

Naming Rights Agreement

This Naming Rights Agreement (“Agreement”), is made and entered into by and between Pamela and Robby Rask (hereinafter, “The Rasks”), 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 an interactive water feature, located at Howard Park, 301 S. St. Louis Blvd., South Bend, Indiana 46617 (the “Water Feature”); and

WHEREAS, the Parties desire to enter into a naming rights agreement pursuant to which the City will grant the Rasks temporary exclusive naming rights for the City’s interactive water feature 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 fifteen (15) years, commencing on November 29, 2019 (“Effective Date”) and expiring on November 29, 2034, 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, the Rasks agree to pay a Naming Rights Fee in the amount of Seventy Five Thousand Dollars (“\$75,000.00”), to be paid by certified check, in a single payment prior to or upon the Effective Date of this Agreement.
3. **Use of Payments.** The payments shall be used exclusively for Howard Park, specifically toward the purchase, installation and operation of the interactive Water Feature.
4. **Acknowledgment.** In consideration for the payment of the consideration and ancillary benefits granted hereunder, the City agrees to acknowledge the Rasks naming rights during the term of this Agreement by naming the Howard Park interactive Water Feature via a personalized plaque, the content of which shall be mutually agreed to by the Parties, to be affixed upon a seatwall adjacent to the feature. At the end of the initial term of this Agreement, the City grants to the Rasks right to renew this Agreement for a renewal term and in consideration of payment of an amount mutually agreed to by the Parties.
5. **Modification of Naming.** If during the term of this Agreement, and following receipt of full payment from the Rasks, the Water Feature is permanently shut down, 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 the Rasks with naming rights for another available and equivalent Howard Park or City park facility, at no additional charge, for the remainder of the Agreement term.

6. **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 water feature. However, neither Party shall be indemnified hereunder for any loss, liability, damage, or expense resulting from its sole negligence or willful misconduct.
7. **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 Water Feature 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.
8. **Ownership.** The Rask’s acknowledge that at all times the ownership of the Water Feature remains with the City.
9. **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.
10. **Termination.** In addition to any rights and remedies available at law, the City may terminate this Agreement and all rights and benefits of the Rasks hereunder, including termination of naming rights and affixation of the logoed plaque upon the occurrence of the following:
 - a. In the City’s reasonable opinion, at any time during the term of this Agreement, the association of the Rask’s name with the Water Feature develops or acquires a negative connotation for any reason such that the reputation of Howard Park and/or the City is or might be at risk.

The Rasks may elect to terminate this Agreement for convenience, at any time during the term of this Agreement, by providing the City with ten (10) business days advance written notice.

In the event of termination by the Rasks for convenience, the Rasks agree that they shall not be entitled to a refund of any portion of the Naming Rights Fee, and will reimburse the City for the reasonable cost to remove the display plaque.

11. **Notices.** Any notice required or permitted to be given hereuner shall be deemed to be delivered, whether or not actually received, when deposited in the United States Postal Serfice, postage prepaid, registered or certified mail, return receipt requested, addressed to a Party, at the addresses set forth below:

Robby & Pamela Rask
914 N. Niles Ave
South Bend, IN 46617
Attn: _____

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

12. **Counterparts.** This Agreement may be executed in two or more counterparts, which together shall constitute one and the same agreement among the Parties.
13. **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.
14. **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**

ROBBY & PAMELA RASK

Mark Neal, President

By: _____
Robby Rask

Consuella Hopkins, Vice President

Pamela Rask

Aimee Buccellato, Member

Address

Dan Farrell, Member

City, State and Zip Code

ATTEST: _____
Eva Ennis, Clerk