

RECORD OF RESOLUTIONS

Resolution No. 2015-II

December 14, 2015

City of Bellbrook

Resolution No. 2015-II

A Resolution Authorizing the City Manager to Enter into a Contract with Miami Valley Lighting (MVLt) for Street Lighting Services for Use on Public Grounds and Streets in the City of Bellbrook for a Period of Ten (10) Years Commencing January 1, 2016 and Expiring on December 31, 2025.

WHEREAS, the current street light contract with DPLE expires on December 31, 2015;

WHEREAS, the City is part of a consortium of 23 cities formed to jointly negotiate a new street light contract; and

WHEREAS, the cooperative negotiation process has produced a new street light contract that is being recommended for approval by the regional negotiating committee; and

WHEREAS, the new street light contract will reduce the City's costs for street lighting services and improve the ongoing maintenance of the system; and

WHEREAS, the Council of the City of Bellbrook wishes to continue to provide street lighting under the provisions of the new contract.

Now, Therefore, the City of Bellbrook Hereby Resolves:

Section 1: The city manager is hereby authorized to enter into a ten year contract with MVLt for street lighting services on public grounds and streets a copy of which contract is attached hereto and made a part hereof.

Section 2: The new street lighting contract is effective January 1, 2016.

Section 3: This resolution shall become effective immediately upon its passage.

Robert L. Baird, Mayor

Jami L. Kinion, Clerk of Council

**FULL SERVICE
STREET LIGHTING AGREEMENT**

Between

City of Bellbrook

and

Miami Valley Lighting, LLC

Effective Date: January 1, 2016

**Miami Valley Communications Council –
Negotiator for the Joint Municipalities**

CITY OF BELLBROOK
FULL SERVICE STREET LIGHTING AGREEMENT

THIS FULL SERVICE STREET LIGHTING AGREEMENT (“Agreement”) is entered into by and between the **City of Bellbrook** (the “Municipality”) and **Miami Valley Lighting, LLC** (“MVLt”) effective the 1st day of January, 2016.

Recitals

WHEREAS, Miami Valley Communications Council (“MVCC”), on behalf of the municipalities of Beavercreek, Bellbrook, Brookville, Centerville, Clayton, Englewood, Fairborn, Germantown, Greenville, Huber Heights, Kettering, Miamisburg, Moraine, Oakwood, Riverside, Sidney, Trotwood, Troy, Union, Urbana, Vandalia, West Carrollton, and Xenia (the “Joint Municipalities”), negotiated the terms of a full service street lighting agreement with MVLt; and

WHEREAS, the general terms and conditions of the street lighting agreement negotiated between MVCC and MVLt are set forth in a Term Sheet dated November 6, 2015, which has formed the basis of this Agreement; and

WHEREAS, pursuant to the terms of this Agreement, MVLt is willing to own, maintain, and operate lighting fixtures and associated equipment (generally including luminaires, poles, masts, wiring, conduit, and connective components, hereinafter collectively referred to as “Fixtures”) on a long-term basis to provide full service lighting services to the Municipality, and the Municipality desires to purchase such full service lighting services from MVLt at prices and on terms stated herein; and

NOW, THEREFORE, the Municipality and MVLt desire to enter into this formal Full Service Street Lighting Agreement containing all of the terms and conditions under which MVLt shall provide lighting to the streets, roads and public places within the boundaries of the Municipality.

AGREEMENT

I. PRIMARY PROVISIONS.

- A. **Term of Agreement.** The term of this Agreement shall be ten (10) years to commence on the Effective Date of January 1, 2016, and end on December 31, 2025.
- B. **Modification and Extension.**
 - 1. Ninety (90) days prior to the expiration of the Agreement, the parties shall commence good faith negotiations for renewal of the Agreement.

2. At the discretion of the Municipality, the Municipality may designate MVCC as its negotiation representative for the conduct of good faith negotiation for renewal or renewal with modifications of this Agreement.
3. After such good faith negotiations, should the parties be unable to agree on new terms and conditions within thirty (30) days before the date the Agreement is to terminate, then either party, on or before December 31, 2025, may provide the other party with written notice of termination to be effective as of December 31, 2025.

C. **Full Service Street Lighting Defined.** Full service street lighting (“Full Service Street Lighting”) is the provision of illumination for the streets, roads and public places within the Municipality by MVLt utilizing MVLt Fixtures (as defined in section I.D. below) and associated equipment, operated and maintained by MVLt and attached to either MVLt, The Dayton Power and Light Company (“DP&L”) or other entity, or Municipality poles. Full Service Street Lighting also includes service calls, system maintenance, and installation of lighting Fixtures as further described in this Agreement.

D. **Definitions.** As used in this Agreement:

“Failure,” “failure,” or variants of such word when used in the context of a Luminaire that has failed, means that that the Luminaire is not operable for reasons which cannot be resolved by a simple repair (e.g., replacement of a non-functioning lamp or photocell) or a repair to a portion of the Fixture other than the Luminaire.

“Fixtures” means, depending on usage, “MVLt Fixtures” (as defined below) or MVLt equipment used for lighting purposes that is attached to poles or other supporting structures owned by the Municipality, DP&L or other entity.

