

**THIS AGREEMENT** dated for reference the \_\_\_\_\_ day of \_\_\_\_\_, 2020.

**BETWEEN:**

**REGIONAL DISTRICT OF EAST KOOTENAY**, a Regional District pursuant to the *Local Government Act*, RSBC 2015, Chapter 1 and incorporated pursuant to the laws of the Province of British Columbia with a place of business at 19 - 24th Avenue South, Cranbrook BC V1C 3H8.

(the “RDEK”)

OF THE FIRST PART

**AND:**

**JAFFRAY CEMETERY SOCIETY**, a Society incorporated pursuant to the laws of the Province of British Columbia, c/o Box 37, Jaffray BC V0B 1T0.

(the “Society”)

OF THE SECOND PART

**WHEREAS:**

- A. The RDEK owns District Lot 5039, Kootenay District, and in particular the Jaffray Cemetery (the “Cemetery”);
- B. The RDEK has, by Bylaw No. 1337, established the Cemeteries Local Service in Electoral Areas A, B, C, E, F, and G;
- C. The RDEK has, by Bylaw No. 2355, established regulations for the operation and maintenance of a cemetery to serve the Jaffray/Galloway area of Electoral Area B;
- D. The Minister of Attorney General has issued a “Certificate of Public Interest” which is dated March 8, 1985 with said certificate permitting the establishment of a cemetery on District Lot 5039, Kootenay District;
- E. The RDEK is desirous of having the Society be responsible for the operation and maintenance of the Cemetery;

**NOW THEREFORE** this Agreement witnesses that in consideration of the mutual terms and covenants contained herein, the parties agree as follows:

**1. TERM OF THE AGREEMENT**

- 1.1 The term of this Agreement will be ten years commencing November 6, 2020 and ending October 31, 2030.
- 1.2 Upon expiration, this Agreement may be renewed automatically on an annual or monthly basis.

**2. ADMINISTRATION**

- 2.1 The RDEK grants the Society the right to be the sole sales and management agent of the Cemetery.

### 3. DUTIES

#### 3.1 The Society will:

- (a) use all reasonable efforts to sell the available grave spaces in the Cemetery;
- (b) provide the services of a cemetery caretaker as provided for in Bylaw No. 2355;
- (c) issue the Cemetery licences and permits as provided for in Bylaw No. 2355;
- (d) maintain and administer a special bank account known as the Jaffray Cemetery Care Fund (the "Care Fund");
- (e) collect the fees and charges as provided for in Bylaw No. 2355 and other income from the Cemetery, promptly, when such amounts become due and payable and will deposit all monies received for Care Fund purposes into the Care Fund. The Care Fund will not be mingled with other funds of the Society. The Society may withdraw the interest from the Care Fund and said monies are to be expended for the specific perpetual care of the grave sites within the Cemetery. Employees or members of the Society who are responsible for monies of the Society will be bonded by a fidelity bond;
- (f) keep and maintain all records, files, and other documents relative to fees, charges, tariffs, licences, and permits as provided for in Bylaw No. 2355;
- (g) purchase necessary supplies, and to make contracts at its own expense for the digging and covering up of all grave sites; the supply of water and any other utilities which the Society will reasonably consider advisable; and to make ordinary repairs to the fencing and other structures within the Cemetery;
- (h) employ, discharge, supervise and pay all servants, employees or contractors considered by the Society to be necessary for the efficient management of the Cemetery;
- (i) perform all services to provide for, in addition to the foregoing, the necessary management and operation and financial control of the funds required to maintain the perpetual care of the Cemetery. Such services will include the institution of legal actions in the name of and at the expense of the Society, to enforce the collection of fees and tariffs or other income from the Cemetery and otherwise maintain records as to each grave within the Cemetery. In connection with any such legal action, the Society may engage counsel at the expense of the Society. If counsel advises that the RDEK join in any such actions, then on advice of the RDEK's counsel and upon receipt of an indemnity satisfactory to the RDEK's counsel, the Society may sue or defend in the name of the RDEK as well; and
- (j) file with the RDEK an annual financial statement, including advising of the then current status of the Care Fund, and record of number of interments in the Cemetery within six months of the fiscal year end of the Society.

### 4. INDEMNITY AND INSURANCE

- 4.1 The Society covenants to obtain and keep in force during the term of this Agreement at its sole expense, insurance satisfactory to the RDEK protecting the RDEK and the Society (without any rights of cross-claim or subrogation against the RDEK) against claims for personal injury, death, property damage or third party or public liability claims arising out of, in connection with, or in any way related to the Cemetery, in an amount not less than \$2,000,000 and with the RDEK named as additional insured. Every policy will contain a provision that 30-day written notice of cancellation will be given to the RDEK.

- 4.2 The Society hereby indemnifies, saves harmless, releases and forever discharges the RDEK and its officers, employees, agents and elected officials from and against any and all manner of actions, causes of action, debts, suits, losses, liabilities, costs, demands and expenses whatsoever, whether known or unknown, of any person in any way arising from, in connection or attributable to the negligence or other fault of the Society, its servants, agents and employees in connection with or in consequence of this Agreement. This indemnification provision will survive the cancellation, termination or expiry of this Agreement.
- 4.3 The Society will pay all insurance premiums relative to the operation of the Cemetery and as required by this Agreement.
- 4.4 The Society will submit a Certificate or Certificates of Insurance required under this Agreement and such certificates will be submitted upon signing this Agreement and upon renewal of the insurance policy(ies).
- 4.5 The RDEK will not be liable nor responsible for any bodily or personal injury whatsoever that may be suffered or sustained by the Society, its employees, volunteers, or agents in the performance of this Agreement.

## **5. TERMINATION**

- 5.1 The parties hereto agree that either party may terminate this Agreement by giving the other party 60 days written notice of its intention to do so in the manner outlined in Section 7.1.
- 5.2 Notwithstanding the provisions of Section 5.1, this Agreement may be terminated, and the obligations of the parties hereunto will thereupon cease, upon the occurrence of any of the following circumstances:
  - (a) If a petition in bankruptcy is filed by the Society, or if the Society makes an assignment for the benefit of creditors or take advantage of any insolvency act, then the RDEK may terminate this Agreement by serving written notice by registered mail to the other party.
  - (b) If the Society fails to comply with any rules, order, determination, ordinance or law of any federal, provincial or municipal/regional authority, the RDEK may terminate this Agreement upon 10 days written notice by registered mail to the Society.

## **6. BREACH OF ACTS, REGULATIONS OR SCHEDULES TO THIS AGREEMENT**

- 6.1 In the event of any breach of the *Cremation, Internment and Funeral Services Act*, or the *Business Practices and Consumer Protection Act*, as well as any breach of the "Certificate of Public Interest" being Schedule A and the "Burial Area Certificate" being Schedule B, held by the RDEK with respect to all or a portion of the Cemetery, then the RDEK may enter upon and take possession of the Cemetery and assume management and operation of the Cemetery until the Society is in good standing once again.
- 6.2 In the event that the RDEK is placed in a position to take possession of the Cemetery according to Section 6.1, and the Society is no longer in good standing and does not wish to reinstate itself under this Agreement, and no new agent shows it is interested in managing the Cemetery, the RDEK is hereby empowered to close the Cemetery and apply for the rescinding of the "Certificate of Public Interest" and the "Burial Area Certificate".

## **7. NOTICES**

- 7.1 All notices under this Agreement will be given in writing, and will be delivered by pre-paid courier or hand-delivered to the address indicated on the face page of this Agreement, or otherwise transmitted by fax or other means of electronic communication to the usual numbers or addresses of the respective party. Such

addresses may be changed from time to time by either party giving notice to the other party.

- 7.2 If any questions arise as to whether any notice was or was not communicated by one party to the other, it will be deemed to have been effectively communicated or given on the day received or on the fifth day after it was mailed or sent, whichever is earlier.

**8. EXECUTION OF AGREEMENT**

- 8.1 The parties acknowledge and agree that this Agreement may be executed by electronic signature, which will be considered as an original signature for all purposes and will have the same force and effect as an original signature. Without limitation, "electronic signature" will include faxed versions of an original signature or electronically scanned and transmitted versions of an original signature.
- 8.2 This Agreement may be executed in any number of counterparts, each of which will be deemed an original, but all of which together will constitute one and the same instrument.

**9. INTERPRETATION**

- 9.1 This Agreement will be governed by and construed in accordance with the laws of the Province of British Columbia.
- 9.2 Headings are inserted in this Agreement for convenience only and will not be construed as affecting the meaning of this Agreement.
- 9.3 All references to section numbers in this Agreement refer to sections in this Agreement, and all references to Schedules in this Agreement refer to Schedules attached to this Agreement.
- 9.4 This Agreement constitutes the entire Agreement amongst the parties and there are no terms, conditions, representations, or warranties, expressed or implied, statutory or otherwise, except for those expressly set forth herein.
- 9.5 This Agreement will enure to the benefit of and be binding upon the parties hereto and their permitted successors and assigns.

**10. ASSIGNMENT**

- 10.1 This Agreement will not be assigned by either party without the prior written approval of the other.

**11. SEVERABILITY**

- 11.1 If any term, covenant or condition contained herein will, to any extent, be adjudged by a court of competent jurisdiction to be invalid or unenforceable in any respect the same will be severed from this Agreement, and the remainder of this Agreement will not be affected thereby.

The Corporate Seal of **REGIONAL DISTRICT OF EAST KOOTENAY** was hereunto affixed in the presence of:  
  
\_\_\_\_\_  
Rob. C Gay, Chair  
  
\_\_\_\_\_  
Shawn Tomlin, Chief Administrative Officer

C/S

Signed by **JAFFRAY CEMETERY SOCIETY:**  
in the presence of

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Witness Name

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Authorized Signatory

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Witness Address

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Authorized Signatory