THE GREAT ACADEMY & THE GREAT ACADEMY FOUNDATION

CONSULTING SERVICES REPORT
FOR THE PERIOD OF
JULY 1, 2016 TO JANUARY 31, 2022

THE GREAT ACADEMY & THE GREAT ACADEMY FOUNDATION

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KUBIAK MELTON & ASSOCIATES, LLC
AUDITORS – BUSINESS CONSULTANTS - CPAs

Report of Independent Accountants'

Honorable Brian S. Colón, Esq., CFE, New Mexico State Auditor, and
Jasper Matthews, Executive Director, The GREAT Academy, and
The GREAT Academy Board of Directors and
The GREAT Academy Foundation Board of Directors
Albuquerque, New Mexico

We have performed consulting services for the GREAT Academy (the "Academy") and the GREAT Academy Foundation (the "Foundation") for the period July 1, 2016 through January 31, 2022. This consulting services engagement was conducted in accordance with Standards for Consulting Services established by the American Institute of Certified Public Accountants, the Audit Act (NMSA 1978, Sections 12-6-1 et seq.), and the Audit Rule (NMAC 2.2.2.1 et seq.). The sufficiency of these procedures is solely the responsibility of the parties specified in this report. Consequently, we make no representation regarding the sufficiency of the procedures described below either for the purpose for which this report has been requested, or for any other purpose.

The consulting procedures performed in this engagement do not constitute an examination, investigation, or an audit made in accordance with U.S. Generally Accepted Auditing Standards, the objective of which would be the expression of an opinion on the items reviewed as part of our consulting services.

Consulting services differ fundamentally from the Certified Public Accountants' (CPA) function of attesting to the assertions of other parties. In an attest service, the CPA expresses a conclusion about the reliability of a written assertion that is the responsibility of another party, the asserter. In a consulting service, the CPA develops the observations, findings, and recommendations presented. The nature and scope of work is determined solely by the agreement between the CPA and the client. Generally, the work is performed only for the use and benefit of the client.

Kubiak Melton & Associates, LLC (KMA CPAs) recommendations regarding procedures to be performed and the results of the procedures performed are dependent upon the accuracy and completeness of the representations and information that KMA CPAs receives from the Academy and the GREAT Academy Foundation, Inc. (the "Foundation"). Accordingly, inaccurate or incomplete representations could result in inaccurate findings or inappropriate recommendations, and critical recommendations may not be identified.

6747 Academy Road NE, Ste. A
Albuquerque, NM 87109
P: 505.822.5100 | F: 505.822.5106
kubiakcpa.com

This report is intended solely for the information and use of the Academy's governance, the Foundation's governance, management of the Academy and the Foundation, the New Mexico Office of the State Auditor (OSA), the NM Legislative Finance Committee, and the NM Public Education Department, and is not intended to be, and should not be, used by anyone other than these specified parties.

Kubiak Melton & Associates, LLC

Kubiak Melton & Associates, LLC
Auditors – Business Consultants – CPAs

Albuquerque, New Mexico
October 28, 2022

Executive Summary:

KMA CPAs performed procedures detailed in the *Scope of Work* over information spanning the period of July 1, 2016 through January 31, 2022. It also included any pre-payments of rent from the Academy to the Foundation. In approaching the engagement, and based on the *Scope of Work*, KMA CPAs structured the report into the following sections:

> ***Objective 1: Establish an Understanding*** - We were charged with establishing an understanding of a variety of items as detailed below in the *Scope of Work* section of this report.
>
> ***Objective 2: Assessment and Reporting*** - We were charged with assessing and reporting on practices regarding all Academy funds paid to the Foundation during the period of the scope of our work for items: (a) rent (b) pre-paid rent (c) maintenance (d) expenditures on behalf of the Foundation, including maintenance, and (e) all other payments or fund transfers.
>
> This also included assessment and reporting on practices regarding all expenditures of public funds by the Foundation during the Period by type: (a) on behalf of the Academy including, but not limited to, mortgage, building maintenance, and Academy employee travel and, (b) expenditures benefiting the Academy and/or its employees.
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> ***Objective 3: Evaluation, Observations and Findings*** - We were charged with evaluating the Academy's adherence to relevant laws, rules and policies and procedures including internal controls and any identified risks or weaknesses in the Academy's expenditure of public funds.
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> This section dives into the "Observations" made by the consultants as well as the "Findings" identified in the performance of the engagement. Observations are meant to call attention to certain matters that are of interest to the users of this report while the findings identify actual noncompliance or internal control weaknesses.

The Academy is required to follow and comply with all laws and regulations as a New Mexico charter school. This includes New Mexico State Statutes, New Mexico Administrative Code (NMAC), the New Mexico State Audit Rule, Internal Revenue Codes (IRC), the New Mexico State Constitution, and New Mexico Public Education Department's (NMPED) Charter Schools Policies and Procedures. The New Mexico "Charter Schools Act" (NM Stat § 22-8B-1) is the overarching state law governing charter schools throughout the state of New Mexico.

The Internal Revenue Code (IRC) Section 501(c)3 sets forth exempt purposes for organizations that are charitable, religious, educational, among other purposes. The term "charitable" is used in its generally accepted legal sense and includes advancement of religion, advancement of education or science, among other purposes. The United States Internal Revenue Service (IRS) allows organizations that apply for a charitable determination typically if they fall within the general purposes indicated above. Those organizations with this determination are then required to conduct themselves under IRC 501(c)3 and will be exempt from federal and state income taxes.

The Foundation is a 501(c)3, nonprofit organization. 501(c)3 organizations are typically funded by grants, individuals or corporate donors, fundraising, along with other sources. It is important to understand the Foundation's organizational structure in order to understand the relevant law and regulations it has to comply with.

In consideration of the technical relationship between the Academy and the Foundation beyond the obvious related party considerations, we look to the requirements the Academy is bound to follow as a component unit of the NMPED. Certain Governmental Accounting Standards Board (GASB) statements define the financial reporting entity as consisting of the primary government, organizations for which the primary government (NMPED) is financially accountable, and other organizations for which the nature and significance of their relationship with the primary government are such as exclusion would cause the reporting entity's financial statements to be misleading or incomplete. The Academy is a component unit of the NMPED.

Furthermore, under GASB standards, the Academy's Foundation is considered to be a blended component unit of the Academy and is reported as separate fund within the Academy's financial statements in their annual audit. The Foundation is not required to have a legally adopted budget, however, as a 501(c)3, it is best practices for nonprofit organizations to adopt a budget and monitor the actual expenses to that budget.

As part of our consideration of the Foundation as a 501(c)3, we considered it important to look into where the Foundation's revenues came from. In analyzing that information, we noted that essentially all revenues of the Foundation came from the Academy. In total, the Foundation's revenues from the Academy amounted to 99.5% of the total sources of revenues during the period within the scope of our engagement. This means that only $12,521 or 0.5% of the Foundation's total revenues for the period, were received from other sources such as fundraisers and donations. The $12,521 amount is insignificant in comparison to the Foundation's total receipts of $2,280,355 during the scope of our engagement. Given this fact, we must consider the entirety of the engagement with the following thought in mind:

> Is it possible that at least some of that money that went over to the nonprofit Foundation, is essentially still public funds, and therefore, subject to the accountability of New Mexico laws and regulations? Considering the Academy funded the Foundation in excess of the Foundation's required debt service, property taxes, maintenance, other operating and administrative expenses, a reasonable person may consider the excess funding to still be public funds.

Alternatively, if a substantial portion the money had come from private donations, fundraising, grants, etc., the Foundation would have been beholden to those donors and/or grant stipulations, and therefore, would not be looked at from the perspective being funded by public funds in the form of rent payments, prepayments, and maintenance.

Summarized Results

As a result of the procedures performed, we believe that the funds would have been spent differently had they stayed with the Academy. At a bare minimum, it would have been subject to more accountability by means of budgets and other safeguards such as travel and per diem maximums, anti-donation laws, and internal controls.

Under this approach, we have found that many of the expenses:

- Would have been subject to greater transparency and accountability resulting from the internal controls in place at the Academy, including:
    - The $1,000,000 rent prepayment would have stayed with the Academy and any subsequent use of those funds would have been subject to more accountability as described above.
    - Expenses would have been subject to more thorough review process which would have more than likely included requiring more detailed invoices (i.e., contract invoices did not specify hours or units or specific duties that were completed that month.)
- Would be in noncompliance with the anti-donation law Article IX, Section 14 of the State of New Mexico Constitution.
- Would be in noncompliance with the New Mexico Travel and Per Diem Act (Title 2, Chapter 42, Part 2 NMAC).
- Would be in noncompliance with the Procurement Code (NMSA 1978 § 13-1-28 through 13-1-199)
- Would have been subject to less conflicts of interest in the general control environment of the Academy as opposed to the Foundation.

Background:

On February 23, 2022, New Mexico State Auditor Brian S. Colón, Esq., CFE designated the GREAT Academy (the "Academy") and its Foundation, the GREAT Academy Foundation, Inc. (the "Foundation") for a special audit to examine and evaluate the Academy's and the Foundation's adherence to relevant laws, rules, and policies and procedures as it relates to their expenditure of public funds and the Foundation funds. Since the Foundation solely exists to benefit the Academy during the scope of this engagement, and since the Academy has significant influence over the Foundation, they are considered related parties.

Pursuant to Section 12-6-3 NMSA 1978, the State Auditor *"may cause the financial affairs and transactions of an agency to be audited in whole or in part."* Additionally, the Audit Rule, at 2.2.2.15(B)(1) NMAC, further provides that the State Auditor may designate an agency for special audit … regarding the financial affairs and transactions of an agency … based on information or a report received from an agency, independent public accountant, or member of the public.

The designated engagement may be performed by the State Auditor, or an Independent Public Accountant selected by the Academy in accordance with procurement rules and approved by the State Auditor. On May 5, 2022, the Academy contracted with KMA CPAs to perform the procedures detailed in the *Scope of Work*.

The engagement was limited to the areas in the *Scope of Work* and periods described, the documents available, and interviews performed. If the OSA determined that specific items needed to be reviewed that were related to the general *Scope of Work*, we performed those additional procedures.

Joint Venture
The consulting services were performed under a joint venture agreement with the OSA dated May 5, 2022. The *Scope of Work* included reviewing transactions made during the period July 1, 2016 through January 31, 2022. The *Scope of Work* identified by the Academy and OSA was selected to allow for empirical observations. The goal of the engagement was to evaluate and assess compliance with relevant laws, rules, and policies and procedures including internal controls.

Scope of Work:

The scope of work was designed based on the OSA's designation to independently review the relevant information and to promote accountability and transparency.

The engagement with the Academy consisted of the following eight (8) items for which we designed procedures to address.

1. Evaluation of the Academy's adherence to relevant laws, rules, and policies and procedures including internal controls and any identified risks or weaknesses in the Academy's expenditure of public funds.
2. Establish an understanding of the processes and procedures (official and unofficial) for any payments/disbursements/payables (cash, check, ACH, etc.) made by the Academy to the Foundation during the period including rent and maintenance payments.
3. Establish an understanding of the building/lease agreement(s) between the Academy and the Foundation in effect during the period.
4. Establish an understanding of the Memorandum of Understanding (MOU) between the Academy and the Foundation in effect during the period.
5. Establish an understanding of the purpose for the Foundation.
6. Establish an understanding of the Foundation's policies and procedures, including internal controls and any identified risks and/or weaknesses in the Foundation's process for expenditure, including but not limited to:
    - i. An evaluation of the Foundation's adherence to laws, rules, and relevant policies
    - ii. Foundation contract employees and payments.
    - iii. Foundation expenditures on behalf of the Academy including mortgage, building maintenance, and Academy employee travel.
    - iv. Foundation expenditures benefiting the Academy and/or its employees.
7. Assessment and report on: Practices regarding all Academy funds paid to the Foundation during the period by type:
    - a) Rent.
    - b) Pre-paid Rent.
    - c) Maintenance.
    - d) Expenditures on behalf of the Foundation, including building maintenance.
    - e) All other payments or funds transfers.
8. Assessment and report on: Practices regarding all expenditures of public funds by the Foundation during the Period by type:
    - a) On behalf of the Academy including, but not limited to, mortgage, building maintenance, and Academy employee travel.
    - b) Expenditures benefiting the Academy and/or its employees.