“Luminaires” means a complete lighting unit consisting of a lamp (and, as applicable, the ballast) together with the parts designed to distribute the light, to position and protect the lamp and ballast and that portion of the wiring that connects the lamp to the wiring installed from the power supply to the lamp.

“MVLt Fixtures” means and includes poles, masts, Luminaires, and related wiring owned by MVLt and installed within the boundaries of the Municipality as identified in the Fixture Inventory. MVLt Fixtures do not include any underground wiring.

E. **MVLt Fixture Removal Upon Termination.**

1. Fixtures in Place as of or After January 1, 2016. If this Agreement is not renewed or replaced with an agreement extending beyond December 31, 2025, or is terminated prior to that for any reason, MVLt shall have a reasonable amount of time to remove all MVLt Fixtures that were in place as of or after January 1, 2016, at its own cost and shall be responsible to remediate the right

of way upon removal consistent with then current guidelines of the Municipality for right of way restoration.

2. Safe Removal. Removal of the MVLt Fixtures by MVLt shall be coordinated with the Municipality in a manner that does not adversely impact the health, safety, and welfare of the citizens of the Municipality.
3. Underground Wiring. Any underground wiring connecting to any MVLt Fixture shall not be removed and shall be left in place in as is condition and where possible in a condition, acceptable for any future connection. Nothing herein however shall be interpreted to require MVLt to make any improvements or repairs to any underground wiring in the event of removal of MVLt fixtures.
4. No Appropriation. During the term of this Agreement, the Municipality shall not attempt to appropriate any MVLt owned street lighting assets through any type of appropriation proceeding or legislative action.

F. **Monthly Charge for Full Service Street Lighting.**

The pricing effective January 1, 2016, and for subsequent years of the term (“Monthly Charge”) for poles, masts, Luminaires, related wiring (excluding trenching necessary for underground electric service wiring), and energy will be as set forth in Appendix A attached and incorporated herein by reference. Except as explicitly provided otherwise below, the cost of service calls, system maintenance, and other obligations undertaken by MVLt under this Agreement shall be provided by MVLt as part of the Monthly Charge.

- G. **New Installation Charges.** This subsection I.G. applies with respect to: (i) the installation of a new pole where the new pole is not a replacement for an existing pole or to move a pole for road construction or safety purposes; (ii) the incremental poles in a circumstance where multiple existing poles are replaced by a larger number of new poles; and (iii) new Luminaires installed on existing or new poles.

Pricing for new installation (“Installation Charge”) of Luminaires and poles after the Effective Date of this Agreement shall be as set forth below. The Installation Charge shall also include any wiring and other components necessary to render the new installation operational. When underground wiring is required or requested by the Municipality, it will be the responsibility of the Municipality to provide all trenching, backfilling, pavement cuts and repairs, and associated work and/or costs for the installation of such underground wiring. MVLt will be afforded the opportunity to bid for the provision of such service. New street lights will be installed on existing or new MVLt poles or poles owned by DP&L or a related entity, or Municipality provided poles. Should Municipality choose to have MVLt install a standard cobra head Luminaire on a DP&L or other pole, the Municipality will be responsible for any standard third party pole attachment fee incurred by MVLt from DP&L or other

pole owner. Any third party expense to be incurred shall first be submitted to the Municipality for review and approval prior to incurring any such third party expense.

1. High Pressure Sodium (“HPS”) Luminaires. MVLt will offer the following product types for new HPS cobra head lighting Luminaire installations effective January 1, 2016: 9500 HPS CO, 9500 HPS DG, 16000 HPS CO, 16000 HPS DG, 27000 HPS CO, 27000 HPS DG, 50000 HPS CO, 50000 HPS DG. There will be no charge for installation of new HPS cobra head Luminaires on or after January 1, 2016.
2. Light Emitting Diode (“LED”) Luminaires. MVLt will offer the following product types for new LED cobra head lighting Luminaire installations effective January 1, 2016: 49 watt LED, 94 watt LED, 215 watt LED. (LED wattages are approximate.) There will be no charge for installation of new LED Luminaires on or after January 1, 2016, except as provided in section I.H.2.(e) below.
3. Poles. MVLt will offer the following product types for new pole installations effective January 1, 2016: standard wood, 23' spun aluminum, and 30' spun aluminum. There will be no charge for wood pole installations. The charge for installing 23' spun aluminum poles owned by MVLt will be \$600, and the charge for installing 30' spun aluminum poles owned by MVLt will be \$650. The Municipality may, at its sole election, choose to purchase from MVLt and own the poles that MVLt will then install, and if such election is made, a separate agreement in the form of Appendix B will be executed. For sales and installations prior to January 1, 2019, the installed sales price specified in an Appendix B agreement will be \$2,150 for a 23' spun aluminum pole, inclusive of the foundation and \$2,460 for a 30' spun aluminum pole, inclusive of the foundation. For sales and installations on and after January 1, 2019, the installed sales price will be negotiated. Poles owned by the Municipality will not be subject to that portion of the Appendix A monthly charge applicable to poles.
4. Reservation of Rights. The Municipality may, at its sole discretion, elect to pay for and install poles and Luminaires on its own and at its sole expense. Upon such election to pay for and install poles and Luminaires, the Municipality may acquire energy for such Fixtures or pay the monthly regulated energy rate tariff to the regulated entity.
5. Non-Standard Street Lighting Installations. Sections I.G.1., 2. and 3. above identify the only new equipment that MVLt will be offering for new standard street light installations under this Agreement on and after January 1, 2016. In the event that Municipality requests special installation of a product not listed in those sections, (i.e. decorative lighting) MVLt and Municipality will negotiate independent pricing for the installation and any full service fees separately. Any independent price negotiation for such special installation

shall be reduced to writing as an addendum to this Agreement by utilizing the Standard Special Installation Pricing Addendum form attached hereto as Appendix B.

