

SETTLEMENT, RELEASE AND WAIVER AGREEMENT

This Settlement Release and Waiver Agreement (“Agreement”) is made and entered into by and between M Squared Enterprises, Inc. dba Tribloom, Inc. (hereafter “Tribloom”), and the City of San Jose (hereafter “the City”). Tribloom and the City are collectively referred to as “Parties” in this Agreement. The Effective Date of this Agreement shall be the date of execution by the City.

RECITALS

WHEREAS, Tribloom is the Plaintiff in a lawsuit filed on October 31, 2017 and pending in Santa Clara County Superior Court against the City, case number 17-cv-318441, entitled *M Squared Enterprises, Inc. dba Tribloom v. City of San Jose*, and the City filed a Cross-Complaint in the same case that it later voluntarily dismissed (hereafter, the “Action”); and

WHEREAS, the Action relates to an Electronic Content Management System (hereafter “ECMS Project”) that Tribloom contracted to build for the City (hereafter “the Contract”); and

WHEREAS, the City had the right to terminate the Contract for convenience under section 12.1 of Contract; and

WHEREAS, a dispute thereafter arose concerning the compensation due to Tribloom upon the City’s termination of the Contract, leading to the filing by Tribloom of the Action; and

WHEREAS, the Parties now undertake through this Agreement to settle the Action in its entirety, pursuant to which the Parties will release and extinguish on a final basis any and all claims against each other, arising out of or in any way connected with the Action.

NOW, THEREFORE, in consideration of the promises, undertakings and covenants herein, and for good and valuable consideration the sufficiency of which is hereby acknowledged, the Parties agree as follows:

1. Scope of Settlement. This Agreement will settle, compromise, and forever discharge all claims by the Parties of any and every kind, nature and character, arising from or based on the Action. Each of the parties has obtained the advice of legal counsel prior to entering into this Agreement. Each of the Parties hereto executes this Agreement with the full knowledge of its significance and with express intention of effecting its legal consequences.

2. Consideration. In consideration for Tribloom’s release, the City shall pay the sum of Two Hundred Seventy-Five Thousand Dollars (\$275,000.00) (“Settlement Amount”). The Settlement Amount shall be paid by direct deposit directly to Tribloom.

The Settlement Amount shall compensate Tribloom for any and all damages claimed, or which it could have claimed, arising from or related in any way to the matters alleged in the Action. In consideration of said payment, Tribloom shall dismiss the Action with prejudice and withdraw, waive and release any and all claims for other damages, including any and all claims and/or rights to recover costs and attorney's fees incurred in the Action. The Settlement Amount shall be paid by direct deposit on or before December 20, 2019.

3. Dismissal of Claims. Tribloom and its attorneys shall dismiss the Action with prejudice within three (3) business days after receiving payment of the Settlement Amount.

4. Tribloom's Release. Tribloom, for itself and its successors, assigns, attorneys and agents, hereby generally releases and forever discharges the City and all individuals who could have been named in the Action. The City includes, without limitation, all City Departments and Agencies, the City Council, all past and present elected and appointed officials, City employees, and any person or entity to which the City may owe an obligation of contractual or implied indemnity relating to a released claim. The release includes, without limitation, any and all actions, causes of action, obligations, costs, expenses, damages, losses, claims, liens, liabilities, attorney's fees and demands of whatsoever nature relating to or arising out of the facts or circumstances alleged in the Action, or that could have been alleged in the Action, whether or not such claims were actually asserted in the Action.

5. The City's Release. The City, for itself and its successors, assigns, attorneys and agents, hereby generally releases and forever discharges Tribloom, all individuals who could have been named in the Action, and each of their heirs, executors, administrators, representatives, agents, officers, shareholders, members, managers, partners, predecessors, successors, and assigns from all claims related to or arising from the Action. The City includes, without limitation, all City Departments and Agencies, the City Council, all past and present elected and appointed officials, City employees, and any person or entity to which the City may owe an obligation of contractual or implied indemnity relating to a released claim. The release includes, without limitation, any and all actions, causes of action, obligations, costs, expenses, damages, losses, claims, liens, liabilities, attorney's fees and demands of whatsoever nature relating to or arising out of the facts or circumstances alleged in the Action, or that could have been alleged in the Action, whether or not such claims were actually asserted in the Action.

6. Waiver of California Civil Code § 1542. It is the intention of the Parties hereto that this is a full and final release applying to the Parties' present and future unknown and unanticipated injuries, losses or damages arising out of the Action, as well as to those now known or disclosed, and the Parties understand and waive all rights or benefits which the Parties hereto now have or may in the future have under the terms of § 1542 of the Civil Code of the State of California, or any successor statute thereto, which section reads as follows:

A general release does not extend to claims that the creditor or releasing party does not know or suspect to exist in his or her favor at the time of executing the release and that, if known by him or her, would have materially affected his or her settlement with the debtor or released party.

Notwithstanding the provisions of § 1542, and for the purpose of implementing the full and complete release, the Parties hereto expressly acknowledge that this release and Agreement is intended to include in its effect, without limitation, all claims, known or unknown, which the Parties may have, and this release further contemplates the extinction of any and all such claims. The Parties hereby expressly waive any right hereafter to assert that any such claim has, through ignorance or oversight, been omitted from this release and further assume full responsibility for any injury, damages, losses or liability of any kind or nature whatsoever they have, or may hereafter incur, from the above-specified waiver.

