

AGREEMENT BETWEEN THE CITY OF RAPID CITY AND STONE ORCHARD  
SOFTWARE INC. FOR CEMETERY SOFTWARE

This Agreement is entered into this 28 day of January, 2014, by and between the City of Rapid City, a municipal corporation organized under the laws of the state of South Dakota, of 300 Sixth Street, Rapid City, SD 57701, hereinafter referred to as "City," and Stone Orchard Software, Inc. ("Vendor"), 17655 Leslie Street, Unit 47, Newmarket, Ontario Canada L3Y 3E3.

WHEREAS, the City Parks and Recreation Department desires to acquire a software system to assist in record-keeping for the Mountain View / Mt. Calvary Cemetery; and

WHEREAS, such contracts are exempt from state bid law in accordance with SDCL 5-18A-22 in that the contract is one for computer software and professional services associated with installation, training, and setup of the computer software; and

WHEREAS, the City Parks and Recreation Department solicited quotes from various vendors of software systems designed for cemetery records; and

WHEREAS, City wishes to enter into a contract with Vendor for purchase of the cemetery software system and professional services associated with the system.

NOW, THEREFORE, in consideration of the promises and mutual covenants herein contained and other good and valuable consideration, the receipt of which is hereby acknowledged, it is hereby agreed as follows:

1. Equipment and Services. Vendor agrees to provide the Equipment and perform the Work described in the "Quote-Agreement" dated December 13, 2013, attached hereto and incorporated herein by this reference.
2. Price for Work. Vendor agrees to provide the Equipment and perform the Work for an amount not to exceed Twenty-Nine Thousand, Three Hundred Ninety Dollars (\$29,390.00). Vendor will only be paid for Equipment actually provided and Work actually performed and accepted by City.

If Vendor believes additional Work or Equipment is necessary which would cause the total cost to exceed the above amount (\$29,390), it agrees to seek written approval from City prior to performing the Work or supplying the equipment.

3. Payment. The parties agree that Vendor will invoice City in accordance with the Terms and Conditions discussed in the "Quote-Agreement." City shall remit payment to Vendor within forty-five (45) days of each invoice for Work that has been accepted by City.

4. Relationship between the Parties. Vendor is an independent contractor of the City. This Agreement does not create an employment relationship between the City of Rapid City and Vendor or its agents or employees. Nothing contained in this Agreement is intended to create a

partnership or joint venture between Vendor and the City of Rapid City. No agent of Vendor shall be the agent of the City, and Vendor covenants that it will not take any action in the name of, or by holding itself out as the agent of, the City of Rapid City.

5. Time of Essence. Time is of the essence of this Agreement.

6. Waivers. The failure by one party to require performance of any provision herein shall not affect that party's right to require performance at any time thereafter, nor shall a waiver of any breach or default of this Agreement constitute a waiver of any subsequent breach or default or a waiver of the provision itself.

7. Amendments. This Agreement may only be amended by a written document duly executed by all parties.

8. Entire Agreement. This Agreement, along with attached "Quote-Agreement," constitutes the entire agreement between the parties and supersedes all prior negotiations, agreements and understandings, whether oral or written.

9. Counterparts. This Agreement may be executed in counterparts; each such counterpart shall be deemed an original and when taken together with other signed counterparts, shall constitute one Agreement.

10. Severability. If any provision of this Agreement is held unenforceable by a court of competent jurisdiction, such holding shall not affect the remaining provisions of this Agreement, which shall remain in full force and effect.

11. Headings. The headings and numbering of the different paragraphs of this Agreement are inserted for convenience only and are not to control or affect the meaning, construction or effect of each provision.

12. Construction and Venue. This Agreement shall be interpreted under the laws of the State of South Dakota. Any litigation under this Agreement shall be resolved in the circuit court of Pennington County, State of South Dakota.

*[REMAINDER OF PAGE LEFT INTENTIONALLY BLANK.]*

Dated this 28 day of January, 2014.

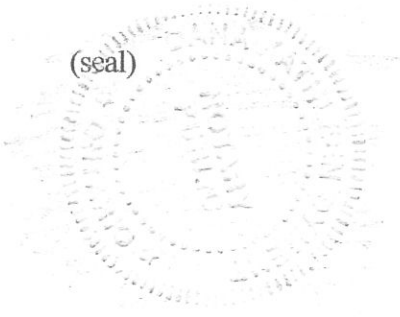
STONE ORCHARD SOFTWARE, INC.

Ken Munday  
By Ken Munday  
Its President

Province  
STATE OF Ontario )  
Regional Municipality )ss.  
COUNTY OF York )

On this the 28<sup>th</sup> day of January, 2014, before me the undersigned officer, personally appeared Ken Munday, who acknowledged himself/herself to be the President of Stone Orchard Software Inc. of Newmarket, Ontario, Canada, and as such, being authorized so to do, executed the foregoing instrument for the purposes therein contained on behalf of Stone Orchard Software, Inc.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.



(seal)

Dana K. Dyment  
Notary Public, in and for the Province of Ontario  
My Commission Expires: on death

**DANA KATHLEEN DYMENT**  
Notary Public  
in and for  
the Province of Ontario

**DANA DYMENT**  
Barrister and Solicitor  
17665 Leslie Street, Unit 45  
Newmarket, Ontario L3Y 3E3

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 2014.

CITY OF RAPID CITY

\_\_\_\_\_  
Mayor

\_\_\_\_\_  
Finance Officer  
(SEAL)

STATE OF SOUTH DAKOTA     )  
  )ss.  
COUNTY OF PENNINGTON     )

On this the \_\_\_\_\_ day of \_\_\_\_\_, 2014, before me, the undersigned officers, personally appeared Sam Kooiker and Pauline Sumption, who acknowledged themselves to be the Mayor and Finance Officer, respectively, of the City of Rapid City, a municipal corporation, and that they, as such Mayor and Finance Officer, being authorized so to do, executed the foregoing Memorandum of Understanding for the purposes therein contained by signing the name of the City of Rapid City by themselves as Mayor and Finance Officer.

IN WITNESS WHEREOF I hereunto set my hand and official seal.

(SEAL)

\_\_\_\_\_  
Notary Public, South Dakota  
My Commission Expires: \_\_\_\_\_