



LOS ANGELES FIRE DEPARTMENT

KRISTIN M. CROWLEY
FIRE CHIEF

July 15, 2022

| |
|------------------------------------------------|
| BOARD OF FIRE COMMISSIONERS FILE NO. 22-074 |
|------------------------------------------------|

TO: Board of Fire Commissioners

FROM:  Kristin M. Crowley, Fire Chief

SUBJECT: AGREEMENT WITH GIANT STEPS LAX, LLC DBA FUNDAMENTAL DESIGN GROUP FOR WEBSITE AND INTRANET SUPPORT AND MAINTENANCE SERVICES PURSUANT TO THE REQUEST FOR PROPOSALS NO. 2022-038-001

| | | | |
|---------------|-----------------------------------|-------------------------------------------------|------------------------------------|
| FINAL ACTION: | <input type="checkbox"/> Approved | <input type="checkbox"/> Approved w/Corrections | <input type="checkbox"/> Withdrawn |
| | <input type="checkbox"/> Denied | <input type="checkbox"/> Received & Filed | <input type="checkbox"/> Other |

SUMMARY

The Los Angeles Fire Department (LAFD or Department) is one of the largest municipal Fire Departments in the United States with approximately 3,246 sworn and 380 civilian personnel who work from 106 fire stations and dozens of other office and fire facility locations throughout the City. The Department serves a population of 4,031,000 and covers a service area of nearly 500 square miles.

It is the Department's mission to preserve life and property, promote public safety, foster economic growth through a commitment to prevention, preparedness, response and recovery as an all risk life safety response provider, by disseminating information to the community and its employees through external and internal websites that provide commonly sought information to the public and internal resources to the LAFD.

The existing LAFD internet and intranet websites require on-going support and maintenance services. On March 9, 2022, the Department issued Request for Proposals (RFP) No. 2022-038-001 for website and intranet support and maintenance services on the existing LAFD website (www.lafd.org) and the LAFD intranet portal. Three proposals were received by the submission deadline date of May 4, 2022.

An Evaluation Committee, comprised of personnel from the Department's Information Technology Bureau and Planning, reviewed and scored the eligible proposals based on the following criteria:

- **Company Qualifications & Experience**
- **Approach and Methodology**
- **Fit to Requirements**
- **Cost**

The evaluation scores of the three eligible proposers are listed below.

| Scoring Rank | |
|---------------------------------------------------|-------|
| Proposer | Score |
| Giant Steps LAX, LLC dba Fundamental Design Group | 96 |
| The Glue | 82 |
| Interpersonal Frequency, LLC | 74 |

Of the three eligible proposers, Giant Steps LAX, LLC dba Fundamental Design Group (Giant Steps) received the top score of 96 points. Giant Steps has extensive experience in the design and technology industry, with the individuals in the company having over 20 years of experience combined. In addition, they have extensive experience working on significant projects for the City of Los Angeles in Departments such as LAFD, Los Angeles Police Department, City Controller, and Department of Public Works, Bureau of Engineering.

It is recommended that the agreement be awarded to Giant Steps as it was evaluated as the most qualified amongst the eligible proposers. The proposed term is for three (3) years, from July 1, 2022 through June 30, 2025. The maximum compensation for the three-year term is not to exceed \$400,000.

The attached Agreement has been reviewed and approved by the City Attorney as to legal form.

RECOMMENDATIONS

That the Board:

1. Approve and authorize the Fire Chief to execute an Agreement with Giant Steps LAX, LLC dba Fundamental Design Group for website and intranet support and maintenance services, for a three-year term, commencing on July 1, 2022 and terminating on June 30, 2025, for a maximum amount not to exceed \$400,000 during the term of the Agreement.
2. Authorize the Fire Chief to have sole discretion to execute amendments regarding any modifications, additions or exclusions during the three-year term.
3. Transmit the Agreement to the Mayor for review and approval, in accordance with Executive Directive No. 3.

FISCAL IMPACT

Funding for this Agreement will come from savings in the Department's FY 2022-23 Contractual Services Account 3040 and/or other savings addressed through a Financial Status Report.

Board Report prepared by Carr Oduro, Senior Systems Analyst, Information Technology Bureau.

Attachment

AGREEMENT NO. _____

AGREEMENT BETWEEN

THE CITY OF LOS ANGELES

AND

GIANT STEPS LAX, LLC DBA FUNDAMENTAL DESIGN GROUP

FOR

WEBSITE AND INTRANET SUPPORT AND MAINTENANCE SERVICES

TABLE OF CONTENTS

| | | |
|-------------|----------------------------------------------------------------------|-----------|
| 1.0 | SECTION 1: PARTIES TO THE AGREEMENT AND REPRESENTATIVES | 2 |
| 2.0 | SECTION 2: TERM OF AGREEMENT | 3 |
| 3.0 | SECTION 3: SCOPE OF WORK | 3 |
| 4.0 | SECTION 4: COMPENSATION AND METHOD OF PAYMENT | 4 |
| 5.0 | SECTION 5: DATA MANAGEMENT, SECURITY, AND PRIVACY | 5 |
| 6.0 | SECTION 6: REPRESENTATIONS AND WARRANTIES..... | 11 |
| 7.0 | SECTION 7: MISCELLANEOUS | 13 |
| 8.0 | SECTION 8: NON-EXCLUSIVE AGREEMENT | 13 |
| 9.0 | SECTION 9: CITY CONTRACTING REQUIREMENTS | 14 |
| 10.0 | SECTION 10: ORDER OF PRECEDENCE..... | 14 |
| 11.0 | SECTION 11: ENTIRE AGREEMENT..... | 14 |
| 12.0 | SECTION 12: COUNTERPARTS/ELECTRONIC SIGNATURES | 14 |

