

**ON-CALL AGREEMENT FOR
FACILITIES ENGINEERING SUPPORT
BETWEEN
THE CITY OF LEE'S SUMMIT
AND
BRANCHPATTERN, INC.**

THIS ON-CALL AGREEMENT FOR Facilities Engineering Support (this "Agreement") is entered into as of the Effective Date set forth below between the City of Lee's Summit, a Missouri municipal corporation (the "City"), and BranchPattern, Inc., a Corporation (the "Consultant"). The City and the Consultant are sometimes referred to individually as the "Party" and collectively as the "Parties".

RECITALS

- A. The City issued a Request for Qualifications, RFQ #2023-054 "Request for qualifications for on-call Facilities Engineering Support" (the "RFQ"), a copy of which is on file with Public Works and incorporated herein by reference, seeking proposals from Consultants to provide on-call geotechnical engineering, materials testing, and inspection services as described in Exhibit B, attached hereto and incorporated herein by reference (the "Services").
- B. The Consultant responded to the RFQ by submitting a proposal (the "Proposal"), attached hereto as Exhibit A and incorporated herein by reference, and the City desires to enter into an Agreement with the Consultant for the Services.

AGREEMENT

NOW, THEREFORE, in consideration of the foregoing recitals, which are incorporated herein by reference, the following mutual covenants and conditions, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the City and the Consultant hereby agree as follows:

1. Term of Agreement.

- A. Initial Term. This Agreement shall be effective from the Effective Date, and remain in full force and effect for one year thereafter (the "Initial Term"), unless terminated as otherwise provided herein.
- B. Renewal Terms. After the expiration of the Initial Term, this Agreement may automatically renew for up to four (4) successive, one-year terms (each a "Renewal Term") if it is deemed in the best interests of the City, subject to availability and appropriation of funds for renewal in each subsequent year. The Initial Term and any Renewal Term(s) are collectively referred to herein as the "Term." Upon renewal, the terms and conditions of this Contract shall remain in full force and effect.

2. Scope of Work. This is an indefinite quantity and indefinite delivery Agreement for Services, which shall only be provided when the City chooses to move forward with a pending project and proper authorization and documentation have been approved. In the event Consultant is engaged to provide the Services, City and Consultant shall enter into a written Memorandum of Authorization describing (a) the scope of services to be provided by Consultant and City, (b) compensation to the Consultant for services to be provided, (c) required deliverables or products from the Consultant to the City, and (d) completion times for said services. The compensation to be paid Consultant pursuant to any Memorandum of Authorization shall be at the rates set forth in Exhibit C, attached hereto and incorporated herein by reference. In no event shall any work in excess of that described in Exhibit B be authorized by this Agreement without City and Consultant first entering into a written modification. The City does not guarantee any minimum or maximum amount of Services will be requested under this Agreement.

3. Compensation. The City shall pay Consultant for the Services (as described in Section 2, Scope of Work) at the rates for the Services, as set forth in the Fee Schedule, attached hereto as Exhibit C and incorporated herein by reference.

The City's Public Works Department will only review fully documented requests for price increases after an Agreement has been in effect for one (1) year. Any price increase adjustment will only be made at the time of contract renewal and will be a factor in the renewal review process. The City's Public Works Department will determine whether the requested price increase or an alternate option is in the best interest of the City. Any price adjustment will be effective upon the effective date of the contract renewal.

4. Payments. The City shall pay the Consultant upon the completion of each project, based upon work performed and completed to date, and upon submission and approval of invoices. All invoices shall document and itemize all work completed to date, and shall include the Purchase Order number authorizing the transaction, if applicable, and shall be delivered to the City Accounts Payable address indicated on the face of the Purchase Order or email to ap@cityofls.net, unless otherwise specified. Each invoice statement shall include a record of time expended and work performed in sufficient detail to justify payment. All transportation

charges must be prepaid by the Consultant. If invoice is subject to a quick payment discount, the discount period will be calculated from the date of receipt of the claim Service or the/ Materials or the invoice, whichever is later.

5. Safety Plan. Consultant shall provide the Services in accordance with a safety plan that is compliant with Occupational Safety and Health Administration ("OSHA"), American National Standards Institute and National Institute for Occupational Safety and Health standards. If, in the Consultant's sole determination, the Services to be provided do not require a safety plan, Consultant shall notify the City, in writing, describing the reasons a safety plan is unnecessary. The City reserves the right to request a safety plan following such notification.

6. Documents. All documents, including any intellectual property rights thereto, prepared and submitted to the City pursuant to this Agreement shall be the property of the City.

7. Consultant Personnel. Consultant shall provide adequate, experienced personnel, capable of and devoted to the successful performance of the Services under this Agreement. Consultant agrees to assign specific individuals to key positions. If deemed qualified, the Consultant is encouraged to hire City residents to fill vacant positions at all levels. Consultant agrees that, upon commencement of the Services to be performed under this Agreement, key personnel shall not be removed or replaced without prior written notice to the City. If key personnel are not available to perform the Services for a continuous period exceeding thirty (30) calendar days, or are expected to devote substantially less effort to the Services than initially anticipated, Consultant shall immediately notify the City of same and shall, subject to the concurrence of the City, replace such personnel with personnel possessing substantially equal ability and qualifications.

8. Inspection; Acceptance. All work and services shall be subject to inspection and acceptance by the City at reasonable times during Consultant's performance. The Consultant shall provide and maintain a self-inspection system that is acceptable to the City.

9. Licenses; Materials. Consultant shall maintain in current status all federal, state, and local licenses and permits required for the operation of the business conducted by the Consultant. The City has no obligation to provide Consultant, its employees, or subconsultants any business registrations or licenses required to perform the specific services set forth in this Agreement. The City has no obligation to provide tools, equipment or material to Consultant.

10. Performance Warranty. Consultant warrants that the Services rendered will conform to the requirements of this Agreement and with the care and skill ordinarily used by members of the same profession practicing under similar circumstances at the same time and in the same locality.

11. Indemnification. To the fullest extent permitted by law, the Consultant shall indemnify, defend and hold harmless the City and each council member, officer, director, employee or agent thereof (the City and any such person being herein called an "Indemnified Party"), for, from and against any and all losses, claims, damages, liabilities, fines, penalties, judgments, costs and expenses (including, but not limited to, reasonable attorneys' fees, court costs and the costs of appellate proceedings) to which any such Indemnified Party may become subject, under any theory of liability whatsoever (collectively "Claims"), insofar as such Claims (or actions in respect thereof) relate to, arise out of, or are caused by or based upon the intentional, reckless, or negligent acts, misconduct, errors, directives, mistakes or omissions, in connection with the work or services of the Consultant, its officers, employees, agents, or any tier of subconsultant or person for which Consultant may be legally liable in the performance of this Agreement.

The amount and type of insurance coverage requirements set forth below will in no way be construed as limiting the scope of the indemnity in this Section.

12. Insurance.

12.1 General.

- A. Insurer Qualifications. Without limiting any obligations or liabilities of Consultant, Consultant shall purchase and maintain, at its own expense, hereinafter stipulated minimum insurance with insurance companies authorized to do business in the State of Missouri, with an AM Best, Inc. rating of A or above with policies and forms satisfactory to the City. Failure to maintain insurance as specified herein may result in termination of this Agreement at the City's option.
- B. No Representation of Coverage Adequacy. The City reserves the right to review any and all of the insurance policies and/or endorsements cited in this Agreement, but has no obligation to do so. Failure to demand such evidence of full compliance with the insurance requirements set forth in this Agreement or failure to identify any insurance deficiency shall not relieve Consultant from, nor be construed or deemed a waiver of, its obligation to maintain the required insurance at all times during the performance of this Agreement.
- C. Additional Insured. All insurance coverage and self-insured retention or deductible portions, except Workers' Compensation insurance and Professional Liability insurance, if applicable, shall name and endorse, to the fullest extent permitted by law for claims arising out of the performance of this Agreement, the City, its agents, representatives, officers,

directors, officials and employees as Additional Insured as specified under the respective coverage sections of this Agreement.

- D. Coverage Term. All insurance required herein shall be maintained in full force and effect until all work or services required to be performed under the terms of this Agreement are satisfactorily performed, completed and formally accepted by the City, unless specified otherwise in this Agreement.
- E. Primary Insurance. Consultant's insurance shall be, or be endorsed to indicate, its primary, non-contributory insurance with respect to performance of this Agreement and in the protection of the City as an Additional Insured. Such coverage shall be at least as broad as ISO CG 20 01 04 13.
- F. Claims Made. In the event any insurance policies required by this Agreement are written on a "claims made" basis, coverage shall extend, either by keeping coverage in force or purchasing an extended reporting option, for six (6) years past completion and acceptance of the services. Such continuing coverage shall be evidenced by submission of annual Certificates of Insurance citing applicable coverage is in force and contains the provisions as required herein for the six-year period.
- G. Waiver. All policies, except for Professional Liability, including Workers' Compensation insurance, shall contain a waiver of rights of recovery (subrogation) against the City, its agents, representatives, officials, officers and employees for any claims arising out of the work or services of Consultant. Consultant shall arrange to have such subrogation waivers incorporated into each policy via formal written endorsement.
- H. Policy Deductibles and/or Self-Insured Retentions. The policies set forth in these requirements may provide coverage that contains deductibles or self-insured retention amounts. Such deductibles or self-insured retention shall not be applicable with respect to the policy limits provided to the City. Consultant shall be solely responsible for any such deductible or self-insured retention amount.
- I. Sovereign immunity. In no event shall any language or requirement in this Agreement be construed as or constitute a waiver or limitation of City's defenses with regard to sovereign immunity, governmental immunity, or official immunity under federal or state constitutions, statutes, and/or laws.
- J. Use of SubConsultants. If any work under this Agreement is subcontracted in any way, Consultant shall either cover all sub-Consultants in the Consultant's liability insurance policy or execute written agreements with its subConsultants containing the indemnification provisions set forth in this Section and insurance requirements set forth herein protecting the City and Consultant. Consultant shall be responsible for executing any agreements with its subConsultants and obtaining certificates of insurance verifying the insurance requirements.
- K. Notice of Claim. Consultant shall upon receipt of notice of any claim in connection with this Agreement promptly notify the City, providing full details thereof, including an estimate of the amount of loss or liability. Consultant shall also promptly notify the City of any reduction in limits of protection afforded under any policy listed in the certificate(s) of insurance in an amount such that the policy aggregate becomes less than the current statutory waiver of sovereign immunity, regardless of whether such impairment is a result of this Agreement. A breach of this provision is a material breach of the Agreement.
- L. Evidence of Insurance. Prior to commencing any work or services under this Agreement, Consultant will provide the City with suitable evidence of insurance in the form of certificates of insurance and a copy of the declaration page(s) of the insurance policies as required by this Agreement, issued by Consultant's insurance insurer(s) as evidence that policies are placed with acceptable insurers as specified herein and provide the required coverages, conditions and limits of coverage specified in this Agreement and that such coverage and provisions are in full force and effect. The City may reasonably rely upon the certificates of insurance and declaration page(s) of the insurance policies as evidence of coverage but such acceptance and reliance shall not waive or alter in any way the insurance requirements or obligations of this Agreement.

If any of the policies required by this Agreement expire during the life of this Agreement, Consultant shall forward renewal certificates and declaration page(s) to the City thirty (30) days prior to the expiration date. All certificates of insurance and declarations required by this Agreement shall be identified by referencing number and title of this Agreement. Additionally, certificates of insurance and declaration page(s) of the insurance policies submitted without a reference to this Agreement, as applicable, will be subject to rejection and may be returned or discarded. Certificates of insurance and declaration page(s) shall specifically include the following provisions:

- (1) The City, its agents, representatives, officers, directors, officials and employees are Additional Insureds as follows:
 - (a) Commercial General Liability – Under Insurance Services Office, Inc., ("ISO") Form CG 20 10 03 97 and CG 20 37 07 04, or their equivalents.
 - (b) Auto Liability – Under ISO Form CA 20 48 or equivalent.
 - (c) Excess Liability – Follow Form to underlying insurance.
- (2) Consultant's insurance shall be primary, non-contributory insurance with respect to performance of the Agreement.

- (3) All policies, except for Professional Liability, including Workers' Compensation, waive rights of recovery (subrogation) against City, its agents, representatives, officers, officials and employees for any claims arising out of work or services performed by Consultant under this Agreement.
- (4) ACORD certificate of insurance form 25 (2014/01) is preferred. If ACORD certificate of insurance form 25 (2001/08) is used, the phrases in the cancellation provision "endeavor to" and "but failure to mail such notice shall impose no obligation or liability of any kind upon the company, its agents or representatives" shall be deleted. Certificate forms other than ACORD form shall have similar restrictive language deleted.

All Certificates of Insurance shall name the City of Lee's Summit as the certificate holder and send the certificate and any endorsements to:

City of Lee's Summit
Attn: Public Works
220 S.E. Green Street
Lee's Summit, MO 64063 -2358

- M. Endorsements. Consultant shall provide the City with the necessary endorsements to ensure City is provided the insurance coverage set forth in this Subsection.

12.2 Required Insurance Coverage.

- A. Commercial General Liability. Consultant shall maintain "occurrence" form Commercial General Liability insurance with an unimpaired limit of not less than \$3,000,000 for each occurrence, \$3,000,000 Products and Completed Operations Annual Aggregate and a \$3,000,000 General Aggregate Limit. The policy shall cover liability arising from premises, operations, independent Consultants, products-completed operations, bodily injury, personal injury and advertising injury. Coverage under the policy will be at least as broad as ISO policy form CG 00 01 93 or equivalent thereof, including but not limited to, separation of insured's clause. To the fullest extent allowed by law, for claims arising out of the performance of this Agreement, the City, its agents, representatives, officers, officials and employees shall be endorsed as an Additional Insured under ISO, Commercial General Liability Additional Insured Endorsement forms CG 20 10 03 97 and CG 20 37 07 04, or their equivalents, which shall read "Who is an Insured (Section II) is amended to include as an insured the person or organization shown in the Schedule, but only with respect to liability arising out of "your work" for that insured by or for you." The policy shall contain an endorsement waiving rights of recovery (subrogation) against the City, its agents, representatives, officials, officers and employees. If any Excess insurance is utilized to fulfill the requirements of this subsection, such Excess insurance shall be "follow form" equal or broader in coverage scope than underlying insurance.
- B. Vehicle Liability. Consultant shall maintain Business Automobile Liability insurance with an unimpaired limit of \$1,000,000 each occurrence on Consultant's owned, hired and non-owned vehicles assigned to or used in the performance of the Consultant's work or services under this Agreement. Coverage will be at least as broad as ISO coverage code "1" "any auto" policy form CA 00 01 12 93 or equivalent thereof. To the fullest extent allowed by law, for claims arising out of the performance of this Agreement, the City, its agents, representatives, officers, directors, officials and employees shall be endorsed as an Additional Insured under ISO Business Auto policy Designated Insured Endorsement form CA 20 48 or equivalent. The policy shall contain an endorsement waiving rights of recovery (subrogation) against the City, its agents, representatives, officials, officers and employees. If any Excess insurance is utilized to fulfill the requirements of this subsection, such Excess insurance shall be "follow form" equal or broader in coverage scope than underlying insurance.
- C. Workers' Compensation Insurance. Consultant shall maintain Workers' Compensation insurance to cover obligations imposed by federal and state statutes having jurisdiction over Consultant's employees engaged in the performance of work or services under this Agreement and shall also maintain Employers Liability Insurance with an unimpaired limit of not less than \$500,000 for each accident, \$500,000 disease for each employee and \$1,000,000 disease policy limit. The policy shall contain an endorsement waiving rights of recovery (subrogation) against the City, its agents, representatives, officials, officers and employees.
- D. Professional Liability. If this Agreement is the subject of any professional services or work, or if the Consultant engages in any professional services or work in any way related to performing the work under this Agreement, the Consultant shall maintain Professional Liability insurance covering negligent errors and omissions arising out of the Services performed by the Consultant, or anyone employed by the Consultant, or anyone for whose negligent acts, mistakes, errors and omissions the Consultant is legally liable, with an liability insurance limit of \$3,000,000 each claim and \$3,000,000 annual aggregate.

The Policy shall include, or be endorsed to include, property damage liability coverage for damage to, alteration of, loss of, or destruction of electronic data and/or information "property" of the City in the care, custody, or control of Consultant.

12.3 Cancellation and Expiration Notice. Insurance required herein shall not expire, be canceled, or be materially changed without thirty (30) days' prior written notice to the City.

13. Termination; Cancellation.

13.1 For City's Convenience. This Agreement is for the convenience of the City and, as such, may be terminated without cause after receipt by Consultant of written notice by the City. The Notice of Termination shall specify the effective date of termination, which shall be not less than five (5) calendar days from the date the notice is personally delivered or ten (10) days from the date the Notice of Termination is sent by another method. Upon termination for convenience, Consultant shall be paid, for all undisputed materials or services that were delivered prior to the termination date.

13.2 For Cause. If either Party fails to perform any obligation pursuant to this Agreement and such Party fails to cure its nonperformance within thirty (30) calendar days after notice of nonperformance is given by the non-defaulting Party, such Party will be in default. In the event of such default, the non-defaulting Party may terminate this Agreement immediately for cause and will have all remedies that are available to it at law or in equity including, without limitation, the remedy of specific performance. If the nature of the defaulting Party's nonperformance is such that it cannot reasonably be cured within thirty (30) calendar days, then the defaulting Party will have such additional periods of time as may be reasonably necessary under the circumstances, provided the defaulting Party immediately (1) provides written notice to the non-defaulting Party and (2) commences to cure its nonperformance and thereafter diligently continues to completion the cure of its nonperformance. In no event shall any such cure period exceed ninety (90) calendar days. In the event of such termination for cause, payment shall be made by the City to the Consultant for the undisputed portion of its fee due as of the termination date.

The City shall have the right to declare the Consultant in default for the following reasons, which set forth examples, but are not the only reasons the Consultant may be declared in default:

- A. Upon a breach by the Consultant of a material term or condition of this Contract, including unsatisfactory performance of the services;
- B. Upon insolvency or the commencement of any proceeding by or against the Consultant, either voluntarily or involuntarily, under the Bankruptcy Code or relating to the insolvency, receivership, liquidation, or composition of the Consultant for the benefit of creditors;
- C. If the Consultant refuses or fails to proceed with the services under the Contract when and as directed by the City;
- D. If the Consultant or any of its officers, directors, partners, five percent (5%) or greater shareholders, principals, or other employee or person substantially involved in its activities are indicted or convicted after execution of the Contract under any state or federal law of any of the following:
 - 1. a criminal offense incident to obtaining or attempting to obtain or performing a public or private contract;
 - 2. fraud, embezzlement, theft, bribery, forgery, falsification, or destruction of records, or receiving stolen property;
 - 3. a criminal violation of any state or federal antitrust law;
 - 4. violation of the Racketeer Influence and Corrupt Organization Act, 18 U.S.C. § 1961 et seq., or the Mail Fraud Act, 18 U.S.C. § 1341 et seq., for acts in connection with the submission of bids or proposals for a public or private contract;
 - 5. conspiracy to commit any act or omission that would constitute grounds for conviction or liability under any statute described in subparagraph (d) above; or
 - 6. an offense indicating a lack of business integrity that seriously and directly affects responsibility as a City Consultant.
- E. If the Consultant or any of its officers, directors, partners, five percent (5%) or greater shareholders, principals, or other employee or person substantially involved in its activities are subject to a judgment of civil liability under any state or federal antitrust law for acts or omissions in connection with the submission of bids or proposals for a public or private contract; or
- F. If the Consultant or any of its officers, directors, partners, five percent (5%) or greater shareholders, principals, or other employee or person substantially involved in its activities makes or causes to be made any false, deceptive, or fraudulent material statement, or fail to make a required material statement in any bid, proposal, or application for City or other government work.

13.3 Gratuities. The City may, by written notice to the Consultant, cancel this Agreement if it is found by the City that gratuities, in the form of economic opportunity, future employment, entertainment, gifts or otherwise, were offered or given by the Consultant or any agent or representative of the Consultant to any officer, agent or employee of the City for the purpose of securing

this Agreement. In the event this Agreement is canceled by the City pursuant to this provision, the City shall be entitled, in addition to any other rights and remedies, to recover and withhold from the Consultant an amount equal to 150% of the gratuity.

13.4 Agreement Subject to Appropriation. The City is obligated only to pay its obligations set forth in the Agreement as may lawfully be made from funds appropriated and budgeted for that purpose during the City's then current fiscal year. The City's obligations under this Agreement are current expenses subject to the "budget law" and the unfettered legislative discretion of the City concerning budgeted purposes and appropriation of funds. Should the City elect not to appropriate and budget funds to pay its Agreement obligations, this Agreement shall be deemed terminated at the end of the then-current fiscal year term for which such funds were appropriated and budgeted for such purpose and the City shall be relieved of any subsequent obligation under this Agreement. The Parties agree that the City has no obligation or duty of good faith to budget or appropriate the payment of the City's obligations set forth in this Agreement in any budget in any fiscal year other than the fiscal year in which the Agreement is executed and delivered. The City shall be the sole judge and authority in determining the availability of funds for its obligations under this Agreement. The City shall keep Consultant informed as to the availability of funds for this Agreement. The obligation of the City to make any payment pursuant to this Agreement is not a general obligation or indebtedness of the City. Consultant hereby waives any and all rights to bring any claim against the City from or relating in any way to the City's termination of this Agreement pursuant to this section.

13.5 Conflict of Interest. No salaried officer or employee of the City and no member of the City Council shall have a financial interest, direct or indirect, in this Agreement, and any violation of this provision renders the Agreement void. The parties shall comply with all federal conflict of interest statutes and regulations, and all applicable provisions of §§ 105.450, *et. seq.* RSMo. Consultant covenants that it presently has no interest and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of Services to be performed under this Agreement. Consultant further covenants that in the performance of this Agreement no person having such interest shall be employed.

14. Miscellaneous.

14.1 Independent Consultant. It is clearly understood that each party will act in its individual capacity and not as an agent, employee, partner, joint venturer, or associate of the other. An employee or agent of one party shall not be deemed or construed to be the employee or agent of the other for any purpose whatsoever. Consultant acknowledges and agrees that all services provided under this Agreement are being provided as an independent Consultant, not as an employee or agent of the City. Consultant, its employees and subConsultants are not entitled to workers' compensation benefits from the City. The City does not have the authority to supervise or control the actual work of Consultant, its employees or subConsultants. Consultant is neither prohibited from entering into other contracts nor prohibited from practicing its profession elsewhere. City and Consultant do not intend to nor will they combine business operations under this Agreement.

14.2 Applicable Law; Venue. This Agreement shall be governed by the laws of the State of Missouri, and a suit pertaining to this Agreement may be brought only in courts in eastern Jackson County, Missouri. The Parties expressly and irrevocably consent to the exclusive jurisdiction and venue of such courts and expressly waive the right to transfer or remove any such action.

14.3 Laws and Regulations. Consultant shall comply with all federal, state, and local laws, regulations, and ordinances applicable to its performance under this Agreement. The Consultant shall include similar requirements of all subConsultants in Agreements entered for performance of Consultant's obligations under this Agreement. Consultant shall keep fully informed and shall at all times during the performance of its duties under this Agreement ensure that it and any person for whom the Consultant is responsible abides by, and remains in compliance with, all rules, regulations, ordinances, statutes or laws affecting the Services, including, but not limited to, the following: (1) existing and future City and County ordinances and regulations; (2) existing and future State and Federal laws and regulations; and (C) existing and future Occupational Safety and Health Administration standards.

14.4 Amendments. This Agreement may be modified only by a written amendment signed by persons duly authorized to enter into contracts on behalf of the City and the Consultant.

14.5 Provisions Required by Law. Each and every provision of law and any clause required by law to be in the Agreement will be read and enforced as though it were included herein and, if through mistake or otherwise any such provision is not inserted, or is not correctly inserted, then upon the application of either Party, the Agreement will promptly be physically amended to make such insertion or correction.

14.6 Severability. The provisions of this Agreement are severable to the extent that any provision or application held to be invalid by a Court of competent jurisdiction shall not affect any other provision or application of the Agreement which may remain in effect without the invalid provision or application.

14.7 Entire Agreement; Interpretation; Parol Evidence. This Agreement represents the entire agreement of the Parties with respect to its subject matter, and all previous agreements, whether oral or written, entered into prior to this Agreement are hereby revoked and superseded by this Agreement. No representations, warranties, inducements or oral agreements have been made

by any of the Parties except as expressly set forth herein, or in any other contemporaneous written agreement executed for the purposes of carrying out the provisions of this Agreement. This Agreement shall be construed and interpreted according to its plain meaning, and no presumption shall be deemed to apply in favor of, or against the Party drafting the Agreement. The Parties acknowledge and agree that each has had the opportunity to seek and utilize legal counsel in the drafting of, review of, and entry into this Agreement.

14.8 Assignment; Delegation. No right or interest in this Agreement shall be assigned or delegated by Consultant without prior, written permission of the City, signed by the City Administrator. Any attempted assignment or delegation by Consultant in violation of this provision shall be a breach of this Agreement by Consultant. The requirements of this Agreement are binding upon the heirs, executors, administrators, successors, and assigns of both Parties.

14.9 Subcontracts. No subcontract shall be entered into by the Consultant with any other Party to furnish any of the material or services specified herein without the prior written and signed approval of the City. The Consultant is responsible for performance under this Agreement whether or not sub-contractors are used. Failure to pay sub-contractors in a timely manner pursuant to any subcontract shall be a material breach of this Agreement by Consultant.

14.10 Rights and Remedies. No provision in this Agreement shall be construed, expressly or by implication, as waiver by the City of any existing or future right and/or remedy available by law in the event of any claim of default or breach of this Agreement. The failure of the City to insist upon the strict performance of any term or condition of this Agreement or to exercise or delay the exercise of any right or remedy provided in this Agreement, or by law, or the City's acceptance of and payment for services, shall not release the Consultant from any responsibilities or obligations imposed by this Agreement or by law, and shall not be deemed a waiver of any right of the City to insist upon the strict performance of this Agreement.

14.11 Offset for Damages. In addition to all other remedies at law or equity, the City may offset from any money due to the Consultant any amounts Consultant owes to the City for damages resulting from breach or deficiencies in performance or breach of any obligation under this Agreement.

14.12 Notices and Requests. Any notice or other communication required or permitted to be given under this Agreement shall be in writing and shall be deemed to have been duly given if (1) delivered to the Party at the address set forth below, (2) deposited in the U.S. Mail, registered or certified, return receipt requested, to the address set forth below or (3) given to a recognized and reputable overnight delivery service, to the address set forth below:

If to the City: City of Lee's Summit
220 SE Green St
Lee's Summit, Missouri 64063
Attn: Public Works Department

With copy to: City of Lee's Summit
220 SE Green St
Lee's Summit, Missouri 64063
Attn: City Attorney's Office

If to Consultant: BranchPattern, Inc.
1508 Grand Boulevard
Kansas City, MO 64108
Attn: Brad Lewis

or at such other address, and to the attention of such other person or officer, as any Party may designate in writing by notice duly given pursuant to this subsection. Notices shall be deemed received (1) when delivered to the Party, (2) three (3) business days after being placed in the U.S. Mail, properly addressed, with sufficient postage, or (3) the following business day after being given to a recognized overnight delivery service, with the person giving the notice paying all required charges and instructing the delivery service to deliver on the following business day. If a copy of a notice is also given to a Party's counsel or other recipient, the provisions above governing the date on which a notice is deemed to have been received by a Party shall mean and refer to the date on which the Party, and not its counsel or other recipient to which a copy of the notice may be sent, is deemed to have received the notice.

14.13 Force Majeure. The Parties shall be excused from performance during the time and to the extent that they are prevented from obtaining, delivering, or performing for reasons beyond the Parties' reasonable control, including without limitation, by act of God, public health emergency, natural disaster fire, strike, loss or shortage of transportation facilities, lock-out, commandeering of materials, products, plants or facilities by the government, and any other events or circumstances beyond the reasonable control

of the party, when satisfactory evidence is presented to the City, provided that it is satisfactorily established that the non-performance is not due to the fault or neglect of the Party not performing.

14.14 Confidentiality of Records. The Consultant shall establish and maintain procedures and controls that are acceptable to the City for the purpose of ensuring that information contained in its records or obtained from the City or from others in carrying out its obligations under this Agreement shall not be used or disclosed by it, its agents, officers, or employees, except as required to perform Consultant's duties under this Agreement. Persons requesting such information should be referred to the City. Consultant also agrees that any information pertaining to individual persons shall not be divulged other than to employees or officers of Consultant as needed for the performance of duties under this Agreement. Consultant shall ensure its sub-contractors are aware of and comply with this provision.

14.15 Information Technology

- A. Limited Access. If necessary for the fulfillment of the Contract, the City may provide the Consultant with non-exclusive, limited access to the City's information technology infrastructure. The Consultant understands and agrees to abide by all the City policies, standards, regulations and restrictions regarding access and usage of the City's information technology infrastructure. The Consultant shall enforce all such policies, standards, regulations and restrictions with all the Consultant's employees, agents or any tier of sub-contractor granted access in the performance of this Contract, and shall be granted and authorize only such access as may be necessary for the purpose of fulfilling the requirements of the Contract.
- B. Data Confidentiality: All data, regardless of form, including originals, images and reproductions, prepared by, obtained by or transmitted to the Consultant in connection with this Contract is confidential, proprietary information owned by the City. Except as specifically provided in this Contract, the Consultant shall not, without the prior, written consent of the City Manager or authorized designee, (A) disclose data generated in the performance of the Services to any third party or (B) use City data and information.
- C. Data Security. Personal identifying information, financial account information, or restricted City information, whether electronic format or hard copy, must be secured and protected at all times to avoid unauthorized access. At a minimum, the Consultant must encrypt and/or password-protect electronic files. This includes data saved to laptop computers, computerized devices or removable storage devices. When personal identifying information, financial account information, or restricted City information, regardless of its format, is no longer necessary or this Contract is terminated (whichever occurs first), the information must be redacted or destroyed through appropriate and secure methods that ensure the information cannot be viewed, accessed or reconstructed. Before the information discussed in this subsection is destroyed, the Consultant shall send a copy of such information to the City in a format specified by the City.
- D. Compromised Security. In the event that data collected or obtained by the Consultant in connection with this Contract is believed to have been compromised, the Consultant shall notify the City Manager, or authorized designee, immediately. The Consultant agrees to reimburse the City for any costs incurred by the City to investigate potential breaches of this data and, where applicable, the cost of notifying individuals who may be impacted by the breach.
- E. Permitted Access. The Consultant's employees, agents and sub-contractors must receive prior, written approval from the City before being granted access to the City's information technology infrastructure and data and the City, in its sole determination, shall determine accessibility and limitations thereto. The Consultant agrees that the requirements of this Section shall be incorporated into all sub-contractor contracts entered into by the Consultant. It is further agreed that a violation of this Section shall be deemed to cause irreparable harm that justifies injunctive relief in court. A violation of this Section may result in immediate termination of this Contract without notice.
- F. Cessation of Operation or Support. If Consultant ceases to operate, ends support of, or otherwise divests its interest in the software and materials for which it is contracted by the City and does not assign its service obligations according to these Terms and Conditions, the Consultant shall provide the City a copy of current source code. The City agrees it shall only use the source code to support its internal use of the software.
- G. Disengagement. In the event the Contract is terminated by either party, Consultant agrees to confer back to the City all of its data, in usable and normalized format, within 30 calendar days of notice of termination. There shall be no charge for the return of City data to the City.
- H. Survival. The obligations of the Consultant under this Section shall survive the termination of this Contract.

14.16 Work Authorization/E-verify. Pursuant § 285.530, RSMo., if Agreement exceeds five thousand dollars (\$5,000.00), Consultant warrants and affirms to the City that (i) Consultant is enrolled and participates in a federal work authorization program with respect to the employees working in connection with the contracted services and (ii) Consultant does not knowingly employ any person who is an unauthorized alien in connection with the contracted services.

Consultant shall swear to and sign an affidavit declaring such affirmation, and provide the City with supporting documentation of its enrollment and participation in a federal work authorization program with respect to the employees working in connection with this Agreement. The required documentation must be from the federal work authorization program provider (e.g. the electronic signature page from the E-Verify program's Memorandum of Understanding); a letter from Consultant reciting compliance is not sufficient.

14.17 Conflicting Terms. In the event of any inconsistency, conflict or ambiguity among the terms of this Agreement, the Scope of Work, any City-approved Purchase Order or memorandum of authorization, the Fee Schedule, the RFQ and the Consultant's Proposal, the documents shall govern in the order listed herein.

Notwithstanding the foregoing, unauthorized exceptions, conditions, limitations or provisions in conflict with the terms of this Agreement (collectively, the "Unauthorized Conditions"), other than the City's project-specific quantities, configurations or delivery dates, are expressly declared void and shall be of no force and effect. Acceptance by the City of any invoice containing any such Unauthorized Conditions or failure to demand full compliance with the terms and conditions set forth in this Contract shall not alter or relieve Consultant from, nor be construed or deemed a waiver of, its requirements and obligations in the performance of this Agreement. If the Agreement is renewed pursuant to Section 1 above and such renewal includes any conflicting terms, other than price, those terms will be null and void unless amended as set forth in this Agreement.

14.18 Non-Exclusive Agreement. This Agreement is entered into with the understanding and agreement that it is for the sole convenience of the City. The City reserves the right to obtain like goods and services from another source when necessary.

14.19 Prevailing Wages. Pursuant to RSMo. § 290.230.5, if this Agreement exceeds seventy-five thousand dollars (\$75,000.00) and involves construction of public works, Consultant shall all its workers the prevailing hourly rate of wages for work of a similar character in Lee's Summit. If there is a dispute whether this Agreement is subject to prevailing wages as required by RSMo. § 290.210, et. seq., the City's determination shall control.

14.20 Cooperative Purchasing. Consultant, by submitting a proposal to the RFQ, acknowledges that other specific eligible political subdivisions and nonprofit institutions ("Eligible Procurement Unit(s)") are permitted to utilize procurement agreements developed by the City, at their discretion and with the agreement of the awarded Consultant. Consultant may, at its sole discretion, accept orders from Eligible Procurement Unit(s) for the purchase of the materials and/or services at the prices and under the terms and conditions of this Agreement, in such quantities and configurations as may be agreed upon between the Parties. All cooperative procurements under this Agreement shall be transacted solely between the requesting Eligible Procurement Unit and Consultant. Payment for such purchases will be the sole responsibility of the Eligible Procurement Unit. The exercise of any rights, responsibilities or remedies by the Eligible Procurement Unit shall be the exclusive obligation of such unit. The City assumes no responsibility for payment, performance or any liability or obligation associated with any cooperative procurement under this Agreement. The City shall not be responsible for any disputes arising out of transactions made by others.

14.21 Time of the Essence. Time is of the essence in this Agreement. Unless otherwise specifically provided, any consent to delay in Consultant's performance of its obligation is applicable only to the particular transaction to which it relates, and is not applicable to any other obligation or transaction.

14.22 Signatory Authority. Each person signing this Agreement represents that such person has the requisite authority to execute this Agreement on behalf of the entity the person represents and that all necessary formalities have been met.

14.23 E-Signature and Counterparts. The Parties agree that this Agreement may be signed in two or more counterparts and/or signed electronically, and all such counterparts together shall constitute one and the same contract; such signatures shall bind the signing party in the same manner as if a handwritten signature had been delivered.

14.24 Anti-Discrimination Against Israel Act. If this Agreement has a total potential value of \$100,000 or more and Consultant has 10 or more employees, the following applies. Pursuant to Section 34.600, RSMo and to the fullest extent permitted by law, Consultant certifies that Consultant is not engaged in a boycott of Israel as of the Effective Date of this Agreement, and agrees for the duration of this Agreement to not engage in a boycott of Israel as defined in Section 34.600, RSMo

[SIGNATURES ON FOLLOWING PAGES]

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of this ____ day of _____, 2023 ("Effective Date").

CITY OF LEE'S SUMMIT

Mark Dunning, City Manager

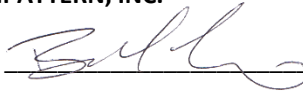
ATTEST:

Trisha Fowler Arcuri, City Clerk

APPROVED AS TO FORM:

Edward Rucker, Chief Counsel of Management and Operations

BRANCHPATTERN, INC.

By  _____

Print Name Brad Lewis

Title Principal

Date _____

EXHIBIT A
TO
ON-CALL AGREEMENT FOR
FACILITIES ENGINEERING SUPPORT
BETWEEN
THE CITY OF LEE'S SUMMIT
AND
BRANCHPATTERN, INC.

[Consultant's Proposal]

See following pages.

EXHIBIT B
TO
ON-CALL AGREEMENT FOR
FACILITIES ENGINEERING SUPPORT
BETWEEN
THE CITY OF LEE'S SUMMIT
AND
BRANCHPATTERN, INC.

SCOPE OF SERVICES TO BE PROVIDED BY CONSULTANT

Consultant shall provide the following services to the City on an as-needed basis:

-

EXHIBIT C
TO
ON-CALL AGREEMENT FOR
FACILITIES ENGINEERING SUPPORT
BETWEEN
THE CITY OF LEE'S SUMMIT
AND
BRANCHPATTERN, INC.

[Fee Schedule]

See following page(s).