



**CITY OF NOVI CITY COUNCIL**  
**MAY 18, 2020**

**SUBJECT:** Approval of an addendum to the agreement with the Michigan Employee Retirement System (MERS) to allow employees to borrow against their retirement accounts

**SUBMITTING DEPARTMENT:** Human Resources

**BACKGROUND INFORMATION:** In 2006, all new full-time City employees received a Defined Contribution (DC) pension benefit moving away from the traditional Defined Benefit (DB) program, both administered by the Michigan Retirement System (MERS). In doing so, the City started to provide pension programs that resembled those traditionally found in the private sector. Fourteen years later, a majority of the City's employees are now members of the DC program, continuing to reduce the long-term liability of the City. The City's DC policies differ slightly from those in the private sector in one significant respect: they do not provide the opportunity for employees to borrow against their respective retirement funds. MERS does provide the loan options; however, when the City adopted the DC program 14 years ago, it chose not to allow employees to take advantage of this feature. Through this loan program, MERS enrolled employees could borrow up to 50% (or \$50,000) from their retirement account with a 2% interest rate. The loan does not affect the City's funding status, or its invested funds, only what the City has in the system. The loan must be paid off in 5 years or earlier if the employee separates from their employment with the City. By allowing this option, the City will be providing a choice to assist employees in their financial dealings.

It should be noted that employees/MERS members that are affected by COVID-19 can also utilize this benefit, despite the City's current prohibition, via a new program to assist members in need. To qualify, employees need to "self" validate their family's exposure to COVID-19.

**RECOMMENDED ACTION:** Approval of an addendum to the agreement with the Michigan Employee Retirement System (MERS) to allow employees to borrow against their retirement accounts, including authorization for the City Administration to execute the documents required by MERS to implement the loan program.

# MERS Hybrid Loan Addendum



1134 Municipal Way Lansing, MI 48917 | 800.767.2308 | Fax 517.703.9711

www.mersofmich.com

## I. Loan Reference

This loan addendum is for the POLC after 4/1/2012 employees of the City of Novi (Eligible Employees) which modifies the Hybrid Plan Adoption Agreement effective 4/1/2012 (Adoption Date) with respect to current participants in MERS.  
(Employer) (MM/DD/YYYY)

The Employer offers the following retirement plans (e.g., 457, 401a, 403(b) plans, etc.) to its employees in addition to the MERS Hybrid Plan: \_\_\_\_\_  
 None

If the Employer has other plans listed above, the Employer agrees to coordinate the application of the maximum loan limits among the MERS Hybrid Plan and any other retirement plans which the Employer may sponsor. The Employer hereby acknowledges that MERS is not able to perform such coordination and accepts the delegation of this responsibility.

The Employer agrees to report to MERS within 1 month any of the following events relating to a participant with an outstanding loan: death, disability, unpaid leave of absence, military leave, change to a part-time position, termination of employment, or any other circumstances which the Employer has reason to believe will impact the repayment of the outstanding loan.

## II. Loan Procedures

- Availability.** Any participant who is an active employee may apply to the Employer, or its designee, for a loan from the employee's account balance in the Plan. Loans will be available to all such participants on a uniform and nondiscriminatory basis upon submission of the required loan application forms. All loans are subject to the approval of the Employer and MERS, or its designee.
- Purpose.** A general purpose loan may be obtained for any purpose.
- Restrictions on Availability.** A participant may not have more than two (2) outstanding loan(s) at any one time.
- Frequency.** A participant may not apply for a loan any more frequently than once per a rolling 12-month period.
- Minimum Amount.** The minimum loan amount is One Thousand Dollars (\$1,000.00).

### 6. **Maximum Amount**

The maximum amount for all outstanding loans to the participant from the Plan and all other plans participated in is the lesser of:

- (a) Fifty Thousand Dollars (\$50,000.00), reduced by the highest outstanding balance of loans from all the plans in which the participant participates during the one (1) year period ending on the day before the date on which the loan is to be made; or
- (b) One-half (1/2) of the sum of the vested account balance, reduced by the participant's current outstanding balance of all loans from all plans of the participant for that participant, determined as of the loan application date.

The maximum amount will also be reduced by the amount of any existing loan balance (including accrued interest).

### 7. **Domestic Relations Orders**

No loans will be made during a period when MERS, or its designee, is determining whether a domestic relations order affecting the participant's accounts is an "eligible domestic relations order" as defined by the Eligible Domestic Relations Order Act, MCL 38.1701, *et seq.*

### 8. **Interest Rate**

- (a) The interest rate to be charged on a loan will be the prime interest rate (as reported by the Wall Street Journal or any successor thereto) plus two percent (2.00%) and is fixed for the life of the loan. The interest rate will be the established rate in effect on the date the loan application becomes effective and is approved by MERS.
- (b) Interest payments on the loans by participants are not deductible for tax purposes.

### 9. **Term**

- (a) The term of the loan must extend for at least one (1) year from the date of the loan but must not exceed five (5) years.
- (b) The term of the loan will end prior to the end of the applicable period and the outstanding balance (principal and accrued interest) will become immediately due and payable on the earlier of:
  - (1) in the case of a participant who becomes eligible for a plan distribution (other than an in-service distribution beginning at age 70½) which begins after the beginning date of the loan, the date such distribution begins;
  - (2) the date of distribution or separation of (1) the participant's accounts pursuant to an eligible domestic relations order, or (2) any portion of the accounts which causes the remaining portion of the accounts to be less than the security interest established at the time of inception of the loan;
  - (3) the date of termination of employment of the participant as provided in paragraph 15; or
  - (4) the date of a default on the loan as provided in paragraph 16.
- (c) The term of the loan shall not exceed a period which would cause the payment to be less than Five Dollars (\$5.00) per week.
- (d) Loans may not be refinanced for any reason.

### 10. **Repayment**

- (a) Each loan must be repaid in substantially equal installments, with payments not less frequently than each payroll period beginning as specified in loan document but no later than 30 days from receipt of payment.
- (b) The participant must authorize repayment of the principal and interest of each loan to be made by regular payroll deduction payments and reported to MERS according to reporting cycle selected in Adoption Agreement. If the scheduled repayment amount is greater than the participant's payroll, the participant must make payment in full for any remaining repayment amount not collected through payroll deduction by delivering to the Employer or its designee, a check or other negotiable instrument (not cash) payable to the Employer.
- (c) Repayments will be reallocated to the participant's account according to the investment election made by the participant, and in effect at the time the payment is processed to the participant's account.

### 11. **Unpaid Leave of Absence**

During the term of a loan, if a participant takes an approved leave of absence without pay, the participant may choose to suspend regular loan payments for up to one year during such unpaid leave of absence. Suspension of payments will not cause the term of the loan to be extended beyond its original term, and such suspended payments (and accrued interest) will become due and payable at the end of the original loan term in one lump sum payment. If a participant on a leave of absence without pay chooses to continue regular payments during such unpaid leave of absence, payments may be made by check or other negotiable instrument (not cash) made payable to the Employer and delivered to the Employer, or its designee.

### 12. **Military Service**

As permitted under Code Section 414(u), if a participant with an outstanding plan loan takes a leave of absence for a period of military service; such participant may elect to suspend regular loan payments during such period of military service, regardless of the duration of such service. Upon completion of such military service, the participant must resume making loan repayments in an amount which is not less than the original repayment amount, and in installments which are not less frequent than the frequency required under the terms of the original loan. The loan must be repaid in full (including interest that accrues during the period of military service at a rate not to exceed 6% compounded annually) by no later than the date of the original loan plus the period of military service. Any balance due and payable at the end of the adjusted loan term must be paid in one lump sum payment. Such lump sum payments may be made by check or other negotiable instrument (not cash) made payable to the Employer and delivered to the Employer, or its designee.

### 13. **Prepayments**

The participant may repay, without penalty, the entire outstanding principal balance of the loan and accrued interest to date of repayment. Prepayments should be made by check or other negotiable instrument (not cash) made payable to the Employer and delivered to the Employer or its designee, who shall report the payment to MERS.

**14. Loan Processing Fees**

Any loan processing fee charged by MERS will be paid by the participant. Following loan issuance, MERS will deduct an initial processing fee of One Hundred and Fifty Dollars (\$150.00) from the participant's remaining vested account balance. MERS reserves the right to charge an annual maintenance fee.

**15. Termination of Employment**

(a) The entire amount outstanding on the participant's loan will be due and payable on the date of the participant's termination of employment. The date a participant terminates employment is the date on which the participant quits, retires, is discharged, or dies. If the loan is not paid in full at termination, default will occur and paragraph 16 applies.

(b) No distributions to a participant (other than in-service withdrawals, as limited under paragraph 18(b)) will be made prior to repayment of all outstanding loans, including interest, costs, and expenses due thereon regardless of termination of employment. If there is a distributable event with respect to the participant, the accounts of the participant will be applied against any outstanding loans to the extent necessary to fully repay the same as provided in paragraph 17.

**16. Defaults and Remedies**

(a) The Plan, or its designee, may declare a default on a loan as of the last day of the quarter following the quarter in which either of the following occurs:

- (1) the participant fails to make a payment (other than due to an unpaid leave of absence as provided in item 11 or military service as provided in item 12 of these Loan Procedures); or
- (2) MERS, or its designee, in good faith deems the Benefit Program DC insecure with respect to the repayment of the loan and notifies the participant of this deemed insecurity.

(b) If a default occurs prior to a distributable event, the defaulted loan amount will be a taxable "deemed" distribution. When the participant is later eligible for a distribution, the amount distributed will be net of the loan balance, adjusted for interest. This "offset" at the time of distribution is not taxable.

(c) When a default occurs simultaneously with a distributable event, the defaulted loan balance will be treated as part of the actual taxable distribution.

(d) A participant will not be eligible to receive any subsequent loans if the participant has ever defaulted on a plan loan.

**17. Source of Loan Funds**

Any loan to a participant will be considered a separate asset of the trust fund segregated for the benefit of such participant. The loan proceeds will come from the fund or funds of the participant in which the vested accumulated balance is invested on a pro-rata basis.

18. **Security**

- (a) The participant must pledge his or her remaining vested account balance as the security interest for the loan, which will be reduced by the amount of loan plus any accrued interest should the loan be defaulted.
- (b) The unpaid portion of the loan is not available for the participant in-service withdrawals.
- (c) No loans will be permitted to a participant who has previously defaulted on a loan.

19. **Loan Application and Processing**

- (a) Loan applications may be made by completing the required forms obtained from the Employer or its designee, and submitting them to the Employer or its designee.
- (b) All loans will be subject to approval by the Employer or its designee. The Employer, or its designee, will designate the individual or individuals authorized to approve loans.
- (c) If a loan application is approved, the Employer, or its designee, will forward the approved application materials to MERS. The amount of the loan will be issued to the participant as soon as administratively feasible after the completed application is submitted to MERS and MERS determines that the participant is eligible for the requested loan.
- (d) If a loan application is denied, the Employer, or its designee, will notify the participant in writing.

### **III. Enforcement**

In the event a filing under the IRS Employee Plans Compliance Resolution System becomes necessary with respect to a loan, the filing may, at MERS' discretion, be managed by MERS; however, the Employer shall be responsible for paying all costs and fees associated with such filing, including legal fees.

# MERS Defined Contribution Plan Adoption Agreement



1134 Municipal Way Lansing, MI 48917 | 800.767.MERS (6377) | Fax 517.703.9711

www.mersofmich.com

The Employer, a participating municipality or court within the state of Michigan that has adopted MERS coverage, hereby establishes the following Defined Contribution Plan provided by MERS of Michigan, as authorized by 1996 PA 220 in accordance with the MERS Plan Document.

**I. Employer Name** City of Novi **Municipality #:** 6320

## II. Effective Date

Check one:

A.  If this is the **initial** Adoption Agreement for this group, the effective date shall be the first day of \_\_\_\_\_, 20\_\_.

This municipality or division is new to MERS, so vesting credit prior to the **initial** MERS effective date by each eligible employee shall be credited as follows (choose one):

Vesting credit from date of hire     No vesting credit

This division is for new hires, rehires, and transfers of current Defined Benefit\* division # \_\_\_\_\_ and/or current Hybrid division # \_\_\_\_\_

**Closing this division will change future invoices to a flat dollar amount instead of a percentage of payroll, as provided in your most recent annual actuarial valuation.** (The amount may be adjusted for any benefit modifications that may have taken place since then.)

Current active (defined benefit or hybrid) employees (select one of the following and see [Plan Document](#), Section 64 for more information):

Will have a one-time opportunity to convert the value of their current defined benefit from the existing defined benefit or hybrid plan into the new Defined Contribution Plan as a lump sum, or continue accruing service in the Defined Benefit. (Complete *MERS Defined Contribution Conversion Addendum*.)

Will have a one-time opportunity to cease service accrual in the current plan and transfer to the new Defined Contribution plan for future service accrual, or continue accruing service in the Defined Benefit. The deadline for employees to make their election is: \_\_\_/\_\_\_/\_\_\_

Will be required to cease service accrual in Defined Benefit and will transfer to Defined Contribution for future service accrual.

*\* By completing the section above, the Employer acknowledges receiving Projection Study results and understands the municipality's obligation to continue funding the liability associated with the closed Defined Benefit division.*

B.  If this is an **amendment** of an existing Adoption Agreement (existing division number 106187,106783,110049), the effective date shall be the first day of May, 2020.

**Note:** You only need to mark **changes** to your plan throughout the remainder of this Agreement.

# MERS Defined Contribution Plan Adoption Agreement

- C.  If this is to **separate employees** from an existing *Defined Contribution division* (existing division number(s) \_\_\_\_\_) into a new division, the effective date shall be the first day of \_\_\_\_\_, 20\_\_\_\_.
- D.  If this is to **merge division(s)** \_\_\_\_\_ into division(s) \_\_\_\_\_, the effective date shall be the first of \_\_\_\_\_, 20\_\_\_\_.

### III. Eligible Employees

Only those Employees eligible for MERS membership may participate in the MERS Defined Contribution Plan. A copy of ALL employee enrollment forms must be submitted to MERS. The following groups of employees are eligible to participate:

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(Name of Defined Contribution division – e.g. All Full Time Employees, or General After 7/01/13)

**To further define eligibility, (check all that apply):**

- Probationary periods** are allowed in one-month increments, no longer than 12 months. During this introductory period the Employer will not report or make contributions for this period, including retroactively. Service will begin after the probationary period has been satisfied. The probationary period will be \_\_\_\_\_ month(s).
- Temporary employees** in a position normally requiring less than a total of 12 whole months of work in the position may be *excluded* from membership. These employees must be notified in writing by the participating municipality that they are excluded from membership within 10 business days of date of hire or execution of this Agreement. The temporary exclusion period will be \_\_\_\_\_ month(s).



# MERS Defined Contribution Plan Adoption Agreement

## IV. Provisions

1. **Vesting** (Check one):

- Immediate
- Cliff Vesting (fully vested after below number years of service)
  - 1 year     2 years     3 years     4 years     5 years
- Graded Vesting
  - \_\_\_\_\_ % after 1 year of service
  - \_\_\_\_\_ % after 2 years of service
  - \_\_\_\_\_ % after 3 years of service (min 25%)
  - \_\_\_\_\_ % after 4 years of service (min 50%)
  - \_\_\_\_\_ % after 5 years of service (min 75%)
  - \_\_\_\_\_ % after 6 years of service (min 100%)

Vesting will be credited using (check one):

- Elapsed time method – Employees will be credited with one vesting year for each 12 months of continuous employment from the date of hire.
- Hours reported method – Employees will be credited with one vesting year for each calendar year in which \_\_\_\_\_ hours are worked

In the event of disability or death, an employee's (or his/her beneficiary's) entire employer contribution account shall be 100% vested, to the extent that the balance of such account has not previously been forfeited.

Normal Retirement Age (presumed to be age 60 unless otherwise specified) \_\_\_\_\_

*If an employee is still employed with the municipality at the age specified here, their entire employer contribution balance will become 100% vested regardless of years of service.*

2. **Contributions**

- a. Will be remitted according to Employer's payroll withholding which represents the actual period amounts are withheld from employee paychecks, or within the month during which amounts are withheld (check one):
  - Weekly
  - Bi-Weekly (every other week)
  - Semi-Monthly (twice each month)
  - Monthly
  - Other (must specify) \_\_\_\_\_
- b. Required Employee Contribution Structure to DC (subject to Internal Revenue Code 415(c) limitations). Select one:
  - Employees are required to contribute per payroll period, the percentage \_\_\_\_\_% OR flat dollar amount \$\_\_\_\_\_
  - Employees are required to contribute within the following range for each payroll:  
Percentage range from \_\_\_\_\_% to \_\_\_\_\_% OR  
dollar amount range \$\_\_\_\_\_ to \$\_\_\_\_\_
  - Direct Required Employee Contributions pre-tax

# MERS Defined Contribution Plan Adoption Agreement

c. **Employer Contributions**

**Non-Matching Contributions**

The Employer hereby elects to make contributions to the Program without regard to an employee's contribution to the Program. The Employer elects the following contribution formula (check one):

**Annual Contributions:** A one-time annual contribution of \$\_\_\_\_\_ OR \_\_\_\_\_% of compensation per employee.

\$ \_\_\_\_\_ or \_\_\_\_\_% of compensation per employee for each payroll period.

**Matching Contributions**

The Participating Employer may make matching contributions and/or non-matching contributions into the Defined Contribution plan based on an employee's voluntary election as outlined in the *Matching Employer Contribution Addendum (MD-073)*.

d. Post-tax voluntary employee contributions are allowable into a Defined Contribution account subject to Section 415(c) limitations of the Internal Revenue Code.

3. **Compensation**

Employers may designate the definition of compensation per division participating in Defined Contribution pursuant to section 49 of the MERS Plan Document (check one):

All income subject to income tax reported in Box 1 of Form W-2, plus elective deferrals (Note: this definition aligns to MERS' 457 definition of compensation)

Medicare taxable wages reported in Box 5 of Form W-2

Base wages, to which any of the following may be included:

Longevity pay

Overtime pay

Shift differentials

Pay for periods of absence from work by reason of vacation, holiday, and sickness

Workers' compensation weekly benefits (if reported and are higher than regular earnings)

A member's pre-tax contributions to a plan established under Section 125 of the IRC

Transcript fees paid to a court reporter

A taxable car allowance

Short term or long term disability payments

Payments for achievement of established annual (or similar period) performance goals

Payment for attainment of educational degrees from accredited colleges, universities, or for acquisition of job-related certifications

Lump sum payments attributable to the member's personal service rendered during the FAC period

Other: \_\_\_\_\_

Other 2: \_\_\_\_\_

NOTE: For purposes of applying the Internal Revenue Code Section 415(c) limits on annual additions, compensation shall be defined as required under that law.

