

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

<input checked="" type="checkbox"/> Action <input type="checkbox"/> Information	MEAD Number: 99855	Resolution: <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
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**PURPOSE**

To obtain Board approval of an indemnification provision contained in a proposed License Agreement between the Norfolk Southern Railway Company and WMATA.

**DESCRIPTION**

WMATA has requested permission from the Norfolk Southern Railway Company (the "Railway") to construct, operate and maintain a 30'x140' access road across the Railway's property in Landover, Maryland (the "Crossing"). The road would provide direct vehicular access between the Carmen Turner Facility on one side of the Railway's property and WMATA's Open Material Storage Facility on the other side. The Railway is amenable to allowing WMATA to construct and operate this Crossing contingent upon WMATA signing the Railway's standard License Agreement. The Agreement contains the following indemnification provision, which requires Board approval in accordance with Board Resolution #93-23, "WMATA Policy Concerning Assurance For Use of Real Property":

"Licensee agrees to indemnify and save harmless Railway, its officers, agents and employees, from and against all liability, claims, loss, damage, expense (including attorneys' fees) or costs for personal injuries (including death) and/or property damage to whomsoever or whatsoever, occurring or arising in any manner from railway operations at or in the vicinity of the Crossing and by the construction, reconstruction, maintenance, use or removal of the Crossing by the Licensee or others. The indemnity obligations imposed upon the Licensee by this paragraph shall be absolute and shall not be affected by the contributory negligence of the Railway or its officers, agents and employees."

**FUNDING IMPACT**

There is no immediate financial impact associated with the proposed action. Indemnification of the Railway as described above could, however, result in a potential

financial exposure which cannot be quantified at this time. WMATA is self-insured up to \$5 million per occurrence with excess liability coverage beyond that.

**RECOMMENDATION**

That the Board approve the indemnification provision contained in the proposed License Agreement between the Norfolk Southern Railway Company and WMATA.