

MEMORANDUM

TO: Chief Administrative Officer

FROM: Ronald Eldridge, City Comptroller

RE: Audit of Utility Tax Revenues

Date: April 30, 2006

Brief Description of Item. The attached resolution will authorize the Mayor to sign the attached agreements for audit services for utility costs billed the City and for audit services for utility tax revenues that are paid to the City.

Recommendation. Approval of the attached resolution and agreements.

Background Information. For a few years, I have been exploring with the Finance Director for the City of Champaign, the possibility of having an audit performed of the utility tax companies that collect our local utility tax and of the utility fees charged the two cities. Other cities that have performed these audits have usually recovered additional tax revenues and/or utility cost savings.

Having knowledge of franchise agreements and being familiar with the utility companies accounting records and how the franchise billings and tax collections are calculated under these franchise agreements requires a special expertise. The two main steps utilized are to: (1) compare data base of residences in city limits to those utilized by the utility companies and (2) review formulas used by the utility companies to calculate tax and bills under State tariffs.

We are recommending the firm of AmAudit, Crystal Lake, Illinois. Both the Champaign Finance Director and I met with the two principals of the firm and believe them to be knowledgeable and experienced. AmAudit has been performing these services specializing in service to small and medium sized companies for approximately the last 7 years (since deregulation of the utility industry in Illinois). In the last 2 years, they have been extending their services to local governments in Illinois. AmAudit has worked with a long list of cities in Illinois to perform these utility audits (ex. Naperville, Hoffman Estates, Palatine) and I received a good recommendation from officials of these cities concerning satisfaction of AmAudit's work. It is expected that this audit will take approximately 3 months to complete.

The fee for these audit services are on a contingent basis, 45% of identified savings over the past 2 years that are provided by the way of a credit or refund and also

45% of any future savings for a 2 year period. AmAudit did agree to reduce their normal fee of 50% due to economy of scale of having both Champaign and Urbana together performing the same audit services. If no savings or revenues are identified, there is no cost for the audit.

ORDINANCE NO. 2006-05-062

AN ORDINANCE APPROVING AND AUTHORIZING THE EXECUTION OF
AN AGREEMENT FOR A UTILITY COST AUDIT AND FOR A MUNICIPAL
FRANCHISE AND TAX AUDIT

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF
THE CITY OF URBANA, ILLINOIS, as follows:

Section 1. That Agreements between the City of Urbana and AmAudit of
Crystal Lake, Illinois, concerning utility audit services, in substantially the form
of the copy of said agreements attached hereto and hereby incorporated by
reference, be and the same is hereby authorized and approved.

Section 2. That the Mayor of the City of Urbana, Illinois, be and the same
is hereby authorized to execute and deliver and the City Clerk of the City of
Urbana, Illinois, be and the same is authorized to attest to said execution of said
agreements as so authorized and approved for and on behalf of the City of
Urbana, Illinois.

PASSED by the City Council this ____ day of _____, 2006.

AYES

NAYS:

ABSTAINS:

Phyllis Clark, City Clerk

APPROVED by the Mayor this ____ day of _____, 2006.

Laurel L. Prussing, Mayor



UTILITY COST AUDIT AGREEMENT

This Agreement entered into this _____ day of _____, _____, by and between *AmAudit*, and the **City of Urbana**, Illinois, hereinafter referred to as “Client”.

The Parties hereto agree as follows:

- 1. AUDIT SERVICES** – AmAudit agrees to review and analyze current utility service bills as set forth in the “Scope of Audit” supplied herewith. Such review shall be for the purpose of reducing the ongoing utility operating costs to the lowest possible level consistent with Client’s desired quality of service, current average usage and usage patterns and to correct any billing errors that may result in a refund or credit. The audit services shall be for the following selected utilities:

- | <u>A) Telecom Services:</u> | <u>CHECK BOX TO INCLUDE</u> |
|------------------------------------|-----------------------------|
| a) Local | <input type="checkbox"/> |
| b) Long Distance | <input type="checkbox"/> |
| c) Data | <input type="checkbox"/> |
| d) Internet | <input type="checkbox"/> |
| B) <u>Electric Services:</u> | <input type="checkbox"/> |
| C) <u>Gas Services:</u> | <input type="checkbox"/> |
| D) <u>Waste Removal:</u> | <input type="checkbox"/> |
| E) <u>Water Service:</u> | <input type="checkbox"/> |

<p>IF YOU DO NOT RECEIVE A REFUND, CREDIT OR EXPENSE REDUCTION, THERE WILL BE NO FEE FOR OUR SERVICES</p>

- 2. FINDINGS** – On or before expiration of 180 days from the date of this agreement unless extended, in writing, by agreement of the parties due to inability to obtain necessary records, contracts and information from Client or Client’s carriers or providers, *AmAudit* shall prepare a detailed written report, of all of the audit’s findings with spreadsheet attachment, when needed, clearly demonstrating current utility costs and, where necessary, comparing current costs with required contract and/or tariff costs to demonstrate variances and errors or proposed savings.

