

# COUNCIL CHAMBER

City of Berea, Ohio

ORDINANCE No. 2014-70

By Dale A. Lange Sponsored By Mayor Cyril M. Kleem

## AN ORDINANCE

### RATIFYING AND AUTHORIZING THE MAYOR TO ENTER INTO A LEASE AGREEMENT FOR THE ACQUISITION OF FIELD LIGHTING FOR THE MULTI-PURPOSE FIELD AT THE GROZA FIELD RECREATION COMPLEX IN COOPERATION WITH THE BERA BOARD OF EDUCATION, AND DECLARING AN EMERGENCY.

**WHEREAS**, the City of Berea, in cooperation with the Berea Board of Education, has arranged for the installation of lighting to illuminate the multi-purpose field at the Groza Field Recreation Complex; and

**WHEREAS**, the City of Berea has found that the Groza Field Recreation Complex has experienced and will continue to experience increased usage by the community; and

**WHEREAS**, the City of Berea and the Berea Board of Education are desirous of entering into Lease agreements under which the Berea Board of Education will act together with the City of Berea to provide lighting at the multi-purpose field at the Groza Field Recreation Complex; and

**WHEREAS**, the City of Berea and the Berea Board of Education have agreed to divide the cost of this project which will inure to the benefit of both parties.


**NOW, THEREFORE, BE IT ORDAINED** by the Council of the City of Berea, State of Ohio:

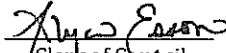
**SECTION 1.** That the Mayor, or his designee, be and he is hereby authorized and directed to enter into a Lease Agreement to provide for lighting at the multi-purpose field at the Groza Field Recreation Complex in substantially the form of Exhibit A, which is attached hereto.

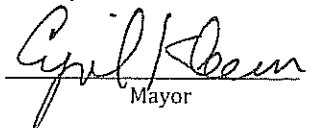
**SECTION 2.** That it is found and determined that all formal actions of this Council concerning and relating to the adoption of this Ordinance were adopted in an open meeting of this Council, and that all deliberations of this Council and of any of its committees that resulted in such formal actions were in meetings open to the public, in compliance with all legal requirements, including Section 121.22 of the Ohio Revised Code.

**SECTION 3.** That this Ordinance is declared to be an emergency measure necessary for the immediate preservation of the public peace, property, health, safety and welfare, and for the further reason that it is immediately necessary to provide for the evening and after dark use of this important recreation facility. Therefore, provided this Ordinance receives the affirmative vote of two-thirds of all members elected to Council, it shall take effect and be in force immediately upon its passage and approval by the Mayor; otherwise, from and after the earliest period allowed by law.

PASSED: September 15, 2014

  
President of Council

ATTEST:   
Clerk of Council

APPROVED: September 16, 2014  
  
Mayor

APPROVED AS TO FORM:

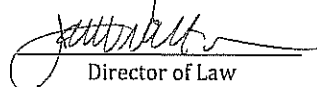
  
Director of Law

Exhibit "A"  
2014-70



Groza Multipurpose Field  
Berea, OH  
Date: July 15, 2014  
To: City of Berea

TIPS / TAPS  
Master Project: 163994  
Contract Number: 8022813  
Expiration: 02/27/2014  
Commodity: Sports Facility Lighting - New

**Quotation Price (Turnkey)**

Musco's Light Structure Green™ as described below and delivered to the job site:  
Football/Soccer.....\$77,317.50

\*This quote is for half of the equipment to light the field.

This quote includes lighting equipment, installation and underground wiring.

