

DATE:

9/23/2021

AGENDA ITEM (ACTION ITEM):

Consider / Approve the Municipal Advisory Services Agreement with RSA Advisors, LLC to perform the municipal advisory services for the Building Revenue Bond Series 2021 in the amount of \$29,810,000.00.

APPLICABLE BOARD POLICY:

01.1 Legal Status of the Board; 04.31 Authority to Encumber and Expend Funds; 702 KAR 3:020 Bonds; KRS Chapter 162

HISTORY/BACKGROUND:

The Municipal Advisory Services Agreement with RSA, LLC will provide general financial advice, development of plans for financing, assist in coordinating the financing activities, and various other responsibilities related to the Building Revenue Bond Series 2021.

FISCAL/BUDGETARY IMPACT:

Issuance of \$29,810,000.00 Bond Principal Amount which may be increased or decreased by the amount of \$2,980,000.00.

RECOMMENDATION:

Approve the Municipal Advisory Services Agreement with RSA Advisors, LLC to perform the municipal advisory services for the Building Revenue Bond Series 2021 in the amount of \$29,810,000.00.

CONTACT PERSON:

Rob Haney, Chief Operations Officer

Principal/Administrator

Rob Haney

District Administrator

[Signature]

Superintendent

Use this form to submit your request to the Superintendent for items to be added to the Board Meeting Agenda

Principal – Complete, print, sign and send to your Director. Director – if approved, sign and put in the Superintendent's mailbox

Municipal Advisory Services Agreement

This Municipal Advisory Services Agreement (the “Agreement”) is between **RSA ADVISORS, LLC** (the “Advisor”) and **KENTON COUNTY BOARD OF EDUCATION** (“Client”), who has appointed Advisor to perform the municipal advisory services described herein to and for Client. In consideration of the mutual covenants made in this Agreement, and intending to be legally bound by this Agreement, the Advisor and Client agree as follows:

1. Effective Date. The effective date of this Agreement (the “Effective Date”) is _____.

2. Appointment. Client appoints and retains the adviser as a “municipal adviser” as that term is defined in Section 15B(e)(4)(A)(i) of the Securities Exchange Act of 1934 (the “Act”). The Advisor accepts such appointment and retention, all on the terms and conditions set forth in this Agreement.

3. Municipal Advisory Services. Advisor will provide the services set forth on the attached Schedule A (the “Municipal Advisory Services”). Advisor will provide the Municipal Advisory Services to Client on an as-requested basis by Client; provided, however, that Advisor’s obligations under this Agreement will be expressly limited to the Municipal Advisory Services. Notwithstanding the foregoing, if Client requests Advisor to provide services in connection with a particular municipal issuance-related matter and the parties agree that the services that will be required to be provided in connection therewith differ in scope from the Municipal Advisory Services, the parties will negotiate a mutually agreeable set of services that will be provided by Advisor to Client. Upon the parties’ agreement to a particular set of alternative services, Advisor will deliver to Client an addendum to this Agreement (an “Addendum”). Any such Addendum will set forth the scope of Advisor’s engagement with respect to such municipal issuance-related matter, as well as any alterations to the terms of this Agreement that may have been agreed to by the parties in connection with such alternate services.

4. Representations by Advisor. Advisor represents and warrants as follows:

- A. It is registered as a municipal advisor pursuant to Section 15B of the Act.
- B. It has the power and authority to enter into and perform this Agreement.
- C. In providing the Municipal Advisory Services it has a fiduciary duty to Client pursuant to Section 15B(c)(1) of the Act, as well as a duty of loyalty and a duty of care pursuant to Municipal Securities Rulemaking Board (“MSRB”) Rule G-42.

5. Representations by Client. Client represents and warrants as follows:

- A. It is a municipal entity as that term is defined in Section 15B(e)(8) of the Act.
- B. The person signing this Agreement on behalf of Client has all necessary authority to do so.

C. The execution of this Agreement and the performance thereof has been duly authorized in accordance with applicable law and is enforceable against Client pursuant to applicable law.

6. Provision of Information by Client. Client will make available to Advisor in connection with its provision of the Municipal Advisory Services, at reasonable times as requested by the Advisor, any information and material pertaining to Client, any prospective financing, bond issuance, or otherwise municipal issuance-related, as well as any other information determined necessary by the Advisor for the provision of the Municipal Advisory Services. Client acknowledges that all opinions and advice given by Advisor pursuant to this Agreement are intended solely for the benefit and use of Client. The Client acknowledges and understands that it will be responsible for the accuracy and completeness of all information provided by Client to Advisor pursuant to this Agreement.

7. Disclosure.

A. Conflicts of Interest. Set forth on the attached Schedule B is disclosure by Advisor of any conflicts of interest relating to Advisor's provision of the Municipal Advisory Services.

B. Disciplinary History. Set forth on the attached Schedule C is a description of any legal events or disciplinary history of Advisor and any relevant Advisor personnel.

C. Acknowledgment of Receipt of Disclosure. Client undertakes to review and consider the disclosure made by Advisor pursuant to this Section 7. Client acknowledges receipt of these disclosures prior to the execution of this Agreement.

8. Limitation on Liability. Advisor undertakes to perform only those duties that are specifically set forth in this Agreement. Both Advisor and Client acknowledge that no other person or entity will have any rights or obligations hereunder except as expressly provided herein. Except for bad faith, intentional misconduct or gross negligence in regard to Advisor's performance of its duties under this Agreement, neither Advisor nor any of its directors, officers, employees and agents will be liable for any acts or omissions or for any loss suffered by Client. Advisor and its directors, officers, employees and agents will be entitled to rely, and will be protected from liability in relying, upon any information or instructions furnished to it (or any of them as individuals) which, after reasonable inquiry by Advisor, is believed in good faith to be accurate and reliable. The parties agree that a good faith and unintentional error or mistake in judgment or discretion by Advisor or any of its directors, officers, employees or agents in the performance of its or their duties under this Agreement will not in and of itself constitute negligence.

9. Indemnification; Sole Remedy. To the extent permitted by Kentucky state law, Advisor and Client each hereby agree to indemnify, defend and hold the other harmless from and against any and all losses, claims, damages, expenses, including without limitation, reasonable attorney's fees, costs, liabilities, demands and causes of action (collectively referred to herein as "Damages") which the other may suffer or be subjected to as consequence of any breach of the terms of this Agreement by the indemnifying party. To the extent permitted by Kentucky state law and notwithstanding the foregoing, no party will be liable to the other for Damages suffered by the other to the extent those Damages are the consequence of: (a) events or conditions beyond the control of the indemnifying party, including without limitation, changes in economic

conditions; (b) actions of the indemnifying party which were reasonable based on facts and circumstances existing at the time and known to the indemnifying party at the time the service was provided; or (c) errors made by the indemnifying party due to its reliance on facts and materials provided to the indemnifying party by the indemnified party. Whenever Advisor or Client becomes aware of a claim with respect to which it may be entitled to indemnification hereunder, it will promptly provide written notice to the other, which will include a description of the nature of the claim. If the claim arises from a claim made against the indemnified party by a third party, the indemnifying party will have the right, at its expense, to assume the defense thereof, to employ legal counsel in connection therewith, and to compromise or settle the same, provided that any compromise or settlement by the indemnifying party of such claim will be deemed an admission of liability hereunder. The remedies set forth in this Section 9 will be the sole remedies available to either party against the other in connection with any Damages suffered by it.

10. Fees and Expenses. The compensation of Advisor for the performance of the Municipal Advisory Services under this Agreement and for the payment of expenses is described on the attached Schedule of Fees found on Schedule D. Unless agreed to in writing by the parties, Advisor will not receive any other compensation, direct or indirect, for its services under this Agreement.

11. Assignment. This Agreement is not assignable by either party hereto without the prior written consent of the other party.

12. Term of Agreement and Termination. This Agreement will be effective as of the Effective Date and will remain in effect until terminated by either party for any reason upon thirty (30) days' prior written notice to the other party, or _____, 2024, unless renewed by both parties. A termination of this Agreement will not relieve Client of its obligations to pay Advisor for any and all Municipal Advisory Services rendered and expenses incurred prior to the effective date of termination, and within 12 months following termination, the full Municipal Advisory fee payable on any existing financings in progress.

13. Notices. Unless otherwise specified herein, all notices, instructions and advice with respect to any matter contemplated by this Agreement will be deemed duly given when received in writing by Advisor at the address specified below or when deposited by first class mail addressed to (or delivered by hand to) Client at the address specified below. Advisor may rely on such notice from any person reasonably believed by it to be genuine and authorized. For purposes of this section and any other notices contemplated in this Agreement, the following addresses will be used until modified in writing:

For Advisor: RSA Advisors, LLC
325 West Main St. Suite 300
Lexington, KY 40507

For Client: Kenton County Board of Education
1055 Eaton Dr
Fort Wright, KY 41017

14. Entire Agreement. This Agreement constitutes the entire agreement of the parties with respect to Advisor's provision of Municipal Advisory Services and, except as otherwise provided in this Agreement, can be amended only by a written document signed by the parties.

15. Governing Law; Venue. This Agreement will be construed and the rights and obligations of the parties under this Agreement enforced, in accordance with the laws of the Kentucky. The venue for resolving any dispute arising out of or relating to this Agreement are the state and federal courts located in Fayette County, Kentucky.

16. Survival of Provisions. In the event of termination of this Agreement pursuant to Section 12, operation of law or otherwise, the provisions of Section 10, 12 and Schedule D will remain in effect so as to ensure the payment of fees and expenses owed to Advisor, as well the provisions of Sections 8, 9, 13, 14 and 15 as necessary to give effect thereto.

The parties have caused this Agreement to be executed by their duly authorized officers as of the Effective Date.

RSA Advisors, LLC

Kenton County Board of Education

By: *R.E. Tarvin*

By: _____

Printed Name: Robert E Tarvin

Printed Name: _____

Title: Vice President

Title: _____

Date: _____

Date: _____

SCHEDULE A
MUNICIPAL ADVISORY SERVICES & STANDARD OF CARE

By signing this agreement, Client is confirming that Advisor is their Independent Registered Municipal Advisor ("IRMA") and is relying on the advice of the IRMA in all municipal financing matters.

Following are the Municipal Advisory Services to be provided by Advisor pursuant to the terms of this Agreement:

Securities Issuance. Unless otherwise agreed to by the parties, in connection with any request for services relative to any new money issuance, refunding of a prior issuance or other financings (each referred to herein as a "Transaction"), the Advisor will perform the following services, as applicable:

1. Provide general financial advice relative to any Transaction.
2. Survey the financial resources of Client to determine its borrowing capacity and analyze existing debt structure as compared to the existing and projected sources of revenues.
3. Assist in the development of a plan or plans for the financing or refinancing of any improvements through the issuance of general bond obligations, loans and/or notes, school bonds, revenue or refunding bonds, or other type of financing alternatives that may be available and appropriate for the particular issuance ("Debt Obligations").
4. Recommend to Client an amount, the maturity structure, call provisions, pricing, and other terms and conditions of the Debt Obligation.
5. Advise Client on current market conditions, forthcoming bond, loans and note issues, federal, state or other tax law considerations, and other general information and economic data that might normally be expected to influence the interest rates of the financing.
6. Assist Client in the analysis of and the selection of a credit rating firm or firms for the Debt Obligation and further assist in the development and presentation of information to obtain a credit rating or credit ratings for the Debt Obligation.
7. Advise Client on utilizing credit enhancement and provide assistance in seeking such credit enhancement if, in the opinion of Advisor, such credit enhancements would be advantageous to Client.
8. Assist in coordinating the financing activities between various parties to any Transaction as needed.
9. Assist Client in selecting and, working with, members of a working group to procure services deemed necessary to the issuance or post-issuance requirements of the Debt Obligation. Services that may be procured may include, but are not limited to: bond counsel; special tax counsel; disclosure counsel; trustee selection; paying agent selection; credit facilities; underwriter; and printing services.

10. Assist with the review of all financial documents, including but not limited to the preliminary and final offering statement, any governing body resolutions, purchase agreement, and any official notice of sale.
11. Communicate with potential underwriters or investors, as appropriate to any Transaction, to ensure that each is furnished with the information they need to render an independent, informed purchase or investment decision concerning the Client's proposed financing.
12. Coordinate with the proper parties and oversee the closing process so as to ensure the efficient delivery of the Debt Obligations to the applicable purchaser.

Duty of Care and Loyalty (MSRB Rule G42)

Duty of Care. Municipal advisors must exercise due care in performing their municipal advisory activities. The duty of care includes, but is not limited to:

A municipal advisor must possess the degree of knowledge and expertise needed to provide the municipal entity or obligated person client with informed advice.

A municipal advisor also must make a reasonable inquiry as to the facts that are relevant to a client's determination as to whether to proceed with a course of action or that form the basis for any advice provided to the client.

A municipal advisor must undertake a reasonable investigation to determine that it is not basing any recommendation on materially inaccurate or incomplete information. Among other matters, a municipal advisor must have a reasonable basis for:

- (a) any advice provided to or on behalf of a client;
- (b) any representations made in a certificate that it signs that will be reasonably foreseeably relied upon by the client, any other party involved in the municipal securities transaction or municipal financial product, or investors in the municipal entity client's securities or securities secured by payments from an obligated person client; and
- (c) any information provided to the client or other parties involved in the municipal securities transaction in connection with the preparation of an official statement for any issue of municipal securities as to which the municipal advisor is advising.

Duty of Loyalty. Municipal advisors must fulfill a duty of loyalty in performing their municipal advisory activities for municipal entity clients. The duty of loyalty includes, but is not limited to:

A municipal advisor must deal honestly and with the utmost good faith with a municipal entity client and act in the client's best interests without regard to the financial or other interests of the municipal advisor.

A municipal advisor must not engage in municipal advisory activities for a municipal entity client if it cannot manage or mitigate its conflicts of interest in a manner that will permit it to act in the municipal entity's best interests.

SCHEDULE B CONFLICTS OF INTEREST DISCLOSURE

RSA Advisors, LLC (“RSA Advisors”) is a registered municipal advisory firm registered with the Securities and Exchange Commission (the “SEC”) and the Municipal Securities Rulemaking Board (the “MSRB”). In accordance with MSRB rules, this disclosure statement is provided by RSA Advisors to each client prior to the execution of its advisory agreement with written disclosures of any material conflicts of interest that are required to be disclosed with respect to providing financial advisory services pursuant to MSRB Rule G-42(b) and (c) (ii).

RSA Advisors employs a number of resources to identify and subsequently manage actual or potential conflicts of interest, in addition to disclosing actual and potential conflicts of interest. These resources include the implementation of policies and procedures and a supervisory structure.

Compensation Based: The fees due under a Municipal Advisor Agreement may be based on the size of the transaction and the payment of such fees shall be contingent upon the closing of the transaction. While this form of compensation is usual and customary in the municipal securities market, this may present a conflict of interest. RSA Advisors believes that this conflict of interest will not impair our ability to render unbiased advice or to fulfill our fiduciary duty to the client.

Sponsorships and Donations: Upon request, RSA Advisors may provide sponsorships or donations to various municipal organizations (to which the Client may be a member), charitable organizations or client-sponsored events. RSA Advisors limits the size of any such sponsorship or donation to a reasonable level taking into consideration various matters such as the purpose of the organization, other sponsorships or donations made to the organization and RSA Advisors’ role and physical presence in the community and the state.

Other Municipal Advisory Relationship: RSA Advisors serves a wide variety of clients that may potentially have interests that could have a direct or indirect impact on the interests of the client. RSA Advisors could potentially face a conflict of interest arising from these competing client interests. None of these other relationships or engagements would impair RSA Advisors’ ability to fulfill its regulatory duties to the client.

To our knowledge, following reasonable inquiry, we are not aware of any actual or potential conflicts of interest that could reasonably be anticipated to impair our ability to provide advice to or on behalf of the client in accordance with the applicable standards of conduct of MSRB Rule G-42. If RSA Advisors becomes aware of any potential or actual conflict of interest after this disclosure, we will disclose the detailed information in writing to the client in a timely manner including a plan for mitigation.

SCHEDULE C
DISCIPLINARY HISTORY DISCLOSURE

RSA Advisors, LLC (as a Registered Municipal Advisory firm) is required to file with the Securities and Exchange Commission ("SEC"), and thereafter update as necessary, a Form MA. In addition, for all registered personnel that provide municipal advisory services, each Municipal Advisor is required to file with the SEC, and thereafter update as necessary, a Form MA-I. Forms MA and MA-I include information about criminal actions, investigations, terminations, judgments, liens, civil actions, customer complaints, arbitrations and civil litigation relating to Advisor and its municipal advisory personnel. Client may access Advisor's most recent Form MA and each most recent Form MA-I filed with the SEC by visiting the SEC's EDGAR website at: www.sec.gov.

SCHEDULE D
SCHEDULE OF FEES

Securities Issuance

1. On the sale and delivery of securities, the Issuer shall pay the Financial Advisor a fee not to exceed the maximum allowable fee as set forth by the Kentucky Department of Education and Kentucky School Facilities Construction Commission.
2. Financial Advisor shall have no obligation to pay from its fee any other expenses associated with issuance of the Series of Bonds, including but not limited to: local counsel fees, special tax counsel fees, consultant fees, paying agent, escrow agent and/or registrar fees and bond rating services.

General Municipal Advisory Services Fee

Regarding any general services not outlined in Schedule A (General Municipal Advisory Services), the Advisor and Issuer shall separately agree to the amount of the fee payable in respect of any such service or services requested by the Issuer.