

RESOLUTION NO. 30543

A RESOLUTION AUTHORIZING THE EXECUTION OF AN INTRA-GOVERNMENTAL FUNDING AGREEMENT WITH THE ELECTRIC POWER BOARD OF CHATTANOOGA (“EPB”), AUTHORIZING EPB TO ENTER INTO AN INTERLOCAL AGREEMENT WITH HAMILTON COUNTY, TENNESSEE AND AUTHORIZING EPB TO ENTER INTO ADDITIONAL INTERLOCAL AGREEMENTS ALL IN CONNECTION WITH THE HCS EDCONNECT PROGRAM FOR THE HAMILTON COUNTY SCHOOL SYSTEM.

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF CHATTANOOGA, TENNESSEE, the Mayor is authorized to enter into an intra-governmental funding agreement with EPB in connection with the establishment and operation of the EdConnect program for the Hamilton County school system, with such agreement to be in substantially the form attached hereto as Exhibit A, with such changes as may be approved by the Mayor; and

BE IT FURTHER RESOLVED BY THE CITY COUNCIL OF THE CITY OF CHATTANOOGA, that EPB is authorized to enter into an interlocal agreement with Hamilton County, Tennessee, in connection with the establishment and operation of the EdConnect program, with such agreement to be in substantially the form attached hereto as Exhibit B, with such changes as may be approved by the Chairman or the President and Chief Executive Officer of EPB; and

BE IT FURTHER RESOLVED BY THE CITY COUNCIL OF THE CITY OF CHATTANOOGA, that EPB is further authorized to enter such into additional interlocal agreements with Hamilton County and/or the Hamilton County school system as may be necessary or convenient in connection with the establishment and operation of the EdConnect program in the form approved by the Chairman or the President and Chief Executive Officer of EPB; and

BE IT FURTHER RESOLVED BY THE CITY COUNCIL OF THE CITY OF CHATTANOOGA, TENNESSEE, that the Mayor is authorized to take such further steps as may be necessary or appropriate in connection with the authorization provided to EPB pursuant to this Resolution.

ADOPTED: October 27, 2020

/mem

EXHIBIT A
(Intra-Governmental Funding Agreement)

EXHIBIT B
(Interlocal Agreement)

INTRA-GOVERNMENTAL FUNDING AGREEMENT

This **INTRA-GOVERNMENTAL FUNDING AGREEMENT** dated as of October __, 2020 (this “**Agreement**”) by and between the City of Chattanooga, Tennessee, a municipal corporation created and existing under the laws of the State of Tennessee (the “**City**”) and the Electric Power Board of Chattanooga, an independent Board of the City of Chattanooga, Tennessee (“**EPB**”);

W I T N E S S E T H:

WHEREAS, the City, Hamilton County, Tennessee, the Hamilton County school system and EPB have developed a program that is commonly known as the "HCS EdConnect" program, which is generally described in Exhibit A attached to this Resolution and which is designed to ensure student internet access during the Coronavirus disease 2019 ("COVID-19") pandemic and thereafter for qualifying students of the Hamilton County schools; and

WHEREAS, the City and EPB recognize the importance of internet access for the educational development of students in the Hamilton County school system and the potential adverse impact that may arise if a substantial number of students in the Hamilton County schools are unable to obtain the necessary internet access for their continued educational development during the COVID-19 pandemic and beyond; and

WHEREAS, the City and EPB anticipate that the HCS EdConnect program will also contribute to maintaining and enhancing the local economy by supporting the Hamilton County school system's efforts to develop a well-educated and highly-trained workforce; and

WHEREAS, in addition to the funding provided under this Agreement, the City, Hamilton County, the Hamilton County school system and EPB have raised an additional \$6 million from other public and private sources in support of the HCS EdConnect program.

NOW, THEREFORE, for and in consideration of the promises and covenants hereinafter contained, the parties hereby agree as follows:

Section 1.1. Funding Agreement; Application of Proceeds. In order to provide funds for EPB to pay the costs of constructing and equipping a portion of the facilities necessary to support the HCS EdConnect program, the City agrees that it will appropriate One Million Five Hundred Thousand Dollars (\$1,500,000) to EPB within thirty (30) days of the date of this Agreement. The facilities that are eligible for funding under this Agreement are generally described in Exhibit B (the “EPB Project”), and EPB agrees to use the funding provided under this Agreement exclusively for the purposes described in Exhibit B.

