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Date March 22, 2010

APPROVAL OF FY 2009-10 ANNUAL RIGHT-OF-WAY MANAGEMENT FEE

WHEREAS, pursuant to the City of Des Moines Right-of-Way Management Ordinance, Chapter 102, Article IX of the City Code, the City has established a program to manage and regulate the use of its street and alley rights-of-way (ROW) by public and private users, and established provisions to charge ROW management fees to recover the costs of said program; and

WHEREAS, pursuant to Section 102-711 of the City Code, the City will attempt to recover its ROW management costs from all persons, companies and governmental entities whose presence and activities in the ROW require the City to engage in regulatory activities, as provided and allowed by Chapter 480A of the Iowa Code, "Public Utilities in Public Rights-of-Way"; and

WHEREAS, Section 480A.5 of the Iowa Code provides as follows:

A local government may recover from a public utility only those management costs caused by the public utility's activity in the public right-of-way. A fee or other obligation under this section shall be imposed on a competitively neutral basis. When a local government's management costs cannot be attributed to only one entity, those costs shall be allocated among all users of the public rights-of-way, including the local government itself. The allocation shall reflect proportionately the costs incurred by the local government as a result of the various types of uses of the public rights-of-way"; and

WHEREAS, Section 102-711 of the City Code provides that ROW management costs which the City incurs due to the activities of particular persons, companies and governmental entities in its ROW will be allocated to and collected from such persons, companies and governmental entities by means of permit fees; and

WHEREAS, Section 102-711 of the City Code further provides that ROW management costs which the City incurs which cannot be allocated to particular users ("non-allocable costs") will be allocated among all users of the public rights-of-way, including the City, and collected by means of an "annual management fee"; and

WHEREAS, Section 102-711 of the City Code provides that each user's annual management fee is to be based on its proportional allocation and use of City ROW as reported to the City by all ROW users, and that each user is to pay its proportionate share of the non-allocable costs in the City's ROW management program budget by means of an annual management fee to be approved by the City Council; and

WHEREAS, the City Engineer has determined the proportional allocation of ROW usage by all of the known ROW users in terms of "equivalent lineal footage" of such use, which usage was calculated on the basis of reports of ROW usage submitted by such users, or on the basis of City Engineer's estimate of such usage, as provided and required in Section 102-711 of the City Code; and

★ **Roll Call Number**

Agenda Item Number

25

Date March 22, 2010

WHEREAS, the City Engineer recommends the City Council approve the annual management fee for FY 2009-2010 in the amount of 0.84 cents (.0084 dollars) per equivalent lineal foot with the proposed minimum annual management fee of \$100.

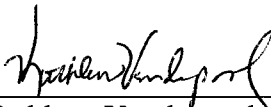
NOW, THEREFORE, BE AND IT IS HEREBY RESOLVED BY THE CITY COUNCIL OF THE CITY OF DES MOINES, IOWA:

1. That the supplemental documentation for the FY 2009-2010 ROW Management Program Budget submitted by the City Engineer is hereby received and filed.
2. That the City Engineer's calculation of the annual management fee for FY 2009-2010 in the amount of 0.84 cents (.0084 dollars) per equivalent lineal foot with the proposed minimum annual management fee of \$100, all as shown in the supplemental documentation for the FY 2009-2010 ROW Management Program Budget, is hereby approved and adopted by this City Council as provided by Section 102-711 of the City Code.
3. That this City Council hereby authorizes and directs the City Engineer to calculate the annual management fee for FY 2009-2010 owing by all ROW users with known use of City ROW and to send notice of such fee to all such ROW users.

(Council Letter Number 10-156 attached)

Moved by _____ to adopt.

