

ORDINANCE

CITY OF NEW ORLEANS

CITY HALL: August 7, 2024

CALENDAR NO. 35,191

NO. _____ MAYOR COUNCIL SERIES

BY: COUNCILMEMBER THOMAS (BY REQUEST)

AN ORDINANCE to authorize the Mayor of the City of New Orleans to enter into Amendment No. 1 to a previously executed Cooperative Endeavor Agreement (“CEA”) between the City of New Orleans (“City”) and Hyfi, LLC, relative to the installation a system of water level monitors to provide real time data to the City to assist with flood mitigation efforts, desire to modify the provisions of the CEA and extend the term thereof for an additional one (1) year, five (5) months, and twelve (12) days, as more fully set forth in the Amendment No. 1 form attached hereto as Exhibit “A” and made a part hereof; and otherwise to provide with respect thereto.

WHEREAS, pursuant to the authority contained in Article 7, Section 14(C) of the Louisiana Constitution of 1974, and statutory authority supplemental thereto, the State of Louisiana and its political subdivisions, including the City, may enter into cooperative endeavors with each other, or with any public or private corporation or individual; and further pursuant to Section 9-314 of the Home Rule Charter of the City of New Orleans, the City may enter into cooperative endeavors with any public or private association, corporation, or individual for activities in support of economic growth and other public purposes; and

WHEREAS, the City and Hyfi, LLC desire to modify the provisions of and extend the term thereof for an additional one (1) year, five (5) months, and twelve (12) days, to the previously executed Cooperative Endeavor Agreement (CEA) between the City and Hyfi, LLC relative to the valued public purpose of the installation a system of water level monitors to provide real time data to the City to assist with flood mitigation efforts in the City of New Orleans; and

WHEREAS, the City and Hyfi, LLC desire to enter into this Amendment No. 1 to provide for the installation a system of water level monitors to provide real time data to the City to assist

with flood mitigation efforts and to set forth certain other matters in connection therewith; **NOW THEREFORE**

1 **SECTION I. THE COUNCIL OF THE CITY OF NEW ORLEANS HEREBY**
2 **ORDAINS**, That the Mayor, on behalf of the City of New Orleans, is hereby authorized to enter
3 into Amendment No. 1 to the Cooperative Endeavor Agreement, in the form attached hereto as
4 Exhibit “A”, to the previously executed Cooperative Endeavor Agreement between the City of
5 New Orleans and Hyfi, LLC to modify the provisions of and extend the term thereof for an
6 additional one (1) year, five (5) months, and twelve (12) days, to the previously executed CEA
7 relative to the valued public purpose of the installation a system of water level monitors to provide
8 real time data to the City to assist with flood mitigation efforts in the City of New Orleans.

1 **SECTION 2.** That said Amendment No. 1 to the Cooperative Endeavor Agreement is
2 attached to this ordinance as “Exhibit A” and incorporated and made a part hereof.

ADOPTED BY THE COUNCIL OF THE CITY OF NEW ORLEANS _____

PRESIDENT OF THE COUNCIL

DELIVERED TO THE MAYOR ON _____

APPROVED:
DISAPPROVED: _____

MAYOR

RETURNED BY THE MAYOR ON _____ **AT** _____

ASSISTANT CLERK OF COUNCIL

ROLL CALL VOTE:
YEAS:
NAYS:
ABSENT:
RECUSED:

EXHIBIT A

**AMENDMENT NUMBER 1 TO THE
COOPERATIVE ENDEAVOR AGREEMENT BETWEEN
THE CITY OF NEW ORLEANS AND HYFI, LLC**

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AMENDMENT NO. 1 TO COOPERATIVE ENDEAVOR AGREEMENT

BY AND BETWEEN

THE CITY OF NEW ORLEANS

AND

HYFI, LLC

THIS FIRST AMENDMENT (the “**Amendment**”) is entered into by and between the City of New Orleans, represented by LaToya Cantrell, Mayor (the “**City**”), and Hyfi LLC, represented by Brandon P. Wong, CEO (the “**Partner Agency**”). The City and the Partner Agency are sometimes each referred to as a “**Party**,” and collectively, as the “**Parties**.” The Amendment is effective as of July 19, 2025 (the “**Effective Date**”).

RECITALS

WHEREAS, on July 19, 2024, the City and the Partner Agency entered into a Cooperative Endeavor Agreement for the installation a system of water level monitors to provide real time data to the City to assist with flood mitigation efforts (the “**Agreement**”); and

WHEREAS, the City and the Partner Agency, each having the authority to do so, desire to enter this Amendment to renew the agreement and extend the term for one (1) additional year;

NOW THEREFORE, for good and valuable consideration, the City and the Partner Agency amend the Agreement as follows:

1. **Extension.** In accordance with Article IV, Section B of the Agreement, the term is extended for an additional one (1) year, five (5) months, and twelve (12) days from the Effective Date through December 31, 2026.

2. **Additional Miscellaneous Provisions.** The following terms and conditions are added to the Agreement:

3. **Convicted Felon Statement.** The Partner Agency swears that it complies with City Code Section 2-8(c). No Partner Agency principal, member, or officer has, within the preceding five years, been convicted of, or pled guilty to, a felony under state or federal statutes for embezzlement, theft of public funds, bribery, or falsification or destruction of public records.

4. **Non-Solicitation Statement.** The Partner Agency swears that it has not employed or retained any company or person, other than a bona fide employee working solely for it, to solicit or secure this Amendment. The Partner Agency has not paid or agreed to pay any person, other than a bona fide employee working for it, any fee, commission, percentage, gift, or any other consideration contingent upon or resulting from this Amendment.

5. **Prior Terms Binding.** Except as otherwise provided by this Amendment, the terms and conditions of the Agreement remain in full force and effect.

6. **Counterparts.** This Amendment may be executed in one or more counterparts, each of which shall be deemed to be an original copy of this Amendment, but all of which, when taken together, shall constitute one and the same agreement.

7. **Electronic Signature and Delivery.** The Parties agree that a manually signed copy of this Amendment and any other document(s) attached to this Amendment delivered by facsimile,

email, or other means of electronic transmission shall be deemed to have the same legal effect as delivery of an original signed copy of this Amendment. No legally binding obligation shall be created with respect to a Party until such Party has delivered or caused to be delivered a manually signed copy of this Amendment.

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

CITY OF NEW ORLEANS

BY: _____
LATOYA CANTRELL, MAYOR

Executed on this _____ of _____, 2025.

FORM AND LEGALITY APPROVED:
Law Department

By: _____

Printed Name: _____

HYFI, LLC

BY:  _____
BRANDON P. WONG, CEO

83-4573259
FEDERAL TAX I.D.

K24-874

COOPERATIVE ENDEAVOR AGREEMENT

BY AND BETWEEN

THE CITY OF NEW ORLEANS

AND

HYFI LLC

THIS COOPERATIVE ENDEAVOR AGREEMENT (the “**Agreement**”) is entered into by and between the City of New Orleans, represented by LaToya Cantrell, Mayor (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 political subdivision of the State of Louisiana;

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

WHEREAS, pursuant to Article 7, Section 14(C) of the Louisiana Constitution of 1974, and related statutes, and Section 9-314 of the Home Rule Charter of the City of New Orleans, the City may enter into cooperative endeavors with the State of Louisiana, its political subdivisions and corporations, the United States and its agencies, and any public or private corporation, association, or individual with regard to cooperative financing and other economic development activities, the procurement and development of immovable property, joint planning and implementation of public works, the joint use of facilities, joint research and program implementation activities, joint funding initiatives, and other similar activities in support of public education, community development, housing rehabilitation, economic growth, and other public purposes;

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. SWBNO) 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 provide water level information services to the Study Partners, including identifying up to 50 monitoring locations and the main point of contact for each location with the Study Partners. Hyfi will use best efforts to meet the deployment of these sites or whichever alternate sites have been agreed upon between Hyfi and the Study Partners;

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 these services at no cost to the City. The City acknowledges that Hyfi is the recipient of external funding to support this project.

D. *Equipment.*

At the end of the term of the agreement, the City will retain ownership of any and all mounting hardware provided by Hyfi during the term of the agreement.

E. *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 Hazard Mitigation 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, 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 Council approves it as a multi-term cooperative endeavor agreement and that additional funding, if required, is allocated by the City Council.

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, including without limitation any failure to comply with the requirements of the City's Disadvantaged Business Enterprise program and any failure to comply with any provision of City Code § 2-1120 or requests of the Office of Inspector General. 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.

D. Expenses. Notwithstanding any provision to the contrary, the Partner Agency shall bear the expenses including, but not limited to, the City's reasonable attorney fees and expenses, incurred by the City in enforcing this indemnity.

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 of New Orleans as to form and content. These requirements are subject to amendment or waiver only if approved in writing by the City of New Orleans.

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 Louisiana 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.

