

**CITY OF MARYSVILLE AGENDA BILL**

**EXECUTIVE SUMMARY FOR ACTION**

**CITY COUNCIL MEETING DATE: July 12, 2021**

<b>AGENDA ITEM:</b>	
Agreement with Azavar Government Solutions for Local Government Revenue Compliance Audit, Maximization, and Monitoring Program.	
<b>PREPARED BY:</b>	<b>DIRECTOR APPROVAL:</b>
John Nield, Financial Operations Manager	
<b>DEPARTMENT:</b>	
Finance	
<b>ATTACHMENTS:</b>	
Professional Services Agreement with Azavar Government Solutions.	
<b>BUDGET CODE:</b>	<b>AMOUNT:</b>
00101023.541000	39% of recovered revenues
<b>SUMMARY:</b>	

The City receives over 15% of the General Fund revenues from Business fees and taxes of which most are self-reported. City code allows for inspection of taxpayer records up to six years. An outside analysis regarding telephone utility tax estimated approximately \$250,000 possible recovery. Finance believes it to be in the best interest of the city to pursue regular audits. It has been very difficult to locate a business that has the experience in auditing governmental revenues, especially all general fees and taxes.

Azavar Government Solutions was founded in 1996 by a former city manager, which provided the knowledge and experience to assist governments with revenue recovery and compliance. The proposed agreement will provide auditing and recovery of certain revenues the City receives such as utility taxes, telephone taxes, franchise fees, sales taxes, etc. Azavar fee is based on the recovery amount, which is 39% and the term is for 39 months. Other consultants contacted also had a similar fee structure as a percent of recovered revenues which ranged from 28% to 50% and only audited specific taxes.

**RECOMMENDED ACTION:**

Staff recommends that Council authorize the Mayor to sign and execute the Agreement between the City of Marysville and Azavar Government Solutions.

**RECOMMENDED MOTION:**

I move to authorize the Mayor to sign and execute the agreement.

**PROFESSIONAL SERVICES AGREEMENT BETWEEN  
CITY OF MARYSVILLE  
AND AZAVAR GOVERNMENT SOLUTIONS**

**THIS AGREEMENT** (“Agreement”) is made and entered into as of the date of the last signature below, by and between the City of Marysville, a Washington State municipal corporation (“City”), and Azavar Government Solutions, a limited liability company organized under the laws of the state of Illinois, located and doing business at 55 East Jackson Chicago, Illinois 60604 (“Consultant”).

In consideration of the terms, conditions, covenants, and performances contained herein, the parties hereto agree as follows:

- 1. SCOPE OF SERVICES.** The Consultant shall provide the work and services described in the attached **EXHIBIT A**, incorporated herein by this reference (the “Services”). All services and materials necessary to accomplish the tasks outlined in the Scope of Services shall be provided by the Consultant unless noted otherwise in the Scope of Services or this Agreement. All such services shall be provided in accordance with the standards of the Consultant’s profession.
- 2. TERM.** The term of this Agreement shall commence on July 19, 2021 and shall terminate at midnight on July 1, 2026. The parties may extend the term of this Agreement by executing a written supplemental amendment.
- 3. COMPENSATION.** The Consultant shall be paid by the City for Services rendered under this Agreement as described in **EXHIBIT A** and as provided in this section. The Consultant shall be paid thirty nine percent (39%) of revenue recovered from the audit (as further described in Exhibit A). Such payment shall be full compensation for the Services and for all labor, materials, supplies, equipment, incidentals, and any other expenses necessary for completion.

The Consultant shall submit a monthly invoice to the City for Services performed in the previous calendar month in a format acceptable to the City. The Consultant shall maintain time and expense records and provide them to the City upon request.

The City will pay timely submitted and approved invoices received before the 20th of each month within thirty (30) days of receipt.

**4. CONSULTANT’S OBLIGATIONS.**

**4.1 MINOR CHANGES IN SCOPE.** The Consultant agrees to accept minor changes, amendments, or revisions to the scope of the Services, as may be required by the City, when such changes, amendments, or revisions will not have any impact on the cost of the Services or the

proposed delivery schedule.

**4.2 ADDITIONAL WORK.** The City may desire to have the Consultant perform additional work or services which are not identified in the scope of the Services. If the parties agree to the performance of additional work or services, the parties will execute a written supplemental amendment detailing the additional work or services and compensation therefore. In no event will the Consultant be compensated for preparing proposals for additional work or services. In no event shall the Consultant begin work contemplated under a supplemental amendment until the supplemental amendment is fully executed by the parties.

