



**Free Schools Capital Team
Education & Skills Funding Agency
Fourth Floor, Sanctuary Buildings
20 Great Smith Street
London
SW1P 3BT**

Tel: 0370 000 2288

27th February 2018

Ms Joanne Rockall
SASH Education Trust,
Ditton Park Academy
Wellington Street,
Slough,
SLY 1YG

Dear Jo,

As we start work together on the capital works for **Grove Academy Free School** we want to outline the roles and responsibilities of our respective organisations, to ensure that the programme is delivered effectively.

The delivery of the Free Schools Programme is being managed on behalf of the Secretary of State for Education by the Education and Skills Funding Agency (**ESFA**), which is an executive agency of the Department for Education.

For each school the Secretary of State will enter into delivery contracts (for example, she will sign the design and build contract with the contractor). The Secretary of State and the ESFA fully understand and acknowledge the vital role that the **SASH Education Trust** has in delivering the works. 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 Trust signs 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 ask the Trust to sign a short letter of agreement with the Secretary of State (the template form of which is attached at Appendix 2). This will set out what is required from all parties to deliver the building works. The final form of that letter of agreement for **Grove Academy Free School** will be prepared in due course and, whilst we will only make changes to the template that are necessary for project specific reasons, we will ensure that it is shared with the Trust so that no element will come as a surprise to you at the time of signature.

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

The ESFA 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 opening a new free school at best value for money for the taxpayer.

The ESFA will manage the procurement process (decide on any batching strategy across the programme with other free schools, issue the bidding documentation, work with bidders during the bid period, evaluate the bids received and then select the construction company to carry out the works for the school) and act as contract manager during the build process following contract signature. In order to deliver this role successfully, the ESFA will work closely with the Trust throughout the processes. It is important that you have the resources to provide the level of input required.

The Role and Responsibilities of the free school trust and its Stakeholders

The Trust will need to work with the ESFA so that the procurement process can progress as efficiently as possible both for the school and when applicable 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 Trust should expect to dedicate resources and time to attending meetings and feeding in information and views to the project throughout the feasibility, bidding and construction processes.

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

There are also non-property matters that the Secretary of State will need to pass down to the Trust. 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 Trust will be provided with collateral warranties from the contractor, design professionals and the principal building sub-contractors (the "Project Team"). These will give the Trust 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 Trust, 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.

Although the ESFA will be responsible for contracting the construction works and loose FFE, ICT hardware will be procured by the Trust. Loose FFE may be procured by the Trust if there are project specific reason for this to be done and if all parties agree.

For those schools that require planning permission for capital works then a planning application will be submitted in the name of the Secretary of State. The ESFA will be responsible for negotiating any works which may be required pursuant to section 278 of the Highways Act or section 106 of the Town and County Planning Act.

We look forward to working with you in delivering this procurement for **Grove Academy Free School**. Please countersign this letter below where indicated.

Yours sincerely

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Deputy Director

Free Schools Programme Capital

For and on behalf of the Education and Skills Funding Agency

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

Signed on behalf of the Trust by:

A handwritten signature in black ink, appearing to read 'Rocksu'.

[Trustees]

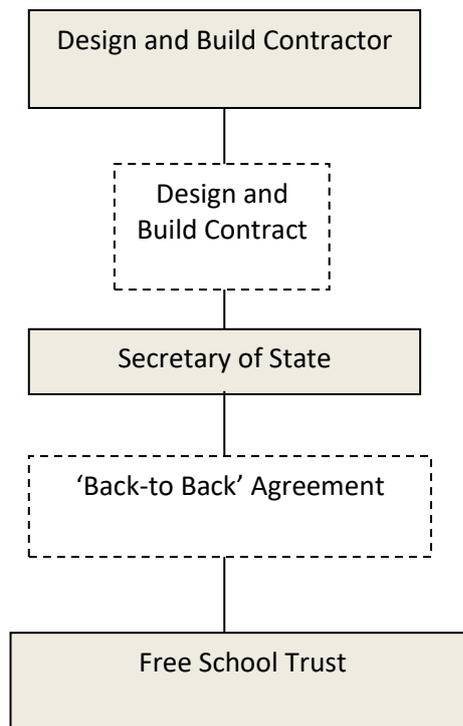
APPENDIX 1

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 the school site that the Trust is better placed to manage as the ultimate end user and control than the Secretary of State.