Objective 1: Establishing an Understanding

Section I: Introduction

As part of our engagement, we were tasked with establishing an understanding of:

1. The processes and procedures (official and unofficial) for any payments/ disbursements/payables (cash, check, ACH, etc.) made by the Academy to the Foundation during the period including rent and maintenance payments,

2. The building/lease agreement(s) between the Academy and the Foundation in effect during the period,

3. The Memorandum of Understanding (MOU) between the Academy and the Foundation in effect during the period,

4. The purpose for the Foundation, and,

5. The Foundation's policies and procedures, including internal controls and any identified risks and/or weaknesses in the Foundation's process for expenditure, including but not limited to:

    a. An evaluation of the Foundation's adherence to laws, rules, and relevant policies.

    b. Foundation contract employees and payments.

    c. Foundation expenditures on behalf of the Academy including mortgage, building maintenance, and Academy employee travel.

    d. Foundation expenditures benefiting the Academy and/or its employees.

Section II: KMA CPAs Required Understanding as Part of the Engagement

1. **Our understanding of the processes and procedures (official and unofficial) for any payments/disbursements/payables (cash, check, ACH, etc.) made by the Academy to the Foundation during the period including rent and maintenance payments.**

OSA's Special Investigations Division (SID) interviewed the Academy's Business Office Support employee (BOS employee) and the Academy's Executive Director/Founder (ED), on June 24, 2022, as to the process surrounding payments/disbursements/payables (cash, check, ACH, etc.) made by the Academy to Foundation. We document OSA's review and understanding below. OSA also reviewed the Academy's adopted policies and procedures.

During their review, they noted the types of payments made by the Academy to the Foundation included the following:

- Rent
- Maintenance
- Reimbursements for items such as marketing, storage, other items which were put on the Foundation's credit card.

On July 1st of every fiscal year, a purchase order (PO) is created by the BOS employee and approved by the ED for the rent and maintenance payments required in the upcoming fiscal year. Subsequently, the BOS employee enters the PO into the APTAFund Financial System software. The rent and maintenance PO is based on the lease amortization schedule. The PO is signed by the ED. One check is paid to the Foundation for rent and maintenance monthly. The methods used by the Academy to make payments to the Foundation are checks and electronic funds transfer (EFT). No cash payments are made to the Foundation. Academy checks up to $9,999 are signed by the ED. If the amount is $10,000 and greater the check requires both the ED and either the BOS employee or the Board President's signature. The BOS employee or the Board President can sign checks in the ED's absence. Prior to fiscal year 2018, a Board member designee could sign checks in place of the Board President. During the COVID-19 pandemic, DocuSign was used to sign checks.

Credit card payment reimbursements to the Foundation are for items such as marketing, storage, and other items where a credit card payment is required. An MOU is in place between the Academy and the Foundation which identifies the items the Foundation can purchase. See part *3* of this section for our discussion regarding our understanding of the MOU. The Foundation uses an expense approval form which is reviewed by the Foundation Board President to approve the expense. The credit card is used once the form is approved. The Foundation is reimbursed for those payments once the Foundation submits backup documentation to the Academy.

Section II: KMA CPAs Required Understanding as Part of the Engagement (continued)

2. **Our understanding of the building/lease agreement(s) between the Academy and the Foundation in effect during the period.**

To gain an understanding of the building lease agreement between the Academy and the Foundation, KMA CPAs obtained historical and current lease agreements, mortgage agreements, mortgage statements, and maintenance agreements from the Academy and the Foundation.

In 2011, the Academy executed a lease agreement with a non-related company. The lease was for the building the Foundation would eventually purchase. The Academy performed under this lease until the time the Foundation was created and purchased the building from the owners. Initially, the Foundation entered into a mortgage agreement with a bank out of Colorado to purchase the building, which was later refinanced with Peoples Bank. For the scope of work of this engagement, we focused on the mortgage agreement the Foundation entered into with Peoples Bank in July 2017. We noted that the lease agreement with the non-related company was different in a key term to the lease agreement entered into between the Academy and the Foundation. The main difference noted was that the agreement with the non-related company lease was a “triple net lease”. The difference between a triple net lease and absolute net lease is that in a triple net lease, the tenant may not pay for expenses directly.

Below is the breakdown of the lease agreements and terms entered into between the Foundation and the Academy. In each of the three times there was a prepayment of rent, a new lease agreement was executed with a new term and a new amortization table to amortize the prepaid rent over the new term of the lease.

Lease	Lessor	Lessee	Term Dates	Rent	Prepaid Rent
School building	The Foundation	The Academy	July 1, 2015 - June 30, 2031	Monthly rent ($16,500) Less amortized prepayment amount ($1,875) plus 1/12 of estimated Operating Expenses ($4,500)	$450,000
School building	The Foundation	The Academy	April 1, 2017 - March 31, 2037	Monthly rent ($16,500 - $16,995) Less amortized prepayment amount ($2,960.94) plus 1/12 of estimated Operating Expenses ($4,500)	$300,000
School building	The Foundation	The Academy	January 1, 2019 - January 1, 2039	Monthly rent ($16,995- $29,800.84) Less amortized prepayment amount ($3,743.52) plus 1/12 of estimated Operating Expenses ($5,500)	$250,000

Section II: KMA CPAs Required Understanding as Part of the Engagement (continued)

2. **Our understanding of the building/lease agreement(s) between the Academy and the Foundation in effect during the period. (continued)**

Under these lease agreements, the Academy is required to pay a base rent according to the lease amortization schedule. In addition, prepaid rent of $1,000,000 was paid to the Foundation in three installments and then amortized as outlined above.

Per discussion with the ED, when the Academy began to incur reductions in lease assistance from the New Mexico Public School Facilities Authority (NMPSFA), the Academy made the above prepayments to help reduce future lease payments. The goal was that the lease assistance amounts received from NMPSFA would cover the net rent amount needed to be paid to the Foundation for the building.

The Academy is also required to pay “Additional Rent” to the Foundation for operating/maintenance expenses. More specifically, the lease agreement is what is called an “absolute net lease” which means that the Academy as the tenant is responsible for rent and all other property related expenses, which includes roof and structure. This type of lease completely relieves the Foundation as the property owner from all financial obligations besides debt service.

The amount of this “additional rent” is 1/12 of the Foundation’s annual estimate of total operating expenses. Currently, this operating/maintenance fee is $5,500 per month or $66,000 annually. The total “additional rent” amounts paid during the period of the engagement totaled $338,500, which do not include other expenses paid directly by the Academy pursuant to their absolute net lease. If after each lease year, actual operating/maintenance expenses are more than the Foundation’s estimate, the Academy is to pay the Foundation for the difference. On the other hand, if estimated operating/maintenance expenses are more than actual, the difference is to be kept by the Foundation in a “Maintenance Reserve” account to be used for the building’s repair & maintenance. If the balance of the maintenance reserve account exceeds a balance of $100,000, the Foundation is to return to the Academy the excess amount.

Per our discussions with the ED, this lookback of estimated versus actual has never occurred. However, we noted that building and maintenance expenses of the Foundation totaled $439,329 for the period of this engagement. Therefore, we didn’t expect anything to be left in the “Maintenance Reserve” account as of January 31, 2022. Please see **Section III** of the **Objective 2: Assessment and Reporting** for the details of how those funds were spent.

Section II: KMA CPAs Required Understanding as Part of the Engagement (continued)

3. **Our understanding of the Memorandum of Understanding (MOU) between the Academy and the Foundation in effect during the period.**

The Academy and the Foundation have entered into an MOU in two separate occasions. The two MOUs were for the following periods:

1. School Year (SY) 2018-2019
2. Ongoing [after SY 2018-2019]

KMA CPAs reviewed the MOUs provided by the Academy. The MOUs consisted of the same information on one page as detailed below:

1. *Student*
    a. *Testing and Academics*
    b. *Behavior*
    c. *Attendance*
    d. *Dual Credit*
    e. *Service Learning*
2. *Parents*
    a. *Parent Night – Food; Gift Card Prize*
    b. *Family Support – Food, gas, and clothing*
    c. *Parental Involvement – Gift Cards*
3. *Staff / Personnel Cost*
    a. *International Exchange Support*
    b. *Gift Card Incentive*
    c. *Retention Incentive*
    d. *Staff Appreciation – Birthday; Christmas*
    e. *Contractor – Maintenance, Admin, Others*
4. *Professional Development*
    a. *Conference Fees*
    b. *Travel (Air, Ground and Food)*
    c. *Hotel*
    d. *Board Training*
    e. *Trainers*
5. *Fundraising / Marketing*
    a. *Campus-based*
    b. *Grants / Sponsorship*
    c. *Mass Media Marketing*
    d. *Special Events Marketing*
    e. *Concert Fundraiser*

Please see **Objective 3: Evaluation, Observations, and Findings** for our conclusions on the MOU.

Section II: KMA CPAs Required Understanding as Part of the Engagement (continued)

4. **Our understanding of the purpose for the Foundation.**

To gain an understanding of the purpose of the Foundation, KMA CPAs reviewed the Foundation's Articles of Incorporation and the Bylaws. We also interviewed the ED of the Academy, and the BOS employee of the Academy, on several occasions throughout the engagement. The ED and BOS employee of the Academy are employed by the Academy and were also contractors of the Foundation during the period of our engagement.

The Foundation was primarily created to support and operate for the benefit of public charter schools. Per the Articles of Incorporation, the Foundation:

> *"shall operate exclusively for the benefit of, to perform the functions of, or to carry out the purposes of one or more public charter schools" and "shall not have any additional purpose or support any organization other than public charter schools."*

Additionally, the Foundation:

> *"may provide support to established public charter schools by acquiring and purchasing a facility for use/lease/lease-purchase by a school, through direct grants to a public charter school, by performing activities that benefit a public charter school, by assuming financial liability, such as debt, as a means to benefit a public charter school, or by other means deemed appropriate by the Board of the Corporation (the Foundation)."*

Essentially, the Articles of Incorporation define the Foundation's acceptable activities as any action that benefits any public charter school.

Per our discussions and interviews with the ED and BOS employee, the Foundation was originally created for the purpose of assigning to the Foundation the Academy's purchase option contained in the lease agreement with the Academy's previous landlord. The Foundation was then to exercise its option to purchase the building from the non-related company and subsequently lease the building to the Academy.

As included in the lease agreements between the Academy and the Foundation,

> *"The Foundation was created to support the School, and for the purpose of providing the School with a facility pursuant to NMSA 1978 §22-8B-4.2."*

Per the ED, the Foundation's purpose then expanded to also provide financial support to the Academy as outlined in the MOU discussed above. From the ED's comment during interviews, the Foundation would be saving the Academy money by providing financial support to the Academy. The item that stuck out about this assertion is that, since the Foundation was essentially completely funded by the Academy, yet they were meant to provide financial support for the Academy, then why wouldn't the Academy have just kept that money to be used in it's own budget.

Th ED also specified during our interviews that the Foundation was able to purchase items such as food and clothing for students and able to provide rental deposits and other assistance to the Academy's students' families. In contrast, had the Academy purchased these types of items or provided this type of assistance to the students' families, it would be in violation of Article 9, Section 14 of the New Mexico Constitution, otherwise known as the anti-donation clause. The important thing to note is that substantially all the Foundation's revenues came from the Academy and should be considered along with the comments above.

Section II: KMA CPAs Required Understanding as Part of the Engagement (continued)

4. **Our understanding of The Foundation's policies and procedures, including internal controls and any identified risks and/or weaknesses in the Foundation's process for expenditure, including but not limited to:**

    i. **An evaluation of the Foundation's adherence to laws, rules, and relevant policies.**

    ii. **Foundation contract employees and payments.**

    iii. **Foundation expenditures on behalf of the Academy including mortgage, building maintenance, and Academy employee travel.**

    iv. **Foundation expenditures benefiting the Academy and/or its employees.**

Our understanding and evaluation of the Foundation's adherence to laws, rules, and relevant policies.

As part of our understanding and evaluation of the Foundation's adherence to laws, rules, and relevant policies, we searched for any contractual obligations. We identified two debt covenants contained in the Foundation's mortgage with the Peoples Bank. The two debt covenants are:

1. Maintain a minimum Debt Service Coverage Ratio of 1.20:1

2. Maintain all depository accounts with Peoples Bank for the duration of loan, including checking, savings, Money Market accounts, and CDs.

The loan agreement indicates that the debt service coverage ratio is to be based on the Foundation's tax returns or financial statements. Moreover, the ratio is to be computed as: net income before interest, depreciation, and amortization ("NIBIDA") divided by all debt payments (interest and principal). KMA CPAs performed the below calculation of the Foundation's debt service coverage ratio with information from the Foundation's audited financial statements and found the following:

Table 1-1: Compliance with the Debt Service Coverage Ratio

	FY2017	FY2018	FY2019	FY2020	FY2021
NIBIDA	101,298	(167,506)	(338,534)	49,204	137,991
Debt Payments	96,430	87,648	94,952	80,343	87,648
Debt Service Coverage Ratio	1.05	-1.91	-3.57	0.61	1.57
Complied with Debt Service Coverage Ratio Requirement:	FALSE	FALSE	FALSE	FALSE	TRUE

Source: Amounts were obtained from the Foundation's audited financial statements for the fiscal years 2017 through 2021.

The second covenant requires that the Foundation maintain depository accounts with Peoples Bank for the duration of loan. Based on our review of the Foundation's accounts, all depository accounts held during the period July 2016 through January 2022 were held with a bank other than Peoples Bank. Please see **Objective 3: Evaluation, Observations, and Findings** for our conclusions on the Foundation's compliance with these requirements.

Section II: KMA CPAs Required Understanding as Part of the Engagement (continued)

Our understanding and evaluation of the Foundation's adherence to laws, rules, and relevant policies. (continued)

Please see **Objective 3: Evaluation, Observations, and Findings** for our conclusions regarding the Foundation’s compliance with the loan agreement surrounding ceasing operations, liquidate, merge, transfer, acquire or consolidated with another entity.

Our understanding of the Foundation's policies and procedures over the Foundation’s contract employees and payments

During the period July 2016 through January 2022, the Foundation executed contracts with the Academy’s ED; the Academy’s Director of Academics/Founder which is also the ED’s wife; the Academy’s BOS employee; a Sales Operations Manager at Aspire, an advertising company based out of San Francisco, CA; and an attorney at Stiletto Enterprises. The contracts were approved by the Foundation’s Board of Directors and executed by the Board President. For an analysis of the Foundation’s payments made to contract employees see **Section III** of the **Objective 2: Assessment and Reporting**. See **Objective 3: Evaluation, Observations, and Findings** for our control environment finding.

Our understanding of the Foundation's policies and procedures over the Foundation’s expenditures on behalf of the Academy including mortgage, building maintenance, and Academy employee travel.

OSA SID interviewed the Academy’s ED and BOS employee on June 24, 2022, as to the process surrounding the Foundation’s expenditures. We documented OSA’s review and understanding below. OSA also reviewed the Foundation’s adopted policies and procedures provided by the BOS employee.

The Foundation’s policies and procedures, including internal controls, regarding the Foundation’s expenditures are as follows:

1. Expense Approval Forms are submitted by the Director of Operations/Volunteer/Designee to the Board President/Treasurer before a purchase is made.

2. The Board President/Board Treasurer approves the Expense Approval Form.

3. Purchase is made.

4. The Director of Operations receives the product, prints and signs the check.

Section II: KMA CPAs Required Understanding as Part of the Engagement (continued)

Our understanding of the Foundation's policies and procedures over the Foundation's expenditures on behalf of the Academy including mortgage, building maintenance, and Academy employee travel. (continued)

Checks up to an amount of $9,999 are signed by the Director of Operations only. Checks of $10,000 or greater are signed by both the Director of Operations and a Board Member. Any checks made to the Director of Operations must be signed by a Board Member.

In and out-of-state travel is approved/authorized by the Director of Operations/Volunteer/Designee and the Board President/Treasurer. Board members and the Director of Operations are entitled to reimbursement of travel expenses incurred.

Prior to the Foundation's *Financial Procedure and Internal Control Policy* effective September 3, 2021, the Foundation only required for the Board to "acknowledge" expense approval forms meaning there would be no documentation of a formal approval for the expense (i.e. no signature, initials, approval stamp, etc.). See **Objective 3: Evaluation, Observations, and Findings** for our conclusions surrounding this.

Our understanding of the Foundation's policies and procedures over the Foundation's expenditures benefiting the Academy and/or its employees.

The Foundation's expenditures benefiting the Academy and/or its employees follow the same policies and procedures as described in the section above. The type of expenses paid by the Foundation is based on the executed MOU between the Academy and the Foundation. See our understanding of the MOU in **Objective 1: Establishing an Understanding - Section II: KMA CPAs Required Understanding as Part of the Engagement.**

Objective 2: Assessment and Reporting

Section I: Introduction

We were tasked with assessing and reporting on:

1. Practices regarding all Academy funds paid to the Foundation during the period by type:
    a. Rent
    b. Pre-paid Rent
    c. Maintenance
    d. Expenditures on behalf of the Foundation, including building maintenance
    e. All other payments or funds transfers

2. Practices regarding all expenditures of public funds by the Foundation during the period by type:
    a. On behalf of the Academy including, but not limited to, mortgage, building maintenance, and Academy employee travel.
    b. Expenditures benefiting the Academy and/or its employees.

Section II: Our assessment of the practices regarding all Academy funds paid to the Foundation during the period of our engagement by type:

a. Rent
b. Pre-paid Rent
c. Maintenance
d. Expenditures on behalf of the Foundation, including building maintenance.
e. All other payments or funds transfers

Our assessment of the practices regarding rent and maintenance payments paid by the Academy to the Foundation

To assess the Academy's practices regarding rent and maintenance payments made to the Foundation during the period July 2016 through January 2022, we compared the lease amortization schedules to the actual payments made by the Academy to the Foundation per the Academy's general ledgers for the period July 1, 2016 through January 31, 2022. The amortization schedules included in the lease agreements, list both the required monthly net base rent payments (the base rent net of the amortized prepaid rent payment(s)) and the required monthly maintenance payments ("Additional Rent"). Based on our comparative analysis, we noted that overall, from the period July 1, 2016 through May 1, 2021, the Academy made the required payments to the Foundation per the lease amortization schedule.

Occasionally, when the base rent or the monthly maintenance fee increased per the lease agreement effective January 1, 2019, the Academy underpaid the Foundation when compared to the required payments under the lease amortization schedule. Upon further review, we noted the Academy later caught-up with an increased subsequent payment. For example, in the period July 1, 2018 through January 1, 2019, the Academy underpaid both the net base rent and the additional rent in a total amount of $5,500.

Section II: Our assessment of the practices regarding all Academy funds paid to the Foundation during the period of our engagement by type. (continued)

Our assessment of the practices regarding rent and maintenance payments paid by the Academy to the Foundation (continued)

However, the Academy made a catch-up payment on June 1, 2019, by increasing its payment to the Foundation by the same amount.

Our assessment of the practices regarding prepaid rent payments made by the Academy to the Foundation

To assess the Academy's prepaid rent payments made to the Foundation, we reviewed the lease agreements between the Foundation and the Academy to determine whether the three prepayments were in fact stipulated in the agreements. We noted that the third lease agreement dated October 30, 2018, effective January 1, 2019, did not stipulate an additional prepayment of $250,000 which was made by the Academy to the Foundation in November of 2018.

When we inquired of the BOS employee and the ED, why the body of the third lease agreement did not indicate a $250,000 prepayment of rent, they indicated this was a typo. See **Objective 3: Evaluation, Observations, and Findings** for our conclusion related to this.

Section II: Our assessment of the practices regarding all Academy funds paid to the Foundation during the period of our engagement by type. (continued)

Our assessment of the practices regarding Academy expenditures made on behalf of the Foundation, including building maintenance

KMA CPAs reviewed the Academy's general ledgers for the period July 1, 2016 through January 31, 2022. We identified the following amounts were expended by the Academy for building maintenance and repairs by fiscal year:

Table 2-1: Academy Maintenance Expenses to Other Vendors

	FY2017	FY2018	FY2019	FY2020	FY2021	FY2022 (through 1/31/2022)	Grand Total
Maintenance & Repair - Buildings and Grounds	$44,325*	$3,739	$36,165	$12,069	$6,202	$ -	$102,501

Source: Amounts were summarized from the Academy's general ledgers for the period July 1, 2016 through January 31, 2022.

** An accounting journal entry was posted by the Academy to reclassify $43,726 out of repair and maintenance expense to contractual services. However, this amount was included in the Academy's total repair and maintenance costs for fiscal year 2017 as this amount was initially coded to repair and maintenance expense in the Academy's general ledger. Moreover, this amount was identified as a finding in the Academy's fiscal year 2017 financial statement audit. The finding identified the purchase as a violation of the New Mexico Procurement Code and stated: "The School did not follow proper procurement procedures when it procured asphalt repair, striping and the installation of speed bumps in the amount of $43,726. While the Academy utilized a vendor who is listed in the Cooperative Education Services (CES) "Blue Book," the procurement did not go through CES and the Academy paid this vendor directly and bids were not obtained." Because the purchase was described as "asphalt repair, striping and the installation of speed bumps".*

The above table summarizes the building repair and maintenance expenses paid directly to vendors as required by the absolute net lease stipulated in the lease agreement. The lease agreement between the Academy and the Foundation is an absolute net lease. Anytime there are additional expenses related to the property over the required a monthly maintenance fee (additional rent) of $5,500 per month, the Academy is required to pay that.

Section II: Our assessment of the practices regarding all Academy funds paid to the Foundation during the period of our engagement by type. (continued)

Section III: Our assessment of the practices regarding all expenditures of public funds by the Foundation during the period by type:

a. **On behalf of the Academy including, but not limited to, mortgage, building maintenance, and Academy employee travel.**

b. **Expenditures benefiting the Academy and/or its employees.**

Timeline of the Foundation's cash receipts from the Academy

As described in **Objective 1: Establishing an Understanding - Section II: KMA CPAs Required Understanding as Part of the Engagement** the Foundation received three (3) rent prepayments from the Academy in the amounts of:

- $450,000 on July 1, 2015
- $300,000 on April 1, 2017
- $250,000 on November 14, 2018

In addition to these prepaid rents, the Foundation also collected rent and maintenance (additional rent) payments from the Academy as stipulated in their lease agreement. The table below summarizes the Foundation's sources of cash receipts by fiscal year:

Table 2-2: Foundation Cash Receipts

	FY2016*	FY2017	FY2018	FY2019	FY2020	FY2021	FY2022 (through 1/31/2022)	Grand Total
Foundation's Sources of Cash Receipts:								
Prepaid Rent	$ 450,000	$ 300,000	$ -	$ 250,000	$ -	$ -	$ -	$ 1,000,000
Rent - Net of								
Amortized Prepayments	*	172,242	162,469	163,713	162,077	168,287	100,546	929,334
Maintenance	*	54,000	54,000	60,000	66,000	66,000	38,500	338,500
Other Sources	*	4,150	1,642	6,463	266	-	-	12,521
Grand Total	**$ 450,000**	**$ 530,392**	**$ 218,111**	**$ 480,176**	**$ 228,343**	**$ 234,287**	**$ 139,046**	**$ 2,280,355**

**The only FY2016 information that was in the scope of the engagement was the prepaid rent amount of $450,000.*

Source: The prepaid rent, rent and maintenance amounts were summarized from the lease amortization schedules provided by the Academy. The other sources amounts were summarized from the Foundation's general ledgers for the period July 1, 2016 through January 31, 2022.

As summarized in the table above, in addition to the prepaid rent amounts totaling $1,000,000, the Foundation has also received $1,267,834 in monthly rent and additional rent payments from the Academy. Substantially all revenues of the Foundation came from the Academy. More specifically:

- 99.5% of the Foundation's total sources of revenues during the period came from the Academy.
- $12,521 or 0.5% of the Foundation's total revenues for the period, were received from other sources such as fundraisers and donations.

Our assessment of the practices regarding all expenditures of public funds by the Foundation on behalf of the Academy including, but not limited to, mortgage, building maintenance, and Academy employee travel.

We noted that the Foundation has expended the prepaid rent, rental payments and additional rent payments from the Academy as follows:

Table 2-3: Total Foundation Expenses by Category

	FY2017	FY2018	FY2019	FY2020	FY2021	FY2022 (through 1/31/2022)	Grand Total
Expenses:							
Mortgage	$96,430 *	$87,648 *	$94,952 *	$80,343 *	$87,648 *	$46,885 **	$ 493,906
Building & Maintenance	59,749 **	114,890 **	223,866 **	63,161 **	39,418 **	6,813 **	507,896
Professional Services	28,310 **	110,462 **	184,844 **	54,271 **	63,199 **	12,575 **	453,661
School Support	34,570 **	97,541 **	102,086 **	37,702 **	15,524 **	15,905 **	303,327
Travel	14,639 **	45,143 **	37,491 **	17,817 **	208 **	3,202 **	118,500
Operational	5,487 **	2,033 **	7,149 **	2,926 **	1,462 **	1,173 **	20,232
Grand Total	$ 239,184	$ 457,717	$ 650,388	$ 256,221	$ 207,459	$ 86,553	$ 1,897,522

** Amounts were obtained from the Foundation's audited financial statements.*
*** Amounts were obtained from the Foundation's general ledgers for the period July 1, 2016 through January 31, 2022.*

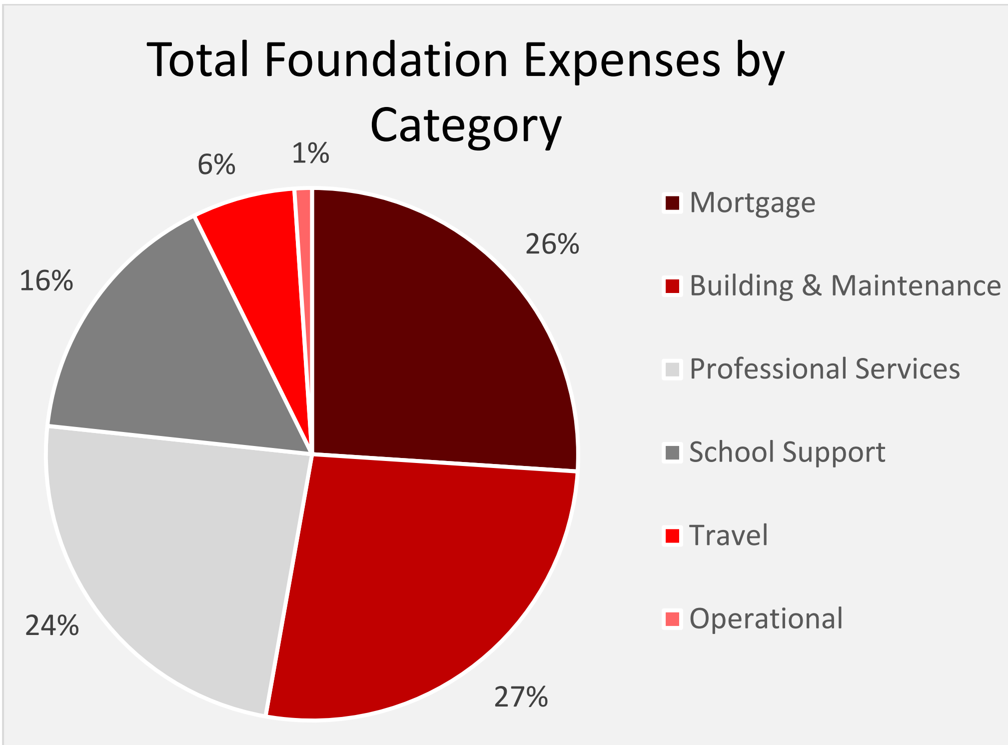
The Foundation's general ledgers for fiscal years 2017 through 2021 provided by the Foundation did not match to the audited financial statements for the same periods. This could be due to audit entries or accruals made during the audit process. Total Foundation expenses from the general ledgers from the period July 1, 2016 through June 30, 2021 were $1,839,942 and total expenses per the audited financial statements for the same period were $1,877,364. The difference was $37,422. KMA CPAs concluded that since both totals were within 2% of each other we would use some amounts from the Foundation's audited financial statements (primarily the mortgage payments), and other amounts from the Foundation's general ledgers as indicated in the table above. This decision was strictly made around the consideration of the access to the data for further analysis.

Section III: Our assessment of the practices regarding all expenditures of public funds by the Foundation during the period by type. (continued)

Our assessment of the practices regarding all expenditures of public funds by the Foundation on behalf of the Academy including, but not limited to, mortgage, building maintenance, and Academy employee travel. (continued)

The following chart is an illustration of the distribution of expenses by category:

Chart 2-1: Total Foundation Expenses by Category



Section III: Our assessment of the practices regarding all expenditures of public funds by the Foundation during the period by type. (continued)

Our assessment of the practices regarding all expenditures of public funds by the Foundation benefiting the Academy and/or its employees

Based on our analysis of the Foundation's expenses by category, we performed a more detailed assessment and review of the building and maintenance, professional services, school support and travel categories.

The first category of expenses we assessed was building and maintenance expenses. During the period July 1, 2016 through January 31, 2022 the Foundation's building and maintenance expenses consisted of the following:

Table 2-4: Analysis of Building & Maintenance

Building & Maintenance:	FY2017	FY2018	FY2019	FY2020	FY2021	FY2022 (through 1/31/2022)	Grand Total
Maintenance	$31,936	$ 112,236	$ 221,000	$ 60,496	$ 10,007	$ 3,654	$ 439,329
Taxes	25,220	-	-	72	-	-	25,292
Utilities	2,593	2,654	2,866	2,594	2,973	3,159	16,838
Total	$59,749	$ 114,890	$ 223,866	$ 63,161	$ 12,980	$ 6,813	$481,458*

**For purposes of this analysis, KMA CPAs excluded $26,438 of depreciation expense from the total building and maintenance expenditures.*
Source: Amounts were summarized from Foundation's general ledgers for the period July 1, 2016 through January 31, 2022.

A total of $382,471 of the Foundation's $439,329 maintenance expenses were capitalized as capital assets in fiscal years 2018, 2019 and 2020. Items capitalized included:

- Roof replacement
- Flooring
- Repairs and renovations to the restrooms
- Permanent landscaping to the grounds
- Construction of the patio
- Purchase and installation of heating and cooling systems for the building

The remaining $56,858 of maintenance expenses not capitalized mostly consisted of items such as maintenance to the elevators, painting, carpet cleanings, and pest control. The taxes consist of the building's property taxes. Please note that in fiscal year 2018 through fiscal year 2022, tax amounts were escrowed and paid to the mortgage company.

Section III: Our assessment of the practices regarding all expenditures of public funds by the Foundation during the period by type. (continued)

Our assessment of the practices regarding all expenditures of public funds by the Foundation benefiting the Academy and/or its employees (continued)

The Foundation's professional services for the period July 1, 2016 through January 31, 2022 consisted of the following:

Table 2-5: Analysis of the Foundation's Professional Services

Professional Services:	Academy Employee Position	7/1/2016 through 1/31/2022
Legal and Accounting Services	**N/A**	$ 85,711
Marketing and Consulting Services	**N/A**	113,973
Individual Foundation Contract for:		
Graphic Design for Graduate Activities	N/A	4,912
Director of Operations	BOS Employee	5,178
Education Consulting Contractor / Facilities Management / Academy Replication / Concert Fundraiser	ED	108,734
Legal Services	N/A	2,158
Education Consulting Contractor	Director of Academics	102,200
Maintenance Labor	N/A	95
Subtotal Contracts		223,277
Retention Bonuses to:		
BOS Employee		2,450
Teacher		4,450
ED		8,450
Director of Academics		8,450
Teacher		4,450
AV Lab Coordinator/SPED EA		2,450
Subtotal Bonuses		30,700
Total Professional Services		$ 453,661

Source: Amounts were summarized from Foundation's general ledgers for the period July 1, 2016 through January 31, 2022.

Our review of the Foundation's professional services expenses for the period showed that the largest professional services acquired during the period in order were:

- Contractual services
- Marketing and consulting services
- Legal and accounting services

The Foundation's largest contracts were with the Academy's ED and the Academy's DOA which amounted to more than $100,000 each.

Section III: Our assessment of the practices regarding all expenditures of public funds by the Foundation during the period by type. (continued)

Our assessment of the practices regarding all expenditures of public funds by the Foundation benefiting the Academy and/or its employees (continued)

In reviewing these contracts, we noted they consisted of the following. The Academy's ED was contracted by the Foundation for the following:

- For the period of July 1, 2018 through December 20, 2018 and for compensation of $15,000 plus gross receipts tax. The scope of services included:
  - Develop special education programs and services for the Academy
  - To support the Academy in their compliance with State and Federal laws and district procedures
- For the period of January 1, 2019 through June 30, 2021 and for compensation of $2,500 per month plus gross receipts tax. The scope of services included:
  - Facilities Management
  - TGA Replication Initiative
  - Concert Fundraiser

The Academy's DOS was contracted by the Foundation for the following:

- For the period January 1, 2018 through June 30, 2018 and for compensation of $45,000 plus gross receipts tax. The scope of services included:
  - To provide educational consulting services including, but not limited to: overseeing student standardized testing, coordinating Intervention Services/Programming, coordinating Academic Improvement Plan processes, coordinating training and implementation of programs, coordinating curriculum materials, and serving as Academic Data Coordinator.
- For the period July 1, 2018 through June 30, 2019 and for compensation of $60,000 plus gross receipts tax. The scope of services included:
  - To provide educational consulting services including, but not limited to: overseeing student standardized testing, coordinating Intervention Services/Programming, coordinating Academic Improvement Plan processes, coordinating training and implementation of programs, coordinating curriculum materials, and serving as Academic Data Coordinator.

Section III: Our assessment of the practices regarding all expenditures of public funds by the Foundation during the period by type. (continued)

Our assessment of the practices regarding all expenditures of public funds by the Foundation benefiting the Academy and/or its employees (continued)

The Academy's Business Office Support employee was contracted by the Foundation for the period January 1, 2019 through June 30, 2019 and for compensation of $800 per month plus gross receipts tax not to exceed $5,500. The scope of services included:

- To assist in preparing all Board and financial documents for Board meetings and annual audits, maintaining all the Foundation's accounts, receiving and paying all invoices, assisting in Board trainings (including travel, meals and accommodations), and coordinating all Foundation sponsored student, parent, and staff activities and special projects.

Our assessment also revealed that a total of $30,700 were paid as bonuses to six (6) Academy employees. These bonuses were documented as "retention bonuses".

Our assessment also revealed that a total of $14,400 was paid to the ED during fiscal year 2021 by the Foundation for "vehicle allowance". We were unable to identify this amount in his Foundation contract and unable verify it was approved by the Foundation's Board.

The Foundation's marketing and consulting services for the period consisted entirely of payments to one Michigan company for a video production/consulting contract. See **Objective 3: Evaluation, Observations, and Findings** for our conclusion related to this.

Section III: Our assessment of the practices regarding all expenditures of public funds by the Foundation during the period by type. (continued)

<u>Our assessment of the practices regarding all expenditures of public funds by the Foundation benefiting the Academy and/or its employees (continued)</u>

The next category of expenses for which we performed a detailed analysis was school support. The Foundation's school support expenses for the period July 1, 2016 through January 31, 2022 consisted of the following:

Table 2-6: Analysis of School Support

School Support:	FY2017	FY2018	FY2019	FY2020	FY2021	FY2022 (through 1/31/2022)	Grand Total
Marketing	$ 70	$ 59,916	$ 12,868	$ 5,805	$ 1,157	$ 5,445	$ 85,261
Student Activities	12,057	8,235	11,446	1,842	1,742	2	35,324
Gifts/Prizes/Donations	3,952	6,862	12,199	534	-	-	23,547
Meals	3,413	3,661	5,266	3,146	169	841	16,495
Professional Development	9,351	1,686	80	-	-	-	11,117
Supplies	5,119	11,729	28,976	17,464	2,208	2,841	68,336
Other	608	5,452	31,252	8,911	10,248	6,776	63,247
Total School Support	$ 34,570	$ 97,541	$ 102,086	$ 37,702	$ 15,524	$ 15,905	$ 303,327

Source: Amounts were summarized from Foundation's general ledgers for the period July 1, 2016 through January 31, 2022.

