

## **CITY OF STURGIS HOST AGREEMENT**

**1. Parties:** The parties to this City of Sturgis Host Agreement (“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”.

**2. Purpose:** The purpose of this Agreement is to define the terms and conditions under which AFTE agrees to stage and promote, and the City agrees to host the Spirit of Sturgis TT street race in Sturgis, SD (“Event”). In connection with the foregoing, AFTE represents and warrants the following to City:

- a) Daytona Motorsports Group d/b/a AMA Pro Racing (“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”). Furthermore, the Sanction Agreement will cause AMAP to fulfill any obligations in this Agreement which may fall under AMAP’s responsibility, including without limitation licensing, sponsorship, marketing and promotion.
- b) Outerkind, LLC (“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”).

### **3. Definitions:**

- a) “AFTE Marks” means all names, seals, trademarks, service marks, logos, and/or symbols of the Series and AFTE as set forth on Exhibit B.
- b) “Ancillary Events” or “Activities” includes private or public racecar practices, other motors sports events, and thrill shows.
- c) “Broadcast Rights” means 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).
- d) “Competition” means the portion of the Event during which the actual racing competition and all competitive activity related thereto occurs, including, registration, inspections, time trials, practice runs, actual race(s), post-race inspections, on the dates set forth in the Sanction Agreement.
- e) “Event” means the Race set plus the 48 hours before the start and 24 hours after completion of the race.

- f) "Event Budget" means the sum paid by the City to AFTE for AFTE's services, including a sanction from AMAP. The 2024 Event Budget is set forth on Exhibit A, including the timing of such payments due by the City. For the years 2025 through 2028, the Event Budget shall be determined by the Parties working in good faith based on substantially similar performance and services as previous years.
- g) "Force Majeure Event" means any event that causes performance under this Agreement impossible, including 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 other than the City, fires, floods, epidemics, pandemics, war, acts of terrorism, embargo, riots or national company strikes or lockouts.
- h) "Rule Book" means the Membership Guide and Rules published by AMAP for the Series and any amendments and other special rules published by AMAP for the Event.
- i) "Sturgis marks" means all names, seals, trademarks, service marks, logos, and symbols of the City of Sturgis Motorcycle Rally, the City, its subsidiaries, or its affiliates as set forth on Exhibit C.

**4. Term.** The Term of this Agreement shall begin on the Effective Date and shall run through the conclusion of the Event in 2028.

**5. Conduct and Control over Competition.** The Parties acknowledge and agree that the separate Sanction Agreement and the AMAP Rule Book control the Event Competition.

**6. Compliance with Laws.** All Parties must 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).

**7. Consideration.** In consideration of their respective obligations under this Agreement the Parties agree to the following:

- a) **Event Budget.** The City agrees to pay AFTE the amount set forth in the Event Budget each year of the Term.
- b) **Event Revenue.** The City shall retain all revenue it generates for the Event (if any) including ticket sales, hospitality, parking, and camping.

**c) Sponsorship.**

1. AFTE or AMAP may retain all Series sponsorship payables.
2. AFTE or AMAP may retain any increase in Series sponsorship payables.
3. The City must receive a 20% commission on Series Sponsorship payables to AFTE or AMAP because of the Spirit of Sturgis TT. For example, in the case where City facilitates an introduction between AMAP and an existing City sponsor that results in the formation of a new Series sponsorship.
4. The City shall retain all existing sponsorship payables for the City of Sturgis Motorcycle Rally.
5. The City shall retain any increase in existing sponsorship payables for the City of Sturgis Motorcycle Rally.
6. AFTE must receive a 20% commission on Sponsorship payables to the City because of the Spirit of Sturgis TT. For example, in the case where AFTE, AMAP or Agency:
  - i. Secure a title sponsor for the Spirit of Sturgis TT.
  - ii. Secure activation contracts for the duration of the Rally from OEMs which were not previously activating or participating.
  - iii. Facilitates an introduction between the City and an existing AMAP sponsor that results in the formation of a new or expanded sponsorship for the City of Sturgis Motorcycle Rally.
7. The City shall retain 100% of new Sponsorship payables to the City that are not related to the Spirit of Sturgis TT.
8. The Parties contemplate a new Sponsorship Agreement for each new City sponsor retained because of the Spirit of Sturgis TT.

**8. Payment of Consideration:** The Parties acknowledge that the City intends to pay its financial obligations under this Agreement exclusively from money the City receives through Sponsorship, less commissions due AMAP's sponsorship sales representative. Accordingly, the Parties agree that the Consideration for this Agreement will be paid according to the terms of Exhibit A.

