

February 26, 2007

Date

APPROVAL OF FY 2006-07 ANNUAL MANAGEMENT FEE AND
RIGHT-OF-WAY MANAGEMENT PROGRAM BUDGET

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

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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 the City Engineer's estimate of such usage, as provided and required in Section 102-711 of the City Code; and

WHEREAS, Section 102-711 further provides that the City Engineer is to "submit to the City Council a right-of-way management program budget, showing the anticipated revenues from 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"; and

WHEREAS, although Section 102-711 provides that the City Engineer is to submit that budget based upon direct and non-allocable program costs in March of each year, the professional auditing firm hired by the city to make a more thorough review of the actual costs of such program and the results of that audit would prohibit timely compliance by the City Engineer; and the requirement that such submittal be made in March of each year is in recognition of the annual "construction season"; and

WHEREAS, the City Engineer has submitted to this City Council supplemental documentation for the FY 2006-2007 ROW Management Program Budget, which document is on file in the office of the Chief Deputy City Clerk and is attached hereto, and by this reference, made a part hereof. That supplemental documentation reflects anticipated revenues based upon the projections used but, because the City Engineer has not received the report of the professional auditing firm that supplemental documentation may substantially understate the anticipated allocable and non-allocable program costs that the City will incur; and

WHEREAS, although the supplemental documentation may substantially understate both the allocable cost items in said budget which the City anticipates recovering through permit fees in FY 2006-2007, as well as the non-allocable cost items which will not be recovered from ROW users as permit fees and which are proposed to be recovered through the annual management fee, the City Engineer has determined it better to establish fees in anticipation of the construction season and make necessary adjustments when the true costs are known rather than to delay; and

WHEREAS, as required by Section 102-711 and subject to future revision, the City Engineer has calculated and proposed an annual management fee, expressed as a per equivalent lineal foot charge, to be charged to all ROW users on the basis of their reported or estimated usage of City ROW, and has proposed a minimum annual management fee to be charged to all users; and

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WHEREAS, the City Engineer has recommended the City Council's approval of the annual management fee and of the minimum annual management fee.

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 2006-2007 ROW Management Program Budget submitted by the City Engineer is hereby received and filed.
2. That the City Engineer's calculation of the equivalent lineal footage of all ROW users in the amount of 23,112,820 equivalent lineal feet, as well as the City Engineer's calculation of allocable costs in the amount of \$140,205 and non-allocable costs in the amount of \$131,000 including a budget deficit carry over from FY 2005 – 2006 in the amount of \$90,168, all as shown in the supplemental documentation for the FY 2006-2007 ROW Management Program Budget, is hereby approved.
3. That the City Engineer's calculation of the annual management fee for FY 2006-2007 in the amount of 0.57 cents (.0057 dollars) per equivalent lineal foot, and the proposed minimum annual management fee in the amount of \$100.00, all as shown in the supplemental documentation for the FY 2006-2007 ROW Management Program Budget, is hereby approved and adopted by this City Council as provided by Section 102-711 of the City Code.
4. That this City Council hereby authorizes and directs the City Engineer to calculate the annual management fee owing by all ROW users with known use of City ROW and to send notice of such fee to all such ROW users.

★ Roll Call Number

Agenda Item Number

65


February 26, 2007

Date

(Council Communication No. 07-120 attached)

MOVED BY _____ TO ADOPT.

APPROVED AS TO FORM:


Susan A. Low
Assistant City Attorney

COUNCIL ACTION	YEAS	NAYS	PASS	ABSENT
COWNIE				
COLEMAN				
HENSLEY				
KIERNAN				
MAHAFFEY				
MEYER				
VLASSIS				
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