

3-6)



City Council Agenda Item
Meeting of January 19, 2016

TO: The Honorable Mayor and Members of the City Council
FROM: James R. O'Connor, City Manager
DATE: January 12, 2016

SUBJECT: License and Construction Agreement – GoPlayVero, Inc., at Riverside Park

REQUESTED BY: City Manager/Public Works Department

The following is requested as it relates to the above-referenced agenda item:

Request Council review and approval based on the attached supporting documentation.

No action required. (Information only)



DEPARTMENTAL CORRESPONDENCE

TO: James R. O'Connor, City Manager
DEPT: City Manager

FROM: Monte K. Falls, PE, Director *MKF for MKF*
DEPT: Public Works

DATE: January 12, 2016

RE: **License and Construction Agreement
GoPlayVero, Inc. at Riverside Park**

Background:

GoPlayVero is a Florida non-profit corporation who has raised funds for and will manage the construction of a community playground at Riverside Park. They have requested a license and construction agreement to facilitate this effort. The licensed area (± 0.60 acres) will encompass the existing playground and some land immediately west of the playground (see Attachment 'A' of the agreement). The components and layout of the playground can be seen in Attachment 'B' of the agreement.

The City is participating in this effort by constructing a shell path for access to the playground.

GoPlayVero has established the end of February, 2016 as their target date for completion. Once complete the project will be turned over to the City.

Funding:

Funding will be provided by GoPlayVero, Inc.

Recommendation:

- Place this item on the City Council's agenda for January 29, 2016;
- Approve the license and construction agreement with GoPlayVero to install playground equipment and shade structures at Riverside Park.

Analysis:

Strengths: This license and construction agreement will allow GoPlayVero to upgrade the playground equipment at Riverside Park.

Weaknesses: The playground will be out of service during the construction period.

Opportunities: The playground at Riverside Park will receive a major renovation through the efforts of a non-profit organization.

Threats: None.

Attachments

Cc: Rob Slezak, Recreation Director

MKF/ntn

LICENSE AND CONSTRUCTION AGREEMENT

This License and Construction Agreement (the "Agreement") is entered into on this _____ day of _____, 2016 ("Effective Date"), by and between **GOPLAYVERO, INC.** ("**Play Vero**"), a Florida nonprofit corporation, whose mailing address is 638 Banyan Road, Vero Beach, Florida 32963, and the **CITY OF VERO BEACH, FLORIDA** ("**City**"), a Florida municipal corporation, whose mailing address is P. O. Box 1389, Vero Beach, FL 32961-1389, and, each party acting by and through their duly authorized officers and officials.

RECITALS

WHEREAS, Play Vero desires to fund and manage the construction of a community play ground within the City's Riverside Park (the "Project"); and

WHEREAS, the City and Play Vero believe that the Project will provide recreational activities to not only the City's residents, but also to the surrounding county; and

WHEREAS, Play Vero has plans to raise funds needed for construction, will hire a licensed design and construction firm to design the Project, and has obtained support from the City of Vero Beach Recreation Commission and the City Council of the City of Vero Beach to build the Project; and

WHEREAS, Play Vero will be responsible for the Project and will engage the services of a competent general contractor to oversee construction of the Project should the funds raised be sufficient to undertake the Project; and

WHEREAS, the Project will be constructed by various representatives of Play Vero, including subcontractors and volunteers, some of whom may provide their services without charge or at greatly reduced rates,

NOW, THEREFORE, in consideration of the mutual covenants contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the City and Play Vero agree as follows:

ARTICLE I

Adoption of Whereas Clauses

The foregoing "Whereas" clauses are hereby ratified and incorporated as forming the purpose and intent of this Agreement.

ARTICLE II

License; Project Access Area

Section 2.01. License. The City hereby grants, upon the terms and conditions set forth in this Agreement, a license to Play Vero for the sole purpose of constructing the Project on and over that certain real property owned by the City described on **Exhibit A** (the "Licensed Premises" or "Premises"). In addition, the City hereby grants the area shown and designated on

Exhibit A as the "Project Access Area" to Play Vero for non-exclusive access to the Licensed Premises. Except as otherwise described herein, this Agreement does not grant Play Vero the authority to use any area beyond the Licensed Premises. The parties understand that the construction of the Project is for a public purpose, and is being built upon public property for the benefit of the citizens of Vero Beach.

Section 2.02. License Agreement. The intent of this Agreement is to grant a license to Play Vero to utilize the Premises solely for the purposes described herein. This Agreement shall not be construed, in any way, manner or form, as a lease of the Premises or as conveying to Play Vero any interest in the real property comprising the Premises. Play Vero acknowledges that this Agreement is in the nature of a privilege to use the Premises, and, therefore, is revocable by City at any time; City does not purport to convey any real property interest over, under or upon the Premises. City reserves the right to enter upon the Premises at any time for asserting its superior real property interests or for emergency purposes. Upon entering the Premises, City will proceed with due care and caution, fully recognizing the condition of the Premises as a construction site.

Section 2.03. Term. The term of this license shall commence on the Effective Date and terminate on the date of final acceptance by City ("Completion Date") unless terminated earlier, or extended further, as provided herein. If necessary, the City Manager may approve an extension of such term, but under no circumstance shall he be obligated to do so.

Section 2.04. Acceptance of Project and Termination of Agreement. This Agreement shall terminate upon Play Vero's completion of the Project and final acceptance by City. Thereafter, neither Play Vero nor its employees, contractors, subcontractors, agents, representatives or volunteers (hereinafter collective referred to as "Play Vero's Agents") will have any further obligations under this Agreement unless specifically provided for herein and except for any breach of this Agreement prior to the City's acceptance of this Project. City's acceptance shall not be unreasonably withheld or delayed. City shall provide written notice to Play Vero of its acceptance.

ARTICLE III PLAY VERO'S OBLIGATIONS

Section 3.01. Design and Construction of Project. Play Vero shall, at its cost, be solely responsible for the completion of design and construction of the Project and the Improvements, subject to the terms of this Agreement. In this regard, Play Vero agrees to enter into all contracts necessary to fully complete the construction of the Project and its Improvements. All Play Vero contracts relating to the design and construction of the Project and its Improvements shall contain language that City is not liable for any obligations and liability thereunder.

Section 3.02. Project Construction Period and Description. Prior to Play Vero's commencement of any construction activities on the Premises, Play Vero shall obtain the necessary building permit(s). Following its receipt of all applicable permits and necessary approvals, Play Vero shall thereafter diligently prosecute the work to completion. The Project shall include the installation and construction of equipment, and various improvements ("Improvements") for the purpose of providing a public recreational playground. The Project

and Improvements are more fully described and depicted at **Exhibit B**.

Section 3.03. City Approval Required.

(a) Play Vero shall not begin the construction of any Improvement on the Premises unless the plans, specifications, cost estimates, and proposed location have received the City's written approval, and the Improvement complies with the approved plans, specifications, and proposed location.

