

**CONTRACT FOR DEMOLITION SERVICES
BY AND BETWEEN
THE CITY OF ST. FRANCIS
AND
KAMISH EXCAVATING, INC.**

**23115 AMBASSADOR BLVD NW
ST. FRANCIS, MINNESOTA**

This Agreement is made this ___th day of August 2022, by and between the City of St. Francis, a political subdivision of the State of Minnesota (“the City”) and Kamish Excavating, Inc. (“the Contractor”) for **Residential Building Demolition and Property Cleanup** as detailed in the bid request.

RECITALS

1. The City desires to have performed described in the Request for Proposal for Demolition and Property Cleanup for 23115 Ambassador Blvd NW, St. Francis, MN 55070 dated July 6, 2022 (the “Contract Documents” or the “Work”).
2. Contractor represents that it has the necessary personnel, experience, competence, and legal right to perform the Work.
3. The Contractor is a corporation in good standing and legally authorized to contract and do business in the State of Minnesota.

AGREEMENT

In consideration of the premises and the mutual obligations of the parties hereto, each of them does hereby covenant and agree with the other as follows:

1. **WORK TO BE COMPLETED.** The Work shall be performed in strict accordance with the Contract Documents. The Contractor shall carefully review all the Contract Documents before performing the Work and shall promptly call to the attention of the city any discrepancy or inconsistency which may exist between any documents or between any parts of the same document. The City shall have discretion as to how to address any such discrepancy or inconsistency and shall modify, interpret, or adjust the Contract Documents accordingly as the case may be.
2. **CONTRACT DOCUMENTS.** The Contract Documents shall consist of the Work Agreement and the Request for Proposal for Demolition and Property Cleanup for 23115 Ambassador Blvd NW, St. Francis, MN 55070 dated July 6, 2022 prepared by or on behalf of the City in connection with the Work (where specified), the Proposal submitted by the Contractor, all Amendment Request Certificates approved by the City, all Change Orders issued by the City, the Notice to Proceed, the Completion Certificate, and written interpretations of the Contract Documents issued by the City. The Contract Documents shall, insofar as is possible, be interpreted to be consistent with one another. Any inconsistencies shall be addressed in accordance with paragraph 1 of this Agreement.
3. **PERMITS AND REGULATIONS.** Prior to commencing the Work, the contractor shall secure all necessary building permits and licenses as may be required, and before and during the progress of the Work, give all notices and comply with all the laws, ordinances, rules and regulations of every kind and nature now or hereafter in effect that are promulgated by any federal, state, county, or other governmental, authority, relating to the performance of the Work. If the Contract’s performance is contrary to any such law, ordinance, rule or regulation, it

shall bear all costs arising there from. Contract specifically agrees to abide by and observe all standards and regulations of the Occupational Safety and Health Administration, which are applicable to the Work.

4. **PROSECUTION OF THE WORK.** The Contractor shall at all times prosecute the Work diligently so as to insure its completion in full accordance with the Contract Documents and shall at all times furnish sufficient numbers and amounts of properly skilled Workers, acceptable materials and equipment, adequate services, construction tool, and equipment. The Work shall be performed in a good and workmanlike manner. Contractor shall keep the Work site clean and orderly during the course of the Work and remove all debris at the completion of the Work. If the Contractor is negligent in these areas, the City reserves the right to perform this work with its own forces at overtime rates. The costs of such work shall be charged to the Contractor. The Contractor will adequately protect the Work from damage, will protect the property from injury or loss, and will take all necessary precautions during the progress of the Work to protect all persons and the property of others from injury or damage. The Contractor will assume full responsibility for all its tools and equipment and all materials to be used in connection with the Work. Materials and equipment that have been removed and replaced, as part of the Work shall belong to the contractor unless agreed otherwise.

5. **COMMENCEMENT AND COMPLETION OF THE WORK.** The Work must commence no later than thirty (30) days after the execution of this Agreement by both Parties ("Commencement Date"). In the event the Work is not commenced by the Commencement Date, the City may in its sole discretion dismiss the Contractor without paying any compensation under this Agreement whatsoever and appoint a substitute Contractor(s). If the Contractor is unable to commence the Work by the Commencement Date, it must promptly notify the City.

6. **AMENDMENT REQUEST CERTIFICATE.** Changes in the scope, specifications, or cost of the Work that are proposed by the Contractor subsequent to the execution of this Agreement shall be considered Amendments. No such Amendments shall be made without proper written approval by the City. Any Amendment proposed by the Contractor shall be submitted via an Amendment Request Certificate. The Amendment Request Certificate must: (a) be signed and dated by the Contractor; (b) specify how the Work is to be amended and the cost for such Amendments; and (c) specify the reason for any cost increase/decrease resulting from the Amendments(s). The City will approve or disapprove the Amendment Request Certificate after appropriate review and property inspection. If approved, a copy of the signed Amendment Request Certificate will be forwarded to the Contractor. Upon receipt by the Contractor of the approved Amendment Request Certificate, the approved Amendment(s) may be implemented. All Amendments made before receipt of an approved Amendment Request Certificate will not be compensable by the City. No such Amendment Request Certificate shall be deemed to constitute a waiver of any remaining covenant, agreement, term, or condition contained in the Contract Documents.

7. **CHANGE ORDER.** The City shall have the right, within the general scope of the Work, to make changes in the Work, either by altering the nature of the same or by adding to or deducting from it. All changes shall, except in the case of emergencies endangering the safety of person or property be made by written Change Order. The Contractor shall promptly comply with any and all written Change Orders. No such Change Order shall be deemed to invalidate the remaining terms and conditions contained in the Contract Documents.

8. **GENERAL GUARANTEE.** The Contractor hereby guarantees to the City that all of the Work shall be completed in a competent, workman-like manner and that such Work shall be and remain free of defects in workmanship and materials for a period of one (1) year from the date that the City executes the Completion Certificate pursuant to paragraph 17 of this Agreement. The Contractor warrants that all materials and equipment furnished in connection with the Work will be new, unless otherwise specified, and be of good quality and free from faults and defects. The Contractor shall assign to the City (if assignable) or enforce for the benefit of the City (if not assignable) any guarantees provided by manufacturers or sellers of machinery materials or equipment that are to be incorporated into the Work. City acceptance of the Work shall not be deemed to be a waiver of any of the City's rights under this paragraph.

9. **WAIVER OF LIABILITY.** It is agreed that the Work is undertaken at the sole risk of the Contractor. The Contractor does expressly forever release the City of St. Francis from any claims, demands, injuries, damage actions, or causes of action whatsoever, arising out of or connected with the Work.

10. **INDEMNIFICATIONS.** Any and all claims that arise or may arise as a consequence of any act or omission on the part of the Contractor, its agents, servants, or employees while engaged in the performance of the Work shall in no way be the obligation or responsibility of the City of St. Francis. The Contractor shall indemnify, hold harmless, and defend the City of St. Francis, council members, officers, employees, successors, and assigns against any all liability, loss, cost, damages, expenses, claims, or actions, including attorneys' fees which the City of St. Francis, council members, officers, or employees may hereinafter incur or be required to pay on account injury to or death of any person or persons or damage to any property arising out of or by reason of any act or omission of the Contractor, its agents, servants, or employees in the execution, performance, or failure to adequately perform its obligations under this Agreement, whatever the cause of such injuries or damage.

11. **INSURANCE.** The Contractor agrees that in order to protect itself, the City of St. Francis under the indemnity provisions set forth in paragraph 10 of this Agreement, it will at all times during the term of this Agreement, maintain, at a minimum, the following insurance policies:

- a. **Workers Compensation Insurance.** The Contractor shall maintain worker's compensation insurance in compliance with all applicable statutes including Chapter 176 of the Minnesota Statutes. Such policy shall include Employer's Liability Coverage and at least such amount(s) as are customarily provided in worker's compensation policies issued in Minnesota. Contractor further agrees to require all subcontractors and independent contractors to maintain worker's compensation insurance in compliance with all applicable statutes and to monitor the compliance of such subcontractors and independent contractors with the applicable statutes.
- b. **Commercial General Liability Insurance.** The Contractor shall maintain Occurrence Based Commercial General Liability Insurance ("CGL"), providing coverage of One Million Five Hundred Thousand Dollars (\$1,500,000 per occurrence) and Two Million Dollars (\$2,000,000) annual aggregate. The policy shall cover liability arising from premises, operations, products-completed operations, personal injury, advertising injury, and contractually assumed liability. All policies shall be written on an occurrence basis using ISO form CG 00 01 07 98 or its equivalent.
- c. **Automobile Liability Insurance.** The Contractor shall maintain automobile liability insurance covering liability for Bodily Injury and Property Damage arising out of the ownership, use, maintenance, or operation of all owned, non-owned, and hired automobiles and other motor vehicles. Such policy shall provide total liability limits for combined Bodily Injury and/or Property Damage in the amount of at least One Million Five Hundred Thousand Dollars (\$1,500,000) per accident, which total limits may be satisfied by the limits afforded under such policy, or by such policy in combination with the limits afforded by an Umbrella Liability Policy (or policies) provided, however, that the coverage afforded under any such Umbrella Liability Policy shall be at least as broad as that afforded by the underlying automobile liability insurance policy.

The City of St. Francis shall be named as "additional insured" parties with respect to the insurance policies specified in (b) and (c) above. The Contractor shall not commence work until a Certificate of Insurance evidencing all of the insurance policies required above is approved and a written Notice to Proceed is issued by an authorized representative of the City of St. Francis. The City of St. Francis shall, at any time during the term of this agreement, have the right to require that the Contractor secure any additional insurance, or additional feature to existing insurance, as the City of St. Francis may reasonably require for the protection of its interests or those of the public. It is expressly understood that the City of St. Francis does not in any way represent that the minimum insurance coverage set forth in this paragraph is sufficient or adequate to protect the interest or liabilities of the Contractor.

13. **SECURITY IN LIEU OF BOND.** The Contractor shall furnish as security either a performance bond, certified check or cashier's check ("the Security"), acceptable to the City and made payable to the City for the performance of the Agreement in the sum of One Hundred Percent (100%) of the Contract Price. The Security shall remain in effect for one year after the date the Completion Certificate is executed by the City and for any warranty period required by the Work, whichever date is later. The premiums for such Security shall be deemed to be included in the Contract Price, and no additional compensation shall be payable to the Contractor with respect to such Security. No Change Order, approval or disapproval of an Amendment Request Certificate, changes in the commencement and/or completion dates pursuant to paragraph 5, failure to enforce any rights arising under the Contract Documents, or other act or forbearance of the City shall, unless specifically agreed to otherwise by the City, operate to release or discharge any Security under this paragraph.

14. **LIEN WAIVERS.** Neither the Contractor nor any subcontractor or other person or entity furnishing labor, equipment, or materials in connection with the Work shall file any mechanic's lien against the City's buildings, structures or land or any part thereof. The Contractor shall protect, defend, indemnify, and hold harmless the City of St. Francis from any and all claims, demands, or actions of whatever nature arising out of work, labor, equipment, or materials furnished by the Contractor or its subcontractors in connection with the Work. Payment of the Contract Price shall not be due until the Contractor has delivered to the City lien waivers acceptable to the City, which release the City from all liens that may arise in connection with the Work. The Contractor shall list below the names of all suppliers and/or subcontractors that will provide materials, services, or labor in connection with the Work. The Contractor will notify the City of any changes in this list prior to the commencement of the Work.

_____	_____
_____	_____
_____	_____
_____	_____
_____	_____

15. **CONTRACT PRICE.** The Contractor agrees to furnish all work, labor, materials, and equipment necessary to complete the Work as set forth in the Contract Base Bid Documents for the sum of Twenty-Five Thousand Four Hundred Seventy-Three Dollars (\$25,473.00) (the "Contract Price"), to be paid by the City in accordance with the terms and conditions of this Agreement. The Contract Price shall constitute the sole compensation payable to the Contractor for its performance of the Work or anything done in connection therewith including expenditures by the Contractor for all taxes, permits, licenses, and bonds required to perform the Work. The Contractor shall indemnify and save the City harmless from and against any liability for any such taxes, fees, premiums, contributions, etc. that the Contractor incurs in connection with the Work.

16. **EXAMINATION OF WORK SITE.** Contractor agrees that the Contract Price specified in paragraph 15 of this Agreement is based upon Contractor's examination of the work site and that it will make no claim for additional compensation or the extension of time for performance if the conditions encountered differ from those anticipated by such examination, unless such a claim is based upon conditions at the work site, or omissions, ambiguities, or conflicts in the Contract Documents, which Contractor can show could not have been discovered in the exercise of reasonable care prior to the submission of the Contract Price.

17. **PAYMENT OF CONTRACT PRICE.** The Contractor agrees to provide the City with the following documentation as a condition to receiving payment of the Contract Price: (a) an itemized bill for the completed Work; (b) a properly executed Completion Certificate; (c) a Sworn Construction Statement; and (d) all lien waivers as required by paragraph 14 of this Agreement. The City may withhold payment of the Contract Price to the Contractor to such extent as may be necessary to protect the City from loss on account of: (a) defective work not remedied; (b) claims or actions filed or evidence reasonably indicating the probable filing of the same against the

City with respect to the Work performed; (c) the failure of the Contractor to make payments properly to subcontractors and/or suppliers for equipment, material, or labor, or to provide evidence that such payments have been made; (d) any cost for which the Contractor is liable under the Contract Documents; or (e) a breach by Contractor of any term, condition, or provision contained in the Contract Documents.

18. **EQUAL EMPLOYMENT OPPORTUNITY.** Contractor not to discriminate against any employee or applicant for employment on the basis of age, race, color, religion, sex, or national origin. The Contractor shall comply with all applicable laws, Executive Orders, and regulations concerning non-discrimination in employment, as amended, which is hereby incorporated by reference.

19. **INDEPENDENT CONTRACTOR STATUS.** Contractor is and shall remain an independent contractor in the performance of the Work, maintaining complete control of its workers and operations. Neither Contractor nor anyone employed or engaged by Contractor shall become an agent, representative, servant, or employee of the City in the performance of the Work or any part thereof.

20. **CONTRACT REPRESENTATIVES; ADDRESSES.** The City's representative with respect to this Agreement shall be **Jodie Steffes, Community Development Department, City of St. Francis.** The Contractor's representative with respect to this Agreement shall be **Brad Ensruide.** All notices, requests, and instructions, or other communications given or received by either party under the terms of this Agreement shall, unless otherwise specifically provided herein, be made in writing signed by the designated representative of the party making such communication and be delivered or addressed to the designated representative of the other party at the following address:

CITY OF ST. FRANCIS ADDRESS:

**City of St. Francis
Community Development Department
Attn: Jodie Steffes
23440 Cree Street NW
St. Francis, MN 55070
JSteffes@stfrancismn.org**

CONTRACTOR ADDRESS:

**Kamish Excavating, Inc.
Attn: Brad Ensruide
1301 S. Concord Street
South St. Paul, MN 55075
(651) 775-0848**

21. **SUBCONTRACTORS.** Contractor agrees to bind every subcontractor by the terms, conditions, and provisions set forth in the Contract Documents that are applicable to the subcontractor's work, unless otherwise specifically agreed otherwise in writing by the City of St. Francis.

22. **ASSIGNMENT.** This Agreement shall be binding upon and in order to the benefit of the Contractor, its legal representatives, heirs, successors, and assigns. No assignment or attempted assignment of this Agreement or any rights hereunder shall be effective unless the written consent of the City is first obtained. No such assignment, even if consented to by the City, shall relieve the Contractor from liability under this Agreement for the performance and completion of the Work in accordance with the Contract Documents.

23. **ENTIRE AGREEMENT.** The Contract Documents contain all the terms, conditions, and provisions pertaining to the Work to be completed by the Contractor, there being no other understandings, agreements, or warranties, express or implied. All prior negotiations and dealings regarding the subject matter of the Contract Documents are superseded by and merged into the Contract Documents.

24. **APPLICABLE LAW.** This Agreement shall be construed in accordance with and governed by the laws of the state of Minnesota.

25. **AMENDMENT.** This Agreement may be modified or amended only with the written approval of the City and the Contractor.

26. **CONSTRUCTION.** In the event that any one or more of the provisions of this Agreement, or any application thereof, shall be found to be invalid, illegal, or otherwise unenforceable, the validity, legality, and enforceability of the remaining provisions or any application thereof shall not in any way be affected or impaired thereby.

27. **AUTHORITY.** Each of the undersigned parties warrants that it has the full authority to execute this Agreement, and each individual signing this Agreement on behalf of a corporation hereby warrants that he or she has full authority to sign on behalf of the corporation and that he or she represents and binds such corporation thereby.

28. **WAIVER.** No failure by the City to insist upon the strict performance of any covenant, duty, agreement, or condition contained in this Agreement or to exercise any right or remedy consequent upon a breach thereof shall constitute a waiver of any such breach or any other covenant, agreement, term, or condition, nor does it imply that such covenant, agreement, term, or condition may be waived again.

IN WITNESS WHEREOF, the parties have set their hands this ____th day of _____, 2022

CITY OF ST. FRANCIS

By: _____
Its: City Administrator

By: _____
Its: Mayor

CONTRACTOR

By: _____
Its: _____

Witness