

AGREEMENT
For
PROFESSIONAL SERVICES
Between
THE CITY OF COLUMBIA, MISSOURI
And
WEATHER OR NOT

THIS AGREEMENT (hereinafter "Agreement") between the City of Columbia, Missouri, a municipal corporation (hereinafter "City") and **Weather or Not**, with an address of **6100 Nieman Road, Suite 200; Shawnee, KS 66203**, (hereinafter "Consultant") is entered into on the date of the last signatory noted below (the "Effective Date").

WITNESSETH:

WHEREAS, City desires to engage the Consultant to render certain professional services as outlined in the Scope of Work in Exhibit A; and

WHEREAS, Consultant represents and warrants that Consultant is equipped, competent, and able to provide all of the professional services necessary or appropriate in accordance with this Agreement.

NOW, THEREFORE, the Parties hereto, for good and sufficient consideration, the receipt of which is hereby acknowledged, intending to be legally bound, do hereby agree as follows.

1. **Services.** City agrees to engage the services of the Consultant and the Consultant agrees to perform the professional services outlined in Exhibit A. City may add to the Consultant services or delete therefrom activities of a similar nature, provided that the total cost of such work does not exceed the total cost allowance as specified herein. Consultant shall undertake such changed activities or prepare written reports only upon the direction of the City. All such directives and changes shall be in written form and prepared and approved by the City Manager and shall be accepted and countersigned by the Consultant.

2. **Subcontracts.** Consultant represents that Consultant will secure at Consultant's own expense, all personnel required to perform the services called for under this Agreement by Consultant. None of the work or services covered by this Agreement shall be subcontracted or assigned without the written approval of City.

3. **Term.** The services of Consultant shall commence as soon as practicable after the execution of this Agreement, unless otherwise directed in writing, and shall be undertaken and completed in such sequence as to assure their expeditious completion in the light of the purposes of the Agreement, but in any event, all of the services

required hereunder shall be completed by **October 31, 2018**, unless the Parties agree otherwise, in writing.

4. **Payment.** City agrees to pay Consultant the sum of **Seven Thousand Eight Hundred Dollars (\$7800)** which shall constitute complete compensation for all services and payment of expenses to be rendered under this Agreement. Payment shall be made as follows: **Net 30 days**. It is expressly understood that in no event will the total amount to be paid to Consultant under the terms of this Agreement or any amendment thereto exceed the sum set forth in this paragraph unless otherwise agreed to in writing between the parties in advance of the provision of such services.

5. **Termination.** City shall have the right at any time by written notice to Consultant to terminate and cancel this Agreement, without cause, for the convenience of City. In such event, Consultant shall immediately stop work and City shall not be liable to Consultant except for payment for actual work performed prior to such notice in an amount proportionate to the completed contract price and for the actual costs of preparations made by Consultant for the performance of the cancelled portions of the contract, including a reasonable allowance of profit applicable to the actual work performed. Anticipatory profits and consequential damages shall not be recoverable by Consultant. Should City terminate this Agreement, Consultant shall refund any advance payment made and amount due to the City within thirty (30) days of the termination date.

6. **Notices.** Any notice, demand, request, or communication required or authorized by the Agreement shall be delivered either by hand, facsimile, overnight courier or mailed by certified mail, return receipt requested, with postage prepaid, to:

If to CITY:

Public Works Department
ATTN: Kim McCulloch
P.O. Box 6015
Columbia, MO 65205-6015

If to CONSULTANT:

Weather or Not
ATTN: Sara Croke
6100 Nieman Rd, Suite 200
Shawnee, KS 66203

The designation and titles of the person to be notified or the address of such person may be changed at any time by written notice. Any such notice, demand, request, or communication shall be deemed delivered on receipt if delivered by hand and on deposit by the sending party if delivered by courier or U.S. mail.

7. **Compliance with Laws.** Consultant shall comply with all applicable federal, state and local laws, ordinances, rules and regulations.

8. **Governing Law and Venue.** This Agreement shall be governed, interpreted, and enforced in accordance with the laws of the State of Missouri and/or the laws of the United States, as applicable. The venue for all litigation arising out of, or

relating to this Agreement, shall be in Boone County, Missouri, or the United States Western District of Missouri. The Parties hereto irrevocably agree to submit to the exclusive jurisdiction of such courts in the State of Missouri. The Parties agree to waive any defense of forum non conveniens.

9. **Employment of Unauthorized Aliens Prohibited.** Consultant agrees to comply with Missouri Revised Statute Section 285.530 in that Consultant shall not knowingly employ, hire for employment, or continue to employ an unauthorized alien to perform work within the state of Missouri. As a condition for the award of this Agreement the Consultant shall, by sworn affidavit and provision of documentation, affirm its enrollment and participation in a federal work authorization program with respect to the employees working in connection with the contracted services. Consultant shall also sign an affidavit affirming that it does not knowingly employ any person who is an unauthorized alien in connection with the contracted services. Consultant shall require any subcontractor to affirmatively state in its contract with Consultant that the subcontractor shall not knowingly employ, hire for employment or continue to employ an unauthorized alien to perform work within the state of Missouri. Consultant shall also require any subcontractor to provide Consultant with a sworn affidavit under the penalty of perjury attesting to the fact that the subcontractor's employees are lawfully present in the United States.

10. **No Third-Party Beneficiary.** No provision of the Agreement is intended to nor shall it in any way inure to the benefit of any person, so as to constitute any such person a third-party beneficiary under the Agreement.

11. **No Assignment.** This Agreement shall inure to the benefit of and be binding upon the Parties and their respective successors and permitted assigns. Neither Party shall assign this Agreement or any of its rights or obligations hereunder without the prior written consent of the other Party.

