

M E M O R A N D U M

DATE: April 19, 2010
TO: Kansas Water Authority
FROM: Diane Coe
SUBJECT: FY2011 Contract for State Water Plan Funds for the Western Kansas Weather Modification Program

Attached is a draft contract **10-0131** for state fiscal year (SFY) 2011 funds. This contract with the Western Kansas Groundwater Management District No. 1 provides State Water Plan (SWP) funds for the operation of the Western Kansas Weather Modification Program for the calendar year 2010.

The SWP amount recommended by the Governor for Weather Modification for FY2011 is \$168,000. Neither the House nor the Senate has yet approved a FY 2011 budget. The contract will be finalized when the budget number is final.

Both a valid Weather Modification License and a Weather Modification Permit to Operate for calendar year 2010 are on file. The program will operate for the period April 15, 2010 through September 14, 2010.

If you have any questions prior to the Kansas Water Authority meeting, please feel free to give me a call.

The KWO staff recommends the Kansas Water Authority approve the contract in concept, authorizing the Director to finalize the contract when the appropriate budget numbers are available.

Weather Modification Enhancements for Hail Suppression- 2010 Calendar Year

Kansas Water Office Number 10-0131

This Agreement between the Kansas Water Office, 901 South Kansas Avenue, Topeka, Kansas, 66621 and Western Kansas Groundwater Management District No. 1, 906 West 5th, Scott City, KS 67871, Federal Employer Identification Number _____ (hereinafter collectively "the parties") is entered for the purpose of augmenting rain and suppressing hail in the designated operational area from mid April through mid September 2010 by direct injection of dry ice into clouds, vaporizing ice forming nucleants and pyrotechnic generation of hygroscopic nucle and to acquire data related to seeding operations and storm activity.

I. PROJECT TITLE

The project has been entitled Weather Modification Enhancements for Hail Suppression-2010 Calendar Year. All references to this Agreement shall include this title and the Kansas Water Office Number 10-0131.

II. COMPENSATION

- A. The Kansas Water Office agrees to pay, Western Kansas Groundwater Management District No. 1, not more than **TO BE DETERMINED** for the work to be completed or performed under the attachments incorporated into this agreement by reference below. Payments will be made upon receipt of a billing from Western Kansas Groundwater Management District No. 1, under the schedule in Attachment B, upon receipt, review, and acceptance by the Kansas Water Office of the indicated deliverables listed in Attachment B. See the Payments clause, *infra*. All funding is subject to legislative and budgetary approval, review, restraint, or appropriation.
- B. The Scope of Work, Deliverables and the Payment Schedule, Attachment B, is hereby incorporated in this Agreement and made a part hereof by reference.
- C. The Kansas Water Office will have 15 business days from the date of receipt to review the deliverable, ask for changes, or approve the deliverable.

III. PAYMENTS

Invoices for payments for work completed under the terms of this Agreement, as outlined in the attachments to this Agreement should be sent to:

**Kansas Water Office
Attention: Accounts Payable
901 South Kansas
Topeka, Kansas 66612**

Payments will be due and payable 45 calendar days following the receipt of the invoice from, Western Kansas Groundwater Management District No. 1. No payment will be remitted unless and until the appropriate work or work to be delivered has been received

and approved by the Kansas Water Office in the manner specified in the attachments hereto.

IV. EFFECTIVE DATES

This Agreement shall be effective for the period of July 1, 2010 through December 31, 2010, inclusive.

V. MODIFICATION AND EXTENSION/RENEWAL OF CONTRACT

This Agreement may be modified, extended or renewed by written agreement of all parties to this Agreement. The parties agree that any request by Western Kansas Groundwater Management District No. 1 for an extension of time of the completion of the Agreement, or any part or portion thereof, should be communicated to the Kansas Water Office no later than 60 days prior to the stated completion date.

VI. CONTACT PERSONS

Each party has designated a contact person to facilitate communication between the parties for purposes of this Agreement. Either party may change the designated contact person at any time by sending notice of such change, via first class mail, to the appropriate party at the address first given above.

