

report

meeting	NOTTINGHAMSHIRE AND CITY OF NOTTINGHAM FIRE & RESCUE AUTHORITY	
date	16 December 2005	agenda item number

REPORT OF THE CHIEF FIRE OFFICER

PROPOSED PARTNERSHIP AGREEMENT FOR THE PROVISION OF COMMERCIAL TRAINING

1 PURPOSE OF REPORT

The purpose of this report is to seek final approval of Members, to the creation of a commercial partnership between Nottinghamshire and City of Nottingham Fire and Rescue Authority and Nationwide Fire Safety Ltd for the provision of Commercial Training services.

2 BACKGROUND

On 3 June 2005 a report came to the Fire Authority seeking approval to go in to a commercial partnership with Nationwide Fire Safety Ltd. At this meeting it was resolved that :

- (1) The management team be authorised to negotiate the setting up of a partnership arrangement with Nationwide Fire Safety Ltd for the purpose of providing commercial training and for the joint promotion of on-line fire safety training.
- (2) That subject to the legal issues identified in the report being satisfactorily resolved, approval for the final partnership agreement be sought from the Authority at a future meeting.

3 REPORT

This report brings to a resolution those items referred to above :

- 3.1 Legal advice on the legitimacy of setting up a partnership of this type was sought initially from PA Consultancy of London, whose advice was that there were no legal barriers to the setting up of a partnership between a public sector organisation and a private sector company, such as was proposed by Nottinghamshire and City of Nottingham Fire & Rescue Authority and Nationwide Fire Safety Ltd.
- 3.2 Browne Jacobson LLP were instructed to confirm PA Consultancy's opinion on a formal basis, and this being so, were further instructed to draw up Heads of Terms in respect of the joint provision of Commercial Training (Appendix A). These Terms have been drawn up using the initial report to the Authority as guidance.
- 3.3 On that basis, having satisfied the resolutions of the initial report, detailed negotiation with Nationwide Fire Safety Ltd have led to early wins from the intended partnership :

- The introduction of a new pricing structure has been agreed and implemented, leading to an average increase in course fees of 40%, with no drop off in course demand.
- Two new courses (Responsible Person Seminar & Fire Safety Managers Course) have been designed and are generating a lot of interest.
- Prior to any marketing being undertaken the links to Nationwide Fire Safety Ltd have led to an increase in business enquiries.

4 FINANCIAL IMPLICATIONS

There are no financial implications arising directly from this report.

5 PERSONNEL IMPLICATIONS

All existing personnel have relocated to the new partnership entity.

6 EQUAL OPPORTUNITIES IMPLICATIONS

There are no equal opportunities implications arising directly from this report.

7 RISK MANAGEMENT IMPLICATIONS

There are no risk management implications arising directly from this report.

8 RECOMMENDATIONS

That Members note the Heads of Terms in respect of final approval for the Joint Provision of Commercial Training Services between Nottinghamshire and City of Nottingham Fire and Rescue Authority and Nationwide Fire Safety Ltd, and that the Chief Fire Officer be authorised to conclude the final agreement.

9 BACKGROUND PAPERS FOR INSPECTION

- Report to Fire Authority – 3 June 2005 – Proposed Partnership Agreement for the Provision Of Commercial Training.

Paul Woods
CHIEF FIRE OFFICER

APPENDIX A

Heads of Terms In Respect of the Joint Provisions of Commercial Training Services by Nottinghamshire and City of Nottingham Fire & Rescue Authority and Nationwide Fire Safety Ltd through a Commercial Training Unit

SUBJECT TO CONTRACT

These heads of terms set out the basis on which the Parties shall proceed to negotiate the full agreement for the provision of commercial training services with Nottinghamshire. With the exception of clauses 25, 26 and 27 which are legally binding on both Parties from the date of signature of these heads of terms, these heads of terms are not binding on the Parties.

1	Parties	Nottinghamshire Fire & Rescue Service ("NFRS"); and Nationwide Fire Safety Ltd ("NatFire")
2	Territory	The county of Nottinghamshire
3	Commercial Training Unit	To be known as Nottinghamshire Fire & Rescue Service Commercial Training Unit in Partnership with Nationwide Fire Safety Ltd.
4	Base	The "Unit" shall be based at Unit 1, Hill Crest Park, Hoyle Road, Calverton, Notts NG14 6QJ. Training Courses shall be provided either at:- <ul style="list-style-type: none">• the Base;• the client's own premises;• other premises belonging to NFRS or another Fire Brigade; or• premises hired for the specific purpose of providing the training.
5	Parties' Representatives	NFRS - Mark Mortimore NatFire - Mike Davies (Director)
6	Unit Staff	NFRS shall provide: <ul style="list-style-type: none">• 1 x Business Development Manager;• 1 x Trainer; and• 1 x Part time Administrator NatFire shall provide: <ul style="list-style-type: none">• 1 x Training Unit Manager; and• Mike Davies - Director of NatFire At the appropriate times NatFire shall employ such further trainers and administrators as are necessary for the carrying out of the Unit's role. All staff shall remain employees of the their respective current employer and shall not be transferred to the other Party. Notwithstanding this, if the TUPE regulations apply so as to transfer staff from one party to the other, the agreement will contain TUPE indemnities to deal with this.

7	Reporting Structure	<p>Trainers and administrators shall report to the Unit Training Manager.</p> <p>The Unit Training Manager and the Business Development Manager shall report to Mike Davies.</p> <p>Mike Davies shall report to the Management Committee.</p>
8	Branding	<p>All branding shall be approved by the Parties prior to use. In the event of a dispute NFRS has the deciding vote.</p> <p>In the event that any intellectual property is created in the brand it shall be owned jointly by the Parties.</p>
9	Training courses to be provided by the Unit	<p>The Parties shall agree between themselves which courses shall be provided by the Unit.</p>
10	Training Courses	<p>The content of all Training Courses must be approved in writing by both Parties before delivery of such courses commences. In the event of the Parties disputing the contents of a course NFRS shall have the deciding vote; and</p> <p>All Training Courses shall, as a minimum, be reviewed annually and updated as appropriate and referred to the Management Committee for sanctioning.</p>
11	Training Course Materials	<p>All Training Course Materials must be approved in writing by both Parties before being used. If the Parties are in dispute as to the Training Course Materials, NFRS shall have the deciding vote;</p> <p>All approved Training Course Materials shall carry the Parties' names and logos; and</p> <p>All Training Course Materials shall be supplied by NatFire.</p>

12	Training Products	<p>In addition to the Training Courses, the "Unit" may sell Training Products sourced or supplied by NatFire subject to both Parties agreeing the terms of sale.</p> <p>Any Training Products sold by the "Unit" must be approved in writing by both Parties. In the event of a dispute NFRS shall have the deciding vote.</p> <p>All approved Training Products shall carry the NFRS name and logo.</p> <p>All Training Products shall, as a minimum, be reviewed annually and updated as necessary and referred to the Management Committee for sanctioning.</p>
13	Trainers	<p>All Trainers must be approved by both Parties. In the event that the Parties dispute whether or not a person is a suitable Trainer, NFRS shall have the deciding vote.</p> <p>All Trainers shall attend refresher courses/update courses as deemed appropriate.</p>
14	Intellectual Property	<p>The intellectual property rights vesting in the Training Courses the Training Course Materials and the Training Products (if applicable) shall belong to the Party who creates them. In any event both Parties shall be entitled to use the intellectual property on a non-exclusive royalty free basis following termination of this Agreement for its own purposes.</p> <p>Each Party acknowledges that it acquires no rights of any nature in the name or logo of the other.</p>
15	Client Contracts	<p>All contracts to deliver Training Courses or supply Training Products to clients shall be contracted for on the Unit's standard terms of condition (to be agreed between the Parties). NatFire shall be the contracting party in respect of all contracts with third parties.</p> <p>The fees for all Training Courses and (to the extent necessary) prices for Training Products shall be agreed between the Business Development Manager and the Administrator but shall not take effect until approved by NFRS's Resources & Finance Officer. Prices may also be reviewed at any other time if the Parties consider it economically necessary.</p>
16	Marketing and Advertising	<p>The Parties shall be jointly responsible for producing all marketing literature.</p> <p>The Business Development Manager shall produce a marketing strategy and this shall be implemented following approval from both Parties.</p>

17	Management Committee	<p>NatFire shall be responsible for the overall management of the "Unit" on a day to day basis and the Training Unit Manager shall be responsible for carrying out these responsibilities.</p> <p>A Management Committee shall be established to make decisions relating to the:</p> <ul style="list-style-type: none"> • Long term objectives and plans of the "Unit"; • Training courses to be provided by the "Unit"; • Training Products to be supplied by the "Unit"; • Financial affairs of the "Unit"; • Employment needs of the "Unit"; and • Any other matters it considers it needs to review. <p>The Management Committee shall comprise:</p> <ul style="list-style-type: none"> • Mike Davies - Director of NatFire; • NFRS's Training Manager; and • A member of the senior management team of NFRS. <p>Additional persons may be co-opted onto the Management Committee from either NFRS or NatFire subject to the approval of both Parties.</p> <p>The head of the Management Committee shall be NFRS's Training Manager.</p> <p>The Management Committee shall meet not less than quarterly and at such other times as it deems necessary.</p>
18	Insurance	<p>NatFire shall be responsible for taking out and maintaining a professional indemnity policy of insurance in respect of the Training Courses/ Training Products supplied by the "Unit".</p> <p>NatFire shall also be responsible for taking out and maintaining the relevant public liability insurance in respect of the "Unit" and any necessary building insurances in respect of the Premises.</p> <p>Each party shall maintain employer's liability in respect of its own employees.</p>

19	Financial Arrangements	<p>A bank account shall be opened in the name of the Unit and shall be a sub-bank account of NFRS's own bank account.</p> <p>The bank account shall be administered by NFRS. All income generated through the work/sales of the "Unit" shall be paid into the bank account opened in respect of the services provided by the "Unit".</p> <p>The costs as set out in the Report shall be met by the "Unit".</p> <p>The Parties shall agree a policy on retaining profit within the "Unit" for further development of the "Unit" and distributing profits to the Parties. Any disputes shall be referred to NFRS's Treasurer.</p> <p>Any distribution of profit shall take place on a 50:50 basis as between the Parties. The frequency of such distributions shall be as agreed between the Parties. In the event of a dispute the matter shall be referred to the NFRS's Treasurer.</p>
20	Liability	<p>NatFire shall fully indemnify NFRS in respect of any claims, actions brought against NFRS as a result of the:</p> <ul style="list-style-type: none"> • negligent provision of the Training Courses; • provision of Training Courses not approved by NFRS; • advice given during Training Courses, which falls outside the scope of the Training Course and/or which is contrary to best practice/ national guidelines/ the advice of NFRS; and • supply of Training Products not approved by NFRS.
21	Termination	<p>This Agreement shall be for an initial period of 5 years and shall continue thereafter until terminated by either Party giving 6 months notice in writing.</p> <p>The Agreement may be terminated prior to the end of the 5 year term if:-</p> <ul style="list-style-type: none"> • there is a material breach of agreement (in whatever form) by either Party; or • NatFire becomes insolvent.

22	Consequences of Termination	<p>Upon termination of this Agreement both Parties shall be entitled to continue to deliver training courses and sell training products within the Territory.</p> <p>Any such training courses and/or training products will not carry the branding, name or logo of the other party.</p> <p>The Parties shall agree as to what to do with any remaining joint branded Training Course Materials and/ or Training Products.</p> <p>Neither party will seek to use any brand name developed by the "Unit" or trade on the reputation of the other.</p>
23	Exclusivity	<p>NatFire shall not provide any similar services in the Territory covered by NRFS by any means other than through these arrangements.</p>
24	Disputes	<p>In the event of any disputes relating to post termination use of branded products and/or disputes relating to ownership and use of intellectual property the parties shall seek to resolve the issues through expert determination.</p>
25	No Publication	<p>Subject to the provisions of the Freedom of Information Act 2000, neither party shall publicise that it is in talks or intends to enter into an agreement with the other for the purpose of providing commercial training services.</p>
26	Confidentiality	<p>Each Party shall keep the content of these heads of terms confidential and shall only disclose them to those of its employees, agents and directors who need to know for the purposes of entering into the full agreement. NFRS shall be permitted to disclose the contents of these heads of terms to its auditors and the Combined Fire Authority.</p>
27	Governing Law	<p>These heads of terms are governed by and shall be construed in accordance with English Law and the Parties submit to the exclusive jurisdiction of the English Courts.</p>

Signed by

For and on behalf of Nottinghamshire Fire & Rescue Service

Date

Signed by

For and on behalf of Nationwide Fire Safety Ltd

Date