

## PERSONAL SERVICES AGREEMENT

This PERSONAL SERVICES AGREEMENT (this "Agreement") is made and entered into by and between the City of Carlton (the "City"), an Oregon municipal corporation, and The Automation Group, Inc., an Oregon corporation ("Contractor").

### RECITALS

A. The City is in need of Integrator of Record services and Contractor is qualified and prepared to provide such services.

B. The purpose of this Agreement is to establish the services to be provided by Contractor and the compensation and terms for such services.

### AGREEMENT

1. **Engagement.** The City hereby engages Contractor to provide Integrator off Record related services, ("Services") and Contractor accepts such engagement. The principal contact for Contractor shall be the City Manager for City.

2. **Scope of Work.** The duties and responsibilities of Contractor, including a schedule of services, shall be as described in Exhibit A attached hereto and incorporated herein by reference. The Scope of Services for the Work shall be authorized by execution of this Agreement to be conducted or accrued during fiscal year 2021-2022.

3. (This Section Reserved)

4. **Term.** Subject to the termination provisions of Section 12 of this Agreement, this Agreement shall commence on December 1, 2021 and shall terminate on June 30, 2022.

5. **Compensation.** The terms of compensation for all Services shall be as provided in Exhibit A consisting of a hourly rates for specified services to be provided and reimbursable expenses as listed in Exhibit A.

6. **Payment.**

6.1 The City agrees to pay Contractor for and in consideration of the faithful performance of the Services, and Contractor agrees to accept from the City as and for compensation for the faithful performance of the Services, the fees outlined in Section 5 above. Contractor shall make and keep reasonable records of work performed pursuant to this Agreement and shall provide an interim and a final billing to the City based upon an hours incurred basis. Following approval by the City Manager, billings shall be paid in full within thirty (30) days of receipt thereof. The City shall notify Contractor of any disputed amount within fifteen (15) days from receipt of the invoice, give reasons for the objection, and promptly pay the undisputed amount. Disputed amounts may be withheld without penalty or interest pending resolution of the dispute.

6.2 The City may suspend or withhold payments if Contractor fails to comply with requirements of this Agreement.

6.3 Contractor is engaged by the City as an independent Contractor in accordance with the standards prescribed in ORS 670.600. Contractor operates Contractor's business from the address indicated below. Contractor shall be free from direction or control over the means and methods of providing the services requested. Contractor represents that Contractor has provided similar services to other parties within the last twelve months. Contractor retains all risk of loss for losses according in Contractor's business. Contractor shall not be entitled to any benefits that are provided by the City to City employees. Contractor's compensation is fixed by the terms and limits set forth on Exhibit A.

6.4 Any provision of this Agreement that is held by a court to create an obligation that violates the debt limitation provision of Article XI, Section 9 of the Oregon Constitution shall be void. The City's obligation to make payments under this Agreement is conditioned upon appropriation of funds pursuant to ORS 294.305 through 294.565.

7. **Document Ownership.** Upon acceptance of the Services and payment for such Services by the City, all finished work product produced by Contractor and delivered to City for the benefit of the City under this Agreement shall become the property of the City. Any reuse or alteration of any work produced under this Agreement, except as contemplated herein, shall be at the City's sole risk.

8. **Notices.** All notices, bills and payments shall be made in writing and may be given by personal delivery or by mail. Notices, bills and payments sent by mail or email should be addressed as follows:

9. **CITY:** City Manager  
City of Carlton  
191 E. Main Street  
Carlton, OR 97111

**CONTRACTOR:** Gary Jenks  
4678 Isabelle Street  
Eugene, OR 97402

When so addressed, such notices, bills and payments shall be deemed given upon deposit in the United States mail, postage-prepaid.

10. **Standard of Care.** Contractor shall comply with applicable standards of professional care in the performance of the Services. Contractor shall prepare materials and deliverables in accordance with generally accepted standards of professional practice for the intended use of the project.

11. **Consequential Damages.** Neither party shall be liable to the other for consequential damages, including, without limitation, loss of use or loss of profits incurred by one another or their subsidiaries or successors, regardless of whether such damages are caused

by either party's breach of contract, willful misconduct, negligent act or omission, or other wrongful act.

**12. Insurance.**

**12.1** At all times during the term of this Agreement, Contractor shall carry, maintain and keep in full force and effect a policy or policies of insurance as specified in Attachment B attached hereto and incorporated herein by reference.

**12.2** All insurance policies shall provide that the insurance coverage shall not be canceled or reduced by the insurance carrier without thirty (30) days' prior written notice to the City. Contractor agrees that it will not cancel or reduce said insurance coverage.

**12.3** Contractor agrees that if it does not keep the aforesaid insurance in full force and effect, the City may either immediately terminate this Agreement or, if insurance is available at a reasonable cost, the City may take out the necessary insurance and pay, at Contractor's expense, the premium thereon. If the City procures such insurance, the City shall retain any cost incurred for same from moneys due Contractor hereunder.

**12.4** At all times during the term of this Agreement, Contractor shall maintain on file with the City a Certificate of Insurance or a copy of actual policies acceptable to the City showing that the aforesaid policies are in effect in the required amounts. The policies shall contain an endorsement naming the City, its officers, employees and agents, as additional insureds (except for the professional liability and workers' compensation insurance).

**12.5** The insurance provided by Contractor shall be primary to any coverage available to the City. The insurance policies (other than workers' compensation and professional liability) shall include provisions for waiver of subrogation. Contractor shall be responsible for any deductible amounts outlined in such policies.

**13. Termination.** Either party may terminate this Agreement upon seven (7) days' written notice if one of the following occurs: (a) the other party fails to substantially perform in accordance with the terms of this Agreement; or (b) the City, in its sole discretion, decides to abandon the project or discontinue further services. If either party terminates this Agreement, Contractor shall receive compensation only for Services actually performed up to the date of termination.

**14. No Third-Party Rights.** This Agreement shall not create any rights in or inure to the benefit of any parties other than the City and Contractor.

**15. Modification.** Any modification of the provisions of this Agreement shall be set forth in writing and signed by the parties.

**16. Waiver.** A waiver by a party of any breach by the other shall not be deemed to be a waiver of any subsequent breach.

**17. Indemnification.** Contractor and the officers, employees, agents and subcontractors of Contractor are not agents of the City, as those terms are used in ORS 30.265.

Contractor shall defend, indemnify and hold harmless the City and its officers, employees, elected officials, volunteers and agents from any and all claims for injury to any person or damage to property caused by the negligence or other wrongful acts, omissions, or willful misconduct of Contractor or officers, employees, agents, or subcontractors of Contractor. Contractor shall not be responsible for claims caused by the negligence or other wrongful acts or omissions of the City or the City's officers, employees, or agents.

**18. Governing Laws.** This Agreement shall be governed by the laws of the State of Oregon. Venue shall be in the Circuit Court for Yamhill County, Oregon.

**19. Compliance with Law.**

**19.1** Contractor shall comply with all applicable federal, state and local statutes, ordinances, administrative rules, regulations and other legal requirements in performance of this Agreement.

**19.2** Contractor shall comply with applicable provisions of ORS 279B.020, 279B.220, 279B.225, 279B.230 and 279B.235. Pursuant to ORS 279B.235, any person employed by Contractor who performs Services shall be paid at least time and a half pay for all overtime in excess of forty (40) hours in any one (1) week, except for persons who are excluded or exempt from overtime pay under ORS 653.010 through 653.261 or under 29 USC Sections 201 through 209.

**19.3** Contractor is a "subject employer," as defined in ORS 656.005, and shall comply with ORS 656.017.

**19.4** Contractor shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, age, national origin, physical or mental disability, or disabled veteran or veteran status in violation of state or federal laws.

