

## **CITY OF CLEARWATER LIEN FORECLOSURE ATTORNEY RETAINER AGREEMENT**

The Clearwater City Council has approved Matthew D. Weidner, Esq. and his firm, Matthew D. Weidner, PA, (hereinafter collectively called “Weidner” or “Attorney”) as a Special Counsel under the supervision of the City Attorney for the limited purposes set forth herein and no other purpose for a five year period. All communication with the City by the Attorney related to the matters herein shall be through the City Attorney, designated Assistant City Attorney, or with any employee designated by the City Attorney. In consideration of the legal services to be rendered by Attorney for any claims that his Client, the City of Clearwater, (hereinafter called the “Client” or “City”) may have related to the collection of code enforcement, utility, or any other kind of liens (hereinafter these may also be referred to collectively as “cases”) which will be assigned to Attorney in writing by the City Attorney, the parties agree to the following terms:

1. The City Attorney or her designee will assign cases to Weidner which are suggested as appropriate for foreclosure and collection of amounts owed to the City. Weidner will carefully review each case for appropriateness and may accept or reject any case for further pursuit for any reason or no reason whatsoever. Likewise, the City Attorney may rescind the assignment of any case at any time at which time Weidner shall deliver a copy of the complete file to the City Attorney and take no further action in representing the Client related to that case (costs, expenses, and fees shall be handled as later set forth in this Agreement).

2. As and for his compensation for such lien collection work, Weidner will receive:

25% of any net recovery by the City if a compromise or settlement is reached without filing of suit;

33 1/3% of any net recovery after suit is filed and until such time as an Answer is filed or Summary Judgment is entered;

40 % of any net recovery after an answer is filed and the matter is not disposed of by Summary Judgment; or

Any fees awarded by the court or agreed to by opposing parties, whichever is greater.

The contingency compensation is subject to the following additional limitations:

Weidner shall recover not more than 40% of any net recovery by the City of any amount less

than \$250,000.00;

Weidner shall recover not more than 33 1/3% of any net recovery by the City of any amount greater than \$250,000.00 but less than \$500,000.00; and

Weidner shall recover not more than 25% of any net recovery by the City of any amount greater than \$500,000.00.

For purposes of this agreement, the term “net recovery” is defined as the amount of money realized by the sale of the foreclosed property less any court costs and expenses advanced by Weidner as agreed in Paragraph 4 of this agreement.

3. Weidner will make a demand for payment of attorney's fees and costs in all cases in which they may be awarded. Attorney shall be entitled to any such fees awarded by the court or agreed to by opposing parties for each case assigned to Attorney to the extent that those fees are greater than the contingency fee described in Paragraph 2. In the event the contingency fee is greater than the attorney's fees awarded by the court or agreed to by opposing parties, Attorney shall only be entitled to collect the contingency fee, with the contingency offset by the attorney fee award. In any case in which a foreclosure action is filed by Attorney and the City obtains title to the property, but court-awarded or settlement fees are not available, Attorney shall be entitled to recover those attorney's fees awarded by the court in addition to actual costs as awarded by the court. It is agreed that Attorney may record a lien against any property subject to foreclosure to secure payment for such fees, and that the amount of the lien shall be a contingency award based on the amount of the final judgment or a property appraisal, whichever is less, subject to the contingency award limits agreed to in Paragraph 2.

4. Weidner will advance all costs and expenses which are related to litigation including filing fees, title search, service of process and other costs or expenses which are necessary in pursuit of the case. In the case of a foreclosure final judgment, the Attorney will provide details of all costs and expenses incurred to the court and seek to have all costs and expenses incorporated into any final judgment entered by the court. It is expected that any case brought to foreclosure auction should include recovery of any compensable costs and expenses recoverable by the client after

issuance of the final judgment. Weidner will coordinate the City's participation in bidding in any foreclosure auction. After every public auction, Attorney will provide a written invoice to the City Attorney which will detail the results of the public auction and which shall include a check from the public auction, if any, along with a copy of the final judgment showing all costs and expenses awarded. This written invoice will serve as Weidner's request for payment, which invoice will be paid in a timely manner by city.

5. The Client acknowledges that the Attorney has explained that the Client could bear Defendant costs and attorney's fees if the Defendant prevails. An example of this outcome would be if liens the Client has directed Attorney to foreclosure have already been paid or satisfied.

6. The Client agrees not to compromise any claim which has been forwarded to Attorney without the Attorney's consent and the Attorney is not authorized to compromise any claim without the Client's consent.

7. Attorney agrees and acknowledges that there may be certain issues that arise in a case that, while not essential to resolution of the foreclosure action, may address important collateral issues that the Client wishes to address before the courts. The Attorney agrees to work with the City Attorney's office to identify such issues and allocate responsibility for handling such issues when they arise.

8. The undersigned Client has, before signing this Agreement, received and read the Statement of Client's Rights, and understands each of the rights set forth therein. The undersigned Client has signed the Statement and this Agreement and received signed copies to keep and to refer to while being represented by the undersigned Attorney.

9. This Agreement may be terminated by Client at any time by written notification to the Attorney. If terminated within 3 business days of the date the Agreement was signed, as shown below, the Client shall not be obligated to pay any fees to the Attorney for any work performed during that time. If terminated after three business days, the Client and the Attorney shall discuss the status of each case and, after reviewing the factors for attorney's fees set forth above, the Client in its'

sole discretion shall determine whether to pay Attorney any attorney's fees and the amount thereof. Attorney may terminate this representation after providing reasonable notice to the City in writing and shall not be entitled to any attorney's fees for any work. If the Attorney has paid any approved costs or expenses in the representation of the Client in any case, the Attorney is entitled to be reimbursed for such amounts that the Attorney has reasonably advanced on behalf of the Client.

10. Non appropriation. The obligations of the City as to any funding required pursuant to this Agreement shall be limited to an obligation in any given year to budget, appropriate and pay from legally available funds, after monies for essential City services have been budgeted and appropriated, sufficient monies for the funding that is required during that year. Notwithstanding the foregoing, the City shall not be prohibited from pledging any legally available non-ad valorem revenues for any obligations heretofore or hereafter incurred, which pledge shall be prior and superior to any obligation of the City pursuant to this Agreement.

11. Attorney shall comply with all applicable federal, state, and local laws, ordinances, rules and regulations, the federal and state constitutions, and orders and decrees of any lawful authorities having jurisdiction over the matter at issue including but not limited to Florida Public Records laws (e.g., Chapter 119, Florida Statutes, and specifically Chapter 119.0701(2)(a)-(d)). In the event that Attorney receives a public records request pursuant to Chapter 119, Florida Statutes, Attorney shall immediately notify the City Attorney's Office in writing. Attorney shall obtain written approval from the City Attorney's Office prior to releasing or disclosing public records because exemptions may apply. Attorney shall also comply with instructions of the City Attorney's Office and all City policies and procedures regarding public records. The Attorney shall retain all records maintained by Attorneys for each case and make them available to Clients within three (3) days of request.

By execution of this Agreement, the parties agree to be bound by the terms and conditions as set forth herein.

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CITY OF CLEARWATER  
100 S. Myrtle Ave  
Clearwater FL 33756

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MATTHEW WEIDNER, ESQ.  
250 Mirror Lake Dr N  
St. Petersburg FL 33701

Date: \_\_\_\_\_

Date: \_\_\_\_\_

Approved as to form:

Attest:

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Pamela Akin  
City Attorney

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Rosemarie Call  
City Clerk

## **STATEMENT OF CLIENT'S RIGHTS**

Before you, the prospective client, arrange a contingent fee agreement with a lawyer, you should understand this statement of your rights as a client. This statement is not a part of the actual contract between you and your lawyer, but, as a prospective client, you should be aware of these rights:

1. There is no legal requirement that a lawyer charge a client a set fee or a percentage of money recovered in a case. You, the client, have the right to talk with your lawyer about the proposed fee and to bargain about the rate or percentage as in any other contract. If you do not reach an agreement with one lawyer, you may talk with other lawyers.

2. Any contingent fee contract must be in writing and you have three (3) business days to reconsider the contract. You may cancel the contract without any reason if you notify your lawyer in writing within three (3) business days of signing the contract. If you withdraw from the contract within the first three (3) business days, you do not owe the lawyer a fee although you may be responsible for the lawyer's actual costs during that time. If your lawyer begins to represent you, your lawyer may not withdraw from the case without giving you notice, delivering necessary papers to you, and allowing you time to employ another lawyer. Often, your lawyer must obtain Court approval before withdrawing from a case. If you discharge your lawyer without a good cause after the three-day period, you may have to pay a fee for work the lawyer has done.

3. Before hiring a lawyer, you, the client, have the right to know about the lawyer's education, training and experience. If you ask, the lawyer should tell you specifically about the lawyer's actual experience dealing with cases similar to yours. If you ask, the lawyer should provide information about special training or knowledge and give you this information in writing if you request it.

4. Before signing a contingent fee contract with you, a lawyer must advise you whether the lawyer intends to handle your case alone or whether other lawyers will be helping with the case. If your lawyer intends to refer the case to other lawyers, the lawyer should tell you what kind of fee sharing arrangement will be made with the other lawyers. If lawyers from different law firms will represent you, at least one lawyer from each law firm must sign the contingent fee contract.

5. If your lawyer intends to refer your case to another lawyer or counsel with other lawyers, your lawyer should tell you about that at the beginning. If your lawyer takes the case and later decides to refer it to another lawyer or to associate with other lawyers, you should sign a new contract that includes the new lawyers. You, the client, also have the right to consult with each lawyer working on your case and each lawyer is legally responsible to represent your interests and is legally responsible for the acts of the other lawyers involved in the case.

6. You, the client, have the right to know in advance how you will need to pay the expenses and the legal fees at the end of the case. If you pay a deposit in advance for costs, you may ask reasonable questions about how the money will be or has been spent and how much of it remains unspent. Your lawyer should give a reasonable estimate about future necessary costs. If your lawyer agrees to lend or advance you money to prepare or research the case, you have the right to know periodically how much money your lawyer has spent on your behalf. You also have the right to decide, after consulting with your lawyer, how much money is to be spent to prepare a case. If you pay the expenses, you have the right to decide how much to spend. Your lawyer should also inform you whether the fee will be based on the gross amount recovered or on the amount recovered minus the costs.

7. You, the client, have the right to be told by your lawyer about possible adverse consequences if you lose the case. Those adverse consequences might include money that you might have to pay to your lawyer for costs, and liability you might have for attorney's fees to the other side.

8. You, the client, have the right to receive and approve a closing statement at the end of the case before you pay any money. The statement must list all of the financial details of the entire case, including the amount recovered, all expenses, and a precise statement of your lawyer's fee. Until you approve the closing statement, you need not pay any money to anyone including your lawyer. You also have the right to have every lawyer or law firm working on your case sign this closing statement.

9. You, the client, have the right to ask your lawyer at reasonable intervals how the case is progressing and to have these questions answered to the best of your lawyer's ability.

10. You, the client, have the right to make the final decision regarding settlement of a case. Your lawyer must notify you of all offers of settlement before and after the trial. Offers during the trial must be immediately communicated and you should consult with your lawyer regarding whether to accept a settlement. However, you must make the final decision to accept or reject a settlement.

11. If at any time, you, the client, believe that your lawyer has charged an excessive or illegal fee you have the right to report the matter to The Florida Bar, the agency that oversees the practice and behavior of all lawyers in Florida. For information on how to reach The Florida Bar, call 1-850-561-5600 or contact the local bar association. Any disagreement between you and your lawyer about a fee can be taken to Court and you may wish to hire another lawyer to help you resolve this disagreement. Usually fee disputes must be handled in a separate lawsuit.

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St. Petersburg FL 33701