

**RESOLUTION NO. 3131**

**A RESOLUTION OF THE CITY OF WILSONVILLE AUTHORIZING THE CITY MANAGER TO EXECUTE A CONSTRUCTION CONTRACT WITH MUSCO SPORTS LIGHTING, LLC., INC TO CONSTRUCT THE MEMORIAL PARK ATHLETIC FIELD LIGHTING PROJECT.**

WHEREAS, the City of Wilsonville has identified the Memorial Park Athletic Field Lighting Project through The Memorial Park Master planning process; and

WHEREAS, the City of Wilsonville Parks and Recreation Department has identified this project as a key athletic space improvement; and

WHEREAS, the City is a member of the King County Directors' Association (KCDA); and

WHEREAS, (KCDA) provided procurement assistance for the Memorial Park Athletic Field Lighting Project, as described in the contract; and

WHEREAS, Musco Sports Lighting, LLC. is a vendor of KDCA; and

WHEREAS, Musco Sports Lighting, LLC represents that Musco Sports Lighting, LLC is qualified to perform the Memorial Park Athletic Lighting Project work, as described in the Construction Contract, attached hereto as Exhibit A.; and

NOW, THEREFORE, THE CITY OF WILSONVILLE RESOLVES AS FOLLOWS:

Section 1. The City Manager is authorized to execute a Construction Contract with Musco Sports Lighting, LLC. for the Memorial Park Athletic Field Lighting Project, in a form substantially similar to the attached **Exhibit A**.

Section 2. The City of Wilsonville, acting as the Local Contract Review Board, authorizes the City Manager to enter into and execute, on behalf of the City of Wilsonville, a construction contract with Musco Sports Lighting, LLC. for a not-to-exceed amount of \$669,613.00.

Section 3. This resolution is effective upon adoption.

ADOPTED by the Wilsonville City Council at a regular meeting on this 5<sup>th</sup> Day of September 2024, and filed with the Wilsonville City Recorder this date.

Signed by:  
*Julie Fitzgerald*  
8A974AF3ADE042E...

---

JULIE FITZGERALD, MAYOR

ATTEST:

DocuSigned by:  
*Kimberly Veliz*  
E781DE10276B498...

---

Kimberly Veliz, City Recorder

SUMMARY OF VOTES:

Mayor Fitzgerald	Yes
Council President Akervall	Yes
Councilor Berry	Yes
Councilor Dunwell	Yes
Councilor Linville	Excused

EXHIBIT:

- A. Construction Contract Musco Athletic Lighting LLC, to conduct the Memorial Park Athletic Field Lighting Project.

**CITY OF WILSONVILLE  
COOPERATIVE PROCUREMENT  
CONSTRUCTION CONTRACT**

This Cooperative Procurement Construction Contract (“Contract”) for the Memorial Park Athletic Fields Lighting Project (“Project”) is made and entered into on this \_\_\_\_ day of July 2024 (“Effective Date”) by and between the **City of Wilsonville**, a municipal corporation of the State of Oregon (hereinafter referred to as the “City”), and **Musco Sports Lighting, LLC.**, an Iowa limited liability company (hereinafter referred to as “Contractor”).

**RECITALS**

WHEREAS, the Oregon Revised Statutes authorize cooperative procurements in accordance with ORS 279A.200, et seq.; and

WHEREAS, the City has need for the services of an entity with the particular training, ability, knowledge, and experience as possessed by Contractor; and

WHEREAS, Contractor represents that Contractor is qualified to perform the construction services described herein on the basis of specialized experience and technical expertise; and

WHEREAS, Contractor is prepared to provide such services, as the City does hereinafter require.

NOW, THEREFORE, in consideration of these mutual promises and the terms and conditions set forth herein, the parties agree as follows:

**AGREEMENT**

**Section 1. Contract Documents**

This Contract includes and incorporates by reference all of the foregoing Recitals, all of the following additional “Contract Documents,” and any and all terms and conditions set forth in such Contract Documents: KCDA Purchasing Cooperative Invitation for Bid #23-406 Sport Court and Field Lighting, dated November 9, 2022; Contractor’s bid submitted in response thereto; the KCDA Board of Directors Bid Award Recommendation, dated February 16, 2023; the KCDA Purchasing Cooperative award letter contract with Contractor, dated February 24, 2023, and all attachments and amendments thereto (the “KCDA Contract”); and the provisions of Oregon Revised Statutes (ORS) 279B and 279C, as more particularly set forth in this Contract. Any conflict between this Contract and the KCDA Contract shall be resolved in favor of this Contract. This Contract, the attached exhibits, and the KCDA Contract shall be collectively referred to as the “Contract Documents.” All Contract Documents should be read in concert and Contractor is required to bring any perceived inconsistencies to the attention of the City before executing this Contract. In the event a provision of this Contract conflicts with standards or requirements contained in any of the foregoing Contract Documents, the provision that is more favorable to the City, as determined by the City, will apply.

## **Section 2. Scope of Work**

Contractor will supply the new equipment and perform the installation services, as more particularly described in the Quote/Scope of Work attached hereto as **Exhibit A** and incorporated by reference herein (the “Work”). Contractor shall diligently perform the Work according to the requirements identified in the Scope of Work and Contract Documents.

## **Section 3. Term**

The term of this Contract shall be from the Effective Date until all Work required to be performed hereunder is completed and accepted, or no later than March 15, 2025, whichever occurs first, unless earlier terminated in accordance herewith or an extension of time is agreed to, in writing, by the City.

## **Section 4. Contractor’s Work**

4.1. All written documents, drawings, and plans submitted by Contractor in conjunction with the Work shall bear the signature, stamp, or initials of Contractor’s authorized Project Manager. Any documents submitted by Contractor that do not bear the signature, stamp, or initials of Contractor’s authorized Project Manager, will not be relied upon by the City. Interpretation of plans and answers to questions regarding the Work given by Contractor’s Project Manager may be verbal or in writing, and may be relied upon by the City, whether given verbally or in writing. If requested by the City to be in writing, Contractor’s Project Manager will provide such written documentation.

4.2. The existence of this Contract between the City and Contractor shall not be construed as the City’s promise or assurance that Contractor will be retained for future services beyond the Work described herein.

4.3. Contractor shall maintain the confidentiality of any confidential information that is exempt from disclosure under state or federal law to which Contractor may have access by reason of this Contract. Contractor warrants that Contractor’s employees assigned to perform any of the Work provided in this Contract shall be clearly instructed to maintain this confidentiality. All agreements with respect to confidentiality shall survive the termination or expiration of this Contract.

## **Section 5. Contract Sum and Payment**

5.1. Except as otherwise set forth in this **Section 5**, the City agrees to pay Contractor the fixed price of SIX HUNDRED SIXTY-NINE THOUSAND SIX HUNDRED THIRTEEN DOLLARS (\$669,613) for performance of the Work (“Contract Sum”). Any compensation in excess of the Contract Sum will require an express written Change Order between the City and Contractor.

5.2. During the course of Contractor’s performance, if the City, through its Project Manager, specifically requests Contractor to provide additional services beyond the Work

described in the Contract Documents, Contractor shall provide such additional services and bill the City a reasonable agreed upon fee, pursuant to a written Change Order, executed in compliance with the provisions of **Section 24**.

5.3. Contractor will be paid for Work for which an itemized invoice is received by the City within thirty (30) days of receipt, unless the City disputes such invoice. In that instance, the undisputed portion of the invoice will be paid by the City within the above timeframe. The City will set forth its reasons for the disputed claim amount and make good faith efforts to resolve the invoice dispute with Contractor as promptly as is reasonably possible.

5.4. The City will be responsible for the direct payment of required fees payable to governmental agencies, including but not limited to plan checking, land use, zoning, permitting, and all other similar fees resulting from this Project that are not specifically otherwise provided for in the Contract Documents.

5.5. Contractor's Contract Sum is all inclusive and includes, but is not limited to, all work-related costs, expenses, salaries or wages, plus fringe benefits and contributions, including payroll taxes, workers compensation insurance, liability insurance, profit, pension benefits, and all other contributions and benefits, technology and/or software charges, licensing, trademark, and/or copyright costs, office expenses, travel expenses, mileage, and all other indirect and overhead charges, including, but not limited to, the Oregon Corporate Activity Tax (CAT).

## **Section 6. Prevailing Wages**

This is a Contract for a Public Works Project, subject to ORS 279C.800 to 279C.870. Therefore, not less than the current applicable state prevailing wage must be paid on this Project. Wage rates for this Project are those published by the Oregon Bureau of Labor and Industries (BOLI), entitled "Prevailing Wage Rates for Public Works Contracts," effective July 5, 2024, and all subsequent amendments. The BOLI prevailing wage rate for public works contracts can be found at the following website: <http://www.oregon.gov/boli/employers/pages/prevailing-wage-rates.aspx>. Because this is a public works contract subject to payment of prevailing wages, each worker in each trade or occupation employed in the performance of the Work, either by Contractor, a subcontractor, or other person doing or contracting to do, or contracting for the whole or any part of the Work, must be paid not less than the applicable state prevailing wage for an hour's work in the same trade or occupation in the locality where such labor is performed, in accordance with ORS 279C.838 and 279C.840, if applicable. If applicable, Contractor must comply with all public contracting wages required by law. If applicable, Contractor and any subcontractor, or their sureties, shall file a certificate of rate of wage as required by ORS 279C.845. If the City determines at any time that the prevailing rate of wages has not been or is not being paid as required herein, it may retain from the moneys due to Contractor an amount sufficient to make up the difference between the wages actually paid and the prevailing rate of wages, and may also cancel the Contract for breach. Contractor shall be liable to the workers affected for failure to pay the required rate of wage, including all fringe benefits under ORS 279C.840(5). If applicable, Contractor must include a contract provision in compliance with this paragraph in every subcontract and shall require each subcontractor to include it in subcontract(s).

See **Contractor's Responsibilities** below and other Contract Documents for additional requirements and responsibilities regarding compliance with wage and hour laws and regulations.

### **Section 7. Filing of Certified Statement**

As required in ORS 279C.845(7), the City will retain twenty-five percent (25%) of any amount earned by Contractor under the Contract until Contractor has filed the certified statements required in ORS 279C.845(1). The City will pay to Contractor the amount withheld within fourteen (14) days after Contractor files the required certified statements. As required in ORS 279C.845(8), Contractor shall retain twenty-five percent (25%) of any amount earned by a first-tier subcontractor on the Project until the first-tier subcontractor has filed with the City the certified statements required in ORS 279C.845(1). Before paying any amount withheld, Contractor shall verify that the first-tier subcontractor has filed the certified statement. Within fourteen (14) days after the first-tier subcontractor files the required certified statement, Contractor shall pay the first-tier subcontractor any amount withheld. Contractor shall require all other sub-subcontractors to file certified statements regarding payment of prevailing wage rates with the City.

### **Section 8. Reports to Department of Revenue**

When a public contract is awarded to a nonresident bidder and the contract sum exceeds Ten Thousand Dollars (\$10,000), Contractor shall promptly report to the Department of Revenue, on forms to be provided by the Department, the total contract sum, terms of payment, length of contract, and such other information as the Department may require, before the City will make final payment on the Contract.

### **Section 9. City's Rights and Responsibilities**

9.1. The City will designate a Project Manager to facilitate day-to-day communication between Contractor and the City, including timely receipt and processing of invoices, requests for information, and general coordination of City staff to support the Project.

9.2. If applicable, the City will pay the required Bureau of Labor and Industries fee of one/tenth of one percent (0.1%) of the Contract Sum, or as required by statute.

9.3. The City reserves the right to reject any bid or to refuse delivery of materials or services at or from any manufacturer, supplier, or contractor with which the City has reasonable grounds to believe is or may be operating in violation of any local, state, or federal law or which is the subject of pending litigation.

9.4. If Contractor fails, neglects, or refuses to make prompt payment of any claim for labor or services furnished to Contractor or a subcontractor by any person in connection with the Contract as such claim becomes due, the City may, but shall not be obligated to, pay such claim to the person furnishing the labor or services and charge the amount of the payment against funds due or to become due Contractor by reason of the Contract. The payment of a claim in the manner authorized hereby shall not relieve Contractor or its surety from the obligation with respect to any unpaid claim. If the City is unable to determine the validity of any claim for labor or services

furnished, the City may withhold from any current payment due Contractor an amount equal to said claim until its validity is determined, and the claim, if valid, is paid by Contractor or the City. There shall be no final acceptance of the Work under the Contract until all such claims have been resolved.

9.5. Award of this Contract is subject to budget appropriation. Funds are approved for Fiscal Year 2024-25. If not completed within this fiscal year, funds may not be appropriated for the next fiscal year. The City also reserves the right to terminate this Contract early, as described in **Section 22**.

### **Section 10. City's Project Manager**

The City's Project Manager is Dustin Schull. The City shall give Contractor prompt written notice of any re-designation of its Project Manager.

### **Section 11. Contractor's Project Manager**

Contractor's Project Manager is Rick Charbonneau. In the event that Contractor's Project Manager is changed, Contractor shall give the City prompt written notification of such re-designation. Recognizing the need for consistency and knowledge in the administration of the Project, Contractor's Project Manager will not be changed without the written consent of the City, which consent shall not be unreasonably withheld. In the event the City receives any communication from Contractor that is not from Contractor's Project Manager, the City may request verification by Contractor's Project Manager, which verification must be promptly furnished.

### **Section 12. Project Information**

Except for confidential information designated by the City as information not to be shared, Contractor agrees to share Project information with, and to fully cooperate with, those corporations, firms, contractors, public utilities, governmental entities, and persons involved in the Project. No information, news, or press releases related to the Project, whether made to representatives of newspapers, magazines, or television and radio stations, shall be made without the written authorization of the City's Project Manager.

### **Section 13. Duty to Inform**

If at any time during the performance of this Contract, Contractor becomes aware of actual or potential problems, faults, environmental concerns, or defects in the Project, Contract Documents, or Work, or any portion thereof; or of any nonconformance with federal, state, or local laws, rules, or regulations; or if Contractor has any objection to any decision or order made by the City with respect to such laws, rules, or regulations, Contractor shall give prompt written notice thereof to the City's Project Manager. Any delay or failure on the part of the City to provide a written response to Contractor shall neither constitute agreement with nor acquiescence to Contractor's statement or claim, nor constitute a waiver of any of the City's rights.



## Section 14. Subcontractors and Assignments

14.1. Unless expressly authorized in writing by the City, pursuant to **Subsection 15.3**, Contractor shall not subcontract with others for any of the Work prescribed herein. Contractor shall not assign any of Contractor's rights acquired hereunder without obtaining prior written approval from the City. Some Work may be performed by persons other than Contractor, provided Contractor advises the City of the names of such subcontractors and the services which they intend to provide, and the City specifically agrees, in writing, to such subcontracting. Contractor acknowledges such services will be provided to the City pursuant to a subcontract(s) between Contractor and subcontractor(s) and no privity of contract exists between the City and the subcontractor(s). Unless otherwise specifically provided by this Contract, the City incurs no liability to third persons for payment of any compensation provided herein to Contractor. Any attempted assignment of this Contract without the written consent of the City shall be void. Except as otherwise specifically agreed, all costs for services performed by others on behalf of Contractor shall not be subject to additional reimbursement by the City.

14.2. The City shall have the right to enter into other agreements for the Project, to be coordinated with this Contract. Contractor shall cooperate with the City and other firms, engineers, or subcontractors on the Project so that all portions of the Project may be completed in the least possible time and within normal working hours. Contractor shall furnish other engineers, subcontractors, and affected public utilities, whose designs are fitted into Contractor's design, detail drawings giving full information so that conflicts can be avoided.

## Section 15. Contractor's Responsibilities

In addition to the obligations and responsibilities set forth in ORS 279C or any of the Contract Documents, Contractor agrees to the following terms and conditions:

15.1. Except as otherwise provided under ORS 30.265, the performance under this Contract is at Contractor's sole risk. All damages or loss to Work, equipment, or materials incurred during the performance of the Work shall be at Contractor's sole risk. Any injury to persons or property incurred during the performance of the Work shall be at Contractor's sole risk. The service or services to be rendered under the Contract are those of an independent contractor who is not an officer, employee, or agent of the City, as those terms are used in ORS 30.265. Notwithstanding the Oregon Tort Claims Act or provisions of any other contract, Contractor is acting as and assumes liability of an independent contractor as to claims between the City and Contractor. Contractor is solely liable for any workers compensation coverage, social security, unemployment insurance or retirement payments, and federal or state taxes due as a result of payments under the Contract. Any subcontractor hired by Contractor shall be similarly responsible. Contractor shall be liable to the City for any failure of any subcontractor(s) to comply with the terms of the Contract.

15.2. Contractor is an independent contractor for all purposes and shall be entitled to no compensation other than the Contract Sum provided for under **Section 5** of this Contract. Contractor will be solely responsible for determining the manner and means of accomplishing the end result of Contractor's Work. The City does not have the right to control or interfere with the manner or method of accomplishing said Work. The City, however, will have the right to



specify and control the results of Contractor's Work so such Work meets the requirements of the Project.

