



Agenda Item # 0A7H

VILLAGE OF ROYAL PALM BEACH

Agenda Item
Summary

AGENDA ITEM:

Approval and authorization for the Village Manager to execute the Second Addendum to Purchase Agreement for the provision of sports lighting equipment and services with Musco Sports Lighting, LLC for Royal Palm Beach Commons Park Lighting. The cost for said services shall not exceed \$189,500.00 and funds will come from project PR1903.

ISSUE:

Permanent lighting of the dog park and overflow parking lots on both sides of the sporting center is needed to increase safety for residents at night and will reduce temporary lighting costs for special events. The project includes the materials of the Musco Sports Lighting, LLC; including the steel poles and energy-saving LED light fixtures.

The sports lighting equipment was competitively bid by Clay County, Florida and the Village piggybacked said contract by entering into the initial Purchase Agreement on February 20, 2020. The Village and Musco Sports Lighting, LLC entered in the First Addendum to Purchase Agreement, effective retroactively as of February 20, 2020. The proposed Second Addendum is for the purchase and delivery of additional sports lighting and 25 year maintenance / warranty plan for the Commons Park Lighting project. Installation of said lighting will be under a separate agreement.

Funds to come from Project: PR1903, Account No. 302-7200-572.64-99

RECOMMENDED ACTION:

Staff recommends a motion to approve.

Initiator:	Village Manager	Agenda Date:	Village Council
	Approval:		Action:
Village Engineer		7/16/2020	

SECOND ADDENDUM TO PURCHASE AGREEMENT

THIS SECOND ADDENDUM TO PURCHASE AGREEMENT ("Second Addendum") is hereby entered into this ____ day of _____, 2020, by and between the Village of Royal Palm Beach, a municipal corporation, ("Village") having its principal office located at 1050 Royal Palm Beach Boulevard, Royal Palm Beach, Florida, 33411; and Musco Sports Lighting, LLC, a foreign limited liability company having its principal address at 100 1st Avenue West, Oskaloosa, Iowa 52577 ("Musco").

WHEREAS, the Village and Musco entered into a Purchase Agreement ("Agreement") for the provision of sports lighting and equipment, approved February 20, 2020; and

WHEREAS, the Village and Musco executed a First Addendum to Purchase Agreement ("First Addendum") on March 4, 2020; and

WHEREAS, the Village and Musco agree to modify the Agreement as set forth below.

NOW, THEREFORE, and in consideration of mutual terms, conditions, promises, covenants and payments hereinafter set forth, the Village and Musco agree as follows:

Section 1: Section 11, Sentence 1 of the Agreement is hereby modified and hereinafter shall read as follows:

11. **TOTAL PRICE** – Buyer will pay for the above-described Equipment and, if applicable, Services the Total Price of \$540,700.00 (plus applicable taxes) which includes additional sports lighting and equipment as depicted on Exhibit "A", due within 30 days from invoice date; with fifteen percent (15%) due at the time of issuance of the Notice To Proceed and the remaining eighty-five percent (85%) due 30 days upon receipt of the equipment.

Section 2: **REAFFIRMATION OF RIGHTS AND OBLIGATIONS** - The Village and Musco hereby reaffirm their rights and obligations under the Agreement as modified by this Second Addendum. In the event of a conflict or ambiguity between the Agreement and this Second Addendum, the terms and provisions of this Second Addendum shall control. This Second Addendum shall be attached to the Agreement and shall become a part thereof. All other sections of the Agreement shall remain in full force and effect as set forth in the Agreement and there shall be no changes to the Agreement with the exception of those items specifically set forth in this First Addendum.

IN WITNESS WHEREOF, the parties have executed this Second Addendum on the date set forth above.

