

EXHIBIT A

**FIRST AMENDMENT TO THE AGREEMENT BETWEEN THE  
CITY OF SOUTH SAN FRANCISCO AND  
FRANK + GROSSMAN LANDSCAPE CONTRACTORS, INC.**

THIS FIRST AMENDMENT TO THE SERVICES AGREEMENT is made at South San Francisco, California, as of April 10, 2023, by and between THE CITY OF SOUTH SAN FRANCISCO (“City”), a municipal corporation, and Frank + Grossman Landscape Contractors, Inc. (“Contractor”), (sometimes referred together as the “Parties”) who agree as follows:

RECITALS

A. On July 1, 2021, City and Contractor entered that certain Services Agreement (“Agreement”) whereby Contractor agreed to provide Right of Way landscaping services. A true and correct copy of the Agreement and its exhibits is attached as Exhibit A.

B. City and Contractor now desire to amend the Agreement.

NOW, THEREFORE, for and in consideration of the promises and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, City and Contractor hereby agree as follows:

1. All terms which are defined in the Agreement shall have the same meaning when used in this Amendment, unless specifically provided herein to the contrary.
2. Section 1: Term. The June 30, 2023, end date for the term of services identified in Section 1 of the Agreement is hereby replaced with June 30, 2024.
3. Section 2: Compensation. Section 2 of the Agreement shall be amended by the amount of \$278,760 such that the City agrees to pay Contractor a sum not to exceed totaling \$894,824.00, with the understanding that up to \$491,690 has already been paid to Contractor as of 04/01/2023.

Original Contract Amount:	\$616,064.00
<u>Amendment #1:</u>	<u>\$278,760.00</u>
Total Contract Amount:	\$894,824.00

Contractor agrees this is the City’s total contribution for payment of costs under the Agreement unless additional payments are authorized in accordance with the terms of the Agreement and said terms of payment are mutually agreed to by and between the parties in writing.

4. Scope of Services. The Scope of services is amended and attached as Exhibit B to this Amendment.

All other terms, conditions and provisions in the Agreement remain in full force and effect. If there is a conflict between the terms of this Amendment and the Agreement, the terms of the Agreement will control unless specifically modified by this Amendment.

[SIGNATURES ON THE FOLLOWING PAGE]

EXHIBIT A

Dated: \_\_\_\_\_

**CITY OF SOUTH SAN FRANCISCO**

**FRANK + GROSSMAN LANDSCAPE  
CONTRACTORS, INC.**

By: \_\_\_\_\_  
Sharon Ranals, City Manager

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

ATTEST:

By: \_\_\_\_\_  
City Clerk

Approved as to Form:

By: \_\_\_\_\_  
City Attorney

**LANDSCAPE MAINTENANCE SERVICES AGREEMENT BETWEEN  
THE CITY OF SOUTH SAN FRANCISCO AND  
FRANK + GROSSMAN LANDSCAPE CONTRACTORS, INC.**

THIS AGREEMENT for consulting services is made by and between the City of South San Francisco ("City") and Frank + Grossman Landscape Contractors, Inc. ("Consultant") (together sometimes referred to as the "Parties") as of **July 1, 2021** (the "Effective Date").

**Section 1. SERVICES.** Subject to the terms and conditions set forth in this Agreement, Consultant shall provide to City the services described in the Scope of Work attached as **Exhibit A**, attached hereto and incorporated herein, at the time and place and in the manner specified therein. In the event of a conflict in or inconsistency between the terms of this Agreement and **Exhibit A**, the Agreement shall prevail.

- 1.1 **Term of Services.** The term of this Agreement shall begin on the Effective Date and shall end on **June 30, 2023**, the date of completion specified in **Exhibit A**, and Consultant shall complete the work described in **Exhibit A** prior to that date, unless the term of the Agreement is otherwise terminated or extended, as provided for in Section 9. The time provided to Consultant to complete the services required by this Agreement shall not affect the City's right to terminate the Agreement, as provided for in Section 9.
- 1.2 **Standard of Performance.** Consultant shall perform all services required pursuant to this Agreement in the manner and according to the standards observed by a competent practitioner of the profession in which Consultant is engaged in the geographical area in which Consultant practices its profession. Consultant shall prepare all work products required by this Agreement in a substantial, first-class manner and shall conform to the standards of quality normally observed by a person practicing in Consultant's profession.
- 1.3 **Assignment of Personnel.** Subject to the requirements of Section 9.4, Consultant shall assign only competent personnel to perform services pursuant to this Agreement. In the event that City, in its sole discretion, at any time during the term of this Agreement, desires the reassignment of any such persons, Consultant shall, immediately upon receiving notice from City of such desire of City, reassign such person or persons.
- 1.4 **Time.** Consultant shall devote such time to the performance of services pursuant to this Agreement as may be reasonably necessary to meet the standard of performance provided in Sections 1.1 and 1.2 above and to satisfy Consultant's obligations hereunder.

**Section 2. COMPENSATION.** City hereby agrees to pay Consultant a sum not to exceed **SIX HUNDRED SIXTEEN THOUSAND SIXTY FOUR DOLLARS (\$616,064)** notwithstanding any contrary indications that may be contained in Consultant's proposal, for services to be performed and reimbursable costs incurred under this Agreement. In the event of a conflict between this Agreement and Consultant's proposal, attached as **Exhibit A**, regarding the amount of compensation, the Agreement shall prevail. City shall pay Consultant for services rendered pursuant to this Agreement at the time and in the manner set forth herein. The payments specified below shall be the only payments from City to Consultant for services

rendered pursuant to this Agreement. Consultant shall submit all invoices to City in the manner specified herein. Except as specifically authorized by City, Consultant shall not bill City for duplicate services performed by more than one person.

Consultant and City acknowledge and agree that compensation paid by City to Consultant under this Agreement is based upon Consultant's estimated costs of providing the services required hereunder, including salaries and benefits of employees and subcontractors of Consultant. Consequently, the parties further agree that compensation hereunder is intended to include the costs of contributions to any pensions and/or annuities to which Consultant and its employees, agents, and subcontractors may be eligible. City therefore has no responsibility for such contributions beyond compensation required under this Agreement.

**2.1 Invoices.** Consultant shall submit invoices, not more often than once per month during the term of this Agreement, based on the cost for services performed and reimbursable costs incurred prior to the invoice date. Invoices shall contain the following information:

- Serial identifications of progress bills (i.e., Progress Bill No. 1 for the first invoice, etc.);
- The beginning and ending dates of the billing period;
- A task summary containing the original contract amount, the amount of prior billings, the total due this period, the balance available under the Agreement, and the percentage of completion;
- At City's option, for each work item in each task, a copy of the applicable time entries or time sheets shall be submitted showing the name of the person doing the work, the hours spent by each person, a brief description of the work, and each reimbursable expense;
- The total number of hours of work performed under the Agreement by Consultant and each employee, agent, and subcontractor of Consultant performing services hereunder, as well as a separate notice when the total number of hours of work by Consultant and any individual employee, agent, or subcontractor of Consultant reaches or exceeds eight hundred (800) hours, which shall include an estimate of the time necessary to complete the work described in **Exhibit A**;
- The amount and purpose of actual expenditures for which reimbursement is sought;
- The Consultant's signature.

**2.2 Monthly Payment.** City shall make monthly payments, based on invoices received, for services satisfactorily performed, and for authorized reimbursable costs incurred. City shall have thirty (30) days from the receipt of an invoice that complies with all of the requirements above to pay Consultant. City shall have no obligation to pay invoices submitted ninety (90) days past the performance of work or incurrence of cost.

**2.3 Final Payment.** City shall pay the last five percent (5%) of the total sum due pursuant to this Agreement within sixty (60) days after completion of the services and submittal to City of a final invoice, if all services required have been satisfactorily performed.

- 2.4 Total Payment.** City shall pay for the services to be rendered by Consultant pursuant to this Agreement. City shall not pay any additional sum for any expense or cost whatsoever incurred by Consultant in rendering services pursuant to this Agreement. City shall make no payment for any extra, further, or additional service pursuant to this Agreement.
- In no event shall Consultant submit any invoice for an amount in excess of the maximum amount of compensation provided above either for a task or for the entire Agreement, unless the Agreement is modified prior to the submission of such an invoice by a properly executed change order or amendment.
- 2.5 Hourly Fees.** Fees for work performed by Consultant on an hourly basis shall not exceed the amounts shown in **Exhibit A.**
- 2.6 Reimbursable Expenses.** Expenses not listed are not chargeable to City. Reimbursable expenses are included in the total amount of compensation provided under this Agreement that shall not be exceeded.
- 2.7 Payment of Taxes.** Consultant is solely responsible for the payment of employment taxes incurred under this Agreement and any similar federal or state taxes. Contractor represents and warrants that Contractor is a resident of the State of California in accordance with California Revenue & Taxation Code Section 18662, as may be amended, and is exempt from withholding. Contractor accepts sole responsibility for verifying the residency status of any subcontractors and withhold taxes from non-California subcontractors as required by law.
- 2.8 Payment upon Termination.** In the event that the City or Consultant terminates this Agreement pursuant to Section 8, the City shall compensate the Consultant for all outstanding costs and reimbursable expenses incurred for work satisfactorily completed as of the date of written notice of termination. Consultant shall maintain adequate logs and timesheets in order to verify costs incurred to that date.
- 2.9 Authorization to Perform Services.** The Consultant is not authorized to perform any services or incur any costs whatsoever under the terms of this Agreement until receipt of authorization from the Contract Administrator.