Changes to current service to conform to existing agreements, remove improper charges including all credits and refunds shall be processed when discovered and without prior written approval of Client. AmAudit will make no changes that will risk terminating existing services without the written consent of Client. Notice of changes will be provided to the Client in a timely manner.

3. **RECOMMENDATIONS** – *AmAudit* shall make recommendations as it deems appropriate based on *AmAudit's* findings for the purpose of avoiding billing errors and reducing forward utility costs. All such recommendations shall be submitted in writing as part of the audit report or interim report and subject to approval by Client. *AmAudit's* recommendations are only suggested solutions and Client may prefer other solutions that they seek and obtain on their own after presentation of the *AmAudit's* findings. Audit fees shall be deemed earned based on forward savings regardless if they are obtained through *AmAudit's* recommendations or Client's preferred solution.
4. **IMPLEMENTATION** – *AmAudit* will implement any or all of the agreed upon recommendations on behalf of client after written authorization is given. Client may choose to implement any or all of the recommendations presented by *AmAudit* subsequent to receipt of their written audit report. *AmAudit* 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.
5. **CLIENT OBLIGATIONS** – In addition to the Client obligations set forth in this agreement, the Client agrees to the following specific items
 - a. Client hereby agrees to provide copies of the current billing for telecom and other utility services as described in paragraph 1. above either in paper form or electronic format including copies of all contracts for such services between Client and any and all utility carriers providing such services.
 - b. Client shall also provide a Letter of Authority copied onto Client's letterhead in form as set forth hereto as Exhibit B to permit Auditor to obtain customer service records or copies of service agreements as necessary and to correct billing errors, remove improper charges, cancel unused services and apply for credits and refunds on behalf of Client
 - c. Client also agrees to provide reasonable access to Client staff for purpose of identifying circuits, clarifying services, tracking usage and function of circuits and equipment and such other information as may be necessary from time to time. *AmAudit* agrees that access to staff shall be at reasonable times and shall be at the convenience of Client.
 - d. Client agrees that during the process of the audit, Client will not make any changes to services 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.
 - e. Client hereby represents that there are no pending negotiations with current or other carriers to modify, change, reduce or otherwise affect current utility services 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 *AmAudit's* findings. ***Credits or savings as a result of the pending hearings before the ICC contesting rate increases of AmerenIP shall not be considered as a result of the activities of AmAudit and shall not be included in calculating any audit fees under this agreement.***

f. Client agrees that they will establish an appointment with an *AmAudit* agent within fifteen days after receiving notice from *AmAudit* that the written audit report is ready for presentation. If Client fails to establish an appointment date as required, Client agrees that delivery of the written audit report within ten working days after the required 15 day deadline, by certified mail, shall satisfy the requirement for *AmAudit* to present the audit report. Client further agrees that they will initial and sign all of the items identified in the authorization page *either accepting or rejecting* the recommendation within thirty days after presentation of the written audit report

6. CONFIDENTIALITY – Neither party shall disclose confidential information to any third party unless required by the Freedom of Information Act or other statutory or court order. For purposes of this Agreement, “Confidential Information” means proprietary and confidential data or information of Client 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 Client to *AmAudit*, 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 *AmAudit's* report or work product. The term “affiliate” shall mean any person or entity controlling, controlled by or under common control with a party. *AmAudit* shall not disclose any Confidential Information to any person or affiliate outside the employ of Client without the express written consent of Client. 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.

7. TERMINATION - This agreement may be terminated, in whole or in part, for cause by either party by providing written notice of termination to the other party. The party at cause shall have 20 days from the receipt of notice to remedy the breach and restore the agreement. Cause shall be any action or lack of action that breaches the obligations of the party as set forth in this agreement. It is understood that this agreement will terminate by performance at the end of the 24 month term of each utility forward savings period or revenue enhancement period and payment of the fees earned.

