

PORTFOLIO HOLDER DECISION FORM

REF NO
573

DIRECTORATE

Children's Services

SUBJECT

To authorise the Corporate Director of Children's Services to enter into a contractual arrangement with the Local Education Partnership in order to carry out early works at Rosehill School.

DECISION²

This is not a key decision because the value of the agreement does not have a capital value in excess of £1 million.

SUBJECT TO CALL-IN : YES

Decision taken that:

- i. The Portfolio Holder authorises the Corporate Director of Children's Services to enter into a contractual arrangement with the Local Education Partnership (LEP) in order to carry out early works at Rosehill School.
- ii. The Portfolio Holder approves the Stage 1 and Stage 2 submission for the LEP to complete the Early Works as attached at Appendix 1.
- iii. The contractual arrangement will be drawn up using standard documentation provided by Partnerships for Schools, or through an Early Works Agreement approved by the project's legal advisors.

OPTIONS CONSIDERED

Two options were considered, the option outlined in the decision and the option that the scheme does not commence until the conclusion of the consultation process for Rosehill. This second option was not deemed appropriate since it would delay the construction start date for the new Rosehill school.

REASONS FOR DECISION(S)

On 28 July 2009 Executive Board approved the Stage 1 submission from the Local Education Partnership (LEP) which set out design principles, costs and construction programming. The associated risk issues and their mitigations were noted and an evaluation report was supplied as Appendix 1 which incorporated feedback on the main elements of the Stage 1 submission from the BSF Team and its advisors.

Approval of Stage 1 was subject to the proposals for the expansion and temporary relocation of Rosehill School to the Shepherd School site on Harvey Road is to be approved by Executive Board in December 2009.

The capital cost of the scheme will be met through grant funding of approximately £8.57m from the DCSF.

The early works agreement is required for the former Shepherd School site on Harvey Road.

This will allow construction work at Rosehill School to commence in earnest in March 2010.

In order to do this approximately £387,000 of early works expenditure will need to be incurred. Details of these costs, which will be contracted on a fixed price basis and include allocations for preliminaries and a contingency are provided in the Early Works Agreement attached as Appendix 2 to this decision. These works have been included within the overall cost of the scheme and will therefore ultimately be met from the overall funding envelope set out above.

The works along with the overall contract for delivering Rosehill School will be delivered by the LEP which has been procured through the Nottingham Building Schools for the Future (BSF) programme which was established in June 2008.

Finance and Legal comments are provided in Appendix 2 to this report.

The information in Appendix 1 page 3 is exempt from publication under Schedule 12A to the Local Government Act 1972 in the interests of commercial confidence, having regard to all the circumstances, the public interest in maintaining the exemption outweighs the public interest in disclosing the information.

AFFECTED WARDS

All

THE DECISION IS NOT VALID UNTIL PUBLISHED BY COMMITTEE SERVICES. THIS FORM SHOULD BE SENT TO COMMITTEE SERVICES WITHIN 2 WORKING DAYS OF LAST SIGNATURE.

PLEASE REFER TO SEPARATE DETAILED GUIDANCE ON THE INTRANET (COMMITTEE ONLINE) ON HOW TO COMPLETE THIS FORM BEFORE SUBMITTING TO DECISION TAKER.

ADVICE SOUGHT

	Yes	No
Legal	✓	<input type="checkbox"/> Glen O'Connell
Finance	✓	<input type="checkbox"/> John Beevers
Human Resources	<input type="checkbox"/>	<input type="checkbox"/>
Equality and Diversity	<input type="checkbox"/>	<input type="checkbox"/>
Other (please specify)	<input type="checkbox"/>	<input type="checkbox"/>

DECLARED OFFICER/ ⁴
MEMBER INTERESTS

DISPENSATION BY
STANDARDS COMMITTEE

DATE:	DISPENSATION REF:
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BACKGROUND PAPERS ⁵

Approval of Stage 1 Submission for Rosehill School – Executive Board 28 July 2009

Approval to undertake consultation on the proposed expansion of Rosehill School for pupils with autistic spectrum disorder (ASD) and its temporary relocation to enable refurbishment of the existing buildings – Portfolio Decision 23 April 2009

Wave 2 Phase 2 Stage 0 Submission to Partnerships for Schools – 3 March 2009

EXEMPT/CONFIDENTIAL REPORT

YES NO

and Date
DETAILS OF CONSULTATION UNDERTAKEN ⁶

	Yes	No	N/A	Name
Executive Member	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
Ward Councillors	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
Area Committee	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
Other Council Bodies	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
Corp. Directors Affected	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
Trades Unions	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
Others (Specify)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
<u>Reasons for not consulting</u>				

CONTACT PERSON

Matthew Neal, Head of Schools for the Future	CONTACT NO 0115 915 0976
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AUTHORISED SIGNATORY⁷

CHIEF OFFICER:	Ian Curryer	DATE: 01/10/09
PORTFOLIO HOLDER(S):	David Mellen	DATE 01/10/09
	Date Published: 06/10/09	Last Date for Call-in: 13/10/09
RELEVANT OVERVIEW AND SCRUTINY SELECT COMMITTEE	Young Nottingham Select Committee	

Stage 1 and Stage 2 Submission



Building Schools for the Future for Nottingham

Stage 1 and 2 for Shepherd Enabling Works

Shepherd Enabling Works

Item	Stage 1 and Stage 2 Submission Paper for NCC Approval
1.	<p><u>Purpose of the paper</u></p> <p>To receive approval from NCC to carry out enabling works to Shepherd School after decant to the new Oakfield Special School.</p>
2.	<p><u>Brief outline of the Scheme</u></p> <ul style="list-style-type: none"> • To carry out non structural works in classroom bases to suit new class layouts. This is limited to standard partitioning (non-acoustically treated, fire rated etc), and relocating of services where required to accommodate the new walls. • Patching of the existing roof as identified on the attached scope sheet provided by NCC. • Removal of all asbestos in the ceilings and areas where impact damage is a possibility by the children. • ICT infrastructure and relocation of the IWB and specialist equipment. (This is being carried out by the Authority)



3.	<p><u>Summary of Proposals.</u></p> <ul style="list-style-type: none"> • A type 3 Asbestos survey will be required after the existing school vacate the building to move to Oakfield. This will ascertain more clearly the extent of the asbestos within the school. All asbestos which is in student occupied areas and could be subject to damage and potential contamination due to damage shall be removed (ceilings can be damaged, but floor tiles can not). The full extent of the asbestos removal will be ascertained post the Type 3 survey and the existing building Type 2 has been used to allocate a budget for this. Areas where asbestos are removed will be made good i.e. ceiling tiles replaced, walls patched etc (the full extent to be agreed with the authority) • The design has been achieved through discussion with the authority (see attached agreed layout and scope) on what is required in each class base. In general it consists of minor alterations to large spaces, further sub-dividing it with smaller rooms. These will be constructed from 12.5mm plaster board, including any new doors required. Any decoration and finishes have been limited to making good areas directly affected by the work. • An allowance has been made to cover new magnetic locks (fob controlled), upgrading of fencing to prevent unauthorised access/egress, and automated gates controlled from the reception area. (the extent of the work to be agreed fully with the authority) • A general allowance has been made to cover any incidental minor works required by the authority during the works to suit the new layout. • An allowance has been made to make the existing caretakers house into usable space (decoration and servicing the boiler – no allowance has been made to address any damp issues, or major defects) • ICT installation and relocation of IWB/Servers, upgrading wireless, new switches/broadband (if required) etc is to be carried out by NCC. As advised an allowance of £20,000 has been allocated. • External works will consist of <ul style="list-style-type: none"> ○ A new electronic gate controlled from reception to control visitors. ○ An allowance for patch repairs to the roof to cure current leaks as per the scope advised by NCC. ○ An allowance has been to sub divide the external play spaces with 2.4m anti climb weld mesh in part.
4.	<p><u>Risk & Legal's</u></p> <ol style="list-style-type: none"> 1. The form of contract is to be JCT intermediate form of contract. 2. Asbestos – There is a risk that the Type 3 intrusive survey finds more asbestos than is shown on the type 2 survey, which will have time and financial implications. 3. Oakfield being delayed – There is a risk that the new Oakfield School could be delayed and the existing Shepherd pupils are not decanted in time.



7.

Programme

- 12th October 2009 Early Works order received
- 12th October 2009 notify HSE of asbestos removal works
- Works commence on 2nd November 2009
- 17th January 2010 refurbishment works complete
- 18th January 2010 school commences familiarisation process
- 8th February 2010 NCC commence transfer of ICT equipment
- 19th February 2010 school decant complete
- 22nd February 2010 School occupy Shepherd School.





General Note:
 All new rooms to have sufficient light and heating provision to suit needs, in accordance with the relevant standards. Agreement on exact scope to be made. Consideration must be made regarding and new floor finishes - it to be used as a staff meeting zone.

Note:
 All new rooms to have sufficient light and heating provision to suit needs, in accordance with the relevant standards.

Notes:
 1. The building is to be constructed in accordance with the relevant standards.
 2. The building is to be constructed in accordance with the relevant standards.
 3. The building is to be constructed in accordance with the relevant standards.
 4. The building is to be constructed in accordance with the relevant standards.
 5. The building is to be constructed in accordance with the relevant standards.
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 8. The building is to be constructed in accordance with the relevant standards.
 9. The building is to be constructed in accordance with the relevant standards.
 10. The building is to be constructed in accordance with the relevant standards.

Proposed:
 Northglan BSR
 Research School

Prepared:
 Proposed Shepherd School
 Director: Vicky
 Deputy: Vicky
 Design: Vicky

Client:
 M1, M2, M3, M4, M5, M6, M7, M8, M9, M10

Project No:
 CS0201/42-01-05 06.07.08

Client:
 M1, M2, M3, M4, M5, M6, M7, M8, M9, M10

Client:
 CAPITA
 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100

DATED _____ **2009**

NOTTINGHAM CITY COUNCIL

- and -

inspiredspaces Nottingham Limited

=====
Early Works Agreement for works at
Shepherd School - Nottingham
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THIS AGREEMENT is made the day of Two Thousand and Nine

BETWEEN:

- (1) **Nottingham City Council of The Guildhall, South Sherwood Street, Nottingham NG1 4BT** (the "Employer"); and
- (2) **inspiredspaces Nottingham Limited** company incorporated in England (No. 06506329)] whose registered office is at Birch Street, Wolverhampton, WV1 4HY (the "**Contractor**"),

together "the Parties".

WHEREAS:-

- (A) The Parties intend to enter into a building contract using the Partnerships for Schools standard form Design and Build Contract – Lump Sum each for the design and construction of a special school, such contracts incorporating the derogations agreed for Nottingham's Building Schools for the Future project.
- (B) In the meantime, the Employer wishes the Contractor to carry out the Early Works subject to and in accordance with the terms of this Agreement.
- (C) The Parties further intend that, when the Building Contract is entered into, the Early Works shall be deemed to have been carried out under the Building Contract.
- (D) The Parties intend that the Contractor shall immediately enter into a sub-contract with Carillion Construction Ltd on substantially the same terms as this Agreement (mutatis mutandis).

IT IS AGREED as follows:

1. DEFINITIONS AND INTERPRETATION

- 1.1 In this Agreement, except where the context otherwise requires, the following words shall have the following meanings:
 - 1.1.1 "All Risks Insurance" means an insurance policy, with a policy wording in line with normal market practice, which provides cover against any physical loss or damage to the Early Works and against the reasonable cost of removal and disposal of debris and of any shoring or propping of the Early Works which results from such physical loss or damage but excluding the matters excluded from such policies as identified in the Building Contract;
 - 1.1.2 "Authority Representative" shall be Jim Mason or such other person as the Employer shall nominate by notice to the Contractor;
 - 1.1.3 "Building Contract" means the above recited contract
 - 1.1.4 "Change" means an addition, omission or amendment to the Early Works or the manner in which they are performed.
 - 1.1.5 "Early Works" means the design and/or construction of those works identified in Schedule 1 to this Agreement and including any changes made to those works in accordance with this Agreement;
 - 1.1.6 "Excepted Risks" means ionising radiations or contamination by radioactivity from any nuclear fuel or from any nuclear waste from the combustion of nuclear fuel, radioactive toxic explosive or other hazardous properties of any explosive nuclear assembly or nuclear component thereof, pressure waves caused by aircraft or other aerial devices travelling at sonic or supersonic speeds;
 - 1.1.7 "Parties" means both the Contractor and the Employer and "Party" means either;
 - 1.1.8 "Sites" means the land edged red on the plans annexed at Schedule 2 and "Site" shall where the context requires mean either of the Sites;

- 1.1.9 "Works" means the remodelling of existing building both internally and externally including demolition of existing structures at the Shepherd School at Harvey Road, Bilborough, Nottingham, NG8 3BB
- 1.1.10 "Shepherd School" means the existing and proposed Shepherd School at Harvey Road, Bilborough, Nottingham, NG8 3BB
- 1.2 In this Agreement, except where the context otherwise requires:
- 1.2.1 any reference to a clause or Schedule is to the relevant clause or Schedule of or to this Agreement and any reference to a sub-clause or paragraph is to the relevant sub-clause or paragraph of the Clause or Schedule in which it appears;
- 1.2.2 the index and clause headings are included for convenience only and shall not affect the interpretation of this Agreement;
- 1.2.3 use of the singular includes the plural and vice versa and the use of any gender includes the other genders;
- 1.2.4 any reference to "persons" includes natural persons, firms, partnerships, companies, corporations, associations, organisations, governments, governmental bodies, states, foundations and trusts (in each case whether or not having separate legal personality);
- 1.2.5 any phrase introduced by the terms "including", "include", "in particular" or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms.
- 1.3 The Schedules form part of this Agreement and shall have effect as if set out in full in the body of this Agreement and any reference to this Agreement includes the Schedules.

2. THE CONTRACTOR'S OBLIGATIONS

- 2.1 The Contractor shall carry out the Early Works:
- 2.1.1 in a good and workmanlike manner; and
- 2.1.2 in accordance with all Statutory Requirements.
- 2.2 The Contractor shall carry out and complete the Early Works within a reasonable time.
- 2.3 As between the Employer and the Contractor, the Contractor shall be the only Client for the purposes of the Construction (Design and Management) Regulations 2007.
- 2.4 The Contractor will keep the Employer fully and promptly informed of the progress of the Early Works at weekly meetings and will provide a fortnightly report to the Employer with clear readily comprehensible details of all costs and expenses which may be payable by the Employer hereunder.
- 2.5 The Contractor will not enter into any commitment to pay a third party any sub-contractor, supplier or sub-consultant in connection with the Early Works without the consent of the Employer (such consent not to be unreasonably withheld or delayed) and the Contractor shall give the Employer notice of each such proposed commitment together with reasonable supporting information provided that the Contractor will not be obliged to obtain consent or give notice in accordance with this clause where its aggregate commitment to pay such third parties in any week does not exceed £50,000. If the Employer has not responded to a notice from the Contractor under this clause within 48 hours of receipt, the Employer's consent under this clause 2.5 shall be deemed to have been given. The Contractor will be responsible for the work of all third parties engaged by the Contractor in connection with the Early Works.
- 2.6 All confidential information exchanged between the Employer and Contractor in the context of the Early Works, Works and the Site and pursuant to this Agreement will be treated by the Party receiving the same on a strictly confidential basis. Save as required by law, such information will not be disclosed to any third party without the authority of the Party who disclosed the same nor will the same be used for any purposes other than those envisaged by this Agreement.
- 2.7 The Contractor shall be liable for the design of the Early Works.
- 2.8 Notwithstanding the date of execution this Agreement shall be deemed to take effect on the date upon which the Contractor shall have first commenced performance of the Early Works.

3. THE EMPLOYER'S OBLIGATIONS

3.1 With effect from the 2nd day of November 2009 the Employer shall grant to the Contractor access to the Site in order for the Contractor to carry out the Early Works.

4. VARIATIONS

4.1 The Employer may issue a written instruction to the Contractor effecting a Change. The Contractor will comply with such instructions.

5. INSURANCE AND LOSS OR DAMAGE TO THE EARLY WORKS

5.1 The Employer shall, as soon as practicable following the date of this Agreement, take out and maintain until the earlier of completion of the Early Works or the determination of the Contractor's employment under this Agreement, in the joint names of the Employer and the Contractor and its sub-contractor, All Risks Insurance for the full reinstatement value of the Early Works. The Contractor will take all steps necessary to comply with the terms of such insurance and will not do or omit to do anything that would cause the insurance to be invalidated.

5.2 If any loss or damage to the Early Works is occasioned by any risk, the Contractor shall restore, replace or repair any part of the Early Works which have been lost or damaged, remove and dispose of any debris and proceed with the carrying out of the Early Works. Such restoration, replacement, repair, removal and disposal shall be treated as a Change instructed in accordance with clause 4.1.

5.3 The Contractor shall indemnify and keep the Employer indemnified against any expense loss claim or proceedings whatsoever arising under statute or at common law in respect of personal injury to or the death of any person arising out of or in the course of or caused by the carrying out of the Early Works except to the extent that the same is caused by any act or the neglect of the Employer or any person for whom the Employer is responsible.

