



Monterey County Board of Supervisors

168 West Alisal Street,
1st Floor
Salinas, CA 93901
831.755.5066

Board Order

Agreement No.: A-14482

A motion was made by Supervisor Luis A. Alejo, seconded by Supervisor Chris Lopez to:

- a. Authorize the Contracts/Purchasing Officer or Contracts Purchasing Supervisor to execute a non-standard Agreement with Fluence Automation, LLC to provide software, maintenance and support services for a "Vote by Mail" processing system for a term retroactive to November 1, 2018 through October 31, 2021, for a total amount not to exceed \$96,657;
- b. Accept non-standard warranty, liability and indemnification contract provisions as recommended by the Registrar of Voters; and
- c. Authorize the Contracts/Purchasing Officer or Contracts Purchasing Supervisor to execute no more than two amendments, subject to County Counsel review, extending the Agreement by one (1) year each, which do not significantly alter the scope of work and do not exceed an increase of 10% of the original amount.

PASSED AND ADOPTED on this 27th day of August 2019, by the following vote, to wit:

AYES: Supervisors Alejo, Phillips, Lopez, Parker and Adams

NOES: None

ABSENT: None

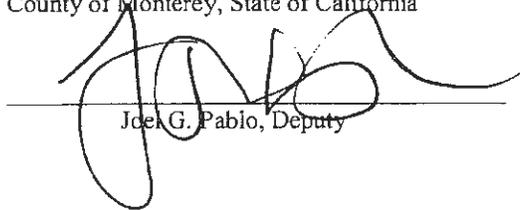
I, Valerie Ralph, Clerk of the Board of Supervisors of the County of Monterey, State of California, hereby certify that the foregoing is a true copy of an original order of said Board of Supervisors duly made and entered in the minutes thereof of Minute Book 82 for the meeting August 27, 2019.

Dated: August 28, 2019

File ID: A 19-304

Agenda Item No.: 46

Valerie Ralph, Clerk of the Board of Supervisors
County of Monterey, State of California


Joel G. Pablo, Deputy

FLUENCE

A U T O M A T I O N

MASTER EQUIPMENT SERVICE AND SOFTWARE SUPPORT AGREEMENT

THIS MASTER EQUIPMENT SERVICE AND SOFTWARE SUPPORT AGREEMENT, with all attached Exhibits (the "Agreement") is made and entered into as of the 1st day of November 2018, ("Effective Date") by and between MONTEREY COUNTY ELECTIONS OFFICE, with an address located at 1441 Schilling Pl – North Bldg., Salinas, CA 93901 ("Customer"), and Fluence Automation, LLC, a Delaware Limited Liability Company with an address located at 760 S Wolf Road, Wheeling IL 60090 ("FA").

Article 1 – Description of Services

1.1 **Schedules.** Maintenance and support services selected by Customer will be identified in an Equipment Service and Software Support Schedule (the "Schedule"), which by this reference is made a part hereof. Each Schedule shall be signed by Customer and FA and shall constitute a separate agreement which incorporates the terms and provisions of this Agreement. Each piece of equipment and any software covered under the terms of this Agreement shall be listed on a Schedule and shall be referred to respectively as the "Equipment" or the "Software". "Equipment" shall refer to Equipment individually and collectively and "Software" shall refer to Software individually and collectively. If software (including software embedded in the equipment) or equipment is not listed on the Schedule, then FA shall have no obligation to service such equipment or software. The provisions of this Agreement shall control over any conflicting provisions in a Schedule.

1.2 **Selection of Services.** A description of service options (the "Services") is attached to the Schedule as Exhibit 1. Customer may select one or more Services. FA will provide the Services selected.

1.2.A **Limitations.** FA shall not be responsible under this Agreement for the replacement or repair of any Equipment or Software damaged as a result of: (i) Customer's failure to use the Equipment in a normal, ordinary and routine manner as intended, including, Customer's use or installation of any part or product not meeting FA specifications and Consumable Parts; (ii) accident, neglect, misuse, site not meeting environmental specifications or non-performance by Customer or operator care and adjustment; (iii) power source deviations or failures; or (iv) service, repair or replacement of the Equipment or parts or any modification thereof, including any software update performed by anyone other than an authorized FA representative. FA shall have no obligation to service any software (except software and updates provided under this agreement) other than the most current version of such Software. Customer agrees to obtain such most current version at Customer's sole expense. Further, Services provided under this Agreement shall not include any overhaul of the Equipment, move and/or de-installation of the Equipment or Software or part thereof. If Customer requests, FA may, at Customer's expense, provide support services to perform any of the above listed limitations. If FA has already performed such services and FA determines that the need for such services was the result of one of the limitations set forth above, then FA may charge Customer its then current fees and expenses for those services.

1.3 **Defined Terms.** (a) "Regular Business Hours" shall mean the hours between 8:30 A.M. and 5:00 P.M. local time, Monday through Friday, excluding FA holidays; (b) "Preventive Maintenance" or "PM" shall mean the performance of periodic inspections of the Equipment and other services necessary to maintain the Equipment

in good working order, including lubrication, cleaning and adjustment. Customer understands and acknowledges that; the Equipment is subject to ordinary wear and tear and periodic malfunctions that will require repairs. Ordinary wear and tear or periodic malfunctions shall not be deemed a breach of or failure to perform; (c) "Contracted Period of Maintenance" or "CPM" shall mean, unless otherwise stated in the Schedule, Regular Business Hours during which FA personnel shall provide the Services to Customers selecting Resident Service (as defined in the Schedule) or Priority Resident Service (as defined in the Schedule); (d) "Remedial Maintenance" or "RM" shall mean the repair or replacement (at FA's option) of Equipment parts that fail; (e) "Consumable Parts" shall mean those Equipment parts which are generally expended or used up beyond their point of intended functionality during the normal operation of the Equipment. Consumable Parts include, but are not limited to, Equipment parts such as suction cups, postage printer sorts, cutting knives/blades, floppy disks, feed tires and ribbons; (f) "Non-Consumable Parts" shall mean those Equipment parts not defined as Consumable Parts; and (g) "Supplies" shall mean those items which by their nature are intended to be expended or used up during operation of the Equipment, including, but not limited to, ink and printer paper. The Services provided hereunder do not include the provision of any Supplies.

1.4 **Supplemental Services.** If FA begins to perform Services during CPM or Regular Business Hours but is unable to complete such Services during the applicable time period, then FA will offer Customer the option of completing the Services immediately or during the next CPM or Regular Business Hours. If Customer elects to have the Services completed immediately, then FA shall bill Customer for the time required to complete such Services at rates set forth in the rate sheet attached as Exhibit A and travel will be billed per Monterey County Travel Policy attached as Exhibit B. If Customer elects to have the Services completed during the next CPM or Regular Business Hours (whichever is applicable to the Services selected), then Customer shall not incur any additional charges except as set forth herein.

1.5 **Emergency Services.** If Customer requires emergency maintenance or repair services outside of the CPM or Regular Business Hours, then, FA will provide services pursuant to its then current "7x24 Service Plan" as defined in the LTRP.

1.6 **Third Party Products.** To the extent Customer has engaged FA to provide Services on products other than FA manufactured products ("Third Party Products") for which FA is not an authorized service provider, Customer acknowledges that FA may not be authorized to access certain elements of the Third Party Products without prior authorization from the original equipment manufacturer ("OEM"). In such event, Customer shall be responsible for obtaining such

authorization from the OEM necessary for FA to legally access any restricted elements of the Third Party Products for purposes of providing the Services. In the event that Customer is unable to obtain such authorization, then FA shall have no responsibility to perform such Services or provide credits, if applicable, for the affected portion(s) of the Third Party Products.

Article 2 – Customer Responsibilities

- 2.1 **Access.** Customer agrees to give FA access to the Equipment and Software during Regular Business Hours or CPM (whichever is applicable to the Services selected) to provide all Services provided hereunder. Customer further agrees to provide FA access to additional information, facilities and resources as may be necessary for FA to provide the Services contemplated. If Customer fails to provide FA access to service the Equipment and Software, then FA shall have no responsibility to perform Services or provide credits, if applicable.
- 2.2 **Updates.** Customer shall purchase and install all Equipment and Software updates recommended by FA to keep the Equipment and Software in good working order. If Customer decides not to purchase and install the recommended Software updates, then upon thirty (30) days' notice to Customer, FA, at its sole discretion, may terminate or alter its services, including service fees charged, under this Agreement or any applicable Schedule.

Article 3 – Term and Termination

- 3.1 **Term of Master Agreement.** The term of this Agreement shall commence upon the execution date hereof and shall continue until the later of the date on which (i) the Term of every Schedule has expired and the obligations of Customer under every Schedule are fully discharged and (ii) thirty (30) days following the date either party gives written notice of termination.
- 3.2 **Term of Schedule.** Each Schedule shall have an initial term, commencing and ending as defined in the Schedule. The Customer has the option to renew the Term in writing twice (2) for successive one (1) year periods (each a "Renewal Term"). In the event that customer extends the term, a price adjustment that is the lesser of 4% per year or the Consumer Price Index (CPI) shall apply. If the Customer and FA mutually agree to continue services upon expiration of all terms, a new agreement shall be executed. Either party may terminate a Schedule effective the last day of the then current Term or Renewal Term by providing ninety (90) days prior written notice to the other party of its intent to terminate the Schedule. The parties may terminate a Schedule at any time by mutual written consent of the parties.

Article 4 – Payment Terms

- 4.1 **Payment.** Customer shall pay to FA the "Service Fees" as set forth in the Schedule. FA will invoice Customer for each installment of the Service Fees and any other charges payable by Customer, and Customer shall certify each invoice and forward the invoice to the Office of the Auditor Controller, who will pay each invoice within thirty (30) days after receipt of the certified invoice. Customer shall be responsible for paying all applicable taxes.
- 4.2 **Changes in Service Fees.** At the end of this agreement, FA shall have the right to change the Service Fees charged to Customer, in

writing and signed by all parties, in the form of an Amendment. New fees, including for Supplemental Services, Additional On-site Service Blocks and Labor Rates, must be agreed to in the written amendment prior to additional services being given.

Article 5 – Insurance.

Insurance Coverage Requirements: Without limiting FA's duty to indemnify, FA shall maintain in effect throughout the term of this agreement a policy or policies of insurance with the following minimum limits of liability:

- 1) Commercial general liability insurance, including but not limited to premises and operations, including coverage for Bodily Injury and Property Damage, Personal Injury, Contractual Liability, Broad form Property Damage, Independent Contractors, Products and Completed Operations, with a combined single limit for Bodily Injury and Property Damage of not less than \$5,000,000 per occurrence.
 - a) Intellectual property infringement insurance, covering the liability of FA by reason of any actual or alleged infringement or misappropriation of a third party's Intellectual Property, including all infringement indemnification obligations hereunder this agreement of not less than \$5,000,000 per occurrence.
- 2) Business automobile liability insurance, covering all motor vehicles, including owned, leased, non-owned, and hired vehicles, used in providing services under this agreement, with a combined single limit for Bodily Injury and Property Damage of not less than \$1,000,000 per occurrence.
- 3) Workers' Compensation Insurance, If FA employs others in the performance of this agreement, in accordance with California Labor Code section 3700 and with Employer's Liability limits not less than \$1,000,000 each person, \$1,000,000 each accident and \$1,000,000 each disease.
- 4) Professional liability insurance, if required for the professional services being provided, (e.g., those persons authorized by a license to engage in a business or profession regulated by the California Business and Professions Code), in the amount of not less than \$1,000,000 per claim and \$2,000,000 in the aggregate, to cover liability for malpractice or errors or omissions made in the course of rendering professional services. If professional liability insurance is written on a "claims-

made" basis rather than an occurrence basis, FA shall, upon the expiration or earlier termination of this agreement, obtain extended reporting coverage ("tail coverage") with the same liability limits. Any such tail coverage shall continue for at least three years following the expiration or earlier termination of this Agreement.

- 5) Technology Errors and Omissions Liability coverage, (if applicable) with limits of \$3,000,000 which occurrence and each loss. The policy shall at a minimum cover professional misconduct or lack of requisite skill required for the performance of services defined in the Agreement and shall also provide coverage for the following risks:
 - (a) Network security liability arising from the unauthorized access to, use of, or tempering with computers or computer systems, including hacker attacks; and
 - (b) Liability arising from the introduction of any form of malicious software including computer viruses into, or otherwise causing damage to Customer's or third person's computer, computer system, network, or similar computer related property and the data, software, and programs thereon.
- 6) Cyber Liability. Consultant should carry and maintain cyber liability insurance with limits of not less than \$3,000,000 per claim covering claims involving privacy violations, record holder breach notification costs, privacy breach remediation costs, privacy regulatory actions, fines and penalties, theft of confidential or protected information, damage to or destruction of electronic information, restoration or retrieval of electronic information, intentional and/or unintentional release of private or confidential information, alteration of electronic information, ransomware, extortion and network security. Such insurance must affirmatively state that the coverage it provides is primary and non-contributory to any other valid and collective insurance.

Other Requirements: All insurance required by this Agreement shall be with a company acceptable to Customer and issued and executed by an admitted insurer authorized to transact insurance business in the State of California. Unless otherwise specified by this agreement, all such insurance shall be written on an occurrence basis, or, if the policy is not written on an occurrence basis, such policy with the coverage required herein shall continue in effect for a period of three years following the date FA completes its performance of services under this Agreement.

Each liability policy shall provide that Customer shall be given notice in writing at least thirty days in advance of any endorsed reduction in coverage or limit, cancellation, or intended non-renewal thereof. Each policy shall provide coverage for FA and additional insured with respect to claims arising from each subcontractor, if any, performing work under this Agreement, or be accompanied by a certificate of insurance from each subcontractor showing each subcontractor has identical insurance coverage to the above requirements.

Commercial general liability, automobile liability policies, and Cyber Liability shall provide an endorsement naming the County of Monterey, its officers, agents, and employees as Additional insureds with respect to liability arising out of the FA's work, including ongoing and completed operations, and shall further provide that such insurance is primary insurance to any insurance or self-insurance maintained by the County and that the insurance of the Additional Insureds shall not be called upon to contribute to a loss covered by the FA's insurance. The required endorsement from for Commercial General Liability Additional Insured is ISO Form CG 20 10 11-85 or CG 20 10 10 01 in tandem with CG 20 37 10 01 (2000). The required endorsement from for Automobile Additional Insured Endorsement is ISO Form CA 20 48 02 99.

Prior to the execution of this Agreement by Customer, FA shall file certificates of insurance with Customer's Contracts/Purchasing Department, showing that FA has in effect the insurance required by this Agreement. FA shall file a new or amended certificate of insurance within five (5) calendar days after any change is made in any insurance policy, which would alter the information on the certificate then on file. Acceptance or approval of insurance shall in no way modify or change the indemnification clause in this Agreement, which shall continue in full force and effect.

FA shall at all times during the term of this Agreement maintain in force the insurance coverage required under this Agreement and shall send, without demand by Customer, annual certificates to Customer's Contracts/Purchasing Department. If the certificate is not received by the expiration date, Customer shall notify FA and FA shall have five calendar days to send in the certificate, evidencing no lapse in coverage during the interim. Failure by FA to maintain such insurance is a default of this Agreement, which entitles Customer, at its sole discretion, to terminate the Agreement immediately.