*Pricing furnished is effective for 60 days unless otherwise noted and is considered confidential.  
Divulging technical or pricing information to competitive vendors will result in removal from the bid list.*

**Equipment Description**

Light Structure Green™ System delivered to your site in Five Easy Pieces™

- Pre-cast concrete bases
- Galvanized steel poles
- UL Listed remote electrical component enclosures
- Pole length wire harnesses
- Factory-aimed and assembled luminaires

Also Includes:

- Energy savings of more than 50% over a standard lighting system
- 50% less spill and glare light than Musco's prior industry leading technology
- Musco Constant 25™ product assurance and warranty program that eliminates 100% of your maintenance costs for 25 years, including labor and materials
- Guaranteed constant light level of 30 footcandles for 25 years.
- 1 group re-lamp at the end of the lamps' rated life, 5000 hours
- Reduced energy consumption with an average of 43.79 kW per hour
- Control Link® Control & Monitoring System for flexible control and solid management of your lighting system
- Lighting Contactors sized for Voltage and Phasing

**Payment Terms to be determined between Musco Credit department and purchasing entity**

Fax or Mail a copy of the Purchase Order to Region 8 Service Center and Musco Sports Lighting:



Musco Finance, LLC  
 100 1<sup>st</sup> Avenue West  
 Oskaloosa, IA 52577  
 Phone: 800-825-6020  
 Fax: 641-673-6360

## Lease Purchase Proposal

Customer Name: City of Berea	Date: July 17, 2014
City, State Berea, OH	
Contact Person: Tony Armagno	Sales Rep: John Kaufman
Project Name: Groza Multipurpose Field	Project # 166579

Half of Project Cost	\$77,317.50
Down-payment (Due with Order)	\$.00
Total Amount Financed	\$77,317.50
Term of Contract (Years)	10
Interest Rate (Annual)	4.95%
Payments per Year	1
Payment Amount	\$10,044.05
Number of Payments	10

- At the end of the term, clear title passes with the completion of payments.
- Amount does not include sales tax. Proof of exemption is required.
- \$250.00 documentation fee due at lease signing.
- Proposal assumes first payment is due one year from contract date.

**The interest rate quoted is based on current market rates and will be adjusted when the lease closes. The lease must qualify for "Federal Income Tax Exempt" status for the Lessor as defined by Section 265(b)(3)(B) of the Internal Revenue Code of 1986\*.**

This proposal is subject to acceptance of documentation and credit approval. The finance agreement is to be executed within 14 days of the execution of the equipment purchase contract.

Required information may include three years audited financial statements, current year's budget, and most current quarter interim profit and loss statement. Additional information may be requested.

\*Lessee must certify that it reasonably anticipates that it and all of its subordinate entities will not issue more than \$10,000,000 of "qualified tax-exempt obligations during the calendar year in which the Lease is executed. The interest rate may vary if this is not the case.

**LESSEE:**  
**ADDRESS:**  
**LEASE NUMBER:**  
**DATE OF LEASE:**

**DESCRIPTION OF EQUIPMENT:**

1. **COVENANTS:** Lessee represents, covenants and warrants that (a) It is a public body corporate and politic or other qualified entity, (b) It is a "tax-exempt issuer" within the meaning of the Internal Revenue Code Sections 147 and/or 150 and has complied with all terms and conditions therein stated, (c) It is authorized by all applicable laws to make, and perform under, the Lease, (d) The equipment is essentially needed for its proper, efficient and economic operation, (e) At the time of making the Lease, sufficient funds were appropriated to fulfill the obligations of the current fiscal year, and (f) Lessee has not previously terminated a lease for non-appropriation, except as specifically described in a letter appended hereto.
2. **PAYMENTS:** The payment shall be payable in the amounts and on the dates set forth in the attached Exhibit "Schedule of Payments" until the total payments and all other obligations are paid in full. All payments shall be made to the Lessor at its address or at such other place as Lessor may designate in writing.
3. **PURCHASE OPTION:** After making all required payments, Lessee may purchase the equipment for \$1.00. At any other time, Lessee may purchase the Equipment for the then applicable "Early Term/Purchase Option" shown in the amortization schedule furnished by Lessor.
4. **NON-APPROPRIATION:** If Lessee is not allotted funds for the next Fiscal Period to continue the payments under this Lease, and has no funds for the purchase, lease or rental of Equipment or services to perform functions similar to those performed by the Equipment, and has no funds from other sources, Lessee may terminate this lease at the end of the then current Fiscal Period, by giving ninety (90) days written notice to Lessor, and enclosing therewith a sworn statement by the Chief Financial Officer and Secretary of Governing Board of the Lessee that the foregoing conditions exist. In the sole event, Lessee shall not be obligated to make payments beyond the end of the then current Fiscal Year. Upon the occurrence of this event, Lessee agrees, if requested, to provide Lessor with an opinion of its counsel relating to the circumstances of non-appropriation. Lessee shall, at its sole expense, both restore the Equipment to its original condition, allowing for reasonable wear and tear, and return it to the Lessor, or to a place designated by the Lessor.
5. **PAYMENTS UNCONDITIONAL:** Lessee has examined, tested and accepted the Equipment covered by this lease. As long as funds have been legally appropriated, it will not fail to make agreed payments, regardless of loss, damage, destruction, malfunction or disrepair of the Equipment, or dispute with the vendor for any other reason.
6. **DISCLAIMER OF WARRANTIES:** LESSOR MAKES NO WARRANTY, EXPRESS OR IMPLIED, AS TO ANY MATTER WHATSOEVER, INCLUDING THE CONDITION OF THE EQUIPMENT, ITS MERCHANTABILITY OR ITS FITNESS FOR ANY PARTICULAR PURPOSE, AND, AS TO LESSOR, LESSEE LEASES THE EQUIPMENT "AS IS". UNDER NO CIRCUMSTANCES SHALL LESSOR BE RESPONSIBLE FOR ANY INCIDENTAL OR CONSEQUENTIAL DAMAGES IN CONNECTION WITH THE LEASE AND/OR THE EQUIPMENT THEREUNDER. Lessor, or any successor assignee, shall not be responsible for any consequential or special damages arising from the leasing, use, ownership of the equipment.
7. **SIGNATURE:** Each signer warrants that he/she is fully conversant with relevant legal and regulatory provisions, and has full power to bind Lessee and Lessor, respectively.

## GENERAL TERMS AND CONDITIONS

- (a) **TITLE:** Title to the Equipment shall remain with Lessee. To secure the payment of all Lessee's obligations under this Agreement, Lessee grants to Lessor a security interest constituting a first lien on the Equipment and on all additions, attachments, accessions, that are considered to be an integral part of the Equipment, and substitutions thereto, and on any proceeds therefrom, until Lessee has made all required payments or exercised its earlier option to purchase. The Equipment is, and will remain personal property and will not be deemed to be affixed or attached to real estate or any building thereon.
- (b) **REPAIRS:** Lessee, at its sole expense, shall maintain the Equipment in good condition and state of repair. The payments specified herein do not include maintenance or repair services or repair or replacement parts for the Equipment, unless separately stated.
- (c) **TAXES: STATE AND LOCAL TAXES:** In addition to payments specified herein, Lessee shall promptly pay all taxes, assessments and other governmental charges (including penalties, interest, recording and registration fees, if any) levied or assessed: (1) upon the Lessee's interest in, or use or operation of, or earnings arising from, the Equipment; and (2) against Lessor, on account of its ownership, use or operation, leasing to the Lessee, of the Equipment, or receipt of payments or earnings from it, exclusive, however, of taxes based on net income of Lessor. **FEDERAL INCOME TAX REPORTING REQUIREMENTS** – Lessee acknowledges that its compliance with the reporting requirements of the Internal Revenue Code is essential to the exemption from Federal Income tax of the interest portion of payments made by Lessee hereunder. Accordingly, Lessee agrees that its failure to comply with those requirements provided in paragraph (i) below, shall entitle Lessor and any of its assignee(s) to be indemnified and held harmless of Lessee for all costs, liabilities, damages, expenses, taxes and penalties (including Federal Income tax penalties and interest) incurred as a result of such failure, which amount Lessee agrees to pay upon written demand therefore. **FEDERAL INCOME TAX EXEMPTION STATUS** – Lessee certifies that it reasonably anticipates that not more than \$10,000,000.00 of "qualified tax-exempt obligations" (as that term is defined in Section 265 (b) 3 (D) of the Internal Revenue Code, as amended by the Tax Reform Act of 1986, (the "Code") will be issued by it and subordinate entities during the calendar year in which the Lease begins. Further, Lessee will, by resolution, designate the Lease as comprising a portion of the \$10,000,000.00 in aggregate issues to be designated as "qualified tax-exempt obligations" eligible for the exception contained in Section 265 (b) 3 (D) of the Code allowing for an exemption to the general rule of the Code which provides for a total disallowance of a deduction for interest expenses allocable to the carrying of tax-exempt obligations. **CERTIFICATE AS TO ARBITRAGE** – The Agreement was issued by the Lessee under and pursuant to law to finance the acquisition of certain Equipment described herein. The Lessee is entitled to receive said equipment in consideration for its obligation to make Rental Payments under this Agreement. The Equipment will be used in furtherance of the public purposes of the Lessee. The Lessee has not covenanted not to sell or otherwise dispose of the Equipment during the term of this Agreement. The Lessee will not receive any monies, funds, or other "proceeds" as a result of the Agreement. The Lessee expects to make payments under this Agreement from its general fund on the basis of annual appropriations in amounts equal to the required payments hereunder. The remaining general funds of the Lessee are not reasonably expected to be used to make such payments and no other monies are pledged to the payment of Rental Payments or other payments under this Agreement, or are reasonably expected to be used to pay principal and interest hereunder. No reserve fund has been established to make such payments. The Lessee has not received notice that its Arbitrage Certificate may not be relied upon with respect to its issues nor has it been advised that any adverse action by the Commissioner of Internal Revenue is contemplated. On the basis of the facts and expectations set forth above, the obligations of the Lessee hereunder will not constitute an "Arbitrage Bond" under Section 1.48 of the Internal Revenue Code of 1986, as amended.
- (d) **INSPECTION:** Lessor shall have the right to enter the premises where the Equipment is located at all reasonable times, to inspect the Equipment and otherwise determine Lessee's compliance with the terms of this Lease.
- (e) **ALTERATIONS:** Lessee shall make no alterations or affix any attachments to the Equipment without the prior consent of Lessor.

