

Memorandum
Administrative Services Department



To: Thomas Thomas, City Manager
Subject: Azavar (Am Audit) Payment for Cable Franchise Settlement
Date: December 12, 2012

On June 18, 2012, the City Council approved a new cable franchise agreement with Mediacom.

In 2007, Azavar Audit Solutions (Azavar) initiated an address audit and franchise fee verification of Mediacom on behalf of the city. The time period covered was from January 1, 2001 through September 30, 2009. The purpose of the audit was to determine the accuracy of the provider's franchise fee collections and remittance to the city. Azavar performed an initial detailed analysis and determined franchise fee underpayments to the city totaled \$168,108. Mediacom disputed this level of underpayment. Mediacom finally agreed to an underpayment of \$133,466.46 and the city accepted this offer in complete satisfaction of all claims during the accounting period.

Under the attached agreement with Azavar / Am Audit, the fees paid are equal to fifty percent (50%) of any credits identified and realized due to findings presented by the auditors.

Recommendation: City Council pays Azavar according to the contract agreement in the amount of \$66,733.23.

Azavar Invoice: #9176

Account: 101-155041-53112-000000
Fund: General Fund
Division: Personnel Administration
Cost Center: Administration
Object Class: Consultant Services

Requisition: #003637

Submitted By: John Thorson, Administrative Services Director
Ted Kutsunis, City Attorney

Approved By: Thomas Thomas, City Manager



8600 U.S. Highway 14 • Crystal Lake, IL • 60012
888-262-8785 • (fax) 866-332-3564
info@amaudit.com

June 11, 2007

Mr. John Phillips
City of Rock Island
1528 3rd Avenue
Rock Island, IL 61201

Re: Franchise Audit

Dear Mr. Phillips:

Enclosed please find an executed copy of the Audit Agreement authorizing AmAudit to provide franchise audit services to your municipality with the goal of reducing your costs and/or increasing your revenues.

In the audit we will examine the current vendor(s) and/or utility's billings, applicable contracts, utility service infrastructure, and applicable municipal tax collection and tariff rates for errors.

Our audit will take three to six months and could run longer if we uncover billing or contractual errors and have to go back several months or years to track the initial month of those errors and to calculate the amounts needed to support a claim against the vendor. We generally do not require a great deal of your staff time unless we are building evidence for our claims. We do, however, alert you to contacts you may receive from your current providers once we contact them for customer service records. Vendors may make offers to reduce your costs or change your contracts as a means to circumvent the audit. Please refer them to us before agreeing to such changes so that we can preserve your interests under the existing contracts. After completion of our review we will provide you with a written report detailing our findings and recommendations.

Thank you for allowing our firm to be of service. If you have any questions during the audit process please feel free to call our office at (815) 788-0488.

Sincerely,

A handwritten signature in black ink, appearing to read 'Deidre McCannon', written over a white background.

Deidre McCannon
Audit Manager
DHM/dm
encl



MUNICIPAL FRANCHISE & TAX AUDIT AGREEMENT

Agreement entered into this 21 day of MAY 2007, between *AmAudit* hereinafter referred to as "Auditor", and CITY OF ROCK ISLAND, IL, hereinafter referred to as "Client".

The Parties hereto agree as follows:

1. **AUDIT SERVICES** – *Auditor* agrees to provide audit services to obtain credits, forward savings and increases in future revenues through audits in the following areas:
 - a. **Franchise & Taxes:** *Auditor* agrees to review and analyze current municipal electric, telecom & gas utility service taxes and franchise fees agreements and collections. Such review shall include business & residential data base address listing and comparisons to electric, telecom, and gas utility database listings for the purpose of determining proper utility tax collections and franchise fee payments.
 - b. **Tax Assessments and Collections:** *Auditor* agrees to review and analyze current tax processes and methods for assessing utility taxes for gas, electric, and telecom with a view toward increasing the tax base and/or future tax revenues.
2. **FINDINGS** – *Auditor* shall prepare a detailed written report of all of *Auditor's* findings with spreadsheet attachments, where applicable, clearly demonstrating current utility revenues and costs and, where necessary, comparing current revenues and costs with required franchise agreements payments and/or ordinance assessment rates to demonstrate variances and errors or proposed increases in future revenues and savings. *Auditor* shall also prepare a detailed written report of all of *Auditor's* findings with a listing of all discrepancies in utility tax records in comparison with municipal records together with credits and estimated forward revenue increases and savings due to the audit results. The audit process shall also include a review of taxing methods and its effect on reaching the entire taxing base within the municipality.
3. **CREDITS, REFUNDS, AND CLAIMS** – *Auditor* shall process all credits, refunds, and claims when discovered with notice to Client of the discovery of such credit, refund or claim. Past, uncollected utility taxes assessed by the municipality, but either not collected by the utility or reimbursed to the municipality by the utility, shall not be considered part of the credits/refunds or claims in the audit findings.
4. **RECOMMENDATIONS**- *Auditor* shall make recommendations as it deems appropriate based on *Auditor's* findings for the purpose of correcting payment collection and increasing future revenues and savings. All such recommendations shall be submitted in writing as part of the audit report and subject to approval by Client. *Auditor's* recommendations are only suggested solutions and Client may prefer other solutions that they seek and obtain on their own after presentation of the *Auditor's* findings. Audit fees shall be deemed earned based on credits, payment collection errors correction and increases in future revenue and savings regardless if they are obtained through *Auditor's* recommendations or Client's preferred solution.

5. **IMPLEMENTATION** – *Auditor* will implement any or all of the agreed upon recommendations on behalf of client, to the extent that such implementation is within the power of the *Auditor*, after written authorization signed by the *Client*. If implementation requires enactment of a municipal ordinance or other actions totally within the power of the *Client*, such implementation shall be the responsibility of the *Client*. *Client* may choose to implement any or all of the recommendations presented by *Auditor* subsequent to receipt of their written audit report. *Auditor* will act as *Client*'s agent in the collection of any credits and refunds except that such agency shall not include representation in litigation or before the Public Service Commission without specific written agreement between the parties to that effect.
6. **CLIENT OBLIGATIONS-** *Client* hereby agrees to provide copies of all of their current franchise agreements, municipal tax ordinances, and copies of the current statements and bills for receipt of electric, telecom and gas services, utility taxes, and franchise fees as described in paragraph 1a & 1b. above either in paper form or electronic format including copies of all contracts for such services between *Client* and any and all carriers providing such services. *Client* shall also provide a Letter of Authority copied onto *Client*'s letterhead to permit *Auditor* to obtain *Client* service records or copies of service agreements as necessary. *Client* also agrees to provide reasonable access to *Client* staff for purpose of identifying payments, clarifying services, tracking usage and identifying carrier personnel assigned to *Client* and such other information as may be necessary from time to time. *Auditor* agrees that access to staff shall be at reasonable times and shall be at the convenience of *Client*. *Client* agrees that during the process of the audit, *Client* will not make any changes to tax bases other than normal additions and deletions made in the ordinary course of business, nor will *Client* change contract terms or conditions with utility carriers until *Auditor* findings are complete. *Client* hereby represents that there are no pending negotiations with current or other carriers to modify, change, reduce or otherwise affect current utility franchise agreements and that *Client* will not engage in those activities during the audit process in order to permit AmAudit to complete it's findings without changes requiring a re-start to the audit process or raising issues as to the value of AAUA's findings.
7. **CONFIDENTIALITY-** For purposes of this Agreement, "Confidential Information" means proprietary and confidential data or information of *Client* or AmAudit in whatever form transmitted, relating to business plans, operation, systems and/or the purchase and use of telecommunications or utility services, which (i) is disclosed by either party, indicating its confidential or proprietary nature or is obviously confidential or proprietary by its nature, or (ii) is developed during the relationship between the parties and set forth in the *Auditor*'s report or work product. The term "affiliate" shall mean any person or entity controlling, controlled by or under common control with a party. Neither *Auditor* nor *Client* shall disclose any Confidential Information to any person or affiliate outside the employ of *Client* or *Auditor* without the express written consent of the other party. The restrictions herein shall not extend to discussions or disclosures to telecom or utility carriers as may be required to conduct the audit services herein.
8. **FEES** – *Auditor* shall be compensated by *Client* for services rendered under this agreement by payment of a fee equal to:
 - a. One half (50%) of the first twenty four (24) month's forward savings, and/or
 - b. One half (50%) of the first twenty four (24) month's gross income generated from any increases in revenue income or reduction in costs to *Client* and/or

- c. One half (50%) of any refunds or credits identified and realized due to the findings presented by AAUA Auditors.

Client shall not use directly or indirectly, or authorize the use of by any third party, throughout the 24-month period, any information obtained by Auditor to acquire credits, refunds or future revenues or future savings unless Auditor is paid its fee as required under this agreement.

9. **PAYMENT SCHEDULE** – The fee earned for authorized forward revenues and savings shall be paid each month for 24 consecutive months beginning with the month following the month in which the authorized changes have been fully implemented. It is understood that several invoices may issue in any single month, each covering a separate utility service, due to different implementation dates of changes for each utility service. The entire fee for refunds or credits generated will be due upon receipt of such refund or credit by the Client.
10. **DEFAULT**- If Client should default on any payment not being contested for a greater period than 30 days from the billing date, Auditor, at its discretion, may accelerate all payments due under this agreement and seek recovery of the entire estimated audit fee. All late payments shall incur a 1.5% per month late payment penalty. If collection proceedings are required to recover audit fees earned herein, Client shall be responsible for collection costs including reasonable attorney's fees.
11. **FUTURE REVENUES AND FORWARD SAVINGS** - Shall be determined by comparing the historical monthly revenues and/or costs, for the 12 months prior to the Auditor's findings, described in 2. above, to the estimated average monthly increase in future revenues and/or decrease in forward costs. Since estimating future revenues and forward savings varies based on the process of establishing those revenues and savings, the method of estimating the future revenues and forward savings will be described in detail as part of the findings.

City of Rock Island
By: John C Phillips
Signature
Name: John C Phillips
Print
Title: City Manager
Date: 6/5/07

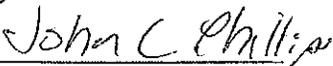
AmAudit:
By: Gregory A. Karr
Signature
Name: Gregory A. Karr
Print
Title: President
Agent: House

12. Exclusions – It is expressly understood and agreed, notwithstanding anything to the contrary above, that the cable franchise agreement and revenues and any unpaid storm water utility fees are not a part of this agreement and shall not qualify in any way for the determination of fees due pursuant to paragraph 8. above.

City of Rock Island, Illinois



Signature

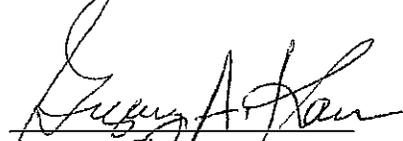


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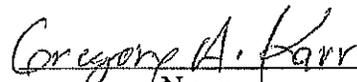


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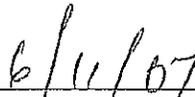
AmAudit



Signature



Name



Date



Invoice

Date	Terms	Due Date
12/1/2012	Net 30	12/31/2012

Bill To:
City of Rock Island John Thorson 1528 Third Avenue Rock Island, IL 61201

Invoice #:	9176
Billing Period	2012
Project	RIL/001 - Audits
Project Manager	Jason Perry

Quantity	Description	Rate	Amount
0.5	Contingency payment for Cable Settlement	133,466.46	66,733.23
<p>OK John Thorson 12/11/12</p> <p>101-155041-53112-000</p> <p>12019 R003637</p> <p>REQ # _____</p> <p>PO BATCH # _____</p> <p>PO # _____</p> <p>CLAIMS BATCH # _____</p> <p>CLAIMS # _____</p> <p>ACCOUNT # _____</p> <p>PLEASE MAKE CHECKS PAYABLE TO AZAVAR.</p>			

Thank you for choosing Azavar Audit Solutions. Please refer all inquiries to mutap@azavar.com	Total	\$66,733.23
	Payments/Credits	\$0.00
	Balance Due	\$66,733.23