★ **Roll Call Number**

Agenda Item Number
51-I

Date September 22, 2014

An Ordinance entitled, "AN ORDINANCE to amend the Municipal Code of the City of Des Moines, Iowa, 2000, adopted by Ordinance No. 13,827, passed June 5, 2000, as heretofore amended, by amending Sections 102-657, 102-660, 102-711 and 102-766, relating to right-of-way management fees",

which was considered and voted upon under Roll Call No. 14-1390 of September 8, 2014; again presented.

Moved by _____ that this ordinance be considered and given second vote for passage.

(Second of three required readings)

COUNCIL ACTION	YEAS	NAYS	PASS	ABSENT
COWNIE				
COLEMAN				
GATTO				
GRAY				
HENSLEY				
MAHAFFEY				
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

S1-I

★ **Roll Call Number**
14-1390

Agenda Item Number
34

Date September 8, 2014

An Ordinance entitled, "AN ORDINANCE to amend the Municipal Code of the City of Des Moines, Iowa, 2000, adopted by Ordinance No. 13,827, passed June 5, 2000, as heretofore amended, by amending Sections 102-657, 102-660, 102-711 and 102-766, relating to right-of-way management fees",

presented.

Moved by Hensley that this ordinance be considered and given first vote for passage. refer to the City Manager to continue discussions with CenturyLink regarding the following:
1. Seek input on a possible hybrid of fees and permits
2. Review the potential impact of increasing the implementation period to 10 years.
3. Review the declaratory judgement process.

(First of three required readings)

FORM APPROVED:

Glenna K. Frank
Assistant City Attorney

(Council Communication No. 14-440)

COUNCIL ACTION	YEAS	NAYS	PASS	ABSENT
COWNIE	✓			
COLEMAN		✓		
GATTO	✓			
GRAY	✓			
HENSLEY	✓			
MAHAFFEY	✓			
MOORE	✓			
TOTAL	6	1		

MOTION CARRIED APPROVED

T. M. Franklin Cownie
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.

Diane Rauh
City Clerk

S1 I

CITY OF DES MOINES **Council Communication** Office of the City Manager	**Date:**	September 8, 2014
	Agenda Item No.	**34**
	Roll Call No.	[14-1390]
	Communication No.	**14-440**
	Submitted by:	**Pamela S. Cooksey, P.E., Interim City Engineer**

AGENDA HEADING:

Amending Chapter 102 of the Municipal Code Regarding Right-of-Way Management Fee Changes.

SYNOPSIS:

Recommend approval of the Right-of-Way Management Fee changes to Municipal Code Sections 102-657, 102-660, 102-711, and 102-766 relating to the right-of-way management fee definition, calculation and implementation. The ordinance and fee amount and structure are proposed to be effective as of January 1, 2015.

FISCAL IMPACT:

Amount: Revenue

- Fiscal Year (FY) 2014-2015 ($0.03/ Equivalent Lineal Foot {ELF}): $292,700 recovered costs from non-City users; $93,500 from City of Des Moines Sewer Enterprise funds
- FY 2015-2016 ($0.06/ELF): $583,800 recovered costs from non-City users; $186,900 from City of Des Moines Sewer Enterprise funds
- FY 2016-2017 ($0.09/ELF): $875,000 recovered costs from non-City users; $280,400 from City of Des Moines Sewer Enterprise funds
- FY 2017-2018 ($0.12/ELF): $1,166,500 recovered costs from non-City users; $373,800 from City of Des Moines Sewer Enterprise funds
- FY 2019-2020 ($0.15/ELF): $1,457,900 recovered costs from non-City users; $467,300 from City of Des Moines Sewer Enterprise funds

Funding: Monies generated from this cost recovery effort will be used to reimburse administrative expenses associated with the effort, with additional monies remaining offsetting a portion of the costs associated with managing the City's right-of-way within the City's Operating and Capital budgets and debt service payments associated with right-of-way maintenance and improvements.

ADDITIONAL INFORMATION:

The Iowa Supreme Court ruling in the Kragnes v. City of Des Moines case outlined what impacts due to activities within the City right-of-way are eligible for cost recovery. Based on the identified impacts as set forth in the Kragnes ruling and based on data through fiscal year 2012, a new study was conducted in 2013 that calculated the City's current annual cost to manage the right-of-way to be $9,064,000. City franchisees and City-owned utilities accounted for $5,160,000 of this actual cost. All other users of City right-of-way account for the remaining $3,820,000 of the actual cost, although said right-of-way users currently pay only approximately $84,000 annually through the City's current

annual right-of-way management fee. Thus the annual remaining $3,820,000 right-of-way management cost is not currently being recovered by the City and as a result is being subsidized by the City of Des Moines tax payers.

