

Washington Metropolitan Area Transit Authority
Board Action/Information Summary

☒ Action ☐ Information

MEAD Number:
202126

Resolution:
☒ Yes ☐ No

TITLE:

Approval to Indemnify TSA

PRESENTATION SUMMARY:

The Washington Metropolitan Area Transit Authority (WMATA) is seeking Board approval to authorize the General Manager and Chief Executive Officer or his designee to indemnify the Transportation Security Administration (TSA).

PURPOSE:

Board approval to authorize the General Manager and Chief Executive Officer or his designee to indemnify TSA as described in the Memorandum of Agreement (MOA) between WMATA and TSA.

DESCRIPTION:

The interested parties in this transaction are the TSA and the Metro Transit Police Department (MTPD). At this time, TSA has not identified any contractors associated with this project nor does MTPD anticipate the use of contract staff to support this initiative.

Key Highlights:

Authorize the General Manager and Chief Executive Officer or his designee, to indemnify TSA in accordance with the MOA.

Background and History:

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

Discussion:

The MTPD is continuing its partnership with the TSA in exploring testing to protect passengers and employees.

FUNDING IMPACT:

Define current or potential funding impact, including source of reimbursable funds.

Project Manager:	Ronald A. Pavlik, Jr.
Project Department/Office:	COO/MTPD

TIMELINE:

Previous Actions	
Anticipated actions after presentation	Board approval to authorize the General Manager and Chief Executive Officer or his designee to indemnify the TSA.

RECOMMENDATION:

Board approval of the indemnification of TSA will allow WMATA and TSA to move forward with testing to protect passengers and employees.

SUBJECT: APPROVAL TO INDEMNIFY THE TRANSPORTATION SECURITY
ADMINISTRATION

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

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

WHEREAS, WMATA is preparing to test certain Transportation Security Administration (TSA) threat-detection technology in the Metrorail system; and

WHEREAS, TSA requires an indemnification in the Memorandum of Agreement for the testing of its equipment;

NOW, THEREFORE, be it

RESOLVED, That the Board authorizes the General Manager and Chief Executive Officer or his designee to include an indemnity for TSA as may be required in the Memorandum of Agreement substantially in the form shown as Attachment A; and be it finally

RESOLVED, That, to promptly begin testing technologies to protect passengers and employees, this Resolution shall be effective immediately.

Reviewed as to form and legal sufficiency,



Patricia Y. Lee
General Counsel

ATTACHMENT A

H. Use of the Test Equipment

1. WMATA will ensure that the test equipment and support equipment, when used by WMATA employees, agents, contractors or subcontractors, is operated in accordance with the user's manuals or supplemental instructions. WMATA is liable to TSA for any damage to or loss of the test equipment or supporting equipment resulting from operation or use of the equipment that does not comply with the user's manuals or supplemental instructions, or otherwise arising solely from the grossly negligent acts or omission of WMATA or WMATA's agent, contractor or subcontractor, acting within the scope of employment. In such cases, WMATA agrees to replace or pay the replacement or repair cost of the test equipment or supporting equipment to TSA.

2. WMATA will control the use and/or operation of the test equipment. TSA shall have no responsibility for operation of the test equipment. Only in such instance where WMATA does exert this kind of control, WMATA agrees to indemnify and hold harmless TSA from any loss, claim, damage or liability of any kind which may arise from WMATA's gross negligence or willful misconduct related to the use or operation of the test equipment.

3. Subject to the overriding provisions of the Federal Tort Claims Act, 28 U.S.C. §§ 1346(b), 1402(b), 2401(b), 2671-2680, TSA will not be liable to WMATA for any loss, claim, or demand made by WMATA or made against TSA by another party, due to or arising from the use of the test equipment by WMATA.

4. Nothing in this Agreement is intended to confer any rights, duties, obligations, claims or right of action by any other person, third party or entity, including but not limited to, members of the public. WMATA and TSA retain all rights, privileges, immunities and defenses provided under law. Nothing in this Agreement will be construed to create an agency relationship between WMATA and TSA.