

Date September 23, 2013

RESOLUTION APPROVING VACATION OF THREE SEGMENTS OF STREET RIGHT-OF-WAY FOR RAILROAD CROSSING CLOSURES AT THE HULL AVENUE, SCOTT AVENUE AND SE 34TH STREET CROSSINGS, AND APPROVING AGREEMENT BETWEEN THE CITY OF DES MOINES AND UNION PACIFIC RAILROAD COMPANY FOR THE UPRR CROSSING CLOSURE MITIGATION PROJECT, AND AUTHORIZATION TO PROCEED WITH ACQUISITION OF THE NECESSARY RIGHT-OF-WAY AND EASEMENTS REQUIRED FOR THE PROJECT BY GIFT, NEGOTIATION OR EMINENT DOMAIN

WHEREAS, Union Pacific Railroad Company ("UPRR") has requested vacation of the following City-owned right-of-way for permanent railroad crossing closures to address train and automobile movement constraints and to create rail capacity to support the growth of existing and new rail development business in Des Moines: Hull Avenue (also known as East Hull Avenue) between Delaware Avenue and Dixon Street; Scott Avenue between Southeast 20th Street and Southeast 22nd Street; and Southeast 34th Street between Scott Avenue and East Court Avenue; and

WHEREAS, on April 8, 2013, by Roll Call No. 13-0578, the City Council approved the preliminary terms of agreement outlining a series of infrastructure, crossing notification, and buffering improvements that would offset the impacts of the proposed closures, and, by Roll Call No. 13-0579, it was duly resolved by the City Council that the proposed vacation be set down for hearing on June 10, 2013; and

WHEREAS, due notice of said proposal to vacate the above-listed City-owned right-of-way was given as provided by law, setting forth the time and place for hearing on said proposal; and

WHEREAS, on June 10, 2013, by Roll Call Nos. 13-0924 and 13-0925, the City Council held the public hearing and approved the first reading of the ordinance to vacate the above-listed City-owned right-of-way; and

WHEREAS, on August 26, 2013, by Roll Call No. 13-1349, the City Council approved the second reading of the ordinance to vacate the above-listed City-owned right-of-way; and

WHEREAS, there is no known current or future public need or benefit for the City-owned right-of-way proposed to be vacated, and the City will not be inconvenienced by the vacation of said right-of-way, subject to certain terms and conditions as set forth in the vacation ordinance and in the Agreement between UPRR and the City as described herein below; and

WHEREAS, City staff have negotiated an Agreement with UPRR related to the proposed vacation of the above-listed City-owned right-of-way and the public at-grade street crossing closures, as on file in the office of the City Clerk, including but not limited to the following terms:

- (1) the City will acquire property for and construct a public access roadway in the vicinity of the SE 34th Street crossing in order to continue to provide ingress and egress to the area residents following the closure of the SE 34th Street crossing;
- (2) UPRR will pay to the City the sum of \$594,000.00 in exchange for the City's vacation of the Scott Avenue right-of-way, and to partially reimburse the City for costs of the street improvements related thereto, including installation of roadway closure markers and advance street signs, following the City's property acquisition for said public access roadway related to the SE 34th Street crossing;

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- (3) UPRR will pay to the City the sum of \$500,000.00 in exchange for the City's vacation of the Hull Avenue right-of-way, and to partially reimburse the City for costs of the street improvements related thereto, including installation of roadway closure markers, roadway improvements and advance warning information signs, and removal of pavement approach surfaces on UPRR property in the vicinity of the Hull Avenue closure, following the City's property acquisition for said public access roadway related to the SE 34th Street crossing;
- (4) UPRR will pay to the City the sum of \$506,000.00 in exchange for the City's vacation of the SE 34th Street right-of-way, and to partially reimburse the City for costs of the street improvements related thereto, including installation of roadway closure markers and advance street signs, completion of property acquisition for and construction of the access roadway in the vicinity of the SE 34th Street crossing, and removal of pavement approach surfaces on UPRR property in the vicinity of the SE 34th Street closure;
- (5) UPRR will install advance warning informational signal cabinets, move its railroad crossing warning devices from the SE 34th Street crossing to the SE 36th Street crossing, and install concrete-paneled crossing surface within the SE 36th Street crossing area, in exchange for payment by the City to UPRR for actual costs of such work in an amount not to exceed \$212,500.00;
- (6) each party is obligated to maintain its own improvements, at its own cost, in perpetuity;
- (7) the City's vacation of the above-listed City right-of-way is subject to reservation of easement for access to and repair, maintenance, operation, construction and replacement of any existing utilities and future public utilities, with City access to occur pursuant to agreed-upon Developmental Specifications incorporated into the Agreement;
- (8) the City's vacation of the SE 34th Street crossing is subject to the right to rededicate said right-of-way as public right-of-way and to make improvements necessary to provide public access across the rededicated right-of-way in the event that UPRR obtains authority to abandon its rail line within the vacated SE 34th Street right-of-way; and
- (9) the City and UPRR agree to participate in a planning effort, to begin within five (5) years of the effective date of the agreement, relating to rail usage in Des Moines; and

