

RESOLUTION NO. 06-059

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF PASO ROBLES
AUTHORIZING THE CITY MANAGER TO ENTER INTO A LOAN
AGREEMENT WITH THE “CHILDRENS MUSEUM AT THE VOLUNTEER
FIREHOUSE” FOR THE USE OF THE 1944 MACK FIRE TRUCK AS AN
INTERACTIVE MUSEUM EXHIBIT

WHEREAS, the City of Paso Robles and the Children’s Museum have separately entered into a 30-year Lease agreement for the Old Fire Station No. 1 located at 623 - 13th Street; and

WHEREAS, the terms and provisions of the Lease agreement will result in the renovation and conversion of the Fire Station into an interactive recreational facility (Children’s Museum) open to the public; and

WHEREAS, the Mack Fire Truck is mechanically operational, but no longer functional as fire fighting apparatus; and

WHEREAS, the Mack Fire Truck has been housed at old Fire Station No. 1 on 13th Street and remains in storage except for occasional special community events (such as the Pioneer Day Parade); and

WHEREAS, the Children’s Museum is a nonprofit organization whose desire it is to continue to share the Mack Fire Truck and its role in the history of Paso Robles; and

WHEREAS, the Children’s Museum has submitted a “conditions of display” description of the intended use of the Mack Fire Truck as an interactive exhibit within the Museum; and

WHEREAS, the Loan Agreement has provisions to accommodate the Mack Fire Truck not only as a static display within the Museum, but to allow for its continued occasional use in special community events either by the Museum, the City, or by individuals deemed appropriate by the City; and

WHEREAS, the setting of the Volunteer Firehouse for long-term storage and display of the historic vehicle would seem appropriate, as would the enhanced learning opportunities focused on its heritage.

THEREFORE BE IT HEREBY RESOLVED that the City Manager is authorized to enter into a Loan Agreement (attached herein) with the “Children’s Museum at the Paso Robles Volunteer Firehouse” for the use of the 1944 Mack Fire Truck as an interactive museum exhibit.

ADOPTED by the City Council of the City of El Paso de Robles at a regular meeting of said Council held on the 18th day of April 2006 by the following vote:

AYES:

NOES:

ABSTAIN:

ABSENT:

Frank R. Mecham, Mayor

ATTEST:

Cathy David, Deputy City Clerk

LOAN AGREEMENT

THIS AGREEMENT is made by and between the CITY OF PASO ROBLES, a California municipal corporation ("Lender") and the CHILDREN'S MUSEUM AT THE PASO ROBLES VOLUNTEER FIREHOUSE, a California nonprofit corporation ("Borrower").

Recitals

- A. Lender is a municipal corporation of the State of California, owning certain personal property referred to as the Mack Fire Truck ("Truck"), as further described below; and
- B. Because of its age, the Truck is no longer used by the Paso Robles Fire Department to respond to emergency calls; however Lender desires to continue to share the Truck and its role in history of Paso Robles with the public; and
- C. Borrower is a nonprofit organization that seeks to develop and maintain an interactive educational recreation facility for the children, families, and educators, while showcasing the heritage of the Paso Robles Volunteer Firefighters; and
- D. Borrower and Lender have agreed to enter into a separate lease agreement ("Lease") whereby the Borrower will lease the Paso Robles Volunteer Firehouse ("Museum") located at 623 13th Street, Paso Robles, CA 93446 from the Lender; and
- E. In order to further Borrower's goals, the parties desire to enter into a loan agreement whereby Lender will loan Truck to Borrower on the terms and conditions set forth below.

NOW, THEREFORE, for and in consideration of the foregoing Recitals and the mutual covenants, terms, and conditions contained in this Agreement, the sufficiency of which are hereby agreed, the Lender and Borrower agree as follows:

Agreement

1. Incorporation of Recitals. The recitals set forth above, and all defined terms set forth in such recitals and in the introductory paragraph preceding the recitals, are hereby incorporated into this Agreement as if set forth herein in full.
2. Truck. Lender hereby loans to Borrower certain personal property owned by City, and more particularly described as the Mack Fire Truck. The Truck is a 1944 Mack Pumper, with the vehicle identification number EN5101099F. A photograph of the Truck is attached as Attachment "A" and incorporated herein by reference.
3. Term. The term of the loan shall begin on the day when this Agreement is signed by representatives of the Lender and the Borrower and shall expire upon the termination of the Lease, unless this Agreement is earlier terminated pursuant to Section 8.

