
**MEMORANDUM
FINANCE DEPARTMENT**

TO: Thomas Thomas, City Manager
SUBJECT: Azavar Contract

Number: 023-14
Date: 09/03/2014

Azavar Audit Solutions is a company that audit's an organization's tax remittances by service providers including utility taxes, telecommunication taxes, cable franchise fees, and sales taxes. This Municipal Audit Program is at no cost to the City unless the firm finds any revenue owed to the City of Rock Island that was not properly paid and collected in the past. The contingency fee is 45% of recovered funds. Azavar will also look for any future revenue that the city can collect from taxes and fees not currently being collected. The fee for any future revenue is 45% of the new revenue for 30 months. This fee will be billed monthly to the City by Azavar.

The attached contract has been reviewed by the City attorney and any suggested revisions are included in this final draft.

Recommendation:

Council authorize the City Manager to execute the Contract Document for Municipal Audit services with Azavar Audit Solutions.

Submitted by: Cynthia Parchert, Finance Director

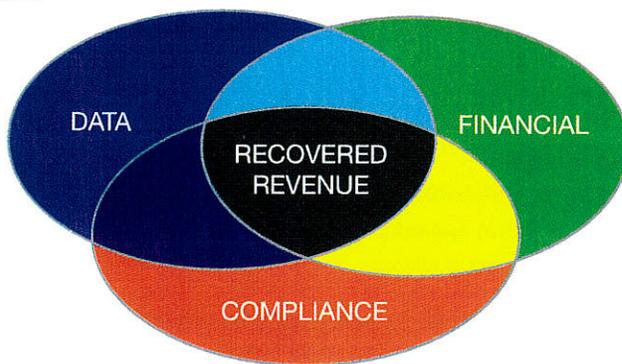
Approved: Thomas Thomas, City Manager

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– Mayor Gayle Smolinski • Village of Roselle, Illinois

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Your Azavar Audit team takes a comprehensive, three-pronged approach to your audit.



1. Data

No matter what type of audit you need, success depends on sifting through millions of pieces of data to find and correct problems.

Azavar Audit is uniquely capable of finding the proverbial needle in the haystack through our exclusive combination of software and advanced technology. We employ proprietary audit software, conduct database-mining reviews, perform GIS analyses, and correlate data error rates and patterns to find and correct all possible revenue errors and recover funds for your community.

2. Financial

After our electronic data analysis, we apply a financial review that matches dollar for dollar theoretical with actual payments.

Our team examines your actual numbers to ensure expenses paid, gross revenue computed, and taxes received are the correct amounts as established by contracts and ordinances. Through our financial analysis, we uncover hundreds of thousands of dollars in missed, underpaid, or incorrectly paid taxes due to your community.

3. Compliance

Azavar Audit makes sure your data and financial information are in line with your contracts, franchises, and ordinances.

We analyze all local, state, and federal laws regarding your rights in dealing with utility companies. Then, we inspect your agreements from a customer perspective to make sure service is delivered as expected. Finally, we work closely with all parties to ensure compliance.

OUR BENEFITS

- Potential addition of up to 5% each year or more to your utility or other tax revenues
- No up-front fees or costs – we work on a performance or contingency basis
- All efforts require little investment of your staff's time
- Our relationships with service providers ensure quick and efficient audits and tax recovery
- We not only find errors, we recover lost monies

AZAVAR'S UNIQUE SOLUTIONS

- We develop a "100%" master address list for each municipal client
- We compare utility lists of service addresses against the master list, systematically analyze data, and identify discrepancies
- Our team typically finds a margin of error of 2-3% of municipal premises
- We apply a financial analysis of tax and gross revenue and reporting along with compliance with your laws, contracts, and franchises
- We investigate issues with utilities and collect past errors and correct tax coding going forward
- Azavar Audit experts find added tax revenue trending to 8-12% of total tax for some utilities

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 City of Rock Island, an Illinois municipal corporation having its principal place of business at 1528 Third Avenue, Rock Island, Illinois 61201 (“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 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 local sales/use/occupation taxes and business license/registration revenue. Azavar shall review and audit water service databases, 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 by the Customer (“Findings”). Azavar shall review Customer ordinances and shall present Findings to maximize Customer revenues as part of the Audits. 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 and shall therefore pay Azavar the fees set forth in this Agreement for any Findings made by Azavar. Customer agrees that it shall not initiate or engage in any 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 use its authority as necessary to assist in acquiring information and procure data from Providers; Customer agrees to cooperate with Azavar, provide any necessary documentation, and will engage in necessary meetings with Providers;
 - (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 its participation for that specific Provider 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 to Customer for these errors 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. Should Customer negotiate, abate, cancel, amend, delay, or waive by any means all or a portion of funds identified as payable to Customer during an audit, Customer shall pay all Azavar expenses and fees on a time and materials basis for that audit in addition to any applicable contingency fees for any Findings that were identified by Azavar or by its Audits;
 - (g) 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’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 however overlapping audit work may take place at the discretion of Azavar. Audit timelines are set at the discretion of Azavar;
 - (i) Audit status meetings will be held regularly 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 single point of contact. The Customer’s Audit Primary Contact and Liaison, with the approval of the Customer’s designated corporate authorities, 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.