# MERS Defined Contribution Plan Adoption Agreement

4. **Loans:**  shall be permitted  shall not be permitted  
If Loans are elected, please complete and attach the *MERS Defined Contribution Loan Addendum*.
5. **Rollovers** from qualified plans are permitted and the plan will account separately for pre-tax and post-tax contributions and earnings thereon.

## V. Appointing MERS as the Plan Administrator

The Employer hereby agrees to the provisions of this *MERS Defined Contribution Plan Adoption Agreement* and appoints MERS as the Plan Administrator pursuant to the terms and conditions of the Plan. The Employer also agrees that in the event of any conflict between the MERS Plan Document and the MERS Defined Contribution Plan Adoption Agreement, the provisions of the Plan Document control.

## VI. Modification of the terms of the Adoption Agreement

If the Employer desires to amend any of its elections contained in this Adoption Agreement, including attachments, the Governing Body or Chief Judge, by resolution or official action accepted by MERS, must adopt a new Adoption Agreement. The amendment of the new Agreement is not effective until approved by MERS.

## VII. Enforcement

1. The Employer acknowledges that the Michigan Constitution of 1963, Article 9, Section 24, provides that accrued financial benefits arising under a public Employer's retirement plan are a contractual obligation of the Employer that may not be diminished or impaired.
2. The Employer agrees that, pursuant to the Michigan Constitution, its obligations to pay required contributions are contractual obligations to its employees and to MERS and may be enforced in a court of competent jurisdiction;
3. The Employer acknowledges that employee contributions (if any) and employer contributions must be submitted in accordance with the *MERS Reporting and Contribution Enforcement Policy*, the terms of which are incorporated herein by reference;
4. The Employer acknowledges that late or missed contributions will be required to be made up, including any applicable gains, pursuant to the Internal Revenue Code;
5. Should the Employer fail to make its required contribution(s) when due, MERS may implement any applicable interest charges and penalties pursuant to the *MERS Reporting and Contribution Enforcement Policy* and Plan Document Section 79, and take any appropriate legal action, including but not limited to filing a lawsuit and reporting the entity to the Treasurer of the State of Michigan in accordance with MCL 141.1544(d), Section 44 of PA 436 of 2012, as may be amended.
6. It is expressly agreed and understood as an integral and non-severable part of this Agreement that Section 43 of the Plan Document shall not apply to this Agreement and its administration or interpretation. In the event any alteration of the terms or conditions of this Agreement is made or occurs, under Section 43 or other plan provision or law, MERS and the Retirement Board, as sole trustee and fiduciary of the MERS plan and its trust reserves, and whose authority is non-delegable, shall have no obligation or duty to administer (or to have administered) the MERS Defined Contribution Plan, to authorize the transfer of any defined benefit assets to the MERS Defined Contribution Plan, or to continue administration by MERS or any third-party administrator of the MERS Defined Contribution Plan.

# MERS Defined Contribution Plan Adoption Agreement

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## VIII. Execution

### Authorized Designee of Governing Body of Municipality or Chief Judge of Court

The foregoing Adoption Agreement is hereby approved by \_\_\_\_\_ on  
the \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_. (Name of Approving Employer)

Authorized signature: \_\_\_\_\_

Title: \_\_\_\_\_

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

Dated: \_\_\_\_\_, 20\_\_\_\_ Signature: \_\_\_\_\_  
(Authorized MERS Signatory)

# MERS Hybrid Plan Adoption Agreement



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The Employer, a participating municipality or participating court within the State of Michigan that has adopted MERS coverage, hereby establishes the following MERS Hybrid Plan provided by MERS of Michigan, as authorized by 1996 PA 220 in accordance with the MERS Plan Document, as both may be amended, subject to the terms and conditions herein.

**I. Employer Name** City of Novi **Municipality #:** 6320

If new to MERS, provide your municipality's/court's fiscal year: \_\_\_\_\_ through \_\_\_\_\_.  
(Month) (Month)

## II. Effective Date

Check one:

A.  If this is the **initial** Adoption Agreement for this group, the effective date shall be the first day of \_\_\_\_\_, 20\_\_\_\_.

This municipality or division is new to MERS, so vesting credit prior to the **initial** MERS effective date by each eligible employee shall be credited as follows (choose one):

Vesting credit from date of hire  No vesting credit

This division is for new hires, rehires, and transfers of current Defined Benefit\* division # \_\_\_\_\_ and/or current Defined Contribution division # \_\_\_\_\_

**Closing this division will change future invoices to a flat dollar amount instead of a percentage of payroll, as provided in your most recent annual actuarial valuation.** (The amount may be adjusted for any benefit modifications that may have taken place since then.)

Current active (defined benefit or Defined Contribution) employees (select one of the following and see [Plan Document](#), Section 70 for more information):

Will have a one-time opportunity to convert the value of their current defined benefit into a lump sum transferred to the Defined Contribution portion of Hybrid sum, or continue accruing service in the Defined Benefit. (Complete *MERS Hybrid Conversion Addendum*.)

Will have a one-time opportunity to cease service accrual in the current plan and transfer to the new Hybrid plan for future service accrual, or continue accruing service in the Defined Benefit. The deadline for employees to make their election is: \_\_\_/\_\_\_/\_\_\_\_

Will be required to cease service accrual in Defined Benefit and will transfer to Hybrid for future service accrual.

*\* By completing the section above, the Employer acknowledges receiving Projection Study (if applicable) results and understands the municipality's obligation to continue funding the liability associated with the closed Defined Benefit division.*

B.  If this is an **amendment** of an existing Adoption Agreement (Hybrid division # HA), the effective date shall be the first day of May, 2020. *Please note:* You only need to mark **changes** to your plan throughout the remainder of this Agreement.

