

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

WHEREAS, on May 9, 2023, Council authorized a Professional Services Reimbursement Agreement with Avon Lake Environmental Redevelopment Group, LLC, of Louisville, Kentucky, by Ordinance No. 23-81, to cover reasonable out-of-pocket expenses incurred by the City for development consulting services related to the Power Plant Redevelopment Project; and

WHEREAS, Council desires to enter into a First Amendment to the Agreement.

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 First Amendment to the Reimbursement Agreement with Avon Lake Environmental Redevelopment Group, LLC, of Louisville, Kentucky, for development consultant services for an amount not to exceed \$310,175. (Exhibit A)

Section No. 2: 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 any of its committees, which resulted in such formal action, 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, the emergency being the necessity 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: 5/27/2025

/s/ Jennifer G. Fenderbosch  
Council President

POSTED: 5/30/2025

APPROVED: 5/28/2025

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

/s/ Mark A. Spaetzel  
Mayor

FIRST AMENDMENT  
TO  
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 First Amendment to Professional Services Reimbursement Agreement for Power Plant Redevelopment Project (the “Amendment”) is entered into this 16th day of April, 2025 (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 collectively herein as the “Parties” and each individually as a “Party.”)

WHEREAS, on May 2, 2023, ALERG and the City entered into the “Professional Services Reimbursement Agreement for Power Plant Redevelopment Project” (the “Original Agreement”) wherein the Parties anticipated 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 Redevelopment Project at the real property known as the Avon Lake Generating Station property on Lake Road in the City (the “Property”) (and collectively the “Project”);

WHEREAS, during the planning and negotiation of an interim development agreement between the Parties, the City expressed its desire to purchase approximately 23.22 acres along the lakefront of the Property for public park purposes (the “Park Land”);

WHEREAS, the potential purchase of the Park Land by the City brings into play various environmental remediation issues for the lakefront Park Land and also necessitating the engagement of environmental consultants by both Parties therefor;

WHEREAS, on or about November 13, 2024, the Parties entered into an “Interim Development Agreement” which addresses all of the foregoing matters in these recitals, including provisions for reimbursement to the City by ALERG for certain professional services incurred by the City;

WHEREAS, the City has continued to retain professional legal, financial development, and environmental consultants of its own choosing at its expense to provide special legal counsel and consulting services to further the City’s interests in the Project, including but not limited to acquisition of the Park Land, the rezoning for the Project, and creation of a TIF district to support the Project;

WHEREAS, pursuant to the Interim Development Agreement, ALERG has agreed to reimburse the City for its reasonable and necessary expenses for certain legal counsel, financial development, and environmental professionals' fees incurred by the City in connection with the Project, including but not limited to the acquisition of the Park Land;

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

1. The provisions of this Amendment shall take precedence over the provisions of the Original Agreement but all provisions of the Original Agreement which are not in conflict with the provisions of this Amendment shall remain in full force and effect.

2. Reimbursement of City for Out-of-Pocket Professional Fees. ALERG shall reimburse the City, for the reasonable and necessary out-of-pocket fees ("City Expenses") incurred by the City beginning on January 1, 2025, for the legal services, professional financial development consulting services, and environmental consulting services (each is a "Consultant" and collectively, the "Consultants") as set forth in the "Interim Budget for Interim Development Agreement Cost Reimbursement", attached hereto and fully incorporated herein by reference as "Exhibit A", and which may be amended by the Parties from time-to-time upon their mutual written consent.

3. Deposit by ALERG with City. Within five (5) business days of the Effective Date, ALERG shall deposit with the City an initial amount of Fifty Thousand Dollars (\$50,000.00) to cover reimbursements to the City as set forth in Section 2 of this Amendment. When the reimbursement of City Expenses by ALERG is within Ten Thousand Dollars (\$10,000.00) of that initial \$50,000.00 deposit, ALERG agrees to deposit an additional amount to bring the deposit up to \$50,000.00 to cover the 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 final Development Agreement or apply for any exemptions from property taxes unless such final Development Agreement is fully approved in writing by the Parties.

4. Objections to Consultant Fee Reimbursements. ALERG shall have the right to object to any Consultant's compensation which is unreasonable based upon the Consultant's qualifications for the services being invoiced to the City, the time required to perform the service being invoiced, and the necessity for the service. In the event of an objection by ALERG, the Parties shall meet and confer and make best efforts to resolve the objection.

5. Procedure for Reimbursements. ALERG shall reimburse the City for City Expenses incurred by the City for services performed by the Consultants after January 1, 2025, and upon submission by the City to ALERG of an itemized invoice on a monthly basis for such Consultants' fees. Each invoice shall set forth a detailed description of the services rendered to the City, the time spent rendering each service, and the fees for each service rendered. To the extent the description of service is protected by the attorney-client privilege, those service entries so protected may be redacted from the invoice supplied to ALERG. Payment by the City of the itemized Consultants' invoices may be made no less than sixteen (16) days after ALERG's receipt of the invoice which meets the foregoing criteria unless within the fifteen (15) days from

ALERG's receipt of the invoice it notifies the City of its objection to the invoice. 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 Amendment by written notice to the other Party and neither Party shall have any further liability to the other Party under this Amendment.

6. Agreement for Reimbursements.

a. This Amendment is an interim agreement in contemplation by the Parties of the execution of a final 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 that were obligated to be reimbursed by ALERG pursuant to this Amendment.

b. In the event there is 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 one (1) year of the commencement of the TIF.

7. 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.

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

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

10. Construction. As both Parties are represented by legal 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 Amendment or any part thereof.

