

WEST MIDLANDS FIRE AND RESCUE AUTHORITY

20TH APRIL 2009

1. TRANSFER OF OWNERSHIP OF NEW DIMENSION ASSETS

Joint report of the Chief Fire Officer and Clerk.

RECOMMENDED

- 1.1 THAT Members consider the implications of the revised Transfer Agreement (Appendix 1) and determine whether or not they are content to agree in principle to the proposal for the transfer of New Dimension Assets (NDAs) from Communities for Local Government (CLG) to the Fire Authority on the 1st October 2009.
- 1.2 THAT in relation to paragraph 1.1 above, Members consider a response on behalf of the Authority which is required to be sent to CLG by Monday 27th April 2009.
- 1.3 THAT, subject to 1.2 above, Members authorise the Chief Fire Officer to send the Authority's approved response to the CLG.

2. PURPOSE OF REPORT

- 2.1 This report is submitted to seek the Authority's views as to whether or not it is minded to agree in principle to the transfer of the NDAs that are presently hosted by the Authority. The detail and costs of this particular equipment is provided at Appendix 2.
- 2.2 This report is also intended to seek the Authority's response to CLG relating to the transfer of NDAs from CLG to the Fire Authority.

3. **BACKGROUND**

- 3.1 Members may recall that the New Dimension Project is a collaborative initiative between CLG and the Fire and Rescue Service (FRS) intended to enhance the ability of the FRS to respond to major disruptive events involving Chemical, Biological, Radiological and Nuclear (CBRN) materials, collapsed or unstable structures, and to displace large volumes of water.
- 3.2 The New Dimension vehicles and equipment are currently owned by CLG. However, there is no option for CLG to continue to own these resources for the medium term. A number of options relating to the future ownership of the New Dimension assets have been explored by CLG, but in their opinion the one which makes the most sense for the FRSs is that ownership of these new resilience assets be transferred to the FRSs.
- 3.3 The view of CLG is that the benefits deriving from both the transfer and the long-term strategy for the New Dimension Project for both FRAs and FRSs is as follows:
- It will ensure that New Dimension capability can be fully integrated into FRS core business and from an FRA perspective will unite ownership with use of the capability, providing FRAs with control over the assets they host.
 - Provision of a maintained and fully operational fleet of ND vehicles and equipment through CLG's procurement of a £100m long term maintenance contract with Vosper Thornycroft Critical Services (VTCS). This maintenance contract commenced in October 2008 and has received positive feedback from FRSs.
 - Access to free, comprehensive future assurance for the New Dimension capabilities. CLG appreciate that New Dimension provides national capabilities; therefore, it will require future overarching governance once the assets have transferred to individual FRAs.

On this basis, CLG has agreed to fund a long-term Assurance Body (FRS National Resilience Board) led by the Chief Fire Officers' Association (CFOA) which will ensure that the capabilities are fit for purpose, do not degrade over time, continue to be interoperable between FRSs whilst also providing specialist guidance and advice, access to a national training programme and a fully managed minor asset refresh programme.

- 3.4 CLG has confirmed that it is committed to future funding of the New Dimensions project for the Comprehensive Spending Review (CSR) 07 period. In line with the New Burdens principle, CLG has recognised that FRAs need continued funding to support the New Dimension capabilities. During the summer of 2008, Ministers announced continuation funding of £80 million between 2008/09 and 2010/11. As part of this package, in December 2008, CLG provided funding to FRAs of £19.4m and a further grant containing the remaining funding for 2008/2009 is expected shortly.
- 3.5 CLG has indicated that it would wish to mainstream New Dimension grants into the Revenue Support Grant and that it is looking to do this in line with agreed CLG/LGA policy, but only when there is a clear history of actual costs to take account of. Further consideration of this option will form part of the formula grant review; at which time FRAs and the LGA will have full opportunity to raise any remaining concerns that they may have in relation to these particular funding arrangements.
- 3.6 Members should note that concerns relating to future funding arrangements associated with the provision of New Dimension Assets have been highlighted in the response to CLG.
- 3.7 Based upon the above factors FRAs have been invited by CLG to review the revised Transfer Agreement (Appendix 1) and to indicate whether they are content in principle to sign up to the proposal for the transfer of the New Dimension assets. A response is required by Monday 27 April 2009.

- 3.8 Members should note that following receipt of FRA comments, CLG intend to finalise the Transfer Agreement and seek formal sign-up from FRAs by the summer recess, with a view to setting the date for formal transfer of the New Dimension Assets to the FRAs as the 1st October 2009. This time frame is intended to allow FRAs to take the issue through the Committee structures.

4. **EQUALITY AND DIVERSITY IMPLICATIONS**

An initial Equality Impact Assessment has been carried out and a full Impact Assessment is not required.

5 **LEGAL IMPLICATIONS**

- 5.1 Issues raised by the Authority's Legal Advisor in relation to the transfer agreement have been sent to Members as a separate document to aid them in their deliberations.

6. **FINANCIAL IMPLICATIONS**

- 6.1 CLG currently provide New Burdens Funding of £942.46k to the Authority by way of a Section 31 Grant, which covers New Dimension training, consumables, USAR Team staffing and the provision of the search and rescue dog.
- 6.2 As indicated at paragraph 3.5 CLG is seeking to mainstream all of the funding provision required to support New Dimension Assets that have been transferred to FRAs. As these proposed funding arrangements have yet to be agreed, no clarity can be provided to the Authority as to the level of any additional funding that may be received in the proposed changes to the RSG formula.

BACKGROUND PAPERS

Fire and Rescue Circular 16/2009

VIJ RANDENIYA
CHIEF FIRE OFFICER

SUE PHELPS
CLERK



AGREEMENT

BETWEEN:

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

-and-

(2) WEST MIDLANDS FIRE AND RESCUE AUTHORITY

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

Contract number: XXXXXX

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) The West Midlands Fire and Rescue Authority (“**the FRA**”).

BACKGROUND

- (1) The Department has for some time maintained and kept available for use assets for the purposes of the New Dimension Programme 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, the singular shall include the plural and vice versa, and words expressed in any gender shall include any other gender.
- 1.2 The headings are inserted for convenience only and shall not affect the interpretation of this Agreement.
- 1.3 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.
- 1.4 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 equipment of the Department set out in Schedule 2 ('the Retained Equipment') including all property assets rights and liabilities relating to the Retained Equipment whether or not such Retained 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 4) 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 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 3.

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 maintain national interoperability of the Equipment by ensuring that 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 data will be incorporated in to the table below for each 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: Hydrosb			
High Volume Pump: Hose Box			
Enhanced Command Support Vehicles			

Detailed descriptions of each asset can be found in the agreed annexes entitled [xxxxxxx] bearing reference number [xxxxxxxxxxxxx]

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: The Retained Equipment

[Currently the Firelink related equipment, detailed description of such to be added]

Schedule 3

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 without first decommissioning the Retained Equipment. [Further Firelink related conditions to be added].
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. The FRA shall maintain the status of the Equipment on the [RCC network] when operational in like manner to any other asset owned by the FRA. Until the [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 the Equipment becomes operationally unavailable and is expected to remain so for more than four hours, within an hour of the defect occurring;
 - 4.2 on changes in location of and contact numbers for the Equipment;
 - 4.3 when the Equipment is deployed to an incident. The FRA also should notify the [FRSNCC] as soon as the Equipment becomes operationally available again within one hour; and is required to complete and forward to the [FRSNCC] at the end of each month a Monthly Validation Form.
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 4

List of Relevant Documents of Title

AS WITNESS etc

(signatures of (or on behalf of) the parties)

NEW DIMENSION ASSETS HOSTED BY
WEST MIDLANDS FIRE SERVICE

	Number	Total Cost
Incident Response Units	x 3	£1.061m
Prime Movers	x 6	£0.890m
Mass Decontamination Disrobe Module	x 1	£0.055m
Mass Decontamination Re-robe Module	x 1	£0.055m
Urban Search and Rescue Module 1	x 1	£0.265m
Urban Search and Rescue Module 2	x 1	£0.176m
Urban Search and Rescue Module 3	x 1	£0.094m
Urban Search and Rescue Module 4	x 1	£0.084m
Urban Search and Rescue Module 5	x 1	£0.027m
Urban Search and Rescue Canine Unit	x 1	£0.020m
High Volume Pump/Hose Module	x 1	£0.254m
Detection Identification Monitoring Unit	x 1	£0.400m
	<u>TOTAL</u>	<u>£3.381m</u>