

COMMISSIONERS JOURNAL NO. 78 - DELAWARE COUNTY
MINUTES FROM REGULAR MEETING HELD APRIL 24, 2023

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

1:30 P.M. Viewing For Consideration Of The Drainage Improvement Petition For The Jones #60 Watershed

1
RESOLUTION NO. 23-324

IN THE MATTER OF APPROVING THE ELECTRONIC RECORD OF THE PROCEEDINGS FROM REGULAR MEETING HELD APRIL 20, 2023:

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

WHEREAS, the Board of Commissioners of Delaware County, Ohio (the "Board") met in regular session on April 20, 2023; 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 Mrs. Lewis Aye Mr. Merrell Aye Mr. Benton Aye

2
PUBLIC COMMENT
-None.

3
RESOLUTION NO. 23-325

IN THE MATTER OF APPROVING PURCHASE ORDERS, THEN AND NOW CERTIFICATES, AND PAYMENT OF WARRANTS IN BATCH NUMBERS CMAPR0421, MEMO TRANSFERS IN BATCH NUMBERS MTAPR0421:

It was moved by Mrs. Lewis, seconded by Mr. Merrell to approve Then And Now Certificates, payment of warrants in batch numbers CMAPR0421, memo transfers in batch numbers MTAPR0421 and Purchase Orders as listed below:

<u>Vendor</u>	<u>Description</u>	<u>Account</u>	<u>Amount</u>	
PO' Increase (P2301151) Safehouse Ministries, Inc.	Medical & Health Related Services	7016165-5342	\$15,000.00	
<u>PR Number</u>	<u>Vendor Name</u>	<u>Line Description</u>	<u>Line Account</u>	<u>Amount</u>
R2303070	DELAWARE AUTO SALES LLC	REPAIR 21-2 DEER HIT	60111901 - 5370	\$9,800.00

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

4
RESOLUTION NO. 23-326

IN THE MATTER OF A NEW LIQUOR LICENSE FROM DARNER ENTERPRISES, LLC (DBA HAMMER & NAILS LEWIS CENTER) AND FORWARDING TO THE OHIO DIVISION OF LIQUOR CONTROL WITH NO OBJECTIONS AND NO REQUEST FOR A HEARING:

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

WHEREAS, the Ohio Division of Liquor Control has notified the Delaware County Board of Commissioners of a request for a new D3 license from Darner Enterprises, LLC (DBA Hammer & Nails Lewis Center), located at 6547 Artesian Run, Lewis Center, Ohio 43035; and

WHEREAS, the Delaware County Board of Commissioners has found no reason to file an objection;

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NOW, THEREFORE, BE IT RESOLVED that the Clerk of the Board shall complete the necessary forms and notify the Ohio Division of Liquor Control that no objections are made and no hearing is requested by this Board of County Commissioners.

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

5
RESOLUTION NO. 23-327

IN THE MATTER OF APPROVING A CONTRACT FOR REAL ESTATE PROPERTY TAX BILL PRINTING, PROCESSING, HANDLING AND MAILING WITH SMARTBILL LTD. FOR 2ND HALF COLLECTIONS FOR THE TREASURER’S OFFICE:

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

WHEREAS, the County Treasurer and staff recommend approval of a contract with SmartBill Ltd. for 2nd Half Collections for the Treasurer’s Office;

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

**CONTRACT FOR REAL ESTATE PROPERTY TAX BILL PRINTING,
PROCESSING, HANDLING AND MAILING**

This Contract for Real Estate Property Tax Bill Printing, Processing, Handling, and Mailing Services (“Contract”) is entered into this April 24, 2023 by and between the Board of Commissioners, Delaware County, Ohio (“Board”), whose principal place of business is located at 91 N. Sandusky St., Delaware, OH 43015, on behalf of the Treasurer of Delaware County, Ohio, whose principal place of business is located 145 N. Union St., 1st Floor, Delaware, OH 43015, the State of Ohio Tax Commissioner, and:

SmartBill Ltd

Company Name (“Contractor”)

whose principal place of business is located at
1050 O’Neill Drive
P.O. Box 105
Hebron, Ohio 43025

(individually “Party,” collectively, “Parties”).

1. Purpose

The purpose of this Contract is to state the covenants and conditions under which the Contractor shall provide all labor, equipment, machinery, vehicles, time, supplies, and materials necessary to provide for quality real estate property tax bill printing, processing, handling, and mailing services, all provided and performed in accordance with the provisions of the Request for Bids (“RFB”) and this Contract (collectively “Services”).

2. Definitions

Unless otherwise defined in this Contract, capitalized words and phrases shall have the same meanings assigned to them by the RFB.

3. Incorporation of Contract Documents

This Contract includes all Contract Documents (Legal Notice, RFB, Bid, Bidder’s submittal) and all forms, attachments, appendixes, and/or exhibits to this Contract and those documents. By this reference, the Contract Documents and all forms, attachments, appendixes, and/or exhibits to this Contract and those documents are incorporated into and made a part of this Contract.

4. Term

The term of this Contract shall become effective on and be inclusive of the date the last Party signs this Contract and continue through December 2025, unless otherwise terminated as provided in this Contract.

5. Renewal

Upon signed written agreement of the Parties, this Contract may be renewed subject to the same terms and conditions as provided in this Contract and upon any such terms and conditions as may be specifically agreed upon, added and/or amended in writing by the Parties. Any renewal agreements shall become a binding part of this Contract.

6. Scope of Services

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The following Services shall constitute the Specifications for this Contract. The Services to be provided include, but are not limited to, the following:

A. Summary of Project

Delaware County, Ohio has approximately 98,000 real estate property tax parcels. Real estate property taxes are billed in two (2) installments annually. Approximately 42,000 tax bills are sent to property owners for each installment. Taxes are due on February 10th and July 10th of each calendar year¹. The Treasurer is responsible for mailing the bills for real estate property taxes at least twenty (20) days prior to these semi-annual due dates. For purposes of this Contract, tax bills for each installment shall be mailed respectively no later than the first Friday of January and the first Friday of June ahead of each due date.

For each semi-annual installment during the term of the Contract, the Contractor shall be responsible for and shall timely provide all labor, equipment, machinery, vehicles, time, supplies, and materials necessary to fully provide for quality real estate property tax bill printing, processing, handling, and mailing services (“Services”), all in accordance with the RFB and the Contract.

B. Compliance with Legal Requirements

All Services must meet the requirements of R.C. § 323.13 *et seq.*, all other applicable federal, state, and local laws, rules, and regulations, and the detailed specifications contained in the RFB and Contract.

C. Quality

All Services shall be of good quality, satisfactory to the Treasurer, in the Treasurer’s sole discretion, and be provided and performed in a timely and professional workman like manner.

D. Tax Bill

In accordance with R.C. § 323.131, each tax bill prepared and mailed or delivered shall be in the form and contain the information required by the State of Ohio Tax Commissioner (“Commissioner”). The current form is attached to the RFB as Appendix J. If a new or updated form is required by the Commissioner, the Treasurer shall provide that new or updated form to the

1 Important Note: Real estate property tax due dates are established by the State of Ohio. Any extension of the prescribed due date must be approved by the State of Ohio upon application of the county treasurer. The Treasurer does not intend on seeking extensions of these dates.

Contractor. The Contractor shall customize the form for Delaware County use. Prior to printing tax bills for each installment, the Contractor shall provide a proof (i.e. sample) tax bill to the Treasurer for the Treasurer’s review and approval.

The tax bill shall meet the following requirements:

- Meet all requirements of R.C. § 323.131 and be in the form required by the Commissioner.
- Meet all applicable federal, state, and local laws, rules, and regulations, and the detailed specifications contained in the RFB and Contract.
- Be printed on white 8 ½” x 11” (letter size) paper. Paper should be at least 20lb weight.
- Contain the Treasurer’s logo (to be provided by the Treasurer).
- Contain custom colors, front, and backer text.
- Contain taxpayer name, address, property address, parcel number, tax information, and any other information required by the Treasurer and/or Commissioner.
- Text for taxpayer name, address, property address, parcel number, tax information, and any other information required by the Treasurer and/or Commissioner shall be black in color, in a standard font (i.e. Times New Roman), and at least 11 point font size.
- Contain a return stub to be returned with payment that displays taxpayer name, address, property address, parcel number, tax information, any other information required by the Treasurer and/or Commissioner.

E. Tax Bill Inserts (i.e. “Buck Slip”)

Aside from the tax bill, the Treasurer may require other items to be inserted in the outgoing envelope with the real estate tax bill and return envelope. The Treasurer currently requires one (1) approximately 7¼” x 3¼” insert, known as a “Buck Slip,” to be inserted in the outgoing envelope with the real estate tax bill and return envelope. The Treasurer will specify the text and graphics to be included on the Buck Slip. The Contractor shall custom design the Buck Slip with the required text and graphics and provide a proof to the Treasurer for review and approval prior to performing Services for each tax bill installment. After approval by the Treasurer, the Contractor shall print and insert the Buck Slip in each outgoing envelope. An example Buck Slip is included in Appendix J.

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The content (text and graphics) on the Buck Slip are subject to change for each tax bill installment. The Contractor shall check with the Treasurer for changes when preparing to perform the Services for the next installment mailing. The Treasurer shall advise the Contractor of any changes, the Contractor shall make those changes, and provide a proof to the Treasurer for review and approval.

Except for the Buck Slip and other inserts expressly approved and authorized by the Treasurer, **NO** other items besides the real estate tax bill and return envelope shall be enclosed in the outgoing envelope.

