

1 KAMALA D. HARRIS  
Attorney General of California  
2 MARC D. GREENBAUM  
Supervising Deputy Attorney General  
3 GEOFFREY WARD  
Deputy Attorney General  
4 State Bar No. 246437  
300 South Spring Street, Suite 1702  
5 Los Angeles, CA 90013  
Telephone: (213) 897-2660  
6 Email: geoffrey.ward@doj.ca.gov  
*Attorneys for Plaintiff*  
7 *Cemetery and Funeral Bureau*

8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

9 **SANTA CLARA SUPERIOR COURT**

10  
11 **Coordination Proceeding**  
**Special Title (Rules 3.501 CRC et seq.)**  
12  
13 **CALIFORNIA MASTER TRUST CASES**  
14 Coordinated Actions:  
15 Cemetery and Funeral Bureau, Department of  
Consumer Affairs v. California Master Trust,  
et al.  
16  
17 In the Matter of California Master Trust  
18  
19 Funeral Directors Service Corporation v.  
Department of Consumer Affairs, Cemetery  
and Funeral Bureau.

Judicial Council Coordination Proceeding No.  
4686

**DECLARATION OF PHILLIP HARRIS IN  
SUPPORT OF PLAINTIFF CEMETERY  
AND FUNERAL BUREAU'S PETITION  
FOR AN ORDER ACCEPTING  
RESIGNATION OF TRUSTEE AND FOR  
APPOINTMENT OF SUCCESSOR  
TRUSTEE**

Hearing Date: May 22, 2015  
Hearing Time: 10:00 a.m.  
Department: 1  
Judge: Hon. Peter H. Kirwan

[Petition and Declaration of Geoffrey Ward,  
filed concurrently]

20 I, Phillip Harris declare:

21 1. I am a General Auditor III, of the Cemetery and Funeral Bureau ("Bureau"),  
22 Department of Consumer Affairs, State of California, which is a government agency and the  
23 Plaintiff in the above-entitled action. I make this declaration in support of the Bureau's Petition  
24 for an order accepting the resignation of the California Master Trust's trustee and for appointment  
25 of a successor trustee. Because this declaration is made for a limited purpose, it does not contain  
26 all of the information that I know about this matter. I have personal knowledge of the facts stated  
27 here and if called as a witness I could and would testify competently to those facts.

1           2. I began working for the Bureau in 2006 as a General Auditor III. On or about July 1,  
2 2008, I was promoted to Supervising Governmental Auditor I. I retired in or about mid-  
3 September 2011. In or about mid-December, 2011, I returned to work for the Bureau as a retired  
4 annuitant, as a General Auditor III.

5           3. I hold a bachelor's degree in business with a concentration in accounting California  
6 State University, Sacramento from which I graduated in 1978.

7           4. I am a Certified Public Accountant, licensed in the State of California and have held  
8 that license since February 2005.

9           5. Through my work at the Bureau I have become familiar with the applicable statutes  
10 and regulations governing preneed funeral trusts, endowment care funds, and special care funds,  
11 which are different mechanisms for consumers to put money aside for cemetery or funeral  
12 services.

13           6. I conducted a field audit of the California Master Trust beginning in late 2007 and  
14 ending in June 2009.

15           7. In the course of this audit, I reviewed numerous documents relating to the California  
16 Master Trust, including reviewing the Trust's annual independent auditors' reports and audited  
17 financial statements (collectively, "Annual Reports") that were submitted to the Bureau from  
18 1986 to 2007.

19           8. In the course of this audit, I also reviewed numerous contracts relating to the  
20 California Master Trust, including (1) the so-called Master Trust Agreement between Comerica  
21 Bank and the Funeral Directors Service Corporation (FDSC); (2) enrollment agreements between  
22 funeral establishments participating in the Trust and FDSC and Comerica Bank; and (3) contracts  
23 between purchasers of preneed funeral arrangements and funeral establishments participating in  
24 the Trust.

25           9. Since conducting the audit, I have reviewed numerous documents obtained in 2010  
26 through administrative subpoenas jointly issued by the Department of Consumer Affairs and the  
27 Attorney General. I have also reviewed numerous documents obtained in the course of discovery  
28

1 in the California Master Trust litigation from 2011 to the present, as well as deposition transcripts  
2 of various witnesses in this litigation.

3 10. I also have reviewed documents submitted to the Bureau since 2007 and documents  
4 obtained during and after settlement of this litigation. These documents include the Annual  
5 Reports submitted to the Bureau from 2007 to 2014, as well as a database of Trust accounts  
6 obtained from Comerica Bank in December 2014. They also include a number of different types  
7 of statements of account provided by Comerica Bank that detail the Trust's assets, disbursements,  
8 and investments for the years from 2002 to 2014.

9 11. The database of Trust accounts obtained from Comerica Bank in December 2014  
10 gave the names and address of 358 funeral establishments that are participating in the Trust and  
11 the names of over 20,000 beneficiaries with accounts in the Trust as of December 2014.  
12 Beneficiary accounts in the California Master Trust are pooled together into one investment pool.

13 12. Attached as Exhibit 1 is a true and correct copy of Master Trust Agreement dated  
14 February 15, 2002 between Comerica Bank and FDSC. Paragraph (F)(2) of the Master Trust  
15 Agreement provides:

16 (2) Resignation of Trustee. Trustee may resign as Trustee by giving FDSC ninety (90)  
17 days advance written notice ("Notice of Resignation"). The ninety (90) days will  
commence upon FDSC's actual receipt of the Notice of Resignation.

18 And paragraph (F)(3)(a) of the Master Trust Agreement provides:

19 "(3) Successor Trustee.

20 (a) Qualified Successor Trustee. Upon resignation or removal of Trustee, FDSC,  
21 agrees to use good faith and to exert reasonable efforts to find a qualified successor  
22 trustee ("Successor Trustee"). Trustee agrees, as reasonably appropriate, to cooperate  
23 with and to assist FDSC in finding a qualified Successor Trustee. Trustee is not  
obligated, however, to secure such a substitute. Trustee will be entitled to rely upon  
the representations of FDSC that the Successor Trustee engaged by FDSC is qualified  
to act as a trustee of a preneed funeral trust under California law."

24 13. Attached as Exhibit 2 is a true and correct copy of an enrollment agreement between  
25 a funeral establishment participating in the Trust. Based on my review of the Trust's records  
26 through the audit and this litigation, I believe this to be a representative sample of the enrollment  
27 agreements used by the funeral establishments participating in the Trust since 2002. I believe  
28 there to be 358 of these enrollment agreements, one for each establishment participating in the

1 Trust. Section 3 of these enrollment agreements, titled “Duties and Responsibilities of the  
2 Trustee” contains a paragraph that states as follows:

3 “FDSC hereby reserves the right, in its sole discretion, to amend the Master Trust  
4 Agreement from time to time and to remove the Trustee or accept the resignation of  
5 the Trustee and to appoint a successor Trustee or Trustees, without notice to or the  
6 consent of the Funeral Establishments, the Trustors, or the Beneficiaries. FDSC  
7 further reserves the right to appoint and remove investment advisors engaged to assist  
8 in the management of the Trust, to approve the Investment Policy, defined below, to  
9 be provided to and used by the investment advisors to make investment decisions, and  
10 to retain agents as reasonable, necessary, or prudent to carry out its duties including,  
11 but not limited to, a Trust Accounts Administrator for the Trust and independent  
12 auditors to prepare annual audits of Trust records. FDSC shall exercise reasonable  
13 business judgment in exercising this power but shall only be liable for liability caused  
14 by FDSC’s willful misconduct or gross negligence.

15 FUNERAL ESTABLISHMENT ACKNOWLEDGES THAT IT HAS RECEIVED A  
16 COPY OF THE SIGNED MASTER TRUST AGREEMENT AND, BY SIGNING  
17 THIS ENROLLMENT AGREEMENT, FUNERAL ESTABLISHMENT  
18 CONSENTS TO FDSC ACTING AS ITS AGENT FOR THE FOREGOING  
19 STATED PURPOSES.”

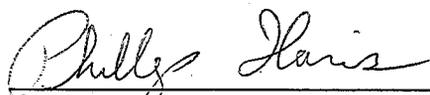
20 14. Attached as Exhibit 3 is a true and correct copy of an agreement for funeral services  
21 between a trustor and a funeral establishment participating in the California Master Trust for the  
22 funeral services of a specific beneficiary. These were called “Preneed Funeral Trust  
23 Agreements.” Based on my review of the Trust’s records through the audit and this litigation, I  
24 believe this to be a representative sample of the trustor agreements used by the funeral  
25 establishments participating in the Trust since 2002. I believe there is one of these agreements for  
26 each of the 24,596 beneficiaries. These agreements contain a section 6 that states in full:

27 “**6. Administration and Investment.** The Corpus plus any net income earned  
28 thereon shall be held, managed and distributed by the Trustee in accordance with the  
terms of the Master Trust Agreement of the 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.”

15. Among the other contracts in the California Master Trust are transfer and rollover  
agreements under which a trustor transfers an preneed arrangement originally purchased at one

1 establishment to another establishment. These transfer and rollover agreements are amendments  
2 to the agreements between the trustor and the original funeral establishments. These transfer  
3 agreements do not have any provisions relating to successor trustees and do not have any  
4 provisions modifying the section 6 of the "Preneed Funeral Trust Agreements."

5 16. I declare under penalty of perjury under the laws of the State of California that the  
6 foregoing is true and correct and that this declaration was executed in Sacramento on April 15,  
7 2015.

