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Date March 7, 2022

APPROVAL OF DONATION, CONSTRUCTION AND NAMING AGREEMENT WITH KICK IT FORWARD REGARDING MINI-PITCH FUTSAL COURT SYSTEMS AT CHESTERFIELD PARK, EVERGREEN PARK, STONE PARK, TOWER PARK, AND NAMING SUCH FUTSAL COURTS "KICK IT FORWARD MINI-PITCH SYSTEM"

WHEREAS, the City of Des Moines, acting through the Parks and Recreation Department, operates Chesterfield Park, Evergreen Park, Stone Park, and Tower Park; and

WHEREAS, Kick It Forward, an Iowa non-profit corporation, working together with other donors, desires to make a charitable contribution for the benefit of the residents of Des Moines by funding and coordinating the procurement and installation of one Mini-Pitch Futsal Court System at Chesterfield Park, one Mini-Pitch Futsal Court System Evergreen Park, one Mini-Pitch Futsal Court System Stone Park, and one Mini-Pitch Futsal Court System Tower Park; and

WHEREAS, the Parks and Recreation Department desires to accept such donation and City staff have negotiated a Donation, Construction and Naming Agreement Between Kick It Forward and the City of Des Moines Regarding Installation of Mini-Pitch Futsal Court Systems, a copy of which is on file in the City Clerk's Office; and

WHEREAS, pursuant to such Agreement, the Parks and Recreation Director will accept such improvements on behalf of the City upon their completion; and

WHEREAS, such Agreement provides that the Mini-Pitch futsal courts will be named the "Kick It Forward Mini-Pitch Systems" upon completion of such courts and acceptance by the City; and

WHEREAS, in accordance with the Policy for the Naming of Streets, Facilities and Parkland in the City of Des Moines, the City Council has the authority to make exceptions to such Policy upon finding appropriate circumstances to consider or expedite the naming or renaming of a park facility; and

WHEREAS, the City Council finds that there are appropriate circumstances in this proposal to meet the requirements of the Policy for the Naming of Streets, Facilities and Parkland in the City of Des Moines and that it is in the best interests of the City to approve this Donation, Construction and Naming Agreement.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Des Moines, Iowa, that the Donation, Construction, and Naming Agreement with Kick It Forward for the Mini-Pitch Futsal Court Systems at Chesterfield Park, Evergreen Park, Stone Park, and Tower Park, a copy of which is on file in the City Clerk's Office, is hereby approved and the Mayor is authorized and directed to sign such Agreement on behalf of the City and the City Clerk is directed to attest to his signature.



Date March 7, 2022

BE IT FURTHER RESOLVED that the Mini-Pitch futsal court at Chesterfield Park shall be and is hereby named and to be known as the "Chesterfield Park Kick It Forward Mini-Pitch System" for a period of 20 years upon compliance by Kick It Forward with the terms of said Agreement and completion of construction of such Mini-Pitch Futsal Court and its acceptance by the Parks and Recreation Director.

BE IT FURTHER RESOLVED that the Mini-Pitch futsal court at Evergreen Park shall be and is hereby named and to be known as the "Evergreen Park Kick It Forward Mini-Pitch System" for a period of 20 years upon compliance by Kick It Forward with the terms of said Agreement and completion of construction of such Mini-Pitch Futsal Court and its acceptance by the Parks and Recreation Director.

BE IT FURTHER RESOLVED that the Mini-Pitch futsal court at Stone Park shall be and is hereby named and to be known as the "Stone Park Kick It Forward Mini-Pitch System" for a period of 20 years upon compliance by Kick It Forward with the terms of said Agreement and completion of construction of such Mini-Pitch Futsal Court and its acceptance by the Parks and Recreation Director.

BE IT FURTHER RESOLVED that the Mini-Pitch futsal court at Tower Park shall be and is hereby named and to be known as the "Tower Park Kick It Forward Mini-Pitch System" for a period of 20 years upon compliance by Kick It Forward with the terms of said Agreement and completion of construction of such Mini-Pitch Futsal Court and its acceptance by the Parks and Recreation Director.

BE IT FURTHER RESOLVED that the Parks and Recreation Director is authorized to accept such completed Mini-Pitch Futsal Courts n behalf of the City effective upon the date of such written communication to Kick it Forward.

(Council Communication No. 22- **096**) Moved by _____ to adopt.

Second by: _____.

APPROVED AS TO FORM:

Ann DiDonato Ann DiDonato, Assistant City Attorney

COUNCIL ACTION	YEAS	NAYS	PASS	ABSENT
COWNIE				
BOESEN				
GATTO				
SHEUMAKER				
MANDELBAUM				
VOSS				
WESTERGAARD				
TOTAL				
MOTION CARRIED			APPROVED	
_____ Mayor				

CERTIFICATE

I, P. Kay Cmelik, City Clerk of said City hereby certify that at a meeting of the City Council of said City of Des Moines, held on the above date, among other proceedings the above was adopted.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my seal the day and year first above written.

