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10 **SUPERIOR COURT OF CALIFORNIA**
11 **COUNTY OF SANTA CLARA**

13 Coordination Proceedings
Special Title (Rules 3.501 CRC et seq.)

14 **CALIFORNIA MASTER TRUST**
15 **CASES**

16 Coordinated Actions:

17 Cemetery and Funeral Bureau, Department
of Consumer Affairs, Plaintiff, v.
18 California Master Trust, et al., Defendants

19 In the Matter of : California Master Trust

20 Funeral Directors Service Corporation,
21 Program Administrator for California
Master Trust, Plaintiff v. California
22 Department of Consumer Affairs,
Cemetery and Funeral Bureau, Defendants

JUDICIAL COUNCIL COORDINATION
PROCEEDING NO. 4686

Superior Court of California
County of Los Angeles
Case No. BC459862

Superior Court of California
County of Santa Clara
Case No. 109PR165181

Superior Court of California
County of Sacramento
Case No. 34-2010-80000715

**PLAINTIFF CEMETERY AND FUNERAL
BUREAU'S PETITION FOR AN ORDER
ACCEPTING RESIGNATION OF
TRUSTEE AND FOR APPOINTMENT OF
SUCCESSOR TRUSTEE**

(PROBATE CODE §15640)

Judge: Hon. Peter Kirwan
Date: May 22, 2015
Time: 9:00 a.m.
Dept.: 1

*[Declarations of Geoff Ward and Phillip Harris
and Proposed Order filed concurrently]*

1 **I. INTRODUCTION**

2 1. Overview. The three cases in this coordinated proceeding have all resolved by
3 settlement, but the Cemetery and Funeral Bureau has requested this Court to retain jurisdiction to
4 accept the resignation of the California Master Trust’s current trustee and to approve the
5 appointment of a successor trustee. (Declaration of Geoffrey Ward (“Ward Decl.”), ¶¶ 2-3.)

6 The California Master Trust is a trust fund pooling the preneed funeral trust accounts from
7 over 20,000 beneficiaries. (See Declaration of Phillip Harris (“Harris Decl.”), ¶¶ 11.) Each of
8 these beneficiaries has a specific funeral establishment that will be providing their funeral
9 services; in all, there are 358 different active funeral establishments who have placed some or all
10 of their customers’ trust funds into the Trust. (Harris Decl. ¶¶ 11, 14.)

11 The Trust has operated under an interconnected set of agreements. One agreement
12 purchases the preneed funeral services from a funeral establishment for a designated beneficiary.
13 (Harris Decl. ¶ 14 and Exh. 3.) There appear to be 24,952 of these types of agreements: one for
14 each beneficiary in the Trust. (Harris Decl. ¶ 14.) A second type of agreement enrolls the funeral
15 establishments in the Trust. (Harris Decl. ¶ 13 and Exh. 2.) This agreement has been between the
16 establishment, the Funeral Directors Service Corporation (a subsidiary of the California Funeral
17 Directors Association), and Comerica Bank, the Trust’s trustee. (Id.) There appear to be 358 of
18 these enrollment agreements: one for each establishment in the Trust. (Id.) A third agreement,
19 called the “Master Trust Agreement”, is between the Trust’s current trustee, Comerica Bank, and
20 the Funeral Directors Service Corporation. (Harris Decl. ¶ 12 and Exh. 1.) The Master Trust
21 Agreement is incorporated into the other two types of agreements. (Harris Decl. Exh. 1 at ¶B.1.)
22 The defendants in this litigation, including Comerica Bank, have considered this third agreement
23 to be the trust instrument. (Ward Decl. ¶ 5.)

24 The Bureau petitions for a successor trustee under the authority granted to it through this
25 litigation’s settlement and these agreements. As described below, each of the agreements
26 comprising the Trust specifies that the Funeral Directors Service Corporation has the power to
27 select and appoint a successor trustee without notice to the 358 funeral establishments in the Trust
28

1 or the 20,000-plus beneficiaries. (Harris Decl. ¶¶ and Exhs. 1-3.) In settling this case, the
2 Funeral Directors Service Corporation assigned to the Bureau this authority to select a successor
3 trustee. (Ward Decl. ¶¶ 6-8 and Exhs. A-B.) Likewise, Comerica Bank also agreed to allow the
4 Bureau to select the Trust’s next trustee. (Ward Decl. ¶¶ 9-11 and Exh. C.)

5 The Bureau has selected Bessemer Trust Company of California, National Association
6 (“Bessemer Trust”) as the successor trustee. Both the Bureau and Bessemer Trust have
7 conducted due diligence to ensure that Bessemer Trust is prepared to take over the Trust and
8 protect its assets and beneficiaries.

9 This Petition also submits a transition plan for the Court’s approval. The Bureau proposes
10 that the successor trustee accept all of the Trust’s assets and accounts under the existing trust
11 agreements and then asks the participating funeral establishments whether they wish to keep
12 participating in the Trust. If establishments opt-in, they will do so by executing a modified
13 enrollment agreement that the Bureau and the successor trustee submit here for the Court’s
14 approval. This modified agreement will replace both the existing enrollment agreements and the
15 Master Trust agreement, while keeping in place the 20,000-plus contracts between the trustors
16 and the funeral establishments.

17 If establishments opt-out, they must identify and transfer their consumer accounts to
18 another trustee that they designate who is qualified under state law. These transfers must be made
19 in accordance with preneed funeral laws and the establishments’ customer agreements. The
20 Bureau submits that this plan will streamline the contractual arrangements comprising the Trust,
21 put a qualified trustee into place, and allow funeral establishments to choose an appropriate
22 trustee for their beneficiaries’ funeral trust funds.

23 2. Notice. As explained further below, the Bureau has served this petition and
24 provided timely notice of this proceeding to the 358 funeral homes enrolled in the Trust to keep
25 them informed of this litigation’s resolution, to give them an opportunity to object to this petition
26 and the selection of a successor trustee, and to inform them about the transition process.

27 3. Venue. Venue before this Court is proper as Santa Clara County is a principal
28 place of administration of the Trust. (Prob. Code §§ 17002(a), 17005(a).) Moreover, the Judicial

1 Council of California selected Department 1 of Santa Clara Superior Court to be the trial court for
2 this coordinated proceeding.

3 **II. RESIGNATION OF COMERICA BANK AS TRUSTEE**

4 4. Probate Code section 15640 subdivision (a) provides that a trustee may resign as
5 provided in the trust instrument.

6 5. Defendant Comerica Bank accepted trusteeship of the California Master Trust
7 under an agreement titled “Master Trust Agreement” dated February 15, 2002, and has been
8 trustee since that date. (Ward Decl. ¶¶ 5-6.)

9 6. Comerica Bank has treated the Master Trust Agreement as the trust instrument for
10 the California Master Trust. (Ward Decl. ¶ 5.)

11 7. The Master Trust Agreement provides in section (F)(2) that Comerica Bank may
12 tender its resignation upon 90 days’ notice to the Funeral Directors Service Corporation (FDSC).
13 (See Harris Decl. Exh. 1.)

14 8. The other agreements comprising the Trust allow the trustee to resign as provided
15 in the Master Trust Agreement.

16 9. For example, funeral establishments enrolled some or all of their customers into
17 the Trust using an “Enrollment Agreement.” (Harris Decl. ¶ 13 and Exh. 2.) These Enrollment
18 Agreements provided in section 3 that FDSC had the right to accept the trustee’s resignation and
19 had the right to select a successor trustee “without notice to or the consent of the Funeral
20 Establishments, the Trustors, or the Beneficiaries.” (Harris Decl. ¶ 13 and Exh. 2.) These
21 Enrollment Agreements also provided in that same section, in bold letters, that the funeral
22 establishments consented to FDSC acting as its agent for this and other purposes. (*Id.*)

23 10. Customers purchased funeral services from funeral establishments participating in
24 the Trust by entering into a “Preneed Funeral Trust Agreement.” (Harris Decl. ¶¶ 14-15 and Exh.
25 3.) These agreements were signed by the trustor and the funeral establishment. (*Id.*) Although
26 they are not signatories, FDSC and the trustee are also parties to this agreement. (*Id.*) Like the
27 other agreements, these agreements delegated to FDSC the power to accept the trustee’s
28 resignation and to select a successor trustee: they state in section 6 that “FDSC is exclusively

1 authorized ... to change the Trustee from time to time without notice to or the consent of the
2 Trustor or the Beneficiary, so long as the Trustee meets the requirements of California law ... the
3 Trustor appoints FDSC as its agent therefore.” (Harris Decl. ¶¶ 14-15 and Exh. 3.)

4 11. On October 12, 2014, Comerica Bank entered into a settlement agreement with the
5 Cemetery and Funeral Bureau that provided in part that Comerica Bank would notice its
6 resignation as trustee of the California Master Trust. (Ward Decl. ¶¶ 10-12.) The agreement also
7 provided, as discussed further below, that the Cemetery and Funeral Bureau would select, with
8 this Court’s approval, a successor trustee to administer the California Master Trust. (Ward Decl.
9 ¶ 12.)

10 12. On or about October 21, 2014, consistent with its settlement agreement, Comerica
11 Bank tendered its resignation as trustee of the California Master Trust to be effective as of the
12 earlier of December 31, 2014 or the date the Court appointed a successor trustee. (Ward Decl. ¶
13 13.)

14 13. On January 7, 2014, Comerica Bank agreed to extend its trusteeship of the
15 California Master Trust in order to allow for additional time to select a successor trustee. (Ward
16 Decl. ¶ 14.)

17 14. Under Probate Code sections 15640(d) and 17200(b)(11), Petitioner alleges this
18 Court has jurisdiction to accept Comerica Bank’s resignation as trustee and requests the Court to
19 do so.

20 **II. APPOINTMENT OF BESSEMER TRUST AS SUCCESSOR TRUSTEE**

21 15. Probate Code section 15660 subdivision (b) provides that a trustee’s vacancy shall
22 be filled as provided in the trust instrument if the trust instrument provides a practical method of
23 appointing a trustee or names the person to fill a vacancy.

24 16. As stated above, the agreements comprising the California Master Trust all
25 provide that FDSC will select the successor trustee in the event of Comerica Bank’s resignation.

26 17. Specifically, section (F) of the Master Trust Agreement provides that FDSC may
27 remove the current trustee, accept its resignation, and use its best efforts to find a successor.
28 (Harris Decl. ¶ 12 and Exh. 1.)

1 18. Likewise, section 3 of the enrollment agreements provides that FDSC “reserves
2 the right, in its sole discretion ... to appoint a successor Trustee or Trustees, without notice to or
3 the consent of the Funeral Establishments.” (Harris Decl. ¶ 13 and Exh. 2.)

4 19. And section 6 of the consumer agreements provides that “FDSC is exclusively
5 authorized ... to change the Trustee from time to time without notice to or the consent of the
6 Trustor or the Beneficiary...” (Harris Decl. Exh. 3.)

7 20. On July 21, 2014, FDSC entered into a settlement agreement with the Cemetery
8 and Funeral Bureau. (Ward Decl. ¶ 7.)

9 21. On November 12, 2014, FDSC and the Cemetery and Funeral Bureau amended
10 their settlement agreement. (Ward Decl. ¶ 8.) The amended agreement created a new section 3.5
11 of the settlement agreement that provided in full:

12 “Successor Trustee Selection. FDSC hereby assigns to the Bureau
13 any right it may have under the Master Trust Agreement with
14 Comerica or under any other agreement regarding the California
15 Master Trust to select a successor trustee of the trust and to modify
16 or reform the Master Trust Agreement. The Bureau will petition the
17 court to request the court to appoint a qualified successor trustee or
18 receiver.” (*Id.*)

19 22. The Bureau therefore has the authority to select a successor trustee because it has
20 been assigned FDSC’s power to do so.

21 23. The Bureau has diligently searched for and interviewed candidates and has
22 selected Bessemer Trust to be the successor trustee. Bessemer Trust has conducted its own due
23 diligence and agreed to accept the responsibilities for administering the California Master Trust.

24 24. Bond. No bond should be required because the trust instruments do not require
25 one. (See Prob. Code § 15602.) The Bureau has reviewed the Trust’s account records and found
26 that the Trust is solvent and able to pay for the funeral services of all of the trustors in the Trust.

27 25. Notice. The Bureau has served all 358 funeral establishments participating in the
28 Trust with notice of this petition and the petition itself. The Bureau obtained the names and
addresses of these funeral establishments from the Trust’s database as of December 2014. (Harris
Decl. ¶ 11.) This notice was not required under the agreements comprising the California Master

1 Trust, but the Bureau believes it appropriate to inform the establishments of this transition and to
2 give them an opportunity to be heard on this petition.

3 26. The Bureau has not provided notice of this petition to the more than 20,000
4 beneficiaries in the Trust or the trustors of those accounts for three reasons.

5 27. First, notice to the beneficiaries or trustors is not required by existing trust
6 agreements, including the agreements the trustors' signed.

7 28. Second, from the beneficiaries' perspective, the change of trustee does not impair
8 or alter the funeral establishments' intended performance of their contracts for funeral services:
9 the trustee may change, but their preneed funeral arrangements will not. (See *Bowles v. Superior*
10 *Ct.* (1955) 44 Cal.2d 574, 583-84 [Appointment of receiver without joining all beneficiaries
11 permissible because "[t]he appointment did not adversely affect any interest of the beneficiaries
12 in the trust property but, to the contrary, was necessary to protect property which undoubtedly
13 would have been lost if the court had refused to take this step.']) As in the *Bowles* case, the goal
14 of this change is to benefit the beneficiaries by preserving their preneed funeral trusts.

15 29. Third, the Petitioner and those given notice of this proceeding can, as a practical
16 matter, represent the beneficiaries' interests. The Bureau, and the Office of the Attorney General
17 who represents the Bureau in this proceeding, have the authority to protect consumers' interests
18 and are attempting to do so here. (See, e.g., Bus. & Prof. Code §§ 125.5, 7740 [Bureau has
19 authority to act to enforce preneed funeral laws in order to safeguard trust funds and to protect
20 persons from statutory violations.]). Further by providing notice to and an opportunity to be heard
21 to the funeral establishments the Bureau is allowing the establishments to voice concerns they
22 may share with their customers, the beneficiaries. Notably, in the only published case involving
23 the removal of a trustee for preneed funeral trusts, *IFS Industries, Inc. v. Stephens* (1984) 159
24 Cal.App.3d 740, 749-50, the court of appeals held that as a "contingent beneficiary", the party
25 receiving payment once a beneficiary dies, a funeral establishment has standing to petition for a
26 change in trustee without joining all of the beneficiaries in its action. Under cases like *IFS*
27 *Industries, Bowles v. Superior Court*, and those cited below, it is permissible for this Court to
28 consider the impracticality of having more than 20,000 beneficiaries participating in this

1 proceeding when the Bureau and the funeral establishments can adequately represent their
2 interests. (*Bowles v. Superior Court*, supra, 44 Cal.2d at 584-85. See also *Camp v. Board of*
3 *Supervisors* (1981) 123 Cal.App.3d 334, 354 [no need to join all landowners affected by
4 challenge to a general plan where joinder is impractical], *Las Virgenes Educators Ass'n. v. Las*
5 *Virgenes Unified School District*, 86 Cal.App.4th 1, 9 [for joinder purposes, parties participating
6 in proceeding can adequately represent those not participating.]

7 30. Fourth, Probate Code sections 15800 to 15804 generally provide that notice need
8 not be given to beneficiaries where another holds the power of appointment or the power to
9 revoke the Trust. (See also Prob. Code § 17203(a)(2).) Under the existing trust agreements,
10 FDSC holds the power of appointment, a power it has now assigned to the Bureau. (See Prob.
11 Code § 15803.) (See Ward Decl. ¶¶ 7-8.) Likewise, under the existing trust agreements, FDSC
12 has the power to revoke the California Master Trust as a whole (though not the individual trust
13 accounts within it). (See Prob. Code § 15802.) Thus, because the beneficiaries do not have the
14 power to revoke the Trust or the power to appoint to trustee, notice to them is not required under
15 section 15800 to 15804.

16 31. Special Notice. No one has filed a request for special notice in this proceeding.

17 32. Accounting. Comerica Bank or the successor trustee will file a final accounting
18 for the calendar year 2014, as required by Probate Code and Business and Professions Code.

19 33. Therefore, the Bureau selects Bessemer Trust to be the trustee of the California
20 Master Trust and requests this Court to approve that appointment.

21 **III. TRANSITION PROCESS AND ADOPTION OF NEW TRUST AGREEMENTS**

22 34. The Bureau proposes the following process for transitioning the California Master
23 Trust to the successor trustee.

24 35. The successor trustee will accept the appointment under the existing trust
25 agreements.

26 36. In accordance with FDSC's settlement with the Bureau, FDSC will assign and
27 delegate all of its duties under the trust agreements to the successor trustee.

1 37. Comerica Bank and the successor trustee will work together to transfer all trust
2 assets and accounts to the successor trustee.

3 38. On behalf of the trustors, the successor trustee will accept the transfer of certain
4 settlement funds from the Cemetery and Funeral Bureau that resulted from this litigation.

5 39. In accordance with Comerica Bank's settlement with the Bureau, the successor
6 trustee will waive in writing any and all claims against Comerica that are subject to the Bureau's
7 release as stated in section 8.1 of that settlement agreement, which generally provides that
8 Comerica is released from all claims known or unknown that in any way relate to or arise out of
9 the Bureau's claims in *Cemetery and Funeral Bureau v. California Master Trust et. al.*, Los
10 Angeles County Superior Court, Case Number BC459862 or the Bureau's claims in intervention
11 in *In the Matter of the California Master Trust*, Santa Clara County Superior Court Case Number
12 1-09-PR-165181.

13 40. The successor trustee will notify each funeral establishment participating in the
14 Trust of the completion of the transition and will request that the establishments indicate whether
15 they wish to continue to participate in the California Master Trust by executing a new enrollment
16 agreement with the successor trustee.

17 41. The successor trustee will use the enrollment agreement attached as Exhibit A.
18 This enrollment agreement is acceptable to the successor trustee. The revised enrollment
19 agreement will simplify and streamline the existing contractual arrangement for the California
20 Master Trust: there will no longer need to be a Master Trust Agreement and the duties, powers,
21 and obligations of the trustee and the funeral establishments will be specified in these enrollment
22 agreements. This arrangement is consistent with California's preneed funeral laws and
23 regulations and the practices of other states.

