

Leveraging School District Property

Practical Revenue Generating Options & Issues to Consider

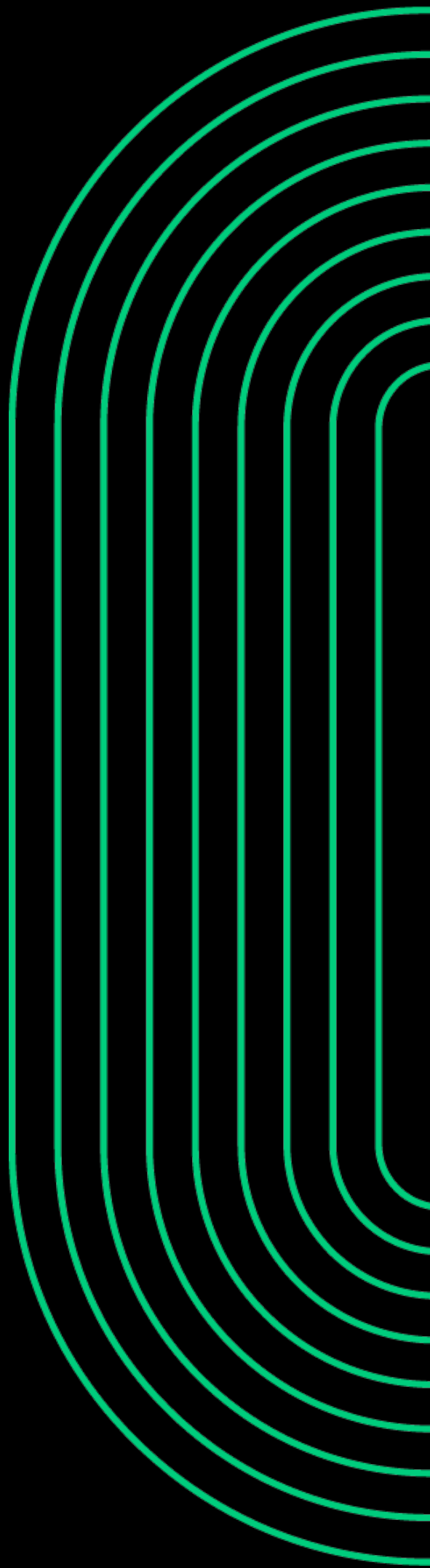
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Today's Roadmap & Objectives

WHAT

- ❖ General Powers School Districts
- ❖ Facility Use Agreements (Leases)
- ❖ Wireless Communications Leases
- ❖ Billboard Ground Leases
- ❖ Solar Options

OBJECTIVES

- ❖ Understand Key Issues
- ❖ Identify Best Practices



General Powers School Districts

The Broad Powers under the Revised School Code – MCL 380.11a

- ❖ General Powers School Districts
- ❖ School districts have **express powers** and may exercise those **powers that are implied or incidental to those express powers**.
- ❖ School districts may also exercise a power incidental or appropriate to the performance of any function related to the operation of the school district **in the interest of public elementary and secondary education within the school district**.

 **“Educational Nexus”**

- ❖ Express Powers:
 - MCL 380.11a(3)(c) – “Acquiring, constructing, maintaining, repairing, renovating, **disposing of, or conveying school property, facilities, equipment, technology, or furnishings**.”
 - MCL 380.11a(4) – “A general powers school district may enter into **agreements or cooperative arrangements** with other entities, public or private, or join organizations **as part of performing the functions of the school district**.”

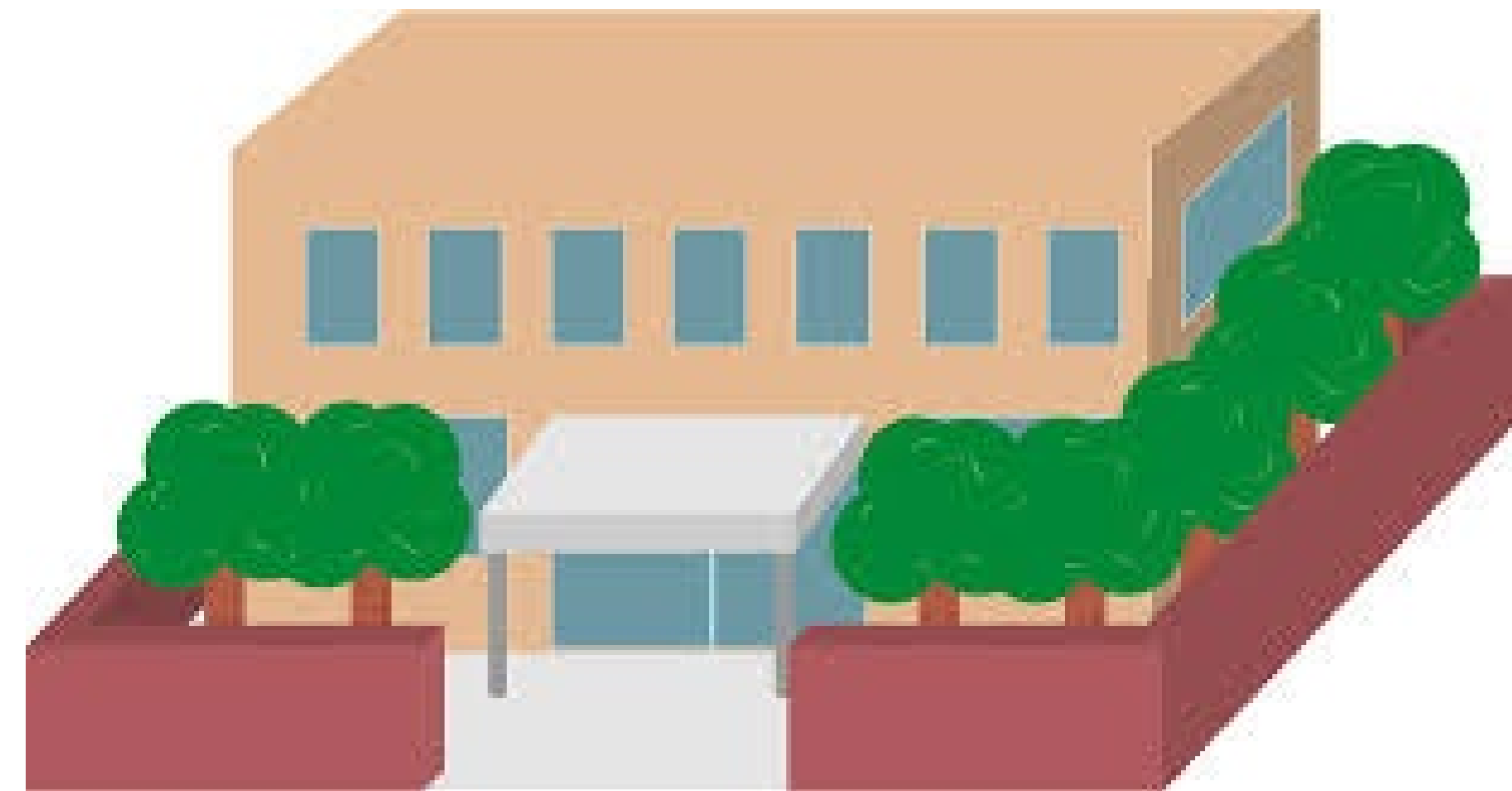
Facility Use Agreements



Practical Options to Consider

What facilities, space or fields could be considered?

- ❖ Surplus Buildings (or portions) no longer used for daily school operations.
- ❖ Building Amenities for Community Use:
 - Gymnasiums and Aquatic Centers.
 - Auditoriums
 - Classrooms
- ❖ Courts and Fields for Community Groups/Sports
- ❖ Athletic Buildings and Fieldhouses.



Legal Framework of Use Agreements

What Key Issues Should a School District Consider?