Our review of the Foundation's school support expenses for the period showed that the largest support provided to the Academy was marketing. Marketing expenses consisted primarily of payments to several radio and television stations as well as social media websites for advertising, and expenses for the maintenance of the Academy's website. These payments are outside of what was paid to the Michigan company as detailed above.

Other school support activities paid by the Foundation on behalf of the Academy included:

- **Student Activities** – includes expenses incurred related to hosting and/or arranging student activities such as: formals, college trips, student banquets, and graduations.

- **Gifts/Prizes/Donations** – includes purchases of gift cards, clothing for students, prizes awarded in student activities, and donations and in some instances, rental assistance to student's families.

- **Meals** – includes meals provided by the Foundation during meetings, luncheons, conferences, and events hosted by the Academy for staff, students, and/or parents/families.

- **Professional Development** – includes materials and other costs incurred for professional development trainings not requiring travel, including registration fees for professional development.

- **Supplies** – includes purchases of school, office, and maintenance supplies. School supplies include books and uniforms, among other items purchased for the Academy's students.

Section III: Our assessment of the practices regarding all expenditures of public funds by the Foundation during the period by type. (continued)

Our assessment of the practices regarding all expenditures of public funds by the Foundation benefiting the Academy and/or its employees (continued)

- **Other** – includes storage rental expenses, miscellaneous auto expenses, and reimbursements to Academy employees.

As directed by the OSA, KMA CPAs evaluated the Foundation's school support expenses using the question below as the guiding principle:

- *Had the $1,000,000 prepayment of rent as well as additional payments from the Academy to the Foundation stayed with the Academy, would these expenditures comply with State and other laws and regulations regarding the use of public funds?*

KMA CPAs selected a sample of the Foundation's school support related expenses for the period July 1, 2016 through January 31, 2022 to review. Samples were selected in two ways:

1. Judgmentally based on risks identified by OSA and KMA CPAs
2. Randomly from the remaining population of expenses that were not selected based on our judgement.

Please note, the original backup documentation for all accounting information during the period July 1, 2016 through June 30, 2017 was purged by the Foundation and we were unable to perform our assessment of expenses for that period. See **Objective 3: Evaluation, Observations, and Findings** for our conclusion related to this.

The last category of expenses for which we performed a detailed analysis was travel. The Foundation's travel expenses for the period July 1, 2016, through January 31, 2022, consisted of the following:

Table 2-7: Analysis of Travel

Travel:	FY2017	FY2018	FY2019	FY2020	FY2021	FY2022 (through 1/31/2022)	Total
Airfare	$ 5,142	$ 9,975	$ 7,998	$ 5,671	$ -	$ 654	$ 29,440
Lodging	8,509	21,776	18,499	6,553	-	2,031	57,368
Meals	322	2,733	3,356	820	208	460	7,898
Other	665	10,659	7,638	4,773	-	58	23,793
Total Travel	$ 14,639	$ 45,143	$ 37,491	$ 17,817	$ 208	$ 3,202	$ 118,500

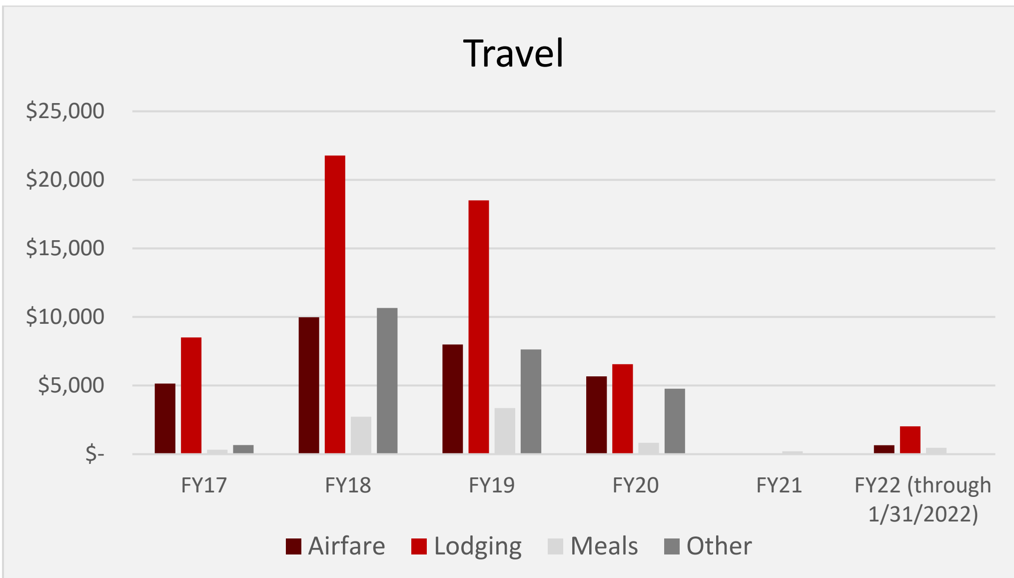
Source: Amounts were summarized from Foundation's general ledgers for the period July 1, 2016 through January 31, 2022.

Section III: Our assessment of the practices regarding all expenditures of public funds by the Foundation during the period by type. (continued)

Our assessment of the practices regarding all expenditures of public funds by the Foundation benefiting the Academy and/or its employees (continued)

Our review of the Foundation's travel expenses for the period revealed that the most travel occurred during fiscal years 2018 and 2019. The Foundation paid all travel related expenses for both the Academy's and the Foundation's Board Members as well as for several of the Academy's employees travel during the period. The following chart illustrates the distribution of travel expenses by category and fiscal year:

Chart 2-2: Analysis of Travel



The "Other" category of travel expenses includes registration fees, parking fees, rentals, and transportation costs other than airfare.

During the period of our engagement, we noted that some of the Foundation's significant travels included:

- **Fiscal Year 2017:**
  - A trip to Orlando, Florida for the *Future of Education Technology Conference (FETC)* attended by the BOS employee, the ED, the Dean of Students (DOS), and the Student/Community Outreach Coordinator (COC). The total cost of this trip was approximately $4,400.
  - A trip to Las Vegas, Nevada for the *Differentiated Instruction Conference* attended by the ED, and two Academy Board Members. The total cost of this trip was approximately $4,200.
- **Fiscal Year 2018:**
  - A trip to New Orleans, Louisiana for the Solution Tree Conference attended by the BOS employee, the ED, the DOS, and two Academy Board Members. The total cost of the trip was approximately $9,200.

Section III: Our assessment of the practices regarding all expenditures of public funds by the Foundation during the period by type. (continued)

Our assessment of the practices regarding all expenditures of public funds by the Foundation benefiting the Academy and/or its employees (continued)

- **Fiscal Year 2018 (continued):**
  - A trip to Nashville, Tennessee for the *REACH Conference* attended by the ED, the DOS, and two Academy Board Members. The total cost of the trip was approximately $12,400.

- **Fiscal Year 2019:**
  - A trip to Anaheim, California for the 2018 *Powerschool University* attended by the BOS employee and the DOA. The total cost of the trip was approximately $3,500.
  - A trip to Puerto Rico to visit three (3) local schools the Foundation was considering sponsoring (adopting). Our understanding is this trip was made as part of the Academy's partnership with United Way. The Academy's objective was to adopt one or more of the schools visited to help them fundraise for the purchase of water filters. Individuals traveling to Puerto Rico included the ED, the DOS, and an Academy Board Member. The total cost of the trip was approximately $8,500. In April 2019, the Foundation's Board of Directors selected Politécnico Amigo Inc. as their school to adopt. According to the Foundation, due to the pandemic and because the PEC voted initially not to renew the charter for the Academy, the school adoption project has been placed on hold.
  - The Foundation paid for three (3) trips for the recruitment and relocation of the DOS from Las Vegas, Nevada to Albuquerque, New Mexico. The individual hired as the DOS had been a Board member of the Academy from July 2017 through June 2019. He was then recruited by the Academy to be the DOS as well as a Foundation Board member. He served as a Board member for the Foundation from July 2019 through September 2021 and is still currently the DOS at the Academy. See **Objective 3: Evaluation, Observations and Findings** section of this report for our control environment finding. The three trips were as follows:

Table 2-8: Analysis Recruitment and Relocation Travel Expenses

Travel Dates	Individuals	Purpose	Items Paid by Foundation	Approximate Cost
May 27, 2019 – May 31, 2019	The ED	To recruit the DOS	Lodging, airfare, meals, parking fees	$1,200
June 19, 2019 – June 23, 2019	The DOS	Relocation arrangements	Lodging, airfare, meals	$1,100
August 2, 2019	The DOS	Relocation	Airfare Additional moving expenses (moving truck rental, fuel, meals, and temporary lodging)	$210 $1,800

Section III: Our assessment of the practices regarding all expenditures of public funds by the Foundation during the period by type. (continued)

Our assessment of the practices regarding all expenditures of public funds by the Foundation benefiting the Academy and/or its employees (continued)

- **Fiscal Year 2020:**
  - A trip to Orlando, Florida for the *REACH Conference* attended by the ED, the DOA, the DOS, and an Academy Board Member. The total cost of the trip was approximately $13,600.
- **Fiscal Year 2021:**
  - No trips were taken this fiscal year due to the Covid-19 pandemic.
- **Fiscal Year 2022:**
  - A trip to Las Vegas, Nevada for the *National Student Safety and Security Conference* attended by the ED, the DOS, and an Academy Board Member. The total cost of the trip was approximately $3,200.

KMA CPAs selected 100% of the Foundation's travel related expenses to review for the period July 1, 2016 through January 31, 2022. Please note, the original backup documentation for all accounting information during the period July 1, 2016 through June 30, 2017 was purged by the Foundation and therefore, unavailable for us to review. Because of this, we were unable to perform our assessment of expenses for that period. See **Objective 3: Evaluation, Observations, and Findings** for our conclusions related to this.

Objective 3: Evaluation, Observations and Findings

Section I: Introduction

We were tasked with evaluating the Academy's adherence with the following criteria:

1. Relevant laws, rules, and policies and procedures including internal controls

   We were also tasked with identifying risks or weaknesses in the Academy's expenditure of public funds.

The purpose of this section is to evaluate the Academy and Foundation's compliance with laws, rules, and policies and procedures including internal controls regarding transactions between the Academy and the Foundation and certain Foundation transactions that occurred during fiscal years 2017, 2018, 2019, 2020, 2021 and the period July 1, 2022 through January 31, 2022.

There are three sections to this Objective:

Section: I: Introduction
Section II: Observations
Section III: Findings

We believe that the specified users of this report will need to consider this portion of the report as they evaluate the objective of the engagement.

Section II: Observations

Observation 001 – Foundation's Travel and Per Diem Expenses

Observation: As part of the engagement, we reviewed all of the Foundation's travel related expenses to review for the period July 1, 2016 through January 31, 2022. The total population of expenses was 296. Based on the perspective of Foundation's funds framed throughout the report, we approached these expenses considering Title 2, Chapter 42, Part 2 NMAC "Regulations Governing the Per Diem and Mileage Act" and we made the following observations.

- In 14 instances actual meal costs exceeded the maximum of $30 for in state travel for a 24-hour period. The total costs in question would be $1,714.68.
- In nine (9) instances actual meal costs exceeded the maximum of $45 for out of state travel for a 24-hour period. The total costs in question would be $1,373.92.
- In 11 instances reimbursement for actual expenses were granted when partial day per diem rates were required. On the last day of travel when overnight lodging is no longer required, partial day per diem shall be made. The total costs in question would be $581.39.
- In four (4) instances the Foundation paid for or reimbursed individuals' meals that included purchases of alcoholic beverages. The amount of alcohol purchases was $36.94.
- In four (4) instances lodging reservations were made under the ED's name when the supporting documentation indicated the lodgings were for other individuals. The lodging costs in question would be $2,905.28.
- In three (3) instances an individual was reimbursed for actual meals at the out of state rate of $45 per day when actual meals were less than $45 had the Foundation not included the cost of alcoholic beverages in the reimbursement. The total costs in question would be $135.00.
- In four (4) instances the expense per the general ledger was more than the cost that was stated in the supporting documentation (receipts, reservation confirmations, etc.). The difference between the documentation and the general ledger amounts total to $297.49.
- In two (2) instances lodging reservations indicated that the accommodation was for more than one individual. One reservation confirmation indicated the accommodation was for two (2) adults and one (1) child, and a second reservation confirmation indicated the accommodation was for two (2) adults and two (2) children.
- In one (1) instance the Foundation paid for airfare and lodging for six (6) individuals to travel to Nashville, Tennessee. However, we were only able to verify the related conference registration for four (4) of those individuals. The additional costs incurred for the two (2) additional individuals is estimated to be $2,072 not including meals, the amount of which could not be determined.

