

Washington Metropolitan Area Transit Authority
Board Action/Information Summary

☒ Action ☐ Information

MEAD Number:
202290

Resolution:
☐ Yes ☒ No

TITLE:

Indemnification of Norfolk Southern Railway Co

PRESENTATION SUMMARY:

In order to vacate existing and no-longer used surface easements owned by Norfolk Southern Railway Company at the site of the future Rail Heavy Repair and Overhaul facility (Rail HRO) in Landover, Maryland, WMATA will enter into a Purchase and Sale Agreement (PSA), which includes an indemnity provision, with Norfolk Southern.

PURPOSE:

Request Board approval to indemnify Norfolk Southern Railway Company within a Purchase and Sale Agreement.

DESCRIPTION:

Norfolk Southern Railway Company controls surface easements on two of the properties WMATA acquired for the future Rail Heavy Repair and Overhaul facility. These easements have not been used since at least the mid-1990s. In order to expedite the process by which Norfolk Southern will file easement vacation documents with the United States Surface Transportation Board, a PSA, with an indemnity provision, between WMATA and Norfolk Southern will be required.

The party with an interest in this matter is **Norfolk Southern Rail Company**.

Key Highlights:

- Norfolk Southern controls existing but no-longer used easements on the future site of WMATA's Rail Heavy Repair and Overhaul facility
- WMATA will enter into a PSA with Norfolk Southern, who will make best efforts to vacate the easements in a timely manner
- The Purchase and Sale Agreement requires WMATA indemnify Norfolk Southern
- The easements, if left in place, would preclude efficient use of the properties and require significant re-design and reduction of the proposed Rail HRO facility

Background and History:

WMATA has eight Rail Storage and Inspection Yards ("S&I Yards") strategically located throughout the system for storage and maintenance of the railcar fleet. However, there is no facility dedicated to major overhaul and repair of the fleet. Currently, major repair and overhaul activity takes place on a portion of the Greenbelt and Brentwood railyard, which is inefficient and significantly diminishes the ability to perform routine day-to-day maintenance and repairs as well as impacts storage of operational railcars.

A region-wide analysis of a possible location for a dedicated Rail Heavy Repair and Overhaul facility identified the area between the New Carrollton S&I Yard and the Carmen Turner Facility as the best option. In 2020, WMATA acquired 3636 Pennsy Drive, a portion of unimproved land at 3570 Pennsy Drive, as well as 8121 Ardwick Ardmore Road in Landover, Maryland, as an assemblage.

Discussion:

Of the three properties WMATA has acquired, two are encumbered by surface easements for railroad spurs controlled by Norfolk Southern Railway Company. Norfolk Southern has not used these easements since at least the mid-1990s. In order to expedite the process by which Norfolk Southern will file easement vacation documents with the United States Surface Transportation Board, a Purchase and Sale Agreement (PSA) between WMATA and Norfolk Southern will be required. The PSA requires WMATA to indemnify Norfolk Southern.

The easements prohibit development of the portions of the land on which they are located. If the easements are not vacated, the Rail HRO layout would have to be so radically redesigned that the resulting limited functionality of any facility would render the project unfeasible.

FUNDING IMPACT:

The indemnification language in the PSA does not allow for quantitative analysis of any future impacts on funding, if any	
Project Manager:	Anabela Talaia
Project Department/Office:	CFO/LAND

TIMELINE:

Previous Actions	None
Anticipated actions after presentation	September 2021: Execute PSA

RECOMMENDATION:

Board approval to indemnify Norfolk Southern Railway Company within a Purchase and Sale Agreement.

PRESENTED AND ADOPTED: September 23, 2021

SUBJECT: APPROVAL TO INDEMNIFY NORFOLK SOUTHERN RAILWAY COMPANY

2021-33

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, In order to build a new rail heavy repair and overhaul facility in Landover, Maryland, WMATA requires Norfolk Southern Railway Company ("Norfolk Southern") to abandon its existing surface easements on the site; and

WHEREAS, WMATA and Norfolk Southern are negotiating a Purchase and Sale Agreement ("PSA") to allow for the abandonment of the easements; and

WHEREAS, Norfolk Southern requires the PSA to contain an indemnity in favor of Norfolk Southern;

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 in favor of Norfolk Southern Railway Company as may be required by the Purchase and Sale Agreement for Norfolk Southern Railway Company to abandon surface easements on the site of a new to-be-built rail heavy repair and overhaul facility in Landover, Maryland; and be it finally

RESOLVED, That this Resolution shall be effective 30 days after adoption in accordance with Compact Section 8(b).

Reviewed as to form and legal sufficiency,



Patricia Y. Lee
Executive Vice President and General Counsel

WMATA File Structure Nos.:
15.2.1 Grants of Indemnification

Motioned by Mr. Smedberg, seconded by Mr. Slater
Ayes: 8- Mr. Smedberg, Ms. Babers, Mr. Slater, Ms. Kline, Mr. Letourneau, Mr. Bulger, Mr. Drummer and Dr. Helfer