4. Truck Display. Except as provided in Section 6, Borrower shall be the exclusive entity or organization authorized to display the Truck. Borrower shall display the Truck at the Museum only and shall not operate or allow any other person to operate the Truck, except for use by the Firefighters Association and as otherwise provided in Section 6. In consideration for the exclusive right to display the Truck, the Borrower shall put the Truck on display for the education and enjoyment of Museum attendees so as to shared the Truck and its role in the history of Paso Robles with the public. In addition to displaying the Truck, Borrower shall likewise be permitted to use the Truck in parades and other promotional activities for the Museum, subject to Lender's right to use the Truck for similar purposes pursuant to Section 6.

5. Maintenance of the Truck.

a. Maintenance, Inspection, and Supervision. Maintenance of the Truck and all costs associated therewith shall be the sole responsibility of the Lender; provided, however, that any damage to the Truck that occurs while in the possession of the Borrower that is a result of the Borrower's failure to properly secure or supervise the conditions of display of the Truck will be the sole responsibility of the Borrower. The Borrower will also be solely responsible for any damage caused by Museum attendants. Borrower shall develop and submit, for the Lender's approval, of the conditions, rules and procedures that will control the scope of the Truck's display and the Borrower's supervision of Museum attendants in the vicinity of the Truck. The "Conditions of Display" are attached hereto as Attachment "B" and incorporated herein by reference. Lender shall use best efforts to schedule maintenance of the Truck as such times as coincide with Lender's use of the Truck outside the Museum pursuant to Section 6, in order to limit the cumulative amount of time the Truck is off-display.

b. Securing the Truck When Not On Display. When the Truck is not on display and when the Borrower is not open for business, the Borrower shall use its best efforts to secure the Truck against all unauthorized access and against vandalism by storing the Truck either within the Museum or within some other enclosed and lockable building. Borrower will be solely responsible for securing the Truck while the Truck is on display at the Museum.

6. Lender's Right to Truck. Lender and its authorized representatives shall have the right to enter Borrower's building at all reasonable times for any of the following purposes: (a) to determine whether the Truck is in good condition and whether the Borrower is complying with its obligations under this Agreement; (b) to do any necessary maintenance and to make any restoration to the Truck that Lender has the right or obligation to perform; (c) to do any act or thing necessary for the safety or preservation of the Truck; (d) to use the Truck for community parades, events, or similar activities, (e) or to return the Truck from community parades, events, or similar activities. Lender shall provide Borrower with a one week written notice and shall make reasonable efforts to enter the building during times the building is closed for business. Lender shall not be liable in any manner for any inconvenience, disturbance, loss of business, nuisance or other damages arising out of the Lender's entry of the building as provided in this Section

unless caused by the Lender's or its agents' or contractors' negligence or willful misconduct. The Lender acknowledges and agrees that due to certain safety concerns that the Truck cannot be placed within the Museum unless all fluids (gasoline, oil, etc.) have been completely drained from the Truck. Additionally, exhibit of the vehicle will require the steering mechanism to be temporarily disengaged and temporary equipment and devices (as described in Attachment "B") to be placed on the Truck. At such times that the Truck is to be used in a special event outside of the Museum, it will be necessary to reverse the "decommission" process and to reassemble and/or reengage equipment so that the vehicle is in working condition. As such, all mechanical, service and/or physical modifications to the Truck shall either be performed by the Lender, or under the direct supervision of the Lender's fleet maintenance staff. The Lender shall perform this service for the Borrower one time a year at no cost to the Borrower. Such service for events exceeding one time a year shall be performed by the Lender, but at the cost of the Borrower. Any use of the Truck for special events outside of the Museum by the Lender, or their assignee, shall require the "reassembly" and "decommission" process as described above, but at no cost to the Borrower.

7. Abandonment. Borrower shall not abandon the Truck at any time during the term, and if the Borrower shall abandon, or surrender the Truck, or be dispossessed by process of law or otherwise, the Lender shall have the right to immediate possession of the Truck.

