

Board Action/Information Summary

<input checked="" type="radio"/> Action <input type="radio"/> Information	MEAD Number: 100227	Resolution: <input checked="" type="radio"/> Yes <input type="radio"/> No
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TITLE:

Health and Welfare Agency Agreement

PURPOSE:

The purpose of this action is to obtain Board approval to execute an Agency Agreement between Metro and the Transit Employee Health and Welfare Plan (Plan) which satisfies the Internal Revenue Service allowing a third party to act as agent for the withholding and reporting obligations of Metro.

DESCRIPTION:

The Internal Revenue Service requires a formal agreement between Metro and the Plan allowing the Plan to act as agent for tax withholding and reporting obligations of Metro.

The Plan will act as Metro`s agent for purposes of tax withholding and reporting obligations exclusively on disability payments for plan participants. As outlined in the agreement, the Plan will act as Metro`s agent withholding and paying all federal and state income, FICA, Medicare and FUTA taxes, which would normally be the responsibility of Metro. Further, the Plan will issue to affected employees all required information, including W-2 forms, covering third party sick pay-out by the plan. The withholding payments will include both the employee and employer`s shares.

The Plan will submit to Metro an itemized invoice for payment of the employer share of taxes under this agreement within ten calendar days of the close of each calendar quarter. Metro will either dispute or pay the invoice to the Plan by the first day of the month after which the invoice was received. If penalties or interest accrue because of the Plan`s inability or failure to pay timely, Metro will not be liable for such costs, unless it was Metro`s action or inaction causing such a condition.

The agreement will become retroactively effective October 1, 2008 and continue until December 31, 2009. Further, the agreement will automatically renew for successive 1-year periods unless written notice is served; either party can terminate the agreement by providing a minimum of 60 days notice prior to the end of a calendar quarter.

FUNDING IMPACT:

No impact on funding. The Plan will not charge for this service and Metro will not be obligated to pay an administrative fee to the Plan for performance.

RECOMMENDATION:

Approval to Approval to execute an Agency Agreement between Metro and the Transit Employee Health and Welfare Plan which satisfies the Internal Revenue Service allowing a third party to act as agent for the withholding a and reporting obligations of Metro.

SUBJECT: APPROVAL OF AGENCY AGREEMENT WITH TRANSIT EMPLOYEES HEALTH AND WELFARE PLAN

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

WHEREAS, Certain disability benefits for Metro employees represented by Local 689 ATU are paid by the Transit Employees Health and Welfare Plan; and

WHEREAS, Those benefits are subject to FICA and unemployment tax payments that Metro is required to make; and

WHEREAS, Internal Revenue Service regulations allow the employer to appoint an agent to handle these payments; and

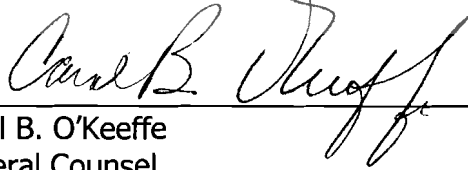
WHEREAS, The appointment of an agent will simplify the tax administration burdens of Metro and reduce the possibility of Metro being penalized for late tax deposits; now, therefore be it

RESOLVED, That the Board of Directors approves the attached Agency Agreement, which appoints the Transit Employees Health and Welfare Plan as Metro's agent for the limited purpose of paying and reporting the required federal and state income, FICA, Medicare, and unemployment taxes on the covered disability benefits; and the General Manager here is authorized to execute the Agency Agreement and any necessary related documents in the name of and on behalf of Metro, with such changes as the General Manager may approve (provided such changes, when viewed as a whole, do not have a material adverse effect upon the interests of Metro), the execution of such document to be conclusive evidence of such person's approval of all such changes; and be it further

RESOLVED, That the Board of Directors approves the indemnification of the Transit Employees Health and Welfare Plan, its Trustees, employees and agents from any action taken in furtherance of the Agency Agreement, unless the Plan, its Trustees, employees or agents have been negligent or have engaged in intentional wrongdoing; 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

**AGENCY AGREEMENT
BETWEEN
THE WASHINGTON METROPOLITAN AREA TRANSIT AUTHORITY
AND
THE TRANSIT EMPLOYEES' HEALTH AND WELFARE PLAN**

WHEREAS, it is in the best interests of both the Washington Metropolitan Area Transit Authority (WMATA) and the Transit Employees Health and Welfare Plan (Plan) (collectively "the Parties") to confirm the tax reporting and withholding undertakings of the Plan relating to disability payments made to WMATA employees from the Plan; and

WHEREAS, a written Agency Agreement is in the interest of the parties and is required by the Internal Revenue Service as a condition of allowing a third party to act as agent for the withholding and reporting obligations of WMATA.

NOW, THEREFORE, the Parties hereby agree as follows:

1. WMATA hereby appoints the Plan as its agent for purposes of tax withholding and reporting obligations on disability payments only, as described herein.
2. The Plan hereby accepts such appointment as Agent for WMATA and agrees to perform its duties with the degree of skill and diligence reasonably required under the circumstances.
3. The Plan shall not charge and WMATA shall not pay to the Plan any administrative fee for the Plan's performance of its duties under this Agreement. WMATA agrees to indemnify and hold harmless the Plan, its Trustees, employees and agents from any action taken under this Agreement, unless the Plan has been negligent or has engaged in intentional wrongdoing with respect to such action.
4. In accordance with 26 CFR § 31.6051-3(c), the parties agree that the Plan shall, as WMATA's agent, withhold and pay all federal and state income, FICA, Medicare and FUTA taxes, which would normally be the responsibility of WMATA, and to issue to the affected WMATA employees all required information returns, including W-2 forms, covering the third party sick pay paid out by the Plan. This paragraph is meant to include withholding the employee share and paying the employer share of the referenced taxes.
5. WMATA represents and warrants that none of the sick pay paid by the Plan is exempt from gross income under Internal Revenue Code § 104(a)(3).

6. Within ten (10) calendar days of the close of every calendar quarter, the Plan shall submit an itemized invoice to WMATA for payment of the employer share of the taxes paid under this Agreement by the Plan. WMATA shall either dispute or pay the invoice by the first day of the month after which the invoice was received.
7. Any penalties or interest incurred by virtue of the Plan's failure to timely pay all such taxes to the appropriate taxing authority shall be the liability of the Plan and shall not be billed to WMATA, except to the extent that the failure to timely pay taxes is due to WMATA's actions or inactions.
8. WMATA agrees to provide, in a timely manner, all information that the Plan requires in order for the Plan to comply with its obligations under the terms of this Agreement.
9. Upon request of the Plan, WMATA shall determine whether a FUTA obligation exists or whether the employee has earned at least \$7,000 in the calendar year prior to the beginning of the short-term disability claim.
10. This Agreement shall be construed under the laws of the District of Columbia.
11. Except as noted in this Agreement, neither party shall hold itself out nor be construed to be the agent of the other.
12. This Agreement shall be effective on October 1, 2008 and shall continue until December 31, 2009. The Agreement shall automatically renew for successive one-year periods unless a Party shall give written notice to the other of its desire to terminate the Agreement no later than October 1 of the year prior to the termination date. Either party may terminate this Agreement for any reason by providing no less than 60 days notice prior to the end of a calendar quarter.
13. Each signatory warrants that he/she has the legal authority to bind the respective Party.

WASHINGTON METROPOLITAN AREA
TRANSIT AUTHORITY

TRANSIT EMPLOYEES'
HEALTH & WELFARE PLAN

Name:
Title:
Date:

Name:
Title:
Date: