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To: Mayor and City Council **FINANCE & RECORDS**

From: Nancy A. Lueck, Finance Director
Jodi Royal-Goodwin, Community Development Director

Date: November 15, 2019

Re: Resolution to Approve Development Agreement and Tax Increment Payments - Musco Sports Lighting LLC

Introduction:

At the November 7, 2019 meeting, the City Council approved the Urban Renewal Plan Amendment which included the proposed Development Agreement with Musco Sports Lighting LLC. The City also set the public hearing on the proposed Agreement for November 21, 2019.

Recommendation:

Following the public hearing, the Council will consider the agenda item to Approve the Development Agreement and Tax Increment Payments to Musco Sports Lighting LLC. This agreement provides for Musco to invest approximately \$7 million in upgrades to their existing facilities in Muscatine and add 40 new high quality jobs over the next three years. The agreement provides for a 10-year, 50% TIF (tax increment financing) rebate to Musco in an amount not to exceed \$515,000.

Summary:

Please include the attached resolution on the agenda for the November 21, 2019 meeting. Please contact either of us if you have any questions or need additional information.

HOLD HEARING ON AND APPROVE
DEVELOPMENT AGREEMENT AND
TAX INCREMENT PAYMENTS

(Musco Sports Lighting, LLC)

421646-59

Muscatine, Iowa

November 21, 2019

A meeting of the City Council of the City of Muscatine, Iowa, was held at _____
o'clock __.m., on November 21, 2019, at the _____, Muscatine, Iowa,
pursuant to the rules of the Council.

The Mayor presided and the roll was called, showing members present and absent as
follows:

Present: _____

Absent: _____

The City Council investigated and found that notice of the intention of the Council to
conduct a public hearing on a Development Agreement between the City and Musco Sports
Lighting, LLC had been published according to law and as directed by the City Council and that
this is the time and place at which the Council shall receive oral or written objections from any
resident or Company of the City. All written objections, statements, and evidence heretofore
filed were reported to the Council, and all oral objections, statements, and all other exhibits
presented were considered.

The following named persons presented oral objections, statements, or evidence as
summarized below; filed written objections or statements, copies of which are attached hereto; or
presented other exhibits, copies of which are attached hereto:

**(Here list all persons presenting written or oral statements or evidence and
summarize each presentation.)**

There being no further objections or comments, the Mayor announced that the hearing was closed.

Council Member _____ introduced the resolution next hereinafter set out and moved its adoption, seconded by Council Member _____; and after due consideration thereof by the City Council, the Mayor put the question upon the adoption of said resolution, and the roll being called, the following named Council Members voted:

Ayes: _____

Nays: _____.

Whereupon, the Mayor declared said resolution duly adopted, as follows:

RESOLUTION 2019-0384

Resolution Approving Development Agreement with Musco Sports Lighting, LLC, Authorizing Annual Appropriation Tax Increment Payments and Pledging Certain Tax Increment Revenues to the Payment of the Agreement

WHEREAS, the City of Muscatine, Iowa (the “City”), pursuant to and in strict compliance with all laws applicable to the City, and in particular the provisions of Chapter 403 of the Code of Iowa, has adopted an Urban Renewal Plan for the Consolidated Muscatine Urban Renewal Area (the “Urban Renewal Area”); and

WHEREAS, this City Council has adopted an ordinance providing for the division of taxes levied on taxable property in the Urban Renewal Area pursuant to Section 403.19 of the Code of Iowa and establishing the fund referred to in Subsection 2 of Section 403.19 of the Code of Iowa (the “Urban Renewal Tax Revenue Fund”), which fund and the portion of taxes referred to in that subsection may be irrevocably pledged by the City for the payment of the principal of and interest on indebtedness incurred under the authority of Section 403.9 of the Code of Iowa to finance or refinance in whole or in part projects in the Urban Renewal Area; and

WHEREAS, a certain development agreement (the “Agreement”) between the City and Musco Sports Lighting, LLC (the “Company”) has been prepared in connection with the expansion of its existing facilities located at 2107 Stewart Road in the Urban Renewal Area (the “Project”); and

WHEREAS, under the Agreement, the City would provide annual appropriation tax increment payments to the Company in a total amount not exceeding \$515,000; and

