

Consent Item (D) 09-26-2019

Washington Metropolitan Area Transit Authority
Board Action/Information Summary

☒ Action ☐ Information

MEAD Number:
202115

Resolution:
☒ Yes ☐ No

TITLE:

Approval to Indemnify MDOT

PRESENTATION SUMMARY:

Information is provided on the requirement of the Maryland Department of Transportation (MDOT) that WMATA indemnify the State of Maryland, the Maryland Department of Transportation and the Washington Suburban Transit District in the proposed dedicated funding agreement. Board is requested to approve and authorize the General Manager/Chief Executive Officer or his designee to indemnify the Maryland Department of Transportation and execute the agreement.

PURPOSE:

MDOT and WMATA are negotiating an agreement regarding dedicated funding. MDOT requires an indemnification in the proposed dedicated funding agreement. This action will allow the parties to complete the negotiations and sign the agreement.

DESCRIPTION:

Key Highlights:

Authorize the General Manager/Chief Executive Officer, or his designee, to indemnify the State of Maryland and the Maryland Department of Transportation in the proposed dedicated funding agreement.

Background and History:

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

Discussion:

Approval would allow WMATA to indemnify the State of Maryland to move forward with finalizing the proposed dedicated funding agreement.

FUNDING IMPACT:

Program:	Capital Improvement Program
Project:	Systemwide
Project Manager:	Regina Sullivan
	GOVR

Project Department/Office	
Remarks:	If the proposed dedicated funding agreement is not executed, then WMATA is at risk of not receiving \$167M from the State of Maryland for FY21 and future funding of \$167M annually.

TIMELINE:

Previous Actions	None
Anticipated actions after presentation	If the Board approves this action, then WMATA and MDOT will be able to move forward with finalizing the proposed dedicated funding agreement and WMATA will be able to start receiving funding for FY21 and future years.

RECOMMENDATION:

Board approval to authorize the General Manager/Chief Executive Officer, or his designee, to indemnify the State of Maryland and the Maryland Department of Transportation in the proposed dedicated funding agreement

PRESENTED AND ADOPTED: September 26, 2019

SUBJECT: APPROVAL TO INDEMNIFY THE STATE OF MARYLAND

2019-32

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

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


WHEREAS, The State of Maryland requires an indemnification in the proposed dedicated funding agreement;

NOW, THEREFORE, be it

RESOLVED, That the Board authorizes the General Manager & Chief Executive Officer or his designee to include an indemnity for the State of Maryland as may be required in the proposed dedicated funding agreement and substantially in the form shown as Attachment A; and be it finally

RESOLVED, That, to timely complete the negotiations and execute the proposed dedicated funding agreement, this Resolution shall be effective immediately.

Reviewed as to form and legal sufficiency,



Patricia Y. Lee
General Counsel

WMATA File Structure No.:
15.2.1 Grants of Indemnification

Motioned by Mr. Smedberg, seconded by Mr. McMillin

Ayes: 8- Mr. Smedberg, Mr. Bulger, Mr. Goldman, Mr. Horner, Mr. Dorsey, Mr. Marootian, Mr. Rahn and Mr. McMillin

ATTACHMENT A

F. INDEMNIFICATION AND INSURANCE:

(1) WMATA shall indemnify, defend, and hold harmless the State and WSTD, and their directors, officers, agents, and employees, from and against all claims, suits, judgments, actions, losses, damages, liabilities, costs and expenses of every name and description, including but not limited to reasonable attorney's fees and costs, brought by any third party arising out of, resulting from, or in connection with any negligent act or omission by WMATA, its contractors, subcontractors, agents, or employees, or anyone directly or indirectly employed by them, or anyone for whose acts they may be liable, relating to any CIP work covered by this Agreement.

....

(7) The obligations of this section shall survive the termination of this Agreement for the life of the assets purchased with the funding provided or for 20 years after the termination, whichever is longer.