

VILLAGE OF LOMBARD
REQUEST FOR BOARD OF TRUSTEES ACTION
For Inclusion on Board Agenda

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

TO: PRESIDENT AND BOARD OF TRUSTEES

FROM: Scott R. Niehaus, Village Manager

DATE: January 27, 2014 (COW)(B of T) Date: February 6, 2014

TITLE: A Resolution Authorizing Signature of the Village President on an Agreement with Azavar Audit Solutions, Inc. to Engage with Cozen O'Connor LLP

SUBMITTED BY: Tim Sexton, Director of Finance

BACKGROUND/POLICY IMPLICATIONS:

The Village of Lombard entered into an agreement with Azavar Audit Solution, Inc. to provide municipal utility/telecommunications tax auditing services. Based on direction from Azavar, Lombard recently issued one Notice of Tax Liability (NOTL) to both Nicor and ComEd.

The attached resolution authorizes the Village President to sign the Agreement with Azavar Audit Solutions, Inc. to jointly engage Cozen O'Connor LLP ("Cozen") to assist in the collection of municipal utility taxes from Commonwealth Edison Company and affiliates ("ComEd"), Northern Illinois Gas Company and affiliates ("Nicor"), and other entities

Cozen's fee will be contingent upon any payment of taxes by ComEd, Nicor or others and will be paid by Azavar out of fees that it receives from Lombard. The contract that the Village has with Azavar is on a contingency basis.

Review (as necessary):

Village Attorney <u> X </u>	Date <u> </u>
Finance Director <u> X </u>	Date <u> </u>
Village Manager <u> X </u>	Date <u> </u>

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.



A PROFESSIONAL CORPORATION

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January 3, 2014

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VIA ELECTRONIC MAIL

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Village Manager
Village of Lombard
255 E. Wilson Ave.
Lombard, IL 60148

Mr. Jason Perry
Azavar Audit Solutions, Inc.
234 South Wabash Avenue, Sixth Floor
Chicago, IL 60604

Re: Municipal Utility Taxes

Dear Tim and Jason:

We are pleased that the Village of Lombard ("Lombard") and Azavar Audit Solutions, Inc. ("Azavar") are jointly engaging Cozen O'Connor LLP ("Cozen") to assist in the collection of municipal utility taxes from Commonwealth Edison Company and affiliates ("ComEd"), Northern Illinois Gas Company and affiliates ("Nicor"), and other entities. This letter is intended to formalize our retention, as required by applicable Rules of Professional Conduct.

Lombard and Azavar entered into a Professional Services Agreement on December 7, 2006 (the "PSA"). Pursuant to the PSA, Azavar is in the process of conducting an audit of outstanding municipal utility taxes and has identified certain unpaid taxes. Lombard has issued one Notice of Tax Liability ("NOTL") to both Nicor and ComEd and may issue an additional NOTL to each in 2014. Azavar and Lombard now retain Cozen to advise them as to the additional NOTLs and as to other actions that they may take to bring this matter to resolution. Such additional actions may include an administrative hearing and/or litigation. Cozen may elect to represent Lombard in such actions, but the firm is not now being retained to do so and any such retention is subject to Cozen's agreement confirmed in writing.

Cozen's fee will be contingent upon payment of taxes by ComEd, Nicor or others and will be paid by Azavar out of fees that it receives from Lombard under Section 3 of the PSA. Cozen, Azavar and Lombard will each be responsible for paying their own costs such as travel expenses for their personnel and routine overhead expenses (e.g., copying, telephone and express mail). Typically, Cozen does not pay for direct litigation costs, such as filing fees, deposition transcripts, expert witness expenses, and outside copying fees. Before any such costs will be incurred in this

Mr. Tim Sexton
Mr. Jason Perry
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matter, however, Cozen, Azavar, and Lombard will agree on who shall bear those costs. If Lombard is awarded costs or legal fees in addition to taxes, penalties and interest, those costs or fees shall first be used to reimburse Lombard for any direct litigation costs it paid. Any amount in excess would be paid to Cozen.

Notwithstanding Azavar's financial interest in the collection of taxes, Azavar acknowledges that Lombard will retain ultimate decision-making authority as to this matter.

As we discussed, Cozen currently represents another affiliate of Exelon Corporation, ComEd's parent, in unrelated employment matters outside of Illinois. Cozen has concluded that this representation does not constitute a conflict of interest under the applicable Rules of Professional Conduct, but ComEd may disagree and seek to disqualify Cozen. We do not believe that the firm's representation of a different Exelon affiliate in unrelated matters would otherwise impair our ability to effectively represent Lombard and Azavar in this matter. Should Exelon move to disqualify Cozen, Cozen will oppose such a motion and be responsible for all associated costs.

If the arrangement outlined above is satisfactory, please acknowledge this by signing below and returning it to me at your earliest convenience. If you have any questions concerning the terms of this engagement, please do not hesitate to call me.

Sincerely,

COZEN O'CONNOR

By: Jonathan M. Grossman

ACCEPTED ON BEHALF OF THE
VILLAGE OF LOMBARD:

ACCEPTED ON BEHALF OF
AZAVAR AUDIT SOLUTIONS, INC.

Signature

Signature

Name

Name

Title

Title

Date

Date

RESOLUTION
R _____ 14

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 _____, 2014

Ayes: _____

Nays: _____

Absent: _____

Approved this ____ day of _____, 2014

Keith Giagnorio
Village President

ATTEST:

Janet Downer
Village Clerk

APPROVAL AS TO FORM:

Thomas P. Bayer
Village Attorney