7. Covenant Not to Challenge Enforceability. The Parties do hereby covenant, promise and agree that they will not at any time challenge the enforceability of this Agreement, or any provision thereof, or assert that this Agreement, or any provision thereof, is invalid on any constitutional grounds, including, but not limited to, assertions that this Agreement violates the First Amendment, Due Process Clause, Equal Protection Clause or is void as against public policy.

8. Parties Affected and Choice of Law. This Agreement shall bind and benefit the Parties hereto, and their legal successors, heirs, assigns, agents, legal advisors, and predecessors. This agreement shall be governed by California law.

9. Parties to Bear Own Attorney's Fees and Costs. The Parties shall bear their own costs of suit, attorneys' fees and other expenses incurred in connection with the Action. Neither party shall be entitled to recover any attorney's fees, costs or expenses from the other.

10. Liability Not Admitted. Nothing contained in this Agreement shall be construed as, or constitute, an admission by any of the Parties as to any claim or defense, and each of the Parties denies that it has any liability to the other. Each party fully assumes the risk that the facts or law surrounding such claims, and/or the other matters settled pursuant hereto, may be other than that party believes them to be.

11. Entire Agreement. This document is a fully integrated contract. It contains all agreements, covenants, understandings, representations, and warranties between the Parties concerning the subject matter of the Agreement. The Parties have made no other express or implied agreements, covenants, understandings, representations or warranties concerning the subject matter of this Agreement. All prior and

contemporaneous conversations, negotiations, possible and alleged agreements, understandings, representations, covenants and warranties concerning the subject matter of this Agreement, other than those referred to herein, are merged herein. This Agreement cannot be modified or amended by the exchange of electronic communications or any means other than a fully integrated writing signed by all Parties.

12. Representations. Tribloom represents and warrants that it has not assigned any claim or claims that are the subject of this Agreement; that no liens on the settlement proceeds have been asserted; that it is the sole and rightful owner of said claims; and that it is authorized to execute this Agreement. The City represents and warrants that it has not assigned any claim or claims that are the subject of this Agreement; that it is the sole and rightful owner of said claims; and that it is authorized to execute this Agreement.

13. Responsibility for Liens or Claims. Tribloom and its attorneys shall pay or otherwise satisfy or resolve any outstanding liens or claims, including without limitation, liens or claims asserted by or on behalf of any non-party to this suit that arise from or are related in any way to the matters alleged in the Action. Tribloom and its attorneys jointly and severally agree to indemnify and hold the City harmless with regard to any liens or claims made against, or as a result of, this settlement.

14. Severability. If any provision in this Agreement is found to be unenforceable, it shall not affect the enforceability of the remaining provisions and the court shall enforce the remaining provisions to the extent permitted by law.

15. Voluntary Agreement. The Parties understand and agree that they are waiving certain legal rights by signing this Agreement and represent that they have entered into this Agreement voluntarily, after consulting with their attorneys, with a full understanding of and in agreement with all of its terms.

16. Headings. The headings in each paragraph herein are for convenience of reference only and shall be of no legal effect in the interpretation of the terms hereof.

17. Drafting. The Parties agree that this Agreement shall be interpreted without regard to the drafter of the same and shall be construed as though each party to this Agreement participated equally in the preparation and drafting of this Agreement.

18. Consultation with Counsel. The Parties and each of them acknowledge they have had the opportunity to consult with legal counsel of their choice prior to execution and delivery of this Agreement, and that they have in fact done so.

19. Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original and shall be deemed duly executed upon the signing of the counterparts by the Parties hereto.

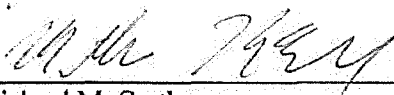
20. Binding Force and Effect. This Agreement shall be binding and inure to the benefit of all parties hereto and their respective heirs, executors, administrators,

trustors, trustees, beneficiaries, predecessors, successors, assigns, partners, partnerships, affiliated entities, agents, and representatives.

AGREED AND ACCEPTED:

FOR PLAINTIFF:

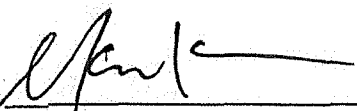
Dated: November 24, 2019



Michael McCarthy
Chief Executive Officer
M Squared Enterprises, Inc. dba Tribloom

APPROVED AS TO FORM:

Dated: November 25, 2019



Mark Puhzalan, Esq.
Attorney for TRIBLOOM

FOR DEFENDANT:


CITY OF SAN JOSE

Dated: November __, 2019

Richard Doyle
City Attorney as Authorized Agent for the CITY
OF SAN JOSE

APPROVED AS TO FORM:

Dated: Dated: November 25, 2019



Ardell Johnson
Yue Han Chow
Attorneys for CITY OF SAN JOSE

M Squared Enterprises, Inc. dba Tribloom v. City of San Jose
Case No. 17-cv-318441
Settlement Agreement