F. Envelopes

The Contractor shall design a custom outgoing envelope for mailing tax bills to taxpayers and a custom envelope to be enclosed with the tax bill for the tax payer to return payment. Prior to printing, the Contractor shall provide proofs (i.e. samples) of both envelopes to the Treasurer for the Treasurer's review and approval. The outgoing envelope shall meet the following requirements:

- Meet all requirements of R.C. § 323.131 and be in the form required by the Commissioner.
- Meet all applicable federal, state, and local laws, rules, and regulations, and the detailed specifications contained in the RFB and Contract.
- Be a #10 (9" X 12") window envelope for displaying outgoing address.
- Envelope shall be white in color.
- Contain the Treasurer's logo (to be provided by the Treasurer).
- Contain the return address for the Treasurer.
- The text should be in custom colors and front.

The return envelope shall meet the following requirements:

- Meet all requirements of R.C. § 323.131 and be in the form required by the Commissioner.
- Meet all applicable federal, state, and local laws, rules, and regulations, and the detailed specifications contained in the RFB and Contract.
- Be a #9 envelope that fits inside the outgoing envelope with the tax bill.
- Envelope shall be white in color.
- Contain the Treasurer's logo (to be provided by the Treasurer).
- Contain the return address for the Treasurer.
- The text should be in custom colors and front.

G. Process:

The following process will be used to provide the Services for each billing cycle:

1. Once the Treasurer has established due dates for the billing cycle, the Treasurer will provide these to the Contractor. The Contractor shall then provide deadlines for format and data changes, testing, and submission of production files for that billing cycle.
2. The Treasurer will submit test data files to the Contractor via secure FTP site. The file layouts, mapping, and CSV formats will be provided by the Treasurer.
3. The Contractor will provide to the Treasurer an electronic file of real estate property tax bill proofs for review, barcode testing, and OCR line testing.
4. Once initial proofs are approved by the Treasurer, the final data file will be sent to the Contractor via secure FTP site. The file layouts, mapping, and CSV formats will be provided.
5. The Contractor will provide to the Treasurer final real estate property tax bill proofs for review, barcode testing, and OCR line testing.
6. The Treasurer's tax services provider will balance its tax data file load totals to the tax data file totals provided by the Treasurer.
7. Once the final proofs are approved by the Treasurer and the tax data file totals are verified, run and mailing dates will be established by agreement of both Parties.
8. The Contractor shall print and stuff the envelopes by the run date and deliver the tax bills to the United States Post Office for placement in the U.S. Mail by the mail date.
9. The Contractor will provide to the Treasurer a searchable electronic file containing all real estate property tax bills and informational sheets produced for that billing cycle.
10. The Contractor shall invoice the Treasurer for Services and invoice the Board for Postage.

H. Information for Tax Bills

In advance of each installment and with time for printing and mailing, as negotiated between Contractor and Treasurer, the Treasurer shall electronically provide to the Contractor via data file all taxpayer and tax information to be printed on individual tax bills, including, but not limited to, taxpayer name, address, property address, parcel number, tax information, and any other information required by the Treasurer and/or Commissioner.

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I. Printing

Printing shall occur as follows:

First Half Billing (First Installment): The Treasurer will provide one data file for real estate property tax bills. The Contractor will print information from the data file onto the preprinted custom real estate property tax bills.

Second Half Billing (Second Installment): The Treasurer will provide one data file for real estate property tax bills. The Contractor will print information from the data file onto the preprinted custom real estate property tax bills.

General:

- High quality digital or laser printing is required.
- Text for taxpayer name, address, property address, parcel number, tax information, and any other information required by the Treasurer and/or Commissioner shall be black in color, in a standard font (i.e. Times New Roman), and at least 11 point font size.
- The remittance stub portion of the real estate property tax bill must contain:
 - An OCR line. Standard for the OCR line will be provided by the Treasurer.
 - A barcode. Standard for the OCR line will be provided by the Treasurer.
- The Contractor will print custom messages provided by the Treasurer.
- Data sections printed from files onto the real estate property tax bills must be able to grow or shrink according to varying sizes of information provided for each parcel number.

J. Handling

In time to mail the tax bills respectively no later than the first Friday of January and the first Friday of June ahead of each installment due date, the Contractor shall print the tax bills on the approved forms, fold the tax bills, and stuff the tax bills and approved return envelopes into the approved outgoing envelopes and perform all other Services and/or take all other necessary steps to prepare to mail the tax bills.

The Contractor shall sort and deliver real estate property tax bills by treasurer code. The Contractor shall deliver requested codes to the Treasurer. These tax bills require special handling.

The Contractor will deliver the real estate property tax bills to the United States Post Office for mailing, with the exception of the tax bills requiring special handling. The Treasurer will advise the Contractor how to handle the tax bills that require special handling.

K. Mailing Information

Approximately 42,000 tax bills are sent to property owners for each installment. This number is approximate and is subject to increase or decrease.

The Contractor shall provide mailing hygiene by comparing the mailing information from the data file provided by the Treasurer to the latest mailing information provided by the United States Postal Service. The Contractor shall prior to mailing tax bills:

- Update the mailing information on the applicable real estate property tax bills based on the data comparison.
- Provide an electronic report of mailing addresses that were updated to the Treasurer.

L. Postage

Postage means the actual cost of USPS postage at the lowest discounted rate at the time of mailing for the type of item mailed and, if applicable, weight of the item.

The Contractor shall presort data for barcode postage rates. Postage shall be charged separately to the Board at actual cost. Invoices for Postage shall be sent to the Treasurer.

M. Mailing Deadlines

Taxes are due on February 10th and July 10th of each calendar year². The Treasurer is responsible for mailing the bills for real estate property taxes at least twenty (20) days prior to these semi-annual due dates. For purposes of this Contract, tax bills for each installment shall be mailed respectively no later than the first Friday of January and the first Friday of June ahead of each due date.

N. Prohibition on Including Other Items with Tax Bills

Except for the Buck Slip and other inserts expressly approved and authorized by the Treasurer, **NO** other items besides the real estate tax bill and return envelope shall be enclosed in the outgoing envelope.

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O. No Substitutions

There shall be no Exceptions to or substitutions for any of the specifications/scope of services contained in the RFP and/or this Contract.

P. Warranty

The Contractor shall fully guarantee and warrant the Services as follows:

- The Contractor represents and warrants that it has adequate quality and quantity of trained staff and equipment to undertake the Services.

2 Important Note: Real estate property tax due dates are established by the State of Ohio. Any extension of the prescribed due date must be approved by the State of Ohio upon application of the county treasurer. The Treasurer does not intend on seeking extensions of these dates.

- The Contractor represents and warrants that absent circumstances beyond the Contractor's control, real estate property tax bills for each installment shall be mailed respectively the first Friday of January and the first Friday of June ahead of each due date, but in no event later than at least twenty (20) days prior to the established first and second half due dates as required by the Treasurer in the Ohio Revised Code.
- The Contractor, without exception, fully guarantees and warrants the quality, accuracy, and timeliness of the Services.

The Contractor also hereby warrants that all of its and its subcontractor's board members, officers, officials, directors, managers, employees, volunteers, representatives, and/or agents that will perform the Services and/or this Contract are, or will be at the time of performance, licensed and/or certified, if applicable, to perform the tasks they are required to perform under this Contract and are sufficiently and properly trained to competently perform their job duties.

Additionally, the Contractor hereby warrants that the Services that it provides pursuant to this Contract are correct, accurate, performed properly, and are free from defect. The Contractor, without cost to the County, shall promptly and properly fix, correct, re-perform, and/or replace the Services, any deliverable, or any portion thereof provided pursuant to this Contract that, in the sole discretion of the Treasurer, is/are defective and/or not satisfactorily performed.

7. Financial Agreement

The following are the financial terms and conditions of this Contract.

A. Payments

In exchange for the Services, the County shall pay the Contractor by real estate tax billing cycle, up to the Awarded Bid Amount. Payments shall be made as follows:

1. After each real estate tax billing cycle, the Contractor shall submit to the Treasurer a Proper Invoice for only those costs for or associated with the Services (except for Postage) provided by the Contractor during that billing cycle. The invoice shall be submitted in hard copy directly to the Treasurer as follows:

Donald E. Rankey, Jr. Delaware County Treasurer
Office of the Treasurer
145 N. Union Street, 1st Floor
Delaware, Ohio 43015

2. The Contractor shall also submit a separate Proper Invoice to the Board for Postage costs for mailing the real estate property tax bills for that billing cycle. The invoice shall be submitted in hard copy directly to the Board as follows:

Tracie Davies, Delaware County Administrator
91 N. Sandusky St.
Delaware, OH 43015

3. If an alternate bid is awarded, the Treasurer shall pay the Contractor the per piece Alternate Awarded Bid Amount. After providing Services for an alternate bid project, the Contractor shall submit to the Treasurer a Proper Invoice for only those costs for or associated with the per piece Services (except for Postage). The invoice shall be submitted in hard copy directly to the Treasurer per Sec. 7(A)(1) of this Contract. The Contractor shall also submit a separate Proper Invoice to the Board for Postage costs for mailing the per piece items. The invoice shall be submitted in hard copy directly to the Board per Sec. 7(A)(2).

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B. Maximum Payment

The maximum amount payable pursuant to this Contract is the Awarded Bid Amount, plus, if awarded, the Alternate Awarded Bid Amount, multiplied times the number of pieces for which Services are provided.

