

AN ORDINANCE PROVIDING FOR LEGAL COUNSEL REGARDING ZONING MATTERS
PURSUANT TO THE REDEVELOPMENT OF THE AVON LAKE POWER PLANT AND
DECLARING AN EMERGENCY.

WHEREAS, the Administration and Council has authorized Berns, Ockner & Greenberger, LLC to represent the City in the redevelopment of the Avon Lake Power Plant relating to zoning matters.

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

Section No. 1: That Berns, Ockner & Greenberg, LLC be, and they are hereby authorized and directed to provide professional services for the redevelopment of the Avon Lake Power Plant. **(Exhibit A)**

Section No. 2: That the necessary expenses for said representation be paid upon approval voucher submitted therefore, in an amount not to exceed \$25,000.

Section No. 3: 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. 4: That this Ordinance is hereby declared to be an emergency measure, the emergency being the necessity of providing legal counsel regarding zoning matters in the redevelopment of the Avon Lake Power Plant, thus for the health, safety, and welfare of the public. Therefore, this Ordinance shall be in full force and effect from and immediately after its passage and approval by the Mayor.

1st reading: 5/09/2023

2nd reading: 5/22/2023

3rd reading:

PASSED: 6/12/2023

/s/ Martin E. O'Donnell
President of Council

POSTED: 6/16/2023

APPROVED: 6/13/2023

ATTEST: /s/ Valerie E. Rosmarin
Clerk of Council

/s/ Gregory J. Zilka
Mayor

BERNS, OCKNER & GREENBERGER, LLC

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Elizabeth Wells Rothenberg, Of Counsel

*Also admitted in New York and D.C.

June 12, 2023

VIA EMAIL gaebert@avonlake.org

Gary Ebert, Esq.
The City of Avon Lake
150 Avon Belden Road
Avon Lake, OH 44012

**Re: Counseling City of Avon Lake Regarding Zoning Matters Relating to
Redevelopment of Avon Lake Power Plant**

Dear Mr. Ebert:

Thank you for selecting Berns, Ockner & Greenberger, LLC, as counsel to represent the City of Avon Lake in the above matter. We value the relationships we build with our clients and believe that it will be mutually beneficial to have a clear understanding of our engagement. Accordingly, this letter confirms our representation and your authorization for us to act on your behalf. If you have any questions concerning this letter, please call me.

Scope of the Engagement. You have requested our representation in connection with the above-referenced matter. In this engagement, we expect to represent you in the above. You have not requested that we perform any other services or functions or assume any other responsibilities.

Conflict of Interest Review. For the purpose of checking whether there exists any conflict of interest with respect to this engagement, we have searched our conflict of interest database under the following:

**City of Avon Lake
Avon Lake Environmental Redevelopment Group, LLC
("ALERG, LLC")
Charah Solutions, Inc.**

We will assume that the above listing is accurate and complete unless you otherwise advise us. We also request that you notify us promptly if any additional searches are required because of any change in your circumstances.

Professional Services and Fees. The Rules of Professional Conduct generally permit a law firm to consider a number of factors in pricing legal services, including the time and labor required, the novelty and difficulty of the questions involved, and the skill requisite to perform the legal service

properly; the likelihood, if apparent to the client, that the acceptance of the particular employment will preclude other employment by the lawyer; the fees customarily charged in the locality for similar legal services; the amount involved and the results obtained; the time limitations imposed by the client or by the circumstances; the nature and length of the professional relationship with the client; the experience, reputation, and ability of the lawyer or lawyers performing the services; and whether the fee is fixed or contingent.

In providing services, we may decide that it is necessary or appropriate to involve multiple members, of counsel and other contract attorneys, and legal assistants having different levels of experience, skills, and rates for effective management of the matter. Our current hourly rates range from \$350 to \$515 for members and \$300 to \$375 for of counsel and other contract attorneys, depending on the type of engagement. We review and revise the billing rates from time to time to reflect changes in levels of experience and various economic factors.