On February 11, 2013, by Roll Call No. 13-0186, City Council approved a professional services agreement with Springsted, Inc. to update the City's Right-of-Way Management Fee Study. In 2013 Springsted Inc. conducted a study to and review the City's current actual costs associated with the management of the City right-of-way and the current fee structure for recovering these costs. Pursuant to said agreement, Springsted, Inc. updated the 2007 Franchise Fee Study that Springsted, Inc. prepared in 2007 for the City of Des Moines, in conjunction with the legal case of relating to franchise fees, Kragnes v. City of Des Moines. The Iowa Supreme Court ruling in the Kragnes v. City of Des Moines case outlined what impacts due to activities within the City right-of-way are eligible for cost recovery.

The 2013 study reviewed these impacts and identified a deficit between the City's costs to manage the right-of-way and the current fees collected from right-of-way users to support this management function, pursuant to Des Moines Municipal Code Chapter 102, Article IX (the "Right-of-Way Management Ordinance") and Iowa Code Chapter 480A. The 2013 study also identified the need for an additional City Engineering Department, Traffic and Transportation Division staff person to better manage multiple right-of-way users and provide better overall service to the said users and the public.

The 2013 study distributed the City's calculated current annual right-of-way management cost among all right-of-way users based on type of usage, measured by the actual impacts from the size and displacement of the user's type of equipment in the right-of-way. The range of cost per ELF of equipment in the City right-of-way was determined to be $0.28 to $0.53 per ELF, based on approximately 24 million ELF of facilities in the right-of-way, the average rate calculated through the study is $0.35 per ELF.

The City currently charges an annual right-of-way management fee of $0.0085/ELF to right-of-way users, in addition to an annual license fee of $0.10/ELF for licensed users (i.e., non-franchise and non-public utility users). This equates to a total of approximately $84,000 annually. The City would need to charge an annual right-of-way management fee of approximately $0.35/ELF in order to recover the full calculated amount of $9,064,000 in expense to the City for right-of-way management as determined by the 2013 study.

Based on the study findings and in an effort to address right-of-way user's budget planning and simplify the fee structure, City staff has proposed the adoption of a $0.15ELF right-of-way management fee implemented over a five -year period, and the elimination of the additional license fee for licensed right-of-way users. The rate for the first year would equal $0.03 per ELF, with a $0.03 per ELF increase per year for the next five years. The rate in the fifth year (FY2019-20) would be $0.015 per ELF. The proposed fee is significantly less than the average fee of $0.35 per ELF (FY2012) as calculated by the 2013 study, and is also less than the lowest fee based on right-of-way usage type of $0.28 per ELF (FY2012) as calculated by the 2013 study, but has been determined by City staff to be reasonable in consideration of the changes in fee amount and fee structure now planned for right-of-way users. Right-of-way management fee rates will be reviewed on an annual basis if significant changes in the City's management of right-of-way should occur. Every five years, the overall study will be updated to review cost recovery and reassess the fee amount if needed, and the professional services agreements for study updates and schedule of fee amendments for any newly proposed right-of-way management fee amounts will be submitted to City Council for consideration and approval.

This information was presented to the City Council at the July 14, 2014 workshop. An informational meeting was held for right-of-way users on Monday, August 4, 2014. At request of Council during the August 25, 2014 meeting, additional discussions are planned to take place with stakeholders and Council members. The ordinance reading was continued until September 8th so that additional discussion could take place. A second right-of-way user meeting is scheduled for September 4, 2014 along with additional discussions with City Council members.

Questions and concerns have been raised by right-of-way users regarding the background calculations in the 2013 study. One concern raised was that the cost determination was made based on qualitative information only, rather than on quantitative numbers. Much of the study was based on previous work by Springsted during the Kragnes v. City of Des Moines legal case. Over 625 pages of employee interviews were performed and collected to determine the overhead and administrative costs associated with City staff overseeing the right-of-way. The degradation costs were based upon actual permit data from the Permit and Development Center, which detailed the number of right-of-way excavation permits taken out and the area of pavement removed. Construction costs were determined by the Engineering Department's experience in extra costs and staff time associated with designing and constructing around the existing utilities in the roadway. In the Kragnes ruling, the Iowa Supreme Court approved the cost-recovery items and the manner of calculation addressed in the 2013 study in relation to usage by franchisees of the City right-of-way.

PREVIOUS COUNCIL ACTION(S):

Date: August 25, 2014

Roll Call Number: 14- 1313

Action: Amending Chapter 102 of the Municipal Code regarding ROW Management Fees. (Council Communication No. 14-423) Moved by Hensley to continue to September 8, 2014; refer to the City Manager, City Attorney and Engineering Department to work with the impacted parties on suggestions for amendments to the proposed ordinance, to provide the Council with a list of all right-of-way users, and to provide information regarding the proposed job description for the additional staff person. Motion Carried 7-0.

Date: January 27, 2014

Roll Call Number: 14-0118

Action: Approval of FY2013-2014 Annual ROW Management Fee. (Council Communication No. 14-020) Moved by Mahaffey to adopt. Motion Carried 5-2.

Date: April 8, 2013

Roll Call Number: 13-0562

Action: FY2012-2013 Annual ROW Management Fee. (Council Communication No. 13-176) Moved by Hensley to adopt. Motion Carried 7-0.

