

**A RESOLUTION AUTHORIZING THE TOWN MANAGER TO
EXECUTE A MEMORANDUM OF AGREEMENT
TO CONDUCT A CABLE FRANCHISE FEE AUDIT
Resolution No. 54/2004-05**

Whereas the franchise agreement with Time Warner Cable allows for an independent audit of franchise fee payments.

BE IT RESOLVED by the Board of Aldermen that the Town Manager is authorized to execute the Memorandum of Agreement with the Triangle J Council of Governments to conduct an audit to ascertain the accuracy of franchise fee payments.

MEMORANDUM OF AGREEMENT

This agreement, made by and between the Triangle J Council of Governments (TJCOG) and 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 of Carborro 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 of Carborro.

The Town of Carborro has entered into a consortium of local governments directed by TJCOG for the purpose of regulating cable TV rates and franchising cable TV service in the town. The Town of Carborro, along with several other participants in the TJCOG Cable TV Consortium has directed TJCOG to procure the professional services necessary to conduct the desired audit. TJCOG has, in turn, contracted with Lewis and Associates of Hollywood, Florida to conduct the audits for each 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 Town of Carborro agrees to:

- a) Instruct its employees to cooperate with Lewis and Associates and provide information and/or documents necessary to perform the review services;
- b) Provide Lewis and Associates with a letter of authority appointing Lewis and Associates as the Town's agent in this matter;

- c) Provide Lewis and Associates with copies of all necessary documents such as annexation maps and data, zip code listings, street maps, tax/franchise fee receipts, revenue statements, franchise agreements, and other information relevant to the scope of this agreement; and,
- d) Actively pursue recovery of under payments identified by Lewis and Associates.

The Town of Carborro agrees to pay the following compensation for the professional services provided:

- a) A \$3,000 retainer upon receipt of an invoice from TJCOG to be sent following the execution of this agreement;
- b) Reimbursement for out-of-pocket costs incurred by the contractor in completing this project, not to exceed \$300. Requests for payment of out-of-pocket costs will be accompanied by appropriate receipts.
- c) 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 connection with any litigation arising out of this Agreement, the prevailing party should be entitled to recover reasonable attorney's fees and court costs, including such fees and costs incurred in trial and in appellate proceedings. The parties recognize that other provisions of the Agreement provide for consideration for this provision.

The Town of Carborro may cancel this agreement upon 30 days of prior written notice sent by first class mail. In the event that the town exercises it's right of cancellation the retainer will be forfeited and the town will be responsible for any out-of-pocket expenses that have been made prior to the date of cancellation.

DATE

Dee A Freeman, Executive Director
Triangle J Council of Governments

DATE

Town of Carborro

ATTACHMENT C

AN ORDINANCE AMENDING THE FY2004-05 BUDGET ORDINANCE

WHEREAS, the Town Board of the Town of Carrboro on June 15, 2004 adopted the annual budget for the fiscal year beginning July 1, 2004 and ending June 30, 2005; and

WHEREAS, it is appropriate to amend the expense accounts in the funds listed to provide for increased expenses for the reasons stated.

NOW, THEREFORE, BE IT ORDAINED, that in accordance with authority contained in G.S. 159-15, the following expense and revenue accounts are amended as shown and that the total amount for the funds are herewith appropriated for the purposes shown:

FUND	ACCOUNT TITLE	INCREASE (DECREASE)	AMOUNT	FROM	TO
General Fund					
Expenditures	Non-departmental	DECREASE	\$3,000	\$597,719	\$594,719
	Town Manager's Office	INCREASE	\$3,000	\$290,583	\$293,583

REASON: Transfer contingency funds to Town Manager's Office to cover costs associated with the Time Warner Cable Franchise Fee Audit directed by the Triangle J Council of Governments. 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. With the transfer of \$3,000 for this audit, \$12,000 will remain in contingency for undesignated purposes.