


Date: August 8, 2018

To: Board of Directors

From: Doug Kelsey 

Subject: **RESOLUTION 18-08-58 OF THE TRI-COUNTY METROPOLITAN TRANSPORTATION DISTRICT OF OREGON (TRIMET) AMENDING THE MANAGEMENT 401a DEFINED CONTRIBUTION PLAN**

1. Purpose of Item

The purpose of this item is to authorize amendment of the 2013 Restatement of the TriMet Defined Contribution Retirement Plan for Management and Staff Employees (Management Plan).

2. Type of Agenda Item

- Initial Contract
- Contract Modification
- Other Amendment of Defined Contribution Plan

3. Reason for Board Action

The TriMet Board of Directors (Board) has approved the Management Plan, as restated effective January 1, 2013 and as amended by the First Amendment, effective September 1, 2014. The Board has authority to amend the Management Plan pursuant to section 9.1 of the Management Plan, which provides, in pertinent part: "The Board of Directors shall have the power and authority at any time, and from time to time, to amend, in whole or in part, any or all of the provisions of this Plan."

4. Type of Action

- Resolution
- Ordinance 1st Reading
- Ordinance 2nd Reading
- Other _____

5. Background

The Management Plan is a defined contribution plan that is a "profit sharing" plan as defined by the Internal Revenue Service. Each Management Plan participant has an individual account in a trust to which contributions are made and from which distributions are made. TriMet contributes 8% of eligible participants' base compensation each pay period, and participants may elect at time of hire to contribute additional amounts. This decision is irrevocable. No benefit amount is guaranteed; the benefit is the amount in the participant's account at the time of distribution. The Plan is administered by a Committee consisting of TriMet's Executive Director of Finance & Administration, Executive Director of Labor Relations & Human Resources, General Counsel, and Director of Financial Services.

In addition to TriMet's 8% of pay contribution and an employee's one-time, irrevocable election at time of hire, the Management Plan permits participants to make "Voluntary Employee Contributions" in a whole-number percentage of the participant's compensation, from one to fifteen percent of compensation. Such contributions are made on an "after-tax" basis, meaning that the amount contributed is included in the participant's taxable compensation for the year. Earnings on such contributions are not taxed when credited to the participant's account, but are subject to state and federal income taxes when distributed to the participant or the participant's beneficiaries. The principal amount of such contributions is not subject to income taxes when distributed. Roughly 13 participants made such contributions in 2018.

In addition to the Management Plan described above, TriMet also maintains a "Section 457" deferred compensation plan (457 Plan). The 457 Plan permits participants to elect voluntary "pre-tax" contributions, up to limits fixed by the Internal Revenue Service (IRS). These pre-tax contributions reduce the participant's taxable income for the year of the contribution. These contributions, adjusted for investment gains or losses, are subject to income taxes when distributed to the participant or the participant's beneficiaries.

The 457 Plan was recently amended by TriMet to permit participants to make "Roth after-tax contributions" (Roth Contributions) to the 457 Plan. Like Voluntary Employee Contributions to the Management Plan, Roth Contributions are included in the participant's taxable income for the year of the contribution. But unlike such Voluntary Employee Contributions, any earnings on Roth Contributions are not subject to federal income tax when distributed, pursuant to rules of the IRS. Thus, Roth Contributions are generally preferable to Voluntary Employee Contributions, from a tax perspective.

The Committee believes that participants who wish to make after-tax contributions will be better served by making Roth Contributions to the 457 Plan, as opposed to Voluntary Employee Contributions to the Management Plan, and will not need to make both types of after-tax contributions. Continuing to allow Voluntary Employee Contributions to the Management Plan also complicates administration of the Management Plan by combining after-tax and pre-tax dollars in the Management Plan, which may confuse participants deciding between Roth Contributions to the 457 Plan and Voluntary Employee Contributions to the Management Plan.

For the reasons noted above, the Committee recommends that the Board approve the attached proposed amendment to the Management Plan, discontinuing the opportunity to make Voluntary Employee Contributions to the Management Plan, effective August 9, 2018.

6. Impact if Not Approved

We do not see any immediate financial impact if the proposed amendment to the Management Plan is not adopted, though there would be the possibility of increased fees to administer the Management Plan, as well as any costs of resolving disputes with employees who make Voluntary Employee Contributions to the Management Plan instead of Roth Contributions to the 457 Plan, regret their choice, and claim they were not adequately informed.