8  
9   
10 PHILLIP HARRIS

11 LA2011501983  
12 51674879.doc

13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**EXHIBITS TO DECLARATION OF PHIL HARRIS**

<b>EXHIBIT</b>	<b>CONTENTS</b>
<b>1.</b>	Master Trust Agreement
<b>2.</b>	Sample Enrollment Agreement
<b>3.</b>	Sample "Preneed Funeral Trust Agreement"

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**Exhibit 1**  
**Master Trust Agreement**

# MASTER TRUST AGREEMENT

OF

## CALIFORNIA MASTER TRUST™

This Master Trust Agreement of California Master Trust™ (hereinafter the “Master Trust Agreement” or the “Agreement”) is entered into by and between Funeral Directors Service Corporation, the California Master Trust™ Program Administrator (hereinafter “FDSC”), and Comerica Bank-California, a banking institution qualified under California law to handle preneed funeral trust funds in California (hereinafter “Comerica” or “Trustee”) (collectively the “Parties”), effective as of February 15, 2002 (hereinafter the “Effective Date”).

### OVERVIEW

A. **Creation of the California Master Trust™.** FDSC created the California Master Trust™ (hereinafter the “CMT” or “Trust”), a preneed funeral trust, for the purpose and upon the terms and conditions set forth in this Agreement and the other CMT Program Agreements, described below. The name California Master Trust™ is a California registered trademark of FDSC.

B. **California Master Trust™ Program.** Various funeral establishment members of the California Funeral Directors Association (hereinafter the “CFDA”) are enrolled in the CMT Program (hereinafter the “Funeral Establishments”). The Funeral Establishments enter into various agreements provided by the CMT Program with individuals desiring to provide for funeral services and merchandise in advance of need (hereinafter the “Trustor” or “Trustors”). Under these agreements FDSC is appointed as the Program Administrator and Comerica as the Trustee. The CMT Program Agreements are as follows:

1. **California Master Trust™ Master Trust Agreement.** This Agreement governs the relationship between FDSC and the Trustee, and sets forth the duties and responsibilities of FDSC and the Trustee to the Trustors, the Beneficiaries, the Funeral Establishments, and the CMT Program and governs the overall relationship among FDSC, Trustee, Trustors, Beneficiaries, and Funeral Establishments. This Agreement is either referred to or incorporated by reference into the other CMT Program Agreements.

2. **California Master Trust™ Enrollment Agreement.** The Enrollment Agreement is executed by and between FDSC and a Funeral Establishment and governs the relationship between FDSC and the Funeral Establishment. The Enrollment Agreement also sets forth the duties and responsibilities of FDSC and the Funeral Establishment to the Trustors, the Beneficiaries, the Trustee, and the CMT Program. A specimen copy of such Enrollment Agreement is attached as Exhibit A.

3. **California Master Trust™ Preneed Funeral Trust Agreement.** The Trust Agreement is executed by and between a Funeral Establishment and a Trustor, wherein FDSC and the Trustee are also parties, to provide for funeral services and merchandise in advance of

need for the benefit of the Trustor or another named beneficiary (a "Beneficiary"). A specimen copy of such Trust Agreement is attached as Exhibit B.

4. **California Master Trust™ Preneed Funeral Trust Rollover Agreement.** The Rollover Agreement is executed by and between a Funeral Establishment and a Trustor, wherein FDSC and the Trustee are also parties, to substitute the Trustee in place of the current trustee of the Trustor's preneed funeral trust. A specimen copy of such Rollover Agreement is attached as Exhibit C.

5. **California Master Trust™ Preneed Funeral Trust Transfer Agreement.** The Transfer Agreement is executed by and between a current Funeral Establishment, a new Funeral Establishment, and a Trustor to replace the current Funeral Establishment, named in the Trustor's Trust Agreement, Rollover Agreement, or earlier Transfer Agreement, with the new Funeral Establishment. A specimen copy is attached as Exhibit D.

FDSC and Trustee shall amend the CMT Program Agreements from time to time as reasonably necessary to comply with changes in law or changed business conditions or practices.

C. **Definitions:** Certain terms used in this Agreement are defined below.

1. **Trust Account, Trustor's Account and Trustors' Accounts.** An account established on behalf of a Trustor that is administered by FDSC, or FDSC's agent, and managed by the Trustee pursuant to a Trust Agreement, Rollover Agreement, or Transfer Agreement, including all exhibits, schedules, and amendments thereto and all other agreements incorporated therein. The Trustor Accounts are trusts, which collectively constitute the CMT.

2. **Preexisting Trustors' Accounts.** Trustor Accounts created under Trust Agreements, Rollover Agreements, or Transfer Agreements prior to the Effective Date of this Agreement.

3. **Trustee.** The term Trustee includes the roles of successor trustee for the Preexisting Trustors' Accounts, trustee of all Trust Accounts created after the Execution Date, and trustee for the CMT as a whole.

4. **Successor Trustee.** The term Successor Trustee means all trustees appointed after the removal or resignation of the Trustee.

5. **At Need Trust.** A Trust Account is "At Need" when the Beneficiary is deceased and the Funeral Establishment has provided the funeral services and merchandise required under the Trust Agreement or Rollover Agreement and satisfactory evidence of the Beneficiary's death and the provision of services has been provided to the Trustee.

6. **Revoked Trust.** A Trust Agreement or Rollover Agreement that has been revoked by a Trustor, the Trustor's legally appointed representative or an authorized Beneficiary, so long as the revocation was pursuant to the terms of such agreement.

7. **Revocation Notice.** A notice sent by a Trustor, the Trustor's legally appointed representative or an authorized Beneficiary that acts to revoke a Trust Agreement or Rollover Agreement.

8. **Cancelled Trust.** A Trust Agreement or Rollover Agreement that has been cancelled by a Funeral Establishment, so long as the cancellation was pursuant to the terms of such agreement.

9. **Cancellation Notice.** A notice sent by a Funeral Establishment that acts to cancel a Trust Agreement or Rollover Agreement.

10. **Investment Advisor.** The Investment Advisor shall be a person or business entity registered under the Investment Advisor's Act of 1940 or qualified to act as an investment advisor under the laws of the State of California.

11. **Administrative Fees.** California Preneed Funeral Law authorizes the payment of administrative fees from the current income of a preneed funeral trust. Administrative Fees, hereinafter, shall collectively mean the FDSC Fee, the Trustee Fee, and the Investment Advisor Fee.

12. **FDSC Fee.** The fee to be paid to FDSC shall be an amount equal to the maximum amount authorized under California law to be paid as an administrative fee for a preneed funeral trust, the Administrative Fee. This fee shall be paid to FDSC for the administrative services rendered to the CMT by FDSC and FDSC's Trust Accounts Administrator, Consultants, Accountant, Legal Counsel, and Auditor and all other costs related thereto, as discussed more fully below. In the event FDSC has received fees in excess of that allowed by California law, such excess will be immediately restored to the CMT.

13. **Trustee Fee.** The fee to be paid to the Trustee shall be an amount equal to a reasonable percent of the current income of the CMT, as agreed to in writing by FDSC and Trustee, payable from the Administrative Fee (except when and to the extent that the current income of the CMT does not exceed the administrative costs incurred by FDSC to operate the CMT Program), as set forth in that separate Trustee Fee Agreement incorporated herein by reference, as amended from time to time as agreed to by FDSC and the Trustee. The Trustee Fee will be paid to the Trustee by FDSC. In the event the Trustee has received fees in excess of that allowed by California law, such excess will be immediately restored to the CMT.

14. **Investment Advisor Fee.** The fee to be paid to the Investment Advisor shall be an amount equal to a reasonable percent of the current income of the CMT, as reasonably agreed to in writing by FDSC and the Investment Advisor, payable from the Administrative Fee (except when and to the extent that the current income of the CMT does not exceed the administrative costs incurred by FDSC to operate the CMT Program), as set forth in the Investment Advisor Fee Agreement, as amended from time to time as agreed to by FDSC and the Investment Advisor. The Investment Advisor Fee will be paid to the Investment Advisor by FDSC. In the event the Investment Advisor has received fees in excess of that allowed by California law, such excess will be immediately restored to the CMT. The Investment Advisor Fee shall not include such

additional fees, costs, or charges incurred by the Investment Advisor as a result of the investment of the CMT assets in a mutual fund or fund of a similar nature.

## AGREEMENT

(A) **Appointment of Trustee and Acceptance of Appointment as Trustee.** FDSC hereby appoints Comerica as the Trustee and Comerica hereby accepts its appointment as the Trustee, as of the date hereof. Trustee will serve as Trustee as hereinafter set forth. FDSC and Trustee agree that no further action by FDSC, the Trustee, the Funeral Establishments, the Trustors, or the Beneficiaries is necessary or required to effect Trustee's substitution as Trustee of said Preexisting Trustors' Accounts.

(B) **Duties and Responsibilities of Funeral Establishments.** FDSC and Trustee agree that a Funeral Establishment, in order to participate in the CMT Program, is required to execute an Enrollment Agreement whereby the Funeral Establishment is required to execute and perform those duties set forth in the Enrollment Agreement.

(C) **Duties and Responsibilities of FDSC.**

(1) **CMT Program Agreements.**

(a) **Master Trust Agreement.** This Agreement is incorporated by reference into the CMT Program Agreement. FDSC agrees to deliver, or cause to be delivered, a copy of this Agreement to each Funeral Establishment promptly after the Effective Date and to each new Trustor upon receipt of each new Trust Agreement, Rollover Agreement and Transfer Agreement. FDSC and Trustee agree that under the Trust Agreements and the Rollover Agreements, FDSC is not required to provide existing Trustors with copies of this Agreement or to otherwise provide them with information relating to this Agreement. FDSC shall, however, make copies of this Agreement available to all Trustors upon request.

(b) **Trust Agreements, Rollover Agreements and Transfer Agreements.** FDSC agrees to be bound by the printed terms of the Trust Agreements, Rollover Agreements and Transfer Agreements and understands that it shall be deemed a party to all such agreements without separate execution thereof. FDSC further agrees to allow their name and address to be printed on the Trust Agreements and Rollover Agreements and further understands that this will serve as their signature for purposes of those agreements. Under no circumstances shall FDSC be deemed the trustee of the Trustor Accounts or the CMT, or be deemed to have the duties of a trustee, implied or otherwise, under any of the CMT Program Agreements. Nor shall FDSC be deemed the Trustor under any of the CMT Program Agreements.

(c) **Enrollment Agreements.** FDSC agrees to enter into Enrollment Agreements with the Funeral Establishments and to be bound by the printed terms of the Enrollment Agreement.

(2) **Records and Accounts.** FDSC and FDSC's Trust Accounts Administrator, defined below, shall be responsible for the establishment and maintenance of all Trust Account records respecting the Trustors' Accounts. FDSC and FDSC's Trust Accounts Administrator shall also be responsible for recording the pro rata share of the net current income earned on the CMT assets to each Trustor's Account based on income statements provided by Trustee, or its agents, or by an Investment Advisor, and for the timely periodic transmission of deposits received from the Funeral Establishments to the Trustee. FDSC is also responsible for preparing:

- (a) the federal and state tax forms necessary for each Trustor;
- (b) federal and state fiduciary income tax returns for Trustee relating to the CMT Program;
- (c) an annual Audit Report for the CMT; and
- (d) annual reports to the Department of Consumer Affairs.

(3) **Trustor Deposits.** FDSC shall remit all funds received from a Funeral Establishment, pursuant to a Trust Agreement or a Rollover Agreement, in accordance with the terms of this Agreement. With the initial deposit of funds from a Trustor under a Trust Agreement or Rollover Agreement, FDSC shall deliver to Trustee, along with the deposit, a copy of such agreement, the name and address of the Beneficiary thereof, and a statement setting forth the amount of the deposit and the date the Funeral Establishment received the deposit. For all other deposits, FDSC shall deliver to Trustee, along with the deposits, the Beneficiaries' names and statements setting forth the amounts of the deposits and the dates the Funeral Establishments received the deposits. FDSC will deliver all deposits to Trustee within thirty (30) days of the receipt by the Funeral Establishment of the funds, unless delayed by the Funeral Establishment's failure to remit funds to FDSC on a timely basis.

(4) **Trust Account Investment Reserve.** FDSC shall, as it deems reasonable necessary and prudent, direct Trustee to hold certain recognized and unrecognized gains on the Trust assets for the purpose of offsetting fluctuations in the investment marketplace in the Trust Account Investment Reserve. FDSC shall determine the amount of gains to be reserved in accordance with Generally Accepted Accounting Principles as determined in accordance with reasonable business practices and may, in its sole discretion, consult with the Trustee and other of FDSC's Agents regarding such reserve amounts.

(5) **Payouts on Trustors' Accounts.** To initiate a payout from the CMT, FDSC shall forward to Trustee, within two (2) business days of receipt from the Funeral Establishment, the following:

- (a) **For an At Need Trust.** A certified copy of the death certificate of the Beneficiary, or other satisfactory evidence of the death of the Beneficiary, and evidence satisfactory to FDSC that the Funeral Establishment has furnished the merchandise and services required under the Trust Agreement or Rollover Agreement.

(b) **For a Revoked Trust.** The Revocation Notice from the Trustor, the Trustor's legally appointed representative, or an authorized Beneficiary .

(c) **For a Cancelled Trust.** The Cancellation Notice from the Funeral Establishment.

FDSC and Trustee are each entitled to rely conclusively on the accuracy and authenticity of such CMT Program Agreements, including the exhibits, schedules, and amendments thereto, signatures, certificates, evidence, and notices, without further inquiry or investigation into the validity of the same, as provided for in this Agreement and in the other CMT Program Agreements.

(6) **Investment Advisor.**

(a) **Engage Investment Advisor.** FDSC shall hire one or more qualified Investment Advisors to invest and reinvest the CMT assets in accordance with the Investment Policy as amended from time to time by FDSC in consultation with the Trustee and FDSC's other consultants, if any.

(b) **Investment Advisor Agreement.** The Investment Advisor Agreement is entered into by and between FDSC and the Investment Advisor and governs the relationship between FDSC and the Investment Advisor. The Investment Advisor Agreement may be amended from time to time by FDSC in consultation with the Trustee and FDSC's other consultants, if any. A copy of any Investment Advisor Agreement shall be provided to the Trustee as agreed upon.

(c) **Investment Policy.** The Investment Policy sets forth the strategy and goals for the investment of the CMT assets. The Investment Policy shall be developed and adopted by FDSC, and amended from time to time by FDSC in consultation with the Trustee and FDSC's other consultants, if any. The Investment Policy is provided to the Investment Advisor and governs the Investment Advisor's investment of the CMT assets.

(7) **Trust Accounts Administrator, Consultants, Accountants and Auditors (collectively "FDSC's Agents").** FDSC may retain such agents as it, in its sole discretion, determine to be reasonable, necessary or prudent to assist it in carrying out its duties under this Agreement and the other CMT Program Agreements.

(a) **Trust Accounts Administrator.** FDSC may, in its sole discretion, engage and terminate an administrator for the CMT (hereinafter a "Trust Accounts Administrator"). FDSC shall submit a schedule, as amended from time to time by FDSC, to Trustee that shall list any such administrator and such administrator's agents upon whom Trustee is authorized to rely.

(b) **Legal Counsel.** FDSC may, in its sole discretion, retain such legal counsel as FDSC deems reasonable, necessary or prudent to review the CMT Program or issues related thereto. FDSC has no duty to engage legal counsel for such purposes. If legal counsel is engaged and reports are generated regarding the Trustee's or the

Investment Advisor's performance of its duties, FDSC agrees to provide a summary of such report to the Trustee or the Investment Advisor if FDSC, in its sole discretion, determines that such a disclosure is reasonable, necessary or prudent and will not waive any attorney-client privilege.

(c) **Consultants.** FDSC may, in its sole discretion, retain such consultants as FDSC deems reasonable, necessary or prudent to review the performance of Trustee and any Investment Advisors. FDSC has no duty to engage such a consultant for such purposes. If a consultant is engaged and reports are generated regarding the Trustee's or the Investment Advisor's performance of its duties, FDSC agrees to provide a summary of such report to the Trustee or the Investment Advisor if FDSC, in its sole discretion, determines that it may improve the Trustee's or Investment Advisor's performance of its duties.

(d) **Accountant/Auditor.** FDSC shall engage an independent CPA to annually audit the financial records of the Trust and account for the Trust receipts, disbursements, assets and income, including gains and losses (the "Audit Report"). The CPA shall report to FDSC and FDSC shall share with the Trustee the CPA's report. Both FDSC and the Trustee shall cooperate and reasonably provide access to necessary books and records and respond to any management letter concerns.

(D) **Duties and Responsibilities of Trustee.**

(1) **CMT Program Agreements.** Trustee agrees to be bound by the printed terms of the Trust Agreements, the Rollover Agreements and Transfer Agreements and shall be deemed a party to such agreements without separate execution thereof. Trustee agrees to allow its name and address to be printed on the Trust Agreements and Rollover Agreements and such printed name will serve as Trustee's signature. Trustee shall have the right to inspect such Trust Agreements, Rollover Agreements and Transfer Agreements, personally or through a representative, at the offices of FDSC, during ordinary business hours, with reasonable advance notice to FDSC.

(2) **General Duties of the Trustee.**

(a) **Custody and Safekeeping of Assets.** Trustee agrees that the CMT funds received by it pursuant to this Agreement and the CMT Program Agreements shall be held in one or more segregated custodial trust accounts of the Institutional Trust Department of Comerica Bank-California, 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 of Comerica Bank-California.

(b) **Former Trustee.** The Trustee shall become responsible for CMT funds it receives from the former trustee, and for CMT funds it receives pursuant to this Agreement and the CMT Program Agreements only when, as and if the same shall be received by it. To the extent the Trustee receives CMT funds from a former trustee, the Trustee shall have no liability whatsoever for the acts or omissions of the former trustee

and shall 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 CMT funds while that former trustee was acting.

(c) **Maintain Trust Account Records.** Trustee shall maintain Master Trust records as required under Section 1267 of Title 16 of the California Code of Regulations, as amended from time to time.

(d) **Monthly Investment and Transaction Report.** Trustee is responsible for accounting on a monthly basis for all collective receipts transferred by FDSC to the CMT, disbursements from the CMT, income earned on the CMT assets, and reporting on the investment activities of the CMT, including any gains or losses on investments (hereinafter the "Investment and Transaction Report"). Trustee shall provide FDSC with this report, which will contain Trustee's accounting statement reporting the collective receipts transferred by FDSC to the CMT, disbursements from the CMT, assets held by the CMT, income earned on the CMT assets, investment activities of the CMT, and gains or losses on investments held in the CMT. This report will be provided within ten (10) business days of each month's end to the Trust Accounts Administrator and, if directed by FDSC, a copy of this report will be provided to FDSC's Agents.

