



City Hall, 215 Sycamore St.
Muscatine, IA 52761-3899
(563) 264-1550
Fax (563) 264-0750

FINANCE & RECORDS

MEMO

To: Mayor Hopkins and Members of City Council

From: Nancy A. Lueck, Finance Director

Date: June 16, 2015

Re: Perpetual Care Cemetery Trust Agreement

Introduction and Background:

The Iowa Insurance Division in April of 2015 completed a Compliance Examination Report for Greenwood Cemetery based on information submitted by the City in April of 2014. This report reviewed financial information for fiscal years 2011/2012 and 2012/2013, the forms used at the Cemetery, and the Cemetery's compliance with State Code requirements.

General Information:

In the Compliance Examination report it was noted that there was no written Trust Fund Agreement including appointing a Trustee for perpetual care funds of the cemetery as required by the State Code. The City of Muscatine has been serving as Trustee for investments of the Cemetery's Perpetual Care Fund, but there has been no formal written agreement. With Greenwood Cemetery being a municipal cemetery, the required agreement is in effect an agreement between the Cemetery as a division of the City and the City itself. The attached Agreement was prepared by Erin Clanton of the Brick, Gentry law firm in order to meet the requirements of the State Code. This Agreement formalizes the City's trustee responsibilities for the Cemetery Perpetual Care funds. There will be no change operationally with the execution of this agreement.

There will also be some language modifications to the City's form for sale of cemetery lots/internment rights based on the recommendations in the Compliance Examination.

Summary and Recommendation:

The attached Perpetual Care Cemetery Trust Agreement meets the requirements of the State Code. Upon approval by the City, this Agreement will be submitted to the Iowa Insurance Division as requested in their report.

Please include this agreement on the City Council agenda for the June 18, 2015 meeting.

**PERPETUAL CARE CEMETERY
TRUST AGREEMENT**

This Perpetual Cemetery Care Trust Agreement (the "Trust Agreement") is made and entered into this _____ day of _____ 2015, by and between the Greenwood Cemetery, a municipally owned and operated facility located at 1814 Lucas Street, Muscatine, Iowa (hereafter "Cemetery") and the City of Muscatine, Iowa (hereafter "Trustee") located at 215 Sycamore Street, Muscatine, Iowa.

WHEREAS, it is a common practice for consumers ("Purchasers") to contract with cemetery authorities for perpetual care of interment rights;

WHEREAS, the Cemetery is engaged in the business of selling perpetual care of interment rights subject to the provisions of Chapter 523I, as amended, and related rules and regulations of the State of Iowa, as amended;

WHEREAS, the payments received for perpetual care of interment rights are required to be placed in trust and deposited with a trustee meeting the requirements of Iowa Code chapter 523I as amended;

WHEREAS, pursuant to Iowa Code §523I.502 and Title 3, Chapter 6 of the Muscatine Code of Ordinances, Trustee is qualified to serve as a trustee; and

WHEREAS, Cemetery wishes to contract with Trustee; and

WHEREAS, as required by Iowa Code §523I.806, Cemetery and Trustee wish to set forth the terms and conditions whereby all accumulated deposits hereafter deposited under this Trust Agreement and all accumulated appreciation and income thereon, (such accumulated deposits and accumulated appreciation and income shall hereafter be referred to as "Perpetual Care Funds") shall be administered in accordance with the Iowa code chapter 523I;

NOW THEREFORE, in consideration of the declarations of trust and the mutual covenants of the Cemetery and Trustee, the parties agree as follows:

**ARTICLE I
TRUST PURPOSE**

1.1 Creation of the Trust. The purpose of this Trust Agreement and the trust created (the "Perpetual Care Cemetery Trust Fund") is to provide for the administration and investment, in compliance with Iowa code chapter 523I, of all Perpetual Care Funds received by Trustee from the Cemetery. The Perpetual Care Cemetery Trust Fund shall be irrevocable.

1.2 Appointment of Trustee. The Cemetery hereby appoints Trustee and Trustee hereby accepts the appointment as Trustee of the Perpetual Care Trust Fund in accordance with the terms and conditions of this Trust Agreement and applicable law.

1.3 **Bond.** The Trustee is exempt from posting bond hereunder.

