

Washington Metropolitan Area Transit Authority
Board Action/Information Summary

☒ Action ☐ Information

MEAD Number:
201913

Resolution:
☒ Yes ☐ No

TITLE:

Indemnification of USRC and Amtrak

PRESENTATION SUMMARY:

To obtain Board approval to delegate to the GM/CEO or his delegate authority to provide an indemnification of Union Station Redevelopment Corporation (USRC) and Amtrak.

PURPOSE:

To obtain Board approval to delegate to the GM/CEO or his delegate authority to enter into a mutual indemnification between the parties to the Union Station project improvements agreements.

DESCRIPTION:

Key Highlights:

Board Resolution 2011-30 requires Board approval where an agreement requires WMATA to indemnify the counter-party in non-procurement contracts.

USRC requires that the project coordination agreement include an indemnification of the parties for constructing the Metro and Amtrak improvements.

Background and History:

In July 2017, the Board approved construction of the Metro Union Station Project as a reimbursable project and negotiation of reimbursable project agreements with the District of Columbia (DC), State of Maryland (MD) and USRC and Amtrak for this work.

The Metro Union Station project will reduce pedestrian congestion and increase vertical circulation capacity by: (1) relocating the First Street NE entrance, (2) adding stairs to the existing north mezzanine escalator bank, and (3) adding three fare gates and relocating fare card vending machines.

Amtrak, in coordination with USRC, is engaged in a project to design and construct improvements to the existing Claytor passenger concourse at Union

Station. The design phase of the concourse is expected to be completed by October, 2017, and will produce 100% design and construction documents.

WMATA has completed the design for improvements to the Metro Union Station First Street NE entrance and north mezzanine and produced 100% design and construction documents.

As was explained to the Board in July, all parties agreed efficiencies would be gained by combining the transit and concourse projects into one construction project. USRC, as the overseer for planning and redevelopment efforts at Union Station, is willing to contract for and deliver the project subject to Metro and Amtrak providing funding for their respective projects.

DC and MD have agreed to provide \$5 million to fund the components of the project that benefit the Metrorail Station. This project is included in Metro's FY18 Capital Improvement Program (CIP) as a reimbursable project.

Discussion:

Metro is negotiating the reimbursable project funding agreement with DC and MD, and is negotiating the project coordination agreement with USRC and Amtrak.

USRC requires that the project coordination agreement include an indemnification substantially in the form the following:

'Subject to the prior identification and obligation of funding, each Party (the "Indemnifying Party") shall indemnify, defend and hold harmless the other Party and its directors, officers, agents and employees ("Indemnified Party") from and against any and all claims, causes of action, suits, judgments, losses, obligations, costs and expenses, including reasonable attorneys' fees and expenses (collectively, "Damages"), incurred by the Indemnified Party to the extent the same arise out of the failure of the Indemnifying Party to perform any of its obligations or to comply with the provisions of this Agreement, except to the extent such Damages are the direct result of the negligent act or omission of the Indemnified Party.'

FUNDING IMPACT:

There is no impact on funding for WMATA to provide indemnification of USRC and Amtrak.	
Project Manager:	Shyam Kannan
Project Department/Office:	CPPM/PLAN

TIMELINE:

Previous Actions	July 2017 – Board approved construction of the Union
-------------------------	--

	Station Metro Station improvements as a reimbursable and negotiation of associated agreements.
Anticipated actions after presentation	October 2017 – GM/CEO will execute the project coordination agreement with USRC and Amtrak.

RECOMMENDATION:

Board approval to delegate to the GM/CEO or his delegate authority to provide an indemnification of USRC and Amtrak.

PRESENTED AND ADOPTED: December 14, 2017

**SUBJECT: DELEGATION OF THE AUTHORITY TO INDEMNIFY AND HOLD HARMLESS
AMTRAK AND UNION STATION REDEVELOPMENT CORPORATION**

2017-55

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

WHEREAS, Pursuant to Resolution 2011-30, Board of Directors' approval is required for the Washington Metropolitan Area Transit Authority (WMATA) to enter into indemnification agreements with third parties in non-procurement contracts; and

WHEREAS, WMATA desires to enter into certain agreements approved by the Board of Directors in Resolution 2017-32 for the Union Station Metro Station First Street Entrance and North Mezzanine Project with Union Station Redevelopment Corporation (USRC) and Amtrak; and

WHEREAS, USRC and Amtrak require that the agreement include a mutual indemnification between and among the parties; now, therefore be it

RESOLVED, That, the Board of Directors authorizes the General Manager/Chief Executive Officer or his designee to provide an indemnification to USRC and Amtrak in the project coordination and funding agreements, so long as the indemnification is substantially similar to the following:

"Subject to the prior identification and obligation of funding, each Party (the "Indemnifying Party") shall indemnify, defend and hold harmless the other Parties and its directors, officers, agents and employees ("Indemnified Parties") from and against any and all claims, causes of action, suits, judgments, losses, obligations, costs and expenses, including reasonable attorneys' fees and expenses (collectively, "Damages"), incurred by the Indemnified Parties to the extent the same arise out of the failure of the Indemnifying Party to perform any of its obligations or to comply with the provisions of this Agreement, except to the extent such Damages are the direct result of the negligent act or omission of the Indemnified Parties"; and be it finally

Motioned by Mr. Evans, seconded by Mr. McMillin

Ayes: 8 – Mr. Evans, Ms. Harley, Mr. Corcoran, Mr. McMillin, Mr. Price, Mr. Goldman, Mrs. Hudgins and Mr. Horner

RESOLVED, That, in order to expedite moving the Union Station Project forward, this Resolution shall be effective immediately.

Reviewed as to form and legal sufficiency,



Patricia Y. Lee
General Counsel

WMATA File Structure Nos.:
2.7. Delegation of Authority
15.2.1 Grants of Indemnification