

★ Roll Call Number
13-0184

Agenda Item Number
10

Date February 11, 2013

**APPROVING AND AUTHORIZING THE EXECUTION OF
AMENDMENT TO NORFOLK SOUTHERN RAILWAY COMPANY CONSTRUCTION
AND FLAGGING AGREEMENT FOR THE SOUTHEAST CONNECTOR PROJECT**

WHEREAS, the Norfolk Southern Railway Company (NSR) owns and operates a railroad and operates the Burlington Northern Santa Fe (BNSF) railroad, both within the area near and adjacent to the Southeast Connector Project; and

WHEREAS, the Southeast Connector includes construction of roadway improvements adjacent and over the NSR rail lines; and

WHEREAS, NSR has certain requirements that must be satisfied to allow construction on or near the railroad; and

WHEREAS, as provided in the construction and flagging agreement, the NSR will provide the necessary switch tenders, flagmen, watchman and other protective services and devices to promote safety and insure continuity of train operations as may be necessary in connection with the work performed by the BNSF and the City's contractors, at City cost; and

WHEREAS, on December 17, 2012, by Roll Call No. 12-1913, City Council approved and authorized execution of the construction and flagging agreement with Norfolk Southern Railway Company; and

WHEREAS, on December 17, 2012, by Roll Call No. 12-1914, City Council approved and authorized execution of the contract of purchase for the partial acquisitions, temporary construction easements, permanent easement for roadway overpass, and total fee acquisition of property owned by NSR required for the Southeast Connector; and

WHEREAS, the City of Des Moines and NSR agree that an amendment to the construction and flagging agreement is necessary to provide right of entry to the property being purchased in the contract of purchase; and

WHEREAS, the amendment adds the NSR properties to Exhibit A of the construction and flagging agreement.

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

1. That the First Amendment to the construction and flagging agreement (Norfolk Southern Railway Company) in connection with the Southeast Connector Project, be and is hereby

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approved as substantially in the same form as the copy of which is now on file in the office of the City Clerk, subject to final negotiation and approval by the City Engineering and Legal Departments.

2. That the Mayor and City Clerk are hereby authorized and directed to execute the final approved version of said First Amendment for and on behalf of the City of Des Moines, Iowa.
3. That the City Engineer, or his/her designee, is hereby authorized to administer the terms of said Agreement and all amendments thereto, and to approve and execute further amendments or other documents pertaining to minor or unsubstantial changes to said Agreement, following approval of the City's Legal Department as to form.
4. That the Finance Director is authorized to make payment to the railroad for the actual costs upon receipt of invoices acceptable to the Engineering Department.

(Council Letter Number 13-073 attached)
 Activity ID 06-2012-006

Moved by Hensley to adopt.

FORM APPROVED: Kathleen Vanderpool
 Kathleen Vanderpool
 Deputy City Attorney

JB

COUNCIL ACTION	YEAS	NAYS	PASS	ABSENT
COWNIE	✓			
COLEMAN	✓			
GRIESS	✓			
HENSLEY	✓			
MAHAFFEY	✓			
MEYER	✓			
MOORE	✓			
TOTAL	7			
MOTION CARRIED	APPROVED			

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.

T. M. Franklin Mayor

Diane Rauh City Clerk