(b) Play Vero will obtain plans from a licensed architect or engineer experienced in playground design. Play Vero shall submit three (3) copies of detailed working drawings, plans, and specifications for the City's approval before the construction begins. City may use the drawings, plans and specifications and other documents furnished to City pursuant to this Agreement for any purpose.

(c) The City shall promptly review all plans submitted by Play Vero, and note in writing any required changes or corrections that must be made to the plans.

(d) The City's approval of any plans and specifications applies only to the conformity of the plans and specifications to the general plan for the Improvements. The City's approval does not constitute approval of the architectural or engineering design, and the City, by approving the plans and specifications, assumes no liability or responsibility for the architectural or engineering design or to any defect in the Improvements constructed from the plans or specifications.

Section 3.04. Change Orders. Play Vero shall not make any changes or substitutions to the design, specifications, construction plans. or materials approved by City without the City's prior written consent ("Chance Order").

Section 3.05. Construction Costs. Play Vero, at its sole cost and expense, shall acquire and pay for all labor, materials, equipment, tools, construction equipment and machinery, water, gas, storm and sanitary sewer and electricity, transportation, surveys, plans, approvals and permits, and other facilities and services necessary for the proper completion of the Project and the Improvements in a first-class good and workmanlike manner, using the highest degree of skill and attention. All materials and equipment incorporated in the Improvements shall be new unless otherwise agreed to in writing by the City, and all work shall be of good quality, free from faults and defects and in conformance with this Agreement. All work not conforming to these requirements may be considered defective. City agrees to waive its applicable permit fees for the construction of the Project.

Section 3.06. Payment of Costs. Play Vero shall promptly pay all valid bills and charges for material or labor relating to the Improvements, and keep the Premises free from claims of liens for labor or material. Play Vero shall pay its debts as they mature, and shall remain financially solvent and financially able to complete the Project and the Improvements as required by this Agreement. Play Vero covenants that it shall not bind, nor shall Play Vero's contractors or subcontractors bind, or attempt to bind, City for payment of any money in connection with

any of Play Vero's work in, on or about the Premises, whether authorized or unauthorized hereunder.

Section 3.07. *Exclusive Control.* All work is and will be Play Vero's private undertaking. Play Vero shall have full power over, and exclusive control of, the work, subject only to the limitations and obligations of this Agreement and state and federal statutes and regulations.

Section 3.08. *Premises Review and Acknowledgement.* Play Vero warrants and represents to the City that it has examined all aspects of the Premises and familiarized itself with the conditions under which the work is to be performed. Play Vero hereby acknowledges that the Premises have public facilities in place, which include an underground electric service, irrigation system and drainage system. Play Vero shall take all necessary and proper precautions to prevent injury to persons and damage to such utilities and shall properly locate and account for the utilities prior to commencing work on the Premises. City shall be responsible for having the facilities located and then visibly marked upon request by Play Vero.

Section 3.09. *Conflicts in Plans.* Play Vero shall immediately notify City of all errors, conflicts, or inconsistencies discovered with respect to the design specifications or construction plans, and of any other matter which would delay the work or cause the Improvements to be constructed in any manner other than as specified herein.

Section 3.10. *Accounting; public records.* Play Vero shall keep full and detailed accounts as may be necessary for proper financial management of the work. City shall be afforded access to the Improvements and to all Play Vero's instructions, drawings, memoranda, invoices, receipts, and the like relating to the Improvements, and Play Vero shall preserve all such records for a period of four (4) years after completion and City's acceptance of the work, or the required period for retention of public records pursuant to the state of Florida Records Retention Schedule. Pursuant to section 119.0701 Florida Statutes, Play Vero shall comply with Florida public records laws, specifically to:

- (a) Keep and maintain public records that ordinarily and necessarily would be required by the public agency in order to perform the service; and
- (b) Provide the public with access to public records on the same terms and conditions that the public agency would provide the records and at a cost that does not exceed the cost provided in Florida statutes, Chapter 119, or as otherwise provided by law; and
- (c) Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law;
- (d) Meet all requirements for retaining public records and transfer, at no cost, to the City all public records in possession of Play Vero upon termination of this Agreement and destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. All records stored electronically must be provided to the City in a format that is compatible with the City informational technology systems.

Section 3.11. *Accessibility and Safety.* If sufficient funds are raised to proceed with the Project, Play Vero will have the Project designed and shall thereafter construct and install the Improvements in compliance with:

- (a) all federal and state design standards for accessibility for the disabled; and
- (b) the U.S. Consumer Product Safety Commission and other design safety standards applicable to public playgrounds.

Section 3.12. *Maintenance and Control of Premises.* During the Term of this Agreement, Play Vero or its agents shall on a daily basis maintain the Premises and Improvements in a safe and clean condition, and shall regularly remove debris and surplus materials occasioned by the work. Play Vero or its agents shall enforce strict discipline and good order among its employees, contractors, agents, representatives and volunteers while on the Premises, and shall, to the best of their knowledge and belief, not employ the services of any unfit person or anyone not skilled in the task assigned to him. Play Vero or its agents shall maintain the Premises as an active construction zone and shall prevent and limit public access accordingly. Play Vero or its agents shall take all necessary means to prevent access to the Premises at all times when construction has ended each day.

Section 3.13. *Site Security and Securing Construction Materials.* Play Vero and Play Vero's Agents shall be solely responsible for site security, and securing construction tools, equipment, supplies and materials when left on the Premises.

Section 3.14. *Notice of Delay.* Play Vero shall not delay the progress of the work under this Agreement. Play Vero shall send a written Notice of Delay to the City within five (5) days following the occurrence of any event; whether the result of force majeure, act or default of the City, the occurrence of such event, and of the number of days by which such event will delay completion of the Improvements. Play Vero shall not be entitled to any extension of the Completion Date in the absence of a timely notice as required by this paragraph, and such delay shall be incorporated into a Change Order.

Section 3.15. *Responsibility for Damage.* City assumes no liability and no expense by reason of its grant of this license or its exercise by Play Vero. Play Vero is solely responsible for any injury or damage sustained by any persons or property resulting from any act or default of Play Vero or its employees, contractors, agents, volunteers and representatives, and other persons performing any work on the Premises on behalf of or under the direction of Play Vero.

Section 3.16. *Ownership of Improvements.* All additions, alterations and fixtures constructed, placed, located and/or maintained on any part of the Premises as part of the Improvements shall be considered part of the real property, shall remain on the Premises and shall become property of the City upon completion and the City's acceptance of the Project. Prior to the Completion Date, Play Vero shall provide to City a full accounting of the total cost of the Project to support the City's valuation of the improvements in accordance with governmental accounting standards.

Section 3.17. *Other Agreements.* Where Play Vero or its general contractor enters into any agreement, whether written or otherwise, with respect to the design and construction of the Project, Play Vero and the general contractor shall provide a copy of this Agreement to any such third parties and the third parties shall acknowledge receiving this Agreement in writing As

soon as available, Play Vero shall provide the City with a list of persons or firms who agree to perform work on the Premises, and if/when this list changes either by the addition or removal of persons or firms, Play Vero shall immediately provide a revised copy of the list to the City.

Section 3.18. Construction Warranties. All rights under construction warranties shall be assigned to City and administered by Play Vero or Play Vero's Agents.

Section 3.19. Contractors and Subcontractors. PLAY VERO SHALL REQUIRE PLAY VERO'S AGENTS TO FULLY INDEMNIFY AND HOLD HARMLESS THE CITY AND ITS OFFICIALS, OFFICERS, EMPLOYEES AND AGENTS FROM AND AGAINST ALL CLAIMS, SUITS OR ACTIONS ASSERTED BY ANY PERSON, FIRM OR CORPORATION ON ACCOUNT OF LABOR, MATERIAL OR SERVICES FURNISHED TO PLAY VERO OR TO PLAY VERO'S AGENTS DURING PLAY VERO'S CONSTRUCTION OF THE PROJECT AND AGAINST ANY CLAIM FOR INJURY OR DEATH TO PERSONS OR DAMAGE TO ANY PROPERTY CAUSED BY THE GENERAL CONTRACTOR OR ITS SUBCONTRACTORS, EMPLOYEES OR AGENTS WHICH OCCUR DURING PLAY VERO'S CONSTRUCTION OF THE PROJECT AND COVERED BY THE GENERAL CONTRACTOR'S COMMERCIAL LIABILITY INSURANCE.

ARTICLE IV

Maintenance and Repair; Continuity as City Park

Section 4.01. Maintenance; following Completion of Project. After the Project is completed and is accepted by City, City shall operate, maintain and repair the Project at its sole costs and expense to City maintenance standards.

Section 4.02. Continuity as City Park. The City shall continue to operate Riverside Park as a City park unless and until a voter referendum under Section 5.05 passes to the contrary.

ARTICLE V

Insurance, Indemnity and Release

Section 5.01. Indemnity and Release. PLAY VERO SHALL INDEMNIFY, RELEASE AND HOLD HARMLESS THE CITY, AND CITY'S OFFICIALS, OFFICERS, EMPLOYEES AND AGENTS FROM AND AGAINST ANY AND ALL LOSSES, DAMAGES, CLAIMS OR LIABILITIES, OF ANY KIND OR NATURE, WHICH ARISE DIRECTLY OR INDIRECTLY, OR ARE RELATED TO, IN ANY WAY, MANNER OR FORM, THE DESIGN OR CONSTRUCTION OF THE PROJECT, AND LOSSES, DAMAGES, CLAIMS OR LIABILITIES ARISING FROM OR RELATED TO, IN ANY WAY, MANNER OR FORM, THE ACT OR OMISSION OF PLAY VERO OR PLAY VERO'S AGENTS DURING THE TERM OF THIS AGREEMENT. PLAY VERO FURTHER COVENANTS AND AGREES TO DEFEND ANY SUITS OR ADMINISTRATIVE PROCEEDINGS BROUGHT AGAINST THE CITY AND/OR THE CITY'S OFFICIALS, OFFICERS, EMPLOYEES AND AGENTS ON ACCOUNT OF ANY SUCH CLAIM, AND TO PAY OR DISCHARGE THE FULL

AMOUNT OR OBLIGATION OF ANY SUCH CLAIM INCURRED BY, ACCRUING TO, OR IMPOSED ON THE CITY, OR THE CITY'S RESPECTIVE OFFICIALS, OFFICERS, EMPLOYEES AND AGENTS, AS APPLICABLE, RESULTING FROM ANY SUCH SUITS, CLAIMS, AND/OR ADMINISTRATIVE PROCEEDINGS OR ANY MATTERS RESULTING FROM THE SETTLEMENT OR RESOLUTION OF SAID SUITS, CLAIMS, AND/OR ADMINISTRATIVE PROCEEDINGS. IN ADDITION, PLAY VERO SHALL PAY TO CITY, THE CITY'S OFFICIALS, OFFICERS, EMPLOYEES AND AGENTS, AS APPLICABLE, ALL REASONABLE ATTORNEYS' FEES INCURRED BY SUCH PARTIES IN ENFORCING PLAY VERO'S INDEMNITY IN THIS SECTION. THE INDEMNITY AND RELEASE FOR LOSSES, DAMAGES, CLAIMS OR LIABILITIES OCCURING DURING THE TERM HEREOF SHALL SURVIVE THE TERMINATION OR VOIDANCE OF THIS AGREEMENT.

ARTICLE VI Insurance

Section 6.01. Insurance. Without limiting City's rights to indemnification, all construction contracts entered into between Play Vero and its contractor(s) for the purpose of constructing the Project and its Improvements, shall require the contractor(s) to obtain and maintain continuously in effect at all times during the performance of the contract, at the contractor's sole expense, at least the following minimum insurance with a carrier or carriers licensed to do business in the State of Florida and satisfactory to the City and Play Vero:

(a) General

Before starting and until acceptance of the work by the City, Play Vero shall procure and maintain insurance of the types and to the limits specified below.

Play Vero shall require each of Play Vero's contractors and subcontractors to procure and maintain, until completion of that contractor and subcontractor's work, insurance of types and to the limits specified below. It shall be the responsibility of Play Vero to ensure that all of Play Vero's contractors and subcontractors comply with all of the insurance requirements contained herein relating to such contractors and subcontractors. The City reserves the right to request proof of contractor's and subcontractor's insurance from Play Vero.

(b) Coverage

Except as otherwise stated, the amounts and types of insurance shall conform to the following minimum requirements:

1. **Workers' Compensation**
 - \$500,000 each accident
 - \$500,000 bodily injury by disease each employee
 - \$500,000 bodily injury by disease policy limit

Workers' Compensation insurance must meet mandatory statutory limits for employers with three or more employees.

If any operations are to be undertaken on or about navigable waters, coverage must be included for the U.S. Longshoremen & Harbor Workers Act and Jones Act.

2. **Commercial General Liability** – Coverage must be afforded on a form no more restrictive than the latest edition of the Commercial General Liability Policy filed by the Insurance Services Office and must include:

\$1,000,000 per occurrence/\$2,000,000 aggregate

3. **Business Auto Policy** - Coverage must be afforded on a form no more restrictive than the latest edition of the Business Auto Policy filed by the Insurance Services Office and must include:

\$1,000,000 /combined single limit (CSL)

4. **Umbrella** - \$1,000,000 per occurrence. Otherwise, \$2,000,000 per occurrence, if the contract exceeds 180 days or \$300,000.

5. **Certificates of Insurance** - Certificates of all insurance required from the contractor shall be filed with the City and shall be subject to its approval for adequacy and protection. Certificates from the insurance carrier, stating the types of coverage provided, limits of liability and expiration dates, shall be filed with the City before operations are commenced. The City of Vero Beach shall be identified as an additional insured for general and automobile liability coverage's required above. A copy of the additional insured endorsement must be attached and contain language no less restrictive than ISO Form CG20100704 or ISO Form CG20330704. The required certificates of insurance shall not only name the types of policies provided, but shall also refer specifically to this contract and section and the above paragraphs in accordance with which such insurance is being furnished, and shall state that such insurance is as required by such paragraphs of this contract. If the initial insurance expires prior to the completion of the work, renewal certificates shall be furnished thirty (30) days prior to the date of expiration.

