

## **AGREEMENT FOR COMMEMORATIVE DISPLAY ON CITY PROPERTY IN RIVERSIDE AREA OF SOUTH BEND, INDIANA WITH 1970 ALUMNI CLASS OF THE UNIVERSITY OF NOTRE DAME**

This Naming Rights Agreement (the "Agreement") is entered into on April 12, 2020 (the "Effective Date"), by and between the City of South Bend, Indiana, acting by and through its Board of Park Commissioners (the "City"), and the 1970 Alumni Class from the University of Notre Dame (hereinafter, "Class of 1970") (each a "Party" and collectively the "Parties").

The City owns real and personal property located adjacent to the St. Joseph River, north of Angela Blvd., east of Riverside Dr., and south of the culvert area on the west bank of the St. Joseph River (the "Property"), as depicted in Exhibit A, which is incorporated herein by reference and attachment.

The Parties desire to enter into an agreement pursuant to which the City will grant the Class of 1970 naming rights for a sculpture display (the "Display") on said Property in return for certain benefits set forth below.

In consideration of the following mutual promises and all other good and valuable consideration, the receipt and adequacy of which are acknowledged, the Parties agree as follows:

### Responsibilities

#### 1. City

- a. Preparation of Property and planting of trees
  - i. Soil test
  - ii. Ordering and planting of trees
  - iii. Care and maintenance of the trees, including replacement, if deemed necessary by the City.
- b. Boulder Rock transportation and placement
- c. Plaque installation
- d. Sculpture installation – location on Property agreed to by the Parties

#### 2. Alumni Class

The Alumni Class agrees to provide compensation to the City in the amount of \$7,050. The verbiage to be inscribed on the plaque will be finalized as agreed to by the Parties. It will include the following wording:

REUNION  
May 14, 2020 – Dunne + Hesburgh + King. Jr.  
"Rock, Paper, Shovel"  
Notre Dame Class of 1970

### Term; Termination.

The term of this Agreement is for a period of 15 years from the Effective Date. The City may terminate this Agreement at any time, if the City determines that such termination is in the best interest of the City. Written notice of termination must be provided to the Class of 1970 a minimum of thirty (30) days prior to the effective date of termination. If the City terminates this Agreement within the first five (5) years, the Class of 1970 will be entitled to a prorated refund of its payment in accordance with the schedule below.

Ownership.

The Class of 1970 acknowledges that at all times the ownership of the Display remains with the City.

City Retained Rights.

The City holds the right to deny initial installation prior to receipt of payment by the Class of 1970 or remove any or all elements of the Display prior to the expiration of this Agreement. If the commemorative plaque and sculpture are removed by the City within five (5) years of installation, The Class of 1970 will be entitled to a prorated refund of the payment made in accordance with the following schedule:

Year 1	80%
Year 2	60%
Year 3	40%
Year 4	20%
Year 5	10%
After Year 5	0%

Point of Contact.

The City employee identified in the *Notices* Section below will serve as the City's principal point of contact for purposes of this Agreement.

Relationship.

This Agreement is strictly for the benefit of the Parties and not for any third party or person. This Agreement was negotiated by the Parties at arm's length and each of the parties hereto has reviewed the Agreement after the opportunity to consult with independent legal counsel. Neither party shall maintain that the language in the Agreement shall be construed against any signatory hereto. The Parties hereby renounce the existence of any form of agency relationship, joint venture, or partnership. The Parties agree that nothing contained herein or in any document executed in connection herewith shall be construed as creating any such relationship.

Notices.

Any notice required or permitted to be delivered hereunder shall be deemed to be delivered, whether or not actually received, when deposited in the United States Postal Service, postage prepaid, registered or certified mail, return receipt requested, addressed to the City or the Class of 1970, as the case may be, at the address set forth below.

CLASS of 1970:

Donald R. Graham, Secretary  
1901 S. Glenwood  
Springfield, IL 62704

CITY:

City of South Bend  
Venues Parks & Arts  
301 S. St. Louis Blvd.  
South Bend, IN 46617  
Attn: Amy Roush

Indemnification and Hold Harmless.

The City agrees to indemnify, defend and hold the Class of 1970 harmless from any and all loss, liability, damage, or expense, including attorney fees accruing during the term of this Agreement and

arising out of or in connection with the operation, maintenance, repair, supervision, inspection or ownership of the Display. However, the Class of 1970 shall not be indemnified hereunder for any loss, liability, damage or expense resulting from any loss, liability, damage or expense resulting from its sole negligence or willful misconduct.

Assignment.

The Parties shall not assign or subcontract the whole or any part of this Agreement or its obligations hereunder without the prior written consent of the other Party.

Entire Agreement; Amendment; Applicable Law.

This Agreement sets forth the entire agreement and understanding between the parties as to the subject matter hereof, and merges and supersedes all prior discussions, agreements, and understanding of any and every nature between them. This Agreement may be amended only by separate writing, signed by authorized representatives of both the Parties. This Agreement will be construed and interpreted according to the laws of the State of Indiana, and any dispute arising out of this Agreement or otherwise concerning the Class of 1970's rendering of the Services will be resolved in the courts located in St. Joseph County, Indiana, unless the Parties mutually agree to a different method of dispute resolution.

Severability.

All provisions of this Agreement shall be considered as separate terms and conditions, and in the event any one shall be held illegal, invalid or unenforceable, all the other provisions hereof shall remain in full force and effect as if the illegal, invalid, or unenforceable provision were not a part hereof, unless the provision held illegal, invalid or unenforceable is a material provision of this Agreement, in which case the Parties agree to amend this Agreement with replacement provisions containing mutually acceptable terms and conditions.

Force Majeure.

Neither Party shall be responsible for any failure or delay in the performance of any obligation hereunder, if such failure or delay is due to a cause beyond the Party's reasonable control, including, but not limited to acts of God, flood, fire, volcano, war, third-party suppliers, labor disputes or governmental acts.

Authority of Signatories and Counterparts.

Each person signing this Agreement represents and warrants that she or he is duly authorized and has legal capacity to execute and deliver this Agreement. Each Party represents and warrants to the other that the execution and delivery of this Agreement and the performance of such Party's obligations hereunder have been duly authorized and that the Agreement is a valid and legal agreement binding on such Party and enforceable in accordance with its terms. This Agreement may be executed in two or more counterparts, which together shall constitute one and the same agreement among the Parties.

[Signature page follows.]

IN WITNESS WHEREOF, the Parties hereto have caused this License Agreement to be effective as of the Effective Date stated above.

**CLASS of 1970 NOTRE DAME ALUMNI**

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Printed Name & Title

\_\_\_\_\_  
Street Address

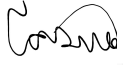
\_\_\_\_\_  
City, State ZIP

\_\_\_\_\_  
Telephone

\_\_\_\_\_  
Fax

**CITY OF SOUTH BEND, INDIANA  
BOARD OF PARK COMMISSIONERS**

  
\_\_\_\_\_  
Mark Neal, President

  
\_\_\_\_\_  
Consuela Hopkins, Vice President

\_\_\_\_\_  
Aimee Buccellato, Member

  
\_\_\_\_\_  
Dan Farrell, Member

ATTEST:   
\_\_\_\_\_  
Eva Ennis, Clerk

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IN WITNESS WHEREOF, the Parties hereto have caused this License Agreement to be effective as of the Effective Date stated above.

**CLASS of 1970 NOTRE DAME ALUMNI**

**CITY OF SOUTH BEND, INDIANA  
BOARD OF PARK COMMISSIONERS**

Signature

Donald R. Graham, Secretary  
Printed Name & Title

1901 S. Glenwood  
Street Address

Springfield IL 62704  
City, State ZIP

217-522-5720  
Telephone

217-527-4739  
Fax

Mark Neal, President

Consuela Hopkins, Vice President

Aimee Buccellato, Member

Dan Farrell, Member

ATTEST: Eva Ennis, Clerk