

# **USED EQUIPMENT PURCHASE AGREEMENT**

## **BETWEEN**

### **THE CITY OF SAN MARCOS AND THE CITY OF KYLE, TEXAS**

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 the City of Kyle, Texas, Home Rule Municipality with offices at 100 W. Center St Kyle, Texas 78640 ("Transferee"), under the following circumstances:

#### **Section 1. Equipment donated.**

1.1 City agrees to sell the following equipment to the City of Kyle:

- (a) 2012 Chevrolet Tahoe Police Utility, Vehicle Identification Number: 1GNLC2E07CR257558 more specifically described in Exhibit A attached hereto and incorporated herein.
- (b) 2012 Chevrolet Tahoe Police Utility, Vehicle Identification Number: 1GNLC2E03CR256410 more specifically described in Exhibit A attached hereto and incorporated herein.
- (c) 2013 Chevrolet Tahoe Police Utility, Vehicle Identification Number: 1GNLC2E05DR302031 more specifically described in Exhibit A attached hereto and incorporated herein.

1.2. Transferee represents that it is a Home Rule Municipality.

#### **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 fifteen (15) days after the Effective Date, Transferee will, at Transferee's sole cost, expense and risk, remove the police cars identified in Section 1.1 herein below ("Equipment") from City's offices at 2300 S. IH-35, San Marcos, Texas 78666 (the "Site").

2.2 **Consideration.** The consideration for the sale contemplated by this Agreement shall be that the Transferee agrees to use the Equipment for official use to further the public purposes stated in Resolution No. 2019-\_\_R, approved by the San Marcos City Council on January 29, 2019. The monetary consideration agreed upon for this transaction is in the amount of \$17,100 per vehicle (\$51,300 total) payable by check or ACH transfer on or before the date of vehicle pickup.

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 TRANSFEEE HEREBY ACKNOWLEDGES RECEIPT OF THE EQUIPMENT AND THAT TRANSFEEE HAS EXAMINED THE EQUIPMENT TO INSPECT ITS CONDITION. THE TRANSFEEE ACKNOWLEDGES AND AGREES THAT THE EQUIPMENT IS SOLD 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 TRANSFEEE 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.** Exhibit A, Equipment Description, is attached to and incorporated into this Agreement for all purposes.

**EXECUTED** to be effective as of the \_\_\_\_ day of \_\_\_\_\_, 2019.

**CITY OF KYLE**

By: \_\_\_\_\_  
Scott Sellars  
City Manager

**CITY OF SAN MARCOS**

By: \_\_\_\_\_  
Bert Lumbreras  
City Manager

# EXHIBIT A

## Equipment Description

<b>Make/Model</b>	<b>2012 Chevrolet Tahoe PPV (1202 Command)</b>
<b>VIN#</b>	1GNLC2E07CR257558
<b>Engine Make</b>	<b>GM 5.3 V-8</b>
<b>Mileage</b>	<b>39,000 approx</b>
<b>Transmission</b>	<b>GM</b>
<b>Emergency Lighting</b>	<b>Whelen Inner Edge Tomar Rear Scorpion Whelen and Tomar surface lighting Plastix Plus Console 100 Watt siren system</b>

<b>Make/Model</b>	<b>2012 Chevrolet Tahoe PPV (1201 Command)</b>
<b>VIN#</b>	1GNLC2E03CR256410
<b>Engine Make</b>	<b>GM 5.3L V-8</b>
<b>Mileage</b>	<b>49,000 approx</b>
<b>Transmission</b>	<b>GM</b>
<b>Emergency Lighting</b>	<b>Whelen Inner Edge Tomar Rear Scorpion Whelen and Tomar surface lighting Plastix Plus Console 100 Watt siren system</b>

<b>Make/Model</b>	<b>2013 Chevrolet Tahoe PPV (1305 Patrol)</b>
<b>VIN#</b>	1GNLC2E05DR302031
<b>Engine Make</b>	<b>GM 5.3L V-8</b>
<b>Mileage</b>	<b>49,000 approx.</b>
<b>Transmission</b>	<b>GM</b>
<b>Emergency Lighting</b>	<b>Whelen Inner Edge Tomar Rear Scorpion Whelen and Tomar surface lighting Plastix Plus Console 100 Watt siren system</b>