

CITY OF COLUMBIA, ILLINOIS

ORDINANCE NO. 2904

AN ORDINANCE TO AUTHORIZE THE CITY OF COLUMBIA, ILLINOIS, TO ENTER INTO A CONTINGENT FEE PROFESSIONAL SERVICES AGREEMENT WITH AZAVAR AUDIT SOLUTIONS, INC. OF CHICAGO, ILLINOIS, TO PROVIDE MUNICIPAL REVENUE/COST AUDIT PROGRAM SERVICES FOR THE CITY OF COLUMBIA, ILLINOIS

**Adopted by the
City Council
of the
City of Columbia, Illinois
this 17th day of October, 2011**

**Published in pamphlet form by
authority of the City Council
of the City of Columbia,
Illinois, this 17th day
of October, 2011**

OCT 17 2011


City Clerk

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WHEREAS, the City Council of the City of Columbia, Illinois (“City”) has found and determined and does hereby declare that it is in the City’s best interests and appropriate to employ a firm to provide municipal revenue/cost audit program management consulting services for the City;

WHEREAS, the City Council of the City has selected Azavar Audit Solutions, Inc. of Chicago, Illinois (“Azavar”) as an appropriate company to provide such services; and

WHEREAS, it is necessary and appropriate that this Ordinance be enacted for the purpose of authorizing the City to enter into a Contingent Fee Professional Services Agreement to employ said firm to provide such services to the City.

NOW, THEREFORE, BE IT ORDAINED, by the City Council of the City of Columbia, Illinois, as follows:

Section 1. The recitals contained above in the preamble of this Ordinance are hereby incorporated herein by reference, the same as if set forth in this Section of this Ordinance verbatim, as findings of the City Council of the City of Columbia, Illinois.

Section 2. The City Council of the City of Columbia, Illinois, does hereby authorize the employment of Azavar to provide municipal revenue/cost audit program management consulting services as requested by the City, and does further authorize and direct the City Administrator to execute and deliver a Contingent Fee Professional Services Agreement, substantially in the form attached hereto, evidencing such employment of Azavar to provide such municipal revenue/cost audit program management consulting services as requested by the City, in as many counterparts as said City Administrator shall determine.

Section 3. This ordinance shall be in full force and effect following its passage and publication in pamphlet form, as provided by law.

Alderman Reis moved the adoption of the above and foregoing Ordinance; the motion was seconded by Alderman Huch, and the roll call vote was as follows:

YEAS: Aldermen Agne, Roessler, Huch, Mathews, Piazza and Reis.

NAYS: None.

ABSENT: Aldermen Ebersohl and Niemietz.

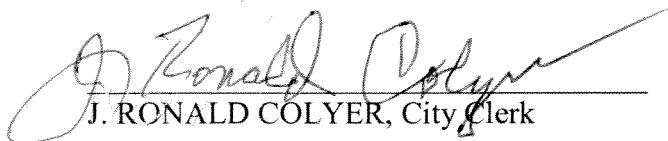
ABSTENTIONS: None.

PASSED by the City Council and APPROVED by the Mayor this 17th day of October, 2011.



KEVIN B. HUTCHINSON, Mayor

ATTEST:



J. RONALD COLYER, City Clerk

(SEAL)

STATE OF ILLINOIS)
) SS
COUNTY OF MONROE)

CERTIFICATE OF PUBLICATION

I, J. Ronald Colyer, certify that I am the duly elected and acting City Clerk of the City of Columbia, Illinois.

