

AGREEMENT FOR THE CONVEYANCE OF REAL PROPERTY

THIS AGREEMENT is made and entered into this _____ day of _____, 2012, by and between the **BOARD OF PUBLIC INSTRUCTION OF MONROE COUNTY, FLORIDA**, n/k/a The School Board of Monroe County Florida whose address is 241 Trumbo Road, Key West, Florida 33040 (hereinafter "School Board"), and the **CITY OF KEY WEST, FLORIDA**, a municipal corporation, whose address is P.O. Box 1409, Key West, Florida, 33041 (hereinafter "CITY").

Whereas, the School Board has commenced construction at the HOB campus for the relocation of a new elementary school for the students currently housed at Glynn R. Archer School; and

Whereas, the School Board has indicated the Glynn R. Archer School site will be available once the School Board completes plans to relocate students to the new facility; and

Whereas, on November 2, 2010, 70.5% of the voters casting ballots authorized the City of Key West to move forward with negotiations for the acquisition of the Glynn R. Archer School property; and

Whereas, the School Board and City have entered into a Memorandum of Understanding Regarding Parameters for Negotiation of Glynn R. Archer School Property; and

Whereas, the parties desire a written agreement between them providing the terms by which the School Board agrees to convey the subject property and the City agrees to accept title to the subject property.

NOW THEREFORE, in mutual consideration of the benefits that will accrue to the parties in faithfully abiding by the terms of this Agreement, School Board and City agree as follows:

1. In consideration of Ten Dollars (\$10.00) in hand, paid by the City, the receipt of which is hereby acknowledged, and the mutual conditions and covenants contained herein, the School Board agrees to convey to the City certain real property upon the terms and conditions hereinafter set forth, at no cost to City, for all of the real property and other interests, which real property shall include all tenements, hereditaments, together with all water and other rights, easements, appurtenances, and any and all of the School Board's rights in or arising by reason of ownership thereunto belonging, owned by the School Board, situate and lying in the County of Monroe, State of Florida, more particularly described as follows; to-wit:

_____, (hereinafter "Property").

(Legal description consistent with conveyed and retained property described in exhibit 1 shall to be supplied prior to closing)

The said conveyance of the Property shall take place on a date mutually agreeable to the parties However, in no event shall the conveyance take place later than June 28, 2013.

2. The School Board agrees, subject to compliance with all legal requirements for surplusing the subject property, which the School Board agrees to undertake with all due diligence, that it has the full right, power and authority to convey, and that it will convey to the City the fee simple title

together with legal and practical access thereto clear, free and unencumbered, except subject to the following easements or reservations:

Existing easements for canals, ditches, flumes, pipelines, railroads, public highways and roads, telephone, telegraph, power transmission lines and public utilities.

The City, at the City's expense, within the time allowed to examine evidence of title, may have the real property surveyed and certified by a registered Florida surveyor. If the survey discloses encroachments on the real property or that improvements located thereon encroach on setback lines, easements, lands of others, or violate any restrictions, contract covenants, or applicable governmental regulations, the same shall constitute a title defect.

The School Board shall convey a marketable title subject only to the aforementioned liens, encumbrances, exceptions or qualification set forth herein. Marketable title shall be determined according to applicable title standards adopted by authority of the Florida Bar and in accordance with law. The City shall have ninety (90) days from the effective date of this Agreement in which to examine title. If title is found defective, the City shall, within this specified time period, notify School Board in writing specifying defect(s). If the defect(s) render title unmarketable the School Board will have one hundred twenty (120) days from receipt of notice within which to remove the defect(s), failing which the City shall have the option of either accepting the title as it then is or rescinding the contract herein; thereupon the City and the School Board shall release one another of all further obligations under this Agreement. The School Board will, if title is found unmarketable, use diligent effort to correct defect(s) in title within the time provided therefore, including the bringing of necessary suits.

