



CITY OF HAGERSTOWN, MARYLAND

Public Works Department

www.hagerstownmd.org

TO: Scott Nicewarner, City Administrator
Michelle Hepburn, Chief Financial Officer

FROM: Eric B. Deike, Director of Public Works

DATE: July 2, 2025

RE: Western Maryland Scenic Railroad
Locomotive 202 Donation Agreement

MAYOR AND COUNCIL ACTION REQUESTED

Staff is seeking Mayor and Council approval of a donation agreement of Locomotive 202 to the Western Maryland Scenic Railroad (WMSR).

DISCUSSION

City Engineer, Jim Bender, spoke to the Mayor and Council on Tuesday, July 24, 2024, regarding Locomotive 202. The City had attempted to complete a cosmetic restoration of the locomotive along with improvements to the site. The only bid received was four (4) times greater than the estimated cost for the project. Options were presented to the Council on a path forward including seeking additional funds, revise the restoration plans to reduce the cost, leave the locomotive as-is, or revisit the offer from the WMSR.

As you recall, WMSR wishes to relocate Locomotive 202 to Cumberland and complete a full restoration. Once restored, the locomotive would be placed in operation to pull passenger cars for short scenic tours of Western Maryland.

WMSR was invited back to the council meeting of September 10, 2024, where they once again laid out their plans to transport the train to Cumberland for restoration. The Council was receptive to the idea of donating Locomotive 202 to the WMSR as a means to preserve the locomotive for future generations.

Staff was directed to work with the WMSR to write a donation agreement. Attached is the donation agreement that has been reviewed by staff, the City's legal counsel, and the WMSR.

Highlights of the donation agreement include the following:

1. The City agrees to donate Locomotive 202 to WMSR for the sum of \$1.00.
2. The purpose of the donation is for the repair and full restoration of the locomotive for scenic railroad tours.

Public Works Department
51 West Memorial Blvd.
Hagerstown, MD 21740
Ph: 301.739.8577 Ext. 178

Parks and Recreation Division
351 North Cleveland Ave.
Hagerstown, MD 21740
Ext. 169

Parking Division
1 E. Franklin St.
Hagerstown, MD 21740
Ext.479



CITY OF HAGERSTOWN, MARYLAND

Public Works Department

www.hagerstownmd.org

3. WMSR bears all costs for relocation of the locomotive to Western Maryland and for the restoration.
4. No parts or components of the locomotive shall be used for other locomotive restorations without the expressed written consent of the City.
5. The proposed completion of the project is ten (10) years.
6. WMSR shall provide residents of the City of Hagerstown with a 25% discount on ticket purchases for WMSR-operated excursions in perpetuity.

FINANCIAL IMPACT

The financial impact to the City for the relocation of Locomotive Engine 202 is to be ZERO DOLLARS (\$0.00). However, there may be incidental cost involved when removing the locomotive from City Park. City staff will provide minimal assistance to WMSR as needed.

RECOMMENDATION

It is the recommendation of staff to enter into the draft agreement with the Western Maryland Scenic Railroad. Staff will be available to answer any questions regarding this agreement.

Att: WSMR Donation Agreement
C: Jason Morton, Attorney (digital copy)
Parks Staff (digital copy)

Public Works Department
51 West Memorial Blvd.
Hagerstown, MD 21740
Ph: 301.739.8577 Ext. 178

Parks and Recreation Division
351 North Cleveland Ave.
Hagerstown, MD 21740
Ext. 169

Parking Division
1 E. Franklin St.
Hagerstown, MD 21740
Ext.479

DONATION AGREEMENT

THIS DONATION AGREEMENT (“Agreement”), is made by and between **City of Hagerstown, Maryland** (the "City"), a Maryland municipal corporation, and the **Western Maryland Scenic Railroad Development Corporation** (“WMSR”), a Maryland non-profit corporation, and is effective upon the date of its completed execution, which date is hereinafter referred to as the “Effective Date.”

