



American Conservation & Billing Solutions

UTILITY BILLING SERVICES AGREEMENT

Buyer

Town of Palmer Lake
42 Valley Crescent
PO Box 208
Palmer Lake, CO 80133

American Conservation & Billing Solutions, Inc. (AMCOBI)

PO Box 51356
Colorado Springs, CO 80949
Telephone: (877) 410-0167
Fax: (719) 599-4057

AGREEMENT

ORDER FORM

PROPERTY & CONTACT INFORMATION			
Property Name:	Town of Palmer Lake	Contact Name:	Julia Stambaugh
Property Address:	42 Valley Crescent PO Box 208 Palmer Lake, CO 80133	Title:	Deputy Town Clerk
Bill To:	Town of Palmer Lake	Contact Phone:	(719) 481-2953
City, State, Zip Code:	Palmer Lake, CO 80133	Contact Fax:	
Account Manager:	Bobby Lee	Contact E-mail:	Julia@palmer-lake.org

PAYEE INFORMATION			
Payee Name	Town of Palmer Lake	Name:	Julia Stambaugh
Payee Address	42 Valley Crescent PO Box 208	Phone:	(719) 481-2953
City, State, Zip Code	Palmer Lake, CO 80133	Fax:	
		E-mail:	Julia@palmer-lake.org

UTILITY BILLING SERVICES FEES			
1.	Number of Billing Periods:	12	
2.	Number of Units:	1000	
3.	Service:	<input type="checkbox"/> Read/Bill <input checked="" type="checkbox"/> Read/Bill/Collect	
4.	Utilities to be Billed:	<input type="checkbox"/> Electric <input type="checkbox"/> Gas <input checked="" type="checkbox"/> Water <input type="checkbox"/> Sewer <input type="checkbox"/> Trash	
5.	Utility Bill Statement	<input type="checkbox"/> Postcard <input checked="" type="checkbox"/> Letter (8.5x11") <input checked="" type="checkbox"/> eBill <input type="checkbox"/> Management Report Only	
	Description	Amount to Charge Buyer	Amount to Charge Owner
6.	Account Setup Fee (One-time charge for new customer setup):	\$1,500 - Yr. One \$1,000 - Yr. Two \$1,000 - Yr. Three	N/A
+7.	Utility Billing Fee (per unit per month):	\$3.50	
8.	Additional Utility Billing Fee (2 nd utility):	N/A	N/A
9.	Additional Fixed Fee Items	N/A	
10.	Late Fee: <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No		
11.	Late Fee Amount: TBD per Town Policy		
12.	Warranty & Maintenance: <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	N/A	N/A
13.	Maintenance Service per Hour (Does not include travel expenses, equipment costs, materials)	N/A	N/A

UTILITY BILLING METHOD		
1.	Billing Method:	<input type="checkbox"/> RUBS <input checked="" type="checkbox"/> Metered <input type="checkbox"/> Flat Fee
2.	Common Area Deduction (%):	0%
3.	Other Deduction (%):	0%
4.	Utility Provider:	Town of Palmer Lake Water Department

AGREEMENT

I. GENERAL TERMS AND CONDITIONS

A. Clarification of the Names Used in this Agreement: This Agreement refers to AMCOBI, Buyer, Order Form, Resident Manager, Occupant, Property, and Equipment. "AMCOBI" refers to American Conservation & Billing Solutions, Incorporated. "Buyer" refers to the buyer of services and/or equipment whose name is listed on the front page of this Agreement. "Order Form" refers to the forms contained in this Agreement. "Resident Manager" refers to the person designated by Buyer as the main contact on the Order Form. "Occupant" refers to a resident or business occupant of the Property. "Property" refers to the real property of Buyer where the services described in this Agreement are to be performed as listed on the Order Form. "Equipment" refers to the item(s) sold or licensed by AMCOBI to Buyer pursuant to this Agreement or an addendum. If this Agreement is signed by more than one party for Buyer, they shall be jointly and severally liable for all obligations of Buyer under this Agreement.

B. Term, Price Adjustments, Cancellation, and Breach: The term of this Agreement shall commence when the Agreement is signed by both parties hereto and shall expire after AMCOBI has provided billing services for the number of billing periods set forth on the Order Form.

The billing fee shall remain fixed for the term of this Agreement, except for any postal increases which will be passed through at cost.

This Agreement shall be automatically renewed for succeeding terms of one month unless thirty (30) days prior to the expiration of any term, either party shall provide notice to the other party of its intention not to renew this Agreement.

