



DRAFT

EXHIBIT 2

**The School Board of Broward County, Florida
Procurement & Warehousing Services Department
7720 W. Oakland Park Blvd., Suite 323
Sunrise, Florida 33351**

(754) 321-0505

Document 00520: Agreement Form

THIS AGREEMENT made and entered into this 5th day of February, 2019 by and between

THE SCHOOL BOARD OF BROWARD COUNTY, FLORIDA
(hereinafter "**SBBC**")

and

MUSCO SPORTS LIGHTING, LLC
(hereinafter "**MUSCO**")
100 1 St Avenue West
Oskaloosa, Iowa 52577

WHEREAS, The SBBC is the owner of certain real property located in Parkland, Broward County, Florida and known as Marjory Stoneman Douglas High School; and

WHEREAS, on November 7, 2017, **Anthony Rizzo**, a 2007 graduate of Marjory Stoneman Douglas High School and currently a professional baseball player, entered into a Donation, Fundraising and Naming Agreement with the SBBC wherein he graciously agreed to contribute partial funding and assist in additional fundraising efforts towards purchase and installation of lighting at Marjory Stoneman Douglas High School's varsity baseball field; and

WHEREAS, in an act of generosity and goodwill, MUSCO, a specialty sports lighting contractor, desires to provide and install lighting at the sports fields of Marjory Stoneman Douglas High School, at no cost to the SBBC, and in accordance with applicable Contract Documents, laws, codes and ordinances; and

WHEREAS, through the combined efforts and donations of Anthony Rizzo, MUSCO and other donors to fundraising efforts, Marjory Stoneman Douglas High School shall receive a custom-designed, high output LED sports lighting system including a Lighting Control System, Project Management and Installation Services (collectively hereinafter the "**Project**"); and

WHEREAS, MUSCO, shall provide all components of the Project at no cost to the SBBC, and in accordance with applicable Contract Documents, laws, codes and ordinances; and

WHEREAS, SBBC and MUSCO wish to enter into this Agreement to facilitate such work.

NOW THEREFORE, in exchange for the mutual covenants and promises set forth herein, the parties agree as follows:

ARTICLE 1. ENTIRE AGREEMENT

1.01 This Construction Contract, along with the Contract Documents consisting of the Agreement Form, Drawings, Specifications, and modifications issued after execution of

the Contract embodies the entire agreement between SBBC and MUSCO and supersedes all other writings, oral agreements, or representations.

- 1.02 The parties shall not be bound by or be liable for any statement, representation, promise, inducement or understanding of any kind or nature not set forth herein.
- 1.03 NO CHANGES, AMENDMENTS OR MODIFICATIONS OF ANY OF THE TERMS OR CONDITIONS OF THE CONTRACT SHALL BE VALID UNLESS REDUCED TO WRITING AND SIGNED BY BOTH PARTIES.

ARTICLE 2. ENUMERATION OF THE CONTRACT DOCUMENTS.

- 2.01 The Contract Documents consisting of the Agreement Form, Drawings, Specifications, and all Addenda and modifications issued after execution of the Contract thereto together form the Contract, and they are fully a part of the Contract as if written herein word for word. The following is an enumeration of the Drawings and Specifications for this Project:
 - 1. LED Lighting Specifications;

ARTICLE 3. CONTRACT SUM

- 3.01 This is a zero (0) net cost to the School Board, however, this agreement represents and acknowledges that MUSCO will receive \$150,000 from Anthony Rizzo previously committed on 11/7/2017 and \$50,000 held by the Broward Education Foundation that was raised by the school for this specific purpose as compensation for the completed project. In the event that the School Board does not receive a total of \$200,000 from the above mentioned parties, MUSCO will not have any obligation to move forward with this project.

ARTICLE 4. TIME FOR CONTRACTOR'S PERFORMANCE.

- 4.01 Upon execution of the contract by both MUSCO and the SBBC, submittal of the required certificates of insurance, and receipt and approval of other required information, the SBBC will issue **Document 00550, Notice to Proceed** which will stipulate the commencement date for the Work.
- 4.02 MUSCO shall commence the performance of the Work on the date stipulated on Document 00550, Notice to Proceed, and agrees to diligently continue its performance to and until final completion of the Project.
- 4.03 Required date(s) of Substantial Completion**
 - 4.03.01 MUSCO shall accomplish Substantial Completion of the Work within 150 days of the notice to proceed.
 - 4.03.02 (Not used)

4.04 Liquidated Damages for Substantial Completion:

(Not used)

ARTICLE 5. SUBSTANTIAL COMPLETION AND FINAL PAYMENT.