6. **Notice of Cancellation and/or Restriction** - Each policy must be endorsed to provide the City with a minimum of thirty (30) days notice of cancellation and/or restriction, ten days (10) days notification for non-payment.

Section 6.02. Alterations. City's Risk Department is hereby authorized to reasonably modify the requirements set forth above in the event the City's Risk Department determines that such modification is in the City's best interest.

Section 6.03. Payment and Performance Bonds During Construction. All construction contracts entered into between Play Vero and its contractor(s) for the purpose of constructing the Project and its Improvements shall require performance and payment bonds in the amount of not less than the construction price set forth in the contract, said payment and performance bonds to be in the form approved by the City.

Section 6.04. Remaining Liability. Nothing herein contained shall be construed as limiting in any way the extent to which Play Vero may be held responsible for the payment of damages to persons or property resulting from Play Vero's activities or the activities of Play Vero's agents, officers, directors, representatives, employees, consultants, subconsultants, contractors, subcontractors, sublicensees, assignees, invitees, volunteers, or service providers under this Agreement.

Section 6.05. Play Vero's Agents. Any and all agents, officers, directors, representatives, employees, consultants, subconsultants, contractors, subcontractors, sublicensees, assignees, invitees, volunteers or service providers of Play Vero or any other party providing services on behalf of Play Vero while engaged in the performance of any work required by Play Vero related to the Premises shall be considered agents, officers, directors, representatives, employees; consultants subconsultants, contractors, subcontractors, sublicensees, assignees, invitees; volunteers or service providers of Play Vero only, and not of City unless otherwise required by law. Any and all claims that may result from any obligation for which Play Vero may be held liable under any Workers' Compensation, Unemployment Compensation or Disability Benefits law or wider any similar law on behalf of said agents, officers, directors, representatives; employees; consultants, subconsultants, contractors, subcontractors, sublicensees, Assignees, invitees, volunteers or service providers shall be the sole obligation and responsibility of Play Vero.

ARTICLE VI

Warranties, Covenants and Representations of Play Vero

Section 7.01. Existence. Play Vero is a not for profit corporation duly organized, validly existing and in good standing under the laws of the state of Florida, and is duly qualified to carry on its business in the state of Florida.

Section 7.02. Power. Play Vero has the corporate power to enter into and perform this Agreement and all activities contemplated hereby.

Section 7.03. Authorization. The execution, delivery and performance of this Agreement and the activities contemplated hereby have been duly and validly authorized by all requisite corporate action on the part of Play Vero.

ARTICLE VIII

Events of Default and Remedies

Section 8.01. Default. An Event of Default (herein so called) shall exist if any one or more of the following events shall occur:

(a) Any representation or warranty made by Play Vero in this Agreement shall prove to be untrue or inaccurate in any material respect as of the date on which such representation or warranty is made;

(b) Play Vero shall default, in any way, manner or from, in the performance of any off

the covenants, provisions and/or terms of this Agreement.

Section 8.02. Remedies Upon Event of Default. If an Event of Default shall have occurred and be continuing, then the City, at its option, may terminate this Agreement or require the immediate cessation of construction on the Premises.

ARTICLE IX Miscellaneous

Section 9.01. Relationship of Parties. The relationship between the City and Play Vero is at all times solely that of licensor and licensee, and shall not be deemed, in any event, a partnership or a joint venture.

Section 9.02. Compliance with Applicable Law. Play Vero shall comply with all applicable federal, state and local rules, regulations statutes, laws and ordinances governing, in any way, manner or form, the construction activities contemplated herein, and/or any other aspect of the activities described in this Agreement, including, without limitation those regarding access of the facilities by handicapped persons.

Section 9.03. Notices. All notices given with respect to this Agreement shall be in writing and shall be deemed to have been properly given for all purposes (i) if sent by a nationally recognized overnight carrier for next business day delivery, on the first business day following deposit of such notice with such carrier unless such carrier confirms such notice was not delivered, then on the day such carrier actually delivers such notice, or (ii) if personally delivered, on the actual date of delivery, or (iii) if sent by certified U.S. Mail, return receipt requested postage prepaid, on the fifth business day following the date of mailing, or (iv) if sent by facsimile, then on the actual date of delivery (as evidenced by a facsimile confirmation) provided that a copy of the facsimile and confirmation is also sent by regular U.S. Mail, addressed as:

If to the City:
City of Vero Beach
ATTN.: James O'Connor, City Manager
P.O. Box 1389
Vero Beach, FL 32961-1389

If to Play Vero:
GOPLAYVERO, INC.
ATTN:Kelley Dellaporta, Chairman
638 Banyan Road
Vero Beach, Florida 32963

with copy to:

City of Vero Beach
ATTN.: Rob Slezak, Recreation Director
P.O. Box 1389
Vero Beach, FL 32961-1389

Section 9.04. Time of the Essence. Time is of the essence of this Agreement.

Section 9.05. Florida Law/Venue. This Agreement is to be construed under Florida law, without regard to conflict of law rules that would direct application of the laws of any other

jurisdiction, and all obligations of the parties created by this Agreement are performable in Indian River County, Florida. Venue for any action brought pursuant to this Agreement, or any activity contemplated hereby, shall lie exclusively in Indian River County, Florida.

Section 9.06. *Partial Invalidity.* If any one or more of the provisions contained in this Agreement are for any reason held to be invalid, illegal or unenforceable in any respect, the invalidity, illegality, or unenforceability will not affect any other provision of this Agreement, which shall be construed as if it had not included the invalid illegal or unenforceable provision.

Section 9.07. *Agreement Superseded.* This Agreement constitutes the parties' sole agreement and supersedes any prior understandings or written or oral agreements between the parties with respect to the subject matter hereof.

Section 9.08. *Amendment.* No amendment, modification or alteration of this Agreement is binding, unless in writing, dated subsequent to the date of this Agreement, and duly executed by the parties.

Section 9.09. *References to Days.* All references to days mean calendar days. If the date for performance of any obligation falls on a Saturday, Sunday, or City-recognized holiday, that obligation is performable on the next business day.

Section 9.10. *Assignment.* Play Vero may not assign this Agreement or any of Play Vero's rights under it without the City's prior written consent, and any attempted assignment in the absence of such consent is void.

Section 9.11. *Third-Party Beneficiaries.* There are no third-party beneficiaries of this Agreement.

Section 9.12. *Attorney's Fees.* If, as a result of either party's breaching this Agreement, the other party employs or uses an attorney or attorneys to enforce its rights under this Agreement, then the breaching party shall pay the other party the reasonable attorney's fees and costs incurred to enforce this Agreement.

Section 9.13. *Exhibits.* The exhibits, which are referenced in, and attached to this Agreement, are incorporated in and made a part of this Agreement for all purposes.

