

**MEMORANDUM OF UNDERSTANDING
BETWEEN THE COUNTY OF TUOLUMNE AND
THE CITY OF COSTA MESA REGARDING
DONATION OF SURPLUS TRAILERS**

This MEMORANDUM OF UNDERSTANDING (“MOU”) is made this 28th day of September 2020, by and between the County of Tuolumne (“COUNTY”) and the City of Costa Mesa (“CITY”). COUNTY and CITY are collectively referred to herein as the “Parties” and each individually as a “Party.”

WHEREAS, CITY owns certain non-motorized trailers which it has determined to be surplus property; and

WHEREAS, COUNTY desires to take possession of said trailers and assume ownership thereof; and

WHEREAS, COUNTY understands and acknowledges that the CITY has made no guarantee, warranty and/or assurances as to the condition of the trailers and/or their fitness for use, and that it accepts the trailers “as is”; and

WHEREAS, CITY desires to donate said trailers to COUNTY on the terms and conditions stated herein.

NOW, THEREFORE, the Parties to this MOU agree as set forth herein below.

1. Property transferred. The CITY hereby agrees to transfer ownership to, and COUNTY agrees to accept, the following two non-motorized trailers (the “Property”): 17' Coleman 17B - single axle trailer, Model: CM17B20, VIN: 4YDT17B1XL8938115 and 17' Coleman 17B - single axle trailer, Model: CM17B20, VIN: 4YDT17B10L8937930. The Parties shall execute any and all Department of Motor Vehicles paperwork necessary to effectuate transfer of title and release of liability. COUNTY shall be responsible for picking up and/or arranging for delivery of the Property from the CITY.

2. Defense, indemnity and hold harmless. As consideration for the CITY agreeing to donate the Property to, and/or for entering into this MOU, COUNTY agrees, to the fullest extent allowed by law, that it shall defend, with counsel acceptable to CITY, indemnify, and hold free and harmless CITY, its elected officials, officers, agents and employees, at COUNTY’s sole cost and expense, from and against any and all claims, actions, suits or other legal proceedings brought against CITY, its elected officials, officers, agents and/or employees arising out of or in any way related to the Property including but not limited to the use and/or misuse thereof, this MOU and/or the actions and/or inactions of COUNTY, including its elected officials, officers, agents, employees, and/or volunteers. The defense obligation provided for hereunder shall apply without any advance showing of negligence or wrongdoing by COUNTY, but shall be required whenever any claim, action, complaint, or suit asserts as its basis the negligence, errors, omissions or misconduct of COUNTY, including its elected officials, officers, agents, employees, and/or volunteers, and/or whenever any claim, action, complaint or suit asserts liability against the CITY, its elected officials, officers, agents and employees based upon the Property and/or this MOU, whether or not COUNTY, including its elected officials, officers, agents, employees, and/or volunteers are specifically named or otherwise asserted to be liable. Notwithstanding

the foregoing, COUNTY shall not be liable for the defense or indemnification of CITY for claims, actions, complaints or suits arising out of the sole active negligence or willful misconduct of CITY.

3. General Provisions.

(a) Binding Agreement. The Parties agree that this MOU is both an understanding between the Parties and a binding and legally enforceable agreement between the Parties with respect to the matters encompassed within this MOU.

(b) Notices. Any notices, documents, correspondence or other communications concerning this MOU may be provided by personal delivery or mail and shall be addressed as set forth below. Such communication shall be deemed served or delivered: (a) at the time of delivery if such communication is sent by personal delivery, and (b) 48 hours after deposit in the U.S. Mail as reflected by the official U.S. postmark if such communication is sent through regular United States mail.

IF TO COUNTY:

County of Tuolumne
2 South Green Street
Sonora, CA 95370
Tel: (209) 533-5511
Attn: Tracie M. Riggs, County
Administrative Officer

IF TO CITY:

City of Costa Mesa
77 Fair Drive
Costa Mesa, CA 92626
Tel: (714) 754-5000
Attn: Susan Price, Assistant City
Manager

Courtesy copy to:

Jones & Mayer
3777 N. Harbor Blvd.
Fullerton, CA 92835
Attn: Kimberly Hall Barlow,
City Attorney

(c) Costs. Each Party shall bear its own costs and fees incurred in the preparation and negotiation of this MOU and in the performance of its obligations hereunder except as expressly provided herein.

(d) No Third Party Beneficiary Rights. This MOU is entered into for the sole benefit of the Parties hereto and no other parties are intended to be direct or incidental beneficiaries of this MOU and no third party shall have any right in, under or to this MOU.

(e) Construction. The Parties have participated jointly in the negotiation and drafting of this MOU. In the event an ambiguity or question of intent or interpretation arises with respect to this MOU, this MOU shall be construed as if drafted jointly by the Parties and in accordance with its fair meaning. There shall be no presumption or burden of proof favoring or disfavoring any Party by virtue of the authorship of any of the provisions of this MOU.

(f) Amendments. Only a writing executed by the Parties hereto or their respective successors and assigns may amend this MOU.

(g) Waiver. The delay or failure of either Party at any time to require performance or compliance by the other of any of its obligations or agreements shall in no way be deemed a waiver of those rights to require such performance or compliance. No waiver of any provision of this MOU shall be effective unless in writing and signed by a duly authorized representative of the party against whom enforcement of a waiver is sought. The waiver of any right or remedy in respect to any occurrence or event shall not be deemed a waiver of any right or remedy in respect to any other occurrence or event, nor shall any waiver constitute a continuing waiver.

(h) Severability. If any provision of this MOU is determined by a court of competent jurisdiction to be unenforceable in any circumstance, such determination shall not affect the validity or enforceability of the remaining terms and provisions hereof or of the offending provision in any other circumstance. Notwithstanding the foregoing, if the value of this MOU, based upon the substantial benefit of the bargain for any Party, is materially impaired, which determination made by the presiding court or arbitrator of competent jurisdiction shall be binding, then both Parties agree to substitute such provision(s) through good faith negotiations.

(i) Entire Agreement. This MOU contains the entire agreement between the Parties hereto with respect to the subject matter hereof, and any other purported agreement made shall be ineffective to change, modify, discharge or effect an abandonment of this MOU in whole or in part unless such purported agreement is in writing and signed by the Party against whom enforcement is sought.

(j) Applicable Law & Venue. This MOU shall be governed and interpreted in accordance with the laws of the State of California. Venue shall be in the superior court for the County of Orange.

(k) Counterparts. This MOU may be executed in multiple counterparts each of which shall be deemed an original for all purposes.

(l) Effective Date. This MOU shall be effective on the date of full execution of this MOU by both Parties ("Effective Date"). The term of this MOU shall commence upon the Effective Date and shall remain in effect unless or until terminated by both Parties upon written agreement thereof.

(m) Corporate authority. The individuals signing this MOU represent and warrant that they have the right, power, and authorization to bind their respective entities to the terms of this MOU.

IN WITNESS WHEREOF, COUNTY and CITY have executed this MOU as of the respective dates below.

COUNTY OF TUOLUMNE



Eric Erhardt, Assistant County
Administrator

Date: 8-25-20

CITY OF COSTA MESA

For [Signature]
Lori Ann Farrell Harrison
City Manager

Date: 10/9/20

ATTEST:

Brenda Green 10/12/2020
Brenda Green
City Clerk



APPROVED AS TO FORM:

Kimberly Hall Barlow
Kimberly Hall Barlow
City Attorney

Date: 10/10/20

APPROVED AS TO LEGAL FORM

COUNTY COUNSEL
COUNTY OF TUOLUMNE

[Signature] 9/28/20
CODY M. NESPER DATE