

**COMMISSIONERS JOURNAL NO. 73 - DELAWARE COUNTY
MINUTES FROM REGULAR MEETING HELD OCTOBER 12, 2020**

THE BOARD OF COMMISSIONERS OF DELAWARE COUNTY MET IN REGULAR SESSION ON THIS DATE WITH THE FOLLOWING MEMBERS PRESENT:

Present:
Jeff Benton, President
Gary Merrell, Vice President
Barb Lewis, Commissioner

1
RESOLUTION NO. 20-896

IN THE MATTER OF APPROVING THE ELECTRONIC RECORD OF THE PROCEEDINGS FROM REGULAR MEETING HELD OCTOBER 8, 2020:

It was moved by Mrs. Lewis, seconded by Mr. Merrell to approve the following:

WHEREAS, the Board of Commissioners of Delaware County, Ohio (the "Board") met in regular session on October 8, 2020; and

WHEREAS, the Clerk of the Board has certified, pursuant to section 305.11 of the Ohio Revised Code, that the entire record of the proceedings at that meeting is completely and accurately captured in the electronic record of those proceedings;

NOW, THEREFORE, BE IT RESOLVED that the Board hereby approves the electronic record of proceedings at the previous meeting.

Vote on Motion Mr. Merrell Aye Mrs. Lewis Aye Mr. Benton Aye

2
RESOLUTION NO. 20-897

IN THE MATTER OF APPROVING PURCHASE ORDERS, THEN AND NOW CERTIFICATES, AND PAYMENT OF WARRANTS IN BATCH NUMBERS CMAPR1009:

It was moved by Mr. Merrell, seconded by Mrs. Lewis to approve Then And Now Certificates, payment of warrants in batch numbers CMAPR1009 and Purchase Orders as listed below:

<u>Vendor</u>	<u>Description</u>	<u>Account</u>	<u>Amount</u>
PO' Increase			
Hoffman/Alloway (P2001257)	Lab Analyses Regional Sewer	66211900-5301	\$10,000.00
Flora's Diesel (P2000949)	Service Center Fuel	10011106-5228	\$ 6,988.00
Flora's Diesel	Service Center Fuel	10011106-5328	\$ 6,819.00
Endicott Microfilm (P2001161)	Records Center Services	10011103-5201	\$ 8,095.00

<u>PR Number</u>	<u>Vendor Name</u>	<u>Line Description</u>	<u>Line Account</u>	<u>Amount</u>
R2004375	OPENGOV INC	PREMIUM SUPPORT	10011102 - 5320	\$5,988.96
R2004509	TREASURER,STATE OF OHIO	COMPUTERS & ACCESSORIES - JFS	22711328 - 5201	\$28,980.00
R2004509	TREASURER,STATE OF OHIO	COMPUTERS & ACCESSORIES - JFS	22711328 - 5260	\$44,900.00
R2004513	ADVIZEX TECHNOLOGIES LLC	COMPUTERS	10011102 - 5201	\$19,353.58
R2004513	ADVIZEX TECHNOLOGIES LLC	COMPUTERS	10011102 - 5260	\$4,299.55
R2004513	ADVIZEX TECHNOLOGIES LLC	COMPUTERS - FACILITIES	10011106 - 5201	\$6,542.69
R2004513	ADVIZEX TECHNOLOGIES LLC	COMPUTERS - FACILITIES	10011106 - 5260	\$1,074.77
R2004513	ADVIZEX TECHNOLOGIES LLC	COMPUTERS - COMMON PLEAS	10025201 - 5201	\$634.79
R2004513	ADVIZEX TECHNOLOGIES LLC	COMPUTERS - JUVENILE COURT	10026201 - 5201	\$14,869.75
R2004513	ADVIZEX TECHNOLOGIES LLC	COMPUTERS - DOG WARDEN	20411305 - 5201	\$2,379.16
R2004513	ADVIZEX TECHNOLOGIES LLC	COMPUTERS - CLERK OF COURTS	24820101 - 5201	\$634.79

**COMMISSIONERS JOURNAL NO. 73 - DELAWARE COUNTY
MINUTES FROM REGULAR MEETING HELD OCTOBER 12, 2020**

R2004513	ADVIZEX TECHNOLOGIES LLC	COMPUTERS - CLERK OF COURTS	24820102 - 5201	\$634.79
R2004513	ADVIZEX TECHNOLOGIES LLC	COMPUTERS - ENGINEER	29214001 - 5201	\$6,982.69
R2004513	ADVIZEX TECHNOLOGIES LLC	COMPUTERS - ENGINEER	29214009 - 5260	\$5,373.85
R2004513	ADVIZEX TECHNOLOGIES LLC	COMPUTERS - ADMIN SERVICES	61311923 - 5201	\$1,189.58
R2004513	ADVIZEX TECHNOLOGIES LLC	COMPUTERS - REGIONAL SEWER	66211900 - 5201	\$5,713.11
R2004513	ADVIZEX TECHNOLOGIES LLC	COMPUTERS - REGIONAL SEWER	66211900 - 5260	\$8,598.16

Vote on Motion Mrs. Lewis Aye Mr. Merrell Aye Mr. Benton Aye

**3
RESOLUTION NO. 20-898**

IN THE MATTER OF APPROVING THE SANITARY SEWER IMPROVEMENT PLANS FOR PIATT PRESERVE SECTION 1:

It was moved by Mrs. Lewis, seconded by Mr. Merrell to approve the following sanitary sewer improvement plans for submittal to the Ohio EPA for their approval:

WHEREAS, the Sanitary Engineer recommends approval of the sanitary sewer improvement plans for Piatt Preserve Section 1;

NOW, THEREFORE, BE IT RESOLVED that the Board of Commissioners approves the sanitary sewer improvement plans for Piatt Preserve Section 1 for submittal to the Ohio EPA for their approval.