8. INSURANCE – *AmAudit* hereby represents that it is insured by Hartford Casualty Insurance Company under policy 83 SBA PP4865 SA for general business liability coverage of \$1,000,000 with general aggregate limits of \$2,000,000 and other standard insurance requirements for Workman’s Compensation and premises liability. Insurance coverage is currently valid to 2/05/07. *AmAudit* further represents that it will keep all existing coverage current during the term of this agreement.

9. FEES – *AmAudit* shall be compensated by Client for services rendered under this agreement by payment of a fee equal to forty five percent (45%) of the first 24 month’s savings that arise from any changes to service or pricing identified and verified in the findings as presented by *AmAudit* that are implemented within 24 months by either *AmAudit* or Client, and 45% of any refunds or credits identified and realized due to the findings as presented by *AmAudit*. 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 *AmAudit* to acquire credits, refunds or future savings unless *AmAudit* has first been paid its fee. **The audit fee has been reduced by 10%, from 50% to 45% based on the representation that the City of Champaign, Illinois, will sign an agreement for full audit services concurrently or within 10 days of the date of this agreement. If Champaign should fail to sign the audit agreement as aforesaid, the audit fee will revert to the 50% standard fee for both forward savings and credits.**

- 10. **PAYMENT SCHEDULE** – The fee earned for authorized forward going 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.
- 11. **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.
- 12. **NOTICES** – All notices under this agreement shall be sent, by certified mail, return receipt requested, to the parties at the addresses shown below.

Client: City of Urbana

AmAudit:

By: _____
Signature

By: _____
Signature

Name: _____
Print

Name: _____
Print

Title: _____

Title: _____

Date: _____

Agent: _____

Address:

Address: 8600 US Hwy 14, Suite 100
Crystal Lake, IL 60012



MUNICIPAL FRANCHISE & TAX AUDIT AGREEMENT

Agreement entered into this _____ day of _____, between *AmAudit* hereinafter referred to as “*Auditor*”, and **City of Urbana, Illinois**, 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, water, cable & 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, water 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** – **On or before expiration of 180 days from the date of this agreement unless extended, in writing, by agreement of the parties due to inability to obtain necessary records, contracts and information from Client or Client’s carriers or providers,** *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 *Auditor'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. Forty Five Percent (45%) of the estimated first twenty four (24) month’s forward savings, and
 - b. Forty Five Percent (45%) of the estimated first twenty four (24) month’s gross income generated from any increases in revenue income or reduction in costs to Client and
 - c. Forty Five Percent (45%) of any refunds or credits identified and realized due to the findings presented by *Auditor*.
 - d. The fee for increases in revenue income shall be subject to a mandatory true-up to actual revenues annually if the revenue increase is over \$10,000/month. If the estimated revenue increases are from \$2,000 to \$10,000 per month, either party may request a true-up to actual revenues annually. Revenue increases under \$2,000 per month shall have the fee based on the estimated revenues. 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. **The audit fee as set forth in a.-c. above has been reduced by 10%, from 50% to 45% based on the representation that the City of Champaign, Illinois, will sign an agreement for full audit services concurrently or within 10 days of the date of this agreement. If Champaign should fail to sign the audit agreement as aforesaid, the audit fee will revert to the 50% standard fee for both forward savings and credits.**
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 it’s discretion, may accelerate all payments due under this agreement and seek recovery of the entire estimated audit fee.

- 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.
- 12. TERMINATION** - This agreement may be terminated, in whole or in part, for cause by either party by providing written notice of termination to the other party. The party at cause shall have 20 days from the receipt of notice to remedy the breach and restore the agreement. Cause shall be any action or lack of action that breaches the obligations of the party as set forth in this agreement. It is understood that this agreement will terminate by performance at the end of the 24 month term of each utility forward savings period or revenue enhancement period and payment of the fees earned.
- 13. INSURANCE** – AmAudit hereby represents that it is insured by Hartford Casualty Insurance Company under policy 83 SBA PP4865 SA for general business liability coverage of \$1,000,000 with general aggregate limits of \$2,000,000 and other standard insurance requirements for Workman’s Compensation and premises liability. Insurance coverage is currently valid to 2/05/07. AmAudit further represents that it will keep all existing coverage current during the term of this agreement.
- 14. NOTICES** – All notices under this agreement shall be sent, by certified mail, return receipt requested, to the parties at the addresses shown below.

City of Urbana:

AmAudit:

By: _____
Signature

By: _____
Signature

Name: _____
Print

Name: _____
Print

Title: _____

Title: _____

Date: _____

Agent: _____

Address:

Address: 8600 US Hwy 14, Suite 100
Crystal Lake, IL 60012