

Dated this 21th day of July, 2022

CITY OF EASTPOINTE

Mariah Walton

Mariah Walton, City Clerk, City of Eastpointe, a Michigan municipal corporation

STATE OF MICHIGAN)
) SS:
COUNTY OF MACOMB)

The foregoing instrument was acknowledged before me this ____ day of July, 2022, by Mariah Walton, City Clerk, City of Eastpointe, a Michigan municipal corporation.

Michael K. Mcloyd
Notary Public,
Wayne County, Michigan.
My Comm. Exp.: January 17, 2028
Acting in Macomb County

MICHAEL K. MCLOYD
NOTARY PUBLIC, STATE OF MI
COUNTY OF WAYNE
MY COMMISSION EXPIRES Jan 17, 2028
ACTING IN COUNTY OF Macomb

Dated this 21th day of July, 2022

CONTRACTOR
Rossmann Enterprises Inc.
M. Rossmann DBA magne grip
By: Margaret R Rossmann-Roach
Its: president

STATE OF ~~MICHIGAN~~ ^{OHIO})
) SS:
COUNTY OF ~~MACOMB~~ ^{HAMILTON})

The foregoing instrument was acknowledged before me this 26th day of July, 2022, by Margaret Rossmann-Roach, Its: President

Pamela A. Miller
Notary Public,
Hamilton County, Michigan ^{OHIO}.
My Comm. Exp.: 10-23-2023
Acting in Macomb County,



PAMELA A MILLER
Notary Public, State of Ohio
My Comm. Expires 10/23/2023

CONTRACT FOR
Vehicle Exhaust Removal System

This Vehicle Exhaust Removal System Contract ("Contract") is agreed to between the **City of Eastpointe, a Michigan Municipal Corporation, 23200 Gratiot Avenue, Eastpointe, Michigan 48021 (the "City")** and **MagneGrip ("Contractor"), an Ohio company.** This Contract is effective on July 19, 2022 ("Effective Date"), and unless terminated, expires on July 19, 2023.

The Contractor agrees to the consideration set forth in the Bid Form for **Vehicle Exhaust Removal System** to provide the City work as indicated in the Bid Specifications. It is agreed that the aforementioned specifications are incorporated herein by reference and are attached hereto and made part of this contract except for any changes made herein to the contract. Work shall be accomplished in the manner and time prescribed.

NOW, THEREFORE, in consideration of the promises and mutual agreements contained herein, the City agrees to retain, and does hereby retain, the Contractor and the Contractor agrees to provide services to the City as follows:

AGREEMENT

The following are a list of standard contract terms and conditions that Contractor agrees to:

1. Duties of Contractor. Contractor must perform the services and provide the deliverables described within this document. An obligation to provide delivery of any commodity is considered a service and is a Contract Activity.

Contractor must furnish all labor and specific supplies necessary for the performance of the Contract Activities, and meet operational standards, unless otherwise specified in this document.

Contractor must: (a) perform the Contract Activities in a timely, professional, safe, and workmanlike manner consistent with standards in the trade, profession, or industry; (b) meet or exceed the performance and operational standards, and specifications of the Contract; (c) provide all Contract Activities in good quality, with no material defects; (d) not interfere with the City's operations; (e) obtain and maintain all necessary licenses, permits or other authorizations necessary for the performance of the Contract; (f) cooperate with the City, including the City's quality assurance personnel, and any third party to achieve the objectives of the Contract; (g) return to the City any City-furnished equipment or other resources in the same condition as when provided when no longer required for the Contract; (h) not make any media releases without prior written authorization from the City; (i) assign to the City any claims resulting from state or federal antitrust violations to the extent that those violations concern materials or services supplied by third parties toward fulfillment of the Contract; (j) comply with all City physical and IT security policies and standards which will be made available upon request; and (k) provide the City priority in performance of the Contract except as mandated by federal

disaster response requirements. Any breach under this paragraph is considered a material breach.

2. Insurance Requirements. Contractor must maintain the insurances identified below and is responsible for all deductibles. All required insurance must: (a) protect the City from claims that may arise out of, are alleged to arise out of, or result from Contractor's or a subcontractor's performance; (b) be primary and non-contributing to any comparable liability insurance (including self-insurance) carried by the City; and (c) be provided by a company with an A.M. Best rating of "A-" or better, and a financial size of VII or better.

