

SERVICE AGREEMENT NO. 65099

Subscription and Maintenance of Customer Engagement Software

THIS **Subscription and Maintenance of Customer Engagement Software Agreement** ("Agreement") is entered into by and between the City of Corpus Christi, a Texas home-rule municipal corporation ("City") and WaterSmart Software, Inc. ("Contractor"), effective upon execution by the City Manager or the City Manager's designee ("City Manager").

WHEREAS, Contractor has bid to provide Subscription and Maintenance of Customer Engagement Software in response to Request for Bid/Proposal No. 65099 ("RFB/RFP"), which RFB/RFP includes the required scope of work and all specifications and which RFB/RFP and the Contractor's bid or proposal response, as applicable, are incorporated by reference in this Agreement as Exhibits 1 and 2, respectively, as if each were fully set out here in its entirety.

NOW, THEREFORE, City and Contractor agree as follows:

- 1. Scope.** Contractor will provide Subscription and Maintenance of Customer Engagement Software ("Services") in accordance with the attached Scope of Work, as shown in Attachment A, the content of which is incorporated by reference into this Agreement as if fully set out here in its entirety, and in accordance with Exhibit 2.
- 2. Term.** This Agreement is for 12 months, with performance commencing upon the date of issuance of a notice to proceed from the Contract Administrator or Purchasing Division. The parties may mutually extend the term of this Agreement for up to zero additional zero-month periods ("Option Period(s)"), provided, the parties do so in writing and prior to the expiration of the original term or the then-current Option Period. The City's extension authorization must be executed by the City Manager or designee.
- 3. Compensation and Payment.** This Agreement is for an amount not to exceed \$45,000.00, subject to approved extensions and changes. Payment will be made for Services completed and accepted by the City within 30 days of acceptance, subject to receipt of an acceptable invoice. Subscription fees are payable annually in advance. Contractor may invoice City for the annual subscription fee of \$45,000 upon completion of setup and commencement of the services, subject to City's acceptance thereof, and City agrees to pay such invoice within 30 days. All pricing must be in accordance with the attached Bid/Pricing Schedule, as shown in Attachment B, the content of which is incorporated by reference into this Agreement as if fully set out here in its entirety. Any amount not expended

during the initial term or any option period may, at the City's discretion, be allocated for use in the next option period.

Invoices will be mailed to the following address with a copy provided to the Contract Administrator:

City of Corpus Christi
Attn: Accounts Payable
P.O. Box 9277
Corpus Christi, Texas 78469-9277

4. **Contract Administrator.** The Contract Administrator designated by the City is responsible for approval of all phases of performance and operations under this Agreement, including deductions for non-performance and authorizations for payment. The City's Contract Administrator for this Agreement is as follows:

Name: Wesley Nebgen
Department: Utilities
Phone: (361)-826-3111
Email: WesleyN@cctexas.com

5. **Insurance; Bonds.**

(A) Before performance can begin under this Agreement, the Contractor must deliver a certificate of insurance ("COI"), as proof of the required insurance coverages, to the City's Risk Manager and the Contract Administrator. Additionally, the COI must state that the City will be given at least 30 days' advance written notice of cancellation, material change in coverage, or intent not to renew any of the policies. The City must be named as an additional insured. The City Attorney must be given copies of all insurance policies within 10 days of the City Manager's written request. Insurance requirements are as stated in Attachment C, the content of which is incorporated by reference into this Agreement as if fully set out here in its entirety.

(B) In the event that a payment bond, a performance bond, or both, are required of the Contractor to be provided to the City under this Agreement before performance can commence, the terms, conditions, and amounts required in the bonds and appropriate surety information are as included in the RFB/RFP or as may be added to Attachment C, and such content is incorporated here in this Agreement by reference as if each bond's terms, conditions, and amounts were fully set out here in its entirety.

6. **Purchase Release Order.** For multiple-release purchases of Services to be provided by the Contractor over a period of time, the City will exercise its right to specify time, place and quantity of Services to be delivered in the following manner: any City department or division may send to Contractor a purchase

release order signed by an authorized agent of the department or division. The purchase release order must refer to this Agreement, and Services will not be rendered until the Contractor receives the signed purchase release order.

7. Inspection and Acceptance. City may inspect all Services and products supplied before acceptance. Any Services or products that are provided but not accepted by the City must be corrected or re-worked immediately at no charge to the City. If immediate correction or re-working at no charge cannot be made by the Contractor, a replacement service may be procured by the City on the open market and any costs incurred, including additional costs over the item's bid/proposal price, must be paid by the Contractor within 30 days of receipt of City's invoice.

8. Warranty.

(A) The Contractor warrants that all products supplied under this Agreement are new, quality items that are free from defects, fit for their intended purpose, and of good material and workmanship. The Contractor warrants that it has clear title to the products and that the products are free of liens or encumbrances.

(B) In addition, the products purchased under this Agreement shall be warranted by the Contractor or, if indicated in Attachment D by the manufacturer, for the period stated in Attachment D. Attachment D is attached to this Agreement and is incorporated by reference into this Agreement as if fully set out here in its entirety.

(C) Contractor warrants that all Services will be performed in accordance with the standard of care used by similarly situated contractors performing similar services in accordance with the Software-as-a-Service Provisions attached hereto as Attachment E (the "SaaS Provisions").

9. Quality/Quantity Adjustments. Any Service quantities indicated on the Bid/Pricing Schedule are estimates only and do not obligate the City to order or accept more than the City's actual requirements nor do the estimates restrict the City from ordering less than its actual needs during the term of the Agreement and including any Option Period. Substitutions and deviations from the City's product requirements or specifications are prohibited without the prior written approval of the Contract Administrator.

10. Non-Appropriation. The continuation of this Agreement after the close of any fiscal year of the City, which fiscal year ends on September 30th annually, is subject to appropriations and budget approval specifically covering this Agreement as an expenditure in said budget, and it is within the sole discretion of the City's City Council to determine whether or not to fund this Agreement. The City does not represent that this budget item will be adopted, as said determination is within the City Council's sole discretion when adopting each budget.

11. **Independent Contractor.** Contractor will perform the work required by this Agreement as an independent contractor and will furnish such Services in its own manner and method, and under no circumstances or conditions will any agent, servant or employee of the Contractor be considered an employee of the City.
12. **Subcontractors.** Contractor may use subcontractors in connection with the work performed under this Agreement. When using subcontractors, however, the Contractor must obtain prior written approval from the Contract Administrator unless the subcontractors were named in the bid or proposal or in an Attachment to this Agreement, as applicable. In using subcontractors, the Contractor is responsible for all their acts and omissions to the same extent as if the subcontractor and its employees were employees of the Contractor. All requirements set forth as part of this Agreement, including the necessity of providing a COI in advance to the City, are applicable to all subcontractors and their employees to the same extent as if the Contractor and its employees had performed the work. The City may, at the City's sole discretion, choose not to accept Services performed by a subcontractor that was not approved in accordance with this paragraph.
13. **Amendments.** This Agreement may be amended or modified only in writing executed by authorized representatives of both parties.
14. **Waiver.** No waiver by either party of any breach of any term or condition of this Agreement waives any subsequent breach of the same.
15. **Taxes.** The Contractor covenants to pay payroll taxes, Medicare taxes, FICA taxes, unemployment taxes and all other applicable taxes. Upon request, the City Manager shall be provided proof of payment of these taxes within 15 days of such request.
16. **Notice.** Any notice required under this Agreement must be given by fax, hand delivery, or certified mail, postage prepaid, and is deemed received on the day faxed or hand-delivered or on the third day after postmark if sent by certified mail. Notice must be sent as follows:

IF TO CITY:

City of Corpus Christi

Attn: Wesley Nebgen

Title: Assistant Director of Maintenance of lines

Address: 2726 Holly road, Corpus Christi, TX 78469

Phone: (361)-826-3111

Fax: None

IF TO CONTRACTOR:

WaterSmart Software, Inc.

Attn: Michelle Camp

Title: Regional Sales Director

Address: 20 California St. # 200, San Francisco, CA 94111

Phone: (512)-422-1647

Fax: None

17. CONTRACTOR SHALL FULLY INDEMNIFY, HOLD HARMLESS AND DEFEND THE CITY OF CORPUS CHRISTI AND ITS OFFICERS, EMPLOYEES AND AGENTS ("INDEMNITEES") FROM AND AGAINST ANY AND ALL LIABILITY, LOSS, CLAIMS, DEMANDS, SUITS, AND CAUSES OF ACTION OF WHATEVER NATURE, CHARACTER, OR DESCRIPTION ON ACCOUNT OF PERSONAL INJURIES, PROPERTY LOSS, OR DAMAGE, OR ANY OTHER KIND OF INJURY, LOSS, OR DAMAGE, INCLUDING ALL EXPENSES OF LITIGATION, COURT COSTS, ATTORNEYS' FEES AND EXPERT WITNESS FEES, WHICH ARISE OR ARE CLAIMED TO ARISE OUT OF OR IN CONNECTION WITH A BREACH OF THIS AGREEMENT OR THE NEGLIGENT PERFORMANCE OF THIS AGREEMENT BY THE CONTRACTOR OR RESULTS FROM THE NEGLIGENT ACT OR OMISSION, MISCONDUCT, OR FAULT OF THE CONTRACTOR OR ITS EMPLOYEES OR AGENTS. CONTRACTOR MUST, AT ITS OWN EXPENSE, INVESTIGATE ALL CLAIMS AND DEMANDS, ATTEND TO THEIR SETTLEMENT OR OTHER DISPOSITION, DEFEND ALL ACTIONS BASED THEREON WITH COUNSEL SATISFACTORY TO THE CITY ATTORNEY, AND PAY ALL CHARGES OF ATTORNEYS AND ALL OTHER COSTS AND EXPENSES OF ANY KIND ARISING OR RESULTING FROM ANY SAID LIABILITY, DAMAGE, LOSS, CLAIMS, DEMANDS, SUITS, OR ACTIONS. THE INDEMNIFICATION OBLIGATIONS OF CONTRACTOR UNDER THIS SECTION SHALL SURVIVE THE EXPIRATION OR EARLIER TERMINATION OF THIS AGREEMENT. CONTRACTOR'S LIABILITY AND OBLIGATIONS HEREUNDER ARE SUBJECT TO THE LIMITATIONS OF SECTION D OF THE SAAS PROVISIONS.

18. Termination.

(A) The City Manager may terminate this Agreement for Contractor's failure to perform the work specified in this Agreement or to keep any required insurance policies in force during the entire term of this Agreement. The Contract Administrator must give the Contractor written notice of the breach and set out a reasonable opportunity to cure. If the Contractor has not cured within the cure period, the City Manager may terminate this Agreement immediately thereafter.

(B) Alternatively, the City Manager may terminate this Agreement for convenience upon 30 days advance written notice to the Contractor. The City Manager may also terminate this Agreement upon 24 hours written notice to the Contractor for failure to pay or provide proof of payment of taxes as set out in this Agreement.

19. **Assignment.** No assignment of this Agreement by the Contractor, or of any right or interest contained herein, is effective unless the City Manager first gives written consent to such assignment. The performance of this Agreement by the Contractor is of the essence of this Agreement, and the City Manager's right to withhold consent to such assignment is within the sole discretion of the City Manager on any ground whatsoever. Notwithstanding the foregoing, Contractor may without City's consent assign this Agreement in the context of Contractor's merger, acquisition, or other change in control.
20. **Severability.** Each provision of this Agreement is considered to be severable and, if, for any reason, any provision or part of this Agreement is determined to be invalid and contrary to applicable law, such invalidity shall not impair the operation of nor affect those portions of this Agreement that are valid, but this Agreement shall be construed and enforced in all respects as if the invalid or unenforceable provision or part had been omitted.
21. **Order of Precedence.** In the event of any conflicts or inconsistencies between this Agreement, its attachments, and exhibits, such conflicts and inconsistencies will be resolved by reference to the documents in the following order of priority:
 - A. this Agreement (excluding attachments and exhibits);
 - B. Attachment E – Software-as-a-Service Provisions;
 - C. its other attachments;
 - D. the bid solicitation document including any addenda (Exhibit 1), as modified by the Contractor's bid response (Exhibit 2).
22. **Certificate of Interested Parties.** Contractor agrees to comply with Texas Government Code Section 2252.908, as it may be amended, and to complete Form 1295 "Certificate of Interested Parties" as part of this Agreement if required by said statute.
23. **Verification Regarding Israel.** In accordance with Chapter 2270, Texas Government Code, the City may not enter into a contract with a company for goods or services unless the contract contains a written verification from the company that it: (1) does not boycott Israel; and (2) will not boycott Israel during the term of the contract. The signatory executing this Agreement on behalf of the Contractor verifies that the company does not boycott Israel and will not boycott Israel during the term of this Agreement.

24. **Governing Law.** This Agreement is subject to all federal, State, and local laws, rules, and regulations. The applicable law for any legal disputes arising out of this Agreement is the law of the State of Texas, and such form and venue for such disputes is the appropriate district, county, or justice court in and for Nueces County, Texas.

25. **Entire Agreement.** This Agreement constitutes the entire agreement between the parties concerning the subject matter of this Agreement and supersedes all prior negotiations, arrangements, agreements and understandings, either oral or written, between the parties

CONTRACTOR

Signature: 

Printed Name: Erik C. Andersen

Title: Vice President of Sales

Date: November 2, 2018

CITY OF CORPUS CHRISTI



Kim Baker
Assistant Director of Finance – Purchasing Division

Date: 11.5.18

APPROVED AS TO LEGAL FORM:

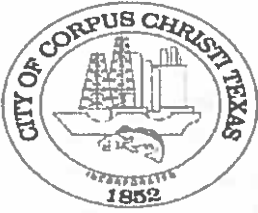
 11/6/18
Assistant City Attorney Date

Attached and Incorporated by Reference:

- Attachment A: Scope of Work
- Attachment B: Bid/Pricing Schedule
- Attachment C: Insurance and Bond Requirements
- Attachment D: Warranty Requirements
- Attachment E: Software-as-a-Service Provisions

Incorporated by Reference Only:

- Exhibit 1: RFB/RFP No. 65099
- Exhibit 2: Contractor's Bid/Proposal Response



ATTACHMENT A: SCOPE OF WORK

SCOPE OF WORK

- A. The Contractor will provide access to a Customer Portal for up to 30,000 utility customers for a term of 1 year.
- B. The Contractor will provide access to a Utility Analytics Dashboard for the 30,000 subscriber accounts for a term of 1 year as designed.
- C. As a software-as-a-service (SaaS) provider, the Contractor will provide hosting and maintenance of the Customer Portal and Utility Analytics Dashboard for the 30,000 subscriber accounts for 1 year.
- D. The City is responsible for providing Water Smart key program inputs including account information, regular feeds of meter data, customer billing information including bill date, amount due, and PDF copies of customer bills (when available) in addition to City logos and contact information. The City is also responsible for timely feedback and input on key program elements during initialization. The City maintains responsibility as the primary contact for customer inquiries and technical assistance.
- E. The Contractor will designate a customer success manager, and the City shall designate a project manager for the program. All City decisions shall be channeled through the City's project manager. In addition, the City shall designate a Data contact who is responsible for providing the data indicated below.
- F. Content and design of all materials are subject to change over time, as the Contractor incorporates new features.
- G. This scope of work and agreement cover services rendered over term of the agreement. The exact timing of program launch, and duration of services may vary depending on City resource levels, data availability, and other unforeseeable events. The Contractor endeavors to adhere to the proposed schedule. City's responsiveness and prompt provisioning of necessary program inputs is also critical to schedule adherence. A proposed schedule is provided in Attachment A1, Schedule of Performance.
- H. The Contractor will provide alerts to customers to notify of potential high volume or continuous use leaks, to notify a customer that they have reached a self-selected consumption threshold, or to inform customers before the end of the billing cycle that they are likely to have high water use on their upcoming bill. Threshold notifications and leak alerts are further enabled by AMI, though they are also available for non-AMI customers. Alerts can be sent through multiple channels—email, SMS text message, or automated voice call. Burst leak alerts are currently targeted at single-

family residential accounts and irrigation-only accounts, whereas continuous use leaks are available for all meter classes. The leak resolution workflow helps customers identify the source of their leak and resolve the leak on their own.

- I. The Contractor will provide Group Messenger, a module within the Utility Analytics Dashboard that allows rapid delivery of targeted, timely, and topical messages to groups of customers. The integrated 'Lists' tool allows the City to create custom lists of accounts to analyze or communicate with. Group Messenger supports multiple communication channels, including email, SMS text, and automated voice.
- J. The Contractor will provide Electronic Bill Presentment that allows City customers to view their billing amount online. The City has the option to present the billing amount or display a PDF of the bill.
- K. Program initialization and subscription begin with Contract Signing (or Purchase Order Issue if a Purchase Order is necessary for invoicing). The City should move to set up data transfers with the quickest speed to make the most use of their subscription. Significant delay on the part of the City during launch may result in less than 12 months of access to the Customer Portal and Utility Analytics Dashboard and/or fewer than the planned number of communications to be sent during the 12-month period. If the City delays approval of a renewal or extension agreement, the Contractor may, at its discretion (assuming the renewal agreement is retroactive to being at the previous contracts' end), maintain Customer Portal and Utility Analytics Dashboard access and functionality, in the interim, for up to 90 days at which time all access is revoked until the renewal/extension has been signed.
- L. To initialize the program, the Contractor will work with the City to set up the transfer of key data elements, discuss configurable elements of the Customer Portal, and train City employees on the Water Smart platform. Below are the key steps for the Program Initialization Phase.
 1. Kickoff: The Contractor will conduct a 60- to 90-minute introductory online meeting to orient City staff involved in the Program with the Customer Portal and Utility Analytics Dashboard Applications and Alerts. The Contractor suggests the City include a representative from each functional group that will be involved with the setup and use of the program, including: Conservation, Customer Service, Field Service, Finance, Marketing/Public Information Office, and Information Technology (IT) representatives.
 2. Data Transfer and Utility Obligations: While the Contractor has developed processes to minimize the burden on City staff to launch the program, initiative and technical know-how on the part of City IT staff, consultants or existing vendors is necessary. All scheduling of City IT time and approval of any additional AML, CIS, or Payment vendor service agreements for the project are responsibilities of the City and should be confirmed in advance to ensure a timely launch. Delays on the part of the City may reduce the number of months the City and its customers are able to make use of the software platform.

Contractor works with the City to securely transfer a dataset on accounts, including but not limited to the following data:

Account Information

- Account Number, Account Type and Account Sequence Number
- Property APN, where available
- Meter Size
- Customer Name
- Service and Billing Address
- Customer Mobile Number and Email, where available

Consumption History

The Contractor requests, for at least the last two years but ideally for five to ten years in the past, such fields as, but not limited to:

- Account Number
- Account Sequence Number
- Meter I.D. (serial number)
- Current Meter Read Date
- Previous Meter Read Data
- Days in Billing Cycle
- Consumption
- Bill and water allocation details as per mutually agreed

* Note this consumption history is for billed consumption, with up to twelve data points per account per year. Water Smart does not load historic interval data.

Current Consumption:

The Contractor will work with the Utility to set up a regular transfer of meter reads from the Utility to Water Smart through a secure channel. This is the same file format as the system above. The Contractor requests, for accounts with interval data:

- Account Number
- Timestamp
- Time zone
- Consumption
- Additional details as mutually agreed

Should Utility implement new data management systems after the first initialization process, or otherwise provide data files in a new format which requires the Contractor to re-onboard new file structures or map historical identifiers (e.g., customers, accounts, premises, service points), The Contractor

will be allowed an additional one-time fee not to exceed \$10,000 upon receipt of first test files from the new system.

AMI Interval Information

- Date and time of read
- Volume of water read for interval
- Time zone including daylight savings
- Additional details as mutually agreed

Bills and Payments

- Due date of bill
- Total amount due by the due date
- PDF Identifier
- Date payment is received
- Amount of payment

3. **Configuration of Customer Portal:** The Customer Portal contains several configurable fields. The Contractor works with the City to configure the Customer Portal with City logo and contact information. The Contractor provides messages and recommendations for City to review and approve for display on a targeted basis. City has the opportunity to approve or exclude any recommendations shown in the Customer Portal. The City also has the opportunity at the start of the program to provide the Contractor with information on available rebates and incentives that should be flagged within relevant water saving recommendations. City and Contractor agree to complete this process in a timely manner. City should provide final approvals to the Contractor no more than ten business days from when initial materials are provided to City. For both Messaging and Recommendations, the review process is as follows: (1) the Contractor sends default content to City. (2) City project manager sends back a single, consolidated list of approved messages. (3) Contractor's customer success manager can offer the City the opportunity to proof finalized content of the Customer Portal once they are configured.
4. **Spanish Language Availability:** The Water Smart Customer Portal is available in English and Spanish. A customer can change their preferred language within the Portal. Take Action Recommendations may not be available in languages beyond English.
5. **Training:** After all initial customer data has been received and program content is finalized, the Contractor will provide City staff with training via webinar and resources to understand the features and functionality of the Customer Portal and Utility Analytics Dashboard.

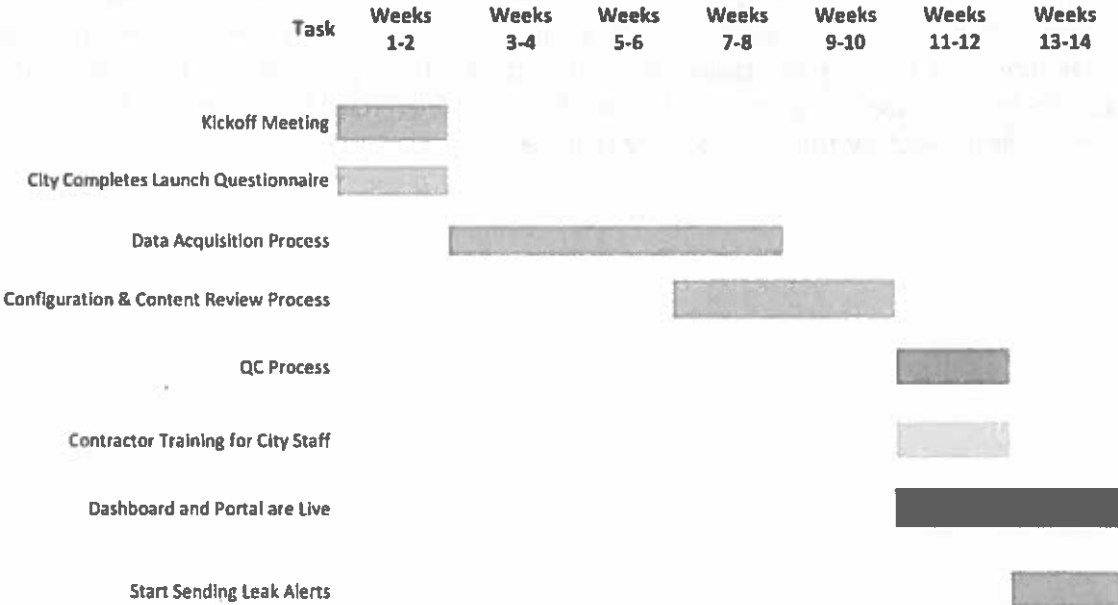
M. The Contractor does not communicate directly with the City's customers; end-user support is the responsibility of the City.

- N. The Contractor will provide a number of tools to facilitate both end-user support as well as assist City staff looking to understand and maximize their Water Smart experience. These include: (1) the Water Smart Support Site, which is accessible by all City staff, includes responses to Frequently Asked Questions as well as common troubleshooting topics, how-to videos and other customer support-oriented content. (2) The Customer Detail Page that helps customer service representatives respond to Customer inquiries by providing all relevant customer property and water use information, a complete history of notes and email interactions, a quick link to their portal and step-by-step process support for common questions around high bills. (3) A Live Chat feature that allows City staff to ask questions about data, get help with challenging customer questions, provide product feedback and more. Users can typically expect to receive a response within the hour. Chat is available between the hours of 7 a.m. and 6 p.m. PST Monday thru Friday, excluding federal holidays. (4) Quarterly Product Webinars that provide the latest Water Smart news including product releases, practical implementation case studies, a forum to interact with other Water Smart customers and sneak previews of upcoming products and functionality.
- O. In addition to the above support tools, the Contractor will provide the following services: (1) dedicated Customer Success Manager (CS Manager): the CS Manager will support the City program, answer questions, provide updates, support complex tasks, provide new feature updates and additional training as needed. The CS Manager is available by telephone and email to answer specific programmatic and technical questions during regular business hours. CS Manager support will be capped at 1 hour per week for the City. (2) Quarterly check-in meetings: meetings will track performance relative to City objectives and adjust as necessary, provide implementation support, review best practices, support outreach efforts, gather feedback and answer any questions. (3) Portal content customization: the CS Manager can help the City create personalized messaging for the Customer Portal and outbound Engagement vehicles, including Group Messenger, if requested.
- P. The Contractor maintains commercially reasonable systems and controls designed to maximize monthly uptime and minimize unscheduled outages of the Customer Portal and Utility Analytics Dashboard. Excluding any down time for maintenance and/or upgrades, the Contractor makes strong efforts to provide Customers and the City with access to their respective Web applications on a continuous basis. The Contractor provides advance notification of any planned outages and notifies the City without unreasonable delay if it detects or receives notice of any material problems relating to the Customer Portal and/or the Utility Analytics Dashboard. Water Smart's Web Applications include dynamic and interactive charts and tables that may not be compatible with older Internet browsers. The Internet browser and operating system requirements are: (1) Windows XP: Chrome 38+, Firefox 32+ (2) Windows 7, 8, 8.1, 10: IE 11+, Chrome 38+, Firefox 32+ (3) Mac: Chrome 38+, Firefox 32+, Safari 10+ Water Smart's system requirements are subject to change in the future.
- Q. The Contractor does not share personally identifiable customer information or customer-specific water use information with any third party without prior consent from the City. Data transferred to the Contractor from the City is stored in a database

dedicated to the City and its Water Smart project. The data is not comingled with the data provided by any other entity; provided, however, that certain anonymous data may be copied and consolidated with data provided by one or more other entities for the research and product development purposes subject to the terms of the Agreement. The Contractor enacts standard controls, policies, and procedures to ensure the security of the City's data and customer-provided information, including but not limited to choosing a reputable cloud-server vendor with appropriate physical security of server infrastructure, secure public-private key-based login to all Water Smart server infrastructure, password authentication on all Web site interaction, and audit logging. The Contractor provides the City with private key access to a secure FTP destination for regular delivery of the data. The City agrees to send data only through this secure channel, or by having the Contractor pull data from a secure server maintained by the City or City partner.

Attachment A1: Schedule of Performance

Estimated Initialization Schedule



Attachment B: Bid/Pricing Schedule

City of Corpus Christi
 Purchasing Division
 Buyer: Japan Shah

Subscription and Maintenance of
 Customer engagement software
 Utilities Department

				Water Smart San Francisco, California	
Item	Description	Unit	Qty	Total Price	
1	Subscription and Maintenance of Customer Engagement Portal	Lump sum	1	\$	45,000.00
	Total			\$	45,000.00

ATTACHMENT C: INSURANCE REQUIREMENTS

I. CONTRACTOR'S LIABILITY INSURANCE

- A. Contractor must not commence work under this contract until all insurance required has been obtained and such insurance has been approved by the City. Contractor must not allow any subcontractor, to commence work until all similar insurance required of any subcontractor has been obtained.
- B. Contractor must furnish to the City's Risk Manager and Contract Administrator one (1) copy of Certificates of Insurance with applicable policy endorsements showing the following minimum coverage by an insurance company(s) acceptable to the City's Risk Manager. The City must be listed as an additional insured on the General liability and Auto Liability policies **by endorsement**, and a waiver of subrogation **endorsement** is required on all applicable policies. **Endorsements** must be provided with Certificate of Insurance. Project name and/or number must be listed in Description Box of Certificate of Insurance.

TYPE OF INSURANCE	MINIMUM INSURANCE COVERAGE
30-day advance written notice of cancellation, non-renewal, material change, or termination required on all certificates and policies.	Bodily Injury and Property Damage Per occurrence - aggregate
COMMERCIAL GENERAL LIABILITY including: 1. Commercial Broad Form 2. Premises – Operations 3. Products/ Completed Operations 4. Contractual Liability 5. Independent Contractors 6. Personal Injury- Advertising Injury	\$1,000,000 Per Occurrence \$1,000,000 Aggregate
AUTO LIABILITY (including) 1. Owned 2. Hired and Non-Owned 3. Rented/Leased	\$1,000,000 Combined Single Limit

WORKERS'S COMPENSATION (All States Endorsement if Company is not domiciled in Texas) Employer's Liability	Statutory and complies with Part II of this Exhibit. \$500,000/\$500,000/\$500,000
CYBER LIABILITY	\$5,000,000 Per Occurrence \$5,000,000 Aggregate

C. In the event of accidents of any kind related to this contract, Contractor must furnish the Risk Manager with copies of all reports of any accidents within 10 days of the accident.

II. ADDITIONAL REQUIREMENTS

A. Applicable for paid employees, Contractor must obtain workers' compensation coverage through a licensed insurance company. The coverage must be written on a policy and endorsements approved by the Texas Department of Insurance. The workers' compensation coverage provided must be in statutory amounts according to the Texas Department of Insurance, Division of Workers' Compensation. An All States Endorsement shall be required if Contractor is not domiciled in the State of Texas.

B. Contractor shall obtain and maintain in full force and effect for the duration of this Contract, and any extension hereof, at Contractor's sole expense, insurance coverage written on an occurrence basis by companies authorized and admitted to do business in the State of Texas and with an A.M. Best's rating of no less than A-VII.

C. Contractor shall be required to submit renewal certificates of insurance throughout the term of this contract and any extensions within 10 days of the policy expiration dates. All notices under this Exhibit shall be given to City at the following address:

City of Corpus Christi
Attn: Risk Manager
P.O. Box 9277
Corpus Christi, TX 78469-9277

D. Contractor agrees that, with respect to the above required insurance, all insurance policies are to contain or be endorsed to contain the following required provisions:

- List the City and its officers, officials, employees, and volunteers, as additional insureds by endorsement with regard to operations, completed operations, and activities of or on behalf of the named insured performed under contract with the City, with the exception of the workers' compensation policy;

- Provide for an endorsement that the "other insurance" clause shall not apply to the City of Corpus Christi where the City is an additional insured shown on the policy;
 - Workers' compensation and employers' liability policies will provide a waiver of subrogation in favor of the City; and
 - Provide thirty (30) calendar days advance written notice directly to City of any, cancellation, non-renewal, material change or termination in coverage and not less than ten (10) calendar days advance written notice for nonpayment of premium.
- E. Within five (5) calendar days of a cancellation, non-renewal, material change or termination of coverage, Contractor shall provide a replacement Certificate of Insurance and applicable endorsements to City. City shall have the option to suspend Contractor's performance should there be a lapse in coverage at any time during this contract. Failure to provide and to maintain the required insurance shall constitute a material breach of this contract.
- F. In addition to any other remedies the City may have upon Contractor's failure to provide and maintain any insurance or policy endorsements to the extent and within the time herein required, the City shall have the right to order Contractor to stop work hereunder, and/or withhold any payment(s) which become due to Contractor hereunder until Contractor demonstrates compliance with the requirements hereof.
- G. Nothing herein contained shall be construed as limiting in any way the extent to which Contractor may be held responsible for payments of damages to persons or property resulting from Contractor's or its subcontractor's performance of the work covered under this contract.
- H. It is agreed that Contractor's insurance shall be deemed primary and non-contributory with respect to any insurance or self-insurance carried by the City of Corpus Christi for liability arising out of operations under this contract.
- I. It is understood and agreed that the insurance required is in addition to and separate from any other obligation contained in this contract.

2018 Insurance Requirements

Purchasing

Customer Engagement Software Service Agreement – Utility Customer Portal

10/17/2018 sw Risk Management

ATTACHMENT D: WARRANTY REQUIREMENTS

No product warranty is required by this Agreement therefore, Section 8 warranty subsections(A) and (B) are null and void.

ATTACHMENT E: SOFTWARE AS A SERVICE PROVISIONS



Software-as-a-Service Provisions

BACKGROUND: WATERSMART's customer engagement and data analytics services are to be provided primarily by utilization of WATERSMART's proprietary software hosted on WATERSMART's computer systems and accessed by authorized users over the Internet. This is a shared cost software utilization model which enables customers to achieve substantial cost savings versus commissioning custom development of software or licensing software for installation and maintenance on customers' computer systems. Companies like WATERSMART are commonly referred to as "SaaS" or "software-as-a-service" providers. Certain supplemental provisions which are customary within the SaaS sector and essential to enabling WATERSMART's SaaS service model and providing substantial cost savings for Utility, are set forth below and incorporated by reference in the Agreement. Also included below are additional terms applicable to bill payment, leak alert and group messenger services if such services are elected by Utility.

A. WATERSMART's reservation of intellectual property rights

WATERSMART has created, acquired or otherwise currently has rights in, and may, in connection with the performance of this Agreement or otherwise develop, create, employ, provide, modify, acquire or otherwise obtain rights in various inventions, concepts, ideas, methods, methodologies, procedures, processes, know-how, techniques, models, templates, software, applications, documentation, user interfaces, screen and print designs, source code, object code, databases, algorithms, development framework repositories, system designs, processing techniques, tools, utilities, routines and other property or materials, including without limitation any and all subject matter protected or which may be protected under patent, copyright, mask work, trademark, trade secret, or other laws relating to intellectual property, whether existing now or in the future, whether statutory or common law, in any jurisdiction in the world ("WATERSMART IP"). Utility acknowledges that WATERSMART owns and shall own all intellectual property rights in and to deliverables hereunder, the WATERSMART IP and derivative works of WATERSMART IP (whether independently or jointly conceived), regardless of whether or not incorporated in any print or electronic Water Reports, Customer Portal, Utility Dashboard, or other software or deliverable provided to Utility by

WATERSMART, and that Utility shall acquire no right or interest in the same.

Utility agrees to assign, and hereby does assign, any right, title and interest in any suggestions, enhancement requests, or other feedback provided by Utility relating to services offered by WATERSMART. If and to the extent any such assignment is ineffective, Utility hereby grants to WATERSMART a royalty-free, worldwide, irrevocable, perpetual license to use and incorporate into its services any such suggestions, enhancement requests, or other feedback provided by Utility.

Subject to the foregoing, authorized employees and customers of Utility may during the term of the Agreement access and use the WATERSMART SaaS services, print and electronic Water Reports, Customer Portal, Utility Dashboard, Extended Messaging Services, other deliverables provided to Utility by WATERSMART, and applicable bill presentment services, each as so specified by the Scope of Work, for purposes of Utility's customer engagement program, customer billing, and for Utility's internal purposes, so long as Utility is current with respect to its financial and other obligations under the Agreement. Such authorization is limited to Utility's service territory and is non-exclusive, non-transferable, and non-sublicenseable. If Utility enters into an agreement with a third party contractor of WATERSMART related to bill payment services, the intellectual property provisions of such agreement shall apply with respect to intellectual property owned or controlled by such third party. Any rights not expressly granted herein are reserved by WATERSMART and its licensors.

B. Utility's cooperation in providing necessary inputs

Deliverables to be provided by WATERSMART via its proprietary software require certain data from Utility. Utility shall provide WATERSMART with those data, records, reports, approvals and other inputs identified for Utility to provide in the Scope of Work or otherwise requested by WATERSMART. Utility shall ensure that such inputs are accurate and within Utility's legal rights to share with WATERSMART subject to the confidentiality and other applicable provisions of the Agreement. Time is of the essence, and Utility shall provide its inputs within the timeframes specified for Utility by the Scope of Work. If bill payment services are included in the Scope of Work, Utility shall cooperate with WATERSMART and its applicable third party partner(s) in timely providing the data, records, reports, approvals and other inputs requested for such services. WATERSMART shall not be responsible for delays outside WATERSMART's control, and deadlines for WATERSMART's performance shall be adjusted, if necessary, to accommodate delays by Utility

C. Confidentiality and WATERSMART's use of aggregated data

All data, documents and other information received or accessed by one party ("Receiver") from the other party or its end users (collectively, "Discloser") for performance of this Agreement, including without limitation personally identifiable information and financial information, are deemed confidential. Such information shall not be used or disclosed by the Receiver without the prior written consent of the Discloser or owner (which may include without limitation consent by end users to share any information with additional users they authorize), except to the Receiver's employees and contractors on a need-to-know basis for performance of this Agreement with appropriate confidentiality protections. For this purpose, protected confidential information shall not include (i) information that, at the time of disclosure, is publicly available or generally known or available to third parties, or information that later becomes publicly available or generally known or available to third parties through no act or omission by the Receiver; (ii) information that the Receiver can demonstrate was in its possession prior to receipt from the Discloser; (iii) information received by the Receiver from a third party who, to the Receiver's knowledge and reasonable belief, did not acquire such information on a confidential basis from the Discloser; (iv) information the Receiver can demonstrate was independently developed by it or a third party; or (v) information that the Receiver is legally required or compelled by a court to disclose, including information disclosed by the Utility in accordance with the Texas Public Information Act.

The foregoing confidentiality obligations are subject to the following clarification of the parties' rights and obligations with respect to aggregated and anonymous data. Utility hereby gives its permission to WATERSMART to use and disclose on an anonymous and/or aggregated basis (excluding any personally identifiable information) any data pertaining to Utility end customers and their water consumption, including without limitation derivative data and data combined with the data of other utilities, for purposes of project evaluation and any research, product development, marketing, or other legitimate business purposes. This Section C shall survive any termination or expiration of the Agreement.

Each party shall post and comply with its applicable privacy policy.

D. Software corrections and third party acts; limitation of liability for SaaS services

In the event that WATERSMART's services fail to meet specifications or other requirements specified by the Scope of Work, Utility shall promptly notify WATERSMART and WATERSMART shall promptly correct any defect or substitute services, software, or products to achieve the functionality and

benefits originally specified. If WATERSMART promptly makes such correction or substitution, WATERSMART shall have no further liability with respect to said defect(s), notwithstanding any other provision of the Agreement. All warranties not expressly stated in the Agreement are disclaimed. Utility understands that Utility's use of WATERSMART's services provided online may be interrupted by circumstances beyond WATERSMART's control involving third parties, including without limitation computer, telecommunications, network, Internet service provider or hosting facility failures or delays involving hardware, software, networks, or power systems not within WATERSMART's possession or direct control, and network intrusions or denial of service attacks (collectively, "Third Party Acts"). WATERSMART shall not be responsible or otherwise liable for any Third Party Acts, including, without limitation, any delays, failures, or security breaches and damages resulting from or due to any Third Party Acts, provided that WATERSMART has exercised due care. However, in the case of any Third Party Act which will delay or prevent WATERSMART from providing online services to Utility, WATERSMART will promptly notify Utility and assist in mitigating any impact. Neither party will be liable to the other, under any non-indemnity claim relating to this Agreement, for any indirect, incidental, exemplary, special, reliance or consequential damages, including loss of profits or loss of data, even if advised of the possibility of these damages. Under no circumstances or event shall WATERSMART's total cumulative liability for losses or damages of any kind arising under or relating to this Agreement and under any theory (contract, tort, defense and indemnity, or otherwise), exceed (i) the fees received by WATERSMART for the services that give rise to the liability in the twelve months preceding the accrual of such liability, or (ii) available insurance proceeds from WATERSMART's carriers, whichever is higher. The foregoing limited remedy and limitation of liability provisions shall apply notwithstanding any conflicting provisions or any failure of essential purpose with respect to a limited remedy or limitation of liability, and shall survive any termination or expiration of the Agreement. Utility acknowledges that pricing for WATERSMART's services would be substantially higher without the aforementioned limitations.

E. Technology and services infrastructure vendors

WATERSMART as a SaaS provider utilizes the secure cloud hosting platform of a third party industry leader in cloud computing with state-of-the-art security to host the data of all WATERSMART customers. WATERSMART utilizes a reputable third party vendor to perform printing and mailing services when included within the scope of WATERSMART's work. For bill payment services, including credit card, debit card, and ACH

payments and authentication, WATERSMART works with leading edge, reputable third party vendors specializing in such functions. Since the referenced cloud hosting platform, printing and mailing vendors, bill payment services providers, and certain other vendors performing similar or related functions, are integral components of WATERSMART's technology and services infrastructure used across its pertinent customer base and are not specific to Utility and services under this Agreement, Utility acknowledges that such utilization or collaboration is not considered subcontracting of WATERSMART's services under this Agreement.

If Utility elects to make bill payment services available to its end customers, the pertinent end users and Utility assume all risks associated with such services, and no indemnity provisions in favor of Utility shall apply to such services, except in the event of WATERSMART's willful misconduct. In the absence of willful misconduct by WATERSMART, Utility's sole remedies related to bill payment services shall be from the independent third party provider of such services in accordance with any contract between Utility and such provider. If Utility enters into an agreement with any third party contractor of WATERSMART for any other services ancillary or related to the services provided by WATERSMART during the term of this Agreement, Utility shall first seek and exhaust all remedies from such third party contractor prior to seeking any remedy from WATERSMART with respect to such services.

With respect to all bill payment services, as well as any services provided by independent third party contractors not in contract with WATERSMART, including without limitation any such services which at Utility's request or direction are integrated by WATERSMART into its electronic interfaces for Utility, WATERSMART shall not be responsible for services provided by such third parties.

F. Compliance With Laws

WaterSmart shall comply with all federal, state and local laws, regulations, regulatory rulings, and ordinances as may be applicable to the performance of its services under this Agreement. Utility shall comply with all federal, state and local laws, regulations, regulatory rulings, and ordinances related to this Agreement, and shall have sole responsibility for securing any necessary regulatory approvals, if any, for this Agreement and/or the services hereunder.

Utility shall be responsible for obtaining from its end customers any consents and providing any notices, if any are legally required, for the services to be provided by WaterSmart hereunder, as well as any bill payment or other third party services elected by Utility.

G. Extended Messaging Services

If Utility elects to utilize WATERSMART's leak alert or group messenger services, certain supplemental legal terms shall apply. These supplemental terms ("Extended Messaging Terms") are set forth below and shall prevail in the event of any conflict or inconsistency. For avoidance of doubt, the Extended Messaging Terms apply to all WATERSMART services involving automated phone calls (conventional and mobile), pre-recorded messages, text messages, and other such bulk communications (including emails outside of WATERSMART's core customer engagement offerings) (collectively, "Extended Messaging Services").

1. Utility shall be solely responsible for the content of any messages or communications to end customers which Utility initiates or authorizes in connection with the Extended Messaging Services, as well as Utility's selection of any vehicle (ie., conventional phone, mobile phone, text, email) for such messages or communications. WATERSMART shall have no responsibility or liability of any kind with respect to messages or communications initiated or authorized by Utility or its representatives. For avoidance of doubt, if the Agreement has indemnity provisions in favor of Utility such provisions shall not apply to the Extended Messaging Services, except in the event of WATERSMART's willful misconduct.
2. If Utility elects to make available to its end customers Extended Messaging Services offered by WATERSMART to alert end users of potential leaks or high water usage, the pertinent end users and Utility assume all risks associated with such alerts, and no indemnity provisions in favor of Utility shall apply to such risks (including without limitation any liability claims for failure to alert or inaccurate alerts), except in the event of WATERSMART's willful misconduct.
3. With respect to Extended Messaging Services, WATERSMART's role is limited to delivering via its technology platform Utility's communications through vehicles selected by Utility; accordingly, compliance with applicable laws (which may vary by state and locale) is strictly Utility's responsibility with respect to Extended Messaging Services notwithstanding any provision to the contrary.
4. Utility is encouraged to consult legal counsel of its own with respect to this Agreement and in reference to Federal Communications Commission Declaratory Ruling FCC 16-88 (released August 4, 2016), any Extended Messaging Services, and compliance with applicable federal, state and local laws, regulations and regulatory rulings, and ordinances. Utility shall not rely on WATERSMART or WATERSMART's representatives for legal advice or guidance concerning the content or appropriate vehicles (ie., conventional phone, mobile phone, text, email) for communications with Utility end customers.

5. In order to provide the Extended Messaging Services at efficient cost and with optimal levels of security and reliability, WATERSMART may utilize one or more third party communications technology and communications services providers. Since such providers are utilized across WATERSMART's pertinent customer base and are not specific to Utility and service choices by Utility under the Agreement, Utility acknowledges that such utilization is not considered subcontracting of WATERSMART's services under the Agreement.