

**Date:** May 25, 2022

**To:** Board of Directors

**From:** Sam Desue, Jr.

**Subject: RESOLUTION NO. 22-05-35 OF THE TRI-COUNTY METROPOLITAN TRANSPORTATION DISTRICT OF OREGON (TRIMET) AMENDING THE GENERAL MANAGER'S LEVEL OF CONTRACTING AUTHORITY FOR PERSONAL SERVICES CONTRACTS**

**1. Purpose of Item**

This Resolution requests that the Board of Directors (Board) increase the level of contracting authority granted to the General Manager or his designee for personal services contracts.

**2. Type of Agenda Item**

- Initial Contract
- Contract Modification
- Other: Amend TriMet's Delegated Contracting Authority

**3. Reason for Board Action**

Board authority is required to amend the level of contracting authority previously granted by the Board.

**4. Type of Action**

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

**5. Background**

Although ORS Chapter 267 vests the General Manager with full charge of the business affairs of the District, the Board reviews and approves contracts above certain dollar amounts pursuant to an adopted Statement of Board Policy (Statement), which requires prior Board approval for the General Manager to execute certain contracts and other transactions. The Statement has periodically been amended, most recently on October 25, 2017, by Resolution 17-10-80. This proposed Resolution would increase the amount of the General Manager's delegated authority to enter into personal services contracts from \$500,000 to \$1,000,000, and modify related portions of the Statement.

The Statement establishes an appropriate, practicable, and consistent framework for TriMet's General Manager or his designee to effectively execute certain contracts, while continuing to enable the Board to effectively monitor contract performance and compliance. The Board periodically reviews the Statement in light of new capital projects, changes in federal and state requirements, TriMet's record of performance,

and the effectiveness of reporting mechanisms that govern the award and administration of TriMet contracts.

The contracting authority limits in the Statement are not indexed to inflation and have not been updated for five years. In October of 2017, the Board increased the threshold for personal services contracts from \$150,000 to \$500,000, and all other contracts to \$1,000,000.

Under ORS 279A.055 of the Public Contracting statutes, a contracting agency, like TriMet, may designate services or a class of services as “personal services,” and apply special procurement procedures to them. Section VI.F. of the TriMet Contract Review Board Rules defines a “personal service” as a service where the skill, ability, resources, knowledge or expertise of an independent contractor are of paramount importance. Section VI.F. then lists specific professions that fall into the category of personal services, including but not limited to accountant, attorney, physician, IT consultant, architect, engineer and land surveyor.

Such personal services are regularly utilized in TriMet projects, and there is no objective reason why the General Manager’s authority to execute such contracts should be different from his authority to execute contracts for goods and services, construction and property acquisition, all of which have a \$1,000,000 limit. An examination of contracting authority for peer transit and local agencies found the following contracting authority levels:

	TriMet	Sound Transit	Denver RTD	City of Portland	Metro & Multnomah Co.
Goods & Services	\$1,000,000	\$2,000,000	\$2,000,000	\$1,000,000	*Unlimited
Construction	\$1,000,000	\$5,000,000	\$2,000,000	\$1,000,000	*Unlimited
Personal Services	\$500,000	\$5,000,000	\$2,000,000	\$1,000,000	*Unlimited

\* Metro's Council and Multnomah County's Board have delegated all contracting authority to internal leadership or the Chief Procurement Officer respectively

This Resolution will amend the Statement as shown in the italicized text below, and will delete a separate sentence pertaining solely to personal services contracts:

“The General Manager or his designee is authorized to execute contracts for goods and services, *construction services, personal services*, real property acquisitions, and to enter into intergovernmental agreements and Change Orders that do not exceed \$1,000,000.”

The Statement and the General Manager’s exercise of delegated authority are predicated on the premise that Board members are fully, continuously, and appropriately informed of TriMet contracts and all material, operational, financial, and procurement issues. As part of the framework established by the Statement, the General Manager must report regularly to the Board concerning the authority exercised. This reporting is accomplished through the Monthly Delegated Contract Report, which covers transactions entered into pursuant to the delegated authority, and is contained in each month’s Board packet. All contracts awarded pursuant to delegated authority are required to fully comply with all applicable Federal Transit Administration (FTA) requirements, state law, and the TriMet Contract Review Board and Contracting Rules.