APPROVED AS TO FORM:


 Kathleen Vanderpool
 Deputy City Attorney

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

**City of Des Moines
Engineering Department**

**SUPPLEMENTAL DOCUMENTATION FOR FY 2009-2010
RIGHT-OF-WAY MANAGEMENT PROGRAM BUDGET
February 2010**

FY 2009-10 Budget

Revenues

Carry Over from FY 2008-2009	\$55,137
Annual Management Fee ^(1,2,3)	\$207,710
<u>ROW Permit Fees</u>	<u>\$140,000</u>
Total	<u>\$402,847</u>

Expenditures

Personal Services ⁽⁴⁾	\$335,677
Contractual Services ⁽⁵⁾	\$13,400
Other Services & Charges ⁽⁶⁾	\$5,570
Commodities/Capital Outlays ⁽⁷⁾	<u>\$18,200</u>
Subtotal	\$372,847
Reserve	<u>\$30,000</u>
Total	<u>\$402,847</u>

⁽¹⁾ Annual Management Fee = 0.84 Cents / equivalent lineal foot of ROW usage

⁽²⁾ Approximately \$99,980 of the total Annual Management Fee will be covered by the City General Fund.

⁽³⁾ Minimum annual management fee to be charged to ROW users = \$100

⁽⁴⁾ Personnel Services = salaries, wages, and fringe benefits of employees and indirect employee costs.

⁽⁵⁾ Contractual Services = consultants and cell phone service.

⁽⁶⁾ Other Services = charges from other departments for service provided.

⁽⁷⁾ Commodities/Capital Outlay = office supplies, office equipment, and computers.

FY 2009-10 Budget Calculations (with Reserve)

FY 2008-2009		
Revenues		
Fy 07-08 Carry-Over	\$132,160.00	FY 2008 Revenues + Reserve - Expenditures
Annual Management Fee (08-09)	\$98,516.00	FY 2009 Franchise Fees + ROW Management Fee
ROW Permit Fees (08-09)	\$155,803.00	Fees collected per Peoplesoft
FY 08-09 Revenue Subtotal	\$386,479.00	
Expenditures		
Personnel Services	\$312,931.00	Salary and benefit provided by Finance.
Contractual Services	\$10,651.00	Per Finance/Peoplesoft
Other Services & Charges	\$4,445	Per Finance/Peoplesoft
Commodities/Capital Outlays	\$3,315.00	Per Finance/Peoplesoft
FY 08-09 Expenditures Subtotal	\$331,342.00	
Carry-over FY 08-09	\$55,137.00	FY 08-09 Revenues - Expenditures + FY08 Carryover
FY 2009-2010		
Revenues		
Carry Over from FY 2008-2009	\$55,137.00	
Annual Management Fee	\$207,710.00	
ROW Permit Fees	\$140,000.00	Based on permit and license fees through Dec (\$69,500)
Total	\$402,847.00	
⁽¹⁾ Annual Management Fee = 0.84 Cents / equivalent lineal foot of ROW usage		
Expenditures		
Personnel Services	\$335,677.00	Salary and benefit provided by Finance
Contractual Services	\$13,400.00	
Other Services & Charges	\$5,570.00	
Commodities/Capital Outlays	\$18,200.00	
Subtotal	\$372,847.00	
Reserve	\$30,000.00	Reserve can be between 25 and 90 days of operation. Per GLF
Total	\$402,847.00	

