

DATED \_\_\_\_\_ 1983

CENTRAL DURHAM JOINT  
CREMATORIUM COMMITTEE

A G R E E M E N T

for the constitution of the  
above-named joint committee

\_\_\_\_\_

M E M O R A N D U M O F A G R E E M E N T made  
the \_\_\_\_\_ day of \_\_\_\_\_ One thousand  
nine hundred and eighty three B E T W E E N  
THE COUNCIL OF THE CITY OF DURHAM (hereinafter  
referred to as "the City Council") of the one  
part and THE TOWN COUNCIL OF SPENNYMOOR  
(hereinafter referred to as "the Spennymoor  
Council") of the other part \_\_\_\_\_

W H E R E A S :

(1) The Councils being parties hereto may by  
section 4 of the Cremation Act 1902 as amended by  
the Cremation Act 1952 respectively provide and  
maintain crematoria \_\_\_\_\_

(2) Both the said Councils are local  
authorities for the purposes of Local Government  
Act 1972 and are empowered by section 101 thereof  
(subject as therein provided) to arrange with one  
or more other local authorities for the discharge  
of their functions jointly and to arrange for the  
discharge of those functions by a joint committee  
of those authorities and are empowered by section  
102 thereof (subject as therein provided) to  
appoint a joint committee in pursuance of the  
arrangements for the discharge of functions  
hereinbefore mentioned \_\_\_\_\_

(3) By section 103 of the Local Government  
Act 1972 it is provided that the expenses of a  
joint committee appointed thereunder shall be  
defrayed by appointing authorities in such  
proportions as they may agree upon \_\_\_\_\_

(4) The said Councils have each of them  
passed a resolution to enter into an agreement as  
hereinafter appearing \_\_\_\_\_

NOW IT IS HEREBY AGREED by and between the parties hereto in pursuance of the powers conferred upon them by virtue of the hereinbefore recited enactments and of every other power (if any) them respectively hereunto enabling as follows that is to say:-

1. There shall be constituted a joint committee (hereinafter referred to as the "joint committee") of both the Councils being parties hereto (hereinafter collectively referred to as the two Councils) consisting of members appointed under provisions hereof and having the functions powers and duties upon and subject to the terms and conditions hereinafter mentioned \_\_\_\_\_

2. The name of the joint committee shall be the Central Durham Crematorium Joint Committee \_\_\_\_\_

3. (1). The joint committee shall consist of members appointed by each of the two Councils from amongst their respective members in the following manner that is to say:-

<u>Appointing Council</u>	<u>Number of members to be appointed</u>
The City Council	12
The Spennymoor Council	3

3. (2). The whole number of the members of the joint committee shall retire on the thirtieth day of May one thousand nine hundred and eighty three and on the thirtieth day of May in every fourth year thereafter \_\_\_\_\_

3. (3). Each of the two Councils shall in respect of members to retire on the thirtieth day of May in the year one thousand nine hundred and eighty seven appoint the said members at the first convenient meeting of such Council held after the execution of this agreement \_\_\_\_\_

3. (4). In the year one thousand nine hundred and eighty seven and in every fourth year thereafter being a year in which members of the joint committee shall retire each of the two Councils shall appoint members of the joint committee as herein provided to take office on the thirtieth day of May in that year \_\_\_\_\_

3. (5). The two Councils may revoke an appointment of any member at any time \_\_\_\_\_

3. (6). Without prejudice to the generality of sub-clause (5) of this clause if a member fails to attend four consecutive meetings of the joint committee such fact shall be reported by the Clerk to the joint committee to the Council by whom that member was appointed and the Council may thereupon terminate the member's term of office notwithstanding any other provision in this agreement contained and any such termination of appointment shall be reported to the Clerk to the joint committee by the Council concerned \_\_\_\_\_

3. (7). If by reason of the operation of statutory provisions failure to attend meetings as hereinbefore mentioned or otherwise there shall be a vacancy amongst the members of the joint committee as herein provided the Council out of whose appointment the vacancy occurs may

thereupon appoint another member to fill such vacancy and person so appointed shall remain a member of the joint committee until and shall retire on the date of the normal retirement under the provisions of this agreement of the member whose place he fills \_\_\_\_\_

4. The two Councils hereby delegate to the joint committee upon and subject to the terms and conditions of this agreement all the powers of the two councils with respect to the provisions and maintenance of crematoria in the area of each of them other than powers of borrowing money levying or issuing a precept for a rate of holding land and without prejudice to the generality of the foregoing the joint committee shall to the exclusion of the two Councils have all the powers of each of the two Councils under the Cremation Acts 1902 and 1952 and under any Act of Parliament or statutory instruments with respect to the provision of maintenance of crematoria \_\_\_\_\_

5. (1). The joint committee shall hold four meetings at least in every year for the transaction of general business and may hold such other meetings at such intervals as it may find necessary or convenient \_\_\_\_\_

5. (2). The joint committee shall elect annually from amongst its members a Chairman and a Vice-Chairman \_\_\_\_\_

5. (3). The election of the Chairman and the Vice-Chairman shall be respectively the first and the second business transacted at the first

meeting of the joint committee after the First June in any year (hereinafter referred to as "the annual meeting") \_\_\_\_\_

5. (4). The Chairman of the joint committee shall unless he resigns or becomes disqualified continue in office until his successor becomes entitled to act as Chairman \_\_\_\_\_

5. (5). The Vice-Chairman of the joint committee shall unless he resigns or becomes disqualified hold office until immediately after the election of the Chairman of the joint committee at the next annual meeting of the joint committee \_\_\_\_\_

5. (6). The joint committee shall have power to appoint sub-committees from amongst its members with or without delegated powers for any purpose which in its opinion could more satisfactorily be dealt with by a sub-committee \_\_\_\_\_

6. (1). The joint committee may appoint and pay such officers and servants as it may deem necessary for the purpose of carrying out its duties under this agreement \_\_\_\_\_

6. (2). Sections 114 to 119 of the Local Government Act 1972 shall apply to an officer of the joint committee in the same manner as the said sections apply to an officer of a local authority with such modifications as are necessary to make them applicable to officers of the joint committee \_\_\_\_\_

7. (1). The joint committee and every officer thereof who is by reason of his office entrusted with the custody or control of money

shall keep accounts of all money received by the joint committee or any such officer and all expenditure thereof by it or him as may be required for the purpose of Part VIII of the Local Government Act 1972 and Part III of the Local Government Finance Act 1982 \_\_\_\_\_

7. (2). The joint committee shall as soon may be after the conclusion of every financial year (which shall for the purposes of this agreement be taken to be a period of twelve months ending on the thirty first day of march in any year) send to each of the two Councils a report on the operations of the joint committee during such financial year and a copy of the final accounts of the joint committee for such financial year \_\_\_\_\_

8. (1). If the joint committee shall at any time require to incur capital expenditure for the acquisition of property or the construction of works or for other capital purposes in connection with the provision of crematoria then (unless the joint committee shall in their discretion decide to defray such expenditure out of revenue) such expenditure shall be borne by the two Councils respectively in the proportions four parts by the City Council and one part by the Spennymoor Council PROVIDED THAT the Clerk of the joint committee shall obtain approval from both of the two Councils before the joint committee shall incur such expenditure \_\_\_\_\_

8. (2). That where possible any necessary borrowing be effected by the City Council and

that any requests for transfers of borrowing authority or capital expenditure allocation between the two Councils be made to the appropriate Minister or other authority \_\_\_\_\_

8. (3). Where any sum is to be borrowed by the City Council in pursuance of sub-clauses (1) and (2) of this clause the loan may be effected at the discretion of the City Treasurer for the time being of the City Council through the City Council's loans pool in which case the loan shall be chargeable at such rates of interest and expenses as shall be applicable to such loans as prescribed by the said City Treasurer and the period of such loan shall be in accordance with any guidelines prescribed for the time being for loans by local authorities by the Secretary of State for the Environment or other authority \_\_\_\_\_

8. (4). Subject to any condition or conditions prescribed by either or both of the two Councils in giving consent to any capital expenditure under the proviso to sub-clause (1) of this clause the two Councils or either of them shall pay to the joint committee the amount of any sums borrowed in pursuance of this clause in such sums and at such times as the joint committee shall direct \_\_\_\_\_

8. (5). Subject as is hereinafter provided the joint committee shall from time to time pay to the two Councils or either of them the amounts of all interest and all instalments of principal or sinking fund contributions as and when the same shall become due and the cost of taking up



any loans raised for such purposes by the two Councils or either of them \_\_\_\_\_

9. The legal estate in all land acquired and works constructed whether by means of capital or annual expenditure for the purpose of enabling the joint committee to exercise its functions under the provisions of this agreement shall be vested in the Council in whose area the same shall situate and that Council shall hold such land or works as the case may be for the purpose of provision and maintenance of crematoria expressly for the same to be maintained controlled and managed by the joint committee \_\_\_\_\_

10. (1). All expenses incurred by the joint committee in any financial year so far as they are not paid out of income other than contributions from the two Councils under this clause shall be borne by the two Councils respectively in the proportions four parts by the City Council and one part by the Spennymoor Council and such Councils shall pay to the joint committee such sum as the joint committee may estimate will be the proportion to be borne by that Council of any estimated deficit for that financial year \_\_\_\_\_

10. (2). The joint committee may:-

(a) use any part or all of any profits or surplus made in any financial year to finance capital expenditure or to redeem debt \_\_\_\_\_

(b) carry forward part or all of such profits or surplus as is in the opinion

of the joint committee required to meet contingencies or to defray any expenditure which may fall to be defrayed before the date on which moneys to be received by the joint committee whether from the two Councils in accordance with this agreement or from the operation of the crematoria established by the joint committee will become available and the joint committee shall as soon as practicable return to the two Councils the amount of such profits or surplus not so applied by the joint committee in proportion to the total amounts respectively contributed by each of the two Councils towards previous deficits provided that if at any time both the two Councils shall have had the total amount of their contributions towards previous deficits returned to them the joint committee shall pay all such unapplied profits or surplus to the two Councils in the same proportions in which by virtue of sub-clause (1) hereof the two Councils would have borne a deficit in that financial year had one occurred \_\_\_\_\_

11. (1). Either of the two Councils may terminate this agreement by giving the other not less than one year's notice in writing to that effect expiring on the thirty-first day of March

in any year \_\_\_\_\_

11. (2). The Council which shall have given notice under sub-clause (1) of this clause shall bear the expense of settling the adjustment required by clause 12 hereof \_\_\_\_\_

12. In the event of either of the two Councils at any time hereafter terminating this agreement under the provisions hereinbefore contained or otherwise there shall as on the date of such termination be an adjustment between the two Councils of all property income debts liabilities and expenses then existing and of any financial relations affected by such termination and on such adjustment there shall be an adjustment of capital assets and liabilities acquired or assumed by either of the two Councils on such termination including any outstanding loans borrowed by either or both of the two Councils under clause 8 hereof and provision may then be made for the payment to either or both of the two Councils of such sum as seems equitable \_\_\_

13. Subject to section 103(1)(b) of the Local Government Act 1972 all disputes between the two Councils or between either of them and the joint committee on the interpretation of this agreement and all disputes or differences in any way or at any time arising hereon (including without prejudice to the generality of these words the adjustments required by clause 12 hereof) shall be referred to some competent arbitrator agreed on by the two Councils or in the absence of agreement to be named by the Secretary of State

for the Environment or his successor and the Arbitration Act 1950 or any statutory modification thereof for the time being in force shall apply to any such arbitration \_\_\_\_\_

14. (1) This agreement shall come into effect on the date of its sealing when it shall in all respects supersede and replace the provisions of the Memorandum of Agreement made the First day of October One thousand nine hundred and fifty five between the Mayor Aldermen and the Citizens of the City of Durham and Framwelgate of the first part the Rural District Council of Durham of the second part the Urban District Council of Brandon and Byshottles of the third part and the Urban District Council of Spennymoor of the fourth part relating to the constitution of a joint committee of those Councils to perform the functions of those Councils under the Cremation Act 1902 as amended by the Cremation Act 1952 Provided (1) that any rights or liabilities arising under the said Memorandum of Agreement dated the First day of October One thousand nine hundred and fifty five prior to the coming into effect of this Memorandum of Agreement shall not be affected thereby \_\_\_\_\_

14. (2). that the making of this agreement shall not be deemed to be a withdrawal by any party from the joint committee constituted thereby \_\_\_\_\_

I N W I T N E S S whereof the parties hereto  
have unto caused their respective Common Seals to  
be hereunto affixed the day and year first before  
written \_\_\_\_\_

THE COMMON SEAL of  
THE COUNCIL OF THE  
CITY OF DURHAM was  
affixed in the  
presence of \_\_\_\_\_

Mayor

Chief Executive

THE COMMON SEAL of  
THE SPENNYMOOR TOWN  
COUNCIL was  
hereunto affixed in  
the presence of \_\_\_\_\_

Town Clerk

Town Mayor



## **DEED OF VARIATION**

This DEED OF VARIATION is made on the                      day of                      2004 between the  
COUNCIL of the CITY OF DURHAM(1) and the TOWN COUNCIL of  
SPENNYMOOR(2)

### **1. Recitals**

- 1.1 This Deed is supplemental to a Memorandum of Agreement ("the Memorandum")  
dated 3rd May 1983 and made between the parties hereto constituting the Central  
Durham Crematorium Joint Committee
- 1.2 The parties to this Deed of Variation have agreed to vary the Memorandum on the  
terms set out in this Deed of Variation

### **2. Interpretation**

- 2.1 Words and Expressions defined in the Memorandum have the same meanings in this  
Deed of Variation except to the extent that they are expressly varied by this Deed of  
Variation
- 2.2 This Deed is supplemental to the Memorandum

### **3.1 Variation or Substitution of Clauses**

Membership of the Joint Committee

Clause 3 of the Memorandum shall be deleted and shall be replaced by the following:-

- 3.1 The Joint Committee shall consist of Members appointed by each of the two Councils  
from amongst their respective Members in the following manner that is to say:-

<u>Appointing Council</u>	<u>Number of Members to be Appointed</u>
The City Council	12
The Spennymoor Council	3

- 3.2 The whole number of Members of the Joint Committee shall retire on the first Thursday in May 2007 and on the first Thursday in May of every fourth year thereafter
- 3.3 In the year 2007 and in every fourth year thereafter being a year in which Members of the Joint Committee shall retire each of the two Councils shall appoint Members of the Joint Committee as herein provided to take office on the first Thursday in May that year
- 3.4 The two Councils may revoke an appointment of any Member at any time and the City Council shall do so if a Member ceases to be a Member of the City Council's Executive
- 3.5 Without prejudice to the generality of Clause 3.4 if a Member fails to attend four consecutive meetings of the Joint Committee such facts shall be reported by the Clerk to the Joint Committee to the Council by whom that Member was appointed and the Council may thereupon terminate the Member's term of office notwithstanding any other provision in the Memorandum and any such termination of appointment shall be reported to the Clerk to the Joint Committee by the Council concerned.
- 3.6 If by reason of the operation of the statutory provisions or revocation of appointment by the reason of the appointee no longer being a Member of the City Council's Executive or failure to attend meetings as herein before mentioned or otherwise there shall be a vacancy amongst the Members of the Joint Committee the Council out of whose appointment the vacancy occurs may thereupon appoint another Member to fill such a vacancy and the person so appointed shall remain a Member of the Joint Committee until and shall retire on the date of the normal retirement under the provisions of this Agreement of the Member whose place he or she fills.



**3.2 Meetings of the Joint Committee**

Clause 5 of the Memorandum shall be deleted and shall be replaced by the following:-

- 5.1 The Joint Committee shall hold four meetings at least in every year for the transaction of general business and may hold such other meetings including a visit to the Crematorium premises at such intervals as it may find necessary or convenient.
- 5.2 The Joint Committee shall elect annually from amongst its Members a Vice Chairman and shall appoint the outgoing Vice Chairman as Chairman
- 5.3 The appointment of the Chairman and the election of a Vice Chairman shall be respectively the first and second business transacted at the first meeting of the Joint Committee after the first Thursday in May of any year (hereinafter referred to as the Annual Meeting)
- 5.4 So far as it is practicable to do so the Vice Chairmanship shall alternate each year between a Member of Spennymoor Town Council and a Member of the City Council
- 5.5 The Chairman shall, unless he or she resigns or becomes disqualified continue in office until his or her successor becomes entitled to act as Chairman and the Vice Chairman of the Joint Committee shall unless he or she resigns or becomes disqualified hold office as such until his or her appointment as Chairman of the Joint Committee at the next Annual Meeting

**4. Memorandum of Agreement**

The Memorandum of Agreement is to be read and interpreted as if the variations to it in Clause 3 (if applicable) were set out in full in the Memorandum of Agreement

THE COMMON SEAL of the )  
COUNCIL OF THE CITY OF )  
DURHAM was affixed to this )  
Deed in the presence of:- )

Mayor

Director of Legal Services

THE COMMON SEAL of the )  
SPENNYMOOR TOWN )  
COUNCIL was affixed to this )  
Deed in the presence of:- )

Town Clerk

Town Mayor

**1919 CONSTITUTION OF THE CREMATORIUM JOINT COMMITTEE**  
(Min. No's 1878 dated 1<sup>st</sup> May, 1891 dated 26<sup>th</sup> June 1905 dated 9<sup>th</sup> October 2002 refer)

The formal responses of Durham City Council and Spennymoor Town Councils on the proposed changes to the Central Durham Crematorium Joint Committee's Constitution had been received.

Spennymoor Town Council had indicated that they did not support an amendment to the Constitution of the Joint Committee, wishing it to remain as 8 (City Council) and 3 (Spennymoor Town Council). In noting this, the summary of the proposed changes were detailed at Appendix 'A' to the report.

**RESOLVED:** That the proposed changes outlined in Appendix 'A' be supported and implemented from the date of the Joint Committee's next Annual General Meeting.

**1920 REPLACEMENT CARPET**

Included in the current Estimates for 2002/2003 was a sum of £8,000 for the provision of new carpets throughout the Crematorium building.

The Superintendent and Registrar had obtained three quotations and in consultation with the Chair and Vice-Chairman of the Joint Committee, the Clerk had authorised acceptance of the lowest quotation received from Johnson Wright Flooring Ltd in the sum of £8,061.67 plus VAT.

The excess (£61.67) above budget would be covered by additional income.

**RESOLVED:** Members noted the report.

**1921 INDEPENDENT EMISSION TEST RESULTS**

Under the terms of the Environmental Protection Act (1990) every Crematorium must have its cremator equipment independently tested each year to ensure that it was operating within the parameters set out in the Act. Independent Tests were carried out by E.U.S. Ltd between 10<sup>th</sup> and 12<sup>th</sup> December 2002.

Results found that Cremators one and two operated within all limits and were operating in full compliance of the E.P.A.

Results found that number three cremator exceeded the particulate emission legislation limit in both tests and the Hydrogen chloride level was also seen to be high. Whilst the Superintendent and Registrar was of the opinion that certain factors contributed to the problem experienced, he was of the view that there was not a problem with the cremator itself.

The Superintendent and Registrar had asked the City Council's Environmental Health Officers for a view on the results and also sought comment from the Cremator Service Engineers (Phoenix). Phoenix had subsequently responded to indicate that they considered there was no major cause for concern but they would look further at the findings on their next service visit.

**RESOLVED:** Members noted the report.

Constitution: Central Durham Crematorium Joint Committee  
Summary of Proposed Changes

The Constitution provides for the retirement of all Members of the Joint Committee on 30<sup>th</sup> May in every fourth year. Members may consider it would be appropriate to change this date to coincide with the date of District Council Elections.

However, due to the provisions of the City Council's Constitution adopted on 7<sup>th</sup> May 2002, only Executive (Cabinet) Members of the City Council are eligible to represent the Council on the Joint Committee. These Members are appointed by the Council on a two year basis. If a Member appointed to the Joint Committee ceases to be an Executive Member, his/her appointment to the Joint Committee will need to be revoked. The present Constitution allows for revocation and the filling of vacancies in general terms. To ensure that it is clear what must happen if an appointed Member ceases to be a Member of the City Council's Cabinet, it is suggested that:-

**Paragraph 3 (5)** be amended to read:- The two Councils may revoke an appointment of any Member at any time and the City Council shall do so if a Member ceases to be a Member of the City Council's Executive.

**Paragraph 3 (7)** be amended to read:- If by reason of the operation of statutory provisions revocation of appointment by reason of the appointee no longer being a Member of the City Council's Executive, failure to attend meetings as hereinbefore mentioned or otherwise there shall be a vacancy amongst the Members of the Joint Committee as herein provided the Council out of whose appointment the vacancy occurs may thereupon appoint another member to fill such a vacancy and the person so appointed shall remain a member of the Joint Committee until and shall retire on the date of the normal retirement under the provisions of this agreement of the Member whose place he fills.

**Paragraph 5** be amended to provide for 2 meetings in every year with others as necessary.

If it is agreed that the Chairmanship should be on a formal alternating basis, paragraphs 5 (2-5) of the Constitution be changed to read:-

2. The Joint Committee shall elect annually from among its Members a Vice-Chairman and shall appoint the out-going Vice-Chairman as Chairman;
3. The appointment of the Chairman and the election of the Vice-Chairman shall be respectively the first and second business transacted at the first meeting of the Joint Committee after 1<sup>st</sup> June in any year (hereinafter referred to as "the Annual Meeting");
4. So far as it is practicable to do so, the Vice-Chairmanship shall alternate each year between a Member of Spennymoor Town Council and a Member of the City Council;
5. The Chairman shall, unless he resigns or becomes disqualified, continue in office until his successor becomes entitled to act as Chairman and the Vice-Chairman of the Joint Committee shall, unless he resigns or becomes disqualified, hold office as such until his/her appointment as Chairman of the Joint Committee at the next Annual Meeting of the Joint Committee.