

EXECUTION VERSION

RELEASE AND SETTLEMENT AGREEMENT

This Release and Settlement Agreement (“Agreement”) is dated as of the ___ day of November, 2015 (the later of this date, or the date the proposed ordinance referred in Paragraph 7 of this Agreement is enacted by the City, shall be the “Effective Date”) and is entered into by and between Ameren Illinois Company, d/b/a Ameren Illinois (“Ameren Illinois”), the City of Peoria (the “City”), and for the purposes of the obligations imposed in Paragraph 13 only, Azavar Audit Solutions, Inc. Peoria and Ameren Illinois may be referred to singularly or collectively as, respectively, a “Party” or the “Parties.”

WHEREAS, Ameren Illinois is an Illinois corporation engaged in the transmission, sale and distribution of electricity and natural gas to the public in Illinois, and is a public utility as defined in Section 3-105 of the Public Utilities Act;

WHEREAS, the City is a municipal corporation and home rule unit of local government organized and existing under Article VII, Section 1 and 6(a), respectively, of the 1970 Constitution of the State of Illinois;

WHEREAS, Ameren Illinois and its predecessor, Central Illinois Light Company a/k/a AmerenCILCO, have been the public utility companies providing electricity and natural gas service to the City during all relevant periods;

WHEREAS, in December 1991, the City enacted an ordinance imposing municipal utility taxes (“MUTs”) on the gross receipts of a utility’s sale of electric services for use or consumption within the corporate limits of the City, and in October 1998, the City changed its MUT on electric utility’s gross receipts to a tax on the privilege of using or consuming electricity within the corporate limits of the City;

WHEREAS, on October 21, 2010, the City issued a Notice of Audit (“Notice of Audit”) to Ameren Illinois auditing Ameren Illinois’ collection and remittance of MUTs for electric service;

WHEREAS, in December 2010, the City enacted an ordinance imposing MUTs on the gas gross receipts within the corporate limits of the City;

WHEREAS, the City issued Notices of Tax Liability (“NOTLs”) to Ameren Illinois on May 1, 2012, June 6, 2012, and December 20, 2012, alleging that Ameren Illinois has failed to collect from its customers and remit to the City certain MUTs for electric and gas service;

WHEREAS, Ameren Illinois timely protested and appealed to the Peoria Finance Department the City’s NOTLs on June 13, 2012, July 23, 2012, and February 18, 2013, respectively;

WHEREAS, hearings were held on these NOTLs from May 7-8, 2013 before Bridget Burke (the “Hearing Officer”), after which the Hearing Officer issued her decision on September 16, 2013;

EXECUTION VERSION

WHEREAS, on October 18, 2013, Ameren Illinois filed a Petition for Administrative Review of the Hearing Officer's decision in the Peoria County Circuit Court (*Ameren Illinois Co. v. City of Peoria*, Case No. 13 MR 541), and the Parties thereafter agreed to stay enforcement of the Hearing Officer's decision;

WHEREAS, there continue to exist a number of disputes related to the NOTLs and the liability assessed therein;

WHEREAS, the Parties desire to fully settle and resolve all claims that were or could have been brought against one another, as well as any other claims arising under or in connection with Ameren Illinois' collection, noncollection, remittance, nonremittance, payment and/or nonpayment of MUTs to the City pertaining to time period up to effective date of this Agreement, including but not limited to its collection and remittance or payment of MUTs pursuant to Peoria Code of Ordinances § 27-252, § 27-312, or any other legal authority; WHEREAS, there is in place between the Parties a certain electric franchise agreement, of which the Parties desire to modify terms and conditions;

NOW, THEREFORE, in consideration of and in reliance upon the respective representations, covenants, terms and conditions contained herein, as well as other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