# MERS Hybrid Plan Adoption Agreement

C.  If this is to **separate employees** from an existing Hybrid division

(existing division number(s) \_\_\_\_\_)

into a new Hybrid division, the effective date shall be the first day of \_\_\_\_\_, 20\_\_\_\_\_.

### III. Eligible Employees

Only those Employees eligible for MERS membership may participate in the MERS Hybrid Plan. A copy of ALL employee enrollment forms must be submitted to MERS. The following groups of employees are eligible to participate:

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(Name of Hybrid division – e.g. All Full Time Employees, or General after 7/10/13)

**To receive one month of service credit** (check one):

An employee shall work 10 \_\_\_\_\_ hour days

An employee shall work \_\_\_\_\_ hours in a month

All employees classified under eligible employees, whether full or part time, who meet this criteria must be reported to MERS. If you change your current day of work definition to be more restrictive, the new definition only applies to employees hired after the effective date.

To further define eligibility, check all that apply:

**Probationary periods** are allowed in one-month increments, no longer than 12 months. During this probationary period the Employer will not report or make contributions, and none will be due on behalf of the new employee retroactively. Service will begin after the probationary period has been satisfied.

The probationary period will be \_\_\_\_\_ month(s).

**Temporary employees** in a position normally requiring less than a total of 12 whole months of work in the position may be *excluded* from membership. These employees must be notified in writing by the participating municipality that they are excluded from membership within 10 business days of date of hire or execution of this Agreement.

The temporary exclusion period will be \_\_\_\_\_ month(s).

# MERS Hybrid Plan Adoption Agreement

## IV. Provisions

### Employer Caps

- The Employer hereby elects to cap the annual contribution to Hybrid (total amount for both Defined Benefit and Defined Contribution portions) \_\_\_\_% of payroll. The employer will adjust its contribution to the DC portion of the plan based on the required contribution for the DB portion. An employee contribution will become required on the DB portion of the plan if the total employer contribution DB + DC portions has exceeded the cap with no employer contribution to the DC portion.
- The Employer hereby elects to cap the annual contribution to the Defined Benefit portion of Hybrid to \_\_\_\_% of payroll. An employee contribution will become required on the DB portion of the plan if the required employer contribution for the DB portion of the plan has exceeded the set cap (regardless of the employer contribution to the DC portion of the plan).

### Hybrid – Defined Benefit Component Provisions

*The Defined Benefit Provisions, once adopted, are irrevocable and shall not be later changed except for definition of compensation.*

Valuation Date: \_\_\_\_\_, 20 \_\_\_\_

1. This Adoption Agreement will be implemented in conjunction with a current actuarial valuation certified by a MERS actuary or normal cost calculation created by MERS that sets contribution rates.
2. Annually, the MERS actuary will conduct an actuarial valuation to determine the employers' contribution rates for the Defined Benefit portion of Hybrid. Employers are responsible for payment of said contributions at the rate, in the form and at the time that MERS determines.
3. Benefit Multiplier  
The multiplier shall be one of the following dependent upon the division's Social Security status:

<b>Social Security Coverage</b>	<b>No Social Security Coverage</b>
<input type="checkbox"/> 1.00%	<input type="checkbox"/> 1.00%
<input type="checkbox"/> 1.25%	<input type="checkbox"/> 1.25%
<input type="checkbox"/> 1.50%	<input type="checkbox"/> 1.50%
	<input type="checkbox"/> 1.75%
	<input type="checkbox"/> 2.00%
4. Final Average Compensation (FAC) shall be based on the highest consecutive 3 years
5. Vesting shall be 6 years

# MERS Hybrid Plan Adoption Agreement

6. Compensation for the Defined Benefit Plan means the salary or wages paid to an employee for personal services rendered while a member of MERS. Compensation and any applicable employee contributions must be reported to MERS on a monthly basis.

Employers shall define compensation using the following options (choose one):

- Compensation including all items as allowed in the MERS Plan Document (Section 14).

If anything varies, specify here:

Included: \_\_\_\_\_

Excluded: \_\_\_\_\_

- Base wages only

If any items should be included, specify here:

Included: \_\_\_\_\_

- Medicare taxable wages as reported on W2

- Wages plus amounts otherwise not reported as gross compensation, such as elected amounts for Section 125(a) or 457(b) deferrals

7. Normal Retirement Age: \_\_\_\_\_ (any age from 60 – 70)

8. Early Normal Retirement with unreduced benefits

- Age 55-65 \_\_\_\_\_ with 25 years of service

## Hybrid – Defined Contribution Component Provisions

1. Vesting (Check one):

- Immediate

- Cliff Vesting (fully vested after below number years of service)

1 year     2 years     3 years     4 years     5 years

- Graded Vesting

\_\_\_\_\_ % after 1 year of service

\_\_\_\_\_ % after 2 years of service

\_\_\_\_\_ % after 3 years of service (min 25%)

\_\_\_\_\_ % after 4 years of service (min 50%)

\_\_\_\_\_ % after 5 years of service (min 75%)

100 % after 6 years of service

Vesting will be credited using (check one):

- Elapsed time method – Employees will be credited with one vesting year for each 12 months of continuous employment from the date of hire.

- Hours reported method – Employees will be credited with one vesting year for each calendar year in which \_\_\_\_\_ hours are worked

In the event of disability or death while actively employed, an employee's (or his/her beneficiary's) entire employer contribution account shall be 100% vested.



# MERS Hybrid Plan Adoption Agreement

## 2. Contributions

a. Will be remitted according to Employer's payroll withholding which represents the actual period amounts are withheld from employee paychecks, or within the month during which amounts are withheld (check one):

- Weekly
- Bi-Weekly (every other week)
- Semi-Monthly (twice each month)
- Monthly
- Other (must specify) \_\_\_\_\_

b. Required Employee Contribution Structure to DC (subject to Internal Revenue Code 415(c) limitations)

- Employees are required to contribute per payroll period, the percentage \_\_\_\_% OR flat dollar amount \$\_\_\_\_\_
- Employees are required to contribute within the following range for each payroll:  
Percentage range from \_\_\_\_% to \_\_\_\_% OR  
dollar amount range \$\_\_\_\_\_ to \$\_\_\_\_\_

Direct Required Employee Contributions pre-tax

c. Post-tax voluntary employee contributions are allowable into a Defined Contribution account subject to Section 415(c) limitations of the Internal Revenue Code.

d. The Participating Employer may make matching contributions and/or non-matching contributions into the Defined Contribution plan based on an employee's voluntary election into the MERS 457 (or any other 457 qualified plan where MERS is the Defined Contribution administrator). Check *Matching*, *Non-Matching*, or *both* as applicable below:

**Matching Contributions**

Employer Contributions shall be made to match all or a portion of an employee's compensation deferred into this Program. The Employer elects the following matching contribution formula **(check and complete *Percentage* or *Flat Dollar* and *Employer Cap*, if applicable, below):**

- Percentage:** For each payroll period in which the employee deferred compensation into the Program, the Employer will contribute \_\_\_\_\_%.