In building 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 Free Schools building programme and that the Secretary of State passes responsibilities relating to the school site to Trusts 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.

Responsibilities passed to a local entity must be passed to the person best able to manage and hold them. In the case of Free Schools that would be the Trust as day to day occupier of the site. The proposed contract structure for Free Schools is detailed below:



APPENDIX 2

Template form of Back-to-Back letter agreement

To: [◆]

Date: [◆]

Dear [◆]

Free Schools Programme Capital Project at [◆]¹

The Secretary of State for Education (the “Secretary of State”) intends to enter into a Design and Build Contract with [◆] (the “Contractor”) for the carrying out of design and construction work relating to [◆] (the “School”). A copy of the proposed Design and Build Contract (the “Contract”) has been made available to you and you will be aware that by entering into it, the Secretary of State will assume various obligations to the Contractor. However, the Secretary of State does not have day-to-day control over the School’s activities. As such, this letter seeks your formal agreement that you will assist the Secretary of State in fulfilling those of her obligations that relate to the School’s site and activities.

Requirements of you

In consideration of the Secretary of State entering into the Contract with the Contractor we ask that the Trust agrees to the following:

1. you will at all times act reasonably in all dealings with the Secretary of State concerning the Contract;
2. to the extent that you are able to do so, you grant to the Secretary of State such property and other rights as are necessary to allow the Secretary of State to grant to the Contractor those property and other rights granted by her in the Contract;
3. to the extent that you are able to do so, you consent to the carrying out of the construction works as described in the Contract (including as that contract may be varied from time to time) by or on behalf of the Secretary of State;
4. you will co-operate fully and in a timely manner (at your own expense) with any request made by the Secretary of State to provide documents, or ensure the provision of

¹ Name of School

documents relating to the School, and to provide, or ensure the provision of any oral or written information relating to the School;

5. you will not wilfully impede either the Secretary of State or the Contractor in the performance of their obligations under the Contract;
6. you will regularly liaise with the Secretary of State and assist with anything that is required of you by the Secretary of State to discharge her obligations under the Contract including (without limitation) complying with the requirements of the planning permission and the obtaining of any third party consents²;
7. you acknowledge that the planning permission for the carrying out of the construction works as described in the Contract is subject to the planning conditions appended at Annex 1. Whilst the majority of these planning conditions will be the responsibility of the Contractor to fulfil in accordance with the Contract, you agree that, without prejudice to the generality of paragraph 6, you will comply with planning conditions numbers [♦] as these conditions can be fulfilled (either wholly or in part) only by you and not (or not solely) by the Contractor or the Secretary of State; and
8. you will behave reasonably at all times and not do anything or omit to do anything that would cause the Secretary of State to breach her obligations under the Contract or would otherwise allow the Contractor to claim additional time or money.

[The Contract provides that in certain circumstances, if the Contractor fails to complete the works on time it will be liable to pay damages to the Secretary of State. We all acknowledge that the amount of those damages has been calculated by reference to a pre-estimate of the losses that the Secretary of State and the School will suffer as a result of this delay. If those damages are paid by the Contractor, the Secretary of State will ensure that the correct proportion of them is passed to the School.³]

It is intended that this letter creates legal relations between the Secretary of State and the other parties to it.

Please acknowledge receipt and acceptance of the terms of this letter by signing, dating and returning both copies. Once the ESFA has signed both copies a completed version will be returned to you for your records.

Yours faithfully,

² If necessary insert specific references to any Authority Necessary Consents (e.g. wayleave agreements) that the Trust may be required to enter into.

³ LADs drafting to be included only where the Contractor is to pay LADs rather than provide temporary alternative accommodation – delete as necessary.

Deputy Director, Free Schools Programme (Capital)

Authorised to sign for and on behalf of the
SECRETARY OF STATE FOR EDUCATION

We hereby acknowledge receipt and accept the contents of this letter:

[Trust]

Authorised Signatory:	
Name:	
Position in Organisation:	
Date:	