

Washington Metropolitan Area Transit Authority
Board Action/Information Summary

☒ Action ☐ Information

Document
Number:
205625

Resolution:
☒ Yes ☐ No

Presentation Name:

Indemnify Pepco for the Northern Bus Garage Replacement Project

Project Manager:

Diana Levy

Project Department:

Infrastructure

Purpose/Key Highlights:

Requesting authorization to indemnify Pepco in an Agreement for Interconnection of Small Generator Facilities in connection with the Northern Bus Garage Replacement Project (CIP0315).

Interested Parties:

- Pepco
- Clark Construction Group
- STV Designer

Background:

The Northern Bus Garage Replacement Project broke ground in 2023. The garage will house up to 150 battery electric buses when complete. The project includes a rooftop solar photovoltaic system that connects with the Pepco electric grid. The installation of the rooftop solar photovoltaic system requires Pepco approval to determine if electric distribution system upgrades are necessary. This is necessary to build the infrastructure to maintain the buses. To initiate this work, Pepco requires WMATA to enter into an Agreement for Interconnection of Small Generator Facilities. This agreement requires WMATA to indemnify Pepco. This project directly supports the Strategic Transformation Plan goal 4 of environmental sustainability.

Discussion:

Indemnification is required to advance the Northern Bus Garage Replacement Project.

Funding Impact:

No impact to funding

Previous Actions:

Unknown

Next Steps:

Approval of indemnification is required to move forward.

Recommendation:

Approval to: indemnify Pepco

PRESENTED AND ADOPTED: October 26, 2023

SUBJECT: APPROVAL TO INDEMNIFY PEPCO

2023-34

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

WHEREAS, Resolution 2011-30 as amended requires approval by the Board of Directors for WMATA to indemnify a counterparty; and

WHEREAS, WMATA is replacing Northern Bus Garage as part of the Northern Bus Garage Replacement Project (CIP0315); and

WHEREAS, The Northern Bus Garage Replacement Project includes a rooftop solar photovoltaic system that connects with the Pepco electric grid that requires Pepco review/approval to determine if electric distribution system upgrades are necessary; and

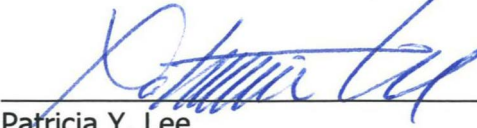
WHEREAS, To initiate this work, Pepco requires WMATA to enter into an Agreement for Interconnection of Small Generator Facilities which agreement requires WMATA to indemnify Pepco in substantially the form shown in Attachment A;

NOW THEREFORE, be it

RESOLVED, That the Board of Directors authorizes the General Manager and Chief Executive Officer or his designee to include an indemnity for Pepco as may be required in the Agreement for Interconnection of Small Generator Facilities in the form shown as Attachment A; and be it finally

RESOLVED, That in order to timely execute the Agreement for Interconnection of Small Generator Facilities required to advance the replacement of Northern Bus Garage, this Resolution shall be effective immediately.

Reviewed as to form and legal sufficiency,



Patricia Y. Lee
Executive Vice President, Chief Legal Officer,
and General Counsel

WMATA File Structure No.:
15.2.1 Grants of Indemnification

Motioned by Mr. Smedberg, seconded by Dr. Hadden Loh
Ayes: 7- Mr. Smedberg, Mr. McAndrew, Dr. Hadden Loh, Ms. Kline, Mr. Drummer, Ms. Worth and Ms. Martin-Proctor

ATTACHMENT A
AGREEMENT FOR INTERCONNECTION OF SMALL GENERATOR FACILITIES

6.3 Indemnity

6.3.1 This provision protects each Party from liability incurred to third parties as a result of carrying out the provisions of this Agreement. Liability under this provision is exempt from the general limitations on liability found in Article 6.2.

6.3.2 The Parties shall at all times indemnify, defend, and hold the other Party harmless from, any and all damages, losses, claims, including claims and actions relating to injury to or death of any person or damage to property, demand, suits, recoveries, costs and expenses, court costs, attorney fees, and all other obligations by or to third parties, arising out of or resulting from the other Party's action or failure to meet its obligations under this Agreement on behalf of the indemnifying Party, except in cases of gross negligence or intentional wrongdoing by the indemnified Party.

6.3.3 Promptly after receipt by an indemnified Party of any claim or notice of the commencement of any action or administrative or legal proceeding or investigation as to which the indemnity provided for in this Article may apply, the indemnified Party shall notify the indemnifying Party of such act. Any failure of or delay in such notification shall not affect a Party's indemnification obligation unless such failure or delay is materially prejudicial to the indemnifying Party.

6.3.4 If an indemnified Party is entitled to indemnification under this Article as a result of a claim by a third party, and the indemnifying Party fails, after notice and reasonable opportunity to proceed under this Article, to assume the defense of such claim, such indemnified Party may at the expense of the indemnifying Party contest, settle or consent to the entry of any judgment with respect to, or pay in full, such claim.

6.3.5 If an indemnifying Party is obligated to indemnify and hold any indemnified Party harmless under this Article, the amount owing to the indemnified person shall be the amount of such indemnified Party's actual loss, net of any insurance or other recovery.