

MEMORANDUM OF UNDERSTANDING  
BETWEEN THE CITY OF NORTH MIAMI AND VAN ALEN INSTITUTE

THIS MEMORANDUM OF UNDERSTANDING (the "MOU") is made and entered into as of this 17<sup>th</sup> day of April, 2019, by and between the **CITY OF NORTH MIAMI**, a municipal corporation of the State of Florida (hereinafter referred to as "**City**"), and the **VAN ALEN INSTITUTE** (hereinafter referred to as "**Van Alen**"), a New York Section 501 (c) (3), Internal Revenue Code recognized non-profit organization (hereinafter referred to as "**Van Alen**"), whose principal address is 30 West 22<sup>nd</sup> Street, New York, NY 10010, and is authorized to do business in the State of Florida.

RECITALS:

- A. The City is the owner of certain National Flood Insurance Program (NFIP) Repetitive Loss Properties located at 495 NE 140th Street and 901 NE 144th Street, North Miami, FL 33161 (the "**Sites**").
- B. Van Alen is a non-profit organization that collaborates with communities, scholars, policymakers, and professionals on local and global initiatives to rigorously investigate the most pressing social, cultural, and ecological challenges of tomorrow.
- C. As a benefit to the public, and in furtherance of Van Alen's organizational purpose, Van Alen will assist the City, as described below, in designing ("**Phase I**" or the "**Design Phase**") and constructing ("**Phase II**") temporary and/or semi-permanent structures on the Sites that will take into consideration the increasing flood risks associated with sea level rise, stormwater management concerns, unique cultural heritage of the neighborhood, and the increase in developments surrounding the Sites (the "**Project**").
- D. Van Alen will provide to the City with in-kind consulting and advisory services in connection with the design phase of the Project. The design phase of the Project will include providing input, advice, coordination and assistance with community engagement in an effort to create a contextually-relevant, low-maintenance pilot implementation project for existing derelict NFIP Repetitive Loss Properties, such as the Sites. The Project will also involve development of a master plan to help inform the City's acquisition of additional properties in coming years.
- E. Van Alen's consulting services will also include, but are not limited to, development of a solicitation to select the design team or team(s) (the "**Selected Proposer**"); management of community engagement activities; interfacing with the Selected Proposer; and development and coordination of the peer review team for design development, and other tasks as specified in the attached Scope of Services (the "**Services**") (Exhibit A).
- F. Van Alen's in-kind consulting services in connection with the Project are valued at approximately one-hundred and twenty thousand dollars (\$120,000.00). Van Alen, additionally, will, following the selection of the Selected Proposer, provide a specified amount, which will be a minimum of sixty thousand (\$60,000.00) in monetary

funds to be utilized solely to compensate the Selected Proposer for its work (i) to develop designs for the Project at one or both of the Sites, (ii) to develop a master plan for the Project; and (iii) to implement the resulting pilot implementation designs for one or both of the Sites.

G. The City is responsible for the municipal planning, construction drawings, construction management, operation and maintenance of its property, including the Sites.

H. The City will also ensure that: (i) the Sites are available for the development and construction of the Project; (ii) certain public engagement activities will be scheduled to bring attention to the Project; and (iii) all necessary city, state and/or federal approvals will be obtained by the City prior to the implementation and construction of the Selected Proposer's design.

I. The City will also be responsible for, and have control over, the development (including the creation of any required drawings or plans), fabrication, installation and long-term maintenance and conservation of the Project. The maintenance term for the pilot implementation will be determined and agreed upon by the City and Van Alen once the Selected Proposer is identified.

J. The City has determined that the new design will primarily benefit the general public due to the requirement that NFIP Repetitive Loss Properties project is for the accessibility and enjoyment of the general public.

K. The City and Van Alen desire to memorialize the terms and conditions of the parties' respective commitments and performance obligations for the development of the Project.

**NOW, THEREFORE**, in consideration of the mutual covenants and promises herein, Van Alen and the City agree as follows:

(1) Incorporation by Reference. The recitals set forth in the preamble to this MOU are incorporated by reference as though set forth in full herein and made a part hereof.