The Contractor shall provide proof of insurance to meet these requirements and in a form acceptable to the City of Eastpointe and the City's Risk Manager (see Attachment I for list of requirements).

Required Limits	Additional Requirements
Commercial General Liability Insurance	
<u>Minimum Limits:</u> \$1,000,000 Each Occurrence Limit \$1,000,000 Personal & Advertising Injury Limit \$2,000,000 General Aggregate Limit \$2,000,000 Products/Completed Operations <u>Deductible Maximum:</u> \$50,000 Each Occurrence	Contractor must have their policy endorsed to add "the City of Eastpointe, its departments, divisions, agencies, offices, commissions, officers, employees, and agents" as additional insureds.
Automobile Liability Insurance	
<u>Minimum Limits:</u> \$1,000,000 Per Accident	Contractor must have their policy: (1) endorsed to add "the City of Eastpointe, its departments, divisions, agencies, offices, commissions, officers, employees, and agents" as additional insureds; and (2) include Hired and Non-Owned Automobile coverage.
Workers' Compensation Insurance	
<u>Minimum Limits:</u> Coverage according to applicable laws governing work activities.	Waiver of subrogation, except where waiver is prohibited by law.
Employers Liability Insurance	
<u>Minimum Limits:</u> \$500,000 Each Accident \$500,000 Each Employee by Disease \$500,000 Aggregate Disease.	

If any of the required policies provide claims-made coverage, the Contractor must: (a) provide coverage with a retroactive date before the effective date of the contract or the beginning of Contract Activities; (b) maintain coverage and provide evidence of coverage for at least three (3) years after completion of the Contract Activities; and (c) if coverage is cancelled or not renewed, and not replaced with another claims-made policy form with

a retroactive date prior to the contract effective date, Contractor must purchase extended reporting coverage for a minimum of three (3) years after completion of work.

Contractor must: (a) provide insurance certificates to the Contract Administrator, containing the agreement or delivery order number, at Contract formation and within 20 calendar days of the expiration date of the applicable policies; (b) require that subcontractors maintain the required insurances contained in this Section; (c) notify the Contract Administrator within 5 business days if any insurance is cancelled; and (d) waive all rights against the City for damages covered by insurance. Failure to maintain the required insurance does not limit this waiver.

This Section is not intended to and is not to be construed in any manner as waiving, restricting or limiting the liability of either party for any obligations under this Contract (including any provisions hereof requiring Contractor to indemnify, defend and hold harmless the City).

3. Staffing. The City's Contract Administrator may require Contractor to remove or reassign personnel by providing written notice to Contractor.

4. Independent Contractor. Contractor is an independent contractor and assumes all rights, obligations and liabilities set forth in this Contract. Contractor, its employees, and agents will not be considered employees of the City. No partnership or joint venture relationship is created by virtue of this Contract. Contractor, and not the City, is responsible for the payment of wages, benefits and taxes of Contractor's employees and any subcontractors. Prior performance does not modify Contractor's status as an independent contractor.

5. Subcontracting. Contractor may not delegate any of its obligations under the Contract without the prior written approval of the City. Contractor must notify the City at least 90 calendar days before the proposed delegation and provide the City any information it requests to determine whether the delegation is in its best interest. If approved, Contractor must: (a) be the sole point of contact regarding all contractual matters, including payment and charges for all Contract Activities; (b) make all payments to the subcontractor; and (c) incorporate the terms and conditions contained in this Contract in any subcontract with a subcontractor. Contractor remains responsible for the completion of the Contract Activities, compliance with the terms of this Contract, and the acts and omissions of the subcontractor. The City, in its sole discretion, may require the replacement of any subcontractor.

6. Assignment. Contractor may not assign this Contract to any other party without the prior approval of the City. Upon notice to Contractor, the City, in its sole discretion, may assign in whole or in part, its rights or responsibilities under this Contract to any other party. If the City determines that a novation of the Contract to a third party is necessary, Contractor will agree to the novation and provide all necessary documentation and signatures.

7. Stop Work Order. The City may suspend any or all activities under the Contract at any time. The City will provide Contractor a written stop work order detailing the

suspension. Contractor must comply with the stop work order upon receipt. Within 90 calendar days, or any longer period agreed to by Contractor, the City will either: (a) issue a notice authorizing Contractor to resume work, or (b) terminate the Contract or delivery order. The City will not pay for Contract Activities, Contractor's lost profits, or any additional compensation during a stop work period.

8. Termination for Cause. The City may terminate this Contract for cause, in whole or in part, if Contractor, as determined by the City: (a) endangers the value, integrity, or security of any location, data, or personnel; (b) becomes insolvent, petitions for bankruptcy court proceedings, or has an involuntary bankruptcy proceeding filed against it by any creditor; (c) engages in any conduct that may expose the City to liability; (d) breaches any of its material duties or obligations; or (e) fails to cure a breach within the time stated in a notice of breach. Any reference to specific breaches being material breaches within this Contract will not be construed to mean that other breaches are not material.

If the City terminates this Contract under this Section, the City will issue a termination notice specifying whether Contractor must: (a) cease performance immediately, or (b) continue to perform for a specified period. If it is later determined that Contractor was not in breach of the Contract, the termination will be deemed to have been a Termination for Convenience, effective as of the same date, and the rights and obligations of the parties will be limited to those provided in Section 24, Termination for Convenience.

The City will only pay for amounts due to Contractor for Contract Activities accepted by the City on or before the date of termination, subject to the City's right to set off any amounts owed by the Contractor for the City's reasonable costs in terminating this Contract. The Contractor must pay all reasonable costs incurred by the City in terminating this Contract for cause, including administrative costs, attorneys' fees, court costs, transition costs, and any costs the City incurs to procure the Contract Activities from other sources.

9. Termination for Convenience. The City may immediately terminate this Contract in whole or in part without penalty and for any reason, including but not limited to, appropriation or budget shortfalls. The termination notice will specify whether Contractor must: (a) cease performance of the Contract Activities immediately, or (b) continue to perform the Contract Activities in accordance with Section 10, Transition Responsibilities. If the City terminates this Contract for convenience, the City will pay all reasonable costs, as determined by the City, for City approved Transition Responsibilities.

10. Transition Responsibilities. Upon termination or expiration of this Contract for any reason, Contractor must, for a period of time specified by the City (not to exceed 90 calendar days), provide all reasonable transition assistance requested by the City, to allow for the expired or terminated portion of the Contract Activities to continue without interruption or adverse effect, and to facilitate the orderly transfer of such Contract Activities to the City or its designees. Such transition assistance may include, but is not limited to: (a) continuing to perform the Contract Activities at the established Contract

rates; (b) taking all reasonable and necessary measures to transition performance of the work, including all applicable Contract Activities, training, equipment, software, leases, reports and other documentation, to the City or the City's designee; (c) taking all necessary and appropriate steps, or such other action as the City may direct, to preserve, maintain, protect, or return to the City all materials, data, property, and confidential information provided directly or indirectly to Contractor by any entity, agent, vendor, or employee of the City; (d) transferring title in and delivering to the City, at the City's discretion, all completed or partially completed deliverables prepared under this Contract as of the Contract termination date; and (e) preparing an accurate accounting from which the City and Contractor may reconcile all outstanding accounts (collectively, "Transition Responsibilities"). This Contract will automatically be extended through the end of the transition period.

11. General Indemnification. Contractor must defend, indemnify and hold the City, its departments, divisions, agencies, offices, commissions, officers, and employees harmless, without limitation, from and against any and all actions, claims, losses, liabilities, damages, costs, attorney fees, and expenses (including those required to establish the right to indemnification), arising out of or relating to: (a) any breach by Contractor (or any of Contractor's employees, agents, subcontractors, or by anyone else for whose acts any of them may be liable) of any of the promises, agreements, representations, warranties, or insurance requirements contained in this Contract; (b) any infringement, misappropriation, or other violation of any intellectual property right or other right of any third party; (c) any bodily injury, death, or damage to real or tangible personal property occurring wholly or in part due to action or inaction by Contractor (or any of Contractor's employees, agents, subcontractors, or by anyone else for whose acts any of them may be liable); and (d) any acts or omissions of Contractor (or any of Contractor's employees, agents, subcontractors, or by anyone else for whose acts any of them may be liable).

The City will notify Contractor in writing if indemnification is sought; however, failure to do so will not relieve Contractor, except to the extent that Contractor is materially prejudiced. Contractor must, to the satisfaction of the City, demonstrate its financial ability to carry out these obligations.

The City is entitled to: (i) regular updates on proceeding status; (ii) participate in the defense of the proceeding; (iii) employ its own counsel; and to (iv) retain control of the defense if the City deems necessary. Contractor will not, without the City's written consent (not to be unreasonably withheld), settle, compromise, or consent to the entry of any judgment in or otherwise seek to terminate any claim, action, or proceeding. To the extent that any City employee, official, or law may be involved or challenged, the City may, at its own expense, control the defense of that portion of the claim.

Any litigation activity on behalf of the City, or any of its subdivisions under this Section, must be coordinated with the Department of Law. An attorney designated to represent the City may not do so until approved by the Department of Law.

12. Disclosure of Litigation, or Other Proceeding. Contractor must notify the City within 14 calendar days of receiving notice of any litigation, investigation, arbitration, or other proceeding (collectively, "Proceeding") involving Contractor, a subcontractor, or an officer or director of Contractor or subcontractor, that arises during the term of the Contract, including: (a) a criminal Proceeding; (b) a parole or probation Proceeding; (c) a Proceeding under the Sarbanes-Oxley Act; (d) a civil Proceeding involving: (1) a claim that might reasonably be expected to adversely affect Contractor's viability or financial stability; or (2) a governmental or public entity's claim or written allegation of fraud; or (e) a Proceeding involving any license that Contractor is required to possess in order to perform under this Contract.

13. Compliance with Laws. Contractor must comply with all federal, state and local laws, rules and regulations.

14. Living Wage. Contractor must comply with living wage requirements to the extent applicable to this Contract. The 2020 Living Wage is presently \$13.10/hr with health care benefits provided and \$16.25/hr if the employee does not receive health care benefits. This figure is calculated every February by the Federal Government and is released in late February or March. The City of Eastpointe shall not enter into any service contract with any Contractor who does not demonstrate that it pays its work force a Living Wage as defined in the Codified Ordinances of the City of Eastpointe Chapter 213, Ordinance No. 901.

The Contractor shall certify annually that it is following the Living Wage Ordinance.

15. Governing Law. This Contract is governed, construed, and enforced in accordance with Michigan law, and all claims relating to or arising out of this Contract are governed by Michigan law.

16. Integrated Agreement. This Agreement contains all of the agreements of the parties and cannot be amended or modified except by written agreement.

17. Amendment. This Agreement may be amended at any time by the mutual consent of the parties by an instrument, in writing.

18. Non-Exclusivity. Nothing contained in this Contract is intended nor will be construed as creating any requirements contract with Contractor. This Contract does not restrict the City or its agencies from acquiring similar, equal, or like Contract Activities from other sources.

19. Dispute Resolution. The parties will endeavor to resolve any Contract dispute in accordance with this provision. The dispute will be referred to the parties' respective Contract Administrators, Program Managers. Such referral must include a description of the issues and all supporting documentation. The parties must submit the dispute to the City Manager if unable to resolve the dispute within 15 business days. The parties will

continue performing while a dispute is being resolved, unless the dispute precludes performance. A dispute involving payment does not preclude performance.

Litigation to resolve the dispute will not be instituted until after the dispute has been elevated to the City Manager and either concludes that resolution is unlikely or fails to respond within 15 business days. The parties are not prohibited from instituting formal proceedings: (a) to avoid the expiration of statute of limitations period; (b) to preserve a superior position with respect to creditors; or (c) where a party makes a determination that a temporary restraining order or other injunctive relief is the only adequate remedy. This Section does not limit the City's right to terminate the Contract.

20. Media Releases. News releases (including promotional literature and commercial advertisements) pertaining to the Contract or project to which it relates must not be made without prior written City approval, and then only in accordance with the explicit written instructions of the City.

21. Severability. If any part of this Contract is held invalid or unenforceable, by any court of competent jurisdiction, that part will be deemed deleted from this Contract and the severed part will be replaced by agreed upon language that achieves the same or similar objectives. The remaining Contract will continue in full force and effect.

22. Waiver. Failure to enforce any provision of this Contract will not constitute a waiver.

23. Force Majeure. Neither party will be in breach of this Contract because of any failure arising from any disaster or acts of god that are beyond their reasonable control and without their fault or negligence. Each party will use commercially reasonable efforts to resume performance. Contractor will not be relieved of a breach or delay caused by its subcontractors. If immediate performance is necessary to ensure public health and safety, the City may immediately contract with a third party.

24. Entire Agreement and Order of Precedence.

This Contract, ~~which includes Schedule A – Statement of Work, and schedules and exhibits which are hereby expressly incorporated,~~ is the entire agreement of the parties related to the Contract Activities. This Contract supersedes and replaces all previous understandings and agreements between the parties for the Contract Activities. If there is a conflict between documents, the order of precedence is: (a) first, this Contract, excluding its schedules, exhibits, and Schedule A – Statement of Work; (b) second, Schedule A – Statement of Work as of the Effective Date; and (c) third, schedules expressly incorporated into this Contract as of the Effective Date. NO TERMS ON CONTRACTOR'S INVOICES, ORDERING DOCUMENTS, WEBSITE, BROWSE-WRAP, SHRINK-WRAP, CLICK-WRAP, CLICK-THROUGH OR OTHER NON-NEGOTIATED TERMS AND CONDITIONS PROVIDED WITH ANY OF THE CONTRACT ACTIVITIES WILL CONSTITUTE A PART OR AMENDMENT OF THIS CONTRACT OR IS BINDING ON THE STATE FOR ANY PURPOSE. ALL SUCH OTHER TERMS AND CONDITIONS HAVE NO FORCE AND EFFECT AND ARE DEEMED REJECTED BY THE STATE,

EVEN IF ACCESS TO OR USE OF THE CONTRACT ACTIVITIES REQUIRES AFFIRMATIVE ACCEPTANCE OF SUCH TERMS AND CONDITIONS.

25. Records Maintenance, Inspection, Examination, and Audit.

The City or its designee may audit Contractor to verify compliance with this Contract. Contractor must retain and provide to the City Manager or Assistant City Manager, all financial, payroll, human resources, and accounting records related to the Contract through the term of the Contract and for 4 years after the latter of termination, expiration, or final payment under this Contract or any extension ("Audit Period"). If an audit, litigation, or other action involving the records is initiated before the end of the Audit Period, Contractor must retain the records until all issues are resolved.

Within 10 calendar days of providing notice, the City and its authorized representatives or designees have the right to enter and inspect Contractor's premises or any other places where Contract Activities are being performed, and examine, copy, and audit all records related to this Contract. Contractor must cooperate and provide reasonable assistance. If any financial errors are revealed, the amount in error must be reflected as a credit or debit on subsequent invoices until the amount is paid or refunded. Any remaining balance at the end of the Contract must be paid or refunded within 45 calendar days.

This Section applies to Contractor, any parent, affiliate, or subsidiary organization of Contractor, and any subcontractor that performs Contract Activities in connection with this Contract.

26. Conflicts and Ethics.

Contractor will uphold high ethical standards and is prohibited from: (a) holding or acquiring an interest that would conflict with this Contract; (b) doing anything that creates an appearance of impropriety with respect to the award or performance of the Contract; (c) attempting to influence or appearing to influence any City employee by the direct or indirect offer of anything of value; or (d) paying or agreeing to pay any person, other than employees and consultants working for Contractor, any consideration contingent upon the award of the Contract. Contractor must immediately notify the City of any violation or potential violation of these standards. This Section applies to Contractor, any parent, affiliate, or subsidiary organization of Contractor, and any subcontractor that performs Contract Activities in connection with this Contract.

27. Website Incorporation.

The City is not bound by any content on Contractor's website unless expressly incorporated directly into this Contract.

28. Entire Agreement and Order of Precedence.

This Contract supersedes and replaces all previous understandings and agreements between the parties for the Contract Activities. NO TERMS ON CONTRACTOR'S INVOICES, ORDERING DOCUMENTS, WEBSITE, BROWSE-WRAP, SHRINK-WRAP, CLICK-WRAP, CLICK-THROUGH OR OTHER NON-NEGOTIATED TERMS AND CONDITIONS PROVIDED WITH ANY OF THE CONTRACT ACTIVITIES WILL CONSTITUTE A PART OR AMENDMENT OF THIS CONTRACT OR IS BINDING ON

THE CITY FOR ANY PURPOSE. ALL SUCH OTHER TERMS AND CONDITIONS HAVE NO FORCE AND EFFECT AND ARE DEEMED REJECTED BY THE CITY, EVEN IF ACCESS TO OR USE OF THE CONTRACT ACTIVITIES REQUIRES AFFIRMATIVE ACCEPTANCE OF SUCH TERMS AND CONDITIONS.

29. Survival.

The provisions of this Contract that impose continuing obligations, including warranties and representations, termination, transition, insurance coverage, indemnification, and confidentiality, will survive the expiration or termination of this Contract.

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