

MERS Retiree Health Funding Vehicle Uniform Resolution



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

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WHEREAS, the Municipal Employees' Retirement Act , authorized the Municipal Employees' Retirement Board ("Board") to establish additional programs including but not limited to Defined Benefit and Defined Contribution programs (MERS Plan Document Section 71(2)(a)); and the Municipal Employees Retirement Act of 1984, Section 36(2)(a) as amended by 1996 PA 220, MCL 38.1536(2)(a));

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

WHEREAS, the Board has established a governmental trust under Internal Revenue Code Section 115 of the Internal Revenue Code (the "Trust Fund") 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, and is tax-exempt under Code Section 115 as confirmed by MERS' Private Letter Ruling dated January 13, 2004

WHEREAS, 1999 PA 149, the Public Employee Health Care Fund Investment Act, MCL 38.1211 et seq. ("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 accumulate funds to provide for the funding of health benefits for retirees and beneficiaries;

WHEREAS, a separate MERS health care trust fund created under PA 149 also constitutes a governmental trust established by an Eligible Employer , under Section 115 of the Internal Revenue Code; provided further that PA 149 trust, shall not accept assets from any defined benefit health account established under Section 401(h) of the Internal Revenue Code;

WHEREAS, the Board acts as investment fiduciary for the pooled assets of each MERS participating municipality and court as defined by applicable law, , on whose behalf MERS performs all plan administration and investment functions, and such participating municipalities and courts have full membership, representation and voting rights at the Annual Meeting as provided under Plan Section 78; MCL 38.1545.

WHEREAS, the Board also acts as investment fiduciary for those Eligible Employers who are non-MERS participating municipalities and courts that have adopted the MERS Health Care Savings Program, Retiree Health Funding Vehicle, or Investment Services Program, and such entities are not accorded membership, representation or voting rights provided to MERS participating municipalities and courts at the MERS Annual Meeting under Plan Section 78; MCL 38.1545.

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

WHEREAS, this Uniform Resolution has been approved by the Board under the authority of 1996 PA 220, MERS Plan Document Section 71(2)(a), MCL 38.1536(2)(a), declaring that the Board "shall determine and establish" all provisions of the Retirement System. The MERS RHFV shall not be implemented with respect to any Eligible Employer unless in strict compliance with the terms and conditions of this Resolution, the Trust Document, and Trust Agreement.

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- 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 shall not apply to this Uniform Resolution Adopting MERS Retiree Health Funding Vehicle, the Trust Agreement, its administration or interpretation.
- In the event any alteration of the language, terms or conditions stated in this Uniform Resolution Adopting MERS Retiree Health Funding Vehicle is made or occurs under MERS 401(a) Plan Document Section 43 or 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 MERS RHFV or its Trust Fund; or to continue administration.

NOW, THEREFORE, BE IT RESOLVED that the governing body adopts the MERS Retiree Healthcare Funding Vehicle as provided below.

I. MERS RETIREE HEALTH FUNDING VEHICLE

EFFECTIVE _____, 20____, the MERS Retiree Health Funding

Vehicle is hereby adopted by the _____
(MERS municipality or court or other eligible employer)

CONTRIBUTIONS shall be made only by the Eligible Employer, remitted to MERS by the Eligible Employer, and credited to the Eligible Employer’s separate fund within the Trust Fund for MERS RHFV. As this Plan is funded solely by employer, on a cash or actuarial basis as determined by the employer, there is no requirement for a Participation Agreement establishing the schedule of contributions. Amounts in a Participating Employer’s RHFV account shall be used to provide or subsidize the provision of health insurance for Eligible Retirees to provide health benefits as defined by Code Section 213 and excludable from income under Code Sections 105 and 106 as may be 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 the Public Employee Retirement System Investment Act (“PERSIA”), 1965 PA 314, as provided by MERS Plan Document Section 76; MCL 38.1539, and PA 149.

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

DISTRIBUTIONS In order to receive distribution for allowable expenses, an Employer must complete the Applicable Form. The Program Administrator shall establish any procedures necessary to process distribution requests and transfer funds within the time frame set by the Program Administrator.

II. IMPLEMENTATION DIRECTIONS FOR MERS AS RHFV INVESTMENT FIDUCIARY AND TRUSTEE

- (A) The governing body of this Eligible Employer desires that all assets placed in its MERS RHFV (as a sub-fund within all pooled Trust Funds with MERS) be administered by MERS, which shall act as investment fiduciary with all powers provided under Public Employee Retirement System Investment Act, PA 149, all applicable provisions of the Internal Revenue Code and other relevant law.

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- (B) The governing body desires, and MERS upon its approval of this Resolution agrees, that all funds accumulated and held in the MERS RHFV Trust Fund shall be invested and managed by MERS within the collective and commingled investment of all RHFV funds held in trust for all Eligible Employers.
- (C) 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 employer in conjunction with any advice they may obtain from their health care actuary and/or auditor, if any. The Employer acknowledges and affirms the responsibility for selecting the investment option(s) from the MERS investment funds for their RHFV account.

All allocations must use a whole percentage, and the total percentage of amount allocated must equal 100%.

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

The Participating Employer makes the following initial fund election (subsequent changes may be made by the RHFV Investment Change Form RH-602). Percentage of assets to be invested in fund selected:

Portfolios Built for You (Stocks/Bonds)		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)	%		

All allocations must use a whole percentage, and the total percentage of amount allocated must equal 100%.

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

- (D) Changes in the fund choices or allocations made in paragraph (C) may be made in writing using the designated MERS form addressed to the MERS RHFV Program Administrator and shall be made by (select one):
 - RHFV Investment Change Form #RH-602 and supporting certified minutes stating Governing Body approval.
 - The designated employer contacts (ongoing fund elections may be made either through your online account or by the RHFV Investment Change Form RH-602).

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- (E) All monies in the MERS 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, and for any expenses of administration, and shall not be used for any other purpose, and shall not be distributed to the State.
- (F) The Eligible Employer will fund its MERS RHFV Trust sub-fund to provide funds for health care benefits for “Eligible Employees” who shall constitute “qualified persons.” 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 RHFV documents.
- (G) The Eligible Employer will determine who constitutes “Eligible Employees” to receive retiree health care benefits subsidized under the MERS RHFV trust sub-fund. 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 health insurer.
- (H) The Eligible Employer may designate the appropriate employer contacts who may request distributions of fund monies for the benefit of the Eligible Employees) under any retiree health care benefit program, including, but not limited to, MERS HCSP; make investment allocations of the Employer’s fund assets within MERS-approved funds to the extent authorized in paragraph (C); receive necessary reports, notices, etc.; I act on behalf of the Eligible Employer; and delegate any administrative duties relating to the Fund to appropriate departments.

SECTION 3. PLAN TERMINATION

Plan Termination may occur for any of the following reasons: 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 such determination, the Program Administrator will supply the Participating Employer with the any and all applicable forms for termination.

SECTION 4. EFFECTIVENESS OF THIS RHFV UNIFORM RESOLUTION

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

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 the initial Resolution or action where concurred in by this governing body and MERS (and the Program Administrator if necessary). Section 86 of the MERS Plan Document shall apply to this Resolution and all acts performed under MERS’ authority. The terms and conditions of this Resolution supersede and stand in place of any prior resolution, and its terms are controlling.

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I hereby certify this above is a true copy of the Resolution Adopting the MERS Retiree Health Funding Vehicle adopted and approved on the _____ day of _____, 20____ at the official meeting held by _____.
(Name of approving employer)

Authorized Signature: _____

Title: _____

Witness Signature: _____

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

Dated: _____, 20____

(Authorized MERS signatory)