

AN ORDINANCE AUTHORIZING THE MAYOR TO EXECUTE A PROFESSIONAL SERVICES REIMBURSEMENT AGREEMENT WITH AVON LAKE ENVIRONMENTAL REDEVELOPMENT GROUP, LLC FOR THE POWER PLANT REDEVELOPMENT PROJECT AND DECLARING AN EMERGENCY.

WHEREAS, the City of Avon Lake desires to enter into a professional services reimbursement agreement with Avon Lake Environmental Redevelopment Group, LLC for reasonable out-of-pocket fees and expenses incurred by the City for development consultant services.

NOW THEREFORE, BE IT ORDAINED BY THE COUNCIL OF
THE CITY OF AVON LAKE, STATE OF OHIO:

Section No. 1: That the Mayor is hereby authorized and directed to enter into a reimbursement agreement with Avon Lake Environmental Redevelopment Group, LLC of Louisville, Kentucky for development consultant services for an amount not to exceed \$25,000. (Exhibit A)

Section No. 2: That it is found and determined that all formal actions of this Council concerning and relating to the adoption of this Ordinance were adopted in an open meeting of this Council and that all deliberations of this Council and any of its committees which resulted in such formal actions, were in meetings open to the public, in compliance with all legal requirements, including Section 121.22 of the Ohio Revised Code.

Section No. 3: This Ordinance is declared to be an emergency measure necessary for the immediate preservation of public health, safety, and welfare. Therefore, this Ordinance shall be in full force and effect immediately upon its adoption and approval by the Mayor.

PASSED: 5/09/2023

/s/ Martin E. O'Donnell

President of Council

POSTED: 5/12/2023

APPROVED: 5/10/2023

ATTEST: */s/ Valerie E. Rosmarin*

Clerk of Council

/s/ Gregory J. Zilka

Mayor

PROFESSIONAL SERVICES REIMBURSEMENT AGREEMENT FOR POWER PLANT
REDEVELOPMENT PROJECT

by and between
CITY OF AVON LAKE, OHIO

and
AVON LAKE ENVIRONMENTAL REDEVELOPMENT GROUP, LLC

This Professional Services Reimbursement Agreement for Power Plant Redevelopment Project (the “Agreement”) is entered into this ____ day of _____, 2023 (the “Effective Date”), by and between the City of Avon Lake, Ohio (“City”), a municipal corporation duly organized and validly existing under the Constitution and the laws of the State of Ohio and its Charter, and Avon Lake Environmental Redevelopment Group, LLC, (“ALERG”), a limited liability company duly organized and validly existing under the laws of the State of Ohio, with its principal place of business in Louisville, Kentucky. (The City and ALERG are referred to together herein as the “Parties” and each individually as a “Party.”)

WHEREAS, ALERG and the City have been engaged in ongoing community development discussions and negotiations in connection with ALERG’s redevelopment plans for real property within the City, now known as the Avon Lake Generating Station property (the “Property”);

WHEREAS, ALERG has completed the acquisition of the Avon Lake Generating Station and certain adjacent property and has begun environmental remediation in preparation for redevelopment of the Property. ALERG is responsible for the shutdown and decommissioning of the coal-fired power plant, which is planned to be redeveloped as a mixed-use residential and commercial development with lakefront access for the public over the Property (the “Project”);

WHEREAS, the City and ALERG intend to discuss entering into a development agreement related to: the creation of a mixed-use zoning district, certain property transactions, and certain development incentives that may include but may not be limited to the creation of a tax increment financing (“TIF”) incentive district for the Project (the “Development Agreement”);

WHEREAS, the City has retained or may retain professional legal and financial development consultants of its own choosing at its expense to provide special counsel and representation of the City’s interests in the furtherance of the Project and in particular the potential creation of a TIF district to support the Project;

WHEREAS, ALERG has agreed to reimburse the City for its reasonable expenses for legal and financial development professionals’ fees incurred by the City in connection with the Project and specifically related to the establishment of a TIF district;

NOW, THEREFORE, in consideration of the foregoing and the promises and mutual covenants contained herein, the Parties agree as follows:

1. Reimbursement of City for Out-of-Pocket Professional Fees and Expenses. ALERG shall reimburse the City, up to an amount not to exceed Twenty-Five Thousand Dollars (\$25,000.00) for all reasonable out-of-pocket fees and expenses (“City Expenses”) incurred by the City from the Effective Date for: (i) the legal and other professional financial development consulting services as selected by the City (collectively, the “Consultants”) to develop and negotiate the Development Agreement and to analyze all legal and financial incentive aspects of the Property’s redevelopment; (ii) fulfillment of the City’s obligations to file applications for any exemptions from property taxes; and (iii) all actual expenditures of the City in connection with the exemption filings, including, but not limited to, legal fees and financial consulting fees. In the event it is anticipated by the Parties that the City Expenses will exceed the Twenty-Five Thousand Dollars (\$25,000.00), when the reimbursement of City Expenses is within Five Thousand Dollars (\$5,000.00) of that initial \$25,000.00 limit, the Parties agree to negotiate an additional amount to cover reasonable and necessary City Expenses for the Project. For purposes of clarity, neither the City nor ALERG shall have any obligation to enter into any Development Agreement or apply for any exemptions from property taxes unless such Development Agreement is fully approved in writing by the Parties.

