PROFESSIONAL SERVICES AGREEMENT

This PROFESSIONAL SERVICES AGREEMENT (this “Agreement”) is made as XXXXXX the “Effective Date”) by and between the Pennsylvania Horticultural Society (“PHS”), a Pennsylvania non-profit corporation with its principal place of business at 100 N. 20th Street, 5th Floor, Philadelphia, PA 19103-1495, and XXXXXXXXX (the “Service Provider”). PHS and Service Provider are each sometimes referred to in this Agreement as a “Party” and collectively as the “Parties.”

RECITALS

**WHEREAS**, PHS desires to engage the Service Provider to provide the services described in the scope of work (the “SOW”) attached as Exhibit A to this Agreement (the “Services”); and

**WHEREAS**, the Service Provider desires to provide the Services to PHS, pursuant to the terms of this Agreement and the SOW.

**NOW THEREFORE**, intending to be legally bound, the Parties do hereby agree to the terms of this Agreement as set forth below.

# SCOPE OF SERVICES; compensation

## Professional Services

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### Services. The Service Provider shall provide the Services to PHS as set forth in the SOW attached as Exhibit A to this Agreement. The Services may be supplemented or amended from time to time during the term of this Agreement by the creation and execution of a supplemental SOW to specify the additional services required.

* + 1. **Schedule.** Service Provider will provide to PHS the services set forth on the Statement of Work (“SOW”). Service Provider will perform such services in a diligent and workmanlike manner and in accordance with the schedule, if any, set forth in the SOW.
    2. **Control**. PHS will not control the manner or means by which Service Provider performs the services, including but not limited to the time and place Service Provider performs the services. However, PHS may control the result of the services.
    3. **Equipment**. Unless otherwise set forth in the SOW, Service Provider will furnish, at its own expense, the equipment, supplies, and other materials used to perform the services.
    4. **Premises**. To the extent Service Provider performs any services on PHS’s premises or using PHS’s equipment, Service Provider will comply with all applicable policies of PHS relating to business and office conduct, health and safety and use of PHS’s facilities, supplies, information technology, equipment, networks, and other resources.
    5. **Vehicles.** Service Provider is expected to use their personal vehicle for PHS-related services and is not entitled to reimbursement for vehicle expenses.
    6. **Cellphone.** Service Provider is expected to use their own cellphones for PHS-related work and is not entitled to reimbursement for mobile expenses.

### Acceptance by PHS. All Services, including but not limited to the preparation of the Deliverables, provided by the Service Provider pursuant to this Agreement shall be performed to PHS’s reasonable satisfaction, and all documents, work product and other materials created in the course of performing the Services (the “Deliverables”) shall be completed and delivered to PHS in accordance with the schedule set forth in the SOW.

## PHS Obligations.

### Evaluation of Services. PHS shall monitor and inspect the implementation and progress of the Services to confirm that, to the extent completed, the Service Provider’s performance and the Deliverables (defined below) conform to the terms of the SOW.

## Compensation

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### Compensation. In consideration for providing the Services, PHS shall pay to the Service Provider the compensation set forth in the SOW (the “Fees”). The Fees specified in this Agreement and in the SOW are the total fees and charges for the Services and shall not be increased during the term of this Agreement, except as the parties may agree in writing.

### Payment Schedule. The Fees shall be paid in accordance with the payment schedule set forth in the applicable SOW, subject to the submission of an invoice by the Service Provider in accordance with Section 1.3(d).

### Expenses. PHS shall reimburse the Service Provider for only those expenses incurred in the performance of the Services and set forth in the applicable SOW.

### Invoicing. PHS shall pay the Service Provider for satisfactory performance of the Services within thirty (30) of receipt of an invoice detailing the services provided during the invoice period and the corresponding charges. The Service Provider shall submit invoices monthly to PHS in the following prescribed format: per month. Furthermore, copies of receipts or invoices for any associated project expenses must also be provided and those expenses must be clearly noted on the submitted invoice.

## Tax Withholding and Forms

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### Service Provider is responsible for any and all applicable taxes arising under this Agreement. Service Provider shall pay all taxes required under the Internal Revenue Code and other laws, including taxes on nonresident aliens and foreign corporations if applicable. Notwithstanding the above, PHS may withhold such sums as PHS, in its reasonable discretion, may determine should be withheld under the Internal Revenue Code and under other laws without liability to Service Provider as a result thereof. Service Provider shall save and hold harmless PHS from any and all claims and expenses relating to tax withholding requirements, including reasonable attorneys' fees, which arise or are incurred as a result of this agreement.

