

PLANNING DEPARTMENT
CITY OF SOUTH BEND

PERSONAL APPEARANCE AGREEMENT

This Personal Appearance Agreement, (the "Agreement") is entered into on October 30, 2019, (the "Effective Date") by and between the City of South Bend, Indiana, acting by and through its Board of Park Commissioners, for the benefit of the Venues Park and Arts Department, (hereinafter, the "City") and Brian Boitano Ventures LLC, a California limited liability company, together with Brian Boitano, the individual with a principal address of 1040 Francisco, San Francisco, California 94109, (hereinafter "Boitano")(each a "Party" and collectively the "Parties").

For and in consideration of the mutual covenants and promises contained herein, the Parties agree as follows:

1. Engagement. The City engages Boitano to provide services in connection with the personal appearances services, ("Services") described below. Boitano agrees to the following services and to participate in the following events on November 29, 2019, (the "Events").

A. Boitano agrees to do an in-person meet and greet and pose for photos in front of the Howard Park "Step and Repeat Stand" with donors and stakeholders from approximately 4-5 PM.

B. Boitano agrees to participate in the Howard Park Opening ribbon cutting ceremony and thereafter interact with attendees and the general public on and off the ice in the Howard Park Ice Skating area from approximately 6-8 PM.

C. Boitano agrees to be available to the media to discuss the importance of ice skating and his participation in the Howard Park Opening, between the hours of 12PM and 8PM.

2. Compensation.

A. In consideration of Boitano's Services, in connection with the Howard Park Opening under this Agreement, the City shall pay Boitano a fee of Six Thousand Four Hundred Eighteen Dollars (\$6,418.00). Such fee shall be paid no later than fifteen (15) days from date of receipt of invoice from Boitano and completion of Boitano's services under this Agreement.

B. Payment shall be made by check payable to Brian Boitano Ventures, LLC and delivered by hand to Boitano or mailed to Boitano at, 959 McKendrie Street, San Jose, CA 95126, unless otherwise notified by Boitano in writing.

C. In addition, the City shall provide two night's accommodations for Boitano November 29-30, 2019 at the Courtyard by Marriot, South Bend, IN.

Boitano shall not incur or seek reimbursement for any expenses beyond the Agreement amount.



3. Term. The term of this Agreement shall commence from the Effective Date listed above and shall continue until all obligations of the Boitano and City have been fulfilled hereunder.
4. Point of Contact. The City employee identified in Section 10 below will serve as the City's principal point of contact for purposes of this Agreement. Jeanne Martin and Linda Leaver, 10545 West Loyola Drive, Los Altos, CA 94024, will serve as Boitano's principal points of contact for purposes of this Agreement.
5. Use of Name and Likeness. Boitano agrees that beginning upon receipt of a fully-executed Agreement, Boitano shall allow use of Boitano's pre-approved name, photo and likeness, subject to the terms and conditions outlined herein, and the City may use such name and likeness solely in connection with the advertisement and promotion of the Event by the City. All such use shall be subject to Boitano's prior written approval, which shall not be unreasonably withheld, as to form and content with the understanding that Boitano shall approve or disapprove all such uses within three (3) business days of receipt of any advertising or promotional piece and that should Boitano not respond timely, the lack of response shall be considered as an approval. Further, Boitano agrees that once Boitano has approved a particular use (i.e. photo, likeness, form or style), Boitano shall not require approval for each future use of that same item, unless used in a materially different context. It is clearly understood, however, that no such advertisement, promotion or media use shall contain any direct or indirect endorsement by Boitano of any particular product, company, entity, charity, product category or service without Boitano's express written consent, which Boitano may withhold for any reason whatsoever. In no event will Boitano's services hereunder, or the results thereof, be used in any manner that would suggest a direct or indirect endorsement by Boitano of any particular product, company, entity, charity, product category, or service (including those of City's sponsors of the Event) without Boitano's written approval, which may be withheld in Boitano's sole discretion. The City acknowledges that Boitano shall have the right to use photos and tapes of his own performance for his personal use, for a sizzle reel, and on his website.
6. Independent Contractor Status/Relationship. The Parties recognize that Boitano is an independent contractor and not an employee, agent, co-venturer, or representative of the City. This Agreement does not constitute a partnership or joint venture between the City and Boitano. Neither party shall have any right to obligate or bind the other party in any manner whatsoever other than as provided for herein. The City will not withhold any taxes from amounts payable to Boitano hereunder unless required by law and shall have no obligation to provide Boitano with any benefits or insurance provided to employees of the City. Boitano acknowledges responsibility for payment of all taxes on amounts paid to Boitano under this Agreement and agrees to indemnify and hold harmless the City therefrom.
7. Indemnification. Boitano shall indemnify, and hold harmless the City, its officials, agents, and employees from and against any and all third-party claims based on a breach of Boitano's obligations under this Agreement or based on Boitano's representations and/or warranties under this Agreement. The City shall indemnify, and hold harmless, Boitano, and



Boitano's assigns, from and against any and all third-party claims arising out of any or in any way connected with the Event, or any breach of any representation, or warranties made by the City under this Agreement. In no event shall either Party be liable to the Other for any amount in excess of the amount of remuneration actually paid by City to Boitano hereunder (not including expenses), nor will either Party be liable for any consequential, direct, or indirect, incidental, reliance, special or punitive damages.

8. Injuries/Assumption of Risk. Boitano understands and acknowledges that injuries may occur in the course of any athletic activity, and Boitano specifically assumes all risk of any personal injury or damage to his property occurring during the course of Boitano's participation in the Event, provided that such injury or property damage is not caused by or as a result of the gross negligence or misconduct of the City or others under the City's control or direction. Boitano agrees to hold the City, harmless from and against any and all claims, losses or damages arising from Boitano's participation in the Event unless such claims, losses or damages are caused by or as a result of the gross negligence or misconduct of the City, its representatives, or others under the City's control or direction.

9. Assignment. Neither Party shall have the right to assign, or subcontract any of the rights or obligations under this Agreement without the prior written consent of the other Party, except that Boitano shall have the right to assign the financial benefits payable to Boitano. Any unauthorized assignment of this Agreement shall be void.

10. Notices. All notices or other communications and deliveries required or permitted under this Agreement, or permitted or desired to be given or made by any Party to the other, shall be in written form and given or made by hand delivery or by mail (certified or registered, return receipt requested) at or to the addresses set forth below or by electronic facsimile or email with confirmation sent by certified or registered mail. Any notice shall be deemed received on the date that it is hand delivered, or, in the event such notice is mailed, on the date which is the earlier of (a) five (5) business days subsequent to the date it is deposited with the United States Postal Service, or (b) the date of actual receipt.

Boitano:

Brian Boitano
10545 West Loyola Dr.,
Los Altos, CA 94024
Attn: Linda Leaver

City:

City of South Bend, Indiana
Venues Parks & Arts Department
301 S St Louis Blvd.,
South Bend, IN 46601

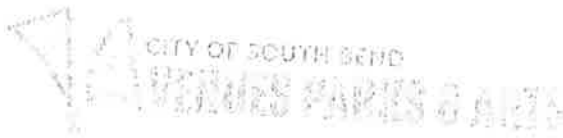


Attn: Annie Gawkowski

11. Entire Agreement. This Agreement constitutes the entire agreement between the Parties and supersedes all other oral or written understandings and agreements and may only be modified by a written agreement duly signed by both Parties.
12. Arbitration. Before referring any cause of action arising from this Agreement to the courts, the Parties agree to submit to non-binding arbitration or mediation. The Parties shall be responsible for their own costs as a result of any alternative dispute resolution process. All such alternative dispute resolution shall take place at a mutually agreed to location.
13. Severability. If any provision of this Agreement shall be declared illegal, invalid, void or unenforceable by any judicial or administrative authority, the validity of any other provision and of the entire Agreement shall not be affected thereby.
14. Cancellation/Force Majeure. If, for any reason other than the City's contractual breach, gross negligence, misconduct or error, Boitano fails, refuses or is unable for any reason to participate in the Event, or if the staging of the Event is interrupted or materially interfered with by reason of any governmental order, labor dispute or any other "force majeure" reason beyond the control of the Parties, the City has the right: (i) to terminate this Agreement without further obligation to Boitano, or (ii) if possible, to reschedule the Event to a mutually agreeable time and place, whereupon all applicable terms of Boitano's services hereunder, and this Agreement will continue in effect. In either case, the City will not be responsible for incidental or consequential damages incurred by Boitano as a result of a cancellation under the terms of this paragraph. The City agrees to pay Boitano any travel expenses incurred by Boitano (via copies of receipts of such expenses) if Boitano travels to the Event and the Event is cancelled.
15. Insurance. Mr. Boitano recognizes and accepts that the City is a municipal corporation organized under the laws of the State of Indiana and is self-funded under provisions of Indiana statute and local ordinance. Specifically, the City maintains blanket insurance coverage over real and personal property and is covered by a non-reverting insurance premium and liability reserve fund created by the City Ordinance No. 6657-79, pursuant to Indiana Code Section 34-13-34, as amended from time to time. Under said statute, the City's liability is limited to Seven Hundred Thousand Dollars (\$700,000) for a cause of action that accrues on or after January 1, 2009; and for injury to or death of all persons in a single occurrence, Five Million Dollars (\$5,000,000); and a governmental entity or an employee of a governmental entity acting within the scope of employment is not liable for punitive damages.

{Signature page follows}





1000 BATTLES
CITY OF SOUTH BEND
COUNCIL PERM

IN WITNESS OF THE ABOVE, the Parties hereby certify that this Agreement is executed by authorized signatories and becomes effective on the above Effective Date.

Brian Boitano Ventures LLC.

Brian Boitano
Signature

BRIAN BOITANO
Printed Name

11-4-19
Date

**City of South Bend, Indiana
Board of Park Commissioners**

Mark Neal, President

Consuela Hopkins, Vice-President

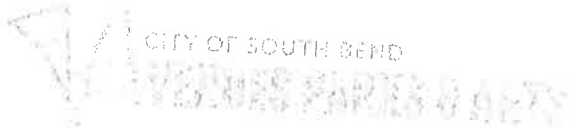
Aimee Bucellato, Member

Dan Farrell, Member

ATTEST:

Clerk





OFFICE OF THE
CITY CLERK

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