

## **PFAS LITIGATION RETAINER AGREEMENT**

The City of Port St. Lucie, Florida ("Port St. Lucie") and The Ferraro Law Firm ("Law Firm"), hereby agree that the Law Firm shall serve as attorneys for Port St. Lucie to investigate and prosecute claims against any and all parties, individuals and/or corporations that may be liable under the law, for wrongs and injuries suffered by Port St. Lucie arising out of groundwater supply and soil contamination by Per- and Polyfluoroalkyl Substances ("PFAS") containing with any and all products including, but not limited to, Aqueous Film Forming Foam ("AFFF"), including the submission and processing of claims in currently pending class action lawsuit settlements.

The Law Firm has both the financial and legal resources to provide Port St. Lucie with the highest level of representation. The Law Firm is prepared to investigate PFAS contamination of the groundwater and soil on behalf of Port St. Lucie upon the signing of this Retainer Agreement ("Agreement"). If upon the conclusion of the Law Firm's initial investigation it is determined there are actionable claims for PFAS contamination, the Law Firm shall bring suit on behalf of Port St. Lucie. The Law Firm is prepared to finance the entire litigation including all out-of-pocket expenses and disbursements and handle the lawsuit on a contingent fee basis. This guarantees that Port St. Lucie will not be responsible for any costs of this litigation whether the Law Firm is successful or not.

The purpose of this litigation is to seek reimbursement of the costs incurred and to be incurred to investigate and remediate soil, groundwater and surface water and design, construct and operate drinking water treatment systems arising out of contamination caused by the conduct of the defendants in this litigation. By way of example, the aim of this litigation is to seek reimbursement of costs including, but not limited to, those associated with potential soil and groundwater contamination at any fire training facilities and the installation and continued maintenance of filtration systems at Port St. Lucie's water treatment facilities.

**1. CONTINGENCY FEE PERCENTAGE, COSTS, FEE/COST CAPS:** In consideration, Port St. Lucie agrees the gross recovery shall be calculated on the amount obtained before the deduction of costs and expenses. The agreed contingency fee percentage and fee/cost caps shall be determined by the stage of litigation, as set forth in the Schedule below:

- 15% upon execution of the Agreement. Total fees and expenses shall not exceed 16% of any gross recovery.
- 18% of any gross recovery obtained following disclosure of expert reports. Total fees and expenses shall not exceed 20% of any gross recovery.
- 19% of any gross recovery obtained following briefing of summary judgment or *Daubert* after expert discovery. Total fees and expenses shall not exceed 20% of any gross recovery.
- Total fees and expenses shall not exceed 20% of any gross recovery after jury selection begins.

Total fees and expenses shall not exceed twenty percent (20%) of the gross recovery. Port St. Lucie grants the Law Firm an interest in a fee based on the gross recovery. If a court awards attorneys' fees, the Law Firm shall receive the "greater of" the gross recovery-based contingent fee or the attorneys' fees awarded. **There is no fee if there is no recovery.**

The Law Firm agrees to advance all necessary litigation expenses necessary to prosecute these claims. The litigation expenses may include, but will not be limited to, court costs and filing fees, process serving fees, investigators' fees, product investigation and testing fees, trial related expenses, including but not limited to, audiovisual, court reporter, exhibits, expert witnesses, demonstrative aids, and computer research charges. **These Litigation expenses will only be incurred if they pertain directly to Port St. Lucie's claim. Additionally, there is no reimbursement of litigation expenses if there is no recovery.**

With respect to travel costs and travel-related expenses, the Law Firm agrees to adhere to Section 112.061 of the Florida Statutes as they pertain to out-of-pocket expenses, including employee lodging, transportation, per diem, and all miscellaneous travel related costs and fees.

At the conclusion of the matter, Port St. Lucie will have the right to receive and approve a closing statement before a fee is deducted. The statement will list all of the financial details of the entire case, including the amount recovered, an itemized list of all expenses incurred, and a precise statement of the Law Firm's fees.

To be clear, the Law Firm shall not be paid nor receive reimbursement from public funds. However, any judgment arising from successful prosecution of the case, or any consideration arising from a settlement of the matter, whether monetary or equitable, shall not be considered public funds for purposes of calculating the contingent fee. Port St. Lucie and the Law Firm agree to make a good faith effort to seek a monetary payment in any settlement that includes a non-monetary equitable remedy.