WITNESSES:

By: Elizabeth Johannes
Print Name: Elizabeth Johannes

MUSCO SPORTS LIGHTING, LLC

By: [Signature]
Print Name: James M. Hansen
Title: Secretary
Date: July 6, 2020

WITNESSES:

By: _____
Print Name: _____

VILLAGE OF ROYAL PALM BEACH

By: _____
Print Name: _____
Title: _____
Date: _____

Exhibit A
June 30, 2020 Purchase Agreement

Purchase Agreement

Date: June 30, 2020

Project Name: Commons Park Area Lighting

Project #: 186585

<p>1. SELLER NAME AND ADDRESS: Musco Sports Lighting, LLC ("Musco") 100 1st Avenue West / PO Box 808 Oskaloosa, IA 52577 Attn: Cynde Gillispie Email: cynde.gillispie@musco.com Telephone: 800-754-6025 ext. 4742 Fax: 800-374-6402</p>	<p>2. BUYER NAME AND ADDRESS: Village of Royal Palm Beach (The "Buyer") 1050 Royal Palm Beach Blvd. Royal Palm Beach, FL 33411 Attn: Adamo DiSisto Email: adisisto@royalpalmbeach.com Telephone: 561-790-5163</p>
<p>3. OWNER NAME AND ADDRESS: Village of Royal Palm Beach 1050 Royal Palm Beach Blvd. Royal Palm Beach, FL 33411 Telephone: 561-790-5124</p>	<p>4. SHIPPING NAME AND ADDRESS: Commons Park 11004 Poinciana Blvd. Royal Palm Beach, FL 33411 Attn: _____ Email: _____ Telephone: _____</p>
<p>5. WARRANTY CONTACT: Village of Royal Palm Beach 1050 Royal Palm Beach Blvd. Royal Palm Beach, FL 33411 Attn: _____ Email: _____ Telephone: _____</p>	<p>6. FACILITY NAME AND ADDRESS: Commons Park 11004 Poinciana Blvd. Royal Palm Beach, FL 33411</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:

- 6 – pre-cast concrete bases
- 4 – 80' galvanized steel poles
- 2 – 70' galvanized steel poles
- 18 – Total Light Control™ TLC-LED-600 factory-aimed and assembled luminaires
- 6 – OSQ Area luminaires with pole mounting brackets
- Electrical component enclosures
- Pole length wire harnesses
- 6 – GFCI receptables (one per pole)
- Control-Link® control and monitoring system

Built to the following specifications (needs confirmation):

- Ballast input voltage: 208
- Phase to pole: 3
- Structural integrity: based upon FBC 2017, 170 mph, exposure C

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

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

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 Control-Link app or website, email, phone call or fax; and provide technical support 24 hours a day, seven days a week.



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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 for a period of 25 years on the following terms:**
- Warranty service begins on the date of product shipment
 - Expiration date is 25 years from date of shipment
 - Monitoring, maintenance and control services
 - Light levels shall be guaranteed for 25 years
 - Energy Consumption: 10.44 kW

- 11. TOTAL PRICE – Buyer will pay for the above-described Equipment and, if applicable, Services the Total Price of \$189,500.00 (plus applicable taxes), payable as follows:**

- \$189,500.00 within 30 days from invoice date

Pricing listed above is based on Clay County bid #18/19-2.

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

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.

- 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**

- 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 delivery by Musco of such Equipment to the shipping location indicated above. 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.



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- 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 (877-347-3319). 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.
- 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.
- 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. Buyer shall name Musco as loss payee until such time as Buyer has performed in full all obligations contained herein.
- 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.



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- 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).
- 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. **APPLICABLE LAW** – This Agreement shall be governed by the laws, including the Uniform Commercial Code, adopted in the State of Iowa as effective and in force on the date of this Agreement.
 - 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.



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VILLAGE OF ROYAL PALM BEACH

MUSCO SPORTS LIGHTING, LLC

Acceptance

Acceptance

this _____ day of _____, 20__

this 6th day of July, 2020

Signature

Signature



Name and Title

James M. Hansen, Secretary
Name and Title

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



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