WHEREAS, the City's Engineering Department has estimated costs of the City's UPRR Crossing Closures Mitigation street project as related to the above-described Agreement, including costs for design, construction, and acquisition of necessary property interests, to total approximately \$2,100,000.00, of which costs UPRR will contribute \$1,600,000.00 pursuant to the conditions set forth above and in the Agreement, the Iowa Department of Transportation (IDOT) will fund \$500,000.00 pursuant to the IDOT Agreement for E. 30th Street and Dean Avenue Intersection Improvements (IDOT Agreement No. 2014-TS-014) as approved by the City Council on June 24, 2013 by Roll Call No. 13-0970, and the City will fund the remaining costs of approximately \$200,000.00 pursuant to the 2013-2014 Capital Improvement Program (CIP); and

WHEREAS, the City's Engineering Department has determined that it is necessary to acquire property interests in connection with the UPRR Crossing Closures Mitigation street project; and

WHEREAS, the City's Real Estate Division of the Engineering Department will acquire the necessary property interests for this street project; and

WHEREAS, after the project design is completed by the City and/or its consultant and property needs are determined, the proposed Fair Market Value of the property interests to be acquired will be submitted to the City Council or the City Manager, as applicable, in accordance with City ordinance and policy; and

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WHEREAS, the property interests to be acquired for this Project will be used as City right-of-way following acquisition thereof, except for land to be determined excess by the City Engineer.

NOW THEREFORE, BE IT RESOLVED, by the City Council of the City of Des Moines, Iowa:

1. There is no public need or benefit for the right-of-way proposed to be vacated and the public would not be inconvenienced by reason of the vacation of City-owned right-of-way located at Hull Avenue between Delaware Avenue and Dixon Street; Scott Avenue between Southeast 20th Street and Southeast 22nd Street; and Southeast 34th Street between Scott Avenue and East Court Avenue, all legally described as follows, subject to certain terms and conditions as set forth in the vacation ordinance and fulfillment by UPRR of its obligations as set forth in the Agreement between the City and UPRR as described herein:

HULL AVENUE A/K/A EAST HULL AVENUE

THAT PORTION OF EAST HULL AVENUE RIGHT-OF-WAY THAT CROSSES THE UNION PACIFIC RIGHT-OF-WAY BETWEEN DIXON STREET AND DELAWARE AVENUE IN THE CITY OF DES MOINES, POLK COUNTY, IOWA;

MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE EAST QUARTER CORNER OF SECTION 25, TOWNSHIP 79 NORTH, RANGE 24 WEST OF THE 5TH P.M.; THENCE SOUTH 89°(DEGREES)57'(MINUTES) 28"(SECONDS) WEST, 351.37 FEET ALONG THE NORTH LINE OF THE SOUTHEAST QUARTER OF SAID SECTION 25 TO THE POINT OF BEGINNING AT THE EAST RIGHT-OF-WAY LINE OF THE UNION PACIFIC RAILROAD; THENCE SOUTH 00°09'40" EAST, 25.00 FEET ALONG THE EAST RIGHT-OF-WAY LINE OF THE UNION PACIFIC RAILROAD TO THE SOUTH RIGHT-OF-WAY LINE OF EAST HULL AVENUE; THENCE SOUTH 89°57'28" WEST, 100.00 FEET ALONG THE SOUTH RIGHT-OF-WAY LINE OF EAST HULL AVENUE TO THE WEST RIGHT-OF-WAY OF THE UNION PACIFIC RAILROAD; THENCE NORTH 00°09'40" WEST, 50.00 FEET ALONG THE WEST RIGHT-OF-WAY OF THE UNION PACIFIC RAILROAD TO THE NORTH RIGHT-OF-WAY OF EAST HULL AVENUE; THENCE NORTH 89°57'28" EAST, 100.00 FEET ALONG THE NORTH RIGHT-OF-WAY LINE OF EAST HULL AVENUE TO THE EAST RIGHT-OF-WAY LINE OF THE UNION PACIFIC RAILROAD; THENCE SOUTH 00°09'40" EAST, 25.00 FEET ALONG THE EAST RIGHT-OF-WAY LINE OF THE UNION PACIFIC RAILROAD TO THE POINT OF BEGINNING.

SCOTT AVENUE NEAR SOUTHEAST 22ND STREET

THAT PORTION OF SCOTT AVENUE RIGHT-OF-WAY THAT CROSSES THE UNION PACIFIC RAILROAD RIGHT-OF-WAY BETWEEN SOUTHEAST 20TH STREET AND SOUTHEAST 22ND STREET IN THE CITY OF DES MOINES, POLK COUNTY, IOWA;

MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTHEAST CORNER OF PARCEL "D", THE VACATED SCOTT AVENUE RIGHT-OF-WAY AS SHOWN ON THE PLAT OF SURVEY RECORDED AS BOOK 14161, PAGES 49-50 IN THE OFFICE OF THE RECORDER OF POLK COUNTY, IOWA; THENCE SOUTH 89°(DEGREES) 47'(MINUTES) 36"(SECONDS) EAST, 103.37 FEET ALONG THE NORTH RIGHT-OF-WAY LINE OF SCOTT AVENUE TO THE EASTERLY LINE OF THE UNION PACIFIC RIGHT-OF-WAY; THENCE SOUTH 13°35'41" EAST, 81.98 FEET ALONG THE EASTERLY RIGHT-OF-WAY OF THE UNION PACIFIC RAILROAD TO THE SOUTH RIGHT-OF-WAY LINE OF SCOTT AVENUE; THENCE NORTH 89°48'35" WEST, 103.31 FEET ALONG THE SOUTH RIGHT-OF-WAY LINE

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OF SCOTT AVENUE TO THE SOUTHEAST CORNER OF SAID PARCEL "D" ON THE WESTERLY RIGHT OF WAY OF THE UNION PACIFIC RAILROAD; THENCE NORTH 13°37'44" WEST, 82.03 FEET ALONG THE WESTERLY RIGHT-OF-WAY OF THE UNION PACIFIC RAILROAD AND ALSO THE EASTERLY LINE OF SAID PARCEL "D" TO THE POINT OF BEGINNING.

SOUTHEAST 34TH STREET AT LAUREL HILL DRIVE

THAT PORTION OF SOUTHEAST 34TH STREET RIGHT-OF-WAY THAT CROSSES THE UNION PACIFIC RAILROAD RIGHT-OF-WAY BETWEEN SCOTT AVENUE AND EAST COURT AVENUE IN THE CITY OF DES MOINES, POLK COUNTY, IOWA;

MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE INTERSECTION OF THE WEST RIGHT-OF-WAY LINE OF SOUTHEAST 34TH STREET AND THE SOUTHERLY RIGHT-OF-WAY LINE OF THE UNION PACIFIC RAILROAD; THENCE NORTH 0°(DEGREES) 06'(MINUTES) 26"(SECONDS) EAST, 107.02 FEET ALONG THE WEST RIGHT-OF-WAY LINE OF SOUTHEAST 34TH STREET TO THE NORTHERLY RIGHT-OF-WAY LINE OF THE UNION PACIFIC RAILROAD; THENCE SOUTH 70°05'09" EAST, 53.33 FEET ALONG THE NORTHERLY RIGHT-OF-WAY LINE OF THE UNION PACIFIC RAILROAD TO THE EAST RIGHT-OF-WAY LINE OF SOUTHEAST 34TH STREET; THENCE SOUTH 0°12'09" WEST, 106.13 FEET ALONG THE EAST RIGHT-OF-WAY LINE OF SOUTHEAST 34TH STREET TO THE SOUTHERLY RIGHT-OF-WAY LINE OF THE UNION PACIFIC RAILROAD; THENCE NORTH 70°55'59" WEST, 52.87 FEET ALONG THE SOUTHERLY RIGHT-OF-WAY OF THE UNION PACIFIC RAILROAD TO THE POINT OF BEGINNING ON THE WEST RIGHT-OF-WAY LINE OF SOUTHEAST 34TH STREET.

