

# RECORD OF RESOLUTIONS

Resolution No. 2015-W

July 13, 2015

## CITY OF BELLBROOK, OHIO

### RESOLUTION NO. 2015-W

#### **A RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO AN ENERGY EFFICIENT LIGHTING SERVICE AGREEMENT WITH ENERGY OPTIMIZERS, USA, LLC.**

WHEREAS, the City desires to replace the existing lighting in its facilities with energy efficient lighting to maximize energy cost savings; and

WHEREAS, Energy Optimizers, USA, LLC, has provided a proposal to replace the lighting while maintaining the integrity and functionality of the existing systems; and

WHEREAS, the proposal stipulates a ten year lighting service agreement with Energy Optimizers that will provide significant savings to the City in the form of lower energy costs.

NOW, THEREFORE, THE CITY OF BELLBROOK HEREBY RESOLVES:

Section 1. That the City Manager is hereby authorized to execute the attached Energy Efficient Lighting Service Agreement with Energy Optimizers, USA, LLC.

Section 2. That this resolution shall take effect and be in force forthwith.

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Robert L. Baird, Mayor

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Carrie C. Smith, Clerk of Council





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**The City of Bellbrook, Ohio and Energy Optimizers, USA, LLC**  
*Energy Efficient Lighting Service Agreement (10-Year)*

**Project No. #: 1382C**

**This Agreement** (hereafter the "Agreement") is made and entered into as of this 13th day of July, 2015 by and between Energy Optimizers, USA, LLC, (hereinafter "EOU") and the City of Bellbrook, Ohio (hereinafter "Customer") for the purpose of furnishing certain services and work designed to improve the facilities at the Premises as defined in this Agreement (the "Project").

**Section 1.01. Contract Price; Conditions Precedent.** Subject to the terms and conditions hereof, as payment for EOU's performance and furnishing of the Services as defined in proposal #1382C dated July 9, 2015, a copy of which is attached to this Agreement and incorporated herein by reference as Exhibit A for the Project, Customer shall pay or cause to be paid to EOU, the Monthly amount of:

\$ 1,466.00.00 (the "Contract Price") per month for the duration of the 10-Year Agreement

The Agreement Price includes all sales, consumer, use and similar taxes for which EOU is responsible associated with the performance of the work to provide the Services and which are legally enacted as of the date of this Agreement. EOU acknowledges that Customer is exempt from payment of sales and use taxes in the State of Ohio, and Customer agrees to provide a completed Construction Tax Exemption Certificate to EOU for the purchase by it and its subcontractors and suppliers of materials and equipment to be incorporated into the Project.

**Section 1.02. Payment Terms.** Customer agrees to pay EOU or cause EOU to be paid for the Services the amount stated in Section 1.01 above and shall receive our maintenance services for a period of 10 years.

A total of \$1,466.00 (10-Year Agreement) shall be paid to EOU per month. The first Monthly payment, will be due within thirty (30) days after Customer's receipt of an invoice from EOU following completion of project installation.

**Section 1.03. Construction Procedures and Changes to Services.** EOU will supervise and direct the Services using its best skill and attention. Upon acceptance from Customer of the scope of work to be provided, EOU will have exclusive control over the implementation of the means, methods, techniques, sequences and procedures to carry out the scope of work.

**Section 1.04. Final Completion.** Upon Customer's receipt of written notice from EOU that all the work performed hereunder that comprises the Scope of Work Services is ready for final inspection and acceptance, Customer and EOU shall inspect such work and determine whether the same has been performed in accordance with this Agreement. If Customer considers all the work performed hereunder that comprises the Services to have been performed in accordance with this Agreement ("Final Completion"), Customer shall issue a Certificate of Final Completion and Acceptance, substantially in the form attached hereto as Exhibit D, to be executed by an authorized representative of Customer. In the event EOU presents a Certificate of Final Completion and Acceptance to Customer for execution and, within fourteen (14) calendar days from the date noted in the Certificate of Final Completion and Acceptance, as the date of such presentation, Customer fails to deliver an executed original of the Certificate to EOU and does not provide to EOU written objections to issuance of the Certificate of Final Completion and Acceptance, providing specific facts as to why the Services have not been finally completed, it shall be deemed that Customer considers all the work performed hereunder that comprises the Services to have been performed in accordance with this Agreement and the Date of Final Completion shall be the date noted in the Certificate of Final Completion and Acceptance as the date the Certificate of Final Completion and Acceptance was submitted to Customer.

