Agreements.
4. That the Finance Director is authorized to make payment to the railroad for the required easement, the Agreement preparation fee, and for actual construction costs upon receipt of an invoice acceptable to the Engineering Department, and all other fees and costs included under the Agreement.

(Council Letter Number 16-047 attached)
Activity ID 14-2010-036

Moved by _____ to adopt.

FORM APPROVED:


Kathleen Vanderpool
Deputy City Attorney

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

COUNCIL ACTION	YEAS	NAYS	PASS	ABSENT
COWNIE				
COLEMAN				
GATTO				
GRAY				
HENSLEY				
MOORE				
WESTERGAARD				
TOTAL				

MOTION CARRIED

APPROVED

Mayor

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.

City Clerk