

Washington Metropolitan Area Transit Authority
Board Action/Information Summary

<input checked="" type="radio"/> Action <input type="radio"/> Information	MEAD Number: 100208	Resolution: <input checked="" type="radio"/> Yes <input type="radio"/> No
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TITLE:

Indemnify CVS/pharmacy for selling SmarTrip Cards

PURPOSE:

To request Board approval to indemnify the CVS Caremark Corporation against liability arising out of the sale of SmarTrip® cards by CVS/pharmacy retail stores.

DESCRIPTION:

In an effort to increase the availability of sales outlets in the transit region that sell SmarTrip® cards, Metro staff has been in discussions with the management of CVS/pharmacy to sell SmarTrip® cards at 187 stores. The availability of additional sales outlets for SmarTrip® cards is more critical with the elimination of paper transfers on January 4, 2009. The SmarTrip® cards will be sold for \$10.00 each and will be pre-loaded with a \$5.00 value to eliminate the need for Metro and regional bus customers to have to immediately seek a location to load value.

CVS requires that its vendors indemnify CVS from liability arising out of the sale by CVS of SmarTrip® cards. The proposed agreement with the CVS Caremark Corporation includes an indemnification provision requiring that WMATA indemnify CVS for any and all liabilities, losses, claims, and/or costs, including reasonable attorneys' fees, which allegedly result from any defect, alleged or real, in any product, fixture, equipment or item, sold or supplied by WMATA to CVS, or which result from any infringement, alleged or real, of any trademark, patent, copyright or other intellectual property right, or which result from any violation of applicable laws by WMATA; however, WMATA is not obligated to CVS under this indemnity to the extent that a claim is a result of any negligence on the part of CVS, its employees, agents or servants.

CVS/pharmacy will sell SmarTrip® cards at no cost to Metro and with no mark-up to customers. Metro will provide CVS/pharmacy with window decals and "register toppers" that will alert CVS/pharmacy customers of the availability of SmarTrip® cards in the stores. Metro will also place advertising on buses and in the Metro system alerting Metro customers of the availability of SmarTrip® cards at CVS/pharmacy stores.

FUNDING IMPACT:

No impact on funding.

RECOMMENDATION:

Approval of the indemnification of the CVS Caremark Corporation against liability arising out of the sale of SmarTrip® cards by CVS/pharmacy retail stores.

SUBJECT: INDEMNIFICATION OF CVS CAREMARK CORPORATION

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

WHEREAS, CVS Caremark Corporation has agreed to sell SmarTrip® Cards at various CVS stores throughout the Metropolitan Washington region; and

WHEREAS, CVS requires that its vendors indemnify CVS from liability arising out of the sale by CVS or SmarTrip® Cards; and

WHEREAS, The CVS Caremark Corporation Indemnification Agreement includes an indemnification provision requiring that Metro indemnify CVS any and all liabilities, losses, claims, and/or costs, including reasonable attorneys' fees, which allegedly result from any defect, alleged or real, in any product, fixture, equipment or item, sold or supplied by Metro to CVS, or which result from any infringement, alleged or real, of any trademark, patent, copyright or other intellectual property right, or which result from any violation of applicable laws by Metro; however, Metro is not obligated to CVS under this indemnity to the extent that a claim is a result of any negligence on the part of CVS, its employees, agents or servants; and

WHEREAS, The Purchase Agreement for DSD Suppliers of CVS Pharmacy, Inc. also includes an indemnification provision requiring that Metro indemnify CVS from any claims, obligations, debts, demands, or liabilities and from any damage, deficiency, loss, cost or expense (including without limitation attorneys' fees) arising from, relating to or connected with: (i) the use, possession or resale by anyone of any or all merchandise covered by this Agreement for real or alleged injuries to person or property, misrepresentations or breach of warranty, express or implied; (ii) any real or alleged infringement of, or litigation concerning any trade name, trademark, patent, design, copyright, right of privacy or similar right in connection with any or all of the merchandise covered by this Agreement, other than any name or mark supplied by CVS; and (iii) violation of State or Federal laws, statutes or regulations regarding the manufacture and packaging of merchandise (including without limitation the requirement for expiration dating and other product information); and

WHEREAS, The Board of Director's approval is required for Metro to indemnify a third-party; now, therefore be it

RESOLVED, That the Board of Directors approves the granting of the requested indemnification contained in the CVS Caremark Corporation Indemnification Agreement and associated Purchase Agreement for DSD Suppliers of CVS Pharmacy, Inc.; and be it finally

RESOLVED, That this Resolution shall be effective immediately.

Reviewed as to form and legal sufficiency,

A handwritten signature in cursive script, appearing to read "Carol B. O'Keeffe", written over a horizontal line.

Carol B. O'Keeffe
General Counsel