

## **AGENDA**

**Regular Meeting of the Sawmills Town Council  
Sawmills Town Hall  
Tuesday, October 17, 2023  
6:00 pm**

1. Call To Order Mayor Keith Warren
2. Invocation
3. Pledge of Allegiance Mayor Keith Warren
4. Adopt Agenda Mayor Keith Warren
5. Approve Meeting Minutes  
A. September 19, 2023 Regular Meeting Minutes Mayor Keith Warren
6. Public Comment Mayor Keith Warren
7. A. October Recycle Rewards Mayor Keith Warren
8. Public Hearing: Park Light Funding  
A. Open Public Hearing Mayor Keith Warren  
B. Staff Comments/Recommendations  
C. Public Comment Mayor Keith Warren  
D. Close Public Hearing Mayor Keith Warren  
E. Council Action Mayor Keith Warren
9. Planning Matters:  
A. Reappoint Planning Board/BOA Members Mayor Keith Warren  
B. Call for Public Hearing for Text Amendment for Zoning Ordinance Mayor Keith Warren
10. Financial Matters:  
A. Resolution for Designation of Agent for FEMA Funds Mayor Keith Warren
11. Discussion:  
A. Panhandling and Urban Camping Mayor Keith Warren
12. Public Comment Mayor Keith Warren
13. Updates:  
A. Code Enforcement Report Mayor Keith Warren  
B. Town Manager Updates Town Manager Chase Winebarger  
C. Council Comment Mayor Keith Warren
14. Closed Session: N.C.G.S. §143-318.11(a)(3) Mayor Keith Warren
15. Adjourn Mayor Keith Warren

**TUESDAY, SEPTEMBER 19, 2023  
TOWN OF SAWMILLS REGULAR COUNCIL MEETING  
6:00PM**

**COUNCIL PRESENT**

Mayor Keith Warren  
Mayor Pro Tem Clay Wilson  
Bobby Mosteller  
Joe Wesson  
Rebecca Johnson

**STAFF PRESENT**

Chase Winebarger  
Julie A Good  
Terry Taylor

**COUNCIL ABSENT**

Melissa Curtis

**CALL TO ORDER:** Mayor Keith Warren called the meeting to order at approximately 6:01pm.

**INVOCATION:** Pastor Levi Addison gave the invocation.

**PLEDGE OF ALLEGIANCE:** Mayor Keith Warren led the Pledge of Allegiance.

**ADOPT AGENDA:** Mayor Keith Warren stated that the agenda would need to be amended to add Item 8C. Budget Amendment Ordinance; Item 10B. Project Resolution Appalachian Regional Commission Evergreene Industrial Park Infrastructure, and Item 10C. Town of Sawmills Ordinance Chapter 94: Urban Camping Improper Use of Public Lands and Places and Panhandlers.

Mayor Keith Warren asked for a motion to adopt the September 19, 2023 Amended Agenda.

Clay Wilson made a motion, and Joe Wesson seconded, to adopt the September 19, 2023 Amended Agenda. All were in favor.

**APPROVE AUGUST 15, 2023 REGULAR MEETING MINUTES:** Mayor Keith Warren asked for a motion to approve the August 15, 2023 regular meeting minutes.

Bobby Mosteller made a motion, and Rebecca Johnson seconded, to approve the August 15, 2023 regular meeting minutes. All were in favor.



**PUBLIC COMMENT:** Mayor Keith Warren asked if anyone had any questions or comments at this time.

No one wished to speak.

**RECOGNITIONS:**

**SEPTEMBER RECYCLE REWARDS WINNER:** Mayor Keith Warren announced Norma Duffey as the September Recycle Rewards Winner. A credit of forty dollars (\$40.00) will be added to the current sanitation bill.

No Council action was required.

**FINANCIAL MATTERS:**

**PROJECT BUDGET ORDINANCE FOR TOWN HALL-NEW CONSTRUCTION:**

Finance Officer Kelly Melton stated that with the Council approving the Architect Contract during the regular scheduled August 15, 2023 Council meeting, that in order to move forward, a Project Budget Ordinance in the amount of four million six hundred eighty-three thousand dollars (\$4,683,000.00) will need to be approved to move forward with the New Town Hall Construction. The project will be funded by a fund balance appropriation from the General Fund.

The amounts for expenditures appropriated for the project are:

Architect:	\$473,000.00
Construction Costs:	\$4,010,000.00
Furnishings/Other:	\$200,000.00
Total:	\$4,683,000.00

Clay Wilson made a motion, and Bobby Mosteller seconded, to approve the Project Ordinance for Town Hall-New Construction in the amount of four million six hundred eighty-three thousand dollars (\$4,683,000.00), to be funded by a fund balance appropriation from the General Fund to the Capital Projects Fund. All were in favor.

**CALL FOR PUBLIC HEARING FOR PARK LIGHT FUNDING:** Town Manager Chase Winebarger stated that the Town of Sawmills intends to enter into an Installment Purchase Contract pursuant to North Carolina General Statute 160A-20 in a principal amount of one million three hundred forty-five thousand five hundred dollars (\$1,345,500.00) for the purpose of providing funds to pay the costs of the equipment installation of field lights and parking lot lights at Sawmills Municipal Park and Sawmills Veterans Park. The Town's obligation with respect to the debt will be secured by the equipment which consists of the light structure system.

The proposed financing contract will be placed with MUSCO Finance, LLC with a quoted

rate of four point ninety-one percent (4.91%) for ten (10) years as of August 28, 2023. The proposed principal and interest payments total one hundred seventy-three thousand for hundred eighty-eight dollars (\$173,488.00) per year.

The Town Council must hold a public hearing in order to authorize the filing of an application for approval of a financing contract with the Local Government Commission. The Local Government Commission is responsible for approving Installment Purchase Contracts in excess of five hundred thousand dollars (\$500,000.00) and with a term greater than five (5) years.

Rebecca Johnson made a motion, and Joe Wesson seconded, to call for a public hearing at the next regularly scheduled meeting of the Town of Sawmills Council on October 17, 2023, to authorize the filing of the application with MUSCO Finance, LLC, in the amount of one million three hundred forty-five thousand five hundred dollars (\$1,345,500.00) for the purpose of providing funds to pay the costs of the equipment installation of field lights and parking lot lights at Sawmills Municipal Park and Sawmills Veterans Park, with the Local Government Commission. All were in favor.

**BUDGET AMENDMENT ORDINANCE:** Town Manager Chase Winebarger stated that there are multiple places at Sawmills Municipal Park and Sawmills Veterans Park that are difficult to mow, along with sewer rights-of-ways, with the mowers that the Public Works and Parks and Recreation are currently using. Town Manager Chase Winebarger stated that Killian's Hardware of Hickory brought a Ventrac mower to demonstrate and see if it would be easier to mow the difficult places and sewer right-of-ways. Town Manager Chase Winebarger stated that the Ventrac Mower was able to mow the difficult places with ease and in less time. Town Manager Chase Winebarger stated that Killian's Hardware of Hickory had the Ventrac mower in stock. Town Manager Chase Winebarger stated that a Budget Amendment Ordinance in the amount of sixty thousand dollars (\$60,000.00) would need to be approved to buy the Ventrac mower.

Rebecca Johnson made a motion, and Clay Wilson seconded, to approve the Budget Amendment Ordinance in the amount of sixty thousand dollars (\$60,000.00) for the purchase of a Ventrac mower. All were in favor.

#### **PLANNING MATTERS:**

**REZONING OF PIN NUMBERS 2766657929, 2766666171, 2766667200, 2766668126, 2766659938 AND 2766658939:** Mayor Keith Warren stated that a public hearing for the rezoning of pin numbers 2766657929, 2766666171, 2766667200, 2766668126, 2766659938 and 2766658939, was held during the regularly scheduled Town of Sawmills Council meeting on August 15, 2023, at which time Council tabled this matter to the regularly scheduled Town of Sawmills Council meeting on September 19, 2023.

Rebecca Johnson made a motion, and Joe Wesson seconded, to table this matter until the regularly scheduled Town of Sawmills Council meeting on December 19, 2023. All were in favor.



**DISCUSSION:**

**CAJAH MOUNTAIN ROAD PROJECT:** Town Manager Chase Winebarger stated that the Department of Transportation had requested a meeting with him regarding adding a new sewer line on the Cajah Mountain Road as the Department of Transportation is doing their expansion project. The Department of Transportation stated that they would have their contractors do the work and the Town of Sawmills could pay them at the Department of Transportation rates. Town Manager Chase Winebarger stated that he would like Council to give him guidance on what they would like to do.

Council asked that Town Manager Chase Winebarger get more information and approximate costs from the Department of Transportation for them before a decision can be made.

No Council action was taken.

**PROJECT RESOLUTION APPALACHIAN REGIONAL COMMISSION EVERGREENE INDUSTRIAL PARK INFRASTRUCTURE:** Town Manager Chase Winebarger stated that in order for the receipt of grant funding for the Evergreene Industrial Park project from the North Carolina Department of Commerce and the Appalachian Regional Commission, a Project Resolution would need to be approved.

Clay Wilson made a motion, and Rebecca Johnson seconded, to approve the Project Resolution Appalachian Regional Commission Evergreene Industrial Park Infrastructure as written. All were in favor.

**TOWN OF SAWMILLS ORDINANCE CHAPTER 94: URBAN CAMPING IMPROPER USE OF PUBLIC LANDS AND PLACES AND PANHANDLERS:** Town Attorney Terry Taylor stated that The Town of Sawmills has determined that the streets and public areas within the Town should be readily accessible and available to residents and the public at large. Town Attorney Terry Taylor stated that the use of these areas for camping purposes interferes with rights of others to use these areas as they were intended and such activity can constitute a public health and safety hazard, which could adversely affect neighborhoods and commercial spaces. Town Attorney Terry Taylor also stated that camping on private property without the owner's consent and without the proper sanitary measures affects the private property rights as well as public health, safety and welfare of the Town.

Town Attorney Terry Taylor stated that with following with North Carolina General Statute § 160, the Town Council will need to have two (2) readings of any ordinance that may require a fine be imposed. Town Attorney Terry Taylor stated that the second (2<sup>nd</sup>) reading would be at the regularly scheduled meeting of the Town of Sawmills Council on October 17, 2023.

No Council action was taken.

**PUBLIC COMMENT:** Mayor Keith Warren asked if anyone had any questions or comments at this time.

No one wished to speak.

**UPDATES:**

**AUGUST CODE ENFORCEMENT REPORT:** Town Code Enforcement Officer Curt Willis stated that there are five (5) code enforcement cases that are open.

No Council action was required.

**TOWN MANAGER UPDATES:** Town Manager Chase Winebarger had the following updates:

- Town Manager Chase Winebarger stated that signs were ordered for Sawmills Elementary School to put on Coral Drive and should be delivered and placed during the month of October. Town Manager Chase Winebarger stated that the residents of Coral Drive were having difficulties getting to their homes during the student morning drop off and afternoon pick up and that the signs will help with this situation.

**COUNCIL COMMENTS:**

Bobby Mosteller wanted to thank everyone for coming to the meeting.

Rebecca Johnson wanted to thank everyone for coming to the meeting.

Joe Wesson wanted to thank everyone for coming to the meeting. Joe Wesson also wanted to thank the Town employees for the good job everyone is doing.

**COUNCIL ADJOURN:** Mayor Keith Warren asked for a motion to adjourn.

Rebecca Johnson made a motion, and Joe Wesson seconded, to adjourn the meeting. All were in favor.

The meeting was adjourned at approximately 6:51pm.

**AGENDA ITEM 7A**

**MEMO**

**DATE:**

October 17, 2023

**SUBJECT:**

Recognition:  
Recycle Rewards  
Program

**Discussion:**

The Town of Sawmills would like to congratulate Nancy King on winning the Recycle Rewards Program for the month of September. She will be presented with a Certificate of Appreciation. A forty dollar (\$40.00) credit will be added to the current sanitation bill.

**Recommendation:**

No Council action is required.



## AGENDA ITEM 8A

### MEMO

#### DATE:

October 17, 2023

#### SUBJECT:

Public Hearing:  
Resolution Authorizing Filing  
of an Application for  
Financing Approval

#### Discussion:

The Town of Sawmills (the "Town") intends to enter into an Installment Purchase Contract pursuant to Section 160A-20 of the General Statutes of North Carolina, as amended, in a principal amount of \$1,345,500 for the purpose of providing funds to pay the costs of the equipment and installation of field lights and parking lot lights at Sawmills Municipal Park and Sawmills Veterans Park.

The documents referenced in Section 10 of the Resolution include:

a) Purchase Agreements - 3 separate agreements totaling \$1,345,500

- #152581 – Veterans Park - \$1,109,000
- #223248 – Sawmills Municipal Park – Tee Ball - \$104,500
- #225565 – Sawmills Municipal Park – Parking Lot - \$132,000

b) Financing Agreement – Capital One Public Funding, LLC

- Rate – 4.91% Fixed
- Term – 10 years
- Payment Amount - \$173,533 annually
- Pre-payment - The Town may choose to retire the debt ahead of schedule without penalty or administrative burden, up to 10% per year in years 2024-2029 and in whole or part in years 2030-2033.

c) Escrow Fund and Account Control Agreement – for the purpose of holding the proceeds from the financing agreement and disbursing such amounts to the purchase of and payment for the project.

d) Use of Proceeds Certificate – for the purpose of authorizing payment from the Escrow Fund

#### Recommendation:

Staff recommends approval.

## **TOWN OF SAWMILLS**

### **RESOLUTION AUTHORIZING THE FILING OF AN APPLICATION FOR APPROVAL OF A FINANCING AGREEMENT AUTHORIZED BY NORTH CAROLINA GENERAL STATUTE 160A-20**

**WHEREAS**, the Town Council of the Town of Sawmills of Sawmills, North Carolina desires to provide for the purchase and installation of field lights and parking lot lights at Sawmills Municipal Park (a/k/a Baird Park) and Sawmills Veterans Park (the "Project") to better serve the citizens of the Town of Sawmills; and

**WHEREAS**, the Town Council of the Town of Sawmills, North Carolina desires to finance the Project by the use of an installment contract authorized under North Carolina General Statute 160A, Article 3, Section 20; and

**WHEREAS**, findings of fact by this governing body must be presented to enable the North Carolina Local Government Commission to make its findings of fact set forth in North Carolina General Statute 159, Articles 8, Section 151 prior to approval of the proposed contract;

**NOW, THEREFORE, BE IT RESOLVED** that the Town Council of the Town of Sawmills, North Carolina, meeting in regular session on the 17<sup>th</sup> day of October, 2023, make the following findings of fact:

1. The proposed contract is necessary or expedient because Lighting facilities are necessary and/or expedient for the Town of Sawmills to provide improved public security and citizen usage of the playing fields, parking lots areas and amenities at Sawmills Municipal Park and Veterans Park in the Town of Sawmills.
2. The proposed contract is preferable to a bond issue for the same purpose because the proposed contract or agreement, under the circumstances, is preferable to a general obligation or revenue bond issue for the same purpose. Specifically, (i) the cost of the proposed undertaking, that being the total cost of \$1,345,500.00, exceeds the amount that can be prudently raised from currently available appropriations, unappropriated fund balances, and non-voted bonds that could be issued by the contracting unit in the current fiscal year pursuant to Article V, Section 4, of the North Carolina Constitution (the "two-thirds limitation"); and (ii) the method of using an installment purchase contract is more cost effective and expedient and justifies choosing the contract method of financing rather than a non-voted general obligation bond issue, a voted general obligation bond issue, or a revenue bond issue.
3. The cost of financing under the proposed contract is preferable to a bond issue for the same purposes because the Town of Sawmills has sufficient reserves to meet the debt obligation.

4. The sums to fall due under the contract are adequate and not excessive for the proposed purpose because the annual principal and interest payment amounts proposed are within amounts feasible for the Town's Annual Budget.
5. The Town of Sawmills of Sawmills, North Carolina's debt management procedures and policies are good because the unit manages debt in strict compliance with the law.
6. No increase in taxes necessary to meet the sums to fall due under the proposed contract.
7. The Town of Sawmills of Sawmills, North Carolina is not in default in any of its debt service obligations.
8. The attorney for the Town of Sawmills of Sawmills, North Carolina has rendered an opinion that the proposed Project is authorized by law and is a purpose for which public funds may be expended pursuant to the Constitution and laws of North Carolina.
9. Under N.C.G.S. Section 143-129(e), the requirements of the statute for Bidding Required does not apply under the Exceptions Section (e)(6) when a needed product is available from only one supply. Since the current lighting systems at these two Town Parks in the Town of Sawmills are equipment from Musco Sports Lighting, LLC ("Musco") then Musco Parking Lot Lighting Fixtures are the sole source for the lighting upgrades and improvements.
10. The following documents have been reviewed and the Town Council has been made aware of these documents (collectively the "Instruments") which the Town Council now proposes to approve, enter into and deliver, as applicable, to effectuate the proposed installment financing:
  - a) Purchase Agreements #152581, 223248 and 225565 with Musco Sports Lighting, LLC;
  - b) Financing Agreement;
  - c) Escrow and Account Control Agreement;
  - d) Use of Proceeds Certificate; and
  - e) Other ancillary documents to effectuate the Purchase and Financing arrangements.

**NOW, THEREFORE, BE IT FURTHER RESOLVED** that the Town Manager and/or the Mayor as is applicable, are hereby authorized to act on behalf of the Town of Sawmills of Sawmills, North Carolina in filing an application with the North Carolina Local Government Commission for approval of the Project, and the proposed financing contract, and executing the Instruments (in the same or similar format as attached hereto) and such other actions and agreements not inconsistent with this Resolution.



This Resolution is effective upon its adoption this 17<sup>th</sup> day of October, 2023.

The motion to adopt this Resolution was made by Council Member \_\_\_\_\_, seconded by Council Member \_\_\_\_\_ and passed by a unanimous vote.

\_\_\_\_\_  
Mayor

ATTEST:

\_\_\_\_\_  
Town Clerk

This is to certify that this is a true and accurate of this Resolution adopted by the Town Council of the Town of Sawmills, North Carolina on the 17<sup>th</sup> day of October, 2023.

\_\_\_\_\_  
Town Clerk

\_\_\_\_\_  
Date

**ESCROW FUND AND ACCOUNT CONTROL AGREEMENT**

This Escrow Fund and Account Control Agreement (this “Escrow Agreement”), dated as of December \_\_, 2023, by and among **CAPITAL ONE PUBLIC FUNDING, LLC** (together with any successors and permitted assigns, hereinafter referred to as “Lender”), **TOWN OF SAWMILLS, NORTH CAROLINA** (hereinafter referred to as “Purchaser”) and **BANK OZK**, as escrow agent (hereinafter referred to as “Escrow Agent”).

Reference is made to that certain Financing Agreement dated as of December \_\_, 2023, between Lender and Purchaser (hereinafter referred to as the “Financing Agreement”), covering the acquisition of certain equipment described therein (the “Equipment”). It is a requirement of the Financing Agreement that the Amount Advanced (as defined in the Financing Agreement) of \$1,345,500 be deposited into a segregated escrow account under terms satisfactory to Lender, for the purpose of fully funding the Financing Agreement, and providing a mechanism for the application of such amounts to the purchase of and payment for the Equipment, and paying costs of issuance.

**NOW, THEREFORE**, in consideration of the mutual promises contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

1. Creation of Escrow Fund.

(a) There is hereby created a special trust fund to be known as the “Town of Sawmills, NC Escrow Fund” (the “Escrow Fund”) to be held in trust by Escrow Agent for the purposes stated herein, for the benefit of Lender and Purchaser, to be held, disbursed and returned in accordance with the terms hereof.

(b) Escrow Agent shall invest and reinvest moneys on deposit in the Escrow Fund in Qualified Investments (as hereinafter defined) in accordance with written instructions received from Purchaser. Purchaser shall be solely responsible for ascertaining that all proposed investments and reinvestments are Qualified Investments and that they comply with federal, state and local laws, regulations and ordinances governing investment of such funds and for providing appropriate notice to Escrow Agent for the reinvestment of any maturing investment. Accordingly, neither Escrow Agent nor Lender shall be responsible for any liability, cost, expense, loss or claim of any kind, directly or indirectly arising out of or related to the investment or reinvestment of all or any portion of the moneys on deposit in the Escrow Fund, and Purchaser, to the extent permitted by the Constitution and laws of the State of North Carolina, agrees to and does hereby release Escrow Agent and Lender from any such liability, cost, expenses, loss or claim. Interest earned on moneys within the Escrow Fund shall become part of the Escrow Fund, and gains and losses on the investment of the moneys on deposit in the Escrow Fund shall be borne by the Escrow Fund. For purposes of this Escrow Agreement, “Qualified Investments” means a public funds money rate savings account, as directed by the Purchaser and Lender, that meets the requirements of Section 159-30 of the General Statutes of North Carolina, as amended, and Article IV of the Financing Agreement.



(c) Moneys in the amount of \$1,345,500 shall be paid on the date hereof for costs of the transaction, and Escrow Agent is authorized and directed to pay such amounts in accordance with a closing fund flow memorandum provided to Escrow Agent. Unless the Escrow Fund is earlier terminated in accordance with the provisions of **paragraph (d)** below, remaining amounts in the Escrow Fund shall be disbursed by Escrow Agent from time to time in payment of amounts described in **Section 2** hereof upon receipt of a duly executed disbursement request (a "Disbursement Request"), approved for payment by Lender, as is more fully described in **Section 2** hereof. If the amounts in the Escrow Fund are insufficient to pay such amounts, Purchaser shall provide any balance of the funds needed to complete the acquisition and installation of the Equipment.

(d) The Escrow Fund shall be terminated at the earliest of (i) the date on which Lender receives a duly executed written certificate of completion, as provided in Section 4.03 of the Financing Agreement, (ii) written notice given by Lender of the occurrence of an Event of Default, or (iii) either (A) three years or more have elapsed from the time of the Closing Date (as defined in the Financing Agreement), or (B) six months have elapsed from the Lender's most recent receipt of a requisition for Project Costs (as defined in the Financing Agreement). If any moneys remain in the Escrow Fund when the Escrow Fund is terminated, such moneys shall be applied as provided in **Section 4** hereof.

(e) Escrow Agent may act in reliance upon any writing or instrument or signature which it, in good faith, believes to be genuine and may assume the validity and accuracy of any statement or assertion contained in such a writing or instrument. Escrow Agent shall not be liable in any manner for the sufficiency or correctness as to form, manner of execution, or validity of any instrument nor as to the identity, authority, or right of any person executing the same; and its duties hereunder shall be limited to the receipt of such moneys, instruments or other documents received by it as Escrow Agent, and for the disposition of the same in accordance herewith.

(f) Unless Escrow Agent is guilty of gross negligence or willful misconduct with regard to its duties hereunder, Purchaser agrees to and does hereby, to the extent permitted by the Constitution and laws of the State of North Carolina and solely from funds lawfully available for such purpose, release and indemnify Escrow Agent and hold it harmless from any and all claims, liabilities, losses, actions, suits or proceedings at law or in equity, or any other expense, fees or charges of any character or nature, which it may incur or with which it may be threatened by reason of its acting as Escrow Agent under this Escrow Agreement; and in connection therewith, does, to the extent permitted by the Constitution and laws of the State of North Carolina and solely from funds lawfully available for such purpose, indemnify Escrow Agent against any and all expenses; including reasonable attorneys' fees and the cost of defending any action, suit or proceeding or resisting any claim.

(g) If Purchaser and Lender shall be in disagreement about the interpretation of the Financing Agreement, or about the rights and obligations, or the propriety of any action contemplated by Escrow Agent hereunder, Escrow Agent may, but shall not be required to, file an appropriate civil action to resolve the disagreement. Escrow Agent shall be reimbursed by Purchaser for all costs, including reasonable attorneys' fees, in connection with such civil action,

and shall be fully protected in suspending all or part of its activities under the Financing Agreement until a final judgment in such action is received.

(h) Escrow Agent may consult with counsel of its own choice and shall have full and complete authorization and protection with the opinion of such counsel. Escrow Agent shall otherwise not be liable for any mistakes of fact or errors of judgment, or for any acts or omissions of any kind unless caused by its willful misconduct.

(i) Purchaser, to the extent permitted by the Constitution and laws of the State of North Carolina and solely from funds lawfully available for such purpose, shall reimburse Escrow Agent for all reasonable costs and expenses, including those of Escrow Agent's attorneys, agents and employees incurred for extraordinary administration of the Escrow Fund and the performance of Escrow Agent's powers and duties hereunder in connection with any Event of Default under the Financing Agreement, or in connection with any dispute between Lender and Purchaser concerning the Escrow Fund.

(j) The aggregate amount of the costs, fees, and expenses of the Escrow Agent in connection with the creation of the Escrow Fund described in and created by this Escrow Agreement and in carrying out any of the duties, terms or provisions of this Escrow Agreement is a one-time fee in the amount of \$\_\_\_\_\_, to be paid by Lender concurrently with the execution and delivery of this Escrow Agreement.

## 2. Acquisition of Equipment.

(a) Acquisition Contracts. Purchaser will arrange for, supervise and provide for, or cause to be supervised and provided for, the acquisition of the Equipment, with moneys available in the Escrow Fund. Purchaser represents the estimated costs of the Equipment are within the funds estimated to be available therefor, and Lender makes no warranty or representation with respect thereto. Lender shall have no liability under any of the acquisition or construction contracts. Purchaser shall obtain all necessary permits and approvals, if any, for the acquisition, equipping and installation of the Equipment, and the operation and maintenance thereof.

(b) Authorized Escrow Fund Disbursements. Except as provided in **Section 1(c)** hereof, disbursements from the Escrow Fund shall be made for the purpose of paying (including the reimbursement to Purchaser for advances from its own funds to accomplish the purposes hereinafter described) the cost of acquiring the Equipment.

(c) [Reserved].

(d) Requisition Procedure. No disbursement from the Escrow Fund shall be made unless and until a person designated in the Certificate of Authorized Lender Representatives (each an "Authorized Lender Representative") , a copy of which is attached hereto as a part of **Schedule 2**, has signed and approved such Disbursement Request for payment. Prior to disbursement from the Escrow Fund there shall be filed with Escrow Agent a duly executed Disbursement Request for such payment in the form attached hereto as **Schedule 1**, stating each amount to be paid and the name of the person, firm or corporation to whom



payment thereof is due (such payment to be paid by wire). Each such Disbursement Request shall be signed by one or more of the officers of Purchaser set forth in the Incumbency and Authorization Certificate (each, an "Authorized Purchaser Representative"), a copy of which is attached hereto as a part of **Schedule 2**, and shall be subject to the following:

1. Delivery to Lender of an executed Disbursement Request in the form attached hereto as **Schedule 1** certifying and representing to the Lender the information provided for therein.
2. Delivery to Lender of invoices (and proofs of payment of such invoices, if Purchaser seeks reimbursement), lien waivers and bills of sale (if title to such Equipment has passed to Purchaser) therefor and any additional documentation reasonably requested by Lender.
3. Delivery to Lender of evidence of insurance required by **Section 5.16** of the Financing Agreement in form and substance satisfactory to Lender.

Lender and Escrow Agent may, but are not required to seek confirmation of such instructions by telephone call-back to any Authorized Purchaser Representative designated on **Exhibit B** hereto, and Lender and Escrow Agent may rely upon the confirmations of anyone purporting to be such Authorized Purchaser Representative. Notwithstanding the foregoing, Purchaser agrees that neither Escrow Agent nor Lender shall have a duty to seek such confirmation, and shall have no liability for disbursement in accordance with the instructions contained in any Disbursement Request submitted with signature of an Authorized Purchaser Representative. Escrow Agent shall confirm any Disbursement Request by telephone call-back to the person or persons designated for verifying such draw requests on **Exhibit B** (such person verifying the request shall be different than the person initiating the request). Lender and Purchaser hereby confirm that any call-back performed by Escrow Agent to verify a disbursement instruction pursuant to a Disbursement Request submitted pursuant to this Section before release shall be made to Lender only and Escrow Agent shall have no obligation to call-back Purchaser. The persons and telephone numbers for call-backs may be changed only in writing actually received and acknowledged by Lender and Escrow Agent. The parties to this Escrow Agreement acknowledge that such security procedure is commercially reasonable.

It is understood that Lender, Escrow Agent and the beneficiary's bank in any funds transfer may rely solely upon any account numbers or similar identifying number provided by any party hereto to identify (i) the beneficiary, (ii) the beneficiary's bank, or (iii) an intermediary bank.

3. Deposit to Escrow Fund. Lender will cause the Amount Advanced to be deposited in the Escrow Fund, which shall be used to pay costs of the transaction, as described in **Section 1(c)** above. Purchaser agrees to pay any costs with respect to the Equipment in excess of amounts available therefor in the Escrow Fund.

4. Excess in Escrow Fund. Any funds remaining in the Escrow Fund on or after the earlier to occur of items (i), (ii) or (iii) described in Section 1(d) of this Escrow Agreement, shall

be applied by Escrow Agent to amounts owed under the Financing Agreement in accordance with **Section 4.03(d)** of the Financing Agreement.

5. Security Interest. Escrow Agent and Purchaser acknowledge and agree that the Escrow Fund and all proceeds thereof are being held by Escrow Agent for disbursement or return as set forth herein. Purchaser hereby grants to Lender a first priority perfected security interest in the Escrow Fund, and all proceeds thereof, and all investments made with any amounts in the Escrow Fund. If the Escrow Fund, or any part thereof, is converted to investments as set forth in this Escrow Agreement, such investments shall be made in the name of Escrow Agent and Escrow Agent hereby agrees to hold such investments as bailee for Lender so that Lender is deemed to have possession of such investments for the purpose of perfecting its security interest.

6. Control of Escrow Fund. In order to perfect Lender's security interest by means of control in (i) the Escrow Fund established hereunder, (ii) all securities entitlements, investment property and other financial assets now or hereafter credited to the Escrow Fund, (iii) all of Purchaser's rights in respect of the Escrow Fund, such securities entitlements, investment property and other financial assets, and (iv) all products, proceeds and revenues of and from any of the foregoing personal property (collectively, the "Collateral"), Lender, Purchaser and Escrow Agent further agree as follows:

(a) All terms used in this **Section 6** which are defined in the Commercial Code of the State of North Carolina ("Commercial Code") but are not otherwise defined herein shall have the meanings assigned to such terms in the Commercial Code, as in effect on the date of this Escrow Agreement.

(b) Escrow Agent will comply with all entitlement orders originated by Lender with respect to the Collateral, or any portion of the Collateral, without further consent by Purchaser.

(c) Escrow Agent hereby represents and warrants (a) that the records of Escrow Agent show that Purchaser is the sole owner of the Collateral, (b) that Escrow Agent has not been served with any notice of levy or received any notice of any security interest in or other claim to the Collateral, or any portion of the Collateral, other than Lender's claim pursuant to this Escrow Agreement, and (c) that Escrow Agent is not presently obligated to accept any entitlement order from any person with respect to the Collateral, except for entitlement orders that Escrow Agent is obligated to accept from Lender under this Escrow Agreement and entitlement orders that Escrow Agent, subject to the provisions of **paragraph (e)** below, is obligated to accept from Purchaser.

(d) Without the prior written consent of Lender, Escrow Agent will not enter into any agreement by which Escrow Agent agrees to comply with any entitlement order of any person other than Lender or, subject to the provisions of **paragraph (e)** below, Purchaser, with respect to any portion or all of the Collateral. Escrow Agent shall promptly notify Lender if any person requests Escrow Agent to enter into any such agreement or otherwise asserts or seeks to assert a lien, encumbrance or adverse claim against any portion or all of the Collateral.



(e) Except as otherwise provided in this **paragraph (e)** and subject to **Section 1(b)** hereof, Escrow Agent may allow Purchaser to effect sales, trades, transfers and exchanges of Collateral within the Escrow Fund, but will not, without the prior written consent of Lender, allow Purchaser to withdraw any Collateral from the Escrow Fund. Escrow Agent acknowledges that Lender reserves the right, by delivery of written notice to Escrow Agent, to prohibit Purchaser from effecting any withdrawals (including withdrawals of ordinary cash dividends and interest income), sales, trades, transfers or exchanges of any Collateral held in the Escrow Fund. Further, Escrow Agent hereby agrees to comply with any and all written instructions delivered by Lender to Escrow Agent (once it has had a reasonable opportunity to comply therewith) and has no obligation to, and will not, investigate the reason for any action taken by Lender, the amount of any obligations of Purchaser to Lender, the validity of any of Lender's claims against or agreements with Purchaser, the existence of any defaults under such agreements, or any other matter.

(f) Purchaser hereby irrevocably authorizes Escrow Agent to comply with all instructions and entitlement orders delivered by Lender to Escrow Agent.

(g) Escrow Agent will not attempt to assert control, and does not claim and will not accept any security or other interest in, any part of the Collateral, and Escrow Agent will not exercise, enforce or attempt to enforce any right of setoff against the Collateral, or otherwise charge or deduct from the Collateral any amount whatsoever.

(h) Escrow Agent and Purchaser hereby agree that any property held in the Escrow Fund shall be treated as a financial asset under such section of the Commercial Code as corresponds with Section 8-102 of the Uniform Commercial Code, notwithstanding any contrary provision of any other agreement to which Escrow Agent may be a party.

(i) Escrow Agent is hereby authorized and instructed, and hereby agrees, to send to Lender at its address set forth in **Section 7** below, concurrently with the sending thereof to Purchaser, duplicate copies of any and all monthly Escrow Fund statements or reports issued or sent to Purchaser with respect to the Escrow Fund.

7. Miscellaneous. Capitalized terms not otherwise defined herein shall have the meanings assigned to them in the Financing Agreement. This Escrow Agreement may not be amended except in writing signed by all parties hereto. This Escrow Agreement may be executed in one or more counterparts, each of which shall be deemed to be an original instrument and each shall have the force and effect of an original and all of which together constitute, and shall be deemed to constitute, one and the same instrument. This Escrow Agreement shall be governed by and construed in accordance with the laws of the State of North Carolina. Notices hereunder shall be made in writing and shall be deemed to have been duly given when personally delivered or when deposited in the mail, first class postage prepaid, or delivered to an express carrier, charges prepaid, or sent by facsimile with electronic confirmation, addressed to each party at its address below:

If to Lender:	Capital One Public Funding, LLC
	1307 Walt Whitman Road
	Melville, New York 11747
	Attention: Catherine DeLuca



If to Purchaser: Town of Sawmills, North Carolina  
4076 US Highway 321-A  
Sawmills, NC 28630  
Attention: Finance Officer

If to Escrow Agent: Bank OZK  
18000 Cantrell Road  
Little Rock, Arkansas 72223  
Attention: Sheila Mayden

IN WITNESS WHEREOF, the parties have executed this Escrow Fund and Account Control Agreement as of the date first above written.

**CAPITAL ONE PUBLIC FUNDING, LLC,**  
as Lender

**TOWN OF SAWMILLS, NORTH  
CAROLINA,** as Purchaser

By: \_\_\_\_\_  
Title: Senior Vice President

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

**BANK OZK,** as Escrow Agent

By: \_\_\_\_\_  
Title: Executive Vice President

**SCHEDULE 1**  
**to Escrow Fund and Account Control Agreement**

**FORM OF DISBURSEMENT REQUEST**

Re:    Financing Agreement dated as of December \_\_, 2023, by and between Capital One Public Funding, LLC, as Lender, and Town of Sawmills, North Carolina, as Purchaser (the "Financing Agreement") (Capitalized terms not otherwise defined herein shall have the meanings assigned to them in the Financing Agreement.)

In accordance with the terms of the Escrow Fund and Account Control Agreement, dated as of December \_\_, 2023 (the "Escrow Agreement") by and among Capital One Public Funding, LLC (together with its successors and permitted assigns, "Lender"), Town of Sawmills, North Carolina ("Purchaser") and Bank OZK, as escrow agent (the "Escrow Agent"), the undersigned hereby requests the Escrow Agent to pay the following persons the following amounts from the Escrow Fund created under the Escrow Agreement for the following purposes:

Payee's Name and Address (please include wire transfer instructions)	Invoice Number	Dollar Amount	Purpose

The undersigned hereby certifies and represents to and agrees with Lender as follows:

(i)     An obligation in the stated amount has been incurred by Purchaser, and the same is a proper charge against the Escrow Fund for costs relating to the Equipment identified in the Financing Agreement, and has not been paid (or has been paid by Purchaser and Purchaser requests reimbursement thereof)[, and the Equipment relating to such obligation has been delivered, installed and accepted by Purchaser]. *Attached hereto* is the original invoice with respect to such obligation, together with lien waivers, if applicable.

(ii)    The undersigned, as Authorized Purchaser Representative, has no notice of any vendor's, mechanic's or other liens or rights to liens, chattel mortgages, conditional sales contracts or security interest which should be satisfied or discharged before such payment is made.

(iii)   This requisition contains no item representing payment on account, or any retained percentages which Purchaser is, at the date hereof, entitled to retain (except to the extent such amounts represent a reimbursement to Purchaser).

(iv) No amount requested to be disbursed was included in any Disbursement Request previously filed with the Lender and the Escrow Agent for which payment was actually made by the Escrow Agent.

(v) Purchaser has made such investigation of such sources of information as are deemed necessary and is of the opinion that the applicable portion of the Equipment and related work has been fully paid for, and no claim or claims exist against Purchaser or the Vendor out of which a lien based on furnishing labor or material exists or might arise.

(vi) The acquisition and installation of the applicable portion of the Equipment for which payment is being requested has been completed in accordance with the terms and conditions of the Vendor Agreement, and said applicable portion of the Equipment is suitable and sufficient for the expected uses thereof, however, this statement is made without prejudice to any rights against third parties which exist at the date hereof or which may subsequently come into being.

(vii) The amount remaining in the Escrow Fund will, after payment of the amount requested, be sufficient to pay the remaining costs of the Equipment.

(viii) A present need exists for such Equipment which need is not temporary or expected to diminish in the near future.

(ix) Such Equipment is essential to and will be used by Purchaser only for the purpose of performing one or more governmental functions of Purchaser consistent with the permissible scope of Purchaser's authority.

(x) The estimated useful life of such Equipment based upon the manufacturer's representations and Purchaser's projected needs is not less than the term of the Financing Agreement.

(xi) Purchaser has conducted such inspection and/or testing of such Equipment as it deems necessary and appropriate and hereby acknowledges that it accepts such Equipment for all purposes as of the date of this Disbursement Request.

(xii) The Equipment is insured in accordance with the Financing Agreement.

(xiii) No Event of Default or nonappropriation, and no event which with notice or lapse of time, or both, would become an Event of Default or nonappropriation, under the Financing Agreement has occurred and is continuing at the date hereof.

(xiv) Sufficient funds have been appropriated by Purchaser for the payment of all payments due under the Financing Agreement during Purchaser's current fiscal year.

(xv) The representations, warranties and covenants of Purchaser set forth in the Financing Agreement are true and correct as of the date hereof.

IF REQUEST IS FOR REIMBURSEMENT, CHECK HERE ☐. Purchaser paid an invoice with respect to the Equipment and is requesting reimbursement for such payment. A copy of evidence of such payment together with a copy of Purchaser's Declaration of Official Intent and other evidence required by Lender prior to Lender's approval hereof that Purchaser has satisfied the requirements for reimbursement set forth in Treas. Reg. 1.150 2 is hereby attached. Lender's approval hereof shall evidence that Purchaser has delivered to Lender such required documentation.

Dated: \_\_\_\_\_, 20\_\_.

**TOWN OF SAWMILLS, NORTH  
CAROLINA**

By: \_\_\_\_\_  
Printed Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**Approved for Payment:**

**CAPITAL ONE PUBLIC FUNDING, LLC,**  
as Lender

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_



**SCHEDULE 2**  
**to Escrow Fund and Account Control Agreement**

**INCUMBENCY CERTIFICATES REGARDING**  
**AUTHORIZED PURCHASER REPRESENTATIVES AND**  
**AUTHORIZED LENDER REPRESENTATIVES**

[To be attached.]

