

DATED 23<sup>rd</sup> NOVEMBER 2006

*original  
in Record  
Office*

**MEMORANDUM OF AGREEMENT BETWEEN**

**Fareham Borough Council**

**Gosport Borough Council**

**Havant Borough Council**

**and**

**Portsmouth City Council**

**RELATING TO**

**The Portchester Crematorium Joint Committee**

## **PORTCHESTER CREMATORIUM JOINT COMMITTEE**

### **MEMORANDUM OF AGREEMENT**

This Agreement is made between the Executive body of Portsmouth City Council (Portsmouth); the Executive body of Fareham Borough Council (Fareham); the Executive body of Havant Borough Council (Havant); and Gosport Borough Council (Gosport), together called 'the Constituent Councils'. The Portchester Crematorium Joint Committee (created by an agreement between the Constituent Councils dated 1 December 1956 and amended on 27 October 1976) ceased to exist on 6 May 2002 in accordance with provisions of the Local Government Act 2000 and regulations made thereunder, and in consequence those agreements have terminated. The Executive bodies of Portsmouth, Fareham, and Havant, and Gosport Borough Council have resolved to constitute a new Portchester Crematorium Joint Committee as they are empowered to do by the Local Government Act 2000 and regulations made thereunder for the purpose of exercising the functions of the Constituent Councils under the Cremation Acts and under any other acts and regulations with respect to the provision of and maintenance of crematoria.

It is hereby AGREED by and between the Constituent Councils as follows –

#### **1. Constitution of Joint Committee**

- (1) There shall be constituted a Joint Committee of Portsmouth, Fareham, Gosport and Havant ("the Constituent Councils") consisting of two members from Gosport Borough Council and two executive members from each of the remaining Constituent Councils ("The Joint Committee").
- (2) The Joint Committee shall have the functions, powers and duties and be subject to the terms and conditions set out below.
- (3) The Joint Committee shall be deemed to have been constituted as from the 7 May 2002, from which date the functions, powers and duties have been discharged in accordance with the terms and conditions set out below.

**2. Name of Committee**

The name of the Committee shall be the Portchester Crematorium Joint Committee ("the Joint Committee")

**3. Membership of Committee**

- (1) The Joint Committee shall consist of members appointed by the Executives of Portsmouth, Fareham and Havant Councils from among members of their Executive, and from Gosport Borough Council.
- (2) Each Executive shall be entitled to appoint two members to the Joint Committee. In the absence of an appointed member, any other member of the same Executive can substitute.
- (3) Gosport Borough Council shall be entitled to appoint two members. In the absence of an appointed member, any other member appointed by Gosport Borough Council for the purpose can substitute.
- (4) The usual term of office shall be for the ensuing municipal year, with each Constituent Council appointing their representatives at or within 14 days of the Annual Meetings of such respective councils.
- (5) Membership of the Joint Committee shall end immediately if the appointed member ceases to be a member of his/her Council's Executive for any reason whatsoever or if any appointed member ceases to be a member of the Council by whom s/he was appointed to the Joint Committee.
- (6) Any vacancy in the number of representatives of any of the Constituent Councils may be filled forthwith by the respective Council or its Executive as the case may be and the person so appointed shall hold office until such time as the person whose place s/he fills would regularly have retired.

**4 Powers of Committee**

- (1) The Constituent Councils agree to delegate to the Joint Committee all their powers and duties under Section 214 of the Local Government Act 1972 and any other relevant legislation for the provision and maintenance of crematoria (including the existing crematorium at Portchester).
- (2) The delegated powers shall not extend to the power to borrow money or to levy a precept or to hold land.

## **5. Committee Meetings and Proceedings**

- (1) The Joint Committee shall hold two meetings at least every year and may hold other meetings at intervals if it finds it necessary or convenient.
- (2) The Joint Committee shall have power to appoint sub-committees from among its members for any purpose it decides could better be managed or considered by a sub-committee.
- (3) The Joint Committee shall make standing orders regulating the procedure at its meetings, making provision for the election of a chair and specifying the place of meeting and quorum for meetings of the Joint Committee and any sub-committee.

## **6. Staff**

The Joint Committee may appoint and pay such officers and staff as it deems necessary for the fulfilment of this agreement.

## **7. Accounting Arrangements**

- (1) The Joint Committee, its officers and staff, shall keep proper accounts of all income and expenditure transactions as required by legislation and codes of practice.
- (2) As soon as possible at the end of every financial year (a period of 12 months ending on 31 March) the Joint Committee shall publish a report on the operations of the Joint Committee during the financial year and a set of the final accounts for the year and send copies to each Constituent Council.
- (3) As soon as available the Joint Committee shall publish the audited accounts for the financial year.

## **8. Borrowing Arrangements**

If the Joint Committee requires to incur capital expenditure in connection with the provision of crematoria, which it cannot fund from revenue, it may request one or more of the Constituent Councils to lend it the money or borrow the funds on its behalf for such periods, at such rates of interest and on such terms and conditions of repayment as the Joint Committee may reasonably prescribe or approve.

**9. Vesting of Land and Property**

All land and property acquired or constructed by whatever means for the purpose of cremation, shall belong to and be vested in the Council in whose area the greater part is situated but shall be managed and maintained by the Joint Committee.

**10. Apportionment of Deficits and Surpluses**

- (1) All expenses, net of income and reserves, incurred by the Joint Committee in any financial year shall be borne by the Constituent Councils in equal shares.
- (2) The Joint Committee may require each of the Constituent Councils to pay on 1 April, or another date that the Joint Committee determines, the sum which the Joint Committee estimates will be the proportion of any estimated deficit to be met by that Council. When the exact amount and proportion of the deficit are known, there shall be an appropriate adjustment between the Joint Committee and each of the Constituent Councils.
- (3) The Joint Committee may use part or all of any surplus made in a financial year to finance capital expenditure and redeem debt and to carry it forward to meet contingencies and future expenditure requirements.
- (4) Any surplus remaining shall, as soon as practicable, be returned to the Constituent Councils in the same proportions as applies to deficits in sub-clauses (1) and (2).

**11. Scrutiny of Decisions**

Scrutiny of decisions taken by the Joint Committee shall be undertaken as follows –

- (1) The relevant scrutiny committee of each Constituent Council shall have the power to call-in a decision taken by the Joint Committee but not yet implemented and to request that it be re-considered. The following criteria must be met –
  - (a) the request is made to the Clerk to the Joint Committee within 5 working days of publication of the decision and by at least 2 members representing the relevant scrutiny committee of any one Constituent Council, and

- (b) the decision proposes expenditure or savings in excess of £250,000.
- (2) A decision called in for scrutiny shall be reviewed by the relevant scrutiny committee of the Constituent Council whose members made the request, and shall report its conclusions within 15 working days from the date of publication of the decision, failing which the original decision will take effect.
- (3) On receipt of a report from the relevant scrutiny committee the Joint Committee may decide to proceed with the original decision or an amended decision and will publish that decision.
- (4) The relevant scrutiny committee of each Constituent Council shall have the power to review the effectiveness of the Joint Committee in providing efficient and effective crematoria services. In so discharging that power each scrutiny committee will be required to consult with the scrutiny committee of each other Constituent Council to ensure that they are not duplicating each others work.

## **12. Review of the Agreement and Determination of Agreement**

- (1) Any Constituent Council Executive may require a review of all or any of the terms of this agreement by giving all the other Constituent Council Executives written notice specifying the nature of the review required.
- (2) A review, once requested, must take place within six months of the written notice requesting the review.
- (3) Any change to this agreement must be agreed by all Constituent Council Executives.
- (4) If as a consequence of a review all of the authorities agree to determine this agreement or the agreement is determined by statute, then the assets shall be realised and the Constituent Councils share equally in the proceeds:
- (5) Any Constituent Council wishing to withdraw from the agreement must give not less than two years' notice in writing to all the other Councils, such withdrawal only to take place at 31 March in any year.

- (6) If any Constituent Council(s) withdraw from the agreement then they shall be entitled to their share of the value of fixed assets stated in the balance sheet at 31 March in the year of their withdrawal, and based on an updated depreciated replacement cost. Such share will be paid at a time or in instalments over a period of time to be agreed by the Councils.
- (7) In the event of any Constituent Council which holds land and property or other asset for the benefit of the Joint Committee withdrawing from this agreement, that Council shall continue to allow the land, property or other asset to be managed and maintained by the Joint Committee.
- (8) Throughout this agreement, unless otherwise stated reference to "Constituent Council Executive" shall be deemed to include the relevant Committee of Gosport Borough Council exercising powers and duties conferred by the 'Alternative Arrangements' provisions of the Local Government Act 2000.
- (9) Any written notice served under the terms of this clause shall also be sent to the Clerk to the Joint Committee.

**13. Arbitration**

All disputes between the Constituent Councils or between any of them and the Joint Committee on the interpretation of this agreement and all disputes or differences in any way or at any time shall be referred to an arbitrator to be agreed by the parties, failing which to be named by the Secretary of State, and the current arbitration legislation will apply.

This agreement is freely entered into by the following parties on *23<sup>rd</sup> November 2006*

*Executed as a Deed by affixing*

**THE COMMON SEAL OF  
FAREHAM BOROUGH COUNCIL**

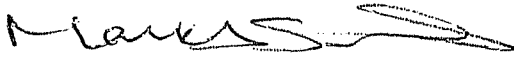
~~was hereunto affixed~~ in the presence of:



Authorised Signatory

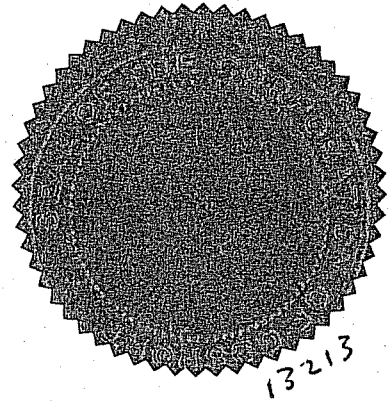
Executed as a deed by affixing  
THE COMMON SEAL OF  
GOSPORT BOROUGH COUNCIL

~~was hereunto affixed~~ in the presence of:



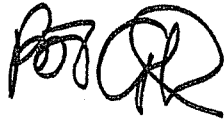
~~Authorised Signatory~~

Head of Legal Services



Executed as a Deed by affixing  
THE COMMON SEAL OF  
HAVANT BOROUGH COUNCIL

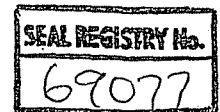
~~was hereunto affixed~~ in the presence of:



~~Authorised Signatory~~

Solicitor to the Council

THE COMMON SEAL OF PORTSMOUTH )  
CITY COUNCIL was hereunto affixed in )  
Pursuance of a resolution of the Council )  
passed at a meeting duly convened and )  
held:-



Authorised Signatory