H. Existing Installations

1. Mercury Vapor Cobra Head Luminaire Replacement Program. MVLt will replace all of its existing Mercury Vapor Luminaires on cobra head fixtures that provide lighting services to Municipality with LED Luminaires by December 31, 2020. Existing 4000 lumen and 7000 lumen mercury vapor Luminaires will be replaced by 49 watt LED cobra head Luminaires. Existing 11,000 lumen mercury vapor Luminaires will be replaced by 94 watt LED cobra head Luminaires. Existing 21,000 lumen mercury vapor Luminaires will be replaced by 215 watt LED cobra head Luminaires. (LED wattages are approximate.) There will be no separate installation charge for such replacements. Notwithstanding the above, at Municipality's request, MVLt will replace existing Mercury Vapor cobra head Luminaires with standard HPS cobra head Luminaires, with no separate installation charge for such replacements. As each Luminaire is replaced, the corresponding mercury vapor Luminaire shall be removed from the Fixture Inventory and the corresponding LED cobra head Luminaire or HPS cobra head Luminaire shall be added to the Fixture Inventory.
2. HPS Cobra Head Luminaire Replacement Program.
 - a. Development/Participation in Luminaire Replacement Program. Subject to eligibility and the Municipalities participation election set forth below, MVLt has made a commitment to the Joint Municipalities to replace all HPS cobra head Luminaries with LED Luminaries at a rate of 2,500 replacements per year from 2016 through 2021 (the "HPS Replacement Program"). A priority will be established based on a first-come, first-served basis each year until the annual quota is met, recognizing, however, that schedules will be flexible and may be coordinated with other work to be done in the Municipality such as the conversion of mercury vapor Luminaires or replacement of steel poles. Participation in the HPS Replacement Program shall be at the full discretion of the Municipality, with such election to occur on or before June 30, 2016. Any such election to participate in the HPS Replacement Program by the Municipality may be either for the entire Municipality or limited to identified streets or neighborhoods, with the understanding that MVLt will utilize all reasonable efforts to minimize the "checkerboarding" of different Luminaires within a block or neighborhood. Should the Municipality not elect to participate by June 30, 2016, then any replacements later requested by the Municipality will be performed by MVLt at a time negotiated between MVLt and the Municipality after

completion of replacements for others within the Joint Municipality that elected to participate on or before June 30, 2016.

- b. Upon receiving notice of an election to participate in the HPS Replacement Program by the Municipality, MVLt will be responsible to work with the Municipality on developing a plan for replacement of HPS cobra head Luminaires with LED Luminaires within the Municipality.
- c. Eligible HPS Luminaire Replacements. The HPS Replacement Program applies to the HPS cobra head Luminaire with 5800 lumen, 9500 lumen, 16,000 lumen, and 27,000 lumen luminaires. Existing 5800 lumen and 9500 lumen HPS Luminaires will be replaced by 49 watt LED cobra head Luminaires. Existing 16,000 lumen HPS Luminaires will be replaced by 94 watt LED cobra head Luminaires. Existing 27,000 HPS fixtures will be replaced by 215 watt LED cobra head Luminaires. (LED wattages are approximate.) Together these are the “Eligible HPS Luminaires.” HPS cobra head Luminaires over 27000 Lumens (“27000L+ HPS”) will not be included in the HPS Replacement Program. In the event the Municipality desires to have any 27000L+ HPS Luminaires replaced by MVLt during the Term of this Agreement, any such replacement will be based on a negotiated Monthly Rate for those replaced Luminaires.
- d. Replacement Schedule. The schedule for replacements under this Program shall be in MVLt’s sole discretion, but it shall consult with Municipality prior to initiating the replacement program. MVLt shall also consider scheduling requests by Municipality, but is not required to make modifications to its planned replacement schedule. As each Luminaire is replaced, the corresponding HPS Luminaire shall be removed from the Fixture Inventory and the corresponding LED Luminaire shall be added to the Fixture Inventory
- e. Installation Charges. Installation charges for replacing the Eligible HPS Luminaires with LED Luminaires shall be as follows:
 - i. 49 Watt LED - \$20 per Luminaire
 - ii. 94 Watt LED - \$30 per Luminaire
 - iii. 215 Watt LED - \$40 per Luminaire
 - iv. There will be no charge for installing LED Luminaires after December 31, 2022.

3. Wood Pole Inspection, Treatment, and Replacement Program.

- a. MVLt will implement a wood pole inspection program using a third party vendor with expertise and experience with such programs. The results of the inspection programs will be shared with Municipality. MVLt will replace any poles that fail the third party vendor’s inspection.

Municipality may, but is not required to, direct MVLt to replace the wood pole with a spun aluminum pole, in which case the regular charges for the installation and monthly use of a new spun aluminum poles shall apply. In the absence of such direction, any replacement for a wood pole shall be a wood pole. There will be a zero monthly charge for a replacement wood pole.

- b. MVLt will make good faith efforts to have all wood poles that it owns in Municipality inspected by December 31, 2020. MVLt, however, shall be deemed to have fulfilled its obligations under this inspection program so long as it inspects at least 90% of such wood poles by December 31, 2020. MVLt shall also promptly inspect any individual pole upon the request of Municipality if an official of the Municipality has a good faith belief that the pole may be hazardous or unsafe.

4. Steel Pole Replacement Option for Municipality.

- a. A representative from MVLt and the Municipality will together visually inspect each steel pole prior to May 31, 2016. The results of the inspection shall be set forth in writing and shared with the Municipality. Within 30 days after receipt of the written report, Municipality shall provide to MVLt a list identifying each of the steel poles that the Municipality wants to replace. In the event that the Municipality identifies one or more steel poles to be replaced, MVLt shall develop a schedule for such replacement pole(s). The schedule for such replacements shall be in MVLt's sole discretion, but it shall consult with Municipality prior to initiating the replacement program. MVLt shall also consider scheduling requests by Municipality, but is not required to make modifications to its planned replacement schedule.
- b. There will be no separate removal or installation charge. The replacement pole(s) shall be either 23 foot or 30 foot spun aluminum poles, unless the Municipality directs MVLt to replace one or more steel poles with a standard wood pole. As each steel pole is replaced, the steel pole shall be removed from the Fixture Inventory and the replacement spun aluminum pole or replacement wood pole shall be added to the Fixture Inventory and the monthly bills shall thereafter reflect the charges set forth in Appendix A for the applicable size of a new replacement spun aluminum pole or the zero charge associated with a standard wood pole.
- c. The foregoing provisions of H.4.a. and H.4.b. shall not apply with respect to a steel pole that is replaced with a spun aluminum pole under circumstances in which MVLt is fully compensated for any removal or installation costs by a third party, including a third-party insurer. In such circumstance, the replacement pole shall be installed at no cost to

Municipality and the monthly charge shall continue to be at the rate set forth in Appendix A for existing steel poles.

- d. Any spun aluminum pole that, as of December 31, 2015, is listed in the Fixture Inventory as a “Billable Pole – Spun Aluminum” will continue to be charged at the rate set forth in Appendix A for such category of poles. Any steel pole that, as of December 31, 2015, is listed in the Fixture Inventory as a Billable Pole – Steel” will continue to be charged at the rate set forth in Appendix A for such category of poles.
- e. MVLt Indemnification of Municipality Regarding Steel Poles. It is agreed and recognized that Municipality has no particular expertise in the evaluation of the safety or physical integrity of steel poles. MVLt therefore agrees to hold harmless and indemnify Municipality and Municipality’s officials, employees, and contractors (“Indemnitees”), against any and all claims, liabilities, damages to property, or injuries or death of persons (“Claim”) brought against Indemnitees by a non-party to this Agreement to the extent such Claim has as its basis the alleged actions or non-actions of Indemnitees with respect to the Steel Pole Replacement Option set forth herein. MVLt’s indemnification shall include reimbursement for Municipality’s legal expenses. MVLt shall have the right, but not the obligation, to hire its own counsel and assume control over the litigation strategy, including the negotiation and execution of settlements. Whether received by Municipality or other Indemnitee through service of process or through an informal writing threatening litigation or alleging a Claim, Municipality shall notify MVLt of any such Claim and MVLt shall have the right and opportunity to develop the initial response. Absent good cause, a failure by Municipality to notify MVLt of a Claim as set forth in the preceding sentence, shall relieve MVLt of its indemnification obligation unless MVLt received actual knowledge of the Claim in a timely manner through other means and had the opportunity to develop the initial response.

5. LED Wattage.

- a. In recognition of potential technological advances that may take place during the term of this Agreement and that, even as of the date of execution of this Agreement, different vendors offer LED Luminaries operating at slightly different wattage levels, all references to 49, 94, and 215 wattage levels are approximate. MVLt may provide LED Luminaire installations that deviate from the above referenced 49, 94, and 215 watt levels, but only if the LED Luminaire installation provides the same or better street lighting characteristics with a comparable lighting pattern.

- b. For wattage deviations that are within the greater of 4 watts or 5% of the 49, 94, and 215 watt levels set forth above, charges for any such alternative LED Luminaire shall be the same as the LED Luminaire with the closest comparable wattage as set forth in Appendix A. For wattage deviations that are more than the greater of 4 watts or 5% below the 49, 94, and 215 watt levels set forth above, charges for any such alternative LED Luminaire shall be based on the closest comparable wattage as set forth in Appendix A with a passthrough adjustment downward of the energy savings attributable to the alternative LED Luminaire. For wattage deviations that are more than the greater of 4 watts or 5% above the 49, 94, and 215 watt levels set forth above, charges for any such alternative LED Luminaire shall be the same as the LED Luminaire with the closest comparable wattage as set forth in Appendix A. An illustrative example of how the passthrough adjustment will be calculated and provided is set forth in Appendix C.
- c. It is further understood and agreed that technological advances may be such that at some point during the term of this Agreement, the replacement with LED Luminaires for other HPS Luminaires that are not Eligible HPS Luminaires may be economically advantageous to MVLt and Municipality. Neither party shall be obligated to enter into an agreement to address other conversions, but nothing herein shall preclude either party from making a proposal to the other for such additional conversions.

I. **Billing and Payment.** Invoicing by MVLt and payment by the Municipality for services provided pursuant to this Agreement shall be as set forth below:

- 1. **Full Service Street Lighting.** MVLt shall invoice the Municipality on a monthly basis for Full Service Street Lighting within the Municipality pursuant to the pricing schedule attached hereto as Appendix A. Each invoice shall provide the number and type of Luminaires and poles and the rate charged for each. The Municipality shall pay the invoice for the Monthly Charge within twenty (20) days after the mailing date of the invoice. Payments received after the due date will be subject to interest at the rate of one percent (1%) per month on all balances past due, provided however, that if the Municipality contests the amount of a bill, the portion of the bill which is contested in good faith will not be subject to the delayed payment charge if the Municipality notifies MVLt prior to the due date for payment of the fact that it is contesting and provides the reason why that portion of the bill is incorrect.
- 2. **New Installations.** MVLt shall invoice the Municipality for charges for new installations within ten (10) days after the completion of the new installation. The Municipality shall pay any charges for new installations within twenty (20) days after the mailing date of the invoice. Payments received after the due date will be subject to interest at the rate of one percent (1%) per month on all balances past due, provided however, that if the Municipality contests the

amount of a bill, the portion of the bill which is contested in good faith will not be subject to the delayed payment charge if the Municipality notifies MVLt prior to the due date for payment of the fact that it is contesting and provides the reason why that portion of the bill is incorrect.

II. ADDITIONAL OBLIGATIONS.

- A. **Scope.** MVLt shall provide the Municipality with Full Service Street Lighting and various additional street lighting services designed to illuminate the streets, roads, and public places within the Municipality. All lights will be illuminated every night from approximately one-half hour after sunset of one day, until approximately one-half hour before sunrise of the next day. While MVLt cannot guarantee continuous service without interruption, any routine outage will be handled in accordance with the service parameters described in section II.C. below. In addition, MVLt shall provide new installations of light poles, Luminaires, and related components, service calls, system maintenance, and a Fixture Inventory as set forth in section II.B. of this Agreement.
- B. **Fixture Inventory.** MVLt shall maintain a complete inventory of all MVLt Fixtures, or components thereof, contained within the Municipality's corporate boundaries ("Fixture Inventory"). The Fixture Inventory shall set forth the specific characteristics of all Fixtures or components thereof, and shall provide GPS coordinates of all poles. Said Fixture Inventory list shall be maintained and updated by MVLt on an ongoing basis and published to the Municipality on an annual basis or upon request during the term of this Agreement or any extension thereof. Any GPS coordinates and related data will be provided by MVLt on an "as-is" basis.
- C. **Service Calls.** The Municipality will report to MVLt all Luminaires which fail to illuminate. To the extent possible, such reports shall be made through the web-based outage reporting system that MVLt has developed and agrees to maintain in its current or a modified form. The outage shall be reported by Municipality utilizing the identification data fields provided in the Fixture Inventory. Service shall be restored for minor outages (lamp, photocell, fuse, exposed wiring) within three (3) working days. MVLt will repair major outages (underground electric faults, Luminaire or pole replacements) within seven (7) working days. MVLt shall provide the Municipality with a prorated credit for each reported Luminaire not repaired within these time requirements. The prorated credit shall be accumulated and reflected by MVLt in a bill credit at least once each year in or prior to the December monthly invoice. At the same time, for informational purposes, MVLt shall also provide a summary of the Municipality's annual bill credit to the Executive Director of MVCC.
- D. **Maintenance.** MVLt, as part of its service and maintenance obligations, shall repair and/or replace defective or broken components; test, repair and/or replace defective street light wiring; and paint and/or refinish Luminaire and light pole surfaces. Additionally, MVLt agrees to perform two (2) daytime and one (1) nighttime

inspection of its street lighting equipment within the Municipality each year from January 1, 2016 through December 31, 2019; and one (1) annual daytime or nighttime inspection of its street lighting equipment within the Municipality from January 1, 2020 through December 31, 2025.

All inspections performed by MVLt shall be summarized and delivered to the Municipality via e-mail, stating the date and time of each inspection, nature of repairs made by specific pole location, and date repairs were made.

E. Equipment Upgrade.

1. The Municipality may request the change out of an existing HPS Luminaire to the same style, higher lumen standard HPS Luminaire without charge except for the change in monthly full service charge. A change out of an existing LED Luminaire to a different LED Luminaire shall be subject to a separate agreement as to price and schedule. A change out of an existing HPS Luminaire that is not an Eligible HPS Luminaire to a standard LED Luminaire shall be subject to a separate agreement as to price and schedule.
2. As set forth in section I.G.2, MVLt is offering specified types of LED Luminaires as a standard product type. Municipality may, at any time, direct MVLt to replace mercury vapor cobra head or HPS cobra head Luminaires with lumen levels as set forth in H.1 or H.2.(a), with the appropriately sized LED Luminaire as such mercury vapor and HPS cobra head fixtures fail. Such replacements are not within the scope of the HPS to LED Replacement Program and other aspects of that program, including the installation fee and making efforts to minimize checkerboarding do not apply.
3. All other change outs, including relocation of mast arms on existing poles or change out of Luminaires to the same or lower lumen Luminaires or to different styles, will be done at a charge mutually agreed to by the Municipality and MVLt. All change outs will be accomplished on a schedule submitted by MVLt to the Municipality. If, in the judgment of MVLt, an MVLt Fixture or a component thereof becomes obsolete or will no longer be serviceable, MVLt will notify the Municipality and, upon permission from the Municipality's authorized agent, change the Fixture or component to a standard MVLt Fixture or component. The Municipality will not unreasonably withhold permission for these changes. If MVLt and the Municipality cannot reach agreement on such changes, MVLt may remove the Fixture at no cost to the Municipality.

III. GENERAL PROVISIONS.

- A. Temporary Disconnection.** At times it may become necessary to temporarily disconnect certain Fixtures. MVLt shall temporarily disconnect any of its Fixtures at the Municipality's request. In exchange for this service, MVLt shall assess a charge

of \$100.00 for each physical disconnection and \$100 for each physical reconnection of a Fixture. During the period a Fixture has been disconnected, but not removed, at the Municipality's request, the monthly service charge will be 60% of the applicable full service lighting charge.

- B. Right of Way Utilization and Relocation.** MVLt will be permitted to install and operate in the public right of way any of the Fixtures described in this Agreement at no cost to MVLt for use of the public right of way for the street lighting system described in this Agreement. Any such use of the public right of way shall be subject to the respective legally valid right of way ordinance for each Municipality except that any cost or fee imposed on MVLt for right of way use shall be inapplicable. MVLt shall relocate any Fixture, at its cost, upon receipt of written notice and instructions from the Municipality of a Municipality-driven relocation.
- C. Municipality to Consider MVLt for Other Lighting Projects.** Municipality shall ensure that MVLt is considered as a potential contractor or service provider for the construction, installation, operation, or maintenance of any indoor or outdoor lighting services required by Municipality with respect to Municipality's facilities including buildings, parks and other Municipality properties. During the term of this Agreement, Municipality shall contact MVLt, place MVLt on any bidder's lists or other solicitations, and invite MVLt to bid on any project that Municipality may make with respect to lighting services. Nothing herein shall require Municipality to accept MVLt's bid or otherwise establish a priority for MVLt's consideration. This provision is to ensure only that MVLt has an opportunity to make an offer that Municipality will consider.
- D. Replacement of Replacement Fixtures.** The Municipality agrees that any Fixtures replaced by MVLt within the Municipality during the Term of this Agreement will remain in place during the Term of this Agreement unless replacement becomes necessary for purposes of continued safety or road construction.
- E. Dispute Resolution.**
1. In the event that Municipality has identified an MVLt Fixture that it believes has a defect in its physical integrity such that the pole or Luminaire may fall, or there is danger of electric shock, and MVLt disagrees, or if there is a disagreement regarding the steps necessary to rectify the physical defect, the parties shall first elevate the dispute to the level of Municipality Manager (or equivalent position) and MVLt Vice President, who shall meet in good faith in an attempt to resolve the dispute. With respect to those MVLt Fixtures that are subject to dispute as set forth herein, the same indemnification provided by MVLt to the Municipality relative to steel poles as referenced in section I.H.4.e. shall apply to those MVLt Fixtures until such time as MVLt replaces that portion of the MVLt Fixture that is under dispute.
 2. Should any other type of dispute not addressed in section III.E.1 above arise between the parties relative to the terms of the Agreement, the offended party

shall be required to provide written notice to the offending party specifying the nature of the alleged breach (the "Breach"). Within three (3) days of such written notice, the parties shall conduct a meeting in an effort to discuss and resolve the Breach. Thereafter, the offending party shall have a period of thirty (30) days to either cure the Breach or provide sufficient evidence to the offended party's satisfaction that appropriate steps are being taken by the offending party to remedy the Breach. At the end of the thirty (30) day cure period, the parties shall conduct a second meeting to make a determination whether or not the Breach has been cured and to work toward a resolution. Thereafter, if the breach remains unresolved, the offended party may pursue any and all legal remedies available at law or equity, however, the parties specifically agree that any legal action taken by either party shall be limited to arbitration rather than litigation. Any such arbitration shall be conducted under the laws of Ohio and the Commercial Arbitration Rules of the American Arbitration Association, and the venue for the arbitration shall be Dayton, Ohio.

IV. MISCELLANEOUS PROVISIONS.

- A. **Governing Law.** This Agreement will be governed by and construed in accordance with the laws of the State of Ohio.
- B. **Force Majeure.** Neither party shall be liable to the other for any act, omission, misfeasance, malfeasance or circumstance arising or resulting from events reasonably beyond the control of either party. If a force majeure condition arises, each party will use due diligence to remove the condition and put itself in a position to carry out all of the obligations assumed hereunder.
- C. **Complete Agreement; Modification.** This Agreement supersedes all prior discussions, negotiations, understandings and agreements between the parties, written or oral (including the Letter of Intent), is intended as a complete and exclusive statement of the terms of the agreement between the parties, and may be amended, modified, or rescinded only by a written instrument executed by both parties.
- D. **No Third Parties.** Except as otherwise provided herein, this Agreement is made for the sole benefit of the Municipality and MVLt, and no other person or entity shall have any right of action of any kind hereon or be deemed to be an intended third party beneficiary of this Agreement.
- E. **Invalid Provisions.** In the event that any one or more of the provisions contained in this Agreement are held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision hereof, and this Agreement shall be construed as if such invalid, illegal or unenforceable provision had not been contained herein.
- F. **Interpretive Provisions.** All exhibits and appendices referred to in and attached to this Agreement are incorporated by reference. The headings of each section and paragraph are for convenience of reference only and shall not be considered in

interpreting or construing any term or condition of this Agreement. Words in the singular shall include the plural, and vice versa, and words in the masculine shall include the feminine and/or neuter, and vice-versa, where the context so requires for a reasonable interpretation of this Agreement. Except as otherwise set forth in this Agreement, for purposes of computing any time requirements under this Agreement, the term “days” shall mean all calendar days, including Saturdays, Sundays and legal holidays. All of the promises, agreements, representations and warranties made by either party are material terms of this Agreement. Time is of the essence in the performance of all obligations of the parties under this Agreement. For purposes of construction and interpretation of this Agreement, neither party shall be deemed to be the draftsman, nor shall this Agreement be interpreted or construed in favor of or against either party. Delay, failure, or partial exercise by a party of any right or remedy under this Agreement will not constitute a waiver of any right or remedy.

G. Binding Effect; Assignment. The rights and obligations of each party under this Agreement shall inure to and shall be binding upon any subsidiary, affiliate, successor or permitted assignee to the extent provided below. Provided that the assignee executes an assignment and assumption agreement under which it agrees to fulfill all obligations under this Agreement, MVLt shall have the right to assign the Agreement without prior written approval of the Municipality: (1) to an assignee that is an affiliate of MVLt; (2) to an assignee that is credit-worthy as defined below; or (3) to an assignee that provides to Municipality assurances of performance in the form of (i) cash deposited in an account designated by Municipality in an amount equal to or greater than the prior six months of Municipality payments under this Agreement; (ii) a letter of credit for the benefit of Municipality issued by a U.S. bank in an amount equal to or greater than the prior six months of Municipality payments under this Agreement; or (iii) a guarantee of performance by a credit-worthy parent company that controls assignee. A “Credit-worthy” entity under this Agreement is defined as an entity that has at least one minimum corporate or issuer credit rating of at least “BB-“ from Standard & Poors Rating Services, “Ba3” from Moody’s Investors Services, Inc. or “BB-” from Fitch, Inc. Any other proposed assignment of this Agreement by MVLt shall require prior written approval of the Municipality, which consent shall not be unreasonably withheld or conditioned. For purposes of this section IV.G., in determining reasonableness, the Municipality may consider such things as the prospective assignee's experience, financial condition, conduct and performance on previous contracts, facilities, management skills, and ability to properly execute the Agreement.

H. Notices. All notices, demands and other communications under this Agreement shall be in writing, and delivered in person, or mailed by certified mail, return receipt requested, postage prepaid, or by express delivery service. In the alternative, notices may be delivered by facsimile or attached to electronic mail (e-mail), with confirmation of the original sent by ordinary mail. Notices shall be deemed to have been delivered on the date the party to be notified first receives the notice. All notices shall be addressed to the parties at the following addresses which may be changed only by written notice given to the other parties:

If to MVLt: Miami Valley Lighting, L.L.C.
1065 Woodman Drive
Dayton, OH 45432
Attn: Customer Account Manager, MVLt

If to Municipality: City Manager
City of Bellbrook
15 E. Franklin Street
Bellbrook, OH 45305

- I. Counterparts.** This Agreement may be executed by the parties in counterparts which when taken together shall be deemed to be one original, and/or may be executed in multiple copies, each of which shall be deemed an original. All true and accurate copies of this fully executed Agreement shall be valid and binding evidence of the agreement of the parties, whether the document and/or any or all of the signatures are reproductions of an original by photocopy, facsimile transmission, electronic mail, or other method commonly accepted as accurate.

IN WITNESS WHEREOF, the parties have set their hands effective the 1st day of January, 2016.

CITY OF BELLBROOK

MIAMI VALLEY LIGHTING, L.L.C.

By: _____
Mark Schlagheck
City Manager
Date: _____

By: _____
Robert L. Stallman
Manager
Date: _____

APPROVED AS TO FORM:

By: _____
Patricia Campbell
Law Director
Date: _____

**CERTIFICATE OF FUNDS AVAILABILITY
BY MUNICIPALITY FISCAL OFFICER**

I, Mark Schlagheck, Finance Director of the City of Bellbrook, hereby certify that the funds for payment of the contractual obligations set forth in the Full Service Street Lighting Agreement between the City of Bellbrook and Miami Valley Lighting, LLC effective January 1, 2016, have been lawfully appropriated for such purpose and are in the treasury or in the process of collection to the credit of an appropriate fund free from any previous encumbrance to the extent necessary to meet the obligations of this contract maturing in the first or current fiscal year thereof.

Mark Schlagheck
Finance Director

APPENDIX B

ADDENDUM TO FULL SERVICE STREET LIGHTING AGREEMENT

THIS ADDENDUM TO FULL SERVICE STREET LIGHTING AGREEMENT ("Addendum") is entered into by and between the Municipality of _____ (the "Municipality") and **Miami Valley Lighting, L.L.C.** ("MVLt"), effective the _____ day of _____, 20____.

WHEREAS, the Municipality and MVLt entered into a Full Service Street Lighting Agreement (the "Agreement") effective as of January 1, 2016; and

WHEREAS, the Municipality has requested that MVLt install special lighting equipment that is not included in MVLt's standard inventory of lighting equipment; and

WHEREAS, pursuant to the terms of the Agreement, in the event the Municipality requests special installation of a product not listed in Appendix A to the Agreement, that the parties will negotiate independent pricing for such installation and any associated service fees.

WHEREAS, the parties have negotiated and agreed to pricing for the requested equipment and associated service fees and desire to amend the Agreement with this Addendum to reflect the agreed upon terms.

NOW, THEREFORE, in consideration of the mutual promises contained herein, the Municipality and MVLt agree as follows:

1. MVLt shall install the requested specialized lighting equipment as described in the attached product description sheets within the Municipality at the desired locations pursuant to the following pricing schedule:

- a. Cost per pole \$ _____
- b. Cost per Luminaire attached to each pole \$ _____
- c. Cost of installation of each pole and Luminaire \$ _____
- d. Total Project Cost \$ _____

2. The project will include the installation of the following number of poles and Luminaire:

- a. Poles _____
- b. Luminaire _____

3. The monthly charges for full service street lighting services for the installed poles and fixtures are as follows:

- a. Monthly cost per Luminaire \$ _____
- b. Monthly cost per pole \$ _____
- c. Total monthly cost \$ _____

These costs will be billed on MVLt's monthly invoice to the Municipality for street lighting services.

4. This Addendum shall serve only to amend the Agreement to add the special pricing terms set forth herein for specialized lighting equipment, and all remaining terms of the Agreement, as they may have been amended prior to execution of this Addendum, shall remain in full force and effect.

IN WITNESS WHEREOF, the parties have set their hands on the dates written under the signature.

By: _____
Name Printed: _____
Title: _____
Date: _____

By: _____
Name Printed: _____
Title: _____
Date: _____

APPROVED AS TO FORM:

By: _____
Name: _____
Title: _____
Date: _____

APPENDIX C

ILLUSTRATIVE EXAMPLE OF ENERGY ADJUSTMENT UNDER SECTION I.H.5.b.

The examples below are based on an LED Luminaire that is installed in lieu of an LED installation that would otherwise be at 49 watts in the Agreement. The same type of adjustments or non-adjustments would be performed for LED Luminaires that deviate from the 94 watt and 215 watt LED Luminaires.

Example 1) LED Luminaire between 45 and 53 watts, inclusive, for an installation that would call for a 49 watt LED Luminaire in Agreement. No price adjustment.

Example 2) LED Luminaire above 53 watts vs 49 watts in Agreement. No price adjustment.

Example 3) LED Luminaires of 44 watts or lower vs. 49 watts in Agreement. A price modification is applied with adjusted amounts accumulated and returned in a lump-sum credit in the December invoice applicable for the prior December 1 through November 30 period.

An illustrative credit computation would be as follows:

Assume: (a) As of December 1, 2019, MVLt has purchased and installed 1,000 LED Luminaires within the Municipality each of which provides the same or better lighting characteristics with a comparable lighting pattern as the otherwise applicable 49 watt LED but operates at 39 watts; (b) the DP&L “energy charge” for “street lighting” under DP&L’s Competitive Bidding Rate (set forth in DP&L Tariff G19) as of December 2019 is \$0.0500 per kwh and remains the same throughout 2020; (c) as per DP&L Tariff (D25), if there is no usage specified for a particular wattage of unmetered street lighting, the monthly kwh usage is based on input wattage multiplied by 333.3 hours.

The amount credited in the December 2020 invoice would be based on 1000 Luminaires multiplied by 10 watts (the difference between 49 watts and 39 watts) multiplied by 12 months of service (December 2019 through November 2020) multiplied by 333.3 hours per month multiplied by \$0.0500 multiplied by the ratio of 1 kwh/1000 watts. That total would be \$1,999.80 credited in the December 2020 invoice.