

Date: July 25, 2012

To: Board of Directors

From: Neil McFarlane

Subject: **RESOLUTION 12-07-73 OF THE TRI-COUNTY METROPOLITAN TRANSPORTATION DISTRICT OF OREGON (TRIMET) REGARDING AMENDMENT OF THE TRIMET DEFINED CONTRIBUTION RETIREMENT PLAN FOR MANAGEMENT AND STAFF EMPLOYEES**

1. Issue or Purpose of Item

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

2. Reason for Board Action

The TriMet Board of Directors (the Board) has approved the Management Plan, as restated effective January 1, 2008 and as amended by Amendments 2011-1, 2011-2 and 2011-3. The Board has authority to amend the Plan document.

3. Background

The Management Plan is a defined contribution plan that is a “profit sharing” plan as defined by the Internal Revenue Service. Each 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 to contribute additional amounts. 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, Director of Financial Services and Director of Employee Services.

The Management Plan document currently permits participants to elect distribution in either of two basic forms: a lump sum (which may include some or all of the payment being directly rolled over to another retirement plan or an individual retirement arrangement (an IRA)), or an annuity (which may be a single-life annuity or a joint and survivor annuity). Due to the individual-account nature of the Management Plan, the trust is not able to pay an annuity directly. If a Plan participant or beneficiary were to elect to receive an annuity, and none has ever done so, the Committee would be required to purchase an annuity from an insurance company or similar vendor, with fiduciary risk attaching to the Committee’s selection of the vendor (in the event an equally safe, higher-yielding annuity could have been purchased, or the vendor becomes insolvent and a safer vendor could have been found).

The Resolution would amend the Management Plan to replace the annuity options with an installment-payment option. As amended, the Management Plan still would permit participants wishing tax-deferred periodic payments to select such an option, either by taking installment payments from the trust or by rolling over a lump sum to an IRA, of the participant's choosing, that offers an annuity-payout option. Participants could also continue to elect a lump-sum option.

Due to time pressures, explained below, the Resolution is not in the form of an amendment to the Management Plan, nor is a formal amendment attached. Rather, the Resolution is an outline of the terms on which the Management Plan would be amended. The Resolution allows a formal amendment document consistent with this outline to be prepared by counsel for TriMet and, if acceptable, signed by the General Manager.

On July 12, 2012, Arbitrator David Gaba issued an award (the Award) in the interest arbitration between TriMet and Amalgamated Transit Union Division 757 (the Union). Among other points, the Award requires TriMet to enroll Union-represented employees hired by TriMet after July 31, 2012 "in a Defined Contribution Plan, which shall have the same elements as that currently offered to all TriMet non-union employees." In order to prepare documents for the July 25, 2012 Board meeting relating to both the Management Plan and the new plan for Union-represented employees following the Award, there has not been time to prepare the formal amendment document for the Management Plan.

In reviewing the Management Plan for purposes of establishing a new plan with substantially identical terms for Union-represented employees, counsel for TriMet identified the above-referenced annuity as an unnecessary risk to the Plan fiduciaries and recommended this proposed amendment to the Management Plan. The new defined contribution plan to be established for Union-represented employees would have the same provisions and would not provide an annuity option.

4. Options

If the Resolution is adopted, Management Plan participants, as well as participants in the new plan for Union-represented employees, would have the right to elect a lump-sum payment (including a direct rollover to another plan or an IRA in whole or in part) or installment payments from their respective defined contribution plans.

5. Recommendation

The General Manager recommends the Board adopt the Resolution.

RESOLUTION 12-07-73

RESOLUTION OF THE TRI-COUNTY METROPOLITAN TRANSPORTATION DISTRICT OF OREGON (TRIMET) REGARDING AMENDMENT OF THE TRIMET DEFINED CONTRIBUTION RETIREMENT PLAN FOR MANAGEMENT AND STAFF EMPLOYEES

WHEREAS, TriMet has established and maintains the TriMet Defined Contribution Retirement Plan for Management and Staff Employees (the Management Plan); and

WHEREAS, Section 9.1 of the Management Plan Document, as amended by Amendment 2011-1, provides: “The Board of Directors shall have the power and authority at any time, and from time to time, to amend, in whole or part, any or all of the provisions of this Plan;” and

WHEREAS, the TriMet Board of Directors (the Board) determines it to be in the best interests of TriMet to amend the Management Plan Document to replace the Management Plan’s current annuity-distribution option with an installment-distribution option that is not tied to the recipient’s life;

NOW, THEREFORE, BE IT RESOLVED:

1. That the Management Plan shall be amended effective with respect to distributions that commence after July 31, 2012 to delete the annuity-distribution option and insert an installment-distribution option.
2. That the installment-distribution option shall be subject to plan-qualification requirements, including minimum-required-distribution rules, which limit when distributions must begin and over what term they may be made.
3. That the General Manager or the Committee may fix administrative requirements with respect to installment distributions, which may, among other restrictions, require that installments be at least a minimum dollar amount, establish the timing or frequency of installment payments, require that installments be made in substantially equivalent amounts over the distribution period and restrict distributees’ rights to modify the timing or amount of installment payments once payments have begun.
4. That the General Manager shall direct counsel for TriMet to have a formal amendment prepared consistent with this Resolution and, once the amendment is satisfactory to the General Manager and upon advice of counsel, to execute such amendment on behalf of TriMet.

5. That the General Manager is authorized and directed 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: July 25, 2012

Presiding Officer

Attest:

Recording Secretary

Approved as to Legal Sufficiency

Legal Counsel