

**Building Acquisition Due Diligence**

1. Before an Academy Board votes to approve a real property acquisition, the Academy Board should perform due diligence sufficient to conclude that the acquisition is in the best financial and educational interest of the Academy. At a minimum, the Academy Board should:
  - a. Identify the seller. If the seller is not an individual, identify all individual owners, shareholders, members, etc., as well as the seller's directors, officers and management level employees. This list should disclose any familial, business, or other relationships between Academy Board members, Academy employees, and owners and employees of the Academy's Educational Service Provider ("ESP"), if any.
  - b. Identify whether the transaction involves a related party. Related parties include the ESP, ESP owners, ESP employees, family members of ESP owners and employees, parent, subsidiary or affiliates of the ESP, as well as with Academy Board members, Academy employees and family members of Academy Board members and Academy employees. Academy Board members, Academy employees, entities owned by Academy Board members, Academy employees, and family members of Academy Board members and Academy employees are prohibited from having any ownership, contractual or monetary interest in the seller.
  - c. Identify all known conflicts of interest that the seller's owners, directors, officers or employees may have in regard to Academy Board members, Academy employees, as well as other vendors contracting with the Academy. Conflict of interests include, but are not limited to, familial and/or business relationships.
  - d. Identify the Academy's anticipated total cost of ownership, including:
    - i. Mortgage payments;
    - ii. Fixture costs;
    - iii. Taxes;
    - iv. Utilities and Assessments;
    - v. Interest;
    - vi. Insurance;
    - vii. Renovation, Repair and Maintenance;
    - viii. Transaction fees;
    - ix. Broker fees; and
    - x. Other fees or costs (please identify).
  - e. Identify the cost per square foot for the physical plant.

2. The Academy Board also should:

- a. Identify who presented the proposed site to the Academy Board. In other words, was the site identified by a real estate agent, the Academy's ESP, an Academy Board member, or some other person.
- b. Confirm that the Academy Board undertook, or retained a third party to undertake, a process to identify and select the proposed site that included a site analysis to determine factors such as the school age population in the area surrounding the facility, adequacy of transportation options, number of other schools nearby, and any other factors considered by the Academy Board in selecting the site. If the Academy Board retained an ESP to undertake the process described in this paragraph, confirm that the information compiled by the ESP was presented to the Academy Board at a public meeting before the acquisition was approved.
- c. Confirm that the Academy Board determined that the proposed purchase agreement provides for a fair market value for the Academy. Specifically, confirm that the Academy used one of the following market indicators in its fair market value determination (the Academy may use more than one or a different indicator for determining fair market value):
  - Colliers International Market Report
  - Area chamber of commerce reports
  - CB Richard Ellis Market Index
  - Charter School Facilities Report from a National Survey of Charter Schools, prepared by Charter Friends National Network
  - Independent appraisal
  - Market analysis by independent real estate professional
  - Analysis of comparable properties by independent real estate professional
  - Comparison of other similar public school academies using the Michigan Department of Education's Bulletin 1014
- d. Confirm that the Academy retained a real estate, architect, or other professional to advise the Academy Board regarding the decision to purchase the property and identify that professional. If the Academy Board did not engage such experts, explain why not. If the Academy retained its ESP to engage such professionals, confirm that the ESP explained to the Academy Board at a public meeting prior to the Academy Board approving the purchase the process utilized to reach its recommendation regarding the property.
- e. Confirm the Academy Board considered other properties prior to agreeing to purchase the building. If so, explain what factor(s) compelled the Academy Board to select the site? If not, explain why not? If the Academy retained its ESP to evaluate property options, confirm that the ESP explained to the Academy Board at a public meeting, prior to the Academy Board approving the purchase, the process utilized to identify the site selected.

- f. Confirm that the Academy Board has inspected the proposed physical plant and that the use and condition of the proposed physical plant, including the interior and exterior walls, restrooms, technology infrastructure, roof, HVAC, and other structures is sufficient for the intended use.
    - g. Confirm the total square footage of the building and the number acres at the physical plant. Is there adequate space and acreage for subsequent expansion of the building, if necessary?
  3. Confirm that Academy Board members, Academy Board employees, and their respective spouses and immediate family members do not have any direct or indirect ownership, employment, contractual, management, or other monetary interest in the seller. The relationship between the Academy and the seller must be consistent with the conflicts of interest and prohibited familial relationship provisions set forth in the Contract and applicable law.
  4. The Academy Board should retain independent legal counsel to review and advise on the negotiation of the purchase. Legal counsel for the Academy shall not represent the seller or the seller's owners, directors, officers, or employees. The purchase agreement must be an arms-length, negotiated agreement between an informed Academy Board and the seller. Prior to the Academy Board's approval of the purchase, the Academy Board must obtain a legal opinion from its legal counsel, which includes the representation that legal counsel has reviewed the proposed purchase agreement and the Academy's Contract, and that in their opinion:
    - a. The Academy Board has the power and authority to purchase the facility;
    - b. Purchasing the facility does not violate any term or provision of the Contract or applicable law; and
    - c. Purchasing the facility does not authorize or require an improper delegation by the Academy Board.
  6. The Academy Board should not purchase the building until all Academy Board members have been given the opportunity to review the proposed purchase agreement with the Academy's legal counsel.
  7. The Academy Board may only approve a facility purchase with a formal vote at a public board meeting. Prior to an Academy Board's vote, the Academy Board shall provide an opportunity for public comment on the proposed purchase.
  8. In negotiating the purchase, the Academy Board must budget adequate resources to fulfill its Contract requirements which may include, but are not limited to: oversight of any ESP, negotiation of the Contract and any Contracts amendments, payment of staff costs, insurance, annual financial audit, the Academy Board's legal counsel, consultants, recording secretary and any other such cost necessary for Academy Board operations. In undertaking this analysis, the Academy Board should consider the total costs of the building.

9. The Academy Board is responsible for ensuring that the budget reserve amount included as part of the Academy's annual budget is adequate for any anticipated facility improvements.

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