

MINI PITCH PROGRAM
GRANT AGREEMENT – FISCAL YEAR 2020

Pursuant to this Mini Pitch Grant Agreement (“Agreement”), dated as of the **20th of October, 2020** (“Effective Date”), the United States Soccer Federation Foundation, Inc. (“Foundation”) agrees to partner with the **City of Chula Vista** (“Grantee” or “City”), in accordance with the terms and conditions set forth herein.

1. **Foundation:** **U.S. Soccer Foundation**
Attn: Rob Kaler
1140 Connecticut Ave. NW, Suite 1200
Washington, DC 20036
- Grantee:** **City of Chula Vista**
Attn: Tim Farmer, Parks & Recreation Ad
276 Fourth Avenue
Chula Vista, CA 91910

2. **Acrylic Mini Pitch:** Consistent with Foundation’s interests in promoting youth soccer, particularly within vulnerable communities, this Agreement will provide one (1) acrylic mini pitch surface with goal installation (“Mini Pitch”), to be supplied by the Foundation, which shall be valued by Foundation, in its sole and absolute discretion, in an amount up to \$60,000 per Mini Pitch. Foundation will furnish, or shall cause to be furnished, all materials, equipment, services, and labor, and will perform, or cause to be performed, all work necessary, in strict accordance with all City of Chula Vista and other applicable permits, standards, and specifications, whether now existing or hereinafter approved, the Mini Pitch at the following location (“Mini Pitch Project”):

- Valle Lindo Park – FY21-722

Foundation expressly warrants and agrees that any and all services under this Agreement shall be performed in accordance with the highest standard of care exercised by members of the profession currently practicing under similar conditions and in similar locations. In its performance of obligations under this Agreement, Foundation expressly warrants and agrees that it shall comply with any and all applicable federal, state and local laws, including the Chula Vista Municipal Code.

3. **Grantee Covenants:** In order to induce Foundation to enter into this Agreement, and to receive the aforementioned Mini Pitch, Grantee covenants as follows:

- (a) Foundation will be granted usage of each Mini Pitch for one (1) day per year over the first five (5) years following each completion, including, without limitation, for Special Events (as defined below) that are organized by Foundation. Foundation will make best efforts to schedule such usage for dates and times mutually agreed upon with 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, events, training sessions, media functions and any other similar event the Foundation so determines.
- (b) Upon completion, the Mini Pitch will be maintained in accordance with Foundation’s installation vendors’ recommendations for user safety, to be provided by the Foundation. Grantee acknowledges and agrees that it will be responsible for regular maintenance and safety of the Mini Pitch following its completion, which include regular cleaning of the surface and inspection of all Mini Pitch elements.
- (c) Grantee presently owns the property on which the Mini Pitch will be built.

- (d) Prior to commencing installation of the Mini Pitch, Grantee will obtain, or shall assist (where necessary) in obtaining, all permits, authorizations and consents from third parties, including governmental entities, necessary for the installation and construction of the Mini Pitch.

4. **Facts and Representations True and Correct:** Grantee hereby affirms the representations made in its written communications with Foundation are true and correct and that Foundation may rely upon the truth and correctness of the representations made in all written communications regarding the Mini Pitch, 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 written 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 these Mini Pitches. Grantee agrees to immediately inform the Foundation within five (5) business days of any material change, in Grantee or the Mini Pitch locations, which might affect any terms of this Agreement.

5. **Mini Pitch Reports:**

- (a) **Impact Reports:** Following completion of the Mini Pitch, Grantee shall complete a report, provided by the Foundation, describing the impact of each Mini Pitch. Such reports shall be submitted to Foundation annually, for three (3) years after completion of the Mini Pitch as well as provide 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 reasonable efforts to accommodate any representative of Foundation, or of Foundation's funders, who requests to conduct site visits, at the sole cost of Foundation or its funders, for the purposes of collecting information about project impact.
- (c) **Photographs/Videos/Stories/Testimonials:** In addition to submitting digital photographs, videos, stories and testimonials relating to the Mini Pitch in the aforementioned 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 areas.

6. **Publicity Material and Recognition:**

- (a) The Foundation shall have the right to publicize, show photographs of, and use the name of the Mini Pitch and otherwise promote its contributions in any and all media.
- (b) 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.

7. **Awareness Opportunities:** Grantee grants to Foundation the right to permanently place Foundation's trademark, trade name or any design/logo owned or controlled by Foundation (each, a "Mark" and together, the "Marks"), and that of its funding partners, on the surface of each Mini Pitch, per the rendering found in Attachment A. Additionally, Grantee grants to the Foundation the right to place Foundation's Marks, and the Marks of its funding partners, on signage at each Mini Pitch, per the rendering found in Attachment A.

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. Each Mark will remain at the site of the Mini Pitches, 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 each Mini Pitch is built, per the rendering found in Attachment A, in order to promote and recognize the Foundation and other funders for their contribution to the Mini Pitch.

8. **Mini Pitch Project Not Assignable:** The Mini Pitch Project is intended solely for the benefit of Grantee. No benefit of the Mini Pitch 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.
9. **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.
10. **Limitation of Warranties:** EXCEPT AS PROVIDED IN SECTION 2, 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 PITCH OR ANY COMPONENT PART THEREOF, OR ANY OTHER ENTITIES AND THEIR ASSOCIATED SERVICES. EXCEPT AS OTHERWISE PROVIDED IN THIS AGREEMENT, FOUNDATION WILL NOT BE LIABLE FOR DAMAGES FOR LOST PROFITS, OR OTHER CONSEQUENTIAL, EXEMPLARY, INCIDENTAL OR PUNITIVE DAMAGES ARISING OUT OF THIS AGREEMENT OR PERFORMANCE OF THE OBLIGATIONS HEREUNDER. FOR THE AVOIDANCE OF DOUBT, THIS SECTION DOES NOT AND SHALL NOT LIMIT ANY OF FOUNDATION'S OBLIGATIONS AS SET FORTH IN SECTION 12 OF THIS AGREEMENT.
11. **Assumption of Risk:** Grantee hereby agrees to assume all risks and liabilities associated with the use, operation, maintenance, safety, and condition of the Mini Pitch, except those risks or liabilities caused, or alleged to be caused, by the negligence or willful misconduct of Grantor.
12. **Indemnification:** Grantee agrees to indemnify, defend and hold harmless Foundation, its parent, subsidiary and affiliated companies, sponsors, benefactors, donors, officers, directors, employees, accountants, attorneys, agents, successors and assigns ("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 the Mini Pitch Project, the Mini Pitch or 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 Pitches, or any person's use of the Mini Pitches, whether authorized or unauthorized, proper or improper except Claims caused, or alleged to be caused, by the negligence or willful misconduct of Grantor. Grantee's indemnification obligation hereunder shall survive the expiration or earlier termination of this Agreement. Without limiting this obligation, Grantee will maintain the insurance described in Section 13 of this Agreement.

Foundation agrees to indemnify, defend and hold harmless Grantee, its parent, subsidiary and affiliated companies, sponsors, benefactors, donors, officers, directors, employees, accountants, attorneys, agents, successors and assigns ("Grantee 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 the Mini Pitch Project, the Mini Pitch or 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 supply, delivery, or construction of the Mini Pitch, or any person's use of the Mini Pitch, whether authorized or unauthorized, proper or improper, except Claims caused, or alleged to be caused, by the sole negligence or willful misconduct of Grantee. Foundation's indemnification obligation hereunder shall survive the

expiration or earlier termination of this Agreement. Without limiting this obligation, Foundation will maintain the insurance described in Section 13 of this Agreement.

13. Insurance Requirements:

- (a) **Insurance Requirements of Grantee.** At all times while the Mini Pitch is in place, Grantee shall provide and maintain, at its expense, the following insurance, or equivalent 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 the Mini Pitch Project and the Mini Pitch to 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 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 Liability, Automobile Liability and Employer's 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 satisfactory to Foundation and that are licensed to do business in the state in which the Mini Pitch is 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 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.

- (b) **Insurance Requirements of Foundation.** At all times while the Mini Pitch is in place, Foundation shall provide and maintain, at its expense, the following insurance, or equivalent 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 the Mini Pitch Project and the Mini Pitch to 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 City, its officers, officials, employees, agents, and volunteers as Additional Insureds.

- ii. Automobile Liability insurance covering liability arising out of Foundation'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 Foundation 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 Liability, Automobile Liability and Employer's 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 Pitch; and (2) shall be written by insurance companies that are satisfactory to Grantee and that are licensed to do business in the state in which the Mini Pitch is located. Foundation shall not allow any of the required policies to be materially changed, reduced or cancelled unless Foundation provides thirty (30) days prior written notice thereof to Grantee.

Upon execution of this Agreement, Foundation shall provide Grantee with a certificate of 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.

- 14. **Participant Waiver and Release Forms:** To the extent that Grantee requires 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.
- 15. **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.
- 16. **Applicable Law; Jurisdiction:** This Agreement shall be governed by and construed in accordance with the laws of the 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 the California, and by execution and delivery of this Agreement, such party irrevocably consents to jurisdiction and venue in each such court.
- 17. **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.
- 18. **Notices:** Any notices or communications given under this Agreement must be made in writing (a) if to Foundation, at the address of Foundation as hereinabove set forth or at such other address as Foundation

may designate by notice, or (b) if to Grantee, at the address of Grantee as hereinabove set forth or at such other address as Grantee may designate by notice.

- 19. **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.
- 20. **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 one and 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.
- 21. **Administrative Claims Requirements and Procedures.** No suit or arbitration shall be brought arising out of this Agreement against City unless a claim has first been presented in writing and filed with City and acted upon by City in accordance with the procedures set forth in Chapter 1.34 of the Chula Vista Municipal Code, as same may be amended, the provisions of which, including such policies and procedures used by City in the implementation of same, are incorporated herein by this reference. Upon request by City, Consultant shall meet and confer in good faith with City for the purpose of resolving any dispute over the terms of this Agreement.
- 22. **Electronic Signatures.** The words “execution”, “execute”, “signed”, “signature”, and words of like import in or related to any document signed or to be signed in connection with this Agreement and the transactions contemplated hereby shall be deemed to include electronic signatures, the electronic matching of assignment terms and contract formations on electronic platforms approved by the Parties, or the keeping of records in electronic form, each of which shall be of the same legal effect, validity or enforceability as a manually executed signature or the use of a paper-based recordkeeping system, as the case may be, to the extent and as provided for in any applicable law, including the Federal Electronic Signatures in Global and National Commerce Act, the California Uniform Electronic Transaction Act, or any other similar state laws based on the Uniform Electronic Transactions Act.
- 23.

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

City of Chula Vista

By: _____

By: _____
(Sign)

Name: Rob Kaler

Name: _____
(Print Name)

Title: COO & General Counsel

Title: _____
(Print Title)

Date: _____

Date: _____

(Print Date)

ATTACHMENT A

