

AGENDA REQUEST FORM
THE SCHOOL BOARD OF BROWARD COUNTY, FLORIDA

Meeting Date 1/25/11	<table border="1" style="width: 100%; border-collapse: collapse;"><tr><td style="width: 50%; text-align: center;">Open Agenda Yes <u>X</u> No</td><td style="width: 50%; text-align: center;">Time Certain Request Yes <u>X</u> No</td></tr></table>	Open Agenda Yes <u>X</u> No	Time Certain Request Yes <u>X</u> No	Agenda Item Number J-11				
Open Agenda Yes <u>X</u> No	Time Certain Request Yes <u>X</u> No							
TITLE: Funding and Use Agreement for McNicol Middle School Basketball Courts								
REQUESTED ACTION: Approve the Funding and Use Agreement between The School Board of Broward County, Florida and the City of Hollywood. Project funding in the amount of \$90,000 is derived from the Adopted District Educational Facilities Plan (\$80,000), City of Hollywood (\$5,000) and the Department of Athletics and Student Activities (\$5,000).								
SUMMARY EXPLANATION AND BACKGROUND: The Adopted District Educational Facilities Plan, 2010-2015, appropriates \$80,000 for sports lighting of basketball courts at McNicol Middle School. Lighting of the courts will contribute to expanded use by students from McNicol Middle School and the community. The City of Hollywood will contribute \$5,000 to the lighting project. In addition, the City of Hollywood will fund all electrical consumption costs resulting from the use of the sports lights at McNicol Middle School. The remaining \$5,000 for the project will come from the Department of Athletics and Student Activities budget. The City of Hollywood approved the Agreement on December 1, 2010. This Agreement has been reviewed and approved as to form and legal content by the School Board Attorney.								
SCHOOL BOARD GOALS: ☐ • Goal One: Raise achievement of all students to ensure graduation from high school and readiness for post-secondary education. ☐ • Goal Two: Improve the health and wellness of students and personnel. ☐ • Goal Three: Provide a safe and secure physical and technological environment for all students and employees. ☐ • Goal Four: Promote innovation which focuses on best practices and quality efforts that improve our best-in-class position. ☐ • Goal Five: Recruit, develop, retain, and recognize high performing and diverse faculty and personnel. ☒ • Goal Six: Build strong partnerships with family, business, community and government at the classroom, school, area, and district level. ☐ • Goal Seven: Ensure district's leadership as an environmental steward through innovative ecology and energy conservation programs.								
FINANCIAL IMPACT: The financial impact to The School Board of Broward County, Florida is \$90,000. The source of funds is the Adopted District Educational Facilities Plan (\$80,000, page 78, McNicol Middle School), the City of Hollywood (\$5,000) and the Department of Athletics and Student Activities (\$5,000).								
EXHIBITS: (List) 1. Funding and Use Agreement								
BOARD ACTION: APPROVED (For Official School Board Records' Office Only)	SOURCE OF ADDITIONAL INFORMATION: <table border="1" style="width: 100%; border-collapse: collapse;"><tr><td style="width: 60%;">Damian Huttenhoff</td><td style="width: 40%;">754 321-2550</td></tr><tr><td>Chris O. Akagbosu</td><td>754 321-2162</td></tr><tr><td style="font-size: x-small;">Name</td><td style="font-size: x-small;">Phone</td></tr></table>		Damian Huttenhoff	754 321-2550	Chris O. Akagbosu	754 321-2162	Name	Phone
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Name	Phone							

THE SCHOOL BOARD OF BROWARD COUNTY, FLORIDA

THOMAS LINDNER, ACTING DEPUTY SUPERINTENDENT

FACILITIES & CONSTRUCTION MANAGEMENT DIVISION

Approved in Open Board Meeting on:

JAN 25 2011

By:

Revised July 2008

JFN/JWH/DH/sw/TJL/COA/NM/burrell

School Board Chair

**FUNDING AND USE AGREEMENT FOR
MC NICOL MIDDLE BASKETBALL FIELD LIGHTING**

THIS AGREEMENT is made and entered into as of this 25th day of January, 2011, by and between