RECITALS

WHEREAS, WMSR provides scenic railroad tours between the City of Cumberland and the City of Frostburg as part of its business; WMSR is dedicated to preserving the rich history of the Western Maryland Railway

WHEREAS, the City owns a steam locomotive (1912 Baldwin Locomotive Works K-2 Pacific type steam locomotive, .) that is commonly known as Steam Locomotive Number 202, together with all accessories thereto, attached and unattached, all parts thereof, and all equipment and other items affixed thereto or temporarily removed therefrom, all of which are referred to collectively hereinafter as the “Locomotive”.

WHEREAS, the City has offered to donate the Locomotive to WMSR and WMSR has agreed to accept that donation subject to the terms and conditions of this Agreement; and

WHEREAS, the parties deem the entry into this Agreement to be in their respective best interests.

WITNESSETH:

NOW THEREFORE, in consideration of the sum of \$1.00, in hand paid, the receipt of which is hereby acknowledged, and in consideration of these premises and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

1. **Recitals.** The Recitals set forth above are not merely prefatory. They are incorporated by reference in and form a part of this Agreement.
2. **Donation.** Subject to the terms and conditions set forth herein, the City agrees to donate the Locomotive to WMSR, and WMSR has agreed to accept that donation.
3. **Purpose of Donation.** WMSR intends to repair and restore the Locomotive so it will be suitable for use for scenic railroad tours.
4. **Condition.** The City shall convey the Locomotive to the WMSR in “AS IS” condition and without any representations or warranties other than those expressly set forth herein.

5. **Contingencies.** The donation of the Locomotive shall be subject to the following contingencies:

5.1. **Title.** To the best of its knowledge, the City knows of no other entity having claim to title to the Locomotive. The City knows of no liens and encumbrances to the Locomotive.

5.2. **Other Agreements.** To the best of its knowledge, the City knows of no current agreements, recorded or unrecorded, that pertain to the Locomotive, directly or indirectly.

5.3. **Condition of Locomotive.** The Locomotive shall be delivered to the WMSR free of all trash and debris, all items owned by third parties, and all items the City will not be donating to WMSR.

5.4. **Notices from Government Entities.** Upon the execution of this Agreement, the City shall provide WMSR with all notices and documentation, if any, issued by any government authority pertaining to safety violations or the condition of the Locomotive during the time the City owned it, without regard to whether the conditions which were the subject of the notices and documentation have been resolved.

5.5. **Inspection Rights.**

(a) The City will provide WMSR, its agents, employees, representative and contractors with such access to the Locomotive as is necessary to conduct a comprehensive assessment of its condition, whether and the extent to which it contains asbestos or asbestos containing materials, the work that will be required to restore it, and whether it is feasible to transport the Locomotive from its current location to WMSR's facilities in Cumberland, Maryland. The assessment shall be concluded on or before sixty (60) days from the Effective Date, and WMSR shall promptly provide the City with its findings.

(b) WMSR and any contractor(s) it retains for the performance of the inspection work described in subsections (a) and (b) above shall secure (i) comprehensive general public liability insurance with limits of no less than One Million Dollars (\$1,000,000.00) per claim and per occurrence and shall name the City as an additional insured, and (ii) workers' compensation insurance in the statutory minimum amounts covering the inspection work described in this subsection, and WMSR shall provide the City with a Certificate of Insurance as to these obligations

5.6. **Waiver of Contingencies.** WMSR may waive any or all of the contingencies set forth in this section or elsewhere in this Agreement. These contingencies shall be deemed to have been waived unless WMSR gives the City written notice of its intent not to accept the donation of the Locomotive within sixty (60) days of the Effective Date, the said sixty (60) day period hereinafter being referred to as the "Due Diligence Period".

6. **Representations and Warranties.** As of the Effective Date and the date of the closing for the transfer of the Locomotive (the “Closing”), the City makes the following representations and warranties for the benefit of WMSR:

- (a) The City is, to the best of its knowledge, the legal owner of the Locomotive and has the authority to donate it to WMSR.
- (b) The Locomotive is, to the best of its knowledge, free from any liens, encumbrances or legal claims.