- ❖ A facility use agreement is a formal contract that outlines the terms and conditions under which an external party may use a school district facility, space or field. It should address key provisions that define the permitted use/purpose, costs/fees, time duration and compliance requirements.
- ❖ Form of Agreement is important for practical application and ease of administration:
 - Short Form of Agreement for limited (one-time) or **short-term** (specific time frame) uses.
 - ✓ Fillable Form of User Information.
 - ✓ Include generic terms and conditions of use applicable for all.
 - Long Form of Agreement for entire building or **long-term** use of specific space.
 - ✓ Terms and conditions more tailored for specific use and user obligations.
 - ✓ Terms and conditions may be more negotiated with user group.
- ❖ For ease administration, prudent to develop a **form** of use agreement for all departments to utilized to ensure standardization of terms and conditions.

Legal Framework of Use Agreements

What Key Provisions Should be Addressed?

- ❖ Define space subject to use and the **authorized use**, including exclusive vs non-exclusive use.
- ❖ Define **Use Fee**:
 - Do all users need to be charged under the same fee structure?
 - ✓ Consider developing policy that differentiates groups.
 - ✓ Example: school support groups vs community-based groups vs non-affiliated groups.
 - Address additional costs and fees in addition to Use Fee.
 - ✓ IT Services or AV Services.
 - ✓ Custodial Services.
- ❖ Address **Term and Termination** – Duration of use and when/how can agreement be terminated.
- ❖ Consider **Liability and Insurance** – Indemnification, Insurance Coverage and Limits and Waivers.
- ❖ Clarify **Maintenance and Clean-Up** – Who is responsible and repairs for damage.
- ❖ Require **Compliance** – Establish requirements to comply with law and School District policies and rules.



Legal Issues to Consider

Some Uses Could Implicate Legal Issues for the School District

- ❖ Review relevant Board Policy
- ❖ Consider how granting a use could impact school district in future requests.
- ❖ Depending on the type and scope of the use, certain legal issues may need to be addressed.
 - ✓ Zoning Issues.
 - ✓ Governmental Immunity.
 - ✓ Property and other Tax Implications.
 - ✓ Private Activity issues if Bond Proceeds involved.
- ❖ These issues may not be present in all situations but may need to be considered in certain circumstances.

Wireless Communications Lease Agreements



Key Issues to Consider

A wireless communications lease is a legal contract between the school district landowner (landlord/lessor) and a wireless carrier/operator tenant (lessee) for the use and possession of real estate (land and/or improvements). It is intended to be the “roadmap” for a business transaction. **Negotiating an effective lease** requires an understanding of the relationship between the parties, the context of the transaction, the key provisions for the lease, as well as the desired outcome.

❖ Preliminary Issues to Consider:

- Does school district have the power to enter into a wireless commun
- What **carrier** is interested in leasing your land/building?
- What is the proposed cell site configuration? (**Tower vs. Building**)
- Where will cell tower site be **located** on your property?
- Are there any **access issues**?
- What are the **local zoning** ordinances relating to cell towers?
- What are the industry norms for the particular transaction?
- What is your **long-term intended use** of the property?.



Key Negotiated Terms/Issues

❖ Size and Location of Leased Premises

- ✓ Size of area do they **request vs. what they really need** (including easements).
- ✓ Beware of Leased Premises expansion clauses.
- ✓ Consider school district's long-term intended uses of the property?

❖ Option Terms

- ✓ Length of **Option and Consideration**.
- ✓ Set forth what can be done during Option Term.
- ✓ Identify how and when the Option must be exercised.

❖ Lease Term and Renewal Term(s)

- ✓ When does Initial **Term** start?
- ✓ Length of Initial Term.
- ✓ Number and length of Renewal Term(s).
- ✓ Identify how and when Renewal Terms are exercised.



Key Negotiated Terms/Issues

❖ Permissible Use of the Leased Premises

- ✓ Identify what improvements the tenant may **install** for its Cellular Communications Facility.
- ✓ Require construction drawings and consent to materially modify.
- ✓ Identify who builds and owns the cell tower.
- ✓ Set forth what can be done to upgrade the equipment/site during the term.

❖ Rent and Fees

- ✓ Up-Front **Fee** Payment for Option (with renewal fees).
- ✓ Identify **base rent** and when payment of rent commences.
- ✓ Frequency of payment (annually or monthly).
- ✓ How and when is Rent increased?
 - Term vs. Annual **Escalators**.
- ✓ Review of **Co-Location Revenue**.



