

**FIRST AMENDMENT TO**

**CEMETERY MANAGEMENT AGREEMENT**

**BETWEEN**

**BURLESON CEMETERY OPERATORS, LLC,**

**AND**

**THE CITY OF BURLESON, TEXAS**

This First Amendment to the Cemetery Management Agreement (“Amendment”) is made and entered into as of this \_\_\_\_ day of \_\_\_\_\_, 2023, by and between the City of Burleson, a Texas municipal corporation located in the Counties of Johnson and Tarrant, State of Texas (“City”), by and through its City Manager, and Burleson Cemetery Operators, LLC (“Contractor”), a Texas limited liability company, by and through its duly authorized representative.

**RECITALS:**

WHEREAS, on or about November 12, 2018, the City and Contractor entered into that Cemetery Management Agreement (the “Agreement” as attached hereto as Exhibit A); and

WHEREAS, the parties desire to amend the Agreement by revising it to read as set forth below, with all other terms to remain unchanged.

NOW THEREFORE, in consideration of the mutual benefits and promises contained herein and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

1. **Article XIII “Burleson Memorial Cemetery Fee Schedule”** is hereby added to the Agreement to read as follows:

**“ARTICLE XIII**

**BURLESON MEMORIAL CEMETERY FEE SCHEDULE**

**13.01 Fee Schedule.** For City of Burleson Fiscal Year 23-24 (October 1, 2023, through September 30, 2024), Contractor presents the proposed rates for lot sales as follows:

<b>Space Type</b>	<b>Proposed Fee</b>
Original Cemetery Upright Monument	\$1,450.00
Original Cemetery Flat Monument	\$1,450.00
Original Cemetery Double Depth	\$900.00
Original Cemetery Baby Space	\$245.00
2023 Expanded Cemetery Upright Monument	\$2,000.00
2023 Expanded Cemetery Flat Monument	\$1,700.00
2023 Expanded Cemetery Double Depth	\$900.00
2023 Expanded Cemetery Baby Space	\$400.00
2023 Expanded Cemetery Cremation Garden Space	\$995.00

2023 Expanded Cemetery Cremation Columbarium Space	\$2,200.00
2023 Expanded Cemetery Family Estate A	\$11,250.00
2023 Expanded Cemetery Family Estate B	\$15,000.00

To be effective, the proposed rates above must be approved by the City Council by ordinance and included in the City’s fee schedule pursuant to Section 18-5 of the City of Burleson Code of Ordinances.”

2. **Article XII “Mutual Cooperation” of the Agreement is hereby amended by revising Section 12.01(a) to read as follows:**

“(a) The Contractor shall present the rate for lot sales to the City no later than June 15 of each year. The Contractor must receive City Council approval for any fee increases for lot sales.”

3. **Effect of Amendment.** All other terms and conditions of the Agreement, with the exception of the terms modified by this Amendment, shall remain in full force and effect. Except for the terms modified by this Amendment, the parties hereby ratify the remainder of the Agreement in its entirety.

EXECUTED on the respective dates of acknowledgement, to be effective as of the date first set forth above.

**THE CITY OF BURLESON,  
a Texas municipal corporation**

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

STATE OF TEXAS  
COUNTY OF JOHNSON

This instrument was acknowledged before me on \_\_\_\_\_, 2023 by \_\_\_\_\_, known personally by me to be the \_\_\_\_\_ of the City of Burleson, on behalf of said City.

[Notary Seal]

\_\_\_\_\_  
Notary Public, State of Texas

**BURLESON CEMETERY OPERATORS, LLC,  
A Texas Limited Liability Company**

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

STATE OF TEXAS  
COUNTY OF \_\_\_\_\_

This instrument was acknowledged before me on \_\_\_\_\_, 2023 by \_\_\_\_\_,  
known personally by me to be the \_\_\_\_\_ of BURLESON CEMETERY OPERATORS, LLC,  
on behalf of said company.

[Notary Seal]

\_\_\_\_\_  
Notary Public, State of Texas

**Exhibit A**

CSO#934-11-2018

**CEMETERY MANAGEMENT AGREEMENT  
BETWEEN  
BURLESON CEMETERY OPERATORS LLC  
AND  
CITY OF BURLESON, TEXAS**

This AGREEMENT, made this 12 day of NOVEMBER, 2018 (the effective date), between BURLESON CEMETERY OPERATORS, LLC (hereinafter called Contractor) and the CITY OF BURLESON (hereinafter called "City").

WHEREAS, City is the owner of certain lands and improvements which constitute cemeteries in the greater Burleson, Texas area (collectively, the "Cemetery"); and

WHEREAS, Contractor has the resources and expertise necessary to operate and manage the Cemetery; and

WHEREAS, City desires to obtain the services of Contractor to operate, manage and sell cemetery property rights, merchandise and services at the Cemetery.

NOW, THEREFORE, in consideration of the mutual covenants herein contained, the parties agree as follows:

**ARTICLE I**  
**APPOINTMENT AND EXCLUSIVITY**

**1.01 Appointment of Manager.** The City hereby designates, appoints and authorizes Contractor as its sole and exclusive agent during the term of this Agreement to (i) manage the Cemetery and (ii) conduct all sales of cemetery property rights within the Cemetery subject to the provisions herein. The City hereby also authorizes Contractor to sell funeral merchandise and services within the Cemetery on a nonexclusive basis subject to the provisions herein. Contractor hereby accepts such designation, appointment and authorization and agrees to use its best efforts to discharge its responsibilities as provided herein during the term of this Agreement. It is agreed and understood, however, that the City remains the owner of the Cemetery. This Agreement does not lease the Cemetery to Contractor and does not grant, sell or convey to Contractor any right, title or interest in the real estate where the Cemetery is located.

**1.02 Exclusivity.** As a material inducement to Contractor to enter into this Agreement, City expressly covenants and agrees that, except with the written permission of Contractor and except as herein provided, during the term of this Agreement, City shall not, directly or indirectly, through any corporation, partnership, limited liability company, joint venture or other entity or otherwise own, manage, operate, control, lease or have any financial interest in any corporation, partnership, limited liability company, joint venture or other entity which owns, manages, operates, controls or leases a cemetery or mortuary or which sells monuments, grave markers or other interment receptacles or any other related business within the Burleson City limits.

**1.03 Cemetery Sales and Services.**

(a) The Contractor shall have the exclusive right to sell burial plots at the Cemetery.

(b) Any licensed funeral home, including Contractor, shall be allowed to provide funeral services at the Cemetery and to sell grave markers and monuments for use at the Cemetery. Individuals who have purchased a burial plot in the Cemetery shall not be obligated to use the Contractor to provide funeral services, grave markers or monuments. All burials in the Cemetery shall be in accordance with the rules of the Cemetery governing burials which are intended to protect Cemetery property and other plot owners.

**ARTICLE II**  
**DUTIES AND RESPONSIBILITIES OF CONTRACTOR**

**2.01 Management Duties.** Contractor shall have complete control of and assume full responsibility for all matters relating to management and operation of the Cemetery, including but not limited to the following:

(a) The exclusive right to perform interments and disinterments at the Cemetery.

(b) The exclusive right to conduct sales and complete delivery of cemetery property rights, the non-exclusive right to conduct sales of merchandise and services at the Cemetery, and the obligation to pay all costs associated with management and operations of the Cemetery as described herein and the costs associated with Contractor's sales of merchandise and services as described herein.

(c) Develop and supervise a sales and marketing program for the Cemetery.

(d) Manage process and pay accounts payable incurred in the management of the Cemetery.

(e) Bill and collect all accounts receivable of the Cemetery including but not limited to those associated with the sale of cemetery property rights, and Contractor's sale of merchandise and services at the Cemetery.