**Section 1.05. Equipment Location and Access.** Customer will provide, without charge, a mutually satisfactory location or locations for the installation and operation of the equipment and the performance of the Services, including sufficient areas for staging, mobilization, and storage.





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**Section 1.06. Concealed or Unknown Conditions.** In the performance of the Services, if EOU encounters conditions at the Premises that are (i) subsurface or otherwise concealed physical conditions that differ materially from those provided by the Customer during the facility reviews, EOU must notify Customer of such conditions as promptly as practicable, prior to significantly disturbing the same. If such conditions differ materially and cause an increase in EOU’s cost of, or time required for, performance of any part of the Services, the parties will negotiate a reasonable adjustment to the Contract Price and Contract Time, as appropriate, which will be documented through a Change Order to this Agreement.

**Section 1.07. Changes to the Services.** Customer, by written change order, may request that EOU perform work in addition to or different than the Services (a “Change Order”). EOU will perform such additional work only pursuant to a Change Order agreed to and executed by Customer and EOU.

**Section 1.08. Services.** EOU will provide the following turn-key lighting retrofit Services for the Customer at said Premises as noted in Proposal #1382C

a. Material Services and Project Warranty

- EOU will provide all material required to address failed or malfunctioning lamps, drivers and material at no additional cost to the customer for the duration of the Agreement for the proposed scope of *interior* lighting work.
  - i. Electrical issues outside the lamp, driver or fixture is not covered as part of this warranty.
  - ii. Acts of God (i.e. Utility grid surges, lighting strikes, etc.) are not covered under this Agreement.

b. Material and Labor Services and Project Warranty

- EOU will provide all material and labor required to address failed or malfunctioning lamps, drivers and material at no additional cost to the customer for the duration of the Agreement for the proposed scope of *exterior* lighting work.
  - i. Electrical issues outside the lamp, driver or fixture is not covered as part of this warranty.
  - ii. Acts of God (i.e. Utility grid surges, lighting strikes, etc.) are not covered under this Agreement.

**Scope of Work Overview – City/Police Interior**

83	two foot fluorescent fixtures will be retrofit with linear direct wire LED lamps and custom designed reflector. Fixtures will be controlled by occupancy sensors.
70	four foot fluorescent fixtures will be retrofit with linear direct wire LED lamps. Fixtures will be controlled by occupancy sensors.
39	four foot fluorescent fixtures will be retrofit with linear direct wire LED lamps.
39	two foot fluorescent fixtures will be retrofit with linear direct wire LED lamps and custom designed reflector.
30	compact fluorescent can fixtures will be retrofit with LED kits. Fixtures will be controlled by occupancy sensors.
20	occupancy sensor power packs will be installed.
18	wall mount occupancy sensors will be installed.
16	compact fluorescent can fixtures will be retrofit with LED kits.
12	ceiling mount occupancy sensors will be installed.
12	wireless wall mount switch will be installed to control wireless ceiling mount occupancy sensors.
8	wireless ceiling mount occupancy sensors will be installed.
6	wide view occupancy sensors will be installed.
5	four foot fluorescent fixtures will be replaced by new LED wrap fixtures. Fixtures will be controlled by occupancy sensors.
4	compact fluorescent fixtures will be replaced by new LED canopy fixtures.
3	common incandescent lamps will be replaced by new LED lamps.
3	hallway occupancy sensors will be installed.
3	wireless wall mount wide view occupancy sensors will be installed.
2	compact fluorescent fixtures will be retrofit with LED lamps.
2	compact fluorescent lamps will be replaced by new LED lamps.



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**Scope of Work Overview – City/Police Exterior**

9	HID fixtures will be replaced by new LED pole fixtures.
3	common incandescent lamps will be replaced by new LED lamps.
3	HID fixtures will be replaced by new LED flood fixtures.
3	HID fixtures will be replaced by new LED wall pack fixtures.

**Project Scope of Work Overview – Fire Station 1 Interior**

66	two foot fluorescent fixtures will be retrofit with linear direct wire LED lamps and custom designed reflector. Fixtures will be controlled by occupancy sensors.
17	two foot fluorescent fixtures will be retrofit with linear direct wire LED lamps and custom designed reflector.
10	wall mount occupancy sensors will be installed.
9	occupancy sensor power packs will be installed.
8	compact fluorescent lamps will be replaced by new LED lamps.
7	ceiling mount occupancy sensors will be installed.
6	eight foot fluorescent fixtures will be retrofit with linear direct wire LED lamps.
4	eight foot fluorescent fixtures will be retrofit with linear direct wire LED lamps. Fixtures will be controlled by occupancy sensors.
4	fixture mount daylight sensors will be installed.
4	four foot fluorescent fixtures will be retrofit with linear direct wire LED lamps.
2	wireless wall mount switch will be installed to control wireless ceiling mount occupancy sensors.
1	wireless ceiling mount occupancy sensor will be installed.

**Project Scope of Work Overview – Fire Station 1 Exterior**

4	HID fixtures will be replaced by new LED wall pack fixtures.
2	common incandescent lamps will be replaced by new led lamps.

**Project Scope of Work Overview – Fire Station 2 Interior**

15	common incandescent lamps will be replaced by new LED lamps.
13	four foot fluorescent fixtures will be retrofit with linear direct wire LED lamps.
8	HID fixtures will be replaced by new LED high-bay fixtures with occupancy sensors.
5	four foot fluorescent fixtures will be retrofit with linear direct wire LED lamps. Fixtures will be controlled by occupancy sensors.
4	compact fluorescent fixtures will be relamped with LED lamps. Fixtures will be controlled by occupancy sensors.
4	compact fluorescent lamps will be replaced by new LED lamps.
4	HID fixtures will be replaced by new LED high-bay fixtures.
2	HID fixtures will be replaced by new LED wall pack fixtures.
2	wall mount occupancy sensors will be installed.
1	wireless ceiling mount occupancy sensor will be installed.
1	wireless wall mount switch will be installed to control wireless ceiling mount occupancy sensors.

**Project Scope of Work Overview – Fire Station 2 Exterior**

8	HID fixtures will be replaced by new LED flood fixtures.
4	common incandescent lamps will be replaced by new LED lamps.
3	four foot fluorescent fixtures will be retrofit with linear direct wire LED lamps.
3	HID fixtures will be replaced by new LED pole fixtures.
1	common incandescent fixture will be replaced by a new LED flood fixture.
1	common incandescent lamp will be replaced by a new LED lamp.

**Project Scope of Work Overview – Service Garage Interior**

62	four foot fluorescent fixtures will be retrofit with linear direct wire LED lamps.
12	LED fixtures will be controlled by occupancy sensors.
9	fixture mount daylight sensors will be installed.
9	HID fixtures will be replaced by new LED high-bay fixtures with photocells.
8	four foot fluorescent fixtures will be retrofit with linear direct wire LED lamps. Fixtures will be controlled by occupancy sensors.
7	eight foot fluorescent fixtures will be retrofit with linear direct wire LED lamps. Fixtures will be controlled by occupancy sensors.
5	wireless wall mount switch will be installed to control wireless ceiling mount occupancy sensors.
4	HID fixtures will be replaced by new LED high-bay fixtures.
4	wall mount occupancy sensors will be installed.
4	wireless ceiling mount occupancy sensors will be installed.
2	common incandescent lamps will be replaced by new LED lamps.
2	compact fluorescent lamps will be replaced by new LED lamps.
2	fixture mount occupancy sensors will be installed.
2	two foot fluorescent fixtures will be retrofit with linear direct wire LED lamps. Fixtures will be controlled by occupancy sensors.
1	ceiling mount occupancy sensor will be installed.
1	existing exit fixture will be replaced with a new LED exit fixture.
1	occupancy sensor power pack will be installed.
1	two foot fluorescent fixture will be retrofit with linear direct wire LED lamps.

