

RESOLUTION NO. 2875

A RESOLUTION OF THE MAYOR AND TOWN COUNCIL OF THE TOWN OF PAYSON, ARIZONA (“TOWN”), APPROVING AND AUTHORIZING THE MAYOR TO EXECUTE A PURCHASE AGREEMENT WITH MUSCO SPORTS LIGHTING, LLC (“MSL”) FOR THE PURCHASE OF A LIGHTING SYSTEM AT RUMSEY PARK KIWANIS FIELDS 1 AND 2, AND DECLARING AN EMERGENCY TO EXIST.

WHEREAS, pursuant to A.R.S. § 9-240 (A) and (B), the Common Council shall have control of the finances of the municipal corporation and shall appropriate money and provide for the payment of its debts and expenses; and

WHEREAS, pursuant to A.R.S. § 9-241 (A), the Common Council purchase, receive, hold, lease and convey property, real and personal, necessary or proper to carry out the purposes of the corporation, within or without its limits.; and

WHEREAS, the Mayor and Council approved a capital improvement line item in the FY 15-16 budget cycle to purchase and install the lighting system (“Equipment”) at Rumsey Park pursuant to the Parks and Recreation Department request; and

WHEREAS, the TOWN utilized the Arizona State Procurement Office’s (“SPO”) State Purchasing Cooperative to obtain the same cost bid as any SPO participating member would receive; and

WHEREAS, the Equipment Purchase Agreement has been prepared and is scheduled to be presented to Mayor and Council on August 13, 2015 and to be executed on August 14, 2015.

WHEREAS, Mayor and Council deem this measure one necessary for the preservation of the public peace, health or safety, which requires an emergency to be declared and requires immediate adoption and passage of this Resolution approving the Agreement to acquire the equipment immediately.

NOW, THEREFORE, THE MAYOR AND TOWN COUNCIL OF THE TOWN OF PAYSON, ARIZONA, DO HEREBY RESOLVE AS FOLLOWS:

Section 1: That the Equipment Purchase Agreement with Musco Sports lighting, LLC is hereby approved in substantially the form attached hereto as Exhibit “A”.

Section 2: That Kenny J. Evans, Mayor of the Town of Payson, is authorized to execute said

Page 1

Prepared by Town of Payson Legal Department

HMF/drs August 10, 2015 (3:51PM)

81015.RESO.2875.MSL.MUSCO.EQUIP.AGREEMENT

AUG 13 2015 

Agreement in substantially the form attached hereto as Exhibit "A".

Section 3: That the Town and the Acting Town Manager are authorized to take such other and further actions as may be necessary or appropriate to carrying out the intent of this Resolution.

Section 4: That it is necessary for the preservation of peace, health and safety of the Town of Payson, Arizona, and to allow for execution of the attached Agreement as planned on August 14, 2015, thus an emergency is hereby declared to exist and this Resolution shall become immediately operative and in full force and effect from and after the date of its enactment.

PASSED AND ADOPTED BY THE MAYOR AND TOWN COUNCIL OF THE TOWN OF PAYSON, ARIZONA, this 13th day of August, 2015, by the following vote:

AYES _____ NOES _____ ABSTENTIONS _____ ABSENT _____

Kenny J. Evans, Mayor

ATTEST:

APPROVED AS TO FORM:

Silvia Smith, Town Clerk

Hector M. Figueroa, Town Attorney

EXHIBIT "A"

Purchase Agreement

Date: August 6, 2015
Revision #2

Project Name: Rumsey Park Kiwanis East West

Project #: 107174

<p>1. SELLER NAME AND ADDRESS: Musco Sports Lighting, LLC ("Musco") 100 1st Avenue West / PO Box 808 Oskaloosa, IA 52577 Attn: Dee Smith Email: dee.smith@musco.com Telephone: 800-825-6020 ext. 6322 Fax: 800-374-6402</p>	<p>2. BUYER NAME AND ADDRESS: Town of Payson (The "Buyer") 303 North Beeline Highway Payson, AZ 85541 Attn: LaRon Garrett Email: lgarrett@paysonaz.gov Telephone: 928-474-5242</p>
<p>3. OWNER NAME AND ADDRESS: Town of Payson (The "Buyer") 303 North Beeline Highway Payson, AZ 85541 Telephone: 928-474-5242</p>	<p>4. SHIPPING LOCATION AND ADDRESS: Rumsey Park 504 North McLane Road Payson, AZ 85541 Attn: Ralph Maxey Email: ramaxey@hotmail.com Telephone: 623-882-8929</p>
<p>5. WARRANTY CONTACT: Town of Payson Parks and Recreation Office 1000 W Country Club Drive Payson, AZ 85541 Attn: Nelson Beck Email: nbeck@paysonaz.gov Telephone: 928-474-5242 Fax: 928-472-8412</p>	<p>6. FACILITY NAME AND ADDRESS: Rumsey Park 504 North McLane Road Payson, AZ 85541</p>

7. EQUIPMENT DESCRIPTION – Musco shall sell, transfer and deliver to Buyer, and Buyer will purchase, accept and pay for the following goods (The "Equipment") in accordance with the "Total Price" paragraph of this Agreement. Musco's lighting system consisting of:

- 10 pre-cast concrete bases
- 7 – 70' galvanized steel poles
- 3 – 80' galvanized steel poles
- 72 – 1500 watt metal halide factory-aimed and assembled luminaires
- Control-Link® Control & Monitoring System Cabinet
- Electrical component enclosures
- Pole length wire harnesses

Built to the following specifications:

- Ballast Input Voltage: 480
- Phase to Pole: 3
- Structural Integrity: Based upon IBC 2012, 115 mph, Exposure C

8. RESPONSIBILITIES OF THE BUYER:

- Pay all APS fees and charges
- Provide all APS primary trench, conduit and backfill.
- Provide and install APS transformer pad.
- Provide all trenching and backfill for all electrical conduits on entire project.
- Complete access to the site for construction using standard 2 wheel drive rubber tire equipment.
- Locate existing underground utilities not covered by "One Call" and irrigation systems and sprinkler heads. Musco or Subcontractor will not be responsible for repairs to unmarked utilities.
- Locate and mark field reference points per Musco supplied layout.
- Pay for extra costs associated with foundation excavation in non-standard soils (rock, caliche, high water table, collapsing holes, etc.). Standard soils are defined as soils that can be excavated using standard earth auguring equipment.



_____ Initials

Purchase Agreement

Date: August 6, 2015
Revision #2

Project Name: Rumsey Park Kiwanis East West

Project #: 107174

- Owner responsible for any power company fees and requirements.
- Provide area on site for disposal of spoils from foundation excavation.
- Payment of any permitting fees if required.

9. **MUSCO SERVICES** – Musco agrees to provide design and layout for the lighting system. In addition to the purchase and sale of the Equipment, Musco agrees to provide, itself or through its subcontractors, the following (The “Services”):

Musco Responsibilities:

- Provide required poles, fixtures, and foundations.
- Provide layout of pole locations and aiming diagram.
- Provide Project Management as required.
- Provide stamped foundation designs based on 2500psi soils.
- Provide Payment and Performance Bond.

Musco Subcontractor Responsibilities:

- Provide sealed Electrical Plans - sealed by a State of Arizona registered engineer.
- Provide equipment and materials to off load equipment at jobsite per scheduled delivery.
- Provide storage containers for material, (including ballast boxes), as necessary and waste disposal.
- Provide adequate security to protect Musco delivered products from theft, vandalism or damage during the installation.
- Obtain any required permitting.
- Provide materials and equipment to install a new 600A 277/480V 3 Phase electrical service complete with all required circuit breakers and blank sections to house Musco Control panels. Provide the concrete housekeeping pad for the service.
- Provide materials and equipment to install all underground conduit, wiring, pull boxes etc. and terminate wiring as required per electrical design.
- Confirm the existing underground utilities and irrigation systems have been located and are clearly marked so as to avoid damage from construction equipment. Repair any such damage during construction.
- Provide materials and equipment to install (10) LSS foundations as specified on Layout.
- Remove spoils to owner designated location at jobsite.
- Provide materials and equipment to assemble (72) LSG fixtures and terminate all necessary wiring.
- Provide equipment and materials to assemble and erect (10) LSS Poles.
- Provide equipment and materials to install (1) Lighting Contactor Cabinet and terminate all necessary wiring.
- Provide step down transformer for 120v control circuit if not available.
- Contractor will commission Control Link by contacting Control Link Central at (877-347-3319).
- Check all Zones to make sure they work in both auto and manual mode.
- 1 hour comprehensive burn of all lights on each zone.
- Set base line for the DAS (Diagnostic Acquisition System)
- Keep all heavy equipment off of playing fields when possible. Repair damage to grounds which exceeds that which would be expected. Indentations caused by heavy equipment traveling over dry ground would be an example of expected damage. Ruts and sod damage caused by equipment traveling over wet grounds would be an example of damage requiring repair.
- Provide startup and aiming as required to provide complete and operating sports lighting system.
- Provide as built drawings on completion of installation.



____ Initials

© 1999, 2015 Musco Sports Lighting, LLC • M-1010-enUS-18

www.musco.com • lighting@musco.com

Purchase Agreement

Date: August 6, 2015
Revision #2

Project Name: Rumsey Park Kiwanis East West

Project #: 107174

10. **CONSTANT 10™ WARRANTY & MAINTENANCE PROGRAM (The "Warranty")** – Musco shall provide parts, labor and all services outlined in the Musco Constant 10 Agreement to maintain operation of lighting equipment for 10 years as follows:
- Warranty service begins on the date of product shipment
 - Expiration date is 10 years from date of shipment, or once lamp usage is exceeded, whichever occurs first
 - Monitoring, Maintenance & Control Services
 - Light levels shall be guaranteed for 10 years
 - Spill Light Control – as specified in Musco design documents
 - Energy Consumption: System Average 112.608; System Maximum 122.4

Area of Lighting	Number of Luminaires	Constant Light Levels	Number of Group Relamps	Estimated Annual / 10 Year Estimated Usage Hours	Maximum Hours of Coverage for 10 years
Baseball 1	34	50 FC infield 30 FC outfield	0	500 / 5,000	5,000
Baseball 2	38	50 FC infield 30 FC outfield	0	500 / 5,000	5,000

11. **TOTAL PRICE** – Buyer will pay for the above-described Equipment and, if applicable, Services the Total Price of \$402,000.00, payable as follows:

- \$402,000.00 within 30 days from invoice date

Monthly progress invoicing and payments will apply.

Final payment shall not be withheld by Buyer on account of delays beyond the control of Musco.

Price includes delivery to the address indicated in item #4 of this Agreement, unloading and installation of equipment, and taxes.

Project is pending approval and mutual acceptance of finance package provided by Musco Finance, LLC (Lender). Credit approval by Lender must be complete prior to the order being released for production. Finance documents must be signed and returned to Lender prior to shipment. Deposit will be refunded in the event the Lender does not approve Buyer for financing.

Payments not paid when due are subject to a carrying charge for each month past due or will be pro-rated for the portion of the month there is an unpaid balance. Carrying charges shall accrue in the amount of one and one half percent (1½%) per month of any overdue unpaid balance, or the maximum rate permitted by law, whichever is less.

Source of Funds: Buyer agrees that Buyer's payment to Musco is not contingent upon Buyer getting paid by the Owner/End User.

Buyer may not hold back or set off any amounts owed to Musco in satisfaction of any claims asserted by Buyer against Musco. No partial payment by Buyer shall constitute satisfaction of the entire outstanding balance of any invoice of Musco, notwithstanding any notation or statement accompanying that payment.

The Total Price was calculated utilizing parameters outlined in the project specifications. In the event soil conditions vary from those relied upon, or if the soil cannot be readily excavated, Buyer shall be responsible for Musco's additional associated costs, including but not limited to the cost of design, alternate foundations, additional materials, and labor.

12. **TAXES** – Buyer has agreed to pay all applicable state and local sales taxes, use or any similar tax invoiced appropriately by Musco, in full, as part of the enclosed amount.

Taxable Non-Taxable (Copy of resale or exemption certificate must be attached. Note: Just holding a sales tax permit does not, in and of itself, qualify for a non-taxable sale.)

13. **PAYMENT/PERFORMANCE BONDING** – Is there a bond on this project? Yes No



_____ Initials

© 1999, 2015 Musco Sports Lighting, LLC • M-1010-enUS-18

www.musco.com • lighting@musco.com

Purchase Agreement

Date: August 6, 2015
Revision #2

Project Name: Rumsey Park Kiwanis East West

Project #: 107174

- 14. DELIVERY** – Normal delivery to the shipping address indicated above is 30 to 45 days after submittal approval or release of order, if later. If the Equipment is shipped in multiple lots, Musco shall prepare a separate invoice for the price of the Equipment shipped at the time of each shipment. Buyer shall pay the amount of each such invoice upon the same terms as set out in the "Total Price" paragraph of this Agreement. Equipment will be shipped after finance agreement is finalized between Buyer and Lender.

All deliveries shall be made by means of a common carrier or some other reasonable means chosen by Musco. All risk of loss to Equipment sold shall pass to Buyer upon delivery by Musco of such Equipment to the shipping location indicated above.

Delivery is subject to Buyer maintaining credit satisfactory to Musco. Musco may suspend or delay performance or delivery at any time pending receipt of assurances, including full or partial prepayment or payment of any outstanding amounts owed adequate to Musco in its discretion, of Buyer's ability to pay. Failure to provide such assurances shall entitle Musco to cancel this contract without further liability or obligation to Buyer.

- 15. NO RETAINAGE/WARRANTY** – Buyer acknowledges payment in full is required within the agreed terms. Warranty claims and back charges shall not be deducted from contract payments without prior approval of Musco's Warranty Department (800-825-6020). Musco's Equipment and its performance are sold subject to Musco's written warranty. The Warranty provided by Musco shall be in lieu of all other representations, warranties and conditions of any kind, in respect of the Equipment or the Services and Musco disclaims any other representation, warranty or condition whatsoever, whether written or oral, express or implied, statutory or otherwise, including, but not limited to, the implied warranties and conditions of merchantability and fitness for a particular purpose.

Buyer acknowledges that any warranty and/or maintenance guarantee contained within payment/performance bonds issued on Musco's behalf pursuant to this Agreement and the corresponding liability on behalf of the issuing surety shall apply only to the first 12 months of any warranty and/or maintenance obligation of Musco specified in the written Warranty to be delivered to Buyer. The balance of any warranty and/or maintenance obligation greater than 12 months shall be the sole responsibility of Musco and shall not be guaranteed by a third party.

- 16. EXCLUSION OF SPECIAL DAMAGES** – In no event shall Musco be liable for incidental, special or consequential damages, including without limitation lost revenues and profits, in respect of this Agreement or the Equipment and, if applicable, Services provided hereunder.

- 17. LIMITATIONS PERIOD** – Unless otherwise specified in the Warranty to be delivered to Buyer, any action or proceeding against Musco arising out of or relating to the Equipment or Services will be forever barred unless commenced within the earlier of: (a) one (1) year after delivery of the Equipment or if applicable, completion of the Services; or (b) the period prescribed by the applicable statute of limitation or repose.

- 18. SECURITY AGREEMENT** – In consideration of the promises contained herein, Buyer hereby grants and conveys to Musco, to secure payment and performance of all obligations in full, a purchase money security interest in the Equipment, including all repairs, replacements and accessions thereto and proceeds thereof (collectively referred to as the "Secured Property"). Buyer hereby irrevocably authorizes Musco at any time to register in any registration office in any province (including personal property registries and if applicable, land titles or real property registries) any initial financing statements, financing change statements, notices of security interest or other documents relating to this security interest or this transaction. Buyer further agrees to promptly furnish any information requested by Musco to effectuate the terms of this Agreement. Buyer further agrees to execute any document reasonably required by Musco to perfect the security interest granted herein and to assure the preservation, priority and enforcement of such security interest. Buyer agrees that value has been given for this security interest and that the parties have not agreed to postpone the time for attachment of the security interest.



_____ Initials

© 1999, 2015 Musco Sports Lighting, LLC • M-1010-enUS-18

www.musco.com • lighting@musco.com

Purchase Agreement

Date: August 6, 2015
Revision #2

Project Name: Rumsey Park Kiwanis East West

Project #: 107174

- 19. INSURANCE** – From and after delivery, regardless of the pending performance of the Services, until such time as Buyer has performed in full all obligations contained herein, Buyer shall maintain adequate insurance covering the Equipment in accordance with generally accepted business practices. Buyer shall name Musco as loss payee until such time as Buyer has performed in full all obligations contained herein.
- 20. DEFAULT** – Each of the following shall constitute a default (“Default”) under this Agreement: a) failure to pay, in full, any payment when due hereunder; b) Buyer becomes the subject of a bankruptcy, receivership or insolvency proceeding; c) any warranty, representation or statement made or furnished to Musco by or on behalf of the Buyer proved to have been false in any material respect when made or furnished; d) loss, theft, damage, destruction or encumbrance to, or of, the Secured Property or the making of any lease, seizure or attachment thereof or thereon prior to payment in full; or e) the occurrence or non-occurrence of any event or events which causes Musco, in good faith, to deem itself insecure for any reason whatsoever.
- 21. REMEDIES UPON DEFAULT** – In the event of Default, Musco may, at its option, and without notice or demand: a) declare the entire unpaid balance owing hereunder due and payable at once; b) proceed to recover judgment for the entire unpaid balance due; c) exercise all rights provided to Musco under this Agreement, any applicable personal property security act (or similar legislation), at law or in equity including but not limited to entering the Buyer's premises and taking possession of the Secured Property. All the remedies described herein are cumulative, and may be exercised in any order by Musco. Buyer agrees to pay all costs (including reasonable attorney's fees and court costs) incurred by Musco in disposing of the Secured Property and collecting any amounts owing hereunder, and such costs shall be part of the obligations secured hereunder.
- 22. FORCE MAJEURE** – Musco shall not be liable for delays or failure to perform in respect of the Equipment or the Services due, directly or indirectly, to (i) causes beyond Musco's reasonable control, or (ii) acts of God or nature, acts (including failure to act) of any governmental authority, wars (declared or undeclared), strikes or other labor disputes, fires, and natural calamities (such as floods, earthquakes, storms, epidemics).
- 23. EEO COMPLIANCE** – When applicable, Musco and Subcontractor shall comply with the EEO Clause in Section 202 of Executive Order 11246, as amended, which is incorporated herein by specific reference.

When applicable, Musco and Subcontractor shall abide by the requirements of 41 CFR 60-741.5(a) and 41 CFR 60-300.5(a). These regulations prohibit discrimination against qualified individuals on the basis of disability and against qualified protected veterans, and require affirmative action by covered prime contractors and subcontractors to employ and advance in employment qualified individuals with disabilities and qualified protected veterans.

24. CONDITIONS OF AGREEMENT

- a. **APPLICABLE LAW** – This Agreement shall be governed by the laws, including the Uniform Commercial Code, adopted in the State of Iowa as effective and in force on the date of this Agreement.
- b. **EXPENSES/REMEDIES** – Buyer shall pay to Musco the reasonable expenses, including court costs, legal and administrative expenses and reasonable legal fees (on a solicitor and client basis), paid or incurred by Musco in endeavoring to collect amounts due from Buyer to Musco. It is further understood that if Buyer does not make a payment as due, Musco has the right to forward appropriate notices or claims on jobs with owners, bonding companies, general contractors, or the like, as deemed appropriate by Musco.
- c. **ENTIRE AGREEMENT** – This Agreement, the written Warranty to be delivered to Buyer, and any invoice issued by Musco pursuant to this Agreement constitute the entire agreement between the parties and supersede all prior statements of any kind made by the parties or their representatives. No representative or employee of Musco has any authority to bind Musco to any term, representation or warranty other than those specifically included in this written Agreement or the written Warranty to be delivered to Buyer in connection with this Agreement.



_____ Initials

© 1999, 2015 Musco Sports Lighting, LLC • M-1010-enUS-18

www.musco.com • lighting@musco.com

Page 5 of 6

Purchase Agreement

Date: August 6, 2015
Revision #2

Project Name: Rumsey Park Kiwanis East West

Project #: 107174

This Agreement may not be amended or supplemented except by written agreement executed by Musco and Buyer.

- d. **ACCEPTANCE** – This Agreement is subject to the approval of Musco's Credit Department and the written acceptance of this Order by Musco.

NATIONAL JOINT POWERS ALLIANCE

Master Project: 170558

Contract Number: 082114-msl

Expiration: 09/16/2018 (*Renewable annually*)

Category: Facility & MRO

Sub-Category: Athletic Field / Court and Parking Lot Lighting Systems

TOWN OF PAYSON	MUSCO SPORTS LIGHTING, LLC
Acceptance this ____ day of _____, 20__	Acceptance this ____ day of _____, 20__
Signature	Signature
LaRon Garrett Name and Title	Name and Title

Please remember to initial and return all pages of this agreement.



____ Initials