AGREEMENT NO. _____

AGREEMENT
BETWEEN THE CITY OF LOS ANGELES
AND
GIANT STEPS LAX, LLC DBA FUNDAMENTAL DESIGN GROUP

This Agreement (hereinafter referred to as "Agreement") is made and entered into by and between the City of Los Angeles, a municipal corporation (hereinafter referred to as "City"), acting by and through the Los Angeles Fire Department (hereinafter referred to as "LAFD" or "Department"), and Giant Steps LAX, LLC dba Fundamental Design Group, a California Limited Liability Company (hereinafter referred to as "Contractor"), with reference to the following:

WHEREAS, in 2014, the LAFD launched an updated, redesigned and hosted LAFD.org website system, which includes the LAFD.org website and the LAFD Intranet; and

WHEREAS, the LAFD.org website has become the main resource for the community and City personnel to find important information about the LAFD, and the LAFD Intranet keeps Department personnel informed of the latest Departmental bulletins, announcements, training information, and administrative resources; and

WHEREAS, having qualified technical support to provide proper support and maintenance of the website system and enhancements, as needed, is critical to ensuring its availability to users upon demand; and

WHEREAS, competitive bidding under Charter Section 371 was not required for this Agreement because the Agreement is for the performance of professional, scientific, expert, technical, or other special services of a temporary and occasional character for which competitive bidding under Charter Section 371 is not practicable or advantageous; and

WHEREAS, pursuant to Charter Section 372, on March 9, 2022, the LAFD issued a Request for Proposals (RFP) for website and intranet support and maintenance services (RFP No. 2022-038-001); and

WHEREAS, the Contractor submitted a proposal in response to the RFP, and the LAFD has determined that the Contractor possesses the qualifications and experience necessary to provide the services requested; and

WHEREAS, pursuant to Charter Section 1022, the City has found that this service can be performed more feasibly by a contractor than by City employees; and

WHEREAS, the City and Contractor desire to enter into this Agreement for a three (3) year term, not to exceed \$400,000.

NOW, THEREFORE, the City and the Contractor agree as follows:

1.0 SECTION 1: PARTIES TO THE AGREEMENT AND REPRESENTATIVES

1.1 Parties to the Agreement

- A. City – The City of Los Angeles, a municipal corporation, acting by and through the Los Angeles Fire Department, having its principal office at 200 N. Main St., 18th Floor, Los Angeles, CA 90012.
- B. Contractor – Giant Steps LAX, LLC dba Fundamental Design Group, having its principal office at 11323 Cashmere St., Los Angeles, CA 90049.

1.2 Representatives of the Parties

The representatives of the respective parties authorized to administer this Agreement, and to whom formal notices, demands, and communications shall be given are as follows:

- A. The City's representative is, unless otherwise stated in this Agreement:

Kristin M. Crowley, Fire Chief
Los Angeles Fire Department
200 N. Main St., Room 1800
Los Angeles, CA 90012

With copies to:

Carr Oduro, Senior Systems Analyst
Los Angeles Fire Department
200 N. Main St., Room 1680
Los Angeles, CA 90012

- B. The Contractor's representative is, unless otherwise stated in the Agreement:

Jessica Robins Thompson, Principal
Giant Steps LAX, LLC dba Fundamental Design Group
11323 Cashmere St.
Los Angeles, CA 90049

- C. Formal notices, demands, and communication required hereunder by either party shall be made in writing and may be affected by personal delivery or by registered or certified mail, postage prepaid, return receipt requested and shall be deemed communicated as of the date of mailing
- D. If the name of the person designated to receive the notices, demands or communications or the address of such person is changed, written notice must be provided as described in this Agreement, within five (5) working days of said change.

2.0 SECTION 2: TERM OF AGREEMENT

2.1 Term

The term of this Agreement shall commence upon the date of attestation by the Los Angeles City Clerk, and will terminate three (3) years from that date, unless otherwise terminated by the City as provided for in this Agreement.

2.2 Amendments

This Agreement may be extended for an additional three (3) years, exercised in three (3) one-year increments, utilizing the amendment process described in Section PSC-5, Amendment, of Attachment A – Standard Provisions for City Contracts (Rev. 10/21)[v.4], attached hereto and incorporated by reference herein. Any amendment to extend the term of this Agreement is contingent on the availability of funds and the Contractor having provided satisfactory services under this Agreement.

2.3 Ratification of Agreement

To the extent that the Contractor may have begun performance of the services before the date of execution at the City's request and due to the immediate needs of the LAFD, the City hereby ratifies and accepts those services performed in accordance with this Agreement and authorizes payment as provided by the terms of this Agreement. Notwithstanding this Section, the term of this Agreement will remain as stated above.

3.0 SECTION 3: SCOPE OF WORK

3.1 Contract Services

The Contractor shall provide the website and intranet support and maintenance services as described in the Scope of Work, attached hereto as Attachment B and incorporated into this Agreement by reference as though fully set forth herein.

3.2 Out of Scope Services

Unless mutually agreed to by both parties by way of an amendment to this Agreement, any other services not specifically listed in this Agreement are considered out of scope. The City shall not be responsible to pay Contractor for any out-of-scope work not described in this Agreement, and not agreed to by the parties in writing by way of an amendment to this Agreement. Contractor shall immediately notify the City in writing of any work that is requested to be performed that is outside of the original scope of work covered by this Agreement. If it is determined that the request is outside of the scope of work, Contractor shall not perform the requested work unless and until (i) the City approves the request in writing and authorizes the use of any contingency funds for the work, and (ii) an amendment providing for an adjustment in Contractor's compensation and the scope of work is approved and executed by both parties.

3.3 Additional As-Needed Services

From time to time, additional as-needed services may be required that are not included within the scope of this Agreement. Such services are described in the Scope of Work, Attachment B, and will be addressed with a separate scope of work, cost and schedule, and may be included in this Agreement by amendment.

4.0 SECTION 4: COMPENSATION AND METHOD OF PAYMENT

4.1 Maximum Compensation

The maximum compensation to be paid to the Contractor shall not exceed \$400,000 for the three year term of this Agreement.

4.2 Ongoing Support and Maintenance Services

The maintenance cost for Years 1, 2 and 3 is \$7,000 per month. In Year 1, a one-time expense to upgrade to the LAFD Portal shall not exceed \$66,000.

| | Service | Cost |
|--------|---------------------------------------------|-----------|
| Year 1 | Upgrade and Ongoing Support and Maintenance | \$150,000 |
| Year 2 | Ongoing Support and Maintenance | \$84,000 |
| Year 3 | Ongoing Support and Maintenance | \$84,000 |

4.3 Additional As-Needed Services

The City will pay the Contractor for the satisfactory performance of additional as-needed services during Years 2 and 3 that are pre-approved in writing by the LAFD, based on the hourly rates specified in Attachment C, Fee Schedule for Additional As-Needed Services, attached hereto and incorporated into this Agreement by reference as though fully set forth herein. The annual maximum compensation for the Additional As-Needed services shall not exceed \$41,000.

4.4 Method of Payment

4.4.1 The Contractor shall submit their invoices to:

Carr Oduro, Senior Systems Analyst
Los Angeles Fire Department
200 North Main Street, Room 1680
Los Angeles, CA 90012

The invoice must contain the following:

- a. Name and address of company or firm;
- b. Name and address of the contracting department;
- c. Date of the invoice and period covered;
- d. Reference to the contract number;
- e. Description of the completed task and amount due for the task;
- f. Copy of the invoices and payments to third parties, if any;
- g. Payment terms, total due, and due date;
- h. Certification by a duly authorized officer of the Contractor;
- i. Discounts and terms (if applicable);
- j. Remittance address (if different from company address); and

- k. Percentage of maximum allowable compensation against which services have been billed to date, and percentage of maximum allowable compensation remaining.

5.0 SECTION 5: DATA MANAGEMENT, SECURITY, AND PRIVACY

5.1 Data Ownership and Use

The City is the sole and exclusive owner of all data and information that is managed or contained within the system and/or provided to the Contractor by or on behalf of City pursuant to this Agreement and any and all updates or modifications thereto or derivatives thereof made by Contractor ("City Data"), and all intellectual property rights in the foregoing, whether or not provided to any other party under this Agreement. Subject to the restrictions articulated elsewhere in this Agreement, City grants Contractor a non-transferable, non-exclusive, terminable at-will license, solely for the term of this Agreement, to use City Data solely for purposes of performing the services pursuant to this Agreement for City's benefit.

5.2 Confidential Data

City Data is Confidential Information for the purposes of this Agreement. Contractor shall not use City Data for any purpose other than that of rendering the services under this Agreement, nor sell, assign, lease, dispose of or otherwise exploit City Data. Contractor shall not possess or assert any lien or other right against or to City Data. City may request an export of City Data stored within the systems or held by Contractor in standard forms or formats that are mutually agreed upon between Contractor and City at no charge to City.

5.3 Data Protection in General

The protection of personal privacy and personally identifiable data shall be an integral part of the business activities of Contractor, and Contractor shall use all reasonable efforts to prevent inappropriate or unauthorized use of City Data at any time and safeguard the confidentiality, integrity, and availability of City Data.

5.4 Data Protection Encryption

Unless otherwise stipulated in writing, Contractor shall encrypt all City Data at rest and in transit with controlled access. The Contractor shall apply and support encryption solutions that are certified against U.S. Federal Information and Processing Standard 140-2, Level 2, or equivalent industry standard, and verify that the encryption keys and keying material are not stored with any associated data. Whenever and wherever applicable, Contractor shall apply and support industry standards or better for tokenization, fraud-use protection, format-preserving encryption, and data encryption technology.

5.5 Data Protection Copying

At no time shall any City data be copied, disclosed, or retained by Contractor or any party related to Contractor, including its subcontractors, for use in any process, publication, or transaction that is not specifically authorized by the City in writing.

5.6 Data Protection Hacking

Contractor shall secure and protect all City Data from hacking, viruses, ransomware, and denial of service and related attacks.

5.7 On Shore Development and Access

Contractor shall provide its services to the City and its end users solely from facilities / data centers in the continental United States of America. Storage of City Data at rest shall be located in the continental United States of America. Contractor shall not allow its personnel or subcontractors to store City Data on portable devices, including personal computers, except for devices that are used and kept only at Contractor's continental United States of America offices or data centers. Contractor may permit its personnel and subcontractors to access City Data remotely only as required to provide Contracted Services. Contractor shall neither access nor allow a third-party access to City Data from any location outside of the continental United States of America. Contractor shall not provide any services under this Agreement from a location outside of the continental United States of America, absent receipt of City's express approval. For purposes of support services provided in association with the Service Level Agreement, City's approval may come via e-mail or other written instrument from the Department's Chief Information Officer.