**Project Scope of Work Overview – Service Garage Exterior**

5	HID fixtures will be replaced by new LED flood fixtures.
5	HID fixtures will be replaced by new LED wall pack fixtures.
3	HID fixtures will be replaced by new LED pole fixtures.

**Project Scope of Work Overview – Water Treatment Interior**

25	four foot fluorescent fixtures will be retrofit with linear direct wire LED lamps. Fixtures will be controlled by occupancy sensors.
20	four foot fluorescent fixtures will be retrofit with linear direct wire LED lamps.
4	wireless wide view sensors and power packs will be installed.

**Project Scope of Work Overview – Water Treatment Exterior**

6	HID fixtures will be replaced by new LED wall pack fixtures.
3	compact fluorescent fixtures will be replaced by new LED wall pack fixtures.
1	HID fixture will be replaced by new LED flood fixture.

**Project Scope of Work Overview – Library Interior & Exterior**

63	four foot fluorescent fixtures will be retrofit with linear direct wire LED lamps and custom designed reflector. Fixtures will be controlled by occupancy sensors.
12	four foot fluorescent fixtures will be retrofit with linear direct wire LED lamps.
8	ceiling mount occupancy sensors will be installed.
6	occupancy sensor power packs will be installed.
4	HID lamps will be retrofit by new LED lamps.
3	compact fluorescent lamps will be replaced by new LED lamps.
2	common incandescent lamps will be replaced by new LED lamps.
2	HID fixture will be replaced a by new LED wall pack fixture.
2	wall mount occupancy sensors will be installed.
1	four foot fluorescent fixture will be retrofit with linear direct wire LED lamps and custom designed reflector.
1	HID fixture will be replaced by a new LED flood fixture.



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Project Scope of Work Overview – Museum Interior & Exterior

8	compact fluorescent lamps will be replaced by new LED lamps.
3	existing exit fixtures will be replaced with new LED exit fixtures.
2	common incandescent lamps will be replaced by new LED lamps.
2	HID fixtures will be retrofit with new LED lamps.
1	four foot fluorescent fixture will be retrofit with linear direct wire LED lamps.

Section 1.09. Premises. EOU will provide the Services as identified in Section 1.08 at the following facility(s):

- ✓ City Admin/Police Facility located at 15 E. Franklin St. Bellbrook, OH
- ✓ Museum located at 42 N. Main St. Bellbrook, OH
- ✓ Library located at 57 W. Franklin St. Bellbrook, OH
- ✓ Service Garage located at 29 N. West St. Bellbrook, OH
- ✓ Water Treatment Facility located at 4254 W. Franklin St. Bellbrook, OH
- ✓ Fire Station 1 located at 35 N. West St. Bellbrook, OH
- ✓ Fire Station 2 located at 4254 W. Franklin St. Bellbrook, OH

Section 2.01. Representations and Warranties of Customer. Customer hereby warrants and represents to EOU that:

- (a) Customer is the legal fee owner of the Premises and/or otherwise has all requisite authority to make the improvements to the Premises that will result from EOU's performance of the Services;
- (b) Customer has disclosed in writing to EOU the existence and location of all known or suspected asbestos and other hazardous materials on the Premises;
- (e) This Agreement has been approved by the Customer in accordance with all applicable laws, rules and regulations; and
- (f) The individual signing this Agreement on behalf of Customer is an authorized representative of Customer with the full power and authority to sign this Agreement on behalf of Customer and bind Customer to the terms hereof.

