

## **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 East Jackson Boulevard, Suite 2100, Chicago, Illinois 60604 ("Azavar"), and the Village of Grayslake an Illinois municipal corporation, having its principal place of business at 10 South Seymour Avenue Grayslake, Illinois 60030 ("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 ("Statement of Work") on behalf of the Customer. As part of the Municipal Audit Program Azavar shall, on behalf of the Customer, separately review and/or audit each tax, fee, ordinance, contract, franchise agreement, and expense imposed by or upon the Customer within the Customer's corporate boundaries ("Audit(s)"). The Municipal Audit Program includes Audits and reviews of revenues and expenditures related to the following:

- i. Electricity providers and/or consumers
- ii. Natural gas and Natural Gas Use Tax providers and/or consumers
- iii. Telecommunications providers and/or consumers

(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 invoices to the Customer 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 paid, due, or potentially due to the Customer for review by the Customer ("Findings"). Where already allowable by existing Customer contracts or agreements or Federal, State, or local laws or ordinances, Azavar will correct any prospective errors under such applicable laws, local ordinances, or contracts. As to the collection of past due monies, Azavar will consult with Customer prior to making a reasonable effort to collect such funds. If Customer directs Azavar to not attempt to collect such funds, Section (g) of this Paragraph shall apply. Azavar shall present Findings to Customer to maximize Customer revenues as part of the Audits, and where such Findings requires a change into the future, Azavar will only implement such change after Customer has reviewed and agreed to in writing any such change. Customer agrees to review any Findings within thirty (30) days. Customer agrees that any Findings, whether implemented in whole or in part by Azavar or the Customer, shall be fully compensable under Section 3 of this Agreement, which shall apply only to those revenue sources existing or currently generating revenue for the Customer at the time that Azavar begins actual review and audit services.

(c) Customer understands that Findings may require changes and/or updates to local ordinances or the codification thereof, but such Findings shall relate to maximizing revenue from

an existing source, such as ensuring that similarly situated users, residents and businesses are taxed or assessed fees on an equal or reasonably proportional basis. In any case, Section (g) of this Paragraph shall not apply to Findings that require an ordinance change.

(d) Customer hereby represents that it is not engaged in any Audits as contemplated under this Agreement or, to the extent that it is engaged in such Audits, shall cease such auditing upon execution of 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.

(e) In order to perform the Audits, Azavar will require full access to Customer records and auditee records. Customer will use its authority as necessary to assist in acquiring information and procure data from auditees; Customer agrees to cooperate with Azavar, provide any necessary documentation, and will engage in necessary meetings with auditees, provided that the travel required to meet with auditees is reasonable. Customer acknowledges that each auditee is a separate entity that is not controlled by Azavar and therefore Azavar cannot predict all the steps or actions that an auditee will take to limit its responsibility or liability during the Audit.

(f) 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 Audit for that specific auditee 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. Azavar will not enter into an agreement or solicit an agreement with a taxpayer that would raise a conflict of interest with Customer.

(g) Should Customer abate, cancel, amend, delay, or waive by any means all or a portion of funds identified as payable to Customer during an Audit (a "Waiver"), Customer shall pay: (1) applicable contingency fees on the portion of the funds collected, and (2) time and materials for the portion subject to the Waiver. Time shall be charged at the rate of \$150 per hour and time and materials shall be prorated in the case of a partial Waiver. Under no circumstances, however, should the total fee exceed what the applicable contingent fee would have been absent the Waiver. A voluntary settlement (formal or informal) with an auditee shall not be considered a Waiver, provided that the settlement is discussed, in advance, with Azavar and such agreement is, in Azavar's sole but reasonable determination, on commercially reasonable terms. As stated in Section (c) of this Paragraph, this Section (g) shall not apply to Findings requiring an ordinance change, meaning that Customer will only pay fees to Azavar if it elects to implement the Finding.

(h) All Audits will be initiated by Azavar within thirty (30) days from the date of this Agreement unless changed and approved by the Customer's Audit Primary Contact and Liaison.

(i) Each audit is expected to last at least six (6) months. Findings on later completed audits may be withheld pending Customer satisfactorily completing payment obligations from previously completed Audits. Audit timelines are set at the discretion of Azavar but will be discussed with Customer. Azavar shall use reasonable efforts to present Findings to Customer on all audits within eighteen (18) months following execution of this Agreement.

(j) 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;

(k) 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 Audits 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 auditees 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. Azavar shall comply with Customer's written policies on workplace conduct matters such as harassment and proper dress and shall not disrupt staff or engage in improper social behavior. It is Customer's responsibility to provide applicable written policies to Azavar in advance.

### **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. Invoices shall include the start and end date of any particular item. 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. 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-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-five (45) percent of any new revenues or prospective funds recovered per account or per auditee for thirty-six (36) 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 auditee. All contingency fees paid to Azavar are based on determinations of recovery by Azavar including auditee 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 Customer expenses, expenditures, and cost Audits, Customer shall pay Azavar an amount equal to forty-five (45) percent of prospective savings approved by Customer for thirty-six (36) months following the date savings per auditee 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 auditee, unless otherwise stated in Section 3.4. All contingency fees paid to Azavar are based on determinations of savings by Azavar including auditee data and regulatory filings. All savings after the subsequent thirty-six (36) month period for each account individually will accrue to the sole benefit of the Customer.

3.4 Lake County Consortium Discount. Azavar will discount the prospective contingency payments referred to in Sections 3.2 and 3.3 above from forty-five (45) percent to a lesser percentage ("Discount") for Customer and other Lake County Municipalities that execute this Agreement and provide it to Azavar on or before September 30, 2018. The Discount is based on the number of Lake County Municipalities and is as follows:

**Executed Agreements Necessary to Achieve Discount and Discounted Fee**

|                          |     |
|--------------------------|-----|
| 3 - 4 Municipalities     | 40% |
| 5 - 6 Municipalities     | 39% |
| 7 - 8 Municipalities     | 38% |
| 9 or more Municipalities | 37% |

3.5 To the extent that any payment is due to Azavar after April 30, 2021, or any Finding has been presented to Customer, but not acted upon, this Section 3.5 shall apply:

(a) Azavar shall estimate the total amount due after April 30, 2021 and shall bill Customer for this amount on or before March 31, 2021, with a due date of April 30, 2021.

(b) Notwithstanding the due date of April 30, 2021, Azavar shall toll all contractual and statutory remedies (including the Local Government Prompt Payment Act.) for nonpayment until June 30, 2021.

(c) If Customer signs a new contract (or contract amendment) with Azavar on or before June 30, 2021, payment terms shall revert those that would have applied in the absence of this Section 3.5.

(d) If Customer does not sign a new contract (or contract amendment) with Azavar on or before June 30, 2021 and has not paid the bill due on April 30, 2021 by June 30, 2021, Customer shall be in default, retroactive to April 30, 2021 and agrees that the Local Government Prompt Payment Act is applicable and has not been waived by Azavar.

(e) Both Azavar and Customer agree that neither party is admitting or acknowledging that 65 ILCS 5/8-1-7(a)-(b) is or is not applicable to this Agreement and both Azavar and Customer agree that this Agreement shall not be used in support of an argument for or against such applicability.

3.6 No payment shall be due to Azavar beyond 60 months following the execution of this agreement except:

(a) If Section 3.1 applies; or

(b) If Azavar has presented a Finding related to prospective tax or fee collection to Customer, but the auditee does not implement the changes necessary to generate the corresponding revenues (or does not report the value of such changes) in a timely manner such that the 36month period for which Azavar's fee would be due extends beyond the 60 month deadline; or

(c) By agreement between Azavar and Customer, which may or may not be in the form of a contract amendment, but at minimum must be memorialized in writing, to include electronic mail.

#### **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 .

#### **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.  
55 East Jackson Boulevard, Suite 2100  
Chicago, Illinois 60604

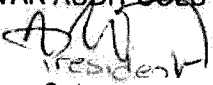
If to Customer  
Village Attorney  
Village of Grayslake  
10 South Seymour Avenue  
Grayslake, Illinois 60030

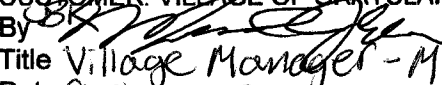
9. **ASSIGNMENT.** Neither party may assign this Agreement or any of its rights hereunder without the prior written consent of the other party hereto, except Azavar shall be entitled to assign its rights and obligations under this Agreement in connection with a sale of all or substantially all of Azavar's 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 additional 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 *9/12/2018*

CUSTOMER: VILLAGE OF GRAYSLAKE, ILLINOIS  
By   
Title *Village Manager - Michael J. Ellis*  
Date *9-14-2018*