

ACCG Facilities Financing Program

MEMORANDUM

Multiyear Lease Purchase or Installment Sale Agreement Transactions; and Transfer of Real Property

I. Multi-Year Lease/ Purchase Contracts (O.C.G.A. §36-60-13)

Legal Overview

O.C.G.A. §36-60-13 provides that each county and municipality is authorized to enter into multi-year lease, purchase or lease-purchase contracts for the acquisition of goods, materials, real and personal property, services and supplies provided the following provisions are met:

1. The contract must terminate without further obligation on the part of the governmental entity at the close of each calendar year. The contract may provide for automatic renewal unless positive action is taken by the governmental entity. (The typical lease-purchase contract includes a non-appropriation provision, i.e., a provision which allows the county to terminate the contract at the end of each calendar year without further obligation.)

2. The contract shall state the total obligation of the governmental entity for each calendar year.

3. The contract must provide that title remain in the vendor (Association County Commissioners of Georgia) until fully paid.

4. A lease-purchase financing may not be utilized if (a) the average annual payments on the aggregate of all such outstanding contracts exceed 7.5% of the governmental fund revenues of the county or municipality for the calendar year preceding the delivery of such lease-purchase; or (b) the outstanding principal amount of all such outstanding lease-purchase financings exceeds \$25,000,000.

Courts have determined these lease-purchase agreements are not debts that are subject to the approval of municipal voters.¹ Counties and cities can enter these lease agreements for their infrastructure needs after adopting a resolution stating the lease-purchase agreement is for public purposes.

¹ Barkley v. Rome, 259 Ga. 355, 381 S.E. 2d 34 (1989); Bauerband v. Jackson County, 278 Ga. 222, 598 S.E.2d 444

Steps to initiate ACCG Lease Purchase Program:

1. Contact the ACCG Lease Program Administrator to discuss interest in participating in the ACCG Lease-Purchase program.
2. Identify Project site and produce survey and legal description.
3. Prepare an appraisal for the Project.
4. Perform Phase I (environmental survey) for Project site.
5. Work with ACCG to send out bids to banks to loan funds to finance the acquisition/construction of Project.
6. Select Bond Counsel who prepares legal documentation for Lease-Purchase transaction.
7. All transaction documents are approved and executed. At closing title to Project is transferred to ACCG (for term of the loan) and the project is leased back to the County.
8. The Lease payments owed by the County to ACCG pursuant to the Lease are equal to the principal and interest amounts owed on the loan. Such Lease payments are pledged to the bank as security for the loan along with a deed to secure debt in the Project.
9. After the loan is repaid, title to the Project is transferred by ACCG back to the County.

II. Transfer of Property

Legal Overview

O.C.G.A. §36-9-3 provides that the governing authority of any county disposing of any real property shall make all such sales to the highest responsible bidder, except if the transfer of such property meets one of the exemptions provided in paragraph (a)(2). Subparagraph (a)(2)(A) provides that the bidding requirements of this section shall not apply to any sale, transfer or conveyance to a nonprofit corporation in order to effectuate a lease-purchase transaction pursuant to O.C.G.A. §36-60-13. ACCG is a nonprofit corporation. Any transfer of real property to ACCG to effectuate a lease-purchase transaction (as described in paragraph I above) is exempt from the bidding requirements of O.C.G.A. §36-9-3.