

City Council
STAFF REPORT



Meeting Date: City Council - May 20 2024

Agenda Item: Public discussion on the proposal (and Co-Host Agreement) presented by AMA-Pro on May 14, 2024 to the community

Prepared By:

BACKGROUND INFORMATION:

[This link](#) is to the community presentation given by AFTE on Tuesday, May 14, 2024 regarding the Sturgis TT 2024 Proposal v 2024.

[This link](#) is to the website created by AFTE regarding their Sturgis TT 2024 Proposal.

The City received the proposed agreement language on Friday, May 17th and it is attached to this report.

DISCUSSION:

This agenda item is a discussion, with the Council seeking public comment and reaction, on the proposal.

If the Council wishes to take action on this proposed agreement, it will have the opportunity to do so, per the agenda, following the Executive Session later in this meeting.

ATTACHMENTS:

[AFTE-2024-Co-Host-Agreement-Sturgis-TT-2024-05-17](#)

Approved By:

Lisa Katzenstein, Human Resources Coordinator

Status:

Approved - May 16 2024

CO-HOST AGREEMENT

The parties to this Co-Host Agreement (“**Co-Host Agreement**”) are AFT Events, LLC (“**AFTE**”), a Delaware limited liability company of 525 Fentress Blvd., Suite B, Daytona Beach, FL 32114, and the City of Sturgis, a South Dakota municipality of 1040 Harley Davidson Way, Sturgis, SD 57785, (“**CITY**”), each a “Party” and collectively as “Parties”. This Co-Host Agreement constitutes a contractual arrangement whereby AFTE and CITY will jointly host the Progressive American Flat Track event set forth below during the term:

Race Name (“Event”):	Sturgis TT
Track Name (“Facility”):	Streets of Downtown Sturgis
Track Address:	1040 Harley-Davidson Way Sturgis, SD 57785
Website:	https://www.sturgistt.com
Event Dates:	Sunday, August 11, 2024: 2024 Sturgis TT Sunday, August 10, 2025: 2025 Sturgis TT

WHEREAS, Daytona Motorsports Group, LLC d/b/a AMA Pro Racing (“**AMAP**”) licenses, sanctions and conducts, among other things, professional motorcycle racing events throughout the United States and the world, including, among others, the Progressive American Flat Track championship series; and

WHEREAS, AFTE is a wholly owned subsidiary of AMAP and is in the business of promoting motorcycle races; and

WHEREAS, CITY is a South Dakota municipality and has the ability to grant street closures and host events; and

WHEREAS, Outerkind, LLC (“**Agency**”) is a Colorado limited liability company and is in the business of marketing, advertising and promotional services; and

WHEREAS, AMAP has agreed to sanction the Event as a part of the annual American Flat Track championship (“**Series**”) pursuant to a sanction agreement between AMAP and AFTE (“**Sanction Agreement**”), which shall cause AMAP to fulfill any obligations in this Co-Host Agreement which may fall under AMAP’s responsibility; and

WHEREAS, Agency has agreed to serve as the agency of record and provide marketing, advertising and promotional services for the Event pursuant to a Master Services Agreement between Agency and AFTE (“**MSA**”); and

WHEREAS, CITY and AFTE agree to jointly host, and AFTE agrees to conduct, the Event pursuant to the terms herein.

NOW, THEREFORE, in consideration of the mutual covenants contained herein and other good and valuable consideration, the receipt and sufficiency which is hereby acknowledged, the Parties agree with each of the terms and conditions set forth herein.

Definitions

- a) “AFTE Marks” shall mean all names, seals, trademarks, service marks, logos, and/or symbols of AFTE, its parent or its affiliates as set forth on Exhibit B.
- b) “Broadcast Rights” shall mean all rights to engage in any Broadcast and directly related broadcast activity (for example, live streaming, tape-delayed broadcasts, single re-broadcasts and support programming).
- c) “Competition” shall mean the portion of the Event during which the actual racing competition and all competitive activity related thereto occurs, including, but not limited to, registration, inspections, time trials, practice runs, actual race(s), post-race inspections on the dates set forth in the Sanction Agreement.
- d) “Event” shall mean the Event set forth in the preamble plus the 48 hours before the start and 24 hours after the completion of the final race.
- e) “Force Majeure Event” shall mean any event that causes performance under this Co-Host Agreement impossible, including without limitation, weather, acts of God, acts or omissions of civil or military authority, any rule, regulation or orders issued by any governmental authority or by any officer, department, agency or instrumentality thereof, fires, floods, epidemics, pandemics, war, acts of terrorism, embargo, riots or national company strikes or lockouts.
- f) “Gross Sponsorship Revenue” shall mean all sponsorship revenue actually collected, including without limitation naming rights, official category sponsors, associate sponsors, at-track branding, digital advertising, jumbotron commercials, tickets, suites, hospitality, travel packages and the like.
- g) “Net Sponsorship Revenue” shall mean the amount of Gross Sponsorship Revenue less any discounts, pass-throughs, race awards, point funds or commissions paid out in connection with a sponsorship contract.
- h) “Rule Book” shall mean the American Flat Track rulebook published by AMAP, and any amendments thereto and other special rules published by AMAP specifically for the Event.