Section 1.2. Term of Agreement. This Agreement shall become effective upon its delivery and shall be in full force and effect until such time as the funding authorized under this Agreement shall be disbursed to EPB and utilized by EPB in accordance with its terms.

Section 1.3. No Assignment by EPB. This Agreement may not be sold, assigned, delegated, or encumbered by EPB.

Section 1.4. Amendments, Changes, and Modifications. This Agreement may not be amended, changed, modified, altered, or terminated, and the observance of any term hereof may not be waived, except pursuant to the written consent of both parties hereto.

Section 1.5. Execution of Counterparts. This Agreement may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

Section 1.6. Law Governing Construction of this Agreement. This Agreement is prepared and entered into with the intention that the law of the State of Tennessee, exclusive of such state's rules governing choice of law, shall govern its construction.

IN WITNESS WHEREOF, the parties have executed this Agreement effective as of the day and year first above written.

CITY OF CHATTANOOGA, TENNESSEE

By: _____
Mayor

Attest:

City Treasurer

**ELECTRIC POWER BOARD OF
CHATTANOOGA, TENNESSEE**

By: _____
Chairman of the Board

Attest:

Secretary

EXHIBIT A

OVERVIEW OF HCS EDCONNECT PROGRAM

Ensuring Student Internet Access for the COVID Crisis and Beyond

> Bridging the Digital Divide for Education in Hamilton County

The Challenge

When the COVID Crisis necessitated a rapid transition to online learning for the students of Hamilton County, thousands of young people struggled in their educational efforts because they lacked home-based internet access. Although EPB joined with Hamilton County Schools and other community partners in deploying outdoor WiFi access points in public places across the community, these efforts were not a comprehensive solution.

In Hamilton County, more than 28,500 students qualify for Free and Reduced Lunch Assistance. Many of them lack any home-based internet access at all. For others, their family's financial ability to continue internet service is extremely insecure and low-cost internet options may not be fast enough to reliably support video-based learning and other education applications.

World-class internet can close the educational divide

Leveraging EPB's existing community-based fiber optic network, Hamilton County Schools seeks an upfront infrastructure investment of \$8.2 million to cover the cost of the additional equipment necessary to open internet access to all 28,500 students. With support for the upfront investment in place, EPB and Hamilton County Schools will be able to fund the on-going cost of 100 Mbps, symmetrical internet service with no data caps at no cost to qualified families for the next ten years out of existing operating budgets.

This high-quality internet service is up to 10 times faster than typical educational support internet services and delivers 100 Mbps for both uploads and downloads. This service is fast enough for video-based learning and other bandwidth intensive learning applications. Completing this project can also support telehealth services and work-from-home opportunities to support families in accessing healthcare more affordably while increasing their earning options.

COMMUNITY BENEFIT

STUDENT IMPACT

28,500 Students

gain internet service at no charge to them

- 100 Mbps (10 times faster than typical educational support internet services)
- Symmetrical speeds (same upload and download speed)
- No data caps
- Includes WiFi router



PROJECT BUDGET

Upfront Infrastructure Investment \$8.2 Million Requested of public and private partners	On-Going Operational Costs, 10-Year \$7.1 Million Committed by EPB and Hamilton County Schools	Total Project Budget \$15.3 Million
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INVESTING IN EDUCATIONAL DIVIDENDS

- The \$8.2 million upfront infrastructure investment creates a durable asset that will pay on-going dividends by ensuring continuing internet access for more than 28,500 Hamilton County students in need for at least 10 years.
- This project gives our community the flexibility to continue educational efforts as circumstances change during the ongoing COVID crisis whether students are at home, in-class, or attending on a staggered schedule.
- Closing the digital divide helps enhance educational attainment for the benefit of students in their future careers, companies in meeting their workforce needs, and Hamilton County in enhancing economic growth.
- By providing 100 Mbps, symmetrical, internet service with no data caps, this project will provide these households with a resource to support telehealth applications as well as work-from-home options, so the benefits above and beyond education extend to the whole family.
- Solving the internet digital divide for students will allow Hamilton County to serve as a national model for how other communities may address this issue garnering favorable PR.