What Is a Municipal Revenue Audit As Conducted by Azavar Audit Solutions, Inc.?

Through our municipal transactional tax and revenue audits, you receive a comprehensive analysis of all tax receivables remitted to your organization by service providers, including but not limited to:

- Utility taxes (electric and gas)
- Telecommunications taxes
- Cable franchise fees
- Sales tax
- Hotel/motel taxes
- Local use taxes & fees

We complete your audit using *our* resources not yours, and we provide a time & material or contingency & performance payment model. Your municipal revenue audit includes:

1. An Exclusive Geographic Analysis

- We use state-of-the-art geographic information systems (GIS) to analyze all customers in your local jurisdiction
- Our experts employ advanced database software and advanced data-mining technology

2. Technical Expertise

- We utilize industry-leading software to uncover outdated technologies and wasteful practices
- Our experts utilize proprietary auditing software and employ advanced data-mining technology

3. Strategic Relationships with Service Providers

- Our relationships aid communication and foster compliance and accountability
- We facilitate franchise negotiations to meet local needs and protect your community's property and purse

How can Azavar Audit Solutions return money to your community? Please call Jason Perry at **800-683-0800** or email him at jperry@azavar.com.

Do you need a specific audit that we have not mentioned? Please let us know – we are equipped to conduct many types of electronic audits.

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 Jason Perry and assigned auditors as authorized employees of Customer for the purpose of reviewing data provided by 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 forty-five (45) 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. If Customer defaults on payment of any invoice that is not disputed in writing by Customer within thirty (30) days after the receipt of such invoice Azavar, at its discretion, may accelerate all payments due under this Agreement and seek recovery of all estimated fees due to Azavar based on Findings. Azavar shall be entitled to recover all costs of collection including, but not limited to, finance charges, interest at the rate of one percent (1%) per month, reasonable attorney's fees, court costs, and collection service fees and costs for any efforts to collect fees from the customer. 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 (30) months. If Customer later implements during the subsequent thirty (30) months any Findings Customer initially declined based on Azavar programs or recommendations, Azavar shall be paid by Customer its portion of the savings and/or recoveries over the following thirty (30) months at the contingency fee rates set forth below.

3.2 Customer shall pay Azavar an amount equal to forty-five (45) percent of any new revenues or prospective funds recovered per account or per Provider for thirty (30) months following when funds begin to be properly remitted to the Customer. In the event Azavar is able to recover any retroactive funds, 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-five (45) percent of any retroactive funds, savings, and fair market value for any other special consideration or compensation recovered for or received by the Customer from any Provider. All contingency fees paid to Azavar are based on determinations of recovery by Azavar including Provider data and regulatory filings. All revenue after the subsequent thirty (30) month period for each account individually 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-five (45) percent of prospective savings approved by Customer for thirty (30) months following the date savings per Provider is 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 forty-five (45) percent of said refunds or credits recovered for or received by Customer from any Provider. All contingency fees paid to Azavar are based on determinations of savings by Azavar including Provider data and regulatory filings. All savings after the subsequent thirty (30) month period for each service provider individually will accrue to the sole benefit of the Customer.

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, (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; and (iv) information subject to disclosure under Illinois' Freedom of Information Act (5 ILCS 140/1 *et seq.*).

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.

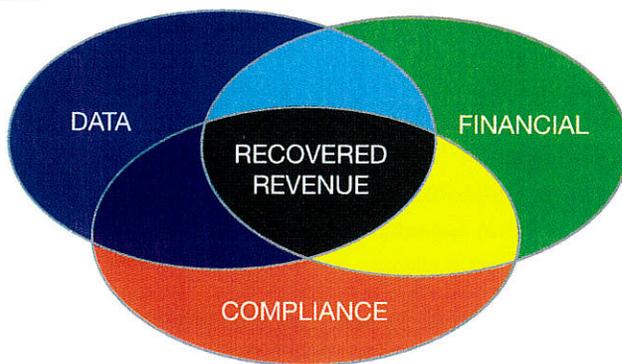
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4.2 Azavar agrees that any work product or any other data or information that is provided by Customer in connection with the Services shall remain the property of Customer, and shall be returned promptly upon demand by Customer, or if not earlier demanded, upon expiration of the Services provided under the Statement of Work hereto.

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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:

<u>If to Azavar</u>	<u>If to Customer</u>
General Counsel	Finance Director
Azavar Audit Solutions, Inc.	City of Rock Island
234 South Wabash Avenue, Sixth Floor	1528 Third Avenue
Chicago, Illinois 60604	Rock Island, Illinois 61201

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 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.

CUSTOMER ROCK ISLAND, ILLINOIS

By _____

By _____

Title _____

Title _____

Date _____

Date _____