(e) **Monitoring Investment Advisor's Performance.** Provided that FDSC agrees to utilize the performance measurement services referenced in the Trustee Fee Agreement, Trustee shall monitor the performance by any Investment Advisor of its duties under the Investment Advisor Agreement, and Trustee shall advise FDSC regarding the prudence of such Investment Advisor's investment decisions and the reasonableness of the performance of the investments.

(f) **Quarterly Investment Performance Report.** Trustee is responsible for providing FDSC with a quarterly report, which will contain Trustee's evaluation of the performance of the investments made by the Investment Advisor with the CMT assets. This report will be provided within ten (10) business days of each third month's end, starting with March of 2002, and, if directed by FDSC, a copy of this report will be provided to FDSC's Agents.

(g) **Annual Investment, Transaction and Performance Report.** Trustee is responsible for providing FDSC with an annual report summarizing the Monthly Investment and Transaction Reports and the Quarterly Investment Performance Reports. This report will be provided within ten (10) business days of the year end (December 31) to the Trust Accounts Administrator and, if directed by FDSC, a copy of this report will be provided to FDSC's Agents.

(3) **General Powers of Trustee.** Trustee, in the administration of the CMT, the Trust Agreements, the Rollover Agreements, and the Transfer Agreements, has the following powers:

(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 shall pass by delivery. Trustee shall not to hold any Trust assets in its own name.

(c) To pay the Administrative Fees.

(d) To pay the Investment Advisor Fee.

(e) To establish a Trust Account Revocation Fee Reserve. Such reserve shall be established from the income earned on the corpus of each individual Trustor's Account in such amounts as set forth in each Trustor's Trust Agreement or Rollover Agreement. This reserve shall not exceed ten percent (10%) of the corpus of each Trustor's Account.

(f) To establish a Trust Account Investment Reserve. Such reserve shall be established from the recognized and unrecognized gains on the Trust assets for the purpose of offsetting fluctuations in the investment marketplace, as directed by FDSC from time to time. This reserve is and shall be maintained in accordance with Generally Accepted Accounting Principles as determined in accordance with reasonable business practices.

(g) To payout Trustors' Accounts as follows:

(i) **Trustor Initiated Payouts.**

a) **At-Need Trusts.** Trustee is authorized and directed, upon receipt from FDSC of a certified copy of the death certificate of the Beneficiary, or other satisfactory evidence of the death of the Beneficiary, and evidence that the Funeral Establishment has furnished the merchandise and services in accordance with the Trust Agreement, Rollover Agreement or Transfer Agreement, to deliver or cause to be delivered to FDSC the corpus and accrued income (if any), less Administrative Fees attributable to such Beneficiary's account, to FDSC within three (3) business days of receipt of.

b) **Revoked Trusts.** Trustee is authorized and directed, upon receipt from FDSC of a Revocation Notice by a Trustor, the Trustor's legally appointed representative or an authorized Beneficiary, to deliver or cause to be delivered to FDSC the corpus and accrued income (if any), less Administrative Fees and any Trust Account Revocation Fee Reserve attributable to such Trustor Account, within three (3) business days of receipt of the Revocation Notice, which shall in no event occur more than fifteen (15) days after the Funeral Establishment receives notice of a Notice of Revocation unless the delay is due to the Funeral Establishment's failure to remit such notice on a time basis or the notice is in insufficient form.

(ii) **Funeral Establishment Initiated Payouts; Cancelled Trusts.** Trustee is authorized and directed, upon receipt from FDSC of a Cancellation Notice by the Funeral Establishment, to deliver or cause to be delivered to FDSC the corpus and accrued income (if any), less Administrative Fees and any other applicable fee, within three (3) business days of receipt of the Cancellation Notice.

(4) **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;

(c) Those persons executing this Agreement on behalf of Trustee are legally authorized to execute it; and

(d) This Agreement is a binding obligation on Trustee and does not violate the terms of any other agreement to which Trustee is a party.

(E) **Additional Duties and Responsibilities of FDSC and Trustee.**

(1) **Monthly, Quarterly, and Annual Reports.** FDSC, or a committee of the Board of Directors (the "Board"), shall:

(a) **Monthly Review of Reports.** Review the Investment and Transaction Report, referenced in section (D)(2)(d), on a monthly basis. Review other reports that may be generated or provided from other sources on other frequencies agreed to by the Parties from time to time. FDSC and Trustee shall promptly advise each other of any problems or irregularities they have observed or other concerns that they have in reference to the substance of the Investment and Transaction Report, the Annual Investment, Transaction and Performance Report, the Accounting Report, and Audit Report.

(b) **Quarterly Review of Reports.** Review the Quarterly Investment Performance Report, subject to being provided with such report from Trustee in accordance with sections (D)(2)(e)-(f), on a quarterly basis.

(c) **Annual Review of Reports, Accounting, and Audit.** Review the Annual Investment, Transaction and Performance Report, Accounting Report, and Audit Report on an annual basis.

Additionally, FDSC and Trustee shall meet and confer at least at each Board meeting regarding the investment performance and Trustee shall advise FDSC of any

modification, changes or suggestions that Trustee, in its professional judgment, would recommend.

(2) **Investment Policy.**

(a) **Review of Investment Policy.** FDSC and the Trustee shall, when reviewing the monthly, quarterly and annual reports, discussed above, review the Investment Policy as is reasonable, necessary or prudent. FDSC and Trustee further agree to inform each other in writing of any change of circumstances that may reasonably necessitate a revision of the Investment Policy. Trustee shall meet and confer with FDSC at least at each Board meeting regarding the propriety of the Investment Policy under then existing circumstances and any modifications or changes that Trustee, in its professional judgment, would recommend. FDSC shall consult with the Trustee when reviewing or revising the Investment Policy.

(b) **Annual Review of Investment Policy.** FDSC agrees to annually review the Investment Policy to determine if a revision of the Investment Policy is reasonably necessary or prudent to meet the needs of the CMT and the CMT Program or to maintain compliance with California law. FDSC shall consult with the Trustee and FDSC's Agents, if any, when reviewing or revising the Investment Policy.

(3) **Communications.** Trustee agrees to regularly meet with the Board, committees formed by the Board, and the Trust Accounts Administrator for administrative, informational and educational purposes to assist the Board.

(4) **California Preneed Funeral Trust Law.** FDSC and Trustee shall each be responsible, at their own cost, for maintaining compliance with the provisions of California law that relate to the preneed funeral trust industry (hereinafter the "California Preneed Funeral Trust Law:), including but not limited to California Business and Professions Code Sections 7735, et. seq., Title 16 of the California Code of Regulations Sections 1261, et. seq., California Health and Safety Code Sections 7100 and 7100.1, and California Probate Code Sections 15000, et. seq. If FDSC and Trustee disagree as to the interpretation of a provision of California Preneed Funeral Trust Law, FDSC and Trustee agree to resolve the disagreement by relying upon the interpretation provided in an opinion letter from reputable counsel that is knowledgeable about California Preneed Funeral Trust Law and independent from both FDSC and Trustee or seeking written guidance from the Department of Consumer Affairs.

(F) **Change of Trustee.**

(1) **Removal of Trustee.** FDSC may remove Trustee, with or without cause, by giving Trustee ninety (90) days advance written notice ("Notice of Removal"). The ninety (90) days shall commence on the day the Notice of Removal is emailed or faxed to Trustee, with a hard copy confirmation sent by first class mail, or three (3) days after the Notice of Removal is mailed by first class mail, postage prepaid.

(2) **Resignation of Trustee.** Trustee may resign as Trustee by giving FDSC ninety (90) days advance written notice ("Notice of Resignation"). The ninety (90) days will commence upon FDSC's actual receipt of the Notice of Resignation.

(3) **Successor Trustee.**

(a) **Qualified Successor Trustee.** Upon resignation or removal of Trustee, FDSC agrees to use good faith and to exert reasonable efforts to find a qualified successor trustee ("Successor Trustee"). Trustee agrees, as reasonably appropriate, to cooperate with and to assist FDSC in finding a qualified Successor Trustee. Trustee is not obligated, however, to secure such a substitute. Trustee will be entitled to rely upon the representations of FDSC that the Successor Trustee engaged by FDSC is qualified to act as a trustee of a preneed funeral trust under California law.

(b) **Court Appointed Successor Trustee.** If FDSC fails to appoint a successor Trustee within ninety (90) days of Trustee's resignation, then Trustee may, 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. Trustee will be responsible for paying all costs associated with such a petition from their Trustee Fee. FDSC agrees to be bound by any court decision designating a Successor Trustee or Successor Trustees regardless of whether such Successor Trustee or Successor Trustees are nominated by FDSC. In any event, however, such Successor Trustee shall agree to the terms and conditions of this Agreement.

(c) **Extension of Time to Appoint Successor Trustee.** If FDSC obtains a binding commitment from a banking institution or trust company qualified to act as the Successor Trustee during the ninety (90) day period, Trustee agrees to continue to serve as Trustee for a reasonable period of time following the expiration of the ninety (90) day period as reasonably necessary to allow for the substitution of the Successor Trustee; provided, however, that Trustee will not be required to serve for more than sixty (60) days beyond the expiration of the ninety (90) day period.

(d) **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 CMT assets as directed by the Successor Trustee.

(ii) **Final Accounting.** Trustee shall provide a final accounting to FDSC and the Successor Trustee upon its transfer of the CMT assets to the Successor Trustee.

(iii) **Report Change of Trustee.** FDSC shall advise the California Department of Consumer Affairs within thirty (30) days of any change in Trustee.