Date: February 11, 2013

Roll Call Number: 13-0186

Action: Approving professional services agreement with Springsted, Inc. to update ROW Management Fee Study, not to exceed $55,530. (Council Communication No. 13-056) Moved by Hensley to adopt. Motion Carried 7-0.

Date: May 7, 2012

Roll Call Number: 12-0710

Action: FY2011-2012 Annual Right-of-Way Management Fee. (Council Communication No. 12-212) Moved by Hensley to adopt. Motion Carried 7-0.

BOARD/COMMISSION ACTION(S): NONE

ANTICIPATED ACTIONS AND FUTURE COMMITMENTS:

Second and third ordinance readings. Approval of amendment to schedule of fees to implement the proposed fee amount and structure. Approval of professional services agreements and further amendments to schedule of fees as may be applicable upon 5-year study updates.

For more information on this and other agenda items, please call the City Clerk's Office at 515-283-4209 or visit the Clerk's Office on the first floor of City Hall, 400 Robert D. Ray Drive. Council agendas are available to the public at the City Clerk's Office on Thursday afternoon preceding Monday's Council meeting. Citizens can also request to receive meeting notices and agendas by email by calling the Clerk's Office or sending their request via email to cityclerk@dmgov.org.

5IE

ORDINANCE NO. _____

AN ORDINANCE to amend the Municipal Code of the City of Des Moines, Iowa, 2000, adopted by Ordinance No. 13,827, passed June 5, 2000, as heretofore amended, by amending Sections 102-657, 102-660, 102-711 and 102-766, relating to right-of-way management fees.

Be It Ordained by the City Council of the City of Des Moines, Iowa:

Section 1. That the Municipal Code of the City of Des Moines, Iowa, 2000, adopted by Ordinance No. 13,827, passed June 5, 2000, as heretofore amended, is hereby amended by amending Sections 102-657, 102-660, 102-711 and 102-766, relating to right-of-way management fees, as follows:

Sec. 102-657. Definitions.

The definitions in this section apply to divisions 1 through 3 of this article. References to sections are, unless otherwise specified, references to sections in this Code. Defined terms remain defined terms whether or not capitalized in the text. The following words, terms and phrases, when used in divisions 1 through 3 of this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

~~***Annual right-of-way management fee*** or ***annual management fee*** means the fee imposed on right-of-way users each year to recover right-of-way management program costs which will not be allocable to particular users of the right-of-way and which cannot be recovered through permit fees.~~

.....

City cost or ***city cost component*** means the direct and indirect costs borne by the city for management ~~administration~~ of public rights-of-way, including but not limited to pavement management, traffic management, risk management, financial management, cost recovery, ~~recovery of revenue lost due to street occupancy,~~ infrastructure oversight, budget analysis, recordkeeping, legal assistance, systems analysis, application processing and checking, issuing permits, inspecting job sites, creating and updating mapping systems, degradation costs, construction costs, operating costs, disruptive costs, and including other costs the city may incur in managing public rights-of-way and in performing all of the tasks required by this article.

.....

City utilities or ***city enterprises*** means any city-owned and/or city-operated utility other than the city stormwater management utility.

.....

Disruptive cost or disruptive cost component means the cost the city will incur that is reasonably related to the disruption or interruption of normal vehicular and/or pedestrian usage of the right-of-way.~~in managing the vehicular and/or pedestrian traffic which will be disrupted by the excavation and/or obstruction activities in the right-of-way, and may also include compensation to the city for loss of revenues, including but not limited to the loss of parking revenues due to loss of access to parking spaces or facilities.~~

.....

License fee means right-of-way management fee.

.....

Right-of-way management fee or ***management fee*** (or ***annual right-of-way management fee*** or ***annual management fee)*** means the fee imposed on right-of-way users each year to recover reasonable costs incurred by the city in managing its right-of-way, which costs will not be allocable to particular users of the right-of-way, and which are not recovered through permit fees.

.....

Unit or ***unit of equipment*** means utility equipment placed in the right-of-way at individual location(s) and that is not part of and/or is measured separately from a lineal-footage equipment system.

.....

Cross reference(s)--Definitions generally, § 1-2.

Sec. 102-660. Persons subject to registration, permitting and licensing.

(a) Each person who occupies, uses, or seeks to occupy or use the right-of-way or any equipment located in the right-of-way or who has or seeks to have equipment located in any right-of-way shall register with the department. ~~All such registrations shall be filed with the city on or before the registration deadline established by the city council by resolution, notice of which deadline shall be published in advance thereof in a newspaper of general circulation in Polk County.~~ No person may~~, after the registration deadline,~~ construct, install, repair, remove, or relocate equipment located in any right-of-way or perform any other work on or use any equipment or any part thereof located in any right-of-way, without first being registered with the department. No person shall obstruct or excavate in any street right-of-way without obtaining appropriate permits as required by division 2 of this article.

(b) No person shall construct a tree well in any right-of-way unless such tree well is shown in an approved site plan ~~and~~ or a permit for such has been obtained pursuant to division 2 of this article.