24 42. The revised enrollment agreement will replace the enrollment agreements and the
25 Master Trust Agreement that currently exist. This process will be voluntary, but to the extent
26 Court approval is required for this modification, this Court has the power to modify the Trust's
27 terms under Probate Code section 15409 subdivision (a), which allows for modification owing to
28 circumstances not known to or anticipated by the settlor or if continuation of a Trust under its

1 terms would defeat or substantially impair the accomplishment of the Trust's purposes. In this
2 case, FDSC's exit from management of the Trust requires the termination of the Master Trust
3 Agreement and revisions to the existing enrollment agreements, to which FDSC is a party. This
4 was not anticipated at the time of drafting of these agreements. Allowing the current agreements
5 to continue could impair the Trust's purposes by allowing the continued oversight and
6 management of the Trust by a party other than the trustee.

7 43. Establishments that wish to continue using the Trust will execute the revised
8 enrollment agreement with the successor trustee.

9 44. Establishments that do not wish to continue using the Trust will notify the
10 successor trustee of a qualified trustee to whom they wish to have their customers' funds
11 transferred and the successor trustee will make that transfer. The establishments must ensure that
12 these transfers are made in accordance with their customer agreements and preneed funeral laws.

13 45. Regardless of whether they continue using the Trust or they select a new trustee,
14 the funeral establishments should provide notice of the change in trustee to their customers.

15 46. The successor trustee will then operate the Trust in accordance with the revised
16 enrollment agreements and applicable laws and regulations.

17 47. Pursuant to the new enrollment agreement, the successor trustee will provide
18 notice to all Trustors to inform them that there has been a change in trustee within 60 days of its
19 appointment as the successor trustee.

20 48. Petitioner therefore requests that the Court approve the modification of the Trust's
21 enrollment agreements for use by the successor trustee and those funeral establishments that will
22 continue to participate in the Trust.

23 WHEREFORE, petitioner requests that:

- 24 1. The Court accept Comerica Bank's tender of resignation.
- 25 2. The Court discharge and release Comerica Bank as trustee on delivery and transfer
26 of all the trust assets to the successor trustee.
- 27 3. The Court appoint Bessemer Trust as successor trustee to serve without bond.

1 4. The Court approves the revised enrollment agreement as set forth in paragraphs 40
2 to 43 and attached as Exhibit A for use by the successor trustee and funeral establishments that
3 will continue to participate in the Trust and approves the waiver in writing of any and all claims
4 against Comerica by the successor trustee that are subject to the Bureau's release as described in
5 paragraph 39.

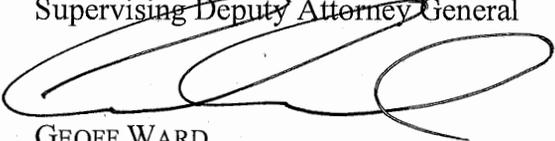
6 5. The Court make all further and proper orders, including any order it may deem
7 necessary for the preservation of the Trust.

8
9
10 Dated:

April 17, 2015

Respectfully Submitted,

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13 MARC D. GREENBAUM
14 Supervising Deputy Attorney General

15 
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Exhibit A
Revised Enrollment Agreement

**CALIFORNIA MASTER TRUST ENROLLMENT AGREEMENT
FOR THOSE FUNERAL ESTABLISHMENTS**

PREVIOUSLY ENROLLED IN THE CALIFORNIA MASTER TRUST PROGRAM

This enrollment agreement for the California Master Trust ("Agreement") is entered into by and between the funeral establishment, _____ ("Funeral Establishment"), and Bessemer Trust Company of California, National Association, is a trust company, qualified under California law to conduct a trust business in California ("Bessemer Trust" or "Trustee") (together, the "Parties"), effective as of _____ (the "Effective Date").

RECITALS

1. Background. The California Master Trust ("Trust") is a trust fund pooling the preneed funeral arrangement trust accounts for trustors and beneficiaries throughout California. Preneed funeral arrangement trusts set aside funds to pay for funeral services. The purchaser, the "Trustor", contracts with a funeral establishment to pay for a designated beneficiary's funeral services while the beneficiary is still alive (hence "preneed"). In some contracts, the trustor and the beneficiary are the same person. The preneed funeral arrangement funds are then placed in trust with a trustee until the beneficiary dies, the Trustor revokes or cancels the arrangement, or the funeral establishment is unable to perform the funeral services prior to or upon the death of the beneficiary.

2. The California Master Trust was created in 1985 by the Funeral Directors Service Corporation ("FDSC"), a subsidiary of California Funeral Directors Association, a trade association of funeral directors. It holds preneed funeral trust funds of thousands of Trustors. Each of these Trustors is contracted with a licensed funeral establishment that will be providing the funeral services for each Trustor's designated beneficiary ("Beneficiary"). Certain California funeral establishments have contracted with FDSC to place their customers' trust funds into the Trust.

3. Since 1985, the Trust has operated under an interconnected set of agreements. One agreement was used for a Trustor to place the funeral establishment customer's money as a deposit with a trustee for the provision of future funeral services from a funeral establishment for a designated beneficiary. A second type of agreement was used to enroll funeral establishments in the Trust and was executed between FDSC and the funeral establishment. In 2002, a third agreement, called the "Master Trust Agreement" was executed between Comerica Bank, as trustee, and FDSC. The Master Trust Agreement specified Comerica Bank's and FDSC's duties in administering the Trust. The Master Trust Agreement had been incorporated into the other two types of agreements.

4. The Cemetery and Funeral Bureau, Department of Consumer Affairs, State of California ("Bureau") regulates preneed funeral arrangements. Its duties include enforcing Business and Professions Code sections 7735 to 7746, the statutes governing preneed funeral

arrangements, and enacting and enforcing its own regulations implementing those statutes. Those regulations include California Code of Regulations Title 16 sections 1261 to 1277.5. The Bureau's web site is <http://www.cfb.ca.gov> and its phone number is (916) 574-7870.

5. From 2011 to 2015, the Cemetery and Funeral Bureau was involved in litigation over the operation of the California Master Trust. That litigation has now been resolved. That litigation, *In re: California Master Trust*, was designated Judicial Council Coordination Proceeding No. 4686 and was coordinated for trial and ultimately resolved in Santa Clara County Superior Court, Department 1.

6. Bessemer Trust Company of California, National Association, is a trust company, located at 10250 Constellation Blvd., Suite 2600, Los Angeles, CA 90067. Its web site is www.bessemer.com and its phone number is (213) 892-0900.

7. Agreement's Purpose. This Agreement has three purposes. The first is to ensure that the Trust complies with state law, including the laws and regulations specifically governing preneed funeral trusts and trust laws generally regulating trust administration. The second is to allow Funeral Establishment to keep or place its customers' funeral trust funds in the Trust under the new trusteeship of Bessemer Trust. The third is to ensure that the Trust's agreements reflect the Trust's recent changes in business practices, including FDSC's and Comerica Bank's exit from management of the Trust. To achieve these goals, this Agreement will streamline the contractual arrangements under which funeral establishments and their customers have participated in the Trust in the past. It will do so by superseding the Master Trust Agreement and the existing enrollment agreement that funeral establishments have executed with FDSC. Rather than having a Master Trust Agreement, the Trustee will administer the Trust according to the terms of this Agreement and the terms of the consumer contracts executed between each funeral establishment and its customers. Bessemer Trust will execute this Agreement with the other funeral establishments currently enrolled in the Trust who wish to continue using the Trust to ensure uniformity. This will help ensure that the Trust operates in conformity with state laws and in the best interests of the Trust's Trustors, its beneficiaries, and of the funeral establishments participating in it.

The parties therefore agree as follows:

Article I. Trust's Purpose.

Section 1.01 Trust's Purpose. The Trust's purpose is to safeguard preneed funeral trust funds. This requires the Trustee to hold and administer the assets of the Trust ("Trust Assets") for the benefit of the people for whom the preneed funeral arrangements were made, the beneficiaries ("Beneficiaries"). It also requires the Trustee to liquidate and distribute the Trust's assets for the following purposes: (a) to the Funeral Establishment who has performed funeral arrangements when the Beneficiaries die, including providing funeral-related goods and services; (b) to make refunds to those revoking or cancelling their trust agreements; or (c) to make refunds to the appropriate beneficiary, trustor, or legal representative if the Funeral Establishment does not have the ability to perform the funeral services prior to or upon the death

of the Beneficiary. To these ends, the Trustee will oversee investments, supervise and administer the claims process and perform all other obligations of the Trust, as described in this Agreement.

Section 1.02 Trust's Philosophy. The Trust's primary goal is to maintain Trust Assets for the benefit of the Beneficiaries and their successors in interest. Principal preservation is more important than principal growth. Only through principal preservation will the Trust be able to maintain distributions in the amounts deposited by the Trustors, the people purchasing preneed funeral arrangements for the Beneficiaries. Achieving this goal will allow the Funeral Establishment to stabilize and plan for their businesses and will provide the Beneficiaries with the funeral services they have been promised. To those ends, the Trust's investments will be conservative (not necessarily limited to bonds), and the Trustee, the Trustee's agents and all others providing services to the Trust will seek to keep administrative costs reasonable while honoring the checks and balances of this Agreement and ensuring transparency and accountability.

Article II. Establishment of Trust.