*For example, if an Employer elects a 50% match, then for every \$10 the employee defers to the Program, the Employer will contribute \$5 to the Program.*

- Flat Dollar:** For each payroll period in which the employee deferred at least \$ \_\_\_\_\_ to the Program, the Participating Employer will contribute \$ \_\_\_\_\_ per payroll period.

**Employer Cap:** The Employer elects to establish a cap on its matching contributions, so that the match amount cannot exceed a certain amount. The Employer hereby elects the following cap on its percentage matching contribution:

- Flat Dollar Cap:** In no event will matching contributions made on behalf of a employee exceed a flat dollar amount equal to \$ \_\_\_\_\_ per

\_\_\_\_\_.  
(pay period / year / etc.)

# MERS Hybrid Plan Adoption Agreement

**Cap Equal to Percentage of Total Compensation:** In no event will matching contributions made on behalf of an employee exceed \_\_\_\_\_% of the employee's IRS Section 457(e)(5) includable compensation (gross income from the Employer).

**Non-Matching Contributions**

The Employer hereby elects to make contributions to the Program without regard to an employee's contribution to the Program. The Employer elects the following contribution formula (check one):

**Annual Contributions:** A one-time annual contribution of \$\_\_\_\_\_ OR \_\_\_\_\_% of compensation per employee.

\$ \_\_\_\_\_ or \_\_\_\_\_% of compensation per employee for each payroll period.

**3. Compensation:**

Employers may designate the definition of compensation per division participating in Defined Contribution pursuant to section 49 of the MERS Plan Document (check one):

Medicare taxable wages reported in Box 5 of Form W-2

All income subject to income tax reported in Box 1 of Form W-2, plus elective deferrals

Compensation, for retirement purposes, is defined as base wages. Any of the following may be included:

Longevity pay

Overtime pay

Shift differentials

Pay for periods of absence from work by reason of vacation, holiday, and sickness

Workers' compensation weekly benefits (if reported and are higher than regular earnings)

A member's pre-tax contributions to a plan established under Section 125 of the IRC

Transcript fees paid to a court reporter

A taxable car allowance

Short term or long term disability payments

Payments for achievement of established annual (or similar period) performance goals

Payment for attainment of educational degrees from accredited colleges, universities, or for acquisition of job-related certifications

Lump sum payments attributable to the member's personal service rendered during the FAC period

Other: \_\_\_\_\_

Other 2: \_\_\_\_\_

NOTE: In any of the above elections, an employee's compensation shall not exceed the annual limit under section 401(a)(17) of the Internal Revenue Code.

4. **Loans:**  shall be permitted  shall not be permitted

If Loans are elected, please complete and attach the *MERS Hybrid Loan Addendum*.

5. **Rollovers** from qualified plans are permitted as set forth in the Hybrid Plan and the plan will account separately for pre-tax and post-tax contributions and earnings thereon.

# MERS Hybrid Plan Adoption Agreement

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## V. Appointing MERS as the Plan Administrator

The Employer hereby agrees to the provisions of this *MERS Hybrid Plan Adoption Agreement* and appoints MERS as the Plan Administrator pursuant to the terms and conditions of the Plan. The Employer also agrees that in the event of any conflict between the MERS Plan Document and the MERS Hybrid Plan Adoption Agreement, the provisions of the Plan Document control.

## VI. Modification of the terms of the Adoption Agreement

If the Employer desires to amend any of its elections contained in this Adoption Agreement, including attachments, the Governing Body or Chief Judge, by resolution or official action accepted by MERS, must adopt a new Adoption Agreement. The amendment of the new Agreement is not effective until approved by MERS.

## VII. Enforcement

1. The Employer acknowledges that the Michigan Constitution of 1963, Article 9, Section 24, provides that accrued financial benefits arising under a public Employer's retirement plan are a contractual obligation of the Employer that may not be diminished or impaired, and prohibits the use of the Employer's required current service funding to finance unfunded accrued liabilities.
2. The Employer agrees that, pursuant to the Michigan Constitution, its obligations to pay required contributions are contractual obligations to its employees and to MERS and may be enforced in a court of competent jurisdiction;
3. In accordance with the Constitution and this Agreement, if at any time the balance standing to the Employer's credit in the reserve for employer contributions and DB benefit payments is insufficient to pay all service benefits due and payable to the entity's retirees and beneficiaries, the Employer agrees and covenants to promptly remit to MERS the amount of such deficiency as determined by the Retirement Board within thirty (30) days notice of such deficiency;
4. The Employer acknowledges that the DB wage and service reports are due monthly, and the employee contributions (if any) and Employer contributions are due and payable monthly, and must be submitted in accordance with the MERS Enforcement Procedure for Prompt Reporting and Payment, the terms of which are incorporated herein by reference;
5. The Employer acknowledges that employee contributions (if any) and employer contributions must be submitted in accordance with the MERS Enforcement Procedure for Prompt Reporting and Payment, the terms of which are incorporated herein by reference;
6. The Employer acknowledges that late or missed contributions will be required to be made up, including any applicable gains for the Defined Contribution portion of Hybrid, pursuant to the Internal Revenue Code;
7. Should the Employer fail to make its required contribution(s) when due, the retirement benefits due and payable by MERS on behalf of the entity to its retirees and beneficiaries may be suspended until the delinquent payment is received by MERS. MERS may implement any applicable interest charges and penalties pursuant to the MERS Enforcement Procedure for Prompt Reporting and Payment and Plan Document Section 79, and take any appropriate legal action, including but not limited to filing a lawsuit and reporting the entity to the Treasurer of the State of Michigan in accordance with MCL 141.1544(d), Section 44 of PA 436 of 2012, as may be amended;

# MERS Hybrid Plan Adoption Agreement

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8. It is expressly agreed and understood as an integral and non-severable part of this Agreement that Section 43 of the Plan Document shall not apply to this Agreement and its administration or interpretation. In the event any alteration of the terms or conditions of this Agreement is made or occurs, under Section 43 or other plan provision or law, MERS and the Retirement Board, as sole trustee and fiduciary of the MERS plan and its trust reserves, and whose authority is non-delegable, shall have no obligation or duty to administer (or to have administered) the Hybrid Plan, to authorize the transfer of any assets to the Hybrid Plan, or to continue administration by MERS or any third-party administrator of the Hybrid Plan.

