

Purchase Agreement

Date: February 26, 2019

Project Name: Bob Lewis Ballpark

Project #: 193969

<p>1. SELLER NAME AND ADDRESS: Musco Sports Lighting, LLC ("Musco") 100 1st Avenue West – PO Box 808 Oskaloosa, IA 52577 Attn: Amber Wittmer Email: amber.wittmer@musco.com Telephone: 641-673-0411 800-825-6020 Ext 4136 Fax: 800-374-6402</p>	<p>2. BUYER NAME AND ADDRESS: Buncombe County (the "Buyer") 205 College Street Asheville, NC 28801 Attn: Josh O'Conner Email: josh.oconner@buncombecounty.org Telephone: 828-250-4233</p>
<p>3. OWNER NAME AND ADDRESS: Buncombe County 205 College Street Asheville, NC 28801 Attn: Josh O'Conner Email: josh.oconner@buncombecounty.org Telephone: 828-250-4233</p>	<p>4. SHIPPING NAME AND ADDRESS: Bob Lewis Ballpark 164 Jacob Holm Way Candler, NC 28715 Attn: Eric Jedd Email: EJedd@mbhaynes.com Telephone: 828-254-6141</p>
<p>5. WARRANTY CONTACT: Buncombe County 205 College Street Asheville, NC 28801 Attn: Josh O'Conner Email: josh.oconner@buncombecounty.org Telephone: 828-250-4233</p>	<p>6. FACILITY NAME AND ADDRESS: Bob Lewis Ballpark 164 Jacob Holm Way Candler, NC 28715</p>

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

Light-Structure System™ Foundation-to-Poletop Lighting System

- 27 – pre-cast concrete bases
- 27 – galvanized steel poles
- 75 – Total Light Control™ TLC-LED-1500 factory-aimed and assembled luminaires
- 67 – Total Light Control™ TLC-LED-1200 factory-aimed and assembled luminaires
- 47 – Total Light Control™ TLC-BT-575 factory-aimed and assembled luminaires
- 20 – OSQ Area luminaires with pole mounting brackets
- Control-Link® control & monitoring system cabinet
- Electrical component enclosures
- Pole length wire harnesses

Built to the following specifications:

- Ballast Input Voltage: ___
- Phase to Pole: ___ phase
- Structural Integrity: Based upon IBC 2015, 115mph, Exposure B

- 8. RESPONSIBILITIES OF THE BUYER AND/OR THIRD PARTY** – Buyer/Third Party agrees to:

- Confirm supply voltage required for lighting system.
- Provide confirmation on pole locations.
- Provide electrical design and materials for electrical distribution system.
- Provide labor and equipment for installation of electrical distribution system.

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

Control-Link customer support services: commission the system; monitor and report system alarms; provide automated facility management reports; provide on-off schedules via website, email, phone call or fax; and provide technical support 24 hours a day, seven days a week.

Owner/Contractor Responsibilities:

- Complete access to the site for construction using standard 2 wheel drive rubber tire equipment.
- Locate existing underground utilities and irrigation systems and verify all pole locations per Musco supplied layout.
- Pay for extra costs associated with foundation excavation in non-standard soils (rock, caliche, high water table, collapsing holes, etc.). Standard soils are defined as soils that can be excavated using standard earth auguring equipment.
- Power Company fees and schedule
- Turf, landscape and concrete repairs

Musco Responsibilities:

- Provide required poles, controls, fixtures, and foundations.
- Provide layout of pole locations and aiming diagram.
- Provide Project Management as required.

Subcontractor Responsibilities:

- Provide equipment and materials to off load equipment at jobsite per scheduled delivery.
- Provide storage containers for material as necessary and waste disposal.
- Provide adequate security to protect Musco delivered products from theft, vandalism or damage during the installation.
- Provide required permits.
- Provide electrical design for Musco to review prior to installation of panels and control circuit
- Provide materials and equipment to install all underground conduit, copper wiring, pull boxes etc. and terminate wiring as required per electrical design.
- Confirm the existing underground utilities and irrigation systems have been located and are clearly marked so as to avoid damage from construction equipment. Repair any such damage during construction.
- Provide materials and equipment to install precast concrete foundations as specified on layout.
- Remove spoils to owner designated location at the jobsite.
- Provide materials and equipment to assemble LED fixtures terminate all necessary wiring.
- Provide equipment and materials to assemble and erect Musco poles.
- Provide equipment and materials to install the new Lighting Contactor Cabinet and terminate all necessary wiring -including restroom door locks and controls
- Contractor will commission Control Link by contacting Control Link Central at (877-347-3319) and going through the following steps:
 - Check all Zones to make sure they work in both auto and manual mode.
 - 1 hour comprehensive burn of all lights on each zone.
 - Set base line for the DAS (Diagnostic Acquisition System)
 - Keep all heavy equipment off of playing fields when possible.
 - Provide startup and aiming as required to provide complete and operating sports lighting system.