ARTICLE II ENDOWMENT CARE DEPOSITS

2.1 **Deposits into Trust.** Cemetery may at any time this Trust Agreement is in effect, and in any amount, pay or direct that moneys constituting Perpetual Care Funds be paid to Trustee for deposit into the Perpetual Care Trust Fund established hereunder by Trustee for Cemetery. Trustee shall not be responsible for any Perpetual Care Funds that shall be deposited pursuant to this Trust Agreement until such Perpetual Care Funds shall have been actually delivered to Trustee for deposit into Perpetual Care Trust Fund.

2.2 **Investment Accounts.** Cemetery may establish one or more separate and distinct investment accounts within the Perpetual Care Trust Fund, provided that all statutes, rules and regulations of the State of Iowa, as well as all terms and conditions under this Trust Agreement, are complied with separately for each investment account.

2.3 **Accounts.** Trustee agrees to accept all Perpetual Care Funds paid on behalf of Cemetery and to maintain such accounts and records as are necessary to carry out its obligations as Trustee. Cemetery, or its agent, shall be responsible for maintaining records for the purpose of identifying those Perpetual Care Funds which relate to specific Purchasers.

2.4 **Compliance.** Trustee shall be responsible for determining whether the Cemetery has complied with requirements under Iowa Code chapter 523I concerning the timing or amount of accumulated deposits to be deposited with Trustee.

ARTICLE III DUTIES OF THE TRUSTEE

3.1 **Title To Assets.** Trustee shall take title to any assets conveyed to it by Cemetery to be deposited into the Perpetual Care Trust Fund for the purpose of investing, protecting and conserving such assets for Cemetery, collecting income earned from such assets and distributing principal and income of such Perpetual Care Trust Fund pursuant to the terms of this Trust Agreement, and applicable law.

ARTICLE IV POWERS OF THE TRUSTEE

Except as otherwise provided under Iowa Code chapter 523I, Trustee shall have the powers normally granted to trustees under Iowa law, specifically including, but not by way of limitation, the power to:

4.1 Collect, receive and provide receipt(s) for any and all items of income and principal that may be derived from the assets placed under the terms of this Trust Agreement and to allocate same either to principal or to income, or partly to one and partly to the other, in accordance with the usual and customary accounting practices of Trustee.

4.2 Invest and reinvest the assets of the Perpetual Care Trust Fund pursuant to the provisions of this Trust Agreement, the City of Muscatine's Investment Policy, and any other applicable laws.

4.3 Execute, acknowledge, deliver and accept any and all deeds, deeds of trust, releases, mortgages, certificates, documents, affidavits, declarations and any and all other papers and instruments whatsoever deemed by Trustee necessary or appropriate to carrying out the powers and authority herein granted.

4.4 Exercise any option or privilege to buy, sell, exchange, or convert bonds, notes, or real, personal or mixed property, of any kind.

4.5 Pay from income of the Perpetual Care Trust Fund any expenses which may from time to time be permitted under Iowa Code chapter 523I.

ARTICLE V INVESTMENT OF TRUST FUNDS

5.1 **Permitted Investments.** Trustee shall invest and reinvest the assets of the Perpetual Care Trust Fund only in such manner and in such investments as are permitted under Iowa Code chapter 523I, as amended, the City of Muscatine's Investment Policy, and any related rules which may now exist or which may be promulgated hereafter.

Subject to the foregoing limitation, Trustee is authorized to invest and reinvest and keep the Perpetual Care Funds invested in any kind of property; real, personal or mixed; and any kind of investment, including, but not limited to; cash and other liquid assets; any interest in a common trust fund, or other such investment maintained by Trustee; bonds; notes; mortgages; trust deeds; and mortgage participations.

ARTICLE VI INVESTMENT ADVISOR

6.1 **Employment of Third Parties.** Notwithstanding anything to the contrary contained herein, authority is hereby reserved by the parties, subject to any applicable restrictions under Iowa Code chapter 523I, to select an investment advisor to advise Trustee in the making or retention of any investment. Trustee shall use commercially reasonable efforts to follow such advice received from such investment advisor.

6.2 **Investment Standards of the Investment Advisor.** The investment advisor, in advising Trustee to manage, administer, invest, reinvest and dispose of assets of the Perpetual Care Trust Fund, shall conform with the investment standards required of Trustee by Iowa law. Provided, that Trustee shall not be required to follow the advice received from such Investment Advisor should Trustee be of the opinion that the actions being advised by the Investment Advisor would violate requirements under Iowa law or Trustee's fiduciary obligations.

**ARTICLE VII
USE OF TRUST FUNDS**

7.1 **Perpetual Care Funds – Use of Corpus and Net Income.** The corpus of the Perpetual Care Funds shall be retained by the Trustee and shall not, under any circumstances, be withdrawn. Out of the income of the Perpetual Care Trust Fund shall be paid any expenses incurred by and fees charged by the Trustee in connection with the discharge of his duties under this trust instrument. The income from the Perpetual Care Funds remaining after payment of such fees and expenses (the “Net Income”) shall be used exclusively for the care of the cemetery.

7.2 **Trust Records.** Trustee shall maintain such records for the Perpetual Care Trust Fund as will evidence the amounts received for deposit, the amounts disbursed and withdrawn, the total amount of Perpetual Care Funds held and the location, description, and character of the investments of the Care Trust Fund.

7.3 **Cemetery Records.** Cemetery, or its agent, shall be responsible for maintaining individual records by Purchaser.

7.4 **Custodian.** The Trustee shall serve as custodian of the funds, securities, and other properties constituting the Perpetual Care Trust Fund.

**ARTICLE VIII
REPORTS**

8.1 **Statements.** Trustee shall furnish Cemetery, or its agent, a statement detailing the activity of Cemetery’s Perpetual Care Trust Fund for the period covered by the statement, including but not limited to the readily ascertainable funds available in the Cemetery’s Perpetual Care Trust Fund as of the last day of the period covered by the statement.

8.2 **Additional Reports.** Trustee will furnish such additional reports or information related to Cemetery’s Perpetual Care Trust Fund as may be required of Trustee under Iowa Code chapter 523I, as may be requested of Trustee by the State of Iowa or as Cemetery, at its expense, or its agent may reasonably request.

8.3 **Filing of Notices and/or Reports.** Cemetery shall be solely responsible for filing any notices and/or reports that may now or hereafter be required to be filed with the State of Iowa, except as may be set forth hereinabove, regarding establishment of Cemetery’s Perpetual Care Trust Fund and the management, investment and disposition of the funds thereunder.

**ARTICLE IX
MISCELLANEOUS**

9.1 **Amendment or Modification of the Trust.** Trustee and Cemetery may from time to time amend and modify the provisions of this Trust Agreement, in any manner consistent with Iowa Code chapter 523I, by written instrument, provided that any changes affecting the responsibilities of Trustee must be approved in writing by Trustee.

Trustee and Cemetery shall amend this Trust Agreement when necessary to conform to any applicable statutes, rules or regulations. Any amendments to this Trust Agreement shall be subject to approval by the State of Iowa.

9.2 **Governing Law.** This Trust Agreement shall be governed by the laws of the State of Iowa.

9.3 **Severability.** Should any provision of this Trust Agreement be held to be unlawful, invalid or unenforceable for any reason, such provision shall not affect the remaining provisions of this Trust Agreement, but shall be fully severable, and the Trust Agreement shall be construed as if such unlawful, invalid or unenforceable provision had never been included herein.

9.4 **Parties In Interest.** This Trust Agreement shall inure to the benefit of and be binding upon the parties hereto and their respective successors and assigns.

9.5 **Notices To Parties.** All communications provided for hereunder shall be in writing and shall be deemed to be given when delivered in person or deposited in the United States Mail, first class, postage prepaid and properly addressed as described above.

9.6 **Counterparts.** This Trust Agreement may be executed in any number of counterparts and by different parties in separate counterparts, each of which when so executed and delivered shall be an original and all of which when taken together shall constitute one and the same instrument.

9.7 **Headings.** The headings, subheadings, and numbering of the different paragraphs of this Trust Agreement are inserted for convenience of reference only and are not to be taken as part of this Trust Agreement or to control or affect the meaning, construction or effect of the same.

9.8 **Effective Date.** This Trust Agreement shall be effective as of the date first written above.

IN WITNESS WHEREOF, each of the undersigned have executed this Trust Agreement on the date first hereinabove written.

CEMETERY

TRUSTEE

By: DeWayne Hopkins
Its: Mayor of the municipally-owned
Cemetery

By: DeWayne Hopkins
Its: Mayor

Attest:

Attest:

City Clerk

City Clerk