

COOPERATIVE ENDEAVOR AGREEMENT

BY AND BETWEEN

THE CITY OF RACINE

AND

HYFI LLC

THIS COOPERATIVE ENDEAVOR AGREEMENT (the “**Agreement**”) is entered into by and between the City of Racine, a municipal corporation (the “**City**”), and Hyfi LLC, represented by Brandon P. Wong, CEO (the “**Partner Agency**”). The City and the Partner Agency may sometimes each be referred to as a “**Party**,” and collectively, as the “**Parties**.” The Agreement is effective as of the date of execution by the City (the “**Effective Date**”).

RECITALS

WHEREAS, the City is a municipal corporation in the State of Wisconsin;

WHEREAS, the Partner Agency is a corporation which principal address is located at 455 E Eisenhower Pkwy, Suite 300, Ann Arbor, MI, 48108;

WHEREAS, the City and the Partner Agency desire to accomplish a valuable public purpose of providing data on the location, timing, and depth of flood events to city planners, emergency managers and the general public by designing, installing and maintaining a network of wireless sensors to continuously report water level data to the City and Study Partners (e.g. AECOM) to aid in flood warning and response and infrastructure planning;

WHEREAS, the **Partner Agency** will manufacture, install, and maintain a network of wireless sensors to continuously monitor water levels at locations selected in partnership with the City and provide that data to the City in real-time; and

WHEREAS, the City will identify monitoring locations, provide site access, coordinate permits and stakeholder relations, and integrate the collected data into existing city data platforms and flood warning systems.

NOW THEREFORE, the City and the **Partner Agency**, each having the authority to do so, agree as follows:

ARTICLE I - THE PARTNER AGENCY’S OBLIGATIONS

A. Services. Hyfi will install up to five (5) wireless water-level monitoring sensors within the City. These sensors will provide real-time flood and drainage data to support emergency response, infrastructure planning, and environmental monitoring. Sensors will transmit data to a web-based dashboard accessible to authorized City personnel and project partners.

As of the Effective Date, five (5) sensor installation locations have been identified. At the Mt. Pleasant Street Dry Detention Basin, sensors will be installed upstream of the outfall berm and

near the headwall on Mt. Pleasant Street. At the Young Industrial Basin, a sensor will be installed near the outfall to detect if the system fails to drain within 72 hours following a storm event, which would indicate potential clogging or failure of the outlet. A third sensor will be co-located with the USGS Flood Gauge on the Root River to monitor river stage in real time, eliminating the need for manual checks during storms. At Mallard Shores, a sensor near the basin outfall will continuously monitor the water stage.

B. *Schedule.* Hyfi will provide the above services to the City for a 1-year period beginning on the Effective Date.

C. *Invoices.* Hyfi will provide all equipment, installation, maintenance, and data services at no cost to the City. Project funding is provided through the Great Lakes Protection Fund under the initiative titled “*Empowering Water Operators with Digital Tools.*”

D. *Insurance.* Hyfi will maintain insurance per Article VI throughout the term of this agreement.

ARTICLE II - THE CITY’S OBLIGATIONS

A. *Administration.* The City will:

1. Administer this Agreement through the Public Works Office (the “**Department**”);
2. Provide the Partner Agency with any documents deemed necessary for the Partner Agency’s performance of any work required under this Agreement;
3. Provide access to Department personnel or designated subcontractors, including during regular bi-weekly check-ins, to discuss the required services during normal working hours, as requested by the Partner Agency; and
4. Provide site access to the Partner Agency for installation and maintenance; and
5. Coordinate with project stakeholders to obtain any required permits for flood warning sensor installation

ARTICLE III - FUNDING

The City has no funding obligation under this Agreement. Each Party is responsible for their own costs.

ARTICLE IV - DURATION AND TERMINATION

A. *Term.* The term of this agreement shall be one year from the Effective Date.

B. *Extension.* The City can opt to extend the term of this Agreement provided that the City approves it as a multi-term cooperative endeavor agreement and that additional funding, if required, is allocated by the City.

C. *Termination for Convenience.* Either Party may terminate this Agreement at any time during the term of the Agreement by giving the other Party written notice of the termination at least 30 calendar days before the intended date of termination.

D. Termination for Cause. Either Party may terminate this Agreement immediately for cause by sending written notice to the Partner Agency. “Cause” includes without limitation any failure to perform any obligation or abide by any condition of this Agreement or the failure of any representation or warranty in this Agreement. If a termination for cause is subsequently challenged in a court of law and the challenging party prevails, the termination will be deemed to be a termination for convenience effective 30 days from the date of the original written notice of termination for cause was sent to the challenging party; no further notice will be required.

E. Termination for Non-Appropriation. This Agreement will terminate immediately in the event of non-appropriation of funds sufficient to maintain this Agreement without the requirement of notice and the City will not be liable for any amounts beyond the funds appropriated and encumbered for this Agreement.

ARTICLE V - INDEMNITY

A. In General. To the fullest extent permitted by law, the Partner Agency will indemnify, defend, and hold harmless the City, its agents, employees, officials, insurers, self-insurance funds, and assigns (collectively, the “**Indemnified Parties**”) from and against any and all claims, demands, suits, and judgments of sums of money accruing against the Indemnified Parties: for loss of life or injury or damage to persons or property arising from or relating to any act or omission or the operation of the Partner Agency, its agents or employees while engaged in or in connection with the discharge or performance of any Services under this Agreement; and for any and all claims and/or liens for labor, services, or materials furnished to the Partner Agency in connection with the performance of work under this Agreement.

B. Limitation. The Partner Agency’s indemnity does not extend to any loss arising from the negligence, gross negligence or willful misconduct of any of the Indemnified Parties, provided that neither the Partner Agency nor any of its agents or employees contributed to such negligence, gross negligence or willful misconduct.

C. Independent Duty. The Partner Agency has an immediate and independent obligation to, at the City's option: (a) defend the City from or (b) reimburse the City for its costs incurred in the defense of any claim that actually or potentially falls within this indemnity, even if: (1) the allegations are or may be groundless, false, or fraudulent; or (2) the Partner Agency is ultimately absolved from liability.

ARTICLE VI - INSURANCE

Except as otherwise noted, for the duration of this Agreement or the performance of work required by this Agreement, the Partner Agency agrees to have and maintain the policies set forth in said Agreement. All policies, endorsements, certificates, and/or binders shall be subject to approval from the City as to form and content. These requirements are subject to amendment or waiver only if approved in writing by the City.

Evidence of coverage shall be provided prior to the start of any activities/work, in conjunction with the Partner Agency's Services under the Agreement. A lapse in any required insurance coverage during this Agreement shall be a breach of this Agreement.

Insurance Requirements:

Workers' Compensation & Employers Liability Insurance in compliance with the Wisconsin's Workers' Compensation Act(s). Statutory and Employers Liability Insurance with limits of not less than \$1,000,000. All employers must provide this coverage or be registered as a "Self- Insured" entity with the State.

Commercial General Liability Insurance including contractual liability insurance, products and completed operations, personal & advertising injury, bodily injury, property damage, and any other type of liability for which this Agreement applies with limits of liability of not less than \$1,000,000 each occurrence / \$2,000,000 policy aggregate.

Business Automobile Insurance (Where applicable) with a combined single limit of liability of not less than \$500,000 per accident for bodily injury and property damage. Insurance shall include all owned, non-owned and hired vehicles.

Professional Liability - As professional services are required under the contract, the Partner Agency shall maintain or cause to be maintained, professional liability coverage specific to the contractors profession with limits of liability of not less than \$1,000,000 per occurrence or claim / \$2,000,000 policy aggregate. Coverage shall be sufficiently broad to respond to the duties and obligations as is undertaken by the Partner Agency in this agreement.

Policy shall be kept in force and uninterrupted for a period of three (3) years beyond policy expiration. If coverage is discontinued for any reason during this three (3) year term, the Partner Agency must procure and evidence full extended reporting period (ERP) coverage.

Important: The obligations for the Partner Agency to procure and maintain insurance shall not be constructed to waive or restrict other obligations. It is understood that failure to comply nor full compliance with the foregoing insurance requirements shall limit or relieve the Partner Agency from any liability incurred as a result of their activities/operations in conjunction with the Partner Agency's obligations and/or Services.