_____ City Clerk

DONATION, CONSTRUCTION, AND NAMING AGREEMENT
BETWEEN
KICK IT FORWARD
AND
THE CITY OF DES MOINES
REGARDING INSTALLATION OF MINI-PITCH FUTSAL COURT SYSTEMS
AT TOWER, STONE, CHESTERFIELD, AND EVERGREEN PARKS

This Donation Agreement, hereinafter “Agreement”, made and entered into this ____ day of _____, 2022 by and between the City of Des Moines, Iowa, 1551 E. Martin Luther King Jr. Pkwy, Des Moines, Iowa 50317, (the “CITY”) and Kick It Forward, an Iowa nonprofit corporation, located at 301 East Walnut, Studio 6, Des Moines, Iowa 50309 (“Donor”).

WHEREAS, the CITY Parks and Recreation Department is charged with the responsibility of providing safe recreation amenities within the City of Des Moines; and

WHEREAS, Donor, working together with other donors, desires to make a charitable contribution for the benefit of the citizens of Des Moines by funding and coordinating the procurement and installation (for purposes of this Agreement “installation” also includes “construction”) of four (4) Mini-Pitch Futsal Court Systems, with one large system at Tower Park, one large system at Stone Park, one medium system at Chesterfield Park, and one large system at Evergreen Park (“the Parks”), as shown on the attached **Exhibit A**. The Futsal Court Systems include: the structure, lighting, two coats of acrylic resurfacing, two coats of acrylic court painting (one color scheme), court lines, any related materials and labor to install the donation (the “Mini-Pitch Futsal Courts Systems”), as described herein and as shown on the attached **Exhibit B**; and the naming rights as well as donor recognition plaque as shown on the attached **Exhibit C**.

WHEREAS, the Donor is desirous of installing the Mini-Pitch Futsal Court Systems at Tower and Evergreen Parks in the Fall of 2022, and Chesterfield and Stone Parks in the Fall of 2023, as described herein; and

WHEREAS, the CITY is desirous of accepting such donation.

NOW, THEREFORE, in consideration of the mutual covenants, promises, and agreements hereinafter set forth, the parties agree as follows:

I. DONOR’S RESPONSIBILITIES

A. MATERIALS AND EQUIPMENT

1. Donor agrees to fund and contract for the purchase and construction of the Mini-Pitch Futsal Court Systems, signage and protection of existing improvements, to be constructed in the timeline noted above, and if all work cannot be completed during either designated time, a new timeline must be mutually agreed to by the CITY and Donor.

2. The CITY Parks and Recreation Director, or his designee, shall review and approve all design and construction documents. The Donor agrees that the Mini-Pitch Futsal Court Systems shall be completed in strict adherence to the design as approved by the CITY. Any deviations from the design and construction documents shall be permitted only with the prior written approval of the CITY Parks and Recreation Director.
3. The design and installation of the Mini-Pitch Futsal Court Systems shall be in compliance with the City of Des Moines ADA Transition Plan and the 2010 ADA Standards for Accessible Design, and as amended, and implementing regulations and the Donor shall apply for and receive all necessary permits and CITY board, commission and CITY Council approvals.
4. Donor represents to CITY that Donor has fully secured funding for four Mini Pitch Futsal Court Systems.
5. In consideration of the CITY accepting the Mini-Pitch Futsal Court Systems improvements prior to completion of painting of the Court surface, Donor agrees to complete painting of the Futsal Court surfaces by a mutually agreeable date to be determined by the parties to this Agreement, once each Mini-Pitch Futsal Court System has been installed, and no later than December 31, 2025. Donor agrees to provide the Parks and Recreation Director, or his designee, with at least seven days written notice prior to such painting work in order for the CITY to provide notice to the public. Donor agrees to complete such painting work in a timely manner to the satisfaction of the Parks and Recreation Director, or his designee.

B. CONSTRUCTION

1. Donor shall engage and be responsible for all costs and the payment of a general contractor (“General Contractor”) for the installation/construction of The Mini-Pitch Futsal Court Systems, including: structure, lighting, two coats of acrylic resurfacing, two coats of acrylic court color painting (one color scheme, as approved by the Director of Parks and Recreation), court lines, signage, and protection of existing improvements. The responsibilities of the Donor shall include:
 - a. Providing all materials for the installation/construction of the Mini-Pitch Futsal Court Systems.
 - b. The timely payment of all fees, costs, charges, and expenses associated with this work, including all required permit fees.
 - c. Requiring the General Contractor to: (1) indemnify the CITY and obtain and maintain in continuous effect the insurance coverages and agree to the indemnification requirements specified in **Attachment 1** of this Agreement; and (2) impose the same requirements on any subcontractor. Donor shall require the General Contractor shall (1) provide the CITY with a certificate of insurance verifying the General Contractor’s compliance with this coverage requirement at least two weeks prior to the beginning of any work by the contractor; and (2) impose the same requirements on any subcontractor. Donor must provide the City with a

copy of the contract between the Donor and the General Contractor so that the City may determine compliance with the indemnification requirements of this subsection.

