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How to Get the Best Deal:
Negotiating Facility
Leases and Facility Use

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Understanding the Differences
Between Leases and Facility Use
Agreements



- Proposition 39 FUAs typically much less costly and typically do not trigger zoning issues

But

- Leasing a private facility typically gives you more control over facility design and how you use the space


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Alternatives to Leases:
Facilities Use Agreements



<ul style="list-style-type: none"> Proposition 39 FUAs Recitals Exclusive use provisions Shared use provisions Civic Center Act Furnishings, Fixtures & Equipment Utilities/telecommunications 	<ul style="list-style-type: none"> Over-allocation fees Pro rata share and other fees Oversight fees Maintenance and Operations Compliance liability Indemnification Dispute resolution
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Deficiencies of Typical Prop. 39 FUAs



- Pushing legal compliance onto charter school – provided “as is”
- Destruction provisions don't provide alternative space
- Civic Center control by District
- No default for District breach
- Not full school year use
- Mandating shared use
- Unilateral indemnification
- Incorporation of District policies (sometimes contrary to Prop. 39)
- Excessive insurance
- Requiring school to comport with consent decrees
- Termination for breach w/o notice or upon revocation/non-renewal
- No recognition of charter school's property rights
- Oversight plus pro-rata share
- No signage rights
- Unilateral attorneys' fees
- No dispute resolution provision



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Alternatives to Leases: Facilities Use Agreements



Negotiating with a school district

- How is it different?
- What limitations does a school district have?
- Surplus property
- Making improvements to district property



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The Big Picture



Would you ever do any of the following:

- Buy a home without having someone do an inspection?
- Buy a home without looking at the surrounding areas?
- Hire a contractor to improve your home without checking his/her references?
- Design a custom home without the help of an architect?

The answer is probably “no” because your home is probably the single biggest purchase you will make.




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The Big Picture

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You need to think of your school's facilities as the school's "home."

- Most likely the largest single item in your school's budget after employee salaries.
- Facilities are essential for communicating your school's "image" to parents, students, the community, and the granting authority.
- If your facilities are not safe, it will be harder to persuade students to try your program.


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First Steps: Developing Your Shopping List



1. Get the right team in place.


- Architect with experience successfully working with California charter schools
- Realtor who is qualified, regularly serves charter schools, and can provide comparable data on deals other schools are getting in the area
- Legal counsel with experience advising charter schools on facilities matters.




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First Steps: Developing Your Shopping List



2. Determine what budget and funding implications will come from locating at a particular site.

- Neighborhood demographics
- Qualifying for SB 740 funding
 - To be eligible for SB740, a charter school must have 55% more of its students eligible for FRPM, or it must be located in the attendance area of a district elementary school that has 55% or more FRPM and the charter school must offer an enrollment preference for students who attend that elementary school or live in its boundaries.
- Qualifying for other grants or loans from the California School Finance Authority, such as:
 - Charter School Facilities Program
 - Charter School Facilities Credit Enhancement Grant Program
 - State Charter School Facilities Incentive Grants Program


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First Steps: Developing Your Shopping List



3. Determine what facility will fit with your school's needs and requirements.
4. Determine whether your landlord can pay for tenant improvements, give free rent up front, and address other fiscal needs.



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Second Steps: Going Shopping



What are legal requirements to consider?

- Zoned for school use?
 - If not, can the school get a Conditional Use Permit?
 - How much is the cost of compliance?
 - Would emergency services be able to access the facility?
- Are there any CCRs (covenants, codes, and restrictions) relating to the facility?
 - Particularly common with multi-building complexes.



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Second Steps: Going Shopping



What are the legal requirements (cont.)?

- Is the facility within two nautical miles of an airfield?
 - If so, the school will need to receive special state approval.
- Is the facility in close proximity to other hazards?
 - Near freeway?
 - Lacking protective fences?
 - No safe place to drop off/pick up students?
 - High crime area?
 - Near undesirable businesses?



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Second Steps: Going Shopping

What are the legal requirements?

- Meets building code standards **for charter schools.**
 - This is where having an architect with experience assisting schools is essential!
- Meets city parking requirements.
- Meets utility needs (water, power, sewage, etc.)
- Complies with federal and state disability laws.
- Completed environmental review required by CEQA (California Environmental Quality Act).
- Adequate ingress and egress for emergency personnel and persons involved with school.

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Third Steps: Leasing the Building

1. What kind of lease do you want?

- Landlord lease
- AIR lease
- Benefits/Drawbacks
- Negotiating Strategies
- Basic provisions to avoid

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Third Steps: Leasing the Building

2. What are the particularly important provisions to review and negotiate?

- Term
- Options to extend
- Rent (including increases)
- Gross vs. Net
- Necessary Improvements
- Maintenance of Premises
- Utilities
- Common Area Costs
- Tax benefits
- Insurance

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Third Steps: Leasing the Building



2. What are the particularly important provisions to review and negotiate (cont.)?

- Liability and Indemnification
- Default/Breach and Opportunity to Cure
- Remedies
- Damage and Destruction
- Quiet possession
- Legal compliance
- Etc...



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Third Steps: Leasing the Building



Other ways to protect your school:

- Conditions of Lease
 - Receiving CUP/COO
 - Non-renewal/revocation/funding or enrollment reduction
 - Timely delivery of Premises
 - Completion of Tenant Improvements
- Inspections
- No personal liability or guarantees
- Cost of improvements and legal compliance
- Payment schedule aligned with State deferral schedule in the event deferrals are reinstated in future fiscal years



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Third Steps: Leasing the Building



Other ways to protect your school (cont.):

- Remedies if the Landlord defaults
- Waiver of subrogation
- Quiet possession/Non-Disturbance
- Plenty of time to remedy violations
- Subletting



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Third Steps: Leasing the Building

3. What are important business terms to consider?

- Early termination
- Tenant improvement costs/responsibilities
- Rent-free occupancy for initial period
- Square foot cost
- Purchase options

TIP: sometimes it's not what you pay, it's when you pay that will make a difference.

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Third Steps: Leasing the Building

4. Good negotiating strategies



- Know the market
 - This is where having a knowledgeable realtor is essential!
- Always have multiple deals available
- Never say which site is preferred
- Understand the property owner's interests
- Never be the first one to suggest a dollar figure
- Play offers against one another

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QUESTIONS AND RESPONSES

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