

**TOWN OF JOHNSTOWN  
PROFESSIONAL SERVICES AGREEMENT**

**THIS PROFESSIONAL SERVICES AGREEMENT** (the “Agreement”) is made and entered into this \_\_\_\_ day of \_\_\_\_\_ 2024 (the “Effective Date”) by and between the Town of Johnstown, Colorado, a Colorado home-rule municipal corporation (the “Town”) and Go Play, Inc, a Colorado corporation (“Contractor”) (collectively, the “Parties”).

**RECITALS**

**WHEREAS**, the Town desires to engage the services of Contractor and Contractor desires to provide those services more fully described on Exhibit A, attached hereto and incorporated herein by reference (“Services”), to the Town; and

**WHEREAS**, the Parties wish to memorialize their contractual relationship.

**AGREEMENT**

**NOW, THEREFORE**, incorporating the foregoing Recitals herein and in consideration of the mutual promises, agreements, undertakings and covenants set forth herein and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties hereby mutually agree as follows:

**SECTION 1: PARTIES**

1.01 Town. The Town is a home-rule municipal corporation located in Johnstown, Colorado.

1.02 Contractor. Contractor is a private, independent business entity who will exercise discretion and judgment of an independent contractor in the performance and exercise of its rights and obligations under this Agreement.

**SECTION 2: SERVICES, COMPENSATION AND TERM**

2.01 Services. Contractor agrees to perform the Services for the Town.

2.02 Compensation. In consideration of Contractor’s performance of the Services contemplated herein, the Town agrees to pay Contractor the compensation set forth on Exhibit A. Contractor shall submit detailed invoices reflecting the portion of the Services completed to the date of the invoice. The Town shall provide payment for Services to Contractor within thirty (30) days of receipt of the invoice. In its discretion, the Town may withhold payment for disputed portions of invoices on the condition that the Town provides written notice to Contractor of the dispute. Upon delivery of notice, the Town and Contractor shall promptly endeavor to resolve such dispute.

2.03 Expenses: Contractor shall not incur any expense or debt on behalf of the Town

without the Town's prior written authorization.

2.04 Term. Unless otherwise terminated in accordance with Section 5, the term of this Agreement shall be from the Effective Date through December 31, 2024, and shall not extend beyond that date absent the written approval of the Town.

### **SECTION 3: OPERATIONS**

3.01 Contractor Status. Contractor avers that it has the background, expertise and education to provide the Services. Contractor shall be responsible for the proper performance of the Services in accordance with the terms hereof. Contractor shall obtain the necessary permits, if any, and maintain all required licenses, including but not limited to a Town business license.

3.02 Schedule. Unless otherwise set forth in Exhibit A, Contractor shall provide the Services in accordance with the timeline requested by the Town.

### **SECTION 4: INSURANCE AND INDEMNITY PROVISIONS**

#### **4.01 Insurance.**

A. Contractor understands and agrees that Contractor shall have no right of coverage under any existing or future Town comprehensive or personal injury liability insurance policies. As a material term of this Agreement, Contractor agrees to maintain and keep in force during the term of this Agreement one or more policies of insurance written by one or more responsible insurance carrier(s) authorized to do business in the State of Colorado in the following amounts:

1. Workers' compensation insurance as required by law;
2. Commercial general or business liability insurance with minimum combined single limits of ONE MILLION DOLLARS (\$1,000,000.00) each occurrence and TWO MILLION DOLLARS (\$2,000,000.00) general aggregate;
3. Automobile liability insurance with minimum combined single limits for bodily injury and property damage of not less than ONE MILLION DOLLARS (\$1,000,000) for any one occurrence, with respect to each of Contractor's owned, hired or non-owned vehicles assigned to or used in performance of the Services. In the event that Contractor's insurance does not cover non-owned automobiles, the requirements of this paragraph shall be met by each employee of Contractor who utilizes an automobile in providing services to Town under this Agreement; and
4. Professional liability insurance with minimum limits of ONE MILLION DOLLARS (\$1,000,000.00) each claim and TWO MILLION DOLLARS (\$2,000,000.00) general aggregate.