**9. Event Schedule and Facility Access Requirements: Event Setup and Teardown.**

1. *Access for Preparation.* AFTE and City agree to grant access to the designated street race area for 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. AMAP must coordinate with AFTE and City local authorities to ensure

minimal disruption to the public and adherence to all applicable laws and regulations.

2. *Full Access for Event Setup.* From 2:00 AM on the day of the event, AFTE and City agree to grant unrestricted access to the designated street race area for 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.
3. *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 AMAP 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 the Promoter and the City.
4. *Coordination with the City.* AFTE commits, and agrees to cause AMAP to commit, to ongoing coordination with the 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.

## **10. Postponement or Cancellation; Ticket Refund Policy.**

- a) *Postponement or Cancellation of Events.* The City, AFTE, and AMAP must consult regarding postponement of the Event, provided however the Sanction Agreement determines any cancellation or postponement. The Parties must agree on the selection of the postponed date if applicable.
- b) *Ticket Refund.* If the Event is cancelled or postponed and cannot be rescheduled in accordance with the terms hereof, the City shall be responsible for any ticket refunds.

## **11. City Event Obligations.**

The City must perform or provide the following to the levels required by the Sanction Agreement or applicable law:

- a) Project briefing & Established Goals
- b) Creative feedback and approvals
- c) Stakeholder navigation and support

- d) Event Budget resourcing
- e) Insights and information sharing
- f) Access to existing media channel
- g) Utilize City resources where reasonably possible
- h) Special Events License (SEL), City agrees to provide if necessary.

## **12.AFTE Event Obligations.**

AFTE shall perform or provide the following to the levels required by the Sanction Agreement or applicable law. AFTE will engage AMAP and Agency to assist in performing such services.

- a) Timeline navigation and accountability
- b) Creative development and Branding
- c) Content creation
- d) Experience and aesthetic production design
- e) Resource Coordination
- f) Sponsorship Negotiations Support
- g) Technology and tool(s) integration
- h) Provision of course barriers
- i) Course build
- j) Race and event operations
- k) Sanctioning Body (AMAP)
- l) Onsite Safety Plan
- m) Rider Selection (AMAP)
- n) Media Production (AMAP)
- o) Technical, power and system needs
- p) Budget management and accountability
- q) Secure Event sanction agreement
- r) General liability insurance policy for Event
- s) Negotiate real estate leases needed to develop track.
- t) AFTE shall provide all necessary retaining walls and fencing for the event. The retaining walls and fencing must be installed and removed by AFTE in closed consultation with the City.

## **13.Event Sponsors and Merchandise.**

- a) *Event Logo.* The City, AMAP, and AFTE must agree on the Event logo. The City, AMAP, and AFTE shall jointly own all right, title and interest in the Event logo (provided however that any of a Party's individual 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. The parties consent to the

registration of the Event logo with the United States Patent and Trademark Office.

- a) AFTE must be provided with a suitable space for display and sale of series merchandise. The Parties will work together in good faith to create, license and sell Event merchandise.
- b) Net revenue from the sale of event merchandise must be divided equally between the City, AMAP, and AFTE.

#### **14. Fitness of Facility.**

The City will be responsible for all repair to the facility and track arising out of the Event except those damages directly caused by the negligence of AFTE. A tentative track schematic is attached to this Agreement as Exhibit D.

#### **15. Advertising; Use of Marks.**

- a) The Parties acknowledge that AFTE is primarily responsible for the promotion and advertising of the Event. No Party will make any misrepresentations of fact in connection with the promotion and advertising of the Event. If such misrepresentation is made, the Party making the misrepresentation agrees to promptly correct it.
  - b) The City licenses AFTE 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 the City, which shall not be unreasonably withheld. This limited license does not authorize AFTE 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 Agreement.
- a) AFTE licenses the 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 and AMAP, which shall not be unreasonably withheld. This limited license does not authorize the City to use such Marks in its corporate business or firm name and title or use or permit the use of such Marks other than in accordance with the terms and conditions of this Agreement.

## **16. Media Rights.**

The Parties agree 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.

## **17. Indemnification and Insurance.**

- 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.

- d) AFTE must add the City as an additional insured to any Event Insurance that AFTE is required to obtain and maintain under its Sanction Agreement with AMAP for this Event.

## **18. DISCLAIMER OF WARRANTIES AND LIMITATION OF LIABILITY**

- a) *Disclaimer of Warranties.* AFTE AND THE 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 CITY MARKS OR AFTE MARKS AS THE CASE MAY BE OR OTHERWISE.
- b) *Limitation of Liability.* IN NO EVENT SHALL THE AFTE INDEMNIFIED PARTIES, THE 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 THE CITY, AFTE, THEIR RESPECTIVE OFFICERS, DIRECTORS, EMPLOYEES, AGENTS OR CONTRACTORS OR OTHERWISE, ARISING FROM OR RELATING TO THIS AGREEMENT, EVEN IF DAMAGING PARTY IS EXPRESSLY



ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. AS A GOVERNMENTAL ENTITY, THE 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.

## **19. 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 the City under this Agreement including a copy of this Agreement shall also be deemed to be the Confidential Information of the 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.

## **20. Notices.**

All written notices, offers, requests, demands, and other communications pursuant to this 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 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.

## **21. Remedies.**

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 Agreement are not transferable or assignable. This Agreement represents the entire understanding between the parties with respect to the subject matter contained herein and supersedes all other negotiations,

agreements, representations, and covenants (oral or written) and any other agreement executed by the parties in connection herewith.

- b) This 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 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 Agreement is to be construed in accordance with and governed by the laws of the State of South Dakota without giving effect to any choice of law rules that would cause the application of the laws of any jurisdiction other than the internal laws of the State of South Dakota to the rights and duties of the parties. Any legal disputes arising under this Agreement shall be exclusively filed in the Circuit Court for the State of South Dakota, Fourth Judicial Circuit, Meade County, State of South Dakota or the appropriate United States District Court for the District of South Dakota, and the Parties irrevocably agree to the exclusive personal jurisdiction of such courts.
- d) This 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 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 Agreement and kept on file at the City Finance Office.
- e) This Agreement supersedes all previous, contemporaneous and inconsistent agreements, negotiations, representations and promises between the parties, written or oral, regarding the subject matter of this Agreement. There are no oral or written collateral representations, agreements or understandings except as provided herein.
- f) This 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.
- g) This Agreement may be executed in two (2) or more counterparts, each of which shall be deemed an original, but all of which together constitute one and the same instrument. The parties

agree that execution of this Agreement via facsimile shall be deemed an original and shall be legally binding only upon the execution by the Parties.

- h) Nothing in this 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 City and AFTE 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.
- i) In the event that any term or condition of this 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 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 Agreement shall bind, and inure to the benefit of, the parties and their respective successors and permitted assigns.
- j) This Agreement may be terminated at any time upon mutual written agreement of the Parties, for example if AFTE does not secure a track location.

Executed this 22 day of February, 2024 ("Effective Date").

AFTE:



By: Gene Crouch, Chief Executive Officer

City:



By: Beka Zerbst, Council President

ATTEST:



By: Adam Hosch, Finance Officer

(CITY SEAL)



## **EXHIBIT A**

### **Annual Event Budget**

1. AFTE shall provide all necessary retaining walls and fencing for the event. The retaining walls and fencing must be installed and removed by AFTE in close consultation with the City.
2. The annual Event Budget for 2024 shall be \$653,962. For the years 2025 through 2028, the Event Budget shall be determined by the Parties working in good faith based on substantially similar performance and services as previous years.

### **Payments Due to AFTE**

1. Event revenue less commissions due AMAP's sales representative must first be applied to the City's obligation to AFTE each year until the City's financial obligation is satisfied.
2. The remaining balance of the Event Budget for 2024 must be paid in full by January 31, 2025. For years 2025 through 2028, the remaining balance of the annual Event Budget must be paid in full by the day of the Event.

## EXHIBIT B

### AFTE Marks

#### **1. NAMES**

- a. “Series Name” is defined as:
  - i. Progressive American Flat Track
- b. “Class Names” are defined as:
  - i. Mission® AFT SuperTwins
  - ii. Parts Unlimited AFT Singles presented by KICKER
  - iii. AFT AdventureTrackers

#### **2. LOGOS**

- a. “Series Logos” are defined as:



- b. “Class Logos” are defined as:
  - i. Mission® AFT SuperTwins:



- ii. Parts Unlimited AFT Singles presented by KICKER:



- iii. AFT AdventureTrackers:

TBA

**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 84<sup>th</sup>, 85<sup>th</sup>, 86<sup>th</sup>, 87<sup>th</sup>, and 88<sup>th</sup> Rally Logos, as adopted by the City of Sturgis

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**EXHIBIT D**

