

**CITY OF EL PASO, TEXAS  
AGENDA ITEM  
AGENDA SUMMARY FORM**

**DEPARTMENT:** Mayor and Council

**AGENDA DATE:** Tuesday, April 30, 2019

**CONTACT PERSON NAME AND PHONE NUMBER:** City Representative Henry Rivera, District 7  
- 915.212.0007

**DISTRICT(S) AFFECTED:** ALL DISTRICTS

**STRATEGIC GOAL:** Goal 2 - Set the Standard for a Safe and Secure City

**SUBJECT:**

**APPROVE** a resolution / ordinance / lease to do what? **OR AUTHORIZE** the City Manager to do what? Be descriptive of what we want Council to approve. Include \$ amount if applicable.

Discussion and action that the City Manager be authorized to sign an Agreement between the City of El Paso and the El Paso Municipal Police Officers' Association (EPMPOA) for the sale of a decommissioned 2004 Harley Davidson Dyna Defender Motorcycle 4700, to be used by the Association for activities that include, but are not limited to, Safety Presentations, Static Displays, Parades, and Law Enforcement recruitment.

**BACKGROUND / DISCUSSION:**

Discussion of the what, why, where, when, and how to enable Council to have reasonably complete description of the contemplated action. This should include attachment of bid tabulation, or ordinance or resolution if appropriate. What are the benefits to the City of this action? What are the citizen concerns? N/A

**PRIOR COUNCIL ACTION:**

Has the Council previously considered this item or a closely related one? N/A

**AMOUNT AND SOURCE OF FUNDING:**

How will this item be funded? N/A Has the item been budgeted? N/A If so, identify funding source by account numbers and description of account. N/A Does it require a budget transfer? N/A

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\*\*\*\*\*REQUIRED AUTHORIZATION\*\*\*\*\*

**RESOLUTION**

**BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF EL PASO:**

That the City Manager be authorized to sign an Agreement between the City of El Paso and El Paso Municipal Police Officers' Association ("EPMPOA") for the sale of a decommissioned 2004 Harley Davidson Dyna Defender Motorcycle 4700, to be used by the Association for activities that include, but are not limited to, Safety Presentations, Static Displays, Parades, and Law Enforcement recruitment.

**APPROVED** this \_\_\_\_\_ day of \_\_\_\_\_, 2019.


**CITY OF EL PASO:**

\_\_\_\_\_  
Dee Margo  
Mayor

**ATTEST:**

\_\_\_\_\_  
Laura D. Prine  
City Clerk

**APPROVED AS TO FORM:**

  
Oscar G. Gabaldón, Jr.  
Assistant City Attorney

**APPROVED AS TO CONTENT:**

\_\_\_\_\_  
Gregory K. Allen  
Police Chief for El Paso Police Department

**THE STATE OF TEXAS §  
§  
COUNTY OF EL PASO §**

**AGREEMENT**

This Agreement (the “Agreement”) is entered into this 30<sup>th</sup> day of April, 2019, by and between the City of El Paso, Texas, a Texas home rule municipality (“City” or “Seller”), and the El Paso Municipal Police Officers’ Association (“E.P.M.P.O.A.” or “Buyer”), a 501(c)(4) organization.

**RECITALS**

**WHEREAS**, the Seller’s El Paso Police Department has a used 2004 Harley Davidson Dyna Defender motorcycle (as described on Exhibit “A”) which is salvage and decommissioned, and no longer required by the City; and

**WHEREAS**, the Buyer, E.P.M.P.O.A., whose mission is to enforce, protect, and enhance the rights and benefits of its members, and to assure a better quality of life for its members, and the citizens of El Paso through proactive community involvement; and

**WHEREAS**, the Buyer desires to purchase and take possession of the 2004 Harley Davidson Dyna Defender motorcycle, described in Exhibit “A,” (the “Motorcycle”);

**WHEREAS**, the City of El Paso finds that the transfer of the Motorcycle to Buyer would benefit Seller’s citizens in terms of public safety awareness; and

**WHEREAS**, the City of El Paso Police Department law enforcement capabilities would not be hindered by the transfer of the Motorcycle.

