

Master Agreement

Redondo Beach Public Library

October 18, 2023



15218 Summit Avenue
Suite 300, #240
Fontana, CA 92336
(800) 766-6939

www.auto-graphics.com

THIS **MASTER AGREEMENT** (the “Agreement”) is between **Auto-Graphics, Inc.**, with a place of business at **15218 Summit Avenue, Suite 300, #240, Fontana, CA 92336**, (“A-G”) and **the City of Redondo Beach, 415 Diamond Street, Redondo Beach, CA 90277** “Customer.”

1. **SCOPE OF AGREEMENT:** This Agreement specifies the terms and conditions by which the Customer will access and use the A-G services outlined in Schedule A (the “Price Summary”).
2. **TERM OF AGREEMENT AND BILLING:** The term (the “Term”) of this Agreement shall commence on December 5, 2023 and shall expire on December 4, 2024. Billing for all services will be annually, with the first invoice due within thirty days of Customer’s receipt of both the invoice and confirmation of system availability for the Term.
3. **CANCELLATION FOR BUDGET:** This Agreement can be terminated by either party by providing sixty (60) days written notice prior to the desired termination date. If the Agreement is terminated by the Customer or Customer Board due to defunding or other catastrophic funding failures during the Term, or for any other reason, a pro-rated refund will be provided to the Customer based on the unused portion of the prepaid annual services. All services rendered up to the date of termination will be accounted for, and the remaining balance of the prepaid amount will be refunded accordingly.
4. **RIGHT TO USE THE SERVICES:** Subject to the terms of this Agreement, A-G grants to Customer the nonexclusive right during the Term to access and use the Services outlined in Schedule A on A-G’S application server with supported browsers through the internet, as specified in this Agreement in the United States in accordance with the documentation supplied by A-G. A-G grants the Customer the right to copy for training or other internal uses only, portions of A-G-produced documentation and manuals furnished pursuant to Services, provided that Customer agrees not to remove the copyright notices placed by A-G.
5. **PAYMENT:** Customer agrees to pay the amounts outlined in Schedule A for the Services. Customer shall make payment for invoiced amounts within 30 days of invoice receipt unless otherwise outlined in Schedule A. Customer shall pay all reasonable costs including, without limitation, attorneys’ fees, collection agency fees, and any other costs incurred by Customer, in collecting unpaid fees for Services due under this Agreement. Payments not received from Customer within 30 days of when payment is due may result in the suspension of Services and will automatically release A-G of all obligations to perform the Services including any Service Level Objectives.
6. **SERVICE LEVEL OBJECTIVES:** The Services will be provided according to Service Level Objectives outlined in Schedule B.

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7. **OWNERSHIP:** Customer owns and retains all right, title and interest, worldwide, in all data provided by Customer to A-G, or obtained from Customer by A-G, in connection with the provision of the Services to Customer (collectively, the “Customer Data”). Upon termination or expiration of this Agreement, A-G shall cease use of the Customer Data and upon request by Customer shall return the Customer Data to Customer or certify that it has destroyed such Customer Data. A Customer may download its data and files at will at any time. Any custom processing of Customer Data by A-G may be subject to additional fees and mutually agreed-upon change orders. A-G owns and retains all rights, title, and interest, worldwide, in the Services and all software, technology, ideas, methods, work-flows, processes, manuals, documentation, and know-how in connection with the Services (collectively the “A-G Technology”). Customer will not copy, reverse engineer, decompile, make derivative works of, resell, repackage, or redistribute in any way the A-G Technology or any other information provided or that may be gained by Customer or its personnel through A-G’s provision of the Services contemplated in this Agreement.
8. **MUTUAL CONFIDENTIALITY:** Both parties acknowledge that during the Term, each party may provide information to the other that is marked “Confidential” (the “Confidential Information”). Each party agrees that it shall not disclose to any third party or use such Confidential Information in any manner except to provide the Services. However, the obligations under this section shall not apply if such information is:
- a. Publicly available or becomes publicly available other than through a breach of this Agreement by the Receiving Party.
 - b. Already in the possession of the Receiving Party prior to its disclosure by the Disclosing Party.
 - c. Obtained by the Receiving Party from a third party not in breach of any obligations of confidentiality.
 - d. Independently developed by the Receiving Party without use of or reference to the Confidential Information.
 - e. Required to be disclosed by the Receiving Party pursuant to law, rule, regulation, subpoena, or court order, including but not limited to the California Public Records Act (CALIFORNIA PUBLIC RECORDS ACT GOVERNMENT CODE SECTION 6250 ET SEQ.)
 - f. Disclosed due to any rule, order, referral, or request, including without limitation any rule, order, referral, or request of Customer’s City Council.
 - g. Disclosed as part of the Customer’s customary contract approval process.
9. **WARRANTIES:** A-G warrants that the Services do not violate the patent, copyright, or trademark rights of any third party. A-G warrants that A-G has the right to license the Services to the Customer. A-G further warrants that the Services will perform substantially in accordance with A-G’s documentation and A-G agrees to make best efforts in accordance with the Service Level Objectives outlined in Schedule B, to correct reproducible material errors in the Services that do not comply with the documentation. Except as specifically set forth above, A-G does not warrant that the operation of the Services will be uninterrupted or error-free or that all defects will be corrected. In addition, due to the continual development of new techniques for

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intruding upon and attacking networks, A-G does not warrant that the Software Services or any equipment, system, or network on which the Services are used will be free of vulnerability to intrusion or attack and A-G shall have no liability in connection with any such intrusions or attacks, and A-G shall have no responsibility or liability to Customer even if personal information of Customer's patrons or users are compromised or lost as a result of such intrusions or attacks. A-G assumes no responsibility for correcting any adverse effects on either the performance or operation of the Services or on the individual components of the Services, that result from the Customer's use of (a) third party hardware or software, or (b) databases and networks external to the Services. **THE FOREGOING WARRANTIES ARE EXCLUSIVE AND A-G DISCLAIMS ALL OTHER WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT, AND ANY OTHER TYPE OF WARRANTY WHETHER EXPRESSED OR IMPLIED.**

10. **LIABILITY LIMITATIONS:** The parties acknowledge and agree that the following disclaimers and limitations of liability represent bargained for allocations of risk and that the economics, terms, and conditions of this Agreement are based upon and reflect such allocations. In no event will either party be liable for any consequential, incidental, indirect, special, punitive, or exemplary damages (including lost profits and lost savings) suffered or incurred by the other party in connection with the Services, or any other matter covered by this Agreement, regardless of the form or theory of the action, (including negligence), even if such other party or parties have been advised of the possibility of such damages. These limitations on the amount of liability will not apply to the violation of any ownership rights outlined in Section 7 of this Agreement or to claims for personal injury to Customer's personnel caused solely by A-G's negligence. No action, regardless of form, arising out of or related to this Agreement, may be brought by a party more than two (2) years after the cause of action arose.
11. **INDEMNIFICATION:** A-G shall indemnify, defend, and hold harmless the Customer, its agents, officials, and employees from all liabilities, damages, losses, costs, and expenses (including reasonable attorneys' fees) arising out of or in connection with any third-party claims attributable to the fault or negligence of A-G's employees or subcontractors.
12. **NOTICE:** Notices under this Agreement shall be effective upon 1) actual delivery if delivery is by hand; 2) 5 days after deposit into the United States mail if delivery is by postage-paid registered or certified return receipt requested mail; 3) upon confirmed receipt of facsimile transmission, or 4) upon transmission by email. Each notice shall be sent to the party at the following address or as otherwise designated by the party from time to time.

Auto-Graphics, Inc.
15218 Summit Avenue
Suite 300, #240
Fontana, CA 92336

City of Redondo Beach
Redondo Beach Public Library
303 N Pacific Coast Highway
Redondo Beach, CA 90277

Customer Initial: _____



Attn: Contracts Administrator

(800) 776-6939 x 1504

(909) 569-1504 Direct

contracts@auto-graphics.com

Attn: Dana Vinke

Library Director

(310) 697-3322

dana.vinke@redondo.org

13. **APPLICABLE LAWS:** This Agreement shall be governed, interpreted, and construed under and in accordance with the laws of the **STATE OF CALIFORNIA**.
14. **WAIVER:** The waiver by either party of a breach of this Agreement or any right hereunder shall not constitute a waiver of any subsequent breach of this Agreement; nor shall any delay by either party to exercise any right under this Agreement operate as a waiver of any such right. If any provision of this Agreement shall be adjudged by any court of competent jurisdiction to be unenforceable or invalid, that provision shall be limited or eliminated to the minimum extent necessary so that this Agreement shall otherwise remain in full force and effect and enforceable.
15. **SEVERABILITY:** If any one or more of the provisions contained herein shall, for any reason, be held to be invalid or unenforceable, such invalidity or unenforceability shall not affect any other provisions of this Agreement.
16. **ENTIRE AGREEMENT:** This Agreement constitutes the entire agreement between the parties hereto related to the subject matter hereof, and all written or oral agreements, except for any nondisclosure agreements, are expressly superseded and canceled. Any modifications of this Agreement must be in writing and signed by both parties hereto. The terms of this Agreement shall supersede and replace the terms of any purchase order submitted by Customer regarding this Agreement.
17. **SURVIVABILITY:** Sections 6 through 17 shall survive after the expiration or termination of this Agreement.
18. **NEWS AND INFORMATION RELEASE:** A-G agrees that it will not issue any news releases, case studies, white papers, etc. regarding either the award of this Agreement or any subsequent amendment of or effort under this Agreement, without first obtaining approval of said news releases from Customer, which shall not be unreasonably withheld.
19. **COUNTERPARTS/ELECTRONIC SIGNATURES:** This Agreement may be executed in counterparts, each of which shall be deemed an original and together shall constitute the same agreement. Signatures sent by facsimile or electronic means and signatures made electronically such as through Adobe Sign or similar services shall be as binding as original signatures.

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**PRICE SUMMARY
Schedule A**



October 18, 2023

Redondo Beach Public Library

Library Location:

303 N Pacific Coast Highway
Redondo Beach, CA 90277

Description of Services	Extension
Recurring Services	
MONTAGE Digital Collection	
Software Subscription (11/01/23 – 10/31/24)	\$2,500
Less 20% discount	<u>\$500</u>
Total 1 Year Price US Dollars:	<u>\$2,000</u>

Customer Initial: _____



GLOSSARY OF TERMS

Anniversary Date: The first day of the following month the Contract/Agreement is signed and executed by all parties. All additional annual services purchased and added to the base services will be prorated to this “anniversary date.”

Cloud: The term used to note vendor hosted or co-location of data.

Current Digital Collections System: Current library automation.

Digital Media – The term used to describe jpegs, sound files, video files, PDF, word, and Excel files. The system does support TIFF, but it is not recommended to load TIFF files because of their size.

Go-Live Date: The date the library initiates use of the system for the first circulation/search transaction.

Migration: The process of customer supplied metadata and digital media for loading into the MONTAGE Dublin Core template. Migration does not include A-G staff manually creating and entering metadata into the MONTAGE system on behalf of the customer or loading digital media only without associated metadata.

MONTAGE and Options: Selections of components, such as indexing OCR’ed PDF documents, that are not a standard part of the base MONTAGE software.

On Premise: VERSO software installed locally, either at the library itself or at a data center the library designates.

SaaS (Software as a Service): A subscription-based deployment whereby Auto-Graphics will host the customer’s VERSO and related files.

System Setup: The term used to describe the base installation and configuration of the MONTAGE software on the vendors Cloud. This does not include metadata or digital media migration.

Storage: is a technology consisting of computer components and recording media used to retain digital data. It is a core function and fundamental component of computers and is used within the MONTAGE system to retain metadata and digital content such as JPG’s, PDF’s, sound and movie files.

Training: The term used to describe up to 4 hours web training for the MONTAGE software.

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TERMS AND CONDITIONS

- A. Payment terms are due in full upon contract signing. The Anniversary date is 12 months from the "In Service" date. Thereafter the annual fees are due and payable on or before the Anniversary Date each year.
- B. Failure to pay annual fees or subscription services within 30 days of the anniversary date of said invoice may result in service suspension.
- C. A Change Order will be issued by Auto-Graphics when the customer redefines any agreed upon process or specification or requests additional services beyond the scope of pricing and/or proposal provided. Written approval by authorized representatives will be required before any additional work called for by the Change Order is initiated on the project. All necessary custom or special programming is on a time and materials basis unless specified otherwise.
- D. Auto-Graphics will bill for change orders and non-recurring services upon completion of said services. Customer shall pay to Auto- Graphics the full amount of the services within 30 days of the invoice date, less any prepayments as noted above.
- E. Change orders will be processed as non-recurring and subscription services. All non-recurring change orders will be billed in the month the non-recurring (setup, training, custom services) occurs. All subscription change orders (additional modules or annual services sold or resold by Auto-Graphics) will be prorated to the anniversary date for the base system. For example, if the anniversary date is July 1st and the subscription service is being added in January of the same calendar year you will receive a 6-month pro-rated invoice and the annual subscription will be added for a full year on July 1st.
- F. Customer agrees to provide access to provide "Log-Me-In" or similar software as agreed upon to allow A-G staff to diagnose system problems. Auto-Graphics and the customer can schedule access to said systems to address local security needs. Such access will be provided during reasonable business hours.
- G. The quantities shown are estimated based upon information provided by the Library. If quantities or requirements change or are different than present, then pricing may subject to change.
- H. All prices are in US dollars, paid via ACH or check. Payments made with credit card are subject to a convenience charge.
- I. All Auto-Graphics pricing and information is proprietary and confidential, and for the use of the Library only.
- J. All third-party products may be adjusted annually based on third party provider subscription charges. (i.e., Syndetics/Content cafe...). However, no increase shall be effective without Customer's written consent.
- k. Offer valid for three (3) months from the date of Price Summary.

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Schedule B – Service Level Objectives

1. **SERVICE LEVEL OBJECTIVES:** A-G will make commercially reasonable efforts to ensure that the Services are fully operational 99.72% average uptime per month (no more than two hours of downtime). Scheduled downtime for preventive maintenance, system upgrades, and other similar maintenance where notice is provided to the Customer shall not be used in calculating average uptime.
2. **MAINTENANCE AND SYSTEM SUPPORT:** A-G will provide the following maintenance in connection with the Services: a) troubleshooting of the Services for problems under A-G’s control; b) provision of updates to the latest version of the A-G Services; c) provision of Services system back-ups including daily transactions and weekly full system back-ups; and d) monitoring of A-G server hardware and A-G internet connections. Telephone diagnostic service is available during the following hours: 8:00 am – 8:00 pm, Eastern Time, Monday through Friday, excluding standard A-G holidays. From 8:00 am -- 8:00 pm Eastern Time customers will be able to call Customer Support and reach a Technical Support Specialist. At 8:00 pm Eastern Time, the Help Desk phones will be transferred to the answering service. Emergency support is available 24 hours per day 7 days a week by sending an email to emergencysupport@Auto-Graphics.com with the subject line “System Down” and including the Customer name, contact information, and services URL. This emergency email address above should only be used in the event Customer cannot access the Services and the subject line must include the words “System Down.” If a message is received with a subject other than “System Down” it will not be responded to until the next available business day. This Email address should NOT be used for general support. General requests should be sent to: HelpDesk@Auto-Graphics.com.
3. **CUSTOMER OBLIGATIONS:** The Customer will assume responsibility for any updates or changes to the Customer’s systems or workstations that may be required to use the Services. Customer shall provide all information, access, and full, good faith cooperation reasonably necessary for the delivery and provisioning of the Services.
4. **SERVICES MODIFICATION:** A-G reserves the right to adjust or modify the components or functionality of the Services as A-G sees fit in its sole discretion provided that the overall functionality of the Services as described in the documentation is not materially degraded.
5. **EXCLUSIONS TO SERVICES – ASSUMPTIONS AND ADJUSTMENTS:** The events listed below (the “Excluded Events”) shall excuse A-G from meeting the Service Level Objectives outlined in this Schedule B:
 - a. Outages that occur during a regular maintenance window or emergency maintenance action or that are caused by conditions beyond A-G’s control.
 - b. Outages caused in full or in part by actions or omission on the part of the Customer, anyone acting by, through, or under Customer.
 - c. Outages caused in full or in part by equipment, business operations, software, or facilities owned by or under the control of the Customer, including any third-party equipment.

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- d. Customer fails to provide A-G with accurate, up-to-date contact information and A-G support staff is unable to reach Customer’s contacts on file when the event in question occurs.
- e. The acts or omissions of Customer, its employees, customers, contractors, or agents.
- f. The failure or malfunction of equipment, applications, or Systems not owned or controlled by A-G.
- g. A publicly reported third-party vendor-announced issue that affects A-G until a fix can be reasonably implemented.

6. **RESPONSE TIMES:** A-G will make commercially reasonable efforts to achieve the response times in the chart appearing below for conditions affecting the functionality of the Services:

PRIORITY	INCIDENT TYPE	RESOLUTION TARGET	FIRST CONTACT WITHIN	DEFINITION
P0	Critical Event	1-4 Hours	60 minutes via Mailing List	Multiple Customer; Critical Infrastructure Event – Service interruption of critical infrastructure, Incident is worked until service is restored.
P1	Major Event	1-4 Hours	90 Minutes	Single Customer; Critical Infrastructure Event - Service interruption of critical infrastructure, Incident is worked until service is restored.
P2	Impaired Event	1-6 Hours	Within 90 minutes via Mailing List	Infrastructure Impairment Event – Significant degradation of service impacting daily operations of multiple users or business-critical functions. Incident worked till the degradation resolved.
P3	Expedited	1-6 Hours	90 Minutes	Escalated Single end-user with critical operations impacted or single critical function unavailable - Incident worked until resolved.
P4	Moderate	3 Business Days	6 Business Hours	Single end-user limited degradation of function affected – the business process can continue, or non-mission-critical applications.
P5	De-escalation	Driven by Need	N/A	Scheduled timeline or corrective action-driven, dependent, and led by customer.
P6	General Question	Driven by Need	3 Business Days	Requests that are submitted to the Help Desk that are general how-to questions.

Note 1: Software, Network, Hardware, and all related systems are monitored 24/ 7/ 365. Spare hardware and redundancy of hardware provide for the ability to "repair" or return-system to an operational status as noted above.

Note 2: Software issues are addressed 8 am to 5 pm Pacific Monday-Friday (except holidays), by A-G Engineering Team. If P0 or P1 software events occur in off-hours, the A-G Director of Engineering is informed, and all efforts are made to resolve the problem within hours following the identification of the problem. The software is updated and sent to QA who will release said corrected software as soon as adequately tested. The target for such

Customer Initial: _____



software correction, QA, and release is 8 hours or less. Please note the company and the staff understand that time is of the essence and such fixes will be treated as critical. With that understanding, the engineering team must first be able to replicate the problem, apply a fix to the code, and then the software must be tested before it can be released.

Note 3: Persistent data is backed up onsite with copies stored offsite for additional disaster recovery options. Auto-Graphics’ hosting environment is housed in a secure data center in Ohio that has multiple redundant feeds both in terms of internet access, utility power delivery, environmental controls, and equipment. Backups are performed daily and are managed by the hosting provider.

Note 4: Auto-Graphics’ policy about a data breach is to notify affected customers via phone and email within eight (8) hours of Auto-Graphics becoming aware of such breach.

END OF MASTER AGREEMENT

Auto-Graphics, Inc.
15218 Summit Avenue
Suite 300, #240
Fontana, CA 92336

City of Redondo Beach
415 Diamond Street
Redondo Beach, CA 90277

Print Name: Albert Flores

Print Name: William C. Brand

Title: Vice President Sales & Marketing

Title: Mayor

Signature: 

Signature: _____

Date: 10/18/2023

Date: _____

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ATTEST:

Eleanor Manzano, City Clerk

APPROVED AS TO FORM:

Michael W. Webb, City Attorney

Customer Initial: _____

