

**ORDINANCE NO. 2010-04**

AN ORDINANCE APPROVING AND AUTHORIZING THE MAYOR TO EXECUTE A SERVICE AGREEMENT BETWEEN SMARTBILL, LTD., AND THE VILLAGE OF BUCKEYE LAKE FOR THE BUCKEYE LAKE WATER DEPARTMENT.

WHEREAS, Council has determined it to be in the best interest of the Village of Buckeye Lake, and its residents, to approve a Service Agreement between SmartBill, Ltd. and the Buckeye Lake Water Department,

NOW, WHEREFORE, Be It Ordained by the Council of the Village of Buckeye Lake, State of Ohio:

SECTION 1: That the Service Agreement is hereby approved, and the Mayor be, and he hereby is, authorized and directed to execute a Service Agreement between Smart Bill Ltd. and the Buckeye Lake Water Department.

SECTION 2: That this ordinance shall take effect and be in force from and after the earliest period allowed by law.

ADOPTED: 1-25-, 2010.

ATTEST: Tom Mast Clerk of Council      Charles C. Hayden President of Council

Date filed with Mayor: 1-25, 2010.

Date approved by Mayor: 1-25, 2010.

Richard S. Bindley  
Rick Baker, Mayor

Approved as to form: \_\_\_\_\_  
Richard S. Bindley, Solicitor

## SERVICE AGREEMENT

This Agreement is entered into as of this \_\_\_\_ Day of \_\_\_\_\_ 2010 by and between SmartBill Ltd., an Ohio Company, (hereinafter known as "Vendor") and the Buckeye Lake Water Department (hereinafter known as "Customer").

### Recitals

- A. Vendor is in the business of providing Output Services to its customers.
- B. Customer wishes to obtain from Vendor and Vendor wishes to provide to Customer, certain Output Services upon the terms and conditions below.

NOW, THEREFORE, the parties agree as follows.

### AGREEMENT

1. **Output Services.** Customer agrees to purchase from Vendor, and Vendor agrees to sell and provide to Customer, the following services and related consumable supplies (collectively, the "Output Services"):
  - a. Vendor will secure for Customer's benefit, as requested by the Customer from time to time, offset printing services for new forms and envelopes (such services hereinafter referred to as "Forms Services");
  - b. Vendor will: (1) format and prepare laser printed, one-sided invoices from all account debtor billing information ("Data") received electronically from Customer; (2) presort the Data based upon account debtor postal codes; (3) fold and insert invoices into separate preprinted envelopes (which envelopes will be provided by Customer if not otherwise obtained through Vendor as part of the Forms Services; (4) insert into preprinted envelopes additional pre-folded pages of information (not to exceed 4 pages per package envelope) as requested from Customer; (5) presort envelopes for bar-coded postage rates; (6) mail invoices to account debtors on Customer's behalf; (7) track each invoice and related documents through the production process; and (8) provide storage space for Customer's inventory of envelopes and related supplies (all of the foregoing services sometimes hereinafter referred to as "Processing Services").
2. **Service Fees.** Customer shall pay to Vendor the following fees, which shall be payable within fifteen (15) days of Vendor's invoice to Customer:
  - a. The fee for Forms Services shall be \$.08 per unit of work. Unit of work shall be one (1) 24# paper with (3) color front, one (1) color on back, one (1) #9 single window return envelope, one (1) #10 dual window carrier envelope. Oversized 9 x 13 white envelopes shall be sold at cost. Additional forms requests or changes will be quoted at time of Customer's request for such services. One year worth of forms

shall be acquired on behalf of customer and will be billed when approved and ordered.

- b. The fee for all Processing Services, exclusive of postage costs, shall be at a rate of \$.12 per single, one-sided page produced or data record. Processing fees are based on an annual minimum of 11,700 records. Vendor reserves the right to modify Processing fees if minimums are not met.
  - c. Set up fee of \$1,000.00 due after Agreement signing. After acceptance of initial project, Vendor reserves the right to charge a programming/processing fee of \$75.00 per hour for additional programming or processing.
  - d. Customer shall reimburse Vendor all postage costs incurred concerning Processing Services. Customer will hold on Vendors account two (2) months postage calculated by multiplying two (2) months volume by the average per piece postal rate.
  - e. Customer shall pay all applicable taxes set fourth by the federal, state, and local governments.
  - f. SmartBill Ltd. reserves the right to increase the forms services (offset printing services for new forms and envelopes) fees billed to Customer with thirty (30) days written notice.
  - g. SmartBill Ltd. reserves the right; at anytime after the first year anniversary of this agreement, to change the prices charged with thirty (30) days written notice. Price changes may not exceed 10% of current charges and may be executed once per year.
3. **Term.** This Agreement shall remain in effect for a period of sixty (60) months from the date hereof unless otherwise terminated by either party. Either party may terminate this agreement with cause (Failure to perform any of the duties stated above or below by either party) by giving sixty – (60) days advance written notice to the other party of its intent to terminate. If Customer does not initiate contract termination, Contract will automatically renew unless Customer notifies vendor with written notice within sixty (60) days of termination of agreement.
4. **Vendor Confidentiality.** Vendor acknowledges that certain information made available to it by Customer, including, without limitation, client information and billings, financial statements, tax records, membership lists and service information, is confidential and proprietary to Customer (the “Confidential Information”). Vendor shall keep the Confidential secret and shall not disclose, reveal or provide the same to any person except as required by law, except those persons employed by Vendor or on its behalf who are involved in providing the Output Services, and shall cause those persons to observe the terms of this agreement, and shall not use the Confidential Information for any purpose, directly or indirectly, other than in connection with the Output Services. “Confidential Information” shall not include information which (a) is or becomes generally available to the public other than as a result of a disclosure by Vendor or it affiliates, officers, directors, employees, or representatives, (b) was available to Vendor on a non-confidential basis prior to disclosure by Customer, or (c) becomes available to Vendor on a non-confidential basis from a person other than Customer who is not otherwise bound by a confidentiality agreement with

Customer. The covenants created under this Section 4 shall survive the termination or cancellation of this Agreement.

5. **Customer Confidentiality.** Customer acknowledges that certain information made available to it by Vendor, including, without limitation, Vendor's special business techniques, production systems, vendor relationships, marketing plans, sales, product and vendor pricing information, list of customers, prospective customers, contracts and other information regarding the Products and Services is confidential and proprietary to Vendor (the "Confidential Information"). Customer shall keep the Confidential Information secret and shall not disclose, reveal or provide the same to any person except as required by law. "Confidential Information" shall not include information which (a) is or becomes generally available to the public other than as a result of a disclosure by Vendor or its affiliates, officers, directors, employees, or representatives, (b) was available to Vendor on a non-confidential basis prior to disclosure by Customer, or (c) becomes available to Vendor on a non-confidential basis from a person other than Customer who is not otherwise bound by a confidentiality agreement with Customer. The covenants created under this Section 4 shall survive the termination or cancellation of this Agreement.
6. **Limitation on Liability** In no event shall Vendor be liable or responsible to Customer for incidental, special, or consequential damages (including without limitation lost profits) arising out of, resulting from, or in any way related to Vendor's performance or breach of this Agreement in excess of the value of the proposed Processing Service portion of this contract.
7. **Representations and Warranties.**
  - a.) **Customer:** Customer represents and warrants that: (1) it has full authority to enter into and perform, all of the terms of this Agreement; and (2) the execution, delivery and performance of this Agreement, and compliance with its terms, will not conflict with or otherwise be inconsistent with, or result in the breach of or default under, any agreement to which Customer is a party.
  - b.) **Vendor:** Vendor represents and warrants that: (1) it has full authority to enter into and perform all of the terms of this Agreement; and (2) the execution, delivery and performance of this Agreement, and compliance with its terms, will not conflict with or otherwise be inconsistent with, or result in the breach of or default under, any agreement to which Vendor is a party.
8. **Independent Contractors:** In performing their obligations under this Agreement, the parties are acting as independent contractors. Nothing in this Agreement shall create or be construed to create a partnership, joint venture or agency relationship between the parties and no party shall have authority to bind the other in any respect.

9. **Mediation of Disputes:** In the event of a dispute between the parties arising out of or related to this Agreement, the parties agree to abide by the dispute resolution procedure outlined in the Ohio Revised Code Section 2701.10. It is understood and agreed to by the parties that the defaulting or non-prevailing party agrees to pay the other party's reasonable attorney's fees and expenses so incurred by such party to enforce the terms of this Agreement.
10. **Compliance with laws.** Both Vendor and Customer agree to comply with all applicable federal and state law prohibiting discrimination against persons on account of race, sex, color, age, religion, and national origin, or disability. Vendor certifies that all Services provided pursuant to this Agreement shall be performed in accordance with all state, federal, and local laws applicable to such services, in conformity with the highest professional standards.
11. **Binding Effect: Assignment.** This Agreement shall inure to the benefit of and be binding upon the respective successors and assigns of the parties hereto; provided, that no party may assign or in any way voluntarily transfer this Agreement, or any right, remedy, obligation or liability hereunder without the prior written consent of the other party.
12. **Entire Agreement: Modification.** This Agreement set forth the entire understanding and agreement between the parties respecting its subject matter and supersedes all prior agreements, oral and written. This Agreement may be amended or modified only by a writing signed by the parties.
13. **No Third Party Rights.** The parties do not intend to create rights in or to grant remedies to any third party as a beneficiary of this Agreement or of any duty, covenant, obligation or undertaking established hereunder.
14. **Notice.** All notices provided for in this Agreement shall be in writing, shall be given either manually or by written telecommunication, mail, or by reputable overnight courier, and shall be deemed sufficiently given when received by the party to be notified at its address set forth below, if mailed by registered mail, postage prepaid, five (5) days after deposit in the mail, in each case addresses to such party at such address. Either party may, by notice to the other, change its address for receiving such notices.

If to Vendor, to:

SmartBill, Ltd.  
Attn: Robin W. Hess  
President  
895 Buckeye Ave  
Newark, Ohio 43055

If to Customer, to:

Village of Buckeye Lake  
Attn: Tim Matheny  
5192 Walnut Road  
Buckeye Lake, OH 43008

15. **Governing Law.** This Agreement shall be governed by and construed in accordance with the laws of the State of Ohio.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first above written.

**SmartBill Ltd.**

By: \_\_\_\_\_  
Richard E. Baker-Mayor

By: \_\_\_\_\_  
President

Date: \_\_\_\_\_

Date: \_\_\_\_\_