(2) Scope of Obligation

- a. In furtherance of the above, Van Alen shall provide the City with the services set forth in Exhibit A, hereto, under "A."
- b. The City shall have those responsibilities and obligations set forth in Exhibit A hereto, under "B."

(3) Intellectual Property. The City agrees to permit the Selected Proposer to retain all legal rights to its design, work product and deliverables including, but not limited to, copyrights (the "**Intellectual Property**"). Van Alen shall be responsible for securing from the Selected Proposer a license agreement, which will grant Van Alen and/or the City customary reproduction and related rights, on the following basis: (i) the copyright in the Project will remain the property of the Selected Proposer, subject to an exclusive,

perpetual, license by the Selected Proposer to Van Alen; and (ii) the City permits the Selected Proposer to reproduce freely the Project for the Selected Proposer's and Van Alen's customary purposes, consistent with past practice, such as publicity, promotion, advertising, websites, social media, books, articles and other publications, relating to the Project, Project-related programming and activities, the Sites and/or Van Alen. The license agreement may, upon mutual agreement of the parties thereto, include certain merchandising rights (e.g., the right to produce and sell postcards, note cards, and similar items reproducing the Project). Any and all reproductions or descriptions of the work in marketing materials shall identify the Project as being developed and/or funded by Van Alen and located within the City. In consultation with the Selected Proposer, Van Alen will also have the right to remove the Project, temporarily or permanently, at any time and for any reason, in its discretion. However, if the components of the de-installed Project will be discarded or destroyed, the Selected Proposer will be provided with a reasonable opportunity to take possession of them, at its own expense.

(4) Attribution and other Partners

A. Van Alen and the City shall be credited prominently as co-producers of the Project, during preparation, construction and after completion, as well as in press releases, websites, social media, other digital communications, brochures, and all other materials concerning the Project (the "**Project Communications**"). To the extent possible, such crediting will always include the language below:

*Keeping Current: Repetitive Loss Properties* is a partnership between Van Alen Institute and the City of North Miami. *Keeping Current* is a project of Van Alen Institute. [It will also include both logos inserted in that order with equal size and prominence]

Van Alen and the City will jointly develop a communications strategy for the Project, will consult and cooperate with each other before any press releases are issued, and will allow each other the opportunity to review and approve all press releases in advance, provided the reviewing party gives approval or comments within three (3) business days of receipt of drafts. Van Alen and the City will use best efforts to incorporate the others' comments and to notify one another of media inquiries, offering a spokesperson from each organization for interviews, with the understanding that the media contact may or may not wish to communicate with more than one person.

B. Should additional organizations be proposed by either Van Alen or the City to participate in the Project, then the non-proposing party hereto shall have pre-approval before such organization is included, and shall have absolute discretion over how that organization's participation is described in respect to the Project.

(5) Miscellaneous.

- A. Term. Unless earlier cancelled by the City or Van Alen, the term of this MOU shall commence on the date it is fully executed and delivered by both Van Alen and the City and shall terminate upon the earlier of (i) completion of the Project, hereby defined as the date when the construction at the Sites has been completed or (ii) on the date which is three (3) years from date of execution of this MOU.
- B. Enforcement. The provisions of this MOU may be enforced by all appropriate actions in law and in equity by any party to this MOU. Notwithstanding the above, neither party shall seek consequential, special or punitive damages from the other party. In order to expedite the conclusion of the actions brought pursuant to this MOU, the parties, their successors and assigns will not demand jury trial nor file permissive counterclaims outside the bounds of this MOU in such actions.
- C. Counterparts. This MOU may be executed in any number of counterparts and by the separate parties hereto in separate counterparts, each of which when taken together shall be deemed to be one and the same instrument.
- D. City Officials. The "City" is a municipal corporation, and the City Manager as its Chief Administrative Officer, is empowered to make all decisions with regard to this MOU on behalf of the City, unless otherwise provided by this MOU, by law, or by resolution of the City Commission and notice of same is provided to Van Alen.
- E. Construction. The section headings contained in this MOU are for reference purposes only and shall not affect the meaning or interpretation hereof. All of the parties to this MOU have participated fully in the negotiation of this MOU, and accordingly, this MOU shall not be more strictly construed against any one of the parties hereto. In construing this MOU, the singular shall be held to include the plural, the plural shall be held to include the singular, and reference to any particular gender shall be held to include every other and all genders.
- F. Notices. Any and all notices required or desired to be given hereunder shall be in writing and shall be deemed to have been duly given when delivered by hand (including recognized overnight courier services, such as Federal Express) or three (3) business days after deposit in the United States mail, by registered or certified mail, return receipt requested, postage prepaid, and addressed to the recipient at the address for such party set forth in the introductory paragraph to this MOU (or to such other address as any party hereunder shall hereafter specify to the other in writing).

