

WEST SENECA TOWN OFFICES
1250 Union Road
West Seneca, NY 14224

TOWN BOARD PROCEEDINGS
Executive Session
July 30, 2018

ROLL CALL: Present - Sheila M. Meegan Supervisor
William P. Hanley, Jr. Councilman
Eugene P. Hart Councilman


Absent - None

Motion by Supervisor Meegan, seconded by Councilman Hart, to approve the attached Settlement Agreement and General Release between John Gullo and the Town of West Seneca.

Ayes: All

Noes: None

Motion Carried
APPENDICES



JACQUELINE A FELSER, TOWN CLERK

CONFIDENTIAL
SETTLEMENT AGREEMENT AND GENERAL RELEASE

This Confidential Settlement Agreement and General Release ("AGREEMENT") is entered into by and between JOHN GULLO ("GULLO") and the TOWN OF WEST SENECA (the "TOWN") (collectively "PARTIES").

RECITALS

This AGREEMENT is made with reference to the following facts:

- A. **WHEREAS**, THE TOWN preferred Charges of misconduct and incompetence against GULLO in connection with his employment with the TOWN, pursuant to Section 75 of the New York State Civil Service Law (the "Charges") and has recommended the termination of GULLO's employment with THE TOWN; and
- B. **WHEREAS**, the Charges are currently pending and are scheduled for hearing before hearing Officer Anne Evanko, Esq.; and
- C. **WHEREAS**, GULLO denies the validity of the Charges and denies having engaged in any misconduct or incompetence in connection with his employment with THE TOWN and THE TOWN denies any liability to GULLO; and
- D. **WHEREAS**, all wages concededly due to GULLO have been unconditionally paid; and
- E. **WHEREAS**, all Parties wish to settle their differences without resort to hearing or further litigation; and
- F. **WHEREAS**, THE TOWN is willing to provide GULLO with certain considerations described below, which it is not ordinarily required to, provided GULLO voluntarily resigns or retires from employment with THE TOWN and releases THE TOWN from any claims GULLO has made or might make arising out of his employment with THE TOWN and agrees to comply with the other promises and conditions set forth in this AGREEMENT.

NOW THEREFORE, in consideration of the mutual covenants and promises contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by the Parties, the Parties agree to be legally bound by the following terms and conditions, which constitute full settlement of any and all disputes between them:

1. **Recitals:** The Parties acknowledge that the "WHEREAS" clauses preceding paragraph 1 are true and correct, and are incorporated herein as material parts to this AGREEMENT.
2. **Definitions:** Throughout this AGREEMENT, the term "THE TOWN" shall include the following:

- (A) THE TOWN OF WEST SENECA NEW YORK as well as any as well as any department or division of the Town of West Seneca, New York or any related entity or operating entity of The Town of West Seneca, New York; and
 - (B) Any elected or appointed official, agent, employee, or insurer of an entity encompassed by subparagraph (A).
3. Settlement Sum: As consideration for signing this AGREEMENT and compliance with the promises made herein, THE TOWN agrees to do the following:
- (A) Pay to GULLO the sum of TWENTY- FIVE THOUSAND DOLLARS AND 00/100 CENTS (\$25,000.00) less lawful deductions. The Parties acknowledge that this sum is approximately equal to the dollar amount of accrued benefit time which GULLO may have been entitled at retirement, less the TOWN's attorneys' fees and legal costs and restitution to any affected taxing entities. This sum shall be allocated as follows: TEN THOUSAND DOLLARS AND 00/100 shall be contributed to GULLO'S New York State Deferred Compensation Plan Account and FIFTEEN THOUSAND DOLLARS AND 00/100 as wage-based compensatory damages to GULLO, and W-2's shall be issued as may be required; and
 - (B) Withdraw the Charges currently pending against GULLO under Section 75 of the New York State Civil Service Law, and immediately thereafter accept GULLO'S voluntary resignation/retirement from employment with THE TOWN, effective July 20, 2018.
 - (C) Provide single health insurance coverage for GULLO under the Blue Cross/Blue Shield, Point of Service 201 Plan, or the least expensive single health insurance plan made available by the TOWN to its employees, until GULLO reaches the age of Medicare eligibility. Additionally, single Sunrise Dental and Vision Coverage, or the lease expensive dental and vision plans made available by THE TOWN to its employees, shall be provided until GULLO reaches the age of Medicare eligibility.

THE TOWN shall provide the consideration identified in this paragraph 3 after receiving all of the following items: (1) an original of this AGREEMENT appropriately signed and dated by GULLO; (2) A letter from GULLO notifying THE TOWN that he will voluntarily resign or retire from his employment with THE TOWN effective July 20, 2018.

This AGREEMENT shall not become effective, therefore, and none of the benefits set forth in this paragraph will become due or payable, until after the Effective Date of this AGREEMENT (the "Effective Date"). The Effective Date shall be defined as the first day after THE TOWN has received from GULLO all of the items described in this paragraph and the revocation period set forth in Paragraph 25(c) has passed.

4. **Consideration:** GULLO understands and agrees that he would not receive the monies and/or benefits specified in paragraph 3, above, but for his/her execution of this AGREEMENT and the fulfillment of the promises contained herein.

5. **General Release of Claims:** Subject to the rights enumerated in paragraph 6, below, in exchange for, and in consideration of, the payments, benefits, and other commitments described above, GULLO, for himself and for each of his heirs, executors, administrators, and assigns, hereby fully releases, acquits, and forever discharges THE TOWN and each of its predecessors, successors and assigns, related entities, affiliated entities, and the elected officials, employees, attorneys and agents, past and present, of each of the aforesaid entities (“Related Persons”) of and from any and all claims, liabilities, causes of action, damages, costs, attorneys’ fees, expenses, and compensation whatsoever, of whatever kind or nature, in law, equity or otherwise, whether known or unknown, vested or contingent, suspected or unsuspected, that GULLO may now have, has ever had, or hereafter may have relating directly or indirectly to GULLO’s employment with THE TOWN, including, but not limited to, claims for wages, which, as set forth in “WHEREAS” clause “D” preceding paragraph 1 of this AGREEMENT, as well as paragraph 7 of this AGREEMENT, have been fully paid to GULLO prior to the execution of this AGREEMENT, or are fully paid by way of paragraph 3 of this AGREEMENT; back pay; front pay; reinstatement; damages; or benefits. GULLO also releases any and all claims he may have that arose prior to the date of this AGREEMENT, and hereby specifically waives and releases all claims, including, but not limited to, those arising under Title VII of the Civil Rights Act of 1964, as amended, the Civil Rights Act of 1991; the Equal Pay Act; the Americans With Disabilities Act of 1990; the Rehabilitation Act of 1973, as amended; the Age Discrimination in Employment Act, as amended (ADEA); Sections 1981 through 1988 of Title 42 of the United States Code, as amended; the Immigration Reform and Control Act, as amended; the Workers Adjustment and Retraining Notification Act, as amended; the Occupational Safety and Health Act, as amended; the Sarbanes-Oxley Act of 2002; the Consolidated Omnibus Budget Reconciliation Act (COBRA); the Employee Retirement Income Security Act of 1974, as amended (ERISA); the New York State Civil Service Law; and any and all state or local statutes, ordinances, or regulations, as well as all claims arising under federal, state, or local law involving any tort, employment contract (express or implied), public policy, wrongful discharge, or any other claim.

Nothing in this AGREEMENT is intended to waive claims (i) for unemployment or workers’ compensation benefits, (ii) for vested rights under ERISA-covered employee benefit plans as applicable on the date GULLO signs this AGREEMENT, or (iv) which cannot be released by private agreement.

