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DR. JOSEPH P. BURKE
Superintendent of Schools



**“Student Success,
Whatever It Takes”**

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Vice Chair
- District # 5*
DR. DEBRA WALKER

October 4, 2010

Mr. Shawn D. Smith, Esq
City of Key West
525 Angela Street
Key West, Fl. 33040

RE: Glynn Archer MOU

Dear Shawn,

The attached MOU was approved by the Monroe County School Board on a 5-0 vote at the September 29, 2010 School Board meeting. The Board has authorized me and our attorneys to engage in serious negotiations with the City of Key West to frame an agreement that would receive final approval from the School Board.

Sincerely,

Dr. Joseph P. Burke
Superintendent of Schools

MEMORANDUM OF UNDERSTANDING

Parameters For Negotiation Of Glynn Archer School Property Acquisition/Disposition

THIS AGREEMENT is made by and between the **SCHOOL BOARD OF MONROE COUNTY, FLORIDA**, whose address is 241 Trumbo Road, Key West, Florida 33040 ("School Board"), and the **CITY OF KEY WEST**, a Florida municipal corporation, whose address is 525 Angela Street, Key West, Florida 33040 (the "City").

Whereas, the School Board has moved forward with a plan for the construction of a new elementary school for the students currently housed at Glynn R. Archer School; and

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

Whereas, the School Board authorized the Superintendent of Schools to negotiate with the City of Key West for the Glynn R. Archer School property at its meeting of March 23, 2010; and

Whereas, the City may only acquire real property upon a vote of its electors pursuant to a charter amendment approved in 2007; and

Whereas, the Key West City Commission placed a referendum on the November 2, 2010 ballot to determine whether the electors will authorize the City to purchase such property if an acceptable agreement can be reached; and

Whereas, the City Commission has directed the City Manager to determine the feasibility of utilizing the Glynn Archer site as a City Hall; and

Whereas, in addition to the passage of the referendum question, a number of items must be negotiated prior to bringing a formal contract before the respective legislative bodies; and

Whereas, to ensure that contract negotiations proceed in the most expeditious and cost-efficient manner, the parties desire to enter into a Memorandum of Understanding for the purpose of defining the parameters within which their staffs are authorized to negotiate; and

THE SCHOOL BOARD AND CITY THEREFORE AGREE AS FOLLOWS:

1. **Recitals.** The above recitals are true and correct.
2. **Potential Contract Terms.** Any contract for the acquisition and disposition of the Glynn R. Archer School property shall include the following provisions:
 - A. The School Board agrees to convey clear title to the Glynn Archer property (1300 White Street; RE 00040100-000000) to the City of Key West.
 - B. In exchange for the Glynn Archer property, the City shall convey clear title to an approximately 1.14 vacant acre of real property located on Trumbo Road (RE 00001720-000200) to the School Board in accordance with City Charter section 7.03.
 - C. The City and School Board will jointly utilize public meeting space at the Glynn Archer site. The scheduling authority for the space will be the City of Key West.
 - D. The City agrees to lease administrative space to the School Board at the Glynn Archer site. It is contemplated that such area would not be more than the footprint of the buildable space of the current “D” and “E” wings and shall not limit the City’s ability to utilize the property for City Hall.
 - E. Reconstruction or construction of such space shall be at the sole cost of the School Board, including any increased demand on parking resources.
 - F. The School Board shall lease such space from the City for a nominal rate dependant upon the School Board’s improvements to the property.
 - G. The School Board intends to make the Glynn Archer property available to the City between January 2013 and June 2013. In no event will the property be turned over later than June 28, 2013.
3. **Termination/Duration of Agreement.** In the event that voters do not approve

authorization for the City to acquire the Glynn R. Archer property, this agreement shall automatically expire. Either party may terminate this agreement at any time, with or without cause. Termination shall take effect fifteen (15) working days after receipt of written notification as evidenced by a certified mail receipt.

4. **Venue, Interpretation, Costs, and Fees.** 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.

5. **Notices.** 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
525 Angela Street
Key West, FL 33040
(305) 809-3700

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.

6. **Severability.** 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.

7. **Legal Obligations and Responsibilities; Non-Delegation of Constitutional or Statutory Duties.** 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.

8. **Effective Date.** This Memorandum of Understanding shall become effective upon execution by both parties.

9. **Non-Reliance by Non-Parties.** 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.

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

City of Key West

By: _____
James K. Scholl, City Manager

Date: _____

Monroe County School District

By: 
Dr. Joseph Burke, Superintendent

Date: 10/1/10