

**Agenda Item No: CA-e**

**Meeting Date: February 13, 2023**

**Subject:** Approval of Resolution 23-10, approving an Agreement in an amount not to exceed \$15,000, to Musco Sports Lighting, LLC. (MUSCO) to install remote lighting controls for the Centennial Field lights.

**Background:** The City of Dacono allows use of Centennial Field for various sports programs. Public Works and Police Department staff have been tasked with manually turning on/off field lights for these programs.

The City previously had a cellular app that controlled the lights. The cellular app is no longer functional.

MUSCO will install a new lighting control for Centennial Field so staff can turn on/off lights remotely.

MUSCO was sole sourced for this project due to their reputation as a leader in sports complex lighting, the specialized nature of the work & their verified installation of sports lighting for the Carbon Valley Recreation District. This item was approved in the 2023 Budget.

**Recommended Action:** Staff is recommending approval of Resolution 23-10.

**RESOLUTION NO. 23-10**

**A RESOLUTION APPROVING A PROFESSIONAL SERVICES  
AGREEMENT WITH MUSCO SPORTS LIGHTING, LLC. FOR  
INSTALLATION OF REMOTE LIGHTING CONTROLS  
AT CENTENNIAL FIELD**

**BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF DACONO,  
COLORADO:**

**Section 1.** The Professional Services Agreement by and between the City of Dacono and Musco Sports Lighting, LLC. is hereby approved in essentially the same form as the copy of such Agreement accompanying this resolution.

**Section 2.** The Mayor is hereby authorized to execute the Agreement. The City Council further authorizes the Mayor to negotiate and approve on behalf of the City such revisions to the Agreement as the Mayor and City Attorney's Office determines are necessary or desirable for the protection of the City, so long as the essential terms and conditions of the Agreement are not altered.

**INTRODUCED, READ, and ADOPTED** this 13<sup>th</sup> day of February, 2023.

CITY OF DACONO, COLORADO

---

Adam Morehead, Mayor

ATTEST:

---

Valerie Taylor, City Clerk

**AN AGREEMENT BY AND BETWEEN THE CITY OF DACONO,  
AND MUSCO SPORTS LIGHTING, LLC.  
FOR INSTALLATION OF REMOTE LIGHTING  
CONTROLS AT CENTENNIAL FIELD**

**1.0 PARTIES**

The parties to this Agreement are the City of Dacono, a Colorado home rule municipal corporation, hereinafter referred to as the “City,” and MUSCO Sports Lighting, LLC, hereinafter referred to as the “Consultant.”

**2.0 RECITALS AND PURPOSE**

- 2.1 The City desires to engage the Consultant for the purpose of providing REMOTE LIGHTING CONTROLS INSTALLATION related to CENTENNIAL FIELD LIGHTS.
- 2.2 The Consultant represents that it has the background, experience, equipment and facilities necessary to provide the City with the services.

**3.0 SCOPE OF SERVICES**

The Consultant agrees to provide the City with the specific professional services as set forth in Exhibit “A” attached hereto and incorporated herein by reference.

**4.0 COMPENSATION**

- 4.1 The City shall pay the Consultant for services under this agreement the amounts set forth in Exhibit “B” attached hereto and incorporated herein by this reference. Such amounts shall be inclusive of all costs of whatsoever nature associated with the Consultant’s efforts, including but not limited to salaries, benefits, expenses, overhead, administration, profits, and outside consultant fees. No hourly rates or other charges shall exceed those identified in Exhibit “B,” except as may be authorized by the City in advance. The scope of services and payment therefor shall only be changed by a properly authorized amendment to this Agreement. No City employee has the authority to bind the City with regard to any payment for any services which exceeds the amount payable under the terms of this Agreement.

4.2 The Consultant shall submit monthly a detailed invoice to the City describing the professional services rendered. The invoice shall document the hours spent on the project identifying by work category and subcategory the work performed for the month, the hours worked by employee, and the hourly rate charged for that work. The City shall have access to backup payroll documentation identifying individual employee, date, and hours worked. The City shall pay the invoice within thirty (30) days of receipt unless the work or the documentation therefor are unsatisfactory. Payments made after thirty (30) days may be assessed an interest charge of one percent (1%) per month unless the delay in payment resulted from unsatisfactory work or documentation therefor.

## **5.0 PROJECT REPRESENTATION**

5.1 The City designates **BOBBY REDD**, as the responsible City staff member(s) to provide direction to the Consultant during the conduct of the project. The Consultant shall comply with the directions given by the designated staff members.

5.2 The Consultant designates \_\_\_\_\_ as its project manager. The City may rely upon the guidance, opinions, and recommendations provided by the Consultant and its representatives. Should any of the representatives be replaced, particularly \_\_\_\_\_, and such replacement require the City or the Consultant to undertake additional reevaluations, coordination, orientations, etc., the Consultant shall be fully responsible for all such additional costs and services.

## **6.0 TERM**

The Consultant's services under this Agreement shall commence on ***February 13, 2023*** and be valid for ***one (1) year***.

## **7.0 INSURANCE**

7.1 The Consultant agrees to procure and maintain, at its own cost, the following policy or policies of insurance. The Consultant shall not be relieved of any liability, claims, demands, or other obligations assumed pursuant to the Contract Documents by reason of its failure to procure or maintain insurance, or by reason of its failure to procure or maintain insurance in sufficient amounts, durations, or types.

7.1.1 Consultant shall procure and maintain, and shall cause each Sub-consultant of the Consultant to procure and maintain or insure the activity of Consultant's Sub-consultants in Consultant's own policy, the minimum insurance coverages listed below. Such coverages shall be procured and maintained with forms and insurers acceptable to the City. All coverages shall be continuously maintained from the date of commencement of services hereunder. In the case of any claims-made policy, the necessary retroactive dates and extended reporting periods shall be procured to maintain such continuous coverage.

- 7.1.1.1 Workers' Compensation insurance to cover obligations imposed by the Workers' Compensation Act of Colorado and any other applicable laws for any employee engaged in the performance of Work under this contract, and Employers' Liability insurance with minimum limits of FIVE HUNDRED THOUSAND DOLLARS (\$500,000) each accident, FIVE HUNDRED THOUSAND DOLLARS (\$500,000) disease - policy limit, and FIVE HUNDRED THOUSAND DOLLARS (\$500,000) disease - each employee.
- 7.1.1.2 Comprehensive General Liability insurance with minimum combined single limits of ONE MILLION DOLLARS (\$1,000,000) each occurrence and ONE MILLION DOLLARS (\$1,000,000) aggregate. The policy shall be applicable to all premises and operations. The policy shall include coverage for bodily injury, broad form property damage (including completed operations), personal injury (including coverage for contractual and employee acts), blanket contractual, independent Consultants, products, and completed operations. The policy shall contain a severability of interests provision.
- 7.1.1.3 Comprehensive Automobile Liability insurance with minimum combined single limits for bodily injury and property damage of not less than ONE MILLION DOLLARS (\$1,000,000) each occurrence and ONE MILLION DOLLARS (\$1,000,000) aggregate with respect to each of Consultant's owned, hired and/or non-owned vehicles assigned to or used in performance of the services. The policy shall contain a severability of interests provision.
- 7.1.1.4 Professional Liability insurance with minimum limits of ONE MILLION DOLLARS (\$1,000,000) each occurrence and ONE MILLION DOLLARS (\$1,000,000)
- 7.1.2 The policies required above, except for the Workers' Compensation insurance, Employers' Liability insurance, and Professional Liability insurance, shall be endorsed to include the City, and its officers and employees, as additional insureds. Every policy required above shall be primary insurance, and any insurance carried by the City, its officers, or its employees, shall be excess and not contributory insurance to that provided by Consultant. The additional insured endorsement for the Comprehensive General Liability insurance required above shall not contain any exclusion for bodily injury or property damage arising from completed operations. The Consultant shall be solely responsible for any deductible losses under each of the policies required above.
- 7.1.3 Certificates of insurance shall be completed by the Consultant's insurance agent as evidence that policies providing the required coverages, conditions, and minimum limits are in full force and effect, and shall be subject to review and approval by the

City. Each certificate shall identify the Project and shall provide that the coverages afforded under the policies shall not be cancelled, terminated or materially changed until at least 30 days prior written notice has been given to the City. If the words “endeavor to” appear in the portion of the certificate addressing cancellation, those words shall be stricken from the certificate by the agent(s) completing the certificate. The City reserves the right to request and receive a certified copy of any policy and any endorsement thereto.

