



## **CHECKLIST FOR CHARTER SCHOOL SUBMISSION OF PROPOSED LEASE PURCHASE ARRANGEMENT FOR PUBLIC EDUCATION DEPARTMENT APPROVAL**

***Note: Charter schools submitting proposed Lease Purchase Arrangements must check periodically for any modifications to this checklist prior to making submissions.***

### **Introduction to Checklist**

In accordance with Section 22-26A-4(A) NMSA 1978, part of the Public School Lease Purchase Act, Chapter 22, Article 26A NMSA 1978, when the governing body of a charter school determines that a lease purchase arrangement is in the best interest of the charter school, the governing body shall forward to the Public Education Department a copy of the proposed lease purchase arrangement, and the source of funds the governing body has identified to make payments due under the lease purchase arrangement.

As stated in Section 22-26A-2 NMSA 1978, the purpose of the Public School Lease Purchase Act is to implement the provision of Article IX, Section 11 of the New Mexico Constitution, which provides that a lease purchase agreement entered into by a charter school<sup>1</sup> for leasing of a building or other real property with an option to purchase for a price that is reduced according to the payments made by the charter school pursuant to the financing agreement is not a debt if: (a) there is no legal obligation for the charter school to continue the lease from year to year or to purchase the real property; and (b) the financing agreement provides that the lease shall be terminated if sufficient money is not available to meet the current lease payments.

Under Section 22-26A-3(A) NMSA 1978 a “lease purchase arrangement” or “financing agreement” (the terms are used interchangeably in the statute) means an agreement for the leasing of a building or other real property with an option to purchase for a price that is reduced according to the payments made by the charter school, which periodic lease payments - composed of principal and interest components - are to be paid to the holder of the agreement.

Section 22-26A-4(B) NMSA 1978 provides that a governing body of a charter school shall not enter into a lease purchase arrangement without the (prior) approval of the Public Education Department.

### **Purpose of Checklist**

To assist governing bodies of charter schools in submitting their proposed lease purchase arrangements to the Public Education Department for the required statutory approval, our state agency has prepared a checklist of items that governing bodies are required to comply with by law or administrative policy.

---

<sup>1</sup> School districts are also included in this Constitutional provision.

This checklist is a guidance document to be used by governing bodies of charter schools in submitting their proposed lease purchase arrangements. This checklist is not necessarily a comprehensive list of all the Public Education Department's requirements for approval of proffered financing agreements. In specific instances, our state agency may require the governing body of a charter school to submit additional documents or other information pertaining to the particular business transactions and financing arrangements involved.

Public School Facilities Authority Approval

Section 22-8B-4.2(E) NMSA 1978 provides that a charter school shall not enter into a lease purchase agreement without the (prior) approval of the Public School Facilities Authority, pursuant to Section 22-20-1 NMSA 1978.

Under Section 22-20-1(A)(2) NMSA 1978, except for particular statutory exemptions granted by the Public School Capital Outlay Council, each governing body of a charter school shall secure the approval of the Public School Facilities Authority's director or his designee prior to entering into a lease purchase arrangement for a building to be used as a school facility or a related school structure.

The Public School Facilities Authority is required under Section 22-20-1(D) NMSA 1978 to give approval to an application for approval of a lease purchase arrangement if the director or his designee reasonably determines that:

- the buildings to be leased for purchase meet the applicable statewide adequacy standards promulgated by the Public School Capital Outlay Council and set forth in 6.27.30 NMAC (09/01/2002);
- the buildings to be leased for purchase have, as measured by the New Mexico condition index, a condition rating equal to or better than the average condition for all New Mexico public schools for the applicable year.

