



CITY OF
FOLSOM
C. DIVINE BY NATURE

Folsom City Council Staff Report

MEETING DATE:	2/11/2020
AGENDA SECTION:	Consent Calendar
SUBJECT:	Resolution No. 10386 - A Resolution Authorizing the Donation of Surplus Railroad Rolling Stock to the Placerville & Sacramento Valley Railroad
FROM:	Public Works Department

RECOMMENDATION / CITY COUNCIL ACTION

Staff recommends that the City Council adopt Resolution No. 10386 – A Resolution Authorizing the Donation of Surplus Railroad Rolling Stock to the Placerville & Sacramento Valley Railroad.

BACKGROUND / ISSUE

The City of Folsom has in its inventory one Pullman Interurban Passenger Coach (SP 2110), which was built in 1924 and used in commuter rail service between San Francisco and San Jose before it was donated to the City of Folsom in 1970. The coach was located in the Historic District railroad block until 2012. It was then relocated to the Wye property in order to allow for construction of the Historic Folsom Station redevelopment project. In 2012, the California Office of Historic Preservation assessed the Pullman Coach and concurred with the City’s assessment that it was not eligible for listing on the National Register of Historic Places (NRHP) and therefore could be considered surplus property.

The Placerville & Sacramento Valley Railroad (P&SVRR) has expressed interest in receiving the coach as a donation, with an intent of refurbishing the coach and incorporating it into their excursion rail operations along the Sacramento-Placerville Transportation Corridor (SPTC).

POLICY / RULE

In accordance with Section 2.36.220 of the Folsom Municipal Code, the Folsom City Council is authorized to approve the donation of surplus property, if the City Council finds that such donation serves a public purpose and/or benefit.

ANALYSIS

Per their website, P&SVRR is a 501(c)(3) nonprofit organization dedicated to preserving California’s railroad history. Their mission is protecting, preserving and developing the SPTC, celebrating its legacy through the creation and operation of a sustainable community heritage railroad for the benefit, use, education, and enjoyment of the general public. P&SVRR operates excursion train rides along the SPTC, as well as various holiday-themed rail events and the annual “Rail Fest,” which typically occurs every September. They ask for nominal donations for their excursion train rides to help support the maintenance and operations of their activities.

The Pullman Coach has sat unused on City property since 1970 and has deteriorated somewhat due to exposure to the elements. The exterior paint is faded and the metal equipment is oxidized. The interior upholstery is torn and faded, and the flooring and walls need to be refurbished. In 2019 the Ozark Mountain Railcar Company of Kirbyville, Missouri assessed the Pullman Coach and set its current value at \$25,000. P&SVRR has received two grants to fund the restoration of the Pullman Coach; a \$3,000 grant from the National Railway Historical Society and a \$1,000 grant from a private foundation.

While the City could conduct an auction and attempt to sell the coach for an amount up to its fair market value, it is staff’s recommendation that the coach would provide more value to the City of Folsom if it were donated to P&SVRR and used in their excursion rail operations. If approved, staff will execute a waiver and release for acceptance of this donation in a form that is acceptable to the City Attorney.

FINANCIAL IMPACT

There is no negative financial impact to the City in allowing the donation of this surplus equipment that is no longer needed.

ENVIRONMENTAL REVIEW

This action is exempt from environmental review under the California Environmental Quality Act (CEQA).

ATTACHMENTS

1. Resolution No. 10386 – A Resolution Authorizing the Donation of Surplus Railroad Rolling Stock to the Placerville & Sacramento Valley Railroad.
2. Donation and Release Agreement

Submitted,



Dave Nugen, Public Works Director

Attachment 1

Resolution No. 10386

RESOLUTION NO. 10386

**A RESOLUTION AUTHORIZING THE DONATION OF
SURPLUS RAILROAD ROLLING STOCK TO THE
PLACERVILLE & SACRAMENTO VALLEY RAILROAD**

WHEREAS, the City of Folsom has in its inventory a Pullman Interurban Passenger Coach rail car which is no longer needed or used for City purposes; and

WHEREAS, the coach is in generally good condition, with cosmetic defects and wear and tear due to several decades of exposure to the elements; and

WHEREAS, in 2012 it was determined that the coach is not eligible for listing on the National Register of Historic Places; and

WHEREAS, Placerville & Sacramento Valley Railroad (P&SVRR) has expressed interest in receiving the coach as a donation, restoring it, and incorporating it into their excursion rail operations; and

WHEREAS, there is no negative financial impact to the City in donating this surplus equipment to P&SVRR; and,

WHEREAS, P&SVRR has agreed to sign a waiver and release for the acceptance of this donation in a form acceptable to the City Attorney.

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Folsom hereby finds that the proposed donation of surplus City equipment to P&SVRR serves a public purpose and benefit.

BE IT FURTHER RESOLVED that the donation pursuant to this Resolution shall be “as is” without warranty, express or implied, and that P&SVRR shall defend, indemnify and hold harmless the City and its officers, agents and employees from any claim, cause of action, damage, loss or liability arising out of the condition of the surplus City equipment or its use by P&SVRR or subsequent transferee.

BE IT FUTHER RESOLVED that the donation of one (1) Pullman Interurban Passenger Coach (SP 2110) to P&SVRR is hereby approved.

PASSED AND ADOPTED on this 11th day of February 2020, by the following roll-call vote:

AYES: Council Member(s):
NOES: Council Member(s):
ABSENT: Council Member(s):
ABSTAIN: Council Member(s):

Sarah Aquino, MAYOR

ATTEST:

Christa Freemantle, CITY CLERK

Attachment 2

Donation and Release Agreement



CITY OF
FOLSOM
DISTINCTIVE BY NATURE

DONATION AND RELEASE AGREEMENT

This Agreement is entered into as of this ____ day of February, 2020 (“Effective Date”) by and between the City of Folsom, a Municipal Corporation (hereinafter “City”) and Placerville & Sacramento Valley Railroad (hereinafter “Recipient”) pertaining to the donation of a surplus City railroad vehicle in accordance with to the terms and conditions set forth below.

WITNESSETH:

WHEREAS, City owns a Pullman Interurban Passenger Coach, SP 2110 (“Vehicle”), which is no longer needed or used for City purposes; and,

WHEREAS, Recipient is a non-profit 501(c)(3) organization in need of a vehicle to support its efforts to preserve Folsom’s railroad heritage in the City; and,

WHEREAS, City desires to donate the Vehicle to Recipient for its sole use and benefit and Recipient desires to accept such donation.

NOW, THEREFORE, in consideration of the mutual promises hereinafter set forth, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged and agreed, City and Recipient agree as follows:

1. Vehicle is 96 years old and, while it is in generally good condition, it does come with cosmetic defects and normal wear and tear from prior use and exposure to the elements.
2. Recipient acknowledges and agrees that it has had an opportunity to inspect the Vehicle and take the Vehicle to its own mechanic for inspection, and that Recipient is satisfied with the condition of the Vehicle at the time of the donation.
3. Vehicle is hereby donated by City to Recipient in an “as-is” condition and with all faults and defects.
4. City makes no express or implied warranties whatsoever in connection with the Vehicle.
5. City makes no representation regarding the fitness of the Vehicle for any use, including but not limited to, travel and transportation.

6. All risks of loss with respect to the Vehicle shall pass to the Recipient upon signing of this Agreement.
7. Recipient will require any user of the Vehicle to perform safety inspection of the Vehicle prior to using it.
8. Recipient holds the right to sell or transfer ownership the Vehicle upon acceptance of the donation.
9. By signing below, the Recipient hereby agrees to protect, defend, indemnify and hold harmless the City of Folsom and its officers, agents, employees and volunteers from and against any loss, injury, damage, claims, actions or lawsuits arising out of or in connection with the donation, possession, ownership and use of the Vehicle.
10. By signing below, the Recipient further agrees to waive any and all claims or causes of action against the City with respect to the donation, possession, ownership and use of the Vehicle. This waiver includes waiving any rights under Section 1542 of the California Civil Code which provides that: **“A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor.”**

11. **Amendments**

Any modification or amendment of any provision of this agreement shall be in writing and must be executed by both parties hereto.

12. **Incidental Beneficiaries**

It is expressly understood and agreed that the enforcement of these terms and conditions shall be reserved to City and Recipient. Nothing contained in the Agreement shall give or allow any claim or right of action whatsoever by any third person. It is the express intent of the City and Recipient that any such person or entity, other than City and Recipient, receiving services or benefits under this Agreement shall be deemed an incidental beneficiary.

13. **Miscellaneous Provisions**

- A. Attorneys' Fees: In the event an action or proceeding is instituted by either party for the breach or enforcement of any provision of this Agreement, the prevailing party shall be entitled to reasonable attorneys' fees according to law.

- B. Venue: This Agreement shall be deemed to be made in, and the rights and liabilities of the parties, and the interpretation and construction of the Agreement governed by and construed in accordance with the laws of the State of California. Any legal action arising out of this Agreement shall be filed in and adjudicated by a state court in the County of Sacramento, State of California.
- C. Enforceability: If any term or provision of this Agreement is found to be void, voidable, invalid or unenforceable by a court of competent jurisdiction under the laws of the State of California, any and all of the remaining terms and provisions of this Agreement shall remain binding.
- D. Time: All times stated herein or in any other contract documents are of the essence.
- E. Binding: This Agreement shall bind and inure to the heirs, devisees, assignees and successors in interest of Recipient and to the successors in interest of City in the same manner as if such parties had been expressly named herein.
- F. Survivorship: Any responsibility of Recipient for warranties, insurance, indemnity, record keeping or compliance with laws with respect to this Agreement shall not be invalidated due to the expiration, termination or cancellation of this Agreement.
- G. Waiver: In the event that either City or Recipient shall at any time or times waive any breach of this Agreement by the other, such waiver shall not constitute a waiver of any other or succeeding breach of this Agreement, whether of the same or any other covenant, condition or obligation. Waiver shall not be deemed effective until and unless signed by the waiving party.

16. Entire Agreement

This instrument and any attachments hereto constitute the entire Agreement between the City and Recipient concerning the subject matter hereof and supersedes any and all prior oral and written communications between the parties regarding the subject matter hereof.

17. Authority to Execute

The person or persons executing this Agreement on behalf of the parties hereto warrants and represents that he/she/they has/have the authority to execute this Agreement on behalf of their entity and has/have the authority to bind their party to the performance of its obligations hereunder.

18. Counterparts

This agreement may be executed in one or more counterparts, each of which shall be deemed an original, and will become effective and binding upon the parties at such time as all of the signatories hereto have signed a counterpart of this Agreement. All

counterparts so executed shall constitute one Agreement binding on all of the parties hereto, notwithstanding that all of the parties are not signatory to the same counterpart.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed.

Placerville & Sacramento Valley Railroad

Dated: February ___, 2020

Jim Harville, President

City of Folsom

Dated: February ___, 2020

Elaine Andersen, City Manager

Approved as to Form:

Dated: February ___, 2020

Steven Wang, City Attorney

Attest:

Dated: February ___, 2020

Christa Freemantle, City Clerk