**2. FEDERAL MULTIDISTRICT LITIGATION ("MDL"):** The litigation authorized by this Agreement may become part of The Federal Multidistrict Litigation ("MDL") docket, on which one or more attorneys from the Law Firm currently serve on plaintiff management or executive committees, performing work that benefits multiple clients of the Law Firm, as well as clients of other attorneys involved in similar litigation. As a result, the court or courts where an MDL is pending may order that one or more Law Firms is to receive additional compensation for time and effort which has benefitted all claimants in the MDL. Compensation for this work and effort, known as "common benefit work," may be awarded to the Law Firm and paid out of the MDL court's assessments against settlements, including settlements on behalf of Port St. Lucie and others who have filed claims that are pending in the MDL court. This common benefit compensation is separate and distinct from any fees or costs owed under this Agreement.

**3. CONTACT COUNSEL AND COMMUNICATION WITH CLIENT:** The Law Firm shall appoint a contact person to keep Port St. Lucie reasonably informed about the status of the matter in a manner deemed appropriate by Port St. Lucie. The identity of the contact person designated by the Law Firm may change over the course of the investigation and litigation to best match the contact person with the stage of investigation and litigation and to best meet the needs

of Port St. Lucie. Port St. Lucie at all times shall retain the authority to decide the disposition of the case and personally oversee and maintain absolute control of the litigation. Port St. Lucie, subject to approval by the City Council, or acting through, or on the advice of, its City Attorney, shall be the ultimate decision maker on all matters relating to the investigation and/or litigation, including whether to file litigation and whether and what terms to settle such litigation. The Law Firm shall consult with and obtain the approval of Port St. Lucie, acting through its City Attorney, concerning all important issues regarding the investigation, litigation, and any settlement, including but not limited to the complaint and all dispositive motions, selection of consultants, experts and other professional services, discovery, pre-trial proceedings, trial, and settlement offers, demands, or negotiations. The Law Firm shall consult with and obtain the approval of the City Attorney, or the City Attorney's designated alternate contact, prior to making or releasing any press release, news release, media release, press statement or public statements regarding Port St. Lucie's role in or position on this litigation or any matters related thereto.

**4. CLOSING STATEMENT:** Upon conclusion of this matter, the Law Firm shall provide Port St. Lucie with a written statement stating the outcome of the matter and, if there is a recovery, showing the remittance to Port St. Lucie and the method of its determination. The closing statement shall specify the matter in which the compensation was determined under the Agreement, any costs and expenses deducted by the Law Firm from the judgment or settlement involved, and, if applicable, the actual division of the lawyers' fees with a lawyer not in the same firm, as required in Rule 4-1.5 (f)(5) of the Florida Rules of Professional Conduct. The closing statement shall be signed by Port St. Lucie and each attorney among whom the fee is being divided.

**5. ASSOCIATION WITH ADDITIONAL ASSOCIATE COUNSEL:** Weiss Serota Helfman Cole + Bierman, P.L. shall serve as associate counsel. The Law Firm may retain additional associate counsel to assist with litigation pursuant to this Agreement. Any additional associate counsel selected by the Law Firm shall be subject to Port St. Lucie's approval. Port St. Lucie shall not be responsible for any additional costs or fees for any associate counsel, all of whom shall be compensated by Law Firm out of the contingency fee described in Section 1 of this Retainer Agreement.

**6. STATUTE OF LIMITATIONS:** Port St. Lucie understands that the Statute of Limitations period for the case must be investigated, and that this Agreement is made subject to that investigation as well as an investigation of the entire case.

**7. RESULTS NOT GUARANTEED:** No attorney can accurately predict the outcome of any legal matter, accordingly, no representations are made, either expressly or impliedly, as to the final outcome of this matter.

**8. INSURANCE:** During the performance of services under this Agreement, the Law Firm shall maintain the following insurance coverage. All insurance policies shall be written by an insurance company authorized to do business in the state of Florida. The Law Firm shall procure and maintain, for the life of this Agreement either Professional Liability Insurance or equivalent Errors and Omissions Insurance. This coverage is for damages arising out of the insured's negligence, mistakes or failure to take appropriate action in the performance of business or professional duties. This coverage shall be on an "Occurrence" basis, however, if the Law Firm's

coverage is on a “Claims Made” basis, Port St. Lucie will accept such coverage as long as the Law Firm shall maintain a “retroactive date” prior to or equal to the effective date of this Agreement. The Certificate of Insurance shall evidence whether the coverage is on an “Occurrence” or “Claims Made” basis, and if the coverage is on a “Claims Made” basis, the Certificate of Insurance must also evidence the “retroactive date” of coverage. The minimum limits of coverage shall be \$1,000,000 per occurrence with a deductible of no more than \$10,000. A Certificate of Insurance shall be forwarded by the Law Firm to the City Attorney.

## **9. LOCAL GOVERNMENT REQUIREMENTS:**

### **I. Scrutinized Companies**

- A. Pursuant to Section 287.135, the Law Firm is ineligible to enter into, or renew, this Agreement if the Law Firm is on the Scrutinized Companies that Boycott Israel List (as identified in Section 215.4725, Florida Statutes), or is engaged in a boycott of Israel.
- B. By entering into this Agreement, the Law Firm certifies that the Law Firm is not on the Scrutinized Companies that Boycott Israel List, and that the Law Firm is not engaged in a boycott of Israel.
- C. The Law Firm shall notify Port St. Lucie if, at any time during the term of this Agreement, the Law Firm is placed on the Scrutinized Companies that Boycott Israel List, or that the Law Firm is engaged in a boycott of Israel. Such notification shall be in writing and provided by the Law Firm to Port St. Lucie within ten (10) days of the date of such occurrence.
- D. In the event Port St. Lucie determines, using credible information available to the public, that the Law Firm has submitted a false certification or the Law Firm is found to have been placed on the Scrutinized Companies that Boycott Israel List or engaged in a boycott of Israel, Port St. Lucie may, in its sole discretion, terminate this Agreement and seek a civil penalty, and other damages and relief, against the Law Firm, pursuant to Section 287.135, Florida Statutes. In addition, Port St. Lucie may pursue any and all other legal remedies against the Law Firm.
- E. The Law Firm shall not seek damages, fees, or costs against Port St. Lucie in the event Port St. Lucie terminates the Agreement pursuant to this provision.

### **II. E-Verify**

By entering into this Agreement, the Law Firm becomes obligated to comply with the provisions of Section 448.095, Fla. Stat., "Employment Eligibility." This includes but is not limited to utilization of the E-Verify System to verify the work authorization status of all employees hired after January 1, 2021 (as well as contractual employees whose contract is renewed after January 1, 2021) and requiring all subcontractors to provide an affidavit attesting that the subcontractor does not employ, contract with, or subcontract with, an

unauthorized alien. Failure to comply will lead to termination of this Agreement, or if a subcontractor knowingly violates the statute, the subcontract must be terminated immediately. Any challenge to termination under this provision must be filed in the Circuit Court no later than 20 calendar days after the date of termination. If this Agreement is terminated for a violation of the statute by the Law Firm, the Law Firm may not be awarded a public contract for a period of 1 year after the date of termination. Should the Law Firm violate the requirements of Section 448.095, Fla. Stat., they shall be liable for any additional costs incurred by Port St. Lucie as a result of the termination of the Agreement.

### III. Public Records

A. Port St. Lucie is a public agency subject to Chapter 119, Florida Statutes. This Agreement requires The Law Firm to provide services, and therefore the Law Firm shall comply with Section 119.0701, Florida Statutes. Specifically, the Law Firm shall:

- 1) Keep and maintain all public records related to the performance of the services.
- 2) Upon request from Port St. Lucie's custodian of public records, provide Port St. Lucie with a copy of the requested records, or allow the records to be inspected or copied within a reasonable time, at a cost that does not exceed that provided in chapter 119, Florida Statutes, or as otherwise provided by law.
- 3) Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of the Agreement term and following completion of the Agreement.
- 4) Upon completion or other termination of the Agreement, keep and maintain the public records required by Port St. Lucie to perform the services. The Law Firm shall meet all applicable requirements for retaining public records set out in Florida law.
- 5) In addition to maintaining the records pursuant to Paragraph Number 4 above, provide to Port St. Lucie all records that were stored electronically by the Law Firm, upon request from Port St. Lucie's custodian of public records, in a format that is compatible with the information technology systems of Port St. Lucie.

B. The failure of the Law Firm to comply with the provisions set forth in this Article, or to comply with Port St. Lucie's request for records, shall constitute a default and breach of this Agreement, and Port St. Lucie shall, in its discretion, pursue any and all remedies against the Law Firm provided for under this Agreement or at law.

**IF THE LAW FIRM HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE LAW FIRM'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS AGREEMENT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT 772-871-5161,**

**MSANCHEZ@CITYOFPSL.COM, OR BY MAIL AT 121 SW PORT ST. LUCIE BLVD, PORT ST. LUCIE, FL 34984.**

I certify and acknowledge that I have had the opportunity to read this Agreement and have answered any questions pertaining thereto. I further state that I have voluntarily entered into this Agreement fully aware of the terms and conditions. This contract may be cancelled by written notification to the attorney at any time within 3 business days of the date the contract was signed, as shown below, and if cancelled the client shall not be obligated to pay any fees to the attorneys for the work performed during that time. If the Law Firm has advanced funds to others in representation of Port St. Lucie, the firm is entitled to be reimbursed for such amounts as the attorneys have reasonably advanced on behalf of the client.

SIGNED AND ACCEPTED ON THIS \_\_\_\_\_ day of \_\_\_\_\_, 2024.

**CITY OF PORT ST. LUCIE, FLORIDA**

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

Name:

Position:

**THE FERRARO LAW FIRM, P.A.**

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

Name:

Position: