



HOWARD PARK

Howard Park Legacy Project Agreement

1stSource Bank

Thank you for being a critical piece of the second vision for South Bend's first park.

This Naming Rights Agreement dated _____, 2019 (“Agreement”), is made and entered into by and between 1stSource Bank (hereinafter, “1st Source”), an Indiana domestic for profit corporation, whose address is 100 N. Michigan Street, South Bend, IN 46617, and the City of South Bend, Indiana, Department of Venues Parks & Arts, by and through its Board of Park Commissioners (hereinafter the “City”), (each a “Party” and collectively, the “Parties”).

RECITALS

WHEREAS, the City owns certain machinery, namely a Zamboni ice resurfacer, located at Howard Park, 219 S. St. Louis Blvd., South Bend, Indiana 46617 (the “Zamboni”); and

WHEREAS, the Parties desire to enter into a naming rights agreement pursuant to which the City will grant 1st Source temporary exclusive naming rights for the City’s Zamboni in return for certain benefits set forth below.

NOW THEREFORE, 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:

AGREEMENT

1. **Term.** The initial term of this Agreement shall be for seven (7) years, commencing on September 1, 2019 and ending on August 31, 2026, unless otherwise terminated earlier in accordance with the terms and conditions contained herein. The Parties by mutual written agreement may extend the term of this Agreement. The initial term and any extensions thereof shall be referred to as the “Term”.
2. **Naming Rights and Fee.** Subject to the limitations of this Agreement, the City grants to 1st Source the right to affix to certain equipment and property of the City the name and logo of 1st Source as such name and logo are more fully described in attached Exhibit A (the “Naming Rights”). The Naming Rights are granted for the Term, subject to the early termination provisions of this Agreement. In consideration of the Naming Rights and ancillary benefits granted by the City hereunder, 1st Source agrees to pay a Naming Rights fee in the amount of one hundred thirty-five thousand (“\$135,000”) dollars, in the manner and amounts set forth below (“Naming Rights Fee”).

3. **Naming Rights Fee Payment Schedule.** 1st Source has the option to pay the Naming Rights Fee to the City over a period of three (3) years. The initial payment of forty-five thousand (\$45,000) dollars shall be paid no later than August 31, 2019 and then the two remaining payments shall be paid annually in accordance with the following schedule:

Naming Rights Fee Amount	Due Date
\$45,000	August 31, 2019
\$45,000	February 3, 2020
\$45,000	February 3, 2021
Total: \$135,000	

1st Source may accelerate the payment of any or all of these payments at any time, in 1st Source’s discretion, as long as the cumulative total of all payments meets the total amount of \$135,000 as agreed by the Parties. Payments shall be paid by 1st Source to the City via check or electronic funds transfer acceptable to 1st Source and the City.

4. **Use of Naming Rights Fee Payments.** The payments shall be used exclusively by the City for the Howard Park Development Project, including: (a) the purchase and wrapping of the Howard Park Zamboni and (b) the purchase and mounting of a plaque to be affixed to the Howard Park annex garages; in each case reflecting 1st Source’s name and logo in accordance with Exhibit A.
5. **Acknowledgment.** In consideration for the payment of the consideration and ancillary benefits granted hereunder, the City hereby acknowledges 1st Source’s Naming Rights during the term of this Agreement by naming the Howard Park Zamboni via a mutually agreed upon logoed wrap (“Logoed Wrap”), as well as a via a logoed plaque (“Plaque”) to be affixed between Howard Park annex garages (“Parking Area”). The application of the Logoed Wrap and the fabrication and installation of the Plaque constitutes the “Naming” for purposes of this Agreement. The Logoed Wrap and the Plaque shall each comply with and contain the name and logo of 1st Source all in accordance with the specifications set forth on Exhibit A (the “Specifications”). After the Naming is affixed, 1st Source will continue pledge payments in accordance with the foregoing schedule. Subject to the terms of this Agreement, the 1st Source’s Naming Rights will continue for the Term of this Agreement. Any additional benefits or rights granted to 1st Source beyond those specified in this section must be mutually agreed to by the Parties and are subject to the payment of additional consideration in an amount agreed to by the Parties.
6. **Maintenance and Modification of Naming.** Throughout the Term, the City shall: (i) keep the Logoed Wrap and the Plaque free of dirt, dust and debris; and (ii) repair all tears, dents, breaks, graffiti, and evidence of vandalism; and (iii) ensure that the Zamboni is kept clean and well-painted in the same color as on the date of this Agreement; and (iv) cause the Parking Area (including the area where the Plaque is affixed) to be kept clean and well lighted; and (v) not close the Parking Area to the general public except for routine and temporary maintenance.