**Section 3. FACILITIES AND EQUIPMENT.** Except as set forth herein, Consultant shall, at its sole cost and expense, provide all facilities and equipment that may be necessary to perform the services required by this Agreement. City shall make available to Consultant only the facilities and equipment listed in this section, and only under the terms and conditions set forth herein.

City shall furnish physical facilities such as desks, filing cabinets, and conference space, as may be reasonably necessary for Consultant's use while consulting with City employees and reviewing records and the information in possession of the City. The location, quantity, and time of furnishing those facilities shall be in the sole discretion of City. In no event shall City be obligated to furnish any facility that may involve

incurring any direct expense, including but not limited to computer, long-distance telephone or other communication charges, vehicles, and reproduction facilities.

**Section 4. CONTRACT SECURITY.** Concurrently with the execution of this Agreement, Consultant shall furnish a surety bond in an amount equal to at least 100% of the contract price set forth in Section 2 as security for the faithful performance of this contract. Sureties on said bond and the form thereof shall be issued by a California-admitted surety, satisfactory to the City and approved by the Contract Administrator identified in Section 11.9.

**Section 5 INSURANCE REQUIREMENTS.** Before beginning any work under this Agreement, Consultant, at its own cost and expense, unless otherwise specified below, shall procure the types and amounts of insurance listed below against claims for injuries to persons or damages to property that may arise from or in connection with the performance of the work hereunder by the Consultant and its agents, representatives, employees, and subcontractors. Consistent with the following provisions, Consultant shall provide Certificates of Insurance, attached hereto and incorporated herein as **Exhibit B**, indicating that Consultant has obtained or currently maintains insurance that meets the requirements of this section and under forms of insurance satisfactory, in all respects, to the City. Consultant shall maintain the insurance policies required by this section throughout the term of this Agreement. The cost of such insurance shall be included in the Consultant's bid. Consultant shall not allow any subcontractor to commence work on any subcontract until Consultant has obtained all insurance required herein for the subcontractor(s).

**5.1 Workers' Compensation.** Consultant shall, at its sole cost and expense, maintain Statutory Workers' Compensation Insurance and Employer's Liability Insurance for any and all persons employed directly or indirectly by Consultant. The Statutory Workers' Compensation Insurance and Employer's Liability Insurance shall be provided with limits of not less than ONE MILLION DOLLARS (\$1,000,000) per accident. In the alternative, Consultant may rely on a self-insurance program to meet those requirements, but only if the program of self-insurance complies fully with the provisions of the California Labor Code. Determination of whether a self-insurance program meets the standards of the Labor Code shall be solely in the discretion of the Contract Administrator (as defined in Section 10.9). The insurer, if insurance is provided, or the Consultant, if a program of self-insurance is provided, shall waive all rights of subrogation against the City and its officers, officials, employees, and volunteers for loss arising from work performed under this Agreement.

**5.2 Commercial General and Automobile Liability Insurance.**

**5.2.1 General requirements.** Consultant, at its own cost and expense, shall maintain commercial general and automobile liability insurance for the term of this Agreement in an amount not less than ONE MILLION DOLLARS (\$1,000,000.00) per occurrence, combined single limit coverage for risks associated with the work contemplated by this Agreement. If a Commercial General Liability Insurance or an Automobile Liability form or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to the work to be performed under this Agreement or the general aggregate limit shall be at least

twice the required occurrence limit. Such coverage shall include but shall not be limited to, protection against claims arising from bodily and personal injury, including death resulting there from, and damage to property resulting from activities contemplated under this Agreement, including the use of owned and non-owned automobiles.

**5.2.2 Minimum scope of coverage.** Commercial general coverage shall be at least as broad as Insurance Services Office Commercial General Liability occurrence form CG 0001 or GL 0002 (most recent editions) covering comprehensive General Liability and Insurance Services Office form number GL 0404 covering Broad Form Comprehensive General Liability. Automobile coverage shall be at least as broad as Insurance Services Office Automobile Liability form CA 0001 (ed. 12/90) Code 8 and 9. No endorsement shall be attached limiting the coverage.

**5.2.3 Additional requirements.** Each of the following shall be included in the insurance coverage or added as a certified endorsement to the policy:

- a. The insurance shall cover on an occurrence or an accident basis, and not on a claims-made basis.
- b. Any failure of Consultant to comply with reporting provisions of the policy shall not affect coverage provided to City and its officers, employees, agents, and volunteers.

### **5.3 Professional Liability Insurance.**

**5.3.1 General requirements.** Consultant, at its own cost and expense, shall maintain for the period covered by this Agreement professional liability insurance for licensed professionals performing work pursuant to this Agreement in an amount not less than ONE MILLION DOLLARS (\$1,000,000) covering the licensed professionals' errors and omissions. Any deductible or self-insured retention shall not exceed ONE HUNDRED FIFTY THOUSAND DOLLARS \$150,000 per claim.

**5.3.2 Claims-made limitations.** The following provisions shall apply if the professional liability coverage is written on a claims-made form:

- a. The retroactive date of the policy must be shown and must be before the date of the Agreement.
- b. Insurance must be maintained and evidence of insurance must be provided for at least five (5) years after completion of the Agreement or the work, so long as commercially available at reasonable rates.
- c. If coverage is canceled or not renewed and it is not replaced with another claims-made policy form with a retroactive date that precedes the date of

this Agreement, Consultant must provide extended reporting coverage for a minimum of five (5) years after completion of the Agreement or the work. The City shall have the right to exercise, at the Consultant's sole cost and expense, any extended reporting provisions of the policy, if the Consultant cancels or does not renew the coverage.

- d. A copy of the claim reporting requirements must be submitted to the City prior to the commencement of any work under this Agreement.

#### **5.4 All Policies Requirements.**

**5.4.1 Acceptability of insurers.** All insurance required by this section is to be placed with insurers with a Bests' rating of no less than A: VII.

**5.4.2 Verification of coverage.** Prior to beginning any work under this Agreement, Consultant shall furnish City with complete copies of all policies delivered to Consultant by the insurer, including complete copies of all endorsements attached to those policies. All copies of policies and certified endorsements shall show the signature of a person authorized by that insurer to bind coverage on its behalf. If the City does not receive the required insurance documents prior to the Consultant beginning work, it shall not waive the Consultant's obligation to provide them. The City reserves the right to require complete copies of all required insurance policies at any time.

**5.4.3 Notice of Reduction in or Cancellation of Coverage.** A certified endorsement shall be attached to all insurance obtained pursuant to this Agreement stating that coverage shall not be suspended, voided, canceled by either party, or reduced in coverage or in limits, except after thirty (30) days' prior written notice by certified mail, return receipt requested, has been given to the City. In the event that any coverage required by this section is reduced, limited, cancelled, or materially affected in any other manner, Consultant shall provide written notice to City at Consultant's earliest possible opportunity and in no case later than ten (10) working days after Consultant is notified of the change in coverage.

**5.4.4 Additional insured; primary insurance.** City and its officers, employees, agents, and volunteers shall be covered as additional insureds with respect to each of the following: liability arising out of activities performed by or on behalf of Consultant, including the insured's general supervision of Consultant; products and completed operations of Consultant, as applicable; premises owned, occupied, or used by Consultant; and automobiles owned, leased, or used by the Consultant in the course of providing services pursuant to this Agreement. The coverage shall contain no special limitations on the scope of protection afforded to City or its officers, employees, agents, or volunteers.



A certified endorsement must be attached to all policies stating that coverage is primary insurance with respect to the City and its officers, officials, employees and volunteers, and that no insurance or self-insurance maintained by the City shall be called upon to contribute to a loss under the coverage.

- 5.4.5 Deductibles and Self-Insured Retentions.** Consultant shall disclose to and obtain the approval of City for the self-insured retentions and deductibles before beginning any of the services or work called for by any term of this Agreement. Further, if the Consultant's insurance policy includes a self-insured retention that must be paid by a named insured as a precondition of the insurer's liability, or which has the effect of providing that payments of the self-insured retention by others, including additional insureds or insurers do not serve to satisfy the self-insured retention, such provisions must be modified by special endorsement so as to not apply to the additional insured coverage required by this agreement so as to not prevent any of the parties to this agreement from satisfying or paying the self-insured retention required to be paid as a precondition to the insurer's liability. Additionally, the certificates of insurance must note whether the policy does or does not include any self-insured retention and also must disclose the deductible.

