

Washington Metropolitan Area Transit Authority
Board Action/Information Summary

Action Information

MEAD Number:
200237

Resolution:
 Yes No

TITLE:

Indemnification for Capital Projects

PRESENTATION SUMMARY:

To obtain board approval for indemnifications for three jurisdictions in order to gain needed permits for the construction of three major facilities.

PURPOSE:

Approve indemnification of Prince George's County, Fairfax County and VDOT.

DESCRIPTION:

Key Highlights:

The Pennsy Drive Project includes utility work in the public right-of-way for which Prince George's County requires indemnification for potential damages caused performing the utility work.

The entrance driveway for the Cinder Bed Road Bus Garage passes thru the 100 year floodplain for which Fairfax County requires indemnification in case the entrance is damaged.

Construction of The MTPD District II Substation Project at the Franconia-Springfield Metro Station requires the use of state roads for construction traffic for which VDOT requires indemnification.

Background and History:

Permits are being sought from the respective jurisdictions for the following projects:

The Pennsy Drive Project which is proposed to provide the MTPD with a Security Operations Control Center.

The Cinder Bed Road Bus Garage which is proposed as the replacement of the Royal Street Bus Garage.

The MTPD District II Substation Project which is to replace for the existing substation and provide a firearms training facility.

Discussion:

The Pennsy Drive Project is on property purchased in 2011 and contains 4 buildings. Work on the site includes renovation of three buildings including upgrading the utility service. Since upgrading the utility service involves work in the public right-of-way, Prince George's County will not issue one of the permits without being indemnified against damages caused by the work in the street.

The Cinder Bed Road Bus Garage has an entrance driveway that passes thru a floodplain. Fairfax County requires that WMATA indemnify it for any damages that WMATA may incur if a flood were to damage the entrance driveway. The indemnification is a condition required for WMATA's contractor to obtain permits to build the garage.

The MTPD Substation Project requires the contractor to use state roads during the construction of the buildings. The Virginia Department of Transportation (VDOT) requires indemnifications due to the use of the roads. Fairfax County will not permit construction to begin without approval of VDOT Land Use applications which includes indemnification language.

The Board has historically granted indemnification requests in circumstances where the party is insistent and where the risk of recovery by the party being indemnified is low. Board practice is that these matters are not vetted through a Board committee, but generally come to the Board on the "Consent" agenda. Per Board policy, only the Board can grant indemnity.

FUNDING IMPACT:

No funding impact.	
Project Manager:	John Thomas
Project Department/Office:	TIES/CENI

TIMELINE:

Previous Actions	<p>May 2011 - The Board approved purchase of the property on Pennsy Drive for the MTPD Facility.</p> <p>April 2013 – Court actions preventing Cinder Bed Road from advancing were resolved allowing implementation activities to resume.</p>
Anticipated actions after presentation	Summer/Fall 2013 – Obtain building permits from Prince George's County and Fairfax County.

RECOMMENDATION:

Board approval of the indemnification of Prince George's County, Fairfax County and VDOT.

SUBJECT: INDEMNIFICATION OF FAIRFAX COUNTY, VIRGINIA; VIRGINIA DEPARTMENT OF TRANSPORTATION; AND PRINCE GEORGE'S COUNTY, MARYLAND

2013-22

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

WHEREAS, WMATA purchased land on Cinder Bed Road in Fairfax County, Virginia for the construction of a bus facility to replace the Royal Street Bus Garage; and

WHEREAS, WMATA obtained a Special Exception from Fairfax County to construct the bus facility which included a condition that WMATA indemnify Fairfax County for "all adverse effects that may arise as a result of the location of the site within the flood plain area;" and

WHEREAS, Fairfax County will not issue a rough grading permit until WMATA agrees to the following indemnification provision:

The Owner, its executors, administrators, assigns and any other successors in interest shall indemnify and hold the County, its agents, and employees, harmless for any and all damages, accidents, casualties, injuries, costs, changes, liabilities, occurrences or claims which might arise or be asserted against the County by reason of the construction, existence, presence of flooding of the entrance driveway or any appurtenances thereto; and

WHEREAS, WMATA is constructing a police substation for the Metropolitan Transit Police Department (MTPD) in Springfield, Virginia; and

WHEREAS, Fairfax County requires that WMATA obtain a permit from the Virginia Department of Transportation (VDOT) before Fairfax County will issue a building permit for the police substation; and

WHEREAS, VDOT will not issue a permit unless WMATA agrees to:

indemnify and save harmless the Commonwealth Transportation Board, members of the Board, the Commonwealth, and all Commonwealth employees, agents, and officers, from responsibility, damage, or liability arising from the

Motioned by Mr. Downs, seconded by Mrs. Hudgins

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

exercise of the privileges granted in such permit to the extent allowed by law;
and

WHEREAS, WMATA is constructing a Special Operations Facility for MTPD at Pennsy Drive in Hyattsville, Maryland; and

WHEREAS, Prince George's County, Maryland will not issue a building permit unless WMATA indemnifies Prince George's County for any damage to existing facilities in the public right of way; and

WHEREAS, As a condition of obtaining a building permit, WMATA must agree to the following indemnification provision:

In order to save the County harmless from any expense for repair of the potential damage, we, Washington Metropolitan Area Transit Authority, as contractor, do hereby accept all responsibility for any necessary repair, as directed by the Department; and

WHEREAS, Metro staff is in the process of negotiating bilateral agreements with jurisdictional partners to obviate the need for indemnifying jurisdictional partners; and

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 indemnifications 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