

**DONATION AGREEMENT
BETWEEN
THE TOWN OF FOUNTAIN HILLS AND TEXAS A&M FOREST SERVICE**

WHEREAS, the Town of Fountain Hills, Arizona (“Fountain Hills”), and Texas A&M Forest Service (“TFS”) desire to enter into this Agreement for the purpose of memorializing a donation to TFS’s Helping Hands Program; and

WHEREAS, Fountain Hills has a 1998 ALF Eagle Aerial Ladder truck (“Truck”) which is surplus to its needs; and

WHEREAS, TFS intends to transfer the Truck through its Helping Hands Program to the City of Port Aransas, Texas to replace a ladder truck which was lost in Hurricane Harvey; and

NOW THEREFORE, the parties hereto, in consideration of the mutual covenants and conditions contained herein, promise and agree as follows:

1. **Truck.** Fountain Hills will donate the Truck, as depicted in Exhibit A attached hereto, to TFS’s Helping Hands Program.
2. **Delivery.** TFS will pick up the Truck from the Fountain Hills Fire Department.
3. **Effective Date.** This Agreement shall be effective upon the final signature on the agreement.
4. **Limit of Liability.** The parties agree that to the maximum extent permitted by law, including the laws of the State of Texas, specifically the Texas Education Code, Section 88.106 (d), Fountain Hills will not be liable in civil damages for personal injury, property damage, or death resulting from a defect in equipment donated in good faith by Fountain Hills under this agreement unless Fountain Hills’s act or omission proximately causing the claim, damage, or loss constitutes malice, gross negligence, recklessness, or intentional misconduct.
5. **Release.** TFS assumes full responsibility for the use of the Truck and hereby releases, relinquishes, and discharges Fountain Hills, its officers, agents, volunteers, and employees from all claims, demands, and causes of action of every kind and character. This release shall apply regardless of whether said claims, demands, and causes of action are covered in whole or in part by insurance and regardless of whether such injury, death, loss, or damage was caused in whole or in part by the negligence of Fountain Hills or TFS.
6. **Disclaimer of Warranty.** The donation of the Truck shall be “as is” and without warranty, express or implied, as to quality, condition, fitness for known purpose, or any other kind. TFS understands and agrees the goods are donated “as is,” with no warranty of any kind, and are used at TFS’s sole risk.

7. **Invalidity.** If any provision of this Agreement shall be held to be invalid, illegal, or unenforceable by a court or other tribunal of competent jurisdiction, the validity, legality, and enforceability of the remaining provisions shall not in any way be affected or impaired thereby. The parties shall use their best efforts to replace the respective provision or provisions of this Agreement with legal terms and conditions approximating the original intent of the parties.
8. **Written Notice.** Unless otherwise specified, written notice shall be deemed to have been duly served if delivered in person or sent by certified mail to the last business address as listed herein.

Agency:
Texas A & M Forest Service
Attn: Jason Keiningham
200 Technology Way, Suite 1162
College Station, TX 77845
(979) 458-7341
jkeiningham@tfs.tamu.edu

Fountain Hills:
Town of Fountain Hills
Attn: Justin Weldy
16705 E. Avenue of the Fountains
Fountain Hills, AZ 85268
480 816-5133
jweldy@fh.az.gov

9. **Entire Agreement.** It is understood that this Agreement contains the entire agreement between the parties and supercedes any and all prior agreements, arrangements, or understandings between the parties relating to the subject matter. No oral understandings, statements, promises, or inducements contrary to the terms of this Agreement exist. This Agreement cannot be changed or terminated orally. No verbal agreement or conversation with any officer, agent, or employee of any party before or after the execution of this Agreement shall affect or modify any of the terms or obligations hereunder.
10. **Authority to Enter into Agreement.** Each party has the full power and authority to enter into and perform this Agreement, and the person signing this Agreement on behalf of each party has been properly authorized and empowered to enter into this Agreement. The persons executing this Agreement hereby represent they have authorization to sign on behalf of their respective entity.
11. **Waiver.** Failure of either party, at any time, to enforce a provision of this Agreement, shall in no way constitute a waiver of that provision, nor in anyway affect the validity of this Agreement, any part hereof, or the right of either party thereafter to enforce each and every provision hereof. No term of this Agreement shall be deemed waived or breach excused unless the waiver shall be in writing and signed by the party claimed to have waived. Furthermore, any consent to or waiver of a breach will not constitute consent to or waiver of or excuse of any other different or subsequent breach.
12. **Acknowledgment.** The parties acknowledge that they have read, understand and intend to be bound by the terms and conditions of this Agreement.

13. **Assignment.** This Agreement and the rights and obligations contained herein may not be assigned by any party without the prior written approval of the other parties to this Agreement.
14. **Multiple Originals.** It is understood and agreed that this Agreement may be executed in a number of identical counterparts, each of which shall be deemed an original for all purposes.

TEXAS A&M FOREST SERVICE

By: _____

Tom Boggus
Director and State Forester

Date: 3-22-18

TOWN OF FOUNTAIN HILLS

By: _____

Name: Grady Miller
Title: Town Manager

Date: 3/7/2018

Exhibit A