THE SCHOOL BOARD OF BROWARD COUNTY, FLORIDA
(hereinafter referred to as "SBBC"),
a body corporate and political subdivision of the State of Florida,
whose principal place of business is
600 Southeast Third Avenue, Fort Lauderdale, Florida 33301

and

CITY OF HOLLYWOOD
(hereinafter referred to as "CITY"),
a municipal corporation operating and
existing under the Laws of the State of Florida,
whose principal place of business is
2600 Hollywood Boulevard, Hollywood, Florida 33022

WHEREAS, SBBC and the CITY have enjoyed a mutually beneficial relationship over the past several years and are both interested in and concerned with the development and provision of adequate parks and recreational facilities for interscholastic sports, intramural sports, physical education programs, leisure and use by both students and the local community; and

WHEREAS, SBBC and the CITY desire to fund and install sports lighting on outside basketball courts located at the school grounds of McNicol Middle, contiguous to the CITY's community center; and

WHEREAS, SBBC and the CITY believe that an arrangement whereby SBBC permits certain uses of its athletic and recreational areas by CITY will be of mutual benefit to all parties and will serve a public need and benefit the citizens of the CITY and those students served by the school sites to be improved; and

WHEREAS, the CITY is desirous of working together with the SBBC to construct said athletic facility; and

NOW THEREFORE, in consideration of the premises and of the mutual covenants contained herein and the sum of Ten Dollars (\$10.00) and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties hereby agree as follows

ARTICLE 1 – RECITALS

1.01 **Recitals.** The Parties agree that the foregoing recitals are true and correct and that such recitals are incorporated herein by reference.

ARTICLE 2 – PROJECT AND FUNDING

2.01 **Project.** SBBC as the Project and Construction Manager will make or cause to be made lighting improvements to the outside basketball courts as more fully described in Exhibit “A.” SBBC will assign a project manager from its staff to manage the installation of sports field lighting and security fencing.

2.02 **Project Funding.** The sports field lighting and perimeter fencing shall be funded as follows:

(a) **SBBC Funding.** SBBC agrees to fund certain improvements including security fencing and Musco Lighting as described in Exhibit “B,” which is attached hereto and specifically incorporated into this Agreement (SBBC Improvements). SBBC shall hire the contractor for the installation of sports field lighting and perimeter fencing.

(b) **CITY Funding.** CITY agrees to pay to SBBC the sum of five thousand dollars (\$5,000) for perimeter/security fencing to be installed by SBBC around the basketball courts.

2.03 **Plans.** As the Construction Manager, SBBC will prepare or cause to be prepared, the construction plans for the project (the Plans).

2.04. **Inspection.** SBBC agrees to perform all planning, zoning, engineering design, permitting and inspections for the project.

ARTICLE 3 – SPECIAL CONDITIONS

3.01 **Leased Premises.** SBBC does hereby lease to the CITY all of the athletic and recreational facilities (hereinafter referred to as “Leased Premises”) that are more fully described in Exhibit “A” which is appended hereto and incorporated herein by reference.

3.02 **Lease Term and Rate.** The term of this Agreement is twenty-five (25) years from the date of the execution of this Agreement. The CITY shall pay SBBC an annual rental fee of One Dollar (\$1.00), payable to SBBC on the yearly anniversary of this Agreement. It is specifically understood and agreed by the parties hereto that the term of this Agreement may be shortened or extended, subject to the provisions of Sections 3.10.

3.03 **Use of Leased Premises.** The CITY may utilize the Leased Premises for recreational purposes subject to the limitations contained in this Agreement. The

CITY's use of the Leased Premises shall not conflict in any way with **SBBC's** use of its school sites for the delivery of academic and athletic programs. The **CITY's** use of the Leased Premises shall at all times be in compliance with the laws of the State of Florida concerning the use of school property.

3.04 **Advertising.** The **CITY** may not erect advertising on the Leased Premises without obtaining the prior written consent of the principal of the school upon which the Leased Premises are located.

3.05 **Rental of Leased Premises.** The **CITY** may not rent the Leased Premises for the use of third persons without obtaining the prior written consent of the principal or designee of the school upon which the Leased Premises are located.

