

MOTION

I HEREBY MOVE that the Council ADOPT the following recommendations of the City Attorney in order to effect settlement in the case entitled City of Los Angeles v. Time Warner Cable (TWC), United States District Court Case No. CV14-1984-ODW (this matter arises concerns allegations that TWC owes franchise fee and Public Educational and Government [PEG] fee money to the City, and TWC's contention that the City owes it money), **SUBJECT TO THE APPROVAL OF THE MAYOR:**

1. APPROVE the proposed settlement of the above-entitled matter with the following terms:
 - a. TWC agrees to allow the City to reclassify the \$5,223,022 previously paid from 2008 PEG capital money to 2011 franchise fee money.
 - b. TWC agrees to allow the City to use the 1 percent PEG fee money for PEG operational, and not just capital, expenses.
 - c. Both TWC and the City agree to forgo their pending claims and dismiss their respective lawsuits.
 - d. The City agrees to waive a potential claim of approximately \$1 million resulting from its audit of TWC's 2012 and 2013 cable fee payments.
2. AUTHORIZE the City Attorney, or designee, to prepare Controller instructions for any necessary technical adjustments, subject to the approval of the City Administrative Officer; and, AUTHORIZE the Controller to implement the instructions.

This matter was recommended for approval by the Budget and Finance Committee (Krekorian – Koretz – Blumenfield – Bonin: “Yes”) at its meeting on January 25, 2016, in Closed Session as permitted by Government Code Section 54956.9(d)(1).

PRESENTED BY _____
PAUL KREKORIAN
Councilmember, 2nd District

SECONDED BY _____
MITCHELL ENGLANDER
Councilmember, 12th District

REW
CF 16-0022
January 25, 2016

SETTLEMENT AGREEMENT AND MUTUAL RELEASE

This Settlement Agreement and Mutual Release ("Agreement") is entered into by and between Defendants Time Warner Cable, Inc., Time Warner Cable Pacific West LLC, Time Warner Cable Enterprises LLC, Time Warner NY Cable LLC, TW NY Cable Holding Inc., and Time Warner Entertainment Advance/Newhouse Partnership (collectively, "TWC") and Plaintiff the City of Los Angeles ("LA" or "the City"), (jointly, "the Parties").

WHEREAS, the City filed a lawsuit against TWC in the United States District Court for the Central District of California on March 14, 2014, styled *City of Los Angeles v. Time Warner Cable, Inc., Time Warner Cable Pacific LLC, et al.*, Case No. CV14-01984ODW(ASX) (the "Litigation"), alleging that TWC violated state and local law regarding payment of franchise and public, educational, and governmental ("PEG") access fees for 2008 through 2011; and

WHEREAS, TWC filed an Answer and Counterclaim in the Litigation; and

WHEREAS, the City filed an Answer to TWC's Counterclaims; and

WHEREAS, the Parties have a dispute regarding TWC's payment of franchise and PEG fees to the City for 2012 through September 30, 2015; and

WHEREAS, the City filed a lawsuit against TWC in the Los Angeles Superior Court, Central District, on January 22, 2016, styled *City of Los Angeles v. Time Warner Cable, Inc., Time Warner Cable Pacific West LLC, et al.*, Case No.

BC607770, related to the payment of franchise and PEG fees for 2012 and 2013;
and

WHEREAS, the Parties' dispute in the foregoing WHEREAS clauses, including their respective claims and counterclaims in the Litigation and the claims presented in the City's lawsuit styled *City of Los Angeles v. Time Warner Cable, Inc., Time Warner Cable Pacific West LLC, et al.*, Case No. BC607770, is collectively referred to as "the Dispute"; and

WHEREAS, without any admission of liability whatsoever by any Party as to the validity, force, or effect of any asserted or unasserted claim or counterclaim, the Parties desire fully and completely to settle and resolve the Dispute as set forth below.

NOW THEREFORE, in consideration of the premises, mutual covenants and promises set forth in this Agreement, and for other good and valuable consideration, the validity, sufficiency and receipt of which are hereby acknowledged, TWC and the City hereby STIPULATE AND AGREE as follows:

1. **Dismissal of Litigation.** Within ten (10) business days of the execution of this Agreement, the City and TWC shall jointly stipulate to dismiss the Litigation and all of their claims and counterclaims filed therein, with prejudice. The City also shall dismiss all of its claims in the January 22, 2016, litigation filed in the Los Angeles Superior Court, Central District, Case No. BC607770, with prejudice.

2. **Payment, Attorneys' Fees, and Costs.** The Parties and each of them specifically understand, acknowledge, and agree that no money shall be due or owed by any party under this Agreement. All Parties shall bear their own respective attorneys' fees and costs incurred in connection with the above described action. No Party shall have a right to recover any of its attorneys' fees or costs from any other Party.

3. **May 2011 Payment.** LA may classify TWC's May 2011 payment of approximately \$5.2 million as franchise fees.

4. **Franchise Fee and Related Audits.** The City agrees that TWC has paid in full all required franchise and PEG fees, including any claims of interest, through September 30, 2015.

5. **Remittance and Use of Fees.** TWC will not challenge, contest, or offset against the City's use or expenditure of franchise or PEG fees remitted by TWC during the period January 1, 2009, through December 31, 2030, except if the City challenges or contests the amount of such fees remitted by TWC during such period. From the Effective Date of this Agreement through December 31, 2030, TWC will calculate and remit franchise and PEG fees to the City using the same methodology it used in 2012 except as otherwise provided by any applicable federal or state law. The following shall be included as gross revenues under the 2012 methodology: (i) bad debt recoveries; and (ii) payment reversal fees related to customer returned checks.

6. **Non-Disparagement and Public Comment.** The Parties shall make reasonable efforts to provide notice to their employees, agents and representatives that, in response to any inquiry by a member of the media, press or public, they are to advise that the matter was resolved to the satisfaction of the Parties, and that they should refrain from making any public statements (or authorizing any statements) that are disparaging to the reputation or business of one another. The foregoing obligation to make reasonable efforts shall be fulfilled by providing written notice, including by e-mail, to such employees agents and representatives at or around the Effective Date of this Agreement. This paragraph does not create any ongoing obligations once such notice has been provided. The Parties understand and agree that this Agreement will be a public document under the California Public Records Act and will be released by the City upon request to any interested party.

7. **Mutual Special Releases and Covenants Not to Sue.**

(a) **TWC's Release of the City.** Except with respect to any obligations created by or arising out of this Agreement, TWC hereby covenants not to sue and releases and absolutely and forever discharges the City and its elected officials, agents, contractors, employees, attorneys, predecessors, successors and assigns, and each of them, from any and all claims, demands, grievances, liabilities, debts, accounts, obligations, costs, expenses, liens, actions and causes of action, of every kind and nature whatsoever, whether known or unknown, anticipated or unanticipated, suspected or unsuspected, which TWC has or claims to have, now or hereafter, against the City or its elected officials, agents, contractors, employees,

attorneys, predecessors, successors and assigns, and each of them, arising out of or in connection with the Litigation and/or the Dispute.

(b) **The City's Release of TWC.** Except with respect to any obligations created by or arising out of this Agreement, the City hereby covenants not to sue and releases and absolutely and forever discharges TWC and its agents, contractors, employees, attorneys, predecessors, successors and assigns, and each of them, from any and all claims, demands, grievances, liabilities, debts, accounts, obligations, costs, expenses, liens, actions and causes of action, of every kind and nature whatsoever, whether known or unknown, anticipated or unanticipated, suspected or unsuspected, which the City has or claims to have, now or hereafter, against TWC or its agents, contractors, employees, attorneys, predecessors, successors and assigns, and each of them, arising out of or in connection with the Litigation and/or the Dispute.

8. **Inapplicability of Civil Code Section 1542.** Each of the Parties to this Agreement acknowledges and agrees that the releases contained in this Agreement are special releases and that section 1542 of the Civil Code of the State of California is not applicable. If and to the extent it should be determined that the mutual releases and covenants not to sue contained in this Agreement are not special releases, contrary to the Parties' acknowledged intention and agreement, each Party specifically waives the benefit of the provisions of section 1542 of the Civil Code of California, which provides as follows:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE,

**WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY
AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR.**

9. **Waiver of Unknown Claims.** Each Party hereby acknowledges that each Party is aware that such Party may later discover facts in addition to or different from those which such Party now knows or believes to be true with respect to the claims that comprise the Dispute and that it is such Party's intention, notwithstanding, to fully, finally and forever, settle and release all of the claims released by this Agreement, known or unknown, suspected or unsuspected, which now exist, or previously existed between the Parties. In furtherance of such intention, the releases given in this Agreement shall be and shall remain in effect as a full and completed release, notwithstanding the discovery or existence of any such additional or different facts. The Parties, further, accept and assume the risk that such facts may turn out to be different from the facts now known or believed to be true by the parties and agree that the releases given in this Agreement shall remain in all respects effective and shall not be subject to termination or rescission by reason of any such difference in fact.

10. **Representations and Warranties.**

(a) **Non-assignment.** Each of the Parties to this Agreement hereby represents and warrants that such Party has not heretofore assigned or transferred, or purported to assign or transfer, to any person whomsoever any of the claims, demands, grievances, liabilities, debts, accounts, obligations, costs, expenses, liens, actions or causes or action that are released by the terms of this Agreement. Each Party to this Agreement further agrees to indemnify and hold

harmless any other Party from and against the assertion by any third party of any such claims, demands, grievances, liabilities, debts, accounts, obligations, costs, expenses, liens, actions or causes of action, including reasonable attorneys' fees and costs incurred, arising out of or in connection with any such assignment or transfer by such Party.

(b) **Authority.** Each person executing this Agreement on behalf of a corporation or other legal entity warrants that he or she holds the position indicated beneath his or her signature and that he or she has been duly authorized by said corporation or other legal entity to execute this Agreement on its behalf.

11. **Effective Date.** This agreement shall become effective upon the later of the date it is (a) signed by all Parties; or (b) finally approved by the Los Angeles City Council.

12. **Miscellaneous.**

(a) **Independent Advice.** Each Party to this Agreement acknowledges and agrees that such Party to this Agreement has been represented throughout the negotiation and documentation by attorneys of the Party's choice and has been advised by such attorneys with respect to this Agreement and the effect of the releases given in this Agreement. Each party to this Agreement further acknowledges and agrees that such Party has read this Agreement, knows the contents of this Agreement and in executing this Agreement has relied solely on the Party's own judgment, belief and knowledge, and the advice and recommendations of the party's attorneys and other advisers, concerning this Agreement, and has not

been induced to enter into this Agreement by any representation or statement of any other party not expressly contained in this Agreement.

(b) **Successors and Assigns.** This Agreement shall be binding on TWC and its agents, contractors, employees, attorneys, predecessors, successors, and assignees, and each of them, including but not limited to any voluntary or involuntary successor or assign in whole or in part of: (i) the franchises held by TWC as the same may be renewed or extended; or (ii) the system controlled or operated by TWC; (iii) the subscribers or customers serviced by TWC; or (iv) a direct or indirect agreement with TWC or its affiliates to provide cable service subject to franchise and PEG fees in the City.

(c) **Integration.** The Parties acknowledge that this Agreement sets forth the entire agreement between the Parties relating to the subject matter of this Agreement.

(d) **No Admission of Liability.** Each Party acknowledges and agrees that this Agreement accomplishes the compromise of disputed claims and neither this Agreement nor any negotiations or proceedings connected with this Agreement shall be considered, offered, received as or deemed to be evidence of an admission on the part of any party hereto of any fact, allegation, claim, statement, culpability, liability or wrongdoing whatsoever, whether as alleged in connection with the Litigation or otherwise. Any liability, wrongdoing or error is expressly denied by each Party to this Agreement and this Agreement is without prejudice to any Party's claims or defenses in any future proceedings between the Parties to this Agreement,

except to the extent that such claim or defense is inconsistent with the express promises herein.

(e) **Additional Actions.** The Parties agree to take such other action as may be reasonably required to carry out the terms of this Agreement.

(f) **Titles and Captions.** Titles and captions contained in this Agreement are inserted as a matter of convenience and for reference and are not intended and shall not be construed to define, limit, extend or otherwise describe the scope of this Agreement or any provision of this Agreement.

(g) **Waiver.** No breach of any provision of this Agreement can be waived unless in writing. Waiver of any one breach of this Agreement shall not be deemed to be a waiver of any other breach of that or any other provision of this Agreement.

(h) **Modification and Amendment.** No modification of any of the terms or provisions of this Agreement shall be binding on any Party to this Agreement unless made in writing and signed by a duly authorized representative of such Party and in the case of a modification intended to bind the City, approval of the modification by the City Council.

(i) **Agreement to be Governed by California Law.** This Agreement shall be governed by and construed in accordance with the laws of the State of California.

(j) **No Construction.** No Party to this Agreement or such Party's attorney shall be deemed to be the drafter of this Agreement for purposes of interpreting or construing any of the provisions of this Agreement. This Agreement

shall be interpreted in accordance with the fair meaning of its language and not strictly for or against any of the Parties to this Agreement.

(k) **Execution in Counterparts.** This Agreement may be executed in any number of copies by the Parties to this Agreement on separate counterparts and will become effective upon signature by all Parties upon one of more such counterparts.

IN WITNESS WHEREOF, the Parties hereto have executed and delivered this Agreement as of the dates shown below.

CITY OF LOS ANGELES

By: 

Dated: 1/29, 2016

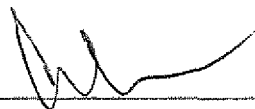
TIME WARNER CABLE, INC., TIME
WARNER CABLE PACIFIC WEST LLC,
TIME WARNER CABLE ENTERPRISES
LLC, TIME WARNER NY CABLE LLC, TW
NY CABLE HOLDING INC., TIME
WARNER ENTERTAINMENT
ADVANCE/NEWHOUSE PARTNERSHIP

By: _____

Dated: _____, 2016

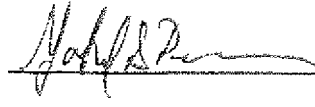
Its: _____

ATTEST:



City Clerk

APPROVED AS TO FORM:



City Attorney

APPROVED AS TO FORM:

Counsel for Time Warner