

LEASE AGREEMENT
BETWEEN

**The City of Kyle, as Lessee
And
Cowboy Motorsports of Austin, L.P. dba Cowboy Harley Davidson of Austin, as Lessor**

THIS LEASE AGREEMENT (the Lease), is by and between Cowboy Motorsports of Austin, L/P/ dba Cowboy Harley-Davidson of Austin as Lessor, a corporation duly organized and existing under the laws of the State of Texas, whose address is 10917 S. Ih-35 Austin, Tx 78747 and the City of Kyle, a political subdivision of the State of Texas, as Lessee (**the City**), whose address is 100 W. Center Street, Kyle Tx 78640.

WITNESSETH:

WHEREAS, the City is authorized by law to acquire such items of personal property as are needed to carry out its governmental functions, and to acquire such personal property by entering into a lease; and

WHEREAS, the City has determined that it is necessary for it to acquire under this Lease three (3) solo, certified, traffic law enforcement motorcycles; and

WHEREAS, Lessor is willing to acquire and lease such Property to the City pursuant to this Lease; the parties hereto recite and agree as follows:

**ARTICLE I
DEFINITIONS AND EXHIBITS**

Section 1.1. Definitions. The terms defined in this Section, shall for all purposes of this Lease, have the following meanings:

Business Day: Each day on which the City is open for business.

Contractor: Each manufacturer or vendor from whom the City has ordered or contracted for the manufacture, delivery, construction, and/or installation of the Property.

Fiscal Year: The twelve (12) month fiscal period of the City which commences on October 1 in every year and ends on the following September 30.

Net Proceeds: Any insurance proceeds or condemnation award, paid with respect to any Property, remaining after payment therefrom of all expenses incurred in the collection thereof.

Non-appropriation: The failure of the City Council of the City to appropriate money for any Fiscal Year sufficient for the continued performance of this Lease by the City with respect to any Property Group, which may be evidenced by a budget ordinance or resolution which does not appropriate any moneys to pay the Rental Payments due under this Lease with respect to such Property Group for a designated Fiscal Year.

Payment Date: The date upon which any Rental Payment is due and payable as provided in **Exhibit "B"**

as now or hereafter constituted.

Property: Individually or collectively as the context requires, the personal property designated by the City, which shall be described in the attached **Exhibit "A"** as now or hereafter constituted.

Property Group: The Property listed on any addendum of Lease **Exhibit "A,"** comprising a single purchase of a group of items, equipment, construction of building, or associated products.

Rental Payment: The payment due from the City to Lessor on each Payment Date as shown on **Exhibit "B."**

Specifications: The bid specifications and contract documents which the City has executed.

Term of this Lease or Lease Term: The period during which this Lease is in effect as specified in **Section 4.1.**

Section 1.2. Exhibits. The following Exhibits are attached to and by reference made a part of this Lease:

Exhibit "A": Attached addendum comprising of a schedule describing each Property Group being leased by the City pursuant to this Lease, including serial numbers thereof which shall be inserted when available, each schedule comprising a number of pages numbered consecutively, each addendum containing the description of all Property comprising a Property Group.

Exhibit "B": A schedule to be completed by Lessor as provided herein and furnished to the City as provided in **Section 3.2,** comprising pages to be consecutively numbered, and each page to contain the date and amount of each Rental Payment coming due during the Lease Term with respect to the Property Group listed on the corresponding addendum of **Exhibit "A."**

ARTICLE II

REPRESENTATION, COVENANTS, AND WARRANTIES

Section 2.1. Representations, Covenants, and Warranties of the City. The City represents, covenants, and warrants as follows:

- (a) The City is a municipal corporation and political subdivision of Texas, duly organized and existing under the Constitution and laws of the State.
- (b) The City is authorized under the Constitution laws of Texas and City Charter to enter into this Lease and the transactions contemplated hereby, and to perform all of its obligations hereunder.
- (c) The City will not pledge, mortgage, or assign this Lease, or its duties and obligations hereunder to any other person, firm, or corporation except as provided under the terms of this Lease.
- (d) The City will use the Property during the Lease Term only to perform essential governmental functions.

Section 2.2. Representation, Covenants and Warranties of Lessor.

