

## Appendix 2

Gateshead amendments DH/JM/PB: 23/07/12

This **DEED** of Agreement is made the .....day of .....2013

### **BETWEEN:-**

- 1) The County Council of Durham, Durham County Council, County Hall, Durham and
- 2) The Borough Council of Gateshead of the other part.

### **WHEREAS:-**

1. The Authorities to the Deed have by virtue of Section 102(1) of the Local Government Act 1972 the Local Government Act 2000 the Local Authorities (Arrangements for the Discharge of Functions) (England) Regulations 2000 the Local Authorities and all and every power enabling them agreed and resolved to constitute a joint committee to exercise the powers which each of the Authorities hereto might respectively have exercised by virtue of the Cremation Acts 1902 and 1952 for the provision running, maintenance and management of the existing Crematorium at Mountsett within the County of Durham which is more particularly described in paragraph 1 below.
2. The said Authorities now wish to constitute the said joint committee on the terms set out below and to the intent that the Deeds of Agreement between the said Authorities and dated 7<sup>th</sup> September 1976 and 8<sup>th</sup> September 1983 shall cease to have effect.

**NOW** in pursuance of the said agreement and the respective resolutions and in consideration of these presents **THIS DEED WITNESSES** as follows:-

#### **1. Definition and Interpretation**

- 1.1 In this agreement the following expressions have the meanings set out below, unless the context otherwise requires.

‘Authority’ either Durham or Gateshead and ‘Authorities’ shall be construed accordingly.

‘Annual meeting’ the annual meeting of the Joint Committee held each year in accordance with paragraph 7.2 of this agreement.

‘Chief Executive’ the head of an Authority’s paid service being the person designated as such under Section 4 of the Local Government and Housing Act 1989.

'Clerk', the person appointed by virtue of paragraph 16.1 to carry out certain duties allocated by this agreement.

'Council' the Council of elected members of one or other of the Authorities to this agreement.

'Crematorium' the crematorium known as Mountsett Crematorium which includes all buildings grounds equipment and other property appurtenant there.

'Financial year' the period running from 1<sup>st</sup> April in one calendar year until 31<sup>st</sup> March in the next calendar year (inclusive).

'Joint committee' the Mountsett Crematorium Joint Committee constituted by this agreement.

'Member' unless the context otherwise so requires, a member of the Joint Committee.

'Monitoring officer', Durham County Council's Head of Legal and Democratic Services being the person designated under Section 5 of the Local Government and Housing Act 1989 or this officers nominated deputy in the case of absence or illness.

'Ordinary meeting', any meeting of the Joint Committee that is not an Annual Meeting or a Special Meeting.

'Principal Office' in the case of Durham County Council, the Council Offices, County Hall, Durham and the case of Gateshead Council the Civic Centre as referred to at the beginning of the agreement.

'Special meeting' a meeting of the Joint Committee convened in accordance with paragraph 7.6 of this Agreement.

## **2. Duration of Joint Committee**

The Authorities shall constitute the Joint Committee from the Commencement Date and the Joint Committee shall continue thereafter unless and until determined by either Authority or both of them under the provisions contained in this agreement.

## **3. Name of Joint Committee**

The Joint Committee shall be known as the Mountsett Crematorium Joint Committee.

## **4. Provision and Location of Crematorium**

- 4.1 The Crematorium is located on the Crematorium Site which was acquired by the Authorities prior to the date hereof.

4.2 The Crematorium site is vested 60% in Durham County Council and 40% Gateshead Council by virtue of Section 120(4) of the Local Government Act 1972 and all and every power so enabling and registered at HM Land Registry with Title Absolute Title Number.

## 5. **Membership**

5.1 The Joint Committee shall consist of Members appointed by the Authorities as follows:-

5.1.1 Each Authority shall appoint from its own membership nine Members from Durham County Council and seven Members from Gateshead Council which appointments shall reflect the political balance of each authority.

5.1.2 Subject to the provisions of this agreement each Member shall continue in office for a period of one year or until such time as he shall cease to be a members of the Council by whom he is appointed whichever is the sooner and any provision in the Procedure Rules of either Authority to the contrary is hereby waived. Each member shall be eligible for re- appointment until such time as he shall cease to be a member of the council by whom he is appointed.

5.1.3 If either Authority does not appoint the number of Members which it is entitled to appoint the other Members of the Joint Committee shall be competent to carry out the business thereof pursuant to this agreement.

5.1.4 Any person who is a member of the Councils of both Authorities shall only represent the first Authority to appoint him as a Member and any subsequent appointment by the other Authority shall be void.

5.1.5 The Chief Executive of each Authority shall notify the Chief Executive of the other Authority and the Clerk within fourteen days of any appointment of a member of his Council to the Joint Committee.

5.1.6 Any member may at any time resign his office as such Member by notice addressed to the Clerk who shall forthwith notify the respective Chief Executives of each of the Authorities.

5.1.7 Any member may be removed at any time by resolution by the Authority by whom he was appointed but such removal should only become effective upon receipt by the Clerk of notification thereof.

## 6. **Chair and Vice Chair**

6.1 At the first meeting of the Joint Committee and subsequently at its Annual Meeting in each successive year the Joint Committee shall select one of its Members as Chair and another as Vice Chair for the forthcoming year Provided that at no time shall the Chair and Vice Chair be members of the same Authority.

- 6.2 The Chair of the Committee shall alternate between both authorities on an annual basis unless otherwise agreed at the Annual meeting of the Committee.
- 6.3 The elected Chair and Vice Chair shall remain in office until the next Annual Meeting unless by reason of death resignation disqualification or any other cause before that time and upon a vacancy occurring during the term of office another Member from the same Authority shall be appointed by the Joint Committee to fill the vacancy until the next Annual Meeting.
- 6.4 If there is equality of votes as to the appointment of Chair or Vice Chair then the Chair for the time being of that meeting shall have a second or casting vote.

## 7. **Meetings of the Joint Committee**

- 7.1 The first meeting of the Joint Committee shall be convened by the Clerk.
- 7.2 The Joint Committee shall hold an Annual Meeting before the end of June in each year.
- 7.3 Other than the Annual Meeting, meetings shall be held at such places and on such dates and at such times as the Joint Committee may decide from time to time save that meetings shall be held not less than quarterly.
- 7.4 Ordinary meetings and Annual Meetings of the Joint Committee shall be convened by the Clerk who shall deliver notice thereof to each member at least five clear days before the date of the meeting.
- 7.5 With the notice referred to in paragraph 7.4 the Clerk shall send a copy of the agenda for the meeting which shall include:
- provision for the declaration of personal and prejudicial interests by Members for the purposes of the Code of Conduct issued under Section 50 Local Government Act 2000.
  - all items of business which have been, or are deemed to have been, referred to the Joint Committee by a Council resolution of either Authority.
  - all reports submitted by any officer of either Authority; and
  - any item of business directed to be included by the person appointed to preside at the meeting.
- 7.6 A quorum of four members must be present to constitute a meeting Provided that there is at least one member present from each Authority.
- 7.7 The Chair and two members of the Joint Committee may at any time by notice specifying the business to be transacted and sent to the Clerk require a Special Meeting of the Joint Committee to be convened and the Clerk shall

accordingly convene a special meeting which shall be held within thirty clear days of receipt by the Clerk of the said notice.

7.8 The Clerk shall give Members of the Joint Committee at least five clear days notice of the Special Meeting and such notice shall specify the business proposed to be transacted.

7.9 No business shall be transacted at a Special Meeting other than that specified in the notice sent to the Clerk and referred to in paragraph 7.7 above.

## 8. **Person Presiding at Meetings**

8.1 The Chair or in his absence the Vice Chair shall preside at every meeting provided that if both the Chair and the Vice Chair are absent the Members present shall elect another Member of the Joint Committee who shall preside at that meeting.

## 9. **Voting**

9.1 Every matter at a meeting of the Joint Committee shall be decided by a simple majority of those Members voting and present and in the venue, at the time the question is put. In the case of an equality of votes in relation to a particular item of business then consideration of that item shall be adjourned and shall be deferred for decision at a future meeting of the Joint Committee to allow informal discussion to take place between the parties

9.2 Except where a requisition is made under the next paragraph 9.3, the method of voting at meetings of the Joint Committee shall be by show of hands.

9.3 If a requisition for a recorded vote is made by any three Members present before a vote is taken on any question or motion, the voting shall be recorded so as to show whether each Member present voted for or against that question or motion or abstained from voting.

## 10. **Minutes**

10.1 The Clerk shall be responsible for keeping a record of attendance and a record of the business transacted at every meeting of the Joint committee and the minute book shall be submitted to, and signed at the next following meeting.

10.2 The person presiding at the next following meeting referred to in paragraph 10.1 shall put the question that the minutes be approved as a correct record of the previous meeting.

10.3 No discussion shall take place upon the minutes, except upon their accuracy. If no question is raised as to accuracy or if it is raised then as soon as it is disposed of, the person presiding shall sign the minutes.

10.4 Copies of the minutes of every meeting of the Joint Committee and any sub-committee thereof shall as soon as possible after each meeting be sent by the Clerk to the Chief Executive of each authority.

**11. Sub-Committees**

11.1 The Joint Committee may from time to time appoint sub-committees for any general or special purpose in connection with their powers and functions for the purposes of advising and reporting back to the Joint Committee. Any sub-committee so appointed shall consist of a minimum of three members and shall include at least one Member from each Authority.

11.2 Subject to clause 11.1 the Joint Committee shall at the time of appointing any sub-committee resolve what shall be the terms of reference of that sub-committee.

**12. Vacancies**

12.1 No act or proceeding of the Joint Committee shall be questioned on account of any vacancy or on account of any defect in the appointment of any Member.

**13. Capital Expenditure**

13.1 If the Joint Committee shall at any time require to incur capital expenditure for the:

13.1.1 The acquisition of property

13.1.2 The construction of works, or

13.1.3 Any other capital purposes in connection with its powers.

13.2 Then the use of part or all of any profits or surplus made in any financial year shall be used to finance capital expenditure or upon agreement of the Joint Committee may carry forward part or all such profits or surplus as required to finance known future capital expenditure.

**14. Revenue Expenditure**

14.1 All losses/deficits or profits/surpluses either incurred or generated as a result of the normal operational business of the Joint Committee in any financial year shall be borne or distributed in the following percentages 35% Gateshead and 65% Durham County Council. This arrangement shall be subject to review at least every five years with the first review taking place in March 2015.

14.2 Any losses identified during the financial year should be first met by any available reserves. In the absence of available reserves each Authority should make a relevant contribution in accordance with the % mentioned in paragraph 14.1

14.3 As soon as possible after the end of any financial year the Joint Committee shall calculate the exact net revenue expenditure for the preceding year and shall request or make payments to each Authority to be allocated in accordance with the % mentioned in paragraph 14.1 (total to the agreed distributable surplus amount).

14.4 The Joint Committee upon agreement may use or carry forward retained surplus made in any financial year for the purpose of:

14.4.2 Paying debts

14.4.3 Meeting contingencies

14.4.4 Meeting future expenses

14.5 But any amount of such profit or surplus not so applied (as agreed annually at the Annual General Meeting) shall be returned to the Authorities. Payable to each authority by the 1<sup>st</sup> October in each year.

## 15. **Interest on Sums Due**

15.1 Any sum properly payable by either of the Authorities to the Joint committee whether of a capital or revenue nature, which is not paid by the due date shall be liable to interest at the base lending rate of the Co-operative Bank plc until such time as the sum due is paid in full.

## 16. **Appointment of Officers**

16.1 (a) The Clerk shall be the Head of Legal and Democratic Services or their appointee of Durham County Council.

(b) The Treasurer shall be the Corporate Director Resources of Durham County Council or anyone appointed by him.

16.2 The Joint Committee shall appoint and pay such employees as it deems necessary to provide equip maintain and manage the Crematorium and all services and duties ancillary thereto and required to be provided by virtue of this agreement or by statute and such employees shall be enabled to join any pension scheme which employees of Durham County Council are entitled to join by virtue of their individual contracts of employment.

16.3 The functions of the Joint Committee shall be dealt with by Durham County Council officers (identified at clause 16 above). For the avoidance of doubt the identified officers shall include officers succeeding to the named officers responsibilities on any re-organisation.

## **17. Accounts**

- 17.1 The Treasurer shall keep accounts of all monies received by and all expenditure of the Joint committee as may be required for the purposes of Part 8 of the Local Government Act 172.
- 17.2 As soon as practicable after the end of the Financial Year the Joint Committee shall send to each Authority a full report of the operations of the Joint Committee during the last financial year and a copy of the accounts thereof.
- 17.3 Durham County Council will carry out an annual audit of the accounts and the Joint Committee will provide a copy of the report thereof to each of the Authorities as soon as practicably possible after receipt of the same.
- 17.4 When this agreement is silent the Mountsett Crematorium will operate within the procedure rules and financial regulations of the lead partner authority, Durham County Council, who will continue to be responsible for the management of the facility and for supporting the Joint Committee.

## **18. Performance of Agreement**

- 18.1 The Authorities shall at all times take all or any action as may be necessary for giving full effect to this agreement and every provision and obligation contained herein and any decision made by the Joint Committee pursuant hereto. Each party shall be committed to mutual cooperation and assistance to give effect to the terms of this Agreement which shall include :
- a) the setting up of a joint officer meeting to discuss and formulate advice and reports to the Joint Committee and
  - b) not less than twenty business days before the date of any Joint Committee prior notification of agenda items only shall be given to officers of each Authority of items intended to be tabled as items of business for the Joint Committee in order to ensure that the same may be fully considered by officers of each Authority. An officer Neighbourhood services Director of Resources from each authority to be involved in a pre-meeting to the committee hearing
- 18.2 Each Authority shall bear its own costs for the negotiation preparation completion and stamping of this agreement.
- 18.2.1 If either Authority shall fail to carry out any necessary act required to be taken pursuant to paragraph 18.1 above, the other may implement any reasonable measures necessary to give effect to this agreement or any proper decision of the Joint Committee and the reasonable costs thereof shall be recoverable as a debt from the Authority which so failed to act.

19. **Termination**

- 19.1 If the Authorities or either of them shall wish to determine this agreement or make any alteration to the terms hereof then in default of agreement between the Authorities the matter shall be referred to arbitration in accordance with paragraph 20 below

20. **Arbitration**

Any dispute between the Authorities under or arising out of this agreement shall be referred to a single arbitrator to be agreed upon by the Authorities or in default of agreement to be nominated by the Secretary of State for Communities and Local Government or such other Government Minister as shall be appropriate in accordance with and subject to the provision of [ the Arbitration Acts 1950 and 1979] or any statutory modification or re-enactment of them for the time being in force.

21. **Complaints**

Any complaint received by the Joint Committee or either or both of the Authorities relating to the Crematorium or any officer employed thereat or to the performance of functions under this agreement shall be dealt with in the first instance in accordance with Durham County Council's formal complaints procedure and if the complaint is not resolved as a result of that process or if a complaint is received from the Local Government Ombudsman dealt with by the Monitoring Officer.