



MANAGED SERVICES AGREEMENT

THIS AGREEMENT is made and entered into the ____ day of September, 2024 by and between Crestline Software, LLC, d/b/a **MuniBilling**, a Pennsylvania limited liability company with its principal place of business at 3300 Battleground Avenue, Suite 402, Greensboro, NC 27410 (hereinafter called "MuniBilling") and the **Town of Minturn, CO**, a municipality with its principal place of business at 302 Pine Street, Minturn, Colorado 81654 (hereinafter called "Client").

WHEREAS, Client is engaged in providing water, and trash service to customers situated in and around the Town of Minturn; and

WHEREAS, Client wishes to obtain certain managed services, consisting of bill generation, bill delivery, and bill payment processing services, to support its utility operations; and

WHEREAS, MuniBilling represents that it is capable of providing the services described herein and is qualified to do business in Client's jurisdiction.

NOW, THEREFORE, BE IT RESOLVED, that in consideration of the mutual covenants contained herein, it is agreed that MuniBilling, as an independent contractor, is hereby retained, authorized and instructed by Client to perform the services described herein and Client agrees to pay and MuniBilling agrees to accept payments as specified herein as compensation therefore.

- 1) **SERVICES PROVIDED BY MUNIBILLING.** MuniBilling shall provide the services described in Exhibit "A" attached hereto and made a part hereof (hereinafter collectively called "Services").
- 2) **TERM AND TERMINATION**
 - a) This Agreement shall be effective for an initial term of five (5) years from the date the Client goes live in MuniBilling's system and MuniBilling commences rendering the managed services identified herein and will automatically renew for successive one-year terms thereafter unless either party provides the other with at least ninety (90) days' advance written notice of its desire to terminate this Agreement at the end of its current term.
 - b) Upon any termination of this Agreement, MuniBilling shall be entitled to payment for work and services authorized by Client and performed by MuniBilling prior to termination, subject to the terms and provisions set forth herein.

- c) If Client breaches the terms of this Agreement, including, but not limited to, not paying on time, and does not cure such breach within 10 days after written notice of such breach, MuniBilling may, in its sole discretion, suspend all Services and/or terminate this Agreement. If MuniBilling terminates this Agreement due to Client's breach, or if Client desires to terminate this Agreement for convenience prior to the end of any current term, Client shall be responsible to pay any balance due prior to such date of termination and all unpaid fees which would be payable for the remainder of the current term or three months, whichever is greater.
- d) If MuniBilling breaches the terms of this Agreement, including, but not limited to, the failure to provide Services for more than 5 consecutive business days if not caused by Force Majeure, and MuniBilling does not cure such breach within 10 days after written notice of such breach, Client may terminate this Agreement provided it pays any amounts due and owing for Services previously rendered.

3) COMPENSATION

- a) For rendering Services, Client shall pay MuniBilling rates and charges set forth in said Exhibit "A". Each month, MuniBilling will render an itemized invoice for Services performed during the preceding month. Invoices are due and payable within thirty (30) days of the invoice. Without waiving any other rights and remedies available, any amounts not paid will be subject to a late charge equal to 1.5% of the outstanding balance per month from the date due until paid or the maximum rate allowed by law, whichever is less.
- b) The rates and charges specified in said Exhibit "A" may, as determined by MuniBilling, automatically increase under following conditions:
 - 1) If the Services include mailing customer bills, the rates and charges shall increase by the amount equal to any increase in the U.S. Postal Service rates applicable to mailing customer bills upon effective date of increase.
 - 2) If the Services include printing customer bills, the rates and charges shall increase by the amount equal to any increase in the cost of printing charged by MuniBilling's third party printer applicable to the printing of Client's customer bills upon effective date of increase.
 - 3) Increases at the beginning of each yearly anniversary of this Agreement or at any time thereafter, but not more than one time during any one-year period, to the monthly fees charged by MuniBilling equal to the percentage increase based on the Consumer Price Index, U.S. City Average (All Urban Consumer), Services, Not Seasonally Adjusted, published by the Bureau of Labor Statistics, U.S. Department of Labor, for the most recent preceding 12-month period for which the index is available. In the event said index is superseded by a new index or is discontinued, the new or similar index published by the U.S. Department of Labor shall apply.

- c) The rates and charges shall be amended upon implementation of Client's requests for changes to the character of Services or procedures in connection with performing same, in which case the parties shall prepare an addendum to this Agreement setting forth such services for a mutually agreeable compensation.
- d) MuniBilling shall notify Client in writing at least thirty (30) days prior to the effective date of any increase in the rates and charges as provided herein.
- e) Unless otherwise specified in Exhibit A, the fees chargeable by MuniBilling are stated exclusive of all taxes, duties and levies imposed by any government body. Client shall be liable and will pay for all applicable tax liabilities such as sales, services, use or value added taxes, but specifically excluding employment related taxes concerning MuniBilling personnel and corporate taxes based on MuniBilling net income or property. If Client claims exemption from any taxes resulting from this Agreement, then Client shall promptly provide MuniBilling with the relevant documentation to avail itself of such exemption including required certificates, if any, from the relevant taxing authorities.

4) PERFORMANCE

- a) In the event of any error or omission, whether human or mechanical, on the part of MuniBilling or its employees, MuniBilling will correct the work at no additional cost to Client. It is expressly understood and agreed that the liability, if any, of MuniBilling for errors or omissions shall be limited to the cost of correcting the particular error or omission.
- b) If any data, instructions, or information submitted by Client to MuniBilling for processing is incorrect or incomplete, Client agrees to reimburse MuniBilling for the additional work, costs and time required by MuniBilling to correct or complete such errors and/or omissions. Client assumes the entire responsibility for such losses or damages which may be occasioned by errors in output resulting from submission of incorrect data, instructions, or information by Client.
- c) MuniBilling shall furnish completed work in reasonable conformance with mutually agreeable schedules. If no special procedures or techniques for validating the resultant output are specified by Client and accepted by MuniBilling in writing, it is understood that the results accomplished are accepted as satisfactory upon completion of the assignment.
 - 1) All deliveries to and pick up of paper documents from MuniBilling's office, if any, shall be the responsibility of Client and shall be accomplished at Client's expense.
 - 2) MuniBilling agrees to exercise normal and reasonable precautions to protect the work and all property placed under its control or in its custody against the loss and/or damage resulting from theft, fire, vandalism, the elements or otherwise.

- 3) MuniBilling shall be responsible for maintaining all billing and customer service records for a period of three (3) years.
- 4) The parties agree that this Agreement is non-exclusive and that MuniBilling and Client have the right at each party's discretion and at any time, to contract with other parties to perform services or work of a similar nature and make agreement on any terms whatsoever with said other parties to perform said services.
- 5) **CONFIDENTIAL INFORMATION.** At all times during the term of this Agreement and for a period of three (3) years thereafter, each party will hold in strictest confidence and will not use or disclose or permit access to, by any third party (including subsidiaries and affiliates), any Confidential Information of the other party. "Confidential Information" means all nonpublic information that a party designates as confidential at the time of the disclosure or that, based on the nature of the information or circumstances surrounding its disclosure, the receiving party should in good faith treat as confidential. Confidential Information includes without limitation, information related to a party's respecting invention, products, designs, methods, know-how, techniques, systems, processes, software programs, works of authorship, customer information, customer lists, projects, plans and proposals. Confidential Information also includes information received from others (including without limitation, customers, suppliers, and/or principals) that is subject to nondisclosure obligations. Confidential Information does not include any information that: (v) was known by the receiving party without obligation of confidentiality prior to disclosure thereof by the disclosing party; (w) was in or entered the public domain through no fault of the receiving party; (x) is disclosed to the receiving party by a third-party legally entitled to make the disclosure without violation of any obligation of confidentiality; (y) is required to be disclosed by applicable laws or regulations (but in this event, only to the extent required to be disclosed); or (z) is independently developed by the receiving party without reference to any Confidential Information of the disclosing party. The parties will notify each other promptly in writing if they learn of any unauthorized use or disclosure of the Confidential Information of the other party and will cooperate in good faith to remedy the occurrence to the extent reasonably possible. The parties acknowledge that a breach of this provision would result in irreparable harm to the other party, for which money damages would be an insufficient remedy, and therefore, that the non-breaching party will be entitled to seek injunctive relief to enforce the provisions of this Section. Notwithstanding the provisions of this paragraph, MuniBilling shall have the right to list Client, a general description and magnitude of Services expressed in terms of number of utility customer accounts served by Client and/or the total revenue accruing to MuniBilling from Services for purposes of business promotion or acknowledging Client as a customer of MuniBilling.
- 6) **USE AND OWNERSHIP.** As between Client and MuniBilling, all materials, reports, data and documents directly related to Services shall be the property of Client, and MuniBilling shall treat such as confidential and shall not use such except on Client's behalf. As between