8. Termination. This Agreement may be terminated at any time either: (a) without cause upon the mutual written consent of Lender and Borrower; or (b) with cause by either party upon written notice to the other party. Such notice shall provide the allegedly defaulting party fifteen (15) days to cure any alleged default prior to the Agreement's termination. If the default is substantially cured, the Agreement shall not be terminated. If the default is not cured, the non-defaulting party shall send a notice of termination to the defaulting party. "Cause" shall include but not be limited to any failure of either party in the keeping and performing of any of its covenants or agreements herein contained. Borrower understands that if the Agreement is terminated, the provisions of Section 9 shall apply.

9. Ownership at Termination. Upon expiration or termination of the Agreement, the Truck shall become Lender's property free and clear of all claims to or against it by Borrower.

10. Non-Discrimination. Borrower shall not employ discriminatory practices in the use of volunteers for the building on the basis of race, gender, development disability, color, religion, national origin, ancestry, place of birth, marital status, sexual preferences, or physical or mental handicap.

11. Assignment. Borrower shall not assign, transfer, convey, or otherwise dispose of this Agreement or any right, obligation, or interest in this Agreement without the Lender's prior written consent, which consent may be withheld in Lender's sole and absolute discretion. Any purported assignment without Lender's prior written consent shall be

void. Whether Lender grants such consent shall be a matter vested in the Lender's sole discretion. Lender's consent may be granted only if the proposed assignee is a non-profit organization that provides a similar service to the residents of the community.

12. Destruction of Truck. In the event that the Truck is substantially destroyed by fire, earthquake, elements, casualty, war, insurrection, riot, public disorder, any authorized act on the part of any governmental authority or any cause or happening, to the extent that the same cannot be used by the Borrower, then either party has the option of terminating this Agreement.

13. Insurance. Borrower shall, at its sole cost and expense, obtain and keep in force during the term hereof; commercial general liability insurance insuring Truck and naming Lender as an additional insured against claims for bodily injury, personal injury, and property damages, providing coverage in an amount not less than one million dollars (\$1,000,000) per occurrence, with the general aggregate coverage limit applying separately to the Lender for the duration of this Agreement. If the aggregate limit does not apply separately to the Lender for the duration of this Agreement, the minimum general aggregate limit shall be two million dollars (\$2,000,000).

Upon execution of this Agreement, the Borrower shall deliver to the Lender current certificates evidencing the existence and amounts of this insurance, with the additional insureds required under this section. Each policy shall contain an endorsement providing that it cannot be cancelled or subject to nonrenewal or reduction in coverage except after thirty (30) days' prior written notice from the insurance company to the Lender. Proof of liability insurance in compliance with the terms and conditions of this section shall be provided to the Lender by the Borrower annually, prior to expiration of the previous insurance certification, or by January 1, whichever occurs first.

14. Indemnification. Borrower shall indemnify, defend, and hold harmless the Lender, its members, officers, directors, agents, employees, volunteers, and any other person acting for or on behalf of the Lender from and against any and all liabilities, obligations, orders, decrees, judgments, demands, actions, claims, losses, damages, fines, penalties, expenses, or costs of any kind or nature whatsoever, together with reasonable attorneys' fees resulting from or in connection with Borrower's use and display of the Truck. The foregoing obligation shall survive termination of this Agreement.

15. Attorneys' Fees. Should any action be brought arising out of this Agreement including, without limitation, any action for declaratory or injunctive relief, the prevailing party shall be entitled to reasonable attorneys' fees and costs..

16. Notice. Any written notice required by this Agreement shall be deemed to have been given if delivered in person or deposited in the U.S. Mail, postage prepaid, addressed by either party to the other as follows:

If to Lender:

CITY OF PASO ROBLES:
DIRECTOR OF EMERGENCY SERVICES
1000 Spring Street
Paso Robles, CA 93446

with a copy to:
CITY MANAGER
1000 Spring Street
Paso Robles, CA 93446

If to Borrower:

THE CHILDREN'S MUSEUM AT THE PASO ROBLES VOLUNTEER FIREHOUSE
P.O. Box 2526
Paso Robles, CA 93447
Attn: PRESIDENT OF THE BOARD

17. Amendments. This Agreement may be amended or modified only in writing, signed by the Lender and by the Borrower.
18. No Waiver. No waiver of any of the provisions of this Agreement shall be deemed, or shall constitute, a waiver of any provision, whether or not similar, nor shall any waiver constitute a continuing waiver. No waiver shall be binding unless executed in writing by the party making the waiver.
19. Governing law and Choice of Forum. This Agreement shall be construed in accordance with and governed by the laws of the State of California as if written by both parties. Any litigation arising from this Agreement shall be brought in the Superior Court of San Luis Obispo.
20. Authorized Signatory. The Borrower and Lender hereby warrant that each has authorized the respective person signing this Agreement to sign the Agreement and to bind the Borrower and Lender respectively to this Agreement. The persons signing this Agreement on behalf of the Borrower and Lender affirmatively represent that they have the requisite legal authority to enter into this Agreement on behalf of the Borrower and Lender respectively and to bind the Borrower and Lender to the terms and conditions of this Agreement. The person executing this Agreement on behalf of the Borrower and the Borrower understand that the Lender is relying on this representation in entering into this Agreement.
21. Entire Agreement. This Agreement constitutes the entire agreement between the Lender and the Borrower with respect to the subject matter hereof and supersedes all prior negotiations, oral and written.

Dated: _____.

LENDER:

City of Paso Robles, a California
municipal corporation

By _____

Its _____

ATTEST:

City Clerk

-AND-

BORROWER:

**THE CHILDREN'S MUSEUM
AT THE PASO ROBLES VOLUNTEER
FIREHOUSE, a California nonprofit
corporation**

By _____

Its _____

**ATTACHMENT "A"
PHOTO OF TRUCK**



ATTACHMENT B

CONDITIONS OF DISPLAY (FIRE TRUCK)

DESCRIPTION OF DISPLAY:

“The Mack” will be one of the biggest features of the museum as we celebrate the heritage of Paso Robles’ Volunteer Fire force. This exciting display will be a virtual reality exhibit where children can actually don firefighter hats and jackets before climbing up on the old fire truck complete with a model of a full size Dalmatian dog, where they pretend to drive on a virtual tour of downtown Paso Robles as if going to a fire as featured on the screen just in front of the fire engine. Students from the Paso Robles High School video production department did the video filming from an actual fire engine.

CONDITIONS:

To aid in the feeling of ‘driving’ the truck, the steering mechanism will be temporarily released so that children on the truck can move the steering wheel without affecting the front wheels. A flashing red light will be temporarily attached to the truck with its own power source so that children can turn on the red light. A switch for this would be temporarily mounted near the dash board and can be removed when the truck is in a parade or other outside events. A temporary button will be also near the dashboard to control a computer generated siren audio effect. This also has its own power source. The truck will also be used as a seating area for children watching the video described above. There are 3 ‘step units’ for children to use to board the truck. (See the attached step design drawings). They are to be located at the left and right cab entrance and rear tailboard. The engine will be made safe from flammable or hazardous materials for display within the museum and the battery system will be disconnected. The tires will be chocked to prevent vehicle movement, and the emergency brake will be applied without chance of release by the users. All mechanical, service and/or physical modifications to the Truck shall either be performed by the Lender (City of Paso Robles), or under the direct supervision of the Lender’s fleet maintenance staff.

The truck display will be on the main floor of the museum with easy access for the truck to be removed. When the museum is open, the bottom floor will be staffed by two adult employees of the museum. The intent is that children will be accompanied by a parent or child care provider when visiting the museum. No more than seven (7) children can be on the truck at one time. One (1) child will be in the engineer’s seat, two (2) children can be in the captains seat and no more than four (4) on the firefighters tailboard.

RULES FOR OPERATION:

It is our intent that the truck will always be kept inside a lockable building if not inside the museum. A qualification and checkout will be set up for those wanting to be able to operate the apparatus for the museum’s events. The truck will be exercised at least twice a year to keep things lubricated, or as otherwise prescribed and performed by the Lender. Only qualified drivers shall be able to operate the truck for parades and exercise.