

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 the Village of Carpentersville, an Illinois municipal corporation having its principal place of business at 1200 L.W. Besinger Drive, Carpentersville, Illinois 60110 ("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) Azavar shall undertake a Municipal Audit Program on behalf of the Customer. As part of the Municipal Audit Program Azavar shall, on behalf of the Customer, separately review and audit, without limitation, each fee, ordinance, contract, franchise agreement, utility tax, locally imposed occupation tax, excise tax, taxpayer, franchise fee, utility service fee, intergovernmental or other remittances to the Customer, and expense imposed by or upon the Customer within the Customer's corporate boundaries ("Audits") including, but not limited to local businesses, electric, gas, cable, telecommunications, refuse, and water providers ("Providers") on behalf of the Customer. Azavar shall audit or review during the course of its work for the Customer, Customer ordinances, contracts, receipts, addresses and databases including the aforementioned relating to state and local sales/use/occupation taxes, including amusement taxes, and business license/registration revenue. Azavar shall review and audit water service, expense, and taxes and hotel/motel occupancy taxes where applicable to Customer. Azavar shall review and consult Customer on areas to maximize Customer revenues including, but not limited to, previous or existing ordinances, agreements, or third-party contracts.
- (b) The purpose of each audit is to determine past, present, and future taxes, franchise fees, service fees, or any other refunds, 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, contracts or bills between Customer and Providers are used by Azavar to conduct the Audits and Azavar will present to Customer in writing during the course of the Audits findings of monies due or potentially due to the Customer for review and approval by the Customer ("Findings"). Customer agrees to review any Findings within thirty (30) days.
- (c) Customer hereby represents that it is not engaged in any Audits as contemplated under this Agreement. Customer agrees that it shall not initiate or engage in any audits for the same purpose as the Audits contemplated under this Agreement without Azavar's written consent.
- (d) In order to perform the Audits, Azavar will require full access to Customer records and Provider records. Customer will cooperate with Azavar in good faith to assist Azavar in acquiring records necessary for the Audits.
- (e) 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 the Services related to that specific Provider audit and will document the error and provide the Customer with information necessary to correct the error. Azavar will not charge Customer for Services related to the Audits described in this Section 1.1(e). Azavar shall have no liability to Customer for any failure by Customer to pay amounts owed or actions arising from Azavar's or Customer's knowledge thereof.
- (f) Customer acknowledges that each Provider is a separate entity that is not controlled by Azavar and therefore Azavar cannot predict all the steps or actions that a Provider will take to limit its responsibility or liability during the audit.
- (g) The first audit start date is expected to be no later than thirty (30) days after the date of this Agreement unless changed and approved by the Customer's Audit Primary Contact and Liaison;
- (h) Each audit is expected to last at least six (6) months. Each subsequent audit will begin after payment terms and obligations have been satisfactorily met from previously-completed Audits; provided, however, that Azavar may elect to perform overlapping Audit work at its discretion.
- (i) Audit status meetings will be held regularly, and at Customer's request, via phone, email, or in person throughout the course of the Audits between Azavar and the Customer's Primary Contact and Liaison and will occur approximately every quarter;
- (j) Jason Perry, Municipal Audit Program Manager, and Azavar specialists will be auditors under this agreement. All Azavar staff or subcontractors 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 and Liaison 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. Customer's staff shall be available for meetings and participation with Providers to properly verify 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 authorize Azavar to obtain and review, on behalf of Customer, records and data from the Illinois Department of Revenue.

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. Any invoice not disputed in writing by Customer within thirty (30) days after the receipt of such invoice shall be considered approved by the Customer. 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, delays, or waives, without Azavar's written consent, any tax determination or Findings that were identified by Azavar or by its Audits where such Findings were allowed under the law at the time the tax determination or Findings were made, Customer shall pay to Azavar applicable contingency fees for the total said tax determination or Findings at the rates set forth below and for the following thirty-six (36) months.

3.2 Customer shall pay Azavar an amount equal to forty (40) percent of any new revenues or prospective funds recovered per account or per Provider for thirty-six (36) months after the date that payment is first remitted to the Customer for that account or Provider as a result of Azavar's Audits and Findings. In the event Azavar is able to recover any past-due amounts, any additional savings or revenue increases for any time period, or any credits at any time, Customer will pay Azavar an amount equal to forty (40) percent of those past-due amounts, savings or revenue increases, and credits. All contingency fees paid to Azavar shall be based on determinations by Azavar, set forth in the Findings, of the amounts that may be recovered; provided, however, that Customer shall not be obligated to pay any amounts unless Customer has first approved the Findings and the amounts in writing. All revenue collected by Customer as a result of the Audits after the thirty-six (36) month period for each account or Provider will accrue to the sole benefit of the Customer.

3.3 As it pertains to Customer expenses, utility service bill, and cost Audits, Customer shall pay Azavar an amount equal to forty (40) percent of prospective savings, approved in writing and in advance by Customer, for thirty-six (36) months following the date savings per Provider is implemented by Azavar or Customer. All contingency fees paid to Azavar shall be based on the determinations by Azavar, set forth in the Findings, of the amounts that may be recovered; provided, however, that Customer shall not be obligated to pay any amounts unless Customer has first approved the Findings and the amounts in writing. All savings after the subsequent thirty-six (36) month period for each account or Provider will accrue to the sole benefit of the Customer.

4. **CONFIDENTIAL INFORMATION**

4.1 The term "Confidential Information" shall mean information in the possession or under the control of Customer relating to the technical, business, or corporate affairs of Customer; Customer property; user information, including, without limitation, any information pertaining to usage of Customer's computer system, including and without limitation, any information obtained from server logs or other records of electronic or machine readable form; and the existence of, and terms and conditions of, this Agreement. Customer Confidential Information shall not include information that can be demonstrated: (1) to have been rightfully in the possession of Azavar from a source other than Customer prior to the time of disclosure of such information to Azavar pursuant to this Agreement ("Time of Disclosure"); (2) to have been in the public domain prior to the Time of Disclosure; (3) to have become part of the public domain after the Time of Disclosure by a publication or by any other means except an unauthorized act or omission or breach of this Agreement on the part of Azavar or Customer; or (4) to have been supplied to Azavar after the Time of Disclosure without restriction by a third party who is under no obligation to Customer to maintain such information in confidence.

4.2 Azavar acknowledges that it shall, in performing the Services for Customer under this Agreement, have access, or be directly or indirectly exposed, to Confidential Information. Azavar shall hold confidential all Confidential Information and shall not disclose or use such Confidential Information without the express prior written consent of Customer. Azavar shall use reasonable measures at least as strict as those Azavar uses to protect its own confidential information. Such measures shall include, without limitation, requiring employees and subcontractors of Azavar to execute a non-disclosure agreement before obtaining access to Confidential Information.

5. **INTELLECTUAL PROPERTY**

5.1 Designs, drawings, plans, specifications, photos, reports, information, observations, calculations, notes, and any other documents, data, or information, in any form, prepared, collected, or received from Customer by Azavar in connection with any or all of the Services to be performed under this Agreement ("Documents") shall be and remain the exclusive property of Customer. At Customer's request, or upon termination of this Agreement, Azavar shall cause the Documents to be promptly delivered to Customer.

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.

5.3 Customer agrees to participate in pilot testing and use of Azavar software related to expense management, tax location management, sales, use, and occupation taxes and hotel/motel taxes. Customer agrees to provide Azavar feedback in writing regarding the features and function of Azavar software including the usefulness of said software to Customer and the value of any savings Customer may derive from the use of said software.

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 THAT ARE NOT INTENTIONAL OR RECKLESS IN NATURE, REGARDLESS OF WHETHER IT HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

7. STANDARD OF SERVICES AND INDEMNIFICATION.

- 7.1 Azavar represents and certifies that the Services shall be performed in accordance with the standards of professional practice, care, and diligence practiced by recognized consulting firms in performing services of a similar nature in existence at the time Azavar performs the Services. The representations and certifications expressed shall be in addition to any other representations and certifications expressed in this Agreement, or expressed or implied by law, which are hereby reserved unto Customer.
- 7.2 Azavar shall, and does hereby agree to, indemnify and save harmless Customer against all damages, liability, claims, losses, and expenses (including attorneys' fees) that may arise, or be alleged to have arisen, out of or in connection with Azavar's performance of, or failure to perform, the Services or any part thereof, or any failure to meet the representations and certifications set forth in Section 7.1 of this Agreement.
- 7.3 Azavar shall provide, at its sole cost and expense, liability insurance in the aggregate amount of \$1,000,000, which insurance shall include, without limitation, protection for all activities associated with the Services. The insurance shall be for a minimum of \$1,000,000 per occurrence for bodily injury and \$1,000,000 per occurrence for property damage. Azavar shall cause Customer to be named as an additional insured on the insurance policy described in this Section 7.3. Not later than 10 days after the effective date of this Agreement, Azavar shall provide Customer with either: (a) a copy of the entire insurance policy; or (b) a Certificate of Insurance along with a letter from the broker issuing the insurance policy to the effect that the Certificate accurately reflects the contents of the insurance policy. The insurance coverages and limits set forth in this Section 7.3 shall be deemed to be minimum coverages and limits, and shall not be construed in any way as a limitation on Azavar's duty to carry adequate insurance or on Azavar's liability for losses or damages under this Agreement.

8. TERMINATION

- 8.1 Unless earlier terminated in accordance with Section 8.2 below, this Agreement shall be effective from the date first written above and shall continue thereafter unless terminated upon 30 days written notice by Customer or Azavar.
- 8.2 If Azavar fails to perform any of its obligations under this Agreement or otherwise breaches any of the terms and provisions of this Agreement, Customer may terminate this Agreement immediately by providing written notice to Azavar. 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.
- 8.3 The provisions set forth above in Section 3 (Payment Terms), Section 4 (Confidential Information), and Section 5 (Intellectual Property) shall survive termination of this Agreement.

9. 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

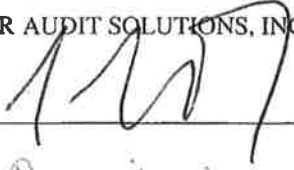
If to Customer
Finance Director
Village of Carpentersville
1200 L.W. Besinger Drive
Carpentersville, Illinois 60110

- 10. **ASSIGNMENT.** Neither party may assign this Agreement or any of its rights hereunder without the prior written consent of the other party hereto.
- 11. **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.
- 12. **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 courts of the State of Illinois.

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.

By



Title

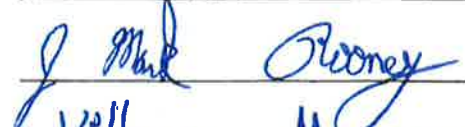
President

Date

7/24/15

CUSTOMER VILLAGE OF CARPENTERSVILLE, ILLINOIS

By



Title

Village Manager

Date

7/22/15