

Consent Item (B) 10-24-2019

Washington Metropolitan Area Transit Authority

Board Action/Information Summary

☒ Action ☐ Information

MEAD Number:
202119

Resolution:
☒ Yes ☐ No

TITLE:

Indemnifications of CSX and the City of Alexandria

PRESENTATION SUMMARY:

To obtain Board approval for indemnification of CSX for a construction agreement for work within the Railroad's property during the construction of the Potomac Yard Metrorail Station and for the City of Alexandria for a stormwater maintenance agreement.

PURPOSE:

Board approval to indemnify CSX as part of a Construction Agreement for work during the construction of the Potomac Yard Metrorail Station and for the City of Alexandria for a post-construction Stormwater Management/BMP Facilities Operation and Maintenance Agreement.

DESCRIPTION:

Key Highlights:

- WMATA is constructing a new Metrorail station in the City of Alexandria
- In order to construct adjacent to and over CSX's property, WMATA has to grant indemnification to CSX as required in CSX's Construction Agreement.
- In order to complete the permitting process and operate the facility post construction, WMATA has to grant indemnification to the City of Alexandria as required in the City's Stormwater Management/BMP Facilities Operation and Maintenance Agreement.

Background and History:

The Potomac Yard Metrorail Station is a \$290M design-build project in Alexandria. This Project is in progress and is being done as a cost-reimbursable project with the City of Alexandria. The station is being built as an infill station located between the Braddock Road Metro and the National Airport Metro on the Blue and Yellow lines. It is scheduled for completion in Spring 2022.

The design and construction of the Potomac Yard Metrorail Station has elements that are installed over CSX's tracks and adjacent to CSX property. This work requires WMATA to enter into a Construction Agreement with CSX to perform the work. The Construction Agreement contains language requiring indemnification of CSX. Board policy states that only the Board can grant indemnification.

The stormwater design of the Potomac Yard Metrorail Station has been completed to a level that the final storm structures are known. The permitting process requires that an executed copy of the City of Alexandria's "Stormwater Management / BMP Facilities Operation and Maintenance Agreement" be submitted in order to obtain final permit approval. This maintenance agreement must be executed by the Landowner(Metro) and contains language requiring indemnification of the City. Board policy states that only the Board can grant indemnification.

Discussion:

No further discussion required.

FUNDING IMPACT:

No impact on funding to indemnify CSX or the City of Alexandria	
Project Manager:	Fred Robertson III
Project Department/Office:	DECO/MCAP

TIMELINE:

Previous Actions	Contract award for Potomac Yard - September 2018
Anticipated actions after presentation	Sign the agreements allowing construction to progress.

RECOMMENDATION:

Board grants indemnification to the City of Alexandria, Virginia as may be required in the Stormwater Management/BMP Facilities Operation and Maintenance Agreement and to CSX Transportation, Inc. as may be required in the Construction Agreement.

PRESENTED AND ADOPTED: October 24, 2019

SUBJECT: APPROVAL TO INDEMNIFY THE CITY OF ALEXANDRIA, VIRGINIA AND CSX TRANSPORTATION, INC.

2019-39

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

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

WHEREAS, WMATA is preparing to build a new Metrorail Station at Potomac Yards in the City of Alexandria, Virginia; and

WHEREAS, The City of Alexandria, Virginia requires an indemnification in its Stormwater Management/BMP Facilities Operation and Maintenance Agreement; and

WHEREAS, CSX Transportation, Inc. requires an indemnification in its form construction agreement for work performed that is adjacent to and over property owned by CSX Transportation, Inc.;

NOW, THEREFORE, be it

RESOLVED, That the Board authorizes the General Manager & Chief Executive Officer (GM/CEO) or his designee to include an indemnity for the City of Alexandria, Virginia as may be required in the Stormwater Management/BMP Facilities Operation and Maintenance Agreement substantially in the form shown as Attachment A; and be it further

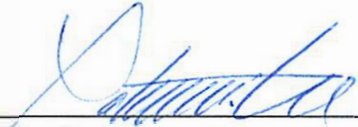
RESOLVED, That the Board authorizes the GM/CEO or his designee to include an indemnity for CSX Transportation, Inc. as may be required in its construction agreement substantially in the form shown as Attachment B; and be it finally

Motioned by Mr. Smedberg, seconded by Mr. Goldman

Ayes: 7- Mr. Smedberg, Mr. Bulger, Mr. Goldman, Mr. Rouse, Mr. Dorsey, Mr. Marootian and Mr. McMillin

RESOLVED, That, in order to timely execute the proposed permits and agreements required to move the Potomac Yard Metrorail Station project forward, this Resolution shall be effective immediately.

Reviewed as to form and legal sufficiency,



Patricia Y. Lee
General Counsel

WMATA File Structure No.:
15.2.1 Grants of Indemnification

ATTACHMENT A

7. In the event the City, pursuant to this Agreement, performs work of any nature, or expends any funds in performance of said work for labor, use of equipment, supplies, materials and the like on account of the Landowner's or its successors' and assigns' failure to perform such work, the Landowner, its successors and assigns, shall reimburse the City, upon demand, within 30 days of receipt thereof for all costs incurred by the City hereunder.

8. The Landowner, its successors and assigns, shall indemnify and hold harmless the City and its agents and employees for any and all damages, accidents, casualties, occurrences or claims which might arise or be asserted against the City for the construction, presence, existence, or maintenance of the stormwater management/BMP facilities by the Landowner, its successors and assigns.

9. In the event a claim is asserted against the City, its agents or employees, the City shall promptly notify the Landowners, their successors and assigns, and they shall defend, at their own expense, any suit based on such claim. If any judgment or claim against the City, its agents or employees shall be allowed, the Landowner, its successors and assigns shall pay all costs and expenses in connection therewith.

ATTACHMENT B

11.1 Generally. To the maximum extent permitted by applicable law, Agency and its Contractors shall indemnify, defend, and hold CSXT and its affiliates harmless from and against all claims, demands, payments, suits, actions, judgments, settlements, and damages of every nature, degree, and kind (including direct, indirect, consequential, incidental, and punitive damages), for any injury to or death to any person(s) (including, but not limited to the employees of CSXT, its affiliates, Agency or its Contractors), for the loss of or damage to any property whatsoever (including but not limited to property owned by or in the care, custody, or control of CSXT, its affiliates, Agency or its Contractors, and environmental damages and any related remediation brought or recovered against CSXT and its affiliates), arising directly or indirectly from the negligence, recklessness or intentional wrongful misconduct of the Contractors, Agency, and their respective agents, employees, invitees, contractors, or its contractors' agents, employees or invitees in the performance of work in connection with the Project or activities incidental thereto, or from their presence on or about CSXT's property. The foregoing indemnification obligation shall not be limited to the insurance coverage required by this Agreement, except to the extent required by law or otherwise expressly provided by this Agreement.

11.2 Compliance with Laws. Agency shall comply, and shall require its Contractors to comply, with any federal, state, or local laws, statutes, codes, ordinances, rules, and regulations applicable to its construction and maintenance of the Project. Agency's Contractors shall indemnify, defend, and hold CSXT and its affiliates harmless with respect to any fines, penalties, liabilities, or other consequences arising from breaches of this Section.

11.3 "CSXT Affiliates". For the purpose of this Section 11, CSXT's affiliates include CSX Corporation and all entities, directly or indirectly, owned or controlled by or under common control of CSXT or CSX Corporation and their respective officers, directors, employees and agents.

11.4 Notice of Incidents. Agency and its Contractor shall notify CSXT promptly of any loss, damage, injury or death arising out of or in connection with the Project work.

11.5 Survival. The provisions of this Section 11 shall survive the termination or expiration of this Agreement.