



March 5, 2020

**TO:** LOCSD Board of Directors  
**FROM:** Ron Munds, General Manager  
**SUBJECT:** **Item 6F – 3/5/2020 Board of Directors Meeting**  
Approve a Rebate for Customers Who Purchase and Install the Flume Smart Water System

**President**  
Charles L. Cesena

**Vice President**  
Christine M. Womack

**Directors**  
Matthew D. Fourcroy  
Vicki L. Milledge  
Marshall E. Ochylski

**General Manager**  
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**District Accountant**  
Robert Stilts, CPA

**Unit Chief**  
Scott M. Jalbert

**Battalion Chief**  
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### DESCRIPTION

Recommendation regarding including a rebate program the Flume Smart Water System into the District's Rebate Program.

### STAFF RECOMMENDATION

This item will be approved along with the Consent Calendar unless it is pulled by a Director for separate consideration. If so, Staff recommends that the Board adopt the following motion:

***Motion: I recommend that:***

***1. The Board of Directors approve the District's rebate program include a rebate in the amount of \$100, for customers who purchase and install the Flume Smart Water System.***

***2. Approve the monitoring and participation agreement (attached) with Flume Smart Water Systems.***

### DISCUSSION

The District currently has a rebate program in place for other items, such as low flow toilets and rain catchment tanks installed in residences within the District water service area. A product that has come onto the market is the Flume Smart Water System (Flume), this system can assist customers with monitoring of their water usage, assist in finding a leak or high use in timely manner, and also allow tracking of water usage in real time.

The cost of the product is approximately \$200, the district can encourage customer use of this product by providing a rebate, in the amount of \$100. This rebate will encourage customer to purchase the unit and assist both the customer and District when diagnosing and investigating a high use inquiry.

As part of the program, Flume will assist in administering the rebate program, as well as assist in promoting the sales of the product. An agreement outlining roles and responsibilities is attached which explains the fundamentals of the program.

### SUMMARY

The Utilities Advisory Committee unanimously supports the inclusion of the Flume device on the District's rebate list and the \$100 rebate amount..

## **FINANCIAL IMPACT**

Fund 500 has about \$3,500 remaining in this year water conservation budget for rebates and other program activities. There is approximately \$59,000 in conservation reserves that may be used to assist with program implementation if needed.

Attachments

**LOS OSOS COMMUNITY SERVICES DISTRICT**  
**FLUME WATER MONITORING PARTICIPATION AGREEMENT**

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This Water Monitoring Program Participation Agreement (the "Agreement") is entered into effective on \_\_\_\_\_, 2020 ("Effective Date"), by and between Los Osos Community Services District ("LOCSD"), an independent special district of the State of California, and Flume, Inc., a vendor of a smart water system utilizing a smartphone application for real-time water monitoring ("Flume") each individually a "Party" and collectively, the "Parties").

**WHEREAS**, Flume has developed the Flume™ Smart Water System that allows the consumers of water to monitor water use in real time and to detect leaks; and

**WHEREAS**, LOCSD has developed a Water Monitoring Program (the "Program"), whereby its eligible customers receive a coupon or rebate that can be redeemed at Flume for certain selected products or services, thereby monitoring and reducing overall water use; and

**WHEREAS**, LOCSD customers will authorize LOCSD to receive data to assess overall customer use of water.

**NOW THEREFORE**, for good and valuable consideration, including but not limited to the mutual covenants contained herein, the Parties agree as follows:

**1. TERM**

Subject to the early termination provisions provided for herein, the term of this Agreement shall commence on the Effective Date hereof and continue until terminated by either Party.

**2. PROGRAM TERMS**

LOCSD will offer to its qualified customers a coupon or a rebate for the purchase of qualified Flume products. LOCSD and Flume hereby agree that the product described in **Exhibit A** attached hereto, shall be offered as part of the product program set forth in **Exhibit B** attached hereto.

**3. DESIGNATED REPRESENTATIVES**

LOCSD's initial representative for this Agreement is \_\_\_\_\_. Flume's initial representative for this Agreement is Joe Fazio – VP, Customer Success. Flume will be expected to have a contact person available during regular business hours to facilitate communication between LOCSD and Flume. Regular business hours are Monday through Friday from 8:00 am to 5:00 pm Pacific Time. Flume support can be reached via E-Mail at [support@flumetech.com](mailto:support@flumetech.com) or via chat from within the Flume app or at [flumetech.com](http://flumetech.com).

**4. RELEASE OF LOCSD**

Flume hereby expressly releases LOCSD from any and all liability to Flume resulting from any damages, including punitive, special, indirect, or consequential damages, arising from Flume's performance of its obligations under this Agreement, including but not limited to: (a) claims for damages because of bodily injury, sickness, or disease of Flume's employees and agents or by those of any supplier or by anyone indirectly employed by any of

them; (b) claims for damages to or destruction of tangible property of others, including loss of use thereof; (c) claims for damages regarding defects or repairs of any Flume product; and (d) actions of any LOCSD customer, including without limitation, failure to pay or damage to any Flume products.

**5. INDEMNIFICATION AND INSURANCE**

FLUME AGREES TO INDEMNIFY, DEFEND AND HOLD HARMLESS LOCSD, AND EACH OF THEIR DIRECTORS, OFFICERS, EMPLOYEES, AND AGENTS FROM ANY AND ALL SUITS, ACTIONS, LOSSES, DAMAGES, CLAIMS OR LIABILITY, PENALTIES AND COSTS OR DAMAGES INCLUDING WITHOUT LIMITATION, ALL EXPENSES OF LITIGATION, COURT COSTS, ATTORNEYS FEES, EXPERT WITNESS FEES, AND DAMAGES FOR INJURY, DEATH OR PROPERTY DAMAGE SUSTAINED BY ANY ENTITY, PERSON OR PERSONS ARISING DIRECTLY OUT OF THE PERFORMANCE UNDER THIS AGREEMENT BY FLUME, ITS OFFICERS, AGENTS, EMPLOYEES OR REPRESENTATIVES OR FLUME'S BREACH OF THIS CONTRACT. PRIOR TO EXECUTION OF THIS AGREEMENT, FLUME SHALL PROVIDE INSURANCE COVERAGE DOCUMENTATION IN AMOUNT AND SCOPE SATISFACTORY TO LOCSD IN WRITING AS DETERMINED BY LOCSD IN ITS SOLE DISCRETION. FLUME SHALL ADD LOCSD AS AN ADDITIONAL INSURED UNDER SUCH INSURANCE POLICIES, AND FLUME SHALL PROVIDE LOCSD WITH CERTIFICATES OF INSURANCE AND INSURANCE ENDORSEMENTS IN A FORM ACCEPTABLE TO LOCSD.

**6. NOTICES**

Notices to the Parties under this Agreement shall be given in writing (except a Party may provide notice solely by telephone in the case of an emergency) via certified mail, or email to the following addresses, and notices shall be effective pursuant to Section 17:

LOCSD  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
\_\_\_\_\_  
Address: \_\_\_\_\_  
City, State, Zip: \_\_\_\_\_  
Email: \_\_\_\_\_  
Phone: \_\_\_\_\_

Flume  
Joe Fazio  
VP, Customer Success  
75 Higuera Street, Suite 120  
San Luis Obispo, CA 93401  
Email: [joefazio@flumetech.com](mailto:joefazio@flumetech.com)  
Phone: (805) 705-2590

**7. NOTICE OF TERMINATION**

This Agreement may be terminated at any time by either Party, provided that written notice of termination is given at least thirty (30) days in advance of the intended date of termination. Flume must submit all outstanding invoices for Water Monitoring Coupons or rebates within sixty (60) days following the effective date of termination.

**8. RIGHT TO AUDIT**

LOCSD has the right to audit, at LOCSD’ expense, Flume records and all supporting documentation upon reasonable advance notice and during regular business hours for the purposes of compliance with this Agreement for three (3) years following the expiration or earlier termination of this Agreement.

**9. ASSIGNMENT**

Flume shall not assign or transfer this Agreement, in whole or in part, without the prior written consent of LOCSD, which may be withheld or conditioned in LOCSD’s sole discretion.

**10. NO JOINT VENTURE, AGENCY**

In no event will Flume hold itself out as, act as or be an agent of LOCSD. This Agreement is not intended to and shall not result in a partnership or joint venture between the Parties. LOCSD and Flume are entering into this Agreement solely for the benefit of themselves and agree that nothing herein shall be construed to confer any right, privilege or benefit on any person or entity other than the Parties hereto and their permitted assigns. Flume represents and warrants that Flume customarily engages

in the independently established trade and business of the same nature as the work to be performed under this Agreement.

**11. COMPLIANCE WITH LAWS**

Flume will fully comply with all appropriate local, state and federal laws, regulations and ordinances governing the acquisition of materials and performance of contractual Services required hereunder, in accordance with the highest standards of professional care expected by a vendor with expertise in the subject matter of this Agreement.

**12. DISPUTE RESOLUTION**

In the event a dispute arises between the Parties regarding the application or interpretation of any provision of this Agreement or any matter pertaining to transactions contemplated by this Agreement, the aggrieved Party shall notify the other Party in writing of the nature of the dispute within 30 (30) days after such dispute arises. If the matter cannot be resolved informally within thirty (30) days, the dispute shall be referred to a meeting between a designated officer of each Party not otherwise involved in the administration of this Agreement. This meeting shall occur within thirty (30) days of the referral. If the Parties are unable to resolve the dispute within fifteen (15) days after the meeting has occurred or if the meeting does not occur, then, without waiving any defenses or immunities that may be available to a Party, each Party shall have the right to pursue any and all remedies available at law or in equity.

**13. GOVERNING LAW**

This Agreement shall be governed by, construed and enforced under the laws of the United States and the State of California as applicable without giving effect to the principles of conflicts of law thereof, and shall, to the maximum extent practicable, be deemed to call for performance in San Luis Obispo County, California. LOCSD and Flume expressly consent to the court of competent jurisdiction in the state and federal courts of California, San Luis Obispo County.

**14. FURTHER ACTIONS**

The Parties hereto agree to execute, acknowledge and deliver such further documents as may be necessary or proper to carry out the purpose and intent of this Agreement.

**15. ENTIRE CONTRACT**

This Agreement, including the schedules, exhibits and addenda referred to in this Agreement, which are incorporated in and constitute a part of this Agreement, contains the entire Agreement of the Parties hereto and supersedes all prior oral or written agreements, negotiations, representations and understandings with

respect to the subject matter. This Agreement may not be amended or modified except by a writing signed by the Parties.

#### **16. WAIVER**

Any waiver at any time by either Party with respect to a default or other matter arising in connection with this Agreement shall not be deemed a waiver with respect to any subsequent default or matter.

#### **17. NOTICES/APPROVALS**

All notices and approvals by either Party that are required under this Agreement, including invoices, must be in writing unless other means are specifically permitted, and must be signed by the person authorized to give such approvals and make such contracts for that Party. The persons authorized to give such notices and approvals and to make such contracts for the Parties shall, until changed as hereinafter provided, be as set forth in section 7 above. Each Party shall have the right at any time to change the person authorized to give such approvals and make such contracts by giving at least fifteen (15) days written notice

to the other Party. When notice is given by mail, it shall be deemed served three (3) business days following deposit, postage prepaid in the United States mail. When notice is given by e-mail transmission, it shall be deemed served upon receipt of confirmation of transmission if transmitted during normal business hours or, if not transmitted during normal business hours, on the next business day following the e-mail transmission.

#### **18. FORCE MAJEURE**

This Agreement shall be subject to all applicable federal, state and county and municipal laws, executive orders, ordinances, rules, regulations and acts, and this Agreement shall not be terminated, in whole or in part, nor shall the Parties hereto be held liable in damages, for failure to comply therewith, if compliance is prevented due to force majeure. The term "force majeure" as used herein shall mean: any act of God, including but not limited to, storms, floods, washouts, earthquakes, landslides, fires and lightning; acts of the public enemy; wars, blockage, insurrections, riots or other public disorders; lockouts, strikes or other labor disturbances, epidemics or quarantine regulations, freight embargoes or failures; exhaustion or unavailability or delays in delivery of any product, labor, fuel, service or material not the fault of the Parties; breakdown or failure of Parties' equipment; interference by a governmental entity; or any other event or condition beyond the reasonable control of

the Parties. Flume will provide notice to LOCS D immediately upon becoming aware of any condition that adversely affects the ability of Flume to perform its obligations under this Agreement.

#### **19. SEVERABILITY**

Should any part, paragraph, sentence, phrase, clause, or word of this Agreement for any reason be held illegal, inoperative, or invalid or if any exception to or limitation upon any general provision herein contained be held to be

invalid or ineffective, the remainder shall nevertheless stand effective and valid as if this Agreement had been executed without the portion held to be invalid or ineffective.

#### **20. JOINT PREPARATION**

The Parties shall be deemed to have jointly prepared this Agreement and no ambiguity herein shall be construed by or for or against any Party based on the identity of the author of this Agreement or any portion herein.

#### **21. HEADINGS**

The headings appearing in this Agreement are inserted merely to facilitate reference and are not to be considered a part of this Agreement and in no way shall they affect the interpretation of any of the provisions of this Agreement.

#### **22. COUNTERPARTS**

This Agreement may be executed in one or more counterparts, each of which will be deemed an original. Faxed signatures and countersignatures shall be deemed originals for all purposes and proper evidence of assent to this Agreement. The individuals executing this Agreement each represent and warrant to the other Party that he/she has full authority to execute this Agreement on behalf of his/her respective Party.

#### **23. EXHIBITS**

The following exhibits are hereby incorporated in this Agreement and any changes made thereto shall be in a new updated Exhibit signed by authorized representatives of the Parties with a reference stating that the exhibit is subject to the terms and conditions of this Agreement:

Exhibit A – Flume Product

Exhibit B – The LOCS D Program

IN WITNESS WHEREOF the Parties hereto have respectively caused this Agreement to be duly executed by the undersigned duly authorized representatives.

**LOCSD (Los Osos Community Services District)**

By \_\_\_\_\_  
(Signature)  
\_\_\_\_\_  
(Print/Type Name)  
Title \_\_\_\_\_

**FLUME, INC.**

By \_\_\_\_\_  
(Signature)  
Eric Adler \_\_\_\_\_  
(Print/Type Name)  
Title \_\_CEO\_\_\_\_\_

## **EXHIBIT A**

### **FLUME PRODUCT**

#### Description of Flume™ Products and Flume™ Services for Water Monitoring:

The Flume™ Smart Water System enables homeowners to detect leaks and monitor water usage in real time across their entire property, both indoors and outdoors. With Flume, homeowners gain unprecedented understanding of their water use, helping them conserve water, save money and protect their home from costly leaks.

#### **The Flume Smart Water System includes:**

- The **Flume™ Water Sensor** simply straps onto an existing meter and measures flow rate to a tested accuracy of 99.9%.
- The **Flume™ Bridge** plugs into a power outlet and connects to a home WiFi network. It receives the signal from the Flume Water Sensor and sends this data securely into the cloud.
- The **Flume™ App** runs on an iOS or Android smartphone and accesses real-time water usage data from the cloud. It shows usage in real time right down to the minute, notifies users of existing leaks, and sends alerts when abnormal usage is detected.

#### **How It Works**

When water flows through a water meter, a magnetic disc spins inside of the meter. The rate at which this disc spins correlates directly to a water flow rate. The Flume Water Sensor measures this magnetic field from the meter and sends this information using Radio Frequency (RF) to the Flume Bridge.

#### **The Platform**

Water usage information is securely processed by the Flume HomeHealth™ Platform which delivers entire-property insights about your water usage via the Flume App. Machine learning is employed to detect abnormal water usage and leaks, even when users are away from their homes.

#### **Support**

The FlumeTech™ Support Team offers best-in-class service and support which is available between 7AM and 7PM, 7 days a week. Customers may contact the FlumeTech Support Team at [support@flumetech.com](mailto:support@flumetech.com) or through the chat feature built into the Flume App.

Trademark Notice: Flume, FlumeTech, HomeHealth are trademarks of Flume, Inc. in the United States.

## **EXHIBIT B**

### **THE LOCS D PROGRAM**

- LOCS D and Flume will jointly market this rebate program to LOCS D's customer base.
- Customers will be directed to [flumetech.com/locs d](http://flumetech.com/locs d) to purchase their discounted Flume Smart Water Systems, where they will be asked for their LOCS D account number.
- LOCS D will provide a rebate of \$100 for up to a total of 250 Flume systems.
- LOCS D Customers will pay \$99+tax+shipping (normally \$199) for each Flume system.
- Flume will ship the systems directly to the customers to the address they provide.
- If customers have any questions or problems with their systems, they will contact Flume for support.

#### **LOCS D Responsibilities**

- LOCS D agrees to send a series of emails to its eligible customer base advertising this rebate program. Flume will provide sample content for these emails, and will share best practices for maximizing the effectiveness of this email campaign. Expect to sell 25 Flume systems for each 1000 emails sent.
- LOCS D may also market the Flume system to its customer base using other means, such as: traditional mail, social media, LOCS D's website, newspaper articles, press releases, bill inserts, newsletters, etc.
- LOCS D is hereby licensed to use Flume trademarks in association with such advertising provided trademarks are acknowledged in fine print as follows: "Flume and FlumeTech are registered trademarks of Flume, Inc. in the United States." Flume may review such advertising and make suggestions for minor changes. If Flume determines that advertising will adversely impact its trademarks, Flume may retract LOCS D's right to use such trademarks.
- LOCS D will direct their customers to [flumetech.com/locs d](http://flumetech.com/locs d) to purchase discounted Flume systems.
- LOCS D will reimburse Flume for \$100 for each system sold through the above site.
- LOCS D will provide Flume with a list of valid LOCS D account numbers for all customers in its service area. These account numbers will be used to validate that customers are in the LOCS D service area before they can purchase a Flume system.

#### **Flume Responsibilities**

- Flume will setup and administer a co-branded website at [flumetech.com/locs d](http://flumetech.com/locs d). LOCS D customers will be directed to this site where they can purchase their discounted Flume systems.
- Before the launch of this program, Flume will host periodic meetings with LOCS D regarding the design of the site and any other program related details.
- Flume will provide all customer support for the end-user customers between 7AM and 7PM, 7 days a week. Customers may contact FlumeTech support at [support@flumetech.com](mailto:support@flumetech.com) or through the chat feature built into the Flume app.
- Flume will do its best to verify any suspicious orders with LOCS D before they are fulfilled. This will help prevent non-LOCS D customers from ordering systems through this special site.
- Once verified, Flume will ship systems directly to the customers.
- Flume will provide a no-cost return option for customers that are not able to install their systems after contacting Flume support..
- Flume will provide LOCS D with a complete list of their customers that have a Flume system upon request.
- Flume may also market this LOCS D program via digital marketing and other means. LOCS D to approve any marketing pieces in writing before they are launched.
- Flume shall notify LOCS D in advance of any events held by Flume concerning the Program and will allow participation by LOCS D when appropriate.



- Flume will invoice LOCSD as defined below in the “Program Pricing” section.

**Customer Responsibilities**

- During the purchase of their Flume system, customers will agree to a Participant Agreement that LOCSD will approve in writing.
- Customers will be responsible for installing their Flume systems. Flume will provide customer support if there are any questions or problems.
- The customer will agree to the Flume End User License Agreement (EULA) when they install the Flume app. This EULA can be found at: <https://flumetech.com/eula/>
- The customer will agree to the Flume Privacy Policy when they install the Flume app. This Privacy Policy can be found at: <https://flumetech.com/privacy-policy/>

**Scope and Timing**

- This program will be available to all LOCSD customers that have a compatible water meter.
- This program will be launched on a mutually agreeable date (tentatively in March 2020).

**Program Pricing**

Item	Notes
Rebate Amount (LOCSD’s portion)	\$100 (includes all applicable charges)
Customer’s Portion	\$99 + tax + \$10 shipping
Payment Terms	Flume will invoice LOCSD for 50 systems upon execution of this contract (\$5000). Flume will then invoice LOCSD every 30 days (as necessary) for additional devices sold through the program.
Optional Utility Portal	If LOCSD would like to monitor all of the Flume systems in their service area (in real-time), they may opt to do so with Flume’s Utility Portal. Flume will provide the portal free of charge to LOCSD until May 30, 2020. After that, the Portal will be available for \$1/system/month.