15.3. The City understands and agrees that Contractor may request that some Work be performed on the Project by persons or firms other than Contractor, through a subcontract with Contractor. Contractor acknowledges that if such Work is provided to the City pursuant to a subcontract(s) between Contractor and those who provide such services, Contractor may not utilize any subcontractor(s), or in any way assign its responsibility under this Contract, without first obtaining the express written consent of the City. In all cases, processing and payment of billings from subcontractors is solely the responsibility of Contractor. References to "subcontractor" in this Contract mean a subcontractor at any tier.

15.4. Contractor shall be responsible for, and defend, indemnify, and hold the City harmless against, any liability, cost, or damage arising out of Contractor's use of such subcontractor(s) and subcontractor's negligent acts, errors, or omissions. Unless otherwise agreed to, in writing, by the City, Contractor shall require that all of Contractor's subcontractors also comply with, and be subject to, the provisions of this **Section 15** and meet the same insurance requirements of Contractor under this Contract.

15.5. Contractor must make prompt payment for any claims for labor, materials, or services furnished to Contractor by any person in connection with this Contract as such claims become due. Contractor shall not permit any liens or claims to be filed or prosecuted against the City on account of any labor or material furnished to or on behalf of Contractor. If Contractor fails, neglects, or refuses to make prompt payment of any such claim, the City may pay such claim to the person furnishing the labor, materials, or services, and offset the amount of the payment against funds due, or to become due, to Contractor under this Contract. The City may also recover any such amounts directly from Contractor.

15.6. Contractor must comply with all Oregon and federal wage and hour laws, including BOLI wage requirements, if applicable. Contractor shall make all required workers compensation and medical care payments on time. Contractor shall be fully responsible for payment of all employee withholdings required by law, including but not limited to taxes, including payroll, income, Social Security (FICA), and Medicaid. Contractor shall also be fully responsible for payment of salaries, benefits, taxes, and all other charges due on account of any employees. Contractor shall pay all contributions or amounts due the Industrial Accident Fund from Contractor or subcontractor incurred in the performance of this Contract. Contractor shall pay to the Department of Revenue all sums withheld from employees pursuant to ORS 316.167. All costs incident to the hiring of subcontractors or employees shall be Contractor's responsibility. Contractor shall defend, indemnify, and hold the City harmless from claims for payment of all such expenses.

15.7. No person shall be discriminated against by Contractor or any subcontractor in the performance of this Contract on the basis of sex, gender, race, color, creed, religion, marital status, age, disability, sexual orientation, gender identity, or national origin. Any violation of this provision shall be grounds for cancellation, termination, or suspension of the Contract, in whole or in part, by the City. Contractor shall comply with all federal, state, and local laws, regulations, executive orders, and ordinances applicable to the Contract or to the implementation

of the Project. Without limiting the generality of the foregoing, Contractor expressly agrees to comply with the following laws, regulations, and executive orders to the extent they are applicable to the Contract or the implementation of the Project: (a) all applicable requirements of state civil rights and rehabilitation statutes, rules, and regulations; (b) Titles VI and VII of the Civil Rights Act of 1964, as amended; (c) Sections 503 and 504 of the Rehabilitation Act of 1973, as amended; (d) the Americans with Disabilities Act of 1990, as amended, and ORS 659A.142; (e) Executive Order 11246, as amended; (f) the Health Insurance Portability and Accountability Act of 1996; (g) the Age Discrimination in Employment Act of 1967, as amended, and the Age Discrimination Act of 1975, as amended; (h) the Vietnam Era Veterans' Readjustment Assistance Act of 1974, as amended; (i) all regulations and administrative rules established pursuant to the foregoing laws; and (j) all other applicable requirements of federal civil rights and rehabilitation statutes, rules, and regulations.

15.8. Contractor certifies that Contractor has not discriminated against minority, women, or small business enterprises in obtaining any subcontract.

15.9. Pursuant with ORS 279C.505(2), by execution of this Contract, Contractor agrees to have an employee drug testing program in place at the time of executing the Contract, acknowledges that such a program will be maintained throughout the Contract period, including any extensions, and shall demonstrate to the City that such drug testing program is in place. The failure of Contractor to have, or to maintain, such a drug-testing program is grounds for immediate termination of the Contract. Contractor shall require each subcontractor providing labor for the Project to also comply with this drug testing program requirement.

15.10. Contractor agrees that the City shall not be liable, either directly or indirectly, in any dispute arising out of the substance or procedure of Contractor's drug testing program. Nothing in this drug testing provision shall be construed as requiring Contractor to violate any legal, including constitutional, rights of any employee, including but not limited to selection of which employees to test and the manner of such testing. The City shall not be liable for Contractor's negligence in establishing or implementing, or failure to establish or implement, a drug testing policy or for any damage or injury caused by Contractor's employees acting under the influence of drugs while performing Work covered by the Contract. These are Contractor's sole responsibilities, and nothing in this provision is intended to create any third party beneficiary rights against the City.

15.11. Contractor is solely responsible for ensuring that any subcontractor selection and substitution is in accordance with all legal requirements. The City shall not be liable, either directly or indirectly, in any dispute arising out of Contractor's actions with regard to subcontractor selection and/or substitution.

15.12. Contractor shall make payment promptly, as due, to all parties supplying to such Contractor labor or material for the prosecution of the Work provided for in the Contract Documents, and shall be responsible for payment to such persons supplying labor or material to any subcontractor.

15.13. By execution of this Contract, as required by ORS 305.385(6), Contractor certifies under penalty of perjury that to the best of Contractor's knowledge, Contractor is not in violation of any tax laws described in ORS 305.380(4).

15.14. Contractor agrees that if Contractor or a first-tier subcontractor fails, neglects, or refuses to make payment to a person furnishing labor or materials in connection with this Contract within thirty (30) days after receiving payment from the City or a contractor, Contractor or the first-tier subcontractor shall owe the person the amount due plus interest charges commencing at the end of the ten (10) day period within which payment is due under ORS 279C.580(3)(a) and ending upon final payment, unless payment is subject to a good faith dispute as defined in ORS 279C.580. The rate of interest on the amount due shall be calculated in accordance with ORS 279C.515(2). The amount of interest may not be waived.

15.15. Contractor agrees that if Contractor or a subcontractor fails, neglects, or refuses to make payment to a person furnishing labor or materials in connection with this Contract, the person may file a complaint with the Construction Contractors Board, unless payment is subject to a good faith dispute as defined in ORS 279C.580.

15.16. Contractor shall make payment promptly, as due, to any party furnishing medical, surgical, hospital, or other needed care and attention, incident to sickness or injury, to the employees of Contractor, of all sums which Contractor agreed to pay or collected or deducted from the wages of employees pursuant to any law, contract, or agreement for the purpose of providing payment for such service.

15.17. Contractor and all subcontractors shall comply with the provisions of ORS 279C.540 pertaining to maximum hours, holidays, and overtime. With certain exceptions listed below, Contractor shall not require or permit any person to work more than ten (10) hours in any one (1) day, or forty (40) hours in any one (1) week, except in case of necessity, emergency, or where public policy requires it, and in such cases the person shall be paid at least time and a half for:

15.17.1. All overtime in excess of eight (8) hours in any one (1) day or forty (40) hours in any one (1) week when the work week is five (5) consecutive days, Monday through Friday; or

15.17.2. All overtime in excess of ten (10) hours in any one (1) day or forty (40) hours in any one (1) week when the work week is four (4) consecutive days, Monday through Friday; and

15.17.3. All work performed on the days specified in ORS 279C.540(1)(b) for public improvement contracts.

15.18. Contractor and all subcontractors shall comply with the provisions of ORS 279C.545 pertaining to time limitation on claims for overtime and requirements for posting circulars containing said provisions.

15.19. For personal/professional service contracts, as designated under ORS 279A.055, instead of 15.17.1, 15.17.2, and 15.17.3 above, a laborer shall be paid at least time and a half for all overtime worked in excess of forty (40) hours in any one (1) week, except for individuals under these contracts who are excluded under ORS 653.010 to 653.261 or under 29 USC §§ 201 to 209 from receiving overtime.

15.20. Contractor shall follow all other exceptions, pursuant to ORS 279B.235 (for non-public improvement contracts) and ORS 279C.540 (for public improvement contracts), including contracts involving a collective bargaining agreement, contracts for services, and contracts for fire prevention or suppression.

15.21. Contractor must give notice to employees who work on a public contract, in writing, either at the time of hire or before commencement of Work on the Contract, or by posting a notice in a location frequented by employees, of the number of hours per day and days per week that the employees may be required to work.

15.22. The hourly rate of wage to be paid by any Contractor or subcontractor to employed workers or other persons doing or contracting to do all or part of the work contemplated by a public contract shall be not less than the applicable wage required by law.

15.23. Contractor, its subcontractors, and all employers working under the Contract are subject employers under the Oregon Workers Compensation Law and shall comply with ORS 656.017 and provide the required workers compensation coverage, unless otherwise exempt under ORS 656.126. Contractor shall ensure that each of its subcontractors complies with these requirements.

15.24. In the performance of this Contract, Contractor shall comply with all applicable federal, state, and local laws, municipal codes, regulations, rules, and ordinances, including but not limited to those dealing with public contracts (ORS Chapter 279C) and with the prevention of environmental pollution and the preservation of natural resources (and avoidance of natural resource damages) in the performance of the Contract, including but not limited to ORS 279C.525. To the extent that known environmental and natural resource risks are specifically noted, shown, or specified in the Contract Documents or on the construction drawings, such risks are allocated to Contractor pursuant with ORS 279C.525(8)(a). If new or amended statutes, ordinances, rules, or regulations are adopted, or Contractor encounters a condition not referred to in this Contract, not caused by Contractor, and that was not discoverable by reasonable site inspection which requires compliance with federal, state, or local laws, codes, or regulations dealing with the preservation of the environment, both the City and Contractor shall have all the rights and obligations set forth in ORS 279C.525.

15.25. Contractor shall be liable for any fine imposed against Contractor, the City, or the 'Project' as a result of a violation of any laws or permitting requirements by Contractor or any of its subcontractors or their sub-subcontractors or any suppliers.

15.26. Pursuant to ORS 279B.055, Contractor shall use recyclable products to the maximum extent economically feasible, and in full conformance with the Contract Document Specifications, in the performance of the Work.

15.27. Contractor shall ensure that, upon completion of the Work, the premises where the Work was conducted are clean and restored to the same condition as when the Work commenced.

## **Section 16. Subcontractor Requirements**

16.1. If subcontractors are permitted, Contractor's relations with subcontractors shall comply with ORS 279C.580. Pursuant with ORS 279C.580(3), each subcontract for property or services that Contractor enters into with a first-tier subcontractor, including a material supplier, for the purpose of performing a construction contract, shall include:

16.1.1. A payment clause that obligates Contractor to pay the first-tier subcontractor for satisfactory performance under the subcontract within ten (10) days out of such amounts as are paid to Contractor by the City under the public improvement contract; and

16.1.2. An interest penalty clause that obligates Contractor, if payment is not made within 30 days after receipt of payment from the City, to pay to the first-tier subcontractor an interest penalty on amounts due in the case of each payment not made in accordance with the payment clause outlined in **Subsection 16.1.1** above. A contractor or first-tier subcontractor may not be obligated to pay an interest penalty if the only reason that the contractor or first-tier subcontractor did not make payment when payment was due is that the contractor or first-tier subcontractor did not receive payment from the City or Contractor when payment was due. The interest penalty period shall begin on the day after the required payment date and end on the date on which payment of the amount due is made and shall be computed at the rate specified in ORS 279C.515(2).

16.2. Contractor shall include in each subcontract, as a condition of performance of such contract, a provision requiring the first-tier subcontractor to include a payment clause and interest penalty clause, conforming to the standards set forth in **Subsections 16.1.1 and 16.1.2** above, in each of its subcontracts and requiring that the same clauses be included in any of the first-tier subcontractors' subcontracts with a lower-tier subcontractor or supplier.

16.3. Contractor shall certify that all subcontractors, as described in ORS 701.005(2), will be registered with the Construction Contractors Board or licensed by the State Landscape Contractors Board in accordance with ORS 701.035 or 701.026, respectively, before the subcontractors commence Work under the Contract.

16.4. In no event shall any subcontract be awarded to any person or entity debarred, suspended, or disqualified from federal, state, or municipal contracting.

16.5. Contractor shall include this Contract by reference in any subcontract and require subcontractors to perform in strict compliance with this Contract.

**Section 17. Environmental Laws**

17.1. In compliance with the provisions of ORS 279C.525, the following is a list of federal, state, and local agencies, of which the City has knowledge, that have enacted ordinances or regulations dealing with the prevention of environmental pollution and the preservation of natural resources that may affect the performance of the Contract:

FEDERAL AGENCIES:

Forest Service  
 Defense, Department of  
 Environmental Protection Agency  
 Bureau of Sport Fisheries and Wildlife  
 Bureau of Land Management  
 Bureau of Reclamation  
 Occupational Safety and Health Administration  
 Coast Guard

Agriculture, Department of  
 Soil Conservation Service  
 Army Corps of Engineers  
 Interior, Department of  
 Bureau of Outdoor Recreation  
 Bureau of Indian Affairs  
 Labor, Department of  
 Transportation, Department of  
 Federal Highway Administration

STATE AGENCIES:

Environmental Quality, Department of  
 Forestry, Department of  
 Human Resources, Department of  
 Soil and Water Conservation Commission  
 State Land Board

Agriculture, Department of  
 Fish and Wildlife, Department of  
 Geology and Mineral Industries, Department of  
 Land Conservation and Development Commission  
 National Marine Fisheries Service (NMFS)  
 State Engineer  
 Water Resources Board

LOCAL AGENCIES:

County Courts  
 Port Districts  
 County Service Districts  
 Water Districts

City Council  
 County Commissioners, Board of  
 Metropolitan Service Districts  
 Sanitary Districts  
 Fire Protection Districts

This list may not be all-inclusive, and it is the responsibility of Contractor to know all applicable laws and to comply with them in the performance of this Contract.

17.2. Pursuant with ORS 279C.510(1), if this Contract calls for demolition work, Contractor shall salvage or recycle construction and demolition debris, if feasible and cost-effective.

17.3. Pursuant with ORS 279C.510(2), if this Contract calls for lawn or landscape maintenance, Contractor shall compost or mulch yard waste material at an approved site, if feasible and cost-effective.

17.4. Contractor shall be responsible for the immediate clean-up, remediation, reporting, and payment of fines, if any, related to the release of any hazardous substance or material by Contractor or any subcontractor.

17.5. Contractor must maintain a City of Wilsonville or Metro business license at all times while performing Work under this Contract.

17.6. Contractor must maintain and provide proof of a statutory public works bond throughout the term of this Contract.



## Section 18. Indemnity

18.1. Indemnification. Contractor acknowledges responsibility for liability arising out of the performance of this Contract, and shall defend, indemnify, and hold the City harmless from any and all liability, settlements, loss, costs, and expenses in connection with any action, suit, or claim resulting or allegedly resulting from Contractor's negligent acts, omissions, errors, or willful or reckless misconduct pursuant to this Contract, or from Contractor's failure to perform its responsibilities as set forth in this Contract. The review, approval, or acceptance by the City, its Project Manager, or any City employee of documents or other work performed, prepared, or submitted by Contractor shall not be considered a negligent act, error, omission, or willful misconduct on the part of the City, and none of the foregoing shall relieve Contractor of its responsibility to perform in full conformity with the City's requirements, as set forth in this Contract, and to indemnify the City as provided above and to reimburse the City for any and all costs and damages suffered by the City as a result of Contractor's negligent performance of this Contract, failure of performance hereunder, violation of state or federal laws, or failure to adhere to the standards of performance and care described in **Subsection 18.2**.

18.2. Standard of Care. In the performance of the Work, Contractor agrees to use at least that degree of care and skill exercised under similar circumstances by reputable members of Contractor's profession practicing in the Portland metropolitan area. Contractor will re-perform any Work not meeting this standard without additional compensation. Contractor's re-performance of any Work, even if done at the City's request, shall not be considered as a limitation or waiver by the City of any other remedies or claims it may have arising out of Contractor's failure to perform in accordance with the applicable standard of care of this Contract and within the prescribed timeframe.

