

**Date:** December 11, 2024

**To:** Board of Directors

**From:** Sam Desue, Jr.

**Subject: RESOLUTION NO. 24-12-63 OF THE TRI-COUNTY METROPOLITAN TRANSPORTATION DISTRICT OF OREGON (TRIMET) AMENDING TRIMET’S DEFINED CONTRIBUTION RETIREMENT PLAN FOR UNION EMPLOYEES TO INCREASE THE EMPLOYER CONTRIBUTION, CHANGE THE PICK-UP CONTRIBUTION RULES, AND CLARIFY PARTICIPANT ELIGIBILITY**

**1. Purpose of Item**

This Resolution requests that the TriMet Board of Directors (Board) authorize amending TriMet’s Defined Contribution Retirement Plan for Union-Represented Employees (Union Plan) to incorporate certain terms of the recently-negotiated Working and Wage Agreement (WWA) between TriMet and the Amalgamated Transit Union (Union) into the Union Plan’s Employer Contribution and employee Pick-up Contribution rules, and to clarify the Union Plan’s Participant Eligibility rules.

**2. Type of Agenda Item**

- Initial Contract
- Contract Modification
- Other: Amend Defined Contribution Retirement Plan

**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 closed the Defined Benefit (DB) Retirement Plan for Union-Represented Employees to new entrants on August 1, 2012. Effective August 2, 2012, TriMet established the Union Plan as the replacement retirement plan. The Union Plan is a

defined contribution retirement plan sponsored by TriMet for the benefit of its union-represented employees and is intended to be a qualified plan under Section 401(a) of the Internal Revenue Code of 1986, as amended (the Code).

The Union Plan has both an employer and employee contribution component. The employer contribution is currently set at 8% of base pay. In addition, an eligible Participant (newly hired employee) is permitted to make a one-time, irrevocable election within the first sixty (60) days of hire to contribute between 0% and 15% of their base pay to the Plan. This employee contribution is called a “Pick-up Contribution”. If the employee fails to make a “Pick-up Contribution” election by the end of the 60-day period, the employee is deemed to have a 0% election.

Certain provisions of the recently ratified WWA require that changes be made to the Union Plan’s existing Employer Contribution and Pick-up Contribution rules.

Pursuant to the new WWA, the employer contribution was increased from 8% to 9% effective September 15, 2024, with an additional increase from 9% to 10%, effective December 1, 2027. Also pursuant to the new WWA, if a newly hired Eligible Employee under the Union Plan fails to make an affirmative Pick-up Contribution election of between 0% and 15% of base pay within a 60-day period, then the employee will be deemed to have made a five percent (5%) Pick-up Contribution under the Union Plan.

Pick-up Contribution features in governmental retirement plans such as the Union Plan are subject to special rules established under the Code and regulatory guidance issued thereunder to ensure the Union Plan’s Pick-up Contribution provisions are not treated as impermissible “cash or deferred arrangements.”

To clarify the Union Plan’s intended compliance with these rules, the Administrative Committee recommends the Plan clarify the date on which a newly hired Eligible Employee first becomes a Participant under the Union Plan.

Accordingly, TriMet recommends that the Union Plan’s eligibility rules be amended to provide that each newly hired Eligible Employee will first become a Participant in the Union Plan on the Eligible Employee’s Participation Date, which shall be the earlier of:

- (i) the date the Eligible Employee completes and submits a written Pick-up Contribution election form; or
- (ii) the Eligible Employee’s sixtieth consecutive day of employment.

Provided that both of these recommended changes are made to the Union Plan, if a newly hired Eligible Employee completes and returns a properly executed Pick-up Contribution enrollment form within the 60-day period following hire, then the date on which the enrollment form is submitted becomes that Eligible Employee’s Participation Date – and the irrevocable Pick-up Contribution rate that applies to that

Participant shall be as set forth in that Participant's enrollment form. If no Pick-up Contribution enrollment form is completed/returned within this 60-day period, then the Eligible Employee's sixtieth consecutive day of employment is that Eligible Employee's Participation Date and the Participant will be deemed to have irrevocably elected to make a Pick-up Contribution election at a five percent (5%) contribution rate.

