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December 27, 2018

Ms. Rossana Rosado
Secretary of State
Department of State
99 Washington Ave.
Albany, NY 12231

Re: Monitoring of Not-for-Profit Cemeteries
    for Fiscal Stability and Adequate Facility
    Maintenance
    Report 2018-F-22

Dear Secretary Rosado:

Pursuant to the State Comptroller's authority as set forth in Article V, Section 1 of the State Constitution and Article II, Section 8 of the State Finance Law, we have followed up on the actions taken by officials of the Department of State to implement the four recommendations contained in our audit report, *Monitoring of Not-for-Profit Cemeteries for Fiscal Stability and Adequate Facility Maintenance* (2016-S-79) issued on July 11, 2017.

Background, Scope, and Objectives

The Department of State's (Department) Division of Cemeteries (Division) oversees the establishment, maintenance, and preservation of burial grounds for all not-for-profit cemetery corporations (cemeteries) in New York State. As authorized by Article 15 of the Not-for-Profit Corporation Law (Law), and under the supervision of the State's Cemetery Board (Board), the Division works with cemetery officials on a wide range of issues, including the sale of lots, service fees, and acquisition of lands, to promote public welfare and to prevent cemeteries from falling into disrepair or insolvency. When a not-for-profit cemetery is abandoned, either due to fiscal issues or simply because there are not enough citizens willing or able to take on its corporate duties, responsibility generally falls to the local municipality. When that occurs, it can become a financial and/or program burden on the community.

The Division's monitoring and oversight is a critical means through which the State seeks to ensure that not-for-profit cemeteries do not become a burden on their local community. The Division is responsible for administering the cemetery provisions of the Law as well as the rules and regulations established by the Board. The Division only regulates cemeteries that are

incorporated under the Law, which does not include other religious, municipal, national, private, or family cemeteries.

The Law establishes certain requirements for cemeteries to ensure the care, management, and protection of property. For instance, cemeteries must allot a portion of their revenue to two separate funds: a Current Maintenance Fund for current ordinary and necessary expenses, care, and maintenance; and a Permanent Maintenance Fund, the principal of which is to be held in trust for future maintenance and preservation. Additionally, Cemeteries are required to file annual reports and financial reports with the Division, and must establish reasonable rules and regulations regarding the use, care, management, and protection of the property as well as reasonable charges for services and lot/plot prices. This information, as well as a statement identifying the Board as the regulator and key contact information, must be conspicuously posted and available for visitors. The Division maintains two online manuals to assist cemeteries in meeting these and other requirements.

As of September 30, 2018, the Division operated six regional offices with 17 full-time employees to oversee the 1,723 cemeteries under its jurisdiction. As part of its oversight and monitoring process, the Division strives to conduct a financial audit of each cemetery every three to five years and a physical inspection every five to seven years. For the period December 1, 2016 through September 30, 2018, the Division conducted 1,486 audits and 1,070 inspections. The Division has three policy and procedure manuals to guide its employees' monitoring activities.

Our initial audit report, covering the period January 1, 2014 through March 31, 2017, sought to determine whether the Division sufficiently monitored cemeteries to ensure fiscal stability and adequate facility maintenance. Our audit found that the cemeteries we visited were generally in good condition, but many did not have all the required information posted that would inform patrons and visitors as to how and where to report problems. Furthermore, we determined many cemeteries may not have been sufficiently funded to ensure future maintenance and preservation. We also found that the Division's ability to provide optimum oversight was hindered due to its use of antiquated technology and inefficient processes. For instance, weaknesses in data integrity, entry, and access, as well as limited data collection, posed challenges in terms of data reliability and the Mainframe data system's usefulness as a risk assessment tool. As a result, the Division could not use the information to better focus its attention on locations that are in danger of failing. Lastly, the Division had not updated its policies and procedures, nor its manuals for cemeteries, to reflect revised laws and other new or revised regulations. The objective of our follow-up was to assess the extent of implementation, as of December 19, 2018, of the four recommendations included in our initial audit report.

Summary Conclusions and Status of Audit Recommendations

Division officials made some progress in addressing the problems we identified in the initial audit report; however, further actions are still needed. Of the four prior report recommendations, two were implemented and two were partially implemented.

Follow-Up Observations

Recommendation 1

In designing the new data management system, include features that will allow the Division to more readily and accurately identify cemeteries at risk, thereby increasing work planning efficiency and effectiveness. Such features should include, but not be limited to:

- *Additional expanded data fields encompassing a range of risk factors;*
- *Centralized data access; and*
- *Integrated mobile data collection.*

Status – Implemented

Agency Action – The Division began development of a new database in 2017 and put it into operation in April 2018. The database was expanded and now captures fields such as fund balances, operating fund reconciliation details, and variances from actual balances. In addition, enhanced payment detail includes the type of activity (i.e., cremations, interments, accounting adjustments, audits). The new system allows for annual reports to be batch-loaded to the system, which increases accuracy and efficiencies for the Division.

The new database captures significantly more information than the previous mainframe system and allows staff to retrieve details from all Division offices about audits and inspections performed from the central database file, where these tasks previously required searching other electronic or paper records. The physical location of cemeteries as well as geocoding features have been integrated into the system. The database contains several expanded data fields, forms, queries, reports, and scripts to address risk factors.

A mobile data collection platform was utilized to enable cemeteries to submit annual reports online and a database extension is in place that allows these submissions to be periodically batch-loaded into the central database in bulk and to provide receipt copies to the submitter. The Division has a strategic initiative to extend this platform to provide for field submission of investigation and audit reports that can similarly be batch-loaded into the central database. Staff will be able to use this platform with already issued mobile devices.

Recommendation 2

Work with each of the 37 cemeteries identified in our analysis of Permanent Maintenance Fund requirements to determine what actions each needs to take to ensure it is sufficiently funded.

Status – Partially Implemented

Agency Action – Division officials told us that their responsibilities are to work with each cemetery to learn what actions a cemetery may take to improve its financial position, but they cannot

ensure that every cemetery is sufficiently funded. Our original audit tested 64 cemeteries and found that 37 (58 percent) had insufficient funding. Of the 37 identified in our original analysis, 10 were abandoned and 27 remained active. When a cemetery is abandoned to a town, it is no longer in the Division's jurisdiction. One of the 27 cemeteries active during our initial audit was subsequently abandoned in September 2017 (two months after our audit).

The Division reported that it continues to follow the same risk factors as it did prior to our original audit to identify cemeteries at risk. Currently, 40 percent of cemeteries have a net positive operating balance. The Division focuses on those most at risk; consequently, the cemeteries we identified during the initial audit were not made a priority. Even though the Division did not assess the 26 active cemeteries we identified, it did audit four of them after our initial audit. Of the four audited cemeteries, one increased its Permanent Maintenance Fund balance, one was operating at a loss, and two were recommended to reach out to their towns for assistance. The Division has not worked with the remaining 22 cemeteries to determine what actions each needs to take to ensure it is sufficiently funded. Four of the remaining 22 have not filed their annual reports.

Recommendation 3

Ensure that the required information for visitors is properly posted at cemeteries.

Status – Implemented

Agency Action – The Division continues to inspect cemeteries for many factors, one of which is the required signage. While the Division did not follow up with the specific cemeteries we identified, the Division director sent an e-mail to remind staff to check for the sign posting the rules and regulations when they visit a cemetery for any reason. Additionally, the Division plans to include a reminder in its annual mailing to cemeteries. Division investigators also follow up with cemetery operators in interviews concerning cemetery record keeping and practices. Where cemeteries still fail to comply, the Division typically issues a notice of non-compliance. In the future, the Division stated it will look to enhance these efforts, utilizing the new database capabilities and cemetery contact information.

Recommendation 4

Ensure that all operational manuals used by Division and cemetery staff are up to date with the latest regulations.

Status – Partially Implemented

Agency Action – The Division has five manuals, of which three were updated, one is in progress, and one is expected to be completed in September 2019. The three updated manuals are the Cemetery Law Manual, the Audit Manual, and the Reviewing Annual Report Manual. A draft of the updated Investigator Manual is pending the approval of the Board.

The Treasurer Manual has not been updated, and, for example, does not include the Binghamton office in the online version, the requirement for medium and large cemeteries to have certified public accountant reviews, or the option to file annual reports online.

Major contributors to this report were Todd Seeberger, Theresa M. Nellis-Matson, Barbara Barfield, and Jessica Strizzi.

We would appreciate your response to this report within 30 days, indicating any actions planned to address the unresolved issues discussed in this report. We thank the management and staff of the Department for the courtesies and cooperation extended to our auditors during this review.

Sincerely,

Walter J. Irving
Audit Manager

cc: Shelly Taleporos, Audit Liaison
     Division of the Budget