B. Contractor shall procure and maintain the minimum insurance coverages

listed herein. All coverages shall be continuously maintained to cover all liability, claims, demands and other obligations assumed by Contractor pursuant to this Agreement. In the case of any claims-made policy, the necessary retroactive dates and extended reporting periods shall be procured to maintain such continuous coverage. The Town shall have the right to request and receive a certified copy of any policy and any endorsement thereto. Except for workers compensation insurance, the Town shall be listed as an additional insured party on Contractor's insurance policies.

C. A certificate of insurance shall be completed by Contractor's insurance agent(s) as evidence that policies providing the required coverages, conditions and minimum limits are in full force and effect, and, upon request by the Town, shall be subject to review and approval by the Town. The certificate shall identify this Agreement and shall provide that the coverages afforded under the policies shall not be canceled, terminated or materially changed until at least thirty (30) days prior written notice has been given to Town. If the words "endeavor to" appear in the portion of the certificate addressing cancellation, those words shall be stricken from the certificate by the agent(s) completing the certificate. The completed certificate of insurance shall be provided to the Town.

4.02 Damage and Indemnity. Contractor assumes full responsibility for any and all damages caused by Contractor's exercise of its activities, or failures to act, under this Agreement. Contractor agrees that it will at all times protect, defend, indemnify and hold harmless the Town, its elected officials, employees, agents, and their successors and assigns, from and against all liabilities, losses, claims, demands, actions and costs (including reasonable attorneys' fees), arising from or related to loss or damage to property or injury to or death to any persons arising from or resulting in any manner from the actions or failures to act of Contractor or any invitees, guests, agents, employees or subcontractors of Contractor, whether brought by any of such persons or any other person.

## **SECTION 5: TERMINATION**

5.01 Termination. The Town may terminate this Agreement, with or without cause, by providing thirty (30) days prior written notice to Contractor. Notwithstanding the foregoing, if the Town terminates this Agreement for cause and determines that a notice period is not in the best interests of the Town, the Town may terminate this Agreement by providing written notice to Contractor effective immediately.

## **SECTION 6: INDEPENDENT CONTRACTOR**

6.01 Independent Contractor. Contractor understands and agrees that Contractor is an independent contractor and not an employee of the Town. The Town shall not provide benefits of any kind to Contractor. The Town shall not be responsible for withholding any portion of Contractor's compensation for the payment of Federal Insurance Contributions Act (FICA) tax, workers' compensation, or other taxes or benefits. **CONTRACTOR IS NOT ENTITLED TO UNEMPLOYMENT COMPENSATION COVERAGE FROM THE TOWN. CONTRACTOR IS OBLIGATED TO PAY FEDERAL AND STATE INCOME TAX ON MONEYS PAID PURSUANT TO THIS AGREEMENT.** As long as there is not a conflict of interest with the

Town, Contractor may engage in any other lawful business activities during the term of this Agreement.

## **SECTION 7: NOTICE**

7.01 Notices. All notices required under this Agreement shall be in writing and shall be: 1) hand-delivered; 2) sent by registered or certified mail, return receipt requested, postage prepaid, to the addresses of the Parties herein set forth; or 3) sent by electronic mail (“email”) return receipt or written acknowledgment requested and received. All notices by hand-delivery shall be effective upon receipt. All notices by mail shall be considered effective seventy-two (72) hours after deposit in the United States mail with the proper address as set forth below. All notices by email shall be effective upon acknowledgment of receipt by the intended recipient. Either party, by notice to be given, may change the address to which future notices shall be sent.