Primary Coverage: For any claims related to this agreement, the Partner Agency's insurance coverage shall be primary insurance as respects the City, its departments, political subdivisions, officers, officials, employees, and volunteers. Any insurance or self-insurance maintained by the City shall be non-contributing to the Partner Agency's coverage.

Claims Made Policies: If applicable, the retroactive date must be shown and must be before the date of the agreement or the beginning of work. If the coverage is canceled or non-renewed, and not replaced with another claims-made policy, the Partner Agency must purchase “extended reporting” coverage for a minimum of 3 years after the termination of this agreement.

Waiver of Subrogation: The Partner Agency and its insurers agree to waive any right of subrogation which any insurer may acquire against the City by virtue of the payment of any loss under insurance required by this agreement.

Notice of Cancellation: Each insurance policy required above shall not be canceled, expire, or altered except without prior notice to the City of no less than 30 days.

Copies of all policies of insurance, including all policies, forms, and endorsements:
Substitute insurance coverage acceptable to the City within 30 calendar days if any insurance company providing any insurance with respect to this Agreement is declared bankrupt, becomes insolvent, loses the right to do business in Wisconsin, or ceases to meet the requirements of this Agreement.

Special Risks or Circumstances: The City shall reserve the right to modify these requirements, including limits, based on the nature of the risk, prior experience, insurer coverage, or other circumstances, **based on any change in the Services and/or Partner Agency obligations.**

ARTICLE VII - PERFORMANCE MEASURES

A. Factors. The City will measure the performance of the Partner Agency according to the following non-exhaustive factors: work performed in compliance with the terms of the Agreement; staff availability; staff training; staff professionalism; staff experience; customer service; communication and accessibility; prompt and effective correction of situations and conditions; timeliness and completeness of submission of requested documentation (such as records, receipts, invoices, insurance certificates, and computer-generated reports).

B. Failure to Perform. If the Partner Agency fails to perform according to the Agreement, the City will notify the Partner Agency. If there is a continued lack of performance after notification, the City may declare the Partner Agency in default and may pursue any appropriate remedies available under the Agreement and/or any applicable law. In the event of a notification of default, the City will invoice the defaulting contractor for any increase in costs and other damages sustained by the City. Further, the City will seek full recovery from the defaulting contractor.

ARTICLE VIII - NON-DISCRIMINATION

A. Equal Employment Opportunity. In all hiring or employment made possible by, or resulting from this Agreement, the Partner Agency (1) will not discriminate against any employee or

applicant for employment because of race, color, religion, sex, gender, age, physical or mental disability, national origin, sexual orientation, creed, culture, or ancestry, and (2) where applicable, will take affirmative action to ensure that the Partner Agency's employees are treated during employment without regard to their race, color, religion, sex, gender, age, physical or mental disability, national origin, sexual orientation, creed, culture, or ancestry. This requirement shall apply to, 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. All solicitations or advertisements for employees shall state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, gender, age, physical or mental disability, national origin, sexual orientation, creed, culture, or ancestry.

B. Non-Discrimination. In the performance of this Agreement, the Partner Agency will not discriminate on the basis, whether in fact or perception, of a person's race, color, creed, religion, national origin, ancestry, age, sex, gender, sexual orientation, gender identity, domestic partner status, marital status, physical or mental disability, or AIDS- or HIV-status against (1) any employee of the City working with the Partner Agency or (2) any person seeking accommodations, advantages, facilities, privileges, services, or membership in all business, social, or other establishments or organizations operated by the Partner Agency. The Partner Agency agrees to comply with and abide by all applicable federal, state and local laws relating to non-discrimination, including, without limitation, Title VI of the Civil Rights Act of 1964, Section V of the Rehabilitation Act of 1973, and the Americans with Disabilities Act of 1990.

C. Incorporation into Subcontracts. The Partner Agency will incorporate the terms and conditions of this Article into all subcontracts, by reference or otherwise, and will require all subcontractors to comply with those provisions.

D. Termination for Breach. The City may terminate this Agreement for cause if the Partner Agency fails to comply with any obligation in this Article, which failure is a material breach of this Agreement.

ARTICLE IX - INDEPENDENT CONTRACTOR

A. Independent Contractor Status. The Partner Agency is an independent contractor and shall not be deemed an employee, servant, agent, partner, or joint venture of the City and will not hold itself or any of its employees, subcontractors or agents to be an employee, partner, or agent of the City.

B. Waiver of Benefits. The Partner Agency, as an independent contractor, will not receive from the City any sick and annual leave benefits, medical insurance, life insurance, paid vacations, paid holidays, sick leave, pension, or Social Security for any services rendered to the City under this Agreement.

ARTICLE X - FORCE MAJEURE

A. Event. An event of Force Majeure will include any event or occurrence not reasonably foreseeable by the City at the execution of this Agreement, which will include, but not be limited to, abnormally severe and unusual weather conditions or other acts of God (including tropical weather events, tornados, hurricanes, and flooding); declarations of emergency; shortages of labor or materials (not caused by City); riots; terrorism; acts of public enemy; war; sabotage; cyber-attacks, threats, or incidents; epidemics or pandemics; court or governmental order; or any other cause whatsoever beyond the reasonable control of City, provided such event was not caused by the negligence or misconduct of City, by the failure of City to comply with applicable laws, or by the breach of this Agreement.

B. Notice. To seek the benefit of this Article, the City must provide notice in writing to the Partner Agency stating: (1) an event triggering this Article has occurred; (2) the anticipated effect of the Force Majeure event on performance; and (3) the expected duration of the delay, if the Agreement is being suspended

C. Effect.

1. Upon the occurrence of a Force Majeure event, for which the City has provided required notice, the City may, at its sole discretion:
 - a. Suspend this Agreement for a duration to be set by the City, not to exceed 90 days. During such time of suspension, the Parties will not be liable or responsible for performance of their respective obligations under this Agreement, and there will be excluded from the computation of such a period of time any delays directly due to the occurrence of the Force Majeure event. During any such period of suspension, the Partner Agency must take all commercially reasonable actions to mitigate against the effects of the Force Majeure event and to ensure the prompt resumption of performance when so instructed by the City; or
 - b. Terminate this Agreement, either immediately or after one or more periods of suspension, effective on notice to the Partner Agency and without any further compensation due.
2. Notwithstanding Section C(1) above, the obligations relating to making payments when due (for services or materials already provided) and those obligations specified to survive in the Agreement will be unaffected by any suspension or termination.

ARTICLE XI - NOTICE

A. In General. Except for any routine communication, any notice, demand, communication, or request required or permitted under this Agreement will be given in writing and delivered in person or by certified mail, return receipt requested as follows:

1. To the City:

John C. Rooney, P.E.
Commissioner of Public Works
City of Racine
730 Washington Avenue
Racine, WI 53403

&

Scott R Letteney
Office of the City Attorney
800 Center Street, STE 122
Racine, WI 53403

2. To the Partner Agency:

Brandon P. Wong
HyFi, LLC
455 E Eisenhower Pkwy, Suite 300
Ann Arbor, MI 48108

B. Effectiveness. Notices are effective when received, except any notice that is not received due to the intended recipient's refusal or avoidance of delivery is deemed received as of the date of the first attempted delivery.

C. Notification of Change. Each party is responsible for notifying the other in writing that references this Agreement of any changes in its address(es) set forth above.

[SIGNATURES CONTAINED ON NEXT PAGE]

[The remainder of this page is intentionally left blank.]

IN WITNESS WHEREOF, the City and the Partner Agency, through their duly authorized representatives, execute this Agreement.

CITY OF RACINE

Signature _____ Title: Mayor _____ Date: _____
Cory Mason

Signature _____ Title: City Clerk _____ Date: _____
Tara McMenamin

Approved as to Form:

Signature _____ Title: City Attorney _____ Date: _____
Scott Letteney

Provisions have been made to pay the liability that will accrue hereunder:

Signature _____ Title: Finance Director _____ Date: _____
Kathleen Fischer

HYFI, LLC (Federal Tax ID # 83-4573259)

Signature _____ Title: CEO _____ Date: _____
Brandon P. Wong