

Washington Metropolitan Area Transit Authority
Board Action/Information Summary

☒ Action ☐ Information

MEAD Number:
202263

Resolution:
☒ Yes ☐ No

TITLE:

Lines of Credit Indemnification

PRESENTATION SUMMARY:

Staff recommends indemnification of two additional financial institutions, Royal Bank of Canada and TD Bank, providing WMATA lines of credit

PURPOSE:

Board approval to indemnify Royal Bank of Canada and TD Bank as participating lenders in WMATA's line of credit program.

DESCRIPTION:

WMATA recently invited banks to participate in a competitive bid process for its line of credit program. Sixteen banks were represented and eight submitted bids. Five of the eight bids were favorable to WMATA's line of credit program. Three of the financial institutions are existing line of credit providers and two are new banks that require indemnification.

Parties with an interest in WMATA's Bank Indemnification are Royal Bank of Canada and TD Bank.

Key Highlights:

- Following a competitive bid process, five bank bids were selected to participate in WMATA's line of credit program
- Staff estimates the new line of credit structure with five participating banks will produce annual savings in excess of \$1.3 million
- Proposed indemnification language is consistent with prior Board of Directors' approvals on WMATA's lines of credit and in accordance with the existing loan agreements

Background and History:

Due to the Covid-19 pandemic, constrained access to lines of credit substantially increased interest rates and credit fees on WMATA's lines of credit expiring May 2021. With the credit markets slowly normalizing, staff recently invited banks to participate in a competitive bidding process for

WMATA's lines of credit. Sixteen financial institutions were represented, resulting in bids from eight banks. Five of the eight banks submitted bids with rates and fees lower than WMATA's expiring line of credit program.

Discussion:

To reduce the concentration of WMATA's credit exposure, staff recommends diversifying WMATA's lines of credit among five financial institutions, including three existing banks: Bank of America, Wells Fargo and Truist; and two new banks, Royal Bank of Canada and TD Bank to reduce WMATA's current credit cost by approximately \$1.3 million. Similar to the Board of Directors' indemnification of the existing three creditors, the two new financial institutions require indemnification to participate in WMATA's line of credit program. The proposed indemnification language is consistent with prior Board of Directors approvals on WMATA's lines of credit and in accordance with the existing loan agreements.

FUNDING IMPACT:

Request for indemnification to allow low-cost providers to participate in the Lines of Credit. The indemnification has no funding impact. However, the indemnification allows for WMATA to achieve lower cost for its 364-day line of credit.	
Project Manager:	Robert Haas
Project Department/Office:	CFO/TRES

TIMELINE:

Previous Actions	March/2021 - Treasury staff hosted a call for bids for the lines of credit and received eight proposals totaling \$1,050,000,000.
Anticipated actions after presentation	April/2021 - Staff recommends allocating a participatory share of the \$350 million, 364-day line of credit, across five banks. Two of the five banks, Royal Bank of Canada and TD Bank, are new to the program. May/2021 - Staff will negotiate new lending agreements and close on new 364-day lines of credit

RECOMMENDATION:

Approval to indemnify Royal Bank of Canada and TD Bank as participating lenders in WMATA's line of credit program.

SUBJECT: APPROVAL TO INCLUDE AN INDEMNIFICATION IN LOAN DOCUMENTS OF
LINE OF CREDIT PROVIDERS

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

WHEREAS, Section 206 of the Board-adopted Debt Policy requires the Board of Directors approval for indemnification in loan documents of any new providers of short-term debt (Resolution 2020-04); and

WHEREAS, The Authority's lines of credit will expire on May 25, 2021; and

WHEREAS, As potential new providers of short-term debt, RBC Bank and TD Bank have offered to provide lines of credit and each bank requires a customary financial institution indemnification;

NOW, THEREFORE, be it

RESOLVED, That the Board of Directors authorizes the General Manager and Chief Executive Officer or his designee to provide a financial institution indemnification in the loan documents with RBC Bank and TD Bank in substantially the form as shown in Attachment A; and be it finally

RESOLVED, That to provide for timely renewal or replacement of the Authority's lines of credit which expire May 25, 2021, this Resolution shall be effective immediately.

Reviewed as to form and legal sufficiency,

/s/ Patricia Y. Lee
Patricia Y. Lee
Executive Vice President and General Counsel

Attachment A

WMATA STANDARD LOAN AGREEMENT INDEMNIFICATION:

Indemnity. (a) Borrower will indemnify Bank and its affiliates and each of the directors, officers, employees, agents, trustees, administrators, managers, advisors and representatives of Bank or any affiliate of Bank (Bank, and each such affiliate and Person being called an “**Indemnitee**”) against, and hold each Indemnitee harmless from, any and all losses, claims, damages, liabilities and related expenses imposed upon, asserted or assessed against or incurred by such Indemnitee arising out of the inaccuracy or breach of any of Borrower’s representations contained in this Agreement or any other Loan Document or arising out of, in connection with, or as a result of (i) the execution or delivery or the administration of this Agreement and the other Loan Documents, (ii) the making of the Loan or the use or proposed use of the proceeds therefrom, or (iii) any actual or prospective claim, litigation, investigation or proceeding relating to any of the foregoing, whether based on contract, tort or any other theory, whether brought by a third party or by Borrower, and regardless of whether any Indemnitee is a party thereto; provided that such indemnity shall not, as to any Indemnitee, be available to the extent that such losses, claims, damages, liabilities or related expenses are determined by a court of competent jurisdiction by final and nonappealable judgment to have resulted from the gross negligence, negligence or willful misconduct of such Indemnitee. (b) To the fullest extent permitted by applicable law, Borrower shall not assert, and hereby waives, and acknowledges that no other Person shall have, any claim against any Indemnitee, on any theory of liability, for special, indirect, consequential or punitive damages (as opposed to direct or actual damages) arising out of, in connection with, or as a result of, this Agreement, any other Loan Document or any agreement or instrument contemplated hereby, the transactions contemplated hereby or thereby, the making of the Loan or the use of the proceeds thereof. No Indemnitee referred to in subsection (a) above shall be liable for any damages arising from the use by unintended recipients of any information or other materials distributed to such unintended recipients by such Indemnitee through telecommunications, electronic or other information transmission systems in connection with this Agreement or the other Loan Documents or the transactions contemplated hereby or thereby other than for direct or actual damages resulting from the gross negligence, negligence or willful misconduct of such Indemnitee as determined by a final and nonappealable judgment of a court of competent jurisdiction. (c) All amounts due under this Section shall be payable not later than ten Business Days after demand therefor. (d) The agreements in this Section shall survive the payment in full of the Note, the repayment, satisfaction or discharge of all other Secured Obligations and the termination of this Agreement for no more than three years following the event.

WMATA STANDARD SECURITY AGREEMENT INDEMNIFICATION:

INDEMNIFICATION. Debtor shall protect, indemnify and save harmless Bank from and against all losses, liabilities, obligations, claims, damages, penalties, causes of action, costs and expenses (including, without limitation, reasonable attorneys’ fees and expenses) (collectively, “**Damages**”) imposed upon, incurred by or asserted against Bank on account of (i) the Loan Documents or any failure or alleged failure of Debtor to comply with any of the terms or representations of this Agreement; (ii) any claim of loss to the Collateral, (iii) any failure or alleged failure of Debtor to materially comply with any law, rule or regulation applicable to the Collateral, (iv) any Damages

whatsoever by reason of any alleged action, obligation or undertaking of Bank relating in any way to or any matter contemplated by the Loan Documents, or (v) any claim for brokerage fees or such other commissions relating to the Collateral or any other Secured Obligations; provided that such indemnity shall be effective only to the extent of any Damages that may be sustained by Bank in excess of any net proceeds received by it from any insurance of Debtor (other than self-insurance) with respect to such Damages. Nothing contained herein shall require Debtor to indemnify Bank for any Damages resulting from Bank's gross negligence, negligence or its willful misconduct. The indemnity provided for herein shall survive payment of the Secured Obligations and shall extend to the officers, directors, employees and duly authorized agents of Bank. In the event Bank incurs any Damages arising out of or in any way relating to the transaction contemplated by the Loan Documents (including any of the matters referred to in this section), the amounts of such Damages shall be added to the Secured Obligations, shall bear interest, to the extent permitted by law, at the interest rate borne by the Secured Obligations from the date incurred until paid and shall be payable on demand.