2. Objections to Consultant Reimbursements. ALERG shall receive written notice of the City’s Consultants upon their being engaged by the City and of their compensation and hourly rates, if applicable. ALERG shall not have the right to object to any Consultant’s compensation or hourly rate, unless such compensation and hourly rate is unreasonable based upon the Consultants’ qualifications and scope of work. In the event of an objection by ALERG, the Parties shall meet and confer and make best efforts to resolve the objection.

3. Procedures for Reimbursements. ALERG shall reimburse the City for City Expenses incurred by the City for services performed by the Consultants after the Effective Date and upon submission by the City to ALERG of an itemized invoice on a monthly basis for such fees and expenses. Each invoice shall set forth a detailed description of said fees and expenses and the services provided for each invoice but without any detailed description of the actual Consultant work that is protected by the attorney-client privilege. ALERG shall make payment of the itemized invoices from the City within thirty (30) days of its receipt of an invoice meeting the foregoing criteria or shall have fifteen (15) days from receipt of the invoice to object to it. In the event of an objection by ALERG, the Parties shall meet and confer and make best efforts to resolve the objection. In the event the Parties are unable to resolve the objection, either Party may terminate this Agreement by written notice to the other Party and neither Party shall have any further liability to the other Party under this Agreement.

4. Agreement for Reimbursements.

a. This Agreement is an interim agreement in contemplation by the Parties of the execution of a Development Agreement, adoption of appropriate zoning regulations for the Project, and approval of a financial development incentive of some type for the Project (such as tax increment financing (TIF)). If the Project does not move forward for any reason whatsoever, except for the reason that the City, in its sole discretion, decides not to go forward with the Project approvals, ALERG shall remain obligated to pay all City Expenses incurred to the date of such decision not to

go forward, and the City shall be entitled to retain all amounts for City Expenses so reimbursed by ALERG pursuant to this Agreement.

b. In the event there is a TIF approved for the Project, ALERG shall be reimbursed from the TIF proceeds for all reimbursement payments to the City for the City Expenses and such reimbursement from the TIF proceeds shall be paid to ALERG within two (2) years of the commencement of the TIF.

5. Successors and Assigns. Neither Party hereto may assign or delegate any of its rights or obligations hereunder without the prior written consent of the other Party, which assignment shall not be unreasonably delayed or denied.

6. Amendment and Waiver. The provisions of this Agreement may be amended and waived only with the prior written consent of both Parties.

7. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Ohio, without regard to conflicts of law principles.

8. Construction. As both Parties are represented by counsel and as both Parties have equal negotiating power, there shall be no construction in favor of any Party due to the fact that counsel for the other Party may not have been responsible for the drafting of this Agreement.

9. Severability. Whenever possible, each provision of this Agreement shall be interpreted in such manner as to be effective and valid under applicable law, but if any provision of this Agreement is held to be prohibited by or invalid under applicable law, such provision shall be ineffective only to the extent of such prohibition or invalidity, without invalidating the remainder of this Agreement.

10. Counterparts; Electronic Transmission. This Agreement may be executed in separate counterparts (including by means of facsimile, email of a .pdf or similar file or other electronic transmission), each of which shall be deemed to be an original and all of which taken together shall constitute one and the same agreement. This Agreement, to the extent signed and delivered by means of a facsimile machine, email of a .pdf or similar file or other electronic transmission, shall be treated in all manner and respects and for all purposes as an original agreement and shall be considered to have the same binding legal effect as if it were the original signed version thereof delivered in person.

11. Notices. Any notices, submissions, transmittals and remittances required herein shall be sent to:

As to the City:

City of Avon Lake, Ohio
150 Avon Belden Road
Avon Lake, OH 44012
Attention: Mayor
GZilka@avonlake.org

With a Copy To:

Gary Ebert, Esq.
Director of Law
150 Avon Belden Road
Avon Lake, OH 44012
GAEbert@avonlake.org

Todd S. Davis, Esq.
Attorney at Law
3 Hemisphere Way
Bedford, OH 44146
tdavis@hemispheredev.com

(a) As to the Developer:

Avon Lake Environmental Redevelopment Group, LLC
12601 Plantside Drive
Louisville, KY 40299
Attention: Steve Brehm, Vice President of Legal Affairs and
Corporate Secretary
Charah Solutions, Inc.
sbrehm@charah.com

With a Copy To:

R. Todd Hunt, Esq.
Roetzel & Andress, LPA
1375 East Ninth Street
One Cleveland Center, 10th Floor
Cleveland, OH 44114
RTHunt@ralaw.com

The City and ALERG have caused this Agreement to be executed in their respective names by their duly authorized representatives, all as of the date first written above.

CITY OF AVON LAKE, OHIO

By: _____
Gregory Zilka, Mayor

Approved as to Form:

Gary Ebert
Director of Law, City of Avon Lake, Ohio

**AVON LAKE ENVIRONMENTAL
REDEVELOPMENT GROUP, LLC**

By: _____

Print Name: _____

Title: _____