City of Des Moines
Engineering Department
Right-of-Way Management Program

Annual Management Fee Assessment
July 1, 2009 to June 30, 2010
updated 2-25-2010

NO.	USER'S NAME	EQUIVALENT LINEAL FEET			% OF TOTAL	FY 2009 - 10 Ann. Mgt. Fee	FY 2009 - 10 Ann. Mgt. Fee
		OVERHEAD	UNDERGROUND	TOTAL			
1	American Republic Insurance Company		66	66	0.00%	\$ 100.00	\$ 100.00
2	AT&T Corp.		59,942	59,942	0.24%	\$ 605.17	\$ 605.51
3	August Home Publishing		80	80	0.00%	\$ 100.00	\$ 100.00
4	Baker Group		6,519	6,519	0.03%	\$ 100.00	\$ 100.00
5	Des Moines Area Community College		65	65	0.00%	\$ 100.00	\$ 100.00
6	Des Moines Sewer Enterprise		3,115,200	3,115,200	12.64%	\$ 26,263.97	\$ 26,479.20
7	Des Moines Water Works		4,473,396	4,473,396	18.15%	\$ 37,700.44	\$ 38,023.87
8	CenturyTel Fiber Co. II, LLC		68,020	68,020	0.28%	\$ 573.25	\$ 578.17
9	Drake University *		2,732	2,732	0.01%	\$ 100.00	\$ 100.00
10	Electronic Engineering Co.		79	79	0.00%	\$ 100.00	\$ 100.00
11	Emco Enterprises		1,800	1,800	0.01%	\$ 100.00	\$ 100.00
12	Employers Mutual Casualty Co	665	241	906	0.00%	\$ 100.00	\$ 100.00
13	Grand View College		466	466	0.00%	\$ 100.00	\$ 100.00
14	Hickory Tech	100	36,694	36,694	0.15%	\$ 308.25	\$ 311.90
15	Hummel's Nissan		112	112	0.00%	\$ 100.00	\$ 100.00
16	Iowa Communications Network - State of Iowa		310,785	310,785	1.28%	\$ 2,619.20	\$ 2,641.67
17	Central Iowa Hospital Corp. (MMC)(addendum #1)	9,376	1,437	10,813	0.04%	\$ 100.00	\$ 100.00
18	Iowa Network Services, Inc. (addendum #3)		67,840.5	67,840.5	0.28%	\$ 571.74	\$ 576.64
19	Level 3 Communications LLC		3,902.0	3,902.0	0.02%	\$ 100.00	\$ 100.00
20	MCI Communications Services, Inc.* (Verizon) Add.#2		71,499	71,499	0.29%	\$ 602.67	\$ 607.74
21	McLeod USA (addendum #1)	331,180	162,188	493,368	2.00%	\$ 4,157.96	\$ 4,193.63
22	MediaCom - MCC Iowa L.L.C. **	2,616,998	735,221	3,351,219	13.60%	\$ 28,243.67	\$ 28,485.36
23	Mercy Medical Center (addendum #1)		290	290	0.00%	\$ 100.00	\$ 100.00
24	MidAmerican Energy / Gas & Electric **	3,109,136	6,301,745	8,410,881	34.13%	\$ 70,884.38	\$ 71,492.49
25	Principal Life Insurance Company		6,203	6,203	0.03%	\$ 100.00	\$ 100.00
26	Qwest Communications Corp. *	2,665,000	1,435,000	4,100,000	16.64%	\$ 34,553.67	\$ 34,850.00
27	Sherman Hills, LLC		33	33	0.00%	\$ 100.00	\$ 100.00
28	Titan Tire Corporation		60	60	0.00%	\$ 100.00	\$ 100.00
29	Unite Private Networks		24,626	24,626	0.10%	\$ 207.64	\$ 209.32
30	Waste Water Reclamation Authority		28,512	28,512	0.12%	\$ 240.29	\$ 242.35
TOTAL all Users		8,731,455	15,914,663	24,646,108	100.00%	\$ 209,922.40 †	\$ 210,801.65
Percent of Total		35.43%	64.67%	100.00%			

Total Franchise Paying Users	8,726,134	8,036,966	11,762,100	47.72%	\$ 99,127.45	\$ 99,977.85
Percent of Total	23.23%	24.49%	47.72%			

* - Usage was not reported by user but estimated by city staff

** - Franchise paying user. Assessed Annual Management Fee will be charged to the City's General Fund

† - Annual Management Fee = Budget - Permit Fee - C/O = \$207,710

‡ - Calculated Annual Management Fee is less than the \$100.00 minimum charge.

FY 2009-10 Budget = \$402,847. Any funds that are not expended during FY 2009-10, will be carried over to FY 2010-11

FY 2009 - 2010 Annual Management Fee per Equivalent Lineal Foot =

\$0.0084