

MAR - 5 2012

  
City Clerk

**ORDINANCE NO. 2939**

**AN ORDINANCE AUTHORIZING THE CITY OF COLUMBIA,  
ILLINOIS, TO ENTER INTO A NON-DISCLOSURE AGREEMENT  
WITH AZAVAR AUDIT SOLUTIONS, INC. AND CHARTER  
COMMUNICATIONS ENTERTAINMENT I, LLC, d/b/a CHARTER  
COMMUNICATIONS PERTAINING TO NON-DISCLOSURE OF  
CONFIDENTIAL CORPORATE INFORMATION**

**WHEREAS**, the City of Columbia, Illinois (the "City") and Azavar Audit Solutions, Inc. ("Azavar") entered into a Contingent Fee Professional Services Agreement, pursuant to the approval of Ordinance No. 2904 on October 17, 2011, authorizing Azavar to perform certain revenue/cost audit program management consulting services ("Consulting Services") for the City; and

**WHEREAS**, Charter Communications Entertainment I, LLC d/b/a Charter Communications ("Charter") has been asked to provide various data to Azavar pursuant to the Consulting Services Azavar is providing to the City; and

**WHEREAS**, Charter has requested that Azavar and the City enter into a Non-Disclosure Agreement with Charter agreeing not to disclose any of Charter's Confidential Information that Charter may supply to Azavar or the City in conjunction with the Consulting Services Azavar is providing 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 and direct the Mayor to execute and deliver the Non-Disclosure Agreement, by and between the City, Azavar and Charter, substantially in the form attached hereto, in as many counterparts as the Mayor shall determine, and the City Clerk is hereby authorized and directed to attest the same and affix thereto the corporate seal of the City.

**SECTION 3.** This Ordinance shall be in full force and effect immediately on and after its passage and approval as provided by law.

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

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

NAYS: None.

ABSENT: None.

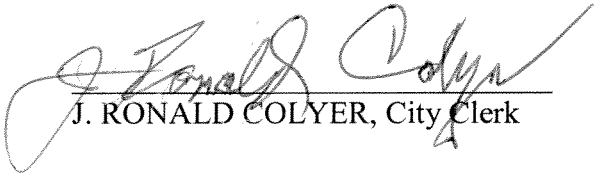
ABSTENTIONS: None.

PASSED by the City Council and APPROVED by the Mayor this 5<sup>th</sup> day of March, 2012.



KEVIN B. HUTCHINSON, Mayor

ATTEST:



J. RONALD COLYER, City Clerk

(SEAL)

## NON-DISCLOSURE AGREEMENT

This Non-Disclosure Agreement (this "Agreement") is entered into as of this \_\_\_\_\_ day of \_\_\_\_\_, 2012 (the "Effective Date"), by and between the City of Columbia, Illinois, a municipal corporation (the "City") and Azavar Audit Solutions, Inc. (the "Consultants"), on the one hand, and Charter Communications Entertainment I, LLC, d/b/a Charter Communications ("Charter"), a subsidiary of Charter Communications Corporation (the "Company"), on the other hand.

### RECITALS

WHEREAS, the City desires to perform an audit with respect to the franchise fees paid to the City by the Company (the "Audit"); and

WHEREAS, the City has retained the services of the Consultants to perform the Audit on behalf of the City; and

WHEREAS, the Company will be providing certain confidential and proprietary information to the City and to the Consultants in connection with the Audit and the Company desires to protect the confidential and proprietary nature of such information.

NOW, THEREFORE, in consideration of the mutual covenants and conditions set forth in this Agreement, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

### AGREEMENT

1. Definition of Confidential Information. For purposes of this Agreement, the "Company's Confidential Information" means all information relating to the Company's business, and the business of any of the Company's affiliated companies, disclosed to the City and/or to the Consultants in the following forms: (a) information originally disclosed in written, graphic, machine-readable or any other tangible medium, to the extent marked with a "confidential," "proprietary" or similar legend; and (b) information originally disclosed orally or by way of observation, to the extent identified as confidential or proprietary at the time of such original disclosure and summarized in reasonable detail in a written notice delivered to the receiving party within thirty (30) days after original disclosure. Confidential Information shall not include any information which becomes available in the public domain through no act of the City or the Consultants. The City and the Consultants each acknowledge that the Company's Confidential Information is and shall remain the exclusive property of the Company. Nothing in this Agreement shall be construed as granting any license or other rights in or to the Company's Confidential Information. Any issue that the City and/or the Consultants may have as to the confidentiality expectations of the Company regarding particular information shall be submitted to the Company for determination.

2. Obligations. The City and the Consultants each hereby agree that they will: (a) treat the Company's Confidential Information with the same degree of confidentiality with which

it treats its own confidential or proprietary information, and, in any event, with no less than a reasonable degree of confidentiality; (b) use the Company's Confidential Information solely for the purposes of conducting the Audit and verifying franchise fee payments made by the Company to the City; (c) refrain from copying the Company's Confidential Information, in whole or in part, except as required in furtherance of the uses permitted by this Agreement, and, in such instances, only upon the accurate reproduction of all proprietary legends and notices located in the originals; (d) refrain from any effort to use any addresses provided by the Company to identify the name or telephone number of any of the Company's subscribers or otherwise contact or approach any of the Company's subscribers at the addresses provided or derived; (e) limit dissemination of the Company's Confidential Information to employees of the City and/or the Consultant who have a need to know the Company's Confidential Information in furtherance of the uses permitted by this Agreement; provided, however, that any such additional person who gains access to the Company's Confidential Information shall, prior to receiving access to the Company's Confidential Information read this Agreement and execute the form of Certification attached hereto as "Exhibit A;" notwithstanding, the City and the Consultants shall in all events be responsible to the Company for any action or inaction of their respective employees that violate any term or provision in this Agreement or Certification including indemnifying the Company for any and all claims, damages or assessments that may arise from the City's and/or Consultants', and/or their employees' use of the Confidential Information provided hereunder in violations of the terms of this Agreement and/or Certification; and (f) return to the Company all of the Company's Confidential Information received in written or other tangible media, including all copies and records thereof, upon conclusion of the Audit.

3. Legally Required Disclosure. If the City and/or the Consultants, as the case may be, is compelled to disclose any of the Company's Confidential Information pursuant to applicable federal or state laws, rules, regulations, or court orders or subpoenas (each a "Requirement"), the City and/or the Consultants, as the case may be, shall provide the Company with prompt notice of any such Requirement and shall cooperate with the Company, at the Company's sole expense, in seeking to obtain any protective order or other arrangement pursuant to which the confidentiality of the Company's Confidential Information is preserved. If such an order or arrangement is not obtained, the City and/or the Consultants, as the case may be, shall disclose only that portion of the Company's Confidential Information as is required pursuant to such Requirement. Any such required disclosure shall not, in and of itself, change the status of the disclosed information as the Company's Confidential Information under the terms of this Agreement.

4. Term. This Agreement shall commence as of the Effective Date and shall continue in effect until the expiration of the maximum time period set forth in any applicable federal or state law, rule or regulation pertaining to the period of time for which a person's or entity's non-public information may be deemed to be confidential or proprietary and subject to protection under an agreement to that effect.

5. No Assignment. Neither the City nor the Consultants may assign any of its rights or delegate any of its obligations under this Agreement, except upon the prior written consent of the Company, which may be withheld in the Company's sole and absolute discretion.

6. Equitable Relief. The City and the Consultants each acknowledge that the Company may be irreparably injured by a breach of this Agreement by the City and/or the Consultants and that the Company, in addition to any other remedies available at law or in equity, shall be entitled to seek equitable relief, including injunctive relief and specific performance, in the event of any breach of the provisions of this Agreement by the City and/or the Consultant.

7. Invalid Provisions. If any provision of this Agreement is held to be illegal, invalid or unenforceable, the remaining provisions shall remain in full force and effect. Should any provision be held to be illegal, invalid or unenforceable as being too broad with respect to the duration, scope or subject matter thereof, such provisions shall be automatically modified to reflect the maximum duration, scope or subject matter allowable by law.

8. Notices. Any notices or other communications contemplated or required under this Agreement, in order to be valid, shall be in writing and shall be given via personal delivery, telefax or overnight courier, or via U.S. Certified Mail, Return Receipt Requested, at the following addresses:

If to the Company: Charter Communications  
941 Charter Commons Drive  
Town & Country, MO 63017  
Attention: Eddie Trower

If to the City: The City of Columbia, Illinois  
208 South Rapp Avenue  
Columbia, IL 61738

If to the Consultants: Azavar Audit Solutions, Inc.  
234 South Wabash Avenue 6<sup>th</sup> Floor  
Chicago, IL 60604

or at such or at such other addresses as a party may designate by notice to the other parties. Such notices or other communications shall be deemed received when actually delivered (where given via personal delivery, telecopier or overnight courier) or three (3) business days after mailing (where given via U.S. Certified Mail).

9. Integration. This Agreement supersedes all previous oral and written agreements, if any, among the parties regarding the confidentiality of information disclosed to each other.

10. Governing Law. This Agreement shall be construed and enforced in accordance with the laws of the State of Illinois.

11. Counterparts. This Agreement may be executed in one or more counterparts, each of which, shall for all purposes be deemed an original and all of which, taken together, shall collectively constitute one and the same agreement.

IN WITNESS WHEREOF, the parties have entered into this Agreement effective as of the date first above written.

Charter Communications Entertainment I, LLC  
d/b/a Charter Communications

City of Columbia, Illinois

By: \_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_

Azavar Audit Solutions, Inc.

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

**Exhibit "A"**

**To Non-Disclosure Agreement  
Between Charter Communications,  
The City of Columbia and Azavar Audit Solutions, Inc.**

**INDIVIDUAL CERTIFICATION**

I certify my understanding that any and all Confidential Information that is provided to me is restricted in its use pursuant to the terms and restrictions of the Agreement executed by and between the City of Columbia, a municipal corporation (the "City") and Azavar Audit Solutions, Inc. (the "Consultant"), and Charter Communications Entertainment I, LLC, d/b/a Charter Communications ("Charter"), a subsidiary of Charter Communications Corporation (the "Company"), relating to a franchise fee audit of the Company conducted by the City and the Consultants. I further certify that I have been given a copy of and have read the Agreement and I myself agree to be bound by it. I understand that all such Confidential Information, any copies, any notes or other memoranda, or any other forms of information regarding or derived from the Confidential Information, shall not be disclosed to anyone, shall be used only for the limited purpose of the franchise fee audit being conducted by the City and the Consultants, and shall be returned to the Company all in accordance with the Agreement. I further understand that I may not use any Confidential Information subject to this Agreement for any of the following purposes: (i) as the basis for obtaining any names, addresses or phone numbers of any of the Company's subscribers, (ii) for contacting any subscriber by any means, or (iii) for any party or third-party to gain any competitive advantage over any party to the Agreement. I further understand that if I breach this certification, I may be personally liable for any damages caused by such breach.

By: \_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Printed Name)

Date: \_\_\_\_\_