

## TAX FORECLOSURE ATTORNEY AGREEMENT

This agreement, made and entered into this the \_\_\_\_\_ day of \_\_\_\_\_, 2020, by and between Guilford County, hereinafter referred to as County, and Mark D. Bardill, P.C., a North Carolina professional corporation, trading as Zacchaeus Legal Services, hereinafter referred to as Attorney, shall be for the legal services to be provided for foreclosure actions on delinquent real property taxes due to the County, and to this end, the parties hereto make the following recitals:

### WITNESSETH:

WHEREAS, tax foreclosure is a certain and special area of practice and any attorney who serves as a Special Tax Attorney must provide specially trained staff, must advance thousands of dollars in costs and must dedicate other resources in order to successfully complete the foreclosure assignments made to it; and

WHEREAS, to support these specially trained staff, advanced costs and other dedicated resources, Attorney needs to extend the contract with County to serve as its special tax attorney for a term of four (4) years;

NOW, THEREFORE, for good and valuable consideration, and upon the agreements, conditions, and covenants found herein, the parties hereto agree as follows:

1. **Assignments.** The Attorney shall initiate foreclosure actions for all parcels with delinquent taxes which County has designated for foreclosure to be assigned in batches made on or before the 1st day of every May, August, November and February during the term of this agreement, or in more frequent intervals, upon mutual agreement of the parties hereto.

2. **Information Provided.** The Tax Collector shall provide to the Attorney the name of the delinquent taxpayer, the most recent address on file, the total delinquent taxes, including interest and penalties by year and a map of the parcel with its identification number. This information shall be in the form of a computer printout and GIS Map, with other requested information provided as available.

3. **Timing.** All related work and filing of foreclosure actions shall take place within one hundred eighty (180) calendar days from the date that the Tax Collector transmits the initial information outlined in Paragraph 2 above and the request for foreclosure to the Attorney; however, if for some reason, the foreclosure action is not filed within one hundred eighty (180) calendar days from the date of transmittal, Attorney shall submit a written statement to the Tax Collector as to the reason why the action has not been filed and shall diligently work to file the action. If a Taxpayer tenders payment in full prior to the filing of the complaint, the Tax Collector must accept payment and no attorney fees are due from the Taxpayer or County. Provided, however, should the Tax Office fail to inform the Attorney that a parcel has been paid in full while Attorney continues to work on preparing the case for filing, then in that event the Tax Office shall pay Attorney the standard per parcel fee as set forth in Paragraph 6 (as reduced

by Paragraph 9 and/or increased by Paragraph 10.ii, if applicable) and all incurred expenses, copy charges, and the like even though the case has not been filed.

4. **Filing.** The Attorney shall notify the Tax Collector, in writing, immediately upon the filing of a foreclosure complaint with the Office of the Clerk of Superior Court. Attorney and County acknowledge and agree that the law provides that the payment of the fee to file tax foreclosure cases in the Office of the Clerk of Superior Court and for in-County service by the Sheriff can be deferred pursuant to N.C.G.S. Section 105-374(i). Should the laws of North Carolina be changed so that payment of said fees can no longer be deferred or should the Clerk of Court of Guilford County or the Sheriff of Guilford County refuse to adhere to said statute, County agrees to immediately advance said fees upon request by Attorney or, in the case of the filing fees, to make payment directly to the Clerk of Court.

5. **Completion.** The Attorney shall bring the foreclosure to conclusion within two years after filing said foreclosure action with the Clerk of Court's office; however, if for some reason, the foreclosure action is not concluded within two years of filing, Attorney shall submit a written statement to the Tax Collector as to the reason why the action has not been concluded and shall diligently work to conclude the matter.

6. **Compensation.** The Attorney shall be compensated in each foreclosure action in accordance with procedures set forth in the North Carolina General Statutes, Chapter 105 as ordered by a District or Superior Court Judge, or as agreed between the instant Taxpayer and Attorney. Attorney shall be guaranteed compensation for filing foreclosure on each parcel in the amount of One Thousand Three Hundred Fifty and 00/100 Dollars (\$1,350.00) plus all incurred expenses, i.e., service fees, copy charges, postage, publication costs, filing fees, and the like. Attorney shall be paid said compensation and costs upon settlement of the foreclosure action prior to the Order of Foreclosure, upon redemption of the parcel from sale or as part of the amount paid to purchase the property at sale. Notwithstanding any other provision in this Agreement, for any parcel for which the Attorney files for foreclosure on behalf of the County and on behalf of any municipal unit of government, or for which the Attorney ultimately represents the County and any municipal unit of government in a foreclosure initially filed on behalf of just one of those jurisdictions, including where the taxes of a municipality are placed in the hands of the County Tax Collector pursuant to NCGS Section 105-354, (hereinafter "joint representation"), the compensation guaranteed to Attorney shall also be One Thousand Three Hundred Fifty and 00/100 Dollars (\$1,350.00) plus all expenses, i.e., service fees, copy charges, postage, publication costs, filing fees, and the like, the total amount of which to be divided equally between the County and each such municipality involved in joint representation. If the Taxpayer applies to the District or Superior Court for determination of a reasonable attorney fee pursuant to the procedures set forth in the North Carolina General Statutes, Chapter 105, and the Court awards less than set forth herein per parcel, the County shall pay the balance of said compensation within thirty (30) days of said award from the County's local funds for legal work.

7. **Commissioner Fees.** The Attorney shall use its best efforts to be appointed the Commissioner in the Order of Foreclosure, and upon public sale of such property pursuant to the Order of Foreclosure as provided for in Chapter 105, the Attorney shall be entitled to a

Commissioner's Fee, plus incurred expenses, in accordance with the schedule provided for in Chapter 105, as approved by the Clerk of Superior Court. However, to assist the County in collecting all taxes due without reduction by the amount of the Commissioner's Fee, the Attorney agrees that as Commissioner, it shall be paid only to the extent available after payment of all amounts so ordered in the Order of Foreclosure plus the expenses incurred by the Attorney to advertise and give proper notice of public sale of such property. To this end, these expenses shall be added to the amount of taxes, fees and costs as ordered in the Order of Foreclosure to determine the opening bid by the County for purchase of such property from local funds. For purposes of illustration, compare the examples below where a typical 5% commission would be appropriate in a foreclosure with \$3,000.00 of taxes, \$1,500.00 of attorney fees and costs and \$500.00 of advertising/notice of public sale expenses (Total without Commissioner's Fee \$5,000):

Example #1 - County as High Bidder @ \$5,000

In this example, the County is paid in full for the taxes and interest which have accrued to the date the Order of Foreclosure is entered, the Attorney is paid in full for the attorney fees and costs incurred to the date of the Order of Foreclosure, the expenses incurred by the Attorney to advertise and give proper notice of public sale are paid, but no Commissioner's Fee is paid.

Example #2 - Other High Bidder @ \$5,100

In this example, all amounts outlined in Example #1 are paid, plus \$100.00 of the \$255.00 5% Commissioner's Fee is paid.

Example #3 - Other High Bidder @ \$5,500

In this example, all amounts outlined in Example #1 are paid, the \$275.00 5% Commissioner's Fee is paid, and \$225.00 is paid to the Clerk to hold as surplus from the sale.

7a. **Bids.** Should the County, in its complete and unfettered discretion, determine that it does not wish to make the opening bids on sales equal to all fees, costs and taxes as set forth in the underlying judgment in the causes filed on its behalf, unless another taxing unit makes such a bid, the County shall pay the Attorney a fixed fee of one hundred fifty and 00/100 dollars (\$150.00) per upset bid filed in the Clerk's Office pursuant to NCGS Section 1-339.25, in all foreclosure sales and resales until such time as the bidding reaches the amount that would have been bid if the County had bid in the amount equal to all fees, costs and taxes as set forth in the underlying judgment in the cause. Said fixed fee shall be due and payable within thirty (30) days of invoice of County by Attorney.

8. **Taxpayer Bankruptcy.** If the Taxpayer files a petition in bankruptcy during the period any foreclosure action brought pursuant to this agreement is pending, the Tax Collector shall file, as part of its claim to the bankruptcy court, the fees, costs and expenses set forth herein, and shall pay Attorney for such amounts within sixty (60) days of written notification to

Tax Collector of such bankruptcy. If the Taxpayer's petition is dismissed or a lift of the stay of bankruptcy court is obtained during the term of this agreement, Attorney agrees to proceed with the foreclosure and complete the remaining services due from it hereunder.

9. **One Owner/Multiple Parcels.** If the County assigns to the Attorney, in any one assignment, more than one parcel owned by the same Taxpayer or Taxpayer(s) and none other and encumbered by the same liens, the County's obligation to pay the compensation set forth in Paragraphs 6, 7 and 8 shall be based on the following per parcel charge: 2 to 5 parcels, the same amount as set forth above per parcel; 6 to 10 parcels, the same amount as set forth above less fifty (\$50.00) dollars per parcel, 11 or more parcels, the same amount as set forth above less one hundred (\$100.00) dollars per parcel, plus all costs and expenses. Provided, however, in the case of joint representation, such deductions shall not be doubled but shall be the total amount that the per parcel fee is reduced.

10. **Unusual, Novel, or Difficult Cases.** The Attorney shall not apply for fees over the amounts aforementioned except for unusual, novel, or difficult cases. The provisions of this paragraph shall be rarely invoked. County and Attorney acknowledge and agree that a major factor in such cases is a high number of parties as defendants or lienholders. To facilitate the efficient administration of this agreement as to such cases, without further review by the County and irrespective as to sole or joint representation of the County and its municipalities by Attorney, the following fee schedule shall apply according to the number of party defendants and lienholders involved:

–16 - 201,80021 - 25 .....	\$3,450
26 - 30 .....	\$4,200
31 - 35 .....	\$4,950
36 - 40 .....	\$5,700
41 – Over.....	Upon agreement with County on a case by case basis

In the event of an unusual, novel, or difficult case, other than those based purely upon the number of the parties involved, the County shall either provide reasonable additional compensation for the extra time necessitated by the unusualness, novelty, or difficulty or, at County's option, shall provide Attorney with co-counsel. Attorney and County acknowledge and agree that cases involving discovery or preparation for trial shall be deemed as "difficult" under the terms hereof. Furthermore, the Attorney shall notify the Tax Office for approval before taking on extraordinary time and expense so as to make such application for additional fees necessary.

11. **Recall Fees.** The County shall pay to the Attorney a fixed fee of four hundred dollars and 00/100 (\$400.00) plus all incurred expenses, i.e., service fees, copy charges, postage, publication costs, filing fees, and the like, if a parcel is recalled by the County before suit is filed, for reasons other than payment of the tax lien. County shall pay to the Attorney the standard per parcel fee as set forth in Paragraph 6 (as reduced by Paragraph 9, if applicable) below for sole or joint representation, as the case may be, plus all incurred expenses, i.e., service fees, copy charges, postage, publication costs, filing fees, and the like, if a parcel is recalled after suit is filed. These recall fees are intended to apply in the event of double listings, clerical or other

erroneous information provided by the Tax Collector to the Attorney, or legal, practical or administrative problems discovered by the Attorney which result in legal impracticality to effect proper collection remedies through foreclosure.

12. **Costs.** Costs, expenses, and the like, to the extent that they are ascertainable as of the time this Agreement is executed, are as follows: a) copies at \$ .25 per copy for those made at Attorney=s office and as incurred by Attorney as to copies made elsewhere, *i.e.* register of deeds, clerk of court, *etc.*, with a minimum charge of \$.25 per copy, b) locator, obituary and genealogy tracing charges at the per item amount charged by the vendor providing the service, and if no per unit schedule provided by the vendor, then at \$2.00 per inquiry made by Attorney, c) filing fees as set by statute, currently \$150 per suit, \$20 per notice filed, and \$15 per *alias & pluries* summons issued d) publication costs as incurred by Attorney according to the publishers= then current rate, e) service fees by certified and regular mail as set by the United States Postal Service, currently \$6.95 per envelope, plus digital mail service charge, f) service fees by North Carolina Sheriff as set by statute, currently \$30 per defendant/lienholder, and g) service fees by out of state service providers as set by that state=s statute.

13. **Lien Payoffs.** To ensure that the proper amount of delinquent taxes, interest, fees and costs are collected, the Attorney and the Tax Collector shall verify with one another the amount due at the time when, and if, the Taxpayer satisfies the tax lien after the complaint is filed but prior to foreclosure.

14. **Collections.** All funds collected shall be paid to the Tax Collector and shall be paid in the form of cash, bank check or certified funds. County shall immediately inform Attorney of the receipt of any such funds and the parcel to which they pertain. Any part of any such funds that represent attorney fees, service fees, copy charges, postage, publication costs, filing fees, and the like shall be remitted to Attorney as part of the next ensuing regular disbursement by the County Finance Office.

15. **Exclusivity.** Subject to the terms of Paragraph 16, Attorney shall be the sole and exclusive special tax foreclosure attorney for the County during the term of this agreement. County may nonetheless pursue tax foreclosures through its own staff. Further, and notwithstanding the forgoing, County may authorize attorneys who bring lien foreclosure actions on behalf of other governmental units to include County tax liens in such actions and to represent the County with respect thereto.

16. **Appeals.** Attorney's services hereunder are limited to the general prosecution of foreclosure actions to collect delinquent taxes assessed against real property located in the County, including title search services, document preparation, court appearances to obtain orders of foreclosure by default judgment, judgment on the pleadings, summary judgment, other trial court proceedings, appearances as Commissioner to sell property at public sale, and negotiation with Taxpayers in settlement of such actions. Attorney's services hereunder do not include preparation and court appearances for appeal and the County shall provide all such appellate legal services.

17. **Term.** This agreement shall be for the period of four (4) years, beginning December 1<sup>st</sup>, 2020 and terminating on December 1<sup>st</sup>, 2024.

18. **Termination.** Notwithstanding paragraph 17, either party shall have the right to terminate this Agreement upon thirty (30) days notice in writing to the other party.

19. **Winding Up.** In the event of the expiration or termination of this agreement, Attorney will handle to completion any previously-assigned parcel(s) which County requests Attorney to complete for the compensation and under the terms set by this agreement. For any previously-assigned parcel(s) which County does not request Attorney to complete following expiration or termination of this agreement, County's sole obligations will be to (a) reimburse Attorney its incurred expenses, i.e., service fees, copy charges, postage, publication costs, filing fees, and the like, and (b) pay Attorney a fee of \$200/parcel for parcels on which action has not been filed or a fee of 60% of the normally applicable fee for parcels on which action has been filed.

20. **Payment.** Payment will be made to the Attorney by the County within thirty (30) days of receipt of a correct, itemized invoice and proper documentation that the goods and/or services have been delivered or provided in accordance with this Contract.

21. **Appropriation.** County and Attorney acknowledge and agree that County will budget no more than \$300,000.00 for each fiscal year during the term of this agreement towards payment of all fees and costs to be incurred hereunder and under the previous agreement with Attorney. To this end, the total amount paid by County to Attorney for these items under the provisions of this agreement and the former agreement between County and Attorney shall not exceed \$300,000.00 cumulatively per fiscal year unless and until said amount is increased and approved by both parties and memorialized by a written amendment hereto. Additionally, this agreement is subject to annual appropriation of funds by the Guilford County Board of Commissioners or other funding source, pursuant to N.C.G.S. Chapter §153A-13.

22. **Jurisdiction.** The Parties agree that this agreement is subject to the jurisdiction and laws of the State of North Carolina. Attorney will comply with bid restrictions, if any, and applicable laws, including N.C.G.S. §143-129(j) regarding E-Verify. Any controversies arising out of this agreement shall be governed by and construed in accordance with the laws of the State of North Carolina. An Affidavit Regarding E-Verify is attached hereto and incorporated herein by reference as **Exhibit I**.

23. **Iran Divestment Act of 2015.** Whereas, N.C.G.S. §147-86.59 requires that a State agency or political subdivision of the State must require persons attempting to contract therewith, including contract renewals or assumptions, to certify that the persons or the assignees are not identified on the list created by State Treasurer pursuant to N.C.G.S. §147-86.58. Effective as of the date of this Contract, and in accordance with N.C.G.S. Chapter 147, Article 6E entitled "Iran Divestment Act," each Party hereby certifies that it is not identified on the Final Divestment List created by the State Treasurer, which list of persons the Treasurer has determined engage in investment activities in Iran, including any subcontractors of either Party.

**24. Training and Orientation.** Attorney will provide the following training and orientation at County's site at no additional charge: Two 1.5 hour orientation/ training sessions for Tax Department staff, County Management, Commissioners, Clerk's Office and Register of Deeds Office; Orientation luncheon meeting with Tax Administrator, Tax Collection Supervisor, Tax Collection Staff, and County Attorney; and one 1.5 hour re-orientation session every third year of program.

**25. Reporting and Consultation.** Attorney will provide the following reporting and consultation at no additional charge: "On demand" status reports updated in "real time;" Post court reports, usually emailed to the Tax Collection Supervisor and Tax Administrator on the day of court; Quarterly luncheon meeting with Tax Office staff after court/sales appearances for program review, including review of settlements, problem cases, impossible/impractical parcels; and as needed telephone consultations with staff or attorney.

COUNTY:

\_\_\_\_\_  
County Manager

ATTEST:

\_\_\_\_\_  
Clerk

ATTORNEY:

\_\_\_\_\_  
President, Mark D. Bardill, P.C.

ATTEST:

\_\_\_\_\_  
Secretary

This instrument has been pre-audited in the manner required by the Local Government Budget and Fiscal Control Act. Total payments under this contract are not to exceed \$\_\_\_\_\_ in FY 2020 - 2021.

\_\_\_\_\_  
County Finance Director