

**MEMORANDUM OF
UNDERSTANDING BETWEEN
THE CITY OF KEY WEST AND
FLORIDA KEYS AREA HEALTH
EDUCATION CENTER, INC.,
DATED OCTOBER 6, 2021**

I. PURPOSE

This Memorandum of Understanding (hereafter MOU) is made and entered into by and between The City of Key West (hereafter CITY) and the Florida Keys Area Health Education Center, Inc. (hereafter AHEC). By this MOU, the City and AHEC agree to terms and conditions related to disbursement and utilization of UP TO \$50,000 of City of Key West funds for providing free rapid testing and follow up PCR testing to community members via static and mobile testing sites, per the requirements below and the Keys AHEC Health Centers proposal, dated September 20, 2021, submitted to the City of Key West by Michael Cunningham, CEO.

II. AUTHORITY

CITY may, by agreement of operation of law, charge persons or groups with duties incident to the protection of life and property within the County during an emergency. This Agreement is governed by the laws of the State of Florida and the United States. Venue for any dispute arising under this Agreement shall be in Monroe County, Florida.

III. RECITALS

WHEREAS, CITY has statutory responsibility to prevent, minimize, and repair injury and damage resulting from any type of disaster, and;

WHEREAS, the Florida Keys Area Health Education Center, Inc., effectively promote health and wellness through education, health assessments, and professional development using partnerships and other contract-funded services, resulting in a healthier, better educated community. Residents and workers requiring supportive services in the form of testing are reluctant to get tested for fear of losing income, and;

WHEREAS, CITY understands it is in the best interest of the residents and workers of Key West to enter into an agreement with AHEC for the deployment of static and mobile testing sites that will be available to qualified residents of Key West and for employees who work in the City of Key West who can provide proof of residence and/or employment to receive the test at no cost.

IV. DUTIES AND RESPONSIBILITIES

NOW, THEREFORE, the parties agree as follows:

A. Parties: The Parties to the MOU are:

1. Florida Keys Area Health Education Center, Inc.
2. The City of Key West

B. Term: The agreement became effective on October 6, 2021 and shall remain in effect until January 22, 2022.

C. Terms and Conditions:

1. AHEC will:

- A. Commit to using the funds from City for the program and related goals solely to provide free rapid testing and follow up PCR testing to mitigate the effects of COVID-19 for qualified residents of Key West and for employees who work in Key West and no other related activity or expense. Funds should be exhausted by January 22, 2022. In the event of unforeseen circumstances, any unused funds must be acknowledged to City for reimbursement, extension of time or approval of alternate use.
- B. Provide City with a report on funding expenditures by January 31, 2022. The report will include:
 1. Accounting of how all dollars are spent
 2. Accounting of number of unduplicated individuals/families and workers served, and services provided
 3. Demographic information on individuals/families and workers served, including gender, race/ethnicity, age, documented COVID hardship, employment, and geographic area
 4. Description of how funds aided in relief efforts for affected residents and workers, including specific stories and photos (if available)
 5. Acknowledgement of how funding was recognized via a press release, social media, or other outreach effort.
- C. Include either the City of Key West logo and/or mention of our funding in any media stories, advertisements/flyers or press releases related to the program, and any activities that are being funded by City.

2. CITY will:

- A. Review all request for reimbursement and supporting documentation submitted from AHEC for completeness and accuracy before reimbursing AHEC

- B. City will reimburse AHEC in an expedited manner but in no case more than 7 days after City reviewed, and accepted request is received.**
- C. Share information with AHEC**
- D. Include AHEC and partner agencies in all public information pieces, media stories, advertisements/flyers, and press releases where applicable**

V. INDEMNIFICATION AND LIABILITIES

- A. AHEC shall be solely responsible to parties with whom it shall deal in carrying out the terms of this agreement and shall save the CITY harmless against all claims of whatever nature by third parties arising out of the performance of work under this agreement. For purposes of this agreement, AHEC agrees that it is not an employee or agent of the CITY, but it is an independent 501 (c) (3) non-profit organization and as such must abide by strict Federal regulations that govern the handling and accountability for all transferred funds.**
- B. CITY recognizes that AHEC, its staff and volunteers are not employees or agents of the CITY in any form and that they maintain their own system of management and personnel policies.**
- C. Nothing herein is intended to serve as a waiver of sovereign immunity by any party or recipient to whom sovereign immunity applies. Nothing herein shall be construed as consent by a CITY agency or subdivision of CITY to be sued by third parties in any matter arising out of any contract.**
- D. AHEC agrees to indemnify, defend, and hold free and harmless, the CITY and each of its members, agents, servants, employees, officers, and directors, from and against any and all actions, claims, liabilities, assertions, of liability, losses, costs, and expenses including, but not limited to, attorney fees, reasonable investigative and discovery costs, and court costs, which in any manner may arise or be alleged to have arisen, or resulted, or alleged to have resulted, from the presence and activities , or any nature of otherwise of indemnify, defend, and hold free and harmless, the CITY and each of its members, agents, servants, employees, officers, and directors, from and against any and all actions, claims, liabilities, assertions, of liability, losses, costs, and expenses including, but not limited to, attorney fees, reasonable investigative and discovery costs, and court costs, which in any manner may arise or be alleged to have arisen, or resulted, or alleged to have resulted, from the presence and activities, or any nature of otherwise of AHEC, its agents,**

servants, or employees relating to this MOU, including but not limited to, claim or claims for bodily injury or death of persons, and for loss of or damage to property, including claims or loss by CITY or its agents, servants, and employees.

- E. These indemnifications shall survive the term of this agreement. If any action or proceeding is brought against the City of Key West by reason of such claim or demand, AHEC shall, upon written notice from the City of Key West, resist and defend such action or proceeding by counsel satisfactory to the City of Key West. The indemnification provided above shall obligate AHEC to defend at its own expense to and through appellate, supplemental or bankruptcy proceeding, or to provide for such defense, at the City of Key West's option, any and all claims of liability and all suits and actions of every name and description covered above which may be brought against the City of Key West whether performed by AHEC, or persons employed or utilized by AHEC
- F. The indemnification obligations under the Contract shall not be restricted in any way by any limitation on the amount or type of damages, compensation, or benefits payable by or for AHEC under workers' compensation acts, disability benefits acts, or other employee benefits acts, and shall extend to and include any actions brought by or in the name of any employee of the AHEC or of any third party to whom CITY may subcontract a part or all the Work. This indemnification shall continue beyond the date of completion of this contract.

VI. FEDERAL REQUIREMENTS

Federal regulations apply to all of the CITY of Key West contracts using Federal funds as a source for the solicitation of goods and services. In addition to the terms of Appendix II to 2 C.F.R. Part 200, which are attached as Exhibit A and incorporated herein, the following Federal requirements also apply to this Emergency Agreement:

- A. **ACCESS BY THE GRANTEE, SUBGRANTEE, FEDERAL GRANTOR AGENCY AND COMPTROLLER GENERAL:** AHEC shall allow access by the grantee, sub-grantee, Federal grantor agency and Comptroller General of the United States, or any of their duly authorized representatives to any books, documents, papers, and records of AHEC which are directly pertinent to that specific contract for the purpose of making audit, examination, excerpts and transcriptions.
- B. **COPYRIGHTS:** The Grantee is free to copyright original work developed in the course of or under the agreement. FEMA reserves a royalty-free, nonexclusive and irrevocable right to reproduce, publish, or otherwise use, and to authorize others to use the work for Government purposes. Publication resulting from work performed under this agreement shall include an acknowledgement of FEMA financial support, by grant number, and a statement that the publication does not constitute an endorsement by FEMA or reflect FEMA views.
- C. **DISADVANTAGED BUSINESS ENTERPRISES (DBE) Contractors:** AHEC agrees to ensure that Disadvantage Business Enterprises as defined in 49 C.F.R. Part 23, as amended, have the maximum opportunity to participate in the performance of contracts and this agreement. In this

regard, AHEC shall take all necessary and reasonable steps in accordance with 49 C.F.R. Part 23, as amended, to ensure that the Disadvantaged Business Enterprises have the maximum opportunity to compete for and perform contracts. AHEC shall not discriminate on the basis of race, color, national origin or sex in the award and performance of federal assisted contracts.

- D. **ENERGY POLICY AND CONSERVATION ACT:** AHEC shall comply with mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (Pub. L. 94-163).
- E. **EQUAL EMPLOYMENT OPPORTUNITY:** During the performance of this contract, AHEC agrees as follows:
1. AHEC will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. AHEC will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, or national origin. Such action shall include, but not be limited to the following: Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. AHEC agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.
 2. AHEC will, in all solicitations or advertisements for employees placed by or on behalf of AHEC, state that all qualified applicants will receive considerations for employment without regard to race, color, religion, sex, or national origin.
 3. AHEC will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representatives of AHEC's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
 4. AHEC will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.
 5. The AHEC will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.
 6. In the event of AHEC's noncompliance with the nondiscrimination clauses of this contract or with any of the said rules, regulations, or orders, this contract may be canceled, terminated, or suspended in whole or in part and the AHEC may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions as may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