Vote on Motion Mr. Benton Aye Mr. Merrell Aye Mrs. Lewis Aye

**4
RESOLUTION NO. 20-899**

IN THE MATTER OF APPROVING A SERVICES AGREEMENT WITH SMARTBILL LTD. FOR QUARTERLY PRINTING, MAILING AND PROVIDING PDF'S OF SEWER BILLS:

It was moved by Mr. Merrell, seconded by Mrs. Lewis to approve the following:

WHEREAS, the Sanitary Engineer recommends approval of an agreement with SmartBill Ltd. for Quarterly Printing, Mailing and Providing PDF's of Sewer Bills;

NOW, THEREFORE, BE IT RESOLVED by the Board of County Commissioners of the County of Delaware, State of Ohio, that:

Section 1. The Board of Commissioners of Delaware County, Ohio approves the agreement with SmartBill Ltd. for Quarterly Printing, Mailing and Providing PDF's of Sewer Bills.

Section 2. The County Administrator is hereby authorized to execute the agreement with SmartBill Ltd. for Quarterly Printing, Mailing and Providing PDF's of Sewer Bills.

**SmartBill
Production agreement**

This Production Agreement ("**Agreement**") is made and entered into this 12th day of October, 2020 ("**Effective Date**"), by and between SMARTBILL, LTD., an Ohio corporation ("**SmartBill**"), and Delaware County Board of Commissioners ("**Client**", and collectively with SmartBill, Ltd., "**Parties**"; Client and SmartBill may each be generically referred to as a "**Party**"). In consideration of the mutual promises and covenants contained below, and other good and valuable consideration, the receipt and sufficiency of which the Parties hereby acknowledge, the Parties agree as follows:

Section 1. Scope of Production Agreement. SmartBill agrees to provide to Client the "**Services**" set forth in Schedule 1 attached hereto and incorporated herein by this reference, and Client agrees that SmartBill shall be Client's sole and exclusive provider of goods and/or services of the type or nature of the Services during the Term (as defined below). During the Term, Client agrees to furnish all data and documentation requested by SmartBill to perform the Services. Client requires and shall purchase, and SmartBill agrees to produce, a minimum quarterly quantity of twenty-one thousand (21,000) statements ("**Minimum Commitment**") based upon the rates

**COMMISSIONERS JOURNAL NO. 73 - DELAWARE COUNTY
MINUTES FROM REGULAR MEETING HELD OCTOBER 12, 2020**

and terms provided herein. In the event that Client does not fulfill the Minimum Commitment for a given quarter, Client shall pay to SmartBill a "**Minimum Processing Fee**" equal to the product of (i) the difference between the Minimum Commitment and the actual number of statements ordered by Client for the relevant quarter, multiplied by (ii) the effective per statement rate.

Section 2. Fees. Client agrees to pay SmartBill fees for the Services as set forth in Schedule 2 attached hereto and incorporated herein by this reference ("**Fees**", which Fees are subject to adjustment as set forth below). SmartBill will invoice Client for the Services provided each quarter on or before the 15th day of the subsequent month, provided that SmartBill may immediately provide the invoice following the conclusion of each quarter ("**Invoice**"). Invoices are due upon receipt, and will be considered past due if not paid in full within thirty (30) days of receipt. A late fee will be assessed on Invoices not paid within thirty (30) days of receipt as set forth in Section 3 below ("**Late Fee**"). SmartBill will not increase the Fees for a period of twelve (12) months from the Effective Date ("**Initial Pricing Period**"). SmartBill may increase the Fees following the Initial Pricing Period at the discretion of SmartBill upon written notice to Client, provided that (i) SmartBill may increase the Fees no more than one (1) time during any twelve (12) month period following the Initial Pricing Period (each such twelve (12) month period, a "**Pricing Period**") and (ii) SmartBill may not, during any Pricing Period, increase the Fees by more than ten percent (10%) of the Fees in effect during the preceding Pricing Period. The fees contained in this agreement shall not exceed \$25,000 in the one-year term if total scope of contract remains the same. In the event that Client terminates this Agreement as permitted herein by providing a termination notification, then Client will be responsible for paying for all Fees accrued and Services rendered between the termination notice date and the termination effective date.

Section 3. Late Payment Fees. The Late Fee will equal one and one-half percent (1.5%) each thirty (30) days on the amounts due under the relevant unpaid Invoices, accruing as follows: (i) one and one-half percent (1.5%) of the entire unpaid Invoice amount shall accrue immediately following the thirtieth (30th) day after receipt of such Invoice; and (ii) following the 30th day after receipt of the unpaid Invoice, daily at the corresponding rate of one thirtieth (1/30) of one and one-half percent (1.5%) or five hundredths of one percent (0.05%).

Section 4. Term. The term of this Agreement shall commence on the Effective Date and continue for a period of one and one half (1 1/2) years. The term of this Agreement shall commence on the Effective Date of November 1, 2020 and continue thru April 30, 2022 ("**Term**"); provided, however that this Agreement may be terminated in accordance with certain other provisions set forth in this Agreement.

Section 5. Postage. Client shall deposit a permanent postage deposit with SmartBill in the amount specified on Schedule 3 ("**Postage Deposit**") no later than ten (10) days after the Effective Date. SmartBill may, in its sole discretion, adjust the Postage Deposit amount due to changes in Client's volume, postage usage, postal rates or payment history, or any other reason deemed appropriate by SmartBill, so long as Client is provided advance written notice of such adjustment. Upon termination of this Agreement, SmartBill shall return the Postage Deposit to Client after Client has paid for all Services and postage provided to or on the behalf of Client in performance of the Services. If this Agreement is terminated due to a default by Client, upon such a termination SmartBill may apply any of the Postage Deposit or any other Client's funds that SmartBill holds against any sums that Client owes SmartBill. **IF CLIENT FAILS TO MAINTAIN THE DEPOSIT AT THE REQUIRED LEVELS, OR IF CLIENT FAILS TO TIMELY PAY ALL INVOICES AS SPECIFIED IN SECTION 2, SMARTBILL MAY IMMEDIATELY SUSPEND ITS PERFORMANCE OF ALL ITS DUTIES, SERVICES, AND OBLIGATIONS UNDER THIS AGREEMENT UNTIL THE DEPOSIT IS PROPERLY PAID AND MAINTAINED AND ALL OUTSTANDING INVOICES ARE PAID.**

Section 6. Expenses. Client will reimburse SmartBill for all costs and expenses associated with the performance of Services for Client, such as costs and expenses associated with, freight, delivery service and other required supplies in connection with providing the Services ("**Expenses**").