- i) “Sturgis Marks” shall mean all names, seals, trademarks, service marks, logos, and/or symbols of CITY, its subsidiaries, or its affiliates as set forth on Exhibit C.

Terms and Conditions

1. **Co-Host.** So long as the Co-Host Agreement is in effect and not terminated, AFTE and CITY shall perform their obligations set forth herein to co-host the Events.
2. **Term.**
 - a. *Term.* The term of this Co-Host Agreement shall be from the Effective Date and shall run through the conclusion of the second annual Event in 2025 (“**Term**”).
 - b. *Option to Renew.* Upon mutual written agreement, the Parties may extend the Term of the contract for up to another three (3) years subject to terms and conditions which shall be determined by the Parties working in good faith based on substantially similar performance and services as previous years.
3. **Conduct and Control over Competition.** CITY and AFTE acknowledge that the Sanction Agreement and the AMAP Rule Book exclusively control the Event competition.
4. **Media Rights.** Each Party agrees to comply with the Sanction Agreement as it relates to media rights and limitations for the commercial exploitation of the Event. Notwithstanding the foregoing, to the extent allowed by the Sanction Agreement each Party may capture images, video or otherwise from the Event on its own and promote its activities therefrom.
5. **Compliance with Laws.** AFTE and CITY shall comply with all local, state and federal laws and regulations applicable to their obligations under this Agreement, including but not limited to state and federal environmental law and regulations concerning the City’s Municipal Separate Storm Sewer System (MS4).
6. **Financial Considerations.**
 - a. **Profit Share.** AFTE and CITY agree to distribute the Profits from the Event evenly between the Parties.
 - b. **No Upfront Fee.** CITY shall not be required to pay an upfront flat fee for AFTE to conduct the Event.
 - c. **Payment of Shared Expenses.** AFTE agrees to pay all upfront Shared Expenses related to the Event.
 - d. **Collection of Shared Revenues.** AFTE shall collect all Shared Revenue related to the Event. CITY agrees to pass through to AFTE any Shared Revenues actually collected by CITY upon receipt.
 - e. **Shared Revenue:** Revenue generated because of the Event collected by either Party, including without limitation:
 - i. Sponsorship revenue, including without limitation naming rights, official categories, at-track branding, digital advertising and jumbotron commercials.
 - ii. Vendor revenue including without limitation the sale of vendor spots, display footprints, activation spaces, SELs, permits and land leases.
 - iii. Ticket revenue including without limitation grandstand, advance, reserved seating, paddock upgrades, service fees.
 - iv. Hospitality revenue including without limitation VIP passes and suite rentals.
 - v. Parking and camping revenue.
 - vi. F&B revenue including without limitation revenue from the sale of F&B or royalties received from any agreement with a third-party vendor selling F&B.
 - vii. Licensing revenue generated by the use of the Event Logo, including without limitation revenue from direct sales of Event Merchandise, royalties and licensing agreements.
 - f. **Shared Expense:** All expenses related to the Event whether paid for by AFTE or CITY, including without limitation:
 - i. Equipment Rental
 - ii. Track Build & Track Barrier Rentals
 - iii. Parking Lot Leases
 - iv. Race Operations
 - v. Event Experience
 - vi. Event Labor
 - vii. Sanction Fees & Competitor Purse Payouts
 - viii. Legal & Insurance
 - ix. Program Travel
 - x. Marketing, Advertising & Program Management
 - xi. Contingencies & Commissions

g. Final Reconciliation and Distribution of Proceeds

- i. After the Event, the Parties shall determine their respective total Shared Revenue and total Shared Expense.
- ii. The Parties shall then provide each other with the totals along with any necessary accounting information transparently.
- iii. The Parties agree to meet within 60 days after the conclusion of the Event for final reconciliation to determine the share of Net Income between the Parties.
- iv. Shared Revenue shall first be applied to Shared Expenses until all financial obligations of the Parties related to the Event have been satisfied.
- v. After Shared Expenses have been covered by Shared Revenues, AFTE and CITY will share the remaining Net Income equally.
- vi. If Shared Expenses exceed Shared Revenues, Residuals AFTE owes to CITY will first be applied to the deficit. Any remaining deficit will be offset by gross sponsorship revenues upon collection by CITY in the following year.

7. Residuals.

- a. *Residuals for Facilitating Introductions.* If CITY or AFTE secures a sponsorship agreement with any sponsor introduced by the other Party, and which is not related to the Shared Revenue for the Event, the introducing Party shall be entitled to a residual commission (“**Residual**”). Recognizing that AFTE bears sole responsibility for upfront costs and will be leveraging its list of existing Series sponsors for CITY’s benefit, the following residual commission rates will apply:
 - i. *AFTE Introduction.* The residual commissions owed to AFTE for facilitating sponsor introductions which lead to contracts with CITY shall be 25% of the gross sponsorship amount.
 - ii. *City Introduction.* The residual commissions owed to CITY for facilitating sponsor introductions which lead to contracts with AFTE shall be 15% of the gross sponsorship amount.
- b. *Residuals for Sponsorship Increases.* Broadcast coverage of the Event will provide a major increase in exposure for CITY’s existing and future Rally sponsorships. For bearing all upfront expense liability for the Event, AFTE shall be paid a Residual for annual increases in the sponsorship amounts received by CITY from existing Rally sponsors:
 - i. *Rally Increases.* The residual commissions owed to AFTE for Rally sponsorship contract renewals secured by CITY shall be 25% of the incremental gross sponsorship amount.
- c. *Reporting Requirements.* The party securing the sponsorship shall provide the introducing party with periodic reports detailing the sponsorship funds received from the introduced sponsor, including payment dates and amounts.
- d. *Payment Terms.* Residual commissions shall be part of the final reconciliation process. If there is a deficit, AFTE shall apply any residuals due to CITY as a credit against the deficit amount. Any remaining residual commissions owed by either Party shall be paid within 30 days following the final reconciliation, or receipt of such funds, whichever is later.
- e. *Duration.* As the new sponsorship agreements or increases in contract amounts contemplated in this section would not have been attainable by one Party but for the efforts of the other Party, this mutual residual commission obligation shall remain in full force and effect throughout the respective Term of each sponsorship agreement qualifying for Residuals.

8. Sponsorship.

- a. *Cooperation.* The Parties agree to cooperate and jointly make best efforts to secure sponsorship revenue for the Event which shall be considered Shared Revenue according to the terms and conditions herein. CITY agrees to make best efforts to facilitate meetings between AFTE and Rally sponsors.
- b. *Sponsorship Proposals.* CITY and AFTE agree not to present Event sponsorship proposals to a third-party without first seeking the other’s approval with respect to all aspects of the proposal, but specifically the name of the prospect, pricing, term and deliverables. Neither party may unreasonably withhold approval.
- c. *Sponsorship Contracts.* The Parties contemplate that AFTE will secure a new Sponsorship Agreement for each sponsor retained because of the Event. Should CITY secure any Event sponsorship contracts, upsell existing sponsors with Event assets or otherwise generate and/or collect any Shared Revenue as defined herein, then CITY shall pass through such revenues to AFTE immediately upon receipt.
- d. *Signage.* AFTE acknowledges that existing signage exists around the City and such signage may remain up for the Event. CITY agrees not to allow any new or additional sponsorship signage to be displayed within the confines of, or adjacent to, the racetrack after the Effective Date without prior, mutual consent of the Parties.

- e. *Series Sponsors.* Although AMAP is not a party to this contract, for the avoidance of doubt, the Parties agree that AMAP will retain all Series sponsorship revenues including any increases in contract values.

