

**STATE MORTUARY AND CEMETERY BOARD**

**STATE OF OREGON**

In the Matter of the  
Cemetery Authority Licenses of:

**SETTLEMENT AGREEMENT  
AND CONSENT ORDER**

**METRO, an Oregon municipal  
corporation,  
RESPONDENT.**

Agency Case Nos.: 11-1031A1, 11-  
1031A2, 11-1031A3, 11-1031A4, 11-  
1031A5, 11-1031A6, 11-1031A7, 11-  
1031A8, 11-1031A9, 11-1031A10,  
11-1031A11, 11-1031A12, 11-  
1031A13 and 11-1031A14

The Oregon Mortuary and Cemetery Board (hereafter "Board") is the state agency responsible for licensing, regulating and disciplining cemeteries, funeral establishments, funeral service practitioners and embalmers in the State of Oregon. Metro, an Oregon municipal corporation, holds the following fourteen (14) certificates of authority to operate a cemetery:

Lone Fir Cemetery (OMCB License No. CS-0531)  
Multnomah Park Cemetery (OMCB License No. CS-0532)  
Douglass Cemetery (OMCB License No. CS-0526)  
Jones Cemetery (OMCB License No. CS-0530)  
Gresham Pioneer Cemetery (OMCB License No. CS-0529)  
Brainard Cemetery (OMCB License No. CS-0524)  
Columbia Pioneer Cemetery (OMCB License No. CS-0525)  
Escobar Cemetery (OMCB License No. CS-0527)  
Grand Army of the Republic Cemetery (OMCB License No. CS-0528)  
Mt. View Cemetery – Corbett (OMCB License No. CS-0533)  
Mt. View Cemetery – Stark (OMCB License No. CS-0534)  
Pleasant Home Cemetery (OMCB License No. CS-0535)  
Powell Grove Cemetery (OMCB License No. CS-0536)  
White Birch Cemetery (OMCB License No. CS-0537)

The Board initiated an investigation after the Board received a complaint. Upon investigation, the Board finds it has grounds to issue a Notice of Proposed Disciplinary Action. Metro would be provided the opportunity to request a hearing on such a Notice. In lieu thereof,

the parties wish to resolve this matter informally, by entering into this Settlement Agreement and Consent Order (“Order”), on the terms set forth below, pursuant to ORS 183.417(3).

### SETTLEMENT AGREEMENT

The Board and Metro (collectively “the Parties”) agree to resolve this matter on the following terms

1. The Parties stipulate to the following:
  - a. During 2008 and 2009, Metro twice failed to provide the Board with the name of a new principal, an assigned manager, for each of its fourteen licensed cemeteries in a timely manner in violation of OAR 830-040-0000(5) (1998), (2009).
  - b. Metro owns and manages fourteen historic pioneer cemeteries. Thirteen of these cemeteries were founded in the 19<sup>th</sup> century, and one was founded in the early 20<sup>th</sup> century. Beginning in or about 1994, Metro mistakenly determined that some pioneer interment rights, which had not been used by the owners for burials, were abandoned. Metro then sold interment rights for the same graves to modern purchasers without obtaining written permission from the pioneer owner or the owner’s heir. Metro has found that in at least 600 instances, Metro believed it had terminated the interment rights of pioneer owners, but did so without following the proper legal process, and then sold interment rights to modern purchasers. Most of the modern purchasers purchased the rights at need and used the interment rights for burials, also without the written permission of the original owner or the owner’s heir. Metro’s conduct constituted misrepresentations in the conduct of business under ORS 692.180(1)(a) as defined by OAR 830-030-0100(5) (1993), *renumbered* OAR 830-030-0100(9)(1997).

- c. Metro owns property at NE 223<sup>rd</sup> Avenue, Fairview, Oregon (“223<sup>rd</sup> property”) and has used the property to store earthen material, including soil and gravel, from Metro’s parks and cemeteries. In May 2011, Metro was notified that possible human remains were discovered at the 223<sup>rd</sup> property. In a report dated November 2011, the Oregon State Medical Examiner’s Office concluded that the bone fragments discovered at the 223<sup>rd</sup> property in May 2011 contained numerous skeletal elements, possibly from at least two separate individuals. Metro’s conduct was inconsistent with the Standards of Practice under OAR 830-030-0090 (2011).
2. Metro acknowledges that it has had the opportunity to seek the advice of legal counsel. Metro further acknowledges that it understands and agrees to the terms of this Order. Metro agrees to issuance of the Order voluntarily and without any force or duress. Metro states that the Board and Board staff have not made promises or representations not stated herein to induce Metro to sign this document and agree to issuance of the Order.
3. Metro understands that it has the right to notice and a contested case hearing under the Administrative Procedures Act (ORS Chapter 183), and fully and finally waives any and all right to notice, a hearing and any rights to appeal or otherwise challenge this Order.
4. This Order resolves the matters described in paragraph 1 in their entirety, including violations known and unknown at the time of this Order. This Order does not limit the Board from taking other actions, unrelated to the matters described in paragraph 1, to enforce compliance with ORS Chapter 97 or 692 or any administrative rule

adopted by the Board that were committed prior to or after the effective date of this Order.

5. Notwithstanding the language of paragraph 4, the Board reserves the right to investigate any complaint for conduct that occurred before the effective date of this Order. The Board agrees not to take formal action against Metro for any alleged violation that is related to the matters described in paragraph 1, in accordance with the terms of this agreement.
6. The Parties acknowledge that this Order is a public document and must be disclosed and published in accordance with the Oregon Public Records Law, and the statutes and rules administered by the Board. Each party agrees to make a reasonable effort to notify the other party before communicating with a media source about this Order. Failure to notify under this section will not result in disciplinary action or a finding of breach of this Order.
7. Metro agrees that the Board may issue the following Consent Order, which shall be effective on the date it is signed by the Board or its designee. Metro understands that this agreement is subject to and conditioned upon acceptance and approval by the full Board. If approved by the Board, the Order below may be issued.

