



WEBB COUNTY

Jose A. Lopez III, CTPM
Purchasing Agent

HONORABLE JUDGE JOE LOPEZ
49th Judicial District
HONORABLE JUDGE BECKIE PALOMO
341st Judicial District
HONORABLE JUDGE OSCAR J. HALE
406th Judicial District
HONORABLE JOHN GALO
Commissioner Pct. 3

PURCHASING DEPARTMENT
1110 Washington, Suite 101
Laredo, Texas 78040
(956) 523-4125
(956) 523-5010

October 30, 2018

FLOWatch, LLC
Kapal Madireddi
9457 So. University Blvd, #157
Highlands Ranch, CO 80130

Dear Mr. Madireddi:

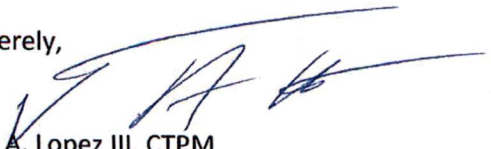
This is to notify you that on August 13, 2018, Webb County Commissioners' Court voted to award FLOWatch LLC **RFP 2018-004 "Operational Data Management System"** to provide a web based sampling information management software program for the water and wastewater system to enhance the collection of data needed for reporting purposes and for compliance with State regulatory agencies.

I have provided our Civil and Legal staff your contact information so the terms and conditions of the contract can be discussed and negotiated.

An Official Purchase Order will follow as soon as the contract is reviewed, mutually agreed upon, and fully executed by both Webb County and Porras Nance Engineering.

We thank you for your interest in doing business with Webb County and look forward to the successful completion of the awarded project.

Sincerely,


Jose A. Lopez III, CTPM
Purchasing Agent

Cc: Nathan Bratton, Civil/Legal Division Director
Adrian Montemayor, Water Utilities Director

MASTER LICENSE & SERVICES AGREEMENT



This **Master License & Services Agreement** (the “Agreement”) is between FLOWatch, LLC (“FLOWatch”) and the Client identified on the signature page below. FLOWatch and Client are each a “Party” and are collectively, the “Parties.” This Agreement is entered into between the Parties having an effective date (the “Effective Date”) as of the last date shown below on the signature page.

This Agreement also includes an Addendum, and shall be accompanied by one or more Invoices and/or a Statement of Work (“SOW”) (each an “Order Form” and collectively, “Order Forms”), each of which is incorporated into and made part of this Agreement. Capitalized terms not defined in this Agreement shall have the meanings given to those terms in the Order Forms. In the event of a conflict between or among the terms in this Agreement, the Order Form(s), and any other document made a part hereof, the documents shall be interpreted and control in the following order: (1) the most recent Order Form; (2) this Agreement; (3) the Addendum; and (4) any other documents.

1. Services

1.1. Services. During the Term (as defined below), FLOWatch will provide to client the services described in the SOW or Order Forms (the “Services”).

1.2. Software License Grant. FLOWatch grants to Client during the Term, a revocable, nonexclusive, non-sub-licensable, and nontransferable limited license to use the FLOWatch Application only in object code form, solely for Client’s own, internal business purposes, and solely for use with the Facility(or Facilities) and Plant(s) identified in the Order Forms, and only so long as the Application (as defined below) is hosted by FLOWatch pursuant to this Agreement. The FLOWatch Application (the “Application”) is as described in the documentation supplied by FLOWatch (the “Documentation”). Client may copy and use the Documentation relating to the Application to the extent necessary for Client’s proper use of the Application pursuant to this Agreement. So long as all due and owing fees are fully paid, Client shall have access to its data maintained within the Application or the FLOWatch systems. Application data is stored in a Database, and this Database shall not be accessed except through the Application granted for licensed use.

1.3. Standard Support. After acceptance of the installation of the Application, FLOWatch shall use commercially reasonable efforts to correct any Error and resolve any Downtime, as those terms are defined below (excluding any scheduled Downtime, and excluding any Downtime caused by failures of third party providers or third party provider infrastructure) reported in reasonable detail by Client and confirmed by FLOWatch that such Error or Downtime is within the exclusive management and control of FLOWatch *and* is caused by FLOWatch’s gross negligence or willful misconduct. “Error” means a failure of the Application to function substantially in accordance with the functional descriptions of the Application set forth in the Documentation. “Downtime” means a failure of the systems infrastructure through which the Application is hosted that result in Client’s inability to use or access all or part of the Application, or results in the loss, compromise or inaccuracy of data. Unless otherwise provided in an Order Form, FLOWatch shall have no obligation to provide any other support services, including answering of questions by telephone, email, or otherwise regarding the Application.

1.4. Redundant Service Capability. FLOWatch will provide the following backup or redundant service capability (i) provided that the Application is hosted by FLOWatch, FLOWatch will make daily backup copies of all Client data stored on the FLOWatch systems and deliver such copies daily to an off-site, secured storage area (and will rotate such copies on a weekly basis), (ii) FLOWatch will maintain contractual relationships with one or more facilities that would enable FLOWatch to deliver the Services in accordance with this Agreement at such facilities, utilizing backed-up Client data, within seventy-two (72) hours of when FLOWatch’s primary infrastructure becomes inoperative, (iii) FLOWatch will permit Client, at Client’s option and expense, to provide qualified individuals to assist FLOWatch at FLOWatch’s direction in the event of Downtime of more than six (6) consecutive hours, (iv) FLOWatch will perform semi-annual tests of its redundant service capability, and (v) FLOWatch will contract with the vendors of its systems infrastructure to provide to FLOWatch, four (4) hour response support on a 24 hours x 365 daysbasis.

