

MANSFIELD AND DISTRICT CREMATORIUM JOINT COMMITTEE

**AGREEMENT RELATING TO JOINT MANAGEMENT ARRANGEMENTS
FOR MANSFIELD & DISTRICT CREMATORIUM**

BETWEEN

**MANSFIELD DISTRICT COUNCIL
-and-
ASHFIELD DISTRICT COUNCIL
-and-
NEWARK & SHERWOOD DISTRICT COUNCIL**

This **DEED OF AGREEMENT** is made the **xx** day of **xxxxxxx 2022**

BETWEEN

- (i) **Mansfield District Council of Civic Centre, Chesterfield Road South, Mansfield, Nottinghamshire NG19 7BH (“Mansfield”) and**
- (ii) **Ashfield District Council of Council Offices, Urban Road, Kirkby in Ashfield, Nottinghamshire NG17 8DA (“Ashfield”) and**
- (iii) **Newark and Sherwood District Council of Castle House Great North Road Newark NG24 1BY (“Newark and Sherwood”)**

WHEREAS:

1. The authorities to this Deed have by their Executives or by virtue of Section 102 (1) of the Local Government Act 1972 the Local Government Act 2000 and the Local Authorities (Arrangements for the Discharge of Functions)(England) Regulations 2000, now superseded by The Local Authorities (Arrangements for the Discharge of Functions)(England) Regulations 2012 and all and every power enabling them agreed and resolved to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 (“the Crematorium”) at Derby Road, Mansfield, Nottinghamshire NG18 5BJ which is more particularly described in paragraph 1 below and on 3 July 2002 entered into a Joint Management Agreement (“the 2002 Agreement”).
2. The 2002 Agreement and a subsequent Agreements on 27 July 2012 and 11 November 2013 (“the 2013 Agreement”) superseded an agreement entered into by the said Authorities or their predecessor authorities dated 4th April 1955 (the Prior Agreement).
3. The parties now wish to revise the terms of the 2013 Agreement to reflect Newark and Sherwood District Council’s change in governance

arrangements to Executive Arrangements with effect from 17 May 2022 and have entered into a Revised Agreement accordingly.

NOW in pursuance of the said Agreement and in consideration of these presents THIS DEED WITNESSES as follows:

1.0 Definitions and Interpretation

1.1 In this Agreement, the following expressions shall have the meaning set out below unless the context otherwise requires:

“Authority”	means either Mansfield, Ashfield or Newark and Sherwood and “Authorities” shall be construed accordingly;
“Annual Meeting”	means the annual meeting of the Joint Committee held each year in accordance with Paragraph 7.2 of this Agreement;
“Chief Executive”	means 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”	means the person appointed by virtue of Paragraph 17.1 to carry out certain duties allocated by this Agreement;
“Commencement Date”	the 17 May 2022
“Council”	the Council of elected members of the Authorities to this Agreement;
“Crematorium”	the crematorium known as the Mansfield and District Crematorium, which includes all buildings, grounds, equipment and all other property appurtenant thereto;
“Crematorium Site”	means the land shown edged red on the plan annexed situate at Derby Road, Mansfield, Nottinghamshire;
“Executive”	the form of Executive created and operated by each Authority in accordance with Sections 10 and 11 of the Local Government Act 2000;
“Financial Year”	the period running from 1 April in one calendar year until 31 March in the next calendar year (inclusive);
“Joint Committee”	the Mansfield and District Crematorium Joint Committee constituted by this Agreement;
“Member”	unless the context otherwise so requires a member of the Joint Committee;
“Ordinary Meeting”	any meeting of the Joint Committee that is not an annual meeting or a special meeting;
“Special Meeting”	a meeting of the Joint Committee convened in accordance with Paragraph 7.6 of this Agreement.

- 1.2 Words importing one gender include all other genders and words importing the singular include the plural and vice versa.
- 1.3 The clause, paragraph and schedule headings do not form part of this Agreement and should not be taken into account in its construction or interpretation.
- 1.4 References to Statutes, sections of Statutes or Statutory Instruments shall include any statutory modifications or re-enactment thereof from time to time and for the time being enforced.

2.0 **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 under the provisions contained in this Agreement. If one of the constituent authorities gives notice of their intention to withdraw from the arrangements, the Joint Committee may continue to operate with the two remaining constituent authorities and this Agreement shall be amended accordingly.

3.0 **Name of Joint Committee**

The Joint Committee shall be known as the Mansfield and District Crematorium Joint Committee.

4.0 **Provision and Location of Crematorium**

The Crematorium is located on the Crematorium Site which site was acquired by Mansfield District Council on behalf of the predecessor Authorities to those which are party to this Agreement.

- 4.1 The Crematorium Site is now vested in Mansfield by virtue of S120(4) of the Local Government Act 1972.
- 4.2 Mansfield acknowledges that it holds the Crematorium Site on behalf of the constituent authorities. It further acknowledges that in the event of the Crematorium Site being sold to a third party, the assets shall be apportioned between the Authorities in accordance with a formula to be agreed between them. In the absence of agreement being reached between the parties as to the formula to be applied, regard shall be given to the original capital contributions of the predecessor Authorities and to contributions to revenue deficits and contributions to capital made by the three Authorities and by their predecessor Authorities. In the event of the three Authorities failing to reach agreement, having had regard to such historic data, an arbitrator shall be appointed to determine the due apportionment, the arbitrator to be nominated by the external auditors for the time being of the Joint Committee.

5.0 **Membership**

- 5.1 The Joint Committee shall consist of members appointed by the Authorities as follows:
 - 5.1.1 The Authorities shall each appoint three executive members to the Joint Committee
 - 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 an executive member of the Council by whom he is appointed whichever is the sooner and any provision in the constitutions of any of the Authorities to the contrary is hereby waived.
- 5.1.3 If any 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 more than one Authority shall only represent the first Authority to appoint him as a member and any subsequent appointment by another Authority shall be void.
- 5.2 The Chief Executive of each Authority shall notify the Clerk within 14 days of any appointment of a member of his Council to the Joint Committee.
- 5.3 Any member may at any time resign his office as such member by notice addressed to the Clerk who should forthwith notify the respective Chief Executives of each of the Authorities.
- 5.4 Any member may be removed at any time by resolution by the Executive of the Authority by whom he was appointed, but such removal should only become effective upon receipt by the Clerk of notification thereof.

6.0 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 should the Chair and Vice-Chair be members of the same Authority.
- 6.2 The offices of Chair and Vice-Chair shall, in successive years, rotate between the three constituent authorities.
- 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 within 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. Disqualification shall, in the case of [Mansfield and Ashfield District Council](#) each Authority, include ceasing to hold office as an executive member of the appointing Authority.
- 6.4 If there is equality of votes for the appointment of Chair or Vice-Chair, then the Chair for the time being of that meeting shall have a casting vote.

7.0 Meetings of the Joint Committee

- 7.1 The Joint Committee shall hold an Annual Meeting which will normally be before the end of June in each year.
- 7.2 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.

- 7.3 Ordinary meetings and Annual Meetings of the Joint Committee shall be convened by the Clerk who shall deliver notice thereof to each member and observer at least five clear days before the date of the meeting (provided that failure to serve such notice on any member shall not affect the validity of the meeting).
- 7.4 With the notice referred to in Paragraph 7.3 the Clerk shall send a copy of the agenda for the meeting which shall include:
 - 7.4.1 Provision for the declaration of disclosable pecuniary interests by members and observers;
 - 7.4.2 All items of business which have been, or are deemed to have been, referred to the Joint Committee by a Scrutiny Committee, the Cabinet an ordinary committee (in the case of Newark and Sherwood District Council) or a Council Resolution of any Authority;
 - 7.4.3 All reports submitted by any officer of any of the Authorities; and
 - 7.4.5 Any item of business directed to be included by the person appointed to preside at the meeting.
- 7.5 A quorum of three members must be present to constitute a meeting provided that there is at least one member present from each Authority.
- 7.6 The Chair and two or more 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 will be held within 21 clear days of receipt by the Clerk of the said notice.
- 7.7 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 that is proposed to be transacted.
- 7.8 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 7.6 above.

8.0 **Persons 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 Vice-Chair are absent, the members present shall elect another member of the Joint Committee who shall preside at that meeting.

9.0 **Voting**

- 9.1 Every question at a meeting of the Joint Committee shall be decided by a majority vote of those members present and voting and in the case of an equality vote the person presiding at the meeting shall have a second and casting vote.
- 9.2 Except where a requisition is made under paragraph 9.3, the method of voting at meetings of the Joint Committee shall be by show of hands.
- 9.3 If requisition for a recorded vote is made by not less than 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.

- 9.4 Where, immediately after a vote is taken, any member present so requires, there shall be recorded in the minutes whether the person cast his vote for the question or against the question or whether he abstained from voting

10.0 **Veto**

- 10.1 Any member of the Joint Committee shall have a right of veto in respect of any decision of the Joint Committee
- 10.2 Such veto must be exercised prior to close of the meeting at which the matter is considered and shall provide that a decision is deferred on that matter until the next available meeting of the Joint Committee.
- 10.3 The right of veto shall not be exercisable where the majority of members of the Joint Committee present and voting resolve that the matter in question requires an urgent decision.
- 10.4 The right of veto may only be exercised once in respect of any matter.

11.0 **Minutes**

- 11.1 The Clerk shall be responsible for keeping a record of attendance and a record of business transacted at every meeting of the Joint Committee and the Minute Book shall be submitted to and signed at the next following meeting.
- 11.2 The person presiding at the next following meeting and referred to in Paragraph 11.1 shall put the question that the minutes be approved as a correct record of the previous meeting.
- 11.3 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.
- 11.4 Copies of the minutes of every meeting of the Joint Committee and any Sub-Committee thereof shall as soon as possible after each meeting and in any event within five working days be sent by the Clerk to the Chief Executive of each Authority and a copy of the minutes will be submitted to the appropriate scrutiny committee of the Authority for consideration at the next meeting thereof, subject to proper notice in accordance with that Authority's rules of procedure.
- 11.5 If any matter or decision arising from the minutes of the Joint Committee is referred by a scrutiny committee ~~of~~ to the Joint Committee, it shall be reconsidered in the light of the scrutiny committee's reference and reasons by the Joint Committee at the next Joint Committee meeting of which proper notice of the matter can be given and the Joint Committee's decision after such reconsideration shall be final.

12.0 **Sub-Committees**

- 12.1 The Joint Committee may from time to time appoint Sub-Committees for any general or special purpose in connection with their powers and functions. Any Sub-Committees so appointed shall consist only of members but should include at least one member from each Authority.

- 12.2 The Joint Committee shall at the time of appointing any Sub-Committee determine the terms of reference of that Sub-Committee.

13.0 **Vacancies**

- 13.1 No act or proceeding of the Committee shall be questioned on account of any vacancy or on account of any defect in the appointment of any member.

14.0 **Capital Expenditure**

- 14.1 If the Joint Committee shall at any time require to incur capital expenditure for:
- 14.1.1 the acquisition of property;
 - 14.1.2 the construction of works;
 - 14.1.3 any other capital purposes in connection with its powers

then (unless the Joint Committee shall in their discretion decide to defray such expenditure out of revenue surpluses) the express approval of each of the Authorities to such capital expenditure shall be required. In the event of the request for additional capital funding being approved by each of the Authorities, the Authorities shall contribute to that capital expenditure in accordance with a formula to be calculated according to the throughput of cremations emanating from each of the Authorities for the relevant financial year, ("the Formula") unless the Authorities shall jointly determine that a different formula be applied. For the purposes of the calculations, any cremations emanating from outside the areas of the three constituent authorities shall be disregarded.

- 14.2 The Joint Committee shall, from time to time, pay the amounts of all interest and all instalments of principal and other payments that become due under any loan raised pursuant to Paragraph 14.1 above.
- 14.3 The Authorities expressly give delegated authority to the Joint Committee to determine the capital programme provided that the cost of funding the same can be met from revenue surpluses and any accrued repairs and renewals fund.

15.0 **Revenue Expenditure**

- 15.1 All expenses of a revenue nature incurred by the Joint Committee in any financial year shall be borne in accordance with the same Formula to be applied to capital expenditure, namely according to the throughput of cremations emanating from each of the respective Authorities for the relevant financial year as set out in paragraph 14.1.3.
- 15.2 The Joint Committee may use or carry forward part or all of any profit or surplus made in any financial year for the purposes of:
- 15.2.1 Paying debts
 - 15.2.2 Meeting contingencies

15.2.3 Meeting future expenses

15.2.4 Funding any capital works in accordance with clause 14.3, but any amount of such profit or surplus not so applied shall be returned to the Authorities according to the formula set out in paragraph 14.1.3 namely the throughput of cremations emanating from each of the constituent Authorities for the relevant financial year. In calculating the respective share to be distributed to each of the Authorities any cremations from outside the areas of the three constituent Authorities shall be disregarded.

15.3 Revenue surpluses shall be applied in the first instance towards funding the capital programme from time to time agreed by the Joint Committee in accordance with clause 14.3. However, the Authorities shall be entitled to elect to take their share of the revenue surplus provided that they provide the equivalent amount by way of capital contribution towards the agreed capital programme.

15.4 In the event of a revenue deficit, this shall be met by the constituent Authorities in accordance with the Formula set out in paragraph 14.1.3 for the relevant financial year.

16.0 **Interest on Sums Due**

16.1 Any sum properly payable by any 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 Mansfield's bankers until such time as the sum due is paid in full.

17.0 **Apportionment of Assets and Liabilities**

17.1 If one or more of the constituent authorities give notice under clause 21 that they wish to withdraw from the joint management arrangements, they shall be entitled, on such withdrawal, to receive an appropriate apportionment of assets or shall be required to pay an appropriate apportionment of the liabilities of the Crematorium on the basis of a formula calculated with reference to the number of cremations as a percentage of total within area cremations (i.e. excluding out of area cremations entirely from the calculation) over the 15 year period immediately preceding the effective date of such withdrawal as follows:

X = Number of cremations taking place within each district area for the preceding 15 years

Y = Total number of cremations taking place within the total of the constituent district areas (excluding out of area cremations)

$\frac{X}{Y} \times 100 = \% \text{ for each authority } \times \text{ value of assets or liabilities.}$

17.2 In such event, the authority or authorities giving notice of their intention to withdraw shall be required to meet any costs directly arising as a result of such withdrawal including any professional fees incurred.

- 17.3 In the event of a sale or disposal of the Crematorium to a third party or in the event of it ceasing to operate for any other reason, the formula to be applied for the distribution of assets and liabilities shall be calculated according to the number of cremations emanating from each district as a percentage of the total within area cremations (i.e. excluding out of area cremations from the calculations) over the 25 year period immediately preceding the disposal or closure as the case may be as follows:

X = Number of cremations taking place with each district area for the preceding 25 years

Y = Total number of cremations taking place within the total of the constituent district areas (excluding out of area cremations)

$$\frac{X}{Y} \times 100 = \% \text{ for each authority } \times \text{ value of assets or liabilities.}$$

- 17.4 The Joint Committee shall make appropriate arrangements for a valuation of the Joint Committee's assets and liabilities to be carried out on a 5 yearly basis.

18.0 **Officers**

- 18.1 Those persons currently holding office as Clerk and Treasurer pursuant to the 2013 Agreement shall continue to hold office by virtue of this Agreement. Should those officers resign or otherwise cease to hold office the Joint Committee shall appoint to those offices, provided that any person so appointed shall be an employee of one of the Authorities and shall cease to hold office on terminating such employment.

- 18.2 The Joint Committee shall appoint and pay such employees as it deems necessary to provide, equip, maintain and manage the Crematorium and also duties ancillary thereto required to be provided by virtue of this Agreement or by Statute. Such employees shall be employed by Mansfield District Council on the Joint Committee's behalf on the terms and conditions of employment which apply to employees of Mansfield District Council and shall be enabled to join any pension scheme which employees of Mansfield are entitled to join by virtue of their individual Contracts of Employment. **Matters relating to staff are delegated to Mansfield District Council's Head of Paid Service.**

- 18.3 Employees of Mansfield District Council have delegated authority to take all operational, managerial and professional decisions in respect of the provision and management of the Crematorium and ancillary duties. Any decisions of strategic significance or that are potentially contentious will be escalated in accordance with the Authority's Constitution. Consultation with the Chairman, and Vice Chairman of the Joint Committee and nominated Member from the third authority will be undertaken as appropriate.**

18.4 Some decisions are reserved to the Joint Committee: approving the annual capital and revenue budgets, setting fees and charges, approving the Annual Statement of Accounts and the Statement of Internal Control, and all Key Decisions as defined by Mansfield District Council's Constitution as amended from time to time.

18.5 The procedures for emergency and urgency Key Decisions as set out in Mansfield District Council's Constitution apply. Where practical to so do, consultation with the Chairman and Vice Chairman of the Joint Committee and nominated member from the third Authority will be undertaken prior to an emergency or urgency Key Decision being taken, and all such decisions will be reported to the Joint Committee.

19.0 **Accounts**

19.1 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 1972.

19.2 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.

19.3 Mansfield will arrange for an annual audit of the accounts to be carried out and the Joint Committee shall provide a copy of the report thereof to each of the Authorities as soon as practically possible after receipt of the same.

20.0 **Performance of Agreement**

20.1 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.

20.2 Each Authority shall bear its own costs for the negotiation, preparation, completion and stamping of this Agreement and any amended agreement be approved by the three constituent authorities.

20.3 If any Authority shall fail to carry out any necessary act required to be taken pursuant to Paragraph 20.1 and 20.2 above, the others may implement any reasonable measures necessary to effect 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.

21.0 **Withdrawal from the Agreement or Termination of the Agreement**

21.1 If any of the Authorities wish to withdraw from this Agreement they shall be required to give not less than twenty-four months notice to expire on 31 March in any year.

21.2 Termination of the Agreement in its entirety shall only be effected by agreement of all the parties at the relevant time. If one party gives notice of their intention to withdraw from the Agreement, the remaining parties shall continue to operate under the terms of this Agreement

(subject to any consequential amendments) unless they shall otherwise determine.

21.3 In the event of one of the authorities giving notice of their intention to withdraw from the Agreement, the provisions as to apportionment of assets and liabilities and payment of costs as set out in clauses 17.1 and 17.2 ante shall apply.

21.4 If any of the authorities wishes to make any major alterations to the terms of this Agreement, then in default of agreement between the authorities, this shall be referred to arbitration in accordance with paragraph 22 below.

21.5 In the event of the parties jointly agreeing to terminate this Agreement, the apportionment of assets and liabilities shall be in accordance with clause 17.3 ante.

22.0 **Arbitration**

22.1 Any dispute between the Authorities and or arising out of this Agreement shall be referred to a single arbitrator to be agreed upon by the Authorities or in default of the Agreement to be nominated by the Secretary of State for the Environment, Transport and the Regions or such other Government Minister who shall be appropriate in accordance with and subject to the provisions of the Arbitrations Act 1996 or any statutory modification or re-enactment for the time being in force.

23.0 **Complaints**

23.1 Any complaints received by the Joint Committee or any of the Authorities relating to the Crematorium or any officer employed thereat or as to the performance of functions under this Agreement whether made through an Authority's complaints procedure or received via the Local Government Parliamentary Ombudsman shall be dealt with by the Clerk.

24.0 **Notices**

24.1 Notices under this Agreement shall be in writing and except where otherwise specified herein shall be delivered or despatched by first class post to the principal office of the Authority by whom the Clerk is employed as the case may be or sent by email to the Clerk at the address specified by them. Notice given by first class post is deemed to be given and received three days after it is despatched. Notice given by email is deemed to be given at the time of transmission, or if this time falls outside a working day, when the next working day resumes.

25.0 **General**

25.1 The Contracts Act (Rights of Third Parties) Act 1999 shall not apply to this Agreement.

EXECUTED by the Authorities as a Deed the day and year first before written

SEALED AS A DEED by
MANSFIELD DISTRICT COUNCIL
in the presence of:

SEALED AS A DEED by
ASHFIELD DISTRICT COUNCIL
in the presence of:

SEALED AS A DEED by
NEWARK AND SHERWOOD DISTRICT COUNCIL
in the presence of: