

**NON-EXCLUSIVE COMMODITY AGREEMENT  
BETWEEN CITY OF TEMECULA AND MUSCO SPORTS LIGHTING, LLC  
SOURCEWELL: CONTRACT NO. 071619-MSL**

**MULTI-USE LED FIELD LIGHTING EQUIPMENT**

**THIS AGREEMENT** is made and effective as of **November 12, 2019**, between the City of Temecula , a municipal corporation (hereinafter referred to as "City"), and **Musco Sports Lighting, LLC**, a limited liability company (hereinafter referred to as "Vendor"). In consideration of the mutual covenants and conditions set forth herein, the parties agree as follows:

**1. TERM**

This Agreement shall commence on **November 12, 2019**, and shall remain and continue in effect until tasks described herein are completed, but in no event later than **June 30, 2020**, unless sooner terminated pursuant to the provisions of this Agreement.

**2. PURCHASE OF GOODS**

Vendor recognizes and agrees that this Agreement is for the purpose of establishing a contractual relationship between the City and the Vendor for the non-exclusive procurement of retail goods as specified on Exhibit A, attached hereto and incorporated herein as though set forth in full. The Vendor understands this Agreement is non-exclusive and the City reserves the right to purchase similar goods from other Vendors.

**3. PURCHASE PRICE**

The City agrees to pay the Vendor for merchandise ordered and received in the amount of **Two Hundred Sixty-Nine Thousand, Seven Hundred Dollars (\$269,700.00)** as outlined in Exhibit B for for the total term of this agreement unless additional payment is approved as provided in this Agreement.

Vendor will submit invoices monthly for actual merchandise ordered and received. Invoices shall be submitted between the first and fifteenth day of each month for merchandise delivered and accepted. Payment will be made within thirty (30) business days following the receipt of invoice as to all non-disputed fees. The not to exceed purchase amount listed herein is an estimated expenditure and this Agreement does not guarantee Vendor this amount in purchases.

**4. REPRESENTATION AND WARRANTIES OF VENDOR**

Vendor makes the following representations and warranties to City:

a. Authority and Consents. Vendor has the right, power, legal capacity and authority to enter into and perform its obligations under this Agreement. No approvals or consents of any persons are necessary in connection with Vendor's execution, delivery and performance of this Agreement, except for such as have been obtained on or prior to the date hereof. The execution, delivery and performance of this Agreement by Vendor have been duly authorized by all necessary action on the part of Vendor and constitute the legal, valid and binding obligations of Vendor, enforceable against Vendor in accordance with their respective terms.

b. Title, License and Operating Condition. Vendor has good and marketable title to all of the merchandise. All of the merchandise are free and clear of any restrictions on or mortgages, liens, pledges, charges, encumbrances, equities, claims, covenants, conditions, and restrictions except for such as may be created or granted by City. All of the merchandise is in good condition, free of any defects, and are in conformity with the specifications, descriptions, representations and warranties set forth in the Vendor's catalog, website, retail store, quote or in the Agreement Documents that may be attached hereto or incorporated herein.

c. Full Disclosure. None of the representations and warranties made by Vendor in this Agreement contains or will contain any untrue statements of a material fact, or omits to state a material fact necessary to make the statements made, in light of the circumstances under which they were made, not misleading.

#### **5. TIME OF DELIVERY**

The date and time of delivery of the merchandise shall be stated at time of order. The merchandise shall be delivered to the City location as stated on the purchase order or at time of merchandise order.

#### **6. RISK OF LOSS**

Risk of loss, damage and destruction of the merchandise shall remain with the Vendor until after inspection and acceptance of the merchandise by City.

#### **7. INSPECTION AND ACCEPTANCE**

City shall inspect the merchandise at the time and place of delivery. Such inspection may include reasonable review by City. If in the determination of the City, the merchandise fails to conform to the Agreement IN ANY MANNER OR RESPECT, City shall so notify Vendor within ten (10) days of delivery of the merchandise to City. Failing such notice, the merchandise shall be deemed accepted by City as of the date of receipt.

#### **8. REJECTION**

In the event of such notice of non-conformity by City pursuant to the section entitled "Inspection and Acceptance" above, City may, at its option, (1) reject the whole of the Merchandise, (2) accept the whole of the Merchandise, or (3) accept any commercial unit or units/portions of the Merchandise and reject the remainder. The exercise of any of the above options shall be "without prejudice" and with full reservation of any rights and remedies of City attendant upon a breach. In the event of such notice and election by City, City agrees to comply with all reasonable instructions of Vendor and, in the event that expenses are incurred by City in following such instructions, Vendor shall indemnify City in full for such expenses.

#### **9. NO REPLACEMENTS OF CURE**

This Agreement calls for strict compliance. Vendor expressly agrees that both the Merchandise tendered and the tender itself will conform fully to the terms and conditions of the Agreement on the original tender. In the event of rejection by City of the whole of the Merchandise or any part thereof pursuant to the section entitled "Rejection" above, City may, but is not required to, accept any substitute performance from Vendor or engage in subsequent efforts to affect a cure of the original tender by Vendor.

