

Washington Metropolitan Area Transit Authority
Board Action/Information Summary

Action Information

MEAD Number:
200931

Resolution:
 Yes No

TITLE:

Indemnification of CSX Transportation, Inc.

PRESENTATION SUMMARY:

To obtain board approval for indemnification of CSX Transportation, Inc. (CSX) in order for WMATA to perform an annual inspection of its bridges and seven of the bridges that cross over property owned by CSX.

PURPOSE:

Approval of the indemnification of CSX Transportation, Inc. (CSX)

DESCRIPTION:

CSX will not permit WMATA access CSX property without WMATA obtaining approval agreeing to the indemnification provision.

Key Highlights:

WMATA has seven bridges which lie in common corridors with the CSX Transportation, Inc. (CSX). These bridges are inspected by Track and Structures (TRST) on an annual basis. In order to inspect these bridges, WMATA must be granted permission by CSX to gain access to their property or air space over their tracks. CSX will provide a flag person for Right Of Way (ROW) safety protection for the WMATA Structural Inspection Branch personnel on CSX property during their inspections.

Background and History:

The Structure Inspection division of TRST requires the services of a CSX escort to support the annual inspection activities on the Authority's structures over or near CSX mainline tracks.

CSX requires a watchman be on site escorting inspectors or maintenance crews while on, over or within 25 feet of the center line of their tracks.

Since CSX owns the tracks and must be the provider of the escort, they are the only allowable providers of this service.

The inspection of the Authority's seven bridges near the center line of CSX tracks are spread out over several months and occur on a yearly basis.

Discussion:

WMATA will use its own track mounted inspection vehicle on the WMATA-owned bridge above the CSX tracks. Inspectors may also have to erect ladders on a nightly basis next to piers which support the bridge. Each WMATA inspection will use this agreement with separate operating procedures.

FUNDING IMPACT:

The impact is \$19,600.	
Project Manager:	Clay Bunting
Project Department/Office:	TIES/TRST

TIMELINE:

Previous Actions	<p>March 5, 2014 - Application for Right-of-Entry</p> <p>March 11, 2014 - Temporary Right of Entry Agreement Number CSX 763777 effective CSX and WMATA.</p> <p>July 14, 2014 - Proposed Board Resolution Indemnification of the CSX Transportation, Inc.</p>
Anticipated actions after presentation	

RECOMMENDATION:

Approval of the indemnification of CSX Transportation, Inc. (CSX)

PRESENTED AND ADOPTED: July 24, 2014

SUBJECT: INDEMNIFICATION OF CSX TRANSPORTATION, INC.

2014-42

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

WHEREAS, WMATA performs an annual inspection of its bridges; and seven of the bridges cross over property owned by CSX Transportation, Inc. (CSXT); and

WHEREAS, CSXT will not permit the Washington Metropolitan Area Transit Authority (WMATA) access to CSXT property unless WMATA agrees to the following indemnification provision:

Licensee hereby assumes risk of and agrees, to the fullest extent permitted by State law (Constitutional or Statutory, as amended), to indemnify, defend, protect and save CSXT and CSXT's Affiliates harmless with respect to any and all attorneys' fees, liability, claims, demands, payments, suits, actions, recoveries, penalties, costs, legal expenses, judgments, settlements, and damages of every nature, degree, and kind (including direct, indirect, consequential, incidental, and punitive damages) for:

2.1.1 personal injury, including, but not limited to bodily injury to or death of any person or persons whomsoever, including the agents, servants, Affiliates or employees of the parties;

2.1.2 the loss or damage to any property whatsoever, including property owned or in the care, custody or control of the parties hereto or their respective Affiliates;

2.1.3 any environmental damage and any related remediation brought or recovered against CSXT or any of its Affiliates; and

2.1.4 any and all other losses or damages; arising directly or indirectly from the presence of Licensee or its Agents on or about the Property, whether or not attributable in whole or part to the negligence or gross negligence of CSXT or its Affiliates; and

Motioned by Mrs. Hudgins, seconded by Mr. Acosta


Ayes: 8 – Mr. Downs, Mr. Downey, Mr. Nichols, Mrs. Hudgins, Mr. Dyke, Ms. Bowser, Mr. Acosta and Mr. Goldman

WHEREAS, The Board of Directors' approval is required for WMATA to indemnify a third-party; now, therefore be it

RESOLVED, That the Board of Directors approves the granting of the requested indemnification described in this Resolution; and be it finally

RESOLVED, That this Resolution shall be effective immediately.

Reviewed as to form and legal sufficiency,



Kathryn H.S. Pett
General Counsel

WMATA File Structure No.:
15.2.1 Grants of Indemnification