(e) **Release.** Upon the transfer of the CMT assets and provision of the final accounting, Trustee will be fully discharged and relieved of any future responsibility with respect to the future operations of the CMT. Trustee is not responsible or liable for acts or inactions by the predecessor trustees or any Successor Trustees.

(f) **Indemnity.** Trustee, upon resignation or termination, agrees to hold harmless, indemnify and defend, including attorneys fees and costs, all Successor Trustees for Trustee's acts or inactions while Trustee of the CMT.

(G) **Proprietary Information and Materials.**

(1) **Proprietary Materials.** Proprietary Materials collectively refers to the following: FDSC 's ownership of all right, title and interest to the California Master Trust™ name, which is a registered trademark of FDSC, the California Master Trust™ Program and concept, which is unique and proprietary to FDSC, and all related information and materials, including without limitation, all forms, including all Trust Agreements, Rollover Agreements, Transfer Agreement and Enrollment Agreements, all data files, all customer lists, Trustor lists, Beneficiary lists or membership lists, all names, logos, designs developments, ideas, improvements, know-how, process, programs and techniques, whether or not patentable or registrable under copyright, trademark or similar statutes, and all designs, trademarks and copyrightable works made, conceived, or reduced to practice by FDSC or its agents are related to or useful in the business of the California Master Trust™ and California Master Trust™ Program, or to FDSC's actual or demonstrably anticipated design, development, program or marketing activities.

(2) **Use by Trustee.** Trustee shall not use any Proprietary Materials except as reasonably necessary to perform its duties and responsibilities under this Agreement or as otherwise provided for by FDSC in writing or under this Agreement.

(3) **Retention of Rights.** FDSC retains all rights, title and interest in the Proprietary Materials, including, but not limited to, all copyrights, trademarks, patents and other intellectual property rights therein. FDSC retains all rights to license, sell, assign, transfer, reproduce, distribute, perform or display Proprietary Materials and any derivative works based on the Proprietary Materials, as well as all other rights, privileges, and remedies granted or reserved to a copyright and trademark owner under the laws of the United States.

(4) **Post-Termination and Enforcement Rights.** Upon termination of this Agreement, all rights of Trustee to use any Proprietary Materials shall automatically terminate. Trustee shall return all Proprietary Materials to FDSC and shall not use such Proprietary Materials in any manner. Trustee acknowledges that any breach or threatened breach of this Agreement shall result in immediate and irreparable harm to FDSC and the CMT and CMT Program for which there will be no adequate remedy at law, and that FDSC shall be entitled to injunctive relief restraining Trustee from violating this Agreement or to compel Trustee to cease and desist all unauthorized use or disclosure of the Proprietary Materials, without posting bond or other security.

**(H) Miscellaneous.**

(1) **Entire Agreement.** This document, including the exhibits and schedules hereto, and which incorporates the printed terms of the Trust Agreements, the Rollover Agreements, the Transfer Agreements, and the Enrollment 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 agrees to incorporate herein any amendments made to these agreements, as implemented by FDSC to comply with federal or California law, regulations or rules, or as reasonably necessary for operation of the CMT Program.

(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 Party against whom enforcement of the modification is sought.

(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 effect 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

(4) **Nonassignability.** 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 one hundred twenty (120) days advance written notice to FDSC.

(5) **Succession.** Subject to the provisions otherwise contained in this Agreement, this Agreement shall inure to the benefit of and be binding on the successors and assigns of the Parties hereto.

(6) **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.

(7) **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 Parties at the addresses set forth below 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 FDSC:                      Funeral Directors Service Corporation  
   P.O. Box 1700  
   Folsom, CA 95763-1700  
   Attn: Debbe Dreher**

**With a copy to:** Michael A. Kvarme, Esq.  
Pillsbury Winthrop LLP  
400 Capitol Mall, Suite 1700  
Sacramento, CA 95814

**If to Trustee:** California Master Trust  
c/o Comerica Bank-California  
Institutional Trust  
MC 4195, PO Box 2249  
San Jose, CA 95109-2249

(8) **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.

(9) **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.

(10) **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 California Business and Professions Code Sections 7735, et. seq., and Title 16 of the California Code of Regulations Sections 1261, et. seq., and California Probate Code Sections 15000, et. seq., and those sections as they may from time to time be amended.

(11) **Agreement to Govern.** In the case of any conflict between the terms of this Agreement and any Trust Agreement, Rollover Agreement, Transfer Agreement, Enrollment 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.

(12) **Cumulative Remedies.** No remedy or election hereunder shall be deemed exclusive, but shall whenever possible be cumulative with all other remedies at law or in equity.

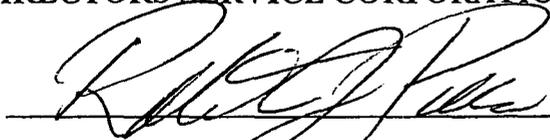
(13) **Other Trust Activities.** Trustee may act as trustee for other preneed funeral trusts but Trustee is not authorized nor entitled to participate in the creation of competing preneed funeral trust programs or to provide any Proprietary Materials or any other materials or information regarding the CMT or the CMT Program to any third party, unless otherwise required by law.

(14) **Use of Trustee's Name.** Trustee's name will not be used by any Funeral Establishments or FDSC in any advertising or promotional material, nor will they use Trustee's name for any other business purpose, other than those related to the CMT Program, without the express written consent of Trustee. FDSC agrees to provide Trustee with copies of all documents wherein Trustee's name is used.

IN WITNESS WHEREOF, the Parties hereto have executed this MASTER TRUST AGREEMENT OF CALIFORNIA MASTER TRUST™ on February 15, 2002, being the Effective Date set forth herein.

**FUNERAL DIRECTORS SERVICE CORPORATION**

By:



**ROBERT J. PIERCE, PRESIDENT**

**COMERICA BANK-CALIFORNIA**

By:



**ROBERT H. GAJEWSKI, SENIOR VICE PRESIDENT**

**MANAGER, INSTITUTIONAL TRUST DEPARTMENT**

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**Exhibit 2**  
**Sample Enrollment Agreement**



## CALIFORNIA MASTER TRUST™ ENROLLMENT AGREEMENT

THIS CALIFORNIA MASTER TRUST™ ENROLLMENT AGREEMENT (the "Enrollment Agreement") is entered into by and between \_\_\_\_\_ ("Funeral Establishment") and FUNERAL DIRECTORS SERVICE CORPORATION, the California Master Trust™ Program Administrator, P.O. Box 1700, Folsom, CA 95763 ("FDSC" or "Program Administrator"), (collectively the "Parties"), who agree as follows:

### OVERVIEW

- A. **Creation of the California Master Trust™.** FDSC created the California Master Trust™ (hereinafter the "CMT" or "Trust"), a preneed funeral trust, for the purpose and upon the terms and conditions set forth in this Agreement and the other CMT Program Agreements, described below. The name California Master Trust™ is a California registered trademark of FDSC.
- B. **California Master Trust™ Program.** Various funeral establishment members of the California Funeral Directors Association are enrolled in the CMT preneed funeral trust program (the "CMT Program"), (hereinafter "Members" or "Funeral Establishments"). The Funeral Establishments enter into various agreements provided by the CMT Program with individuals desiring to provide for funeral merchandise and services in advance of need (hereinafter the "Trustor" or "Trustors"). Under these agreements FDSC is appointed as the Program Administrator and the trustee of the CMT (the "Trustee") is appointed as the trustee of the Trustors' individual trusts created by the execution of California Master Trust™ Preneed Funeral Trust Agreements or California Master Trust™ Rollover Agreements, defined below. The CMT Program Agreements are as follows:
1. **Master Trust Agreement of California Master Trust™.** The Master Trust Agreement of California Master Trust™ is executed by and between FDSC and the Trustee, and governs the relationship between FDSC and the Trustee. The Master Trust Agreement also sets forth the duties and responsibilities of FDSC and the Trustee to the Trustors, the Beneficiaries, the Funeral Establishments, and the CMT Program (the "Master Trust Agreement") and governs the overall relationship among FDSC, the Trustee, the Trustors, the Beneficiaries, and the Funeral Establishments. This Master Trust Agreement is either referred to or incorporated by reference into the other CMT Program Agreements. A specimen copy of the Master Trust Agreement is attached as Exhibit A.

2. **California Master Trust™ Enrollment Agreement.** The California Master Trust™ Enrollment Agreement is executed by and between FDSC and a Funeral Establishment and governs the relationship between FDSC and the Funeral Establishment (the "Enrollment Agreement" or this "Agreement"). The Enrollment Agreement also sets forth the duties and responsibilities of FDSC and the Funeral Establishment to the Trustors, the Beneficiaries, the Trustee, and the CMT Program.

3. **California Master Trust™ Preneed Funeral Trust Agreement.** The California Master Trust™ Preneed Funeral Trust Agreement is executed by and between a Funeral Establishment and a Trustor, wherein FDSC and the Trustee are also parties, to provide for funeral merchandise and services in advance of need for the benefit of the Trustor or another named beneficiary ("Beneficiary"), (the "Trust Agreement"). A specimen copy of such Trust Agreement is attached as Exhibit B.

4. **California Master Trust™ Preneed Funeral Trust Rollover Agreement.** The California Master Trust™ Rollover Agreement is executed by and between a Funeral Establishment and a Trustor, wherein FDSC and the Trustee are also parties, to substitute the Trustee in place of the current trustee of the Trustor's preneed funeral trust (the "Rollover Agreement"). A specimen copy of such Rollover Agreement is attached as Exhibit C.