(f) Employ all office personnel, officer supervisors, sales staff and any other full time or seasonal workers necessary to operate the Cemetery.

(g) Enter into sub-contracts necessary for the management and operation of the Cemetery.

(h) Maintain complete books and records regarding operation of the Cemetery including but not limited to: accounts reconciliation, burial information, general ledger maintenance, inventory and file maintenance and budgeting services. These reports must be furnished to the City on a quarterly basis by the 15th of each month following the end of each quarter.



**ARTICLE III**  
**DUTIES AND RESPONSIBILITIES OF THE CITY**

**3.01 Access to Cemetery.** During the term of this Agreement, City shall allow free and unrestricted access to and use of the Cemetery and all assets and equipment within the Cemetery in order for Contractor to perform its management responsibilities for the Cemetery. Such assets and equipment may be used at the discretion of Contractor.

**3.02 Accounts Receivable.** Upon execution of this Agreement, City shall bear all responsibility for the collection of or payments of any outstanding accounts receivable accumulated prior to June 28, 2007. Any sums collected by Contractor from such accounts receivable shall be remitted to the City.

**3.03 Quiet Enjoyment.** City covenants and agrees that, subject to the terms and provisions hereof, Contractor shall be entitled to quietly and peacefully hold, occupy and enjoy the Cemetery and Contractor's rights hereunder during the term of this Agreement.

**3.04 Use of Names.** During the term of this Agreement, Contractor may use and include the names of any and all of the cemeteries in any fictitious or other name that Contractor may adopt in conformity with and subject to the laws of the State of Texas in connection with the use and operation of the Cemetery.

**3.05 Licensure.** During the term of this Agreement, City shall maintain, at its expense, all appropriate licenses to operate the Cemetery.

**3.06 Property Tax Exemption.** During the term of this Management Agreement, City shall make timely application for all federal, state and local property tax exemptions available for the Cemetery.

**3.07 Execution of Documents.** During the term of this Agreement, City shall execute any documents reasonably necessary to permit Contractor to carry out the terms and obligations set forth herein.

**3.08 Maintenance of Cemetery Grounds.** Maintain all facilities, property and landscaping within the Cemetery in good condition and make repair to such facilities at its sole cost and expense. This provision includes all maintenance and care of the cemetery grounds, including: trees, shrubbery, turf, fencing, monuments and cemetery roadways at a level of care consistent with generally accepted industry practices or as determined by City staff.

**ARTICLE IV**  
**CONSIDERATION AND RIGHT TO INSPECT RECORDS**

**4.01 (a)** Contractor shall retain all income from the Cemetery and remit to the City an amount equal to sixty five percent (65%) of all burial lot sales to the City . The Contractor is

authorized to negotiate installment or pre need plans for the sales of burial lots and services. Such funds will be remitted based on actual dollars collected on both 'paid in full' contracts and installment plans according to the following schedule.

January 15  
April 15  
July 15  
October 15

(b) Contractor further agrees to remit to the City sixty five percent (65%) for all burials occurring in extraordinary burial structures. The structures include but are not limited to the following:

- a. Urn Niches
- b. Scatter Gardens
- c. Columbariums

(c) Contractor agrees that City shall have access to and the right to examine any directly pertinent books, documents, papers and records of Contractor involving transactions relating to this contract. Contractor agrees that City shall have access during normal working hours to all necessary Contractor facilities and shall be provided adequate and appropriate work space in order to conduct audits in compliance with the provisions of this section. City shall give Contractor reasonable advance notice of intended audits.

(d) Contractor further agrees to include in subcontract(s), if any, a provision that any subcontractor or consultant agrees that City shall have access to and the right to examine any directly pertinent books, documents, papers and records of such consultant or subcontractor involving transactions to the subcontract, and further, that City shall have access during normal working hours to all consultant or subcontractor facilities, and shall be provided adequate and appropriate work space, in order to conduct audits in compliance with the provisions of this paragraph. City shall give the consultant or subcontractor reasonable advance notice of intended audits.

## **ARTICLE V** **INSURANCE**

**5.01 Insurance.** During the term of this Agreement, Contractor shall, at its sole cost and expense, keep and maintain policies of:

(a) General public liability insurance protecting and indemnifying Contractor and the City of Burleson, its officers, employees and agents on an occurrence basis from and against any and all claims for damages or injury to persons, property or for loss of life or property caused by Contractor, its agents, employees, representatives and invitees (1) occurring upon, in or about the Cemetery and/or (2) arising from the conduct of business in or management of the Cemetery or any work or thing whatsoever done or any condition created in or about the Cemetery during the term of this Agreement, such insurance to afford immediate protection to the limit of not less than \$2,000,000 combined single limit, with not more than \$5,000 deductible. City shall have the right from time to time of reasonably requiring Contractor to increase the amount of such coverage



to an amount which, at the time, is commonly provided in cases of premises and businesses similarly situated.

(b) The Contractor is further required to provide a certificate of insurance from the insurance company showing the amount of coverage and that the policy contains a provision that the City must be notified at least 15 days prior to any change in coverage or termination of the policy.

(c) Workers' compensation insurance for Contractor employees in full compliance with all requirements of the laws of the State of Texas.

**ARTICLE VI**  
**RELATIONSHIP BETWEEN THE PARTIES**

**6.01 Independent Contract.** City and Contractor are independent contracting parties. Nothing in this Agreement shall be construed to create between the parties a relationship of principal and agent, employer and employee, partners or joint ventures. Neither party shall have any right, power or authority to act for or enter into binding Agreements on behalf of the other party unless expressly authorized in this Agreement.

**6.02 No Assumption of Liability.**

(a) Except as specifically provided in this agreement, nothing herein shall be construed to be an assumption of any liability by Contractor for the acts or omissions of City resulting in claims, injury or damages, including attorneys' fees and costs arising from City's or its agents' negligence, intentional or willful misconduct. This covenant shall survive termination of this Agreement.

(b) Except as specifically provided in this Agreement, nothing herein shall be construed to be an assumption of any liability by City for the acts or omissions of Contractor resulting in claims, injury or damages, including attorneys' fees and costs, arising from Contractor's or its agents' negligence, intentional or willful misconduct. This covenant shall survive termination of this Agreement.

**ARTICLE VII**  
**TERM OF AGREEMENT**

**7.01 Term.** The initial term of this agreement shall be for a term of ten (10) years commencing on contract award with two (2), five (5) year renewal option periods. These renewal periods must be approved by the Burleson City Council.

**ARTICLE VIII**  
**TERMINATION**

**8.01 Accrued Accounts Payable.** All accrued amounts payable by the parties shall be paid in full within thirty (30) days after the termination of this Agreement.

**ARTICLE IX**  
**DEFAULT**

**9.01 Breach or Default.** During the term of this Agreement, in the event either party is in default or breach of any material, terms, or condition of this Agreement, the other party shall give written notice to the party in default or breach of same and said party shall have a period of sixty (60) days to remedy or cure such default or breach. If such default or breach cannot be remedied or covered within such 60-day period and Contractor is diligently pursuing the same, the cure period shall be extended.

**9.02 Termination.** If such default or breach continues to exist after the initial sixty (60) day cure period, an additional 60-day cure period may be provided, but not to exceed 120 days in total. After such time, the party not in default or breach may, at its option, terminate this Agreement and pursue any other legal remedies against the other party it may have at law or in equity or are provided herein.

**9.03 Ownership of Records.** If termination of this agreement occurs, all records, burial information, financial records must be returned to the City with 30 thirty days following such termination.

**9.04 No Waiver.** The failure of either party to insist, in any one or more instances, upon the performance of any of the terms, covenants or conditions of this Agreement and to exercise any rights hereunder shall not be construed as a waiver or relinquishment of the future performance of any such term, covenant or condition or the future exercise of such right but the obligations of the other party, with respect to such future performance, shall continue in full force and effect.

**9.05 Termination Due to Lack of Appropriations.** Notwithstanding anything in this Agreement to the contrary, if City should not appropriate or otherwise receive funds sufficient to purchase, operate, or maintain the services set forth in this Agreement, City may unilaterally terminate this Agreement effective on the final day of the fiscal year through which City has funding. City will make every effort to give Contractor at least thirty (30) days written notice prior to a termination for lack of appropriations. In the event of termination due to a lack of appropriations, City will pay Contractor for all undisputed fees and expenses related to the software and/or services City has received, or Contractor has incurred or delivered, prior to the effective date of termination. In the event of a conflict between this provision and any other provision in this Agreement, the terms of this provision shall govern.

**ARTICLE X**  
**INDEMNIFICATION**

**10.01 General Indemnity.** Contractor shall indemnify and hold City and all of its officers, agents, servants, and employees harmless from any loss, damage, liability or expenses, on account of damage to property or injury, including death, to any and all persons, including but not limited to officers, agents, or employees of City or Contractor and all other persons performing any act pursuant to this contract, which may arise out of any intentional misconduct, negligent act, error,

or omission by Contractor, its officers, agents, employees, invitees, or other persons for whom it is legally liable, with regard to the performance of this contract; Contractor shall defend at its own expense any suits or other proceedings brought against City or its officers, agents, servants, employees and shall pay all expenses and satisfy all judgments which may be incurred by or rendered against City, its officers, agents, servants or employees or any of them, in connection with the foregoing described intentional misconduct, negligent act, error, or omission by Contractor.

**10.02 Environmental Indemnity.**

(a) To the extent provided by law, City further agrees to indemnify and hold Contractor harmless from and against any and all claims, demands, charges, losses, damages, liabilities and obligations (including without limitation reasonable attorneys' fees and other costs and expenses of the indemnified party incurred as an incident thereto) arising of, based on, or relating to the existence of any (i) hazardous substances as defined in the Comprehensive Environmental Response Compensation and Liability Act, 42 U.S.C. Section 6901, et seq. and its implementing regulations or (ii) regulated substances, as defined in Section 90-01 of the Solid Waste Disposal Act as amended by Section 9601 of the Hazardous and Solid Waste Amendments of 1984, as further amended by the Superfund Amendments and Regulations Act of 1986 in existence at the property of the Effective Date or which was not caused by Contractor or its agents, employees, representatives or invitees.

(b) To the extent provided by law, Contractor further agrees to indemnify and hold City harmless from and against any and all claims, demands, charges, losses, damages, liabilities and obligations (including without limitation reasonable attorneys' fees and other costs and expenses of the indemnified party incurred as an incident thereto) arising of, based on, or relating to the placement by Contractor, its agents, employees, representatives or invitees, of any (i) hazardous substances as defined in the Comprehensive Environmental Response Compensation and Liability Act, 42 U.S.C. Section 6901, et seq. and its implementing regulations or (ii) regulated substances, as defined in Section 90-01 of the Solid Waste Disposal Act as amended by Section 9601 of the Hazardous and Solid Waste Amendments of 1984, as further amended by the Superfund Amendments and Regulations Act of 1986 on the Cemeteries after the Effective Date.

**ARTICLE XI**  
**MISCELLANEOUS PROVISIONS**

**11.01 Entire Agreement.** This Agreement and any exhibits attached hereto contain the complete Agreement among the parties with respect to the transactions contemplated hereby and supersede all prior Agreements and understandings among the parties with respect to such transactions, including but not limited to the agreement between the City and Contractor dated June 28, 2007.

**11.02 Notices.** All notices, demands, requests or other communications that may be or are required to be given, served or sent by any party to any other party pursuant to this Agreement shall be in writing and shall be mailed by certified mail, return receipt requested or by verifiable

overnight delivery, postage prepaid or by facsimile transmission with receipt acknowledged or transmitted by hand delivery, addressed as follows:

If to CONTRACTOR:  
Burlison Cemetery Operators LLC  
c/o Lucas Funeral Home  
Attn: James N. Lucas  
P.O. Box 1587  
Hurst, Texas 76053

If to CITY:  
City Manager  
City of Burlison  
141 West Renfro  
Burlison, Texas 76028

Each party may designate by notice in writing a new address to which any communication may thereafter be so given, served or sent. Each notice or communication that is mailed or delivered in the manner described above shall be deemed given at such time as it is delivered to the addressee (with the return receipt, the delivery receipt or the affidavit of messenger being deemed conclusive evidence of such delivery) or at such time as delivery is refused by addressee upon presentation.

**11.03 Successors and Assigns.** This Agreement and the rights, interest, and obligation hereunder may be assigned by the parties and shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and assigns only with the prior written consent of the City. The City shall not unreasonably withhold or delay such consent.

**11.04 Governing Law.** Venue of any legal action arising out of this Agreement shall be in a district court in Johnson County, Texas.

**11.05 Waiver and Other Action.** This Agreement may be amended, modified or supplemented only by a written instrument executed by Contractor and City.

**11.06 Severability.** The parties hereto intend all provisions of this Agreement to be enforced to the fullest extent permitted by law. Accordingly, should a court of competent jurisdiction determine that the scope of any provision is too broad to be enforced as written; the parties intend that the court should reform the provision to such narrower scope as it determines to be enforceable. If, however, any provision of this Agreement is held to be illegal, invalid, or unenforceable under present or future law, such provision shall be fully severable; this Agreement shall be construed and enforced as if such illegal, invalid or unenforceable provision were never a part hereof; and the remaining provisions of this Agreement shall remain in full force and effect and shall not be affected by the illegal, invalid or unenforceable provision or by its severance, except to the extent such remaining provisions constitute obligations of another party to this Agreement corresponding to the unenforceable provision.

**11.07 Memorandum of Agreement.** If requested by either party, City and Contractor shall execute and deliver a mutually acceptable memorandum of this Agreement for the purpose of recording but the memorandum shall not in any circumstance be deemed to modify or to change any of the provisions of this Agreement.

**11.08 No Waiver of Governmental Immunity.** Notwithstanding anything in this Agreement to the contrary, nothing contained in this Agreement shall be construed as a waiver of City's governmental immunity, or of any damage caps or limitations imposed by law, or any other legal protections granted to City by law, except to the extent expressly provided or necessarily implied herein. In the event of a conflict between this provision and any other provision in this Agreement, the terms of this provision shall govern.

**ARTICLE XII**  
**MUTUAL COOPERATION**

**12.01 Mutual Cooperation.** During the Term, City and Contractor shall cooperate with each other to the greatest extent possible in order to provide the general public with more complete and convenient cemetery services. These cooperative efforts shall include, but shall not be limited to, the following:

(a) The contractor shall present the rate for lot sales to the City no later than June 15 of each year. The contractor must receive City Council approval for any fee increases for lot sales greater than 10% from the previous year. Any other fees shall be comparable to fees charged by comparable cemeteries in the Metroplex.

(b) Contractor shall coordinate with the Burleson Cemetery Board and appropriate City Staff.

(c) Contractor agrees to provide the mowing services of the Cemetery until 60 days after the Effective Date of this Agreement.


**IN WITNESS WHEREOF**, the parties have executed this Agreement as of the day and year first above written.

Signed on this 12 day of NOVEMBER, 2018.

**THE CITY OF BURLESON, TEXAS**

By:   
Name: KEN SHETTER  
Title: MAYOR

**BURLESON CEMETERY OPERATORS, LLC**

By:   
Name: James Meludas Jr.  
Title: Member