**NOW THEREFORE**, for and in consideration of the terms, provisions, and mutual promises that are established in this document, the Parties agree as follows:

**ARTICLE I. RESPONSIBILITY OF SELLER**

- 1.1 The Seller hereby transfers to Buyer the 2004 Harley Davidson Dyna Defender Motorcycle, more completely described on Attachment “A.”
- 1.2 The Seller shall provide title to the Motorcycle to Buyer upon approval of the transfer. Upon receipt of the title and a properly executed Agreement, the Motorcycle shall become the sole property and responsibility of Buyer.
- 1.3 Any City of El Paso Police logos, radio, and emergency equipment on the Motorcycle shall be removed by the Seller prior to the transfer of the Motorcycle to Buyer.

## ARTICLE II. RESPONSIBILITY OF BUYER

- 2.1 Buyer agrees that it shall take transfer of the Motorcycle listed on Attachment "A."
- 2.2 Buyer shall be fully responsible for any and all taxes, fees, and assessments for sales tax, use tax, excise tax, or other amounts imposed by governmental bodies with respect to the Motorcycle, as described in this Agreement.
- 2.3 Buyer agrees to pay all costs that might be incurred for the transportation of the Motorcycle from its location in El Paso, Texas to its final destination. The Motorcycle is to be claimed at 10780 Pebble Hills Blvd. A, El Paso, TX 79935; contact person Alex Ramirez, (915) 212-4657.
- 2.4 Within one (1) week of the Motorcycle, license plate TX Exempt # XY9156, being transported by Buyer to its final destination at 10780 Pebble Hills Blvd. A, El Paso, TX 79935, the Motorcycle will be placed in static display.
- 2.5 Buyer shall obtain and pay for all necessary registration, licenses, permits, inspections, and fees necessary for the lawful operation or display of said Motorcycle, to include title cost and insurance for said Motorcycle.
- 2.6 Buyer agrees that the Motorcycle shall be used solely and exclusively for a variety of functions to include, but not limited to, Safety Presentations, Static Displays, Parades, Recruitment tool, and similar activities, as approved by the El Paso Municipal Police Officers' Association and the El Paso Police Department's Chief of Police, in order to maintain a predominate public purpose. The Motorcycle will at no time be used for official police services. The El Paso Police Officers' Association will keep monthly logs of approved usage or displays in its Monthly Meeting minutes as a way to maintain oversight controls.
- 2.7 Buyer agrees that it shall not sell the Motorcycle at any time in lieu of complying with Section 2.6 of this Agreement.

## ARTICLE III. CONDITION OF EQUIPMENT

- 3.1 **BUYER ACCEPTS MOTORCYCLE "AS IS" AND WITHOUT WARRANTY OF ANY KIND. BUYER SHALL BE RESPONSIBLE FOR ANY AND ALL INSPECTIONS OF THE VEHICLE PRIOR TO BUYER TRANSPORTING THE VEHICLE. THE CITY DISCLAIMS ANY WARRANTIES, EXPRESS OR IMPLIED, MADE TO BUYER, OR TO ANY OTHER PERSON OR ORGANIZATION, INCLUDING WITHOUT**

**LIMITATION, ANY WARRANTIES REGARDING QUALITY, SUITABILITY, MERCHANTABILITY, AND FITNESS FOR A PARTICULAR PURPOSE.**

- 3.2 THE CITY SHALL NOT BE LIABLE FOR ANY LOSS OR DAMAGE TO BUYER, NOR ANYONE ELSE IN WHATSOEVER CAUSE MAY ARISE, WHETHER BY USE, REPAIR, MAINTENANCE OR ANY FAILURE OF THE VEHICLE PURCHASED.

