

## CONTRACT

Between

THE KANSAS DEPARTMENT OF HEALTH AND ENVIRONMENT  
And  
Sedgwick County

SUBJECT: Corrective action at Illegal Dump Site #1

DIVISION: Bureau of Waste Management

### CONTRACT

PERIOD: March 6, 2017 to August 31, 2017

AMOUNT: Estimated \$10,000.00 not to exceed \$10,000.00

This agreement between the Kansas Department of Health and Environment (hereinafter KDHE) and Sedgwick County takes effect upon signature of the Secretary of the Kansas Department of Health and Environment.

The relevant property with a legal description as follows: NE1/4 of Sec. 11, T26S, R03W located in Sedgwick County, Kansas; is an illegal solid waste dumping area pursuant to K.S.A. 65-3415(a). Unknown Dumpers used this area as an illegal solid waste dumping site. The property is currently owned by Dennis Gorges. Sedgwick County has agreed to administer the contract.

K.S.A. 65-3415a(c)(12) authorizes the secretary of KDHE to pay for seventy-five percent (75%) up to a maximum of ten thousand dollars (\$10,000) of the costs of removal and disposal or stabilization of solid waste from the site of illegal dumping activity, if the city or county of jurisdiction consents.

K.S.A. 65-3415a(d) requires that the person(s) responsible for the illegal solid waste dumping activity at the subject site, whose failure to comply with the solid waste act, rules and regulations or permit conditions resulted in the determination that expenditures from the solid waste fund are necessary, are responsible for repayment of those funds. The secretary shall, in his discretion, take the appropriate action to recover those funds.

The secretary has determined that the above site is an illegal solid waste dumping site which requires authorized corrective action, and also that the person(s) responsible for the illegal dumping activity is/are either unknown, unable or unwilling to pay for the cost of corrective action.

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Sedgwick County wishes to enter into an agreement to perform corrective action at the above illegal solid waste dumping site.

The secretary has determined that it is most cost effective for Sedgwick County to perform or contract for performance of the tasks necessary to take correction action at the site.

In consideration of the foregoing and the representations and obligations undertaken herein and intending to be legally bound, the parties hereto agree as follows:

I. The KDHE shall:

- (1) Provide reimbursement to Sedgwick County for 75% of their actual cost of corrective action not to exceed \$10,000.
- (2) Agree that Sedgwick County may utilize the labor cost of its employees and cost of use of appropriate equipment in the calculation of its total cost of corrective action, subject to review and approval by KDHE.
- (3) Advance 25% of \$10,000.00 or \$2,500.00 of the estimated contract amount upon execution of the contract.
- (4) Reimburse the remainder of the actual cost contract amount upon completion of the project as verified by receipt of Certified Expenditure Affidavits supported by evidence of expenditure, if KDHE approves the evidence of expenditure as appropriate. No reimbursements will be processed until the advanced contract amount is expended.
- (5) Review all requests and contracts submitted by Sedgwick County for approval by KDHE within thirty days of receipt by KDHE.
- (6) Provide technical assistance to Sedgwick County for project execution and administration.

II. Sedgwick County:

- (1) Shall incur 25% of the total cost of the clean up, either through the direct payment of expenses or supplying a minimum of in-kind contributions through labor, equipment or landfill space.
- (2) Shall submit a work plan to KDHE for approval prior to initial distribution of funds.

(3) Shall submit Certified Expenditure Affidavits and a final affidavit supported by evidence of expenditures upon completion of the project and a final affidavit. The final affidavit shall be received by KDHE no later than 30 days after completion of the project. Complete, accurate documentation and current accounting of all funds received and expended shall be maintained to provide an audit trail to source documentation.

(4) Agrees that no capital equipment will be purchased with the funds provided by KDHE. No matching funds will be reimbursed to Sedgwick County for the purchase of any capital equipment.

(5) Submit all contracts over \$500 for approval by KDHE. KDHE recommends that Sedgwick County use competitive bid procedures for purchases over \$500, however, Sedgwick County may follow the same policies and procedures utilized for procurements obtained in the normal course of business.

(6) Afford access, upon written request, to the secretary of KDHE or the secretary's authorized representative, or Kansas Legislative Post Audit to any documents and other records necessary to certify compliance with Kansas statutes, regulations, and appropriation requirements.

(7) Complete the project as specified in the approved work plan.

(8) Submit a final report to KDHE detailing the work accomplished in implementing the work plan.

(9) Obtain all necessary site access agreements. Documentation of any such agreements shall be submitted to KDHE with the final report or upon request of KDHE.

(10) Provide additional funds or resources, over the contract amount, as necessary, for completion of the project.

(11) Sedgwick County shall submit to KDHE a copy of the resolution adopting this agreement. Upon submission, the resolution shall be incorporated into this agreement as Exhibit A.

### III. The parties mutually agree that:

(1) Failure to submit an acceptable work plan shall render this contract void.

(2) The provisions found in Contractual Provisions Attachment (Form DA-146a), which is attached hereto and executed by the parties to the agreement, are hereby incorporated into this contract and are made a part hereof.

(3) 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.

(4) This contract shall terminate upon Sedgwick County receipt of written notice from KDHE that the Sedgwick County has demonstrated that the items set forth in the work plan were satisfactorily completed.

(5) Nothing in this agreement shall be considered an admission of any fact or an acknowledgment of any liability; and, nothing herein shall be binding or have any effect on the position of the parties on any other agreements which may be negotiated between them.

(6) KDHE and the Sedgwick County will not be liable for any acts or omissions of their respective employees, agents, assigns, contractors, or persons acting on behalf of KDHE or the Sedgwick County in carrying out any activities pursuant to the terms of this agreement, beyond that liability granted by the Kansas Tort Claims Act, K.S.A. 75-6101 *et seq.*

(7) Failure to obtain necessary site access agreements, per paragraph II.(9), and/or to submit documentation of access agreements to KDHE upon KDHE's request, shall result in KDHE denying reimbursement of outstanding funds to Sedgwick County.

(8) KDHE shall not be responsible for any payments for site access or crop damage.

(9) By signing this agreement, the person below warrants that he or she has the authority to sign this document and to bind the parties to its terms.

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

BY: \_\_\_\_\_

\_\_\_\_\_  
PRINTED NAME

\_\_\_\_\_  
Date

\_\_\_\_\_  
TITLE

\_\_\_\_\_  
ORGANIZATION:

\_\_\_\_\_  
Susan Mosier, MD, MBA, FACS  
Secretary and State Health Officer  
Kansas Department of Health and Environment

\_\_\_\_\_  
Date

Approved As To Form  
Nisha C. Jacob-Wiaman

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 the following provisions are hereby incorporated into the contract to which it is attached and made a part thereof, said contract being the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

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."
13. **Campaign Contributions / Lobbying:** Funds provided through a grant award or contract shall not be given or received in exchange for the making of a campaign contribution. No part of the funds provided through this contract shall be used to influence or attempt to influence an officer or employee of any State of Kansas agency or a member of the Legislature regarding any pending legislation or the awarding, extension, continuation, renewal, amendment or modification of any government contract, grant, loan, or cooperative agreement.



## RESOLUTION

A RESOLUTION OF THE GOVERNING BODY OF THE Sedgwick County, KANSAS ADOPTING AN RESOLUTION AGREEMENT WITH THE KANSAS DEPARTMENT OF HEALTH AND ENVIRONMENT REGAUGARDING AN ILLEGAL DUMPING DISPOSAL SITE.

WHEREAS, The Kansas Department of Health and Environment is seeking properties within the state that were utilized for the disposal of solid waste illegally and to protect the health, safety, and welfare of the area surrounding such a site;

WHEREAS, The Kansas Department of Health and Environment has located such a site at NE1/4 of Sec. 11, T26S, R03W and has requested Sedgwick County partner with the State to address the cleanup of such site;

WHEREAS, The Kansas Department of Health and Environment has provided Sedgwick County with a contract for the cleanup of the solid waste illegally disposed located at NE1/4 of Sec. 11, T26S, R03W and Sedgwick County has provided a Work Plan for their professional services setting forth the scope of work for the project and their cost estimate, such an agreement having been approved by the Kansas Department of Health and Environment;

WHEREAS, The Kansas Department of Health and Environment has agreed to provide funds to the Sedgwick County to pay 75% of the cost not to exceed \$10,000 associated with removing the solid waste illegally disposed located at NE1/4 of Sec. 11, T26S, R03W of the community of Sedgwick County, as described as follows:

NOW THEREFORE, BE IT RESOLVED BY THE GOVERNING BODY OF THE SEDGWICK COUNTY, KANSAS that; SECTION II. (11) ADOPTION. The CONTRACT Agreement between the Kansas Department of Health and Environment and the Sedgwick County regarding cleanup of the solid waste illegally disposed at the site located at NE1/4 Sec. 11, T26S, R03W hereby adopted.

Dated this \_\_\_\_\_ day of \_\_\_\_\_ 2017.

\_\_\_\_\_  
County Commissioner or County Administrator

Approved As To Form  
Melba C. Jacob Warren