

EXHIBIT A – SCHEDULE (FISCAL YEAR 2020 – 2022)

Equipment Service and Software Support Schedule No. 1106-2020

Customer: County of Monterey Start Date of Services: 07/01/2020
End Date of Services: 06/30/2022

Site (Equipment Site Address): Invoice To Address:
County of Monterey County of Monterey, County Administrative Office
1488 Schilling Place 1488 Schilling Place
Salinas, CA 93901 Salinas, CA 93901-4527

THIS EQUIPMENT SERVICE SUPPORT SCHEDULE (the "Schedule") by and between Fluence Automation, LLC ("FA" or "CONSULTANT") and COUNTY is entered into pursuant to the terms and conditions of that certain Master Equipment Service and Software Support Agreement by and between FA and COUNTY dated 07/01/2018 (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 two (2) years unless otherwise stated above (the "Term"). **This Schedule shall renew by written consent of the COUNTY until terminated in accordance with the Agreement.**

CONDITION SUBSEQUENT/NON-APPROPRIATION OF FUNDING

The compensation paid to CONSULTANT pursuant to this Schedule is based on COUNTY'S continued appropriation of funding for the purpose of Schedule, as well as the receipt of local, County, State and/or Federal funding for this purpose. The parties acknowledge that the nature of government finance is unpredictable, and that the rights and obligations set forth in this Schedule are therefore contingent upon the receipt and/or appropriation of the necessary funds. In the event that funding is terminated, in whole or in part, for any reason, at any time, this Schedule and all obligations of the COUNTY arising from this Schedule for Services not rendered as of the final date which funding is available shall be immediately discharged. COUNTY agrees to inform CONSULTANT no later than ten (10) calendar days after the COUNTY determines, in its sole judgment, that funding will be terminated and the final date for which funding will be available. Under these circumstances, all billing or other claims for compensation or reimbursement by CONSULTANT arising out of performance of this Schedule must be submitted to COUNTY prior to the final date for which funding is available. In the alternative, the parties may agree, in such circumstance, to a suspension or modification of either party's rights or obligations under this Schedule. Such a modification, if the parties agree thereto, may permit a restoration of previous contract terms in the event funding is reinstated. Also in the alternative, the COUNTY may, if funding is provided to the COUNTY in the form of promises to pay at a later date, whether referred to as "government warrants," "IOUs," or by any other name, the COUNTY may, in its sole discretion, provide similar promises to pay to the CONSULTANT, which the CONSULTANT hereby agrees to accept as sufficient payment until cash funding becomes available.

2. **Service Coverage.** See Equipment Maintenance and Software Maintenance Subscription Services Coverage List in Sections 2.1.A and 2.1.B (attached). Equipment and Software Services are described in Exhibit 1, attached hereto and by this reference made a part hereof.
3. **Service Fees.** COUNTY shall pay to FA a Service Fee of \$51,344.00 for Year 1 and \$52,370.00 for Year 2 as set forth in Sections 2.1.A and 2.1.B (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. Equipment that reaches its 7th and/or 12th year of age from the original manufacture date during the Term hereof is subject to maturity surcharges of five percent (5%) and ten percent (10%) of the applicable annual Service Fees, respectively. Such surcharge(s) shall be reflected in the total Service Fee hereunder.

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

- Annual Installment = \$17,525.00 for Software Maintenance Subscription – Year 1
\$17,875.00 for Software Maintenance Subscription – Year 2
- Quarterly Installments = \$8,454.75 per Quarter for Equipment Maintenance – Year 1
\$8,623.75 per Quarter for Equipment Maintenance – Year 2

Please check if applicable to COUNTY with respect to this Schedule:

- COUNTY requires a Purchase Order be issued before an invoice may be paid. Accordingly, COUNTY agrees to issue such a Purchase Order upon signing this Schedule and return such Purchase Order with this Schedule to FA.

4. **Right of First Refusal.** If COUNTY intends to enter into an agreement with another party to obtain any services the same as or similar to any of the Services, COUNTY shall provide FA with written notice of the terms of such agreement prior to terminating this Schedule hereunder or the Agreement. If FA agrees to meet the same or similar terms within thirty (30) days following receipt of the written notice thereof, then COUNTY shall enter into an agreement on such same or similar terms with FA upon expiration of this Schedule or the Agreement, as applicable.
5. **Nonsolicitation/Hire.** During the Term of the Agreement and this Schedule, and for a period of one (1) year after the latest of termination or expiration of the Agreement and this Schedule, COUNTY will not directly or indirectly, on behalf of itself, or on behalf of any person, firm, partnership, corporation, association or entity, (i) hire or solicit or induce any employee, consultant or representative of FA, including, without limitation, any Resident Technician or any Priority Resident Technician who is such during the Term of the Agreement or this Schedule (each a "Protected Party") to discontinue its relationship with FA or to establish a relationship with COUNTY or any other party, or (ii) engage any third party that hires any Protected Party to provide services the same as or similar to the Services. Violation of this provision shall constitute an event of default and FA shall have the right to any or all of the following: (i) equitable relief (including without limitation injunctive relief) without having to prove damages or post a security bond; (ii) terminate this Agreement; and (iii) pursue all other damages and remedies available under applicable law.
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, COUNTY 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.