- d. Require the General Contractor to meet onsite with a Parks and Recreation Department representative at least two weeks before construction to determine the needed site protection, which includes but is not limited to: caution tape, snow fencing and t-posts, signage, and flaggers when equipment is being driven within the park.
 - 1) These methods will ensure that all materials, equipment, tools, General Contractor's staff, and park visitors are safe during construction and until the close out of work to install the Mini-Pitch Futsal Court Systems.
 - 2) The City and General Contractor must agree to the needed site protection, site access for staff and equipment, parking and storage areas, delivery areas, ways to secure the work area and materials to avoid disruption to the park and its visitors.
- e. Coordinating closely with the CITY to provide construction dates to the CITY. General Contractor is responsible for maintaining court closure and signage, blockades, and other devices for the duration of the construction period until the Mini-Pitch Futsal Courts can be safely accessed by the public.
- f. Delivering to the CITY all project construction documents, records, and equipment manuals upon acceptance of the Mini-Pitch Futsal Court Systems by the CITY.
- g. Donor and General Contractor, or applicable subcontractors, shall be responsible for obtaining and compiling with any necessary building and electrical permits from the CITY Permit and Development Center. Allowing the Parks and Recreation Department Director or his designee access to conduct any inspection he or she deems necessary.
- h. Requiring the General Contractor to be on-site, including the removal of all equipment and materials, for no longer than ten (10) days for each court installation project. This provision applies to structure installation, only. Installation of the acrylic surface is weather dependent. CITY and DONOR will mutually agree for each site the time frame for installation of each acrylic surface.
- i. Requiring the General Contractor to restore the site used for staging to the same condition as prior to the start of construction activities.
- j. Provide and transfer, as needed, to the CITY, the manufacturer's and contractor's warranties of the Mini-Pitch Futsal Court Systems.

II. CITY'S RIGHTS AND RESPONSIBILITIES

- A. The CITY will provide, as the CITY and DONOR mutually agree for each site, the necessary court paving, and electrical line installation to each site per Mini-Pitch Futsal Court System requirements. Such work will be accomplished 45 days

prior to each system installation schedule date.

- B. The DONOR and General Contractor will provide the CITY all product specifications including but not limited to acrylic product color options 60 days before commencement.
- C. The CITY retains the right to preform or contract color modification to each mini-pitch futsal court system surface. Including but not limited to multi-color acrylic surfaces.
- D. CITY will provide DONOR and its General Contractor a surface design for a one-color acrylic surface for each Mini-Pitch Futsal Court System 45 days before commencement of the installation of the first Mini-Pitch Futsal Court system. Installation of a multi-color acrylic surface will result in additional cost to CITY.
- E. Upon completion of the CITY's work as required in Section A above, the CITY agrees to provide site access to those portions of the Parks which are needed for the construction and installation of The Futsal Courts. CITY will also provide DONOR and its General Contractor notification of areas in Parks to be avoided and locate all underground utilities not covered by the local utility (such as water lines, irrigations systems and sprinkler heads).
- F. CITY shall notify DONOR and its General Contractor of any applicable permitting requirements.
- G. The CITY shall assist with communicating to the public the necessary park closures for construction and installation of the Futsal Courts.

III. ENCUMBRANCES AND LIENS.

Neither the Donor nor anyone claiming by, through, or under the Donor shall have the right to file or place any mechanic's lien or any other lien of any kind or character whatsoever upon The Mini-Pitch Futsal Court Systems or Tower Park or Stone Park or Chesterfield Park or Evergreen Park any CITY property. Notice is hereby given that no contractor, subcontractor, or anyone else who may furnish any materials, service, or labor for any improvements, alterations, repairs, or any part thereof shall at any time be or become entitled to any lien thereon. For the further security of CITY, the Donor covenants and agrees to give actual notice thereof in advance to any and all contractors and subcontractors who may furnish or agree to furnish any such material or labor and further agrees to include such a provision in every agreement made with contractors and subcontractors in connection with the Mini-Pitch Futsal Court Systems.

IV. INSURANCE AND INDEMNIFICATION

The Donor's General Contractor shall purchase and maintain Commercial General Liability Insurance coverage and shall include the City as an additional Insured with respect to its "Product-Completed Operations" coverage and shall maintain such coverage and Additional

Insured status for a period of one year following the CITY taking ownership of the Mini-Pitch Futsal Court Systems. Donor shall provide the CITY with a certificate of insurance verifying compliance with this coverage requirement prior to execution of this Agreement. Donor shall also hold and save the CITY harmless for any and all claims due to loss associated with Product-Completed Operations exposures to the extent that such losses are covered by Donor's insurance. Donor also agrees to waive subrogation for itself and anyone claiming through or under Donor against the CITY for any insured loss related to Product-Completed Operations exposures for a period of one year following the CITY taking ownership of the Mini-Pitch Futsal Court Systems.

The Donor shall and hereby agrees to hold and save the CITY harmless for any and all claims due to the loss or damage of any personal property owned or borrowed by the Donor and brought to either Tower, Stone, Chesterfield, or Evergreen Parks for the installation of the Mini-Pitch Systems.

The CITY shall and hereby agrees to hold and save Donor harmless for any and all claims that may arise out of use of the Mini-Pitch Futsal Court Systems upon and following the City's taking ownership of the Mini-Pitch Futsal Court Systems.

V. ACCEPTANCE OF THE IMPROVEMENTS

Upon completion of each Mini-Pitch Futsal Court System installation, such improvements shall be reviewed by the CITY Parks and Recreation Project Manager or his designee. Notwithstanding the foregoing, the CITY shall consider the installation of the Mini-Pitch Futsal Court Systems complete if the Parks and Recreation Director determines that the only remaining work is for painting of the Court. Such acceptance of the Mini-Pitch Futsal Court Systems improvements is subject to Donor completing all required painting of the Futsal Court surface to the satisfaction of the Parks and Recreation Director or his designee by a mutually agreeable date to be determined by the parties to this Agreement as each Mini-Pitch Futsal Court System has been installed. Upon such acceptance in writing by the Parks and Recreation Director, the Mini-Pitch Futsal Court Systems shall immediately become the property of the CITY and the Donor forfeits all rights to such donation and improvements. It is expressly agreed and understood that nothing in this Agreement shall be construed as empowering the Donor to encumber, mortgage or pledge any interest in the site or improvements thereon in any manner whatsoever.

VI. NAMING

Upon completion of each of the Mini-Pitch Futsal Court System and acceptance of each such Mini-Pitch Futsal Court System, pursuant to Section V above, the Tower Park Futsal Court System shall be designated the "Tower Park Kick it Forward Mini-Pitch System", Stone Park Futsal Court System shall be designated the "Stone Park Kick it Forward Mini-Pitch System", Chesterfield Park Futsal Court System shall be designated the "Chesterfield Park Kick it Forward Mini-Pitch System", and Evergreen Park Futsal Court System shall be designated the "Evergreen Park Kick it Forward Mini-Pitch System" for a period of 20 years. Such naming designation is subject to compliance with the CITY's Policy for Naming of Streets, Facilities and Park Land in the City of Des Moines. Signage indicating the Tower, Stone, Chesterfield, and Evergreen Parks Mini-Pitch Futsal Court names will be displayed at each respective Court site.

Such signage location, size, shape and wording must receive the approval of the Donor and the Parks and Recreation Department Director prior to installation. Donor shall pay all costs of such signs.

The parties acknowledge that during the term of this Agreement, if Donor intends to change the name of one or any of the Courts, in a manner consistent with the name change of "Donor". Donor shall have the right to request such name change for approval by the City Council. If in conformance with the current CITY's Policy for Naming of Streets, Facilities and Park Land in the City of Des Moines, the Parks and Recreation Director will recommend approval of such name change to the City Council. A naming change will not lengthen the 20 year term of this Agreement.

Naming recognition is subject to future change/reconsideration by the CITY in the event that the recognition becomes damaging to the CITY's reputation, or contradictory to applicable law, as determined by the CITY, in conformance with the CITY's Policy for Naming of Streets, Facilities and Park Land in the City of Des Moines, as it may be amended from time to time.

VII. DONOR RECOGNITION PLAQUE

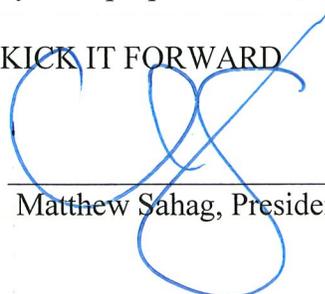
Donor shall have the right to display a Donor recognition plaque upon completion of each Futsal Court installation. Donor agrees to pay the costs of the Donor recognition plaque and its installation. The plaque shall be no more than 2 feet by 3 feet in area unless approved by the CITY Parks and Recreation Director (**See Exhibit C**). The plaque size, content, and installation location must be approved by the CITY Parks and Recreation Director via written approval letter prior to installation. The CITY shall not be responsible for the repair or replacement of such plaque.

IX. TERM

The term of this Agreement shall commence on the date signed and continue until the Mini-Pitch Futsal Court Systems have been accepted by the CITY, the Donor sign has been installed, and painting of all of the Mini-Pitch Futsal Courts Systems has been completed to the satisfaction of the CITY. This Agreement shall be subject to the continuing requirements pursuant to section IV, VI, and VII of this Agreement. Either party may terminate this Agreement upon a material breach of any term or condition set forth herein by first providing notice in writing specifying the breach and providing a 30 day period in which to cure such breach to the party in breach.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their proper officers, duly authorized, therefore.

