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July 2, 2021

Memorandum

To: Common Council, Mayor
From: Brian Running
Re: Cemetery Trust Agreement with Horicon Bank

You'll recall we recently amended Municipal Code §3.08 to change the rules for our cemetery trust accounts, based on Finance Department recommendations. At that time, the Cemetery Commission and Common Council had already authorized Horicon Bank and Dana Investment Managers to be the depository bank and investment advisor for the Cemetery funds, we had begun the process of moving our cemetery trusts from Associated Bank. We waited until §3.08 was finalized before negotiating the final version of the trust agreement with Horicon Bank, and after lengthy discussions, we have finally reached a definitive trust agreement.

Some key points of the new trust agreement are:

- It complies with revised Municipal Code §3.08.
- The trust is revocable and terminable, to give greater flexibility in changing trustees and depository banks, as we have done twice in the last few years.
- Mandatory annual distributions of all trust income are no longer required, withdrawals are on direction from the cemetery only. This gives the cemetery discretion to withdraw only as much as needed, leaving the balance invested to earn additional income.

The agreement has been reviewed and approved by the Finance Department and City Administrator, and Common Council and Cemetery Commission member Cassie Rodriguez is sponsoring this proposed agreement.

We're requesting approval of the agreement and authorization for the mayor and clerk to sign it. Afterward, we can then go ahead and move our trust accounts over to Horicon Bank and have Dana begin to manage the investment of our cemetery funds.

The trust agreement is attached, for your review.

Trust Agreement
City of Waukesha Prairie Home Cemetery – Horicon Bank

This Trust Agreement is entered into by and between the City of Waukesha, referred to herein as the Grantor; and Horicon Bank; referred to herein as Trustee.

Recitals

The Grantor is the owner and operator of the Prairie Home Cemetery, a municipal cemetery referred to herein as the Cemetery.

Grantor maintains several funds which are required by City ordinance to be held in trust. Trustee is willing to act as trustee of these funds, according to the requirements of all applicable laws and the terms of this Trust Agreement.

Now, therefore, the Grantor and Trustee agree as follows:

Article I. Creation of Trust and Funds. The Prairie Home Cemetery Trust, referred to herein as the Trust, is hereby created, for the benefit of the Grantor. The corpus of the Trust shall consist of the following separate Funds, which shall each be accounted for and administered separately by the Trustee: the Perpetual Care Fund, the Mausoleum Care Fund, the Endowment Trust Fund, and the Pre-Need Trust Fund. The Funds shall come into existence upon the deposit by Grantor of designated assets with the Trustee.

Article II. Revocation and Amendment. This Trust is revocable and terminable by the Grantor, and may be amended upon the agreement of the Grantor and Trustee. The resignation of a trustee and the subsequent appointment and acceptance of a successor trustee, or the transfer of Trust Assets from one account into another, do not automatically terminate or revoke this Trust. If any of the terms of this Trust Agreement are in conflict with any mandatorily-applicable laws, then this Trust shall be amended, and deemed amended, as necessary to comply with all mandatorily-applicable laws.

Article III. Appointment of Trustee and Successors. The Grantor appoints Horicon Bank as initial Trustee of the Trust and each individual Fund. Successor trustees shall be appointed by the Grantor, and upon acceptance of the appointment successor trustees shall assume all duties and privileges of the Trustee under this Trust Agreement. Trustees may resign and refuse to accept additional Trust Assets at any time, upon 90 days' advance written notice to Grantor, provided that such resignation shall be effective only upon the transfer of Trust Assets to a successor trustee according to this Trust Agreement.

Article IV. Grant of Assets to Trust. Grantor grants and conveys to Trustee the assets shown on the Schedule of Deposits attached hereto, which shall be deposited into the Funds designated on the Schedule of Deposits, and held and administered according to the terms of this Trust Agreement. Additional assets may be conveyed to Trustee at any time by Grantor, and such assets shall be added to the Fund designated by the Grantor. All such assets held by the Trust are referred to herein as the Trust Assets. All deposits are subject to acceptance by Trustee.

Article V. Terms of Trust Administration. The Trust and each individual Fund shall be administered according to the following rules:

Section 5.01 Responsibility for Compliance with Fund Requirements. The Grantor shall be responsible for ensuring that the requirements of Waukesha Municipal Code §3.08(4), and its successors, are met with respect to the Funds. Trustee shall not have a duty to inquire into Grantor's requests for disbursements or to determine whether the uses to which funds requested by Grantor are legal, provided Grantor has complied with the requirements of Section 5.06 and Section 5.07. The Trustee shall not be required to determine principal and income amounts.

Section 5.02 Investment of Trust Funds, Annual Review of Investment Results. The Trustee shall keep all Trust Assets safe and invest Trust Assets in accordance with Wis. Stat. §881.01. Subject to this requirement, Trustee shall retain, invest and reinvest Trust Assets as Trustee deems advisable, in its sole discretion, to comply with Grantor's stated investment objectives. Trustee may delegate investment management of Trust Assets to an investment advisor pursuant to Wis. Stat. §881.01(10), and shall inform the Grantor of the identities of any investment advisor to which investment management has been delegated. The initial investment advisor shall be Dana Investment Advisors. Trustee may custody the Trust Assets with an outside or external custodian and shall inform the Grantor of the identity of the custodian. The initial custodian shall be Charles Schwab. On or before March 31 of each year, an annual review of investment results and policies shall be conducted by the Trustee, the investment advisor, the City Cemetery Director, the City Administrator, and the City Director of Finance.

Section 5.03 Trustee's General Duties. The Trustee shall collect income and the proceeds of sales, maturities and redemptions; invest net income and principal as provided under Section 5.02; render monthly accounting statements to the Grantor, including those reasonably requested by Grantor and necessary to comply with Grantor's reporting and certification requirements; render an annual accounting of the Trust as of the close of business on December 31 each year; provide the Grantor with a summary of Trust income for income tax purposes; make all records pertaining to this Trust available for audit by the Department of Safety and Professional Services as provided by law; and cooperate with the Grantor in the filing of reports, certifications and applications by making certifications, affidavits and other writings when reasonably requested. The responsibility for filing required annual tax returns for each fund in a timely manner as required by law is the responsibility of the Trustee, and the Trustee shall provide copies of all tax returns to Grantor. The Trustee is empowered to do all things reasonably necessary or convenient for the proper administration of the Trust, and shall have all powers granted by law, except as specifically limited herein.

Section 5.04 Trustee's Powers. The Trustee is empowered to do all things reasonably necessary for the proper administration of this Trust without obtaining the approval of any court. Without limiting this general power, but subject to the investment direction set forth in Section 5.02, the Trustee shall have the following powers: To hold and retain Trust Assets; to hold non-invested cash; to invest in common funds; to invest in mutual funds; to invest in certificates of deposit or other bank instruments, to sell or round out any fractional shares received on securities held in the account; to vote or refrain from voting stock in person or by proxy; to hold Trust Assets in the name of a nominee or in bearer form; to deposit Trust Assets in a clearing depository and to hold U.S. Government securities in book entry form; to allocate receipts and disbursements between income and principal when applicable law is uncertain; to place offers for the purchase and sale of securities with brokers of its choice; to employ and pay reasonable compensation to investment advisors, custodians, attorneys, accountants, and other professionals or third parties as reasonably required; and to employ and pay reasonable compensation to agents to manage and protect Trust Assets. The Trustee shall pay the compensation of the investment advisor and the custodian directly from the assets of the Funds or shall reimburse the Trustee for the compensation of a custodian and the investment advisor and such payment or reimbursement shall be in addition to the compensation to which the Trustee is entitled; provided, however, that any other agents' compensation shall not be in addition to any compensation to which the Trustee is entitled without the Grantor's prior written agreement. The Trustee shall not be liable for any loss or damage resulting from decisions made or actions taken in good faith in compliance with Wis. Stat. §881.01.

Section 5.05 Grantor's General Duties. The Grantor shall provide to the Trustee such information and documents, and in such formats, as the Trustee may reasonably require and request for the performance of its duties imposed hereunder or by law. Grantor shall indemnify and hold the Trustee harmless from and against any and all liability arising, in whole or in part, from a failure to comply with this subsection.

Section 5.06 Distributions from Perpetual Care, Mausoleum Care, and Endowment Trust Fund. The Trustee shall distribute to the Grantor, annually, the net income only of the Perpetual Care Fund, Mausoleum Care Fund, and Endowment Trust Fund, unless Grantor directs that all or a portion of net income shall not be

distributed and shall remain invested in the Trust Funds. The Trustee shall distribute to the Grantor such other amounts as are directed from time to time in writing signed by a person authorized to do so pursuant to Section 5.10. Unless otherwise specifically stated in this Agreement or the applicable statute, or as directed by the Grantor, "net income" shall mean "net income" as calculated pursuant to the Wisconsin Uniform Principal and Income Act, provided, however, that compensation paid to the Trustee shall be treated as a disbursement from Trust income and not principal.

Section 5.07 Distributions from Pre-Need Trust Fund. The Trustee shall distribute to the Grantor net income and principal of the Pre-Need Trust Fund, as directed in writing signed by a person authorized to do so pursuant to, and further subject to the requirements of Wis. Stat. §440.92(5). The certifications required by Wis. Stat. §440.92(5) shall be given in substantially the form of attached Exhibit A. Trustee shall be entitled to rely conclusively on any such certification and may release funds as so directed. The Grantor shall be responsible for determining the amount of accrued income that is attributable to pre-need sales contracts that have been fulfilled, voided, or rescinded.

Section 5.08 Limitation on Trustee's Liability, Indemnification. In no event shall Trustee be responsible for the application of any funds following their withdrawal from the Trust in accordance with Section 5.06 or Section 5.07. Grantor hereby agrees to indemnify and hold Trustee harmless from and against any and all such claims, losses, liabilities, or damages resulting from or relating in any way to the application of withdrawn funds or the products or services provided by Grantor to its customers, provided Trustee has not breached any of its duties under this Trust Agreement.

Section 5.09 Reliance on Grantor's Representations.

(a) Trustee shall be entitled to rely conclusively on the accuracy of the information and documentation furnished by Grantor or any Authorized Person as defined in Section 5.10. Trustee shall be entitled to rely conclusively on the representations of Grantor and any Authorized Person and shall have no duty whatsoever (1) to investigate the activities of Grantor or any Authorized Person, whether before, on, or after the date of this Trust Agreement, or (2) to determine or inquire as to Grantor's operations, accounts, or records, or the accuracy of information provided by Grantor or any Authorized Person, or (3) to determine the validity or sufficiency of any documentation or information provided by Grantor or any Authorized Person, except as otherwise expressly provided in this Trust Agreement.

(b) Trustee shall be entitled to rely conclusively on the amounts specified and statements made in any written direction for release of funds and related documentation received from Grantor or any Authorized Person as defined in Section 5.10. Trustee's only responsibility with regard to such request shall be to verify that the form and manner by which such request is submitted comply with the requirements of this Trust Agreement, and, where such request does comply with such requirements, to issue payment as directed in the request. In no event shall Trustee incur any liability to any person when acting upon any notice, direction or request as set forth in an instrument reasonably believed by Trustee to be genuine and reasonably believed by Trustee to have been executed by the Grantor or any Authorized Person. Trustee shall have no duty to determine whether Grantor or any Authorized Person has complied with the requirements of any applicable ordinance, statute, regulation, or other law, or for determining whether this Trust Agreement complies with such requirements.

(c) The Grantor shall not commence a proceeding against the Trustee for breach of trust or other violation of this Agreement more than one year after the date on which the Grantor was sent a report that adequately disclosed the existence of a potential claim by the Grantor. The Grantor agrees to release, indemnify, and hold harmless the Trustee for any loss or expense related to any such claim made by the Grantor.

Section 5.10 Persons Authorized by Grantor. Grantor shall provide in writing to Trustee the names and specimen signatures of all persons authorized by the Grantor to receive or withdraw income or principal

distributions from this Trust according to the terms of this Trust Agreement, or otherwise to provide directions to the Trustee. These persons are referred to herein as Authorized Persons. Grantor may at any time add or remove Authorized Persons by providing written notice to the Trustee.

Article VI. Compensation of Trustee. The Trustee shall receive reasonable compensation for its services in accordance with its fee schedule as published from time to time and agreed upon by Grantor, and reimbursement for expenses reasonably and necessarily incurred by the Trustee in the performance of its duties hereunder. Trustee's fees may be based on an annual percentage of the market value of the Trust Assets, and may be assessed pro-rata based on the monthly or quarterly market value as determined by the Trustee or Trustee's investment advisors. Trustee may withdraw such amounts from the Funds, and compensation and reimbursement shall be from Trust income and not principal. Trustee may allocate such fee withdrawals among the Funds, in Trustee's reasonable discretion.

Article VII. Situs, Applicable Law. This Trust has been executed and delivered in the State of Wisconsin and shall be construed and administered according to the laws of Wisconsin. References to specific statutes, regulations and ordinances shall be deemed to refer to their successors, as necessary.

Article VIII. Severability. Should any provision of this Trust Agreement be held to be unlawful, invalid or unenforceable for any reason, such provision shall be severed from the remainder of this Trust Agreement, and the remainder shall remain in effect and enforceable.

Article IX. 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.

Article X. 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.

In witness whereof, the Grantor and the Trustee have executed this Trust Agreement.

City of Waukesha

Shawn N. Reilly, Mayor
Date: _____

Gina L. Kozlik, City Clerk
Date: _____

Horicon Bank, Trustee

By: _____
Title: _____
Date: _____

By: _____
Title: _____
Date: _____

Schedule of Deposits
Funds Initially Conveyed to Trustee

Fund	Amount (Principal/Retained Earnings)
Perpetual Care Fund	\$\$/\$\$
Mausoleum Care Fund	\$\$/\$\$
Endowment Trust Fund	\$\$/\$\$
Pre-Need Trust Fund	\$\$/\$\$
<hr/>	
Total	\$\$/\$\$

Exhibit A – Form of Pre-Need Release Certification

To: [Trustee]

The undersigned certifies that:

1. He or she is an Authorized Person as that term is defined in Section 5.10 of the Trust Agreement dated _____ between the City of Waukesha and @@, and that he or she makes this certification for a release of funds from the Pre-Need Fund pursuant to Section 5.07 of the Trust Agreement and Wis. Stat. §440.92(5).
2. The amount requested to be released is \$_____.
3. If the requested amount is being requested before construction of a mausoleum, the requested amount does not exceed the amount charged to the pre-need seller by the person who is constructing the mausoleum for labor that has actually been performed and materials that have actually been used in the construction of the mausoleum, and does not include any cost for which pre-need trust funds have previously been released.
4. If the requested amount is being requested before all the terms of a pre-need sales contract have been fulfilled, the requested amount does not exceed the actual cost to the pre-need seller for any cemetery merchandise that has actually been supplied or delivered and for any cemetery services that have actually been performed, and does not include any cost for which preneed trust funds have previously been released.
5. Trustee is entitled to rely on this certification without inquiry.

Dated: _____

City of Waukesha Prairie Home Cemetery

(sign above)
(print name) _____
Title: _____