### **TO THE TOWN:**

Town of Johnstown  
Attn: Jason Elkins, Public Works Director  
450 S. Parish Avenue  
P.O. Box 609  
Johnstown, CO 80534  
Email: notices@johnstownco.gov

### **TO CONTRACTOR:**

Go Play, Inc  
Attn: Jennifer VanWormer, Owner  
9916 County Road 48 1/2  
Milliken, CO 80543  
Email: jennifer@goplayplaygrounds.com

## **SECTION 8: MISCELLANEOUS**

8.01 Time. Time is of the essence of this Agreement and of each covenant hereof.

8.02 Non-Appropriation of Funds. Pursuant to Section 29-1-110, C.R.S., as amended, the financial obligations of the Town payable as set forth herein, after the current fiscal year, are contingent upon funds for that purpose being budgeted, appropriated and otherwise made available. This Agreement shall be terminated effective January 1 of the first fiscal year for which funds are not budgeted and appropriated.

8.03 Laws and Regulations. In the conduct of the Services, Contractor shall comply with all applicable laws, rules and regulations, and the directives or instructions issued by the Town or its designated representatives.

8.04 Assignment; Third Party Rights. Contractor may not assign, delegate or subcontract any part of its rights, duties or obligations under this Agreement. The Parties do not intend to confer any benefit hereunder on any person or entity other than the Parties hereto.

8.05 Amendment. This Agreement may not be amended or modified except by a subsequent written instrument signed by the Parties. Course of performance, no matter how long, shall not constitute an amendment to this Agreement.

8.06 Severability. If any part, term or provision of this Agreement is declared unlawful or unenforceable, the remainder of this Agreement shall remain in full force and effect, except that, in the event any state or federal governmental agency or court determines that the relationship between the Town and Contractor is one of employment rather than independent contractor, this Agreement shall become null and void in its entirety.

8.07 Waiver. No consent or waiver, express or implied, by the Town to or of any breach or default by Contractor in the performance by Contractor of its obligations hereunder shall be deemed or construed to be a consent or waiver to or of any other breach or default by the Town. Failure on the part of the Town to complain of any act or failure to act or to declare Contractor in default, irrespective of how long such failure continues, shall not constitute a waiver by the Town of its rights hereunder.

8.08 Governmental Immunity. The Parties agree that the Town is relying on, and does not waive or intend to waive by any provision of the Agreement, the monetary limitations or any other rights, immunities, and protections provided by the Colorado Governmental Immunity Act, §§ 24-10-101 *et seq.*, C.R.S., as amended from time to time, or otherwise available to the Town, its elected officials, employees or agents.

8.09 Applicable Law and Venue. This Agreement shall be construed according to the laws of the State of Colorado. Venue for any claim, proceeding or action arising out of this Agreement shall be in Weld County, State of Colorado.

8.10 Mediation. In the event of any dispute arising under this Agreement, except in the case of an action for injunctive relief, the Parties shall submit the matter to mediation prior to commencing legal action and shall share equally in the cost of the mediation.

8.11 Costs and Attorney's Fees. If any judicial proceedings may hereafter be brought to enforce any of the provisions of this Agreement, the Town, if the prevailing party, shall be entitled to recover the costs of such proceedings, including reasonable attorney's fees and reasonable expert witness fees.

8.12 Entire Agreement. The provisions of this Agreement represent the entire and integrated agreement between the Town and Contractor and supersede all prior negotiations, representations and agreements, whether written or oral.

8.13 Public Official Personal Liability. Nothing herein shall be construed as creating any personal liability on the part of any elected official, employee or agent of the Town.

8.14 No Presumption. Each Party acknowledges that it has carefully read and reviewed the terms of this Agreement. Each Party acknowledges that the entry into and execution of this Agreement is of its own free and voluntary act and deed, without compulsion. Each Party acknowledges that it has obtained, or has had the opportunity to obtain, the advice of legal counsel

of its own choosing in connection with the negotiation and execution of this Agreement and with respect to all matters set forth herein. The Parties agree that this Agreement reflects the joint drafting efforts of all Parties and in the event of any dispute, disagreement or controversy arising from this agreement, the Parties shall be considered joint authors and no provision shall be interpreted against any Party because of authorship.

8.15 Controlling Document. In the event of a conflict between the provisions in this Agreement and Exhibit A, the provisions in this Agreement shall control.

