

**SOLID WASTE MANAGEMENT
HOUSEHOLD HAZARDOUS WASTE
GRANT CONTRACT**

Between

SECRETARY of HEALTH and ENVIRONMENT of KANSAS

And

CITY OF LAWRENCE

SUBJECT: Kansas Household Hazardous Waste (HHW) Grant
Grant Program for Local Government

DIVISION: Environment

**CONTRACT
PERIOD:** State Fiscal Year 2016

**CONTRACT
AMOUNT:** \$40,001.00

This agreement between the Secretary of the Kansas Department of Health and Environment, herein known as the Grantor, and City of Lawrence located in Douglas County, herein known as the Grantee, takes effect July 1st, 2015 and terminates June 30th, 2016.

In consideration of the mutual promises contained hereinafter, the parties therefore covenant that:

I. The Grantor shall:

- (1) Pay the Grantee up to 60% of the total costs incurred, but not to exceed \$40,001.00 for conducting the activities in the approved grant proposal.
- (2) Advance 50% of the total grant amount upon execution of the contract contingent on signed interlocal agreements and current solid waste management plan. If the project funded by the grant requires a new HHW permit application or modification to an existing permit, no grant payments will be made until a complete application is submitted to KDHE.
- (3) Reimburse the remainder of the grant award upon receipt of Affidavits of Expenditures supported by evidence of expenditure on or before June 30th, 2016.

- (4) Process reimbursements only after the advance grant contract amount is expended.
- (5) Provide technical assistance to the Grantee.
- (6) Monitor the program for compliance with the approved project proposal.
- (7) Review all Grantee contract(s) related to this grant within 30 days of receipt of the contract to insure the contract is written pursuant to the grant funding and solid waste regulations.
- (8) Retain 10% of the total grant for match or the state or federal amount until a final report and final affidavit of expenditures have been received and approved by the Grantor and it has been determined that the Grantee has complied with all of the provisions of the grant contract.

II. The Grantee shall:

- (1) Accept the responsibility for risks associated with the services performed before this contract is fully executed by the signature of the Secretary of KDHE.
- (2) Submit required HHW permit applications or modifications, if applicable, to KDHE prior to receipt of grant funding.
- (3) Submit documentation of signed interlocal agreements for all counties receiving services or items purchased with grant funding.
- (4) Fulfill the 40% match required by K.S.A. 65-3415(c) by providing at least \$26,666.67 in financial and in-kind project resources.
- (5) Submit written documentation on physical address of satellite cabinets.
- (6) Conduct the activities outlined in the approved grant proposal incorporated herein.
- (7) Contract with a bonded and permitted hazardous waste management company for the transportation and disposal of the collected household hazardous wastes.

If grant funds are to be used for the disposal of the collected household hazardous wastes then the Grantee shall not charge the public for disposal of such waste and shall submit the contract to the Grantor for approval prior to accepting such wastes. The contract shall include:

- (a) A definition of the services to be provided by the contractor. Said services may include, but are not limited to, staff time and equipment provided.

- (b) Provision by the Grantee of a contingency fund for payment to the contractor of any costs resulting from underestimation of the volume and cost of wastes collected and disposed, or provision of a rule that the collection site will be closed when the contractor determines that the contract limit has been reached.
 - (c) Name and location of licensed hazardous waste disposal facility in which the hazardous wastes will be disposed.
- (8) Submit an affidavit of expenditures and a progress report by January 30th, 2016. Affidavits requesting reimbursement shall be submitted, no more than quarterly with the final affidavit to be received by KDHE no later than July 31st, 2016. These expenses shall be only for items agreed to in the accepted project proposal document. Grantee agrees to submit any requests for time extensions at least six weeks prior to the ending date of the contract. Requests for extensions received after the deadline may not be considered. Extension approvals are at the discretion of KDHE.
 - (9) Maintain complete, accurately documented and current accounting of all program funds received and expended to provide an audit trail to source documentation. Other reports requested by the Grantor shall be submitted within 30 days from the Grantor's request.
 - (10) Obtain prior approval from the Grantor before purchasing capital items of equipment in excess of \$500 for any capital equipment not listed in the project proposal, if said equipment is to be purchased in whole or in part with the State funds under this contract.
 - (11) Obtain prior approval from the Grantor before any capital equipment purchased with funds from this grant is sold, transferred or otherwise disposed of by the Grantee. Capital equipment is defined as any item costing \$500 or greater and which has a useful life of at least one year. Grantee agrees that any proceeds from the sale, transfer or other disposal of capital equipment purchased with funds from this grant will be, at the option of the Grantor, either returned to the Grantor or utilized by Grantee for other expenses related to Household Hazardous Waste Management. No approval will be necessary if the sale, transfer or other disposal occurs more than five years after the termination of this contract.
 - (12) Submit all contracts for services to the Grantor for prior approval.
 - (13) Require contracts that provide for payment only for services rendered; specify timetables, procedures for billing, work to be done, and how Grantee will compensate the contractor. These contracts shall not allow for payment prior to completion of services performed. The contract shall include a definition and description of services to be provided by the contractor.

- (14) **Submit a final report and final affidavit of expenditures** on the temporary and/or permanent program which will include a breakdown of all program costs, a narrative description of the program, and a summary of community education and outreach activities performed as part of the program.
- (15) Agree to allow KDHE or any of its employees or agents to enter and freely move about all property in which work connected to this grant contract is being or has been performed for the purposes of: interviewing site personnel and contractors, auditing and inspecting records, contracts and any other documents pertaining to the activities involved, and reviewing the progress of Grantee in completing its duties under the grant contract.
- (16) Permit KDHE to take any pictures or to conduct videotaping at the site. Grantee also agrees to permit KDHE, its employees or agents to inspect and copy all records, files, photographs, documents and other writings that pertain to work undertaken in connection with this grant contract.
- (17) Agree to preserve all records pertaining to the work conducted in connection with this grant contract during the time the grant contract is in effect, and following termination of the contract, in accordance with the Public Records Preservation Act, K.S.A. 45-501, et seq.
- (18) Return any unused funds to the Grantor within 30 days of the expiration of the grant period.
- (19) Recognize the source of the grant money by posting a plaque in the facility and/or by affixing a tag to capital equipment. The signage should include language that states the facility and/or equipment purchased is “funded in part by the Kansas Department of Health and Environment”.
- (20) Agree to participate in the KDHE Bureau of Waste Management public education campaign in a manner that is appropriate to the Grantee’s needs.

III. Both parties mutually agree that:

- (1) This agreement may be terminated by either party by giving at least thirty days written notice in advance of the effective date of cancellation to the other party.
- (2) The provisions found in Contractual Provisions Attachment (Form DA-146a), which is attached hereto are hereby incorporated in this contract and made a part thereof.
- (3) The appended grant proposal, which is incorporated into this agreement, is based upon estimates of costs, and there will be flexibility in the use of funds for different categories as long as changes are approved by the Grantor. Reports and affidavits of expenditures will provide revised, actual expenditures.

- (4) This agreement creates no property right to any grant money. Grantor reserves the right to disallow any expenditures upon review. It is understood that there is no right of appeal from any decision of KDHE for any payment or non-payment of grant money. The Secretary reserves the right to adjust the amount of grant money disbursed based upon availability of funding.
- (5) Pursuant to K.S.A. 65-3415(f), the Grantee will not be eligible to receive grant funds if the Grantee is in substantial violation of applicable solid and hazardous waste laws, rules, and regulations.
- (6) This agreement constitutes the whole agreement between the parties, and it is mutually understood and agreed that no alternative or variation to the terms of this agreement shall be valid unless amendments hereto are made in writing and agreed to by both parties.

IN WITNESS WHEREOF, the parties hereto have affixed their signatures on the dates is indicated.

Susan Mosier, MD, Secretary
Kansas Department of Health and Environment

Date

Authorized Representative
David L. Corliss
City Manager

Date

Attachment A

State of Kansas
Department of Administration
DA-146a (Rev. 06-12)

CONTRACTUAL PROVISIONS ATTACHMENT

Important: This form contains mandatory contract provisions and must be attached to or incorporated in all copies of any contractual agreement. If it is attached to the vendor/contractor's standard contract form, then that form must be altered to contain the following provision:
"The Provisions found in Contractual Provisions Attachment (Form DA-146a, Rev. 06-12), which is attached hereto, are hereby incorporated in this contract and made a part thereof."
The parties agree that following provisions are hereby incorporated into the contract to which it is attached and made a part thereof, said contract being the 1st day of July, 2015

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. Any terms that conflict or could be interpreted to conflict with this attachment are nullified.
2. **Kansas Law and Venue:** This contract shall be subject to, governed by, and construed according to the laws of the State of Kansas, and jurisdiction and venue of any suit in connection with this contract shall reside only in courts located in 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 the 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:** No provision of this contract will be given effect that attempts to require the State of Kansas or its agencies to defend, hold harmless, or indemnify any contractor or third party for any acts or omissions. The liability of the State of Kansas is defined 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.

Contractor agrees to comply with all applicable state and federal anti-discrimination laws.

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 of this contract shall find that the State or its agencies have agreed to binding arbitration, or the payment of damages or penalties. Further, the State of Kansas and its agencies do not agree to pay attorney fees, costs, or late payment charges beyond those available under the Kansas Prompt Payment Act (K.S.A. 75-6403), and no provision will be given effect that attempts to exclude, modify, disclaim or otherwise attempt to limit any damages available to the State of Kansas or its agencies at law, including but not limited to the 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 and its agencies 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 and its agencies shall not be required to purchase any insurance against loss or damage to property or any other subject matter relating to this contract, nor shall this contract require them 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 contractor shall bear the risk of any loss or damage to any property in which the contractor 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."