

**AMBROSE RECREATION & PARK DISTRICT
RIGHT OF ENTRY AND ENCROACHMENT AGREEMENT
LOWE’S 100 HOMETOWNS GRANT PROGRAM**

THIS RIGHT OF ENTRY AND ENCROACHMENT AGREEMENT (“Agreement”) is made and entered into on the 13th day of August, 2021, by and between the Ambrose Recreation and Park District, a California special district (hereinafter the "District"), and Little Sprouts Garden Academy, a California non-profit corporation (hereinafter "Little Sprouts"). District and Contractor shall be referred to individually as a “Party” and collectively as “Parties.”

RECITALS

WHEREAS, District owns and operates a community garden on the real property located at 3105 Willow Pass Road, Bay Point, California, known as the Ambrose Community Garden (“Community Garden”) and as shown on the Community Garden Site Map, which is attached hereto as **Exhibit 1** and incorporated herein;

WHEREAS, Jasmine Cisneros, on behalf of District, applied for grant funds provided by the Lowe’s 100 Hometowns Grant Program (“Grant Program”), administered by the Points of Light Foundation, for community improvement projects in the amount of Fifty Thousand Dollars (\$50,000.00) to construct various improvements at the Community Garden;

WHEREAS, Lowe’s approved the District’s application and awarded grant funds in the amount of \$50,000.00 (“Grant Funds”) for, among other things, the installation of a new fence around the perimeter of the Community Garden, the rebuilding of raised planters and the construction of a new shed, greenhouse and chicken coop, all as set forth in the List of Grant Funded Projects, attached hereto as **Exhibit 2** and incorporated herein;

WHEREAS, the Points of Life Foundation and the District agreed that Little Sprouts would replace the District as the recipient of the Grant Funds under the Grant Program Agreement (“Grant Agreement”) and would be responsible for the administration and performance of the duties and obligation set forth in the Grant Agreement;

WHEREAS, Little Sprouts, in order to construct and implement the Grant Funded Projects, will need access for its volunteers and contractors to the Community Garden for the placement and use of equipment, materials and supplies related to the construction and implementation of the Grant Funded Projects; and

WHEREAS, District and Little Sprouts desire to enter into this Agreement to allow for Little Sprouts’ entry onto and use of the Access Area for the purposes stated herein and subject to the terms and conditions set forth herein;

WHEREAS, the District’s Board of Directors, at its meeting of August 12, 2021, authorized the Grant Agreement with the Points of Life Foundation, a copy of which is attached hereto as **Exhibit 3** and incorporated herein, authorized the amendment to the Grant Agreement

for Contractor's replacement of the District as the grantee under the Grant Agreement, a copy of which is attached hereto as **Exhibit 4** and incorporated herein, authorized the General Manager to execute this Agreement, and directed the General Manager to take such other actions necessary to facilitate Little Sprouts' access to the Community Garden and the construction and implementation of the Grant Funded Projects; and

WHEREAS, Little Sprouts will perform the construction and the implementation of the Grant Funded Projects without compensation of any kind from the District and the District will not be responsible for the funding any portion of the Grant Funded Projects.

NOW, THEREFORE, in consideration of the promises and of the covenants, representations and agreements set forth herein, District and Contractor hereby covenant, represent and agree as follows:

AGREEMENT

1. RIGHT OF ENTRY.

District hereby grants to Little Sprouts and its volunteers, contractors and agents a temporary right of entry onto the Access Area subject to the terms and conditions of this Agreement. Such right of entry is limited to worker, vehicular and equipment access to the Access Area and the placement and use of equipment, materials and supplies related to the construction of the Grant Funded Projects. Little Sprouts' use of the Access Area shall not interfere with District's use of the remainder of Community Garden. Little Sprouts shall not park vehicles or store equipment, supplies or materials on, or otherwise obstruct, the Access Area or the remainder of the Community Garden, except as provided herein. Any change in the location or use of the Access Area is subject to the prior written approval of District.