**FINANCING AGREEMENT**

THIS FINANCING AGREEMENT (this “**Contract**”) is dated as of December \_\_, 2023, and is between TOWN OF SAWMILLS, NORTH CAROLINA, a political subdivision of the State of North Carolina (the “**Borrower**”), and CAPITAL ONE PUBLIC FUNDING, LLC (“**COPF**”).

**R E C I T A L S:**

The Borrower has the power, pursuant to Section 160A-20 of the North Carolina General Statutes, to enter into installment contracts to finance or refinance the purchase of personal property, or the repair of fixtures or improvements on real property, and to secure its obligations under such contracts by security interests in all or a portion of the property purchased or improved. This Contract provides for COPF to advance \$1,345,500 to the Borrower to enable the Borrower to acquire and install the Equipment (as defined below) and provides for securing the Borrower’s obligations under this Contract by creating certain security interests in favor of COPF.

This Contract secures current advances of \$1,345,500. The current scheduled date for final repayment is on December 15, 2033.

NOW THEREFORE, for and in consideration of the mutual promises in this Contract, and other good and valuable consideration, the parties hereby agree as follows:

Article I

**Definitions; Interpretation**

Unless the context clearly requires otherwise, capitalized terms used in this Contract and not otherwise defined shall have the following meanings:

“**Additional Payments**” means any of COPF’s reasonable and customary fees and expenses related to the transactions contemplated by this Contract, any of COPF’s expenses (including attorneys’ fees) in prosecuting or defending any action or proceeding in connection with this Contract, any required license or permit fees, state and local sales and use or ownership taxes or property taxes which COPF is required to pay as a result of this Contract, inspection and re-inspection fees, and any other amounts payable by the Borrower (or paid by COPF on the Borrower’s behalf) as a result of its covenants under this Contract (together with interest that may accrue on any of the above if the Borrower shall fail to pay the same, as set forth in this Contract).

“**Amount Advanced**” has the meaning assigned in Section 2.02.

“**Bond Counsel Opinion**” means a written opinion (in form and substance acceptable to COPF) of an attorney or firm of attorneys acceptable to COPF.

“**Borrower**” means the Town of Sawmills, North Carolina.

“**Borrower Representative**” means the Borrower’s finance officer, investment officer or such

other person or persons at the time designated, by a written certificate in the form of Exhibit C attached hereto furnished to COPF and signed on the Borrower's behalf by an authorized representative of the Borrower, to act on the Borrower's behalf for any purpose (or any specified purpose) under this Contract.

**"Budget Officer"** means the Borrower officer from time to time charged with preparing the Borrower's draft budget as initially submitted to the Governing Board for its consideration.

**"Business Day"** means any day on which banks in the State are not by law authorized or required to remain closed.

**"Closing Date"** means the date on which this Contract is first executed and delivered by the parties.

**"Code"** means the Internal Revenue Code of 1986, as amended, including regulations, rulings and revenue procedures promulgated thereunder or under the Internal Revenue Code of 1954, as amended, as applicable to the Borrower's obligations under this Contract and all proposed (including temporary) regulations which, if adopted in the form proposed, would apply to such obligations. Reference to any specific Code provision shall be deemed to include any successor provisions thereto.

**"Escrow Agent"** means Bank OZK, as Escrow Agent under the Escrow Agent Agreement.

**"Escrow Agent Agreement"** means Escrow Fund and Account Control Agreement dated the Closing Date by and among COPF, the Borrower and the Escrow Agent.

**"Equipment"** has the meaning assigned in Section 2.03, and is generally expected to include the personal property described in Exhibit A.

**"Event of Default"** means one or more events of default as defined in Section 7.01.

**"Event of Nonappropriation"** means any failure by the Governing Board to adopt, by the first day of any Fiscal Year, a budget for the Borrower that includes an appropriation for Required Payments, or the Governing Board's amendment of the annual budget to remove an appropriation for Required Payments, in each case as contemplated by Section 3.05.

**"Fiscal Year"** means the Borrower's fiscal year beginning July 1, or such other fiscal year as the Borrower may later lawfully establish.

**"Governing Board"** means the Borrower's governing board as from time to time constituted.

**"Installment Payments"** means the payments payable by the Borrower pursuant to Section 3.01.

**"LGC"** means the North Carolina Local Government Commission.

**"Net Proceeds,"** when used with respect to any amounts derived from claims made on account of insurance coverages required under this Contract, any condemnation award arising out of the condemnation of all or any portion of the Equipment, or any amounts received in lieu or in



settlement of any of the foregoing, means the amount remaining after deducting from the gross proceeds thereof all expenses (including attorneys' fees and costs) incurred in the collection of such proceeds, and after reimbursement to the Borrower or COPF for amounts previously expended to remedy the event giving rise to such payment or proceeds.

**"Payment Date"** means the December 15 of each year, commencing December 15, 2024, with a final Payment Date of December 15, 2033.

**"Project Costs"** means all costs of the design, planning, acquiring and installing the Equipment as determined in accordance with generally accepted accounting principles and that will not adversely affect the exclusion from gross income for federal income tax purposes of the designated interest component of Installment Payments payable by the Borrower under this Contract, including (a) sums required to reimburse the Borrower or its agents for advances for any such costs, (b) interest during the period of the acquisition and installation of the Equipment and for up to six months thereafter, and (c) all costs related to the financing of the Equipment through this Contract and all related transactions.

**"Project Fund"** has the meaning assigned in Section 4.01.

**"Required Payments"** means Installment Payments and Additional Payments.

**"Section 160A-20"** means Section 160A-20 of the North Carolina General Statutes, as amended, or any successor provision of law.

**"Security Property"** means the Equipment and all amounts on deposit from time to time in the Project Fund.

**"State"** means the State of North Carolina.

**"UCC"** means the Uniform Commercial Code or any successor law as in effect from time to time in the State, currently Chapter 25 of the North Carolina General Statutes.

All references in this Contract to designated "Sections" and other subdivisions are to the designated sections and other subdivisions of this Contract. The words "hereof" and "hereunder" and other words of similar import refer to this Contract as a whole and not to any particular Section or other subdivision unless the context indicates otherwise. Words importing the singular number shall include the plural number and vice versa.

## Article II

### Security Provided by this Contract; Advance

Section 2.01. Security for Payment and Performance. This Contract secures the Borrower's payment, as and when the same shall become due and payable, of all Required Payments and the Borrower's timely compliance with all terms, covenants and conditions of this Contract.

Section 2.02. Advance. COPF shall advance \$1,345,500 (the "**Amount Advanced**") to the Borrower by making a deposit of the Amount Advanced on the Closing Date as provided in Article

IV herein, and the Borrower hereby accepts the Amount Advanced from COPF.

Section 2.03. UCC Security Agreement.

(a) This Contract is intended as and constitutes a security agreement pursuant to the UCC with respect to the following:

(i) all moneys on deposit from time to time in the Project Fund; and

(ii) all property acquired by the Borrower with funds advanced by COPF pursuant to this Contract, all personal property obtained in substitution or replacement therefor, and all personal property obtained in substitution or replacement for any portion of the Security Property, and all proceeds of the foregoing (collectively, the "Equipment").

To secure the Required Payments, the Borrower hereby grants to COPF a security interest in the Equipment and in the moneys on deposit from time to time in the Project Fund.

(b) The Borrower shall allow COPF to deliver and file, or cause to be filed, in such place or places as may be required by law, financing statements (including any continuation statements required by the UCC or determined by COPF) in such form as COPF may reasonably require to perfect and continue the security interest in the Equipment and in the moneys on deposit from time to time in the Project Fund.

Section 2.04. Borrower's Limited Obligation. (a) THE PARTIES INTEND THAT THIS TRANSACTION COMPLY WITH SECTION 160A-20. NO PROVISION OF THIS CONTRACT SHALL BE CONSTRUED OR INTERPRETED AS CREATING A PLEDGE OF THE BORROWER'S FAITH AND CREDIT WITHIN THE MEANING OF ANY CONSTITUTIONAL DEBT LIMITATION. NO PROVISION OF THIS CONTRACT SHALL BE CONSTRUED OR INTERPRETED AS A DELEGATION OF GOVERNMENTAL POWERS OR AS AN IMPROPER DONATION OR A LENDING OF THE BORROWER'S CREDIT WITHIN THE MEANING OF THE STATE CONSTITUTION. NO DEFICIENCY JUDGMENT MAY BE RENDERED AGAINST THE BORROWER IN VIOLATION OF SECTION 160A-20. No provision of this Contract shall be construed to pledge or to create a lien on any class or source of the Borrower's moneys (other than the funds held under this Contract), nor shall any provision of this Contract restrict the future issuance of any of the Borrower's bonds or obligations payable from any class or source of the Borrower's moneys (except to the extent this Contract restricts the incurrence of additional obligations secured by the Security Property). In the event of any conflict between this Section or Section 160A-20 and any other provision of this Contract, this Section and Section 160A-20 take precedence over any other provisions of this Contract.

(b) Nothing in this Section is intended to impair or prohibit execution on the Security Property if the Required Payments are not paid when due or otherwise upon the occurrence of an Event of Default under this Contract.

Section 2.05. Borrower's Continuing Obligations. The Borrower shall remain liable for full performance of all its covenants under this Contract (subject to the limitations described in Section 2.04), including payment of all Required Payments, notwithstanding the occurrence of any event or



circumstances whatsoever, including any of the following:

- (a) COPF's waiver of any right granted or remedy available to it;
- (b) The forbearance or extension of time for payment or performance of any obligation under this Contract, whether granted to the Borrower, a subsequent owner of the Equipment or any other person;
- (c) The release of all or part of the Security Property or the release of any party who assumes all or any part of such performance;
- (d) Any act or omission by COPF (but this provision does not relieve COPF of any of its obligations under this Contract);
- (e) The sale of all or any part of the Equipment; or
- (f) Another party's assumption of the Borrower's obligations under this Contract.

### Article III

#### Borrower's Payment Obligation and Related Matters

Section 3.01. Installment Payments. The Borrower shall repay the Amount Advanced by making Installment Payments to COPF in lawful money of the United States at the times and in the amounts set forth in Exhibit B, except as otherwise provided in this Contract and provided that additional interest payments may be required pursuant to Section 3.04 hereof. As indicated in Exhibit B, the Installment Payments reflect the repayment of the Amount Advanced and include designated interest components.

Section 3.02. Additional Payments. The Borrower shall pay all Additional Payments on a timely basis directly to the person or entity to which such Additional Payments are owed in lawful money of the United States.

Section 3.03. Prepayment. Prior to December 15, 2029, the Borrower is permitted to prepay in part, at par, on a Payment Date, up to 10% of the outstanding principal component of the Amount Advanced by giving at least 45 days' written notice thereof to COPF. On and after December 15, 2029, the Borrower is permitted to prepay in whole or in part, at par, on a Payment Date, the outstanding principal component of the Amount Advanced by giving at least 45 days' written notice thereof to COPF. Any prepayment in part by the Borrower shall be applied to the outstanding principal component of the Amount Advanced in inverse order of maturity.

Section 3.04. Late Payments. If the Borrower fails to pay any Installment Payment when due, the Borrower shall pay additional interest on the principal component of the late Installment Payment (as permitted by law) at an annual rate equal to 7% from the original due date.

Section 3.05. Appropriations. (a) The Budget Officer shall include in the initial proposal for each of the Borrower's annual budgets the amount of all Installment Payments and estimated Additional Payments coming due during the Fiscal Year to which such budget applies. Notwithstanding that the Budget Officer includes such an appropriation for Required Payments in a



proposed budget, the Governing Board may determine not to include such an appropriation in the Borrower's final budget for such Fiscal Year.

(b) The Budget Officer shall deliver notification to COPF within 15 days after the adoption of the annual budget if an amount equal to the Installment Payments and estimated Additional Payments coming due during the next Fiscal Year has not been appropriated by the Borrower in such budget for such purposes. If such amount has not been so appropriated, the Budget Officer shall send a copy of such notification to the LGC, to the attention of its Secretary, at 3200 Atlantic Avenue, Raleigh, NC 27604.

(c) The actions required of the Borrower and its officials and/or officials pursuant to this Section shall be deemed to be and shall be construed to be in fulfillment of ministerial duties, and it shall be the duty of each and every Borrower official to take such action and do such things as are required by law in the performance of the official duty of such officials to enable the Borrower to carry out and perform the actions required pursuant to this Section and the remainder of this Contract to be carried out and performed by the Borrower.

(d) The Borrower reasonably believes that it can obtain funds sufficient to pay all Required Payments when due.

Section 3.06. No Abatement. There shall be no abatement or reduction of the Required Payments for any reason, including, but not limited to, any defense, recoupment, setoff, counterclaim, or any claim (real or imaginary) arising out of or related to the Equipment, except as expressly provided in this Contract. The Borrower assumes and shall bear the entire risk of loss and damage to the Equipment from any cause whatsoever. The Installment Payments shall be made in all events unless the Borrower's obligation to make Installment Payments is terminated as otherwise provided in this Contract.

Section 3.07. Interest Rate and Payment Adjustment. (a) "Rate Adjustment Event" means (i) any action by the Internal Revenue Service (including the delivery of a deficiency notice) or any other federal court or administrative body determining, or (ii) receipt by COPF of an opinion of nationally recognized bond counsel to the effect, (A) that the interest component of Installment Payments, or any portion thereof, is includable in any beneficiary's gross income for federal income tax purposes or (B) that the Borrower's obligations under this Contract are not "qualified tax-exempt obligations" within the meaning of Code Section 265 (a "265 Event").

(b) Upon any Rate Adjustment Event, (i) the unpaid principal portion of the Amount Advanced shall continue to be payable on dates and in amounts as set forth in Exhibit B, but (ii) the interest components of the Installment Payments shall be recalculated, at an interest rate equal to an annualized interest rate of 6.73% to the date (retroactively, if need be) determined pursuant to the Rate Adjustment Event to be the date interest became includable in any beneficiary's gross income for federal income tax purposes (or in the case of a 265 Event, retroactively to the Closing Date).

(c) The Borrower shall pay interest at such adjusted rate (subject to credit for interest previously paid) to each affected beneficiary, notwithstanding the fact that any particular beneficiary may not necessarily be a beneficiary to this Contract on the date of a Rate Adjustment Event. The Borrower shall additionally pay to all affected counterparties any interest, penalties or

other charges assessed against or payable by such beneficiary and attributable to a Rate Adjustment Event notwithstanding the prior repayment of the entire Amount Advanced or any transfer to another beneficiary.

#### Article IV Project Fund

Section 4.01. Project Fund. Pursuant to Section 2.02, on the Closing Date, COPF shall deposit \$1,345,500 into the Project Fund, which shall be established and held by the Escrow Agent pursuant to Section 1 of the Escrow Agent Agreement. The Project Fund shall be held separate and apart from all other funds or accounts of the Borrower. The Project Fund is the Borrower's property, but the Borrower may withdraw amounts on deposit in the Project Fund only as provided herein and pursuant to the Escrow Agent Agreement. Pending such application, such amounts shall be subject to a lien and charge in favor of COPF to secure the Borrower's obligations hereunder.

Section 4.02. Requisitions from Project Fund. Disbursements from the Project Fund shall be made by the Escrow Agent pursuant to Section 2 of the Escrow Agent Agreement.

Section 4.03. Disposition of Project Fund Balance. (a) Promptly after the acquisition of the Equipment, and when the Borrower has withdrawn from the Project Fund all of the funds needed to acquire the Equipment, the Borrower shall deliver to COPF a written certificate of completion executed by a Borrower Representative stating that (i) the Equipment has been acquired, (ii) there are no mechanic's or other liens against the Equipment for labor or materials furnished in connection with the acquisition of the Equipment, and (iii) no further funds will be requisitioned from the Project Fund to pay Project Costs. COPF may then instruct the Escrow Agent to withdraw any balance remaining in the Project Fund (and not required to be retained to pay Project Costs incurred but not yet paid) and deliver such funds to COPF and COPF may apply such amount as provided in subsection (d) of this Section.

(b) Upon the occurrence of an Event of Default, COPF may instruct the Escrow Agent to withdraw any balance remaining in the Project Fund and deliver such funds to COPF and COPF may apply such amount as provided in subsection (d) of this Section.

(c) If (i) more than three years have elapsed from the Closing Date or (ii) at least six months have elapsed from COPF's most recent receipt of a requisition for Project Costs, then COPF, upon 30 days' notice from COPF to the Borrower, may instruct the Escrow Agent to withdraw any balance remaining in the Project Fund and deliver such funds to COPF and COPF may apply such amount as provided in subsection (d) of this Section.

(d) COPF may apply any amounts withdrawn from the Project Fund pursuant to this Section in the following order: (i) to the payment of any Additional Payments then due to COPF under this Contract, (ii) to the payment of any interest accrued to the Project Fund disposition date that is then due and payable, (iii) to the payment of any principal amount then due and payable, and (iv) to the payment of future Installment Payments in inverse order of maturity; provided, however, that (1) at the option of COPF, COPF may deliver funds held in the Project Fund and received from the Escrow Agent to the Borrower to be applied to additional Project Costs or future Required Payments, and (2) in no event will COPF apply any funds in the manner set forth herein if it is



advised in an opinion of bond counsel provided by the Borrower that such a use of funds could adversely affect the exclusion from gross income for federal income tax purposes of the interest component of Installment Payments. Any prepayment pursuant to this Section shall not affect any other Borrower payment obligation hereunder. COPF shall notify the Borrower of any withdrawal from the Project Fund made under this Section, and in the notice shall describe its application of the funds so withdrawn.

Section 4.04. Investment. (a) The Borrower and COPF agree that money in the Project Fund will be continuously invested and reinvested in a public funds money rate savings account, as directed by the Borrower and COPF, that meets the requirements of Section 159-30 of the General Statutes of North Carolina, as amended, and this Article IV, as more fully provided in the Escrow Agreement.

(b) From and after the date that is three years from the Closing Date, the Borrower and COPF agree that money in the Project Fund will not be invested at a "yield," as determined under the Code, in excess of the "yield" on the Borrower's obligations under this Contract, unless the Borrower has supplied COPF with an opinion of bond counsel to the effect that such investment will not adversely affect the exclusion from gross income for federal income tax purposes to which the interest components of Installment Payments would otherwise be entitled, as more fully provided in the Escrow Agreement,.

(c) Investment obligations acquired with money in the Project Fund shall be deemed at all times to be part of the Project Fund. The interest accruing thereon and any profit or loss realized upon the disposition or maturity of any such investment shall be credited to or charged against the Project Fund.

(d) All earnings on moneys in the Project Fund shall be used for Project Costs or otherwise applied in accordance with Section 4.03 hereof.

## Article V

### Borrower's Covenants, Representations and Warranties

Section 5.01. Indemnification. To the extent permitted by law, the Borrower shall indemnify, protect and save COPF and its officers and directors, and the LGC's members and employees, harmless from all liability, obligations, losses, claims, damages, actions, suits, proceedings, costs and expenses, including attorneys' fees, arising out of, connected with, or resulting directly or indirectly from the Security Property or the transactions contemplated by this Contract, including without limitation the possession, condition or use of the Equipment. The indemnification arising under this Section shall survive this Contract's termination.

Section 5.02. Covenant as to Tax Exemption. (a) The Borrower covenants that it will not take any action, or fail to take any action, if any such action or failure to take action would adversely affect the exclusion from gross income for federal income taxation purposes of the interest portion of the obligation created by this Contract under Section 103 of the Code. In particular, the Borrower covenants that it will not directly or indirectly use or permit the use of any proceeds of any fund created under this Contract, any funds of the Borrower or any property financed or refinanced with funds provided to the Borrower under this Contract, or otherwise take or omit to take any action, that would cause the obligation created by this Contract to be an "arbitrage bond"



within the meaning of Section 148(a) of the Code or a "private activity bond" under Section 141 of the Code. The Borrower will maintain books on which will be recorded (i) COPF or (ii) any assignee of the Installment Payments due under this Contract, as the registered owner of such Installment Payments. To that end, the Borrower has executed the Use of Proceeds Certificate dated the date hereof (the "Use of Proceeds Certificate"), and will comply with all requirements of Section 141 and Section 148 of the Code to the extent applicable.