**4.3 WORK PRODUCT AND DOCUMENTS.** The work product and all documents produced under this Agreement shall be furnished by the Consultant to the City, and upon completion of the Services shall become the property of the City, except that the Consultant may retain one copy of the work product and documents for its records. The Consultant will be responsible for the accuracy of the Services, the work product, and all documents produced under this Agreement, even though the Services have been accepted by the City.

In the event that the Consultant defaults on this Agreement or in the event that this Agreement is terminated prior to the completion of the Services or the time for completion, all work product and all documents and other materials produced under this Agreement, along with a summary of work as of the date of default or termination, shall become the property of the City. The summary of Services provided shall be prepared at no additional cost to the City. Upon request, the Consultant shall tender the work product, all documents, and the summary to the City within five (5) business days. Tender of said work product shall be a prerequisite to final payment under this Agreement.

The Consultant will not be held liable for reuse of work product or documents produced under this Agreement or modification of the work product or documents for any purpose other than those identified in this Agreement without the written authorization of the Consultant.

**4.4 PUBLIC RECORDS ACT.** Consultant acknowledges that the City is subject to the Public Records Act, chapter 42.56 RCW (the "PRA"). All records owned, used, or retained by the City are public records subject to disclosure unless exempt under the PRA, whether or not the records are in the possession or control of the City or Consultant. All exemptions to the PRA are narrowly construed.

a. **Confidential Information.** Any records provided to the City by the Consultant which contain information that the Consultant in good faith believes is not subject to disclosure under the PRA shall be marked "Confidential" and shall identify the specific information that the Consultant in good faith believes is not subject to disclosure under the PRA and a citation to the statutory basis for non-disclosure.

b. **Responding to Public Records Requests.** The City shall exercise its sole legal judgment in responding to public records requests.

- (1) The City may rely upon the lack of notification from the Consultant in releasing any records that are not marked “Confidential.”
- (2) If records identified as “Confidential” by the Consultant are responsive to a PRA request, the City will seek to provide notice to Consultant at least ten (10) business days before the date on which the City anticipates releasing records. The City is under no obligation to assert any applicable exemption on behalf of the Consultant. The Consultant may seek, at its sole cost, an injunction preventing the release of information which it believes is protected. In no event will the City have any liability to Consultant for any failure of the City to provide notice prior to release.
- (3) If the City, in its sole legal judgment, believes that the Consultant possesses records that (1) are responsive to a PRA request and (2) were used by the City, the City will request the records from the Consultant. The Consultant will, within ten (10) business days:
  - i. Provide the records to the City in the manner requested by the City;
  - ii. Obtain a court injunction, in a lawsuit involving the requester, covering all, or any confidential portion of, the records and provide any records not subject to the court injunction; or
  - iii. Provide an affidavit, in a form acceptable to the City Attorney, specifying that the Consultant has made a diligent search and did not locate any requested documents.

c. **Indemnification.** In addition to its other indemnification and defense obligations under this Agreement, the Consultant shall indemnify and defend the City from and against any and all losses, penalties, fines, claims, demands, expenses (including, but not limited to, attorneys fees and litigation expenses), suits, judgments, or damages (collectively “Damages”) arising from or relating to any request for records related to this Agreement, to the extent such Damages are caused by action or inaction of the Consultant. This indemnification and defense obligation shall survive the expiration or termination of this Agreement.

**4.5 MAINTENANCE/INSPECTION OF RECORDS.** The Consultant shall maintain all books, records, documents, and other evidence pertaining to the costs and expenses allowable under this Agreement in accordance with generally accepted accounting practices. All such books and records required to be maintained by this Agreement shall be subject to inspection and audit by representatives of the City and/or the Washington State Auditor at all reasonable times, and the Consultant shall afford the proper facilities for such inspection and audit.

Representatives of the City and/or the Washington State Auditor may copy such books, accounts, and records where necessary to conduct or document an audit. The Consultant shall preserve and make available all such books of account and records for a period of three (3) years after final payment under this Agreement. In the event that any audit or inspection identifies any discrepancy in such financial records, the Consultant shall provide the City with appropriate clarification and/or financial adjustments within thirty (30) calendar days of notification of the discrepancy.

