

**Date:** October 25, 2017**To:** Board of Directors**From:** Neil McFarlane *Neil McFarlane***Subject:** **RESOLUTION 17-10-80 OF THE TRI-COUNTY METROPOLITAN TRANSPORTATION DISTRICT OF OREGON (TRIMET) AMENDING THE GENERAL MANAGER'S LEVEL OF CONTRACTING AUTHORITY****1. Purpose of Item**

This Resolution requests that the Board of Directors (Board) amend the General Manager's level of contracting authority.

**2. Type of Agenda Item**

- Initial Contract
- Contract Modification
- Other Amendment to Contracting Authority

**3. Reason for Board Action**

Although Chapter 267 of the Oregon Revised Statutes vests the General Manager with full charge of the business affairs of the District, historically the Board reviews and approves contracts above certain dollar amounts. The Board has periodically adopted and amended a Statement of Board Policy (Statement) establishing requirements for Board approval in order for the General Manager to execute certain contracts and other transactions. The Board adopted the most recent changes to the Statement on November 25, 2009, by Resolution 09-11-87. The proposed Resolution updates certain provisions of the General Manager's delegated authority and the Statement.

**4. Type of Action**

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

**5. Background**

The purpose of the Statement is to establish an appropriate, practicable, and consistent framework of control for TriMet to effectively execute certain contracts while enabling the Board to effectively monitor performance and compliance. The Board periodically reviews the Statement in light of the challenges of new and complex capital projects, changes in federal and state legal, regulatory, or administrative requirements, TriMet's record of performance, and the effectiveness of reporting mechanisms that will insure compliance and transparency of the award and administration of TriMet contracts.

TriMet has initiated a number of different strategies to reduce agency carryover, particularly in the capital program in an effort to maximize its capital utilization. A key strategy for TriMet to operate more efficiently and reduce carryover (and increase capital utilization rates) is to reduce the amount of time required to execute a contract.

The contracting authority limits in the Statement are not indexed to inflation and some have not been updated in 15 years. The current \$150,000 threshold for personal services contracts was established in June 2002. Contracts for goods and services subject to a low-bid procurement was also increased to \$500,000 in June 2002. Goods and services contracts procured by a RFP was increased to \$500,000 in November 2009.

The resolution will amend the Statement as follows:

- The General Manager or his designee is authorized to execute contracts for personal services that do not exceed \$500,000.
- The General Manager or his designee is authorized to execute contracts for goods and services, real property acquisitions, and to enter into intergovernmental agreements and Change Orders that do not exceed \$1,000,000.
- The General Manager or his designee is authorized to execute emergency contracts that do not exceed \$1,000,000. Emergency contracts executed in excess of \$1,000,000 require Board notification within 72 hours.
- The Statement amends “real property transactions” to “real property acquisitions.” This clarifies that revenue neutral or revenue generating transactions such as licenses, easements, permits, etc., are not subject to the requirements of the Statement. Disposition of real property must also be in accordance with Resolution No. 94-06-41.

The Statement and management's exercise of delegated authority are predicated on the premise that Board members are fully, continuously, and appropriately informed of not only TriMet contracts but also all material, operational, financial, and procurement issues. As part of the framework set up by the Statement, the General Manager is required to 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 your Board packet each month. 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.

An examination of contracting authority for peer transit agencies found a variety of approaches to contracting authority. Utah Transit (UTA) has no requirement that its Board approve contracts. Orange County (OCTA) and Denver (RTD) require board approval for contracts that exceed \$1 million, while C-TRAN requires board approval for any contract over \$35,000. The City of Portland recently increased the authority of its procurement office to execute goods and services contracts up to \$1 million and contracts for “Professional, Technical and Expert Services” that do not exceed \$500,000.

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. The General Manager will retain the authority to change the Matrix, but not the overall Board delegation, upon adoption of the Resolution.

## **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 clarity and flexibility, within the stated authority parameters, in the administration and management of agency contracts, real estate acquisition and change order authority. The Resolution amendments would be a particular benefit to TriMet's administration and management of Capital Projects.

## **RESOLUTION 17-10-80**

### **RESOLUTION OF THE TRI-COUNTY METROPOLITAN TRANSPORTATION DISTRICT OF OREGON (TRIMET) AMENDING THE GENERAL MANAGER'S LEVEL OF CONTRACTING AUTHORITY**

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

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

**WHEREAS**, since 1971, the Board has by resolution adopted numerous amendments to the Statement, most recently by Resolution 09-11-87 adopted on November 25, 2009; and

**WHEREAS**, the Board now desires to amend the November 25, 2009 Statement with respect to its review process when TriMet intends to obligate and make expenditures of its funds for certain contracts;

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

1. That the General Manager and his designee(s) are authorized to enter into contracts for goods, services and real property acquisitions, to enter into intergovernmental agreements and to enter into Change Orders to public improvement contracts (including CM/GC and design/build), which have complied with applicable Federal Transit Administration requirements, state law, and with TriMet's Contracting Review Board and Contracting Rules, obligating TriMet to pay a total amount not to exceed \$1,000,000. In addition, the General Manager and his designee(s) are 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 Change Order or contingency allowance approved by Board resolution authorizing the contract award.
2. That the General Manager and his designee(s) are authorized to enter into personal services contracts obligating TriMet to pay a total amount not to exceed \$500,000, except that the General Manager and his designee(s) may amend 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 and his designee(s) 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 General Manager's and his designee(s)' contracting authority established by this Resolution.
6. That this Resolution supersedes any and all previous resolutions with regard to the limits of the General Manager's and his designee(s)' contracting authority.

Dated: October 25, 2017

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Presiding Officer

Attest:

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Recording Secretary

Approved as to Legal Sufficiency:

  
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Legal Department