If during the Term of this Agreement and provided that 1st Source is in compliance with the terms of this Agreement, the useful life of the Howard Park Zamboni expires prior to

the expiration of this Agreement, or the Zamboni is transferred or conveyed away from Howard Park, or is destroyed or severely damaged, relocated, or replaced (each of the foregoing events, a “Retirement”), then the Naming Rights under this Agreement will cease; provided, however, that if the Zamboni is replaced by another Zamboni (the “New Zamboni”), the New Zamboni shall be deemed the “Zamboni” for purposes of this Agreement. In such event, the Naming Rights shall continue and a logoed wrap comparable to the Logoed Wrap shall be installed on the New Zamboni at the City’s expense. The new logoed wrap shall be prepared in accordance with the Specifications and shall become the Logoed Wrap for purposes of this Agreement.

If the Zamboni is not replaced, the City shall offer to provide 1st Source with naming rights comparable to the Naming Rights for another available and equivalent Howard Park or City park machinery. No additional fees shall be assessed by the City for such alternate Naming rights. If 1st Source accepts the Naming of the alternate machinery, the City will create and affix a replacement Logoed Wrap complying with the Specifications, at no additional charge,

The Term of the Naming Rights shall be suspended from the date of the Retirement of the original Zamboni until the new logoed wrap is installed on the New Zamboni or alternate machinery (the “Suspension Period”). Once installed, the Term shall be extended by the Suspension Period, and the Naming rights shall continue for the remainder of the Term as so extended. Unless otherwise agreed, the Retirement of the Zamboni shall have no impact on the Naming pursuant to the Plaque.

7. **Mutual Indemnification and Hold Harmless.**

a. The City agrees to indemnify, defend and hold 1st Source, its officers, directors and employees harmless from and against any and all third party claims for loss, liability, damage, or expense, including attorney fees, to the extent arising out of or in connection with: (i) the operation, maintenance, repair, supervision, inspection, or ownership of the Zamboni or the Parking Area or (ii) subject to the provisions of Section 7(b), the use of 1st Source’s name or logo (whether or not such use is permitted by this Agreement). The City shall have no liability for such claims to the extent solely and directly attributable to the negligence or willful misconduct of 1st Source.

b. 1st Source agrees to indemnify, defend, and hold the City harmless from and against any all third party claims for loss, liability, damage, or expense, including attorney fees to the extent arising from infringement (unless such infringement is timely cured) by 1st Source of its name or logo upon the intellectual property rights of such third parties; provided, however, that 1st Source shall have no liability for such claims to the extent that they arise from the improper or unauthorized modifications or use by the City of such name or logo or from defacing or alteration of the name of logo.

c. NEITHER PARTY SHALL HAVE ANY LIABILITY FOR ANY INDIRECT, INCIDENTAL, CONSEQUENTIAL, LOST PROFITS OR OTHER SPECIAL DAMAGES ARISING OUT OF OR RELATING TO THIS AGREEMENT; provided, however, that any damages paid to third parties pursuant to Section 7.b. shall be deemed direct damages.

