

THIS AGREEMENT made as of October 10, 2013

BETWEEN

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 make a repayment to Toronto with respect to the compliance audit expenses.
2. Mammoliti made a first instalment payment to Toronto in the amount of _____ on or about May 31, 2013. Mammoliti will make a second and final instalment payment to Toronto in the amount 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. The two payments, once made, will total _____.

3. Following the receipt of an instalment payment, or payments, in any year, Toronto will provide a letter to Mammoliti confirming receipt of such instalment payment(s). 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, or payments, 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(s). Access to Mammoliti's Notice(s) 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 Notice(s) 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, or payments, 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 the payment on the date referenced in paragraph 2 above, or comply with paragraph 3, then Mammoliti 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 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 the payment in the amount and on the date referenced in paragraph 2 above, and complies with paragraph 3, Toronto will pay as Mammoliti may direct 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. Mammoliti shall forfeit his entitlement under this paragraph if he fails to make the payment in the amount and on the date referenced in paragraph 2 above, or comply with paragraph 3.
7. Toronto and Mammoliti will exchange a mutual release, limited to the matters set forth in these Minutes of Settlement, upon the completion of the instalment payments as 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, with the exception of the quantum of the payments (referenced in paragraphs 2 and 6 above) which will be redacted. However, disclosure of the quantum of the payments 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.

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 replace the Minutes of Settlement between Mammoliti and Toronto made as of June 7, 2012 (the "**2012 Agreement**"). The 2012 Agreement shall be of no further force or effect once Mammoliti and Toronto sign these Minutes of Settlement.
13. 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.
14. 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 Mammoliti this day of October, 2013

Witness

GIORGIO MAMMOLITI

THE CORPORATION OF THE CITY OF TORONTO

Per: _____
Authorized Signing Officer