6. **Right to Engage in Protected Activity:** Nothing in this AGREEMENT including but not limited to the General Release of Claims, No Further Employment, Confidentiality, Non-Disparagement, Conditions paragraphs, or any other paragraphs whether referencing this paragraph or not, prevents GULLO from filing a charge or complaint with, from participating in an investigation or proceeding conducted by, providing information to, or otherwise assisting the EEOC, NLRB, SEC, or any other federal, state or local agency charged with the enforcement of any

laws, or from exercising rights under Section 7 of the NLRA to engage in joint activity with other employees, although by signing this AGREEMENT GULLO is waiving rights to individual relief (including front pay, back pay, reinstatement or other legal or equitable relief) based on claims asserted in such a charge or complaint or other proceeding brought by GULLO or on his behalf by any third party, except for any right GULLO may have to receive a payment from a government agency (and not THE TOWN) for information provided to the government agency or otherwise prohibited.

7. INTENTIONALLY OMITTED.

8. Affirmations: GULLO represents and affirms that he has been paid and/or received all leave (paid or unpaid), compensation, wages, bonuses, commissions, and/or benefits to which he may be entitled and that no other leave (paid or unpaid), compensation, wages, bonuses, commissions, and/or benefits are due him, except as provided for in this AGREEMENT. GULLO further represents that he reported all work-related injuries suffered during employment and that he reported any and all concerns regarding suspected ethical and compliance issues or violations on the part of THE TOWN or any released person or entity.

9. No Medicare Beneficiaries, No Conditional Medicare Payments: This settlement is based on a good faith determination of the Parties to resolve a disputed claim. The Parties have attempted to resolve this matter in compliance with both state and federal law. It is believed that the settlement terms adequately consider and protect Medicare's interest and do not reflect any attempt to shift responsibility for medical treatment to Medicare in contravention of the Medicare Secondary Payor Act, 42 U.S.C. Sec. 1395y(b).

GULLO warrants that he is not a Medicare beneficiary as of the date of this release, nor does he/she reasonably anticipate becoming a Medicare beneficiary within 30 months of executing this Agreement. Because GULLO is not a Medicare recipient as of the date of this release, no conditional payments have been made to Medicare.

The Parties acknowledge and understand that any present or future action or decision by Medicare on this settlement, or GULLO's eligibility or entitlement to Medicare or Medicare payments, will not render this release void or ineffective, or in any way affect the finality of this liability settlement.

10. No Further Employment: Subject to the rights enumerated in paragraph 6, GULLO acknowledges that his employment with THE TOWN terminated effective July 20, 2018. GULLO permanently, unequivocally, and unconditionally waives any and all rights GULLO may now have, may have had in the past, or may have in the future to obtain or resume employment with THE TOWN. GULLO agrees never to apply for employment with THE TOWN, its successors, affiliates or related entities. In the event that GULLO is ever mistakenly employed by THE TOWN, its parent, successors, affiliates, and/or related entities, GULLO agrees to have his employment terminated with no resulting claim or cause of action against THE TOWN, its successors, affiliates, and/or related entities.

11. **No Assignment:** The Parties represent and warrant that no person other than the signatories hereto had or has any interest in the matters referred to in this AGREEMENT, that the Parties have the sole right and exclusive authority to execute this AGREEMENT, and that the Parties have not sold, assigned, transferred, conveyed, or otherwise disposed of any claim, demand or legal right that is the subject of this AGREEMENT.

