

Naming Rights Agreement

This Naming Rights Agreement (“Agreement”), is made and entered into by and between 1st Source 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.
2. **Naming Rights Fee.** 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 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 Payments.** The payments shall be used exclusively for the Howard Park Development Project, specifically the purchase and wrapping of the Howard Park Zamboni to reflect 1st Source's logo.
5. **Acknowledgment.** In consideration for the payment of the consideration and ancillary benefits granted hereunder, the City agrees to acknowledge 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 to be affixed between Howard Park annex garages. 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 seven year 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. **Modification of Naming.** If during the term of this Agreement, and following receipt of full payment from 1st Source, the useful life of the Howard Park Zamboni expires prior to the expiration of this Agreement, the Zamboni is transferred or conveyed away from Howard Park, destroyed or severely damaged, relocated, or replaced, then the naming rights under this Agreement will cease. In such event, the Parties may mutually agree to provide 1st Source with naming rights for another available and equivalent Howard Park or City park machinery or facility, at no additional charge, for the remainder of the Agreement term.
7. **Mutual Indemnification and Hold Harmless.** The Parties mutually agree to indemnify, defend and hold the other harmless from any and all loss, liability, damage, or expense, including attorney fees, arising out of or in connection with the operation, maintenance, repair, supervision, inspection, or ownership of the Howard Park Zamboni. However, neither Party shall be indemnified hereunder for any loss, liability, damage, or expense resulting from its sole negligence or willful misconduct.
8. **Promotion.** During the term of this Agreement, the City, in consideration of the naming rights and benefits conferred hereunder, shall have the right, without charge, to photograph, use the names, likenesses, and images of the 1st Source Logoed Zamboni and/or 1st Source representatives in photographic, audiovisual, digital or any other form of media (the "Media Materials") and 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.

9. **Ownership.** 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.** 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. In the City’s reasonable opinion, at any time during the term of this Agreement, 1st Source and/or the Logoed Wrapping have developed or acquired a negative connotation for any reason such that the reputation of Howard Park and/or the City is or might be at risk.

If termination is due to failure of payment, as of the effective date of termination, the City shall have no further obligation or liability to 1st Source and shall not be required to return any portion of the Naming Rights Payment already received; and the City may immediately cease to use or display the 1st Source logoed Zamboni wrap and display of plaque. 1st Source will be liable to the City for payment of all costs and expenses incurred by the City in removing, discarding, and/or replacing the logoed Howard Park Zamboni wrapping. The City may in its sole and absolute discretion determine an alternative recognition for the portion of the payment already received.

If termination is due to a change in circumstances such that the City determines 1st Source and/or the Logoed Wrapping have developed or acquired a negative connotation that may or puts the reputation of Howard Park and/or the City at risk, 1st Source shall not be entitled to a refund of any portion of the payment made.

1st Source may elect to terminate this Agreement for convenience by providing the City with ten (10) business days advance written notice. In the event of 1st Source’s termination for convenience, 1st Source agrees to reimburse the City for the cost to remove and re-wrap the Howard Park Zamboni.

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, at the addresses set forth below:

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

City of South Bend, Indiana
Venues Parks & Arts Department
219 S. St. Louis Street
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 and Venue.** 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.

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