

AGREEMENT FOR PUBLIC SERVICES

This Agreement for Public Services (“Agreement”) is made as of the date of last signature below between the **CITY OF MARSHALLTOWN, IOWA** (“CITY”), an Iowa municipal corporation, and **MARSHALL CEMETERY ASSOCIATION dba RIVERSIDE CEMETERY** (“ASSOCIATION”), an Iowa non-profit corporation,

RECITALS

WHEREAS, the Association owns, maintains, and administers Riverside Cemetery (“Cemetery”), an approximately 105-acre cemetery situated within the City of Marshalltown; and

WHEREAS, the Cemetery, founded in 1863, offers in addition to burial plots, a park-like setting including a lake (“Lake Woodmere”), green and wooded areas, and paved and unpaved paths and ways; and

WHEREAS, the Cemetery has been utilized by residents of the City of Marshalltown for recreation for over 150 years, including but not limited to walking, jogging, bicycling, picnicking, and feeding and admiring waterfowl (a local tradition for generations of residents); and

WHEREAS, such recreational use of the Cemetery supplements the CITY’S public park system by providing additional outdoor recreational space near Riverview Park without the continuing cost and expense of maintaining, administering, and improving public land; and

WHEREAS, Lake Woodmere constitutes the principal attraction for residents’ recreational use and enjoyment of the Cemetery; and

WHEREAS, Lake Woodmere’s water level and quality has been steadily diminishing due to evaporation and loss of the lake’s prior source of fresh water; and

WHEREAS, an alternative source of fresh water is necessary to sustain Lake Woodmere, to maintain appropriate water levels and water quality, and to ensure residents’ continued recreational use and enjoyment of the Cemetery; and

WHEREAS, the ASSOCIATION estimates the cost to install a well and necessary appurtenances to sustain Lake Woodmere (“Improvements”) to be approximately \$45,000.00; and

WHEREAS, funding the Improvements presents a challenge to the ASSOCIATION in the wake of unforeseen expenses following the derecho that struck the Marshalltown community in August of 2020; and

WHEREAS, the ASSOCIATION’S ability to sustain Lake Woodmere; and to continue to provide residents of the City of Marshalltown safe, free, and open access to the Cemetery for

recreational purposes; is dependent upon the ASSOCIATION'S ability to fund the Improvements without compromising its maintenance and administration of the grounds; and

WHEREAS, the City Council of the City of Marshalltown has determined the ASSOCIATION'S continued provision of free and open access to the Cemetery for recreational purposes constitutes a valued public service to the residents of Marshalltown for the reasons stated herein.

AGREEMENT

NOW THEREFORE, in consideration of the ASSOCIATION providing the residents of Marshalltown free and open access to the Cemetery for recreational purposes, and other good and valuable consideration, the CITY and the ASSOCIATION agree as follows:

1. **FINANCIAL CONTRIBUTION.** The CITY agrees to contribute to the ASSOCIATION an amount not to exceed Forty-Five Thousand Dollars (\$45,000.00) towards installation of the Improvements based upon the estimate provided by the ASSOCIATION, attached hereto as "Exhibit A," and incorporated herein by this reference.

2. **MANNER OF PAYMENT.** The CITY'S contribution toward the Improvements shall be paid to the ASSOCIATION in reimbursement of qualifying expenses incurred by the ASSOCIATION to install the Improvements.

3. **PROOF OF QUALIFYING EXPENSES.** The ASSOCIATION agrees to submit to the CITY one or more application(s) for reimbursement of qualifying expenses accompanied by contractors' and/or suppliers' invoices demonstrating the Association has incurred such qualifying expenses. The determination of whether a particular expense qualifies for reimbursement shall be made by the City Council in its sole discretion.

4. **CEMETERY ACCESS.** The ASSOCIATION agrees to provide residents of the City of Marshalltown, and the public generally, year-round free and open access to the Cemetery for recreational purposes from dawn to dusk for a period of no less ten (10) years from the effective date of this Agreement, excluding only bona fide emergency closures, and temporary closures necessitated by repair or maintenance upon thirty (30) days' written notice by the ASSOCIATION to the CITY'S Parks and Recreation Director.

5. **REPAYMENT.** The ASSOCIATION agrees to repay to the CITY the full extent of contributions made by the CITY to the ASSOCIATION pursuant to this Agreement in the event the ASSOCIATION fails to comply with any term or provision of this Agreement, including but not limited to the provisions of the preceding paragraph. In such event, the ASSOCIATION shall remit payment to the CITY within sixty (60) days of receiving the CITY'S written demand for repayment.

6. **GENERAL PROVISIONS.** In the performance of each part of this Agreement, time shall be of the essence. Failure to promptly assert rights herein shall not, however, be a waiver of such rights or a waiver of any existing or subsequent default. This Agreement shall

apply to and bind the successors in interest of the parties. This Agreement contains the entire agreement of the parties and shall not be amended, except by a written instrument duly signed by the CITY and ASSOCIATION. Paragraph headings are for convenience of reference and shall not limit or affect the meaning of this Agreement. Words and phrases herein shall be construed as in the singular or plural number, and as masculine, feminine, or neuter gender according to the context.

7. **NOTICE.** Any notice under this Agreement shall be in writing and be deemed served when it is delivered by personal delivery, email, or mailed by certified mail, addressed to the parties at the addresses given below.

8. **APPROVAL; AUTHORITY.** This Agreement is expressly contingent upon approval by the City Council of Marshalltown, Iowa.

9. **COUNTERPARTS.** This Agreement may be executed in several counterparts, each of which, when so executed and delivered, shall be deemed an original and all of which, when taken together, shall constitute one and the same instrument, even though all parties are not signatories to the original or the same counterpart. Furthermore, the parties may execute and deliver this Agreement by electronic means, such as .pdf or a similar format. ASSOCIATION and CITY agree delivery of the Agreement by electronic means shall have the same force and effect as delivery of original signatures and that each of the parties may use such electronic signatures as evidence of the execution and delivery of the Agreement by all parties to the same extent as an original signature.

10. **EXECUTION.** When and if executed by both ASSOCIATION and CITY, this Agreement shall become a binding contract.

(REMAINDER OF PAGE INTENTIONALLY LEFT BLANK)

**MARSHALL CEMETERY
ASSOCIATION, dba RIVERSIDE
CEMETERY,**
an Iowa non-profit corporation

Dated this ____ day of October 2022.

By: _____

(Print Name), (Print Title)

Address: 611 N. Center Street
Marshalltown, IA, 50158

Telephone: (641) 753-7891

CITY OF MARSHALLTOWN, IOWA,
an Iowa municipal corporation

Dated this ____ day of October 2022.

By: _____

Joel T.S. Greer, Mayor

Attest: _____

Alicia Hunter, City Clerk

Address: Marshalltown City Hall
P.O. Box 155
24 North Center Street
Marshalltown, IA 50158

Telephone: (641) 754-5701