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1.5. Service Security. FLOWatch will provide Service security by providing Client with access to the Application through a combination of unique user names and passwords. Client is fully responsible for all activities, transactions and administration conducted through or occurs under Client's user accounts and/or passwords, whether or not authorized by Client.

1.6. Maintenance and New Releases. The Services include installation by FLOWatch of bug fixes and minor enhancements made from time-to-time by FLOWatch to the Application. The Services also include new releases of the Application issued by FLOWatch provided for the purpose of materially enhancing the functionality or performance of the Application. Client shall review and incorporate all new releases and updates and ensure its representatives are available for training relating to the new releases and updates. FLOWatch reserves the sole right to adopt, use or discontinue any third-party software that is used within the Application provided that such change does not materially affect the use of the Application. FLOWatch will provide the Client with a thirty (30) day notice prior to when third-party software usage is to be amended.

1.7. Hardware. If the Services include the installation and use of hardware owned by FLOWatch, FLOWatch grants to Client during the Term the right to use such hardware solely for Client's own, internal business purposes. All hardware, whether owned by FLOWatch or owned by Client (recommended by FLOWatch), is provided "as is," and FLOWatch makes no warranties with respect to any hardware. Client acknowledges and agrees that its use of Hardware shall be exclusively subject to and controlled by the terms of any manufacturer's or supplier's warranty, and Client agrees that the manufacturer or supplier shall be solely responsible for all mechanical, service and other claims. For hardware owned by FLOWatch, FLOWatch will assign to Client, were feasible, the right to enforce any such hardware warranty claims during the Term. Client will, at its own expense, keep any hardware installed at its facilities in good repair, appearance and condition, other than normal wear and tear, and will use the hardware in compliance with the manufacturer's or supplier's suggested guidelines. Client shall not affix or install any accessory, addition, upgrade, equipment or other device onto the hardware without FLOWatch's prior written consent.

1.8. Supplemental Services. FLOWatch may provide Client with certain supplemental services, support, and/or equipment as may be needed, including on an emergency basis, or requested by Client, that are not included within the Services. Fees for any such supplemental services, support, and / or equipment shall be as set forth on an Order Form, and shall be charged at FLOWatch's prevailing rates for such services, support, and / or equipment.

2. Application Installation

2.1. Services and Application Installation. FLOWatch will endeavor to install the Application and provide the training Services in accordance with the estimated schedule and fulfillment dates set forth in the Order Forms. Such dates are, however, only guidelines and are not deadlines. FLOWatch makes no guarantee that the Application or Services will be commenced or completed by the estimated dates. Client agrees to diligently respond to any requests for comment, approval or acceptance of any Service as may be made by FLOWatch.

2.2. Acceptance. The Application shall be deemed accepted on the date that (i) Client notifies FLOWatch in writing of its acceptance (which such acceptance shall not be unreasonably withheld), (ii) Client fails to notify FLOWatch in writing within the applicable time period, outlined below, of any errors, (iii) FLOWatch has materially corrected any errors identified by Client, as outlined below, or (iv) Client commences using the Application pursuant to this Agreement. Upon receipt of notice of installation completion by FLOWatch, Client shall have thirty (30) days to perform testing and evaluation of the Application to identify any failures in the Application, and to notify FLOWatch in writing of such errors. FLOWatch shall thereafter use reasonable efforts to remedy, at no additional charge to Client, any errors. After the completion of such remediation, Client shall have a period of ten (10) business days to again perform testing and evaluation of the Application to determine the existence of any failures it deems errors and notify FLOWatch in writing of such errors. In the event the Application is not accepted or the identified errors are not corrected after commercially reasonable efforts by FLOWatch, Client's sole and exclusive remedy for such failure of acceptance shall be to terminate this Agreement and to receive a full refund of the installation fees paid by Client.

2.3. Access. Client shall provide FLOWatch with reasonable access to Client's equipment or hardware, personnel, data and resources as FLOWatch may reasonably request in order for FLOWatch to effectively provide the Services. Client personnel shall have no access to the data except through the Application. When Application and Database are hosted on Client's hardware, all maintenance of the Application and Database shall be undertaken only by FLOWatch personnel. Any unauthorized access shall constitute a breach of this agreement.

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3. Fees, Expenses and Payment Terms

3.1. Fees and Expenses. Client will pay all fees and expenses as set forth in the Order Form(s) and in this Agreement. In addition to any other rights or remedies, FLOWatch may charge and collect a late charge on any unpaid due and owing fees and expenses, equal to one and one-half percent (1 and 1/2 %) of such amount due for each month outstanding. Client shall be liable for all costs and expenses (including reasonable attorneys' fees) incurred by FLOWatch in connection with collecting any fees or expenses, or enforcing its related rights under this Agreement. If Client is delinquent in any payment(s), FLOWatch may, upon written notice to Client, modify the payment terms to require full payment before the provision or continuation of Services, to secure Client's payment obligations hereunder.