9. CITY Obligations. CITY shall perform or provide the following to the levels required by this Co-Host Agreement or applicable law:

- a. Project briefing, strategy alignment, goal and KPI setting
- b. Creative feedback and approvals related to Sturgis Marks
- c. Stakeholder guidance, navigation, advice and inter-departmental support within City
- d. Community engagement based on transparent communication regarding Event and AFTE
- e. Providing regular feedback between Event stakeholders and City constituents
- f. Sharing of insights and analytics in support of common goals
- g. Communications support via CITY owned media channels
- h. Making good faith efforts for AFTE to be able to utilize existing City resources to reduce unnecessary expenditure related to the Event
- i. Making best efforts to facilitate meetings between AFTE and CITY sponsors to grow revenue for both Parties
- j. Provision of Special Events Licenses (SELS), if necessary

10. AFTE Obligations. AFTE shall perform, provide, contract and/or have responsibility for the following to the levels required by this Co-Host Agreement, the Sanction Agreement or applicable law:

- a. Equipment Rental
- b. Track Build
- c. Track Barrier Rentals
- d. Parking Lot Leases
- e. Race Operations
- f. Event Experience
- g. Onsite Event Staff
- h. Sanction Fees
- i. Competitor Purse Payouts
- j. Legal & Insurance
- k. Program Travel
- l. Marketing, Advertising & Program Management
- m. Program Recovery

11. Event Schedule; Facility Access Requirements; Event Setup and Teardown.

- a. *Access for Preparation.* CITY agrees to grant AFTE and its affiliates access to the designated street race area for AFTE and AMAP Staff, Officials and Broadcast personnel for the purposes of event preparation, barrier staging and setup. This access is granted in accordance with City regulations and permissions, recognizing that the streets remain open to the public until 2:00 AM on the day of the event. AFTE and its affiliates must coordinate with CITY and the appropriate and necessary City of Sturgis local authorities to ensure minimal disruption to the public and adherence to all applicable laws and regulations.
- b. *Full Access for Event Setup.* From 2:00 AM on the day of the event, CITY agrees to grant AFTE and its affiliates unrestricted access to the designated street race area for AFTE and AMAP Staff, Officials, and Broadcast personnel for final deployment and setup of the race infrastructure. This period of unrestricted access is essential for the safe and timely preparation of the event site.
- c. *Duration of the Event.* The Event is defined as commencing 72 hours prior to on-track Competition, with the understanding that full, unrestricted access for final preparation begins at 2:00 AM on the day of the event. The Event concludes twenty-four (24) hours after the final on-track Competition, during which time AFTE shall have access to the area for the purposes of teardown, clean-up, and restoration of the public space to its original condition, in coordination with CITY.
- d. *Coordination with the City.* AFTE commits, and agrees to cause AMAP to commit, to ongoing coordination with CITY to ensure that all aspects of event setup, execution and teardown comply with local regulations, prioritize public safety and minimize disruption to the City of Sturgis and its residents.

- e. *Postponement or Cancellation of Event.* CITY and AFTE shall consult regarding postponement of the Event, as specifically outlined in the Sanction Agreement. The parties understand that the Sanction Agreement solely determines the terms, conditions and fees associated with cancellation or postponement of the Event. The parties will mutually agree upon the selection of the postponed date, if applicable.

12. Event Logo and Event Merchandise.

- a. *Event Logo.* The Event logo included in Exhibit C has been approved by the Parties. The Parties shall jointly own all right, title and interest in the Event logo (provided however that any of a Party's individual registered marks included in the Event logo shall remain owned by such Party). Each Party agrees to cease and desist use of the Event logo after expiration of the Term unless otherwise agreed to in writing. The Parties consent to the registration of the Event logo with the United States Patent and Trademark Office.
- b. *Race-Day Merchandise Sales.* The Parties acknowledge that AMAP has an official merchandise partner for trackside merchandise which desires to take on all financial risk related to the production and sale of Event merchandise in exchange for a royalty on Net Sales sold during the Event ("Event Merchandise Royalties").
- i. Should the Parties reach an agreement with AMAP's vendor:
- (1) All Event Merchandise Royalties will be included as Shared Revenue.
 - (2) The Parties further agree that they will not sell any other merchandise bearing the Event Logo during the Event.
 - (3) AMAP's official merchandise partner shall retain all revenues from the sale of other merchandise lines (AFT Pro Line, American Flat Tracker Clothing Co., novelties, etc.).
- ii. Otherwise, the Parties agree to work together in good faith to create, license and sell Event merchandise. Furthermore, the Parties agree to ensure that AMAP's designated merchandise vendor will still be provided a suitable space for display and sale of Series merchandise at no additional cost.
- c. *Third-Party Merchandise Sales and Licensing.* All other revenue generated from the sale of event merchandise or licensing of the Event Logo to a third-party must be considered Shared Revenue in accordance with the terms and conditions herein.