Section 2.01 Appointment of Trustee and Acceptance of Appointment as Trustee. Bessemer Trust has been appointed the Trust's trustee. By execution of this agreement, Bessemer Trust accepts the appointment and has assumed control of the Trust's assets under the agreements operative prior to this one, and as reflected on the Statement of Assets as of the date of acceptance, including the previous enrollment agreement executed between Funeral Establishment and FDSC. The Trust's assets included preneed funeral trust accounts that Funeral Establishment had enrolled in the Trust on its Trustors' and Beneficiaries' behalf. Upon execution of this new Enrollment Agreement, Bessemer Trust will continue to serve as Trustee for Funeral Establishment's customers' preneed funeral trust accounts according to this Agreement's terms. The Funeral Establishment and Trustee agree that no further action by Trustee, the Funeral Establishment, the Trustors, or the Beneficiaries is necessary or required to effect Trustee's substitution as trustee of Funeral Establishment's existing preneed funeral trust accounts, including the substitution of Bessemer Trust as trustee on any existing consumer preneed trust contract.

Section 2.02 The Trust's Agreements. Two types of agreements will now comprise the Trust:

(a) **Enrollment Agreement.** This Agreement, the enrollment agreement, governs the relationship between funeral establishments participating in the Trust and the Trustee. It sets forth the Trustee's and the Funeral Establishment's respective duties and responsibilities. This Agreement will supersede the Master Trust Agreement and any previous agreements under which funeral establishments participating in the Trust had previously contracted with FDSC or the previous Trustee, including the agreement entitled "California Master Trust Enrollment Agreement" that Funeral Establishment executed, if applicable.

(b) **Consumer Preneed Trust Contract.** The agreement between a Funeral Establishment, Trustee and a Trustor, which this Agreement will call a “Consumer Preneed Trust Contract” is and has been a contract executed by and between a Funeral Establishment, Trustee and a Trustor. These contracts provide written instruction regarding the trusting of the funds paid by the Trustors for goods or services or both goods and services for final disposition of human remains when the goods or services are not provided until the time of death, and paid for in advance of need. Those funds must be deposited with the Trustee within 30 days of receipt by the Funeral Establishment. Except for the removal of FDSC and substitution of Bessemer Trust as the trustee of the Trust, this Agreement does not supersede the existing Consumer Preneed Funeral Trust Agreements, an example of which is attached as **Exhibit A** hereto. There are also agreements entitled “California Master Trust Rollover Agreement” and “California Master Trust Transfer Agreements” that provide that a funeral establishment will honor and accept the assignment of preneed funeral arrangement agreements that a Trustor had originally purchased at another establishment. Except for the removal of FDSC and substitution of Bessemer Trust, as the trustee of the Trust, these agreements will also not be superseded by this Agreement.

Article III.

The Parties’ Duties and Responsibilities

Section 3.01 Funeral Establishment’s Duties and Responsibilities. The Funeral Establishment has the following duties and responsibilities.

(a) **Provide Enrollment Agreement to Trustors.** The existing Master Trust Agreement is incorporated by reference into all of the existing Consumer Preneed Trust Contracts and had been provided to Trustors when they purchased their preneed funeral arrangements. Since this Enrollment Agreement supersedes the Master Trust Agreement, each Funeral Establishment agrees to deliver, or cause to be delivered, a copy of this Agreement to each new Trustor who purchases preneed funeral services after this Agreement’s Effective Date and who has their preneed funeral trust funds placed in the Trust. The Funeral Establishment will also make copies of this Agreement available to customers with existing preneed funeral arrangements in the Trust. Furthermore, the Funeral Establishment agrees that it will provide this Agreement or any other relevant agreements available to a Trustor or Beneficiary upon request.

(b) **Trustor Deposits.** The Funeral Establishment will promptly remit all funds received from a Trustor under a Consumer Preneed Trust Contract to the Trustee in accordance with this Agreement’s terms. At the latest, the Funeral Establishment will deliver all funds received to Trustee by the 15th day after receiving them.

(c) **Payouts on Trustors’ Accounts.** To initiate a payout from this Trust, the Funeral Establishment will forward to the Trustee within two business days of receipt, the following:

(i) **Upon Beneficiary’s Death.** A certified copy of the Beneficiary’s death certificate, or other satisfactory evidence of the Beneficiary’s death, and evidence

satisfactory to the Trustee that the Funeral Establishment has furnished the merchandise and services required under the Consumer Preneed Trust Contract.

(ii) For a Revoked or Cancelled Trust. The Trustee may initiate a payout upon receipt of written notice of revocation from the Trustor, an authorized Beneficiary, or the Trustor's legally appointed representative. All written requests for revocation, by the Trustor, of a trust shall be honored within 15 days of their receipt in compliance with California Code of Regulations, Title 16, Section 1264.

(iii) Inability to Perform. If, for any reason, Funeral Establishment is unable to perform the funeral services prior to or upon the death of the Beneficiary of a pre-need trust agreement, then the Trustee shall proceed as set forth in Section 3.05(t).

Section 3.02 Trustee's Duties and Responsibilities.

(a) Abide by Consumer Preneed Trust Contracts. The Trustee agrees to be bound by the terms of the existing Consumer Preneed Trust Contracts Agreements and any new Consumer Preneed Trust Contracts and will be deemed a party to those agreements without separate execution thereof. Trustee agrees to allow its name and address to be printed on the Consumer Preneed Trust Contracts.

(b) Inspect Consumer Preneed Trust Contracts. The Trustee has the right to audit or inspect any Consumer Preneed Trust Contracts personally or through a representative, at the Funeral Establishment, during ordinary business hours, with reasonable advance notice to the Funeral Establishment.

(c) Maintain Trust Account Records. The Trustee will become responsible for Trust funds it receives from the former trustee, and for Trust funds it receives pursuant to this Agreement and the Consumer Preneed Trust Contracts. The Trustee will be responsible for establishing and maintaining all records, including those records pertaining to individual Trustor accounts in California, so that the records are always available for inspection by the Bureau during reasonable business hours in California. This includes the responsibility to regularly allocate and record the pro rata share of the net current income earned on the Trust's assets to each Trustor's account. Trustee will maintain Trust records as required under Section 1267 of Title 16 of the California Code of Regulations.

(d) Taxes and Audits. The Trustee is also responsible for obtaining and filing the following:

(i) Federal and state fiduciary income tax returns for Trustee relating to the Trust. The Trust may file as a single income taxpayer and is not obligated to issue a K-1 form to each beneficiary, unless otherwise required by federal and state law.

(ii) An annual, independent certified financial audit for the Trust performed by a Certified Public Accounting firm. The cost of this service is an administrative expense of the Trust. This audit will (a) compile an annual statements of activities and changes in net assets and cash flows for the Trust as of the fiscal year-end; (b) issue an accountant's report in connection with such compilation in accordance with Statements on Standards for Accounting and Review Services issued by the American Institute of Certified Public Accountants; and (c) certify compliance with existing law regarding preneed trust funds including, Business and Professions Code sections 7735 to 7746 and their implementing regulations and with the terms of this Trust Agreement. The Trustee will ensure that a copy of the certified audit will be submitted to the Bureau annually on or before May 1st of each year or, upon approval by the Bureau Chief, no later than 120 days of the close of the Trustee's fiscal year.

(e) **Annual Reporting to the Bureau.** The Trustee will prepare annual written reports to the Bureau, as required by Title 16 section 1269 of the California Code of Regulations. The trustee will submit these reports to the Bureau annually on or before May 1st of each year or, upon approval by the Bureau Chief, no later than 120 days of the close of the Trustee's fiscal year. These reports will include the information required by Section 1269 including completion of any prescribed forms, and will include a statement of the Trust's assets, claims, and liabilities, a cash flow statement, a report of the Trust's investments and investment results, and an itemization of disbursements, including the amount of the Trustee's compensation.

(f) **Annual Reporting to the Funeral Establishments and the Trustors.** The Trustee will provide the annual report submitted to the Bureau to all Funeral Establishments participating in the Trust and, upon request, to any Trustor participating in the Trust. In lieu of mailing these reports, the Trustee may post this information within two weeks of filing it with the Bureau on a publically accessible web site, and give notice to the Funeral Establishments and Trustors of the web site's address.

(g) **Hiring of Agents and Delegation of Duties Generally.** In conformance with Probate Code sections 16012 and 16052, the Trustee may retain such agents as it, in its sole discretion, determines to be reasonable, necessary or prudent to assist it in carrying out its duties under this Agreement and the Consumer Preneed Trust Contracts, including the agents listed below. Any expenses incurred are chargeable to income in accordance with Business and Professions Code Section 7735 and California Code of Regulations, Title 16, Section 1265.

(1) **Bookkeeper.** Trustee may hire one or more qualified bookkeepers as agents to perform the recordkeeping of all Trustor accounts or the Trustee may perform such duties in-house. The Bookkeeper will be a person or business entity acting under the Trustee's direction.

(2) **Legal Counsel.** Trustee may, in its sole discretion and expense, retain such legal counsel as Trustee deems reasonable, necessary or prudent in

the administration or operation of the Trust or related issues.

