

## MEMORANDUM OF UNDERSTANDING

THIS MEMORANDUM OF UNDERSTANDING is made and entered into this 27<sup>th</sup> day of JULY, 2012, by and between the Jefferson County School District No. R-1, a political subdivision of the State of Colorado, hereinafter referred to as "School District", Conifer High School hereinafter referred to as "High School" and the Conifer Lobos Unified Boosters, a 501(c3) organization, located in Jefferson County hereinafter referred to as the "Club".

WITNESSETH:

THAT, WHEREAS, Club proposes to light the sports field and make other improvements on School District owned land, at the High School, which construction and improvements are referred to herein as the "Project."

WHEREAS, the School District and Club are authorized and empowered under Jefferson County School District Board of Education Policy, to enter into Memorandums of Understanding and

WHEREAS, the School District and Club now desire to evidence this agreement as well as provide for the manner and method for the Project to be developed;

NOW, THEREFORE, the parties, in consideration of the mutual covenants contained herein, agree as follows:

1. Club will receive donations and other funding to provide for construction and maintenance of the Project.
2. Club will plan, develop, and contract to construct a system of field lights, repurpose existing storage building, and will relocate existing modular buildings and utility services thereto at the High School sports field.
3. Club shall contribute the project funding, and additional administration time to the Project. The School District shall contribute the use of the land for the Project, provide existing modular buildings for relocation, and provide non-financial support to Club in their efforts to secure funding.
4. Club shall coordinate and fund the following materials and/or services:
  - a. Plan, develop and contract to make athletic field improvements in accordance with the most recent Athletic Master Plan and to School District standards and Technical Guidelines. Club shall submit to School District and High School engineered drawings of the improvements. Drawings shall be reviewed and approved by School District.
  - b. Perform all construction administration.
5. **COMPLETION DATE.** Club agrees to use its best efforts to complete development of Phase I of the Project prior to September, 2013. If development is delayed, there will be no monetary penalty incurred between Club and School District.
6. **CONSTRUCTION AGREEMENT.** Club shall enter into an Agreement with Contractor for construction of the Project. The Contractor selected to do the work shall be subject to School District approval. Club may require that the Contractor provide a Performance, Labor and Material Bond in the full amount of the Contract for Work. The Contractor will provide a Certificate of Insurance naming the School District, High School and Club as co-insured. The Contractor will provide a signed School District Criminal Background Check. Club will

require the Contractor to provide a manufacturer standard warranty for the Work and a one-year warranty on all other Work performed. At the end of the warranty period, Club will release the Contractor from further obligation upon receiving written consent from the School District. The lighting manufacturer shall provide Club with a warranty/maintenance agreement that will be transferred to the School District at the time of Project completion. School District reserves the right to review and approve or disapprove terms and conditions of the Warranty/Maintenance Agreement. Warranty/Maintenance Agreement is attached as **Exhibit A**.

7. **SCHOOL DISTRICT CONSTRUCTION REPRESENTATION.** A designated representative of the School District shall periodically observe the construction of the Project. The School District shall notify Club in writing of any concerns.
8. **DONATION OF IMPROVEMENTS.** Upon completion of the Project, Club shall donate the improvements to the School District.
9. **REPRESENTATION.** Club and School District/High School shall appoint a liaison to serve the interest of their respective organizations. The School District and High School liaison may be one and the same. The liaisons shall communicate and coordinate the field use schedule.
10. **USE.** The School District and High School has exclusive use of the field during school hours. Use during non-school hours shall be scheduled through the School District and High School and Club.
11. **MAINTENANCE RESPONSIBILITIES.** Maintenance needs shall be determined by School District and High School representatives.
  - a. The High School shall be responsible for the reimbursement of utility costs associated with the lighting, for replacement of bulbs and other on-going maintenance associated with the lighting not included in the Warranty/Maintenance Agreement (Exhibit A).
  - b. School District will be responsible for cleaning & maintaining relocated modular buildings as a result of school use only. School District will provide fire alarm, security, power and heat to modular buildings at no cost to Club.
12. **INSURANCE.** The School District shall incorporate the completed Project into the School District's general liability and property insurance policies.
13. **EFFECTIVE DATE.** The terms of this Memorandum shall become binding upon all Parties hereto upon mutual approval of this Agreement by the School District Board of Education and Club and shall remain in effect, though subject to annual review, until such time as both parties agree to dissolve, void or amend this Agreement.
14. **INDEMNIFICATION.** To the extent permitted by law, but without waiving any of the protections afforded by the Colorado Governmental Immunity Act, each party shall hold the other, its officers, agents, servants, employees, and those acting on its behalf, while acting as such, harmless and free from liability for all damages, costs, or expenses, including reasonable attorney fees and legal costs, which any of them shall become obligated to defend or pay by reason of liability alleged or imposed by law because of property or injury to or death of persons, received or suffered by reason of or during the operation of each respective party's programs or activities or from its use of the property.

15. **AMENDMENTS AND MODIFICATIONS.** The parties hereto may amend or modify this agreement only by written instrument executed on behalf of Club by an authorized representative and executed on behalf of the School District and High School by an authorized representative thereof.
16. **DESIGNATION.** The School District and Club are independent entities and nothing herein contained shall constitute or designate either party or any of their employees, contractors, or agents as agents or employees of the other. The School District shall represent the High School in matters of designation.
17. **TITLES.** Titles of paragraphs or section of the agreement have been included solely for the convenience of the parties and are not to be considered or deemed a part of this agreement, nor are they intended to be a full or accurate description of the contents thereof.
18. **COUNTERPARTS.** The Agreement may be executed in counterparts, each of which shall be deemed an original.
19. **SCOPE.** This Agreement contains the entire agreement between the parties with regard to its subject matter and no statements, promises, or inducements made by either party or agent of either party that are not contained within this written contract shall be valid or binding; and this contract may not be enlarged, modified, or altered except in writing with future site specific letters of agreement or amendments to this agreement, signed by the parties and endorsed hereon.
20. **SEVERABILITY.** It is understood and agreed by the parties hereto that if any part, term, or provision of this contract is by the courts held to be illegal or in conflict with any law of the State of Colorado, the validity of the remaining portions or provisions shall not be affected, and the rights and obligations of the parties shall be construed and enforced as if the contract did not contain the particular part, term, or provision held to be invalid.
21. **NOTICE.** Any notice required or desired to be given under the terms of this Agreement shall be mailed by certified mail, postage prepaid, return receipt requested, to the party at the address set forth below:
  - The School District:  
Director of Facility Planning  
Jefferson County School District R-1  
809 Quail St. Building 4  
Lakewood, CO 80215
  - Conifer High School  
10441 Highway 73  
Conifer, CO 80443
  - The Conifer Lobos Unified Boosters  
PO Box 1218  
Conifer, CO 80433
22. **AUTHORITY.** The undersigned hereby acknowledge and warrant their power and authority to bind the parties to this agreement.

**23. TERMINATION.** It is the intent of the parties that the obligations specified in this Agreement shall remain effective only so long as each party has duly appropriated funds for performing such obligations for the party's current fiscal year. If for any fiscal year of either party, funds are not appropriated for such party's performance of its obligations under this Agreement or subsequent Letter Agreement, as the case may be, shall become void and such party shall promptly give notice to the other party of the non-appropriation of funds and termination of this agreement.

Jefferson County School District R-1

By [Signature]

Name: TIM REED

Title: DIRECTOR FACILITY PLANNING -

STATE OF COLORADO )  
 ) ss.  
COUNTY OF JEFFERSON )

The foregoing MEMORANDUM OF UNDERSTANDING was acknowledged before me this day of \_\_\_\_\_, 2012, by \_\_\_\_\_ as \_\_\_\_\_ of Jefferson County School District R-1.

Conifer High School

By [Signature]

Name: Michael P. Musick

Title: Principal

STATE OF COLORADO )  
 ) ss.  
COUNTY OF JEFFERSON )

The foregoing MEMORANDUM OF UNDERSTANDING was acknowledged before me this day of \_\_\_\_\_, 2012, by \_\_\_\_\_ as \_\_\_\_\_ of Conifer High School.

Conifer Lobos Unified Boosters Club

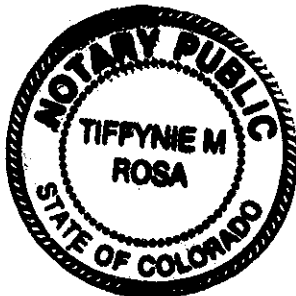
By [Signature]

Name: THOMAS E. MOORE

Title: CLUB PRESIDENT

STATE OF COLORADO )  
 ) ss.  
COUNTY OF JEFFERSON )

The foregoing MEMORANDUM OF UNDERSTANDING was acknowledged before me this day of 27<sup>th</sup> July, 2012, by \_\_\_\_\_ as Club President of Conifer Lobos Unified Boosters Club.



Thomas E. Moore

SUBSCRIBED AND AFFIRMED, OR SWORN TO BEFORE ME IN THE COUNTY OF JEFFERSON, STATE OF COLORADO THE 27<sup>th</sup> DAY OF July 2012

[Signature]  
NOTARY PUBLIC STATE OF COLORADO  
My Commission Expires 11/07/2015



# Musco Constant 25™

Musco's Comprehensive 25-Year Warranty & Maintenance Program

For 25 years, Musco Lighting will provide all materials and labor to maintain operation of your lighting system to original design criteria. Our products and services are guaranteed to perform on your project as follows:

## Light

Average constant light levels of \_\_\_\_ footcandles are guaranteed through Musco's Smart Lamp™ and service technology, within the Illumination Engineering Society of North America RP-6-01 standards of +/- 10% of the design criteria.

Musco will electronically monitor lamp operation and operating hours, and will group relamp at the end of the 5000 hour useful life.

Initial lamps provided:	5000 hours
Group lamp replacements # ____ x 5000 hours:	_____ hours
	_____
Total hours of lamp warranty and maintenance:	_____ hours

Individual lamp outages that occur during the lamp warranty and maintenance period stated above are repaired when the usage of any field is materially impacted. If actual usage exceeds \_\_\_\_\_ hours, the customer will be required to purchase lamp replacements in order to maintain the warranty to the end of twenty-five years.

## Energy Consumption

Energy consumption for your lighting system will average \_\_\_\_ kW per hour, and will not exceed \_\_\_\_ kW per hour at the maximum. Exhibit A provides a 25-year energy cost model based upon the customer provided utility rate and anticipated hours of usage. Changes in rates or usage will proportionately change the costs.

## Monitoring, Maintenance and Control Services

Musco shall monitor the performance of your lighting system, including on/off status, hours of usage and lamp outages. If fixture outages that affect playability are detected, Musco will contact you and proactively dispatch technicians.

On-off control of your lighting system is provided via an easy-to-use web site scheduling system, phone, fax or email. Our trained Control-Link Central™ staff is available toll-free 24/7. Regular usage reports will be sent to you and are always available on Control-Link Central's web site.

## Spill Light Control

Spill light readings at identified locations are guaranteed to be controlled to the values provided in Musco's design documents for your project, shown in Exhibit B. Readings shall be within the Illumination Engineering Society of North America RP-6-01 standards of +/- 10% of the design criteria.

## Structural Integrity

Your project has been designed to \_\_\_\_\_ (code reference).

Musco has a team of people to ensure fulfillment of our product and services warranty (Exhibit C) and maintains specifically-funded financial reserves dedicated to support our fulfillment of this warranty.

To further assure compliance, Musco will provide the Owner with this signed contract guaranteeing the comprehensive service for the 25-year period.

*See additional information on back page of warranty*



# Musco Constant 25™

Musco's Comprehensive 25-Year Warranty & Maintenance Program

Project Name: \_\_\_\_\_ Project Number: \_\_\_\_\_

Fixture Quantity: \_\_\_\_\_ Lamp type: 1500 Watt Smart Lamp™

Date Issued: [Date of Shipment] \_\_\_\_\_ Expiration: [Date] \_\_\_\_\_

Service under this Contract is provided by Musco Sports Lighting, LLC ("Musco") or an authorized servicer approved by Musco. Services performed under this Contract shall consist of furnishing labor and parts necessary to restore the operation of the covered Product(s) to original design criteria provided such service is necessitated by failure of the covered Product(s) during normal usage. This Contract covers Product(s) consisting of Musco's Light-Structure Green™ with Control-Link® and any additional Musco manufactured product provided.

"We", "us" and "our" mean Musco. "You" and "your" mean the purchaser of the covered Product(s). No one has the authority to change this Contract without the prior written approval of Musco. Musco shall not assume responsibility for their agents or assignees other than as described below. If there is a conflict between the terms of this Contract and information communicated either orally or in writing by one or more of our employees or agents, this Contract shall control.

## Additional Provisions

1. **Availability of Service:** Control-Link Central™ operators shall be available 24/7 via web site, phone, fax or email. Maintenance service specialists shall be available 8 AM to 5PM Central Time, and services shall be rendered during these same hours in your local time zone, Monday through Friday (with the exception of national holidays). Hours of operation are subject to change without notice to you. Musco will exercise all reasonable efforts to perform service under this Contract, but will not be responsible for delays or failure in performing such services caused by adverse weather conditions, acts of any government, failure of transportation, accidents, riots, war, labor actions or strikes or other causes beyond its control.

2. **Determination of Repairs:** Musco will utilize the field monitoring system and any information provided by the customer to determine when the usage of the field is materially impacted. From this information, Musco will determine needed repair and/or replacement of products and parts. Repair will be with product(s) of like kind and quality.

3. **Your Requirements Under this Contract:** You must meet all electrical requirements as specified by the manufacturer. In addition, you promise and assure: full cooperation with Musco, Musco's technicians and authorized servicers during telephone diagnosis and repair of the covered Product(s); reasonable accessibility of the covered Product(s); a non-threatening and safe environment for service.

You agree to check fuses and to replace fuses as needed. Musco provides spare fuses and a fuse puller in the lowest alpha-numeric numbered enclosure Musco will replenish spare fuses used.

4. **Service Limitations - This Contract does not cover:** Maintenance, repair or replacement necessitated by loss or damage resulting from any external causes such as, but not limited to, theft, environmental conditions, negligence, misuse, abuse, improper electrical/power supply, unauthorized repairs by third parties, attachments, damage to cabinetry, equipment modifications, vandalism, animal or insect infestation, physical damage to covered Products parts or components, or acts of God/nature (including, but not limited to: earthquake, flood, tornadoes, typhoons, hurricanes or lightning).

## 5. Contract Limitations:

a. **EXCLUSIONS FROM COVERAGE:** IN NO EVENT WILL MUSCO BE LIABLE FOR ANY SPECIAL, INDIRECT, INCIDENTAL OR CONSEQUENTIAL DAMAGES WHICH INCLUDE, BUT ARE NOT LIMITED TO, ANY DELAY IN RENDERING SERVICE OR LOSS OF USE DURING THE REPAIR PERIOD OF THE PRODUCT(S) OR WHILE OTHERWISE AWAITING PARTS.

b. **LIMITATION OF LIABILITY:** To the extent permitted by applicable law, the liability of Musco, if any, for any allegedly defective covered Product(s) or components shall be limited to repair or replacement of the Product(s) or components at Musco's option. THIS CONTRACT IS YOUR SOLE EXPRESS WARRANTY WITH RESPECT TO THE COVERED PRODUCTS(S). ALL IMPLIED WARRANTIES WITH RESPECT TO THE PRODUCT(S) INCLUDING, BUT NOT LIMITED TO, IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, ARE HEREBY EXPRESSLY EXCLUDED.

c. Musco requires reasonable access for a crane or man lift equipment to service the lighting system. Musco will not be responsible for damage from operating the vehicle on the property when the equipment is operated in the prescribed manner over the designated access route.

6. **Transfer and Assignment:** You shall not have the right to assign or otherwise transfer your rights and obligations under this Contract except with the prior written consent of Musco provided, however, that a successor in interest by merger, operation of law, assignment or purchase or otherwise of your entire business shall acquire all of your interests under this Contract.

7. **Governing Law:** Unless otherwise governed by applicable state law, the Contract shall be interpreted and enforced according to the laws of the State of Iowa.

8. **Subrogation:** In the event Musco repairs or replaces any covered Product(s), parts or components due to any defect for which the manufacturer or its agents or suppliers may be legally responsible, you agree to assign your rights of recovery to Musco. You will be reimbursed for any reasonable costs and expenses you may incur in connection with the assignment of your rights. You will be made whole before Musco retains any amounts it may recover.

Signature: \_\_\_\_\_

Vice President of Sales