(c) No person shall construct an irrigation system in any right-of-way unless a permit for such has been obtained pursuant to division 2 of this article.

(d) No person shall plant a street tree or any ornamental plantings in the right-of-way unless either a permit for such has been obtained pursuant to chapter 122 of this Code or a garden lease has been obtained pursuant to chapter 74 of this Code. Persons constructing or maintaining tree wells or irrigation systems in the right-of-way or planting or maintaining street trees or ornamental plantings in the right-of-way shall not be deemed to use or occupy the right-of-way for purposes of this division and shall not be required to register such use.

(e) A person having a franchise from the city for the provision of a utility service shall be required to register as provided in this division, and pay ~~an annual~~ management fee, obtain right-of-way permits and pay right-of-way permit fees to excavate in or obstruct the right-of-way as provided in division 2 of this article. However, if such franchise provides for the payment of a franchise fee, the franchisee shall not be required to pay such ~~annual~~ management fee or permit fees in addition to the franchise fee.

(f) City utilities and enterprises and public utilities which occupy and use right-of-way, other than by easement, for the provision of ~~municipal~~ utility and enterprise services ~~city~~ shall be required to register as provided in this division~~,~~ and pay ~~annual~~ management fees. All city utilities and enterprises and public utilities which occupy and use right-or-way shall~~,~~ obtain

right-of-way permits and pay right-of-way permit fees to excavate in or obstruct the right-of-way as provided in division 2 of this article. ~~City w~~Work crews and ~~city~~ contractors performing work in the right-of-way on behalf of the city and/or public utility shall be required to obtain right-of-way permits and pay right-of-way permit fees to excavate in or obstruct the right-of-way as provided in division 2 of this article.

(g) Governmental entities or agencies of the federal government, the state, or the county which occupy and use right-of-way for the provision of communications or utility services for governmental purposes shall be required to comply with the registration requirements of this division, except the insurance and bonding requirements associated therewith. Such governmental entities and agencies shall be required to pay ~~annual~~ management fees and obtain right-of-way permits and pay right-of-way permit fees to excavate in or obstruct the right-of-way as provided in division 2 of this article. Such governmental entities or agencies shall be exempt from the licensing requirements of division 3 of this article.

Sec. 102-711. Permit fees; management fees.

.....

(d) *Computation of disruptive cost component for permitting purposes.* The disruptive cost is the cost the city will incur in managing the vehicular and/or pedestrian traffic which will be disrupted by permitted excavation and/or obstruction activities in the right-of-way. The city engineer shall determine the disruptive cost component of the fees for excavation and obstruction permits by using economic and accounting principles. Fees may vary from one location to another based on: the size of the area to be obstructed; the duration that the right-of-way or parts of it will be unavailable for public use and travel; the proximity of businesses and enterprises which rely in whole or in part on access by members of the public or the delivery of supplies or raw materials; the importance of the particular right-of-way to the traveling public; the use of the particular right-of-way for emergency vehicles and the availability of alternate routes; the traffic volumes carried by the particular right-of-way; the amount of vehicular, bicycle, and pedestrian traffic that is reasonably likely to be disrupted thereby; the traffic control measures and activities which the city will have to undertake to appropriately manage the disruption of traffic, including maintenance of special traffic control signage or signals, and the provision of traffic control personnel; and the loss of revenues to the city, including but not limited to the loss of parking revenues due to loss of access to parking spaces or facilities.

.....

(j) ~~*Annual m*~~*Management fee.* On or before ~~February~~ January 1st of each year, all right-of-way users required to pay ~~an annual~~ management fee~~, as provided in section 102-660,~~ shall make a detailed report to the city engineer on the right-of-way usage reporting form provided by the city for that purpose, setting forth the amount of equipment that each such user has in city street rights-of-way, measured in equivalent lineal feet and/or on a per-unit basis, as applicable and as instructed on such form. ~~In March of each year, the city engineer shall submit to the city council a right-of-way management program budget, showing the anticipated revenues from right-of-way permit fees in the next fiscal year, as well as the amount of non-allocable program costs which the city will incur, but which will not be allocable to particular users of the right-of-way and which cannot be recovered through permit fees as provided in this section. The city engineer shall also calculate and submit to the city council, as part of the budget for the right-of-way management program, an annual management fee to recover the non-allocable program costs.~~ The ~~annual~~ management fee

shall be expressed in (i) cents per equivalent lineal foot of equipment to be charged to all users with more than one linear foot of equipment in city rights-of-way, and (ii) price per unit of equipment to be charged to all users with unit-based equipment in city rights-of-way. The ~~annual~~ management fee to be charged to each user shall be determined by multiplying that user's number of equivalent lineal feet of equipment in City right-of-way by the per equivalent lineal foot fee amount set forth in the approved ~~program budget~~ schedule of management fees, and/or by multiplying that user's number of units of equipment in city right-of-way by the per-unit fee amount set forth in the approved schedule of management fees. The city engineer shall report and invoice the ~~annual~~ management fee so calculated to each right-of-way user ~~on or before May 1st of~~ each year and each user's ~~annual~~ management fee shall be due and payable within sixty (60) calendar days of the date on the invoice. ~~on and as of July 1st of the fiscal year succeeding the approval and calculation of the annual management fee as above provided. An annual management fee shall be calculated for franchisees which pay a franchise fee to the city, but such franchisees shall not be required to pay such annual management fee in addition to the franchise fee.~~ Right-of-way users that are not required to pay a management fee include permittees; franchisees; public utilities operating within right-of-way by easement; and the city's stormwater management utility whose equipment constitutes part of the right-of-way infrastructure.

