

Washington Metropolitan Area Transit Authority
Board Action/Information Summary

☒ Action ☐ Information

Document
Number:
203480

Resolution:
☒ Yes ☐ No

Presentation Name:

Indemnification of the District of Columbia

Project Manager:

John Pasek

Project Department:

Office of the Board Corporate Secretary

Purpose/Key Highlights:

Request Board approval to indemnify the District of Columbia and its agencies in order to use District of Columbia-owned facilities for current and future Compact public hearings.

Interested Parties:

The **District of Columbia government, DC Public Schools** and the **Department of General Services** are Interested Parties.

Background:

In Resolution 2023-12, the Board authorized Metro staff to conduct public hearings on proposed changes at six Metro stations: Brookland-CUA, Capitol Heights, Congress Heights, Deanwood, Forest Glen and North Bethesda. Three of those stations (Brookland-CUA, Congress Heights and Deanwood) are within the District of Columbia.

Post-pandemic, Metro has transitioned to hybrid public hearings that allow for both in-person and virtual participation. In order to have the in-person portion of the hearings in locations that are accessible and geographically proximate to the subject Metro stations, staff desires the flexibility to use District of Columbia-owned buildings, including District of Columbia Public Schools buildings, recreation and community centers and other similar facilities.

As required by Article VI, Section 15 of the WMATA Compact, "...before a Mass

Transit Plan is adopted, altered, revised or amended," Metro must transmit copies of the plan, alteration, revision or amendment for comment and conduct a public hearing on the proposal. Changes such as those proposed at Brookland-CUA, Congress Heights and Deanwood are considered a change to the Mass Transit Plan.

In accordance with Metro's Public Participation Plan (PPP), Metro will conduct community outreach to inform riders and members of the community about the proposed changes as part of the Compact public hearing process. Providing public hearing locations that are accessible and geographically proximate to the subject projects is consistent with the PPP's goal of providing receive high-quality information, communication and feedback opportunities around planned projects.

Discussion:

In order to use any facility owned by the District of Columbia or its agencies, Metro must agree to indemnification language contained in the facility use agreement. In accordance with Resolution 2011-30, as amended, Board authorization is required to indemnify a counterparty.

Failure to receive authorization required to use District of Columbia-owned facilities would require Metro to seek alternate locations for upcoming public hearings or to conduct the hearings as virtual-only. Alternate hearing locations may not have the same level of accessibility features as District-owned buildings and/or may not be in close proximity to the proposed project. Conducting public hearings as virtual-only would lessen the opportunity for public participation, especially for members of the public with limited technology access.

Funding Impact:

No impact on funding. This action will only authorize Metro to enter into agreements for use of District of Columbia-owned facilities.

Previous Actions:

2022 - Metro releases 10-Year Strategic Plan for Joint Development that seeks to accelerate development at Metro stations, with a goal of executing twenty new joint development agreements by 2032

April 2023 - Board authorization for six Compact public hearings associated with joint development solicitations, including three in the District of Columbia

Next Steps:

Summer/Fall 2023 - Compact public hearings on proposed changes at Metro stations

Fall/Winter 2023 - Board acceptance of Public Hearing Staff Reports from subject hearings

2024 and beyond - Additional Compact public hearings in the District of Columbia

Recommendation:

Approval to: authorize the Board Corporate Secretary or her designee to indemnify the District of Columbia

SUBJECT: APPROVAL TO INDEMNIFY DISTRICT OF COLUMBIA AGENCIES FOR USE
OF DISTRICT-OWNED FACILITIES TO HOLD WMATA PUBLIC HEARINGS

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

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

WHEREAS, In Resolution 2023-12, the Board authorized staff to hold public hearings on proposed changes to the Brookland-CUA, Capitol Heights, Congress Heights, Deanwood, Forest Glen and North Bethesda Metro stations; and

WHEREAS, Three of these Metro stations – Brookland-CUA, Congress Heights, and Deanwood – are located in the District of Columbia; and

WHEREAS, In order to hold hearings in locations that are accessible and near the relevant Metro stations in the District of Columbia, staff desires to use District-owned buildings including DC Public Schools buildings, recreation and community centers, and other similar facilities; and

WHEREAS, The District of Columbia use permit requires WMATA to indemnify DC agencies, such as DC Public Schools and the DC Department of General Services; and

WHEREAS, Staff anticipates using District-owned buildings to hold public hearings in the future;

NOW, THEREFORE, be it

RESOLVED, That the Board of Directors authorizes the Board Corporate Secretary or her designee to indemnify District of Columbia agencies as may be required for use of District-owned facilities to hold public hearings, now and in the future, substantially in the form as shown in Attachment A; and be it finally

RESOLVED, That in order to provide for timely public hearings on the proposed changes to the Brookland-CUA, Congress Heights, and Deanwood Metro stations, this Resolution shall be effective immediately.

Reviewed as to form and legal sufficiency,

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

WMATA File Structure No.:
15.2.1 Grants of Indemnification

Attachment A

GOVERNMENT OF THE DISTRICT OF COLUMBIA DEPARTMENT OF GENERAL SERVICES USE AGREEMENT:

The User shall indemnify, hold harmless, and upon request by the District, defend the District*, its officers, agents, invitees and employees (each and collectively, "Indemnitees"), against all damages, liability, claims, losses, and expense, including, without limitation, reasonable attorneys' fees and litigation costs, incurred by and of the Indemnitees and arising out of or relating to (a) the acts of omissions of the User or any of its members, agents, invites and guests ("Agents") during the Term, (b) User and User's Agents use of the Premises of the Property (c) any breach of the Use Agreement by the User or its Agents, or (d) any other cause whatsoever. If an action or proceeding, as described herein, is instituted against any of the Indemnities, then upon written notice from the District to the User, the User shall, at its sole expense, resist or defend such action or proceeding by counsel approved by the District of Columbia Government in writing. User agrees to be responsible and indemnify the District of Columbia Government for any violation of the Use Agreement by User or any of its Agents.

*The use agreement separately defines the "District" as "the District of Columbia Public Schools and the District of Columbia Department of General Services."