**TO VAN ALLEN:**  
Executive Director  
Van Alen Institute  
30 West 22nd Street  
New York, NY 10010

**TO THE CITY:**  
Larry Spring  
City Manager  
776 N.E. 125 Street  
N. Miami, FL 33161

**With a copy to:**  
Carol Rosenthal  
Fried, Frank, Harris, Shriver and Jacobson LLP  
1 New York Plaza, 22<sup>nd</sup> Floor  
New York, NY 10004

**With a copy to:**  
Jeff P. H. Cazeau  
City Attorney  
776 N.E. 125 Street  
North Miami, FL 33161

- G. Amendments. This MOU may not be amended or modified except by mutual approval of both Van Alen and the City. No modification or amendment shall be effective unless in writing and executed by the parties.
- H. Compliance With Federal, State And Local Laws: Van Alen understands that agreements with local governments are subject to certain laws and regulations, including laws pertaining to public records, conflict of interest, record keeping, etc. City and Van Alen agree to comply with and observe all such applicable federal, state and local laws, rules, regulations, codes and ordinances, as they may be amended from time to time.
- I. Termination. Van Alen shall have the right in its sole discretion, at any time prior to commencement of installation of the Project to terminate this MOU upon at least fourteen (14) days' notice to the City. The City shall have the right in its sole discretion to terminate this Agreement upon at least fourteen (14) days' notice to Van Alen if (i) prior to the date the Agreement is due to terminate, Van Alen is unable to provide documentation reasonably satisfactory to the City to evidence that Van Alen has the requisite funding to compensate the Selected Proposer; or (ii) installation of the Project has not commenced by December 2020. Notwithstanding any such termination by either party, the City shall return to Van Alen all of Van Alen's and the Selected Proposer's work products, and any funds Van Alen provided that are not yet disbursed or for which Van Alen is responsible under this MOU.
- J. No Joint Ventures or Third-Party Beneficiaries. Van Alen is an independent contractor and is not an agent, joint venture, partner or affiliate of the City, nor can the City be bound to honor any obligation or duty of Van Alen, except as expressly provided herein.

Neither the City nor Van Alen intends to directly or substantially benefit a third-party by this Agreement. Therefore, the parties agree there are

no third-party beneficiaries to this Agreement and that no third-party shall be entitled to assert a claim against either of them based upon this Agreement.

- K. Entire Agreement. This MOU constitutes the entire agreement between the parties with respect to the subject matter hereof and supersedes all prior agreements, understandings and arrangements, both oral and written, between the parties with respect thereto.
- L. No Discrimination. Van Alen represents and warrants that there shall be no unlawful discrimination as provided by federal, state or local law, in connection with its performance under this MOU.
- M. Authority of Van Alen Signatories. The undersigned officers executing this MOU on behalf of Van Alen has authority pursuant to corporate resolutions on file with the City, and all applicable laws of the State of Florida to act on behalf of and bind Van Alen to every condition, covenant and duty set forth herein.
- N. Timeline: Within a reasonable time after execution of this MOU, the parties shall create a written schedule, subject to modification by mutual agreement of the parties.
- O. Insurance, Indemnity and Hold Harmless. Van Alen shall, at all times during the term of this Agreement, maintain such insurance coverage(s) as may be reasonably required by the City and are commercially feasible. Van Alen shall add the City as an additional insured to its commercial general liability and auto liability policies. Van Alen shall be responsible for assuring that the insurance certificates required under this Agreement remain in full force and effect for the duration of this Agreement, including any extensions hereof. All such insurance, including renewals, shall be subject to the approval, which shall not be unreasonably withheld, of the City for adequacy of protection and evidence of such coverage(s) and shall be furnished to the City on Certificates of Insurance indicating such insurance to be in force and effect.

Van Alen agrees to indemnify, defend, save and hold harmless the City its officers, agents and employees, from and against any and all claims, liabilities, suits, losses, claims, fines, and/or causes of action that may be brought against the City, its officers, agents and employees, on account of any negligent act or omission of Van Alen, its agents, servants, or employees in the performance of the Services listed in Exhibit A, Section A to this Agreement and resulting in personal injury, loss of life or damage to property sustained by any person or entity, to the extent caused by Van Alen's negligence within the scope of this Agreement, including all costs, reasonable attorney's fees, expenses, including any appeal (expressly excluding consequential, special and punitive damages unless actually paid to third parties), and including

the investigations and defense of any action or proceeding and any order, judgment, or decree which may be entered in any such action or proceeding, except for damages specifically caused by or arising out of the negligence, strict liability, intentional torts or criminal acts of the City, its officer, agents, employees or Consultants, which claims are lodged by any person, firm, or corporation. Nothing herein shall make Van Alen responsible for any acts or omissions of the Selected Proposer or any contractor or other third party engaged in connection with the development of the Sites.

The City agrees to indemnify, defend, save and hold harmless Van Alen its officers, agents and employees, from and against any and all claims, liabilities, suits, losses, claims, fines, and/or causes of action that may be brought against Van Alen, its officers, agents and employees, on account of any negligent act or omission of the City, its agents, servants, or employees in the performance of the Services listed in Exhibit A, Section B to this Agreement and resulting in personal injury, loss of life or damage to property sustained by any person or entity, to the extent caused by the City's negligence within the scope of this Agreement, including all costs, reasonable attorney's fees, expenses, including any appeal (expressly excluding consequential, special and punitive damages unless actually paid to third parties), and including the investigations and defense of any action or proceeding and any order, judgment, or decree which may be entered in any such action or proceeding, except for damages specifically caused by or arising out of the negligence, strict liability, intentional torts or criminal acts of Van Alen, its officer, agents, employees or Consultants, which claims are lodged by any person, firm, or corporation. Nothing herein shall make the City responsible for any acts or omissions of the Selected Proposer or any contractor or other third party engaged in connection with the development of the Sites.

Nothing contained in this Agreement is any way intended to be a waiver of the limitation placed upon the City's liability as set forth in Chapter 768, Florida Statutes (2016). Additionally, the City does not waive sovereign immunity, and no claim or award against the City shall include attorney's fees, investigative costs or pre-judgment interest.

- P. Public Records. Van Alen agrees that all documents generated hereto shall be subject to the applicable provisions of the Public Records Law, under Chapter 119, Florida Statutes. Van Alen shall additionally comply with Section 119.0701, Florida Statutes, including without limitation, the following conditions: (1) keep and maintain public records that ordinarily and necessarily would be required by the City to perform this service; (2) provide the public with access to public records on the same terms and conditions as the City would at the cost provided by Chapter 119, Florida Statutes, or as otherwise provided by law; (3) ensure that public records that are exempt or confidential and exempt from disclosure are

not disclosed, except as authorized by law; (4) meet all requirements for retaining public records and transfer, at no cost to the City, all public records in its possession upon termination of this Agreement and destroy any duplicate public records that are exempt or confidential and exempt from disclosure requirements; and (5) all electronically stored public records must be provided to the City in a format compatible with the City's information technology systems.

The City agrees that, if public records access requests are received by the City pursuant to the Public Records Law (under Chapter 119, Florida Statutes) requesting any records or information relating to this Agreement, the City shall give Van Alen prior written notice.

- Q. Governing Law and Venue. This Agreement shall be construed and enforced according to the laws of the State of Florida. Venue in any proceedings between the Parties shall be in Miami-Dade County, Florida. In any actions, claims or proceedings between the parties, each party shall bear their own attorney's fees.
- R. Severability. Should any provision, paragraph, sentence, word or phrase contained in this Agreement be determined by a court of competent jurisdiction to be invalid, illegal or otherwise unenforceable under the laws of the State of Florida, such provision, paragraph, sentence, word or phrase shall be deemed modified to the extent necessary in order to conform with such laws, or if not modifiable, then same shall be deemed severable, and in either event, the remaining terms and provisions of this Agreement shall remain unmodified and in full force and effect or limitation of its use.

IN WITNESS WHEREOF, the parties hereto have caused this instrument to be executed by their respective officials thereunto duly authorized, this the day and year above written.

“City”

CITY OF NORTH MIAMI, a municipal corporation

ATTEST:

DocuSigned by:

Michael A. Etienne

Michael A. Etienne, City Clerk

DocuSigned by:

Larry M. Spring, Jr.

Larry M. Spring, Jr., City Manager

APPROVED AS TO LEGAL FORM AND SUFFICIENCY:

DocuSigned by:

Jeff P. H. Cazeau

Jeff P. H. Cazeau  
City Attorney

“Van Alen Institute”

ATTEST:

By: [Signature]

Print Name: Richard Reese

Title: Manager of Finance + Operations

(Corporate Seal)

By: [Signature]

Print Name: Elissa Black

Title: Interim Executive Director

(Authorized Corporate Officer)

**EXHIBIT "A"**  
**SCOPE OF SERVICES**

**A. The Van Alen Institute ("Van Alen") shall:**

Phase 1

1. Provide the City with in-kind consulting services as described herein valued at approximately \$120,000 for support to the design phase of the Project.
2. Provide the Selected Proposer a minimum of \$60,000 in monetary funds, subject to contract performance by the Selected Proposer for development of a master plan, pilot project designs, and construction documents, as well as implementation of such designs at one (1) or two (2) Sites.
3. Designate a Project Manager to attend weekly calls with the City of North Miami and manage all logistics regarding Van Alen's role in the Project.
4. Develop and host a webpage providing an overview of the Project, sharing information on the solicitation and a link to apply, acknowledging stakeholders and sharing engagement activities, and providing information on the partners.
5. Co-develop, release, and publicize the solicitation for the Project.
6. Develop a 1-page project brief to include distilled RFQ goals and partners, general Keeping Current information, and project imagery, for RFQ marketing purposes.
7. Publicize the RFQ to generate more competition, tapping into VAI's network of over 14,000 firms worldwide.
8. Develop and host the application portal for submission of solicitation proposals. Van Alen will have the right to post any and all proposals to our website from the time they are submitted.
9. Manage the proposal submissions process.
10. Establish a group of experts (the "**Jurors**") based both locally and nationally and which may be comprised of architects, landscape designers, resiliency and sea-level rise experts, scientists, and/or community experts and others to provide project expertise. The Jurors will both act as the proposal Selection Committee to award and select a proposer or proposers and will provide feedback to the City and the Selected Proposer during pilot implementation design development. The Peer Reviewers will be coordinated with the city and occur at two points during the design phase.
11. Recommend one (1) staff person to serve as a Juror.
12. At Van Alen's discretion, offer a travel stipend to recommended and selected Jurors.
13. Consult as set forth herein during design implementation through design

