K21-1131

AMENDMENT NO. 1 TO COOPERATIVE ENDEAVOR AGREEMENT

BETWEEN

THE CITY OF NEW ORLEANS

AND

TOOLE DESIGN GROUP, LLC

USDOT VULNERABLE USER RISK NETWORK ANALYSIS TOOL

THIS AMENDMENT TO THE COOPERATIVE ENDEAVOR AGREEMENT (the "**Amendment**") is entered into by and between the City of New Orleans, represented by LaToya Cantrell, Mayor (the "**City**"), and Toole Design Group, LLC, represented by Jennifer Toole, President ("**Toole**" or the "**Contractor**"). The City and Toole may sometimes each be referred to as a "**Party**," and collectively, as the "**Parties**." The Amendment is effective as of August 20, 2021 (the "**Effective Date**").

RECITALS

WHEREAS, on September 21, 2020, the City and the Contractor entered into a Cooperative Endeavor Agreement for the City to be the fiscal agent for the funds payable to Toole upon the completion of Toole's deliverables and as otherwise set forth hereinunder (the "**Agreement**") through the United States Department of Transportation's Safety Data Initiative grant;

WHEREAS, the City is a political subdivision of the State of Louisiana;

WHEREAS, Toole is a private corporation, which principal address is located at 8484 Georgia Ave., Suite 800, Silver Spring, MD 20910;

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 Toole desire to accomplish the valuable public purposes of partnering, along with the other supporting partners, to improve public health and wellness by working to develop, refine, and implement data tool applications that address specific roadway safety problems and can demonstrate deployment application;

WHEREAS, the City received a grant from the U.S. Department of Transportation ("**USDOT**") to support the USDOT Safety Data Initiative;

WHEREAS, to that end, a Cooperative Agreement between USDOT, Office of the Secretary ("**OST**"), Office of the Assistant Secretary of Transportation for Policy ("**OST-P**") and the City of New Orleans (the "**City**") was executed to memorialize the aforementioned USDOT Safety Data Initiative grant (the "**Cooperative Agreement**" or the "**Grant**");

WHEREAS, the Cooperative Agreement is currently being amended and is fully incorporated herein by reference;

WHEREAS, the USDOT is authorized under 49 U.S.C. § 330(e) to initiate "grants, cooperative research and development agreements . . . and other agreements to fund, and accept funds from . . . State departments of transportation, cities, counties... to carry out joint transportation research and technology efforts";

WHEREAS, the total amount of the Federal Award granted awarded to the City totals $402,791.00, with the total approved cost share or in-kind contributions totaling $34,648.62; and

WHEREAS, the City and the Contractor, each having the authority to do so, desire to enter this Amendment to modify the scope of the Contractor's obligations and adjust the funding accordingly.

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

1. ***Obligations of Toole.*** The obligations of Toole are amended as follows:

- **a.** In Article I Section A, Subsection 6e of the Agreement is removed in its entirety.
- **b.** In Article I Section A, Subsection 8c of the Agreement is removed in its entirety and replaced, as follows:

  Host the software tool and make the tool available to the public for no less than one year after the end of the USDOT period of performance on September 20, 2021 (*i.e.*, host the software tool and make the tool available to the public until at least September 20, 2022). Toole will cover all costs associated with storing user and background data, hosting the public facing tool, and hosting the background model processor. Toole will not be responsible for helpdesk involvement or interaction with the public user and Toole makes no guarantees regarding the accessibility of this tool.

2. ***Funding.***

- **a.** The funding described in Article III Section B of the Agreement is increased by $5,870 to a total amount not to exceed **$275,875.40.**

b. The Funding Disbursement Conditions described in Article III Section C of the Agreement is amended to increase the amount of funds allocated for the section entitled Documentation and End Products by $5,870 to a total amount not to exceed $30,947.60, and to increase the amount of funds allocated for the section entitled Total Federal Funding Requested by $5,870 to a total amount not to exceed $275,875.40.

c. Article III Section D of the Agreement entitled "Reimbursable Expenses" is removed in its entirety.

3. ***Duration.*** The term or duration of the Agreement set forth in Article IV is reaffirmed and will extend from September 21, 2020 through September 20, 2021.

4. ***Additional Miscellaneous Provisions.*** The following terms and conditions are reaffirmed and/or added to the Agreement:

ARTICLE VII – NON-DISCRIMINATION

A. ***Equal Employment Opportunity.*** In all hiring or employment made possible by, or resulting from this Agreement, Toole (1) will not be 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 Toole'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, Toole 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 Toole in any of Contractor'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 Contractor. Toole 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*. Toole 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 Toole fails to comply with any obligation in this Article, which failure is a material breach of this Agreement.

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 Contractor 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 Contractor 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 Contractor 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.

5. ***Compliance with the City's Hiring Requirements – Ban the Box***. (i) The Contractor agrees to adhere to the City's hiring requirements contained in City Code Sections 2-8(d) and 2-13(a)-(f). Prior to executing this Agreement, Contractor must provide a sworn statement attesting to its compliance with the City's hiring requirements or stating why deviation from the hiring requirements is necessary. (ii) Failure to maintain compliance with the City's hiring requirements throughout 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 Contractor notice of noncompliance and allow Contractor thirty (30) days to come into compliance. If, after providing notice and thirty (30) days to cure, the Contractor remains noncompliant, the City may move to suspend payments to Contractor, void the Agreement, or take any such legal action permitted by law or this Agreement. (iii) 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 the remaining provisions of the Agreement will remain in full force and effect. (iv) The Contractor 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.

6. ***Convicted Felon Statement.*** The Contractor swears that it complies with City Code § 2-8(c). No Contractor 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.

7. ***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 Contractor shall reimburse the City or disgorge anything of value or economic benefit received from the City if the Contractor fails to meet its contractual obligations."

8. ***Exhibits.*** The following exhibits will be either attached herein or attached separately and are incorporated into this Amendment:

- **a.** Exhibit A – Non-Federal Entity Compliance Provisions for Federal Awards; and
- **b.** Exhibit B – USDOT Cooperative Endeavor Agreement

9. ***Order of Documents.*** In the event of any conflict between the provisions of this Agreement any incorporated documents, the terms and conditions of the documents will apply in this order: "Exhibit A"; the Amendment; the Agreement; and "Exhibit B".

10. ***Non-Solicitation Statement.*** The Contractor 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 Contractor 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.

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

12. ***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.

13. ***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.

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[SIGNATURES CONTAINED ON NEXT PAGE]

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

CITY OF NEW ORLEANS

BY: ______________________________
LATOYA CANTRELL,
MAYOR

Executed on this 12th **of** November**, 2021.**

FORM AND LEGALITY APPROVED:

Law Department

By: ______________________

Printed Name: Tracy Tyler

TOOLE DESIGN GROUP, LLC

BY: ______________________________
JENNIFER TOOLE,
PRESIDENT

TAX I.D. NUMBER ______________________

[SIGNATURES AND EXHIBIT "A" IS CONTAINED ON THE NEXT PAGE; EXHIBIT "B" IS ATTACHED SEPARATELY]

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EXHIBIT "A"

NON-FEDERAL ENTITY COMPLIANCE PROVISIONS FOR FEDERAL AWARDS

The Contractor is advised that this Project is to be funded by USDOT. Notwithstanding any provision of the Agreement to the contrary, the following terms and conditions:

A. TERMINATION FOR CAUSE: The City and the Contractor shall each have the right to terminate this Agreement for cause, effective immediately upon the giving of written notice to the other party of its intent to terminate and the reasons therefore. If the termination for cause is subsequently challenged in a court of law and if the challenging party prevails, the termination for cause shall be deemed to be a termination for convenience and shall be effective thirty (30) days from the date that the original written notice of termination for cause was given to the challenging party and no further notice shall be required.

B. TERMINATION FOR CONVENIENCE: The City shall have the right to terminate this Agreement without cause by giving the Contractor written notice of its intent to terminate at least thirty (30) days prior to the date of termination. In the event that the City elects to terminate for convenience, the City shall be obligated to pay the Contractor only for those Services performed up to and through the date of termination.

C. RECORDS RETENTION AND ACCESS: The Contractor shall grant the City, the State of Louisiana, the Federal Emergency Management Agency, the Comptroller General of the United States, or any of their duly authorized representatives, access to any books, documents, papers, and records of the Contractor which are pertinent to this Agreement for the purpose of making audit, examination, excerpts, and transcriptions. The Contractor shall retain all required records for five (5) years or until such time as the State of Louisiana or the City of New Orleans make final payments and all other pending matters related to the Agreement are closed.

D. COMPLIANCE WITH APPLICABLE LAWS AND REGULATIONS: As applicable, the Contractor shall comply with each of the following, all of which are incorporated herein by reference.

- Executive Order 11246 of September 24, 1965, entitled "Equal Employment Opportunity," as amended by Executive Order 11375 of October 13, 1967, and as supplemented in Department of Labor regulations (41 CFR chapter 60);
- The Copeland "Anti-Kickback" Act (18 U.S.C. 874) as supplemented in Department of Labor regulations (29 CFR Part 3);
- Sections 103 and 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 327–330) as supplemented by Department of Labor regulations (29 CFR Part 5);
- Standards, orders, or requirements issued under section 306 of the Clean Air Act (42 U.S.C. 1857(h)), section 508 of the Clean Water Act (33 U.S.C. 1368), Executive Order 11738, and Environmental Protection Agency regulations (40 CFR part 15);
- Mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (Pub. L. 94–163, 89 Stat. 871)

- Unless duly suspended or revoked, the Davis-Bacon Act (40 U.S.C. 276a to 276a-7) as supplemented by Department of Labor regulations (29 CFR Part 5)
- Any and all applicable requirements as required by Federal Uniform Administrative Requirements (Appendix II to 2 CFR Part 200).

E. NOTICES: Except as otherwise provided, this Agreement contains no requirements pertaining to reporting, patent rights, copyrights, or rights in data.

F. DEBARMENT, SUSPENSION, AND INELIGIBILITY: The Contractor represents and warrants that it and its sub-recipients are not debarred, suspended, or placed in ineligibility status under the provisions of 24 CFR 24 (government debarment and suspension regulations).

G. REMEDIES AND SANCTIONS AGAINST ENGINEER'S DEFAULT: The City retains all rights and recourse under Louisiana law to enforce this Agreement or recover damages in connection with any Contractor breach or violation hereof.

<u>EXHIBIT "B" (Attached Separately)</u>

Modification 1 Cooperative Agreement between
The United States Department of Transportation,
Office of the Secretary of Transportation,
Office of the Assistant Secretary of Transportation for Policy
And
the City of New Orleans, Louisiana

[END OF AGREEMENT]
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