## Section 19. Insurance

19.1. Insurance Requirements. Contractor must maintain insurance coverage acceptable to the City in full force and effect throughout the term of this Contract. Such insurance shall cover all risks arising directly or indirectly out of Contractor's activities or Work hereunder. Any and all agents or subcontractors with which Contractor contracts for any portion of the Work must have insurance that conforms to the insurance requirements in this Contract. Additionally, if a subcontractor is an engineer, architect, or other professional, Contractor must require the subcontractor to carry Professional Errors and Omissions insurance and must provide to the City proof of such coverage. The amount of insurance carried is in no way a limitation on Contractor's liability hereunder. The policy or policies maintained by Contractor shall provide at least the following minimum limits and coverages at all times during performance of this Contract:

19.1.1. Commercial General Liability Insurance. Contractor and all subcontractors shall obtain, at each of their own expense, and keep in effect during the term of this Contract, comprehensive Commercial General Liability Insurance covering Bodily Injury and Property Damage, written on an "occurrence" form policy. This coverage shall include broad form Contractual Liability insurance for the indemnities provided under this Contract and shall be for the following minimum insurance coverage amounts: The coverage shall be in the amount of **\$2,000,000** for each occurrence and

**\$3,000,000** general aggregate and shall include Products-Completed Operations Aggregate in the minimum amount of **\$2,000,000** per occurrence, Fire Damage (any one fire) in the minimum amount of **\$50,000**, and Medical Expense (any one person) in the minimum amount of **\$10,000**. All of the foregoing coverages must be carried and maintained at all times during this Contract.

19.1.2. Professional Errors and Omissions Coverage. Contractor agrees to carry Professional Errors and Omissions Liability insurance on a policy form appropriate to the professionals providing the Work hereunder with a limit of no less than **\$2,000,000** per claim. Contractor shall maintain this insurance for damages alleged to be as a result of errors, omissions, or negligent acts of Contractor. Such policy shall have a retroactive date effective before the commencement of any work by Contractor on the Work covered by this Contract, and coverage will remain in force for a period of at least three (3) years after termination of this Contract.

19.1.3. Business Automobile Liability Insurance. If Contractor or any subcontractors will be using a motor vehicle in the performance of the Work herein, Contractor shall provide the City a certificate indicating that Contractor and its subcontractors have business automobile liability coverage for all owned, hired, and non-owned vehicles. The Combined Single Limit per occurrence shall not be less than **\$2,000,000**.

19.1.4. Pollution Liability Coverage. Contractor shall carry sudden and accidental and gradual release pollution liability coverage that will cover, among other things, any spillage of paints, fuels, oils, lubricants, de-icing, anti-freeze or other hazardous materials, or disturbance of any hazardous materials, as that term is defined under Oregon law, during the performance of this Contract. Contractor will be fully responsible for the cost of any clean-up of any released materials or disturbance, in accordance with Oregon Department of Environmental Quality (“DEQ”) and Federal Environmental Protection Agency (“EPA”) clean-up requirements. The coverage shall be in the amount of **\$2,000,000** for each occurrence and **\$2,000,000** general aggregate.

19.1.5. Workers Compensation Insurance. Contractor, its subcontractors, and all employers providing work, labor, or materials under this Contract that are subject employers under the Oregon Workers Compensation Law shall comply with ORS 656.017, which requires them to provide workers compensation coverage that satisfies Oregon law for all their subject workers under ORS 656.126. Out-of-state employers must provide Oregon workers compensation coverage for their workers who work at a single location within Oregon for more than thirty (30) days in a calendar year. Contractors who perform work without the assistance or labor of any employee need not obtain such coverage. This shall include Employer’s Liability Insurance with coverage limits of not less than **\$500,000** each accident.

19.1.6. Insurance Carrier Rating. Coverages provided by Contractor and its subcontractors must be underwritten by an insurance company deemed acceptable by the City, with an AM Best Rating of A or better. The City reserves the right to reject all or any insurance carrier(s) with a financial rating that is unacceptable to the City.

19.1.7. Additional Insured and Termination Endorsements. The City will be named as an additional insured with respect to Contractor's liabilities hereunder in insurance coverages. Additional Insured coverage under Contractor's Commercial General Liability, Automobile Liability, Pollution Liability, and Excess Liability Policies, as applicable, will be provided by endorsement. Additional insured coverage shall be for both ongoing operations via ISO Form CG 2010 or its equivalent, and products and completed operations via ISO Form CG 2037 or its equivalent. Coverage shall be Primary and Non-Contributory. Waiver of Subrogation endorsement via ISO Form CG 2404 or its equivalent shall be provided. The following is included as additional insured: "The City of Wilsonville, its elected and appointed officials, officers, agents, employees, and volunteers." An endorsement shall also be provided requiring the insurance carrier to give the City at least thirty (30) days' written notification of any termination or major modification of the insurance policies required hereunder. Contractor must be an additional insured on the insurance policies obtained by its subcontractors performing any of the Work contemplated under this Contract.

19.1.8. Certificates of Insurance. As evidence of the insurance coverage required by this Contract, Contractor shall furnish a Certificate of Insurance to the City. This Contract shall not be effective until the required certificates and the Additional Insured Endorsements have been received and approved by the City. Contractor agrees that it will not terminate or change its coverage during the term of this Contract without giving the City at least thirty (30) days' prior advance notice and Contractor will obtain an endorsement from its insurance carrier, in favor of the City, requiring the carrier to notify the City of any termination or change in insurance coverage, as provided above.

19.2. Primary Coverage. The coverage provided by these policies shall be primary, and any other insurance carried by the City is excess. Contractor shall be responsible for any deductible amounts payable under all policies of insurance. If insurance policies are "Claims Made" policies, Contractor will be required to maintain such policies in full force and effect throughout any warranty period.

## **Section 20. Bonding Requirements**

20.1. Payment and Performance Bonds. Contractor shall obtain a Payment Bond and a Performance Bond, each in a form acceptable to the City and from a surety acceptable to the City, and each in the full amount of the Contract Sum.

20.2. Public Works Bond. Pursuant to ORS 279C.830(2), in addition to the Payment and Performance bonds, before starting work on this Contract or any subcontract hereunder, Contractor and all subcontractors, unless exempt under ORS 279C.836(4), (7), (8), or (9), must have on file with the Construction Contractors Board a public works bond with a corporate surety authorized to do business in the State of Oregon in the minimum amount of **\$30,000**. The bond must provide that the Contractor or subcontractor will pay claims ordered by the Bureau of Labor and Industries to workers performing labor upon public works projects. The bond must be a continuing obligation, and the surety's liability for the aggregate of claims that may be payable from the bond may not exceed the penal sum of the bond. The bond must remain in effect

continuously until depleted by claims paid under ORS 279C.836, unless the surety sooner cancels the bond. Contractor further certifies that Contractor will include in every subcontract a provision requiring a subcontractor to have a public works bond filed with the Construction Contractors Board before starting work on the Project, unless exempt under ORS 279C.836(4), (7), (8), or (9).

20.3. Bond Claims. Any notice of claim on a payment or performance bond or public works bond shall comply with the requirements of ORS 279C.605.

## **Section 21. Warranty**

21.1. In addition to, and not in lieu of, any other warranties provided by various manufacturers and suppliers, Contractor fully warrants all equipment for a period of twenty-five (25) years from the date of delivery and shall make all necessary repairs and replacements to remedy, in a manner satisfactory to the City's Project Manager and at no cost to the City, any and all defects, breaks, or failures of the equipment occurring within said twenty-five (25) year period due to faulty or inadequate equipment. Delivery of the equipment shall occur no later than November 15, 2024.

21.2. Contractor fully warrants all Work for a period of twenty-five (25) years from the date of delivery of the equipment and shall make all necessary repairs and replacements to remedy, in a manner satisfactory to the City's Project Manager and at no cost to the City, any and all defects, breaks, or failures of the Work occurring within twenty-five (25) years following the date of completion due to faulty or inadequate workmanship. Repair of damage or disturbances to other improvements under, within, or adjacent to the Work, whether or not caused by settling, washing, or slipping, when such damage or disturbance is caused, in whole or in part, from activities of Contractor in performing Contractor's duties and obligations under this Contract, is also covered by the warranty when such defects or damage occur within the warranty period.

21.3. If Contractor, after written notice, fails within **ten (10) days** to proceed to comply with the terms of this Section, the City may have the defects corrected, and Contractor and Contractor's surety shall be liable for all expense incurred. In case of an emergency where, in the opinion of the City's Project Manager, delay would cause serious loss or damage, repairs may be made without notice being given to Contractor, and Contractor or Contractor's surety shall pay the cost of repairs. Failure of the City's Project Manager to act in case of an emergency shall not relieve Contractor or Contractor's surety from liability and payment of all such costs.

21.4. Current State Law (ORS 12.135) provides for a ten (10) year period, from the time of substantial completion, for the City to file a claim for repairs of defective Work due to Contractor's improper use of materials and/or workmanship, and Contractor agrees it is bound thereby.

## **Section 22. Early Termination; Default**

22.1. This Contract may be terminated prior to the expiration of the agreed upon terms:

22.1.1. By mutual written consent of the parties;

22.1.2. By the City, for any reason, and within its sole discretion, effective upon delivery of written notice to Contractor by mail or in person. The City retains the right to elect whether or not to proceed with actual construction of the Project; or

22.1.3. By the City if Contractor breaches this Contract and fails to cure the breach within ten (10) days of receipt of written notice of the breach from the City.

22.2. If the City terminates this Contract in whole or in part, due to default or failure of Contractor to perform Work in accordance with the Contract, the City may procure, upon reasonable terms and in a reasonable manner, services similar to those so terminated. In addition to any other remedies the City may have, both at law and in equity, for breach of contract, Contractor shall be liable for all costs and damages incurred by the City as a result of the default by Contractor, including, but not limited to all costs incurred by the City in procuring services from others as needed to complete this Contract. This Contract shall be in full force to the extent not terminated by written notice from the City to Contractor. In the event of a default, the City will provide Contractor with written notice of the default and a period of ten (10) days to cure the default. If Contractor notifies the City that it wishes to cure the default but cannot, in good faith, do so within the ten (10) day cure period provided, then the City may elect, in its sole discretion, to extend the cure period to an agreed upon time period, which agreed upon extension must be in writing and signed by the parties prior to the expiration of the cure period. Unless a written, signed extension has been fully executed by the parties, if Contractor fails to cure prior to expiration of the cure period, the Contract is automatically terminated.

22.3. If the City terminates this Contract for its own convenience not due to any default by Contractor, payment of Contractor shall be prorated to, and include the day of, termination and shall be in full satisfaction of all claims by Contractor against the City under this Contract.

22.4. Termination under any provision of this Section shall not affect any right, obligation, or liability of Contractor or the City that accrued prior to such termination. Contractor shall surrender to the City items of work or portions thereof, referred to in **Section 27**, for which Contractor has received payment or the City has made payment.

### **Section 23. Suspension of Work**

The City may suspend, delay, or interrupt all or any part of the Work for such time as the City deems appropriate for its own convenience by giving written notice thereof to Contractor. An adjustment in the time of performance or method of compensation shall be negotiated as a result of such delay or suspension, unless the reason for the delay was within Contractor's control. The City shall not be responsible for Work performed by any subcontractors after notice of suspension is given by the City to Contractor.

### **Section 24. Contract Modification; Change Orders**

Any modification of the provisions of this Contract shall not be enforceable or binding unless reduced to writing and signed by both the City and Contractor. A modification is a written



document, contemporaneously executed by the City and Contractor, which increases or decreases the cost to the City over the agreed Contract Sum in **Section 5** of this Contract, or changes or modifies the Work described in the Contract Documents or the time for performance. In the event Contractor receives any communication of whatsoever nature from the City, which communication Contractor contends gives rise to any modification of this Contract, Contractor shall, within five (5) days after receipt, make a written request for modification to the City's Project Manager in the form of a Change Order. Contractor's failure to submit such written request for modification in the form of a Change Order shall be the basis for refusal by the City to treat said communication as a basis for modification or to allow such modification. In connection with any modification to this Contract affecting any change in price, Contractor shall submit a complete breakdown of labor, material, equipment, and other costs. If Contractor incurs additional costs or devotes additional time on Project tasks, the City shall be responsible for payment of only those additional costs for which it has agreed to pay under a signed Change Order. To be enforceable, the Change Order must describe with particularity the nature of the change, any delay in time the Change Order will cause, or any increase or decrease in the Contract Sum. The Change Order must be signed and dated by both Contractor and the City before the Change Order may be implemented.

### **Section 25. Dispute Resolution**

In the event of a dispute concerning performance of this Contract, the parties agree to meet to negotiate the problem. If such negotiation fails, the parties will mediate the dispute using a professional mediator, and the parties will split the cost. If the dispute cannot be resolved in either of the foregoing ways within thirty (30) days, either party may file suit in Clackamas County Circuit Court.

### **Section 26. Access to Records**

The City shall have access, upon request, to such books, documents, receipts, papers, and records of Contractor as are directly pertinent to this Contract for the purpose of making audit, examination, excerpts, and transcripts during the term of this Contract and for a period of four (4) years after termination of the Contract, unless the City specifically requests an extension. This clause shall survive the expiration, completion, or termination of this Contract.

### **Section 27. As-Built/Property of the City**

Contractor must provide redlined as-builts prior to Final Acceptance. As-builts should be provided in electronic format. All documents, reports, and research gathered or prepared by Contractor under this Contract, including but not limited to spreadsheets, charts, graphs, drawings, tracings, maps, surveying records, mylars, modeling, data generation, papers, diaries, inspection reports, photographs, and any originals or certified copies of the original work forms, if any, shall be the exclusive property of the City and shall be delivered to the City prior to final payment. Any statutory or common law rights to the as-builts held by Contractor as creator of such work shall be conveyed to the City upon request without additional compensation.



## Section 28. Notices

Any notice required or permitted under this Contract shall be in writing and shall be given when actually delivered in person or forty-eight (48) hours after having been deposited in the United States mail as certified or registered mail, addressed to the addresses set forth below, or to such other address as one party may indicate by written notice to the other party.

To City: City of Wilsonville  
Attn: Dustin Schull, Parks Maintenance Supervisor  
29799 SW Town Center Loop East  
Wilsonville, OR 97070

To Contractor: Musco Sports Lighting, LLC  
Attn: Rick Charbonneau  
100 1<sup>st</sup> Ave West  
Oskaloosa, IA 52577

## Section 29. Miscellaneous Provisions

29.1. Legal Effect and Assignment. This Contract shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, personal representatives, successors, and assigns. This Contract may be enforced by an action at law or in equity.

29.2. No Assignment. Contractor may not assign this Contract, nor delegate the performance of any obligations hereunder, unless agreed to in advance and in writing by the City.

29.3. Governing Law. This Contract shall be construed in accordance with and governed by the laws of the State of Oregon, regardless of any conflicts of laws. All contractual provisions required by ORS Chapters 279A, 279B, 279C, and related Oregon Administrative Rules to be included in public agreements are hereby incorporated by reference and shall become a part of this Contract as if fully set forth herein.

29.4. Jurisdiction. Jurisdiction and venue for any dispute will be in Clackamas County Circuit Court.

29.5. Legal Action/Attorney Fees. If a suit, action, or other proceeding of any nature whatsoever (including any proceeding under the U.S. Bankruptcy Code) is instituted in connection with any controversy arising out of this Contract or to interpret or enforce any rights or obligations hereunder, the prevailing party shall be entitled to recover attorney, paralegal, accountant, and other expert fees and all other fees, costs, and expenses actually incurred and reasonably necessary in connection therewith, as determined by the court or body at trial or on any appeal or review, in addition to all other amounts provided by law. If the City is required to seek legal assistance to enforce any term of this Contract, such fees shall include all of the above fees, whether or not a proceeding is initiated. Payment of all such fees shall also apply to any administrative proceeding, trial, and/or any appeal or petition for review.

29.6. Time of the Essence. Time is expressly made of the essence in the performance of this Contract.

29.7. Calculation of Time. Except where the reference is to business days, all periods of time referred to herein shall include Saturdays, Sundays, and legal holidays in the State of Oregon, except that if the last day of any period falls on any Saturday, Sunday, or legal holiday observed by the City, the period shall be extended to include the next day which is not a Saturday, Sunday, or legal holiday. Where the reference is to business days, periods of time referred to herein shall exclude Saturdays, Sundays, and legal holidays observed by the City. Whenever a time period is set forth in days in this Contract, the first day from which the designated period of time begins to run shall not be included.

29.8. Number, Gender and Captions. In construing this Contract, it is understood that, if the context so requires, the singular pronoun shall be taken to mean and include the plural, the masculine, the feminine and the neuter, and that, generally, all grammatical changes shall be made, assumed, and implied to individuals and/or corporations and partnerships. All captions and paragraph headings used herein are intended solely for convenience of reference and shall in no way limit any of the provisions of this Contract.

29.9. Good Faith and Reasonableness. The parties intend that the obligations of good faith and fair dealing apply to this Contract generally and that no negative inferences be drawn by the absence of an explicit obligation to be reasonable in any portion of this Contract. The obligation to be reasonable shall only be negated if arbitrariness is clearly and explicitly permitted as to the specific item in question, such as in the case of where this Contract gives the City “sole discretion” or the City is allowed to make a decision in its “sole judgment.”

29.10. Other Necessary Acts. Each party shall execute and deliver to the other all such further instruments and documents as may be reasonably necessary to carry out this Contract in order to provide and secure to the other parties the full and complete enjoyment of rights and privileges hereunder.

29.11. Interpretation. As a further condition of this Contract, the City and Contractor acknowledge that this Contract shall be deemed and construed to have been prepared mutually by each party and it shall be expressly agreed that any uncertainty or ambiguity existing therein shall not be construed against any party. In the event that any party shall take an action, whether judicial or otherwise, to enforce or interpret any of the terms of the contract, the prevailing party shall be entitled to recover from the other party all expenses which it may reasonably incur in taking such action, including attorney fees and costs, whether incurred in a court of law or otherwise.

29.12. Defined Terms. Capitalized terms not otherwise defined herein shall have the meaning given to them in the Contract Documents.

29.13. Entire Agreement. This Contract, all documents attached to this Contract, and all Contract Documents and laws and regulations incorporated by reference herein represent the entire agreement between the parties.

29.14. Counterparts. This Contract may be executed in one or more counterparts, each of which shall constitute an original Contract but all of which together shall constitute one and the same instrument.

29.15. Authority. Each party signing on behalf of Contractor and the City hereby warrants actual authority to bind their respective party.

The Contractor and the City hereby agree to all provisions of this Contract.

**CONTRACTOR:**

**CITY:**

MUSCO SPORTS LIGHTING, LLC.

CITY OF WILSONVILLE

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

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

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

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

As Its: \_\_\_\_\_

As Its: \_\_\_\_\_

EIN/Tax I.D. No. \_\_\_\_\_

APPROVED AS TO FORM:

\_\_\_\_\_  
Stephanie Davidson, Assistant City Attorney  
City of Wilsonville, Oregon

**Quote**

**Date:** June 3<sup>rd</sup>, 2024  
**Expiration date:** August 3<sup>rd</sup>, 2024  
**To:** Dustin Schull

**Project:** Memorial Park Baseball/Softball  
 Wilsonville, Oregon  
**Musco Project Number:** 228489

**King County Directors Association**  
**Master Project:** 221674, **Contract Number:** 23-406, **Expiration:** 02/28/2025  
**Commodity:** Sport Court and Field Lighting

**All purchase orders should note the following:**  
**KCDA Purchase – Contract Number: 23-406**

***Quotation Price – Materials Delivered to Job Site and Installation***

**Fields #4 & 5**

<b>KCDA Contract Price – Field #4: Baseball 300' (50/30fc LSS)</b> .....	<b>\$ 325,861.00</b>
<b>KCDA Contract Price – Field #5: Baseball 200' (50/30fc LSS)</b> .....	<b>\$ 211,835.00</b>
<b>Adder: Electrical Installation</b> .....	<b>\$ 128,254.00</b>
<b>Adder for Bonding</b> .....	<b>\$ 3,663.00</b>
<b>Total</b> .....	<b>\$ 669,613.00</b>

*Pricing furnished is effective for 60 days unless otherwise noted and is considered confidential.*

***Light-Structure System with Total Light Control – TLC for LED™ technology***

**Guaranteed Lighting Performance**

- Guaranteed light levels:
  - Baseball & Softball: 50fc Infield / 30fc Outfield and a uniformity of 2:1 Infield / 2.5:1 Outfield
- BallTracker™ technology – targeted light, optimizing visibility of the ball in play with no glare in the players typical line-of-sight

**System Description fields #4 & 5**

- (10) Factory wired poletop luminaire assemblies
- (10) Pre-cast concrete bases with integrated lightning grounding
- (10) 60' & 70' Galvanized steel poles
- (8) Factory aimed and assembled TLC-LED-1500 luminaires
- (18) Factory aimed and assembled TLC-LED-1200 luminaires
- (10) Factory aimed and assembled TLC-LED-900 luminaires
- (10) Factory aimed and assembled TLC-BT-575 luminaires
- Factory wired and tested remote electrical component enclosures
- Pole length, factory assembled wire harnesses
- UL Listed assemblies

**Control Systems and Services**

- Control-Link® control and monitoring system to provide remote on/off and dimming (high/medium/low) control and performance monitoring with 24/7 customer support

**Operation and Warranty Services**



## Quote

- Support from Musco's Lighting Services Team – over 170 Team members dedicated to operating and maintaining your lighting system – plus a network of 1800+ contractors
- **25-year materials and onsite labor warranty**

### ***Installation Services Provided***

---

- Deliver and unload Musco equipment
- Remove and dispose of the eight (8) existing wood poles, pole lighting, and hardware.
- Auger and set Musco pre-cast concrete foundation(s)
- Assemble and stand Musco equipment
- Trenching and backfill
- Conduit, wire, and in-ground boxes
- Supply and install Musco control cabinet(s) and wireless controller
- Wire, energize, and commission
- Site cleanup
- Testing and train staff

### **Scope of work:**

The work shall be completed by, a licensed Electrical Contractor, Licensed in the State of Oregon, under contract to Musco Sports Lighting. The pricing includes removal of and disposal of the eight (8) existing wood poles including all lighting equipment and hardware. The wood poles will be cut off 2' below grade, then backfilled and graded. The eight (8) pole mounted transformers will be left onsite and disposed of by others.

The Light Structure System installation includes, delivering and unloading of the Musco equipment upon arrival to the job site, excavation of ten (10) augured holes, installation of ten (10) pre-cast concrete foundations and concrete backfill. Assembly and installation of ten (10) new galvanized steel poles, assembly and mounting of the luminaire assemblies, electrical enclosures and wiring harnesses on each of the 10 poles. Wiring for the Lighting System is from the luminaire assemblies down to the remote electrical enclosures at the base of each pole where they will be terminated on the Musco supplied disconnect breaker.

Trench around the field(s) to each new pole location and install a new in-ground box next to each pole. Install all new conduit from each ground box next to each new pole and from the inground boxes into each Musco pole base. Trenches will be backfilled with native material and compacted (final grading and seeding will be by others). Install new conduit (as required) from the existing distribution cabinet to the Musco control cabinet(s). Trenches will be backfilled with native material and compacted. Install new wiring from the existing distribution cabinet to the Musco control cabinet. Install new wiring from each new in-ground box to the remote electrical enclosure on each Musco pole, they will be landed on the Musco supplied disconnect. Make up all electrical connections, energize, commission and tested to ensure the entire system is operational.

Note that the transformer/service and the trenching, conduit, and wire from the service/transformer location to the distribution equipment is not included. The installation of the distribution equipment, control cabinet and commissioning are all included.

The Musco Control Cabinet(s) is to be installed next to or near the existing electrical distribution equipment. All wiring from the breakers in the distribution cabinet shall be terminated on the line side of each contactor in the control cabinet. The existing wiring from each pole shall be terminated on the load side of each contactor.

Notes:



## Quote

This scope includes the heavy equipment needed to remove all existing lighting equipment and install the new Musco equipment. All materials necessary to protect the site from the heavy equipment needed to perform the work is included. We will take all precautions necessary to minimize damage to the site. The electrical permit is included; **any other required permits will be by others.**

It has been assumed that no alterations or repairs will be required to any transformers, distribution equipment, raceways or conductors. Any repairs or replacement of transformer, distribution panel(s) raceways and/or conductors will be considered an extra.

### Payment Terms

---

Musco's Credit Department will provide payment terms.

Email or fax a copy of the Purchase Order to Musco Sports Lighting, LLC & KCDA:

Musco Sports Lighting, LLC  
 Attn: Chris Hailey  
 Fax: 800-374-6402  
 Email: musco.contracts@musco.com

KCDA  
 Attn: Thomas Kim  
 Email: tkim@kcda.org

**All purchase orders should note the following: KCDA purchase – Contract Number: 23-406**

### Delivery Timing

---

8 – 10 weeks for delivery of materials to the job site from the time of order, submittal approval, and confirmation of order details including voltage, phase, and pole locations.

Due to the built-in custom light control per luminaire, pole locations need to be confirmed prior to production. Changes to pole locations after the product is sent to production could result in additional charges.

### Notes

---

Quote is based on:

- Payment and performance bond included at \$5.50/1000
- Purchase orders are to be sent directly to the KCDA along with a copy of this quote.
- Shipment of entire project together to one location.
- Structural code and wind speed = 2018 IBC, 100mph, Exposure C, Importance Factor 1.0.
- **Standard soil conditions – rock, bottomless, wet or unsuitable soil may require additional engineering, special installation methods and additional cost.**
- Owner is responsible for getting electrical power to the site, coordination with the utility, and any power company fees.
- Field/ground protection provided by others.
- Reasonable access to poles provided by others.
- Light Levels and uniformities are guaranteed by MUSCO, any additional aiming required to meet the specified requirements shall be done by MUSCO.
- Confirmation of pole locations prior to production.

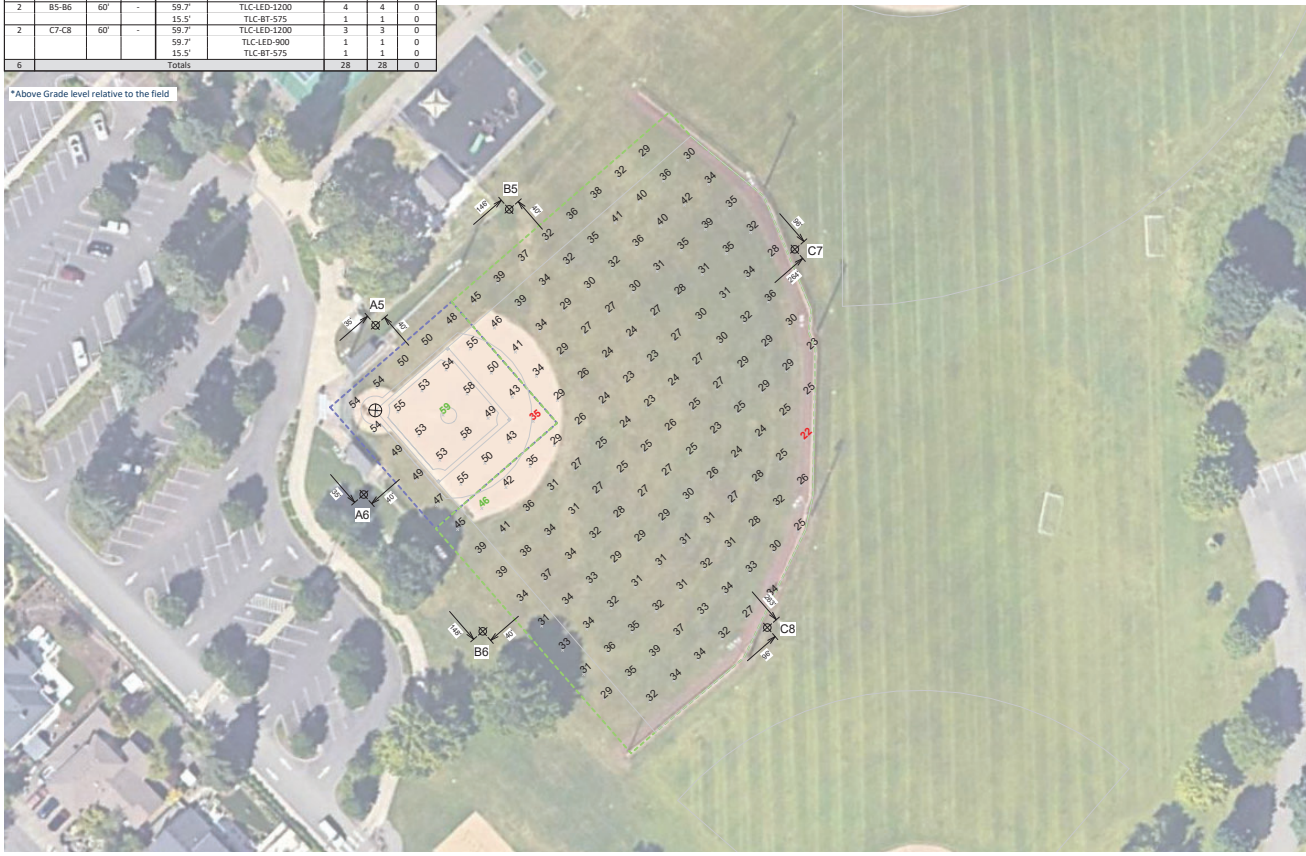




DocuSign Envelope ID: 229BFCF8-460F-4A25-A440-C371639596ED

Pole		Luminaires						
QTY	LOCATION	SIZE	GRADE ELEVATION	ABOVE GRADE LEVEL	LUMINAIRE TYPE	QTY/POLE	THIS GRID	OTHER GRIDS
2	A5-A6	60'	-	59.7'	TLC-LED-1200	1	1	0
				15.5'	TLC-LED-900	2	2	0
				15.5'	TLC-BT-575	1	1	0
2	B5-B6	60'	-	59.7'	TLC-LED-1200	4	4	0
				15.5'	TLC-BT-575	1	1	0
				15.5'	TLC-LED-900	3	3	0
2	C7-C8	60'	-	59.7'	TLC-LED-1200	1	1	0
				15.5'	TLC-LED-900	1	1	0
				15.5'	TLC-BT-575	1	1	0
6	Totals					28	28	0

\*Above Grade level relative to the field



SCALE IN FEET 1 : 60  
 0' 60' 120'  
 ENGINEERED DESIGN By: Vashon Alexander • File #228489B\_R1 • 12-Jan-24

Pole location(s) ⊕ dimensions are relative to 0.0 reference point(s) ⊗

### Memorial Park SB BB Field Relight

Wilsonville, OR

Grid Summary	
Name	Field #4
Size	Irregular 261'/275'/267'
Spacing	20.0' x 20.0'
Height	3.0' above grade

	MAINTAINED HORIZONTAL FOOTCANDELS	
	Infield	Outfield
Guaranteed Average	30	30
Scan Average	51.19	31.35
Maximum	59	46
Minimum	35	22
Avg/Min	1.44	1.46
Guaranteed Max/Min	2	2.5
Max/Min	1.68	2.13
UG (adjacent pts)	1.21	1.28
CU	0.70	
No. of Points	25	146
<b>LUMINAIRE INFORMATION</b>		
Applied Circuits	0	
No. of Luminaires	28	
Total Load	27.45 kW	

**Guaranteed Performance:** The ILLUMINATION described above is guaranteed per your Musco Warranty document and includes a 0.95 dirt depreciation factor.  
**Field Measurements:** Individual field measurements may vary from computer-calculated predictions and should be taken in accordance with IESNA RP-6-15.  
**Electrical System Requirements:** Refer to Amperage Draw Chart and/or the "Musco Control System Summary" for electrical sizing.  
**Installation Requirements:** Results assume a 3% nominal voltage at line side of the driver and structures located within 3 feet (1m) of design locations.



Not to be reproduced in whole or part without the written consent of Musco Sports Lighting, LLC. ©1981, 2023 Musco Sports Lighting, LLC.

### ILLUMINATION SUMMARY

DocuSign Envelope ID: 229BFCF8-460F-4A25-A440-C371639596ED

Pole		Luminaires						
QTY	LOCATION	SIZE	GRADE ELEVATION	ABOVE GRADE LEVEL	LUMINAIRE TYPE	QTY/POLE	THIS GRID	OTHER GRIDS
2	A7-A8	60'	-	59.7'	TLC-LED-1200	1	1	0
				59.7'	TLC-LED-900	2	2	0
				15.5'	TLC-BT-575	1	1	0
2	B7-B8	70'	-	70.3'	TLC-LED-1500	4	4	0
				15.5'	TLC-BT-575	1	1	0
4	Totals					18	18	0

\*Above Grade level relative to the field



SCALE IN FEET 1 : 50  
 0' 50' 100'  
 ENGINEERED DESIGN By: Vashon Alexander • File #228489B\_R1 • 12-Jan-24

Pole location(s) (⊗) dimensions are relative to 0.0 reference point(s) (⊗)

### Memorial Park SB BB Field Relight

Wilsonville, OR

Grid Summary	
Name	Field #5
Size	200'200'/200' - basepath 60'
Spacing	20.0' x 20.0'
Height	3.0' above grade

	MAINTAINED HORIZONTAL FOOTCANDELS	
	Infield	Outfield
<b>Guaranteed Average</b>	<b>50</b>	<b>30</b>
Scan Average	51.21	33.69
Maximum	60	47
Minimum	40	20
Aug/Min	1.28	1.65
<b>Guaranteed Max/Min</b>	<b>2</b>	<b>2.5</b>
Max/Min	1.50	2.29
UG (adjacent pts)	1.19	1.24
C.U.	0.63	
No. of Points	25	73

#### LUMINAIRE INFORMATION

Applied Circuits: E  
 No. of Luminaires: 18  
 Total Load: 19.44 kW

**Guaranteed Performance:** The ILLUMINATION described above is guaranteed per your Musco Warranty document and includes a 0.95 dirt depreciation factor.

**Field Measurements:** Individual field measurements may vary from computer-calculated predictions and should be taken in accordance with IESNA RP-6-15.

**Electrical System Requirements:** Refer to Amperage Draw Chart and/or the "Musco Control System Summary" for electrical sizing.

**Installation Requirements:** Results assume a 3% nominal voltage at line side of the driver and structures located within 3 feet (1m) of design locations.



Not to be reproduced in whole or part without the written consent of Musco Sports Lighting, LLC. ©1981, 2023 Musco Sports Lighting, LLC.

### ILLUMINATION SUMMARY