3.06 **Operation and Control.** The Leased Premises are reserved for the sole use and control of the **SBBC** during the hours that the school, upon which the Leased Premises is located, is in session and during the hours of any interscholastic/intramural practices and contests. The Principal or his/her designee shall maintain a schedule of school events and practices conducted on the Leased Premises. During off school hours the Leased Premises shall be officially open to the **CITY**. During the hours that the Leased Premises is being used by the **CITY**, the **CITY** shall provide supervision by recreational personnel or **CITY** staff. During the term of this lease, the **CITY** shall fund the electric consumption resulting from the use of the basketball sports lights at McNicol Middle School.

3.07 **Clean-up.** It shall be the responsibility of **SBBC** to keep the Leased Premises clean, sanitary, and free from trash and debris. Notwithstanding any of the provisions of this section, the parties agree that the **CITY** will clean up the Leased Premises after each **CITY** use and after each **CITY** sponsored event. **SBBC** will be responsible for cleaning of the Leased Premises after each **SBBC** use and after each **SBBC** sponsored event. The **CITY** may pay **SBBC** the contractual hourly rate applicable for **SBBC** custodial service personnel to clean up the Leased Premises after **CITY** use or after a **CITY** sponsored event.

3.08 **Maintenance.** It shall be the responsibility of **SBBC** to keep the Leased Premises in a clean, safe and sanitary condition. However, the **CITY** shall be responsible for ensuring that the Leased Premises are left in the same condition as prior to usage, allowing for normal wear and tear. The **CITY** is responsible for repairing or replacing any recreational equipment, fixtures, improvements or grounds upon the Leased premises that are damaged as a result of **CITY** use. The regular upkeep and maintenance of the Leased Premises shall be **SBBC's** responsibility.

3.09 **Termination by SBBC.** **SBBC** may terminate this Agreement or terminate the **CITY's** right to use any portion of the Leased Premises, without cause and for any reason, upon provision to the **CITY** of one hundred and eighty (180) days written notice of such termination. In the event of such termination, **SBBC** shall reimburse the **CITY** for the then remaining value of the **CITY** funded Improvements.

3.10 **Termination by CITY.** The **CITY** may terminate this Agreement, without cause and for any reason, upon provision to **SBBC** of one hundred eighty (180) days written notice of such termination.

ARTICLE 4 – GENERAL CONDITIONS

4.01 **No Waiver of Sovereign Immunity.** Nothing contained in this Agreement is intended to serve as a waiver of sovereign immunity by any agency to which sovereign immunity may be applicable.

4.02 **No Third Party Beneficiaries.** The parties expressly acknowledge that it is not their intent to create or confer any rights or obligations in or upon any third person or entity under this Agreement. None of the parties intend to directly or substantially benefit a third party by this Agreement. The parties agree that there are no third party beneficiaries to this Agreement and that no third party shall be entitled to assert a claim against any of the parties based upon this Agreement. Nothing herein shall be construed as consent by an agency or political subdivision of the State of Florida to be sued by third parties in any manner arising out of any contract.

4.03 **Non-Discrimination.** The parties shall not discriminate against any employee or participant in the performance of the duties, responsibilities and obligations under this Agreement because of race, age, religion, color, gender, national origin, marital status, disability or sexual orientation.

4.04 **Records.** Each party shall maintain its own respective records and documents associated with this Agreement in accordance with the records retention requirements applicable to public records. Each party shall be responsible for compliance with any public documents request served upon it pursuant to Section 119.07, Florida Statutes, and any resultant award of attorney's fees for non-compliance with that law.

4.05 **Entire Agreement.** This document incorporates and includes all prior negotiations, correspondence, conversations, agreements and understandings applicable to the matters contained herein and the parties agree that there are no commitments, agreements or understandings concerning the subject matter of this Agreement that are not contained in this document. Accordingly, the parties agree that no deviation from the terms hereof shall be predicated upon any prior representations or agreements, whether oral or written.

4.06 **Amendments.** No modification, amendment, or alteration in the terms or conditions contained herein shall be effective unless contained in a written document prepared with the same or similar formality as this Agreement and executed by each party hereto.

4.07 **Preparation of Agreement.** The parties acknowledge that they have sought and obtained whatever competent advice and counsel as was necessary for them to form a full and complete understanding of all rights and obligations herein and that the preparation of this Agreement has been their joint effort. The language agreed to herein expresses their mutual intent and the resulting document shall not, solely as a matter of judicial construction, be construed more severely against one of the parties than the other.

4.08 **Waiver.** The parties agree that each requirement, duty and obligation set forth herein is substantial and important to the formation of this Agreement

and, therefore, is a material term hereof. Any party's failure to enforce any provision of this Agreement shall not be deemed a waiver of such provision or modification of this Agreement. A waiver of any breach of a provision of this Agreement shall not be deemed a waiver of any subsequent breach and shall not be construed to be a modification of the terms of this Agreement.

4.09 **Compliance with Laws.** Each party shall comply with all applicable federal and state laws, codes, rules and regulations in performing its duties, responsibilities and obligations pursuant to this Agreement.

4.10 **Governing Law.** This Agreement shall be interpreted and construed in accordance with and governed by the laws of the State of Florida. Any controversies or legal problems arising out of this Agreement and any action involving the enforcement or interpretation of any rights hereunder shall be submitted to the jurisdiction of the State courts of the Seventeenth Judicial Circuit of Broward County, Florida.

4.11 **Binding Effect.** This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns.

4.12 **Assignment.** Neither this Agreement nor any interest herein may be assigned, transferred or encumbered by any party without the prior written consent of the other party. There shall be no partial assignments of this Agreement including, without limitation, the partial assignment of any right to receive payments from SBBC.

4.13 **Force Majeure.** Neither party shall be obligated to perform any duty, requirement or obligation under this Agreement if such performance is prevented by fire, hurricane, earthquake, explosion, wars, sabotage, accident, flood, acts of God, strikes, or other labor disputes, riot or civil commotion, or by reason of any other matter or condition beyond the control of either party, and which cannot be overcome by reasonable diligence and without unusual expense ("Force Majeure"). In no event shall a lack of funds on the part of either party be deemed Force Majeure.

4.14 **Place of Performance.** All obligations of SBBC under the terms of this Agreement are reasonably susceptible of being performed in Broward County, Florida and shall be payable and performable in Broward County, Florida.

4.15 **Severability.** In case any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal, unlawful, unenforceable or void in any respect, the invalidity, illegality, unenforceability or unlawful or void nature of that provision shall not effect any other provision and this Agreement shall be considered as if such invalid, illegal, unlawful, unenforceable or void provision had never been included herein.

4.16 **Notice.** When any of the parties desire to give notice to the other, such notice must be in writing, sent by U.S. Mail, postage prepaid, addressed to the party for whom it is intended at the place last specified; the place for giving notice shall remain such until it is changed by written notice in compliance with the provisions of this paragraph. For the present, the Parties designate the following as the respective places for giving notice:

To SBBC: Superintendent of Schools
The School Board of Broward County, Florida
600 Southeast Third Avenue
Fort Lauderdale, Florida 33301

With a Copy to: Damian Huttenhoff, Director
Student Support
600 Southeast Third Avenue, Third Floor
Fort Lauderdale, Florida 33301

To CITY: City Manager
City of Hollywood
2600 Hollywood Boulevard
Hollywood, Florida 33022

With a Copy to: City Attorney
Office of the City Attorney
2600 Hollywood Boulevard
Hollywood, Florida 33022

Director of Parks, Recreation and Cultural Arts
1405 S. 28th Avenue
Hollywood, Florida 33022

4.17 **Captions.** The captions, section numbers, article numbers, title and headings appearing in this Agreement are inserted only as a matter of convenience and in no way define, limit, construe or describe the scope or intent of such articles or sections of this Agreement, nor in any way effect this Agreement and shall not be construed to create a conflict with the provisions of this Agreement.

4.18 **Authority.** Each person signing this Agreement on behalf of either party individually warrants that he or she has full legal power to execute this Agreement on behalf of the party for whom he or she is signing, and to bind and obligate such party with respect to all provisions contained in this Agreement.

REMAINDER OF PAGE INTENTIONALLY LEFT BLANK

IN WITNESS WHEREOF, the Parties hereto have made and executed this Agreement on the date first above written.