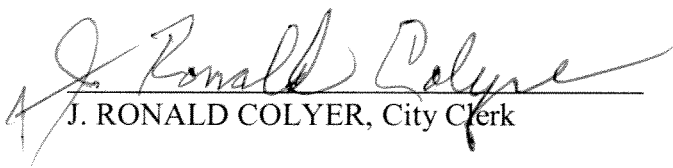
I further certify that on the 17th day of October, 2011, the Corporate Authorities of the City of Columbia, Illinois, passed and approved Ordinance No. 2904 entitled:

“AN ORDINANCE TO AUTHORIZE THE CITY OF COLUMBIA, ILLINOIS, TO ENTER INTO A CONTINGENT FEE PROFESSIONAL SERVICES AGREEMENT WITH AZAVAR AUDIT SOLUTIONS, INC. OF CHICAGO, ILLINOIS, TO PROVIDE MUNICIPAL REVENUE/COST AUDIT PROGRAM SERVICES FOR THE CITY OF COLUMBIA, ILLINOIS”

which provided by its terms that it should be published in pamphlet form.

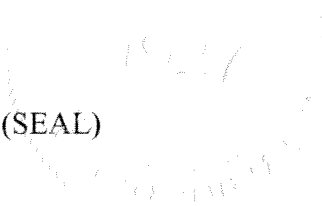
The pamphlet form of Ordinance No. 2904, including the ordinance and a cover sheet thereof, was prepared, and a copy of such ordinance was posted in the Columbia City Hall, commencing on October 18, 2011 and continuing for at least ten (10) days thereafter. Copies of such ordinance were also made available for public inspection upon request in the office of the City Clerk.

DATED at Columbia, Illinois this 17th day of October, 2011.



J. RONALD COLYER, City Clerk

(SEAL)



STATE OF ILLINOIS)
) SS
COUNTY OF MONROE)

CERTIFICATE OF TRUE COPY


I, J. Ronald Colyer, hereby certify that I am the duly elected and acting City Clerk of the City of Columbia, Illinois, and as such I am the keeper of the books, records, files and corporate seal of said City.

I do further certify that Ordinance No. 2904, entitled:

“AN ORDINANCE TO AUTHORIZE THE CITY OF COLUMBIA, ILLINOIS, TO ENTER INTO A CONTINGENT FEE PROFESSIONAL SERVICES AGREEMENT WITH AZAVAR AUDIT SOLUTIONS, INC. OF CHICAGO, ILLINOIS, TO PROVIDE MUNICIPAL REVENUE/COST AUDIT PROGRAM SERVICES FOR THE CITY OF COLUMBIA, ILLINOIS”

to which this certificate is attached, is a true, perfect, complete and correct copy of said ordinance as adopted at a regular meeting of the Columbia, Illinois, City Council held on the 17th day of October, 2011.

IN WITNESS WHEREOF, I have made and delivered this certificate for the uses and purposes hereinabove set forth this 17th day of October, 2011.



J. RONALD COLYER, City Clerk

(SEAL)

CONTINGENT FEE PROFESSIONAL SERVICES AGREEMENT

This Professional Services Agreement ("Agreement") is made and entered into by and between Azavar Audit Solutions, Incorporated, an Illinois corporation having its principal place of business at 234 South Wabash Avenue, Sixth Floor, Chicago, Illinois 60604 ("Azavar"), and _____, an Illinois municipal corporation having its principal place of business at _____ ("Customer").

1. SCOPE OF SERVICES

1.1 Subject to the following terms and conditions, Azavar shall provide professional computer, data audit, compliance management, and management consulting services ("Services") in accordance with the below statement of work. Azavar will render the services provided under this Agreement in a workmanlike manner in accordance with industry standards. The services and work provided shall be provided in substantial accordance with the below statements:

- (a) As part of the Municipal Audit Program Azavar shall separately audit each utility tax, taxpayer, franchise fee, and utility service fee / expense imposed within the Customer's corporate boundaries including, but not limited to the Electric, Gas, Cable, and Telecommunications ("Utility Taxpayers") on behalf of the Customer. Azavar shall also audit during the course of its work for the Customer addresses and databases relating to local sales/use taxes. Where applicable Azavar shall audit water utility taxes and hotel/motel taxes.
- (b) The purpose of each audit is to determine past, present, and future taxes, franchise fees, service fees, or any other monies or revenue owed to the Customer that were not properly attributed to the Customer or were not properly paid or collected and to determine future taxes, franchise fees, and other monies owed to the Customer not previously counted so that Customer can collect these past, present, and future monies. Federal and Illinois state law, the Customer's own local ordinances and databases, and the franchise agreements and contracts between Customer and Utility Taxpayers and franchisees are used to conduct these audits and make final audit and tax determinations.
- (c) Azavar will require full access to Customer records and utility taxpayer records to complete these audits and Customer will use its authority as necessary to provide information and procure data from taxpayers; Customer agrees to cooperate with Azavar, provide any necessary documentation, and will engage in necessary meetings with utilities;
- (d) During the course of each audit, Azavar may find that rather than being owed past due funds, the Customer owes funds erroneously paid to the Customer. In this case, Azavar will immediately terminate its participation for that specific utility audit at no cost to the Customer and will document the error and provide the Customer with information necessary to correct the error. Azavar shall have no liability for these errors or actions arising from knowledge thereof.
- (e) Customer understands that each utility taxpayer is a separate entity that is not controlled by Azavar and therefore Azavar cannot predict all the steps or actions that a utility taxpayer will take to limit its responsibility or accountability during the audit.
- (f) The first audit start date is expected to be within no later than thirty (30) days from the date of this Agreement unless changed and approved by the Customer Primary Contact and Liaison;
- (g) Each audit is expected to last at least six (6) months. Each subsequent audit will begin after payment terms and obligations have been met from previously completed audits however overlapping audit work may take place at the discretion of Azavar. Audit timelines are set at the discretion of Azavar;
- (h) Audit status updates/meetings will be held regularly via phone, email, or in person throughout the course of the audits between Azavar and the Customer Primary Contact and will occur approximately every month;
- (i) Jason Perry, Azavar Municipal Audit Program Manager, and Azavar specialists will be Auditors under this agreement. All Azavar staff shall be supervised by the Azavar Program Manager.

1.2 Customer agrees to provide reasonable facilities, space, desks, chairs, telephone and reasonably necessary office supplies for Consultants working on Customer's premises as may be reasonably required for the performance of the Services set forth in this Agreement and in any Exhibit hereto. Customer will assign and designate an employee to be the Audit Primary Contact and Liaison. The Customer's Audit Primary Contact will be the final decision maker for the Customer as it relates to this audit and will meet with Azavar staff on a regular basis as necessary. Lack of participation of Customer staff, especially at critical milestones during an audit, will adversely affect the audit timeline and successful recovery of funds. While Azavar strives to provide turn-key audit programs that require little Customer staff time, it is important that the Customer's staff be available for meetings and participation with utilities to properly verify tax records and recover funds.

2. **INDEPENDENT CONTRACTOR**. Azavar acknowledges and agrees that the relationship of the parties hereunder shall be that of independent contractor and that neither Azavar nor its employees shall be deemed to be an employee of Customer for any reason whatsoever. Neither Azavar nor Azavar's employees shall be entitled to any Customer employment rights or benefits whatsoever. Customer shall designate Azavar as an authorized agent for the purposes of authorizing Azavar to work with the Illinois Department of Revenue when necessary.

3. PAYMENT TERMS

3.1 Customer shall compensate Azavar the fees set forth in this agreement on a contingency basis. If applicable, Azavar shall submit an invoice to Customer on a monthly basis detailing the amounts charged to Customer pursuant to the terms of this Agreement. Customer shall remit payment to Azavar in accordance with the Local Government Prompt Payment Act. Contingency payment terms are outlined below. If

Customer negotiates, abates, cancels, amends, or waives, without Azavar's written consent, any tax determination that was allowed under the law at the time the tax determination was made, Customer shall pay to Azavar applicable contingency fees for the total said tax determination at the rates set forth below and for the following thirty-six (36) months. If Customer later implements during the subsequent thirty-six (36) months any action Customer initially declined based on Azavar programs, including overall utility audits included herein, Azavar will be entitled to its portion of the savings and/or recoveries over the following thirty-six (36) months at the contingency fee rates set forth below.

- 3.2 Customer shall pay Azavar an amount equal to fifty (50) percent of prospective funds recovered per account, per taxpayer for thirty-six (36) months following when funds on an individual account begins to be properly remitted to the Customer. In the event Azavar is able to recover any retroactive funds, any additional savings or revenue increases, or any credits at any time, Customer will pay Azavar an amount equal to fifty (50) percent of any retroactive funds, savings, and fair market value for any other special consideration or compensation recovered for and/or by the Customer from any audited taxpayer. All contingency fees paid to Azavar are based on determinations of recovery by Azavar and agreed to by the Customer. All revenue after the subsequent thirty-six (36) month period for each account individually will accrue to the sole benefit of the Customer.
- 3.3 As it pertains to utility service bill cost audits, Customer shall pay Azavar an amount equal to fifty (50) percent of prospective savings approved by Customer for thirty-six (36) months following the date savings per utility are implemented by Azavar or Customer. In the event Azavar is able to recover any refunds or any credits at any time, Customer will pay Azavar an amount equal to fifty (50) percent of said refunds or credits. All contingency fees paid to Azavar are based on determinations of savings by Azavar. All savings after the subsequent thirty-six (36) month period for each service provider individually will accrue to the sole benefit of the Customer.
- 3.4 Illinois Municipal Treasurers Association ("IMTA") Metro East Consortium Discount. Azavar will discount the prospective contingency payments referred to in Sections 3.2 and 3.3 above by ten (10) percent (discounted from fifty (50) percent to forty-five (45) percent) for all IMTA Metro East Consortium communities executing this agreement with Azavar between May 19, 2011 and October 31, 2011 such that a) at least five (5) IMTA Metro East Consortium communities execute the agreement and (b) said five (5) communities execute this agreement between May 19, 2011 and October 31, 2011.

4. **CONFIDENTIAL INFORMATION**

- 4.1 Each party acknowledges that in the performance of its obligations hereunder, either party may have access to information belonging to the other which is proprietary, private and highly confidential ("Confidential Information"). Each party, on behalf of itself and its employees, agrees not to disclose to any third party any Confidential Information to which it may have access while performing its obligations hereunder without the written consent of the disclosing party which shall be executed by an officer of such disclosing party. Confidential Information does not include: (i) written information legally acquired by either party prior to the negotiation of this Agreement, (ii) information which is or becomes a matter of public knowledge, and (iii) information which is or becomes available to the recipient party from third parties where such third parties have no confidentiality obligations to the disclosing party.
- 4.2 Azavar agrees that any work product or any other data or information that is provided by Customer in connection with the Services shall remain the property of Customer, and shall be returned promptly upon demand by Customer, or if not earlier demanded, upon expiration of the Services provided under the Statement of Work hereto.

5. **INTELLECTUAL PROPERTY**

- 5.1 No work performed by Azavar or any Consultant with respect to the Services or any supporting or related documentation therefor shall be considered to be a Work Made for Hire (as defined under U.S. copyright law) and, as such, shall be owned by and for the benefit of Azavar. In the event that it should be determined that any of such Services or supporting documentation qualifies as a "Work Made for Hire" under U.S. copyright law, then Customer will and hereby does assign to Azavar, for no additional consideration, all right, title, and interest that it may possess in such Services and related documentation including, but not limited to, all copyright and proprietary rights relating thereto. Upon request, Customer will take such steps as are reasonably necessary to enable Azavar to record such assignment. Customer will sign, upon request, any documents needed to confirm that the Services or any portion thereof is not a Work Made for Hire and/or to effectuate the assignment of its rights to Azavar.
- 5.2 Under no circumstance shall Customer have the right to distribute any software containing, or based upon, Confidential Information of Azavar to any third party without the prior written consent of Azavar which must be executed by a senior officer of Azavar.

6. **DISCLAIMER**

EXCEPT AS EXPRESSLY PROVIDED IN THIS AGREEMENT, AZAVAR DOES NOT MAKE ANY WARRANTY, EXPRESS OR IMPLIED, WITH RESPECT TO THE SERVICES RENDERED UNDER THIS AGREEMENT OR THE RESULTS OBTAINED FROM AZAVAR'S WORK, INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. IN NO EVENT SHALL AZAVAR BE LIABLE FOR CONSEQUENTIAL, INCIDENTAL, SPECIAL, OR INDIRECT DAMAGES, OR FOR ACTS OF NEGLIGENCE THAT ARE NOT INTENTIONAL OR RECKLESS IN NATURE, REGARDLESS OF WHETHER IT HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. CUSTOMER AGREES THAT AZAVAR'S LIABILITY HEREUNDER FOR DAMAGES, REGARDLESS OF THE FORM OF ACTION, SHALL NOT EXCEED THE

TOTAL AMOUNT PAID FOR THE SERVICES GIVING RISE TO THE DAMAGES UNDER THE APPLICABLE ESTIMATE OR IN THE AUTHORIZATION FOR THE PARTICULAR SERVICE IF NO ESTIMATE IS PROVIDED.

7. TERMINATION

- 7.1 Unless earlier terminated in accordance with Section 7.2 below, this Agreement shall be effective from the date first written above and shall continue thereafter until terminated upon 90 days written notice by Customer or Azavar.
- 7.2 Termination for any cause or under any provision of this Agreement shall not prejudice or affect any right of action or remedy which shall have accrued or shall thereafter accrue to either party.
- 7.3 The provisions set forth above in Section 3 (Payment Terms), Section 4 (Confidential Information), and Section 5 (Intellectual Property) and below in Section 9 (Assignment), and Section 10 (Use of Customer Name) shall survive termination of this Agreement.

8. NOTICES. Any notice made in accordance with this Agreement shall be sent by certified mail or by overnight express mail:

If to Azavar
 General Counsel
 Azavar Audit Solutions, Inc.
 234 South Wabash Avenue, Sixth Floor
 Chicago, Illinois 60604

If to Customer

- 9. **ASSIGNMENT.** Neither party may assign this Agreement or any of its rights hereunder without the prior written consent of the other party hereto, except Azavar shall be entitled to assign its rights and obligations under this Agreement in connection with a sale of all or substantially all of Azavar's assets.
- 10. **USE OF CUSTOMER NAME.** Customer hereby consents to Azavar's use of Customer's name in Azavar's marketing materials; provided, however, that Customer's name shall not be so used in such a fashion that could reasonably be deemed to be an endorsement by Customer of Azavar unless such an endorsement is provided by customer.
- 11. **COMPLETE AGREEMENT.** This Agreement, along with each Statement of Work attached hereto from time to time, contains the entire Agreement between the parties hereto with respect to the matters specified herein. The invalidity or unenforceability of any provision of this Agreement shall not affect the validity or enforceability of any other provision hereof. This Agreement shall not be amended except by a written amendment executed by the parties hereto. No delay, neglect or forbearance on the part of either party in enforcing against the other any term or condition of this Agreement shall either be, or be deemed to be, a waiver or in any way prejudice any right of that party under this Agreement. This Agreement shall be construed in accordance with the laws of the State of Illinois and the parties hereby consent to the jurisdiction of the ~~Madison~~ ^{MONROE} County Circuit Court.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed in duplicate originals by their duly authorized representatives as of the date set forth below.

AZAVAR AUDIT SOLUTIONS, INC.

CUSTOMER _____

By _____

By _____

Title _____

Title _____

Date _____

Date _____