E-Verify: Contractor shall comply with the requirements of Article 2 of Chapter 64 of the North Carolina General Statutes. Contractor shall also require any and all of its subcontractors to comply with the requirements of Article 2 of Chapter 64 of the North Carolina General Statutes.



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10. CONSTANT 25™ WARRANTY & MAINTENANCE PROGRAM (the “Warranty”) – Musco shall provide parts, labor and services as outlined in the Musco Constant 25 Warranty Agreement to maintain operation of lighting equipment included in the Equipment for a period of up to 25 years on the following terms:

- **Warranty Service Begins:** On the date of product shipment
- **Expiration Date:** 25 years from date of shipment
- **Monitoring, Maintenance & Control Services**
- **Light levels** – shall be guaranteed for 25 years
- **Energy Consumption:** System Average 224.54 kW

Area of Lighting	Number of Luminaires	Target Light Levels	Estimated Annual / 25 Year Estimated Usage Hours
Softball 1	34	50 FC Infield 30 FC Outfield	300 / 7,500 hours
Softball 2	34	50 FC Infield 30 FC Outfield	300 / 7,500 hours
Softball 3	31	50 FC Infield 30 FC Outfield	300 / 7,500 hours
Baseball 1	22	50 FC Infield 30 FC Outfield	300 / 7,500 hours
Baseball 2	22	50 FC Infield 30 FC Outfield	300 / 7,500 hours
Baseball 3	20	50 FC Infield 30 FC Outfield	300 / 7,500 hours
Baseball 4	26	50 FC Infield 30 FC Outfield	300 / 7,500 hours

11. TOTAL PRICE – Buyer will pay for the above-described Equipment and, if applicable, Services the Total Price of \$1,295,000.00 plus applicable taxes, payable as follows.

- \$1,295,000.00 within 30 days from invoice date

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

Monthly progress invoicing and payments will apply.

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

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

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

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

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

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



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

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

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

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

14. DELIVERY – Normal delivery to the shipping address indicated above is 6 to 8 weeks after submittal approval or release of order, if later. If the Equipment is shipped in multiple lots, Musco shall prepare a separate invoice for the price of the Equipment shipped at the time of each shipment. Buyer shall pay the amount of each such invoice upon the same terms as set out in the "Total Price" paragraph of this Agreement.

All deliveries shall be made by means of a common carrier or some other reasonable means chosen by Musco. All risk of loss to Equipment sold shall pass to Buyer upon Musco's substantial completion of the Services.

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

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

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

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

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



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- 18. SECURITY AGREEMENT** – In consideration of the promises contained herein, Buyer hereby grants and conveys to Musco, to secure payment and performance of all obligations in full, a purchase money security interest in the Equipment, including all repairs, replacements and accessions thereto and proceeds thereof (collectively referred to as the “Secured Property”). Buyer hereby irrevocably authorizes Musco at any time to register in any registration office in any province (including personal property registries and if applicable, land titles or real property registries) any initial financing statements, financing change statements, notices of security interest or other documents relating to this security interest or this transaction. Buyer further agrees to promptly furnish any information requested by Musco to effectuate the terms of this Agreement. Buyer further agrees to execute any document reasonably required by Musco to perfect the security interest granted herein and to assure the preservation, priority and enforcement of such security interest. Buyer agrees that value has been given for this security interest and that the parties have not agreed to postpone the time for attachment of the security interest. Buyer agrees that value has been given for this security interest and that the parties have not agreed to postpone the time for attachment of the security interest. Any security interest filings or right to file same shall expire and be canceled by Musco at Musco’s sole expense upon payment in full in accordance with the these terms.
- 19. INSURANCE** – From and after delivery, regardless of the pending performance of the Services, until such time as Buyer has performed in full all obligations contained herein, Buyer shall maintain adequate insurance covering the Equipment in accordance with generally accepted business practices. The County of Buncombe is hereby self-insured for tort claims. Nothing herein shall be construed as a waiver on the part of the County to any defense of any claim, including, but not limited to the defense of governmental immunity. And that the County's obligations under this paragraph shall be limited to the extent and manner of recovery pursuant to County's self-insured claim policies and North Carolina law.
- 20. DEFAULT** – Each of the following shall constitute a default (“Default”) under this Agreement: a) failure to pay, in full, any payment when due hereunder; b) Buyer becomes the subject of a bankruptcy, receivership or insolvency proceeding; c) any warranty, representation or statement made or furnished to Musco by or on behalf of the Buyer proved to have been false in any material respect when made or furnished; d) loss, theft, damage, destruction or encumbrance to, or of, the Secured Property or the making of any levee, seizure or attachment thereof or thereon prior to payment in full; or e) the occurrence or non-occurrence of any event or events which causes Musco, in good faith, to deem itself insecure for any reason whatsoever.
- 21. REMEDIES UPON DEFAULT** – In the event of Default, Musco may, at its option, and without notice or demand: a) declare the entire unpaid balance owing hereunder due and payable at once; b) proceed to recover judgment for the entire unpaid balance due; c) exercise all rights provided to Musco under this Agreement, any applicable personal property security act (or similar legislation), at law or in equity including but not limited to entering the Buyer’s premises and taking possession of the Secured Property. All the remedies described herein are cumulative, and may be exercised in any order by Musco. Buyer agrees to pay all costs (including reasonable attorney’s fees and court costs) incurred by Musco in disposing of the Secured Property and collecting any amounts owing hereunder, and such costs shall be part of the obligations secured hereunder.
- 22. FORCE MAJEURE** – Musco shall not be liable for delays or failure to perform in respect of the Equipment or the Services due, directly or indirectly, to (i) causes beyond Musco’s reasonable control, or (ii) acts of God or nature, acts (including failure to act) of any governmental authority, wars (declared or undeclared), strikes or other labor disputes, fires, and natural calamities (such as floods, earthquakes, storms, epidemics).



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23. EEO COMPLIANCE – When applicable, Musco and Subcontractor shall comply with the EEO Clause in Section 202 of Executive Order 11246, as amended, which is incorporated herein by specific reference.

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

24. CONDITIONS OF AGREEMENT

- a. **GOVERNING LAW** – Claims, disputes and/or other matters in question between the parties that are not resolved by mediation shall be heard in the North Carolina General Courts of Justice in Asheville, Buncombe County, North Carolina, which said Court shall have jurisdiction to hear any dispute between the parties arising out of this agreement. The Parties hereby agree that this paragraph establishes exclusive and sole jurisdiction for any legal proceeding in Buncombe County, North Carolina.
- b. **EXPENSES/REMEDIES** – Buyer shall pay to Musco the reasonable expenses, including court costs, legal and administrative expenses and reasonable legal fees (on a solicitor and client basis), paid or incurred by Musco in endeavoring to collect amounts due from Buyer to Musco. It is further understood that if Buyer does not make a payment as due, Musco has the right to forward appropriate notices or claims on jobs with owners, bonding companies, general contractors, or the like, as deemed appropriate by Musco.
- c. **ENTIRE AGREEMENT** – This Agreement, the written Warranty to be delivered to Buyer, and any invoice issued by Musco pursuant to this Agreement constitute the entire agreement between the parties and supersede all prior statements of any kind made by the parties or their representatives. No representative or employee of Musco has any authority to bind Musco to any term, representation or warranty other than those specifically included in this written Agreement or the written Warranty to be delivered to Buyer in connection with this Agreement. This Agreement may not be amended or supplemented except by written agreement executed by Musco and Buyer.
- d. **ACCEPTANCE** – This Agreement is subject to the approval of Musco’s Credit Department and the written acceptance of this Order by Musco.

BUNCOMBE COUNTY

MUSCO SPORTS LIGHTING, LLC

Acceptance

Acceptance

this _____ day of _____, 20____

this _____ day of _____, 20____

Signature

Signature

Name and Title

Name and Title

This instrument has been preaudited in the manner required by the Local Government Budget and Fiscal Control Act. _____, Donald Warn, Buncombe County Finance Director.

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



_____ Initials