

RE: Insurance coverage for the playground project.

1 message

Tabb Randolph <Tabb@wsrins.com>

Mon, Apr 23, 2018 at 8:26 AM

To: Gary Wegener <gwegener4098@gmail.com>, Bob Nakken <rnakken@yololaw.com>, "jmartin@lbmj.com" <jmartin@lbmj.com>

Cc: Peter Holmes <pmhco@msn.com>, Mike Chandler <fyrchf26@sbcglobal.net>

Gary,

I will defer to legal counsel for formal opinion, but from my perspective all looks to be in order.

Tabb Randolph, APIS Sr. Vice President

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From: Gary Wegener <gwegener4098@gmail.com>**Sent:** Sunday, April 22, 2018 6:43 PM**To:** Tabb Randolph <Tabb@wsrins.com>; Bob Nakken <rnakken@yololaw.com>; jmartin@lbmj.com**Cc:** Peter Holmes <pmhco@msn.com>; Mike Chandler <fyrchf26@sbcglobal.net>**Subject:** Insurance coverage for the playground project.

Tabb, Bob, attached is the draft MOU (with some recent proposed changes) with the language I put in regarding a release of liability. Also attached is the quote from the playground equipment supplier, and their indemnity language in the page 2 terms and conditions.



Memorandum of Understanding



This Memorandum of Understanding is between the County of Yolo (County) and the Rotary Club of Woodland/Woodland Rotary Endowment and its members (Rotary), for the procurement and installation of a play structure at the HHS Building 134-137 North Cottonwood, Woodland, CA.

Rotary has worked with the County General Services Department, the Health and Human Services Agency, and Miracle Play Group (MPG), a member of the National Joint Powers Agency, to develop a play structure project satisfactory to all parties.

The estimated cost is \$4239,000, as follows:

- ~\$10,000 for the site preparation, based on attached plans prepared by Laugenour & Meikle (L&M) and informal quotes from various sources. The work will be accomplished under a contract let and administered by the County, to be paid by Rotary;
- ~\$25,662,220,000 for MPG to provide the play structure components, which the county will order as per the attached MPG quote through the National Joint Powers Agency, to be paid by Rotary;
- \$1000 for installation of play structure by Rotarians;
- ~\$500-1000 (estimate) for third party inspection of the completed play structure by a certified play structure inspector, contracted for by the County, to be paid by Rotary;
- \$1500 for fencing, to be procured and installed by Rotarians;
- \$5,350,3500 contingency (~15-10%)

The County has reviewed and approved the project documents (the MPG proposal and the project plans prepared by L&M in a volunteer capacity). The County will contract for the site preparation with the intent to complete that phase of work by May 1st, 2018. The county will procure the play structure components, as per the attached MPG quote, for a desired delivery the last week of April. Rotary will install the play structure as per the MPG installation instructions. The county will retain a certified play structure inspector to certify proper installation upon completion. Rotary will make corrections as required to meet certification requirements.

Discretionary changes will be funded by the requesting party.

The County will be responsible for maintenance of the facility upon completion, including coordination of any warranty work by the manufacturer. The County agrees to hold Rotary, club members, volunteers, Rotary District 5160, and Rotary International harmless from any liability, including attorney fees, arising out of this project.

Changes to this MOU will be in writing, agreed to by both parties.

For the County/date the Rotary Club of Woodland/date Woodland Rotary Endowment/date

April 4, 2018

PO BOX 263
ALAMO, CA 94507
Phone (800) 879-7730
Fax (510) 893-2163
Email info@miracleplaygroup.com



Job: P16_0008 Yolo County Family Services Name: Yolo County Family Services Final Number: 00002230 Type: Equipment Only CSL: PO: Terms: 50% Deposit	End User To: Yolo County Family Services 455 1st Street Woodland, CA 95695	Bill To: Yolo County Family Services 455 1st Street Woodland, CA 95695	Sub Total \$20,010.71 Freight \$2,413.23 Tax \$1,600.86 Total \$24,024.80
	Delivery Contact: Delivery Phone: Delivery Address: Woodland, CA		

Item	Type	Qty	Rate	Total
Engineered Wood Fiber: to be installed by customer. Not to exceed 50 cu/yds	Install	50	\$29.00	\$1,450.00
SG315P - Wabash - Signature Bench: Blue	Equipment	2	\$455.00	\$910.00
MC104N - Wabash - Mounting Covers	Equipment	1	\$56.00	\$56.00
NJPA Discount	Equipment	1	(\$1,627.29)	(\$1,627.29)
SY225D - Wabash - Spyder diamond picnic table, surface mount	Equipment	1	\$1,141.00	\$1,141.00
Miracle Equipment per BOM 16_0008_Yolo CO Family_008	Equipment	1	\$18,081.00	\$18,081.00

Sub Total \$20,010.71
Total Freight \$2,413.23
Total Tax \$1,600.86
Grand Total \$24,024.80

Company: _____
Signature: _____
Name: _____
Date: _____

County

INDEMNITY

Client/Owner shall defend, indemnify and hold harmless Miracle Playsystems, Inc., its officers, directors, board of trustees, agents, or employees and each of them, from any and all claims, demands, causes of action in law or in equity, damages, penalties, costs, expenses, reasonable attorneys' fees, reasonable consultants' fees, judgments, losses or liabilities, of every kind and nature whatsoever arising out of or in any way connected with or incidental to, the performance of the services under this Agreement or any of the obligations contained in this Agreement ("Claims"). Without limitation, "damages" include personal injury, including, but not limited to bodily injury, emotional injury, sickness or disease, or death to persons, including, but not limited to, any employees or agents of Miracle Playsystems, Inc., or any other person; or other damages of any kind to anyone including, without limitation, economic loss, property damage and loss of use thereof. It is expressly acknowledged and agreed that each of the foregoing indemnities is independent, that each shall be given effect, and that each shall apply despite any acts or omissions, misconduct or negligent conduct, whether active or passive, on the part of, or other contractor(s); provided, however, Miracle Playsystems, Inc. duty to indemnify shall be limited to the percentage or the degree Miracle Playsystems, Inc. comparative negligence caused any damages.

STANDARD NOTES

- Price quotation is good for 90 days. Accurate color selections must be made in writing prior to equipment going into production. Colors to be confirmed with your local sales representative.
- PLEASE MAKE PURCHASE ORDER AND CHECK TO MIRACLE PLAYSYSTEMS, INC AT PO Box 263 Alamo, CA 94507
- Please email/fax quotation with your signature to accept this quote and place order. Fax 510-893-2163 or email Info@MiraclePlayGroup.com
- Unless otherwise specified, Miracle Playsystems, Inc DOES NOT include the following in this proposal:
 - Engineered drawings
 - Installation of equipment or other site amenities
 - Specialty trades, equipment, power supply required to install equipment
- Any insurance requiring in excess of \$1M/\$2M per occurrence, special insurance coverage or wording, Prevailing/Certified wage rates, local permitting, bid/performance bonds, temp fencing, geo tech surveys, playground safety inspection, equipment offload, and testing services.

TERMS & CONDITIONS

- Purchase contract terms & conditions of sale: The client/customer's acceptance and understanding of these terms & conditions and all other supporting documentation provided as part of this package is evidenced by signing of this estimate/quote.
- Payment terms: Standard terms (on approved credit), unless otherwise noted are 50% with order and balance to ship equipment (no retention). Should any changes be required to the products after order is placed, modifications or changes will be at client/customers expense. Miracle Playsystems, Inc maintains a no return policy and asks all clients to determine feature, layout and color selection prior to ordering. Should any order be cancelled after production has started a 30% restocking fee will be charged to client. Credit card convenience fee is 3.5% which will be added to all credit card charges • Lead times: Estimated lead times for the time the order is released into production until it is delivered will vary and are as follows:
 - 6-8 weeks for standard (non-custom) play features for US based manufacturers;
 - 12-20 weeks standard play features (non-custom) from European & Canadian manufacturers. Expedited Air Freight is available for additional cost (calculated on case by case basis).
 - Custom play feature lead times are determined on a case by case basis.

CONSTRUCTION SERVICES (if applicable)

Unless otherwise noted, we exclude responsibility for material delivery & offloading equipment, removal & disposal of packaging accumulated by equipment packaging, project security, landscape & hardscape repair based on access route to site, delays or returns due to layout conflicts or delay of other trades, removal of spoils from job site, locating underground: utilities, pipes, obstructions in work area, conditions unforeseen and/or not disclosed at time of estimate, permits, engineering, material testing, soil samples, CPSI. Conditions: Grades; stable, compacted & workable with 95% compaction and less than 1% grade, adequate access to site for labor, materials, tools and equipment. Estimate good for 90 days from quote or Dec. 31 of current calendar year, whichever comes first. Terms: Upon completion.

GENERAL TERMS

- THIS QUOTE IS LIMITED TO AND GOVERNED BY THE TERMS CONTAINED HEREIN: Miracle Playsystems, Inc. objects to any other terms proposed by client, in writing or otherwise, as material alterations, and all such proposed terms shall be void. Client authorizes Miracle Playsystems, Inc. to ship equipment and agrees to pay the total specified. Shipping terms are FOB the place of shipment via common carrier.
- Client and owner/operator agree to indemnify and hold Miracle Playsystems, Inc. harmless from and against all liabilities, losses, penalties, damages and expenses, including costs and attorney fees, resulting from any and all claims, liens, damages, actions, suits, judgments or settlements, injuries arising or alleged to arise out of their failure, or failure of architect, contractors, subcontractors, installers, employees, agents and assigns to assemble, install, inspect and/or maintain the play equipment and impact absorbing surfacing in full compliance with each manufacturers installation instructions and safety requirements and their misuse and/or alteration of the play equipment.

Company: _____
 Signature: _____
 Name: _____
 Date: _____