**4.6 INDEMNITY.**

a. **Indemnification and Hold Harmless.** The Consultant shall defend, indemnify, and hold the City, its officers, officials, employees, and volunteers harmless from any and all claims, injuries, damages, losses, or suits including attorney fees, arising out of or resulting from the acts, errors, or omissions of the Consultant in performance of this Agreement, except for injuries and damages caused by the sole negligence of the City.

b. Should a court of competent jurisdiction determine that this Agreement is subject to RCW 4.24.115, then, in the event of liability for damages arising out of bodily injury to persons or damages to property caused by or resulting from the concurrent negligence of the Consultant and the City, its officers, officials, employees, and volunteers, the Consultant's liability, including the duty and cost to defend, hereunder shall be only to the extent of the Consultant's negligence.

c. The provisions of this Section 4.6 shall survive the expiration or termination of this Agreement.

d. The Consultant hereby knowingly, intentionally, and voluntarily waives the immunity of the Industrial Insurance Act, Title 51 RCW, solely for the purposes of the indemnity contained in subpart "a" of this Section 4.6. This waiver has been mutually negotiated by the parties.

\_\_\_\_\_ (City Initials)



\_\_\_\_\_ (Contractor Initials)

**4.7 INSURANCE.**

a. **Insurance Term.** The Consultant shall procure and maintain for the duration of the Agreement, insurance against claims for injuries to persons or damage to property which may arise from or in connection with the performance of the Services hereunder by the Consultant, its agents, representatives, or employees.

b. **No Limitation.** Consultant's maintenance of insurance as required by the Agreement shall not be construed to limit the liability of the Consultant to the coverage provided by such insurance, or otherwise limit the City's recourse to any remedy available at law or in equity.

c. **Minimum Scope of Insurance.** Consultant shall obtain insurance of the types and coverage described below:

- (1) Automobile Liability insurance covering all owned, non-owned, hired, and leased vehicles. Coverage shall be written on Insurance Services Office (ISO) form CA 00 01 or a substitute form providing equivalent liability coverage.
- (2) Commercial General Liability insurance shall be at least as broad as ISO occurrence form CG 00 01 and shall cover liability arising from premises, operations, stop-gap independent contractors and personal injury and advertising injury. The City shall be named as an additional insured under the Consultant's Commercial General Liability insurance policy with respect to the Services performed for the City using an additional insured endorsement at least as broad as ISO CG 20 26.
- (3) Workers' Compensation coverage as required by the Industrial Insurance laws of the State of Washington.
- (4) Professional Liability insurance appropriate to the Consultant's profession.

d. **Minimum Amounts of Insurance.** Consultant shall maintain the following insurance limits:

- (1) Automobile Liability insurance with a minimum combined single limit for bodily injury and property damage of \$1,000,000 per accident.
- (2) Commercial General Liability insurance shall be written with limits no less than \$1,000,000 each occurrence, \$2,000,000 general aggregate.
- (3) Professional Liability insurance shall be written with limits no less than \$1,000,000 per claim and \$1,000,000 policy aggregate limit.

e. **Other Insurance Provision.** The Consultant's Automobile Liability and Commercial General Liability insurance policies are to contain, or be endorsed to contain that they shall be primary insurance as respect the City. Any Insurance, self-insurance, or self-insured pool coverage maintained by the City shall be excess of the Consultant's insurance and shall not contribute with it.

f. **Acceptability of Insurers.** Insurance is to be placed with insurers with a current A.M. Best rating of not less than A:VII.

g. **Verification of Coverage.** The Consultant shall furnish the City with original certificates and a copy of the amendatory endorsements, including but not necessarily limited to the additional insured endorsement, evidencing the insurance requirements of the Consultant before commencement of the Services.

h. **Notice of Cancellation.** The Consultant shall provide the City with written notice of any policy cancellation within two business days of the Consultant's receipt of such notice.

i. **Failure to Maintain Insurance.** Failure on the part of the Consultant to maintain the insurance as required shall constitute a material breach of contract, upon which the City may, after giving five (5) business days notice to the Consultant to correct the breach, immediately terminate the Agreement or, at its discretion, procure or renew such insurance and pay any and all premiums in connection therewith, with any sums so expended to be repaid to the City on demand, or at the sole discretion of the City, offset against funds due the Consultant from the City.

j. **Insurance to be Occurrence Basis.** Unless approved by the City all insurance policies shall be written on an "Occurrence" policy as opposed to a "Claims-made" policy. The City may require an extended reporting endorsement on any approved "Claims-made" policy. Professional liability insurance may be written on a "Claims-made" basis if it is maintained for a period of three (3) years following completion of the services.

k. **City Full Availability of Consultant Limits.** If the Consultant maintains higher insurance limits than the minimums shown above, the City shall be insured for the full available limits of Commercial General and Excess or Umbrella liability maintained by the Consultant, irrespective of whether such limits maintained by the Consultant are greater than those required by this Agreement or whether any certificate of insurance furnished to the City evidences limits of liability lower than those maintained by the Consultant.