5.01 Substantial Completion:

5.01.01 When MUSCO believes that Substantial Completion has been achieved, MUSCO shall notify the School Board Building Department in writing and shall provide to the Project Manager a listing of those matters yet to be finished. The designated Project Consultant will determine whether the Work (or portion thereof) is appropriately ready for a Substantial Completion Inspection.

5.01.02 If the Work is determined to be ready for a Substantial Completion Inspection, the Project Consultant and SBBC will thereupon conduct an inspection of the Work to determine if the Work is, in fact, substantially complete and establish a list of items necessary for MUSCO to correct or finish. When Substantial Completion has been granted as evidenced by the Substantial Completion Inspection, the Project Consultant will issue a letter formally establishing the Substantial Completion Date for the Work or portion thereof.

5.01.03 (Not used)

5.02 Final Completion:

5.02.01 When MUSCO believes that the Work or portion thereof, is finally complete and is ready for a final inspection, MUSCO shall notify the Project Consultant in writing. The Project Consultant will then determine whether the Work (or portion thereof) is appropriately ready for a Final Completion Inspection.

5.02.02 If the Work is determined to be ready for a Final Completion Inspection, the Project Consultant and SBBC will thereupon conduct an inspection of the Work to determine if the Work is, in fact, finally complete. When Final Completion has been granted as evidenced by the Final Completion Inspection, the Project Consultant will issue a letter formally establishing the Final Completion Date for the Work or portion thereof.

5.04 Upon Final Completion, MUSCO shall provide the SBBC, in the form and manner required by SBBC, if any, with a copy to the Project Consultant of the following:

5.04.01 An affidavit that all of MUSCO's obligations to subcontractors, laborers, equipment or suppliers, or other third parties in connection with the Project, if any, have been paid or otherwise satisfied;

5.04.02 Such other documents as required by the SBBC from each subcontractor, lower tier subcontractor, laborer, supplier or other person or entity who has or might have a claim against the SBBC;

5.04.03 All product warranties, operating manuals, instruction manuals and other things or documents customarily required of MUSCO, or reasonably required by SBBC, including but not limited to those required elsewhere in the Contract Documents, as part of its Project Closeout procedures;

5.04.04 (Not used)

5.04.05 (Not used)

ARTICLE 6. TIME AND DELAYS.

- 6.01 All time in the Contract Documents is calculated on a consecutive calendar day basis.
- 6.02 Time is of the essence in this Contract, and any breach of same shall go to the essence hereof, and MUSCO, in agreeing to complete the Work within the time herein mentioned, has taken into consideration and made allowances for all reasonable hindrances and delays incident to its work.
- 6.03 MUSCO agrees to commence the Work when directed by SBBC and to diligently and continuously perform such Work and to coordinate the Work with other Work being performed on the Project by other trades so that the SBBC shall not be delayed by any act or omission of MUSCO in completion of the Project within the time specified above.
- 6.04 MUSCO shall make payments, if any, promptly to its vendors, subcontractors, suppliers and for labor, material and equipment used by it in the performance of its work.
- 6.05 MUSCO shall not be entitled to any claim for damages or an extension of time on account of hindrance or delays from any cause whatsoever, but if caused by any act of God or active interference on the part of the SBBC, such act, hindrance, or delay may only entitle MUSCO to receive an extension of time as its sole and exclusive remedy.
 - 6.05.01 Adverse weather such as rain is not to be considered to be an act of God unless it exceeds the ten (10) year average as published by the National Weather Service (or equivalent organization acceptable to the SBBC at its sole discretion) for that time of year in Broward County.
 - 6.05.02 An extension of time to complete the Work shall be determined by the SBBC provided that MUSCO provides the SBBC with notice in writing of the cause of said act, hindrance or delay within twenty (20) days after its occurrence.
 - 6.05.03 In the event the request for extension is not made in writing within that twenty (20) day time period, MUSCO acknowledges and agrees it has forever waived any and all rights to such an extension.
 - 6.05.04 All extensions of time shall be authorized only by a written change order executed by the SBBC and Project Consultant.
 - 6.05.05 This "no damage for delay" clause will encompass any damages for delay or disruption even if MUSCO completes construction of the Work in a timely fashion in accordance with this Contract.
 - 6.05.06 Damages as referenced in this "no damage for delay" shall include any type of damages that are or could be awarded by any court or arbitration panel such as, by way of

general example, but not limitation, tort, contract, strict liability, consequential damages, liquidated damages and/or punitive damages.

- 6.05.07 By way of specific example, but not limitation, damages as referenced within this clause include loss of use, loss of profits, labor inefficiency, loss of bonding capacity, overhead and repair costs, costs of capital replacement, loss of wages, pain and suffering, loss of production costs to replace facilities, equipment and/or product loss, increased and/or extended home office overhead, increased general conditions, costs of mobilization and demobilization, decrease in value, and/or any other damage or loss.
- 6.05.08 MUSCO recognizes and specifically acknowledges the terms and conditions of the "no damage for delay" clause upon execution of this Contract.

ARTICLE 7. CONTRACT BOND AND INSURANCE

- 7.01 The Contract shall become effective and in full force upon the execution of this agreement, concurrently with the delivery of a bond issued by a Surety Company acceptable to SBBC in its sole discretion, such Surety being qualified and rated in accordance with requirements established by the SBBC and approved by the United States Treasury Department and licensed to do business in the State of Florida.
- 7.02 This Agreement must be executed and signed by a resident agent having an office in Florida, representing such Surety Company, for one hundred per cent (100%) of the Contract price, said bond guaranteeing the performance of this Contract.
- 7.03 (Not used)
- 7.04 (Not used)
- 7.04.01 MUSCO and Surety shall have a continuing obligation to ensure that all insurance or surety requirements are satisfied throughout the construction of the project and until all post completion obligations, including punch list and warranty requirements, are completed or expire.
- 7.05 **INSURANCE REQUIREMENTS – MINIMUM INSURANCE REQUIREMENTS**
- 7.05.1 **GENERAL LIABILITY:** Limits not less than \$1,000,000 per occurrence for Bodily Injury/ Property Damage; \$1,000,000 General Aggregate. Limits not less than \$1,000,000 for Products/Completed Operations Aggregate.
- 7.05.2 **WORKER'S COMPENSATION:** Florida Statutory limits in accordance with Chapter 440; Employer's Liability limits not less than \$100,000/\$100,000/\$500,000 (each accident/disease-each employee/disease-policy limit).
- 7.05.3 **AUTO LIABILITY:** Owned, Non-Owned and Hired Auto Liability with Bodily Injury and Property Damage limits of not less than \$1,000,000 Combined Single Limit. If Awardee does not own any vehicles, hired and non-owned automobile liability coverage in the amount of \$1,000,000 shall be accepted. In addition, an affidavit signed by the Awardee must be furnished to SBBC indicating the following:

Musco Sports Lighting, LLC does not own any vehicles. In the event insured acquires any vehicles throughout the term of this agreement, insured agrees to provide proof of "Any Auto" coverage effective the date of acquisition.

7.05.4 **ACCEPTABILITY OF INSURANCE CARRIERS:** The insurance policies shall be issued by companies qualified to do business in the State of Florida. The insurance companies must be rated at least A- VI by AM Best or Aa3 by Moody's Investor Service.

7.05.5 **VERIFICATION OF COVERAGE:** Proof of Insurance must be furnished within 15 days of execution of this Agreement. To streamline this process, SBBC has partnered with EXIGIS RiskWorks to collect and verify insurance documentation. All certificates (and any required documents) must be received and approved by SBBC before any work commences to permit Awardee time to remedy any deficiencies. EXIGIS RiskWorks will send an email notification within three (3) business days after receipt of the award letter.

- New vendors will receive an email notification requesting account verification and insurance agent information.
- Existing vendors will receive an email notification of current status.

7.05.6 **REQUIRED CONDITIONS:** Liability policies must contain the following provisions. In addition, the following wording must be included on the Certificate of Insurance:

7.05.6.1 The School Board of Broward County, Florida, its members, officers, employees and agents are added as additional insured.

7.05.6.2 All liability policies are primary of all other valid and collectable coverage maintained by the School Board of Broward County, Florida.

