

## Consent Item (C) 07-27-2023

Washington Metropolitan Area Transit Authority  
**Board Action/Information Summary**

Action  Information

Document  
Number:  
205561

Resolution:  
 Yes  No

**Presentation Name:**

Approval for Indemnification for Access Agreement at McLean Station

**Project Manager:**

Alan Watson

**Project Department:**

Adjacent and Task Order Contracting

**Purpose/Key Highlights:**

In order to execute an access agreement for construction material and equipment to cross Capital One's property adjacent to the McLean Metro Station, approval by the Board of indemnity language contained in the agreement is required.

**Interested Parties:**

Capital One Bank, N.A.  
Fairfax County  
ADP Construction Services, Inc.  
F.H. Paschen

**Background:**

By resolution 2021-40, the Board approved an agreement between WMATA and Fairfax County for the construction of a new north entrance to the McLean Metrorail Station. This project entails the addition of double doors in the north curtainwall, exterior sidewalks, lighting and other necessary improvements. Capital One has revised its site plan and will fund (through Fairfax County) additional work such as steps, additional lighting and relocation of a waterline.

**Discussion:**

To execute this project and associated additional work, it is necessary and beneficial to cross and occupy a portion of Capital One's property during construction. The

agreement between Capital One and WMATA has been prepared and negotiated. The agreement contains indemnification language requiring Board approval prior to execution.

**Funding Impact:**

Approval of the indemnity language does not have a funding impact. The access agreement does not have a funding impact.

**Previous Actions:**

On October 28, 2021, the Board approved resolution 2021-40 approving a reimbursable project agreement between WMATA and Fairfax County for the construction of a new north entrance to the McLean Metrorail Station.

**Next Steps:**

Bi-lateral execution of the access agreement with Capital One Bank, N.A.. The contractor will immediately establish a storage area, continue site work and begin using the Capital One property to access the construction site. Because of the urgency of continuing contracted work, the resolution requests that this approval take immediate effect.

**Recommendation:**

Approval to: authorize General Manager or his designee to indemnify Capital One as part of an access agreement.

SUBJECT: INDEMNIFICATION OF CAPITAL ONE IN RIGHT OF ACCESS AGREEMENT  
FOR CONSTRUCTION OF NEW NORTH ENTRANCE TO MCLEAN METRO  
STATION

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

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

WHEREAS, Resolution 2021-40 authorized an agreement with Fairfax County for the construction of a new north entrance to the McLean Metro Station; and

WHEREAS, WMATA needs to access Capital One's property for construction of the new north entrance and related improvements; and

WHEREAS, Capital One requires WMATA to enter into a right of access agreement in order to access its property; and

WHEREAS, The right of access agreement contains a term that requires WMATA to indemnify Capital One, substantially in the form as shown in Attachment A;

NOW, THEREFORE, be it

*RESOLVED*, That the Board of Directors authorizes the General Manager and Chief Executive Officer or his designee to indemnify Capital One as may be required in the Capital One right of access agreement, substantially in the form as shown in Attachment A.

*RESOLVED*, That to timely continue the construction work of the new north entrance to the McLean Metro Station already under contract, 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

PROPOSED

**ATTACHMENT A**

**RIGHT OF ACCESS AGREEMENT BETWEEN WMATA and CAPITAL ONE, N. A.**

**Restoration; Loss, Damage and Liability.** WMATA and other Permitted Users shall not materially alter or disturb the Premises. Prior to the expiration of the Term, WMATA, at its sole cost and expense, shall remove any fencing, personal property or equipment placed on the Premises by any Permitted Users, and shall restore the Premises to the condition existing as of the commencement of the Term, including, without limitation, repairing any damage to the pavement and/or landscaping. Further, WMATA shall be responsible for, and must make good at its own expense, all loss, liability or damages incurred by Permitter caused by any activities at or in the vicinity of the Premises by any of the Permitted Users and others acting on behalf of WMATA, including, without limitation, personal injury and damage to property up to an aggregate amount of Ten Million Dollars (\$10,000,000). WMATA shall reimburse Permitter for any cost incurred under this Paragraph 6 within fifteen (15) business days of WMATA's receipt of notice from Permitter. The requirements of this Paragraph shall survive the expiration or any earlier termination of this Agreement.