## VIII. Execution

### Authorized Designee of Governing Body of Municipality or Chief Judge of Court

The foregoing Adoption Agreement is hereby approved by \_\_\_\_\_ on  
the \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_. (Name of Approving Employer)

Authorized signature: \_\_\_\_\_

Title: \_\_\_\_\_

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

Dated: \_\_\_\_\_, 20\_\_\_\_ Signature: \_\_\_\_\_  
(Authorized MERS Signatory)

## I. Loan Reference

This loan addendum is applicable to all employers that participate in the MERS DC or 457 and offer loans as a provision in any division. This Addendum has been modified and is effective March 27, 2020.

## II. Loan Procedures for Coronavirus Aid, Relief and Economic Security Act (CARES Act)

1. **Availability.** Any participant who is an active employee may apply to the Employer, or its designee, for a loan from the employee's account balance in the Plan. Loans will be available to all such participants on a uniform and nondiscriminatory basis upon submission of the required loan application forms. All loans are subject to the approval of the Employer and MERS, or its designee.
2. **Purpose.** A general purpose loan may be obtained for any purpose.
3. **Restrictions on Availability.** A participant may not have more than two (2) outstanding loan(s) at any one time.
4. **Frequency.** A participant may not apply for a loan any more frequently than once per a rolling 12-month period.
5. **Minimum Amount.** The minimum loan amount is One Thousand Dollars (\$1,000.00).
6. **Maximum Amount**

The maximum amount for all outstanding loans to the participant from the Plan and all other plans participated in is the lesser of:

- (a) Fifty Thousand Dollars (\$50,000.00), reduced by the highest outstanding balance of loans from all the plans in which the participant participates during the one (1) year period ending on the day before the date on which the loan is to be made; or
- (b) One-half (1/2) of the sum of the vested account balance, reduced by the participant's current outstanding balance of all loans from all plans of the participant for that participant, determined as of the loan application date.

The maximum amount will also be reduced by the amount of any existing loan balance (including accrued interest).

CARES  
Act

For the period March 27, 2020, and ending on September 22, 2020 only. New loans taken by any participant who is a Qualified Individual (based upon the participant's self-certification reflected by completion and submission of the Certification of Qualified Individual Status Under the CARES Act) during the period March 27, 2020, and ending on September 22, 2020 only, the maximum amount for all outstanding loans from the Plan and all other plans participated in is the lesser of:

1. 100% of the present value of the participant's vested account balance on the date of distribution (that is, the account balance minus current any outstanding loan balance), or
2. \$100,000, reduced by the excess of the participant's highest outstanding loan balance(s), if any, during the prior 12 months over the balance(s) immediately prior to the date the loan is made.

## MERS Defined Contribution & 457 Loan Addendum

### 7. Domestic Relations Orders

No loans will be made during a period when MERS, or its designee, is determining whether a domestic relations order affecting the participant's accounts is an "eligible domestic relations order" as defined by the Eligible Domestic Relations Order Act, MCL 38.1701, *et seq.*

### 8. Interest Rate

(a) The interest rate to be charged on a loan will be the prime interest rate (as reported by the Wall Street Journal or any successor thereto) plus two percent (2.00%) and is fixed for the life of the loan. The interest rate will be the established rate in effect on the date the loan application becomes effective and is approved by MERS.

(b) Interest payments on the loans by participants are not deductible for tax purposes.

### 9. Term

(a) The term of the loan must extend for at least one (1) year from the date of the loan but must not exceed five (5) years.

(b) The term of the loan will end prior to the end of the applicable period and the outstanding balance (principal and accrued interest) will become immediately due and payable on the earlier of:

(1) in the case of a participant who becomes eligible for a plan distribution (other than an in-service distribution beginning at age 70½) which begins after the beginning date of the loan, the date such distribution begins;

(2) the date of distribution or separation of (1) the participant's accounts pursuant to an eligible domestic relations order, or (2) any portion of the accounts which causes the remaining portion of the accounts to be less than the security interest established at the time of inception of the loan;

(3) the date of termination of employment of the participant as provided in paragraph 15; or

(4) the date of a default on the loan as provided in paragraph 16.

(c) The term of the loan shall not exceed a period which would cause the payment to be less than Five Dollars (\$5.00) per week.

(d) Loans may not be refinanced for any reason.

### 10. Repayment

(a) Each loan must be repaid in substantially equal installments, with payments not less frequently than each payroll period beginning as specified in loan document but no later than 30 days from receipt of payment.

(b) The participant must authorize repayment of the principal and interest of each loan to be made by regular payroll deduction payments and reported to MERS according to reporting cycle selected in Adoption Agreement. If the scheduled repayment amount is greater than the participant's payroll, the participant must make payment in full for any remaining repayment amount not collected through payroll deduction by delivering to the Employer or its designee, a check or other negotiable instrument (not cash) payable to the Employer.

(c) Repayments will be reallocated to the participant's account according to the investment election made by the participant, and in effect at the time the payment is processed to the

participant's account.

CARES  
Act

For the period March 27, 2020, through December 31, 2020, if a payment is due on any existing plan loan of a participant who is a Qualified Individual (based upon the participant's self-certification reflected by completion and submission of the Certification of Qualified Individual Status Under CARES Act) between March 27, 2020 and December 31, 2020, the due date for that payment is delayed by one year. Any subsequent repayments, plus applicable interest, shall be adjusted to reflect the extended repayment period by re-amortization, and the delay period is disregarded for purposes of determining compliance with the above repayment period maximum of five years.