5. **California Master Trust™ Preneed Funeral Trust Transfer Agreement.** The California Master Trust™ Transfer Agreement is executed by and between a current Funeral Establishment, a new Funeral Establishment, and a Trustor to replace the current Funeral Establishment, named in the Trustor's Trust Agreement, Rollover Agreement, or earlier Transfer Agreement, with the new Funeral Establishment (the "Transfer Agreement"). A specimen copy is attached as Exhibit D.

FDSC and Trustee shall amend the CMT Program Agreements from time to time as reasonably necessary to comply with changes in law or changed business conditions or practices and Funeral Establishment shall comply therewith.

## AGREEMENT

1. **Enrollment of Funeral Establishment.** FDSC hereby enrolls Funeral Establishment, and Funeral Establishment hereby accepts enrollment, as a Member of the CMT Program, pursuant to the terms and subject to the conditions set forth herein. The Overview set forth above is hereby incorporated in its entirety into this Agreement.

2. **Acknowledgement of Nature of Trust Program.** Funeral Establishment acknowledges that FDSC provides the CMT Program services to Funeral Establishment as a convenience and that FDSC does not guaranty any return or a particular rate of return on any of the Trustors' funds remitted to the Trustee. This Enrollment Agreement is a contract for goods and services and no significant portion is related to investment. The Trust is not a "security" under Federal and California law and is not a collective investment. Funeral Establishment further agrees not to represent to any Trustor or potential Trustor that participation in the Master Trust Program

will yield a particular rate of return or constitutes a particular investment portfolio, or to promote participation in the Trust as a "good investment."

3. **Duties and Responsibilities of the Trustee.** Funeral Establishment understands and acknowledges that FDSC has entered into a Master Trust Agreement, on behalf of the Trustors, the Beneficiaries, and the Funeral Establishments, with three qualified trustees or with a banking institution or trust company qualified to handle trust funds in California, wherein the Trustee or Trustees have agreed to act as the trustee or trustees of the California Master Trust™ and to safeguard the funds remitted to the California Master Trust™ in accordance with the CMT Program Agreements (hereinafter the "Trustee"), a specimen copy of which is attached hereto as Exhibit A.

FDSC hereby reserves the right, in its sole discretion, to amend the Master Trust Agreement from time to time and to remove the Trustee or accept the resignation of the Trustee and to appoint a successor Trustee or Trustees, without notice to or the consent of the Funeral Establishments, the Trustors, or the Beneficiaries. FDSC further reserves the right to appoint and remove investment advisors engaged to assist in the management of the Trust, to approve the Investment Policy, defined below, to be provided to and used by the investment advisors to make investment decisions, and to retain agents as reasonable, necessary, or prudent to carry out its duties including, but not limited to, a Trust Accounts Administrator for the Trust and independent auditors to prepare annual audits of Trust records. FDSC shall exercise reasonable business judgment in exercising this power but shall only be liable for liability caused by FDSC's willful misconduct or gross negligence.

FUNERAL ESTABLISHMENT ACKNOWLEDGES THAT IT HAS RECEIVED A COPY OF THE SIGNED MASTER TRUST AGREEMENT AND, BY SIGNING THIS ENROLLMENT AGREEMENT, FUNERAL ESTABLISHMENT CONSENTS TO FDSC ACTING AS ITS AGENT FOR THE FOREGOING STATED PURPOSES.

4. **Duties and Responsibilities of the Funeral Establishment.** Funeral Establishment's continued enrollment and participation as a Member in the California Master Trust™ Program is expressly conditioned upon the following:

a. **Qualified Funeral Establishment.** Funeral Establishment warrants and represents that Funeral Establishment is a member in good standing of the California Funeral Directors Association ("CFDA") and is a funeral establishment validly licensed in California to engage in the business of providing funeral merchandise and services to consumers. Funeral Establishment further represents and warrants that Funeral Establishment will remain a member in good standing of CFDA and will maintain a valid license in California to engage in the business of providing funeral merchandise and services to consumers.

b. **California Master Trust™ Program Agreements.** Funeral Establishment will use only the current Trust Agreements, Rollover Agreements, Transfer Agreements, and Master Trust Agreements provided to Funeral Establishment by FDSC when entering into agreements with members of the general public for funeral merchandise and services in advance of need. Funeral Establishment will use and comply with all procedures, agreements, and restrictions set forth herein and in the other CMT Program Agreements.

If this Enrollment Agreement is terminated for any reason, that Funeral Establishment will cease using all CMT Program Agreements and collateral material immediately and return them to FDSC, as provided for more fully below.

c. **Furnishing Merchandise and services.** Funeral Establishment will honor the commitments and obligations specified in the Trust Agreements, the Rollover Agreements, and the Transfer Agreements that it is a party to by furnishing the funeral merchandise and services as called for in the Statement of Funeral Goods and Services Selected attached to and incorporated into the Trust Agreements and Rollover Agreements.

d. **Remit Funds to FDSC.** Funeral Establishment shall remit all funds received from Trustors pursuant to Trust Agreements, Rollover Agreements, and Transfer Agreements to FDSC within ten (10) days of receipt by the Funeral Establishment. The funds will be deposited with the Trustee in trust and held, managed and disbursed in accordance with the CMT Program Agreements.

i. **Initial Deposits.** Funeral Establishment shall submit to FDSC, along with the initial payment of funds, also referred to as a deposit, from a Trustor under a Trust Agreement or Rollover Agreement, a copy of such agreement, the name and address of the Trustor and Beneficiary thereof, and a statement setting forth the amount of the deposit and the date the Funeral Establishment received the deposit.

ii. **Subsequent Deposits.** Funeral Establishment shall submit to FDSC, along with each subsequent payment of funds, also referred to as a deposit, from a Trustor under a Trust Agreement, Rollover Agreement or Transfer Agreement, a statement setting forth the name of the Trustor and the Beneficiary, the amount of the deposit, and the date the Funeral Establishment received the deposit.

FDSC will thereafter deliver all deposits and information received by it from a Funeral Establishment to Trustee within thirty (30) days of the receipt by the Funeral Establishment of the funds from the Trustor, unless delayed by the Funeral Establishment's failure to remit such deposits to FDSC on a timely basis.

e. **Revocation/Cancellation of Trusts.** Trust Agreements, Rollover Agreements, and Transfer Agreements may be revoked by Trustors, or revoked by the Funeral Establishment, pursuant to the Trust Agreements or Rollover Agreements by submission of a Notice of Revocation, to FDSC.

i. **Submit Notice of Revocation.** Funeral Establishment is required to submit each Notice of Revocations to FDSC within one-three (1-3) business days of receipt of such Notice of Revocation from the Trustor, the Trustor's legally appointed representative, or an authorized Beneficiary. Funeral Establishment understands that FDSC and Trustee are entitled to rely conclusively on the accuracy and genuineness of such agreements, information, signatures, certificates, evidence, and notices, without further inquiry or investigation.

ii. **Submit Notice of Revocation.** Funeral Establishment may submit a Notice of Revocation to FDSC who will forward such notice to the Trustee. Funeral Establishment understands that FDSC and Trustee are entitled to rely conclusively on the accuracy and genuineness of such agreements, information, signatures, certificates, evidence, and notices, without further inquiry or investigation.

iii. **Remit Funds to Trustor.** Funeral Establishment is required to remit the Trustor's funds to the Trustor no later than fifteen (15) days from receipt of the written Notice of Revocation, unless California law provides otherwise.

f. **Payment Upon Provision of Services.** Upon the Funeral Establishment's provision of services as provided for in Trust Agreement, Rollover Agreement or Transfer Agreement, pursuant to which Funeral Establishment is entitled to a disbursement from the Trust, Funeral Establishment is required to do the following within one to three (1-3) days of providing such services:

i. submit certified copies of death certificates of Beneficiary or other evidence satisfactory to FDSC of the death of the Beneficiary; and

ii. evidence satisfactory to FDSC that Funeral Establishment has furnished the merchandise and services set forth in the Preneed Funeral Trust Agreement, the Rollover Agreement or the Transfer Agreement ("Notice of Provision of Services"), pursuant to which Funeral Establishment shall (1) attest to the fact that services were provided as required under such agreement; and (2) obtain a written verification from the Trustor or a member of the decedent's family specified under California Health and Safety Code Section 7100, or successor thereto, that services were provided in accordance with such agreement or attest that no such family member was reasonably available to provide such verification.

In the alternative, if the services were not provided for as set forth in the Trust Agreement, Rollover Agreement or Transfer Agreement, Funeral Establishment will be required to notify FDSC of the circumstances attendant to Funeral Establishment's inability or failure to provide such services.

g. **Reliance on Funeral Establishment.** Funeral Establishment warrants and represents that all CMT Program Agreements, including the exhibits, schedules, and amendments thereto, signatures, certificates, evidence, and notices, and all other materials and information, provided by the Funeral Establishment to FDSC and Trustee pursuant to the terms of this Enrollment Agreement and the other CMT Program Agreements will be accurate and genuine. Funeral Establishment hereby acknowledges that FDSC and Trustee shall be entitled to rely conclusively on the accuracy and genuineness of such CMT Program Agreements, including the exhibits, schedules, and amendments thereto, signatures, certificates, evidence, and notices, and all other materials and information, provided by the Funeral Establishment to FDSC and Trustee.

h. **Compliance With Law.** Funeral Establishment will comply fully with all requirements of law relating to pre-need funeral trust arrangements and the delivery of funeral merchandise and services including but not limited to:

i. **Compliance With California Preneed Law.** Funeral Establishment and its agents will comply fully with all requirements of California law relating to pre-need funeral arrangements ("California Preneed Funeral Trust Law"), including but not limited to Business and Professions Code sections 7735, *et. seq.*, Title 16 of the California Code of Regulations section 1261, *et. seq.*, and Health and Safety Code sections 7100 and 7100.1.

ii. **Compliance with California Law.** Funeral Establishment and its agents will comply fully with all requirements of California law, including but not limited to the Funeral Establishments and Embalmers Law, Business and Professional Code sections 7600, *et. seq.*, and regulations thereunder.

iii. **Licenses and Permits.** Funeral Establishment is required to maintain all necessary licenses and permits for performance of services, as required under California law, including but not limited to the provisions of California Business and Professions Code, Division 3, Chapter 12, Article 9 (relating to preneed funeral arrangements), regulations thereunder and other applicable laws and regulations.

iv. **Federal Law.** Funeral Establishment will comply fully with all requirements of Federal law relating to pre-need funeral arrangements and the provision of funeral merchandise and services, including but not limited to 15 USC 57a, 15 USC 46(g), 5 USC 552 and regulations thereunder including The Funeral Rule, Part 453, Section 453, *et. seq.*

i. **Use of Trustee's Name.** Funeral Establishment will not use the Trustee's name, including a successor Trustee's name, in any advertising or promotional material without the express written consent of FDSC and the Trustee which may be withheld in their sole and absolute discretion. Funeral Establishment will make no representation to anyone respecting Trustee's role other than as appears expressly on the Trust Agreements, the Rollover Agreement, the Transfer Agreement, and the California Master Trust™ Agreement. This provision is for the benefit of the Trustee and shall be enforceable by Trustee in law and in equity.

j. **Indemnification of FDSC and Trustee.** Funeral Establishment is required to hold harmless, defend and indemnify FDSC and Trustee from any claim, loss, liability, damage or expense including reasonable costs and attorneys fees resulting from the following:

i. Funeral Establishment's failure to comply with the terms of the Enrollment Agreement and the failure of any representation and warranty by Funeral Establishment hereunder;

ii. Funeral Establishment's failure to comply with the terms of the Trust Agreement, Rollover Agreement or Transfer Agreement;

iii. Funeral Establishment's acts or inactions relating to the CMT Program Agreements or the provision of services thereunder;

iv. Funeral Establishment's noncompliance with any applicable federal, state or local laws, regulations or rules; and

v. Any investment losses, except those due to FDSC or Trustee's gross negligence or willful misconduct, including without limitations, gross negligence or willful misconduct relating to engaging investment advisors and establishing or revising the CMT Investment Policy, defined below, and any investment decisions or the rate of return on Trust investments realized thereunder.

5. **Duties and Responsibilities of FDSC.**

a. **California Master Trust™ Program Agreements.** FDSC will make available to Funeral Establishment the CMT Program Agreements for Funeral Establishment's use in establishing or maintaining trusts for customers who desire to select funeral merchandise and services in advance of need.

i. **Master Trust Agreement.** The Master Trust Agreement is incorporated by reference into the Trust Agreement and the Rollover Agreement. FDSC agrees to deliver, or cause to be delivered, a copy of this Agreement to each Funeral Establishment promptly after the Effective Date of the Master Trust Agreement and to make copies available to the Funeral Establishment for distribution to each new Trustor upon the execution of each new Trust Agreement, Rollover Agreement and Transfer Agreement. FDSC further agrees to make copies of the Master Trust Agreement available to all other Trustors upon request.

ii. **Trust Agreements, Rollover Agreements, and Transfer Agreements.** FDSC agrees to be bound by the printed terms of the Trust Agreements, Rollover Agreements, and Transfer Agreements and understands that it shall be deemed a party to all such agreements without separate execution thereof. FDSC further agrees to allow their name and address to be printed on the Trust Agreements and Rollover Agreements and further understands that this will serve as their signature for purposes of those agreements. Under no circumstances shall FDSC be deemed the trustee of the Trustor Accounts or the CMT, or be deemed to have the duties of a trustee, implied or otherwise, under any of the CMT Program Agreements. Nor shall FDSC be deemed the Trustor under any of the CMT Program Agreements.

b. **California Master Trust™ Procedures.** FDSC will comply with all procedures, agreements, and restrictions set forth herein and in the other CMT Program Agreements, all of which are incorporated herein by reference

c. **Records and Accounts.** FDSC and FDSC's Trust Accounts Administrator, defined below, shall be responsible for the establishment and maintenance of all Trust Account records respecting the Trustors' Accounts. FDSC and FDSC's Trust Accounts Administrator shall also be responsible for recording the pro rata share of the net current income earned on the CMT assets to each Trustor's Account based on income statements provided by Trustee, or its agents, or by an Investment Advisor, and for the timely periodic transmission of deposits received from the Funeral Establishment to the Trustee. FDSC is also responsible for preparing:

- i. the federal and state tax forms necessary for each Trustor;
- ii. federal and state fiduciary income tax returns for Trustee relating to the CMT Program;
- iii. an annual Audit Report, defined below, for the CMT; and
- iv. annual reports to the Department of Consumer Affairs.

d. **Trustor Deposits.** FDSC shall remit all funds received from the Funeral Establishment, pursuant to a Trust Agreement, Rollover Agreement, or Transfer Agreement in accordance with the terms of this Agreement. With the initial deposit of funds from a Trustor under a Trust Agreement or Rollover Agreement, FDSC shall deliver to Trustee, along with the deposit, a copy of such agreement, the name and address of the Beneficiary thereof, and a statement setting forth the amount of the deposit and the date the Funeral Establishment received the deposit. For all other deposits, FDSC shall deliver to Trustee, along with the deposits, the Beneficiaries' names and statements setting forth the amounts of the deposits and the dates the Funeral Establishments received the deposits. FDSC will deliver all deposits to Trustee within thirty (30) days of the receipt by the Funeral Establishment of the funds, unless delayed by the Funeral Establishment's failure to remit funds to FDSC on a timely basis.

e. **Trust Account Investment Reserve.** FDSC shall, as it deems reasonable necessary and prudent, direct Trustee to hold certain recognized and unrecognized gains on the Trust assets for the purpose of offsetting fluctuations in the investment marketplace in the Trust Account Investment Reserve. FDSC shall determine the amount of gains to be reserved in accordance with Generally Accepted Accounting Principles as determined in accordance with reasonable business practices and may, in its sole discretion, consult with the Trustee and other of FDSC's Agents, defined below, regarding such reserve amounts.

f. **Payouts on Trustors' Accounts.** To facilitate a payout from the CMT, FDSC shall forward to Trustee, within two (2) business days of receipt from the Funeral Establishment, the following:

- i. **For an At Need Trust.** A certified copy of the death certificate of the Beneficiary, or other satisfactory evidence of the death of the Beneficiary, and evidence satisfactory to FDSC that the Funeral Establishment has furnished the

merchandise and services required under the Trust Agreement or Rollover Agreement.

ii. **For a Revoked Trust.** The Notice of Revocation from the Trustor, the Trustor's legally appointed representative, or an authorized Beneficiary .

iii. **For a Cancelled Trust.** The Notice of Cancellation from the Funeral Establishment.

g. **Investment Advisor.**

i. **Engage Investment Advisor.** FDSC shall hire one or more qualified Investment Advisors to invest and reinvest the CMT assets in accordance with the Investment Policy as amended from time to time by FDSC in consultation with the Trustee and FDSC's other consultants, if any.

ii. **Investment Advisor Agreement.** The Investment Advisor Agreement is entered into by and between FDSC and the Investment Advisor and governs the relationship between CMT and the Investment Advisor. The Investment Advisor Agreement may be amended from time to time by FDSC in consultation with the Trustee and FDSC's other consultants, if any.

iii. **Investment Policy.** The Investment Policy sets forth the strategy and goals for the investment of the CMT assets. The Investment Policy shall be developed and adopted by FDSC, and amended from time to time by FDSC in consultation with the Trustee and FDSC's other consultants, if any. The Investment Policy is provided to the Investment Advisor and governs the Investment Advisors Investment of the CMT assets.

h. **Trust Accounts Administrator, Consultants, Accountants and Auditors (collectively "FDSC's Agents").** FDSC may retain such agents as it, in its sole discretion, determine to be reasonable, necessary or prudent to assist it in carrying out its duties under this Agreement and the other CMT Program Agreements.

i. **Trust Accounts Administrator.** FDSC may, in its sole discretion, engage and terminate an administrator for the CMT (hereinafter a "Trust Accounts Administrator").

ii. **Legal Counsel.** FDSC may, in its sole discretion, retain such legal counsel as FDSC deems reasonable, necessary or prudent to review the CMT Program or issues related thereto. FDSC has no duty to engage legal counsel for such purposes.

iii. **Consultants.** FDSC may, in its sole discretion, retain such consultants as FDSC deems reasonable, necessary or prudent to review the

performance of Trustee and any Investment Advisors. FDSC has no duty to engage such a consultant for such purposes.

iv. **Accountant/Auditor.** FDSC shall engage an independent CPA to annually audit the financial records of the Trust and account for the Trust receipts, disbursements, assets and income, including gains and losses (the "Audit Report").

i. **Compliance With California Law.** FDSC and its agents will comply fully with all requirements of California law relating to pre-need funeral arrangements ("California Preneed Funeral Trust Law"), including but not limited to Business and Professions Code sections 7735, *et. seq.*, Title 16 of the California Code of Regulations section 1261, *et. seq.*, and Health and Safety Code sections 7100 and 7100.1.

6. **Administrative Fees.** California Preneed Funeral Law authorizes the payment of administrative fees from the current income of a preneed funeral trust. Administrative Fees, hereinafter, shall collectively mean the FDSC Fee, the Trustee Fee, and the Investment Advisor Fee. FDSC is authorized to pay Administrative Fees to the extent authorized by California law from the current income of the CMT.

a. **FDSC Fee.** The fee to be paid to FDSC shall be an amount equal to the maximum amount authorized under California law to be paid as an administrative fee for a preneed funeral trust, the Administrative Fee. This fee shall be paid to FDSC for the administrative services rendered to the CMT by FDSC and FDSC's Trust Accounts Administrator, Consultants, Accountant, Legal Counsel, and Auditor and all other costs related thereto, as discussed more fully below. In the event FDSC has received fees in excess of that allowed by California law, such excess will be immediately restored to the CMT.

b. **Trustee Fee.** The fee to be paid to the Trustee shall be an amount equal to a reasonable percent of the current income of the CMT, as agreed to in writing by FDSC and Trustee, payable from the Administrative Fee (except when and to the extent that the current income of the CMT does not exceed the administrative costs incurred by FDSC to operate the CMT Program), as set forth in that separate Trustee Fee Agreement incorporated herein by reference, as amended from time to time as agreed to by FDSC and the Trustee. The Trustee Fee will be paid to the Trustee by FDSC. In the event the Trustee has received fees in excess of that allowed by California law, such excess will be immediately restored to the CMT.

c. **Investment Advisor Fee.** The fee to be paid to the Investment Advisor shall be an amount equal to a reasonable percent of the current income of the CMT, as reasonably agreed to in writing by FDSC and the Investment Advisor, payable from the Administrative Fee (except when and to the extent that the current income of the CMT does not exceed the administrative costs incurred by FDSC to operate the CMT Program), as set forth in the Investment Advisor Fee Agreement, as amended from time to time as agreed to by FDSC and the Investment Advisor. The Investment Advisor Fee will be paid to the Investment Advisor by FDSC. In the event the Investment Advisor has received fees in excess of that

allowed by California law, such excess will be immediately restored to the CMT. The Investment Advisor Fee shall not include such additional fees, costs, or charges incurred by the Investment Advisor as a result of the investment of the CMT assets in a mutual fund or fund of a similar nature.

**7. Proprietary Information and Materials.**

a. **Proprietary Materials.** Proprietary Materials collectively refers to the following: FDSC's ownership of all right, title and interest to the California Master Trust™ name, which is a registered trademark of FDSC, the California Master Trust™ Program and concept, which is unique and proprietary to FDSC, and all related information and materials, including without limitation, all forms, including all Trust Agreements, Rollover Agreements, Transfer Agreement and Enrollment Agreements, all data files, all customer lists, Trustor lists, Beneficiary lists or membership lists, all names, logos, designs developments, ideas, improvements, know-how, process, programs and techniques, whether or not patentable or registrable under copyright, trademark or similar statutes, and all designs, trademarks and copyrightable works made, conceived, or reduced to practice by FDSC or its agents are related to or useful in the business of the California Master Trust™ and California Master Trust™ Program, or to FDSC's actual or demonstrably anticipated design, development, program or marketing activities.

b. **Use by Funeral Establishment.** Funeral Establishment shall not use any Proprietary Materials except as reasonably necessary to perform its duties and responsibilities under this Agreement or as otherwise provided for by FDSC in writing or under this Agreement.

c. **Retention of Rights.** FDSC retains all rights, title and interest in the Proprietary Materials, including, but not limited to, all copyrights, trademarks, patents and other intellectual property rights therein. FDSC retains all rights to license, sell, assign, transfer, reproduce, distribute, perform or display Proprietary Materials and any derivative works based on the Proprietary Materials, as well as all other rights, privileges, and remedies granted or reserved to a copyright and trademark owner under the laws of the United States.

d. **Post-Termination and Enforcement Rights.** Upon termination of this Agreement, all rights of Funeral Establishment to use any Proprietary Materials shall automatically terminate. Funeral Establishment shall return all Proprietary Materials to FDSC and shall not use such Proprietary Materials in any manner. Funeral Establishment acknowledges that any breach or threatened breach of this Agreement shall result in immediate and irreparable harm to FDSC, the CMT, and the CMT Program for which there will be no adequate remedy at law, and that FDSC shall be entitled to injunctive relief restraining Funeral Establishment from violating this Agreement or to compel Funeral Establishment to cease and desist all unauthorized use or disclosure of the Proprietary Materials, without posting bond or other security.

**8. Termination of Enrollment Agreement.**

a. **Without Cause.** This Enrollment Agreement will remain in force and effect until revoked by fifteen (15) days advance written notice of either Funeral Establishment or FDSC to the other Party.

b. **For Cause.** This Enrollment Agreement may be terminated by FDSC, effective immediately upon receipt by Funeral Establishment of written notice from FDSC, if Funeral Establishment violates any condition or covenant set forth in Sections 4.

c. **FDSC Rights Upon Termination For Cause.** If this Enrollment Agreement is terminated pursuant to Section 8.b., FDSC reserves the right to notify any or all of the Trustors and Beneficiaries under any Trust Agreements, Rollover Agreements or Transfer Agreements to which Funeral Establishment is a party and to inform such Trustors and Beneficiaries of their right to change funeral establishments under the Trust Agreement.

d. **Funeral Establishment Rights Upon Termination.** Upon termination of this Enrollment Agreement, or Funeral Establishment's participation in the California Master Trust™ Program, Funeral Establishment will immediately cease all use of California Master Trust™ Materials and the entering into of any new Trust Agreements, Rollover Agreements or Transfer Agreements. Additionally, Funeral Establishment will immediately return to FDSC all California Master Trust™ Material, and all other materials in Funeral Establishment's possession pertaining to the California Master Trust™ as more fully provided in Section 7 above.

9. **Record Requirements.** Funeral Establishment agrees to maintain all records pertaining to this Enrollment Agreement, and each Trust Agreement, Rollover Agreement or Transfer Agreement entered into pursuant to this Enrollment Agreement, for a period of one (1) year following the latest of the revocation, cancellation, or provision of services under any Trust Agreement, Rollover Agreement or Transfer Agreement, or transfer of obligations from Funeral Establishment under a Transfer Agreement. Funeral Establishment agrees that FDSC or its agent shall have the right to review, obtain and copy all records required hereunder.

10. **LIMITATION OF LIABILITY.** IN CONNECTION WITH OR RESULTING FROM FDSC'S PROVISION OF THE CALIFORNIA MASTER TRUST™ MATERIALS OR FUNERAL ESTABLISHMENT'S USE OF THE CALIFORNIA MASTER TRUST™ MATERIALS, FDSC SHALL IN NO EVENT BE LIABLE TO FUNERAL ESTABLISHMENT FOR CONSEQUENTIAL, EXEMPLARY, INDIRECT, SPECIFIC OR INCIDENTAL DAMAGES (INCLUDING WITHOUT LIMITATION, LOST PROFITS), OR BE LIABLE TO ANY THIRD PARTY FOR ANY DAMAGES WHATSOEVER.

11. **Interpretation.** In the event of any inconsistencies, FDSC and Funeral Establishment agree that the documents shall be interpreted in the following order with the provisions of the first listed documents controlling over subsequent documents and so forth:

- a. Trust Agreement, Rollover Agreement or Transfer Agreement.
- b. Master Trust Agreement.

c. **Enrollment Agreement.**

Any subsequent written document signed by all parties affected thereby may amend or alter any provision of the governing documents.

12. **Miscellaneous.**

a. **Entire Agreement.** This Enrollment Agreement, including the exhibits and schedules hereto, 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.

b. **Amendment.** The provisions of this Enrollment Agreement may be modified at any time by agreement of the Parties. FDSC shall, however, be entitled to amend this Enrollment Agreement without Funeral Establishment's agreement as reasonably necessary to comply with changes in the law and Funeral Establishment hereby agrees to such changes. FDSC will notify the Funeral Establishment of such modifications. Any other agreement hereafter made shall be ineffective to modify this Enrollment Agreement in any respect unless in writing and signed by the Party against whom enforcement of the modification or discharge is sought.

c. **Waiver.** Any term or condition of this Enrollment 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 an other term or condition hereof.

d. **Assignment/Succession.** Subject to the provisions otherwise contained in this Enrollment Agreement, this Enrollment Agreement shall inure to the benefit of and be binding on the assignees or successors of the Parties hereto.

e. **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.

f. **Notices.** Any notice under this Enrollment Agreement is required to be in writing. Notice will be deemed to have been duly given on the date of personal service on the Party, on the fifth business day after mailing if the notice is mailed by registered or certified mail addressed to the Party at the addresses set forth below or at the most recent address specified by the addressee through written notice under this provision, or when received if the notice is mailed to by some other means.

g. **Counterparts.** This Enrollment 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 are to be construed together and constitute one agreement.

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

i. **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 Enrollment Agreement is to be interpreted so as to be consistent with Business and Professional Code sections 7735, et. seq., and Title 16 of the California Administrative Code sections 1261, et. seq., as those sections may be amended from time to time.

j. **Cumulative Remedies.** No remedy or election hereunder shall be deemed exclusive but shall whenever possible be cumulative with all other remedies at law or in equity.

Dated: \_\_\_\_\_

**Funeral Establishment**

**Funeral Directors Service Corporation**

By: \_\_\_\_\_

By: \_\_\_\_\_

Title: Funeral Establishment

Title: President

Address: \_\_\_\_\_

Address: P.O. Box 1700

License Number: \_\_\_\_\_

Folsom, CA 95763

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**Exhibit 3**

**Sample “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.