

THIS AGENCY OF RECORD AGREEMENT made effective as of the 1st day of January, 2010

BETWEEN:

The City of Regina, a city, continued under *The Cities Act*, c. C-11.1, S.S. 2002
(hereinafter referred to as the "City")

- and -

McKim Cringan George Ltd. an active business corporation, duly registered as an extra-provincial corporation and having an office in Saskatchewan
(hereinafter referred to as the "Consultant")

WITNESSES THAT:

WHEREAS the City requires assistance in executing elements of its advertising and communications plans as outlined in a Request for Proposals issued as RFP #1682 (the "RFP"), a copy of which is attached as Schedule "A" and forms a part of this Agreement; and

WHEREAS the Consultant is an advertising and communications agency with capability to deliver these elements as demonstrated in its response dated November 10, 2009 (the "Proposal"), a copy of which is attached as Schedule "B" and forms a part of this Agreement; and

WHEREAS the City has accepted the Consultant's Proposal and is desirous of entering into a contractual relationship with the Consultant for the purpose of engaging the Consultant as the City's Agency of Record and providing services to the City as set out in this Agreement;

NOW, THEREFORE, the CITY and the CONSULTANT mutually agree as follows:

Engagement

1. Subject to the terms and conditions of this Agreement, the City hereby retains and engages the Consultant to represent the City as its "agency of record" and to provide technical and professional services as further described in the RFP and the Proposal (the "Services") and the Consultant hereby agrees to act on the City's behalf in the provision of the Services.

Compensation

2. The agreed upon fee for service for the term of this Agreement shall be at the rate of \$140 per hour and shall be otherwise consistent with the fees quoted in the Proposal.
3. In addition to the Billing Practices described in the Proposal, the Consultant shall comply with the following:
 - a. the Consultant shall maintain detailed records of hours worked and receipts for chargeable disbursements, which the City, upon request, may inspect and audit during normal business hours;

- b. the Consultant shall include a reference to Purchase Order # 81625 on all invoices submitted to the City and forward all invoices to P.O. Box 5095, Regina, Saskatchewan, S4P 3M3 to the attention of 5th Floor City Hall;
- c. all invoices for work completed in the current year must be submitted before the City's fiscal year end;
- d. any volume discounts or special rates that are negotiated on the City's behalf shall accrue to the City;
- e. the City will not pay any travel time or mileage costs for normal travel to and from meetings with the City after July 1, 2010; and
- f. for projects on this account, the Consultant shall use fair and open competitions as the method of procuring its subcontracted suppliers in keeping with the spirit and intent of the City's *Purchasing Policy*.

GST/PST

- 4. The Consultant warrants that the Consultant:
 - a. is a registrant for the purposes of the Goods and Services Tax (Canada) (GST) with the following registration # 83956 5561 RT0001 and
 - b. will remit the GST and the PST payable on the fees in section 3 as required by law.

Standards of Performance

- 5. The Consultant will perform the Services with a degree of care, skill and diligence normally used by a reasonable consultant when performing similar services.
- 6. The City will review, instruct changes where necessary, and approve work performed for this Agreement at the initial creative concept stage, design and layout, copywriting, typesetting, page proofs, colour keys, blueline, and placement schedule or action plan.
- 7. All stages of work indicated above must be completed in sufficient timeliness so as to meet ultimate project completion deadlines.
- 8. An informal review of the City-Consultant relationship will take place after approximately six months, and on an annual basis thereafter, with a view to identifying areas of improvement, so that both parties may have the opportunity to improve their weaknesses prior to the formal review for contract extension.

Term of Contract

- 9. Unless otherwise terminated in accordance with its terms, this Agreement will be in effect from January 1, 2010 until April 30, 2012, with the possibility of an extension for one additional year depending on a satisfactory performance review.
- 10. Not more than ninety (90) days and not less than sixty (60) days prior to the expiration of this Agreement as set out in section 9, the City shall undertake a formal review of the

performance of the Consultant. Following the review contemplated in this section, the City shall have the option to extend the original term by written notice to the Consultant delivered no less than thirty (30) days prior to the expiry of the original term.

Supplies, Equipment and Third-Party Services

11. The Consultant shall maintain an office in Regina with sufficient staff to provide the day-to-day services associated with this Agreement.
12. The Consultant is solely responsible for all the office space, equipment, tools, supplies and third-party services that the Consultant considers necessary to complete the Services.

Ownership and Use of Documents and Confidentiality

13. The Consultant shall keep confidential and secure all documents, data, information, computer disks and other material of the City which shall be provided for the purposes of this Agreement unless the Client has consented to its release.
14. The Consultant shall be responsible to ensure all its employees, agents, subcontractors and suppliers are bound by the confidentiality requirements set forth in section 13.
15. All materials and concepts, including copyright and intellectual property in those materials and concepts produced, developed, or acquired by the Consultant in the course of providing services pursuant to this agreement, become the property of the City upon payment being made and may not be used in any way without the express consent of the City.