5.4 The Employer shall indemnify and keep the Contractor indemnified against any expense loss claim or proceedings whatsoever arising under statute or at common law in respect of personal injury to or the death of any person arising out of or in the course of or caused by the carrying out of the Early Works except to the extent that the same is caused by any act or the neglect of the Contractor or any person for whom the Contractor is responsible.

5.5 Subject always to the Employer exercising its duty to mitigate, the Contractor shall indemnify and keep the Employer indemnified against any reasonably foreseeable expense loss claim or proceedings in respect of any loss injury or damage to any property real or personal (but excluding the Early Works) arising out of or in the course of or caused by the carrying out of the Early Works to the extent that the same is caused by the negligence breach of statutory duty omission or default of the Contractor or its sub-contractors.

5.6 The Contractor shall take out and maintain insurance in respect of claims for personal injury to or the death of any person under a contract of service or apprenticeship with the Contractor and arising out of and in the course of such person's employment. Such insurance shall comply with all relevant legislation.

5.7 Notwithstanding any other provision in this Agreement, the Contractor shall not be liable either to indemnify the Employer or to insure against any personal injury to or death of any person or any damage, loss or injury caused to the Early Works, the Site or any property, by the effect of an Excepted Risk.

6. PAYMENT

6.1 At the beginning of each calendar month the Contractor may apply to the Employer for payment of all reasonable costs and expenses that the Contractor has incurred for work properly carried out under this Agreement during the previous calendar month (including any design fees) together with an amount in respect of profit and overheads being 6% of the amount of costs and expenses referred to in this clause 6.1.

6.2 The date of making any application under clause 6.1 shall be "**the due date**".

6.3 Not later than fourteen days (14) after the due date the Employer shall give a written notice to the Contractor specifying the amount of the payment proposed to be made to the Contractor, the basis on which such amount is calculated and to what the amount relates. The Employer shall, subject to clause 6.4, pay to the Contractor no later than 14 days thereafter ("**the final date for payment**") the amount proposed in the notice served pursuant to this clause 6.3 or in the event that no notice is served in accordance with this clause 6.3, the amount stated in the Contractor's application.

- 6.4 Not later than five (5) days before the final date for payment of an amount due, the Employer may give a written notice to the Contractor which shall specify any amount proposed to be withheld and/or deducted from the due amount, the ground or grounds for such withholding and/or deduction and the amount of withholding and/or deduction attributable to each ground.
- 6.5 Value Added Tax at the prevailing rate shall be added to any sum payable to the Contractor under this Agreement.
- 6.6 All payments to be made to the Contractor hereunder shall be made subject to any deductions or withholding required by Statutory Requirements. The Employer shall make no payment of any kind unless and until the Contractor obtains and produces for inspection by the Employer a valid registration card or tax certificate in the manner prescribed by the Income Tax (Subcontractors in the Construction Industry) Regulations 1993 (as amended from time to time) ("CIS Regulations") or any equivalent document contemplated by any subsequent legislation that may be enacted to replace or supplement the CIS Regulations.

7. **DETERMINATION OF THE CONTRACTOR'S EMPLOYMENT**

- 7.1 The Employer may determine the Contractor's employment under this Agreement at any time on four week's notice in writing.
- 7.2 The Contractor may determine its employment under this Agreement only in the event of:
- 7.2.1 a material breach by the Employer of its obligations under this Agreement which is irremediable or, where remediable, which the Employer shall have failed to remedy within a reasonable time (but not less than 14 days) after receiving notice in writing from the Contractor specifying the breach and requiring its remedy, in which case the Contractor shall be entitled forthwith by written notice to the Employer to determine the performance of its obligations under this Agreement; or
- 7.2.2 insolvency, administration or other like event affecting the Employer, in which case the Contractor shall be entitled forthwith by written notice to the Employer to determine the performance of its obligations under this Agreement.
- 7.3 On determination of the Contractor's employment under this Agreement for any reason:
- 7.3.1 the Contractor will remove all personnel and equipment from the Site.
- 7.3.2 the Employer shall pay to the Contractor:-
- 7.3.2.1 the total value of work properly executed, and of any design work properly carried out, up to the date of determination of the employment of the Contractor; and
- 7.3.2.2 the cost of materials and goods properly ordered for the Early Works for which the Contractor has paid or for which the Contractor is liable to pay (and on such payment, at the Employer's option, such materials and goods shall become the property of the Employer); and
- 7.3.2.3 save where the reason for the determination has been a breach by the Contractor of his obligations under this Agreement or insolvency, administration or other like event affecting the Contractor:
- (i) the reasonable cost of removal of any temporary buildings, plant, tools, equipment, goods and materials; and
- (ii) any direct loss and/or damage caused to the Contractor by the determination.
- 7.3.2.4 Its loss of profit at 5% of the sums determined in 7.3.2.1 and 7.3.2.3 together with a contribution to its overhead.