Moreover, for all Union Plan contribution allocation purposes, including but not necessarily limited to Pick-up Contributions and Non-elective Employer Contributions, each newly eligible Participant's "Considered Compensation" (as that term is defined by the Union Plan) will include only that compensation earned starting with the first day of the first full pay period commencing on or next following the Participant's Participation Date.

**6. Financial/Budget Impact**

These changes will not have any annual financial impact on TriMet or on its operating budget.

**7. Impact if Not Approved**

If the Resolution is not passed, the Union Plan will be out of compliance with the recently ratified Working and Wage Agreement (WWA).

**RESOLUTION NO. 24-12-63**

**RESOLUTION NO. 24-12-63 OF THE TRI-COUNTY METROPOLITAN  
TRANSPORTATION DISTRICT OF OREGON (TRIMET)  
AMENDING TRIMET'S DEFINED CONTRIBUTION RETIREMENT  
PLAN FOR UNION EMPLOYEES TO INCREASE THE EMPLOYER  
CONTRIBUTION, CHANGE THE PICK-UP CONTRIBUTION  
RULES, AND CLARIFY PARTICIPANT ELIGIBILITY**

**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 currently sponsors and maintains the TriMet Defined Contribution Retirement Plan for Union-Represented Employees (Union Plan); and

**WHEREAS**, under the recently approved Working and Wage Agreement (WWA) between TriMet and Amalgamated Transit Union (ATU) Local 757, the Employer Non-Elective Contribution will increase from eight (8%) percent to nine (9%) percent effective September 15, 2024, with an additional increase from nine (9%) percent to ten 10% effective December 1, 2027; and

**WHEREAS**, under the recently approved WWA, unless within 60 days of hire an Eligible Employee affirmatively makes a Pick-up Contribution election of between 0% and 15% of the Eligible Employee's Considered Compensation, the Eligible Employee shall be deemed to have made a five percent (5%) default Pick-up Contribution election under the Union Plan; and

**WHEREAS**, the Administrative Committee and TriMet staff recommends that the Union Plan be amended to incorporate the above provisions of the new WWA into the Union Plan's Employer Contribution rules, Pick-up Contribution rules, and to clarify the Union Plan's eligibility rules; and

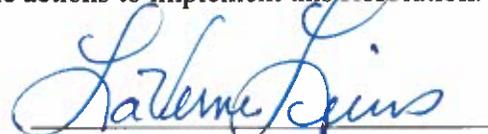
**WHEREAS**, the TriMet Board of Directors (Board) determines it to be in the best interests of TriMet to amend the Union Plan to incorporate the above provisions of the new WWA into the Union Plan's Pick-up Contribution rules, effective December 1, 2024, and to clarify the Union Plan's eligibility rules to comply with applicable U.S. Tax Code requirements; and

**WHEREAS**, by Resolution No. 24-12-63, dated December 11, 2024, the Board of hereby amends the Union Plan to implement the Administrative Committee's recommendations, as shown on the Third (3<sup>rd</sup>) Amendment to the Union Plan, attached hereto as Exhibit A;

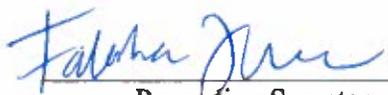
**NOW, THEREFORE, BE IT RESOLVED:**

1. That the TriMet Defined Contribution Retirement Plan for Union-Represented Employees be amended to increase the Employer Non-Elective Contribution under the Plan from eight percent (8%) to nine percent (9%) effective September 15, 2024, with an additional increase from nine percent (9%) to ten percent (10%), effective December 1, 2027.
2. That the Union Plan's Pick-up Contribution provisions shall be amended effective December 1, 2024, for each newly-hired Eligible Employee to provide for a default Pick-up Contribution election of 5% of Covered Compensation, unless the Eligible Employee affirmatively elects a Pick-up Contribution between 0% and 15%.
3. That the Union Defined Contribution Plan's Pick-up Contribution provisions shall be further amended to clarify that a Participant's Pick-up Contribution election (or default election) made within the 60-day period following their initial hire date will remain in effect for all periods of time during which such individual is employed by TriMet, whether as a union or a non-union employee.
4. That the Union Defined Contribution Plan's eligibility provisions shall be amended to clarify when a newly-hired Eligible Employee first becomes a Participant in the Plan.
5. That the General Manager or his designee is authorized to direct the Plan Administrators to adopt the Third Amendment to the Plan, as shown on the attached Exhibit A and described herein, and to execute such other documents and take such other necessary or desirable actions to implement this Resolution.

Dated: December 11, 2024

  
\_\_\_\_\_  
Presiding Officer

Attest:

  
\_\_\_\_\_  
Recording Secretary

Approved as to Legal Sufficiency:

  
\_\_\_\_\_  
Legal Department

**RESOLUTION NO. 24-12-63  
EXHIBIT A**

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

**THIRD AMENDMENT**

**PARTIES**

THIS AMENDMENT is adopted by the Tri-County Metropolitan Transportation District of Oregon, hereinafter referred to as “TriMet.”

**RECITALS**

TriMet originally established the TriMet Defined Contribution Retirement Plan for Union-Represented Employees (the “Plan”), effective August 1, 2012.

The Plan was most-recently amended by that certain First Amendment, adopted effective August 9, 2018, and the Second Amendment, adopted March 27, 2020.

TriMet desires to again amend the Plan in certain respects.

**AMENDMENT**

The Plan is hereby amended effective December 1, 2024, as set forth on the pages hereto that are incorporated by reference herein as follows:

1. ARTICLE 1 – DEFINITIONS
  - a. Added new 1.17 at page 6.
  - b. Renumbered existing 1.17 and 1.18 as 1.18 and 1.19, respectively, at page 6.
  - c. Added new 1.19 at page 6.
  - d. Renumbered existing 1.19 and 1.20 as 1.21 and 1.22, respectively, at page 6.
  - e. Added new 1.22 at page 7.
  - f. Renumbered existing 1.21 through 1.31 as 1.24 through 1.34, respectively, at pages 7 to 8.

2. ARTICLE 3 – PARTICIPATION

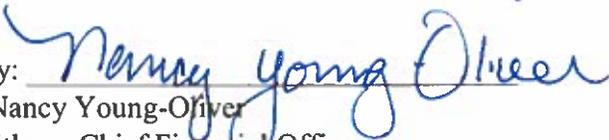
- a. 3.1 at page 11

3. ARTICLE 4 – CONTRIBUTIONS

- a. 4.2.1 at page 12.
- b. 4.3 at page 13.

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:   
Nancy Young-Ofiver  
Title: Chief Financial Officer

Date: December 11, 2024

## **ARTICLE 1. DEFINITIONS**

New Section 1.18 (Original Employment Commencement Date) is added to the Plan and existing Section 1.18 is renumbered as Section 1.19, accordingly:

### **“1.17 Original Employment Commencement Date**

For each Eligible Employee who is or has ever been a Participant in this Plan or any other retirement plan sponsored by TriMet governed by Code section 401(a), such individual’s Original Employment Commencement Date means the date on which an Employee first completes an Hour of Service for TriMet, irrespective of whether that Employee’s employment was governed by the Collective Bargaining Agreement.”

New Section 1.19 (Participation Date) is added to the Plan and existing Sections 1.19 through 1.20 are renumbered as Sections 1.21 through 1.22, accordingly:

### **“1.19 Participation Date**

“For Eligible Employees with Original Employment Commencement Dates on and after December 1, 2024, Participation Date means the earlier of (a) or (b) below, so long as such Eligible Employee remains an Eligible Employee as of such date:

- (iii) the date the Eligible Employee completes and submits a written Pick-up Contribution Election Form; or
- (iv) the Eligible Employee’s sixtieth (60<sup>th</sup>) consecutive day of employment as measured from such Eligible Employee’s Original Employment Commencement Date.”

New Section 1.22 (Pick-up Contribution Election Form) is added to the Plan and existing Sections 1.21 through 1.31 are renumbered as Sections 1.23 through 1.34, accordingly.

### **“1.22 Pick-up Contribution Election Form**

Effective on and after December 1, 2024, a Pick-up Contribution Election Form means a written agreement, in such form as required by the Committee, which is completed and submitted to the Committee (or its delegate) within the first sixty (60) days following the Eligible Employee’s Original Employment Commencement Date.”

## **ARTICLE 3. PARTICIPATION**

### **3.1 Conditions of Participation.**

Each Eligible Employee first becomes a Participant under this Plan on his or her Participation Date.

## ARTICLE 4. CONTRIBUTIONS

Existing section 4.2 is deleted in its entirety and replaced with the following:

### 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. **For payroll periods ending on or before November 30, 2024, the applicable Non-elective Employer Contribution rate shall equal to eight percent (8%) percent of each Participant's the Considered Compensation. ~~of each Participant~~. For pay periods ending on and after December 1, 2024, but prior to December 1, 2027, the applicable Non-elective Employer Contribution rate shall increase to nine percent (9%) of Considered Compensation. For pay periods beginning on and after December 1, 2017 2027, the applicable Non-elective Employer Contribution Rate shall increase to ten percent (10%) of Considered Compensation.**

**For newly eligible Participants, Considered Compensation for purposes of this section 4.2.1, includes only Considered Compensation starting with the first day of the first complete pay period commencing on or next following such Participant's Participation Date.**

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.

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.

Existing section 4.3 is deleted in its entirety and replaced with the following:

#### **4.3 Pick-up Contributions**

**Effective commencing December 1, 2024, within ~~Within~~ sixty (60) days after first becoming an Eligible Employee, but not later than such Eligible Employee's Participation Date, each such newly-hired Eligible Employee shall make a one-time irrevocable election to contribute a percentage of his or her Compensation to this Plan (a "Pick-up Contribution Election"); such Pick-up Contribution Election shall be made using the Pick-up Contribution Election Form made available to such Eligible Employee by the Committee for this purpose. As provided on the Pick-up Contribution Election Form, the permissible ~~The~~ contribution amount shall be any whole number percentage between zero percent (0%) and fifteen ~~15~~ percent (15%), subject to the maximum annual addition limits set forth in section 4.5. Any such Eligible Employee who fails to make a Pick-up Contribution Election ~~an election~~ during the ~~time period~~ ~~specified above period~~ shall be deemed to have made a Pick-up Contribution Election at a rate of ~~an irrevocable election to contribute five zero (5%) percent~~ of his or her Compensation to this Plan. Once the Pick-up Contribution Election ~~election~~ is made (or deemed to be made), it shall be irrevocable for all periods during which such Eligible Employee is a TriMet Employee. ~~until the Eligible Employee ceases to have Compensation or ceases to be an Eligible Employee.~~**

An Eligible Employee's ~~Pick-up Contribution Election election~~ shall be effective on **Compensation earned starting with the first day of the first complete pay period commencing on or next following the Eligible Employee's Participation Date.** ~~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.

**Where a Participant who has made (or deemed to have made) a Pick-up Contribution Election later terminates employment with TriMet and is subsequently rehired as an Employee, that individual's Pick-up Contribution Election will remain in effect. If the rehired Participant is eligible for this Plan, then pick-up contributions will resume under this Plan. If the rehired Participant is eligible for the defined contribution plan maintained by TriMet for its non-union employees, then pick-up contributions will resume under that other plan.**