



JOHN FENZ
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TOWN OF WEST SENECA

TOWN SUPERVISOR
SHEILA M. MEEGAN
TOWN COUNCIL
EUGENE P. HART
WILLIAM P. HANLEY, JR.

TO: The Honorable Town Board

FROM: John J. Fenz, Esq.
Town Attorney

DATE: April 1, 2015

RE: Settlement Agreement
Western New York AmeriCorps Fund, Inc.

Kindly authorize the Supervisor to execute the necessary documents to enter into a Settlement Agreement with Western New York AmeriCorps Fund, Inc. ("WNY") to fully resolve certain obligations WNY owed the Town of West Seneca.

Further, kindly authorize the Town Attorney to execute a Stipulation of Discontinuance which discontinues the Town's legal action against WNY. This legal action was commenced in 2011 to recover funds which the Town claimed due and owing pursuant to its various agreements with WNY.

Please be advised, that after a final accounting, WNY agreed to pay the Town a total of \$1,178,851. Accounting for all previous payments, and those proposed to be recovered in a lump sum payment pursuant to this Settlement Agreement, the Town has collected approximately \$.76 on the dollar of those amounts determined due and owing.

APR 06 2015

SETTLEMENT AGREEMENT

This Settlement Agreement (the "Agreement") is made this __ day of April 2015, by and among Western New York AmeriCorps Fund, Inc. ("WNY"), a New York Not-For-Profit Corporation with its principal place of business located at 173 Elm Street, Buffalo, New York, and the Town of West Seneca ("Town"), a municipal corporation organized under the laws of the State of New York with its principal place of business located at 1250 Union Road, West Seneca, New York.

RECITALS:

WHEREAS, on or about June 23, 2008, the Town and WNY entered into a Grant Administration Agreement (the "Administration Agreement"); and

WHEREAS, on or about September 21, 2009, the parties entered into an Amendment to the Grant Administration Agreement (the "Amendment"); and

WHEREAS, pursuant to the Amendment, upon the approval and transfer of certain grants from the Town, WNY was required to pay the Town a total of \$964,338: (a) \$409,338 on or before June 1, 2010; (b) \$480,000 in sixty (60) equal monthly installments beginning on February 1, 2010; and (c) \$75,000 for a "facility usage fee" on or before March 1, 2010; and

WHEREAS, the Town commenced a legal action in Erie County, New York by filing a Summons and Complaint with the Clerk of Erie County on January 18, 2011, Index No. 2011-600244, (the "Legal Action");

WHEREAS, an accounting performed in 2012 determined that WNY was further obligated to the Town in the amount of \$214,513; and

WHEREAS, as of the date of this Agreement WNY has paid to the Town \$622,558 and \$556,293 remains due and owing; and

WHEREAS, WNY and the Town have agreed to settle WNY's liability under the Amendment, and the Legal Action, in accordance with and subject to the terms and conditions as set forth herein.

NOW, THEREFORE, the parties hereto hereby agree as follows:

1. **SETTLEMENT.** As of the Effective Date of this Agreement: (a) WNY shall provide and the Town shall accept certain property, furniture and equipment in an estimated amount of \$20,000.00; and (b) WNY shall provide the Town a lump sum cash payment of \$268,147. To comprise the balance due to the Town, WNY shall continue providing service delivery in the Town provided that it is done in a manner in compliance with federal and state law and the terms of the Grants.

2.1 RELEASE OF TOWN. WNY and each of its respective successors, assigns, parents, subsidiaries, affiliates, predecessors, employees, agents, heirs, executors, as applicable, both present and former (collectively, the "WNY Parties"), jointly and severally, release and forever discharge the Town, its affiliates, officers, directors, employees, agents, attorneys, successors and assigns, both present and former (collectively the "Town Affiliates") of and from any and all manner of action and actions, cause and causes of action, suits, debts, controversies, damages, judgments, executions, claims and demands whatsoever, asserted or unasserted, in law or in equity which against the Town and/or Town Affiliates they ever had, now have or which any of WNY successors, assigns, parents, subsidiaries, affiliates, predecessors, employees, agents, heirs, executors, as applicable, both present and former ever had or now has, upon or by reason of any manner, cause, causes or thing whatsoever, including, without limitation, any presently existing claim or defense whether or not presently suspected, contemplated or anticipated and including but not limited to any claim that relates to, in whole or in part, directly or indirectly to the Administration Agreement and the Amendment.

2.2 DISCONTINUANCE OF LEGAL ACTION AND RELEASE OF WNY. Subject to the provisions this Agreement, effective upon the delivery to the Town of the final payment in accordance with the settlement of WNY's obligations as set forth in Section 1 above, and in consideration of the payments described therein, the Town shall discontinue the Legal Action and the Town Affiliates, jointly and severally, release and forever discharge the WNY Parties of and from any and all manner of action and actions, cause and causes of action, suits, debts, controversies, damages, judgments, executions, claims and demands whatsoever, asserted or unasserted, in law or in equity which against the WNY Parties they ever had or now have, whether or not presently suspected, contemplated or anticipated, that relate to the Amendment.

