

COMMISSIONERS JOURNAL NO. 76 - DELAWARE COUNTY
MINUTES FROM REGULAR MEETING HELD MARCH 17, 2022

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

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

1
RESOLUTION NO. 22-185

IN THE MATTER OF APPROVING THE ELECTRONIC RECORD OF THE PROCEEDINGS FROM REGULAR MEETING HELD MARCH 14, 2022:

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

WHEREAS, the Board of Commissioners of Delaware County, Ohio (the "Board") met in regular session on March 14, 2022; and

WHEREAS, the Clerk of the Board has certified, pursuant to section 305.12 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 Mrs. Lewis Aye Mr. Merrell Aye Mr. Benton Aye

2
PUBLIC COMMENT
-None.

3
THE DELAWARE COUNTY TRANSIT BOARD;
NEW EXECUTIVE DIRECTOR, HARRY KAMDAR

4
RESOLUTION NO. 22-186

IN THE MATTER OF APPROVING PURCHASE ORDERS, THEN AND NOW CERTIFICATES, AND PAYMENT OF WARRANTS IN BATCH NUMBERS CMAPR0316 AND MEMO TRANSFERS IN BATCH NUMBERS MTAPR0316:

It was moved by Mr. Benton, seconded by Mr. Merrell to approve Then And Now Certificates, payment of warrants in batch numbers CMAPR0316, memo transfers in batch numbers MTAPR0316 and Purchase Orders as listed below:

<u>Vendor</u>	<u>Description</u>	<u>Account</u>	<u>Amount</u>
PO' Increase			
HR Gray & Assoc (P2201532)	Regional Sewer Services	66211900-5301	\$10,000.00
Village Network	Medical & Health Related Services	70161605-5342	\$15,265.00
Schilling Propane	Utilities	10011303-5338	\$5,000.00
Eastway	Medical & Health Related Services	70161605-5342	\$36,000.00
PNC Bank	Services	10011303-5300	\$20,000.00
PNC Bank	Supplies	10011303-5200	\$20,000.00

<u>PR Number</u>	<u>Vendor Name</u>	<u>Line Description</u>	<u>Line Account</u>	<u>Amount</u>
R2202257	JUVENILE COURT	IV-D CONTRACT SERVICES	23711630 - 5360	\$5,125.20
R2202481	H M COMPANY INC	(2) WASHERS & (2) DRYERS FOR JAIL	41711436 - 5450	\$39,712.00
R2202486	TRIHEDRAL INC	VT SCADA RENEWAL LICENSING FEES FOR ACWRF	66211900 - 5320	\$11,877.75
R2202488	PERRY PROTECH INC	COPIER CONTRACT - COMMISSIONERS	10011101 - 5325	\$2,900.00
R2202488	PERRY PROTECH INC	COPIER CONTRACT - RECORDS CENTER	10011103 - 5325	\$350.00
R2202488	PERRY PROTECH INC	COPIER CONTRACT - FACILITIES	10011105 - 5325	\$400.00
R2202488	PERRY PROTECH INC	COPIER CONTRACT - HR	10011108 - 5325	\$1,600.0

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R2202488	PERRY PROTECH INC	COPIER CONTRACT - BUILDING SAFETY	10011301 - 5325	\$1,050.00
R2202488	PERRY PROTECH INC	COPIER CONTRACT - EMS	10011303 - 5325	\$950.00
R2202488	PERRY PROTECH INC	COPIER CONTRACT - PROSECUTOR	10012101 - 5325	\$6,000.00
R2202488	PERRY PROTECH INC	COPIER CONTRACT - DOMESTIC RELATIONS	10023201 - 5325	\$4,800.00
R2202488	PERRY PROTECH INC	COPIER CONTRACT - COMMON PLEAS	10025201 - 5325	\$3,250.00
R2202488	PERRY PROTECH INC	COPIER CONTRACT - JUVENILE COURT	10026201 - 5325	\$1,400.00
R2202488	PERRY PROTECH INC	COPIER CONTRACT - SHERIFF LE	10031301 - 5325	\$3,150.00
R2202488	PERRY PROTECH INC	COPIER CONTRACT - SHERIFF JAIL	10031303 - 5325	\$150.00
R2202488	PERRY PROTECH INC	COPIER CONTRACT - VETERANS SERVICES	10062601 - 5325	\$500.00
R2202488	PERRY PROTECH INC	COPIER CONTRACT - PUBLIC DEFENDER	10083801 - 5325	\$2,200.00
R2202488	PERRY PROTECH INC	COPIER CONTRACT - LAW LIBRARY	20683201 - 5325	\$600.00
R2202488	PERRY PROTECH INC	COPIER CONTRACT - 911	21411306 - 5325	\$500.00
R2202488	PERRY PROTECH INC	COPIER CONTRACT - JFS	22411605 - 5325	\$8,075.00
R2202488	PERRY PROTECH INC	COPIER CONTRACT - RECORDER	24113102 - 5325	\$2,650.00
R2202488	PERRY PROTECH INC	COPIER CONTRACT - ADULT COURT SERVICES	25622303 - 5325	\$2,775.00
R2202488	PERRY PROTECH INC	COPIER CONTRACT - REGIONAL SEWER	66211900 - 5325	\$1,250.00
R2202492	B & C COMMUNICATIONS INC	9-1-1 Phone System Maintenance	21711326 - 5325	\$65,253.71
R2202502	PRIME CONSTRUCTION MANAGEMENT & SURVEY INC	ON CALL INSPECTION SERVICES - RESOLUTION 22-120	66211900 - 5301	\$40,000.00
R2202513	United Way of Delaware County	Emergency Rental Assistance Program Round 2	21111173-5601	\$1,278,449.96

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

**5
RESOLUTION NO. 22-187**

IN THE MATTER OF APPROVING TRAVEL EXPENSE REQUESTS:

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

The EMS Department is requesting that Jason Walton attend a National Honor Guard Academy in Marion, Ohio June 5-10, 2022, at the cost of \$625.00 (fund number 10011303).

The EMS Department is requesting that Amy Ritter and Tony Berry attend a National Honor Guard Academy in Marion, Ohio June 5-10, 2022, at the cost of \$1,250.00 (fund number 10011303).

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

**6
RESOLUTION NO. 22-188**

SETTING DATE AND TIME FOR A PUBLIC HEARING WITH RESPECT TO THE PROPOSED ISSUANCE BY FRANKLIN COUNTY OF ITS REVENUE BONDS PURSUANT TO CHAPTER 140, OHIO REVISED CODE, TO FINANCE AND REFINANCE HOSPITAL FACILITIES FOR THE BENEFIT OF NATIONWIDE CHILDREN’S HOSPITAL LOCATED IN FRANKLIN COUNTY AND DELAWARE COUNTY AND APPROVING THE ISSUANCE OF THE BONDS PURSUANT TO SECTION 147(F) OF THE INTERNAL REVENUE CODE:

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

**NOTICE OF PUBLIC HEARING
HOSPITAL FACILITIES REVENUE BONDS**

Notice is hereby given that on Monday, April 4, 2022, commencing at 9:45 a.m., a public hearing will be held by the Board of Commissioners of Delaware County, Ohio in the Commissioners’ Hearing Room, Second Floor of the Historic Courthouse, 91 North Sandusky Street, Delaware, Ohio 43015, with respect to the proposed issuance by the County of Franklin, Ohio (the “Issuer”) of its hospital facilities revenue bonds (the “Bonds”), in one or more series, in an aggregate principal amount currently estimated not to exceed \$500,000,000 pursuant to Chapter 140 of the Ohio Revised Code (the “Code”).

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The proceeds of the Bonds will be made available to Nationwide Children’s Hospital, an Ohio nonprofit corporation (the “Hospital”), and a portion of the proceeds will be used for (i) restructuring or refunding on a current basis all or a portion of the Issuer’s (a) \$45,000,000 original principal amount Variable Rate Demand Hospital Improvement Revenue Bonds, Series 2008B (Nationwide Children’s Hospital Project), dated May 7, 2008, (b) \$75,000,000 original principal amount Hospital Improvement Revenue Bonds, Series 2012A (Nationwide Children’s Hospital Project), dated May 15, 2012, (c) \$45,580,000 Adjustable Rate Hospital Facilities Revenue Refunding Bonds, Series 2014B (Nationwide Children’s Hospital), dated November 20, 2014, (d) \$12,635,000 original principal Adjustable Rate Hospital Facilities Revenue Refunding Bonds, Series 2016A (Nationwide Children’s Hospital) dated April 28, 2016, (e) \$35,035,000 original principal Adjustable Rate Hospital Facilities Revenue Refunding Bonds, Series 2016B (Nationwide Children’s Hospital) dated April 28, 2016, (f) \$44,155,000 Adjustable Rate Hospital Facilities Revenue Refunding Bonds, Series 2013A (Nationwide Children’s Hospital Project) dated June 4, 2013, (g) \$22,830,000 Adjustable Rate Hospital Facilities Revenue Refunding Bonds, Series 2013B (Nationwide Children’s Hospital Project) dated June 4, 2013, (h) \$17,225,000 Adjustable Rate Hospital Facilities Revenue Refunding Bonds, Series 2014 (Nationwide Children’s Hospital Project) dated June 4, 2014, and the County’s \$46,150,000 Hospital Facilities Revenue Refunding and Improvement Bonds, Series 2017B (Nationwide Children’s Hospital Project) dated November 16, 2017 (collectively, the “Prior Bonds”), (ii) funding interest rate hedge termination payments. and (iii) paying certain costs of issuance of the Bonds. The projects financed and refinanced by the Prior Bonds consist of construction, additions, improvements and equipping of health care facilities located at 700 Children’s Drive, Columbus, Ohio, 6435 East Broad Street, Columbus, Ohio, 5675 Venture Drive, Dublin, Ohio, and 433 N Cleveland Ave, Westerville, Ohio (the “Prior Projects”). The Prior Projects have been, and will continue to be, owned by the Hospital.

The public hearing is intended to comply with the public approval requirements of Section 147(f) of the Code. THE BONDS SHALL NOT REPRESENT OR CONSTITUTE A DEBT OR PLEDGE OF THE FAITH AND CREDIT OR THE TAXING POWER OF THE ISSUER, THE COUNTY OF DELAWARE, OHIO, THE STATE OF OHIO, OR ANY POLITICAL SUBDIVISION OF THE STATE OF OHIO. Interested persons are invited to attend this public hearing and will be given an opportunity to express their views concerning the facilities and the proposed issuance of the Bonds. Any written submissions should be sent to the attention of Jennifer Walraven, Clerk of the Delaware County Board of Commissioners, 91 North Sandusky Street, Delaware, Ohio 43015, and clearly marked “RE: Nationwide Children’s Hospital 2022 Bonds TEFRA Hearing” and must be received on or before the date and time of the hearing. Should any attendee require auxiliary aids due to disability or non-English languages, please contact the Clerk at (740) 833-2100 or jmwalraven@co.delaware.oh.us no later than 5:00 PM on March 31, 2022, to ensure needs will be accommodated.

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

**7
RESOLUTION NO. 22-189**

IN THE MATTER OF PROCLAIMING THE WEEK OF MARCH 20-26, 2022 BE DESIGNATED AS SEVERE WEATHER AWARENESS AND FLOOD SAFETY WEEK IN DELAWARE COUNTY:

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

WHEREAS, Ohio’s Severe Weather Awareness AND Flood Safety Awareness Week are a statewide coordinated effort to encourage Ohioans to prepare for severe weather in their homes, businesses, and schools; and

WHEREAS, Delaware County will participate in the Statewide Tornado Drill on Wednesday, March 23, 2022, at 9:50 a.m. as this event aims to increase public awareness concerning the importance of preparing for emergencies and to persuade individuals to take action; and

WHEREAS, during the Week of March 20-26, 2022, the Delaware County Office of Homeland Security and Emergency Management (EMA) will urge residents to plan for, and take appropriate measures to make themselves and their families better prepared for severe weather and flooding; and

WHEREAS, being prepared includes understanding the difference between a watch and a warning; knowing where to shelter during a storm; exercising caution and not driving through flooded roadways; and

WHEREAS, familiarizing themselves and their families with the best way to receive communications in an emergency, mitigate situations around their homes and general preparedness; and

WHEREAS, the Delaware County EMA promotes severe weather awareness, flood safety, and emergency preparedness year-round by working closely with partner agencies, maintaining “StormReady” certification from the National Weather Service; using traditional and social media to reach out to the community; and

WHEREAS, the Board of County Commissioners would like to officially recognize the Delaware County Office of Homeland Security and Emergency Management (EMA) and its community partners including law, fire, EMS, and the many other volunteers and civic organizations that routinely offer their services to our community;

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NOW, THEREFORE, be it proclaimed by the Board of County Commissioners of Delaware County, Ohio, that the week of March 20-26, 2022 be designated as

SEVERE WEATHER AWARENESS and FLOOD SAFETY AWARENESS WEEK

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

8

RESOLUTION NO. 22-190

IN THE MATTER OF APPROVING A SERVICES AGREEMENT WITH MVC LIMITED (DBA MULTIVISTA) FOR PHOTOGRAPHIC CONSTRUCTION DOCUMENTATION FOR THE COUNTY'S BYXBE CAMPUS PROJECT:

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

WHEREAS, the Director of Facilities recommends approving the services agreement with MVC Limited (DBA Multivista) for Photographic Construction Documentation for the County's Byxbe Campus Project;

NOW, THEREFORE, BE IT RESOLVED that the Delaware County Board of Commissioners approves the services agreement with MVC Limited (DBA Multivista) for Photographic Construction Documentation for the County's Byxbe Campus Project, as follows:

SERVICES AGREEMENT

This Agreement is made and entered into on March 17, 2022, by and between the Delaware County Board of Commissioners, Delaware County, Ohio, 91 North Sandusky Street, Delaware, Ohio 43015 (the "County"), and MVC Limited, dba Multivista, 1001 Eastwind Dr., Suite 110, Westerville, Ohio 43081 (the "Contractor"), hereinafter collectively referred to as the "Parties."

1 SERVICES PROVIDED BY CONTRACTOR

- 1.1 The Contractor will provide photographic construction documentation for the County's Byxbe Campus project (the "Services").
- 1.2 The Services shall be further defined in and rendered by the Contractor in accordance with the following documents, by this reference made part of this Agreement:
MULTIVISTA CONSTRUCTION DOCUMENTATION PROPOSAL AND AGREEMENT dated March 2, 2022.
- 1.3 In the event of a conflict between the terms and conditions stated in this Agreement, consisting of pages 1 through 5, and any of the documents incorporated by reference herein, the terms and conditions stated herein shall take precedence.

2 SUPERVISION OF SERVICES

- 2.1 The Delaware County Board of Commissioners hereby designates the Delaware County Director of Facilities as the Project Manager and agent of the County for this Agreement.
- 2.2 The Project Manager shall have authority to review changes, commencement, and suspension 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 Contractor, shall supersede all prior understandings and agreements relating to the Services, 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 Proposal noted in Section 1.2.
- 4.2 Total compensation under this Agreement shall not exceed \$44,980.00 without subsequent modification.
- 4.3 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 Services.