Section 7. Termination. Upon breach or default with respect to any term contained herein by a Party, regardless of whether such term is material or not ("**Default**"), the non-Defaulting Party may send the Defaulting Party a notice of such Default ("**Notice of Default**"). If such noticed Default remains uncured for thirty (30) days after the Defaulting Party's receipt of the Notice of Default, this Agreement shall be terminated unless the non-Defaulting Party agrees or specifies otherwise in writing. Neither Party may terminate this Agreement unless (i) such Party terminates this Agreement pursuant to this Section after the other Party Defaults or (ii) such Party provides appropriate notice of nonrenewal pursuant to Section 4 in order to end the Term of this Agreement. Examples of Default include, but are not limited to, the: (a) failure of Client to pay for all goods and/or Services as provided in this Agreement; (b) non-Appropriation of funds by [authorizing agent]; (c) any other Default by Client or SmartBill with respect to any term or condition of this Agreement.

**COMMISSIONERS JOURNAL NO. 73 - DELAWARE COUNTY
MINUTES FROM REGULAR MEETING HELD OCTOBER 12, 2020**

Section 8. Force Majeure. Other than any obligation to pay money, neither Party shall be responsible for delays or failures in performance resulting from acts or occurrence beyond the reasonable control of such Party, including, without limitation, the following: fire, explosion, power failure, flood, earthquake, or other act of god; war, revolution, civil commotion, terrorism, or acts of public enemies; any law, order, regulation, ordinance, or requirement of any government or legal body or any representative of any such government or legal body; or labor unrest, including without limitation, strikes, slowdowns, picketing or boycotts (“**Force Majeure**”). In such Force Majeure, the Party affected shall be excused from such performance, on a day-to-day basis. Likewise, such other Party not directly affected by such Force Majeure shall also be excused from performance of its obligations on a day-to-day basis to the extent such party’s obligations relate to the other Party’s performance interfered with by the Force Majeure.

Section 9. Confidentiality. SmartBill agrees that any and all data, reports and documentation supplied by Client or its affiliates or third parties on Client’s behalf that are non-public and confidential shall, subject to the disclosure required for the performance of SmartBill’s obligations hereunder, not be intentionally or recklessly disclosed or otherwise disseminated by SmartBill without the consent of Client.

Section 10. WARRANTIES/DISCLAIMER OF WARRANTIES. SmartBill shall provide all goods and/or Services in accordance with the terms specifically set forth in Schedule 1. The parties hereto agree that this Agreement is only for the production of those goods and/or Services set forth in Schedule 1. **ALL WARRANTIES NOT EXPRESSLY PROVIDED IN THIS AGREEMENT ARE HEREBY DISCLAIMED. CLIENT EXPRESSLY ACKNOWLEDGES THAT IT IS NOT RELYING ON ANY OTHER STATEMENT NOT CONTAINED IN THIS AGREEMENT AND THAT THIS WARRANTY CONSTITUTES THE ONLY WARRANTY WITH RESPECT TO THE GOODS AND SERVICES TO BE PROVIDED TO CLIENT. THE STATED WARRANTY IS IN LIEU OF ALL OTHER WARRANTIES, WRITTEN OR ORAL, STATUTORY, EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, THE WARRANTY OF MERCHANTABILITY AND THE WARRANTY OF FITNESS FOR PARTICULAR PURPOSE.**

Section 11. Limitation of Liability. The liability of SmartBill with respect to any failure to provide the goods and/or Services as required under this Agreement shall be limited to the processing and service fees actually paid to SmartBill for the defective goods or services. The liability of SmartBill with respect to any Default hereunder shall be limited to the Fees actually paid to SmartBill for the good and services claimed to be in Default. **SMARTBILL IS NOT LIABLE FOR INCIDENTAL OR CONSEQUENTIAL DAMAGES, INCLUDING BUT NOT LIMITED TO LOST PROFIT OR INCOME.** Client has accepted this restriction on its right to recover incidental and consequential damages as a part of its bargain with SmartBill. Client acknowledges that SmartBill’s Fees would be higher if SmartBill were required to bear the risk of responsibility for these damages.

Initial: Delaware County Board of Commissioners _____ SmartBill _____

Section 12. Governing Law and Jurisdiction. Except to the extent governed by applicable federal law, this Agreement shall be interpreted under and governed by the laws of the State of Ohio, and any dispute between the Parties, whether arising under this Agreement or from any other aspect of the parties’ relationship, shall be governed by and determined in accordance with the substantive laws of the State of Ohio, regardless of conflicts of laws. The Parties agree that the exclusive venue for disputes between them shall be the Common Pleas Courts of Ohio, and each party hereby waives any objection it might have to the personal jurisdiction of or venue in such courts and waives any right to file or remove any such action or claim to federal court.

Section 13. Severability. If any provision of this Agreement is deemed invalid or unenforceable for any reason whatsoever, such provision will be fully severable; this Agreement shall be construed and enforced as if such invalid, or unenforceable provision were not a part of this Agreement; and the remaining provisions of this Agreement will remain in full force and effect and will not be affected by the invalid or unenforceable provision or by its severance from this Agreement. Further, in lieu of such illegal, invalid, or unenforceable provision, there will be automatically as part of this Agreement a provision as similar in terms to such invalid or unenforceable provision as may be possible and be valid and enforceable.

Section 14. Waiver; Modification of Agreement. No waiver, amendment or modification of any of the terms of this Agreement shall be valid unless in writing and signed by authorized representative of both Parties hereto. Failure by either Party to enforce any rights under this Agreement shall not be construed as a waiver of such rights. Further, to the extent that a provision is waived in strict accordance with the above guidelines, no waiver of any provision of this Agreement shall constitute a waiver of any other provision or term not expressly waived in writing and signed by authorized representative of both Parties hereto, nor shall any waiver constitute a continuing waiver unless otherwise provided in writing.

**COMMISSIONERS JOURNAL NO. 73 - DELAWARE COUNTY
MINUTES FROM REGULAR MEETING HELD OCTOBER 12, 2020**

Section 15. Notice. All notices must be in writing and if not personally delivered, be sent by facsimile, first class mail, nationally recognized overnight, delivery services or by electronic mail. Mailed notices will be effective on the other Party upon receipt. Notice by personal delivery or delivery service will be effective when delivered. When sent by facsimile or electronic mail, notice will be effective on the day the transmission is received by the recipient provided that (a) a duplicate copy of the notice is promptly given by overnight delivery, or (b) the receiving party delivers a written confirmation of receipt. Either party may change the address to which notices are to be sent by giving notice of such a change to the other party. Addresses for notice purposes are as follows:

SmartBill: SmartBill, Ltd.
1050 O'Neill Drive
Hebron, OH 43025
Facsimile: 740-928-5438
Email: robh@smartbillcorp.com

Client: Delaware County Regional Sewer District
50 Channing Street
Delaware, OH 43015
Facsimile: 740-833-2239
Email: RDeWitt@co.delaware.oh.us

Section 16. Entire Agreement. This Agreement and its exhibits and schedules constitute the final, complete, and exclusive statement of the terms of the agreement between the Parties pertaining to the production of goods and Services for Client by SmartBill, and supersede all prior and contemporaneous understandings or agreements of the Parties. **NO PARTY HAS BEEN INDUCED TO ENTER INTO THIS AGREEMENT, NOR IS ANY PARTY RELYING ON ANY REPRESENTATION OR WARRANTY OUTSIDE THOSE EXPRESSLY SET FORTH IN THIS AGREEMENT.**

Section 17. Attorney Fees. Each party shall bear their own costs of bringing an action including court costs and attorney fees subject to an Offer of Judgment made under the Ohio Rules of Civil Procedure. SmartBill shall have the right to seek attorney fees in an action brought to recover fees owed for services provided that are not subject to dispute.

Section 18. Successors and Assigns. This Agreement shall be binding upon and shall inure to the benefit of all the successors and assigns of the Parties hereto. The Parties hereto execute this Agreement through their duly authorized officers, as of the day and year first written above.

Section 19. Authority to Bind. SmartBill and Client warrant that the person executing this Agreement has full and legal authority to execute this Agreement for and on behalf of its respective legal entity it is purporting to bind to the terms of this Agreement, as well as the full legal ability to bind such legal entity to the terms contained in this Agreement.

Section 20. No Partnership or Joint Venture. No agency, partnership, joint venture or other relationship is intended hereby, and neither party shall be deemed the agent, servant, employee, partner or joint venturer of the other party. Client and SmartBill shall not, in any way or for any reason be deemed to have become a partner of the other in the conduct of its business or otherwise, or a joint venturer. In addition, by virtue of this Agreement, there shall not be deemed to have occurred a merger or any joint enterprise between Client and SmartBill.

Section 21. Cooperation of Parties. Each party agrees to cooperate in good faith with the other party in all aspects of accomplishing the intent of this Agreement, including but not limited to signing documents and taking other actions as may be reasonably necessary or proper for such purpose.

Section 22. Headings. Headings or captions in this Agreement are inserted for convenience of reference only and do not define, describe or limit the scope or intent of this Agreement or any of the terms hereof.

Section 23. Interpretation. All provisions herein shall be construed in all cases as a whole according to its fair meaning, neither strictly for nor against either Client or SmartBill and without regard for the identity of the party initially preparing the same. Titles and captions are inserted for convenience only and shall not define, limit or construe in any way the scope or intent of this Agreement. References to sections are to sections as numbered in this Agreement unless expressly stated otherwise.

Section 24. Counterparts. This Agreement may be signed in multiple counterparts which, when duly delivered and taken together, shall constitute a binding Agreement between all parties.

Section 25. Exhibits. All exhibits attached to this Agreement are incorporated herein by reference.

COMMISSIONERS JOURNAL NO. 73 - DELAWARE COUNTY
MINUTES FROM REGULAR MEETING HELD OCTOBER 12, 2020

Section 26. Joint and Several Liability. If any party consists of more than one person or entity, the liability and responsibilities of each such person or entity with respect to this Agreement shall be joint and several.

Section 27. Extension of Performance Deadline if Non-Business Day. If the date for performance of any obligation of the parties to this agreement falls on a non-Business Day, then the performance of the relevant obligation shall become due on the next Business Day following such date.

Section 28. Legal Counsel. Client and SmartBill acknowledge that they have been represented, or have had the opportunity to be represented, by counsel of their own choice. Neither Client nor SmartBill is relying upon any legal advice from the other party’s counsel regarding the subject matter hereof. Both parties acknowledge that they understand the terms and conditions of this Agreement and the terms and conditions of all other documents and agreements executed in connection herewith and that they sign the same freely. Neither Client nor SmartBill shall deny the enforceability of any provision of this agreement or any of the other documents or agreements executed in connection herewith on the basis that it did not have legal counsel.

Vote on Motion Mr. Merrell Aye Mr. Benton Aye Mrs. Lewis Aye

5
RESOLUTION NO. 20-900

IN THE MATTER OF APPROVING THE PIPELINE RELOCATION AGREEMENT BY AND BETWEEN COLUMBIA GAS OF OHIO, INC. AND DELAWARE COUNTY FOR E. POWELL ROAD:

It was moved by Mrs. Lewis, seconded by Mr. Merrell to approve the following:

WHEREAS, the County Engineer recommends approving the Pipeline Relocation Agreement by and between Columbia Gas of Ohio, Inc. and Delaware County for E. Powell Road;

NOW, THEREFORE, BE IT RESOLVED that the Delaware County Board of Commissioners approves the Pipeline Relocation Agreement by and between Columbia Gas of Ohio, Inc. and Delaware County for E. Powell Road as follows:

Job Order No. 20-0081915-01

Pipeline Relocation Agreement

This Pipe Relocation Agreement (“Agreement”) is made as of the 14th of September, 2020, by and between Columbia Gas of Ohio, Inc., an Ohio corporation with offices at 3550 Johnny Appleseed Ct. Columbus, Ohio 43231, hereinafter referred to as “Columbia,” and Delaware County, whose address is 50 Channing St. Delaware, Ohio 43015, hereinafter referred to as “Requestor.” Columbia and Requestor are each a “Party” and collectively referred to as “the Parties.”

Witnesseth

WHEREAS, Columbia owns and operates a 4 inch pipeline, located along the south side of E. Powell Rd., in Delaware County, Ohio; and

WHEREAS, Requestor wishes to have a portion of the pipeline and any related pipeline facilities relocated in order to permit certain construction or other activity in the vicinity of said pipeline, and Columbia is willing to relocate a portion of the pipeline subject to the conditions set forth below.

NOW, THEREFORE, in consideration of the mutual covenants and promises contained herein, and intending to be legally bound, the Parties hereby agree as follows:

1. Requestor requests relocation of Columbia’s pipeline and any related pipeline facilities as follows: Installing 1,312’-2” PMMP on the north and south sides of E. Powell Rd. Requestor shall pay eleven percent (11.43%) of any and all direct and indirect costs associated with the pipeline relocation.

2. Requestor shall deposit the sum of **\$5,078.00** (the “Deposit”) with Columbia, which sum is an estimated cost of relocating Columbia’s pipeline. Said cost of relocation shall include any and all costs including, but not limited to, cost of right-of-way acquisition, permit fees, materials, contractor mobilization, and labor. Requestor acknowledges and agrees that the Deposit is based upon both the information available and circumstances known to Columbia as of the date of the execution of this Agreement. Requestor further agrees and acknowledges that the Deposit may be increased, pursuant to this Paragraph 2 and Paragraph 3 below. If Requestor cancels or postpones its contemplated construction project or other activity, Requestor shall reimburse Columbia for all costs (direct and indirect) expended or obligated at the time of cancellation or postponement, including costs which may have to be expended to restore the Requestor’s, Columbia’s or any third party’s premises to their original condition, all such amounts to be deducted from the Deposit. Any such costs which exceed the Deposit shall be payable by Requestor immediately upon notice from Columbia. Notwithstanding any other provision of this Agreement, if the pipeline relocation is not completed within six months of the execution

**COMMISSIONERS JOURNAL NO. 73 - DELAWARE COUNTY
MINUTES FROM REGULAR MEETING HELD OCTOBER 12, 2020**

of this Agreement, Columbia reserves the right to increase the Deposit. Upon notice from Columbia, Requestor shall promptly pay such additional sum to Columbia. Columbia may retain the Deposit until the completion of the work contemplated under this Agreement.

3. Unless otherwise required by law or order of any governmental body having jurisdiction over Columbia, Columbia shall not be required to pay interest, carrying charges, or any other amounts related to the Deposit.

4. Upon execution of this Agreement by both Parties and the receipt of the Deposit from Requestor, Columbia agrees to begin plans for said pipeline relocation. Columbia will physically relocate said pipeline and any related pipeline facilities as mutually agreed only when all necessary rights-of-way have been secured and all material is available. Columbia will not commence the relocation project until such time as such pipeline relocation work will not impair the operation of Columbia's gas distribution system or its service to its customers. Columbia is not responsible for any Requestor losses of any kind resulting from work delays or cancellation, or delay or refusal by a governmental entity to issue any necessary permit. This Agreement may be suspended, the Deposit amount may be increased by Columbia, or the terms of this Agreement renegotiated by Columbia, due to adverse digging or soil (e.g. ledge, hazardous materials, etc.) conditions, or delay or denial of necessary permits.

5. Upon Columbia's request, Requestor agrees to enter into a Right of Way Agreement with Columbia in which Requestor shall grant to Columbia all necessary easements or rights of way on property owned by Requestor at no cost to Columbia. Requestor shall also cooperate with and compensate Columbia for acquiring any necessary easements or rights of way on property owned by third parties that are not in a public street or way. Columbia shall not be obligated to undertake the pipeline relocation and this Agreement shall be terminated at the sole discretion of Columbia if: (i) Requestor fails to timely enter into the Right of Way Agreement with Columbia, referenced above; or (ii) Columbia is not able to obtain necessary third party easements or rights of way upon terms and conditions (including cost) agreeable to Columbia. In the event of such termination, Requestor shall be responsible for all costs expended by Columbia and/or which Columbia is obligated to expend in connection with the relocation project and the termination of such project. Any such costs which exceed the Deposit shall be payable by Requestor immediately upon notice from Columbia.

6. To the extent any portion of the pipeline relocation occurs on Requestor's property or property it or an affiliate controls, the Requestor at its own expense, shall (i) respond to reasonable requests of Columbia, its representatives and any governmental authorities or administrative agencies to provide all necessary information describing the physical characteristics of the property, including surveys, site elevations, legal and other required investigations and the like which it may have now or in the future; (ii) mark and identify for Columbia, the correct locations of all underground facilities (e.g., septic systems, sprinkler systems, water lines electric lines, propane tanks and lines, etc.) owned by the Requestor and/or others at or about the property; (iii) notify Columbia of any condition on or about the property which could affect the work contemplated hereunder; and (iv) cooperate with Columbia to obtain all necessary approvals, site plan reviews, permits, required for Columbia to carry out its work and obligations hereunder. Columbia shall not be obligated to undertake the pipeline relocation and this Agreement shall be terminated at the discretion of Columbia if Requestor fails to satisfy its obligations as set forth in this Section 5. In the event of such termination, Requestor shall be responsible for all costs expended by Columbia and/or which Columbia is obligated to expend in connection with the relocation project and the termination of such project. Any such costs which exceed the Deposit shall be payable by Requestor immediately upon notice from Columbia.

7. Upon completion of said pipeline relocation, Columbia shall, within a reasonable time, submit to Requestor a statement showing the actual cost thereof. If the actual (direct and indirect) cost of said pipeline relocation is more than the amount of the Deposit, Requestor shall promptly pay the difference between the actual costs and the Deposit, to Columbia. Requestor will make such reimbursement payment to Columbia within thirty (30) days of receipt of the invoice. Late payments will bear interest at a rate of 1.0% a month, which equals an annual percentage rate of 12%. If the actual cost is less than the amount of the Deposit, Columbia shall promptly return to Requestor the difference between the Deposit and the actual costs.

8. All questions with respect to the interpretation and construction of this Agreement and the rights and liabilities of the Parties hereunder shall be determined in accordance with the applicable laws of Ohio without regard to the law of conflicts or any choice of law provisions that would direct the application of the laws of another jurisdiction. Any legal action or in any way related to or arising from this Agreement shall be brought and heard only in a court of competent jurisdiction located in Delaware County, Ohio. This Agreement contains the entire agreement between the Parties concerning the relocation work, and no modification of this Agreement will be binding unless approved in writing by both Parties. Requestor may not assign this Agreement without express written consent from Columbia. Such consent may be withheld by Columbia in its sole discretion. If any provision of this Agreement is found by a court of competent jurisdiction to be invalid such provision shall be deemed modified so as to be no longer invalid and, all of the remaining provisions of this Agreement shall remain in full force and effect. The recitals set forth in this Agreement are an integral part hereof and shall have the same contractual significance as any other language contained in this Agreement. No provision of this Agreement shall be interpreted more or less favorably towards either Party because its counsel drafted all or a portion hereof.

Requestor represents and warrants that it has requisite authority to enter into this Agreement and that its

**COMMISSIONERS JOURNAL NO. 73 - DELAWARE COUNTY
MINUTES FROM REGULAR MEETING HELD OCTOBER 12, 2020**

representative signing this Agreement is authorized to bind and obligate the Requestor to the terms of this Agreement. This Agreement may be executed in one or more counterparts, each of which when so executed and delivered shall be deemed an original, but all of which together shall constitute one instrument. Facsimile and pdf signatures to this Agreement shall be legally binding and considered in all manner and respects as original signatures.

Vote on Motion Mr. Benton Aye Mr. Merrell Aye Mrs. Lewis Aye

6

RESOLUTION NO. 20-901

IN THE MATTER OF APPROVING GENERAL ENGINEERING SERVICES AGREEMENT 2020-2 WITH IBI GROUP ENGINEERING SERVICES (USA) INC.:

It was moved by Mr. Merrell, seconded by Mrs. Lewis to approve the following:

WHEREAS, the County Engineer recommends approval of General Engineering Services Agreement No. 2020-2 between the Delaware County Board of Commissioners and IBI Group Engineering Services (USA) Inc.;

NOW, THEREFORE, BE IT RESOLVED that the Board of Commissioners of Delaware County, State of Ohio, hereby approves the following professional services agreement:

**PROFESSIONAL SERVICES AGREEMENT
General Engineering Services**

This Agreement is made and entered into this 12th day of October, 2020, by and between the Delaware County Board of Commissioners, Delaware County, Ohio, 101 North Sandusky Street, Delaware, Ohio 43015 (“County”), and IBI Group Engineering Services (USA) Inc., 8101 North High Street, Suite 100, Columbus, OH 43235 (“Consultant”), hereinafter collectively referred to as the “Parties.”

1 SERVICES PROVIDED BY CONSULTANT

- 1.1 The Consultant will provide general engineering services (the “Services”) to the County.
- 1.2 The Consultant shall perform the Services promptly and with the ordinary degree of skill and care that would be used by other reasonably competent practitioners of the same discipline practicing in the same locale and under similar circumstances.
- 1.3 Services shall be further described in and rendered by the Consultant in accordance with the following documents, to be retained and on file with each Party, and by this reference made part of this Agreement:
Delaware County General Engineering Services 2020-2 Scope of Services dated 7-26-2020.

2 SUPERVISION OF SERVICES

- 2.1 The Delaware County Board of Commissioners hereby designates the Delaware County Engineer as the “Project Manager” and agent of the County for this Agreement.
- 2.2 The Project Manager shall have authority to review and order changes, commencement, suspension or termination of the Services performed under this Agreement.

3 AGREEMENT AND MODIFICATIONS

- 3.1 This Agreement, and those documents incorporated by reference herein, shall constitute the entire understanding and agreement between the County and the Consultant, shall supersede all prior understandings and agreements relating to the Project, and may only be modified or amended in writing with the mutual consent and agreement of the Parties.

4 FEES AND REIMBURSABLE EXPENSES

- 4.1 Compensation for Services provided under this Agreement shall be in accordance with the Fee Proposal and other documents enumerated in Section 1.3.
- 4.2 The Project Manager may authorize partial lump sum payments for itemized tasks in “If Authorized Services” with written consent of the Consultant when the Project Manager determines the necessity therefor.
- 4.3 Total compensation under this Agreement shall not exceed Three Hundred Thousand Dollars and no cents (\$300,000.00) without subsequent modification.

**COMMISSIONERS JOURNAL NO. 73 - DELAWARE COUNTY
MINUTES FROM REGULAR MEETING HELD OCTOBER 12, 2020**

- 4.4 The fees specified above shall constitute full compensation for all direct labor, payroll burden, general and administrative overhead, profit, travel, equipment, and materials necessary to complete the tasks as set forth in the Scope of Services.

5 NOTICES

- 5.1 "Notices" issued under this Agreement shall be served on the individuals listed below in writing. The Parties may use electronic communication for the purposes of general communication; however, e-mail shall not be used to transmit Notices.

County Engineer:

Name: Delaware County Engineer
Attn: Ryan J. Mraz, Chief Deputy Design Engineer

Address: 50 Channing Street, Delaware, Ohio 43015

Telephone: 740-833-2400

Email: Rmraz@co.delaware.oh.us

Consultant:

Name of Principal in Charge: Ryan Hutson, P.E., P.S.

Address of Firm: 8101 North High Street, Suite 150

City, State, Zip: Columbus, Ohio 43235

Telephone: (614) 818-4900, ext. 2058 (office); (614) 893-5048 (cell)

Email: ryan.hutson@ibigroup.com

6 PAYMENT

- 6.1 Compensation shall be paid periodically, but no more than once per month, based on invoices submitted by the Consultant and approved by the County Engineer, and shall be based on the calculated percentage of Services performed to date in accordance with the Consultant's Price Proposal.
- 6.2 Invoices shall be submitted to the Project Manager by the Consultant on company letterhead clearly listing the word "Invoice" with a sequential invoice number provided. The County may request additional documentation to substantiate said invoices and the Consultant shall promptly submit documentation as needed to substantiate said invoices.
- 6.3 The County shall pay invoices within thirty (30) days of receipt.

7 NOTICE TO PROCEED; COMPLETION; DELAYS AND EXTENSIONS

- 7.1 The Consultant shall commence Services upon written Notice to Proceed ("Authorization") by the Project Manager and shall complete the services within 24 months from said date. No extensions will be provided without prior written authorization.
- 7.2 Consultant shall not proceed with any "If Authorized" tasks without written Authorization.
- 7.3 In the event that unforeseen and unavoidable delays prevent the timely completion of this Agreement, the Consultant may make a written request for time extension, and the Project Manager may grant such an extension provided that all other terms of the Agreement are adhered to.

8 SUSPENSION OR TERMINATION OF AGREEMENT

- 8.1 The County, upon written Notice as specified in Section 5, may suspend or terminate this Agreement at any time for the convenience of the County, at which time the Consultant shall immediately suspend or terminate Services, as ordered by the County.
- 8.2 In the case of termination, the Consultant shall submit a final invoice within sixty (60) days of receiving Notice of termination for Services completed up to the date of termination. The County is not liable for payment for Services performed after the date of termination.

9 CHANGE IN SCOPE OF SERVICES

**COMMISSIONERS JOURNAL NO. 73 - DELAWARE COUNTY
MINUTES FROM REGULAR MEETING HELD OCTOBER 12, 2020**

- 9.1 In the event that significant changes to the Scope of Services are required during performance of the Services, the first party shall notify the second party in writing with a detailed explanation of the circumstances believed to have changed beyond those originally contemplated by this Agreement. Any subsequent modifications to this Agreement shall not take effect unless and until approved in a written modification signed by both Parties.

10 OWNERSHIP

- 10.1 Upon completion or termination of the Agreement, the Consultant shall provide copies, if so requested, to the County of all documents or electronic files produced under this Agreement.
- 10.2 The County shall have ownership of said documents, which are considered, but not limited to, any completed or partially completed surveys, calculations, reports, schematics, drawings and any other tangible written or electronic work produced in accordance with the Agreement.
- 10.3 This section does not require unauthorized duplication of copyrighted materials.

11 CHANGE OF KEY CONSULTANT STAFF; ASSIGNMENT

- 11.1 The Consultant shall immediately notify the County, in writing, of any change to key Consultant staff or subconsultants assigned to the Services as contemplated at the time of executing this Agreement.
- 11.2 The Consultant shall not assign or transfer this Agreement, or any of the rights, responsibilities, or remedies contained herein, to any other party without the express, written consent of the County.

12 INDEMNIFICATION

- 12.1 The Consultant shall indemnify and hold free and harmless Delaware County and its officials and employees from any and all damages, injury, costs, expenses, judgments or decrees, or any other liabilities that they may incur as a result of bodily injury, sickness, disease or death or injury to or destruction of tangible property including the loss of use resulting therefrom, to the proportionate extent caused by any negligent acts, errors or omissions of the Consultant, its employees, agents, subcontractors, and their employees and agents' subcontractors and their employees or any other person for whose acts any of them may be liable.

13 INSURANCE

- 13.1 General Liability Coverage: Consultant shall maintain commercial general liability insurance of \$1,000,000 each occurrence with an annual aggregate of \$2,000,000. Identical coverage shall be required to be provided by all subcontractors, if any.
- 13.2 Automobile Liability Coverage: Consultant shall maintain automobile liability insurance of \$1,000,000 each accident. Such coverage shall include coverage for owned, hired and non-owned automobiles. Identical coverage shall be required to be provided by all subcontractors, if any.
- 13.3 Workers' Compensation Coverage: Consultant shall maintain workers' compensation coverage as required by the laws of the State of Ohio. Identical coverage shall be required to be provided by all subcontractors, if any.
- 13.4 Professional Liability Insurance: Consultant hereby agrees to maintain, and require its subconsultants to maintain, professional liability insurance for the duration of the services hereunder and for three (3) years following completion of the services hereunder. Such insurance for negligent acts, errors, and omissions shall be provided through a company licensed to do business in the State of Ohio for coverage of One Million Dollars (\$1,000,000) per claim and in the aggregate.
- 13.5 Additional Insureds: Delaware County, its elected officials and employees, shall be named as additional insureds with respect to all activities under this Agreement in the policies required by Subsections 13.1 and 13.2. Consultant shall require all of its subcontractors to provide like endorsements.
- 13.6 Proof of Insurance: Prior to the commencement of any Services under this Agreement, Consultant, and all of its subcontractors, shall furnish the County with properly executed certificates of insurance for all insurance required by this Agreement. Certificates of insurance shall provide that such insurance shall not be cancelled without thirty (30) days prior written notice to the County. Consultant will replace certificates for any insurance expiring prior to completion of Services under this Agreement.

