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[Date]

Mr Matthew Milburn
Headteacher
Saddleworth School
High Street
Uppermill
Oldham
OL3 6BU

Dear Matthew,

As we take forward the delivery of the Priority School Building Programme (PSBP) for the Cap2 NW3 batch of schools and for Saddleworth School, we wanted to outline the roles and responsibilities of our respective organisations, to ensure that the programme is delivered in the most efficient and practical manner.

The delivery of the PSBP is being managed on behalf of the Secretary of State for Education by the Education Funding Agency (EFA), which is an executive agency of the Department for Education.

For each school the Secretary of State will enter into delivery contracts (for example, he will sign the design and build contract with the contractor). The Secretary of State and the EFA fully understand and acknowledge the vital role that the school, its governing body and Oldham Metropolitan Borough Council has in ensuring the efficient delivery of the project in a way that satisfies all of our respective requirements (in this letter we will refer to these parties collectively as 'the school and its stakeholders'). For this reason, we have set out in this letter the principal roles and responsibilities of the relevant organisations and we are asking that the school and its stakeholders each countersigns this letter to indicate their acknowledgement of the processes involved in achieving a successful and timely delivery.

Prior to final signature of the contracts, we will require the school and its stakeholders to sign a formal agreement with the Secretary of State. This agreement sets out, in more specific detail, exactly what is required from all parties to deliver the building works and what, in limited and clear circumstances, the implications will be if a party fails to deliver those requirements. The agreement is standard form for all schools in the capital part of the PSBP.

The Role and Responsibilities of the Secretary of State and the EFA

The EFA will manage the delivery of the building works 'centrally' and its primary responsibility is to ensure that the investment of public money achieves the objective of dealing with the condition need at the school at a reasonable cost to the taxpayer.

The EFA will prepare the feasibility study for the school, manage the project development with the contractor and act as contract manager during the build process following contract signature. In order to deliver this role successfully, the EFA will work closely with the school and its stakeholders throughout the processes described above to ensure that an appropriate level of local input is established and maintained.

The EFA will be using its Contractors' Framework to deliver the building works which has a proven track record of delivering schools in an extremely timely manner. Further information on the Contractors' Framework can be found by following the link below.

<http://www.education.gov.uk/schools/adminandfinance/schoolscapital/funding/a00202925/contractors-framework>

The Role and Responsibilities of the School and its Stakeholders

The school and its stakeholders will need to work with the EFA so that the feasibility study is submitted on time and thereafter so that the project development process can progress as efficiently as possible both for the school and for the other schools in the batch. Whilst it is not clear yet exactly what this commitment will entail (and it will be different for each school), the school and its stakeholders should expect to dedicate resources and time to attending meetings and feeding in information and views to the project throughout the feasibility project development and construction processes.

To allow the EFA to complete the feasibility study and project development process in a timely fashion, we will need the school and its stakeholders to supply certain information including information relating to the property's title (so that we can grant appropriate access rights to the construction contractor to come onto the site and to carry out the planned works). We understand that in a number of cases (such as, for example, the provision of detailed property information), the school itself will not be best placed to provide the necessary information. In such cases we would expect the school to assist the EFA in dealing with the person or organisation best able to deliver the required information (for example, the local authority). The school must also allow access to the site for the carrying out of a number of property related surveys (including intrusive surveys).

It is important that information and access is provided in a timely manner and that any information is correct.

As referred to above, the Secretary of State will be entering into a design and build contract and under that contract, he will be taking on certain responsibilities (and thus liabilities) to the contractor relating to local site matters and school activities. He will be relying on the information and access given by the school and its stakeholders and in the agreement to be signed between the Secretary of State and the school and its stakeholders, may look to the school and its stakeholders to assume some of these responsibilities for themselves. Appendix 1 to this paper sets out in more detail how the contracting will work and Appendix

2 sets out examples of the sorts of responsibilities that the Secretary of State may look to pass to the school and its stakeholders.

There will also be some non-property matters that the Secretary of State will seek to pass to the school and its stakeholders. For example, a general obligation not to disrupt the building works.

Once the building works are complete, the design and build contract provides for a 12 month period during which time, if a problem arises, the contractor can be required by the Secretary of State to solve the issue. The school and its stakeholders will be provided with collateral warranties from the contractor, design professionals and the principal building sub-contractors (the "Project Team"). These will give the school and its stakeholders rights against the Project Team in respect of any defects in the building which arise after that 12 month period. Consequently, following the expiry of the 12 month period after the completion of the building works, and the resolution of any issues that may have emerged, it will be the school and/or its stakeholders, rather than the Secretary of State, who will be responsible for ensuring the resolution of any defects in the buildings which subsequently arise by enforcing their rights under the collateral warranties against the Project Team.

Whilst the PSBP does include funding for certain fixed furniture, fittings and equipment and for ICT network infrastructure, it does not include any funding for loose furniture and equipment (including ICT equipment). As such the school will be expected to re-use as much of its existing furniture and equipment as it considers necessary in the new school and to make up any deficit for itself. The exception to this is if an expansion of the school is being funded by the Secretary of State under the PSBP. Where this expansion is for an extra form of entry (or more), funding up to an amount set by the EFA, will be provided for loose furniture and equipment (including ICT equipment) for the expansion only.

The PSBP does not include funding, either directly or indirectly, for any works which may be required pursuant to section 278 of the Highways Act or section 106 of the Town and County Planning Act. The cost of any such works will be met by Oldham Metropolitan Borough Council.

We look forward to working with you and the other parties involved in delivering this project and the improved facilities for Saddleworth School. Please countersign this letter below where indicated.

Yours sincerely



Mike Green
Director of Capital
For and on behalf of the Education Funding Agency

In acknowledgement of the expectations upon the School set out in this letter for the delivery of the Priority School Building Programme:

Signed on behalf of the School by:

A handwritten signature in black ink, appearing to read 'Matthew Milburn', written over a dotted line.

Mr Matthew Milburn
Headteacher

Signed on behalf of the School's Governing Body by:

A handwritten signature in blue ink, appearing to read 'B Lord', written over a dotted line.

Cllr B Lord
Chair of Governors

Signed on behalf of Oldham Metropolitan Borough Council by:

A handwritten signature in black ink, appearing to read 'Charlie Parker', written over a dotted line.

Mr Charlie Parker
Chief Executive

APPENDIX 1

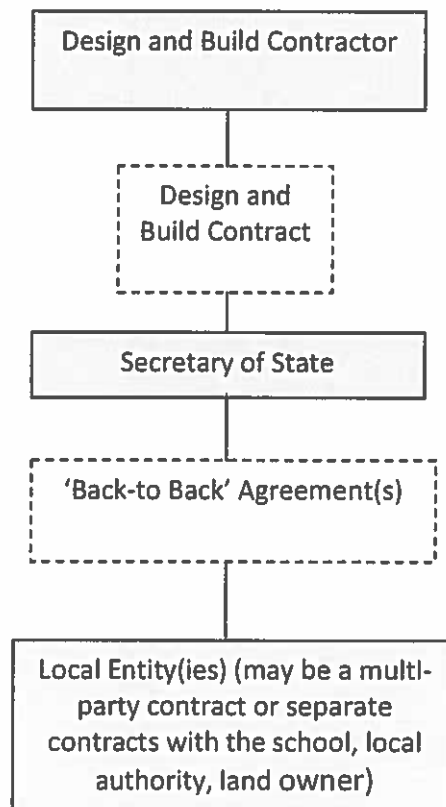
Contract Structure

Under the Design and Build contract, the Secretary of State will assume certain responsibilities to the contractor. A number of these responsibilities relate to 'local' site matters and school activities that the school and its stakeholders are better placed to manage and control than the Secretary of State.

In contracts previously let by local authorities they have required schools to enter into back-to-back arrangements to pass on those responsibilities (the local authority owes the duty to the contractor and that duty is then mirrored to the school or local entity in its contract with the local authority). With the passing of the responsibilities comes also the right to enforce any failure to carry them out. It is proposed that the same arrangements be put in place for the PSBP and that the Secretary of State passes 'local' responsibilities to schools and other local entities and also has the right to enforce their performance although there would be no obligation to take any enforcement action should the Secretary of State choose not to do so.

Schools in England are 'owned' under a number of corporate structures and the ownership of the land they are on is yet more diverse. Schools may either be local authority maintained, Academy Trusts, VA or Foundations; the land they sit on may be owned by the school, the local authority, the local diocese or another third party. Responsibilities passed to a local entity must be passed to the person best able to manage and hold them (i.e. the local school 'owner' and the local landowner (if different)) so there may be a multi-party back-to-back agreement or separate agreements with more than one local entity.

The proposed contract structure for PSBP is detailed below:



APPENDIX 2

Examples of Risks and Responsibilities

There are responsibilities that the school and its stakeholders will need to fulfil in order to facilitate the building works at the school. The majority of these relate to property and planning issues and include:

- a. *restrictive covenants over the site or part of the site that need to be released or otherwise addressed (for example a covenant in the title not to build in a specified place on the site):* these are often dealt with either by way of insurance, a release from the covenant holder or via a land tribunal. All of these require the involvement of the landowner or the holder of a material interest in the land. A failure to take the insurance or otherwise deal with the covenant would require either taking the risk that the covenant would not be enforced in the face of the works or varying the project to avoid breaching the covenant.
- b. *Occupational interests (for example, telemasts, substations, and nursery, caretaker or dentist leases):* these are likely to require the landowner or lessor to vary or terminate the interest as necessary for the purposes of the works.
- c. *Adverse rights (for example a group of local residents who have had long uninterrupted rights to walk across playing fields for recreation and to access amenities):* the landowner would need to make the Secretary of State aware of these rights so that they can be rescheduled or the plan for the site varied to accommodate them.
- d. *Access to the site:* the landowner may need to enter into or vary or extend agreements with 3rd party owners of adjoining land to ensure that the school site can be accessed by the contractor.
- e. *Highways/planning/utilities agreements:* Landowners are likely to need to enter agreements to satisfy planning condition or move utilities.

The list above is not exhaustive but experience has shown that they are real when carrying out works of this nature. There are mitigating actions that can apply to each provided they are known about in advance. As such, the responsibility to be passed to the school and its stakeholders is:

- to declare all property interests that are known about and that may affect the site; and
- to take those steps that are needed to enter into agreements and if applicable undertake and fund any highways works required as part of the development as may be required by the local planning authority in order that the mitigating actions are effective and the works can go ahead. All of the agreements with 3rd parties can be facilitated centrally by the EFA as part of the central procurement function but the Secretary of State will not be entitled to enter into the agreements itself.

There are also non-property matters that the Secretary of State will need to pass down. For example, a general obligation not to disrupt the building works (which includes an obligation to comply with the decant programme (i.e. if a school is being delivered in phases the school

must be ready to move from an area on time if that area is the subject of the next build phase)).