

**The Corporation of the Township of Southgate**

**By-law Number 2020-055**

**being a by-law to authorize an agreement  
between The Corporation of the Township of Southgate  
and Walker Cemetery**

**Whereas** the Municipal Act, 2001, Chapter 25, as amended, Section 5 (3), states that municipal power, including a municipality's capacity, rights, powers and privileges, shall be exercised by by-law unless the municipality is specifically authorized to do otherwise; and

**Whereas** Section 8 of the Municipal Act, 2001, Chapter 25, as amended, provides that a municipality has the authority to govern its affairs as it considers appropriate and enables the municipality to respond to municipal issues; and

**Whereas** Section 9 of the Municipal Act, 2001, Chapter 25, as amended, provides that a municipality has the capacity, rights, powers and privileges of a natural person for the purpose of exercising its authority under this or any other Act; and

**Whereas** it is deemed necessary and desirable that the Council of the Corporation of the Township of Southgate enact a by-law authorizing the Corporation to enter into an agreement with the Walker Cemetery,

**Now therefore be it resolved that** the Council of the Corporation of the Township of Southgate enacts as follows:

1. **That** the agreement between Walker Cemetery and The Corporation of the Township of Southgate, attached hereto at Schedule A is hereby ratified and confirmed; and
2. **That** the Mayor and Acting Clerk are authorized to sign the agreement on behalf of the Township of Southgate; and
3. **That** where the provisions of any other by-law, resolution or action of Council are inconsistent with the provisions of this by-law, the provisions of this by-law shall prevail.

**Read a first, second and third time and finally passed this 3<sup>rd</sup> day of June, 2020.**

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John Woodbury – Mayor

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Lindsey Green – Acting Clerk



THIS AGREEMENT MADE THIS **3<sup>rd</sup>** day of **JUNE, 2020**

BETWEEN:

**Walker Cemetery**

(herein called the "Operator")

OF THE FIRST PART

-and-

**The Corporation of the Township of Southgate**

(herein called the "Trustee")

OF THE SECOND PART

**Whereas** the Operator is the owner of property located in the Township of Southgate in the Province of Ontario, as follows:

CON 5 PT LOT 21 RP 16R9093, PARTS 1 and 3, Geographic Township of Proton, alternately described as 085795 Southgate Road 08, in the Township of Southgate, County of Grey; and

**Whereas** the Operator has developed the said lands for cemetery use; and

**Whereas** the Operator is licensed to sell rights to use lots in the said cemetery exclusively for the interment of human remains; and

**Whereas** under s.53 of the Funeral, Burial, and Cremation Service Act, 2002, the Operator is required to deposit a portion of the purchase price into a Cemetery Care and Maintenance Fund; and

**Whereas** the Operator has requested the Trustee to act as Trustee of the said Cemetery Care and Maintenance Fund pursuant to s.53 (7) of Funeral, Burial, and Cremation Services Act, 2002, which the Trustee has agreed to do, in accordance with the terms hereof,

**Now therefore be it resolved that** in consideration of the premises and the covenants and agreements herein contained, it is agreed between the Parties hereto as follows,

1. **That** the Operator hereby establishes with the Trustee hereunder a Cemetery Care and Maintenance Trust Fund, a fund which is separate and apart from all other funds, properties or securities belonging to the said Operator, to be forever conserved for the care and maintenance of the said cemetery property, together with the mausoleum and garden crypts, buildings and appurtenances, and any extensions or enlargements thereof; and
2. **That** the Operator shall deposit or cause to be deposited with the Trustee hereunder, as and when Certificates of Easement conveying burial rights in the said Cemetery are

hereafter issued to purchasers pursuant to contracts for interment rights in presently unsold lots, crypts, niches, etc., moneys equivalent in amount to the percentage (as provided in the Tariff Schedule) of the principal sum or contract price of such lots, crypts, niches, etc., in every case in which said principal sum or contract price has been paid in full. However, when said principal sum or contract price has not been paid in full within one year from date of contract, upon expiry of the said year the Operator, in discharge of its commitment to the Fund for the said contract, shall deposit with the Trustee, from payments received from the purchaser, such moneys as would be due the Cemetery Care and Maintenance Trust Fund if the contract price had in fact been paid in full, as above provided. Similarly, the Operator shall deposit or cause to be deposited with the Trustee hereunder the amount as provided in the Tariff Schedule upon the installation of each adult memorial. It is understood that the Operator will provide to the Trustee sufficient information in writing to verify the correctness of all payments due to or deposited with it hereunder; and

3. **That** the Operator may, if it so desires, deposit or cause to be deposited additional moneys with the Trustee hereunder. The Trustee is authorized to accept gifts and bequests of money or property to the said Cemetery Care and Maintenance Trust Fund from any source, to be subject to the terms of this trust; and
4. **That** all moneys deposited with the Trustee and all property transferred or conveyed to the Trustee shall become and constitute the principal of the Cemetery Care and Maintenance Trust Fund hereby created, to be held and administered by the Trustee, subject to the provisions hereof; and
5. **That** the Trustee shall in no manner be responsible for or charged with the duty of collecting any money or property from the said Operator, or any other person or corporation; and
6. **That** the fund hereby established shall be known as the "Walker Cemetery Care and Maintenance Trust Fund,"; and
7. **That** all moneys deposited with the Trustee hereunder shall be received by it for the purpose of the Cemetery Care and Maintenance Trust Fund, and, despite subsection 27(9) of the Trustee Act, 1990, the Trustee shall not make investments with money that the Funeral, Burial, and Cremation Service Act, 2002 is required to hold in trust if the investments would contravene the standards for investments required under subsection 27(2) of the Trustee Act; and  
**That** the Trustee shall not be liable for any loss that may happen to the Cemetery Care and Maintenance Trust Fund of the Operator in connection with any such investments made by them in good faith; and  
**That** the Trustee agrees to review annually with the Operator the investments and the investment policy of Cemetery Care and Maintenance Trust Fund; and
8. **That** the Trustee shall manage the trust fund hereby established pursuant to the powers conferred upon Trustees by the Trustee Act, 1990; and
9. **That** the solicitor of the Trustee shall be employed from time to time by the Trustee as solicitor for this Cemetery Care and Maintenance Trust Fund in all matters relating to the investment of the funds where legal services may be required; and

10. **That** the Trustee shall pay the net income from said Cemetery Care and Maintenance Trust Fund annually to the Operator up to the amount spent by the Operator for care and maintenance during that calendar year as evidenced by a certificate of the Operator; should the Operator not withdraw any or all of the said income to which it is entitled, or should said income be in excess of that covered by the certificate for that particular year, the Trustee shall hold and reinvest the balance, if any, and such balance and the income therefrom shall be available to the Operator for care and maintenance in future years if required; and
11. **That** in the event, at any time hereafter, there is no person, firm or corporation lawfully in actual possession, management and operation of said cemetery, or there is dispute, question or uncertainty as to what person, firm or corporation, if any, is lawfully in actual possession management and operation of said Operator, the Trustee shall hold the Cemetery Care and Maintenance Trust Fund and the income therefrom subject to payment of the income upon order of a Judge of a Court of competent jurisdiction, made upon application to the said Court by any person or corporation having an interest in the Cemetery Care and Maintenance Trust Fund of the said Operator; and
12. **That** the Trustee agrees to keep a true and correct account of all receipts and disbursements made by it hereunder and agrees to furnish to the Operator, its successor or assigns, and also to the person, firm or corporation lawfully in actual possession, management and control of said Operator, annual statements of account showing all such receipts and disbursements during the period covered and an inventory of assets. Such accounts and inventory shall be deemed to be accounts stated, accepted and approved except as to any items appearing or by inference included therein to which written objections are made to the Trustee within sixty (60) days from the mailing of said statement; and
13. **That** this Cemetery Care and Maintenance Trust Fund is hereby declared to be irrevocable, except on 60 days notice of termination by either the Trustee or the Operator, approved by the Bereavement Authority of Ontario; and
14. **That** it is understood and agreed by the parties hereto that no advertising shall be used in connection with the sale of the lots, crypts, niches, etc. of the said Operator, in which the Trustee is named or referred to, unless the same shall first have been submitted to and approved by the Trustee; and
15. **That** the Trustee may retain and reimburse itself out of the income therefrom of Cemetery Care and Maintenance Trust Fund for all costs, charges and expenses of or incidental to the administration of Cemetery Care and Maintenance Trust Fund or in relation thereto in accordance with the tariff of costs set out as the First Schedule to this agreement; and
16. **That** the tariff of costs set out in Schedule A shall be subject to review at the request of the Trustee or at the request of the Operator but the party requesting the revision of the tariff of costs shall give notice of its request to the other party not less than 60 days before the intended effective date of the revision requested; and
17. **That** the Operator agrees to bring to the attention of the Trustee any new statute or regulations which may affect the provisions of this agreement and should the Operator fail so to do the Trustee shall not be responsible for any payments made contrary to or any acts at variance with the provisions of such statutory regulations; and

18. **That** for any extraordinary services not presently contemplated by the Parties, the Trustee shall be entitled to reasonable additional compensation and out-of-pocket disbursements. Until such time as income from the Cemetery Care and Maintenance Trust Fund is sufficient to pay the said compensations, any deficiency therein shall be paid each year to the Trustee by the Operator; and
19. **That** neither the principal nor income of this Cemetery Care and Maintenance Trust Fund shall be subject to the claims of the Operator's creditors or to legal process, except as such claims arise from normal and proper execution of the Cemetery Care and Maintenance Trust Fund; and
20. **That** notwithstanding that this Cemetery Care and Maintenance Trust Fund is irrevocable, or any successor Trustee may resign and discharge itself of the duties and obligations of Trustee by giving the Operator or its successors or assigns, sixty (60) days notice in writing before such resignation shall take effect, PROVIDED, however, that such resignation shall be accompanied by a complete and satisfactory accounting to the Operator, its successors or assigns, of the status and condition of the Cemetery Care and Maintenance Trust Fund at that time and the transferring to the successor Trustee of all assets then belonging to said Cemetery Care and Maintenance Trust Fund. This clause shall not relieve the Trustee from any liability for mismanagement which would otherwise be imposed by law; and
21. **That** in the event of the resignation of the said Trustee hereunder, pursuant to the provisions of the preceding paragraph, the Operator, its successors or assigns, shall appoint a successor Trustee, but in the event of failure so to do within a period of sixty (60) days after written notice to said Operator, its successors or assigns, of the intention of said Trustee to resign, said Trustee may apply to a Court of competent jurisdiction for the appointment of a successor Trustee. Any such successor Trustee shall have and incur the rights, duties and obligation of the Trustee hereunder. The resigning Trustee shall render a full, true and correct accounting to such successor Trustee; and
22. **That** the Trustee, by acceptance of this Cemetery Care and Maintenance Trust Fund and the execution of this agreement, accepts no responsibility and in no way shall be called to account by any person for any Cemetery Care and Maintenance Trust Fund previously established for this said property and held or operated by any person as Trustee thereof, other than to account for any capital in any such Cemetery Care and Maintenance Trust Fund which may be paid over to it by any such Trustee. And in the event of the receipt by it of any such fund the same shall be added to this Care Fund Trust and invested and managed pursuant to the terms hereof; and
23. **That** the Operator may, on its own initiative, apply to the Bereavement Authority of Ontario, for authority to appoint a successor Trustee to be the depository of trust funds under this Agreement. When the approval of the Bereavement Authority of Ontario has been obtained and the Operator has notified the predecessor Trustee under this Agreement of the successor Trustee, the predecessor Trustee shall, within 60 days of such notice, transfer to the successor Trustee all assets then belonging to the Cemetery Care and Maintenance Trust Fund together with a full, true and correct accounting of the Cemetery Care and Maintenance Trust Fund; the receipt by the successor Trustee of these assets and accounting shall constitute a complete release of the predecessor Trustee from all obligations under this Agreement except any existing successor Trustee shall have the rights and incur the responsibilities and

obligations of the Trustee under this Agreement but shall in no way be accountable for the previous administration of the Cemetery Care and Maintenance Trust Fund other than to account for the actual assets received from the predecessor Trustee; and

24. **That** in the event the name of the said Operator's property is changed at any subsequent time or times, the new name, shall be substituted therefore throughout this agreement.

**In Witness Whereof**, this instrument has been executed by the duly authorized officers of the parties hereto, and their respective corporate seals affixed hereto, on the day and year first above written.

**OWNER OF AND ON BEHALF OF THE WALKER CEMETERY  
(OPERATOR)**

**DATED:** \_\_\_\_\_

**PER:** \_\_\_\_\_

**PER:** \_\_\_\_\_

**THE CORPORATION OF THE TOWNSHIP OF SOUTHGATE  
(TRUSTEE)**

**DATED:** \_\_\_\_\_

**PER:** \_\_\_\_\_  
John Woodbury – Mayor

**PER:** \_\_\_\_\_  
Lindsey Green – Acting Clerk

## **SCHEDULE A**

### **TARIFF OF COSTS**

1. Annual fee of 0% of the income earned by the Cemetery Care and Maintenance Trust Fund plus of 0% based upon the average annual market value of the Cemetery Care and Maintenance Fund; and
2. Closing out fee upon termination or winding up of the Cemetery Care and Maintenance Trust Fund of the Cemetery; and
3. Will be entitled to reimbursement for any out-of-pocket expenses incurred in administering this agreement.