7. AHEC will include the portion of the sentence immediately preceding paragraph (1) and the provisions of paragraphs (1) through (7) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each partner of AHEC or vendor. AHEC will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance: Provided however, in the event AHEC becomes involved in, or is threatened with, litigation with a partner of AHEC or vendor as a result of such direction by the administering agency AHEC may request the United States to enter into such litigation to protect the interests of the United States.
8. AHEC shall:
 - a. Place qualified small and minority businesses and women's business enterprises on solicitation lists.
 - b. Assure that small and minority businesses and women's business enterprises are solicited whenever they are potential sources.
 - c. Divide work, when economically feasible, into smaller tasks to permit maximum participation by small and minority businesses, and women's business enterprises.
 - d. Establish delivery schedules, where the requirement permits, which encourage participation by small and minority businesses, and women's business enterprises.
 - e. Provide documentation of compliance with 1-4 above.

F. CONTRACT WORK HOURS AND SAFETY STANDARDS ACT COMPLIANCE

1. Overtime requirements. No AHEC or partner of AHEC contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.
2. Violation: liability for unpaid wages; liquidated damages. In the event of any violation of the clause set forth in paragraph (1) of this section AHEC and any partner of AHEC responsible therefor shall be liable for the unpaid wages. In addition, AHEC and partner of AHEC shall be liable to the United States, for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (1) of this section, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (1) of this section.
3. Withholding for unpaid wages and liquidated damages. The Federal Emergency Management Agency (FEMA) shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold AHEC or cause to be withheld, from any moneys payable on account of work performed by AHEC or a partner of AHEC under any such contract or any other Federal contract with the same prime AHEC, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by AHEC, such sums as may be determined to be necessary to satisfy any liabilities of AHEC or partner of AHEC for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (2) of this section.

4. Subcontracts. AHEC or a partner of AHEC shall insert in any subcontracts the clauses set forth in paragraph (1) through (4) of this section and also a clause requiring the partner of AHEC to include these clauses in any lower tier subcontracts. AHEC shall be responsible for compliance by any partner of AHEC or lower tier partner with the clauses set forth in paragraphs (1) through (4) of this section.”

G. CLEAN AIR ACT

1. AHEC agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. § 7401 et seq.

AHEC agrees to report each violation to the City of Key West and understands and agrees that the City of Key West will, in turn, report each violation as required to assure notification to the Federal Emergency Management Agency, and the appropriate Environmental Protection Agency Regional Office.

AHEC agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance provided by FEMA.

H. FEDERAL WATER POLLUTION CONTROL ACT

1. AHEC agrees to comply with all applicable standards, orders or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et seq.

AHEC agrees to report each violation to the City of Key West and understands and agrees that the City of Key West will, in turn, report each violation as required to assure notification to the Federal Emergency Management Agency, and the appropriate Environmental Protection Agency Regional Office.

AHEC agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance provided by FEMA.”

I. DEBARMENT AND SUSPENSION:

1. This MOU is a covered transaction for purposes of 2 C.F.R. pt.180 and 2 C.F.R. pt. 3000. As such the AHEC is required to verify that none of the AHEC, its principals (defined at 2 C.F.R. § 180.995), or its affiliates (defined at 2 C.F.R. § 180.905) are excluded (defined at 2 C.F.R. § 180.940) or disqualified (defined at 2 C.F.R. § 180.935).
2. AHEC must comply with 2 C.F.R. pt. 180, subpart C and 2C.F.R. pt. 3000, subpart C and must include a requirement to comply with these regulations in any lower tier covered transaction it enters into.
3. This certification is a material representation of fact relied upon by (insert name of sub-recipient). If it is later determined that the AHEC did not comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C, in addition to remedies available to (name of state agency serving as recipient and name of sub-recipient), the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment.

4. The bidder or proposer agrees to comply with the requirements of 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C while this offer is valid and throughout the period of any contract that may arise from this offer. The bidder or proposer further agrees to include a provision requiring such compliance in its lower tier covered transactions.

J. PROCUREMENT OF RECOVERED MATERIALS

1. In the performance of this contract, AHEC shall make maximum use of products containing recovered materials that are EPA- designated items unless the product cannot be acquired-

- a. Competitively within a timeframe providing for compliance with the contract performance schedule;
- b. Meeting contract performance requirements; or
- c. At a reasonable price.

2. Information about this requirement, along with the list of EPA- designate items, is available at EPA's Comprehensive Procurement Guidelines web site, <https://www.epa.gov/smm/comprehensive-procurement-guideline-cpg-program>."

K. RETENTION OF ALL RECORDS: AHEC is required to retain all records for seven (7) years after grantees or sub-grantees make final payments and all other pending matters are closed.

L. ADDITIONAL REQUIREMENTS

1. **REMEDIES** – In the event of a breach by AHEC of the terms and conditions of this agreement CITY shall be entitled to recover any and all monetary damages arising therefrom including the recovery of reasonable attorney fees at all trial and appellate levels.

2. **ACCESS TO RECORDS**

- a. AHEC agrees to provide City, the FEMA Administrator, the Comptroller General of the United States, or any of their authorized representatives access to any books, documents, papers, and records of AHEC which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts, and transcriptions.
- b. AHEC agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed and permissible by law.
- c. AHEC agrees to provide the FEMA Administrator or his authorized representatives access to construction or other work sites pertaining to the work being completed under the contract.
- d. In addition to the above, pursuant to Florida Statute §119.0701, the parties shall comply with all public records laws of the State of Florida.

3. **DHS SEAL, LOGO AND FLAGS:** AHEC shall not use the DHS seal(s), logos, crests, or reproductions of flags or likenesses of DHS agency officials without specific FEMA pre-approval.

4. **COMPLIANCE WITH FEDERAL LAW, REGULATIONS AND EXECUTIVE ORDERS:** This is an acknowledgement that FEMA financial assistance will be used to fund the contract only. AHEC will comply will all applicable federal law, regulations, executive orders, FEMA

policies, procedures, and directives.

5. **NO OBLIGATION:** The Federal Government is not a party to this contract and is not subject to any obligations or liabilities to the non-Federal entity, AHEC, or any other party pertaining to any matter resulting from the contract."
6. **FRAUD AND FALSE OR FRAUDULENT OR RELATED ACTS:** AHEC acknowledges that 31 U.S.C. Chap. 38 (Administrative Remedies for False Claims and Statements) applies to AHEC's actions pertaining to this contract.

VII. ASSIGNMENT, CONSTRUCTION, PUBLIC RECORDS

- A. AHEC may not assign this Agreement or assign or subcontract any of its obligations under this Agreement other than as specified without the approval of the CITY. All the obligations of this Agreement will extend to and bind the legal representatives, successors and assigns of the Parties.
- B. This Agreement has been carefully reviewed by each of the parties. Therefore, this Agreement is not to be construed against any party on the basis of authorship.
- C. Should litigation be necessary to enforce any provision of this agreement then the prevailing party shall be entitled to recover a reasonable attorney's fee from the other side subject to the Sovereign Immunity limitations of Section 768.28 Florida Statutes. Nothing contained herein shall be construed to alter or waive the City's sovereign immunity under 768.28, Florida Statutes. AHEC acknowledges that this provision may be unenforceable under Florida law, and that the City of Key West does not waive any legal defense based on the unenforceability of such provision.

VIII. INTEGRATION

This agreement contains the entire understanding of the parties with respect to the subject matter of the agreement, and it supersedes all prior understandings, and agreements, whether written or oral, and all prior dealings of the parties with respect to the subject matter herein.

IX. MODIFICATIONS

This MOU may be modified or amended only by an instrument in writing signed by the parties hereto.

X. NOTICES

Notices in this Agreement, unless otherwise specified, must be sent by certified mail to the following:

AHEC:
5800 Overseas Highway, Suite 38
Marathon, FL 33050

CITY OF KEY WEST
Attn: City Manager
1300 White Street
Key West, Florida 33040

XI. EFFECTIVE DATE: October 6, 2021

IN WITNESS WHEREOF, the undersigned have executed this Agreement this 10 day of Jan, 2021.

(SEAL)
ATTEST

By: _____



Deputy Clerk

CITY OF KEY WEST

By: _____

Patti McLauchlin, City Manager

THE FLORIDA KEYS AREA HEALTH
EDUCATION CENTER, INC.

By: _____

Michael L. Cunningham
Chief Executive Officer

STATE OF: Florida

COUNTY OF: Monroe

Subscribed and sworn to (or affirmed) before me, by means of physical presence or online notarization, on 11/7/2022 (date) by Michael Cunningham (name of affiant). He/She is personally known to me or has produced _____ (type of identification) as identification.

NOTARY PUBLIC
Krisna Helms
Comm. #HH087205
Expires: Feb. 2, 2025
Bonded Thru Aaron Notary

