

Board Office Use: Legislative File Info.	
File ID Number	24-1531
Introduction Date	06-26-2024
Enactment Number	24-1260
Enactment Date	6/26/2024 os



Board Cover Memorandum

To Board of Education

From Kyla Johnson-Trammell, Superintendent
Preston Thomas, Chief Systems and Services Officer
Kenya Chatman, Executive Director of Facilities

Meeting Date June 26, 2024

Subject Donation Agreement for Gymnasium Improvements with Under Armour and Eat.Learn.Play Foundation

Ask of the Board Approval by the Board of Education of the Donation Agreement with Under Armour and Eat.Learn.Play Foundation

Background Eat.Learn.Play Foundation has committed long-term to Oakland Unified School District and our students and families. This commitment has grown out of the body of research that ELP commissioned in partnership with the Aspen Institute. In the State of Play Oakland report, several findings emerged that impact Oakland youth:

- Oakland youth are less physically active than the nation.
- Oakland lacks equitable access to recreational sports league opportunities.
- Physical education in Oakland lacks funding and accountability.

ELP has partnered with OAL, Community Schools, Academics and the After School staff to build athletic programs across the district that address these issues. These investments are specifically designed to support the development of OAL middle school program, and the gyms identified in this agreement are the cornerstones for the district programming. Improving the sports facilities will support the robust growth associated with these programmatic investments and improve equitable participation.

Discussion The Facilities Department, OAL, and the after-school program have been working with ELP to augment the sporting opportunities for our middle school scholar-athletes. To provide quality programming for our middle school students, ELP and Under Armour are deeply committed to improving the gym spaces for students across the city. This investment will support the growing middle school sports and High School sports programming at the home schools.

The agreement includes improvements at the following schools: McClymonds High School Gym, Oakland Tech High School Gym (Girls and Boys), Madison Upper (6-12) Gym, Roosevelt Middle School Gym, and Montera Middle School Gym.

Fiscal Impact This is a no-cost agreement for OUSD. The only cost to the program will be the in-kind support for OUSD Facilities Staff time to coordinate the engagement.

Attachment(s)

- Board Agreement for Donated Gymnasiums

AGREEMENT FOR DONATED GYMNASIUM IMPROVEMENTS

THIS AGREEMENT FOR DONATED GYMNASIUM IMPROVEMENTS (this "Agreement") is made and entered into as of the date it is signed by the last party below, by and among Under Armour, Inc. hereinafter referred to as "Under Armour" or "UA", EAT. LEARN. PLAY. FOUNDATION, a Delaware nonprofit nonstock corporation tax-exempt under Internal Revenue Code Section 501(c)(3) (hereinafter referred to as "ELP"), ALLSPORT SPORT AMERICA, a California corporation hereinafter referred to as "AllSport" and OAKLAND UNIFIED SCHOOL DISTRICT, hereinafter referred to as "OUSD" (ELP, UA, AllSport and OUSD are collectively referred herein to as the "Parties" or individually referred to herein as a "Party").

RECITALS

A. WHEREAS, Oakland Unified School District owns facilities at McClymonds High School, Oakland Technical High School-Boys and Girls Gym, Madison, Roosevelt Middle School, and Montera Middle School which include basketball courts and gym facilities which the Parties wish to improve as set forth herein (the "Project").

B. WHEREAS, each of ELP and UA are, directly and indirectly, sponsoring the completion of the Project at no cost to OUSD.

C. WHEREAS, AllSport represents it is capable of providing the construction services necessary for the completion of the Project.

D. WHEREAS, AllSport desires to complete, or cause to be completed, those certain tasks for completion of the Project as described in this Agreement.

AGREEMENT

NOW, THEREFORE, in consideration of the mutual representations, covenants and promises hereinafter contained, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereto agree as follows:

1. TERM OF AGREEMENT/ENTIRE AGREEMENT

The term of this Agreement (the "Term") shall commence on the date hereof and shall, unless sooner terminated in accordance with the terms and conditions set forth herein, terminate on that date on which all of the Services to be provided by AllSport for the Project, as described in **Exhibit A** hereunder have been completed to the satisfaction of OUSD, and all periods of warranty hereunder, if any, have expired.

This Agreement represents the entire agreement among the Parties and supersedes all prior

negotiations, representations and/or agreements relating to the subject matter hereof. This Agreement may be amended only by a written instrument signed by each Party, and shall not otherwise be superseded by any other documents relating to completion of the Services.

2. SCOPE OF SERVICES, TIME FOR COMPLETION

Each Party is responsible for providing the applicable services described in **Exhibit A** attached hereto (the "Services"). All Services to be provided hereunder shall be performed to the highest professional standards, consistent with other professionals similarly situated who are providing services to first class projects of a similar complexity.

Parties agree that UA, ELP and AllSport will design the Courts and the surrounding walls as each of the gyms, subject to the prior written approval by the OUSD Facilities Department, such approval not to be unreasonably delayed or withheld. UA, ELP and AllSport shall be responsible for the completion of the Project, consistent with the District-approved design.

UA, ELP, and AllSport each agree that the services anticipated by this Agreement and discussed on Exhibit A shall be completed on a schedule that is approved by the District in writing prior to commencing work.

The District makes no warranties or representations regarding the condition of the facilities to be improved, and UA, ELP and AllSport shall be responsible for investigating the sites to ensure the Services can be timely completed. In no event shall the District be responsible for cost overruns or unforeseen circumstances. If unforeseeable circumstances arise prior to completion which cause delay, UA, ELP and AllSport shall ensure that the District's facilities are in sound and useable condition when school is in session. If delays are encountered, the Parties shall meet and confer in good faith in an attempt to arrive at a mutually agreeable revised completion schedule.

UA, ELP and AllSport agree that no mechanic's lien can be filed against any District property, and further agree, without limiting any other obligation herein, to defend, indemnify, and hold harmless OUSD against any claim for unpaid contract amounts, wages, or other claims related to allegations of nonpayment on the Project.

3. REPRESENTATIVES

Each Party shall designate a project manager who will be responsible to manage and direct such party's performance of its Services and to whom instructions and notices to such party shall be directed, which project manager shall have the authority to act on behalf of the respective party in all matters concerning the Services to be provided by such party hereunder.

The Parties hereby acknowledge and agree that their respective representatives are as follows:

Under Armour: Lynn Quayle

Title: Lead, Community Impact
Telephone No. 585-704-0872
Email: lynn.quayle@underarmour.com

ELP: Courtney Harvey
Title: Chief Operations Officer
Email: charvey@eatlearnplay.org

OUSD: Kenya Chatman
Title: Executive Facilities Director
Telephone No. 510-535-2728
Email: kenya.chatman@ousd.org

4. NOTICES

Unless otherwise specifically provided herein, all notices, consents, approvals, requests and other communications required or permitted hereunder ("Notices") shall be given in writing by (a) hand; (b) Federal Express or other nationally recognized overnight courier, fee prepaid; or (c) first-class certified or registered mail, return receipt requested, postage prepaid, in all cases addressed as follows:

If to Under Armour: Under Armour
1020 Hull St.
Baltimore, MD 21230
ATTN: Lynn Quayle

With a copy to:

Under Armour
1020 Hull St.
Baltimore, MD 21230
ATTN: legalnotices@underarmour.com

If to ELP: Eat.Learn.Play. Foundation
647 4th Street
Oakland, CA 94607
Christopher Helfrich, Chief Executive Officer,
Email: chelfrich@eatlearnplay.org
Courtney Harvey, Chief Operating Officer,
Email: charvey@eatlearnplay.org

If to AllSport: AllSport America, Inc.
4831 Pacheco Blvd
Martinez, CA 94553

jeremy@allsportamerica.com
info@allsportamerica.com
barrett@allsportamerica.com

If to OUSD: Oakland Unified School District
1011 Union St.
Oakland, California 94607
ATTN: Office of the General Counsel

With a copy to:
Oakland Unified School District
955 High Street
Oakland, California 94601
ATTN: Chief of Facilities

Notices shall be deemed given upon actual receipt (or when delivery is refused). Changes of address for Notices shall be in compliance with this Section.

5. INSURANCE

AllSport, ELP, and UA shall carry and maintain the following insurance throughout the Term of this Agreement:

Workers' Compensation	Statutory Benefits
Employers' Liability	Bodily Injury by accident: \$1,000,000 each accident Bodily Injury by disease: \$1,000,000 policy limit Bodily Injury by disease: \$1,000,000 each employee
Commercial General Liability	Each Occurrence Limit: \$1,000,000 General Aggregate Limit: \$2,000,000
Commercial Automobile Liability	\$1,000,000 combined single limit, each accident

The foregoing policies must include an additional insured endorsement including the other Parties as additional insureds, including their respective subsidiaries, members, managers, officers, directors, affiliates, employees, agents, successors and assigns.

6. INDEMNITY

To the fullest extent permitted by law, AllSport shall indemnify, defend, protect, and hold harmless, OUSD, UA, and ELP and their respective affiliates, owners, directors, officers, lenders, subsidiaries, members, managers, employees, agents, partners, successors and assigns (the "Indemnified Parties," from and against any and all claims, demands, damages, losses lawsuits and other proceedings, judgments, causes of action, liabilities, claims of lien, liens, civil or criminal penalties and charges, costs and expenses (including, without limitation, reasonable attorney's fees and costs of defense) (collectively "Liabilities") incurred by any Indemnified Party arising out of or in any way caused by (or alleged to be caused by), in whole or in part; (i) actual or alleged negligent, reckless, intentional or wrongful actions or omissions by AllSport, or its employees, representatives, affiliates, subcontractors, or agents; (ii) actual or alleged breaches by AllSport, or its employees, representatives, affiliates, subcontractors or agents of any warranty, representation, covenant or agreement made under this Agreement; provided that AllSport shall not be obligated to indemnify any party for Liabilities to the extent they arise from the gross negligence or willful misconduct of the Indemnified Parties.

With respect to any obligation to defend contained herein, in any proceeding, including any action, arbitration, litigation or claim (including any governmental investigation), brought against an Indemnified Party in respect of which indemnity may be sought as set forth in this Section 6, an Indemnified Party shall notify AllSport in writing and AllSport, upon request of an Indemnified Party, shall immediately assume the defense thereof on behalf of such Indemnified Party, including the employment of counsel reasonably acceptable to the Indemnified Party and payment of all legal fees and expenses; provided that an Indemnified Party's failure to give prompt notice shall not relieve AllSport of its indemnification obligations except to the extent that it is actually prejudiced as a result of such failure.

AllSport's indemnity obligations are not limited to and may exceed its limits of liability under Section 5 of this Agreement.

UA, and ELP shall defend, indemnify, and hold harmless OUSD against any "Liabilities" in the same manner and extent as AllSport's indemnity obligations described above.

7. WARRANTIES/REPRESENTATIONS

AllSport warrants and represents that the Services shall be completed to the best of its ability, of a first-class quality, and shall be performed and completed in compliance with all applicable laws, rules, ordinances and regulations. Each Party represents and warrants to the other parties that it is authorized to do business in the state, county and municipality where Services are to be rendered and is properly licensed, including, but not limited to, licenses by all necessary governmental and public and quasi-public authorities having jurisdiction over the Services. The person signing this Agreement on behalf of each Party affirms that he or she is authorized to execute on such party's behalf.

8. CERTIFICATION REGARDING DEPARTMENT, SUSPENSION, INELIGIBILITY AND VOLUNTARY EXCLUSION

Through its execution of this Agreement, each Party certifies to the best of its knowledge and belief, that it and its principals are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency according to Federal Acquisition Regulation Subpart 9.4, and by signing this contract, certifies that this vendor does not appear on the Excluded Parties List (<https://www.sam.gov/>).

9. OWNERSHIP OF INTELLECTUAL PROPERTY

9.1 ELP Materials

Any materials, information or other content (including, without limitation, corporate or trade names, trademarks, service marks, designs, logos or other identification marks of ELP or any affiliated individuals or organizations) furnished to AllSport shall remain at all times the exclusive property of ELP or its respective owner ("ELP Materials"). ELP hereby grants to AllSport a non-exclusive, royalty-free, non-transferable, limited right to use such ELP Materials solely during the Term to perform the contracted Services pursuant to this Agreement. AllSport shall have no rights whatsoever to utilize the corporate or trade names, trademarks, service marks, designs, logos or other identification marks of the ELP or its affiliated individuals or organizations.