- 7.1.4 Failure on the part of the Consultant to procure or maintain policies providing the required coverages, conditions, and minimum limits shall constitute a material breach of contract upon which the City may immediately terminate the contract, or at its discretion may procure or renew any such policy or any extended reporting period thereto and may pay any and all premiums in connection therewith, and all monies so paid by the City shall be repaid by Consultant to the City upon demand, or the City may offset the cost of the premiums against any monies due to Consultant from the Owner.
- 7.1.5 The parties hereto understand and agree that the City is relying on, and does not waive or intend to waive by any provision of this contract, the monetary limitations (presently \$350,000 per person and \$990,000 per occurrence) or any other rights, immunities, and protections provided by the Colorado Governmental Immunity Act, ' 24-10-101 et seq., 10 C.R.S., as from time to time amended, or otherwise available to the City, its officers, or its employees.

## **8.0 INDEMNIFICATION**

To the fullest extent permitted by law, the Consultant agrees to indemnify and hold harmless the City, and its officers and its employees, from and against all liability, claims, and demands, on account of any injury, loss, or damage, which arise out of or are connected with the services hereunder, if such injury, loss, or damage, or any portion thereof, is caused by, or claimed to be caused by, the negligent act, omission, or other fault of the Consultant or any sub-consultant of the Consultant, or any officer, employee, or agent of the Consultant or any sub-consultant, or any other person for whom Consultant is responsible. The Consultant shall, at its sole expense, timely investigate and respond to the City regarding any such liability, claims and demands. To the extent and for an amount represented by the degree or percentage of negligence or fault attributable to the Consultant or the Consultant’s agents, representatives, sub-consultants, or suppliers, Consultant shall be solely responsible to bear all costs and expenses, including court costs and attorney fees, for any such injury, loss, or damage, or portion thereof, caused by or claimed to be caused by Consultant’s negligent acts, errors, or omissions relating to the professional work or services in the performance of this Agreement. The Consultant's indemnification and defense obligations shall not be construed to extend to any injury, loss, or damage which is caused by the act, omission, or other fault of the City or any other party that is not a sub-consultant or other person for whom Consultant is responsible. The extent of the Consultant’s obligation to defend, indemnify, or hold harmless the City shall be determined only after the Consultant’s liability or fault has been determined by adjudication, alternative dispute resolution, or otherwise resolved by mutual agreement between the

City and the Consultant; however, the Consultant's duty to investigate and respond to the City regarding any claims or demands shall immediately arise upon the receipt by the City or Consultant of any claims or demands.

## **9.0 QUALITY OF WORK**

Consultant's professional services shall be in accordance with the prevailing standard of practice normally exercised in the performance of professional services of a similar nature in the Denver metropolitan area.

## **10.0 INDEPENDENT CONTRACTOR**

Consultant and any persons employed by Consultant for the performance of work hereunder shall be independent Consultants and not agents of the City. Any provisions in this Agreement that may appear to give the City the right to direct Consultant as to details of doing work or to exercise a measure of control over the work mean that Consultant shall follow the direction of the City as to end results of the work only. **As an independent contractor, Consultant is not entitled to workers' compensation benefits except as may be provided by the independent contractor nor to unemployment insurance benefits unless unemployment compensation coverage is provided by the independent contractor or some other entity. The Consultant is obligated to pay all federal and state income tax on any moneys earned or paid pursuant to this contract.**

## **11.0 ASSIGNMENT**

Consultant shall not assign or delegate this Agreement or any portion thereof, or any monies due to or become due hereunder without the City's prior written consent.

## **12.0 DEFAULT**

Each and every term and condition hereof shall be deemed to be a material element of this Agreement. In the event either party should fail or refuse to perform according to the terms of this Agreement, such party may be declared in default.

## **13.0 TERMINATION**

13.1 This Agreement may be terminated by either party for material breach or default of this Agreement by the other party not caused by any action or omission of the other party by giving the other party written notice at least thirty (30) days in advance of the termination date. Termination pursuant to this subsection shall not prevent either party from exercising any other legal remedies which may be available to it.

13.2 In addition to the foregoing, this Agreement may be terminated by the City for its convenience and without cause of any nature by giving written notice at least seven (7) days in advance of the termination date. In the event of such termination, the Consultant will be paid for the reasonable value of the services rendered to the date of termination, not to exceed the total amount set forth in Exhibit B, and upon such payment, all obligations of the City to the Consultant under this Agreement will cease. Termination pursuant to this Subsection shall not prevent either party from exercising any other legal remedies which may be available to it.

#### **14.0 INSPECTION**

The City and its duly authorized representatives shall have access to any books, documents, papers, and records of the Consultant that are related to this Agreement for the purpose of making audits, examinations, excerpts, and transcriptions.

#### **15.0 ENFORCEMENT**

15.1 In the event that suit is brought upon this Agreement to enforce its terms, the prevailing party shall be entitled to its reasonable attorneys' fees and related court costs.

15.2 Colorado law shall apply to the construction and enforcement of this Agreement. The parties agree to the jurisdiction and venue of the courts of Weld County in connection with any dispute arising out of or in any matter connected with this Agreement.

#### **16.0 COMPLIANCE WITH LAWS**

Consultant shall be solely responsible for compliance with all applicable federal, state, and local laws, including the ordinances, resolutions, rules, and regulations of the City; for payment of all applicable taxes; and obtaining and keeping in force all applicable permits and approvals.

#### **17.0 INTEGRATION AND AMENDMENT**

This Agreement represents the entire Agreement between the parties and there are no oral or collateral agreements or understandings. This Agreement may be amended only by an instrument in writing signed by the parties.

#### **18.0 EQUAL OPPORTUNITY EMPLOYER**

18.1 Consultant will not discriminate against any employee or applicant for employment because of race, color, religion, age, sex, disability or national origin. Consultant will take affirmative action to ensure that applicants are employed and that employees are treated during employment without regard to their race, color, religion, age, sex, disability, or national origin. Such action shall include but not be limited to the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training,



including apprenticeship. Consultant agrees to post in conspicuous places, available to employees and applicants for employment, notice to be provided by an agency of the federal government, setting forth the provisions of the Equal Opportunity Laws.

18.2 Consultant shall be in compliance with the applicable provisions of the American with Disabilities Act of 1990 as enacted and from time to time amended and any other applicable federal, state, or local laws and regulations. A signed, written certificate stating compliance with the Americans with Disabilities Act may be requested at any time during the life of this Agreement or any renewal thereof.

## **19.0 PROHIBITION AGAINST EMPLOYING ILLEGAL ALIENS**

19.1 Consultant shall not knowingly employ or contract with an illegal alien to perform work under this contract. Consultant shall not enter into a contract with a sub-consultant that fails to certify to the Consultant that the sub-consultant shall not knowingly employ or contract with an illegal alien to perform work under this contract.

19.2 Consultant will participate in either the E-verify program or the Department program, as defined in C.R.S. §§ 8-17.5-101(3.3) and 8-17.5-101(3.7), respectively, in order to confirm the employment eligibility of all employees who are newly hired for employment to perform work under the public contract for services. Consultant is prohibited from using the E-verify program or the Department program procedures to undertake pre-employment screening of job applicants while this contract is being performed.

19.3 If Consultant obtains actual knowledge that a sub-consultant performing work under this contract for services knowingly employs or contracts with an illegal alien, Consultant shall:

a. Notify the sub-consultant and the City within three days that the Consultant has actual knowledge that the sub-consultant is employing or contracting with an illegal alien; and

b. Terminate the subcontract with the sub-consultant if within three days of receiving the notice required pursuant to this paragraph the sub-consultant does not stop employing or contracting with the illegal alien; except that the Consultant shall not terminate the contract with the sub-consultant if during such three days the sub-consultant provides information to establish that the sub-consultant has not knowingly employed or contracted with an illegal alien.

19.4 Consultant shall comply with any reasonable request by the Department of Labor and Employment made in the course of an investigation that the Department is undertaking pursuant to the authority established in C.R.S. § 8-17.5-102(5).

19.5 If Consultant violates a provision of this Contract required pursuant to C.R.S. § 8-17.5-102, City may terminate the contract for breach of contract. If the contract is so terminated, the Consultant shall be liable for actual and consequential damages to the City.

**DATED:** \_\_\_\_\_, 20\_\_

**CITY OF DACONO,**

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

Attest: \_\_\_\_\_  
City Clerk

**CONSULTANT:**

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

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

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

**WITNESS:**

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

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

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

**Exhibit “A”**

**Exhibit “B”**

[Scope of Services & Fee Schedule]  
(combined)

# Purchase Agreement

Date: January 27, 2023

Project Name: Centennial Field Control Link Retrofit

Project #: 225038

<b>1. SELLER NAME AND ADDRESS:</b> Musco Sports Lighting, LLC ("Musco") 100 1 <sup>st</sup> Avenue West – PO Box 808 Oskaloosa, IA 52577 Attn: Joe Fox Email: joe.fox@musco.com Telephone: 641-673-0411 800-825-6020 Ext 2340 Fax: 800-374-6402	<b>2. BUYER NAME AND ADDRESS:</b> City of Dacono (the "Buyer") PO Box 186 Dacono, CO 80514 Attn: Bobby Redd Email: bredd@cityofdacono.com Telephone: 303-833-2317 132 Fax:
<b>3. OWNER NAME AND ADDRESS:</b> City of Dacono PO Box 186 Dacono, CO 80514 Attn: Bobby Redd Email: bredd@cityofdacono.com Telephone: 303-833-2317 132 Fax:	<b>4. SHIPPING NAME AND ADDRESS:</b> PLEASE PROVIDE PREFERRED SHIPPING ADDRESS Attn: PLEASE PROVIDE Email: Telephone: Fax:
	<b>5. FACILITY NAME AND ADDRESS:</b> Centennial Field 123 Forest Avenue City of Dacono, CO 80514

**6. 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:

- (1) Remote Equipment Controller (REC)
- (3) Off/On/Auto Switches (mounted in the cabinet door)
  - Zone 1: Soccer
  - Zone 2: Parking
  - Zone 3: Spare

**7. MUSCO SERVICES** – Musco agrees to provide, itself or through its subcontractors, installation, testing and commissioning for the Equipment (collectively, the "Services").

**8. MUSCO CONTROLS WARRANTY (the "Warranty")** –

- 10 Years Control-Link Central™ Service (CLC)
- 24/7 toll free access to CLC Customer Call Center Operators
- Access to Musco CLC Scheduling Website
- REC operations and Website Training for your scheduling staff



# Purchase Agreement

Date: January 27, 2023

Project Name: Centennial Field Control Link Retrofit

Project #: 225038

**10. TOTAL PRICE** – Buyer will pay for the above-described Equipment and, if applicable, Services. The Total Price of \$12,350 plus applicable taxes, due Net 30 upon receipt of invoice issued by Musco.

A copy of the payment and performance bond (if applicable) is required prior to shipment.

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, unloading, and installation to the address indicated in item #4 of this Agreement. Price does not include sales tax.

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.

**11. TAXES** – Buyer shall pay all applicable state and local sales taxes, use or any similar tax invoiced appropriately by Musco.

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.)

# Purchase Agreement

Date: January 27, 2023

Project Name: Centennial Field Control Link Retrofit

Project #: 225038

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

Principal Bond Holder:	
Bonding Company Name:	
Bonding Company Address:	
Bonding Company Address	
Phone Number:	
Bond Number:	

**DELIVERY** – Normal delivery to the shipping address indicated above is 4 to 6 weeks 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.

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 Musco’s substantial completion of the Services.

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.

**13. 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 (877-347-3319). 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.

**14. 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.

**15. 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.



# Purchase Agreement

Date: January 27, 2023

Project Name: Centennial Field Control Link Retrofit

Project #: 225038

- 16. 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.
- 17. 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.
- 18. 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 levee, 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.
- 19. 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.
- 20. 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).
- 21. 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.**

# Purchase Agreement

Date: January 27, 2023

Project Name: Centennial Field Control Link Retrofit

Project #: 225038

## 22. 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. 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.

### CITY OF DACONO

Acceptance

this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_

\_\_\_\_\_  
*Signature*

\_\_\_\_\_  
*Name and Title*

### MUSCO SPORTS LIGHTING, LLC

Acceptance

this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_

\_\_\_\_\_  
*Signature*

\_\_\_\_\_  
*Name and Title*