City of Carroll

112 E. 5th Street Carroll, Iowa 51401-2799 (712) 792-1000 FAX: (712) 792-0139

MEMO TO: Mike Pogge-Weaver, City Manager MPW

FROM: Jack Wardell, Director of Parks and Recreation JW

DATE: February 3, 2021

SUBJECT: Software Services Agreement – Cemetery
- Resolution

The City has been working with Grave Discover, LLC to set up an online program for families and individuals to research and locate grave locations in the Carroll City Cemetery.

Attached is the Software Services Agreement with Grave Discover, LLC – Carroll, Iowa to perform the following scope of work:

- Setup and Configure the Software
  - User Client Administration Setup
  - Cloud Server Configurations
  - Satellite Map Setup
  - Date Field Customization
  - Online Training
- Provide Maintenance Services
  - Hosting and Storage
  - Data Backups
  - Backup Storage
  - Yearly Software Feature Releases and Upgrades
- Mapping of Grave Locations

Project Cost

Cemetery Software Setup	$1,999.00 – One time cost – paid
Cemetery Software Maintenance	$3,588.00 – Annually – paid 11/20

Austin Scott, Grave Discover owner will be attending via Zoom and will present the online program to the City Council and will be available to answer any questions regarding the program.

RECOMMENDATION: For the Mayor and City Council consideration and approval of the Software Service Agreement with Grave Discover, LLC for the Carroll City Cemetery Software Improvements for the annual fee of $3,588.00.

RESOLUTION _____

RESOLUTION ACCEPTING THE GRAVE DISCOVER, LLC SOFTWARE SERVICES AGREEMENT - 2021

WHEREAS, a Software Services Agreement prepared with Grave Discover, LLC is attached.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Carroll, Iowa, that the Software Service Agreement with Grave Discover, LLC – 2021 is accepted.

Passed and approved by the Carroll City Council this 8th day February 2021.

CITY COUNCIL OF THE
CITY OF CARROLL, IOWA

By: _____
Eric P. Jensen, Mayor

ATTEST:

By: _____
Laura A. Schaefer, City Clerk

SOFTWARE SERVICES AGREEMENT

This Software Services Agreement ("Agreement") is executed on the date indicated in Item 1 of the attached Schedule A ("Effective Date"), by and between Grave Discover, LLC, a limited liability company organized under the laws of Iowa ("Grave Discover"), and the entity indicated in Item 2 of Schedule A ("Customer," together with Grave Discover, the "Parties," and each, a "Party").

1. SCOPE OF WORK

SETUP AND CONFIGURATION

Grave Discover will setup and configure the Grave Discover Software ("Software") for Customer (the "Setup and Configuration"). The Setup and Configuration will include the following: (1) User Client Administrator Setup; (2) Cloud Server Configuration; (3) Satellite Map Setup; (4) Data Field Customization; and (5) an Online Training Session.

MAINTENANCE SERVICES

Grave Discover will perform annual services ("Maintenance Services") for the duration of the term set forth in Section 2 of this Agreement. These services will include the following: (1) Hosting and Storage; (2) Data Backups; (3) Backup Storage; and (4) Yearly Software Feature Releases and Upgrades.

Grave Discover will perform Maintenance Services for a term of three years from the Effective Date ("Term"). Maintenance Services automatically renew on a yearly basis after the Term. The Customer shall be notified of the fee ("Renewal Fee") in an invoice sent to the Customer prior to the end of the Term and prior to each yearly renewal, which Customer shall pay by the date due on the invoice.

2. PRICE AND PAYMENT

SETUP AND CONFIGURATION FEE

Customer shall pay to Grave Discover a one-time fee in the amount set forth in Item 4 of Schedule A for the Setup and Configuration of the Software. Customer shall also pay to Grave Discover a one-time fee in the amount set forth in Item 5 of Schedule A for any elected additional features, e.g., Grave Pinning.

MAINTENANCE SERVICES FEE

Customer must subscribe to Maintenance Services for the Term. The Maintenance Services Fee for the first year of services is set forth in Item 6 of Schedule A. The Maintenance Services Fee is due upon completion of the Setup and Configuration. Failure to pay the Maintenance Services Fee within sixty days of completion of the Setup and Configuration will result in the termination of Grave Discover's Maintenance Services and removal of Customer's data from databases and/or servers used by Grave Discover.

The Renewal Fee of $3588 for the second, third, and all subsequent years of the Term shall be due and payable no later than the last day of the preceding year ("Renewal Date"). Customer may decline renewal by notifying Grave Discover in writing by letter or email. Maintenance Services will automatically terminate upon Grave Discover receiving notice of nonrenewal. If notice of nonrenewal is received within sixty days after the Renewal Date, the Renewal Fee will be prorated and Customer shall pay Grave Discover the prorated Renewal Fee. Failure to pay the Renewal Fee within sixty days after the Renewal Date will result in the termination of Grave Discover's Maintenance Services and removal of Customer's data from databases and/or servers used by Grave

Discover. Customer may be required to pay an additional fee if maintenance services lapse and are subsequently resumed.

3. MAPPING

Grave Discover uses a third-party mapping services and accuracy of pinned map locations may vary from location to location. Grave Discover does not guarantee the accuracy of the cemetery mapping to the extent that such is under third-party control and is therefore dependent on the accuracy of the third-party mapping services. Grave Discover may, in its sole discretion, change its mapping services without notice to Customer.

4. CUSTOMER DATA

All cemetery data shall be owned by the Customer. Grave Discover will not use or resell Customer data for any purpose.

5. DATA LOSS

Grave Discover uses a third party for its data storage and cloud computing services. Grave Discover assumes no liability for any loss, corruption, or alteration of Customer's data. Grave Discover may, in its sole discretion, change its data storage service, cloud computing service, or both without notice to Customer. Grave Discover will provide a quarterly backup of all Customer Data on a flash drive or CD and will send to Customer.

6. LIMITED WARRANTY

Customer's access to the Software and related services is at their own risk. Customer understands and agrees that the Software and related services are provided an "AS IS" and "AS AVAILABLE" basis. Without limiting the foregoing, to the maximum extent permitted under applicable law, GRAVE DISCOVER DISCLAIMS ALL WARRANTIES AND CONDITIONS, WHETHER EXPRESS OR IMPLIED, OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR NON-INFRINGEMENT.

Grave Discover makes no warranty or representation and disclaims all responsibility and liability for: (i) the completeness, accuracy, availability, timeliness, security or reliability of the Software and related services; (ii) any harm to a computer system, loss of data, or other harm that results from access to or use of the Software and related services or any content; (iii) the deletion of, or the failure to store or to transmit, any content and other communications maintained by the Software and related services; (iv) whether the Software and related services will meet any requirement or be available on an uninterrupted, secure, or error-free basis; and (v) any harm to any computer system or other property, loss of data, or other harm that results from use of the Software and related services. No advice or information, whether oral or written, obtained from the Grave Discover, will create any warranty or representation not expressly made herein.

7. LIMITED LIABILITY

THE CUMULATIVE LIABILITY OF GRAVE DISCOVER TO CUSTOMER FOR ALL CLAIMS ARISING UNDER OR RELATED TO THIS SOFTWARE SERVICES AGREEMENT, WHETHER IN CONTRACT, TORT, OR OTHERWISE, SHALL NOT EXCEED THE MAINTENANCE SERVICES FEES PAID TO GRAVE DISCOVER WITHIN THE PRECEDING YEAR. IN NO EVENT WILL

GRAVE DISCOVER BE LIABLE TO CUSTOMER FOR DAMAGES FOR LOSS OF DATA, LOST PROFITS, OR OTHER INDIRECT, SPECIAL, INCIDENTAL, OR CONSEQUENTIAL DAMAGES ARISING OUT OF THIS AGREEMENT, EVEN IF GRAVE DISCOVER HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, OR FOR ANY CLAIM BY ANY THIRD PARTY. THE FOREGOING LIMITATION OF LIABILITY AND EXCLUSION OF CERTAIN DAMAGES SHALL APPLY REGARDLESS OF THE SUCCESS OR EFFECTIVENESS OF OTHER REMEDIES.

8. OUR RIGHTS

All right, title, and interest in and to the Software and related services, except for Content generated by Customer and third-parties, are and will remain the exclusive property of Grave Discover. Grave Discover's intellectual property rights in the Software and related services are protected by copyright and trademark laws of the United States and international treaties, as well as other domestic and international laws. Nothing in these Terms gives Customer a right to use Grave Discover's trademarks, logos, domain names, and other distinctive brands. Any feedback, comments, or suggestions Customer may provide regarding the Software and related services is entirely voluntary and Grave Discover shall be free to use such feedback, comments, or suggestions as deemed fit and without any obligation or approval to Customer.

9. ASSIGNMENT AND DELEGATION

This Agreement and each right, duty or obligation hereunder may be assigned or delegated by the Grave Discover in its sole discretion and without notice to Customer.

10. GOVERNING LAW & VENUE

This agreement shall be governed by and construed in accordance with Iowa law. The Parties agree that any claims or litigation arising from this agreement shall be tried in Iowa District Court for Carroll County. All Parties expressly waive trial by jury.

IN WITNESS WHEREOF, the Parties have executed this agreement as of the Effective Date.

CUSTOMER	GRAVE DISCOVER, LLC
By:_____	By:_____
Name:_____	Name:_____
Title:_____	Title:_____
For:_____	For: Grave Discover, LLC

SCHEDULE A:

SOFTWARE SERVICES AGREEMENT

1. Effective Date:	1/21/2021
2. Customer Name:	City of Carroll
3. Cemetery(s) Name(s):	Carroll City Cemetery
4. Setup & Configuration Fee:	$1999
5. Additional Features and Fees:	Data Migration – No Charge
6. Yearly Maintenance Services Fee:	$3588