My current hourly rate on this engagement will be \$475.00. The current hourly rate on this engagement for Majeed Makhoulf will be \$450.00.

Our fees will be determined based on the amount of time spent on this engagement (in increments of one-tenth ($\frac{1}{10}$) hour) based on the hourly rates applicable to the engagement in effect at the time services are performed. Also, for efficiency, we may combine multiple tasks into one entry (block billing) unless you instruct us otherwise in writing.

Expenses and Other Charges. In addition to fees for our professional services, there may be charges for expenses which we incur, such as filing fees, travel, and copying charges. Expenses incurred will be billed at our cost. We may, on occasion, request prepayment for extraordinary expenses or other costs. Copying charges will be billed as follows:

Copies:	\$0.25 per page
Color Copies:	\$0.50 per page

Invoices and Payments. We will render invoices to you monthly for legal services, expenses and other charges. Our invoices are payable upon receipt and are considered overdue if not paid within 21 days.

Tax Advice. If our representation involves advice with respect to any Federal tax issue, or if, in the course of our representation, we provide any advice with respect to a Federal tax issue (in either case, "Federal Tax Advice") then, unless we have discussed the matter with you and mutually agreed otherwise, all written communication relating to Federal Tax Advice with respect to your matter, including electronic communication, is not intended or written to be used, and cannot be used, for the purpose of avoiding penalties that may be imposed under the Internal Revenue Code of 1986, as amended. We may specifically reiterate this limitation to you from time to time. Further, certain Federal Tax Advice cannot be given unless it complies with specific opinion rules which have been adopted by the Internal Revenue Service (a "Covered Opinion"). Unless specifically set forth in the Engagement Letter, and affirmatively designed as such, the Federal Tax Advice we provide with

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respect to your matters will not be a Covered Opinion. Unless we have been engaged otherwise as specifically set forth in the Engagement Letter, no one, without our written consent, may use or refer to any part of any Federal Tax Advice we have provided in promoting, marketing or recommending a partnership or other entity, investment plan or arrangement to any other taxpayer. Furthermore, any Federal Tax Advice we provide may not be shared with any other person without our prior written consent other than as required by law or ethical rules.

Conflict Waiver. As explained during our interview, our firm traditionally represents property owners and developers in development matters, including land-use and zoning. In agreeing to undertake this representation, we need to ensure that our firm is not prevented from representing clients in land use and zoning matters either involving or before the City of Avon Lake. You have agreed to waive any such conflict, which waiver is effectuated through the signature of this engagement letter. Notwithstanding the foregoing, our firm will not represent any client in any land use or zoning matter relating to the Avon Lake Power Plant property without a separate waiver of conflict executed by the City of Avon Lake, which waiver the City may decline to grant in its sole discretion.

Withdrawal. We reserve the right to withdraw from representation in the event that our invoices are not timely paid. We also reserve the right to withdraw from representation in the event that continued representation would violate our obligations as attorneys under the Ohio Rules of Professional Conduct.

Document Retention and Destruction. When our work for you pursuant to this engagement is concluded, we will send you a letter confirming the conclusion of our services for this engagement and letting you know how long we will maintain your documents. Upon expiration of the document-retention period, the documents, including electronically stored information, may be permanently destroyed. You may retrieve your documents at any time before the date of destruction specified in the letter.

Acceptance of Engagement. If this letter is acceptable to you, please countersign and return it to me. Unless terminated earlier by you or us, this engagement will end when we have completed the work described in the Scope of the Engagement paragraph above.

We are pleased that you selected Berns, Ockner & Greenberger, LLC, to represent you and look forward to serving you.

Sincerely,

A handwritten signature in blue ink, appearing to read "Jordan Berns", followed by a horizontal line.

Jordan Berns

For Berns, Ockner & Greenberger, LLC

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ACCEPTED AND AGREED TO:

THE CITY OF AVON LAKE

(Signature)

(Title)

(Date)