

RESOLUTION NO. 08-03

**RESOLUTION OF THE CITY OF WILLIAMS TO DONATE A SURPLUS
AUTOMOBILE TO THE COUNTY OF COLUSA**

WHEREAS, the City of Williams (“CITY”) is authorized and empowered to hold and dispose of property under the Public Resources Code section 9452 *et seq*;

WHEREAS, the CITY is authorized pursuant to CA Government Code section 40500 *et seq* to dispose of surplus property;

WHEREAS, a surplus automobile described in Exhibit “A” attached, and incorporated herein by reference, is currently owned by the CITY;

WHEREAS, the automobile is no longer necessary to be retained for the uses or purposes of the CITY, and is not anticipated to become necessary to the CITY in the future;

WHEREAS, the Chief of Police has determined that, due to the minimal value or particular nature of the automobile, it would be more efficient to donate the automobile and forego any bidding and notice procedures that may be required to sell it; and

WHEREAS, the CITY has decided to donate the automobile to the County of Colusa Sheriff’s Department.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Williams that:

- 1) The automobile constitutes surplus property and is no longer necessary to be retained for the uses or purposes of the CITY, and is not anticipated to become necessary to the CITY in the future.
- 2) City staff is directed to donate the automobile to the County of Colusa, Sheriff’s Office, conditioned on the County of Colusa’s execution of a written waiver of liability for the automobile, which is attached as Exhibit “B”, and incorporated herein by reference.
- 3) City staff is further directed to file with the Department of Motor Vehicles a Notice of Transfer & Release of Liability (REG 138) within five (5) days from the date of the donation.
- 4) City staff is further directed to transfer true title to the automobile upon its conveyance to the County of Colusa.
- 5) The automobile shall be accepted by the County of Colusa “as is,” “without warranty of merchantability of fitness for particular use.”

PASSED AND ADOPTED by the City Council of the City of Williams on this 13th day of February, 2008 by the following vote:

AYES:
NOES:
ABSTAIN:
ABSENT:

Patricia Ash, Mayor

ATTEST:

By: _____
Rene Miles, City Clerk

EXHIBIT "A

2003 Ford Crown Victoria, Vehicle Identification No. 2FAFP71W43X115648.

EXHIBIT "B"

**WAIVER AND RELEASE AGREEMENT BETWEEN CITY OF WILLIAMS POLICE
DEPARTMENT AND COLUSA COUNTY SHERIFF'S DEPARTMENT**

This WAIVER AND RELEASE AGREEMENT ("Agreement") is made this 13th day of February 2008, by and between the CITY of Williams ("CITY") and the COUNTY of Colusa ("COUNTY"). CITY and COUNTY may be referred to herein as "Party" or "Parties."

RECITALS

A. CITY is donating a used, surplus Automobile to the COUNTY contingent on COUNTY executing this Agreement.

B. COUNTY has agreed to waive certain liabilities and release CITY from these liabilities according to the terms and conditions set forth herein.

C. CITY has agreed to: (a) properly endorse and deliver the certificate of ownership for the Automobile as provided in the Vehicle Code, or (b) deliver to the California Department of Motor Vehicles by United States mail, either of the following documents: (1) the notice as provided in subdivision (b) of Section 4456 or Section 5900 or 5901 of the Vehicle Code or (2) the appropriate documents and fees for registration of the Automobile to COUNTY pursuant to the transfer.

NOW, THEREFORE, the Parties agree as follows:

1. Waiver #1: COUNTY effectively waives any and all rights to sue for the condition of the Automobile. COUNTY understands that it is receiving the Automobile "as is," and "without warranty of merchantability of fitness for particular use."

2. Waiver #2: Upon complete and proper transfer of title, COUNTY effectively becomes true owner of the Automobile and waives any and all rights it may have to sue CITY for future criminal and/or civil liability with regards to the Automobile upon transfer of good title and delivery of possession. Pursuant to Vehicle Code § 5602, upon proper transfer of title and possession of the Automobile, CITY will no longer be an owner of the Automobile. COUNTY will be sole owner of the Automobile and accept full responsibility for all resulting operations, litigation and citations arising from said ownership. COUNTY will then be subject to any and all civil and/or criminal liability for the parking, abandoning or operation of the Automobile thereafter.

