

Bill No. 62  
2018

By-law No. A.-\_\_\_\_\_

A by-law to authorize and approve an Agreement between The Corporation of the City of London and Arcane Digital Incorporated to design, produce and sell advertising, and to distribute the Spectrum Recreation Activity Guide, and to authorize the Mayor and the City Clerk to execute the Agreement.

WHEREAS section 5(3) of the *Municipal Act, 2001*, S.O. 2001, c.25, as amended, provides that a municipal power shall be exercised by by-law;

AND WHEREAS section 9 of the *Municipal Act, 2001* S.O. 2001, c.25 as amended, provides that a municipality has the capacity, rights, powers and privileges of a natural person for the purpose of exercising its authority under this or any other Act;

AND WHEREAS it is deemed expedient for The Corporation of the City of London to enter into an Agreement with Arcane Digital Incorporated to design, produce and sell advertising, and to distribute the Spectrum Recreation Activity Guide;

AND WHEREAS it is appropriate to authorize the Mayor and the City Clerk to execute the Agreement with Arcane Digital Incorporated on behalf of The Corporation of the City of London;

NOW THEREFORE the Municipal Council of The Corporation of the City of London enacts as follows:

1. The Agreement attached hereto as "Schedule A", between The Corporation of the City of London and Arcane Digital Incorporated, is hereby authorized and approved.
2. The Mayor and the City Clerk are hereby authorized to execute the Agreement authorized and approved under Section 1 of this by-law.
3. This by-law shall come into force and effect on the day it is passed.

PASSED in Open Council on January 30, 2018.

Matt Brown  
Mayor

Catharine Saunders  
City Clerk

First Reading – January 30, 2018  
Second Reading – January 30, 2018  
Third Reading – January 30, 2018

## **“Schedule A”**

PURCHASE OF SERVICE AGREEMENT made this 22nd day of December, 2017.

BETWEEN

THE CORPORATION OF THE CITY OF LONDON  
(hereinafter referred to as the City)

AND

Arcane Digital Inc.  
(hereinafter referred to as the Vendor)

**WHEREAS** Spectrum Recreation and Leisure Catalogue has been provided to Londoners for over 45 years and has tremendous brand recognition and appeal. It began as a publication provided by the Public Utilities Commission in the 70’s and was assumed by The City of London in 1993. The purpose of the publication is to promote affordable, introductory level recreational and leisure activities offered by the City of London and its recreation partners.

**WHEREAS** the City is committed to reducing the print volume of Spectrum and wishes to entertain other formats for the dissemination of the catalogue such as print on demand and online user friendly formats. The City also wishes to modernize the look and layout of the catalogue.

**AND WHEREAS** the City requires the Vendor to provide services of production, printing and distribution of the Spectrum catalogue and to perform advertising sales to subsidize costs, as well as creative methodology for modernization of the look and layout of the catalogue;

**AND WHEREAS** the Vendor agrees to provide the services as set out in this agreement;

**NOW THEREFORE THIS AGREEMENT WITNESSETH** that in consideration of the mutual covenants herein contained, the parties thereto covenant and agree, each with the other as follows:

### **DEFINITIONS**

1. For the purpose of this Agreement including attachments (hereinafter referred to as the Agreement), unless a contrary intention appears:
  - a) **“The City”** means the Corporation of the City of London as being represented by the Managing Director, Parks and Recreation (hereinafter referred to as the “Managing Director”) or his designate who shall be responsible for the administration of this Agreement.
  - b) **“The Vendor services”** means design, print production, distribution of the Spectrum catalogue, and advertisement sales to subsidize costs.
  - c) **“The Spectrum Catalogue means”** a publication to promote affordable, introductory level recreational and leisure activities offered by the City of London and its recreation partners.

### **TERM OF AGREEMENT**

2. The terms of this Agreement shall be for a period of three (3) years commencing May 1, 2018 and ending April 30, 2021, with an option to renew for an additional two (2) years at the City’s sole discretion.

### **SERVICES**

3. The Vendor shall deliver the services as more specifically described in Schedule “A”, for which the Vendor shall be paid in accordance with Schedule “B”.

## **SCHEDULES**

4. The following Schedules which are attached hereto shall form part of this Agreement:

Schedule "A" – Scope of Work  
Schedule "B" – Pricing Schedule

## **PERSONAL INFORMATION**

5. In accordance with the Municipal Freedom of Information and Protection of Privacy Act (the "Act"), the Vendor, its directors, officers, employees, agents, volunteers and persons for whom it is at law responsible will hold confidential and will not disclose or release to any person at any time during or following the term of this Agreement, except where required by law, any information or document without obtaining the written consent of the individual/organisation concerned prior to the release or disclosure of such information or document and shall comply with the requirements regarding Personal Information and Confidentiality.

## **RECORDS RETENTION**

6. In the event that the Vendor ceases operation, it is agreed that the Vendor will not dispose of any records under this agreement without the prior written consent of the City, but when requested by the City shall return the records to the City forthwith.

## **INSURANCE**

7. The Vendor shall at its own expense obtain and maintain until the termination of the contract, and provide the City with evidence of:
  - a) Comprehensive general liability insurance on an occurrence basis for an amount not less than two million (\$2,000,000.00) dollars and shall include the City as an additional insured with respect to the Vendor's operations, acts and omissions relating to its obligations under this Agreement, such policy to include non-owned automobile liability, personal injury, broad form property damage, contractual liability, owners' and contractors' protective, products and completed operations, contingent employers liability, cross liability and severability of interest clauses.
  - b) Media Liability Policy, the policy shall be underwritten by an insurer licensed to conduct business in the Province of Ontario and acceptable to the City. The policy shall be renewed for 2 years after contract termination. A certificate of insurance evidencing renewal is to be provided each and every year. If the policy is to be cancelled or non-renewed for any reason, 90 days' notice of said cancellation or non-renewal must be provided to the City. The City has the right to request that an Extended Reporting Endorsement be purchased by the Vendor at the Vendor's sole expense.
  - c) Automobile liability insurance for an amount not less than two million (\$2,000,000.00) dollars on forms meeting statutory requirements covering all vehicles used in any manner in connection with the performance of the terms of this Agreement.
  - d) The policies shown above will not be cancelled or permitted to lapse unless the insurer notifies the City in writing at least thirty (30) days prior to the effective date of cancellation or expiry. The City reserves the right to request such higher limits of insurance or other types of policies appropriate to the work as the City may reasonable require.
  - e) The Vendor shall not commence work until satisfactory evidence of insurance has been filed with and approved by the Risk Management Division of the City. The Vendor shall further provide that evidence of the continuance of said insurance is filed at each policy renewal date of the duration of the contract.
  - f) The Vendor shall indemnify and hold the City harmless from and against any liability, loss, claims, demands, costs and expenses, including reasonable legal fees occasioned wholly or in part by any acts or omissions either in negligence or nuisance whether willful or otherwise by the Vendor, its agents, officers, employees or other persons for whom the Vendor is legally responsible.

## **DECLARATION OF CONFLICT OF INTEREST**

8. No elected official, appointed officer or employee of the City shall have any pecuniary or controlling interest, either direct or indirect, in any competitive bid or contract for the supply of goods or services to the City, unless such pecuniary interest is disclosed by the contractor, bidder, or person submitting a quote, as the case may be, or unless such pecuniary interest would be exempt under the Municipal Conflict of Interest Act. The Vendor shall disclose any potential conflicts in writing when applicable.

## **CANCELLATION**

9. The City reserves the right, at its absolute sole discretion, to terminate this contract with thirty (30) days written notice, without cause and without penalty.

The City reserves the right, at its absolute sole discretion, to terminate this contract with seven (7) days written notice, with cause and without penalty.

The Vendor reserves the right, at its absolute sole discretion, to terminate this contract within thirty (30) days written notice, prior to the beginning of the production process for the forthcoming Spectrum Guide.

## **CODE OF CONDUCT**

10. The Vendor, its employees, agents, volunteers, or others for whom the Vendor is legally responsible shall comply with the City of London Code of Conduct Policy: <http://www.london.ca/business/tenders-rfps/bidding-opportunities/Documents/CodeConduct.pdf>

## **ASSIGNMENT**

11. The Vendor shall not, without written consent of the Manager of Purchasing and Supply or designate make any assignment or any subcontract for the execution of any service or product hereby quoted on. The consent of the Manager of Purchasing and Supply or designate may be arbitrarily withheld.

## **OWNERSHIP OF MATERIALS, REPORTS, DESIGNS, SPECIFICATIONS & TRAINING MATERIALS**

12. Any work completed at the City's expense, on-site or remotely during the course of the project, including training materials, reports, designs, custom applications, specifications or otherwise shall become the exclusive property of the City.

## **NON-DISCLOSURE AGREEMENT (NDA)**

13. Except as the City may otherwise consent in writing, the Vendor shall not use other than for the City and not directly or indirectly publish or otherwise disclose at any time (except as the Vendor's duties for the City require) either during or subsequent to the Vendor work, any of the City's appendices, attachments or other written material (whether or not conceived, originated, discovered, or developed in whole or in part by the Vendor).

The Vendor shall complete and submit to the City a Non-Disclosure Agreement (NDA).

## **CONFIDENTIALITY**

14. Except as may be necessary in the performance of an order under this agreement, the Vendor shall not at any time or in any manner make or cause to be made any copies, pictures, duplicates, facsimiles or other reproduction or recordings of any type, or any abstracts or summaries of any reports, studies, memoranda, correspondence, manuals, records, plans or other written, printed or otherwise recorded material of the City, or which relate in any manner to the present or prospective business of the City. The Vendor shall have no interest in any of this material and agrees to surrender any of this material which may be in its possession to the City immediately upon the termination of this Agreement or at any time prior to the termination upon the request of the City.

The Vendor shall not at any time (except under legal process) divulge any matters relating to the business of the City or any customers or agents of the City which may become known to it by reason of its services under an order, orders or otherwise and shall be true to the City in all dealings and transactions relating to the services contemplated by this agreement and any order. Furthermore, the Vendor shall not use at any time (whether during the continuance of this agreement or after its termination) for its own benefit or purposes or for the benefit or purposes of any other person, firm, corporation, association or other business entity, any trade secrets, business development programs, or plans belonging to or relating to the affairs of the City, including knowledge relating to customers, clients, or employees of the City.

## **COMPLIANCE WITH THE ACCESSIBILITY FOR ONTARIANS WITH DISABILITIES ACT, 2005**

15. The Vendor shall ensure that all its employees, agents, volunteers, or others for whom the Vendor is legally responsible receive training regarding the provision of the goods and services contemplated herein to persons with disabilities in accordance with Section 6 of Ontario Regulation 429/07 (the "Regulation") made under the Accessibility for Ontarians with Disabilities Act, 2005, as amended (the "Act"). The Vendor shall ensure that such training includes, without limitation, a review of the purposes of the Act and the requirements of the Regulation, as well as instruction regarding all matters set out in Section 6 of the Regulation. The Vendor shall submit to the City, as required from time to time, documentation describing its customer service training policies, practices and procedures, and a summary of its training program, together with a record of the dates on which training was provided and a list of the employees, agents, volunteers or others who received such training. The City reserves the right to require the Vendor to amend its training policies to meet the requirements of the Act and the Regulation.

## **CHANGES IN LAW**

16. The parties acknowledge that performance of the obligations required hereunder may be affected by changes in applicable laws of the Province of Ontario. In the event of a change in applicable legislation that results in a material impact on the performance of any act required by this Agreement, the Parties shall renegotiate the provisions of this Agreement to achieve mutually acceptable terms for the performance of acts required hereunder. If the Parties are unable to agree on the revised terms and conditions either Party may submit the dispute to arbitration in accordance with the provisions of the Arbitration Act S.O. 1991, C. 17.

## **ENVIRONMENTAL CONSIDERATIONS**

17. In order to contribute to waste reduction and to increase the development and awareness of environmentally sound purchasing, acquisitions of goods and services will ensure that, wherever possible, specifications are amended to provide for expanded use of durable products, reusable products and products (including those used in services) that contain the maximum level of post-consumer waste and/or recyclable content, without significantly affecting the intended use of the product or service. It is recognized that cost analysis is required in order to ensure that the products are made available at competitive prices.

## **EXCLUSION OF VENDOR DUE TO POOR PERFORMANCE**

18. The Managing Director or Designate shall document evidence and advise Purchasing and Supply in writing where the performance of the Vendor has been unsatisfactory in terms of failure to meet contract specifications, terms and conditions or for Health and Safety violations.

The City Treasurer may, in consultation with the City Solicitor, prohibit an unsatisfactory supplier from bidding on future contracts for a period of up to three (3) years.

## **NON-PERFORMANCE**

19. In the event that the Vendor, in the opinion of the Manager of Business Solutions & Customer Service, fails to perform the services in accordance with the scope of work, terms and conditions as stated herein, the City reserves the right to terminate the contract

within seven (7) days written notice, without penalty, and contract for the services with an alternate service provider.

#### **DISPUTE RESOLUTION**

20. In an effort to resolve any conflicts that arise during the course of the Work or following completion of the Work, the City and the Vendor agree that all disputes between them arising out of or relating to this Agreement shall be submitted to non-binding mediation unless the parties mutually agree otherwise.

#### **AMENDMENTS**

21. Any future amendments to this service agreement can be modified via written email confirmation by both parties.

#### **NON-ASSIGNMENT**

22. The Vendor shall not assign this Agreement without the prior consent in writing of the City which consent may not be unreasonably withheld.

#### **GOVERNING LAW**

23. This Agreement shall be governed by and interpreted in accordance with Ontario law.

#### **SUCCESSORS AND ASSIGNS**

24. This Agreement shall inure to the benefit of and be binding on the Parties hereto, their administrators, successors and permitted assigns.

IN WITNESS WHEREOF the parties hereto have hereunto affixed their corporate seals attested to by the hands of their respective authorized signing officers.

THE CORPORATION OF  
THE CITY OF LONDON

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Matt Brown, Mayor

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Catharine Saunders, City Clerk

I/We have the authority to bind the corporation

ARCANE DIGITAL INC.

By: 

\_\_\_\_\_  
Matt Bergmann, VP

December 22, 2017

I/We have the authority to bind the company/corporation

## **SCHEDULE "A"**

### **SCOPE OF WORK**

#### **PRODUCTION**

- a) The City is interested in a modernization of the catalogue in both design and layout, reducing print volume while retaining the reach of the current catalogue.
- b) The Vendor will adhere to guidelines for protecting the City of London corporate image and Parks and Recreation branding in the development of the deliverables.
- c) The City will have control over the distribution dates and input to the production schedule. City staff will continue to provide all program content and work with Vendor to supply required information on a timely basis.
- d) The Vendor will be responsible for the supply of clip art, images, and typesetting of the entire publication. All required charts, indexes and advertisements will be will be created by the Vendor.
- e) The City will collaborate with the Vendor to create the production schedule.
- f) The Vendor will be responsible for the printing of the catalogue with inside content on newsprint and the cover in gloss. Current production is approximately 25,000 copies per issue. There are currently two issues a year. The City retains the right to increase or decrease the volume based on demand.
- g) The City will provide the first draft of all program/facility codes and fees in electronic form, and any digital files and City specific photographs.
- h) The City shall have approval rights of the cover for each edition. The production schedule will allow for one proof reading stage, plus one sign off stage (final copy). The Vendor shall be required to create a different cover for each issue.
- i) Note: The Vendor will be required to provide to the City a PDF of the front cover (size 11" x 17") with minor copy changes to text, twenty (20) working days prior to production, for cover artwork approval.

#### **DELIVERY**

The Vendor will deliver and unload copies of the Spectrum Recreation Catalogue to approximately 60 distribution sites throughout London.

The City reserves the right to change the delivery address, dates, process as well as increase or decrease delivery sites at any time throughout the contract

All deliveries are to be F.O.B. Destination – Prepaid. Unit prices shall include delivery and unloading without the assistance of staff at any location specified.

Delivery will be made to multiple locations (locations and dates to be determined by the City) and all charges are included with this agreement.

#### **ADVERTISING SALES**

The Vendor will sell and manage advertising in the Spectrum Recreation Catalogue, and will control the solicitation of advertising, manage and execute contracts, and be responsible for the collection and reporting of revenues, and reporting of ad sales which occur within one week of the distribution of the current catalogue.

Advertisements that may be deemed inappropriate by the City of London shall not be placed in the Spectrum Catalogue. This may include but is not limited to adult entertainment, alcohol, promotion of unhealthy lifestyles and ads for political parties or persons.

Advertising sales are, at a minimum, required to subsidize 50% of the total cost of the production of catalogue each edition. (see Schedule "B".)