A. The Kansas Water Office contact person for purposes of this Agreement will be:

Name: Diane Coe
Address: 901 S. Kansas Avenue, Topeka, KS 66612
Phone: 785-296-0864
E-mail: diane.coe@kwo.ks.gov

B. The Kansas Water Office contact person for purposes of Agreement administration will be:

Name: Kim Christiansen
Address: 901 S. Kansas Avenue, Topeka, KS 66612
Phone: 785-296-3185
E-mail: Kim.Christiansen@kwo.ks.gov

C. The Western Kansas Groundwater Management District No. 1 contact person for purposes of this Agreement will be:

Name: David Brenn
Address: 906 West 5th
Phone: (620) 827-5563
E-mail: wkgmd1@wbsnet.org

VII. OWNERSHIP OF MATERIALS, DOCUMENTS, ETC.

All reports, information, data, photos, documents, procedures, descriptions and work flows accumulated, developed or acquired by Western Kansas Groundwater Management District No. 1, under this Agreement shall be owned be jointly owned by the parties to this

agreement. Either party may use, release or otherwise distribute any such materials without the written approval of the other party.

VIII. ACKNOWLEDGMENTS

Each article, newsletter and/or report written for, about or resulting from this Agreement shall acknowledge, "This project is funded in part by the State of Kansas Water Plan Fund."

IX. ADDITIONAL PROVISIONS

- A. KANSAS CONTRACT PROVISIONS ATTACHMENT. The provisions found in contractual provisions attachment (Form DA-146a – Attachment A), which is attached hereto, are hereby incorporated in this Agreement and made a part thereof.
- B. TAX CLEARANCES. Tax Clearances: Per K.S.A. 75-3740-3(c), the Director of Purchases may reject the bid of any bidder who is in arrears on taxes due the State of Kansas. The Division of Purchases will confirm tax status prior to the release of a purchase order or contract award. The State of Kansas reserves the right to allow a bidder an opportunity to clear its tax status within ten (10) calendar days, or to proceed with award to the next lowest responsive bidder, whichever is determined by the Director of Purchases to be in the best interest of the State.
- C. HEADINGS. Headings used in this Agreement are informational and not to be considered persuasive or determinative of any clause or matter in dispute.
- D. The operational plan developed by Western Kansas Groundwater Management District No. 1 is hereby incorporated in this Agreement and made a part hereof by reference.

X. SIGNATURES

In agreement to the terms of this Agreement, we set our hand this _____ day of May 2010, under the authority and power granted to us by virtue of our position or office.

For the Kansas Water Office

**For Western Kansas Groundwater
Management District No. 1**

Tracy Streater
Director, Kansas Water Office

Greg Graff,
President

State of Kansas
 Department of Administration
 DA-146a (Rev. 1-01)

CONTRACTUAL PROVISIONS ATTACHMENT A

1. **Terms Herein Controlling Provisions:** It is expressly agreed that the terms of each and every provision in this attachment shall prevail and control over the terms of any other conflicting provision in any other document relating to and a part of the contract in which this attachment is incorporated.
2. **Agreement With Kansas Law:** All contractual agreements shall be subject to, governed by, and construed according to the laws of the State of Kansas.
3. **Termination Due To Lack Of Funding Appropriation:** If, in the judgment of the Director of Accounts and Reports, Department of Administration, sufficient funds are not appropriated to continue the function performed in this agreement and for the payment of the charges hereunder, State may terminate this agreement at the end of its current fiscal year. State agrees to give written notice of termination to contractor at least 30 days prior to the end of its current fiscal year, and shall give such notice for a greater period prior to the end of such fiscal year as may be provided in this contract, except that such notice shall not be required prior to 90 days before the end of such fiscal year. Contractor shall have the right, at the end of such fiscal year, to take possession of any equipment provided State under the contract. State will pay to the contractor all regular contractual payments incurred through the end of such fiscal year, plus contractual charges incidental to the return of any such equipment. Upon termination of the agreement by State, title to any such equipment shall revert to contractor at the end of State's current fiscal year. The termination of the contract pursuant to this paragraph shall not cause any penalty to be charged to the agency or the contractor.
4. **Disclaimer Of Liability:** Neither the State of Kansas nor any agency thereof shall hold harmless or indemnify any contractor beyond that liability incurred under the Kansas Tort Claims Act (K.S.A. 75-6101 et seq.).
5. **Anti-Discrimination Clause:** The contractor agrees: (a) to comply with the Kansas Act Against Discrimination (K.S.A. 44-1001 et seq.) and the Kansas Age Discrimination in Employment Act (K.S.A. 44-1111 et seq.) and the applicable provisions of the Americans With Disabilities Act (42 U.S.C. 12101 et seq.) (ADA) and to not discriminate against any person because of race, religion, color, sex, disability, national origin or ancestry, or age in the admission or access to, or treatment or employment in, its programs or activities; (b) to include in all solicitations or advertisements for employees, the phrase "equal opportunity employer"; (c) to comply with the reporting requirements set out at K.S.A. 44-1031 and K.S.A. 44-1116; (d) to include those provisions in every subcontract or purchase order so that they are binding upon such subcontractor or vendor; (e) that a failure to comply with the reporting requirements of (c) above or if the contractor is found guilty of any violation of such acts by the Kansas Human Rights Commission, such violation shall constitute a breach of contract and the contract may be cancelled, terminated or suspended, in whole or in part, by the contracting state agency or the Kansas Department of Administration; (f) if it is determined that the contractor has violated applicable provisions of ADA, such violation shall constitute a breach of contract and the contract may be cancelled, terminated or suspended, in whole or in part, by the contracting state agency or the Kansas Department of Administration.

Parties to this contract understand that the provisions of this paragraph number 5 (with the exception of those provisions relating to the ADA) are not applicable to a contractor who employs fewer than four employees during the term of such contract or whose contracts with the contracting state agency cumulatively total \$5,000 or less during the fiscal year of such agency.
6. **Acceptance Of Contract:** This contract shall not be considered accepted, approved or otherwise effective until the statutorily required approvals and certifications have been given.
7. **Arbitration, Damages, Warranties:** Notwithstanding any language to the contrary, no interpretation shall be allowed to find the State or any agency thereof has agreed to binding arbitration, or the payment of damages or penalties upon the occurrence of a contingency. Further, the State of Kansas shall not agree to pay attorney fees and late payment charges beyond those available under the Kansas Prompt Payment Act (K.S.A. 75-6403), and no provision will be given effect which attempts to exclude, modify, disclaim or otherwise attempt to limit implied warranties of merchantability and fitness for a particular purpose.
8. **Representative's Authority To Contract:** By signing this contract, the representative of the contractor thereby represents that such person is duly authorized by the contractor to execute this contract on behalf of the contractor and that the contractor agrees to be bound by the provisions thereof.
9. **Responsibility For Taxes:** The State of Kansas shall not be responsible for, nor indemnify a contractor for, any federal, state or local taxes which may be imposed or levied upon the subject matter of this contract.
10. **Insurance:** The State of Kansas shall not be required to purchase, any insurance against loss or damage to any personal property to which this contract relates, nor shall this contract require the State to establish a "self-insurance" fund to protect against any such loss or damage. Subject to the provisions of the Kansas Tort Claims Act (K.S.A. 75-6101 et seq.), the vendor or lessor shall bear the risk of any loss or damage to any personal property in which vendor or lessor holds title.
11. **Information:** No provision of this contract shall be construed as limiting the Legislative Division of Post Audit from having access to information pursuant to K.S.A. 46-1101 et seq.
12. **The Eleventh Amendment:** "The Eleventh Amendment is an inherent and incumbent protection with the State of Kansas and need not be reserved, but prudence requires the State to reiterate that nothing related to this contract shall be deemed a waiver of the Eleventh Amendment."

Attachment B

The following is an outline of the tasks the parties agree should be completed by the Western Kansas Groundwater Management District No. 1 under this contract. Additional tasks may arise, as the project is undertaken. Any significant changes, additions, corrections, or deletions from the work or tasks as outlined will be discussed between the parties.

Payment for the work to be performed under this contract shall be in three (3) payments, upon the following schedule, pursuant to receipt of invoices and other terms of the contract.

All monies discussed within the terms of this Contract are in United States official currencies.

The parties agree and acknowledge that any technical terms, jargon or abbreviations in this Attachment are commonly known terms of art in the field so contracted for or are mutually understood between the parties.

Scope of Work	Deliverable	Payment Amounts	Due Dates
Document County Participation	Proof that 9 Southwest Kansas counties are participating in the 2010 Western Kansas Weather Modification Program operated by GMD1 and have each pledged at least \$10,000 toward operation of the program for calendar year 2010.	7/31/2010 45%	07/15/10
Operation of Weather Modification Program mid April through mid September 2010.	Daily log of weather modification activities (flight tracker).		Each Quarter
Conduct hail suppression operations through September 2010 as specified in the "2010 Operational Plan for Weather Modification Project, Western Kansas Weather Modification" for the target area specified in the Plan.	Weekly newsletter describing program activities.	9/15/2010 45%	Weekly
GMD#1 shall provide an annual report of activities and accomplishments of the program during the contract period. This report shall include documentation of expenses of upgrades and maintenance of equipment for monitoring weather and cloud seeding operations.	Annual report of activities, accomplishments and expenditures of Agreement moneys.	10%	12/31/2010