Note, the original backup documentation for all accounting information during the period July 1, 2016 through June 30, 2017 was purged by the Foundation and therefore, unavailable for us to review. Because of this, we were unable to perform our assessment of expenses for that period.

Section II: Observations

Observation 001 – Foundation's Travel and Per Diem Expenses (continued)

Consultants' Recommendation: We recommend that if the Foundation is utilizing funds that came from the Academy, they should adopt a travel and per diem policy to mirror the NM Travel and Per Diem Act (Chapter 10 "Public Officers and Employees", Article 8 "Per Diem and Mileage Act", Sections 10-8-1 through 10-8-8 NMSA 1978) so that it does not appear that the Academy is moving public funds to the Foundation to spend with less accountability. To avoid the appearance of this in the future, the Foundation should establish per diem rates consistent with Title 2, Chapter 42, Part 2 NMAC.

Observation 002 – Foundation's "School Support" Expenses

Observation: Based on our review of the Foundation's school support expenses for the period July 1, 2017 through January 31, 2022, we identified the following items as conflicts with Article 9, Section 14 of the New Mexico Constitution known as the anti-donation clause:

- The total amount of $23,547 under the gifts/prizes/donations category of student support consisted of 61 transactions. These transactions related to the purchase of gift cards, prizes, clothing, birthday or other celebratory gifts, reimbursements to students and/or families for school related costs, and, in some instances, rental assistance provided to student's families.

- The total amount of $16,495 under the meals category of student support consisted of 185 transactions. These transactions related to purchases of food/meals for staff, students, and families. This also includes purchases of food for student and staff birthday celebrations.

Note, the original backup documentation for all accounting information during the period July 1, 2016 through June 30, 2017 was purged by the Foundation and therefore, unavailable for us to review. Because of this, we were unable to perform our assessment of expenses for that period.

Consultants' Recommendation: We would recommend that the Foundation only use privately raised funding such as unrestricted donations and fundraising for these types of purchases to avoid the appearance of publicly derived funds being expended in violation of state law.

Section II: Observations (continued)

Observation 003 –MOU between the Foundation and the Academy

Observation: Upon our review of the MOU between the Foundation and the Academy, we observed the following items:

1. The MOU was for "Financial Support", but it was unclear from reading the MOU who would be providing "financial support" to whom.

2. The MOU also lacked key information such as:
   - The effective date of the agreement, as an "ongoing" agreement may not be the best benefit of either the Academy or the Foundation at any given point in time.
   - How the financial support would be provided (i.e., advanced payments, reimbursements, direct payments to the vendor, etc.).
   - The length of the MOU term.
   - Who executed the MOU.
   - Any restrictions and limitations.

The MOUs lacked specific information or an annual budget to support the MOU on how much the Foundation intended to spend and in what areas. More specificity as to the nature and extent of the financial support would allow for more financial accountability by the Foundation.

Consultants' Recommendation: We recommend that the Foundation more clearly define the MOU as indicated above for interested parties of the organizations.

Observation 004 – Foundation's Annual Budget

Observation: During our gaining an understanding of the Foundation, we noted that the Foundation did not have an annual budget approved by the Board of Directors. Given the Foundation had spent approximately $1.9 million dollars over the scope of our engagement, we would have expected to see annual budgets approved to demonstrate accountability and transparency.

Consultants' Recommendation: Internal control best practices for nonprofit organizations include approving and monitoring an annual budget to demonstrate the organization's priorities and promote transparency and accountability. We recommend that the Foundation's Board of Directors approve a budget annually and monitor the budget at each board meeting, making budget adjustments based on their evolving priorities and actual revenue and expenses.

Section II: Observations (continued)

<u>Observation 005 – Foundation's Internal Controls over Cash Disbursements</u>

Observation: During our gaining an understanding of the Foundation's policies and procedures, we noted that prior to the Foundation's *Financial Procedure and Internal Control Policy* effective September 3, 2021, the Foundation only required for the Board to "acknowledge" expense approval forms meaning there would be no documentation of a formal approval for the expense (i.e. no signature, initials, approval stamp, etc.). However, during our sampling of the Foundation's expenses from the period July 2017 through January 2022, we noted all expenses had an expense approval form attached with both the Director of Operation's and the Board President or Board Treasurer's signature. We noted the signatures all appeared to be electronically copied or digital. Upon inquiry of the BOS employee, we were informed that the Board President and Board Treasurer's electronic signatures were available to the BOS employee. Also, the BOS employee used them after getting verbal approval for the expense approval form. The Foundation has recently started using DocuSign.

Note, the original backup documentation for all accounting information during the period July 1, 2016 through June 30, 2017 was purged by the Foundation and therefore, unavailable for us to review. Because of this, we were unable to perform our assessment of expenses for that period.

Consultants' Recommendation: Internal control best practices should always include an evaluation and approval of expenses prior to payment. The basic framework for a well-designed process would look as such:

- Reviewing budget to verify there is available funds to purchase the goods or services.
- Some procurement process to verify the Foundation is getting the best obtainable price.
- A person within the organization responsible to verifying receipt of the goods and services.
- Once the invoice is received, considering all above-mentioned items, an approval from the proper level of authority to pay the vendor. Docusign would work in the context assuming the above items were done.

This will mitigate the risk of a Foundation agent incurring expenses that the Foundation did not approve or is not in-line with the Foundation's budget.

Section II: Observations (continued)

Observation 006 – Missing Significant Information on Lease Agreement

Observation: There are three instances in which the Academy prepaid rent to the Foundation. In all three instances, the Academy and the Foundation entered into a new lease agreement to evidence the prepayment and amortize it accordingly. However, the lease agreement starting January 1, 2019 did not indicate the $250,000 prepayment of rent, within the body of the lease. The main purpose of executing a new lease was triggered by this prepayment. The lease payment amortization schedule included the $250,000 prepayment. Because of the significance of the information, we determined this to be a weakness in both the Academy's and the Foundation's management and governance given that this should have been caught by someone on either side of the agreement before the agreement was executed.

Consultants' Recommendation: We recommend that the Academy and the Foundation design procedures to mitigate the risk of these types of mistakes happening in the future. This type of oversight could cause unintended consequences for one or both parties.

Observation 007 – Significant Amounts Paid to One Individual for Building and Maintenance Projects

Observation: We noted that $330,499 of the $439,239 in building maintenance was paid to one individual from fiscal years 2018 through 2021. When reviewing the accounting details, we noted these payments were for a wide range of projects such as, tiling, painting, roof replacement, carpet removal/install, landscaping, storage cleaning/organization, patio work, among other things.

Consultants' Recommendation: We would recommend that the Foundation create a short and long-term capital improvements plan. This would include an associated budget and revenue source to fund this plan. This will allow the Foundation to proactively plan the building maintenance going forward. We also recommend that the Foundation seeks a competitive bid process to verify they are receiving the best obtainable price.

Observation 008 – Building and Maintenance Costs

Observation: During our procedures, we noted that the Foundation's building & maintenance costs were $439,329. Furthermore, the Academy paid direct building and maintenance costs of $102,501. This puts total building and maintenance costs to $541,830 from the period of July 1, 2016, through January 31, 2022.

When compared against the rest of the Foundation's expenses for the period of our engagement, this was the largest expense, over half a million dollars in building maintenance is significant to the Foundation and the Academy and makes us wonder the shape of the building when it was initially purchased by the Foundation.

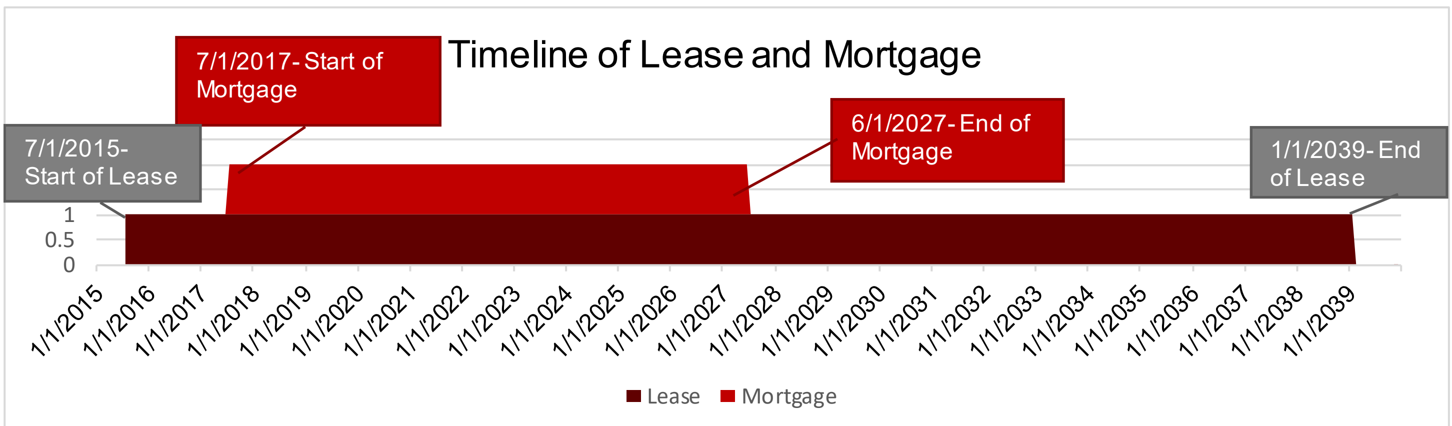
Consultants' Recommendation: We would recommend that the Foundation create a short and long-term capital improvements plan. This would include an associated budget and revenue source to fund this plan. This will allow the Foundation to proactively plan the building maintenance going forward.

Section II: Observations (continued)

Observation 009 – Timeline of Lease Agreement and Mortgage Agreement

Observation: During our engagement, we observed that the term of the mortgage is a fraction compared to the term of the lease. From the first iteration of the lease, the terms typically spanned 16 to 20 years, while the mortgage spans 10 years with a balloon payment at the end of the term. New leases with similar terms were entered into upon every rent prepayment. Below is an illustration of the timeline from the first prepayment in 2015 through the current term of the lease beginning in 2019 compared to the mortgage which will end in 2027, at which point, the Foundation will owe a balloon payment to the bank in the amount of: $693,567.39.

Chart 2-3: Timeline of Lease and Mortgage



Given the current terms of the mortgage, and the historical approach to paying the mortgage payments, it appears the Foundation will have to refinance the balloon payment of $693,567.39 when the mortgage comes due in 2027. The Academy will also be up for renewal of the charter around that same time. If the Academy's charter is renewed, they will be able to continue to lease from the Foundation. However, if the Academy's charter is not renewed, the Foundation may be left in a difficult position trying to refinance the building without a long-term lease agreement in place. This consideration would be factoring in that the Academy would not be able to fulfill its lease agreement if it ceases to exist.

