

MERS Retiree Health Funding Vehicle Uniform Resolution



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WHEREAS, Section 36(2)(a) of the Municipal Employees' Retirement Act ("MERA"), 1984 PA 427, MCL 38.1536(2)(a), authorizes 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 2b(2) of MERA, MCL 38.1502b(2) ("Eligible Employer"), may adopt.

WHEREAS, the Board has established a governmental trust ("Trust") under Section 115 of the Internal Revenue Code ("Code") to hold the assets of the RHFV, which Trust shall be administered under the discretion of the Board as fiduciary, directly by (or through a combination of) MERS or MERS' duly-appointed agent ("Program Administrator") (as defined in the MERS HCSP and 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 Code Section 115; provided that the PA 149 trust does not accept assets from any defined benefit health account established under Code Section 401(h);

WHEREAS, the Board is an investment fiduciary of the Trust 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, as well as the establishment and monitoring of the investment options that comprise the investment menu among which a Participating Employer may select one or more for the investment of its RHFV assets;

WHEREAS, each Participating Employer is also a fiduciary of its 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, the RHFV shall not be implemented with respect to any Participating Employer unless in strict compliance with the terms and conditions of this Uniform Resolution, the HCSP and RHFV Plan Document, and the Trust Agreement.

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

_____, _____,
(Participating employer) (Participating employer 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)

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I. MERS RETIREE HEALTH FUNDING VEHICLE

CONTRIBUTIONS shall be made only by the Participating Employer, remitted to MERS by the Participating Employer, and credited to the Participating Employer's account as a bookkeeping entry within the Trust for the RHFV. As this RHFV account is funded solely by the Participating Employer on a cash or actuarial basis as determined by the Participating Employer, there is no requirement for an 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 or their beneficiaries, to provide health benefits as defined by Code Section 213 and are excludable from income under Code Sections 105 and 106 as amended from time to time.

INVESTMENT of funds accumulated and held in the Trust shall be held in a separate reserve and invested on a pooled basis by MERS subject to PERSIA, Section 39 of MERA, MCL 38.1539, the Trust Agreement, and PA 149.

If the Participating Employer does not choose an investment option within the RHFV investment menu for its RHFV Account assets, the Participating Employer's assets will be placed in the Program's default investment option as provided for in the Trust Agreement, which assets MERS shall manage as sole fiduciary.

If the Participating Employer elects its own investment allocation within the RHFV investment menu, the Participating Employer shall be the sole fiduciary responsible for the asset allocation of its RHFV assets, in accordance with PERSIA, as required by PA 149.

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

DISTRIBUTIONS for allowable expenses require a Participating Employer to 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 Participating Employer desires that all assets placed in its RHFV Account (as a sub-fund of the pooled Trust) 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. The governing body of the Participating Employer may select its own investment allocation among the RHFV investment menu options, and shall do so in compliance with PERSIA, PA 149, all applicable provisions of the Code and other applicable law, as a co-fiduciary of its RHFV Account. If the Participating Employer does not make any selection within the RHFV investment menu for the investment of its Account assets, the Participating Employer's assets will be placed in the default investment option (as provided in the Trust Agreement), and MERS shall assume full fiduciary responsibility for those assets.

All assumptions, including the rate of investment return used in any other post-employment benefit ("OPEB") valuation, are the responsibility of the Participating Employer.

- (B) Initial investment option elections and allocations within the MERS investment menu made by the Participating Employer, as well as subsequent changes, may be made by the Participating Employer in the manner approved by MERS and submitted to the Program Administrator.

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- (C) All monies in the RHFV (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 Participating Employer or their beneficiaries, and for any Program administration expenses. RHFV monies shall not be used for any other purpose and shall not be distributed to the State.
- (D) 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 Participating 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 and Trust Agreement, both as amended from time to time.
- (E) The Participating Employer will determine who constitutes an “Eligible Employee” to receive retiree health care benefits subsidized under its RHFV Account. The Participating Employer will provide proof of liability for retiree health care benefits by way of a collective bargaining agreement and/or personnel policy, OPEB valuation, or most recent and active contract with its health insurer.
- (F) The Participating Employer will designate in writing an employer contact person who may request distributions of fund monies for the benefit of the Eligible Employees, and receive necessary reports, notices, etc., using a method approved by MERS.
- (G) The Participating Employer acknowledges its responsibility to create and comply with an investment policy with respect to its RHFV Account assets, as required by PA 149.
- (H) It is expressly agreed and understood as an integral and nonseverable part, extension or continuation of coverage under this Uniform Resolution, that this Uniform Resolution, the HCSP and RHFV Plan Document, the Trust Agreement, or any administration or interpretation thereto, shall not be amended by any collective bargaining agreement or similar agreement between the Participating Employer and its employees and/or their union(s).

III. TERMINATION OF PARTICIPATION

Termination of participation in the RHFV may occur for any of the reasons provided for in the HCSP and RHFV Plan Document and Trust Agreement. The Program Administrator shall determine what documentation is necessary to demonstrate termination in such circumstances. After receipt of such documentation, and approval of the termination, the Program Administrator shall supply the Participating Employer with any additional 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 the HCSP and RHFV Plan Document, PA 149, this Uniform Resolution, the Trust Agreement, and other applicable laws, have been met. Upon MERS’ determination that all necessary documents have been completed and submitted, MERS shall execute this Uniform Resolution and return a copy to the Participating Employer’s designated contact person.

In the event an amendatory resolution or other action by the Participating 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. 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

(Participating Employer)

Authorized Signature: _____

Name: _____

Title: _____

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

on the _____ day of _____, 20____,

Authorized Signature: _____

Name: _____

Title: _____