7.05.6.3 Certificate Holder: The School Board of Broward County, Florida, c/o EXIGIS Risk Management Services, P. O. Box 4668-ECM, New York, New York 10163-4668

7.05.7 **CANCELLATION OF INSURANCE:** Vendors are prohibited from providing services under this Agreement with SBBC without the minimum required insurance coverage and must notify SBBC within two business days if required insurance is cancelled.

The School Board of Broward County, Florida reserves the right to review, reject or accept any required policies of insurance, including limits, coverages or endorsements, herein throughout the term of this agreement

ARTICLE 8. NOTICES

8.01 Any notices provided for hereunder shall be in writing and may be served either personally on the authorized representative of the receiving party at the jobsite, with a copy via telecopy or facsimile to the addresses shown below, or by registered mail or overnight delivery/courier service (e.g., Federal Express) to that party at the addresses shown below:

Party:		Address:
SBBC:	Superintendent of Schools The School Board of Broward County, Florida	600 SE Third Avenue Ft. Lauderdale, FL 33301 Attn: Robert W. Runcie
With Copies To:	Project Manager Facilities and Construction Management	2301 NW 26 th Street Fort Lauderdale, FL 33311 Attn: Gregory Boardman
MUSCO:	Musco Sports Lighting, LLC	100 1st Avenue West Oskaloosa, IA 52577
Surety:		
Surety's Agent:		
Project Consultant:		

8.02 These addresses may be changed by either of the parties by written notice to the other party.

ARTICLE 9. CONTRACTOR'S RESPONSIBILITIES

9.01 MUSCO must comply with public records laws. Florida State Statute 119.0701 requires that the MUSCO keep, maintain and provide public access to public records. MUSCO shall ensure that public records that are confidential and exempt from public records disclosure are not disclosed, except as authorized by law. MUSCO shall be responsible for retaining public records and transfer, at no cost to the public agency, all public records in their possession upon completion or termination of the contract. Electronically stored records must be provided in a format compatible with the information technology systems of the public agency. Failure to comply with these provisions will constitute a breach of contract and will have financial consequences.

9.02 **Background Screening of Contractual Personnel** - MUSCO must comply with the background screening requirements for all personnel to be working onsite, regardless of whether such personnel are directly employed by MUSCO or employed by any subcontractors. See **Document 00455: Background Screening of Contractual Personnel**.

(Intentionally left blank)

IN WITNESS HEREOF, MUSCO, Musco Sports Lighting, LLC, and the SBBC, The School Board of Broward County, Florida, have caused this contract to be executed and their corporate seals affixed by and through their proper officers, thereunto duly authorized, on this day and year first above written.

SBBC

MUSCO

**THE SCHOOL BOARD OF BROWARD
COUNTY, FLORIDA**

MUSCO SPORTS LIGHTING, LLC

SEAL

SEAL

By: _____
Heather Brinkworth,
Chair

By: _____
(Printed Name and Title)

Attest Secretary

Witness or Attest Secretary (MUSCO)

Robert W. Runcie
Superintendent of Schools

By: _____
(Printed Name and Title)

Approved as to Form and Legal Content By:

Office of the General Counsel

CONTRACTOR NOTARIZATION

STATE OF _____

COUNTY OF _____

The foregoing instrument was acknowledged before me this ____ day of _____, _____
by _____ of _____,
and, _____ of _____, on
behalf of the MUSCO.

_____, and, _____ are personally known to
me or produced _____ as identification and did/did not first take
an oath.

My commission expires:

(SEAL)

Signature – Notary Public

Printed Name of Notary

Notary’s Commission No.

SURETY ACKNOWLEDGMENT

The Surety acknowledges that it has read the foregoing Construction Contract and has familiarized itself with the obligations of MUSCO and the Surety as stated therein, which obligations are agreed to by Surety and are incorporated, by reference to the Construction Contract, in the Payment and Performance Bonds.

SURETY:

_____ **By:** _____
_____ **Its:** _____
_____ **Date:** _____

STATE OF _____

COUNTY OF _____

The foregoing instrument was acknowledged before me this ____ day of _____, _____
by _____ of _____, on
behalf of the Surety.

He/she is personally known to me or produced _____ as
identification and did/did not first take an oath.

My commission expires:

(SEAL)

Signature – Notary Public

Printed Name of Notary

Notary’s Commission No.

END OF DOCUMENT