Section 2.02. Customer Default. Each of the following events or conditions constitutes a default by Customer ("Customer Default") and provides EOU the right to, without an election of remedies: (a) proceed pursuant to Section 7.01; and/or (b) terminate this Agreement by delivery of written notice declaring termination, upon which event Customer will be liable to EOU for all Services furnished to date, including any specially manufactured or non-stock items, whether in production or delivered, and any damages sustained by EOU, including anticipatory profits:

- (1) Any failure by Customer to pay or cause to be paid amounts due EOU more than thirty (30) days after the date of the invoice therefor;
- (2) Any representation or warranty furnished by Customer in this Agreement is false or misleading in any material respect when made;
- (3) Any default by Customer under any instrument or agreement related to the financing of all or any part of the Services or equipment hereunder;
- (4) Any failure by Customer to perform or comply with any material term or condition of this Agreement, including breach of any covenant contained herein, provided that such failure continues for ten (10) days after written notice to Customer demanding that such failure be cured or, if cure cannot be effected in such ten (10) days, Customer fails to promptly begin to cure and diligently proceed to completion thereof; or
- (5) The commencement of any voluntary or involuntary proceedings in bankruptcy or receivership by or against Customer, Customer becomes insolvent, make a general assignment for the benefit of creditors, or Customer fails to pay its debts as and when they become due.

Section 3.01. EOU's Liability Insurance. EOU will purchase from and maintain, without interruption from the commencement of the Services until the date of Final Completion, a commonly available commercial general liability policy of insurance through a company or companies rated A- or above by A.M. Best Company, providing coverage for workers' compensation insurance, comprehensive automobile insurance and commercial general liability insurance.

Section 3.02. Customer's Liability and Property Insurance. (a) Customer is responsible for purchasing and maintaining Customer's liability insurance of the type and amount Customer deems necessary and appropriate, provided, however, that the minimum coverage limits shall be no less than \$1,000,000 per occurrence.



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**Section 3.03. Waiver of Subrogation.** Unless prohibited by law, even if any loss or damage is caused by the fault or negligence of the other party, EOU and Customer, for themselves and all others claiming under them including any insurer, waive all rights including rights of subrogation against the other for loss, damage, or liability resulting from a risk (a) which is insured against by either party, to the extent of any recovery collectible under such insurance, or (b) that is required to be insured against by such party under the terms of this Agreement but such party failed to maintain such insurance to the extent required or any amount that would have been collected under such insurance had such party maintained such insurance. All policies of insurance of either party with respect to the Premises, the Services or a party's personal property located on the Premises will contain a provision of waiver of subrogation. Each party, if allowable by each party's insurer, shall cause any and all fire, extended coverage or any and all liability policies which may be carried endorsed with the following (or equivalent) clause: "This insurance shall not be invalidated should the insured waive in writing prior to a loss any and all right of recovery against any party for loss occurring to the property described herein."

**Section 4.01. Indemnification.** To the maximum extent permitted by law, EOU will indemnify and hold Customer harmless from any and all actions, costs, expenses, damages and liabilities, including reasonable attorneys' fees, resulting from death or bodily injury or damage to tangible physical property of Customer, to the extent arising out of or resulting from the negligence of EOU's employees or other authorized agents in connection with the Premises. However, EOU will have no obligation to indemnify the Customer against actions, costs, expenses, damages and liabilities to the extent attributable to the omissions or negligent acts of the Customer or Customer's employees or agents. The duty to indemnify will continue in full force and effect, notwithstanding the expiration or early termination of this Agreement, with respect to any claims based on facts or conditions which occurred prior to expiration or termination.

**Section 5.01. Workmanship and Equipment Warranty.** EOU warrants that, for the duration of this Agreement, beginning from the date of Final Completion, EOU shall provide the Customer all labor and material required to replace any failed lamps, drivers and/or fixtures associated with this project.