8.16 Headings. The headings in this Agreement are inserted only for the purpose of convenient reference and in no way define, limit or prescribe the scope or intent of this Agreement or any part thereof.

8.17 Counterparts. This Agreement may be executed in counterparts, each of which shall be an original, but all of which, together, shall constitute one and the same instrument.

8.18 Data Security. If Contractor has access to personal identifying information during the term of this Agreement, Contractor shall, pursuant to Section 24-73-101, *et seq.*, C.R.S., destroy all paper and electronic documents containing such personal identifying information within six months of termination of this Agreement, unless otherwise required by law. During the term of this Agreement, Contractor shall implement and maintain reasonable security procedures that are appropriate to the nature of the personal identifying information disclosed or maintained and that are reasonably designed to help protect the information from unauthorized access, use, modification, disclosure or destruction. If Contractor discovers or is informed of a security breach, Contractor shall give the Town notice in the most expedient time and without unreasonable delay, no later than ten (10) calendar days after it is determined a security breach occurred. Contractor shall cooperate with the Town in the event of a security breach that compromises computerized data, if misuse of personal information about a Colorado resident occurred or is likely to occur. Cooperation includes sharing with the Town information relevant to the security breach.

8.19 Right to Injunction. The Parties hereto acknowledge that the Services to be rendered by Contractor and the rights and privileges granted to the Town under the Agreement are of a special, unique, unusual and extraordinary character which gives them a peculiar value, the loss of which may not be reasonably or adequately compensated by damages in any action at law, and the breach by Contractor of any of the provisions of this Agreement may cause the Town irreparable injury and damage. Contractor agrees that the Town, in addition to other relief at law, shall be entitled to injunctive and other equitable relief in the event of, or to prevent, a breach of any provision of this Agreement by Contractor.

[Remainder of page intentionally left blank.]

IN WITNESS WHEREOF, the parties have executed this Agreement on the date first written above.

TOWN OF JOHNSTOWN, COLORADO

ATTEST:

By: \_\_\_\_\_  
Hannah Hill, Town Clerk

By: \_\_\_\_\_  
Matt LeCerf, Town Manager

By: \_\_\_\_\_  
Name:  
Title:

STATE OF COLORADO)  
  ) ss  
COUNTY OF \_\_\_\_\_)

SUBSCRIBED AND SWORN to before me this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by  
\_\_\_\_\_ as the \_\_\_\_\_ of \_\_\_\_\_.

WITNESS my hand and official seal.

My commission expires: \_\_\_\_\_









\_\_\_\_\_  
Notary Public

**EXHIBIT A**  
**SERVICES**



Customer			
Name	Town of Johnstown		
Address	450 S Parish Ave		
City	Johnstown	State	CO ZIP 80534
Phone	(970)481-9252		

Misc	PAGE 1
Date	4/17/2024
Order No.	SRP279492
Rep	JVW
FOB	

Qty	Description	Unit Price	TOTAL
<b>PLAYGROUND EQUIPMENT</b>			
1	Superior FXT-5000 tower structure, 5" OD posts, ages 5-12 	\$147,170.00	\$ 147,170.00
1	Superior PS3-72778 structure, 3.5" OD posts, ages 2-5 	\$31,885.00	\$ 31,885.00
1	PA5-72677 Active Course 	\$14,335.00	\$ 14,335.00
1	Superior Playgrounds set of (5) Lily Pad steppers 	\$1,551.00	\$ 1,551.00
1	Superior Playgrounds 2-bay Tri-Pod swing frame with 10' pivot, (4) belt seats 	\$3,281.00	\$ 3,281.00
1	Superior Playgrounds 2-Bay 5" OD Arch Swing frame with (2) full-bucket seats and (2) ADA seats, 8' pivot 	\$8,995.00	\$ 8,995.00
1	Superior Playgrounds Ascend Peak 14' Net RC-802SR 	\$18,050.00	\$ 18,050.00
2	Superior Amenities 6' Regal bench with back, 3/4" #9 expanded metal design, inground mount 	\$740.00	\$ 1,480.00
	<b>Go Play Local Discount valid on equipment as quoted above only. May not be combined with any other discounts or promotions.</b>	<b>30%</b>	<b>\$ (68,024.10)</b>
<b>INSTALLATION</b>			
1	Complete removal and disposal of existing playground equipment, wood fiber surfacing material and concrete borders.	\$15,950.00	\$ 15,950.00
1	Complete installation of equipment listed above by CPSI certified installer including one mobilization to the site.		\$ 76,076.51
<i>Notes- Pricing above is for the playground equipment and installation only and does not include safety surfacing (see page 2 for surfacing and project total). Current lead time on custom playground orders runs about 20 weeks and may vary without further notice. Colors shown in illustrations if for example only. Customer selects preferred colors at time of order.</i>			

Approved proposal and PO or 50% deposit required to proceed.

SubTotal	\$ 250,749.41
Freight	\$ 15,965.00
Tax Rate(s)	N/A exempt
<b>Page 1 Total</b>	<b>\$ 266,714.41</b>

Date \_\_\_\_\_

Tax Rate(s)

Authorizing Signature \_\_\_\_\_

Tax Exempt # 98-03492

Office Use Only

	Contact : Go Play Phone (970) 420-6796 Go Play email jennifer@goplayplaygrounds.com		



Go Play, Inc.  
9916 County Road 48 1/2  
Milliken, CO 80543

**Option 3**  
**SURFACING**  
**Eddie Aragon**  
**PROPOSAL**

Customer			
Name	Town of Johnstown		
Address	450 S Parish Ave		
City	Johnstown	State	CO ZIP 80534
Phone	(970)481-9252		

Misc	PAGE 2
Date	4/17/2024
Order No.	BSTTPIP1
Rep	JWW
FOB	

Qty	Description	Unit Price	TOTAL
	<b>SITE PREPARAION</b> <i>(Removal and disposal of existing playground equipment, wood fiber surfacing and borders is quoted on page 1 of the proposal.)</i>		
1	Concrete curbing- form and finish 460 lf of 8" x 8" grey concrete curb with 3" notch (sub-surface) to accept PIP, (2) bench pads and (1) 30' L x 6' wide sidewalk (connecting to existing shelter) a 4" thick with grey broom finish, includes pump truck.	\$37,630.00	\$ 37,630.00
8815	sf Supply, install and compact 4" depth of stable aggregate base for poured-in-place surfacing, includes materials, delivery, installation and compaction.	\$2.35	\$ 20,715.25
	<b>POURED-IN-PLACE SURFACING</b>		
8815	Surface America PlayBound poured-in-place surfacing, 50% black/ 50% color speckle mix, variable fall height attenuation 8' - 12', standard binder, includes materials, delivery and installation.	\$18.45	\$ 162,636.75
1	Graphic add-on- incorporate Johnstown "J" logo ino surfacing with 100% green / 100% yellow, approximately 400 sf overall size.		\$ 4,750.00
	<b>Notes-</b> See page 1 of proposal for playground equipment / installation. No permits, licenses, taxes, bonding, or associated fees are included. No turf protection, fencing, security, drainage, locating or repairing existing private utilities or sprinkler lines, exceptional digging conditions, nor site restoration included. Poured-in-place surfacing and concrete installation are weather dependent and is not typically scheduled between the months of December-Februrary. No cold weather blankets or chemicals included with concrete pricing (can be added for additional fee). Forms can leave voids in concrete after removal. It is typical for concrete to crack and it does not effect the integrity of the concrete. Control joints will be cut to attempt to direct cracking, and cracks outside of control joints can be chased and sealed within 30 days of needed. Go Play is not responsible for any cracking due to expansive soils or settling. Pricing assumes adequate access to site for large installation machinery (minimum 6' wide access path needed).		

Approved proposal and PO or 50% deposit required to proceed.

SubTotal	\$ 225,732.00
Page 1 total	\$ 266,714.41
Tax Rate(s)	N/A exempt
<b>PROJECT TOTAL</b>	<b>\$ 492,446.41</b>

Date \_\_\_\_\_

Tax Rate(s)

Authorizing Signature \_\_\_\_\_

Tax Exempt # 98-03492

Office Use Only



Contact : Go Play Phone (970) 420-6796  
Go Play email [jennifer@goplayplaygrounds.com](mailto:jennifer@goplayplaygrounds.com)



Thank you for your consideration! Pricing is valid for 30 days.

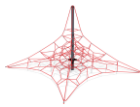








Go Play, Inc.  
9916 County Road 48 1/2  
Milliken, CO 80543

**OPTION 2**  
**West Lake Park**  
**PROPOSAL**

Customer			
Name	Town of Johnstown		
Address	450 S Parish Ave		
City	Johnstown	State	CO ZIP 80534
Phone	(970)481-9252		

Misc	
Date	4/10/2024
Order No.	SRP279423
Rep	JVW
FOB	

Qty	Description	Unit Price	TOTAL
<b>PLAYGROUND EQUIPMENT</b>			
1	Superior FXT-50025 Tower structure, 5" OD posts, ages 5-12. 	\$60,860.00	\$ 60,860.00
1	Superior Ascend 13' Tower RC-101SR 	\$13,410.00	\$ 13,410.00
1	Superior Playgrounds PS5-72777 ages 5-12 	\$97,160.00	\$ 97,160.00
1	Superior Playgrounds 3-Bay 5" OD Arch Swing frame 8' pivot height, with (2) belt seats, (2) full-bucket seats and (2) inclusive ADA seats. 	\$11,830.00	\$ 11,830.00
1	Superior Playground Rockface Climber 	\$4,910.00	\$ 4,910.00
1	Superior Playgrounds set of (5) Lily Pad Steppers 	\$1,551.00	\$ 1,551.00
1	Superior Playgrounds Zig Zag Balance Beam 	\$722.00	\$ 722.00
	<b>Go Play Local Discount</b> valid on equipment as quoted above only. May not be combined with any other discounts or promotions.	<b>28%</b>	<b>\$ (53,324.04)</b>
<b>INSTALLATION</b>			
1	Complete removal and disposal of existing playground equipment and 6951 sf of wood fiber surfacing material up to 12" depth.	\$22,925.00	\$ 22,925.00
1	Complete installation of equipment listed above by CPSI certified installer including one mobilization to the site.		\$ 64,096.19
<b>SURFACING - Poured-In-Place</b>			
6951	sf supply, install and compact 9" compacted depth of stable base material for poured-in-place surfacing, compacted in 4" lifts.	\$5.12	\$ 35,589.12
6951	sf Surface America PlayBound poured-in-place surfacing, 50% black / 50% color speckle mix, standard binder, variable 6' - 10' fall height attenuation, includes materials, delivery and installation.	\$17.70	\$ 123,032.70
<b>Notes:</b> No permits, licenses, taxes, bonding, nor associated fees are included (if applicable). No turf protection, locating or repairing existing private utilities or sprinkler lines, fencing, security, off-site disposal of spoils, unusual digging conditons, nor site restoration are included (if needed). Assumes adequate access to site for large installation machinery (minimum 6' wide access path required). Current lead time on playground equipment production is running 20 weeks on custom equipment and 12 weeks on standard, but may vary without further notice.			

Approved proposal and PO or 50% deposit required to proceed.

SubTotal	\$ 382,761.97
Freight	\$ 13,225.00
Tax Rate(s)	N/A exempt
<b>TOTAL</b>	<b>\$ 395,986.97</b>

Date \_\_\_\_\_

Tax Rate(s)

Authorizing Signature \_\_\_\_\_

Tax Exempt # 98-03492

Office Use Only



Contact : Go Play Phone (970) 420-6796  
Go Play email jennifer@goplayplaygrounds.com



Thank you for your consideration! Pricing is valid for 30 days.