

## REFINANCING PARTICIPATION RESOLUTION

A RESOLUTION OF THE BOARD OF EDUCATION ("BOARD") AUTHORIZING THE EXECUTION OF AN EDUCATIONAL FACILITIES LEASE ("LEASE") WITH THE KENTUCKY INTERLOCAL SCHOOL TRANSPORTATION ASSOCIATION ("KISTA") TO IMPLEMENT THE REFUNDING OF KISTA'S LEASE PROGRAM REVENUE BONDS, ADJUSTED RATE SERIES AND/OR THE REFUNDING OF THE KENTUCKY AREA DEVELOPMENT DISTRICTS FINANCING TRUST LEASE ACQUISITION PROGRAM REVENUE BONDS, FIXED RATE SERIES, ISSUED BY THE CITY OF EWING, KENTUCKY ("BONDS") THROUGH THE ISSUANCE OF KISTA'S EDUCATIONAL FACILITIES LEASE REVENUE CERTIFICATES OF PARTICIPATION ("CERTIFICATES").

WHEREAS, the provisions of Sections 65.210 through 65.300 of the Kentucky Revised Statutes ("KRS"), designated as the Interlocal Cooperation Act ("Interlocal 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, it was determined by the Boards of Education of the Elliott, Lewis, Morgan, Pendleton, Rowan ("Original Districts") and certain Subsequent Districts ("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 financing for educational facilities generally, and

WHEREAS, the Governing Board pursuant to the Interlocal Act established the Kentucky Interlocal School Transportation Association ("KISTA") to act 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 for financing the acquisition of school buses and financing educational facilities generally, in order that certain economies in financing may be realized, and

WHEREAS, KISTA in conjunction with the Boards of Education of the Augusta Independent, Cloverport Independent, Murray Independent, Providence Independent, Williamsburg Independent, Williamstown Independent, and Ballard County, Carlisle County, Elliott County, Fulton County School Districts ("Issuing Districts") participated in the Small Issuer Loan Program ("SILP") through the issuance of Lease Program Revenue Bonds, Adjusted Rate Series ("Bonds") the proceeds of which were utilized in financing educational facilities for numerous school districts throughout the Commonwealth ("Participating Districts"), and

WHEREAS, the Kentucky Area Development Districts Finance Association ("KADDFA") in conjunction with the City of Ewing, Kentucky ("Ewing") participated in the Small Issuer Loan Program ("SILP") through the issuance of City of Ewing (Kentucky) Kentucky Area Development Districts Financing Trust Lease Acquisition Program Revenue Bonds, Fixed Rate Series ("Bonds") the proceeds of which were utilized in financing educational facilities for numerous school districts throughout the Commonwealth ("Participating Districts"), and

WHEREAS, the present conditions of the municipal bond market make it possible for KISTA, KADDFA and the Participating Districts to realize a substantial savings in interest costs by refinancing the Bonds through the issuance of KISTA's Educational Facilities Lease Revenue Certificates of Participation ("Certificates") ("KISTA's Refinancing Program"), and

WHEREAS, the Board of Education is a Participating District and executed a Lease Agreement ("Prior Lease") with KISTA or KADDFA to provide for the payment of the Board's pro rata share of the principal and interest requirements on the Bonds and now desires to participate in KISTA's Refinancing Program evidenced by the Certificates;

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 Interlocal Act and to contract with KISTA through the execution of an Educational Facilities Lease ("Lease") to effect the refinancing of the Board's pro rata share of the Bonds and provide for the payment of the Board's pro rata share of the Certificates in order to realize savings in interest costs.

## **SECTION 2. GENERAL APPROVAL OF KISTA'S REFINANCING PROGRAM**

That KISTA has been established pursuant to the Interlocal 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, and issuance, shall be utilized on a pro rata basis among the Participating Districts for the retirement of the Bonds issued on their behalf. The KISTA Certificates shall be issued pursuant to the terms of a Trust Indenture ("Indenture") by and between KISTA and a trustee bank ("Trustee") and shall be secured exclusively by rental payments due under Educational Facilities Leases whereunder the school facilities financed from the Bonds will be leased to Participating Districts on a year to year basis at annual rentals sufficient to amortize each Participating District's pro rata portion of the Certificates, and the expenses incident to the authorization, sale, and issuance of the Certificates.