Lessor represents, covenants, and warrants as follows:

- (a) Lessor is a limited partnership duly organized, existing and in good standing under and by virtue of the laws of the State of Texas, or is duly qualified and in good standing as a foreign corporation authorized to transact business in the State of Texas; has power to enter into this Lease, is possessed of full power to own and hold personal property, and to lease the same; engages in the leasing of personal

property such as the Property in the ordinary course of business; and has duly authorized the execution and delivery of this Lease and all addenda thereto.

ARTICLE III LEASE OF PROPERTY

Section 3.1. Lease. Lessor hereby leases all Property made subject to this Lease to the City, and the City hereby leases such Property from Lessor, upon the terms and conditions set forth in this Lease.

Section 3.2. Possession and Enjoyment. Lessor hereby covenants to provide the City during the Term of this Lease with the quiet use and enjoyment of the Property, and the City shall during the Term of this Lease peaceably and quietly have and hold and enjoy the Property, without suit, trouble or hindrance from Lessor, except as expressly set forth in this Lease.

Section 3.3. Lessor's Access to Property. The City agrees that Lessor shall have the right at all reasonable times to examine and inspect the Property. The City further agrees that Lessor shall have such rights of access to the Property as may be reasonably necessary to cause the proper maintenance of the Property in the event of failure by the City to perform its obligations hereunder.

ARTICLE IV TERM OF LEASE

Section 4.1. Lease Term. This Lease shall be in effect for a 12 month Term commencing upon its date of execution and ending as provided in **Section 4.4.**

Section 4.2. Termination by the City. Lessor agrees and understands that City is a governmental entity and it has projected costs for this Lease/Purchase and Lessee expects to pay all obligations of this Agreement from projected revenue sources, but all obligations of Lessee are subject to annual appropriation by the City Council in future years. In the sole event of Non-appropriation relating to any particular Property Group or specific item within a Property Group, the City shall have the right to terminate this Lease with respect to such Property Group or specific item, at the end of any Fiscal Year of the City. The City may effect such termination by giving Lessor a written notice of termination with respect to such Property Group and by paying to Lessor any Rental Payments and other amounts with respect to such Property Group which are due and have not been paid at or before the end of its then current Fiscal Year. The City shall endeavor to give notice of such termination not less than thirty (30) days prior to the end of such Fiscal Year, and shall notify Lessor of any anticipated termination. In the event of termination of this Lease, the City shall deliver possession of such Property Group to Lessor in accordance with **Section 12.3**, and shall convey to Lessor or release its interest in such Property Group within ten (10) days after termination of this Lease with respect to such Property Group.

Section 4.3. Effect of Termination. Upon termination of this Lease with respect to any Property Group, the City shall not be responsible for the payment of any additional Rental Payments coming due, but if the City has not delivered possession and conveyed to Lessor or released its interest in the Property Group within ten (10) days after the date of termination, the termination shall nevertheless be effective, but the City shall be responsible for the payment of the Rental Payments thereafter coming due under the page of **Exhibit "B"** attributable to the number of days after such ten (10) day period during which the City fails to take such action.

Section 4.4. Termination of Lease Term. The Term of this Lease will terminate upon the occurrence of the first of the following events:

(a) the termination thereof by the City with respect to all Property Groups in accordance with **Section 4.2**;

(b) a default by the City with respect to all Property Groups and Lessor's election to terminate this Lease with respect to all Property Groups;

(c) the payment by the City of all Rental Payments and all other amounts authorized or required to be paid by the City hereunder with respect to all Property Groups.

ARTICLE V

RENTAL PAYMENTS

Section 5.1. Rental Payments. The City agrees to pay Rental Payments during the Term of this Lease, in the amounts and on the dates specified in **Exhibit "B."** All Rental Payments shall be paid to Lessor at its offices at the address specified in the first paragraph of this Lease, or to such other person(s) or entity to which Lessor has assigned such Rental Payments as specified in **Article XI**, at such place as such assignee may designate by written notice to the City. The City shall pay the Rental Payments exclusively from moneys legally available therefor, in lawful money of the United States of America.

