



**Town of Mammoth Lakes
Parks and Recreation Department
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March 1, 2023

AllSport America, Inc.
Barrett Park, President
110 2nd Avenue South #B-12,
Pacheco, CA 94553
(925) 766-6820
barrett@allsportamerica.com

RE: LETTER AGREEMENT WITH THE TOWN OF MAMMOTH LAKES AND ALLSPORT AMERICA, INC. FOR TENNIS COURT REPAIR AND THE INSTALLATION OF A MODULAR OVERLAY SURFACE ON COMMUNITY TENNIS COURTS 5/6 AND THE INSTALLATION OF SIX PICKLEBALL COURTS AT THE MULTI-USE FACILITY

Dear Barrett,

PARTIES: This letter shall be our agreement ("Letter Agreement") regarding the services described below ("Services") to be provided by AllSport America, Inc. ("Contractor") as an independent contractor to the Town of Mammoth Lakes ("Town") for tennis court repair and the installation of a modular overlay surface on community tennis courts 5/6 and the installation of six pickleball courts at the multi-use facility ("Project"). Contractor is retained as an independent contractor and is not an employee of the Town.

SERVICES; SCHEDULE OF PERFORMANCE: The Services to be provided consist of (i) repairing community courts 5/6 in preparation for the installation of the SportGame Pickleball Overlay Surface (approx. 14,400 sq. ft.), installing one (1) fixed height tempered-glass basketball system on court #1 and striping two (2) tennis courts on courts 5/6, one basketball key on court #1, and optimal striping for one set of (1) pickleball lines on court #2, and (ii) preparing the multi-use facility (ice rink) concrete surface for installing six (6) sets of pickleball sleeve posts and nets, and installing Cushion Extreme Pickleball sub-surface on the entire playing area. Services to be provided are more particularly described in the Scope of Services attached hereto as Exhibit "A" and "B" and incorporated herein by reference. Services on the Project shall begin no later than June 5, 2023 and be completed by no later than June 30, 2023 unless the Project is changed or amended by the Town in writing.

STANDARD OF CARE: Contractor shall perform all Services under this Letter Agreement in a skillful and competent manner consistent with the standards generally recognized as being employed by professionals in the same discipline in the State of California, and consistent with all applicable laws. Contractor represents that it, its employees, and its subcontractors have all licenses, permits, qualifications, and approvals of whatever nature that are legally required to perform the Services and that such licenses and approvals shall be maintained throughout the term of this Letter Agreement.

COMPENSATION: Contractor shall receive the fixed sum of **TWO HUNDRED AND SIXTY FOUR THOUSAND AND FOUR HUNDRED DOLLARS** (\$264,400) for its work under this Agreement, which sum includes without limitation all material, personnel, and travel costs. If Contractor does extra work which is in addition to the project scope of work as identified in Exhibit "A" and "B" and that is agreed upon in writing by both parties, Town shall compensate Contractor on a time and materials basis or lump sum for such extra work. Such compensation shall be either for a lump sum agreed upon by Town and Contractor prior to the commencement of the extra work, or in accordance with a rate schedule agreed upon by Town and Contractor prior to the commencement of the extra work. Any extra work requiring compensation greater than ten thousand six hundred dollars (\$10,600) shall require approval from Town's Town Council for an amendment to this Agreement. Town shall pay Contractor in accordance with the payment schedule attached hereto as Exhibit "C" and incorporated herein by reference. Contractor shall submit invoices upon shipping and for work upon completion of the Project. Town shall pay such invoices within 30 days of their receipt.

PREVAILING WAGES: Contractor is aware of the requirements of California Labor Code Section 1720, et seq., and 1770, et seq., as well as California Code of Regulations, Title 8, Section 16000, et seq., ("Prevailing Wage Laws"), which require the payment of prevailing wage rates and the performance of other requirements on "public works" and "maintenance" projects. Contractor agrees to fully comply with such Prevailing Wage Laws. Town shall provide Contractor with a copy of the prevailing rates of per diem wages in effect at the commencement of this Agreement. Contractor shall make copies of the prevailing rates of per diem wages for each craft, classification or type of worker needed to provide services hereunder available to interested parties upon request, and shall post copies at Contractor's principal place of business and at the project site. Contractor shall defend, indemnify and hold Town, its officials, officers, employees, agents, and volunteers free and harmless from any claim or liability arising out of any failure or alleged failure to comply with the Prevailing Wage Laws. Contractor shall comply, and shall require each subcontractor employed by Contractor to provide services pursuant to this Agreement to comply, with the requirements of Labor Code Section 1776, including without limitation the requirement to maintain certified payroll records. Contractor shall submit certified payroll records directly to the California Labor Commissioner. At all times during the course of Contractor's work, Contractor shall remain registered with the Department of Industrial Relations and qualified to perform public work pursuant to Labor Code Section 1725.5, and Contractor shall ensure that all subcontractors employed by Contractor also remain so registered. Pursuant to Labor Code Section 1771.1(a), a contractor or subcontractor shall not be qualified to bid on, be listed in a bid proposal (subject to the requirements of Section 4104 of the Public Contract Code), or engage in the performance of any contract for public work, as defined in Chapter 1 of Part 7 of Division 2 of the Labor Code, unless currently registered with the Department of Industrial Relations and qualified to perform public work pursuant to Section 1725.5. However, an unregistered contractor may submit a bid that is authorized by Section 7029.1 of the Business and Professions Code or by Sections 10164 or 20103.5 of the Public Contract Code, provided that the contractor is registered to perform public work at the time the contract is awarded. This project is subject to compliance monitoring and enforcement by the California Department of Industrial Relations.

INSURANCE: Contractor shall provide proof of commercial general liability and automobile insurance to Town in amounts and with policies, endorsements, and conditions required by Town for the Services. If Contractor is an employer or otherwise hires one or more employees during the term of this Project, Contractor shall also provide proof of workers' compensation coverage for such employees which meets all requirements of state law. Coverage shall be at least as broad as the latest version of the following: (1) General Liability: Insurance Services Office Commercial General Liability coverage (occurrence form CG 0001), providing coverage on an "occurrence" basis for bodily injury and property damage, including products-completed operations, personal injury, and advertising injury; (2) Automobile

Liability: Insurance Services Office Form Number CA 0001 covering, Code 1 (any auto), or if Contractor has no owned autos, Code 8 (hired) and 9 (non-owned); (3) Workers' Compensation and Employer's Liability: Workers' Compensation insurance as required by the State of California and Employer's Liability Insurance. Contractor shall maintain limits no less than: (1) General Liability: \$1,000,000 per occurrence for bodily injury, personal injury and property damage. If Commercial General Liability Insurance or other form with general aggregate limit is used including, but not limited to, form CG 2503, either the general aggregate limit shall apply separately to this Agreement/location or the general aggregate limit shall be twice the required occurrence limit; (2) Automobile Liability: \$1,000,000 per accident for bodily injury and property damage; and (3) Workers' Compensation and Employer's Liability: Workers' Compensation limits as required by the Labor Code of the State of California. Employer's Liability limits of \$1,000,000 per accident for bodily injury or disease. The Workers' Compensation policy shall be endorsed to provide a Waiver of Subrogation stating that the insurer waives all rights of subrogation against the indemnified parties. Notwithstanding the foregoing, if Contractor maintains higher limits than the specified minimum limits, Town requires and shall be entitled to coverage for the higher limits maintained by Consultant. The General Liability and Automobile Liability policies shall include or be endorsed (amended) to state that: (1) Town, its officials, officers, employees, and agents shall be covered as additional insured with respect to the Services or operations performed by or on behalf of Contractor, including materials, parts, or equipment furnished in connection with such work; and (2) the insurance coverage shall be primary insurance as respects Town, its directors, officials, officers, employees, agents, and volunteers or, if excess, shall stand in an unbroken chain of coverage excess of Contractor's scheduled underlying coverage. Any insurance or self-insurance maintained by Town, its officials, officers, employees, and agents shall be excess of Contractor's insurance and shall not be called upon to contribute with it in any way. With respect to the General Liability policy, the foregoing endorsements shall be made using standard ISO endorsement No. CG 2010 with an edition date of 2010 or later. General liability coverage can be provided in the form of an endorsement to Contractor's insurance (at least as broad as ISO Form CG 20 10, 11 85 or both CG 20 10 and CG 23 37 forms if later revisions are used). Each such policy shall be from a company or companies with a current A.M. Best's rating of no less than A:VII and allowed to place insurance through surplus line brokers under applicable provisions of the California Insurance Code or any federal law.