- (f) **THIRD-PARTY INJURY:** Lessor shall not be liable for injury to any person or damage to property resulting directly or indirectly from the operation or use of the Equipment. Lessee shall indemnify and save Lessor and its assignee(s) harmless from and against any loss, damage, liability, or expenses (including attorneys' fees) claimed with respect to injury to any person or damage to property resulting directly from the operation or use of the Equipment.
- (g) **NON-ASSIGNABILITY BY LESSEE:** This Lease is personal to Lessee. Lessee shall not assign, sub-lease, transfer or otherwise encumber its right in and to this Lease or the Equipment without the prior written consent of the Lessor.
- (h) **RISK OF LOSS:** Lessee shall have the risk of loss, damage or destruction of the Equipment during the term of the Lease. In such event, Lessee shall either (1) restore the equipment to good repair, condition and working order, in which event this Lease shall remain in full force and effect without abatement of payments, or (2) pay to Lessor an amount equal to the Remaining Balance (plus interest, to the date of payment, at 12% per annum) immediately prior to the loss, damage or destruction, in which event the Lease shall terminate as to the Equipment for which such payment is made at the time such payment is made.
- (i) **DEFAULT:** In the event of default by Lessee, in the payment of any sums due under this Lease within (10) days after they are due, or receivership, insolvency, or proceedings by or against Lessee under the bankruptcy laws, or Lessee's failure to observe or perform any other required provision of this Lease, and such default continues for fifteen (15) days after written notice thereof, by Lessor, to Lessee, Lessor shall have the right to exercise any one of more to the following remedies: (1) to declare all sums due and to become due hereunder, during the Lessee's current fiscal period, immediately due and payable, without notice or demand to Lessee; (2) to sue for and recover all payments then accrued or thereafter accruing with respect to the Equipment; (3) to take possession of the Equipment without demand or notice wherever it may be located, with or without legal process, and retain it free from any claims of Lessee whatsoever; (4) to terminate this Lease; or (5) to pursue any other remedy at law or in equity. Notwithstanding any repossession or any other action which Lessor may take, Lessee shall remain liable for the full performance of all of its obligations under this Lease unless Lessor elects, at its option, to sell or re-lease any of the repossessed Equipment to a third party, in which event the net proceeds of such sale or lease, less Lessor's expenses incurred in connection therewith, including attorney's fees, shall be applied to the total amount due by Lessee under this Lease, and Lessee shall be obligated to pay Lessor any deficiency. All of the foregoing remedies are cumulative and may be exercised concurrently or separately. Lessee shall pay all costs and legal expenses incurred by Lessor in collecting or attempting to collect, any sums due hereunder or in securing possession of the Equipment. Lessee consents to the personal jurisdiction of the courts, and the applicability of the laws, of the State of Iowa with respect to any dispute arising out of the Lease.
- (j) **ASSIGNMENT BY LESSOR:** This Lease, the Equipment and any payments by Lessee due to become due under it, may be assigned or otherwise transferred, either in whole or in part, by Lessor and its assignee, without affecting any obligations of Lessee, and in such event Lessor's transferee or assignee shall have all the rights, powers, privileges and remedies of Lessor hereunder to the extent of such transfer or assignment. Any assignee's rights shall be free from all defenses, set-offs or counterclaims which Lessee may be entitled to assert against Lessor. No assignee shall be obligated to perform any duty or condition required to be performed by Lessor under the terms of this Lease.
- (k) **ADMINISTRATIVE SUPPORT:** Lessee may, from time to time, be required to file, or assist in the filing of, reports to regulatory and/or taxing authorities, which may be necessary to establish, perfect or maintain the legality and/or tax-exempt status of this Lease, or to execute documents needed for Lessor's financing. Lessee promises to promptly make such filings or to render such assistance as may, from time to time, be reasonably requested by Lessor or its Assigns, and to indemnify and hold harmless Lessor or its assigns from any cost, expense or other damages caused by its failure to do so. Lessee hereby further authorizes Lessor to file UCC-1 financing statements with Lessee's signature, and to fill in dates and other obvious minor corrections on this Lease.

Lessee hereby agrees and does hereby appoint Lessor or its agents its true and lawful attorney-in-fact to prepare, execute and sign any instrument or financing statement necessary to protect Lessor's interest in the Equipment subject hereto, and to sign the name of Lessee with the same force and effect as if signed by Lessee, and to file same at the proper location or locations. Lessee further agrees, if Lessor so request, to execute any instrument or financing statement necessary to protect Lessor's interest in the Equipment.

- (l) **SEVERABILITY:** Any term or provision of this Lease found to be prohibited by law or unenforceable shall be ineffective to the extent of such prohibition or unenforceability without, to the extent reasonably possible, invalidating the remainder of the Lease.
- (m) **ENTIRE AGREEMENT:** This Lease constitutes the entire agreement between the parties regarding the Equipment, and there are no representations, warranties, promises, guarantees or agreements, oral or written, expressed or implied, between the parties hereto with respect to the Lease. **No modification or amendment hereof shall be binding upon the Lessor unless made in writing and executed on behalf of Lessor by its duly authorized officer or agent.**

**LESSEE:**

Signature \_\_\_\_\_

Witness \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

**LESSOR: MUSCO FINANCE, LLC**

Signature \_\_\_\_\_

Title: Rhonda Long, Operations Administrator

Date: \_\_\_\_\_

**ADDITIONAL AUTHORIZED SIGNERS**

In addition to the signers of the Lease Agreement, the Lessee also approves the following individuals as authorized signers that may verify receipt, delivery and good condition of all the Equipment described in this Lease and accepts the Equipment in accordance with the terms and conditions of this Lease; and agrees that Lessor has fully and satisfactorily performed all covenants and conditions to be performed by it under the Lease.