2. RIGHT TO ENCROACH.

District hereby grants to Little Sprouts the right to encroach on the Access Area for the purpose of placing, using and temporarily storing equipment, materials and supplies thereon related to the construction of the Grant Funded Projects. Such right to encroach on to the Access Area shall be conditioned on and subject to, among other things, the requirements of CalOSHA and such other applicable federal, State and local construction and environmental requirements. Little Sprouts shall construct or install adequate protective measures as necessary to ensure that the remainder of the Community Garden property and adjacent properties are not impacted by construction work.

3. AGREEMENT TERM.

The term of this Agreement will commence on the first day it is fully executed on page 8 hereof and terminate upon Little Sprouts' completion of construction and implementation of the Grant Funded Projects and the filing of a Notice of Completion, if any, but not later than twelve (12) months from the commencement date unless otherwise agreed to in writing by the parties.

Little Sprouts' filing of the Notice of Completion, if any, shall be conditioned on District's written acceptance of the constructed Grant Funded Projects which shall not be unreasonably withheld. This Agreement may be terminated at any time and for any reason by written agreement of the parties.

District may suspend Little Sprouts' access to the Access Area by providing written notice to Contractor five (5) business days prior to the date of suspension. Upon receipt of such notice, Contractor shall suspend performance of the Scope of Work as set forth in any such notice and shall not commence performance thereof until so notified by District.

4. USE OF ACCESS AREA.

(a) Performance of Work: Little Sprouts' use of the Access Area is limited to the construction and implementation of the Grant Funded Projects as set forth in the Grant Agreement, the Amendment and this Agreement. The performance of work may be revised by agreement of the Parties and documented as an amendment thereto.

(b) Plans for Grant Funded Projects: Little Sprouts shall provide District with plans and designs for Grant Funded Projects that will be constructed on the Community Garden property and obtain District's written approval prior to the commencement of construction. District may require changes to the plans and designs as long as such changes do not materially increase the cost of construction of such improvements.

(c) Permits and Approvals: Little Sprouts shall obtain all necessary permits and governmental approvals, if any, for the construction/implementation of the Grant Funded Projects. Little Sprouts may apply for such permits and approvals on behalf of the District, as the property owner. Little Sprouts shall provide copies of any such permits and approvals to District upon District's request. As further set forth hereinbelow, Little Sprouts shall comply with all federal, State and local requirements for the construction/implementation of the Grant Funded Projects.

(d) Performance of the Work: All construction work shall be performed by licensed contractors or under the supervision of a licensed contractor if volunteers will perform the construction work. The work shall be performed in accordance with the approved plans and designs, this Agreement and the Grant Agreement and in compliance with all federal, State and local laws, including, but not limited to building, fire and other government codes and requirements. District may review the performance of the work, but will not otherwise supervise or direct the work nor will the District be responsible for the compliance of the work with applicable building, fire and other government codes and requirements.

(e) Acceptance of Work: Little Sprouts shall notify District in writing of its completion of construction of each of the Grant Funded Projects constructed on the Community Garden property. District may inspect the constructed Grant Funded Projects to assess compliance with the plans and designs, governmental requirements and this Agreement and identify areas for which additional work is required to meet the District's reasonable satisfaction. District shall issue a notice of completion, or similar notification, for each Grant Funded Project for

which the work performed is complete and meets the requirements of the Scope of Work and reasonable satisfaction of District.

(f) Ownership of Grant Funded Projects: Upon the completion of construction and acceptance by District of the Grant Funded Projects constructed on the Community Garden property, the District shall own said improvements to the Community Garden. The constructed Grant Funded Projects shall not be removed from the Community Garden property without District's prior written consent. Contractor agrees to execute any document reasonably required by District to further evidence District's ownership of the constructed Grant Funded Projects.

5. FEES AND COMPENSATION.

There shall be no fee for Little Sprouts' access and use of the Access Area. Little Sprouts will construct and implement all of the Grant Funded projects with Grant Funds and/or its own funds. District will not compensate Little Sprouts or any of its volunteers, contractors or agents for work performed on the Community Garden property.

6. COMPLIANCE WITH LAWS AND THIS AGREEMENT.

Little Sprouts shall comply with all local, State and federal laws, regulations and rules, including, but not limited to laws related to health and safety, the care, handling and transportation of animals and the handling and disposal of waste materials. Little Sprouts shall also comply with all applicable District rules and regulations; however, District may waive certain specified rules and regulations in regards to the construction or implementation of the Grant Funded Projects. Little Sprouts shall at all times comply with terms and conditions contained herein.

Little Sprouts agrees to indemnify, defend and hold District, its elected officials, officer, employees and agents, in any action related to the payment of prevailing wages for any work performed on District property or in the construction or implementation of the Grant Funded Projects.

7. REPAIR AND RESTORATION.

Little Sprouts shall immediately repair any damage to the Access Area or to the remainder of the Community Garden Property caused by Little Sprouts and/or its volunteers, contractors and agents. Upon expiration of the Agreement Term, or earlier termination thereof, Little Sprouts shall remove all construction materials, tools, equipment and supplies from the Access Area and leave it free of any debris, refuse and personal property. Little Sprouts, upon the request of District, shall replace in like kind any trees, shrubs, plants or other foliage and/or any improvements or facilities damaged or destroyed as a result of its use of the Access Area.

8. PARTY CONTACTS:

The representatives for each of the parties and to whom any notices or communication shall be provided are: District: Doug Long, General Manager: dlong@ambroserec.org, and Little

Sprouts: Jasmine Cisneros: baypointgardens@gmail.com. Either party shall have the right to change its designated representative by written notice to the other party.

9. WAIVER, RELEASE AND INDEMNITY.

Little Sprouts hereby agrees on its behalf and that of its officers, employees, volunteers, agents, successors, assigns and contractors (collectively for the purposes of this Paragraph 9 “Little Sprouts”) that District, except for District’s acts of active negligence and willful misconduct, shall not be responsible or liable for any personal injury, damage to District’s property, including the Access Area, and/or any other damage, liability or loss, or expense (including reasonable attorney’s fees and costs) to Little Sprouts or other third parties which result from Little Sprouts’ entry onto or use of the Access Area or the remainder of the Community Garden property, construction or implementation of the Grant Funded Projects and/or compliance with the terms and conditions of this Agreement (“Little Sprouts’ Uses”). Little Sprouts hereby assumes full responsibility for any and all risk of such personal injury, property damage and other damages, liability or loss arising out of Little Sprouts’ Uses. Excepting District’s acts of active negligence and willful misconduct, Little Sprouts agrees to indemnify and hold harmless District from and against all claims, suits, actions, costs, losses and liabilities, (including reasonable attorney’s fees) arising from Little Sprouts’ Uses. This provision shall survive the expiration or earlier termination of this Agreement.

10. INSURANCE.

Little Sprouts shall, prior to entering the Access Area, furnish District with certificates of insurance for coverage of not less than the limits contained herein and in a form satisfactory to District. All insurance shall be maintained continuously throughout the Term hereof. Little Sprouts’ liability hereunder shall not be limited in any way as a result of the insurance requirements. All of the policies of insurance so required to be obtained and maintained shall contain a provision or endorsement that the coverage afforded will be primary and will not be canceled, materially changed, or renewal refused until at least thirty (30) days' prior written notice has been given to District by certified mail. In addition, the insurance required herein (except for Worker's Compensation and Employer's Liability), and including special provisions and endorsements, shall name District and its officers, directors, agents, and employees as "additional insured" under the policies. Little Sprouts shall also require all of its subcontractors, if any, to procure and maintain the same insurance as set forth herein for the Term hereof.

a) Commercial General Liability. This insurance shall be written in comprehensive form and shall protect Little Sprouts against all claims arising from injuries to or death of persons (other than its employees) or damage to property of District or others, or arising out of any act or omission of Little Sprouts and/or its volunteers, contractors and agents while performing any work on the Community Garden property. Coverage shall be at least as broad as Insurance Services Office Commercial General Liability Coverage (Occurrence Form CG 0001). Contractor shall maintain limits no less than One Million Dollars (\$1,000,000.00) per occurrence for personal injury and property damage. If Commercial General Liability insurance or other form with general aggregate limit or product-completed operations

aggregate limit is used, including but not limited to form CG 2503, either the general aggregate limit shall apply separately or the general aggregate limit shall be twice the required occurrence limit. The policy shall also include protection against claims insured by usual personal injury liability coverage, a "protective liability" endorsement to insure the contractual liability assumed by Little Sprouts under the indemnification provisions in this Agreement, and products/completed operations coverage.

b) Comprehensive Automobile Liability. This insurance shall be written in comprehensive form and shall protect Little Sprouts against all claims for injuries to or death of persons and damage to property of others arising from the use of motor vehicles, and shall cover operation on or off the site of all motor vehicles licensed for highway use, whether they are owned, non-owned, or hired. Coverage shall be at least as broad as the latest version of the Insurance Services Office Business Auto Coverage form number CA 0001, Code 1 (any auto). Contractor shall maintain limits no less than One Million Dollars (\$1,000,000.00) per occurrence.

c) Worker's Compensation and Employer's Liability Insurance. Little Sprouts shall comply with the applicable requirements of California Labor Code Section 3700.

11. HAZARDOUS MATERIALS.

Little Sprouts shall not cause or permit any Hazardous Materials, other than those to be used in the construction of the Grant Funded Projects, if any, to be brought upon, kept or used on or about the Access Area or the Community Garden Property. "Hazardous Materials" means any hazardous or toxic substance, material or waste which is or may become regulated by federal, State or local government and includes, without limitation, any material or substance which is (i) defined as a "hazardous waste," "extremely hazardous waste" or "restricted hazardous waste" under Section 25115, 15117 or 15122.7, or listed pursuant to Section 25140 of the California Health and Safety Code (Hazardous Waste Control Law) or (ii) defined as a "hazardous substance" under Sections 25316 of the California Health and Safety Code.

12. STOP NOTICES/LIENS.

Little Sprouts shall not permit the attachment of any liens against the District's property, including the Access Area, in connection with access to the Community Garden property or any work performed thereon. Little Sprouts shall take necessary actions to resolve any mechanics lien or Stop Payment Notice filed by any contractor performing work on the Grant Funded Projects.

13. INDEPENDENT CONTRACTOR.

Little Sprouts, and its officers, employees, volunteers, animals, contractors and agents, shall be at all times during the Term hereof independent contractors and not employees, animals or agents of District. Little Sprouts shall maintain complete control over its employees, volunteers, animals and contractors, if any. Little Sprouts shall perform all work in accordance with its own methods, but in compliance with this Agreement. Little Sprouts and its

employees, volunteers, contractors and agents shall not represent or otherwise hold themselves out as an employee or agent of District.

14. ENTIRE AGREEMENT.

This Agreement together with its exhibits embodies the entire agreement between District and Little Sprouts. The parties shall not be bound by or be liable for any statement, representation, promise, inducement, or understanding of any kind or nature not set forth herein. No changes, amendments, or modifications of any of the terms or conditions of this Agreement shall be valid unless reduced to writing and signed by both parties. This Agreement may be modified only by a written amendment executed by both District and Little Sprouts.

15. GOVERNING LAW.

The terms of this Agreement shall be interpreted and enforced pursuant to the laws of the State of California. Any action to interpret and/or enforce the terms herein shall be filed in the Superior Court of Contra Costa County.

16. COUNTERPARTS.

This Agreement may be executed in counterparts, all of which taken together shall be deemed one original. Signatures delivered electronically or by facsimile shall be as binding as originals upon the Parties so signing and delivering.

17. SUCCESSOR AND ASSIGNS.

This Agreement shall be binding upon and shall inure to the benefit of the parties and their respective heirs, executors, administrators, successor and assigns.

18. AUTHORIZED SIGNATORIES.

Each of the parties warrants and represents that the person executing this ROE on behalf of said party is duly authorized and empowered to execute this ROE on behalf of said party.

IN WITNESS WHEREOF, District and Contractor have caused this Agreement to be executed the day and year first above written.

DISTRICT:

Ambrose Recreation and Park District

By _____
General Manager

LITTLE SPROUTS:

Jasmine Cisneros

By _____

Address for giving notices:

Ambrose Recreation and Park District

3105 Willow Pass Road

Bay Point, California 94565

Address for giving notices:

LIST OF EXHIBITS:

Exhibit 1– Site Map

Exhibit 2– List of Grant Funded Projects

Exhibit 3 – Grant Agreement

Exhibit 4 – Grant Agreement Amendment