13. Fitness of Facility.

- a. CITY represents and warrants to AFTE that its streets are in good repair and in compliance with all applicable laws and will remain so through the duration of the Event. The Parties agree that any repairs to street or parking lot surfaces within the confines of the track layout arising out of the Event shall be considered Shared Expense, except for any damages directly caused by the negligence of AFTE or CITY.

14. Advertising; Use of Marks.

- a. CITY and AFTE acknowledge that the promotions and advertising relating to the Event shall be subject to mutual agreement. CITY and AFTE will make no misrepresentations of fact in connection with the promotion and advertising of the Event. If such misrepresentation is made, CITY and AFTE agree to promptly correct any misrepresentation.
- b. CITY licenses AFTE and its parent AMAP the right to use, on a revocable, non-transferable, non-exclusive and royalty free basis, during the Term, the Sturgis Marks in advertising, promoting and sponsorship relating to the Event. Each use is subject to the prior review and written consent of CITY, which shall not be unreasonably withheld. This limited license does not authorize AFTE or AMAP to use the Sturgis Marks in its corporate business or firm name and title, to use or permit the use of the Sturgis Marks other than in accordance with the terms and conditions of this Co-Host Agreement. CITY represents and warrants to AFTE that it has all necessary rights and approvals to grant such license for the Sturgis Marks to AFTE as contemplated herein.
- c. AFTE licenses CITY to use, on a revocable, non-transferable, non-exclusive and royalty free basis, during the Term, the AFTE Marks in advertising, promoting and sponsorship relating to the Event. Each use is subject to the prior review and written consent of AFTE, which shall not be unreasonably withheld. This limited license does not authorize CITY to use the AFTE Marks in its corporate business or firm name and title, to use or permit the use of the AFTE Marks other than in accordance with the terms and conditions of this Co-Host Agreement.

- 15. Insurance.** AFTE agrees to keep in force Comprehensive General Liability insurance including spectator liability and participant liability for the event including but not limited to the racing, the racetrack, pit areas, parking, concessions, liquor liability, common areas and spectator areas (including exposures of debris created by the racing). AFTE must add CITY as an additional insured on such policy. AFTE will provide evidence of insurance to CITY no later than 30 days prior to the Event, a certificate of insurance evidencing effective coverage to the following:

- i. Commercial General Liability with limits not less than Five Million Dollars (\$5,000,000).

- ii. Workers Compensation insurance as required by host state.
- iii. Liquor Liability (if applicable) as required by License issuing agency.
- b. *Participant Accident Insurance.* AFTE agrees to ensure that AMAP shall keep in force an excess Participant Accident Insurance Policy with coverage limits equal to but not less than Ten Thousand Dollars (\$10,000) in Accidental Death and Dismemberment and Fifty Thousand Dollars (\$50,000) Excess Medical Insurance.

