

Consent Item (D) 04-27-2023

Washington Metropolitan Area Transit Authority Board Action/Information Summary

☒ Action ☐ Information

MEAD Number:
203453

Resolution:
☒ Yes ☐ No

TITLE:

Indemnify VA Dept. of Rail & Public Transportation

PRESENTATION SUMMARY:

Staff requests Board approval to indemnify the Virginia Department of Rail and Public Transportation (DRPT) as part of a local match funding agreement (Match Agreement) for federal Congestion Mitigation Air Quality (CMAQ) funding. The indemnification is a DRPT requirement as a condition of entering into a local match funding agreement. The Commonwealth of Virginia/DRPT provides the local match to CMAQ funding, eliminating the need for matching funds from WMATA.

PURPOSE:

Request Board approval to indemnify the Virginia Department of Rail and Public Transportation.

DESCRIPTION:

There are no interested parties for conflicts of interest purposes.

Key Highlights:

- CMAQ funding is programmed and managed by the Commonwealth of Virginia via DRPT.
- CMAQ funding is an on-going and historic part of WMATA's capital improvement program. Over the last four years, this partnership has provided over \$20 million to support bus replacement.
- The CMAQ funds are flexed to the Federal Transit Administration (FTA) for a direct award to WMATA. The Match Agreement provides the local match to CMAQ funding.
- The Match Agreement will be executed once the FTA awards the CMAQ funding.

Background and History:

The CMAQ program is a federal grant program administered by the Federal Highway Administration (FHWA). The program allows for funds to be "flexed"

from FHWA to FTA for direct grant administration. The Commonwealth of Virginia is responsible for competitively distributing CMAQ funding.

The federal CMAQ grant funding to WMATA is an on-going partnership with the Virginia DRPT. WMATA routinely applies for and receives CMAQ funding for Metrobus replacements. Bus replacement projects are eligible expenses under this funding source. Continuing this partnership will provide approximately \$4 million of funding to support timely replacement of buses in WMATA's fleet.

Discussion:

Identifying and securing available funding for the Capital Improvement Program is part of WMATA's financial sustainability goal. Every funding source received by WMATA includes some number of terms and conditions on that funding. In this case, the Commonwealth of Virginia requires an indemnification of DRPT, among other requirements. Staff has worked to reduce the number of conditions, and to remove conditions that DRPT imposes on other recipients that are not authorized under the WMATA Compact. Providing an indemnification is not prohibited by WMATA practices but does require approval from the Board.

The resolution also requests authorization by the Board for staff to provide similar indemnifications in the future, without further Board action, as new CMAQ grant funding opportunities become available.

FUNDING IMPACT:

Approving this request authorizes the execution of a funding agreement in excess of \$3.5 million for the Capital Improvement Program, supported by over \$876,000 in local match from DRPT for use against FY 2023 and FY 2024 expenditures.

Program:	Capital Improvement Program
Project Manager:	Yetunde Olumide
Project Department/Office:	Finance

TIMELINE:

Previous Actions	None
Anticipated actions after presentation	None

RECOMMENDATION:

Staff recommends authorizing the indemnification of the Virginia Department of Rail and Public Transportation for current and future CMAQ grants and local match funding agreements in substantially the same form as in the proposed resolution.

Presented and Adopted: April 27, 2023

SUBJECT: APPROVAL TO INDEMNIFY THE VIRGINIA DEPARTMENT OF RAIL AND PUBLIC TRANSPORTATION AS PART OF CONGESTION MITIGATION AIR QUALITY GRANT MATCH AGREEMENTS

2023-16

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

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

WHEREAS, WMATA desires to enter into a funding agreement with the Virginia Department of Rail and Public Transportation for local match to a federal Congestion Mitigation Air Quality Grant; and

WHEREAS, The Virginia Department of Rail and Public Transportation requires WMATA to provide an indemnification as part of its match funding agreement; and

WHEREAS, The use of Congestion Mitigation Air Quality Grant agreements is anticipated to continue into the future on a yearly basis;

NOW, THEREFORE, be it

RESOLVED, That the Board of Directors authorizes the General Manager and Chief Executive Officer or his designee to indemnify the Virginia Department of Rail and Public Transportation as part of one or more grant funding agreements, now and in the future, substantially in the form as shown in Attachment A; and be it finally

RESOLVED, That in order to timely execute the funding agreement and receive the funding, this Resolution shall be effective immediately.

Reviewed as to form and legal sufficiency,



Patricia Y. Lee
Executive Vice President, Chief Legal Officer, and
General Counsel

WMATA File Structure No.:
15.2.1 Grants of indemnification

**Motioned by Mr. Smedberg, seconded by Dr. Loh
Ayes: 8- Mr. Smedberg, Ms. Babers, Mr. Drummer, Ms. Kline, Mr. Letourneau, Dr. Loh, Mr. McAndrew and Ms. Martin-Proctor**

Attachment A

Further, to the extent allowable by law, it is expressly understood that the Grantee shall indemnify, defend and hold harmless the Commonwealth of Virginia, the Department, the Virginia Department of Transportation, and their officers, agents, and employees from and against all damages, claims, suits, judgments, expenses, actions and costs of every name and description, arising out of or resulting from any negligent act or omission in the performance by the Grantee or its subcontractors of the work covered by this Project Agreement.