

DIVISION OF CEMETERIES

STATE OF NEW YORK
DEPARTMENT OF STATE
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ANDREW M. CUOMO
GOVERNOR

CEMETERY BOARD

ROSSANA ROSADO
SECRETARY OF STATE
CHAIR

LETITIA JAMES
ATTORNEY GENERAL

DR. HOWARD A. ZUCKER
COMMISSIONER OF HEALTH

TO: New York State Cemetery Board

FROM: Michael Seelman, Investigator II

SUBJECT: Finger Lakes Crematory, Livingston County,#26-035

RE: Major Renovation: Replacement of Crematory Retort

DATE: June 12, 2020

Exhibits:

- A. Memorandum from Senior Accountant DeYoung
- B. Sales agreement with Matthews Environmental Solutions
- C. Estimate from Sessler Environmental Services
- D. Estimate from Lawman Heating & Cooling
- E. Finger Lakes Crematory, Inc. meeting minutes
- F. Building Permit
- G. Application for cemetery renovation
- H. Division Documents 2012
- I. Skivington Letter and Craig Email

Introduction and Recommendation

The Finger Lakes Crematory has applied for Cemetery Board approval of a cemetery renovation pursuant to 19 NYCRR Section 201.16 for the replacement of a 1974 G&S cremation retort, with a 2020 Matthews, Super-Power Pak I, cremator. The total cost of this project would be \$174,723.64 and would include purchase of the new unit, removal of the existing unit, asbestos remediation and installation of the new unit.

The Cemetery Board considered and rejected the crematory's request to have two functioning retorts back in March, 2012. Then, as set forth in the minutes of the July 2012 meeting, the crematory resubmitted its application but this time to "install a new retort while disabling an older existing retort taking it out of service." That application was approved in September 2012. There is nothing to indicate that the Cemetery Board contemplated that the outdated retort replaced in 2012 would continue to be used, even as backup. Consequently, the Division recommends that the Cemetery Board deny the application.

The Crematory

The Finger Lakes Crematory is a stand-alone crematory located on the premises of Kevin Dougherty Funeral Home at 21 Big Tree Street in the Village of Livonia, Livingston County. They currently have two retorts: a Matthews Power Pak II, installed in 2012 and a G&S Crematory Company unit that was installed in 1974. According to the crematory, the G&S retort has been used only once, in 2017, when the Matthews retort was out of service, since 2012. The Crematory was last inspected on January 15, 2020, and no compliance issues were noted at that time. In 2019, the crematory averaged 29 cremations per week, performing a total of 1525 cremations. This year, through June 12, the crematory has performed 720 cremations with 36 of those cremations being Covid 19 related deaths. The crematory performed 1,567 cremations in 2018, 1,484 in 2017,



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and 1,223 in 2016. The G&S was used only when the Matthews unit was out of service for repair and has not been used since April of 2017, as it no longer complies with DEC regulations. In that instance, the regional investigator was notified that the unit would be operated.

Justification

The crematory has stated that the 1974 G&S cremator is old technology and cannot be upgraded to comply with current DEC air quality regulations. They have stated that the new retort will not be operated at the same time as the remaining 2012 unit but will be used as a backup unit and only operated when the 2012 unit is out of service.

In 2012, the Cemetery Board approved the crematory's application to take their existing 1974 G&S retort out of service—not out of the building—and to install a new 2012 Matthews retort, without increasing the building footprint and without increasing cremation capacity. This approval was interpreted by the crematory to allow operation of the 1974 G&S unit when the 2012 unit was down for repairs, thus not increasing the crematory's capacity. The crematory then installed the 2012 unit and ceased using the 1974 G&S unit unless the 2012 unit was down for repair. In that case, the crematory notified the regional investigator that they would be operating the G&S unit as a back-up. The crematory notified the regional investigator one time, in April of 2017, that the 2012 unit would be down for repairs and the 1974 unit would be brought online to limit service disruption. A search of the crematory's file and Cemetery Board minutes failed to produce a statement that the crematory would be allowed to operate the 1974 G&S unit as a backup. Instead, the approval letter for installation of the new retort says that the crematory would take "the existing crematory retort out of service." The crematory has stated that they do not wish to increase cremation capacity as the new unit would only be operated as a back-up when the 2012 unit was down for repairs.

Compliance with 19 NYCRR Section 201.16

- 1) *Whether the alteration will result in or avoid the destruction, damage to, modification or interference with existing graves and markers, crypts, mausoleums, roadways, and pathways:* This facility is a stand-alone crematory and as such, none of these factors apply.
- 2) *The location, design and duration of the major alteration:* The new retort will be located in the same position as the G&S retort. The crematory anticipates the replacement could be installed and running with minimal interruption of crematory operations.
- 3) *The financial impact on the applicant:* The complete project is expected to cost \$174,723.64. The attached report by Division Senior Accountant DeYoung provides more analysis of the financial aspects of this project.
- 4) *Whether the alteration will interfere with the lots or the interests of the lot owners:* This facility is a standalone crematory, and as such, this does not apply.
- 5) *Whether the alteration will be appropriate for cemetery purposes:* Installation of a new machine will allow the facility to operate more efficiently and in a more environmentally responsible manner.
- 6) *Whether the alteration will have an adverse impact on the surrounding community:* The crematory does not anticipate any impact on the surrounding community.
- 7) *Whether the alteration will have the potential to adversely affect the public health and safety, the environment or natural resources:* The crematory does not anticipate any adverse impact of the project, and in fact, the new retort's increased efficiency will provide a net benefit to the community.

Recommendation

The replacement of the 1974 G&S retort I would allow Finger Lakes Crematory to operate without service interruption due to equipment maintenance. The current DEC regulations prohibit the use of the 1974 G&S unit as a back-up and the crematory is currently shut down for routine maintenance.

However, the Board considered and rejected the crematory's application to add a second retort in 2012. Adding a second operating retort, even if only for backup, seems to be a forbidden increase in the crematory's capacity. Even if the addition of the retort were allowed, the crematory appears to have had its operating retort out of service for any significant period of time only once since 2012 (in 2017), calling into question the need for such a large investment merely for backup.

The crematory's attorney has sent a letter arguing that the Division allowed the crematory to use its existing retort for backup and claiming that several Division employees encouraged the crematory to replace the backup retort. Division staff cannot approve the addition of a retort; that decision is up to the Board. Nothing in the attorney's letter suggests that the Board agreed that the replaced retort could be used for backup; instead, it was supposed to be taken "out of service."

The Division recommends that the Cemetery Board reject this application as inconsistent with the Board's previous decisions.

EXHIBIT A

DIVISION OF CEMETERIES

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To: New York State Cemetery Board
From: Karen DeYoung, Senior Accountant
Subject: Finger Lakes Crematory Inc., Livingston County, 26-035
Date: 5/19/2020

Schedules:

- 1) Four-year Income and Expense Analysis
- 2) Four-year Asset Balance
- 3) Return on Investment
- 4) 2020 Division Audit
- 5) Lease agreement dated 11/7/2015 in effect through 12/31/2017
- 6) Lease agreement dated 1/1/2018 in effect through 12/31/19
- 7) Lease agreement dated 1/1/2020 currently in effect
- 8) CPA engagement letters for 2017, 2018 & 2019
- 9) Email dated 5/16/2020 with updated vendor invoices and additional explanation by a trustee.

Summary:

Finger Lakes Crematory, a standalone crematory, is seeking approval to replace its obsolete backup retort. The crematory would not be expanding its footprint.

The crematory currently has two (2) units, a Matthews Power Pak II installed in 2012 as a previously approved major improvement and a backup unit from 1974 built by the G&S Crematory Company which was originally an oil fired retort that had been converted to natural gas some time ago (prior to the 2012 purchase). The 1974 unit is the one under consideration for replacement.

Trustees believe the total replacement costs, estimated at \$174,723.64 are appropriate to allow the crematory to have a backup retort that would meet all New York State as well as DEC requirements. Due to the 1974 unit's lack of time and temperature recording, computer controls, environmental systems and the fact that the unit contains asbestos, the trustees have not determined what costs were involved with trying to bring the unit up to date. As such, no offset to the total replacement cost has been provided to the Division.

Costs:

The entire cost of the replacement would be paid for from available funds. The crematory is a standalone and as such does not have restricted permanent maintenance funds. As of the audit conducted on 3/9/2020 for the period 1/1/16 through 12/31/18 reports the following asset balances:

- 1) Investment Account \$643,698.64
- 2) Checking Account \$76,956.05

Totaling as of 12/31/2018 \$720,663.66

Revenue – Increase due to replacement:

Trustees have indicated that the replacement retort will be used as backup replacing the 1974 model. As a result, the crematory will not recognize any increase in cremation productivity nor increase in revenue. The new unit would be utilized only if the main retort went down. The last request to raise their service charge for a cremation was as of 6/28/2013.

Expenses – Increase or decrease due to replacement:

No increase or decrease will be recognized by replacing the backup retort as reported below:

Payroll: The crematory does not have employees and as such no savings will result. The crematory pays a per cremation fee on each cremation per their lease agreement. The per cremation fee is \$130.00 under the current lease agreement.

Utilities: Because the 1974 retort is not used a comparison of utility efficiencies was sought between the current used unit and the proposed unit. Trustees have indicated that no real savings will be realized and that any possible savings were not taken into consideration in their decision to replace the 1974 unit. The need for a reliable retort was the only consideration.

No one time savings realized by not upgrading: Due to the crematory's need to have a reliable replacement back up retort available and the obsolescence of the current unit backup unit, the trustees did not explore the costs of trying to upgrade the 1974 model.

Financing:

The total construction cost of \$174,723.64, is going to be fully funded from available funds available as of 12/31/18 of \$720,663.66 comprised of \$76,965.02 in a checking account and \$643,698.64 in an investment account. An additional \$35,000.00 would be anticipated over a ten year period as maintenance and upkeep on the new unit. As a crematory no funds are restricted.

Update: Available fund balances as of 12/31/19 include checking account \$109,106.51 and investment account \$656,798.66 totaling \$765,905.17.

Return on Investment:

The return on investment is zero. The expenditure will not result in a ROI due to:

- 1) no increase in cremation capacity,
- 2) no utility savings as the replacement is for the crematory's backup retort. When asked about utility savings between the unit currently used and the proposed unit it was stated that the utility savings would be minimal if any.
- 3) no savings in payroll (gained through efficiencies) as the crematory does not employ a crematory operator. The operator is an employee of the landlord funeral home.

Annual Report Filings:

The crematory has filed the Division's Annual Financial Reports through 12/31/18 with 2019 on extension. The crematory is not in compliance with the Division's requirement that a stand-alone crematory obtain an external CPA audit. After bringing this to the crematory's attention the crematory has identified an CPA firm to conduct the audits. The crematory has provided engagement letters for the years 2017, 2018 & 2019. The engagement letters were signed on 5/7/2020.

During the audit it was discovered that the crematory owes an additional \$608.00 in vandalism and assessment fees that as of 5/19/2020 has not been received by the Division. The additional fees due resulted primarily from the cremation of children at no charge to the family despite having been approved for a child service charge of \$100.00

Related Party Transactions:

Payments to related parties comprise approximately 66.92% of total expenditures (Schedule 1). These payments include rent payments to Kevin Dougherty Funeral Home and in addition to contractual per cremation fee of \$105.00 for the period covering 11/7/15 to 12/31/17, \$120.00 for the period covering 1/1/18 to 12/31/19 and \$130.00 for the period starting 1/1/20 to current.

Directors Fees:

A review of the crematory's annual meeting minutes documented the increase in total Director's Fees from \$9,300.00 in 2017 to \$18,800.00 in 2018. A vote was taken to increase the fees at the 9/12/2017 annual meeting.

Recommendation:

The Division Senior Accountant is unable to make a recommendation based on the financial analysis. The lack of revenue generated, or cost savings prohibits a positive recommendation. However, the need to have a backup retort in instances when the main retort is down for repairs or in an instance of an unexpected increase in the need for additional retort capacity could be beneficial.



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SCHEDULE 1

Schedule 1	4 Y/R Income Expense Analysis
Name	Finger Lakes Crematory
County	Livingston
Cemetery #	26-035
Application Type	Major Reno - Replace retort

Conclusions about revenue

- 1) Crematory's cremation service charge is the only material revenue source.
- 2) Cemetery's cremation charges have been constant since 2013 at \$250 for a adult cremation, \$100 for a child cremation and \$30 for a combustible container
- 3) The number of annual cremations is increasing and average: 1,376 annual average
- 4) Overall revenue is increasing as are the # of cremations \$344,986.20 annual average

Conclusions about Expenditures and results from operations

			Source:
1) Operating expenditures are steadily increasing average	\$270,744.25		Calc. below
2) Contract Service and rent comprise the vast majority of expenses and average 2a) Formal lease exists	\$181,180.00	66.92% of total expenses	Calc. below
3) Reported Contract Services cost have increased and average	\$151,180.00	55.84% of total expenses	Calc. below
4) Reported rent costs have increased and average	\$30,000.00	11.08% of total expenses	Calc. below
5) Reported utility costs have increased in recent years.	\$26,281.18	9.71% of total expenses	Calc. below
6) Although repairs and maintenance expense represents only about 3% of expenses, it has increased year to year			Calc. below
7) Annual surpluses average	\$86,554.26		Calc. below

	12/31/2018	12/31/2017	12/31/2016	12/31/2015	Four Yr Avg
Number of Retorts Utilized	1	1	1	1	1
Number of Cremations	1569	1484	1223	1226	1,376
Annual Change in cremation activity	5.73%	21.34%	-0.24%		

YEAR	12/31/2018	12/31/2017	12/31/2016	12/31/2015	Four Yr Avg
Operating Income					
Cremations - adult	389,330.00	370,255.00	305,284.81	315,075.00	\$344,986.20
Cremations - other	0.00				\$0.00
Refund				-500.00	-\$125.00
Dividends and Interest	17,034.98	14,096.14	5,857.59	7,687.10	\$11,168.95
Dividends and Interest - add'l to total 990			2,819.41	2,254.00	\$1,266.35
Total Revenue	406,364.98	384,351.14	313,981.81	324,516.10	\$357,298.51
Annual change in operating revenues	5.73%	22.42%	-3.25%		

Expenses Operating and Maintenance	12/31/2018	12/31/2017	12/31/2016	12/31/2015	Four Yr Avg
Accounting Fees	800.00	785.00	0.00		\$396.25
Advertising	250.00	250.00	1,028.59	762.34	\$572.73
Contract Services	187,995.00	159,645.00	130,496.00	126,585.00	\$151,180.00
Directors Fees	18,800.00	9,300.00	9,300.00	6,800.00	\$11,050.00
Dues & Subscriptions	790.00	790.00	1,981.38	3,613.98	\$1,788.84
Equipment	0.00	0.00	0.00	6,480.97	\$1,620.24
Equipment Rental	248.40	232.20	0.00		\$120.15
Insurance - General	1,657.00	930.00	930.00	1,462.00	\$1,244.75
Insurance - Bonding	717.00	0.00	717.00	542.00	\$494.00
Investment Fees; Cooperative Funeral Funds	4,573.60	3,670.22	0.00	2,254.00	\$2,624.46
Legal & Professional	0.00	0.00	1,562.50	3,015.80	\$1,144.58
Meals & Entertainment	1,760.32	973.40	0.00	738.18	\$867.98
Meetings	0.00	0.00	696.00		\$174.00
Office Expense	221.92	2,483.78	97.20	894.84	\$924.44
Postage & Shipping	2,972.62	4,032.80	2,128.27	1,718.52	\$2,713.05
Rent	32,000.00	30,000.00	30,000.00	28,000.00	\$30,000.00
Repairs & Maintenance	12,207.60	9,624.00	6,283.42	4,831.88	\$8,236.73
Supplies	25,743.16	23,773.00	18,648.83	9,662.58	\$18,956.39
Training & Seminars	0.00	1,573.96	0.00	0.00	\$393.49
Travel	400.00	0.00	0.00	0.00	\$100.00
Utilities - Gas & Electric	30,714.42	29,016.09	21,614.71	23,779.50	\$26,281.18
Vandalism and Assessment	11,927.00	9,547.00	9,587.00	8,483.00	\$9,861.00
Total Expenses	333,678.04	286,626.45	233,047.90	229,624.59	\$270,744.25
Annual change in operating expenditures	16.42%	22.99%	1.49%		
Surplus / (Deficit) - annual	72,686.94	97,724.69	80,913.91	94,891.51	\$86,554.26

SCHEDULE 2

Schedule 2	4 YR Balance Sheet
Name	Finger Lakes Crematory
County	Livingston
Cemetery #	26-035
Application Type	Major Reno - Replace retort

Conclusion on Assets:
1) Assets have increased each year.
2) No liabilities have been reported

Balance sheet- Financial Assets Cost Basis	12/31/2018	12/31/2017	12/31/2016	12/31/2015
General fund Accounts:				
Checking Account	76,965.02	88,484.00	176,729.00	102,939.79
Investment Account	643,698.64	556,237.00	370,811.00	362,134.67
Total Financial assets	720,663.66	644,721.00	547,540.00	465,074.46

SCHEDULE 3

Schedule 3	ROI
Name	Finger Lakes Crematory
County	Livingston
Cemetery #	26-035
Application Type	Major Reno - Replace reort

Analysis of estimated sales and expenditures indicates simple ROI will be approximately 0.00%

Basis of replacement: 1974 unit to be replaced is unable to be brought into compliance with current day safety requirements and ability to heat to 1800 degrees

- Steps:
- 1) No payroll savings will result as the crematory pays a "per cremation" fee to the landlord and does not have employees of its own.
 - 2) No utility savings will result as the currently used unit is similar in efficiency as the reort under consideration
 - 3) No estimation of savings available as a result of not improving old unit as it is not feasible to do so.
 - 4) One time cost of \$174,723.64K to remove 1974 unit, purchase, install new unit.
 - 5) ROI calculation does not factor additional cremation revenue from the potential of additional cremations performed.

Net Income/Cost Saving	Amount	Reference	Estimated # of years	Total Revenue/cost savings
Cost Savings:				
1) Payroll Savings:	\$0.00	Trustee assertion	10	\$0.00
2) Utilities Savings:	\$0.00	Trustee assertion	10	\$0.00
3) Savings by not upgrading current unit	\$0.00	Trustee assertion	1	\$0.00
Totals	\$0.00			\$0.00

Expenses:	Construction costs	Reference	Estimated # of years	Comments
	Mathews International Super Power Pack 1	109,943.64		Per quote dated 3/30/2020
	SES Environmental Services; exterior wall, demo old unit including asbestos removal, reconstruct wall and siding after	18,480.00		Per quote dated 9/17/2019 & updated 3/30/2020
	Lawnmen Heating & Cooling Installation costs (crane/rigging)	36,300.00		Per application dtd 1/29/20 and supplemental letter dtd 1/14/19. Email confirmation 5/16/2020
	Total Construction Expenses	174,723.64		Per email confirmation 5/16/2020
	Yearly Maintenance \$3,500 x 10 years	\$35,000.00		Per email confirmation 5/16/2020
	Construction plus 10 years maintenance	\$209,723.64		
	Savings	\$0.00		
	Total Net Cost	\$209,723.64		
	% Return			0.00%

SCHEDULE 4

Schedule 4
9 pgs

MEMORANDUM

STATE OF NEW YORK - DEPARTMENT OF STATE

TO: Lewis Polishook, Director **DATE:** 5/8/2020
FROM: Karen DeYoung, Sr. Accountant
SUBJECT: Finger Lakes Crematory # 26-035
Livingston County
RE: Field Examination & Fund Verification
Audit period 1/1/16 to 12/31/18

Officer Contacted: Mr. Jeffrey Deragon; Treasurer
3068 W Main Street
Caledonia, New York 14423
585-538-6500

Audit held at: Alhart Funeral Home
3068 W Main Street
Caledonia, New York 14423

Officer cc: Mr. William Brennan; President
25 Big Tree Street
Livonia, New York 14487
585-737-1334

The subject crematory was audited on March 9th, 2020 for the period of January 1, 2016 through December 31, 2018. The Treasurer; Jeffrey Deragon was present. Records were in good condition and overall easy to work with. All assets were verified. The crematory has three (3) officers; President, Treasurer and Secretary in addition to seven (7) additional Trustees. The checks require one signature; authorized signors are the President and the Treasurer. The crematory carries the following insurances; commercial crime insurance and Directors and Officers liability insurance. The crematory does not have a general liability policy in place. This was discussed at length with the Treasurer and again with the manager of the landlord funeral home when a visit to the crematory took place to allow for access to the cremation tags for total county purposes. The need to obtain a general liability policy should be researched further by the crematory board. In addition, the question of who owns the retorts was asked several times. Each time the response was that that crematory owns the retorts and the other related equipment. With that said, the crematory is renting space and houses their equipment within this rented space. The crematory may also need to have a "renters" policy (or similar) should the equipment be destroyed; the landlord cannot file a claim for damage to equipment that is not owned by the landlord. No other insurances were paid for by the crematory as the crematory has no employees as all cremation activity is done by employees of the (landlord) funeral home. Service charges are in effect and were last updated in a Board Order dated 6/28/13 as: adult \$250.00, child (3 and under) \$100 and previous as of 9/15/06: combustible container \$30.00. Please note that it was stated the crematory

does not charge for children. The crematory has a "no charge" count on its worksheet that represents what was explained as children only. It is noted that the crematory is recognized by the IRS as a not for profit entity and as such the crematory is filing the form 990.

The results of the examination are as follows:

Crematory Operations:

- A review of the most recent Crematory Field Inspection Report dated 2/13/19 indicating that the crematory is in compliance.
- The lease agreement is between Landlord: Kevin W. Dougherty Funeral Home Inc and Tenant: Finger Lakes Crematory. A copy of the lease agreement was obtained and reviewed. A Lease Agreement was signed on 11/7/2015 with quarterly rent of \$7,500.00 plus contractual fees of \$105.00 per cremation. A Lease Agreement was signed 1/1/2018 with quarterly rent of \$8,000.00 plus contractual fees of \$120.00 per cremation. The audit period runs through 12/31/18 however a copy of the current Lease Agreement was obtained for the Division's file. This lease agreement was signed on 1/1/2020 reflecting a quarterly rent of \$8,500.00 and contractual fees of \$130.00 per cremation.
- The equipment is not mentioned in the lease. As it was asked several times and stated that the equipment is owned outright by the crematory.
- Lease indicates: "The Landlord agrees to pay all taxes to be assessed on the Premises during the Term. The Landlord will pay all utilities for the premises rented except for natural gas, which will be paid for by the Tenant."

The crematory has two (2) retorts housed in the leased space however is operating on one (1) retort at this time. The crematory has increased its activity each of the three (3) years in the audit period. Based on the cremation log/tag count, beginning 2016 to 2018 forward the increases have been 1.58%, 21.34% and 5.73% respectively. Sales as expected have reflected the increase as well and starting year 2016 \$305,285, \$370,255 and \$389,330 in 2018 respectively per IRS form 990.

General Fund:

General fund assets total \$ 720,663.66 and are held in two (2), an operating checking account totaling \$76,965.02 and an investment account totaling \$643,698.64 as of 12/31/18.

Financial Condition:

The crematory's total funds have increased by \$255,589.20 since the previous audit. There are no outstanding loans due to or due between the crematory and the Board Members.

A conversation was had regarding a number of repayments made by the crematory to the (landlord) funeral home this is problematic for several reasons. Supplies purchased and paid for by the funeral homes such as gloves in addition to repair invoices are a few examples. Supplies and repairs for the crematory should be made by the crematory. The requirement to not comeingle for profit and not for profit operations must be maintained. In addition, a conversation regarding sales tax paid on various vendor invoices (when purchased by the funeral home) was had as a considerable amount of sales tax is being paid and wouldn't be if the crematory had made the purchase itself. Because the (landlord) funeral home is not sales tax exempt the vendors must charge sales tax. The crematory is a not for profit and should not be paying sales tax. An email was sent on to the Treasurer containing information regarding how to obtain a NYS sales tax exempt status.

A conversation regarding the \$30.00 combustible container charge was had. The crematory was approved to charge the fee however the crematory is purchasing cardboard boxes from the funeral home. It was explained that the funeral home is the entity purchasing and storing the cardboard boxes that the crematory does not have enough storage space. The crematory should be purchasing its own supply of cardboard boxes to eliminate the appearance of collusion between a for profit and a not for profit entity.

Check signing is almost exclusively done by the Treasurer. It was brought to the Treasurer's attention that he should not be signing his own stipend check. The Treasurer is welcome to write out the check and the President needs to be the signor on the check to have proper internal controls in place.

During the audit it was realized that the crematory is not timely depositing checks received for cremations preformed. The crematory is only depositing checks one day per month. The checks received during the month are placed into a safe until the month ends. A date is selected in the following month and a deposit is written up. The deposit date can run anywhere from the 1st of the following month up to up to as late as the 13th of the following month. At that time as much as \$40,500.00 is deposited resulting in multiple deposit slips being prepared at one time. This practice is problematic for many reasons. Checks could be returned for insufficient funds and if the same funeral home is having financial problems any number of checks could be returned by the time the deposit is made. The crematory should be depositing the funds into an interest-bearing account to maximize its return. It is recommended that the crematory research the possibility of utilizing lock box with a local bank. This would allow the checks to be deposited in a timely fashion.

As a result of the above method of accounting for deposits the cemetery's activity is shifted by one month and each December's activity rolls forward into the following year reconciling the calendar year revenue to contract services in the general ledger and paid to the funeral home was done. 2017 had an error in the total due to the (landlord) funeral home of \$420.00. 2018 has an error on the total counts (1,517 + 42 = 1,559 not 1,567 as shown) The tag count for 2018 differs as I recorded 1,569 which will come into play with the calculation of the additional vandalism and assessment due.

Copies of the lease agreement between the crematory and funeral home were obtained and added to the Division's files. Lease dated 11/7/2015 allows for quarterly rent of \$7,500.00 and a per cremation fee of \$105.00/ Lease dated 1/1/2018 allows for quarterly rent of \$8,000.00 and a per cremation fee of \$120.00. Lease dated 1/1/2020 which is outside this audit period but included for reference allows for quarterly rent of \$8,500.00 and a per cremation fee of \$130.00.

The crematory was not in compliance with the 2016 requirement of a nontraditional cemetery obtaining a CPA audit. At the onset of the audit this was discussed and as of today 5/8/2020 the Division is in possession of engagement letters for the years 2017, 2018 and 2019. The audits will be forthcoming. If material findings result from the CPA audit, adjustments to this audit may result.

Additional Information:

Town of Livonia

\$250.00 adult cremation: lbo 6/28/13
\$100.00 child cremation: combustible casket lbo 6/28/13
\$30.00 combustible container lbo 9/15/06

GF: \$720,663.66

Note: The crematory has underpaid their vandalism and assessment fee during the audit period by \$608.00 which is due to the NYS Division of Cemetery, see enclosed letter for further instruction.

DIVISION OF CEMETERIES

STATE OF NEW YORK
DEPARTMENT OF STATE

ONE COMMERCE PLAZA
99 WASHINGTON AVENUE
ALBANY, NY 12231-0001
TELEPHONE: (518) 474-6226
FAX: (518) 473-0876
WWW.DOS.NY.GOV

ANDREW M. CUOMO
GOVERNOR

CEMETERY BOARD

ROSSANA ROSADO
SECRETARY OF STATE
CHAIR

LETITIA JAMES
ATTORNEY GENERAL

DR. HOWARD A. ZUCKER
COMMISSIONER OF HEALTH

May 8, 2020

Mr. Jeffrey Deragon; Treasurer
Finger Lakes Crematory Inc.
3068 W Main Street
Caledonia, New York 14423

Mr. William Brennan; President
Finger lakes Crematory Inc.
25 Big Tree Street
Livonia, New York 14487

RE: Finger Lakes Crematory No 26-035

Dear Gentlemen:

The recent audit of your books and records included a reconciliation of the vandalism and assessment fees paid by the cemetery. Based upon the examination, financial records in conjunction with burials records, it has been determined the cemetery has underpaid vandalism and/or assessment fees. (reconciliation attached)

The amount of the under payment is \$608.00. Please make remittance payable to "Division of Cemeteries" and mail to the above Albany address along with a copy of the reconciliation.

Please reference your cemetery number on all correspondence and include a copy of this letter and reconciliation to aid the application of the underpayment.

Sincerely,

Karen L. DeYoung
Senior Accountant

Attachment



K. DeYoung
 Field Visit: 3/9/2020
 Report: 5/8/2020

26-035
Fingerlakes Crematory Inc
Livingston County
Audit Period: 1-1-16 through 12-31-18

Calendar	Audit Calculation from Crematory Records			Crematory Records	
Year end	Total			Due Vand.	Amt Paid
	Cremations	Vandalism	Due Assess.		
2016	1,223.00	1,223.00	1,208.00	9,739.00	9,547.00
2017	1,484.00	1,484.00	1,469.00	11,827.00	11,827.00
2018	1,569.00	1,569.00	1,554.00	12,507.00	12,091.00
				34,073.00	33,465.00
				Over/(Under) Payment	\$ (608.00)

K. DeYoung
 Field Visit: 3/9/2020
 Report: 5/8/2020

26-035
 Fingerlakes Crematory Inc
 Livingston County
 Audit Period: 1-1-16 through 12-31-18

Summary of receipts and disbursements from 2016 to 2018

	2016	2017	2018	TOTAL	Average
Revenue per Form 990					
Cremation Services	305,284.81	370,255.00	389,330.00	1,064,869.81	354,956.60
Overweight charge				0.00	0.00
Temporary Urns				0.00	0.00
Interest income	8,677.00	14,096.14	17,034.98	39,808.12	13,269.37
other				0.00	0.00
Recycling Income (implants)				0.00	0.00
Weekend charge				0.00	0.00
Return of Cremalns w/in 48				0.00	0.00
Packaging				0.00	0.00
Total Revenue:	313,961.81	384,351.14	406,364.98	1,104,677.93	368,225.98

Contract Services	130,495.00	159,645.00	187,995.00	478,135.00	159,378.33
Accounting Fees	0.00	785.00	800.00	1,585.00	528.33
Advertising	1,028.59	250.00	250.00	1,528.59	509.53
Director Fees	9,300.00	9,300.00	18,800.00	37,400.00	12,466.67
Dues & Subscriptions	11,548.38	10,337.00	12,617.00	34,502.38	11,500.79
Equipment Rental	0.00	232.20	248.40	480.60	160.20
Insurance - Office / General	1,647.00	930.00	2,374.00	4,951.00	1,650.33
Investment Fees - CFF	0.00	3,670.22	4,573.60	8,243.82	2,747.94
Legal & Professional	1,562.50	0.00	0.00	1,562.50	520.83
Meals & Entertainment	0.00	973.40	1,760.32	2,733.72	911.24
Meetings	696.00	0.00	0.00	696.00	232.00
Office Expense	97.20	2,483.78	221.92	2,802.90	934.30
Postage & Shipping	2,128.27	4,032.80	2,972.62	9,133.69	3,044.56
Rent	30,000.00	30,000.00	32,000.00	92,000.00	30,666.67
Repairs & Maintenance	6,283.42	9,624.00	12,207.60	28,115.02	9,371.67
Supplies	16,646.83	23,773.00	25,743.16	66,162.99	22,054.33
Training & Seminars	0.00	1,573.96	0.00	1,573.96	524.65
Travel	0.00	0.00	400.00	400.00	133.33
Utilities - Gas & Electric	21,614.71	29,016.09	30,714.42	81,345.22	27,115.07
Interest Income				0.00	0.00
Total Expenses	233,047.90	286,626.45	333,678.04	853,352.39	284,450.80

Net Income	80,913.91	97,724.69	72,686.94	251,325.54	83,775.18
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Annual Cremations	1,223	1,484	1,569	4,276	1,425.33
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Average charge per cremation	249.62	249.50	248.14	247.26	249.09
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	2016	2017	2018	Total	Average per Year
Five Star Bank - checking	176,728.70	88,484.01	76,965.02	342,177.73	114,059.24
Cooperative Funeral Fund	370,811.35	556,237.28	643,698.64	1,570,747.27	523,582.42
Total	547,540.05	644,721.29	720,663.66	1,912,925.00	637,641.67

K. DeYoung
Field Visit: 3/9/2020
Report: 5/8/2020

26-035
Fingerlakes Crematory Inc
Livingston County
Audit Period: 1-1-16 through 12-31-18

Name	Title	Compensation 2016	Compensation 2017	Compensation 2018
John Cameron	Trustee	750.00	750.00	1,000.00
Joseph Robinson	Trustee	750.00	750.00	1,000.00
William D'Angelo	Trustee	750.00	750.00	3,000.00
William Brennan	President	750.00	750.00	3,400.00
Charles St George	Trustee	750.00	750.00	1,000.00
F. Scott Hicks	Trustee	750.00	750.00	3,000.00
Frank Hicks	Trustee	750.00	750.00	1,000.00
Francis (Joseph) Martin	Trustee	750.00	750.00	1,000.00
Tim Woodward	Trustee	750.00	750.00	1,000.00
Jeff Dergon	Trustee portion	750.00	750.00	-
Jeff Dergon	Sec/Treas	1,800.00	1,800.00	3,400.00
		9,300.00	9,300.00	18,800.00

26-035
 Fingerlakes Crematory Inc
 Livingston County
 Audit Period: 1-1-16 through 12-31-18

6/25/1992 Kevin Dougherty Funeral Home lease agreement signed with Fingerlakes FH

	1992	1993	1994	1995	1996	1997	1998	1999	2000	2001	2002	2003	2004	2005	2007	2008
Frank Hicks						President	Treasurer	President - noted on Oct 1999 Agenda	Treasurer		Trustee	Trustee	Trustee	Trustee	Trustee	Trustee
Jeffrey Deragan						Sec/Treasurer					Sec/Treas	Sec/Treas	Sec/Treas	Sec/Treas	Sec/Treas	Sec/Treas
John Cameron						Trustee	x - no title in minutes				Trustee	Trustee	Trustee	Trustee	Trustee	Trustee
Charles St George						Trustee	x - no title in minutes				Trustee	Trustee	Trustee	Trustee	Trustee	Trustee
William Brennan						Vice President	x - no title in minutes				President	President	President	President	President	President
Joe Martin						Trustee	x - no title in minutes				Trustee	Trustee	Trustee	Trustee	Trustee	Trustee
Nail Alhart						Trustee	x - no title in minutes				Trustee	Trustee	Trustee	Trustee	Trustee	Trustee
William Brennan						Trustee	x - no title in minutes				Trustee	Trustee	Trustee	Trustee	Trustee	Trustee
Gerald Watson						Trustee					Trustee	Trustee	Trustee	Trustee	Trustee	Trustee
F. Scott Hicks						Trustee					Trustee	Trustee	Trustee	Trustee	Trustee	Trustee

	2009	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019
Frank Hicks	Trustee										
Jeffrey Deragan	Sec/Treas										
John Cameron	Trustee										
Charles St George	Trustee										
William Brennan	President										
Joe Martin	Trustee										
Nail Alhart	deceased										
Gerald Watson	deceased										
F. Scott Hicks	Trustee										
Joseph Robinson	Trustee										
William D'Angelo	Trustee										
Timothy Woodward	Trustee										
Ryan Cameron										Resigned	Resigned

SCHEDULE 5

Schedule 5
pg 1-2

LEASE AGREEMENT

(This Lease replaces the prior Lease between the parties of September 1, 2013)

The parties agree as follows:

Date of this Lease: 7TH day of NOVEMBER, 2015

Parties to this Lease & Addresses:

Landlord: KEVIN W. DOUGHERTY FUNERAL HOME, INC.
Address for notices: 21 Big Tree Street, Livonia, NY 14487

You, the Tenant: FINGER LAKES CREMATORY, INC.
Address: 21 Big Tree Street, Livonia, NY 14487

If there are more than one Landlord or Tenant, the words "Landlord" and "Tenant" used in this Lease includes them.

Term:

1. Years: One Months : 0 Beginning: January 1, 2016

Ending: December 31, 2017

This Lease shall automatically renew for five (5) additional two (2) year periods, unless either party notifies the other within thirty (30) days of the expiration of the Lease their intent to amend the Lease.

Premises Rented:

2. Crematory located at 21 Big Tree Street, Livonia NY 14487.

Rent:

3. The quarterly rent is \$7,500.00. You, the Tenant, will pay this quarterly Rent to the Landlord, as follows: On the first day of each quarter beginning January 1, 2016, plus contractual fees of \$105.00 per cremation.

Agreement to lease & pay rent:

4. Landlord leases the premises to you, the Tenant, for the Term. You, the Tenant, agree to pay the Rent and other charges as required in the Lease. You, the Tenant, agree to do everything required of you in the Lease.

Default:

5. If you, the Tenant, fail to pay the Rent, or any part of the Rent when it becomes due, the Landlord may sue you for it, or re-enter the Premises, or use any legal remedy.

Taxes:

6. The Landlord agrees to pay all taxes to be assessed on the Premises during the Term. The Landlord will pay all utilities for the premises rented except for natural gas, which will be paid for by the Tenant.

End of Term:

7. You, the Tenant, agree that at the end of the Term, you will surrender the Premises in as good condition as now, except for ordinary wear and damage by the elements.

Successors:

8. Unless otherwise stated, the Lease is binding on all parties who lawfully succeed to the rights or take the place of the Landlord or you, the Tenant.

Changes:

9. This Lease can be changed only by an agreement in writing signed by the parties to the Lease.

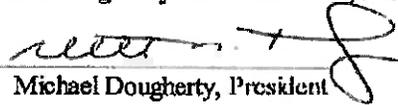
Quiet Enjoyment:

10. Landlord agrees that if you, the Tenant, pay the rent and are not in default under this Lease, you, the Tenant, may peaceably and quietly have, hold, and enjoy the premises for the term of this Lease.

Signatures: The parties have signed this Lease as of the date at the top of the first page.

LANDLORD:

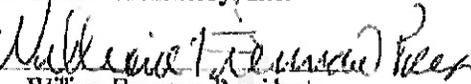
Kevin W. Dougherty Funeral Home, Inc.

By: 
Michael Dougherty, President

WITNESS: 

TENANT:

Finger Lakes Crematory, Inc.

By: 
William Brennan, President

WITNESS: 

SCHEDULE 6

Schedule 6
pg 1-2

LEASE AGREEMENT

(This Lease replaces the prior Lease between the parties that expires on December 31, 2017)

The parties agree as follows:

Date of this Lease: 1st day of JANUARY, 2018

Parties to this Lease & Addresses:

Landlord: **KEVIN W. DOUGHERTY FUNERAL HOME, INC.**
Address for notices: 21 Big Tree Street, Livonia, NY 14487

You, the Tenant: **FINGER LAKES CREMATORY, INC.**
Address: 21 Big Tree Street, Livonia, NY 14487

If there are more than one Landlord or Tenant, the words "Landlord" and "Tenant" used in this Lease includes them.

Term:

1. Years: Two Months : 0 Beginning: January 1, 2018

Ending: December 31, 2019

This Lease shall automatically renew for five (5) additional two (2) year periods, unless either party notifies the other within thirty (30) days of the expiration of the Lease their intent to amend the Lease.

Premises Rented:

2. Crematory located at 21 Big Tree Street, Livonia NY 14487.

Rent:

3. The quarterly rent is \$8,000.00. You, the Tenant, will pay this quarterly Rent to the Landlord, as follows: On the first day of each quarter beginning January 1, 2016, plus contractual fees of \$120.00 per cremation.

Agreement to lease & pay rent:

4. Landlord leases the premises to you, the Tenant, for the Term. You, the Tenant, agree to pay the Rent and other charges as required in the Lease. You, the Tenant, agree to do everything required of you in the Lease.

Default:

5. If you, the Tenant, fail to pay the Rent, or any part of the Rent when it becomes due, the Landlord may sue you for it, or re-enter the Premises, or use any legal remedy.

Taxes:

6. The Landlord agrees to pay all taxes to be assessed on the Premises during the Term. The Landlord will pay all utilities for the premises rented except for natural gas, which will be paid for by the Tenant.

End of Term:

7. You, the Tenant, agree that at the end of the Term, you will surrender the Premises in as good condition as now, except for ordinary wear and damage by the elements.

Successors:

8. Unless otherwise stated, the Lease is binding on all parties who lawfully succeed to the rights or take the place of the Landlord or you, the Tenant.

Changes:

9. This Lease can be changed only by an agreement in writing signed by the parties to the Lease.

Quiet Enjoyment:

10. Landlord agrees that if you, the Tenant, pay the rent and are not in default under this Lease, you, the Tenant, may peaceably and quietly have, hold, and enjoy the premises for the term of this Lease.

Signatures: The parties have signed this Lease as of the date at the top of the first page.

LANDLORD:

Kevin W. Dougherty Funeral Home, Inc.

WITNESS: Mary Lincoln

By: [Signature]
Michael Dougherty, President

SIGNED ON:
11/14/17

TENANT:

Finger Lakes Crematory, Inc.

WITNESS: Mary Lincoln

By: [Signature]
William Brennan, President

SIGNED ON:
11/14/17

SCHEDULE 7

LEASE AGREEMENT

(This Lease replaces the prior Lease between the parties that expires on December 31, 2019)

The parties agree as follows:

Date of this Lease: 1st day of January, 2020

Parties to this Lease & Addresses:

Landlord: **KEVIN W. DOUGHERTY FUNERAL HOME, INC.**
Address for notices: 21 Big Tree Street, Livonia, NY 14487

You, the Tenant: **FINGER LAKES CREMATORY, INC.**
Address: 21 Big Tree Street, Livonia, NY 14487

If there are more than one Landlord or Tenant, the words "Landlord" and "Tenant" used in this Lease includes them.

Term:

1. Years: Two Months : 0 Beginning: January 1, 2020

Ending: December 31, 2020

This Lease shall automatically renew for five (5) additional two (2) year periods, unless either party notifies the other within thirty (30) days of the expiration of the Lease their intent to amend the Lease.

Premises Rented:

2. Crematory located at 21 Big Tree Street, Livonia NY 14487.

Rent:

3. The quarterly rent is \$8,500.00. You, the Tenant, will pay this quarterly Rent to the Landlord, as follows: On the first day of each quarter beginning January 1, 2020, plus contractual fees of \$130.00 per cremation.

Agreement to lease & pay rent:

4. Landlord leases the premises to you, the Tenant, for the Term. You, the Tenant, agree to pay the Rent and other charges as required in the Lease. You, the Tenant, agree to do everything required of you in the Lease.

Default:

5. If you, the Tenant, fail to pay the Rent, or any part of the Rent when it becomes due, the Landlord may sue you for it, or re-enter the Premises, or use any legal remedy.

Taxes:

6. The Landlord agrees to pay all taxes to be assessed on the Premises during the Term. The Landlord will pay all utilities for the premises rented except for natural gas, which will be paid for by the Tenant.

End of Term:

7. You, the Tenant, agree that at the end of the Term, you will surrender the Premises in as good condition as now, except for ordinary wear and damage by the elements.

Successors:

8. Unless otherwise stated, the Lease is binding on all parties who lawfully succeed to the rights or take the place of the Landlord or you, the Tenant.

Changes:

9. This Lease can be changed only by an agreement in writing signed by the parties to the Lease.

Quiet Enjoyment:

10. Landlord agrees that if you, the Tenant, pay the rent and are not in default under this Lease, you, the Tenant, may peaceably and quietly have, hold, and enjoy the premises for the term of this Lease.

Signatures: The parties have signed this Lease as of the date at the top of the first page.

LANDLORD:

Kevin W. Dougherty Funeral Home, Inc.

By:

Michael Dougherty
Michael Dougherty, President

WITNESS:

Mary Lincoln

TENANT:

Finger Lakes Crematory, Inc.

By:

William Brennan
William Brennan, President

WITNESS:

Mary Lincoln

SCHEDULE 8

Schedule E
12 pages



Bonn, Dioguardi & Ray LLP
Certified Public Accountants • Business & Financial Advisors

Kenneth Bonn Jr.
Joseph P. Dioguardi Jr.
Michael S. Ray

Michael S. Boychuk
William S. Bailey
Harry I. Sealfon

70 Linden Oaks Office Park, Rochester, NY 14826
www.bdrllp.com • 585-381-9660 • Fax: 585-248-0803

2017

May 4, 2020

To the Board of Directors of
Finger Lakes Crematory, Inc.
Livonia, New York 14487

We are pleased to confirm our understanding of the services we are to provide for Finger Lakes Crematory, Inc. for the year ended December 31, 2017.

We will audit the balance sheet of Finger Lakes Crematory, Inc., as of December 31, 2017 and the related notes to the financial statements. The document we submit to you will include supplementary information as required by the Division of Cemeteries. The supplementary information accompanying the financial statements will be subjected to the auditing procedures applied in our audit of the financial statements and certain additional procedures, including comparing and reconciling such information directly to the underlying accounting and other records used to prepare the financial statements or to the financial statements themselves, and other additional procedures in accordance with auditing standards generally accepted in the United States of America, and we will provide an opinion on it in relation to the financial statements as a whole, in a report combined with our auditor's report on the financial statements.

Audit Objective

The objective of our audit is the expression of an opinion about whether your financial statements are fairly presented, in all material respects, in conformity with U.S. generally accepted accounting principles. Our audit will be conducted in accordance with auditing standards generally accepted in the United States of America and will include tests of your accounting records and other procedures we consider necessary to enable us to express such an opinion. We will issue a written report upon completion of our audit of Finger Lakes Crematory, Inc.'s financial statements. Our report will be addressed to the board of directors of Finger Lakes Crematory, Inc. We cannot provide assurance that an unmodified opinion will be expressed. Circumstances may arise in which it is necessary for us to modify our opinion or add an emphasis-of-matter or other-matter paragraph. If our opinion is other than unmodified, we will discuss the reasons with you in advance. If, for any reason, we are unable to complete the audit or are unable to form or have not formed an opinion, we may decline to express an opinion or withdraw from this engagement.

Audit Procedures

Our procedures will include tests of documentary evidence supporting the transactions recorded in the accounts, tests of the physical existence of inventories, and direct confirmation of receivables and certain assets and liabilities by correspondence with selected individuals, funding sources, creditors, and financial institutions. We will also request written representations from the Organization's attorneys as part of the engagement, and they may bill you for responding to this inquiry. At the conclusion of our audit, we will require certain written representations from you about the financial statements and related matters.

An audit includes examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements; therefore, our audit will involve judgment about the number of transactions to be examined and the areas to be tested. An audit also includes evaluating the appropriateness of accounting policies used and the reasonableness of significant accounting estimates made by management, as well as evaluating the overall presentation of the financial statements. We will plan and perform the audit to obtain reasonable assurance about whether the financial statements are free of material misstatement, whether from (1) errors, (2) fraudulent financial reporting, (3) misappropriation of assets, or (4) violations of laws or governmental regulations that are attributable to the Organization or to acts by management or employees acting on behalf of the Organization.

Because of the inherent limitations of an audit, combined with the inherent limitations of internal control, and because we will not perform a detailed examination of all transactions, there is a risk that material misstatements may exist and not be detected by us, even though the audit is properly planned and performed in accordance with U.S. generally accepted auditing standards. In addition, an audit is not designed to detect immaterial misstatements or violations of laws or governmental regulations that do not have a direct and material effect on the financial statements. However, we will inform the appropriate level of management of any material errors, any fraudulent financial reporting, or misappropriation of assets that comes to our attention. We will also inform the appropriate level of management of any violations of laws or governmental regulations that come to our attention, unless clearly inconsequential. Our responsibility as auditors is limited to the period covered by our audit and does not extend to any later periods for which we are not engaged as auditors.

Our audit will include obtaining an understanding of the Organization and its environment, including internal control, sufficient to assess the risks of material misstatement of the financial statements and to design the nature, timing, and extent of further audit procedures. An audit is not designed to provide assurance on internal control or to identify deficiencies in internal control. Accordingly, we will express no such opinion. However, during the audit, we will communicate to you and those charged with governance internal control related matters that are required to be communicated under professional standards.

We may, from time to time and depending on the circumstances, use third-party service providers in serving your account. We may share confidential information about you with these service providers, but remain committed to maintaining the confidentiality and security of your information. Accordingly, we maintain internal policies, procedures, and safeguards to protect the confidentiality of your personal information. In addition, we will secure confidentiality agreements with all service providers to maintain the confidentiality of your information and we will take reasonable precautions to determine that they have appropriate procedures in place to prevent the unauthorized release of your confidential information to others. In the event that we are unable to secure an appropriate confidentiality agreement, you will be asked to provide your consent prior to the sharing of your confidential information with the third-party service provider. Furthermore, we will remain responsible for the work provided by any such third-party service providers.

Management Responsibilities

You are responsible for designing, implementing, and maintaining internal controls relevant to the preparation and fair presentation of financial statements that are free from material misstatement, whether due to fraud or error, including monitoring ongoing activities; for the selection and application of accounting principles; and for the preparation and fair presentation of the financial statements in conformity with U.S. generally accepted accounting principles.^y You are also responsible for making all financial records and related information available to us and for the accuracy and completeness of that information. You are also responsible for providing us with (1) access to all information of which you are aware that is relevant to the preparation and fair presentation of the financial statements, including identification of all related parties and all related-party relationships and transactions, (2) additional information that we may request for the purpose of the audit, and (3) unrestricted access to persons within the organization from whom we determine it necessary to obtain audit evidence.

Your responsibilities include adjusting the financial statements to correct material misstatements and confirming to us in the management representation letter that the effects of any uncorrected misstatements aggregated by us during the current engagement and pertaining to the latest period presented are immaterial, both individually and in the aggregate, to the financial statements taken as a whole.

You are responsible for the design and implementation of programs and controls to prevent and detect fraud, and for informing us about all known or suspected fraud affecting the Organization involving (1) management, (2) employees who have significant roles in internal control, and (3) others where the fraud could have a material effect on the financial statements. Your responsibilities include informing us of your knowledge of any allegations of fraud or suspected fraud affecting the Organization received in communications from employees, former employees, grantors, regulators, or others. In addition, you are responsible for identifying and ensuring the Organization complies with applicable laws and regulations.

You are responsible for the preparation of the supplementary information in conformity with U.S. generally accepted accounting principles. You agree to include our report on the supplementary information in any document that contains, and indicates that we have reported on, the supplementary information. You also agree to include the audited financial statements with any presentation of the supplementary information that includes our report thereon.^{ee, ff}

You agree to assume all management responsibilities for the tax services, financial statement preparation services, and any other nonattest services we provide; oversee the services by designating an individual, preferably from senior management, with suitable skill, knowledge, or experience; evaluate the adequacy and results of the services; and accept responsibility for them.

Engagement Administration, Fees, and Other

We understand that your employees will prepare all cash, accounts receivable, and other confirmations we request and will locate any documents selected by us for testing.

Joseph P. Dioguardi Jr. is the engagement partner and is responsible for supervising the engagement and signing the report or authorizing another individual to sign it. We expect to begin our audit on approximately May 20, 2020.

We estimate that our fees for the audit to be \$3,500. The fee is based on anticipated cooperation from your personnel and the assumption that unexpected circumstances will not be encountered during the work performed. If significant additional time is necessary, we will discuss it with you and arrive at a new fee estimate before we incur additional costs.

We appreciate the opportunity to be of service to you and believe this letter accurately summarizes the significant terms of our engagement. If you have any questions, please let us know. If you agree with the terms of our engagement as described in this letter, please sign the enclosed copy and return it to us.

Very truly yours,

Bonn, Dioguardi & Ray LLP



Joseph P. Dioguardi Jr., CPA

RESPONSE:

This letter correctly sets forth the understanding of Finger Lakes Crematory Inc.

By: *JEFFREY T. BERATTONI JTB*

Title: *TREASURER*

Date: *5/7/2020*

By: *William Edmund William BEENAN*

Title: *PRESIDENT*

Date: *5/7/20*



Bonn, Dioguardi & Ray LLP
Certified Public Accountants • Business & Financial Advisors

Kenneth Bonn Jr.
Joseph P. Dioguardi Jr.
Michael S. Ray

Michael S. Boychuk
William S. Bailey
Harry I. Seillon

70 Linden Oaks Office Park, Rochester, NY 14626
www.bdrllp.com • 585-381-9880 • Fax: 585-248-0803

May 4, 2020

To the Board of Directors of
Finger Lakes Crematory, Inc.
Livonia, New York 14487

2018

We are pleased to confirm our understanding of the services we are to provide for Finger Lakes Crematory, Inc. for the year ended December 31, 2018.

We will audit the financial statements of Finger Lakes Crematory, Inc., which comprise the statement of financial position as of December 31, 2018, the related statements of activities, functional expenses, and cash flows for the year then ended, and the related notes to the financial statements. The document we submit to you will include supplementary information as required by the Division of Cemeteries. The supplementary information accompanying the financial statements will be subjected to the auditing procedures applied in our audit of the financial statements and certain additional procedures, including comparing and reconciling such information directly to the underlying accounting and other records used to prepare the financial statements or to the financial statements themselves, and other additional procedures in accordance with auditing standards generally accepted in the United States of America, and we will provide an opinion on it in relation to the financial statements as a whole, in a report combined with our auditor's report on the financial statements.

Audit Objective

The objective of our audit is the expression of an opinion about whether your financial statements are fairly presented, in all material respects, in conformity with U.S. generally accepted accounting principles. Our audit will be conducted in accordance with auditing standards generally accepted in the United States of America and will include tests of your accounting records and other procedures we consider necessary to enable us to express such an opinion. We will issue a written report upon completion of our audit of Finger Lakes Crematory, Inc.'s financial statements. Our report will be addressed to the board of directors of Finger Lakes Crematory, Inc. We cannot provide assurance that an unmodified opinion will be expressed. Circumstances may arise in which it is necessary for us to modify our opinion or add an emphasis-of-matter or other-matter paragraph. If our opinion is other than unmodified, we will discuss the reasons with you in advance. If, for any reason, we are unable to complete the audit or are unable to form or have not formed an opinion, we may decline to express an opinion or withdraw from this engagement.

Audit Procedures

Our procedures will include tests of documentary evidence supporting the transactions recorded in the accounts, tests of the physical existence of inventories, and direct confirmation of receivables and certain assets and liabilities by correspondence with selected individuals, funding sources, creditors, and financial institutions. We will also request written representations from the Organization's attorneys as part of the engagement, and they may bill you for responding to this inquiry. At the conclusion of our audit, we will require certain written representations from you about the financial statements and related matters.

An audit includes examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements; therefore, our audit will involve judgment about the number of transactions to be examined and the areas to be tested. An audit also includes evaluating the appropriateness of accounting policies used and the reasonableness of significant accounting estimates made by management, as well as evaluating the overall presentation of the financial statements. We will plan and perform the audit to obtain reasonable assurance about whether the financial statements are free of material misstatement, whether from (1) errors, (2) fraudulent financial reporting, (3) misappropriation of assets, or (4) violations of laws or governmental regulations that are attributable to the Organization or to acts by management or employees acting on behalf of the Organization.

Because of the inherent limitations of an audit, combined with the inherent limitations of internal control, and because we will not perform a detailed examination of all transactions, there is a risk that material misstatements may exist and not be detected by us, even though the audit is properly planned and performed in accordance with U.S. generally accepted auditing standards. In addition, an audit is not designed to detect immaterial misstatements or violations of laws or governmental regulations that do not have a direct and material effect on the financial statements. However, we will inform the appropriate level of management of any material errors, any fraudulent financial reporting, or misappropriation of assets that comes to our attention. We will also inform the appropriate level of management of any violations of laws or governmental regulations that come to our attention, unless clearly inconsequential. Our responsibility as auditors is limited to the period covered by our audit and does not extend to any later periods for which we are not engaged as auditors.

Our audit will include obtaining an understanding of the Organization and its environment, including internal control, sufficient to assess the risks of material misstatement of the financial statements and to design the nature, timing, and extent of further audit procedures. An audit is not designed to provide assurance on internal control or to identify deficiencies in internal control. Accordingly, we will express no such opinion. However, during the audit, we will communicate to you and those charged with governance internal control related matters that are required to be communicated under professional standards.

We may, from time to time and depending on the circumstances, use third-party service providers in serving your account. We may share confidential information about you with these service providers, but remain committed to maintaining the confidentiality and security of your information. Accordingly, we maintain internal policies, procedures, and safeguards to protect the confidentiality of your personal information. In addition, we will secure confidentiality agreements with all service providers to maintain the confidentiality of your information and we will take reasonable precautions to determine that they have appropriate procedures in place to prevent the unauthorized release of your confidential information to others. In the event that we are unable to secure an appropriate confidentiality agreement, you will be asked to provide your consent prior to the sharing of your confidential information with the third-party service provider. Furthermore, we will remain responsible for the work provided by any such third-party service providers.

Management Responsibilities

You are responsible for designing, implementing, and maintaining internal controls relevant to the preparation and fair presentation of financial statements that are free from material misstatement, whether due to fraud or error, including monitoring ongoing activities; for the selection and application of accounting principles; and for the preparation and fair presentation of the financial statements in conformity with U.S. generally accepted accounting principles.^y You are also responsible for making all financial records and related information available to us and for the accuracy and completeness of that information. You are also responsible for providing us with (1) access to all information of which you are

aware that is relevant to the preparation and fair presentation of the financial statements, including identification of all related parties and all related-party relationships and transactions, (2) additional information that we may request for the purpose of the audit, and (3) unrestricted access to persons within the organization from whom we determine it necessary to obtain audit evidence.

Your responsibilities include adjusting the financial statements to correct material misstatements and confirming to us in the management representation letter that the effects of any uncorrected misstatements aggregated by us during the current engagement and pertaining to the latest period presented are immaterial, both individually and in the aggregate, to the financial statements taken as a whole.

You are responsible for the design and implementation of programs and controls to prevent and detect fraud, and for informing us about all known or suspected fraud affecting the Organization involving (1) management, (2) employees who have significant roles in internal control, and (3) others where the fraud could have a material effect on the financial statements. Your responsibilities include informing us of your knowledge of any allegations of fraud or suspected fraud affecting the Organization received in communications from employees, former employees, grantors, regulators, or others. In addition, you are responsible for identifying and ensuring the Organization complies with applicable laws and regulations.

You are responsible for the preparation of the supplementary information in conformity with U.S. generally accepted accounting principles. You agree to include our report on the supplementary information in any document that contains, and indicates that we have reported on, the supplementary information. You also agree to include the audited financial statements with any presentation of the supplementary information that includes our report thereon.^{ea .ff}

You agree to assume all management responsibilities for the tax services, financial statement preparation services, and any other nonattest services we provide; oversee the services by designating an individual, preferably from senior management, with suitable skill, knowledge, or experience; evaluate the adequacy and results of the services; and accept responsibility for them.

Engagement Administration, Fees, and Other

We understand that your employees will prepare all cash, accounts receivable, and other confirmations we request and will locate any documents selected by us for testing.

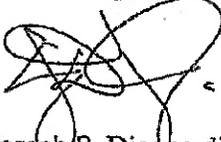
Joseph P. Dioguardi Jr. is the engagement partner and is responsible for supervising the engagement and signing the report or authorizing another individual to sign it. We expect to begin our audit on approximately May 20, 2020.

We estimate that our fees for the audit to be \$3,500. The fee is based on anticipated cooperation from your personnel and the assumption that unexpected circumstances will not be encountered during the work performed. If significant additional time is necessary, we will discuss it with you and arrive at a new fee estimate before we incur additional costs.

We appreciate the opportunity to be of service to you and believe this letter accurately summarizes the significant terms of our engagement. If you have any questions, please let us know. If you agree with the terms of our engagement as described in this letter, please sign the enclosed copy and return it to us.

Very truly yours,

Bonn, Dioguardi & Ray LLP



Joseph P. Dioguardi Jr., CPA.

RESPONSE:

This letter correctly sets forth the understanding of Finger Lakes Crematory Inc.

By: JEFFREY T. DERAGON *J. Deragon*

Title: TREASURER

Date: 5/7/2022

By: WILLIAM BRENNAN *William Brennan*

Title: PRESIDENT

Date: 5/7/20



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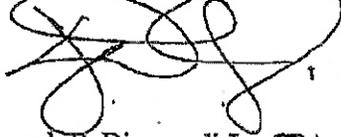
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Very truly yours,

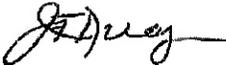
Bonn, Dioguardi & Ray LLP



Joseph P. Dioguardi Jr., CPA

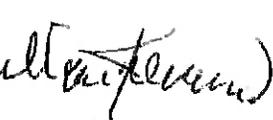
RESPONSE:

This letter correctly sets forth the understanding of Finger Lakes Crematory Inc.

By: *JEFFREY T. DERAGON* 

Title: *TREASURER*

Date: *5/7/2020*

By: *WILLIAM BREWSTER* 

Title: *PRESIDENT*

Date: *5/7/20*

SCHEDULE 9

Schedule 9
18 pages

DeYoung, Karen KD (DOS)

From: Michael Dougherty <mpdougherty27@gmail.com>
Sent: Saturday, May 16, 2020 1:23 PM
To: DeYoung, Karen KD (DOS); Billy Brennan
Cc: Ambrose, Joseph (DOS)
Subject: Finger Lakes Crematory Inc.
Attachments: LawmanEstimateBreakdown.docx; Finger Lakes Crematory Abatement - Rev03302020.pdf; Finger Lakes PPI 3-30-2020 (1).pdf

ATTENTION: This email came from an external source. Do not open attachments or click on links from unknown senders or unexpected emails.

Karen,

I have attached documents relating to numbers 1, 2, 3 & 4 of part 1 your request.

Part 2:

1. At this time we feel that it would not be possible or sensible to bring the 1975 unit up to date. We would rather put a new computer controlled, environmentally sound, and technologically advanced unit in. Matthews International has already stated that they do not feel comfortable retrofitting older units. I believe that the first issue was safety as the old units are not built for the high temperatures now required by NYS (1800 degrees.)
2. Annual maintenance could vary year to year based on use and wear. We would definitely subscribe to the remote monitoring program, M-Pyre, which monitors any sensor/alarm issues and has an instant support feature. This program cost roughly \$2000 per year and also the annual PMI, Preventative Maintenance Inspection, is about \$1500 per year. It would be roughly about \$3500 in known yearly maintenance. Maintenance could be more in the future based on any preventative maintenance work that could be performed on the unit.
3. Utility Savings would probably not be much. We currently have a Super Power Pack 3 and we would like to replace the old unit with a Super Power Pack 1. The big difference is in the physical size of the unit, the SPP 1 is smaller with both inside and outside dimensions. I believe the burner BTU's are less on the SPP 1 than the SPP 3. The SPP 1 will most likely be slightly less to operate. Our main consideration in installing the SPP 1 was to have a second unit that was new and reliable in case our existing SPP 3 was offline due to maintenance or mechanical issues. Utility savings was not a factor that was considered.
4. a. The contract rate of \$105.00 (2015-2017) was requested by the funeral home that holds the operating contract. As in most businesses operational costs increase every year due many factors, including staffing requirements, pay and benefits, taxes, utilities, etc. The The increase was proposed and approved by our board of directors.

b. The contract rate of \$120.00 (2018-2019) was requested by the funeral home that holds the operating contract. As in most businesses operational costs increase every year due many factors, including staffing requirements, pay and benefits, taxes, utilities, etc. The increase was proposed and approved by our board of directors.

Thank your for your help with our application, please let me know if you need anything further.

Michael P. Dougherty
Superintendent, Finger Lakes Crematory Inc.

Michael P. Dougherty, Funeral Director
www.doughertyfuneralhomes.com
21 Big Tree Street, Livonia, NY 14487
8624 Main Street, Honeoye, NY 14471
585-346-5401 or 585-229-2444

EXHIBIT B



March 30, 2020

Michael Dougherty
Finger Lakes Crematory
21 Big Tree St
Livonia, NY 14487-9609

Dear Mike,

Thank you for allowing us the opportunity to present this crematory equipment proposal. The enhanced business opportunities of owning cremation equipment have never been stronger. The choice for cremation services with today's consumer is growing and the timing is perfect to differentiate your services and enjoy the additional revenue opportunities with this expanding market.

Matthews represents the highest standards for cremation equipment, service and merchandising solutions. With more than 4,500 installations in over 50 countries, our clients confidently know that we symbolize the finest technology, highest safety standards and 24/7 service & technical support. We understand the magnitude of this decision and are committed to ensuring your investment is built upon a solid foundation for long-term success.

We are proud to present this equipment contract based on the information we have gathered about your current and future business requirements. This comprehensive proposal contains a Purchase Agreement, Project Itemization List and Terms & Conditions.

Upon acceptance of this proposal the next step is to sign and initial all enclosed documents, then return the originals with a standard 10% "good faith" deposit. After receipt of these documents, we will forward a "Pre-Construction Checklist" for you to complete and return to us as soon as possible. Once we receive this checklist, we will prepare the appropriate environmental application and forward it to you along with the equipment installation instructions. If you are unable to obtain all necessary permits and financing, we will cancel the order and return your full deposit. This is our commitment to you.

We want you to be confident with your purchase and know that with Matthews, you have a team of experts who will guide you through this process. I will follow-up shortly to review any questions you may have, or please feel free to call me at our toll free number (800)-327-2831. Thank you.

Sincerely,

A handwritten signature in black ink, appearing to read 'Ron Salvatore', is written over a light blue horizontal line.

Ron Salvatore
Sales Representative
ext. 206-6140
rsalvatore@matw.com

Enclosures

Matthews Environmental Solutions
2045 Sprint Boulevard | Apopka, Florida 32703
O: 407-866-5533 | F: 407-866-5990 | www.matthewsenvironmentalsolutions.com

Matthews

Matthews Environmental Solutions is a (MATW) Matthews International company

Seller: Matthews Environmental Solutions
2045 Sprint Boulevard
Apopka, Florida 32703

Purchaser: Michael Dougherty
Finger Lakes Crematory
21 Big Tree St
Livonia, NY 14487-9609

Project Price*

\$109,943.64, which represents the scope of the project brought forward from the Project Itemization List. The Project Price is subject to change due to modifications to the scope of this original contract.

Downpayment [10% of the Project Price - Minimum]**

Downpayment of **\$10,994.36** is payable upon the execution of this agreement and shall be applied to the Project Price.

Project Shipment [85% of the Project Price - Minimum]

Prior to shipment, 85% of the Project Price **\$93,452.09** must be paid three (3) weeks prior to packing and shipping of equipment. Payment not received will delay shipment.

Remaining Balance of Project Price

The final project balance of **\$5,497.18** is due and payable 30 days after shipment of equipment (via wire transfer or check) or at the time of start-up, whichever occurs first. *Startup and training will not occur without this final payment.*

Lease Financing requires a \$2,500 deposit:****

Project

Sale to Purchaser of cremation equipment (as described by parts on Attachment I), all in accordance with the Terms and Conditions hereof. All attachments are incorporated herein for all purposes.

Modifications to the Project

The equipment to be sold may be modified from time to time by execution of a "change order" in substantially the same form as this agreement. Such agreement shall be attached hereto and incorporated herein for all proposed. Changes made prior to scheduled shipment may subject Project to additional charges and delays in delivery. Modifications include any additional stacking custom elbow brackets, additional instrumentation required by an environmental agency or any other customization requested by Owner.

Cancellation & Delivery Postponement Policy

If cancellation of an order occurs after Matthews assists in the successful completion of a zoning hearing and/or preparation of an environmental permit, before production of the equipment occurs, there will be a \$2,500 holdback of Purchaser's deposit. An additional cancellation fee, 30% of total project price, will apply if order has entered the production phase. The date of shipment and delivery will be agreed upon and finalized by Seller and Purchaser before production begins. If Purchaser requests a postponement of delivery after equipment has entered the production phase, Purchaser will be subject to a storage fee (per unit) of \$50 per day. Storage fee begins the day after the original agreed upon shipment date and continues until order leaves Seller's facility.

Cost Summary

Cremation Equipment	\$107,384.00
Government Surcharges	+ \$1,575.00
	Sub Total: \$108,959.00
Loyalty Discount	- \$4,358.36
Services Total	+ \$1,788.00
Shipping & Freight***	+ \$3,555.00

TOTAL DUE: \$109,943.64

Plus Applicable Government and Local Taxes



Terms

- *The Terms and Price contained herein are valid for ninety (90) days from the written date of this contract.
- **Downpayment received by Matthews will hold the Terms and Price contained herein for twelve (12) months from the written date of this contract. If equipment is not shipped within that twelve (12) months from the date of this contract, project cost will be subject to prevailing terms and prices.
- *** Freight charges are estimates and subject to change based on prevailing market rates.
- **** Lease Finance requires separate payment terms outlined by the finance agency.

Dated: March 30, 2020

Seller: Matthews Environmental Solutions

Ron Salvatore

Purchaser: Finger Lakes Crematory

Accepted By: Michael Dougherty

Accepted By: _____
Matthews Environmental Solutions

Title: Owner

Date: _____

Date: _____

Attachment I - Project Itemization List

Bill To: Finger Lakes Crematory
21 Big Tree St
Livonia, NY 14487-9609

Contact: Michael Dougherty
Phone: (585) 346-5401

Ship To: Finger Lakes Crematory
21 Big Tree St
Livonia, NY 14487-9609

Title: Owner
Email: mpdougherty27@gmail.com

Cremation Equipment		Cost	Quantity	Total
1.	Power Pak I with M-pyre 2.0	\$107,384.00	1	\$107,384.00
Services		Cost	Quantity	Total
1.	M-pyre 2.0™ 1 Year Auto-Renewal Subscription	\$1,788.00	1	\$1,788.00
Government Surcharges		Cost	Quantity	Total
1.	1-Pen: Installed complete with thermocouple and wiring, 24-hour recording chart	\$1,575.00	1	\$1,575.00
Standard Supplies & Services Included				
1	M-Pyre 2.0 Intuitive Logic Control (ILC) Operating System.*			
1	Set of Sentry loading door safety latches.			
1	Stainless Steel Stack lined with 3.0 inches of refractory, 8 feet of stack included. Also includes storm collar. <i>Note: Additional Stainless Steel Stack costs an additional fee per foot.</i>			
1	Opacity Monitor.			
1	Set of Clean-Out Tools.			
1	Ashpan for transporting the cremated remains from the collection hopper to the processing area.			
1	Environmental applications forms with the necessary technical data for you to submit to the environmental authorities of your area. <i>Note: Does not include local engineering costs/permitting fees that may be required, local environmental modeling or other site specific costs.</i>			
1	Pre-paid and allowed freight from Apopka, Florida to your location.			
1	Start-up service after arrival and installation of equipment. Services include operator training.			
1	Owner's manual.			
1	Case of (36) TCC-1 temporary cremains containers.			
1	Case of shipping boxes (36) for the containers.			
1	Case of rollers (60) for loading the case to be processed.			
100	Stainless Steel Identification discs with the name of your facility, city, state and sequential numbering.			
1	LT-1BS Hydraulic Battery Lift Table with Scale.			

Notice (if applicable)

***M-pyre 2.0 Subscription Notice:**

60-Day Free Trial is included. After 60 Days from start-up there will be a \$149 per month charge. Each additional unit is \$50 per month. Facility must have a hard wired internet connection, ethernet cable should reach the control panel with 6ft extra. Minimum internet speed required is 128Kbps.

Early Termination Fee is \$295 on 1 year auto-renewal contract, plus \$195 for each additional year.

All Subscriptions are auto-renewed, cancellations must be submitted in writing atleast 60 days prior to next renewal period.

Delivery & Warranty

The time of delivery will be approximately ten (10) weeks after receipt of the pre-construction checklist & environmental construction permit to proceed. The warranty applicable is one (1) year from date of shipment against defects in material and/or workmanship, F.O.B. Apopka, Florida.

Initial

General

- 1 The Terms and Conditions of Sale are only those stated below and in the Purchase/Lease Agreement, (collectively, the "Agreement"). The parties hereto agree there are no agreements between the parties, oral or written, with respect to the goods sold or the services provided hereunder (including any made or implied from past dealings) except as expressed in the Agreement and/or herein. To the extent there are any inconsistencies and/or conflicts between the terms and/or language of the Agreement and the Terms and Conditions of Sale, the Terms and Conditions of Sale shall govern and control.
- 2 Shipping and performance dates are estimated only and are not guaranteed. Matthews International Corporation (hereinafter referred to as "Seller") will use every effort to make shipments and/or perform services as scheduled and may make partial shipments. However, the completion of the Agreement is subject to acts of God or the public enemy, fires, floods, unusually severe weather, delays caused by governments (including government priorities, preferences or allocations), delays of suppliers in furnishing materials and services, and any other causes beyond Seller's control ("Force Majeure"). In the event of a Force Majeure, Seller shall not be liable to Purchaser for any delays related to the manufacturing, shipping and/or delivery of the items and/or services contemplated and/or specified in the Agreement.
- 3 Prices quoted, unless otherwise stated, are F.O.B. destination and do include sales tax. If taxes are not paid to Seller, Purchaser will pay these items directly if the law permits or will reimburse Seller if Seller is required to pay them. Purchaser will provide tax exemption certificates or evidence of tax payment if requested by Seller.
- 4 Any amount not paid when due can delay shipment where Purchaser can incur fees associated from rescheduling freight logistics. Purchaser shall not be entitled to set off any amount owing under the Agreement at any time to Seller or any of Seller's affiliated entities.
- 5 Purchaser's execution of the Agreement will be deemed a representation that Purchaser is solvent and able to pay for the items ordered. If Purchaser fails to make payments when due or if bankruptcy or insolvency proceedings are instituted by or against Purchaser, or if Purchaser makes an assignment for the benefit of creditors, Purchaser will be deemed in default, and Seller will have the right to terminate its obligations by written notice to Purchaser, but such termination will not affect Purchaser's obligation to pay for items delivered and work in progress.
- 6 No goods may be returned without prior written approval of Seller. Orders placed with and accepted by Seller may not be canceled by Purchaser except upon (a) Seller's written consent prior to shipment and (b) Purchaser's acceptance of Seller's cancellation charges, 30% of total project price if order is in production phase, which shall protect Seller against all costs and losses. Seller reserves the right to cancel any sale (and related services) hereunder without liability to Purchaser (except for refund of monies already paid), if the manufacture or sale of the goods or provision of services is or becomes technically or economically impractical.
- 7 Purchaser is exclusively responsible for the installation of the any and all equipment specified in the Agreement and is also responsible for installing it pursuant to Seller's installation instructions. Accordingly, Purchaser shall be responsible for coordinating facility preparation, including the retention of subcontractors if necessary and may include, but is not limited to, electrical and fuel hookup, crane for off-loading and placement of equipment, stack installation and connection.
- 8 Governing Law: This Agreement shall be governed by the laws of Pennsylvania, excluding the choice of law provisions thereof. Any litigation shall be brought in Allegheny County in the State of Pennsylvania for all issues relating to sale. All disputes arising out of this order shall be resolved by arbitration in accordance with the Commercial Arbitration Rules (as amended and effective on the date of the Demand, the "Arbitration Rules") of the AAA. The hearing and all other proceedings and documents in such arbitration shall be conducted in the English language in Pittsburgh, Pennsylvania. The arbitrator(s) shall, with reasonable diligence, render a final decision with respect to the Dispute as disclosed in the Demand and the answering statement, if any, filed by the other party. The decision shall be rendered within 90 days after the commencement of the hearing, unless the arbitrator(s) find it necessary to extend this period to hear the dispute or reasonably render a decision. Until the award is issued, performance under this order shall continue in the manner and form existing prior to the dispute but subject to adjustment as a result of the award. The provisions of this Section 8 shall be a complete defense to any suit, action or proceeding instituted in any federal, state or local court or before any administrative tribunal with respect to any Dispute arising with regard to this order. In connection with enforcing any arbitration award entered pursuant to this Section 8, or any other action related to this order, Seller hereby consents and submits to jurisdiction of the state and Federal courts seated in Allegheny County, Pennsylvania any action at law, suit in equity or other proceeding that may arise out of this order. Seller also agrees during the periods of performance and warranty to maintain within the Commonwealth of Pennsylvania an agent to accept service of legal process on its behalf. Seller will require such agent to acknowledge such appointment in writing to Purchaser, and such agent will agree in writing to Purchaser that such appointment may not lapse or otherwise terminate without prior written notice to Purchaser at least 180 days prior to such lapse or termination.

Title and Damage of Shipment

- 9 All goods sold hereunder are warranted, when paid for and properly installed. A claim should be immediately filed with the carrier when damages are identified upon delivery. A full report of the damage should be forwarded to Seller so that Seller can arrange for repair or replacement.
- 10 To the extent applicable, title to items contemplated in the Agreement and not subject to leasing terms under the agreement, passes upon tender of delivery by carrier to Purchaser, and if items are damaged, Seller must receive Purchaser's claim for loss or damage in transit within ten (10) days after receipt of shipment, which must be signed by the carrier.

Warranty for Goods and Services

- 11 Seller cremators and collateral equipment sold are warranted free from defects in workmanship and/or materials, under normal use and service, for one (1) year from date of shipment. Seller's obligation under this warranty is limited to the repair or replacement of any parts or part, F.O.B. Apopka, Florida, which may prove defective under normal use and service within one (1) year from date of shipment, and which is found by our inspection to be thus defective. This warranty shall not apply to any cremator and collateral equipment which has been repaired or altered outside our factory in any way so as, in our judgment, to affect its performance, safety, stability and reliability. No other express warranty is given. Written notice of defect must be received by Seller within warranty period. At Purchaser's request, Seller will make reasonable efforts to provide warranty service at the Project premises. If a fault has been caused by improper installation (other than by Seller or third parties under contract to Seller), maintenance or use, or by abnormal conditions of operation, repairs will be billed at normal rates.

If any fault develops, the following steps should be taken:

- A Notify Seller by giving the item model number, serial number and details of the difficulty. On receipt of this information, Purchaser will be given service data or
 - B On receipt of shipping instructions, forward the item prepaid. If the item or the fault is not covered by warranty, an estimate of charges will be furnished before work begins.
- 12 Seller warranties, including, without limitation, warranties with respect to the design, materials, workmanship, merchantability, fitness for purpose and performance of its products, shall be limited exclusively to those specifically expressed in writing from time to time by Seller. EXCEPT AS EXPRESSLY PROVIDED HEREIN, SELLER DISCLAIMS ANY AND ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, IN FACT OR BY OPERATION OF LAW OR OTHERWISE, CONTAINED OR DERIVED HEREFROM OR IN ANY OTHER MATERIALS, BROCHURES, PRESENTATIONS OR OTHER DOCUMENTS OR COMMUNICATION WHETHER ORAL OR WRITTEN, INCLUDING, WITHOUT LIMITATION, IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

Confidential Information; Patent Indemnity

- 13 Any drawings submitted herewith are to show only the general style, arrangement, and approximate dimensions of the goods offered. No work is to be based on drawings unless the drawings are certified.
- 14 Purchaser agrees that all drawings, prints and other technical material which Seller provides to Purchaser, whether prepared by Seller or by third parties under contract to Seller, contain data which embody trade secrets and confidential know-how of commercial value to Seller or third parties under contract to Seller. Purchaser agrees (a) to keep such information confidential; (b) that it will not disclose such information to any other person, corporate division or entity; (c) that it will not use such information except in connection with the goods supplied hereunder; and (d) that it will not sell, lease, loan or permit any other person, corporate division or entity to use such information for any purpose, without Seller's prior written consent. Nothing herein shall restrict the use of information available to the general public.
- 15 Seller has the right to defend or, at its option, to settle, and Seller agrees, at its own expense, to defend or settle, any claims, suit or proceedings brought against Purchaser based on a claim of infringement of any United States patent by any item supplied to Purchaser under the Agreement.

Limitation of Damages

- 16 IN NO EVENT SHALL SELLER BE LIABLE, IN CONTRACT, TORT, STRICT LIABILITY, LAWS RELATING TO THE PROTECTION OF THE ENVIRONMENT, OR UNDER ANY OTHER LEGAL THEORY, FOR INCIDENTAL, INDIRECT, SPECIAL OR CONSEQUENTIAL DAMAGES, REGARDLESS OF WHETHER SELLER WAS INFORMED ABOUT THE POSSIBILITY OF SUCH DAMAGES, AND IN NO EVENT SHALL SELLER'S LIABILITY EXCEED AN AMOUNT EQUAL TO THE SALES PRICE OF THE GOODS AND/OR SERVICES CONTEMPLATED IN THE AGREEMENT AND SOLD TO PURCHASER THEREUNDER.

Project Provisions

- 17 Under limited circumstances, Purchaser may timely change orders in the work contemplated by the Agreement consisting of additions, deletions or modifications. However, such changes in the work shall be authorized by written change orders signed by Purchaser and approved in writing by Seller (each, a "Change Order"). If Purchaser elects to make any such changes pursuant to a Change Order, the project price and the date of completion of the desired work shall be adjusted accordingly by Seller.
- 18 Purchaser acknowledges that any additional requirements including, but not limited to: environmental testing, field evaluations by independent testing laboratories and/or any modifications to obtain or keep any permits in effect are the responsibility of the purchaser.
- 19 Purchaser shall secure and pay for all building permits, and other permits or licenses necessary for proper execution and completion of the work contemplated under the Agreement.
- 20 Purchaser and Seller acknowledge that time is of the essence hereunder and that the price quoted in the Agreement is based upon the project being as described in the Agreement. If Purchaser, or any party under Purchaser's control, interferes with or delays performance of the work contemplated by the Agreement (whether intentionally or otherwise), Seller shall (a) extend the date for completion of the work to account for the delay caused by such interference and (b) adjust the project price to reflect any cost or expenses incurred by Seller on account of such interference.
- 21 Seller is acting as an independent contractor hereunder and does not undertake in any way to perform any obligation of Purchaser or to assume any liability for Purchaser's business or operations. In addition, the Terms and Conditions specified herein relate solely to the rights and obligations of the Parties with respect to the purposes of the Agreement as set forth therein and shall not extend to any other activities, transactions, relationships, contracts or work, or be deemed to create a general partnership, joint venture, agency or employment relationship among the Parties of any kind whatsoever.
- 22 Indemnification: Purchaser agrees to release, indemnify and hold harmless Seller against any and all losses, damages, claims, liabilities, penalties, expenses (including costs and attorney's fees) directly or indirectly based upon or arising out of any negligent act, omission or the willful misconduct of Purchaser under the Agreement. Purchaser acknowledges that the provisions of this Section and Purchaser's obligations hereunder shall survive the termination of the Agreement.
- 23 Notice: Any notice required to be given pursuant to the Agreement and/or the Terms and Conditions set forth herein shall be in writing and mailed by certified or registered mail, return receipt requested, or delivered by a national overnight express service to the following Seller address:

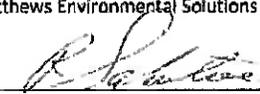
To Seller:
 Matthews International - Environmental Solutions Division
 2045 Sprint Boulevard
 Apopka, Florida 32703

- 24 Waiver. No waiver by either party of any default shall be deemed as a waiver of any prior or subsequent default of the same or other provisions of this agreement.
- 25 Severability. If any provision hereof is held invalid or unenforceable by a court of competent jurisdiction, such invalidity shall not affect the validity or operation of any other provision and such invalid provision shall be deemed to be severed from the Agreement.
- 26 Entire Agreement. The Terms and Conditions of Sale, in conjunction with the Agreement, constitute the entire understanding of the parties relating to the purchase, installation and operation of the products and/or services and revokes and supersedes all prior agreements between the parties relating to the purchase, installation and operation of the products and/or services and is intended as a final expression of their agreement. The Terms and Conditions of Sales shall not be modified or amended except in writing signed by the parties hereto and specifically referring to the Agreement.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as of the date indicated below.

Seller: Matthews Environmental Solutions

Purchaser: Finger Lakes Crematory

Signed: 
 Ron Salvatore

Signed: _____

Dated: March 30, 2020

Print Name: _____

Title: _____

Dated: _____

EXHIBIT C



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September 17, 2019 - Revised on March 30, 2020

Michael P. Dougherty
Finger Lakes Crematory
21 Big Tree
Livonia, NY 14487
Mpdougherty27@gmail.com

RE: Asbestos Abatement & Crematory Demolition

Sessler Environmental Services, LLC (SES) is pleased to provide abatement pricing for the above-mentioned properties to Finger Lakes Crematory (client). Pricing is reflective of the scope of work identified in asbestos reports drafted by Lu Engineers (July 2019) and provided by the client as well conditions observed during a walkthrough of the structure on 9/13/19.

Pre-Mobilization Activities:

- SES will draft and submit NYS DOL notifications for the site prior to commencement of the project.
- SES will draft and post Building Notifications prior to commencement of the project.
- SES will coordinate schedule with client and project monitoring company.
- Client will coordinate with building owner for access.

Task 1: Abatement of Identified Asbestos

- SES will abate asbestos in full compliance with NYS ICR 56.
- Regulate work area with barrier tape and signage.
- Set up an Attached Decontamination unit to support abatement activities.
- Install critical barriers and negative air pressure containment for friable abatement activities.
- Removal of 200 SF of ACM Ceiling & 200 SF of ACM Wall from beside and above Crematory Unit.
- Removal of 185 SF of loose fill Vermiculite from the top of the Crematory Unit.
- Complete first & final cleaning and clearance by 3rd party monitor.
- Tear down and de-regulate area.

Task 2: Crematory Demolition

- Removal of the old Crematory Unit in its entirety.

Task 3: Re-Install Wall & Exterior Siding

Waste Disposal:

- Waste generated during abatement activities will disposed of in accordance with local, state and federal regulation.



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- Waste will be disposed of at an approved landfill via a waste shipment record, disposal receipts will be provided to the client with a closeout package.

Assumptions:

- Pricing assumes work can be conducted during standard business hours – Monday through Friday.
- Pricing assumes client will provide power and water, at no cost to SES for the duration of the project.
- Pricing excludes NYS Prevailing Wage Rates.
- Pricing excludes NYS Sales Tax, it is assumed this is a capital improvement project. Client will need to provide Tax Exempt Form to SES prior to invoicing.
- Payment Terms are Net 30 Days.

Pricing:

Item #	Task Description	Quantity	Units	Unit Rate	Extended Costs
1	ACM Ceiling, Exterior Wall and Loose Vermiculite Removals	1	LS	\$ 9,770.00	\$ 9,770.00
2	Crematory Demolition	1	LS	\$ 4,240.00	\$ 4,240.00
3	Re-install Exterior Wall & Siding	1	LS	\$ 4,470.00	\$ 4,470.00

Estimated Projects Costs \$18,480.00



SES appreciates the opportunity to provide this proposal, please feel free to call or email with any questions.

Respectfully,

Geoffrey Smith
Project Manager
O 585.617.5710
C 585.694.4668
E gsmith@sesslerenv.com



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APPENDIX A
Sessler Environmental Services
GENERAL TERMS AND CONDITIONS

1. **TERMS AND CONDITIONS:** These terms and conditions apply to all Services performed by Sessler Environmental Services, LLC hereinafter referred to as "SES", and the other party, hereinafter referred to as the "Customer". This Proposal and Work Authorization, and this Appendix A (collectively "Agreement") constitute the entire agreement of the parties. Provisions contained in a purchase order or other documents provided by Customer that vary or conflict with the terms contained in this Agreement are hereby rejected. This Agreement may be signed in multiple counterparts. Facsimile, scanned or electronic signatures, copies of this Agreement, and daily work reports are valid and binding on the parties.
2. **PAYMENT:**
 - a. Customer shall pay SES in full for all services properly rendered under this Agreement within 30 days from receipt of each invoice submitted by SES unless specific credit arrangements are agreed to prior to the commencement of Services, subject to and contingent upon SES's credit approval of Customer. **Payments are not contingent upon owner payments, government funding, or insurance payments.**
 - b. Invoices shall be rendered bi-weekly and/or at the conclusion of services. SES's acceptance of any payment or partial payment for services rendered shall be done without prejudice to any further rights or remedies SES may have, including but not limited to the collection of any additional monies owed to SES.
 - c. If SES's proper invoice is not paid within Net 30 days from Customer's receipt of invoice, Customer agrees that SES will have the right, without further notice, to terminate SES's services until all past due and outstanding amounts are paid and SES receives adequate assurance of Customer's prompt future payment. Payments received more than 30 days past due are subject to interest charges of 1.5% per month, or the maximum rate allowed by law.
 - d. Amounts paid will be credited first to accrued interest, then to the oldest unpaid balance. In addition, Customer shall reimburse SES for all costs incurred to collect overdue amounts, including but not limited to collection fees, filing fees, costs of litigation or alternate dispute resolution, attorneys' fees and charges for time spent by SES personnel. SES reserves all legal rights and recourses against the Customer, its property and the property owner for failure of Customer to pay invoices when due.
3. **COMPLIANCE WITH LAW:** Both Parties shall comply with all applicable laws and regulations. In the event of changes in laws or regulations, that affect the Services, SES shall inform Customer of such changes and the impact they may have on the Services, cost or scheduling. Such changes are to be treated as an Unanticipated Condition under the terms defined in the respective paragraph below.



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4. Customer shall pay any fines, penalties or other sums resulting from violation of, or failure of Company to comply with any laws, codes, standards, statutes, regulations, or administrative or judicial order, unless otherwise provided on the face of this Agreement.
5. **CUSTOMER REPRESENTATIVE:** Customer shall provide all criteria and full information about the Work Site, including Customer's requirements for the project, any Conditions, present and past activities engaged in, and the substances and materials known or likely to be encountered; designate a persons to act with authority of Customer and provide SES continuing access to Customer or Customer's representative; Customer or Customer's representative is to examine and respond promptly to SES's inquiries and submissions.
6. **DAILY WORK REPORTS (TIME & MATERIALS, PROJECTS):** Daily work reports will be the mechanism to document and verify personnel, equipment, materials and outside services utilized by SES in the performance of the Services. If Customer's representative is not available to sign daily work reports, it is Customer's responsibility to ensure prompt review and approval of daily work reports submitted electronically by SES. Customer's failure to (i) sign and return facsimile or electronic daily work reports sent to Customer's fax number or email address, or (ii) provide its written objection to daily work reports within 24 hours, will constitute acceptance of the resources reported by SES.
7. **PROJECT REVIEW:** Customer or Customer's representative shall promptly initiate a review of the project with SES or SES's representative at the conclusion of the Services in order to identify in writing any incomplete, defective or unsatisfactory service. SES in turn will respond within a reasonable time thereafter.
8. **HANDLING OF WASTE:** References to "Customer" in this paragraph shall mean the Client or the generator of the waste. By performing the Services, SES does not accept or acquire (i) title to any waste handled by SES; or (ii) the status or liability of the generator, owner, operator or arranger of transportation, treatment, storage or disposal, as defined by federal and state laws governing the handling, treatment, storage or disposal of solid or hazardous waste. If requested, SES will transport waste or cause it to be transported under a waste manifest executed by Customer to a disposal or treatment facility selected by Customer. Customer shall pay all fees and taxes arising from or related to handling, transportation and disposal of the waste. If SES arranges for the transportation and disposal of waste, executes contracts with disposal facilities, completes and signs waste profiles or waste manifests, or makes payment for transportation or disposal services, these activities are performed by SES as Customer's agent. Customer shall remain responsible for any claims by the disposal facility with respect to the waste and shall look solely to the disposal facility in the *event* of a release or other liability arising from the disposal service. Prices quoted by SES for transportation and disposal of waste do not constitute a selection of the disposal facility and will be subject to adjustment in the event the disposal facility increases its price to SES or Customer designates an alternate facility.
9. **WASTE PROFILE SHEET:** Prior to the time of shipment and/or loading, Customer shall sign a Waste Profile sheet with approval by a disposal facility in advance of scheduling the Services. Customer shall



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also sign waste shipping documents at the time of shipment (prior to loading). Such documents must also include a separate shipping paper for disposal of any truck wash waste.

10. **SCHEDULE:** SES shall use reasonable effort to complete the Services according to the agreed schedule. However, no warranties or representations are made as to the completion date of any Services undertaken, nor will Customer have any right to damages arising from delays of SES in the completion of the Services.
11. **UNANTICIPATED CONDITIONS:** If during the performance of the Services, SES discovers (i) subsurface or other latent physical conditions at the Work Site which differ materially from those indicated in this Agreement; or (ii) unknown physical conditions at the site, including but not limited to any non-hazardous or hazardous materials and/or substances, which differ materially from those ordinarily encountered or could not have been reasonably anticipated at the commencement of this Agreement; or (iii) changes in laws or required standards, and directions by governmental agencies (all such discoveries hereinafter referred to as "Unanticipated Conditions"), SES shall notify Customer as soon as is practically possible. The Customer shall respond to SES's notification within 3 business days as to the course of action it would like SES to take with regard to the Unanticipated Condition. The discovery of Unanticipated Conditions requiring a re-negotiation or termination of this Agreement. Such negotiations must occur promptly and in good faith. If a re-negotiated Agreement cannot be developed, SES has the right to terminate this Agreement without penalty or cause. In the event of a termination, SES is to be paid for all Services performed up to the termination date.
12. **FORCE MAJEURE:** Except as otherwise expressly provided in this Agreement, if SES, through causes, conditions, or events beyond its control, has been delayed in the performing of the Services and as a result will be unable to complete the Services fully and satisfactorily within the time fixed therefore, SES will be granted an excuse of performance or an appropriate extension of time by Customer pursuant to a Change Order negotiated by Customer and SES in good faith.
13. **SUBSURFACE STRUCTURES:** Customer will furnish to SES any and all information available identifying the type and location of Subsurface Structures at the Work Site. SES will also use reasonable diligence to identify and contact the local Underground Facilities Protective Organization or equivalent for the same purposes described herein prior to commencement of any drilling or other excavation. SES is not responsible for any losses from, damage to, or loss of use of, any subsurface structure not accurately located and/or identified by Customer or others as requiring special protection (at Customer's additional cost). SES's only obligation with respect to Subsurface Structures is to use reasonable care under the circumstances when excavating in or near locations identified by Customer or the local Underground Facilities Protective Organization or equivalent, if any.
14. **CROSS-CONTAMINATION:** Customer acknowledges and understands that sampling and/or material handling may result in unavoidable cross-contamination of certain subsurface areas, such as aquifers, underground streams, or other hydrous bodies not previously contaminated. Because SES cannot totally eliminate the risk despite the use of due and reasonable care, and because sampling is



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an essential element of SES's services indicated herein, Customer shall, to the fullest extent permitted by law, waive any claim against SES arising from cross-contamination allegedly caused by SES sampling and/or material handling.

15. INDEMNITY:

- a. Customer shall indemnify and defend, SES from and against all loss, liability, claims, litigation, proceedings, damages, fines, penalties costs or expenses (including defense costs and attorney's fees) incurred from or in connection with the Services (including claims of bodily injury or death, property damage, environmental release, impairment, pollution or condition or any other cause) and arising (i) prior to SES's commencement of the Services, (ii) during or after the performance of the Services that are not directly attributable to SES's active or sole negligence or intentional misconduct in the performance of the Services, or (iii) from Customer's misconduct, negligent acts, errors or omissions, violations of law, or breach of this Agreement.
- b. SES shall indemnify and defend Customer from and against all loss, liability, claims, litigation, proceedings, damages, fines, penalties costs or expenses (including defense costs and attorney's fees) incurred from or in connection with any Claims to the extent directly attributable to SES's active or sole negligence or intentional misconduct in the performance of the Services.

16. LIMIT OF LIABILITY: NOTWITHSTANDING ANY OTHER PROVISION CONTAINED IN THIS AGREEMENT, NEITHER PARTY SHALL BE LIABLE TO THE OTHER PARTY FOR ANY EXEMPLARY, PUNITIVE, INDIRECT, SPECIAL OR CONSEQUENTIAL DAMAGES OF ANY KIND, INCLUDING LOST PROFITS OR LOSS OF USE, REGARDLESS OF THE CAUSE, INCLUDING NEGLIGENCE, EVEN IF SUCH DAMAGES WERE WITHIN THE CONTEMPLATION OF OR REASONABLY FORESEEABLE BY THE PARTIES.

17. INSURANCE: During the performance of the Services, SES shall maintain worker's compensation and employer's liability insurance; commercial general liability insurance in the amount of \$1,000,000 per occurrence; automobile liability insurance in the amount of \$1,000,000 combined single limit; and contractor's pollution liability insurance in the amount of \$1,000,000. Customer will be an additional insured on the general and automobile liability policies per blanket endorsements to the extent of SES's liability under this Agreement.

18. ACCESS: Customer grants a License to SES and right of way to and over Customer's property (including utilities located thereon) for the purposes related to this Agreement. Customer's License to SES survives termination of this Agreement and will continue for a reasonable period of time for the purpose of allowing SES to remove its equipment and all other property from the Work Site.

19. MODIFICATION: Except where otherwise provided in this agreement, no terms, conditions, prior Agreements or Work Orders, Change Orders or agreements purporting to modify, vary, supplement or explain any provision of this Agreement will be valid unless in writing and signed by representatives of both parties authorized to amend this Agreement. In the case of emergency situations however, oral modifications mutually agreed to by Customer and SES will be binding and effective as against all



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parties up and until such modifications are subsequently memorialized in a written Change Order or other writing. Failure of Customer or Customer's authorized representative to sign and submit such Change Order or writing to SES will not negate or otherwise affect the validity or enforceability of such oral modifications.