Section 9.14. *Captions.* Section captions are for convenience only and shall in no way affect the interpretation of this Agreement.

Section 9.15. *Rule of Construction.* The rule of construction that ambiguities in a document will be construed against the party who drafted will not be applied in interpreting this Agreement.

Section 9.16. *Counterparts.* If this Agreement is execute in multiple counterparts, all counterparts taken together will constitute this Agreement.

GOPLAYVERO, INC.

By: *Kelley Dellaporta*
Kelley Dellaporta
Chairman, Board of Directors

WITNESS:

Sign: *Bonnie L. Miller*
Print: Bonnie L. Miller

Sign: *Rebecca F. Emmons*
Print: Rebecca F. Emmons

STATE OF FLORIDA
COUNTY OF INDIAN RIVER

The foregoing instrument was acknowledged before me this 7th day of Jan.,
2016, by Kelley Dellaporta as Chairman of the Board of Directors of GOPLAYVERO, INC.,
who is personally known to me: or produced _____ as identification.

Bonnie L. Miller
Notary Public

My Commission No.:

My Commission Expires:



ATTEST:

CITY OF VERO BEACH, FLORIDA

Tammy K. Vock
City Clerk

Jay Kramer
Mayor

[SEAL]

STATE OF FLORIDA
COUNTY OF INDIAN RIVER

The foregoing instrument was acknowledged before me this _____ day of _____ 2016,
by Jay Kramer, as Mayor, and attested by Tammy K. Vock, as City Clerk, on behalf of the City
of Vero Beach, Florida. They are personally known to me.

Notary Public
My Commission No.:
My Commission Expires:

Approved as to form and
legal sufficiency:

Approved as conforming to
municipal policy:

Wayne R. Coment

Wayne R. Coment
City Attorney

James R. O'Conner

James R. O'Conner
City Manger

by jfv

Approved as to technical
requirements:

Approved as to technical
requirements:

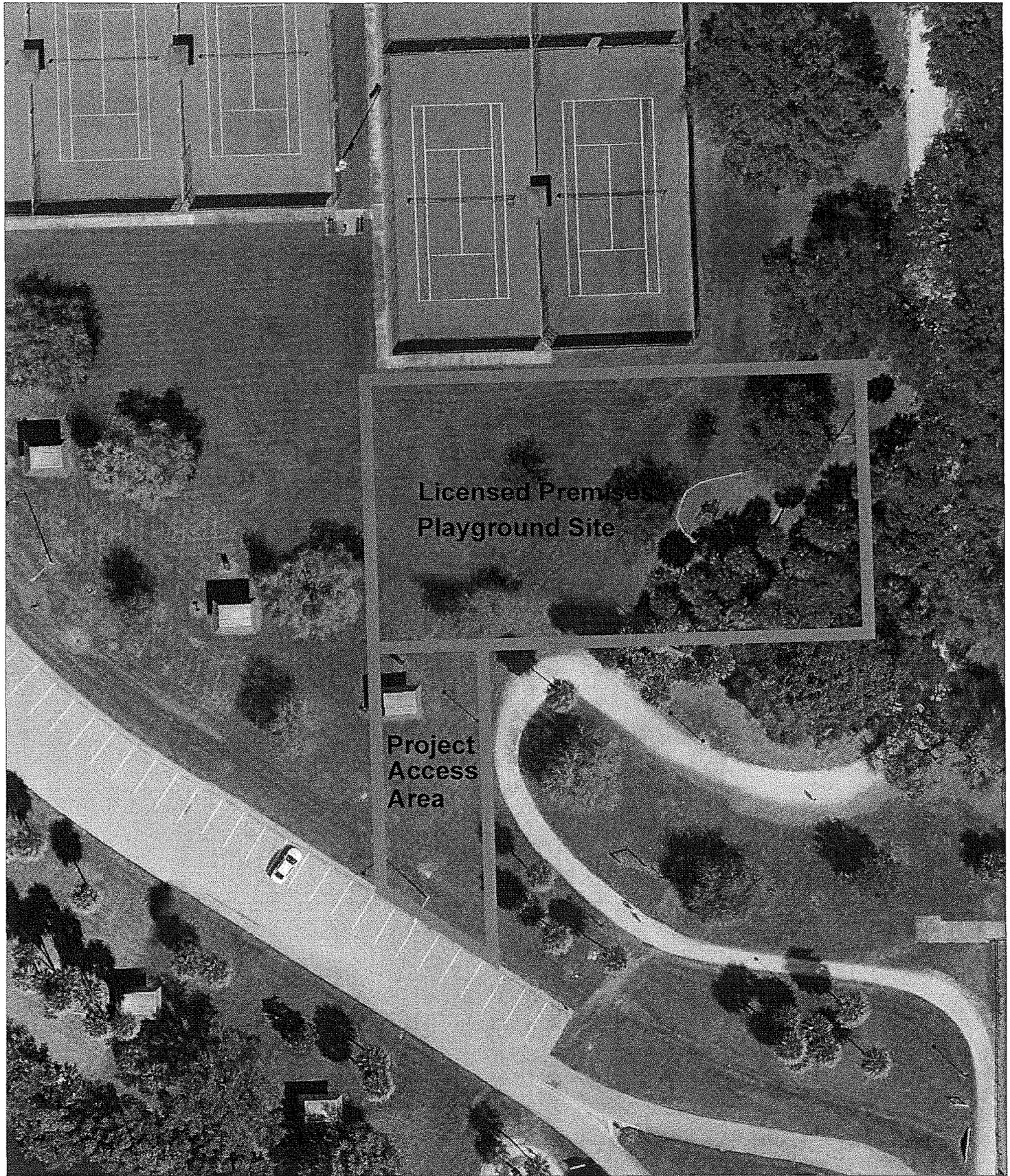
Monte K. Falls

Monte K. Falls
Public Works Director

Robert L. Slezak

Robert L. Slezak
Recreation Director

Exhibit "A"- License Area



Licensed Premises
Playground Site

Project
Access
Area

RIVERSIDE PARK VERO BEACH, FLORIDA

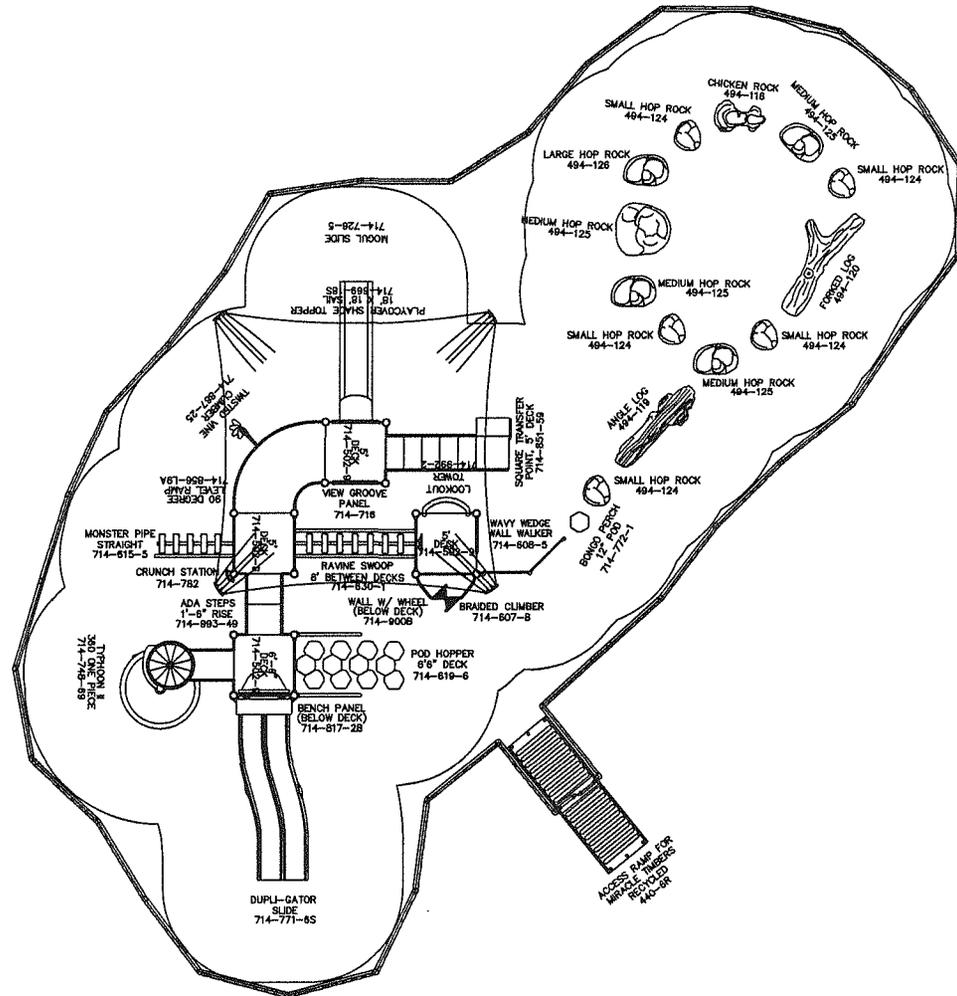
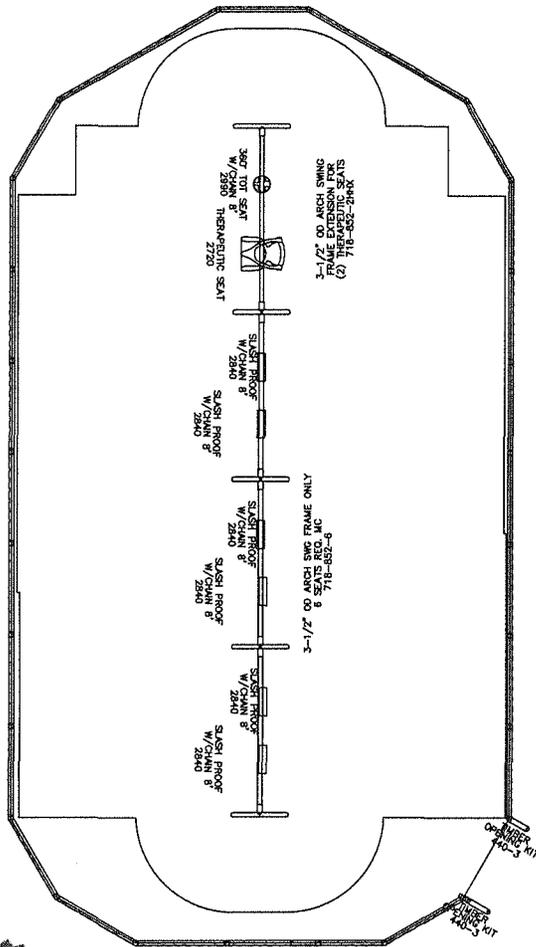


EXHIBIT "B"



To verify product certification, visit www.ipema.org

To promote safe and proper equipment use by children, Miracle recommends the installation of either a Miracle safety sign or other appropriate safety signage near each playsystem's main entry point(s) to inform parents and supervisors of the age appropriateness of the playsystem and general rules for safe play.

Play Area Capacity: 100-110



THE PLAY COMPONENTS IDENTIFIED IN THIS PLAN ARE IPEMA CERTIFIED. THE USE AND LAYOUT OF THESE COMPONENTS CONFORM TO THE REQUIREMENTS OF ASTM F1487. AN ENERGY ABSORBING PROTECTIVE SURFACE IS REQUIRED UNDER & AROUND ALL PLAY SYSTEMS.	CD216102-CD216103		✓ COMPLIES TO CPSC	DESIGNED FOR AGES 5-12	SCALE: 1" = 12'-0"
	GROUND SPACE: 88' X 52' PROTECTIVE AREA: 108' X 65'		✓ COMPLIES TO ASTM	ADDITIONAL GROUND LEVEL ACCESSIBILITY ITEMS NEEDED FOR ADA COMPLIANCE	DATE: 11/6/2015
			✓ COMPLIES TO ADA	TYPE: 0 QUANTITY: 0	ARNE



EXHIBIT "B"

Invoice

Sales Representative

MIRACLE RECREATION EQUIP CO
 REMITTANCE ADDRESS
 PO BOX 204757
 DALLAS, TX 75320-4757
 Phone: (941) 792-4580 Fax: (941) 794-2909

Invoice Number: 93150409
 Invoice Date: 12/14/2015
 Customer Number: 3296K04
 Terms: Net 30
 Customer Class:
 Shipping Method: Miracle
 Freight Terms: Prepaid
 Approximate Ship Date: ASAP
 Cust PO Num:

Prepared For: INDIAN RIVER COMMUNITY FOU
 3055 CARDINAL DRIVE
 SUITE 106
 VERO BEACH, FL 32963

Location: RIVERSIDE PARK
 3100 RIVERSIDE PARK DRIVE
 VERO BEACH, FL L32963

Contact: KATIE BARKER (917) 455-1550

Contact: CHRIS PATTON (941) 518-6203

Quantity	Item Number	Description	Price Each	Price Total
4	7145029	SQUARE DECK (ATTACHES TO 4 POSTS)	\$841.00	\$3,364.00
4	7145505	5" OD X 219" POST FOR 5' DECK W/TOPPER	\$361.00	\$1,444.00
8	7145522	5" OD X 136" ALUM POST (3' TO 5' DECKS)	\$260.00	\$2,080.00
4	7145532	5" OD X 160" ALUM POST (5'6" TO 6'6" DECKS)	\$300.00	\$1,200.00
1	7146078	BRAIDED CLIMBER (8' DECK)	\$926.00	\$926.00
1	7146085	WAVY WEDGE WALL WALKER (5' DECK)	\$2,476.00	\$2,476.00
1	7146156	MONSTER PIPE CLIMBER, STRAIGHT (6'6" DECK)	\$1,934.00	\$1,934.00
1	7146196	POD HOPPER (6'6" DECK)	\$3,847.00	\$3,847.00
1	7146251	BIG TIMBER BONGO STUMP PERCH (STATIONARY)	\$174.00	\$174.00
1	7146301	RAVINE SWOOP BETWEEN DECKS	\$2,236.00	\$2,236.00
1	71466918sfr	PLAYCOVER SAIL 18' X 18', FLAME RETARDANT	\$6,476.00	\$6,476.00
1	714716	VIEW GROOVE PANEL	\$466.00	\$466.00
1	7147265	MOGUL SLIDE-ONE PIECE (5' DECK)	\$1,580.00	\$1,580.00
1	71474869	6'6" TYP II SLIDE 360 D (6' & 6'6" DK)	\$4,908.00	\$4,908.00
1	7147716S	DUPLI-GATOR SLIDE (6' & 6'6" DECK)	\$3,402.00	\$3,402.00
1	71485159	SQUARE TRANSFER POINT W/CLOSED HR (5' DECK)	\$3,699.00	\$3,699.00
1	714856L9A	90 DEG LEVEL RAMP BTWN DECKS W/ARCH ENCL	\$2,259.00	\$2,259.00
1	71486725	TWISTED VINE CLIMBER (5' DECK)	\$905.00	\$905.00
1	714900B	WALL ENCLOSURE W/STEERING WHEEL (BELOW DK)	\$677.00	\$677.00
1	7149929	KIDS' PERCH	\$768.00	\$768.00
1	71499349	ADA STAIRS BETWEEN DECKS W/1'6" RISE 4' SPAN	\$2,360.00	\$2,360.00
1	494116	CUB ROCL	\$1,205.00	\$1,205.00
1	494119	ANGLE LOG	\$3,193.00	\$3,193.00
1	494120	FORKED LOG	\$2,711.00	\$2,711.00
5	494124	SMALL HOP ROCK	\$301.00	\$1,505.00
4	494125	MEDIUM HOP ROCK	\$442.00	\$1,768.00
1	494126	LARGE HOP ROCK	\$583.00	\$583.00

EXHIBIT "B"

Quantity	Item Number	Description	Price Each	Price Total
1	2720	SWG PART THERAPEUTIC SWG SEAT W/CHAIN (8' TR)	\$899.00	\$899.00
6	2840	SWG PART SLASH PROOF SEAT W/CHAIN (8' TR)	\$101.00	\$606.00
1	2990	SWG PART TOT SEAT 360 DEG W/CHAIN (8' TR)	\$156.00	\$156.00
1	7188522HHX	3 1/2" OD ARCH ADD-A-BAY 8' TR THERA SEAT MC	\$640.00	\$640.00
1	7188528	3 1/2" OD ARCH SWG FRAME ONLY 8 SEATS REQ MC	\$2,913.00	\$2,913.00

Color List:

System: KC

System: RR Item Number: 494116 Quantity: 1

System: RR Item Number: 494119 Quantity: 1

System: RR Item Number: 494120 Quantity: 1

System: RR Item Number: 494124 Quantity: 5

System: RR Item Number: 494125 Quantity: 4

System: RR Item Number: 494126 Quantity: 1

System: SWG Item Number: 2720 Quantity: 1

System: SWG Item Number: 2840 Quantity: 6

System: SWG Item Number: 2990 Quantity: 1

System: SWG Item Number: 7188522HHX Quantity: 1

System: SWG Item Number: 7188528 Quantity: 1

Equipment Total: \$63,360.00

Freight: \$5,304.00

Installation: \$26,089.00

Discount: \$19,753.00

Other Charge: (\$37,500.00)

SubTotal: \$37,500.00

Tax: \$0.00

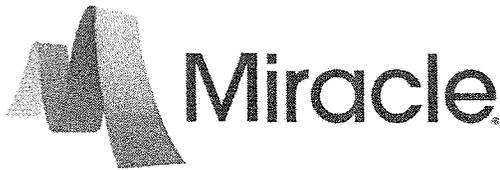
Grand Total: \$37,500.00

Notes:

THE FOLLOWING ARE INCLUDED IN THE INTALLATION PRICE: (104) 4 X 12" PLASTIC TIMBERS AND 1/2 RAMPA DELIVERED AND INSTALLED \$3685 AND 188 YDS OF ADA FIBAR FALL MATERIAL DELIVERED AND INSTALLED \$5828 and \$500 FOR CONCRETE PUMP AND \$675 FOR THE EXTRA CONCRETE FOR THE FOOTERS FOR THE ROCKS AND LOGS. OTHER CHARGE REPERSENTS THE BALANCE DUE ONCE THE PLAYGROUND HAS BEEN COMPLETED AND CUSTOMER HAS SIGNED OFF ON THE COMPLETED PROJECT.

EXHIBIT "B"

Equipment Quotation



Sales Representative

MIRACLE RECREATION EQUIP CO

REMITTANCE ADDRESS

PO BOX 204757

DALLAS, TX 75320-4757

Phone: (941) 792-4580 Fax: (941) 794-2909

Quote Number: 93150409

Quote Date: 12/14/2015

Customer Number 3296K04

Terms of Sale: Net 30

Customer Class:

Shipping Method: Miracle

Freight Terms: Prepaid

Approximate Ship Date: ASAP

Cust PO Num:

PO Remittance (if other than Sales Representative):

Prepared INDIAN RIVER COMMUNITY FOUNDA

For: 3055 CARDINAL DRIVE

SUITE 106

VERO BEACH, FL 32963

Location: RIVERSIDE PARK

3100 RIVERSIDE PARK DRIVE

VERO BEACH, FL L32963

Payment Miracle Recreation Equipment Company
Remittance: PO Box 204757, Dallas, TX 75320-4757

Payment/ KATIE BARKER (917) 455-1550
Accounting
Contact:

Shipping/ CHRIS PATTON (941) 518-6203
Delivery
Contact:

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EXHIBIT "B"

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Equipment Total: \$63,360.00

Freight: \$5,304.00

Installation: \$26,089.00

Discount: \$19,753.00

System: SWG Item Number: 2720 Quantity: 1

System: SWG Item Number: 2840 Quantity: 6

SubTotal: \$75,000.00

Grand Total: \$75,000.00

System: SWG Item Number: 2990 Quantity: 1

System: SWG Item Number: 7188522HHX Quantity: 1

System: SWG Item Number: 7188528 Quantity: 1

Notes:

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This Quote shall not become a binding contract until signed and delivered by both Customer and Miracle Recreation Equipment Company ("Miracle"). Sales Representative is not authorized to sign this Quote on behalf of Miracle or Customer, and signed Quotes cannot be accepted from Sales Representative. To submit this offer, please sign below and forward a complete signed copy of this Quote directly to "Miracle Sales Administration" via fax (417) 235-3551 or email: orders@miraclerec.com. Upon acceptance, Miracle will return a fully-signed copy of the Quote to Customer (with copy to Sales Representative) via fax or email.