## **SECTION 3. AUTHORIZATION OF EXECUTION OF EDUCATIONAL FACILITIES LEASE**

That the Chairman and Secretary of this Board are hereby authorized to execute an Educational Facilities Lease with KISTA; said Lease shall provide for the lease of the Board's school facilities financed from its share of the Bonds ("Project") on a year to year basis for a term concurrent with the term of the Certificates at annual rentals sufficient to amortize the Board's pro rata portion of the Certificates issued by KISTA on its behalf, as well as the expenses incident to the authorization and sale of said Certificates.

The Lease shall be prepared by KISTA's Bond Counsel prior to the sale of KISTA's Certificates, 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 Certificates, which shall be payable in semi-annual installments due two weeks prior to the principal and interest due dates on the KISTA Certificates.

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 Project 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 Certificates, then outstanding, plus interest due to the date of redemption, plus any redemption premium.

The Lease shall provide that title to the Project shall be vested in the Board (or the Board's School District Finance Corporation), but shall be subjected to a security interest in favor of the Trustee Bank in order to secure the Registered Owners of the KISTA Certificates.

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 Kentucky Department of Education ("Department") in accordance with the Commissioner's direction.

In accordance with the provisions of KRS 160.160(5) 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 any funds appropriated and allocated to the Board annually 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.

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

That the Superintendent of the Board is hereby authorized and directed to file an executed copy of this Resolution with Ross, Sinclair & Associates, LLC, Financial Advisor to KISTA no later than **October 30, 2009**.

That this Resolution shall constitute a notice and request by the Board to KISTA that the Board be included in KISTA's Refinancing Program represented by the KISTA Certificates, to the extent of the Board's refinancing requirements for its portion of the Bonds based on the Prior Lease and that Bond 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 Certificates the proceeds thereof, after the deduction of the expenses incident to their authorization and sale, shall be deposited in an Escrow Fund with the Trustee and applied to the complete redemption of all of the Bonds at or prior to their stated maturities.

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 prior to the sale of the Certificates.

#### **SECTION 5. TAX CERTIFICATION REGARDING KISTA CERTIFICATES**

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 Certificates will not be issued as "qualified tax exempt obligations", but that the Board's pro rata portion of said Certificates will count against the Board's \$30,000,000 "qualified tax exempt obligation" limitation for the calendar year in which the Certificates are delivered just as if the Board or its School District Finance Corporation had issued said Certificates 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 Certificates are subject to some variation based upon the conditions of the municipal bond market at the time the KISTA Certificates are publicly advertised and sold and that the annual rental payments due under the Lease will be impacted by the interest requirements of the Certificates, as well as the amount of the Board's participation.

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

That Ross, Sinclair & Associates, LLC, Frankfort, Kentucky, is acting as Financial Advisor to KISTA; nevertheless, the Board hereby acknowledges and consents to the right of Ross, Sinclair & Associates, LLC to submit a bid for the purchase of the Certificates either alone or in concert with other underwriters.

#### **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 October, 2009.

BOARD OF EDUCATION OF  
\_\_\_\_\_ SCHOOL DISTRICT

ATTEST:

\_\_\_\_\_  
Chairperson

\_\_\_\_\_  
Secretary

**CERTIFICATE OF SECRETARY**

I, the undersigned Secretary of the Board of Education of the \_\_\_\_\_ School District certify that the foregoing Resolution was passed and adopted by said Board on the \_\_\_\_\_ day of October, 2009, by a vote of \_\_\_\_\_ voting for the motion to adopt said Resolution and \_\_\_\_\_ voting against said motion.

Dated this \_\_\_\_\_ day of October, 2009.

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