20. **No WAIVER:** No waiver by SES or the Customer of any breach of any term or condition in this Agreement shall operate as a waiver of any subsequent breach of any other term or condition of this Agreement.
21. **WARRANTY:**
- a. SES shall provide services in accordance with the applicable professional and trade standards, standards published by the Owner, and all federal, state and local regulations and statutes. THIS WARRANTY IS IN LIEU OF, AND EXCLUDES ALL OTHER WARRANTIES, STANDARDS AND GUARANTEES, WHETHER EXPRESSED OR IMPLIED, ARISING BY OPERATION OF LAW OR OTHERWISE, INCLUDING ANY WARRANTY OF WORKMANSHIP, MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE AND ANY WARRANTY OF ANY EQUIPMENT, MACHINERY, PROCESS OR SYSTEM EMPLOYED OR PROVIDED BY SES. CUSTOMER'S SOLE REMEDY AND SES'S SOLE LIABILITY FOR BREACH OF WARRANTY SET FORTH IN THIS AGREEMENT OR OTHERWISE WILL BE THE RE-PERFORMANCE OF THE SERVICES IN QUESTION TO THE EXTENT NECESSARY TO CURE THE BREACH. Such remedy will be available to the Customer only if Customer reports the breach to SES within 60 days after discovery of the breach and during the performance of the Services for emergency response Services, or, in the case of other Services no later than one (1) year after completion of the Service in question.
 - b. After Final Completion of the Services, SES will not be responsible for the performance of any further remedial action, removal actions or cleanup of hazardous waste or hazardous substances at the site that the Customer may be ordered, directed or required to perform by any governmental authority, unless such action is necessary as a direct result of SES's failure to perform this Contract, or its recklessness or intentional misconduct in the performance of the Services.
 - c. Unless otherwise warrantied, response activities provided by SES will be for the purpose of minimizing, to the extent practicable, the environmental damage and health and safety risks of spills or releases of petroleum or other hazardous substances. As such the released oil or hazardous substance involved may not be eliminated from the Site by response activities. CONTRACTOR DOES NOT WARRANT, BY THE TERMS OF THIS AGREEMENT OR BY UNDERTAKING A RESPONSE TO SPILLED OIL OR HAZARDOUS SUBSTANCE PURSUANT TO THIS AGREEMENT, THAT SUCH RESPONSE WILL RENDER THE SITE SAFE FOR ANY FORM OF HUMAN ACTIVITY OR IN COMPLIANCE WITH ANY STATE, LOCAL OR FEDERAL LAW.
22. **SEVERABILITY:** If any provision of this Agreement is determined to be unenforceable or invalid, then that provision is to be either (i) modified to the minimum extent necessary to reflect the Parties'



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original intention and make it enforceable if permitted by law; or (ii) disregarded if modification is not permitted by law. The remainder of this Agreement will remain binding and effective against all Parties.

23. **LAW AND JURISDICTION:** This Agreement and the rights and obligations of the parties is to be governed by the laws of the State in which the Services are to be performed. Any suit, action or proceeding brought by any party is to be commenced exclusively in the appropriate state court situated in the county nearest to SES's office that contracted for the Services, and each party submits to the exclusive jurisdiction of such court. The parties waive any right to trial by jury with respect to any claim, counterclaim or action arising from the terms of this agreement.
24. **ASSIGNMENT:** No assignment of rights or delegation of duties, in whole or in part, may be permitted by either party without the prior written consent of the other party, provided that SES may engage such subcontractors to assist SES as SES deems necessary and appropriate, to be determined in SES's sole discretion.
25. **SUSPENSION OR TERMINATION:** SES may suspend or terminate the Services or this Agreement at any time in the event of (i) failure of Customer to timely pay amounts due, or (ii) breach by Customer of any provision of this Agreement. Customer shall be responsible for all charges incurred by SES as a result of such termination or suspension, in addition to charges for Services performed hereunder. The term of this Agreement will continue from the date it is fully executed until the completion of the Services or earlier termination by either party on at least three (3) business days prior written notice. All Services performed by SES prior to the effective date of termination is to be deemed to have been performed during the term of this Agreement. In the event of a termination by Customer, SES is to be paid by Customer, in accordance with the provisions for payments, for all Services performed up to the notice of termination date.
26. **NOTICE OF CLAIM:** As a condition precedent to the commencement of any action or special proceeding against SES, Customer shall provide SES with a written notice of claim specifying the grounds upon which the claim will be based. In addition, such notice must: (a) reasonably identify the contract; (b) identify the date, duration, and nature of any breach or default, actual or suspected, including the nature of any damage, injury, and/or loss; and (c) estimate or state the damage amount and how it was calculated. After such notice of claim is served and prior to the commencement of any action or special proceeding against SES, Customer will give SES two (2) business days in which to correct or diligently commence and pursue correction or cure of such breach or default described in the notice of claim. Customer's payment for services rendered after such notice is given is to be interpreted as and mean that Customer is satisfied with SES's services.
27. **LITIGATION AND COLLECTION COSTS:**
 - a. In the event either Party initiates a claim or legal action concerning issues arising out of the performance or nonperformance of this Agreement against the other, the non-prevailing party will pay the prevailing party's expenses of litigation, including reasonable attorneys' fees.



Decommissioning Services • Remediation Services • Facility Services • Disaster Relief

- b. In the event either party fails to promptly pay the other's invoiced costs and expenses, the non-prevailing party agrees to pay the prevailing party's reasonable collection expenses, including attorneys' fees. This provision shall have no applicability or binding effect if such legal action or proceeding is resolved by means of settlement.
 - c. In the event of any dispute involving Customer or the subject matter of the Services in which SES is either not a named party or not at fault. Customer shall pay SES for any reasonable attorneys' fees, legal expenses and other costs incurred or time spent in responding, defending or participating in such litigation, including costs and time of SES or its personnel when called or subpoenaed for depositions, examinations, appearances or document production.
28. **REIMBURSABLE EXPENSES:** Customer shall reimburse SES at total cost for those expenses outside of the scope of the proposed Services and/or this Agreement, together with any subsequent Change Orders. Such expenses and fees will appear on SES's invoice(s) to Customer. If the services covered by this Agreement are subject to local, state or federal taxes, fees or surcharges, such additional costs will be charged to the project; Mobilization and de-mobilization expenses incurred as a result of work stoppages exceeding 3 days not directly caused by SES.
29. **ENTIRE AGREEMENT:** This Agreement constitutes the entire agreement among the parties with respect to the subject matter of this Agreement and shall supersede all prior negotiations, understandings and writings whether oral or written between the parties relating to the subject matter of this Agreement. There are no oral agreements in connection with this Agreement.



Decommissioning Services • Remediation Services • Facility Services • Disaster Relief

AUTHORIZATION

By accepting this Proposal Agreement, the Customer authorizes SES to commence the Services described and defined herein and grants access, at reasonable times, to the described property. This Proposal Agreement is valid for a period of thirty (30) days.

The Terms and Conditions of the above are satisfactory and are accepted:

By Customer:

By SES:

_____ Date: _____ Date: _____

(signature)

(signature)

_____ Name: _____ Name: _____

_____ Title: _____ Title: _____

EXHIBIT D

Fwd: budget for new crematory

Subject: Fwd: budget for new crematory
From: Michael Dougherty <mpdougherty27@gmail.com>
Date: 12/26/2019 3:50 PM
To: Billy Brennan <ldmilk@frontiernet.net>

This was from lawman heating and cooling for the work they would perform. We'll probably need to review.

Mike

----- Forwarded message -----

From: Don <don@lawmanhc.com>
Date: Thu, Dec 26, 2019, 1:17 PM
Subject: budget for new crematory
To: Michael Dougherty <mpdougherty27@gmail.com>

Per your request we offer the following estimates: 1.) Removal of existing chimney and fill existing 4' x 3' x 12' hole (estimated) with 5,000# concrete, patch hole in ceiling and patch roof = \$12,300. *Concrete should cure 10 -14 days before anything is place on it. 2.) to remove exhaust fan, duct and louver and relocate & reinstall = \$3100. (disconnect and rewiring by others). 3.) relocate existing gas piping and valve and pipe to new and add vent piping = \$ 4,000 (work does not include any increasing of line sizing due to pressure issues) minimal shut down time. 4.) Unloading of unit with crane and rigging into place on rollers = \$10,000 5.) Removal of header and shoring wall between garages, removal and reinstallation of door hood only. Unit must be at 6'-8" to install on rollers *elevation on cremation burner not given. = \$2500. 6.) Install flue(provide by others) thimble cut and frame ceiling and roof for installation of 45" round blk iron thimble and flashing = \$13,000 7.) Installation of combustion air duct and louver = \$1400.

I am using the Free version of SPAMfighter.
SPAMfighter has removed 22159 of my spam emails to date.

Do you have a slow PC? Try a free scan!

EXHIBIT E



William Brennan / President
F. Scott Hicks / Vice President

William D'Angelo / Secretary
Jeffery Deragon / Treasurer

Fingerlakes Crematory, Inc.

21 Big Tree Street, PO Box 6
Livonia, New York 14487

September 10, 2019 Annual Meeting Minutes Landmark Room / Red Osier

AGENDA FOR MEETING

Members Present: Bill Brennan, Scott Hicks, Bill D'Angelo, Jeff Deragon, Frank Hicks, Bud St. George, Joe Martin, Tim Woodward and Joe Robinson

Absent: John Cameron

Others Present: Michael Dougherty

Meeting called to order by Pres. Brennan at 5:39 pm

Presentation of 2018 minutes was read by Secretary Bill D'Angelo. Motion by Woodward, Seconded by Deragon to accept the minutes. Motion Carried

Presentation of Annual /Financial Report by Treasurer Jeff Deragon. Motion by Woodward, seconded by Martin to accept the treasurers report. Motion Carried

Crematory Operations update by Michael Dougherty. The Crematory is on pace to do 1510 this year.

February inspection by the State went well. Inspector Breen suggested that we replace the old retort with a new unit. Dougherty stated that the Power Pak1 would be able to fit in existing space. The new retort would cost about \$ 105,000. An asbestos test of old unit cost \$ 1,400 and did confirm the presence of asbestos in old unit. Abatement, Removal and installing new unit may cost as much \$ 175,000. A motion by Woodward and seconded by F. Hicks to have Peter Skivington send the state a letter allowing the permitting process to begin. Motion Carried

Dougherty stated that all the modules in the monitoring equipment have been updated and

EXHIBIT F

VILLAGE/TOWN OF LIVONIA

NUMBER VB-01-2020

DATE 1-7-2020

This notice, which must be prominently displayed on the property or premises to which it pertains, indicates that a

BUILDING PERMIT

has been issued to Kevin Dougherty Funeral Home
permitting the construction of Replacement of existing Crematory
Pending other agency approvals.

at 21 Big Tree Street, Livonia

All work shall be executed in strict compliance with the permit application, approved plans, the Uniform Fire Prevention and Building Code, and all other laws, rules and regulations which apply. The building permit does not constitute authority to build in violation of any federal, state or local law or other rule or regulation.

BUILDING PERMIT VALID FOR 1 YEAR

It is the responsibility of the applicant/owner to contact the Building Department to conduct inspections during construction and upon completion of project.

Do not proceed beyond these points until countersigned below by the inspector.

Footing before pouring concrete

Foundation before backfill

Framing before enclosing

Rough in of Electrical & Plumbing

Insulation

Heating, Ventilation, Air Conditioning before enclosing

Chimney-Fireplace

Final Inspection C of O

Permission is hereby granted to proceed with the work as set forth in the specifications, plans or statements now on file in this Department. Any amendments made to the original plans and specifications must first be submitted for approval.

585-346-2098

A Backus

Issuing Officer

VILLAGE OF LIVONIA
36 COMMERCIAL STREET
LIVONIA, NEW YORK
14487

Receipt

Date: January 13, 2020

To Finger Lakes Crematory, Inc.

P.O. Box 59

Livonia, New York 14487

BUILDING PERMIT # VB-01-2020

Payment Method	Check No	Job Address
check	2609 \$ 35.00	Dougherty Funeral 21 Big Tree

Thank you

EXHIBIT G



William Brennan / President
F. Scott Hicks / Vice President

William D'Angelo / Secretary
Jeffery Deragon / Treasurer

Finger Lakes Crematory, Inc.

21 Big Tree Street, PO Box 59
Livonia, New York 14487

November 14, 2019

Ms. Holly Huckabone
Division of Cemeteries
One Commerce Plaza
99 Washington Avenue
Albany, New York 12231-0001

Re: Finger Lakes Crematory, Inc.

Dear Ms. Huckabone:

I am the President of Finger Lakes Crematory, Inc.

At the last inspection of the crematory, we discussed with Leonard Breen the replacement of the current back-up retort. This retort is strictly used as a back-up to the main retort. The back-up retort that is in place is an outdated unit from 1974 and would not meet specifications under today's guidelines for the use as a crematory.

We would propose to replace this retort with a state-of-the art retort manufactured by Matthews. In order to replace the retort, we would need to perform asbestos abatement, as well as to upgrade the existing footprint.

We believe the budget for the project would include the following:

1. \$103,859.00 for a Matthews Super Power Pac I;
 2. \$20,000.00 to Lawman Heating and Cooling;
 3. \$20,000.00 to Sessler Environmental Services; and
 4. \$20,000.00 for installation of the unit;
- for a total cost of \$163,859.00.

The crematory would only use this unit in the event of a breakdown of the main retort. The replacement of this retort would provide an environmentally sound unit that meets all specifications. In addition, the unit would be replaced within the existing framework of the replacement retort and require no additional expansion or construction.

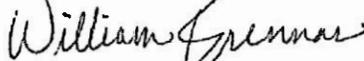
We have the funds to purchase and install this replacement unit. We would continue to operate only one retort and only use the new unit in the event of a malfunction or prolonged maintenance of our main unit. There will be no change in the appearance of the total crematory.

We believe this would better serve the Genesee Valley community and would ensure that the crematory will never be non-operational for any period of time. The installation of the alternative retort would also alleviate any current issues with the outdated retort and remediate any potential environmental hazards.

We understand that we need to submit an application but wanted to contact you first for some guidance to assist us in this matter.

Thank you.

Very truly yours,



William Brennan
President

26035

Finger Lakes Crematory Inc.
21 Big Tree Street – PO Box 59
Livonia, NY 14487
(585) 346-5401

January 29, 2020

RECEIVED
DIV. OF CEMETERIES

FEB 03 2020

To: New York State Division of Cemeteries
Alicia Young, Assistant Director
Albany, NY

ALBANY OFFICE
DEPARTMENT OF STATE

From: Michael P. Dougherty, Superintendent of Finger Lakes Crematory Inc.

Asst. Director Young,

Our board of directors at Finger Lakes Crematory Inc., Livonia, NY has decided to apply to the New York State Division of Cemeteries to install a new retort at our facility.

Per code 201.16, Cemetery Renovation, we are filing the following report.

(C) (1) The renovation will not result in any destruction or damage to existing graves, markers, crypts, mausoleums, roadways, and pathways. It will avoid all these matters as we only wish to remove an outdated retort and install a new retort in an existing building.

(C) (2) The project will be at our facility at 21 Big Tree Street, Livonia, NY. We are seeking permission to remove a 1975 era G&W/Jones retort and install a new Matthews International Super Power Pack I. The project, once approved, would be short in duration as the time needed would be for removal and replacement.

(C) (3) The project will be financially responsible as we have the funds saved to pay for this entire project in full with no financing. See financial report.

(C) (4) There will be no interference with lot owners as we do not have any.

(C) (5) This project will be beneficial to the crematory and facility as it will remove an outdated unit and replace with an updated state of the art retort. The old

retort is not up to date with time and temperature recording, computer controls, environmental systems, and it contains asbestos. The new retort would have time and temperature recording, computer controls, environmental systems, and meet the updated requirements.

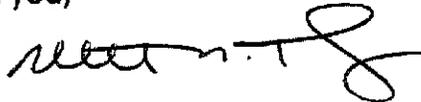
(C) (6) The project would have no impact on the surrounding community as this retort would be installed in an existing building.

(C) (7) The project would have a positive affect to public health and safety and the environment. The new retort would be computer controlled and would operate within all guidelines and requirements. It would use technology that monitors the system at all times and has sensors for temperatures and emissions.

(C) (8) Not applicable

Please see attached reports and documents that support this application. Please contact me anytime if you have any questions or need further information.

Thank you,

A handwritten signature in black ink, appearing to read "Michael P. Dougherty". The signature is fluid and cursive, with a large loop at the end.

Michael P. Dougherty, Superintendent
Finger Lakes Crematory Inc.

EXHIBIT H

EXHIBIT H

**STATE OF NEW YORK
DEPARTMENT OF STATE
DIVISION OF CEMETERIES
BUFFALO, NY 14202-3471**

To: Richard Fishman, Director
Mike Seelman, Sr. Investigator

From: Cynthia T. Craig, Investigator

Date: 3/7/2012

Subject: Major renovation new retort at Finger Lakes Crematory/ Livingston County #26-035

The Finger Lakes Crematory is a stand alone on the premises of the Kevin Dougherty Funeral Home. For many years they have set aside the 2 bay garage areas as the Finger Lakes Crematory.

The single retort is from 1976 build by the G & S Crematory Company, Downers Grove, IL. It was converted from oil to natural gas some time ago.

The board of the Finger Lakes Crematory, Inc. is requesting permission to install a second retort within the same footprint of their facility.

They have already placed a down payment of \$9,796.20 to the contractor (Upstate Refractory Services. They have removed the wall to the temporary storage facility in order to take delivery of the equipment scheduled for later this month.

Although they were informed of the proper procedure on March 9, 2010, they proceeded to order the equipment and make alterations to the facility without regard for those procedures outlined in my letter. The letter is attached to this report.

The cost of the Matthews Power Pac II, a \$12,000.00 deposit was paid to Matthews.

Copies of two board meeting minutes from June 28, 2011 and December 8, 2011, are attached to this report wherein the board decided to purchase the Power Pak II and have Upstate Refractory, Matthews and Lawman Heating and Cooling do the necessary work. Upstate refractory was also approved to put new fire brick in the existing retort.

The money for the project will be taken from the General Fund of the crematory; [REDACTED] in the amount of [REDACTED] and the checking account with a current balance of [REDACTED]

It will take approximately one week for the installation. A permit from Dec has been issued for the Power Pak II and the Village of Livonia has issued the permit for the project as well. The village did not require an EAF nor did they require an engineer's study

This facility has grown from 1988 doing 376 cremations per year to 929 in 2011. The additional retort will help them provide better service to the community.

This writer inspected the facility on 3/1/12, and saw the area where the new unit will be installed. At this time the temporary storage facility is sectioned off by a blue tarp awaiting delivery of the new equipment. Once that is in the building an installed, they will complete the temporary storage family as described in their proposal, attached to this report.

This writer has no objection to this project as described.

This proposal is recommended to the NYS Cemetery for consideration and review.



STATE OF NEW YORK
DEPARTMENT OF STATE
DIVISION OF CEMETERIES

CEMETERY BOARD
LORRAINE A. CORTÉS-VAZQUEZ
SECRETARY OF STATE
CHAIR

ANDREW M. CUOMO
ATTORNEY GENERAL

DR. RICHARD F. DAINES
COMMISSIONER OF HEALTH

ONE COMMERCE PLAZA
99 WASHINGTON AVENUE
ALBANY, NY 12231-0001
(518) 474-6226
FAX: (518) 473-0876

123 WILLIAM STREET
NEW YORK, NY 10038-3804
(212) 417-5713
FAX: (212) 417-2322

RICHARD D FISHMAN
DIRECTOR
CHESTER BUTKIEWICZ
ASSISTANT DIRECTOR

3/9/2010

Fingerlakes Crematory, Inc.
21 Big Tree Street
P.O. Box 59
Livonia, NY 14487

Dear Mr. Deragon:

I am in receipt of your letter dated February 16, 2010, wherein you inquired about the procedure to purchase and install a new retort.

You may not increase the square footage of the documented as the size of the crematory facility. Complete disclosure of the method and source of financing must be submitted along with full, detailed justification for the addition of a retort. All points of Cemetery Board Directive 201.16, Cemetery Renovation must be addressed including local approval.

Once this information is received it will be forwarded to the NYS Cemetery Board for their consideration.

Sincerely,

Cynthia T. Craig
Investigator

*Fingerlakes Crematory Inc.
21 Big Tree Street
Livonia, NY 14487*

Meeting Minutes
June 28, 2011

Members Present: Frank Hicks, Tim Woodward, Bill Brennan, Joe Robinson, Scott Hicks, Joe Martin, Jeff Deragon

Also Present: Steve Talley, Fred Lenz, Matthews International

A special meeting was called to order at 7:30 p.m. by President Brennan at the Conesus Inn with regard to the price and explanation of the New Retort. Steve Tally and Fred Lenz from Matthews International spoke with the board of directors.

After introductions, Steve Tally and Fred Lenz from Matthews International gave a presentation regarding the best fit for the current footprint at Fingerlakes Crematory and total cost of the new retort. After the explanation the board discussed any other options other than the size and capacity of the retort offered by Matthews International. After measurements were taken by Matthews International the only retort that would accommodate the size and place with the current footprint would be the Matthews' Super Power Pak III.

The board discussed the total cost of the new retort. It was determined that the crematory could afford the Super Power Pak III. The issue was discussed at length. The fact was brought up that a new retort might in fact save Fingerlakes Crematory money. The new retort would take stress off our current retort that was built in 1976. New bricking would not be necessary to the current retort as often.

[REDACTED]

Joe Martin made a motion to accept the offer from Matthews International. Frank Hicks seconded the motion. The board voted unanimously to accept the proposal from Matthews International. A deposit for \$12,000 was written by Secretary Deragon to Matthews International.

No other business was discussed. Joe Robinson motioned to adjourn the meeting. President Brennan seconded. The meeting was adjourned at 9:00 p.m.

Respectfully submitted by

Jeffrey T. Deragon
Secretary/Treasurer

*Fingerlakes Crematory Inc.
21 Big Tree Street
Livonia, NY 14487*

Meeting Minutes
December 8, 2011

Members Present: B. St. George, J. Deragon, S. Hicks, T. Woodward, J. Robinson, B. D'Angelo, J. Martin, B. Brennan **Also Present:** Ken George

President Brennan called the meeting to order at 6:30 p.m. and introduced Ken George from Upstate Refractory Services. Ken will be responsible for the installation for the new Super Power Pak III from Matthews International. He provided a detail list of the services he would be provide for the installation.

1. Disconnect, Remove and Relocate existing cooler
2. Disconnect power for storage room removal (as required)
3. Remove existing storage room walls, repair drywall and paint (as required)
4. Cut opening in existing ceiling through the roof to allow stack access
(*Includes: Roof Framing, Drywall and Paint)
5. Install 100 amp electrical service from main building power to new unit location
6. Offload and place new unit in desired location
7. Set three new stack sections on new unit
8. Connect power conduit to new unit control panel

[REDACTED]

An estimate from Lawman, Heating and Cooling Inc. was also provided.

1. 3 " Gas Valve
2. Exterior Meter to new unit
3. Vent to exterior

[REDACTED]

Ken George also explained that the old retort which was built in 1976 would need to be relined with fire brick. [REDACTED]

A motion was made by J. Deragon and seconded by J. Robinson for the following:

1. Installation of the new retort by Upstate Refractory Services
(with 5% overage of installation only if needed)
2. Reline the current retort with fire brick
3. Installation of new gas line by Lawman, Heating and Cooling Inc.

The motion was carried unanimously. A deposit of \$ 9,796.20 was written by Secretary Deragon to Upstate Refractory Services in good faith for installation of the new retort.

A motion was made by J. Robinson to adjourn the meeting and seconded by B. D'Angelo. Meeting adjourned by 8:30 p.m.

Respectfully submitted by,
Jeffrey T. Deragon, Secretary/Treasurer

CEMETERY BOARD MINUTES

March 22, 2012

99 Washington Ave., Albany, NY

ATTENDEES

Daniel Shapiro, Department of State, Chairman
Terryl Brown, Office of the Attorney General
Chester Butkiewicz, Division of Cemeteries
Michael Seelman, Division of Cemeteries
Joseph Ambrose, Division of Cemeteries
Leonard Breen, Division of Cemeteries
Lisa Smith, Division of Cemeteries

Robert Welch, Department of Health
Richard Fishman, Division of Cemeteries, Director
Antonio Milillo, Department of State, Counsel
Howard Carr, Division of Cemeteries

GUESTS

David Flemming, Featherstonhaugh, Wiley & Clyne, LLP, NYS Association of Cemeteries (NYSAC)
Bruce Geiger, Pinelawn Cemetery
Joanne Sullivan, Cemetery of the Highlands

12-03-A-11 Minutes of Previous Meeting

Motion made, seconded and unanimously carried to approve the February 22, 2012 as amended.

12-03-B-12 Legislation and Regulation

Legislation: Mr. Milillo summarized changes to any newly introduced or pending legislation. The Board noted that bill (A8883 - Quart) which would amend the Public Health Law to allow the disposal of unclaimed cadavers or anatomical by alkaline hydrolysis will merit attention as it raised questions of what constitutes final disposition.

12-03-C-13 Division's Report

Crematories: Mr. Fishman reported that the Division was again noting significant discrepancies with respect to completion of the cremation authorization form. Discussion ensued regarding an appropriate manner for dealing with such violations. The board directed the Division and Counsel to draft a formal procedure by which crematories could be cited and/or fined for non-compliance. Counsel stated that this should also include a means to appeal such decisions.

12-03-D-14 Vandalism Payment Report

Mr. Butkiewicz summarized the February 2012 vandalism reports.

12-03-E-15 Vandalism/Dangerous Monument Repair /Abandoned Cemetery Orders

Graceland Cemetery (01-010): Motion made, seconded and unanimously approved for a grant totaling \$570.54 for costs associated with the repair of vandalized monuments.

Batavia Cemetery (19-003): Motion made, seconded and unanimously approved for a grant totaling \$670.22 for cost associated with the repair of vandalized monuments.

Vale Cemetery (47-011): Motion made, seconded and unanimously approved for a grant totaling \$5,629.77 for cost associated with the repair of vandalized monuments.

Southside Cemetery (59-032): Motion made, seconded and unanimously approved for a grant totaling \$4,398.87 for cost associated with the repair of vandalized monuments.

Town of Walworth (59-999) – Motion made, seconded and unanimously approved for a grant totaling \$5,729 for the maintenance of an abandoned cemetery.

12-03-F-16 Abbot’s Corner’s Cemetery (Erie 15-001) - Major Renovation

The cemetery has requested permission to complete the roads in a newly developed section of the cemetery at a cost of \$61,060. The project will be funded from existing general fund monies.

Motion made, seconded and unanimously approved.

12-03-G-17 Johnstown Cemetery (Fulton 18-007) – Land Sale

The cemetery has requested permission to sell a .7 acre parcel of road frontage to the NYS Department of transportation for \$3,600. Discussion ensued regarding the location of the parcel and the board was advised that such a sale would not impede access to the cemetery.

Motion made, seconded and unanimously approved.

12-03-H-18 New Baltimore Chestnut Lawn Cemetery (Green 20-022) - Land Sale

The cemetery is requesting permission to sell .5 acres of land along its western perimeter for \$3,800. All proceeds from the sale would be placed in the permanent maintenance fund. Discussion ensued as to what assurances the cemetery had that loss of the parcel would not impact the wooded buffer between private property and the cemetery proper. The board was advised this would not impact the cemetery aesthetically as a portion of the woodlot would still be on its property.

Motion made, seconded and unanimously approved.

12-03-I-19 Finger Lakes Crematory (Livingston 26-005) – Major Renovation

The crematory operates under the grandfathering provisions of the Anti-Combination law and has requested approval to install a new retort while preserving its existing unit. Discussion ensued whether such crematories could lawfully install new retorts if this materially increases their capacity and/or allows them to operate indefinitely. The board held that the application could not be approved for a second retort; but that the cemetery should be apprised of the issues raised and could address them in a future submission. The Division was directed to research and report on the specifications of modern versus existing retorts.

Mr. Shapiro opened the meeting for comments from attendees.

Mr. Flemming discussed summarized NYSAC’s opposition to the legislation authorizing alkaline hydrolysis.

Motion to adjourn made, seconded and unanimously carried.

Cemetery Board Minutes
April 30, 2012
The Desmond Americana
660 Albany Shaker Rd., Albany, NY

ATTENDEES:

Daniel Shapiro, Department of State, Chairman	Robert Welch, Department of Health
Terryl Brown, Office of the Attorney General	Richard Fishman, Division of Cemeteries, Director
Chester Butkiewicz, Division of Cemeteries	Antonio Milillo, Department of State, Counsel
Michael Seelman, Division of Cemeteries	Howard Carr, Division of Cemeteries
Joseph Ambrose, Division of Cemeteries	Leonard Breen, Division of Cemeteries
Cynthia Craig, Division of Cemeteries	Lisa Smith, Division of Cemeteries

12-04-A-20 Minutes of Previous Meeting

Motion made, seconded and unanimously carried to approve the March 22, 2012 minutes.

12-04-B-21 Legislation and Regulation

Mr. Milillo summarized changes to any newly introduced or pending legislation.

12-04-C-22 Division's Report

Crematory Operator Training: Mr. Fishman reported that the next certification training will take place in four locations to accommodate the 5 year recertification of the initial group of crematory operators. These four locations will be: Buffalo, Syracuse, Albany and Queens. Classes will be limited to 50 attendees each.

Crematory Authorization Form: As part of the annual inspection process, as well as in public outreach efforts, the Division is advising both crematories and funeral homes that a crematory's failure to secure properly completed authorization forms will result in fines. Mr. Fishman stated that sufficient time had passed since the forms introduction and that future instances of non-compliance could only be reduced by some form of penalty.

Service Charges: Mr. Fishman reiterated that all cemeteries must ensure their entire schedule of service charges has received approval by the cemetery board.

12-04-D-23 Vandalism Report

Mr. Butkiewicz summarized the March 2012 vandalism reports.

12-04-E-24 Vandalism/Abandoned Repair Orders – 2

Nelson Rural Cemetery (27-018) - Motion made, seconded and unanimously approved for a grant totaling \$4,055.58 for the repair of hazardous monuments.

Oakwood Cemetery (42-034) - Motion made, seconded and unanimously approved for a grant totaling \$24,814.87 for the repair of hazardous monuments.

12-04-F-25 Evergreen Memorial Park (Albany- 01-008) – Land Sale*

Cemetery is requesting permission to sell a parcel of land to an adjacent car dealership for a price of \$525,000. Discussion ensued during which it was established that the property was unsuitable for burial, that the sale would not negatively impact the cemetery aesthetically. Motion made, seconded and unanimously approved to recommend approval to the Attorney General for the sale of the land for \$525,000 with the proceeds to be placed in the Permanent Maintenance Fund.

* Please note correction to original agenda, which identified the application as a request for a Land Sale/Permanent Maintenance Loan.

12-04-G-26 Finger Lakes Crematory (Livingston – 26-035) – Major Renovation

At the request of the board, the crematory had recently submitted documentation regarding its application to install a new retort. Mr. Shapiro summarized the issues surrounding the lawfulness of allowing grandfathered facilities to replace or install new retorts. Representatives from the cemetery cited gains to the public in terms of the safety/efficiency and the fact that the crematory was the sole facility available to residents of the Genesee Valley. Mr. Shapiro inquired as to whether the crematory would agree to modify its application to include removal of its existing retort and was advised that this would be acceptable. The board thanked the cemetery for its input and stated that the application would be tabled pending due consideration of the new submissions.

Mr. Shapiro opened the meeting for comments from the attendees.

Mr. Shapiro asked if there were comments from the floor. Topics raised included: funding/appropriations for the vandalism fund (Mr. Shapiro reiterated his statement that no valid vandalism claim had ever gone unpaid) and a recent court decision which deemed that local zoning law superseded not-for-profit corporation law with respect to who had ultimate approval over the construction of new crematories.

Motion to adjourn made, seconded and unanimously carried.

Approved 8/31/12

Cemetery Board Minutes
July 31st, 2012
One Commerce Plaza
99 Washington Avenue, Albany, NY

ATTENDEES:

Daniel Shapiro, Department of State, Chairman	Christopher Wiles, Office of Attorney General
Robert Welch, Department of Health	Richard Fishman, Division of Cemeteries, Director
Chester Butkiewicz, Division of Cemeteries	Antonio Milillo, Department of State, Counsel
Michael Seelman, Division of Cemeteries	Howard Carr, Division of Cemeteries
Joseph Ambrose, Division of Cemeteries	Leonard Breen, Division of Cemeteries

GUESTS:

David Fleming, Featherstonhaugh et al, NYSAC
Bruce Geiger, Pinelawn Cemetery
Peter Skivington, Esq., Finger Lakes Crematory
William Passodelis, Vestal Hills
Bernard Stoecklein, Vestal Hills
Kathleen A. Wall, Hodgson, Russ LLP/ Forest Lawn
Joseph Dispenza, Forest Lawn
Donald DeMeo, Forest Lawn
Marianne Reid, NYSFDA
Melanie Grossman, DOS, Consumer Protection

12-07-A-39 Minutes of Previous Meetings

As the minutes of May 24th, 2012 were not available the review was postponed until this meeting. Motion made, seconded and unanimously carried to approve May 24th, 2012 minutes as amended.

Minutes of the previous meeting June 21st, 2012 were review as well. Motion made, seconded and unanimously carried to approve April 30, 2012 minutes as amended.

12-07-B-40 Legislation and Regulation

Mr. Milillo summarized changes to any newly introduced or pending legislation.

12-07-C-41 Division's Report

Jurisdictional Issues: Mr. Fishman reported that some towns are now rejecting crematory applications and operations. Should the seventeen stand-alone crematories operated by funeral directors ultimately cease to operate there may not be any other

interested parties to provide those cremation services. Further, given the rise in the number of cremations performed, the State may be under served. Chairman Shapiro recommended that the inter-governmental issue be brought to the attention of the Office of Local Government within our agency to establish a dialogue with municipalities.

12-07-D-42 Vandalism Report

Mr. Butkiewicz summarized the June 2012 vandalism reports.

12-07-E-43 Vandalism/Abandoned Repair Orders – 5

Evergreen Cemetery (15-024) - Motion made, seconded and unanimously approved for a grant totaling \$12,473.92 for the repair of hazardous monuments.

Rockwood Rural Cemetery (18-013) - Motion made, seconded and unanimously approved for a grant totaling \$ 6,664.40 for the repair of hazardous monuments.

Woodlawn Union Cemetery (38-042) - Motion made, seconded and unanimously approved for a grant totaling \$ 8,156.35 for the repair of hazardous monuments.

Dunning Street Cemetery (46-009) - Motion made, seconded and unanimously approved for a grant totaling \$ 7,704.12 for the repair of hazardous monuments.

12-07-F-44 Forest Lawn Cemetery (Erie - 15-027) and Buffalo Cremation (Erie - 15-073) Cemetery Takeover

Application submitted by Forest Lawn Cemetery to operate Buffalo Cremation was reviewed by Cemetery Board. Mr. Milillo, counsel to the Board, explained the takeover was being accomplished by “judicial dissolution” as per section 1506-c of the Not-for-profit Corporation Law. Mr. Butkiewicz explained financially the crematory was sound and have consistently generated revenue surpluses. Mr. Dispenza of Forest Lawn Cemetery provided a bit of history regarding the crematory. He confirmed the financial steadiness of the crematory operations as well as future plans for upgrading equipment and infrastructure, modernize building, car port, computerize records, etc.

Motion to approve take over of Buffalo crematory by Forest Lawn Cemetery upon judicial dissolution of Buffalo Cremation made, seconded and unanimously carried.

12-07-G-45 Finger Lakes Crematory (Livingston - 26-035)

Mr. Milillo provide brief overview of concerns of a grand-fathered funeral director operated crematory submitting a major renovation application requesting to install a new retort while disabling an older existing retort taking it out of service. Mr. Milillo pointed out that N-PCL Section § 1506-a Cemetery Corporation, Restrictions, sometimes referred to as the “anti-combination” law, addresses a long history of these combinations.

Mr. Shapiro explained that the Division's opinion focuses on the foot print of the crematory not changing if an old retort could be replaced. Mr. Skivington, attorney for Finger Lakes, explained that a new retort address public policy regarding efficiency, including fewer emissions. While a new retort would presumably be more efficient it would also extend the "noxious use" of grand fathered combination of a for-profit funeral home and a not-for-profit cemetery (crematory). Mr. Wiles, discussed the statute and whether the intent of law needed to be considered. Statute addresses grand fathering funeral directors to operate crematories but does not address how grand fathering is to sunset. The question remained, is it permissible to improve or replace a retort at a crematory grand fathered under N-PCL Section § 1506-a.

12-07-H-46 Unionville Cemetery (Orange - 36-036)

Municipality donated land, some six acres, to existing cemetery that has only a small number of graves left to sell. Community meetings were held in support. No Supreme Court approval was required as the land was a gift. Chairman, Shapiro requested additional fiscal review as it appeared all cemetery assets were on the line.

12-07-I-47 Rockland Cemetery (Rockland - 44-008)

Cemetery submitted application for a columbarium project. Plan is to develop the columbarium in phases. Depending upon demand of previous phase cemetery will determine whether and when to continue subsequent phases. Cost of project is well within the cemetery's budgeting considerations with combined funds in excess of \$1M.

Motion to approve major renovation application for construction of columbarium made, seconded and unanimously carried.

Mr. Shapiro opened the meeting for comments from the attendees.

Mr. Shapiro asked if there were comments from the floor.

Mr. Passodelis, representative of Vestal Hills PM, in Broom county, explained that the cemetery, already heavily regulated by various federal, state and local agencies, has now been included under a local Commission of Historical Preservation with additional restrictions. He explained that the designation as a historical site was not sought after, but done without input or consent. The cemetery now needs to obtain a notice or certificate of "appropriateness" from the Commission before pursuing projects that change the appearance of the cemetery. He believes this is an usurpation of Cemetery Board powers.

David Fleming, Featherstonhaugh et al, NYSAC, mentioned briefly Assembly Bill number 7417-A regarding the Cemetery Board's police powers over "all" and that it should be exercised regarding the local restrictions.

Regarding the crematories and the anti-combination law, Mr. Fleming explained that the

expiration is set by functionality of retorts, obnoxious to zoning and statute. The legislative intent to terminate such use is essential, as these operations should not be in competition with not-for-profit cemeteries. Upon such expectation, these services should be provided by a not-for-profit cemetery.

Motion to go into executive session made, seconded and unanimously carried.

Motion to exit executive session made, seconded and unanimously carried.

Motion to adjourn made, seconded and unanimously carried.

Approved 9/27/12

Cemetery Board Minutes
August 31st, 2012
One Commerce Plaza
99 Washington Avenue, Albany, NY

ATTENDEES:

Daniel Shapiro, Department of State, Chairman	Christopher Wiles, Office of Attorney General
Robert Welch, Department of Health	Richard Fishman, Division of Cemeteries, Director
Chester Butkiewicz, Division of Cemeteries	Antonio Milillo, Department of State, Counsel
Howard Carr, Division of Cemeteries	Joseph Ambrose, Division of Cemeteries
Leonard Breen, Division of Cemeteries	

GUESTS:

David Fleming, Featherstonhaugh et al, NYSAC	Joanne P. Sullivan, NYSAC
Bruce Geiger, Pinelawn Cemetery	Valerie A. Newell, NYSAC
Peter Skivington, Esq., Finger Lakes Crematory	Steve Sloane, Woodlawn Cemetery, Syracuse
William Passodelis, Vestal Hills	Paul Gale, Unionville Cemetery
Randy McCullough, NYSFDA	Paul Sutton, Unionville Cemetery
Marianne Reid, NYSFDA	

12-08-A-48 Minutes of Previous Meetings

Motion made, seconded and unanimously carried to approve July 31st, 2012 minutes as amended.

12-08-B-49 Legislation and Regulation

Mr. Milillo informed the Board and attendees there was nothing new to report.

12-08-C-50 Division's Report

Mr. Fishman reported that a town is now imposing fees on a cemetery attempting to remove dead trees, \$150 per tree. Additionally, prior to removal, the cemetery is being required to obtain the services of a horticultural specialist to first determine that the subject trees are in fact dead. Chairman Shapiro asked that Mr. Fishman and Mr. Milillo write up a philosophical and historically educational memo regarding the issue of town intervention with cemetery operations.

Mr. Fishman reported that cremation numbers for 2011 in excess of 46,000, representing an eight percent (8%) increase from the previous year. This does not include cases

cremated in surrounding states which are estimated to be some 5,000 cremations. Collectively this represents approximately half the death rate in the state. This trend has a tremendous impact on cemeteries in the state and stresses the need for crematories in cemeteries around the state.

Mr. Fishman discussed potential policy or regulation regarding mausoleum construction applications. Some cemeteries view them as a panacea to their financial concerns. However, the reality may prove differently once built and not selling. The matter is further compounded if money for the project was borrowed from the permanent maintenance funds. Mr. Fishman suggested an approved mausoleum project begin with a pre-construction sale and that sales amount to 35% of construction cost before starting the project. This would reduce impact on cemetery finances while building community interest. Pre-construction sales would be refunded if 35% of building cost not reached.

Mr. Fishman discussed lot transfer application approvals and potential change in administrative process. Mr. Fishman suggested cemeteries police themselves and notify the Division if they have questions or concerns. Chairman Shapiro commented that while the requirement exists the administrative process can be changed without the Board.

12-08-D-51 Vandalism Report

Mr. Butkiewicz summarized the July 2012 vandalism reports.

12-08-E-52 Vandalism/Abandoned Repair Orders – 5

Erieville Evergreen Cemetery (27-006) - Motion made, seconded and unanimously approved for a grant totaling \$19,387.42 for the repair of hazardous monuments.

Poolville Cemetery (27-027) - Motion made, seconded and unanimously approved for a grant totaling \$16,232.80 for the repair of hazardous monuments.

Van Vechten Cemetery (29-020) - Motion made, seconded and unanimously approved for a grant totaling \$ 4,486.21 for the repair of hazardous monuments.

Oakland Rural Cemetery (32-016) - Motion made, seconded and unanimously approved for a grant totaling \$19,475.85 for the repair of hazardous monuments.

Wethersfield Cemetery (61-035) - Motion made, seconded and unanimously approved for a grant totaling \$17,281.50 for the repair of hazardous monuments.

12-08-F-53 Finger Lakes Crematory (Livingston - 26-035) - Major Renovation

Mr. Shapiro explained that the matter of grand-fathered combinations of funeral homes and crematories operated by funeral directors is a major policy issue. As a watershed

issue with overarching policy it requires additional analysis to make sure it is the right decision or one that is defensible. As such, Mr. Shapiro tabled the submission for further review.

Mr. Skivington contended his research showed the Attorney General in 2004 referred to grand-fathered combinations as serving the citizens of New York, indicating support of exemption and that this was particularly true for his client given the region they serve.

12-08-G-54 Unionville Cemetery (Orange - 36-036) - Major Renovation

Cemetery representatives present at the meeting answered questions and addressed concerns of the Cemetery Board. Mr. Gale and Mr. Sutton explained that there is a community interest in continuing to have a local cemetery. The municipality donated some six acres to an existing cemetery that has only a small number of graves left to sell. The cemetery is working closely with the Town regarding financing land development and loan repayments.

Motion to approve the major renovation application was made, seconded and unanimously carried.

12-08-H-55 Mechanicville Cemetery (Saratoga - 46-021) - Land Sale

Cemetery submitted a land sale application in the amount of \$3,200, as a result of a DOT Project to widen the road next to the cemetery. The project requires taking some two (2') feet running the length of the road boarding the cemetery. Mr. Breen answered questions and addressed concerns of the Cemetery Board.

Motion to recommend land sale application was made, seconded and unanimously carried.

12-08-I-56 Vestal Hills Cemetery (Broome 04-043) - Historic Preservation Designation

Mr. Passodelis reported that he met with the local Historical Preservation Committee. The Committee representatives clearly stated what types of changes are within their purview. They expect to have input or approval on any improvements. While they are fully prepared to enforce their rights and obligations, they agreed to be expeditious and not hold things up.

Mr. Milillo raised the concern that the Cemetery Board should have been notified of this committees action to have oversight of changes at the cemetery. Statute, section 1515, discusses actions affecting cemetery corporations as the Cemetery Board is to protect the public interest. Mr. Shapiro requested a draft letter addressing this concern.

12-08-J-57 Oxford Hills Crematory (Orange - 36-042) - SAPA Hearing

Mr. Shapiro commented that crematory representatives can have a hearing or negotiate a settlement.

12-08-K-58 Oakwood Cemetery (Monroe - 28-024) - PM Loan Deficit

Mr. Ambrose reported that the cemetery is seeking to repay the PM loan deficit from future mausoleum sales. The Cemetery has adjusted its operations by reducing expenses and will begin actively marketing mausoleum sales. They propose to repay the PM loan with 50% of mausoleum sales. Mr. Shapiro commented that if the cemetery can cover expenses without mausoleum sales then 100% of mausoleum sales should be applied to the PM loan deficit. Mr. Ambrose agreed that was a possibility and with legal counsel, he would draft an agreement. The payback of 10 years will include relief for years when revenues do not exceed expenses.

Motion to conditionally approve PM loan repayment plan was made, seconded and unanimously carried.

Mr. Shapiro opened the meeting for comments from the attendees.

Mr. Shapiro asked if there were comments from the floor.

Regarding the crematories Mr. McCullough asked if the issues were going to be addressed singularly or together. Mr. Shapiro responded that specific issues have to be addressed but a general policy will be flowing from that.

Regarding the crematories and the anti-combination law, Mr. Fleming reiterated concerns of the NYS Association of Cemeteries and that the grandfathered facilities should be extinguished.

Regarding section 1515, Mr. Fleming expressed concern that lack of notification is a violation of the Cemetery Board's authority and police powers. As the Cemeteries themselves were not notified prior to designation is yet another violation.

Motion to go into executive session made, seconded and unanimously carried.

Motion to exit executive session made, seconded and unanimously carried.

Motion to adjourn made, seconded and unanimously carried.

Approved 10/18/12

Cemetery Board Minutes
September 27th, 2012
One Commerce Plaza
99 Washington Avenue, Albany, NY

ATTENDEES:

Daniel Shapiro, Department of State, Chairman	Christopher Wiles, Office of Attorney General
Robert Welch, Department of Health	Richard Fishman, Division of Cemeteries, Director
Chester Butkiewicz, Division of Cemeteries	Antonio Milillo, Department of State, Counsel
Howard Carr, Division of Cemeteries	Joseph Ambrose, Division of Cemeteries
Michael Seelman, Division of Cemeteries	Leonard Breen, Division of Cemeteries

GUESTS:

David Fleming, Featherstonhaugh et al, NYSAC	Joanne P. Sullivan, NYSAC
Bruce Geiger, Pinelawn Cemetery	Valerie A. Newell, NYSAC
Peter Skivington, Esq., Finger Lakes Crematory	Steve Sloane, Woodlawn Cemetery, Syracuse
Randy McCullough, NYSFDA	Marianne Reid, NYSFDA
Zack Primeau, Office of Senator Gallivan	

12-09-A-59 Minutes of Previous Meetings

Motion made, seconded and unanimously carried to approve August 31st, 2012 minutes as amended.

12-09-B-60 Legislation and Regulation

Mr. Milillo informed the Board and attendees there was nothing new to report.

12-09-C-61 Division's Report

Mr. Fishman reported that municipalities other than towns are not required to take over care of abandoned cemeteries. New York City has several abandoned cemeteries in Staten Island and Brooklyn that are not receiving any care other than from volunteers. Mr. Shapiro asked if the City would provide assistance to the volunteers. Mr. Fishman explained that the general response from municipalities is that fiscally the support is not available.

Mr. Seelman discussed a recent case involving a cremation of a wrong body. The investigation found that the crematory was in compliance with the required cremation authorization form and follow their internal controls for tracking the identification of

cremation case. As such it was determined the crematory was not the cause of the error.

12-09-D-62 Vandalism Report

Mr. Butkiewicz summarized the August 2012 vandalism reports.

12-09-E-63 Vandalism/Abandoned Repair Orders – 4

Oakwood Cemetery (32-017) - Motion made, seconded and unanimously approved for a grant totaling \$36,137.10 for the repair of hazardous monuments.

South Trenton Cemetery (33-056) - Motion made, seconded and unanimously approved for a grant totaling \$ 1,480.49 for the repair of hazardous monuments.

Belle Isle Cemetery (34-003) - Motion made, seconded and unanimously approved for a grant totaling \$ 1,798.82 for the repair of hazardous monuments.

Rensselaer Falls Cemetery (45-058) - Motion made, seconded and unanimously approved for a grant totaling \$ 3,218.29 for the repair of hazardous monuments.

12-09-F-64-A Sheridan Crematory - Amigone FH (Erie - 15-078) - Relocation Question

12-09-F-64-B Finger Lakes Crematory (Livingston - 26-035) - Major Renovation

Mr. Milillo reviewed the anti-combination law and the grand-fathering of existing funeral home/crematory combinations and how they relate to Finger Lakes Crematory and Sheridan Crematory. Prior to filing a formal application, Sheridan Crematory-Amigone FH asked by letter whether they can move their cremation facility from a residential location to an industrial site or whether it is prohibited as a matter of law. Mr. Milillo explained that the grandfather clause only protects what the funeral home had when the law was passed and that the law regarding crematories doesn't provide for moving a crematory. It only provides for the establishment of a new crematory. Mr. Milillo gave his opinion that the doctrine of "force majeure" doesn't apply because Sheridan is not required to move.

Mr. Shapiro explained that the matter of grand-fathered combinations of funeral homes and crematories is a major policy issue. Discussion ensued. There was consensus among the board that Sheridan Crematory would be opening a new crematory but the grandfather clause only protects the existing crematory. The members agreed that if an application was made it would have to be denied.

Mr. Milillo then discussed the application of Finger Lakes Crematory to replace its retort and gave his opinion that it is not clear whether the Anti-Combination Law and grand-father clause prohibit this major renovation application. Even though the intent was to

have these combinations disappear, the grand-father clause does not have a time-frame for that to happen and does not address replacement of a retort.

Mr. Wiles agreed with prior Division policy that replacing an existing retort is not prohibited by the Anti-combination law if it does not expand the existing footprint. Mr. Welch agreed that absent an expiration date in the grand-father clause, a crematory could replace its retort. Mr. Shapiro agreed replacing a retort without expanding the footprint does not change the grand-fathered funeral home combination. The consensus of the board was that it could consider the application of Finger Lakes Crematory. The board then reviewed the major renovation application for compliance with regulation 201.16 and determined it to be complete.

Motion to approve the major renovation application was made, seconded and unanimously carried.

12-09-G-65 Forest Lawn Cemetery (Erie - 15-027) - Major Renovation

Forest Lawn Cemetery submitted a major renovation application for the construction of a new resource center. The building is to have a multi-purpose room, professional archival storage and research area, restrooms, a loft area with connected offices, and half basement for storage. The total cost of the project is budgeted for \$980,000 which is completely financed by the Cemetery's 501(c)3, Forest Lawn Heritage Fund. There will be no financial impact on the Cemetery's finances. The major renovation application was reviewed for compliance with regulation 201.16 and determined to be complete.

Motion to approve the major renovation application was made, seconded and unanimously carried.

Public Comments

Mr. Fleming, representative for NYS Association for Cemeteries, commented that he does not agree with the decision of the Board approving a major renovation to replace an existing retort with a new one, allowing the adverse combinations to continue. Mr. Shapiro advised specific legislation is required.

Motion to go into executive session made, seconded and unanimously carried.

Motion to exit executive session made, seconded and unanimously carried.

Motion to adjourn made, seconded and unanimously carried.



STATE OF NEW YORK
DEPARTMENT OF STATE
DIVISION OF CEMETERIES

CEMETERY BOARD
CESAR A. PERALES
SECRETARY OF STATE
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COMMISSIONER OF HEALTH

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RICHARD D FISHMAN
DIRECTOR
CHESTER BUTKIEWICZ
ASSISTANT DIRECTOR

October 25, 2012

Michael Dougherty
Finger Lakes Crematory, Inc.
21 Big Tree Street
Livonia, NY 14487

Re: 26-035 – Livingston County
Major Renovation

Dear Mr. Dougherty:

Your application for a major renovation to take your existing crematory retort out of service – but not out of the building - and to install a new retort, without increasing the building footprint and without increasing cremation capacity had been reviewed at previous meetings of the New York State Cemetery Board and was again reviewed at its September 27th, 2012 meeting.

Requirements of Cemetery Board Directive 201.16 were satisfied and the Division recommended approval of the application.

The board first determined that a funeral home/crematory combination which is grandfathered from the prohibitions of the Anti-Combination Law may replace an existing retort with a new retort as long as the crematory building footprint is not increased and cremation capacity is not increased. A motion was then unanimously passed by the NYS Cemetery Board granting the cemetery permission to proceed with the renovation and taking the existing crematory retort out of service and installing a new retort.

Sincerely,

Richard D. Fishman
Director

EXHIBIT I

EXHIBIT I

**LAW OFFICES OF
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J. Michael Jones
(1936-2011)

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July 7, 2020

VIA EMAIL lewis.polishook@dos.ny.gov

New York State
Dept of State
Division of Cemeteries
Att: Lewis Polishook

Re: 26-035-Livingston County
Installation of backup retorts

Dear Mr. Polishook:

This firm represents Finger Lakes Crematory with regard to their pending application to replace the existing "out of service retort" at Finger Lakes with a new backup retort, pursuant to the application received by the Division of Cemeteries on February 3, 2020.

Thank you for your email dated July 1, 2020 after your review of our application.

I understand that the application herein has been scheduled to be reviewed by the Cemetery Board on July 14, 2020.

In 2012 the Cemetery Board approved a major renovation by Finger Lakes to install a updated modern retort at its location in Livonia, New York. The application was approved with the condition that the existing retort be placed out of service, but was not required to be removed from the building.

The "old" retort still remains at the location of the crematory and was taken out of service in 2012. In 2017, the "new" retort needed repairs which required it to be taken out of service for one (1) week. With the permission of Cynthia Craig, the "old retort" was put back in service for that one (1) week. Attached is a copy of the email from Ms. Craig. Finger Lakes complied with all the conditions contained in her email communication.

An inspection of the crematory performed by Leonard Breen and Holly Huckabone took place in 2019. The subject of the "old" retort was discussed. The age of the unit and safety was reviewed and Mr. Breen recommended researching replacing the old unit with a state of the art new unit. Finger Lakes agreed that it would be paramount having an updated, reliable, safe, environmentally sound and computer controlled retort to act as a backup in case the main retort was out of service.

It was understood that this new unit would be used strictly, and solely, as a backup to the existing unit in the event of its breakdown or during major maintenance. It was also emphasized that at no point would both retorts be used simultaneously by the crematory.

Consistent with that recommendation, Finger Lakes conducted a study and investigation as to the cost and availability of a backup retort that would fit in the existing footprint.

Upon investigation, it was discovered that asbestos abatement would be required and also some construction work to allow installation of a new unit within the existing crematory structure.

Finger Lakes contacted the manufacturer, Matthews Environmental Solutions and they have determined that a state of the art backup unit could be installed at the present location, without increasing the footprint or modifying the building to any great degree.

As a result, a budget was established for the purchase, retro fitting and installation of a new backup unit for a total cost of approximately **\$164,000.00.**

In advance of the present application, Finger Lakes, through its President, William Brennan, communicated its plan with regard to the installation of the backup retort, in a letter to Holly Huckabone dated November 14, 2019. A copy of that letter is part of the application before the Board.

Finger Lakes has also discussed the backup installation with Michael Seelman, who has performed recent inspections at the facility. It is believed that Mr. Seelman is in support of the application to provide an environmentally sound backup retort to the existing footprint at the crematory.

The purpose of installing the backup retort is not to increase the capacity of the crematory but only to provide a state of the art, modern retort in the event the main retort was down due to an emergency or for major maintenance on the unit. In addition, the removal of the old, outdated retort and abatement of the asbestos will serve an important health and safety function.

Finger Lakes has no intention of running both units at the same time to handle additional volume, but only to provide a safe and reliable backup unit that meets all the environmental guidelines and regulations.

Finger Lakes is required to submit annual reports to the Board showing the number of cremations and the unit used for such cremations. Finger Lakes will continue to provide accurate reports showing the use of only one retort at the location.

My review of the prior proceeding in 2012 does not show any discussion of the operation of a second retort as backup only. Finger Lakes requested, and received, approval to install a modern updated retort as the only unit to perform cremations at its facility in Livonia.

This issue has come to the forefront based upon the challenges posed as a result of the Covid 19 pandemic. Finger Lakes was contacted by New York State to seek their assistance as a result of the pandemic in New York City and whether they would help out the increased demand during this difficult period.

The dual purposes of installing a state of the art backup retort at Finger Lakes would be:

1. Replace an outdated environmentally unsound unit with a new unit to be used only when the currently installed unit was inoperable or during an extended time of maintenance on that unit.

2. To ensure that Finger Lakes has, at all times, **one unit** which is updated and prepared to meet any demand due to health situations that may develop similar to the pandemic for which many uncertainties still remain.

Again, I wish to emphasize that Finger Lakes does not request an additional retort to be used to increase its capacity to conduct cremations at its location in Livonia. The impetus behind the application was with the urging and support of the division representatives who believed it was prudent to have a backup retort that would be available in the event of the disability of the current retort.

Please let me know if you need any additional information in order to consider this application. Would you also let me know how the meeting of the Cemetery Board will be conducted so that representatives of Finger Lakes may be available to answer any questions and concerns of the Board.

Very truly yours,
/s/

Peter K. Skivington

PKS/dmk

cc: Antonio Milillo (via antonio.milillo@dos.ny.gov)

----- Forwarded message -----

From: **Craig, Cynthia (DOS)** <Cynthia.Craig@dos.ny.gov>

Date: Tue, Feb 14, 2017 at 4:16 PM

Subject: retort repairs

To: Michael Dougherty <mpdougherty27@gmail.com>

Cc: Seelman, Michael (DOS) <Michael.Seelman@dos.ny.gov>

Michael,

As per our conversation of earlier today about the upcoming repairs to your Matthews Super Power Pak II that would essentially close the crematory for a week. As we understand, you are still permitted for 2 emission stacks with the DEC even though the Jones retort has been offline since 2012, and that you have submitted to us the regular annual inspections for both machines.

You are not permitted to increase your capacity as we have discussed and as per the letter from our Division dated October 25, 2012.

However, since your Matthews machine will be out of service completely for repairs, and as long as DEC has no issue with your putting the Jones cremator on line, you can operate that machine only during the time the Matthews is out of service. You must notify us of the date that the machine will be in service and the date it is taken off line again. Your notification letter can be sent to me by email and I can forward it on to our Albany office.

Sincerely,

Cynthia Craig

Investigator