3.2. Taxes and Charges. Client shall be responsible for and pay any and all taxes relating to the delivery of the Services, with the exception of taxes based on FLOWatch's net income.

3.3. License/Hosting Fees. The Fees set forth in the Order Forms are based upon the configuration of the Application licensed, the Services, and the number of authorized operators and/or plants and facilities. Should Client wish to increase the number of operators or plants/facilities using the Application or Services, such an amendment shall be provided via an additional Order Form that will detail any additional Fees to be paid for such additional Services.

3.4. Annual Fee Adjustments. FLOWatch may adjust any of its Fees (i) at the beginning of each calendar year based on the prior year's published Consumer Price Index and on FLOWatch's prevailing service rates, and (ii) from time-to-time to reflect changes in costs, including those of any third party provider of facilities, or competitive pressures in the marketplace.

4. Term and Termination

4.1. Initial Term. This Agreement shall commence and become effective upon the Effective Date and will continue for the Initial Term set forth in the Order Form from the date FLOWatch begins providing Services to Client (the "Service Commencement Date").

4.2. Renewal. This Agreement, and the Services hereunder, will renew and continue automatically for additional terms of one-year each unless either party notifies the other party in writing, at least ninety (90) days prior to the end of the then-current term, that the Services are to be terminated at the end of the then current term (the Initial Term, plus any additional terms, each being a "Term"). If Client seeks to terminate the Agreement prior to the then current year, Client shall still pay FLOWatch the costs associated with supporting the platform for the remainder of that year.

4.3. Termination Rights. In addition to any other events of termination provided herein, including in an Order Form, (i) Client may terminate this Agreement as provided in Sections 2.2, 4.2, 6.1 through 6.4, or after providing written notice to FLOWatch describing in reasonable detail a material breach of this Agreement that was caused directly and exclusively by the gross negligence or willful misconduct of FLOWatch, and the expiration of a period of not less than thirty (30) days in which such breach shall remain uncured by FLOWatch, and (ii) FLOWatch may terminate this Agreement after providing written notice to Client describing in reasonable detail a material breach of this Agreement by Client, and the expiration of a period of not less than thirty (30) days in which such breach shall remain uncured by Client, provided that any failure by Client to make timely payment in full of any Fees or other amounts due and owing under this Agreement shall be deemed material, and there shall be no cure period for any such failure. This Agreement may also be terminated by FLOWatch upon Client's failure to continue to function as a going concern or to operate in the ordinary course of business, or if Client or any third party files a petition for bankruptcy, or if receivership, insolvency, reorganization, dissolution, liquidation or other similar proceedings are instituted against Client.

4.4. Consequences of Termination. Upon termination or expiration of this Agreement:

4.4.1 Client shall within 60 days cease use of the Application, remove the Application, Database and any and all backups from Client's hardware and return to FLOWatch all Application and documentation, and any hardware owned by FLOWatch and any other equipment, property or materials that have been provided to Client by FLOWatch (and Client shall promptly certify to FLOWatch in writing that it has complied with the foregoing).

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4.4.2 The Application licenses shall terminate without action by any party. FLOWatch shall be permitted to (a) cease providing Services to Client, including terminating access to or use of the Application (including any Client data) or Services; terminating Client's web or management portal access; changing Client passwords; and declining support requests, and (b) remove Client and Client data from FLOWatch's systems.

4.4.3 Within thirty (30) business days of a written request from Client, FLOWatch will make available to Client a Microsoft Excel or Microsoft Access file of Client's data, as it then exists on the FLOWatch or Client's hardware. At Client's election and expense, FLOWatch may provide other data and/or system de-conversion services. FLOWatch shall have no obligation to retain any Client data for more than thirty (30) days after termination of this Agreement, if hosted on its hardware. When hosted on its hardware, Client shall remove the Application and Database within 60 days of the written request.

4.4.4 FLOWatch shall have no obligation to assist or support Client in reinstalling, transitioning, administering, maintaining, supporting or otherwise operating its data or systems, including copying or providing any data backup, and shall have no liability with respect to any such data and/or system de-conversion.

4.5. Survival. The obligations of the parties under this Agreement, which by their nature would continue beyond the termination or expiration of this Agreement, shall survive termination or expiration of this Agreement, including specifically Sections 5, 7, 8, and 9.

5. Proprietary Rights

5.1. General. Except as specifically provided herein, this Agreement, the Application license and the provision/receipt of Services do not convey to Client any rights of ownership or intellectual property rights in any Service, the Application, any Documentation, or any other FLOWatch technology (including software, code, hardware, systems, products, processes, user interfaces, know-how, documentation, techniques, designs and other tangible or intangible technical material or information). Moreover, the FLOWatch name, logo, and the product names associated with the Services are trademarks of FLOWatch, and Client is granted no right or license to use them other than as specifically provided in this Agreement. Client will not, and will ensure that its users do not (i) license, sublicense, sell, resell, transfer, assign, distribute or otherwise make available to any third party the Services, FLOWatch technology or any component thereof, (ii) copy, modify, adapt, decompile, reverse engineer, generate source code, attempt to duplicate or make derivative works based upon any FLOWatch technology, (iii) commercially exploit any FLOWatch technology in any way, (iv) alter, remove or obscure any trademark, copyright or other proprietary or restricted rights notices, or any associated disclaimers, that may appear in or through use of the Service or FLOWatch technology, or (vi) use any Services or FLOWatch technology for any purpose other than that for which it is intended.

5.2. Ownership of the Application. The Application, Database, Documentation and all intellectual property rights of FLOWatch, including any patents, copyrights, trademarks and trade secrets with respect to the Application, are and remain the valuable property of FLOWatch. Licensed software and products included in the Application, if any, and all associated intellectual property rights of third parties, are and remain the property of their respective owner(s).

5.3. Ownership of Hardware. Hardware owned by FLOWatch shall remain the personal property of FLOWatch. Client shall not obtain nor have any right, title or interest in or to such hardware and shall use such hardware subject to the rights of FLOWatch. Client shall, at its own expense, keep the hardware free and clear from any liens or encumbrances of any kind and will indemnify and hold FLOWatch harmless from and against any loss or expense caused by Client's failure to do so. Client shall give FLOWatch immediate written notice of any attachment or judicial process affecting any such hardware. Client shall not remove, alter or destroy any labels on any hardware identifying FLOWatch as the hardware owner. Client shall allow FLOWatch's inspection of hardware at reasonable times. As provided in this Agreement, FLOWatch is permitted to remove and repossess the hardware to protect its rights and the hardware.

5.4. Client Data and Work Product. All Client data is the property of Client. FLOWatch shall have exclusive ownership of all methodologies, processes, inventions, ideas, work product, documentation, computer programs, source code, software products, reports, forms, templates or other work product reduced to written, magnetic or other tangible form that are developed, discovered, conceived or introduced by FLOWatch in the course of providing Services under this Agreement ("Work Product"). Client hereby agrees to assign to FLOWatch, without further

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consideration, all right, title and interest it may have in any Work Product, including any and all patents, copyrights, trade secrets and other proprietary rights related thereto. Client shall not access the database included in the Application except through the front end interface provided by FLOWatch, and shall not make any changes to such database unless authorized by FLOWatch in writing. Client acknowledges that at Client's request or agreement, FLOWatch may transmit certain Client data to one or more third parties for use and analysis by the third parties, and that the third parties will thereafter transmit back to FLOWatch data and charts based upon the analyzed Client data. Client acknowledges that FLOWatch shall have no responsibility or liability for any misuse of any Client data by any such third party.

5.5. Confidential Information

5.5.1. Each party and its members, shareholders, partners, managers, directors, officers, employees, agents, representatives, advisors and subcontractors ("Representatives") shall maintain in confidence, protect and safeguard all Confidential Information of the other party, and shall not, directly or indirectly, (i) reproduce, disclose, reveal or make available in any fashion to any third party any such Confidential Information, (ii) assist or enable any third party to access or use any such Confidential Information, or (iii) use or exploit any such Confidential Information other than as explicitly provided in this Agreement.

5.5.2. "Confidential Information" means (i) all information relating to the business relationship between the parties, including this Agreement and any Order Form, and (ii) all information not generally known in the relevant trade or industry, made available by one party (the "Disclosing Party") to the other party (the "Recipient"). Confidential Information includes, without limitation, trade secrets, software programs and code, the Application, software documentation, the Documentation, financial information, business plans, information concerning a party's existing or future products, services, technology, research and development, policies, client lists, supplier information, and any information marked "confidential" or "proprietary." Confidential Information does not include information that (i) is or becomes available to the public through no fault of Recipient, (ii) is or becomes publicly available to Recipient from a third party that has not breached a duty to maintain the confidentiality of such information, (iii) is independently developed by Recipient without any use or reference to any Confidential Information, or (iv) is known to Recipient at the time of disclosure as established by written document prior to the Disclosing Party's disclosure.

5.5.3. Each party may disclose Confidential Information solely to the extent required by applicable law, but only if prior to making such disclosure the Disclosing Party has been given written notice of such required disclosure and has a reasonable opportunity to seek a protective order to protect the Confidential Information.

5.5.4. All materials (including electronic media) provided by a Disclosing Party, and copies thereof, in which Confidential Information of such Disclosing Party may be contained shall remain the property of the Disclosing Party. Upon written request of the Disclosing Party, the Recipient shall promptly deliver to the Disclosing Party all such materials and destroy all materials prepared by the Recipient in which Confidential Information may be contained. Notwithstanding the delivery or destruction of such materials, the parties shall continue to be bound by the obligations of this Section 5.

5.6. Competing Applications. Subject to the confidentiality obligations set forth in Section 5.5, nothing in this Agreement shall prevent, restrict or limit FLOWatch or any FLOWatch personnel from providing to third parties, including competitors of Client, the Application, Services or other services, applications or materials that are similar to or competitive with those provided under this Agreement.

6. Warranties and Exclusive Remedies

6.1. Application Warranty. FLOWatch warrants that the Application will function reasonably free of Errors. If any Errors do occur, FLOWatch will undertake to implement patches to fix the Errors within the time-frames set forth in Section 2.2. FLOWatch may make changes to the Application from time-to-time, provided that no such changes will materially impair the overall functionality of the Application. Upon written notice from Client of a breach of warranty under this section, FLOWatch will, at its own expense, use commercially reasonable efforts to correct any such Errors set forth in such notice. Section 2.2 shall control the acceptance of any correction of any Errors, including that the sole and exclusive remedy of Client for failure to correct any Errors is to terminate this Agreement and receive a refund of the installation fees paid by Client.

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6.2. Warranty Against Infringement. FLOWatch warrants that (i) the Application does not infringe any third party's United States patent or copyright, (ii) FLOWatch has all rights necessary in and to hosting facilities and/or servers, including any provided by third parties, to permit the Application hosting Service to be provided to Client as required in this Agreement, and (iii) FLOWatch owns or has valid and enforceable licenses to use (and where appropriate, to modify or augment the source code of) the licensed products included in the Application in order to permit the Application to be provided to Client pursuant to this Agreement. Upon written notice of an alleged breach of warranty under this section, or if FLOWatch determines that the Application or any portion thereof is reasonably likely to become the subject of a third party infringement claim, FLOWatch may, at its option and expense, either (i) procure for Client the right to continue using the Application, (ii) amend or replace the Application component or the Service component with a product or service that performs the same or similar function as the infringing aspect of the Application or Service, and is non-infringing, or (iii) otherwise cure any such alleged breach. In the event that none of the foregoing alternatives is commercially reasonable, either FLOWatch or Client may, as Client's sole and exclusive remedy, terminate this Agreement upon written notice to the other and receive a refund of the installation fees paid by Client.

6.3. Service Level Warranty. FLOWatch will use commercially reasonable efforts to provide 99% for the Application. FLOWatch warrants that Client will not experience Downtime (other than during any scheduled Service interruption), that is caused directly and exclusively by the gross negligence or willful misconduct of FLOWatch, and exceeds six (6) consecutive hours as a result of any single event, or exceeds twelve (12) total hours in each of three (3) consecutive months. Further, if there is any Downtime of greater than twelve (12) consecutive hours, FLOWatch will work with the Client to evaluate alternate mitigation or repair options including the deployment of FLOWatch's disaster recovery option and / or standing up the Application and database on Client's Infrastructure. Upon an alleged breach of warranty of this section, and written notice from Client thereof, Client's sole and exclusive remedy for any such alleged breach shall be to terminate this Agreement and receive a refund of the installation fees paid by Client.

6.4. Professional Services Warranty. FLOWatch warrants that the Services, including installation of the Application and Services will be performed in a workmanlike and professional manner. Upon an alleged breach of warranty of this section and written notice from Client thereof, FLOWatch may, at its option, either (i) promptly re-perform such Services at FLOWatch's expense until such alleged breach is cured, or (ii) as Client's sole and exclusive remedy, terminate this Agreement upon written notice to Client and issue a refund of the fees paid by Client for such Service.

6.5. Exclusions and Disclaimers. The remedies stated in this Section 6 constitute Client's sole and exclusive remedies available under this Agreement or otherwise, to the full extent permitted by law. Except for FLOWatch's obligations under Section 6 and Section 8.1, FLOWatch shall have no liability or obligation whatsoever to Client, and Client hereby waives any and all other rights, remedies and Damages (as that term is defined below) it may have against FLOWatch.

6.5.1. Except for the express warranties stated in Sections 6.1 through 6.4, FLOWatch does not make, and hereby disclaims, to the full extent permitted by law, any and all express and/or implied warranties, including any warranties of merchantability, fitness for a particular purpose, non-infringement, and title. Without limiting any other disclaimers set forth in this Section, FLOWatch does not warrant that operation of the Application will comply with all industry standards or laws applicable to Client's business. FLOWatch does not warrant that the Application, Services or the data produced using the Application or Services will meet Client's requirements. FLOWatch does not warrant the accuracy or completeness of any data produced or provided by any third party. FLOWatch disclaims all warranties as to any third party software, facilities, servers and other products, equipment or services.

6.5.2. The warranties in Sections 6.1 through 6.4 shall not apply and shall terminate immediately, without notice or other action by FLOWatch (i) if Client ceases to continue hosting Services for the Application from FLOWatch, (ii) if any modification, alteration or addition has been made to the Application or any of its components other than by FLOWatch, (iii) if the Application is used in any manner that is inconsistent with the Documentation or this Agreement, and (iv) if Client breaches any provision of this Agreement.

6.5.3. Any oral or written representation, covenant or warranty not expressly contained in this Agreement (including all exhibits and addendum) shall not be enforceable by Client against FLOWatch. Except for the express warranties set forth in this Section 6, the Application and Services are provided on an "as is" and "as-available" basis, and Client's use of the Application and Services is at its own risk. FLOWatch does not warrant that the Application

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will operate error-free or provide uninterrupted use. FLOWatch does not warrant against breaches of security or against interference with the use of the Application or Services.

7. Indemnification

7.1. Indemnification of Client. Subject to the exclusive remedies provided in Section 6 above, and the limitations on liability provided in Section 8, FLOWatch agrees to indemnify, defend and hold harmless Client from and against any and all losses, claims, obligations, liabilities, damages, actions, suits, proceedings, demands, judgments, payments, costs and expenses (including reasonable attorney fees) ("Damages") relating to any third party claims arising out of (a) any breach by FLOWatch of the warranty set forth in Section 6.2(i), or (b) any willful misconduct or gross negligence of FLOWatch.