- (3) **Accountant/Auditor.** Trustee will engage an independent Certified Public Accounting firm to annually audit the financial records of the Trust, certifying compliance with existing law regarding preneed trust funds including, Business and Professions Code sections 7735 to 7746 and their implementing regulations and the terms of this Trust Agreement. The Certified Public Accounting firm will report to the Trustee and Trustee will submit the firm's reports to the Bureau, at the Bureau's address of public record, as required by the California Code of Regulations Title 16 sections 1269 and 1271.

(h) **Investment Standard.** The investments of Trust funds will be consistent with California Code of Regulations, Title 16, Section 1263, and the Uniform Prudent Investor Act, California Probate Code Sections 16045 through 16054, which requires the Trustee to exercise reasonable care when investing and managing assets and in doing so consider, among other things, the purposes, terms, and distribution requirements of the Trustors whose accounts comprise the Trust. The Trustee is to have an overall investment strategy having risk and return objectives reasonably suited to the Trust, including the primary objective of meeting the legal requirement to return the corpus of the trust and any accumulated income as required by California's preneed funeral laws at Business and Professions Code sections 7735 and 7737.

(i) **Investment Policy.** The Trustee will develop, adopt, and amend as necessary an Investment Policy. The Investment Policy will set the strategy and goals for the investment of the Trust's assets. The Investment Policy will govern any investment advisor's investment of the Trust's assets. It will also be provided to all Funeral Establishments participating in the Trust, and, upon request, to any Trustors or Beneficiaries of the Trust. The Investment Policy will include the following limitations, which are presently adopted by the Bureau in California Code of Regulations, Title 16, Section 1263. The Trust funds will be invested and reinvested, and kept invested in the following manner:

- (1) Bonds of or securities guaranteed by the United States or an Agency thereof of this State, or of any County, City, or City and County in this State.
- (2) Bonds which are legal investments for commercial banks in this State.
- (3) Certificates of deposit or other interest-bearing accounts in any bank in this State insured by the Federal Deposit Insurance Corporation.
- (4) Investment certificates or shares in any state or federally chartered savings institution insured by the Federal Savings and Loan Insurance Corporation.

(5) Investments that otherwise comply with California Probate Code sections 15001 et seq.

(j) **No loans or advances to funeral establishments.** No loan or advance will be made to any licensed funeral establishment; nor to any owner, director, officer, partner or stockholder of any licensed funeral establishment or of the Trustee; or to the Trustee of the Trust funds; or to partners, relatives, agents, or employees of any licensed funeral establishment, or of the Trustee.

(k) **Modification of Investment Policy.** If the Trustee determines that a change to the Investment Policy is necessary to enable the Trustee to fulfill his or her fiduciary duties to the Trustors and Beneficiaries, the Trustee may amend the Investment Policy from time to time. Before making any such amendment, the Trustee may confer with any investment advisor.

(l) **Operating Accounts.** The Trustee may maintain accounts with qualified financial institutions in which cash deposits are maintained in order to make payouts on Trustors' accounts or to fulfill the Trust's operating and administrative obligations.

(m) **Current Investments.** The Trustee may maintain the current investments that exist as of the date of this Agreement until the Trustee determines that such equities are inappropriate and can be prudently unwound.

(n) **Monitoring Investment Advisor's Performance.** In conformance with Probate Code section 16052, subdivision (a)(3), Trustee will regularly monitor and evaluate the investment advisor's investments and advise the investment advisor as needed.

(o) **Monthly Investment and Transaction Report.** Trustee is responsible for accounting on a monthly basis for all collective receipts transferred by the Funeral Establishments to the Trust, for all expenditures from the Trust, for all income earned on the Trust Assets, and for reporting on the investment activities of the Trust, including any gains or losses on investments. This report will be prepared within ten business days of each month's end, with a copy provided to the Bookkeeper, if any. This report will be made available to Funeral Establishment upon request.

(p) **Quarterly Investment Performance Report.** Trustee is responsible for preparing a quarterly report, which will contain Trustee evaluation of the performance of the investments made by the Investment Advisor with the Trust Assets. This report will be prepared within ten business days of each third month's end, starting with three months after the Effective Date, with a copy provided to the Bookkeeper, if any. This report will be made available to Funeral Establishment.

(q) **Annual Investment, Transaction and Performance Report.** Trustee is responsible for preparing an annual report summarizing the Monthly Investment and

Transaction Reports and the Quarterly Investment Performance Reports. This report will be prepared within 20 business days of the year end (December 31) with a copy provided to the Bookkeeper, if any. This report will be made available to Funeral Establishment.

(f) **Custody and Safekeeping of Assets.** Trustee agrees that the Trust funds received by it pursuant to this Agreement and the Consumer Preeed Trust Contracts will be held in one or more segregated custodial trust accounts of Bessemer Trust, exclusively for the investment and reinvestment of the assets contributed to Trustee in its capacity as Trustee, pursuant to the Investment Policy. These accounts are and will remain separate and distinct from depository accounts, if any, of Bessemer Trust.

(s) **Contact with Consumers and Funeral Establishment.** Bessemer Trust will provide notice to all Trustors to inform them that there has been a change in trustee and the Trustee's contact information within sixty (60) days of its appointment as the successor trustee. Trustee will also provide notice to the Trustor when his or her deposit into the Trust has been received within 5 business days. Trustee or its agent must be available to answer any questions that a Trustor or Funeral Establishment may have regarding a Trustor's individual account within the Trust or that Funeral Establishment may have regarding its customers' individual accounts collectively.

(t) **Monitoring Funeral Establishments and Beneficiaries.** Trustee is responsible for regularly monitoring the Funeral Establishments to ensure that they are still licensed and in business. Within a reasonable time after such a monitoring, Trustee will contact Trustors who have Preeed Funeral Trust Agreements with closed or unlicensed Funeral Establishments, if any, and advise them of their options to receive a refund due to the establishment's inability to perform the contract or transfer to another licensed funeral establishment enrolled with this Trust that is willing to accept the rights and responsibilities of the Consumer Preeed Trust Contract. In accordance with California Code of Regulations, Title 16, Section 1274, no revocation fee may be charged to these accounts if Trustors wish to receive a refund. Trustee also will inquire at least annually whether Beneficiaries with apparently active accounts are deceased. If the Trustee finds that there are Beneficiaries with apparently active accounts who are deceased and did not use their trust funds for their funerals, the Trustee will take action to return said funds to the Trustors or Beneficiaries' legal representative within a reasonable time of becoming aware of this fact. Although the Trustee remains responsible for compliance, the Trustee may delegate these duties and responsibilities to an agent. The Trustee is responsible for overseeing and ensuring compliance with these duties by its agents.

(u) **No Liability for Acts or Omissions of Former Trustee.** To the extent Trustee receives Trust funds from Comerica Bank, Trustee will have no liability whatsoever for the acts or omissions of the former trustee and will have no duty to take any actions or pursue any claim as against the former trustee for any decline in the value of the underlying assets in the Trust funds while that former trustee was acting.

(v) **Waiver of Claims against Former Trustee.** Trustee agrees that it waives any and all claims, demands, causes of action, obligations, liens, damages, losses, costs, attorneys' fees, and expenses of any kind and nature whatsoever, known or unknown against Comerica Bank along with Comerica Bank's successors, subsidiaries, members, partners, shareholders, officers, directors, principals, employees, attorneys, representatives, and insurance companies that in any way relate to or arise out of the Cemetery and Funeral Bureau's claims in *Cemetery and Funeral Bureau v. California Master Trust et. al.*, Los Angeles County Superior Court, Case Number BC459862 or the Bureau's claims in intervention in *In the Matter of the California Master Trust*, Santa Clara County Superior Court Case Number 1-09-PR-165181, including but not limited to claims brought by the Bureau under Business & Professions Code Section 125.5(b) for restitution to persons injured as a result of the violations alleged by the Bureau.

Section 3.03 General Powers of Trustee. Trustee has the following powers in administering the Trust, in addition to the powers granted under California law:

(a) To receive and hold funds and all income received thereon in trust for the purposes for which deposited.

(b) To hold any property in its name as Trustee, or in the name of its nominee, or unregistered in such condition that Title will pass by delivery. Trustee will not hold any Trust Assets in its own name.

(c) To pay from the Trust Administrative Fees, which are defined as expenditures that are reasonably incurred in the administration of the Trust and/or for the benefit of the Beneficiaries, subject to the following limits:

(1) In accordance with Business and Professions Code section 7735 and California Code of Regulations, Title 16, Section 1265, these payments must not exceed the total amount of posted trust income for the immediate 12 preceding months and the total amount paid may not exceed 4% of the trust balance as of December 31 of that year.

(2) Payments to the investment advisor will be agreed to in writing by the Trustee and the investment advisor and will be an amount equal to a reasonable percent of the current income of the Trust. These payments will not include additional fees, costs, or charges incurred by the investment advisor as a result of the investment of the Trust Assets in a mutual fund or fund of a similar nature.

(3) The fee to be paid to Trustee will be set forth in **Exhibit B** hereto, which may be amended from time to time after notice to the Funeral Establishment. This fee will be payable from the Administrative Fees and is subject to the limits of subparagraphs (1) and (2) above. The Trustee Fee will be paid to Trustee by the Trustee. In the event Trustee has received fees in excess of that allowed by California law, such excess will be immediately restored to the Trust.

(d) To payout Trustors' accounts as follows:

(1) Upon Death of Beneficiary. When a Beneficiary dies, the Trustee must pay Funeral Establishment as follows. The Trustee will

receive from Funeral Establishment (1) a certified copy of the death certificate of the Beneficiary, or other satisfactory evidence of the Beneficiary's death; and (2) evidence that the Funeral Establishment has furnished the funeral merchandise and services provided for in that Beneficiary's Consumer Goods and Services Agreement required by Business and Professions Code section 7685.2. The Trustee must then deliver within _____ business days the Beneficiary's account balance, which includes the corpus, which is defined herein as the amount deposited by the Trustor, and accrued income (if any), minus any Administrative Fees attributable to the Beneficiary's account.

(2) Revoked Trusts. When the Trustee receives written notice of a request to revoke or cancel a Consumer Preneed Trust Contract from a Trustor or a Trustor's legally appointed representative, the Trustee must deliver to the Trustor within 15 business days the corpus and accrued income (if any), minus any revocation fee charged in accordance with Business and Professions Code sections 7735 and 7737.

(3) Funeral Establishment's Inability to Perform. If Funeral Establishment closes or otherwise becomes unable to provide the funeral services prior to or upon the death of the Beneficiary of the Consumer Preneed Trust Contract, the Trustee shall proceed with payout of corpus of the trust and any accumulated income as provided in Section 3.05(t).

Article IV.

Representations and Warranties

Section 4.01. Trustee's Representations and Warranties. Trustee represents and warrants to the following:

- (a) Trustee is a banking institution or trust company legally authorized and empowered by the State of California to act as trustee in the handling of trust funds;
- (b) Trustee is a duly formed banking institution or trust company, validly existing and in good standing in California; and
- (c) This Agreement is a binding obligation on Trustee and does not violate the terms of any other agreement to which Trustee is a party.

Section 4.02. Funeral Establishment's Representations and Warranties. Funeral Establishment represents and warrants to the following:

- (a) Funeral Establishment is licensed by the Bureau;
- (b) Funeral Establishment's license with the Bureau is active;
- (c) Funeral Establishment has been participating in the Trust; and

(d) As of this Agreement's Effective Date, Funeral Establishment has placed the preneed funeral arrangement trust funds of its customers (Trustors) in the Trust.

(e) Funeral Establishment agrees to notify the Trustee of any change in its license status with the Bureau, e.g., inactive, canceled, or revoked, within ten (10) days of such change.

Article V.

Change of Trustee.

Section 5.01 Removal of Trustee. Bessemer Trust, may be removed, with or without cause, by a Superior Court of the State of California having jurisdiction over this Trust. The Notice of Hearing on Petition for Removal and the Petition for Removal will be provided to all funeral establishments and Trustors, as well as all other appropriate parties, as required by law. In the event of such removal, the removed Trustee will continue as Trustee until a successor trustee has been appointed by the Court. A successor trustee will be an entity or person qualified to act under California law, including Business and Professions Code Section 7736.

Section 5.02 Resignation of Trustee. Trustee has an unqualified right to resign. If the Trustee intends to resign as Trustee of this Trust, it will give all Funeral Establishments and Trustors 90 days' written notice. The resignation will not be effective until a successor trustee, approved by court order, has accepted the Trust and the Trust Assets. Funeral Establishment agrees to cooperate and not unreasonably delay the appointment of a successor trustee.

Section 5.03 Successor Trustee.

(a) **Qualified Successor Trustee.** Trustee agrees, as reasonably appropriate, to cooperate with and to assist in finding a qualified successor trustee. The Trustee is not obligated, however, to secure such a successor trustee.

(b) **Court Appointed Successor Trustee.** Upon giving Notice of Resignation, the Trustee will, as allowed under the California Probate Code, petition a court of appropriate jurisdiction to accept its resignation, and to request the court to direct the appointment of a qualified successor trustee. The Notice of Petition and the Petition will be provided to all funeral establishments and Trustors, as well as all other appropriate parties. Trustee will be responsible for paying all costs associated with such a petition from its Trustee Fee. Funeral Establishment agrees to be bound by any court decision designating a successor trustee or successor trustees. In any event, however, such successor trustee will agree to the terms and conditions of this Agreement and the Consumer Preneed Trust Contracts.

(c) Transition from Trustee to Successor Trustee.

(i) **Transfer of the Trust Assets to a Successor Trustee.** Upon receipt of written notice of the appointment of a successor trustee and written acceptance of such appointment by the successor trustee, Trustee agrees to transfer the Trust Assets as directed by the successor trustee.

(ii) **Final Accounting.** Upon its transfer of the Trust Assets to the successor trustee, the outgoing Trustee will engage an independent Certified Public Accounting firm for a final audit of the financial records of the Trust, certifying compliance with existing law regarding preneed trust funds including Business and Professions Code sections 7735 to 7746 and their implementing regulations and the terms of this Trust Agreement. The Trustee will provide the final audit report to the Bureau and the successor trustee.

Article VI.

Termination.

Section 6.01 Return of Trust Funds to Trustors. Upon termination of the Trust, the Trustee will ascertain all current Trustors under the Agreement. Trustee will deliver or cause to be delivered to Trustors the corpus and accumulated income (if any).

Section 6.02 Escheat. If, after reasonable efforts, Trustee is unable to ascertain a Trustor of the trust, the corpus and accumulated income (if any) that would have been delivered to the Trustors will escheat to the State of California.

Article VII.

Miscellaneous.

Section 7.01 Entire Agreement. This document, including the exhibits and schedules hereto, and which incorporates the printed terms of the Trust Agreements, the Rollover Agreements, and the Transfer Agreements, including the exhibits, schedules, and amendments thereto, constitutes the entire agreement between the Parties, all oral agreements being merged herein, and supersedes all prior and contemporaneous agreements, representations and understandings of the Parties. Trustee and Funeral Establishment agree to incorporate herein any amendments made to these agreements to comply with federal or California law, regulations or rules, or as reasonably necessary for operation of the Trust.

Section 7.02 Amendment. The provisions of this Agreement may be modified at any time if the Parties agree. Any such modification or amendment to this Agreement must comply with the Bureau's Funeral Directors and Embalmer's Law, including Business and Professions Code sections 7735 to 7746 and their implementing regulations, as well as any other law governing preneed trust contracts. Any such agreement hereafter made will be ineffective to modify this Agreement in any respect unless it is in writing, and signed by the Party against whom enforcement of the modification is sought.

Section 7.03 Waiver. Any of the terms or conditions of this Agreement may be waived at any time by the Party entitled to the benefit thereof, but no such waiver will affect or impair the right of the waiving Party to require observance, performance or satisfaction either of that term or condition as it applies on a subsequent occasion or of any other term or condition hereof.

Section 7.04 Non-assignability. This Agreement is not assignable or transferable, in whole or in part, by any Party without the prior written consent of the other Party; provided however, that

Trustee may assign this contract to a successor by merger or acquisition with 120 days' advance written notice to Funeral Establishment.

Section 7.05 Succession. Subject to the provisions otherwise contained in this Agreement, this Agreement will inure to the benefit of and be binding on the successors and assigns of the Parties hereto.

Section 7.06 Notices. Any notice under this Agreement is to be in writing and any written notice or other document will be deemed to have been duly given on the date of personal service on the Parties or on the fifth business day after mailing, if the document is mailed by registered or certified mail addressed to the Trustee as set forth below and to the Funeral Establishment as set forth below its signature on the signature page herein or at the most recent address specified by the addressee through written notice under this provision. Failure to conform to the requirement that mailings be done by registered or certified mail will not defeat the effectiveness of notice actually received by the addressee.

If to Trustee:

Section 7.07 Counterparts. This Agreement may be executed in any number of counterparts with the same effect as if the Parties had all signed the same document. All counterparts will be construed together and will constitute one Agreement.

Section 7.08 Severability. If any provision of this Agreement is held by a court of competent jurisdiction to be invalid or unenforceable, the remainder of the Agreement will continue in full force and effect, and will in no way be impaired.

Section 7.09 Governing Law. The rights and obligations of the Parties and the interpretation and performance of this Agreement are to be governed by the law of California, excluding its conflict of laws rules. This Agreement is to be interpreted so as to be consistent with the Bureau's Funeral Directors and Embalmer's Law, including the Business and Professions Code sections 7735 to 7746 and their implementing regulations, California Probate Code sections 15001 and following and Probate Code sections 16000 to 16504 as they may from time to time be amended.

Section 7.10 Principal Place of Administration. Regardless of any change in the identity or domicile of Trustee, or the location of any office maintained by Trustee, the principal place of administration and the location of its corpus shall always be deemed to be within the State of California.

Section 7.11 Venue. The Parties agree that the venue for any claim, controversy, or action for breach of this Agreement shall be in a Superior Court of California with competent jurisdiction.

Section 7.12 Agreement to Govern. In the case of any conflict between the terms of this Agreement and any Trust Agreement, Rollover Agreement, Transfer Agreement, or other agreement, the provisions of this Agreement are to control and, in the event of such conflict, Trustee will have no liability to any person for complying with the terms of this Agreement.

Section 7.13 Cumulative Remedies. No remedy or election hereunder will be deemed exclusive, but will whenever possible be cumulative with all other remedies at law or in equity.

Section 7.14 Use of Trustee's Name. Trustee's name will not be used by Funeral Establishment in any advertising or promotional material, nor will it use Trustee's name for any other business purpose, other than those related to the Trust, without the express written consent of Trustee. The Funeral Establishment agrees to provide Trustee with copies of all documents wherein Trustee's name is used.

Section 7.15 Authorization. Those persons executing this Agreement on behalf of Trustee and Funeral Establishment represent and warrant that they are legally authorized to execute it.

IN WITNESS WHEREOF, the Parties hereto have executed this CALIFORNIA MASTER TRUST ENROLLMENT AGREEMENT on _____, being the Effective Date set forth herein.

Bessemer Trust

Date:

By: _____
Its: _____

Funeral Establishment:

Date:

By: _____
Its: _____

License No. _____

Address: _____

EXHIBIT A

Sample Consumer Preneed Funeral Trust Agreement



CALIFORNIA MASTER TRUST™
PRENEED FUNERAL TRUST AGREEMENT

Mortuary License No. _____

SAMPLE

Contract No. 916446

PLEASE PRINT OR TYPE

FUNERAL DIRECTORS SERVICE CORPORATION, P.O. Box 1700, Folsom, CA 95763-1700 ("FDSC" or "Program Administrator"), and Comerica Bank-California, California Master Trust, c/o Comerica Bank-California, Institutional Trust, MC 4195, PO Box 2249, San Jose, CA 95109-2249 ("Trustee"), agree as follows:

- 1. Creation of Trust. The Trustor creates this preneed funeral trust ("Trust") for the benefit of the person designated below (the "Beneficiary") and for the purpose and upon the terms and conditions herein set forth. Paragraphs 6-12 on the reverse hereof are incorporated herein by reference.
1.1. Irrevocable Trust (Optional). The Trustor should initial: _____ and date: _____ here only if this Trust is to be irrevocable under Paragraph 9.
2. Deposits. The Funeral Establishment has provided the Trustor with a list of available merchandise and services. The Trustor has selected and received a copy of the Statement of Funeral Services and Goods Selected (the "Plan"). The Plan, which is attached hereto, specifies the merchandise and services to be provided at the death of the Beneficiary. The present cost of the merchandise and services in the Plan is \$ _____. The Trustor will make deposits to fund the Plan as follows: An initial deposit of \$ _____ with the Funeral Establishment upon execution of this Agreement, together with (select one):
[] Monthly deposits of \$ _____ each for _____ months;
[] Deposits as follows: _____; or
[] One deposit upon execution of this Agreement equal to the total present cost of the merchandise and services in the Plan.
The Trustor shall make payments hereunder payable to CALIFORNIA MASTER TRUST™. All deposits shall be transferred by the Funeral Establishment to FDSC within ten (10) days and specify the date of delivery to the Funeral Establishment. FDSC shall transfer the deposit to the Trustee within thirty (30) days of receipt of any deposit by the Funeral Establishment. All amounts deposited by the Trustor shall be held, managed and distributed in trust as herein set forth. The total deposits made by the Trustor shall constitute the Trust's corpus ("Corpus").
3. Services and Merchandise.
3.1 As soon as practicable after the death of the Beneficiary, the Funeral Establishment agrees to use its best efforts to make available the merchandise and services selected for Beneficiary as described in the Plan.
3.2 If the exact merchandise and services described in the Plan are not available at the date of Beneficiary's death, the Funeral Establishment may substitute merchandise and services of similar or better kind, quality, material and workmanship and such substitution shall not impair the Funeral Establishment's performance under this Agreement.
3.3 If offered by the Funeral Establishment, the Trustor may elect to choose either a Guaranteed Plan or Non-Guaranteed Plan by initiating the appropriate option: IF NO ELECTION IS MADE, THE TRUSTOR WILL BE DEEMED TO HAVE ELECTED A NON-GUARANTEED PLAN
(a) [] Guaranteed Plan. The total price of the Plan is the current cost of the merchandise and services in the Plan, as set forth in Paragraph 2. Your price will not change and is guaranteed as long as payments are made as required by this Agreement. If deposits are not made in accordance with Paragraph 2, the Plan shall no longer contain a guaranteed price; instead the price will be determined based on the current cost of the merchandise and services in the Plan at the date of the Beneficiary's death based on the Funeral Establishment's then current price list. If the Beneficiary dies prior to the payment of all deposits required in Paragraph 2 and deposits have otherwise been made in accordance with Paragraph 2, the price shall remain guaranteed if the outstanding balance of the purchase price is paid to the Funeral Establishment immediately. If such balance is not paid immediately, the Funeral Establishment shall provide to Beneficiary merchandise and services as near as possible to those contemplated by this Agreement as may be purchased with the funds available in the Trustor's account, and shall provide to Beneficiary such additional merchandise and services as may be funded by the Beneficiary's representative, as defined by Health and Safety Code section 7100, or accept cancellation as provided for in Paragraph 9. Upon the Funeral Establishment's delivery of the merchandise and services described in the Plan, the funds in the Trustor's account shall belong to the Funeral Establishment whether the total amount in the Trust at the time of the Beneficiary's death is less than, greater than or equal to the Guaranteed Price.
(b) [] Non-Guaranteed Plan. The total price of the Plan shall be based on the current cost of the merchandise and services in the Plan at the date of the Beneficiary's death based on the Funeral Establishment's then current price list. If at that time the funds in the Trustor's account, including income earned on the Corpus and reduced by fees, as provided in Paragraph 7, are insufficient to pay that price, the Funeral Establishment shall not be obligated to furnish the merchandise or services described in the Plan unless the balance of the cost of said services and merchandise is paid to the Funeral Establishment immediately. If such balance is not paid immediately, the Funeral Establishment shall provide to the Beneficiary merchandise and services as near as possible to those contemplated by this Agreement as may be purchased with the available funds in the Trustor's account, and shall provide to Beneficiary such additional merchandise and services as may be funded by the Beneficiary's representative, as defined by Health and Safety Code section 7100, or accept cancellation as provided for in Paragraph 9. If the funds in the Trustor's account exceed the total price of the Plan, any surplus shall be returned to the Trustor or the Trustor's legal representative. If the Trustor is deceased, the surplus shall be paid to the Beneficiary's estate unless the Trustor has designated a person here to receive the surplus:
Name: _____
Address: _____
4. Revocation Fee. If this Trust is revoked pursuant to Paragraph 9, a revocation fee of _____% of the Corpus, payable to the Funeral Establishment, shall be charged to the Trustor's account. This fee shall be payable only from Trust income and such fee shall not exceed 10% of the Corpus. Initial (____).
5. Acknowledgement and Certification by the Trustor. By executing this Agreement on the line provided below, the Trustor acknowledges and certifies under penalty of perjury that: (a) the Trustor has received a copy of the Master Trust Agreement referenced in Paragraph 6; (b) the Trustor has read this Agreement, including Paragraphs 6-12; (c) the social security number and other personal information set forth below is true and correct as of the date hereof; (d) the Trustor is not subject to any mandatory withholding of income requirement imposed by the Internal Revenue Service; and (e) the Trustor is aware of the Trustee's obligation to report all income earned by the Trustor's account to the Internal Revenue Service and appropriate state taxing authorities, see Paragraph 7. Trustor's Initial (____)

All funds received will be deposited with the Trustee within thirty (30) days and held in a trust which is fully refundable upon fifteen (15) days' written notice except when the Beneficiary is the recipient of public assistance, as provided for in the California Welfare and Institutions Code, and this Agreement has been designated as being irrevocable thereunder.

[] (Where Applicable.) You, the Trustor, may cancel this transaction at any time prior to midnight of the third business day after the date of this transaction. See the attached Notice of Cancellation form for an explanation of this right.

FOR MORE INFORMATION ON FUNERAL, CEMETERY, AND CREMATION MATTERS, CONTACT:
DEPARTMENT OF CONSUMER AFFAIRS, CEMETERY AND FUNERAL BUREAU
400 R STREET, SUITE 3040, SACRAMENTO, CA 95814, (800) 952-5210

DATED: _____
TRUSTOR: _____
Print Name: _____
TRUSTOR'S Address: _____
TRUSTOR'S Social Security Number: _____
BENEFICIARY: _____
BENEFICIARY'S Address: _____
OPTIONAL: Sex: [] M [] F Date of Birth: _____ Telephone No: _____

If the Trustor does not receive acknowledgement of this transaction from California Master Trust™ within 30 days of the date of this Agreement, the Trustor should call: (800) 322-4268.

ADDITIONAL TERMS ON REVERSE

FUNERAL ESTABLISHMENT: _____
Authorized Representative: _____ (Signature)
Print Name: _____
Address: _____

6. **Administration and Investment.** The Corpus plus any net income earned thereon shall be held, managed and distributed by the Trustee in accordance with the terms of the Master Trust Agreement of California Master Trust™ executed by and between FDSC and the Trustee (the "Master Trust Agreement"). FDSC is exclusively authorized to modify the Master Trust Agreement and to change the Trustee from time to time without notice to or the consent of the Trustor or the Beneficiary, so long as the Trustee meets the requirements of California law, and to employ or change any investment advisor, the Trustor appoints FDSC as its agent therefore. The Trustee shall invest, reinvest and keep invested the funds in the Trustor's account only in investments authorized by California law. FDSC shall maintain accurate records of the funds in the Trustor's account and such records shall be available to the Trustor upon written request.

7. **Income and Fees.** A percentage of the current income of the Trust will be charged to administer the Trust, including a trustee fee, in an amount not to exceed the maximum allowable by California law, and in no event shall such fees be paid from the Trust's Corpus. The net current income will be credited by Trustee to the Trustor's account. Net income earned on the funds in the Trustor's account may be taxable to the Trustor. Trustee shall supply the necessary tax forms to the Trustor for reporting purposes.

8. **Delivery of Funds.** The Trustee shall hold the funds transferred to it for the purpose for which they are deposited until this Agreement is fulfilled according to its terms. The Funeral Establishment shall file with FDSC a certified copy of the Beneficiary's death certificate and evidence that the Funeral Establishment has furnished the merchandise and services as provided in this Agreement and shall forward such documents to Trustee. Trustee will then direct disbursement of the funds in the Trustor's account, less any fees provided for herein, to the Funeral Establishment.

9. **Revocation of Trust by the Trustor, the Legally Appointed Representative, or the Beneficiary; Cancellation by the Funeral Establishment.** This Agreement may be revoked for any reason at any time before the Funeral Establishment has furnished the services and merchandise or canceled by the Funeral Establishment, upon ten (10) days advance written notice to the Funeral Establishment, or in the event this Trust is canceled, upon ten (10) days advance written notice to FDSC. In the event of the Trustor's death, the Beneficiary or the Beneficiary's legally appointed representative shall succeed to the rights and powers of the Trustor under this Agreement. If this Trust is revoked or cancelled, the Trustee shall return to the Funeral Establishment for delivery to the Trustor or Beneficiary, as applicable, within fifteen (15) days all funds in the Trustor's account, less any fees provided for herein, including any revocation fee, not to exceed the maximum allowable by law. Hereafter this Agreement shall terminate, be of no further force and effect, and the parties shall have no further obligation under this Agreement.

NOTE: If the Trustor or Beneficiary is a recipient of public assistance under the provisions of the California Welfare and Institutions Code pursuant to Sections 11158 and 12152, the Trustor or Beneficiary may elect, pursuant to California Business and Professions Code Section 7737, to make this Agreement irrevocable by dating and initialing this Agreement at Paragraph 1.1. If, at any time after this election, the Trustor or Beneficiary ceases receiving public assistance, the Trustor shall promptly notify the Funeral Establishment and the Trust shall then be revocable, and this Trust shall be subject to the revocation fee described in Paragraph 4.

10. **Inability of the Funeral Establishment to Perform.** If for any reason the Funeral Establishment becomes unable to substantially perform this Agreement prior to or upon the death of the Beneficiary, the Trustee shall return to the Funeral Establishment for delivery to the Trustor or Beneficiary, as applicable, or to the Trustor's or Beneficiary's representative, as defined by Health and Safety Code section 7100, all funds in the Trustor's account, less any fees provided for herein, not to exceed the maximum allowable by law. No revocation fee shall be charged.

11. **Exoneraton of the Trustee and FDSC.** FDSC and the Trustee are each entitled to rely conclusively on the accuracy and authenticity of this Agreement, including the exhibits, schedules, and amendments thereto, signatures, certificates, evidence, and notices provided to them by the Funeral Establishment, the Trustor, the Trustor's legally appointed representative and the Beneficiary, without further inquiry or investigation into the validity of the same. The Trustee and FDSC shall not be responsible for the fulfillment of this Agreement by the Funeral Establishment. Payment by Trustee of all funds in the Trustor's account to the Funeral Establishment in accordance with this Agreement shall relieve Trustee and FDSC of any liability whatsoever. The Trustee is not responsible or liable for acts or inactions by any successor trustees. The Trustor, for himself, the Beneficiary, and their respective heirs and personal representatives, agrees that no claim or demand of any kind or nature whatsoever shall be made upon or asserted against the Trustee or FDSC resulting from or arising out of any act or omission of the Funeral Establishment, Trustee or FDSC, except in the event of the gross negligence or willful misconduct by the Trustee or FDSC.

12. Miscellaneous.

12.1 **Entire Agreement.** This document and the exhibits attached hereto, including but not limited to the Plan and the Master Trust Agreement, constitute the entire agreement among the parties, all oral agreements being merged herein, and supersede all prior representations.

12.2 **Amendment.** The provisions of this Agreement may be modified at any time by agreement of the parties. Any such agreement hereafter made shall be ineffective to modify this Agreement in any respect unless in writing and signed by the parties against whom enforcement of the modification or discharge is sought.

12.3 **Waiver.** Any of the terms or conditions of this Agreement may be waived at any time by the party entitled to the benefit thereof, but no such waiver shall affect or impair the right of the waiving party to require observance, performance or satisfaction either of that term or condition as it applies on a subsequent occasion or of any other term or condition hereof.

12.4 **Assignment and Succession.** This Agreement may be assigned by the Trustor, the Trustor's legally appointed representative or the Beneficiary upon notice in writing to FDSC. This Agreement may be assigned by the Funeral Establishment or FDSC with the written consent of the Trustor or the Beneficiary, if applicable. This Agreement shall then inure to the benefit of and be binding on the successors and assigns of the parties hereto.

12.5 **Arbitration.** Any dispute under this Agreement shall be submitted to binding arbitration in the State of California, in accordance with the Commercial Arbitration Rules of the American Arbitration Association. Judgment upon any award made in such arbitration may be entered and enforced in any court of competent jurisdiction. The Parties shall each be responsible for their own expenses and costs with regard to such arbitration proceedings.

12.6 **Notices.** Any notice under this Agreement shall be in writing, and any written notice or other document shall be deemed to have been duly given on the date of personal service on the parties or on the fifth business day after mailing, if the document is mailed by registered or certified mail addressed to the parties at the addresses herein set forth or at the most recent address specified by the addressee through written notice under this provision. Failure to perform to the requirement that mailings be done by registered or certified mail shall not defeat the effectiveness of notice actually received by the addressee.

12.7 **Counterparts.** This Agreement may be executed in any number of counterparts with the same effect as if the parties had all signed the same document. All counterparts shall be construed together and shall constitute one agreement. FDSC and Trustee have agreed to be bound by the terms of this Agreement as a result of their respectively entering into the Master Trust Agreement, and no separate execution of this Agreement by FDSC or Trustee shall be necessary.

12.8 **Severability.** If any provision of this Agreement is held by a court of competent jurisdiction to be invalid or unenforceable, the remainder of this Agreement shall continue in full force and effect and shall in no way be impaired or invalidated.

12.9 **Governing Law.** The rights and obligations of the parties and the interpretation and performance of this Agreement shall be governed by the laws of California, excluding its conflict of laws rules. This Agreement is to be interpreted so as to be consistent with California Business and Professions Code Section 7735, et seq. and Title 16 of the California Code of Regulations Section 1261, et seq., and those sections as they may from time to time be amended.

12.10 **Investment of Funds.** This Agreement is a consumer contract and not an investment vehicle. This Trust, and the investment of the funds deposited hereunder, shall not constitute a security and, therefore, are not subject to the laws governing securities and investments. Additionally, neither the Funeral Establishment, FDSC, nor the Trustee are guaranteeing or representing any anticipated income or return on investment, and neither shall this Agreement or any brochures, advertisements or other materials provided to the Trustor or Beneficiary hereafter be interpreted to be guaranteeing or representing any return on the investment of the funds deposited hereunder.

12.11 **Limited Benefits.** This Agreement shall clearly state if the benefits under this Agreement are unavailable or limited for any reason.

EXHIBIT B

Trustee's Fee

Estimated Annual Fee Prepared for California Master Trust

User Defined Allocation	Allocation	Amount	Fee Rate/Expense Ratio
<i>Separate Accounts*</i>			
Large Cap Core	14%	\$8,100,000	0.84%
Fixed Income	69%	\$41,400,000	0.62%
Cash	4%	\$2,400,000	0.25%
Sub-total	87%	\$51,900,000	0.63%
<i>Mutual Funds**</i>			
Large Cap Strategies	14%	\$8,100,000	1.15%
Sub-total	14%	\$8,100,000	1.15%
Total Managed Assets	100%	\$60,000,000	0.70%
<i>Trust</i>		<i>Trust Assets</i>	<i>Trust Admin Fee Rate</i>
Trust Administrative Assets	Trustee Fee	\$60,000,000	0.60%
Estimated Annual Fee			

As of October 31, 2014.

*The fee schedules for separately managed accounts apply to assets accessed through separately managed accounts, common trust funds or collective investment trusts that do not assess fund level management fees. Fee break points are based on aggregate managed assets, which is the value of all Bessemer-managed or Bessemer-advised assets held in all accounts that we have agreed to aggregate for fee purposes. Fees for relationships larger than \$100MM are mutually agreed.

** Reflects the net operating expense ratios (before any acquired fund fees and expenses), after application of contractual fee waivers, for the Fixed Income and Municipal Bond funds for the year ended October 31, 2014, and the contractual expense ratio caps (before any acquired fund fees and expenses), after application of contractual fee waivers, for the Large Cap Core, Large Cap Strategies, Small & Mid Cap, Strategic Opportunities and Real Return funds. Total expense ratios may be different. The Fixed Income and Municipal Bond funds are subject to contractual expense ratio caps of 0.70%. All contractual expense ratio caps are valid through October 31, 2015.

Hedge fund, Private Equity Fund and Real Estate Fund investments may also be included in an asset allocation for suitable clients.