TERMINATION: Town may terminate this Letter Agreement at any time with or without cause. If Town finds it necessary to terminate this Letter Agreement without cause before Project completion, Contractor shall be entitled to be paid in full for those Services adequately completed prior to the notification of termination. Contractor may terminate this Letter Agreement only upon 30 calendar days' written notice to Town only in the event of Town's failure to perform in accordance with the terms of this Letter Agreement through no fault of Contractor.

INDEMNIFICATION: To the fullest extent permitted by law, Contractor shall defend, indemnify and hold Town, its directors, officials, officers, employees, volunteers, and agents free and harmless from any and all claims, demands, causes of action, costs, expenses, liability, loss, damage, or injury of any kind, in law or equity, to property or persons, including wrongful death, in any manner arising out of, pertaining to, or incident to any alleged acts, errors or omissions of Contractor, its officials, officers, employees, subcontractors, consultants, or agents in connection with the performance of Contractor's Services, the Project, or this Letter Agreement, including without limitation the payment of all consequential damages, expert witness fees, and attorneys' fees and other related costs and expenses. Contractor's obligation to indemnify shall survive expiration or termination of this Letter Agreement and shall not be restricted to insurance proceeds, if any, received by Town, its directors, officials, officers, employees, agents, or volunteers.

LAWS & REGULATIONS; EMPLOYEE/LABOR CERTIFICATIONS: Contractor shall keep itself fully informed of and in compliance with all local, state, and federal laws, rules, and regulations in any manner affecting the performance of the Project or the Services, including all Cal/OSHA requirements. By executing this Letter Agreement, Contractor verifies that it fully complies with all requirements and restrictions of state and federal law respecting the employment of undocumented aliens including, but not limited to, the Immigration Reform and Control Act of 1986, as may be amended from time to time. Contractor shall maintain records of its compliance, including its verification of each employee, and shall make them available to Town or its representatives for inspection and copy at any time during normal business hours. Town shall not be responsible for any costs or expenses related to Contractor's compliance with the requirements. To the same extent and under the same conditions as Contractor, Contractor shall require all of its subcontractors, sub-subcontractors, and consultants performing any work relating to the Project or this Letter Agreement to make the same verifications and comply with all requirements and restrictions provided herein. Contractor's failure to comply or any material misrepresentations or omissions relating thereto shall be grounds for terminating this Letter Agreement for cause. By its signature hereunder, Contractor certifies that it is aware of the provisions of §3700 of the California Labor Code, which requires every employer to be insured against liability for Workers' Compensation or to undertake self-insurance in accordance with the provisions of that Code, and Contractor agrees to comply with such provisions before commencing performance of the Services. Finally, Contractor represents that it is an equal opportunity employer and shall not discriminate against any sub-consultant, employee, or applicant for employment in violation of state or federal law.

GOVERNING LAW; VENUE; GOVERNMENT CODE CLAIM COMPLIANCE; ATTORNEY'S FEES: This Letter Agreement shall be interpreted in accordance with the laws of the State of California. If any action is brought to interpret or enforce any term of this Letter Agreement, the action shall be brought in a state or federal court situated in Mono County, State of California. In addition to any and all contract requirements pertaining to notices of and requests for compensation or payment for extra work, disputed work, claims and/or changed conditions, Contractor must comply with the claim procedures set forth in Government Code §§ 900 et seq. prior to filing any lawsuit against Town. Such Government Code claims and any subsequent lawsuit based upon Government Code claims shall be limited to those matters that remain unresolved after all procedures pertaining to extra work, disputed work, claims, and/or changed conditions have been followed by Contractor. If no such Government Code claim is submitted, or if any prerequisite contractual requirements are not otherwise satisfied as specified herein, Contractor shall be barred from bringing and maintaining a valid lawsuit against Town. If either Party commences an action against the other party arising out of or in connection with this Letter Agreement, the prevailing party shall be entitled to recover all reasonable fees and costs incurred, including reasonable attorneys' fees, as determined by the court.

ASSIGNMENT; AMENDMENT: Contractor shall not assign, sublet, or transfer this Letter Agreement or any rights under or interest in this Letter Agreement without the written consent of Town, which may be withheld for any reason. This Letter Agreement may not be modified or altered except in writing signed by both parties. Except to the extent expressly provided for in the termination paragraph, there are no intended third party beneficiaries of any right or obligation of the Parties.

ENTIRE AGREEMENT; CONSTRUCTION & CAPTIONS: This is an integrated Letter Agreement representing the entire understanding of the parties as to those matters contained herein, and supersedes and cancels any prior oral or written understanding or representations with respect to matters covered hereunder. Since the Parties or their agents have participated fully in the preparation of this Letter Agreement, the language of this Letter Agreement shall be construed simply, according to its fair meaning, and not strictly

for or against any Party. The captions of the various paragraphs are for convenience and ease of reference only, and do not define, limit, augment, or describe the scope, content or intent of this Letter Agreement.

If you agree with the terms of this Letter Agreement, please indicate by signing and dating where indicated below. An original, executed copy is enclosed for your records.

[signature page to follow]

TOWN OF MAMMOTH LAKES

Approved by:

Attest:

Daniel C. Holler
Town Manager

Jamie Gray
Town Clerk

CONTRACTOR

Reviewed and Accepted by AllSport America, Inc.

Signature

Barrett Park

President

Date

Exhibit 'A'



Client Name: Town of Mammoth Lakes
Project: Tennis Courts Overlay and Preparation - Courts 5-6
Attention: Stuart Brown
Date: 8/2/2022

Scope of Work

- Clean out all cracks (big and small), fill with concrete court patch material and level.
- Torch and scrape down all areas heaving from tree roots, level with court
- Fill, patch, and level low areas with court patch compound and level with court
- Saw-cut and drill footing for basketball hoop anchor system
- Install geo-textile stabilization fabric for surface on both tennis courts
- Install SportGame Pickleball Sport Court Surfacing System on 14,400 SF
- Install fixed height tempered-glass basketball system
- Striping for (2) Tennis Courts, Basketball Lines, & Optional Striping for Pickleball Lines

Sport Court Materials

SportGame Pickleball Modular Overlay Surface



Exhibit 'B'

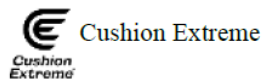


Client Name: Town of Mammoth Lakes
Project: Ice Hockey Rink Conversion to (6) Pickleball Courts with Cushion Extreme
Attention: Stuart Brown
Date: 8/12/2022

Scope of Work

- Acid wash and pressure wash court to clean debris (Preparation)
- Layout courts for core drilling sleeves (pickleball posts and ball containment fencing)
- Core drilling for (12) pickleball sleeves
- Installation of Cushion Extreme Pickleball Sub-Surface on 22'x46 area (entire playing area plus 1' in each direction)
- 2 coats acrylic resurfacer, 2 coats of finish acrylic color, striping for (6) pickleball courts
 - o Color Choice TBD
- Installation of (6) sets of pickleball posts and nets

Sport Court Materials



Acrytech Paint



Exhibit 'C'

Payment Schedule - \$264,400

1. Materials Ordered (50%, due to order material): \$132,200
2. Materials Shipped (30%, due when materials ship): \$79,320
3. Court Installation Complete (20%, due upon installation and striping): \$52,880