

# **MEMORANDUM**

**TO: MAYOR AND CITY COUNCIL**

**FROM: Tom Bergeson, Director of Public Works**

**SUBJECT: Re-lamping of John Burch Field**

**DATE: February 17, 2015**

## **BACKGROUND**

The City entered into a contract in 2002 with the school that states that the school and city would each pay ½ of the cost of new lamps at John Burch Field. They are now getting weak and not producing as much light.

## **REQUESTED COUNCIL ACTION**

Motion to approve ½ of the replacement costs for new bulbs at John Burch Fields. This was approved and recommended to Council at the last Public Works Commission Meeting. Our share would be \$2,565 payable to Musco Electric. This price includes all materials, labor and disposal fees of the old bulbs.

## FIELD SERVICE AGREEMENT

<b>1. CUSTOMER NAME AND ADDRESS:</b>  Customer Name: <u>City of Cannon Falls</u>  Address:  <u>City of Cannon Falls</u> <u>306 W Mill St</u> <u>Cannon Falls, MN 55009</u>  Attn:  <u>Tom Berguson</u>  Telephone:  <u>507-263-4626</u>  Fax:	<b>2. PROPERTY OWNER NAME AND ADDRESS:</b>  Property Owner Name:  <u>City of Cannon Falls</u>  Address:  <u>City of Cannon Falls</u> <u>306 W Mill St</u> <u>Cannon Falls, MN 55009</u>  Attn:  <u>Tom Berguson</u>  Telephone:  <u>507-263-4626</u>  Fax:
<b>3. PROPERTY NAME AND ADDRESS:</b>  Property Name: <u>John Burch Park</u>  Property Address: <u>John Burch Park</u>  <u>Hwy 19</u>  <u>Cannon Falls, MN 55009</u>  County: <u>Goodhue</u>	

## FIELD SERVICE AGREEMENT

This Field Service Agreement (“Agreement”) dated as of February 4th, 2015 (the “Effective Date”) is made by and between Musco Sports Lighting, LLC (“Musco”) and City of Cannon Falls (“Customer”) and provides for the following terms and conditions:

1. **Scope of Service.** Musco agrees to provide field services (“Services”) to City of Cannon Falls in Cannon Fall, MN (“Property”) starting on February 4th, 2015. Musco will provide lift and labor to complete a full relamp and take light levels on the football/baseball field at John Burch Park. In connection with the Services, Musco will provide basic materials consisting of (57) 1500w Musco Z-lamps and additional materials as needed. If additional time or materials are needed to complete the Project, Musco must obtain Customer’s consent before proceeding.
2. **Service Fee.** Customer is responsible to pay Musco a service fee for the basic materials and labor for the Project in the amount of \$2,565.00 (“Service Fee”), due Net 30 days from the date of invoice. Any additional materials and labor needed for the Project will be charged at an additional price. In addition, Customer will pay when due all applicable sales, use, franchise, gross receipts, or similar taxes relating to this Agreement. All past due amounts will accrue interest at a rate equal to 1.5% per month until paid in full. Customer must pay all costs (including reasonable attorney’s fees and court costs) associated with collecting any delinquent amounts due.
3. **Licenses and Permits.** Musco, a non-union organization, requires Customer to arrange and secure all licenses, permits and applicable labor contracts with local authorities. Musco is not responsible for obtaining local union labor or any other permits, if required.
4. **Two-Year Lamp Warranty and Disclaimer.** Musco warrants that lamps delivered and installed for the Project will not fail for two years from the date of delivery so long as the lamps are used in accordance with Musco’s instructions. Lamps that fail during this warranty period will be replaced by Musco, but Musco is not responsible for installation of the replacement lamps. Lamps damaged by physical trauma, electrical surges, or any other improper use or operation, are not covered by this two-year warranty. **Except as expressly provided in this Agreement, Musco has not made, and in rendering the Services, will not be deemed to make, any representation or warranty of any nature, whether express, implied, statutory or otherwise. Musco expressly disclaims all such representations or warranties, including any implied warranty of merchantability, fitness for a particular purpose. No oral or written specification, advice, service description, quality characterization or other information or statement given or made outside of this Agreement by Musco will create a representation or warranty or expand or otherwise affect the express warranties stated in this Agreement.**
5. **Nonliability.** Before Musco enters the Property to set up its equipment under this Agreement, Customer must notify Musco of any landscaping or surface areas that are to be avoided by Musco in setting up its equipment. Absent Musco’s negligence or willful misconduct, Musco is not, at any time or to any extent, liable, responsible or in any way accountable for any loss, injury, death or damage to persons or property, from any cause that at any time may be suffered or sustained by Customer, or by any person on or about

the Property arising out of the entry or activities on the Property by Musco, or any person or persons permitted on the Property by Musco.

6. **Indemnification.** Customer agrees to defend at its expenses, indemnify and save Musco harmless from any and all claims, liabilities, losses, damages, costs, and expenses whatsoever arising out of any loss, injury, death or damage arising out of the entry or activities on the Property by Musco, or any person or persons permitted on the Property by Musco; but excluding any claims, liabilities, losses, damages, costs and expenses to the extent caused by the willful misconduct or negligence of Musco or Musco's employees, agents, contractors or invitees.
7. **Assignment.** Musco may assign its interest or delegate its obligations as provided in this Agreement to any successor in interest by merger, operation of law, consolidation, re-organization, asset purchase or other purchase of Musco's entire business. Customer may not assign its interest or delegate its obligations as provided herein without Musco's prior written consent.
8. **Governing Law.** This Agreement is governed by the laws of the State of Iowa without giving effect to the principles of the conflicts of law.
9. **Severability.** In the event that any clause, sentence or provision contained in this Agreement is deemed illegal, null or void for any reason, or is held by any court of competent jurisdiction to be so, the remaining portions of this Agreement will remain in full force and effect.
10. **Counterparts.** This Agreement may be executed in multiple counterparts, any one of which need not contain the signature of more than one party, but all of which counterparts taken together, shall constitute one and the same agreement. Signatures may be exchanged by telecopy, with original signature to follow. Each party hereto shall be bound by his or its own telecopied signature and shall accept the telecopied signature of the other party hereto.
11. **Acceptance.** The Service Fee set by Musco in accordance with this Agreement applies only if the project is completed within 90 days of the Effective Date of this Agreement. This Agreement becomes effective upon Musco's acceptance at its home office located in Oskaloosa, Iowa.

**Musco Sports Lighting, LLC**



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Mark Keller  
Lighting Services Sales Representative  
100 1st Avenue West  
P.O. Box 808  
Oskaloosa, IA 52577  
(800) 825-6020  
(888) 397-8736 (Fax)

City of Cannon Falls

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Name:  
Title:  
Address:  
City, State, Zip:  
Phone Number  
Fax Number: