

## AGREEMENT FOR CLOUD SEEDING PROFESSIONAL SERVICES

This AGREEMENT is by and between North American Weather Consultants (NAWC), and Bear River Water Conservancy District (CLIENT). CLIENT retains NAWC to perform cloud seeding professional services in portions of the Bear River Watershed (SITE) in return for cash consideration to be paid by CLIENT under terms and conditions set forth below.

### 1. SERVICES

NAWC will perform as follows:

- 1.1 Provide the Services that are described in the attached scope of services (Attachment 1), which by reference is made a part of this Agreement.

### 2. CLIENT RESPONSIBILITIES

CLIENT will perform the following in a timely manner so as not to delay the Services of NAWC:

- 2.1 Designate in writing the person or persons with authority to act in CLIENT'S behalf on all matters concerning the Services;
- 2.2 Arrange for NAWC access to CLIENT owned sites as may be required for NAWC to perform its Services;
- 2.3 Inform NAWC of any project information that CLIENT intends to have NAWC treat in confidence and mark such information "Confidential", if the information is committed to writing; and
- 2.4 Bear all costs incident to the requirements of this Section 2.

### 3. PERIOD OF PERFORMANCE

NAWC's Services will be considered complete on the date when the Report specified in the scope of services is received by CLIENT.

### 4. STANDARD OF SERVICES

- 4.1 NAWC will perform its Services with that degree of skill and care that is in accordance with generally accepted professional practices and procedures in the state or jurisdiction where the site is located, or if no site is specified, in accordance with generally accepted professional practices and procedures in the State of Utah. The standard of care will be judged according to standards in place at the time the services are performed and not according to later standards. This standard is in lieu of all other standards or warranties, either expressed or implied. Wherever reasonably possible, NAWC will correct any services not meeting this standard provided CLIENT notifies NAWC of the deficiencies with reasonable specificity within 30 days of discovery and no later than 120 days after completion of the Services.

4.2 Neither NAWC, nor any of its directors, officers, agents, subcontractors, consultants, or employees, will be liable to the CLIENT for consequential, incidental, indirect, special or punitive damages, including loss of use of property or lost profits, whether such liability arises out of contract, including breach of warranty, or tort.

5. PAYMENTS TO NAWC

5.1 For the Services rendered hereunder, CLIENT agrees to pay NAWC the fixed and reimbursable amounts specified in the attached scope of services and/or any attachment thereto.

5.2 NAWC will submit reasonably detailed monthly invoices for Services rendered. If client objects to any portion of the invoice, it will notify NAWC of the same within 15 days from the date of receipt of the invoice and will pay that portion of the invoice not in dispute, and the parties shall make every reasonable effort to settle that portion of the invoice in dispute.

5.3 If CLIENT fails to make any payment due NAWC within 30 days after receipt of an invoice, then the amount due NAWC will increase at the rate of 1.0 percent or \$50 (whichever is greater) per month after the 30th day. In addition, NAWC may, after giving 7 days' written notice to CLIENT, suspend its Services and any deliverables until NAWC has been paid in full for all amounts outstanding more than 30 days.

6. GENERAL CONSIDERATIONS

6.1 All documents prepared by or for NAWC and delivered to CLIENT in performance of this Agreement are considered property of the CLIENT. NAWC may make and retain copies of all such documents delivered to CLIENT.

6.2 NAWC will procure and maintain insurance as required by law or regulation. At a minimum, NAWC will procure and maintain the following types of insurance:

- (a) Workers' compensation and occupational disease insurance in amounts to satisfy state law;
- (b) Employer's liability insurance in the amount of \$1,000,000;
- (c) Automobile liability in the amount of \$300,000 per occurrence; and
- (d) General comprehensive liability insurance for bodily injury, death or loss of or damage to property of third persons in the minimum amount of \$1,000,000 per occurrence and in the aggregate.

6.3 NAWC will be and will operate as an independent contractor in the performance of this Agreement and will have complete charge of its employees, subcontractors and consultants engaged in performing the required Services.

6.4 The Parties will comply with all applicable federal, state and local laws, rules and regulations, including amendments and changes as they may occur.

- 6.5 Each Party assumes full responsibility for any claims, suits, accidents, injuries (including death) or damages to the person or property of any third party resulting from its own negligent, reckless or willful acts or those of any of its employees, representatives, contractors, consultants and agents in connection with the Services or activities covered by this Agreement, and, to the extent of its proportionate responsibility therefore, will indemnify, defend and save harmless the other Party, its employees, representatives, contractors, consultants and agents from any costs, liabilities or expenses arising out of such negligent, reckless or willful acts.
- 6.6 If a delay in the performance of Services is caused by an act of God, fire, hurricane, flood, explosions, strike, boycott or other labor dispute, or by acts of Government, which, in the opinion of NAWC, could not have been reasonably foreseen and provided for, such delay will entitle NAWC to an extension of time in performing its Services.
- 6.7 CLIENT will have the right to terminate this Agreement at any time without cause following the completion of a minimum one-month program, and NAWC may do the same for cause, by giving the other party seven (7) days written notice to such effect. NAWC will immediately discontinue all Services in progress, which can be discontinued without creating a hazardous condition, and cancel all outstanding commitments, which may be canceled without undue cost. NAWC will notify CLIENT of any commitment, which cannot be canceled without undue cost or without jeopardizing the Services completed to date. Subject to compliance with the foregoing and any other applicable provision of the Agreement, CLIENT will pay to NAWC all amounts owing to NAWC under this Agreement plus reasonable costs and fees for termination of work, including but not limited to: take-down and reporting expenses. For the purpose of this clause, fees associated with final reporting are to be considered part of the regular take-down and set up fees, due and payable even upon early termination of the agreement. As such NAWC will finish and deliver to the client full reports through the period at which the program ceased operations. NAWC will submit to CLIENT, within 45 days of termination, its invoice for the aforesaid amounts in such reasonable detail as the CLIENT may request. Subject to verification thereof, CLIENT will remit such amount within thirty (30) days after receipt of the invoice from NAWC.
- 6.8 The terms and conditions of this Agreement will be governed by and construed and interpreted in accordance with the laws of the state where the site is located, or if there is no specified site, in accordance with the laws of the State of Utah.
- 6.9 This Agreement, together with its Exhibits, will constitute the entire Agreement between the Parties and will supersede all prior written or oral understandings and any purchase order terms that may be issued by CLIENT. This Agreement and its Exhibits may only be amended, supplemented, modified or canceled by a duly executed written instrument signed by the Parties.

## 7. SPECIAL PROVISIONS

Special Provisions are X are not \_ attached to and made a part of this Agreement and identified as: Attachment 1.

This Agreement is effective on the last day signed.

**NAWC Inc.**

By \_\_\_\_\_  
Date \_\_\_\_\_  
Name Jared Smith  
Title General Manager  
Address 8180 S. Highland Dr STE B2  
Sandy, Utah 84093  
Phone 385-222-6079

**CLIENT**

By \_\_\_\_\_  
Date \_\_\_\_\_  
Name \_\_\_\_\_  
Title \_\_\_\_\_  
Address \_\_\_\_\_  
Phone \_\_\_\_\_

## ATTACHMENT 1

### SCOPE OF SERVICES

CLIENT and NAWC do hereby agree as follows:

CLIENT shall undertake a weather modification project; to wit, the seeding of clouds to enhance snowfall in areas above 7000 feet in Box Elder County utilizing Contractor to perform this work. A program is anticipated to operate from November 1 through April 30 (service date).

1. **CLIENT HEREBY AGREES TO:**

- To assist NAWC in making local arrangements to efficiently conduct the program, and
- To serve as liaison for publicity, public affairs and public relations.

2. **NAWC HEREBY AGREES:**

To provide the personnel, equipment, and services as follows:

- Select approximately 40 ground generator sites.
- Provide a part-time technician who will install, maintain, and remove the generators from the field.
- Provide all necessary propane and seeding materials.
- File all required notices and paperwork required at the State and Federal level.
- Provide decision-making on which generators should be operated during suitable storm systems. NAWC meteorologists will perform this monitoring from NAWC's offices in Salt Lake City.
- Prepare a project summary report of the activity on the program following the completion of the program.
- Maintain necessary insurance coverage including: workers compensation insurance, comprehensive general liability insurance and automobile liability insurance. Client will be provided a certificate of this insurance.

3. **PAYMENT TO CONTRACTOR:**

- It is understood that the costs of this program are being shared with the Cache Water District. This contract is conditional to a similar contract being signed by the Cache Water District.
- The fee schedule listed below represents the obligations of the BRWCD under this agreement
- CLIENT agrees to pay NAWC in accordance with the following schedule:

Task	Rate	Frequency	Total
Set-up, take-down and reporting	\$0	1	\$0
Monthly fixed cost	\$4,000	6	\$24,000
Estimate Generator Usage	\$9.00	4000	\$36,000
Estimated Total			\$60,000

- The maximum generator hours to be billed shall not exceed 4000 hours, unless agreed upon in writing.
- Set-up and take-down will be billed in full upon the executions of this contract.
- Fixed costs will be invoiced on or around the first business day of the month in which the work is to be performed. For partial months, invoicing will be pro-rated.
- Generator hours will be billed on or around the first business day of the month FOLLOWING usage. As such, generator usage for the past month, and fixed operational costs for the current month will be invoiced together.
- The Utah Division of Water Resources (DWRe) has allocated funds to share in the cost of this year's program. DWRe funds are distributed as a reimbursement to the CLIENT. CLIENT is responsible for complete payment to CONTRACTOR as outlined above. DWRe contributions are expected to be equal to **or near** 50% of the total program cost, based on actual generator usage.