**10. NON-ASSIGNABILITY**

The Vendor shall not assign the performance of this Agreement, nor any part thereof, nor any monies due hereunder, without prior written consent of the City.

**11. INDEPENDENT CONTRACTOR**

The Vendor is and shall at all times remain as to the City a wholly independent contractor. The personnel performing the Work under this Agreement on behalf of the Vendor shall at all times be under Vendor's exclusive direction and control.

**12. LEGAL RESPONSIBILITIES**

The Vendor shall keep itself informed of State and Federal laws and regulations which in any manner affect those employed by it or in any way affect the performance of its service pursuant to this Agreement. The Vendor shall at all times observe and comply with all such laws and regulations. The City, and its officers and employees, shall not be liable at law or in equity occasioned by failure of the Vendor to comply with this section.

**13. INDEMNIFICATION**

Vendor agrees to defend, indemnify, protect, and hold harmless, the City of Temecula, Temecula Community Services District, and/or the Successor Agency to the Temecula Redevelopment Agency, and its officers, officials, employees, agents, and volunteers, from and against any and all claims, demands, losses, defense costs or expenses, actions, liability or damages of any kind and nature which the City of Temecula, Temecula Community Services District, and/or the Successor Agency to the Temecula Redevelopment Agency, its officers, agents, employees, and volunteers may sustain or incur or which may be imposed upon them for injury to or death of persons, or damage to property arising out of Vendor's negligent or wrongful acts or omissions arising out of or in any way related to the Work or the Vendor's performance or non-performance of this Agreement, excepting only liability out of the sole negligence of the City of Temecula, Temecula Community Services District, and/or the Successor Agency to the Temecula Redevelopment Agency.

**14. TERMINATION OR SUSPENSION**

This Agreement may be terminated or suspended at any time, for any reason, with or without cause at the sole and exclusive discretion of the City Manager, without default or breach of this Agreement by the City.

**15. SURVIVAL OF REPRESENTATIONS AND WARRANTIES**

All representations, warranties, covenants and agreements of the parties contained in this Agreement shall survive the execution, delivery and performance of this Agreement.

**16. REMEDIES**

The remedies and rights conferred on the City by this Agreement are in addition to and cumulative with all other remedies and rights accorded the City under law or equity.

**17. SEVERABILITY**

If any provision of this Agreement is held invalid or unenforceable by any court of final jurisdiction, it is the intent of the parties that all other provisions of this Agreement be construed to remain fully valid, enforceable, and binding on the parties.

**18. GOVERNING LAW**

This Agreement shall be construed in accordance with, and governed by, the laws of the State of California as applied to contracts that are executed and performed entirely in California. The City and Vendor understand and agree that the laws of the State of California shall govern the rights, obligations, duties, and liabilities of the parties to this Agreement and also govern the interpretation of this Agreement. Any litigation concerning this Agreement shall take place in the municipal, superior, or federal district court with geographic jurisdiction over the City of Temecula. In the event such litigation is filed by one party against the other to enforce its rights under this Agreement, the prevailing party, as determined by the court's judgment, shall be entitled to reasonable attorney fees and litigation expenses for the relief granted.

**19. ENTIRE AGREEMENT**

This is the entire agreement between the parties regarding the commodities purchased by this Agreement. Any modification or amendment of this Agreement shall not be effective unless in writing and assigned by the parties to this Agreement.

**20. AUTHORITY TO EXECUTE THIS AGREEMENT**

The person or persons executing this Agreement on behalf of the Vendor warrants and represents that he or she has the authority to execute this Agreement on behalf of the Vendor and has the authority to bind the Vendor to the performance of its obligation hereunder. The City Manager is authorized to enter into an amendment on behalf of the City to make the following non-substantive modifications to the agreement: (a) name changes; (b) extension of time; (c) non-monetary changes in scope of work; (d) agreement termination.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed the day and year first above written.

CITY OF TEMECULA

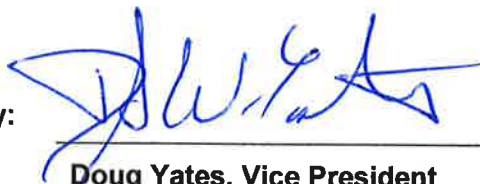
Musco Sports Lighting, LLC

*(Two Signatures of corporate officers required unless corporate documents authorize only one person to sign the agreement on behalf of the corporation.)*

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

Michael S. Naggar, Mayor

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

  
Doug Yates, Vice President

ATTEST:

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

Randi Johl, City Clerk

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

  
Jim Hansen, Corporate Secretary

APPROVED AS TO FORM:

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

Peter M. Thorson, City Attorney

VENDOR

Musco Sports Lighting, LLC

Karin Anderson

100 1<sup>st</sup> Ave West

PO Box 808, Oskaloosa, IA 52577

Karin.anderson@musco.com

760-798-3162

PM Initials: 

Date: 10/29/19

# **EXHIBIT A**

## **Scope of Work / Outline Of Order or Service Procedure**

Vendor recognizes and agrees that this Agreement is for the purpose of establishing a contractual relationship between the **City of Temecula** and the Vendor, for the purchase of goods or services. The procedure for ordering goods or requesting services is set forth as follows:

### **A. Ordering Process**

1. The City Manager or his designee shall submit to Vendor a written "Request for Order/Services". The Request for Order/Services shall include a description of the items to be purchased or the services to be completed, the time for delivery or completion of the services, and the plans and specifications for goods and equipment, if any.