Key Negotiated Terms/Issues

❖ Other Key Provisions that **Must** be Negotiated

- ✓ Assignment and Subleasing.
- ✓ Right of First Refusal Clauses.
- ✓ Relocation Rights and Obligations.
- ✓ Taxes.
- ✓ Interference Clauses and Obligations.
- ✓ Default and Termination.
- ✓ Insurance, Indemnification and Risk Management.
- ✓ Removal at End of Lease.
- ✓ Holdover Issues.
- ✓ Boilerplate Clauses.

❖ Beware of Lease **Buy-Out Offers** and Transactions

- ✓ Third-Party seeking to purchase revenue stream.
- ✓ Highly Complex Transactions
- ✓ Price and other provisions must be negotiated.
- ✓ Do NOT just sign Letter of Intent proposed by company.



Billboard Lease Agreements

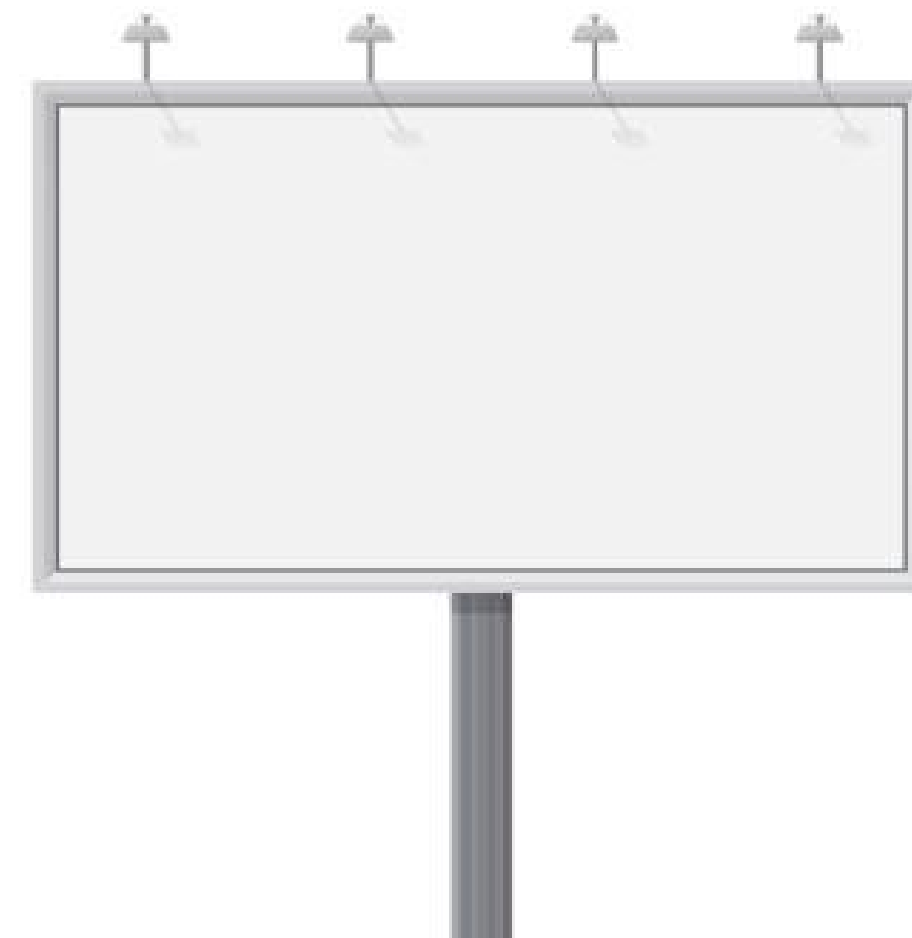


Key Issues to Consider

A traditional billboard lease may be a ground lease or a building lease, where a school district landowner leases a portion of their property to the lessee. The lessee then assumes responsibility for constructing and operating a billboard on the property. A billboard leasing arrangement will need to be properly negotiated and will address many of the same core issues present in wireless communications leasing arrangements.

❖ Key Issues to Consider:

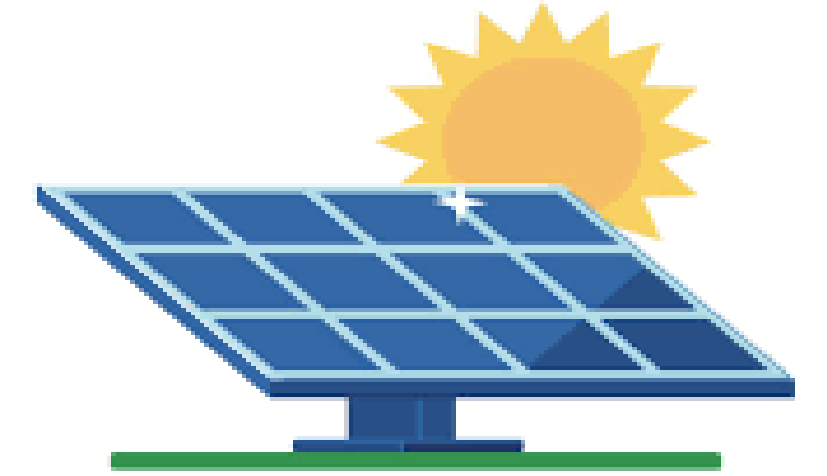
- What is the proposed configuration? (Ground Space vs. Building Facade)
- Are there any access issues?
- What are the local zoning ordinances relating to billboards?
- What are the industry norms for the particular transaction?
- What is your long-term intended use of the property?
- What type of advertisement is intended (content)?



Solar Options



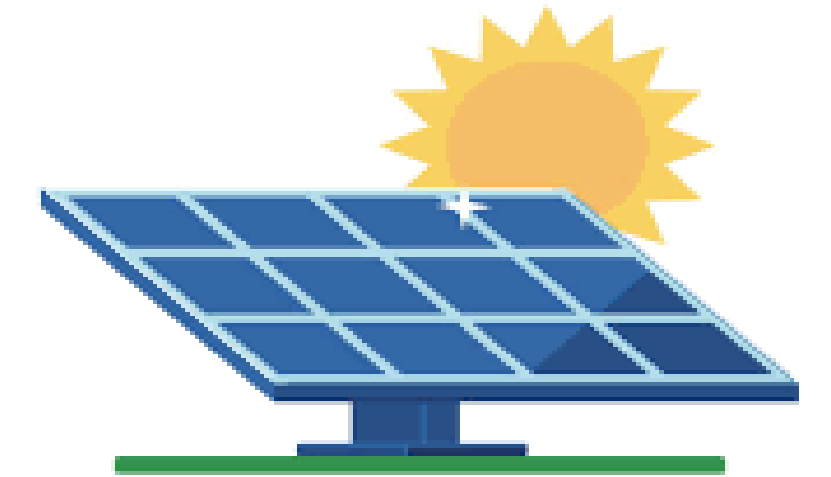
Solar Issues to Consider



- ❖ Requirements for **Renewable Energy Utilization** under Energy Laws
 - Michigan clean energy legislation requires 50% renewable energy by 2030 (60% by 2035).
 - Large-scale solar, wind and energy storage projects under State jurisdiction.

- ❖ Utility **Integrated Resource Plans** and Leasing of Property
 - Utilities identify long-term electricity resources and look for areas to build renewal energy projects.
 - School districts with excess property space (usually large amounts) may be approached by utility to lease ground or rooftop space.
 - Generally, this is a traditional leasing arrangement.

Solar Issues to Consider



❖ Options for **Solar as a Service** (SaaS) & **Power Purchase Agreement** (SPPA).

- A contractual agreement where a third-party solar developer installs and owns a solar system on the landowner's property.
- Generally, the third-party developer owns and maintains the solar system, but school district can potentially lease the system and own it over time.
- School district agrees to purchase the generated electricity at a fixed rate for a set time period.
- Can generate significant energy for school's needs and reduce energy costs.
- Can provide educational opportunities for STEM programs operated by school district.
- Language of contracts very important.

❖ School District **direct installation** of Solar Equipment

- School District secures and installs solar equipment directly.
- Issues with financing of project.
- Up to 40% power usage comes from solar with balance through utility provider.
- Savings on energy consumption when factor in anticipated utility rate increases.



Thank you!

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