

THIS AGREEMENT made as of June 7, 2012

BETWEEN

APPROVED AS TO FORM

For Anna Kinastowski
City Solicitor

GIORGIO MAMMOLITI
("Mammoliti")

and

THE CORPORATION OF THE CITY OF TORONTO
("Toronto")

MINUTES OF SETTLEMENT

The parties agree to the following terms for the repayment of amounts that Toronto paid in 2008 and 2009 in respect of Mammoliti's compliance audit expenses:

1. The parties acknowledge that the Divisional Court held in *Holyday v. City of Toronto et al.* (Court File No. 37/10) that Toronto had no authority to pay amounts in respect of Mammoliti's compliance audit expenses. (Toronto paid \$52,081.37 for Mammoliti's legal and accounting expenses in connection with the audit and a further \$43,218.50 to the Canada Revenue Agency (CRA) so that Mammoliti would not suffer any adverse tax consequences from the payments.) The Divisional Court dismissed the Application against Mammoliti personally. Toronto has alleged, and is alleging, no wrongdoing on Mammoliti's part. The parties are entering into these Minutes of Settlement for Mammoliti to repay Toronto for the compliance audit expenses in order to comply with the result of the Divisional Court judgment.
2. Mammoliti will repay Toronto for the compliance audit expenses in 5 instalments paid over 5 years, with interest at 3% per annum, in accordance with the following schedule of payments (which are inclusive of interest):
 - (1) June 8, 2013 – \$11,978.71;
 - (2) June 8, 2014 – \$11,666.22;
 - (3) June 8, 2015 – \$11,353.73;
 - (4) June 8, 2016 – \$11,041.24; and
 - (5) June 8, 2017 – \$10,728.75

3. Following the receipt of an instalment payment in any year, Toronto will provide a letter to Mammoliti confirming receipt of such instalment payment. In turn, Mammoliti shall file such letter with CRA in submitting his income tax return to CRA. If a refund is received by Mammoliti from CRA in any year as a result of his having made an instalment payment to Toronto, Mammoliti shall pay such refund to Toronto. Mammoliti shall provide to the City Solicitor of Toronto (and such senior financial staff of Toronto as the City Solicitor may need to consult, such persons together with the City Solicitor being referred to below in this paragraph collectively as "Toronto") with access to a copy of his Notice of Assessment each year following the making of any instalment payment. Access to Mammoliti's Notices of Assessment is provided for audit and accountability purposes only, specifically so that Toronto may satisfy itself whether a refund was received by Mammoliti from CRA, and on the understanding that Mammoliti's Notices of Assessment, being personal information, shall be kept in strict confidence by Toronto with the following exceptions:
 - (i) The amount of any tax refund that Mammoliti may receive as a result of his having made an instalment payment shall in any event be made public.
 - (ii) Disclosure of the information will also be made if the information is ordered disclosed by the Information and Privacy Commissioner or a court pursuant to a duly authorized legal process under freedom of information legislation or otherwise.

It is acknowledged that the information may also be provided to City of Toronto staff on a strict need to know basis for the purpose of responding to any legal process set out in (ii) above.

4. If Mammoliti fails to make a scheduled instalment payment on any of the dates referenced in paragraph 2 above, or comply with paragraph 3, all instalment payments (inclusive of interest) then outstanding as set out in paragraph 2 shall then become immediately due and payable by Mammoliti to Toronto. However, Toronto will not set off any amounts owing against severance or other termination-type benefits owing to Mammoliti should he resign or not be re-elected.

5. If a third party brings a proceeding to challenge the agreement in these Minutes of Settlement, or any of its terms, Toronto will defend the agreement at its expense. Toronto's defence will include a defence of Mammoliti's position in the Minutes of Settlement. Toronto, not Mammoliti, will have the right to choose the lawyer or lawyers to defend the agreement set forth in these Minutes of Settlement, and Mammoliti will not be entitled to separate representation unless he retains his own lawyer or lawyers at his own expense.
6. If Mammoliti makes all five of the instalment payments in the amounts and on the dates set forth in paragraph 2 above, and complies with paragraph 3, Toronto will pay as Mammoliti may direct \$20,000 in respect of the legal costs Mammoliti incurred in defending the legal challenge to Toronto's payment of compliance audit expenses that culminated in the Divisional Court judgment dated July 19, 2010.
7. Toronto and Mammoliti will exchange a mutual release, limited to the matters set forth in these Minutes of Settlement, upon the completion of all five of the instalment payments in the amounts and on the dates set forth in paragraph 2 above, and Mammoliti's compliance with paragraph 3. The mutual release will be in a form and content acceptable to each party's legal counsel.
8. These Minutes of Settlement shall not be binding on Toronto until they are approved by Toronto's City Council and signed by a duly authorized officer of Toronto.
9. If Toronto's City Council approves these Minutes of Settlement, and Mammoliti and Toronto sign the Minutes of Settlement, these Minutes of Settlement shall be made public.
10. Toronto and Mammoliti acknowledge one to the other that they have read these Minutes of Settlement and have obtained legal advice in connection with them and confirm that they are executing these Minutes of Settlement freely, voluntarily and without duress.
11. These Minutes of Settlement shall be binding upon and enure to the benefit of the respective successors, administrators and assigns of Mammoliti and Toronto.

12. These Minutes of Settlement may be signed in any number of counterparts and such counterparts, when taken together, shall be deemed to constitute one agreement, and a facsimile, photocopy or electronic copy of these Minutes of Settlement will have the same force and effect as an original.
13. This agreement shall be governed by the laws of the Province of Ontario and the parties attorn to the jurisdiction of the Ontario Superior Court of Justice.

SIGNED by each of Toronto and Mammoliti this day of June, 2012

Witness

GIORGIO MAMMOLITI

THE CORPORATION OF THE CITY OF TORONTO

Per: _____
Authorized Signing Officer

Authorized by Item CC24.6 as adopted by City of Toronto Council on June 6, 7 and 8, 2012.

City Clerk