PROJECT TIMING & DETAIL

Once upfront infrastructure support is in place, EPB can immediately begin build-out and start providing services to students within weeks with plans to complete the roll-out within six months.

Phase I: With \$8.2 million in upfront infrastructure funding from government partners, EPB will open access to internet service to more than 28,500 students including the installation at each location of a fiber optic drop and optical network terminal along with providing a WiFi router at no charge to them.

Phase II: Through a ten-year contract between Hamilton County Schools and EPB, 28,500 students that qualify for Free and Reduced Lunch will gain 100 Mbps internet service. EPB will gain operational efficiencies by serving and billing Hamilton County Schools as a single customer. EPB is also committing \$200,000 per year in additional support to the project.

Hamilton County Schools will determine which students qualify for service and provide them with on-going technical support. The annual cost of service to Hamilton County Schools will be \$510,000.

EXHIBIT B

DESCRIPTION OF EPB PROJECT

The EPB Project is to build fiber optic facilities and to install related equipment and facilities to provide internet services to Hamilton County, Tennessee students that attend Hamilton County, Tennessee public schools and participate in the HCS EdConnect program. The EPB Project will consist of (i) the purchase and installation of overhead and underground fiber optic cable and related facilities, (ii) the purchase and installation of optical network terminals, (iii) the purchase and installations of Wi-Fi hotspots and related facilities, and (iv) any other capital expenditure that EPB incurs in connection with the HCS EdConnect program. EPB may also use the EPB Project assets in the ordinary course of its electric system and broadband operations.

EXHIBIT B
(Interlocal Agreement)

ELECTRIC POWER BOARD OF CHATTANOOGA
(an independent Board of the City of Chattanooga, Tennessee)

and

HAMILTON COUNTY, TENNESSEE
(a public corporation created and existing
under the laws of the State of Tennessee)

INTERLOCAL AGREEMENT

Dated as of September , 2020

INTERLOCAL AGREEMENT

This **INTERLOCAL AGREEMENT** dated as of September [REDACTED], 2020 (this “**Agreement**”) by and between the Electric Power Board of Chattanooga, an independent Board of the City of Chattanooga, Tennessee (“**EPB**”) and Hamilton County, Tennessee, a public corporation created and existing under the laws of the State of Tennessee (the “**County**”);

WITNESSETH:

WHEREAS, EPB and the County are authorized under the Constitution and laws of the State of Tennessee, including an act entitled “Interlocal Cooperation Act,” codified as Section 12-9-101 *et seq.*, as amended, Tennessee Code Annotated, to enter into this Agreement for the purposes set forth herein;

WHEREAS, the County has determined that it is in the best interest of the citizens of Hamilton County, Tennessee that EPB provide certain fiber optic facilities to provide internet services operated by EPB as more fully described in Exhibit A attached hereto (the “**EPB Project**”);

WHEREAS, to finance part of the cost of the EPB Project at favorable interest rates, the County will issue general obligation bonds for the purpose, among other things, of paying for the cost of constructing and equipping the EPB Project; and

WHEREAS, pursuant to the terms of resolutions adopted by the Board of Commissioners of the County on August 5, 2020 and August 19, 2020, respectively (collectively, the “**Resolution**”) and a Certificate of County Mayor executed on September [REDACTED], 2020, the County has authorized the issuance of its General Obligation Improvement and Refunding Bonds, Series 2020A in the aggregate principal amount of \$[REDACTED] (the “**Bonds**”) for the purpose refunding certain general obligation bonds previously issued by the County and financing the cost of certain capital projects, including the EPB Project;

NOW, THEREFORE, for and in consideration of the promises and covenants hereinafter contained, the parties hereby agree as follows:

Section 1.1. Agreement to Issue the Bonds; Application of Proceeds. In order to provide funds for EPB to pay the costs of constructing and equipping the EPB Project, the County agrees that it will sell and cause to be delivered the Bonds in the aggregate principal amount of \$[REDACTED]. The County hereby covenants and agrees that it will apply the proceeds derived from the sale of the Bonds as provided in Section 8 of the Resolution and will use the moneys deposited in the Project Account created under the Resolution to pay the Project Costs (as defined in the Resolution), including the cost of constructing and equipping the EPB Project. The portion of the proceeds of the Bonds deposited to the Project Account on the date of issuance and delivery of the Bonds allocable to the EPB Project is \$1,500,000.