16. Indemnification.

- a. *Indemnification by AFTE.* AFTE must defend, indemnify, and hold harmless the CITY, its affiliates, subsidiaries, licensees, successors and assigns, and the respective owners, mayor, city manager, council members, officers, officials, representatives, directors, agents and employees of CITY each from and against all third party liability, actions, claims, demands, judgments, penalties, fines, losses, property damage, other injuries (including but not limited to bodily injury, death, personal injury or mental anguish), or third party damages (including without limitation, reasonable attorneys' fees, expenses, court costs, expert fees)(collectively "Third Party Claim") arising out of or relating to: (1) the non-performance of AFTE's obligations under this Agreement following notice of non-performance and failure to timely cure; (2) AFTE breach or alleged breach or threat thereof that, if true, would be a breach of any of its obligations set forth in this Agreement, including any violation by AFTE of any applicable law, regulation, ordinance, court or agency order; (3) the negligence, recklessness or intentional misconduct of AFTE, its agents, employees, or independent contractors; and (4) any content, postings, materials or items offered or supplied by AFTE or AMAP under this Agreement.
- b. *Indemnification by CITY.* The CITY shall defend, indemnify, and hold harmless Daytona Motorsports Group, LLC, AFT Events, LLC, their parents, their subsidiaries, limited liability and affiliated companies, and their respective shareholders, members, directors, officers, employees, agents and including event sponsors, series sponsors, FOX Sports, LLC, broadcasters, team owners, race teams, competitors and event officials ("AFTE Indemnified Parties") against any Third-Party Claim arising out of or relating to: (1) CITY's material breach or alleged material breach or threat thereof that, if true, would be a material breach of any of its covenants set forth in this Agreement; and (2) gross negligence, recklessness or intentional misconduct by CITY, its agents, officials or employees.
- c. *Mutual Indemnification Obligations.* A party seeking defense and indemnification under this Agreement shall notify the other party promptly of any Third-Party Claim for which defense and indemnification is sought; provided, however, that the failure to provide notice shall not relieve a party's obligation to defend and indemnify, except to the extent that the party to receive notice was actually and materially prejudiced by such failure. The party to be defended and indemnified may, at its option and expense, participate, hire its own counsel and appear in any litigation proceeding with the party that is obligated to defend and indemnify; provided, however, that such party does not admit liability, take any position adverse or contrary to the party that is obligated to defend and indemnify, allows the party obligated to defend and indemnify sole control over the defense and settlement of the Third-Party Claim and makes no attempt to settle any Third-Party Claim without the express written consent of the party that has assumed the defense and indemnification obligation. Except as stated below, a party may not settle any Third-Party Claim without the approval of the party to be defended and indemnified, which approval shall not be unreasonably withheld or delayed.

17. Disclaimer of Warranties and Limitation of Liability

- a. *Disclaimer of Warranties.* AFTE AND CITY HEREBY SPECIFICALLY DISCLAIMS ALL WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, THE WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE AND NON-INFRINGEMENT OF THIRD-PARTY RIGHTS AND ANY WARRANTIES THAT MAY ARISE FROM THE COURSE OF PERFORMANCE, COURSE OF DEALING OR USAGE OF TRADE, WHETHER RELATED TO THE STURGIS MARKS OR AFTE MARKS AS THE CASE MAY BE OR OTHERWISE.
- b. *Limitation of Liability.* IN NO EVENT SHALL THE AFTE INDEMNIFIED PARTIES, CITY OR ANY OF THEIR RESPECTIVE OFFICIALS, MANAGERS, REPRESENTATIVES, EMPLOYEES OR AGENTS BE LIABLE FOR ANY INDIRECT, EXEMPLARY, SPECIAL, INCIDENTAL, PUNITIVE OR CONSEQUENTIAL DAMAGES OR DAMAGES FOR LOST REVENUES, PROFITS, BUSINESS INTERRUPTION, ECONOMIC LOSS, LOSS OF GOODWILL, LOSS OR INTERRUPTION OF SPONSORSHIP, DAMAGE TO PROPERTY OR PERSONAL INJURY SUFFERED BY CITY, AFTE, THEIR RESPECTIVE OFFICERS, DIRECTORS, EMPLOYEES, AGENTS OR CONTRACTORS OR OTHERWISE, ARISING FROM OR RELATING TO THIS CO-HOST AGREEMENT, EVEN IF DAMAGING PARTY IS EXPRESSLY ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. AS A GOVERNMENTAL ENTITY, CITY ALSO DOES NOT ASSUME ANY LIABILITY FOR ANY ACTS, ERRORS OR OMISSIONS THAT CITY CANNOT BE HELD LIABLE FOR UNDER ANY APPLICABLE LAW, REGULATION, ORDINANCE, COURT OR AGENCY ORDER.

18. Confidential Information

- a. *Definition.* "Confidential Information" means all information disclosed by one party ("Discloser") to the other party ("Recipient") that has been clearly designated and prominently marked by Discloser in writing as being confidential and proprietary to Discloser prior to the time of disclosure to Recipient. Confidential Information may include a party's trade secrets, sponsor lists, customer lists, business plans, technical data, product ideas, contract and financial information. The amount of Sponsorship Fees to be paid to CITY under this Agreement including a copy of this Agreement shall also be deemed to be the Confidential Information of CITY. Confidential Information shall not include information or material that (1) is now, or hereafter becomes, through no act or failure to act on the part of Recipient, generally known to the public or publicly available; (2) is or was known by the Recipient at or before such time such information or material was received from Discloser, as evidenced by the Recipient's tangible (including written or electronic records); (3) is furnished to the Recipient by a third party that is not under an obligation of confidentiality to the Discloser with respect to such information or material; or (4) is independently developed by the Recipient without any breach of this Agreement, as evidenced by the Recipient's contemporaneous tangible (including written or electronic) records.
- b. *Restrictions on Use.* During the term of this Agreement and for five (5) years thereafter, each party shall take reasonable measures to protect the confidentiality of the other party's Confidential Information in a manner that is at least as protective as the measures it uses to maintain the confidentiality of its own Confidential Information of similar importance. Recipient shall hold Confidential Information in strict confidence and shall not disclose, copy, reproduce, sell, assign, license, market, transfer or otherwise dispose of such information, or give or disclose such information to third parties, or use such information for any purposes whatsoever other than as necessary in order to fulfill its obligations or exercise its rights under this Agreement. Notwithstanding the foregoing, Recipient may disclose the other party's Confidential Information (1) to employees, officials and contractors that have a need to know such information, provided that Recipient has received agreements and assurances from such employees, officials and contractors that they will keep such information confidential consistent with the confidentiality and nondisclosure provisions of this Agreement, and (2) to the extent Recipient is legally required or compelled to disclose such Confidential Information, provided Recipient shall give notice of such compelled disclosure to the other party. AFTE further acknowledges that disclosure of Confidential Information is subject to the Public Records provisions of the SDCL ch. 1-27 and applicable City ordinances.

19. Notices.

- a. All written notices, offers, requests, demands, and other communications pursuant to this Co-Host Agreement shall be given by personal delivery, by prepaid first class registered or certified mail properly addressed with appropriate postage paid thereon, or facsimile transmission, and shall be deemed to be duly given and received on the date of delivery if delivered personally or via a secured carrier (i.e., Federal Express or United Parcel Service), the third day after postmarked in the United States Mail if mailed, or upon confirmed receipt of electronic transmission. Notices shall be sent to the Parties at the addresses on the first page of this Co-Host Agreement or to such other address as any party may have furnished to the others in writing in accordance herewith, except that notices of change of address shall only be effective upon receipt.

20. Default and Right to Cure.

- a. In the event of any default or breach of any obligations by any party hereunder, the other party may terminate this Agreement by giving written notice to the defaulting or breaching party of the alleged default or breach. The defaulting or breaching party shall have thirty (30) days following such written notice to cure such breach.
- b. If the noticed default or breach is timely cured, then performance shall continue under this Agreement as if no default or breach had occurred. If there is no timely cure, then the party giving such notice may pursue any and all legal remedies available for the default or breach, including termination in the event the default or breach is material. If this Agreement is terminated by AFTE due to a material default or breach by CITY, then AFTE shall be entitled to recover all amount of the Shared Expenses that have accrued but not been paid, all amounts of the Shared Expenses remaining to be paid, plus interests, costs and attorneys' fees.
- c. The failure to assert any default or breach shall not constitute the waiver of or acquiescence in any other default or breach hereunder.
- d. In any action to enforce the terms of this Agreement, the prevailing party shall be entitled to an award of reasonable attorneys' fees and litigation expenses in addition to other relief.

21. Remedies.

- a. Each of the Parties and any person granted rights hereunder whether such person is a signatory hereto is entitled to enforce its rights under this Agreement specifically to recover damages and costs for any breach of any provision of this Agreement and to exercise all other rights existing in its favor. The Parties agree and acknowledge that money damages may not be an adequate remedy for any breach of the provisions of this Agreement and that each Party may in its sole discretion apply to any court of law or equity of competent jurisdiction for specific performance, injunctive relief and/or

other appropriate equitable relief (without posting any bond or deposit) in order to enforce or prevent any violations of the provisions of this Agreement.

