



NOTTINGHAMSHIRE
Fire & Rescue Service
Creating Safer Communities

Nottinghamshire and City of Nottingham
Fire and Rescue Authority

NEW DIMENSION TRANSFER OF ASSETS

Report of the Chief Fire Officer

Agenda Item No:

Date: 18 December 2009

Purpose of Report:

To seek the approval of Members to formally sign up to the transfer agreement with Communities and Local Government of the New Dimensions assets.

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1. BACKGROUND

- 1.1 Following the tragic events of September 11 2001 and the attack on the Twin Towers building in New York, Central Government began a process of enhancing Fire and Rescue Services' capability of dealing with such incidents. Included in this was also the ability of the Service to deal with natural disasters, such as flooding.
- 1.2 Along with other Fire and Rescue Services, Nottinghamshire Fire and Rescue Service received new assets such as mass decontamination capability and high volume pumping capability. These vehicles, provided and maintained by Communities and Local Government (CLG), were based strategically following national and regional assessments to provide a fully co-ordinated coherent and unified response to the widest possible range of potential emergency incidents.
- 1.3 In addition, government permission for the usage of these assets for local response was given. This has been beneficial locally with response to hazardous materials incidents and flooding being met by utilising the new dimensions fleet.
- 1.4 With the New Dimensions project coming to a close, CLG are now seeking to deliver on a long term commitment to transfer ownership of the assets to Fire Authorities which host them. This will mean that the Fire Authority has full and direct responsibility for their management as well as their use.

2. REPORT

- 2.1 CLG began consultation on the transfer of ownership in November 2007 with the issue of Fire Service Circular (FSC) 51/2007, and a draft transfer of ownership agreement. Quite rightly Fire Authorities and Chief Fire Officers through the Chief Fire Officers' Association (CFOA) sought greater clarity on the long term plans. This included funding arrangements, maintenance costs and assurance around the future provision of such resources.
- 2.2 As a consequence of FSC 51/2007, CLG sought to provide clarity over the issues raised. In response new burdens funding was agreed for the full period of the current Comprehensive Spending Review (CSR), a centralised maintenance contract for the long term maintenance was agreed, and a sector led assurance group, managed through the Fire and Rescue Service National Resilience Board was established with a Memorandum of Understanding being signed in March 2009.
- 2.3 Following on from this, CLG undertook a second period of consultation in March 2009 through FSC 16/2009. This consultation provided a revised draft Transfer of Ownership agreement, and also asked whether Fire and Rescue Services were content to sign up to the principle of a transfer before CLG sought formal agreement from Fire Authorities. Nottinghamshire responded

positively to this request but also raised questions about future funding, contract costs and asset refresh.

- 2.4 On 22 September 2009, CLG issued FSC 59/2009 seeking a response from Fire Authorities and sign up to the formal transfer agreement. This is required by 31 December 2009. The Chair of the Fire Authority and the Chief Fire Officer have subsequently received correspondence from the minister (12 November 2009) seeking whether they are content to sign up to the agreement.
- 2.5 The agreement itself has been subject to scrutiny by the Fire Lawyers network, the Local Government Association Fire Services Management Committee and the Fire Finance Network. A copy of this agreement is attached at Appendix A to this report.
- 2.6 In summary the agreement lays out the following elements:
- The background to the transfer.
 - The transfer details.
 - The liabilities.
 - Assurance.
 - Obligations.

For Nottinghamshire Fire and Rescue Service this would therefore relate to the following equipment:

- The High Volume Pumping Unit based at Ashfield Fire Station.
 - The Mass Decontamination Unit based at West Bridgford Fire Station.
 - The Mass Re-Robe Unit based at Newark Fire Station.
 - ECSV soon to be delivered and based at Highfields Fire Station.
- 2.7 In signing up to the agreement NFRS would be committing to the following with regard to these vehicles:
- 2.7.1 The Fire Authority would be agreeing to the transfer of ownership from CLG.
- 2.7.2 The transfer of the equipment will equally be treated as a transfer of function.
- 2.7.3 The agreement relates to the existing equipment and any subsequent equipment purchased on behalf of the Fire Authority for the purpose of refresh or replacement.
- 2.7.4 The Fire Authority will be in receipt of a Section 31 grant as previously determined in Fire Service Circular 36/2008 for the period of the current CSR.
- 2.7.5 CLG has committed to paying the fixed costs of the contract relating to routine servicing and maintenance over the next 16 years to ensure availability. The maintenance contract is with Vasper Thorneycroft

Critical Services (VTCS). Upon transfer the Fire Authority will also be obliged to sign up to the maintenance contract. CLG will refund Fire Authorities for this cost.