RESOLUTION 18-08-58

RESOLUTION OF THE TRI-COUNTY METROPOLITAN TRANSPORTATION DISTRICT OF OREGON (TRIMET) AMENDING THE MANAGEMENT 401a DEFINED CONTRIBUTION PLAN

WHEREAS, TriMet has established and maintains the TriMet Defined Contribution Retirement Plan for Management and Staff Employees (the Management Plan) as restated effective January 1, 2013 and amended by the First Amendment, effective September 1, 2014; and

WHEREAS, Section 9.1 of the Management Plan document, as restated and amended, provides: “The Board of Directors shall have the power and authority at any time, and from time to time, to amend, in whole or in part, any or all of the provisions of this Plan;” and

WHEREAS, the TriMet Board of Directors (Board) determines it to be in the best interests of TriMet to amend the Management Plan document to discontinue “Voluntary Employee Contributions” to the Management Plan;

NOW, THEREFORE, BE IT RESOLVED:

1. That the Management Plan shall be amended effective August 9, 2018 to discontinue authorization for participants to make Voluntary Employee Contributions to the Management Plan pursuant to the Second Amendment to the Management Plan attached as Exhibit A to this Resolution.
2. That the General Manager is authorized and directed to execute the Second Amendment attached to this Resolution as Exhibit A and to execute such other documents and take such other actions not inconsistent with this Resolution that the General Manager, in his judgment and on advice of counsel, deems necessary or desirable to carry out this Resolution.

Dated: August 8, 2018

Presiding Officer

Attest:

Recording Secretary

Approved as to Legal Sufficiency



Legal Department

**RESOLUTION 18-08-58
EXHIBIT A**

**TRIMET DEFINED CONTRIBUTION
RETIREMENT PLAN FOR
MANAGEMENT AND STAFF EMPLOYEES
SECOND AMENDMENT**

PARTIES

THIS AMENDMENT is adopted by Tri-County Metropolitan Transportation District of Oregon, hereinafter referred to as "TriMet."

RECITALS

TriMet established the TriMet Defined Contribution Retirement Plan for Management and Staff Employees (the "Plan"), effective April 27, 2003.

The Plan was last amended and restated effective January 1, 2013, and subsequently amended effective September 1, 2014.

TriMet desires to amend the Plan again in certain respects.

AMENDMENT

The TriMet Defined Contribution Plan for Management and Staff Employees is hereby amended, effective August 9, 2018, as set forth on the pages attached hereto that are incorporated by reference herein as follows:

1. ARTICLE 3 – PARTICIPATION
 - a. 3.1.2(a) at page 9.
 - b. 3.1.2(b) at page 9.
2. ARTICLE 4 – CONTRIBUTIONS
 - a. 4.1 at page 11.
 - b. 4.5 at page 13.
 - c. 4.6.2 at page 13.

[SIGNATURE PAGE FOLLOWS]

TriMet has caused this amendment to be executed by its duly authorized representative as of the date set forth below.

TRI-COUNTY METROPOLITAN
TRANSPORTATION DISTRICT OF OREGON

By _____

Title _____

Date _____

ARTICLE 3
PARTICIPATION

3.1 Conditions of Participation

3.1.1 First Becomes Eligible Employee After April 26, 2003. Each Eligible Employee who first becomes an Eligible Employee after April 26, 2003, shall be eligible to become a Participant in this Plan on his or her Employment Commencement Date or, if later, the date that he or she becomes an Eligible Employee.

3.1.2 Status as Eligible Employee Before April 27, 2003. Each Eligible Employee who attained Eligible Employee status before April 27, 2003, is entitled to elect to participate in this Plan or to continue to accrue benefits under the Defined Benefit Pension Plan. The Committee will establish an election period under section 3.1.2(c), and will provide information to Eligible Employees about the Plan to allow them to make an informed election. The following options shall be available to Eligible Employees described in section 3.1.2:

(a) Option 1: Continue Benefit Accrual Under Defined Benefit Pension Plan. Eligible Employees may elect to continue to accrue benefits under the Defined Benefit Pension Plan. Once made, this election is irrevocable. Eligible Employees who elect Option 1 were eligible to make Voluntary Employee Contributions prior to August 9, 2018 in accordance with section 4.5, and are eligible to make Rollover Contributions in accordance with section 4.7, but are not eligible for any other contributions under this Plan.

(b) Option 2: Freeze Credited Service Under Defined Benefit Pension Plan. Eligible Employees may elect to freeze their credited service under the Defined Benefit Pension Plan. If an Eligible Employee elects Option 2, his or her benefit under the Defined Benefit Pension Plan will be determined by reference only to his or her credited service prior to the effective date of the election (as determined in section 3.1.2(c)). Once made, this election is irrevocable. As of the effective date of his or her election, the Option 2 Employee will become eligible for Non-elective Employer Contributions under section 4.3, Pick-up Contributions under section 4.4, and Voluntary Employee Contributions through August 8, 2018 under section 4.5; and will cease to be credited with service under the Defined Benefit Pension Plan. An Eligible Employee electing Option 2 may make an irrevocable election, pursuant to section 4.2, to transfer his or her Accrued Pension Benefits to this Plan in lieu of receiving a retirement benefit from the Defined Benefit Pension Plan following his or her Severance from Employment. An Option 2 Employee who does not elect to transfer the Accrued Pension Benefit to this Plan shall be entitled to receive a benefit under the Defined Benefit Pension Plan, except that any Period of Service after the effective date of the Option 2 election will not be considered "credited service" under the Defined Benefit Pension Plan.

ARTICLE 4
CONTRIBUTIONS

4.1 Types of Contributions and Accounts

This Plan provides for five different types of contributions, the terms and conditions of which are described in this Article 4. The contribution types are:

- (a) Transfers of Accrued Pension Benefits (section 4.2);
- (b) Non-elective Employer Contributions (section 4.3);
- (c) Pick-up Contributions (section 4.4);
- (d) Rollover Contributions (section 4.7); and
- (e) Discretionary Non-elective Contributions (section 4.8).

The contributions shall be allocated to a Plan Account maintained on behalf of each Participant in accordance with the provisions of this Article.

Prior to August 9, 2018, the Plan allowed Voluntary Employee Contributions. The Plan continues to maintain Plan Accounts on behalf of Participants who made such contributions.

4.2 Transfer of Accrued Pension Benefits

This section 4.2 applies to each Eligible Employee who (a) elects Option 2 under section 3.1.2 and (b) has an Accrued Pension Benefit under the Defined Benefit Pension Plan. If an Option 2 Employee so elects, the vested and non-vested portions of his or her Accrued Pension Benefit will be transferred from the Defined Benefit Pension Plan to this Plan in a direct plan-to-plan transfer as soon as practicable after the date of the election. This election is irrevocable and must be made during the election period described in section 3.1.2(c). Neither the election to participate in this Plan nor the transfer of the Accrued Pension Benefit shall give the Eligible Employee any right to receive an immediate distribution of the Accrued Pension Benefit. Rather, the Eligible Employee's distribution rights shall be determined under the Defined Benefit Pension Plan prior to the date of transfer and under this Plan after the date of transfer. Option 1 Employees are not eligible to transfer Accrued Pension Benefits under this section.

4.3 Non-elective Employer Contributions

4.3.1 Basic Contribution. Each payroll period, TriMet shall make a Non-elective Employer Contribution to the Plan equal to eight percent (8%) of the Considered Compensation of each Participant, except that no contribution shall be made on behalf of Option 1 Employees. The Non-elective Employer Contribution for Option 2 Employees will commence on the effective date of the Option 2 election, as determined under section 3.1.2(c).

contributions by the Employee. The Employee does not have the option of choosing to receive the contributed amounts directly instead of having them paid by TriMet to the Plan.

4.5 Voluntary Employee Contributions

Prior to August 9, 2018, Eligible Employees could make Voluntary Employee Contributions to the Plan of between one percent and 15 percent, subject to the maximum annual additions limit in section 4.6. Voluntary Employee Contributions are included in an Employee's taxable Compensation and are included in Considered Compensation for the Plan Year in which they are contributed to the Plan.

Effective August 9, 2018, Eligible Employees may no longer make Voluntary Employee Contributions to the Plan.

4.6 Maximum Annual Additions Limit

4.6.1 Limit. For each Plan Year (which is deemed to be the "limitation year" for purposes of Code Section 415(c)), the Annual Additions for each Participant for such Plan Year shall not exceed the lesser of:

- (a) 100 percent of the Participant's Compensation for the Plan Year; or
- (b) \$40,000.

The dollar limit in section 4.6.1(b) shall be adjusted in accordance with Code Section 415(d)(1)(C). The dollar restriction in section 1.8 (under Code Section 401(a)(17)) shall apply in determining the percentage limit under section 4.6.1(a).

4.6.2 Annual Additions Defined. Annual Additions means the sum of TriMet and Employee contributions allocated to a Participant's Account for a Plan Year, which includes the Non-elective Employer Contribution, the Pick-up Contribution, the Voluntary Employee Contributions made prior to August 9, 2018, and the Discretionary Non-elective Contribution. The term Annual Additions also includes forfeitures allocated to a Participant's Account. A contribution is an Annual Addition for a given Plan Year if an amount is allocated to the Participant's Account as of a date within the Plan Year and is contributed to the Participant's Account no later than the 15th day of the tenth calendar month following the close of the Plan Year.

4.6.3 Adjustments During Plan Year to Avoid Exceeding Limit. Contributions to Participants' Accounts are monitored throughout the Plan Year to avoid making contributions in excess of the maximum annual additions limit to any Participant's Account. If a contribution would cause a Participant to exceed the annual additions limit.