3. The School Board further agrees not to do, or suffer others to do, any act by which the value or title to said real property may be diminished or encumbered. It is further agreed that any loss or damage occurring prior to the vesting of satisfactory title in the City by reasons of the unauthorized alteration of the improvements located on the subject property, or because of fire or other natural causes, shall be borne by the School Board; and that, in the event any such loss or damage occurs, the City may refuse, without liability, to accept conveyance of the subject property, or it may elect to accept conveyance of the subject property.
4. The School Board further agrees that, during the period covered by this instrument, officers and accredited agents of the City shall have at all proper times the unrestricted right and privilege to enter upon the Property for all proper and lawful purposes, including examination of the subject property and the improvements located thereon. All liability for said visits shall be borne by the City. All visits shall be appropriately scheduled with School Board agents so as to cause as little interference with school operations as possible. Consent by the School Board not to be unreasonably withheld
5. The School Board will execute and deliver upon closing ~~demand of the proper officials and agents of the City~~ a good and sufficient deed of warranty conveying to the City a safe title to the Property of such character as to be satisfactory to the legal counsel of the City and said deed shall provide that the use, occupation and operation of the rights-of-way, easements and reservations retained therein, shall be subordinate to and subject to such rules and regulations as may be prescribed by the City governing the use, occupation, protection and administration of the Property. Further, the said warranty deed shall contain a restrictive covenant and reverter clause restricting the use of the Property by the City of Key West for the public purposes of a City Hall and/or Community Center.

6. The City shall pay the following expenses associated with the conveyance of the Property: deed recording fees, settlement fees, abstract fees, title examination fees, the City's attorney's fees, and title insurance and commitment, ~~as well as the prorata share of prepaid real property taxes allocable to the period subsequent to the vesting of title in the City, or the effective date of possession of the Property by the same, whichever is earlier.~~ The School Board shall pay the expenses of documentary stamps to be affixed to the deed, if applicable. Full possession of the Property shall pass to the City as of the date the deed is tendered to the City subject only to the reservations stated in Section 2 above.
7. It is mutually agreed that an abstract, title insurance policy or other evidence of title to the Property herein contracted to be conveyed, satisfactory to the legal counsel of the City will be obtained by the City at its expense. The School Board expressly agrees herein to furnish to the City any documents in School Board possession establishing evidence of title including, but not limited to, abstracts, title commitments, title policies and opinions of title.
8. It is mutually understood and agreed that the City may not assign this contract.
9. ~~It shall be the obligation of the School Board to pay all taxes and assessments outstanding as liens at the date title vests of record in the City, whether or not such taxes and assessments are then due and payable. However, this shall specifically exclude any claims by City against School Board for stormwater utility fees, to which the School Board has objected.~~
10. City will, at City's expense and within 180 days from Effective Date ("Due Diligence Period"), determine whether the Property is suitable, in City's sole and absolute discretion, for City's intended use and development of the Property. During the Due Diligence Period, City may conduct any tests, analyses, surveys and investigations ("Inspections") which City deems necessary to determine to City's satisfaction the Property's engineering, architectural, environmental properties; zoning and zoning restrictions; flood zone designation and restrictions; subdivision regulations; soil and grade; availability of access to public roads, water, and other utilities; consistency with local, state and regional growth management and comprehensive land use plans; availability of permits, government approvals and licenses; compliance with Americans with Disabilities Act; absence of asbestos, soil and ground water contamination; and other inspections that City deems appropriate to determine the suitability of the Property for City's intended use and development. The School Board shall provide to the City all documents in its possession related to the use and condition of the Property, including but not limited to environmental reports and reconstruction or rehabilitation estimates in whatever form they exist. City shall deliver written notice to School Board prior to the expiration of the Due Diligence Period of City's determination of whether or not the Property is acceptable. City's failure to comply with this notice requirement shall constitute acceptance of the Property in its present "as is" condition. School Board grants to City, its agents, contractors and assigns, the right to enter the Property at any time ~~(as set forth in paragraph 4 above)~~ during the Due Diligence Period for the purpose of conducting Inspections; provided, however, that City, its agents, contractors and assigns enter the Property and conduct Inspections at their own risk. To the extent permitted by law and subject to the provisions and monetary limitations of Section 768.28, Florida Statutes, the CITY, to the extent of the School Board's potential liability pursuant to section 768.28, Florida Statutes, does hereby agree to defend, indemnify and hold the School Board, its officers, and employees, harmless from and against any and all liability, damages, costs or expenses (including reasonable attorneys' fees, costs, and expenses at both the trial and appellate levels) arising from the acts or omissions of the CITY or any third party vendor contracted by the CITY arising from the conduct of any and all inspections or any work authorized by City. City will not engage in any activity that could result in a mechanic's lien being filed against the Property without School Board's prior written consent. In the event this transaction does not close, (1) City shall repair all damages to

the Property resulting from the Inspections and return the Property to the condition it was in prior to conduct of the Inspections, and (2) City shall, at City's expense, release to the School Board all reports and other work generated as a result of the Inspections.

Walk-through Inspection: City may, on the day prior to closing or any other time mutually agreeable to the parties, conduct a final "walk-through" inspection of the Property to determine compliance with this paragraph and to ensure that all Property is on the premises.

11. The property shall be delivered at closing free of any tenant or occupancy whatsoever.
12. This Agreement shall become effective upon execution by both parties and may be executed in counterparts, each of which shall be deemed an original and all of which together shall be considered the same agreement.
13. The School Board shall retain title to the real property upon which the buildings commonly referred to as the Gym and Art buildings are currently situated, described as Buildings "E" and "D" on Exhibit "1", which is attached hereto and incorporated by reference. These two parcels of real property are more particularly described as follows:

(Legal description for the property retained consistent with exhibit 1 shall to be supplied prior to closing), (hereinafter "Retained Property").

It is the intent of the School Board to utilize the Retained Property as administrative space. The School Board recognizes its obligation to keep the Retained Property in a state of good repair and shall devote the necessary capital resources to maintain the property. In the event the School Board desires to convey its interest in the Retained Property, the City shall have the right of first refusal to acquire such Retained Property. Should the Retained Property be conveyed following the City's declination to acquire the Retained Property, the deed of conveyance shall contain a restrictive covenant and reverter clause restricting the use of the Retained Property to public purposes.

14. The City shall occupy the buildings described as Buildings "A" and "B" on Exhibit "1" and demolish the building described as Building "C" on Exhibit "1". The City intends to construct a ground-level parking lot for the public in the general area currently occupied by Building "C", (hereinafter "Parking Lot").
15. The City shall renovate the existing auditorium located within Buildings "A" and "B" for use as a public meeting space. However, the historic mural located in the auditorium shall remain. Further, City shall permit School Board to utilize the renovated auditorium without charge for the purpose of conducting public meetings upon proper notice to City. It is anticipated that School Board will conduct board meetings twice monthly as well as organizational meetings and workshops. Regular meetings of the City Commission and Monroe County School Board will take preference over any advisory board meetings.
16. The City shall provide one office for the School Board Superintendent and one office to be utilized jointly by all School Board members and an administrative assistant within Building "A". These two private offices shall be located near the entrance to Building "A" such to be readily identifiable to the public. Each office shall be separated from administrative assistant to assure privacy. The School Board shall reimburse City for costs, (exclusive of the costs of construction)

including utilities and maintenance, of the said two offices on a prorated basis based on the square footage of the two offices relative to the total square footage of Building "A". The costs shall include, but not be limited to, electric, water, sewer, insurance, and custodial service.

17. School Board intends to renovate or reconstruct the buildings currently situated on the Retained Property for the purpose of providing office space for its administrative personnel. Upon School Board's completion of the said renovation or reconstruction, School Board shall be permitted joint use of the Parking Lot to enable School Board staff and members of the public to park in the vicinity of the Retained Property. Based upon the current square footage of the Retained Property, it is anticipated that School Board will require approximately 32 parking spaces under the City's Code of Ordinances. Further, City shall grant School Board an easement across City's property in order to provide the School Board ingress and egress to the Retained Property during the renovation or reconstruction and thereafter.
18. In the event the City chooses to rename buildings "A" and "B", the City shall retain the name "Glynn Archer" in some form, such as "Josephine Parker City Hall at Historic Glynn Archer School." Alternatively, the City shall name the buildings which it owns and the School Board name the building to which it retains ownership.
19. Simultaneously with School Board's conveyance of the Property to the City, the City shall at no cost to School Board permit the School Board to utilize property adjacent to the Gerald Adams School and the City's proposed transit facility on Stock Island for the purpose of parking approximately 14 to 20 of School Board's buses. The said area to be provided to School Board shall be a minimum of 6,720 square feet. Such area shall be within the one acre immediately adjacent to the Gerald Adams site depicted in Exhibit "2" attached hereto. Such use shall be pursuant to a long-term lease agreement in substantial conformity that attached hereto as exhibit "3". The City and School Board shall consider formal adoption of the lease agreement at a subsequent meeting prior to the Closing.
20. This Agreement is contingent upon School Board's receipt of approval to convey the Property pursuant to the Florida Inventory of School Houses and other related processes, which shall be immediately undertaken with all due diligence.
21. Except as specifically provided for in this Agreement, each provision of this Agreement shall survive the conveyance of the Property from School Board to City.
22. In the event that any cause of action or administrative proceeding is instituted for the enforcement or interpretation of this Agreement, the School Board and City agree that venue will lie in the appropriate court or before the appropriate administrative body in Monroe City, Florida. The School Board and City further agree that, in the event of conflicting interpretations of the terms or a term of this Agreement between the School Board and City, the issue shall be submitted to mediation prior to the institution of any other administrative or legal proceeding. Additionally, the School Board and City agree that in the event any cause of action or administrative proceeding is initiated or defended by any party relative to the enforcement or interpretation of this Agreement, the prevailing party shall be entitled to reasonable attorneys' fees, court costs, investigative, and out-of-pocket expenses, as an award against the non-prevailing party. Mediation proceedings initiated and conducted pursuant to this Agreement shall be in accordance with the Florida Rules of Civil Procedure and usual and customary procedures required by the Circuit Court of Monroe City.
23. Notice shall be provided as follows:

Monroe County School Board
Superintendent of Schools
241 Trumbo Road
Key West, Florida 33040
(305) 293-1400

City of Key West
City Manager
P.O. Box 1409
Key West, FL 33041
(305) 809-3881

Any notice or other written communication between the agencies shall be considered delivered when posted by Certified Mail, Return Receipt Requested or delivered in person.

24. In the event one or more provisions of this Agreement are declared invalid by a court of competent jurisdiction, the balance of this Agreement shall remain in full force and effect.
25. This Agreement is not intended to, nor shall it be construed as, relieving any participating agency from any obligation or responsibility imposed upon the agency by law except to the extent of actual and timely performance thereof by any other participating agency, in which case the performance may be offered in satisfaction of the obligation or responsibility. Further, this Agreement is not intended to, nor shall it be construed as, authorizing the delegation of the constitutional or statutory duties of the participating agencies, except to the extent permitted by the Florida constitution, state statutes, case law, and, specifically, the provisions of Chapter 163, Florida Statutes.
26. No person or entity shall be entitled to rely upon the terms, or any of them, of this Agreement to enforce or attempt to enforce any third-party claim or entitlement to or benefit of any service or program contemplated hereunder, and the School Board and City agree that neither the School Board nor the City or any agent, officer, or employee of either shall have the authority to inform, counsel, or otherwise indicate that any particular individual or group of individuals, entity or entities, have entitlements or benefits under this Agreement separate and apart, inferior to, or superior to the community in general or for the purposes contemplated in this Agreement.

Signatures on final page

IN WITNESS WHEREOF, the School Board and the City have entered into this Agreement by their authorized individuals as indicated below.

BOARD OF PUBLIC INSTRUCTION OF
MONROE COUNTY, FLORIDA, n/k/a The School Board
of Monroe County Florida

Duly adopted in a public meeting upon the recommendation of the Superintendent.

BY: _____
John Dick, Chairman

ATTEST:

Jesus Jara,
Superintendent

THE CITY OF KEY WEST, FLORIDA

Craig Cates, Mayor

ATTEST:

Cheri Smith
City Clerk