

**SOUTHWEST AERONAUTICS, MATHEMATICS AND SCIENCE ACADEMY
GOVERNING COUNCIL**

Resolution No. 2021-22 - 001

Resolution Re: Lease Purchase Agreement with Option to Purchase Preliminary Approval Pursuant to NMSA 1978, §22-26A-6.

WHEREAS, the Southwest Aeronautics, Mathematics, and Science Academy Governing Council (“Council”), the governing body of Southwest Aeronautics, Mathematics, and Science Academy, a public charter school (“School”) authorized by the New Mexico Public Education Commission, held a special public meeting via the virtual platform Zoom Video Conferencing on August 10, 2021 at 4:30 p.m.; notice of the meeting was published as provided by law;

WHEREAS, the Council has determined that it is necessary and in the School’s best interest to acquire from RM SAMS, LLC (“Owner”), a five (5)-acre+/- parcel of land with a completed public school facility of approximately 36,800 square feet located at the Southwest Corner of Irving Blvd. and Ventana Road, in the City of Albuquerque, County of Bernalillo, New Mexico (“Property”), through a lease purchase arrangement (“Agreement”) as defined by the New Mexico Public School Lease Purchase Act (“Act”), NMSA 1978, §§22-26A-1, *et seq.*;

WHEREAS, the Owner is a New Mexico limited liability company organized and existing under NMSA 1978, 53-19-1, *et seq.*, the Limited Liability Company Act;

WHEREAS, the Council understands that the Owner will obtain financing (“Loan”) from Main Bank to acquire the Property and to make the improvements as contemplated in the Agreement and for which the Owner will be solely liable;

WHEREAS, the Council, in connection with the Owner’s acquisition of the Property and construction of the improvements, has not entered 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 School from the New Mexico Public Education Department (“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 to be deposited in accordance with an account control agreement;

WHEREAS, the Council will not enter into a pledge and covenant agreement as it relates to the Loan, wherein it must 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;

WHEREAS, the Council has made a determination that as of August 10, 2021, the maximum purchase price for the Property and improvements of \$10,903,704.06 (Ten Million Nine Hundred Three Thousand Seven Hundred Four Dollars and 06/100), with a Maximum Monthly Base Rent Amount of \$59,502.69, subject to reduction in the event actual costs are less than projected costs, is fair and reasonable based on the School’s current and projected educational

program needs. The interest rate charged shall not exceed the maximum interest rate allowed pursuant to the Public Securities Act, NMSA 1978, §6-14-1 through 6-14-3;

WHEREAS, the Council has reviewed a summary of the terms of the proposed Agreement and determined that the terms and conditions of the Agreement are in the best interest of the School and are acceptable to the Council, if approved by the Department;

WHEREAS, the Council has determined that the Property and improvements will be suitable for the School's educational program as contemplated by its charter. Further, acquisition of the Property and improvements as its long-term facility is in the School's best interest;

WHEREAS, the Council will, prior to executing the Agreement, submit it to the Department for approval, pursuant to the requirements of the Department, the terms of the Act, and the Charter Schools Act, NMSA 1978, §§22-8B-1, *et seq.*; and

WHEREAS, the Council has reviewed the Sources of Funds that will be used to make the required payments pursuant to the Agreement, which sources comply with NMSA 1978, §22-26A-7 and the Council is satisfied that the School has eligible funding to enter into the Agreement.

NOW, THEREFORE, be it resolved by the Southwest Aeronautics, Mathematics, and Science Academy Governing Council that:

(1) It is necessary and in the School's best interest to acquire from the Owner, the Property and to-be-constructed improvements at located at the Southwest Corner of Irving Blvd. and Ventana Road, in the City of Albuquerque, County of Bernalillo, New Mexico, through a lease purchase arrangement as defined by NMSA 1978, §22-26A-3(A);

(2) the maximum purchase price for the Property and improvements of \$10,903,704.06 (Ten Million Nine Hundred Three Thousand Seven Hundred Four Dollars and 06/100), with a Maximum Monthly Base Rent Amount of \$59,502.69, subject to reduction in the event actual costs are less than projected costs, is fair and reasonable based on the School's current and projected educational program needs. The interest rate charged shall not exceed the maximum interest rate allowed pursuant to the Public Securities Act, NMSA 1978, §6-14-1 through 6-14-3;

(3) The terms of the proposed Agreement are reasonable, acceptable, and in the best interest of the School;

(4) The source of funds to make the payments under the proposed Agreement have been identified from available and allowable funds;

(5) The Council will not be liable for the Loan incurred by Owner for purposes of acquiring the School Site;

(6) The Council will not pledge its revenue, nor commit the School's assets as security for purposes of repaying the Loan, nor will it establish or maintain a depository account into which the School's revenues from any source are deposited to be controlled by a trustee or any third party as it relates to repayment of the Owner's Loan.

(7) The Agreement, along with all required documentation, shall be forwarded to the Department for consideration and approval prior to its execution;

(8) The Council authorizes the School's Executive Director, with the support of the Council President, to respond to any additional requests for documents or information from the Department, to make all revisions required by the Department or as advised by School's legal counsel that do not change the material terms of agreement, and to take such other necessary steps to finalize the draft Agreement in consultation with the School's legal counsel; and

(9) The President of the Council shall have the authority to execute the Agreement if the required approvals are obtained from the Department and the Public School Facilities Authority.

The undersigned certifies that s/he is the duly elected President of the Southwest Aeronautics, Mathematics, and Science Academy Governing Council and that the above is a true and correct statement of the Resolution that was duly adopted at a meeting of the Council, which was held in accordance with State laws and bylaws of the Southwest Aeronautics, Mathematics, and Science Academy Governing Council.

The motion was duly made, seconded, and 6 voted in favor, 0 against and 0 abstained; the motion carried.

By my signature below I certify that the foregoing Resolution constitutes a true and complete copy of the Resolution adopted by the Southwest Aeronautics, Mathematics, and Science Academy Governing Council, at its August 10, 2021 special meeting held over the virtual platform Zoom Virtual Conferencing.

**SOUTHWEST AERONAUTICS, MATHEMATICS AND SCIENCE ACADEMY
GOVERNING COUNCIL**

Larry Kennedy
President (Signature)

8-10-21
Date

LARRY KENNEDY
Printed Name