

Washington Metropolitan Area Transit Authority
Board Action/Information Summary

☒ Action ☐ Information

MEAD Number:
201876

Resolution:
☒ Yes ☐ No

TITLE:

Indemnification of Fairfax County

PRESENTATION SUMMARY:

To obtain Board approval for indemnification of Fairfax County for a maintenance agreement.

PURPOSE:

To obtain Board approval for indemnification of Fairfax County for a maintenance agreement at the District II Police Substation.

DESCRIPTION:

Key Highlights:

The District II Police Substation was built at the Franconia Springfield Station in Fairfax County.

Background and History:

The Substation includes stormwater management facilities and the maintenance of said facilities was the responsibility of the contractor.

Discussion:

The Substation Project is in the close-out phase. The contractor who built the facility is at the end of their obligation for maintenance of stormwater management facilities at the substation. As a result Metro must take over that maintenance responsibility. Fairfax County requires a standard form be signed committing Metro to perform the necessary maintenance. The form includes language requiring that the signatory indemnify the County. Board policy states that only the Board can offer indemnification.

FUNDING IMPACT:

There is no impact on funding for WMATA to indemnify Fairfax County.	
Project Manager:	John Thomas

Project	DECO
Department/Office:	

TIMELINE:

Previous Actions	December 2014 - District II Substation opened.
Anticipated actions after presentation	Sign the maintenance agreement and assume responsibility for said maintenance.

RECOMMENDATION:

Board approval for indemnification of Fairfax County for a maintenance agreement for the District II Police Substation.

PRESENTED AND ADOPTED: May 25, 2017

**SUBJECT: INDEMNIFICATION OF FAIRFAX COUNTY FOR A STORMWATER
MANAGEMENT AGREEMENT FOR THE DISTRICT II POLICE SUBSTATION**

2017-24

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

WHEREAS, Resolution 2011-30 delegates to the General Manager/Chief Executive Officer (GM/CEO) authorization to enter into most non-procurement agreements, but requires that the GM/CEO seek Board of Directors approval for any agreement requiring the Washington Metropolitan Area Transit Authority (WMATA) to indemnify the counter-party; and

WHEREAS, WMATA has built the District II Police Substation in Fairfax County which includes storm water management facilities which are currently being maintained by WMATA's contractor; and

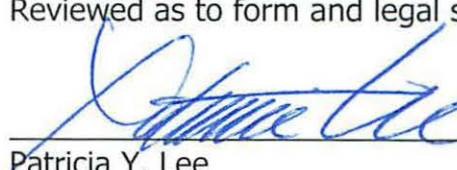
WHEREAS, Fairfax County requires landowners whose developments include storm water management facilities to sign a Maintenance Agreement committing to maintain the facilities and granting the County permission to conduct maintenance if the landowner fails to do so; and

WHEREAS, The Maintenance Agreement, which is attached as Attachment A, requires WMATA to indemnify Fairfax County; now, therefore be it

RESOLVED, That the Board of Directors authorizes the GM/CEO or his designee to indemnify Fairfax County, as shown in Attachment A; and be it finally

RESOLVED, That this Resolution shall be effective immediately so that WMATA may execute the Maintenance Agreement and immediately assume responsibility for the maintenance of the storm water management facility and close-out its construction contract.

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. Evans, seconded by Mr. Goldman
Ayes: 8 – Mr. Evans, Ms. Harley, Mr. Corcoran, Mr. Costa, Mr. Price, Mr. Goldman, Mrs. Hudgins and Ms. Carmody**

District: LEE DistrictTax Map: 0902010060

**MAINTENANCE AGREEMENT
for
STORMWATER MANAGEMENT FACILITIES
(located on private property)**

THIS AGREEMENT, made this _____ day of OCTOBER, 2016, by and between WASHINGTON METROPOLITAN, AREA TRANSIT AUTHORITY

Insert Full Name of Owner(s)

hereinafter called "Landowner", and the Board of Supervisors of Fairfax County, Virginia, hereinafter called "County":

WITNESSETH:

WHEREAS, the Landowner is the owner of certain real property, more particularly described as FRANCONIA PCL 2A

Insert Legal Description of Property

MTPD DISTRICT II SUBSTATION & TRAINING FACILITY

Plan Name

0902010060

Tax Map Number

as recorded by Deed in the land records of Fairfax County, Virginia, in Deed Book 05690 at Page 0957, hereinafter called the "Property"; and

WHEREAS, the Landowner is proceeding to build on and develop the Property; and

WHEREAS, Site/Subdivision/Grading Plan Number 9990 .SP .007 hereinafter called the "Plan" which is expressly made a part hereof, as approved or to be approved by the County, provides for management of stormwater within the confines of the Property; and

WHEREAS, the County and the Landowner agree that the health, safety, and welfare of the residents of Fairfax County, Virginia, require that on-site stormwater quantity and/or quality control facilities, hereinafter called stormwater management facilities, be constructed and maintained on the Property; and

WHEREAS, the County, through the implementation of its Stormwater Management Ordinance and the execution of its Municipal Separate Storm Sewer System Permit, requires the Landowner to ensure that the on-site stormwater management facilities will operate as shown on the Plan; and

WHEREAS, the County desires the ability to inspect the on-site stormwater management facilities shown on the Plan, be able to maintain, repair and replace the facilities should the Landowner fail to do so and be able to recover the expense of any necessary maintenance, repair or reconstruction undertaken.

NOW, THEREFORE, in consideration of the foregoing premises, the mutual covenants contained herein, and the following terms and conditions, the parties hereto agree as follows:

1. The on-site stormwater management facilities shall be constructed by the Landowner in accordance with the design and specifications identified in the Plan.
2. The Landowner shall maintain the stormwater management facilities as shown on the Plan in good working order acceptable to the County and in accordance with the specific maintenance requirements noted on the Plan and/or attached hereto as Attachment A.
3. The Landowner shall inspect the stormwater management facilities in accordance with the inspection qualifications, frequency, and reporting requirements noted on the Plan and/or Attachment A. The purpose of the inspection is to verify that each stormwater management facility and system is being properly maintained, is continuing to perform in accordance with the approved design, and conforms to the Plan and applicable codes. Deficiencies shall be noted in the inspection report. If deficiencies are noted, they shall be promptly corrected, repaired, or replaced by the Landowner.
4. The Landowner shall provide a copy of the inspection and maintenance report of the stormwater management facilities to the County as described on the Plan and/or Attachment A within one year of the date of this Agreement or within one year of the date of bond release of the Plan for bonded plans and annually thereafter.
5. The Landowner hereby grants permission to the County, or its authorized agents and employees, to enter upon the Property at reasonable times and in a reasonable manner to inspect, operate, install, construct, reconstruct, maintain, or repair the stormwater management facilities whenever the County deems necessary.

Whenever reasonably possible, the County shall attempt to notify the Landowner prior to the inspection. Any notice to the Landowner under this Agreement shall be deemed to have been properly sent when personally delivered or sent first-class U.S. mail to the address of said Landowner as displayed in the County's real property tax assessment records or, alternatively, when notified by electronic mail provided that an acknowledgement of receipt is returned by the Landowner. To avoid imminent endangerment to human health or the environment, any notice to the Landowner shall be deemed waived and the County, or its authorized agents and employees, may immediately begin the required maintenance, operation, construction, reconstruction, and/or repair work.

6. The County shall provide to the Landowner copies of the County's inspection results and of any directive from the County outlining any necessary repairs or maintenance required to the stormwater management facilities including a date by which such necessary repairs or maintenance shall be completed.

7. In the event the Landowner fails to maintain the stormwater management facilities in good working order acceptable to the County and in accordance with the specific maintenance requirements noted on the Plan and/or Attachment A, or as noted in inspection results as set forth in Paragraph 6 above, the County may take whatever steps it deems necessary to maintain said stormwater management facilities. This provision shall not be construed to allow the County to erect any structure of a permanent nature on the Property of the Landowner. It is expressly understood and agreed that the County is under no obligation to maintain or repair said facilities and in no event shall this Agreement be construed to impose any such obligation on the County.

8. In the event the County, pursuant to this Agreement, performs work of any nature or expends any funds in performance of said work for labor, use of equipment, supplies, materials, and the like, the Landowner shall reimburse the County upon demand within ten (10) days of receipt of an invoice thereof for all costs incurred by the County hereunder. If the Landowner fails to reimburse the County within sixty (60) days after the receipt of the County's demand for payment, such amount shall be recorded as a lien against the Landowner in the records of Fairfax County, Virginia, and/or the County may also proceed to collect amounts due in any manner not prohibited by law.

9. It is the intent of this Agreement to ensure the proper maintenance of on-site stormwater management facilities by the Landowner provided, however, that this Agreement shall not be deemed to create or affect any additional liability of any party for damage alleged to result from or be caused by stormwater drainage.

10. The Landowner, its executors, administrators, assigns, and any other successors in interest, shall indemnify and hold harmless the County and its agents and employees for any and all damages, accidents, casualties, occurrences or claims which might arise or be asserted against the County from the construction, presence, existence or maintenance of the stormwater management facilities by the Landowner or the County.

11. In the event a claim is asserted against the County, its agents or employees, the County shall promptly notify the Landowner and the Landowner shall defend at his own expense any suit based on such claim. If any judgment or claims against the County, its agents or employees shall be allowed, the Landowner shall pay all costs and expenses in connection therewith.

12. This Agreement shall be recorded among the land records of Fairfax County, Virginia, and shall constitute a covenant running with the land, and shall be binding on the Landowner, its administrators, executors, assigns, heirs and any other successors in interest.

IN WITNESS of all of which, the parties hereto have caused this Agreement to be executed under seal on their behalf.

_____	_____
Landowner	Landowner
By: _____	_____
Signature	Signature
_____	_____
(Print or type name and title)	(Print or type name and title)

Address: (type or print) _____

STATE OF _____

COUNTY/CITY OF _____

I, _____, Notary Public in and for the State and County/City aforesaid, do hereby certify that _____ whose name(s) is (are) signed to the foregoing Agreement, this day personally appeared before me in my State and County/City aforesaid and acknowledged the same.

Given under my hand this _____ day of _____, _____.

My commission expires: _____

Notary Public

BOARD OF SUPERVISORS OF FAIRFAX COUNTY, VIRGINIA

By: _____
Director, Land Development Services
Department of Public Works and Environmental Services

COMMONWEALTH OF VIRGINIA:
COUNTY OF FAIRFAX:

This _____ day of _____, _____, appeared before me in my State and
County aforesaid, _____ Director, Land Development
Services, Department of Public Works and Environmental Services, and acknowledged signature.

My commission expires: _____
NOTARY PUBLIC

Approved as to form:

Office of the County Attorney