

**PARTICIPATION RESOLUTION****A RESOLUTION OF THE BOARD OF EDUCATION AUTHORIZING THE EXECUTION OF AN EQUIPMENT LEASE AND SECURITY AGREEMENT BETWEEN THE KENTUCKY INTERLOCAL SCHOOL TRANSPORTATION ASSOCIATION AND THE BOARD PROVIDING FOR THE ACQUISITION AND LEASING OF SCHOOL BUSES AND APPROVING GENERALLY THE PLAN OF FINANCING THE ACQUISITION OF SCHOOL BUSES FOR AND ON BEHALF OF THE BOARD.**

WHEREAS, the Board of Education ("Board") has determined that it is necessary and desirable that the Board acquire new school buses in order to provide for the transportation needs of the students served by the Board, and

WHEREAS, the Kentucky Department of Education of the Commonwealth of Kentucky ("Department") has implemented a program to assist local boards of education throughout the Commonwealth in the acquisition of school buses, combining the needs of school districts throughout the Commonwealth and purchasing in bulk directly from the manufacturers, and

WHEREAS, notwithstanding the pooled acquisition of buses administered by the Department, it is necessary that local boards of education provide their own financing for the acquisition of school buses purchased for them through the Department, and

WHEREAS, it has been determined by the Boards of Education of the Elliott, Lewis, Morgan, Pendleton, Rowan (the "Original Districts") and certain subsequent Districts (the "KISTA Governing Board") that certain economies may be realized through the utilization of a joint agency to act for and on behalf of local boards of education desiring to acquire school buses, and

WHEREAS, the provisions of Sections 65.210 through 65.300 of the Kentucky Revised Statutes, designated as the Interlocal Cooperation Act ("Act"), set forth the procedure by which any two or more governmental units may enter into agreements with one another and with third parties for joint or cooperative action, and

WHEREAS, the KISTA Governing Board pursuant to the Act administers the Kentucky Interlocal School Transportation Association ("KISTA") which acts as an agency and instrumentality for those local boards of education which desire to participate in the issuance of Certificates of Participation on a pooled basis, the proceeds of which are applied to the acquisition of school buses for participating boards of education in order that certain economies in financing may be realized; said pooled financing plan being designated as the KISTA Equipment Acquisition Program ("KEAP"), and

WHEREAS, in order for the Board to participate in KEAP for the year 2016 for which KISTA is to act as an issuing agency for this Board and other participating local boards of education, it is necessary that the Board approve the execution of an Equipment Lease and Security Agreement ("Series 2017 Lease") by the Chairman and Secretary whereunder this Board's portion of school buses ("Equipment") purchased from the proceeds of KISTA's Series 2017 Certificates of Participation, will be leased by KISTA to the Board on a year to year basis at rentals sufficient to amortize (i) the costs of the Equipment purchased by KISTA on behalf of this Board through the payment of the Board's pro rata portion of the Series 2017 Certificates of Participation, issued by KISTA, (ii) the funding of a collision insurance and debt service reserve fund, to the extent required, and (iii) the expenses incident to the issuance of said 2017 Certificates of Participation, allocated to the Board;

**NOW, THEREFORE, BE IT AND IT IS HEREBY RESOLVED BY THE BOARD OF EDUCATION AS FOLLOWS:**

**SECTION 1. DECLARATION OF PUBLIC POLICY**

That the Board hereby declares that it is in the best interests of the Board to cooperate with other local boards of education pursuant to the Act and to contract with the Kentucky Interlocal School Transportation Association in the acquisition of Equipment through the utilization of KEAP for 2016 effected by the issuance of KISTA's Certificates of Participation, Series of 2017, (the "Series 2017 COPS" or "COPS"). It is now anticipated that KEAP for 2016 will be funded with KISTA COPS issued in the year 2017.

**SECTION 2. APPROVAL OF GENERAL FINANCING PLAN**

That KISTA has been established pursuant to the Act to act as an issuing agency for participating boards of education in the issuance of Certificates of Participation, which, after providing for the expenses of their authorization, sale, issuance, and funding a collision insurance and debt service reserve, shall be utilized on a pro rata basis among the participating boards of education for the acquisition of Equipment. The KISTA COPS, shall be issued pursuant to the terms of a Trust Indenture by and between KISTA and The Huntington National Bank, Cincinnati, Ohio ("Trustee") and shall be secured exclusively by rental payments due under a certain Equipment Lease and Security Agreement ("Lease") whereunder the Equipment purchased by KISTA with the proceeds of the COPS, will be leased to the Board on a year to year basis at annual rentals sufficient to amortize the Board's pro rata portion of the proceeds of the COPS allocated to Equipment purchased on behalf of the Board, and the expenses incident to the authorization, sale, and issuance of the COPS.

**SECTION 3. AUTHORIZATION OF EXECUTION OF EQUIPMENT LEASE AND SECURITY AGREEMENT**

That the Chairman and Secretary of this Board are hereby authorized to execute an Equipment Lease and Security Agreement with KISTA; said Lease shall provide for the lease of the Equipment purchased by KISTA on behalf of the Board to the Board on a year to year basis for a term of ten years at annual rentals sufficient to amortize the Board's pro rata portion of the COPS issued by KISTA on its behalf, as well as the expenses incident to the authorization and sale of said COPS.

The Lease shall be prepared by KISTA's Bond Counsel prior to the sale of KISTA's COPS, and shall be submitted to the Board and its counsel for consideration and execution.

The Lease shall provide for annual rental payments in amounts sufficient to amortize the Board's pro rata portion of the KISTA COPS, which shall be payable in semi-annual installments due two weeks prior to the principal and interest due dates on the KISTA COPS.

The Lease shall provide that the Board shall have the option to not renew the Lease at the end of any rental year (June 30), but the Lease shall automatically renew without action by the Board in the event the Board desires to continue its obligations on a year to year basis.

The Lease shall provide that the Board shall have the option to purchase the Equipment identified therein at any time upon sixty days' notice to KISTA and the Trustee Bank and upon the payment of the Board's pro rata portion of the KISTA COPS, then outstanding, plus interest due to the next interest payment date upon which the Board's portion of said COPS may be redeemed plus any redemption premium.

The Lease shall provide that the Board shall maintain adequate liability insurance in accordance with guidelines established by the statutes and the Department, but the Equipment financed thereunder shall be covered by KISTA for collision insurance for all damage in excess of \$5,000.

The Lease shall provide that title to the Equipment shall be vested in the Board, but shall be subjected to a security interest in favor of the Trustee Bank in order to secure the Registered Owners of the KISTA COPS, with the right to foreclose in the event of a default by the Board.

The Lease shall not be effective or binding upon the Board or KISTA unless and until its provisions and the Board's execution thereof are approved by the Commissioner of Education of the Commonwealth of Kentucky or the duly authorized and designated representative of the Department in accordance with the Commissioner's direction.

That the Lease shall provide that in the event the Board shall fail to pay the required rental payments due thereunder, KISTA, or its designee, shall have the right to advise the Department and request that the Commissioner of Education or his duly designated representative in the Department intercept those funds appropriated and allocated to the Board annually for school transportation requirements in any year in which the Lease is in effect and apply a sufficient amount to the rental then due; said right of interception shall terminate upon the termination of the Lease by the Board in accordance with its terms.

That the Lease shall provide that title to the Equipment purchased by KISTA on behalf of the Board shall vest in the Board and the Board shall exercise all rights incident to the ownership of said Equipment and shall be responsible for liability insurance and maintenance of said Equipment from which responsibilities KISTA shall be held harmless, but KISTA shall provide collision insurance for claims in excess of \$5,000.

#### **SECTION 4. DIRECTION TO SUPERINTENDENT**

That the Superintendent of the Board is hereby authorized and directed to file an executed copy of this Resolution, accompanied by an executed copy of the Board's 2016 School Bus Purchase Authorization, with the Department no later than **November 15, 2016**; the Department's deadline for KISTA orders; said Resolution and Authorization shall likewise be filed with Ross, Sinclair & Associates, LLC, Financial Advisor to KISTA no later than **November 15, 2016**.

That this Resolution shall constitute a notice and request by the Board to KISTA that the Board be included in the 2016 KEAP pooled financing represented by the KISTA COPS, to the extent of the Board's required Equipment indicated herein and that Counsel for KISTA proceed to prepare the Lease reflecting the general terms herein set forth and the specifics of the Board's participation.

That upon the sale and delivery of the KISTA COPS the proceeds thereof, after the deduction of the expenses incident to their authorization and sale, shall be deposited in an Acquisition Account with the Trustee Bank in the name of the Board and applied to the acquisition of the Equipment for the Board in the total amount of approximately \$\_\_\_\_\_ consisting of \_\_\_\_\_ Equipment units.

Notwithstanding anything contained herein to the contrary, the Board shall have the right to withdraw its participation at any time prior to February 1, 2017, by giving written notice to KISTA of its intention to withdraw. Conversely, KISTA may rely on the commitment of the Board expressed through the adoption of this Resolution unless and until it receives notice to the contrary by the date stated.

#### **SECTION 5. NOT TO BE ISSUED AS "QUALIFIED TAX EXEMPT OBLIGATIONS "**

That pursuant to Section 265(b)(3) of the Internal Revenue Code of 1986, as amended, the Board, by the adoption of this Resolution, acknowledges that KISTA's COPS will not be issued as "qualified tax exempt obligations", but that the Board's pro rata portion of said COPS will count against the Board's \$10,000,000 "qualified tax exempt obligation" limitation for the calendar year ending December 31, 2017 just as if the Board or its School District Finance Corporation had issued said COPS directly.

#### **SECTION 6. ACKNOWLEDGEMENT OF POSSIBLE VARIATIONS**

That by the adoption of this Resolution the Board acknowledges its understanding that estimated interest rates for the KISTA COPS, are subject to some variation based upon the conditions of the municipal bond market at the time the KISTA COPS are publicly advertised and sold and that the annual rental payments due under the Lease will be impacted by the interest requirements of the COPS, as well as the amount of the Board's participation.

## **SECTION 7. WAIVER AND CONSENT ON BIDDING**

That Ross, Sinclair & Associates, LLC, Lexington, Kentucky, is acting as Financial Advisor to KISTA and Program Administrator for KEAP. In accordance with Municipal Securities Rulemaking Board Rule G-23 as amended November 28, 2011, said Fiscal Agent shall not provide any underwriting services. Compensation of said Fiscal Agent will be in accordance with the fee schedule approved the Kentucky Department of Education and the Kentucky School Facilities Construction Commission.

## **SECTION 8. SEVERABILITY AND REPEAL OF CONFLICTS**

That if any section, paragraph or clause hereof shall be held invalid, the invalidity of said section, paragraph or clause shall not affect any of the remaining provisions of this Resolution. All resolutions or parts thereof in conflict with the provisions of this Resolution are hereby repealed and this Resolution shall take effect and be in force upon its adoption.

Passed and adopted by the Board of Education of on the \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

ATTEST:

\_\_\_\_\_  
Chairperson

\_\_\_\_\_  
Secretary

## **CERTIFICATE OF SECRETARY**

I, the undersigned Secretary of the Board of Education certify that the foregoing Resolution was passed and adopted by said Board on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ by a vote of \_\_\_\_\_ voting for the motion to adopt said Resolution and \_\_\_\_\_ voting against said motion and that there is attached hereto a true and correct copy of the State Department of Education's form of 2015 School Bus Purchase Authorization executed by the Chairperson and Secretary of said Board in accordance with the terms of said Resolution.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
Secretary, Board of Education

## **PLEASE PROCESS AS FOLLOWS:**

- (1) BOARD OF EDUCATION MUST ADOPT RESOLUTION
- (2) FILL IN INFORMATION REQUIRED BY SECTION 4 ABOVE (page 3)  
AND SIGN ON PAGE 4
- (3) ATTACH COPY OF 2015 SCHOOL BUS PURCHASE AUTHORIZATION
- (4) RETURN TO ROSS, SINCLAIRE & ASSOCIATES, LLC, 325 W. MAIN STREET, SUITE 300  
LEXINGTON, KY 40507
- (5) YOUR DISTRICT **MUST** FILE PA-1 AND PA-2 FORMS WITH THE KENTUCKY DEPARTMENT OF  
EDUCATION BY **November 15, 2016**.