(k) Engineer's authority to waive the annual usage reporting requirement for ROW users; *engineer's authority to estimate equivalent lineal footage and/or number of units of non-reporting user; penalty for under-reporting right-of-way usage.* For any year as to which the city engineer determines that the relative change in right-of-way usage by all right-of-way users is insufficient to materially affect the calculation of the ~~annual~~ management fee as to individual users, the city engineer may waive such annual reporting requirement as set forth in subparagraph (j) above and may utilize the usage reported by right-of-way users for the most recent prior year in which all users were required to report. Such waiver shall be reported to all right-of-way users in lieu of sending a right-of-way usage reporting form to such users. As to any year in which right-of-way usage reporting is not so waived, the failure of the city engineer to send a right-of-way usage reporting form to a right-of-way user shall not excuse such user from the requirement of making such report as herein required. As to any right-of-way user who fails to complete or return a right-of-way usage reporting form as herein required by the ~~February~~ January 1st deadline, the city engineer is authorized to calculate the equivalent lineal feet of equipment and/or number of units of equipment, as applicable, that such user has in city street right-of-way upon such basis as the city engineer determines is fair and rational, and to utilize the number of equivalent lineal feet and/or number of units, as applicable, so determined in the calculation of such user's ~~annual~~ management fee. The city engineer is further authorized to verify reported right-of-way usage by right-of-way users by any means the city engineer determines to be fair and rational. As to those right-of-way users who under-report by more than 5% their equivalent lineal feet and/or number of units of equipment ~~of right-of-way usage,~~ within city right-of-way, the city engineer is authorized to recalculate such usage and such user's ~~annual~~ management fee, and such users shall be required to immediately pay any balance in charges owing, with interest thereon at the rate of 7% per annum, since the due date of the ~~annual~~ management fee for such user.

(l) *Fees accumulated in separate fund.* All fees collected under this article ~~, with the exception of that portion of such fees attributable to indirect costs incurred by the city for administrative services,~~ shall be accumulated in a separate fund ~~for the~~

~~exclusive purpose of administering and maintaining the city's right-of-way infrastructure and associated appurtenances~~ and may be used or distributed from said fund for any purpose at the city's discretion, including but not limited to reimbursement and/or payment of the city's administrative costs of the right-of-way management program, capital improvement projects or debt service payments associated with right-of-way maintenance and improvements, and other direct and indirect costs incurred by the city in managing the right-of-way. As to any franchisee which pays a franchise fee to the city, the amount of the ~~annual~~ right-of-way management fee calculated for that franchisee by the city engineer shall be deducted from the franchise fee paid each year by the franchisee and shall be accumulated in the separate fund provided for in this paragraph.

.....

(n) *Schedule of fees.*

(1) The permit fees to be paid in each instance shall be determined by the city engineer by reference to a schedule of permit fees, which shall be developed in conformance with the requirements of I.C. ch. 480A, shall be updated as needed prior to each construction season, and shall be approved by the city council by resolution.

(2) The management fees to be paid in each instance shall be determined by the city engineer by reference to a schedule of management fees, which shall be developed in conformance with the requirements of I.C. ch. 480A, shall be updated as needed based on city engineer review of all costs incurred by the city in the management of right-of-way, but not less than once every five (5) calendar years, and shall be approved by the city council by resolution.

.....

Division 3. Franchise~~,~~ or License ~~or Lease~~
for ~~Private or Commercial~~ Right-of-Way Use

.....

Sec. 102-766. Compensation required; franchise and management~~, license and lease~~ fees.

(a) No franchise ~~or lease~~ for use of public right-of-way shall be granted, and no license for the use of public right-of-way shall be issued without requiring the grantee or licensee thereof to compensate the city for such use by payment of a reasonable and competitively neutral fee.

(b) All ~~new~~ franchises granted by the city shall require the franchisee to pay an annual franchise fee. The franchise fee shall be provided for in the franchise ordinance.

(c) ~~A license fee shall, to the extent allowed by the constitution and laws of the state, be assessed on all new licenses for use or occupancy of the right-of-way upon and after the city council's approval by resolution of a schedule of license fees for use of city rights-of-way. The schedule of fees for use of city rights-of-way shall reflect the diminution in the functional utility of the right-of-way for use by the city and shall be based upon such factors as the value or rental value of private property abutting the right-of-way to be used and the licensee's avoided cost in using the city right-of-way as opposed to establishing a private right-of-way for the licensed use upon abutting private property. The schedule of fees for use of city rights-of-way shall establish such fees in terms of per-linear-foot charges for the right-of-way used, and assuming a use width of not more than ten feet, with the schedule reflecting the per-foot value of such right-of-way in identified segments of the city.~~ All licenses granted by the city shall require the licensee to pay a right-of-way management fee. The management fee shall be calculated as provided for in the schedule of management fees developed and

approved in accordance with section 102-711 of this article.

~~(d) A lease fee shall be assessed on all new leases for use or occupancy of the right-of-way. The lease fee shall in each instance be established and provided for in the lease approved by the city council.~~

(~~e~~d) In addition to being required to pay franchise and management~~, license, or lease~~ fees, franchisees~~,~~ and licensees~~, and lessees~~ may, to the extent allowed by I.C. § 480A.1 et seq., be required to provide in-kind services as compensation for such use, including but not limited to ~~:~~

~~(1) The installation by the franchisee, licensee, or lessee of city equipment in the trenches excavated by or in the duct banks constructed by the franchisee, licensee, or lessee; and/or~~

~~(2) A~~access to such trenches or ducts so that the city can install its equipment therein.

~~——~~Franchisees~~,~~ and licensees~~, and lessees~~ who provide such services as utility services, as defined in this article, may, to the extent allowed by I.C. § 480A.1 et seq., also be required to provide access at no cost to the services provided by the franchisee~~,~~ or licensee~~, or lessee~~ at a location to be designated by the city, or the equivalent value of the service to be provided at such location.

(~~f~~e) Franchise~~,~~ and ~~license, and lease~~ management fees shall be paid at the city treasurer's office. The acceptance of any such fee payment by the city shall not be construed as an acknowledgment that the amount paid is the correct amount due, nor shall such acceptance of payment be construed as a release of any claim which the city may have for additional sums due and payable. Franchisees and licensees shall, within 90 days of the date of a written request from the city engineer~~, close of the license or fiscal year, as the case may be,~~ provide the city with an annual audit of the fees paid to the city during the reporting period indicating that the fee paid the city during that period is equal to the franchise or ~~license~~ management fee due for such period. If such audit results in a determination that an additional amount of franchise or ~~license~~ management fee is owing to the city for the prior year, such additional amount shall be due and payable immediately, together with interest at the rate of ten percent per year calculated from the due dates for the franchise or ~~license~~ management fee payments in question. The city manager may waive the audit requirement when he or she determines that the ~~license~~ management or franchise fee amount owing to the city is too minimal to justify audit.

(~~g~~f) The licensee ~~or lessee~~ shall pay interest at the rate of ten percent per year on any overdue ~~license or lease~~ management fee calculated from the due date of the fee.

(~~h~~g) Nothing in this division shall be construed to limit the liability of a franchisee~~,~~ or licensee~~, or lessee~~ for all applicable federal, state and local taxes.

(~~i~~h) Nothing in this division shall be construed to prevent the city council from exercising the right of the city to change the amount of any of the fees required by this division.

Section 2. This ordinance shall be in full force and effect as of January 1, 2015.

FORM APPROVED:

Glenna K. Frank

Glenna K. Frank
Assistant City Attorney

14-1390
SIF

Timothy S. White
Vice President/General Manager, Iowa
925 High Street
Des Moines, Iowa
Tim.White@centurylink.com
(o) 515.286.6606

CenturyLink®

August 13, 2014

Sent via U.S. Mail and Email
Larry Hulse, Interim City Manager
Office of City Manager
City Hall
400 Robert D. Ray Drive
Des Moines, IA 50309

Re: City of Des Moines Draft Ordinance and Revised Public Rights-of-Way Fee

Dear Mr. Hulse:

On behalf of CenturyLink, I respectfully request that the City of Des Moines postpone further action on changes to its Municipal Code and fees for use of the public rights-of-way. The proposed changes to the Municipal Code are sweeping and the fees will be costly not only to users of the public right of way, but also to customers within the City. The proposed fees and other provisions require further consideration by all affected utilities prior to action by the Des Moines City Council, currently scheduled for August 25, 2014.

CenturyLink was first alerted to a proposed nearly 20-fold increase in fees our company would pay the City in a letter from your office dated July 16, 2014. We received from the City, on July 29, 2014, a copy of the cost study that the City claims supports its increase in fees.

After initial review of the cost study and draft ordinance, as well as participating in the informational meeting on August 4, 2014, CenturyLink still has numerous concerns and questions. We look forward to having a continued discussion with City staff at a meeting scheduled for August 19.

The City's proposed fees would considerably alter, and could effectively prohibit, our ability to deploy new and advanced services in the City. CenturyLink and its predecessor companies, Qwest, US WEST and Northwestern Bell have invested in Des Moines and served its' constituents for over one hundred years. CenturyLink and other affected utilities should be afforded the opportunity to provide more meaningful input to the City to determine if the current fee structure is flawed.

We respectfully request that the City delay further consideration of these issues so that technical workshops and additional public hearings can be held. The current proposal is extremely detrimental to our continued investment within the City, specifically deployment of new technologies which directly impact economic development, job growth, education and quality of life.

