

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.

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

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

ATTACHMENT A

“LIABILITY WAIVER/INDEMNIFICATION: ~~WMATA shall be responsible to the extent allowable by law for all damage to life and property due to its activities and those of its employees in connection with the CIP work performed under this Agreement. WMATA agrees to indemnify and defend the Commonwealth of Virginia and the Virginia Department of Rail and Public Transportation and their directors, officers, and employees form and against any third party claims for losses, damages, liabilities, cost and expenses awarded as a final judgement in a lawsuit or other legal proceeding, arising out of any negligent act or omission in the performance by WMATA or its subcontractors of the CIP work covered by this Agreement. Even if WMATA is not allowed by law to indemnify, WMATA shall either be sufficiently self-insured by ensuring that it has sufficient funds to meet its self-insured obligations based on historical loss exposure in the opinion of the Department and/or carry sufficient insurance which is acceptable to the Department in the Department’s sole discretion to cover the risks for CIP work performed under this Agreement for WMATA, its employees, agents, contractors and subcontractors. Prior to execution of this Agreement, WMATA shall submit to the The Department accepts as evidence of WMATA’s ability to self-insure WMATA’s financial statements as posted on WMATA’s websiteance for review and approval. 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 in connection with this Agreement to carry insurance sufficient to cover the risks for all damage to persons life and property due to CIP work any and all activities in connection with the work performed 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. Such insurance, purchased by either WMATA or its agents, contractors or subcontractors, shall list the Commonwealth of Virginia, the Department, the Virginia Department of Transportation and their directors, the officers or agents and employees of these entities as additional insureds. Payment of any funds by the Department shall not waive any of the rights of the Department contained in this section nor release WMATA from any responsibilities or duties contained in this Agreement. Further, to the extent allowable by law, it is expressly understood that WMATA shall indemnify, defend and hold harmless the Commonwealth of Virginia, the Department, the Virginia Department of Transportation, and their officers, agents, and employees from and against all damages, claims, suits, judgments, expenses, actions and costs of every name and description, arising out of or resulting from any negligent act or omission in the performance by WMATA or its subcontractors of the CIP work covered by this Agreement. The obligations of this section shall survive the termination or completion of this Agreement for one year.”~~