WHEREAS, this City Council, pursuant to Section 403.9 of the Code of Iowa, has published notice, has held a public hearing on the Agreement on November 21, 2019, and has otherwise complied with statutory requirements for the approval of the Agreement; and

WHEREAS, Chapter 15A of the Code of Iowa (“Chapter 15A”) declares that economic development is a public purpose for which a City may provide grants, loans, tax incentives, guarantees and other financial assistance to or for the benefit of private persons; and

WHEREAS, Chapter 15A requires that before public funds are used for grants, loans, tax incentives or other financial assistance, a City Council must determine that a public purpose will reasonably be accomplished by the spending or use of those funds; and

WHEREAS, Chapter 15A requires that in determining whether funds should be spent, a City Council must consider any or all of a series of factors;

NOW, THEREFORE, It Is Resolved by the City Council of the City of Muscatine, Iowa, as follows:

Section 1. Pursuant to the factors listed in Chapter 15A, the City Council hereby finds that:

(a) The Project will add diversity and generate new opportunities for the Muscatine and Iowa economies;

(b) The Project will generate public gains and benefits, particularly in the creation of new jobs, which are warranted in comparison to the amount of the proposed property tax incentives.

Section 2. The City Council further finds that a public purpose will reasonably be accomplished by entering into the Agreement and providing the incremental property tax payments to the Company thereunder.

Section 3. The Agreement is hereby approved and the Mayor and City Clerk are hereby authorized and directed to execute and deliver the Agreement on behalf of the City, in substantially the form and content in which the Agreement has been presented to this City Council, and such officers are also authorized to make such changes, modifications, additions or deletions as they, with the advice of bond counsel, may believe to be necessary, and to take such actions as may be necessary to carry out the provisions of the Agreement.

Section 4. All payments by the City under the Agreement shall be subject to annual appropriation by the City Council, in the manner set out in the Agreement. As provided and required by Chapter 403 of the Code of Iowa, the City's obligations under the Agreement shall be payable solely from a subfund (the "Musco Sports Lighting Subfund") which is hereby established, into which shall be paid that portion of the income and proceeds of the Urban Renewal Tax Revenue Fund attributable to property taxes derived from the property as described as follows:

Certain real property situated in the City of Muscatine, Muscatine County, State of Iowa bearing Muscatine County Property Tax Parcel Identification Number 1310376001.

Section 5. The City hereby pledges to the payment of the Agreement the Musco Sports Lighting Subfund and the taxes referred to in Subsection 2 of Section 403.19 of the Code of Iowa to be paid into such Subfund, provided, however, that no payment will be made under the Agreement unless and until monies from the Musco Sports Lighting Subfund are appropriated for such purpose by the City Council.

Section 6. After its adoption, a copy of this resolution shall be filed in the office of the County Auditor of Muscatine County to evidence the continuing pledging of the Musco Sports Lighting Subfund and the portion of taxes to be paid into such Subfund and, pursuant to the direction of Section 403.19 of the Code of Iowa, the County Auditor shall allocate the taxes in accordance therewith and in accordance with the tax allocation ordinance referred to in the preamble hereof.

Section 7. All resolutions or parts thereof in conflict herewith are hereby repealed.
Passed and approved November 21, 2019.

Mayor

Attest:

City Clerk

•••••

On motion and vote the meeting adjourned.

Mayor

Attest:

City Clerk

STATE OF IOWA
COUNTY OF MUSCATINE
CITY OF MUSCATINE

SS:

I, the undersigned, Clerk of the City of Muscatine, hereby certify that the foregoing is a true and correct copy of the minutes of the Council of the City relating to holding a public hearing and adopting a resolution to approve a Development Agreement.

WITNESS MY HAND this ____ day of _____, 2019.

City Clerk



November 12, 2019

VIA EMAIL

Gregg Mandsager
City Administrator/City Hall
Muscatine, IA

Re: Musco Sports Lighting, LLC Development Agreement
File No. 421646-59

Dear Gregg:

Attached please find the proceedings covering the City Council's public hearing on the proposed Development Agreement with Musco Sports Lighting, LLC, followed by a resolution approving the Agreement and pledging certain incremental property tax revenues to make the payments under the Agreement.

