

**AGREEMENT FOR CONTRACTUAL SERVICES RELATED TO  
THE REMOVAL OF UNLAWFUL CAMPSITES, BULKY ITEMS, AND PERSONAL PROPERTY**

This Agreement for Contractual Services (the "Agreement") is made and entered into this 1<sup>st</sup> day of December, 2015, by and between the **City of Salinas**, a California charter city and municipal corporation (hereinafter "City"), and **Smith and Enright Landscaping, Inc.**, a California corporation, (hereinafter "Contractor").

**RECITALS**

**WHEREAS**, Contractor represents that it is specially trained, licensed, experienced, and competent to perform the special contractual services which will be required by this Agreement; and

**WHEREAS**, Contractor is willing to render those contractual services described in the City's Request for Proposals dated September 15, 2015 and its only Addendum provided October 9, **Exhibit A** and in the Contractor's October 16, 2015 Proposal **Exhibit B** both of which are attached hereto and incorporated herein by reference.

**NOW, THEREFORE**, City and Contractor agree as follows:

**TERMS**

1. **Scope of Service.** The scope of Contractor's services and qualifications are described in **Exhibits A and B**, attached hereto and incorporated herein by reference. The City and Contractor agree, that the purpose of this Agreement is to fulfill the Contractor's role in the implementation of the City's **"Removal of Unlawful Campsites, Bulky Items, and Personal Property Administrative Procedure"**, provided in **Exhibit C**, attached hereto and incorporated herein.

2. **Term; On-Call/As Needed Basis.** This Agreement shall commence on December 1, 2015, and shall terminate on November 30, 2017. This Agreement may be extended only upon mutual written consent of the parties, and may be terminated only pursuant to the terms of this Agreement. Contractual services will be provided on an on-call, as needed basis. Each job which will require services pursuant to this Agreement will be unique and the Contractor agrees to abide by and fully comply with all time-lines for each individual job site in the performance of its contractual services set forth in **Exhibits A & B**.

3. **Compensation & Prevailing Wages.**

a. City hereby agrees to pay Contractor on a time and materials basis for the services rendered to the City, based upon the labor and equipment rates provided in **Exhibit B**, after receiving a detailed cost estimate prior to beginning each job.

b. The Contractor shall pay prevailing wages and cause all of its subcontractors to pay prevailing wages as those wages are determined pursuant to Labor Code Sections 1720 et seq. and 1771, 1774-76 et seq. to employ apprentices as required by Labor Code Sections 1777.5 et seq. and the implementing regulations of the Department of Industrial Relations (the "DIR") and the Contractor and all subcontractors to comply with the other applicable provisions of Labor Code Sections 1720 et seq., 1771-1774 and 1777.5 et seq., and implementing regulations of the DIR. The contractor and its

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subcontractors shall keep and retain such records as are necessary to determine if such prevailing wages have been paid as required pursuant to Labor Code Sections 1720 et seq., 1771, 1774-1776 et seq. and that apprentices have been employed as required by Labor Code Sections 1777.5 et seq. Copies of the currently applicable per diem prevailing wages are available from the City's Public Works Department and the State Department of Industrial Relations. The contractor shall to post at the job site the applicable prevailing rates of per diem wages.

Penalties for violations may be applied by the DIR pursuant to the Labor Code sections 1815 and 1815. The contractor shall indemnify, hold harmless and defend (with counsel reasonably selected by the City) against any claim for damages, compensation, fines, penalties or other amounts arising out of the failure or alleged failure of any person or entity (including Contractor and its subcontractors) to pay prevailing wages as determined pursuant to Labor Code Sections 1720 et seq., 1771-1774, to employ apprentices pursuant to Labor Code Sections 1777.5 et seq., and implementing regulations of the DIR or to comply with the other applicable provisions of Labor Code Sections 1720 et seq., 1771-1774, 1777.5 et seq., and the implementing regulations of the DIR in connection with the scope of work. This Section 3(b) shall survive the expiration of the Term.

4. **Billing.** Contractor shall submit to City an itemized invoice, prepared in a form satisfactory to City, describing its services and costs for the period covered by the invoice. Except as specifically authorized by City, Contractor shall not bill City for duplicate services performed by more than one person. Contractor's invoice shall include the following information to which such services cost or pertain:

- a. The Job Order number;
- b. The Date of the invoice;
- c. The Date(s) the work was performed;
- d. An itemization of labor and hours worked by each unique classification;
- e. A list of equipment used;
- f. Subcontractor and associated costs;
- g. An estimate of the number of persons (if any) that were displaced by the cleanup;
- h. Amount of waste removed and sorted by category (described as part of the cleanup above).

Any such invoices shall be in full accord with any and all applicable provisions of this Agreement.

City shall make payment on each such invoice within thirty (30) days of receipt; provided, however, that if Contractor submits an invoice which is incorrect, incomplete, or not in accord with the provisions of this Agreement, City shall not be obligated to process any payment to Contractor until thirty (30) days after a correct and complying invoice has been submitted by Contractor. The City shall process undisputed portion immediately.

5. **Responsibility of Contractor.**

a. By executing this Agreement, Contractor agrees that the services to be provided and work to be performed under this Agreement shall be performed in a fully competent manner that fulfills its role as described in the City's **"Removal of Unlawful Encampments, Bulky Items, and Personal Property Administrative Procedure"** provided as **Exhibit C**, attached hereto and incorporated herein by reference. By executing this Agreement, Contractor further agrees and represents to City that the

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Contractor possesses, or shall arrange to secure from others, all of the necessary professional capabilities, experience, resources, and facilities necessary to provide the City the services contemplated under this Agreement and that City relies upon the professional skills of Contractor to do and perform Contractor's work. Contractor further agrees and represents that Contractor shall follow the current, generally accepted practices described in and as it applies to its role in the implementation of the City's Encampment Cleanups described in **Exhibit C** in a timely yet compassionate manner and assist the City to prepare factual presentations, and provide professional advice and recommendations to improve the work for which the services are rendered under this Agreement.

b. Contractor shall assign a single Project Director to have overall responsibility for the execution of this Agreement for Contractor. **Richard Alcala** is hereby designated as the Project Director for Consultant. Any changes in the Project Director designee shall be subject to the prior written acceptance and approval of the City Manager.

**7. Responsibility of City.** To the extent appropriate to the cleanup projects to be completed by Contractor pursuant to this Agreement, City shall:

a. Assist Contractor by placing at his disposal all available information pertinent to the cleanup projects, including but not limited to accompanying Contractor on pre-job walks, assist with job scoping and estimates, provide site support as needed during cleanups, and accompany Contractor on final job walks. City shall support the week by week job scheduling efforts and finalize a work-order calendar that is suitable for all parties concerned. When warranted the City will provide special assistance to address unforeseen circumstances that may include additional safety or police support and the use of special subcontractors including a bio-hazard team.

b. Identify all concerned property owners and coordinate work not related to City or public properties. Act as the Public Information Officer ("PIO") and respond to public and press inquiries.

c. **John Sorenson, Crew Supervisor**, shall act as City's representative with respect to the work to be performed under this Agreement. He shall be assisted by Greg Knowles, Assistant Project Manager. Such person shall have the complete authority to transmit instructions, receive information, interpret and define City's policies and decisions with respect to materials, equipment, elements, and systems pertinent to Consultant's services. City may unilaterally change its representative upon notice to the Consultant. Mr. Sorenson will be supported by Greg Knowles, Assistant Project Manager and the program oversight and PIO efforts will be the responsibility of Assistant Public Works Director Don Reynolds.

d. Give prompt written notice to Contractor whenever City observes or otherwise becomes aware of any deficiency in the services rendered to the City.

**8. Acceptance of Work Not a Release.** City will accept each job as it is completed and having accepted each job an invoice can be submitted for payment. Acceptance by the City of the work performed under this Agreement does not operate as a release of Contractor from the professional responsibility for the work performed.

**9. Indemnification and Hold Harmless.** Contractor shall indemnify, defend, and hold City and its officers, employees, and agents harmless from and against any and all liability, claims, suits, actions, damages, and causes of action arising out of any personal injury, bodily injury, loss of life, or damage to

any property, or violation of any relevant federal, state or municipal law or ordinance, or other cause in connection with the negligent, recklessness or intentional acts or omission of Contractor, its employees, subcontractors or agents, or on account of the performance or character of the work, except for any such claim arising from the negligence or willful misconduct of the City, its officers, employees or agents. Acceptance of insurance certificates and endorsements required under this Agreement does not relieve Contractor from liability under this indemnification and hold harmless clause. This indemnification and hold harmless clause shall apply whether or not such insurance policies shall have been determined to be applicable to any of such damages or claims for damages.

Contractor shall reimburse the City for all costs and expenses including, but not limited to court costs, incurred by the City in enforcing the provisions of this section.

**10. Insurance.**

a. Contractor shall, throughout the duration of this Agreement, maintain comprehensive general liability and property insurance covering all operations of the Contractor, its agents and employees, performed in connection with this Agreement including but not limited to premises and automobile.

b. Contractor shall maintain the following limits:

**General Liability** - Contractor shall at all times during the term of this Agreement maintain in effect a policy or policies having an A.M Best rating of A-Class VIII or better for bodily injury liability, personal injury, advertising injury and property damage, including product liability insurance with limits on the Declarations Page but not less than One Million and 00/100 Dollars (\$1,000,000.00) per occurrence and Two Million and 00/100 Dollars (\$2,000,000) in the general aggregate and products/completed operations aggregate insuring against any and all liability of the insured with respect to premises and products/completed operations. Liability coverage shall also include coverage for underground work and/or construction performed (if applicable). The coverage afforded to the additional insureds under the Contractor's policy shall be primary insurance and non-contributory. If coverage is on a claims-made basis, the Contractor shall maintain "tail coverage" no less than ten (10) years after the expiration date of the policy or policies. Any policy or policies carrying a deductible of more than \$25,000.00 may be subject to review by the City of the Contractor's financials.

**Umbrella or Excess** - Contractor shall provide limits on the Declarations Page but not less than Two Million and 00/100 Dollars (\$2,000,000) per occurrence and Two Million and 00/100 (\$2,000,000) in the aggregate on a follow - form basis having an A.M Best rating of A-Class VIII or better.

**Auto Liability** - Contractor shall provide limits on the Declarations Page but not less than One Million and 00/100 (\$1,000,000.00) combined single limit for bodily injury and property damage having an A.M Best rating of A - Class VIII or better. Automobile Liability Symbol 1 (any auto), if the Company owns automobiles. An entity without autos shall have "Non -owned and Hired" coverage (Auto Symbols 8 & 9). The City and its elected and appointed officers, boards, commissions, agents and employees shall be named as Additional Insureds.

**Workers' Compensation** - Contractor shall provide Workers' Compensation Insurance sufficient to meet its statutory obligation and to provide benefits for employees with claims of bodily injury or occupational disease (including resulting death) as required by the State of California and Employer's

Liability Insurance for One Million and 00/100 Dollars (\$1,000,000). Waiver of Subrogation for Workers' Compensation in favor of the City of Salinas is required.

c. All insurance companies with the exception of "Worker's Compensation shall be required to add the City of Salinas, its officers, and, agents as additional "insured" by endorsement under the insurance policy and shall stipulate that this insurance policy will operate as primary insured for the work performed under this Agreement and that no other insurance affected by the City or other named insured will be called upon to contribute to a loss covered thereunder. The policy shall contain no special limitations on the scope of protection afforded to City, its officers, employees or agents.

d. All insurance companies affording coverage to Contractor shall be insurance organizations authorized by the Insurance Commissioner to transact the business of insurance in the State of California.

e. All insurance companies affording coverage shall provide thirty (30) days written notice by certified mail to the City of Salinas should the policy be canceled or reduced in coverage before the expiration date. For the purpose of this notice requirement, any material change prior to expiration shall be considered cancellation.

f. Contractor shall provide evidence of compliance with the insurance requirements listed above by providing a certificate of insurance, in a form satisfactory to the City Attorney, concurrently with the submittal of this Agreement. A statement on the insurance certificate which states that the insurance company "will endeavor" to notify the certificate holder, "but failure to mail such notice shall impose no obligation or liability of any kind upon the Contractor, its agents or representatives" does not satisfy the requirements of this subsection. The Contractor shall ensure that the authorized representative of the insurance company strikes the above quoted language from the certificate.

g. Contractor shall provide a substitute certificate of insurance no later than ten (10) days prior to the policy expiration date. Failure by the Contractor to provide such a substitution and extend the policy expiration date shall be considered default by Contractor. In the event Contractor is unable to provide a substitute certificate of insurance within the time prescribed in this subsection, Contractor shall provide written confirmation of renewal, in a form satisfactory to the City, to act as proof of insurance only until such time as a certificate of insurance has been received by the City.

h. Maintenance of insurance by the Contractor as specified in this Agreement shall in no way be interpreted as relieving the Contractor of any responsibility whatever and the Contractor may carry, at its own expense, such additional insurance as it deems necessary.

**11. Access to Records.** Contractor shall maintain all preparatory books, records, documents, accounting ledgers, and similar materials relating to work performed for the City under this Agreement on file for at least three (3) years following the date of final payment to Contractor by City. Any duly authorized representative(s) of City shall have access to such records for the purpose of inspection, audit, and copying at reasonable times during Contractor's usual and customary business hours. Contractor shall provide proper facilities to City's representative(s) for such access and inspection.

**12. Assignment.** It is recognized by the parties hereto that a substantial inducement to City for entering into this Agreement was, and is, the professional reputation and competence of Contractor.

This Agreement is personal to Contractor and shall not be assigned by it without express written approval of the City.

**13. Changes to Scope of Work.** City may at any time, and upon a minimum of ten (10) days written notice, seek to modify the scope of services to be provided for any project to be completed under this Agreement. Contractor shall, upon receipt of said notice, determine the impact on both time and compensation of such change in scope and notify City in writing. Rate of compensation shall be based upon the Contractor's Proposal and Rate Schedule shown in Exhibit B of this Agreement. Upon agreement between City and Contractor as to the extent of said impacts to time and compensation, an amendment to this Agreement shall be prepared describing such changes. Execution of the amendment by City and Contractor shall constitute the Contractor's notice to proceed with the changed scope.

**14. Ownership of Documents.** Title to all final documents, including drawings, specifications, data, reports, summaries, correspondence, photographs, video and audio tapes, software output, and any other materials with respect to work performed under this Agreement shall vest with City at such time as City has compensated Contractor, as provided herein, for the services rendered by Consultant in connection with which they were prepared. City agrees to hold harmless and indemnify the Contractor against all damages, claims, lawsuits, and losses of any kind including defense costs arising out of any use of said photos, documents, video, drawings, and/or specifications on any other project without written authorization of the Contractor.

**15. Termination.**

a. City shall have the authority to terminate this Agreement, upon written notice to Contractor, as follows:

- (1) If in the City's opinion the conduct of the Contractor is such that the interest of the City may be impaired or prejudiced, or
- (2) For any reason whatsoever.

b. Upon termination, Contractor shall be entitled to payment of such amount as fairly compensates Contractor for all work satisfactorily performed up to the date of based upon the scope of work and pay-rate schedules shown in Exhibit B, except that:

- (1) In the event of termination by the City for Contractor's default, City shall deduct from the amount due Contractor the total amount of additional expenses incurred by City as a result of such default. Such deduction from amounts due Contractor are made to compensate City for its actual additional costs incurred in securing satisfactory performance of the terms of this Agreement, including but not limited to, costs of engaging another contractor(s) for such purposes. In the event that such additional expenses shall exceed amounts otherwise due and payable to Contractor hereunder, Contractor shall pay City the full amount of such expense.

c. In the event that this Agreement is terminated by City for any reason, Contractor shall:

- (1) Upon receipt of written notice of such termination promptly cease all services on this project, unless otherwise directed by City; and

(2) Deliver to City all documents, data, reports, summaries, correspondence, photographs, computer software output, video and audio tapes, and any other materials provided to Contractor or prepared by or for Contractor or the City in connection with this Agreement. Such material is to be delivered to City in completed form; however, notwithstanding the provisions of Section 15 herein, City may condition payment for services rendered to the date of termination upon Contractor's delivery to the City of such material.

d. In the event that this Agreement is terminated by City for any reason, City is hereby expressly permitted to assume the projects and complete them by any means, including but not limited to, an agreement with another party.

e. The rights and remedy of the City and Contractor provided under this Section are not exclusive and are in addition to any other rights and remedies provided by law or appearing in any other section of this Agreement.

**17. Compliance with Laws, Rules, and Regulations.** Services performed by Contractor pursuant to this Agreement shall be performed in accordance and full compliance with all applicable federal, state, and City laws and any rules or regulations promulgated thereunder.

**18. Exhibits Incorporated.** All exhibits referred to in this Agreement and attached to it are hereby incorporated in it by this reference. In the event there is a conflict between any of the terms of this Agreement and any of the terms of any exhibit to the Agreement, the terms of the Agreement shall control the respective duties and liabilities of the parties.

**19. Independent Contractor.** It is expressly understood and agreed by both parties that Consultant, while engaged in carrying out and complying with any of the terms and conditions of this Agreement, is an independent contractor and not an employee of the City. Contractor expressly warrants not to represent, at any time or in any manner, that Contractor is an employee or servant of the City.

**20. Integration and Agreement.** This Agreement represents the entire understanding of City and Contractor as to those matters contained herein. No prior oral or written understanding shall be of any force or effect with respect to those matters contained herein. This Agreement may not be modified or altered except by amendment in writing signed by both parties.

**21. Jurisdiction.** This Agreement shall be administered and interpreted under the laws of the State of California. Jurisdiction of litigation arising from this Agreement shall be in the State of California, in the County of Monterey or in the appropriate federal court with jurisdiction over the matter.

**22. Severability.** If any part of this Agreement is found to be in conflict with applicable laws, such part shall be inoperative, null and void insofar as it is in conflict with said laws, but the remainder of the Agreement shall continue to be in full force and effect.

**23. Notices.**

a. Written notices to the City hereunder shall, until further notice by City, be addressed to:

Public Works Director  
City of Salinas  
200 Lincoln Avenue  
Salinas, California 93901

With a Copy to:

City Attorney  
City of Salinas  
200 Lincoln Avenue  
Salinas, California 93901

b. Written notices to the Contractor shall, until further notice by the Contractor, be addressed to:

Richard Enright, Vice President  
Smith and Enright Landscaping Inc.  
540 Work Street Suite C  
Salinas CA 93901

c. The execution of any such notices by the Public Works Director of the City shall be effective as to Contractor as if it were by resolution or order of the City Council, and Contractor shall not question the authority of the Public Works Director to execute any such notice.

d. All such notices shall either be delivered personally to the other party's designee named above, or shall be deposited in the United States Mail, properly addressed as aforesaid, postage fully prepaid, and shall be effective the day following such deposit in the mail.

**24. Nondiscrimination.** During the performance of this Agreement, Contractor shall not discriminate against any employee or applicant for employment because of race, color, religion, ancestry, creed, sex, national origin, familial status, sexual orientation, age (over 40 years) or disability. Contractor shall take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, ancestry, creed, sex, national origin, familial status, sexual orientation, age (over 40 years) or disability.

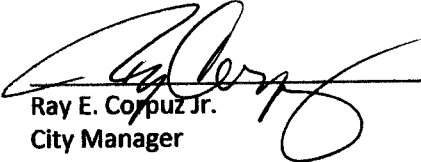
**25. Conflict of Interest.** Contractor warrants and declares that it presently has no interest, and shall not acquire any interest, direct or indirect, financial or otherwise, in any manner or degree which will render the services required under the provisions of this Agreement a violation of any applicable local, state or federal law. Contractor further declares that, in the performance of this Agreement, no subcontractor or person having such an interest shall be employed. In the event that any conflict of interest should nevertheless hereinafter arise, Contractor shall promptly notify City of the existence of such conflict of interest so that City may determine whether to terminate this Agreement. Contractor further warrants its compliance with the Political Reform Act (Government Code section 81000 et seq.) and Salinas City Code Chapter 2A that apply to Consultant as the result of Consultant's performance of the work or services pursuant to the terms of this Agreement.



26. **Headings.** The section headings appearing herein shall not be deemed to govern, limit, modify, or in any manner affect the scope, meaning or intent of the provisions of this Agreement.
27. **Attorney's Fees.** In case suit shall be brought to interpret or to enforce this Agreement, or because of the breach of any other covenant or provision herein contained, the prevailing party in such action shall be entitled to recover their reasonable attorneys' fees in addition to such costs as may be allowed by the Court. City's attorneys' fees, if awarded, shall be calculated at the market rate.
28. **Non-Exclusive Agreement.** This Agreement is non-exclusive and both City and Consultant expressly reserves the right to contract with other entities for the same or similar services.
29. **Rights and Obligations Under Agreement.** By entering into this Agreement, the parties do not intend to create any obligations express or implied other than those set out herein; further, this Agreement shall not create any rights in any party not a signatory hereto.
30. **Licenses.** If a license of any kind, which term is intended to include evidence of registration, is required of Consultant, its representatives, agents or subcontractors by federal, state or local law, Consultant warrants that such license has been obtained, is valid and in good standing, and that any applicable bond posted in accordance with applicable laws and regulations.
31. **Counterparts.** This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute a single agreement.
32. **Legal Representation.** Each party affirms that it has been represented by legal counsel of its own choosing regarding the preparation and the negotiation of this Agreement and the matters and claims set forth herein, and that each of them has read this Agreement and is fully aware of its contents and its legal effect. Neither party is relying on any statement of the other party outside the terms set forth in this Agreement as an inducement to enter into this Agreement.
33. **Joint Representation.** The language of all parts of this Agreement shall in all cases be construed as a whole, according to its fair meaning, and not strictly for or against any party. No presumptions or rules of interpretation based upon the identity of the party preparing or drafting the Agreement, or any part thereof, shall be applicable or invoked.
34. **Warranty of Authority.** Each party represents and warrants that it has the right, power, and authority to enter into this Agreement. Each party further represents and warrants that it has given any and all notices, and obtained any and all consents, powers, and authorities, necessary to permit it, and the persons entering into this Agreement for it, to enter into this Agreement.
35. **No Waiver of Rights.** Waiver of a breach or default under this Agreement shall not constitute a continuing waiver or a waiver of a subsequent breach of the same or any other provision of this Agreement. The failure to provide notice of any breach of this Agreement or failure to comply with any of the terms of this Agreement shall not constitute a waiver thereof. Failure on the part of either party to enforce any provision of this Agreement shall not be construed as a waiver of the right to compel enforcement of such provision or any other provision. A waiver by the City of any one or more of the conditions of performance under this Agreement shall not be construed as waiver(s) of any other condition of performance under this Agreement.


IN WITNESS WHEREOF, the parties hereto have made and executed this Agreement on the date first written above.

**CITY OF SALINAS**

  
\_\_\_\_\_  
Ray E. Corpuz Jr.  
City Manager

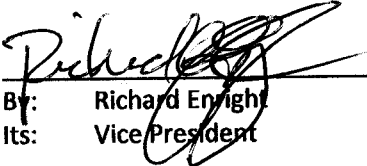
12-08-2015  
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Date

APPROVED AS TO FORM:

  
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Christopher A. Callihan, City Attorney

12/8/2015  
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Date

Grice Engineering and Geology Inc.

  
\_\_\_\_\_  
By: Richard Enright  
Its: Vice President

12-1-15  
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Date

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By:  
Its:

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Date