(b) The Borrower hereby represents and warrants that its representations and warranties in the Use of Proceeds Certificate with respect to its investment and use of funds provided under this Contract, and its use of any property financed or refinanced with funds provided under this Contract, are true, correct and complete.

(c) Without limiting the generality of the foregoing, the Borrower agrees that there shall be paid from time to time all amounts required to be rebated to the United States of America pursuant to Section 148(f) of the Code and any temporary, proposed or final Treasury Regulations as may be applicable to the obligation created by this Contract from time to time. This covenant shall survive the termination of this Contract.

(d) Notwithstanding any provision of this Section, if the Borrower shall provide to COPF a Bond Counsel Opinion to the effect that any action required under this Section or the Use of Proceeds Certificate is no longer required, or to the effect that some further action is required, to maintain the exclusion from gross income of the interest on the obligation created by this Contract pursuant to Section 103 of the Code, the Borrower and COPF may rely conclusively on such opinion in complying with the provisions thereof.

(e) To the extent permitted by law, the Borrower hereby designates and authorizes COPF and its employees as its agents and attorneys-in-fact of the Borrower for the purpose of preparing and filing with the IRS a form 8038-G (or other form required under Section 149(e) of the Code) with respect to this Contract.

(f) The Borrower acknowledges that its personnel must be familiar with the arbitrage rebate rules because the tax-exempt status of the interest on the Installment Payments depends upon continuing compliance with such rules. The Borrower therefore covenants to take all reasonable action to assure that Borrower personnel responsible for the investment of and accounting for financing proceeds comply with such rules.

(g) The Borrower represents that the aggregate face amount of all tax-exempt obligations issued by the Borrower during the current calendar year does not, and will not, exceed \$10,000,000. The Borrower also represents that it has designated each of the Installment Payments under this Contract as a "qualified tax-exempt obligation" for the purposes of the Code.

**Section 5.03. Validity of Organization and Acts.** The Borrower is validly organized and existing under State law, has full power to enter into this Contract and has duly authorized and has obtained all required approvals and all other necessary acts required prior to the execution and delivery of this Contract. This Contract is a valid, legal and binding obligation of the Borrower.

Section 5.04. Maintenance of Existence. The Borrower shall maintain its existence, shall continue to be a local governmental unit of the State, validly organized and existing under State law, and shall not consolidate with or merge into another local governmental unit of the State, or permit one or more other local governmental units of the State to consolidate with or merge into it, unless the local governmental unit thereby resulting assumes the Borrower's obligations under this Contract.

Section 5.05. Acquisition of Permits and Approvals. All permits, consents, approvals or authorizations of all governmental entities and regulatory bodies, and all filings and notices required on the Borrower's part to have been obtained or completed as of today in connection with the authorization, execution and delivery of this Contract, the consummation of the transactions contemplated by this Contract and the acquisition and installation of the Equipment have been obtained and are in full force and effect, and there is no reason why any future required permits, consents, approvals, authorizations or orders cannot be obtained as needed.

Section 5.06. No Breach of Law or Contract. Neither the execution and delivery of this Contract nor the consummation of the transactions contemplated by this Contract, nor the fulfillment of or compliance with the terms and conditions of this Contract, (a) to the best of the Borrower's knowledge, constitutes a violation of any provision of law governing the Borrower or (b) results in a breach of the terms, conditions or provisions of any contract, agreement or instrument or order, rule or regulation to which the Borrower is a party or by which the Borrower is bound.

Section 5.07. No Litigation. There is no litigation or any governmental administrative proceeding to which the Borrower (or any official thereof in an official capacity) is a party that is pending or, to the best of the Borrower's knowledge after reasonable investigation, threatened with respect to (a) the Borrower's organization or existence, (b) its authority to execute and deliver this Contract or to comply with the terms of this Contract, (c) the validity or enforceability of this Contract or the transactions contemplated by this Contract, (d) the title to office of any Governing Board member or any other Borrower official, (e) any authority or proceedings relating to the Borrower's execution or delivery of this Contract, or (f) the undertaking of the transactions contemplated by this Contract.

Section 5.08. No Current Default or Violation. (a) The Borrower is not in violation of any existing law, rule or regulation applicable to it, (b) the Borrower is not in default under any contract, other agreement, order, judgment, decree or other instrument or restriction of any kind to which the Borrower is a party or by which it is bound or to which any of its assets are subject, including this Contract, and (c) no event or condition has happened or existed, or is happening or existing, under the provisions of any such instrument, including this Contract, which constitutes or which, with notice or lapse of time, or both, would constitute an event of default hereunder or thereunder.

Section 5.09. No Misrepresentation. No representation, covenant or warranty by the Borrower in this Contract is false or misleading in any material respect.

Section 5.10. Environmental Warranties and Indemnification. (a) The Borrower warrants and represents to COPF that, to the best of the Borrower's knowledge after thorough investigation, the Equipment is not now and has not ever been used to generate, manufacture, refine, transport, treat, store, handle, dispose, transfer, produce or process Hazardous Materials (as defined herein).



(b) The Borrower covenants that the Equipment shall be kept free of Hazardous Materials and shall not be used to generate, manufacture, refine, transport, treat, store, handle, dispose, transfer, produce or process Hazardous Materials, except in connection with the normal maintenance and operation of the Equipment, and the Borrower shall not cause or permit, as a result of any intentional or unintentional act or omission on the part of the Borrower or any lessee, the release of Hazardous Materials onto the Equipment or suffer the presence of Hazardous Materials on the Equipment, except in connection with the normal maintenance and operation of the Equipment.

(c) The Borrower shall comply with, and ensure compliance by all users and lessees with, all applicable federal, State and local laws, ordinances, rules and regulations with respect to Hazardous Materials and shall keep the Equipment free and clear of any liens imposed pursuant to such laws, ordinances, rules and regulations. If the Borrower receives any notices from any governmental agency or any lessee with regard to Hazardous Materials on, from or affecting the Equipment, the Borrower shall immediately notify COPF. The Borrower shall conduct and complete all investigations, studies, sampling and testing and all remedial, removal and other actions necessary to clean up and remove all Hazardous Materials on, from or affecting the Equipment in accordance with all applicable federal, State and local laws, ordinances, rules, regulations and policies and to COPF's satisfaction.

(d) "Hazardous Materials" means any explosives, radioactive materials, hazardous materials, hazardous wastes, hazardous or toxic substances, or related materials, asbestos or any materials containing asbestos, or any other substance or material as defined by any federal, State or local environmental law, ordinance, rule or regulation including, without limitation, the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (42 U.S.C. sections 9601 et seq.), the Hazardous Materials Transportation Act, as amended (49 U.S.C. sections 1801 et seq.), the Resource Conservation and Recovery Act, as amended (42 U.S.C. sections 9601 et seq.), and the regulations adopted and publications promulgated pursuant thereto.

(e) To the extent permitted by law, the Borrower shall indemnify and hold COPF harmless from and against (i) any and all damages, penalties, fines, claims, liens, suits, liabilities, costs (including clean-up costs), judgments and expenses (including attorneys', consultants' or experts' fees and expenses) of every kind and nature suffered by or asserted against COPF as a direct or indirect result of any warranty or representation made by the Borrower in subsections (a) through (c) of this Section being false or untrue in any material respect, or (ii) any requirement under any law, regulation or ordinance, local, State or federal, which requires the elimination or removal of any hazardous materials, substances, wastes or other environmentally regulated substances by COPF or the Borrower or any transferee or assignee COPF or the Borrower.

(f) The Borrower's obligations under this Section shall continue in full force and effect notwithstanding full payment of the Required Payments or execution on the security interests created under this Contract.

Section 5.11. Further Instruments. Upon COPF's request, the Borrower shall execute, acknowledge and deliver such further instruments reasonably necessary or desired by COPF to carry out more effectively the purposes of this Contract or any other document related to the transactions contemplated by this Contract, and to subject to the liens and security interests hereof and thereof all



or any part of the Security Property intended to be given or conveyed hereunder or thereunder, whether now given or conveyed or acquired and conveyed subsequent to the date of this Contract.

Section 5.12. COPF's Advances for Performance of Borrower's Obligations. If the Borrower fails to perform any of its obligations under this Contract, COPF is hereby authorized, but not obligated, to perform such obligation or cause it to be performed. All expenditures incurred by COPF (including any advancement of funds for payment of taxes, insurance premiums or other costs of maintaining the Security Property, and any associated legal or other expenses), together with interest thereon at the rate of 10% per annum or the maximum rate permitted by law, whichever is less, shall be secured as Additional Payments under this Contract. The Borrower promises to pay all such amounts to COPF immediately upon demand.

Section 5.13. Equipment Will Be Used and Useful. The acquisition and installation of the Equipment is necessary and expedient for the Borrower, and will perform essential functions of the Borrower appropriate for units of local government. The Borrower has an immediate need for, and expects to make immediate use of, all of the Equipment, and does not expect such need or use to diminish in any material respect during the term of this Contract. The Equipment will not be used in any private business or put to any private business use.

Section 5.14. Financial Information. (a) The Borrower shall send to COPF a copy of the Borrower's audited financial statements for each Fiscal Year within 30 days of the Borrower's acceptance of such statements, but in any event within 270 days of the completion of such Fiscal Year.

(b) The Borrower shall furnish COPF, at such reasonable times as COPF shall request, all other financial information (including, without limitation, the Borrower's annual budget as submitted or approved) as COPF may reasonably request. The Borrower shall permit COPF or its agents and representatives to inspect the Borrower's books and records and make extracts therefrom.

Section 5.15. Taxes and Other Governmental Charges. The Borrower shall pay, as Additional Payments, the full amount of all taxes, assessments and other governmental charges lawfully made by any governmental body during the term of this Contract. With respect to special assessments or other governmental charges which may be lawfully paid in installments over a period of years, the Borrower shall be obligated to provide for Additional Payments only for such installments as are required to be paid during the term of this Contract. The Borrower shall not allow any liens for taxes, assessments or governmental charges with respect to the Equipment or any portion thereof to become delinquent (including, without limitation, any taxes levied upon the Equipment or any portion thereof which, if not paid, will become a charge on any interest in the Equipment, including COPF's interest, or the rentals and revenues derived therefrom or hereunder).

Section 5.16. Borrower's Insurance. (a) The Borrower shall, at its own expense, acquire, carry and maintain broad-form extended coverage property damage insurance with respect to all Equipment in an amount equal to the greater of the actual cash value of the Equipment or the outstanding principal component of the Amount Advanced. Such property damage insurance shall include COPF as loss payee. Any Net Proceeds of the insurance required by this subsection (a) shall be payable as provided in Section 6.15.

(b) The Borrower shall, at its own expense, acquire, carry and maintain comprehensive general liability insurance (and auto liability insurance, if applicable) in accordance with State statute or as customarily held by similar entities in the State and such insurance policy or policies shall name COPF as additional insured.

(c) The Borrower shall also maintain workers' compensation insurance issued by a responsible carrier authorized under State law to insure the Borrower against liability for compensation under applicable State law as in effect from time to time.

(d) All insurance shall be maintained with generally recognized responsible insurers in accordance with State law and may carry reasonable deductible or risk-retention amounts.

(e) COPF shall not be responsible for the sufficiency or adequacy of any required insurance and shall be fully protected in accepting payment on account of such insurance or any adjustment, compromise or settlement of any loss agreed to by COPF.

(f) Upon request by COPF, the Borrower shall deliver to COPF a certificate stating that the risk coverages required by this Contract are in effect, and stating the carriers, policy numbers, coverage limits and deductible or risk-retention amounts for all such coverages.

## Article VI The Equipment

Section 6.01. Acquisition and Installation. The Borrower shall comply with the provisions of Article 8 of Chapter 143 of the North Carolina General Statutes, accept all portions of the Equipment when properly delivered, provide for the proper installation thereof and thereafter promptly place each such portion in service.

Section 6.02. Changes in Location. The Borrower shall promptly inform COPF if any component of the Equipment shall be moved from the location designated for such Equipment at the time of its acquisition.

Section 6.03. Acquisition and Installation within Funds Available. The Borrower represents that, based upon its examination of the plans and specifications for the Equipment, estimated installation costs and the Equipment's anticipated configuration, the Equipment can be acquired and installed for a total price within the total amount of funds to be available therefor in the Project Fund, income anticipated to be derived from the investment thereof and other funds previously identified and designated for such purposes. If the total amount available for such purposes in the Project Fund shall be insufficient to pay the entire cost of acquiring and installing the Equipment, the Borrower promises to pay any such excess costs, with no resulting reduction or offset in the amounts otherwise payable by the Borrower under this Contract.

Section 6.04. Disclaimer of Warranties. The Borrower agrees that COPF has not designed the Equipment, that COPF has not supplied any plans or specifications with respect thereto and that COPF (a) is not a manufacturer of, nor a dealer in, any of the component parts of the Equipment or similar equipment, (b) has not made any recommendation, given any advice nor taken any other action with respect to (i) the choice of any supplier, vendor or designer of, or any other contractor with respect to,



the Equipment or any component part thereof or any property or rights relating thereto, or (ii) any action taken or to be taken with respect to the Equipment or any component part thereof or any property or rights relating thereto at any stage of the acquisition, installation and equipping thereof, (c) has not at any time had physical possession of the Equipment or any component part thereof or made any inspection thereof or of any property or rights relating thereto, and (d) has not made any warranty or other representation, express or implied, that the Equipment or any component part thereof or any property or rights relating thereto (i) will not result in or cause injury or damage to persons or property, (ii) has been or will be properly designed, or will accomplish the results which the Borrower intends therefor, or (iii) is safe in any manner or respect.

COPF MAKES NO EXPRESS OR IMPLIED WARRANTY OR REPRESENTATION OF ANY KIND WHATSOEVER WITH RESPECT TO THE EQUIPMENT OR ANY COMPONENT PART THEREOF, INCLUDING BUT NOT LIMITED TO ANY WARRANTY OR REPRESENTATION WITH RESPECT TO THE MERCHANTABILITY OR THE FITNESS OR SUITABILITY THEREOF FOR ANY PURPOSE, and further including the design or condition thereof; the safety, quality or capacity thereof; compliance thereof with the requirements of any law, rule, specification or contract pertaining thereto; any latent defect; the Equipment's ability to perform any function; that the Amount Advanced will be sufficient to pay all costs of the acquisition and installation of the Equipment; or any other characteristic of the Equipment; it being agreed that the Borrower is to bear all risks relating to the Equipment, the installation thereof and the transactions contemplated by this Contract, and the Borrower hereby waives the benefits of any and all implied warranties and representations of COPF.

The provisions of this Section shall survive this Contract's termination.

Section 6.05. Right of Entry and Inspection. COPF and its representatives and agents shall have the right to enter upon the Borrower's property and inspect the Equipment from time to time during installation and after the completion of installation, and the Borrower shall cause any vendor, contractor or sub-contractor to cooperate with COPF and its representatives and agents during such inspections.

No right of inspection or approval granted in this Section shall be deemed to impose upon COPF any duty or obligation whatsoever to undertake any inspection or to make any approval. No inspection made or approval given by COPF shall be deemed to impose upon COPF any duty or obligation whatsoever to identify or correct any defects in the Equipment or to notify any person with respect thereto, and no liability shall be imposed upon COPF, and no warranties (either express or implied) are made by COPF as to the quality or fitness of any improvement, any such inspection and approval being made solely for COPF's benefit.

Section 6.06. Compliance with Requirements. (a) The Borrower shall cause the Equipment to be installed in a careful manner and in compliance with all applicable legal requirements.

(b) The Borrower shall observe and comply promptly with all current and future requirements relating to the Equipment's use or condition imposed by (i) any judicial, governmental or regulatory body having jurisdiction over the Equipment or any portion thereof or (ii) any insurance company writing a policy covering the Equipment or any portion thereof, whether or not any such requirement shall necessitate structural changes or improvements or interfere with the use or enjoyment of the



Equipment.

(c) The Borrower shall obtain and maintain in effect all licenses and permits required for the Equipment's operation.

(d) The Borrower shall in no event use the Equipment or any part thereof, nor allow the same to be used, for any unlawful purpose, or suffer any act to be done or any condition to exist with respect to the Equipment or any part thereof, nor any article to be brought thereon, which may be dangerous, unless safeguarded as required by law, or which may, in law, constitute a nuisance, public or private, or which may make void or voidable any insurance then in force with respect thereto.

Section 6.07. Use and Operation. The Borrower shall use and operate the Equipment and related property for its reasonably intended use and purpose, and for no other purpose unless required by law. The Borrower shall be solely responsible for the Equipment's operation, and shall not contract with any other person or entity for the Equipment's operation.

Section 6.08. Maintenance and Repairs; Additions. (a) The Borrower shall keep the Equipment in good order and repair (reasonable wear and tear excepted) and in good operating condition, shall not commit or permit any waste or any other thing to occur whereby the value or usefulness of the Equipment might be impaired, and shall make from time to time all necessary or appropriate repairs, replacements and renewals.

(b) The Borrower may, also at its own expense, make from time to time any additions, modifications or improvements to the Equipment that it may deem desirable for its governmental or proprietary purposes and that do not materially impair the effective use, nor materially decrease the value or substantially alter the intended use, of the Equipment. The Borrower shall do, or cause to be done, all such things as may be required by law in order fully to protect the security of and all COPF's rights under this Contract.

(c) Any and all additions to or replacements of the Equipment and all parts thereof shall constitute accessions to the Equipment and shall be subject to all the terms and conditions of this Contract and included in the "Equipment" for the purposes of this Contract.

(d) Notwithstanding the provisions of subsection (c) of this Section, however, the Borrower may, from time to time in its sole discretion and at its own expense, install machinery, equipment and other tangible property in or on the Equipment. All such property shall remain the Borrower's sole property in which COPF shall have no interest; provided, however, that any such property which becomes permanently affixed to the Equipment shall be subject to the lien and security interest arising under this Contract if COPF shall reasonably determine that the Equipment would be damaged or impaired by the removal of such machinery, equipment or other tangible property.

Section 6.09. Security. The Borrower shall take all reasonable steps necessary to safeguard the Equipment against theft. The security afforded the Equipment shall at all times be equal to or better than the security afforded the Borrower's personal property that is not subject to this Contract.

Section 6.10. Utilities. The Borrower shall pay all charges for utility services furnished to or used on or in connection with the Equipment.

Section 6.11. Risk of Loss. The Borrower shall bear all risk of loss to and condemnation of the Equipment.

Section 6.12. Condemnation. The Borrower shall immediately notify COPF if any governmental authority shall institute, or shall notify the Borrower of any intent to institute, any action or proceeding for the taking of, or damages to, all or any part of the Equipment or any interest therein under the power of eminent domain, or if there shall be any damage to the Equipment due to governmental action, but not resulting in a taking of any portion of the Equipment. The Borrower shall file and prosecute its claims for any such awards or payments in good faith and with due diligence and cause the same to be collected and paid over to COPF, and to the extent permitted by law hereby irrevocably authorizes and empowers COPF, in the Borrower's name or otherwise, to collect and receipt for any such award or payment and to file and prosecute such claims. If the Borrower receives any Net Proceeds arising from any such action, the Borrower shall apply such Net Proceeds as provided in Section 6.15.

Section 6.13. Title. Title to the Equipment and any and all additions, repairs, replacements or modifications thereto shall at all times be in the Borrower, subject to the lien of this Contract. Upon the Borrower's payment in full of all Required Payments, COPF, at the Borrower's expense and request, shall cancel this Contract.

Section 6.14. No Encumbrance, Mortgage or Pledge of Equipment. (a) The Borrower shall not directly or indirectly create, incur, assume or suffer to exist any mortgage, pledge, lien (including mechanics' and materialmen's liens), charge, encumbrance or other claim in the nature of a lien on or with respect to the Equipment. The Borrower shall promptly, at its own expense, take such action as may be duly necessary to discharge any such mortgage, pledge, lien, charge, encumbrance or claim not excepted above which it shall have created, incurred or suffered to exist.

(b) The Borrower shall reimburse COPF for any expense incurred by COPF to discharge or remove any such mortgage, pledge, lien, security interest, encumbrance or claim, with interest thereon at the rate of 7% per annum.

Section 6.15. Damage and Destruction; Use of Net Proceeds. (a) The Borrower shall promptly notify COPF if (i) the Equipment or any portion thereof is stolen or is destroyed or damaged by fire or other casualty, (ii) a material defect in the installation of the Equipment shall become apparent, or (iii) title to or the use of all or any portion of the Equipment shall be lost by reason of a defect in title. Each notice shall describe generally the nature and extent of such damage, destruction or taking.

(b) The Borrower shall apply Net Proceeds (i) to the prompt completion, repair or restoration of the Equipment (and pay any costs in excess of the Net Proceeds, if necessary), or (ii) together with other available funds as may be necessary, to the prepayment of all outstanding Required Payments pursuant to Section 3.03. The Borrower shall promptly report to COPF regarding the use of Net Proceeds.

(c) Any repair, restoration, modification, improvement or replacement paid for in whole or in part out of Net Proceeds shall be the Borrower's property and shall be part of the Equipment.

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Article VII  
Defaults and Remedies; Execution

Section 7.01. Events of Default. An "Event of Default" is any of the following:

- (a) The Borrower's failing to make any Installment Payment when due.
- (b) The occurrence of an Event of Nonappropriation.
- (c) The Borrower's breaching or failing to perform or observe any term, condition or covenant of this Contract on its part to be observed or performed, other than as provided in subsections (a) or (b) of this Section, including payment of any Additional Payment, for a period of 15 days after written notice specifying such failure and requesting that it be remedied shall have been given to the Borrower by COPF, unless COPF shall agree in writing to an extension of such time prior to its expiration.
- (d) The institution of proceedings under any bankruptcy, insolvency, reorganization or similar law by or against the Borrower as a debtor, or the appointment of a receiver, custodian or similar official for the Borrower or any of its property, and the failure of such proceedings or appointments to be vacated or fully stayed within 30 days after the institution or occurrence thereof.
- (e) Any warranty, representation or statement made by the Borrower in this Contract is found to be incorrect or misleading in any material respect on the Closing Date (or, if later, on the date made).
- (f) Any lien, charge or encumbrance prior to the security interest created under Section 2.03, or affecting the validity of this Contract, is found to exist, or proceedings are instituted against the Borrower to enforce any lien, charge or encumbrance against the Equipment and such lien, charge or encumbrance would be prior to the lien of this Contract.
- (g) The Borrower's failing to pay when due any principal of or interest on any of its general obligation debt.

Section 7.02. Remedies on Default. Upon the continuation of any Event of Default, COPF may, without any further demand or notice, exercise any one or more of the following remedies:

- (a) Declare the unpaid principal components of the Installment Payments immediately due and payable;
- (b) Proceed by appropriate court action to enforce the Borrower's performance of the applicable covenants of this Contract or to recover for the breach thereof;
- (c) As provided in Article IV hereof, pay over any balance remaining in the Project Fund to be applied against outstanding Required Payments in any manner COPF may reasonably deem appropriate; and
- (d) Avail itself of all available remedies under this Contract, including execution as provided in Section 7.03, and recovery of attorneys' fees and other expenses.

Notwithstanding any other provision of this Contract, the Borrower and COPF intend to comply with Section 160A-20. No deficiency judgment may be entered against the Borrower in violation of Section 160A-20.

Section 7.03. Execution on Personal Property. Upon the continuation of any Event of Default and in addition to all other remedies granted in this Contract, COPF shall have all the rights and remedies of a secured party under the UCC and may proceed to execute upon the Security Property.

Section 7.04. Possession of Equipment. After a foreclosure sale, the Borrower shall immediately lose the right to possess, use and enjoy the Equipment (but may remain in possession of the Equipment as a lessee at will of COPF), and thereupon the Borrower (a) shall pay monthly in advance to COPF a fair and reasonable rental value for the use and possession of the Equipment (in an amount COPF shall determine in its reasonable judgment), and (b) upon COPF's demand, shall deliver possession of the Equipment to COPF or, at COPF's direction, to any purchaser of the Equipment after an execution sale.

In addition, upon the continuation of any Event of Default, COPF, to the extent permitted by law, is hereby authorized to (i) take possession of the Equipment, with or without legal action, (ii) lease the Equipment, (iii) collect all rents and profits therefrom, with or without taking possession of the Equipment, and (iv) after deducting all costs of collection and administration expenses, apply the net rents and profits first to the payment of necessary maintenance and insurance costs, and then to the Borrower's account and in reduction of the Borrower's corresponding Required Payments in such fashion as COPF shall reasonably deem appropriate. COPF shall be liable to account only for rents and profits it actually receives.

Section 7.05. No Remedy Exclusive; Delay Not Waiver. All remedies under this Contract are cumulative and may be exercised concurrently or separately. The exercise of any one remedy shall not be deemed an election of such remedy or preclude the exercise of any other remedy. If any Event of Default shall occur and thereafter be waived by COPF, such waiver shall be limited to the particular breach so waived and shall not be deemed a waiver of any other breach under this Contract.

Section 7.06. Payment of Costs and Attorney's Fees. If COPF employs an attorney to assist in the enforcement or collection of Required Payments, or if COPF voluntarily or otherwise shall become a party to any suit or legal proceeding (including a proceeding conducted under any state or federal bankruptcy or insolvency statute) to protect the Equipment, to protect the lien of this Contract, to enforce collection of the Required Payments or to enforce compliance by the Borrower with any of the provisions of this Contract, the Borrower agrees to pay reasonable attorneys' fees and all of the costs that may reasonably be incurred (whether or not any suit or proceeding is commenced), and such fees and costs (together with interest at a rate of 7% per annum) shall be secured as Required Payments.

## Article VIII Miscellaneous

Section 8.01. Notices. (a) Any communication required or permitted by this Contract must be in writing.



(b) Any communication under this Contract shall be sufficiently given and deemed given when delivered by hand or on the date shown on a certified mail receipt, or delivery receipt from a national commercial package delivery service, if addressed as follows:

If to the Borrower:

Town of Sawmills, North Carolina  
4076 US Highway 321-A  
Sawmills, North Carolina 28630  
Attention: Finance Officer

If to COPF:

Capital One Public Funding, LLC  
1307 Walt Whitman Road  
Melville, New York 11747  
Attention: Catherine DeLuca

(c) Any addressee may designate additional or different addresses for communications by notice given under this Section to each of the others.

Section 8.02. No Assignments by Borrower. The Borrower shall not sell or assign any interest in this Contract.

Section 8.03. Assignments by COPF. COPF may, at any time and from time to time, assign all or any part of its interest in the Security Property or this Contract, including, without limitation, COPF's rights to receive Required Payments. Any assignment made by COPF or any subsequent assignee shall not purport to convey any greater interest or rights than those held by COPF pursuant to this Contract.

The Borrower agrees that this Contract may become part of a pool of obligations at COPF's or its assignee's option. COPF or its assignees may assign or reassign all or any part of this Contract, including the assignment or reassignment of any partial interest through the use of certificates evidencing participation interests in this Contract. Any assignment by COPF may be only to a bank, insurance company, or similar financial institution or any other entity approved by the LGC. Notwithstanding the foregoing, no assignment or reassignment of COPF's interest in the Equipment or this Contract shall be effective unless and until the Borrower shall receive a duplicate original counterpart of the document by which such assignment or reassignment is made disclosing the name and address of each such assignee.

The Borrower further agrees that COPF's interest in this Contract may be assigned in whole or in part upon terms which provide in effect that the assignor or assignee will act as a collection and paying agent for any holders of certificates of participation in this Contract, provided the Borrower receives a copy of such agency contract and such collection and paying agent covenants and agrees to maintain for the full remaining term of this Contract a written record of each assignment and reassignment of such certificates of participation.



The Borrower agrees to execute any document reasonably required in connection with any assignment. Any assignor must provide notice of any assignment to the Borrower, and the Borrower shall keep a complete and accurate record of all assignments as required by the Code. After the giving of any such notice, the Borrower shall thereafter make all payments in accordance with the notice to the assignee named therein and shall, if so requested, acknowledge such assignment in writing, but such acknowledgment shall in no way be deemed necessary to make the assignment effective.

Section 8.04. Amendments. No term or provision of this Contract may be amended, modified or waived without the prior written consent of the Borrower and COPF.

Section 8.05. Governing Law. The Borrower and COPF intend that State law shall govern this Contract.

Section 8.06. Liability of Officers and Agents. No officer, agent or employee of the Borrower shall be subject to any personal liability or accountability by reason of the execution of this Contract or any other documents related to the transactions contemplated by this Contract. Such officers or agents shall be deemed to execute such documents in their official capacities only, and not in their individual capacities. This Section shall not relieve an officer, agent or employee of the Borrower from the performance of any official duty provided by law.

Section 8.07. Severability. If any provision of this Contract shall be determined to be unenforceable, that shall not affect any other provision of this Contract.

Section 8.08. Non-Business Days. If the date for making any payment or the last day for performance of any act or the exercising of any right shall not be a Business Day, such payment shall be made or act performed or right exercised on or before the next preceding Business Day.

Section 8.09. Entire Agreement. This Contract constitutes the Borrower's entire agreement with respect to the general subject matter covered by this Contract.

Section 8.10. Binding Effect. Subject to the specific provisions of this Contract, and in particular Section 9.03, this Contract shall be binding upon and inure to the benefit of and be enforceable by the parties and their respective successors and assigns.

Section 8.11. E-Verify. COPF understands that "E-Verify" is a federal program operated by the United States Department of Homeland Security and other federal agencies, or any successor or equivalent program used to verify the work authorization of newly hired employees pursuant to federal law in accordance with Section 64-25(5) of the General Statutes of North Carolina, as amended. COPF uses E-Verify to verify the work authorization of its employees in accordance with Section 64-26(a) of the General Statutes of North Carolina, as amended. COPF will require that any subcontractor that it uses in connection with the transactions contemplated by this Contract certify to such subcontractor's compliance with E-Verify.

[Signatures on following page.]

IN WITNESS WHEREOF, the parties have duly signed, sealed and delivered this Contract by duly authorized officials, all as of the date first above written.

(SEAL)

**ATTEST:**

**TOWN OF SAWMILLS,  
NORTH CAROLINA**

By: \_\_\_\_\_  
Julie Good, Town Clerk

By: \_\_\_\_\_  
Chase Winebarger, Town Manager

**CAPITAL ONE PUBLIC FUNDING,  
LLC**

By: \_\_\_\_\_  
Printed Name: \_\_\_\_\_  
Title: \_\_\_\_\_

State of North Carolina  
County of Caldwell

I, a Notary Public of the County and State aforesaid, certify that JULIE GOOD and CHASE WINEBARGER, personally appeared before me this day and acknowledged to me that they are the Town Clerk and Town Manager, of the Town of Sawmills, a municipal corporation of the State of North Carolina, and that by authority duly given and as the act of the Town Council, the foregoing document was signed in the Borrower's name by such Town Manager, sealed with its corporate seal and attested by such Town Clerk.

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

\_\_\_\_\_  
Notary Public  
Printed/Typed Name: \_\_\_\_\_  
My Commission Expires: \_\_\_\_\_

(Affix Seal or Stamp here)



This document has been pre-audited in the manner required by the Local Government Budget and Fiscal Control Act.

**TOWN OF SAWMILLS, NORTH  
CAROLINA**

By: \_\_\_\_\_  
Name: Kelly Melton  
Title: Finance Officer

**CERTIFICATE OF LOCAL GOVERNMENT COMMISSION**

This Installment Financing Agreement has been approved under the provisions of Article 8 of Chapter 159 of the General Statutes of North Carolina.

\_\_\_\_\_  
Secretary  
Local Government Commission of North Carolina

## **EXHIBIT A**

### **Project and Equipment Description**

*Veterans Park Baseball Softball Football SM 23, Project Number 152581, pursuant to Purchase Agreement dated [August 15], 2023 between Musco Sports Lighting, LLC and Town of Sawmills*

Light-Structure System™ Foundation-to-Poletop Lighting System with Controls and Monitoring, including:

- Sixteen Pre-cast concrete bases with integrated lightning grounding
- Two 80 ft. galvanized steel poles
- Ten 70 ft. galvanized steel poles
- Four 60 ft. galvanized steel poles
- Fourteen Total Light Control™ TLC-LED-1500 factory-aimed and assembled luminaires
- Forty-Six Total Light Control™ TLC-LED-1200 factory-aimed and assembled luminaires
- Ten Total Light Control™ TLC-LED-900 factory-aimed and assembled luminaires
- Ten Total Light Control™ TLC-LED-550 factory-aimed and assembled luminaires
- Twenty-four Total Light Control™ TLC-BT-575 BallTracker® factory-aimed and assembled luminaires
- Pole length factory assembled wire harnesses
- Factory wired and tested remote electrical component enclosures
- Control-Link® control and monitoring system to provide remote on/off and dimming (high/medium/low) control and performance monitoring with 24/7 customer support

*Baird Park Parking Lot Phase 2 SM 23, Project Number 225565 pursuant to Purchase Agreement dated [August 15], 2023 between Musco Sports Lighting, LLC*

Light-Structure System™ Foundation-to-Poletop Lighting System with Controls and Monitoring, including:

- Three Pre-cast concrete bases with integrated lightning grounding
- Three 40 ft. galvanized steel poles
- Six Total Light Control™ TLC-LED-550 factory-aimed and assembled luminaires
- Factory wired and tested remote electrical component enclosures
- Control-Link® control and monitoring system to provide remote on/off and dimming (high/medium/low) control and performance monitoring with 24/7 customer support

*Baird Park T-Ball SM 23, Project Number 223248 pursuant to Purchase Agreement dated [August 15], 2023 between Musco Sports Lighting, LLC and Town of Sawmills*

Light-Structure System™ Foundation-to-Poletop Lighting System with Controls and Monitoring, including:

- Two Pre-cast concrete bases with integrated lightning grounding
- Two 60 ft. galvanized steel poles
- Eight Total Light Control™ TLC-LED-1200 factory-aimed and assembled luminaires
- Pole length factory assembled wire harnesses
- Factory wired and tested remote electrical component enclosures



- Control-Link® control and monitoring system to provide remote on/off and dimming (high/medium/low) control and performance monitoring with 24/7 customer support

**EXHIBIT B**

**Payment Schedule**

<b>Date</b>	<b>Principal</b>	<b>Rate</b>	<b>Interest</b>	<b>Payment</b>	<b>Balance</b>
12/13/2023	-	-	-	-	\$1,345,500.00
12/15/2023	-	-	-	-	1,345,500.00
12/15/2024	\$ 107,101.68	4.910%	\$ 66,431.07	\$ 173,532.75	1,238,398.32
12/15/2025	112,727.39	4.910%	60,805.36	173,532.75	1,125,670.93
12/15/2026	118,262.31	4.910%	55,270.44	173,532.75	1,007,408.62
12/15/2027	124,068.99	4.910%	49,463.76	173,532.75	883,339.63
12/15/2028	130,160.78	4.910%	43,371.98	173,532.76	753,178.85
12/15/2029	136,551.67	4.910%	36,981.08	173,532.75	616,627.18
12/15/2030	143,256.36	4.910%	30,276.39	173,532.75	473,370.82
12/15/2031	150,290.25	4.910%	23,242.51	173,532.76	323,080.57
12/15/2032	157,669.50	4.910%	15,863.26	173,532.76	165,411.07
12/15/2033	<u>165,411.07</u>	4.910%	<u>8,121.68</u>	<u>173,532.75</u>	-
	\$1,345,500.00		\$389,827.53	\$1,735,327.53	



**EXHIBIT C**

**Form of Certificate Designating Borrower Representatives**

In accordance with the terms of the Financing Agreement dated December \_\_, 2023 (the “**Contract**”) between the Town of Sawmills, North Carolina (the “**Borrower**”) and Capital One Public Funding, LLC (“**COPF**”), the Borrower designates the persons listed below as Borrower Representatives:

Printed Name:

Signature:

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Upon written notification to COPF, the Borrower may update Borrower Representatives.

**TOWN OF SAWMILLS, NORTH  
CAROLINA**

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

Title:

# Purchase Agreement

Date: August 15, 2023

Project Name: Veterans Park Baseball Softball Football SM23

Project #: 152581

<b>1. SELLER NAME AND ADDRESS:</b> Musco Sports Lighting, LLC ("Musco") 100 1 <sup>st</sup> Avenue West / PO Box 808 Oskaloosa, IA 52577 Attn: Alex Coca Email: alex.coca@musco.com Telephone: 641-673-0411 800-825-6020 ext. 4774	<b>2. BUYER NAME AND ADDRESS:</b> Town of Sawmills (The "Buyer") 4076 US Highway 321-A Sawmills, NC 28630 Attn: Chase Winebarger Email: manager@townofsawmillsnc.com Telephone: 828-396-7903
<b>3. OWNER NAME AND ADDRESS:</b> Town of Sawmills 4076 US Highway 321-A Sawmills, NC 28630 Telephone: 828-396-7903	<b>4. SHIPPING NAME AND ADDRESS:</b> Veterans Park 5451 Waterworks Road Granite Falls, NC 28630 Attn: Sara Cane, Newco Electric LLC Email: sara@newcoelectricllc.com Telephone: 704-604-8626
<b>5. WARRANTY CONTACT:</b> Town of Sawmills 4076 US Highway 321-A Sawmills, NC 28630 Attn: Chase Winebarger Email: manager@townofsawmillsnc.com Telephone: 828-396-7903	<b>6. FACILITY NAME AND ADDRESS:</b> Veterans Park 5451 Waterworks Road Granite Falls, NC 28630

- 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:

**Light-Structure System™ Foundation-to-Poletop Lighting System with Controls and Monitoring:**

- 16 – Pre-cast concrete bases with integrated lightning grounding
- 2 – 80 ft. galvanized steel poles
- 10 – 70 ft. galvanized steel poles
- 4 – 60 ft. galvanized steel poles
- 14 – Total Light Control™ TLC-LED-1500 factory-aimed and assembled luminaires
- 46 – Total Light Control™ TLC-LED-1200 factory-aimed and assembled luminaires
- 10 – Total Light Control™ TLC-LED-900 factory-aimed and assembled luminaires
- 10 – Total Light Control™ TLC-LED-550 factory-aimed and assembled luminaires
- 24 – Total Light Control™ TLC-BT-575 BallTracker® factory-aimed and assembled luminaires
- Pole length factory assembled wire harnesses
- Factory wired and tested remote electrical component enclosures
- Control-Link® control and monitoring system to provide remote on/off and dimming (high/medium/low) control and performance monitoring with 24/7 customer support

**Built to the following specifications (voltage/phase need confirmed):**

- Driver input voltage: 480
- Phase to pole: 3
- Structural integrity is based upon IBC 2015, 115 mph, exposure C
- Light levels: 30 footcandles for the football field; 50 footcandles infield, 30 footcandles outfield each for the baseball and softball fields

- 8. RESPONSIBILITIES OF THE BUYER AND/OR THIRD PARTY** – Buyer/Third Party agrees to: Refer to responsibilities listed in the Installation Scope of Work in Exhibit A.
- 9. MUSCO CONTROL-LINK® CONTROL SYSTEM** – Musco agrees to provide design and layout for the control system. In addition to the Equipment, Musco agrees to provide the following: Control-Link Central™ customer support services: commission the system; monitor and report system alarms; provide automated facility management reports; provide on-off schedules via Control-Link Central™ app or website, email, phone call or fax; and provide technical support 24 hours a day, seven days a week.