3. OTHER AGREEMENTS, ACKNOWLEDGMENTS, REPRESENTATIONS AND WARRANTIES. WNY acknowledges, represents, warrants, affirms and confirms the following:

3.1 WNY and its officers have read this Agreement, understand the effect and scope of this Agreement and have had the assistance of separate legal counsel of its choice in carefully reviewing, discussing and considering all terms of this Agreement.

3.2 WNY's execution and delivery of this Agreement is not based upon reliance upon any representation, understanding or agreement not expressly set forth herein. Neither the Town nor Town Affiliates have made any representations to any other party (or such party's agent) not expressly set forth herein.

3.3 WNY does execute and deliver this Agreement as its free and voluntary act, without any duress, coercion or undue influence exerted by or on behalf of any other party.

3.4 WNY has full and complete authorization and power to execute this Agreement in the capacity herein stated. This Agreement is a valid, binding and enforceable obligation of WNY and does not violate any law, rule or regulation, or any contract or agreement to which WNY is a party.

4. SEPARABILITY. If any term, provision, covenant or condition of this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remainder of the provisions shall remain, at the option of the Town, in full force and effect and shall in no way be affected, impaired or invalidated. This Agreement is, and shall be deemed to be, the product of joint drafting by the parties hereto and shall not be construed against any of them as the drafter hereof.

5. APPLICABLE LAW. This Agreement is entered into, under and shall be governed by and construed in accordance with the internal laws of the State of New York without regard to such jurisdiction's principles of conflicts of law. WNY agrees that all claims, disputes, and other matters arising out of or relating to this Agreement, or the breach thereof, will be decided by proceedings instituted and litigated in a court of competent jurisdiction sitting in the State of New York.

6. COUNTERPARTS. This Agreement may be executed in multiple identical counterparts, each of which when duly executed shall be deemed an original, and all of which shall be construed together as one agreement. This Agreement will not be binding on or constitute evidence of a contract between the parties hereto until such time as a counterpart has been executed by such party and a copy thereof is delivered to each other party to this Agreement.

7. EFFECTIVE DATE. This Agreement shall be effective as of the date both parties have executed the Agreement as set forth herein.

8. ENTIRE AGREEMENT. This Agreement and all documents, instruments, and agreements executed in connection herewith incorporate all of the discussions and negotiations between the WNY and the Town, either expressed or implied, concerning the matters included herein and in such other documents, instruments and agreements, any statute, custom, or usage to the contrary notwithstanding. No such discussions or negotiations shall limit, modify, or otherwise affect the provisions hereof. None of the terms or provisions of this Agreement, may be changed, waived, modified, discharged, or terminated except by an instrument in writing executed by the party against whom or which enforcement of the change, waiver, modification, discharge or termination is asserted. None of the terms or provisions of this Agreement shall be deemed to have been abrogated or waived by reason of any failure or failures to enforce the same.

9. SUCCESSORS AND ASSIGNS. All rights of the Town hereunder shall inure to the benefit of the Town's successors and assigns, and all obligations of WNY hereunder shall bind the successors, assigns, heirs, administrators, executors and legal representatives and estate of WNY.

10. NO THIRD PARTY BENEFICIARIES. Nothing in this Agreement, expressed or implied, is intended to confer upon any party other than the parties hereto any rights, remedies, obligations or liabilities under or by reason of this Agreement or the Settlement effectuated hereby.

Executed as an instrument under seal as of the day and year first above written.

Western New York AmeriCorps Fund, Inc.:

By: _____

Its _____
(Duly Authorized)

STATE OF _____)
COUNTY OF _____) ss.:

On this ____ day of _____, before me, the undersigned officer, personally appeared the within named _____, to me known, and known by me to be _____ of said Western New York AmeriCorps Fund, the party executing the foregoing Instrument, and he/she acknowledged said Instrument to be his/her free act and deed and the free act and deed of said Western New York AmeriCorps Fund.

Notary Public

Town of West Seneca:

By: _____

STATE OF _____)
COUNTY OF _____) ss.:

On this ____ day of _____, before me, the undersigned officer, personally appeared the within named _____, to me known, and known by me to be a _____ of said Town of West Seneca, New York, the party executing the foregoing Instrument, and he/she acknowledged said Instrument to be his/her free act and deed and the free act and deed of said Town of West Seneca.

Notary Public

STATE OF NEW YORK
SUPREME COURT : COUNTY OF ERIE

TOWN OF WEST SENECA,

Plaintiff,

-vs-

**WESTERN NEW YORK AMERICORPS
FUND, INC.**

Defendant.

**STIPULATION OF
DISCONTINUANCE**

Index No.2011-600244

IT IS HEREBY STIPULATED AND AGREED by the parties herein that the above-entitled action, together with all cross-claims and counterclaims, be and the same is, hereby discontinued, with prejudice and without costs to any party and this stipulation may be filed with the Clerk of the Court without further notice.

JOHN J. FENZ, ESQ.
TOWN ATTORNEY

DUKE, HOLZMAN, PHODIATIS &
GRESENS, LLP

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