

Restated MERS Trust Agreement
For Health Care Savings Program and Retiree Health Funding Vehicle



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Restated MERS Trust Agreement

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Restated MERS Trust Agreement For Health Care Savings Program and Retiree Health Funding Vehicle

THIS TRUST AGREEMENT is executed as of this 14th day of May 2003, by the Retirement Board (“Board”) of the Municipal Employees’ Retirement System of Michigan (hereinafter referred to as “MERS”). This Trust Agreement has been amended and restated as of December 31, 2005.

WITNESSETH:

WHEREAS, pursuant to the Municipal Employees Retirement Act of 1984, 1984 PA 427, as amended by 1996 PA 220 (“Act”), section 36(2)(a); MCL 38.1536(2)(a), the Legislature of the State of Michigan (“State”) has authorized MERS to establish and administer, by Board action, additional retirement system benefit programs, including but not limited to, defined benefit and defined contribution programs for those political subdivisions of the State which are the participating municipalities and courts comprising MERS’ membership;

WHEREAS, pursuant to this authorization under the Act, and the provisions of 1999 PA 149, the Public Employee Health Care Fund Investment Act (PA 149), MCL 38.1211 et seq., the Board has established a trust which consists of two programs known as the Health Care Savings Program (“HCSP”) and the Retiree Health Funding Vehicle (“RHFV”);

WHEREAS, through HCSP Vested Accounts, Eligible Employers and Eligible Employees may save in order to cover the cost of Medical Expenses (and the Medical Expenses of Dependents) following the Eligible Employees’ severance from employment; and under HCSP Non-Vested Accounts, only Eligible Employers may save in order to cover the cost of Medical Expenses (and the Medical Expenses of Dependents) following the Eligible Employees’ severance from employment; and the Board shall maintain a separate account reflecting the contributions made by each Eligible Employer for each Participant in the HCSP;

WHEREAS, through the RHFV, Participating Employers shall provide funding on a cash or an actuarial basis in order to provide funding for medical benefits for Eligible Retirees, provided, that participation in and any coverage under 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 RHFV shall be as provided under the Trust documents; and the Board shall also establish separate accounts for each Eligible Employer within the Trust Fund for the RHFV;

WHEREAS, MERS desires to establish a governmental trust to fund the Programs, which trust shall be named the MERS Trust (“Trust”);

WHEREAS, the Board serves as the sole trustee of MERS and is authorized to receive, hold and administer the funds in the Trust; and such funds, when received by the Board (or its delegate), will constitute the trust fund (“Trust Fund” or “Fund”);

WHEREAS, the Board (or its delegate) agrees to accept this Trust and to perform the duties of the Board hereunder;

WHEREAS, pursuant to the Act and the provisions of PA 149, MERS is authorized to contract with public and private entities to provide investment services necessary for the administration of the Trust and is therefore authorized to name investment manager(s) (the “Investment Manager(s)”), to invest and manage the Trust Fund pursuant to the terms and conditions of this Trust; and

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WHEREAS, the State, acting through MERS and the statutory authorization granted under the Act, intends that the income accruing to the Trust hereby established shall be excluded from income, as such trust income accrues to the Eligible Employers which are political subdivisions of the State, and such income is derived from the exercise of an essential governmental function as provided for under section 115(1) of the Internal Revenue Code of 1986, as amended (“Code”), Revenue Rulings 77-261 and 90-74, and other relevant guidance; and

WHEREAS, PA 149, provides for the creation by a public corporation of a public employee health care fund, and its administration, investment, and management, in order to accumulated funds to provide for the funding of health benefits for retirees and beneficiaries;

WHEREAS, separate sub-trusts within the Trust Fund shall be established by the Board to constitute a health care trust fund in compliance with PA 149 for Eligible Employers, provided that all such employers shall be the State of Michigan, its political subdivisions, and any public entity the income of which is excluded from gross income under Section 115 of the Internal Revenue Code; provided further, that the PA 149 sub-trusts shall not accept assets from any defined benefit health account established under Section 401(h) of the Internal Revenue Code;

WHEREAS, the Board shall act as an investment fiduciary with respect to the sub-trusts, with all powers provided under the Public Employee Retirement Systems Investment Act, pursuant to PA 149, all applicable provisions of the Internal Revenue Code and other relevant law;

WHEREAS, the Board shall accept all investments, receipts, disbursements, and other transactions under the Trust, and shall report the value of such contributions at such times as mutually agreed between MERS and the Board. Such contributions shall be used solely for the payment of benefits, expenses, and other charges properly allocable to the Programs and shall not be used for the payment of benefits, expenses, or other charges properly allocable to non-Trust programs;

NOW, THEREFORE, the Board hereby establishes a Trust to provide as follows:

ARTICLE I - DEFINITIONS AND RULES OF CONSTRUCTION

Section 1.01 Definitions

When the initial letter of a word or phrase is capitalized, it shall have the following meaning:

- (a) **“Board”** means the Retirement Board of MERS.
- (b) **“Investment Fund”** means an investment fund that forms part of the Trust Funds established by the Board.
- (c) **“Investment Manager”** means an investment manager selected by the Board.
- (d) **“MERS”** means the Municipal Employees’ Retirement System of Michigan.
- (e) **“Program”** or **“Programs”** means the HCSP Vested and Non-Vested Accounts or the RHFV under the Trust.
- (f) **“Program Administrator”** means MERS or any third party administrator with which MERS contracts to perform some or all its functions as Program Administrator.
- (g) **“Plan Year”** means the plan year of the Program, which is the calendar year.

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- (h) **“Property”** refers to any property, real or personal, or part interest therein, wherever situated, including, but without being limited to, preferred and common stocks, shares of investment companies, bonds, notes, debentures and mortgages, equipment trust certificates, investment trust certificates, interest in partnerships whether limited or general or in any insurance contract, policy, annuity, or other investment media offered by an insurance company, in which trust assets may be invested pursuant to the Public Employee Retirement System Investment Act.
- (i) **“State”** refers to the State of Michigan.
- (j) **“Trust”** means the trust created and established hereunder.
- (k) **“Trust Fund”** means all such money, property, and all investments made therewith and proceeds thereof and all earnings and profits thereon, less payments made by the Board as authorized herein.
- (l) **“Trust Year”** means the calendar year, on which the books and records of the Trust are maintained.

Section 1.02 Program Definitions

The following terms when used in this Trust agreement have the meanings set forth in the Plan Document.

- (a) “Beneficiary”
- (b) “Code”
- (c) “Dependent”
- (d) “Eligible Employee”
- (e) “Eligible Employer”
- (f) “Eligible Retiree”
- (g) “Health Care Savings Program (HCSP)”
- (h) “Health Care Savings Program Vested Account”
- (i) “Health Care Savings Program Non-Vested Account”
- (j) “Medical Expenses”
- (k) “Participant”
- (l) “Program Resolution and Agreements”
- (m) “Participating Employer”
- (n) “Program” or “Programs”
- (o) “Retiree Health Funding Vehicle (RHFV)”
- (p) “RHFV Program Account”
- (q) “Rule”

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Section 1.03 Rules of Construction

Words herein in the masculine gender shall be construed to include the feminine gender where appropriate, and words used herein in the singular or plural shall be construed as being in the plural or singular where appropriate.

ARTICLE II - TRUST AND TRUST ADMINISTRATION

Section 2.01 Trust Fund

The Board shall receive and accept for the purposes hereof all property paid to it by or at the direction of the Participating Employers and shall hold, invest, reinvest, manage, administer, and distribute property and the increments, proceeds, earnings, and income thereof for the exclusive benefit of the Participants, Dependents and Beneficiaries under the Program

- (a) All assets held by the Board in the Trust are referred to herein as the "Trust Fund." The Board has authority to invest and manage the assets of the Trust Fund.
- (b) Separate sub-trusts shall be established for the HCSP Vested Accounts, HCSP Non-Vested Accounts, and the RHFV.
- (c) Separate Accounts in the Trust Fund shall be maintained by the Program Administrator for each Participant pursuant to the Program.

Section 2.02 Trust Deposits

The Board shall delegate to the Program Administrator the responsibility for accepting deposits to the Trust. Contributions shall be made subject to the provisions of the Program.