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# Purchase Agreement

Date: August 15, 2023

Project Name: Veterans Park Baseball Softball Football SM23

Project #: 152581

10. **MUSCO SERVICES** – Musco agrees to provide, itself or through its subcontractors, design, layout, testing and commissioning for the Equipment and the following (collectively, The "Services"):  
Installation – Refer to the Installation Scope of Work in Exhibit A.
11. **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 & control services
  - Light levels are as specified in Musco design documents
  - Spill light control are as specified in Musco design documents
  - Energy consumption is as specified in Musco design documents
12. **TOTAL PRICE** – Buyer will pay for the above-described Equipment and, if applicable, Services. The Total Price of \$1,109,000.00 (includes use taxes) is payable as follows:
- \$1,109,000.00 within 30 days from invoice date
- A copy of the payment and performance bond (if applicable) is required prior to shipment.  
Monthly progress invoicing and payments will apply.  
Final payment shall not be withheld by Buyer on account of delays beyond the control of Musco.  
Project is being purchased through the following cooperative purchasing agreement:  
Sourcewell (Contract Number 041123-MSL)
- Price includes delivery, unloading, and installation to the address indicated in item #4 of this Agreement.  
Project is pending approval and mutual acceptance of finance package provided by Musco Finance, LLC (Lender). Credit approval by Lender must be complete prior to the order being released for production. Finance documents must be signed and returned to Lender prior to shipment. Deposit will be refunded in the event the Lender does not approve Buyer for financing.
- 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.
13. **TAXES** – Buyer shall pay all applicable state and local sales taxes, use or any similar tax invoiced appropriately by Musco. Total Price includes use taxes.
14. **PAYMENT/PERFORMANCE BONDING** – Is there a bond on this project? ☐ Yes ☐ No
15. **DELIVERY** – Normal delivery to the shipping address indicated above is 8 to 12 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. Equipment will be shipped after finance agreement is finalized between Buyer and Lender.
- 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 Musco's substantial completion of the Services.



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# Purchase Agreement

Date: August 15, 2023

Project Name: Veterans Park Baseball Softball Football SM23

Project #: 152581

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.

- 16. 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.
- 17. 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.
- 18. 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.
- 19. 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.
- 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.
- 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.





# Purchase Agreement

Date: August 15, 2023

Project Name: Veterans Park Baseball Softball Football SM23

Project #: 152581

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.

### TOWN OF SAWMILLS

Acceptance

this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_

\_\_\_\_\_  
Signature

Chase Winebarger, Town Manager

\_\_\_\_\_  
Name and Title

### MUSCO SPORTS LIGHTING, LLC

Acceptance

this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Name and Title

*Please remember to return all pages of this agreement.*





# Purchase Agreement

Date: August 15, 2023

Project Name: Veterans Park Baseball Softball Football SM23

Project #: 152581

## EXHIBIT A

### Customer Responsibilities:

1. Complete access to the site for construction utilizing standard 2-wheel drive rubber tire equipment.
2. Locate existing underground utilities not covered by your local utilities (i.e., water lines, electrical lines, irrigation systems, and sprinkler heads). Musco or Subcontractor will not be responsible for repairs to unmarked utilities.
3. Locate and mark field reference points per Musco supplied layout (i.e., home plate, center of football field).
4. Pay for extra costs associated with foundation excavation in non-standard soils (rock, caliche, high water table, collapsing holes, etc.) or soils not defined in geo-technical report. Standard soils are defined as soils that can be excavated using standard earth auguring equipment.
5. Pay any power company fees and requirements. Provide 480/3 electrical services with 50' –coordinate with installing contractor.
6. Pay all permitting fees and obtain the required electrical permitting.
7. Provide area on site for disposal of spoils from foundation excavation.
8. Provide area on site for dumpsters.
9. Provide sealed electrical plans. (If required.)

### Musco Responsibilities:

1. Provide required foundations, poles, electrical enclosures, luminaires, wire harnesses, and control cabinets.
2. Provide layout of pole locations and aiming diagram.
3. Provide Project Management as required.
4. Provide stamped foundation designs based on soils that meet or exceed those of a Class 5 material as defined by 2018 IBC Table 1806.2. (If required)
5. Assist our installing subcontractor and ensure our responsibilities are satisfied.

### Musco's Subcontractor Responsibilities:

#### General:

1. Obtain any required permitting.
2. Contact 811 for locating underground public utilities and then confirm they have been clearly marked.
3. Contact the facility owner/manager to confirm the existing private underground utilities and irrigation systems have been located and are clearly marked to avoid damage from construction equipment. Notify owner and repair damage to marked utilities. Notify owner and Musco regarding damage which occurred to unmarked utilities.
4. Provide labor, equipment, and materials to off load equipment at jobsite per scheduled delivery.
5. Provide storage containers for material, (including electrical components enclosures), as needed.
6. Provide necessary waste disposal and daily cleanup.
7. Provide adequate security to protect Musco delivered products from theft, vandalism or damage during the installation.
8. Keep all heavy equipment off playing fields when possible. Repair damage to grounds which exceeds that which would be expected. Indentations caused by heavy equipment traveling over dry ground would be an example of expected damage.
9. Provide startup and aiming as required to provide complete and operating sports lighting system.
10. Installation to commence upon delivery and proceed without interruption until complete. Notify Musco immediately of any breaks in schedule or delays.

#### Foundations, Poles, and Luminaires:

1. Mark and confirm pole locations per the aiming diagram provided. If there are any issues, immediately notify your Musco Project Manager.
2. Provide labor, materials, and equipment to install LSS foundations as specified on the layout and per the stamped foundation drawings, if applicable.
3. Remove spoils to owner designated location at jobsite.
4. Provide labor, materials, and equipment to assemble Musco TLC-LED luminaires, electrical component enclosures, poles, and pole harnesses.



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# Purchase Agreement

Date: August 15, 2023

Project Name: Veterans Park Baseball Softball Football SM23

Project #: 152581

5. Provide labor, equipment, and materials to erect dressed LSS poles and aim utilizing the pole alignment beam.

**Electrical:**

1. Provide labor, materials, and equipment to install new 480/3 electrical service panels as required.
2. Provide labor, materials, and equipment to install all underground conduit, wiring, pull boxes etc. and terminate wiring as required.
3. Provide as-built drawings on completion of installation, (if required).

**Control-Link Control and Monitoring:**

1. Provide labor, equipment, and materials to install Musco control and monitoring cabinet(s) and terminate all necessary wiring.
2. Provide a dedicated 120 V 20 A controls circuit or a step-down transformer for 120 V control circuit if not available.
3. Check all zones to make sure they work in both auto and manual mode.
4. Commission Control-Link® by contacting Control-Link Central™ at 877-347-3319.





# Purchase Agreement

Date: August 15, 2023

Project Name: Baird Park T-Ball SM23

Project #: 223248

<b>1. SELLER NAME AND ADDRESS:</b> Musco Sports Lighting, LLC ("Musco") 100 1 <sup>st</sup> Avenue West / PO Box 808 Oskaloosa, IA 52577 Attn: Alex Coca Email: alex.coca@musco.com Telephone: 641-673-0411 800-825-6020 ext. 4774	<b>2. BUYER NAME AND ADDRESS:</b> Town of Sawmills (The "Buyer") 4076 US Highway 321-A Sawmills, NC 28630 Attn: Chase Winebarger Email: manager@townofsawmillsnc.com Telephone: 828-396-7903
<b>3. OWNER NAME AND ADDRESS:</b> Town of Sawmills 4076 US Highway 321-A Sawmills, NC 28630 Telephone: 828-396-7903	<b>4. SHIPPING NAME AND ADDRESS:</b> Sawmills Municipal Park Tee Ball 4064 Baird Drive Hudson, NC 28638 Attn: Sara Cane, Newco Electric LLC Email: sara@newcoelectricllc.com Telephone: 704-604-8626
<b>5. WARRANTY CONTACT:</b> Town of Sawmills 4076 US Highway 321-A Sawmills, NC 28630 Attn: Chase Winebarger Email: manager@townofsawmillsnc.com Telephone: 828-396-7903	<b>6. FACILITY NAME AND ADDRESS:</b> Sawmills Municipal Park 4064 Baird Drive Hudson, NC 28638

- 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:

**Light-Structure System™ Foundation-to-Poletop Lighting System with Controls and Monitoring:**

- 2 – Pre-cast concrete bases with integrated lightning grounding
- 2 – 60 ft. galvanized steel poles
- 8 – Total Light Control™ TLC-LED-1200 factory-aimed and assembled luminaires
- Pole length factory assembled wire harnesses
- Factory wired and tested remote electrical component enclosures
- Control-Link® control and monitoring system to provide remote on/off and dimming (high/medium/low) control and performance monitoring with 24/7 customer support

**Built to the following specifications (voltage/phase need confirmed):**

- Driver input voltage: 480
- Phase to pole: 3
- Structural integrity is based upon IBC 2015, 115 mph, exposure C
- Light levels: 30 footcandles

- 8. RESPONSIBILITIES OF THE BUYER AND/OR THIRD PARTY** – Buyer/Third Party agrees to:  
Refer to responsibilities listed in the Installation Scope of Work in Exhibit A.

- 9. MUSCO CONTROL-LINK® CONTROL SYSTEM** – Musco agrees to provide design and layout for the control system. In addition to the Equipment, Musco agrees to provide the following:  
Control-Link Central™ customer support services: commission the system; monitor and report system alarms; provide automated facility management reports; provide on-off schedules via Control-Link Central™ app or website, email, phone call or fax; and provide technical support 24 hours a day, seven days a week.

- 10. MUSCO SERVICES** – Musco agrees to provide, itself or through its subcontractors, design, layout, testing and commissioning for the Equipment and the following (collectively, The "Services"):  
Installation – Refer to the Installation Scope of Work in Exhibit A.

- 11. 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:



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# Purchase Agreement

Date: August 15, 2023

Project Name: Baird Park T-Ball SM23

Project #: 223248

- Warranty service begins on the date of product shipment
- Expiration date is 25 years from date of shipment
- Monitoring, maintenance & control services
- Light levels are as specified in Musco design documents
- Spill light control are as specified in Musco design documents
- Energy consumption is as specified in Musco design documents

- 12. TOTAL PRICE** – Buyer will pay for the above-described Equipment and, if applicable, Services. The Total Price of \$104,500.00 (includes use taxes) is payable as follows:

- \$104,500.00 within 30 days from invoice date

A copy of the payment and performance bond (if applicable) is required prior to shipment.

Monthly progress invoicing and payments will apply.

Final payment shall not be withheld by Buyer on account of delays beyond the control of Musco.

Project is being purchased through the following cooperative purchasing agreement:

Sourcewell (Contract Number 041123-MSL)

Price includes delivery, unloading, and installation to the address indicated in item #4 of this Agreement.

Project is pending approval and mutual acceptance of finance package provided by Musco Finance, LLC (Lender). Credit approval by Lender must be complete prior to the order being released for production. Finance documents must be signed and returned to Lender prior to shipment. Deposit will be refunded in the event the Lender does not approve Buyer for financing.

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.

- 13. TAXES** – Buyer shall pay all applicable state and local sales taxes, use or any similar tax invoiced appropriately by Musco. Total Price includes use taxes.

- 14. PAYMENT/PERFORMANCE BONDING** – Is there a bond on this project? ☐ Yes ☐ No

- 15. DELIVERY** – Normal delivery to the shipping address indicated above is 8 to 12 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. Equipment will be shipped after finance agreement is finalized between Buyer and Lender.

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 Musco's substantial completion of the Services.

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.





# Purchase Agreement

Date: August 15, 2023

Project Name: Baird Park T-Ball SM23

Project #: 223248

- 16. 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.
- 17. 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.
- 18. 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.
- 19. 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.
- 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.
- 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.



# Purchase Agreement

Date: August 15, 2023

Project Name: Baird Park T-Ball SM23

Project #: 223248

**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.

### TOWN OF SAWMILLS

Acceptance

this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_

\_\_\_\_\_  
Signature

Chase Winebarger, Town Manager

\_\_\_\_\_  
Name and Title

### MUSCO SPORTS LIGHTING, LLC

Acceptance

this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Name and Title

*Please remember to return all pages of this agreement.*





# Purchase Agreement

Date: August 15, 2023

Project Name: Baird Park T-Ball SM23

Project #: 223248

## EXHIBIT A

### Customer Responsibilities:

1. Complete access to the site for construction utilizing standard 2-wheel drive rubber tire equipment.
2. Locate existing underground utilities not covered by your local utilities (i.e., water lines, electrical lines, irrigation systems, and sprinkler heads). Musco or Subcontractor will not be responsible for repairs to unmarked utilities.
3. Locate and mark field reference points per Musco supplied layout (i.e., home plate, center of football field).
4. Pay for extra costs associated with foundation excavation in non-standard soils (rock, caliche, high water table, collapsing holes, etc.) or soils not defined in geo-technical report. Standard soils are defined as soils that can be excavated using standard earth auguring equipment.
5. Pay any power company fees and requirements.
6. Pay all permitting fees and obtain the required electrical permitting.
7. Provide area on site for disposal of spoils from foundation excavation.
8. Provide area on site for dumpsters.
9. Provide sealed electrical plans. (If required.)

### Musco Responsibilities:

1. Provide required foundations, poles, electrical enclosures, luminaires, wire harnesses, and control cabinets.
2. Provide layout of pole locations and aiming diagram.
3. Provide Project Management as required.
4. Provide stamped foundation designs based on soils that meet or exceed those of a Class 5 material as defined by 2018 IBC Table 1806.2. (If required.)
5. Assist our installing subcontractor and ensure our responsibilities are satisfied.

### Musco's Subcontractor Responsibilities:

#### General:

1. Obtain any required permitting.
2. Contact 811 for locating underground public utilities and then confirm they have been clearly marked.
3. Contact the facility owner/manager to confirm the existing private underground utilities and irrigation systems have been located and are clearly marked to avoid damage from construction equipment. Notify owner and repair damage to marked utilities. Notify owner and Musco regarding damage which occurred to unmarked utilities.
4. Provide labor, equipment, and materials to off load equipment at jobsite per scheduled delivery.
5. Provide storage containers for material, (including electrical components enclosures), as needed.
6. Provide necessary waste disposal and daily cleanup.
7. Provide adequate security to protect Musco delivered products from theft, vandalism or damage during the installation.
8. Keep all heavy equipment off playing fields when possible. Repair damage to grounds which exceeds that which would be expected. Indentations caused by heavy equipment traveling over dry ground would be an example of expected damage.
9. Provide startup and aiming as required to provide complete and operating sports lighting system.
10. Installation to commence upon delivery and proceed without interruption until complete. Notify Musco immediately of any breaks in schedule or delays.

#### Foundations, Poles, and Luminaires:

1. Mark and confirm pole locations per the aiming diagram provided. If there are any issues, immediately notify your Musco Project Manager.
2. Provide labor, materials, and equipment to install LSS foundations as specified on the layout and per the stamped foundation drawings, if applicable.
3. Remove spoils to owner designated location at jobsite.
4. Provide labor, materials, and equipment to assemble Musco TLC-LED luminaires, electrical component enclosures, poles, and pole harnesses.
5. Provide labor, equipment, and materials to erect dressed LSS poles and aim utilizing the pole alignment beam.



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# Purchase Agreement

Date: August 15, 2023

Project Name: Baird Park T-Ball SM23

Project #: 223248

## **Electrical:**

1. Provide labor, materials, and equipment to upgrade electrical service panels as required.
2. Provide labor, materials, and equipment to install all underground conduit, wiring, pull boxes etc. and terminate wiring as required.
3. Provide as-built drawings on completion of installation, (if required).

## **Control-Link Control and Monitoring:**

1. Provide labor, equipment, and materials to install Musco control and monitoring cabinet(s) and terminate all necessary wiring.
2. Provide a dedicated 120 V 20 A controls circuit or a step-down transformer for 120 V control circuit if not available.
3. Check all zones to make sure they work in both auto and manual mode.
4. Commission Control-Link® by contacting Control-Link Central™ at 877-347-3319.





# Purchase Agreement

Date: August 15, 2023

Project Name: Baird Park Parking Lot Phase 2 SM23

Project #: 225565

<b>1. SELLER NAME AND ADDRESS:</b> Musco Sports Lighting, LLC ("Musco") 100 1 <sup>st</sup> Avenue West / PO Box 808 Oskaloosa, IA 52577 Attn: Alex Coca Email: alex.coca@musco.com Telephone: 641-673-0411 800-825-6020 ext. 4774	<b>2. BUYER NAME AND ADDRESS:</b> Town of Sawmills (The "Buyer") 4076 US Highway 321-A Sawmills, NC 28630 Attn: Chase Winebarger Email: manager@townofsawmillsnc.com Telephone: 828-396-7903
<b>3. OWNER NAME AND ADDRESS:</b> Town of Sawmills 4076 US Highway 321-A Sawmills, NC 28630 Telephone: 828-396-7903	<b>4. SHIPPING NAME AND ADDRESS:</b> Sawmills Municipal Park Parking Lot 4064 Baird Drive Hudson, NC 28638 Attn: Sara Cane, Newco Electric LLC Email: sara@newcoelectricllc.com Telephone: 704-604-8626
<b>5. WARRANTY CONTACT:</b> Town of Sawmills 4076 US Highway 321-A Sawmills, NC 28630 Attn: Chase Winebarger Email: manager@townofsawmillsnc.com Telephone: 828-396-7903	<b>6. FACILITY NAME AND ADDRESS:</b> Sawmills Municipal Park 4064 Baird Drive Hudson, NC 28638

- 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:

**Light-Structure System™ Foundation-to-Poletop Lighting System with Controls and Monitoring:**

- 3 – Pre-cast concrete bases with integrated lightning grounding
- 3 – 40 ft. galvanized steel poles
- 6 – Total Light Control™ TLC-LED-550 factory-aimed and assembled luminaires
- Pole length factory assembled wire harnesses
- Factory wired and tested remote electrical component enclosures
- Control-Link® control and monitoring system to provide remote on/off and dimming (high/medium/low) control and performance monitoring with 24/7 customer support

**Built to the following specifications (voltage/phase need confirmed):**

- Driver input voltage: 480
- Phase to pole: 3
- Structural integrity is based upon IBC 2015, 115 mph, exposure C

- 8. RESPONSIBILITIES OF THE BUYER AND/OR THIRD PARTY** – Buyer/Third Party agrees to: Refer to responsibilities listed in the Installation Scope of Work in Exhibit A.
- 9. MUSCO CONTROL-LINK® CONTROL SYSTEM** – Musco agrees to provide design and layout for the control system. In addition to the Equipment, Musco agrees to provide the following:  
Control-Link Central™ customer support services: commission the system; monitor and report system alarms; provide automated facility management reports; provide on-off schedules via Control-Link Central™ app or website, email, phone call or fax; and provide technical support 24 hours a day, seven days a week.
- 10. MUSCO SERVICES** – Musco agrees to provide, itself or through its subcontractors, design, layout, testing and commissioning for the Equipment and the following (collectively, The "Services"):  
Installation – Refer to the Installation Scope of Work in Exhibit A.
- 11. 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



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# Purchase Agreement

Date: August 15, 2023

Project Name: Baird Park Parking Lot Phase 2 SM23

Project #: 225565

- Expiration date is 25 years from date of shipment
- Monitoring, maintenance & control services
- Light levels are as specified in Musco design documents
- Spill light control are as specified in Musco design documents
- Energy consumption is as specified in Musco design documents

- 12. TOTAL PRICE** – Buyer will pay for the above-described Equipment and, if applicable, Services. The Total Price of \$132,000.00 (includes use taxes) is payable as follows:

- \$132,000.00 within 30 days from invoice date

A copy of the payment and performance bond (if applicable) is required prior to shipment.

Monthly progress invoicing and payments will apply.

Final payment shall not be withheld by Buyer on account of delays beyond the control of Musco.

Project is being purchased through the following cooperative purchasing agreement:

Sourcewell (Contract Number 041123-MSL)

Price includes delivery, unloading, and installation to the address indicated in item #4 of this Agreement.

Project is pending approval and mutual acceptance of finance package provided by Musco Finance, LLC (Lender). Credit approval by Lender must be complete prior to the order being released for production. Finance documents must be signed and returned to Lender prior to shipment. Deposit will be refunded in the event the Lender does not approve Buyer for financing.

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.