KICK IT FORWARD



Matthew Sahag, President

CITY OF DES MOINES, IOWA

T. M. Franklin Cownie, Mayor

EXHIBIT A

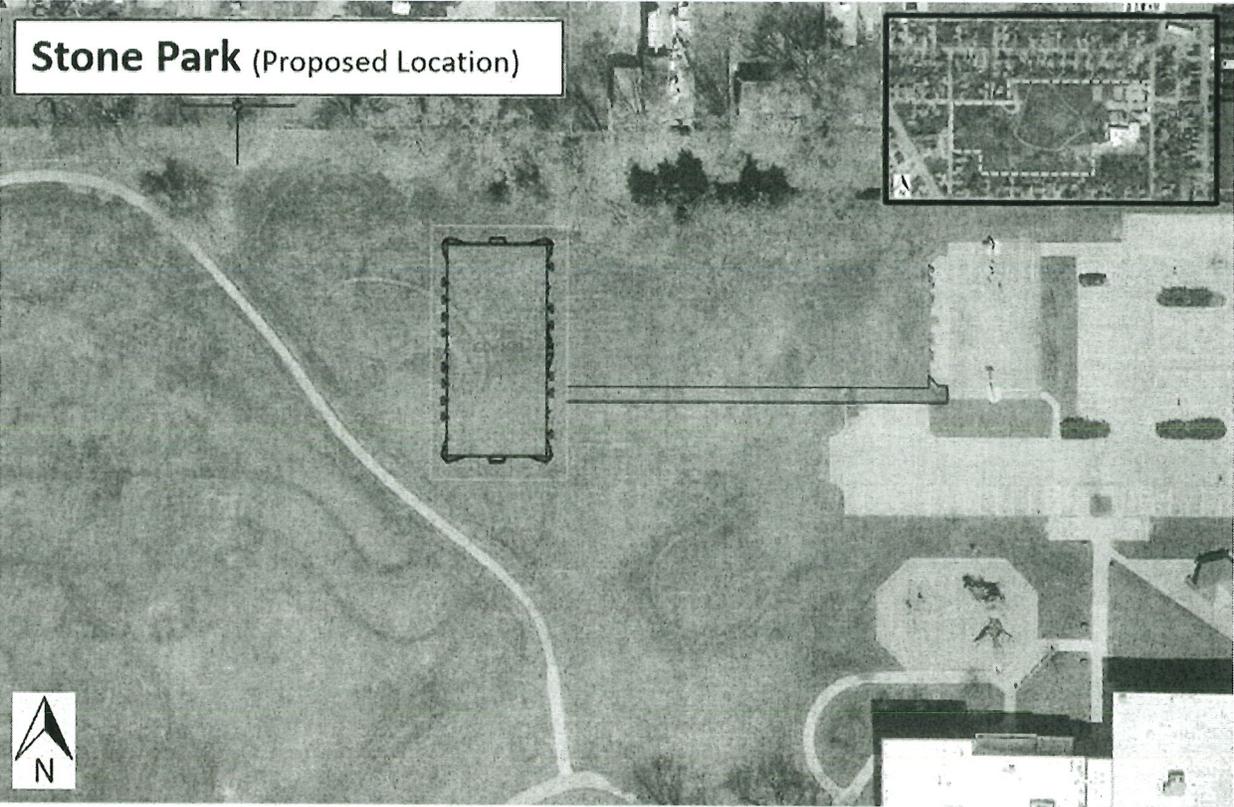
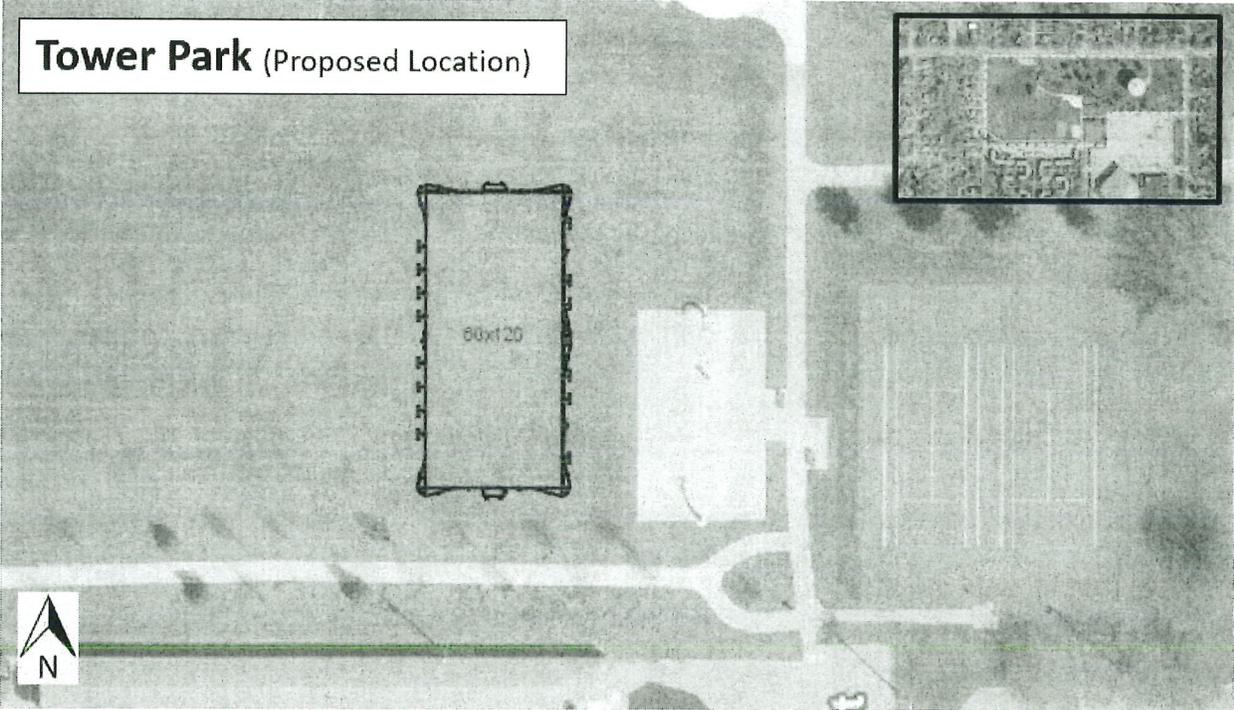


EXHIBIT A

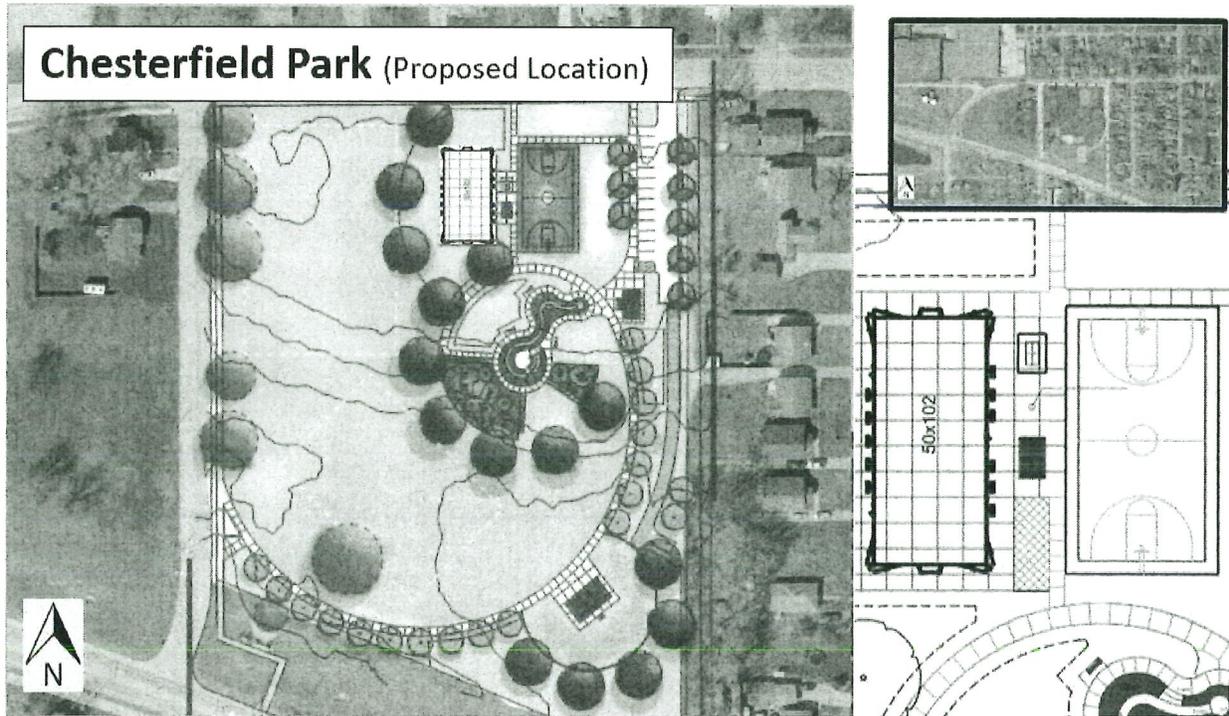
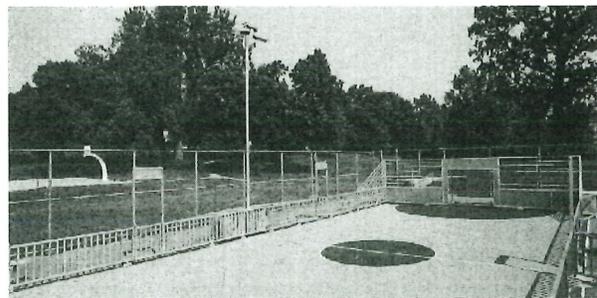


Exhibit B Mini-Pitch Futsal Court System

Mini-Pitch Futsal Court System Includes

Galvanized steel modular systems (Large System: 60'x120', Medium System: 50'x104'), (1) LED Light fixture with lighting control system, built-in goals, benches, cup holders, (3) ADA-compliant access points, lockable storage, naming rights signage, donor recognition plaque, acrylic resurfacing, two color acrylic court painting, and court line striping.

Product Images



**Images are of previously installed Mini-Pitch systems at Birdland, Cheatom, and EK Davis Parks in Des Moines.*

Court Painting



All court playing surfaces are to have two coats of acrylic resurfacing applied to surface prior to the color. Court color is to be a one-color scheme, similar application to the image on the left. Each court's color schemes are to be approved by the Director of Parks and Recreation, prior to contractor purchasing materials to ensure colors work within existing park and surrounding community elements.

Exhibit C

Naming Rights Signage

- As stated in the Naming, Section VI: Such signage location, size, shape and wording must receive the approval of the Donor and the Parks and Recreation Department Director prior to installation.