**4.8 LEGAL RELATIONS.** The Consultant shall comply with all federal, state, and local laws, regulations, and ordinances applicable to the Services to be performed under this Agreement. The Consultant represents that it and all employees assigned to perform any of the Services under this Agreement are in full compliance with the statutes of the State of Washington governing the Services and that all personnel to be assigned to the Services are fully qualified and properly licensed to perform the work to which they will be assigned.

**4.9 INDEPENDENT CONTRACTOR.**

a. The Consultant and the City understand and expressly agree that the Consultant is an independent contractor in the performance of each and every part of this Agreement. The Consultant expressly represents, warrants, and agrees that the Consultant's status as an independent contractor in the performance of the Services required under this Agreement is consistent with and meets the six-part independent contractor test set forth in RCW 51.08.195 or as hereafter amended. The Consultant, as an independent contractor, assumes the entire responsibility for carrying out and accomplishing the Services required under this Agreement. The Consultant shall not make

a claim of City employment and shall not claim any related employment benefits, social security, and/or retirement benefits.

b. The Consultant shall be solely responsible for paying all taxes, deductions, and assessments, including but not limited to federal income tax, FICA, social security tax, assessments for unemployment and industrial injury, and other deductions from income which may be required by law or assessed against either party as a result of this Agreement. In the event the City is assessed a tax or assessment as a result of this Agreement, the Consultant shall pay the same before it becomes due.

c. The City may, during the term of this Agreement, engage other independent contractors to perform the same or similar work to the Services that the Consultant performs under this Agreement.

d. Prior to commencement of Services, the Consultant shall obtain a business license from the City.

#### 4.10 EMPLOYMENT.

a. The term "employee" or "employees" as used herein shall mean any officers, agents, or employee of the Consultant.

b. Any and all employees of the Consultant, while performing any Services under this Agreement, shall be considered employees of the Consultant only and not of the City. The Consultant shall be solely liable for: (1) any and all claims that may or might arise under the Workman's Compensation Act, Title 51 RCW, on behalf of any said employees while performing any Services under this Agreement, and (2) any and all claims made by any third party as a consequence of any negligent act or omission on the part of the Consultant or its employees while performing any Services under this Agreement.

c. The Consultant represents, unless otherwise indicated below, that all employees of the Consultant that will perform any Services under this Agreement have never been retired from a Washington State retirement system, including but not limited to Teacher (TRS), School District (SERS), Public Employee (PERS), Public Safety (PSERS), law enforcement and fire fighters (LEOFF), Washington State Patrol (WSPRS), Judicial Retirement System (JRS), or otherwise. *(Please use initials to indicate No or Yes below.)*

  JP   No, employees performing the Services have never been retired from a Washington state retirement system.

       Yes, employees performing the Services have been retired from a Washington state retirement system.



In the event the Consultant checks “no”, but an employee in fact was a retiree of a Washington State retirement system, and because of the misrepresentation the City is required to defend a claim by the Washington State retirement system, or to make contributions for or on account of the employee, or reimbursement to the Washington State retirement system for benefits paid, the Consultant hereby agrees to save, indemnify, defend and hold the City harmless from and against all expenses and costs, including reasonable attorney fees incurred in defending the claim of the Washington State retirement system and from all contributions paid or required to be paid, and for all reimbursement required to the Washington State retirement system. In the event the Consultant checks “yes” and affirms that an employee providing work has ever retired from a Washington State retirement system, every said employee shall be identified by the Consultant and such retirees shall provide the City with all information required by the City to report the employment with Consultant to the Department of Retirement Services of the State of Washington.

**4.11 NONASSIGNABLE.** Except as provided in **EXHIBIT B**, the Services to be provided by the Consultant shall not be assigned or subcontracted without the express written consent of the City.

**4.12 SUBCONTRACTORS AND SUBCONSULTANTS.**

a. The Consultant is responsible for all work or services performed by subcontractors or subconsultants pursuant to the terms of this Agreement.

b. The Consultant must verify that any subcontractors or subconsultants the Consultant directly hires meet the responsibility criteria for the Services. Verification that a subcontractor or subconsultant has proper license and bonding, if required by statute, must be included in the verification process. If the parties anticipate the use of subcontractors or subconsultants, the subcontractors or subconsultants are set forth in **EXHIBIT B**.

c. The Consultant may not substitute or add subcontractors or subconsultants without the written approval of the City.

d. All subcontractors or subconsultants shall have the same insurance coverage and limits as set forth in this Agreement and the Consultant shall provide verification of said insurance coverage.