7. **Notice of Intent not to Proceed.** WMSR may elect not to proceed with the transaction contemplated by the terms of this Agreement for any reason or no reason at all provided it gives the City written notice of this election (hereinafter referred to as the “Notice of Intent not to Proceed”) during the Due Diligence Period.

8. **Closing; Possession.**

(a) Closing shall take place on a date or dates agreed upon by the parties hereto no later than fifteen (15) days after the expiration of the Due Diligence Period. Closing shall not occur unless and until WMSR has secured funding sufficient to transport the Locomotive to its facility, in accordance with Paragraph 8 (e), below. WMSR shall produce proof of funding to the City no later than the expiration of the Due Diligence Period.

(b) The parties need not be physically present for Closing. Closing will be deemed to have been consummated upon the completion of the execution of the Bill of Sale.

(c) At the Closing, the City shall transfer all of its rights, title and interest in and to the Locomotive by means of an executed Bill of Sale in the form set forth in the Exhibit A attached hereto.

(d) At the Closing, the City shall deliver possession of the Locomotive, attached parts, unattached parts, spare parts, and all accessories thereto to WMSR.

(e) WMSR acknowledges that the Locomotive is not legal for interchange and will require movement by either truck or flat car. At Closing, WMSR shall provide for the transportation of the Locomotive, attached parts, unattached parts, spare parts, and all accessories thereto from the City’s property and it shall provide all tie downs and related arrangements. WMSR is responsible for all insurances, permits and other requirements of the transportation, and shall indemnify and hold the City harmless for all claims arising out of transportation of the Locomotive from its present location.

(f) Immediately upon Closing, the City shall deliver possession of the Locomotive to the WMSR.

9. Release; Indemnity.

9.1. WMSR's Indemnification Obligation. WMSR hereby assumes liability for and agrees to defend, protect and hold the City and its officers, officials, employees, agents and representatives harmless from and against all liabilities (including without limitation any obligation based on strict liability and tort), claims, suits, causes of action, legal or administrative proceedings, demands, judgments, damages, losses, fines, penalties, costs and expenses including attorneys' fees and costs arising out of or in any manner connected with the ownership, transportation, use, operation or disposition of the Locomotive on and after the Closing Date.

9.2. City's Indemnification Obligation. The City hereby assumes liability for and agrees to indemnify, protect and hold WMSR and its officers, directors, employees, agents and affiliates harmless from and against any and all liabilities (including only actions sounding in strict liability and tort), arising out of or in any manner connected with the ownership, use or operation of the Locomotive prior to the Closing Date and prior to transport from its current location.

10. Delivery Details. WMSR shall accept delivery of the Locomotive at its current location at City Park, Hagerstown, Maryland. WMSR shall transport the Locomotive to its facilities in Cumberland, MD no later than one hundred eighty (180) days from the date of Closing. Failure to transport the Locomotive to WMSR facilities within one hundred eighty (180) days shall be grounds for the City to terminate the Agreement, in which case WMSR shall return it to its original location in City Park. WMSR shall be responsible for all transportation costs. WMSR reserves the right to engage qualified heavy equipment contractors to assist in planning and executing the locomotive's removal and movement to WMSR's facilities in Cumberland, Maryland. The parties to this Agreement agree to collaborate with one another and WMSR's heavy equipment contractors for these purposes. Any contractors engaged by WMSR for these purposes shall carry the same insurance required for contractors retained for the purpose of performing inspections, as provided for in Section 5.5(b) of this Agreement, and WMSR shall provide the City with a Certificate of Insurance as to these obligations.

11. Risk of Loss. The Locomotive shall be held at the risk of the City until such time as the Closing has been completed.

12. Possession. The City agrees to give possession and occupancy of the Locomotive to WMSR upon the completion of closing.

