

**PINE GROVE CEMETERY AUTHORITY**  
**AGREEMENT**

This Pine Grove Cemetery Authority Agreement is made as of ~~Sept 17, 18~~ 2018, by and between the City of New Buffalo and the Township of New Buffalo pursuant to the Municipal Partnership Act, 2011 PA 258, MCL 124.111 *et seq.* (the "Act").

RECITALS

- A. The City of New Buffalo is a home rule city organized and existing pursuant to 1909 PA 279, as amended, MCL 117.1 *et seq.*, located in Berrien County, Michigan, the principal business address of which is 224 W. Buffalo St, New Buffalo, MI 49117 (the "City").
- B. New Buffalo Township is a general law township organized and existing pursuant to the Revised Statutes of 1846, as amended MCL 41.1 *et seq.*, located in Berrien County, Michigan, the principal address of which is 17425 Red Arrow Highway, New Buffalo, MI 49117 (the "Township").
- C. The City and the Township have previously entered into an Agreement dated December 18, 1967, and a Cemetery Agreement dated November 17th, 1981, and a Cemetery Agreement dated November 22nd, 1989 (collectively, the "Prior Agreements"), providing for the rights, duties and obligations of each in connection with the operation, maintenance, care and control of the Pine Grove Cemetery located at 36 South Clinton Street, New Buffalo, MI 49117 (the "Cemetery").
- D. The parties each own portions of the Cemetery, as described on the attached **Exhibit A**.
- E. The Act authorizes the adoption and approval of certain agreements providing for joint endeavors of municipalities, including the creation of an authority to provide for the operation, maintenance, repair, replacement, construction, and improvement of personal or real property.
- F. The parties hereby seek to amend and restate their relationship in relation to the maintenance and operation of the Cemetery through the formation of a cemetery authority.
- G. Pursuant to the New Buffalo City Charter, the approval of this Agreement required the affirmative vote of 4 Council members.

**TERMS AND CONDITIONS**

In exchange for the mutual consideration in and referred to by this Agreement, the parties agree:

ARTICLE I

AUTHORITY ESTABLISHED

1. **Establishment.** The Pine Grove Cemetery Authority is established for the purposes of acquiring, owning, leasing, constructing, installing, operating, repairing, maintaining, replacing, improving, extending, enlarging and undertaking any and all other functions, powers and privileges regarding the Cemetery. The Authority is a public body corporate with power to sue and be sued in its own name.

2. **Governance.**

- a. The Authority shall be governed by a 5-member board (the "Board") appointed

as follows, and pursuant to the Bylaws of the Authority:

- i. The City Council shall appoint 2 members. The member first appointed shall serve a 2-year term and the other shall serve a 4-year term. Thereafter, both members shall serve 4-year terms.
  - ii. The Township Board shall appoint 2 members. The member first appointed shall serve a 2-year term and the other shall serve a 4-year term. Thereafter, both members shall serve 4-year terms.
  - iii. The 4 members appointed by the City and the Township shall jointly appoint a fifth member to serve a 6-year term. If the parties are unable to agree on the appointment of the fifth member, the deciding vote shall alternate between the parties starting first with the City Council.
- b. Appointments shall be made by the governing bodies of each of the appointing entities, excepting the fifth member. Unless otherwise mutually agreed by the parties, terms shall end on the anniversary date of the first appointments made by the City pursuant to this Agreement.
  - c. Generally, Board members shall serve at the pleasure of their appointing bodies and may be removed with or without cause by a vote of a majority of the members serving on the appointing body. However, the member appointed to a 6-year term by the other Board members may be removed only by unanimous vote of the other members or majority vote of both the City Council and Township Board.
  - d. No Board member may be removed during that Board member's term of office unless:
    - (i) the Board member is provided at least 14-days' written notice of the meeting of the governing body or bodies at which the Board member's removal shall be discussed or considered, and
    - (ii) the Board member is given an opportunity to address the governing body or bodies prior to any vote or other action with respect to the Board member's removal.

### **3. Meetings of the Board and Officers.**

- a. 3 Board members shall constitute a quorum of the Board. The Board may not take any action except upon the affirmative vote of at least 3 Board members.
- b. The Board shall adopt bylaws or rules of procedure governing its meetings, policies and procedures. The Board shall comply with the Freedom of Information Act, 1976 PA 442, as amended, MCL 15.231 *et seq.* and the Open Meetings Act, 1976 PA 267, as amended, MCL 15.261 *et seq.*
- c. The Board shall elect a chairperson, secretary, treasurer, and any other needed officers as provided in its bylaws. The bylaws shall govern the terms and duties of each officer to the extent not in conflict with this Agreement.
- d. The Board shall meet at least quarterly. The Board shall, prior to the end of each calendar year, adopt a resolution setting its regular meeting schedule for the next calendar year.

4. **Board Member Compensation.** Board members may be compensated for their services in amounts expressly approved by the City Council and Township Board as part of the budgeting process described in Article III below.

ARTICLE II  
AUTHORITY POWERS

1. **Powers Enumerated.** The Authority shall have the power to:
  - a. Acquire, own, operate, maintain and sell real and personal property in connection with the Cemetery.
  - b. Make and enter into contracts.
  - c. Incur debts, liabilities or obligations which do not constitute the debts, liabilities or obligations of the participating governmental units; provided that such debts, liabilities, or obligations are included in the proposed budget for the year in which they are incurred.
  - d. Hire employees or independent contractors, including but not limited to a Cemetery Sexton, as necessary to maintain and operate the Cemetery. Independent contractors shall conduct their work to the satisfaction of the Authority. The Authority shall determine compensation and/or obtain bids.
  - e. Adopt and enforce ordinances, rules and regulations governing the use of the Cemetery. Those ordinances, rules and/or regulations shall have the same force of and may be enforced in the same manner as if they had been duly adopted by the City Council and Township Board. The Authority may prosecute ordinance violations in its own name.
  - f. Establish applicable fees and charges for the purchase of burial rights and other services provided by the Cemetery.
  - g. Adopt bylaws and rules governing the Board.
  - h. Do such other acts necessary for the governance of the Cemetery, to the extent not inconsistent with this Agreement or state or federal law.

ARTICLE III  
BUDGETING AND FUNDING

1. **Annual Budget.** The Board shall each year prepare a detailed operational budget for the cemetery for the ensuing year. The budget shall show estimated receipts and disbursements together with all cash on hand and the amount in need of appropriation by the City and the Township for the following year. The budget, when approved by Cemetery Board, shall be submitted to the City and the Township at least 60 days before the meetings at which the City and the Township fix the operating budget for the City and Township at large. The City Council and Township Board after review and approval of said budget shall each appropriate in their respective budgets 50% of the total amount requested by the Cemetery Board for operating the Pine Grove Cemetery for the following year.
2. **Disagreements Regarding Budget Issues.** In the event disagreement exists among the City or the Township and the Cemetery Board as to the amount of funds required for the operation of the cemetery, the budget submitted by the Cemetery Board may be returned to them for appropriate revision, adjustment, correction or compromise, and as so corrected may thereafter be resubmitted to the City and Township for final approval. No obligation to appropriate money for cemetery purposes shall exist unless and until the budget as submitted by the Cemetery Board has been finally approved by both

the City and the Township.

3. **Financial Statements.** At least once each year and more often if requested by the City and the Township, the Board shall prepare a financial statement accurately depicting the financial operation of the Cemetery during the past year and present copies thereof to the City and Township at least thirty (30) days prior to the annual request for funds made to the City and Township for the operation of the cemetery for the ensuing year. The Authority's financial documents, including logs of receipts and expenditures, shall generally be kept up to date and shall be open to inspection by the public and by the City and Township.

4. **UBAA Compliance and Annual Budget.** The Authority shall comply with the Uniform Budgeting and Accounting Act, 1968 PA 2, as amended, MCL 141.421 et seq.

5. **Initial Transfer of Funds.** All funds currently held in savings accounts or checking accounts for Cemetery purposes are hereby transferred to and shall become the assets of the Authority. As of September 13, 2018, the balances for those accounts were as follows:

#7165210233	Savings	\$36,844.40
#8001350140	Checking	\$20,774.69

6. **Fiscal Year.** The Authority's fiscal year shall begin July 1<sup>st</sup> and end June 30<sup>th</sup>.

#### ARTICLE IV CEMETERY LEASE

1. **Lease Terms and Conditions.** The City and the Township hereby lease to the Authority and the Authority hereby leases from the City and the Township the Cemetery, including, without limitation, all of the real and personal property of the Cemetery, for rent consisting of the payment of \$1.00 per year to each plus the performance of all of the Authority's duties and obligations under this Agreement. The City Council and the Township Board hereby expressly find such rent constitute fair consideration for the lease. The duration of the lease shall be the same as the duration of this Agreement. The City and Township also assign to the Authority and the Authority accepts the assignment of all of the City and Township's rights, duties and obligations related to the Cemetery, including, without limitation, any (i) contracts, (ii) warranties and guarantees, (iii) rights to payments, (iv) obligations to make payments, (v) claims of or against the Cemetery, and (vi) permits, licenses or other approval related to the Cemetery.

- a. No ownership interest in the Cemetery is being conveyed by this Agreement.
- b. The Cemetery is being leased "as is" and "where is" without any representations or warranties as to the condition of any real or personal property comprising it. The Authority is accepting the Cemetery in its current condition.
- c. This lease shall commence and the Authority shall take possession of the leased property as of the date of the first meeting of the Board established by this Agreement. Except as otherwise provided in this Agreement, this lease will terminate on the termination date of this Agreement.
- d. The Authority may operate, repair, maintain, replace, improve, extend, enlarge and undertake any and all other functions, powers and privileges regarding the Cemetery that the City or Township could prior to the effective date of the lease. The

Authority shall operate, repair, and maintain the Cemetery in accordance with this Agreement and good cemetery management practices.

- e. The Authority shall pay all costs necessary to use, operate, repair, maintain, replace, improve, extend, enlarge and undertake any and all other functions, powers and privileges regarding the Cemetery as required by this Agreement.
- f. The Authority shall have all risks and undertake all liability related to ownership, use, operation, repair, maintenance, replacement, improvement, or enlargement of the Cemetery.

2. **Required Notices.** Each of the parties shall give any notice of any actions taken or to be taken pursuant to this Agreement that may be required as an owner, person having an interest in, issuer of debt related to, or for any other reason, under any law, rule, regulation, approval, contract, covenant or representation that may be applicable to such party. This is a mutual responsibility of the parties to ensure such notices are provided and (i) each of the parties agrees that the Authority or its legal counsel may, but is not required to, provide such notices on its behalf, and (ii) the parties shall each verify to the Authority and to one another that such notices have been given.

3. **Alienation.** Except as otherwise expressly authorized by this Agreement or as may be required as part of a transaction incurring debt to repair, maintain, improve, enlarge, or expand any part or all of the Cemetery, the Authority shall not sell, lease, assign or otherwise convey or alienate any interest in the Cemetery or any portion of the Cemetery without the prior approval by the governing bodies of each of the parties to this Agreement.

## ARTICLE V

### INDEMNIFICATION AND INSURANCE

1. **Indemnification.** The Authority shall hold the parties to this Agreement harmless from, indemnify them for, and defend them against, any and all claims, causes of action, lawsuits and other proceedings, judgments, awards, administrative actions and other losses of any kind resulting from the acquisition, lease, ownership, use, operation, repair, maintenance, replacement, improvement, extension, or expansion of the Cemetery, except to the extent resulting from the negligence or wrongdoing of such party.

2. **Insurance.** The Authority shall obtain and maintain the following, and provide upon request to any party copies of all policies, endorsements, certificates of insurance and proofs of premium payment:

- a. Liability insurance in amounts and with such coverage as is consistent with good cemetery management practices.
- b. Casualty and property insurance against fire, flood, wind and other casualty losses, theft, vandalism and other destruction to or damage of any portion of the Cemetery, such that in case of such destruction or damage, the insurance proceeds, plus a commercially reasonable deductible will be sufficient to rebuild or replace such portion that is destroyed or damaged.
- c. Workers disability compensation coverage and unemployment compensation coverage in required amounts covering all Authority employees, if any.

ARTICLE IX  
TERM AND TERMINATION

1. **Term.** This Agreement shall be effective until such time as the City or the Township chooses to terminate it and withdraw from the Authority. Either governmental unit may withdraw at will upon written notice given to the other governmental unit at least 180 days prior to the effective date of such termination. Termination will become effective at the beginning of the next fiscal year.

2. **Effect of Termination.** Upon the expiration or other termination of this Agreement, assets of the Authority shall be conveyed to the parties as provided in this section:

- a. If the parties to this Agreement at the time of its termination agree in writing on the disposition of the Authority's assets, the Authority's assets shall be disposed of in the manner agreed.
- b. Otherwise, the Authority's assets shall be disposed in equal proportions among the parties.

ARTICLE XI  
MISCELLANEOUS

1. **Prior Agreements Superseded.** This Agreement shall supersede and replace the Prior Agreements and all other prior written or oral agreements, representations, covenants, or statements among any of the parties with respect to the Cemetery.

2. **Entire Agreement.** This Agreement is the entire agreement among the parties with respect to its subject matter. All parties specifically acknowledge, in entering into and executing this Agreement, they are relying solely upon the representations and agreements contained in this Agreement and no others.

3. **Interpretation.**

- a. The article, section, and other headings in this Agreement are for reference purposes only and shall not in any way affect its meaning or interpretation. However, the recitals are an integral part of this Agreement.
- b. This Agreement may not be amended except in writing signed by all parties following resolutions adopted by their respective governing bodies.
- c. This Agreement may be executed in any number of counterparts and each such counterpart shall be considered a valid original.
- d. All parties consulted legal counsel and had input into the drafting of this agreement. It should therefore be construed as if it were mutually drafted.


4. **Assignment.** No party may assign any of its rights, duties or obligations under this Agreement without the other parties' prior written consent.

5. **Additional Documents.** The parties agree to execute and deliver additional documents as are reasonably determined to be needed by legal counsel for the Authority and the parties to give full effect and to fully implement this Agreement.

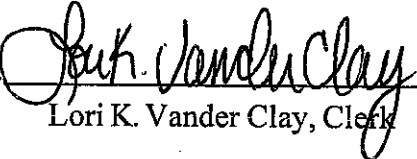
The parties have signed this Agreement as of the date first written above.

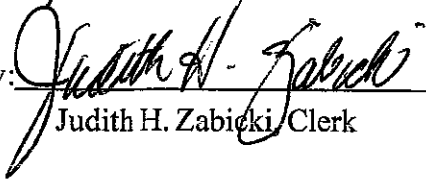
CITY OF NEW BUFFALO

NEW BUFFALO TOWNSHIP

By:   
\_\_\_\_\_  
Lou O'Donnell IV, Mayor

By:   
\_\_\_\_\_  
Michelle Heit, Supervisor

By:   
\_\_\_\_\_  
Lori K. Vander Clay, Clerk

By:   
\_\_\_\_\_  
Judith H. Zabicki, Clerk

**EXHIBIT A**  
**Cemetery Property Description**

TAX PARCEL NUMBER	TAX DESCRIPTION
11-62-8200-0367-09-8	THE SLY 66' OF NLY 132' OF BLK 367 VIRGINIA ADD TO VILLAGE NOW CITY OF NEW BUFFALO
11-62-8200-0366-01-6	VIRGINIA ADD TO VILLAGE OF NEW BUFFALO THE NLY 132' OF BLK 366
11-62-8200-0369-00- 7	BLOCKS 369 370 & 371 VIRGINIA ADD TO CITY OF NEW BUFFALO PINE GROVE CEMETERY MAPS 15 & 17
11-62-8200-0367-05-5	THE NLY 66' OF BLK 367 VIRGINIA ADD TO VILLAGE NOW CITY OF NEW BUFFALO
11-13-2100-0001-00-7	LOTS 1 TO 7 INCLUDE EVERGREEN PARK
11-13-2100-0008-00-1	LOT 8 EVERGREEN PARK