11. Severability. Whenever possible, each provision of this Amendment shall be interpreted in such manner as to be effective and valid under applicable law, but if any provision of this Amendment 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 Amendment.

12. Counterparts; Electronic Transmission. This Amendment 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 Amendment, 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.

13. 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  
MSpaetzel@avonlake.org

With a Copy To:

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

and

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, 10<sup>th</sup> Floor  
Cleveland, OH 44114  
rthunt@ralaw.com

The City and ALERG have caused this Amendment 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: \_\_\_\_\_  
Mark Spaetzel, Mayor

Approved as to Form:

\_\_\_\_\_  
Gary A. Ebert  
Director of Law, City of Avon Lake, Ohio

**AVON LAKE ENVIRONMENTAL  
REDEVELOPMENT GROUP, LLC**  
by Charah, LLC, its Manager

By: \_\_\_\_\_  


Print Name: Steve Brehm

Title: Chief Counsel

## EXHIBIT A

### Initial Budget for Interim Development Agreement Cost Reimbursement (Revised 3/24/25) (January 1, 2025 - July 1, 2025)

	<u>Firm</u>	<u>Hours</u>	<u>Budget</u>
<b>1.0 LEGAL FEES</b>			
<b>1.1 Purchase Agreement Negotiation and City Council Approval</b>			<b>\$47,000.00</b>
All work expected to be completed by July 1, 2025.	Davis	40	\$28,000.00
	Berns	40	\$19,000.00
<b>1.2 TIF Negotiations</b>			<b>\$52,000.00</b>
Fifty percent of work expected to be completed by July 1, 2025.	Berns	80	\$38,000.00
Balance during remainder of 2025.	Davis	20	\$14,000.00
<b>1.3 Zoning Issues</b>			<b>\$41,500.00</b>
Fifty percent of work expected to be completed by July 1, 2025.	Berns	80	\$38,000.00
Balance during remainder of 2025.	Davis	5	\$3,500.00
<b>1.4 Environmental Review and Planning</b>			<b>\$70,000.00</b>
All work for this portion expected to be completed by July 1, 2025.	Davis	100	\$70,000.00
<b>1.5 Miscellaneous Meetings and Issues</b>			<b>\$29,375.00</b>
	Davis	25	\$17,500.00
	Berns	25	\$11,875.00
<b>1.6 Contingency</b>			<b>\$23,500.00</b>
	Davis	20	\$14,000.00
	Berns	20	\$9,500.00
	<b>Subtotal</b>		<b>\$263,375.00</b>

### **2.0 ENVIRONMENTAL PROFESSIONALS**

<b>2.1 Conduct an Initial Site Visit</b>	<b>Verdantas</b>	<b>\$3,800.00</b>
Verdantas will undertake a site visit to traverse the property as safely as possible to gain a comprehensive understanding of the environmental assessment work completed to date, evaluate site conditions, and inspect the remaining structures on the approximate 22-acre portion of the property that the City is considering for purchase (i.e., the Screen House, Transformer Building, and Pump House Building). Verdantas' Certified Professional and Project Manager/Primary Risk Assessor will be in attendance for this initial site visit. This estimate includes travel time between Dublin and Avon Lake.		

**Initial Budget for Interim Development Agreement Cost Reimbursement (Revised 3/24/25)**  
**(January 1, 2025 - July 1, 2025)**

<b>2.2 Technical Review of Existing Documents and Data</b>	<b>Verdantas</b>	<b>\$10,000.00</b>
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Verdantas will perform a review of the existing documents and data recently provided by Deigan & Associates ("Deigan") in the Data Room. This task will include discussions with Deigan to develop a thorough understanding of the Phase II Property Assessment activities completed thus far, as well as any additional Phase II activities planned for the next phase of the property assessment. Verdantas' Certified Professional and Project Manager/Primary Risk Assessor will participate in a meeting with the City to discuss these findings.

<b>2.3 Prepare a Summary Report</b>	<b>Verdantas</b>	<b>\$5,000.00</b>
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Following the completion of Task 2, Verdantas will compile a summary report detailing the information provided in the Data Room. Once the summary report is completed, Verdantas will convene with the City of Avon Lake to present the initial findings and data concerning the portion of the property they are interested in purchasing.

<b>2.4 Collaboration with Diegan &amp; Associates on Additional Phase II Investigation and No Further Action Activities</b>	<b>Verdantas</b>	<b>\$25,000.00</b>
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Verdantas will collaborate and coordinate with Deigan to identify additional site investigation activities necessary to support the Ohio VAP No Further Action Letter. **Verdantas anticipates that Deigan will perform actual sampling activities and field work, to be supported by Verdantas, as reasonably necessary.** These activities also may include preliminary site-specific risk assessment activities and discussions with Ohio EPA VAP Technical Assistance.

	<b>Subtotal</b>	<b>\$43,800.00</b>
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<b>3.0 Costs</b>		<b>\$3,000.00</b>
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Budget for photocopies, shipping and other miscellaneous expenses.

<b><u>TOTAL</u></b>		<b><u>\$310,175.00</u></b>
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**2025 Legal Billing Rates**

Todd S. Davis, Esq. - \$700/hr  
Jordan Berns, Esq. - \$475/hr  
Majeed Makhoulouf, Est. - \$475/hr

\*This budget is a good faith estimate of anticipated costs based on currently available information, for purposes of the Interim Development Agreement (the "IDA"). While all service providers will use good faith efforts to minimize transaction costs, this budget estimate may be periodically updated as needed to reflect changing costs for the parties' approval.