We would appreciate receiving one fully executed copy of these proceedings and of the executed Development Agreement as soon as they are available.

Please call John Danos or me with questions.

Kind regards,

Amy Bjork

Attachments

cc: Nancy Lueck

DEVELOPMENT AGREEMENT

This Agreement is entered into between the City of Muscatine, Iowa (the "City") and Musco Sports Lighting, LLC (the "Company") as of the ___ day of _____, 2019 (the "Commencement Date").

WHEREAS, the City has established the Consolidated Muscatine Urban Renewal Area (the "Urban Renewal Area"), and has adopted a tax increment ordinance for the Urban Renewal Area; and

WHEREAS, the Company owns certain real property which is situated in the City, lies within the Urban Renewal Area and is more specifically described on Exhibit A hereto (the "Property"); and

WHEREAS, the Company has proposed to undertake the construction of expanded facilities on the Property (the "Project") for use in its business operations; and

WHEREAS, the Company has requested that the City provide financial assistance in the form of incremental property tax payments to be used by the Company in paying the costs of constructing and maintaining the Project; and

WHEREAS, the base valuation of the Property for purposes of Section 403.19 of the Code of Iowa is \$6,713,470 (the "Base Valuation"); and

WHEREAS, Chapter 15A of the Code of Iowa authorizes cities to provide grants, loans, guarantees, tax incentives and other financial assistance to or for the benefit of private persons;

NOW THEREFORE, the parties hereto agree as follows:

A. Company's Covenants

1. Project Construction. The Company agrees to construct the Project on the Property and to maintain and use the completed Project as part of its business operations throughout the Term, as hereinafter defined. Furthermore, the Company expects to invest approximately \$7,000,000 into capital improvements for the Project, including construction work, equipment, furnishings and other capital improvements. The Company has submitted a detailed site plan (the "Site Plan") for the development of the Project to the City which was approved in accordance with City Code Section 10-2-7(I) on August 17, 2019. The Site Plan is attached hereto as Exhibit B hereto. The Site Plan may be amended in accordance with the Muscatine City Code by mutual written consent or the parties. The Company agrees to construct the Project in accordance with the Site Plan and to substantially complete such construction by no later than May 1, 2020.

2. Property Taxes. The Company agrees to make timely payment of all property taxes as they come due with respect to the Property with the completed Project thereon throughout the Term, as hereinafter defined, and to submit a receipt or cancelled check in evidence of each such payment.

3. **Company's Certifications.** The Company agrees to submit documentation to the satisfaction of the City by no later than each October 15 during the Term, as hereinafter defined, commencing October 15, 2020, demonstrating that the completed Project is being maintained and used as part of the Company's business operations.

4. **Property Tax Payment Certification.** Furthermore, the Company agrees to certify to the City by no later than October 15 of each year during the Term, as hereinafter defined, commencing October 15, 2021, an amount (the "Company's Estimate") equal to fifty percent (50%) (the "Annual Percentage") of the estimated Incremental Property Tax Revenues anticipated to be paid in the fiscal year immediately following such certification with respect to the taxable valuation of the Property. In submitting each such Company's estimate, the Company will complete and submit the worksheet attached hereto as Exhibit C. The City reserves the right to review and request revisions to each such Company's Estimate to ensure the accuracy of the figures submitted. For purposes of this Agreement, Incremental Property Tax Revenues are calculated by: (1) determining the consolidated property tax levy (city, county, school, etc.) then in effect with respect to taxation of the Property; (2) subtracting (a) the debt service levies of all taxing jurisdictions, (b) the school district instructional support and physical plant and equipment levies, and (c) any other levies which may be exempted from such calculation by action of the Iowa General Assembly; (3) multiplying the resulting modified consolidated levy rate times any incremental growth in the taxable valuation of the Property, as shown on the property tax rolls of Muscatine County, above and beyond the Base Valuation; and (4) deducting any property tax credits which shall be available with respect to taxable incremental valuation of the Property.

Upon request, the City staff shall provide reasonable assistance to the Company in completing the worksheet required under this Section A.4.

5. **Employment Requirements.** The Company agrees to meet the following employment requirements (the "Employment Requirements") during the Term, as hereinafter defined, of this Agreement:

A. **Base Work Force.** As of the Commencement Date of this Agreement, the Company agrees that it has a work force of at least three hundred sixty-three (363) employees (the "Base Work Force") employed in connection with its operations on the Property;

B. **Additional Work Force.** The Company agrees to establish not less than forty (40) additional employment positions (the "Additional Work Force"), above and beyond the Base Work Force, with an average wage of at least \$15.00 per hour, in connection with the Company's business operations on the Property by no later than November 21, 2022.

C. **Work Force Requirements.** From the Commencement Date of this Agreement through November 21, 2022, the Company agrees to maintain the Base Work Force.

From November 21, 2022 and continuing through the remainder of the Term, as hereinafter defined, of this Agreement, the Company agrees to maintain a workforce consisting of the Base Work Force plus the Additional Work Force.

The Company agrees to submit documentation to the satisfaction of the City, by no later than October 15 of each year, commencing October 15, 2020, demonstrating that the Employment Requirements then in effect are being met by the Company.

6. **Legal and Administrative Costs.** The Company hereby agrees to pay for the legal fees and administrative costs incurred by the City in connection with the drafting, negotiation and authorization of this Agreement, including the prerequisite amendment to the urban renewal plan, up to an amount not in excess of \$7,500. The Company agrees to remit payment to the City within 30-days of the submission of reasonable documentation by the City to the Company evidencing such costs.

7. **Default Provisions.** The following shall be “Events of Default” under this Agreement, and the term “Event of Default” shall mean, whenever it is used in this Agreement (unless otherwise provided), any one or more of the following events:

- a) Failure by the Company to commence and complete construction of the Project pursuant to the terms and conditions of this Agreement.
- b) Failure by the Company to fully and timely remit payment of property taxes when due and owing.
- c) Failure by the Company to keep the completed Project in service as part of its business operations on the Property throughout the Term, as hereinafter defined.
- d) Failure by the Company to comply with Sections A.2, A.3, A.4, A.5 or A.6 of this Agreement.

Whenever any event of default described in this Agreement occurs, the City shall provide written notice to the Company describing the cause of the default and the steps that must be taken by the Company in order to cure the default. The Company shall have thirty (30) days after receipt of the notice to cure the default or to provide assurances satisfactory to City that the default will be cured as soon as reasonably possible. If the Company fails to cure the default or provide assurances, the City shall then have the right to:

- a) Pursue any action available to it, at law or in equity, in order to enforce the terms of this Agreement.
- b) Withhold the Payments provided for under Section B.1 below.

B. City’s Obligations

1. **Payments.** In recognition of the Company’s obligations set out above, the City agrees to make twenty (20) semiannual economic development tax increment payments (the “Payments” and each, individually a “Payment”) to the Company during the Term, as hereinafter defined, pursuant to Chapters 15A and 403 of the Code of Iowa, provided however that the aggregate, total amount of the Payments shall not exceed \$515,000 (the “Maximum Payment Total”), and all Payments under this Agreement shall be subject to annual appropriation by the City Council, as provided hereunder.

The Payments shall not constitute general obligations of the City, but shall be made solely and only from Incremental Property Tax Revenues received by the City from the Muscatine County Treasurer attributable to the taxable valuation of the Property.

Each Payment shall not exceed an amount which represents the Annual Percentage of the Incremental Property Tax Revenues available to the City with respect to the Property during the six (6) months immediately preceding each Payment date.

This Agreement assumes that the new valuation from the Project will go on the property tax rolls as of January 1, 2021. Accordingly, Payments will be made on December 1 and June 1 of each fiscal year, beginning December 1, 2022, and continuing through and including June 1, 2032, or until such earlier date upon which total Payments equal to the Maximum Payment Total have been made.

2. **Annual Appropriation.** The Payments shall be subject to annual appropriation by the City Council. Prior to December 1 of each year during the Term of this Agreement, commencing in calendar year 2021, the City Council of the City shall consider the question of obligating for appropriation to the funding of the Payments due in the following fiscal year, an amount (the "Appropriated Amount") of Incremental Property Tax Revenues to be collected in the following fiscal year equal to or less than the most recently submitted Company's Estimate.

In any given fiscal year, if the City Council determines to not obligate the then-considered Appropriated Amount, then the City will be under no obligation to fund the Payments scheduled to become due in the following fiscal year, and the Company will have no rights whatsoever to compel the City to make such Payments or to seek damages relative thereto or to compel the funding of such Payments in future fiscal years. A determination by the City Council to not obligate funds for any particular fiscal year's Payments shall not render this Agreement null and void, and the Company shall make the next succeeding submission of the Company's Estimate as called for in Section A.4 above, provided however that no Payment shall be made after June 1, 2032.

3. **Payment Amounts.** The aggregate Payments to be made in a fiscal year shall not exceed an amount equal to the corresponding Appropriated Amount (for example, for the Payments due on December 1, 2022 and on June 1, 2023, the aggregate maximum amount of such Payments would be determined by the Appropriated Amount determined for certification by December 1, 2021). Furthermore, the amount of each such Payment shall not exceed the amount of Incremental Property Tax Revenues (excluding allocations of "back-fill" or "make-up" payments from the State of Iowa for property tax credits or roll-back) actually received by the City from the Muscatine County Treasurer attributable to the taxable incremental valuation of the Property in the six months immediately preceding the extant Payment due date.

4. **Certification of Payment Obligation.** In any given fiscal year, if the City Council determines to obligate the then-considered Appropriated Amount, as set forth in Section B.1 above, then the City Clerk will certify by December 1 of each such year to the Muscatine County Auditor an amount equal to the most recently obligated Appropriated Amount.

C. Administrative Provisions

1. **Amendment and Assignment.** The parties hereto may not cause this Agreement to be amended, assigned, assumed, sold or otherwise transferred without the prior written consent of the other party. However, the City hereby gives its permission that the Property Owner's rights to receive the Payments hereunder may be assigned by the Property Owner to a private lender, as security on a credit facility taken with respect to the Project, without further action on the part of the City.

2. **Successors.** This Agreement shall inure to the benefit of and be binding upon the successors and assigns of the parties.

3. **Term.** The term (the "Term") of this Agreement shall commence on the Commencement Date and end on June 1, 2032 or on such earlier date upon which the aggregate sum of Payments made to the Company equals the Maximum Payment Total.

4. **Choice of Law.** This Agreement shall be deemed to be a contract made under the laws of the State of Iowa and for all purposes shall be governed by and construed in accordance with laws of the State of Iowa.

The City and the Company have caused this Agreement to be signed, in their names and on their behalf by their duly authorized officers, all as of the day and date written above.

CITY OF MUSCATINE, IOWA

By: _____
Mayor

Attest:

City Clerk

MUSCO SPORTS LIGHTING, LLC

By: _____

EXHIBIT A
DESCRIPTION OF THE PROPERTY

Certain real property situated in the City of Muscatine, Muscatine County, State of Iowa bearing Muscatine County Property Tax Parcel Identification Numbers 1310376001.

EXHIBIT B
SITE PLAN

[ATTACH SITE PLAN HERE]

EXHIBIT C
COMPANY'S ESTIMATE WORKSHEET

- (1) Date of Preparation: October ____, 20 ____.
- (2) Assessed Valuation of Property as of January 1, 20 ____:
\$ _____.
- (3) Base Taxable Valuation of Property:
\$6,713,470.
- (4) Incremental Taxable Valuation of Property (2 minus 3):
\$ _____ (the "TIF Value").
- (5) Current City fiscal year consolidated property tax levy rate for purposes of calculating Incremental Property Tax Revenues (the "Adjusted Levy Rate"):
\$ _____ per thousand of value.
- (6) The TIF Value (4) factored by the Adjusted Levy Rate (5).
\$ _____ x \$ _____ /1000 = \$ _____ (the "TIF Estimate")
- (7) Subtract anticipated property tax credits from the TIF Estimate (6 minus 7) =
\$ _____ (the "Available TIF Estimate")
- (8) Factor the Available TIF Estimate (7) by the Annual Percentage (50%) =
Company's Estimate = \$ _____ x .50 = _____