**4.13 CONFLICTS OF INTEREST.** The Consultant agrees to and shall notify the City of any potential conflicts of interest in Consultant’s client base and shall obtain written permission from the City prior to providing services to third parties when a conflict or potential conflict of interest exists. If the City determines in its sole discretion that a conflict is irreconcilable, the City reserves the right to terminate this Agreement.

**4.14 CITY CONFIDENCES.** The Consultant agrees to and will keep in strict confidence, and will not disclose, communicate, or advertise to third parties without specific prior written consent from the City in each instance, the confidences of the City or any information regarding the City or the Services provided to the City.

**4.15 DISCRIMINATION PROHIBITED AND COMPLIANCE WITH EQUAL OPPORTUNITY LEGISLATION.** The Consultant agrees to comply with equal opportunity employment and not to discriminate against any client, employee, or applicant for employment or for services because of race, creed, color, religion, national origin, marital status, sex, sexual orientation, age, or handicap except for a bona fide occupational qualification with regard, but not limited to, the following: employment upgrading; demotion or transfer; recruitment or any recruitment advertising; layoff or terminations; rates of pay or other forms of compensation; selection for training; or rendition of services. The Consultant further agrees to maintain (as appropriate) notices, posted in conspicuous places, setting forth its nondiscrimination obligations. The Consultant understands and agrees that if it violates this nondiscrimination provision, this Agreement may be terminated by the City, and further that the Consultant will be barred from performing any services for the City now or in the future, unless a showing is made satisfactory to the City that discriminatory practices have been terminated and that recurrence of such action is unlikely.

**4.16 UNFAIR EMPLOYMENT PRACTICES.** During the performance of this Agreement, the Consultant agrees to comply with RCW 49.60.180, prohibiting unfair employment practices.

**5. CITY APPROVAL REQUIRED.** Notwithstanding the Consultant's status as an independent contractor, the Services performed pursuant to this Agreement must meet the approval of the City, which shall not be unreasonably withheld if the Services have been completed in compliance with the Scope of Services and City requirements.

**6. GENERAL TERMS.**

**6.1 NOTICES.** Receipt of any notice shall be deemed effective three (3) calendar days after deposit of written notice in the U.S. mail with proper postage and address.

Notices to the City shall be sent to the following address:

**CITY OF MARYSVILLE**

Finance Director

1049 State Avenue

Marysville, Wa 98270

Notices to the Consultant shall be sent to the following address:

Jason Perry  
55 East Jackson Boulevard  
Chicago, Illinois 60604

**6.2 TERMINATION.** The City may terminate this Agreement in whole or in part at any time by sending written notice to the Consultant. As per Section 6.1, the Consultant is deemed to have received the termination notice three (3) calendar days after deposit of the termination notice in the U.S. mail with proper postage and address. The termination notice is deemed effective seven (7) calendar days after it is deemed received by the Consultant.

If this Agreement is terminated by the City for its convenience, the City shall pay the Consultant for satisfactory Services performed through the date on which the termination is deemed effective in accordance with payment provisions of Section 3, unless otherwise specified in the termination notice. If the termination notice provides that the Consultant will not be compensated for Services performed after the termination notice is received, the City will have the discretion to reject payment for any Services performed after the date the termination notice is deemed received.

**6.3 DISPUTES.** The parties agree that, following reasonable attempts at negotiation and compromise, any unresolved dispute arising under this Agreement may be resolved by a mutually agreed-upon alternative dispute resolution of arbitration or mediation.

**6.4 EXTENT OF AGREEMENT/MODIFICATION.** This Agreement, together with exhibits, attachments, and addenda, represents the entire and integrated Agreement between the parties and supersedes all prior negotiations, representations, or agreements, either written or oral. This Agreement may be amended, modified, or added to only by a written supplemental amendment properly signed by both parties.

**6.5 SEVERABILITY.**

a. If a court of competent jurisdiction holds any part, term, or provision of this Agreement to be illegal or invalid, in whole or in part, the validity of the remaining parts, terms, or provisions shall not be affected, and the parties' rights and obligations shall be construed and enforced as if the Agreement did not contain the particular part, term, or provision held to be invalid.

b. If any part, term, or provision of this Agreement is in direct conflict with any statutory provision of the State of Washington, that part, term, or provision shall be deemed inoperative and null and void insofar as it may conflict, and shall be deemed modified to conform to such statutory provision.