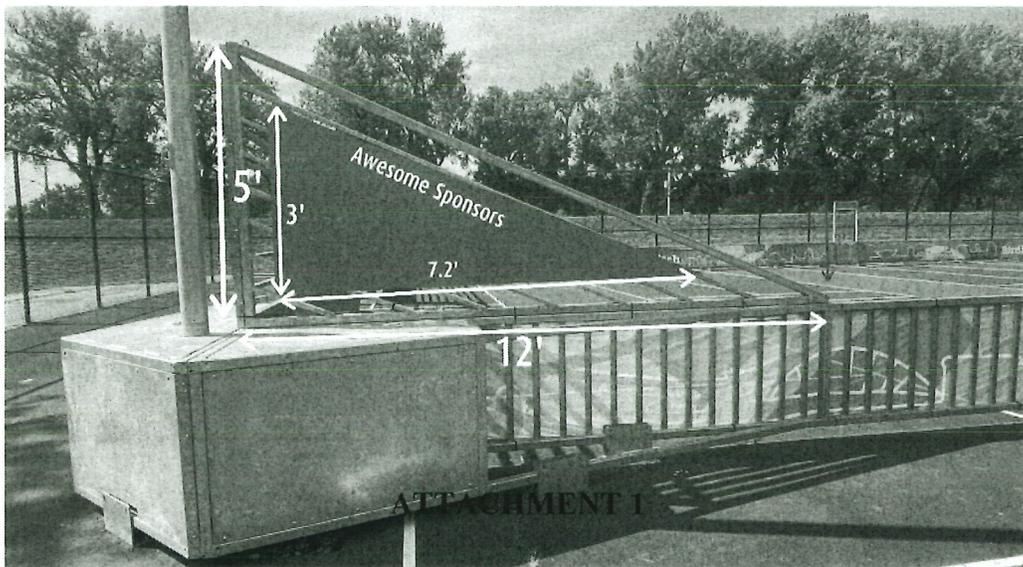
Example Images of Naming Rights Signage Concept



Donor Recognition Plaque

- As stated in the Donor Recognition Plaque, Section VII: The plaque shall be no more than 2 feet by 3 feet in area unless approved by the Director of Parks and Recreation. The plaque size, content, and installation location must be approved by the CITY Parks and Recreation Director via written approval letter prior to installation.

Example Image of Donor Plaque Concept



**CITY OF DES MOINES, IOWA
STANDARD – MAJOR**

INSURANCE & INDEMNIFICATION REQUIREMENTS FOR CONTRACTOR

1. GENERAL

For purposes of this Attachment “Contractor” shall refer to the General Contractor hired or otherwise engaged by Kick It Forward, to perform services at Tower, Stone, Chesterfield, and Evergreen Parks under this Agreement. The Contractor shall purchase and maintain insurance to protect the Contractor, Kick It Forward, and CITY throughout the duration of this Agreement. Said insurance shall be provided by insurance companies “admitted” or “nonadmitted” to do business in the State of Iowa having no less than an A. M. Best Rating of “B+.” All policies shall be written on an occurrence basis and in form and amounts satisfactory to the CITY. Certificates of Insurance confirming adequate insurance coverage shall be submitted to the CITY prior to Contract execution or commencement of work and/or services.

2. INSURANCE REQUIREMENTS

A. WORKER’S COMPENSATION & EMPLOYER’S LIABILITY INSURANCE: The Contractor shall procure and maintain Worker’s Compensation Insurance, including Employer’s Liability Coverage, both written with State of Iowa statutory limits. ***Waiver of Subrogation in favor of the CITY is required.***

B. COMMERCIAL GENERAL LIABILITY INSURANCE: The Contractor shall procure and maintain Commercial General Liability insurance on an occurrence basis with limits of liability not less than \$1,000,000 per occurrence and \$2,000,000 aggregate combined single limit covering Personal Injury, Bodily Injury and Property Damage. Coverage shall include: (a) Contractual Liability, (b) Premises and Operations, (c) Products and Completed Operations, (d) Independent Contractors Coverage, (e) Personal and Advertising Injury and (f) Explosion, Collapse and Underground- XCU (when applicable). ***Waiver of Subrogation in favor of the CITY is required.*** The policy shall be endorsed to include an Aggregate Per Location endorsement.

Coverage shall be no less comprehensive and no more restrictive than the coverage provided by ISO standard Commercial General Liability Policy form ISO CG 0001 including standard exclusions or a non-ISO equivalent form.

C. AUTOMOBILE LIABILITY INSURANCE: The Contractor shall procure and maintain Automobile Liability Insurance with limits of liability of not less than \$1,000,000 per occurrence combined single limit covering Bodily Injury and Property Damage. Coverage shall include all owned, non-owned, and hired vehicles. If the Contractor’s business does not own any vehicles, coverage is required on non-owned and hired vehicles. Policy shall include Contractual Liability coverage. ***Waiver of Subrogation in favor of the CITY is required.***

D. UMBRELLA/EXCESS LIABILITY INSURANCE: The General Liability and Automobile Liability Insurance requirements above may be satisfied with a combination of primary and Umbrella or Excess Liability Insurance. If the Umbrella or Excess Insurance policy does not follow the form of the primary policies, it shall include the same endorsements as required of the primary policies. ***Waiver of Subrogation in favor of the CITY is required.***

- E. **ADDITIONAL INSURED ENDORSEMENT:** The General Liability Insurance policy shall include the CITY as an Additional Insured. The General Liability Insurance policy shall include standard ISO endorsements CG 20 26 07 04 and CG 20 37 07 04 or their ISO/non-ISO equivalents. The Contractor's insurance shall be primary to that of the City and noncontributory to any other insurance or similar coverage available to the CITY whether the other available coverage is primary, contributing or excess.
- F. **GOVERNMENTAL IMMUNITY ENDORSEMENT:** The General Liability Insurance policy shall include the CITY Governmental Immunities Endorsement language as provided below. Standard ISO or insurance carrier "Waiver of Immunity" endorsements are not acceptable.

CITY OF DES MOINES, IOWA
GOVERNMENTAL IMMUNITIES ENDORSEMENT

1. **Nonwaiver of Government Immunity.** The insurance carrier expressly agrees and states that the purchase of this policy and the including of the City of Des Moines, Iowa as Additional Insured does not waive any of the defenses of governmental immunity available to the City of Des Moines, Iowa under Code of Iowa Section 670.4 as it now exists and as it may be amended from time to time.
 2. **Claims Coverage.** The insurance carrier further agrees that this policy of insurance shall cover only those claims not subject to the defense of governmental immunity under the Code of Iowa Section 670.4 as it now exists and as it may be amended from time to time. Those claims not subject to Code of Iowa Section 670.4 shall be covered by the terms and conditions of this insurance policy.
 3. **Assertion of Government Immunity.** The City of Des Moines, Iowa shall be responsible for asserting any defense of governmental immunity, and may do so at any time and shall do so upon the timely written request of the insurance carrier. Nothing contained in this endorsement shall prevent the carrier from asserting the defense of governmental immunity on behalf of the City of Des Moines, Iowa.
 4. **Non-Denial of Coverage.** The insurance carrier shall not deny coverage under this policy and the insurance carrier shall not deny any of the rights and benefits accruing to the City of Des Moines, Iowa under this policy for reasons of governmental immunity unless and until a court of competent jurisdiction has ruled in favor of the defense(s) of governmental immunity asserted by the City of Des Moines, Iowa.
 5. **No Other Change in Policy.** The insurance carrier and the City of Des Moines, Iowa agree that the above preservation of governmental immunities shall not otherwise change or alter the coverage available under the policy.
- G. **CANCELLATION & NONRENEWAL NOTIFICATION ENDORSEMENT:** The General Liability Insurance policy shall be endorsed to provide the CITY with no less than thirty (30) days Advance Written Notice of Cancellation, forty-five (45) days Advance Written Notification for Nonrenewal and ten (10) days Written Notification of Cancellation due to non-payment of premium. ***Written notifications shall be sent to: City of Des Moines, Procurement Administrator, City Hall, 400 Robert D. Ray Drive, Des Moines, Iowa 50309.***
- H. **WAIVER OF SUBROGATION:** To the fullest extent permitted by law, Contractor hereby releases the CITY, including its elected and appointed officials, agents, employees and volunteers and others

working on its behalf, from and against any and all liability or responsibility to the Contractor or anyone claiming through or under the Contractor by way of subrogation or otherwise for any loss without regard to the fault of the CITY or the type of loss involved including loss due to occupational injury. This provision shall be applicable and in full force and effect only with respect to loss or damage occurring during the time of this Contract. The Contractor's policies of insurance shall contain either a policy provision or endorsement affirming the above stated release in favor of the CITY including its elected and appointed officials, agents, employees and volunteers, and others working on its behalf.

- I. **PROOF OF INSURANCE**: The Contractor shall provide to the CITY Certificates of Insurance evidencing all insurance coverage as required in paragraphs A through H above utilizing the latest version of the ACORD form. The Certificate(s) of Insurance shall specify the Title of the Agreement under "Description of Operations/Locations/Vehicle/Special Items". A Copy of the (1) Additional Insured Endorsements, (2) Governmental Immunities Endorsement and (3) Cancellation and Nonrenewal Notification Endorsement shall be submitted with the Certificates of Insurance. ***Mail Certificates of Insurance to: City of Des Moines, Procurement Administrator, City Hall, 400 Robert D. Ray Drive, Des Moines, Iowa 50309.***
- J. **AGENTS AND SUBCONTRACTORS**: The Contractor shall require that any of its agents and subcontractors who perform work and/or services on behalf of the Contractor purchase and maintain the types of insurance customary for the services being provided.

3. **INDEMNIFICATION REQUIREMENTS**

For purposes of this Section 3, the term "CITY" means the City of Des Moines, Iowa and its elected and appointed officials, agents, employees and volunteers, and others working on its behalf. To the fullest extent permitted by law, Contractor agrees to defend, pay on behalf of, indemnify, and hold harmless the CITY against any and all claims, demands, suits, damages or losses, together with any and all outlay and expense connected therewith including, but not limited to, attorneys' fees and court costs that may be asserted or claimed against, recovered from or suffered by the CITY by reason of any injury or loss including, but not limited to, personal injury, bodily injury including death, property damage including loss of use thereof, and economic damages that arise out of or are in any way connected or associated with Contractor's work or services under this Agreement, including that of its officers, agents, employees, subcontractors and others under the control of Contractor.

Contractor's obligation to indemnify the CITY contained in this Agreement is not limited by the amount or type of damages, compensation or benefits payable under any workers' compensation acts, disability benefit acts, or other employee benefits acts.

The CITY shall not be liable or in any way responsible for any injury, damage, liability, claim, loss or expense incurred by Contractor arising out of or in any way connected or associated with Contractor's work or services under this Contract, including that of its officers, agents, employees, subcontractors and others under the control of Contractor, except to the extent caused by or resulting from the negligent act of the CITY.

Contractor expressly assumes responsibility for any and all damage caused to CITY property arising out of or in any way connected or associated with Contractor's work or services under this Contract, including that of its officers, agents, employees, subcontractors and others under the control of Contractor.

Contractor shall ensure that its activities on CITY property will be performed and supervised by adequately trained and qualified personnel and Contractor will observe all applicable safety rules.