2. Within five (5) business days of the date of the Request for Order/Services, Vendor shall respond in writing to the Request for Order/Services and advise the City Manager or his designee whether the goods are available or services can be performed, along with the cost and estimated delivery or start of services.

3. In the event an emergency or service is required, the City Manager or his designee may transmit the Request for Order/Services orally to the Vendor. As soon as practical following the emergency, the Vendor and City designee shall in good faith confirm in writing the scope of the emergency order submitted or services undertaken.

4. Upon acceptance of the Vendor's response by the City Manager or his designee the Vendor shall proceed with the order or begin services. The acceptance of the goods and/or performance of the services shall be pursuant to the terms of this Agreement.

### **B. Type of goods being procured, but not limited to:**

1. Multi-use Field Lighting Materials

## **EXHIBIT B**

### **DESCRIPTION AND PRICE LIST OF MERCHANDISE**

- Cost shall be as per the Vendor quote provided for each order requested and approved by the City.

In any event, the cost of such services or purchase, while not guaranteed per Section 3 of this Agreement, shall not exceed \$269,700.00 for the total term of the Agreement.

## Quote

Paloma Del Sol Park  
Temecula, CA  
October 11, 2019

### Sourcewell

Master Project: 199030. Contract Number: 071619-MSL. Expiration: 08/27/2023  
Category: Sports lighting with related supplies and services

#### Quotation Price - Materials Delivered to Job Site

Baseball Fields with Soccer Overlay .....	\$ 248,000.00
Sales Tax .....	\$ 21,700.00
<b>Total .....</b>	<b>\$ 269,700.00</b>

*Estimated Sales Tax based on 8.75% is included.*

*Bonding, labor, and unloading of the equipment are not included.*

*Pricing furnished is effective for 90 days and is kindly considered confidential.*

#### Light-Structure System Retrofit with Total Light Control - TLC for LED™ Technology

##### System Description [Light-Structure System Retrofit]

- (12) Factory wired poletop luminaire assemblies
- (68) Factory aimed and assembled luminaires, including BallTracker™ luminaires
- Factory wired and tested remote electrical component enclosures
- Pole length, factory assembled wire harnesses
- Mounting hardware for poletop luminaire assemblies & electrical component enclosures
- Disconnects
- UL Listed assemblies
- Guaranteed light levels on your field per Musco Design 184211G

##### Environmental Light Control

- Industry leading spill and glare control fixtures
- Reduced spill light and off-site glare over metal halide

##### Control Systems and Services

- (1) 24" x 72" Controls Cabinet with (7) 30 amp contactors and (2) on/off/auto switches
- (1) 24" x 72" Controls Cabinet with (7) 30 amp contactors and (2) on/off/auto switches
- Control-Link® Control and Monitoring system includes:
  - Remote on/off scheduling and control
  - Dimming capability (high/medium/low)
  - System performance monitoring with 24/7 customer support

##### Operation and Warranty Services

- Reduction of energy and maintenance costs by 40% to 85% over typical 1500W metal halide
- Product assurance and warranty program that covers materials and onsite labor, eliminating 100% of your maintenance costs for 25 years for all non-cellular poles and 10 years for cellular pole.
- 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





# EXHIBIT B

(cont.)

## Quote

### Also Includes

- Freight is included.
- Stamped Structural drawings are included.

### Payment Terms

Payment terms to be coordinated with Musco's Credit Department.

Email a copy of the Purchase Order to Musco Sports Lighting, LLC:

Musco Sports Lighting, LLC  
Attn: Karin Anderson  
Email: karin.anderson@musco.com

All purchase orders should note the following:  
Sourcewell purchase – contract number: 071619-MSL

### Delivery Timing

6 - 8 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:

- Shipment of entire project together to one location.
- Voltage and phasing for the electrical system to be confirmed prior to production.
- Structural code and wind speed = 2016 CBC, 110 mi/h. Exposure C, Importance Factor 1.0.
- Confirmation of pole locations prior to production.
- Pricing is based on (2) softball fields of 320' radius lit to 30 foot-candles infield, 20 foot-candles outfield

Thank you for considering Musco for your lighting needs. Please contact me with any questions or if you need additional details.

Karin Anderson  
Field Sales Representative  
Musco Sports Lighting, LLC  
Phone: 760-798-3162  
Project # 184211