Additional Insured Status: The Partner Agency and all Subcontractors (where applicable) will provide, and maintain current, a Certificate of Insurance naming the City of New Orleans, its departments, political subdivisions, officers, officials, employees, and volunteers are to be covered as "Additional Insureds" on the CGL policy with respect to liability arising out of the performance of this agreement, General liability insurance coverage can be provided in the form of an endorsement to the Partner Agency's insurance (at least as broad as ISO Form CG 20 10 11 85 or both CG 20 10 and CG 20 37 forms if later revisions used).

The Partner Agency shall require and verify that all Subcontractors maintain insurance and coverage limits meeting all the requirements stated herein or the Sub-contractor liability shall be covered by the Partner Agency. The Certificate of Insurance, as evidence of all required coverage, should name the City of New Orleans Risk Manager as Certificate Holder and be delivered via U.S. Mail or **e-mail** to (**User Department Mailing Address**), with a copy forwarded to Risk Management Division, 1300 Perdido Street, 9E06 – City Hall, New Orleans LA 70112.

The Additional Insured box shall be marked “Y” for Commercial General Liability coverage. The Subrogation Waiver Box must be marked “Y” for Workers Compensation/Employers Liability and Property.

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.

Acceptability of Insurers: Insurance is to be placed with insurers licensed and authorized to do business in the State of Louisiana with a current A.M. Best's rating of no less than A: VII, unless otherwise acceptable to the City.

Notice: Upon request the Partner Agency will provide the City's Risk Manager (at City of New Orleans Attn: Risk Manager, 1300 Perdido Street, Suite 9E06, New Orleans, LA 70112- Ref.: CEA) the following documents, within 10 calendar 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 Louisiana, or ceases to meet the requirements of this Agreement.

Special Risks or Circumstances: The City of New Orleans 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 in any of Partner Agency's operations within Orleans Parish 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. Exclusion of Worker's Compensation Coverage. The City will not be liable to the Partner Agency, as an independent contractor as defined in La. R.S. 23:1021(6), for any benefits or coverage as provided by the Workmen's Compensation Law of the State of Louisiana. Under the provisions of La. R.S. 23:1034, any person employed by the Partner Agency will not be considered an employee of the City for the purpose of Worker's Compensation coverage.

C. Exclusion of Unemployment Compensation Coverage. The Partner Agency, as an independent contractor, is being hired by the City under this Agreement for hire and defined in La. R.S. 23:1472(12)(E) and neither the Partner Agency nor anyone employed by it will be considered an employee of the City for the purpose of unemployment compensation coverage, which coverage same being hereby expressly waived and excluded by the parties, because: (a) the Partner Agency has been and will be free from any control or direction by the City over the performance of the services covered by this contract; (b) the services to be performed by the Partner Agency are outside the normal course and scope of the City's usual business; and (c) the Partner Agency has been independently engaged in performing the services required under this Agreement prior to the date of this Agreement.

D. 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 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:

Austin Feldbaum
City of New Orleans
1300 Perdido Street, Suite 9W03
New Orleans, LA 70112

&

City Attorney
City of New Orleans
1300 Perdido Street, Suite 5E03
New Orleans, LA 70112

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.

ARTICLE XII - ADDITIONAL PROVISIONS

A. **Amendment.** No amendment of or modification to this Agreement shall be valid unless and until executed in writing by the duly authorized representatives of both parties to this Agreement.

B. **Assignment.** (i) Neither the Partner Agency nor subcontractor may assign or transfer its rights, duties, or obligations under this Agreement without the prior written consent of the City, which consent must be approved by a resolution of the City Council. (ii) A transfer requiring the prior written consent of the City, as described in the preceding subsection, shall occur upon a change in ownership of the Partner Agency or subcontractor. A "change in ownership" shall occur on the date that any one person, or more than one person acting as a group, acquires, directly or indirectly, an aggregate ownership interest in the Partner Agency or subcontractor that exceeds 50% of the fair market value of the Partner Agency or subcontractor or 50% of the total voting power of the Partner Agency or subcontractor. The foregoing shall not apply to the acquisition of additional ownership interests by a person whose ownership interest in the Partner Agency or subcontractor exceeds 50% of the fair market value of the Partner Agency or subcontractor or 50% of the total voting power of the contractor or subcontractor as of the effective date of the Agreement.

C. **Audit and Other Oversight.**

1. The Partner Agency will submit to any City audit, inspection, and review and, at the City's request, will make available all documents relating or pertaining to this Agreement maintained by or under the control of the Partner Agency, its employees, agents, assigns, successors, and subcontractors, during normal business hours at the Partner Agency's office or place of business in Louisiana. If no such location is available in Louisiana, the Partner Agency will make the documents available at a time and location that is convenient for the City.
2. The Partner Agency will abide by all provisions of City Code § 2-1120, including without limitation City Code § 2-1120(12), which requires the Partner Agency to provide the Office of Inspector General with documents and information as requested. Failure to comply with such requests is a material breach of the Agreement. In signing this Agreement, the Partner Agency agrees that it is subject to the jurisdiction of the Orleans Parish Civil District Court for purposes of challenging a subpoena.

D. **Choice of Law.** This Agreement will be construed and enforced in accordance with the laws of the State of Louisiana without regard to its conflict of laws provisions.

E. **Compliance with City's Hiring Requirements – Ban the Box.**

1. The Partner Agency agrees to adhere to the City's hiring requirements contained in City Code Section 2-8(d) and 2-13(a)-(f). Prior to executing this Agreement, the Partner Agency must provide a sworn statement attesting to its compliance with the City's hiring requirements or stating why deviation from the hiring requirement is necessary.

2. Failure to maintain compliance with the City's hiring requirements through the term of the Agreement, or to provide sufficient written reasons for deviation, is a material breach of this Agreement. Upon learning of any such breach, the City will provide the Partner Agency notice of noncompliance and allow the Partner Agency thirty (30) days to come into compliance. If, after providing notice and thirty (30) days to cure, the Partner Agency remains noncompliant, the City may move to suspend payments to the Partner Agency, void the Agreement, or take any such legal action permitted by law or this Agreement.

3. This section will not apply to any agreements excluded from the City's hiring requirements by City Code Sections 2-8(d) or (g). Should a court of competent jurisdiction find any part of this section to be unenforceable, the section should be reformed, if possible, so that it is enforceable to the maximum extent permitted by law, or if reformation is not possible, the section should be fully severable and remaining provisions of the Agreement will remain in full force and effect.

4. The Partner Agency will incorporate the terms and conditions of this Article into all subcontracts, by reference or otherwise, and will require all sub- Partner Agency to comply with those provisions.

F. Conflicting Employment. To ensure that the Partner Agency's efforts do not conflict with the City's interests, and in recognition of the Partner Agency's obligations to the City, the Partner Agency will decline any offer of other employment if its performance of this Agreement is likely to be adversely affected by the acceptance of the other employment. The Partner Agency will promptly notify the City in writing of its intention to accept the other employment and will disclose all possible effects of the other employment on the Partner Agency's performance of this Agreement. The City will make the final determination whether the Partner Agency may accept the other employment.

G. Construction of Agreement. Neither party will be deemed to have drafted this Agreement. This Agreement has been reviewed by the Parties and shall be construed and interpreted according to the ordinary meaning of the words used so as to fairly accomplish the purposes and intentions of the Parties. No term of this Agreement shall be construed or resolved in favor of or against the City or the Partner Agency on the basis of which party drafted the uncertain or ambiguous language. The headings and captions of this Agreement are provided for convenience only and are not intended to have effect in the construction or interpretation of this Agreement. Where appropriate, the singular includes the plural and neutral words and words of any gender shall include the neutral and other gender.

H. Convicted Felon Statement. The Partner Agency complies with City Code § 2-8(c) and no principal, member, or officer of the Partner Agency has, within the preceding 5 years, been convicted of, or pled guilty to, a felony under state or federal statutes for embezzlement, theft of public funds, bribery, or falsification or destruction of public records.

I. Cost Recovery. In accordance with Section 2-8.1 of the Municipal Code entitled "Cost recovery in contracts, cooperative endeavor agreements, and grants," to the maximum extent permitted by law, the Partner Agency shall reimburse the City or disgorge anything of value or economic benefit received from the City if the Partner Agency fails to meet its contractual obligations.

J. Entire Agreement. This Agreement, including all incorporated documents, constitutes the final and complete agreement and understanding between the parties. All prior and contemporaneous agreements and understandings, whether oral or written, are superseded by this Agreement and are without effect to vary or alter any terms or conditions of this Agreement.

K. Jurisdiction. The Partner Agency consents and yields to the jurisdiction of the State Civil Courts of the Parish of Orleans and formally waives any pleas or exceptions of jurisdiction on account of the residence of the Partner Agency.

L. Limitations of the City's Obligations. The City has no obligations not explicitly set forth in this Agreement or any incorporated documents or expressly imposed by law.

M. No Expectation of Benefit or Special Treatment. The Partner Agency swears that, as a result of the donation of the services that are the subject of this Agreement or otherwise, it has no expectation of benefit or special treatment with regard to other contracts or potential contracts with the City.

N. No Third-Party Beneficiaries. This Agreement is entered into for the exclusive benefit of the parties and the parties expressly disclaim any intent to benefit anyone not a party to this Agreement.

O. Non-Exclusivity. This Agreement is non-exclusive and the Partner Agency may provide services to other clients, subject to the City's approval of any potential conflicts with the performance of this Agreement and the City may engage the services of others for the provision of some or all of the work to be performed under this Agreement.

P. Non-Solicitation Statement. The Partner Agency has not employed or retained any company or person, other than a bona fide employee working solely for it, to solicit or secure this Agreement. The Partner Agency has not paid or agreed to pay any person, other than a bona fide employee working for it, any fee, commission, percentage, gift, or any other consideration contingent upon or resulting from this Agreement.

Q. Non-Waiver. The failure of either party to insist upon strict compliance with any provision of this Agreement, to enforce any right or to seek any remedy upon discovery of any default or breach of the other party at such time as the initial discovery of the existence of such noncompliance, right, default or breach shall not affect or constitute a waiver of either party's right to insist upon such compliance, exercise such right or seek such remedy with respect to that default or breach or any prior contemporaneous or subsequent default or breach.

R. Ownership of Records. The Partner Agency retains the entire right, title, and interest in any new inventions, improvements, or discoveries developed or produced under this Cooperative Endeavor, including, but not limited to, concepts, know-how, software, materials, methods, and devices ("Inventions"). The Partner Agency also retains full ownership of all data collected and produced during the performance of this Agreement. The City shall take no ownership of these Inventions or data and shall have no right to enter into license agreements with any third party covering these Inventions or data. The City shall have a non-exclusive, non-transferable, non-sublicensable right to access, use and distribute certain data and works produced by the Partner Agency as necessary for the City to perform its Services, provided that the City unambiguously attributes and credits the Partner Agency as the source of the licensed data and works produced.

S. **Confidential Information.** The City agrees that all Inventions and all other business, technical and financial information (including, without limitation, the identity of and information relating to customers or employees) that the City or anyone acting on the City's behalf develops, learns or obtains in connection with the Services or that are received by or for the Partner Agency in confidence, constitute "Confidential Information." The City will hold in confidence and not disclose or, except in performing the Services, use any Confidential Information. However, the City shall not be obligated under this paragraph with respect to information the City can document is or becomes readily publicly available without restriction through no fault of the City.

T. **Prohibition of Financial Interest in Agreement.** No elected official or employee of the City shall have a financial interest, direct or indirect, in this Agreement. For purposes of this provision, a financial interest held by the spouse, child, or parent of any elected official or employee of the City shall be deemed to be a financial interest of such elected official or employee of the City. Any willful violation of this provision, with the expressed or implied knowledge of the Partner Agency, shall render this Agreement voidable by the City and shall entitle the City to recover, in addition to any other rights and remedies available to the City, all monies paid by the City to the Partner Agency pursuant to this Agreement without regard to the Partner Agency's otherwise satisfactory performance of the Agreement.

U. **Prohibition on Political Activity.** None of the funds, materials, property, or services provided directly or indirectly under the terms of this Agreement shall be used in the performance of this Agreement for any partisan political activity, or to further the election or defeat of any candidate for public office.

V. **Remedies Cumulative.** No remedy set forth in the Agreement or otherwise conferred upon or reserved to any party shall be considered exclusive of any other remedy available to a party. Rather, each remedy shall be deemed distinct, separate and cumulative and each may be exercised from time to time as often as the occasion may arise or as may be deemed expedient.

W. **Severability.** Should a court of competent jurisdiction find any provision of this Agreement to be unenforceable as written, the unenforceable provision should be reformed, if possible, so that it is enforceable to the maximum extent permitted by law or, if reformation is not possible, the unenforceable provision shall be fully severable and the remaining provisions of the Agreement remain in full force and effect and shall be construed and enforced as if the unenforceable provision was never a part the Agreement.

X. **Survival of Certain Provisions.** All representations and warranties and all obligations concerning record retention, inspections, audits, ownership, indemnification, payment, remedies, jurisdiction, and choice of law shall survive the expiration, suspension, or termination of this Agreement and continue in full force and effect.

Y. **Terms Binding.** The terms and conditions of this Agreement are binding on any heirs, successors, transferees, and assigns.

ARTICLE XIII - COUNTERPARTS

This Agreement may be executed in one or more counterparts, each of which shall be deemed to be an original copy of this Agreement, but all of which, when taken together, shall constitute one and the same agreement.

ARTICLE XIV - ELECTRONIC SIGNATURE AND DELIVERY

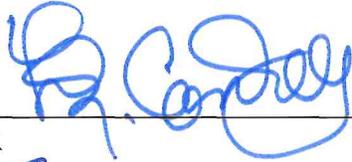
The Parties agree that a manually signed copy of this Agreement and any other document(s) attached to this Agreement delivered by email shall be deemed to have the same legal effect as delivery of an original signed copy of this Agreement. No legally binding obligation shall be created with respect to a party until such party has delivered or caused to be delivered a manually signed copy of this Agreement.

[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 NEW ORLEANS

BY: 
LATOYA CANTRELL, MAYOR

Executed on this 19th of July, 2024

FORM AND LEGALITY APPROVED:
Law Department

By: 

Printed Name: Andrew Gregorian

HYFI, LLC

BY: 
BRANDON P. WONG, CEO

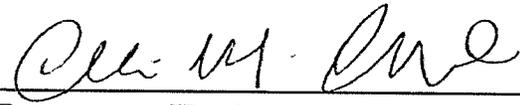
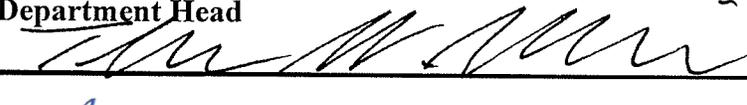
83-4573259
FEDERAL TAX I.D.

Name Katrina M. Porter Ext. 8-8740
Person responsible for routing

**CHECK SHEET TO BE USED FOR
CLEARING ORDINANCES, MOTIONS, AND RESOLUTIONS
BEFORE SUBMISSION TO COUNCIL CLERK**

The originating agency shall attach a copy of each proposed ordinance, motion, or resolution to the check sheet for processing in the sequence indicated after preparing a synopsis. The detailed memorandum of explanation shall also be attached to this check sheet.

SYNOPSIS OF DOCUMENT: K25-382 HYFI, LLC CEA AMENDMENT NO. 1 TO
COOPERATIVE ENDEAVOR AGREEMENT BETWEEN CITY OF NEW ORLEANS FOR THE
INSTALLATION OF A SYSTEM OF WATER LEVEL MONITORS TO PROVIDE REAL TIME
DATA TO THE CITY TO ASSIST WITH FLOOD MITIGATION EFFORTS.

1. 
Department Head
2. 
Department of Law
3. 
Chief Administrative Officer
4. _____
Director of Council Relations
5. _____
Initials of Sponsoring Council Member

COUNCIL ACTION

Council Members Present: _____

Absent: _____

AMENDMENTS:

FINAL ADOPTION:

_____	MOVED:
_____	2ND:
_____	YEAS:
_____	NAYS:
_____	ABSENT:
_____	RECUSED:

7. _____
Reviewed by the Chief Administrative Officer after adoption by the City Council and prior to the Mayor's signature.



LEGISLATIVE SUMMARY

TO ACCOMPANY ORDINANCES

BEFORE SUBMISSION TO CLERK OF COUNCIL

Requesting Department or Agency: _____

Name of Contact Person: _____

Telephone Number: _____

Email Address: _____

Initials of Sponsoring Councilmember(s): _____

DETAILED SYNOPSIS OF THE ORDINANCE

Please generally describe the purpose, intent, and effect of the proposed ordinance.



LEGISLATIVE SUMMARY

If the Ordinance is to effectuate a contract, CEA, or other similar agreement (hereafter contract), please provide the following additional information.

If this section is not applicable, please check this box.

The parties involved:

The obligations, expectations, and deliverables of the parties involved:

Any fiscal implications for the City with the contract:

The public purpose and need for the contract:

The duration of the contract:



LEGISLATIVE SUMMARY

If the Ordinance is to effectuate an amendment to the Codes of the City of New Orleans, please provide the following additional information.

If this section is not applicable, please check this box.

The existing provision(s) of the Code being proposed for amendment:

The general content/requirements of the existing Code provision:

How the proposed ordinance will alter the existing Code provision(s):

Why these changes are needed:

REQUESTED ADOPTION DATE: _____

Reference: Council Rule 41 & City Code Section 2-813