**20. Confidentiality.** Contractor shall maintain the confidentiality, both external and internal, of that confidential information to which it is exposed by reason of this Agreement. Contractor warrants that its employees assigned to this Agreement shall maintain necessary confidentiality.

**21. Publicity.** Contractor shall not use any data, pictures, or other representations of the City in its external advertising, marketing programs, or other promotional efforts except with prior specific written authorization from the City.

**22. Succession.** This Agreement shall inure to the benefit of and shall be binding upon each of the parties hereto and such parties' partners, successors, executors, administrators and assigns.

**23. Assignment.** This Agreement shall not be assigned by Contractor without the express written consent of the City. Contractor shall not assign Contractor's interest in this Agreement or enter into subcontracts for any part of the Services without the prior written consent of the City.

**24. Default.**

24.1 A party will be in default under this Agreement if that party fails to comply with any provision of this Agreement within ten (10) days after the other party gives written notice specifying the breach. If the breach specified in the notice cannot be completely cured within the ten (10)-day period, a default will not occur if the party receiving the notice diligently begins curative action within the ten (10)-day period and proceeds to cure the breach as soon as practicable.

24.2 Notwithstanding Subsection 22.1, the City may declare a default immediately by written notice to Contractor if Contractor intentionally or repeatedly breaches material provisions of this Agreement or if Contractor's breach of contract creates unreasonable risk of injury to any person or damage to property.

24.3 Should a dispute arise between the parties to this Agreement, it is agreed that such dispute will be submitted to a mediator prior to any litigation. The parties shall exercise good-faith efforts to select a mediator who shall be compensated equally by both parties. Mediation shall be conducted in Carlton, Oregon, unless both parties agree in writing otherwise. Both parties agree to exercise good-faith efforts to resolve disputes covered by this section through the mediation process. If a party requests mediation and the other party fails to respond within ten (10) days, a mediator shall be appointed by the presiding judge of the Circuit Court of the State of Oregon for Yamhill County upon request of either party. The parties shall have any rights at law or in equity with respect to any dispute not covered by this section. Nothing in this section shall preclude a party from seeking equitable relief to enjoin a violation of this Agreement.

24.4 If a default occurs, the party injured by the default may terminate this Agreement and enforce any remedies available under Oregon law. Litigation shall be conducted in the Circuit Court of the State of Oregon for Yamhill County. Litigation initiated by the City must be authorized by the Carlton City Council.

25. **Attorney Fees.** If legal action is commenced in connection with this Agreement the prevailing party in such action shall be entitled to recover its reasonable attorney fees and costs incurred herein at trial and on appeal.

**26. Inspection and Audit by the City.**

26.1 The City shall have the right to inspect and audit Contractor's financial records pertaining to the Services under this Agreement at any time during the term of this Agreement or within two (2) years following the termination of this Agreement.

26.2 This Section 26 is not intended to limit the right of the City to make inspections or audits as provided by law or administrative rule.


27. **Entire Agreement.** This Agreement contains the entire agreement between the parties and supersedes all prior written or oral discussions or agreements regarding the Services described herein.

28. **Severance.** If any provision of this Agreement is held to be invalid, it will not affect the validity of any other provision. This Agreement will be construed as if the invalid provision had never been included.

IN WITNESS WHEREOF, the City has caused this Agreement to be executed in duplicate originals by its duly authorized undersigned agents, and Contractor has executed this Agreement on the date written below.

CITY:

CITY OF CARLTON

By:   
Name: Linda Watkins  
Its: Mayor

Date: 11/17/2021  
Attest:   
City Recorder

APPROVED AS TO FORM:

By:   
Walter R. Gowell, City Attorney

CONTRACTOR:

THE AUTOMATION GROUN GROUP, INC.

By: 

Name: ~~Gary Jenks~~ Tim Spencer

Its: ~~President~~ Controller

Date: 11/19/2021

**EXHIBIT A**

See attached EXHIBIT A consisting of 5 Pages attached hereto

## City of Carlton: Understanding and Approach

TAG has serviced many facets of the City of Carlton Water and Wastewater SCADA systems since 2013. The scope of support by TAG has encompassed simple troubleshooting tasks, emergency responses to system failures, programming modifications, and improvement projects and upgrades. Specific instances of TAG support of Carlton Water and Wastewater systems are listed below:

- Grant Street Lift Station SCADA system
- Hawn Creek Lift Station alarm dialer
- Upgrades to the Concrete Reservoir Instrumentation and controls
- MWL Intertie control integration at the Water Plant
- Water Plant SCADA computer upgrade
- Water Plant PLC and SCADA program modifications and troubleshooting
- Instrumentation replacement at the New Reservoir
- Installation of secure remote access to the Water Plant for Public Works employees and TAG remote support
- 24/7 emergency response to issues with SCADA and control systems

TAG technicians are familiar with both the water and wastewater systems in the City, understand the current age and conditions of the automation equipment, and are able to make recommendations to ensure that the systems continue to operate reliably in the future. Several TAG technicians are also licensed electricians and have instrumentation experience. This enables an even greater depth of troubleshooting and resolution of control issues.

Recently TAG has recommended specific upgrades to the Water Plant control system and to the communication network between the Water Plant and the reservoir sites. These recommendations will bring legacy control hardware up to date, increase reliability of the control system, provide a solid communication network between all water system sites, and allow operators to view all sites and make better informed control changes.

In addition to gaining knowledge of the City's control systems since 2013, TAG technicians have also built working relationships with the Public Works team and collaborate together to address current and future needs. As a company TAG hopes to continue this relationship and build on the investment that has been made.

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## TAG Ancillary Support Services

**TAG has Engineers and CAD Drafters Located at our Eugene Facility.**

- Daren Dawson
- Joel Judd
- CJ Connelly
- Bryce Jenks
- Gary Jenks

**Providing UL listed control system cabinets**

- TAG has a UL Panel Shop located in Eugene, Oregon
  - Listing for 508a for standard control panels
  - Listing for 698a for Hazardous Location

**Providing mobile device access to system information**

- TAG offers a "Mobile Monitoring System" for customers to login to their facility SCADA system that will give them the ability to do anything just like they are sitting at the Plant.
  - Cisco VPN for Complex Systems
  - TosiBox for Simple Systems
- Support for the following devices
  - Windows Laptop or desktop
  - IOS
    - iPhone
    - iPad
  - Android
    - Any Android phones
    - Any Android tablets

**Providing SCADA system computer support**

- All of TAGs Programmers/Techs are capable of supporting computer systems
- TAG is a Rockwell Certified Systems Integrator but can support any of the below Primary SCADA Systems
  - Rockwell/Allen Bradley
  - Wonderware
  - Inductive Automation
  - iFix
  - Cimplicity
  - And others

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### **Servicing of automatic hydraulic control valves**

- TAG works with the following manufactures for valves
  - Bray
  - Roto torque
  - EIM
  - Auma

### **Servicing and installation of pressure transducers, Flow Meters, Level Transducers and many others.**

- TAG can provide, install and calibrate most any instrumentation device
  - Endress & Hauser – TAG is the West Coast E&H Factory Provider and can provide a 3-year warranty with every device and can perform Certified Factory Startup
  - Rosemount
  - Neptune
  - Dwyer
  - Siemens
  - Dayton
  - And many more

### **Programming, adjusting operations, and/or servicing backup power generators**

- TAG can provide integration to all Generator Systems and Transfer Switches.
- TAG works with the following Generator system Manufactures
  - Caterpillar
  - Kohler
  - Onan
  - MTU
  - Generac

### **Programmable Logic Controllers (PLC)**

- TAG is a certified System Integrator for the following
  - Allen Bradley
- TAG can program many PLCs, below is a list of a few manufactures
  - Modicon
  - Automation Direct
  - ScadaPack
  - GE
  - Siemens
  - Omron

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### Variable Frequency Drives (VFD)

- TAG can provide Certified Startup and Programming for the following drives and extend the warranty
  - Allen Bradley
  - ABB
  - Cutler Hammer
- TAG can also program other drives as listed below and many more
  - Square D
  - Siemens
  - Yaskawa
  - Automation Direct
  - GE
  - And many more

### Radio Systems

- TAG is a Distributer for CalAmp for the Pacific NW
- TAG can perform Radio Studies

### Analytical Instrumentation

- TAG works with the following Manufactures
  - Hach
  - Chemtrac
  - Rosemount
  - And others

**City of Carlton 2021 TAG Rates**

- **Programming – HMI/OIT:** \$142.50
- **Instrument Calibration:** \$142.50
- **Engineering-Design:** \$150.00
- **Panel Shop Labor:** \$ 71.50
- **Electrical:** \$125.00
- **Mechanical:** \$125.00
- **Fab Shop Labor:** \$ 93.50
- **Admin/Purchasing:** \$ 71.50

- **Straight Time:** 8:00am to 4:30 pm, Monday thru Friday. Swing or Graveyard work can be prearranged at straight time rates if required for customer.
- **Over Time:** After 4:30pm (or after 8 hours) Weekdays and all day Saturdays & Sundays. (Time & ½ x straight time rates.)
- **Double Time:** Holidays (2 x straight time rate.)

**TAG Charges hourly service rate from Portal to Portal**

**Services are rendered in half-hour increments only with a 2 hour minimum billing charge, unless otherwise noted or arranged.**

- **Expenses:** *Expenses of transportation (ie...airline tickets, rental cars, taxis) will be billed at cost plus 10% processing fees.*
- **Standard Per Diem Rates:** \$150/per night lodging and \$50/per day for meals.

**Standard Fuel/Mileage Rates:**

- Round Trip from TAG office up to 50 Miles = \$30.00
- Round Trip from TAG office up to 100 miles = \$60.00
- Round Trip from Tag Office \*Over 100 miles at \$0.59 per Mile

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**ATTACHMENT B  
INSURANCE REQUIREMENTS**

Contractor and its subcontractors shall maintain insurance acceptable to the City in full force and effect throughout the term of this Contract.

It is agreed that any insurance maintained by the City shall apply in excess of, and not contribute toward, insurance provided by Contractor. The policy or policies of insurance maintained by Contractor and its subcontractors shall provide at least the following limits and coverage:

TYPE OF INSURANCE	LIMITS OF LIABILITY		REQUIRED FOR THIS CONTRACT
<b>General Liability</b>	Each occurrence	\$1,000,000	YES
	General Aggregate	\$1,000,000	
	Products/Comp Ops Aggregate	\$1,000,000	
	Personal and Advert. Inj.	\$1,000,000	
Please indicate if Claims Made or Occurrence			
<b>Automobile Liability</b>	Combined Single – covering any vehicle used on City business	\$1,000,000	YES
<b>Workers' Compensation</b>	Per Oregon State Statutes If workers compensation is not applicable please initial here _____. State the reason it is not applicable: _____		YES
<b>Professional Liability</b>	Per occurrence	\$500,000	No
	Annual Aggregate	\$500,000	

Contractor's general liability and automobile liability insurance must be evidenced by certificates from the insurers. The policies shall name the City, its officers, agents and employees, as additional insureds and shall provide the City with a thirty (30)-day notice of cancellation.

Workers' compensation insurance must be evidenced by a certificate from the insurer. The certificate need not name the City as an additional insured, but must list the City as a certificate holder and provide a thirty (30)-day notice of cancellation to the City.

Certificates of Insurance shall be forwarded to: City Manager  
City of Carlton  
191 E. Main Street  
Carlton, OR 97111

Contractor agrees to deposit with the City, at the time the executed Contract is returned, Certificates of Insurance and Binders of Insurance if the policy is new or has expired, sufficient to satisfy the City that the insurance provisions of this Contract have been complied with and to keep such insurance in effect and the