

AGREEMENT FOR ACCESS AND USE OF PUBLIC PROPERTY

THIS AGREEMENT FOR ACCESS AND USE OF PUBLIC PROPERTY (“Agreement”) is made effective this 20th day of May, 2019, by the City of South Bend, Indiana Venues Parks and Arts Department (“VPA”), acting by and through its Board of Parks Commissioners (“Board”) (hereinafter, collectively referred to as the “City”), and LaSalle Council, Inc, Boy Scouts of America, #165 (the “LaSalle Council”), 1340 South Bend Avenue, South Bend, Indiana 46617.

RECITALS

WHEREAS, the City is the owner of certain property and improvements located at 1350 E. South Bend Avenue, South Bend, IN 46617, Parcel Key No. 018-5102-359301, and commonly referred to as Fredrickson Park (the “Park”); and

WHEREAS, the LaSalle Council has served as a partner with the City to maintain and improve, and to share and exchange the use of the Park; and

WHEREAS, the LaSalle Council desires to use the Park on a non-exclusive basis for the purpose of the nation’s first dedicated outdoor Science, Technology, Engineering & Mathematics (“STEM”) Park for Scouts, and local students; and

WHEREAS, the LaSalle Council desires access and use of the Park for the purpose of creating and developing both permanent STEM-related improvements and projects (“STEM Improvements and Projects”) to serve youth throughout the region; and

WHEREAS, the City is willing to permit LaSalle Council and its members, agents, invitees and employees access to and use of the Park for the purposes of constructing the STEM Improvements and Projects as described below and subject to certain terms and conditions set forth in this Agreement.

NOW, THEREFORE, in consideration of the mutual covenants contained herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. The City grants to the LaSalle Council, its members, agents, subcontractors, invitees and employees access to construct the STEM Improvements and Projects at the Park. The STEM Improvements and Projects shall consist of, by way of example and without limitation, plant and wildflower plantings and identification, solar panels, nature and wildlife stations, wind turbines, and geodesic domes for student labs related to STEM activities. The LaSalle Council understands and acknowledges that it shall have the ongoing responsibility to maintain the STEM Improvements and Projects as long as this Agreement is in existence and

will be permitted ongoing access to complete such maintenance.

2. Prior to LaSalle Council's commencement of construction of the STEM Improvements and Projects, the City's VPA must approve the design plan. Such approval shall not be unreasonably withheld; provided, however, the aesthetic integrity of the Park and the STEM Improvements and Projects, as approved solely by VPA, as well as the duration of the construction period are valid reasons for withholding such approval.

3. The LaSalle Council understands that some, if not all, of the STEM Improvements and Projects will be constructed on a former landfill; and the rights granted under this Agreement are subject to any existing or future environmental restrictive covenants ("ERC") or other land use restrictions that may be placed on the Park. The LaSalle Council expressly warrants that any such construction of the STEM Improvements and Projects shall not disrupt the Brownfields remediation measures that have been undertaken by the City to enable use of the site as a public Park, including the clay cap gas management and final cover systems ("Remediation System"). Should LaSalle Council's use of the Park damage the Remediation System, it shall be the LaSalle Council's sole responsibility and expense to remediate such damage in a manner that is approved by both the City and the Indiana Department of Environmental Management ("IDEM").

4. The LaSalle Council hereby agrees and undertakes to hold the City, VPA, its agents, officers, employees, successors and assigns of each (collectively, the "Indemnitees"), free and harmless from any and all liability, loss, costs, damages and expenses, including attorney's fees, which the Indemnitees may be held liable for, suffer or incur, as a result of any claims or actions which may be brought by any person or entity, including but not limited to, governmental authorities, arising out of LaSalle Council's' STEM Improvements and Projects under this Agreement. If any claims or actions are brought against the Indemnitees because of the aforementioned STEM Improvements and Projects, the LaSalle Council agrees to defend such claim, action or proceedings at its own expense and to pay any judgment rendered therein. The provisions of this Section shall survive the termination of this Agreement.

5. To the extent that any portion of the Park is disturbed in connection with the exercise of privileges granted under this Agreement, LaSalle Council shall, within a reasonable timeframe, restore the Park to the same condition in which it existed immediately prior to such disturbance to the satisfaction of the City and IDEM, if applicable.

6. LaSalle Council understands and agrees that it will secure in its own name and at its own expense all necessary permits and authorizations needed in order to construct the STEM Improvements and Projects. LaSalle Council shall not, without the prior written consent of the City, cause or permit, knowingly or unknowingly, any hazardous material to be brought or remain upon, kept, used, discharged, leaked or emitted in or about, or treated at the Park.

7. LaSalle Council understands and agrees that this Agreement is non-exclusive and that the Park shall continue as a public park and venue and under the ownership, control and auspices of the City.

8. LaSalle Council understands and agrees that it will, at its own expense, observe and comply with all present and future statutes, laws, ordinances, requirements, orders, rules and regulations of all governmental authorities.

9. LaSalle Council, at its expense, shall maintain during the term of this Agreement, commercial general liability insurance covering the STEM Improvements and Projects covering LaSalle Council as the named insured and identifying the City as an "additional insured" with terms satisfactory to the City and with insurers admitted to do business in the State of Indiana, for limits of not less than \$100,000.00 for bodily injury, including death resulting therefrom, and personal injury for any one (1) person in any one (1) occurrence, \$500,000.00 for such injuries for all persons for any one (1) occurrence, \$100,000.00 property damage insurance, or a combined single limit in the amount of \$500,000.00. Notwithstanding the foregoing, LaSalle Council shall, at all times, maintain said general liability insurance naming the City as an "additional insured" for bodily injury, including death resulting therefrom and personal injury with limits sufficient to cover the City or VPA's exposure to liability for said injuries, which amounts are set forth at Indiana Code § 34-13-3-4, as the same may be amended, superseded or recodified from time to time.

10. All notices 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 LaSalle Council, as the case may be, at the address set forth below.

LaSalle Council:
LaSalle Council, Incorporated
Boy Scouts of America #165
1340 South Bend Avenue
South Bend, IN 46617
Attn:

City:
City of South Bend, Indiana
Venues, Parks and Arts Department
301 S. St. Louis Boulevard
South Bend, IN 46614
Attn: Aaron Perri, Executive Director

11. The undersigned person(s) signing on behalf of his/her respective Parties certify that he/she is duly authorized to bind his/her respective party to the terms hereof.

12. This Agreement is governed by and construed according to the laws of the State of Indiana. Any action to enforce the terms of this Agreement or to construe the terms of this Agreement must be filed in the state courts of St. Joseph County, Indiana.

IN WITNESS WHEREOF, the Parties have each executed this Agreement as of the date first written above.

**LaSALLE COUNCIL, INC.
BOY SCOUTS OF AMERICA #165**

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

John M. Cary
Signature

John M. Cary, Scout Executive
Printed Name and Title

1340 South Bend Ave
Street Address

P.O. Box

South Bend IN 46617
City, State Zip

574-289-7943
Telephone Fax

[Signature]
Mark Neal, President

[Signature]
Consuella Hopkins, Member

Aimee Buccellato, Member

[Signature]
Dan Farrell, Member

ATTEST:
[Signature]
Eva Ennis, Clerk