It is so stipulated.

METRO

By: \_\_<s> Martha J. Bennett

Date: 11/21/13

Title: \_Chief Operating Officer

## CONSENT ORDER

### IT IS ORDERED:

8. The Board finds that the facts and violations of law listed in paragraph 1 above are correct.
9. Metro shall pay to the Board civil penalties in the amount of \$50,000.00
10. The Board imposes additional suspended civil penalties of \$50,000.00, which the Board will waive on or before December 30, 2015 if Metro satisfies the following conditions by December 1, 2015:
  - a. Metro will pay \$50,000.00 in civil penalties required by paragraph 9; and
  - b. Metro will comply with the Settlement Agreement and Consent Order, ORS Chapters 97 and 692 and the administrative rules adopted by the Board in OAR Chapter 830.

If Metro fails to pay the civil penalties required by paragraph 9 or fails to comply with subparagraph 10.b at any time between the effective date of this Order and 5:00 pm on December 1, 2015, the Board may assess all or a portion of the suspended penalties. The Parties will comply with Oregon law, including without limitation the Administrative Procedures Act and its notice requirements, if the suspended penalties are assessed.

11. Metro's fourteen certificates of authority to operate a cemetery shall be partially suspended for fourteen days beginning at 9:00 am January 12, 2014 and concluding at 5:00 pm January 25, 2014. During the suspension period, Metro may not engage in any pre-need sales or marketing activity, but Metro may (1) perform interments, and sell all related services, for existing owners of interment rights; (2) perform disinterments; and (3) sell new interment rights, and all related services, to an individual with the right to make final disposition at the individual's time of need for that right of interment.
12. Metro has adopted contract provisions (Exhibit 1) and Interment Verification and Soil Protocol (Exhibit 2) to address the soil management issues of its historic pioneer cemeteries. Metro will continue to use similar contract provisions, internal procedures, and other measures to ensure that its interment and soil management procedures meet or exceed cemetery industry standards. Metro shall comply with the requirements of OAR 830-030-0000(8) and (9) if remains are discovered in a presumed unoccupied grave or crypt opened for the purpose of interment.
13. Metro shall implement a 223<sup>rd</sup> Avenue Stabilization Project, in a form substantially similar to the draft attached as Exhibit 3, as soon as practicable. Metro will provide

reasonable notice to the Board staff and Fairview Police Department before it begins this project and will allow representatives of both agencies reasonable access to the 223<sup>rd</sup> property during the project. Metro will inter positively identified human remains and funerary objects discovered during the project at a Metro cemetery location and will identify the location with a small marker. Metro expects that the cost of the stabilization project will exceed \$50,000.00. Metro will complete this project by December 1, 2015. Metro may request an extension of time to complete the project for good cause and the Board will not unreasonably deny the request. Any extension granted by the Board will not change the time period for assessing an additional penalty established in paragraph 10.

14. Metro agrees not to sell or transfer the 223<sup>rd</sup> property without the prior written consent of the Board, which shall not be unreasonably withheld. Metro will ensure that the site is not disturbed after completion of the 223<sup>rd</sup> Avenue Stabilization Project unless required by law. Metro will identify the 223<sup>rd</sup> property with a memorial marker placed at the site. If the site is disturbed, Metro will follow the relevant procedures set forth in paragraphs 12 and 18.
15. Metro has started the process of contacting both the original owners, their heirs and modern purchasers of the interment rights referenced in paragraph 1.b. above and shall continue to take reasonable steps to resolve title issues for both parties. The cost of Metro's efforts exceeds \$100,000.00. In 2012, Metro mailed certified letters directly to modern purchasers, informing them that they may be the second purchaser of an interment right held by a pioneer owner. Metro currently is attempting to locate original owners and their heirs through extensive outreach involving notification in the newspaper, the establishment of a dedicated website, coordination with community groups, and signage at affected cemeteries, at an advertising expense approaching \$40,000.00.
16. Metro will make reasonable efforts to address the concerns of the modern purchasers and original owners and their heirs affected by the conduct referenced in paragraph 1.b. above. Where interment rights cannot be resolved in favor of modern purchasers who have not used their right for a burial, such efforts will include an offer of ownership of an interment right to an available burial plot at a Metro cemetery or a refund of the price paid for the interment right. With respect to the original pioneer owners, once ownership is confirmed, Metro will offer pioneer owners or their heirs alternative interment rights at a Metro Cemetery in accordance with ORS chapter 97. Where interment rights to adjacent spaces have been sold, Metro will use its best efforts to provide rights to alternate adjacent spaces.
17. Beginning in 2014 and ending in December 2015, the Metro cemetery manager shall meet with the Board on a quarterly basis, unless such a meeting is waived in writing by the Board, to provide information and updates on Metro's cemeteries and compliance with this Order. Metro may provide the update in oral or written form.
18. Metro shall report to the Board within five (5) calendar days the discovery of any human remains or partial human remains at any real property owned by Metro and

used for storing earthen material removed from a Metro cemetery. In the event of a discovery or the Board's receipt of a complaint indicating the discovery of human remains or partial human remains, Metro will provide the Board's staff with reasonable access to any real property owned by Metro upon written request by the Board's staff and with reasonable notice. A Metro employee shall have the opportunity to accompany the Board's staff during such access.

19. Metro shall not violate any term of this Settlement Agreement and Consent Order. Any breach of this Settlement Agreement and Consent Order will not result in a reopening of the Board's investigation or in the issuance of a Notice of Proposed Discipline addressing the matters described in paragraph 1. Violation of any term of this Settlement Agreement and Consent Order is cause for imposition of the additional penalty set forth in paragraph 10, if applicable, or discipline under OAR 830-050-0050(4). The parties will comply with Oregon law, including without limitation the Administrative Procedures Act and its notice requirements, if a penalty is assessed under paragraph 10 or if discipline is imposed under OAR 830-050-0050(4).

DATED this \_\_4<sup>th</sup>\_\_ day of \_December\_\_\_\_, 2013

MORTUARY AND CEMETERY BOARD  
OF THE STATE OF OREGON

By: \_\_\_<s> Michelle Gaines  
Michelle Gaines, Executive Director



## EXHIBIT 1

PUBLIC CONTRACT



600 NE Grand Ave.  
Portland, OR 97232-2736  
(503) 797-1700

### Cemetery Interment Services Interment Services Scope of Work

#### INTERMENT SERVICES SCOPE OF WORK

##### I. SCOPE OF SERVICES / SCHEDULE

Contractor shall guarantee all work. Contractor shall perform quality work in the specified time period according to professional standards of practice in the industry. Due to the broad range of service needs, Contractor and Metro agree to work cooperatively in scheduling and conducting grave opening and closings to best serve the interest of cemetery customers while protecting the integrity of the existing graves and of those interred within them. Contractor shall understand the layout and location of each cemetery listed in Exhibit A and demonstrate the ability to accurately locate gravesites using cemetery plat maps provided by Metro. At the order, under the guidance and with the support of the Cemetery program staff, Contractors will perform the following services:

1. Metro shall supply Contractor a Burial Service Schedule. Said schedule shall be updated and sent to Contractor by email each time Metro schedules a new burial. Metro will schedule burials at least 24 hours in advance, with the exception of burials occurring at Multnomah and Lone Fir Cemeteries, for which Metro will schedule burials more than 48 hours in advance. The Burial Service Schedule shall include the cemetery name, grave location, decedent's name, time of burial and the name of the Metro representative.
2. Contractor shall supply Metro with a Daily Grave Opening Schedule by 8:30am that includes Contractor's employees cell phone numbers, this schedule shall correspond to Metro's Burial Service Schedule. Said schedule shall include all grave openings in a 24 hour period, 8:30am to 3:00pm the following day.
3. Metro will conduct the interment verification for the available grave to be opened. Metro shall mark the grave to be opened with spray paint around the perimeter of the grave, 40" by 9'. Metro will mark the top of the grave with an "X". Metro will place a flag in the middle of the "X" with the deceased's last name on it.
4. Contractor will verify that the grave has been measured 40" by 9' and survey the grave for any encroachments that may cause issues in opening the grave prior to the grave opening. Should the Contractor encounter any issues with the grave marked they are to contact Metro immediately.
5. Contractor shall excavate graves with shovels and backhoe and complete the appropriately dimensioned grave at least two (2) hours prior to the scheduled burial, with the exception of Multnomah and Lone Fir Cemeteries. Grave openings at Multnomah and Lone Fir cemeteries shall occur at least the day before the scheduled burial.
6. Contractor shall mark the perimeter of opened graves at Multnomah and Lone Fir cemeteries with safety "CAUTION" tape and cover the open grave as outlined in item 7 of the Scope of Work.
7. For graves opened a day or more in advance, Contractor shall cover open graves with three to four 12" x 12' wooden planks then with plywood prior to scheduled casket delivery or service. Contractor shall maintain the wooden planks and plywood covers in good, safe condition. During wet weather, Contractor shall exert best efforts to minimize causing muddy conditions at the graveside.
8. To enable Metro to inspect grave openings, Contractor shall notify Metro by mobile telephone by calling 503-797-1709 and leaving a message whenever the excavating crew first enters a Metro cemetery.
9. When opening graves, Contractor shall carefully remove sod by hand and set aside for closing and then place sod back onto all graves that are within grassy areas.

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10. At grave opening, Contractor shall first remove from the **top half of the grave** an amount of soil roughly equivalent to the soil to be displaced by the outer burial container, and place it in the Contractor's maintenance vehicle for removal. The Contractor shall reserve the remainder of the excavated soil for backfill, place it adjacent to the grave, and must cover the soil with greens prior to and during interment services. ("Backfill Soil").
11. Contractor shall employ a two person crew for all soil excavating, loading and unloading activities. During excavation and soil loading, one crew member must at all times be performing a diligent visual inspection of the soil for human remains, casket parts, or other funerary objects ("Remains or Funerary Objects"), while the other crew member operates the excavator. If the presence of Remains or Funerary Objects is suspected as a result of the inspection, Contractor shall stop immediately and investigate the soil by hand. If Remains or Funerary Objects are discovered during the excavation and loading process, Contractor shall implement the measures set forth in Section 12.
12. If Remains or Funerary Objects are discovered during the excavation and preparation of a grave, Contractor shall handle the Remains and Funerary Objects with dignity and respect. Contractor shall stop and notify the Cemetery Coordinator immediately. At a minimum, in the absence of further instruction by Metro, Contractor shall cease excavation and cover the Remains and Funerary Objects with a layer of soil and a tarp and continue to attempt to contact Metro. Contractor shall not leave the grave site until Metro has been contacted. No known Remains or Funerary Objects shall be removed and transported from the area of the cemetery in which they are discovered.
13. The Contractor shall record the discovery of Remains or Funerary Objects as outlined in the Inadvertent Discovery Log set forth in Exhibit C.
14. If the inspection of the soil set forth above reveals no Remains or Funerary Objects, the Contractor shall transport the soil to St. Johns Restoration Area, 9387 North Columbia Boulevard, Portland, OR (the "Area"). Only soil from Metro Cemeteries may be deposited in the Area. Said soil deposition shall only occur between the time of 7:00am and 3:30pm, Monday through Friday, for hours outside of this schedule Contractor will make arrangements with Metro to access the site. A Metro employee must be present to direct the disposition of the soil by the Contractor.
15. During soil unloading at the Area, the Contractor must at all times be performing a diligent visual inspection of the soil for Remains or Funerary Objects. If the presence of Remains or Funerary Objects is suspected as a result of the inspection, Contractor shall stop immediately and investigate the soil with a shovel by hand. If Remains or Funerary Objects are discovered during the soil unloading process, Contractor shall implement the measures set forth in Sections 12, 13 and 16.
16. Contractor shall log grave openings, in the form attached as Exhibit B, identifying the personnel who conducted the opening/closing, their initials, day, time and log the day/time that the excess soil was deposited at St. Johns Restoration Area located at 9387 North Columbia Boulevard, Portland, OR. The Contractor shall provide the Metro employee at St. Johns Restoration Area the grave opening log for signature.
17. The completed grave opening logs and Inadvertent Discovery logs will be maintained at Metro's administrative offices.
18. Contractor shall transport, deliver, unload and place the outer burial container specified in the Customer's Grave Sales Contract in the appropriate grave site, at least two (2) hours prior to scheduled delivery or service. For an additional fee the Contractor shall accept delivery of Metro approved vaults and grave boxes purchased from third parties, and shall place said vaults and grave boxes in the appropriate grave site within a reasonable time after delivery. For interments in established burial sections, Contractor shall be required to employ an industry standard self-propelled and powered vault and box liner carrier to minimize damage to existing gravesites and the surrounding grounds. All such vault carriers will employ properly rated manual or motorized hoists or winches and stabilizers.

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19. Contractor shall supply and place the industry standard tent, greens, chairs, and tent equipment (stakes, etc.) in a clean, safe and attractive condition at the grave site at least one (1) hour prior to delivery or service. All tents, greens, chairs, and tent equipment shall be in a safe, attractive and good working condition. Contractor shall assist Metro in keeping burial area free of garbage and debris prior to burial services.
20. Contractor shall erect a tent over the grave site when precipitation is forecast for protective cover or upon cemetery administration request. Tent stakes shall be covered with high visibility cones/covers.
21. Contractor shall supply casket lowering devices or straps, which shall be maintained in safe, operable and excellent condition.
22. Contractor shall close the grave by backfilling the grave with the Backfill Soil immediately following the lowering of the casket in the outer burial container and after the service has been performed.
23. As the grave is being backfilled the Contractor shall compact soil periodically around the liner and every two feet above the liner by hand or by machine. Sod shall be tamped and left level with the surrounding area. If the family fills the grave, Contractor shall assist and compact during filling. Metro shall supply top soil at each of the cemetery locations for backfilling sunken graves to grade. The Contractor shall fill all graves that settle within 12 months following closing the grave. Contractor shall repair the graves by lifting the sod and refilling to grade, with sod replaced and/or seeded, top dressed and tamped. Such repairs must be completed within one (1) week of notification by Metro Cemeteries and be approved by Metro Cemeteries.
24. Contractor shall remove all Contractor-owned equipment and materials from the cemetery promptly after grave closing, or within two (2) hours after completing other work.
25. Contractor shall keep equipment/vehicles out of immediate proximity of graveside services. Contractor shall keep vehicles and equipment in a safe, clean and orderly condition.
26. Contractor's employees shall wear clean company uniforms. Contractor's employees' appearance and conduct must be professional and courteous. Contractor's employees' shall be unobtrusive and respectful to the public at all times.
27. Within 30 days of the last date of signature hereto, Contractors shall institute and share with Metro their company values or service principles for its employees working in Metro Cemeteries that is consistent with this Scope of Work and best practices in the funeral and cemetery services industry, and not inconsistent with Metro's Cemeteries Service Principles. Contractor agrees that their employees will perform their duties strictly in accord with said Service Principles. Metro's Cemeteries Service Principles is attached as Exhibit D as a model.
28. Contractor shall exert best efforts and take every practical precaution to avoid damage to the cemetery grounds, trees, shrubs, curbs, roads, upright monuments or flat stones. Any damage done by Contractor to the grounds, trees, shrubs, curbs, roads, upright monuments or flat stones, including ruts made by backhoe, tractor, truck or trailer shall be reported to the Cemetery Coordinator and promptly repaired or replaced by Contractor within one (1) week of when the damage occurred unless impractical due to weather conditions, if weather conditions exist that prohibit the repair the Contractor must notify Metro and make arrangements for the repair in the future. Repairs and replacements shall meet approval of Metro Cemeteries, in its sole discretion.
29. Contractor shall place a temporary concrete 7" x 11" marker with the name of the interred and grave location stamped into the marker, at each burial site within five (5) business days from the date of interment. This marker must be set to grade so it cannot be dislodged during maintenance of the cemetery. Any dirt or sod removed during this process must be removed by Contractor.
30. Contractor shall perform the following additional cemetery services at hourly rates, at Metro's request:
  - a. Filling or backfilling old sunken graves;
  - b. Straightening monuments;

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- c. Repairing monuments;
- d. Placing a privately ordered vault or grave liner that is delivered graveside for an additional fee as noted in the schedule of prices.

Contractor agrees to perform the above-stated activities within a reasonable length of time (no longer than 60 days after a request has been made). The hourly rate for these services shall be specified in the Fee Schedule which includes cost of labor and materials. These activities are best performed while equipment, etc., is already at a cemetery location (waiting to close a grave or prior to opening grave, etc.) providing these activities do not disturb or interfere with other cemetery activities. Metro reserves the right to request that Contractor perform additional services on 24-hour notice, to assist in the repair of cemetery grounds due to severe weather, vandalism or address other problems which, in Metro's estimation, require immediate attention.

