

AN ORDINANCE PROVIDING LEGAL REPRESENTATION WITH THE PURCHASE AGREEMENT BETWEEN THE CITY OF AVON LAKE AND AVON LAKE REDEVELOPMENT GROUP, LLC, (ALERG) AND DECLARING AN EMERGENCY.

WHEREAS, the Administration and Council have instructed Berns, Ockner & Greenberger, LLC, to represent the City with the purchase agreement between ALERG regarding the former Power Plant.

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

Section No. 1: That Berns, Ockner & Greenberger, LLC, be, and they are hereby authorized and directed to provide legal representation regarding the purchase agreement between ALERG of parcels of land located at the former Power Plant.

Section No. 2: That the Mayor is authorized to execute an agreement between Berns, Ockner & Greenberger, LLC, a copy of which is attached hereto and incorporated herein.

Section No. 3: That the necessary expenses for said representation shall be paid upon approval voucher submitted therefore in an amount not to exceed \$117,250, which is reimbursable through the Interim Development Agreement passed by Ordinance No. 24-143 on November 12, 2024.

Section No. 4: That it is found and determined that all formal actions of this Council concerning and relating to the passage of this Ordinance were adopted in an open meeting of this Council, and that all deliberations of this Council and of 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. 5: That this Ordinance is hereby declared to be an emergency measure, the emergency being the necessity of providing the City with legal representation regarding the acquisition of real property, thus ensuring 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.

PASSED: 3/24/2025

/s/ Jennifer G. Fenderbosch  
Council President

POSTED: 3/28/2025

APPROVED: 3/25/2025

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

/s/ Mark A. Spatzel  
Mayor

## BERNS, OCKNER & GREENBERGER, LLC

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March 17, 2025

VIA EMAIL [gaebert@avonlake.org](mailto:gaebert@avonlake.org)

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

**Re: Counseling in Connection with Purchase Agreement between Avon Lake Environmental Redevelopment Group LLC and City of Avon Lake, Ohio**

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 \$525 for members and \$325 to \$400 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 for Majeed G. Makhlof will be \$475.00.

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

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.

**Corporate Transparency Act.** Our engagement does not include any advice or legal services relating to the federal Corporate Transparency Act or any similar state statutes (collectively, "CTA") or your obligations under the CTA. Unless we are explicitly retained to advise on the CTA, we have no responsibility to advise you on compliance with the CTA, the applicability of CTA exemptions, filing requirements under the CTA or any other aspect of the CTA.

When our work involves creation of a new legal entity, if requested, we will provide you any firm-specific information required for a CTA filing, but we will not be responsible for making any initial or updated filing required under the CTA, which shall remain the responsibility of the client. We also will not be responsible for monitoring the entity for any changes that necessitate an initial or updated filing under the CTA, which shall remain the responsibility of the client.

**Electronic Communications and Data.** The firm often uses electronic devices/internet-based services (such as e-mail, phones, electronic data, cloud-based document-review and document-storage technology). Most such technology involves some risk that your information could be improperly accessed by third parties through a "hack" or other techniques. However, we believe that the benefits of using it outweigh the risk of accidental disclosure, and we will use that technology unless you instruct us otherwise.

You should also take steps to protect the confidentiality of your communications with us. This includes not using electronic devices, networks or e-mail addresses that are owned, controlled, or may be accessed by others, such as an employer, a hotel or a library. Failure to do so can result in improper access and waiver of attorney-client privilege for our communications.

**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

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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,



Jordan Berns

For Berns, Ockner & Greenberger, LLC

ACCEPTED AND AGREED TO:

**THE CITY OF AVON LAKE**

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(Signature)

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(Title)

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(Date)