- 13. TAXES** – Buyer shall pay all applicable state and local sales taxes, use or any similar tax invoiced appropriately by Musco. Total Price includes use taxes.

- 14. PAYMENT/PERFORMANCE BONDING** – Is there a bond on this project? ☐ Yes ☐ No

- 15. DELIVERY** – Normal delivery to the shipping address indicated above is 8 to 12 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. Equipment will be shipped after finance agreement is finalized between Buyer and Lender.

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 Musco's substantial completion of the Services.

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.

- 16. 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).



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# Purchase Agreement

Date: August 15, 2023

Project Name: Baird Park Parking Lot Phase 2 SM23

Project #: 225565

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.

17. **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.
18. **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.
19. **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.
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.
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).





# Purchase Agreement

Date: August 15, 2023

Project Name: Baird Park Parking Lot Phase 2 SM23

Project #: 225565

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.

**TOWN OF SAWMILLS**

**MUSCO SPORTS LIGHTING, LLC**

Acceptance

Acceptance

this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_

this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Signature

Chase Winebarger, Town Manager

\_\_\_\_\_  
Name and Title

\_\_\_\_\_  
Name and Title

*Please remember to return all pages of this agreement.*





# Purchase Agreement

Date: August 15, 2023

Project Name: Baird Park Parking Lot Phase 2 SM23

Project #: 225565

## EXHIBIT A

### Customer Responsibilities:

1. Complete access to the site for construction utilizing standard 2-wheel drive rubber tire equipment.
2. Locate existing underground utilities not covered by your local utilities (i.e., water lines, electrical lines, irrigation systems, and sprinkler heads). Musco or Subcontractor will not be responsible for repairs to unmarked utilities.
3. Locate and mark field reference points per Musco supplied layout (i.e., home plate, center of football field).
4. Pay for extra costs associated with foundation excavation in non-standard soils (rock, caliche, high water table, collapsing holes, etc.) or soils not defined in geo-technical report. Standard soils are defined as soils that can be excavated using standard earth auguring equipment.
5. Pay any power company fees and requirements.
6. Pay all permitting fees and obtain the required electrical permitting.
7. Provide area on site for disposal of spoils from foundation excavation.
8. Provide area on site for dumpsters.
9. Provide sealed electrical plans. (If required)

### Musco Responsibilities:

1. Provide required foundations, poles, electrical enclosures, luminaires, wire harnesses, and control cabinets.
2. Provide layout of pole locations and aiming diagram.
3. Provide Project Management as required.
4. Provide stamped foundation designs based on soils that meet or exceed those of a Class 5 material as defined by 2018 IBC Table 1806.2. (If required)
5. Assist our installing subcontractor and ensure our responsibilities are satisfied.

### Musco's Subcontractor Responsibilities:

#### General:

1. Obtain any required permitting.
2. Contact 811 for locating underground public utilities and then confirm they have been clearly marked.
3. Contact the facility owner/manager to confirm the existing private underground utilities and irrigation systems have been located and are clearly marked to avoid damage from construction equipment. Notify owner and repair damage to marked utilities. Notify owner and Musco regarding damage which occurred to unmarked utilities.
4. Provide labor, equipment, and materials to off load equipment at jobsite per scheduled delivery.
5. Provide storage containers for material, (including electrical components enclosures), as needed.
6. Provide necessary waste disposal and daily cleanup.
7. Provide adequate security to protect Musco delivered products from theft, vandalism or damage during the installation.
8. Keep all heavy equipment off playing fields when possible. Repair damage to grounds which exceeds that which would be expected. Indentations caused by heavy equipment traveling over dry ground would be an example of expected damage.
9. Provide startup and aiming as required to provide complete and operating sports lighting system.
10. Installation to commence upon delivery and proceed without interruption until complete. Notify Musco immediately of any breaks in schedule or delays.

#### Foundations, Poles, and Luminaires:

1. Mark and confirm pole locations per the aiming diagram provided. If there are any issues, immediately notify your Musco Project Manager.
2. Provide labor, materials, and equipment to install LSS foundations as specified on the layout and per the stamped foundation drawings, if applicable.
3. Remove spoils to owner designated location at jobsite.
4. Provide labor, materials, and equipment to assemble Musco TLC-LED luminaires, electrical component enclosures, poles, and pole harnesses.
5. Provide labor, equipment, and materials to erect dressed LSS poles and aim utilizing the pole alignment beam.



1999, 2023 Musco Sports Lighting, LLC • M-1010-enUS-45

[www.musco.com](http://www.musco.com) • [lighting@musco.com](mailto:lighting@musco.com)

# Purchase Agreement

Date: August 15, 2023

Project Name: Baird Park Parking Lot Phase 2 SM23

Project #: 225565

## **Electrical:**

1. Provide labor, materials, and equipment to upgrade electrical service panels as required.
2. Provide labor, materials, and equipment to install all underground conduit, wiring, pull boxes etc. and terminate wiring as required.
3. Provide as-built drawings on completion of installation, (if required).

## **Control-Link Control and Monitoring:**

1. Provide labor, equipment, and materials to install Musco control and monitoring cabinet(s) and terminate all necessary wiring.
2. Provide a dedicated 120 V 20 A controls circuit or a step-down transformer for 120 V control circuit if not available.
3. Check all zones to make sure they work in both auto and manual mode.
4. Commission Control-Link® by contacting Control-Link Central™ at 877-347-3319.



## USE OF PROCEEDS CERTIFICATE

THE TOWN OF SAWMILLS, NORTH CAROLINA (the “*Town*”), has entered into a Financing Agreement, dated as of December [REDACTED], 2023 (the “*Agreement*”), with CAPITAL ONE PUBLIC FUNDING, LLC (the “*Bank*”). This Use of Proceeds Certificate (this “*Certificate*”) is delivered as part of the official record of the proceedings for the delivery of the Agreement. I, the undersigned, am a Borrower Representative (as defined in the Agreement) and am authorized to execute and deliver this Certificate on behalf of the Town. Through such execution and delivery, I have set forth in good faith the Town’s reasonable expectations concerning the use and investment of financing proceeds and other related matters, in order to assure that interest on the Obligations, as defined below, will be excluded from gross income for federal income tax purposes. I understand that I have an obligation to make the representations in this Certificate both correct and complete.

All capitalized terms used in this Certificate and not otherwise defined have the meanings assigned to such terms under the Internal Revenue Code of 1986, as amended (the “*Code*”), and the Treasury Regulations applicable to tax-exempt bonds.

### Section 1. Purpose of Agreement; Proceeds.

The Town is executing and delivering the Agreement to provide funds to (i) finance the acquisition of various items of property more fully described on Exhibit A hereto for use by the Town (collectively, together with any other items of equipment acquired by the Town with proceeds of the financing, the “*Equipment*”). Pursuant to the terms of the Agreement, the Bank will deposit the full \$1,345,000.00 principal amount to be advanced under the Agreement (the “*Proceeds*”) with Bank OZK, as escrow agent (the “*Escrow Agent*”), to be held in accordance with the terms of the Escrow Fund and Account Control Agreement, dated as of December [REDACTED], 2023 (the “*Escrow Agreement*”), among the Town, the Bank, and the Escrow Agent. The Escrow Agreement provides for the Proceeds (together with any investment earnings thereon) to be released to the Town from time to time in order to pay costs of acquiring the Equipment, upon the Escrow Agent’s receipt of disbursement requests submitted by the Town in proper form. The Bank has informed us that it is entering into the Agreement for its own account with no current intention of reselling its rights under the Agreement or any interest therein, except that the Bank may make an assignment of payment rights to an affiliate, in whole, at par, and without recourse.

### Section 2. Payment Obligations.

(a) Under the Agreement, the Town is obligated to make Installment Payments (as defined in the Agreement) on the dates and in the amounts set forth in the Agreement (the Town’s obligations to make Installment Payments are referred to in this Certificate as the “*Obligations*”), subject to its right to not appropriate the payments as provided in the Agreement.

(b) The Installment Payments reflect the repayment of the Proceeds and include a designated interest component as reflected in the Agreement.

**Section 3. Use of Proceeds; Reimbursement.**

(a) All of the Proceeds and all investment earnings thereon will be used to pay for the Equipment.

(b) All of such costs will be incurred and expenditures made subsequent to today, except for reimbursement to the Town for amounts (i) paid not more than 60 days prior to execution of a resolution of the Town dated [REDACTED], 2023, which authorized the financing of the Equipment, (ii) representing engineering, design and similar preliminary expenses in an aggregate amount not exceeding 20 percent of the principal amount of the Obligations, or (iii) otherwise in an amount not exceeding a lesser of \$100,000 or 5 percent of the Proceeds.

(c) All expenditures to be reimbursed occurred not more than 18 months prior to today. None of the Equipment was placed in service more than one year before today.

(d) All of the costs to be paid or reimbursed from Proceeds will be Capital Expenditures, and none will be Working Capital Expenditures. No portion of the Proceeds will be used, directly or indirectly, to make or finance loans to two or more ultimate borrowers.

**Section 4. Qualification for Temporary Period.**

The acquisition of the Equipment will proceed with due diligence, and the Equipment will be placed in service promptly after closing. Within 90 days of today (if it has not already done so), the Town will enter into substantial binding obligations to third parties to spend Proceeds on costs of the acquisition of the Equipment that are capital expenditures in an amount exceeding 5 percent of the amount financed. The Town estimates that all the Proceeds and all the investment earnings thereon will be fully expended within [REDACTED] months from today.

**Section 5. Investment Proceeds.**

(a) Any earnings or net profit derived from the investment of the Proceeds will be used to pay additional costs for the acquisition of the Equipment or interest on the Obligations not later than the date that is the later of (i) three years from today, or (ii) twelve months from the date of the receipt of such earnings.

(b) After the date that is three years from today, the Town will not invest any of the Proceeds at a yield in excess of the yield on the Obligations.

(c) No investment will be acquired or disposed of at a cost or price that exceeds its fair market value as of the acquisition date, or which is less than its fair market value as of the disposition date. No portion will be invested in any investment as to which the economic return is substantially guaranteed for more than three years.

(d) No portion of the Proceeds will be used, directly or indirectly, to replace funds that the Town used (directly or indirectly) to acquire securities or obligations producing (or expected to produce) a yield higher than the yield on the Obligations.



**Section 6. No Over-Issuance or Excessive Maturity.**

(a) The sum of the Proceeds and the reasonably expected investment earnings thereon do not exceed the amount reasonably expected to be required to pay the costs of the Equipment, including interest on the Obligations during the acquisition period and financing costs.

(b) The term of the Obligations is not longer than reasonably necessary for the governmental purposes thereof and is not longer than the expected useful life of the Equipment.

(c) In connection with the issuance of the Obligations, the Town has not utilized any device which attempts to circumvent the restrictions of the Code to exploit the difference between tax-exempt and taxable interest rates to obtain a material financial advantage. The Town has not attempted to increase improperly the burden on the market for tax-exempt obligations (for example, by selling its obligations in larger amounts or with longer maturities, or selling them sooner, than would otherwise be necessary).

**Section 7. Compliance with Rebate Requirement.**

In the Agreement, the Town has agreed to comply with provisions of the Code which in some circumstances require the Town to pay some of its investment earnings to the United States, as provided in Section 148(f) of the Code.

**Section 8. Private Activity Tests.**

No payment on the Obligations is secured by property to be used in any private business (meaning any trade or business carried on by any person, including the federal government, that is not a state or local government, but excluding uses by any person as a member of the general public). None of the Proceeds are to be used for any such private business use. The Town has no leases, management contracts, or other agreements with private entities or the federal government for either (a) management or operation of the Equipment or (b) the use of the Equipment.

**Section 9. Qualified Tax-Exempt Obligations.**

(a) For the reasons set forth above in Section 8, none of the Obligations are “private activity bonds” within the meaning of Section 141 of the Code.

(b) The aggregate amount of tax-exempt obligations, including the Obligations, issued and reasonably expected as of today to be issued in calendar year 2023 by (i) the Town, (ii) all entities on behalf of which the Town issues tax-exempt obligations, (iii) all governmental units that are “subordinate” to the Town, within the meaning of Section 265(b)(3) of the Code, and (iv) all entities that issue tax-exempt obligations on behalf of the same such entities, does not exceed \$10,000,000. The Town has no reason to believe that the Town and such other entities will issue tax-exempt obligations in 2023 in an aggregate amount that will exceed such \$10,000,000 limit.

(c) In making the statements in subparagraph (b) above, I have taken into account (i) all the Town’s departments and agencies and (ii) all political subdivisions or other entities (x) which have the power to borrow money or enter into contracts and (y) of which the Town is a

member or over which it has legal or practical control. For all of such entities, I have taken into account all bonds, bond anticipation notes, installment or lease-purchase contracts and all other obligations to pay money (excluding only current accounts payable and private activity bonds) issued or to be issued or contracted by such entities in calendar year 2023. I have not included those private activity bonds or those refunding obligations excluded from the annual \$10,000,000 calculation by Section 265(b)(3) of the Code.

**Section 10. Invested Sinking Funds.**

There are no funds (a) to be held under the Agreement, or (b) which are pledged as security for the Obligations (including by way of negative pledges), which will be used to pay the Obligations, or which could reasonably be expected to be available to pay the Obligations if the Town were to encounter financial difficulty. The Town will pay the Obligations from its general funds, with there being no obligation (or expectation) on the part of the Town or any other entity to segregate or identify any particular funds or accounts for the payment of or security for the Obligations.

**Section 11. Miscellaneous.**

(a) No substantial part of the Equipment will be sold and no arrangement has been or will be entered into with respect to the Equipment that would be treated as a sale for federal income tax purposes. The Town expects to use the Equipment for its currently intended purpose at least until the stated date for final payment of the Obligations, in all cases other than such insubstantial portions as may be disposed of in the ordinary course of business due to normal wear or obsolescence.

(b) There are no other tax-exempt bonds, notes or obligations of the Town which have been or are expected to be issued or contracted for within 15 days before or after today.

(c) None of the Proceeds will be used to make any payment on any other Town obligation that was contracted in the exercise of the Town's borrowing power.

(d) No portion of the Obligations is federally guaranteed.

**Section 12. Reasonableness; Binding Effect.**

To the best of my knowledge and belief, the expectations set forth above are reasonable and the statements set forth above are correct. The Town's covenants made as described in this Certificate are intended as binding covenants of the Town.



**WITNESS** my signature this \_\_\_\_\_ day of December, 2023

**TOWN OF SAWMILLS, NORTH CAROLINA**

By: \_\_\_\_\_

Name:

Title:

## **EXHIBIT A**

### **Project and Equipment Description**

*Veterans Park Baseball Softball Football SM 23, Project Number 152581, pursuant to Purchase Agreement dated [August 15], 2023 between Musco Sports Lighting, LLC and Town of Sawmills*

Light-Structure System™ Foundation-to-Poletop Lighting System with Controls and Monitoring, including:

- Sixteen Pre-cast concrete bases with integrated lightning grounding
- Two 80 ft. galvanized steel poles
- Ten 70 ft. galvanized steel poles
- Four 60 ft. galvanized steel poles
- Fourteen Total Light Control™ TLC-LED-1500 factory-aimed and assembled luminaires
- Forty-Six Total Light Control™ TLC-LED-1200 factory-aimed and assembled luminaires
- Ten Total Light Control™ TLC-LED-900 factory-aimed and assembled luminaires
- Ten Total Light Control™ TLC-LED-550 factory-aimed and assembled luminaires
- Twenty-four Total Light Control™ TLC-BT-575 BallTracker® factory-aimed and assembled luminaires
- Pole length factory assembled wire harnesses
- Factory wired and tested remote electrical component enclosures
- Control-Link® control and monitoring system to provide remote on/off and dimming (high/medium/low) control and performance monitoring with 24/7 customer support

*Baird Park Parking Lot Phase 2 SM 23, Project Number 225565 pursuant to Purchase Agreement dated [August 15], 2023 between Musco Sports Lighting, LLC*

Light-Structure System™ Foundation-to-Poletop Lighting System with Controls and Monitoring, including:

- Three Pre-cast concrete bases with integrated lightning grounding
- Three 40 ft. galvanized steel poles
- Six Total Light Control™ TLC-LED-550 factory-aimed and assembled luminaires
- Factory wired and tested remote electrical component enclosures
- Control-Link® control and monitoring system to provide remote on/off and dimming (high/medium/low) control and performance monitoring with 24/7 customer support

*Baird Park T-Ball SM 23, Project Number 223248 pursuant to Purchase Agreement dated [August 15], 2023 between Musco Sports Lighting, LLC and Town of Sawmills*

Light-Structure System™ Foundation-to-Poletop Lighting System with Controls and Monitoring, including:

- Two Pre-cast concrete bases with integrated lightning grounding
- Two 60 ft. galvanized steel poles
- Eight Total Light Control™ TLC-LED-1200 factory-aimed and assembled luminaires
- Pole length factory assembled wire harnesses
- Factory wired and tested remote electrical component enclosures
- Control-Link® control and monitoring system to provide remote on/off and dimming (high/medium/low) control and performance monitoring with 24/7 customer support



## **AGENDA ITEM 9A**

### **MEMO**

#### **DATE:**

October 17, 2023

#### **SUBJECT:**

Planning Matters:  
Re-Appoint  
Planning Board/BOA  
Members

#### **Discussion:**

The term of appointment for the following Planning Board/BOA Members expires on October 1, 2023:

- Steve Duncan
- David Powell

Town Planner Dustin Millsaps has contacted the members and both are willing to serve another term.

#### **Recommendation:**

Staff recommends Council re-appoint the two (2) members to the Planning Board/BOA for a term of three (3) years.

**AGENDA ITEM 10A**

**MEMO**

**DATE:**

October 17, 2023

**SUBJECT:**

Financial Matters:  
Resolution for Designation of  
Applicant's Agent for FEMA  
Grant Monies

**Discussion:**

A Resolution of Designation of Applicant's Agent will need to be adopted by Council so that Finance Officer Kelly Melton can receive funds from the BRIC Grant on behalf of the Town.

**Recommendation:**

Staff recommends adopting the Resolution for Designation of Applicant's Agent as written.