2.7.6 Fire Authorities will be responsible for the unfair wear and tear costs and maintenance of these vehicles. Such wear and tear is identified with Fire Service Circular 52/2008 and refers to a vehicle becoming non-serviceable as a result of action or inaction by a Fire and Rescue Service. Examples given with the circular are:

- lenses, mirrors, number plates, body panels, upholstery and seating etc.
- brake components, body panels and transmission systems due to a body being on soft ground.
- engine and transmission repairs due to the failure of the Fire Authority to comply with responsibilities in relation to routine checks and maintenance.
- all costs associated with the Fire Authority, losing keys or other items from the inventory.
- all costs associated with repairs to fuel systems due to filling the vehicle with the wrong type of fuel.
- misuse or careless use of equipment at training or incidents.
- driver error accidents.

2.7.7 By taking receipt of the vehicles the Fire Authority will also accept certain obligations. These are listed in Schedule 2 of the attached draft transfer agreement. In principle however, this is to ensure that the vehicles remain available, fit for purpose and with competent staff to respond under the National Mutual Aid protocol. NFRS already complies with this obligation having accepted the vehicles as part of the New Dimensions project.

2.8 At the present time there has been significant debate about the transfer of these assets to Fire Authorities. Clearly the main cause for concern is the longer term funding arrangements and support for any refresh or replacement following the completion of the useable life of the vehicle. At the present time no clarity is being given beyond the life of the current CSR, although the 16 year central maintenance contract with VTCS does provide some support.

2.9 As of 19 November 2009, the President of CFOA wrote an open letter to CLG seeking further clarification on behalf of Chief Fire Officers around the country. The issues raised include:

- Cost apportionment.
- Contract application or termination.

- Ongoing revenue support.
- Statutory duty.
- Fall back options.
- Grants.

In addition, the continued concerns of new burdens funding, transparency of cost within any move to the revenue support grant and future funding for national assurance have all been raised.

- 2.10 These concerns however, must be placed against the operational benefit of holding and maintaining these vehicles locally, regionally and nationally. NFRS, as a result of engaging in the New Dimensions project has received enhanced capability to deal with its own local incidents and vehicles such as the High Volume Pumping Unit have been deployed locally. This provides both a benefit to the Service and the local community.
- 2.11 Notwithstanding the benefits that the service provision gives both NFRS and the wider regional and national community, it is essential that clarification on these outstanding issues is given so that appropriate advice and guidance can be given to the Fire Authority on which decision to make. Clearly the Service is keen to support the ongoing provision, but quite rightly cannot advise sign-up to an agreement which would have significant legacy issues locally.

3. FINANCIAL IMPLICATIONS

- 3.1 There are significant financial implications arising from this report both in terms of funding and revenue for NFRS. In July 2008 CLG identified the following funding streams for these services.

Mass Decontamination IRU Training

08/09 £35,700, 09/10 £36,414, 10/11 £37,142 per IRU over the three years of the current CSR.

Enhanced Command Support

09/10 £77k and 10/11 79k per ECSV for the three years of the current CSR.

HVP

08/09 £4,889, 09/10 £5k and 10/11 £5k

- 3.2 In addition to these revenue payments via grant, CLG have also amended a £100 million contract for maintenance of the New Dimensions fleet. Full commencement of the contract began on 1 October 2008. Fire and Rescue Services are responsible for arranging the monthly payment directly and CLG will fund Fire Authorities for the cost through Section 31 grant.

- 3.3 Outside of these arrangements Fire Authorities will incur additional revenue costs from the assigned wear and tear criteria as laid down in the transfer agreement. Although these are not yet known it is not anticipated that they will be significant, based upon the usage rates of the vehicles to date and should be able to be met from within the current budget maintenance predictions.
- 3.4 There is however a financial uncertainty post the current CSR period and the conclusion of the current Section 31 grant predictions. In FSC 59/2009, CLG have been clear that it is not possible to commit future parliaments to future spending. If withdrawn this could affect NFRS to a shortfall per annum. Clarification around these issues is being sought by CFOA so that the full impact in terms of finance can be assessed.

4. HUMAN RESOURCES AND LEARNING AND DEVELOPMENT IMPLICATIONS

The human resources and learning and development aspects arising from this report relate primarily to the crewing and training of staff to ensure these vehicles are available. These issues have been addressed as the Service has hosted the vehicles for over three years to date.

5. EQUALITY IMPACT ASSESSMENT

An initial impact assessment has revealed no specific equalities issues arising from this report.

6. CRIME AND DISORDER IMPLICATIONS

There are no crime and disorder implications arising from this report.

7. LEGAL IMPLICATIONS

Both the Civil Contingencies Act and the Fire and Rescue Services Act place specific obligations on the Fire and Rescue Service to respond to major emergencies. NFRS is also a signatory to the national Mutual Aid Protocol which ensures reinforcement of capability between Fire and Rescue Services.

8. RISK MANAGEMENT IMPLICATIONS

The risk management implications associated with this report are largely around the funding issues beyond the current Comprehensive Saving Review period and the impact of any withdrawal of funds. This has to be balanced against the availability of resources that do support the resilience of the county and country as well as the impact on the Service's reputation at governmental level if the resources were to be declined.

9. RECOMMENDATIONS

It is recommended that:

- 9.1 Taking into consideration all of the issues relating to the New Dimensions vehicles allocated by CLG, Nottinghamshire and City of Nottingham Fire Authority authorise the Chief Fire Officer to inform the Secretary of State that NFRS are prepared to consider signing up to the transfer agreement, subject to clarification being received on the outstanding issues relating to the long term financial impact on the Service.
- 9.2 Should clarification not be received, the CFO reports back to the Authority on the situation at the earliest opportunity.

10. BACKGROUND PAPERS FOR INSPECTION (OTHER THAN PUBLISHED DOCUMENTS)

- Fire and Rescue Service Circular 51/2007
- Fire and Rescue Service Circular 36/2008
- Fire and Rescue Service Circular 52/2008
- Fire and Rescue Service Circular 16/2009
- Letter from Shahid Malik MP 12 November 2009

Frank Swann
CHIEF FIRE OFFICER



AGREEMENT BETWEEN:

**(1) THE SECRETARY OF STATE FOR
COMMUNITIES
AND LOCAL GOVERNMENT**

-and-

(2) [FRA]

An agreement for the transfer of
the New Dimension assets and functions

Contract number:

MEPB
DCLG Legal Directorate
Eland House
Bressenden Place
London
SW1E

THIS AGREEMENT is made on

BETWEEN

- (1) **The Secretary of State for Communities and Local Government acting through the Department for Communities and Local Government of Eland House, Bressenden Place, London SW1E 5DU (“the Department”); and**
- (2) [FRA] of (“the FRA”).

BACKGROUND

- (1) The Department has for some time maintained and kept available for use assets for the purposes of the New Dimension Project in England (“the New Dimension Assets”).
- (2) In accordance with Government policy, the Department wishes to transfer the ownership of the New Dimension Assets to the English Fire and Rescue Authorities. The specific equipment (being part of the New Dimension Assets) to be transferred to the FRA is listed in the Schedule 1 (“the Equipment”).
- (3) The FRA has agreed with the Department with effect from 00.01 hours on [...] (“ the Time of Transfer”) to accept the transfer of the Equipment in consideration of the assumption of the obligations ('the Obligations') set out in this Agreement in each case on the terms and conditions set out.
- (4) The transfer of the Equipment from the Department to the FRA shall be treated as a “transfer of function”.

NOW IT IS AGREED as follows:

1. Interpretation

- 1.1 Unless the context requires otherwise "Equipment" includes both the equipment to be transferred under this Agreement and any subsequent equipment purchased on behalf of the FRA, for the purpose of asset refresh and replacement, by the National Assurance Body, (or any successor body) established to provide the future governance for the New Dimension Assets.
- 1.2 Unless the context requires otherwise, the singular shall include the plural and vice versa, and words expressed in any gender shall include any other gender.
- 1.3 The headings are inserted for convenience only and shall not affect the interpretation of this Agreement.
- 1.4 Save where express provision is made to the contrary, any reference to a statute, statutory provision or subordinate legislation shall be construed as a reference to that legislation, as amended and in force from time to time, including any re-enactment, consolidation or replacement (with or without modification). In the case of a statute or statutory provision, the reference shall also be construed as a reference to all subordinate legislation made under such statute or statutory provision.
- 1.5 Any reference to a Schedule is a reference to a Schedule to this Agreement.

2. Transfer

- 2.1 The Department agrees to transfer ownership and the FRA agrees to accept that transfer with effect from the Time of Transfer the Equipment including without limitation all rights and claims of the Department against third parties with respect to the Equipment (including without limitation all rights in connection with insurance policies held by the Department subject to the consent of the relevant insurance companies) so far as the Department can assign the same BUT (for the avoidance of doubt):
 - 2.1.1 excluding all intellectual property rights owned or used by the Department in relation to the Equipment; and
 - 2.1.2 excluding the communication equipment and associated wiring installed as part of the Firelink Project (Firelink Equipment) including all property, assets, rights and liabilities relating to the Firelink Equipment whether or not such Firelink Equipment is incorporated in to or attached to the Equipment.
- 2.2 The Department warrants that:
 - 2.2.1 it has legal and equitable title to the Equipment prior to the Time of

Transfer;

2.2.2 no person has commenced or to its knowledge, threatened to commence, any legal proceedings in relation to the Equipment which would be materially inconsistent with the transfer of ownership of the Equipment under clause 2.1; and

2.2.3 there are no encumbrances in respect of the Equipment or agreement by the Department to create such an encumbrance.

3. Consideration

3.1 The consideration for the [Assets] shall be the assumption by the FRA of the Obligations set out in this Agreement.

3.2 The accounts of the FRA shall reflect that the value of an item of the Equipment listed in the first and second columns of Schedule 1 is the amount specified in relation to that item in the fourth column of Schedule 1.

4. Completion

4.1 Completion of the transfer shall take place at the Time of Transfer by which time the Department shall have delivered the Equipment to the FRA.

4.2 Risk and property in and title to the Equipment shall pass to the FRA at the Time of Transfer.

4.3 The Department shall at or as soon as practicable after the Time of Transfer deliver to the FRA all transfers assignments and novations (if necessary) in connection with the Equipment together with the relevant documents of title (as detailed in schedule 3) necessary to give effect to this Agreement.

5. Liabilities

The FRA agrees to accept the transfer of the Equipment on the terms of this Agreement but the Department shall retain and discharge all debts owing by the Department in respect of the Equipment and all other liabilities of the Equipment subsisting as at the Time of Transfer.

6. Further assurance

The Department agrees and declares that it will after and notwithstanding completion of the transfer under this agreement execute and deliver any other documents and take any other steps that the Department considers necessary from time to time to vest in the FRA (or as it may direct) the Equipment.

7. Obligations

7.1 Firebuy Limited (Company number 5568715) ("Firebuy") (or any successor body thereof) has appointed a Prime Contractor under a prime contract for maintenance and management services in respect of the Equipment. The

FRA shall contract for the maintenance and management services in respect of the Equipment from the Prime Contractor by entering into the relevant "Terms of Access" pursuant to the Access Agreement between the FRA and Firebuy. The FRA shall comply in all material respects with its obligations under the Terms of Access. The FRA agrees with the Department that, in the event of a breach of this term, specific performance would be the appropriate remedy to be granted by the court.

7.2 Subject to the Department complying with its obligations contained in this Agreement the FRA shall during the period of 16 years commencing at the Time of Transfer ("the Term"), comply with the obligations on its part set out in this Agreement and in Schedule 2.

7.3 The FRA shall be liable for all costs relating to the maintenance and management of Equipment under the Terms of Access.

7.4 The FRA agrees to:

7.4.1 maintain national interoperability of the Equipment;

7.4.2 interoperability is the state of affairs where the Equipment remains capable of being used or operated in the same way as other New Dimension assets owned by other FRAs.

8. Costs

Each party shall bear its own costs of and incidental to the preparation and completion of this Agreement and the formation and registration of the transfer of the Equipment to the FRA.

9. Governing law

This Agreement shall be construed in accordance with and governed by the laws of England.

Schedule 1: The Equipment

[a breakdown of all New Dimension equipment by each FRA has been set out in Fire Service Circular 37/2007, which has subsequently been agreed or amended accordingly by FRSs. This, along with the relevant financial data for each asset, will be incorporated in to the table below and provided to each individual FRA in due course]

Asset	Quantity	Vehicle Number	Net Book Value (Modified Historic Cost valuation)¹
Prime Mover			
Incident Response Unit			
Fork Lift Truck			
Fork Lift Training Rigs			
Detection, Identification, & Monitoring Unit			
Re-robe module			
Dis-robe module			
Urban Search & Rescue Module 1			
Urban Search & Rescue Module 2			
Urban Search & Rescue Module 3			
Urban Search & Rescue Module 4			
Urban Search & Rescue Module 5			
High Volume Pump: Hydrosub			
High Volume Pump: Hose Box			
Enhanced Command Support Vehicles			

1 The net book values of the assets are based upon modified historic cost adjusted for depreciation in accordance with CLG's accounting policy. CLG calculates depreciation on a straight-line method in accordance with Financial Reporting Standard (FRS) 15. Asset lives used by CLG were as follows:

- motor vehicles - in the range of 5 to 20 years;
- plant & machinery – in the range of 3 to 10 years

Schedule 2: Obligations of the FRA

1. The FRA shall not without the prior written approval of the Department (the Department agrees that any approval by the Department is not to be unreasonably withheld and any request is to be responded to by the Department as soon as reasonably practicable):
 - 1.1 change the specifications (amounts, technology etc.), stowage arrangements, their training or operating procedures, or relocate the Equipment;
 - 1.2 carry-out repairs and/or maintenance to the Equipment or engage or contract with any other person to undertake the same save in accordance with Clause 7.1, or save where Firebuy and the Prime Contractor appointed by Firebuy in accordance with Clause 7.1 have agreed that the FRA can undertake such repairs and/or maintenance;
 - 1.3 sell or otherwise divest any interest in the Equipment to any third-party; and/or
 - 1.4 deploy the Equipment overseas.
2. The FRA shall maintain the Equipment so that at all times it is fit for purpose including meeting the needs of a wider than local emergency for which it may be deployed under the [National Mutual Aid Protocol] or the [Emergencies Order], and so that in all material respects it meets the technical design specification at the Time of Transfer (as amended in accordance with paragraph 1.1 above)
3. The FRA shall use best endeavours to retain a level of competent staff such that the Equipment may be deployed in accordance with paragraph 2 above.
4. Until the whole [RCC network] is operational, the FRA shall report the status of the Equipment to the [Fire and Rescue Service National Coordination Centre (FRSNCC)]. The FRA shall notify the [FRSNCC] promptly:
 - 4.1 whenever any of the Equipment becomes operationally unavailable and is expected to remain so for more than four hours, within an hour of the FRA becoming aware of the defect;
 - 4.2 whenever any of the Equipment becomes operationally available and ready for deployment following a period of unavailability, including deployment';
 - 4.3 on changes in location of and contact numbers for the Equipment;
 - 4.4 when the Equipment is deployed to an incident.

and is required to complete and forward to the [FRSNCC] at the end of each month a Monthly Validation Form (a monthly return by individual Fire and Rescue Services listing details of all New Dimension Assets hosted within their area).

- 4.5 Once the whole [RCC network] becomes operational, information on the Equipment will be obtained by the [RCC network] in the same way as for any other New Dimension Assets; there will no longer be a requirement to separately notify the [FRSNCC].
5. For the avoidance of doubt, the obligations of the FRA under this Agreement in relation to the availability and deployment of an item of Equipment shall not have effect for so long as:
 - 5.1 that item of Equipment is in the course of regular maintenance; or
 - 5.2 that item of Equipment is awaiting or in the course of unplanned maintenance, repair or re-equipping.

Schedule 3: List of Relevant Documents of Title

AS WITNESS etc
(signatures of (or on behalf of) the parties)