9.2 UA Materials

Any materials, information or other content (including, without limitation, corporate or trade names, trademarks, service marks, designs, logos or other identification marks of Sponsor) furnished to AllSport by UA shall remain at all times the exclusive property of UA ("UA Materials"). UA hereby grants to AllSport a non-exclusive, royalty-free, non-transferable, limited right to use such Sponsor Materials solely during the Term to perform the contracted Services pursuant to this Agreement, subject to UA's prior approval in each instance.

9.3 OUSD's Rights to USE Mark

AllSport, ELP, and UA each hereby grant to OUSD a non-exclusive, revocable, royalty-free, non-transferable, limited right to use their corporate or trade names, trademarks, service marks, designs, logo or other identification marks on the Courts (as defined on **Exhibit A** attached hereto) as agreed upon by the parties in the design phase; provided that OUSD does not alter or modify the identifying marks of AllSport, ELP or UA without such Party's written consent.

10. MAINTENANCE

OUSD agrees to ensure proper annual maintenance of the Project. OUSD further agrees that it will make not significant alterations to or decommission, demolish, or deconstruct the Courts without the written consent of ELP and UA, for a term of five years from the completion of construction (the "Maintenance Term"). If, during the Maintenance Term, the Courts require refurbishment or reconstruction for any reason, , ELP and UA will each be provided a right of first refusal to participate in the refurbishment of the Project, provided that such party will be responsible for funding and completing construction of the refurbishment or reconstruction, unless

such party declines such right by written notice to OUSD or a period of thirty (30) days elapses without a response from such party.

11. MISCELLANEOUS TERMS

11.1 Relationship of Parties

In performing Services pursuant to this Agreement, each Party shall act in the capacity of an independent contractor with respect to each other party and not as an employee thereof. As an independent contractor, each Party agrees that (a) it shall not be entitled to participate in any benefit plans of any other party, even if it is later determined that it has or had the status of an employee of any other party during the Term; (b) it shall not be entitled to unemployment compensation benefits in the event that this Agreement terminates for any reason and shall not be entitled to workers' compensation benefits in the event it is injured in any manner while performing the services or obligations hereunder, even if it is later determined that it has or had the status of an employee of any other party during the Term; and (c) it shall not have any right or authority to assume or create any obligations on behalf of any other party or to make any representations on its behalf. As an independent contractor, it acknowledges that any other party will determine the goals to be attained and the results to be achieved by any other party.

11.2 Assignment/Heirs and Assigns

No Party shall have the right to assign or transfer this Agreement without the prior written consent of the other Parties. This Agreement shall be binding upon the Parties hereto, their heirs, successors, permitted assigns and personal representatives, and references to a party shall include its heirs, successors, assigns and personal representatives.

11.3 Attorney's Fees

In the event that any party to this Agreement commences litigation to enforce the terms of this Agreement, the prevailing Party in such litigation will be entitled to recover its costs and fees incurred in such action, including reasonable attorneys' fees.

11.4 Severability; Governing Law

If any provision of this Agreement is held to be invalid or unenforceable, such holding shall not affect or impair the validity or enforceability of the other provisions hereof which can be given effect without the invalid or unenforceable provision, and the Parties shall promptly in good faith amend this Agreement to include a valid and enforceable provision which accomplishes the legal and economic purposes of the provision so held to be invalid or unenforceable. The validity of this Agreement and of any of its terms, as well as the rights and duties of the parties under this agreement, shall be governed by the laws of the State of California, any dispute shall be venued in Alameda County.

11.5 Counterparts

This Agreement and all amendments and supplements to it may be executed in counterparts, and all counterparts together shall be construed as one document.

11.6 Provisions Required By Law Deemed Inserted

Each and every provision of law and clause required by law to be inserted in this Agreement shall be deemed to be inserted herein and this Agreement shall be read and enforced as though it were included therein.

11.7 Waiver

The waiver by either party of any breach of any term, covenant, or condition herein contained shall not be deemed to be a waiver of such term, covenant, condition, or any subsequent breach of the same or any other term, covenant, or condition herein contained.

11.8 Integration/Entire Agreement of Parties

This Agreement constitutes the entire agreement between the Parties and supersedes all prior discussions, negotiations, and agreements, whether oral or written. This Agreement may be amended or modified only by a written instrument executed by all Parties.

11.9 Limitation of District Liability

Other than as provided in this Agreement, District's financial obligations under this Agreement shall be limited to the payment of the compensation provided in this Agreement. Notwithstanding any other provision of this Agreement, in no event, shall District be liable, regardless of whether any claim is based on contract or tort, for any special, consequential, indirect or incidental damages, including, but not limited to, lost profits or revenue, arising out of or in connection with this Agreement for the services performed in connection with this Agreement.

11.10. No Rights in Third Parties

This Agreement does not create any rights in, or inure to the benefit of, any third party except as expressly provided herein.

[signatures on following page]

UNDER ARMOUR

Flynn Burch

Flynn Burch (Jun 10, 2024 16:10 EDT)

Signature

Flynn Burch

Print Name

Jun 10, 2024

Date

ALLSPORT AMERICA, INC.

Signature

Print Name

Date

OAKLAND UNIFIED SCHOOL DISTRICT

Signature
(Superintendent)

Print Name

Date

Chiff
Christopher McFrich (Jun 7, 2024 17:46 PDT)

EAT.LEARN.PLAY. FOUNDATION

Signature

Print Name

Date

OAKLAND UNIFIED SCHOOL DISTRICT

Benjamin Davis

6/27/2024

Benjamin Davis, President, BOE

Signature
(Board President)

Print Name

Kyla Johnson-Trammell

6/27/2024

Kyla Johnson-Trammell, Superintendent & Secretary, BOE

Date

OAKLAND UNIFIED SCHOOL DISTRICT

Preston Thomas
Preston Thomas (Jun 10, 2024 10:59 PDT)

Signature
(Chief Systems and Services Officer)

Preston Thomas

Print Name

Jun 10, 2024

Date

UNDER ARMOUR

Signature

Print Name

Date

EAT.LEARN.PLAY. FOUNDATION

Signature

Print Name

Date

ALLSPORT AMERICA, INC.



Signature

Barrett Park

Print Name

June 10, 2024

Date

OAKLAND UNIFIED SCHOOL DISTRICT

Signature
(Board President)

Print Name

Date

OAKLAND UNIFIED SCHOOL DISTRICT

Signature
(Superintendent)

Print Name

Date

OAKLAND UNIFIED SCHOOL DISTRICT

Signature
(Chief Systems and Services Officer)

Print Name

Date

EXHIBIT A
SCOPE OF SERVICES

OUSD shall make available to AllSport for refurbishment the facilities described in the Scope of Work attached hereto as Schedule 1, and Allsport will perform the services described therein with respect to the facilities described therein (the "Courts").

ELP and UA may plan and promote a public unveiling of the refurbished Courts to occur on a date to be determined by ELP and UA (the "Event") and agreed upon by OUSD. In connection with the Event, ELP and UA will provide representatives to speak at such Event, in each case as determined by ELP and UA, respectively, and subject to availability. Such appearances shall be conducted in a time, place and manner that is mutually agreeable to both Parties and shall be for a maximum of sixty (60) minutes in length. OUSD Superintendent, or her designees, may attend the Event.

ELP shall pay AllSport for its services related to the Project on a timeline mutually agreed upon between parties. The total will be paid in installments based on the timeline of each project, as specified in an updated Scope of Work to be attached to this Agreement. Any additional expenses must be approved by ELP in writing.

Schedule 1

OUSD Indoor Gymnasiums

Under Armour / ELP

5/14/2024

Scope of Work

1. **McClymonds:** wood flooring, hoops, wall pads, score boards and shot clocks.
2. **Madison Park Academy:** wood flooring, hoops, wall pads, score boards and shot clocks, badminton floor sleeves.
3. **Oakland Tech Girls Gym:** wood flooring, hoops, wall pads, score boards and shot clocks, badminton floor sleeves.
4. **Oakland Tech Boys Gym:** wood flooring, hoops, wall pads, score boards and shot clocks
5. **Roosevelt Middle School:** flooring, hoops, wall pads, score boards and shot clocks.
6. **Montera Middle School:** flooring, hoops, wall pads, score boards and shot clocks.