

TOWN OF WEST SENECA



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TO: Town Board
FROM: Shawn P. Martin
DATE: October 2, 2013
RE: Time Warner Cable Franchise agreement

For your consideration is a settlement agreement with Time Warner Cable for unpaid franchise fees discovered during an audit.

Settlement Agreement & Limited Release

THIS SETTLEMENT AGREEMENT is made as of (date) between the Town of West Seneca (the “Town”) and Time Warner NY Cable LLC (“TWC”) (collectively referred to as the “Parties”):

WHEREAS, the Parties have entered into a cable franchise agreement whereunder TWC, *inter alia*, is obligated to pay franchise fees to the Town; and

WHEREAS, a dispute arose in which the Town alleged that TWC only partially paid the franchise fees which were to the cable Franchise Agreement for the time period August 1, 2006 to December 31, 2010 (the “Disputed Franchise Fees”); and

WHEREAS, the Parties have agreed to compromise their dispute over the Disputed Franchise Fees solely to avoid the expense, effort, uncertainty and inconvenience entailed in continuing the dispute and in potential litigation and the Parties agree that there has been no finding, admission, or inference of liability or wrongdoing of any kind, and that this Agreement may not be deemed to create any inference of liability;

NOW, THEREFORE, in consideration of the terms set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

1. TWC agrees to pay the Town the total sum of \$67,821 (the “Settlement Sum”) contemporaneous with its execution of this Settlement Agreement and Limited Release which shall then constitute full and final settlement of the Parties’ dispute over the Disputed Franchise Fees.

2. The Town releases and discharges TWC from all actions, claims, counterclaims, cross claims, third-party actions, causes of action, suits, debts, dues, sums of money, accounts, reckonings, bonds, bills, specialties, covenants, contracts, controversies, agreements, premises, variances, trespasses, damages, judgments, executions, claims, and demands whatsoever, in law or

in equity, which against TWC, the Town and its affiliates, heirs, executors, administrators, successors and assigns ever had, now have or hereafter can, shall or may, have for the payment of franchise fees for the period between August 1, 2006 and December 31, 2010. This Release shall not release any other claims the Town may have against TWC.

3. This Settlement Agreement and Limited Release incorporates and merges all prior negotiations, and may not be changed orally.

4. The undersigned agree that this Settlement Agreement and Limited Release may be executed in counterparts, and facsimile signatures shall be deemed sufficient.

5. The Parties to this Settlement Agreement and Limited Release agree that the terms and provisions of the Agreement shall be interpreted by, and according to, the laws of the State of New York.

6. The Parties to this Settlement Agreement and Limited Release agree that should any provision of the Agreement be deemed unenforceable by a court of law, such finding shall not affect enforceability of the remaining provisions.

IN WITNESS THEREOF:

The Town of West Seneca

Time Warner NY Cable LLC

By: _____

By: _____