Independent Contractor

16. The Consultant's performance of this Agreement does not create an employee/employer relationship between the Consultant and the City; the Consultant is an independent contractor.
17. The Consultant and anyone the Consultant employs or allows to perform any part of the Services are not and will not ever be considered employees of the City within the meaning of *The Labour Standards Act* of Saskatchewan (or otherwise) or entitled to any of the benefits of an employee of the City as a result of their performance of any part of the Services.
18. The Consultant acknowledges that:
 - a. the consideration provided to the Consultant by the City under this Agreement is income and subject to the provisions of the *Canadian Income Tax Act*, the *Canada Pension Plan*, and the *Employment Insurance Act*;
 - b. the Consultant is solely responsible for remitting any amounts that the statutes listed in clause a. require to be remitted; and
 - c. if a decision-maker of competent jurisdiction decides that the City ought to have remitted any amounts that the statutes in clause a. require to be remitted, then the Consultant will pay the City an amount equal to the amount the City is required to remit and all the costs (including solicitor-client costs) that the City incurs as a result of the Consultant failing to remit the amounts.

19. If the Labour Standards Branch of the Saskatchewan Department of Labour or the Canada Revenue Agency (CRA) (or both of them) determines or deems the City to be an employer under this Agreement, then the Consultant agrees that the Services performed under this Agreement should be considered entirely of a managerial character.

Compliance with Law

20. The Consultant will, at the Consultant's sole expense:
- a. obtain all required permits, licenses, authorisations, approvals and accreditation, including (without limitation) a business license from the City;
 - b. comply with all applicable laws, regulations, bylaws, orders and decrees of government or other authorities with jurisdiction; and
 - c. promptly pay all due taxes, duties, fees or other amounts imposed by law, any government, or other authority having jurisdiction, including all amounts required to be paid under *The Workers' Compensation Act, 1979*, as amended.

Workers' Compensation

21. The Consultant shall comply with *The Workers' Compensation Act, 1979* of Saskatchewan.
22. The Consultant shall provide the City with a copy of a certificate from the Workers' Compensation Board showing that the Consultant is registered and is in good standing with the Board or that the Consultant is excluded from the provisions of *The Workers' Compensation Act, 1979*.
23. The Consultant shall indemnify and save the City harmless if the City is required to pay any Workers' Compensation charges arising from the Consultant's provision of the Services, the provision of the Services by a subcontractor of the Consultant or if the City is held liable for any damages or injury to any employee, partner, or subcontractor of the Consultant while on City-controlled or City-owned property.

Termination

24. The City may, without prejudice to any other right or remedy it may have, immediately terminate this Agreement by written notice to the Consultant if the Consultant:
- a. becomes bankrupt or insolvent or is so adjudged;
 - b. makes a general assignment for the benefit of creditors;
 - c. has its goods and chattels liable to seizure by any secured party or lienholder;
 - d. has its goods made subject to a valid writ;
 - e. becomes the subject of any Act respecting liquidation or winding-up;

- f. is practising as an individual and is unable to satisfactorily perform the Services for a period of 30 calendar days or for an aggregate of 45 calendar days in any 3 month period;
 - g. is practising as an individual and dies before the Services have been completed; or
 - h. otherwise breaches this Agreement and the breach is not remedied within 30 calendar days from a notice of the default being given to the Consultant by the City.
25. The City may terminate this Agreement without cause by giving 60 calendar days prior written notice to the Consultant and, upon receipt of such notice, the Consultant will perform no further work towards the completion of the Services.
26. If the City terminates this Agreement pursuant to section 24 or section 25, the Consultant will provide the City with a copy of all documents and data related to the Services developed as of the date of termination and the City will pay the Consultant the cost of the Services completed and disbursements incurred by the Consultant that remain unpaid on the date of termination.
27. The Consultant may, without prejudice to any other right or remedy it may have, terminate this Agreement by written notice to the City if:
- a. the City breaches this Agreement and the breach is not remedied within 30 calendar days from a notice of the default being given to the City by the Consultant; or
 - b. the Consultant's Services are suspended by the City at any time for more than 30 calendar days through no fault of the Consultant.
28. If the Consultant terminates this Agreement according to section 27, the Consultant will provide the City with a copy of all documents and data related to the Services developed as of the date of termination and the City will pay the Consultant the cost of the Services completed and disbursements incurred by the Consultant that remain unpaid on the date of termination.

Arbitration

29. All matters in dispute under this Agreement may be submitted to a single arbitrator appointed jointly by the Consultant and the City.
30. If the Consultant and the City cannot agree to the single arbitrator to be appointed in section 29, the arbitrator will be appointed by reference to a judge of the Court of Queen's Bench of Saskatchewan.
31. The award of the arbitrator is final and binding upon the City and the Consultant.

Insurance

32. During the term of this Agreement, the Consultant will:

- a. maintain general comprehensive liability insurance in the amount of \$2,000,000 dollars; per occurrence;
- b. maintain professional liability insurance in the amount of \$1,000,000;
- c. in the event that automobiles are required to provide the Services, maintain automobile accident liability in the amount of no less than \$1,000,000.00 dollars per occurrence; and
- d. provide the City with proof of the insurance in clauses a. and b. and c. in a form satisfactory to the City.

