

Washington Metropolitan Area Transit Authority
Board Action/Information Summary

<input checked="" type="radio"/> Action <input type="radio"/> Information	MEAD Number: 100190	Resolution: <input checked="" type="radio"/> Yes <input type="radio"/> No
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TITLE:

Metro`s Credit Card Indemnifications Contracts

PURPOSE:

The regional SmarTrip® card required convenient places to reload the card, especially for bus operations. The Maryland Transportation Authority and Metro jointly purchased credit and debit card processing software due to the high cost. This software will be utilized for the whole transit region; in order to implement card processing for other legal entities besides Metro, Bank of America Merchant Services (BAMS) requires that we sign a third-party processing contract and a special addendum which makes us liable for processing all regional card transactions. The regional operator, Potomac & Rappahanock Transportation Commission (PRTC), will sign Metro`s third party processing agreement to indemnify Metro against fraudulent transactions.

DESCRIPTION:

With the implementation of the point of sale network now being deployed for the regional SmarTrip® Program, it is necessary for Metro to execute a Third-Party Processing Agreement with BAMS. This is necessary because the new system will process debit/credit transactions that belong to PRTC, a regional operator. The receipts of these transactions will be credited directly to PRTC`s own bank account. Within this structure the Authority must provide BAMS certain assurances and indemnities as described in the accompanying resolution and receive identical assurances and indemnification from the regional partner.

These indemnifications are identical to those granted when Metro began accepting debit and credit cards for its own use. Metro will have the regional operator, PRTC, sign our Credit/Debit Third-Party Processing Agreement, ("The Jurisdictional Merchant Agreement") which includes their indemnification of Metro for the same actions as Metro indemnifies BAMS. In addition, the regional partner, PRTC, will also directly sign a merchant processing agreement with BAMS, also containing these indemnifications.

FUNDING IMPACT:

No impact on funding.

RECOMMENDATION:

Approval to execute a Third-Party Processing Agreement with Bank of America Merchant Services.

Approval of indemnifications required by Bank of America Merchant Services.

Approval to execute reciprocal agreement with Potomac & Rappahanock Transportation Commission to indemnify Metro.

SUBJECT: INDEMNIFICATION OF BANK OF AMERICA MERCHANT SERVICES AND CARD ISSUERS FOR THIRD PARTY PROCESSING OF CREDIT AND DEBIT TRANSACTIONS

**PROPOSED
RESOLUTION
OF THE
BOARD OF DIRECTORS
OF THE
WASHINGTON METROPOLITAN AREA TRANSPORTATION AUTHORITY**

WHEREAS, Part of the regional use of the SmarTrip® card involves the loading of funds at remote locations and the use of the SmarTrip® card on local bus systems; and

WHEREAS, The loading of funds may be done with the use of credit and debit cards; and

WHEREAS, The Potomac & Rappahanock Transportation Commission wishes to own the transactions but have the transactions processed through the Metro's switch software; and

WHEREAS, Bank of America Merchant Services and the various card-issuing companies require Metro to indemnify them for risks resulting from processing the third party transactions such as the proposed Potomac & Rappahanock Transportation Commission transactions; and

WHEREAS, Those risks include any claim, suit, demand, action, dispute, or other proceeding, including reasonable attorneys' fees, collection fees and expenses brought by any third party against Bank of America Merchant Services ("Third Party Claim") and all losses, liabilities, damages and expenses incurred by Bank of America Merchant Services or which Bank of America Merchant Services may become liable arising out of such Third Party Claims to the extent that any Third Party Claim or losses there from result from or arise out of any breach of any warranty, covenant, duty, obligation or agreement or any misrepresentation by Metro under the Third Party Agreement, or arising out of any gross negligence or willful misconduct of Metro, its agents or employees in connection with Metro credit/debit card transactions or otherwise arising from Metro's provision of goods and services credit or debit card customers; and

WHEREAS, Metro must reimburse Bank of America Merchant Services for all reasonable costs and expenses including reasonable attorney's fees and expenses incurred by Bank of America Merchant Services to enforce its rights under the Third Party Processing Agreement in connection with any actual or potential default under the Agreement by Metro; and

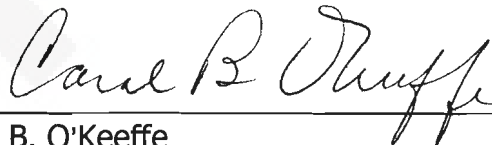
WHEREAS, The indemnification also covers: 1) Bank of America Merchant Services' compliance with the instructions of MasterCard, Visa, or any other card organization; and 2) any alleged infringement, misappropriation or other violation of a third party's intellectual property arising out of Metro's performance under the Agreement as well as third party service providers to Bank of America Merchant Services, card organizations, and the participants of the card organizations for events arising from Metro's or its employees, agents or representatives (a) failure to abide by a requirement of this Agreement including the Rules; (b) violation of any applicable law or regulation or order; (c) misuse of any protested trademark of a card organization; (d) willful misconduct, fraud, or gross negligence; (e) effecting transactions with the use of a lost, stolen, counterfeit, or misused card; (f) failure to follow instructions of a card organization; or (g) conduct of Metro's business; and

WHEREAS, These indemnifications are similar to those granted when Metro began accepting debit and credit cards for its own use; now, therefore be it

RESOLVED, That the Board of Directors approves granting the indemnifications referenced in this Resolution to the parties so referenced provided that the Potomac & Rappahanock Transportation Commission gives the same indemnifications to Metro as a condition of processing transactions through the Metro switch software; and be it finally

RESOLVED, That this Resolution shall be effective immediately.

Reviewed as to form and legal sufficiency,



Carol B. O'Keeffe
General Counsel