5 PAYMENT

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- 5.1 Compensation shall be paid periodically, but no more than once per month, based on invoices submitted by the Contractor and approved by the Project Manager and shall be in accordance with the Contractor's Proposal.
- 5.2 Invoices shall be submitted to the Project Manager by the Contractor 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 Contractor shall promptly submit documentation as needed to substantiate said invoices.
- 5.3 The County shall pay invoices within thirty (30) days of receipt.

6 NOTICE TO PROCEED, COMPLETION, DELAYS AND EXTENSIONS

- 6.1 The Contractor shall commence Services upon written authorization from the Project Manager and shall complete the Services in accordance with the Proposal.
- 6.2 In the event that unforeseen and unavoidable delays prevent the timely completion of this Agreement, the Contractor 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.

7 SUSPENSION OR TERMINATION OF AGREEMENT

- 7.1 The County, upon written notice, may suspend or terminate this Agreement at any time for the convenience of the County, at which time the Contractor shall immediately suspend or terminate Services, as ordered by the County.
- 7.2 In the case of termination, the Contractor 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.

8 INDEMNIFICATION

- 8.1 The Contractor 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 Contractor, 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.

9 INSURANCE

- 9.1 General Liability Coverage: Contractor 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.
- 9.2 Automobile Liability Coverage: Contractor 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.
- 9.3 Workers' Compensation Coverage: Contractor 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.
- 9.4 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 9.1 and 9.2. Contractor shall require all of its subcontractors to provide like endorsements.
- 9.5 Proof of Insurance: Prior to the commencement of any work under this Agreement, Contractor, 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. Contractor will replace certificates for any insurance expiring prior to completion of work under this Agreement.

10 MISCELLANEOUS TERMS AND CONDITIONS

- 10.1 Prohibited Interests: Contractor 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 the proceeds thereof. Contractor 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.

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- 10.2 Independent Contractor: The Parties acknowledge and agree that Contractor 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. Contractor also agrees that, as an independent contractor, Contractor 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. **Contractor 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.**
- 10.3 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.
- 10.4 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.
- 10.5 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.
- 10.6 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.
- 10.7 Findings for Recovery: Contractor certifies that it has no unresolved findings for recovery pending or issued against it by the State of Ohio.
- 10.8 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.
- 10.9 County Policies: The Contractor shall adhere to all applicable Delaware County policies, including, but not limited to, the following: Discrimination Policy, Ethics Policy, Contractor Safety Policy. The Contractor shall require any and all of its boards, board members, officers, officials, employees, representatives, agents, and/or volunteers performing work 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 Contractor 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.
- 10.10 Drug-Free Workplace: The Contractor 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 Contractor shall make a good faith effort to ensure that all of its employees and subcontractors engaged in the work being performed hereunder will not purchase, transfer, use, or possess illegal drugs or alcohol, or abuse prescription drugs.
- 10.11 Non-Discrimination/Equal Opportunity: Contractor hereby certifies that, in the hiring of employees for the performance of work 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.

Contractor 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 work 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 ancestry.

Contractor 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.

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

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

9

RESOLUTION NO. 22-191

IN THE MATTER OF APPROVING A SERVICES AGREEMENT WITH INNOVATIVE HARDWARE, INC. (DBA EPS) FOR REPLACEMENT OF SECURITY CAMERAS AT THE HAYES BUILDING:

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

WHEREAS, the Director of Facilities recommends approving the services agreement with Innovative Hardware, Inc. (DBA EPS) for Replacement Of Security Cameras at the Hayes Building;

NOW, THEREFORE, BE IT RESOLVED that the Delaware County Board of Commissioners approves the services agreement with Innovative Hardware, Inc. (DBA EPS) for Replacement of Security Cameras at the Hayes Building, as follows:

SERVICES AGREEMENT

This Agreement is made and entered into on March 17, 2022, by and between the Delaware County Board of Commissioners, Delaware County, Ohio, 91 North Sandusky Street, Delaware, Ohio 43015 (“County”), and Innovative Hardware, Inc., dba EPS, 8845 Basil Western Road, Canal Winchester, Ohio 43110 (“Contractor”), hereinafter collectively referred to as the “Parties.”

1 SERVICES PROVIDED BY CONTRACTOR

- 1.1 The Contractor shall provide equipment for and installation of replacement security cameras on the ground floor of the County’s Hayes Building, 145 N Union Street, Delaware, Ohio (the “Services”).
- 1.2 The Services shall be further defined in and rendered by the Contractor in accordance with the following documents, by this reference made part of this Agreement: Contractor’s Proposal EPSQ10961, submitted February 28, 2022 (hereinafter referred to as “Exhibit A”)
- 1.3 In the event of a conflict between the terms and conditions stated in this Agreement, consisting of pages 1 through 5, and any of the documents incorporated by reference herein, the terms and conditions stated herein shall take precedence.

2 SUPERVISION OF SERVICES

- 2.1 The Delaware County Board of Commissioners hereby designates the Delaware County Director of Facilities (the “Director”) as the agent of the County for this Agreement.
- 2.2 The Director shall have authority to review changes, commencement, and suspension 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 Contractor, shall supersede all prior understandings and agreements relating to the Services, 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 Exhibit A.
- 4.2 For all Services, the lump sum fee shall be \$27,362.26.
- 4.3 Total compensation under this Agreement shall not exceed \$30,000.00 without subsequent modification of this Agreement in accordance with Section 3.1.
- 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 Services.

5 PAYMENT

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- 5.1 Compensation shall be paid periodically, but no more than once per month, based on invoices submitted by the Contractor and approved by the Director and shall be in accordance with Exhibit A.
- 5.2 Invoices shall be submitted to the Director by the Contractor 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 Contractor shall promptly submit documentation as needed to substantiate said invoices.
- 5.3 The County shall pay invoices within thirty (30) days of receipt.

6 NOTICE TO PROCEED, COMPLETION, DELAYS AND EXTENSIONS

- 6.1 The Contractor shall commence Services upon the order of the Director and shall complete the Services promptly in accordance with Exhibit A.
- 6.2 In the event that unforeseen and unavoidable delays prevent the timely completion of this Agreement, the Contractor may make a written request for time extension, and the Director may grant such an extension provided that all other terms of the Agreement are adhered to.

7 SUSPENSION OR TERMINATION OF AGREEMENT

- 7.1 The County may, upon providing written notice to the Contractor, suspend or terminate this Agreement at any time for the convenience of the County, at which time the Contractor shall immediately suspend or terminate Services, as ordered by the County.
- 7.2 In the case of termination, the Contractor 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.

8 INDEMNIFICATION

- 8.1 The Contractor 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 Contractor, 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.

9 INSURANCE

- 9.1 General Liability Coverage: Contractor 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.
- 9.2 Automobile Liability Coverage: Contractor 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.
- 9.3 Workers' Compensation Coverage: Contractor 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.
- 9.4 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 9.1 and 9.2. Contractor shall require all of its subcontractors to provide like endorsements.
- 9.5 Proof of Insurance: Prior to the commencement of any work under this Agreement, Contractor, 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. Contractor will replace certificates for any insurance expiring prior to completion of work under this Agreement.

10 MISCELLANEOUS TERMS AND CONDITIONS

- 10.1 Prohibited Interests: Contractor 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 the proceeds thereof. Contractor 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.

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- 10.2 Independent Contractor: The Parties acknowledge and agree that Contractor 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. Contractor also agrees that, as an independent contractor, Contractor 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. **Contractor 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.**
- 10.3 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.
- 10.4 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.
- 10.5 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.
- 10.6 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.
- 10.7 Findings for Recovery: Contractor certifies that it has no unresolved findings for recovery pending or issued against it by the State of Ohio.
- 10.8 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.
- 10.9 County Policies: The Contractor shall adhere to all applicable Delaware County policies, including, but not limited to, the following: Discrimination Policy, Ethics Policy, Contractor Safety Policy. The Contractor shall require any and all of its boards, board members, officers, officials, employees, representatives, agents, and/or volunteers performing work 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 Contractor 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.
- 10.10 Drug-Free Workplace: The Contractor 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 Contractor shall make a good faith effort to ensure that all of its employees and subcontractors engaged in the work being performed hereunder will not purchase, transfer, use, or possess illegal drugs or alcohol, or abuse prescription drugs.
- 10.11 Non-Discrimination/Equal Opportunity: Contractor hereby certifies that, in the hiring of employees for the performance of work 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.

Contractor 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 work 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 ancestry.

Contractor 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.

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

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement.

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

10

RESOLUTION NO. 22-192

IN THE MATTER OF WAIVING THE DELAWARE COUNTY PORTION OF TIPPING FEES AT THE SOLID WASTE TRANSFER STATION TO SUPPORT 2022 LITTER CONTROL CAMPAIGNS:

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

WHEREAS, the Board of County Commissioners of Delaware County owns the Delaware County Solid Waste Transfer Station; and

WHEREAS, the Delaware Public Health District has requested that the Board of County Commissioners waive its portion of the Solid Waste Transfer Station tipping fees in support of litter control campaigns; and

WHEREAS, these litter control campaigns include support of Keep Delaware County Beautiful, an affiliate of Keep America Beautiful to promote the Olentangy Watershed Clean Up and the Scioto River Sweep; and

WHEREAS, the Board of County Commissioners of Delaware County has waived its portion of Solid Waste Transfer Station tipping fees in support of these initiatives in past years;

NOW, THEREFORE, BE IT RESOLVED that the Board of County Commissioners of Delaware County does hereby waive the Delaware County portion of the Solid Waste Transfer Station tipping fees in support of the aforementioned programs; the Great American Clean Up effective April 18, 2022 to July 1, 2022, the Olentangy Watershed Clean Up in August 2022 and the Scioto River Sweep in September 2022.

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

11

RESOLUTION NO. 22-193

IN THE MATTER OF APPROVING THE SANITARY SEWER SUBDIVIDER’S AGREEMENT FOR LONGHILL FARMS AT BERLIN OFFSITE:

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

WHEREAS, the Sanitary Engineer recommends approval of the Sanitary Sewer Subdivider’s Agreement for Longhill Farms at Berlin Offsite;

NOW, THEREFORE, BE IT RESOLVED that the Board of Commissioners approves the following Sanitary Sewer Subdivider’s Agreement for Longhill Farms at Berlin Offsite:

SUBDIVIDER'S AGREEMENT

DELAWARE COUNTY SANITARY ENGINEER

SECTION I: INTRODUCTION

This Agreement is entered into on March 17th, 2022, by and between **M/I Homes of Central Ohio, LLC**, hereinafter called “Subdivider”, and the Delaware County Board of Commissioners (hereinafter called “County Commissioners” or “County”), and is governed by the following considerations and conditions, to wit:

The Subdivider is to construct, install or otherwise make all public improvements (the “Improvements”) including sanitary sewer improvements from existing manhole #5 to proposed manhole #9 as shown on sheets 1 through 8 of the approved plans and in compliance with the approved engineering drawings, plans, and specifications for **Sanitary Sewer Improvement Plan Longhill Farms at Berlin Section 1**, dated **May 29, 2020**, approved by the County on **June 22, 2020** and revised on **December 21, 2021**, all of which are a part of this Agreement.

The Subdivider shall pay the entire cost and expense of the Improvements. The County shall reimburse M/I Homes a portion of the construction cost through tap credits in the total amount of **\$154,000.00**, which may only be used by the Subdivider within the Berlin Farm development. The Subdivider and the County mutually acknowledge that this grant of tap credits is intended to establish the reasonable charge for the Subdivider to connect to the County’s sanitary facilities, pursuant to R.C. 6117.02, in

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consideration of the Subdivider's private investment in the sanitary facilities, such charge being a special exception to the established charge.

SECTION II: CAPACITY

There are 0 single family residential equivalent connections approved with this Agreement. Capacity shall be reserved for one year from the date of this Agreement, unless the County Commissioners grant an extension in writing. If the final Subdivision Plat is not recorded prior to expiration of the reservation deadline as set forth herein, the Subdivider agrees and acknowledges that capacity shall not be guaranteed.

SECTION III: FINANCIAL WARRANTY

The Subdivider shall execute bond, certified check, irrevocable letter of credit, or other approved financial warranties equal to the cost of construction (**\$785,953.92.00**) which is acceptable to the County Commissioners to insure faithful performance of this Agreement and the completion of all Improvements in accordance with the Subdivision Regulations of Delaware County, Ohio.

The Subdivider shall within thirty (30) days following completion of construction, and prior to final acceptance, furnish to the Delaware County Sanitary Engineer a five (5) year maintenance bond, or other approved financial warranties, equal to ten percent (10%) of the construction cost.

The Subdivider further agrees that any violations of or noncompliance with any of the provisions and stipulations of this Agreement shall constitute a breach of contract, and the County shall have the right to stop work forthwith and act against the performance surety for the purpose of proper completion of the Improvements for **Sanitary Sewer Improvement Plan Longhill farms at Berlin Section 1**.

SECTION IV: FEES

It is further agreed that upon execution of this Agreement, the Subdivider shall pay the Delaware County Sanitary Engineer three and one-half percent (3½%) of the estimated construction cost of the Improvements for plan review of **Sanitary Sewer Improvement Plan Longhill Farms at Berlin Section 1 (\$27,508.39)**. The Subdivider shall also pay the Delaware County Sanitary Engineer eight and one-half percent (8½ %) of the estimated construction cost of the Improvements for inspection during construction and cleaning and televising of the sewers and appurtenances of **Sanitary Sewer Improvement Plan Longhill Farms at Berlin Section 1 (\$66,806.08)**. The Delaware County Sanitary Engineer shall in his or her sole discretion inspect, as necessary, the Improvements being installed or constructed by the Subdivider and shall keep records of the time spent by his or her employees and agents in such inspections and in the event the hours worked for inspection at a rate of \$75.00 per hour and for the camera truck at \$150.00 per hour exceeds the eight and one-half percent (8½%), the County may require, and the Subdivider shall pay, additional funds based on the estimated effort for completion as determined by the Sanitary Engineer in his or her sole discretion.

In addition to the charges above, the Subdivider shall pay the cost of any third party inspection services for **Sanitary Sewer Improvement Plan Longhill Farms at Berlin Section 1** as required by the County.

SECTION V: CONSTRUCTION

All public improvement construction shall be performed within one (1) year from the date of the approval of this Agreement by the County Commissioners, but extension of time may be granted if approved by the County Commissioners.

The Subdivider shall indemnify and save harmless the County, Townships, Cities, and/or Villages and all of their officials, employees, and agents from all claims, suits, actions and proceedings which may originate from or on account of any death, injuries or damages to persons or property received or sustained as a consequence of any action, or omissions of the Subdivider, and any of its contractors or sub-contractors, or from any material, method, or explosive used in the Work, or by or on account of any accident caused by negligence, or any other act or omission of the Subdivider, and any of its contractors or the contractors' agents or employees in connection with the Work.

The Subdivider shall have a competent representative who is familiar with the project on site during construction. The representative shall be capable of reading the plans and specifications and shall have authority to execute the plans and specifications and alterations required by the County. The representative shall be replaced by the Subdivider when, in the opinion of the County, the representative's performance is deemed inadequate.

If, due to unforeseen circumstances during construction activities, the Subdivider must install any of the Improvements to a different location than shown on the approved and signed construction plans, the Subdivider shall request a revision to the construction plans and the Delaware County Sanitary Engineer shall evaluate this request. If the request for a revision is approved in writing by the Delaware County Sanitary Engineer, then the Subdivider shall provide and record a revised, permanent, exclusive sanitary easement prior to the County's acceptance of the sewer. The language and dimensions of the revised, permanent, exclusive sanitary easements shall be subject to the approval of the Delaware County Sanitary Engineer.

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The Subdivider shall, during the construction and maintenance periods, comply with all rules and regulations and conform to all procedures established by the County regarding submission of shop drawings, construction schedules, operation of facilities, and other matters incident to the construction and operation of the Improvements.

The Subdivider shall obtain all other necessary utility services incident to the construction of the Improvements and for their continued operation. The Subdivider shall be responsible for all utility charges and installation costs. The utility user charges shall be paid by the Subdivider and maintained in continuous use throughout the construction and testing phases until accepted for operation and maintenance by the County.

SECTION VI: EASEMENTS

The Subdivider shall provide to the County all necessary easements or rights-of-way required to complete the Improvements, all of which shall be obtained at the expense of the Subdivider. All Improvements, including, but not limited to, public sanitary sewers, force mains, manholes, and private laterals to offsite properties shall be located within a recorded, permanent, exclusive sanitary easement on file at the Delaware County Recorder’s Office, the language of which shall be subject to approval by the Delaware County Sanitary Engineer. The dimensions of all easements shall be as shown on the approved engineering drawings. If any onsite easement or necessary right of way is not to be recorded as part of a subdivision plat, such easements and rights-of-way shall be recorded and provided to the Delaware County Sanitary Engineer before a preconstruction meeting will be permitted and before construction may begin on the Improvements. All offsite easements must be recorded prior to signing the plans unless otherwise permitted, in writing, by the Delaware County Sanitary Engineer.

SECTION VII: COMPLETION OF CONSTRUCTION

The County shall, upon certification in writing from the Delaware County Sanitary Engineer that all construction is complete according to the plans and specifications, by Resolution, accept the Improvements described herein and accept and assume operations and maintenance of the Improvements.

The Subdivider shall within thirty (30) days following completion of construction of the Improvements, and prior to final acceptance, furnish to the County as required:

- (1) "As built" drawings of the Improvements which plans shall become the property of the County and shall remain in the office of the Delaware County Sanitary Engineer and Delaware County Engineer and/or the City of Powell. The drawings shall be on reproducible Mylar (full size), two paper copies (one full size & one 11"x17"), and a Compact Diskette with the plans in .DWG format & .PDF format.
- (2) An Excel spreadsheet, from a template as provided by the Delaware County Sanitary Engineer, shall accompany the plan submittal showing the locations of the manholes in Ohio State Plane North Coordinates NAD 1983 (NAVD 1988 datum) and other miscellaneous project data.
- (3) An itemized statement showing the cost of the Improvements.
- (4) An Affidavit or waiver of lien from all contractors associated with the project that all material and labor costs have been paid. The Subdivider shall indemnify and hold harmless the County from expenses or claims for labor or materials incident to the construction of the Improvements.
- (5) Documentation showing the required sanitary easements.

Should the Subdivider become unable to carry out the provisions of this Agreement, the Subdivider’s heirs, successors or assigns shall complete and comply with all applicable terms, conditions, provisions, and requirements of this Agreement. Notwithstanding any other provision of this Agreement, the County shall have no obligation to construct any improvements contemplated herein, and any construction thereof on the part of the County shall be strictly permissive and within the County’s sole discretion.

The Subdivider, for a period of five (5) years after acceptance of the Improvements by the County, shall be responsible for defective materials and/or workmanship. All warranties for equipment installed as a part of the Improvements shall be the same as new equipment warranties and shall be assigned to the County upon acceptance of the Improvements. A list of corrective items shall be provided to the Subdivider prior to expiration of the five (5) year period.

After the acceptance of the Improvements, the capacity charge **and any surcharges** shall be paid by the applicant upon request to the Delaware County Sanitary Engineer for a tap permit to connect to the sanitary sewer. User fee charges will commence the day the sanitary tap is made, regardless of completeness of construction.

SECTION VIII: SIGNATURES

IN CONSIDERATION WHEREOF, the County Commissioners hereby grant the Subdivider or its agent the right and privilege to make the Improvements stipulated herein and as shown on the approved plans.

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

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RESOLUTION NO. 22-194

**IN THE MATTER OF APPROVING A PRODUCTION AGREEMENT WITH SMARTBILL LTD.
FOR QUARTERLY PRINTING, MAILING AND PROVIDING DIGITAL IMAGES OF SEWER
BILLS:**

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

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

NOW, THEREFORE, BE IT RESOLVED that the Board of Commissioners of Delaware County, Ohio hereby approves the following agreement with SmartBill Ltd.:

PRODUCTION AGREEMENT

This Production Agreement ("Agreement") is made and entered into this 1st day of May, 2022 ("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 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 (1) year. The term of this Agreement shall commence on the Effective Date of May 1, 2022 and continue thru April 30, 2023 ("**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

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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.

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

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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.

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.

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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.

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 Mrs. Lewis Aye Mr. Benton Aye Mr. Merrell Aye

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RESOLUTION NO. 22-196

IN THE MATTER OF INDEFINITELY TABLING RESOLUTION NO. 22-195 (A JOINT APPLICATION BY THE PROSECUTING ATTORNEY AND THE BOARD OF COUNTY COMMISSIONERS TO THE COMMON PLEAS COURT TO AUTHORIZE THE APPOINTMENT OF KIP WAHLERS, ESQ., AS LEGAL COUNSEL, TO PROVIDE THE TREASURER’S OFFICE WITH A LEGAL OPINION REGARDING R.C. 321.09):

It was moved by Mr. Merrell, seconded by Mr. Benton to approve indefinitely tabling Resolution No. 22-195 (A Joint Application by the Prosecuting Attorney and the Board of County Commissioners to the Common Pleas Court to authorize the appointment of Kip Wahlers, Esq., as Legal Counsel, to provide the Treasurer’s Office with a legal opinion regarding R.C. 321.09).

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

RESOLUTION NO. 22-195

IN THE MATTER OF APPROVING A JOINT APPLICATION BY THE PROSECUTING ATTORNEY AND THE BOARD OF COUNTY COMMISSIONERS TO THE COMMON PLEAS COURT TO AUTHORIZE THE APPOINTMENT OF KIP WAHLERS, ESQ., AS LEGAL COUNSEL, TO PROVIDE THE TREASURER’S OFFICE WITH A LEGAL OPINION REGARDING R.C. 321.09:

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

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PREAMBLE

WHEREAS, pursuant to R.C. § 305.14(A), the Board desires to approve a joint application by it and the Prosecuting Attorney, Delaware County, Ohio (“Prosecutor”) to the Common Pleas Court, Delaware County, Ohio (“Court”) to authorize the appointment of Kip Wahlers, Esq., as legal counsel to provide the Delaware County Treasurer with a legal opinion regarding the reporting requirements found in R.C. 321.09.

RESOLUTION

NOW THEREFORE, BE IT RESOLVED:

A. Pursuant to R.C. § 305.14(A), the Board hereby approves the attached joint application (Exhibit A) by it and the Prosecutor to the Court to authorize the appointment of Kip Wahlers, Esq., as legal counsel, to provide the Delaware County Treasurer with a legal opinion regarding the reporting requirements found in R.C. 321.09

B. All formal actions of this Board concerning and relating to the passage of this Resolution were adopted in an open meeting of the Board, and all deliberations of this Board and of any of its committees that resulted in such formal action were in meetings open to the public in compliance with all legal requirements, including R.C. § 121.22.

C. This Resolution shall be in full force and effect immediately upon adoption.

**IN THE COURT OF COMMON PLEAS
DELAWARE COUNTY, OHIO**

IN RE APPOINTMENT OF LEGAL COUNSEL FOR THE DELAWARE COUNTY TREASURER :
: Case No.
:

**JOINT APPLICATION TO APPOINT LEGAL COUNSEL FOR
THE DELAWARE COUNTY TREASURER**

Now comes Melissa A. Schiffel, Prosecuting Attorney, Delaware County, Ohio, and the Board of Commissioners, Delaware County, Ohio (“Board”), and, pursuant to R.C. § 305.14(A), jointly move this Court to appoint legal counsel to provide the Delaware County Treasurer with a legal opinion regarding the reporting requirements found in R.C. 321.09. The appointment is necessary because the Delaware County Prosecutor’s Office is unable to provide a legal opinion due to a conflict of interest between clients. The compensation for outside legal counsel will not exceed \$5,000.00.

Respectfully submitted,

Melissa A. Schiffel (0082154)
Prosecuting Attorney
Delaware County
140 N. Sandusky Street, 3rd Floor
Delaware, Ohio 43015
Telephone: (740) 833-2690
Facsimile: (740) 833-2689
Email: mschiffel@co.delaware.oh.us

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ADMINISTRATOR REPORTS

Tracie Davies, County Administrator

-Attended a meeting with all the utility companies involved with the Berlin Business Park yesterday to keep things moving forward.

Dawn Huston, Deputy Administrator

-Attended the Township Association meeting last Thursday. Most of the discussion centered on development plans. Allen Freeman made a presentation on grants. Their next meeting is June 9th.

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COMMISSIONERS’ COMMITTEES REPORTS

Commissioner Benton

-Attended the MORPC Executive Committee meeting last week. There was talk of Amtrak expanding services

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throughout Ohio.

- The Chamber's State of the County lunch will be today.
- Attended the MORPC State of the Region yesterday.
- Land Bank will meet today at 1:30 PM
- All three properties at the Auditor's auction sold on Tuesday.

Commissioner Merrell

- The Auditor's Auction went very well. Thanks to the Auditor and Treasurer's offices for their work to get the properties to that point to auction.
- Will be attending a CCAO policy meeting today at 1:00 PM.
- CCAO board will meet tomorrow.
- Happy early birthday to Commissioner Benton.

Commissioner Lewis

- Happy St. Patrick's Day to everyone.

There being no further business, the meeting adjourned.

Gary Merrell

Barb Lewis

Jeff Benton

Jennifer Walraven, Clerk to the Commissioners