

Here are suggested edits for the Host Agreement. Please tell me when I am authorized to send the suggested revisions to the parties. Based on my conversations with them I understand that we have an agreement in principle; however, they want to see the document before committing to the revisions.

For paragraphs 8 and 22 my suggestions are in **bold**. I also suggest that Exhibit A, Annual Event Budget, be replaced in its entirety, and part of Exhibit A be moved to AFTE Obligations in paragraph 12. I have added Exhibit D, a track schematic to the agreement. Finally, I have answered questions from Council. A redlined version of the Host Agreement in PDF format showing the revisions in context of the entire Agreement is attached.

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.

22. 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**.

Exhibit A currently states:

EXHIBIT A

Annual Event Budget

Option A

1. AFTE shall provide all necessary retaining walls and fencing annually on a rental basis. The annual Event Budget for Option A for each year shall be \$653,962. The retaining walls and fencing shall be installed and removed by AFTE in close consultation with the City.
2. AFTE shall own all the retaining walls and fencing purchased pursuant to this Agreement and may use them for any such purposes in addition to the obligations set forth herein.

Option B

1. AFTE shall provide all necessary retaining walls and fencing on a Lease/Purchase basis. The Event Budget for Option B for 2024 is \$846,462 and the annual budget for each remaining year shall be \$489,962. AFTE agrees to provide all necessary retaining walls and fencing pursuant to the terms of a separate Lease/Purchase Agreement. The Lease/Purchase Agreement must not contain a prepayment penalty.

The retaining walls and fencing shall be installed and removed by AFTE in close consultation with the City.

2. AFTE may use the retaining walls and fencing during the term of this Agreement.

Payments Due to AFTE

1. Event revenue less commissions due individual AFTE sales personnel must first be applied to the City's obligation to AFTE 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 the years 2025 through 2028, the remaining balance of the annual Event Budget must be paid in full by the day of the Event.

Exhibit A has been substantially revised to state:

EXHIBIT A

Annual Event Budget

The annual Event Budget for each year 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 the years 2025 through 2028, the remaining balance of the annual Event Budget must be paid in full by the first day of the Event.

Additionally, the following provision from the current Exhibit A has been moved to Section 12. AFTE Event Obligations as subparagraph 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 close consultation with the City.

Council questions:

What is the City's obligation if the contract is terminated?

Revised subparagraph 22 h) addresses this question. That subparagraph states:

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.

Under this provision the onus is on the Parties to mutually agree as to what must be repaid if the contract is terminated. That discussion can only take place in a meaningful way when one knows at what point the Agreement is terminated. For example, if the Agreement were terminated in June or July 2024 the parties' relative positions would be much different than if the agreement were terminated in September 2024. The difference would be because of the timing of cash flow and expenses. Expenses would accrue until the race was run in August, but the revenue to discharge those expenses could accumulate until the end of 2025. While AFTE is not writing the City a check, it is fair to say that AFTA is providing the City with interest-free financing.

I recommend a revision to the City's Sponsorship Agreement to include a "net 30 provision." Such a provision would require the Sponsor to pay its obligations within 30 days of when the Sponsorship Agreement is signed. This would be significantly different from the current situation where the City often does not receive payment until after the end of the Rally. Adding a net 30 provision to the agreement would require the City to be diligent in collecting the fees, and the City should not allow any onsite activation until the sponsorship fee has been paid.

What is the Sponsorship revenue analysis?

The City, Outerkind, AFTE do not have an event for which they can sell sponsorships. Nevertheless, AMA Pro Racing has agreed to provide a projection of where they are currently with potential sponsorships. As of February 12, 2024, tentative Sponsorship agreements have been reached with an event sponsor and a presenting sponsor. Also, four of an anticipated eight original equipment motorcycle manufacturers are tentatively committed to activations and demonstrator rides in Sturgis. A heavy equipment sponsor is also tentatively committed to an activation and an in-kind sponsorship.

Finally, AMA Pro Racing has a commitment for one hour of live airtime on Fox, not Fox Sports 1, but the national Fox network. I am told that this is the first AMA Racing event that will have live airtime on Fox. The live airtime is significant because it enhances the value of all the other sponsorships who

display ads on course barriers and to a lesser degree on other structures around the track that will get airtime during the event.

The total of tentatively committed sponsorships is over \$400,000, all of which is as a result of the Sturgis event, and all of which will be applied to the cost of the event, before it is allocated to the parties based on the revenue sharing portion of the Host Agreement.

What about the retaining walls and fencing? The revisions to the Host Agreement place the obligation to provide retaining walls and fencing on AFTE. The City will not buy or lease the retaining walls or fencing. Any question about whether state bid laws apply to the Host Agreement have been removed.

Can we get an Attorney General's opinion? The answer is No. SDCL § 1-11-1(6) limits the persons who can ask for an Attorney General's opinion to "all questions of law submitted to him by the Legislature or either branch thereof, or by the Governor, auditor, or treasurer."

Who pays Øuterkind? I talked to Gene Crouch, Ben Keane, and Ben Odom about who is responsible for commission payments to Øuterkind. AFTE is responsible for sales commission payments to Øuterkind. The only sales commissions payments that will be made before sponsorship revenue is applied to the City's financial obligations under the Host Agreement are those paid to Cameron Grey at AMA Pro Racing.

What about the track? The track layout has not been changed and I have suggested an additional language to the Host Agreement to include a tentative track map as Exhibit D. I have discussed the matter with Gene and Richie of AMA Pro Racing and explained what the City believes is a need to address the lease issue sooner rather than later and in person rather. AMAM Pro Racing agreed with this suggestion. I understand that representatives of AMA Pro Racing and AFTE will be in Sturgis to negotiate any necessary leases with surrounding landowners within the week.

What about liability insurance? Under the terms of the Sanction Agreement, AFTE as the Promotor, must "obtain and maintain motorsports liability insurance that is acceptable to AMAP for the Event from an insurance company that is acceptable to AMAP for (i) spectator injury and property damage and (ii) participant legal, paddock, track, and premises liability, including liability for medical professionals working on behalf of the Event, with a minimum combined single limit equal to but not less than One Million Dollars (\$1,000,000) per occurrence and Five Million Dollars (\$5,000,000) in aggregate." AMAP's initial draft cast the City as a co-Promotor, under the revised terms the City is a "Host." I have included a provision in the Host Agreement requiring AFTE to name the City as an additional insured.