Section 1.2. Disbursements from the Project Account for EPB Project. To receive disbursements from the Project Account to pay for the cost of constructing and equipping the EPB Project, EPB shall deliver the following items to the County:

(a) A requisition for such payment stating each amount to be paid and the name of the person to whom payment is due.

(b) A certificate in substantially the form attached as Exhibit B attached hereto executed by an authorized representative of EPB attached to the requisition and certifying:

(1) that an obligation in the stated amount has been incurred by EPB and that the same is a proper charge against the Project Account for the EPB Project and has not been paid and stating that the bill or statement of account for such obligation, or a copy thereof, is on file in the office of EPB;

(2) that the signer has no notice of any vendor's, mechanic's, or other liens or rights to liens, chattel mortgages, or conditional sales contracts that should be satisfied or discharged before such payment is made; and

(3) that the representations of EPB contained in this Agreement remain true and correct as if made by EPB on the date of such certificate.

Promptly after receiving the above-described requisition and certificate (i.e., not later than five (5) business days following the receipt thereof), the County shall arrange for the requested amount to be paid to EPB from amounts on deposit in the Project Account; *provided that* the total amount of funds paid to EPB from the Project Account shall not exceed \$1,500,000.

Section 1.3. Tax Compliance - EPB Project.

(a) EPB intends to and expects that it will own and use the EPB Project at all times while the Bonds and the Refunding Bonds, if any, remain outstanding (i.e., at least through January 1, 2036), except to the extent otherwise described in this subsection (a). EPB does not know of any reason why the EPB Project will not be so owned and used in the absence of (a) supervening circumstances not now anticipated by it, (b) adverse circumstance beyond its control or (c) obsolescence of such insubstantial parts or portions thereof as may occur as a result of normal use thereof. EPB will not change the use, ownership or nature of EPB Project so long as any of the Bonds and any general obligation bonds issued by the County to refund the portion of the Bonds allocable to the EPB Project to achieve debt service savings (the "**Refunding Bonds**"), if any, remain outstanding unless, in the written opinion of Bond Counsel to the County, such change will not adversely affect the excludability of interest on the Bonds or the Refunding Bonds, if any, from gross income for federal income tax purposes, except that EPB may without an opinion sell or otherwise dispose of parts or portions of the EPB Project as may be necessary due to normal wear, tear or obsolescence.

(b) Except as otherwise described in this subsection (b), EPB will not allow the EPB Project to be used hereafter in the trade or business by any person other than EPB, the County or a city or town located within the County (a "non-Exempt Person") unless it obtains an opinion of Bond Counsel to the County that such use would not adversely affect the excludability of interest on the Bonds or the Refunding Bonds, if any, from gross income for federal income tax purposes. EPB acknowledges that in determining whether all or any portion or function of the EPB Project is used, directly or indirectly, in the trade or business of a non-Exempt Person, use of any portion or function of the EPB Project by a non-Exempt Person pursuant to a lease, sublease, management contract, research contract, service contract or other arrangement must be examined. A lease, sublease, management contract, research contract, service contract or other arrangement between EPB and a non-Exempt Person with respect to the EPB Project or any portion or function thereof will not result in private trade or business use of a non-Exempt Person if the guidelines set forth in the Regulations, Rev. Proc. 2017-13 (or subsequent or supplemental guidance, including I.R.S. Notice 2014-67) or Rev. Procs. 97-14 or 2007-47 (or subsequent guidance) are met or an approving opinion of Bond Counsel to the County is delivered to the County and EPB.

(c) EPB reasonably expects to submit requisitions to the County totaling the entire amount of the proceeds of the Bonds allocable to the EPB Project deposited into the Project Account (i.e.,

\$1,500,000) within three years from the date of issuance and delivery of the Bonds to pay for the costs of the EPB Project.

