

Mapleton City Council Staff Report

Meeting Date: January 6, 2015

Prepared by: Cory Branch

ACTION ITEM:

Consideration of approval of a Definitive Agreement between Mapleton Cemetery, LLC and Mapleton City defining the mutual understanding of the parties future cemetery obligations.

FINDINGS OF FACT:

1. Attachment 1 includes the terms outlining both parties' future cemetery obligations.
2. Condition #5 (page 2) of the terms outlines the parties proceeds from each burial plot sold. Attachment 2 includes an example of the possible distributions of the proceeds handed out to each party after 30 years.
3. Attachment 3 includes the proposed cemetery fee schedule.

ATTACHMENTS:

1. Definitive Agreement Terms
2. Possible Distribution of Proceeds
3. Proposed Cemetery Fee Schedule

Mapleton Cemetery, LLC

December 29, 2014

Mapleton City Mayor
Mapleton City Council

Re: Mapleton City Cemetery

Dear Mayor and Council Members:

The purpose of this letter (the "**Letter**") is to set forth certain non-binding understandings by and among Mapleton Cemetery, LLC, a Utah limited liability company ("**Mapleton Cemetery**"), on the one hand, and Mapleton City (the "**City**"), on the other hand. Each of Mapleton Cemetery and the City are sometimes individually referred to hereinafter as a "**Party**," and collectively as the "**Parties**."

The following numbered paragraphs of this Letter reflect the mutual understanding of the Parties of the matters described in them, but each Party acknowledges that these provisions are not binding and do not create or constitute any legal binding obligation among the Parties, and no Party shall have any liability to any other Party with respect hereto, whether or not fully integrated, definitive agreements (the "**Definitive Agreements**") or other related documents are prepared, authorized, executed, or delivered by the Parties, and no Party shall have any liability to any other Party to this Letter based upon, arising from, or relating to this Letter.

The Parties desire to enter into Definitive Agreements, whereby:

1. Mapleton Cemetery will transfer by deed those certain parcels of real property located in Mapleton City with parcel numbers 26-063-0171, 26-063-0173 and 26-063-0178 (the "**Property**"), to be dedicated and improved for use as the Mapleton City cemetery (the "**Cemetery**").
2. The Cemetery will consist of approximately 6,000 burial plots to be certificated for sale to third parties (the "**Burial Plots**"). The Parties will cooperate to complete any and all actions required to comply with any statutory or other requirements to properly certificate the Burial Plots.
3. The Cemetery will be developed and improved in phases as agreed to by the Parties, with the first phase bordering Maple Street and containing approximately 3,000 burial plots.
4. Mapleton Cemetery will be responsible for all upfront improvement costs associated with the improvement of the Cemetery (the "**Upfront Costs**"), including but not limited to the following:

- a. Payment for the Property;
- b. Infrastructure improvements – including engineering, curb, gutter, sidewalk, asphalt, road base, PI, sewer, water, utilities, and any other costs or expenses;
- c. Landscaping improvements – including engineering, grading, sprinkling system, sod, fencing, and any other costs or expenses;
- d. New shop building; and
- e. New equipment – snow blower, compaction tool, sod cutter, 4-wheeler, flatbed trailer, grave cover, and other reasonably necessary equipment.
- f. For purposes of the agreement, Mapleton Cemetery will account for all Upfront Costs at the actual out-of-pocket cost paid by Mapleton Cemetery to complete the improvements to the Cemetery.
- g. Although Mapleton Cemetery will be have the sole responsibility and authority to contract directly for all necessary improvements, including the improvements described above, all improvements will be completed by contractors approved by the City with Upfront Costs approved by the City, which approval shall not be unreasonably withheld.

5. Mapleton Cemetery will be responsible for the sales of the first 500 Burial Plots. After the sale of the first 500 Burial Plots, the City will be responsible for all sales efforts. The Parties will agree that whichever party is responsible for sales efforts will use reasonable business efforts to sell Burial Plots to the public. The Parties will reasonably agree on a sales price for the Burial Plots. The proceeds of each Burial Plot sold shall be distributed as follows:

- a. For the first 3,000 Burial Plots sold, 80% to Mapleton Cemetery and 20% to the City;
- b. For the next 1,500 Burial Plots sold, 60% to Mapleton Cemetery and 40% to the City; and
- c. For all remaining Burial Plots (approximately 1,500) sold, 20% to Mapleton Cemetery and 80% to the City.

6. The City will be responsible for the operation, maintenance, upkeep and repair of the Cemetery, specifically excluding all of the Upfront Costs required in the development and improvement of the Cemetery. With the exception of the sales price for the Burial Plots (which will be mutually determined), the City will be responsible for determining any and all fees associated with the operation of the Cemetery, including burial fees, recording fees, maintenance fees, tombstones, and any other fees the City determines appropriate. As part of the Definitive

Agreement, the parties will determine a minimum price for the Burial Plots for residents and non-residents (based at least in part on the average prices for burial plots located in Springville and Spanish Fork city cemeteries), and a minimum number of Burial Plots that a resident may purchase at resident prices.

7. Mapleton Cemetery will agree to maintain in a designated escrow account (the “*Reserve Account*”) a reserve of \$60,000, to be used by the City in the event that the proceeds received by the City from the sales of Burial Plots pursuant to paragraph 5 above is insufficient to cover costs of the operation, maintenance or repair of the Cemetery. Mapleton Cemetery’s obligation to maintain this reserve shall continue only until 500 Burial Plots have been sold, at which time the City will return to Mapleton Cemetery or otherwise consent to the return to Mapleton Cemetery of all amounts remaining in the Reserve Account.

8. Once created and properly certificated, Mapleton Cemetery will take possession of the Burial Plots by receipt of the certificates therefor or another appropriate method agreed to by the Parties. The City will agree that Mapleton Cemetery may pledge up to _____ Burial Plots located in the second phase as security for a loan to pay the Upfront Costs (the “*Loan*”). Mapleton Cemetery will further pledge to the City _____ Burial Plots to guarantee Mapleton Cemetery’s repayment of the Loan. Mapleton Cemetery’s portion of the proceeds from sales of Burial Plots shall be used by Mapleton Cemetery to repay the Upfront Costs, including repayment of the Loan, until fully repaid.

9. The agreement will terminate upon the earlier of (1) the sale of all of the Burial Plots, or (2) 30 years following its effective date. In the event that Mapleton Cemetery has not received distributions in an amount greater than or equal to the Upfront Costs, the City will pay to Mapleton Cemetery an amount equal to the Upfront Costs less the distributions already received by Mapleton Cemetery as proceeds from the sale of Burial Plots. If termination occurs after 30 years and all of the Burial Plots have not been sold, upon repayment of all remaining Upfront Costs, Mapleton Cemetery will transfer to the City all remaining Burial Plots.

10. The Parties do not intend to be bound to any provisions contained herein unless and until the Definitive Agreements have been executed and delivered. It is expected, however, that the Definitive Agreements will be subject to approval of the City Council, comprehensive prior due diligence, customary and reasonable representations, warranties, and indemnification provisions, and other commercially agreeable terms.

Please sign and date this Letter in the space provided below to confirm the mutual understandings set forth herein and return a signed copy to the undersigned.

Sincerely,

Mapleton Cemetery, LLC

By: _____
Ben Peay, Manager

The undersigned desires to move forward with the transaction contemplated above.

Mapleton City

By: _____
Brian Wall, Mayor

Date: _____

Possible Distribution of Proceeds at Year 30

Example:

- Year 1 proceeds: \$1200 per plot X 500 plots sold equals \$600K (80% Investor - \$480K / 20% City – 120K)
- Year 2 to Year 30 proceeds: \$1200 per plot X 50 plots sold equals \$60K (80% Investor - \$48K / 20% City – 12K)
- Total # of plots sold in 30 years: 1,950
- 30 year proceeds: Investor profits \$1.872 Million / City Profits \$468K
- Return on Investment for the Investor equals \$372K (\$1.872 Million minus 1.5 Million for up-front costs)

Notes:

- Total # of plots: 6,000
- 80/20: 1st 3,000 plots; 60/40: 1,500 plots; 20/80: Last 1,500 plots

MAPLETON CITY CEMETERIES FEE SCHEDULE

BURIAL RIGHTS PRICES				
Plots	Full Plot	Cremation Plot*	Cremation Niche in City Cemetery***	
Resident Upright	\$1350.00	\$500.00	Resident \$400.00	2 nd Interment \$200.00
Resident Flat	\$1000.00	\$425.00	Non-resident \$650.00	2 nd Interment \$250.00
Resident Oversized	\$1500.00			

Non-Res Upright	\$2010.00	\$1005.00
Non-Res Flat	\$1660.00	\$830.00
Non-Res Oversized	\$2450.00	
Infant**	\$350.00	

SEXTON FEES				
	Child/Adult	Infant/Cremation Sexton Fees	Weekend/Holiday Fee	Headstone Removal
Resident	\$325.00	\$200.00	Extra \$200.00	\$100.00
Non-Resident	\$650.00	\$250.00	Extra \$200.00	\$150.00

Disinterment Fees*****	
Adult	\$1000.00
Infant	\$600.00

TRANSFER PLOTS****	
Resident to Resident	\$25.00
Non-Res to Resident	\$25.00
Non-Res to Non-Res	\$25.00
Resident to Non-Res	\$300.00

*Cremation plots are only in designed areas of each cemetery. Cremation plots are half plots.

**Cost of infant plot includes sexton fees.

***Cremation niche prices pertain to cremation wall. Cremation burials in any other area will pay for cremation plot and/or cremation sexton fees.

****Burial rights transfer cost is per plot.

*****Sexton's responsibility for disinterment will be to expose the vault only. Removal of and transporting the vault will be the responsibility of family.