8. **BUILDING CONTRACT**

- 8.1 When the Parties enter into a Building Contract, all work carried out and all amounts paid under this Agreement in respect of the Shepherd School will be deemed to have been carried out or paid (as the case may be) under and subject to the terms of the relevant Building Contract and the Parties shall have no liability to each other in respect of that school whether in contract tort (including negligence) or otherwise in connection with this Agreement, subject only to the Unfair Contracts Terms Act 1977.

9. **THIRD PARTIES**

9.1 The Parties hereby agree that this Agreement is not intended to and does not confer any benefit upon any person who is not a Party to it and nor does it confer or purport to confer any right upon any such person to enforce any of its terms.

10. **NOTICES**

10.1 Any notice given under this Agreement shall be in writing and signed by or on behalf of the Party giving it and shall be served by delivering it personally or sending it by pre-paid recorded delivery or registered post to the address and for the attention of the relevant Party set out above.

11. **GOVERNING LAW**

11.1 This Agreement and any dispute or difference arising hereunder or in connection herewith shall be governed by English law and, subject to clause 12 below, the Parties to this Agreement hereby submit to the exclusive jurisdiction of the English courts.

12. **DISPUTES**

12.1 Any dispute (which for the purposes of this clause shall include any difference) shall be dealt with in accordance with the provisions of clause 36 (Dispute Resolution Procedure) of the Building Contract as if the provisions of clause 36 of the Building Contract had been fully set out herein.

13. **INTELLECTUAL PROPERTY RIGHTS**

EXECUTED as a deed by)
Nottingham City Council acting by)

Director

Director/Secretary

13.1 The Contractor agrees to grant to the Employer a non-exclusive, irrevocable, royalty free, transferable licence to copy, use any documents (including copies thereof) written, originated or made by the Contractor in connection with this Agreement for any purpose in connection with the Early Works, Works and the Site. Such licence shall carry with it the right to grant sub-licences in respect of the same. For the avoidance of doubt the licence granted under this clause will survive the determination of the Contractor's employment hereunder. The

Contractor shall use its reasonable endeavours to procure for the Employer the benefit of such a licence in respect of any such information as aforesaid as may be prepared by any sub-contractor, supplier or consultant to the Contractor.

14. **LIMITATION OF LIABILITY**

14.1 Subject to the matters set out in clause 14.2, the Contractor's aggregate liability arising under and in connection with this Agreement shall not exceed 20% of the amounts payable to the Contractor from time to time under this Agreement.

14.2 Nothing in this Agreement shall restrict or exclude the Contractor's liability for any of the following and no liability for the same shall be taken into account in calculating whether any limits of liability have been reached or exceeded:

- 14.2.1 Liability for death or personal injury caused by the Contractor's negligence;
- 14.2.2 Liabilities under the Contractor's indemnities under this Agreement to the extent that the indemnities relate to claims brought by third parties against the Employer which could have been brought by such third parties against the Contractor; and
- 14.2.5 Fraud and willful default.

IN WITNESS whereof this Agreement has been executed and delivered by the parties hereto on the day and year first above written.

EXECUTED as a deed by
inspiredspaces Nottingham
Limited acting by

)
)

Director

Director/Secretary

SCHEDULE 1

THE EARLY WORKS

In the interests of commercial confidence the content of Schedule 1 has been summarised rather than provided in detail.

Total cost of early works £387,000

Incorporating

- Adaptation of existing building
- Further alterations
- Heating and decorating

SCHEDULE 2

THE SITE

Shepherd School Site Plan

Finance and Legal Comments

Finance

The maximum cost of the identified early works is £0.387m; these will be contained within the overall budget of £8.699m reported to Executive Board 28 July 2009. The Early Works will be funded through the approved DCSF funding envelope.

John Beevers 25/09/09

Legal

In entering into Early Works Agreements there is a risk of abortive costs for the City Council in the event that, for whatever reasons, the full schemes do not proceed. With regard to these proposals, within the context of the funding arrangements and the effective working relationships within the BSF programme, this risk is considered to be remote and the proposals are supported, on the basis of the use of the appended documents.