

BOARD OF ALDERMEN

ITEM NO. B(4)

AGENDA ITEM ABSTRACT MEETING DATE: November 9, 2004

TITLE: A Request to Conduct a Time Warner Cable Franchise Fee Audit

DEPARTMENT: Management Services	PUBLIC HEARING: NO
ATTACHMENTS: A. Resolution B. Memorandum of Agreement C. Budget Amendment	FOR INFORMATION CONTACT: Steve Stewart, 918-7315 Richard White, 918-7314

PURPOSE:

The Town of Carborro is a member of the Cable TV Consortium directed by the Triangle J Council of Governments (TJCOG) for the purpose of regulating cable TV rates and franchising cable TV service in the Town. The Town and several other consortium members have directed TJCOG to procure the professional services necessary to conduct an audit of Time Warner Cable franchise fee payments. The Board of Aldermen is requested to authorize the Town Manager to execute a memorandum of agreement with the TJCOG to conduct the audit.

INFORMATION:

The franchise agreement allows the Town to conduct an independent audit of franchise fee payments to determine if proper franchise fees have been paid. This agreement, made by and between the Triangle J Council of Governments (TJCOG) and members of the cable consortium including the Town of Carborro, is for the purpose of procuring professional services to conduct an audit of franchise fees paid by Time Warner Cable (or its predecessors) to the Town during the period January 1, 2002 through December 31, 2003. The purpose of the audit is to ascertain the accuracy of franchise fee payments in accordance with the requirements of the existing franchise between Time Warner Cable (or its predecessors) and the Town.

TJCOG has contracted with Lewis and Associates of Hollywood, Florida to conduct the audits for each participating local government.

The audit by Lewis and Associates will consist of:

- a) Review relevant franchise agreements to determine the extent of each local government's audit rights, franchise fee requirements and the franchisee's reporting requirements;
- b) Review relevant cable operator's records pertaining to franchise payments due for cable television franchise fees for the franchise review period (January 1, 2002 through December 31, 2003);
- c) Perform a review of the franchisee's payments to verify the accuracy of revenues reported, the basis upon which the fee calculations were made for each reporting interval, during the franchise review period;

- d) Calculate the correct fees due each municipality for each quarter of the franchise review period, plus applicable interest and penalties if any; and,
- e) Prepare and provide each municipality with a separate report summarizing each of the findings.

The agreement calls for the Town to pay a \$3,000 retainer upon receipt of an invoice from TJCOG. The Town can expect twenty percent (20%) of recovery of funds in excess of \$2,250. This includes funds recovered either as settlement, refund, credit, or as an award from the franchise cable operator resulting from the audit.

In accordance with Town Code requirements, the Manager must seek Board approval to enter into contractual agreements that commit the Town to purchase goods and services when the Board of Aldermen has not previously authorized the acquisition of such goods or services and the amount of the contract may exceed \$5,000.

FISCAL IMPACT: The agreement requires a \$3,000 retainer. Other than incidental out-of-pocket expenses not to exceed \$300, the Town should not incur additional expenses.

RECOMMENDATION:

Staff recommends that the Board approve the resolution authorizing the Town Manager to execute a Memorandum of Agreement with the Triangle J Council of Governments to conduct an audit of Time Warner Cable franchise fee payments. Also, Town staff requests the Board to approve the attached budget ordinance transferring contingency funds to the Town Manager's Office to cover the \$3,000 retainer.