**6.6 NONWAIVER.** A waiver by either party of a breach by the other party of any covenant or condition of this Agreement shall not impair the right of the party not in default to avail itself of any subsequent breach thereof. Leniency, delay, or failure of either party to insist upon strict performance of any agreement, covenant, or condition of this Agreement, or to exercise any right herein given in any one or more instances, shall not be construed as a waiver or relinquishment of any such agreement, covenant, condition, or right.

**6.7 FAIR MEANING.** The terms of this Agreement shall be given their fair meaning and shall not be construed in favor of or against either party hereto because of authorship. This Agreement shall be deemed to have been drafted by both of the parties.

**6.8 GOVERNING LAW.** This Agreement shall be governed by and construed in accordance with the laws of the State of Washington.

**6.9 VENUE.** The venue for any action to enforce or interpret this Agreement shall lie in the Superior Court of Washington for Snohomish County, Washington.

**6.10 COUNTERPARTS.** This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which shall constitute one and the same Agreement.

**6.11 AUTHORITY TO BIND PARTIES AND ENTER INTO AGREEMENT.** The undersigned represent that they have full authority to enter into this Agreement and to bind the parties for and on behalf of the legal entities set forth herein.

DATED this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

CITY OF MARYSVILLE

By \_\_\_\_\_  
Jon Nehring, Mayor

DATED this 21 day of June, 2021.

AZAVAR GOVERNMENT SOLUTIONS

By   
Its: Jason Jerry (Name)  
resident (Title)

ATTEST/AUTHENTICATED:

\_\_\_\_\_  
\_\_\_\_\_, Deputy City Clerk

Approved as to form:

\_\_\_\_\_  
Jon Walker, City Attorney

## **EXHIBIT A**

### **Scope of Services**

#### **1. SCOPE OF SERVICES**

1.1 Subject to the following terms and conditions, Azavar shall provide professional management, government, revenue and tax, and computer consulting services (“Services”) in accordance with written statements of work agreed to by the parties (each, a “Statement of Work”) attached hereto as Exhibit A-1, which may be subsequently amended by the parties. Each Statement of Work and any subsequent amendments thereto shall be executed on behalf of each of the parties, whereupon it shall be deemed incorporated herein by reference as though fully set forth herein. The parties agree that certain Statements of Work may be delegated by Azavar to different affiliates or entities that shall operate under the terms set forth in this Agreement.

1.2 Azavar shall be responsible for providing the Services in substantial accordance with each Statement of Work. Azavar will render the services provided under this Agreement in a workmanlike manner in accordance with industry standards.

1.3 Customer agrees to provide reasonable facilities and space should Azavar work 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.

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.

3. **PAYMENT TERMS.** Customer shall compensate Azavar the fees set forth in each Statement of Work. Azavar shall be entitled to compensation for time which is actually spent providing the Services set forth in each Statement of Work. Azavar shall submit an invoice to Customer on a monthly or quarterly basis detailing the amounts charged to Customer pursuant to the terms of this Agreement and each Statement of Work hereto. Customer shall remit payment to Azavar within thirty (30) days of the date of each invoice. 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, any Statement of Work attached hereto, and seek recovery of all estimated fees due to Azavar. 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.

#### 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 and such third parties have no confidentiality obligations to the disclosing party, and (iv) information subject to disclosure under any state or federal laws.

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 each Statement of Work hereto.

4.3 Nothing contained herein shall be deemed to limit the Customer's legal obligations to retain or disclose any information or records as required by applicable state, federal, or local laws, including without limitation Chapter 42.56 RCW (the Public Records Act) and Chapter 40.41 RCW (Preservation and Destruction of Public Records).

#### 5. INTELLECTUAL PROPERTY

5.1 No work performed by Azavar or any Consultant with respect to the Services or any supporting or related documentation therefore 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 or make public any information or 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. CLIENT 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 This Agreement shall be effective ("Term") from the date first written above and shall continue thereafter until terminated upon 90 days written notice by Customer or Azavar ("Initial Term") and automatic renewal terms ("Renewal Terms"). The Initial Term shall be for a thirty-nine (39) month period, beginning on the first day of the execution of this Agreement. Upon completion of the Initial Term, this Agreement shall automatically renew for the Renewal Terms, as successive thirty-nine (39) month periods, unless previously terminated. A Party may terminate one or more of a Statement of Work, without terminating either this Agreement or another Statement of Work.

