

INTER-LOCAL AGREEMENT

THIS INTERLOCAL AGREEMENT AND RELEASE (Agreement) is made and entered into this the ___ day of January, 2020 by and between Washington County, Tennessee, a political subdivision of the State of Tennessee (County), and the City of Johnson City, Tennessee (City), a political subdivision and municipal corporation of the State of Tennessee. It is the intent of the parties that this Agreement be binding, irrevocable, and enforceable in all courts of jurisdiction.

I. RECITALS

WHEREAS the County recognizes the vital importance of free public schools as a guarantee to all children of school age the opportunity to obtain an education, and the provisions of the constitution guaranteeing equal protection of the law to all citizens;

WHEREAS the Washington County Board of Commissioners has a fiduciary responsibility to minimize the burden placed on the County tax-payers, including City residents, and to ensure that the issuance of additional debt does not leverage the County to the point of impeding its long-term ability to make future investments in other capital needs or adequately provide other County services;

WHEREAS the County intends this Agreement to express a commitment to affording each student the same opportunity to obtain an education, regardless of place of residence;

WHEREAS the City of Johnson City is a municipality located primarily within the borders of Washington County, Tennessee, and the County and the City each acknowledge the importance of the education and quality facilities for all children in Washington County, Tennessee, regardless of place of residence;

WHEREAS on October 28, 2019, at its Regular October 2019 Meeting, the Washington County Board of Commissioners approved Resolution 19-10-20 entitled "Resolution of Support of Town of Jonesborough's Proposed Terms for a Lease-Purchase Arrangement, and Execution of Inter-Local Agreement and Related Leases" (The Jonesborough School Project);

WHEREAS the Jonesborough School Project includes the purchase of property, specifically 48 acres from that parcel known as Map 052 Parcel 011.00 in Washington County, Tennessee which is currently owned by Curtis L. and Nancy Brenda Lynn. The Jonesborough School Project includes (1) an inter-local agreement between the Town of Jonesborough, Washington County, Tennessee, and the Washington County Board of Education; (2) a Building Lease Agreement between the Mayor and Aldermen of the Town of Jonesborough, Tennessee as Landlord, and Washington County, Tennessee as Tenant, which recites that the County's payments thereunder are intended to reimburse the Town for the costs of purchase of the Property, construction of the Improvements, and are not to be used to pay costs of maintenance or operation expenses related to the Building, and, additionally, the Building Lease Agreement clarifies that Washington County's maximum rent shall not exceed the cost of financing the amount of thirty two million, seven hundred and fifty thousand dollars (\$32,750,000.00) of principal at a fixed rate not to exceed three percent (3%) per year, for a fixed period not to exceed thirty-eight (38) years; and (3) a Facilities Lease Agreement between the Mayor and Aldermen of the Town of Jonesborough, Tennessee and Washington County, Tennessee which recites that the County's payments of rent in the amount of forty-one thousand, seven hundred dollars (\$41,700.00) per month for a fixed period not to exceed ten (10) years shall be attributable to the Town's maintenance and management of the Facilities, other parks and recreation programming of the Town, and other uses; and (4) a Purchase Option Agreement between the Mayor and Aldermen of the Town of Jonesborough and Washington County, Tennessee which contemplates that Washington County will have the option to purchase the Building (such documents referred to collectively hereinafter as the "Jonesborough School Documents");

WHEREAS the Washington County Board of County Commissioners, by resolution dated October 28, 2019, authorized the County Mayor to negotiate with the City on behalf of Washington County to reach an agreement to fund school capital improvements operated by the City and its Board of Education;

WHEREAS Tenn. Code Ann. §7-51-901 et. seq. (the "Local Government Act") authorizes any county and/or municipality to enter into, with any contracting party or parties, contracts, leases or lease-purchase agreements with respect to capital improvement property for terms not to exceed forty (40) years or the useful life of the subject capital improvement property, whichever is less;

WHEREAS the Washington County Board of Commissioners, recognizing these factors, developed a plan for capital funds to balance its responsibility to all county tax-payers with its mandate to fund the needs of the county school system;

WHEREAS the County and City wish to memorialize the terms of their agreement and to do so in this document;

WHEREAS the County and City acknowledge that they are entering into this Agreement voluntarily and after consultation with legal counsel; and

NOW, THEREFORE, for good and valuable consideration, the sufficiency and receipt of which is hereby acknowledged, the parties do hereby agree, covenant and stipulate as follows:

II.
RECITALS EXPRESSLY INCORPORATED

The foregoing Recitals are expressly incorporated as part of this Agreement, and the County and the City confirm and represent to one another that said Recitals are true and correct to the best of their knowledge, information, and belief.

III.
PURPOSE

It is expressly understood that this Agreement and the promises it represents are entered into for the purpose of allowing the County and the City to provide capital improvement school funding to the City by the County.

IV.
APPLICABILITY

All conditions set forth in this Agreement shall apply to the County and its officers, officials, employees, agents, successors and assigns, and all other persons or entities in active concert or participation with Washington County.

V.
CONSIDERATION

The County agrees to fund according to the terms of this Agreement construction projects more particularly described in **Exhibit A** attached hereto (“Johnson City School Capital Improvement Project(s)”). At no time are any payments made by County to be used to pay costs of maintenance or operation expenses of the City school system. It is the intention of City and County that all payments made to the City by the County under the terms of this Agreement comply with the terms of the Local Government Act. All payments made by the County to the City under the terms of this Agreement must be used solely as (1) “Capital Improvement Property” (as defined under the Local Government Act), and (2) to support the education system operated by the City or its Board of Education.

The payments totaling twelve million, five-hundred thousand dollars (\$12,500,000.00) shall be made for a term of twenty-five (25) years at a rate of five-hundred thousand dollars (\$500,000.00) per year. The County’s first payment to the City shall commence when the County makes its first Base Rent Payment as that term is understood and defined in the Building Lease Agreement dated November 13, 2019 . Said payments in equal annual installments of five-hundred thousand dollars (\$500,000.00) shall continue until the expiration of twenty-five (25) years. All payments received by the City from the County under the terms of this Agreement may solely be used to create or acquire “Capital Improvement Property” as defined in the Local Government Act as determined in the sole discretion of the County. In no event shall the County have any obligation under this Agreement if the Jonesborough School Project does not move forward with the construction process.

The City agrees that the payment mentioned above shall constitute the entire amount of monetary consideration that it is entitled to under this Agreement, that it is not entitled to any further monetary consideration whatsoever from the County related to the Jonesborough School Project, notwithstanding any breach of this Agreement by the County, and that it will assume payment of any attorneys’ fees or costs it has incurred in connection with negotiating this Inter-Local Agreement, and any review of the Jonesborough School Project.

The City agrees that it will not seek any further compensation or consideration for any other claim, damage, cost or attorneys’ fees in connection with the matter encompassed by this Agreement, notwithstanding a breach of this Agreement, or for any events or circumstances that occurred prior to the execution of this Agreement arising out of the Jonesborough School Project, or any change in legislation that may create new rights related to the terms of the Jonesborough School Project.

VI.
COVENANT NOT TO SUE

The City represents and warrants that neither it nor any department of the City has initiated or filed any other action, complaint, claim or charge against the County, nor any of its elected officials or agents with any federal, state or local court, or administrative agency, and that it will not do so at any time hereafter regarding matters relating to or arising out of the Jonesborough School Project, except as a result of a breach of this Agreement by the County. The City further agrees neither it nor any department of the City will in the future maintain or prosecute any lawsuit, complaint, administrative charge, action or proceeding of any kind relating to or arising out of the Jonesborough School Project against the County nor any of its elected officials or agents, any lawsuit, complaint, administrative charge, action or proceeding of any kind with respect to any act, omission or other matter occurring on or before the date of its execution of this Agreement relating to or arising out of the Jonesborough School Project, except as a result of a breach of this Agreement by the County. The County and the City further understand that the representations and understandings set forth in this Agreement constitute consideration for each party’s execution of this Agreement, and without which neither party would have entered into this Agreement.

VII.
BREACH OF AGREEMENT

It is a material breach of this Agreement:

- (1) if the County fails to make timely payments and/or defaults pursuant to the schedules set forth in this Agreement (except as a result of a default by City under this Agreement);
- (2) if the City, or any department of the City including but not limited to the City's Department of Education, files any legal action against the County challenging the legal validity or enforcement of the Jonesborough School Project; or
- (3) if, any payment made to the City by the County under the terms of this Agreement fail to comply with the requirements of, or otherwise are deemed in violation of, the Local Government Act.

VIII.
REMEDIES

The City and the County acknowledge that a breach by it of their obligations contained herein will cause irreparable harm to the City, by vitiating the intent and purpose of the Agreement contemplated herein. Accordingly, the County acknowledges that the remedy at law for breach of its obligations under this Agreement will be inadequate and agrees, in the event of a breach or threatened breach by the County, the City shall be entitled, in addition to all other available remedies at law or in equity, and in addition to the penalties assessable herein, to an injunction or injunctions restraining, preventing or curing any breach of this Agreement and to enforce specifically the terms and provisions thereof, without necessity of showing economic loss and without any other security being required.

In the event the City breaches the terms of this Agreement, or otherwise fails to perform under this Agreement, the County may exercise all legal and equitable remedies available to it, including, but not limited to, ceasing any payments to the City contemplated by this Agreement. In addition to the foregoing, if the payments made to the City by the County under the terms of this Agreement are not permitted by, or do not comply with, the Local Government Act, within thirty (30) days after request by the County the City agrees to reimburse the County an amount equal to the payments received by the County from the City which do not comply with the Local Government Act.

IX.
NO ASSIGNMENT OF RIGHTS UNDER AGREEMENT

The City represents and warrants that no portion of any of the matter released by this Agreement and no portion of the Consideration or any recovery or settlement to which the City may be entitled has been assigned or transferred to any other person, firm, or corporation not a party to this Agreement (including but not limited to its Board of Education) in any manner, including by way of subrogation or operation of law or otherwise.

X.
CONSULTATION WITH ATTORNEY

The County and the City each acknowledge that it has been afforded sufficient time to carefully consider the terms of this Agreement and to undertake consultation with an attorney prior to entering into this Agreement.

XI.
ACKNOWLEDGEMENT OF LEGAL VALIDITY AND WAIVER

As additional consideration to encourage the County to incur the obligations described in this Agreement, the City acknowledges the legal validity of the Jonesborough School Project and forever waives the right, if any, of the City to contest, dispute or otherwise litigate against the legal validity of the Jonesborough School Project. In

the event notwithstanding such waiver City holds any claims or rights to litigate against the Town of Jonesborough, the County, its officials and/or employees for claims relating to or arising out of the Jonesborough School Project, the City hereby assigns to the County such rights and claims. In the event notwithstanding such waiver City holds any claims or rights to litigate against the Town of Jonesborough or the County relating to the Jonesborough School Project, the City hereby assigns to the County such rights or claims.

XII.
ENTIRE AGREEMENT

This Agreement sets forth the entire agreement between the parties hereto, and fully supersedes any and all prior agreements or understandings between them pertaining to the Jonesborough School Project and the Johnson City School Capital Improvement Project(s). . It is agreed that this Agreement may be modified only by a subsequent, written agreement, executed by both parties.

XIII.
ATTORNEYS' FEES

If any dispute shall arise between the parties hereto with regard to this Agreement, the prevailing party or parties therein shall be entitled to reimbursement by the other party or parties thereto for all costs, expenses and reasonable attorneys' fees incurred by the prevailing party or parties in connection therewith or as a result thereof.

XIV.
SEVERABILITY

If any provision of this Agreement shall be found by any court of competent jurisdiction to be illegal, void or unenforceable, then and in any such event, to the extent thereof, this Agreement shall be construed as though said provision were not herein contained, so as to give full force and effect, as nearly as possible, to the original intent of the parties hereto.

XV.
WAIVER

The failure of any party hereto to insist upon prompt and strict performance of any terms, conditions, or understandings herein set forth or to exercise any right or option conferred, in any one or more instances, except as is herein otherwise provided, shall not be construed as a waiver of the same or any other term, condition, understanding or option. No waiver shall be valid or binding unless in writing, signed by the party sought to be charged herewith, and then, only to the extent therein expressly set forth.

XVI.
AUTHORSHIP

This Agreement is the result of negotiation between the parties, and as such, shall not be construed against any party hereto on the basis of the authorship of this Agreement or any portion thereof.

XVII.
PARTIES BOUND

This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and assigns.

XVIII.
EFFECTIVE DATE

This Agreement shall become effective upon the date last signed.

IN WITNESS WHEREOF, the parties have hereunto set their hands and seals the day as written.

WASHINGTON COUNTY, TENNESSEE

BY: _____

DATE: _____

ITS: _____

STATE OF TENNESSEE]
COUNTY OF WASHINGTON]

On this ____ day of January, 2020, before the undersigned Notary Public, _____ personally appeared, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to this instrument, and acknowledged that he executed it. I declare under penalty of perjury that the person whose name is subscribed to this instrument appears to be of sound mind and under no duress, fraud or undue influence.

Notary Public

My Commission Expires: _____

CITY OF JOHNSON CITY

BY: _____

DATE: _____

ITS: _____

STATE OF TENNESSEE]
COUNTY OF WASHINGTON]

On this ____ day of January, 2020, before the undersigned Notary Public, _____ personally appeared, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to this instrument, and acknowledged that he executed it. I declare under penalty of perjury that the person whose name is subscribed to this instrument appears to be of sound mind and under no duress, fraud or undue influence.

Notary Public

My Commission Expires: _____

DRAFT 02/04/20

EXHIBIT A

(Identify specific capital expenditure projects; or define a formula to approve projects unable to be identified now.)

DRAFT 02/04/20