12. **Confidentiality:** Subject to the rights enumerated in paragraph 6, in consideration of the obligations under this AGREEMENT, GULLO agrees that this AGREEMENT and the terms and conditions hereof, are strictly, and shall forever remain, confidential, and that neither GULLO nor his heirs, agents, executors, administrators, attorneys, legal representatives or assigns shall disclose or disseminate, directly or indirectly, any information concerning any such terms to any third person(s), including, but not limited to, representatives of the media or other present or former associates of THE TOWN, under any circumstances, except GULLO may disclose the terms of this AGREEMENT to his attorney, accountant, tax advisor, the Internal Revenue Service, other government authorities, or as otherwise required by law ("Third Parties"), provided, however, that the Third Parties to whom such disclosure is made (other than the IRS or other government authorities) shall agree in advance to be bound by the terms of this paragraph 10 and all of its subparts, to the maximum extent permitted by law.
 - (A) Subject to the rights enumerated in paragraph 6, if GULLO is required to disclose this AGREEMENT, its terms or underlying facts pursuant to court order and/or subpoena, GULLO shall notify THE TOWN, in writing via facsimile or overnight mail, within 24 hours of his/her receipt of such court order or subpoena, and simultaneously provide THE TOWN with a copy of such court order or subpoena. The notice shall comply with the notice requirements set forth below in paragraph 23. GULLO agrees to waive any objection to THE TOWN's request that the document production or testimony be done *in camera* and under seal.
 - (B) Subject to the rights enumerated in paragraph 6, GULLO acknowledges that a violation of paragraph 10 or any of its subparts would cause immeasurable and irreparable damage to THE TOWN in an amount incapable of precise determination. Accordingly, GULLO agrees that THE TOWN shall be entitled to injunctive relief in any court of competent jurisdiction for any actual or threatened violation of paragraph 10 and all of its subparts, in addition to any other available remedies.
 - (C) Subject to the rights enumerated in paragraph 6, the Parties agree that the terms of paragraph 12 and all of its subparts are a material inducement for the execution of this AGREEMENT. Any disclosure or dissemination, other than as described above in paragraph 12 and 12(A) will be regarded as a breach of this AGREEMENT and a cause of action shall immediately accrue for damages and injunctive relief. The Parties agree that damages sustained by such breach would be impractical or extremely difficult to determine and, therefore, agree that in the event that GULLO, or any of the individuals identified in paragraph 12(A), violates this paragraph 12 or any of its subparts, GULLO shall pay THE TOWN liquidated

damages in the sum of TWO THOUSAND FIVE HUNDRED DOLLARS AND 00/100 CENTS (\$2,500.00) for each violation. The Parties further agree that such damages are not intended to be, and shall not be construed as, a penalty.

13. **Non-Disparagement:** Subject to the rights enumerated in paragraph 6, GULLO agrees that he will not provide information, issue statements, or take any action, directly or indirectly, that would cause THE TOWN embarrassment or humiliation or otherwise cause or contribute to THE TOWN being held in disrepute, except that nothing herein shall prevent GULLO from providing truthful information and testimony (a) to government authorities; (b) in any legal proceedings; or (c) as required by law.
14. **Governing Law and Jurisdiction:** This AGREEMENT shall be governed and conformed in accordance with the laws of the State of New York, where GULLO was employed at the time of his last day of employment with THE TOWN without regard to its conflict of laws provision. In the event GULLO or THE TOWN breaches any provision of this AGREEMENT, GULLO and THE TOWN affirm that either may institute an action to specifically enforce any term or terms of this AGREEMENT.
15. **Conditions:** Subject to the rights enumerated in paragraph 6, and with the additional agreement of the Parties that this paragraph shall not apply to any claim related to the knowing and voluntary nature of this AGREEMENT under the ADEA and Older Workers Benefit Protection Act (OWBPA), should GULLO ever breach any provision or obligation under this AGREEMENT, GULLO explicitly agrees to pay all damages (including, but not limited to, litigation and/or defense costs, expenses, and reasonable attorneys' fees) incurred by THE TOWN as a result of GULLO's breach. Nothing in this paragraph shall, or is intended to, limit or restrict any other rights or remedies THE TOWN may have by virtue of this AGREEMENT or otherwise.
16. **No Admission of Liability:** The parties agree that neither this AGREEMENT nor the furnishing of the consideration for this AGREEMENT shall be deemed or construed at anytime for any purpose as an admission by THE TOWN of any liability or unlawful conduct of any kind.
17. **Headings:** The headings of the provisions herein are intended for convenient reference only, and the same shall not be, nor be deemed to be, interpretative of the contents of such provision.
18. **Modification of Agreement:** This AGREEMENT may not be amended, revoked, changed, or modified in any way, except in writing executed by all Parties. GULLO agrees not to make any claim at any time or place that this AGREEMENT has been verbally modified in any respect whatsoever. No waiver of any provision of this AGREEMENT will be valid unless it is in writing and signed by the party against whom such waiver is charged. The parties acknowledge that only an authorized representative of THE TOWN has the authority to modify this AGREEMENT on behalf of THE TOWN.

19. **Interpretation:** The language of all parts of this AGREEMENT shall in all cases be construed as a whole, according to its fair meaning, and not strictly for or against any of the Parties. This AGREEMENT has been negotiated by and between attorneys for the Parties and shall not be construed against the “drafter” of the AGREEMENT.
20. **Severability:** The parties explicitly acknowledge and agree that the provisions of this AGREEMENT are both reasonable and enforceable. However, if any portion or provision of this AGREEMENT (including, without implication of limitation, any portion or provision of any section of this AGREEMENT) is determined to be illegal, invalid, or unenforceable by any court of competent jurisdiction and cannot be modified to be legal, valid, or enforceable, the remainder of this AGREEMENT shall not be affected by such determination and shall be valid and enforceable to the fullest extent permitted by law, and said illegal, invalid, or unenforceable portion or provision shall be deemed not to be a part of this AGREEMENT. To the extent any provision herein that relates to GULLO’s voluntary resignation/retirement from employment with THE TOWN, or the general release of claims described in paragraph 5 above is deemed to be illegal, invalid, or unenforceable, THE TOWN is not obligated to honor any of the terms set forth herein and GULLO shall return any amounts paid by THE TOWN.
21. **Binding Nature of Agreement:** This AGREEMENT shall be binding upon each of the Parties and upon their respective heirs, administrators, representatives, executors, successors, and assigns, and shall inure to the benefit of each party and to their respective heirs, administrators, representatives, executors, successors, and assigns.
22. **Entire Agreement:** This AGREEMENT sets forth the entire AGREEMENT between the parties hereto, and fully supersedes any prior obligation of THE TOWN to GULLO, except any prior agreements related to inventions, business ideas, confidentiality of corporate information, and non-competition remain intact. GULLO shall not be held liable under this Agreement or any other agreement or any federal or state trade secret law for making any confidential disclosure of a THE TOWN trade secret or other confidential THE TOWN information to a government official or an attorney for purposes of reporting or investigating a suspected violation of law or regulation, or in a court filing under seal, nor shall GULLO be required to obtain approval or notify THE TOWN prior to making any such disclosure. GULLO acknowledges that he has not relied on any representations, promises, or agreements of any kind made to him in connection with his decision to accept this AGREEMENT, except for those set forth in this AGREEMENT.
23. **Notice Requirements:** Each notice (“Notice”) provided for under this AGREEMENT, must comply with the requirements as set forth in this paragraph. Each Notice shall be in writing and sent by facsimile or depositing it with a nationally recognized overnight courier service that obtains receipts (such as Federal Express or UPS Next Day Air), addressed to the appropriate party (and marked to a particular individual’s attention, if so indicated) as hereinafter provided. Each Notice shall be effective upon being so telecopied or deposited, but the time period in which a response to any notice must be given or any action taken with respect thereto shall commence to run from the date of receipt of the Notice by the addressee thereof, as evidenced by the return receipt. Rejection or other refusal by the

addressee to accept or the inability to deliver because of a changed address of which no Notice was given shall be deemed to be the receipt of the Notice sent. Any party shall have the right from time to time to change the address or individual's attention to which notices to it shall be sent by giving to the other party at least ten (10) days prior Notice thereof. The Parties' addresses for providing Notices hereunder shall be as follows:

THE TOWN OF WEST SENECA
Attention: Town Attorney
1250 Union Road
West Seneca, New York 14224
716-558-3240

JOHN GULLO

24. **Selective Enforcement:** The Parties agree that the failure of any party to enforce or exercise any right, condition, term, or provision of this AGREEMENT shall not be construed as or deemed a relinquishment or waiver thereof, and the same shall continue in full force and effect.
25. **Compliance with Older Workers Benefit Protection Act:** GULLO, being 40 years of age or older, is advised of and acknowledges the following:
 - (A) **Twenty-One Day Consideration Period.** GULLO shall have up to twenty-one (21) days to consider and accept the terms of this AGREEMENT by fully executing it below, and returning it to THE TOWN's counsel, as identified in paragraph 23. During this twenty-one (21) day period and before signing this AGREEMENT, GULLO is encouraged to consult with an attorney regarding the terms and provisions of this AGREEMENT, at his own expense. The terms and provisions of this AGREEMENT are null and void if not accepted by GULLO within the twenty-one (21) day period. GULLO may sign the AGREEMENT prior to the conclusion of the twenty-one (21) day period.
 - (B) **Release of Age Discrimination in Employment Act Claims.** By signing this AGREEMENT, GULLO waives any claims he has or might have against THE TOWN under the Age Discrimination in Employment Act ("ADEA") that accrued prior to the date of GULLO's execution of the AGREEMENT.
 - (C) **Revocation Period.** GULLO shall have seven (7) calendar days from the date he signs this AGREEMENT to revoke the AGREEMENT by notifying THE TOWN in writing prior to the expiration of the seven (7) calendar day period. The written revocation must be personally delivered to THE TOWN in the manner proscribed by paragraph 23 above, and must be postmarked within seven (7) calendar days of GULLO's execution of this AGREEMENT. This AGREEMENT shall not become effective or enforceable until the revocation period has expired. If the last day of

the revocation period is a Saturday, Sunday, or legal holiday, then the revocation period shall not expire until the next following day that is not a Saturday, Sunday, or legal holiday.

GULLO IS HEREBY ADVISED THAT HE HAS UP TO TWENTY-ONE (21) CALENDAR DAYS TO REVIEW AND CONSIDER THIS AGREEMENT AND IS HEREBY ADVISED IN WRITING TO CONSULT WITH AN ATTORNEY PRIOR TO EXECUTION OF THIS AGREEMENT.

GULLO AGREES THAT ANY MODIFICATIONS, MATERIAL OR OTHERWISE, MADE TO THIS AGREEMENT DO NOT RESTART OR AFFECT IN ANY MANNER THE ORIGINAL TWENTY-ONE (21) CALENDAR DAY CONSIDERATION PERIOD.

HAVING ELECTED TO EXECUTE THIS AGREEMENT, TO FULFILL THE PROMISES AND TO RECEIVE THE SUMS AND BENEFITS IN PARAGRAPH 3 ABOVE, GULLO FREELY AND KNOWINGLY, AND AFTER DUE CONSIDERATION, ENTERS INTO THIS AGREEMENT INTENDING TO WAIVE, SETTLE, AND RELEASE ALL CLAIMS HE HAS OR MIGHT HAVE AGAINST THE TOWN.

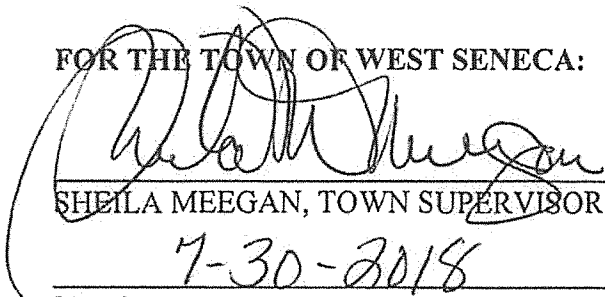
FOR JOHN GULLO:



JOHN GULLO

July 20, 2018
[Date]

FOR THE TOWN OF WEST SENECA:



SHEILA MEEGAN, TOWN SUPERVISOR

7-30-2018
[Date]