


Date: August 8, 2018

To: Board of Directors

From: Doug Kelsey 

Subject: **RESOLUTION 18-08-57 OF THE TRI-COUNTY METROPOLITAN TRANSPORTATION DISTRICT OF OREGON (TRIMET) AMENDING THE UNION 401a DEFINED CONTRIBUTION PLAN**

1. Purpose of Item

The purpose of this item is to authorize amendment of the TriMet Defined Contribution Retirement Plan for Union-Represented Employees (Union 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) approved the Union Plan, effective August 1, 2012. The Board has authority to amend the Union Plan pursuant to section 9.1 of the Union Plan, which 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.”

4. Type of Action

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

5. Background

The Union Plan is a defined contribution plan that is a “profit sharing” plan as defined by the Internal Revenue Service. Each Union 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. Section 2.1.1 of the Plan provides that the Committee shall consist of six members, three of which shall be appointed by, and serve at the pleasure of, the TriMet Board of Directors. Those three members are currently TriMet’s Executive Director of Finance, TriMet’s General Counsel, and one TriMet Board member. Section 2.1.1 of the Plan also provides that three members of the Committee shall be

appointed by, and serve at the pleasure of, the Union, and that the Union Committee members shall initially consist of the Union's officers (President, Vice President and Secretary/Treasurer of Amalgamated Transit Union Division 757).

In addition to TriMet's 8% of pay contribution and an employee's one-time, irrevocable election at time of hire, the Union Plan permits participants to make "Voluntary Employee Contributions" in a whole-number percentage of the participant's 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 Union Plan described above, TriMet also maintains a "Section 457" deferred compensation plan (457 Plan) covering employees eligible to participate in the Union 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 Union 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 Union Plan, and will not need to make both types of after-tax contributions. Continuing to allow Voluntary Employee Contributions to the Union Plan also complicates administration of the Union Plan by combining after-tax and pre-tax dollars in the Union Plan, and may confuse participants deciding between Roth Contributions to the 457 Plan and Voluntary Employee Contributions to the Union Plan.

For the reasons noted above, the TriMet members of the Committee (the Union members having declined to appear at Committee meetings) have recommended that the Board approve the attached proposed amendment to the Union Plan, discontinuing the opportunity to make Voluntary Employee Contributions to the Union Plan, effective August 9, 2018.

6. Impact if Not Approved

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

RESOLUTION 18-08-57

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

WHEREAS, TriMet has established and maintains the TriMet Defined Contribution Retirement Plan for Union-Represented Employees (Union Plan) as originally adopted effective August 1, 2012; and

WHEREAS, Section 9.1 of the Union Plan document 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 Union Plan document to discontinue “Voluntary Employee Contributions” to the Union Plan;

NOW, THEREFORE, BE IT RESOLVED:

1. That the Union Plan shall be amended effective August 9, 2018 to discontinue authorization for participants to make Voluntary Employee Contributions to the Union Plan pursuant to the First Amendment to the Union Plan attached as Exhibit A to this Resolution.
2. That the General Manager is authorized and directed to execute the First Amendment attached as Exhibit A to this Resolution 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 18-08-57
EXHIBIT A**

**TRIMET DEFINED CONTRIBUTION
RETIREMENT PLAN FOR
UNION-REPRESENTED EMPLOYEES**

FIRST 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 Union-Represented Employees (the "Plan"), effective August 1, 2012.

TriMet desires to amend the Plan in certain respects.

AMENDMENT

The TriMet Defined Contribution Plan for Union-Represented 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 4 – CONTRIBUTIONS
 - a. 4.1 at page 12.
 - b. 4.4 at page 13.
 - c. 4.5.2 at page 14.

[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 4. CONTRIBUTIONS

4.1 Types of Contributions and Accounts

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

- (a) Non-elective Employer Contributions (section 4.2); and
- (b) Pick-up Contributions (section 4.3).

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 Non-elective Employer Contributions

4.2.1 Basic Contribution. Each payroll period, TriMet shall make a Non-elective Employer Contribution to the Plan equal to 8 percent of the Considered Compensation of each Participant.

4.2.2 Sick Leave Conversion. Upon a Participant's Severance from Employment, TriMet will contribute to the Participant's Account an additional Non-elective Employer Contribution based on the Participant's accrued, unused sick leave, which shall be calculated in accordance with this subsection.

(a) Formula. The Sick Leave Conversion Contribution will be determined by applying the following formula: (i) the Participant's number of hours of accrued, unused sick leave as of the Participant's Severance from Employment Date (subject to the maximum in (b) below) MULTIPLIED BY (ii) the Participant's hourly rate of pay, as defined in (c) below MULTIPLIED BY (iii) 60 percent.

(b) Maximum Hours. The maximum number of hours of unused sick leave that can be used in the sick leave conversion formula is 1,700.

(c) Hourly Rate of Pay. The Participant's hourly rate of pay is determined by dividing his or her Considered Compensation for the payroll period containing the Severance from Employment Date by the number of regular hours worked during the payroll period. For a Participant paid on a salary basis, the Participant is deemed to have worked an eight-hour day for each day of actual work during the payroll period containing the Severance from Employment Date.

4.3 Pick-up Contributions

Within 30 days after becoming an Eligible Employee, each Eligible Employee shall make a one-time irrevocable election to contribute a percentage of his or her Compensation to this Plan. The contribution amount shall be any whole number percentage between zero percent and 15 percent, subject to the maximum annual addition limits set forth in section 4.5. An Eligible Employee who fails to make an election during the specified period shall be deemed to have made an irrevocable election to contribute zero percent of his or her Compensation to this Plan. Once the election is made, it shall be irrevocable until the Eligible Employee ceases to have Compensation or ceases to be an Eligible Employee. An Eligible Employee's election shall be effective on the first day of the first pay period after the election is received by TriMet. Any contributions elected under this section 4.3 shall be picked up and paid by TriMet as provided in Code section 414(h)(2). The Participant's taxable Compensation shall be reduced by the amount of the contributions picked up by TriMet under this section, but the Pick-up Contributions shall be included in Considered Compensation for the Plan Year in which they are contributed to the Plan. A Participant shall not have any right to receive the Pick-up Contributions until occurrence of a distribution event described in Article 6. Contributions under this section 4.3, although designated as Employee contributions, are paid by TriMet in lieu of 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.

4.4 Voluntary Employee Contributions

Prior to August 9, 2018, an Eligible Employee could make Voluntary Employee Contributions to the Plan of between 1 percent and 15 percent, subject to the maximum annual additions limit in section 4.5. 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.

4.5 Maximum Annual Additions Limit

4.5.1 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 4.5.1(b) shall be adjusted in accordance with Code section 415(d)(1)(C). The dollar restriction in section 1.7 (under Code section 401(a)(17)) shall apply in determining the percentage limit under 4.5.1(a).

4.5.2 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, and the Voluntary Employee Contributions made prior to August 9, 2018. 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.

4.5.3 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 for a Plan Year, contributions will be reduced in the following order before the end of the Plan Year to ensure the total of the contributions for the Participant for the Plan Year do not exceed the maximum annual additions limit.

- (a) First, the Voluntary Employee Contributions will be reduced in whole percentage amounts.
- (b) Second, the Pick-up Contributions will be reduced in whole percentage amounts.
- (c) Third, the Non-elective Employer Contributions (including the Sick Leave Conversion Contribution, if applicable) will be reduced in whatever amount is necessary to avoid exceeding the maximum annual additions limit.

The Committee, TriMet, and all other individuals responsible for administering the Plan have no discretion or authority to alter the method of making adjustments to comply with the maximum annual additions limit. If, notwithstanding this provision, contributions are made to a Participant's Account in excess of the maximum annual additions limit, this provision shall not apply and the excess contribution shall be corrected using a method acceptable to the Internal Revenue Service in published guidance.

4.5.4 Multiple Plans and Related Employers. All defined contribution plans (without regard to whether a plan has been terminated) ever maintained by TriMet (or a