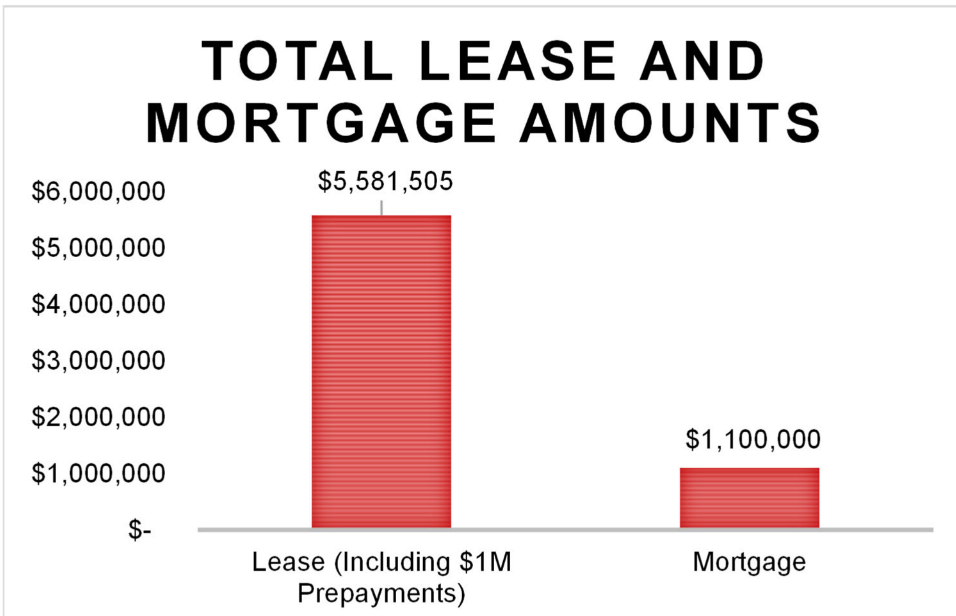
Consultants' Recommendation: Although the prepayments and any excess rent payments are substantially all spent as of January 31, 2022, we recommend that the Foundation is aggressive on paying down the mortgage with any additional funds it receives from the Academy in the form of rent payments. We also recommend that the Foundation begin a campaign to raise funding that they can potentially put toward paying down the mortgage. A budget can be a useful tool for the Foundation in this situation as it will help prioritize spending give these circumstances. Beyond that, the Foundation needs to start planning on how they are going to come up with the funding for the $693,567.39 balloon payment due in 2027 given the considerations mentioned above.

Section II: Observations (continued)

<u>Observation 010 – Total Lease Amounts to be Paid to the Foundation Compared to the Mortgage Amount</u>

Observation: Over the term of the current lease and the amount of the mortgage principal, the Academy will pay the Foundation a total of $5.5 million in lease payments (including the $1,000,000 in prepayments but excluding additional rent payments). To put this figure into context, when the Foundation signed the mortgage agreement in 2017, the mortgage principal amount was $1,100,000. Under the mortgage agreement, the Foundation will pay the lender $1,562,743.39, which includes the balloon payment in 2027 of $693,567.39.

Chart 2-4: Total Lease and Mortgage Amounts



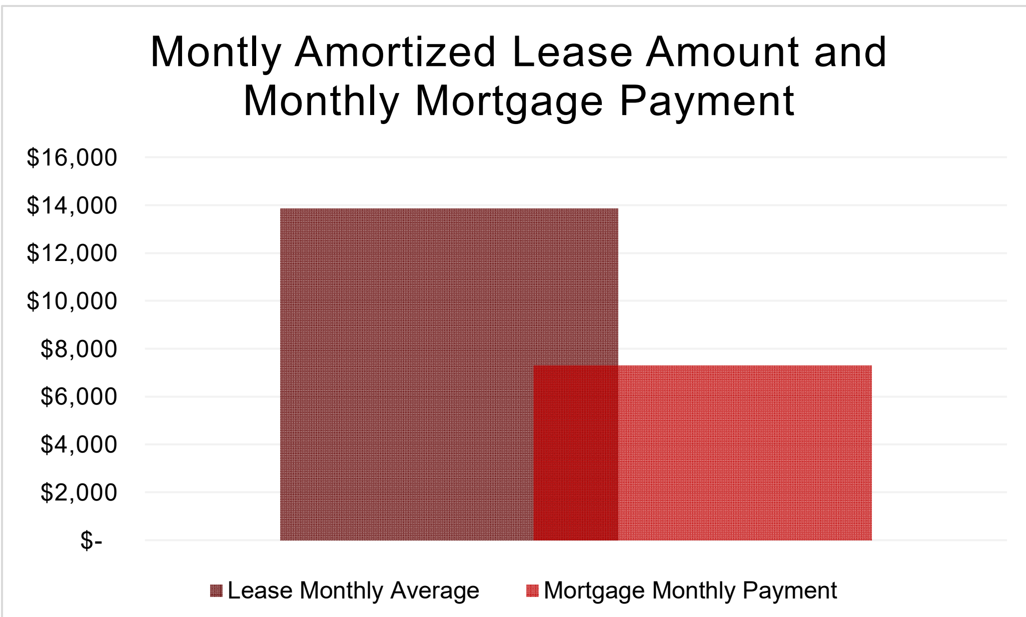
Consultants' Recommendation: We recommend that the Foundation take this information into consideration and design a plan to pay the mortgage off as quickly as possible. The Foundation can then decrease the amount being charged to the Academy which will allow the Academy to use the additional funding for educational needs.

Section II: Observations (continued)

Observation 011 – Monthly Lease Amounts Compared to Monthly Mortgage Amounts

Observation: From the time period of July 1, 2016 through January 31, 2022, the monthly net rent payments range from $13,251.48 to $14,625. Over the scope of our engagement, they average out to $13,862.59. Starting in July of 2017, monthly mortgage payments required were $7,304. This does not take into account the additional rent the Academy was paying that ranged from $4,500 to $5,500 a month. The chart below illustrates the difference on average of $6,559 the Academy was paying over the Foundation's monthly mortgage payment, interest, and escrow.

Chart 2-5: Monthly Lease and Mortgage Amounts



Consultants' Recommendation: Under this matter, we must consider that there are operating costs in the normal course of business for the Foundation. However, there is also enough money left over between the monthly lease payment and the monthly mortgage that the Foundation could have put toward paying down the mortgage in anticipation of the 2027 balloon payment of $693,567.39.

Based on the purpose of the Foundation, we would encourage the Foundation to pay down the mortgage debt with the additional rents collected from the Academy. The sooner the Foundation is not in debt with a mortgage, the sooner the Foundation can support the Academy in many ways, such as potentially charging the Academy less rent so that the Academy has more resources to be used within the school.

Section III: Findings

Finding 001 – Foundation's Noncompliance with Loan/Mortgage Agreement Requirements

Condition: The Foundation was out of compliance with the following three mortgage requirements:

- The Foundation did not keep a depository account with the lender as required by the mortgage agreement for fiscal years 2017 through January 31, 2022.
- The Foundation was not in compliance with the debt service coverage ratio requirement in fiscal years 2017 through 2020.
- During fiscal year 2020 the Foundation's Board of Directors approved a resolution dated December 15, 2019, dissolving the Foundation effective December 31, 2019 and all assets and liabilities of the Foundation were to be transferred to TGA Foundation, LLC, a newly formed for-profit entity in January 2020 without consent from the Lender as required by the loan agreement.

Criteria: The loan agreement requires the Foundation to keep a depository account while it has a loan with the bank, it requires to keep a debt service ratio of 1.20:1 and it stipulates that the "Borrower shall not, without the prior written consent of Lender: ……(2) cease operations, liquidate, merge, transfer, acquire or consolidate with any other entity, change its name, dissolve or transfer…" Based on this action, the Foundation was in noncompliance with its loan agreement.

Cause: The Foundation did not maintain a minimum debt service coverage ratio of 1.20:1 as their net income before interest, depreciation and amortization (NIBIDA) exceeded minimum debt payment requirements. The Foundation also did not keep a depository account as required by the loan agreement. The Foundation attempted to dissolve and transfer assets which was not allowed in the loan agreement.

Effect: The Foundation was not in compliance with the loan agreement and could be in default of the loan.

Consultants' Recommendation: We recommend that the Foundation understand all loan requirements and begin to comply with them as soon as possible.

Management's Response: The audit has three conditions noted in relation to the Foundation's Mortgage loan. Management addresses each in the order they are presented.

- The Foundation understands that there is a loan covenant related to obtaining a depository account with the lender. Lender has not and is not enforcing this covenant. Management will undertake to obtain written confirmation from the lender that they are not requiring a depository account, despite the language in the loan documents.
- The Foundation is in compliance with the debt service coverage ratio for the current fiscal year. The lender waived non-compliance with the debt service coverage ratio in the past.
- While the Foundation board of directors did approve dissolution of the Foundation, no dissolution actually occurred, and no assets were transferred. After approving dissolution, the Foundation board of directors sought legal advice, understood the loan requirements, and unwound the actions inconsistent with the loan covenants.

Section III: Findings (continued)

<u>Finding 002 – Lack of Foundation Expenditure Support</u>

Condition: During our procedures over the Foundation, we noted that one (1) payment to a maintenance vendor was only supported by a quote for a 3-Phase landscaping job. There was not an invoice to support the payment for these services.

Criteria: Per the 2013 COSO Framework, management is responsible for establishing and maintaining internal controls over cash disbursements. This would include a well-designed approval process as well as a general requirement of acceptable documentation for goods or services. In general, the best documentation for goods or services would be a detailed invoice.

Cause: The Foundation did not have proper internal controls over cash disbursements.

Effect: We were unable to review and conclude as to the legitimacy of the expenditures incurred above.

Consultants' Recommendation: We recommend that the Foundation develop and implement processes and procedures to verify receipt of acceptable purchase documentation that supports expenses prior to paying those costs.

Management's Response: The Foundation believes that this was an oversite by the previous Director of Operations.

Section III: Findings (continued)

Finding 003 – The Academy and Foundation's Internal Control Environment

Condition: During the performance of engagement, we noted an overarching environment of conflicts of interest. Overall, we considered this to be a weakness in the Foundation's control environment. These conflicts of interest appear in individuals who are employees of the Academy but also have professional service contracts with the Foundation. It extends to an Academy employee who also served as the Foundation's Board President and Treasurer.

An illustration with the Academy employee contracts with the Foundation

Professional Service Contracts (PSC) were executed between the Foundation and employees of the Academy for scope of work related to and for the benefit of the Academy. We have summarized those PSCs for illustration purposes below:

Academy Employee	FY2017	FY2018	FY2019	FY2020	FY2021	FY2022
Academy's Executive Director and Foundation Contractor	- Head Admin/ED	- Teacher - Head Admin/ED	- Head Admin/ED	- Head Admin/ED - Special Education Director / Teacher	- Head Admin/ED - Special Education Director / Teacher	- Head Admin / ED / Speacial Education Teacher
Academy's Principal / Director of Academics and Foundation Contractor	- Principal/Director of Academics	- Principal/Director of Academics	- Principal/Director of Academics	- Principal/Director of Academics - Teacher	- Principal/Director of Academics - Teacher	Education Contractor
Academy's Busines Office Support / Special Education Assistant / CPO and Foundation Contractor	- Special Education Assistant/CPO	- Special Education Assistant/CPO	- Business Office Support/SPED EA/Truancy Officer	- Business Office Support/SPED EA	- Business Office Support/SPED EA	- Business Office Support/SPED EA
Foundation Contractor	**FY2017**	**FY2018**	**FY2019**	**FY2020**	**FY2021**	**FY2022**
Academy's Executive Director and Foundation Contractor	N/A	N/A	- Educational Consulting Services * - Facilities Management/TGA Replication/Concert Fundraiser **	- Facilities Management/TGA Replication/Concert Fundraiser	- Facilities Management/TGA Replication/Concert Fundraiser	N/A
Academy's Principal / Director of Academics and Foundation Contractor	N/A	N/A	- Educational Consulting Services	N/A	N/A	N/A
Academy's Busines Office Support / Special Education Assistant / CPO and Foundation Contractor	N/A	N/A	- Foundation Director of Operations	N/A	N/A	N/A

* Educational Consulting Services was for the term July 1, 2018 through December 20, 2018.
** Facilities Management/TGA Replication/Concert Fundraiser was for the term January 1, 2020 through June 30, 2021.

The Academy's Executive Director (ED) entered into a PSC related to educational consulting services on June 29, 2018 for the period July 1, 2018 through December 20, 2018. In addition to this PSC, the Academy's ED was also employed full-time by the Academy.

Section III: Findings (continued)

<u>Finding 003 – The Academy and Foundation's Internal Control Environment (continued)</u>

The Academy's ED entered into a second PSC related to Facilities Management, TGA Replication Initiative, and Concert Fundraiser services for the period January 1, 2019 through June 30, 2021. During this time, the Academy's ED was also employed by the Academy. The Academy's ED was also employed as the Special Education Director/Teacher from July 27, 2020 to May 28, 2021.

The Director of Academics/Principal (DOA) entered into a PSC with Foundation on June 29, 2018 for the scope of work. During this time, the DOA was also employed full-time by the Academy.