IN WITNESS WHEREOF, FA and COUNTY, each acting under due and proper authority, have executed this Schedule as of the date set forth below.

FLUENCE AUTOMATION, LLC

By: _____
Name: _____
Title: _____
Date: _____

FLUENCE AUTOMATION, LLC

By: _____
Name: _____
Title: _____
Date: _____

COUNTY OF MONTEREY

By: _____
Contracts/Purchasing Officer

Date: _____

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

By: _____
Marina Pantchenko
Deputy County Counsel

Date: _____

Approved as to Fiscal Provisions

By: _____
Auditor/Controller

Date: _____

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

By: _____

Date: _____

Section 2.1.A - Equipment Maintenance Services Coverage List

Service Type: Priority Service Plus
Contracted Period of Maintenance (CPM): 8:30am – 5:00pm Monday - Friday

Timeframe: 07/01/20 – 06/30/21 – Year 1

EQUIPMENT & MODEL	TAG #	SERIAL NO.	PM INSPS.	RM CALLS	PARTS	AGE	RESPONSE TIME	TOTAL SERVICE FEE
Criterion Elevate	FA00076	0003	Bi-Monthly	All	Yes	13	4 Hours	\$33,819.00
TOTAL EQUIPMENT SERVICE FEES (Exclusive of Taxes)								\$33,819.00

Timeframe: 07/01/21 – 06/30/22 – Year 2

EQUIPMENT & MODEL	TAG #	SERIAL NO.	PM INSPS.	RM CALLS	PARTS	AGE	RESPONSE TIME	TOTAL SERVICE FEE
Criterion Elevate	FA00076	0003	Bi-Monthly	All	Yes	14	4 Hours	\$34,495.00
TOTAL EQUIPMENT SERVICE FEES (Exclusive of Taxes)								\$34,495.00

Section 2.1.B - Software Maintenance Subscription Services Coverage List

Timeframe: 07/01/20 – 06/30/21 – Year 1

SOFTWARE DESCRIPTION	ANNUAL SERVICE FEE
Sorter: Criterion Elevate, SN: 0003, Tag # FA00076	
1stClass let_Primary_SWSUB	\$9,403.00
StanClasLet_Secdonary_SWSUB	\$621.00
MoveComply Cloud SWSUB	\$7,501.00
TOTAL ANNUAL SOFTWARE MAINTENANCE AND SUBSCRIPTION SERVICES FEES (Exclusive of Taxes)	
	\$17,525.00

Timeframe: 07/01/21 – 06/30/22 – Year 2

SOFTWARE DESCRIPTION	ANNUAL SERVICE FEE
Sorter: Criterion Elevate, SN: 0003, Tag # FA00076	
1stClass let_Primary_SWSUB	\$9,591.00
StanClasLet_Secdonary_SWSUB	\$633.00
MoveComply Cloud SWSUB	\$7,651.00
TOTAL ANNUAL SOFTWARE MAINTENANCE AND SUBSCRIPTION SERVICES FEES (Exclusive of Taxes)	
	\$17,875.00

TOTAL EQUIPMENT MAINTENANCE AND SOFTWARE MAINTENANCE SUBSCRIPTIONS YEAR 1: \$51,344.00

TOTAL EQUIPMENT MAINTENANCE AND SOFTWARE MAINTENANCE SUBSCRIPTIONS YEAR 2: \$52,370.00

EXHIBIT 1
Customer Services
Description of Service Options

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

1. *Equipment and Software Service Descriptions*

“Priority Service Plus” - During the Contracted Period of Maintenance (CPM) excluding holidays, if requested by COUNTY, FA shall dispatch a technician to perform, pursuant to the Schedule, Preventive Maintenance inspections and Remedial Maintenance calls. During any Remedial Maintenance call or Preventive Maintenance call, the technician shall replace, without additional charge to COUNTY, as reasonably necessary, Non-Consumable Parts, but not Consumable Parts or Supplies. Operator error, routine set-up, and repeated operator training are not included in the number of inspections or calls listed on the Schedule. FA shall bill COUNTY, (at FA's then current rates for labor plus FA's list price for any Equipment parts) for any Services required as a result of operator error, routine set-up and repeated operator training.