The General Manager has historically implemented the Board-adopted Statement by issuance of a Delegated Contracting Authority Matrix. The proposed Resolution changes will be reflected in an update to the Matrix. Upon adoption of the Resolution, the General Manager will retain the authority to change the Matrix, but not the overall Board delegation of authority.

**6. Impact if Not Approved**

If the Board does not adopt the Resolution, the existing contracting authority would remain in place. However, approval of the Resolution would facilitate and promote increased Agency efficiencies, and provide consistency within established parameters for the administration and management of all Agency contracts and change orders. The amendment made by this Resolution would be of particular benefit to TriMet's administration and management of Capital Projects due to the regular utilization of personal services in major projects.

## **RESOLUTION NO. 22-05-35**

### **RESOLUTION NO. 22-05-35 OF THE TRI-COUNTY METROPOLITAN TRANSPORTATION DISTRICT OF OREGON (TRIMET) AMENDING THE GENERAL MANAGER'S LEVEL OF CONTRACTING AUTHORITY FOR PERSONAL SERVICES CONTRACTS**

**WHEREAS**, pursuant to ORS 267.140, the General Manager is vested with full charge of the acquisition, construction, maintenance, operation, and administration of the business affairs of the District; and

**WHEREAS**, the TriMet Board of Directors (Board) adopted a Statement of Board Policies in 1971 establishing limits on the General Manager's authority to execute certain contracts without prior Board approval; and

**WHEREAS**, the Board subsequently adopted amendments to the Statement, most recently on October 25, 2017, by Resolution No. 17-10-80; and

**WHEREAS**, the Board now desires to amend the October 25, 2017 Statement with respect to when TriMet intends to obligate the expenditure of funds for certain contracts;

#### **NOW THEREFORE BE IT RESOLVED:**

1. That the General Manager or his designee is authorized to enter into contracts for goods and services, construction services, personal services, real property acquisitions, intergovernmental agreements and Change Orders to public improvement contracts (including CM/GC and design/build), which have complied with applicable Federal Transit Administration requirements, state law, and TriMet's Contracting Review Board and Contracting Rules, obligating TriMet to pay a total amount of not to exceed \$1,000,000. In addition, the General Manager or his designee is authorized to execute individual Change Order(s) obligating TriMet to pay an amount in excess of \$1,000,000, up to the cumulative amount of the Change Order or contingency allowance approved by the Board resolution authorizing the contract award.
2. That the General Manager or his designee is authorized to increase the amount of a personal services contract approved by the Board if the cumulative increase does not exceed 10% of the original Board-authorized amount.
3. That Board approval is not required for the General Manager or his designee to enter into any contract that provides revenues to TriMet, emergency contracts, and to contract for and pay all ordinary and necessary bills deemed necessary and convenient to TriMet operations, including but not limited to, such items as utility bills; routine maintenance expenses; fees or charges for routine and ongoing services; amounts to settle

lawsuits or disputed claims; legal fees; and fees or charges assessed by any governmental entity, court, or administrative body.

As used in this Paragraph (3), the term "emergency" means circumstances that: (A) could not have been reasonably foreseen; (B) create a substantial risk of loss, damage or interruption of services or a substantial threat to property, public health, welfare or safety; and (C) require prompt execution of a contract to remedy the condition. The Board shall be notified of any emergency contract executed in excess of \$1,000,000 within 72 hours.

4. That the General Manager shall submit a monthly report to the Board outlining the major activities undertaken by TriMet during the month, including a separate list of contracts over \$25,000, any emergency contracts and any real estate transactions that have been executed pursuant to delegated contracting authority.
5. That the Board may review at any time the limits of the contracting authority of the General Manager or his designee established by this Resolution.
6. That this Resolution supersedes any and all previous resolutions with regard to the limits of the contracting authority of the General Manager or his designee.

Dated: May 25, 2022



Presiding Officer

Attest:



Recording Secretary

Approved as to Legal Sufficiency:

**Gregory E. Skillman**

Legal Department