

Washington Metropolitan Area Transit Authority  
**Board Action/Information Summary**

<input checked="" type="radio"/> Action <input type="radio"/> Information	MEAD Number: 100238	Resolution: <input checked="" type="radio"/> Yes <input type="radio"/> No
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**TITLE:**

Indemnification of WageWorks, Inc.

**PURPOSE:**

Request Board approval to indemnify WageWorks, Inc. as part of a contract to provide administration of the Authority's health care and dependent care Flexible Spending Accounts Program.

**DESCRIPTION:**

Metro offers a Flexible Spending Accounts (FSA) Program as a benefit to its employees. The FSA Program enables employees to set aside a predetermined dollar amount in an account to cover eligible out-of-pocket health care or dependent day care expenses throughout the year. Effective with calendar year 2009, Metro changed its FSA Program Administrator in order to provide a more enhanced benefit to employees to include a VISA Debit Card for the health care account.

On November 26, 2008, Metro entered into a Flexible Spending Accounts (health and dependent care) Master Services Agreement with WageWorks, Inc. to provide the administration of the FSA Program to employees. The agreement contained an indemnification provision requiring that Metro indemnify WageWorks for claims and proceedings for actual damages or losses arising out of any actual or alleged: "(i) breach by such party of its obligations hereunder; (ii) negligence or willful misconduct of such party or its Employees, officers or agents; or (iii) any claims in which one party is named or joined with the other party when such party has not engaged in any wrongful acts." **The contract is being amended to expressly provide that the indemnification language does not require one party to indemnify the other for the actions or omissions of the party receiving the indemnification.**

Given the Internal Revenue Service requirement for participants to make their FSA Program elections before the start of the calendar year, WageWorks agreed that the indemnification provision in the contract would be of no force and effect until reviewed and approved by Metro's Board of Directors at the January 29, 2009 meeting.

**FUNDING IMPACT:**

No impact on funding.

**RECOMMENDATION:**

Approval to indemnify WageWorks, Inc.

SUBJECT: INDEMNIFICATION OF WAGE WORKS, INC.

PROPOSED  
RESOLUTION  
OF THE  
BOARD OF DIRECTORS  
OF THE  
WASHINGTON METROPOLITAN AREA TRANSIT AUTHORITY

WHEREAS, Metro offers a Flexible Spending Accounts (FSA) Program as a benefit to its employees, and effective with calendar year 2009 Metro made the decision to change its FSA Program Administrator in order to provide a more enhanced benefit to employees; and

WHEREAS, The Flexible Spending Accounts Master Services Agreement with WageWorks, Inc. includes an indemnification provision requiring that Metro indemnify WageWorks for claims and proceedings for actual damages or losses arising out of any actual or alleged: "(i) breach by such party of its obligations hereunder; (ii) negligence or willful misconduct of such party or its Employees, officers or agents; or (iii) any claims in which one party is named or joined with the other party when such party has not engaged in any wrongful acts"; and

WHEREAS, The contract is being amended to expressly provide that the indemnification language does not require one party to indemnify the other for the actions or omissions of the party receiving the indemnification; and

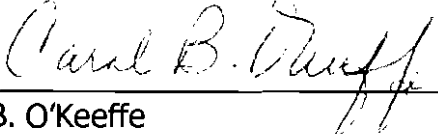
WHEREAS, The Board of Directors' approval is required for Metro to indemnify a third-party; and

WHEREAS, Given the Internal Revenue Service requirement for participants to make their FSA Program elections before the start of the calendar year, WageWorks agreed that the indemnification provision in the contract would be of no force and effect until reviewed and approved by Metro's Board of Directors at the January 29, 2009 meeting; now, therefore be it

*RESOLVED*, That the Board of Directors approves the granting of the requested indemnification contained in the Flexible Spending Accounts Master Services Agreement between Metro and WageWorks, Inc., as amended; and be it finally

*RESOLVED*, That this Resolution shall be effective immediately.

Reviewed as to form and legal sufficiency,

  
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Carol B. O'Keeffe  
General Counsel