The Foundation also executed a PSC with the Academy's Business Office Support (BOS) employee to provide financial and administrative support to the Foundation while this individual was a full-time employee of the Academy as the Business Office Support/SPED EA/Truancy Officer. It was noted in the Foundation's policies and procedures that this person was also the Director of Operations for the Foundation. The term of the contract was through January 1, 2019 through June 30, 2019.

The Foundation and the Academy did not have any mechanism or policies and procedures for these individuals to track their time spent as a contractor of the Foundation and their time spent as an employee of the Academy. These PSCs could be perceived as standalone full-time positions, or even more than a full-time position, on top of already full-time Academy positions.

If these individuals were charged with these duties as employees and not contractors, a conflict of interest would not exist as they would be compensated by a single entity.

During our review of these agreements, it was also noted that the PSCs indicated above were drafted on Foundation letterhead but included the following wording.

> ***"This agreement is made and entered into by and between the GREAT Academy, hereinafter referred to as the "School…"***

Under a normal arms-length transaction, it would be unlikely that such an error would occur.

Foundation's Board President/Treasurer

The Foundation appointed the Academy's Dean of Students (DOS) to the Board of Directors on July 31, 2019 where this person served as the Foundation's Treasurer from July 31, 2019 and was appointed as Board President on August 25, 2021. This individual then served as the Board President until October 6, 2021. During this individual's time on the Foundation's Board, this person was also a full-time employee of the Academy to which this person's reported to the Academy's ED.

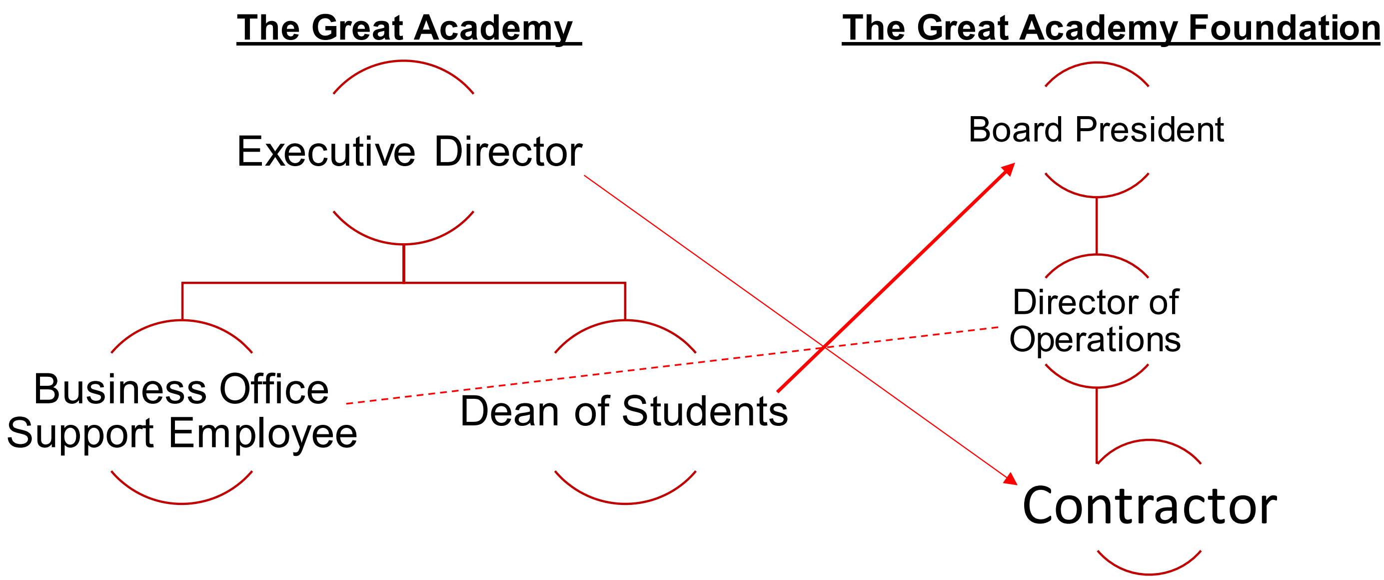
The Foundation's Board President has the authority to review and vote on approval of contracts and expenses. As such, this person approved payments for services rendered under the PSCs listed in leading paragraphs.

Section III: Findings (continued)

Finding 003 – The Academy and Foundation's Internal Control Environment (continued)

As illustrated below, the Academy's ED has authority over both the DOS and BOS employee as employees of the Academy.

Alternatively, both the DOS and BOS employee are part of the Foundation's review and approval process for expenses. A conflict of interest exists due to these circumstances since the DOS and BOS employee would be reviewing and approving expenses related to the Academy's ED's PSC with the Foundation. Both the DOS and BOS employee could feel pressure to approve the payment of expenses related to the Academy's ED and the DOA's PSCs in order to protect themselves from retaliation from authority as employees of the Academy that report to the ED. This would also be the case with any expense that the Foundation is incurring as an expense on the behalf the Academy.



It should also be noted that the Academy employed three related individuals at once. The ED, the DOA and the Student/Community Outreach Coordinator (COC) who were all immediate family members. Furthermore, according to the Academy's June 30, 2017 audit report, the COC was also one of the authorized signors on the Foundation's bank account.

Section III: Findings (continued)

Finding 003 – The Academy and Foundation's Internal Control Environment (continued)

In our review of the Foundation's and the Academy's policies and procedures, we did not identify any explicitly stated conflicts of interest policies. However, the Foundation contracts did include a conflict-of-interest clause. See below:

> ***"Conflict of Interest.*** *The Contractor warrants that it presently has no interest and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance or services required under the agreement."*

Criteria: Per the 2013 COSO Framework, the Control Environment component has five (5) principles relating to it:

- The organization demonstrates a commitment to integrity and ethical values.
- The board of directors demonstrates independence from management and exercises oversight of the development and performance of internal control.
- Management establishes, with board oversight, structures, reporting lines, and appropriate authorities and responsibilities in the pursuit of objectives.
- The organization demonstrates a commitment to attract, develop, and retain competent individuals in alignment with objectives.
- The organization holds individuals accountable for their internal control responsibilities in the pursuit of objectives.

Furthermore, as a result of the above instances of conflicts of interest, the Academy could be in violation of the following laws.

- Chapter 22 NMSA 1978 "Public School Code", Article 8B "Charter Schools Act", Section 22-8B-5.2B, "Governing body conflicts of interest", which states in part, "No member of a governing body or employee, officer or agent of charter school shall participate in selecting, awarding or administering a contract with the charter school if a conflict of interest exists. A conflict of interest exists when the member, employee, officer or agent or an immediate family member of the member, employee, officer or agent has a financial interest in the entity with which the charter school is contracting. A violation of this subsections renders the contract voidable."
- Chapter 10 NMSA 1978 "Public Officers and Employees", Article 16 "Governmental Conduct Act" Section 10-16-4 "Official act for personal financial interest prohibited; disqualification from official act; providing a penalty", which states,

    A. It is unlawful for a public officer or employee to take an official act for the primary purpose of directly enhancing the public officer's or employee's financial interest or financial position. Any person who knowingly and willfully violates the provisions of this subsection is guilty of a fourth-degree felony and shall be sentenced pursuant to the provisions of Section 31-18-15 NMSA 1978.

Section III: Findings (continued)

Finding 003 – The Academy and Foundation's Internal Control Environment (continued)

B. A public officer or employee shall be disqualified from engaging in any official act directly affecting the public officer's or employee's financial interest, except a public officer or employee shall not be disqualified from engaging in an official act if the financial benefit of the financial interest to the public officer or employee is proportionately less than the benefit to the general public.

C. No public officer during the term for which elected and no public employee during the period of employment shall acquire a financial interest when the public officer or employee believes or should have reason to believe that the new financial interest will be directly affected by the officer's or employee's official act.

- Chapter 10 NMSA 1978 "Public Officers and Employees", Article 16 "Governmental Conduct Act" Section 10-16-13 "Prohibit bidding", which states, "No state agency or local government agency shall accept a bid or proposal from a person who directly participated in the preparation of specifications, qualifications or evaluation criteria on which the specific competitive bid or proposal was based. A person accepting a bid or proposal on behalf of a state agency or local government agency shall exercise due diligence to ensure compliance with this section."

- Chapter 10 NMSA 1978 "Public Officers and Employees", Article 16 "Governmental Conduct Act" Section 10-16-13.2 "Certain business sales to the employees of state agencies and local government agencies prohibited", which states in part,

A. A public officer or employee shall not sell, offer to sell, coerce the sale of or be a party to a transaction to sell goods, services, construction or items of tangible personal property, directly or indirectly through the public officer's or employee's family or a business in which the public officer or employee has a substantial interest, to a person over whom the public officer or employee has regulatory authority.

D. A public officer or employee shall not accept from a person over whom the public officer or employee has regulatory authority an offer of employment or an offer of a contract in which the public officer or employee provides goods, services, construction, items of tangible personal property or other things of value to the person over whom the public officer or employee has regulatory authority.

Cause: Overall, the overwhelming conflicts of interest discussed above inherently erode the control environment, which is the cornerstone of the COSO internal control framework.

Effect: Without a solid control environment, the four other components of internal control are compromised and the ability to design and implement effective internal controls, is hindered. An organization without a well operating control environment makes it more likely that the overall remaining components of internal control will not mitigate the risks identified in which that are attempting to address.

Section III: Findings (continued)

Finding 003 – The Academy and Foundation's Internal Control Environment (continued)

Consultants' Recommendation: We recommend that Foundation Board appointees understand the magnitude in which these conflicts of interest can adversely affect the organization as a whole. We would recommend removing any actual or perceived conflicts of interest for the related Academy and Foundation, so that each organization can operate objectively and for the intended purpose they were created.

Management's Response: The Criteria in this Finding makes general reference to conflict-of-interest provisions of the Charter Schools Act and Governmental Conduct Act that the Academy "could" have violated, without a particularized application of the Criteria to the Condition(s) noted, making it difficult for Management to respond with particularity to the citation of these Criteria in the context of this Finding, other than to state:

- The Finding asserts that conflict-of-interest controls had not been in place between the parties in the past which rendered it possible that defalcations could occur; however, the Finding makes no particularized showing that violations of applicable conflict of interest laws interest did, in fact, occur.

- Nevertheless, to the extent that any of the referenced Criteria apply to the Condition(s) stated, if at all, the Academy and the Foundation have addressed and rectified the Condition(s). No Academy employees are or shall be employed or contracted by the Foundation per the Academy's charter contract with its authorizer, and per the ongoing Memorandum of Understanding that has been entered into between the Academy and the Foundation to clarify relationships between the entities.

- To the extent that conflicts of interest might or could have existed between the parties in the past, the Condition noted no longer continues.

- The parties are committed to the elimination of any actual or perceived conflicts of interest, and have already taken steps to address the Consultants' Recommendation stated in Finding 003 by adding additional controls and by removing any actual or perceived conflicts of interest between the parties, as recommended.

- The situation described in the Findings related to the Dean of Students being the president of the Foundation Board arose for a period from July, 2019 through October, 2021 and was not the situation prior to that time nor since that time. Further, the full Foundation Board acted to ratify the Board president's actions at each subsequent Board meeting. The BOS only served in an administrative capacity to process any requests for expense reimbursements and did not have any authority to nor did she act to approve such reimbursements.

Exit Conference:

An exit conference was held on October 28, 2022 to discuss the results of the consulting procedures. Because the consulting report was not yet released by the Office of the State Auditor, the meeting was a closed session. Attending were the following:

Representing the GREAT Academy and the GREAT Academy Foundation:

Jasper Matthews, Executive Director - The GREAT Academy
Denise Garcia, Business Office Support / Health Assistant / Special Education EA - The GREAT Academy and The GREAT Academy Foundation Liaison

Representing the OSA:

Brian S. Colón, Esq., CFE, State Auditor
Elena Tercero, CPA, CGFM, CGMA, CPO, Co-Deputy State Auditor
Shawn P. Beck, MBA, CFE, Director, Special Investigations Division
Alanna Goodman, CFE, Audit Supervisor, Special Investigations Division

Representing KMA CPAs:

Daniel O. Trujillo, CPA, CFE, CGFM, CGMA, KMA CPAs Partner