### Prior to issuing any payment, PHS must receive all required tax forms in the name of the Service Provider, regardless of in whose name the payment is issued.

### If Service Provider is:

#### A U.S. person for tax purposes (e.g., U.S. citizen, permanent resident alien or resident alien for tax purposes), PHS requires a properly completed Form W-9;

#### A nonresident alien for tax purposes who claims a reduced rate of withholding, or exemption from withholding, under an income tax treaty, PHS requires a properly completed Form 8233, Form W-8BEN, W-8BEN E, or W-8EXP;

#### In the event that the Service Provider fails to provide PHS with properly completed documentation detailed above, PHS will withhold the appropriate tax based on the Service Provider’s status as a U.S. person or nonresident alien.

### Service Provider acknowledges that PHS will issue all relevant tax reporting forms in the name of Service Provider, regardless of in whose name payment is issued, including Form 1099 for U.S. persons or Form 1042-S for nonresident aliens.

# REpresentations and warranties

## Quality

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### Performance of Services. The Service Provider represents and warrants that it shall perform all Services in a competent, professional manner in accordance with then-current industry standards.

### Quality of Deliverables. The Service Provider represents and warrants that the Service Provider shall utilize sufficient personnel possessing the skills, experience and abilities necessary to perform the Services, all in accordance with such additional requirements as may be reasonably imposed by PHS from time to time.

## Ownership and Non-Infringement

. The Service Provider represents and warrants that the Deliverables are the original work of the Service Provider and that the Deliverables do not infringe any third party’s intellectual property rights or other rights.

## Conflict of Interest

. The Service Provider represents and warrants that it is under no obligation or restriction that would conflict with its provision of the Services or any of its obligations under this Agreement.

## Compliance with Laws

. The Service Provider shall comply with the requirements of all Applicable Law with respect to Service Provider’s activities, services, materials and facilities used in connection with any aspect of this Agreement. Applicable Law means all applicable present and future, federal, state or local laws, ordinances, executive orders, rules, regulations and all court orders, injunctions, decrees and other official interpretations thereof of any federal state or local court, administrative agency or governmental body, including the City of Philadelphia, the Commonwealth of Pennsylvania, and the United States of America. Service Provider shall inform PHS, in writing, of any notices of violations of any Applicable Law within forty-eight (48 hours) of Service Provider’s receipt thereof and shall correct any violations within the time prescribed by law, or immediately in the case of any emergency.

## Conformity with the terms of Contract No. 2320228 between the City of Philadelphia, by and through the Division of Housing and Community Development, and the Pennsylvania Horticultural Society. Service Provider acknowledges that the Services delivered as part of this Agreement are to fulfill, in part, certain the Services and Materials to be performed or procured by the Pennsylvania Horticultural Society, under contract to the City of Philadelphia bound by Contract No. 2320228. As a recognized SubService Provider to this Contract, Service Provider must conform with the terms of the original Contract. Nothing contained in this Agreement shall be construed to impair the rights of the City of Philadelphia under the original Contract. Furthermore, the City’s consent to or approval of this Agreement shall not create any obligation of the City to Service Provider, and nothing contained in this Agreement shall create any obligation of the City to the Service Provider.

## Non-Discrimination; Fair Practices. This Agreement is entered into under the terms of the Philadelphia Home Rule Charter, the Fair Practices Ordinance (Chapter 9-1100 of the Philadelphia Code) and the Mayor’s Executive Order No. 04-86 (the “Executive Order”), as they may be amended from time to time, and in performing this Agreement, Service Provider shall not discriminate or permit discrimination against any individual because of race, color, religion or national origin. Nor shall Service Provider discriminate or permit discrimination against individuals in employment, housing and real property practices, and/or public accommodation practices whether by direct or indirect practice of exclusion, distinction, restriction, segregation, limitation, refusal, denial, differentiation or preference in the treatment of a person on the basis of actual or perceived race, ethnicity, color, sex, sexual orientation, gender identify, religion, national origin, ancestry, age, disability, marital status, source of income, familial status, genetic information or domestic or sexual violence victim status, Human Immunodeficiency Virus (HIV) infection, or engage in any other act or practice made unlawful under the Charter, Chapter 9-1100, the Executive Order, or under the nondiscrimination laws of the United States or the Commonwealth of Pennsylvania. In the event of any breach of this Section 2.5 (Non-Discrimination; Fair Practices), PHS may, in addition to any other rights or remedies available under this Agreement, at law or in equity, suspend or terminate this Agreement forthwith.

## In accordance with Chapter 17‑400 of the Philadelphia Code as amended, Service Provider agrees that its payment or reimbursement of membership fees or other expenses associated with the participation by its employees in an exclusionary private organization, insofar as such participation confers an employment advantage or constitutes or results in discrimination with regard to hiring, tenure of employment, promotions, terms, privileges or constitutes or results in discrimination with regard to hiring, tenure of employment, promotions, terms, privileges or conditions of employment on the basis of race, color, sex, sexual orientation, disability, age, veteran status, religion, national origin or ancestry, constitutes a substantial breach of the Agreement entitling PHS to all rights and remedies provided in the Agreement Documents or otherwise available at law or in equity. Service Provider agrees to include the immediately preceding sentence (with appropriate adjustments for the identity of the parties) in all subcontracts and other agreements which are entered into for work to be performed pursuant to the Agreement by subService Providers, Service Providers and others. Service Provider further agrees to cooperate with the Commission on Human Relations of the City of Philadelphia in any manner which the said Commission deems reasonable and necessary for the Commission to carry out its responsibilities under Chapter 17‑400 of the Philadelphia Code, as amended. Failure to so cooperate shall constitute a substantial breach of the Agreement entitling PHS to all rights and remedies provided herein or otherwise available in law or equity.

## In accordance with Section 17-104 of the Philadelphia Code, Service Provider agrees that no products being delivered pursuant to the Agreement originate in Northern Ireland unless the Business Entity has implemented the fair employment principles embodied in the MacBride Principles.

## No Indebtedness to the City of Philadelphia. Service Provider and any and all entities controlling Service Provider, under common control with Service Provider or controlled by Service Provider are not currently indebted to the City of Philadelphia, and will not at any time during the Term of this Agreement (including any Additional Term(s)) be indebted to the City, for or on account of any delinquent taxes (including, but not limited to, taxes collected by the City on behalf of the School District of Philadelphia), water bills, sewer bills, liens, judgments, fees or other debts for which no written agreement or payment plan satisfactory to the City has been established. Service Provider shall remain current during the Term of this Agreement under all such agreements and payment plans and shall inform PHS in writing of Service Provider’s receipt of any notices of delinquent payments under any such agreement or payment plan within five (5) days after receipt. In addition to any other rights or remedies available to the City at law or in equity, Service Provider acknowledges that any breach or failure to conform to this representation, warranty and covenant may, at the option the City, result in the withholding of payments otherwise due to Service Provider under this Agreement or any other agreement with the City under which the City may then owe payment of any kind, and, if such breach or failure is not resolved to the City’s satisfaction within a reasonable time frame specified by the City in writing, may result in the offset of any such indebtedness against said payments or the termination of this Agreement for default (in which case Service Provider shall be liable for all excess costs and other damages resulting from the termination), or both. In addition, Service Provider understands that false certification, representation or warranty by it is subject to prosecution under Title 18 Pa.C.S.A. § 4904.

## Commercial Activity License. If Service Provider is a “business” as defined in Section 19-2601 of the Philadelphia Code of Ordinances, Service Provider has and shall maintain during the Term of this Agreement, a valid, current Commercial Activity License, issued by the City of Philadelphia’s Department of Licenses and Inspections, to do business in the City.

## Non-Suspension; Debarment. Service Provider and all individuals acting on Service Provider’s behalf including, without limitation, subService Providers, are not under suspension or debarment from doing business with the Commonwealth of Pennsylvania, any other state, or the federal government, or any department, agency, or political subdivision of any of the foregoing.

## Audits; Inspections Rights; Records.

## City Audit. From time to time during the term of this Agreement, and for a period of five (5) years after the expiration or termination of this Agreement, the City of Philadelphia may audit any and all aspects of Service Provider’s performance under this Agreement, including but not limited to its billings and invoices. Audits may be conducted by representatives, agents or Service Providers of the City, including the Department, or other authorized City representatives including, without limitation, the City Controller. If requested by the City, Service Provider shall submit to the City all vouchers or invoices presented for payment pursuant to this Agreement, all cancelled checks, work papers, books, record and accounts upon which the vouchers or invoices are based, and any and all documentation and justification in support of expenditures or fees incurred pursuant to this Agreement. All books, invoices, vouchers, records, reports, cancelled checks and other materials shall be subject to periodic review or audit by the City.

## Inspection. All Services and Materials shall be subject to inspection and review by City, federal and state representatives, as may be applicable, or their designees, at the offices of Service Provider in the City, or in another location with the City’s consent. Service Provider shall cooperate with all City, state and federal inspections and reviews conducted in accordance with the provisions of this Agreement. Such inspection and review of Service Provider’s Services and Materials, including, without limitation, programs and facilities, shall be in the sole discretion of the inspecting or reviewing entity. Such inspection or review may include, without limitation, meetings with consumers, review of staffing ratios and job descriptions, and meetings with any of Service Provider’s staff members who are either directly or indirectly involved in providing Services or Materials.

## Availability of Records. Service Provider shall make available, in the City at reasonable times during the term of this Agreement and for the period set forth in Section 6.21.4 (Retention of Records) below, all records pertaining to the Agreement for the purpose of inspection, audit or reproduction by any authorized representative (including any agent or Service Provider and the City Controller) of the City, the Commonwealth of Pennsylvania Auditor General, and any other federal and state auditors, as may be applicable.

## Retention of Records. Service Provider shall retain all records, books of account and documentation pertaining to this Agreement for a period of five (5) years following expiration or termination of this Agreement; however, if any litigation, claim or audit or commenced prior to the expiration of said five (5) year period, then the records shall be retained until all litigation, claims or audit findings have been completely terminated or resolved, without right of further appeal, or if Applicable Law requires a longer period, then the records shall be retained for such longer period.

## Sales and Use Tax. The City of Philadelphia is not subject to federal, state or local sales or use taxes or federal excise tax. Service Provider hereby assigns to the City all of its right, title and interest in any sales or use tax which may be refunded as a result of any materials, including any materials, purchased or services, including any services, rendered in connection with this Agreement and unless directed otherwise by the City, Service Provider shall not file a claim for any sales or use tax refund subject to this assignment. Service Provider authorizes the City, in its own name or the name of Service Provider, to file a claim for a refund of any sales or use tax subject to this assignment.

## Upon request by the City of Philadelphia (at the City’s sole option) and upon receipt of written notice from the City stating that Contract No. 2320228 between the City of Philadelphia and the Pennsylvania Horticultural Society has been terminated, Service Provider agrees that it will continue to perform its obligations under this Agreement for the benefit of the City in conformity with the terms and conditions of the Contract, provided the City pays the Service Provider for the Services rendered and Materials provided by Service Provider from and after the date of the termination of the Contract between the City and PHS at the same rate or in the same amount as set forth in this Agreement for those Services and Materials provided by Service Provider after such date of termination.

# INDEMNIFICATION; insurance; intellectual property

## Indemnification

. The Service Provider agrees to indemnify and hold harmless PHS, and the City of Philadelphia and each respective personnel, employees, directors, officers, successors and assigns against all damages, losses, and reasonable expenses (including reasonable attorneys’ fees, costs and expenses) and other liabilities arising out of any claims, demands, suits, or causes of action by third parties, to the extent caused by (i) the Service Provider’s negligent provision of the Services pursuant to this Agreement, (ii) any breach by the Service Provider of any of the provisions of this Agreement, (iii) in connection with the Service Provider’s negligence or willful misconduct in performance of the Services under this Agreement, or (iv) any infringement of third party intellectual property rights. The Service Provider’s indemnification obligations shall survive the expiration or termination of this Agreement.

## Insurance

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### Insurance Requirements. The Service Provider covenants that it carries, and during the term of this Agreement and during any renewal terms, will carry, at its own expense and in full force and effect, at a minimum, the types and amounts of insurance coverage listed on Exhibit B attached hereto.

### Proof of Insurance. During the term of this Agreement and any renewal terms, PHS may request, no more than once annually, and the Service Provider agrees to provide, certificates of insurance showing the coverages set forth in Section 3.2(a).

## Intellectual Property

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### Upon full payment of all monies paid to the Service Provider, PHS is, and shall remain, the sole and exclusive owner of all rights, title and interest in and to the Deliverables, including all Intellectual Property Rights (defined below). PHS agrees, to the fullest extent permitted by law, to indemnify and hold the Service Provider harmless from any claim, liability or cost (including reasonable attorney’s fees and defense costs) arising or allegedly arising out of any (i) reuse of the Deliverables on other projects where Service Provider is not retained as Service Provider or (ii) modification of the Deliverables by PHS or any person or entity that obtains the Deliverables from or through PHS.

