



## Monterey County Board of Supervisors

### Board Order

168 West Alisal Street,  
1st Floor  
Salinas, CA 93901  
831.755.5066

[www.co.monterey.ca.us](http://www.co.monterey.ca.us)

A motion was made by Supervisor Chris Lopez, seconded by Supervisor Mary L. Adams to:

**Agreement No.: A-15018 ; Amendment No.: 1**

- a. Approve Amendment No. 1 to Agreement No. A-15018, Multi-Year Agreement #3200\*5442, with Smith & Enright Landscaping, Inc. to provide services for the Litter Abatement Program to address illegal dumping of household, commercial and industrial waste items on County roads and public lands pursuant to Request for Proposals #10774, to: update the Pricing Schedule effective November 1, 2023, extend the expiration date for 1 additional year through October 31, 2024, for a revised term from November 1, 2020 to October 31, 2024, with the option to extend the term for 1 additional 1-year period, and increase not to exceed maximum by \$250,000 to a total of \$1,000,000; and
- b. Authorize the Contracts/Purchasing Officer or Contracts/Purchasing Supervisor to execute Amendment No. 1 to Agreement No. A-15018 and future amendments to the Agreement where the amendments do not significantly alter the scope of work or increase the approved Agreement amount.

PASSED AND ADOPTED on this 22<sup>th</sup> day of August 2023, by roll call vote:

AYES: Supervisors Alejo, Church, Lopez Askew, and Adams

NOES: None

ABSENT: None

I, Valerie Ralph, Clerk of the Board of Supervisors of the County of Monterey, State of California, hereby certify that the foregoing is a true copy of an original order of said Board of Supervisors duly made and entered in the minutes thereof of Minute Book 82 for the meeting August 22, 2023.

Dated: August 24, 2023

File ID: A 23-400

Agenda Item No.: 78

Valerie Ralph, Clerk of the Board of Supervisors  
County of Monterey, State of California

Emmanuel H. Santos, Deputy

**AMENDMENT NO. 1  
TO STANDARD AGREEMENT  
BETWEEN COUNTY OF MONTEREY AND  
SMITH & ENRIGHT LANDSCAPING, INC.**

**THIS AMENDMENT NO. 1** to Standard Agreement No. A-15018 between the County of Monterey, a political subdivision of the State of California (hereinafter, “County”) and Smith & Enright Landscaping, Inc. (hereinafter, “CONTRACTOR”) is hereby entered into between the County and the CONTRACTOR (collectively, the “Parties”) and effective as of the last date opposite the respective signatures below.

**WHEREAS**, CONTRACTOR entered into Standard Agreement No. A-15018 with County on November 5, 2020 (hereinafter, “Agreement”) to provide services for the litter abatement program to address illegal dumping of household, commercial, and industrial waste items on County roads and public lands (hereinafter, “services”) through October 31, 2023 for an amount not to exceed \$750,000 with the option to extend the Agreement for two (2) additional one (1) year period(s); and

**WHEREAS**, the provisions of the Agreement require an update; and

**WHEREAS**, the County has a continued need for services; and

**WHEREAS**, additional time and funding are necessary to allow CONTRACTOR to continue to provide the services required by the County; and

**WHEREAS**, the CONTRACTOR’s Pricing Schedule requires an update effective November 1, 2023; and

**WHEREAS**, the Parties wish to amend the Agreement to update the provisions, to update the Pricing Schedule effective November 1, 2023, to extend the term one (1) additional year to October 31, 2024 and to increase the amount by \$250,000 for a total amount not to exceed \$1,000,000 to allow CONTRACTOR to continue to provide services identified in the Agreement and as amended by this Amendment No. 1.

**NOW, THEREFORE**, the Parties agree to amend the Agreement as follows:

1. Amend Paragraph 2.0, “Payment Provisions”, to read as follows:

County shall pay the CONTRACTOR in accordance with the payment provisions set forth in Exhibits A and A-1, subject to the limitations set forth in this Agreement. The total amount payable by County to CONTRACTOR under this Agreement shall not exceed the sum of \$1,000,000.

2. Amend the first sentence of Section 3.01 of Paragraph 3.0, “Term of Agreement”, to read as follows:

The term of this Agreement is from November 1, 2020 to October 31, 2024, unless sooner terminated pursuant to the terms of this Agreement.

