

Resolution No. 10-16

**A RESOLUTION APPROVING A PROFESSIONAL SERVICES AGREEMENT
FOR AUDIT SERVICES BETWEEN THE VILLAGE OF EAST DUNDEE AND
AZAVAR AUDIT SOLUTIONS INC.**

WHEREAS, the Village of East Dundee (the "Village") is a duly organized and validly existing home-rule municipality created in accordance with the Constitution of the State of Illinois of 1970 and the laws of the State; and,

WHEREAS, Azavar Audit Solutions Inc. has submitted a proposal to perform a Municipal Audit Program to review and audit the Village's fees, taxes and other remittances to the Village including review and consultation regarding the Village's ordinances, agreements and third-party contracts to maximize Village revenue; and,

WHEREAS, the President and Board of Trustees of the Village of East Dundee acknowledge that this proposal is exempt from the bidding requirements as professional services and find that it is in the best interests of the Village to accept the proposal from Azavar Audit Solutions Inc. for a Municipal Audit Program.

NOW THEREFORE, BE IT RESOLVED, by the President and Board of Trustees of the Village of East Dundee, Kane and Cook Counties, Illinois, as follows:

Section 1: That the *CONTINGENT FEE PROFESSIONAL SERVICES AGREEMENT*, that is attached hereto and made a part hereof by reference as Exhibit A, between Azavar Audit Solutions Inc. and the Village be and is hereby approved and Village Administrator is hereby authorized to execute said proposal on behalf of the Village.

Section 2: That this resolution shall be in full force and effect from and after its passage and approval according to law.

PASSED this 21st day of March, 2016, pursuant to a roll call vote as follows:

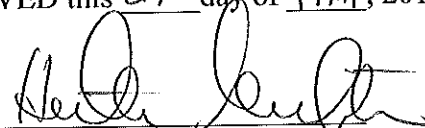
AYES: Trustees Gorman, Lynam, Skillicorn, Selep, Wood
and Hall

NAYS: Ø

ABSENT: Ø

APPROVED this 21st day of Mar, 2016

Attest:


Village Clerk


Village President

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 55 E Jackson Blvd, Suite 2100, Chicago, Illinois 60604 ("Azavar"), and the Village of East Dundee, an Illinois municipal corporation having its principal place of business at 120 Barrington Avenue, East Dundee, Illinois 60118 ("Customer").

I. 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 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 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 formal Audits as contemplated under this Agreement. 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.

12 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 designate Azavar as Power of Attorney with the Illinois Department of Revenue solely 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 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. Should Customer provide notice to Azavar of disapproval of an invoice in accordance with 50 ILCS 505/3, within 15 days of providing such notice, Customer agrees to meet with Azavar to negotiate a reasonable and mutually agreeable resolution; thereby providing Azavar the opportunity to remedy the Customer's original invoice issue and submit an updated invoice that shall be approved by the Customer. Contingency payment terms are outlined below. If Customer negotiates, abates, cancels, amends, delays, or waives, without Azavar's Mitten 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. If Customer later implements during the subsequent thirty-six (36) 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-six (36) months at the contingency fee rates set forth below.

3.2 Customer shall pay Azavar an amount equal to forty (40) percent of any new revenues or -funds recovered per account or per Provider for thirty-six (36) months following when funds begin to be properly remitted to the Customer. The forty (40) percent fee shall be calculated and paid to Azavar on a monthly basis during the 36 month period and shall be calculated based on savings from the previous month. In no case shall Customer be required to pay Azavar for new revenues or prospective funds recovered until said funds and/or revenues are received by 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 (40) 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-six (36) month period for each account individually will accrue to the sole benefit of the Customer.

3.3 As it pertains to reductions in Customer expenses, utility service bill and cost Audits, Customer shall pay Azavar an amount equal to forty (40) percent of savings approved by Customer for thirty-six (36) months following the date savings per Provider is implemented by Azavar or Customer. The forty (40) percent fee shall be calculated and paid to Azavar on a monthly basis during the 36 month period and shall be calculated based on savings from the previous month. In no case shall Customer be required to pay Azavar for savings or reductions in expenses until said savings and reductions are applied to Customer's account. 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 (40) 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-six (36) 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 J 40/1 *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.

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 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 Azavar Audit Solutions, Inc. 234 South Wabash Avenue, Sixth Floor Chicago, Illinois 60604	Village Administrator Village of East Dundee 120 Barrington Avenue East Dundee, Illinois 60118

- 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 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 VILLAGE OF EAST DUNDEE, ILLINOIS

By [Signature]

By [Signature]

Title President

Title Village Administrator

Date 4/27/16

Date 3/28/2016