7.2. Procedure for Indemnification Claims. The indemnification obligations in this Section 7 are conditioned on (a) the prompt written notice to the indemnifying party of any claim, action, or demand for which indemnity is claimed, provided that the failure by the indemnified party to provide timely notice of any claim, action or demand shall not affect or impair the obligations of the indemnifying party, except to the extent that the indemnifying party has been adversely affected by such failure or delay; (b) the indemnifying party having the right to assume complete and sole control over the defense and any and all negotiations for any settlement or compromise thereof; and (c) cooperation of the other party and its employees, officers, directors, consultants, advisers, and corporate affiliates, if any, in such defense. If the indemnifying party elects to assume control of the defense of any claim, the indemnified party shall, at its own expense, have the right to participate in the defense or consult its own counsel. No party shall be liable for or bound by any settlement of an action affected without such party's written consent, which shall not be unreasonably withheld or delayed. Neither party will settle, compromise or consent to the entry of a judgment or otherwise seek to terminate any pending or threatened action in which indemnification may be sought unless such settlement, compromise, consent or termination includes an unconditional release of the Indemnified Party from all claims arising out of any such action.

8. Limitations of Liability

8.1. NO CONSEQUENTIAL DAMAGES. IN NO EVENT WILL EITHER PARTY BE LIABLE OR RESPONSIBLE TO THE OTHER FOR ANY TYPE OF INCIDENTAL, PUNITIVE, SPECIAL, EXEMPLARY, RELIANCE, INDIRECT OR CONSEQUENTIAL DAMAGES, INCLUDING LOST REVENUE, LOST PROFITS, LOSS OF GOODWILL, REPLACEMENT GOODS OR PRODUCTS, LOSS OF TECHNOLOGY, LOSS OF RIGHTS OR SERVICES, LOSS, CORRUPTION OR INACCURACY OF DATA, OR INTERRUPTION, INACCURACY OR LOSS OF USE OF SERVICE OR EQUIPMENT, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES AND REGARDLESS OF THE FORESEEABILITY OF SUCH DAMAGES, WHETHER ARISING UNDER THEORIES OF CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY OR OTHERWISE.

8.2. LIABILITY EXCLUSIONS. IN NO EVENT WILL FLOWATCH BE LIABLE TO CLIENT OR ANY OTHER PERSON FOR DAMAGES ARISING (A) OTHER THAN DIRECTLY AND EXCLUSIVELY FROM THE NEGLIGENCE OR WILLFUL MISCONDUCT OF FLOWATCH OR (B) OUT OF ANY ERROR OR DOWNTIME, INCLUDING ANY DATA LOSS, CORRUPTION OR INACCURACY, OR ANY USE OF THE APPLICATION OR SERVICES, INCLUDING ANY SECURITY BREACH OR REPORTING ERROR, OR ANY ACT OR OMISSION OF ANY PERSON, OR ANY RELIANCE ON THE APPLICATION OR SERVICES OR ANY DATA THEREIN, INCLUDING CLIENT'S OPERATIONAL REQUIREMENTS, LEGAL OR REGULATORY REQUIREMENTS OR OTHER USE OF ANY DATA.

8.3. LIMITATION OF LIABILITY. IN THE EVENT FLOWATCH WILL BE LIABLE TO CLIENT NOTWITHSTANDING THE LIMITATIONS, EXCLUSIONS AND EXCLUSIVE REMEDIES HEREIN, FLOWATCH'S LIABILITY (WHETHER IN CONTRACT, TORT, NEGLIGENCE, STRICT LIABILITY, BY

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STATUTE OR OTHERWISE), EXCEPT FOR ITS INDEMNIFICATION OBLIGATIONS UNDER SECTION 8.1, WILL NOT EXCEED, IN THE AGGREGATE, THE INSTALLATION FEES PAID TO FLOWATCH.

8.4. SURVIVAL. THE PARTIES ACKNOWLEDGE THAT FLOWATCH HAS SET ITS PRICES AND AGREED TO PROVIDE THE SERVICES TO CLIENT IN RELIANCE UPON THE LIMITATIONS OF LIABILITY AND THE DISCLAIMERS OF WARRANTIES AND DAMAGES SET FORTH HEREIN, AND THAT THEY FORM AN ESSENTIAL PART OF THIS AGREEMENT. THE LIMITATIONS AND EXCLUSIONS OF LIABILITY AND DISCLAIMERS SPECIFIED IN THIS AGREEMENT WILL SURVIVE FAILURE OF ANY EXCLUSIVE REMEDY (AND THE SEVERABILITY OF SUCH PROVISIONS) AND WILL APPLY NOTWITHSTANDING THE FAILURE OF ESSENTIAL PURPOSE OF LIMITED WARRANTY OR REMEDY OR THE TERMINATION OR EXPIRATION OF THIS AGREEMENT.

9. Miscellaneous.

9.1. GOVERNING LAW. This Agreement shall be governed by and construed in accordance with the laws of the State of Texas, without regard to its principles of conflicts of laws. Each of the parties to this Agreement hereby submits to the exclusive, personal jurisdiction of either the Federal District Court for the Southern District of Texas or any municipal or local court located in Webb County, Texas for all claims, disputes or controversies involving the parties and relating to this Agreement. Each party hereby knowingly and voluntarily waives its right to contest the jurisdiction or venue of such courts, whether on the grounds of inconvenience or otherwise, and each party hereto knowingly and voluntarily waives its right to initiate a suit or action against the other party in any other court or forum, except as expressly provided above.

9.2. SEVERABILITY WAIVER. In the event any provision of this Agreement is held by a tribunal of competent jurisdiction to be contrary to the law, the remaining provisions of this Agreement will remain in full force and effect. The waiver of any breach or default of this Agreement will not constitute a waiver of any subsequent breach or default, and will not act to amend or negate the rights of the waiving party.

9.3. RELATIONSHIP OF THE PARTIES. FLOWatch and Client are independent contractors and this Agreement will not establish any relationship of partnership, joint venture, employment, franchise or agency between FLOWatch and Client. Neither FLOWatch nor Client will have the power to bind the other or incur obligations on the other's behalf without the other's prior written consent, except as otherwise expressly provided herein. There shall be no third party beneficiaries to this Agreement.

9.4. CUMULATIVE RIGHTS. Except as otherwise expressly provided in this Agreement, the rights and remedies of the parties under this Agreement shall be cumulative with and in addition to any other rights or remedies that may be available under any other agreement between the parties, or at law or in equity.

9.5. ASSIGNMENT. Neither party may assign this Agreement in whole or in part, directly or indirectly, without the express prior written consent of the other party, and any attempted assignment or delegation without such consent shall be void. Notwithstanding the previous sentence, FLOWatch may delegate the performance of certain services to third parties. This Agreement will bind and inure to the benefit of each party's successors and any permitted assigns.

9.6. NOTICE. Any notice or communication required or permitted to be given hereunder may be delivered by hand, deposited with an overnight courier, sent by email, confirmed facsimile, or mailed by registered or certified mail, return receipt requested, postage prepaid, in each case to the address of the receiving party as listed on the Order Form or at such other address as may hereafter be furnished in writing by either party to the other party. Such notice will be deemed to have been given as of the later date it is delivered, mailed, emailed, faxed or sent.

9.7. MARKETING. FLOWatch may publicly refer to Client, orally and in writing, as a Client of FLOWatch and may reference "business case" information to potential clients, investors, regulators and in its marketing efforts. Upon reasonable request of FLOWatch and approval by Client, Client will serve as a reference for FLOWatch, the Application and its Services.

9.8. FORCE MAJEURE. Neither party will be liable for any failure or delay in its performance under this Agreement (except with respect to any payments due or payable hereunder) due to any cause beyond its reasonable control, including acts of war, acts of God, earthquake, flood, embargo, riot, sabotage, labor shortage or dispute, governmental act, failure of the Internet, any network or hardware failure, failure of any third party software,

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facilities, servers or other products, equipment or services (even if any may be included in the Application or the Services).

9.9. ENTIRE AGREEMENT. This Agreement, including all documents incorporated herein by reference (including the Order Forms), constitutes the complete and exclusive agreement between the parties with respect to the subject matter hereof, and supersedes and replaces any and all prior or contemporaneous discussions, negotiations, understandings and agreements, written and oral, regarding such subject matter. This Agreement may be executed in two or more counterparts, each of which will be deemed an original, but all of which together shall constitute one and the same instrument. This Agreement may be only be revised, amended, or changed by a written document signed by authorized representatives of both FLOWatch and Client.

IN WITNESS WHEREOF, intending to be legally bound, the authorized representatives of Client and FLOWatch have read and understand the foregoing, the Exhibits attached hereto, and all documents referenced herein and have executed this Agreement in duplicate originals, as of the date indicated below.

WEBB COUNTY, TEXAS

By: 

Name: Tano E. Tijerina
Title: Webb County Judge

Date: _____

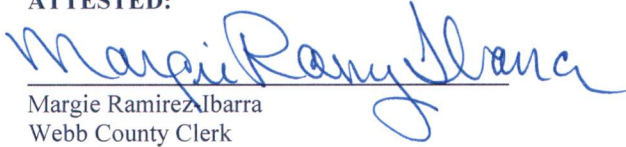
FLOWATCH, LLC

By: _____

Name: _____
Title: _____

Date: _____

ATTESTED:


Margie Ramirez Ibarra
Webb County Clerk



APPROVED AS TO FORM:


Ray Rodriguez
Attorney, Webb County Civil Legal Division *

*By law, this office may only advise or approve contracts or legal documents on behalf of its clients. It may not advise or approve a contract or legal document on behalf of other parties. Our review of this document was conducted solely from the legal perspective of our client. Our approval of this document was offered solely for the benefit of our client. Other parties should not rely on this approval, and should seek review and approval of their own respective attorney(s).

Passed and approved by the Webb County Commissioners Court On August 13, 2018; item no. 21d.

MASTER LICENSE & SERVICES AGREEMENT

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WEBB COUNTY, TEXAS

By: 

Name: Tarto E. Tijerina
Title: Webb County Judge

Date: _____

FLOWATCH, LLC

By: 

Name: KAPAL MADIREDDI
Title: MANAGING DIRECTOR

Date: 10/30/2018

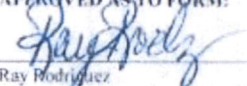


ATTESTED:


Margie Ramirez-Albarra
Webb County Clerk



APPROVED AS TO FORM:


Ray Rodriguez
Attorney Webb County Civil Legal Division *

*By law, this office may only advise or approve contracts or legal documents on behalf of its clients. It may not advise or approve a contract or legal document on behalf of other parties. Our review of this document was conducted solely from the legal perspective of our client. Our approval of this document was offered solely for the benefit of our client. Other parties should not rely on this approval, and should seek review and approval of their own respective attorney(s).

Passed and approved by the Webb County Commissioners Court On August 13, 2018, Item no. 21d.

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Addendum

Additional Client Obligations and Responsibilities

1. Client will at all times obtain and utilize equipment, software, data communications (including redundant high speed Internet connectivity between Client and FLOWatch facilities) and other technology that meets the requirements of FLOWatch, provided that FLOWatch will procure hardware for Client as set forth in the Order Forms. FLOWatch will have no responsibility to implement the Application or provide any Services unless and until Client has satisfied all such requirements. FLOWatch will have no responsibility or liability with respect to any such equipment, software or technology.

2. At all times, Client will maintain personnel that are adequately trained on the use and operation of the Application. All requests for support services by Client must be made by one of the Client employees designated in writing to FLOWatch as a Client technical support contact. Client shall provide descriptions and examples of errors or downtime in a form requested by FLOWatch technical support personnel in addition to any other reasonably requested information required to support and assist in resolving any error or downtime.

3. Client will operate its business and will use the Application and Services at all times in compliance with (i) this Agreement and any policies, requirements or protocols issued by FLOWatch to Client, and (ii) all applicable local, state, federal and international laws, regulations, and conventions. Client will not aid in any unlawful, inappropriate or improper act that, in FLOWatch's reasonable discretion, could adversely affect FLOWatch's public image, goodwill, reputation or contractual relations, or could subject FLOWatch to any liability, or could threaten or put at risk FLOWatch's or any of its third-party provider's technology or facilities.

4. With exception of Section 6 of the Agreement, Client will have sole responsibility and liability for all aspects of data on or posted, transmitted, received or stored through the Application or Client's systems, including, without limitation, its accuracy, adequacy, quality, integrity, legality, reliability, appropriateness, privacy, security and copyright. FLOWatch will not be responsible or liable for, and will exercise no control over the Client data including, without limitation, deletion, correction, destruction, damage, loss or failure to store any Client data.

5. Client will have sole responsibility and liability for all matters and circumstances relating to (i) the network, equipment, software and other systems utilized by Client, including the technology information system from which data is transmitted to FLOWatch, (ii) telephone company and carrier charges, including any in connection with the transmission or exchange of data with FLOWatch, (iii) data storage, data back-up and archival history with respect to Client's equipment and data therein (notwithstanding Client's utilization of the Services), and (iv) all aspects of Client's business. FLOWatch will not be responsible or liable for any of the matters described in the preceding sentence, and Client acknowledges that FLOWatch will exercise no control and have no liability whatsoever with respect to any of such matters.

6. Custom authentication and authorization are standard features in FLOWatch Applications that permit designated Client administrator(s) to create, edit and delete users to meet Client field security requirements. When a new user is created, the Client administrator provides a temporary password to the end user. The end user will use that password to login to the Application for the first time, where the user is presented with the terms of use screen and a password change screen, and where the temporary password can be modified. Each user password is valid for ninety (90) days, after which the Application prompts the user to change the password. Passwords in the Application are required to be strong (that is a combination of letters and numbers, and a minimum length of 8 characters). When a new user is created, the Client administrator has the option to limit the scope of the user's authorization to specific areas of the Application. This authorization will be controlled by and under the sole responsibility of the Client's administrator, but FLOWatch can provide advisory assistance where requested.

7. Client will permit FLOWatch to remotely access and monitor Client's systems, to install such software and/or applications on Client servers, workstations, networking devices and other equipment as determined to be necessary by FLOWatch to properly provide the services, and to access certain Client equipment and facilities (and Client will provide all required passwords). FLOWatch will not be liable or responsible for adverse effects or interruptions caused by any such software, applications or access; however, at Client's request, and as Client's sole and exclusive remedy arising out of the installation, use or performance of any such software or applications, FLOWatch will remove the software or application from the affected device.

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ADDRESSES FOR NOTICES

FLOWatch, LLC
333 E. Lancaster Ave, Suite 402
Wynnwood, PA, 19096
Phone: 832.356.9123
Email: Kapal.Madireddi@flowatch.com

FOR CLIENT:
Webb County Utilities Dept./Adrian Montemayor-Director
513 Martha Drive
Rio Bravo, Texas 78046
Email: agmontemayor@webbcountytx.gov

MARGIE R. IBARRA
COUNTY CLERK
FILED
2019 MAR 25 PM 2:34
WEBB COUNTY, TEXAS
BY 12 DEPUTY