

RESOLUTION 2012-07

A RESOLUTION OF THE GARIBALDI CITY COUNCIL ACTING AS LOCAL CONTRACT REVIEW BOARD ADOPTING FINDINGS AND AUTHORIZING THE MAYOR TO ENTER INTO AN AGREEMENT WITH TELECOMMUNICATIONS CONSULTING ASSOCIATES FOR PROFESSIONAL AUDITING OF THE CITY'S TELEVISION FRANCHISE AGREEMENT

WHEREAS, the City of Garibaldi has a franchise agreement with Charter Cable authorizing them to use the City of Garibaldi right-of-ways for the purpose of providing cable television to the residents of Garibaldi; and

WHEREAS, Charter Cable has agreed to pay the City of Garibaldi five percent (5%) of gross profits collected within the City of Garibaldi; and

WHEREAS, the City of Garibaldi has concluded that it is reasonable and responsible to audit Charter Cable for the purpose of ensuring accurate accounting of this franchise tax; and

WHEREAS, the City of Garibaldi has determined through informal research that Telecommunications Consulting Associates of Waynesville, North Carolina, (Consultants) is a specialized firm that has the ability to perform an audit of Charter Cables financial activities relevant to the City's franchise agreement with Charter Cable; and,

WHEREAS, the City Council, acting as the City of Garibaldi's Local Contract Review Board, has reviewed and approved the proposal of Consultants, and attached to this resolution as Exhibit A,

NOW, THEREFORE, THE COMMON COUNCIL OF THE CITY OF GARIBALDI RESOLVES AS FOLLOWS:

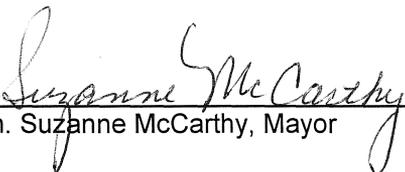
Section 1. The Council finds the recitals to this Resolution are relevant facts and incorporated herein as findings for this Resolution.

Section 2. The Council hereby authorizes the City Manager to develop an agreement with Telecommunications Consulting Associates based on their proposal.

Section 4. The Mayor is authorized to sign an agreement as approved by the City Manager and the City's Attorney.

Section 5. This resolution is effective as of the date of its adoption by the City Council.

PASSED BY THE COMMON COUNCIL AND APPROVED BY THE MAYOR, this 16th day of April 2012.



Hon. Suzanne McCarthy, Mayor

ATTEST:



John O'Leary, City Manager

TELECOMMUNICATIONS CONSULTING ASSOCIATES

**101 Flat Rock Gap Road
Waynesville, NC 28785
munihelp@bellsouth.net
828-627-8415(O) 828-627-8505(F)**

March 16, 2012

John O'Leary
City Manager, City of Garibaldi
PO Box 708
Garibaldi, OR 97118

Dear John,

I have worked for over 30 cities and counties in Oregon. I just completed audits of Charter in Coos Bay, Klamath County, Grants Pass, Jacksonville, Klamath Falls, Phoenix, Central Point, Ashland, Roseburg, Pendleton, Dallas, The Dalles, Medford and Lincoln City.

I am starting audits in Astoria, Bay City, Reedsport, Garibaldi, Cannon Beach Creswell, Sutherlin, Echo, Myrtle Point, Myrtle Creek, Toledo, Newport and North Bend. While I can never promise that I will find underpayments during an audit, I am confident that we will discover some level of discrepancies in the City of Garibaldi based on my past experience with Charter. I am including in this correspondence a detailed description of my Scope of Work, a service agreement (last page) and a list of my references. Included in my Scope of Work are the following activities:

- Review the City's existing enabling ordinance, if one exists, and make recommendations to enhance it to be in compliance with recent FCC and legislative directives as well as typical municipal protections.
- Review all transfer and assignment documents.
- Review the existing franchise agreements with Charter and make recommendations for changes either at a renewal interval or transfer.
- I will conduct a franchise fee audit for Charter as far back as we can based on any limiting language in either the franchise agreements or the City's code of ordinances. I will make this determination after I have reviewed these documents, and spoken with you. This process will commence with my drafting letters for you to place on your letterhead to Charter and others requesting certain documents heretofore unavailable to the City. Once the fee audit is completed, the data will be presented in spreadsheet form and will detail any payment discrepancies and penalties.
- Finally, I will draft all correspondence to each company for you to cut and paste to your letterhead. This correspondence will detail the findings and make demand for any restitution or submission of additional data, such as

secondary address research.

After this work is complete, I will draft a Summary Report detailing all of my findings. This report generally is 3-5 pages and includes all spreadsheet documentation. The fee for providing all of the above items is a 50% contingency fee basis. This places 100% of the risk on our firm. If we find nothing, you pay nothing and if we are successful in getting a recovery for the City, then we split it. The City will keep 100% of all future fees that we identify during the audit. I have attached a contingency fee proposal at the end of this letter.

I look forward to hearing from you and please call if you have any questions. I have attached a list of my references from across the country.

Sincerely,

John C. Howell

Clients Include: Oregon: Ashland, Astoria, Bay City, Burns, Port Orford, Reedsport, Rogue River, Roseburg, Cannon Beach, Creswell, Sutherlin, Echo, Myrtle Point, North Bend, Sandy, Milton-Freewater, Grants Pass, Toledo, Central Point, Coos Bay, Grant Pass, Phoenix, Jacksonville. Lincoln City, The Dalles, Dallas, Klamath Falls, Klamath County, Douglas County, Jackson County and Hood River

Tennessee: Jackson, Cleveland, Elizabethton, Fayetteville, Lenoir City, Parsons, Loudon, Knoxville, Alcoa, Maryville, Clinton, Johnson City, Bristol, Bolivar, LaVergne, Morristown, Waynesboro, Kingston, Madisonville, Sweetwater, Church Hill, Dandridge, Rogersville, Tellico, Collinwood, Crossville, Cornersville, Watauga, Ashland City, Kingsport, Surgoinsville, Paris, Milan, Savannah, Sparta, Mount Carmel, Manchester, McMinnville, Pulaski, Goodlettsville, Clarksville, Newport, Tullahoma, Dover, and Shelbyville;

North Carolina: Asheville, Laurinburg, Sylva, Spruce Pine, Scotland Neck, Bakersville, Washington, Waynesville, Winston-Salem, Belmont, Mount Holly, Fletcher, West Jefferson, Tryon, Marion, Wilkesboro, North Wilkesboro, Carolina Beach, Boone, Seven Devils, Laurinburg, Beech Mountain, Sugar Mountain, Banner Elk, Black Mountain, Hickory, Conover, Newton, Maiden, Long View, Claremont, Catawba, Lenoir, Granite Falls, Blowing Rock, Concord, Holly Ridge, Lincolnnton, Hildebran, Montreat, Morganton, Spring Lake, Taylorsville, Roxboro, Hendersonville, Laurel Park, Flat Rock, Mills River Valdese and Thomasville.

South Carolina: Spartanburg, Greenville, Mauldin, Seneca, Mount Pleasant, Hartsville, Clemson Gaffney, Pickens, Sumter, Travelers Rest, Rock Hill, Clinton and Central.

Alabama, Louisiana and Virginia: Daphne, AL, Alexander City, AL, Sylacauga AL, Etowah County, AL, the Louisiana Parishes of Allen, Avoyelles, Catahoula, Grant, LaSalle, Natchitoches, Rapides, Vernon and Winn; Bristol, VA, Wytheville, VA, Franklin, VA, Windsor, VA, Smithfield, VA, Wythe County, VA, Washington County, Isle of Wight County, VA, Accomack County, VA, Southampton County, VA, Mecklenburg County, VA.

**The Howell Group, LLC. dba
Telecommunications Consulting Associates
Service Agreement**

The City of Garibaldi, Oregon (Local Franchising Authority, City) hereby agrees to hire Telecommunications Consulting Associates (TCA) for the purposes set forth below in the attached letter and incorporated herein.

Scope of Work-Included in my Scope of Work are the following activities:

- Review the enabling ordinance, if one exists, and existing franchise agreement(s) with Charter Communications.
- I will conduct a franchise fee audit of Charter for six (6) years, unless prohibited by the City's franchise agreement. Once the fee audit is completed, the data will be presented in spreadsheet form and will detail any payment discrepancies and penalties.
- I will draft all correspondence to Charter for you to place on your letterhead. This correspondence will detail the findings and make demand for any restitution, including a Settlement Agreement.
- After this work is complete, I will draft a Summary Report detailing all of my findings.
- The report will include a detailed summary of your current franchise agreement and identifying all terms that are not in the City's favor.
- If the City is owed money from Charter as a result of my audit, I will track assist you with a Settlement Agreement and track your payment from them.

Terms of Payment

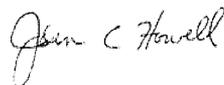
Audit Fee: This audit Scope of Work will be billed at 50% of any funds that are recovered by the City as a result of our audit. This audit scope of work is delineated in a letter from John Howell, which is attached hereto and incorporated by reference.

Payment to TCA of the Percentage Compensation shall be due 20 days following City's receipt of any monies recovered either as settlement, refund, credit, trade out, service in kind or as an award from the franchised cable operator.

DATE

On behalf of the City of Garibaldi, Oregon

DATE March 16, 2012 John C. Howell, TCA



John O'Leary

From: John Howell <munihelp@bellsouth.net>
Sent: Wednesday, April 18, 2012 9:35 AM
To: john@ci.garibaldi.or.us
Subject: Re: Charter audit in Garibaldi

The actual audit would have taken much more time but the 2 docs you sent me give me a 99% look into Charter's behavior.

John Howell
Telecommunications Consulting Associates
101 Flat Rock Gap Road
Waynesville, NC 28785
828-627-8415

On Apr 18, 2012, at 12:33 PM, John O'Leary wrote:

Well, that was easy. Sorry there wasn't more in it for you John; and thank you for your time on this,

John O'Leary
City Manager
City of Garibaldi
Garibaldi, OR 97118
Phone (503) 322-3327
Fax (503) 322-3737
www.ci.garibaldi.or.us
The City of Garibaldi is an equal opportunity provider

From: John Howell [<mailto:munihelp@bellsouth.net>]
Sent: Wednesday, April 18, 2012 9:21 AM
To: mary@ci.garibaldi.or.us
Cc: john@ci.garibaldi.or.us
Subject: Re: Charter audit in Garibaldi

John and Mary

It appears that Charter has properly remitted fees in both 2006 and 2010 so I would say that the period in between is also correct. Based on this review and the limited number of years, I suggest suspending the audit.

Thank you for hiring me to do the first phase of the audit. At least you know Charter's is properly paying you.

John Howell
Telecommunications Consulting Associates
101 Flat Rock Gap Road
Waynesville, NC 28785
828-627-8415

On Apr 18, 2012, at 10:44 AM, Mary DeLoria wrote:

Mr. Howell,

Attached are scanned copies of the remittance documents that accompanied franchise fee payments from Charter for 2006:Q1 and 2010:Q4. Unfortunately, even though we received payment for quarters between these two, apparently Charter neglected to forward documentation with the payments, as I have no correspondence in the file.

Please contact me or John if you need anything else.

Thank you.

Mary DeLoria

Assistant City Manager / Finance Officer
City of Garibaldi
107 - 6th Street - PO Box 708
Garibaldi OR 97118
Phone: 503-322-3327
Fax: 503-322-3737

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Garibaldi Public Calendar

From: John O'Leary [<mailto:john@ci.garibaldi.or.us>]
Sent: Wednesday, April 18, 2012 6:21 AM
To: Mary DeLoria
Subject: FW: Charter audit in Garibaldi

Can you dig up a couple of these spreadsheets for John? Thanks Mary,

From: John Howell [<mailto:munihelp@bellsouth.net>]
Sent: Tuesday, April 17, 2012 7:42 PM
To: john@ci.garibaldi.or.us
Subject: Re: Charter audit in Garibaldi

If you send me the spreadsheet that Charter sends with each payment like the one I've attached I can tell you the "old" arrears. I need a copy of one of them from 2006. just one spreadsheet will tell me what I need to know to estimate your old payments. By the way, If you send me one other one from 2008, then I can tell you if we even need to do the audit.

John Howell
Telecommunications Consulting Associates
101 Flat Rock Gap Road
Waynesville, NC 28785
828-627-8415

<20060410 remittance.pdf><20110119 remittance.pdf>