TERMS OF AGREEMENT

1. Recitals. Each of the foregoing recitals constitutes a substantive provision of this Agreement and should be considered when interpreting other provisions of the Agreement.
2. Representations and Warranties. The Parties acknowledge and agree that the following representations and warranties are essential and material terms of this Agreement and without such representations and warranties, this Agreement would not have been made:
 - a) Each Party represents and warrants that it has not assigned, nor will it assign, to any other person or legal entity any claims releases or rights waived pursuant to this Agreement;
 - b) Each Party represents and warrants that this Agreement is made and executed under such Party's own free will and in accordance with such Party's own judgment and upon advice of counsel of its own choosing. No Party has been influenced, coerced, or induced to make this compromise and settlement by improper actions of any other Party;
 - c) Each Party represents and warrants that in entering into this Agreement, it is not relying on any statements or inducements except those that are expressly set forth herein;

EXECUTION VERSION

- d) Ameren Illinois represents and warrants that (i) it has the power and authority to enter into this Agreement and to do all the acts and things and to execute and deliver all other documents as are required to be done, observed, performed, executed or delivered by it in accordance with the terms hereof, and (ii) it has secured the necessary approval from any parent, affiliate, or any other entity or party necessary for it to effectuate this Agreement. Ameren Illinois further represents and warrants that its signatory below has the power and authority to enter into this Agreement, and that it has the power and authority to do all acts and things and to execute and deliver all other documents as are required to be done, observed, performed, executed or delivered by it in accordance with the terms hereof and that no further consent, approval, order, authorization or filing with any entity, or otherwise, is required in connection with the execution and delivery of this Agreement; and
- e) The City represents and warrants that it has the power and authority to enter into this Agreement and to do all the acts and things and to execute and deliver all other documents as are required to be done, observed, performed, executed or delivered by it in accordance with the terms hereof, including having obtained any necessary approvals from the City Council. The City further represents and warrants that its signatory below has the power and authority to enter into this Agreement, and that it has the power and authority to do all acts and things and to execute and deliver all other documents as are required to be done, observed, performed, executed or delivered by it in accordance with the terms hereof and that no further consent, approval, order, authorization or filing with any entity, or otherwise, is required in connection with the execution and delivery of this Agreement.
3. Waiver and Release by City. Except for the obligations created by the Agreement, the City, on behalf of itself, its agents, including Azavar Audit Solutions, Inc., attorneys, successors, predecessors, members, managers, affiliates, officers, directors, shareholders, employees, assigns, executors, administrators, heirs and legatees hereby releases, remises and forever discharges Ameren Illinois, its agents, attorneys, successors, predecessors, members, managers, affiliates, officers, directors, shareholders, employees, assigns, executors, administrators, heirs and legatees (the "Ameren Illinois Released Parties") from and against any and all claims, tax assessments, charges, complaints, demands, judgments, causes of action, rights of contribution and indemnification, attorneys' fees, costs and liabilities of any kind, whether known or unknown, and waives all rights against the Ameren Illinois Released Parties with respect to any and all actions, tax assessments, causes of action, claims, counterclaims, breaches, controversies, demands, damages, expenses, losses, costs, attorneys' fees, court costs, loss of income, loss of value or loss of services of any type whatsoever, known or unknown, past or present, whether in contract or in tort or under any statute, or under any legal theory, whether at law or in equity, matured or unmatured, fixed or contingent, relating in any way to (i) Ameren Illinois' collection, noncollection, remittance, nonremittance, payment and/or nonpayment of MUTs to the City, including but not limited to its collection, remittance

EXECUTION VERSION

and payment of MUTs pursuant to Peoria Code of Ordinances § 27-252, § 27-312, or any other legal authority, including any claims under Tax Violation Nos. PEO001-1 and PEO-001-2, both as to MUT on usage of electricity and on gas gross receipts, and/or (ii) relating in any way to the City's issuance and/or prosecution of Tax Violation Nos. PEO001-1 and PEO-001-2. The foregoing Release shall not in any way release any claims related to the enforcement of this Agreement.

