

## **State Charter School Board Policy on Review of Facilities Contracts or Financing Agreements for Charter Schools**

U.C.A. § 53A-1a-507 (9) provides that “a charter school shall submit any lease, lease purchase agreement or other contract or agreement relating to the charter school’s facilities or financing of the charter schools facilities to the school’s authorizer and an attorney for review and advice prior to the charter school entering into the lease, agreement or contract.” In order to facilitate this statutory requirement the State Charter School Board as an authorizer under § 53A-1a-501.6 (1) (b) provides this policy and procedure to accomplish the requirements of this statutory provision.

### **Types of agreements to be reviewed:**

U.C.A. § 53A-1a-507 (9) calls for a review of “any lease, lease purchase agreement or other contract or agreement relating to the charter school’s facilities or financing.” This a very broad call for review and could cover a wide variety of contracts or agreements including things as pedestrian as custodial or landscaping agreements. Thus, as a matter of policy only leases or purchase contracts or agreements that relate to a charter school’s physical facility which are a substantial financial commitment (\$\_\_\_\_\_ or more per year, or \_\_\_% of a charter school’s annual budget) will be subject to this mandatory review.

### **Review Process:**

Contracts or agreements that are subject to review will follow the process below:

1. A cover letter or narrative addressing the following considerations will be submitted with the contract or agreement to be reviewed:
  - a. How the contract or agreement is dealt with in the overall operational budget of the charter school (e.g., the percentage of the full operating budget).
  - b. If the contract or agreement is a lease for an existing or “to be built” space:
    - i. Is the lease a long term lease (renewals)?
    - ii. What is the financial impact of the lease, e.g., the yearly cost of the lease and the full cost of the lease over the full term?
    - iii. How does the financial impact of the lease compare to purchasing?
    - iv. Is there an option to buy, and how does that option fit into a long term operational plan and the needs of the charter school (e.g., expansion needs, etc.)?

- v. How was the lease negotiated, e.g., was it the subject of an RFP; how many other leases holds were considered in the negotiations?
  - vi. Is the lease with a related or interested party or entity, and has any conflict of interest been disclosed and resolved?
  - vii. What is the intended allocation of responsibilities and risk for the lease space?
  - viii. Has the lease agreement been reviewed by an attorney (required under the statute) representing the charter school? (A letter from the attorney evidencing that review should be attached and working paper showing any markup of the agreement would be useful to understand the course of the negotiations and preparation of the agreement).
  - ix. Has the charter school board reviewed and approved the draft lease before it is submitted for this review? (Include a copy of the Board resolution approving the submission of the lease and this letter or narrative for review).
  - x. Who will be authorized to sign on behalf of the charter school?
- c. If the contract or agreement is for the purchase of an existing or “to be built” facility:
- i. How is the purchase being financed?
  - ii. How was the financing arranged, e.g., is the financing provided from or through a related or interested party?
  - iii. Was the financing and purchase the subject of an RFP?
  - iv. What are the terms of the financing?
  - v. How does a purchase compare financially with a long term lease?
  - vi. Are there any special terms or conditions to the purchase?
  - vii. Has the purchase agreement, and any related financing been reviewed by an attorney (required under the statute) representing the charter school? (A letter from the attorney evidencing that review should be attached and working paper showing any markup of the purchase agreement would be useful to understand the course of the negotiations).
  - viii. Has the charter school board reviewed and approved the draft purchase agreement before it is submitted for this review? (Include a copy of the Board resolution approving the submission of the purchase agreement and any related financing and this letter or narrative).
  - ix. Who will be authorized to sign on behalf of the charter school?

2. The cover letter or narrative should also contain a paragraph or statement acknowledging that this review is for the purpose of receiving only a review and advice as provided in the statute and is not for the purpose of receiving permission to enter into any contract or agreement and it does not serve as an assessment by the State Charter School Board that the agreement is financially sound, legally binding or enforceable. The charter school should acknowledge that the decision to enter into any contract or agreement is its own decision and that the State Charter School Board does not accept any responsibility or liability for any contract or agreement entered into by the charter school.
  
3. The contract or agreement should be submitted with any accompanying documents as provided herein to:

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250 East 500 South  
PO Box \_\_\_\_\_  
Salt lake City, Utah 84114