- development
14. Co-host, with the City, weekly calls with the Selected Proposer to develop a design that incorporates adaptive sea-level rise protection and stormwater management into the NFIP Repetitive Loss Properties project. Van Alen will play an active role in guiding the pilot implementation design and master plan development of the Selected Proposer.
  15. Develop and host a kick-off meeting for the Selected Proposer involving the city and external stakeholders.
  16. Enter into an agreement with the Selected Proposer by spring 2019 for development of master plan, pilot implementation design, and construction drawings. The agreement shall describe Van Alen's role and attribution, and Intellectual Property expectations and scope expectations of the Selected Proposer, as required by Van Alen. The agreement shall require the Selected Proposer to do the following, among other items:
    - a. Work with Van Alen for a period of 2-3 months on design development.
    - b. Prepare for an exhibition, such that the Selected Proposer will produce drawings and renderings that Van Alen can use in an exhibition.
    - c. Attend regular check-ins with Van Alen and the Project Manager identified by North Miami, either by phone or in-person, at a frequency agreed upon by all parties
    - d. Participate in community engagement activities for the Project, which will require in-person attendance as determined by Van Alen.
    - e. Participate in at least two (2) design reviews between the Selected Proposer and the Jurors, which will require in-person attendance as determined by Van Alen.
  17. Release the Project solicitation by summer 2019.
  18. Convene and manage a group of up to twelve (12) paid community stakeholders (the "Project Outreach Team") to offer guidance on development of the solicitation, provide feedback on community engagement strategy, assist with outreach for public workshops and events, and provide feedback on the design and masterplan.
  19. Lead, with guidance from the City, a community outreach process to help incorporate community feedback into the design and master plan phase. The community outreach process will be led by Van Alen.
  20. Develop and host one (1) to two (2) events and/or surveys to engage the public on the Project prior to release of the solicitation. Develop and host at least two (2) community engagement events in coordination with the Selected Proposer and the community during the pilot implementation design phase.
  21. Share a press release announcing the solicitation, winner and final outputs.

Phase II

1. Attend weekly or bi-weekly calls with the City for updates on construction status, timeline shifts, and any challenges to implementation.
2. Jointly with the City, plan and host a public opening event at one (1) or both Sites after construction is complete.
3. Jointly with the City, plan and host a public exhibition to showcase design solutions at one (1) or both Sites.

**B. The City of North Miami ("City") will, at its sole cost:**

Phase I

1. Designate a Project Manager who will serve as the point-of-contact for the City of North Miami and primary City representative on the Project.
2. Schedule and attend regular, bi-weekly Project management meetings, which may be held either by phone or in-person to: (1) review progress on important tasks and stakeholder outreach; (2) review the overall status of the Project; and (3) address concerns or questions about the overall process.
3. Select a Project with Van Alen that has an economic, equity, and ecological component and that needs to adapt to sea level rise.
4. Co-develop proposal evaluation criteria with Van Alen.
5. Recommend one (1) staff person to serve as a Juror.
6. Grant Van Alen and Selected Proposer unrestricted access to the Site(s) and any data that would inform the success and direction of the Project. Including but not limited to:
  - a. The number and locations of Sites in the city's portfolio
  - b. The number and locations of Sites the city expects to acquire in the future
  - c. Site-specific historical flood data
  - d. Flood and GIS maps
  - e. GIS mapping data
  - f. Relevant city master plans
7. Provide feedback on the Project master plan, as needed
8. Collaborate with Van Alen on hosting a kick-off event, including finding a venue and supporting tours and speakers to inform the development of the Selected Proposer's work.
9. Support public events associated with the Project. The City's role shall include tasks including but not limited to:
  - a. Assistance in identifying event locations

- Design Envelope ID: E6901 D37-772F-4B7D-6556-37DAB074D788
- b. Promoting events via the City's network
  - c. Recommending collaborators such as local cultural institutions
10. Assist Van Alen in the development of Project Outreach Team, identifying and providing access to selected individuals and attending Team events and meetings.
  11. Contribute to and jointly release any press related to the project with Van Alen, in accordance with the process and crediting outlined in Section (3).
  12. Provide Van Alen with City requirements such as contract procurement, permitting and other requirements relevant to the Project and the Scope of Services.

## Phase II

1. Lead the development and review of all construction drawings, ensuring coordination among the appropriate agencies
2. Oversee the implementation of the pilot initiative. Construction of the Project must be completed by November 2020.
3. Perform any necessary due diligence to ensure there is no potential conflict between the city, Van Alen, and/or the Selected Proposer which would prohibit or interfere with Project implementation.
4. Support with maintenance of the site according to the term specified in this Agreement's Recitals.
5. Jointly with the Van Alen, plan a public opening event at one (1) or both Sites after construction is complete.
6. Jointly with Van Alen, plan and support a public exhibition to showcase design solutions at one (1) or both Sites.
7. For all public events, assist Van Alen with city requirements such as permitting, expediting relevant reviews where possible.
8. Grant Van Alen access to the Site(s) during the public opening event and at other opportunities, such as Project documentation and a public exhibition in late 2019.