

MERS Retiree Health Funding Vehicle Uniform Resolution



1134 Municipal Way Lansing, MI 48917 | 800.767.6377 | Fax 517.703.9707

www.mersofmich.com

WHEREAS, Section 36(2)(a) of the Municipal Employees' Retirement Act ("MERA"), 1984 PA 427, MCL 38.1536(2)(a), and Section 71(2)(a) of the MERS Plan Document, authorized the Municipal Employees' Retirement Board ("Board") to establish additional programs;

WHEREAS, the Board has authorized MERS' establishment of a retiree health funding vehicle ("RHFV"), which a participating municipality or court, or another eligible public employer that constitutes a "municipality" under Section 2(23) of the Municipal Employees' Retirement System ("MERS") Plan Document and Section 2b(2) of MERA, MCL 38.1502b(2) ("Eligible Employer"), may adopt.

WHEREAS, the Board has established a governmental trust ("Trust Fund") under Section 115 of the Internal Revenue Code ("IRC") to hold the assets of the RHFV, which Trust Fund shall be administered under the discretion of the Board as fiduciary, directly by (or through a combination of) MERS or MERS duly-appointed Program Administrator (as defined in the MERS RHFV Plan Document), and is tax-exempt under Section 115 as confirmed by MERS' Private Letter Ruling from the Internal Revenue Service dated January 13, 2004;

WHEREAS, the Public Employee Health Care Fund Investment Act, 1999 PA 149, MCL 38.1211 et seq. ("PA 149") allows a public corporation to create a public employee health care fund, and provides for its administration, investment, and management, in order to accumulate funds to provide for the funding of health benefits for retirees and beneficiaries;

WHEREAS, a MERS RHFV health care trust fund created under PA 149 constitutes a governmental trust established by an Eligible Employer under IRC Section 115; provided that the PA 149 trust does not accept assets from any defined benefit health account established under IRC Section 401(h);

WHEREAS, the Board is the investment fiduciary of the Trust Fund under PA 149 and the Public Employee Retirement System Investment Act ("PERSIA"), 1965 PA 314, MCL 38.1132 et seq., and is responsible for the custody of assets in the Trust Fund, as well as the establishment and monitoring of the investment options that comprise the investment menu among which a participating Eligible Employer of the RHFV may select one or more for the investment of its assets;

WHEREAS, each participating Eligible Employer is also a fiduciary of the assets in the RHFV under PA 149, and is responsible for the allocation of its assets by use of the investment options offered within the RHFV investment menu, establishment of an investment policy for its RHFV assets, and compliance with PERSIA.

WHEREAS, adoption of this MERS Retiree Health Funding Vehicle Uniform Resolution ("Uniform Resolution") by the Eligible Employer is necessary and required in order that the benefits available under the RHFV may be extended to the Eligible Employer; and

WHEREAS, this Uniform Resolution has been approved by the Board under the authority of Section 36(2)(a) of MERA and Section 71(2)(a) of the MERS Plan Document. The RHFV shall not be implemented with respect to any Eligible Employer unless in strict compliance with the terms and conditions of this Uniform Resolution, the RHFV Plan Document, and Trust Agreement.

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NOW, THEREFORE, BE IT RESOLVED that the governing body of

_____, _____,
(Municipality name) (Municipality number)

adopts the MERS Retiree Health Funding Vehicle as provided below,

with an effective date of: _____
(MM/DD/YYYY)

for the following covered employees: _____
(List covered employee groups)

I. MERS RETIREE HEALTH FUNDING VEHICLE

CONTRIBUTIONS shall be made only by the Eligible Employer, remitted to MERS by the Eligible Employer, and credited to the Eligible Employer's account as a bookkeeping entry within the Trust Fund for the RHFV. As this RHFV account is funded solely by the Eligible Employer on a cash or actuarial basis as determined by the Eligible Employer, there is no requirement for an agreement establishing the schedule of contributions. Amounts in an Eligible Employer's RHFV account shall be used to provide or subsidize the provision of health insurance for eligible retirees or their beneficiaries, to provide health benefits as defined by IRC Section 213 and are excludable from income under IRC Sections 105 and 106 as amended from time to time.

INVESTMENT of funds accumulated and held in the Trust Fund shall be held in a separate reserve and invested on a pooled basis by MERS subject to PERSIA, as provided by Section 76 of the MERS Plan Document, Section 39 of MERA, MCL 38.1539, and PA 149. However, each participating Eligible Employer shall be responsible for the asset allocation of its assets within the RHFV investment menu, in accordance with PERSIA as required by PA 149.

THE ELIGIBLE EMPLOYER shall abide by the terms of the RHFV, including the MERS RHFV Plan Document, RHFV Trust Agreement, all investment, administration, and service agreements, and all applicable provisions of the IRC, PERSIA, PA 149 and other law. It is affirmed that no assets from any defined benefit health account established under IRC Section 401(h) shall be transferred to, or accepted by MERS.

DISTRIBUTIONS In order to receive a distribution for allowable expenses, an Eligible Employer must complete the applicable form approved by MERS. The Program Administrator shall establish any procedures necessary to process distribution requests and transfer funds within the period set by the Program Administrator.

II. IMPLEMENTATION DIRECTIONS

- (A) The governing body of the Eligible Employer desires that all assets placed in its RHFV account (as a sub-fund of the pooled Trust Fund) be administered by MERS with respect to maintaining appropriate custody of the assets, and the establishment and monitoring of investment options included in the RHFV investment menu among which options the governing body may select one or more to invest its assets, and shall do so in compliance with PERSIA, PA 149, all applicable provisions of the IRC and other relevant law.
- (B) The RHFV is designed as an IRC Section 115 and PA 149 compliant trust. All assumptions, including the rate of investment return used in any OPEB valuation, are the responsibility of the Eligible Employer. The Eligible Employer acknowledges and affirms its fiduciary responsibility for selecting the investment allocation for its RHFV assets from the options in MERS' RHFV investment menu, and its obligation to comply with all applicable provisions of PERSIA as a co-fiduciary of its RHFV account.

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- (C) All allocations must use a whole percentage, and the total percentage of allocated assets must equal 100%.
- (D) The Eligible Employer makes the following initial investment allocation election from MERS' RHFV investment menu:

Portfolios Built for You (<i>Stocks/Bonds</i>)		Funds to Build Your Own Portfolio	
MERS Total Market Portfolio	%	Large Cap Stock Index	%
MERS Global Stock Portfolio (100/0)	%	Mid Cap Stock Index	%
MERS Capital Appreciation Portfolio (80/20)	%	Small Cap Stock Index	%
MERS Established Market Portfolio (60/40)	%	International Stock Index	%
MERS Balanced Income Portfolio (40/60)	%	Emerging Market Stock	%
MERS Capital Preservation Portfolio (20/80)	%	Short-Term Income	%
MERS Diversified Bond Portfolio (0/100)	%		

Please refer to the Fund Summary Sheets for information regarding each investment option, including potential redemption fees, and restrictions (www.mersofmich.com).

- (E) Changes in the investment option(s) selected or allocations made in paragraph (D) may be made by the Eligible Employer in writing using the form approved and provided by MERS and submitted to the RHFV Program Administrator or online via the Eligible Employer's online RHFV account. The Eligible Employer chooses the following method to change its investment option(s) and/or allocation (choose only 1):
- Fund election changes will be made by submitting a completed [RHFV Investment Change Form \(RH-602\)](#) and supporting certified minutes identifying governing body approval.
 - The employer will designate the RHFV Investment Contact in the manner required by MERS to make ongoing fund election changes through the online RHFV account.
- (F) All monies in the RHFV Trust Fund (and any earnings thereon, positive or negative) shall be held and invested for the sole purpose of paying health care benefits for the exclusive benefit of Eligible Employees who shall constitute "qualified persons" who have retired or separated from employment with the Eligible Employer or their beneficiaries, and for any administration expenses. RHFV Trust Fund monies shall not be used for any other purpose and shall not be distributed to the State.
- (G) Participation in and any coverage under the RHFV shall not constitute nor be construed to constitute an "accrued financial benefit" under Article 9, Section 24 of the Michigan Constitution of 1963, nor shall any contribution method for Eligible Employer funding other than "pay as you go" cash funding be required or imposed, and all benefits, rights, and obligations conferred by or arising under the RHFV shall be as provided under this Uniform Resolution and the RHFV Plan Document.
- (H) The Eligible Employer will determine who constitutes an "Eligible Employee" to receive retiree health care benefits subsidized under its RHFV account. The Eligible Employer will provide proof of liability for retiree health care benefits by way of the collective bargaining agreement and/or personnel policy, OPEB valuation, or most recent and active contract with its health insurer.

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- (I) The Eligible Employer designates in writing an employer contact person who may request distributions of fund monies for the benefit of the Eligible Employees; makes investment allocations of the Eligible Employer's assets within the RHFV investment menu to the extent authorized in paragraph (D); receive necessary reports, notices, etc. using the MERS Contact Form and this document.
- (J) The Eligible Employer acknowledges its responsibility to create and comply with an investment policy with respect to its RHFV account assets, as required by PA 149.
- (K) It is expressly agreed and understood as an integral and nonseverable part of, extension or continuation of coverage under this Uniform Resolution Adopting MERS Retiree Health Funding Vehicle, that Section 43 of the MERS Plan Document regarding collective bargaining agreements shall not apply to this Uniform Resolution, the RHFV Plan Document, the Trust Agreement, or any administration or interpretation.
- (L) In the event any alteration of the language, terms or conditions stated in this Uniform Resolution is made or occurs under Section 43 of the MERS Plan Document, other plan provision or other law, it is expressly recognized that MERS and the Board, as fiduciary of the MERS Plan and its trust reserves, and whose authority is nondelegable, shall have no obligation or duty to administer (or to have administered) the RHFV or its Trust Fund, or to continue administration.

III. PLAN TERMINATION

Plan Termination may occur for any of the following reasons provided for in the RHFV Plan Document: Automatic Termination, Plan Asset Transfer, or Satisfaction of RHFV Liabilities. The Program Administrator shall determine what documentation is necessary to demonstrate termination of any of the above circumstances. After receipt of such documentation, and approval of the termination, the Program Administrator shall supply the Eligible Employer with the necessary forms to complete the termination.

IV. EFFECTIVE DATE OF THIS RHFV UNIFORM RESOLUTION

This Uniform Resolution shall have no legal effect until an executed copy is filed with MERS, and MERS determines that all necessary requirements under Section 71 of the MERS Plan Document, PA 149, this Uniform Resolution, and other relevant laws, have been met. Upon MERS' determination that all necessary documents have been completed (if necessary) and submitted, MERS shall execute this Uniform Resolution and return a copy to the Eligible Employer's designated contact person.

In the event an amendatory resolution or other action by the Eligible Employer is required by MERS, such resolution or action may be deemed effective as of the date of this Uniform Resolution or such action, if agreed to in writing by all of the parties, including, the Program Administrator, if necessary. Section 86 of the MERS Plan Document shall apply to this Uniform Resolution and all acts performed under MERS' authority. The terms and conditions of this Uniform Resolution supersede any prior resolution, and its terms are controlling on the parties.

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This MERS Retiree Health Funding Vehicle Uniform Resolution is hereby adopted and approved

on the _____ day of _____, 20____

by the governing body of

(Eligible Employer)

Authorized Signature: _____

Name: _____

Title: _____

Received and Approved by the Municipal Employees' Retirement System of Michigan

Dated: _____, 20____

(Authorized MERS signatory)