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), Section 10 (Non-Solicitation of Employees), and Section 11 (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:  
Jason Perry  
55 East Jackson Boulevard  
Chicago, Illinois 60604

If to Customer:  
Finance Director/Clerk City of Marysville  
1049 State Avenue  
Marysville, Washington 98270

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. NONSOLICITATION OF EMPLOYEES. During the period in which any Exhibit to this Agreement is in effect and for a period of twelve (12) months thereafter, each party agrees it will not, without the prior written consent of the other party, solicit the employees of the other party for the purpose of offering them employment; provided, however, that good faith solicitations by way of mass media (i.e., newspapers, internet) shall not be deemed to be a violation of this Section 10.

11. 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.

## EXHIBIT A-1 – STATEMENT OF WORK

This Statement of Work (“Statement of Work”) is made and entered into on this 1st Day of July 2021 by and between Azavar Audit Solutions, Inc., an Illinois corporation having its principal place of business at 55 East Jackson Boulevard, Suite 2100, Chicago, Illinois 60604 (“Azavar”), and the City of Marysville, Washington, a Washington municipal corporation having its principal place of business at 1049 State Avenue Marysville, Washington 98270 (“Customer”).

WHEREBY the parties entered into a Professional Services Agreement (“Agreement”) by signature by the parties attached hereto on July 1<sup>st</sup> 2021

1. COMPLIANCE AUDITS & ONGOING REVENUE MAXIMIZATION AND MONITORING SERVICES: In addition to the Services and work defined in the Agreement, Services shall be provided in substantial accordance with the below statements:

(a) Azavar, as Customer’s authorized agent and third-party administrator (“TPA”), shall undertake a Local Government Revenue Compliance Audit, Maximization, and Monitoring Program (“Revenue TPA Program”) on behalf of the Customer. As part of the Revenue TPA Program Azavar shall, on behalf of the Customer, separately review, audit, maximize, and regularly monitor for the Term of this Statement of Work any and all sources of Customer revenue and related expenses (“Audits”), including, but not limited to, each sales, occupation, and use tax, ordinance, license, service fee, contract, franchise agreement, intergovernmental agreement, payment in lieu of taxes, and any and all expenses imposed by or upon the Customer within the Customer’s corporate boundaries, and as permitted by the Customers’ ordinances and state and federal law, including those revenues, whether levied, imposed, or administered by the Customer, elsewhere locally, by the state or federal government, taxpayers, remitters, or those that should be remitting any funds or savings to the Customer (“Auditee(s)”), revenues and expenditures related to (and where applicable), but not limited to the following:

- i. Electricity providers and/or consumers
- ii. Natural gas providers and/or consumers
- iii. Multichannel video (i.e. cable) franchise fees and service fees and/or consumers
- iv. Telecommunications (i.e. phone, fiber, wireless, etc.) providers and/or consumers
- v. Water, sewer, and/or stormwater providers and/or consumers
- vi. Waste or refuse hauling providers and/or consumers
- vii. Fuel providers and/or consumers, oil and gas well drilling and production, and oil and gas pipelines in right-of-way
- viii. Locally imposed, levied, and/or administered charges, fees, or fines
- ix. Locally imposed and/or administered Business Licenses, Registrations, or Occupation Taxes
- x. Locally imposed and/or administered Residential Rental Licenses
- xi. Taxpayers subject to Property Taxes and Levies
- xii. Taxpayers subject to Vehicle Related Fees or Taxes (i.e. Wheel Tax, Rental Tax, etc.)