8. **Promotion.** During the Term of this Agreement and subject to the limitations of this Agreement, the City shall have the right, without charge, to photograph, use the images

of the 1st Source Logoed Zamboni in photographic, audiovisual, digital or any other form of media (the “Media Materials”); provided, however, that no names, likenesses or images of 1st Source representatives shall be permitted in Media Materials without the prior approval of 1st Source and the individual representatives (which approval may be withheld by either 1st Source or its representatives at their discretion). Subject to the limitations of this Agreement, the City shall be permitted to use, reproduce, distribute, exhibit, and publish the Media Materials in any manner, and in whole or in part, in City brochures, website postings, informational and marketing materials, and reports and publications (the “City Materials”). The Media Materials and the City Materials shall not in any way contain alterations or changes from the Specifications pertinent to the name and logo of 1st Source Bank. Use of the Media Materials and the City Materials shall in any event be for the limited purpose of promoting community interest and usage in Howard Park.

9. **Ownership.** The City acknowledges that 1st Source retains all right title and interest in the name and logo set forth in Exhibit A which are subject to the Naming Rights (the “Intellectual Property”), and the City will not interfere or infringe upon such Intellectual Property. The City further acknowledges that its use of the Naming Rights in Media Materials and City Materials is pursuant to a limited and non-transferable license granted solely for the purpose of enabling the City to make such use of the name and logo of 1st Source. 1st Source acknowledges that at all times the ownership of the Howard Park Zamboni remains with the City.
10. **Assignment.** This Agreement, and the rights and benefits hereunder, may not be assigned by either Party without the prior written consent of the other Party, which consent shall be in the sole and absolute discretion of the non-assigning Party.
11. **Termination of Naming Rights.** In addition to any rights and remedies available at law, the City may terminate this Agreement and all rights and benefits of 1st Source hereunder, including termination of Naming Rights and affixation of the logoed plaque upon the occurrence of the following:
 - a. In the event 1st Source fails to make any payment due under this Agreement; and such default is not cured within ten (“10”) business days following the date of written notice of default by the City; or
 - b. 1st Source is found by a court of competent jurisdiction to have willfully violated a law of the State of Indiana, by which violation and resulting negative publicity the City reasonably determines that the reputation of Howard Park and/or the City have been materially and adversely affected (a “Reputational Event”).

If termination by the City is due to failure of payment or a Reputational Event, as of the effective date of termination, the Naming Rights shall terminate. The City shall not be required to return any portion of the Naming Rights Payment already received; and the City shall remove and immediately cease to use or display the 1st Source logoed Zamboni wrap and display of Plaque. In addition, the City shall cease using and shall destroy all Media Materials and City Materials in its possession or control. 1st Source will be liable to the City for payment of all reasonable costs and expenses incurred by the City in removing, discarding the logoed Howard Park Zamboni wrapping, and the Plaque. The City may in its sole and absolute discretion determine an alternative recognition for the portion of the payment already received.

1st Source may elect to terminate this Agreement:

- (a) In the event the City breaches its obligations under this Agreement; and such breach is not cured within thirty (“30”) days following the date of written notice of breach by 1st Source, such right of termination to be in addition to other remedies at law or in equity which 1st Source may have by virtue of such breach; or
- (b) for convenience by providing the City with ten (10) business days advance written notice.

In the event of 1st Source’s termination for breach of this Agreement by the City, the City shall, upon demand by 1st Source and at the City’s expense promptly remove the logoed wrapping from the Howard Park Zamboni and the Naming from the Plaque.

In the event of 1st Source’s termination for convenience, 1st Source agrees to reimburse the City for the cost to remove the Howard Park Zamboni and the Plaque. If requested by 1st Source, upon termination of this Agreement, the City shall cease using and shall destroy all Media Materials and City Materials in its possession or control.

- 12. **Notices.** Any notice required or permitted to be given 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 a Party, and the addresses set forth below:

1st Source Bank
 100 N. Michigan St.
 South Bend, IN 46617
 Attn: _____

City of South Bend
 Venues, Parks & Arts Department
 219 S. St. Louis
 South Bend, IN 46617
 Attn: _____

- 13. **Counterparts.** This Agreement may be executed in two or more counterparts, which together shall constitute one and the same agreement among the parties.

- 14. **Entire Agreement.** This Agreement constitutes the entire agreement of the Parties with regard to the matters referenced herein, and supersedes all prior oral and written agreements, if any, of the Parties in respect hereto. This Agreement may not be modified or amended except by written agreement executed by both Parties hereto. The captions inserted in this Agreement are for convenience only and in no way define, limit, or otherwise describe the scope or intent of this Agreement, or any provision hereof, or in any way affect the interpretation of this Agreement.

- 15. **Governing Law, Venue, Waiver of Sovereign Immunity.** This Agreement will be governed by and construed in accordance with the laws of the State of Indiana and the City of South Bend, without regard to any conflict of law. Any legal proceeding brought in connection with disputes relating to or arising out of this Agreement shall be filed and heard in the courts of St. Joseph County, Indiana. The City hereby knowingly and expressly waives all existing and future rights of sovereign immunity and all other

similar immunities as a defense in any action or proceeding concerning the enforcement of this Agreement or other determination of the parties' rights under this Agreement. The City hereby consents to the jurisdiction of the Courts of St. Joseph County of the State of Indiana for such actions or proceedings. This waiver is irrevocable and applies to the jurisdiction of any such court, legal process, suit, judgement, attachment in aid of execution of judgement set off or any other legal process with respect to the enforcement of this Agreement or the determination of the parties' rights under this Agreement. It is the intention of this Agreement that neither the City of South Bend Indiana, nor any entity acting on the City of South Bend's behalf may assert immunity in an action or proceeding concerning the parties' rights under this Agreement.

(Signatures appear on following page)

Attn: _____

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IN WITNESS WHEREOF, this Agreement is executed by the Parties as of the day and year indicated above.

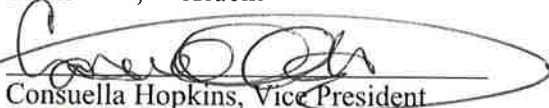
CITY OF SOUTH BEND, INDIANA
BOARD OF PARK COMMISSIONERS

1ST SOURCE BANK



Mark Neal, President

By: _____
Signature



Consuella Hopkins, Vice President


Printed Name and Title



Aimee Buccellato, Member



Dan Farrell, Member

ATTEST: 

Eva Ennis, Clerk

Exhibit A to Naming Rights Agreement

Name and Logo:

1st Source's name and logo will appear on the Logoed Wrap and the Plaque as follows:

[INSERT A PICTURE OF THE NAME AND LOGO AS IT IS TO APPEAR ON THE
ZAMBONI AND THE PLAQUE]

Specifications:

1st Source's specifications for name and logo on the Logoed Wrap:

[INSERT: COLOR, DIMENSION, FONT AND FONT SIZE AND OTHER SPECIFICATIONS
PROTECTED BY THE COPYRIGHTED NAME AND LOGO]

Specifications for the wrapping to be used in the Logoed Wrap:

[INSERT SPECIFICATIONS FOR THE WRAP: OVERALL DIMENSION, COLOR (CLEAR
OR OTHER COLOR), ADHESIVE, CLEANING PROPERTIES, ETC.]

1st Source's specification for name and logo on the Plaque:

[INSERT: COLOR, DIMENSION, FONT AND FONT SIZE AND OTHER SPECIFICATION
PROTECTED BY THE COPYRIGHTED NAME AND LOGO]

Specifications for the Plaque:

[INSERT SPECIFICATIONS FOR THE Plaque: OVERALL DIMENSION, COLOR ,
ADHESIVE, CLEANING PROPERTIES, ETC.]