Name: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

**INSURANCE COVERAGE REQUIREMENTS**

**LESSEE:**

We hereby instruct the insurance agent named below:

Insurance Company Name: \_\_\_\_\_

Agents Name: \_\_\_\_\_

Address: \_\_\_\_\_

City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_

Phone: \_\_\_\_\_ Fax: \_\_\_\_\_ Email: \_\_\_\_\_

Issue To:

**Musco Finance, LLC, and/or its assigns  
P O Box 808  
Oskaloosa, IA 52577**

On the following equipment:

**Musco's Light-Structure Green™ system consisting of  1500 watt metal halide fixtures;  
 galvanized steel poles;  pre-cast concrete bases; and  Control-Link® Control & Monitoring  
System Cabinet with a total acquisition cost of \$**

- (a) All Risk Physical Damage Insurance on the leased equipment evidenced by a Certificate of Insurance and Long Form Loss Payable Clause naming "Musco Finance, LL", its nominees or assigns as Loss Payee with Full Replacement Value coverage.
- (b) Public Liability Insurance evidenced by a Certificate of Insurance naming "Musco Finance, LLC" as an additional insured. Minimum coverage required is \$500,000.00 per person, \$1,000,000.00 aggregate bodily injury liability and \$300,000.00 property damage liability.

**Proof of insurance coverage will be provided to Musco Finance, LLC prior to the time the Equipment is delivered to us.**

Lessee:

By \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_



**CERTIFICATE OF INCUMBENCY AND RESOLUTION**

I do hereby certify that I am the duly elected or appointed and acting Secretary/Clerk of the Lessee, a political subdivision or agency duly organized and existing under the laws of the State that I have custody of the records of such entity, and that the individual(s) signing this Lease, and all documents pertaining thereto, is (are) duly elected or appointed officer(s) of such entity. I further certify that (1) the signature(s) is (are) true and authentic and (2) such officer(s) has (have) the authority of behalf of such entity and by resolution of its governing body to enter in this Municipal Lease Agreement.

IN WITNESS WHEREOF, I have duly executed this certificate this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_

Secretary/Clerk \_\_\_\_\_

**OPINION OF LESSEE'S COUNSEL**

As Counsel for \_\_\_\_\_, Lessee, it is my opinion that:

- (a) Lessee is a political subdivision of the State or other qualified entity within the meaning of Section 147 and/or 150 of the IRS Code, its related rulings and regulations. It is duly organized, existing and operating under the constitution and laws of the State.
- (b) The Lease has been duly authorized and has been executed by an authorized representative.
- (c) The Lease creates a legal, valid and binding obligation of the Lessee and that such Lease is enforceable in accordance with its terms.
- (d) The equipment covered by the Lease is not being used for other than a public purpose.

**COUNSEL FOR LESSEE:**

Signature \_\_\_\_\_

Print Name: \_\_\_\_\_

Date: \_\_\_\_\_

Firm Name: \_\_\_\_\_

Address: \_\_\_\_\_ City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_

Phone Number: \_\_\_\_\_ Fax: \_\_\_\_\_

Musco Finance, LLC  
 100 1st Ave West  
 P.O. Box 808  
 Oskaloosa, Iowa 52577  
 Phone: 800/825-6020  
 Fax: 641/673-6360



Please type.

Tax-Exempt Lease Purchase Application			
Federal Tax ID: 34-6000246			
Legal Name of Entity: City of Berea			
Physical Address: 11 Berea Commons			
City: Berea	State: Oh	Zip: 44017	County: Cuyahoga
Contact Name: Dana J Kavander		Title: Director of Finance	
Phone: 440-826-5889	Fax: 440-234-5630	Email: dkavander@cityofberea.org	
Lease Signer Name: Cyril M. Kleem		Title: Mayor	
Lease Signer Witness Name:		Title:	
Secretary or Clerk Name:		Title:	
Accounts Payable Contact Name: Julie Martin			
Billing Address: 11 Berea Commons			
City: Berea	State: OH	Zip: 44017	
Phone: 440-8919-3314	Fax: 440-826-4598	Email: jmartin@cityofberea.org	
Legal Counsel's Name: Jim Walters			
Mailing Address: 11 Berea Commons			
City: Berea	State: Oh	Zip: 44017	
Phone: 440-826-5831	Fax: 440-234-5628	Email: jwalters@cityofberea.org	
Equipment Location, Facility Name:			
Physical Address:			
City:	State:	Zip:	

Demographic Information			
Population:	2013:	2012:	2011:
Enrollment:	2013:	2012:	2011:

For questions, please contact Rhonda Long at 800/825-6020.