

Washington Metropolitan Area Transit Authority
Board Action/Information Summary

☒ Action ☐ Information

MEAD Number:
202074

Resolution:
☒ Yes ☐ No

TITLE:

Approval to Indemnify VA and DRPT

PRESENTATION SUMMARY:

Information is provided on the requirement of the Virginia Department of Rail and Public Transportation (DRPT) that WMATA indemnify the Commonwealth of Virginia and DRPT in the proposed dedicated funding agreement. Board is requested to approve and authorize the General Manager/Chief Executive Officer or his designee to indemnify Virginia and DRPT and execute the agreement.

PURPOSE:

DRPT and WMATA are negotiating an agreement regarding dedicated funding. DRPT requires an indemnification in the proposed dedicated funding agreement. This action will allow the parties to complete the negotiations.

DESCRIPTION:

Key Highlights:

Authorize the General Manager/Chief Executive Officer, or his designee, to indemnify the Commonwealth of Virginia and DRPT in the proposed dedicated funding agreement.

Background and History:

Resolution 2011-30 requires approval by the Board to indemnify a counterparty.

Discussion:

Approval will allow WMATA to indemnify counterparties to move forward with finalizing the proposed dedicated funding agreement.

FUNDING IMPACT:

No impact because this funding is included in the FY 19 budget and the FY 20-25 Capital Improvement Program. However, if the proposed dedicated funding agreement is not executed, then WMATA is at risk of not receiving \$121.3M from the Commonwealth of Virginia

for FY 19 and future funding of \$154M annually starting in FY 20.

TIMELINE:

Previous Actions	None.
Anticipated actions after presentation	If the Board approves this action, then WMATA and DRPT will be able to move forward with finalizing the proposed dedicated funding agreement and WMATA will be able to start receiving funding for FY 19 and future years.

RECOMMENDATION:

Board approval to authorize the GM/CEO, or his designee, to indemnify the Commonwealth of Virginia and the Virginia Department of Rail and Public Transportation in the proposed dedicated funding agreement.

PRESENTED AND ADOPTED: April 25, 2019

SUBJECT: APPROVAL TO INDEMNIFY THE COMMONWEALTH OF VIRGINIA AND THE VIRGINIA DEPARTMENT OF RAIL AND PUBLIC TRANSPORTATION

2019-13

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

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

WHEREAS, The Commonwealth of Virginia and the Virginia Department of Rail and Public Transportation (DRPT) require an indemnification in the proposed dedicated funding agreement;

NOW THEREFORE, be it

RESOLVED, That the Board authorizes the General Manager & Chief Executive Officer or his designee to include an indemnity for the Commonwealth of Virginia and DRPT as may be required by such parties in the proposed dedicated funding agreement and substantially in the form shown as Attachment A; and be it finally

RESOLVED, That to timely complete the negotiations and execute the proposed dedicated funding agreement, 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

Motioned by Mr. Evans, seconded by Mr. Smedberg
Ayes: 7- Mr. Evans, Mr. Crawford, Mr. Smedberg, Mr. Marootian, Mr. Goldman, Mr. Dorsey and Mr. McMillin

ATTACHMENT A

F. INDEMNIFICATION AND INSURANCE: WMATA shall indemnify, defend, and hold harmless the Commonwealth and DRPT, and their directors, officers, agents, and employees, from and against all claims, suits, judgments, actions, losses, damages, liabilities, costs and expenses of every name and description, including but not limited to reasonable attorney's fees and costs, brought by any third party arising out of, resulting from, or in connection with any negligent act or omission by WMATA, its contractors, subcontractors, agents, or employees, or anyone directly or indirectly employed by them, or anyone for whose acts they may be liable, relating to any CIP work covered by this Agreement.

WMATA shall either be sufficiently self-insured or carry insurance to cover the risks for WMATA, its employees, agents, contractors and subcontractors, anyone directly or indirectly employed by them, or anyone for whose acts they may be liable related to any CIP work covered by this Agreement. WMATA shall require all commercial insurance policies obtained by WMATA to satisfy its obligations under this section to list the Commonwealth, DRPT, and their respective officers, agents, and employees as Additional Insureds. WMATA certifies that as of the Effective Date of this Agreement, all commercial insurance and self-insurance lists the Commonwealth, DRPT, and their respective officers, agents, and employees as Additional Insureds. WMATA shall not remove the Commonwealth, DRPT, or their respective officers, agents, and employees as Additional Insureds for any self-insurance without the written consent of the Commonwealth.

In the event WMATA receives notice from an insurer that any insurance policy is going to be, or has been, subject to cancellation, nonrenewal, or material adverse changes to the insurance contract, WMATA shall provide DRPT with prompt notice. WMATA shall provide 30-days advance written notice to DRPT of any cancellation or material adverse change to any self-insurance.

For all self-insurance and commercial insurance, WMATA shall provide Certificates of Insurance listing the Commonwealth, DRPT, and their respective officers, agents, and employees, as Additional Insureds.

In lieu of carrying insurance for its agents, contractors or subcontractors, WMATA may require all its agents, contractors or subcontractors who perform any CIP work or activity of any type to carry insurance sufficient to cover the risks for all damage to persons and property due to CIP work under this Agreement. However, such insurance does not relieve WMATA of the burden of being self-insured and/or carrying insurance to cover the actions of its employees. WMATA shall require of its agents, contractors, and

subcontractors that the Commonwealth, DRPT, and their respective officers, agents, and employees, are identified as Additional Insureds on all such insurance policies obtained in lieu of WMATA providing such insurance for its agents, contractors or subcontractors, and WMATA shall require that its agents, contractors, and subcontractors provide Certificates of Insurance listing the Commonwealth, DRPT and their respective officers, agents, and employees as Additional Insureds for any such insurance policies.

Payment of any funds by DRPT shall not waive any of the rights of DPRT contained in this section nor release WMATA from any responsibilities or duties contained in this Agreement.

The obligations of this section shall survive the termination of this Agreement for the life of the assets purchased with the funding provided or for 20 years after termination, whichever is longer.