

COMMISSIONERS JOURNAL NO. 65 - DELAWARE COUNTY
 MINUTES FROM REGULAR MEETING HELD SEPTEMBER 8, 2016

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

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

1
 RESOLUTION NO. 16-868

IN THE MATTER OF APPROVING THE ELECTRONIC RECORD OF THE PROCEEDINGS FROM REGULAR MEETING HELD SEPTEMBER 1, 2016:

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

WHEREAS, the Board of Commissioners of Delaware County, Ohio (the "Board") met in regular session on September 1, 2016; and

WHEREAS, the Clerk of the Board has certified, pursuant to section 305.12 of the Ohio Revised Code, that the entire record of the proceedings at that meeting is completely and accurately captured in the electronic record of those proceedings;

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

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

2
 PUBLIC COMMENT

3
 ELECTED OFFICIAL COMMENT

4
 RESOLUTION NO. 16-869

IN THE MATTER OF APPROVING PURCHASE ORDERS, THEN AND NOW CERTIFICATES, AND PAYMENT OF WARRANTS IN BATCH NUMBERS CMAPR0907:

It was moved by Mr. Benton, seconded by Mr. Merrell to approve Then And Now Certificates, payment of warrants in batch numbers CMAPR0907 and Purchase Orders as listed below:

PR Number	Vendor Name	Line Description	Line Account	Amount
R1604578	MONTGOMERY COUNTY	OVERPAYMENT OF WIA	22311611 -	\$23,573.74
	DEPT JOB	FUNDS AREA 7	5319	
R1604703	NEW BEGINNINGS	RESIDENTIAL TREATMENT	22511607 -	\$14,100.00
	RESIDENTIAL		5342	
R1604722	CROUCH ENTERPRISES	HART HOME REPAIR CHIP	23111711 -	\$7,950.00
	LLC	GRANT	5365	
R1604733	SOUTHERN STATE	TUITION FEES TRAINING	22311611 -	\$10,600.00
	COMMUNITY COLLEGE		5348	

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

5
 RESOLUTION NO. 16-870

IN THE MATTER OF APPROVING TRAVEL EXPENSE REQUESTS:

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

The Child Support Enforcement Agency is requesting that Joyce Bowens, Josh Porter and Brandy Krouse attend the 3rd Annual Re-Entry Event in Marysville, OH on October 26, 2016 at no cost.

The Administrative Services Department is requesting that Brian Galligher, Bradley Euans and Dawn Huston attend a PRIMA Training in Columbus, OH on October 6, 2016 at the cost of \$300.00 (fund number 10011108).

The Regional Sewer District is requesting that Mason Janczak and Henry Stephenson attend a PCSWMM

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modeling software training on November 16 and November 17, 2016 at a total cost of \$1,838.00 from org key 66211902-5305.

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

**6
RESOLUTION NO. 16-871**

IN THE MATTER OF APPROVING A RESOLUTION HONORING THE ANNUAL ALL HORSE PARADE:

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

DELAWARE COUNTY ALL HORSE PARADE

WHEREAS, this year’s All Horse Parade, one of the largest and most unique, non-motorized parades east of the Mississippi, occurs on the 15th anniversary of that solemn date in history when our Country drew inspiration from and was protected by the bravery of its first responders; and

WHEREAS, the heroism of these first responders continues to protect us every day in every American community; and

WHEREAS, the Delaware Community, as well as visitors from all around our region, come together to honor and celebrate the traditions that unify and make us uniquely American; and

WHEREAS, we express our gratitude to not only the countless local volunteers who make the All Horse Parade possible, but also our community’s first responders who join us today in celebrating our freedom and honoring our traditions;

NOW THEREFORE, be it resolved that the Delaware County Board of Commissioners honors our community’s first responders who lead the Delaware County All Horse Parade by declaring September 11, 2016, as All Horse Parade Day throughout the County with the presentation of this proclamation.

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

**7
RESOLUTION NO. 16-872**

IN THE MATTER OF RECEIVING AND FILING THE ANNUAL REPORT OF THE SHERIFF OF ALL FINES AND COSTS COLLECTED BY THE SHERIFF’S OFFICE FOR THE YEAR NEXT PRECEDING SEPTEMBER 1, 2016:

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

BE IT RESOLVED, by the Delaware County Board of Commissioners that we hereby receive and file the annual report submitted by the Delaware County Sheriff of all fines and costs collected by the Sheriff’s Office for the year preceding September 1, 2016.

Said report is being filed pursuant to Ohio Revised Code Section 311.16 and total amount of fines and cost collected are in the amount of \$40,868.35.

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

**8
RESOLUTION NO. 16-873**

IN THE MATTER OF APPROVING A SERVICES AGREEMENT BETWEEN THE DELAWARE COUNTY BOARD OF COMMISSIONERS AND GEORGE J. IGEL & CO, INC:

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

Whereas, the Sanitary Engineer recommends approval of the following Agreement;

Now Therefore Be It Resolved that that Delaware County Board of Commissioners approve the following Services Agreement for sewer repairs near 2277 Wilson Road, Sunbury, with George J. Igel & Co., Inc.

SERVICES AGREEMENT

This Agreement is made and entered into this 8th day of September, 2016, by and between the Delaware County Board of Commissioners, Delaware County, Ohio, 101 North Sandusky Street, Delaware, Ohio 43015

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(“County”), and George J. Igel & Co., Inc., 2040 Alum Creek Drive, Columbus, Ohio 43207 (“Contractor”), hereinafter collectively referred to as the “Parties.”

1 SERVICES PROVIDED BY CONTRACTOR

- 1.1 The Contractor will provide “Services” in connection with the following “Project”:
Excavate and replace a segment of damaged 18-inch diameter ductile iron pipe (DIP) sanitary sewer mainline located near 2277 Wilson Road, Sunbury, Ohio 43074. The point of repair is approximately 20 feet downstream (west) from manhole MH38 (DCRSD ID# 01MH001814000038). Excavated soil shall be stockpiled onsite for re-use. The repair shall be made with 18-inch diameter Class 50 DIP. Joints and/or couplings shall be watertight. Pipe shall be bedded to a minimum of 9 inches above the top of pipe with No. 8 aggregate. Backfill shall be re-compacted excavated soil. All disturbed areas shall be restored to original condition and revegetated. Contractor shall be responsible for all work necessary to complete the Project including, but not limited to, erosion and sedimentation controls and dewatering.
- 1.2 The Contractor shall perform the Services promptly and with the ordinary degree of skill and care that would be used by other reasonably competent practitioners of the same discipline practicing in the same locale and under similar circumstances.
- 1.3 Services shall be rendered by the Contractor in accordance with the following documents, by this reference made part of this Agreement:
Contractor’s Proposal for Northstar Sewer Repair dated August 5, 2016 (Exhibit A)

2 SUPERVISION OF WORK

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

3 AGREEMENT AND MODIFICATIONS

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

4 FEES AND REIMBURSABLE EXPENSES

- 4.1 Compensation for Services provided under this Agreement shall be in accordance with the Fee Proposal noted in Section 1.3 and as follows:
- 4.2 For all services described in the Scope of Services and Fee Proposal, except “If Authorized” tasks, the lump sum fee shall be Forty-Four Thousand, Six Hundred and Thirty-Nine Dollars and Forty Cents (\$44,639.40).
- 4.3 For all services identified in the Scope of Services and Fee Proposal as “If Authorized” tasks, the fee for each authorized task shall be the lump sum specified in the Fee Proposal for said task. “If Authorized” tasks shall only be performed upon written Notice of the Sanitary Engineer. The total fee for all “If Authorized” tasks shall not exceed Zero Dollars and Zero Cents (\$0.00).
- 4.4 Total compensation under this Agreement shall not exceed Forty-Four Thousand, Six Hundred and Thirty-Nine Dollars and Forty Cents (\$44,639.40) without subsequent modification.
- 4.5 The fees specified above shall constitute full compensation for all direct labor, payroll burden, general and administrative overhead, profit, travel, equipment, and materials necessary to complete the tasks as set forth in the Scope of Services.

5 NOTICES

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

County:

Name: Nathan Givens
Address: 50 Channing Street, Delaware, Ohio 43015
Telephone: (740) 833-2240
Email: ngivens@co.delaware.oh.us

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Contractor:

Name of Principal in Charge: Craig Hickman
 Address of Firm: 2040 Alum Creek Drive
 City, State, Zip: Columbus, Ohio 43207
 Telephone: (614) 445-8421 x104
 Email: craig.hickman@igelco.com

6 PAYMENT

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

7 NOTICE TO PROCEED, COMPLETION OF WORK, DELAYS AND EXTENSIONS

- 7.1 The Contractor shall commence Work upon written Notice to Proceed ("Authorization") of the Sanitary Engineer and shall complete the work in accordance with the Proposal.
- 7.2 Contractor shall not proceed with any "If Authorized" tasks without written Authorization.
- 7.3 In the event that unforeseen and unavoidable delays prevent the timely completion of this Agreement, the Contractor may make a written request for time extension, and the Sanitary Engineer may grant such an extension provided that all other terms of the Agreement are adhered to.

8 SUSPENSION OR TERMINATION OF AGREEMENT

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

9 CHANGE IN SCOPE OF SERVICES

- 9.1 In the event that significant changes to the Scope of Services are required during performance of the Work, 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 be approved by both parties.

10 OWNERSHIP

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

11 CHANGE OF KEY CONTRACTOR STAFF; ASSIGNMENT

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

12 INDEMNIFICATION

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

13 INSURANCE

- 13.1 General Liability Coverage: Contractor shall maintain commercial general liability insurance of \$1,000,000 each occurrence with an annual aggregate of \$2,000,000. Identical coverage shall be required to be provided by all subcontractors, if any.
- 13.2 Automobile Liability Coverage: Contractor shall maintain automobile liability insurance of \$1,000,000 each accident. Such coverage shall include coverage for owned, hired and non-owned automobiles. Identical coverage shall be required to be provided by all subcontractors, if any.
- 13.3 Workers' Compensation Coverage: Contractor shall maintain workers' compensation coverage as required by the laws of the State of Ohio. Identical coverage shall be required to be provided by all subcontractors, if any.
- 13.4 Additional Insureds: Delaware County, its elected officials and employees, shall be named as additional insureds with respect to all activities under this Agreement in the policies required by Subsections 13.1 and 13.2. Contractor shall require all of its subcontractors to provide like endorsements.
- 13.5 Proof of Insurance: Prior to the commencement of any work under this Agreement, Contractor, and all of its subcontractors, shall furnish the County with properly executed certificates of insurance for all insurance required by this Agreement. Certificates of insurance shall provide that such insurance shall not be cancelled without thirty (30) days prior written notice to the County. Contractor will replace certificates for any insurance expiring prior to completion of work under this Agreement.

14 MISCELLANEOUS TERMS AND CONDITIONS

- 14.1 Prohibited Interests: Contractor agrees that no agent, officer, or employee of the County during his/her tenure or for one year thereafter shall have any interest, direct or indirect, in this Agreement or the proceeds thereof. Contractor further agrees that it will not employ in any manner a current County employee for a minimum period of one (1) year from the completion date of this Agreement, without the prior express written consent of County.
- 14.2 Independent Contractor: The Parties acknowledge and agree that Contractor is acting as an independent contractor and that no agency, partnership, joint venture, or employment relationship has been or will be created between the Parties. Contractor also agrees that, as an independent contractor, Contractor assumes all responsibility for any federal, state, municipal, or other tax liabilities along with workers compensation, unemployment compensation, and insurance premiums that may accrue as a result of compensation received for services or deliverables rendered hereunder. **Contractor hereby certifies that it has five or more employees and that none of the employees are public employees for purposes of Chapter 145 of the Ohio Revised Code.**
- 14.3 Governing Law: This Agreement shall be governed by and interpreted in accordance with the laws of the State of Ohio. Any and all legal disputes arising from this Agreement shall be filed in and heard before the courts of Delaware County, Ohio.
- 14.4 Headings: The subject headings of the Sections and Subsections in this Agreement are included for purposes of convenience only and shall not affect the construction or interpretation of any of its provisions. This Agreement shall be deemed to have been drafted by both Parties and no purposes of interpretation shall be made to the contrary.
- 14.5 Waivers: No waiver of breach of any provision of this Agreement shall in any way constitute a waiver of any prior, concurrent, subsequent, or future breach of this Agreement or any other provision hereof. No term or provision of this Agreement shall be deemed waived, and no breach excused, unless such a waiver or consent is expressly made in writing and signed by the party claimed to have waived or consented. Such waiver shall not constitute and shall not in any way be interpreted as a waiver of any other term or provision or future breach unless said waiver expressly states an intention to waive another specific term or provision or future breach.
- 14.6 Severability: If any item, condition, portion, or section of this Agreement or the application thereof to any person, premises, or circumstance shall to any extent, be held to be invalid or unenforceable, the remainder hereof and the application of such term, condition, provision, or section to persons, premises,

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or circumstances other than those as to whom it shall be held invalid or unenforceable shall not be affected thereby, and this Agreement and all the terms, conditions, provisions, or sections hereof shall, in all other respects, continue to be effective and to be complied with.

- 14.7 Findings for Recovery: Contractor certifies that it has no unresolved findings for recovery pending or issued against it by the State of Ohio.
- 14.8 Authority to Sign: Any person executing this Agreement in a representative capacity hereby warrants that he/she has authority to sign this Agreement or has been duly authorized by his/her principal to execute this Agreement on such principal's behalf and is authorized to bind such principal.
- 14.9 County Policies: The Contractor shall adhere to all applicable Delaware County policies, including, but not limited to, the following: Discrimination Policy, Ethics Policy, Contractor Safety Policy. The Contractor shall require any and all of its boards, board members, officers, officials, employees, representatives, agents, and/or volunteers performing work under this Agreement and/or for or on behalf of the County to comply with all applicable Delaware County policies and shall be responsible for such compliance. The County may, in its sole discretion, immediately terminate this Agreement for failure of the Contractor to comply with this Subsection. Copies of applicable policies are available upon request or online at <http://www.co.delaware.oh.us/index.php/policies>. The County reserves the authority to change, amend, replace, enact, repeal, and/or rescind any or all of the policies at any time and without notice.
- 14.10 Drug-Free Workplace: The Contractor agrees to comply with all applicable federal, state, and local laws regarding drug-free and smoke-free workplaces and environments and shall have established and have in place a drug-free workplace policy. The Contractor shall make a good faith effort to ensure that all of its employees and subcontractors engaged in the work being performed hereunder will not purchase, transfer, use, or possess illegal drugs or alcohol, or abuse prescription drugs.
- 14.11 Non-Discrimination/Equal Opportunity: Contractor hereby certifies that, in the hiring of employees for the performance of work under this Agreement or any subcontract, that neither it nor any subcontractor, by reason of race, color, religion, sex, age, disability as defined in section 4112.01 of the Revised Code, national origin, or ancestry, shall discriminate against any citizen of this state in the employment of a person qualified and available to perform the work to which the Agreement relates.

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

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

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

- 14.12 Campaign Finance – Compliance with R.C. 3517.13: Ohio Revised Code Section 3517.13 I(3) and J(3) requires that no political subdivision shall award any contract for the purchase of goods with a cost aggregating more than ten thousand dollars in a calendar year or services with a cost aggregating more than ten thousand dollars in a calendar year to a corporation, business trust, individual, partnership or other unincorporated business, association, including, without limitation, a professional association organized under Chapter 1785 of the Revised Code, estate, or trust unless the political subdivision has received for that calendar year, or the contract includes, a certification that the individuals named in Revised Code Sections 3517.13(I)(1) and (J)(1) are in compliance with the aforementioned provisions. The Contractor/Provider, therefore, is required to complete the attached certificate/affidavit entitled “Certification/Affidavit in Compliance With O.R.C. Section 3517.13.” **Failure to complete and submit the required aforementioned certificate/affidavit with the Contract will prohibit the County from entering, proceeding, and/or performing the Contract.** Such certification is attached to this Contract and by this reference made a part thereof.

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

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

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IN THE MATTER OF APPROVING A PRODUCTION SERVICES AGREEMENT BETWEEN THE DELAWARE COUNTY BOARD OF COMMISSIONERS AND SMARTBILL, LTD:

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

Whereas, the Regional Sewer District requires printing, mailing and online viewing services to send the quarterly sanitary sewer user billing statements to its customers, and

Whereas, Sewer District Staff recommends executing an agreement with SmartBill, LTD for the required printing, mailing, and online viewing services.

THEREFORE BE IT RESOLVED that the Board of County Commissioners approve the Agreement with SmartBill, LTD for the printing, mailing, and online viewing services for the Regional Sewer District.

This Production Agreement ("Agreement") is made and entered into this 8th day of September, 2016 ("Effective Date"), by and between SMARTBILL, LTD., an Ohio corporation ("SmartBill"), and Delaware County Board of Commissioners ("Client", and collectively with SmartBill, Ltd., "Parties"; Client and SmartBill may each be generically referred to as a "Party"). In consideration of the mutual promises and covenants contained below, and other good and valuable consideration, the receipt and sufficiency of which the Parties hereby acknowledge, the Parties agree as follows:

Section 1. Scope of Production Agreement. SmartBill agrees to provide to Client the "Services" set forth in Schedule 1 attached hereto and incorporated herein by this reference, and Client agrees that SmartBill shall be Client's sole and exclusive provider of goods and/or services of the type or nature of the Services during the Term (as defined below). During the Term, Client agrees to furnish all data and documentation requested by SmartBill to perform the Services. Client requires and shall purchase, and SmartBill agrees to produce, a minimum quarterly quantity of twenty-one thousand (21,000) statements ("**Minimum Commitment**") based upon the rates and terms provided herein. In the event that Client does not fulfill the Minimum Commitment for a given quarter, Client shall pay to SmartBill a "**Minimum Processing Fee**" equal to the product of (i) the difference between the Minimum Commitment and the actual number of statements ordered by Client for the relevant quarter, multiplied by (ii) the effective per statement rate.

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

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

Section 4. Term. The term of this Agreement shall commence on the Effective Date and continue for a period of two (2) years. The term of this Agreement shall commence on the Effective Date of October 26, 2016 and continue thru October 26, 2018, unless a written notice of non-renewal is received by either Party at least sixty (60) days prior to the relevant Effective Date anniversary ("**Term**"); provided, however that this Agreement may be terminated in accordance with certain other provisions set forth in this Agreement.

Section 5. Postage. Client shall deposit a permanent postage deposit with SmartBill in the amount specified on Schedule 3 ("**Postage Deposit**") no later than ten (10) days after the Effective Date. SmartBill may, in its sole discretion, adjust the Postage Deposit amount due to changes in Client's volume, postage usage, postal rates or payment history, or any other reason deemed appropriate by

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SmartBill, so long as Client is provided advance written notice of such adjustment. Upon termination of this Agreement, SmartBill shall return the Postage Deposit to Client after Client has paid for all Services and postage provided to or on the behalf of Client in performance of the Services. If this Agreement is terminated due to a default by Client, upon such a termination SmartBill may apply any of the Postage Deposit or any other Client's funds that SmartBill holds against any sums that Client owes SmartBill. **IF CLIENT FAILS TO MAINTAIN THE DEPOSIT AT THE REQUIRED LEVELS, OR IF CLIENT FAILS TO TIMELY PAY ALL INVOICES AS SPECIFIED IN SECTION 2, SMARTBILL MAY IMMEDIATELY SUSPEND ITS PERFORMANCE OF ALL ITS DUTIES, SERVICES, AND OBLIGATIONS UNDER THIS AGREEMENT UNTIL THE DEPOSIT IS PROPERLY PAID AND MAINTAINED AND ALL OUTSTANDING INVOICES ARE PAID.**

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

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

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

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

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

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

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Initial: Delaware County Board of Commissioners _____ SmartBill _____

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

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

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

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

SmartBill: SmartBill, Ltd.
 1. 1050 O'Neill Drive
 2. Hebron, OH 43025
 3. Facsimile: 740-928-5438
 4. Email: robh@smartbillcorp.com

Client: Delaware County Regional Sewer District
 5. 50 Channing Street
 6. Delaware, OH 43015
 7. Facsimile: 740-833-2239
 8. Email: RDeWitt@co.delaware.oh.us

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

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

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

Section 19. Authority to Bind. SmartBill and Client warrant that the person executing this Agreement has full and legal authority to execute this Agreement for and on behalf of its respective legal entity it is

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purporting to bind to the terms of this Agreement, as well as the full legal ability to bind such legal entity to the terms contained in this Agreement.

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

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

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

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

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

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

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

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

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

SMARTBILL, LTD.

**DELAWARE COUNTY
BOARD OF COMMISSIONERS**

SCHEDULE 1

SERVICES for: Delaware County Board of Commissioners

SmartBill will provide the following services:

Format Data

- Format Data (Layout and custom design statement to 8.5" x 11")
- Create Multiple statements per customer's instructions
- Create custom message if applicable
- Sort and remove any customer-identified accounts
- Presort data for barcode postage rates
- Create statement PDF files for easy in office viewing and reprinting

Laser Printing

- Laser print documents using 600 X 600 DPI

Statement Rendering

- Fold and insert documents into standard business #10 envelope
- Insert #9 return envelope when applicable
- Insert statements and inserts (maximum of two)
- Complete Cass certification reports and delivery to Post Office

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Job Accounting

- Account for all records or pages received, printed and rendered
- Recap postage available in the Delaware County Board of Commissioners postage account

Inventory Management

- Custom design, order and maintain inventory of paper and envelopes needed for processing statements

Components:

- Supplied by the Delaware County Board of Commissioners, **purchased through SmartBill**
- Custom 8.5 X 11 standard form with up 3 colors preprinted on #24 lb. paper with one horizontal perforation ordered in minimum quantities of 108,000
- #10 dual window envelope ordered in minimum quantities of 108,000
- #9 return single window envelope ordered in minimum quantities of 108,000

Postage:

Postage will be charged back to the Delaware County Board of Commissioners. Delaware County Board of Commissioners will maintain postage on account at SmartBill. Deposit required prior to startup.

**SCHEDULE 2
FEES FOR GOODS AND SERVICES
Delaware County Board of Commissioners**

Paper Bill (includes: up to 3-colors, 8.5x11 #24 white paper, perforated at 3.5" from bottom, #10 double window envelope, #9 single window reply envelope)	\$0.05	per set
data processing, printing & folding, inserting, presorting and delivery to USPS	\$0.08	per record
SBO Search & View Bill (Includes: Data processing, electronic color PDF creation, search & access capabilities & hosting of PDF files for 12 months from creation date)	\$199.00	per month-unlimited
SBO Electronic Presentment of bills (optional)	Included	per notification
SBO Payment (Not Using)	\$0.00	per payment
NCOA Link - Automated address update service	\$0.0025	Per record
Addition Impressions	TBD	Quote as per needed
Bill Suppression (Data processing only -- Group Y & Z)	\$0.00	per bill
Oversized Surcharge (8-99 page bills - Group C)	\$0.26	per envelope
Oversized Surcharge (100+ bills - Group D & E)	\$0.67	per envelope
Additional Inserts	TBD	Quote upon request
Basic Set Up Fee (City Bill or Standard Format and Reports)	(\$1,000.00)	Waived
Technical Services (including additional set-up beyond standard, formatting or custom reports, conditional logic & insert/forms composition)	\$125.00	per hour
Minimum Quarterly Charge [Minimum volume X service price]	\$1,680.00	per month
Minimum Daily Processing/Production Fee	\$50.00	per day if applicable
Postage (1 oz.) Estimate to be validated with client data	\$0.355	per bill

**SCHEDULE 3
POSTAGE DEPOSIT**

Delaware County Board of Commissioners

Postage Deposit (Based on (2) two months estimated volume): \$9,470.00 (Quarter's Volume * .355)

26,677 X .355

Please note: Be sure to have postage on account at SmartBill before each quarterly mailing

**SCHEDULE 4
GLOSSARY OF TERMS**

Delaware County Board of Commissioners

Impression	Laser Imaging of one side of one piece of paper. Each physical piece of paper can contain two (2) impressions.
USPS	United States Postal Service
Laser Imaging	The process where the application of dry toner (ink) is electro statically applied and bonded to a piece of paper.
Simplex	Laser Imaging of one (1) side of a piece of paper only.
Duplex	Laser Imaging of both (2) sides of a piece of paper.

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OE	Outer Envelope - This envelope is used as the carrier mechanism for all information contained in a package to be mailed.
RE	Reply Envelope - This envelope is usually utilized by a customer to return information/payment requested by an organization.
Presorting	The act of organizing mail according to the rules and regulations defined by the USPS in order to achieve lower postage rates and increase deliverability of mail.
Business Day	Any day which the USPS as well as the U.S. Federal Reserve are open for business.
U.S. federal holiday	All holidays as defined by the U.S. Federal Reserve
24x7	24 hours a day, 7 days a week.
Additional Inserts	Any item requested to be placed into the mail container above and beyond (a) the bill and (b) the RE.
Container	One complete piece of mail packaged into one OE.
Electronic Transmission	The act of sending data via SmartBill, Ltd. online utility, FTP or Modem.
Bill	Data and other information pertaining to one (1) account number and usually in reference to one customer.
Group	The term used by SmartBill, Ltd. to define how bills are gathered & produced in order to maximize production capabilities. These groups are defined as follows: Group A - 1 ounce bills Group B - 2 ounce bills Group C - 8 -99 page bills Group D - 100 - 499 page bills Group E - 500 + page bills Group I - International bills Group P - Pulls bills (Pulled and returned to PM for further action) Group X - Hold bills (combined and sent back to client) Group Y - Online only bills (suppress from print only) Group Z - Suppress all
Suppress or Suppression	The act of excluding records or bills (based on client defined criteria) that have been received in the input data stream received from the client.
Vote on Motion	Mr. Merrell Aye Mrs. Lewis Aye Mr. Benton Aye

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ADMINISTRATOR REPORTS

Ferzan Ahmed, County Administrator

-The Annual September 11th Ceremony at the Fallen Heroes Memorial is this Saturday at 4:30 PM. The Gold Star Families will attend a private ceremony before the regular ceremony.

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COMMISSIONERS' COMMITTEES REPORTS

Commissioner Merrell

- Attended the Delaware Educational Council meeting this morning. Delaware City Schools are doing a great job.
- Attended the Parade of Homes reception for the county on Tuesday. The Parade has been well attended this year
- There is a MORPC meeting this afternoon at 1:30

Commissioner Benton

- Believes the Parade of Homes has experience a record setting year
- Will be attending the MORPC meeting this afternoon. They have a full agenda today. One of the items on the agenda is the construction cost of the new interchange on 71 near the 36/37 area.

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- The Delaware County Fair is coming up
- Dr. Bill Parker passed away this week. He was a great individual. He will be missed.

Commissioner Lewis

-Would like to thank the Sanitary Sewer Department, their Director and Deputy Director for all of the hard work they put into the Parade of Homes to make sure it opened on schedule. Believes this is the first Parade of Homes that was held on a holiday weekend. The BIA had a very large turn out on Labor Day.

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RESOLUTION NO. 16-875

IN THE MATTER OF ADJOURNING INTO EXECUTIVE SESSION FOR PENDING OR IMMINENT LITIGATION:

It was moved by Mr. Merrell, seconded by Mr. Benton to adjourn into Executive Session at 9:50 AM.

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

RESOLUTION NO. 16-876

IN THE MATTER OF ADJOURNING OUT OF EXECUTIVE SESSION:

It was moved by Mr. Merrell, seconded by Mr. Benton to adjourn out of Executive Session at 10:47 AM.

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

There being no further business, the meeting adjourned.

Gary Merrell

Barb Lewis

Jeff Benton

Jennifer Walraven, Clerk to the Commissioners