- (a) The Board shall account for contributions, income, and payments made to or from the Trust. The Board shall not be responsible for the adequacy of the Trust Fund to meet and discharge any liabilities under the Program, except as may be otherwise provided under law.
- (b) Contributions made into the Programs may consist of the following:
 - (i) Under the HCSP Vested Accounts contributions may consist of Basic Employer, Mandatory Salary Reductions, Mandatory Leave Conversions, and Employee Contributions as those terms are defined in the Participation Agreement.
 - (ii) The HCSP Non-Vested Accounts shall consist of Employer Contributions as specified in the Participation Agreement, which may be subject to a vesting schedule.
 - (iii) The RHFV shall consist of Employer Contributions, as solely the Participating Employer defines.

Section 2.03 Investment of Trust Fund

- (a) Except as otherwise provided by Rule, the Board shall have complete control of the management and administration of the Trust Fund and shall have all powers necessary or convenient to enable it to exercise such control. Interest may be credited to each of the HCSP Vested Accounts, HCSP Non-Vested Accounts, and the RHFV Program Accounts by the Board from time to time as established by Rule pursuant to the Program.

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- (b) The Retirement Board may contract with private investment managers to invest the assets in the reserve for HCSP. A participant may direct the investment of their accumulated balance to one or more of the available categories of investment **provided by the investment managers; provided, however, that the member's investment directions shall not violate any investment restrictions established by the Board and shall not include any investment in collectibles, as defined in Section 408(m) of the Code.**
- (c) To the extent permitted by law, the Board may commingle the investment of the Trust Fund with other funds that it administers.
- (d) The Board, in its sole discretion, may by Rule permit:
 - (i) Participants (or Dependents and Beneficiaries) to direct the investment of their HCSP Accounts among Investment Funds selected by the Board. The Board may by Rule establish one or more default options for a Participant (or Dependent) that does not have a valid investment direction on file with the Program Administrator. The Board may establish the default option based upon various factors, including but not limited to, market value, stability and rate of return. Any Rule adopted under this Part (i) may provide for the setting and changing of administrative and investment fees.
 - (ii) Employers to direct the investment of their RHFV Account among Investment Funds selected by the Board. Any Rule adopted under this Part (ii) may provide for the setting and changing of administrative and investment fees.

Section 2.04 Exclusive Benefit Trust Payments

- (a) The Board shall delegate to the Program Administrator the responsibility for making payments from the Trust Fund. The Program Administrator shall make payments from the Trust Fund to Participants and their Dependents and Beneficiaries as the Program may provide. The Program Administrator shall ensure that any payment directed under this Section conforms to the provisions of the Program, the Trust Agreement, and the provisions of any applicable law.
- (b) Payments from the Trust shall be made by check (or the check of an agent) or electronic funds transfer to the order of the payee. Payments or other distributions hereunder may be mailed to the payee at the address last furnished to the Program Administrator. The Board and Program Administrator shall not incur any liability or other damage on account of any payment or other distribution made by the Trust in accordance with this Section.
- (c) This Trust is created for the sole purpose of providing Medical Expenses for Participants and their Dependents and Beneficiaries under the Program. No portion of the principal or income of this Trust shall revert to the State or the Participating Employers or be used for or diverted to any purpose other than the exclusive benefit of such Participants and their Dependents and Beneficiaries and the payment of reasonable expenses of the Program and Trust.
- (d) Any income or earnings of the Trust Fund shall be allocable for each account and shall first be used to pay expenses and fees of the Trust in accordance with Section 2.04. The Trust Fund shall continue to be held by the Board in trust and dealt with in accordance with the provisions of the Trust. At no time prior to termination shall any part of the Trust Fund be used for, or diverted to, purposes other than for the exclusive benefit of Participants and their Dependents and Beneficiaries, as applicable, under the Program and defraying the reasonable expenses of administering the Trust and the Program.

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Section 2.05 Fees

- (a) The Board may establish an administrative fee structure to be charged against the Participant's Accounts to defray the costs of the Trust.
- (b) The Board may establish an investment fee structure to be charged against the Participant's Accounts to defray the costs of the Trust.
- (c) The Board may adopt different fees for each Program it administers.

ARTICLE III - POWERS AND DUTIES OF THE BOARD

Section 3.01 Powers and Duties

The Board, in administering the Trust, shall have such power and authority (including discretion with respect to the exercise of that power and authority) as may be necessary, advisable, desirable, or convenient to the Board, in its sole discretion as trustee and investment fiduciary under the Public Employee Retirement System Investment Act, subject to the provisions of this Trust Agreement, including the power and authority:

- (a) To make rules and regulations with respect to the Trust not inconsistent with the Program or the Code and to amend or rescind such rules and regulations;
- (b) To determine, consistent with the applicable laws, rules or regulations, all questions of law or fact that may arise as to any person claiming rights under the Trust, including without limitation, Participants, former Participants, Dependents, former Dependents, Beneficiaries, Eligible Employees, and former Eligible Employees;
- (c) Subject to and consistent with the Code, to construe and interpret the Trust and to correct any defect, supply any omissions, or reconcile any inconsistency in the Trust;
- (d) Subject to and consistent with the Code, to construe and interpret the Trust (except as to administrative issues) and to correct any defect, supply any omission, or reconcile any inconsistency with respect to the same;
- (e) To acquire by purchase, exchange, subscription, or other means, any security or other property and to retain the security or other property in trust; provided, however, the Board shall not maintain the indicia of ownership of any Trust asset outside the jurisdiction of the district courts of the United States;
- (f) To invest Trust assets, including appointment of investment managers for specified portfolios;
- (g) To adopt investment policies, guidelines, restrictions, and requirements;
- (h) To sell at public or private sale for cash or on credit, convey, lease for long or short term or convert, redeem, exchange, or abandon all or any part of the Trust Fund;
- (i) To hold part or all of the Trust Fund uninvested as may be appropriate to provide reasonable liquidity for the Trust;
- (j) To contract for, purchase, or otherwise procure insurance and investment products;
- (k) To take, renew, extend, foreclose, or otherwise deal with any mortgage or other security; to reduce interest on obligations held by it; to bid in property foreclosure; and to take deeds in lieu of foreclosure, with or without paying a consideration therefor;

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- (l) To exercise, or by general or limited power of attorney, or to refrain from exercising any right, including the right to vote, incident to any security or other property held by them;
- (m) To register any Trust asset in the name of the Trust, in the name of its agent or in the name of a nominee or to hold any instrument in bearer form (but the books and records of the Program shall at all times show that such investments are part of the Trust Fund);
- (n) To consult with and rely on the advice of legal counsel;
- (o) To employ suitable agents in furtherance of duties hereunder;
- (p) To make, execute, acknowledge, and deliver any and all instruments necessary or appropriate to carry out the powers herein granted;
- (q) To collect any and all money and other property due to the Trust and to issue full discharge therefor;
- (r) To consent to or participate in a reorganization, recapitalization, consolidation, or merger;
- (s) To exercise generally any of the powers of an owner with respect to all or any part of the Trust Fund; and
- (t) To take all actions consistent with this Trust Agreement necessary or appropriate to administer or carry out the purposes of the Trust and the Program; provided, however, the Board need not take any action unless in its opinion there are sufficient Trust assets available for the expense thereof.

Section 3.02 Fiduciary Liability Insurance

The Board may buy fiduciary liability insurance or errors and omissions insurance. However, all such insurance shall provide that proceeds shall be payable to the Trust and shall contain express provisions reserving to the insurer executing the same the full right of recourse against all parties or other individuals whose errors, acts, omissions, or breaches may obligate such insurer to make payments to the Trust. MERS may buy fiduciary liability insurance covering any fiduciary of the Program or Trust, including the Board, and MERS shall pay the premiums [therefor] from the Trust.

Section 3.03 Delegation by Board

In addition to the powers stated in Section 3.01, the Board may from time to time delegate to an individual, committee, or organization certain of its fiduciary responsibilities under the Trust. Any such individual, committee, or organization shall remain a fiduciary until such delegation is revoked by the Board, which revocation may be without cause and without advance notice. Such individual, committee, or organization shall have such power and authority with respect to such delegated fiduciary responsibilities as the Board has under the Trust.

ARTICLE IV - LIMITATIONS OF RESPONSIBILITY

Section 4.01 Board Responsibilities

The Board's responsibilities and liabilities shall be subject to the following limitations and other limitations as set forth in the Program:

- (a) The Board shall have no duties other than those expressly set forth in this Trust Agreement or the Program and those imposed on the Board by applicable laws.

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- (b) The Board shall be responsible only for money and property actually received by the Board, and then to the extent described in this Trust.
- (c) The Board shall not be responsible for the correctness of any determination of payments or disbursements from the Trust Fund.
- (d) The Board shall have no liability for the acts or omissions of any predecessor or successor in office.
- (e) The Board shall have no liability for (i) the acts or omissions of any Investment Manager or Managers; (ii) the acts or omissions of any insurance company; (iii) the acts or omissions of any investment fund; or (iv) the acts or omissions of any contractor.

ARTICLE V - RECORD KEEPING

Section 5.01 Record Keeping

The Board shall maintain or cause to be maintained suitable records, data, and information relating to their responsibilities hereunder. The Board's books and records relating thereto shall be open to inspection and audit at reasonable times, subject to applicable law. Individual Participant Accounts shall be maintained by the Program Administrator pursuant to the Program.

Section 5.02 Audit

The Board shall cause an independent audit of the Trust Fund to be performed annually, as provided by MCL 38.1536(2)(e); Plan Section 71(2)(e), with results reported to all Participating Employees.

ARTICLE VI - RELIANCE ON COMMUNICATIONS

Section 6.01 Reliance on Communications

The Board may rely upon a certification of the Program Administrator with respect to any instruction, direction, or approval of such Program Administrator and may continue to rely upon such certification until a subsequent certification is filed with the Board. The Board shall have no duty to make any investigation or inquiry as to any statement contained in any such writing but may accept the same as fully authorized by the Program Administrator.

- (a) The Board shall be protected further in relying upon a written certification from any investment manager, insurance company, or mutual fund as to the person or persons authorized to give instructions or directions on behalf of such Investment Manager or insurance company and continue to rely upon such certification until a subsequent written certification is filed with the Board.

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ARTICLE VII. MISCELLANEOUS

Section 7.01 Construction and Governing Law

This Trust Agreement shall be construed, enforced and administered and the validity thereof determined in accordance with the Code and the laws of the State of Michigan. If any provision of the Trust Agreement is held to violate the Code or to be illegal or invalid for any other reason, that provision shall be deemed to be null and void, but the invalidation of that provision shall not otherwise affect the Program or Trust.

The headings and subheadings in this Trust Agreement are inserted for convenience of reference only and are not to be considered in the construction of any provision of the Trust Agreement.

In resolving any conflict among provisions of this Trust Agreement and in resolving any other uncertainty as to the meaning or intention of any provision of this Trust Agreement, the interpretation that (i) causes the Trust to be exempt from tax as an integral part of the State, and (ii) causes the Program and Trust to comply with all applicable requirements of the Code, shall prevail over any different interpretation.

Section 7.02 Duration of Trust

Unless sooner terminated, the Trust created under the Trust Agreement shall continue for the maximum period of time permitted by the laws of the State of Michigan.

Section 7.03 Amendment

This Trust Agreement may be amended by the Board at any time and in any manner permitted by applicable State law.

Section 7.04 Termination of Trust

This Trust Agreement and the Trust created hereby may be terminated at any time. In the event that contributions to the Trust have terminated completely and all assets of the Trust have been distributed in accordance with the purposes of this Agreement and the terms of the Program, the Board has the power to terminate the Trust completely by appropriate resolution specifying the date of such termination.

Section 7.05 Resignation and Removal of a Board Member

A vacancy in the position of member of the Board shall occur, and shall be filled, as provided by MCL 38.1536; Plan Section 71(7).

Section 7.06 Parties Bound

This Trust Agreement shall be binding upon the Board and all Participants and their Dependents and Beneficiaries under the Program, and, as the case may be, the heirs, executors, administrators, successors, and assigns of each of them.

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Section 7.07 Necessary Parties to Disputes

Necessary parties to any accounting, litigation, or other proceedings relating to the Trust Agreement shall include only the Board. The settlement or judgment in any such case in which the Board is duly served or cited shall be binding upon the Participating Employers, all Participants in the Program and their Dependents and Beneficiaries, and upon all persons claiming by, through, or under them.

Section 7.08 Severability

If any provisions of the Trust Agreement shall be held by a court of competent jurisdiction to be invalid or unenforceable, the remaining provisions of the Trust Agreement shall continue to be fully effective.

Section 7.09 Supersession

The terms of the Trust Agreement shall supersede any previous oral agreement between the parties pertaining to the Trust.

Section 7.10 Counterparts

This Trust Agreement may be executed in one (1) or more counterparts, each of which shall constitute an original.

MUNICIPAL EMPLOYEES' RETIREMENT BOARD

Dated: July 13, 2011

Larry Opelt, Chairperson