**ARTICLE IV. CONSIDERATION, PAYMENT**

- 4.1 The City sells the Motorcycle to Buyer for FIFTEEN AND NO/100 (\$15.00) DOLLARS in exchange for the non-monetary consideration of the public safety benefit to the citizens of El Paso. The referenced amount shall be paid by Buyer to Seller prior to Buyer's receipt of the Motorcycle.
- 4.2 Payment shall be made to the Seller, and shall be remitted to the following address:

City of El Paso  
Office of the Comptroller  
P.O. Box 1890  
El Paso, Texas 79950

The receipt issued by the Seller to Buyer at the time of Buyer's payment for the Motorcycle shall be provided to the Buyer, so that the Seller may release the Motorcycle to Buyer.

**ARTICLE V. CONTRACTUAL RELATIONSHIP: NATURE OF AGREEMENT**

- 5.1 The Parties are Independent Contractors. Except that which is laid out in this Agreement in expressed form, there is no intention to establish a partnership or a corporation by means of this Agreement, nor any principal-agent or employer-employee relationship. Except to the extent expressly provided in this Agreement, neither Party has, nor will either Party attempt to assert a claim to exercise the power to obligate the other.

**ARTICLE VI. DISTRIBUTION OF RISK-LIMITATION OF LIABILITY**

- 6.1 **Governing Functions.** The Parties expressly agree that in everything relating to this Agreement, the City is performing governmental functions, as defined by the Texas Tort Claims Act.
- 6.2 **Exclusion of Incidental and Consequential Damages.** Independent of, severable from, and to be enforced independently of all other provisions of this Agreement, neither Party will become responsible to the other Party (nor to any person who is

claiming rights which are derived from the rights of the respective Party) for incidental, consequential, special, punitive or exemplary damages, or harm, or issues of any nature, loss of earnings, loss of customers, or other economic damages and harm among others, contemplating for damages to goods, mental anguish and emotional crisis, in consequence of the non-fulfillment of a term of this Agreement, regardless of whether the Party had been notified, may have had another reason to be informed, or in fact might have known about the corresponding possibility. The Seller will not be held responsible by Buyer or by any third party, because of any inaccuracy, omission, or obsolescence of any information provided or maintained by Buyer, regardless of whether the Seller was advised, had other reason to know, or, in fact, had knowledge thereof.

- 6.3 **Intentional Risk Allocation.** The Parties each acknowledge that the provisions of this Agreement were negotiated to reflect an informed, voluntary allocation between them of all risks (both known and unknown) associated with the transactions associated with this Agreement. These disclaimers and limitations of this Agreement are intended to limit circumstances of liability. The remedy limitations and the limitations of liability are separately intended to limit the forms of relief available to the Parties.
- 6.4 **Responsibility for Claims.** To the extent permitted by applicable law, Buyer shall indemnify and hold harmless the City, and all the City's representatives, from all suits, actions, or damages sustained by any person or property in consequence of any neglect by Buyer in transporting, using, operating or storing the Motorcycle, or on account of any act or omission by Buyer involving the Motorcycle. Should such a liability arise, Buyer agrees to comply with all requirements for the satisfaction of debts.

## ARTICLE VII. TERMINATION

- 7.1 **Termination.** This Agreement may be terminated without cause, for the convenience of either Party, upon written notice to the other Party, prior to the sale of the Motorcycle to Buyer.

## ARTICLE VIII. RIGHTS AND REMEDIES

- 8.1 **Rights and Remedies.** The duties and obligations imposed by this Agreement and the rights and remedies available herein, shall be in addition to, and without limitation, of any duties, obligations, rights and remedies otherwise imposed or available by law.