Client and MuniBilling, the programs utilized for Services shall remain the property of MuniBilling.

- 7) **INDEMNIFICATION.** MuniBilling agrees to defend, indemnify and hold harmless Client, its officers, agents and employees, from and against all loss, damage, judgment, claim, demand or penalty or expenses, and costs, including attorney's fees, incurred, in connection with actions arising out of MuniBilling's provision of the Services that are caused or occasioned solely by the gross negligence or willful misconduct of MuniBilling. The Client is responsible for verifying that the rates to be charged to its customers by MuniBilling are accurate.
- 8) **INSURANCE.** MuniBilling shall procure and maintain in effect at all times during its provision of the Services, at its own expense, insurance of the kind and in amounts as is typically maintained by companies engaged in the same or similar business. MuniBilling will provide Client certificates evidencing such insurance upon the Client's request.
- 9) **LIMITATION OF LIABILITY.** UNDER NO CIRCUMSTANCES (A) SHALL MUNIBILLING BE LIABLE TO CLIENT FOR ANY CONSEQUENTIAL, INDIRECT, SPECIAL, EXEMPLARY, PUNITIVE, OR INCIDENTAL DAMAGES, WHETHER FORESEEABLE OR UNFORESEEABLE, BASED ON OR ARISING UNDER THIS AGREEMENT (INCLUDING, BUT NOT LIMITED TO, CLAIMS FOR LOST PROFITS, LOSS OF DATA, OR LOSS OF GOODWILL), REGARDLESS OF THE FORM IN WHICH THE ACTION IS BROUGHT, OR (B) SHALL MUNIBILLING'S AGGREGATE LIABILITY FOR ANY AND ALL CLAIMS ARISING UNDER THIS AGREEMENT EXCEED THE FEES ACTUALLY PAID BY CLIENT TO MUNIBILLING IN CONNECTION WITH THIS AGREEMENT IN THE PRIOR THREE (3) MONTHS.
- 10) **DISCLAIMER OF WARRANTIES.** EXCEPT AS OTHERWISE STATED HEREIN TO THE CONTRARY, MUNIBILLING DISCLAIMS AND EXCLUDES ALL REPRESENTATIONS, WARRANTIES, CONDITIONS, AND DUTIES, WHETHER EXPRESS, IMPLIED OR STATUTORY, INCLUDING BUT NOT LIMITED TO WARRANTIES OR CONDITIONS OF TITLE, NON-INFRINGEMENT, SATISFACTORY QUALITY, MERCHANTABILITY, AND FITNESS FOR A PARTICULAR PURPOSE WITH RESPECT TO THE SERVICES PROVIDED.
- 11) **COMPLIANCE WITH LAWS AND REGULATIONS.** The parties hereto shall keep, observe and perform all requirements for applicable local, State and Federal laws, rules regulations or ordinances in connection with the performance of the work hereunder.
- 12) **INDEPENDENT CONTRACTOR.** This Agreement does not constitute and shall not be construed as constituting a partnership or joint venture between MuniBilling and Client. Neither party shall have any right to obligate or bind the other party in any manner whatsoever nor nothing herein shall give, or be intended to give, any rights of any kind to any third party. MuniBilling and Client recognize and agree that they are independent parties with no express

or implied authority to act for the other, except as expressly provided in this Agreement or any addendum thereto.

13) **ASSIGNMENT**. Client may not assign its rights or obligations hereunder, whether by operation of law or otherwise, without MuniBilling's prior express written consent. Any attempted assignment in violation of this Section shall be void. The terms of this Agreement shall bind and inure to the benefit of the parties, their respective successors, and permitted assigns.

14) **FORCE MAJEURE**. MuniBilling shall not be liable to Client for any damages, delay, or failure to perform its obligations set forth in this Agreement if caused by circumstances beyond its reasonable control. This includes but is not limited to hardware failures, telecommunications and Internet failures, acts of nature, fire, casualty, riot, pandemic, terrorist act or threat thereof, war, labor dispute, material change in applicable law or regulation, or decree of any court. Upon the occurrence of such a force majeure event, within a commercially reasonable amount of time, MuniBilling shall notify Client of the delay and the cause thereof, take reasonable steps to avoid or remove the cause, and resume performance whenever the cause is removed. MuniBilling shall not be liable for costs associated with such delay.

15) **NOTICE**. Any notice provided by this Agreement may be served in writing upon the other at the address set forth below. Notice shall be deemed to have been given three (3) business days after mailing, the next business day if delivered via a nationally recognized overnight carrier, or twelve (12) hours after sending via electronic transmission.

MuniBilling

MuniBilling
Attention: Larry Foster, President
3300 Battleground Ave, Suite 402
Greensboro, NC 27410
Email: Larry.Foster@MuniBilling.com

Client

Town of Minturn, CO
Attention: Michelle Metteer, Town Manager
301 Boulder Street, #301
Minturn, Colorado 81654
Email: Manager@Minturn.org

16) **WAIVER**. The failure of either party to require performance of any terms of this Agreement shall in no way affect the full right to require such performance at any time thereafter or the performance of all the other provisions, nor shall the waiver of any succeeding breach of such provision or any other provision operate as a waiver of the provision itself. No failure or delay in exercising a right shall constitute a waiver of that right. Except as expressly provided herein, all the parties' rights and remedies shall be cumulative, and none of them shall be in limitation of any other right or remedy in law or equity.

- 17) **SEVERABILITY**. If any terms of this Agreement are held to be invalid or unenforceable, such terms shall be construed, as nearly as possible, to reflect the intentions of the invalid or unenforceable terms, with all other terms remaining in full force and effect.
- 18) **GOVERNING LAW**. This Agreement shall be governed by and interpreted in accordance with the laws of the State of North Carolina without regard to choice of law provisions or the United Nations Convention on the International Sale of Goods.
- 19) **ARBITRATION**. Except to the extent prohibited by law, any action or proceeding seeking to enforce any provision of, or based on any right arising out of, this Agreement will be referred to and finally resolved by arbitration in Guilford County, North Carolina, in accordance with Chapter 1, Article 45 of the North Carolina General Statutes (the NC Revised Arbitration Act, the "Act"), which arbitration rules are deemed to be incorporated by reference in this section. Judgment on the arbitrator's award may be entered in any court having jurisdiction thereof. The tribunal will consist of a sole arbitrator appointed by the parties or, failing agreement within one month of the demand for arbitration, as specified by the Act. Any arbitrator shall have substantial familiarity with and at least seven years professional experience with U.S. commercial law and resolution of disputes involving such law, which familiarity may have been obtained by study of, participation in transactions involving, or litigating, adjudicating or resolving disputes involving, such laws. The arbitrator shall be free to consult independent technical or legal experts of his own choosing in resolving any dispute. The parties mutually agree to take advantage of video conferencing and other technology to reduce the need for travel in the unlikely event a proceeding occurs.
- 20) **ENTIRE AGREEMENT**. This Agreement contains the entire understanding of the parties relating to the subject matter hereof, and supersedes all prior and contemporaneous agreements or negotiations between the parties on the subject. No amendment or modification of this Agreement shall be valid or binding upon the parties unless it is in writing dated after this Agreement and signed by the duly authorized officers of the parties. No course of dealing or usage of trade may be invoked to modify the terms and conditions of this Agreement. Those provisions that are by their nature intended to survive termination of this Agreement shall survive.
- 21) **MISCELLANEOUS**. The parties may transmit signatures on this Agreement by electronic transmission, which shall be binding upon the parties. If executed in counterparts, this Agreement will be as effective as if simultaneously executed. For purposes of this section, a "signature" shall include, but is not limited to, an electronic signature. The headings, subheadings, and other captions in this Agreement are for convenience and reference only and will not be used in interpreting, construing, or enforcing any of the terms of this Agreement. Each party acknowledges that it has had the opportunity to review this Agreement with legal counsel of its choice, and there will be no presumption that ambiguities will be construed or interpreted against the drafter, and no presumptions made or inferences drawn because of the

inclusion of a term not contained in a prior draft or the deletion of a term contained in a prior draft. This Agreement may be executed in counterparts, each of which will be deemed an original, and all of which together constitute one and the same instrument.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement by their duly authorized representatives to become effective on the day and year first above written. The parties acknowledge and agree that this Agreement may be executed in counterparts and signed and transmitted electronically.

Town of Minturn, CO
EIN: 84-6000697

By: _____

Name: Michelle Metteer

Title: Town Manager

Crestline Software, LLC d/b/a MuniBilling

By: _____

Name: Kevin S. Kennedy

Title: Chief Executive Officer

EXHIBIT A

SERVICES PROVIDED BY MuniBilling ("SERVICES") & RATES and CHARGES

MuniBilling's Utility Billing Software Proposal dated July 3, 2024 is incorporated into this Agreement as Exhibit B. Any conflicts between the proposal and this Agreement or Exhibit A shall be resolved using the following precedence: this Agreement, Exhibit A, and then Exhibit B.

A. Pre-Authorized Services. Client authorizes MuniBilling to perform the following Services under this Agreement, at the rates and charges shown, without the necessity of any further authorization.

1. Client Billing and Bill Printing

MuniBilling shall prepare and render all monthly water and trash utility bills to Client's customers in accordance with Client's direction and provide the following services:

- a) Maintenance, storage and history of customer accounts on MuniBilling's system. Includes miscellaneous changes to customer master records, including import of customer meter readings (if applicable) provided by Client in electronic form. Client will have access to and use of MuniReadPro, MuniBilling's mobile meter reading app.
- b) Preparation of customer paper bills and printing and mailing customer paper bills, including return envelope and U.S. postage, with postage cost to be reimbursed by Client to MuniBilling;
- c) Generating electronic bills for transmission to customers via email;
- d) Preparation and mailing of late-payment reminders and final bills in envelopes, including first class postage, with postage cost to be reimbursed by Client to MuniBilling.

2. Client Customer Service

MuniBilling shall provide customer service for Client's customers as follows:

- a) Provide customer access to MuniBilling customer portal for payment of bills, account inquiry, establishment of new accounts, closing accounts, finalization of accounts.
- b) Manage lock-box for receipt of customers checks. Any paper check payments of customer bills not processed via lock-box must be processed and entered into MuniBilling's system manually by Client.
- c) Process electronic customer payments via ACH, IVR and credit cards. Except for the monthly merchant account fee, which shall be charged to Client, Client's customers shall pay for all Convenience fees, including any bank or merchant account transaction fees, unless Client has agreed to absorb those fees.
- d) MuniBilling shall help Client to collect delinquent customer accounts by:
 - i. Notifying Client to deliver reminder door tags in accordance with Client's established policy

- ii. Notifying Client to interrupt/suspend service to customers in accordance with Client's established policy, to help Client collect delinquent bills from customers
- e) MuniBilling shall promptly respond to Client inquiries about Client's customers and shall promptly furnish data requested by Client in response to inquiries it receives from its customers or agencies having jurisdiction over Client.
- f) Termination and Final Notices. Prepare and mail late-payment reminders and final bills in envelope, including first class postage, with postage cost to be reimbursed by Client to MuniBilling.
- g) If requested by Client, MuniBilling will accept service order requests from Client's customers and generate service order tickets within the MuniBilling system for follow up by Client. Client will have access to and use of MuniServicePro, MuniBilling's mobile service app.
- h) Call Center as a Service and Broadcast Notification as a Service is included in the scope of work to be provided by MuniBilling. MuniBilling will maintain a call center during normal business hours (8 a.m. to 7 p.m. eastern time) to answer or respond to Client's customers' billing or account inquiries. MuniBilling will send emails, text messages, and pre-recorded voice calls to notify Client's customers as directed by Client. Currently, Broadcast Notification as a Service can be used for notifying customers of Boil Water Notices, Water Outages, Late Charge Notices, and Bill Available only, provided the Client has its customer data appropriately defined, organized and updated for import into MuniBilling's system.

3. Reports

MuniBilling to provide the following monthly and periodic reports:

- a) Monthly Transaction Journal – if requested by Client, documentation of all monetary and non-monetary transactions that have been posted to a customer's account.
- b) Preliminary Meter Reading Report - a report indicating the meter readings entered for each account prior to billing. Error in readings and/or consumption will be indicated for correction.
- c) Account Balance Report - a report indicating each customer's current and past due balance.
- d) Aged Trial Balance - a report listing each customer's account with total balance, current, 30, 60, 90 and 120-day balances (available once monthly).
- e) Past Due Report - a report indicating all delinquent accounts that have a balance other than current.
- f) Consumption History Report – upon Client's request, a report listing meter usages for up to the past 24 months by rate classification and meter size.
- g) Monthly Billing Register - a report indicating each customer account billed with all pertinent information contained on the customer bill.

4. Billing, Printing and Postage Fees.

Client shall pay the following monthly fee for the services specified herein:

Managed Services Utility Billing Fee	\$2,132.00
Third Party Merchant Account Fee	\$42.00
Lockbox Management Fee	\$100.00
Third Party Printing Account Fee	\$30.00
Call Center Fee	\$132.00

If more than 600 parcels are to be billed, the Managed Services Utility Billing Fee shall be increased by \$192.50 per month for each increment of 50 parcels. In addition to the above, Client shall pay MuniBilling for the cost of printing all standard monthly bills at the rate of \$0.31/page (one-sided), which shall include a customer return envelope. Late fee notices shall be charged at the rate of \$0.31/page, which shall include a customer return envelope. A minimum fee may apply if printing less than 200 pages. The actual out-of-pocket cost of first-class postage for mailing bills and notices shall be passed through to Client.

MuniBilling will charge Client or its customers, (Client to specify if it chooses to absorb these fees itself) a convenience fee on all electronic customer payments (credit cards and telephone) based upon the following schedule:

<u>Bill Amount</u>	<u>Fee</u>
\$0.1 - \$50.0	\$1.49
\$50.01 - \$100.00	\$2.94
\$100.01 - \$150.00	\$4.39
\$150.01 - \$200.00	\$5.84
\$200.00 and up	2.99%

E-checks or ACH payments by your end use customers will be charged \$1.00/transaction, regardless of the amount paid. In addition, MuniBilling shall pass through to Client or its customers, as appropriate, any additional bank processing charges, such as returned check fees.

Checks processed through lockbox shall be charged \$2.00/transaction, regardless of the amount paid. In addition, MuniBilling shall pass through to Client or its customers, as appropriate, any additional bank processing charges, such as returned check fees.

The fee for Broadcast Notifications is dependent upon usage and shall be \$10.00 per notification event plus \$0.03 per notification (phone call, text or email) sent.

5. One-Time Setup Fees.

Client shall pay the following one-time set up fees for the services specified herein:

Implementation and Data Import Fee	\$2,750.00
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As part of the Implementation, two years of historical customer data will be imported into the MuniBilling system if Client provides access to the data in a csv file or other electronic file format that can be imported readily by MuniBilling. The Client is responsible for providing up to date customer records and data at the start of Implementation.

6. Special Services.

The following special services will be provided upon Client's request and upon the parties' written agreement:

- a) Special Customer Notices. Prepare or use Client prepared special notices and mail to customers - charge quoted for each notice.
- b) Bill Stuffers - Include Client furnished single page "bill stuffer" for mailing with customer bills (available for bills mailed in envelopes only). MuniBilling furnished "stuffer" will be quoted on a per job basis.

7. Remittance of Funds.

MuniBilling shall remit to Client all funds collected from Client's utility customers for its monthly bills as follows:

- a) Lockbox Payments. If utilized, funds received from lockbox payments will be remitted monthly by the 15th day of the month following the close of the prior month.
- b) Electronic Payments Funds processed through MuniBilling's integrated preferred electronic payment processor will be remitted directly to Client by the processor in accordance with their operating protocols. Funds are normally remitted within 2-3 business days unless Client elects to absorb the transaction fees.

EXHIBIT B

MuniBilling's proposal dated _____ is incorporated herein by this reference.