4. Waiver and Release by Ameren Illinois. Except for the obligations created by the Agreement, Ameren Illinois on behalf of itself, its agents, attorneys, successors, predecessors, members, managers, affiliates, officers, directors, shareholders, employees, contractors, consultants, successors, assigns, executors, administrators, heirs and legatees hereby releases, remises and forever discharges the City, Azavar Audit Solutions, Inc., and counsel for the City and their respective agents, attorneys, successors, predecessors, members, managers, affiliates, officers, directors, shareholders, employees, contractors, consultants, assigns, executors, administrators, heirs and legatees (collectively, the "City Released Parties") from and against any and all claims, charges, complaints, demands, judgments, causes of action, rights of contribution and indemnification, attorneys' fees, costs and liabilities of any kind, whether known or unknown, and waives all rights against the City Released Parties with respect to any and all actions, causes of action, claims, counterclaims, breaches, controversies, demands, damages, expenses, losses, costs, attorneys' fees, court costs, loss of income, loss of value or loss of services of any type whatsoever, known or unknown, past or present, whether in contract or in tort or under any statute, or under any legal theory, whether at law or in equity, matured or unmatured, fixed or contingent, relating in any way to (i) Ameren Illinois' collection, noncollection, remittance, nonremittance, payment and/or nonpayment of its MUTs to the City including but not limited to its collection, remittance and payment of MUTs pursuant to Peoria Code of Ordinances § 27-252, § 27-312, or any other legal authority, including any claims under Tax Violation Nos. PEO001-1 and PEO-001-2, both as to MUT on usage of electricity and on gas gross receipts, and/or (ii) relating in any way to the City's issuance and/or prosecution of Tax Violation Nos. PEO001-1 and PEO-001-2. The foregoing Release shall not in any way release any claims relating to the enforcement of this Agreement.
5. Retraction of NOTLs. The City hereby retracts the NOTLs for Violation Nos. PEO001-1 and PEO-001-2, and those NOTLs have no further effect.
6. Right to Audit. City employees and agents, including Azavar Audit Solutions, Inc., to the extent so authorized by the City, have the right, consistent with the provisions of 65 ILCS § 5/8-11-2.5 and the limitations and protections stated in Section 16-122 of the Public Utilities Act, to audit Ameren Illinois' computation of uncollected MUTs on electricity usage of and on gas gross receipts to customers located within the municipal boundaries of the City, beginning with those collections that occur after the Effective Date of this Agreement. City employees and agents, including Azavar Audit Solutions, Inc., have no further right to audit Ameren Illinois' collections and remittances of MUT on electric usage and on gas gross receipts to customers located within the municipal boundaries of the City for any periods of time prior to the Effective Date of this Agreement, and all

EXECUTION VERSION

existing audits by the City of Ameren Illinois' collections and remittances of MUT on electric usage and gas gross receipts within the municipal boundaries of the City, including the audit reflected by the Notice of Audit, are hereby deemed closed pursuant to 50 ILCS § 45/35.

7. Franchise Agreement. This agreement is not effective unless and until the City has enacted the proposed ordinance attached as Exhibit A ("Ordinance"). Provided that the Ordinance is enacted and published in the form attached as Exhibit A and in the manner prescribed by law, Ameren Illinois agrees to sign and file with the City Clerk the Acceptance attached to the Ordinance within thirty (30) days of receiving notice that such Ordinance has been enacted. The Parties agree that the effective date of the Ordinance will be January 1, 2015.
8. Remaining Disputed Addresses. To the extent that, as of the Effective Date, the Parties continue to dispute the proper taxing jurisdiction of any addresses, the Parties agree to work in good faith to resolve those disputes. Any uncollected or unpaid MUT that exists up to the Effective Date relating to the addresses described in this Paragraph shall be subject to the Waiver and Releases contained in Paragraphs 3 and 4 of this Agreement.
9. Premises Lists. Beginning with the calendar year 2015 and continuing through calendar year 2020, Ameren Illinois will provide the City with annual lists of customers from which it is collecting and remitting the City's MUT, consistent with company policy, practices and the limitations and protections stated in Section 16-122 of the Public Utilities Act ("Premises Lists"). The City agrees, within ninety (90) days of receipt of each Customer List, to notify Ameren Illinois of any additions or deletions from the Customer List.
10. Tax Reporting. The Parties agree to use their best efforts to come to an agreement as to what electric and gas accounts Ameren Illinois has added to its collection and remittance of the City's MUT as a result of the audit process that was commenced by the Notice of Audit. These accounts shall be referred to as the Peoria Added Addresses. Within 90 days of the Parties' agreement as to a list of the Peoria Added Addresses, Ameren Illinois agrees, subject to the limitations and protections stated in Section 16-122 of the Public Utilities Act, to provide the City a report that shall contain: (1) the total amount of electric and gas MUT remitted by Ameren Illinois for the Peoria Added Addresses between October 21, 2010 and December 31, 2014; and (2) the total amount of gas MUT remitted by Ameren Illinois during the calendar year 2014 associated with gas services other than charges for gas supply and delivery that had previously not been taxed by Ameren Illinois. On or before March 31, 2016 and on each March 31 through 2020, Ameren Illinois agrees, subject to the limitations and protections stated in Section 16-122 of the Public Utilities Act, to provide the City a report that shall contain: (1) the total amount of electric and gas MUT remitted by Ameren Illinois for the Peoria Added Addresses during the previous calendar year; and (2) the total amount of gas MUT remitted by Ameren Illinois during the previous calendar year associated with gas services other than charges for gas supply and delivery that had previously not been taxed by Ameren Illinois.

EXECUTION VERSION

11. Dismissal of Action. Upon the Effective Date of this Agreement, and as a material condition hereof, the Parties will execute a Stipulation of Dismissal in the form annexed hereto as Exhibit B (the “Dismissal Stipulation”) that dismisses with prejudice all claims raised by either Party in *Ameren Illinois Co. v. City of Peoria*, Case No. 13 MR 541 (Cir. Ct., Peoria Cty.) (filed October 18, 2013).
12. Vacating the Hearing Officer’s Decision. Upon the Effective Date of this Agreement, the Hearing Officer’s decision of September 16, 2013 is vacated, and the Parties agree that the decision will have no further effect.
13. Confidentiality; Non Use. Each Party agrees that, except as to public disclosures required by law, it and each of its respective agents and assigns, including Azavar Audit Solutions, Inc., shall not disclose, publish, publicize or disseminate, or cause to be disclosed, published, publicized or disseminated, to the public in any way all or any part of the substance, terms or content of this Agreement. Each Party further agrees to refrain from taking any action or causing any third parties to take any action that would require public disclosure of this Agreement under applicable law. In the event public disclosure of this Agreement is sought by a third party, through a subpoena, civil investigative demand, or similar instrument, the Party receiving said request will inform the other Party within 5 business days of such receipt. This Agreement may not be used as evidence in any subsequent proceeding of any kind between or among the Parties and/or their respective agents or assigns (without the other Party’s written consent), except in a proceeding that either Party institutes against the other Party alleging a breach or to enforce the provisions of this Agreement, or as otherwise required by law. Nothing herein shall prevent either Party from using the Agreement as evidence to defend claims brought by third parties. For avoidance of doubt, each of the Parties has the right to disclose the terms of this Agreement to its employees, including executives, board members, attorneys, auditors (including Azavar Audit Solutions, Inc.), tax preparers and insurers. For further avoidance of doubt, either Party may disclose the fact that it has settled (without disclosing the terms of such settlement) the NOTLs (Tax Violation Nos. PEO001-1 and PEO-001-2). Each Party may also disclose the content of the Ordinance attached as Exhibit A to the Settlement Agreement. Notwithstanding the preceding terms in this Paragraph, disclosure of terms of the agreement is permitted without approval of or notice to the other Party:
 - a) in connection with the City’s pre-existing procedures adopted pursuant to the Illinois Open Meetings Act (5 ILCS § 120) related to publishing agendas, minutes, audio recordings or video recordings of City Council meetings, or to publication of resolutions or ordinances enacted by the City Council;
 - b) in response to a valid legal request made pursuant to the Freedom of Information Act;
 - c) in the event that all or portions of the Agreement are publicly disclosed pursuant to this Paragraph, by either Party in order to respond to requests for information from, or engage in written or oral correspondence with, government agencies,

EXECUTION VERSION

customers, citizens, or media concerning the Agreement. In such event the disclosing Party shall timely notify the other Party of the intended disclosure prior to making the same. Any disclosure provided by a Party pursuant to this subsection shall be issued in good faith, mindful of the intent of Paragraph 15 below (“No Admission”), and shall not misrepresent this Agreement or the underlying facts;

- d) by the City in budget or other ordinary-course financial documents that may be required by law to be publicly disclosed or publicly available, but such disclosures shall be limited to the amount of revenue realized and the fact that such revenues derived from a legal settlement with Ameren Illinois related to MUTs and are in accord with MUT charges due and owing pursuant to Section 9-221 of the Public Utilities Act;
 - e) by either Party’s outside financial auditor, as such outside financial auditor, in its sole discretion, deems necessary to include in audit report(s) that may be required by law to be publicly disclosed or available. For avoidance of doubt, Azavar Audit Solutions, Inc. is not an “outside financial auditor” for the purposes of this subparagraph;
 - f) by either Party’s attorneys in any communication with any client protected by attorney-client privilege;
 - g) by Cozen O’Connor and/or any other attorney or attorneys representing Azavar Audit Solutions, Inc. in accordance with the Confidentiality Agreement between Ameren Illinois and Azavar attached as Exhibit C hereto.
14. Binding Effect. Upon the Effective Date of this Agreement, its terms, covenants, conditions, provisions, obligations, undertakings, rights and benefits shall be binding upon and shall inure to the benefit of the undersigned Parties and their respective heirs, executors, liquidators, administrators, agents and/or representatives (including Azavar Audit Solutions, Inc.), subrogees, successors and assigns.
15. No Admission. Execution of this Agreement shall not in any way be construed as an admission of wrongdoing or liability with respect to any matter released hereby by either of the Parties, and any such alleged wrongdoing or liability is expressly denied. This Agreement is a compromise of disputed claims and is entered into knowingly and voluntarily by the Parties.
16. Dispute Resolution. Any controversy or claim arising out of or relating to this Agreement, or the breach thereof, shall be settled by arbitration administered by the American Arbitration Association under its Commercial Arbitration Rules, and any judgment on the award rendered by the arbitrator(s) may be entered in any court having jurisdiction over the Parties. The arbitration shall take place within 25 miles of 1901 Chouteau Avenue, St. Louis, Missouri.

EXECUTION VERSION

- 17. Governing Law. This Agreement shall be governed and construed as to its validity, interpretation and effect by the laws of the State of Illinois, notwithstanding the choice of law rules of such jurisdiction or any other jurisdiction.
- 18. Severability. Should any provision of the Agreement be held invalid or illegal, the Parties agree that such invalidity or illegality shall not invalidate the whole of this Agreement, but rather the Agreement shall be construed as if it did not contain the invalid or illegal part, and the rights and obligations of the Parties shall be construed and enforced accordingly.
- 19. Counterparts; Execution. The Agreement may be executed in counterparts, each of which shall be deemed an original, but which together shall constitute one and the same instrument. For purposes of signing the Agreement, signatures transmitted by facsimile or by e-mail in .pdf form will be deemed equivalent to an original signature.
- 20. Entire Agreement. This Agreement constitutes the entire agreement between the Parties with respect to Ameren Illinois' MUT liability associated with its provision of service in the City up until the Effective Date, or for revenues therefrom, and supplants and replaces any and all prior understandings, agreements or statements. Each Party warrants that in entering into this Agreement it has not relied upon any representations, warranties, commitments, promises, omissions or inducements except those that are expressly set forth herein or in any exhibit hereto.

IN WITNESS WHEREOF, the Ameren Illinois, the City of Peoria, and Azavar Audit Solutions, Inc. have caused this Agreement to be duly executed as of the day and year first above written by their respective representatives thereunto duly authorized.

Date: January __, 2016

AMEREN ILLINOIS COMPANY
By: Craig Nelson
Name: Craig Nelson
Title: Senior Vice President

Date: January __, 2016

CITY OF PEORIA, ILLINOIS
By: Patrick Ulrich
Name: Patrick Ulrich
Title: City Manager

Date: January __, 2016

AZAVAR AUDIT SOLUTIONS, INC.
(only as to obligations set forth in Paragraph 13)
By: _____

EXECUTION VERSION

Name: _____

Title: _____