### 11. **Unpaid Leave of Absence**

During the term of a loan, if a participant takes an approved leave of absence without pay, the participant may choose to suspend regular loan payments for up to one year during such unpaid leave of absence. Suspension of payments will not cause the term of the loan to be extended beyond its original term, and such suspended payments (and accrued interest) will become due and payable at the end of the original loan term in one lump sum payment. If a participant on a leave of absence without pay chooses to continue regular payments during such unpaid leave of absence, payments may be made by check or other negotiable instrument (not cash) made payable to the Employer and delivered to the Employer, or its designee.

### 12. **Military Service**

As permitted under Code Section 414(u), if a participant with an outstanding plan loan takes a leave of absence for a period of military service; such participant may elect to suspend regular loan payments during such period of military service, regardless of the duration of such service. Upon completion of such military service, the participant must resume making loan repayments in an amount which is not less than the original repayment amount, and in installments which are not less frequent than the frequency required under the terms of the original loan. The loan must be repaid in full (including interest that accrues during the period of military service at a rate not to exceed 6% compounded annually) by no later than the date of the original loan plus the period of military service. Any balance due and payable at the end of the adjusted loan term must be paid in one lump sum payment. Such lump sum payments may be made by check or other negotiable instrument (not cash) made payable to the Employer and delivered to the Employer, or its designee.

### 13. **Prepayments**

The participant may repay, without penalty, the entire outstanding principal balance of the loan and accrued interest to date of repayment. Prepayments should be made by check or other negotiable instrument (not cash) made payable to the Employer and delivered to the Employer or its designee, who shall report the payment to MERS.

### 14. **Loan Processing Fees**

Any loan processing fee charged by MERS will be paid by the participant. Following loan issuance, MERS will deduct an initial processing fee of One Hundred and Fifty Dollars (\$150.00) from the participant's remaining vested account balance. MERS reserves the right to charge an annual maintenance fee.

### 15. **Termination of Employment**

## MERS Defined Contribution & 457 Loan Addendum

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- (a) The entire amount outstanding on the participant's loan will be due and payable on the date of the participant's termination of employment. The date a participant terminates employment is the date on which the participant quits, retires, is discharged, or dies. If the loan is not paid in full at termination, default will occur and paragraph 16 applies.
- (b) No distributions to a participant (other than in-service withdrawals, as limited under paragraph 18(b)) will be made prior to repayment of all outstanding loans, including interest, costs, and expenses due thereon regardless of termination of employment. If there is a distributable event with respect to the participant, the accounts of the participant will be applied against any outstanding loans to the extent necessary to fully repay the same as provided in paragraph 17.

### 16. **Defaults and Remedies**

- (a) The Plan, or its designee, may declare a default on a loan as of the last day of the quarter following the quarter in which either of the following occurs:
  - (1) the participant fails to make a payment (other than due to an unpaid leave of absence as provided in item 11 or military service as provided in item 12 of these Loan Procedures); or
  - (2) MERS, or its designee, in good faith deems the Benefit Program DC insecure with respect to the repayment of the loan and notifies the participant of this deemed insecurity.
- (b) If a default occurs prior to a distributable event, the defaulted loan amount will be a taxable "deemed" distribution. When the participant is later eligible for a distribution, the amount distributed will be net of the loan balance, adjusted for interest. This "offset" at the time of distribution is not taxable.
- (c) When a default occurs simultaneously with a distributable event, the defaulted loan balance will be treated as part of the actual taxable distribution.
- (d) A participant will not be eligible to receive any subsequent loans if the participant has ever defaulted on a plan loan.

### 17. **Source of Loan Funds**

Any loan to a participant will be considered a separate asset of the trust fund segregated for the benefit of such participant. The loan proceeds will come from the fund or funds of the participant in which the vested accumulated balance is invested on a pro-rata basis.

### 18. **Security**

- (a) The participant must pledge his or her remaining vested account balance as the security interest for the loan, which will be reduced by the amount of loan plus any accrued interest should the loan be defaulted.
- (b) The unpaid portion of the loan is not available for the participant in-service withdrawals.
- (c) No loans will be permitted to a participant who has previously defaulted on a loan.

### 19. **Loan Application and Processing**



## MERS Defined Contribution & 457 Loan Addendum

- (a) Loan applications may be made by completing the required forms obtained from the Employer or its designee, and submitting them to the Employer or its designee.
- (b) All loans will be subject to approval by the Employer or its designee. The Employer, or its designee, will designate the individual or individuals authorized to approve loans.
- (c) If a loan application is approved, the Employer, or its designee, will forward the approved application materials to MERS. The amount of the loan will be issued to the participant as soon as administratively feasible after the completed application is submitted to MERS and MERS determines that the participant is eligible for the requested loan.
- (d) If a loan application is denied, the Employer, or its designee, will notify the participant in writing.

### III. Coronavirus Aid, Relief, and Economic Security Act (CARES Act)

The Coronavirus Aid, Relief, and Economic Security Act (CARES Act) permits employees with plans that include a loan feature to increase the borrowing amount limits applicable to plan loans to a “qualified individual” during the 180-day period beginning on the date of enactment of the Act (that is, from March 27, 2020, through September 22, 2020).

The CARES Act defines a qualified individual as someone who – on or after January 1, 2020, and before December 31, 2020 – meets one of the following criteria:

- The individual is diagnosed with the virus SARS-CoV-2 or with coronavirus disease 2019 (COVID-19) by a test approved by the Centers for Disease Control and Prevention, or
- The individual’s spouse or dependent (as defined in section 152 of the Internal Revenue Code of 1986) is diagnosed with COVID-19 by a test approved by the Centers for Disease Control and Prevention, or
- The individual experiences adverse financial consequences as a result of one of the following:
  - being quarantined, furloughed or laid off, or having work hours reduced due to COVID-19,
  - being unable to work due to lack of child care due to COVID-19,
  - being unable to work due to closing or reducing hours of a business owned or operated by the individual due to COVID-19, or
  - other factors as determined by the Secretary of the Treasury.

CARES  
Act

### IV. Enforcement

In the event a filing under the IRS Employee Plans Compliance Resolution System becomes necessary with respect to a loan, the filing may, at MERS’ discretion, be managed by MERS; however, the Employer shall be responsible for paying all costs and fees associated with such filing, including legal fees.