

THIS AGREEMENT made as of June 13, 2013

Made public on August 1, 2013

BETWEEN

ADRIAN HEAPS
("Heaps")

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 Heaps' 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 Heaps' compliance audit expenses. (Toronto paid \$45,478.45 for Heaps' legal and accounting expenses in connection with the audit and a further \$37,371.47 to the Canada Revenue Agency (CRA) so that Heaps would not suffer any adverse tax consequences from the payments.) The parties are entering into these Minutes of Settlement so that Heaps may comply with a request by Toronto to make a repayment to Toronto with respect to the compliance audit expenses. Toronto acknowledges that the Divisional Court dismissed the Application against Heaps personally. Toronto has alleged, and is alleging, no wrongdoing on the part of Heaps.
2. Heaps will repay to Toronto with respect to such compliance audit expenses a single lump sum of _____ which will be paid to Toronto within 30 days of these Minutes of Settlement being approved by Toronto's City Council and signed by a duly authorized officer of Toronto.

3. Following the receipt of the payment referred to in the previous paragraph, Toronto will provide a letter to Heaps confirming receipt of such payment. In turn, Heaps shall file such letter with CRA in submitting his income tax return to CRA. If a refund is received by Heaps from CRA as a result of his having made the payment to Toronto, Heaps shall pay such refund to Toronto. Heaps 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 Heaps' Notice of Assessment the year following the making of the payment. Access to Heaps' Notice of Assessment is provided for audit and accountability purposes only, specifically so that Toronto may satisfy itself whether a refund was received by Heaps from CRA, and on the understanding that Heaps' Notice 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 Heaps may receive as a result of his having made the payment in paragraph 2 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 Heaps fails to make the payment on the date referenced in paragraph 2 above, or comply with paragraph 3, then Heaps agrees that Toronto may immediately move for judgment in accordance with these Minutes of Settlement, that he will raise no defence in response to such motion for judgment, and that he hereby consents to such judgment being granted against him.

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, not Heaps, will have the right to choose the lawyer or lawyers to defend the agreement set forth in these Minutes of Settlement, and Heaps will not be entitled to separate representation unless he retains his own lawyer or lawyers at his own expense.
6. Toronto and Heaps will exchange a mutual release, limited to the matters set forth in these Minutes of Settlement, upon the completion of the payment in paragraph 2 above, and Heaps' compliance with paragraph 3. The mutual release will be in a form and content acceptable to the City Solicitor.
7. 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.
8. If Toronto's City Council approves these Minutes of Settlement, and Heaps and Toronto sign the Minutes of Settlement, these Minutes of Settlement shall be made public, with the exception of the quantum of the repayment (referenced in paragraph 2 above) which will be redacted. However, disclosure of the quantum of the repayment 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, or if Toronto finds it necessary to enforce the Minutes of Settlement as contemplated in paragraph 4.
9. Toronto and Heaps acknowledge one to the other that they have read these Minutes of Settlement and have obtained legal advice in connection with them (or have had the opportunity to obtain such legal advice) and confirm that they are executing these Minutes of Settlement freely, voluntarily and without duress.
10. These Minutes of Settlement shall be binding upon and enure to the benefit of the respective successors, administrators and assigns of Heaps and Toronto.

11. 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.
12. This agreement shall be governed by the laws of the Province of Ontario, and the parties attorn to the jurisdiction of the Courts of the Province of Ontario.

SIGNED by each of Toronto and Heaps this day of June, 2013

Witness

ADRIAN HEAPS

THE CORPORATION OF THE CITY OF TORONTO

Per: _____
Authorized Signing Officer