12. **No Waiver of Immunities.** In no event shall the language of this Agreement constitute or be construed as a waiver or limitation for either party's rights or defenses with regard to each party's applicable sovereign, governmental, or official immunities and protections as provided by federal and state constitutions or laws.

13. **HOLD HARMLESS AGREEMENT:** To the fullest extent not prohibited by law, Consultant shall indemnify and hold harmless the City of Columbia, its directors, officers, agents, and employees from and against all claims, damages, losses, and expenses (including but not limited to attorney's fees) for bodily injury and/or property damage arising by reason of any act or failure to act, negligent or otherwise, of Consultant, of any subcontractor (meaning anyone, including but not limited to consultants having a contract with Consultant or a subcontractor for part of the services), of anyone directly or indirectly employed by Consultant or by any subcontractor, or of anyone for whose acts the Consultant or its subcontractor may be liable, in connection with providing these services. This provision does not, however,

require Consultant to indemnify, hold harmless, or defend the City of Columbia from the City of Columbia's own negligence.

14. **Professional Oversight Indemnification.** Consultant understands and agrees that City has contracted with Consultant based upon Consultant's representations that Consultant is a skilled professional and fully able to provide the services set out in this Agreement. In addition to any other indemnification set out in this Agreement, Consultant agrees to defend, indemnify and hold and save harmless City from any and all claims, settlements, and judgments whatsoever arising out of City's alleged negligence in hiring or failing to properly supervise Consultant.

15. **Audit.** Consultant shall maintain financial records according to generally accepted accounting standards. City has the right, at its sole expense and during normal working hours, to examine the records of Consultant to the extent reasonably necessary to verify the accuracy of any statement, charge or computation made pursuant to this Agreement.

16. **Nondiscrimination.** During the performance of this Agreement, Consultant shall not discriminate against any employee, applicant for employment or recipient of services because of race, color, religion, sex, sexual orientation, gender identity, age, disability, or national origin. Consultant shall comply with all provisions of laws, rules and regulations governing the regulation of Equal Employment Opportunity including Title VI of the Civil Rights Act of 1964 and Chapter 12 of the City of Columbia's Code of Ordinances.

17. **General Independent Contractor.** This Agreement does not create an employee/employer relationship between the Parties. It is the Parties' intention that the Consultant will be an independent contractor and not the City's employee for all purposes.

18. **Contract Documents.** This Agreement includes the following exhibits, which are incorporated herein by reference:

<u>Exhibit</u>	<u>Description</u>
A	Scope of Work

In the event of a conflict between the terms of an exhibit and the terms of this Agreement, the terms of this Agreement control.

19. **Entire Agreement.** This Agreement contains the entire agreement of the parties. No modification, amendment, or waiver of any of the provisions of this agreement shall be effective unless in writing specifically referring hereto, and signed by both parties.

[SIGNATURES ON FOLLOWING PAGE]

IN WITNESS WHEREOF, the parties hereto have set their hands and seals on the day and year herein stated.

CITY OF COLUMBIA, MISSOURI

By: _____
Mike Matthes, City Manager

Date: _____

ATTEST:

By: _____
Sheela Amin, City Clerk

APPROVED AS TO FORM:

By: _____
Nancy Thompson, City Counselor

CERTIFICATION: I, hereby certify that this Agreement is within the purpose of the appropriation to which it is to be charged, Account Number **11006021 504990**, and that there is an unencumbered balance to the credit of such appropriation sufficient to pay therefor.

By: _____
Michele Nix, Director of Finance

(Seal)

WEATHER OR NOT

By: Sara Croke
Name: Sara Croke
Title: President
Date: 1/18/18

ATTEST:

By: Loree Voigt
Secretary or Witness
Name: Loree Voigt

EXHIBIT A
SCOPE OF WORK

Statement of Work

Includes:

- **A⁺™ Weather Alerts** - The alerts are custom designed by your employees specifically for the thresholds critical to the City of Columbia, and for ease of communication, all key personnel will be alerted simultaneously via cell phone or pager with daily updates and critical alerts when thresholds are met.
- **Your location-specific forecast via e-mail by 7:00 AM and 3:00 PM.** Forecasts include: present air and pavement temperatures; projected air highs/lows and projected pavement temperatures; dew point temperatures; relative humidity; precipitation outlook including type of precipitation, start/end times, wind speed and direction and possible damaging winds; 3 day extended planning outlook; and the possibility of updates.
- **Monitoring of weather conditions 24/7-** Includes start-time and duration of rain, sleet, freezing rain or snow, intensity of precipitation, snow and/or ice accumulation potential, damaging winds, and dangerous air and pavement temperatures. A minimum of 2 hours notice of all impending storms should be expected with more frequent updates as the storm approaches.
- **Unlimited phone calls** by Sam Thomas and his designees for updates or clarification anytime they want 24/7.
- **Phone calls made *before* the weather changes** so you can plan accordingly.
- **Wake-up calls** overnight if the weather is expected to deteriorate road conditions.
- **Pager number for immediate access to Weather or Not's meteorologists.** Busy signals or voice mail will not be a problem as this ensures you that your forecaster is only a beep away (through the pager) to answer your concerns. Feel free to use it anytime.
- **24-hour/365 days a year access to Weather or Not's meteorologists.** Your questions get answered no matter what time the weather threatens your roads.
- **Web Access- COMING SOON** Columbia will have access to an exclusive **ALL NEW** web-site where the current routine weather forecast, NWS Bulletins and critical alerts will be posted. In addition to the precipitation, wind, and pavement temperature graphs, you will also be able to view real-time radar and satellite.