



## CONSULTANT AGREEMENT

**THIS AGREEMENT** is made and entered into this “ ” day of January, 2019, by and between the **CITY OF BILLINGS, MONTANA**, a municipal corporation organized and existing under the laws of the State of Montana, P.O. Box 1178, Billings, Montana 59103, hereinafter referred to as “**CITY**,” and WaterSmart Software, Inc, 20 California Street, Suite 200, San Francisco, CA 94111, hereinafter referred to as “**CONSULTANT**.”

### **WITNESSETH:**

**WHEREAS**, **CITY** proposes to procure a software-as-a-service provider to build and host a customer portal and desires to hire **CONSULTANT** as an independent contractor to perform the services as described in the Scope of Work attached hereto as Exhibit “A” and by this reference made a part hereof.

**WHEREAS**, **CITY** has authority to contract for such services, and;

**WHEREAS**, **CONSULTANT** represents it is fully qualified to perform such services personally and is in compliance with the Montana Statutes relating to the provisions of such services.

**NOW THEREFORE**, in consideration of the mutual covenants and agreements herein contained, the receipt and sufficiency whereof being hereby acknowledged, the parties hereto agree as follows:

1. **PURPOSE**: **CITY** agrees to hire **CONSULTANT** as an independent contractor to perform the services as described in the Scope of Work attached hereto as Exhibit “A” and by this reference made a part hereof. In performing these services, **CONSULTANT** shall at all times comply with all federal, state and local statutes, rules and ordinances applicable. These services and all duties incidental or necessary therefore, shall be performed diligently and completely and in accordance with professional standards of conduct and performance.

2. **TERM**: This **AGREEMENT** shall be for a period of three (3) years, **commencing** from the date of execution of this **AGREEMENT**. This **AGREEMENT** may be extended for two (2), one year options by mutual agreement of both parties, in writing, thirty (30) days prior to termination.

3. **PAYMENT**: In consideration of the services provided by **CONSULTANT** under this **AGREEMENT**, **CITY** agrees to pay **CONSULTANT** per prices and schedule specified in Exhibit “B”. **CITY** agrees to pay **CONSULTANT** for the initial set-up fees and first



year's ongoing support and maintenance fees upon execution of this agreement. Ongoing fees will be paid annually in advance.

Except as otherwise specified herein, **CONSULTANT** shall invoice **CITY** annually for all services rendered pursuant to this **AGREEMENT**. Such invoices shall specify the services provided to **CITY** during the preceding year and identify the applicable fees, and shall be accompanied by reasonable documentation or other reasonable explanations supporting such charges.

Except as otherwise specified herein, **CITY** shall pay, net of applicable withholding tax, if any, **CONSULTANT** for said invoice within thirty (30) days after receipt.

In the event scope of work issues arise, **CONSULTANT** shall immediately discuss them with the Project Manager for **CITY**. It is understood that **CONSULTANT** will not perform any work that **CITY** deems outside the scope prior to receiving written approval from **CITY**, and at a rate agreed upon by both parties. Any payment for work not agreed upon by **CITY** shall be denied.

**4. INDEPENDENT CONTRACTOR STATUS:** The parties agree that **CONSULTANT** is an independent contractor for purposes of this **AGREEMENT** and is not to be considered an employee of **CITY** for any purpose. **CONSULTANT** is not subject to the terms and provisions of **CITY's** personnel policies handbook and may not be considered a **CITY** employee for workers' compensation or any other purpose. **CONSULTANT** is not authorized to represent **CITY** or otherwise bind **CITY** in any dealings between **CONSULTANT** and any third parties.

**5. INDEMNITY AND INSURANCE:**

- A. **CONSULTANT** agrees to indemnify, defend and save **CITY**, its officers, agents and employees harmless from any and all losses, damage and liability occasioned by, growing out of, or in any way arising or resulting from any intentional or negligent act on the part of **CONSULTANT** or its agents or employees.

**CONSULTANT** shall not indemnify, defend, save and hold the **CITY** harmless from claims, causes of action, lawsuits, damages, judgments, liabilities, and litigation costs and expenses or attorneys' fees and costs arising from wrongful or negligent acts, error or omission solely of **CITY** occurring during the course of or as a result of the performance of the **AGREEMENT**.

Where claims, lawsuits or liability, including attorneys' fees and costs arise from wrongful or negligent act of both **CITY** and **CONSULTANT**, **CONSULTANT** shall indemnify, defend, save, and hold **CITY** harmless from only that portion of claims, causes of action, lawsuits, damages, judgments, liabilities, and litigation costs and expenses including attorneys' fees and costs, which result from **CONSULTANT'S** or any subcontractor's wrongful or



negligent acts occurring as a result from **CONSULTANT'S** performance pursuant to this **AGREEMENT**.

- B. **CONSULTANT** shall maintain in good standing the insurance described in this Section. Before rendering any services under this **AGREEMENT**, **CONSULTANT** shall furnish **CITY** with proof of insurance in accordance with this Section. Consultant's defense and indemnity shall be provided to the extent insurance proceeds are available from the insurance coverages required below; Consultant's defense and indemnity liability is limited to such coverages, except for all losses, damage and liability occasioned by, growing out of, or in any way arising or resulting from any intentional act on the part of Consultant or its agents or employees. The foregoing general defense and indemnity provisions shall not apply to contexts excluded by other express terms of this Agreement.
- C. If **CITY** elects to make available to its end users optional bill payment services offered by or supported by **CONSULTANT**, which may or may not be integrated within **CONSULTANT'S** electronic interfaces, **CITY** acknowledges that such services are provided directly to **CITY** by a third party independent contractor. Such services shall not be supported by **CONSULTANT** until **CITY** enters into a mutually acceptable commercial agreement directly with such third party which shall govern **CITY'S** rights and obligations with respect to such services. The indemnity provisions above shall not apply to bill payment services, and any indemnity for such services shall be provided by the referenced third party provider.

**CONSULTANT** shall provide the following insurance:

1. Workers' compensation and employer's liability coverage as required by Montana law.
2. Commercial general liability, including contractual and personal injury coverage's -- \$1,000,000 per claim and \$2,000,000 per occurrence.
3. Automobile liability -- \$2,000,000 per accident.
4. Umbrella liability in the amount of \$3,000,000 per claim
5. Professional liability/Data Breach in the amount of \$5,000,000.

Each policy of insurance required by this Section shall provide for no less than 30 days' advance written notice to **CITY** prior to cancellation.

**CITY** shall be listed as an additional insured on all policies except Professional Liability and Worker's Compensation Policies.

In addition, all policies except Professional Liability and Worker's Compensation shall contain a waiver of subrogation against **CITY**.

**CONSULTANT** shall comply with the applicable requirements of the Workers' Compensation Act, Title 39, Chapter 71, MCA, and the Occupational Disease Act



of Montana, Title 39, Chapter 71, MCA. **CONSULTANT** shall maintain workers' compensation insurance coverage for all members and employees of **CONSULTANT's** business, except for those members who are exempted as independent **CONSULTANTS** under the provisions of §39-71-401, MCA.

**CONSULTANT** shall furnish **CITY** with copies showing one of the following: **(1)** proof of registration as a registered contractor under Title 39, Chapter 9, MCA; **(2)** a binder for workers' compensation coverage by an insurer licensed and authorized to provide workers' compensation insurance in the State of Montana; or **(3)** proof of exemption from workers' compensation granted by law for independent contractors.

**6. AGREEMENTS OF CONSULTANT:** As an inducement to the execution of this **AGREEMENT** by **CITY** and in consideration of the agreements to be performed by the **CITY**, **CONSULTANT** agrees that:

**A. Qualifications**

**CONSULTANT** is qualified to perform the services to be furnished under this **AGREEMENT** and is permitted by law to perform such services, and all personnel engaged in the work shall be qualified and so permitted to do the work they perform.

**B. Solicitation of Agreement**

**CONSULTANT** has not employed any person to solicit this **AGREEMENT** and has not made, and will not make, any payment or any agreement for the payment of any commission, percentage, brokerage, contingent fee, or other compensation in connection with the procurement of this **AGREEMENT**.

**C. Facilities and Personnel**

**CONSULTANT** has and will continue to have proper facilities and personnel to perform the services and work agreed to be performed.

**D. Subcontracting**

None of the work or services covered by this **AGREEMENT** shall be subcontracted without the prior approval of **CITY**.

**E. Affidavits of Compliance**

**CONSULTANT** will, if requested by **CITY**, furnish **CITY** affidavits certifying compliance with the provisions of this Section.

**7. AGREEMENTS OF CITY:**



- A. To furnish all labor, materials, equipment, supplies, and incidentals necessary to conduct and complete **CITY'S** portion of the project as designated in the scope of work as specified in Exhibit "A".
- B. Name a Project Manager who shall be the liaison between **CONSULTANT** and **CITY**. For this project, the Project Manager for **CONSULTANT** designated is Lindsey Fransen and the Project Manager for **CITY** designated is Stacey Teague.

**8. NONDISCRIMINATION:**

- A. **CONSULTANT** will not discriminate against any employee or applicant for employment because of race, color, religion, national origin, ancestry, age, sex, or marital status or who is a "qualified individual with a disability" (as that phrase is defined in the Americans With Disabilities Act of 1990). **CONSULTANT** will take affirmative action to ensure that applicants are employed and that employees are treated during employment without regard to their race, color, religion, or mental or physical impairment/disability. Such action shall include, without limitation, employment, upgrading, demotion or transfer, recruitment or recruiting advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training including apprenticeship. **CONSULTANT** agrees to post, in conspicuous places available to employees and applicants for employment, notices setting forth the provisions of this non-discrimination clause.
- B. **CONSULTANT** shall state, in all solicitations or advertisements for employees to work on jobs, that all qualified applicants will receive equal consideration for employment without regard to race, color, religion, national origin, ancestry, age, sex or marital status, or mental or physical impairment/disability.

**CONSULTANT** and subcontractor shall abide by the requirements of 41 CFR 60-300.5(a) and 41 CFR 60-741.5(a), which prohibit discrimination against qualified protected veterans and/or qualified individuals on the basis of disability, and requires affirmative action by covered prime contractors and subcontractors to employ and advance in employment qualified protected veterans and individuals with disabilities.

- C. **CONSULTANT** shall comply with any and all reporting requirements that may apply to it that **CITY** may establish by regulation.
- D. **CONSULTANT** shall include the provisions of Subsections A through C of this Section in every subcontract or purchase order under this **AGREEMENT**, so as to be binding upon every such sub-consultant or vendor of the **CONSULTANT** under this **AGREEMENT**.



- E. **CONSULTANT** shall comply with all applicable federal, state, and city laws concerning the prohibition of discrimination.
9. **PERMITS, LAWS, AND TAXES:** **CONSULTANT** shall acquire and maintain in good standing all permits, licenses and other entitlements necessary to its performance under this **AGREEMENT**. All actions taken by **CONSULTANT** under this **AGREEMENT** shall comply with all applicable statutes, ordinances, rules and regulations. **CONSULTANT** shall pay all taxes pertaining to its performance under this **AGREEMENT**.
10. **NONWAIVER:** The failure of either party at any time to enforce a provision of this **AGREEMENT** shall in no way constitute a waiver of the provision, nor in any way affect the validity of this **AGREEMENT** or any part hereof, or the right of such party thereafter to enforce each and every provision hereof.
11. **CONFLICT OF INTEREST:** **CONSULTANT** shall exercise reasonable care and diligence to prevent any actions or conditions which could result in a conflict with **CITY'S** interest. During the term of this Agreement, **CONSULTANT** shall not accept any employment or engage in any consulting work which creates a conflict of interest with **CITY** or in any way compromises the services to be performed under this Agreement. **CONSULTANT** shall immediately notify **CITY** of any and all violations of this Section upon becoming aware of such violation.
12. **SUCCESSORS AND ASSIGNS:** This **AGREEMENT** and all of the covenants hereof shall inure to the benefit of and be binding upon **CITY** and **CONSULTANT** respectively and his partners, successors, assigns, and legal representatives. Neither **CITY** nor **CONSULTANT** shall have the right to assign, transfer, or sublet its interest or obligations hereunder without written consent of the other party, which shall not be unreasonably withheld.
13. **CHANGES IN WORK:** Any change in the scope of **CONSULTANT'S** services as stated in this **AGREEMENT** for whatever reason, will be negotiated between **CITY** and **CONSULTANT** and an amendment to this **AGREEMENT** will be issued with the appropriate change of services and **AGREEMENT** fee noted.
14. **LEGAL RELATIONS:** **CONSULTANT** shall comply with all Federal, State, and local laws and ordinances applicable to the work to be done.
15. **TERMINATION OF AGREEMENT:** The right is reserved by **CITY** to terminate this **AGREEMENT** at any time upon not less than thirty (30) days written notice to the **CONSULTANT**.

In the event **CITY** terminates this **AGREEMENT**, **CONSULTANT** shall be paid for the amount of work performed or services rendered to date of termination per the **AGREEMENT** fee.



16. **ENDORSEMENTS:** **CONSULTANT** shall furnish signatures, statements, or other suitable means to signify responsible endorsement of work on all reports furnished by him.
17. **OWNERSHIP OF DOCUMENTS:** City shall make use of Consultant's pre-existing and proprietary Software as a Service Platform. Ownership of software is covered in Exhibit D, Software as a Service Provisions. Reproducibles of all notes, reports, and plans shall be made available at **CITY'S** request.
18. **PUBLIC INFORMATION:** **CONSULTANT** shall not issue any statements, releases, or information for public dissemination without prior written approval of **CITY**. See also Exhibit "B".
19. **PROPRIETARY RIGHTS:** Intellectual property rights to the deliverables under this contract and the WaterSmart IP are the property of Consultant as outlined in Exhibit "D".
20. **RECORDS:** **CONSULTANT** shall maintain accounting records and other evidence pertaining to the cost incurred and to make the records available at all times during the **AGREEMENT** term and for three (3) years from the date of final payment. Such accounting records and other evidence pertaining to the cost incurred will be made available for inspections authorized by **CITY** and copies thereof shall be furnished if requested.
21. **ATTORNEY'S FEES AND COSTS:** That in the event it becomes necessary for either Party to this **AGREEMENT** to retain an attorney to enforce any of the terms or conditions of the **AGREEMENT** or to give any notice required herein, then the prevailing Party or the Party giving notice shall be entitled to reasonable attorney's fees and costs.
22. **LITIGATION LOCATION:** The parties agree that this **AGREEMENT** shall be governed in all respects by the laws of the state of Montana, and the parties expressly agree that venue shall be in the Montana Thirteenth Judicial District County for Yellowstone County and there shall be no other venue for resolution of disputes arising from the **AGREEMENT** or the performance of its terms.
23. **MODIFICATION AND AMENDMENTS:** That any amendment or modification of this **AGREEMENT** or any provisions herein shall be made in writing and executed in the same manner as this original document and shall after execution become a part of this **AGREEMENT**.

IN WITNESS WHEREOF, the parties hereto have executed this instrument the day and year first above written.

**CITY OF BILLINGS, MONTANA**

\_\_\_\_\_  
**CONSULTANT (Print Name Above)**



By \_\_\_\_\_  
**WILLIAM A. COLE,**  
**MAYOR**

By \_\_\_\_\_

Print Name \_\_\_\_\_

Print Title \_\_\_\_\_

**APPROVED AS TO FORM:**

By \_\_\_\_\_  
**BRENT BROOKS, CITY Attorney**



## EXHIBIT A

### Program Overview

- Program Length: Three 12 month terms, 2 option years
- Total Accounts: 31,500
- Meter Data:
  - AMR/Manual
  - AMI
  - Rolling Reads

### Dashboard and Portal

- Utility Analytics Dashboard: Profiles for all accounts
- Customer Portal: Access for all accounts
  - Additional Portal Languages:
    - Spanish
    - UK English

### Alerts and Notifications

- Leak Detection: All Single Family Residential (SFR) Accounts, All AMI Accounts
- Leak Alerts: All Single Family Residential (SFR) Accounts, All AMI Accounts
  - Email, SMS Text, Automated Voice
  - Print
- Use Notifications: Access for all accounts
- Bill Forecast Notifications: Access for all AMI accounts

### Electronic Bill Presentment & Payments

- Bill Display:
  - Bill Amount Due/Bill History Display
  - PDF Bill Display
- Paperless Billing (requires PDF Bill Display)
- Payment Website Integration:
  - Link to Existing Payments Portal from Customer Portal via generic URL
  - Single-Sign On (SSO) with current payment vendor as identity provider
  - Embedded Payment Pages from payment partner



### **Customer Letter**

- Sent to all accounts with Portal access to provide Portal login, in advance of program

### **Water Reports**

- Residential Recipients
- Non-Residential Recipients

### **Additional Services**

- Premium Integrations: none
- On-Site Training

### **Special Circumstances**

Billings has not yet determined the Payments integration it would prefer (SSO or Embedded Payments) - will complete work on this aspect at Billings direction.



## Section 1: Introduction and Program Elements

### Introduction

WaterSmart Software (“WaterSmart”) is a customer engagement and analytics platform. City of Billings (“Utility”) has contracted with WaterSmart to implement a customer engagement program to serve its population.

The program is comprised of the following elements, which are explained in more detail below:

- Utility Analytics Dashboard: Analytics, customer support tools and Program performance data for Utility staff
- Customer Portal: Additional engagement and information for account owners
- Customer Letters: Customized communications mailed or emailed to each participant
- Single Sign On (SSO) or Click-Through Registration: If selected, WaterSmart can provide log-in to our customer Portal using third party credentials (i.e. billing provider or other government website registration information) through SSO (Single Sign-On) using the SAML 2.0 or OAUTH2 protocol. This provides for bi-directional, seamless registration to multiple portals using a single set of credentials. Alternatively, if selected WaterSmart supports Click-Through Registration for uni-directional sign-on from a third party site to WaterSmart using a URL redirect with key-based encrypted data.

As a software-as-a-service (SaaS) provider, WaterSmart provides all major program elements to the Utility:

- Program setup and initialization, including data collection;
- Hosting of WaterSmart Customer Portal and Utility Analytics Dashboard;

Utility is responsible for providing WaterSmart key program inputs including account information, regular feeds of meter data, and logos and contact information. Utility is also responsible for timely feedback and input on key program elements during initialization. Utility maintains responsibility as the primary contact for customer inquiries and technical assistance.

WaterSmart will designate a customer success manager, and the Utility shall each designate a project manager for the program. All Utility decisions shall be channeled through the Utility’s project manager. In addition, Utility shall designate a Data contact who is responsible for providing the data indicated below.

Content and design of all materials are subject to change over time, as WaterSmart incorporates new features.

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 Utility resource levels, data availability, and other unforeseeable events. WaterSmart endeavors to adhere to the proposed schedule. Utility’s responsiveness and prompt provisioning of necessary program inputs is also critical to schedule adherence. A proposed schedule is provided in Exhibit C, Schedule of Performance.



### **Utility Analytics Dashboard**

The Utility Analytics Dashboard provides analytical insights regarding customer consumption (use by account type, high users, etc.), outbound and inbound communications (outgoing leak or other alerts, incoming emails, etc.), and use of the Customer Portal (visit frequency, device access, most visited pages, etc.) The Dashboard also identifies and notifies Utility staff about suspected leaks in both AMI and non-AMI environments, and allows Utility staff to monitor compliance requirements. The Dashboard delivers information on all customer classes whose data are provided to WaterSmart and integrates external data sources like property records and maps. The Utility Analytics Dashboard is available to all Utility staff, each with their own unique login.

### **Customer Portal**

The WaterSmart Customer Self-Service Portal, available to customers through a mobile and web application interface, provides a single place for customers to see consumption, check and resolve leaks, view bills, sign up for paperless billing, and receive targeted messages about Utility promoted events and programs.

### **Alerts and Notifications**

WaterSmart provides 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.

### **Group Messenger & List Builder**

Group Messenger is 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 Utility to create a custom list of accounts to analyze or communicate with. Group Messenger supports multiple communication channels, including email, SMS text, and automated voice.

### **Electronic Bill Presentment**

If selected (specified in Program at a Glance), WaterSmart's Electronic Bill Presentment allows Utility customers to view their billing amount online. Utilities have the option to present the billing amount, or display a PDF of the bill. If a PDF of the bill is displayed, utilities can also select to use (for an additional fee) WaterSmart's paperless billing option to send a bill electronically to customers who select this service.

### **Electronic Bill Payment**

If selected (specified in Program at a Glance), an Electronic Bill Payment option is offered by WaterSmart's selected independent payment partner (named in Program at a Glance) in collaboration with WaterSmart. This allows a customer to pay a bill on the partner's payment platform from within the WaterSmart Customer Portal using payment partner's credit, debit, and e-check services. Customers can make a



one-time payment, and set up recurring payments. Utility is required to sign a separate agreement with payment partner to access this feature and acknowledges that payment partner provides all services, support, documentation and compliance related to these features, and is separately compensated per the terms of its separate agreement.

### **Customer Letter**

If selected (specified in Program at a Glance), Water utilities can optionally send a Customer Letter to explain the WaterSmart program and its benefits to end-use customers. The Customer Letter is branded for the Utility including logo, contact information, and a signature line from an appropriate representative, and informs recipients about the program and what they can expect to receive.

### **Print Leak Alerts**

Print Leak Alerts are generated and mailed for leak events if: the utility is configured to enable print leak alerts for the account's meter class, the account has an ongoing AMI leak, the account cannot be alerted by email, text, or phone, the account has not opted out of the WaterSmart program, the account has not already received a Print Leak Alert for the same leak event, or the leak event has not been alerted or cancelled by staff. The alerts are sent to the printer on either a daily or weekly basis, depending on the utility's configuration. Customers who receive Print Leak Alerts will not receive another in the 30 days following a prior Print Leak Alert. Water utilities have the option of setting leak detection thresholds for generating alerts. The default leak rate and time threshold values are the same as the utility's standard leak alerting thresholds.

## **Section 2: Program Initialization and Milestones**

Program initialization and subscription begin with Contract Signing (or Purchase Order Issue if a Purchase Order is necessary for invoicing). The Utility 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 Utility 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 Utility delays approval of a renewal or extension agreement, WaterSmart 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.*

To initialize the program, WaterSmart works with the Utility to set up the transfer of key data elements, discuss configurable elements of the Customer Portal, finalize a Customer Letter (if selected), and train Utility employees on the WaterSmart platform. Below are the key steps for the Program Initialization Phase.

### **Kickoff**

WaterSmart conducts a 60- to 90-minute introductory online meeting to orient Utility staff involved in the Program with the Customer Portal and Utility Analytics Dashboard Applications, Alerts, and Reports (if selected). WaterSmart suggests the Utility 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.

### **Data Transfer and Utility Obligations**

While WaterSmart has developed processes to minimize the burden on Utility staff to launch the program, initiative and technical know-how on the part of Utility IT staff, consultants or existing vendors is necessary. All scheduling of Utility IT time and approval of any additional AMI, CIS, or Payment vendor service agreements for the project are responsibilities of the Utility and should be confirmed in advance to ensure a timely launch. Delays on the part of the Utility may reduce the number of months the Utility and its customers are able to make use of the software platform.

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

#### **Account Information**

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

#### **Consumption History:**

WaterSmart 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 Date
- Days in Billing Cycle
- Consumption
- Bill & water allocation details as mutually agreed

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

#### **Current Consumption:**

WaterSmart also works with the Utility to set up a regular transfer of meter reads from the Utility to WaterSmart through a secure channel. This is the same file format as the Consumption History file above. WaterSmart requests, for accounts with interval data:

- Account Number
- Timestamp
- Timezone
- 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 WaterSmart to re-onboard new file structures or map historical identifiers (e.g., customers, accounts, premises, service points), WaterSmart assesses an additional one-time fee not to exceed \$10,000 up on receipt of first test files from the new system.

#### **AMI Interval Information**

- Date and time of read
- Volume of water read for interval
- Timezone including day light 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

#### **Configuration of Customer Portal**

WaterSmart's Customer Portal contains several configurable fields. WaterSmart works with the Utility to configure the Customer Portal with Utility logo and contact information. WaterSmart provides messages and recommendations for Utility to review and approve for display on a targeted basis. Utility has the opportunity to approve or exclude any recommendations shown in the Customer Portal. The Utility also has the opportunity at the start of the program to provide WaterSmart with information on available rebates and incentives that should be flagged within relevant water saving recommendations.

Utility and WaterSmart agree to complete this process in a timely manner. Utility should provide final approvals to WaterSmart no more than ten (10) business days from when initial materials are provided to Utility.

For both Messaging and Recommendations, the review process is as follows:

- WaterSmart sends default content to Utility.
- Utility project manager sends back a single, consolidated list of approved messages.
- WaterSmart's customer success manager can offer the Utility the opportunity to proof finalized content of the Customer Portal once they are configured.

#### **Spanish Language Availability**

If selected by Utility (as noted in the Program at a Glance), the WaterSmart Customer Portal is available in English and Spanish, and in any other languages specifically noted in the Program at a Glance. A customer can change their preferred language within the Portal. Payment pages may not be available in languages beyond English depending on availability from payment provider. Take Action Recommendations may not be available in languages beyond English. Customer Welcome Letters can be sent with messages in multiple languages (subject to space and character constraints). Translated text must be provided by utility.



### **Finalization of Customer Letter**

WaterSmart sends a Customer Letter (if selected), on behalf of the Utility, to accounts that receive access to the Customer Portal. The Customer Letter is branded for the Utility (has utility logo and contact information) and Utility has the ability to personalize the signature. No other customization is available. The format, design, and content of the Customer Letter is based upon existing WaterSmart documents. Content and design of all materials are subject to change over time, as WaterSmart incorporates new features. WaterSmart sends Customer Letters by email where a valid email address is available and by print otherwise.

### **Training**

After all initial customer data has been received and program content is finalized, WaterSmart provides Utility staff with training and resources to understand the features and functionality of the Customer Portal and Utility Analytics Dashboard. If selected in Program at a Glance, WaterSmart Software provides training on-site; if not selected, training is provided via webinar. On-site training may be conducted as multiple sessions on a single day.

A proposed schedule for the Program Initialization Phase is provided in Exhibit C: Schedule of Performance.

## **Section 4: WaterSmart Customer Service**

WaterSmart does not communicate directly with the Utility's customers; end-user support is the responsibility of the Utility.

### **Standard Support**

WaterSmart provides a number of tools to facilitate both end-user support as well as assist Utility staff looking to understand and maximize their WaterSmart experience:

- 1) The **WaterSmart Support Site**, which is accessible by all Utility 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** 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 Utility 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** provide the latest WaterSmart news including product releases, practical implementation case studies, a forum to interact with other WaterSmart customers and sneak previews of upcoming products and functionality.

The above support tools will be additionally complemented by the following services:

- **Dedicated Customer Success Manager (CSM manager):** The CSM manager will support the Utility program, answer questions, provide updates, support complex tasks, provide new feature updates and additional training as needed. The CSM manager is available by telephone and email to answer specific programmatic and technical questions. CSM manager support will be capped at 1 hour per week for the Utility.



- Quarterly check-in meetings – Meetings will track performance relative to Utility objectives and adjust as necessary, provide implementation support, review best practices, support outreach efforts, gather feedback and answer any questions.
- Portal content customization- The CS M anager can help the Utility create personalized messaging for the Customer Portal and outbound Engagement vehicles, including Group Messenger, if requested.

### **Maintenance of Web Applications**

WaterSmart 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 up grades, WaterSmart makes strong efforts to provide Customers and Utility with access to their respective Web applications on a continuous basis. WaterSmart provides advance notification of any planned outages and notifies Utility without unreasonable delay if it detects or receives notice of any material problems relating to the Customer Portal and/or the Utility Analytics Dashboard.

WaterSmart’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:

- Windows XP: Chrome 38+, Firefox 32+
- Windows 7, 8, 8.1, 10: IE 11+, Chrome 38+, Firefox 32+
- Mac: Chrome 38+, Firefox 32+, Safari 10+

WaterSmart’s system requirements are subject to change in the future.

### **Data Security and Privacy**

WaterSmart does not share personally identifiable customer information or customer-specific water use information with any third party without prior consent from Utility. Data transferred to WaterSmart from Utility is stored in a database dedicated to Utility and its WaterSmart 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.

WaterSmart enacts standard controls, policies, and procedures to ensure the security of Utility’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 WaterSmart server infrastructure, password authentication on all Web site interaction, and audit logging.

WaterSmart provides Utility with private key access to a secure FTP destination for regular delivery of the data. Utility agrees to send data only through this secure channel, or by having WaterSmart pull data from a secure server maintained by the Utility or Utility partner.



## Exhibit B: Payment Terms

### Compensation and Utility Obligations

For items listed in the above Scope of Services, Utility shall compensate WaterSmart according to the Fee Schedule below. **Utility acknowledges its responsibilities and obligations, in particular in regards to the expertise and planned IT commitment to provide data needs as described in the Data Specification file.** Delays on the part of the utility may reduce the number of months the Utility and its customers have access to WaterSmart products and services, but does not reduce Fee Schedule.

**Table 1: Fee Schedule**

Item	Description	Units/Price	Fee	Invoicing Schedule
<b>Set-up</b>	One-time set-up fee for program set-up and configuration	1	\$ 12,000	
<b>Customer Welcome Letters</b>	1500 @ \$0.90 each; sold in batches of 1500	31,500 @ .90 ea	\$ 28,350	
<b>Print Leak Alerts</b>	1500 @ \$0.90 each; sold in batches of 1500	4,500 @ .90 ea	\$ 4,050	
<b>On-site Training</b>	One-time fee, including travel and expenses	1	\$ 5,000	
<b>Platform</b>	Annual fee w/ 3% escalator; includes support, maintenance, hosting, and unlimited emails, texts, and calls	31,000 @ \$1.50 ea	\$ 46,500	
<b>Integration Services</b>	Annual fee for Embedded Payments or SSO	1	\$ 5,000	
<b>Year 1 Total Fee</b>			\$ 100,900	Upon Agreement Signing
<b>Year 2 Fee – Platform &amp; Integration Services</b>			\$ 53,395	Annually in Advance
<b>Year 3 Fee – Platform &amp; Integration Services</b>			\$ 54,832	Annually in Advance
<b>Year 4 Fee – Platform &amp; Integration Services</b>			\$ 56,312	Annually in Advance
<b>Year 5 Fee – Platform &amp; Integration Services</b>			\$ 57,836	Annually in Advance

### Contact for Invoices

Utility contact for all invoicing purposes is

Stacey Teague, Finance Manager

teagues@ci.billings.mt.us

406-237-6222

2251 Belknap Ave.

Billings, MT 59101



For any questions regarding WaterSmart Contracts, please contact WaterSmart Accounting at [business@watersmart.com](mailto:business@watersmart.com), 415.366.8622 x 815. All written correspondence can be sent to:  
Accounting Department, WaterSmart Software  
20 California Street, Suite 200  
San Francisco, CA 94111

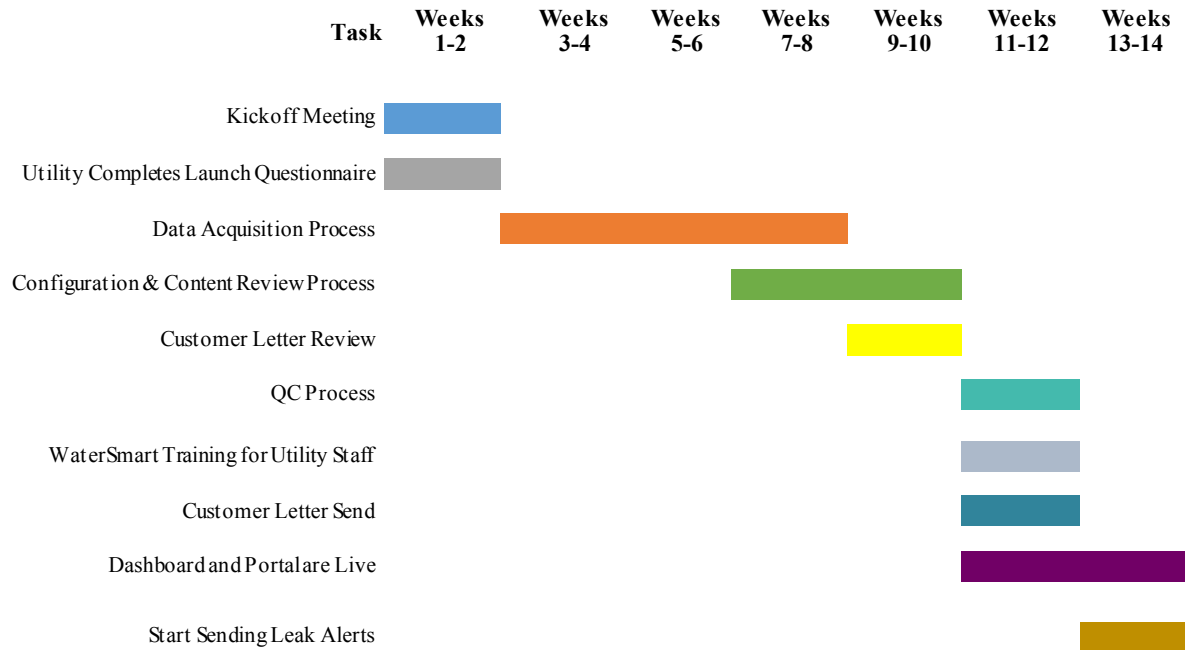


## Exhibit C: Schedule of Performance

### Initialization Schedule

WaterSmart proposes the following schedule to initialize and launch the program.

**Table 2: Estimated Initialization Schedule**





## EXHIBIT D

### 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.

#### 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, and other deliverables provided to Utility by WATERSMART, and applicable bill presentment and payment 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 Exhibit A 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 Exhibit A. 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.

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 Exhibit A, 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 claim relating to this Agreement, for any indirect, incidental, exemplary, or special 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), except losses due to Consultant's intentional bad acts, exceed insurance policy coverage limits set forth in Section 5 E of the Consultant Agreement. If Utility enters into an agreement with a third party contractor of WaterSmart related to bill payment services which specifies a lower limit of liability with respect to such services, the same limit shall apply to WATERSMART's liability (if any) with respect to such services. 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 utilizes 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 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 is not considered subcontracting of WATERSMART's services under this Agreement.

If Utility enters into an agreement with any third party contractor of WATERSMART for any 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.