31. Contractor shall provide at least two skilled employees to assist the Cemeteries staff at services expecting large gatherings (150 people or more).

32. Any deviation from the "Scope of Work" must be approved by the Cemetery Coordinator or Manager

33. Contractor shall perform services in accord with professional safety standards in the industry. To protect life, health and property, the contractor shall take such additional safety measures and precautions as the Cemetery Coordinator or his/her representative(s) shall deem reasonable and necessary.

34. Metro may, at its sole discretion, require Contractor to perform removal, replacement or corrective work due to the defective products, work or negligence of Contractor. Said work will be accomplished by the Contractor at no additional cost to Metro and without significant impact on the other normal cemetery operations.

## II. PRODUCT SPECIFICATIONS

Contractor may provide grave boxes, liners and vaults under this contract that are manufactured using a variety of different materials. However, all grave boxes, liners and vaults must have a weight bearing surface sufficient to permanently prevent sinkage resulting from cracking and/or collapse, and be free of any defects which affect their installation or performance. The Contractor represents and warrants and guarantees that the items supplied under this contract are merchantable and fit to use for the particular purpose described in this contract. With the exception of third party Grave liners, Grave liners supplied by the Contractor that collapse within one year shall be deemed per se defective and shall be replaced by Contractor free of charge.

## III. COORDINATION

Except as otherwise set forth herein, the Metro Cemetery Coordinator will place orders for products and services under this contract a minimum of 24-hours in advance with the exception of Multnomah and Lone Fir Cemeteries where the Coordinator will place order 48-hours in advance. Contractor must be available to perform interments seven (7) days a week, 365 days a year, except for the following holidays: Christmas, New Year, Memorial Day, Independence Day, and Thanksgiving Day. On an occasional basis, the Cemetery Coordinator or his/her designee may order a same day interment, the hourly rate for these services shall be specified in the Fee Schedule which includes cost of labor and materials. The Contractor shall respond to day-of-burial communications and requests by Cemeteries on an ASAP basis. The Metro Cemetery Coordinator will provide Contractor general direction for assignments. To expedite the process, Metro may require direct contact with the Contractor employees that will perform the work. The Contractor shall be responsible for verifying all information with the cemetery program staff for the burial prior to the grave opening and burial service. The Contractor shall be accurate in fulfilling Metro's contract requirements. The Contractor shall respond to all non-day of burial related communications and requests within 24 hours. Metro and the Contractor shall have quarterly meetings in order to track the Contractor's performance under the contract and address any communication issues.

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**EXHIBIT A**

The areas dedicated for Interment purposes by Metro shall consist of the following Cemeteries:

- (a) Brainard Cemetery located at NE 90<sup>th</sup> Ave. and NE Glisan St., Portland
- (b) Columbia Pioneer Cemetery located at NE Sandy Blvd. and NE 99<sup>th</sup> Ave., Portland
- (c) Douglass Cemetery located at Hensley Road and SE 262nd Avenue, Gresham
- (d) Escobar Cemetery located at SW Walters Road and Littlepage Road, Gresham
- (e) Gresham Pioneer Cemetery located at SW Walters Road, Gresham
- (f) Grand Army of the Republic Cemetery located at SW Boones Ferry Road and Palantine Road, Portland
- (g) Jones Cemetery located at SW Hewitt Blvd. and SW Humphrey Blvd., Portland
- (h) Lone Fir Cemetery located at SE 21<sup>st</sup> Ave. and Morrison St., Portland
- (i) Mt. View-Corbett Cemetery located at Smith Road and Evans Road, Corbett
- (j) Mt. View-Stark Cemetery located at SE Stark Street and SE 257<sup>th</sup> Street, Gresham
- (k) Multnomah Park Cemetery located at SE 82<sup>nd</sup> Ave. and SE Holgate Blvd., Portland 97206
- (l) Pleasant Home Cemetery located at Bluff Road and Pleasant Home Road, Gresham
- (m) Powell Grove Cemetery located at NE Sandy Blvd. and NE 122<sup>nd</sup> Ave., Portland
- (n) White Birch Cemetery located at SW Walters Road, Gresham

**PUBLIC CONTRACT**

**Cemetery Interment Services**



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**EXHIBIT B**

1

2

**Description of any foreign material found in excavated soil:**

**Description of objects found and actions taken:**

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### Cemetery Service Principles

Cemetery employees occupy a position of great trust and responsibility. Our client families have a right to expect that all remains entrusted to our custody are handled with care, dignity, and respect at all times. It is essential that all cemetery employees understand the unique and sensitive nature of our work and continuously adhere to the commitments summarized below. These commitments are consistent with the Metro Personnel Code, Executive Order 88, and death care industry standards in Oregon.

#### Metro Cemetery Service Principles:

Our customers entrust the care of their loved ones with us, we earn and honor their trust by being respectful and by providing excellent public service. We work with our contractors, volunteers and each other as a team, always conducting ourselves with respect, making decisions collectively and providing innovation in order to sustainably steward the cemeteries. Moreover, because we have a deep understanding of the unique and sensitive nature of each cemetery, we constantly strive to conduct ourselves with dignity and respect for the deceased in order to honor our cemeteries and those interred therein. We recognize that these are unique cultural resources, and that it is important to appreciate the sentimental and cultural value associated with each gravesite.