Indemnity

- 33. The Consultant covenants to indemnify and save the City harmless from all actions, claims, suits, demands, loss and damage caused by the Consultant, it's associates, servants and agents in the course of discharging the terms of this Agreement and from all costs and expenses made, suffered, or incurred by the City arising out of or by virtue of the commitments or the obligations of the Consultant under the Agreement.

Conflict of interest

- 34. The Consultant will not undertake other work that creates or might create a conflict of interest with the provision of the Services without the City's prior written consent.
- 35. The Consultant will not serve as a member of any of the City's advisory committees or subcommittees during the term of this Agreement.

Assignment and Sub-Contracting

- 36. Neither the City nor the Consultant may assign this Agreement without the prior written consent of the other party.
- 37. The Consultant must not sub-contract or give honouraria for the performance of any part of the Services without the City's prior written consent.
- 38. Any consent given by the City will not relieve the Consultant from the Consultant's obligations under this Agreement or impose any liability on the City related to the subcontractor.

Notices

- 39. Any notice given according to this Agreement must be in writing and may be hand-delivered or by sending it by prepaid registered mail, addressed to:

the City at:
 City of Regina
 City Hall - 14th Floor
 2476 Victoria Avenue,
 P.O. Box 1790
 Regina, SK S4P 3C8

Attention: Manager, Communications

the Consultant at:
 McKim Cringan George Ltd.
 1939 Scarth Street – Suite 200
 Regina, SK S4P 2H1

Attention: Jesse Cringan

or to an alternate address that a Party may advise the other by notice.

40. A notice mailed according to section 39, is deemed given on the third business day after the date the notice is postmarked.
41. If postal service is substantially delayed, all notices must be hand-delivered.

Force Majeure

42. If either party is delayed or prevented from performing any obligation under this Agreement due to fire, flood, explosion, acts of God, war, civil disturbance, strikes or other cause beyond the control of the party affected (except by reason of the financial condition of the party), the time for performance will be extended by the period of the delay.

No waiver or estoppel

43. The acquiescence of one party to any breach of this Agreement by the other party will not operate as a waiver or estop the party not in breach from enforcing this Agreement against the other party.

Cumulative Rights

44. Any rights and remedies created in this Agreement are cumulative and in addition to any rights and remedies provided or available at law or in equity.

Entire agreement

45. This Agreement represents the entire and exclusive agreement between the parties and supersedes all prior contracts, undertakings, representations and understandings, written or oral, between the parties.

Amendments

46. Any amendments to this agreement must be written and formally executed by the parties.

Precedence

47. In interpreting this Agreement and resolving any ambiguities, inconsistencies or conflicts, the main body of this Agreement will take precedence over the Schedules and any inconsistency between the Schedules will be resolved in the following order: A and then B.

Severability

48. If any term in this Agreement is held invalid or unenforceable by a court of competent jurisdiction, the offending term will be severed from this Agreement and its invalidity or unenforceability will not affect the remaining terms, which will be construed as if the offending term never existed.

Conflict of laws

49. The law in force in Saskatchewan governs this Agreement.

Benefit

50. This Agreement will inure to the benefit of and be binding upon each party, their heirs, executors, administrators, successors and permitted assigns.

THIS AGREEMENT EXECUTED BY:

The City of Regina on May 28, 2010

Per: Amber Sma
The City Clerk
Acting



<affix corporate seal>

McKim Cringan George Ltd. on April 22, 2010

Per:

<affix corporate seal> If the corporate seal is not affixed, then the Signing Authority must complete the Affidavit of Corporate Signing Authority printed at the back of this Agreement.

28 (1) - Personal Information

Peter George
Print Name of Signing Authority

CEO
Print Title of Signing Authority

AFFIDAVIT OF CORPORATE SIGNING AUTHORITY

CANADA

SASKATCHEWAN

I, ~~THE~~ Peter Andrew George of Winnipeg, Manitoba
Print Full Name of Signing Authority

MAKE OATH/AFFIRM AS FOLLOWS:

1. I am a Director or Officer of **McKim Cringan George Ltd.** ("Consultant") named in the Consulting Services Agreement to which this Affidavit is attached.
2. I am authorised by the Consultant to execute the Consulting Services Agreement without affixing the Corporate Seal of the Consultant

Sworn/Affirmed before me at Winnipeg,
Manitoba
on

April 26 2010
Month Date

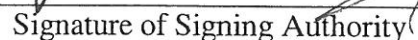
28 (1) - Personal Information

A ~~Commissioner of Oaths~~ or Notary Public in
and for the Province of Manitoba.

Being a lawyer ~~or~~

My ~~appointment~~

expires: ~~—~~


Signature of Signing Authority

MEGAN A. KELLY

Barrister, Solicitor, Notary Public

10 Donald Street

Winnipeg, Manitoba R3C 1L5