2. That the Agreement by and between Union Pacific Railroad Company and the City of Des Moines for Railroad Highway Grade Crossing Closures at Scott Avenue (Public Grade Crossing US DOT No. 602 483X, Railroad Milepost 73.27, Trenton Subdivision), Southeast 34th Street (Public Grade Crossing US DOT No. 603 696L, Railroad Milepost 353.85, Perry Subdivision), and Hull Avenue (a/k/a East Hull Avenue) (Public Grade Crossing US DOT No. 876 010 B, Railroad Milepost 75.87, Mason City Subdivision; Public Grade Crossing US DOT No. 192 650J, Railroad Milepost 224.56, Bondurant Industrial Lead), and all Exhibits thereto including the Signal Interconnect Agreement, are hereby approved; and the Mayor and City Clerk are hereby authorized and directed to execute and attest, respectively, said Agreement and said Signal Interconnect Agreement on behalf of the City of Des Moines, Iowa.
3. That the City Manager or his designees, the City Community Development Director and City Engineer, are authorized and directed to administer said Agreement and said Signal Interconnect Agreement, and the Finance Department is authorized and directed to request payment and/or issue checks as required by said Agreements.
4. That the City of Des Moines Real Estate Division be and is hereby authorized to proceed with the necessary activities and negotiations to acquire by gift, negotiation, or condemnation the necessary property interests for construction of the UPRR Crossing Closures Mitigation street project in accordance with City ordinance and policy.
5. That the property will be acquired in accordance with the guidelines of 49 CFR Part 24 of the Uniform Relocation and Real Property Acquisition Act, as revised, and that relocation assistance is hereby authorized.
6. That the Fair Market Value of the necessary property interests will be approved in accordance with established City policy. If the property owners agree to convey the property to the City in an amount based on the established fair market value, including an approved administrative settlement, or if a condemnation award is based on the established fair market value or falls within an approved settlement amount, the Finance Director is authorized and directed to issue checks in the amounts necessary to carry out these transactions and to pay any unforeseen additional costs certified by the

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Legal Department and the Engineering Department; the Real Estate Division Manager is authorized and directed to complete these transactions in accordance with standard real estate practices and state law requirements.

7. That the Real Estate Division of the Engineering Department is directed to obtain the Legal Department's review and approval of all closing documents prior to closing.

8. That the City Clerk is hereby authorized and directed to endorse upon the real estate documents associated with acquisitions for this Project, the approval and acceptance of this Council; the Mayor is authorized and directed to sign all necessary real estate documents associated with acquisitions for this Project; and the City Clerk is further authorized and directed to deliver the aforementioned documents to the Real Estate Division Manager, who shall proceed to closing in accordance with standard real estate practices.

9. That the property interests acquired as part of this Project for use as City right-of-way and/or public sidewalks are hereby dedicated as such, except for land to be determined excess by the City Engineer, with dedication effective upon acquisition and/or closing by gift, negotiation or eminent domain.

(Council Communication No. 13- 486)

MOVED by Mahaffey to adopt.

FORM APPROVED:

Glenna K. Frank
 Glenna K. Frank, Assistant City Attorney

COUNCIL ACTION	YEAS	NAYS	PASS	ABSENT
COWNIE				✓
COLEMAN	✓			
GRIESS	✓			
HENSLEY	✓			
MAHAFFEY	✓			
MEYER		✓		
MOORE		✓		
TOTAL	4	2		
MOTION CARRIED	APPROVED			

Chris Coleman MAYOR PRO TEM

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.

Diane Rauh City Clerk