5.8 Access Limitations

Contractor shall use precautions, including, but not limited to, physical software and network security measures, personnel screening, training and supervision, and appropriate agreements to prevent anyone other than authorized City personnel, users and subcontractors with a specific need to know, for a purpose authorized under this Agreement, from monitoring, using, gaining access to City Data. The Contractor shall also protect appropriate copies of City Data from loss, corruption, or unauthorized alteration and prevent the disclosure of City and Contractor usernames, passwords, API keys, and other access control information to anyone other than authorized City personnel.

5.9 Least Privilege

Contractor shall authorize access only to the minimum number of resources required to fulfil the Contractor's responsibilities in this contract.

5.10 Separation of Duties

The Contractor shall, as much as practical, divide functions among its staff members to reduce the risk of creating an undue dependency on one key person and reducing the risk of fraud being undetected.

5.11 Role-Based Security

The Contractor shall restrict access to authorized users and base access control on the role a user plays in the Contractor's organization.

5.12 Credential Restrictions

Contractor shall restrict the use of, and access to, administrative credentials for accounts and system services accessing City Data, to only those of Contractor's personnel and subcontractors whose access is essential for the purpose of providing the Contracted Services or performing obligations under this Agreement. Contractor shall require personnel and subcontractors to log on using an assigned user-name and password when administering City accounts or accessing City Data. These controls must enable Contractor to promptly revoke or change access in response to terminations or changes in job functions, as applicable. Contractor shall encrypt all

passwords, passphrases, and PINs, using solutions that are certified against U.S. Federal Information and Processing Standard 140-2, Level 2, or equivalent industry standard, and verify that the encryption keys and keying material are not stored with any associated data. Contractor shall implement any City request to revoke or modify user access within twenty-four (24) hours or the next business day of receipt of City's request. Contractor shall disable user accounts after, at most, ten (10) consecutive invalid authentication attempts. References to "subcontractor" in the Pledge of Compliance document is limited to subcontractors providing professional services.

5.13 Physical and Environmental Security

Contractor facilities that process City Data must provide a physically secure environment from unauthorized access, damage, and interference.

5.14 Operational Controls

Contractor shall implement operational procedures and controls designed to ensure that technology and information systems are configured and maintained according to prescribed internal standards and consistent with applicable Industry Standard Safeguards. Examples of Industry Standard Safeguards are ISO/IEC 27002:2005, NIST 800-44, Microsoft Security Hardening Guidelines, OWASP Guide to Building Secure Web Applications, SOC 2 Type 2, and the various Center for Internet Security Standards. Moreover, Contractor shall use application security and software development controls designed to eliminate and minimize the introduction of security vulnerabilities.

5.15 Antivirus

Contractor shall have and maintain antivirus protection configured to automatically search for and download updates (daily, at a minimum) and perform continuous virus scans. Malware and threat detection must be updated continuously, and software patches provided by vendors must be downloaded and implemented in a timely manner. If Contractor is unable to implement these controls in a timely manner, Contractor shall notify City in writing.

5.16 Vulnerability Management and Patching

Contractor shall employ vulnerability management and regular application, operating system, and other infrastructure patching procedures and technologies designed to identify, assess, mitigate, and protect against new and existing security vulnerabilities and threats, including viruses, bots, and other malicious code.

5.17 Network Controls

Contractor shall have, shall implement, and shall maintain network security controls, including the use of firewalls, layered DMZs and updated intrusion detection and prevention systems, reasonably designed to protect systems from intrusion or limit the scope or success of any attack or attempt at unauthorized access to City Data.

5.18 Logging and Monitoring

Unless prohibited by applicable law, Contractor shall, and shall require subcontractors to, continuously monitor its networks and personnel for malicious activity and other activity that may cause damage or vulnerability to City Data. Contractor shall maintain logs of administrator and operator activity and data recovery events related to City Data.

5.19 Changes in Service.

Contractor shall notify the City of any changes, enhancements, and upgrades to the System Administration and Network Security, or changes in other related services, policies, and procedures, as applicable, which can adversely impact the security of City Data.

5.20 Policies

Contractor shall, and shall require subcontractors to, establish and maintain a formal, documented, mandated, company-wide information security program, including security policies, standards, and procedures (collectively "Information Security Policy"), and communicate the Information Security Policy to all of its respective personnel in a relevant, accessible, and understandable form. Contractor shall regularly review and evaluate the Information Security Policy to ensure its operational effectiveness, compliance with all applicable laws and regulations, and to address new threats and risks. Upon execution of this Agreement and thereafter within three (3) days of City's request, Contractor shall make available for review by the City Contractor's Information Security Policy and any related SOC audits or other evidence that Contractor has in place appropriate policies and procedures regarding information protection and security.

5.21 Vulnerability and Risk Assessments

At least annually, Contractor shall perform vulnerability tests and assessments of all systems that contain City Data. For any of Contractor's applications that process City Data, such testing must also include penetration tests using intercept proxies to identify security vulnerabilities that cannot be discovered using automated tools, and code review or other manual verifications to occur at least annually.

5.22 Right of Audits by City/Security Review Rights

City and its agents, auditors (internal and external), regulators, and other representatives as City may designate, may inspect, examine, and review the facilities, books, systems, records, data, practices, and procedures of Contractor (and any personnel) that are used in rendering services to City to verify the integrity of City Confidential Information and to monitor compliance with the confidentiality and security requirements for City Confidential Information. In lieu of an on-site audit, at City's discretion and upon request by the City, the Contractor agrees to complete, within fourteen (14) days of receipt, an audit questionnaire provided by the City regarding the Contractor's data privacy and information security program. Contractor shall comply with all recommendations that result from such inspections, tests, and audits within reasonable timeframes.

5.23 Data Backup and Emergency Recovery

Contractor shall employ a multilayered approach to backups and disaster recovery, including the use of a primary data center and a backup data center. Contractor shall perform both local and remote backups of the complete server infrastructure, including server operating systems, applications, and data. Contractor shall perform Disaster Recovery Tests no less than annually. Contractor shall maintain and comply with a reasonable written plan (the "DR Plan") setting forth procedures for (a) mitigating disruption to systems during and after an earthquake, hurricane, other natural disaster, war, act of terrorism, act of cyberterrorism, and other natural or man-made disaster, including without limitation Force Majeure Events (as that term is used in

PSC-6, Excusable Delays, of the Standard Provisions for City Contracts (Rev. 10/21)[v.4] (collectively, a “Disaster”); and (b) restoring Service functionality promptly after a Disaster. The DR Plan will include procedures no less protective than industry standard, and Contractor shall update the DR Plan as the industry standard changes.

5.24 Data Return and Destruction

At the conclusion of the Agreement and as instructed by City, Contractor shall (at its sole cost) return, delete, or destroy City Data then in its possession or under its control, including, without limitation, originals, and copies of such City data. The following types of information are excluded from this requirement: (i) City Data that becomes a part of the public domain, including through court filings; and (ii) City Data that Contractor is required to maintain by law, regulations, or by the terms of this Agreement, but only for the time period required. For the avoidance of doubt, anything that is stored on routine backup media solely for the purpose of disaster recovery will be subject to destruction in due course rather than immediate return or destruction pursuant to this paragraph, provided that Personnel are precluded from accessing such information in the ordinary course of business prior to destruction.

Contractor shall implement and utilize appropriate methods to ensure the destruction of City Data. Such methods shall be in accordance with recognized industry best practices and shall leave no data recoverable on Contractor’s computers or other media.

Contractor agrees to certify that City Data has been returned, deleted, or destroyed from its systems, servers, off-site storage facilities, office locations, and any other location where Contractor maintains City Data within forty-five (45) days of receiving City’s request that the information be returned, deleted, or destroyed. Contractor shall document its verification of data removal, including tracking of all media requiring cleaning, purging or destruction.

5.25 Data Breach

Contractor shall notify City in writing as soon as reasonably feasible, but in any event within twenty-four hours, or if later, the next business day after Contractor’s discovery of any unauthorized access of City Data or Contractor becoming reasonably certain that such unauthorized access has occurred (a “Data Breach”), or of any event that compromises the integrity, confidentiality or availability of City Data (a “Security Incident”), including, but not limited to, denial of service attack, and system outage, instability or degradation due to computer malware or virus. Contractor shall begin remediation immediately. Contractor shall provide daily updates if requested by City, and, in any event, reasonably frequent updates, regarding findings and actions performed by Contractor until the Data Breach or Security Incident has been resolved to City’s satisfaction. Contractor shall conduct an investigation of the Data Breach or Security Incident and shall share a report of the investigation findings with City. At City’s sole discretion, City and/or its authorized agents shall have the right to conduct an independent investigation of a Data Breach. Contractor shall cooperate fully with City and its agents in that investigation. If the City is subject to liability for any Data Breach or Security Incident, the Contractor shall fully indemnify and hold harmless the City and defend against any resulting actions.

5.26 Confidentiality

5.26.1 City's Confidential Information

For purposes of this Section 5.26, "Confidential Information" means any nonpublic information whether disclosed orally or in written or digital media, received by Contractor that is either marked as "Confidential" or "Proprietary" or which the Contractor knows or should have known is confidential or proprietary information. City Data shall be treated as Confidential Information by Contractor under this Agreement, even if such data is not marked "Confidential" or "Proprietary" or was obtained by or transferred to Contractor prior to the effective date of this Agreement.

5.26.2 Protection of Confidential Information

Except as expressly authorized herein, Contractor shall (a) hold in confidence and not disclose any Confidential Information to third parties and (b) not use Confidential Information for any purpose other than fulfilling its obligations and exercising its rights under this Agreement or performing the contracted services. Contractor shall limit access to Confidential Information to Contractor personnel and subcontractors that are previously disclosed to City and, (1) who have a need to know such information for the purpose of Contractor performing its obligations or exercising its rights under this Agreement, or performing Contracted Services; (2) who have confidentiality obligations no less restrictive than those set forth herein; and (3) who have been informed of the confidential nature of such information. In addition, the Contractor shall protect Confidential Information from unauthorized use, access, or disclosure in the same manner that it protects its own proprietary information of a similar nature, but in no event with less than reasonable care. At LAFD's request or upon termination or expiration of this Agreement, the Contractor shall return to LAFD any Deliverables not provided to the City and Contractor shall destroy (or permanently erase in the case of electronic files) all copies of Confidential Information, and Contractor shall, upon request, certify to City its compliance with this sentence.

5.26.3 Exceptions

The confidentiality obligations set forth in Section 5.26 shall not apply to any Confidential Information that (a) is at the time of disclosure or becomes generally available to the public through no fault of the Contractor; (b) is lawfully provided to the Contractor by a third party free of any confidentiality duties or obligations; (c) was already known to the Contractor at the time of disclosure free of any confidentiality duties or obligations; or (d) the Contractor can demonstrate was independently developed by personnel of the Contractor without reference to the Confidential Information. In addition, the Contractor may disclose Confidential Information to the extent that such disclosure is necessary for the Contractor to enforce its rights under this Agreement or is required by law or by the order of a court or similar judicial or administrative body, provided that (to the extent legally permissible) the Contractor promptly notifies LAFD in writing of such required disclosure, cooperates with LAFD if LAFD seeks an appropriate protective order, and the Contractor discloses no more information that is legally required.

5.27 Compliance with Privacy Laws

Contractor is responsible for ensuring that Contractor's performance of its obligations and exercise of its rights under this Agreement complies with all applicable local, state, and federal privacy laws and regulations, as amended from time to time. If this Agreement or any practices

which could be, or are, employed in performance of this Agreement become inconsistent with or fail to satisfy the requirements of any of these privacy laws and regulations, City and Contractor shall in good faith execute an amendment to this Agreement sufficient to comply with these laws and regulations and Contractor shall complete and deliver any documents necessary to show such compliance. The City acknowledges and agrees that Contractor is not responsible for giving any notices to or obtaining any consents from any other party in order for Contractor to process the City Data as contemplated by this Agreement.

6.0 SECTION 6: REPRESENTATIONS AND WARRANTIES

Contractor represents and warrants that:

6.1 Compliance with Law

The services that the Contractor provides pursuant to this Agreement will comply with all applicable laws, including without limitation federal, state, and local.

6.2 Authority to Contract and No Pending Litigation

The Contractor has the full right and authority to enter into, execute, and perform its obligations under this Agreement and that no pending or threatened claim or litigation known to it would have a material adverse impact on its ability to perform as required by this Agreement.

6.3 Intellectual Property Warranty

(i) The Contractor's performance under this Agreement does not infringe in any way, directly or contributorily, upon any third party's intellectual property rights, including, without limitation, patent, copyright, trademark, trade secret, right of publicity or proprietary information; and (ii) the Contractor is the owner of the intellectual property rights for the services provided pursuant to this Agreement and of each and every component thereof, or has a valid license for the services provided, as described in Subsection 6.3.1

6.3.1 Third Party Software

In the event the Contractor provides any third-party software ("Third-Party Software"), including Open Source Software, to the City in connection with this Agreement:

- 6.3.1.1 The Contractor has and will maintain the right to license and provide access to any Third-Party Software licensed to the City, or otherwise provided to the City under this Agreement;
- 6.3.1.2 The Third-Party Software does not, and the use of the Third-Party Software by the City as contemplated by this Agreement will not, infringe any intellectual property rights,

including, without limitation, patents, copyrights, trademarks, trade secrets, rights of publicity, and proprietary information, of any third party in any way;

- 6.3.1.3 The City is not obligated to pay any third party any fees, royalties, or other payments for the City's use of any Third-Party Software in accordance with the terms of this Agreement; and
- 6.3.1.4 To the extent permitted by law or contract, the Contractor shall pass through to the City the warranties for the Third-Party Software.
- 6.3.1.5 The Contractor shall provide City license to use any Third-Party Software necessary for the functionality of the System at no additional cost, and inclusive of licensing for any unlimited number of users. Contractor shall ensure that all software is properly licensed at no additional cost to the City, including, but not limited to, any required third-party licenses. The Contractor will ensure that any required third-party licenses are maintained within fully supported versions, and that any custom developed system software continues to function on any new versions of required third-party software (e.g., server, desktop and mobile operating system, browser, database, application servers, etc.) as they become available.

6.3.2 Definition of Open Source Software.

For purposes of this section, "Open Source Software" means any software, programming, or other intellectual property that is subject to (i) the GNU General Public License, GNU Library General Public License, Artistic License, BSD license, Mozilla Public License, or any similar license, including, but not limited to, those licenses listed at www.opensource.org/licenses, or (ii) any agreement with terms requiring any intellectual property owned or licensed by the City to be (a) disclosed or distributed in source code or object code form; (b) licensed for the purpose of making derivative works; or (c) redistributable.

6.3.3 Third-Party and Open Source Software.

With regard to open-source software and any third-party software embedded system, all such software shall be considered, as appropriate, part of and included in the definition of "the System" and subject to all warranties, indemnities, and other requirements of this Agreement, including scope of license and maintenance and support.

6.4 Conformity to Specifications

The System will perform materially as described in Attachment B, Scope of Work.

6.5 Workmanlike Performance

All professional services will be performed in a professional and workmanlike manner, according to at least prevalent industry standards, and performed by competent personnel.

6.6 Disabling Code Warranty

No software or services to which the City is provided access and use hereunder contains any undisclosed disabling code (defined as computer code designed to interfere with the normal operation of the software or the City's hardware or software) or any program routine, device or other undisclosed feature, including but not limited to, a time bomb, virus, drip-dead device,

malicious logic, worm, Trojan horse, or trap door which is designed to delete, disable, deactivate, interfere with or otherwise harm the software or the City's hardware or software.

6.7 Virus/Malicious Software Warranty

The Contractor has used its best efforts to scan for viruses within the software, and no malicious system will be supplied under this Agreement.

7.0 SECTION 7: MISCELLANEOUS

7.1 Not a Waiver

Contractor acknowledges and agrees that nothing contained in this Agreement is, represents, or is intended to be construed as: a release, compromise, settlement, or waiver by City of any cause of action that City may have against Contractor. City reserves its rights in full, including, but not limited to, the right to bring any claim, cause of action, or request for reimbursement against Contractor in relation to this Agreement and other transactions between City and Contractor.

7.2 Audit Rights

In addition to those rights available to City elsewhere in this Agreement, including pursuant to PSC-16, Retention of Records, Audit and Reports, of Attachment A – Standard Provisions for City Contracts (Rev. 10/21)[v.4]. Contractor shall provide City, or City's duly authorized representatives, access for the purposes of audit and investigation, to any and all books, documents, papers, records, deliverables, and software documentation pertaining to any past, current, or future (i) transactions between City and Contractor, (ii) work requested to be performed of Contractor, or (iii) demands for payment by Contractor.

7.3 Payment Does Not Imply Acceptance of Work

The granting of any payment by City, or the receipt thereof by Contractor, in no way lessens the liability of Contractor to replace unsatisfactory work, equipment, or materials although the unsatisfactory character of this work, equipment or materials may not have been apparent or detected at the time the payment was made. Materials, equipment, components, or workmanship that do not conform to the requirements of this Agreement may be rejected by City and upon rejection must be replaced by Contractor without delay.

7.4 Publicity/Case Studies

Contractor shall refer all inquiries from the news media to City, shall immediately contact City to inform City of the inquiry, and shall comply with the procedures of City's Public Affairs staff regarding statements to the media relating to this Agreement or Contractor's services hereunder. Contractor shall not use City as a reference or case study absent receipt of City's prior written approval. Contractor shall further provide City with the opportunity to review and approve any such reference or case study prior to publication. In no event may Contractor use any City marks in conjunction with a reference or case study.

8.0 SECTION 8: NON-EXCLUSIVE AGREEMENT

City and Contractor understand and agree that this is a non-exclusive Agreement to provide services to the City and the LAFD and that the City or the LAFD reserve the right to enter into an agreement with other Contractors to provide similar services during the term of this Agreement.

9.0 SECTION 9: CITY CONTRACTING REQUIREMENTS

9.1 Standard Provisions

Contractor shall comply with the Standard Provisions for City Contracts (Rev. 10/21)[v.4], attached hereto as Attachment A and incorporated by reference as though fully set forth herein.

9.2 Disclosure of Border Wall Contracting Ordinance

Contractor shall comply with Los Angeles Administrative Code (LAAC) Section 10.50 *et seq.*, "Disclosure of Border Wall Contracting Ordinance." City may terminate this Agreement at any time if City determines that Contractor failed to fully and accurately complete the required affidavit and disclose all Border Wall Bids and Border Wall Contracts, as defined in LAAC Section 10.50.1.

10.0 SECTION 10: ORDER OF PRECEDENCE

This Agreement, and any attachments or documents incorporated herein by inclusion or by reference constitutes the complete and entire Agreement between the City and the Contractor. In the event of any inconsistency between the body of this Agreement and the Attachments, the order of precedence will be as follows:

- 1) This Agreement between the City of Los Angeles and Giant Steps LAX, LLC dba Fundamental Design Group
- 2) Attachment A – Standard Provisions for City Contracts (Rev. 10/21)[v.4]
- 3) Attachment B – Scope of Work
- 4) Attachment C – Fee Schedule for Additional As-Needed Services

11.0 SECTION 11: ENTIRE AGREEMENT

This Agreement contains the full and complete Agreement between the parties. No verbal agreement or conversation with any officer or employee of either party will affect or modify any of the terms and conditions of this Agreement. No-shrink-wrap, click-wrap, privacy policy, or other terms and conditions or agreements ("Additional Contractor Software Terms") provided with any products, services, documentation, or software provided by Contractor to City hereunder shall be binding on the City, even if use of the foregoing requires an affirmative "acceptance" of those Additional Contractor Software Terms before access is permitted. All such Additional Contractor Software Terms will be of no force or effect and will be deemed rejected by the City in their entirety.

12.0 SECTION 12: COUNTERPARTS/ELECTRONIC SIGNATURES

This Agreement may be executed in one or more counterparts, and by the parties in separate counterparts, each of which when executed shall be deemed to be an original but all of which taken together shall constitute one and the same agreement. The parties further agree that facsimile signatures or signatures scanned into .pdf (or signatures in another electronic format designated by City) and sent by e-mail shall be deemed original signatures.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by their respective duly authorized representatives.

THE CITY OF LOS ANGELES

GIANT STEPS LAX, LLC
DBA FUNDAMENTAL DESIGN GROUP

By: _____
Kristin M. Crowley
Fire Chief

By: _____
Jessica Robins Thompson
Principal

Date: _____

Date: _____

APPROVED AS TO FORM:
MICHAEL N. FEUER, City Attorney

By: _____
Samuel W. Petty
Deputy City Attorney

Date: _____

ATTEST:
HOLLY L. WOLCOTT, City Clerk

By: _____
Deputy City Clerk

Date: _____

Agreement Number: _____

ATTACHMENT A

STANDARD PROVISIONS FOR CITY CONTRACTS (Rev. 10/21)[v.4]

STANDARD PROVISIONS FOR CITY CONTRACTS

TABLE OF CONTENTS

| | | |
|--------|--------------------------------------------------------------------------------------|---|
| PSC-1 | <u>Construction of Provisions and Titles Herein</u> | 1 |
| PSC-2 | <u>Applicable Law, Interpretation and Enforcement</u> | 1 |
| PSC-3 | <u>Time of Effectiveness</u> | 1 |
| PSC-4 | <u>Integrated Contract</u> | 2 |
| PSC-5 | <u>Amendment</u> | 2 |
| PSC-6 | <u>Excusable Delays</u> | 2 |
| PSC-7 | <u>Waiver</u> | 2 |
| PSC-8 | <u>Suspension</u> | 3 |
| PSC-9 | <u>Termination</u> | 3 |
| PSC-10 | <u>Independent Contractor</u> | 5 |
| PSC-11 | <u>Contractor's Personnel</u> | 5 |
| PSC-12 | <u>Assignment and Delegation</u> | 6 |
| PSC-13 | <u>Permits</u> | 6 |
| PSC-14 | <u>Claims for Labor and Materials</u> | 6 |
| PSC-15 | <u>Current Los Angeles City Business Tax Registration Certificate Required</u> | 6 |
| PSC-16 | <u>Retention of Records, Audit and Reports</u> | 6 |
| PSC-17 | <u>Bonds</u> | 7 |
| PSC-18 | <u>Indemnification</u> | 7 |
| PSC-19 | <u>Intellectual Property Indemnification</u> | 7 |
| PSC-20 | <u>Intellectual Property Warranty</u> | 8 |
| PSC-21 | <u>Ownership and License</u> | 8 |
| PSC-22 | <u>Data Protection</u> | 9 |

TABLE OF CONTENTS (Continued)

| | | |
|-----------|------------------------------------------------------------------------------------------------|----|
| PSC-23 | <u>Insurance</u> | 9 |
| PSC-24 | <u>Best Terms</u> | 9 |
| PSC-25 | <u>Warranty and Responsibility of Contractor</u> | 10 |
| PSC-26 | <u>Mandatory Provisions Pertaining to Non-Discrimination in Employment</u> | 10 |
| PSC-27 | <u>Child Support Assignment Orders</u> | 10 |
| PSC-28 | <u>Living Wage Ordinance</u> | 11 |
| PSC-29 | <u>Service Contractor Worker Retention Ordinance</u> | 11 |
| PSC-30 | <u>Access and Accommodations</u> | 11 |
| PSC-31 | <u>Contractor Responsibility Ordinance</u> | 12 |
| PSC-32 | <u>Business Inclusion Program</u> | 12 |
| PSC-33 | <u>Slavery Disclosure Ordinance</u> | 12 |
| PSC-34 | <u>First Source Hiring Ordinance</u> | 12 |
| PSC-35 | <u>Local Business Preference Ordinance</u> | 12 |
| PSC-36 | <u>Iran Contracting Act</u> | 12 |
| PSC-37 | <u>Restrictions on Campaign Contributions in City Elections</u> | 12 |
| PSC-38 | <u>Contractors' Use of Criminal History for Consideration of Employment Applications</u> | 13 |
| PSC-39 | <u>Limitation of City's Obligation to Make Payment to Contractor</u> | 13 |
| PSC-40 | <u>Compliance with Identity Theft Laws and Payment Card Data Security Standards</u> | 14 |
| PSC-41 | <u>Compliance with California Public Resources Code Section 5164</u> | 14 |
| PSC-42 | <u>Possessory Interests Tax</u> | 14 |
| PSC-43 | <u>Confidentiality</u> | 15 |
| PSC-44 | <u>COVID-19</u> | 15 |
| Exhibit 1 | <u>Insurance Contractual Requirements</u> | 16 |

STANDARD PROVISIONS FOR CITY CONTRACTS

PSC-1. Construction of Provisions and Titles Herein

All titles, subtitles, or headings in this Contract have been inserted for convenience, and shall not be deemed to affect the meaning or construction of any of the terms or provisions of this Contract. The language of this Contract shall be construed according to its fair meaning and not strictly for or against **CITY** or **CONTRACTOR**. The word "**CONTRACTOR**" includes the party or parties identified in this Contract. The singular shall include the plural and if there is more than one **CONTRACTOR**, unless expressly stated otherwise, their obligations and liabilities shall be joint and several. Use of the feminine, masculine, or neuter genders shall be deemed to include the genders not used.

PSC-2. Applicable Law, Interpretation and Enforcement

Each party's performance shall comply with all applicable laws of the United States of America, the State of California, and **CITY**, including but not limited to, laws regarding health and safety, labor and employment, wage and hours and licensing. This Contract shall be enforced and interpreted under the laws of the State of California without regard to conflict of law principles. **CONTRACTOR** shall comply with new, amended, or revised laws, regulations, or procedures that apply to the performance of this Contract with no additional compensation paid to **CONTRACTOR**.

In any action arising out of this Contract, **CONTRACTOR** consents to personal jurisdiction, and agrees to bring all such actions, exclusively in state or federal courts located in Los Angeles County, California.

If any part, term or provision of this Contract is held void, illegal, unenforceable, or in conflict with any federal, state or local law or regulation, the validity of the remaining parts, terms or provisions of this Contract shall not be affected.

PSC-3. Time of Effectiveness

Unless otherwise provided, this Contract shall take effect when all of the following events have occurred:

- A. This Contract has been signed on behalf of **CONTRACTOR** by the person or persons authorized to bind **CONTRACTOR**;
- B. This Contract has been approved by the City Council or by the board, officer or employee authorized to give such approval;
- C. The Office of the City Attorney has indicated in writing its approval of this Contract as to form; and
- D. This Contract has been signed on behalf of **CITY** by the person designated by the City Council, or by the board, officer or employee authorized to enter into this Contract.