Terms of Proposed Lease Purchase Arrangement

A proposed lease purchase arrangement under Section 22-26A-5 NMSA 1978:

- may have payments payable annually or more frequently, as determined by the governing body of the charter school;
- may be subject to prepayment at the option of the governing body of the charter school at such time(s) and upon such terms and conditions, with or without the payment of such premium(s), as determined by the governing body;
- may have a final payment date not exceeding thirty (30) years after the date of execution of the financing agreement;

- may be acquired or executed at a public or negotiated sale;
- may be entered into between the governing body of the charter school and the owner of the building or other real property, who may be a trustee or other person that issues or sells certificates of participation or other interests in the payments to be made under the lease purchase arrangement, the proceeds of which may be used to acquire the building or other real property;
- shall specify the principal and interest component of each payment made under the lease purchase arrangement; provided that the net effective interest rate shall not exceed the maximum permitted by the Public Securities Act, Sections 6-14-1 through 6-14-3 NMSA 1978;
- shall provide that, if the charter school makes capital improvements to the building or other real property, there shall be no change in the lease payments or final payment without a written amendment approved by the Public Education Department;
- shall provide that if state or charter school funds, above those required for lease payments, are used to construct or acquire improvements, the cost of those improvements shall constitute a lien on the real estate in favor of the charter school and then, if the lease purchase arrangement is terminated prior to the final payment and the release of the security interest or the transfer of title, at the option of the charter school: (a) the charter school may foreclose on the real estate lien; or (b) the current market value of the building or other real property at the time of termination - as determined by an independent appraisal certified by the Taxation and Revenue Department - in excess of the outstanding principal due under the lease purchase arrangement, shall be paid to the charter school;
- shall expressly certify that notwithstanding any other provisions of the Agreement, Lessee's governing body represents, warrants and covenants that it has not directly or indirectly undertaken, nor agreed to directly or indirectly undertake, Lessor's debt under any agreement, nor has Lessee pledged, transferred, or granted a security interest in, or assigned to any private third party, public funds, monies, grants or other distributions received, or to be received, by Lessee from or through the state of New Mexico, for the purpose of securing the payment of Lessor's financial obligations, in violation of Article IX, Section 14 of the New Mexico Constitution, or in violation of Article IX, Section 11 of the New Mexico Constitution.
- shall provide that there is no legal obligation for the charter school to continue the lease purchase arrangement from year to year or to purchase the building or other real property;
- shall provide that the lease purchase arrangement shall be terminated if sufficient money is not available to meet any current lease payment;

shall provide that, with the prior approval of the lessor, which shall not be unreasonably withheld, the lease purchase arrangement is assignable, without cost to the charter school and with all of the rights and benefits of its predecessor in interest being transferred to the assignee, to: (a) a school district or charter school; or (b) the state or one of its institutions, instrumentalities or other political subdivisions; and

shall provide that amendments to the lease purchase arrangement, except amendments that would improve the building or other real property without additional financial obligations to the charter school, shall be approved by the Public Education Department.

Compliance with Open Meetings Act

Section 22-26A-6(A) NMSA 1978 provides that if the governing body of a charter school proposes to acquire a building or other real property through a lease purchase arrangement, the governing body shall comply with the requirements of Section 22-26A-6 and the provisions of the Open Meetings Act, Chapter 10, Article 15 NMSA 1978. In accordance with Sections 10-15-1(D) and (F) NMSA 1978, respectively:

Any meeting at which the discussion or adoption of any proposed resolution or formal action occurred and at which a majority or quorum of the governing body of the charter school was in attendance shall be held only after reasonable notice to the public.

The governing body of the charter school shall determine at least annually in a public meeting what notice for a public meeting is reasonable when applied to the governing body. That notice shall include broadcast stations licensed by the federal communications commission and newspapers of general circulation that have provided a written request for such notice.

The meeting notice shall include an agenda containing a list of specific items of business to be discussed or transacted at the meeting or information on how the public may obtain a copy of the agenda.

Except in the case of an emergency, at least seventy-two (72) hours prior to the meeting, the agenda shall be available to the public and posted on the charter school's web site, if one is maintained.

Resolution of Governing Body

Section 22-26A-6(B) NMSA 1978 requires that, at a regular meeting or at a special meeting called for the purpose of considering the acquisition of a building or other real property through a lease purchase arrangement, the governing body of the charter school shall:

- make a determination of the necessity for acquiring the building or other real property through a lease purchase arrangement;
- determine the estimated cost of the buildings or other real property needed;
- review a summary of the terms of the proposed lease purchase arrangement;
- identify the source of funds for the lease purchase payments; and
- if the governing body determines that the lease purchase arrangement is in the best interest of the charter school, forward a copy of the arrangement to the Public Education Department pursuant to Section 22-26A-4 NMSA 1978.

Source of Funds

Under Section 22-26A-7 NMSA 1978, a charter school may apply any legally available funds to acquire or improve buildings or other real property subject to a lease purchase arrangement or to the payments due under a lease purchase arrangement, including any combination of:

- money from the charter school's general fund;
- investment income actually received from investments;
- proceeds from taxes imposed pursuant to the Public School Capital Improvements Act, Chapter 22, Article 25 NMSA 1978, or the Public School Buildings Act, Chapter 22, Article 26 NMSA 1978;
- loans, grants or lease payments received from the Public School Capital Outlay Council pursuant to the Public School Capital Outlay Act, Chapter 22, Article 24 NMSA 1978;
- state distributions to the charter school pursuant to the Public School Capital Improvements Act;
- fees or assessments received by the charter school;
- proceeds from the sale of real property and rental income received from the rental or leasing of charter school property;
- grants from the federal government as assistance to those areas affected by federal activity authorized in accordance with Title 20 of the United States Code, commonly known as "PL 874 funds" or "impact aid"; and

New Mexico legislative appropriations.

Ownership of Building or Other Real Property

If the current owner of the building or other real property subject to the proposed lease purchase arrangement is either a nonprofit entity specifically organized for the purpose of providing the facility for the charter school under Section 22-8B-4.2(D)(2)(b)(2) NMSA 1978, or a domestic nonprofit corporation organized and existing under the Nonprofit Corporation Act, Chapter 53, Article 8 NMSA 1978, the governing body of the charter school shall specify whether the nonprofit entity has an outstanding debt or other financial obligation from, or arising out of, the purchase of the building or other real property, and if so, shall include the total amount of the debt and to whom is it owed.

Pledging of Charter School Revenues or Other Assets

If the governing body of the charter school has entered, or will enter, into a pledge and covenant agreement for the benefit of a third party bank or other financial institution in conjunction with, or as part of, the sale of educational facility revenue bonds to finance the acquisition or renovation, or both, of the building or other real property subject to the proposed lease purchase arrangement, the governing body shall include a complete copy of the agreement with its submission to the Public Education Department.

If, relative to the proposed lease purchase arrangement, the governing body of the charter school has entered, or will enter, into a pledge and covenant agreement whereby it has agreed, or will agree, to grant a security interest and assign to a third party bank or other financial institution for the benefit of educational facility revenue bonds holders, any of the charter school's revenues or other assets, or the charter school's right, title, and interest in and to any agreements with the State of New Mexico for such revenues, or both, the governing body shall include a complete copy of the pledge and covenant agreement with its submission to the Public Education Department.

If, relative to the proposed lease purchase arrangement, the governing body of the charter school has entered, or will enter, into a pledge and covenant agreement whereby it is required to establish and maintain a depository account with a bank or other financial institution, into which account all education funding received by the charter school from the Public Education Department, including State Equalization Guarantee Distribution funding, State Lease Reimbursement Program payments, and other special funds and federal pass-through funding constituting revenue, whether adjusted or otherwise, are be deposited in accordance with an account control agreement, the governing body shall include a complete copy of the agreement with its submission to the Public Education Department.

Submission of Proposed Lease Purchase Arrangement

A transmittal letter with complete copies of the proposed lease purchase arrangement and all appertaining documents shall be submitted by the chair of the governing body of the charter school, or by the charter school's legal counsel, to:

New Mexico Public Education Department  
Capital Outlay Bureau  
Jerry Apodaca Education Building, Room G-6  
300 Don Gaspar Avenue  
Santa Fe, New Mexico 87501  
Attention: Antonio Ortiz, Director

RFS/Ver. 1\_June 2018