


**Date:** July 24, 2024

**To:** Board of Directors

**From:** Sam Desue, Jr. 

**Subject:** **RESOLUTION NO. 24-07-41 OF THE TRI-COUNTY METROPOLITAN TRANSPORTATION DISTRICT OF OREGON (TRIMET) AMENDING TRIMET’S DEFINED CONTRIBUTION RETIREMENT PLAN FOR ITS MANAGEMENT AND STAFF EMPLOYEES TO REVISE THE PLAN’S DEFINITION OF CONSIDERED COMPENSATION**

**1. Purpose of Item**

This Resolution requests that the TriMet Board of Directors (Board) authorize the General Manager or his designee to direct the administrators of TriMet’s Defined Contribution Retirement Plan for Management and Staff Employees to amend the Plan’s existing definition of “Considered Compensation.”

**2. Type of Agenda Item**

- Initial Contract
- Contract Modification
- Other: Amend Defined Contribution Retirement Plan for Management and Staff Employees

**3. Reason for Board Action**

Board authorization is required to amend the Plan.

**4. Type of Action**

- Resolution
- Ordinance 1<sup>st</sup> Reading
- Ordinance 2<sup>nd</sup> Reading
- Other \_\_\_\_\_

**5. Background**

TriMet established the Defined Contribution Retirement Plan for Management and Staff Employees (Plan), effective April 27, 2003. The Plan has both an employee and an employer contribution. Within 30 days of the date of hire, a participating employee must make an irrevocable decision to contribute from 0% to 15% of his or her wages to the Plan. Since May of 2022, the employer has contributed 10% of each participating employee’s “Considered Compensation” to the Plan.

As currently defined in the Plan, “Considered Compensation” means the employee’s gross wages, excluding the following: bonuses (fixed or discretionary), commissions, overtime pay, extraordinary pay, shift differential pay, the value of cash and non-cash injury, disability, or other fringe benefits, and any other extra remuneration of any kind.

Certain TriMet employees who participate in the Plan have achieved the maximum amount of pay allowed by their pay grades (Affected Employees). For example, a Senior Business Systems Analyst with more than 15 years of outstanding service and at the top of his/her pay grade who is likely to receive a significant annual pay increase, would be considered an "Affected Employee." Because they are at the top of their pay grades, these Affected Employees are not eligible to receive increases to their base salaries.

In an effort to retain those Affected Employees, TriMet sometimes supplements their base salaries with discretionary periodic wage adjustments, which are specifically paid to the Affected Employees in lieu of salary increases. Because they receive discretionary periodic wage adjustments instead of increases in their base salaries, they are not entitled to receive the employer's 10% Non-Elective Contribution on the wage increase. This is due to the fact that the Plan's definition of "Considered Compensation" excludes "bonuses," "extraordinary pay," and "any other extra remuneration of any kind."

The Defined Contribution Retirement Plan Committee (Committee) oversees the Plan and meets quarterly with investment advisors to monitor investment performance and growth. Members of the Committee include the Executive Director of Labor Relations/Human Resources, the Executive Director of Finance & Administration, the Director of Financial Services and the General Counsel.

TriMet is increasingly experiencing significant challenges in both recruiting new employees and retaining existing employees, due to the highly competitive job market TriMet now faces. Therefore, the Committee recommends that TriMet increase the value of the employer's 10% Non-Elective Contribution to the retirement accounts of the Affected Employee by including the periodic wage adjustments they receive in lieu of base salaries as "Considered Compensation." This recommendation would not result in a financial benefit to any Committee member or any member of TriMet's Executive team.

In order to retain these Affected Employees, TriMet believes it is in the best interest of the Agency to change the Plan's definition of "Considered Compensation" to include any discretionary periodic wage adjustments that are specifically paid to the Affected Employees in lieu of salary increases.

Changes to the plan documents require Board approval. Therefore, this Resolution seeks Board approval of this change and the adoption of the Fifth Amendment to the TriMet Defined Contribution Retirement Plan for Non-Union Management and Staff, attached to the Resolution as Exhibit A.

**6. Financial/Budget Impact**

Staff estimates the annual financial impact will be an increase of approximately \$5,000 to \$10,000 in employer defined contributions across all TriMet Divisions. These changes will have no impacts on TriMet's operating budget.

**7. Impact if Not Approved**

Failure to approve this Resolution and adopt the Fifth Amendment to the Plan could adversely affect TriMet's ability to retain senior management and staff employees who are at the top of their respective pay scales.

**RESOLUTION NO. 24-07-41 OF THE TRI-COUNTY METROPOLITAN  
TRANSPORTATION DISTRICT OF OREGON (TRIMET) AMENDING  
TRIMET'S DEFINED CONTRIBUTION RETIREMENT PLAN FOR  
MANAGEMENT AND STAFF EMPLOYEES TO REVISE THE PLAN'S  
DEFINITION OF CONSIDERED COMPENSATION**

**WHEREAS**, TriMet has authority under ORS 267.200 to sponsor and maintain retirement plans for the benefit of its employees; and

**WHEREAS**, in addition to other retirement and benefit plans, TriMet sponsors and maintains the TriMet Defined Contribution Retirement Plan for Management and Staff Employees (Plan); and

**WHEREAS**, the Plan Committee and TriMet staff recommend that the Board of Directors (Board) amend the Plan to revise its definition of "Considered Compensation" in order to more effectively retain "Affected Employees," specifically employees who have achieved the maximum amount of pay allowed by their pay grades and therefore are ineligible to receive increases to their base salaries; and

**WHEREAS**, the TriMet Board of Directors (Board) wishes to amend the Plan to revise its definition of "Considered Compensation," as shown on the Fifth Amendment to the TriMet Defined Contribution Retirement Plan for Management and Staff Employees, attached hereto as Exhibit A;

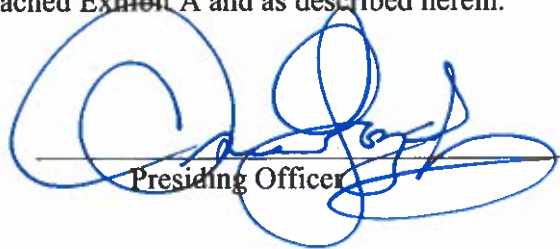
**NOW, THEREFORE, BE IT RESOLVED:**

1. That the TriMet Defined Contribution Retirement Plan for Management and Staff Employees be amended to revise the Plan's definition of "Considered Compensation" to include certain discretionary periodic wage adjustments that are paid to Affected Employees in lieu of salary increases.
2. That the Fifth Amendment to the Plan shall conform to applicable law and be effective January 1, 2024.
3. That the General Manager or his designee is authorized to direct the Plan administrators to adopt the Fifth Amendment to the Plan, as shown on the attached Exhibit A and as described herein.

Dated: July 24, 2024

Attest:

Falesha Thrash  
Recording Secretary

  
Presiding Officer

Approved as to Legal Sufficiency:

Guzay E. Smith  
Legal Department

**EXHIBIT A TO RESOLUTION NO. 24-07-41**

**FIFTH AMENDMENT**

**THIS FIFTH AMENDMENT** to the TriMet Defined Contribution Retirement Plan for Management and Staff Employees is hereby adopted by Tri-County Metropolitan Transportation District of Oregon (TriMet).

**RECITALS**

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

B. After April 27, 2003, the Plan was amended and restated four times, effective on the following dates: January 1, 2013, September 1, 2014, August 9, 2018, and May 1, 2022.

C. TriMet desires to amend and restate the Plan again in certain respects.

**AMENDMENT**

Effective January 1, 2024, the definition of “Considered Compensation” set forth at Article 1, Section 1.9, of the TriMet Defined Contribution Retirement Plan for Management and Staff Employees is hereby amended as set forth below, and incorporated into the Plan by reference herein.

\* \* \*

**ARTICLE 1 - DEFINITIONS**

**1.9 Considered Compensation**

Considered Compensation is used to determine Employer Non-elective Contributions under section 4.3 and Discretionary Non-elective Contributions under section 4.8. Considered Compensation means an Employee's Compensation (as defined in section 1.8) while a Participant during a payroll period, but *excluding* bonuses (fixed or discretionary), commissions, overtime pay, extraordinary pay, shift differential pay, the value of cash and non-cash injury, disability, or other fringe benefits, and any other extra remuneration of any kind.

Notwithstanding the foregoing exclusions of “bonuses,” “extraordinary pay,” and “any other extra remuneration of any kind,” effective for Plan Years commencing on and after January 1, 2024, Considered Compensation shall *include* discretionary periodic wage adjustments that are specifically paid to Participants in lieu of salary increases. Considered Compensation includes Pick-up Contributions under Article 4, but excludes all other TriMet payments to, or pursuant to, a plan of deferred compensation. Considered Compensation includes the portion of unused sick leave that is contributed to the Plan pursuant to section 4.3.2.

\* \* \*

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

**TRI-COUNTY METROPOLITAN TRANSPORTATION  
DISTRICT OF OREGON**



Nancy Young-Oliver  
TriMet Chief Financial Officer



Date