## ARTICLE IX. GENERAL PROVISIONS

- 9.1 If any paragraph, statement, clause or provision of this Agreement is construed or interpreted by a court of competent jurisdiction to be void, illegal, or unenforceable, such decision shall affect only those paragraphs, statements, clauses or provisions.
- 9.2 This Agreement is executed in Texas, and all rights and liabilities hereunder shall be determined in accordance with the laws of Texas.
- 9.3 The Parties will strictly comply with all laws according the applicable rules in the performance of their obligations, pursuant to this Agreement.
- 9.4 It is understood that this Agreement for Sale contains the entire agreement of the Parties, and that all prior understandings and conversations, whether oral or written, are merged herein, and that any subsequent modifications or waiver of any of the provisions to this Agreement shall be invalid and unenforceable, unless in writing and signed by the Parties hereto.
- 9.5 The failure on behalf of either Party at any time to require performance by the other Party of any provision of this Agreement, under no circumstances will affect the right of the respective Party to require performance of that provision. Any waiver on behalf of either Party of the non-performance of any provision of this Agreement will not be considered as a waiver of continuing or future non-performance of any provision or as a waiver of any other right in accordance with this Agreement.
- 9.6 The article headings contained in this Agreement are for reference purposes only, and shall not in any way control the meaning or interpretation of this Agreement.
- 9.7 Each Party has had the opportunity to be represented by counsel of its choice in negotiating this Agreement. This Agreement shall, therefore, be deemed to have been negotiated and prepared at the joint request, direction, and construction of the Parties, at arms' length, with the advice and consultation of legal counsel, and will be interpreted in accordance with its terms without favor to any Party.
- 9.8 **Notices.** All notices required or permitted hereunder shall be in writing, and shall be deemed delivered when actually received via United States Postal Service, or certified mail, return receipt requested, addressed to the respective other Party at the address listed below or at such other address, as the receiving Party may have theretofore prescribed by written notice to the sending Party.

The initial addresses of the Parties, which one party may change by giving written notice of its changed address to the other Party, are as follows:

SELLER: City of El Paso  
Attn: City Manager's Office  
P.O. Box 1890  
El Paso, Texas 79950-1890

COPY TO: City of El Paso  
Police Department  
Attn: Police Chief  
911 N. Raynor St  
El Paso, Texas 79903

BUYER: El Paso Municipal Police Officers' Association  
Attn: Sergeant Ron Martin  
President  
747 E San Antonio Ave # 206,  
El Paso, TX 79901

- 9.9 This Agreement contains the entire agreement of the Parties, and all prior understandings, conversations, whether oral or written, are merged herein, and any subsequent modifications or waiver of any of the provisions to this agreement shall be invalid and unenforceable, unless in writing and signed by the Parties hereto.
- 9.10 Each person signing below represents that he or she has read this Agreement in its entirety (including any and all Attachments); understands its terms; is duly authorized to execute this Agreement on behalf of the Party indicated below; and agrees on behalf of such Party that such Party will be bound by those terms.
- 9.11 **Effective Date.** The effective date of this Agreement shall be the date executed by both Parties.

[SIGNATURES BEGIN ON THE FOLLOWING PAGE]

Executed on this \_\_\_\_\_ day of April, 2019.

**CITY OF EL PASO**

\_\_\_\_\_  
Tomás González  
City Manager

**ATTEST:**

\_\_\_\_\_  
Laura D. Prine  
City Clerk

**APPROVED AS TO FORM:**

  
\_\_\_\_\_  
Oscar G. Gabaldón, Jr.  
Assistant City Attorney

**APPROVED AS TO CONTENT:**

  
\_\_\_\_\_  
Greg K. Allen, Police Chief  
Police Department

**EL PASO MUNICIPAL POLICE  
OFFICERS' ASSOCIATION**

  
\_\_\_\_\_  
Ron Martin  
President, E.P.M.P.O.A.

**ATTACHMENT A**

<b>Year</b>	<b>Make/Model</b>	<b>License Plate</b>	<b>VIN</b>	<b>Mileage</b>	<b>Engine Hrs.</b>
2004	Harley Davidson Dyna Defender Motorcycle	XY9156	1HD1GKV104K319288	73619	