THIS QUOTE IS LIMITED TO AND GOVERNED BY THE TERMS CONTAINED HEREIN. Miracle objects to any other terms proposed by Customer, in writing or otherwise, as material alterations, and all such proposed terms shall be void. Customer authorizes Miracle to ship the Equipment and agrees to pay Miracle the total amount specified. Shipping terms are FOB the place of shipment via common carrier designated by Miracle. Payment terms are Net-30 days from invoice date with approved credit and all charges are due and payable in full at PO Box 204757, Dallas, TX 75320-4757, unless notified otherwise by Miracle in writing. Customer agrees to pay all additional service charges for past due invoices. Customer must provide proper tax exemption certificates to Miracle, and shall promptly pay and discharge all otherwise applicable taxes, license fees, levies and other impositions on the Equipment at its own expense. Purchase orders and payments should be made to the order of Miracle Recreation Equipment Company.

Quote Number: 93150409 **Quote Date:** 12/14/2015 **Equipment Total:** \$63,360.00 **Grand Total:** \$75,000.00

CUSTOMER HEREBY SUBMITS ITS OFFER TO PURCHASE THE EQUIPMENT ACCORDING TO THE TERMS STATED IN THIS QUOTE AND SUBJECT TO FINAL APPROVAL BY MIRACLE.

EXHIBIT "B"

Submitted By

Printed Name and Title

Date

THE FOREGOING QUOTE AND OFFER ARE HEREBY APPROVED AND ACCEPTED BY MIRACLE RECREATION EQUIPMENT COMPANY.

By: _____

Date: _____

ADDITIONAL TERMS, CONDITIONS OF SALE

1. Use & Maintenance. Customer agrees to regularly inspect and maintain the Equipment, and to provide, inspect and maintain appropriate safety surfacing under and around the Equipment, in accordance with Miracle's product literature and the most current Consumer Product Safety Commission Handbook for Public Playground Safety.
2. Default, Remedies & Delinquency Charges. Customer's failure to pay any invoice when due, or its failure to otherwise comply with the terms of this Quote, shall constitute a default under all unsatisfied invoices ("Event of Default"). Upon an Event of Default, Miracle shall have all remedies available to it at law or equity, including, without limitation, all remedies afforded a secured creditor under the Uniform Commercial Code. Customer agrees to assist and cooperate with Miracle to accomplish its filing and enforcement of mechanic's or other liens with respect to the Equipment or its location or its repossession of the Equipment, and Customer expressly waives all rights to possess the Equipment after an Event of Default. All remedies are cumulative and not alternative, and no exercise by Miracle of a remedy will prohibit or waive the exercise of any other remedy. Customer shall pay all reasonable attorneys' fees plus any costs of collection incurred by Miracle in enforcing its rights hereunder. Subject to any limitations under law, Customer shall pay to Miracle as liquidated damages, and not as a penalty, an amount equal to 1.5% per month of any payment that is delinquent in such month and is not received by Miracle within ten (10) days after the date on which due.
3. Limitation of Warranty/ Indemnity. MIRACLE MAKES NO EQUIPMENT WARRANTIES EXCEPT FOR THOSE STANDARD WARRANTIES ISSUED WITH THE EQUIPMENT, WHICH ARE INCORPORATED HEREIN BY THIS REFERENCE. MIRACLE SPECIFICALLY DISCLAIMS ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE AND ANY LIABILITY FOR INCIDENTAL OR CONSEQUENTIAL DAMAGES. CUSTOMER AGREES TO DEFEND, INDEMNIFY AND SAVE MIRACLE HARMLESS FROM ALL CLAIMS OF ANY KIND FOR DAMAGES OF ANY KIND ARISING OUT OF CUSTOMER'S ALTERATION OF THE EQUIPMENT, ITS FAILURE TO MAINTAIN THE EQUIPMENT, ITS FAILURE TO PROPERLY SUPERVISE EQUIPMENT USE, OR ITS FAILURE TO PROVIDE AND MAINTAIN APPROPRIATE TYPES AND DEPTHS OF SAFETY SURFACING BENEATH AND AROUND THE EQUIPMENT IN ACCORDANCE WITH MIRACLE'S INSTALLATION AND OWNER'S MANUALS AND THE MOST CURRENT CONSUMER PRODUCT SAFETY COMMISSION HANDBOOK FOR PUBLIC PLAYGROUND SAFETY.
4. Restrictions. Until all amounts due hereunder are paid in full, Customer shall not: (i) permit the Equipment to be levied upon or attached under any legal process; (ii) transfer title to the Equipment or any of Customer's rights therein; or (iii) remove or permit the removal of the Equipment to any location not specified in this Quote.
5. Purchase Money Security Interest. Customer hereby grants, pledges and assigns to Miracle, and Miracle hereby reserves a purchase money security interest in, the Equipment in order to secure the payment and performance in full of all of Customer's obligations hereunder. Customer agrees that Miracle may file one or more financing statements, in order to allow it to perfect, acquire and maintain a superior security interest in the Equipment.
6. Choice of Law and Jurisdiction. All agreements between Customer and Miracle shall be interpreted, and the parties' obligations shall be governed, by the laws of the State of Missouri without reference to its choice of law provisions. Customer hereby consents to the personal jurisdiction of the state and federal courts located in the city and county of St. Louis, Missouri.
7. Title; Risk of Loss; Insurance. Miracle Retains full title to all Equipment until full payment is received by Miracle. Customer assumes all risk of loss or destruction of or damage to the Equipment by reason of theft, fire, water, or any other cause, and the occurrence of any such casualty shall not relieve the Customer from its obligations hereunder and under any invoices. Until all amounts due hereunder are paid in full, Customer shall insure the Equipment against all such losses and casualties.
8. Waiver; Invalidity. Miracle may waive a default hereunder, or under any invoice or other agreement between Customer and Miracle, or cure such a default at Customer's expense, but shall have no obligation to do either. No waiver shall be deemed to have taken place unless it is in writing, signed by Miracle. Any one waiver shall not constitute a waiver of other defaults or the same kind of default at another time, or a forfeiture of any rights provided to Miracle hereunder or under any invoice. The invalidity of any portion of this Quote shall not affect the force and effect of the remaining valid portions hereof.
9. Entire Agreement; Amendment; Binding Nature. This fully-executed Quote, as supplemented by Change Orders and invoices containing exact amounts of estimates provided herein, constitutes the complete and exclusive agreement between the parties. A Change Order is a written instrument signed by the Customer and Miracle stating their agreement as to any amendment in the terms of this Quote. Customer acknowledges that Change Orders may result in delays and additional costs. The parties agree that all Change Orders shall include appropriate adjustments in price and time frames relating to any requested amendments. Upon full execution, this Quote shall be binding upon and inure to the benefit of the parties and their successors and assigns.
10. Counterparts; Electronic Transmission. This Quote, any invoice, and any other agreement between the parties, may be executed in counterparts, each of which shall constitute an original. The facsimile or other electronic transmission of any signed original document, and retransmission of any signed facsimile or other electronic transmission, shall be the same as the transmission of an original. At the request of either party, the parties will confirm facsimile or other electronically transmitted signatures by signing an original document.