

**AGREEMENT FOR THE DISTRIBUTION OF  
SURPLUS PURCHASE AMOUNT FUNDS**

**(JCM/Madison Academic Schools Project)**

This AGREEMENT (the “Agreement”) is made as of the \_\_\_\_ day of \_\_\_\_\_, 2020, by and among, **JACKSON COMMUNITY REDEVELOPMENT AGENCY**, a public instrumentality created by the City of Jackson pursuant to the Community Redevelopment Act of 1998 (“CRA”); **THE COUNTY OF MADISON**, a political subdivision of the State of Tennessee (“County”); and **THE CITY OF JACKSON**, a municipal corporation organized under the laws of the State of Tennessee (“City” and together with the CRA and County, collectively the “Parties” and each, a “Party”), with reference to the following:

WITNESSETH:

WHEREAS, the CRA has as its purpose to identify and address issues of slum and blight through executing contracts, acquiring and disposing of real property, establishing tax incremental financing districts, and other programs and financial instruments to help stabilize, revitalize, and redevelop certain areas of Jackson, Madison County, Tennessee;

WHEREAS, the CRA has identified a project initiative within the CRA’s District 1 Redevelopment Area whereby the CRA will assist the Jackson-Madison County School System (“District”) with and facilitate the redevelopment and construction of two (2) new public educational institutions and related facilities in Jackson, Madison County, Tennessee, including a redeveloped middle/high school serving approximately 800 students (the “JCM Project”) and a new magnet high school serving approximately 600 students (the “MA Project” and, together with JCM Project, collectively the “Project”);

WHEREAS, the JCM Project will be located on a portion of the campus of the former Jackson Central-Merry High School (the “JCM Campus”) and the MA Project will be located on the former location of Epworth Hall on the campus of the University of Memphis Lambuth (“MA Campus” and together with JCM Campus, collectively the “Project Locations”);

WHEREAS, CRA owns or will own the real property at the Project Locations and will lease the Project Locations to Healthy Community Education Partners, Inc., a Tennessee nonprofit corporation (“HCEP”);

WHEREAS, HCEP will proceed to cause the renovation, construction, redevelopment and equipping of the improvements at the Project Locations in order to facilitate the accomplishment of the redevelopment and construction of the Project;

WHEREAS, HCEP will sublease the JCM Project to County and District pursuant to that certain JCM Sublease Agreement of eventdate herewith (the “JCM Sublease”);

WHEREAS, HCEP will sublease the MA Project to City and District pursuant to that certain Madison Academic Sublease Agreement of evendate (the “MA Sublease” and together with the JCM Sublease, collectively the “Subleases”);

WHEREAS, the JCM Sublease grants the District or County (for the use and benefit of the District) the option and right to purchase the JCM Project for the greater of the Fair Market Value or the Sublease Balance;

WHEREAS, the MA Sublease grants the District or City (for the use and benefit of the District) the option and right to purchase the MA Project for the greater of the Fair Market Value or the Sublease Balance;

WHEREAS, it is anticipated that appreciation could cause the Purchase Amount for either or both Projects to be the Fair Market Value as opposed to the actual cost to finance the construction of such Project;

WHEREAS, the corporate charter currently in effect for HCEP provides that upon dissolution the assets of the corporation shall vest in and be transferred to the CRA or to such entity exempt from federal income tax as its board of directors may designate;

WHEREAS, it is anticipated that funds in excess of the actual cost to finance the construction of either or both Project could be distributed to the CRA upon the ultimate dissolution of HCEP and distribution of its corporate assets;

WHEREAS, the parties desire to enter into this Agreement for the purposes of setting forth terms and conditions for the distribution and release of funds, if any, received by the CRA from the ultimate dissolution of HCEP and distribution of its corporate assets;

WHEREAS, the governing board of the CRA approved this Agreement and the CRA’s execution and delivery thereof pursuant to the action taken at such board’s meeting held on \_\_\_\_\_, 2020;

WHEREAS, the governing body of the County approved this Agreement and the County’s execution and delivery thereof pursuant to the action taken at such body’s meeting held on \_\_\_\_\_, 2020; and

WHEREAS, the governing body of the City approved this Agreement and the City’s execution and delivery thereof pursuant to the action taken at such body’s City Council meeting held \_\_\_\_\_, 2020.

NOW, THEREFORE, in consideration of the mutual covenants, agreements set forth herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties, intending to be legally bound, agree as follows:

**1. Definitions.**

A. Capitalized terms, unless otherwise defined in this Agreement, shall have meanings ascribed to them in the respective Subleases as the context so requires.

B. “Fair Market Purchase” shall mean the circumstance when a Sublease requires the Purchase Amount to be the Fair Market Value.

C. “JCM Project Surplus” shall mean, in the event of a Fair Market Purchase with respect to the JCM Project, the amount equal to the difference between the actual amounts paid by the County to purchase the Demised Premises minus the Sublease Balance. For example, if, at the time the County exercises its option to purchase the Demised Premises, the Fair Market Value of the Demised Premises is \$15,000,000.00, and the Sublease Balance at such time is \$14,000,000.00, then the JCM Project Surplus would be \$1,000,000.00.

D. “MA Project Surplus” shall mean, in the event of a Fair Market Purchase with respect to the MA Project, the amount equal to the difference between the actual amounts paid by the City to purchase the Demised Premises minus the Sublease Balance. For example, if, at the time the City exercises its option to purchase the Demised Premises, the Fair Market Value of the Demised Premises is \$15,000,000.00, and the Sublease Balance at such time is \$14,000,000.00, then the MA Project Surplus would be \$1,000,000.00.

**2. Distribution of JCM Project Surplus.** In the event that the CRA receives funds upon the dissolution and distribution of HCEP’s corporate assets, the CRA agrees to pay the JCM Project Surplus, if any, to the County.

**3. Distribution of MA Project Surplus.** In the event that the CRA receives funds upon the dissolution and distribution of HCEP’s corporate assets, the CRA agrees to pay the MA Project Surplus, if any, to the City.

**4. Acknowledgments and Further Agreements.** The Parties acknowledge and agree that there may be circumstances where the CRA does not receive any funds at all from the dissolution and distribution of HCEP’s assets. The Parties further acknowledge and agree that there may be circumstances where the CRA does not receive amounts necessary to distribute the full amount of either the JCM Project Surplus or the MA Project Surplus, and in such event(s), the CRA shall only be responsible for distributing any such amounts so distributed and in the possession of the CRA.

**5. Miscellaneous.**

A. Controlling Law; Dispute Resolution.

(i) This Agreement is made in Tennessee and shall be governed by and construed in accordance with the laws of the State of Tennessee and be subject to sole and exclusive jurisdiction of the State Courts in the County, the jurisdiction of which the Parties hereby consent to and waive all questions of jurisdiction and venue in that Court.

(ii) The Parties agree that any dispute between the Parties arising from or in any way related to this Agreement will first attempt to be resolved through non-binding mediation with a mediator that is mutually agreeable to the Parties, and the Parties shall share the costs of the dispute resolution process equally, although the attorneys and witnesses or specialists utilized by the respective Parties shall be the direct responsibility of each Party engaging such attorneys, witnesses or specialists, and their fees and expenses shall be the responsibly of the respective Parties. The Parties agree that only in the event that the non-binding mediation is unsuccessful in resolving any such dispute can any Party then institute suit and then only consistent with the foregoing Subsection (i).

B. Entire Agreement. This Agreement constitutes the entire agreement between the Parties relating to the subject matter hereof, and may be amended, modified and/or supplemented only in a writing executed by each Party.

C. Due Authorization; Binding Agreement. Each Party represents and warrants (as to itself only) that the signatory signing on behalf of such Party is duly authorized by such Party to execute and deliver this Agreement on behalf of such Party, and by its signature does bind such Party to the terms of this Agreement.

D. No Partnership or Joint Venture. The Parties agree that nothing herein shall serve to create any agency, employment or other master and servant relationship or partnership or joint venture relationship or fiduciary relationship among the Parties.

E. Waiver of Consequential Damages. Notwithstanding anything to the contrary set forth in this Agreement, no Party (nor any of its officers, directors, employees or representatives, nor any affiliates thereof) shall be liable to the other party for any special, indirect or consequential losses or damages, for lost revenues or lost profits, or for any other special incidental, punitive, exemplary or similar damages, in each case arising out of, relating to or resulting from an actual or alleged default or breach of this Agreement, the transactions contemplated under this Agreement, or the relationship of the Parties, in each case even if the other Party has been advised of the possibility of such damages, and each Party hereby expressly releases the other Party (and its officers, directors, employees and representatives, and any affiliates thereof) therefrom.

F. Assignment. No Party shall assign this Agreement or any of their respective rights granted hereunder without the prior written consent of the other Parties in each instance.

G. Captions. The captions contained in this Agreement are for convenience and reference only and in no way define, describe, extend or limit the scope or intent of this Agreement or the intent of any provision contained herein.

H. Counterparts. This Agreement may be executed in one or more counterparts and by the different Parties hereto under separate counterparts, any one of which need not contain the signatures of more than one Party, but all of which when taken together shall constitute one and the same instrument notwithstanding that all Parties have not signed the same counterpart hereof.

I. Performance. TIME IS OF THE ESSENCE OF THIS AGREEMENT AND OF EACH PROVISION HEREOF.

J. Amendments. This Agreement is not subject to modification or amendment except by a writing of the same formality as this Agreement and executed by the signatories hereto.

K. Severability. Nothing contained herein shall be construed as to require the commission of any act contrary to law, and wherever there is any conflict between any provision contained herein and any present or future statute law, ordinance, or regulation contrary to which the parties have no legal right to contract, the latter shall prevail, but the provisions of this Agreement affected shall be limited only to the extent necessary to bring it within the requirements of such law.

*[Counterpart Signatures on Following Page]*

**AGREEMENT**

**(JCM/Madison Academic Schools Project)**

IN WITNESS WHEREOF, the CRA, City, and County have caused this Agreement to be signed in their names by their duly authorized representatives and delivered as their act and deed, intending to be legally bound by its terms and provisions.

**JACKSON COMMUNITY REDEVELOPMENT AGENCY**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: Chairperson  
Address: \_\_\_\_\_

**THE COUNTY OF MADISON, TENNESSEE**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: Mayor  
Address: \_\_\_\_\_

**THE CITY OF JACKSON, TENNESSEE**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: Mayor  
Address: \_\_\_\_\_