

## **SETTLEMENT AGREEMENT**

This Settlement Agreement (the "Agreement") is entered into by and between CITIZENS FOR SUNSHINE, INC. ("Citizens") a Florida non-profit corporation, and the City of Venice, Florida ("City"), and is effective this \_\_\_\_ day of October, 2013 (the "Execution Date").

### **WITNESSETH:**

WHEREAS, Citizens is a private not-for-profit corporation which promotes awareness of and compliance with the Florida Government-in-the-Sunshine Law;

WHEREAS, the City is a Florida municipal government;

WHEREAS, Citizens and the City are parties to a civil action filed in the Twelfth Judicial Circuit, in and for Sarasota County, Florida, Case No. 2008-CA-8108-SC, which resulted in a Settlement Stipulation and the entry of a Final Judgment dated April 1, 2009 ("Final Judgment");

WHEREAS, Citizens filed a Motion to Enforce the Final Judgment on September 12, 2013, based on allegations that the Utility Rate Study Stakeholders' Work Group (SWG) did not act in compliance with the Final Judgment ("Motion to Enforce");

WHEREAS, the parties agree that it is in their best interest, and in the best interest of the public, to fully resolve all disputes in the Motion to Enforce, by entering into this Agreement;

WHEREAS, the parties have agreed to enter into this Agreement in order to conclude the litigation without the need for incurring additional expenses for attorneys' fees and costs, and this agreement is not in any way to be considered an admission of wrongdoing.

NOW, THEREFORE, in consideration of the mutual promises, representations, covenants, the receipt and sufficiency of which is hereby acknowledged, the parties hereby agree as follows:

### **AGREEMENT**

**1. RECITALS.** The above recitals are true and correct and incorporated herein by reference.

**2. VOLUNTARY DISMISSAL WITH PREJUDICE.** Citizens will file an unopposed stipulated order approving this settlement agreement and providing for the voluntary dismissal with prejudice of the Motion to Enforce, no later than one (1) day after Plaintiff's counsel receives the Settlement Sum, with each party to

bear its own fees and costs.

**3. PAYMENT OF SETTLEMENT SUM.** Defendants have agreed to pay Plaintiff's attorney the sum of \$2,607.50 (Two Thousand Six Hundred Seven Dollars And Fifty Cents) (the "Settlement Sum"), in full and final settlement of all attorneys' fees and costs, and any other amounts, arising out of or related to the Motion to Enforce. Plaintiff agrees to accept this amount as full and final payment of its attorneys' fees and costs, and any other amounts, arising out of or related to the Motion to Enforce. Defendants or their insurer or designee shall tender a check made payable to the Law Office of Andrea Flynn Mogensen, P.A., no later than five (5) days after Execution Date of this Agreement.

**4. GENERAL RELEASE.** In consideration of the mutual promises, representations and covenants contained in this Agreement, the legal sufficiency of which is hereby acknowledged, CITIZENS FOR SUNSHINE, INC. and its respective officers, directors, owners, employees, affiliates, agents, attorneys, successors, assigns, and related entities, on behalf of themselves and their respective heirs, successors, and assigns (collectively and individually, "Citizens"), hereby release, remise, and forever discharge the City of Venice and its past and present elected and appointed officials, officers, directors, employees, boards, administrators, agents, attorneys, contractors and managers, from any and all claims, counterclaims, demands, suits, actions, causes of action, debts, dues, sums of money (including but not limited to attorneys' fees and costs), accounts, damages, judgments, losses, agreements, contracts, covenants, controversies, promises, liabilities, obligations, expenses and liabilities of any kind whatsoever in law or in equity, whether liquidated or unliquidated, contingent or fixed, known or unknown, discovered or undiscovered, asserted or unasserted, which Citizens, or any one of them, now has, from the beginning of time until the Effective Date of this Agreement arising out of or related to the Motion to Enforce. However, notwithstanding the above, Citizens does not release, remise or discharge the City from its continuing obligations under the Settlement Stipulation and Final Judgment entered on April 1, 2009, and the City shall continue to be subject to the requirements of the Final Judgment.

**5. AGREEMENTS RELATING TO CONSIDERATION.** Each of the parties acknowledges and agrees that the covenants under this Agreement, together with the consideration exchanged hereunder, constitute full, fair and valuable consideration for the transfers, transactions and releases required of and by the parties pursuant to the provisions of this Agreement and that, by virtue of the above-referenced consideration, the parties have received reasonably equivalent value in exchange for their obligations under this Agreement. The parties acknowledge and agree that each has received and reviewed a copy of this Agreement in the presence of their respective, independent counsel retained by them. Each party understands the purport, tenor, and effect of this Agreement, and has entered into this Agreement freely and voluntarily.

**6. ENTIRE AGREEMENT; AMENDMENT.** This Agreement (including all exhibits and all documents and papers delivered pursuant hereto and any written amendments hereof executed by the parties hereto) represents the entire agreement between the parties and supersedes any prior agreement, whether oral or in writing, of the parties regarding the subject matter hereof. All parties to this Agreement acknowledge, represent and warrant that they have read and understood this Agreement and that the Recitals set forth above are true and correct. This Agreement may not be modified, amended, changed, discharged, cancelled, or terminated except by written instrument executed by each of the parties to this Agreement.

**7. REPRESENTATIONS BY PARTIES.** The parties represent and warrant that they have entered into this Agreement relying wholly upon their own judgment, belief and knowledge of the nature, extent, effect and duration of any actions, damages and liability therefore. The parties represent that they enter into this Agreement without relying upon any statement or representation of the adverse parties other than what has been set forth in writing in this Agreement. The parties represent that they have had the opportunity to discuss this matter with counsel of their choosing and are satisfied with its counsel and the advice received. The parties further declare and represent that no promise, inducement, agreement or understanding not herein expressed has been made to an adverse party and that this Agreement contains the entire agreement between the parties hereto and that the terms of this Agreement are contractual and not a mere recital.

**8. COUNTERPARTS; SIGNATURES.** This Agreement shall become effective upon its execution by all of the undersigned parties. This Agreement may be executed in counterparts, each of which shall constitute an original and all of which together shall constitute one and the same instrument. Signatures may be given via telecopier, facsimile, or e-mail transmission and shall be deemed given as of the date and time of the transmission of this Agreement to the other parties.

**9. GOVERNING LAW, JURISDICTION, AND VENUE.** The parties agree that the Circuit Court of the 12th Judicial Circuit in Martin County, Florida shall retain jurisdiction for enforcement of this Agreement in the event of any disputes hereunder. Any civil action or legal proceeding arising out of or relating to this Agreement shall be brought solely and exclusively in the courts of record of the State of Florida in Martin County, Florida. Each party consents to the jurisdiction of such court in any such civil action or legal proceeding and waives any objection to the aforesaid laying of venue of any such civil action or legal proceeding in such court.

**10. NOTICE.** Any notice or demand, which must or may be given under this Agreement or by law, shall be in writing and shall be deemed to have been given: (i) when physically received by personal delivery (which shall include the receipt of a telephone facsimile transmission); or (ii) three (3) days after being deposited in United States first class mail, postage prepaid; or (iii) one (1) day

after being deposited with, or for overnight delivery, by a nationally known commercial courier service (such as FedEx, DHL, or UPS) addressed to the parties at the following addresses:

If to Citizens, then: CITIZENS FOR SUNSHINE, INC.  
c/o Andrea Flynn Mogensen, Esq.  
The Law Office of Andrea Flynn Mogensen, P.A.,  
200 South Washington Boulevard  
Suite 7  
Sarasota, FL 34236

If to City, then: David Persson  
217 Nassau St S  
Venice, FL 34285-2317

The addresses above may be changed by the giving of ten (10) business days written notice as provided in this Section.

**11. ATTORNEYS FEES.** If any legal action or other proceedings, including but not limited to any trial proceeding or appellate proceeding, are brought for the enforcement of this Agreement, or because of any alleged dispute, breach, default or misrepresentation in connection with any provision of this Agreement, the successful or prevailing Party shall be entitled to recover all costs incurred, including reasonable attorneys' and legal assistants' fees and costs prior to trial, at trial, and on appeal, in addition to any other relief to which such Party maybe entitled.

**12. INTERPRETATION.** The captions and headings contained in this Agreement are for reference purposes only and shall not affect the meaning or interpretation of this Agreement. Whenever used herein, the singular number shall include the plural, the plural the singular, and the use of any gender shall include all genders.

**13. JOINT DRAFTING CONSTRUCTION.** This Agreement shall be deemed and treated as drafted jointly by all the parties, and no term, condition or provision of this Agreement shall be construed more strictly against any Party.

**14. SEVERABILITY.** If any provision, or portion of any provision of this Agreement, or of any documents or instruments executed in connection with this Agreement are held to be invalid or unenforceable, all other provisions or portions of any provisions shall nevertheless continue in full force and effect.

**~ REMAINDER OF PAGE INTENTIONALLY LEFT BLANK~**

**IN WITNESS WHEREOF**, the parties have caused this Agreement to be executed individually and/or by their authorized representatives as of the day and the year first above written.

**CITIZENS FOR SUNSHINE, INC.**

\_\_\_\_\_  
CITIZENS FOR SUNSHINE, INC.

By: ANDREW SWAIN

Its: Director

**ACKNOWLEDGMENT**

STATE OF FLORIDA     }  
                                     }  
COUNTY OF SARASOTA }

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of October 2013, by ANDREW SWAIN as Director of CITIZENS FOR SUNSHINE, INC., who is: Personally known by me \_\_\_\_\_ OR produced identification \_\_\_\_\_. Type of Identification Produced:\_\_\_\_\_

\_\_\_\_\_  
(Signature of Notary Public- State of Florida

My commission expires:  
(Stamp Commissioned  
Name of Notary Public)

**City of Venice, Florida**

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

Its : \_\_\_\_\_

**ACKNOWLEDGMENT**

STATE OF FLORIDA     }  
                                     }  
COUNTY OF MARTIN    }

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of October, 2013 by \_\_\_\_\_, as \_\_\_\_\_ of the City of Venice, Florida, who is: Personally known by me \_\_\_\_\_ OR produced identification \_\_\_\_\_ Type \_\_\_\_\_ of \_\_\_\_\_ Identification Produced: \_\_\_\_\_

\_\_\_\_\_  
(Signature of Notary Public- State of Florida)

My commission expires:  
(Stamp Commissioned  
Name of Notary Public)