13. Post-Donation Obligations.

13.1. Renovation and Repair. The donation provided herein is contingent upon WMSR's renovation and repair of the Locomotive to a condition which meets or surpasses the Federal Railroad Administration regulations for operation, as provided in 49 CFR Part 230, no later than ten (10) years from the Effective Date, and in accordance with the timeline attached hereto as Exhibit B. WMSR shall not use any parts or components from the Locomotive for any other locomotive, except with the express written consent of the City. The City shall have the right to inspect progress of restoration at five (5) years from the Effective Date, to

ensure that restoration is proceeding in a manner consistent with this Agreement. If WMSR does not restore the Locomotive to this condition in a timely manner, the City shall have the right to demand that the Locomotive be returned to it; provided, however, that, if the Locomotive has been renovated and repaired after this ten (10) year period and the City has not demanded its return, WMSR shall not be obligated to return it. Any demand for the return of the Locomotive must be made in writing. In the event the City is eligible to demand the return of the Locomotive, as provided herein, and it provides notice of such demand to WMSR, WMSR shall return the Locomotive (including all of its component parts) to the City in the same or better condition than it was in as of the Effective date; provided, however, that if the Locomotive is partially restored, it may be returned to the City in that condition.

Notwithstanding the foregoing, the City may demand that WMSR perform a cosmetic restoration of the Locomotive before it is returned to the City. Any such demand shall be set forth in the written demand for the return of the Locomotive. If the City elects to proceed with a cosmetic restoration, the City will be responsible for providing or paying for the resources and materials necessary for the performance of that work, and WMSR shall furnish of the labor to perform that work. WMSR shall be responsible for returning the Locomotive to the City and/or bearing all costs associated with such return. WMSR reserves the right to engage qualified heavy equipment contractors to assist in planning and executing the locomotive's removal and movement to the City's location of choice in Hagerstown, Maryland. The parties to this Agreement agree to collaborate with one another and WMSR's heavy equipment contractors for these purposes. Any contractors engaged by WMSR for these purposes shall carry the same insurance required for contractors retained for the purpose of performing inspections, as provided for in Section 5.5(b) of this Agreement, and WMSR shall provide the City with a Certificate of Insurance as to these obligations.

13.2. Perpetual Discount for Hagerstown Residents. In recognition of the City's collaboration and support for the donation of the Locomotive, WMSR shall provide residents of the City of Hagerstown a with a 25% discount on ticket purchases for WMSR-operated excursions in perpetuity. This discount will not apply for third-party licensed events, such as The Polar Express™ Train Ride and other similar special events not directly operated by WMSR. In order to be eligible for the discount, Hagerstown residents must provide government-issued picture identification showing that they reside in Hagerstown to support their discounted ticket pricing.

13.3. WMSR shall create an annual event to draw Hagerstown residents and show them the progress of the Locomotive's restoration program and eventual operation.

14. Remedies upon Default. If either party breaches the terms of this Agreement, the non-breaching party may pursue such rights and remedies as may be available in law or in equity, including without limitation, an action for specific performance of this Agreement. The prevailing party in any such litigation shall be entitled to be indemnified for its reasonable attorneys' fees, court costs and litigation expenses.

15. **Survival.** With the exception of Section 5, the terms, provisions, covenants and conditions herein contained herein shall not merge into the Bill of Sale. Rather, they shall survive the Closing.

16. **Assignability.** This Agreement may not be assigned except by written agreement of the parties. Either party may refuse to assign this Agreement for any reason or no reason at all.

17. **Captions.** The marginal captions of this Agreement are for convenience and in no way define or limit the intents, rights or obligations of the parties hereunder.

18. **Notices.** Any notice, request, demand, approval or consent given or required to be given under this Agreement shall, except as otherwise expressly provided herein, be in writing and shall be deemed to have been given when mailed by overnight delivery or hand-delivered at the address stated below. Such notices may also be provided by email, provided the recipient acknowledges receipt by means of a responsive email.

To the City:

City Administrator (presently Scott Nicewarmer)
City of Hagerstown
1 E. Franklin Street
Hagerstown, MD 21740
snicewarner@hagerstownmd.org

To WMSR:

Wesley Heinz
Executive Director
Western Maryland Scenic Railroad
13 Canal Street, 2nd Floor
Cumberland, MD 21502
wheinz@wmsr.com

19. **Entire Agreement.** This Agreement contains the final and entire agreement between the parties, and neither they nor their agents shall be bound by any terms, conditions, statements, warranties or representations, oral or written, not herein contained. The parties to this Agreement mutually agree that it is binding upon them, their heirs, executors, administrators, personal representatives, successors and assigns.

20. **Invalidity.** If any provision or part of any provision contained in this Agreement shall be found for any reason to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provisions or the remaining part of any effective provisions of this Agreement, and it shall be construed as if such invalid, illegal, or unenforceable provision or part thereof had never been contained herein, but only to the extent of its invalidity, illegality, or unenforceability.

21. **Governing Law.** This Agreement shall be governed by, construed and enforced in accordance with the laws of the State of Maryland, without regard to its conflicts of laws principles. It shall be enforceable with an action commenced and maintained in the Circuit Court for Allegany County, Maryland, the Circuit Court for Washington County, the District Court of Maryland for Allegany County or the District Court of Maryland for Washington County. The parties hereto agree to be subject to the jurisdiction of such courts and further waive any claim that any action or proceeding arising out of or relating to this Agreement and commenced in such courts is commenced in an inconvenient forum or one that lacks proper venue.

22. **Waiver of Jury Trial.** THE PARTIES HERETO EACH HEREBY WAIVE TRIAL BY JURY IN ANY ACTION OR PROCEEDING TO WHICH ANY OR ALL OF THEM MAY BE PARTIES, ARISING OUT OF OR IN ANY WAY PERTAINING TO THIS AGREEMENT. IT IS AGREED THAT THIS WAIVER CONSTITUTES A WAIVER OF TRIAL BY JURY OF ALL CLAIMS AGAINST ALL PARTIES TO SUCH ACTIONS OR PROCEEDINGS. THIS WAIVER IS KNOWINGLY, WILLINGLY AND VOLUNTARILY MADE BY THE PARTIES HERETO, AND EACH OF THEM REPRESENT THAT NO REPRESENTATIONS OF FACT OR OPINION HAVE BEEN MADE BY ANY INDIVIDUAL(S) TO INDUCE THIS WAIVER OF TRIAL BY JURY OR TO IN ANY WAY MODIFY OR NULLIFY ITS EFFECT.

23. **Gender/Tense/Conjugation.** The use of any gender, tense, or conjugation herein shall be applicable to all genders, tenses and conjugations. The use of the singular shall include the plural and the plural shall include the singular.

24. **Modification.** No modification or waiver by the parties of any of the terms of this Agreement shall be valid unless in writing and executed with the same formality as this Agreement.

25. **Joint Drafting.** The parties hereto agree that this Agreement reflects the joint drafting efforts of each party, and any ambiguities shall not be construed against either party.

26. **Signing by Electronic Means.** Each of the parties hereto expressly authorizes and agrees to sign electronically (but not by facsimile machine) transmitted copies of this Agreement. Once said electronically transmitted copies are fully executed, they shall have the same binding effect as would a signed original Agreement once delivered to the other party.

27. **Counterparts.** This Agreement may be executed in multiple parts, each of which shall be deemed an original and shall have the same binding effect as though a single original was executed by all of the parties hereto.

IN WITNESS WHEREOF, the parties have duly executed this Donation Agreement as of the dates set forth below with the specific intention that it constitute an instrument under seal.

WITNESS/ATTEST:

CITY OF HAGERSTOWN, MARYLAND

By: _____ (SEAL)
William B. McIntire, Mayor

Date

**WESTERN MARYLAND SCENIC RAILROAD
DEVELOPMENT CORPORATION**

By: _____ (SEAL)
Wesley Heinz, Executive Director

Date

EXHIBIT A

THIS QUITCLAIM BILL OF SALE is made by and between **City of Hagerstown, Maryland** (the "City"), a Maryland municipal corporation, and the **Western Maryland Scenic Railroad Development Corporation** ("WMSR"), a Maryland non-profit corporation, and is effective upon the date of its completed execution, which date is hereinafter referred to as the "Effective Date."

In consideration of the sum of Ten Dollars (\$10.00) and other good and valuable consideration (the sufficiency and receipt of which are hereby acknowledged), The City does hereby quitclaim unto WMSR, all of the City's right, title and interest, if any, in and to the 1912 Baldwin Locomotive Works K-2 Pacific type steam locomotive, commonly known as Locomotive 202, together with all accessories thereto, attached and unattached, all parts thereof, and all equipment and other items affixed thereto or temporarily removed therefrom, all of which are referred to collectively as the "Locomotive".

TO HAVE AND TO HOLD the Locomotive unto WMSR and WMSR's successors and assigns forever.

The locomotive is being quitclaimed "as is", "where is", and "with all faults" as of the date of this Bill of Sale, without any representation or warranty whatsoever as to its condition, fitness for any particular purpose, merchantability or any other warranty, express or implied, with the exception of those expressly set forth in the Donation Agreement executed by the parties hereto. The City specifically disclaims any warranty, guaranty, or representation, oral or written, past or present, express or implied, concerning the Locomotive or the City's title thereto with the exception of those expressly set forth in the said Donation Agreement.

With the exception of facsimile transmission, each of the parties hereto expressly authorizes and agrees to sign electronically transmitted copies of this Bill of Sale. Once said electronically transmitted copies are fully executed, they shall have the same binding effect as would a signed original.

This Bill of Sale may be executed in multiple parts, each of which shall be deemed an original and shall have the same binding effect as though a single original was executed by all of the parties hereto

IN WITNESS WHEREOF, the parties have duly executed this Bill of Sale as of the dates set forth below with the specific intention that it constitute an instrument under seal.

WITNESS/ATTEST:

CITY OF HAGERSTOWN, MARYLAND

By: _____ (SEAL)
William B. McIntire, Mayor

date

**WESTERN MARYLAND SCENIC RAILROAD
DEVELOPMENT CORPORATION**

By: _____ (SEAL)
Wesley Heinz, Executive Director

date



Exhibit B
*Restoration Schedule for
Western Maryland Railway #202*

Phase 1: 2025 – 2026

Launch and Initial Assessments

- Fundraising Begins Immediately
- Tear Down
- Superheater Units Are Removed from the Locomotive
- Ultrasound (Boiler Inspection)
- Preliminary FRA Inspection

Phase 2: 2027 – 2028

Engineering and Planning

- Form 4 Boiler Calculations
- Detail Running Gear Inspection
- Interior Acid Wash of the Boiler
- Hydrostatic Test for boiler inspection
- Remove Boiler Flues & Tubes
- Exterior Sand Blast Boiler Shell and Apply THERMOLUX for rust prevention
- Interior of Boiler Barrel will receive a coating of APEXIOR 3 for rust/scale prevention

Phase 3: 2029 – 2031

Begin Restoration Work

- Begin Boiler Work – Removal of Non-Compliant Material
- Preparations for Sourcing Replacement Material
- Firebox Sheet Removal and Replacement
- Begin Major Running Gear Maintenance
- Appliance Inspection
- Appliance Restoration & Acquisition



*Restoration Schedule for
Western Maryland Railway #202*

Phase 4: 2031 – 2032

Tender, Cab, and Boiler Component Preparation

- Tender Disassembly
 - Tender Repair
 - Tender Reassembly
 - Tender Painted
 - Cab Fabrication
 - Flues and Tubes Ordered
 - Superheater Units Tested and Polished for Installation
 - Rebuild Turret Valves and Appliances Continuing.
 - Fabrication of Missing Appliances, Water Column, and/or Turret/Valves
-

Phase 5: 2033 – 2034

Testing and Reassembly

- Hydrostatic Testing of the Boiler
 - FRA Witness of Hydrostatic Test
 - Repair Any Deficiencies Found During Hydrostatic Testing
 - Boiler Test Firing
-

Final Phase: 2035

Completion and Certification

- Reassembly of Key Components
- FRA Inspections to Place the Locomotive in Service