### The Service Provider agrees, and shall cause its personnel to agree, that with respect to any Deliverables that may qualify as “work made for hire” as defined in 17 U.S.C. §101, such Deliverables are hereby deemed “work made for hire” for PHS. To the extent that any of the Deliverables do not constitute a “work made for hire,” the Service Provider hereby irrevocably assigns, and shall cause its personnel to irrevocably assign, to PHS, in each case without additional consideration, all rights, title and interest throughout the world in and to the Deliverables, including all Intellectual Property Rights therein. The Service Provider covenants that it will take, and cause its personnel to take, all actions necessary, including without limitation, the execution of assignment agreements, to cause title and ownership of Deliverables to vest exclusively in PHS. The Service Provider shall retain a permanent, irrevocable, non-exclusive, royalty-free license to use any such Deliverables produced by or resulting from the Services rendered by the Service Provider.

### The Service Provider shall cause its personnel to irrevocably waive, to the extent permitted by law, any and all claims such personnel may now or hereafter have in any jurisdiction to so-called “moral rights” or rights of droit moral with respect to the Deliverables.

### For purposes of this Agreement, “Intellectual Property Rights” means all (1) patents, patent disclosures and inventions (whether patentable or not); (2) trademarks, service marks, trade dress, trade names, logos, corporate names and domain names, together with all of the goodwill associated therewith; (3) copyrights and copyrightable works (including computer programs) and rights in data and databases; (4) trade secrets, know-how and other confidential information; and (5) all other intellectual property rights, in each case whether registered or unregistered, and including all applications for, and renewals or extensions of, such rights, and all similar or equivalent rights or forms of protection in any part of the world

**3.4 Limitation of Liability.** Neither PHS nor the Service Provider shall be liable to the other or shall make any claim for any punitive, incidental, indirect, unforeseen consequential or special damages arising out of or connected to this Agreement or the performance of the services on the project.

Except in the event of (i) violations of law or (ii) Service Provider’s negligence, intentional misconduct, or fraud, it is agreed that the Service Provider’s liability with respect to claims arising under an individual SOW shall be strictly limited to the lesser of the fees paid to the Service Provider pursuant to such SOW and $250,000.

# Term and teRMination

## Term

. The initial term of this Agreement shall commence on XXX and terminate on XXXX (the “Term”). The Term may be extended by the mutual, written agreement of the Parties.

## Termination

. Prior to the expiration of the Term:

### Termination for Material Breach. Either Party may terminate the Agreement, at any time, with immediate effect, in the event the other Party engages in an act or omission constituting a material breach of any term or condition of this Agreement; *provided* that non-payment of any fees owed by PHS to the Service Provider shall not be deemed a material breach.

### Termination for Non-Material Breach. Either Party may terminate the Agreement, at any time, in the event the other Party engages in an act or omission constituting a non-material breach of any term or condition of this Agreement. The Party electing to terminate the Agreement shall provide the breaching Party thirty (30) days’ advance written notice specifying the nature of the breach. The breaching Party shall have fifteen (15) days from receipt of the notice to remedy the breach and conform its conduct to the Agreement. If the breaching Party fails to cure such breach within the specified time, the Agreement shall terminate at the end of the fifteen (15) day notice period without further notice or demand; *provided*, *however*, that in the event the breach is not able to be cured within the fifteen (15) day notice period, the breaching Party shall begin implementation of a plan, approved by the other Party, which approval shall not be unreasonably withheld, to cure such breach within sixty (60) days of receipt of written notice from the other Party specifying the nature of such breach; *provided*, *further*, that any plan to cure such breach shall be completed and such breach cured within ninety (90) days after receipt of written notice of such breach.

### Termination for Convenience. PHS may terminate the Agreement at any time and for any reason by providing thirty (30) days’ advance written notice to the Service Provider.

## Effect of Termination

. Upon termination of the Agreement, neither Party shall have further rights against, or obligations to, the other Party except with respect to any rights or obligations accruing prior to the date and time of termination and any obligations, promises or agreements that expressly extend beyond the termination, including but not limited to, those set out in Section 3.1 (Indemnification) and Article 5 (Miscellaneous).

# Miscellaneous

## 5.1 Entire Agreement

. This Agreement, together with all exhibits attached hereto, represents the entire agreement of the Parties and supersedes all oral and written agreements with regard to the subject matter hereof, if any, between the Parties. No amendment or modification of this Agreement shall be effective unless made in writing and signed by the Parties.

## 5.2 Amendment

. This Agreement may not be released, discharged, changed or modified, except by an instrument in writing signed by a duly authorized representative of each Party.

## 5.3 Time is of the Essence

. The Service Provider acknowledges that time is of the essence with respect to its obligations hereunder and that prompt and timely performance of all such obligations is strictly required.

**5.4 COVID-19 Rules and Regulations**. PHS will provide to Service Provider, COVID- 19 protocols and procedures (the "COVID-19 Rules and Regulations")., Service Provider agrees to comply with such COVID-19 Rules and Regulations, and Service Provider's failure to so comply will result in a material breach of this Agreement, giving PHS the right to terminate this Agreement

Service Provider acknowledges that COVID-19 has been declared a worldwide pandemic and that cases of COVID-19 have been confirmed throughout the United States, including in Pennsylvania. Service Provider understands that COVID- 19 is extremely contagious and, while the state of medical knowledge is evolving, it is believed that COVID-19 spreads through person-to-person contact, by contact with contaminated surfaces and objects, and through the air. Service Provider understands that evidence has shown that COVID-19 can cause serious and potentially life-threatening illness and even death.

Service Provider understands that PHS will put in place certain preventative measures to reduce the spread of COVID-19, but that PHS cannot guarantee that Service Provider/ Service Provider's agents or personnel ("Representatives") will not become infected with COVID-19, nor can PHS prevent against the presence of COVID-19 on the premises. Service Provider understands that participating could increase the risk of Service Provider/Service Provider's Representatives contracting COVID-19. By signing this Agreement, Service Provider, on behalf of its Representatives, acknowledges the contagious nature of COVID-19 and represents that each of its Representatives who will occupy the premises voluntarily assumes (or will voluntarily assume) the risk that such Representatives may be exposed to, or infected by, in participating in the project and that such exposure or infection may result in personal injury, illness, permanent disability, or death. Service Provider further agrees that each of its Representatives has read this (or will read this prior to the project and has agreed (or will agree, as applicable) to assume all risks described herein. Service Provider hereby, and shall cause its Representatives to, voluntarily assumes all the foregoing risks and accept sole responsibility for any injury, illness, disability, and/or death related to participation in the project. Service Provider, on behalf of itself and its Representatives, forever releases and waives its and their right to bring suit or pursue any action or claim for damages against PHS and its past, present, and future directors, officers, partners, agents, employees, attorneys, representatives, affiliates, subsidiaries, divisions, predecessors, successors and assigns, if any, in connection with exposure, infection, and/or spread of COVID-19 related to participation in project.

## 5.5 Severability

. If any provision of this Agreement is determined by any court of competent jurisdiction to be invalid or unenforceable, such invalidity or unenforceability shall not affect or impair the validity and enforceability of the other provisions of this Agreement, which shall be considered severable and shall remain in full force and effect.

## 5.6 Waiver

. No term or provision hereof shall be deemed waived and no breach of contract excused unless such waiver or consent is in writing and signed by the Parties. The waiver by either Party of a breach or violation of the provisions hereof shall not be construed as a waiver of any subsequent breach of the same provision or another provision hereof.

## 5.7 Third Party Beneficiaries

. The Agreement is entered into for the sole benefit of PHS and the Service Provider. Nothing contained herein or in the course of the Parties’ dealing should be construed as conferring any third-party beneficiary status on any person or entity not a party to the Agreement.

## 5.8 Confidentiality

. Except as and to the extent required by law, the Service Provider hereby agrees that it will not, directly, indirectly or otherwise, disclose, publish, make available to, or use for its own benefit or the benefit of any person or entity for any reason or purpose whatsoever, any Confidential Information (defined below). As used in this Agreement, the term “Confidential Information” means information disclosed to the Service Provider, or known by the Service Provider as a consequence of or through its relationship with PHS, about the members, donors, sponsors, employees, business methods, public relations methods, organization, procedures or finances of PHS, including, without limitation, information of or relating to suppliers, member lists, donor or sponsor lists, copyrights, know-how, research, product plans, prices and costs, markets, developments, test data, forecasts, budgets and other confidential or proprietary business, technical, personnel or financial information; *provided, however*, that “Confidential Information” shall not include any information that:

### was publicly known at the time of disclosure to the Service Provider;

### becomes publicly known or available, other than by any means in violation of this Agreement or any other duty owed to PHS by any person or entity, which duty is known to the Service Provider; or

### is lawfully disclosed to the Service Provider by a third party owing no duty of confidentiality to PHS.

The Parties hereto stipulate and agree that the foregoing matters are important, material and confidential proprietary information that affect the successful conduct of the business of PHS. The Service Provider shall keep the Confidential Information in the strictest confidence and trust. The Parties agree that money damages would not be a sufficient remedy for a breach of the Service Provider’s confidentiality obligations hereunder and that, in addition to all other available legal or equitable remedies, PHS shall be entitled to seek equitable relief, including injunction and specific performance. The Service Provider’s confidentiality obligations hereunder shall survive termination of this Agreement.

## 5.9 Use of Name

. Neither Party shall use the name, trade name, service marks, trademarks, trade dress or logos of the other Party in publicity releases, advertising or any similar activity without such other Party’s prior written consent, provided that the Service Provider shall be entitled to mention the project and the Services provided in future proposals as proof of the Service Provider's experience with this type of work

## 5.10 Independent Service Provider

. The Service Provider is performing the Services under this Agreement as an independent Service Provider and not as an employee, agent, partner of, or a joint venturer of PHS. This Agreement does not create a joint venture or partnership, and neither party has the authority to bind the other to any third party. The Service Provider shall have the sole responsibility and shall bear the entire cost and expense relating to, all of its employees and Service Providers, including but not limited to terms of employment, compensation, benefits, payment of withholding and all other federal and state taxes related to employment, hours, discipline, and discharge. In performing the Services required by this Agreement, no employee or Service Provider of the Service Provider shall be deemed to be an employee of PHS by reason of his or her provision of Services in accordance with this Agreement.

## 5.11 Headings

. Section headings contained in this Agreement are for reference purposes only and shall not in any way affect the meaning or interpretation of this Agreement.

## 5.12 Assignment

. The Service Provider may not assign its rights or obligations under this Agreement without the prior written consent of PHS. The rights and benefits of this Agreement shall not inure to the benefit of any third party except to those permitted assignees, as provided in this Section 5.12.

### a)Per Contract No. 23230228 between the City of Philadelphia, by and through DHCD, and the Pennsylvania Horticultural Society, the City of Philadelphia is a permitted assignee.

## 5.13 Notices

. All notices or other communications to be given hereunder shall be in writing and shall be deemed to have been received (a) three days after deposit in the United States mail, postage prepaid, registered or certified, (b) upon personal delivery, (c) one day after deposit with an overnight courier service for next day delivery with charges prepaid, or (d) upon sending electronic mail to the e-mail address provided by the receiving Party. Such notices shall be addressed as set forth below:

If to PHS:

The Pennsylvania Horticultural Society

Tamela Vieira

Executive Vice President

100 North 20th Street, 5th Floor

Philadelphia, PA 19103-1495

E-Mail: [tvieira@pennhort.org](mailto:tvieira@pennhort.org)

With a copy to (which shall not constitute notice):

Ballard Spahr LLP

1735 Market Street, 51st Floor

Philadelphia, PA 19103

Attention: Gregory L. Seltzer

E-Mail: seltzerg@ballardspahr.com

If to Service Provider:

## 5.14 Gender, Etc

. Words used herein, regardless of the number and gender specifically used, shall be deemed and construed to include any other number, singular or plural, and any other gender, masculine, feminine or neuter, as the context indicates is appropriate.

## 5.15 Governing Law and Venue

. This Agreement and all acts and transactions contemplated hereunder shall be governed, construed and interpreted in accordance with the laws of the Commonwealth of Pennsylvania, without regard to conflict of laws principles. Any legal action, suit or proceeding arising out of or relating to this Agreement or the breach thereof will be instituted in a federal or state court of competent jurisdiction in the Commonwealth of Pennsylvania, Philadelphia County, and each Party hereby consents and submits to the personal jurisdiction of such court, waives any objection to venue in such court including any defense of forum non conveniens.

## 5.16 Waiver of Jury Trial

. THE PARTIES KNOWINGLY, UNCONDITIONALLY AND ABSOLUTELY WAIVE THE RIGHT TO A JURY TRIAL WITH RESPECT TO CLAIMS ARISING FROM THIS AGREEMENT.

## 5.17 Counterparts

. This Agreement may be executed in two (2) or more counterparts, each of which will be deemed to be an original of this Agreement and all of which, when taken together, will be deemed to constitute one and the same agreement. This Agreement, to the extent signed and delivered by means of a facsimile machine or by other electronic transmission of a manual signature (by portable document format (.pdf) or other method that enables the recipient to reproduce a copy of the manual signature), shall be treated in all manner and respects as an original agreement or instrument and shall be considered to have the same binding legal effect as if it were the original signed version thereof delivered in person. Neither Party hereto shall raise the use of a facsimile machine or other electronic transmission to deliver a signature or the fact that any signature or agreement or instrument was transmitted or communicated through the use of a facsimile machine or other electronic transmission as a defense to the formation of a contract and each such Party forever waives any such defense.

**SIGNATURE PAGE FOLLOWS**

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

**The Pennsylvania Horticultural Society**

By:

Title:

Date:\_

**SERVICE PROVIDER**

By:

Title:

Date:

Exhibit A

**FEES AND FEE SCHEDULE**

Exhibit B

INSURANCE REQUIREMENTS

Prior to the Effective Date, the Service Provider shall provide PHS with an Association for Cooperative Operations Research and Development (ACORD) certificate of insurance for the minimum limits of insurance specified below, establishing that the following entities and their respective directors, officers and employees are named as additional insured, except on the Professional Liability and Workers' Compensation policies, for the Term of this Agreement.

The Pennsylvania Horticultural Society

100 North 20th Street, 5th Floor

Philadelphia, PA 19103-1495

(Fax No.: 215-988-8810)

The City of Philadelphia

Office of the Director of Finance

Division of Risk Management

1515 Arch Street, 14th Floor

Philadelphia, PA 19102-1579

(Fax No.: 215-683-1705)

Service Provider will furnish an ACORD certificate of insurance to PHS for approval at least ten (10) days prior to commencement of work. Service Provider will provide PHS with a least thirty (30) days prior written notice in the event of cancellation or nonrenewal of the Service Provider’s insurance.

Unless otherwise approved by the City’s Risk Management Division in writing, Provider shall, at its sole cost and expense, procure and maintain, or cause to procured and maintained, in full force and effect, the types and minimum limits of insurance specified below, covering Provider’s performance of the Services and the delivery of the Materials. Provider shall procure, or cause to be procured, all Insurance from reputable insurers admitted to do business on a direct basis in the Commonwealth of Pennsylvania or otherwise acceptable to the City. All insurance herein, except Professional Liability Insurance, shall be written on an “occurrence” basis and not a “claims-made” basis. In no event shall Provider perform any Services or other work until Provider has delivered or caused to be delivered to the City’s Risk Management Division the required evidence of insurance coverages. All insurance coverages shall provide for at least thirty (30) days prior written notice to be given to the City in the event coverage is materially changed, cancelled, or non-renewed. PHS and The City of Philadelphia, its officers, employees, and agents shall be named as additional insureds on the General Liability Insurance policy. Provider shall also deliver or cause to be delivered to the City an endorsement stating that the coverage afforded the City and its officers, employees, and agents, as additional insureds, will be primary to any other coverage available to them and that no act or omission of the City, it officers, employees, or agents shall invalidate the coverage.

(A) **General Liability Insurance**

1. Limit of Liability: $1,000,000 per occurrence combined single limit for bodily injury (including death) and property damage liability; $1,000,000 advertising injury; $2,000,000 general aggregate and $1,000,000 aggregate for products and completed operations. The City may require higher limits of liability if, in the City’s sole discretion, the potential risk warrants.
2. Coverage: Premises operations; blanket contractual liability;

personal injury liability; products and completed operations;

independent Service Providers; employees and volunteers as additional

insureds; cross liability; and broad form property damage (including completed operations).

(B)  **Workers’ Compensation and Employers’ Liability.**

1. Workers’ Compensation: Statutory Limits
2. Employers’ Liability: $100,000 Each Accident – Bodily Injury by

Accident; $100,000 Each Employee – Bodily Injury by Disease;

and $500,000 Policy Limit – Bodily Injury by Disease.

1. Other states’ insurance, including Pennsylvania

**(C) Automobile Liability Insurance.**

1. Limit of Liability: $1,000,000 per occurrence combined single

limit for bodily injury (including death) and property damage

liability.

2. Coverage: Owned, non-owned and hired vehicles.