Either party shall have the right to terminate this Agreement upon any of the following:

1. Immediately upon written notice to the defaulting party in the event that the defaulting party materially breaches the terms hereof and fails to cure such breach within thirty (30) days after receipt of written notice thereof from the non-defaulting party; or
2. Immediately upon written notice in the event that the other party:
 - a) Terminates or suspends its business;
 - b) Becomes subject to any bankruptcy or insolvency proceeding under federal or state law;
 - c) Becomes insolvent;
 - d) Makes a general assignment for the benefit of its creditors; or
 - e) Becomes subject to direct control by a trustee, receiver or similar authority.
3. The "Buyer" has the right to cancel agreement with AMCOBI with a thirty (30) day written notice.

In the event of any termination of this Agreement by AMCOBI, Buyer shall promptly pay AMCOBI within thirty (30) days, for all services delivered or performed by AMCOBI prior to the effective date of termination, as well as all direct and indirect costs incurred by AMCOBI in order to collect the foregoing including, but not limited to, AMCOBI's reasonable attorney's fees. If Buyer terminates this agreement, AmCoBi shall complete, without delay or error, all duties required to complete the current billing service in progress to fulfill the effective date of termination.

Buyer agrees that AMCOBI may conduct a credit check of Buyer prior to or within ninety (90) days after the execution of this Agreement. The parties agree that AMCOBI reserves the right to terminate this Agreement within one hundred (100) days after its execution if AMCOBI is not satisfied (in its own discretion) with the results of the credit check.

C. Limitation of Liability for Installation and Billing Services: FOR ALL SERVICES PERFORMED PURSUANT TO THIS AGREEMENT (INCLUDING, BUT NOT LIMITED TO, INSTALLATION AND BILLING SERVICES), IN NO EVENT WILL AMCOBI BE LIABLE FOR SPECIAL OR INDIRECT DAMAGES, OR ANY LOST BUSINESS, LOST PROFITS, LOST DATA, LOST REVENUES, OR LOST SAVINGS, REGARDLESS OF FAULT, AND REGARDLESS AS TO WHETHER AMCOBI HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES AND WHETHER OR NOT SUCH DAMAGES WERE FORESEEABLE.

D. Indemnity: Subject to section C above, and to the maximum extent permitted by law, Buyer and AMCOBI agree to indemnify, defend, and hold harmless, each other, the other directors, officers, employees, elected officials, and agents from and against all claims, losses and liabilities arising out of or resulting from grossly negligent acts or willful misconduct of the indemnifying party's employees or agents; and/or any acts performed by the other under the direction of the indemnifying party, its employees or agents.

E. Third Party Proprietary Information and Proprietary Rights: AMCOBI will not release Buyer information without written permission from Buyer. Buyer will indemnify, defend and hold harmless AMCOBI from any claims of such third party(ies) with respect to information and data furnished by Buyer to AMCOBI. Except as otherwise expressly set forth herein, AMCOBI retains for itself all proprietary rights in and to all documentation and work product developed by AMCOBI and provided to Buyer.

F. Assignment and Succession: Both parties may assign this Agreement. If this Agreement is assigned by Buyer, Buyer shall immediately provide AMCOBI written notice thereof, along with the name of the new owner, date of sale and any other information the Buyer deems relevant. If Buyer sells/transfers the Property and the transferee does not assume this Agreement at the time of the closing of the transfer, all outstanding amounts owed AMCOBI by Buyer shall become immediately due and payable.

AGREEMENT

G. Applicable Law - This Agreement is executed and delivered within the State of Colorado and that it shall be construed, interpreted, applied and enforced in accordance with the laws of that state. The court and authorities of the State of Colorado have sole jurisdiction, with venue in El Paso County, Colorado, over all controversies which may arise with respect to the execution, interpretation and compliance with this Agreement. Representative agrees to waive any other jurisdiction and venue to which it may be entitled by virtue of location of principal office or otherwise. Further, should Representative initiate or bring a suit or action in any state or federal court in a state other than the State of Colorado, Representative admits and agrees that upon application by AmCoBi, said suit shall be dismissed without prejudice and filed in the El Paso County, Colorado District Court.

H. Payment of Invoices: Buyer agrees to pay all fees designated in this Agreement, or on the Order Form or attached addendum(s). Invoices are due and payable in full within 30 days of date of invoice.

I. Waivers: No term or provision of this Agreement will be considered waived by either party, and no breach excused by either party, unless such waiver or excuse of breach is in writing signed on behalf of the party against whom the waiver is asserted. No such waiver or excuse of breach of any provision of this Agreement by either party shall be deemed to be an ongoing waiver or excuse of subsequent breaches of any provision of this Agreement by the other party. No delay or omission in the exercise of any remedy shall impair or affect a party's right to exercise the same.

J. Notices: All notices to the other party must be in writing and may be e-mailed, faxed, delivered personally, or sent by certified or registered mail, return receipt requested, or by a recognized overnight courier service. All notices shall be sent using the address designated in writing in this Agreement or subsequent addendum(s). Any notice shall be deemed given when delivered.

K. Force Majeure: Neither Party shall be liable to the other Party for any failure or delay caused by events beyond a Party's control, including, without limitation, failure to furnish necessary information requested by the other Party; actions or inactions of Occupants (including nonpayment of any amount due under this Agreement); sabotage; failure or delays in transportation or telecommunications; non-warranted failures or unauthorized substitutions of Equipment at Property; labor disputes; vendor failures; or shortages of labor, fuel, raw materials or Equipment.

In the event of any such delay or failure of performance, the date of delivery or performance shall, at the request of the Party, be deferred for a period equal to the time lost by reason of the delay. In no event shall either Party be liable for any delay or re-procurement costs for failure to meet any delivery or performance date.

L. Performance: In the event that Buyer fails to make any payment when due, or becomes insolvent, AMCOBI may either declare the entire sum remaining unpaid to be immediately due and payable and avail itself of any remedy in effect now or at the time of default under this Agreement, the Uniform Commercial Code or any other statute, including attorney's fees. Further, on delinquent accounts, AMCOBI may suspend performance under this Agreement without incurring liability to Buyer. Should AMCOBI default or fail to provide the service as outlined in this agreement, buyer may terminate without penalty. Should legal remedy be incurred it would include attorney's fees.

M. Regulatory Compliance: The terms and conditions set forth in this Agreement are subject to change upon mutual written agreement by the parties if applicable laws render practices in this Agreement unlawful in the jurisdiction of the property. In the event that applicable laws do render certain practices in this Agreement unlawful, and the parties cannot agree on an appropriate modification of this Agreement, this Agreement shall be subject to termination by either party, upon thirty (30) days prior written notice of the other party.

N. Amendments, Severability, Entire Agreement, Construction, Miscellaneous: No amendment or modification of this Agreement shall be valid or effective unless put into writing and signed by AMCOBI and Buyer. If any portion of this Agreement is invalid, illegal or unenforceable the other portions shall not be affected in any way and this Agreement shall be interpreted to enforce such provision consistent with the intentions of the parties to the maximum extent permitted by applicable law. This Agreement and all attached exhibits, addendum(s), and schedules, which collectively are called the Agreement, shall constitute the entire Agreement. All prior negotiations, proposals, bids, orders and any other communications are superseded by this Agreement and there are no other understandings, agreements, or express or implied representations.

Where this Agreement differs from any included Buyer purchase order, this Agreement prevails. The parties agree that this Agreement was fully negotiated by the parties and, therefore, no part of this Agreement shall be interpreted against the party that drafted it. All paragraph captions are for reference only and shall not be considered in construing this Agreement.

O. Nonwaiver of Governmental Immunity: The Parties recognize that the Buyer is a Colorado municipal corporation. Nothing herein shall be construed as a waiver by the Town, aka Buyer, or any of its officials, of any of the immunities, privileges and defenses available to it under the Colorado Governmental Immunity Act, as may be amended from time to time, or arising under common law.

P. NONAPPROPRIATION: Notwithstanding any other provision of the Agreement, if, at any time during the term of the Agreement, the Town does not appropriate funds for the next fiscal year to pay any amounts provided for in the Agreement, then the Town may terminate the Agreement at the end of the then current fiscal period, and in the event of such termination the Town shall not be obligated to make any payments beyond the end of the then current fiscal period. Such termination due to nonappropriation shall not constitute a breach or default under the Agreement.

AGREEMENT

II. UTILITY BILLING SERVICES

A. Utility Billing Services

AMCOBI shall provide the utility billing services indicated on the Order Form. AMCOBI reserves the right to stop providing any or all of these services if payment of services is not paid. Buyer is authorizing AMCOBI to provide the services selected on the Order Form to Buyer. By selecting the specific billing method on the Order Form, Buyer is authorizing and directing AMCOBI to provide billing to its Homeowners using that billing method. Buyer may modify the billing method (and deductions) by notifying AMCOBI in writing.

B. Homeowners

BUYER SHALL ENSURE THAT EACH HOMEOWNER TO BE BILLED IS BOUND BY AN AGREEMENT WITH BUYER TO PAY BILLS AND FEES PRESENTED BY AMCOBI IN ACCORDANCE WITH THE TERMS OF THIS AGREEMENT PRIOR TO COMMENCEMENT OF BILLING SERVICES FOR EACH APPLICABLE HOMEOWNER. Buyer shall ensure that all fees to be collected by AMCOBI from Homeowners are included in Buyer's agreements with its Homeowners including, but not limited to, monthly billing or administrative fees, setup fees, final bill fees, vacant unit cost recovery fees, late fees, late notice fees, maintenance fees, collection fees and non-sufficient fund fees.

Buyer shall be solely responsible for pursuing any legal remedies against an Homeowner who does not pay AMCOBI bills. Parties, to the fullest extent permitted by law, shall indemnify, hold harmless and defend the other Party and its officers, employees, elected officials, and agents from and against any and all claims, losses, costs, damages, lawsuits, judgments, liabilities, including attorneys' fees and expenses, arising or alleged to have arisen out of or resulting from the performance or failure in performance of the other Party's obligations under this paragraph B.

C. Miscellaneous Government Requirements

Buyer shall be solely responsible for performing all government and/or utility company mandated tests and filings, such as safe drinking water testing, meter tests, state or local filings, and for complying with all applicable regulations related to the services performed pursuant to this Agreement, including, but not limited to landlord-tenant laws. Buyer shall also be solely responsible for obtaining permission to perform submetering or allocation services from government agencies or utility companies (where required). AMCOBI shall not be liable for an interruption of services under this Agreement arising from any action or inaction of any governmental agency.

D. Training

Buyer shall ensure that the Palmer Lake billing staff or other responsible property personnel participate in a training session with an AMCOBI representative for Buyer's account prior to the commencement of AMCOBI's billing services under this Agreement.

E. Initial Buyer Responsibilities. Buyer agrees that, as soon as possible after the execution of this Agreement, it will provide AMCOBI with the following information: an address listing; a Homeowner roster, balance transfer amounts (if applicable and all utility bills received by the Property in the twelve (12) preceding months, or 3 years, (if applicable) (collectively known as the "Setup Information"). After receipt of Setup Information, AMCOBI will schedule a start date for the performance of services under this Agreement; and this start date shall be determined by AMCOBI at its sole discretion.

Buyer must provide AMCOBI with Setup Information that will be valid as of the scheduled start date. AMCOBI reserves the right to alter the scheduled start date at any time. Buyer acknowledges that AMCOBI's obligations to initiate the services in this Agreement are contingent upon the (1) receipt of timely Setup Information and (2) AMCOBI's ability to obtain accurate and complete meter reads and that AMCOBI may postpone the start date until timely Setup Information is received and accurate and complete meter reads are obtained.

F. Recurring Buyer Responsibilities

Buyer shall cause the Billing Staff to provide AMCOBI with monthly Homeowner status changes including move-in and move-out, renewals, credits and other items affecting billing. Buyer and AMCOBI shall agree to work together to provide AMCOBI with access to monthly meter reads in a timely manner. If not possible Buyer agrees to deliver said utility bills within two days of receipt of the meter reads at the Palmer Lake office. AMCOBI shall report all changes in utility rates charged by the Town of Palmer Lake. Buyer also acknowledges that AMCOBI's obligations to provide services under this Agreement are contingent upon the timely provision of the information in this paragraph and that AMCOBI may delay billing services until such information is received. Notwithstanding any provision of this Agreement to the contrary, Buyer agrees and acknowledges that AMCOBI will not be liable for any losses or damages (whether to Buyer or third parties) resulting from the misuse of or tampering with Buyer's account information contained on AMCOBI's website resulting from the negligence of Buyer.

G. Reporting

AMCOBI will provide Buyer with AMCOBI's standard reports (which may change from time to time) at no charge on AMCOBI's website, via e-mail in electronic format, or in hard copies.

H. Units to be Billed. AMCOBI will not bill Buyer for vacant homes with no consumption.

AGREEMENT

I HAVE READ THIS AGREEMENT ("AGREEMENT") INCLUDING THE ATTACHMENT (S) CAREFULLY, UNDERSTAND IT COMPLETELY, AND AGREE TO ALL OF IT. THIS AGREEMENT CONSISTS OF THE ORDER FORM AND THE GENERAL TERMS AND CONDITIONS ATTACHED BELOW AND ANY ADDITIONAL TERMS AND CONDITIONS DESCRIBED ON THE ATTACHED ADDENDUM (S), ALL OF WHICH ARE INCORPORATED HEREIN BY REFERENCE.

I AM AUTHORIZED TO EXECUTE THIS AGREEMENT ON BEHALF OF BUYER OR AMERICAN CONSERVATION & BILLING SOLUTIONS, INC. AS INDICATED BELOW.

Accepted for: Town of Palmer Lake	Accepted for: American Conservation & Billing Solutions, Inc.
Accepted by: <u>DAWN A COLLINS,</u> TOWN ADMINISTRATOR/CLERK	Accepted by: Bobby Lee, Director of Sales
<u>DA Collins</u> <u>3/12/2021</u> (Signature) (Date)	_____ (Signature) (Date)