- xiii. Taxpayers subject to Local Amusement or Entertainment Taxes
  - xiv. Taxpayers subject to Business License and/or Registration Fees
  - xv. Taxpayers subject to the Food & Beverage, Restaurant, or Places of Eating Tax
  - xvi. Taxpayers subject to Liquor Licenses and/or Taxes
  - xvii. Fixed Location taxpayers subject to Hotel Occupation/Use Taxes
  - xviii. Online travel companies and short-term online rental management platforms taxpayers subject to local occupation/sales/use taxes
  - xix. Taxpayers subject to Real Estate Transfer Taxes
  - xx. A review of revenues distributed to the Customer by the state, including reviewing state distributions and address designations for sales tax, remote sellers' sales tax, service taxes, use taxes, and service use taxes.
  - xxi. Should the Customer own or operate its own utilities including, but not limited to, electric, natural gas, water, or other utilities, Azavar shall also review and audit the revenues and expenses of those Customer owned or operated utilities.
- (b) The purpose of each Audit is to determine past, present, and future taxes, license fees, service fees, or any other recoveries, 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 state law, the Customer's own local ordinances and databases, any agreements, contracts or bills between Customer and Auditee are used by Azavar to conduct the Audits and Azavar will present to Customer in writing during the course of the Audits reports detailing compliance findings and findings of monies paid, due, or potentially due to the Customer for review by the Customer per Auditee ("Findings"). Where already allowable by existing Customer contracts or agreements or federal, state, or local laws or ordinances, this Statement of Work authorizes Azavar to correct any prospective errors and make a reasonable effort to collect monies due to the Customer under such applicable laws, local ordinances, or contracts. Additionally, Azavar shall regularly monitor all revenues and related expenditures monthly during the Term of this Agreement and shall make any corrections accordingly. Azavar shall review Customer ordinances and 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 understands that Findings may include, but are not limited to, changes to technology, organizational processes, process automation, Customer communication practices, Customer governing practices, and/or updates to local ordinances or the codification thereof. Customer agrees that any Findings, whether implemented in whole or in part by Azavar or the Customer, shall be fully compensable under Section 2 of this Statement of Work, including wherein the Findings require any amendments to an ordinance and wherein the ordinance is changed. 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 Statement of Work and shall therefore pay Azavar the fees set forth in this Agreement for any Findings made by Azavar. Customer agrees during the Term of this Statement of Work that it shall not initiate or engage in any Audits, changes to any ordinances related to any Audits, or execution or renewal of any contracts or agreements related to any Audits as contemplated under this Statement of Work without Azavar's prior written consent;

(d) In order to perform the Audits, Azavar shall require full access to Customer records and Auditee records. Customer shall use its authority as necessary to assist in acquiring information and procure data from Auditees. Customer agrees that it shall cooperate with Azavar, provide any documentation and records requested by Azavar, and provide continued access (prior to, during, and following any Audits) to documentation and records, and shall engage in meetings with Auditees when requested by Azavar. Customer shall notify Azavar of any Auditee communications or requested meetings with Customer and shall include Azavar in said communications and meetings. Customer shall also designate one (1) professional staff member to be the Customer's Primary Contact;

(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 Audit for that specific Auditee 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 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 an 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 for that Audit in addition to any applicable contingency fees for any Findings that were identified by Azavar or by its Audits and that would have been compensable under Section 2 of this Statement of Work;

(g) During the Audits, Azavar will educate fee and taxpayers and provide all necessary support to onboard them to file and remit payments to Customer using Azavar software as defined in Exhibit A – Statement of Work 2;

(h) Audit timelines and processes are set in accordance with Azavar's proprietary audit process and applicable law. The first Audit start date is expected to be within no later than thirty (30) days from the date of this Statement of Work unless changed and approved by the Customer's Primary Contact;

(i) 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 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 will occur approximately every quarter;

(j) Jason Perry, Local Government Revenue Compliance Audit, Maximization, and Monitoring Program, and Azavar specialists will be auditors under this Statement of Work. All Azavar staff or subcontractors shall be supervised by the Azavar Program Manager.

## 2. PAYMENT TERMS.

2.1 Customer shall compensate Azavar the fees set forth in this Statement of Work 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 Statement of Work. Should Customer negotiate, abate, cancel, amend, delay, or waive, 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-nine (39) months. If Customer later implements during the subsequent thirty-nine (39) 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-nine (39) months at the contingency fee rates set forth below.

2.2 For any and all Audits and/or Findings (under Section 1), Customer shall pay Azavar an amount equal to thirty-nine (39) percent of any new revenues, savings, or prospective funds recovered per account or per Auditee for thirty-nine (39) months following when funds begin to be properly remitted to the Customer. In the event Azavar is able to recover any additional savings or revenue increases for any time period, or any credits at any time, Customer will pay Azavar an amount equal to thirty-nine (39) percent of any savings, funds, 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-nine (39) month period for each account individually will accrue to the sole benefit of the Customer.

3. COMPLETE AGREEMENT: This Statement of Work and the 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 Statement of Work 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 Statement of Work shall either be, or be deemed to be, a waiver or in any way prejudice any right of that party under this Agreement.

IN WITNESS WHEREOF, the parties have caused this Statement of Work 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

CUSTOMER CITY OF MARYSVILLE, WA.

By:

Title:

**EXHIBIT B**  
**Subcontractors/Subconsultants**

**Below is a list of approved subcontractors/subconsultants. If left blank, there are no approved subcontractors or subconsultants.**

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