

This Production Agreement ("**Agreement**") is made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2012 ("**Effective Date**"), by and between SMARTBILL, LTD., an Ohio corporation ("**SmartBill**"), and *City of Gahanna* ("**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 monthly amount of (3,000) 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 month, 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 month, 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 month on or before the 15<sup>th</sup> day of the subsequent month, provided that SmartBill may immediately provide the invoice following the conclusion of each month ("**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 five percent (5%) 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 (30<sup>th</sup>) day after receipt of such Invoice; and (ii) following the 30<sup>th</sup> day after receipt of the unpaid Invoice, daily at the corresponding rate of one thirtieth (1/30) of one and one-half percent (1.5%) or five hundredths of one percent (0.05%).

**Section 4. Term.** The term of this Agreement shall commence on the Effective Date and continue for a period of One (1) year , and shall automatically renew for successive one (1) year periods on the anniversary of the Effective Date and each anniversary of the Effective Date thereafter 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 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. 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 7. 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 8. 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 9. Indemnification.** Client agrees to indemnify and hold SmartBill harmless for any and all claims that may arise in connection with Client's supplying to SmartBill, the data, reports and other documentation necessary to perform SmartBill's duties, services, or obligations under this Agreement, provided that such indemnification shall not extend to any claims that result from the intentional or reckless acts of SmartBill.

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

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

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

**Client:** City of Gahanna  
Attn: Dottie Franey  
200 South Hamilton Rd.  
Gahanna, Ohio 43230  
Facsimile: (614) 342-4103  
Email: dottie.franey@gahanna.gov

**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.** In the event of any claim, dispute or controversy arising out of or relating to this Agreement, including an action for declaratory relief, the prevailing party in such action or proceeding it shall be entitled to recover its court costs and reasonable out-of-pocket expenses not limited to taxable costs, including by not limited to phone calls, photocopies, expert witness, travel, etc., and reasonable attorney fees to be fixed by the court. Such recovery shall include court costs, out-of-pocket expenses and attorney fees on appeal, if any.

**Section 18. Successors and Assigns.** This Agreement shall be binding upon and shall inure to the benefit of all the successors and assigns of the Parties hereto. The Parties hereto

execute this Agreement through their duly authorized officers, as of the day and year first written above.

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

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

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

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

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

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

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

**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.**

City of Gahanna

By: \_\_\_\_\_  
Name: Robin W. Hess  
Title: President

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**SCHEDULE 1**

**SERVICES**

**For: City of Gahanna**

**SmartBill will provide the following services:**

**Format Data**

- Format Data (Layout and custom design statement to 8.5" x 11")
- Create Multiple statements per customers 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

**Job Accounting**

- Account for all records or pages received, printed and rendered
- Recap postage available in the City of Gahanna postage account

**Inventory Management**

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

**Components:**

- Supplied by the City of Gahanna, **purchased through SmartBill**
- Custom 8.5 X 11 standard form with up X colors preprinted on #24 lb. paper with one horizontal perforation ordered in minimum quantities of 42,000
- #10 dual window envelope ordered in minimum quantities of 42,000
- #9 return single window envelope ordered in minimum quantities of 42,000

**Postage:**

Postage will be charged back to the City of Gahanna. The City of Gahanna will maintain two months worth of postage on account at SmartBill or at its option setup a CAPS account with the USPS for postage money to be directly deducted. Deposit required prior to startup



**SCHEDULE 2****FEES FOR GOODS AND SERVICES**

Paper Bill (includes: up to X-color, 8.5x11 #24 white paper, perforated at 3.5" from bottom, #10 double window env., #9 single window reply env., data processing, printing & folding, inserting, presorting and delivery to USPS)	\$0.082	per impression
SBO Search & View Bill (Includes: Data processing, electronic color PDF creation, search & access capabilities & hosting of PDF files for 12 months from creation date)	\$0.105	per bill
SBO Electronic Presentment of bills (optional)	\$0.XX	per bill
SBO Payment (optional)	\$.XX	per notification
NCOALink - Automated address update service	TBD	per payment
Addition Impressions	\$25	Per month
Bill Suppression (Data processing only -- Group Y & Z)	TBD	Quote as per needed
Oversized Surcharge (8-99 page bills - Group C)	\$0.00	per bill
Oversized Surcharge (100+ bills - Group D & E)	\$0.20	per envelope
Additional Inserts	\$0.40	per envelope
Basic Set Up Fee (CityBill or Standard Format and Reports)	\$TBD	Quote upon request
Technical Services (including additional set-up beyond standard, formatting or custom reports, conditional logic & insert/forms composition)		
Minimum Monthly Charge [Minimum volume X service price]	\$125.00	per hour
Minimum Daily Processing/Production Fee (this is for processing files, above the agreed upon number of cycles per month sent to Smartbill)	\$315.00	per month
Postage (1 oz.) Estimate to be validated with client data	\$50.00	per day
Inserts	\$.XX	per bill
		Quote upon request

**SCHEDULE 3**

**POSTAGE DEPOSIT**

**Postage Deposit** (Based on (2) two months estimated volume): \$2,520.00 (2 Months Volume \* .36)

**SCHEDULE 5****GLOSSARY OF TERMS**

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.
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: <ul style="list-style-type: none"> <li>Group A - 1 ounce bills</li> <li>Group B - 2 ounce bills</li> <li>Group C - 8 -99 page bills</li> <li>Group D - 100 - 499 page bills</li> <li>Group E - 500 + page bills</li> <li>Group I - International bills</li> <li>Group P - Pulls bills (Pulled and returned to PM for further action)</li> <li>Group X - Hold bills (combined and sent back to client)</li> </ul>

	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.