C. Taxes

The County is exempt from all federal, state, and local taxes. As such, the County shall be invoiced for and shall not pay any taxes. A tax exempt certificate shall be provided to the Contractor upon request. Should the County be subject to any taxes, it is assumed that the Contractor included all applicable taxes in its Bid, less all discounts and refunds.

D. Invoice

To receive payment, the Contractor shall submit a detailed invoice ("Proper Invoice"). A Proper Invoice is defined as an invoice free from defects, discrepancies, errors, and/or other improprieties and includes, but is not limited to including, the following:

- Invoice number;
- Purchase order number (if applicable);
- Contractor's full name, address and telephone number;
- Name of a contact person with the Contractor in charge of billing, including a telephone number and email address for such contact;
- The Contractor's federal employer identification number;
- As applicable, the Treasurer's or Board's full name and address;
- Detail, including, but not limited to, the following:
 - A description of all Services and/or deliverables provided, including, but not limited to, the number of tax bills printed and mailed, the number of window envelopes printed, and the number of tax bill forms printed; and,
 - Dates the Services and/or deliverables were provided; and,
 - Itemized costs, including, but not limited to, rates, applicable discounts, the formula/means of arriving at the total amount owed, and total amount owed.

As applicable, the invoice shall be accompanied by receipts and/or documentation, satisfactory to the County, supporting the invoiced amount.

Upon receipt of a Proper Invoice and, if applicable, any accompanying receipts and/or documentation, payment shall be made to the Contractor. The County shall have no less than thirty (30) days after receipt to pay a submitted invoice.

The date of the warrant issued in payment shall be considered the date payment is made. The Contractor's payment shall not be initiated before a proper invoice is received by the Treasurer or the Board.

Payment shall be made to the Contractor, under the Contractor's federal employer identification number and only as provided for in this RFP and/or in the Contract.

Defective invoices shall be returned to the Contractor noting areas for correction. When such notification of defect is sent, the required payment date shall be thirty (30) days after receipt of the corrected invoice.

E. Federal W-9 Form

The Contractor shall submit to the County a completed Federal IRS W-9 form (RFB Appendix G).

8. Terms and Conditions

The following are the terms and conditions of this Contract.

A. Independent Contractor

The Contractor agrees that it shall act in performance of this Contract as an independent contractor. No agency, employment, joint venture, or partnership has been or will be created between the Parties hereto pursuant to the terms and conditions of this Contract.

The Contractor assumes all responsibility for any and all federal, state, municipal, or other tax liabilities, along with workers compensation, unemployment compensation, contributions to retirement plans, and/or insurance premiums which may accrue and/or become due as a result of compensation received for the performance of this Contract and/or other services and/or deliverables rendered and/or received under or pursuant to this Contract.

The Contractor and/or its board members, officers, officials, directors, managers, employees, representatives, agents, and/or volunteers are not employees of the County (including, but not limited to, the Board and Treasurer) and are not entitled to any benefits enjoyed by employees of the County (including, but not limited to, the Board and Treasurer).

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- ii. Comprehensive General Liability Insurance. Comprehensive General Liability Insurance with minimum coverage, specific to Delaware County, Ohio, in the amount of at least One Million Dollars (\$1,000,000.00) each occurrence or equivalent and Two Million Dollars (\$2,000,000.00) in the aggregate, including coverage for subcontractors, if any are used, and shall include the following coverage:
 - a. Broad form liability and personal injury liability coverage;
 - b. Broad form property coverage;
 - c. Blanket contractual.
- iii. Umbrella or Excess Liability Insurance (over and above Comprehensive General Liability). Umbrella or excess liability insurance, specific to Delaware County, Ohio, with minimum coverage in the amount of at least Two Million Dollars (\$2,000,000.00).
- iv. Comprehensive Auto/Vehicle Liability Insurance Comprehensive Auto/Vehicle Liability Insurance covering all owned, leased, non-owned, and/or hired vehicles used in connection with the Services with minimum coverage limits of at least at least three hundred thousand dollars (\$300,000.00) (Combined Single Limit) or, one hundred thousand dollars (\$100,000.00) per person and three hundred thousand dollars (\$300,000.00) per accident for bodily injury and one hundred thousand dollars (\$100,000.00) per accident for property damage or more as may be required for particular vehicles or particular uses of vehicles as required by applicable law.

All of the above required insurance policies shall be endorsed to include Delaware County, Ohio, the Board, and the Treasurer, and all their respective boards, officers, officials, committees, directors, managers, employees, volunteers, agents, and representatives as additional insured during the term of this Contract.

Evidence of the above insurance coverage, represented by Certificates of Insurance, shall be furnished to the Treasurer prior to any work being performed under this Contract. Certificates of Insurance shall specify each of the above policies and limits and the additional insured status mentioned above. Such Certificates of Insurance shall state the Treasurer will be notified in writing thirty (30) days prior to any cancellation, material change, or non-renewal of insurance. Failure of the insurer to provide such written notice will obligate the insurer to provide coverage as if cancellation, any change, or the non-renewal did not take place. A renewal certificate will be provided to the Treasurer as the coverage renews. The insurance company needs to be identified on the Certificates of Insurance for each insurance policy and coverage. The Certificates of Insurance are to be signed by a person authorized by the insurance company to bind coverage on its behalf.

All insurance shall be written by insurance companies licensed to do business in the State of Ohio and in good standing with the Ohio Department of Insurance.

If there is any change in insurance carrier or liability amounts, a new Certificate of Insurance must be provided to the Treasurer seven (7) calendar days prior to the change.

The above required insurance coverage shall be primary insurance as respects Delaware County, Ohio, the Board, and the Treasurer and any insurance maintained by the foregoing shall be excess to the above required insurance and shall not contribute to it.

The County reserves the right to request copies of any required policy(ies) of insurance for its review.

The Contractor shall be responsible for any and all premiums for all the above required policies of insurance.

Failure to maintain the above insurance shall be deemed a material breach. Such a failure shall result in the Contract being void in its entirety.

During the term of this Contract, the County may require the Contractor to provide respective and/or additional Certificate(s) of Insurance in order to verify coverage. Failure to provide a requested certificate of insurance within seven (7) calendar days of the request may be considered as default.

In addition to the rights and protections provided by the insurance policies as required above, Delaware County, Ohio, the Board, and the Treasurer shall retain all such other and further rights and remedies as are available to them at law or in equity.

E. Bid Security (Bond)

Each Bid shall be accompanied by security furnished by the Bidder in accordance with R.C. §§307.88 and 153.54 *et seq.* Security shall be in the form of either a bond or certified check, cashier's check, or money order on a solvent bank or savings and loan association. Security shall be in the amount of five percent (5%) of the total amount of the bid for a contract for year 2023. Security shall be conditioned on the Bidder, if the Bidder's bid is accepted, executing a contract in conformity with the invitation (RFB) and the bid within ten (10) days after notice of award. Security issued in bond form shall be substantially in the form provided in R.C. § 153.571 (See RFB Appendix H) or a standard bond form in accordance with R.C. § 153.571 is

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acceptable. Security shall be in the name of the Board (“Board of Commissioners, Delaware County, Ohio”).

Security furnished in bond form shall be issued by a surety company or corporation licensed in the State of Ohio to provide said surety. Any surety company providing a bid bond shall have a minimum A.M. Best Company Policyholder’s Rating of A-, have or exceed the Best Financial Size Category of Class VI, and in all other respects be acceptable to the Board. Attorneys-in-fact who sign a bond must file a certified and effectively dated copy of their power of attorney, together with a copy of the Certificate of Authority issued by the Ohio Department of Insurance authorizing the surety company to engage in such business in the State of Ohio and issue such bond.

Upon execution of the Contract, the Board shall return, in a timely manner, the bid security of all unsuccessful Bidders. The Contractor’s bid security will be returned upon execution of the Contract by the Board.

F. Performance Bond

No performance bond is required. However, as a condition to entering the Contract, the Bidder agrees to faithfully performance of all things to be done under the Contract.

G. Licenses/Permits/Certifications

The Contractor certifies and warrants that its and its subcontractor’s board members, officials, officers, directors, managers, employees, volunteers, representatives, and/or agents that will perform the Services and/or this Contract have obtained, or will have obtained by the time of performance, all approvals, licenses, including operator licenses, permits, certifications, and/or other qualifications or prerequisites (collectively “Licenses”) necessary to fully perform this Contract and to conduct business in the state of Ohio. The Contractor further certifies and warrants that all such Licenses are, or will be at the time of performance, operative and current and that such Licenses have not been revoked or are not currently, or will not be at the time of performance, suspended for any reason.

At any time during the term of the Contract, the County may request from the Contractor copies of applicable Licenses. The Contractor shall promptly produce any such Licenses upon receipt of such a request.

H. Access to Records

At any time during regular business hours, with reasonable notice, and as often as the Board, Treasurer, or other agency or individual authorized by either may deem necessary, the Contractor shall make available to any or all the above named parties or their authorized representatives, at no cost, all contracts, subcontracts, invoices, receipts, reports, documents, and all other information or data, regardless of form or media, relating to all matters covered by this Contract (collectively “Records”). The above named parties shall be permitted by the Contractor and shall be entitled to inspect or audit and/or make excerpts, copies, and/or transcripts of the Records.

I. Retention of Records

For a minimum of three (3) years after expiration or termination of this Contract or for the retention period required by any applicable records retention schedule, whichever is longer, the Contractor shall retain and maintain, and assure that all of its subcontractors retain and maintain, all Records. If an audit, litigation, or other action related to this Contract is initiated during the term of this Contract, the three (3) year retention period, or the retention period required by any applicable records retention schedule, the Contractor shall retain and maintain, and assure that all of its subcontractors retain and maintain, the Records until the action is concluded and all issues are resolved, the three (3) years have expired, or the retention period of the applicable records retention schedule has expired, whichever occurs last.

