

**RESOLUTION NO. 2876**

**A RESOLUTION OF THE MAYOR AND TOWN COUNCIL OF THE TOWN OF PAYSON, ARIZONA (“LESSEE”), APPROVING AND AUTHORIZING THE MAYOR TO EXECUTE A MASTER EQUIPMENT LEASE PURCHASE AGREEMENT AND SCHEDULE OF EQUIPMENT NO. 1 WITH MUSCO FINANCE, LLC (“LESSOR”) FOR THE FINANCING 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, finance 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 Master Equipment Lease Purchase Agreement and the Schedule of Equipment No. 1 have been prepared and are scheduled to be presented to Mayor and Council on August 13, 2015 and to be executed on August 18, 2015 or a date shortly thereafter..

**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 Master Equipment Lease Purchase Agreement and Schedule of Equipment No. 1 with Musco Finance, LLC are hereby approved in substantially the form attached hereto as Exhibit “F”.

*Page 1*

*Prepared by Town of Payson Legal Department*

*HMF.drs August 11, 2015 (3:01PM)*

81015.RESO.2875.LESSOR.MUSCO.EQUIP.AGREEMENT

**AUG 13 2015** *D.8*

Section 2: That Kenny J. Evans, Mayor of the Town of Payson, is authorized to execute said Agreement in substantially the form attached hereto as Exhibit "I".

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 18, 2015 or a date shortly thereafter, 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 13<sup>th</sup> 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 "I"

### MASTER EQUIPMENT LEASE PURCHASE AGREEMENT

**LESSEE:** Town of Payson

**This Master Equipment Lease Purchase Agreement, including all exhibits and schedules hereto whether currently in existence or hereafter executed (the "Agreement"), dated as of 8/18/2018, and entered into between Musco Finance, LLC ("Lessor"), and Town of Payson, 303 North Beeline Highway, Payson, AZ 85541, a body corporate and politic duly organized and existing under the laws of the State of Arizona ("Lessee");**

#### RECITALS

WHEREAS, Lessee desires to lease from Lessor certain equipment described in the schedules to this Agreement, substantially in the form of Exhibit A hereto, that are executed from time to time by the parties hereto (such schedules are hereby incorporated herein and are hereinafter collectively referred to as the "Schedules", and the items of equipment leased to Lessee hereunder, together with all substitutions, proceeds, replacement parts, repairs, additions, attachments, accessories and replacements thereto, thereof or therefore, are hereinafter collectively referred to as the "Equipment") subject to the terms and conditions of and for the purposes set forth in this Agreement.

WHEREAS, The relationship between the parties shall be a continuing one and items of equipment may be added to or deleted from the Equipment from time to time by execution of additional Schedules by the parties hereto and as otherwise provided herein.

WHEREAS, Lessee is authorized under the constitution and laws of the State to enter into this Agreement for the purposes set forth herein.

NOW, THEREFORE, for and in consideration of the premises hereinafter contained, the parties hereby agree as follows:

#### ARTICLE I. REPRESENTATIONS, WARRANTIES AND COVENANTS OF LESSEE

Section 1.01. Lessee represents, covenants and warrants, for the benefit of Lessor and its assignees, as follows:

- (a) Lessee is a public body, corporate and politic, duly organized and existing under the Constitution and laws of the State.
- (b) Lessee will do or cause to be done all things necessary to preserve and keep in full force and effect its existence as a body corporate and politic. Lessee is a political subdivision of the State within the meaning of Section 103(a) of the Code or a constituted authority authorized to issue obligations on behalf of a state or local governmental unit within the meaning of the regulations promulgated pursuant to said Section of the Code.
- (c) Lessee has full power and authority under the Constitution and laws of the State to enter into this Agreement and the transactions contemplated hereby, and to perform all of its obligations hereunder.
- (d) Lessee has duly authorized the execution and delivery of this Agreement by proper action by its governing body at a meeting duly called, regularly convened and attended throughout by the requisite majority of the members thereof, or by other appropriate official approval and all requirements have been met and procedures have occurred in order to ensure the enforceability of this Agreement.
- (e) Lessee has complied or will comply with such public bidding requirements as may be applicable to this Agreement and the acquisition by Lessee of the Equipment.
- (f) During the Lease Term, the Equipment will be used by Lessee only for the purpose of performing one or more essential governmental or proprietary functions of Lessee consistent with the permissible scope of Lessee's authority and will not be used in a trade or business of any person or entity other than Lessee.
- (g) During the Lease Term, Lessee will annually provide Lessor with current financial statements, budgets, proof of appropriation for the ensuing fiscal year and such other financial information relating to the ability of Lessee to continue this Agreement as may be reasonably requested by Lessor.
- (h) The Equipment will have a useful life in the hands of Lessee that is substantially in excess of the Original Term and all Renewal Terms
- (i) The Equipment is, and during the Lease Term will remain personal property and when subjected to use by the Lessee, will not be or become fixtures.
- (j) The Equipment is essential to the function of the Lessee and the services provided to its citizens, and will be used throughout the period that this Agreement is in force for the purpose of performing one or more governmental or proprietary functions consistent with the permissible scope of its authority.
- (k) During the term of this Agreement, Lessee will not dispose of or sell any part of the Equipment.
- (l) Lessee has not terminated a lease, rental agreement, installment purchase contract, or any other type of such agreement in the past five (5) years as a result of insufficient funds being appropriated for payments due under such an agreement.
- (m) This Agreement constitutes the legal, valid and binding obligation of Lessee enforceable in accordance with its terms, except to the extent limited by applicable bankruptcy, insolvency, reorganization or other laws affecting creditors' rights generally.
- (n) No event or condition that constitutes, or with the giving of notice or the lapse of time or both would constitute, an Event of Default exists at the date hereof.

- (o) Lessee has, in accordance with the requirements of law, fully budgeted and appropriated sufficient funds for the current fiscal year to make the Rental Payments scheduled to come due during the current fiscal year and to meet its other obligations under this Agreement for the current fiscal year, and such funds have not been expended for other purposes.
- (p) There is no action, suit, proceeding, inquiry or investigation, at law or in equity, before or by any court, public board or body, pending or threatened against or affecting Lessee, nor to the best knowledge of Lessee is there any basis therefore, wherein an unfavorable decision, ruling or finding would materially adversely affect the transactions contemplated by this Agreement or any other document, agreement or certificate which is used or contemplated for use in the consummation of the transactions contemplated by this Agreement or materially adversely affect the financial condition or properties of Lessee.
- (q) All authorizations, consents and approvals of governmental bodies or agencies required in connection with the execution and delivery by Lessee of this Agreement or in connection with the carrying out by Lessee of its obligations hereunder have been obtained.
- (r) The entering into and performance of this Agreement or any other document or agreement contemplated hereby to which Lessee is or is to be a party will not violate any judgment, order, law or regulation applicable to Lessee or result in any breach of, or constitute a default under, or result in the creation of any lien, charge, security interest or other encumbrance on any assets of Lessee or the Equipment pursuant to any indenture, mortgage, deed of trust, bank loan or credit agreement or other instrument to which Lessee is party or by which it or its assets may be bound, except as herein provided.

## ARTICLE II. DEFINITIONS

Section 2.01. The following terms will have the meanings indicated below unless the context clearly requires otherwise:

"Agreement" means this Master Equipment Lease Purchase Agreement, including the Schedules and any other schedule or exhibit made a part hereof by the parties hereto, whether currently in existence or hereafter executed, as the same may be supplemented or amended from time to time in accordance with the terms hereof. "Code" means the Internal Revenue Code of 1986, as amended

"Commencement Date" means, with respect to any Schedule, the date when the term of this Agreement with respect to that Schedule and Lessee's obligation to pay rent under that Schedule commence, which date shall be the earlier of (i) the date on which the Equipment listed in that Schedule is accepted by Lessee in the manner described in an Acceptance Certificate substantially in the form of Exhibit D hereto, or (ii) the date on which sufficient moneys to purchase the Equipment listed in that Schedule are deposited by Lessor for that purpose

"Equipment" means the property described in the Schedules and all replacements, substitutions, repairs, restorations, modifications, attachments, accessions, additions and improvements thereof or thereto. Whenever reference is made in this Agreement to Equipment listed in a Schedule, that reference shall be deemed to include all replacements, repairs, restorations, modifications and improvements of or to that Equipment.

"Event of Default" means, with respect to any Lease, an Event of Default described in Section 10.01

"Lease" means, at any time, (i) if none of Lessor's interest in, to and under any Schedule has been assigned pursuant to Section 9.01, or if all of Lessor's interest in, to and under this Agreement and all Schedules have been assigned to the same assignee without any reassignment, this Agreement, or (ii) if Lessor's interest in, to and under any Schedule or Schedules has been assigned or reassigned pursuant to Section 9.01, all Schedules that have the same Lessor and this Agreement as it relates to those Schedules and the Equipment listed therein, which shall constitute a separate single lease relating to that Equipment.

"Lease Term" means, with respect to any Lease, the Original Term and all Renewal Terms of that Lease.

"Lessee" means the entity which is described in the first paragraph of this Agreement, its successors and assigns.

"Lessor" means, with respect to each Schedule and the Lease of which that Schedule is a part, (i) if Lessor's interest in, to and under that Schedule has not been assigned pursuant to Section 9.01, the entity described as such in the first paragraph of this Agreement or its successor, or (ii) if Lessor's interest in, to and under that Schedule has been assigned pursuant to Section 9.01, the assignee thereof or its successor.

"Net Proceeds" means the amount remaining from the gross proceeds of any insurance claim or condemnation award after deducting all expenses (including attorneys' fees) incurred in the collection of such claim or award.

"Original Term" means, with respect to any Lease, the period from the first Commencement Date for any Schedule under that Lease until the end of the fiscal year of Lessee in effect at that Commencement Date.

"Purchase Price" means, with respect to the Equipment listed on any Schedule, the amount set forth in that Schedule as the Purchase Price for that Equipment.

"Renewal Terms" means, with respect to any Lease, the automatic renewal terms of that Lease, as provided for in Article III of this Agreement, each having a duration of one year and a term co-extensive with the Lessee's fiscal year except the last of such automatic renewal terms which shall end on the due date of the last Rental Payment set forth in the Schedule.

"Rental Payments" means the basic rental payments payable by Lessee pursuant to Section 4.02.

"State" means the state in which Lessee is located.

"Vendor" means the manufacturer of the Equipment as well as the agents or dealers of the manufacturer from whom Lessor purchased or is purchasing the Equipment.

## ARTICLE III. LEASE TERM

Section 3.01. Lease of Equipment. Lessor hereby demises, leases and lets to Lessee, and Lessee rents, leases and hires from Lessor, the Equipment listed in each Schedule in accordance with this Agreement and that Schedule for the Lease Term for the Lease of which that Schedule is a part. The Lease Term for each Lease may be continued at the end of the Original Term or any Renewal Term for an additional Renewal Term; provided, however, that at the end of the Original Term and at the end of each Renewal Term, Lessee shall be deemed to have continued that Lease for the next Renewal Term unless Lessee shall have terminated that Lease pursuant to **Section 4.06** or **Section 5.04**. The terms and conditions during any Renewal Term shall be the same as the terms and conditions during the Original Term, except that the Rental Payments shall be as provided in the Schedules. Lessor hereby covenants to provide Lessee during the Lease Term with quiet use and enjoyment of the Equipment, and Lessee shall during the Lease Term peaceably and quietly have and hold and enjoy the Equipment, without suit, trouble or hindrance from Lessor, except as expressly set forth in this Agreement

Section 3.02. Continuation of Lease Term. Lessee currently intends, subject to **Section 4.06**, to continue the Lease Term for each Lease through the Original Term and all of the Renewal Terms and to pay the Rental Payments hereunder. Lessee reasonably believes that legally available funds in an amount sufficient to make all Rental Payments during the Lease Term for each Lease can be obtained. The responsible financial officer of Lessee shall do all things lawfully within his or her power to obtain and maintain funds from which the Rental Payments may be made, including making provision for the Rental Payments to the extent necessary in each proposed annual budget submitted for approval in accordance with applicable procedures of Lessee and to exhaust all available reviews and appeals in the event such portion of the budget is not approved. Notwithstanding the foregoing, the decision whether or not to budget or appropriate funds or to extend a Lease for any Renewal Term is solely within the discretion of the then current governing body of Lessee.

Section 3.03. Return of Equipment on Termination. Upon expiration or earlier termination of any Schedule under any provision of this Agreement at a time when Lessee does not exercise its option to purchase the Equipment described in that Schedule under the provisions of this Agreement, Lessee shall deliver, at Lessee's expense, the Equipment described in that Schedule to Lessor in the same condition as existed at the Commencement Date, ordinary wear and tear expected, packaged or otherwise prepared in a manner suitable by shipment by truck or rail common carrier at a location specified by Lessor.

Section 3.04. Conditions to Lessor's Performance Under Schedules. As a prerequisite to the performance by Lessor of any of its obligations pursuant to the execution and delivery of any Schedule, Lessee shall deliver to Lessor the following:

- (a) A Municipal Certificate executed by the Clerk or Secretary or other comparable officer of Lessee, in substantially the form attached hereto as Exhibit B, completed to the satisfaction of Lessor;

- (b) An Opinion of Counsel to Lessee in substantially the form attached hereto as Exhibit C respecting such Schedule and otherwise satisfactory to Lessor;
- (c) All documents, including financing statements, affidavits, notices and similar instruments, in form satisfactory to Lessor, which Lessor deems necessary or appropriate at that time;
- (d) Such other items, if any, as are set forth in such Schedule or are reasonably required by Lessor.

This Agreement is not a commitment by Lessor to enter into any Schedule not currently in existence, and nothing in this Agreement shall be construed to impose any obligation upon Lessor to enter into any proposed Schedule, it being understood that whether Lessor enters into any proposed Schedule shall be a decision solely within Lessor's discretion.

Lessee will cooperate with Lessor in Lessor's review of any proposed Schedule. Without limiting the foregoing, Lessee will provide Lessor with any documentation or information Lessor may request in connection with Lessor's review of any proposed Schedule. Such documentation may include, without limitation, documentation concerning the Equipment and its contemplated use and location and documentation or information concerning the financial status of Lessee and other matters related to Lessee.

#### **ARTICLE IV. RENTAL PAYMENTS**

**Section 4.01. Rental Payments to Constitute a Current Expense of Lessee.** Lessor and Lessee understand and intend that the obligation of Lessee to pay Rental Payments hereunder shall constitute a current expense of Lessee and shall not in any way be construed to be a debt of Lessee in contravention of any applicable constitutional or statutory limitations or requirements concerning the creation of indebtedness by Lessee, nor shall anything contained herein constitute a pledge of the general tax revenues, funds or monies of Lessee.

**Section 4.02. Payment of Rental Payments.** Lessee shall pay Rental Payments, exclusively from legally available funds, in lawful money of the United States of America to Lessor or, in the event of assignment by Lessor, to its assignee, in the amounts and on the dates set forth in each Schedule. Rental Payments shall be in consideration for Lessee's use of the Equipment during the applicable year in which such payments are due. The Rental Payments will be payable without notice or demand at the office of Lessor (or such other place as Lessor may from time to time designate in writing). If any Rental Payment or other sum payable under any Schedule is not paid when due, Lessee shall pay to Lessor accrued interest on such delinquent amount from the date due thereof until paid at the greater of 18% or the maximum rate allowed by law. In the event that it is determined that any of the interest components of Rental Payments may not be excluded from gross income for purposes of federal income taxation, Lessee agrees to pay to Lessor promptly after any such determination and on the date of each Rental Payment thereafter an additional amount determined by Lessor to compensate Lessor for the loss of such excludability (including without limitation, compensation relating to interest expense, penalties or additions to tax), which determination shall be conclusive absent manifest error.

**Section 4.03. Interest and Principal Components.** A portion of each Rental Payment is paid as, and represents payment of, interest, and the balance of each Rental Payment is paid as, and represents payment of, principal. Each Schedule will set forth the interest component and the principal component of each Rental Payment during the Lease Term.

**Section 4.04. Rental Payments to be Unconditional.** The obligations of Lessee to make payment of the Rental Payments required under this Article IV and other sections hereof, and to perform and observe the covenants and agreements contained herein, shall be absolute and unconditional in all events, except as expressly provided under this Agreement. Notwithstanding any dispute between Lessee and Lessor, any Vendor or any other dispute between Lessee and Lessor, any Vendor or any other person, Lessee shall make all payments of Rental Payments when due and shall not withhold any Rental Payments pending final resolution of such dispute, nor shall Lessee assert any right of set-off or counterclaim against its obligation to make such payments required under this Agreement. Lessee's obligation to make Rental Payments during the Original Term or the then-current Renewal Term for each Schedule shall not be abated through accident or unforeseen circumstances.

**Section 4.05. Continuation of Lease Term by Lessee.** Lessee intends, subject to the provisions of Section 4.06, to continue the Lease Term for each Lease through the Original Term and all of the Renewal Terms and to pay the Rental Payments hereunder. Lessee reasonably believes that legally available funds of an amount sufficient to make all Rental Payments during the Original Term and each of the Renewal Terms for each Lease can be obtained. Lessee further intends to do all things lawfully within its power to obtain and maintain funds from which the Rental Payments may be made, including making provision for such payments to the extent necessary in each biannual or annual budget submitted and adopted in accordance with applicable provisions of state law, to have such portion of the budget approved, and to exhaust all available reviews and appeals in the event such portion of the budget is not approved.

**Section 4.06. Nonappropriation.** Lessee is obligated only to pay such Rental Payments under this Agreement as may lawfully be made from funds budgeted and appropriated for that purpose during Lessee's then current fiscal year. Should Lessee fail to budget, appropriate or otherwise make available funds to pay Rental Payments under a Lease following the then current Original Term or Renewal Term, that Lease shall be deemed terminated at the end of the then current Original Term or Renewal Term. Lessee agrees to deliver written notice to Lessor of such termination at least 60 days prior to the end of the then current Original Term or Renewal Term, but failure to give such written notice shall not extend the term beyond such Original Term or Renewal Term.

#### **ARTICLE V. TITLE TO EQUIPMENT; SECURITY INTEREST; OPTION TO PURCHASE**

**Section 5.01. Title to the Equipment.** Upon acceptance of the Equipment by Lessee, title to the Equipment and any and all additions, repairs, replacements or modifications shall vest in Lessee, subject to the rights of Lessor under this Agreement; provided that title to the Equipment that is subject to any Lease shall thereafter immediately and without any action by Lessee vest in Lessor, and Lessee shall immediately surrender possession of that Equipment to Lessor, upon (a) any termination of that Lease other than termination pursuant to Section 5.04, or (b) the occurrence of an Event of Default with respect to that Lease. It is the intent of the parties hereto that any transfer of title to Lessor pursuant to this Section shall occur automatically without the necessity of any bill of sale, certificate of title or other instrument of conveyance. Lessee shall, nevertheless, execute and deliver any such instruments as Lessor may request to evidence such transfer.

**Section 5.02. Security Interest.** To secure the payment of all Lessee's obligations under this Agreement, Lessee grants to Lessor a security interest constituting a first lien on the Equipment and on all additions, attachments, accessions, that are considered to be an integral part of the equipment, and substitutions thereto, and on any proceeds therefrom. Lessee agrees to execute such additional documents, in form satisfactory to Lessor, which Lessor deems necessary or appropriate to establish and maintain its security interest in the Equipment. Lessee hereby authorizes the filing of financing statements under the Uniform Commercial Code in connection with the security interest granted hereunder.

**Section 5.03. Personal Property.** Lessor and Lessee agree that the Equipment is and will remain personal property and will not be deemed to be affixed to or a part of the real estate on which it may be situated, notwithstanding that the Equipment or any part thereof may be or hereafter become in any manner physically affixed or attached to real estate or any building thereon. Upon the request of Lessor, Lessee will, at Lessee's expense, furnish a waiver of any interest in the Equipment from any party having an interest in any such real estate or building.

**Section 5.04. Option to Purchase.** Lessee shall have the option to purchase Lessor's interest in all (but not less than all) of the Equipment described in any Schedule, upon giving written notice to Lessor at least 60 (but not more than 180) days before the date of purchase, at the following times and upon the following terms:

- (a) On the date of the last Rental Payment set forth in that Schedule (assuming this Agreement is renewed at the end of the Original Term and each Renewal Term), if the Agreement is still in effect on such day, upon payment in full to Lessor of the Rental Payments and all other amounts then due under that Schedule plus One Dollar;
- (b) On the last day of the Original Term or any Renewal Term then in effect, upon payment in full to Lessor of the Rental Payments and all other amounts then due under that Schedule plus the then applicable Purchase Price set forth in that Schedule; or
- (c) In the event of substantial damage to or destruction or condemnation of substantially all of the Equipment listed in that Schedule on the day

specified in Lessee's written notice to Lessor of its exercise of the purchase option upon payment in full to Lessor of the Rental Payments and all other amounts then due under that Schedule plus the then applicable Purchase Price set forth in that Schedule.

## **ARTICLE VI. DELIVERY, MAINTENANCE; MODIFICATION; TAXES; INSURANCE AND OTHER CHARGES**

**Section 6.01. Delivery, Installation and Acceptance of Equipment.** Lessee shall order the Equipment, cause the Equipment to be delivered and installed at the locations specified in the Schedules and pay any and all delivery and installation costs in connection therewith. When the Equipment listed in any Schedule has been delivered and installed, Lessee shall immediately accept such Equipment and evidence said acceptance by executing and delivering to Lessor an acceptance certificate in the form attached hereto as Exhibit D.

**Section 6.02. Location; Inspection.** Once installed, no item of the Equipment will be moved from the location specified for it in the Schedule on which that item is listed without Lessor's consent, which consent shall not be unreasonably withheld. Lessor shall have the right at all reasonable times during regular business hours to enter into and upon the property of Lessee for the purpose of inspecting the Equipment.

**Section 6.03. Maintenance of Equipment by Lessee.** Lessee agrees that at all times during the Lease Term Lessee will, at Lessee's own cost and expense, maintain, preserve and keep the Equipment in good repair, working order and condition, and that Lessee will from time to time make or cause to be made all necessary and proper repairs, replacements and renewals. Lessor shall have no responsibility in any of these matters, or for the making of improvements or additions to the Equipment.

**Section 6.04. Liens, Taxes, Other Governmental Charges and Utility Charges.** Lessee shall keep the Equipment free of all liens, charges and encumbrances except those created by this Agreement. The parties to this Agreement contemplate that the Equipment will be used for a governmental or proprietary purpose of Lessee and, therefore, that the Equipment will be exempt from all taxes presently assessed and levied with respect to personal property. In the event that the use, possession or acquisition of the Equipment is found to be subject to taxation in any form (except for income taxes of Lessor), Lessee will pay, as the same respectively come due, all taxes and governmental charges of any kind whatsoever that may at any time be lawfully assessed or levied against or with respect to the Equipment and any equipment or other property acquired by Lessee in substitution for, as a renewal or replacement of, or a modification, improvement or addition to the Equipment, as well as all gas, water, steam, electricity, heat, power, telephone, utility and other charges incurred in the operation, maintenance, use, occupancy and upkeep of the Equipment, provided that, with respect to any governmental charges that may lawfully be paid in installments over a period of years, Lessee shall be obligated to pay only such installments as have accrued during the Lease Term.

**Section 6.05. Provisions Regarding Insurance.** At its own expense, Lessee shall maintain (a) casualty insurance insuring the Equipment against loss or damage by fire and all other risks covered by the standard extended coverage endorsement then in use in the State, and any other risks reasonably required by Lessor, in an amount at least equal to the then applicable Purchase Price of the Equipment, (b) liability insurance that protects Lessor from liability in all events in form and amount satisfactory to Lessor and (c) workers' compensation coverage as required by the laws of the State; provided that, with Lessor's prior written consent, Lessee may self-insure against the risks described in clauses (a) and (b). All insurance proceeds from casualty losses shall be payable as hereinafter provided. Lessee shall furnish to Lessor certificates evidencing such coverage throughout the Lease Term. All such casualty and liability insurance shall be with insurers that are acceptable to Lessor, shall name Lessor as a loss payee and an additional insured, respectively, and shall contain a provision to the effect that such insurance shall not be canceled or modified materially without first giving written notice thereof to Lessor at least 30 days in advance of such cancellation or modification. All such casualty insurance shall contain a provision making any losses payable to Lessee and Lessor as their respective interests may appear.

**Section 6.06. Advances.** In the event Lessee shall fail to maintain the full insurance coverage required by this Agreement or shall fail to keep the Equipment in good repair and operating condition, Lessor may (but shall be under no obligation to) purchase the required insurance and pay the premiums on the same or may make such repairs or replacements as are necessary and provide for payment thereof; and all amounts so advanced therefore by Lessor shall constitute additional rent for the then-current Original Term or Renewal Term, and Lessee covenants and agrees to pay such amounts so advanced by Lessor with interest thereon from the date advanced until paid at the rate of 18% per annum or the maximum interest rate permitted by law, whichever is less.

## **ARTICLE VII. DAMAGE, DESTRUCTION AND CONDEMNATION: USE OF NET PROCEEDS**

**Section 7.01. Risk of Loss.** Lessee is responsible for the entire risk of loss of or damage or destruction to the Equipment. No such loss, damage or destruction shall relieve Lessee of any obligation under this Agreement or any Lease.

**Section 7.02. Damage, Destruction and Condemnation.** If (a) the Equipment listed on any Schedule or any portion thereof is destroyed, in whole or in part, or is damaged by fire or other casualty or (b) title to, or the temporary use of, the Equipment or any part thereof shall be taken under the exercise of the power of eminent domain by any governmental body or by any person, firm or corporation acting pursuant to governmental authority, Lessee and Lessor will cause the Net Proceeds of any insurance claim or condemnation award to be applied to the prompt replacement, repair, restoration, modification or improvement of that Equipment, unless Lessee shall have exercised its option to purchase that Equipment pursuant to Section 5.04. Any balance of the Net Proceeds remaining after such work has been completed shall be paid to Lessee.

**Section 7.03. Insufficiency of Net Proceeds.** If the Net Proceeds are insufficient to pay in full the cost of any replacement, repair, restoration, modification or improvement referred to in Section 7.02, Lessee shall either complete such replacement, repair, restoration, modification or improvement and pay any costs thereof in excess of the amount of the Net Proceeds, unless Lessee, pursuant to Section 5.04, purchases Lessor's interest in the Equipment destroyed, damaged or taken and any other Equipment listed in the same Schedule. The amount of the Net Proceeds, if any, remaining after completing such repair, restoration, modification or improvement or after purchasing Lessor's interest in the Equipment shall be retained by Lessee. If Lessee shall make any payments pursuant to this Section, Lessee shall not be entitled to any reimbursement therefor from Lessor nor shall Lessee be entitled to any diminution of the amounts payable under Article IV.

## **ARTICLE VIII. DISCLAIMER OF WARRANTIES; VENDOR'S WARRANTIES; USE OF THE EQUIPMENT**

**Section 8.01. Disclaimer of Warranties.** LESSEE HAS SELECTED THE EQUIPMENT AND THE VENDORS. LESSOR MAKES NO WARRANTY OR REPRESENTATION, EITHER EXPRESS OR IMPLIED, AS TO THE VALUE, DESIGN, CONDITION, MERCHANTABILITY OR FITNESS FOR PARTICULAR PURPOSE OR FITNESS FOR USE OF THE EQUIPMENT, OR WARRANTY OR REPRESENTATION WITH RESPECT THERETO. In no event shall Lessor be liable for an incidental, indirect, special or consequential damage in connection with or arising out of this Agreement or the existence, furnishing, functioning or Lessee's use of any item or products or service provided for in this Agreement.

**Section 8.02. Vendor's Warranties.** Lessor hereby irrevocably appoints Lessee its agent and attorney-in-fact during the Lease Term, so long as Lessee shall not be in default hereunder, to assert from time to time whatever claims and rights, including warranties of the Equipment, which Lessor may have against the Vendor of the Equipment. Lessee's sole remedy for the breach of such warranty, indemnification or representation shall be against the Vendor of the Equipment, and not against Lessor, nor shall such matter have any effect whatsoever on the rights and obligations of Lessor with respect to this Agreement, including the right to receive full and timely payments hereunder. Lessee expressly acknowledges that Lessor makes, and has made, no representation or warranties whatsoever as to the existence or availability of such warranties of the Vendor of the Equipment.

**Section 8.03. Use of the Equipment.** Lessee will not install, use, operate or maintain the Equipment improperly, carelessly, in violation of any applicable law or in a manner contrary to that contemplated by this Agreement. Lessee shall provide all permits and licenses, if any, necessary for the installation and operation of the Equipment. In addition, Lessee agrees to comply in all respects (including, without limitation, with respect to the use, maintenance and operation of each item of the Equipment) with all laws of the jurisdictions in which its operations involving any item of Equipment may extend and any legislative, executive, administrative or judicial body exercising any power or jurisdiction over the items of the Equipment; provided, however, that Lessee may contest in good faith the validity or application of any such law or rule in any reasonable manner which does not, in the opinion of Lessor, adversely

affect the title of Lessor in and to any of the items of the Equipment or its interest or rights under this Agreement.

**Section 8.04. Essential Nature of the Equipment.** Lessee confirms and affirms that the Equipment is essential to the function of Lessee and the services provided to its citizens, that there is an immediate need for the Equipment which is not temporary or expected to diminish in the foreseeable future, and that Lessee will use substantially all the Equipment for the purpose of performing one or more governmental or proprietary functions consistent with the permissible scope of its authority.

## **ARTICLE IX. ASSIGNMENT, SUBLEASING, INDEMNIFICATION, MORTGAGING AND SELLING**

**Section 9.01. Assignment by Lessor.** Lessor's interest in, to and under this Agreement, any Lease and the Equipment may be assigned and reassigned in whole or in part to one or more assignees by Lessor at any time subsequent to its execution. Lessee hereby agrees to maintain a written record of each such assignment in form necessary to comply with Section 149(a) of the Code. No such assignment shall be binding on Lessee until it has received written notice from Lessor of the assignment disclosing the name and address of the assignee. Lessee agrees to execute all documents, including chattel mortgages or financing statements that may be reasonably requested by Lessor or any assignee to protect its interests in the Equipment and in this Agreement. Lessee shall not have the right to and shall not assert against any assignee any claim, counterclaim, defense, set-off or other right Lessee may from time to time have against Lessor.

**Section 9.02. Assignment and Subleasing by Lessee.** None of Lessee's interest in, to and under this Agreement and in the Equipment may be sold, assigned or encumbered by Lessee without the prior written consent of Lessor.

**Section 9.03. Release and Indemnification Covenants.** To the extent permitted by law, Lessee shall indemnify, protect, hold harmless, save and keep harmless Lessor from and against any and all liabilities, obligations, losses, claims and damages whatsoever, regardless of cause thereof, and all expenses in connection therewith (including, without limitation, counsel fees and expenses, penalties connected therewith imposed on interest received) arising out of or as (a) result of the entering into of this Agreement, (b) the ownership of any item of the Equipment, (c) the manufacture, ordering, acquisition, use, operation, condition, purchase, delivery, rejection, storage or return of any item of the Equipment, (d) or any accident in connection with the operation, use, condition, possession, storage or return of any item of the Equipment resulting in damage to property or injury to or death to any person, and/or (e) the breach of any covenant herein or any material misrepresentation contained herein. The indemnification arising under this paragraph shall continue in full force and effect notwithstanding the full payment of all obligations under this Agreement or the termination of the Lease Term for any reason.

## **ARTICLE X. EVENTS OF DEFAULT AND REMEDIES**

**Section 10.01. Events of Default Defined.** Subject to the provisions of Section 4.06, any of the following events shall constitute an "Event of Default" under any Lease:

- (a) Failure by Lessee to pay any Rental Payment or other payment required to be paid under that Lease at the time specified in that Lease.
- (b) Failure by Lessee to observe and perform any covenant, condition or agreement on its part to be observed or performed under that Lease other than as referred to in subparagraph (a) above, for a period of 30 days after written notice specifying such failure and requesting that it be remedied is given to Lessee by Lessor, unless Lessor shall agree in writing to an extension of such time prior to its expiration; provided that, if the failure stated in the notice cannot be corrected within the applicable period, Lessor will not unreasonably withhold its consent to an extension of such time if corrective action is instituted by Lessee within the applicable period and diligently pursued until the default is corrected;
- (c) Any statement, representation or warranty made by Lessee in or pursuant to that Lease or its execution, delivery or performance shall prove to have been false, incorrect, misleading or breached in any material respect on the date when made,
- (d) Any provision of that Lease shall at any time for any reason cease to be valid and binding on Lessee, or shall be declared to be null and void, or the validity or enforceability thereof shall be contested by Lessee or any governmental agency or authority if the loss of such provision would materially adversely affect the rights or security of Lessor, or Lessee shall deny that it has any further liability or obligation under that Lease.
- (e) Lessee shall (i) apply for or consent to the appointment of a receiver, trustee, custodian or liquidator of Lessee, or of all or a substantial part of the assets of Lessee, (ii) be unable, fail or admit in writing its inability generally to pay its debts as they become due, (iii) make a general assignment for the benefit of creditors, (iv) have an order for relief entered against it under applicable federal bankruptcy law, or (v) file a voluntary petition in bankruptcy or a petition or an answer seeking reorganization or an arrangement with creditors or taking advantage of any insolvency law or any answer admitting the material allegations of a petition filed against Lessee in any bankruptcy, reorganization or insolvency proceeding; or
- (f) An order, judgment or decree shall be entered by any court of competent jurisdiction, approving a petition or appointing a receiver, trustee, custodian or liquidator of Lessee or of all or a substantial part of the assets of Lessee, in each case without its application, approval or consent, and such order, judgment or decree shall continue unstayed and in effect for any period of 30 consecutive days.

**Section 10.02. Remedies on Default.** Whenever any Event of Default under any Lease exists, Lessor shall have the right, at its sole option without any further demand or notice, to take one or any combination of the following remedial steps:

- (a) By written notice to Lessee, declare all Rental Payments and other amounts payable by Lessee under that Lease to the end of the then current Original Term or Renewal Term to be due;
- (b) With or without terminating that Lease, Lessor may, upon 5 days written notice to Lessee, enter the premises where any Equipment that is subject to that Lease is located and retake possession of that Equipment or require Lessee at Lessee's expense to promptly return any or all of the Equipment to the possession of Lessor at such place within the United States as Lessor shall specify, and sell or lease the Equipment or, for the account of Lessee, sublease the Equipment, continuing to hold Lessee liable for the difference between (i) the Rental Payments and other amounts payable by Lessee under that Lease plus the then-applicable Purchase Price for that Equipment and (ii) the net proceeds of any such sale, leasing or subleasing (after deducting all expenses of Lessor in exercising its remedies under this Agreement, including without limitation all expenses of taking possession, storing, reconditioning and selling or leasing the Equipment and all brokerage, auctioneers' and attorneys' fees) provided that the amount of Lessee's liability under this subparagraph (b) shall not exceed the Rental Payments and other amounts otherwise due under that Lease plus the remaining Rental Payments and other amounts payable by Lessee under that Lease to the end of the then current Original Term or Renewal Term; and
- (c) Lessor may take whatever action at law or in equity may appear necessary or desirable to enforce its rights under that Lease or as the owner of any or all of the Equipment that is subject to that Lease.

In addition, whenever an Event of Default exists with respect to any Rental Payment required by a particular Schedule or with respect to any other payment, covenant, condition, agreement, statement, representation or warranty set forth in that Schedule or applicable to that Schedule or the Equipment listed therein, Lessor shall have the right, at its sole option without any further demand or notice, to take one or any combination of the following remedial steps:

- (a) By written notice to Lessee, Lessor may declare all Rental Payments payable by Lessee pursuant to that Schedule and other amounts payable by Lessee under this Agreement to the end of the then current Original Term or Renewal Term to be due;
- (b) With or without terminating that Schedule, Lessor may, upon 5 days written notice to Lessee, enter the premises where the Equipment listed in that Schedule is located and retake possession of that Equipment or require Lessee at Lessee's expense to promptly return any or all of that Equipment to the possession of Lessor at such place within the United States as Lessor shall specify, and sell or lease that Equipment or, for the account of Lessee, sublease that Equipment, continuing to hold Lessee liable for the difference between (i) the Rental Payments payable by Lessee pursuant to that Schedule and other amounts related to that Schedule or the Equipment listed therein that are payable by Lessee hereunder plus the then applicable Purchase Price for that Equipment, and (ii) the net proceeds of any such sale, leasing or subleasing (after deducting all expenses of Lessor in exercising its remedies under this Agreement, including without limitation all expenses of taking possession, storing, reconditioning and selling or leasing such Equipment and all brokerage, auctioneers' and attorneys' fees) provided that the amount of Lessee's liability under this subparagraph (b) shall not exceed the Rental Payments and other amounts otherwise due under that

Schedule plus the remaining Rental Payments and other amounts payable by Lessee under that Schedule to the end of the then current Original Term or Renewal Term; and

- (c) Lessor may take whatever action at law or in equity may appear necessary or desirable to enforce its rights under that Schedule, this Agreement with respect to that Schedule and the Equipment listed therein.

In addition to the remedies specified above, Lessor may charge interest on all amounts due to it at the rate of 18% per annum or the maximum amount permitted by law, whichever is less. The exercise of any such remedies respecting any such Event of Default shall not relieve Lessee of any other liabilities under any other Schedules, this Agreement related to any other Schedule or the Equipment listed therein.

Section 10.03. No Remedy Exclusive. No remedy conferred upon or reserved to Lessor by this Article is intended to be exclusive and every such remedy shall be cumulative and shall be in addition to every other remedy given under this lease. No delay or omission to exercise any right or power accruing upon any default shall impair any such right or power or shall be construed to be a waiver thereof but any such right and power may be exercised from time to time and as often as may be deemed expedient by Lessor or its assignee.

Section 10.04. Agreement to Pay Attorneys' Fees and Expenses. If Lessee should default under any of the provisions hereof and Lessor should employ attorneys or incur other expenses for the collection of moneys or for the enforcement of performance or observance of any obligation or agreement on the part of Lessee contained in this Agreement, Lessee agrees, to the extent it is permitted by law to do so, that it will, if assessed by a court of competent jurisdiction, pay to Lessor the reasonable fees of those attorneys and other reasonable expenses so incurred by Lessor.

Section 10.05. Application of Moneys. Any net proceeds from the exercise of any remedy hereunder (after deducting all expenses of Lessor in exercising such remedies including without limitation all expenses of taking possession, storing, reconditioning and selling or leasing Equipment and all brokerage, auctioneer's or attorney's fees) shall be applied as follows:

- (a) If such remedy is exercised solely with respect to a single Schedule, Equipment listed in that Schedule or rights under the Agreement related to that Schedule, then to amounts due pursuant to that Schedule and other amounts related to that Schedule or that Equipment.
- (b) If such remedy is exercised with respect to more than one Schedule, Equipment listed in more than one Schedule or rights under the Agreement related to more than one Schedule, then to amounts due pursuant to those Schedules pro rata.

## ARTICLE XI. MISCELLANEOUS

Section 11.01. Notices. All notices, certificates or other communications hereunder shall be sufficiently given and shall be deemed given when delivered or mailed by registered mail, postage prepaid, to the parties at their respective places of business.

Section 11.02. Binding Effect. This Agreement shall inure to the benefit of and shall be binding upon Lessor and Lessee and their respective successors and assigns. The terms of this Agreement shall not be waived, altered, modified, supplemented or amended in any manner whatsoever except by written instrument signed by the Lessor and the Lessee; nor shall any such amendment that affects the rights of Lessor's assignee be effective without such assignee's consent. In the event any provision of this Agreement shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof.

Section 11.03. Applicable Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Arizona.

Section 11.04. Severability. In the event any provision of this Agreement shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof.

Section 11.06. Execution in Counterparts; Chattel Paper. This Agreement, including in writing each Schedule, may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument; except (1) to the extent that various Schedules and this Agreement as it relates thereto constitutes separate Leases as provided in this Agreement and (2) that Lessor's interest in, to and under any Schedule and the Agreement as it relates to that Schedule, and the Equipment listed in that Schedule may be sold or pledged only by delivering possession of the original counterpart of that Schedule marked "Counterpart No. 1," which Counterpart No. 1 shall constitute chattel paper for purposes of the Uniform Commercial Code.

Section 11.07. Usury. The parties hereto agree that the charges in this Agreement and any Lease shall not be a violation of usury or other law. Any such excess charge shall be applied in such order as to conform this Agreement and such Lease to such applicable law.

Section 11.08. Jury Trial Waiver. TO THE EXTENT PERMITTED BY LAW, LESSEE AGREES TO WAIVE ITS RIGHT TO A TRIAL BY JURY.

Section 11.09. Facsimile Documentation. Lessee agrees that a facsimile copy of this Agreement or any Lease with facsimile signatures may be treated as an original and will be admissible as evidence of this Agreement or such Lease.

Section 11.10. Captions. The captions or headings in this Agreement are for convenience only and in no way define, limit or describe the scope or intent of any provisions or sections of this Agreement.

IN WITNESS WHEREOF, Lessor and Lessee have caused this Agreement to be executed in their names by their duly authorized representatives as of the date first above written.

**Lease No. 0818OPAY**

**LESSEE: Town of Payson**

By X \_\_\_\_\_

Title \_\_\_\_\_

Date X \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_ **Hope Cribb, Finance Manager**

**LESSOR: Musco Finance, LLC**

By \_\_\_\_\_

Title Rhonda Long, Operations Administrator

Date \_\_\_\_\_

## ADDITIONAL AUTHORIZED SIGNERS

In addition to the signers of the Lease Agreement, the Lessee also approves the following individuals as authorized signers that may verify receipt, delivery and good condition of all the Equipment described in this Lease and accepts the Equipment in accordance with the terms and conditions of this Lease and authorizes payment to the vendor; and agrees that Lessor has fully and satisfactorily performed all covenants and conditions to be performed by under the Lease

Additional Signer:  \_\_\_\_\_ Additional Signer:  \_\_\_\_\_

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

# ATTACHMENT 1

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## EQUIPMENT DESCRIPTION

### Description

Musco's Light-Structure Green system consisting of (72) 1500 watt metal halide factory-aimed and assembled luminaries; (7) 70' galvanized steel poles; (3) 80' galvanized steel poles; (10) pre-cast concrete bases; and (1) Control-Link Control & Monitoring System Cabinet

# ATTACHMENT 2 PAYMENT SCHEDULE

**RE:** Municipal Lease Purchase Agreement between Musco Finance, LLC as Lessor and Town of Payson as Lessee dated 8/18/2018.

Lease Number: 0818OPAY

Interest Rate: 4.95%

Commencement Date: 9/7/2015

**Cost of Equipment: \$402,000.00**

**AMORTIZATION SCHEDULE - Normal Amortization, 360 Day Year**

Payment Number	Payment Date	Payment Amount	Interest Portion	Principal Portion	Early Termination Purchase Option
1	Due with signed Agreement	\$17,107.83	\$0.00	\$17,107.83	\$384,892.17
1	9/7/2016	\$50,000.00	\$19,490.41	\$30,509.59	\$354,382.58
2	9/7/2017	\$50,000.00	\$17,945.44	\$32,054.56	\$322,328.02
3	9/7/2018	\$50,000.00	\$16,322.25	\$33,677.75	\$288,650.27
4	9/7/2019	\$50,000.00	\$14,616.85	\$35,383.15	\$253,267.12
5	9/7/2020	\$50,000.00	\$12,825.10	\$37,174.90	\$216,092.22
6	9/7/2021	\$50,000.00	\$10,942.61	\$39,057.39	\$177,034.83
7	9/7/2022	\$50,000.00	\$8,964.80	\$41,035.20	\$135,999.63
8	9/7/2023	\$50,000.00	\$6,886.83	\$43,113.17	\$92,886.46
9	9/7/2024	\$50,000.00	\$4,703.64	\$45,296.36	\$47,590.10
10	9/7/2025	\$50,000.00	\$2,409.90	\$47,590.10	\$0.00
<b>Grand Totals</b>		<b>\$517,107.83</b>	<b>\$115,107.83</b>	<b>\$402,000.00</b>	

**LESSEE: Town of Payson**

By X \_\_\_\_\_

Title LaRon Garrett, Acting Town Manager

Date X \_\_\_\_\_

# EXHIBIT A

## SCHEDULE OF EQUIPMENT NO. 01

COUNTERPART NO. 1

LESSOR'S INTEREST IN, TO AND UNDER THIS SCHEDULE AND THE AGREEMENT AS IT RELATES TO THIS SCHEDULE MAY BE SOLD OR PLEDGED ONLY BY DELIVERING POSSESSION OF COUNTERPART NO. 1 OF THIS SCHEDULE, WHICH COUNTERPART NO. 1 SHALL CONSTITUTE CHATTEL PAPER FOR PURPOSES OF THE UNIFORM COMMERCIAL CODE

Re: Master Equipment Lease Purchase Agreement, dated as of 8/18/2018, between Musco Finance, LLC, as Lessor, and Town of Payson, as Lessee.

1. **Defined Terms.** All terms used herein have the meanings ascribed to them in the above-referenced Master Equipment Lease Purchase Agreement (the "Master Equipment Lease").
2. **Equipment.** The Equipment included under this Schedule of Equipment is comprised of the items described in the Equipment Description attached hereto as **Attachment 1**, together with all replacements, substitutions, repairs, restorations, modifications, attachments, accessories, additions and improvements thereof or thereto.
3. **Payment Schedule.** The Rental Payments and Purchase Prices under this Schedule of Equipment are set forth in the Payment Schedule attached as **Attachment 2** hereto
4. **Representations, Warranties and Covenants.** Lessee hereby represents, warrants, and covenants that its representations, warranties and covenants set forth in the Agreement are true and correct as though made on the date of commencement of Rental Payments on this Schedule.
5. **Certification as to Arbitrage and Tax Covenants.** Lessee hereby represents as follows:
  - (a) The estimated total costs of the Equipment listed in this Schedule will not be less than the total principal portion of the Rental Payments listed in this Schedule.
  - (b) The Equipment listed in this Schedule has been ordered or is expected to be ordered within six months of the commencement of this Schedule and the Equipment is expected to be delivered and installed, and the Vendor fully paid, within one year from the commencement of this Schedule.
  - (c) Lessee has not created or established, and does not expect to create or establish, any sinking fund or other similar fund (i) that is reasonably expected to be used to pay the Rental Payments listed in this Schedule, or (ii) that may be used solely to prevent a default in the payment of the Rental Payments listed in this Schedule.
  - (d) The Equipment listed in this Schedule has not been and is not expected to be sold or otherwise disposed of by Lessee, either in whole or in major part, prior to the last maturity of the Rental Payments listed in this Schedule.
  - (e) To the best of our knowledge, information and belief, the above expectations are reasonable.
  - (f) Lessee has not been notified of any listing or proposed listing of it by the Internal Revenue Service as an issuer whose arbitrage certificates may not be relied upon.
6. **The Master Equipment Lease.** This Schedule is hereby made as part of the Master Equipment Lease and Lessor and Lessee hereby ratify and confirm the Master Equipment Lease. The terms and provisions of the Master Equipment Lease (other than to the extent that they relate solely to other Schedules or Equipment listed on other Schedules) are hereby incorporated by reference and made a part hereof.
7. **Certificate of "Qualified Tax-Exempt Obligation" By Lessee.** Lessee hereby designates the Lease as a "qualified tax-exempt obligation" as defined in Section 265(b)(3)(B) of the Code. The aggregate face amount of all tax-exempt obligations (excluding private activity bonds other than qualified 501(c)(3) bonds) issued or to be issued by Lessee and all subordinate entities thereof during the Issuance Year is not reasonably expected to exceed \$10,000,000. Lessee hereby covenants that Lessee and all subordinate entities thereof will not issue in excess of \$10,000,000 of qualified tax-exempt obligations (including the Lease but excluding private activity bonds other than qualified 501(c)(3) bonds) during the Issuance Year without first obtaining an opinion of nationally recognized counsel in the area of tax-exempt municipal obligations acceptable to Lessor that the designation of the Lease as a "qualified tax-exempt obligation" will not be adversely affected.
8. **Other Provisions.**

Lease Number: 0818OPAY

LESSEE: Town of Payson

By X \_\_\_\_\_

\_\_\_\_\_

Title LaRon Garrett, Acting Town Manager

Hope Cribb, Finance Manager

Date X \_\_\_\_\_

LESSOR: Musco Finance, LLC

By \_\_\_\_\_

Title Rhonda Long, Operations Administrator

Date \_\_\_\_\_

# EXHIBIT B

## MUNICIPAL CERTIFICATE

**Re: Schedule of Equipment No. 01, dated 8/15/2018, to Master Equipment Lease Purchase Agreement, dated as of 8/18/2018, between Musco Finance, LLC, as Lessor, and Town of Payson, as Lessee.**

I, the undersigned, the duly appointed, qualified and acting **Clerk** of the above captioned Lessee do hereby certify this X \_\_\_\_ day of X \_\_\_\_\_, 20 X \_\_\_\_, as follows:

- (1) Lessee did, at a meeting of the governing body of the Lessee held on X \_\_\_\_\_, 20 X \_\_\_\_, by motion duly made, seconded and carried, in accordance with all requirements of law, approve and authorize the execution and delivery of the above-referenced Schedule of Equipment No. 01 (the "Schedule") on its behalf by the following named representative of the Lessee, to witness:

LaRon Garrett  
Printed Name of Person Executing the Lease

Acting Town Manager  
Title

X \_\_\_\_\_  
Signature of Person Executing the Lease

- (2) The above-named representative of the Lessee held at the time of such authorization and holds at the present time the office set forth above.
- (3) The meeting of the governing body of the Lessee at which the Schedule was approved and authorized to be executed was duly called, regularly convened and attended throughout by the requisite majority of the members thereof or by other appropriate official approval and that the action approving the Schedule and authorizing the execution thereof has not been altered or rescinded.
- (4) No event or condition that constitutes, or with the giving of notice or the lapse of time or both would constitute, an Event of Default (as such term is defined in the above-referenced Master Equipment Lease Purchase Agreement) exists at the date hereof.
- (5) All insurance required in accordance with the above-referenced Master Equipment Lease Purchase Agreement is currently maintained by the Lessee.
- (6) Lessee has, in accordance with the requirements of law, fully budgeted and appropriated sufficient funds for the current budget year to make the Rental Payments scheduled to come due during the Original Term and to meet its other obligations for the Original Term (as such terms are defined in the above referenced Master Equipment Lease Purchase Agreement) and such funds have not been expended for other purposes.
- (7) The fiscal year of Lessee is from X \_\_\_\_\_ to X \_\_\_\_\_.

**IN WITNESS WHEREOF**, I hereunto set my hand and the seal of the governing body of the Lessee the day and year first above written.

**Town of Payson**

By \_\_\_\_\_

Title Silva Smith, Town Clerk

**\*Above signature must be in addition to the two signatures on the Master Equipment Lease Purchase Agreement. This person must be authorized by the governing body to execute the documents on behalf of the Municipality.**

# EXHIBIT C

## OPINION OF LESSEE'S COUNSEL

*(Must be re-typed onto attorney's letterhead)*

### Lessee: Town of Payson

Musco Finance, LLC  
100 1st Avenue West  
Oskaloosa, IA 52577

Gentlemen:

As legal counsel to Town of Payson (the "Lessee"), I have examined (a) an executed counterpart of a certain Master Equipment Lease Purchase Agreement, dated as of 8/18/2018, and Exhibits thereto by and between Musco Finance, LLC (the "Lessor") and Lessee, Schedule of Equipment No. 01, dated 8/15/2018, by and between Lessor and Lessee, which, among other things, provides for the lease to with option to purchase by the Lessee of certain property listed in the Schedule (the "Equipment"), (b) an executed counterpart of the ordinances or resolutions of Lessee which, among other things, authorizes Lessee to execute the Agreement and (c) such other opinions, documents and matters of law as I have deemed necessary in connection with the following opinions.

Based on the foregoing, I am of the following opinions:

- (1) Lessee's true and correct name is Town of Payson.
- (2) Lessee is a public body corporate and politic, duly organized and existing under the laws of the State, and has a substantial amount of the following sovereign powers: (a) the power to tax, (b) the power of eminent domain, and (c) police power;
- (3) Lessee has the requisite power and authority to lease the Equipment with an option to purchase and to execute and deliver the Agreement and to perform its obligations under the Agreement;
- (4) The Agreement and the other documents either attached thereto or required therein have been duly authorized, approved and executed by and on behalf of Lessee and the Agreement and other documents either attached thereto or required therein are the valid and binding obligations of Lessee enforceable in accordance with their terms;
- (5) The authorization, approval and execution of the Agreement and all other proceedings of Lessee relating to the transactions contemplated thereby have been performed in accordance with all open meeting laws, public bidding laws and all other applicable state or federal laws; and
- (6) There is no proceeding pending or threatened in any court or before any governmental authority or arbitration board or tribunal that, if adversely determined, would adversely affect the transactions contemplated by the Agreement or the security interest of Lessor or its assigns, as the case may be, in the Equipment.
- (7) The signatures of the officers which appear on the Agreement are true and genuine; I know said officers and know them to hold the offices set forth below their names.
- (8) No further approval, consent or withholding of objection is required from any federal, state or local governmental authority with respect to the entering into or performance by the Lessee of the Lease and the transaction contemplated thereby.
- (9) The Equipment leased pursuant to the Agreement constitutes personal property and when subjected to use by Lessee will not be or become fixtures under applicable law.
- (10) The Municipality is a political subdivision within the meaning of Section 103 of the Internal Revenue Code of 1986 as amended and the related regulations and rulings.
- (11) The leasing of the Equipment pursuant to the Agreement is exempt from all sales and use taxes against either the Lessor or the Lessee during the term of the Lease pursuant to the Agreement and the Equipment will be exempt from all state and local personal property or other ad valorem taxes.

All capitalized terms herein shall have the same meanings as in the foregoing Agreement unless otherwise provided herein. Lessor, its successors and assigns, and any counsel rendering an opinion on the tax-exempt status of the interest components of the Rental Payments are entitled to rely on this opinion.

\_\_\_\_\_  
Signature of Attorney

\_\_\_\_\_  
Date

# EXHIBIT D

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## ACCEPTANCE CERTIFICATE

Musco Finance, LLC  
100 1<sup>st</sup> Avenue West  
Oskaloosa, IA 52577

Ladies and Gentlemen:

**Re: Schedule of Equipment No. 01, dated 8/15/2018, to Master Equipment Lease Purchase Agreement, dated as of 8/18/2018, between Musco Finance, LLC, as Lessor, and Town of Payson, as Lessee**

In accordance with the Master Equipment Lease Purchase Agreement (the "Agreement"), the undersigned Lessee hereby certifies and represents to, and agrees with Lessor as follows:

- (1) All of the Equipment (as such term is defined in the Agreement) listed in the above-referenced Schedule of Equipment (the "Schedule") has been delivered, installed and accepted on the date hereof.
- (2) Lessee has conducted such inspection and/or testing of the Equipment listed in the Schedule as it deems necessary and appropriate and hereby acknowledges that it accepts the Equipment for all purposes.
- (3) Lessee is currently maintaining the insurance coverage required by **Section 6.05** of the Agreement.
- (4) No event or condition that constitutes, or with notice or lapse of time, or both, would constitute, an Event of Default (as defined in the Agreement) exists at the date hereof.

**LESSEE: Town of Payson**

By X \_\_\_\_\_

Title LaRon Garrett, Acting Town Manager

Date X \_\_\_\_\_

# INSURANCE COVERAGE REQUIREMENTS

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**Lessee: Town of Payson**

**Please mark one of the following:**

( ) 1. In accordance with **Section 6.05** of the Agreement, we have instructed the insurance agent named below to

Insurance Company Name: x		
Agents Name: x		
Address: x		
City: x	State x	Zip: x
Phone: x	Fax: x	Email: x

issue to:

**Musco Finance, LLC, and/or its assigns  
100 1st Avenue West  
Oskaloosa, IA 52577**

on the following equipment:

**Musco's Light-Structure Green system consisting of (72) 1500 watt metal halide factory-aimed and assembled luminaries; (7) 70' galvanized steel poles; (3) 80' galvanized steel poles; (10) pre-cast concrete bases; and (1) Control-Link Control & Monitoring System Cabinet with a total acquisition cost of \$402,000.00.**

- a. Risk Physical Damage Insurance on the leased equipment evidenced by a Certificate of Insurance and Long Form Loss Payable Clause naming "Musco Finance, LLC, and/or its assigns" as loss payee with the following coverage required:
  - Full Replacement Value
  
- b. Public Liability Insurance evidence by a Certificate of Insurance naming "Musco Finance, LLC, and/or its assigns" as an additional Insured with the following minimum coverage required:
  - \$500,000.00 per person
  - \$1,000,000.00 aggregate bodily injury liability
  - \$300,000.00 property damage liability

( ) 2. Pursuant to Section 6.05 of the Agreement, we are self-insured for all risk, physical damage, and public liability and will provide proof of such self-insurance in letter form, together with a copy of the statute authorizing this form of insurance.

**Proof of insurance coverage will be provided to Musco Finance, LLC prior to the time the Equipment is delivered to us.**

**Town of Payson**

By x \_\_\_\_\_

Title LaRon Garrett, Acting Town Manager

Date X \_\_\_\_\_



Hector M. Figueroa  
Town Attorney  
303 North Beeline Highway  
Payson, Arizona 85541  
Phone 928-474-5242  
Fax 928-474-8472

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EXHIBIT C  
OPINION OF TOWN OF PAYSON'S COUNSEL

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August 10, 2015

Musco Finance, LLC  
100 1<sup>st</sup> Avenue West  
Oskaloosa, IA 52577

Re: *Master Equipment Lease Purchase Agreement dated as of August 18, 2015 and Schedule of Property No. 1, dated August 18, 2015 between Musco Finance, LLC, as Lessor, and Town of Payson, as Lessee*

Ladies and Gentlemen:

As in-house legal counsel to Town of Payson, (the "**Lessee**"), I have examined (a) an executed counterpart of a certain Master Equipment Lease Purchase Agreement and Exhibits thereto (the "**Agreement**") dated as of August 18, 2015 by and between Musco Finance, Inc. and Town of Payson and an executed counterpart of Schedule of Property No. 1 dated August 18, 2015 by and between **Lessor** and **Lessee** (the "**Schedule**"), which, among other things, provides for the lease with option to purchase to the Lessee of certain property listed in the Schedule (the "**Equipment**"), (b) an executed counterpart of **Resolution No. 2876** of Lessee which, among other things, authorize Lessee to execute the Agreement and the Schedule and (c) such other opinions, documents and matters of law as I have deemed necessary in connection with the following opinion.

Based on the foregoing, I am of the following opinions:

- (1) **Lessee's** true and correct legal name is Town of Payson, Inc. a municipal corporation;
- (2) **Lessee** is a public body corporate and politic, duly organized and existing under the laws of the State, and has a substantial amount of the following sovereign powers: (a) the power to tax, (b) the power of eminent domain, and (c) police power;
- (3) **Lessee** has the requisite power and authority to lease and acquire the Equipment with an option to purchase and to execute and deliver the Agreement and to perform its obligations under the Agreement;

- (4) The Agreement and the other documents (either attached thereto or required therein) have been duly authorized, approved and executed by and on behalf of **Lessee** and the Agreement and the other documents (either attached thereto or required therein) are the valid and binding obligation of **Lessee** enforceable in accordance with its terms, subject to (i) all applicable bankruptcy, reorganization, insolvency, fraudulent conveyance, moratorium and other similar laws; (ii) the qualification that certain waivers, restrictions and remedies provided for in this Agreements, including without limitation certain indemnification obligations, may be wholly or partially unenforceable under Arizona law; and (iii) general principles of equity;
- (5) The authorization, approval, execution, and delivery of the Agreement and all other proceedings of **Lessee** relating to the transactions contemplated thereby have been performed in accordance with all open meeting laws, public bidding laws and all other applicable state laws or federal laws;
- (6) To the best of my knowledge, there is no proceeding pending or threatened in any court or before any governmental authority or arbitration board or tribunal that, if adversely determined, would adversely affect the transactions contemplated by the Agreement or the security interest of **Lessor** or its assigns, as the case may be, in the Equipment.
- (7) The signatures of the officers which appear on the Agreement are true and genuine; I know said officers and know them to hold the offices set forth below their names;
- (8) No further approval, consent or withholding of objection is required from any federal, state or local governmental authority with respect to the entering into or performance by the **Lessee** of the Lease and the transaction contemplated thereby;
- (9) The Equipment leased pursuant to the Agreement constitutes personal property and when subjected to use by **Lessee** will not be or become fixtures under applicable law;
- (10) The Municipality is a political subdivision within the meaning of Section 103 of the Internal Revenue Code of 1986 as amended and the related regulations and rulings;
- (11) The Leasing of the Equipment pursuant to the Agreement is exempt from all sales and use taxes against either the **Lessor** or the **Lessee** during the term of the Lease pursuant to the Agreement and the Equipment will be exempt from all state and local personal property or other ad valorem taxes.

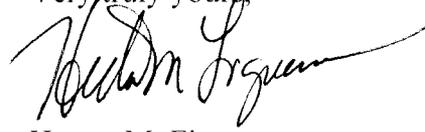
All of the opinions set forth above are also subject to the following qualifications, limitations and exceptions:

- (12) The opinions expressed herein are limited to matters governed by the laws of the State of Arizona. No opinion is expressed regarding the laws of any other jurisdiction.

- (13) The opinions expressed herein are based upon the law in effect on the date hereof, and we assume no obligation to revise or supplement them if the law is changed by legislative action, judicial decision or otherwise.

All capitalized terms herein shall have the same meanings as in the Lease unless otherwise provided herein. **Lessor**, its successors and assigns, and any counsel rendering an opinion on the tax-exempt status of the interest components of the Rental Payments, are entitled to rely on this opinion together with all exhibits, attachments, schedules and certificates.

Very truly yours,

A handwritten signature in black ink, appearing to read "Hector M. Figueroa", with a long, sweeping flourish extending to the right.

Hector M. Figueroa  
Town Attorney