3. Release. COUNTY fully and forever releases and discharges CITY from and against all actions, proceedings, causes of action, claims for relief, demands, rights, titles, interests, damages, losses, expenses, disbursements, obligations, liabilities, costs and attorneys' fees, known or unknown, existing or contingent, based upon, arising out of, or relating in any way to the donation of the Automobile.

4. Binding Effect. Without limiting any other provision hereof, the obligations and rights in this Agreement shall be binding upon, extend to, and inure to the benefit of the undersigned Parties and any and all of their respective employees, officers, directors,

shareholders, servants, successors, predecessors, assignees, transferees and any and all other persons and entities acting or purporting to act on their respective behalf, and any and all firms, corporations, associations, partnerships, limited liability companies and other entities affiliated with, controlled by or otherwise related to any of the undersigned Parties.

5. Parties in Interest. Except as expressly stated in this Agreement, nothing in this Agreement, whether express or implied, is intended to confer third-party beneficiary status or to otherwise confer any rights or remedies on any third person or entity (hereinafter collectively “third party”); nor is anything in this Agreement intended to relieve or discharge the obligation or liability of any third party to either undersigned Party to this Agreement; nor shall any provision hereof afford any third party any right of subrogation, indemnity, contribution or set-off.

6. Full Authority. Each of the Parties to this Agreement hereby represents, covenants and warrants that said Party, and the signatory of said Party, has the full right, power and authority to execute this Agreement on behalf of said Party, and to execute any and all documents as may be necessary to effectuate the terms of this Agreement, and that neither Party, nor any signatory for said Party has sold, assigned, transferred, conveyed, hypothecated, encumbered or otherwise disposed of any rights, titles, interests, causes of action or other claims which said Party may have or have had in relation to the transactions or other matters described in this Agreement.

7. Informed Consent. Each undersigned Party hereby declares that said Party has received, or had the opportunity to receive, sufficient information, either through said Party’s own legal counsel or other sources of said Party’s own selection, so as to be able to make an intelligent and informed judgment whether to enter into this Agreement. Each undersigned Party further states that each has read this Agreement in its entirety prior to executing this document, and that each has executed this Agreement voluntarily, with competence and capacity to contract and with knowledge of the terms, significance and legal effect of this Agreement. By executing this Agreement, it is understood by each Party that substantial rights may be compromised and/or waived in their entirety.

8. Attorneys’ Fees. If any action, motion or proceeding at law or in equity is instituted to enforce or interpret the terms of this Agreement, the undersigned Parties agree that CITY shall be entitled to an award of reasonable attorneys’ fees, costs and necessary disbursements, as determined by a court of competent jurisdiction, in addition to any other relief to which CITY may be entitled.

9. Further Assurances. The undersigned Parties each agree to execute all documents and perform all acts necessary or appropriate to effectuate the performance of the terms of this Agreement including those steps required to be taken to inform the California Department of Motor Vehicles about the transfer of title and delivery of possession of the Automobile.

10. Severability. It is intended that each portion of this Agreement shall be treated as a separate and divisible covenant, and in the event that any portion is deemed unenforceable, the remainder shall continue to be in full force and effect so long as the primary purpose of this Agreement is unaffected.

11. Agreement. This Agreement cannot be amended or modified in any manner except by a writing executed by each of the undersigned Parties or by their valid successor(s). All undersigned Parties agree and acknowledge that no representations, warranties, covenants, assurances or other promises not specifically set forth in this Agreement have been made by any Party in connection with the subject matter of this Agreement, nor is any Party relying on any such conduct in entering into this Agreement. This Agreement has been negotiated and prepared by and for all undersigned Parties equally and shall not be construed as having been drafted by any particular Party or Parties.

12. Governing Law and Jurisdiction. The enforcement and interpretation of this Agreement shall be governed exclusively by the laws of the State of California without regard to its choice of law rules or those of any other state, or nation, and regardless of which state's, or nation's, laws would govern, if at all, otherwise. The Parties consent to the exclusive jurisdiction of the courts sitting in Colusa County, California, for any action or proceeding arising under this Agreement.

13. Counterparts. This Agreement may be signed in counterparts, and each counterpart shall have the same force and effect as though the signatures were contained in a single document. Counterparts may be executed by facsimile.

IN WITNESS WHEREOF, each Party has executed this Agreement as of the date first written above.

City of Williams

Colusa County

James P. Saso, Chief of Police

By: _____
Scott Marshall, Sheriff

APPROVED AS TO FORM:

Ann Siprelle
City General Counsel