

Washington Metropolitan Area Transit Authority
Board Action/Information Summary

☒ Action ☐ Information

MEAD Number:
203411

Resolution:
☒ Yes ☐ No

TITLE:

Approval to Indemnify the District of Columbia

PRESENTATION SUMMARY:

Request Board authorization to indemnify District of Columbia Public Schools (DCPS) and the District of Columbia Department of General Services (DGS) as a condition of a use agreement for a DCPS facility. Metro seeks to use the facility for a Compact public hearing regarding proposed changes to transit facilities at the Takoma Metro station.

PURPOSE:

Request Board authorization to indemnify DCPS and DGS within a use agreement.

DESCRIPTION:

In Resolution 2022-23, the Board authorized a Compact public hearing on proposed changes to transit facilities at the Takoma Metro. As the pandemic-related public health emergency has eased, Metro has shifted to conducting hybrid public hearings that allow testimony to be submitted in-person and virtually.

In order to provide a public hearing location that is both convenient and accessible to neighbors and station users, Metro has selected Takoma Elementary School for the hearing. The facility is located less than one-half mile from the station site and is the closest facility to the station that can accommodate a large gathering. The facilities use agreement between Metro and DCPS and DGS for use of Takoma Elementary School facilities contains indemnification language.

Under Resolution 2011-30, Board of Directors' approval is required to indemnify a counterparty.

District of Columbia Public Schools, and the **Department of General Services** are interested parties.

Key Highlights:

- Metro seeks use of a DCPS facility to conduct a required Compact Public Hearing on proposed changes to the Takoma Metro station.

- The agreement to use the DCPS facility contains indemnification language.
- In order to provide a convenient, accessible location for members of the public to provide comments as part of the Compact public hearing process, Metro needs to use Takoma Elementary School, a DCPS facility, to host the hearing.

Background and History:

As required by Article VI, Section 15 of the WMATA Compact, "before a mass transit plan is adopted, altered, revised or amended," Metro must transmit copies of the proposed plan, alteration, revision or amendment for comment and conduct a public hearing on the proposal. Changes to transit facilities such as those proposed for the Takoma Metro station are considered a change to the mass transit plan.

The Takoma Metro station site has been the subject of previous Compact public hearings in 2007 (to consolidate parking facilities) and 2015 (to reduce parking capacity). In September 2021, after consultation with the community, the developer, EYA, proposed a new site plan to WMATA that reconfigures the bus and parking facilities.

Proposed changes to the transit facilities at the Takoma Metro station include:

- Relocation of the bus loop and Kiss & Ride
- Addition of one alighting bus stop
- Removal of 144 Kiss & Ride spaces
- Addition of a traffic signal on Carroll Street NW at the WMATA bus loop and Kiss & Ride entrance

In accordance with Metro's Public Participation Plan (PPP), Metro will conduct community outreach to inform riders and members of the community about the proposed changes and solicit their input as part of the Compact public hearing process.

Discussion:

In order to use Takoma Elementary School for the Compact public hearing on the proposed changes to transit facilities at the Takoma Metro station, Metro must agree to indemnification language contained in the facility use agreement. Under Resolution 2011-30, the Board has exclusive authority to indemnify couterparties.

Failure to sign an agreement with DCPS for use of their facilities would require Metro to find a new location for a Compact public hearing, or to conduct the hearing as virtual-only. Finding a new location would further delay the opportunity for station users and members of the community to provide input

on the proposed changes. Conducting the hearing as virtual-only is less desirable than holding a hybrid hearing that offers both virtual and in-person participation options.

FUNDING IMPACT:

No impact on funding. This action will only allow Metro to enter into an agreement with DCPS to use their facility to conduct the hearing.

Project Manager:	Jennifer Ellison
Project Department/Office:	Office of the Board Corporate Secretary

TIMELINE:

Previous Actions	September 2021 - The developer, EYA, proposed a new site plan to Metro that reconfigures bus and parking facilities July 2022 – Board authorization of a Compact public hearing on proposed changes to transit facilities at Takoma Metro station
Anticipated actions after presentation	January 2023 – Compact public hearing on proposed changes to transit facilities at the Takoma Metro station Spring 2023 - Board acceptance of the Public Hearing Staff Report

RECOMMENDATION:

Board authorization for the Board Corporate Secretary, or her designee, to indemnify the DCPS and DGS within a use agreement for the Takoma Elementary School.

PRESENTED AND ADOPTED: December 8, 2022

**SUBJECT: APPROVAL TO INDEMNIFY DISTRICT OF COLUMBIA FOR USE OF
TAKOMA ELEMENTARY SCHOOL**

2022-36

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

WHEREAS, Resolution 2011-30 requires Board of Directors' approval for WMATA to indemnify a counterparty; and

WHEREAS, WMATA desires to use the auditorium at the Takoma Elementary School to conduct a public hearing on proposed changes to the transit facilities at the Takoma Metro Station; and

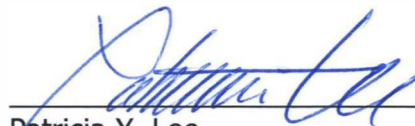
WHEREAS, the District of Columbia requires WMATA to indemnify the District of Columbia Public Schools and the District of Columbia Department of General Services as part of its use agreement;

NOW, THEREFORE, be it

RESOLVED, That the Board of Directors authorizes the Board Corporate Secretary or her designee to indemnify the District of Columbia Public Schools and the District of Columbia Department of General Services for use of facilities at Takoma Elementary School as may be required by its use agreement, substantially in the form as shown in Attachment A; and be it finally

RESOLVED, That to provide for a timely public hearing on the proposed changes to transit facilities at Takoma Metro Station, this Resolution shall be effective immediately.

Revised as to form and legal sufficiency,



Patricia Y. Lee
Executive Vice President and General Counsel

WMATA File Structure No.:
15.2.1 Grants of Indemnification

**Motioned by Mr. Smedberg, seconded by Dr. Loh
Ayes: 6- Mr. Smedberg, Ms. Babers, Ms. Kline, Mr. Letourneau, Dr. Loh and Mr. Drummer**

Attachment A

GOVERNMENT OF THE DISTRICT OF COLUMBIA DEPARTMENT OF GENERAL SERVICES USE AGREEMENT:

The User shall indemnify, hold harmless, and upon request by the District, defend the District*, its officers, agents, invitees and employees (each and collectively, "Indemnitees"), against all damages, liability, claims, losses, and expense, including, without limitation, reasonable attorneys' fees and litigation costs, incurred by and of the Indemnitees and arising out of or relating to (a) the acts of omissions of the User or any of its members, agents, invites and guests ("Agents") during the Term, (b) User and User's Agents use of the Premises of the Property (c) any breach of the Use Agreement by the User or its Agents, or (d) any other cause whatsoever. If an action or proceeding, as described herein, is instituted against any of the Indemnities, then upon written notice from the District to the User, the User shall, at its sole expense, resist or defend such action or proceeding by counsel approved by the District of Columbia Government in writing. User agrees to be responsible and indemnify the District of Columbia Government for any violation of the Use Agreement by User or any of its Agents.

*The use agreement separately defines the "District" as the District of Columbia Public Schools and the District of Columbia Department of General Services."