

Washington Metropolitan Area Transit Authority
Board Action/Information Summary

Action Information

MEAD Number:
201057

Resolution:
 Yes No

TITLE:

Indemnification of Harris Bank and Moneris

PRESENTATION SUMMARY:

The pilot phase of the New Electronic Payment Program allows participants to use their contactless credit and debit cards for fare payment and add to funds to their online transit account. WMATA needs a third party processor in place to handle the transactions.

BMO Harris Bank, NA and Moneris Solutions, Inc. will process the transactions for the pilot and requires certain indemnities from WMATA to undertake the work.

PURPOSE:

Staff requests Board approval of the proposed indemnities to BMO Harris Bank, NA and Moneris Solutions, Inc. for processing debit and credit card transactions for the New Electronic Payments Program pilot.

DESCRIPTION:

As part of the New Electronic Payments Program, the pilot program will test new fare technology and fare gates to allow riders to pay for their trip in new ways, including NFC-equipped phones, and contactless credit and debit cards. The pilot program will test the new technology at 10 Metrorail stations, on 50 buses serving six Metrobus routes and two parking lanes, beginning in January 2015.

BMO Harris Bank, NA and Moneris Solutions, Inc. will process the transactions for the pilot.

Key Highlights:

The requested indemnities are very similar in scope and detail to indemnities provided to WMATA's current card processor. Included in this action, consistent with prior actions, are indemnities that flow down through this agreement to the merchant (WMATA) from the card brands (e.g., MasterCard/VISA) which will be accepted for fare payment.

Key areas of indemnification:

- The card brands (MasterCard and VISA) have rules which govern the payment

processing ecosystem and contain indemnities to which the payment processors (Harris and Moneris) accept and flow down to the merchant (WMATA) holding the card brands harmless of actions by the payment processors or merchant that violate the payment processing rules;

- WMATA's termination as a merchant for cause in violation of the card brands payment processing rules;
- Litigation on issues for which WMATA and its employees are responsible; and
- WMATA's control or operation of software or systems that interface with the Bank's processing system.

Background and History:

The New Electronic Payments Program contract awarded to Accenture in January 2014 included a rigorous pilot testing program. This program was designed to test speed of transactions, reliability of equipment, accuracy of fare computations, performance of the central data system, accurate data processing and transaction reconciliation. The pilot program is being funded by Accenture and only upon achieving the success criteria will they be compensated for the pilot and permitted to advance to the next stage of the contract.

Processing of the credit and debit card fare payments through Harris Bank, NA and Moneris Solutions, Inc. is key to thorough testing of the system.

In detail, the pilot includes testing at the following 10 Metrorail stations: Shady Grove, Eisenhower Avenue, Bethesda, Pentagon City, Pentagon, Ballston, Gallery Place (7th & F), Farragut West, Navy Yard and Suitland. In addition, parking facilities at Shady Grove and Suitland will be included in the pilot. The six Metrobus routes selected for the pilot are: 37 (Wisconsin Ave Limited), X9 (Benning Rd-H St Limited), 39 (Pennsylvania Ave Limited), K9 (New Hampshire Ave Limited), J4 (College Park-Bethesda Limited), and REX (Richmond Highway Express).

Installation of new fare gates and payment targets to support the pilot will be underway in October. Concurrently, Metro will begin recruiting customers to participate in the pilot through a variety of communication channels.

Discussion:

These indemnifications are very similar in scope to those granted when Metro began accepting credit and debit cards for its own use about 15 years ago and more recently when the Board approved a similar set of indemnifications under the SmarTrip® program in 2009.

FUNDING IMPACT:

There is no impact on funding. Processing fees for debit and credit transactions under the New Electronic Payment Program pilot are already included in the FY15 budget.	
Project Manager:	Gregory Garback
Project Department/Office:	NEPP/DGMO

TIMELINE:

Previous Actions	None
Anticipated actions after presentation	Execute contract with BMO Harris Bank, NA and Moneris Solutions, Inc.

RECOMMENDATION:

Approval of the proposed indemnities to BMO Harris Bank, NA and Moneris Solutions, Inc. for processing debit and credit card transactions for the New Electronic Payments Program pilot.

PRESENTED AND ADOPTED: October 23, 2014

SUBJECT: INDEMNIFICATION OF BMO HARRIS BANK, NA AND MONERIS SOLUTIONS, INC FOR THIRD PARTY PROCESSING OF DEBIT AND CREDIT CARD TRANSACTIONS

2014-61

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

WHEREAS, The Washington Metropolitan Area Transit Authority (WMATA) is investing in a new fare payment system for its customers which will improve reliability, transaction speed and convenience for paying transit fares; and

WHEREAS, Customers may load funds to a transit account with a variety of bank-issued cards or Near Field Communications (NFC) – enabled cell phones including debit, credit and pre-paid cards; and

WHEREAS, WMATA is initiating a pilot program to test this new payment system starting in January 2015, where cards or NFC-enabled cell phones may be used to load funds to a customer's transit account or pay fares directly at the new faregate, bus or parking payment targets; and

WHEREAS, These transactions must be processed through a credit card processor; and

WHEREAS, BMO Harris Bank, NA (Member Bank) and Moneris Solutions, Inc. (Processor, and together with Member Bank, Bank) will not provide processing services without the following indemnifications from WMATA:

1. In addition to any other indemnities in the Operating Regulations for the card brands (which are the same as for the existing credit card processor), WMATA agrees to indemnify, defend and hold Bank and Bank's parent companies, subsidiaries and affiliates (including, without limitation, the respective officers, directors, employees, attorneys, shareholders, representatives and agents of all of the foregoing) harmless from and against any and all liabilities, judgments, arbitration awards, settlements, actions, suits, claims, demands, losses, damages, costs (including, but not limited to, court costs and reasonable out-of-pocket costs and expenses), expenses of any and every type, litigation expenses, and reasonable attorneys' fees, including, but not limited to, attorneys' fees incurred in any and every type of suit, proceeding, or action, including but not limited to, bankruptcy

Motioned by Mrs. Hudgins, seconded by Mr. Acosta

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

proceedings, in connection with, by virtue of, or arising from, either directly or indirectly: (a) a transaction that does not conform to the requirements of this Agreement between Processor and WMATA ("Agreement"), the Operating Manual, the Operating Regulations or applicable laws; (b) any Card transaction or any act or omission of WMATA in connection with a cardholder; (c) WMATA's breach or default or an alleged breach or default of or under any term, covenant, condition, representation, warranty, obligation, undertaking, promise or agreement contained in this Agreement (including the Operating Manual and Attachments) or in any agreement (whether oral or written) with any Card Association, or in any other agreement with Bank (including, without limitation, WMATA's application to Bank made in connection with this Agreement), any breach or threatened breach by WMATA of the Operating Regulations or any violation by WMATA of laws, rules and regulations applicable to WMATA; (d) the rescission, cancellation or avoidance of any Card transaction or Item, by operation of law, adjudication or otherwise; (e) any claim, counterclaim, complaint, dispute or defense, including, without limitation, claims brought by WMATA (other than those brought directly by WMATA against Bank under this Agreement); whether or not well founded, with respect to this Agreement, a Card transaction or any Special Programs; (f) damages, including, without limitation, those for death or injury caused by the good or service purchased with the Card; or (g) for all web based, Internet or electronic commerce transactions that do not conform to the requirements of this Agreement, the Operating Manual, the Operating Regulations or applicable laws, including WMATA's insecure transmission of Card transaction data and/or storage of cardholder information. For purposes of the foregoing indemnities, WMATA is responsible and liable for acts and omissions of its employees, agents and representatives (whether or not acting within the scope of their duties);

2. From any and all claims that WMATA or any other person may have as a result of WMATA or its principals being placed on the Terminated Merchant File of merchants terminated for cause;
3. From any and all demands, claims, loss, liability, damages, costs and expenses (including reasonable attorney fees and costs) whatsoever related to, in connection with or arising from, either directly or indirectly, the software covered by the Agreement or the use or results thereof (whether brought against, imposed upon or incurred by WMATA, Bank or Bank's parent companies, subsidiaries, and affiliates (including, without limitation, the respective officers, directors, employees, attorneys, shareholders, representatives, and agents of all of the foregoing), except to the extent caused by Bank's negligence or willful misconduct in providing the development services in connection with the new fare payment system;

4. From any and all liabilities, judgments, arbitration awards, settlements, actions, suits, claims, demands, losses, damages, costs (including, but not limited to, court costs and reasonable out-of-pocket costs and expenses), expenses, litigation expenses, and reasonable attorneys' fees, including, but not limited to, attorneys' fees incurred in any and every type of suit, proceeding, or action, including, but not limited to, bankruptcy proceedings, in connection with, by virtue of, or arising from, either directly or indirectly, electronic commerce activities of WMATA for which WMATA is responsible pursuant to this Section; or losses and Chargebacks resulting from the electronic commerce activities of WMATA;
5. From any and all demands, claims, losses, liabilities, damages and reasonable costs and expenses of every kind and nature, including, but not limited to, claims of infringement, reasonable attorneys' fees, court costs, and reasonable litigation expenses, arising from, in connection with, or by virtue of, either directly or indirectly, the use of any electronic interface with the Bank's credit/debit card processing system by WMATA for which Bank has no responsibility; and

WHEREAS, WMATA has granted similar indemnities to the current card processor; 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 granting 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

WMATA File Structure No.:
15.2.1 Grants of Indemnification