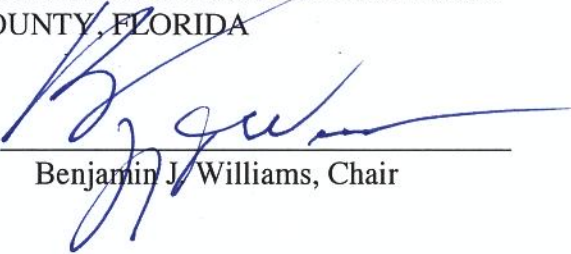
FUNDING AND USE AGREEMENT FOR MC NICOL
BASKETBALL FIELD LIGHTING BETWEEN
THE SCHOOL BOARD OF BROWARD COUNTY, FLORIDA
AND
THE CITY OF HOLLYWOOD, FLORIDA

FOR SBBC

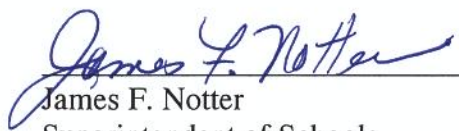
(Corporate Seal)

THE SCHOOL BOARD OF BROWARD
COUNTY, FLORIDA

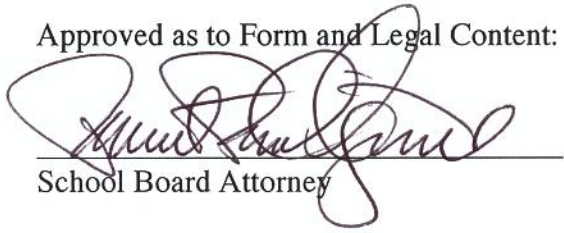
By


Benjamin J. Williams, Chair

ATTEST:


James F. Notter
Superintendent of Schools

Approved as to Form and Legal Content:

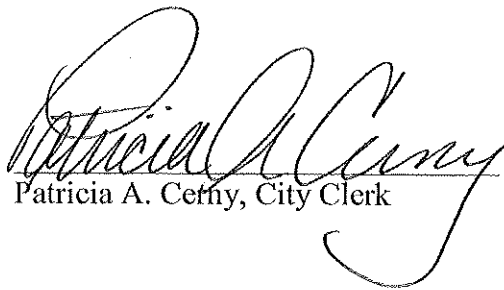

School Board Attorney

FUNDING AND USE AGREEMENT FOR MC NICOL
BASKETBALL FIELD LIGHTING BETWEEN
THE SCHOOL BOARD OF BROWARD COUNTY, FLORIDA
AND
THE CITY OF HOLLYWOOD, FLORIDA

FOR CITY OF HOLLYWOOD

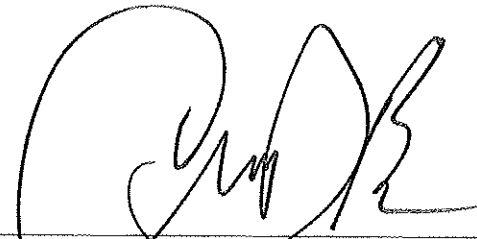
CITY OF HOLLYWOOD, through its
City Commission

ATTEST


Patricia A. Cerny, City Clerk

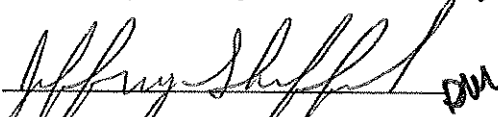
By: 
Peter J.M. Bober, Mayor

1 day of December, 2010

By: 
Cameron Benson, City Manager

29 day of November, 2010

Approved as to form and legality by
Office of the City Attorney for the use of
And reliance by the City of Plantation only

By: 
Jeffrey Sheffel, City Attorney

 day of , 2010

(CITY SEAL)

FUNDING AND USE AGREEMENT FOR MC NICOL
BASKETBALL FIELD LIGHTING BETWEEN
THE SCHOOL BOARD OF BROWARD COUNTY, FLORIDA
AND
THE CITY OF HOLLYWOOD, FLORIDA

EXHIBIT A

**McNicol Middle School
1602 S. 27th Avenue
Hollywood, Florida 33020**

Three outside basketball courts, track, and open field at northeast corner of property, including baseball field.

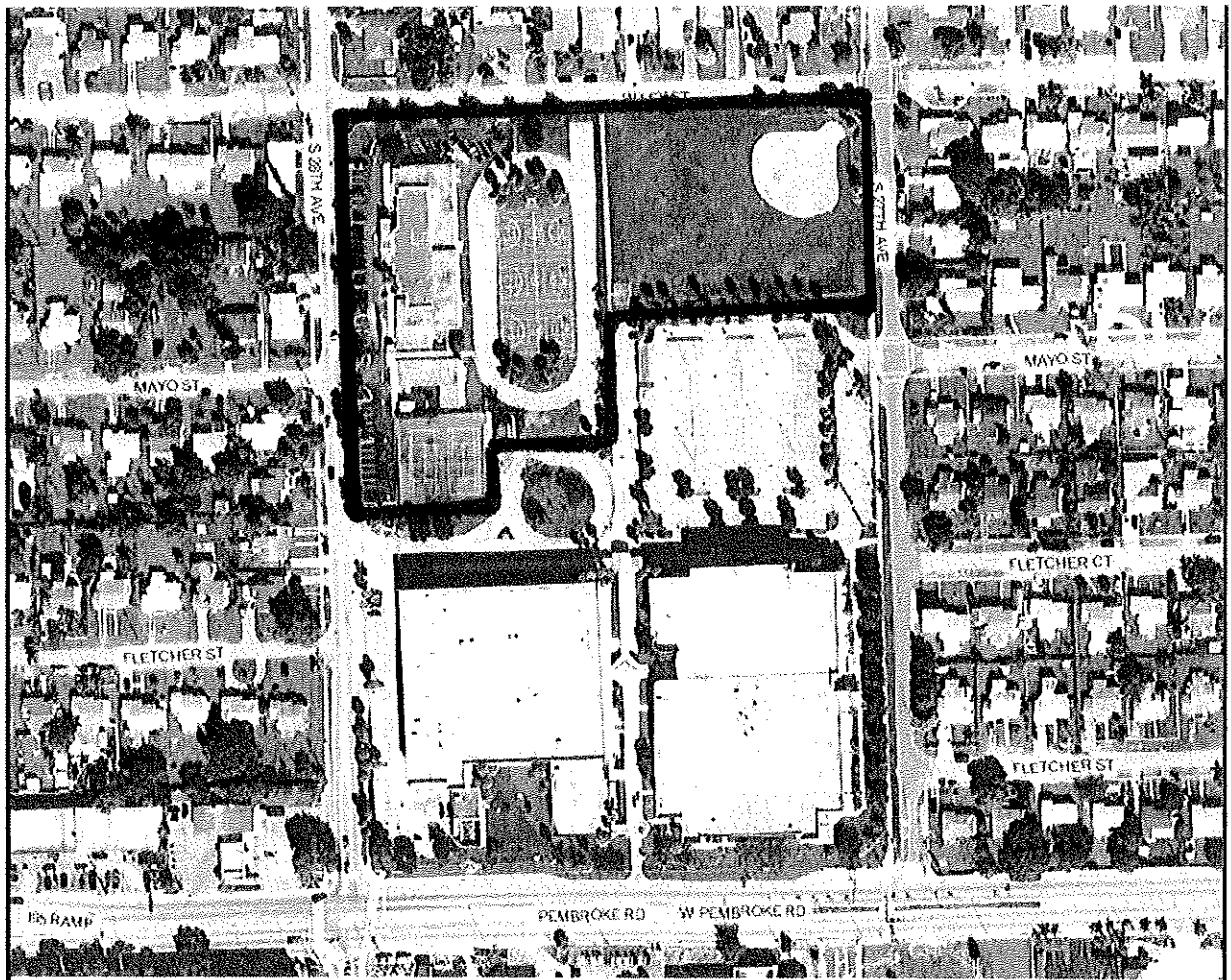


Exhibit A

FUNDING AND USE AGREEMENT FOR MC NICOL
BASKETBALL FIELD LIGHTING BETWEEN
THE SCHOOL BOARD OF BROWARD COUNTY, FLORIDA
AND
THE CITY OF HOLLYWOOD, FLORIDA

EXHIBIT B

SBBC FUNDED IMPROVEMENTS

Outside Basketball Courts Sports Lighting at McNicol Middle School

**McNicol Middle School
1602 S. 27th Avenue
Hollywood, Florida 33020**

Musco Light Structure Area • Pre-cast concrete bases • Galvanized steel poles • UL Listed remote electrical component enclosures • Pole length wire harnesses • Factory-aimed and assembled luminaries	\$80,000
Perimeter Security Fencing Surround the outside courts and applicable parking areas	\$10,000