Section 5.2. Current Expense. The obligations of the City under this Lease, including its obligation to pay the Rental Payments due with respect to the Property, in any Fiscal Year for which this Lease is in effect, shall constitute a current expense of the City for such Fiscal Year and shall not constitute an indebtedness of the City within the meaning of the constitution and laws of Texas. Nothing herein shall constitute a pledge by the City of any taxes or other moneys, other than moneys lawfully appropriated from time to time by or for the benefit of the City in the annual budget of the City and the proceeds or Net Proceeds of the Property, to the payment of any Rental Payment or other amount coming due hereunder.

Section 5.3. Rental Payments to be Unconditional. Except as provided in **Section 4.2**, the obligation of the City to make Rental Payments or any other payments required hereunder shall be absolute and unconditional in all events. Notwithstanding any dispute between the City and Lessor or any other person, the City shall make all Rental Payments when due and shall not withhold any Rental Payment pending final resolution of such dispute nor shall the City assert any right of set-off or counterclaim against its obligation to make such Rental Payments required under this Lease. The City's obligation to make Rental Payments during the Lease Term shall not be abated through accident or unforeseen circumstances. However, nothing herein shall be construed to release Lessor from the performance of its obligations hereunder; and if Lessor should fail to perform any such obligation, the City may institute such legal action against Lessor as the City may deem necessary to compel the performance of such obligations or to recover damages therefore.

ARTICLE VI

INSURANCE AND NEGLIGENCE

Section 6.1. Liability Insurance. The City is covered through the Texas Municipal League.

Section 6.2. Workers' Compensation Insurance. If required by State law, and unless self-insurance is provided by the City, as evidenced by a written certificate specifying the terms and amounts thereof delivered to Lessor, the City shall carry worker's compensation insurance covering all employees on, in, near, or about

each Property, and upon request, shall furnish to Lessor certificates evidencing such coverage throughout the period when the City is required to make Rental Payments with respect thereto.

Section 6.3. City's Negligence. The City assumes all risks and liabilities for loss or damage to any Property and for injury to or death of any person or damage to any property, in any manner arising out of or incident to any possession, use, operation, condition or storage of any Property by the City, whether such injury or death be with respect to agents or employees of the City or of third parties, and whether such property damage be to the City's property or the property of others.

Section 6.4. Casualty Loss and Insurance. If any loss, theft, damage or destruction occurs to any Property in whole or in part from any reason whatsoever ("Casualty Loss"), the City shall immediately notify Lessor of the same and the City shall, unless otherwise directed by Lessor, immediately repair the same. If Lessor reasonably determines that any item of Property has suffered a Casualty Loss beyond repair ("Lost Equipment"), then the City shall pay lessor an amount equal to the value of the equipment at the time of loss.

ARTICLE VII OTHER OBLIGATIONS OF THE CITY

Section 7.1. Use: Permits. The City shall obtain all permits and licenses necessary for the installation, operation, possession, and use of the Property. The City shall comply with all state and federal laws applicable to the installation, use, possession, and operation of the Property, and if compliance with any such state and federal law requires changes or additions to be made to the property, such changes or additions shall be made by the City at its expense.

Section 7.2. Maintenance of Property by the City. The City shall maintain, preserve, and keep the Property in good repair, working order and condition, and shall make all repairs and replacements necessary to keep the Property in such condition.

ARTICLE VIII TITLE

Section 8.1. Title. During the Term of this Lease legal title to the property shall be in the name of the Lessor and not City. City is not in default under Article XII, legal title to the Property and any and all repairs, replacements, substitutions, and modifications to it shall be in the City. Upon termination of this Lease, full and unencumbered legal title to such Property Group shall pass to Lessor, and the City shall have no further interest therein. In either of such events, the City shall execute and deliver to Lessor such documents as Lessor may request to evidence the passage of legal title to such Property Group to Lessor and the termination of the City's interest therein, and upon request by Lessor shall deliver possession of the Property Group to Lessor in accordance with **Section 12.3.**

Section 8.2. Installation of the City's Property. The City may at any time in its sole discretion and at its own expense, install other items of equipment in or upon the Property, which items shall be identified by tags or other symbols affixed thereto as property of the City. All such items so identified shall remain the sole property of the City, in which Lessor shall have no interest, and may be modified or removed by the City provided that the City shall repair and restore any damage to the Property resulting from the installation, modification, or removal of any such items.

Section 8.3. Modification of Property. The City shall, at its own expense, have the right to make repairs, replacements, substitutions and modifications to all or any of the parts of the Property. All such work and any part or component used or installed to make a repair or as a replacement, substitution or modification, shall thereafter comprise part of the Property and be subject to the provisions of this Lease. Such work shall not in any way damage the Property or cause it to be used for purposes other than those authorized

under the provisions of state and federal law or those contemplated by this Lease; and the Property, upon completion of any such work shall be of a value which is not less than the value of the Property immediately prior to the commencement of such work. Any property for which a replacement or substitution is made pursuant to this Section may be disposed of by the City in such manner and on such terms as are determined by the City.

The City will not permit any mechanic's or other lien to be established or remain against the Property for labor or materials furnished in connection with any repair, replacement, substitution, or modification made by the City pursuant to this Section; provided that if any such lien is established and the City shall first notify Lessor of the City's intention to do so, the City may in good faith contest any lien filed or established against the Property, and in such event may permit the items so contested to remain undischarged and unsatisfied during the period of such contest and any appeal therefrom unless Lessor shall notify the City that, in the opinion of Independent Counsel, by nonpayment of any such item the interest of Lessor in the Property will be materially endangered or the Property or any part thereof will be subject to loss or forfeiture, in which event the City shall promptly pay and cause to be satisfied and discharged all such unpaid items or provide Lessor with full security against any such loss or forfeiture, in form satisfactory to Lessor. Lessor will cooperate fully with the City in any such contest, upon the request and at the expense of the City.

Section 8.4. Personal Property. The Property is and shall at all times be and remain personal property notwithstanding that the Property or any part thereof may be or hereafter become in any manner affixed or attached to or embedded in or permanently rested upon real property or any building.

ARTICLE IX

ARTICLE X

ARTICLE XI

ASSIGNMENT, SUBLEASING, MORTGAGING, AND SELLING

Section 11.1. Assignment of Lessor. All of Lessor's right, title and/or interest in and to any Property Group, the Rental Payments and other amounts relating thereto due hereunder, and the right to exercise all rights under this Lease relating to such Property Group may be assigned and reassigned in whole or in part to one or more assignees or subassignees by Lessor at any time, without the consent of the City. No such assignment shall be effective as against the City unless and until the assignor shall have filed with the City a copy of written notice thereof identifying the assignee. The City shall pay all Rental Payments due hereunder relating to such Property Groups to or at the direction of Lessor or the assigned named in the most recent assignment or notice of assignment with respect to such Property Group filed with the City. During the Lease Term, the City shall keep a complete and accurate record of all such assignments. In the event Lessor assigns participations in its right, title, and/or interest in and to any Property Group, the Rental Payments and other amounts due with respect thereto, and the rights granted under this Lease relating thereto, such participants shall be considered to be Lessor with respect to their participated shares thereof.

Section 11.2. Assignment and Subleasing by the City. Neither this Lease nor the City's interest in the Property may be assigned by the City without the written consent of Lessor. However, the Property may be subleased by the City, in whole or in part, without the consent of Lessor, subject, however, to each of the following conditions:

(i) This Lease and the obligation of the City to make Rental Payments hereunder, shall remain obligations of the City.

(ii) The sublessee shall assume the obligations of the City hereunder to the extent of the interest subleased.

(iii) The City shall, within thirty (30) days after the delivery thereof, furnish or cause to be furnished to Lessor a true and complete copy of such sublease.

(iv) No sublease by the City shall cause the Property to be used for a purpose other than a governmental function authorized under the provisions of the Constitution and laws of Texas.

ARTICLE XII

EVENTS OF DEFAULT AND REMEDIES

Section 12.1. Events of Default Defined. The following shall be "events of default" under this Lease with respect to any Property Group and the terms "events of default" and "default" shall mean, whenever they are used in this Lease, with respect to any Property Group, any one or more of the following events:

(i) Failure by the City to pay a Rental Payment or other payment required to be paid under this Lease with respect to any Property Group at the time specified herein and the continuation of said failure for period of three (3) days after telephonic or telegraphic notice given by Lessor that the payment referred to in such notice has not been received, such telephonic or telegraphic notice to be subsequently confirmed in writing.

(ii) Failure by the City to observe and perform any covenant, condition, or agreement on its part to be observed or performed with respect to any Property Group, other than as referred to in Clause (i) of this Section, for a period of thirty (30) days after written notice specifying such failure. Such notice to the City by the Lessor shall request that the default be remedied, unless Lessor shall agree in writing to an extension of such time prior to its expiration; provided, however, if the failure stated in the notice cannot be corrected within the applicable period, Lessor will not unreasonably withhold its consent to an extension of such time if corrective action is instituted by the City within the applicable period and diligently pursued until the default is corrected.

(iii) The filing by the City of a voluntary petition in bankruptcy, or failure by the City promptly to lift any execution, garnishment, or attachment of such consequence as would impair the ability of the City to carry on its governmental function or adjudication of the City as a bankrupt, or assignment by the City for the benefit of creditors, or the approval by a court of competent jurisdiction of a petition applicable to the City in any proceedings instituted under the provisions of the Federal Bankruptcy Statute, as amended, or under any similar acts which may hereafter be enacted.

The provisions of this **Section 12.1** and **Section 12.2** are subject to the following limitation: if by reason of force majeure the City is unable in whole or in part to carry out its obligations under this Lease with respect to any Property Group, other than its obligation to pay Rental Payments with respect thereto which shall be paid when due notwithstanding the provisions of this paragraph, the City shall not be deemed in default during the continuance of such inability. The term "force majeure" as used herein shall mean, without limitation, the following: acts of God, strikes, lockouts, or other labor disturbances; acts of public enemies; orders or restraints of any kind of the government of the United States of America or the State or their respective departments, agencies or officials, or any civil or military authority; insurrections, riots; landslides; earthquakes; fires; storms; droughts; floods, explosions; breakage or accident to machinery, transmission pipes or canals; or any other causes or events not reasonably within the control of the City and not resulting from its negligence. The City agrees, however, to remedy with all reasonable dispatch the cause or causes preventing the City from carrying out its obligations under this Lease;

provided that the settlement of strikes, lockouts and other labor disturbances shall be entirely within the discretion of the City and the City shall not

be required to make settlement of strikes, lockouts, and other labor disturbances by acceding to the demands of the opposing party or parties when such course is in the judgment of the City unfavorable to the City.

Section 12.2. Remedies on Default. Whenever any event of default referred to in **Section 12.1** hereof shall have happened and be continuing with respect to any Property Groups, Lessor shall have the right, at its option and without any further demand or notice, to take one or any combination of the following remedial steps:

(i) Lessor may terminate this Lease with respect to such Property Group and repossess the Property Group, Lessor may enter upon the City's premises where the Property Group is kept and take possession of the Property Group.

Section 12.3. Return of Property. Upon the expiration or termination by the City of this Lease with respect to any Property Group prior to the payment of all Rental Payments in accordance with **Exhibit "B,"** the City shall allow lessor to remove the property group from lessee's property at lessor's cost and expense, provided, however, that such property shall be retrievable from a central location.

Section 12.4. No Remedy Exclusive. No remedy conferred upon or reserved to Lessor by this Article is intended to be exclusive and every such remedy shall be cumulative and shall be in addition to every other remedy given under this Lease. No delay or omission to exercise any right or power accruing upon any default shall impair any such right or power or shall be construed to be a waiver thereof but any such right and power may be exercised from time to time and as often as may be deemed expedient by Lessor or its assignee.

ARTICLE XIII ADMINISTRATIVE PROVISIONS

Section 13.1. Notices. All notices, certificates, legal opinions, or other communications hereunder shall be sufficiently given and shall be deemed given when delivered or deposited in the United States mail in registered form with postage fully prepaid to the addresses specified in this Lease; provided that Lessor and the City, by notice given hereunder, may designate different addresses to which subsequent notices, certificates, legal opinions, or other communications will be sent. Unless otherwise changed by the City, all notices required under this Lease and directed to the City shall be mailed to the following address:

CITY:

Accounts Payable
City of Kyle
P.O. Box 40
Kyle, Tx 78640

LESSOR:

Cowboy Motorsports of Austin, L.P.
dba Cowboy Harley-Davidson of Austin
10917 South IH-35
Austin, Tx 78747

Section 13.2. Severability. In the event any provision of this Lease shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof.

Section 13.3. Amendments, Changes, and Modifications. This Lease may be amended or any of its terms modified only by written document duly authorized, executed, and delivered by Lessor and the

City.

Section 13.4. Captions. The captions or headings in this Lease are for convenience only and in no way define, limit, or describe the scope or intent of any provisions, Articles, Sections, or Clauses of this Lease.

Section 13.5. Further Assurances and Corrective Instruments. Lessor and the City agree that they will, from time to time, execute, acknowledge, and deliver, or cause to be executed, acknowledged, and delivered, such supplements hereto and such further instruments as may reasonably be required for correcting any inadequate or incorrect description of the Property hereby leased or intended so to be, or for otherwise carrying out the expressed intention of this Lease. The Purchasing Agent, or the designee thereof, is hereby authorized by the City Manager to execute such addenda as attached hereto as Exhibits for each Property Group and such other instruments, including, but not limited to, UCC statements, Bill of Sales, etc. that are necessary to carry out the responsibilities, duties, and obligations required of the City in accordance with the terms and conditions of this Lease.

Section 13.6 Execution in Counterparts. This Lease may be simultaneously executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

Section 13.7. Applicable Law. This Lease shall be governed by and construed in accordance with the laws of Texas. Venue of any legal action brought under this agreement will be in Hays County, Texas.

Section 13.8. Entire Agreement. This Lease and all addenda and exhibits, as may hereafter be executed, constitute the entire agreement between the parties and shall supersede all previous negotiations, commitments and contracts.

IN WITNESS WHEREOF, Lessor has caused this Lease to be executed in its corporate name by its duly authorized officer; and the City has caused this Lease to be executed in its name by its duly authorized City Manager.

ATTEST:

APPROVED THIS 7 DAY OF Sept., 2016.

By: Michael Havard
Michael Havard, Managing Partner

CITY OF KYLE

By: _____
City Manager

EXHIBIT "A"
PROPERTY DESCRIPTION

The following Property comprises a Property Group which is the subject to the terms and conditions of the Lease Agreement entered into by and between the City of Kyle and Cowboy Motorsports of Austin L.P., dba Cowboy Harley-Davidson of Austin (Lessor) dated the ____ day of _____, 2016.

Quantity

Description

3

Solo Enforcement Police Motorcycles

Vehicle Identification Numbers (VIN):

2013 HD FLHP 1HD1FMM1XDB644983

2013 HD FLHP 1HD1FMM16DB692674

2013 HD FLHP 1HD1FMM1XDB663324

All Property made subject of this Agreement is owned by and under the sole and exclusive use of the City of Kyle, a political subdivision of the State of Texas, and is used as part of the City's governmental services in furtherance of its public purpose. The City asserts all exemptions provided for political subdivisions of the State of Texas as authorized under the Constitution and laws of the State of Texas against the assessment, levy, or charges for ad valorem taxation, personal property taxation, or any other charges.

LESSOR

By: _____

Name: Michael Havard

Title: Managing Partner

CITY OF KYLE

By: _____

Name: _____

Title: _____

APPROVED THIS THE 7 DAY OF Sept, 2016

EXHIBIT "B"
SCHEDULE OF RENTAL PAYMENTS RELATING TO PROPERTY

The following schedule of Lease Payments constitutes the applicable payments for the Property Group described on **Exhibit "A"** attached to the Lease Agreement entered by and between the City of Kyle and Cowboy Motorsports of Austin L.P., dba Cowboy Harley-Davidson of Austin (Lessor) dated the ____ day of 2016.

Twelve (12) Monthly Payments at:	<u>\$ 1,170.00 per month for three motorcycles @ \$390.00 each per month</u>
Service and Maintenance Cost	\$ 239.00 per motorcycle at 1,000 ; 5,000 ; and 15,000 miles.
(by mileage interval):	\$ 279.00 per motorcycle at 10,000 miles.
	\$ 153.00 per motorcycle at 2,500 ; 7,500 ; and 12,500 miles.
Allowable Mileage:	18,000 miles per motorcycle per 12 month period.
Cost per mile above allowable:	\$ 0.10 /mile

LESSOR

By: Michael Havard

Name: Michael Havard

Title: Managing Partner

APPROVED THIS THE 7 DAY OF Sept, 2016

CITY OF KYLE

By: _____

Name: _____

Title: _____