J. Audit

The Contractor agrees to submit to and cooperate with any audit and accept responsibility for receiving, replying to, and/or complying with any audit exception by any appropriate federal, state, local, or independent audit authority. The Contractor agrees to reimburse the County the amount of any identified audit exception.

K. Termination

This Contract may be terminated as follows:

i. Convenience:

The County may terminate this Contract for convenience at any time and for any reason by giving at least seven (7) days advance notice, in writing, to the Contractor.

The Parties may terminate this Contract for convenience at any time and for any reason upon the mutual written consent of the Parties.

ii. Breach or Default:

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Upon breach or default of any of the terms, conditions, provisions, obligations, or duties contained in this Contract, the aggrieved Party shall provide written notice of the breach or default to the breaching or defaulting Party and permit the breaching or defaulting Party to remedy the breach or default within a reasonable period of time. If the breach or default is not satisfactorily remedied within the stated period of time, this Contract may, at the election of the aggrieved Party, be immediately terminated. The terminating Party shall provide prompt written notice of such termination to the other Party.

Termination pursuant to this section shall relieve the Parties of any and all further obligations under this Contract, except that the Contractor shall be entitled to receive compensation for any Services satisfactorily performed hereunder through the date specified on the notice as the effective date of termination. Such amount shall be full consideration for the Contractor's performance under this Contract.

If the Contract is terminated pursuant to this Section, the Contractor shall have no cause of action against the County, except for a cause of action for non-payment for Services rendered prior to the effective date of termination. The Board, without limitation, retains and reserves and may exercise any available legal, administrative, contractual, or equitable rights, legal actions, or remedies.

If this Contract is terminated pursuant to this section and the County must enter into a contract with a replacement company at a greater cost, the County shall assess the difference in the cost to the Contractor and the Contractor agrees to pay such assessment.

Upon expiration or any termination of this Contract, the Contractor shall return to the Treasurer all County property, including any and all County owned data/data files.

L. Waiver

The waiver of any provision or requirement of this Contract or any occurrence of breach or default is not and shall not be interpreted as a waiver of any such subsequent occurrences. If either Party fails to perform an obligation(s) under this contract and such failure(s) is (are) waived by the other Party, such waiver shall be limited to the particular failure(s) so waived and shall not be deemed to waive any other failure(s). Waiver by either Party shall be authorized in writing and signed by an authorized representative(s) of the waiving Party.

M. Damages in the Event of Default

The County declares and the Contractor acknowledges that the County may suffer damages due to the failure of the Contractor to act in accordance with the requirements, terms, specifications, and conditions of this Contract. The County declares and the Contractor agrees that such failure shall constitute an event of default on the part of the Contractor and the Contractor agrees to pay damages to the County to compensate the County for any damages incurred as a result of the default. The Contractor agrees that if the County does not give prompt notice of such a failure, that the County has not waived any of its rights or remedies concerning the failure by the Contractor or its right to damages. In the event of default by the Contractor, the County may procure the Services from other sources and hold the Contractor responsible for any excess costs occasioned thereby. Damages as contemplated by this section are limited to the amount of fees paid under this Contract for Services, including Postage.

N. Notices

All notices which may be required by this Contract or by operation of any rule of law shall be hand delivered or sent via certified mail, return receipt requested, by nationally recognized and reputable overnight courier, return receipt requested, or by email, read receipt requested, to the following individuals at the following addresses and shall be effective on the date hand delivered or sent:

County

Donald E. Rankey, Jr.
Delaware County Treasurer Office of the Treasurer
145 N. Union Street, 1st Floor
Delaware, Ohio 43015

Email: drankey@co.delaware.oh.us

Contractor

SmartBill Ltd.-Robin Hess
Name

President

Title

Address

1050 O'Neill Drive
P.O. Box 105

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Hebron, Ohio 43025

Email: robh@smartbillcorp.com

O. Certification Regarding Findings for Recovery

The Contractor, by signature of its authorized representative below, hereby certifies that it is not subject to any current unresolved findings for recovery pending with or issued by the Ohio Auditor of State.

	<u>04/20/2023</u>
Signature	Date

Robin W. Hess
Printed Name

President
Title

P. Personal Property Tax Affidavit (R.C. § 5719.042)

Each Bid shall be accompanied by a notarized affidavit which attests that the Bidder is not charged with any delinquent personal property taxes on the general tax list of personal property in Delaware County, Ohio or any other counties containing property in the taxing districts under the jurisdiction of the Auditor of Delaware County, Ohio or that the Bidder is charged with delinquent personal property taxes on any such tax list(s), setting forth the name of the county, the amount of such due and unpaid delinquent taxes and any due and unpaid penalties and interest thereon. The forms for such affidavits are contained in Appendix C to the RFB.

Q. Non-Discrimination/Equal Opportunity/Civil Rights

The Contractor warrants and agrees as follows:

- i. That in the hiring and employment of employees for the performance of work under this Contract or any subcontract, neither the Contractor nor any subcontractor shall, by reason of race, color, religion, sex, sexual orientation, Vietnam-era veteran status, age, handicap, national origin, or ancestry, discriminate against any citizen of this state in the hiring or employment of a person qualified to perform the work to which this Contract relates; and,
- ii. That neither the Contractor nor any of its subcontractors or any person acting on behalf of the Contractor or any subcontractor shall, in any manner, discriminate against, intimidate, or retaliate against any employee hired for the performance of work under this Contract on account of race color, religion, sex, sexual orientation, Vietnam-era veteran status, age, handicap, national origin or ancestry; and,
- iii. The Contractor and all of its subcontractors shall comply with all applicable federal, state, and/or local laws prohibiting discrimination and shall not discriminate.

The Contractor agrees to complete, sign, and submit with the RFB the Non-Discrimination/Equal Opportunity/Civil Rights form in Appendix E to the RFB.

R. Prohibited Interest

The Contractor agrees that no employee of Delaware County, Ohio, the Board or Treasurer during his/her tenure or for one (1) year thereafter shall have any interest, direct or indirect, in this Contract or the proceeds thereof. The Contractor also agrees that it will not employ in any manner a current Delaware County, Ohio, Board or Treasurer employee for a minimum period of one (1) year from the date this Contract expires or is terminated without the prior express signed written consent of the Treasurer.

S. Conflict of Interest

No personnel of the Contractor may voluntarily acquire any personal interest that conflicts with their responsibilities under the Contract. Additionally, the Contractor shall not knowingly permit any public official or public employee who has any responsibilities related to the Contract to acquire an interest in anything or any entity under the Contractor's control if such an interest would conflict with that official's or employee's duties. The Contractor will disclose to the Treasurer and the Board knowledge of any such person who acquires an incompatible or conflicting personal interest related to the Contract. The Contractor will take all legal steps to ensure that such a person does not participate in any action affecting the work under the Contract, unless the Treasurer and Board determine that, in the light of the personal interest disclosed, that that person's participation in any such action would not be contrary to the public interest.

The Contractor is currently unaware of and certifies that there are no conflicts of interest, either involving it or its employees, that would prohibit the Contractor from entering this Contract and agrees to immediately notify the Board and Treasurer when and if it becomes aware of any actual or potential

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conflict(s) of interest that arise(s) during the term of this Contract. Further, the Contractor agrees to take any and all necessary action, as solely determined by the Board and Treasurer, to eliminate any actual or potential conflicts of interest that may arise.

If the Contractor or any person(s) that works for the Contractor in relation to the Contract has a possible conflict of interest (e.g., employed by the Delaware County, Ohio, the Board, the Treasurer, work on a related contract, or participation in the development of the specifications or requirements for this RFP), then the Bid must include a statement regarding such conflict and the nature of that conflict. The Board has the right to reject any Bid in which a conflict is disclosed or cancel the Contract if any interest is later discovered that could give the appearance of a conflict.

T. Non-Collusion

Each Bid shall be accompanied by fully executed and notarized Non-Collusion Affidavit on the form contained in Appendix B of the RFB.

The Bidder/Contractor certifies as follows:

- This Bid/Contract is not entered or made in the interest of or on behalf of an undisclosed person, partnership, company, association, organization, or corporation.
- This Bid/Contract is genuine and not collusive or a sham.
- The Bidder/Contractor has not directly or indirectly induced or solicited any other Bidder to put in a false or sham bid.
- The Bidder/Contractor has not directly or indirectly colluded, conspired, connived, or agreed with any Bidder or anyone else to put in a sham bid or that anyone shall refrain from bidding.
- The Bidder/Contractor has not directly or indirectly colluded, conspired, connived, or agreed with any other person or entity concerning or regarding this Contract.
- The Bidder/Contractor has not in any manner, directly or indirectly, sought by agreement, communication, or conference with anyone to fix the price of this Contract, to fix any overhead, profit, or cost element of this Contract, or to secure any advantage against the Board or Treasurer or anyone interested in this Contract.
- The Bidder/Contractor has not in any manner, directly or indirectly, sought by agreement, communication, or conference with anyone to fix the Bid price of said Bidder or any other Bidder, or to fix any overhead, profit or cost element of such Bid price or that of any other Bidder, or to secure any advantage against the Board or Treasurer or anyone interested in the proposed Contract.
- This Bid/Contract is not a product of collusion with any other vendor, person, or entity, and no effect has been made to fix any overhead, profit or cost element of any proposed price.
- The Bidder/Contractor is unaware of and there is no conflict of interest, either involving it or its employees that would prohibit the Bidder/Contractor from entering this Contract.
- The Bidder has not, directly or indirectly, submitted its Bid price or any break-down thereof, or the contents thereof, or divulged any information or data relative thereto, or paid and will not pay any fee in connection therewith, to any corporation, partnership, company, association, organization, bid depository, or to any member or agent thereof, or to any other individual except to such person or persons as have a partnership or other financial interest with the Bidder in its general business.
- All statements contained in the Bid are true.
- All statements contained in the Contract are true.

U. Drug Free Environment

The Contractor agrees to comply with all applicable federal, state, and local laws regarding drug-free environment 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 will not purchase, use, or possess illegal drugs or alcohol or abuse prescription drugs in any way while performing the Services or on County property.

V. County Policies

The Contractor shall be bound by, conform to, comply with, and abide by all current applicable County directors, managers, employees, agents, representatives, and volunteers performing work under this Contract and/or for or on behalf of the County (collectively "Employees") and subcontractors and each of their respective officials, officers, directors, managers, agents, representatives and volunteers (collectively "Subcontractors") to comply with the Policies and shall be responsible for such compliance. Notwithstanding any other termination provision of this Contract, the Board may, in its sole discretion, immediately terminate this Contract for failure of the Contractor or any of its Employees or Subcontractors to comply with the Policies. Copies of the Policies are available online as follows:

<https://humanresources.co.delaware.oh.us/policies/>

The County reserves the authority to change, amend, replace, enact, repeal, and/or rescind the Policies at

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any time and without notice.

W. Subcontracting

The Contractor may subcontract any portion of this Contract with prior signed written preapproval of the Treasurer, such approval not to be unreasonably withheld. If any portion of this Contract is subcontracted, any subcontractor shall be bound by all applicable terms of this Contract and the Contractor shall continue to act as the prime contractor for all subcontracted work and shall assume full responsibility for the performance of the Services. The Contractor shall remain the sole point of contact and shall be ultimately responsible for the performance of the Services.

X. Assignment

This Contract and/or any of the rights or responsibilities it contains may not be assigned or transferred to any other party without the prior express signed written consent of the Board.

Y. Governing Law

This Contract shall be governed by and interpreted in accordance with the laws of the State of Ohio. The Parties irrevocably agree that jurisdiction and venue is proper in the Courts of Delaware County, Ohio or the Federal District Court for the Southern District of Ohio, Eastern Division in Columbus, Ohio.

Z. Headings

The subject headings of the paragraphs in this Contract are included for purposes of convenience only and shall not affect the construction or interpretation of any of its provisions.

AA. Drafting

This Contract shall be deemed to have been drafted by both Parties and no purposes of interpretation shall be made to the contrary.

BB. Survival

Sections 6(P), 7(B), 7(C), 8(A), (B), (C), (D), (H), (I), (J), (L), (M), (Y), (AA), (BB), (FF), and (GG) of this Contract shall survive termination or expiration of this Contract.

CC. Force Majeure

The Parties shall be temporarily excused from performance under this Contract and shall not be entitled to impose any penalty as a result of any delay in performance or interruption of payments caused by reason of war, insurrection, terrorism, riots, civil unrest, rebellions or revolutions in the United States or any nation where the obligations under this Contract are to be executed, acts, laws, rules or regulations of any government or government agency, failure to appropriate, strike, supplier and third party failure, lockouts, or labor difficulties, automobile fuel shortages, weather, explosion, act of God, order of Court or other public authority, or any other cause beyond the reasonable control of the Parties ("Force Majeure"). A Party who has been affected by a Force Majeure shall immediately give written notice to the other Party, provide an estimate as to the duration of time the Party will be affected the Force Majeure, and shall do everything possible to expediently resume performance. Such excusal from performance or interruption of payments shall continue until such Force Majeure ceases to exist or the Contract is terminated as provided in this Contract.

DD. Severability

The provisions of this Contract are severable and independent, and if any such provision shall be unenforceable in whole or in part, the remaining provisions and any partially enforceable provisions, to the extent enforceable, shall nevertheless be binding and enforceable.

EE. Counterparts

This Contract may be executed in counterparts.

FF. Conflicts

In the event of any conflict between the Contract Documents and Bid submitted by the Contractor, the Contract Documents control.

GG. Signatures

Any person executing this Contract in a representative capacity hereby warrants that he/she has authority to sign this Contract or has been duly authorized by his/her principal to execute this Contract on such principal's behalf and is authorized to bind such principal.

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- 1.3 The Services are more fully defined in and shall be rendered by the Consultant in accordance with Sections 04 and 05 of the Consultant's Proposal (the "Proposal"), which are attached hereto and, by this reference, fully incorporated into this Agreement.
- 1.4 To the extent that the terms, conditions, or provisions of this Agreement and any of the documents incorporated by reference in Section 1.3 may be inconsistent, conflicts shall be resolved in the following order of precedence: (a) the Agreement, excluding those documents incorporated by reference; (b) all other documents forming a part of or incorporated by reference into the Agreement.

2 SUPERVISION OF SERVICES

- 2.1 The Delaware County Board of Commissioners hereby designates the Delaware County Economic Development Director (the "Director") as the agent of the County for this Agreement.
- 2.2 The Director shall have authority to review and order changes to, and 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 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 Section 05 of the Proposal, and the total compensation under this Agreement shall not exceed One Hundred Thirty Thousand Dollars and Zero Cents (\$130,000.00) without subsequent modification of this Agreement in accordance with Section 3.1.
- 4.2 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

- 5.1 Compensation shall be paid based on monthly invoices submitted in accordance with the Proposal. Each monthly invoice shall be based on the percentage completion by task as identified in the Proposal.
- 5.2 The Consultant shall submit invoices to the Director on Consultant's company letterhead clearly listing the word "Invoice" with a sequential invoice number provided. The County may require additional documentation to substantiate an invoice, and the Consultant shall promptly submit documentation as requested to substantiate an invoice.
- 5.3 The County shall pay invoices as approved by the Director within thirty (30) days of receipt.

6 COMMENCEMENT AND COMPLETION OF SERVICES; SUSPENSION; TERMINATION

- 6.1 The Consultant shall commence Services in accordance with the Director's order and shall make best efforts to complete the Services in accordance with the schedule stated in the Proposal. This Agreement shall terminate upon the completion of the Services as set forth in the Proposal, unless terminated earlier in accordance with this Agreement.
- 6.2 The County may suspend the Services or terminate this Agreement for convenience by providing written notice to the Consultant.
- 6.3 In the case of termination, the Consultant shall submit a final invoice within sixty (60) days of the notice of termination for Services completed up to the date of termination. The County is not liable for payment for Services performed after the effective date of termination.

7 CHANGE IN SCOPE OF SERVICES

- 7.1 In the event that significant changes to the scope of the 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 be effective unless and until approved in a writing signed by both Parties.

8 OWNERSHIP OF WORK PRODUCT

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- 8.1 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.
- 8.2 The County shall have ownership of said documents, which are considered, but not limited to, any completed or partially completed reports and any other tangible written or electronic work produced in accordance with the Agreement.
- 8.3 For the sake of clarity, this section does not require unauthorized duplication of copyrighted materials.

9 CHANGE OF KEY CONSULTANT STAFF; ASSIGNMENT

- 9.1 The Consultant shall immediately notify the County, in writing, of any change to key Consultant staff assigned to the Services as contemplated in Section 02 of the Proposal.
- 9.2 The Consultant shall not assign or transfer this Agreement, or any of the rights, responsibilities, or remedies contained herein, to any third party without the County's express, written consent.

10 INDEMNIFICATION; LIMITATION OF LIABILITY

- 10.1 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.
- 10.2 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 breach of contract, direct, non-willful infringement of any right to use, possess, or otherwise operate or have any owned, protected, licensed, trademarked, patented, non-patented, and/or copyrighted software, product, service, equipment, invention, process, article, or appliance manufactured, used, or possessed in the performance of the Agreement and/or in providing the Services, to the extent caused by any act, error, or omission 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.
- 10.3 In no event shall either Party be liable to the other for any indirect, incidental, special, consequential or punitive damages whatsoever (including, without limitation, lost profits, loss of revenue, loss of use or interruption of business) arising out of or related to this Agreement, even if advised of the possibility of such damages.

11 INSURANCE

- 11.1 Minimum Coverage: Consultant shall maintain general and automobile liability insurance policies in such amounts as the Director determines will reasonably protect the County and Consultant.
- 11.2 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.

12 MISCELLANEOUS TERMS AND CONDITIONS

- 12.1 Conflicts of Interest: 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 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 County's prior express written consent. No personnel of the Consultant may voluntarily acquire a personal interest that conflicts with their responsibilities under this Agreement. The Consultant shall promptly disclose to the County knowledge of any such person who acquires an incompatible or conflicting personal interest related to this Agreement. The Consultant shall take all legal steps to ensure that such a person does not participate in any action affecting the Services under this Agreement, unless the County has determined that, in light of the personal interest disclosed, that person's participation in any such action would not be contrary to the public interest.
- 12.2 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

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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 (5) or more employees and that its employees are not public employees as contemplated in Chapter 145 of the Revised Code.**

- 12.3 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.
- 12.4 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.
- 12.5 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.
- 12.6 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.
- 12.7 Findings for Recovery: Consultant certifies that it has no unresolved findings for recovery pending or issued against it by the State of Ohio.
- 12.8 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.
- 12.9 Representations of the County: The County represents and covenants that it is legally empowered to execute, deliver and perform this Agreement and to enter into and carry out the transactions contemplated by this Agreement. The County further represents and covenants that this Agreement has, by proper action, been duly authorized, executed and delivered by the County and that all steps necessary to be taken by the County have been taken to constitute this Agreement, and the covenants and agreements of the County contemplated herein, as a valid and binding obligation, enforceable in accordance with its terms.
- 12.10 Representations of the Consultant: The Consultant represents and covenants that it is legally empowered to execute, deliver and perform this Agreement and to enter into and carry out the transactions contemplated by this Agreement. The Consultant further represents and covenants that this Agreement has, by proper action, been duly authorized, executed and delivered by the Consultant and that all steps necessary to be taken by the Consultant have been taken to constitute this Agreement, and the covenants and agreements of the Consultant contemplated herein, as a valid and binding obligation, enforceable in accordance with its terms.
- 12.11 Non-Collusion: The Consultant certifies as follows: (a) this Agreement is not entered into or made in the interest of or on behalf of an undisclosed person, partnership, company, association, organization, or corporation; (b) the Proposal is genuine and not collusive; (c) the Consultant has not directly or indirectly induced or solicited any other offeror to submit a false or sham proposal; (d) the Consultant has not directly or indirectly colluded, conspired, connived or agreed with any offeror or any other person or entity to put in a sham proposal or that anyone shall refrain from submitting a proposal; (e) the Consultant has not directly or indirectly colluded, conspired, connived or agreed with any other person or entity concerning or regarding this Agreement; (f) the Consultant has not in any manner, directly or indirectly, sought by agreement, communication, or conference with anyone to fix the price of this Agreement, to fix any overhead, profit or cost element of this Agreement, or to secure any advantage against the County in this Agreement; and (g) the Consultant is unaware of any conflict of interest, either involving it or its employees, that would prohibit the Consultant from entering this Agreement.
- 12.12 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 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 Consultant to comply with this Subsection. Copies of applicable policies are

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available upon request or online at <https://humanresources.co.delaware.oh.us/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.

- 12.13 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.
- 12.14 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 Services 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 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.

(Copies of the documents incorporated by reference in the Agreement are available in accordance with the applicable records retention schedule.)

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

7
RESOLUTION NO. 23-329

IN THE MATTER OF ESTABLISHING A NEW ORGANIZATIONAL KEY AND REQUESTING SUPPLEMENTAL APPROPRIATIONS FOR WHIPPLE ROAD OVER HORSESHOE RUN BRIDGE REHABILITATION:

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

NEW ORG KEY
29440462

Whipple Road LBR FY2023

SUPPLEMENTAL APPROPRIATIONS
29440462-5425

Whipple Road LBR FY2023/Bridge Construction \$375,000.00

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

8
RESOLUTION NO. 23-330

IN THE MATTER OF APPROVING AN OWNER’S AGREEMENT FOR OAKS AT BIG WALNUT:

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

WHEREAS, the Engineer recommends approving the Owner’s Agreement for Oaks at Big Walnut;

NOW, THEREFORE, BE IT RESOLVED that the Delaware County Board of Commissioners approves the Owner’s Agreement for Oaks at Big Walnut;

OWNER’S AGREEMENT
PROJECT NUMBER: 22109

THIS AGREEMENT, executed on this 24th day of April, between DBR ROSS ROAD LLC, hereinafter called “OWNER” and the **BOARD OF COUNTY COMMISSIONERS OF DELAWARE COUNTY OHIO (COUNTY COMMISSIONERS)**, for the project described as Oaks at Big Walnut, further identified as Project Number 22109, is governed by the following considerations to wit:

Said **OWNER** is to construct, install or otherwise make all public improvements shown and set forth to be done and performed in compliance with the approved engineering drawings and specifications, all of which are a part of this **AGREEMENT**.

OPTIONS:

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1. Should **OWNER** elect to record the plat prior to beginning construction, **OWNER** shall execute bond, certified check, irrevocable letter of credit, or other approved financial warranties equal to the cost of construction as shown in **Exhibit "A"** attached hereto.
2. Should **OWNER** elect to proceed to construction prior to recording the plat, no approved financial warranties are necessary until such time as **OWNER** elects to record the plat. Such plat cannot be recorded until the County Engineer has determined the construction of the project is at least 80% complete.

OWNER hereby elects to use **Option 1** this project.

The financial warranties are to insure faithful performance of this **AGREEMENT** and the completion of all improvements in accordance with the **Delaware County Design, Construction and Surveying Standards and any supplements thereto**. The **OWNER** shall pay the entire cost and expense of said improvements, unless otherwise specifically noted herein.

The **OWNER** shall indemnify and save harmless **Delaware County and all Townships and/or Villages** within Delaware County and all of their officials, employees or 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 actions or omissions of any contractor or subcontractor or from any material, including explosives, or any method used in said work or by or on account of any accident caused by negligence or any other act or omission of any contractor or his agents or employees.

All public improvement construction shall be performed within one (1) year from the date on which this **AGREEMENT** is executed by the **COUNTY COMMISSIONERS**.

The **OWNER** 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 public improvements within this subdivision.

It is further agreed that upon execution of the **AGREEMENT**, the **OWNER** shall deposit **Thirty Eight Thousand Dollars and No Cents (\$38,000.00)** estimated to be necessary to pay the cost of inspection by the **Delaware County Engineer**. When the fund has been depleted to ten percent (10%) of the original amount deposited, the **OWNER** shall replenish the account upon notice by the Engineer. Upon completion of the maintenance period and acceptance of the improvements by the **Delaware County Commissioners**, the remaining amount in the fund shall be returned to the **OWNER**.

Upon completion of construction, the **OWNER** shall be responsible for the maintenance, repair or construction of any and all defective materials or workmanship for a period of **one year**. Said **OWNER'S** bond, certified check, irrevocable letter of credit or other approved financial warranties may be reduced to 10% of the originally approved construction estimate as shown in **Exhibit "A"** for said maintenance. The reduction may be approved only after the **County Engineer** has been provided evidence that all work has been accomplished according to the approved plan and/or to the **County Engineer's** satisfaction. All work is to be done in accordance with the **Delaware County Design, Construction and Surveying Standards, and any supplements thereto**.

Acceptance of the project into the public system shall be completed only after written notice to the **COUNTY COMMISSIONERS** from the **County Engineer** of his approval. The **OWNER'S** maintenance responsibility as described above shall be completed upon formal acceptance by the **COUNTY COMMISSIONERS**.

Any snow or ice removal, erosion and sediment control maintenance, or other safety requirements deemed necessary by the County Engineer during the period of construction or maintenance shall be the responsibility of the **OWNER**. All of the funds set forth in the **AGREEMENT** shall be made available to the **County Engineer** to ensure proper safety compliance.

The **OWNER** shall, within thirty (30) days of completion of construction and prior to final acceptance, to the **COUNTY COMMISSIONERS**, as required, "as-built" drawings of the improvements, which plans shall become the property of the **COUNTY** and remain in the office of the **Delaware County Engineer**.

The **OWNER** shall, within thirty (30) days of completion of construction, furnish to the **COUNTY COMMISSIONERS** an itemized statement showing the cost of improvements and an affidavit that all material and labor costs have been paid. The **OWNER** shall indemnify and hold harmless Delaware County and all Townships and/or Villages within and all their officials, employees or agents from expenses or claims for labor or material incident to said construction of improvements.

The **OWNER** shall obtain all other necessary utility services incident to the construction of the improvements and for their continued operation. The **OWNER** shall be responsible for all utility charges and installation costs. The utility user charges shall be paid by the **OWNER** and maintained in continuous

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use throughout the construction and testing phases until accepted for operation and maintenance by the County.

Should the OWNER become unable to carry out the provisions of this AGREEMENT, the OWNER’S heirs, successors or assigns shall complete and comply with all applicable terms, conditions, provisions and requirements of this AGREEMENT.

In consideration whereof, the BOARD OF COUNTY COMMISSIONERS OF DELAWARE COUNTY, OHIO hereby grants the OWNER or his agent, the right and privilege to make the improvements stipulated herein.

EXHIBIT "A"

CONSTRUCTION COST ESTIMATE	\$476,000.00
CONSTRUCTION BOND AMOUNT	\$476,000.00
MAINTENANCE BOND AMOUNT	\$47,600.00
INSPECTION FEE DEPOSIT	\$38,000.00

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

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RESOLUTION NO. 23-331

IN THE MATTER OF APPROVING RIGHT-OF-WAY WORK PERMIT SUMMARY SHEET:

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

WHEREAS, the below requests to perform work within the right-of-way have been reviewed and approved by the Delaware County Engineer;

NOW, THEREFORE, BE IT RESOLVED that the following permits are hereby approved by the Board of Delaware County Commissioners:

<u>Permit #</u>	<u>Applicant</u>	<u>Location</u>	<u>Type of Work</u>
UT2023-0076	COLUMBIA GAS	ORANGE POINT DRIVE	GAS MAIN
UT2023-0077	COLUMBIA GAS	SAWMILL ROAD	RELOCATE GAS

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

10

RESOLUTION NO. 23-332

IN THE MATTER OF AWARDING A BID AND APPROVING A CONTRACT BETWEEN THE DELAWARE COUNTY COMMISSIONERS AND SHELLY AND SANDS, INC. FOR THE DEL-BYXBE CAMPUS ASPHALT PARKING LOT PAVING PROJECT:

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

DEL-Byxbe Campus Asphalt Parking Lot Paving Project Bid Opening March 24, 2023

WHEREAS, as the result of the above referenced bid opening, the County Engineer recommends that a bid award be made to Shelly and Sands, Inc., the low bidder for the project; and

WHEREAS, the County Engineer recommends approval of the contract between the Delaware County Commissioners and Shelly and Sands, Inc., for the project; and

NOW, THEREFORE, BE IT RESOLVED that the Delaware County Board of Commissioners awards the bid to and approves the following contract with Shelly and Sands, Inc., for the DEL-Byxbe Campus Asphalt Parking Lot Paving Project:

CONTRACT

THIS AGREEMENT is made this 24th day of April, 2023 by and between **Shelly and Sands, Inc., 1515 Harmon Avenue, Columbus, Ohio 43223**, hereinafter called the “Contractor” and the Delaware County Commissioners, hereinafter called the “Owner”.

The Contractor and the Owner for the considerations stated herein mutually agree as follows:

ARTICLE 1. Statement of Work

The Contractor shall furnish all supervision, technical personnel, labor, materials, machinery, tools, equipment, and services, including utility and transportation services, and perform and complete all work

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required for the construction of the improvements embraced in the project named “**DEL-Byxbe Campus Asphalt Parking Lot Paving Project**”, and required supplemental work for the project all in strict accordance with the Contract Documents.

ARTICLE 2. The Contract Price

The Owner will pay the Contractor for the total quantities of work performed at the unit prices stipulated in the Bid for the respective items of work completed for the sum not to exceed **One Million Twenty-Six Thousand Four Hundred Two Dollars and Ninety-Five Cents (\$1,026,402.95)** subject to additions and deductions as provided in the Contract Documents.

ARTICLE 3. Contract

The executed Contract Documents shall consist of the following:

- a. This Agreement
- b. Addenda
- c. Invitation to Bid
- d. Instructions to Bidders
- e. Signed copy of bid
- f. Work Specifications (including all plans, drawings, etc.)
- g. Specifications – General Provisions
- h. Federal and State Requirements

This Agreement, together with other documents enumerated in this ARTICLE 3, which said other documents are as fully a part of the Contract as if hereto attached or herein repeated, forms the Contract between the parties hereto. In the event that any provision in any component part of this Contract conflicts with any provision of any other component part, the provision of the component part first enumerated in this ARTICLE 3 shall govern except as otherwise specifically stated.

IN WITNESS WHEREOF, the parties hereto have caused this AGREEMENT to be executed in two original copies on the day and year first above written.

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

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RESOLUTION NO. 23-333

IN THE MATTER OF APPROVING A FINAL RESOLUTION TO COOPERATE WITH THE OHIO DEPARTMENT OF TRANSPORTATION ON IMPROVEMENTS TO GALENA ROAD AT U.S. 36/S.R. 37:

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

FINAL RESOLUTION

The following Final Resolution enacted by the Board of County Commissioners, County of Delaware, Ohio, hereinafter referred to as the Legislative Authority/Local Public Agency or "LPA", in the matter of the stated described project.

WHEREAS, on 5th day of April, 2021, the LPA enacted legislation proposing cooperation with the Director of Transportation for the described project:

The project consists of improvements to northbound and southbound Galena Road (C.R. 34) at its intersection with U.S.R. 36/S.R. 37 including construction of a new right turn lane on the north leg of southbound Galena Road, lying within Delaware County; and

WHEREAS, the LPA shall cooperate with the Director of Transportation in the above described project as follows:

The County agrees to assume and bear one hundred percent (100%) of the entire cost of the improvement, less the amount of Federal-Aid funds set aside by the Director of Transportation for the financing of this improvement from funds allocated by the Federal Highway Administration, U.S. Department of Transportation.

The share of the cost of the LPA is now estimated in the amount of One Million One Hundred Fifty-One Thousand Three Hundred Thirty and 00/100 Dollars, (\$1,151,330.00), but said estimated amount is to be adjusted in order that the LPA's ultimate share of said improvement shall correspond with said percentages of actual costs when said actual costs are determined; and

WHEREAS, The Director of Transportation has approved said legislation proposing cooperation and has caused to be made plans and specifications and an estimate of cost and expense for improving the above described highway and has transmitted copies of the same to this legislative authority; and

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WHEREAS, The LPA desires the Director of Transportation to proceed with the aforesaid highway improvement.

NOW, THEREFORE, be it resolved:

I. That the estimated sum, of One Million One Hundred Fifty-One Thousand Three Hundred Thirty and 00/100 Dollars, (\$1,151,330.00) is hereby appropriated for the improvement described above and the fiscal officer is hereby authorized and directed to issue an order on the treasurer for said sum upon the requisition of the Director of Transportation to pay the cost and expense of said improvement. We hereby agree to assume in the first instance, the share of the cost and expense over and above the amount to be paid from Federal funds.

II. That the LPA hereby requests the Director of Transportation to proceed with the aforesaid highway improvement.

III. That the LPA enter into a contract with the State, and that the County Administrator be, and is hereby authorized to execute said contract, providing for the payment of the LPA the sum of money set forth herein above for improving the described project.

That the LPA transmit to the Director of Transportation a fully executed copy of this Resolution

FURTHER THEREFORE, BE IT RESOLVED that the Delaware County Board of Commissioners approves the payment of warrants in batch number CMAPR0420 (for \$1,151,330.00 from 10040421-5420).

PID NO. 104502

C O N T R A C T

(Chapter 5521, Ohio Revised Code)

This contract is made by and between the State of Ohio, Department of Transportation, acting through its director (hereinafter referred to as the "STATE"), 1980 West Broad Street, Columbus, Ohio 43223, and the Board of County Commissioners, County of Delaware, (hereinafter referred to as the legislative authority/Local Public Agency or "LPA").

WITNESSTH:

WHEREAS, Chapter 5521 of the Ohio Revised Code provides that the legislative authority may cooperate with the STATE in a highway project made by and under the supervision of the Director of Transportation; and

WHEREAS, through the enactment of preliminary legislation, the LPA and the STATE have agreed to cooperate in the highway project described below; and

WHEREAS, through the enactment of final legislation, the LPA has committed to pay an estimated amount of money as its share of the total estimated cost and expense of the highway project described below; and

WHEREAS, the fiscal officer of the LPA has filed with the LPA a certificate stating that sufficient moneys are available, as required by Chapter 5521 and Section 5705.41 of the Ohio Revised Code. A duplicate certificate is attached hereto; and

WHEREAS, in accordance with the final legislation, the LPA hereby enters into this contract with the STATE to provide for payment of the agreed portion of the cost of the highway project and any additional obligations for the highway project described below.

NOW, THEREFORE, in consideration of the premises and the performances of mutual covenants hereinafter set forth, it is agreed by parties hereto as follows:

SECTION I: RECITALS

The foregoing recitals are hereby incorporated as a material part of this contract.

SECTION II: PURPOSE

The purpose of this contract is to set forth requirements associated with the highway project described below (hereinafter referred to as the "PROJECT") and to establish the responsibilities for the administration of the PROJECT by the LPA and the STATE.

SECTION III: LEGAL REFERENCES

This contract is established pursuant to Chapter 5521 of the Ohio Revised Code.

IV: SCOPE OF WORK

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The work to be performed under this contract shall consist of the following:

The project consists of improvements to northbound and southbound Galena Road (C.R. 34) at its intersection with U.S.R. 36/S.R. 37 including construction of a new right turn lane on the north leg of southbound Galena Road, lying within Delaware County.

SECTION V: FINANCIAL PARTICIPATION

1. The STATE agrees to provide the necessary funds as enumerated in this section and allowed by law for the financing of this project.
2. The STATE may allocate the money contributed by the LPA in whatever manner it deems necessary in financing the cost of construction, right-of-way, engineering, and incidental expenses, notwithstanding the percentage basis of contribution by the LPA.
3. The total cost and expenses for the project are only an estimate and the total cost and expenses may be adjusted by the STATE. If any adjustments are required, payment of additional funds shall correspond with the percentages of actual costs when said actual costs are determined, and as requested, by the Director of Transportation.
4. The LPA agrees to pay to the STATE its share of the total estimated cost expense for the above highway project in the amount of One Million One Hundred Fifty- One Thousand Three Hundred Thirty and - - - 00/100 Dollars, (\$1,151,330.00).
5. The County agrees to assume and bear one hundred percent (100%) of the entire cost of the improvement, less the amount of Federal-Aid funds set aside by the Director of Transportation for the financing of this improvement from funds allocated by the Federal Highway Administration, U.S. Department of Transportation.
6. The LPA agrees to assume and bear One Hundred Percent (100%) of the cost of any construction items required by the LPA on the entire project, which are not necessary for the improvement, as determined by the State and Federal Highway Administration. The LPA agrees that change orders and extra work contracts required fulfilling the construction contracts shall be processed as needed. The STATE shall not approve a change order or extra work contract until it first gives notice, in writing, to the LPA. The LPA shall contribute its share of the cost of these items in accordance with other sections herein.

SECTION VI: RIGHT-OF-WAY AND UTILITIES

1. The LPA agrees that all right-of-way required for the described project will be acquired and/or made available in accordance with current State and Federal regulations. The LPA also understands that right-of-way costs include eligible utility costs.
2. The LPA agrees that all utility accommodation, relocation, and reimbursement will comply with the current provisions of 23 CFR 645 and the ODOT Utilities Manual, including that:
 - A. Arrangements have been or will be made with all utilities where facilities are affected by the described PROJECT, that the utilities have agreed to make all necessary removals and/or relocations to clear any construction called for by the plans of this PROJECT, and that the utilities have agreed to make the necessary removals and/or relocations after notification by the LPA or STATE.
 - B. The LPA shall, at its own expense, make all removals and/or relocations of publicly-owned utilities which do not comply with the reimbursement provisions of the ODOT Utilities Manual. Publicly-owned facilities which do comply with the reimbursement provisions of the ODOT Utilities Manual will be removed and/or relocated at project expense, exclusive of betterments.
 - C. The removals and/or relocation of all utilities shall be done in such a manner as not to interfere with the operation of the contractor constructing the PROJECT and that the utility removals and/or relocations shall be approved by the STATE and performed in accordance with the provisions of the ODOT Construction and Materials Specifications.

SECTION VII: ADDITIONAL PROJECT OBLIGATIONS

1. The STATE shall initiate the competitive bid letting process and award the PROJECT in accordance with ODOT's policies and procedures.
2. The LPA agrees:
 - A. To keep said highway open to traffic at all times;
 - B. To maintain the PROJECT in accordance with the provisions of the statutes relating thereto, including, but not limited to, Title 23, U.S.C., Section 116; To make ample financial and other provisions for such maintenance of the PROJECT after its completion;

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- C. To maintain the right-of-way and keep it free of obstructions in a manner satisfactory to the STATE and hold said right-of-way inviolate for public highway purposes;
- D. To place and maintain all traffic control devices conforming to the Ohio Manual of Uniform Traffic Control Devices on the project in compliance with the provisions of Section 4511.11 of the Ohio Revised Code;
- E. To regulate parking in accordance with Section 4511.66 of the Ohio Revised Code, unless otherwise controlled by local ordinance or resolution.

SECTION VIII: DISPUTES

In the event that any disputes arise between the STATE and LPA concerning interruption of or performance pursuant to this contract, such disputes shall be resolved solely and finally by the Director of Transportation.

SECTION IX: NOTICE

Notice under this contract shall be directed as follows:

Board of County Commissioners
County of Delaware
91 North Sandusky Street
Delaware, Ohio
43015

Ohio Department of Transportation
Office of Contract Sales & Estimating
1980 West Broad Street, MS 4110
Columbus, Ohio 43223

SECTION X: FEDERAL REQUIREMENTS

1. In carrying out this contract, LPA shall not discriminate against any employee or applicant for employment because of race, religion, color, sex, national origin, disability, or age. LPA will ensure that applicants are hired and that employees are treated during employment without regard to their race, religion, color, sex, national origin (ancestry), disability, genetic information, or age (40 years or older), sexual orientation, or military status (past, present, future). Such action shall include, but not be limited to, the following: Employment, Upgrading, Demotion, or Transfer; Recruitment or Recruitment Advertising; Layoff or Termination; Rates of Pay or other forms of Compensation; and Selection for Training including Apprenticeship.
2. To the extent necessary under Ohio law, LPA agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause. LPA will, in all solicitations or advertisements for employees placed by or on behalf of LPA, state that all qualified applicants will receive consideration for employment without regard to race, religion, color, sex, national origin (ancestry), disability, genetic information, age (40 years or older), sexual orientation, or military status (past, present, future). If applicable, the LPA shall incorporate the foregoing requirements of this paragraph in all of its contracts for any of the work prescribed herein (other than subcontracts for standard commercial supplies or raw materials) and will require all of its subcontractors for any part of such work to incorporate such requirements in all subcontracts for such work.
3. LPA agrees to fully comply with Title VI of the Civil Rights Act of 1964, 42 USC Sec. 2000. LPA shall not discriminate on the basis of race, color, or national origin in its programs or activities. The Director of Transportation may monitor the Contractor's compliance with Title VI.

SECTION XI: GENERAL PROVISIONS

1. This contract constitutes the entire contract between the parties. All prior discussions and understandings between the parties are superseded by this contract.
2. Neither this contract nor any rights, duties or obligations described herein shall be assigned by either party hereto without the prior express written consent of the other party.
3. Any change to the provisions of this contract must be made in a written amendment executed by both parties.
4. This contract and any claims arising out of this contract shall be governed by the laws of the State of Ohio. Any provision of this contract prohibited by the law of Ohio shall be deemed void and of no effect. Any litigation arising out of or relating in any way to this contract or the performance thereunder shall be brought only in the courts of Ohio, and the LPA hereby irrevocably consents to such jurisdiction. To the extent that the STATE is a party to any litigation arising out of or relating in any way to this contract or the performance thereunder, such an action shall be brought only in a court of competent jurisdiction in Franklin County, Ohio.
5. All financial obligations of the State of Ohio, as provided in this contract, are subject to the provisions of Section 126.07 of the Ohio Revised Code. The financial obligations of the State of Ohio shall not be valid and enforceable unless funds are appropriated by the Ohio General Assembly and encumbered by the STATE. Additionally, it is understood that this financial obligation of the LPA shall not be valid and enforceable unless funds are appropriated by the LPA's legislative body. This contract shall be deemed to have been substantially

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performed only when fully performed according to its terms and conditions and any modification thereof.

6. LPA agrees that it is currently in compliance and will continue to adhere to the requirements of Ohio Ethics law as provided by Section 102.03 and 102.04 of the Ohio Revised Code.

SECTION XII: SIGNATURES

Any person executing this contract in a representative capacity hereby warrants that he/she has been duly authorized by his/her principal to execute this contract on such principal behalf.

Facsimile Signatures: Any party hereto may deliver a copy of its counterpart signature page to this Agreement via fax or email. Each party hereto shall be entitled to rely upon a facsimile signature on any other party delivered in such a manner as if such signature were an original.

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

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RESOLUTION NO. 23-334

IN THE MATTER OF APPROVING A PERMIT FOR USE OF DELAWARE COUNTY FACILITIES:

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

WHEREAS, the Delaware County Commissioners passed Resolution No. 21-449 on May 24, 2021, adopting a Delaware County Facilities Permit Policy (the “Policy”); and

WHEREAS, it is the intent of the Policy to allow persons and organizations access to appropriate Delaware County facilities, grounds and meeting places; and

WHEREAS, each request will only be considered after the receipt of a completed Delaware County Facilities Permit Form; and

WHEREAS, the Policy mandates approval from the Commissioners for use of county facilities by groups of 30 participants or more that have agreed in writing to full compliance with the Policy;

NOW, THEREFORE, PURSUANT TO THE FOREGOING, BE IT HEREBY RESOLVED that the Delaware County Board of Commissioners hereby authorizes the use of the Meeting Room in the Frank B. Willis Building, located at 2079 U.S. Route 23 North Delaware, OH on September 12, 2023; at no cost.

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

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ADMINISTRATOR REPORTS

Tracie Davies, County Administrator
-No reports.

Aric Hochstettler, Deputy Administrator
-No reports.

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COMMISSIONERS’ COMMITTEES REPORTS

Commissioner Merrell
-Attended the MainStreet Delaware Gala Awards
-The State of the County will be held tomorrow morning.

Commissioner Lewis
-Attended the 30th Anniversary celebration of El Vaquero’s restaurant
-Will be attending the CCAO legislative meeting this afternoon.

Commissioner Benton
-The Land Bank met last week. There has been much progress on the Demolition and Brownfield Grants.
-Attended the WIKA ribbon cutting last Thursday morning.
-Attended the OneDelaware luncheon on Thursday. Monica Connors (Economic Development Director) was the key speaker.
-Attended CCAO Statehouse reception last week.
-Attended the Sunbury/Big Walnut State of the Community Breakfast last Friday.
-Will be attending the CEBCO board retreat this Thursday and Friday.

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RESOLUTION NO. 23-335

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IN THE MATTER OF ADJOURNING INTO EXECUTIVE SESSION FOR CONSIDERATION OF APPOINTMENT OF A PUBLIC EMPLOYEE OR PUBLIC OFFICIAL:

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

WHEREAS, pursuant to section 121.23(G) of the Revised Code, a public body may hold an executive session only after a majority of a quorum of the public body determines, by a roll call vote, to hold an executive session and only at a regular or special meeting for the sole purpose of the consideration of any of the matters specified in section 121.23(G)(1)-(7) of the Revised Code; and

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

Section 1. The Board hereby adjourns into executive session for consideration of appointment of a public employee or public official.

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

RESOLUTION NO. 23-336

IN THE MATTER OF ADJOURNING OUT OF EXECUTIVE SESSION:

It was moved by Mrs. Lewis, seconded by Mr. Merrell to adjourn out of Executive Session.

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

RECESS at 10:09 AM/RECONVENE 1:30 PM

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1:30P.M. VIEWING FOR CONSIDERATION OF THE DRAINAGE IMPROVEMENT PETITION FOR THE JONES #60 WATERSHED

On January 4, 2023, Glenn Harsh and Others, filed a petition with the Clerk of the Delaware County Board of Commissioners (the "Board") requesting construction of a drainage improvement known as the Jones #60 Drainage Improvement, generally described and located as follows: Improve the drainage, both surface and subsurface, to a good and sufficient outlet by replacing or repairing, or altering the existing improvement as required and/or creating new surface and subsurface drainage mains or laterals as requested by this petition. In Delaware County, Radnor Township, within the Jones #60, watershed and generally following, but not limited to, the course and termini of existing improvements.

There being no further business, the meeting adjourned.

Gary Merrell

Barb Lewis

Jeff Benton

Jennifer Walraven, Clerk to the Commissioners