



**BOARD OF COMMISSIONERS**  
**Agenda Item Summary**

Agenda Category:	Agreements	Item No:
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**Meeting Date: May 25<sup>th</sup>, 2021**

**Originating Department:** Community Corrections, Aaron Hartman

**Issue:** In the matter of approval and signature of the agreement between Klamath County Community Corrections and the South Suburban Sanitary District for property cleanup services and allow Aaron Hartman to sign. Community Corrections, Aaron Hartman

**Background:** South Suburban Sanitary District approached Community Corrections for property cleanup services in 2019. We would like to continue this agreement of services.

This contract is in effect from signature date through June 30, 2023, and upon mutual consent of both parties may be extended for one (1) additional (2) year term.

**Fiscal Impact:** \$600.00 per work day of revenue to the Community Corrections Work Crew Fund.

**Recommended Motion:** Approval and signature of the contract between Klamath County Community Corrections and the South Suburban Sanitary District for property cleanup services and allow Aaron Hartman to sign. Fiscal Impact \$600.00 per work day of revenue to the Community Corrections Work Crew Fund.

DONE AND DATED this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ .

\_\_\_\_\_  
 Chair

Approved   
 Denied

\_\_\_\_\_  
 Vice-Chair

Approved   
 Denied

\_\_\_\_\_  
 Commissioner

Approved   
 Denied

# Contract for Property Clean-up Services

This "Contract" is made between the South Suburban Sanitary District, hereinafter called "District", and Klamath County Community Corrections called "Contractor". In this Contract, either Contractor or the District may also be referred to individually as a "Party" or jointly as the "Parties".

## **SOUTH SUBURBAN SANITARY DISTRICT**

2201 Laverne Avenue  
Klamath Falls, Oregon 97603  
(herein, the "District")

## **KLAMATH COUNTY COMMUNITY CORRECTIONS**

3203 Vandenberg Road  
Klamath Falls, Oregon 97603

In consideration of the mutual promises, obligations, representations, and assurances in this Contract, the Parties agree to the following:

### **§1. SCOPE OF CONTRACTOR'S SERVICES**

Property Clean-up Services

### **§2. DISTRICT PAYMENT OBLIGATIONS FOR CONTRACTOR'S SERVICES**

2.1. In no event, shall the District's amount due and owing the Contractor for any and all services rendered exceed the amount identified as any "NOT TO EXCEED AMOUNT" in this Contract or any task orders referencing this contract.

2.2. The Contractor shall submit an invoice to the District, which shall itemize all amounts due and/or owing by the District under this Contract, and payment terms as the date of the invoice. The District shall have no obligation to make payment until a proper invoice of service is submitted.

2.2.1. Once invoice is provided and accepted by District, the District will make payment within 30-60 days of receipt of the request for payment.

2.3. This Contract does not authorize any in-kind services by either Party, unless expressly provided herein.

### **§3. CONTRACT EFFECTIVE DATE, TERMINATION NOTICES AND AMENDMENTS**

3.1. The effective date of this Contract shall be the last date recorded in the signature block, and unless otherwise terminated or canceled as provided below, shall remain in force for the term ending in June 30, 2023, of which term can be renewed for an additional 2 year term if desired by both parties.

Notwithstanding the above, under no circumstances shall this Contract be effective and binding and no payments to the Contractor shall be due or owing for any Contractor services until and unless:

- This Contract is signed by a Contractor Employee, legally authorized to bind the Contractor.
- Any and all Contractor Certificates of Insurance and any other conditions precedent to the Contract shall be submitted and accepted by the District.

3.2. The District may terminate and/or cancel this Contract (or any part thereof) at any time during the term, any renewal, or any extension of this Contract, at any time, for any reason, including convenience without incurring obligation or penalty of any kind. The effective date for termination or cancellation shall be clearly stated in the notice. Notice shall be effectuated by email and regular mail, and shall become effective two days after mailing or upon receiving an acknowledgement of receipt of notification.

3.3. The District's sole obligation in the event of termination is for payment for actual services rendered by the Contractor before the effective date of termination. Under no circumstances shall the District be liable for any future loss of income, profits, any consequential damages or any loss of business opportunities, revenues, or any other economic benefit Contractor may have realized but for the termination and/or cancellation of this Contract. The District shall not be obligated to pay Contractor any cancellation or termination fee if this Contract is cancelled or terminated as provided herein.

3.4. Any modifications, amendments, recessions, waivers, or releases to this Contract must be in writing and agreed to and signed by both Parties. Unless otherwise agreed, the modification, amendment, recession, waiver, or release shall be signed by an expressly authorized Contractor Employee and by the District Manager.

3.5. This agreement may be executed in counterparts and that it can be signed by facsimile or electronic transmission.

### **§4. CONTRACTOR'S ASSURANCES AND WARRANTIES**

4.1. Service Warranty. Contractor warrants that all services performed hereunder will be performed in a manner that complies with all applicable laws, statutes, regulations, ordinances, and professional standards.

## Contract for Property Clean-up Services

**4.2. Business and Professional Licenses.** The Contractor will obtain and maintain at all times during the term of this Contract all applicable business and professional licenses necessary to provide the contracted services.

**4.3. Contractor shall employ and assign qualified Contractor Employees as necessary and appropriate to provide the services under this Contract.** Contractor shall ensure all Contractor Employees have all the necessary knowledge, skill, and qualifications necessary to perform the required services and possess any necessary licenses, permits, certificates, and governmental authorizations as may be required by law.

**4.3.2.** Contractor shall solely control, direct, and supervise all Contractor Employees with respect to all Contractor obligations under this Contract. Contractor will be solely responsible for and fully liable for the conduct and supervision of any Contractor Employee

**4.4.** Contractor shall indemnify and hold the District harmless for all Claims against the District by any Contractor Employee, arising out of any contract for hire or employer-employee relationship between the Contractor and any Contractor Employee, including, but not limited to, Worker's Compensation, disability pay or other insurance of any kind.

**4.4.** The Contractor is responsible for being adequately and properly prepared to execute this Contract. Contractor has satisfied itself in all material respects that it will be able to perform all obligations under the Contract as specified herein.

**4.5.** Nothing in this Contract is intended to establish an employer-employee relationship between the District and either the Contractor or any Contractor Employee.

**4.6. By signing this agreement, the Contractor has complied with tax laws of this state and that the District may terminate contract if Contractor fails to comply with Tax laws during the term of the contract.**

### **§5. CONTRACTOR PROVIDED INSURANCE AND INDEMNIFICATION**

**5.1.** Contractor shall indemnify and hold the District harmless from any and all Claims which are incurred by or asserted against the District by any person or entity, alleged to have been caused or found to arise, from the acts, performances, errors, or omissions of Contractor or Contractor's Employees, including, without limitation, all Claims relating to injury or death of any person or damage to any property.

**5.1.1.** The indemnification rights contained in this Contract are in excess and over and above any valid and collectible insurance rights/policies. During the term of this Contract, if the validity or collectability of the Contractor's insurance is disputed by the insurance company, the Contractor shall indemnify the District for all claims asserted against the District and if the insurance company prevails, the Contractor shall indemnify the District for uncollectable accounts.

**5.1.2.** Contractor shall have no rights against the District for any indemnification (e.g., contractual, equitable, or by implication), contribution, subrogation, and/or any other right to be reimbursed by the District except as expressly provided herein.

**5.1.3.** Contractor waives and releases all actions, liabilities, loss and damage including any subrogated rights it may have against the District based upon any Claim brought against the District suffered by a Contractor Employee.

**5.2.** At all times during this Contract, Contractor shall obtain and maintain insurance according to the specifications indicated.

**5.2.1.** Contractor shall procure and thereafter during the term of this agreement shall continue to carry the following insurance at Contractor's cost:

- a) General Liability - \$1,000,000 each occurrence, \$2,000,000 Aggregate
- b) Automotive Liability - \$1,000,000

Such insurance shall cover all risks arising directly or indirectly out of Contractor's activities under this agreement. Such insurance shall protect District against the claims of Contractor and third parties on account of the obligations assumed by Contractor under this agreement, and shall name District as an additional insured. Certificates evidencing such insurance and bearing endorsements requiring 30 days' written notice to District before any change or cancellation shall be furnished to District before commencement of Contractor's obligations under this agreement.

**5.2.2. Contractor acknowledges that no work can be done for the District without the following:**

- a) **Current certificate of liability naming District as Insured per section 5.2.1**
- b) **Current evidence of Insurance covering Work Crew Participants**

### **§6. CONTRACT DOCUMENTS, DEFINITIONS AND GENERAL TERMS AND CONDITIONS**

**6.1** While the Contractor retains the right to perform services at any time, the Contractor must obtain prior permission by the District for access to District facilities after the District's regular business hours.

**6.2 Survival of Terms and Conditions.** The following terms and conditions shall survive and continue in full force beyond the termination and/or cancellation of this Contract (or any part thereof) until the terms and conditions are fully satisfied or expire by their very nature:

- "CONTRACTOR'S ASSURANCES AND WARRANTIES";
- "CONTRACTOR PROVIDED INSURANCE AND INDEMNIFICATION";

## Contract for Property Clean-up Services

- “DAMAGE CLEAN UP TO DISTRICT PROPERTY AND/OR PREMISES”;
- “AUDIT”;
- “SEVERABILITY”;
- “GOVERNING LAW/CONSENT TO JURISDICTION AND VENUE”; AND
- “SURVIVAL OF TERMS AND CONDITIONS”.

**6.3 District Right to Suspend Services.** Upon written or electronic notice, the District may suspend performance of this Contract if Contractor has failed to comply with Federal, State, or Local laws, or any requirements contained in this Contract. The right to suspend services is in addition to the District’s right to terminate and/or cancel this Contract. The District shall incur no penalty, expense, or liability to Contractor if the District suspends services under this Section.

**6.4. Compliance with Laws.** Contractor shall comply with all federal, state, and local laws, statutes, ordinances, regulations, insurance policy requirements, and requirements applicable to its activities under this Contract.

**6.5 Reservation of Rights.** This Contract does not, and is not intended to impair, divest, delegate, or contravene any constitutional, statutory, and/or other legal right, privilege, power, obligation, duty, or immunity of the District

**6.6 Force Majeure.** Notwithstanding any other term or provision of this Contract, neither Party shall be liable to the other for any failure of performance hereunder if such failure is due to any cause beyond the reasonable control of that Party and that Party cannot reasonably accommodate or mitigate the effects of any such cause. Such cause shall include, without limitation, acts of God, fire, explosion, vandalism, any law, order, regulation, direction, action, or request of the United States government or of any other government, national emergencies, insurrections, riots, wars, strikes, lockouts, work stoppages, or other labor difficulties. Reasonable notice shall be given to the affected Party of any such event. The Contractor is expected, through insurance or alternative temporary or emergency service arrangements, to continue its obligations under this contract in the event of a reasonably anticipated, insurable business risk such as business interruption and/or any insurable casualty or loss.

**6.7. Damage Clean up to District Property and/or Premises.** Contractor shall be responsible for any unexpected and/or unnecessary damage to any District property, its premises, or a District Agent that is caused by Contractor or Contractor’s Employees. If damage occurs, Contractor shall make necessary repairs and/or replacements to the damaged property to the satisfaction of the District. If the damage cannot be completed to the District’s satisfaction, Contractor shall reimburse the District the actual cost for repairing or replacing the damage property. The Contractor shall be responsible for assuring that all District and municipal sites are restored to their original condition.

**6.8. Dispute Resolution.** All disputes arising under or relating to the execution, interpretation, performance, or non-performance of this Contract involving or affecting the Parties may first be submitted to the respective Contract Administrators for possible resolution. The Contract Administrators may promptly meet and confer in an effort to resolve such dispute. If the Contract Administrators cannot resolve the dispute in five (5) business days, the dispute may be submitted to the signatories of this Contract or their successors in office. The signatories of this Agreement may meet promptly and confer in an effort to resolve such dispute.

**6.8.1. Venue.** Should efforts to resolve disputes fail, all claims shall be brought in the Circuit Court for the State of Oregon in the County of Klamath.

**6.9. Delegation /Subcontract/Assignment.** Contractor shall not delegate, assign, or subcontract any obligations or rights under this Contract without the prior written consent of the District.

**6.9.1.** The rights and obligations under this Contract shall not be diminished in any manner by assignment, delegation or subcontract.

**6.9.3.** The Contractor shall remain primarily liable for all work performed by any subcontractors. Contractor shall remain liable to the District for any obligations under the Contract not completely performed by any Contractor delegee or subcontractor.

**6.9.4.** Should a Subcontractor fail to provide the established level of service and response, the Contractor shall contract with another agency for these services in a timely manner. Any additional costs associated with securing a competent subcontractor shall be the sole responsibility of the Contractor.

**6.9.5.** This Contract cannot be sold.

**6.9.6.** In the event that a Petition in Bankruptcy is filed and there is an assignment of this Contract by a Court, the District may declare this Contract null and void.

**6.10. Non Exclusive Contract.** No provision in this Contract limits, or is intended to limit, in any way the Contractor's right to offer and provide its services to the general public, other business entities, municipalities, or governmental agencies during or after the term of this Contract. Similarly, this Contract is a non-exclusive agreement and the District may freely engage other persons to perform the same work that the Contractor performs. Except as provided in this Contract, this Contract shall not be construed to guarantee the Contractor or any Contractor Employee any number of fixed or certain number or quantity of hours or services to be rendered to the District.

**6.11. No Implied Waiver.** Absent a written waiver, no act, failure, or delay by a Party to pursue or enforce any right or remedy under this Contract shall constitute a waiver of those rights with regard to any existing or subsequent breach of this Contract. No waiver of any term, condition, or provision of this Contract, whether by conduct or otherwise, in one or more instances, shall be deemed or construed as a continuing waiver of any term, condition, or

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provision of this Contract. No waiver by either Party shall subsequently affect its right to require strict performance of this Contract.

6.12. Severability. If a court of competent jurisdiction finds a term, condition, or provision of this Contract to be illegal or invalid, then the term, condition, or provision shall be deemed severed from this Contract. All other terms, conditions, and provisions of this Contract shall remain in full force and effect. Notwithstanding the above, if Contractor's promise to indemnify or hold the District harmless is found illegal or invalid, Contractor shall contribute the maximum it is permitted to pay by law toward the payment and satisfaction of any Claims against the District.

6.13. Precedence of Documents. In the event of a conflict between the terms and conditions in any of the documents comprising this Contract, the conflict shall be resolved as follows:

6.13.1 Any Exhibits to this agreement shall be part of this agreement.

6.13.2 The terms and conditions contained in this main Contract document shall prevail and take precedence over any allegedly conflicting provisions in all other Exhibits or documents.

6.14. Governing Laws/Consent to Jurisdiction and Venue. This Contract shall be governed, interpreted and enforced by the laws of the State of Oregon.

6.15. Contract Administrator. Contract Administrator for the District shall be the District Manager. Contract Administrator for the Contractor shall be someone with authority to enter into contracts on behalf of the Contractor's business.

6.16. Entire Contract. This Contract represents the entire Contract and understanding between the Parties. This Contract supersedes all other prior oral or written understandings, communications, agreements or Contracts between the Parties. The language of this Contract shall be construed as a whole according to its fair meaning, and not construed strictly for or against any Party.

Agreed:

South Suburban Sanitary District

Klamath County Community Corrections

  
Signature Contract Administrator

\_\_\_\_\_  
Signature Contract Administrator

Michael Fratechi  
printed name

\_\_\_\_\_  
printed name

its: District Manager

its: \_\_\_\_\_

Date 5/10/21

Date \_\_\_\_\_