

VILLAGE OF LOMBARD
REQUEST FOR BOARD OF TRUSTEES ACTION

For Inclusion on Board Agenda

070401

Resolution or Ordinance (Blue) *Waiver of First Requested*
 Recommendations of Boards, Commissions & Committees (Green)
 Other Business (Pink)

TO: PRESIDENT AND BOARD OF TRUSTEES

FROM: William T. Lichter, Village Manager

DATE: May 9, 2007 (COW)(B of T) Date June 21, 2007

TITLE: A Resolution Authorizing Signature of the Village President on an Agreement to Join ComEd Litigation with Azavar Audit Solutions, Inc.

SUBMITTED BY: Rhonda L. Heabel, Management Analyst

BACKGROUND/POLICY IMPLICATIONS:

The attached memo discusses ComEd's reluctance to release information needed for municipal utility tax audit purposes to Azavar Audit Solutions, Inc., the vendor that the Village of Lombard entered into an agreement with to provide municipal utility/telecommunications tax auditing services in December, 2006. Because of this resistance, Azavar has brought a lawsuit against ComEd, on behalf of its clients, for the purpose of compelling an accounting from Commonwealth Edison of necessary information.

Staff recommends that the Village of Lombard join the existing lawsuit against ComEd so that Azavar can proceed with attempting to audit ComEd for the entirety of ComEd's franchise agreement with Lombard, which was effective April 1, 1993.

The attached resolution authorizes the Village President to sign the Agreement with Azavar Audit Solutions, Inc. to incorporate the Village of Lombard into an existing lawsuit against Commonwealth Edison on behalf of the Village of Lombard.

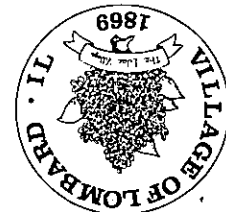
Fiscal Impact/Funding Source:

Azavar will be responsible for payment of all legal costs and attorney's fees for the attorneys that they have selected for said litigation. The contract that the Village has with Azavar is on a contingency basis. For any tax collected for previous years, Azavar will keep 50% of this tax as their payment. Also, Azavar will collect 50% of the tax remitted on any new collections resulting from their audit for the following 60 months.

Review (as necessary):

Village Attorney	X	_____	Date	6/11/07
Finance Director	X	_____	Date	6/11/07
Village Manager	X	_____	Date	6/11/07

NOTE: All materials must be submitted to and approved by the Village Manager's Office by 12:00 noon, Wednesday, prior to the Agenda Distribution.



To: Leonard J. Flood
Director of Finance
Handwritten signature
Rhonda Heabel
Management Analyst

Date: May 7, 2007

Subject: Letter of Agreement for Village to Join ComEd Litigation with Azavar Audit Solutions, Inc.

As you are aware, in December 2006, the Village entered into an agreement with Azavar Audit Solutions to provide municipal utility/telecommunications tax auditing services to the Village. Currently, this service is being used to determine whether each of the Village's utility taxpayers – ComEd, Nicor, major telecommunications providers and Comcast (franchise fees) is collecting and remitting to the Village the correct amount of utility tax and telecommunications tax.

Azavar utilizes their own proprietary software in comparing Village addresses against each of the utility/telecommunications provider's address databases to determine if these companies are collecting taxes from all Village residents and businesses. However, they have been met with some resistance from ComEd to release these addresses to them for audit purposes. Therefore, Azavar has brought a lawsuit against ComEd, on behalf of its clients, for the purpose of compelling an accounting from Commonwealth Edison of necessary information to allow Azavar to conduct a complete electronic audit to determine whether past taxes or any other monies or revenue are owed to the municipalities that have joined in the litigation. This accounting action was filed against ComEd by Azavar for Roselle in 2005 and was originally dismissed. Azavar and Roselle prevailed on appeal, with a decision that ComEd should be held to account in trial court and that process of the accounting action will be starting soon.

The contract with Azavar is on a contingency basis. For any tax collected for previous years, Azavar will keep 50% of this tax as their payment. Also, Azavar will collect 50% of the tax remitted on any new collections resulting from their audit for the following 60 months. Azavar will be attempting to audit ComEd for the entirety of ComEd's franchise agreement with Lombard, which was effective April 1, 1993.

This memo serves as a recommendation to join the existing lawsuit against Commonwealth Edison. Some of the other municipalities that have joined the lawsuit include Burr Ridge and Woodridge. Attached is a Board resolution authorizing the Village of Lombard to enter into an Agreement with Azavar to incorporate the Village of Lombard into an existing lawsuit against Commonwealth Edison on behalf of the Village of Lombard. Also attached is the Agreement with Azavar. Note that Azavar will be responsible for payment of all legal costs and attorney's fees for the attorneys selected by Azavar for said litigation.

I respectfully request that this matter be placed on the Village Board's agenda as an item for discussion in Executive Session on June 7, 2007. I also request that this matter be placed on the Village Board's agenda for approval on June 21, 2007.

A RESOLUTION AUTHORIZING SIGNATURE OF
THE VILLAGE PRESIDENT ON AN AGREEMENT

WHEREAS, the Corporate Authorities of the Village of Lombard have received an Agreement between the Village of Lombard and Azavar Audit Solutions, Inc. as attached hereto and marked Exhibit "A", and

WHEREAS, the Corporate Authorities deem it to be in the best interest of the Village of Lombard to approve such agreement.

NOW, THEREFORE, BE IT RESOLVED BY THE PRESIDENT AND BOARD OF TRUSTEES OF THE VILLAGE OF LOMBARD, DU PAGE COUNTY, ILLINOIS as follows:

Section 1: That the Village President be and hereby is authorized to sign on behalf of the Village of Lombard said agreement as attached hereto.

Adopted this _____ day of _____, 2007

Ayes: _____

Nays: _____

Absent: _____

Approved this _____ day of _____, 2007

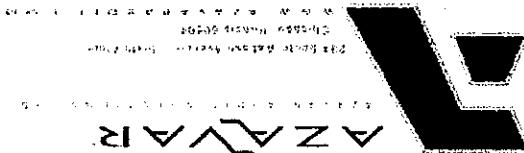
William J. Mueller
Village President

ATTEST:

Brigitte O'Brien
Village Clerk

APPROVAL AS TO FORM:

Thomas P. Bayer
Village Attorney



April 27, 2007

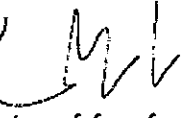
William J. Mueller
Village President
Village of Lombard
255 East Wilson Avenue
Lombard, Illinois 60148

Dear President Mueller:

We refer to that certain Professional Services Agreement by and between Azavar Audit Solutions ("Azavar") and the Village of Lombard ("Village of Lombard") dated as of December 7, 2006.

This letter confirms that Azavar will incorporate the Village of Lombard into an existing lawsuit against Commonwealth Edison on behalf of the Village of Lombard (and possible other municipalities), upon authorization from the Village of Lombard (and possible other municipalities). The purpose of the lawsuit is to compel an accounting from Commonwealth Edison of necessary information to allow Azavar to conduct a complete electronic audit to determine whether past taxes or any other monies or revenue are owed to the Village of Lombard, and if necessary, to collect any such unpaid funds. This letter will confirm that Azavar will be responsible for payment of all legal costs and attorney's fees for the attorneys selected by Azavar for said litigation, Walsh, Knippen, Knight, and Pollock, and that such legal costs and attorney's fees will not be passed on or otherwise chargeable to the Village of Lombard. In regard to said litigation, in the event the Village of Lombard chooses to abate, cancel, negotiate, waive, or recover any audit determination in settlement of said determination without Azavar's written consent, the Village of Lombard agrees to pay Azavar's fees (not reimbursement of its legal fees and costs, which will remain solely borne by Azavar) based on the total funds due prior to such abatement, cancellation, negotiation, waiver, or recovery. To the extent required, with your signed acknowledgement below, this letter modifies our Agreement with the Village of Lombard.

Please sign this letter where indicated below and return to my attention at your earliest convenience.

Very truly yours,

Jason Perry

Village of Lombard

By (Signature): _____

Name: _____

Title: _____

Agreed and acknowledged as of the date first set forth above.

VILLAGE OF LOMBARD
REQUEST FOR BOARD OF TRUSTEES ACTION

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FROM: William T. Lichter, Village Manager

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Review (as necessary):

Village Attorney [Signature]
 Finance Director [Signature]
 Village Manager [Signature]
 Date 05/10/07
 Date 6/11/07

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RESOLUTION
R _____
07

A RESOLUTION AUTHORIZING SIGNATURE OF
THE VILLAGE PRESIDENT ON AN AGREEMENT

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WHEREAS, the Corporate Authorities deem it to be in the best interest of the Village of Lombard to approve such agreement.

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Adopted this _____ day of _____, 2007

Ayes: _____

Nays: _____

Absent: _____

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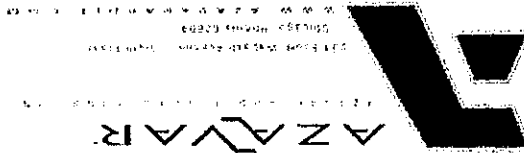
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April 27, 2007

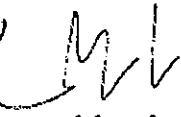
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Please sign this letter where indicated below and return to my attention at your earliest convenience.

Very truly yours,

Jason Perry

Village of Lombard

By (Signature):

Name:

Title:

Agreed and acknowledged as of the date first set forth above.