Article 6 – Warranty.

With respect to the Schedule(s) subscribed by Customer, FA warrants to Customer that, during the term of the corresponding Schedule Exhibit(s), that such Schedule(s) will conform in all material respects with the terms of this MASTER AGREEMENT, the applicable specifications, the descriptions set forth in the corresponding Schedule Exhibit(s), and, to the extent not inconsistent therewith, FA's Documentation. This warranty shall automatically expire or terminate upon the expiration or termination of the Master Agreement or such Schedule Exhibit(s), whichever first occurs.

FA further represents and warrants: (i) its performance under this Master Agreement and the Schedules shall at all times comply with all applicable federal, state, and local laws and regulations, (ii) it will perform all services in a professional and competent manner using properly qualified and trained personnel; (iii) to the best of FA's knowledge, Customer's permitted use of the Products, Services, Schedules provided hereunder shall not infringe the Intellectual Property rights of any third party; (iv) the Schedules provided hereunder are and when delivered to Customer will be free from viruses, spyware, and other similar harmful and destructive code; (v) FA shall use commercially reasonable measures including anti-virus and anti-malware software, to continually scan the Schedules provided hereunder for viruses, spyware, and other similar harmful and destructive code; and (vi) it shall not materially decrease the overall functionality or performance of the Schedules during the term of this Agreement from that existing as of the Effective Date. OTHER THAN THE WARRANTIES EXPRESSLY STATED IN THIS MASTER AGREEMENT, SCHEDULES, NEITHER PARTY MAKES ANY OTHER REPRESENTATION OR WARRANTY OF ANY KIND, EXPRESS OR IMPLIED, INCLUDING ANY IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR NON-INFRINGEMENT, AND ANY AND ALL SUCH REPRESENTATIONS AND WARRANTIES ARE HEREBY DISCLAIMED

Article 7 – Limitation of Liability

- 7.1 **General Indemnity.** FA agrees to indemnify, defend and hold harmless Customer and its governing board, directors, officers, agents and employees with respect to any claim, liability, loss injury or damage, expense (including reasonable attorney's fees), fines or damages, in any way arising out or in connection with (i) any personal injury or damage to real or tangible personal property caused by FA or its personnel; (ii) breach of FA or its personnel of its confidentiality or security obligation; (iii) any claim that Customer's authorized use of the Products and Services infringes a third party's patent, copyright, trademark, trade secret or other Intellectual Property rights; or (iv) the gross negligent acts or omissions or willful misconduct of FA or its personnel
- 7.2 **Limitations.** EXCEPT FOR THE INDEMNIFICATION OBLIGATION UNDER THIS MASTER AGREEMENT, NEITHER PARTY SHALL, UNDER ANY CIRCUMSTANCES, HAVE ANY LIABILITY TO THE OTHER FOR ANY INDIRECT, SPECIAL, OR INCIDENTAL DAMAGES (INCLUDING, WITHOUT LIMITATION, LOSS OF

REVENUE OR PROFITS, OR LOSS OF BUSINESS OR BUSINESS INTERRUPTION) EVEN IF SUCH PARTY HAS BEEN MADE AWARE OF THE POSSIBILITY OF SUCH DAMAGES, AND ANY SUCH CLAIM IS HEREBY WAIVED BY THE PARTIES. IN NO EVENT SHALL THE AGGREGATE LIABILITY OF FA HEREUNDER EXCEED THE AGGREGATE LIMITS OF INSURANCE POLICY COVERAGE.

Article 8 – Nondisclosure. FA and Customer each agree that the performance of this Agreement will result in the disclosure to each other of information not generally known by third parties and treated as proprietary ("Confidential Information"). Neither party shall, without the written consent of the other party, divulge, communicate, or use in any way (except as permitted by this Agreement or required by law) the Confidential Information of the other party, and each party shall utilize the same degree of care and precaution as each utilizes with respect to its own proprietary information to prevent the unauthorized disclosure of the other party's Confidential Information. All service manuals, technical bulletins, price lists, system schematics and machine drawings used in the performance of this Agreement are the Confidential Information and property of FA. The term "Confidential Information" shall not include, and the obligations of this Section shall not apply to, any information which: (a) at the time of disclosure to the recipient party, is in the public knowledge; (b) after disclosure, becomes part of the public knowledge by publication or otherwise, except by breach of this Agreement or by fault of the recipient party; (c) was lawfully in the recipient party's possession (as reflected by its written records) at the time of disclosure by the disclosing party, and which was not acquired, directly or indirectly, from the disclosing party; (d) the recipient party can demonstrate by written documents resulted from its own research and development, independent of disclosure from the disclosing party; or (e) was received by the recipient party from third parties not under an obligation not to disclose such information. The provisions of this Article 8 shall survive the expiration or termination of this Agreement for any reason. Both FA and Customer agree that this agreement is a public document subject to the Public Records Act.

Article 9 - Default And Termination

- 9.1 **Insolvency.** Either party shall have the right to terminate this Agreement immediately upon delivering to the other party or its representative written notice of such termination if the other party: (i) files a petition for bankruptcy by or against the other party, which petition is not dismissed within ninety (90) days after its filing; or (ii) appoints a receiver or conservator with respect to the other party's assets, which appointment is not dissolved within sixty (60) days; or (iii) commences any other proceeding under any reorganization, arrangement, adjustment of debt, relief of debtors, dissolution, insolvency or liquidation or similar law of any jurisdiction whether now or hereafter in effect relating to it or any such proceeding is commenced against either party which is not dismissed for a period of sixty (60) days.
- 9.2 **Monetary Defaults.** If Customer fails to pay any amount due hereunder when such amount shall become due, then FA may, upon five (5) days prior written notice to Customer, terminate this Agreement if such failure to pay is not cured within five (5) days after Customer receipt of such notice. The Customer's payments to FA under this Agreement are funded by local, state and federal governments. If funds from local, state and federal sources are not obtained and continued at a level sufficient

to allow for the Customer's purchase of the indicated quantity of services, then the Customer may give written notice of this fact to FA, and the obligations of the parties under this Agreement shall terminate immediately, or on such date thereafter, as the Customer may specify in its notice, unless in the meanwhile the parties enter into a written amendment modifying this Agreement.

- 9.3 **Non-Monetary Defaults.** Except in the case of a default specified in Sections 9.1 or 9.2 hereof, the non-defaulting party (the "Non-Defaulting Party") may terminate this Agreement for failure by the defaulting party (the "Defaulting Party") to perform or adhere to any of its obligations under this Agreement if after notifying the Defaulting Party of such default the Defaulting Party does not cure such default within thirty (30) days; provided, however, that, where a given default, by its nature, would require more than thirty (30) days to cure, the Defaulting Party shall be deemed to have cured such default if, prior to the termination of said thirty (30) day cure period, the Defaulting Party has taken reasonable steps sufficient to effect the cure and thereafter continues in good faith to take actions sufficient to eliminate the default as soon as practicable.
- 9.4 **Obligations Upon Termination.** Notwithstanding the expiration or other termination of this Agreement, neither FA nor Customer shall be released from any obligation that accrued prior to the date of such expiration or termination, including, but not limited to, the obligations of Customer to pay FA for any and all Services performed in accordance with the terms of this Agreement. The acceptance of orders from Customer or the performance of any Services for Customer or any other act after termination of this Agreement shall not be construed as a renewal of this Agreement for any further term nor as a waiver of the termination hereof.

Article 10 - Miscellaneous

- 10.1 **Force Majeure.** Neither party shall incur any liability of any kind by reason of any delay or failure to perform all or any part of this Agreement due to causes beyond its reasonable control, including, but not limited to, compliance with regulations, orders or instructions of any federal, state or municipal government or any department or agency thereof, acts of God, acts or omissions of either party or either party's employees or agents which are not contemplated in its performance of this Agreement, acts of civil or military authority, civil disorder or disturbance, acts of public enemies, problems arising in transportation (including car or truck shortages), civil insurrection strikes, labor disputes, embargoes, war, riot, or failure of suppliers to make timely deliveries of materials or services.
- 10.2 **Customer's Instructions.** During the Term, when FA's employees and agents are on Customer's premises, FA shall use commercially reasonable efforts to cause its employees and agents to obey all reasonable businesslike instructions and directions that Customer issues concerning Customer's business operations. Customer shall provide FA with Customer's policy and procedures.
- 10.3 **Compliance With Anti-Bribery Provisions.** FA and its subsidiaries are operating in accordance with and have a compliance program in

place which reflects a strict no-bribery policy in keeping with the United States Foreign Corrupt Practices Act and other applicable laws, including those of other countries. By signing this Agreement, Customer confirms and certifies that it understands and will follow the requirements of these laws. FA shall have the right to terminate this Agreement immediately if it has reason to believe that there has been an actual or potential violation of any laws related to anti-bribery, and to fully follow all reporting or other guidelines in the law.

- 10.4 **Governing Law.** This Agreement shall be governed by and construed in accordance with the substantive, but not the conflict, laws of the State of California. Any term or provision hereof that may be invalid or unenforceable under the laws of any state or other jurisdiction shall not affect the validity or enforceability of this Agreement and its remaining terms and provisions and such invalid or unenforceable term or provision may be changed to the extent reasonably necessary to make it valid and enforceable or it shall be deemed not to be part of this Agreement.
- 10.5 **Notices.** All notices under this Agreement shall be in writing and shall be delivered personally, by certified or registered mail, postage prepaid, or any other courier delivery system and shall be deemed received in the case of personal delivery or overnight courier, when delivered and in the case of mailing, on the fifth (5th) day after mailing. All notices sent to FA shall be sent to: Fluence Automation, 760 S Wolf Rd, Wheeling IL 60090, Attention: Contract Administrator, and all notices to Customer shall be sent to the address stated at the beginning of this Agreement. Any party may change its address for receiving notice by providing written notice to the other party.
- 10.6 **Assignment.** Customer nor FA shall not assign any rights or obligations under this Agreement or any Schedule without prior, written consent of the other party, which consent shall not be unreasonably withheld.
- 10.7 **Successors and assigns.** This Agreement and each Schedule hereunder shall inure to the benefit of and be binding upon the respective successors and assigns, if any, of the parties.
- 10.8 **Entire Agreement.** This Agreement represents the entire agreement of the parties, merging herein and superseding all prior negotiations and agreements between them as to such subject matter. Unless otherwise noted herein, there are no other written or oral agreements between the parties. Customer may acknowledge this Agreement by a purchase order, but any and all terms, conditions and provisions contained in any purchase order, acknowledgment form or other communications that Customer uses with respect to the transactions contemplated by this Agreement, whether prior or subsequent to the date hereof, are agreed to be surplusage and without any force or effect. This Agreement may be modified or amended only by a subsequent written instrument signed by authorized representatives of the parties hereto expressly superseding the provisions hereof. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original but all of which together shall be deemed for all purposes to constitute one and the same instrument.

IN WITNESS WHEREOF, the parties hereto, each acting under due and proper authority, have executed this Agreement as of the day and year written below.

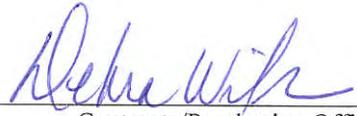
FLUENCE AUTOMATION, LLC

By: 
Name: MICHAEL SWIFT
Title: CEO
Date: 5-16-19

FLUENCE AUTOMATION, LLC

By: 
Name: DAJE BOW
Title: VP
Date: 5-16-19

COUNTY OF MONTEREY

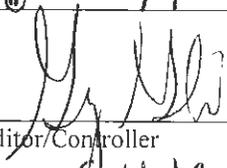
By: 
Contracts/Purchasing Officer
Date: 9/9/2019

Approved as to Form and Legality
Office of the County Counsel-Risk Management
Charles J. McKee, County Counsel-Risk Manager

By: 
Deputy County Counsel

Date: 8.3.19

Approved as to Fiscal Provisions

By: 
Auditor/Controller

Date: 8.4.19

Approved as to Indemnity and Insurance Provisions
Office of the County Counsel-Risk Management
Charles J. McKee, County Counsel-Risk Manager

By: _____
Deputy County Counsel

Date: _____

Equipment Service and Software Support Schedule No. 1106-2018

Customer: Monterey County Elections Office	Start Date of Services: 11/01/2018
	End Date of Services: 10/31/2021
Site/Equipment Address: Monterey County Elections Office 1441 Schilling Place – North Salinas CA 93901	Invoice to Address: Monterey County Elections Office 1441 Schilling Place – North Salinas CA 93901

THIS EQUIPMENT SERVICE AND SOFTWARE SUPPORT SCHEDULE (the "Schedule") by and between Fluence Automation, LLC ("FA") and Customer is entered into pursuant to the terms and conditions of that certain Master Equipment Service and Software Support Agreement by and between FA and Customer dated 11/01/2018 (the "Agreement"), which is incorporated by reference herein. Unless otherwise defined herein, all defined terms used in this Schedule shall have the same meaning ascribed to them in the Agreement.

1. **Term.** This Schedule shall be effective upon the Start Date of Services as set forth above and shall continue for a period of three (3) years unless otherwise stated above (the "Term").
2. **Service Coverage.** See Service Coverage List in Section 2.1 (attached). Equipment and Software Services are described in Exhibit 1, attached hereto and by this reference made a part hereof.
3. **Service Fees.** Customer shall pay to FA a Service Fee of \$31,900.00 for the first and second year and \$32,857.00 for the third year as set forth in Section 2.1 (attached). Such Service Fee shall be paid in installments based on the payment option selected. If a payment option is not selected, the selection will default to annual installments. Service Fee is exclusive of applicable taxes, which will be invoiced with Service Fee.

Payment Options: (Each installment is due in advance of the period in which the services will be provided)

- Annual Installments = \$15,500.00 for maintenance for year one and two; \$15,965.00 for year three
\$16,400.00 for software for year one and two; \$16,892.00 for year three

4. **License; License Key.** Ownership of, and title to, the Software, including any copies thereof and any updates, derivative works or improvements, is retained by FA or its third-party suppliers. Customer's use of the Software and any updates or improvements thereto is subject to the terms of the licensing restrictions under which Customer originally obtained the right to use the Software. Customer acknowledges that the Software and updates thereto use a hardware or software key to enforce the license provisions. Accordingly, Customer's use of the Software and the update(s) may only be on those machines of Customer for which a license key has been granted by FA. If any Software is subject to USPS CASS certification requirement, such software is required to contain a disabling device. Such software is designed to stop operating on the expiration date set by the USPS. To continue use of such Software after the expiration date, Customer must obtain an updated database.
5. **License. THE PROGRAM DEFINED BELOW IS COPYRIGHTED AND LICENSED (NOT SOLD).**
 - a. **License Grant.** FA hereby grants to Customer, and Customer accepts for the Term, a non-exclusive, non-transferable, revocable license to use the compact disc(s) or digital video disc (collectively the "Media") and the computer programs contained therein in machine-readable, object code form only (the "Software"), and the accompanying Documentation (collectively, the "Program"), only as authorized in this License. Only Customer on a computer (whether server-based or integrated into a mail sorter system) owned, leased, or otherwise controlled by Customer at any point in time may use the Software. Customer agrees that Customer will not assign, sublicense, transfer, pledge, lease, rent, or share Customer's rights under this License unless previously authorized in writing by FA. Customer agrees that Customer shall not reverse assemble, reverse compile, or otherwise translate the Software. Customer agrees to use the Software only within the United States, its territories and possessions for the purpose of improving business delivery addresses in multi-occupation buildings for use on letters, flats, postcards, packages, leaflets, magazines, advertisements, books, other printed material and any other item to be delivered by the United States Postal Service ("USPS"). This License does not authorize Customer to use any component of the Software separately for any purpose.
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- g.
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- i. **Security Procedures.** At all times, Customer shall maintain (a) appropriate security controls to restrict access to the hardware, software (including the server and workstations), and data used in connection with the service or process and to ensure a secure environment for maintaining that hardware, software, and data, (b) personnel and management policies sufficient to provide reasonable assurance of the trustworthiness and competence of its employees and the satisfactory performance of their duties and in accordance with all applicable laws, rules and regulations, and (c) appropriate computer and network security controls, including the use of reasonable security procedures which are sufficient to ensure that documents, notices and other information specified in this agreement that are electronically created, communicated, processed, stored, retained, or retrieved are authentic, accurate, reliable, complete, and confidential, and that business records and data are protected from improper access.
- j. **Indemnification Regarding USPS DPV and LACSLink.** =.
- k. **Indemnity.**
6. **Compliance With Anti-Bribery Provisions.** FA and its subsidiaries are operating in accordance with and have a compliance program in place which reflects a strict no-bribery policy in keeping with the United States Foreign Corrupt Practices Act and other applicable laws, including those of other countries. By signing this Schedule, Customer confirms and certifies that it understands and will follow the requirements of these laws. FA shall have the right to terminate this Schedule immediately if it has reason to believe that there has been an actual or potential violation of any laws related to anti-bribery, and to fully follow all reporting or other guidelines in the law.
7. This Schedule may be modified or amended only by a subsequent written instrument mutually agreed to and signed by authorized representatives of the parties hereto expressly superseding the provisions hereof. Any modification or amendment, including, but not limited to, changes to Section 2 may affect the Service Fees hereunder. Notwithstanding anything to the contrary in the Agreement, either party may assign this Schedule or the Agreement to any successor in interest to the business to which the Agreement and Schedule relate, whether by merger, acquisition, the sale of stock or assets, reorganization or otherwise.
8. This Schedule may be executed in any number of counterparts, each of which shall be deemed an original but all of which together shall be deemed for all purposes to constitute one and the same instrument.

Section 2.1.A - Equipment Maintenance Services Coverage List

Service Type: Priority Service Plus-VBM
Contracted Period of Maintenance (CPM): 8:30a – 5:00p M – F

Year 1 - Timeframe: 11/01/18 – 10/31/2019

EQUIPMENT & MODEL	TAG #	SERIAL NO.	PM INSPS.	RM CALLS	PARTS	RESPONSE TIME	TOTAL SERVICE FEE
Criterion Elevate	113252A	E01029	2	All	Yes	4 Hours	\$15,500.00

Year 2 - Timeframe: 11/01/19 – 10/31/2020

EQUIPMENT & MODEL	TAG #	SERIAL NO.	PM INSPS.	RM CALLS	PARTS	RESPONSE TIME	TOTAL SERVICE FEE
Criterion Elevate	113252A	E01029	2	All	Yes	4 Hours	\$15,500.00

Year 3 - Timeframe: 11/01/20 – 10/31/2021

EQUIPMENT & MODEL	TAG #	SERIAL NO.	PM INSPS.	RM CALLS	PARTS	RESPONSE TIME	TOTAL SERVICE FEE
Criterion Elevate	113252A	E01029	2	All	Yes	4 Hours	\$15,965.00

Section 2.1.B - Software Maintenance Subscription Services Coverage List

Year 1 - Timeframe: 11/01/18 – 10/31/2019

SOFTWARE DESCRIPTION	ANNUAL SERVICE FEE
Sorter: Criterion Elevate, SN: E01029, Tag # 113252A	
Vote By Mail SWSUB	\$16,400.00
TOTAL ANNUAL SOFTWARE MAINTENANCE AND SUBSCRIPTION SERVICES FEES (Exclusive of Taxes)	\$16,400.00

Year 2 - Timeframe: 11/01/19 – 10/31/2020

SOFTWARE DESCRIPTION	ANNUAL SERVICE FEE
Sorter: Criterion Elevate, SN: E01029, Tag # 113252A	
Vote By Mail SWSUB	\$16,400.00
TOTAL ANNUAL SOFTWARE MAINTENANCE AND SUBSCRIPTION SERVICES FEES (Exclusive of Taxes)	\$16,400.00

Year 3 - Timeframe: 11/01/20 – 10/31/2021

SOFTWARE DESCRIPTION	ANNUAL SERVICE FEE
Sorter: Criterion Elevate, SN: E01029, Tag # 113252A	
Vote By Mail SWSub	\$16,892.00
TOTAL ANNUAL SOFTWARE MAINTENANCE AND SUBSCRIPTION SERVICES FEES (Exclusive of Taxes)	\$16,892.00

TOTAL EQUIPMENT MAINTENANCE AND SOFTWARE SUBSCRIPTIONS YEAR 1: \$31,900.00

TOTAL EQUIPMENT MAINTENANCE AND SOFTWARE SUBSCRIPTIONS YEAR 2: \$31,900.00

TOTAL EQUIPMENT MAINTENANCE AND SOFTWARE SUBSCRIPTIONS YEAR 3: \$32,857.00

EXHIBIT 1
Customer Services
Description of Service Options

The following terms shall have the meaning ascribed to them below:

1. Equipment Service Descriptions

"Priority Service Plus – Vote By Mail" - During PPM hours, if requested by Customer, FA shall dispatch a technician to perform, pursuant to the Schedule, pre/post election support and remedial maintenance calls. During any remedial maintenance call or during the pre/post election support, the technician shall deliver the services described herein. Operator error and routine set-up are not included in the number of inspections or calls listed on the Schedule. FA shall bill Customer as defined in Section 2.1.A and Section 3 of the Agreement, for any Services required as a result of operator error or routine set-up.

Pre and Post election support shall include the following:

- Scheduled preventive maintenance (PM) inspection and test of VBM sorter to ensure readiness of election ballot processing. The PM inspection will include the replacement of non-consumable parts that are deemed necessary to ensure optimal efficiency of the equipment.
- Operator Training – At the conclusion of each pre-election inspection and testing, FA will provide an operator training refresher course. The course will be up to 4 hours in duration.
- After the election, FA will perform post election services to ensure the system is properly prepared to lay idle until the next election processing period. The post election services ensure the trouble free start up of the equipment at the next election period.
- Eight hours (8) of election day coverage is included in the PMA pricing. Additional on-site coverage (for periods other than the 8 hour Election Day period) may be acquired in blocks of 4 hours, providing they are scheduled at least twenty-one (21) days in advance will be priced as follows:
 - 1-5 blocks - \$815 ea. 4 hour block
 - 6-10 blocks - \$775 ea. 4 hour block
 - 10+ blocks - \$700 ea. 4 hour block
- Backup/Recovery – FA shall be responsible for; (i) backing up the VBM Sorter Software (including configuration files) using industry standard backup software, on a mutually agreed upon frequency, (ii) storing said backups in a fashion sufficient to support the recovery of FA Services at the levels described herein, and (iii) performing necessary and sufficient recovery of the Equipment, Software and Services to ensure the continued, uninterrupted operation.

Remedial Maintenance, during election window timeframe, shall include the following at no additional cost to Customer:

- Access to FA's toll free 7x24 Customer Care Center @ 800-792-4782
- Phone response by a trained FA Customer Service Engineer (CSE) within 15 minutes of a service call
- 4 Hour on-site response time of a trained FA CSE
- Replacement of any broken non-consumable parts.

2. *Software Maintenance and Subscription Services shall include:*

Software Maintenance Services will consist of the following:

i. Telephone and E-Mail Assistance - FA shall provide Customer with a toll-free telephone number that will enable designated Customer employees to (i) call FA for general assistance, (ii) obtain answers to specific software questions, and (iii) receive aid in diagnosing suspected software problems. FA will respond to requests for assistance made by Customer via telephone or e-mail. Telephone support shall be available 8:30 a.m. through 5:00 p.m., Eastern Standard Time, Monday through Friday, excluding FA holidays.

ii. Remote Diagnostic Service - FA, at its sole discretion, may employ remote telephony techniques in an effort to enhance the diagnostics process. Customer agrees that any remote diagnostic ancillary equipment and/or Software (collectively, the "RD") and or software furnished by FA shall remain the property of FA. Customer agrees to provide adequate protection for the RD, including, but not limited to protection against theft, physical damage by Customer's personnel, and reasonable protection against natural elements. Customer further agrees that, upon discontinuance of RD service, FA may remove and/or disable the RD at any time after proper notice of discontinuance to FA. Customer is responsible for any charges for phone line installation or monthly usage.

iii. Maintenance Releases - FA may periodically prepare and provide to Customer software fixes or patches that are otherwise not separately marketed or priced (the "Maintenance Releases"). Customer will be solely responsible for integrating Maintenance Releases into Customer's Equipment and Software environment. FA may at its sole discretion charge a fee for Maintenance Releases that provide new functionality.

iv. Documentation Configuration Management - FA will periodically send to customer the latest revision of the operator's manual (the "Update"). FA may send the Update by either hard copy or electronic media. Customer is responsible for placing the Update in the correct manual and for properly maintaining said manual.

v. Enhancement Releases - FA may periodically prepare and provide to Customer enhancements or additional features that are otherwise not separately marketed or priced (the "Enhancements"). Customer will be solely responsible for integrating Enhancements into Customer's Equipment and Software environment. FA may at its sole discretion charge a fee for Enhancements that provide new functionality.