14 MISCELLANEOUS TERMS AND CONDITIONS

- 14.1 Prohibited Interests: Consultant agrees that no agent, officer, or employee of the County during his/her tenure or for one year thereafter shall have any interest, direct or indirect, in this Agreement or

**COMMISSIONERS JOURNAL NO. 73 - DELAWARE COUNTY
MINUTES FROM REGULAR MEETING HELD OCTOBER 12, 2020**

the proceeds thereof. Consultant further agrees that it will not employ in any manner a current County employee for a minimum period of one (1) year from the completion date of this Agreement, without the prior express written consent of County.

- 14.2 **Independent Contractor**: The Parties acknowledge and agree that Consultant is acting as an independent contractor and that no agency, partnership, joint venture, or employment relationship has been or will be created between the Parties. Consultant also agrees that, as an independent contractor, Consultant assumes all responsibility for any federal, state, municipal, or other tax liabilities along with workers compensation, unemployment compensation, and insurance premiums that may accrue as a result of compensation received for services or deliverables rendered hereunder. **Consultant hereby certifies that it has five or more employees and that none of the employees are public employees for purposes of Chapter 145 of the Ohio Revised Code.**
- 14.3 **Governing Law**: This Agreement shall be governed by and interpreted in accordance with the laws of the State of Ohio. Any and all legal disputes arising from this Agreement shall be filed in and heard before the courts of Delaware County, Ohio.
- 14.4 **Headings**: The subject headings of the Sections and Subsections in this Agreement are included for purposes of convenience only and shall not affect the construction or interpretation of any of its provisions. This Agreement shall be deemed to have been drafted by both Parties and no purposes of interpretation shall be made to the contrary.
- 14.5 **Waivers**: No waiver of breach of any provision of this Agreement shall in any way constitute a waiver of any prior, concurrent, subsequent, or future breach of this Agreement or any other provision hereof. No term or provision of this Agreement shall be deemed waived, and no breach excused, unless such a waiver or consent is expressly made in writing and signed by the party claimed to have waived or consented. Such waiver shall not constitute and shall not in any way be interpreted as a waiver of any other term or provision or future breach unless said waiver expressly states an intention to waive another specific term or provision or future breach.
- 14.6 **Severability**: If any item, condition, portion, or section of this Agreement or the application thereof to any person, premises, or circumstance shall to any extent, be held to be invalid or unenforceable, the remainder hereof and the application of such term, condition, provision, or section to persons, premises, or circumstances other than those as to whom it shall be held invalid or unenforceable shall not be affected thereby, and this Agreement and all the terms, conditions, provisions, or sections hereof shall, in all other respects, continue to be effective and to be complied with.
- 14.7 **Findings for Recovery**: Consultant certifies that it has no unresolved findings for recovery pending or issued against it by the State of Ohio.
- 14.8 **Authority to Sign**: Any person executing this Agreement in a representative capacity hereby warrants that he/she has authority to sign this Agreement or has been duly authorized by his/her principal to execute this Agreement on such principal's behalf and is authorized to bind such principal.
- 14.9 **County Policies**: The Consultant shall adhere to all applicable Delaware County policies, including, but not limited to, the following: Discrimination Policy, Ethics Policy, Contractor Safety Policy. The Consultant shall require any and all of its boards, board members, officers, officials, employees, representatives, agents, and/or volunteers performing Services under this Agreement and/or for or on behalf of the County to comply with all applicable Delaware County policies and shall be responsible for such compliance. The County may, in its sole discretion, immediately terminate this Agreement for failure of the Consultant to comply with this Subsection. Copies of applicable policies are available upon request or online at <http://www.co.delaware.oh.us/index.php/policies>. The County reserves the authority to change, amend, replace, enact, repeal, and/or rescind any or all of the policies at any time and without notice.
- 14.10 **Drug-Free Workplace**: The Consultant agrees to comply with all applicable federal, state, and local laws regarding drug-free and smoke-free workplaces and environments and shall have established and have in place a drug-free workplace policy. The Consultant shall make a good faith effort to ensure that all of its employees and subcontractors engaged in the Services being performed hereunder will not purchase, transfer, use, or possess illegal drugs or alcohol, or abuse prescription drugs.
- 14.11 **Non-Discrimination/Equal Opportunity**: Consultant hereby certifies that, in the hiring of employees for the performance of Services under this Agreement or any subcontract, that neither it nor any subcontractor, by reason of race, color, religion, sex, age, disability as defined in section 4112.01 of the Revised Code, national origin, or ancestry, shall discriminate against any citizen of this state in the employment of a person qualified and available to perform the work to which the Agreement relates.

Consultant further certifies that neither it nor any subcontractor, or person acting on behalf of it or any subcontractor, in any manner, shall discriminate against, intimidate, or retaliate against any employee hired for the performance of Services under this Agreement on account of race, color, religion, sex, age, disability as defined in section 4112.01 of the Revised Code, national origin, or

COMMISSIONERS JOURNAL NO. 73 - DELAWARE COUNTY
MINUTES FROM REGULAR MEETING HELD OCTOBER 12, 2020

ancestry.

Consultant certifies that it has a written affirmative action program for employment and effectively utilizes economically disadvantaged persons, as referred to in division (E)(1) of section 122.71 of the Revised Code.

Consultant certifies that it complies with all applicable laws regarding Non-Discrimination / Equal Opportunity and will not discriminate.

Vote on Motion Mr. Merrell Aye Mrs. Lewis Aye Mr. Benton Aye

7

ADMINISTRATOR REPORTS

Mike Frommer, County Administrator

-No reports.

8

COMMISSIONERS' COMMITTEES REPORTS

Commissioner Merrell

- Attended the CORSA board meeting both Thursday and Friday.
- Was asked to attend the "Never Give Up. Never Quit. Veterans Day Crappie Tournament". The fishing tournament featured war veteran and quadruple amputee, Travis Mills.
- Attended the Back the Blue Event at Liberty Park on Saturday morning.

Commissioner Lewis

-Attended the EMA meeting last week.

Commissioner Benton

- The October TID meeting has been canceled.
- Congrats to Oklahoma University on their 4OT win against Texas.

There being no further business, the meeting adjourned.

Gary Merrell

Barb Lewis

Jeff Benton

Jennifer Walraven, Clerk to the Commissioners