During the period covered by this Agreement, only upon the prior express written authorization of Contract Administrator, Consultant may increase such deductibles or self-insured retentions with respect to City, its officers, employees, agents, and volunteers. The Contract Administrator may condition approval of an increase in deductible or self-insured retention levels with a requirement that Consultant procure a bond, guaranteeing payment of losses and related investigations, claim administration, and defense expenses that is satisfactory in all respects to each of them.

- 5.4.6 Subcontractors.** Consultant shall include all subcontractors as insureds under its policies or shall furnish separate certificates and certified endorsements for each subcontractor. All coverages for subcontractors shall be subject to all of the requirements stated herein.
- 5.4.7 Wasting Policy.** No insurance policy required by Section 4 shall include a "wasting" policy limit.
- 5.4.8 Variation.** The City may approve a variation in the foregoing insurance requirements, upon a determination that the coverage, scope, limits, and forms of such insurance are either not commercially available, or that the City's interests are otherwise fully protected.

- 5.5 Remedies.** In addition to any other remedies City may have if Consultant fails to provide or maintain any insurance policies or policy endorsements to the extent and within the time herein required, City may, at its sole option exercise any of the following remedies, which

are alternatives to other remedies City may have and are not the exclusive remedy for Consultant's breach:

- a. Obtain such insurance and deduct and retain the amount of the premiums for such insurance from any sums due under the Agreement;
- b. Order Consultant to stop work under this Agreement or withhold any payment that becomes due to Consultant hereunder, or both stop work and withhold any payment, until Consultant demonstrates compliance with the requirements hereof; and/or
- c. Terminate this Agreement.

**Section 6. INDEMNIFICATION AND CONSULTANT'S RESPONSIBILITIES.** Consultant shall indemnify, defend with counsel selected by the City, and hold harmless the City and its officials, officers, employees, agents, and volunteers from and against any and all losses, liability, claims, suits, actions, damages, and causes of action arising out of any personal injury, bodily injury, loss of life, or damage to property, or any violation of any federal, state, or municipal law or ordinance, to the extent caused, in whole or in part, by the willful misconduct or negligent acts or omissions of Consultant or its employees, subcontractors, or agents, by acts for which they could be held strictly liable, or by the quality or character of their work. The foregoing obligation of Consultant shall not apply when (1) the injury, loss of life, damage to property, or violation of law arises wholly from the gross negligence or willful misconduct of the City or its officers, employees, agents, or volunteers and (2) the actions of Consultant or its employees, subcontractor, or agents have contributed in no part to the injury, loss of life, damage to property, or violation of law. It is understood that the duty of Consultant to indemnify and hold harmless includes the duty to defend as set forth in Section 2778 of the California Civil Code. Acceptance by City of insurance certificates and endorsements required under this Agreement does not relieve Consultant from liability under this indemnification and hold harmless clause. This indemnification and hold harmless clause shall apply to any damages or claims for damages whether or not such insurance policies shall have been determined to apply. By execution of this Agreement, Consultant acknowledges and agrees to the provisions of this Section and that it is a material element of consideration.

In the event that Consultant or any employee, agent, or subcontractor of Consultant providing services under this Agreement is determined by a court of competent jurisdiction or the California Public Employees Retirement System (PERS) to be eligible for enrollment in PERS as an employee of City, Consultant shall indemnify, defend, and hold harmless City for the payment of any employee and/or employer contributions for PERS benefits on behalf of Consultant or its employees, agents, or subcontractors, as well as for the payment of any penalties and interest on such contributions, which would otherwise be the responsibility of City.

**Section 7. STATUS OF CONSULTANT.**

- 7.1 **Independent Contractor.** At all times during the term of this Agreement, Consultant shall be an independent contractor and shall not be an employee of City. City shall have the right to control Consultant only insofar as the results of Consultant's services rendered pursuant to this Agreement and assignment of personnel pursuant to Subparagraph 1.3;

however, otherwise City shall not have the right to control the means by which Consultant accomplishes services rendered pursuant to this Agreement. Notwithstanding any other City, state, or federal policy, rule, regulation, law, or ordinance to the contrary, Consultant and any of its employees, agents, and subcontractors providing services under this Agreement shall not qualify for or become entitled to, and hereby agree to waive any and all claims to, any compensation, benefit, or any incident of employment by City, including but not limited to eligibility to enroll in the California Public Employees Retirement System (PERS) as an employee of City and entitlement to any contribution to be paid by City for employer contributions and/or employee contributions for PERS benefits.

- 7.2 **Consultant No Agent.** Except as City may specify in writing, Consultant shall have no authority, express or implied, to act on behalf of City in any capacity whatsoever as an agent or to bind City to any obligation whatsoever.

**Section 8. LEGAL REQUIREMENTS.**

- 8.1 **Governing Law.** The laws of the State of California shall govern this Agreement.
- 8.2 **Compliance with Applicable Laws.** Consultant and any subcontractors shall comply with all laws applicable to the performance of the work hereunder.
- 8.3 **Other Governmental Regulations.** To the extent that this Agreement may be funded by fiscal assistance from another governmental entity, Consultant and any subcontractors shall comply with all applicable rules and regulations to which City is bound by the terms of such fiscal assistance program.
- 8.4 **Licenses and Permits.** Consultant represents and warrants to City that Consultant and its employees, agents, and any subcontractors have all licenses, permits, qualifications, and approvals, including from City, of what-so-ever nature that are legally required to practice their respective professions. Consultant represents and warrants to City that Consultant and its employees, agents, any subcontractors shall, at their sole cost and expense, keep in effect at all times during the term of this Agreement any licenses, permits, and approvals that are legally required to practice their respective professions. In addition to the foregoing, Consultant and any subcontractors shall obtain and maintain during the term of this Agreement valid Business Licenses from City.
- 8.5 **Nondiscrimination and Equal Opportunity.** Consultant shall not discriminate, on the basis of a person's race, religion, color, national origin, age, physical or mental handicap or disability, medical condition, marital status, sex, or sexual orientation, against any employee, applicant for employment, subcontractor, bidder for a subcontract, or participant in, recipient of, or applicant for any services or programs provided by Consultant under this Agreement. Consultant shall comply with all applicable federal, state, and local laws, policies, rules, and requirements related to equal opportunity and nondiscrimination in employment, contracting, and the provision of any services that are the subject of this

Agreement, including but not limited to the satisfaction of any positive obligations required of Consultant thereby.

Consultant shall include the provisions of this Subsection in any subcontract approved by the Contract Administrator or this Agreement.

- 8.6 Prevailing Wage.** Where applicable, the wages to be paid for a day's work to all classes of laborers, workmen, or mechanics on the work contemplated by this Agreement. Shall be not less than the prevailing rate for a day's work in the same trade or occupation in the locality within the state where the work hereby contemplates to be performed as determined by the Director of Industrial Relations pursuant to the Director's authority under Labor Code Section 1770, *et seq.* Each laborer, worker or mechanic employed by Consultant or by any subcontractor shall receive the wages herein provided for. The Consultant shall pay two hundred dollars (\$200), or whatever amount may be set by Labor Code Section 1775, as may be amended, per day penalty for each worker paid less than prevailing rate of per diem wages. The difference between the prevailing rate of per diem wages and the wage paid to each worker shall be paid by the Consultant to each worker.

An error on the part of an awarding body does not relieve the Consultant from responsibility for payment of the prevailing rate of per diem wages and penalties pursuant to Labor Code Sections 1770 and 1775. The City will not recognize any claim for additional compensation because of the payment by the Consultant for any wage rate in excess of prevailing wage rate set forth. The possibility of wage increases is one of the elements to be considered by the Consultant.

- (A) Posting of Schedule of Prevailing Wage Rates and Deductions.** If the schedule of prevailing wage rates is not attached hereto pursuant to Labor Code Section 1773.2, the Consultant shall post at appropriate conspicuous points at the site of the project a schedule showing all determined prevailing wage rates for the various classes of laborers and mechanics to be engaged in work on the project under this contract and all deductions, if any, required by law to be made from unpaid wages actually earned by the laborers and mechanics so engaged.
- (B) Payroll Records.** Each Consultant and subcontractor shall keep an accurate payroll record, showing the name, address, social security number, work week, and the actual per diem wages paid to each journeyman, apprentice, worker, or other employee employed by the Consultant in connection with the public work. Such records shall be certified and made available upon request as required by Labor Code Section 1776.
- (C) Subcontracting** – Consultant shall be responsible for his own and subcontractors' compliance with Section 1777.5 of the Labor Code regarding apprentice-able occupations. Consultant's willful failure to comply with this section shall be denied the right to bid on a public works contract for a period of six (6) months from the date the determination is made.

**Section 9. TERMINATION AND MODIFICATION.**

- 9.1 **Termination.** City may cancel this Agreement at any time and without cause upon written notification to Consultant.

Consultant may cancel this Agreement for cause upon 30 days' written notice to City and shall include in such notice the reasons for cancellation.

In the event of termination, Consultant shall be entitled to compensation for services performed to the date of notice of termination; City, however, may condition payment of such compensation upon Consultant delivering to City all materials described in Section 10.1.

- 9.2 **Extension.** If agreed to by all parties the City may extend the end date of this Agreement beyond that provided for in Subsection 1.1. Any such extension shall require a written amendment to this Agreement, as provided for herein. Consultant understands and agrees that, if City grants such an extension, City shall have no obligation to provide Consultant with compensation beyond the maximum amount provided for in this Agreement. Similarly, unless authorized by the Contract Administrator, City shall have no obligation to reimburse Consultant for any otherwise reimbursable expenses incurred during the extension period.

- 9.3 **Amendments.** The parties may amend this Agreement only by a writing signed by all the parties.

- 9.4 **Assignment and Subcontracting.** City and Consultant recognize and agree that this Agreement contemplates personal performance by Consultant and is based upon a determination of Consultant's unique personal competence, experience, and specialized personal knowledge. Moreover, a substantial inducement to City for entering into this Agreement was and is the professional reputation and competence of Consultant. Consultant may not assign this Agreement or any interest therein without the prior written approval of the Contract Administrator. Consultant shall not assign or subcontract any portion of the performance contemplated and provided for herein, other than to the subcontractors noted in the proposal, without prior written approval of the Contract Administrator. Not less than fifty percent (50%) of the contract work shall be done by the prime contractor. Further, the Contractor shall not, without the consent of the City of South San Francisco, either:

- (a) Substitute any person or subcontractors in place of the subcontractors designated on the original proposal; or
- (b) Permit any subcontract to be assigned or transferred or allow it to be performed by anyone other than the original subcontractor listed in the proposal.

Should the Consultant violate any of the provisions of this Agreement or the Identification of Subcontractors Form contained in the proposal, it shall be deemed a violation of this Agreement, and the City of South San Francisco may cancel the Agreement.

- 9.5 Temporary Suspension of Work.** The Parks Manager shall have the authority to suspend the work wholly or in part for such period as deemed necessary, due to unsuitable weather, or to such other conditions as are considered unfavorable for the suitable prosecution of the work, or for such time as he/she may deem necessary, due to the failure on the part of the contractor to carry out orders given, or to perform any of the provisions of the work. The contractor shall immediately obey such orders of the Parks Manager and shall not restart the work until ordered in writing by the Parks Manager.
- 9.6 Survival.** All obligations arising prior to the termination of this Agreement and all provisions of this Agreement allocating liability between City and Consultant shall survive the termination of this Agreement.
- 9.7 Options upon Breach by Consultant.** If Consultant materially breaches any of the terms of this Agreement, City's remedies shall include, but not be limited to, the following:
- 9.7.1** Immediately terminate the Agreement;
  - 9.7.2** Retain the plans, specifications, drawings, reports, design documents, and any other work product prepared by Consultant pursuant to this Agreement;
  - 9.7.3** Retain a different consultant to complete the work described in **Exhibit A** not finished by Consultant; or
  - 9.7.4** Charge Consultant the difference between the costs to complete the work described in **Exhibit A** that is unfinished at the time of breach and the amount that City would have paid Consultant pursuant to Section 2 if Consultant had completed the work.

**Section 10. KEEPING AND STATUS OF RECORDS.**

- 10.1 Records Created as Part of Consultant's Performance.** All reports, data, maps, models, charts, studies, surveys, photographs, memoranda, plans, studies, specifications, records, files, or any other documents or materials, in electronic or any other form, that Consultant prepares or obtains pursuant to this Agreement and that relate to the matters covered hereunder shall be the property of the City. Consultant hereby agrees to deliver those documents to the City upon termination of the Agreement. It is understood and agreed that the documents and other materials, including but not limited to those described above, prepared pursuant to this Agreement are prepared specifically for the City and are not necessarily suitable for any future or other use. City and Consultant agree that, until final approval by City, all data, plans, specifications, reports and other documents are

confidential and will not be released to third parties without prior written consent of both parties unless required by law.

- 10.2 Consultant's Books and Records.** Consultant shall maintain any and all ledgers, books of account, invoices, vouchers, canceled checks, and other records or documents evidencing or relating to charges for services or expenditures and disbursements charged to the City under this Agreement for a minimum of three (3) years, or for any longer period required by law, from the date of final payment to the Consultant to this Agreement.
- 10.3 Inspection and Audit of Records.** Any records or documents that Section 10.2 of this Agreement requires Consultant to maintain shall be made available for inspection, audit, and/or copying at any time during regular business hours, upon oral or written request of the City. Under California Government Code Section 8546.7, if the amount of public funds expended under this Agreement exceeds TEN THOUSAND DOLLARS (\$10,000.00), the Agreement shall be subject to the examination and audit of the State Auditor, at the request of City or as part of any audit of the City, for a period of three (3) years after final payment under the Agreement.
- 10.4 Records Submitted in Response to an Invitation to Bid or Request for Proposals.** All responses to a Request for Proposals (RFP) or invitation to bid issued by the City become the exclusive property of the City. At such time as the City selects a bid, all proposals received become a matter of public record, and shall be regarded as public records, with the exception of those elements in each proposal that are defined by Consultant and plainly marked as "Confidential," "Business Secret" or "Trade Secret."

The City shall not be liable or in any way responsible for the disclosure of any such proposal or portions thereof, if Consultant has not plainly marked it as a "Trade Secret" or "Business Secret," or if disclosure is required under the Public Records Act.

Although the California Public Records Act recognizes that certain confidential trade secret information may be protected from disclosure, the City may not be in a position to establish that the information that a prospective bidder submits is a trade secret. If a request is made for information marked "Trade Secret" or "Business Secret," and the requester takes legal action seeking release of the materials it believes does not constitute trade secret information, by submitting a proposal, Consultant agrees to indemnify, defend and hold harmless the City, its agents and employees, from any judgment, fines, penalties, and award of attorneys fees awarded against the City in favor of the party requesting the information, and any and all costs connected with that defense. This obligation to indemnify survives the City's award of the contract. Consultant agrees that this indemnification survives as long as the trade secret information is in the City's possession, which includes a minimum retention period for such documents.

**Section 11 MISCELLANEOUS PROVISIONS.**

- 11.1 **Attorneys' Fees.** If a party to this Agreement brings any action, including arbitration or an action for declaratory relief, to enforce or interpret the provision of this Agreement, the prevailing party shall be entitled to reasonable attorneys' fees in addition to any other relief to which that party may be entitled. The court may set such fees in the same action or in a separate action brought for that purpose.
- 11.2 **Venue.** In the event that either party brings any action against the other under this Agreement, the parties agree that trial of such action shall be vested exclusively in the state courts of California in the County San Mateo or in the United States District Court for the Northern District of California.
- 11.3 **Severability.** If a court of competent jurisdiction finds or rules that any provision of this Agreement is invalid, void, or unenforceable, the provisions of this Agreement not so adjudged shall remain in full force and effect. The invalidity in whole or in part of any provision of this Agreement shall not void or affect the validity of any other provision of this Agreement.
- 11.4 **No Implied Waiver of Breach.** The waiver of any breach of a specific provision of this Agreement does not constitute a waiver of any other breach of that term or any other term of this Agreement.
- 11.5 **Successors and Assigns.** The provisions of this Agreement shall inure to the benefit of and shall apply to and bind the successors and assigns of the parties.
- 11.6 **Use of Recycled Products.** Consultant shall prepare and submit all reports, written studies and other printed material on recycled paper to the extent it is available at equal or less cost than virgin paper.
- 11.7 **Conflict of Interest.** Consultant may serve other clients, but none whose activities within the corporate limits of City or whose business, regardless of location, would place Consultant in a "conflict of interest," as that term is defined in the Political Reform Act, codified at California Government Code Section 81000 *et seq.*

Consultant shall not employ any City official in the work performed pursuant to this Agreement. No officer or employee of City shall have any financial interest in this Agreement that would violate California Government Code Sections 1090 *et seq.*

Consultant hereby warrants that it is not now, nor has it been in the previous twelve (12) months, an employee, agent, appointee, or official of the City. If Consultant was an employee, agent, appointee, or official of the City in the previous twelve (12) months, Consultant warrants that it did not participate in any manner in the forming of this Agreement. Consultant understands that, if this Agreement is made in violation of Government Code §1090 *et seq.*, the entire Agreement is void and Consultant will not be



entitled to any compensation for services performed pursuant to this Agreement, including reimbursement of expenses, and Consultant will be required to reimburse the City for any sums paid to the Consultant. Consultant understands that, in addition to the foregoing, it may be subject to criminal prosecution for a violation of Government Code § 1090 and, if applicable, will be disqualified from holding public office in the State of California.

- 11.8 Solicitation.** Consultant agrees not to solicit business at any meeting, focus group, or interview related to this Agreement, either orally or through any written materials.
- 11.9 Contract Administration.** This Agreement shall be administered by Joshua Richardson, Parks Maintenance Program Manager ("Contract Administrator"). All correspondence shall be directed to or through the Contract Administrator or his or her designee.
- 11.10 Notices.** All notices and other communications which are required or may be given under this Agreement shall be in writing and shall be deemed to have been duly given (i) when received if personally delivered; (ii) when received if transmitted by telecopy, if received during normal business hours on a business day (or if not, the next business day after delivery) provided that such facsimile is legible and that at the time such facsimile is sent the sending Party receives written confirmation of receipt; (iii) if sent for next day delivery to a domestic address by recognized overnight delivery service (e.g., Federal Express); and (iv) upon receipt, if sent by certified or registered mail, return receipt requested. In each case notice shall be sent to the respective Parties as follows:

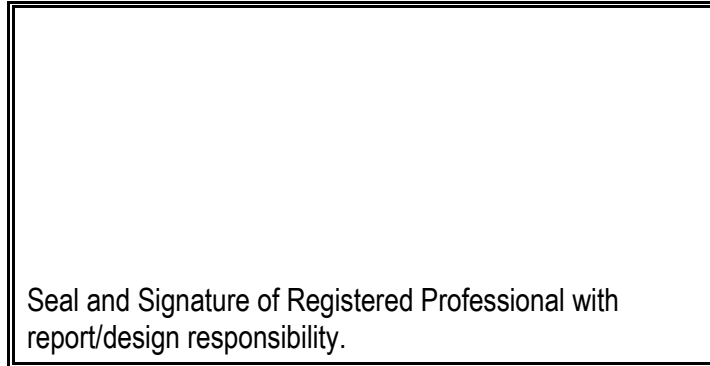
Consultant: Frank + Grossman Landscape Contractors, Inc.  
3428 Arden Road  
Hayward, CA 94545

City:  
City Clerk  
City of South San Francisco  
400 Grand Avenue  
South San Francisco, CA 94080

With a copy to:  
Joshua Richardson  
Parks Maintenance Program Manager  
City of South San Francisco,  
P.O. Box 711,  
South San Francisco California 94083

- 11.11 Professional Seal.** Where applicable in the determination of the contract administrator, the first page of a technical report, first page of design specifications, and each page of construction drawings shall be stamped/sealed and signed by the licensed professional responsible for the report/design preparation. The stamp/seal shall be in a block entitled

"Seal and Signature of Registered Professional with report/design responsibility," as in the following example.



- 11.12 Integration.** This Agreement, including all Exhibits attached hereto, and incorporated herein, represents the entire and integrated agreement between City and Consultant and supersedes all prior negotiations, representations, or agreements, either written or oral pertaining to the matters herein.
- 11.13 Counterparts.** This Agreement may be executed in multiple counterparts, each of which shall be an original and all of which together shall constitute one agreement.
- 11.14 Construction.** The headings in this Agreement are for the purpose of reference only and shall not limit or otherwise affect any of the terms of this Agreement. The parties have had an equal opportunity to participate in the drafting of this Agreement; therefore any construction as against the drafting party shall not apply to this Agreement.

The Parties have executed this Agreement as of the Effective Date.

CITY OF SOUTH SAN FRANCISCO

CONSULTANT Frank & Grossman

DocuSigned by:  
*Mike Futrell*  
6852134787CA4DB...  
Mike Futrell, City Manager

DocuSigned by:  
*Rick Oropeza*  
8B658B85852242B...  
Rick Oropeza  
VP Commercial Operations

**Attest:**

DocuSigned by:  
*Rosa Govea Acosta*  
5908B15FF63F418...  
City Clerk



**Approved as to Form:**

DocuSigned by:  
*Claire Lai*  
851A004F45D4408...  
City Attorney

**ATTACHMENT A**  
**SERVICE AREAS AND LITTER PICKUP FREQUENCIES**

Perform the scope of work for **LANDSCAPE MAINTENANCE SERVICES** in place, and in accordance with the Service Areas and Litter Pickup Frequencies below, and with the Standard of Services (Attachment C). See key below for notes. In the event of a conflict in or inconsistency between the terms of this Attachment and the Standard of Services (Attachment B), the Standard of Services shall prevail.

BID ITEM	DESCRIPTION	FROM	TO	LITTER PICKUP SERVICE FREQ.	IRRIG. TYPE	NOTES	MONTHLY RATE	ANNUAL COST
1	Callan Boulevard	Carter Drive	Westborough Boulevard	26	M		\$ 572	\$ 6,860
2	Capay Circle / Lomas Ave.	Cuesta Drive	Verano Drive	26	M		\$ 332	\$ 3,979
3	Chestnut Avenue	El Camino Real	Mission Road	26	A		\$ 480	\$ 5,762
4	Chestnut Avenue	Hillside Boulevard	Grand Avenue/Aldengate Dr.	26	A	A	\$ 57	\$ 686
5	East Grand Avenue	Airport Boulevard	Gateway Boulevard	26	A	B	\$ 343	\$ 4,116
6	El Camino Real medians & shoulders	Hickey Boulevard	Noor Avenue	52	A	C	\$ 1,932	\$23,185
7	Gellert Boulevard	King Drive	Westborough Boulevard	26	A		\$ 572	\$ 6,860
8	Gellert Boulevard	Westborough Boulevard	Shannon Drive	26	A,M	D	\$ 332	\$ 3,979
9	Mission Road	Chestnut Avenue	Oak Avenue	26	A	E	\$ 514	\$ 6,174
10	Mitchell Avenue	South Airport Boulevard	W/O S.P.R.R.	26	M	F	\$ 343	\$ 4,116
11	South Airport Blvd. medians	S.P.R.R. Underpass	Beacon Street southern most intersection	26	N	G	\$ 354	\$ 4,253
12	Westborough Boulevard Median	800' E/O Junipero Serra Blvd.	Olympic Drive	52	A		\$ 1,086	\$13,033
13	Westborough Boulevard Median	Olympic Drive	Skyline Boulevard	52	N	H	\$ 560	\$ 6,722
14	Westborough Boulevard Median	515' W/O Camaritas Avenue	El Camino Real	52	A	I	\$ 229	\$ 2,744
15	Elm Court	Tamarack Ln.	Park Way	12	M	J	\$ 160	\$ 1,921
16	Forbes Boulevard Medians	E. Grand Ave.	Allerton	26	M		\$ 252	\$ 3,018

## Exhibit A to the 1st Amendment

BID ITEM	DESCRIPTION	FROM	TO	LITTER PICKUP SERVICE FREQ.	IRRIG. TYPE	NOTES	MONTHLY RATE	ANNUAL COST
17	East Grand Ave. Medians	Gateway Blvd.	Littlefield Ave.	26	A,M		\$ 229	\$ 2,744
18	Hillside Blvd.	Chestnut Ave.	Dolores Way	12	A	K	\$ 114	\$ 1,372
19	Willow Avenue	Dolores Way	Estate Ct.	26	A		\$ 114	\$ 1,372
20	Gateway Boulevard	E. Grand Ave.	Mitchell Ave.	26	A		\$ 343	\$ 4,116
21	Airport Blvd. medians, shoulders and hook ramps	Sister Cities Blvd.	Brisbane City limits	12	A,N		\$ 252	\$ 3,018
22	Airport Blvd. median, sidewalks, and tree wells	Sister Cities Blvd.	South to S.P.R.R. underpass	26	A		\$ 366	\$ 4,390
23	Slopes on Airport Blvd.	2nd Lane (including south side)	South Airport Blvd.	12	N	L	\$ 171	\$ 2,058
24	Hillside Blvd/Sister Cities Blvd	Lincoln St.	Airport Blvd	26	A	M	\$ 1,029	\$ 12,347
25	Industrial Way	101 Grand Ave Exit	Planted area at end of Industrial Way	26	N	N	\$ 926	\$ 11,112
26	Hillside Blvd.	N. Slope at end of school fence	East to backflow control valve	12	N		\$ 423	\$ 5,076
27	Randolph Ave slope/valley gutter	Highland Ave.	Airport Blvd.	12	A,N	O	\$ 686	\$ 8,231
28	Beech St. median	Spruce Ave.	Larch Ave.	12	N	P	\$ 91	\$ 1,098
29	Spruce Ave. median	Maple Ave.	Park Way	12	N	Q	\$ 69	\$ 823
30	Hickey Blvd.	El Camino Real	Daly City limits	12	A	R	\$ 857	\$ 10,289
31	Oyster Pt. Blvd. median	Airport Blvd.	Marina Blvd.	26	A		\$ 366	\$ 4,390
32	Jack Drago Park	E. Grand Ave.	Gateway Boulevard	26	A	S	\$ 686	\$ 8,231
33	"Gus' Islands" on Airport Blvd.	Grand Ave.	Miller Ave.	26	A		\$ 171	\$ 2,058
34	Centennial Way / Trail	San Bruno BART	South San Francisco BART	26	A	T	\$ 2,287	\$ 27,438
35	Junipero Serra	Hwy-280 Avalon entrance	SSF Sign approx.. 90' Northwest of Hickey Island	12	N	U	\$ 2,287	\$ 27,438
36	Gull Drive	Oyster Point Blvd	End of culvert approximately 220' before Forbes Blvd	2	N	V	\$ 343	\$ 4,116

## Exhibit A to the 1st Amendment

BID ITEM	DESCRIPTION	FROM	TO	LITTER PICKUP SERVICE FREQ.	IRRIG. TYPE	NOTES	MONTHLY RATE	ANNUAL COST
37	Appian Way Median	Westborough Boulevard	Shannon Dr.	12	A		\$ 332	\$ 3,979
38	SSF Drive Shoulder	Mandalay Place	120' before Woods Circle	4	N	W	\$ 171	\$ 2,058
<b>TOTAL BID PRICE</b>							\$ 20,430	\$245,160

**Key to Service Area Notes:**

Service Frequency: Minimum frequency of litter removal.

- 2 Biannual Service (2 times per year)
- 4 Quarterly Service (4 times per year)
- 12 Monthly Service (12 times per year)
- 26 Bi-weekly Service (26 times per year)
- 52 Weekly Service (52 times per year)

Irrigation Type: Type of control system.

- A Automatic. Irrigation schedule shall be coordinated with the City.
- M Manual. Contractor shall be responsible for turning system on and off as required for proper irrigation.
- N No irrigation system. City will provide water wagon service as requested by contractor.

**Other Notes:**

- A. Side median landscaping on west side (adjacent to subdivision boundary wall) from Hillside to Livingston Place to Street Light #3550; side median landscaping on east side (adjacent to subdivision boundary wall) from easement gate (near Street Light #4234) to Treeside Court to Street Light #4230; west roadside landscaping from Street Light #4229 to Grand Avenue (adjacent to subdivision boundary wall), which continues along Grand Avenue to Aldengate and includes both east and west roadside landscapes at the Aldengate entrance. Includes eastern hillside from Sunset Ave to Hillside Blvd from roadside to header board below homes.
- B. Area includes median islands and roadside landscaping; includes "bomanite" concrete side median along Dubuque which extends along E. Grand Avenue for 200 feet. (area is adjacent to 101 highway boundary fence)
- C. Area includes median islands, intersection islands at Hickey Blvd., and weed abatement along a 10' wide easement from shopping center driveway on west side of El Camino Real extending 525' to grey retaining wall; west side of El Camino Real from El Camino Real staircase across from Bart Way to Arroyo Drive, including triangular area between El Camino Real and Del Paso Drive. Also includes west side shoulder from Brentwood to San Bruno City limits (along wooden retaining wall).
- D. Area includes median islands plus roadside landscaping on east side, adjacent to subdivision boundary wall.

**ATTACHMENT B**  
**ADDITIONAL SERVICES AS NEEDED**

This attachment serves to dictate price per service (**weed abatement and trash pick-up only**) in each area listed below. These prices will be used to award additional work as determined by the Director, Parks Manager, or representative for the City. The City will pay the proposed price for each additional maintenance service requested and service in each area may be requested multiple times. If service is not deemed acceptable or adequate to the standards detailed in the Landscape & Right Of Way Standard of Services (Attachment C), the City holds the right to withhold payment until standards are met.

<b>BID ITEM</b>	<b>DESCRIPTION</b>	<b>FROM</b>	<b>TO</b>	<b>Rate Per Weed Abatement Occurrence</b>	<b>Rate per Trash Pickup Occurrence</b>
1	Callan Boulevard	Carter Drive	Westborough Boulevard	\$ 286	\$ 143
2	Capay Circle / Lomitas Ave.	Cuesta Drive	Verano Drive	\$ 166	\$ 83
3	Chestnut Avenue	El Camino Real	Mission Road	\$ 240	\$ 120
4	Chestnut Avenue	Hillside Boulevard	Grand Avenue/Aldengate Dr.	\$ 29	\$ 14
5	East Grand Avenue	Airport Boulevard	Gateway Boulevard	\$ 171	\$ 86
6	El Camino Real medians & shoulders	Hickey Boulevard	Noor Avenue	\$ 966	\$ 483
7	Gellert Boulevard	King Drive	Westborough Boulevard	\$ 286	\$ 143
8	Gellert Boulevard	Westborough Boulevard	Shannon Drive	\$ 166	\$ 83
9	Mission Road	Chestnut Avenue	Oak Avenue	\$ 257	\$ 129
10	Mitchell Avenue	South Airport Boulevard	W/O S.P.R.R.	\$ 171	\$ 86
11	South Airport Blvd. medians	S.P.R.R. Underpass	Beacon Street southern most intersection	\$ 177	\$ 89
12	Westborough Boulevard Median	800' E/O Junipero Serra Blvd.	Olympic Drive	\$ 543	\$ 272
13	Westborough Boulevard Median	Olympic Drive	Skyline Boulevard	\$ 280	\$ 140
14	Westborough Boulevard Median	515' W/O Camaritas Avenue	El Camino Real	\$ 114	\$ 57
15	Elm Court	Tamarack Ln.	Park Way	\$ 80	\$ 40

## Exhibit A to the 1st Amendment

BID ITEM	DESCRIPTION	FROM	TO	Rate Per Weed Abatement Occurrence	Rate per Trash Pickup Occurrence
16	Forbes Boulevard Medians	E. Grand Ave.	Allerton	\$ 126	\$ 63
17	East Grand Ave. Medians	Gateway Blvd.	Littlefield Ave.	\$ 114	\$ 57
18	Hillside Blvd.	Chestnut Ave.	Dolores Way	\$ 57	29
19	Hillside Blvd.	Chestnut	Ridgeview	\$ 57	\$ 29
20	Willow Avenue	Dolores Way	Estate Ct.	\$ 57	\$ 29
21	Gateway Boulevard	E. Grand Ave.	Mitchell Ave.	\$ 171	\$ 86
22	Airport Blvd. medians, shoulders and hook ramps	Sister Cities Blvd.	Brisbane City limits	\$ 126	\$ 63
23	Airport Blvd. median, sidewalks, and tree wells	Sister Cities Blvd.	South to S.P.R.R. underpass	\$ 183	\$ 91
24	Slopes on Airport Blvd.	2 <sup>nd</sup> Lane (including south side)	South Airport Blvd.	\$ 86	\$ 43
25	Hillside Blvd/Sister Cities Blvd	Lincoln St.	Airport Blvd	\$ 514	\$ 257
26	Industrial Way	101 Grand Ave Exit	Planted area at end of Industrial Way	\$ 463	\$ 232
27	Hillside Blvd.	N. Slope at end of school fence	East to backflow control valve	\$ 212	\$ 106
28	Randolph Ave slope/valley gutter	Highland Ave.	Airport Blvd.	\$ 343	\$ 171
29	Beech St. median	Spruce Ave.	Larch Ave.	\$ 46	\$ 23
30	Spruce Ave. median	Maple Ave.	Park Way	\$ 34	\$ 17
31	Hickey Blvd.	El Camino Real	Daly City limits	\$ 429	\$ 214
32	Oyster Pt. Blvd. median	Airport Blvd.	Marina Blvd.	\$ 183	\$ 91
33	Jack Drago Park	E. Grand Ave.	Gateway Boulevard	\$ 343	\$ 171
34	"Gus' Islands" on Airport Blvd.	Grand Ave.	Miller Ave.	\$ 86	\$ 43



## Exhibit A to the 1st Amendment

<b>BID ITEM</b>	<b>DESCRIPTION</b>	<b>FROM</b>	<b>TO</b>	<b>Rate Per Weed Abatement Occurrence</b>	<b>Rate per Trash Pickup Occurrence</b>
35	Centennial Way / Trail	San Bruno BART	South San Francisco BART	\$ 1,143	\$ 572
36	Junipero Serra	Hwy-280 Avalon entrance	SSF Sign approx.. 90' Northwest of Hickey Island	\$ 1,143	\$ 572
37	Gull Drive	Oyster Point Blvd	End of culvert approximately 220' before Forbes Blvd	\$ 171	\$ 86
38	Appian Way Median	Westborough Boulevard	Shannon Dr.	\$ 166	\$ 83
39	SSF Drive Shoulder	Mandalay Place	120' before Woods Circle	\$ 86	\$ 43

**Monthly and Annual Rates for Service**

Estimates are to be calculated based on a monthly service. The scope of work for each area is detailed in the notes associated with each area and the price should be based on these tasks accordingly.

Bid Item	Description	From	To	Notes	Monthly Rate	Annual Rate
Section A	BART Plaza across from SSF BART	El Camino Real	BART Drop-off area	a, b	\$1,006	\$12,072
Section B	Property Adjacent to Centennial Trail	SSF BART	Mission Road Bridge	a	\$375	\$4,500
Section C	Drainage ditch on Northwest side of trail	Spruce Ave	500' down Centennial Trail	a	\$150	\$1,800
Section D	South west Property adjacent to Centennial Trail	PUC Structure	Start of chain link fence for USPS	a	\$375	\$4,500
				Total Base Bid	\$1,906	\$22,872

**1. Notes:**

- a. Scope of service includes weed abatement, herbicide application, and litter pick-up per the standards defined in Attachment D: Landscape & Right of Way Standard of Services
- b. Area requires pressure washing of hardscape areas bi-annually and/or as needed when deemed necessary by the City. Area also includes maintenance of landscaped planters, trash receptacles, and graffiti abatement.
- c. This area is separate only in parcel delineation from the rest of Centennial Trail, but maintenance would be consistent with the rest of Centennial Trail as described in Attachment A.



# City of South San Francisco

P.O. Box 711 (City Hall,  
400 Grand Avenue)  
South San Francisco, CA

## City Council

### Resolution: RES 100-2021

**File Number: 21-419**

**Enactment Number: RES 100-2021**

RESOLUTION AWARDING LANDSCAPE MAINTENANCE SERVICES AGREEMENTS TO FRANK AND GROSSMAN LANDSCAPE CONTRACTORS, INC. OF HAYWARD, CALIFORNIA FOR CITYWIDE RIGHT-OF-WAY LANDSCAPE MAINTENANCE SERVICES IN AN AMOUNT NOT TO EXCEED \$616,064, AND TO GOTHIC LANDSCAPING OF SAN JOSE, CALIFORNIA FOR COMMON GREENS LANDSCAPE MAINTENANCE SERVICES IN AN AMOUNT NOT TO EXCEED \$792,416 FOR A TWENTY-FOUR (24) MONTH TERM AND AMENDING THE PARKS AND RECREATION DEPARTMENT'S FISCAL YEAR 2021-22 AND 2022-23 OPERATING BUDGETS PURSUANT TO BUDGET AMENDMENT #22.002.

WHEREAS, the City of South San Francisco ("City") issued a Request for Proposals for Landscape Maintenance Services on March 1, 2021 and received three (3) bids in response; and

WHEREAS, staff recommends awarding a landscape services agreement to Frank and Grossman Landscape Contractors of Hayward, California for the Right-of-Way Landscape Maintenance Services Project in a total amount not to exceed \$616,064 for a twenty-four (24) month term based on their average overall proposal score, which included evaluation of project costs, project understanding, project completion schedule, qualifications, expertise and experience; and

WHEREAS, staff recommends awarding a landscape services agreement to Gothic Landscaping of San Jose, California for the Common Greens Landscape Maintenance Services Project in a total amount not to exceed \$792,416 for a twenty-four (24) month term based on their average overall proposal score, which included evaluation of project costs, project understanding, project completion schedule, qualifications, expertise and experience; and

WHEREAS, additional funding in an amount of \$101,100 is requested from the Common Greens funds to elevate the current level of service without any further financial impact to the City's General Fund; and

WHEREAS, staff requests Council's approval for contract authority to utilize a contingency not to exceed \$80,000 annually split equally between the two contracts, with this funding currently existing in the Parks and Recreation Department operating budget, to be used for enhancement projects on either the Right-of-Way Landscape Maintenance Project or the Common Greens Maintenance Project.

NOW, THEREFORE, BE IT RESOLVED, by the City Council of the City of South San Francisco that the City Council hereby award a landscape services agreement to Frank and Grossman of Hayward, California, for the Right-of-Way Landscape Maintenance Services Project, in a total amount not to exceed \$616,064 for a twenty-four (24) month term, and award a landscape services agreement to Gothic Landscaping of San Jose, California, for the Common Greens Landscape Maintenance Services Project, in a total amount not to exceed \$792,416 for a twenty-four (24) month term; and

BE IT FUTHER RESOLVED, that the contract is conditioned on both contractor’s timely execution of the Project contracts and submission of all required documents, including but not limited to, certificates of insurance and endorsements, in accordance with the Project documents; and

BE IT FUTHER RESOLVED that the Parks and Recreation Department’s Fiscal Year 2021-22 and 2022-23 Operating Budgets will be amended via budget amendment #22.002, and that the Finance Director is authorized to adjust budget as necessary to comply with budgetary intent of the executed contract(s); and

BE IT FURTHER RESOLVED that the City Manager is hereby authorized to execute the landscape services agreement and any other necessary documents on behalf of the City, subject to approval as to form by the City Attorney.

\* \* \* \* \*

At a meeting of the City Council on 5/26/2021, a motion was made by Vice Mayor Nagales, seconded by Councilmember Flores, that this Resolution be approved. The motion passed.

**Yes:** 5 Mayor Addiego, Vice Mayor Nagales, Councilmember Nicolas, Councilmember Coleman, and Councilmember Flores

Attest by   
\_\_\_\_\_  
Rosa Govea Acosta, City Clerk

**City of South San Francisco**

Attn : Joshua Richardson  
550 N. Canal St.  
South San Francisco, CA 94080

3-17-23 - We would like to propose a price increase of 4% for the upcoming Fiscal Year (July 2023 to June 2024). After evaluating our expenses over the past two years, including gas, labor, and materials costs, we have determined this increase is necessary to maintain the quality of our services.

The new contract price for the upcoming Fiscal Year will be \$268,032.00, representing a 4% increase from the current contract price of \$278,760.00

Thank you for your business, and we look forward to continuing to provide you with excellent service.

	Current Contract	4% Increase	Total New Contract
Monthly	\$22,336	\$894	\$23,230
Annually	\$268,032	\$10,728	\$278,760

Upon approval, please sign and return to schedule work.

Thank you,

Signature:

---

Date:

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# CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

3/29/2023

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> (PT) Heffernan Insurance Brokers 101 2nd Street, Suite 120 Petaluma CA 94952	<b>CONTACT NAME:</b> Maria Hill <b>PHONE (A/C. No. Ext):</b> 707-789-3069 <b>E-MAIL ADDRESS:</b> MariaH@heffins.com		<b>FAX (A/C. No):</b> 707-781-0800
	<b>INSURER(S) AFFORDING COVERAGE</b>		<b>NAIC #</b>
<b>INSURED</b> Frank & Grossman Landscape Contractors, Inc. 3428 Arden Road Hayward CA 94545	FRANGRO-01	<b>INSURER A :</b> Oak River Insurance Company	34630
		<b>INSURER B :</b> Argonaut Insurance Company	19801
		<b>INSURER C :</b>	
		<b>INSURER D :</b>	
		<b>INSURER E :</b>	

**COVERAGES**

CERTIFICATE NUMBER: 964097522

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
B	<input checked="" type="checkbox"/> <b>COMMERCIAL GENERAL LIABILITY</b> <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input checked="" type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC <input type="checkbox"/> OTHER:	Y	Y	LAN290148902	9/1/2022	9/1/2023	EACH OCCURRENCE \$ 1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 100,000 MED EXP (Any one person) \$ 5,000 PERSONAL & ADV INJURY \$ 1,000,000 GENERAL AGGREGATE \$ 2,000,000 PRODUCTS - COMP/OP AGG \$ 2,000,000 \$
B	<input checked="" type="checkbox"/> <b>AUTOMOBILE LIABILITY</b> <input checked="" type="checkbox"/> ANY AUTO <input type="checkbox"/> OWNED AUTOS ONLY <input type="checkbox"/> SCHEDULED AUTOS <input type="checkbox"/> HIRED AUTOS ONLY <input type="checkbox"/> NON-OWNED AUTOS ONLY	Y		LAA290148902	9/1/2022	9/1/2023	COMBINED SINGLE LIMIT (Ea accident) \$ 1,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ \$
B	<input type="checkbox"/> <b>UMBRELLA LIAB</b> <input checked="" type="checkbox"/> OCCUR <input checked="" type="checkbox"/> <b>EXCESS LIAB</b> <input type="checkbox"/> CLAIMS-MADE <input type="checkbox"/> DED <input checked="" type="checkbox"/> RETENTION \$ 0	Y	Y	LAX290148902	9/1/2022	9/1/2023	EACH OCCURRENCE \$ 5,000,000 AGGREGATE \$ 5,000,000 XS over GL, Auto, EL \$
A	<b>WORKERS COMPENSATION AND EMPLOYERS' LIABILITY</b> ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below	Y/N	N/A	FRWC420263	4/1/2023	4/1/2024	<input checked="" type="checkbox"/> PER STATUTE <input type="checkbox"/> OTHER E.L. EACH ACCIDENT \$ 1,000,000 E.L. DISEASE - EA EMPLOYEE \$ 1,000,000 E.L. DISEASE - POLICY LIMIT \$ 1,000,000

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

Re: As Per Contract or Agreement on File with Insured. City of South San Francisco is included as an additional insured (Primary and Non-Contributory) on the General Liability and Excess Liability policies and additional insured on Automobile Liability policy per the attached endorsements, if required. Waiver of Subrogation is included on General Liability and Excess Liability policies per the attached endorsements, if required. This certificate replaces and supersedes all previously issued certificates.

**CERTIFICATE HOLDER****CANCELLATION**

City of South San Francisco  
 400 Grand Avenue  
 South San Francisco, CA 94080

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

## **EXCLUSION – DEDICATED INSURANCE PROGRAM(S)**

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

- A. **SECTION I – COVERAGES, COVERAGE A – BODILY INJURY AND PROPERTY DAMAGE LIABILITY, 2. Exclusions** is amended by the addition of the following:

This insurance does not apply to:

### **Dedicated Insurance Program(s)**

“Bodily injury” or “property damage” arising out of either your ongoing operations or operations included within the “products-completed operations hazard”, performed by or on behalf of the insured at any project(s) which is or was subject to a “dedicated insurance program”.

This exclusion applies whether or not the “dedicated insurance program”:

1. Provides coverage identical to that provided by this Coverage Part;
2. Provides coverage to one or more contractors;
3. Provides multiple lines of coverage;
4. Has limits adequate to cover all claims; or
5. Remains in effect.

- B. **SECTION V – DEFINITIONS** is amended and the following added:

“Dedicated insurance program” means a centralized insurance program under which one party has secured either insurance or self-insurance covering some or all of the contractors or subcontractors performing work on one or more specific project(s), owner controlled insurance program(s), contractor controlled insurance program(s), or other project specific insurance policy whether provided by you, or any other person or entity if you are an insured under such insurance.

**ALL OTHER TERMS AND CONDITIONS OF THE POLICY REMAIN UNCHANGED.**

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

## **ADDITIONAL INSURED – OWNERS, LESSEES OR CONTRACTORS – AUTOMATIC STATUS FOR OTHER PARTIES WHEN REQUIRED IN WRITTEN CONSTRUCTION AGREEMENT**

This endorsement modifies insurance provided under the following:

### COMMERCIAL GENERAL LIABILITY COVERAGE PART

**A. Section II – Who Is An Insured** is amended to include as an additional insured:

1. Any person or organization for whom you are performing operations when you and such person or organization have agreed in writing in a contract or agreement that such person or organization be added as an additional insured on your policy; and
2. Any other person or organization you are required to add as an additional insured under the contract or agreement described in Paragraph 1. above.

Such person(s) or organization(s) is an additional insured only with respect to liability for "bodily injury", "property damage" or "personal and advertising injury" caused, in whole or in part, by:

- a. Your acts or omissions; or
- b. The acts or omissions of those acting on your behalf;

in the performance of your ongoing operations for the additional insured described in Paragraph 1. or 2. above.

However, the insurance afforded to such additional insured described above:

- a. Only applies to the extent permitted by law; and
- b. Will not be broader than that which you are required by the contract or agreement to provide for such additional insured.

A person's or organization's status as an additional insured under this endorsement ends when your operations for the person or organization described in Paragraph 1. above are completed.

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

This insurance does not apply to:

1. "Bodily injury", "property damage" or "personal and advertising injury" arising out of the rendering of, or the failure to render, any professional architectural, engineering or surveying services, including:
  - a. The preparing, approving, or failing to prepare or approve, maps, shop drawings, opinions, reports, surveys, field orders, change orders or drawings and specifications; or
  - b. Supervisory, inspection, architectural or engineering activities.

This exclusion applies even if the claims against any insured allege negligence or other wrongdoing in the supervision, hiring, employment, training or monitoring of others by that insured, if the "occurrence" which caused the "bodily injury" or "property damage", or the offense which caused the "personal and advertising injury", involved the rendering of, or the failure to render, any professional architectural, engineering or surveying services.

2. "Bodily injury" or "property damage" occurring after:
  - a. 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



b. 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:**

The most we will pay on behalf of the additional insured is the amount of insurance:

1. Required by the contract or agreement described in Paragraph **A.1.**; or

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

This endorsement shall not increase the applicable limits of insurance.

**I. ADDITIONAL INSURED AND WAIVER OF SUBROGATION COVERAGE REQUIRED BY "INSURED CONTRACT", WRITTEN AGREEMENT OR PERMIT**

In **SECTION II – LIABILITY COVERAGE**, item **a.1. Who Is An Insured**, the following are added as "insureds":

- f. Any person, organization, trustee, estate or governmental entity with respect to the operation, maintenance or use of a covered "auto" if:
  - (1) You are obligated to add that person, organization, trustee, estate or governmental entity as an additional "insured" to this policy by:
    - (a) An expressed provision of an "insured contract" or written agreement; or
    - (b) An expressed condition of a written permit issued to you by a governmental or public authority.
  - (2) The "bodily injury" or "property damage" is caused by an "accident" which takes place after:
    - (a) You executed the "insured contract" or written agreement; or
    - (b) The permit has been issued to you.

The following paragraph is added to **SECTION IV – BUSINESS AUTO CONDITIONS**:

We waive any right of recovery we may have against any additional "insured" under paragraph **f.** above, but only as respects "loss" arising out of the operation, maintenance or use of a covered "auto" pursuant to the provisions or conditions of the "insured contract", written agreement or permit.

## COMMERCIAL EXCESS LIABILITY

**COMMERCIAL EXCESS LIABILITY COVERAGE FORM**

Various provisions in this policy restrict coverage. Read the entire policy carefully to determine rights, duties and what is and is not covered.

Throughout this policy the words "you" and "your" refer to the Named Insured shown in the Declarations, and any other person or organization qualifying as a Named Insured under this policy. The words "we", "us" and "our" refer to the company providing this insurance. The word "insured" means any person or organization qualifying as such under the "applicable underlying insurance".

Other words and phrases that appear in quotation marks in this policy have special meaning. Refer to **SECTION IV – DEFINITIONS**. Other words and phrases that are not defined under this policy but defined in the "applicable underlying insurance" will have the meaning described in the policy of "underlying insurance".

The insurance provided under this policy will follow the same provisions, exclusions and limitations that are contained in the "applicable underlying insurance", unless otherwise directed by this insurance. To the extent such provisions differ or conflict, the provisions of this policy will apply. However, this policy will not provide coverage for an "event" unless all the "applicable underlying insurance" provides coverage for the "event". Under no circumstances will coverage provided by this policy ever be broader than coverage provided by all the "applicable underlying insurance".

**SECTION I – COVERAGES****1. Insuring Agreement**

- a. We will pay on behalf of the insured the "ultimate net loss" in excess of the "retained limit" because of "injury or damage" for which the insured is legally obligated to pay and to which this insurance applies.

We have no duty to investigate any claim, suit or proceeding or defend under this policy. However, at our sole discretion we have the right and will be given the opportunity to effectively associate in the defense or investigation of any claim, suit or proceeding. At our sole discretion we also have the right to assume charge of, negotiate and settle any claim, suit or proceeding to which this policy applies. In all such circumstances the insured will cooperate with us fully.

But:

- (1) The amount we will pay for "ultimate net loss" is limited as described in **SECTION II – LIMITS OF INSURANCE**, and
  - (2) Our right to defend terminates when we have exhausted the applicable limit of insurance in the payment of "ultimate net loss" under this Coverage Part. However, if any policy of "underlying insurance" specifies that limits are reduced by defense expenses, our right to defend terminates when we have used up the applicable limit of insurance in the payment of "ultimate net loss" under this Coverage Part.
- b. An additional insured under "applicable underlying insurance" will automatically be an additional insured under this 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 lesser of the amount of insurance required by the contract or available under the limits of insurance provided under this policy, less any amounts payable by any "underlying insurance".

Additional insured coverage provided by this insurance will not be broader than coverage provided by all "applicable underlying insurance".

**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.

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

**WAIVER OF TRANSFER OF RIGHTS OF RECOVERY  
AGAINST OTHERS TO US (WAIVER OF SUBROGATION)**

This endorsement modifies insurance provided under the following:

- COMMERCIAL GENERAL LIABILITY COVERAGE PART
- ELECTRONIC DATA LIABILITY COVERAGE PART
- LIQUOR LIABILITY COVERAGE PART
- POLLUTION LIABILITY COVERAGE PART DESIGNATED SITES
- POLLUTION LIABILITY LIMITED COVERAGE PART DESIGNATED SITES
- PRODUCTS/COMPLETED OPERATIONS LIABILITY COVERAGE PART
- RAILROAD PROTECTIVE LIABILITY COVERAGE PART
- UNDERGROUND STORAGE TANK POLICY DESIGNATED TANKS

**SCHEDULE**

<p><b>Name Of Person(s) Or Organization(s):</b> Blanket as required by written contract and effective during the policy period as stated in the policy declarations.</p>
<p>Information required to complete this Schedule, if not shown above, will be shown in the Declarations.</p>

The following is added to Paragraph **8. Transfer Of Rights Of Recovery Against Others To Us** of **Section IV - Conditions:**

We waive any right of recovery against the person(s) or organization(s) shown in the Schedule above because of payments we make under this Coverage Part. Such waiver by us applies only to the extent that the insured has waived its right of recovery against such person(s) or organization(s) prior to loss. This endorsement applies only to the person(s) or organization(s) shown in the Schedule above.