Sincerely,

Timothy S. White

cc: Michael Sadler, CenturyLink, Director State Regulatory and Legislative Affairs
Eric J. Schwalb, Esq., CenturyLink, Senior Corporate Counsel
Jennifer Dakovich, Principal Traffic Engineer, City of Des Moines

Comment Form
Proposed Changes to City of Des Moines Right-of-Way Program

CITY OF DES MOINES
ENGINEERING DEPARTMENT

Name: Stacy M. Light, Manager-OSP Engineering/Franchises & ROWs

Companies: Windstream Communications, Inc. and McLeodUSA Telecommunications Services, LLC

Phone: 501-748-7538

E-mail: stacy.m.light@windstream.com

Comments/Questions:

All comments/questions are made on behalf of both Windstream Communications, Inc. ("Windstream") and McLeodUSA Telecommunications, Inc. ("McLeod").

Windstream and McLeod both respectfully request that the City of Des Moines postpone its reading of the proposed Right-of-Way Ordinance/Program scheduled for August 25, 2014. Although Windstream has obtained a copy of the study, there has not been sufficient time to review the proposed changes in detail. Without an opportunity to review the proposed changes and the supporting cost study in more detail, Windstream and McLeod do not feel that they can make informed and appropriate comments to the City of Des Moines.

The financial impact of the proposed Ordinance on Windstream and McLeod as well as many other users of the City's right-of-way is significant and needs to be studied in more detail by those affected. It would be in the interests of all parties for the City to postpone its consideration of the proposed Right-of-Way Ordinance.

Form may be e-mailed to jldakovich@dmgov.org or mailed to:

Jennifer Dakovich
City of Des Moines
400 Robert D. Ray Dr.
Des Moines, IA 50313

August 13th, 2014

Mr. Larry Hulse
Interim City Manager
City of Des Moines

RE: Response to your letter dated July 16th, 2014:
Proposed Changes to Current Right-of-Way Management Program.

Dear Mr. Hulse,

My name is David Marley, Operations Manager here at the Iowa Communications Network (ICN). Kent Freise is our Outside Plant coordinator reporting to me. He and I discussed your recent letter and we wanted to respond with some concerns to your proposal of some changes in the Metronet ROW fee structure. First, I've noted a little history on our understanding of how the Metronet partnership came to be.

Starting in 1987, the City of Des Moines, the Des Moines Independent School District and the Communications Division of the State of Iowa General Services (later reorganized as the ICN) have worked together to develop and deploy a shared fiber optic network commonly referred to as the Des Moines Metronet. The intent of the organization was to save the taxpayer resources by eliminating duplication of effort, minimizing engineering costs and locating costs, and Right of Way impact.

As a result of this early cooperation, the City of Des Moines and the Des Moines Metronet were "grand fathered" into the legislation authorizing the creation of the Iowa Communications Network. Des Moines is the only city to which the ICN can provide telecommunications services which has translated into ongoing cost savings for the city. The cost of leasing the original Des Moines Schools fiber network was absorbed under the ICN Part III legislation.

After the floods of 1993, the City of Des Moines, the Des Moines ISD and the ICN formalized this sharing agreement.

The Metronet fiber generally consists of 48 fibers, and is usually configured in one of 4 combinations:

1. A hybrid fiber sheath consisting of 12 multimode strands and 36 single mode strands, or
2. Two fiber sheaths; one of multimode (12 or 24 strands) and the other single mode (36 or 72 strands) or
3. Two fiber sheaths, both single mode, one consisting of 12 strands and the other 36 strands or
4. One fiber sheath consisting of 48 strands of single mode fiber

This fiber is owned by the City of Des Moines and shared among the members of the Metronet. Generally the multimode sheath/fibers or the stand-alone 12 strand single mode is used by Traffic and Transportation to control traffic signals and support cameras. The 36 strand single mode

fibers are shared use in that Des Moines IT uses the first 12 fibers to connect and serve the various city offices, the Des Moines ISD uses the second 12 fibers to interconnect and serve the city schools and the ICN uses the last 12 fibers to connect and serve State and Federal entities in the Des Moines area.

Using the ICN's GIS records, we have determined the following:

- The ICN has 29,581' of fiber on State of Iowa Property (the Capitol Complex and in the tunnels between the State buildings) and
- 26,601' of fiber in the ROW of the City of Des Moines.

There are 441,852 feet of Metronet fiber per our records.

In exchange for access to the Metronet fiber, the ICN has borne the burden of locating any fiber sheath in which the ICN has an active (lit) fiber and paying the annual ROW fee to the City of Des Moines.

In calendar year 2013:

Based upon the City's calculation of 310,785 Linear Equivalent Feet of ROW usage, the ICN is expecting to pay $4,661.78 for ROW usage.

There were 8,111 locates requested of the ICN in the city of Des Moines. "One Call" bills the organization that registers the utility $0.90 each utility locate requested. The ICN paid "One Call" a total of $7,299.90 in calendar year 2013.

Of these 8,111 locates requested, the ICN dispatched a locator 3,384 times at a cost of $46.58 per dispatch for a total of $157,626.72

The total ICN cost for locates within the city of Des Moines during calendar year 2013 was $164,926.62. Adding the City ROW fee of $4,661.78 brings the ICN annual total cost of being a member of Metronet to $169,588.40. All things being equal, if the ROW fee is eventually raised to $.15 per linear foot, this amount will increase to $211,544.37.

This does not include the cost for ICN personnel to manage temporary repairs of disrupted connections, maintain fiber assignments and splice documentation so that each entity knows which fibers are available or in use, and engineer the solutions for re-locates or the frozen fiber conduit issues.

In conclusion, the ICN understands there are costs involved in managing the city rights of way. We just want to point out that the ICN is also incurring costs and not currently charging a large portion of these back to the city as this has always been a partnership. We are more than willing to talk about cost sharing, but the maintenance costs should be considered in the overall picture.

Thanks in advance for your consideration.

Sincerely,

David Marley
Operations Manager-ICN
515-725-4670
david.marley@iowa.gov

cc: Kent Freise-ICN
Jennifer L. McCoy-City of DSM
Jennifer Dakovich-City of DSM

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DES MOINES WATER WORKS
Board of Water Works Trustees

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2201 George Flagg Parkway | Des Moines, Iowa 50321 | (515) 283-8700 | www.dmww.com

August 14, 2014

Mr. Jeb Brewer, PE
Des Moines City Engineer
Des Moines City Hall
400 Robert D. Ray Drive
Des Moines, IA 50309

Subject: DMWW's Objection to Proposed Changes to the Right-of-Way Management Program

Dear Jeb:

I am writing to express DMWW's opposition to the proposed Right-of-Way (ROW) Management Program changes. Des Moines Water Works has reviewed the Right-of-Way Management Cost Study and the proposed implementation plan. Based on our review, we believe the proposed fees are excessive and are based on costs that are not appropriately funded through the Right-of-Way Management Program.

DMWW does agree with the City that the ROW must be managed, management is the City's responsibility, and there are costs associated with this management. The fees in the proposed program are not, however, an accurate representation of these costs and represent a serious departure from the approach used by the City in its ROW cost allocation to date. In short, the fees in the proposed program are a penalty for utilities using the ROW rather than an allocation of actual cost of use. DMWW believes the ROW exists to accommodate infrastructure used by the public. Municipal utilities such as water are part of the public infrastructure, not a tenant to be charged captive rent within the ROW, and as such should not be subject to fees based solely on their existence and operation within the ROW.

While DMWW has accepted some negotiated payment for ROW use in the past, we request a rule of reason not shown in the City's current proposal and request that the "flowing components" be eliminated from the cost calculation as we believe them to be inconsistent with the legitimate purpose of funding the Right-of-Way Management Program, including:

- Degradation Costs
- Right-of-Way Construction Costs
- Disruption Costs
- Lost Value of Trees

DMWW remains committed to fostering a constructive relationship with the City of Des Moines, but respectfully requests the City consider the rate impacts to DMWW customers (most of whom are city residents) of a proposed fee nearly 20 times what is currently being paid by DMWW. The Springstead study raises many concerns including street asset lifecycle assumptions of 21 and 40 years for ACC and PCC streets respectively. Is the City assuring DMWW and its rate payers that the City's street system will be maintained based upon this schedule and that ROW fees paid will be earmarked toward ROW maintenance only? If not, please rework your ROW proposal to suit reality, not simply a need for more revenue.

Please feel free to contact me if you have questions or comments.

Sincerely,

William G. Stowe
CEO and General Manager

cc: Jeff Lester, Esq., Corporation Counsel, City of Des Moines
Graham Gillette, Chair, Board of Water Works Trustees

14-1390

at&t

Sarah A. Sorensen
General Attorney-Network Operations

AT&T Services, Inc.
400 West Avenue
Second Floor
Rochester, New York 14611
585.987.3160 Phone
585.987.3045 Fax
sa1587@att.com

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August 25, 2014

Larry D. Hulse (via U.S. mail and email to citymanager@dmgov.org)
Interim City Manager
City Hall
400 Robert D. Ray Drive
Des Moines, Iowa 50309

Re: City of Des Moines Draft Rights-of-Way Ordinances

Dear Mr. Hulse:

AT&T Corp. ("AT&T") recently became aware that the City of Des Moines is contemplating changes to its Municipal Code in relation to fees charged for use of the public rights-of-way. AT&T has concerns and questions with respect to these proposed revisions to the Municipal Code as well as the increase in rights-of-way fees. We respectfully request that the City suspend further action on these proposed changes and address these issues in workshops or hearings where the public and all affected utilities are invited to participate.

Sincerely,

Sarah A. Sorensen / AAB

Sarah A. Sorensen

cc: Wauneta Browne, Regional Vice President-External Affairs (via e-mail)
Beth Canuteson, Director-External Affairs (via e-mail)
Ann Ahrens Beck, General Attorney (via e-mail)