

36636

MINI PITCH PROGRAM
DONATION AGREEMENT – FISCAL YEAR 2023

Pursuant to this Mini Pitch Program Grant Agreement ("Agreement"), dated as of December 23, 2022 ("Effective Date"), the United States Soccer Foundation, Inc. ("Foundation") agrees to award the Grant ("Grant") to the City of Long Beach Parks, ("Grantee") FY23-749, and Grantee accepts such Grant, in accordance with the terms and conditions set forth herein.

1. **Foundation:** U.S. Soccer Foundation
Attn: Operations Department
1140 Connecticut Ave. NW, Suite 1200
Washington, DC 20036

Grantee: City of Long Beach Parks
Attn: Nancy Villaseñor
2760 N. Studebaker Road
Long Beach, CA 90815
2. **Grant:** This Grant, awarded in the form of two (2) acrylic mini pitch surfaces with goal installation ("Mini Pitches"), supplied by TD West ("Vendor"), which shall be valued by Foundation, in its sole and absolute discretion, in an amount up to \$85,000.
3. **Acrylic Mini Pitch:** Consistent with Foundation's interests in promoting youth soccer, particularly within vulnerable communities, this Grant will provide the Mini Pitches at the DeForest Park (the "Grant Project").
4. **Execution of the Grant Agreement:** Grantee must return an executed copy of this Agreement to the Foundation by January 18, 2022.
5. **Grantee Covenants:** In order to induce Foundation to enter into this Agreement, and to award the aforementioned Grant, Grantee covenants as follows:
 - (a) Foundation will be granted usage of the Mini Pitches for one (1) day per year over the first five (5) years following its completion, including for Special Events that are organized by Foundation as defined below. Foundation will schedule such usage for dates and times mutually agreed upon with the Grantee, and Grantee will not unreasonably withhold play space time for such usage. For purposes of this Agreement, "Special Events" shall be defined as tournaments, clinics, training sessions, media functions (without alcohol service), and similar events.
 - (b) Upon completion, Grantee acknowledges and agrees that it will be responsible for the maintenance and safety of the Mini Pitches following their completion.
 - (d) Grantee presently owns the property on which the Mini Pitches will be installed.
 - (e) Prior to commencing installation of the Mini Pitches, Grantee will obtain, or shall assist (where necessary) in obtaining, all permits, authorizations, and consents necessary for the installation of the Mini Pitches.
6. **Facts and Representations True and Correct:** Grantee hereby affirms the representations made in its conversations and communications with Foundation are true and correct and that Foundation may rely upon the truth and correctness of the representations made in all conversations and communications regarding this Grant Project, without further independent investigation. Grantee further affirms that it has not omitted any material facts, the knowledge of which would adversely impact the awarding of the Grant

to Grantee. Grantee avows that no adverse events have occurred since the latest communication which have materially and adversely altered the truth or reliability of the Grant Project, including the tax status of Grantee and the Grantee's ability to allow successful completion of the Grant Project. Grantee agrees to immediately inform the Foundation within five (5) business days of any material change, in Grantee or the Grant Project, which might affect any terms of this Agreement.

7. **Grantee Books and Records:** Grantee agrees to maintain sufficient operating and financial books, records and related documentation regarding the activities of Grantee and other evidence sufficient for Foundation to satisfy its fiduciary, public and governmental responsibilities and duties. Foundation shall have reasonable access to the books and records of Grantee for inspection purposes and shall be entitled to copies, as they relate to the Grant Project.

8. **Grantee Reports:**

- (a) **Impact Reports:** Following completion of the Mini Pitches, Grantee shall complete to Foundation a report, provided by the Foundation, describing the impact of the Mini Pitches. Such report shall be submitted to Foundation annually, for five (5) years after completion of the Mini Pitches and shall include photographs of the Mini Pitches in use by youth soccer players and provide available information on play space usage rates, stories of impact on the community, and any other information reasonably requested by Foundation.
- (b) **Site Visits:** Grantee will use its best efforts to accommodate any representative of Foundation who requests to conduct a site visit, at the sole cost of Foundation, for the purposes of collecting information about the Grant's impact.
- (c) **Photographs/Videos/Stories/Testimonials:** In addition to submitting digital photographs, videos, stories and testimonials relating to the Grant Project in the aforementioned Impact Reports, the Grantee shall submit the same to the Foundation upon request by the Foundation, including before and after photographs, both in daytime and at night, of the Mini Pitch site area.

9. **Publicity Material and Recognition:**

- (a) Grantee, upon written approval by the Foundation, shall recognize the Foundation and acknowledge the Grant in Grantee's written materials, news releases, website and related marketing or publicity.
- (b) The Foundation, with all proper consent, shall have the right to publicize, show photographs of, and use the name of the Mini Pitches and otherwise promote its contributions in any and all media, including the Internet. Grantee authorizes the Foundation to utilize those logo or logos, owned or controlled by Grantee and associated with the Grant Project, for related marketing and/or publicity.
- (c) Grantee agrees to fully assist and cooperate in a mutually acceptable dedication event, should the Foundation request such, which may include appearances by athletes affiliated with the Foundation.

10. **Awareness Opportunities:** Grantee grants to Foundation the right to place Foundation's trademark, trade name or any design/logo owned or controlled by Foundation (each, a "Mark" and together, the "Marks"), and/or that of its funding partners, on the surface of the Mini Pitch for no less than ten (10) years upon installation completion. Unless Foundation chooses to forego the right, standard Marks will be included during installation of the Mini Pitch, per the rendering found in Attachment A. Foundation may change its Marks at any time in its sole discretion and at its sole cost. Each Mark will remain on the surface of the Mini Pitches for as long as ten years or until the Mini Pitches are operational, whichever comes first,

unless removed by Foundation or unless Foundation otherwise gives its written consent to the removal of such Mark.

Additionally, Grantee will allow Foundation to install signs/banners on the premises on which the Mini Pitches are installed, per the rendering found in Attachment A, in order to promote and recognize the Foundation and other funders for their contribution to the Mini Pitches. Grantee may remove any signage/banners that are vandalized or defaced, with appropriate notice provided to the Foundation. This does not preclude Grantee from installing its own banners at the Mini Pitches.

11. **Grant Not Assignable:** Grant is intended solely for the benefit of Grantee. No benefit of the Grant may be delegated, assigned or otherwise transferred without the advance, written consent of Foundation, which consent shall be in the sole and absolute discretion of Foundation.
12. **Proper Authority:** Each of the parties and its officers represent and warrant that they are authorized to enter into this Agreement and execute the same without further authority.
13. **Absence of Warranties:** FOUNDATION MAKES NO REPRESENTATIONS OR WARRANTIES OF ANY KIND, EITHER EXPRESS OR IMPLIED, AS TO ANY MATTER INCLUDING, BUT NOT LIMITED TO, IMPLIED WARRANTIES OF FITNESS FOR A PARTICULAR PURPOSE, MERCHANTABILITY OR OTHERWISE RELATING TO THE MINI PITCHES OR ANY COMPONENT PART THEREOF, OR ANY OTHER ENTITIES AND THEIR ASSOCIATED SERVICES. IN NO EVENT WILL FOUNDATION BE LIABLE FOR ANY DAMAGES OF ANY KIND INCLUDING, BUT NOT LIMITED TO, PERSONAL INJURY, LOST PROFITS, OR OTHER CONSEQUENTIAL, EXEMPLARY, INCIDENTAL OR PUNITIVE DAMAGES ARISING OUT OF THIS AGREEMENT OR PERFORMANCE OF THE OBLIGATIONS HEREUNDER.
14. **Assumption of Risk:** Grantee hereby agrees to assume all risks and liabilities associated with all permitted use, operation, maintenance, safety and condition of the Mini Pitch except permitted uses of the Foundation.
15. **Indemnification:** Except for claims or causes of action resultant from the gross negligence or willful misconduct of the Foundation, its parent, subsidiary and affiliated companies, sponsors, benefactors, donors, officers, directors, employees, accountants, attorneys, agents, successors and assigns ("Foundation Parties") and to the extent allowed by California law, Grantee agrees to indemnify, defend and hold harmless Foundation Parties from and against any and all third party claims, demands, losses, damages, liabilities, costs and expenses (including reasonable legal/attorneys' fees and expenses arising out of or related to any legal proceeding and any legal appeal) ("Claim" or "Claims") related to this Agreement and liabilities of any kind or nature whatsoever, whether in contract, tort, or otherwise, resulting from any claim (including, without limitation, personal injury, death, or property damage) actually or allegedly arising out of or in connection with the maintenance, location, or condition of the Mini Pitch, or any permitted person's use (with the exception of the permitted uses of the Foundation) of the Mini Pitch. Grantee's indemnification obligation hereunder shall survive the expiration or earlier termination of this Agreement. Without limiting this obligation, Grantee will maintain the insurance or self-insurance described in Section 16 of this Agreement.

Grantee represents to Foundation that the Mini Pitches do not violate any applicable law, regulation, ordinance, lease, or otherwise violate the rights of any person or entity.

16. **Insurance Requirements:**
 - (a) **Insurance Requirements of the Mini Pitches.** At all times during this Agreement, Grantee shall provide and maintain, at its expense, the following insurance or self-insurance, which shall protect

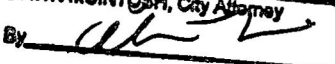
Grantee and the Foundation on a primary basis from any and all Claims arising out of or in connection with this Agreement:

- (i) Commercial General Liability insurance with limits not less than \$1,000,000 each occurrence and \$2,000,000 in the aggregate. Such insurance shall include coverage for contractual liability, premises liability, products-completed operations, personal and advertising injury, property damage and bodily injury liability (including death). Said policy shall be endorsed to name the Foundation and Foundation Parties as Additional Insureds.
- (ii) Automobile Liability insurance covering liability arising out of the Grantee's use, operation and/or maintenance of any auto (including trucks and other construction vehicles), with limits not less than \$1,000,000 each accident combined single limit for bodily injury and property damage.
- (iii) Workers' Compensation insurance covering employees of Grantee involved with the use and maintenance of the Mini Pitches, with limits as required by statutory law, including Employer's Liability coverage with limits not less than \$1,000,000 each accident, \$1,000,000 disease-each employee and \$1,000,000 disease-policy limit.
- (iv) Umbrella and/or Excess Liability insurance with limits not less than \$2,000,000 each occurrence shall apply in excess of the Commercial General and, Automobile Liability policy limits.

All such insurance required above shall be (1) considered primary with respect to Claims arising out of the use and maintenance of the Mini Pitches; and (2) shall be written by insurance companies that are licensed to do business in the state in which the Mini Pitches are located. Grantee shall not allow any of the required policies to be materially changed, reduced or cancelled unless Grantee provides thirty (30) days prior written notice thereof to Foundation.

Upon execution of this Agreement, Grantee shall provide Foundation with a certificate of self-insurance confirming that the appropriate insurance is in place and that the policies have been properly endorsed to meet the insurance requirements as set forth above.

- 17. Permitted Participant Waiver and Release Forms: To the extent that Grantee requires Permitted Participants in its programs or others who use the Mini Pitch to sign waiver and release forms, Grantee shall include the Foundation and the Foundation Parties as released parties in the form.
- 18. Use of Mark: Notwithstanding anything in this Agreement to the contrary, in the event Grantee desires to use a Mark owned or controlled by Foundation in a manner consistent with this Agreement, Grantee shall first submit a sample of the concept of the proposed use to Foundation for prior written approval, which approval may be withheld in the sole discretion of Foundation. Any such use by Grantee shall create no rights for Grantee in or to the Mark. Each Mark shall remain at all times the sole and exclusive intellectual property of Foundation, and Foundation shall have the right, from time to time, to request samples of use from which it may determine compliance with these terms and conditions. Notwithstanding any provision of this Agreement to the contrary, Foundation reserves, in its sole and absolute discretion, the right to prohibit use of its Marks.
- 19. Applicable Law; Jurisdiction: This Agreement shall be governed by and construed in accordance with the laws of the State of California, without regard to principles of conflict of laws. Each party agrees that any action or proceeding with respect to this Agreement may only be brought in a federal or state court situated in California, and by execution and delivery of this Agreement, such party irrevocably consents to jurisdiction and venue in each such court.

APPROVED AS TO FORM
July 5, 2023
DAWN MCINTOSH, City Attorney
By: 
ANITA LAKHANI
DEPUTY CITY ATTORNEY

20. **Attorneys' Fees:** Grantee and Foundation agree to pay all their own costs and expenses, including reasonable attorneys' fees, incurred in connection with any litigation concerning this Agreement.
21. **Third Party Beneficiaries:** It is expressly agreed and by this statement specifically intended by the parties that nothing within this Agreement shall be construed as indicating any intent by either party to benefit any other entity or person not a party signatory to this Agreement by any provision or to entitle any such third party to any right of action on account hereof.
22. **Notices:** Any notices given under this Agreement must be made in writing (a) if to Foundation, at the address of Foundation as provided or at such other address as Foundation may designate, or (b) if to Grantee, at the address of Grantee provided or at such other address as Grantee may designate.
23. **Entire Agreement; Modifications:** This Agreement contains the entire agreement between Foundation and Grantee and cannot be changed, modified, amended, waived or canceled except by an agreement in writing and executed by each of the parties hereto.
24. **Counterparts and Facsimile Signatures:** This Agreement may be executed in one or more counterparts each of which shall be deemed an original but all of which together shall constitute the same instrument. This Agreement may be executed by facsimile signature by any party and such signature will be deemed binding for all purposes hereof without delivery of an original signature being thereafter required.

IN WITNESS WHEREOF, the parties have executed this Agreement by their duly authorized signatories as of the date first above written.

U.S. Soccer Foundation

By: 

Name: Rob Kaler

Title: COO & General Counsel

Date: ~~2/13/2023~~
6/15/23

By: 

Name: Ed Foster-Sineon
President & CEO

Date: 6/15/2023

City of Long Beach Parks

By: 

Name: LINDA F. TATUM

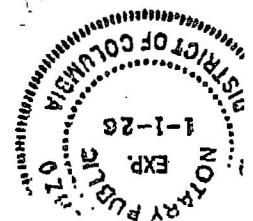
Title: ASST CITY MANAGER

Date: 7/28/2023



DISTRICT OF COLUMBIA: SS
SUBSCRIBED AND SWORN TO BEFORE ME
THIS 15 DAY OF June 2023
Margarita Alfonso
NOTARY PUBLIC
My Commission Expires 6/10/2026
-5-

EXECUTED PURSUANT
TO SECTION 301 OF
THE CITY CHARTER.





ATTACHMENT A

Attachment A: Site Plan

DeForest Park

6255 De Forest Ave.