22. Miscellaneous.

- a. The Parties’ rights and obligations under this Co-Host Agreement are not transferable or assignable. This Co-Host Agreement and the Sanction Agreement represents the entire understanding between the Parties with respect to the subject matter contained herein and full performance of such agreements shall serve to supersede all other negotiations, agreements, representations, and covenants (oral or written) and any other agreement executed by the Parties in connection herewith.
- b. This Co-Host Agreement may not be modified except by a written instrument signed by the Parties. Failure by a party to enforce any of their respective rights under this Co-Host Agreement shall not be construed as waiver of such rights. Any waiver, including waiver of default, in any one instance shall not constitute a continuing waiver or a waiver in any other instance.
- c. This Co-Host Agreement shall be governed by and construed in accordance with the laws of the State of South Dakota. Each party submits to the jurisdiction of the state or and federal courts in and for Meade County, State of South Dakota for the adjudication of any suit, action or proceeding brought by a party hereunder or in connection herewith.
- d. This Co-Host Agreement (including the Exhibits attached hereto, which are incorporated by reference) constitutes the entire agreement of the Parties with respect to the subject matter of this Co-Host Agreement and may be amended or modified only in a writing and signed by the duly authorized representatives of both parties. Pursuant to SDCL § 9-14-17, any such amendment or modification must be signed by all parties, attached to and designated an exhibit to this Co-Host Agreement and kept on file at the City Finance Office.
- e. This Co-Host Agreement has been negotiated by the Parties and shall be interpreted fairly in accordance with its terms and without any construction in favor of against either party.
- f. This Co-Host Agreement may be executed in two (2) or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. The Parties hereby agree that execution of this Co-Host Agreement via facsimile shall be deemed an original and shall be legally binding only upon the execution by both The Parties.
- g. Nothing in this Co-Host Agreement is intended by the Parties hereto to create a fiduciary relationship between them, nor any joint venture or other similar business arrangement. It is understood and agreed that the Parties are independent contractors and are in no way authorized to make any contract, warranty, or representation or to create any obligation on behalf of the other party.
- h. In the event that any term or condition of this Co-Host Agreement shall for any reason be held invalid, illegal, or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other term or provision and this Co-Host Agreement shall be interpreted and construed as if such term or provision, to the extent the same shall have been held invalid, illegal or unenforceable, had never been contained herein. The rights and obligations in this Co-Host Agreement shall bind, and inure to the benefit of, the Parties and their respective successors and permitted assigns.

IN WITNESS WHEREOF, a duly authorized representative of each party has executed this Co-Host Agreement on the date set forth below.

Executed this _____ day of _____, _____ (“Effective Date”).

CITY

AFTE

By: _____

By: _____

Print Name: _____

Print Name: _____

Title: _____

Title: _____

Date: _____

Date: _____

EXHIBIT A

Co-Host Proposal

	Original Host Agreement:	Co-Host Agreement:
Deal Structure:	Host Agreement	Co-Host Agreement
Event Host:	City of Sturgis	AFT Events & City of Sturgis
Track Length (estimated):	0.5-mi	0.25-mi
2024 Expense (estimated):	\$653,462	\$574,755 (w/ target of under \$500k total expense)
Contract Term:	5 Years	2 Years + Option to Renew for 3 Additional Years
Expense Liability:	City of Sturgis	AFT Events & City of Sturgis*
Income Opportunity:	City of Sturgis	AFT Events & City of Sturgis**

** After 2024 expenses have been covered by 2024 revenue, AFTE and CITY will share the remaining net income equally.

* AFTE will pay the up-front expenses for the Event.

* If 2024 expenses exceed 2024 revenue, the deficit will be paid out of 2025 revenue before profits are shared.

EXHIBIT B

AFTE Marks

Event Logo



Sanctioning Body and Co-Host Logos

Official names of Sanctioning Body and Co-Host to be used in all instances:

Sanctioning Body Name: AMA Pro Racing

i. **Co-Host Name:** AFT Events

Sanction Body Logo is defined as:

ii. **Co-Host Logo** is defined as:



Series and Class Logos

Official names of the Series and Classes to be used in all instances:

iii. **Series Name:** Progressive American Flat Track

iv. **“Series Logo”** is defined as:



v. **Classes:**

a. **Class Name:** Mission SuperTwins

b. **Class Name:** Parts Unlimited AFT Singles presented by KICKER

c. **“Class Logos”** are defined as:



EXHIBIT C

Sturgis Marks

THE RIDE. THE ROAR. THE RALLY., Registration No. 6867322, International Class 035 and 041

THE RIDE. THE ROAR. *THE RALLY.*

“S” DESIGN Logo, Registration No. 6867323, International Class 035 and 041



Seal Lockup” Logo, Registration No. 7116020, International Class 035 and 041



Brand Lockup” Logo, Registration No. 7116021, International Class 035 and 041



City of Sturgis 84th, 85th, 86th, 87th, and 88th Rally Logos, as adopted by the City of Sturgis

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