3. Amend Paragraph 4.0, “Scope of Services and Additional Provisions”, to add “Exhibit A-1, Updated Compensation/Payment”, effective November 1, 2023.
4. Amend “Exhibit A, Scope of Services/Payment Provisions” of Agreement, to delete Paragraph B.1, “Compensation/Payment” under Section B, “Payment Provisions”, effective November 1, 2023.
5. In all places within the Agreement, any reference to Paragraph B.1, “Compensation/Payment” under Section B, “Payment Provisions” of Exhibit A, Scope of Services/Payment Provisions is hereby replaced with “Exhibit A-1, Updated Compensation/Payment”, effective November 1, 2023.
6. Amend Section 11.01 of Paragraph 11.0, “Non-Discrimination”, to read as follows:

During the performance of this Agreement, CONTRACTOR, and its subcontractors, shall not unlawfully discriminate against any person because of race, religious creed, color, sex, national origin, ancestry, physical disability, mental disability, medical condition, marital status, age (over 40), sexual orientation, or any other characteristic set forth in California Government code §12940(a), either in CONTRACTOR’s employment practices or in the furnishing of services to recipients. CONTRACTOR shall ensure that the evaluation and treatment of its employees and applicants for employment and all persons receiving and requesting services are free of such discrimination. CONTRACTOR and any subcontractor shall, in the performance of this Agreement, fully comply with all federal, state, and local laws and regulations which prohibit discrimination. The provision of services primarily or exclusively to such target population as may be designated in this Agreement shall not be deemed to be prohibited discrimination.

7. Amend Agreement to revise Paragraph 16.0, “Signature Page”, to Paragraph 18.0, “Signature Page”.
8. Amend Agreement to add Paragraph 16.0, “Compliance with Applicable Laws”, as follows:

16.01 CONTRACTOR shall keep itself informed of and in compliance with all federal, state and local laws, ordinances, regulations, and orders including but not limited to all state and federal tax laws that may affect in any manner the Project or the performance of the Services or those engaged to perform Services under this AGREEMENT as well as any privacy laws including, if applicable, HIPAA. CONTRACTOR shall procure all permits and licenses, pay all charges and fees, and give all notices required by law in the performance of the Services.

16.02 CONTRACTOR shall report immediately to County's Contracts/Purchasing Officer, in writing, any discrepancy or inconsistency it discovers in the laws, ordinances, regulations, orders, and/or guidelines in relation to the Project of the performance of the Services.

16.03 All documentation prepared by CONTRACTOR shall provide for a completed project that conforms to all applicable codes, rules, regulations, and guidelines that are in force at the time such documentation is prepared.

9. Amend Agreement to add Paragraph 17.0, "Consent to Use of Electronic Signatures", as follows:

17.01 The parties to this Agreement consent to the use of electronic signatures via DocuSign to execute this Agreement. The parties understand and agree that the legality of electronic signatures is governed by state and federal law, 15 U.S.C. Section 7001 et seq.; California Government Code Section 16.5; and, California Civil Code Section 1633.1 et seq. Pursuant to said state and federal law as may be amended from time to time, the parties to this Agreement hereby authenticate and execute this Agreement, and any and all Exhibits to this Agreement, with their respective electronic signatures, including any and all scanned signatures in portable document format (PDF).

17.02 Counterparts. The parties to this Agreement understand and agree that this Agreement can be executed in two (2) or more counterparts and transmitted electronically via facsimile transmission or by delivery of a scanned counterpart in portable document format (PDF) via email transmittal.

17.03 Form: Delivery by E-Mail or Facsimile. Executed counterparts of this Agreement may be delivered by facsimile transmission or by delivery of a scanned counterpart in portable format (PDF) by e-mail transmittal, in either case with delivery confirmed. On such confirmed delivery, the signatures in the facsimile or PDF data file shall be deemed to have the same force and effect as if the manually signed counterpart or counterparts had been delivered to the other party in person.

10. In all places within the Agreement, any reference to "Smith & Enright Company, Inc." is hereby replaced with "Smith & Enright Landscaping, Inc."
11. In all places within the Agreement, any reference to "Resource Management Agency (RMA) or RMA – Public Works, Parks & Facilities" is hereby replaced with "Department of Public Works, Facilities and Parks (PWFP)".
12. All other terms and conditions of the Agreement, including all Exhibits thereto, remain unchanged and in full force.
13. This Amendment No. 1 shall be attached to the Agreement and incorporated therein as if fully set forth in the Agreement.
14. The recitals to this Amendment No. 1 are incorporated into the Agreement and this Amendment No. 1.

IN WITNESS WHEREOF, the Parties hereto have executed this Amendment No. 1 to the Agreement which shall be effective as of the last date opposite the respective signatures below.

**COUNTY OF MONTEREY**

**Debra R. Wilson, Contracts/Purchasing Officer**

By: Angelica Ruelas  
4DFC1178E799451...

Its: Management Analyst/ Deputy Purchasing Agent  
(Print Name and Title)

Date: 9/5/2023 | 3:36 PM PDT

**Approved as to Form  
Office of the County Counsel**

**Leslie J. Girard, County Counsel**

By: Michael J. Whilden  
0F98C5BE986F476...  
Michael J. Whilden  
Deputy County Counsel

Date: 7/24/2023 | 5:42 PM PDT

**Approved as to Fiscal Provisions**

**Rupa Shah, Auditor-Controller**

By: Patricia Ruiz  
E79EF64E57454F6...

Its: Patty Ruiz / Auditor Controller Analyst I  
(Print Name and Title)

Date: 7/25/2023 | 10:51 AM PDT

**Approved as to Indemnity and Insurance Provisions**

**Office of the County Counsel-Risk Management  
Leslie J. Girard, County Counsel**

By: \_\_\_\_\_

Its: \_\_\_\_\_  
(Print Name and Title)

Date: \_\_\_\_\_

**CONTRACTOR\***

**Smith & Enright Landscaping, Inc.**

By: James Smith  
309158E980E9496...

Its: James Smith, President  
(Print Name and Title)

Date: 7/24/2023 | 3:15 PM PDT

By: Richard A. Enright  
47251F4832204F3...

Its: Richard A. Enright, Treasurer  
(Print Name and Title)

Date: 7/24/2023 | 3:46 PM PDT

\*INSTRUCTIONS: If CONTRACTOR is a corporation, including non-profit corporations, the full legal name of the corporation shall be set forth above together with the signatures of two (2) specified officers per California Corporations Code Section 313. If CONTRACTOR is a Limited Liability Corporation (LLC), the full legal name of the LLC shall be set forth above together with the signatures of two (2) managers. If CONTRACTOR is a partnership, the full legal name of the partnership shall be set forth above together with the signature of a partner who has authority to execute this Agreement on behalf of the partnership. If CONTRACTOR is contracting in an individual capacity, the individual shall set forth the name of the business, if any, and shall personally sign the Agreement or Amendment to said Agreement.

**EXHIBIT A-1 – UPDATED COMPENSATION/PAYMENT  
Effective November 1, 2023**

**To Agreement by and between  
County of Monterey, hereinafter referred to as “County”  
and  
Smith & Enright Landscaping, Inc., hereinafter referred to as “CONTRACTOR”**

**B. PAYMENT PROVISIONS**

**B.1 COMPENSATION/ PAYMENT**

County shall pay an amount not to exceed **\$1,000,000** for the performance of all things necessary for or incidental to the performance of work as set forth in the Scope of Services. CONTRACTOR's compensation for services rendered shall be based on the following rates or in accordance with the following terms:

<b>Pricing Schedule</b>	
Laborer	\$105.00/hour
Operator Engineer	\$145.00/hour
Truck and Trailer Rental	\$45.00/hour
Skid Steer Rental	\$75.00/hour
Admin Fees	\$60.00/day (charged for each day crew is dispatched for route or complaint work and covers collecting and reporting daily work)
Waste Fees	Will be billed based on debris collected and added to our weekly invoice for the ticket amount plus 3%. All receipts will be included with invoicing for verification.

There shall be no travel reimbursement allowed during this Agreement.

CONTRACTOR warrants that the cost charged for services under the terms of this Agreement are not in excess of those charged to any other client for the same services performed by the same individuals.





# CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

4/20/2022

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

**IMPORTANT:** If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must have ADDITIONAL INSURED provisions or be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

<b>PRODUCER</b> CECILIA KENNEDY INSURANCE AGENCY 423 Pajaro Street Suite A Salinas, CA 93901 6005052	<b>CONTACT NAME:</b> Cecilia Kennedy <b>PHONE (A/C, No., Ext):</b> (831)585-1565 <b>FAX (A/C, No.):</b> (831)417-2923 <b>E-MAIL ADDRESS:</b> ceciliakennedy10@gmail.com <b>INSURER(S) AFFORDING COVERAGE</b> <b>NAIC #</b> INSURER A: Evanston Insurance Company INSURER B: INSURER C: INSURER D: INSURER E: INSURER F:
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**INSURED**  
**Smith & Enright Landscaping**  
 540 Work Street, Suite C  
 Salinas, CA 93901

**COVERAGES**      **CERTIFICATE NUMBER:**      **REVISION NUMBER:**

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input type="checkbox"/> OCCUR <input checked="" type="checkbox"/> <b>Pollution Liability</b> <input checked="" type="checkbox"/> (see below)			CPLMOL110882	4/24/2022	4/24/2024	EACH OCCURRENCE DAMAGE TO RENTED PREMISES (Ea occurrence) \$ <b>1,000,000</b>
	GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC OTHER:		PERSONAL & ADV INJURY \$				
			GENERAL AGGREGATE \$ <b>2,000,000</b>				
			PRODUCTS - COMP/OP AGG \$				
			Transportation Pollution \$ <b>1,000,000</b>				
	AUTOMOBILE LIABILITY <input type="checkbox"/> ANY AUTO <input type="checkbox"/> OWNED AUTOS ONLY <input type="checkbox"/> HIRED AUTOS ONLY <input type="checkbox"/> SCHEDULED AUTOS <input type="checkbox"/> NON-OWNED AUTOS ONLY						COMBINED SINGLE LIMIT (Ea accident) \$ BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$
	UMBRELLA LIAB <input type="checkbox"/> OCCUR EXCESS LIAB <input type="checkbox"/> CLAIMS-MADE DED    RETENTION \$						EACH OCCURRENCE \$ AGGREGATE \$
	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) <input type="checkbox"/> Y/N    N/A If yes, describe under DESCRIPTION OF OPERATIONS below						PER STATUTE    OTH-ER E.L. EACH ACCIDENT \$ E.L. DISEASE - EA EMPLOYEE \$ E.L. DISEASE - POLICY LIMIT \$
A	<b>Pollution Liability cont'd</b>			CPLMOL110882	4/24/2022	4/24/2024	Emergency/Crisis Response \$ <b>1,000,000</b> Defense Expenses Adgreat \$ <b>1,000,000</b> Non-Owned Disposal Site \$ <b>1,000,000</b>

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)

**RE:** Maintenance contractor for litter abatement and waste removal in **RFP #10774**, named insured provides services to address illegal dumping of household, commercial and industrial waste items on county roads and public lands, including, but not limited to: waste collection and illegal dumping mitigation throughout Monterey County.

<b>CERTIFICATE HOLDER</b> County of Monterey Contracts/Purchasing c/o Dina Northcutt 1441 Schilling Place Salinas, CA 93901	<b>CANCELLATION</b> SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS. AUTHORIZED REPRESENTATIVE 
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POLICY NUMBER: 47-GLO-330426-01

COMMERCIAL GENERAL LIABILITY  
CG 20 10 12 19**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.****ADDITIONAL INSURED – OWNERS, LESSEES OR  
CONTRACTORS – SCHEDULED PERSON OR  
ORGANIZATION**

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

**SCHEDULE**

Name Of Additional Insured Person(s) Or Organization(s)	Location(s) Of Covered Operations
As required by written contract	
Information required to complete this Schedule, if not shown above, will be shown in the Declarations.	

**A. Section II – Who Is An Insured** is amended to include as an additional insured the person(s) or organization(s) shown in the Schedule, but only with respect to liability for "bodily injury", "property damage" or "personal and advertising injury" caused, in whole or in part, by:

1. Your acts or omissions; or
2. The acts or omissions of those acting on your behalf;

in the performance of your ongoing operations for the additional insured(s) at the location(s) designated above.

However:

1. The insurance afforded to such additional insured only applies to the extent permitted by law; and
2. If coverage provided to the additional insured is required by a contract or agreement, the insurance afforded to such additional insured will not be broader than that which you are required by the contract or agreement to provide for such additional insured.

**B.** With respect to the insurance afforded to these additional insureds, the following additional exclusions apply:

This insurance does not apply to "bodily injury" or "property damage" occurring after:

1. All work, including materials, parts or equipment furnished in connection with such work, on the project (other than service, maintenance or repairs) to be performed by or on behalf of the additional insured(s) at the location of the covered operations has been completed; or
2. That portion of "your work" out of which the injury or damage arises has been put to its intended use by any person or organization other than another contractor or subcontractor engaged in performing operations for a principal as a part of the same project.

C. With respect to the insurance afforded to these additional insureds, the following is added to **Section III – Limits Of Insurance:**

If coverage provided to the additional insured is required by a contract or agreement, the most we will pay on behalf of the additional insured is the amount of insurance:

1. Required by the contract or agreement; or

2. Available under the applicable limits of insurance;  
whichever is less.

This endorsement shall not increase the applicable limits of insurance.

POLICY NUMBER: 47-GLO-330426-01

COMMERCIAL GENERAL LIABILITY  
CG 20 37 12 19**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.****ADDITIONAL INSURED – OWNERS, LESSEES OR  
CONTRACTORS – COMPLETED OPERATIONS**

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART  
PRODUCTS/COMPLETED OPERATIONS LIABILITY COVERAGE PART**SCHEDULE**

<b>Name Of Additional Insured Person(s) Or Organization(s):</b>	<b>Location And Description Of Completed Operations</b>
As required by written contract	
Information required to complete this Schedule, if not shown above, will be shown in the Declarations.	

**A. Section II – Who Is An Insured** is amended to include as an additional insured the person(s) or organization(s) shown in the Schedule, but only with respect to liability for "bodily injury" or "property damage" caused, in whole or in part, by "your work" at the location designated and described in the Schedule of this endorsement performed for that additional insured and included in the "products-completed operations hazard".

However:

1. The insurance afforded to such additional insured only applies to the extent permitted by law; and
2. If coverage provided to the additional insured is required by a contract or agreement, the insurance afforded to such additional insured will not be broader than that which you are required by the contract or agreement to provide for such additional insured.

**B.** With respect to the insurance afforded to these additional insureds, the following is added to **Section III – Limits Of Insurance:**

If coverage provided to the additional insured is required by a contract or agreement, the most we will pay on behalf of the additional insured is the amount of insurance:

1. Required by the contract or agreement; or
2. Available under the applicable Limits of Insurance shown in the Declarations;

whichever is less.

This endorsement shall not increase the applicable Limits of Insurance shown in the Declarations

Policy Number: 47-GLO-330426-01

COMMERCIAL GENERAL LIABILITY  
CG 20 01 12 19

**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**

## **PRIMARY AND NONCONTRIBUTORY – OTHER INSURANCE CONDITION**

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART  
LIQUOR LIABILITY COVERAGE PART  
PRODUCTS/COMPLETED OPERATIONS LIABILITY COVERAGE PART

The following is added to the **Other Insurance** Condition and supersedes any provision to the contrary:

### **Primary And Noncontributory Insurance**

This insurance is primary to and will not seek contribution from any other insurance available to an additional insured under your policy provided that:

- (1) The additional insured is a Named Insured under such other insurance; and

- (2) You have agreed in writing in a contract or agreement that this insurance would be primary and would not seek contribution from any other insurance available to the additional insured.

## ENDORSEMENT

This endorsement, effective 12:01AM: **August 11, 2023**  
Forms a part of Policy Number: **47-GLO-330426-01**  
Issued to: **Smith & Enright Landscaping, Inc**  
By: **Berkshire Hathaway Specialty Insurance Company**

## AMENDMENT TO CONDITIONS

**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**

This endorsement modifies insurance provided under the following:

### COMMERCIAL GENERAL LIABILITY POLICY PRODUCTS/COMPLETED OPERATIONS LIABILITY POLICY

I. Paragraph **2.b.** under **SECTION IV – COMMERCIAL GENERAL LIABILITY CONDITIONS** is deleted and replaced with the following:

**b.** If a claim is made or "suit" is brought against any insured, you must:

- (1)** Immediately record the specifics of the claim or "suit" and the date received; and
- (2)** Notify us in writing as soon as practicable.

Written notice should be mailed, delivered, faxed or e-mailed to us at the addresses or phone numbers provided in the Declarations of this policy.

II. Paragraph **8.** under **SECTION IV – COMMERCIAL GENERAL LIABILITY CONDITIONS** is deleted and replaced with the following:

#### **8. Transfer Of Rights Of Recovery Against Others To Us**

If any insured has rights to recover all or part of any payment we have made under this policy, those rights are transferred to us. The insured must do nothing after loss to impair these rights and must help us enforce them.

Any recoveries will be applied as follows:

- a.** Any person or organization, including the insured, that has paid an amount in excess of the applicable Limits of Insurance of this policy will be reimbursed first;
- b.** We then will be reimbursed up to the amount we have paid; and
- c.** Lastly, any person or organization, including the insured that has paid an amount over which this policy is excess is entitled to claim the remainder.

Expenses incurred in the exercise of rights of recovery will be apportioned among the persons or organizations, including the insured, in the ratio of their respective recoveries as finally settled.

If, prior to the time of an "occurrence", you waive any right of recovery against a specific person or organization for injury or damage as required under an "insured contract", we will also waive any rights we may have against such person or organization.

**III. The following are added to SECTION IV – COMMERCIAL GENERAL LIABILITY CONDITIONS:**

**Violation of Economic or Trade Sanctions**

If coverage for a claim or "suit" under this policy is in violation of any United States of America economic or trade sanctions, including but not limited to, sanctions administered and enforced by the United States Treasury Department's Office of Foreign Assets Control ("OFAC"), then coverage for that claim or "suit" will be null and void.

**Change in Control**

If during the policy period:

- a. The first Named Insured designated in Item 1. of the Declarations consolidates with or merges into, or sells all or substantially all of its assets to any person or entity; or
- b. Any person or entity acquires an amount of the outstanding ownership interests representing more than fifty percent (50%) of the voting or designation power for the election of directors of the first Named Insured designated in Item 1. of the Declarations, or acquires the voting or designation rights of such an amount of ownership interests;

this policy will continue in full force and effect as to "bodily injury" and "property damage" that occur prior to the effective date of such transaction and "personal and advertising injury" that takes place prior to the effective date of such transaction.

Coverage will be afforded by this policy for "bodily injury" or "property damage" that occurs on or after the effective date of such transaction and "personal and advertising injury" that takes place on or after the effective date of such transaction if the Named Insured notifies us of the transaction no later than ninety (90) days after the effective date of the transaction.

If the Named Insured fails to notify us within ninety (90) days of the effective date of such transaction coverage afforded by this policy will cease on the ninetieth (90th) day after the effective date of such transaction at 12:01 am standard time of the address of the Named Insured shown in Item 1. of the Declarations or the end of the "policy period", whichever is earlier.

The provisions of paragraph 5. shall only apply to transactions with third parties not under control or ownership of the Named Insured on the inception date of this policy.

**Unintentional Failure to Disclose**

Your failure to disclose all hazards existing as of the inception date of the policy will not prejudice you with respect to the coverage afforded by this policy, provided that any such failure or omission is not intentional.

**Knowledge of Occurrence**

With respect to any loss reporting requirements under this policy, it is understood and agreed that knowledge of an "occurrence" or claim by an agent, servant or "employee" of yours or any other person shall not in itself constitute knowledge by you, unless a manager in your risk management department or legal department or a corporate officer of yours shall have received notice from said agent, servant, "employee" or any other person.

All other terms and conditions of this policy remain unchanged.

## ENDORSEMENT

This endorsement, effective 12:01 AM: **August 11, 2023**  
Forms a part of Policy No.: **47-CAO-330427-01**  
Issued to: **Smith & Enright Landscaping, Inc**  
By: **Berkshire Hathaway Specialty Insurance Company**

# BUSINESS AUTO ENHANCEMENT ENDORSEMENT

**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**

This endorsement modifies insurance provided under the following:

### BUSINESS AUTO COVERAGE FORM

#### SECTION II – COVERED AUTOS LIABILITY COVERAGE

I. Subparagraph **A.1. Who is an Insured** is amended to include the following:

The following will qualify as a Named Insured if there is no similar insurance available to that organization, regardless of whether the limits of such insurance are exhausted:

- a. Any incorporated subsidiary in which you maintain ownership or majority interest on the effective date of the policy.
- b. Any organization you newly acquire or form, other than a partnership, joint venture or limited liability company, and over which you maintain ownership or majority interest. However:
  - (1) Coverage under this provision is afforded only until the 180<sup>th</sup> day after you acquire or form the organization or the end of the policy period, whichever is earlier; and
  - (2) Coverage does not apply to "bodily injury" or "property damage" that results from an "accident" that occurred before you acquired or formed the organization.

No person or organization will qualify as a Named Insured with respect to the conduct of any current or past partnership, joint venture or limited liability company that is not shown as a Named Insured in the Declarations.

II. Subparagraph **A.1. Who is an Insured** is amended to include the following:

- d. The lessor of a covered "auto" while the "auto" is leased to you under a written agreement if:
  - (1) The agreement requires you to provide direct primary insurance for the lessor; and
  - (2) The "auto" is leased without a driver.

Such a leased "auto" will be considered a covered "auto" you own and not a covered "auto" you hire.



- e. Any person or organization to whom you become obligated to include as an additional insured under this policy, as a result of any written contract or agreement you enter into which requires you to furnish insurance to that person or organization of the type provided by this policy, but only with respect to liability covered by the terms of this policy, arising out of the use of a covered "auto" you own, hire or borrow. However, the insurance provided herein will not exceed the lesser of:
  - (1) The coverage and/or limits of this policy, or
  - (2) The coverage and/or limits required by said contract or agreement.
- f. Your "employee" while using a covered "auto" you do not own, hire or borrow in your business or your personal affairs.
- g. Your "employee" while operating an "auto" hired or rented under a written contract or agreement in that "employee's" name, with your permission, while performing duties related to the conduct of your business.
- h. Any of your "executive officers" or his or her spouse, while a resident of the same household using a covered "auto" described below.

For the purposes of this Paragraph **h.**, a covered "auto" for Liability Coverage is any "auto" you don't own, hire or borrow while being used by your "executive officer" or by his or her spouse while a resident of the same household except:

- (1) Any "auto" owned by that "executive officer" or a member of that person's household; or
- (2) Any "auto" used by that "executive officer" or his or her spouse while working in a business of selling, servicing, or repairing or parking "autos".

We will provide coverage to this "insured" equal to the broadest coverage applicable to any covered "auto" you own that is covered by this policy. Any coverage provided to this "insured" is excess over any other valid and collectible insurance.

"Executive officer" means a person holding any of the officer positions created by your charter, constitution, bylaws or any other similar governing document.

Subparagraph **A.2.a Supplementary Payments** is deleted and replaced with the following:

**a. Supplementary Payments**

We will pay for the "insured":

- (1) All expenses we incur.
- (2) Up to \$2,500 for cost of bail bonds (including bonds for related traffic law violations) required because of an "accident" we cover. We do not have to furnish these bonds.
- (3) The cost of bonds to release attachments in any "suit" against the "insured" we defend, but only for bond amounts within our Limit of Insurance.
- (4) All reasonable expenses incurred by the "insured" at our request, including actual loss of earnings up to \$300 a day because of time off from work.
- (5) All costs taxed against the "insured" in any "suit" against the "insured" we defend. However, these payments do not include attorneys' fees or attorneys' expenses taxed against the "insured".
- (6) All interest on the full amount of any judgment that accrues after entry of the judgment in any "suit" against the "insured" we defend, but our duty to pay interest ends when we have paid, offered to pay or deposited in court the part of the judgment that is within our Limit of Insurance.

These payments will not reduce the Limit of Insurance.

III. Exclusion **B.5. Fellow Employee** is deleted and replaced with the following:

**5. Fellow Employee**

"Bodily injury" to:

- a. Any fellow "employee" of the "insured" arising out of and in the course of the fellow "employee's" employment or while performing duties related to the conduct of your business; or
- b. The spouse, child, parent, brother or sister of that fellow "employee" as a consequence of Paragraph a. above.

But this exclusion does not apply if you have workers' compensation insurance in force covering all of your "employees". Coverage provided under this exception is excess over any other collectible insurance.

**SECTION III – PHYSICAL DAMAGE COVERAGE**

I. Paragraph **A. Coverage** is amended to include the following Coverage:

**Auto Lease Gap**

If a long-term leased "auto" is a covered "auto" and the lessor is named in the policy as a loss payee, we will pay in the event of a total "loss" the unpaid amounts due on the lease for the covered "auto" at the time of the "loss", less:

- 1. Overdue lease payments at the time of the "loss";
- 2. Financial penalties imposed under a lease for excessive use, abnormal wear and tear or high mileage.
- 3. Security deposits not returned by the lessor;
- 4. Costs for extended warranties, Credit Life Insurance, Health, Accident or Disability Insurance purchased with the lease; and
- 5. Carry-over balances from previous leases.

II. Subparagraph **A.4. Coverage Extensions** is deleted and replaced with the following:

**a. Transportation Expenses**

We will pay up to \$60 per day to a maximum of \$2,000 for temporary transportation expense incurred by you because of the total theft of a covered "auto" of the private passenger type. We will pay only for those covered "autos" for which you carry either Comprehensive or Specified Causes of Loss Coverage. We will pay for temporary transportation expenses incurred during the period beginning 48 hours after the theft and ending, regardless of the policy's expiration, when the covered "auto" is returned to use or we pay for its "loss".

**b. Hired Auto Physical Damage Coverage**

**(1) Loss of Use Expenses**

For Hired Auto Physical Damage, we will pay expenses for which an "insured" becomes legally responsible to pay for loss of use of a vehicle rented or hired without a driver under a written rental contract or agreement. We will pay for loss of use expenses if caused by:

- (a)** Other than collision only if the Declarations indicate that Comprehensive Coverage is provided for any covered "auto";

- (b) Specified Causes Of Loss only if the Declarations indicate that Specified Causes Of Loss Coverage is provided for any covered "auto"; or
- (c) Collision only if the Declarations indicate that Collision Coverage is provided for any covered "auto".

However, the most we will pay for any expenses for loss of use is \$30 per day, to a maximum of \$1,000 per accident.

**(2) Loss to Hired Auto**

For Hired Auto Physical Damage, we will pay for "loss" to an "auto" you rented or hired without a driver, under a written rental contract or agreement. We will pay for "loss" if caused by:

- (a) Other than collision only if the Declarations indicate that Comprehensive Coverage is provided for any covered "auto";
- (b) Specified Causes Of Loss only if the Declarations indicate that Specified Causes Of Loss Coverage is provided for any covered "auto"; or
- (c) Collision only if the Declarations indicate that Collision Coverage is provided for any covered "auto".

We will provide coverage equal to the broadest coverage applicable to any covered "auto" you own that is covered by this policy. However, the most we will pay for "loss" to any hired "auto" is:

- (a) \$50,000;
  - (b) The actual cash value of the damaged or stolen property at the time of the "loss"; or
  - (c) The cost of repairing or replacing the damaged or stolen property;
- whichever is smallest, minus the deductible. The deductible will be equal to the largest deductible applicable to any owned "auto" for that coverage. No deductible applies to "loss" caused by fire or lightning.

- (3) This extension of coverage does not apply to any "auto" you hire or borrow from any of your "employees", partners (if you are a partnership), members (if you are a limited liability company), or members of their households.

**c. Expense for Stolen Auto Return**

We will pay up to \$10,000 for the expense incurred returning a stolen covered "auto" to you because of the total theft of such covered "auto".

**III. Exclusion B.3 is deleted and replaced with the following:**

- 3. We will not pay for "loss" due and confined to:
  - a. Wear and tear, freezing, mechanical or electrical breakdown. However, this exclusion does not apply to accidental discharge of an airbag.
  - b. Blowouts, punctures or other road damage to tires.

This exclusion does not apply to such "loss" resulting from the total theft of a covered "auto".

**IV. Paragraph D. Deductible is deleted and replaced with the following:**

#### D. Deductible

For each covered "auto", our obligation to pay for, repair, return or replace damaged or stolen property will be reduced by the applicable deductible shown in the Declarations. However, no deductible applies to glass breakage if the glass is repaired rather than replaced.

Any Comprehensive Coverage deductible shown in the Declarations does not apply to "loss" caused by fire or lightning.

If another policy or coverage form issued by us or any company that controls, is controlled by, or is under common control with us, applies to the same "accident", the following applies:

1. If the deductible under this policy is the smaller (or smallest) deductible, it will be waived; or
2. If the deductible under this policy is not the smaller (or smallest) deductible, it will be reduced by the amount of the smaller (or smallest) deductible.

### SECTION IV - BUSINESS AUTO CONDITIONS

I. Subparagraph **A.2.a.** is deleted and replaced with the following:

a. In the event of "accident", claim, "suit" or "loss", you must give us or our authorized representative prompt notice of the "accident" or "loss". Include:

- (1) How, when and where the "accident" or "loss" occurred;
- (2) The "insured's" name and address; and
- (3) To the extent possible, the names and addresses of any injured persons and witnesses.

This condition applies only when the "accident" is known to:

- (1) You, if you are an individual;
- (2) A partner, if you are a partnership;
- (3) A member, if you are a limited liability company; or
- (4) An officer or insurance manager, if you are a corporation.

Your failure to give first report of a claim to us shall not invalidate coverage under this policy if the loss was inadvertently reported to another insurer. However, you shall report any such "accident", claim, "suit" or "loss" to us within a reasonable time once you become aware of such error.

II. Subparagraph **A.5. Transfer Of Rights Of Recovery Against Others To Us** is deleted and replaced with the following:

#### **5. Transfer Of Rights Of Recovery Against Others To Us**

If any person or organization to or for whom we make payment under this Coverage Form has rights to recover damages from another, those rights are transferred to us. That person or organization must do everything necessary to secure our rights and must do nothing after "accident" or "loss" to impair them.

However, we waive any right of recovery we may have against any person or organization with whom you have a written contract executed prior to the "loss" that requires a waiver of recovery for payments made for damages arising out of your operations done under contract with such person or organization.

III. Subparagraph **B.2. Concealment, Misrepresentation Or Fraud** is deleted in its entirety and replaced with the following:

**2. Concealment, Misrepresentation Or Fraud**

This Coverage Form is void in any case of fraud by you at any time as it relates to this Coverage Form. It is also void if you or any other "insured", at any time, intentionally conceal or misrepresent a material fact concerning:

- a. This Coverage Form;
- b. The covered "auto";
- c. Your interest in the covered "auto"; or
- d. A claim under this Coverage Form.

Any unintentional failure by you or any "insured" to provide accurate and complete representations as of the inception of the policy will not prejudice the coverages afforded by this policy. However, you must report such error or omission to us as soon as practicable after its discovery.

IV. Subparagraph **B.5.b.** is deleted and replaced with the following:

- b. For Hired Auto Physical Damage Coverage, the following are deemed to be covered "autos" you own:
  - (1) Any covered "auto" you lease, hire, rent or borrow; and
  - (2) Any covered "auto" hired or rented by your "employee" under a contract in that individual "employee's" name, with your permission, while performing duties related to the conduct of your business.

However, any "auto" that is leased, hired, rented or borrowed with a driver is not a covered "auto".

**SECTION V – DEFINITIONS**

I. Definition **C.** "Bodily injury" is deleted and replaced with the following:

- C. "Bodily injury" means bodily injury, sickness or disease sustained by a person including mental anguish or death resulting from any of these.

All other terms and conditions of the policy remain the same.

**WAIVER OF OUR RIGHT TO RECOVER FROM OTHERS ENDORSEMENT-CALIFORNIA**

We have the right to recover our payments from anyone liable for an injury covered by this policy. We will not enforce our right against the person or organization named in the Schedule. (This agreement applies only to the extent that you perform work under a written contract that requires you to obtain this agreement from us.)

You must maintain payroll records accurately segregating the remuneration of your employees while engaged in the work described in the Schedule.

The additional premium for this endorsement shall be  2  % of the California workers' compensation premium otherwise due on such remuneration.

Schedule

**Person or Organization**

**Job Description**

With respect to all employees subject to the workers' compensation laws of the state of California, any person or organization for whom the Named Insured has agreed by written contract to furnish this waiver.

**This policy is subject to a minimum charge of \$250 for the issuance of waivers of subrogation**

This endorsement changes the policy to which it is attached and is effective on the date issued unless otherwise stated.  
(The information below is required only when this endorsement is issued subsequent to preparation of the policy.)

This endorsement, effective 10/01/2022 at 12:01 AM standard time, forms a part of

Policy No. EIG 4902751 00 Of the EMPLOYERS ASSURANCE CO.

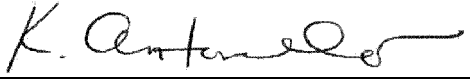
Carrier Code 00919

Issued to SMITH & ENRIGHT LANDSCAPING

Endorsement No.

Premium \$107,854

Countersigned at \_\_\_\_\_ on \_\_\_\_\_

By:  \_\_\_\_\_

Authorized Representative