EOU warrants that, for the duration of this Agreement, beginning from the date of Final Completion, EOU shall provide the material and labor required to repair or replace any failed lamps, ballasts and/or fixtures. No liability whatsoever shall attach to EOU until said equipment and Services have been paid for in full. EOU's warranties expressly exclude any remedy for damage or defect caused by corrosion, erosion, or deterioration, abuse, modifications or repairs not performed by EOU, improper operation, or acts of God.

**Section 6.01. Assignment.** Neither party may assign, transfer, or convey this Agreement, or any part hereof, or its right, title or interest herein, without the written consent of the other party. In the event that EOU defaults on any financing institute directly associated with the financing associated with this project, the remaining Agreement amount due to EOU by the Customer will be transferable to the financing institute, if applicable, holding the financing note associated with this project.

**Section 7.01. Applicable Law and Jurisdiction.** This Agreement is made and will be interpreted and enforced in accordance with the laws of the State of Ohio. Both parties hereby submit to the personal jurisdiction of the courts located in the State of Ohio and to being sued in such jurisdiction(s). The parties agree that any lawsuit initiated to enforce the terms of this Agreement will be filed in local court with jurisdiction located in the County in which the Project is located.

**Section 7.02. Term of Agreement.** The term ("Term") of this Agreement will commence as of the date first written above and end upon the Final Completion and Customer's payment obligations as detailed in Section 1.02 and Section 1.04.

**Section 7.03. Signatures In Counterpart.** This Agreement may be executed in several counterparts, each of which when executed will be deemed to be an original, but all together will constitute but one and the same Agreement. A facsimile copy or scanned and e-mailed copy hereof will suffice as an original.

**Section 8.01. Rebates, Grants and Energy Efficiency Credits.** Customer agrees to allow EOU to acquire any and all rebate, grant and/or energy efficiency credits that may be available as a result of the scope of work associated with the project as described in Section 1.08 of this document.





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**Section 8.02. EPACT 2005 Tax Deduction Credits.** Customer agrees to allow EOU to utilize the benefits of the federal tax deduction credits for implementing the energy conservation project as detailed within this agreement. Since Customer does not pay federal taxes, this federal tax incentive, EPACT 2005, has no value to Customer and may be credited to the "qualifying project engineer or installer".

**The City of Bellbrook, Ohio and Energy Optimizers, USA, LLC**  
*Energy Efficient Lighting Service Agreement (10-Year)*

**Project No. #: 1382C**

**Agreement – Signature Page**

**IN WITNESS WHEREOF**, the duly authorized representatives of the parties have each executed this Agreement, effective as of the date signed by Customer, unless stated otherwise in this Agreement.

**Energy Optimizers, USA, LLC**

**The City of Bellbrook, Ohio**

By: \_\_\_\_\_  
Authorized Signature

By: \_\_\_\_\_  
Authorized Signature

Name: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

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

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

**Project Terms:**

**10-Year Service Agreement Payments**

✓ **\$1,466.00 per month for 120 months**

**PO#'s** \_\_\_\_\_



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# EXHIBIT A

## Certificate of Final Completion and Acceptance

### Certificate of Final Completion and Acceptance

Energy Optimizers, USA Project No.: 1382C

Date Final Completion Certificate Submitted to Customer: TBD

Date Final Completion Certificate Accepted by Customer (Warranty Begins): TBD

The Services performed pursuant to the Lighting Retrofit Service Agreement (the "Agreement"), by and between The City of Bellbrook, Ohio ("Customer") and Energy Optimizers, USA, LLC dated as of July 9, 2015, has been inspected by the undersigned Customer and has been determined to be finally complete.

The Date of Final Completion and Acceptance is hereby established as the date Customer executes this Certificate, as noted below.

**Energy Optimizers, USA, LLC**

**The City of Bellbrook, Ohio**

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

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

Title: \_\_\_\_\_

Title: \_\_\_\_\_

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

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