(d) EPB agrees that it will provide all information regarding the use and operation of the EPB Project to the County promptly following any request thereof and cooperate with the County in connection with an audit, if any, of the Bonds or the Refunding Bonds, if any, by the Internal Revenue Service.

Section 1.4. Term of Agreement. This Agreement shall become effective upon its delivery and shall be in full force and effect until midnight, January 1, 2036 or if all the portion of the Bonds and the Refunding Bonds, if any, allocable to the EPB Project have not been paid or retired (or provision for such payment has not been made as provided in Section 10 of the Resolution), until such date as such payment or provision shall have been made.

Section 1.5. No Assignment by EPB. This Agreement may not be sold, assigned, delegated, or encumbered by EPB.

Section 1.6. Amendments, Changes, and Modifications. This Agreement may not be amended, changed, modified, altered, or terminated, and the observance of any term hereof may not be waived, except pursuant to the written consent of both parties hereto.

Section 1.7. Execution of Counterparts. This Agreement may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

Section 1.8. Law Governing Construction of this Agreement. This Agreement is prepared and entered into with the intention that the law of the State of Tennessee, exclusive of such state's rules governing choice of law, shall govern its construction.

[SIGNATURES BEGIN ON THE FOLLOWING PAGE]

SIGNATURES AND SEALS

IN WITNESS WHEREOF, EPB has executed this Agreement by causing its name to be hereunto subscribed by its Chairman of the Board and attested by its Secretary and approved by the City Council of the City of Chattanooga by Resolution No. [____] dated [____]; and the County has executed this Agreement by causing its name to be hereunto subscribed by its County Mayor and by causing the official seal of the County to be impressed hereon and attested by its County Clerk; all being done as of the day and year first above written.

**ELECTION POWER BOARD OF
CHATTANOOGA, TENNESSEE**

By: _____
EPB Chairman of the Board

Attest:

EPB Secretary

[SIGNATURES CONTINUE ON FOLLOWING PAGE]

HAMILTON COUNTY, TENNESSEE

By: _____
County Mayor

(SEAL)

Attest:

County Clerk

EXHIBIT A

DESCRIPTION OF EPB PROJECT

The Electric Power Board of Chattanooga (“EPB”) Project is to build fiber optic facilities to provide internet services to Hamilton County, Tennessee families that attend Hamilton County, Tennessee public schools. The Project will consist of (i) the purchase and installation of overhead and underground fiber optic cable and related facilities, (ii) the purchase and installation of optical network terminals, and (iii) the purchase and installations of Wi-Fi hotspots and related facilities, and EPB may also use the Project assets in the ordinary course of its electric system and broadband operations. EPB will request reimbursement for these costs from the Project Account.

EXHIBIT B

PROJECT ACCOUNT CERTIFICATE AND REQUISITION FOR PAYMENT

Draw Request #__

Hamilton County, Tennessee
Attention: Administrator of Finance
117 East 7th Street
Chattanooga, Tennessee 37402

The Electric Power Board of Chattanooga, Tennessee (“EPB”) hereby requests, pursuant to Section 1.2 of the Interlocal Agreement dated as of September __, 2020 (the “Interlocal Agreement”) between EPB and Hamilton County, Tennessee, that the following amounts be disbursed to the following parties for the account of EPB from the Project Account (as defined in the Interlocal Agreement) created under Resolution (as defined in the Interlocal Agreement):

<u>Name of Payee</u>	<u>Nature of Disbursement</u>	<u>Amount</u>
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EPB does hereby certify to the County as follows with respect to the above-described disbursements:

(1) that an obligation in the stated amount has been incurred by EPB and that the same is a proper charge against the Project Account for the EPB Project and has not been paid and stating that the bill or statement of account for such obligation, or a copy thereof, is on file in the office of EPB;

(2) that the signer has no notice of any vendor’s, mechanic’s, or other liens or rights to liens, chattel mortgages, or conditional sales contracts that should be satisfied or discharged before such payment is made; and

(3) that the representations of EPB contained in the Interlocal Agreement remain true and correct as if made by EPB on the date hereof.

Dated: _____, 20__

ELECTRIC POWER BOARD OF CHATTANOOGA

By: _____
Name:
Title: