

ORDINANCE NO. 12-13

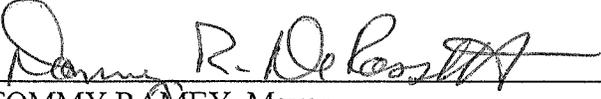
**AN ORDINANCE AUTHORIZING THE MAYOR
AND THE VILLAGE FISCAL OFFICER TO ENTER INTO
A CONTRACT WITH MUSCO SPORTS LIGHTING, LLC,
FOR A FULL RE-LAMP OF THE LIGHTS AT THE
VILLAGE OF SPENCER'S SOFTBALL FIELD AND
TENNIS AND BASKETBALL COURTS
AND DECLARING AN EMERGENCY**

NOW, THEREFORE, BE IT ORDAINED by the Council of the Village of Spencer,
Ohio, three-fourths (3/4) of its members concurring herein as follows:

1. That a full re-lamping of the lights at the Village of Spencer's softball field and tennis and basketball courts should be performed in accordance with the description of work to be done as set forth in the Field Service Agreement attached hereto and incorporated herein as "Exhibit A";
2. That the proposal of Musco Sports Lighting, LLC, in the total amount of Four Thousand Two Hundred Dollars (\$4,200) is hereby accepted by the Village of Spencer;
3. That the Mayor and the Village Fiscal Officer are hereby authorized to enter into the Field Service Agreement with Musco Sports Lighting, LLC, a copy of which Agreement is attached hereto and incorporated herein as "Exhibit A."
4. That the contract price shall be paid from the J. B. Firestone Trust Fund 2902 in accordance with said contract.
5. That this Ordinance is hereby determined to be an emergency measure necessary for the immediate preservation of the public peace, health, and safety of said Village and for the particular reason that it is immediately necessary to effectuate the re-lamping of the softball field

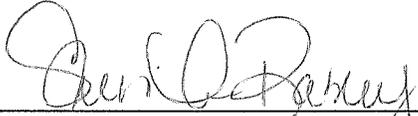
and tennis and basketball courts during the current building season, and that this Ordinance shall be in full force and effect from and after its passage.

PASSED: October 16, 2013



TOMMY RAMEY, Mayor

ATTEST:

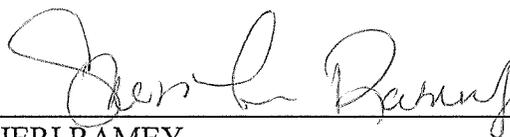


SHERI RAMEY, Village Fiscal Officer

CERTIFICATE

The undersigned, Sheri Ramey, Village Fiscal Officer, hereby certifies that the foregoing is a true and exact copy of Ordinance No. 12-13 duly passed by Council for the Village of Spencer, Ohio, on the 16th day of October, 2013.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal at Spencer, Ohio, on this 16th day of October, 2013.

A handwritten signature in cursive script, appearing to read "Sheri Ramey", is written above a horizontal line.

SHERI RAMEY
Village Fiscal Officer

FIELD SERVICE AGREEMENT

1. CUSTOMER NAME AND ADDRESS: Customer Name: <u>Village of Spencer</u> Address: <u>Village of Spencer</u> <u>315 South Main Street</u> <u>Spencer, OH 44275</u> Attn: <u>Tom Gehring</u> Telephone: <u>330-416-4542</u>	2. PROPERTY OWNER NAME AND ADDRESS: Property Owner Name: <u>Village of Spencer</u> Address: <u>Village of Spencer</u> <u>315 South Main Street</u> <u>Spencer, OH 44275</u> Attn: <u>Tom Gehring</u> Telephone: <u>330-416-4542</u>
3. PROPERTY NAME AND ADDRESS: Property Name: Property Address: County:	

FIELD SERVICE AGREEMENT

This Field Service Agreement (“Agreement”) dated as of September 19th, 2013 (the “Effective Date”) is made by and between Musco Sports Lighting, LLC (“Musco”) and Village of Spencer (“Customer”) and provides for the following terms and conditions:

- 1. Scope of Service.** Musco agrees to provide field services (“Services”) to Village of Spencer in Spencer, OH (“Property”) starting on October 16, 2013, lift and labor to complete a full relamp on the softball field, tennis, and basketball courts. In connection with the Services, Musco will provide basic materials consisting of (24) 1500w Musco lamps and (12) 1000w Musco lamps. 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 \$4,200.00 (“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. **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.

7. **Governing Law.** This Agreement is governed by the laws of the State of Ohio without giving effect to the principles of the conflicts of law.

8. **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.

9. **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.

10. **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

Village of Spencer



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



Name:
Title: Mayor
Address:
Phone Number:
Fax Number:

Approved as to form:

Gregory A. Huber, Solicitor for the Village of Spencer