## EXHIBIT 2

### Metro Cemetery Program – Interment Verification and Soil Protocol February 7, 2012

- I. **Interment Verification:** The following protocol outlined shall be the practice of each cemetery employee when making an interment right sale of a full body grave whether it is an advanced sale or an at-need sale.
  1. Metro receives an inquiry from the customer to procure an interment right. The cemetery coordinator should follow the application of service and corresponding check list depending on if the service will be “at-need” or if the customer is making an advanced purchase of a grave.
  2. Ask the customer if they have any preferences as to location or if they have family members buried in one of our cemeteries etc.... This will allow the coordinator to select appropriate areas.
  3. The Coordinator makes arrangements to meet the customer at a designated time if they want to choose a grave – this allows the coordinator time to locate the grave ahead of time.
  4. The coordinator should control the selection at all times by using resources available to them which include:
    - a. Greening map – check the greening map for graves that are “yellow” for availability, select several lots that indicate availability.
    - b. Lot file and lot sheet information – pull the lot files of the corresponding lots shown available from the greening map. Look through the entire file folder and read through the documents to ascertain the ownership and occupancy of each grave. Review the front and back of the lot sheet for any indication of curbing, trees, notes, writing or “white out” of information. If there’s any doubt that the grave may be owned or occupied mark it in pencil as unavailable with the date, make note of it for further research and verification.
    - c. Manager review – the coordinator is to give the manager the lot file selection for review and sign off. The Manager follows step 4. b. above and either approves the selected graves or assigns follow up instructions to the coordinator to verify graves that are questionable. The manager is especially mindful of notes in the lot file that indicate curbing around a lot should there be available graves within the curbing. The presumption is that there may be an interment right for the entire lot. None of the graves within the curbing border should be used until the interment rights can be determined.
  5. The coordinator should have 3-5 potential vacant graves lined up to field truth for the customer. Prior to meeting the customer take the preselected and approved files, probe, measuring tape, shovel and pin flag to the cemetery to ground truth and locate grave.
  6. Measuring and marking the grave – all graves measure 40” x 9ft, the coordinator should make sure that there is enough room for the grave opening.
    - a. To Measure a Grave:
      - i. Locate the corner marker for the lot where the grave is located.
      - ii. Starting from the middle of the corner marker measure 40 inches in width for each grave space.
      - iii. If a corner marker cannot be located, measure an adjacent grave from the middle of the headstone, measuring 40” in width, note the edge closest to area being located

## EXHIBIT 2

### Metro Cemetery Program – Interment Verification and Soil Protocol February 7, 2012

- and then measure every 40" of the adjacent graves to make sure that there is enough room for the grave that is needed.
- iv. Note any issues that will make a dig impossible and/or difficult. Trees, shrubs, retaining walls on adjacent graves, tight digging spaces, etc.
  - b. Mark the grave with a pin flag for the family to select their grave(s).
7. At Need purchase:
- a. Follow Steps in section I, 1-6 with the customer selecting their grave, enter into a contract for purchase and follow the at need check list.
  - b. Spray paint each side of the grave within the 40 inches that have been measured.
  - c. The grave space should measure 9 feet from the top to the bottom.
  - d. Measure 18 inches from the top of the grave to leave room for the headstone and put an "X" below the 18 inches which is where SI should begin digging, spray paint an arrow indicating the direction of the grave.
  - e. Finally, place a flag in the middle of the "X" with the deceased's last name on it.
8. Advanced sale:
- a. Follow Steps in Section I, 1-6 with the customer selecting their grave, enter into a contract for purchase and follow the advanced sale check list.
  - b. Issue a Certificate of Interment Right.
- II. **Grave Space Issues** - the following protocol outlined shall be the practice of each cemetery employee.
1. Where there are burials prior to 1950 on either side of grave intended to be used care should be taken into determining if the grave can be used with consideration to trees and other foliage that may encroach into the area or if an outer burial container exists or not. If the tree or foliage is large with a large root system the coordinator should mark the grave as unusable for full body burial and the grave should be marked to be used only for inurnments.
  2. If there is not enough room either at the width or the length of the grave the coordinator should mark the grave as unusable for full body burial and the grave should be marked to be used only for inurnments.
  3. If the grave was an advance sale and is being used "at-need", notify the family and make them aware that their grave space will need to be switched with an available grave. Choose an available grave space as close to the original grave as possible. If there is ample time before services will take place, ask the family to bring the original Certificate of Interment Right to the cemetery and obtain the Certificate of Interment Right from them. Show them the new grave and have them sign a revised Contract of Purchase and. If the services are being held immediately, take care of this process at the time of burial. The new Interment Right Certificate will be issued in accordance with the Cemetery Program Procedures document.
  4. Update the lot files and greening map as they are used– if there is a known issue with a grave – mark it on the file with detailed notes and if necessary write a "Memo to File" explaining the issues.

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- III. **Soil Management:** The following protocol outlined shall be the practice of each cemetery employee and the burial services contractor for grave openings and handling Metro cemetery soil.
1. Metro shall supply Contractor a Burial Service Schedule. Said schedule shall be updated and sent to Contractor by email each time Metro schedules a new burial. Metro will schedule burials at least 24 hours in advance, with the exception of burials occurring Multnomah and Lone Fir Cemeteries, for which Metro will schedule burials more than 48 hours in advance. The Burial Service Schedule shall include the cemetery name, grave location, decedent's name, time of burial and the name of the Metro representative.
  2. Contractor shall supply Metro with a Daily Grave Opening Schedule by 8:30am that includes Contractor's employees cell phone numbers, this schedule shall correspond to Metro's Burial Service Schedule. Said schedule shall include all grave openings in a 24 hour period, 8:30am to 8:30am the following day.
  3. Contractor will verify that the grave has been measured 40 inches by 9 feet and survey the grave for any encroachments that may cause issues in opening the grave prior to the grave opening. Should the Contractor encounter any issues with the grave marked they are to contact Metro immediately.
  4. Contractor shall excavate graves with shovels and backhoe and complete the appropriately dimensioned grave at least two (2) hours, but no more than 24 hours prior to scheduled casket delivery or service with the exception of Multnomah and Lone Fir Cemeteries. Grave openings at Multnomah and Lone Fir cemeteries shall occur the day before the scheduled burial.
  5. Contractor shall mark the perimeter of opened graves at Multnomah and Lone Fir cemeteries with safety "CAUTION" tape and cover the open grave as outlined in item 7 of the Scope of Work.
  6. Contractor shall cover open graves with 1/2 inch to 3/4 inch plywood prior to scheduled casket delivery or service. Contractor shall maintain the plywood covers in good, safe condition. During wet weather, Contractor shall exert best efforts to avoid causing muddy conditions at the graveside.
  7. To enable Metro to inspect grave openings, Contractor shall notify Metro by mobile telephone by calling 503-797-1709 and leaving a message whenever the excavating crew first enters a Metro cemetery.
  8. When opening graves, Contractor shall carefully remove sod by hand and set aside for closing and then place sod back onto all graves that are within grassy areas.
  9. At grave opening, Contractor shall first remove from the **top half of the grave** an amount of soil roughly equivalent to the soil to be displaced by the outer burial container, and place it in the Contractor's maintenance vehicle for removal. The Contractor shall reserve the remainder of the excavated soil for backfill, place it adjacent to the grave, and must cover the soil with greens prior to and during interment services. ("Backfill Soil").
  10. Contractor shall employ a two person crew for all soil excavating, loading and unloading activities. During excavation and soil loading, one crew member must at all times be

## EXHIBIT 2

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performing a diligent visual inspection of the soil for human remains, casket parts, or other funerary objects (“Remains or Funerary Objects”), while the other crew member operates the excavator. If the presence of Remains or Funerary Objects is suspected as a result of the inspection, Contractor shall stop immediately and investigate the soil by hand. If Remains or Funerary Objects are discovered during the excavation and loading process, Contractor shall implement the measures set forth in Section 12.

11. If Remains or Funerary Objects are discovered during the excavation and preparation of a grave, Contractor shall handle the Remains and Funerary Objects with dignity and respect. Contractor shall stop and notify the Cemetery Coordinator immediately. At a minimum, in the absence of further instruction by Metro, Contractor shall cease excavation and cover the Remains and Funerary Objects with a layer of soil and a tarp and continue to attempt to contact Metro. Contractor shall not leave the grave site until Metro has been contacted. No known Remains or Funerary Objects shall be removed and transported from the area of the cemetery in which they are discovered.
12. The Contractor shall record the discovery of Remains or Funerary Objects as outlined in the Inadvertent Discovery Log set forth Exhibit B.
13. If the inspection of the soil set forth above reveals no Remains or Funerary Objects, the Contractor shall transport the soil to St. Johns Restoration Area, 9387 North Columbia Boulevard, Portland, OR (the “Area”). Only soil from Metro Pioneer Cemeteries may be deposited in the Area. Said soil deposition shall only occur between the time of 7:00am and 3:30pm, Monday through Friday, for hours outside of this schedule Contractor will make arrangements with Metro to access the site. A Metro employee must be present to direct the disposition of the soil by the Contractor.
14. During soil unloading at the Area, the Contractor must at all times be performing a diligent visual inspection of the soil for Remains or Funerary Objects. If the presence of Remains or Funerary Objects is suspected as a result of the inspection, Contractor shall stop immediately and investigate the soil with a shovel by hand.
15. If Remains or Funerary Objects are discovered during the soil unloading process, Contractor shall contact Metro, follow Section 12 and repatriate the Remains or Funerary Objects to the grave from which the excavation occurred.
16. Contractor shall log grave openings, in the form attached as Exhibit B, identifying the personnel who conducted the opening/closing, their initials, day, time and log the day/time that the excess soil was deposited at St. Johns Restoration Area located at 9387 North Columbia Boulevard, Portland, OR. The Contractor shall provide the Metro employee at St. Johns Restoration Area the grave opening log for signature.
17. The completed grave opening logs and Inadvertent Discovery logs will be maintained at Metro’s administrative offices.
18. Contractor shall close the grave by backfilling the grave with the Backfill Soil immediately following the lowering of the casket in the outer burial container and after the service has been performed.
19. Contractor shall compact soil as the grave is being filled; every two (2) feet around edge of liner, and by machine every two (2) feet above the liner. Sod shall be tamped and left level

## EXHIBIT 2

### Metro Cemetery Program – Interment Verification and Soil Protocol February 7, 2012

with the surrounding area. If the family fills the grave, Contractor shall assist and compact during filling. Metro shall supply top soil at each of the cemetery locations for backfilling sunken graves to grade. The Contractor shall fill all graves that settle within 12 months following closure. Contractor shall repair the graves by lifting the sod and refilling to grade, with sod replaced and/or seeded, top dressed and tamped. Such repairs must be completed within one (1) week of notification by Pioneer Cemeteries and be approved by Pioneer Cemeteries.

20. Upon receipt of the form Metro cemetery staff shall verify the form against the burial schedule and save the form into Metro's TRIM archival system.
21. Should staff at St. John's discover any remains in the excess soil stored at the Area they are to contact the Cemetery Manager and the Cemetery Manager shall contact the state of Oregon Medical Examiner to determine whether or not the remains are human.
22. Should the cemetery staff or St. John's staff find any discrepancies with the transported soil and the burial schedule they should contact the Cemetery Manager immediately.

# EXHIBIT 2

Metro Cemetery Program – Interment Verification and Soil Protocol February 7, 2012

## EXHIBIT A

### Record of Grave Excavation

*Upon arrival, phone Metro at 503-797-1709*

#### Grave Excavation and Soil Delivery Summary

Date of Excavation:

Decedents Name:

Cemetery:

Block:

Lot:

Grave #:

Weather:

Time:

AM/PM

Excavation Crew Names:  
1  
2

Grave Measurement/  
Encroachment Verification:

YES NO  
*\*If no, call Metro for immediate attention*  
Metro immediate assistance phone 503-797-1890

Remove soil from the top half of the grave, the amount roughly equivalent to the soil to be displaced by the outer burial container:

YES NO  
*\*Only this top portion of soil from the grave is allowed for relocation to St. Johns storage area*

Date of Delivery to St.  
John's

Time of Delivery  
to St. John's

AM/PM

Description of any foreign material found in excavated soil:

I deposited by:

Soil Received by:

Suhor Industries Representative

Time/Date

Metro Representative

Time/ Date

# EXHIBIT 2

Metro Cemetery Program – Interment Verification and Soil Protocol February 7, 2012

## EXHIBIT B

### Record of Inadvertant Discovery

#### Location of Discovery

Date of Excavation:

Decedents Name:

Cemetery:

Block:

Lot:

Grave #:

Discovered at St. John

NO

Weather:

Time Discovered:

AM/PM

Step 1, inspect objects:

Metro assistance priority level:

Step 2, cover with tarp:

Cemetery Office 503-797-1709

Step 3, call Metro:

Emma Russac: 503-806-3206

Step 4, stay on site until

Noel Seats: 503-890-1505

Metro representative arrives

Rachel Fox: 503-867-7808

Metro Main Line: 503-797-1890

ask for a Parks manager or director

1

Excavation Crew Names:

Suhor Industries Representa



## EXHIBIT 3

### 223<sup>rd</sup> Avenue Stabilization Project

After receiving approval from the City of Fairview, Metro began storing soil removed from Metro's parks and cemeteries at a vacant 10.5 acre property owned by Metro and located at the corner of 223<sup>rd</sup> Avenue and NE Blue Lake Road.

Metro has the following overall plan for stabilizing the 223<sup>rd</sup> site:

1. Remove temporary fencing surrounding the site.
2. Remove overgrown invasive vegetation.
3. Search for evidence of remains or funerary objects and return to a Metro historic cemetery.
4. Grade smooth the remaining soil mounds located on the property.
5. Add topsoil to increase plant survival rate.
6. Seed and plant the site for long term care as a natural area without a structure.

The following project staff will participate in the stabilization

Paul Slyman, Parks and Environmental Services Director  
Melisa McDonald, Cemeteries Manager  
Justin Patterson, Parks and Properties Stewardship Program Director  
Dan Kromer, Parks and Visitors Services Manager  
Jen High, Parks Operations Supervisor  
Monty Woods, Park Ranger  
Jim Caudell, Park Ranger  
Howard Rasmussen, Arborist  
Matthew Herbert, Cemeteries Seasonal Staff

Metro will take the following actions:

#### Preparation

Parks and Cemeteries staff will meet with City of Fairview staff before starting stabilization activities to review this work plan, and to discuss timing, safety, soil handling protocols, inadvertent discovery procedures, notification of stakeholders, contingency plans, contacts, and any permitting requirements for grading and other soil-related activities.

Once the preparation meeting is held, and all issues have been addressed, Metro will set a tentative schedule to complete the work.

## EXHIBIT 3

### Stabilization Process

The stabilization process will involve several steps, and will be completed in accordance with Metro Cemetery Program Soil Protocol standards. First, Metro will secure any necessary permits for the work. Second, a soil testing company will test several soil samples from the site.

Once these two initial steps are complete, actual site work will commence as follows:

1. Metro will remove invasive vegetation from the site. Metro may contract with a goat rental company to house a small herd on site for a short time period to help with grazing down of the invasive material. Metro may complete any additional removals by hand, machine, or a combination of both. Project staff will be on site at various times during this process and will continually search for materials that may need to be moved offsite.
2. Metro will remove temporary fencing from the site, and will bring in equipment to visually examine the site, blade the dirt, and grade the site smooth. During grading, project staff will be on-site to walk both in front and behind equipment to search for any remains or funerary objects that might be present. Metro will involve experienced staff who participated in the Multnomah Park Cemetery soil removal process.
3. Once grading is complete, a contractor will deposit topsoil at the site and distribute a native hydroseed mix over the entire area. Metro will ensure the site is properly managed and monitored as the hydroseeding takes root. Metro will augment the hydroseeding with plantings of trees and shrubs as appropriate.
4. A final step in the process, Metro will install a permanent fence surrounding the site along the street frontage to prevent dumping of garbage, household items, and other unwanted material.

### Inadvertent Discovery

If Metro staff identifies an object as unusual or as potential remains or funerary objects, Metro will order work to cease to allow the Cemeteries Manager to review the item. If the Cemetery Manager reasonably believes that the object is related to the cemetery, the Cemeteries Manager or her designee will remove and care for that item according to standard protocol. This will involve coordination with the Fairview Police Department and the Medical Examiner's Office. Metro will continue stabilization of the site only after the item is safely and respectfully handled.

## **EXHIBIT 3**

### Additional Project Points

- Before the project begins, the Cemeteries Manager will provide notice to Metro Communications, Fairview Police, the Oregon Mortuary and Cemetery Board, and the State of Oregon Medical Examiner.
- If remains or funerary objects are discovered, the Cemeteries Manager or her designee will be on site to assist with directing the handling of such items. Staff will follow established protocol and record the discovery of remains or funerary objects as outlined in the Inadvertent Discovery Log.