**RESOLUTION  
DESIGNATION OF APPLICANT'S AGENT**

North Carolina Division of Emergency Management

Organization Name (hereafter named Organization) Disaster Number:  
Town of Sawmills

Applicant's State Cognizant Agency for Single Audit purposes (If Cognizant Agency is not assigned, please indicate):

Applicant's Fiscal Year (FY) Start  
2023 Month: 07 Day: 01

Applicant's Federal Employer's Identification Number  
56 - 1609679

Applicant's Federal Information Processing Standards (FIPS) Number  
- -

PRIMARY AGENT	SECONDARY AGENT
Agent's Name Kelly Melton	Agent's Name
Organization Town of Sawmills	Organization
Official Position Finance Officer	Official Position
Mailing Address 4076 US Hwy 321A	Mailing Address
City, State, Zip Sawmills NC 28630	City, State, Zip
Daytime Telephone (828) 396-7903	Daytime Telephone
Facsimile Number (828) 396-8955	Facsimile Number
Pager or Cellular Number	Pager or Cellular Number

BE IT RESOLVED BY the governing body of the Organization (a public entity duly organized under the laws of the State of North Carolina) that the above-named Primary and Secondary Agents are hereby authorized to execute and file applications for federal and/or state assistance on behalf of the Organization for the purpose of obtaining certain state and federal financial assistance under the Robert T. Stafford Disaster Relief & Emergency Assistance Act, (Public Law 93-288 as amended) or as otherwise available. BE IT FURTHER RESOLVED that the above-named agents are authorized to represent and act for the Organization in all dealings with the State of North Carolina and the Federal Emergency Management Agency for all matters pertaining to such disaster assistance required by the grant agreements and **the assurances printed on the reverse side hereof**. BE IT FINALLY RESOLVED THAT the above-named agents are authorized to act severally. PASSED AND APPROVED this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

GOVERNING BODY	CERTIFYING OFFICIAL
Name and Title	Name
Name and Title	Official Position
Name and Title	Daytime Telephone -

**CERTIFICATION**

I, \_\_\_\_\_, (Name) duly appointed and \_\_\_\_\_ (Title) of the Governing Body, do hereby certify that the above is a true and correct copy of a resolution passed and approved by the Governing Body of \_\_\_\_\_ (Organization) on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

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

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

## APPLICANT ASSURANCES

The applicant hereby assures and certifies that it will comply with the FEMA regulations, policies, guidelines and requirements including OMB's Circulars No. A-95 and A-102, and FMC 74-4, as they relate to the application, acceptance and use of Federal funds for this Federally assisted project. Also, the Applicant gives assurance and certifies with respect to and as a condition for the grant that:

1. It possesses legal authority to apply for the grant, and to finance and construct the proposed facilities; that a resolution, motion or similar action has been duly adopted or passed as an official act of the applicant's governing body, authorizing the filing of the application, including all understandings and assurances contained therein, and directing and authorizing the person identified as the official representative of the applicant to act in connection with the application and to provide such additional information as may be required.
2. It will comply with the provisions of: Executive Order 11988, relating to Floodplain Management and Executive Order 11990, relating to Protection of Wetlands.
3. It will have sufficient funds available to meet the non-Federal share of the cost for construction projects. Sufficient funds will be available when construction is completed to assure effective operation and maintenance of the facility for the purpose constructed.
4. It will not enter into a construction contract(s) for the project or undertake other activities until the conditions of the grant program(s) have been met.
5. It will provide and maintain competent and adequate architectural engineering supervision and inspection at the construction site to insure that the completed work conforms with the approved plans and specifications; that it will furnish progress reports and such other information as the Federal grantor agency may need.
6. It will operate and maintain the facility in accordance with the minimum standards as may be required or prescribed by the applicable Federal, State and local agencies for the maintenance and operation of such facilities.
7. It will give the grantor agency and the Comptroller General, through any authorized representative, access to and the right to examine all records, books, papers, or documents related to the grant.
8. It will require the facility to be designed to comply with the "American Standard Specifications for Making Buildings and Facilities Accessible to, and Usable by the Physically Handicapped," Number A117.1-1961, as modified (41 CFR 101-17-7031). The applicant will be responsible for conducting inspections to insure compliance with these specifications by the contractor.
9. It will cause work on the project to be commenced within a reasonable time after receipt of notification from the approving Federal agency that funds have been approved and will see that work on the project will be prosecuted to completion with reasonable diligence.
10. It will not dispose of or encumber its title or other interests in the site and facilities during the period of Federal interest or while the Government holds bonds, whichever is the longer.
11. It agrees to comply with Section 311, P.L. 93-288 and with Title VI of the Civil Rights Act of 1964 (P.L. 83-352) and in accordance with Title VI of the Act, no person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity for which the applicant receives Federal financial assistance and will immediately take any measures necessary to effectuate this agreement. If any real property or structure is provided or improved with the aid of Federal financial assistance extended to the Applicant, this assurance shall obligate the Applicant, or in the case of any transfer of such property, any transferee, for the period during which the real property or structure is used for a purpose for which the Federal financial assistance is extended or for another purpose involving the provision of similar services or benefits.
12. It will establish safeguards to prohibit employees from using their positions for a purpose that is or gives the appearance of being motivated by a desire for private gain for themselves or others, particularly those with whom they have family, business, or other ties.
13. It will comply with the requirements of Title II and Title III of the Uniform Relocation Assistance and Real Property Acquisitions Act of 1970 (P.L. 91-646) which provides for fair and equitable treatment of persons displaced as a result of Federal and Federally assisted programs.
14. It will comply with all requirements imposed by the Federal grantor agency concerning special requirements of law, program requirements, and other administrative requirements approved in accordance with OMB Circular A-102, P.L. 93-288 as amended, and applicable Federal Regulations.
15. It will comply with the provisions of the Hatch Act which limit the political activity of employees.
16. It will comply with the minimum wage and maximum hours provisions of the Federal Fair Labor Standards Act, as they apply to hospital and educational institution employees of State and local governments.
17. (To the best of his/her knowledge and belief) the disaster relief work described on each Federal Emergency Management Agency (FEMA) Project Application for which Federal Financial assistance is requested is eligible in accordance with the criteria contained in 44 Code of Federal Regulations, Part 206, and applicable FEMA Handbooks.
18. The emergency or disaster relief work therein described for which Federal Assistance is requested hereunder does not or will not duplicate benefits received for the same loss from another source.
19. It will (1) provide without cost to the United States all lands, easements and rights-of-way necessary for accomplishments of the approved work; (2) hold and save the United States free from damages due to the approved work or Federal funding.
20. This assurance is given in consideration of and for the purpose of obtaining any and all Federal grants, loans, reimbursements, advances, contracts, property, discounts of other Federal financial assistance extended after the date hereof to the Applicant by FEMA, that such Federal Financial assistance will be extended in reliance on the representations and agreements made in this assurance and that the United States shall have the right to seek judicial enforcement of this assurance. This assurance is binding on the applicant, its successors, transferees, and assignees, and the person or persons whose signatures appear on the reverse as authorized to sign this assurance on behalf of the applicant.
21. It will comply with the flood insurance purchase requirements of Section 102(a) of the Flood Disaster Protection Act of 1973, Public Law 93-234, 87 Stat. 975, approved December 31, 1973. Section 102(a) requires, on and after March 2, 1975, the purchase of flood insurance in communities where such insurance is available as a condition for the receipt of any Federal financial assistance for construction or acquisition purposes for use in any area that has been identified by the Director, Federal Emergency Management Agency as an area having special flood hazards. The phrase "Federal financial assistance" includes any form of loan, grant, guaranty, insurance payment, rebate, subsidy, disaster assistance loan or grant, or any other form of direct or indirect Federal assistance.
22. It will comply with the insurance requirements of Section 314, PL 93-288, to obtain and maintain any other insurance as may be reasonable, adequate, and necessary to protect against further loss to any property which was replaced, restored, repaired, or constructed with this assistance.
23. It will defer funding of any projects involving flexible funding until FEMA makes a favorable environmental clearance, if this is required.
24. It will assist the Federal grantor agency in its compliance with Section 106 of the National Historic Preservation Act of 1966, as amended, (16 U.S.C. 470), Executive Order 11593, and the Archeological and Historic Preservation Act of 1966 (16 U.S.C. 469a-1 et seq.) by (a) consulting with the State Historic Preservation Officer on the conduct of investigations, as necessary, to identify properties listed in or eligible for inclusion in the National Register of Historic places that are subject to adverse effects (see 36 CFR Part 800.8) by the activity, and notifying the Federal grantor agency of the existence of any such properties, and by (b) complying with all requirements established by the Federal grantor agency to avoid or mitigate adverse effects upon such properties.
25. It will, for any repairs or construction financed herewith, comply with applicable standards of safety, decency and sanitation and in conformity with applicable codes, specifications and standards; and, will evaluate the natural hazards in areas in which the proceeds of the grant or loan are to be used and take appropriate action to mitigate such hazards, including safe land use and construction practices.

## STATE ASSURANCES

The State agrees to take any necessary action within State capabilities to require compliance with these assurances and agreements by the applicant or to assume responsibility to the Federal government for any deficiencies not resolved to the satisfaction of the Regional Director.



## **AGENDA ITEM 11A**

**MEMO**

**DATE:**

October 17, 2023

**SUBJECT:**

Discussion:  
Ordinance Chapter 94:  
Panhandling and  
Urban Camping

### **Discussion:**

The Town of Sawmills has determined that the streets and public areas within the Town should be readily accessible and available to residents and the public at large. The use of these areas for camping purposes interferes with rights of others to use these areas as they were intended and such activity can constitute a public health and safety hazard, which could adversely affect neighborhoods and commercial spaces. Camping on private property without the owner's consent and without the proper sanitary measures affects the private property rights as well as public health, safety and welfare of the Town.

### **Recommendation:**

Staff recommends Council discuss this matter and decide how they wish to proceed.

**Town of Sawmills**  
**Caldwell County**  
**Prepared by: Terry M. Taylor, Attorney at Law**

**Resolution**  
**Town of Sawmills**

WHEREAS, the Town of Sawmills has determined that the streets and public areas within the Town should be readily accessible and available to residents and the public at large; and

WHEREAS, the use of these areas for camping purposes interferes with rights of others to use of the areas for which they were intended; and

WHEREAS, such activity can constitute a public health and safety hazard, which adversely affects neighborhoods and commercial spaces; and

WHEREAS, camping on private property without the owner's consent and without proper sanitary measures adversely affects private property rights as well as public health, safety and welfare of the Town; and

WHEREAS, the purpose of the following Chapters, that being Chapter 94 - Urban Camping and Improper Use of Public Lands and Places and Panhandlers is to maintain public areas, streets, parks and other public and private areas within the City in a clean, sanitary and accessible condition and to protect the health, safety and public welfare of the community while recognizing that subject to reasonable conditions, camping and camp facilities associated with special events in limited ways can be beneficial to the cultural and educational climate in the Town; and

WHEREAS, the Town does hereby adopt the following ordinances for urban camping and improper use of public lands in places and panhandling as is set forth and attached hereto.

This the \_\_\_\_\_ day of \_\_\_\_\_, 2023.

**TOWN OF SAWMILLS**

By: \_\_\_\_\_  
Mayor

**ATTEST:**

\_\_\_\_\_  
Town Clerk



**CHAPTER 94**  
**TOWN OF SAWMILLS**

**Chapter 94      URBAN CAMPING IMPROPER USE OF PUBLIC LANDS AND PLACES  
AND PANHANDLERS.**

**Purpose:**      To maintain public areas, streets, parks and other public and private areas within the Town in a clean, sanitary and accessible condition and to protect the health, safety and public welfare of the community while recognizing that subject to reasonable conditions, camping and camp facilities associated with special events in limited ways can be beneficial to the cultural and educational climate in the Town.

**Section 94.01: Urban Camping**

**(A) Definitions.** The following words, terms and phrases, when used in this section, shall have the meanings ascribed to them in this subsection, except where the context clearly indicates a different meaning:

- (1) **CAMP** means residing in or using a public street, sidewalk or park for private living accommodations, such as erecting tents or other temporary structures or objects providing shelter; sleeping in a single place for any prolonged period of time; regularly cooking or preparing meals; or other similar activities.

**OTHER PUBLIC PROPERTY** includes all public or municipal buildings, facilities, structures, properties upon which the buildings, facilities or structures are located, lots, parcels, and any other public properties.

**PUBLIC PARK** includes all municipal parks, public playgrounds, public plazas, attractions and monuments.

**PUBLIC STREET** includes all public streets, highways, rights-of-way, public sidewalks, public benches, public parking lots and medians.

**STORING PERSONAL PROPERTY** means leaving one's personal effects, such as, but not limited to, clothing, bedrolls, cookware, sleeping bags, luggage, knapsacks, or backpacks, unattended for any substantial prolonged length of time. The term "storing personal property" shall not include parking a bicycle or other mode of transportation.

- (2) **PUBLIC PARKS.** It shall be unlawful to camp or to store personal property in any park, as defined in (A)(1) above.
- (3) **PUBLIC STREETS.** It shall be unlawful to camp, to sleep, to store personal property, to sit or to lie down on any public street as defined above.
- (4) **OTHER PUBLIC PROPERTY**—*Blocking ingress and egress; interfering with the normal course of business associated with the designated public property.* It shall be unlawful to camp, to sleep, to store personal property, to sit or to lie down on any public property in such a

manner that interferes with, or is reasonably likely to interfere with, ingress or egress from buildings or to interfere with the normal course of business or operations for which the buildings or properties are designated or intended.

(5) **WARNING.** No person may be arrested for violating this code section until he has received an oral or written warning to cease the unlawful conduct. If the violator fails to comply with the warning issued, he is subject to arrest for urban camping.

(6) **EXCEPTIONS.** This section shall not be construed to prohibit the following behavior:

- (a) Persons sitting or lying down as a result of a medical emergency;
- (b) Persons in wheelchairs sitting on sidewalks;
- (c) Persons sitting down while attending parades;
- (d) Persons sitting down while patronizing sidewalk cafes;
- (e) Persons lying down or napping while attending performances, festivals, concerts, fireworks or other special events;
- (f) Persons sitting on chairs or benches supplied by a public agency or abutting private property owner;
- (g) Persons sitting on seats in bus shelters designed or intended for people to wait for the bus;
- (h) Persons sitting or lying down while waiting in an orderly line awaiting entry to any building, including shelters or awaiting social services, such as provision of meals;
- (i) Children sleeping while being carried by an accompanying person or while sitting or lying in a stroller or baby carriage; or
- (j) Camping by groups or persons with prior approval of the town council or their representative.
- (k) Persons camping on private property must have written permission in their possession at all times and must produce proof thereof upon law enforcement request.

(7) **PENALTY.** Any person who violates the provisions of this Section shall be guilty of a Class 3 Misdemeanor and subject to a maximum fine not to exceed \$500.00 pursuant to N.C.G.S. §160-175 and as set forth in G.S. 14-4. Each day that a violation continues after the offender has been notified of the violation shall constitute a separate offense and may be enforced also as set forth in Section 10.99.



## Chapter 94.02 PANHANDLERS

(A) *Definitions.* The following words, terms and phrases, when used in this section, shall have the meanings ascribed to them in this subsection, except where the context clearly indicates a different meaning:

- (1) **AUTOMATIC TELLER MACHINE** means a device linked to a financial institution's account records, which is able to carry out transactions, including but not limited to, account transfers, deposits, cash withdrawals, balance inquiries, and mortgage, loan, and credit card payments.

**AUTOMATIC TELLER MACHINE FACILITY** means the area comprised of one or more automatic teller machines and any adjacent space which is made available to banking customers after regular banking hours.

**FINANCIAL INSTITUTION** means any bank, industrial bank, credit union, savings and loan, check cashing business, or other financial business.

**PANHANDLING** means, without limitation, use of the spoken, written, or printed words, signs, bodily gestures, or other acts as are conducted in the furtherance of the purpose of obtaining alms or contributions of money, food, or clothing for the use of oneself or others.

**PUBLIC PLACE** means a place where a governmental entity has title and/or to which the public or a substantial group of persons has access, including, but not limited to, any street, highway, parking lot, plaza, restaurant, theater, transportation facility, vendor location, school, place of amusement, park or playground.

### (2) **AGGRESSIVE PANHANDLING INCLUDES:**

- (a) Accosting a person by approaching or speaking to the individual or individuals in such a manner as would cause a reasonable person to fear imminent bodily harm or the commission of a criminal act upon his person, or upon property in his immediate possession;
- (b) Touching someone without his/her consent;
- (c) Using obscene or abusive language toward someone while attempting to panhandle or solicit him;
- (d) Forcing oneself upon the company of another by continuing to solicit in close proximity to an individual who has made a negative response by verbal or physical signs or by attempting to leave the presence of the person soliciting, or by other negative indication;
- (e) Blocking the path of the individual being solicited; otherwise engaging in conduct that could reasonably be construed as intending to force a person to accede to a solicitation;
- (f) Other conduct that a reasonable person being solicited would regard as intended to compel or force the person to accede to the solicitation.

**(3) PROHIBITED CONDUCT WHILE SOLICITING, PEDDLING, OR PANHANDLING.** It shall be unlawful for any person to solicit, peddle, or panhandle, as defined in subsection (a) of this section:

- (a) By engaging in any acts of aggressive soliciting, peddling, or panhandling as defined in subsection (a) of this section;
- (b) Within 50 feet of the entrance to any financial institution, any automatic teller machine or any automatic teller facility;
- (c) At any permitted outdoor dining area or outdoor merchandise area, provided such areas are in active use at the time;
- (d) At any transit stop or taxi stand, or in a public transit vehicle;
- (e) While the person being solicited is standing in line waiting to be admitted to a commercial establishment;
- (f) On private property, unless the person has written permission from the owner of the property to beg or solicit alms on the property;
- (g) After dark, which shall mean one-half hour after sunset until one-half hour before sunrise;
- (h) While under the influence of alcohol or after having illegally used any controlled substance as defined in the North Carolina Controlled Substance Act;
- (i) Within 20 feet of any crosswalk;
- (j) In or on city streets to include the right-of-way, median or shoulder thereof;
- (k) By standing, sitting or loitering in any street or highway, including shoulders or medians, but excluding sidewalks, and/or to stop or attempt to stop any vehicle for the purpose of obtaining employment, business or contribution from the driver or any occupants of the motor vehicle in accordance with G.S. 20-175. This provision shall not apply to licensees, employees or contractors of the department of transportation or city employees engaged in construction, maintenance or in making traffic engineering surveys;
- (l) In a school zone during the time of arrival of students at the beginning of the school day and/or during the time of the departure of students at the end of the school day;
- (m) Within 20 feet of the entrance or exit of any parking deck, garage, or surface parking lot;
- (n) Within 50 feet of any city-owned or -operated building or facility.
- (o) Persons panhandling on private property must have written permission in their possession at all times and must produce proof thereof upon law enforcement request.



- (4) **PENALTY.** A violation of this section is a misdemeanor as set forth in G.S. 14-4. Each day that a violation continues after the offender has been notified of the violation shall constitute a separate offense and may be enforced also as set forth in Section 10.99.

**AGENDA ITEM 13A**

**MEMO**

**DATE:**

October 17, 2023

**SUBJECT:**

Updates:  
Code Enforcement  
Monthly Report

**Discussion:**

The attached report shows the progress that Code Enforcement Officer Curt Willis continues to make throughout the town.

**Recommendation:**

No Council action required.





# CODE ENFORCEMENT ACTIONS TRACKER

October 2023

CEO Curt Willis, 828-485-4263, curt.willis@wpcog.org

Case Number (YRMT-XXX)	Date Opened (YRMTDY)	Town	Property Address	Violation	Man Hours	Status	Deadline
SW2306-062	230608	Sawmills	4463 Rual Dr	Min Housing	2	Order issued	231219
SW2306-063	230608	Sawmills	4463 Rual Dr	Nuisance - TJD	2	Resolved	
SW2306-064	230608	Sawmills	4463 Rual Dr	JNMV	2	Resolved	
SW2306-065	230608	Sawmills	4455 Rual Dr	Min Housing	2	Order issued	231219
SW2306-066	230608	Sawmills	4455 Rual Dr	Nuisance - TJD	2	Order issued	231219
SW2306-067	230608	Sawmills	4455 Rual Dr	JNMV	2	Order issued	231219
SW2306-068	230608	Sawmills	4150 Duggins MHP Dr- 26	Nuisance - TJD	2	Resolved	
SW2306-069	230608	Sawmills	4150 Duggins MHP Dr- L1	Min Housing	2	Order issued	231025
SW2306-070	230608	Sawmills	4150 Duggins MHP Dr- L2	Min Housing	2	Order issued	231025
SW2306-071	230608	Sawmills	4150 Duggins MHP Dr- 31	Min Housing	2	Order issued	231025
SW2306-072	230608	Sawmills	4150 Duggins MHP Dr- 30	Nuisance - TJD	2	Resolved	
SW2306-073	230608	Sawmills	4150 Duggins MHP Dr- 33	Nuisance - Ovrgrth	2	Resolved	
SW2306-074	230608	Sawmills	4150 Duggins MHP Dr- 32	Min Housing	2	Order issued	231025
SW2306-075	230608	Sawmills	4150 Duggins MHP Dr- 35	Min Housing	2	Order issued	231025
SW2306-076	230608	Sawmills	4150 Duggins MHP Dr- 37	Min Housing	2	Order issued	231025
SW2307-006	230703	Sawmills	4505 Sawmills School Rd	Nuisance - TJD	2	Order issued	230930
SW2307-016	230703	Sawmills	4160 US Hwy 321A	Min Housing	2	Order issued	231126
SW2307-017	230703	Sawmills	4160 US Hwy 321A	Nuisance - TJD	2	Order issued	231126
SW2307-084	230725	Sawmills	2823 Legion Rd	Nuisance - Ovrgrth	1	Resolved	230814
SW2308-094	230822	Sawmills	NCPIN# 2765920486	Nuisance - Ovrgrth	1	Resolved	230901