

Consent Item (D) 07-27-2023

Washington Metropolitan Area Transit Authority

Board Action/Information Summary

☒ Action ☐ Information

Document
Number:
205563

Resolution:
☐ Yes ☒ No

Presentation Name:

Approval to Indemnify for the Bladensburg Bus Garage Project

Project Manager:

Diana Levy

Project Department:

Infrastructure

Purpose/Key Highlights:

Supports the Strategic Transformation Plan Goal 4: Sustainability

Requesting Board approval to indemnify CSX by the end of July 2023 so WMATA can enter into a construction Agreement for the Bladensburg Bus Garage Project (CIP0315)

Interested Parties:

CSX is the interested party

Hensel Phelps is the contractor for the Bladensburg Bus Garage Project (CIP0315)

Background:

Board Resolution 2011-30 requires Board approval of any non-procurement agreement that requires WMATA to indemnify the counterparty.

Discussion:

The Bladensburg Bus Garage Project requires the reconstruction of a retaining wall that will replace an existing retaining wall located on the northwest corner of the site on WMATA property. WMATA's property is adjacent to the CSX right-of-way. Construction equipment must be placed on WMATA property. The radius of the

equipment, in the unlikely event of failure, may cross the CSX right-of-way. CSX requires WMATA to enter into a construction agreement. This agreement includes WMATA to indemnify CSX.

Funding Impact:

There is no funding impact to indemnify CSX.

Previous Actions:

The Bladensburg Bus Garage Project (CIP0315) started in 2018.

Next Steps:

Board grants indemnification to CSX Transportation as may be required in the Construction Agreement.

Recommendation:

Approval to: authorize GM/CEO or his designee to indemnify CSX.

SUBJECT: APPROVAL TO INDEMNIFY CSX TRANSPORTATION, INC. IN CONNECTION
WITH BLADENSBURG BUS GARAGE PROJECT

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, WMATA is reconstructing a retaining wall that will replace an existing retaining wall located on the northwest corner of WMATA property, and adjacent to property owned by CSX Transportation, Inc., as part of the Bladensburg Bus Garage Project; and

WHEREAS, CSX requires WMATA to enter into a construction agreement;

WHEREAS, CSX's construction agreement contains a term that requires WMATA to indemnify CSX, 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 CSX Transportation, Inc. as may be required in the CSX construction agreement, substantially in the form as shown in Attachment A; and be it finally

RESOLVED, That in order to timely execute the construction agreement required to advance the Bladensburg Bus Garage Project, 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

ATTACHMENT A

11. Indemnification

11.1 Generally. To the maximum extent permitted by applicable law, Agency and its Contractors shall indemnify, defend, and hold CSXT and its affiliates harmless from and against all claims, demands, payments, suits, actions, judgments, settlements, and damages of every nature, degree, and kind (including direct, indirect, consequential, incidental, and punitive damages), for any injury to or death to any person(s) (including, but not limited to the employees of CSXT, its affiliates, Agency or its Contractors), for the loss of or damage to any property whatsoever (including but not limited to property owned by or in the care, custody, or control of CSXT, its affiliates, Agency or its Contractors, and environmental damages and any related remediation brought or recovered against CSXT and its affiliates), arising directly or indirectly from the negligence, recklessness or intentional wrongful misconduct of the Contractors, Agency, and their respective agents, employees, invitees, contractors, or its contractors' agents, employees or invitees in the performance of work in connection with the Project or activities incidental thereto, or from their presence on or about CSXT's property. The foregoing indemnification obligation shall not be limited to the insurance coverage required by this Agreement, except to the extent required by law or otherwise expressly provided by this Agreement.

11.2 Compliance with Laws. Agency shall comply, and shall require its Contractors to comply, with any federal, state, or local laws, statutes, codes, ordinances, rules, and regulations applicable to its construction and maintenance of the Project. Agency's Contractors shall indemnify, defend, and hold CSXT and its affiliates harmless with respect to any fines, penalties, liabilities, or other consequences arising from breaches of this Section.

11.3 "CSXT Affiliates". For the purpose of this Section 11, CSXT's affiliates include CSX Corporation and all entities, directly or indirectly, owned or controlled by or under common control of CSXT or CSX Corporation and their respective officers, directors, employees and agents.

11.4 Notice of Incidents. Agency and its Contractor shall notify CSXT promptly of any loss, damage, injury or death arising out of or in connection with the Project work.

11.5 Survival. The provisions of this Section 11 shall survive the termination or expiration of this Agreement.