

**USED EQUIPMENT DONATION AGREEMENT**

**BETWEEN**

**THE CITY OF SAN MARCOS AND SAVING A HERO'S PLACE, INC.**

THIS AGREEMENT ("Agreement") is made effective as of the date executed by both parties ("Effective Date"), and is between the City of San Marcos, Texas, a home-rule municipal corporation with offices at 630 E. Hopkins Street, San Marcos, Tx 78666 ("City"), and Saving a Hero's Place, a Texas non-profit corporation, P.O. Box 1009, Castroville, Tx 78009 ("Transferee"), under the following circumstances:

**Section 1. Equipment donated.**

1.1 City agrees to donate the following equipment to Saving a Hero's Place:

(a) 2012 Chevrolet Tahoe police car, Vehicle Identification Number: 1GNLC2E03CR284398 more specifically described in Exhibit A attached hereto and incorporated herein by reference.

1.2. Transferee represents that it is a 501(c)(3) organization.

**Section 2. Removal of Equipment; Consideration; Transfer of Title.**

2.1 **Removal of Equipment.** At a mutually acceptable time and date, but not later than 15 days after the Effective Date, Transferee will, at Transferee's sole cost, expense and risk, remove the police car identified in Section 1.1 herein below ("Equipment") from City's offices at 2300 S. IH-35, San Marcos, TX. 78666 (the "Site").

2.2 **Consideration.** The consideration for the donation contemplated by this Agreement shall be that the Transferee agrees to use the donated Equipment for a minimum of three years to further the public purposes stated in Resolution No. 2018-XXR, approved by the San Marcos City Council on February 6, 2018. No monetary consideration shall be due to Transferor under the terms of this Agreement.

2.3 **Transfer of Title.** Effective upon Transferee's removal of the Equipment from the Site, City hereby transfers, assigns and conveys to Transferee all of Transferor's right, title, and interest in and to the Equipment.

2.4 All costs associated with pickup, transport, refurbishing, repairing or restoring, and retitling the Equipment will be the responsibility of Transferee.

### **Section 3. Disclaimer of Warranties; Limitation of Liability.**

**3.1 TRANSFEE HEREBY ACKNOWLEDGES RECEIPT OF THE EQUIPMENT AND THAT TRANSFEE HAS EXAMINED THE EQUIPMENT TO INSPECT ITS CONDITION. THE TRANSFEE ACKNOWLEDGES AND AGREES THAT THE EQUIPMENT IS DONATED ON AN AS-IS AND WHERE IS WITH ALL FAULTS, WITH NO GUARANTEES OR WARRANTIES, EXPRESS OR IMPLIED WHETHER OF TITLE, MERCHANTABILITY, ITS CONDITION, PERFORMANCE, OR FITNESS FOR A PARTICULAR PURPOSE OR OTHERWISE.**

**3.2 UNDER NO CIRCUMSTANCES WILL TRANSFEROR BE LIABLE TO TRANSFEE OR ANY OTHER PERSON FOR ANY DIRECT, INDIRECT, INCIDENTAL, SPECIAL OR CONSEQUENTIAL DAMAGES ARISING OUT OF OR RELATED TO THIS AGREEMENT OR THE EQUIPMENT OR ITS USE BY TRANSFEROR.**

### **Section 4. Miscellaneous Provisions**

**4.1 Authority.** Each of the persons executing this Agreement represent that he or she has full power and authority to execute this Agreement on behalf of the party that person represents.

**4.2 Law and Venue.** This Agreement shall be construed and enforced according to the laws of the State of Texas; and exclusive venue for any legal action arising under this Agreement shall lie in Hays County, Texas.

**4.3 Immunity:** The City's execution of and performance under this Agreement will not act as a waiver of any immunity of the City to suit or liability under applicable law. The parties acknowledge that the City, in executing and performing this Agreement, is a governmental entity acting in a governmental capacity.

**4.4 Effective Date.** This Agreement will become effective upon execution of both parties.

**4.5 Amendment.** No amendment of this Agreement will be effective until the amendment has been reduced to writing, each party has duly approved it, and is signed by the authorized representatives of the Parties. Any amendment will incorporate this Agreement in every particular not otherwise changed by the amendment.

**4.6 Complete Agreement/Amendment.** This Agreement represents a complete agreement of the parties and supersedes all prior written and oral matters related to this Agreement. This Agreement may be canceled, changed, modified or amended, in whole or in part, only by the written and recorded agreement by the City and the Transferee.

**4.7 Binding Effect.** This Agreement will be binding on and inure to the benefit of the Parties and their respective successors and assigns.

**4.8 Interpretation.** Each of the Parties have been represented by counsel of their choosing in the negotiation and preparation of this Agreement. In the event of any dispute regarding the interpretation of this Agreement, this Agreement will be interpreted fairly and reasonably and neither more strongly for nor against any Party based on draftsmanship.

**4.9 Relationship of the Parties.** This Agreement will not be construed as establishing a partnership or joint venture, joint enterprise, express or implied agency relationship between the parties. The City, its past, present or future officers, elected officials, employees or agents, do not assume any responsibility or liability to any third party in connection with this Agreement.

**4.10 Severability.** If any provision of this Agreement is held to be illegal, invalid or unenforceable under present or future laws, it is the intention of the Parties that the remainder of this Agreement not be affected and it is also the intention of the Parties that, in lieu of each provision that is found to be illegal, invalid or unenforceable, a provision be added to this Agreement which is legal, valid or enforceable and is as similar in terms as possible to the provision found to be illegal, invalid or unenforceable.

**4.11 Paragraph Headings.** The paragraph headings contained in this Agreement are for convenience only and will in no way enlarge or limit the scope or meaning of the paragraphs.

**4.12 No Third-Party Beneficiaries.** This Agreement is not intended to nor shall it be interpreted to confer any rights, privileges or causes of action upon any third party.

**4.13 Counterparts.** This Agreement may be executed simultaneously in two or more counterparts, each of which will be deemed an original, but all of which will constitute one and the same instrument. A facsimile signature will be deemed to be an original signature for all purposes.

**Exhibits.** The following exhibits are attached to and incorporated into this Agreement for all purposes.

Exhibit "A": Equipment description.

[Signature Page to Follow]

**EXECUTED** to be effective as of the \_\_\_\_ day of \_\_\_\_\_, 2018.

**SAVING A HERO'S PLACE, INC**

a Texas Nonprofit Corporation

By: \_\_\_\_\_

Print Name: Tommy Capell

**CITY OF SAN MARCOS**

By: \_\_\_\_\_

Bert Lumbreras

City Manager

EXHIBIT A

<b>Make/Model</b>	<b>2012 Chevy Tahoe</b>
<b>VIN#</b>	<b>1GNLC2E03CR284398</b>
<b>Engine Make</b>	<b>Chevrolet 5.3l V8</b>
<b>Mileage</b>	<b>Est 111,000</b>
<b>Transmission</b>	<b>GM</b>
<b>Emergency Lighting</b>	<b>N/A</b>