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Date February 28, 2011.....

**APPROVAL OF FY 2010-2011 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

WHEREAS, the City Engineer recommends the City Council approve the annual management fee for FY 2010-2011 in the amount of 0.89 cents (.0089 dollars) per equivalent lineal foot with the proposed minimum annual management fee of \$100.

★ Roll Call Number

Agenda Item Number  
35

Date February 28, 2011

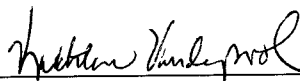
NOW, THEREFORE, IT IS HEREBY RESOLVED BY THE CITY COUNCIL OF THE CITY OF DES MOINES, IOWA:

1. That this City Council hereby authorizes and directs the City Engineer to calculate the annual management fee for FY 2010-2011 owing by all ROW users with known use of City ROW and to send notice of such fee to all such ROW users.
2. That the City Engineer's calculation of the annual management fee for FY 2010-2011 in the amount of 0.89 cents (.0089 dollars) per equivalent lineal foot with the proposed minimum annual management fee of \$100, all as shown in the supplemental documentation for the FY 2010-2011 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 the supplemental documentation for the FY 2010-2011 ROW Management Program Budget submitted by the City Engineer is hereby received and filed.

(Council Letter Number 11-108 attached)

Moved by \_\_\_\_\_ to adopt.

APPROVED AS TO FORM:

  
Kathleen Vanderpool  
Deputy City Attorney

*JEB*

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

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

**Annual Management Fee Assessment**  
July 1, 2010 to June 30, 2011  
updated 2-16-2011

NO.	USER'S NAME	EQUIVALENT LINEAL FEET			% OF TOTAL	FY 2010 - 11 Ann. Mgt. Fee
		OVERHEAD	UNDERGROUND	TOTAL		
1	American Republic Insurance Company		66	66	0.00%	\$ 100.00
2	AT&T Corp.		59,942	59,942	0.24%	\$ 533.48
3	August Home Publishing		80	80	0.00%	\$ 100.00
4	Baker Group		6,519	6,519	0.03%	\$ 100.00
5	CenturyTel Fiber Co. II, LLC DBA CenturyLink Wholesale		68,020	68,020	0.28%	\$ 605.38
6	Des Moines Area Community College		65	65	0.00%	\$ 100.00
7	Des Moines Sewer Enterprise		3,115,200	3,115,200	12.62%	\$ 27,725.28
8	Des Moines Water Works		4,431,907	4,431,907	17.95%	\$ 39,443.97
9	Diamond Oil	80		80	0.00%	\$ 100.00
10	Drake University *		2,732	2,732	0.01%	\$ 100.00
11	Electronic Engineering Co.		79	79	0.00%	\$ 100.00
12	Emco Enterprises		1,800	1,800	0.01%	\$ 100.00
13	Employers Mutual Casualty Co	665	241	906	0.00%	\$ 100.00
14	Grand View College		466	466	0.00%	\$ 100.00
15	Hickory Tech (addendum #2)	100	39,044	39,144	0.16%	\$ 348.38
16	Hummel's Nissan		112	112	0.00%	\$ 100.00
17	Internet Solver		800	800	0.00%	\$ 100.00
18	Iowa Communications Network - State of Iowa		310,785	310,785	1.26%	\$ 2,765.99
19	Central Iowa Hospital Corp. (IMMC)(addendum #	13,630	1,372	15,002	0.06%	\$ 133.52
20	Iowa Network Services, Inc. (addendum #4)		107,793.5	107,793.5	0.44%	\$ 959.36
21	Level 3 Communications LLC		3,902.0	3,902.0	0.02%	\$ 100.00
22	Magellan Pipeline Company, L.P.		2,000.0	2,000.0	0.01%	\$ 100.00
23	MCI Communications Services, Inc.* (Verizon) Add.#3		72,902	72,902	0.30%	\$ 648.83
24	McLeod USA (addendum #1)	331,180	162,188	493,368	2.00%	\$ 4,390.98
25	MediaCom - MCC Iowa L.L.C. **	2,615,998	735,221	3,351,219	13.57%	\$ 29,825.85
26	Mercy Medical Center (addendum #1)		422	422	0.00%	\$ 100.00
27	MidAmerican Energy / Gas & Electric **	3,120,931	5,309,682	8,430,613	34.15%	\$ 75,032.46
28	Principal Life Insurance Company		6,203	6,203	0.03%	\$ 100.00
29	Qwest Communications Corp. *	2,665,000	1,435,000	4,100,000	16.61%	\$ 36,490.00
30	Sherman Hills, LLC		33	33	0.00%	\$ 100.00
31	Sprint Communications Company L.P.		1,720	1,720	0.01%	\$ 100.00
32	Titan Tire Corporation		60	60	0.00%	\$ 100.00
33	Unite Private Networks		25,945	25,945	0.11%	\$ 230.91
34	Waste Water Reclamation Authority		28,512	28,512	0.12%	\$ 253.76
35	Windstream Communications, Inc.		11,750	11,750	0.05%	\$ 104.58
<b>TOTAL all Users</b>		<b>8,747,584</b>	<b>15,942,563</b>	<b>24,690,147</b>	<b>100.00%</b>	<b>\$ 221,392.71</b>
<b>Percent of Total</b>		<b>35.43%</b>	<b>64.57%</b>	<b>100.00%</b>		

<b>Total Franchise Paying Users</b>	<b>5,736,929</b>	<b>6,044,903</b>	<b>11,781,832</b>	<b>47.72%</b>	<b>\$ 104,858.30</b>
<b>Percent of Total</b>	<b>23.24%</b>	<b>24.48%</b>	<b>47.72%</b>		

\* - 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

τ - Annual Management Fee = Budget - Permit Fee - C/O = **\$218,566**

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

FY 2010-11 Budget = \$384,373. Any funds that are not expended during FY 2010-11, will be carried over to FY 2011-12

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

**\$0.0089**

City of Des Moines  
Engineering Department

SUPPLEMENTAL DOCUMENTATION FOR FY 2010-11  
RIGHT-OF-WAY MANAGEMENT PROGRAM BUDGET  
February 2011

FY 2010-11 Budget

**Revenues**

Carry Over from FY 2009-10	\$4,807
Annual Management Fee <sup>(1&amp;2)</sup>	\$218,566
ROW Permit Fees	\$161,000
<b>Total</b>	<b>\$384,373</b>

**Expenditures**

Personnel Services <sup>(3)</sup>	\$334,882
Contractual Services <sup>(4)</sup>	\$17,880
Other Services & Charges <sup>(5)</sup>	\$3,411
Commodities/Capital Outlays <sup>(6)</sup>	\$18,200
Subtotal	\$374,373
Reserve	\$10,000
<b>Total</b>	<b>\$384,373</b>

- (1) Annual Management Fee = 0.89 Cents / equivalent lineal foot of ROW usage
- (2) Minimum annual management fee to be charged to ROW users = \$100
- (3) Personnel Services = salaries, wages, and fringe benefits of employees and indirect employee costs.
- (4) Contractual Services = consultants and cell phone service.
- (5) Other Services = charges from other departments for service provided.
- (6) Commodities/Capital Outlay = office supplies, office equipment, and computers.