

1 **RESOLUTION NO. 040532**

2
3 **PASSED: November 8, 2004**

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5 **A resolution of the City of Gainesville, Florida, establishing a**
6 **401a Money Purchase Plan and Trust for the benefit of eligible**
7 **employees and their beneficiaries; and providing an immediate**
8 **effective date.**

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11 **WHEREAS**, the City of Gainesville, Florida (Employer) has employees
12 rendering valuable services; and

13 **WHEREAS**, the establishment of a money purchase retirement plan benefits
14 employees by providing funds for retirement and funds for their beneficiaries in the event
15 of death; and

16 **WHEREAS**, the Employer desires that its money purchase retirement plan be
17 administered by the ICMA Retirement Corporation and that the funds held under such
18 plan be invested in the ICMA Retirement Trust, a trust established by public employers
19 for the collective investment of funds held under their retirement and deferred
20 compensation plans;

21 **NOW, THEREFORE, BE IT RESOLVED BY THE CITY COMMISSION**
22 **OF THE CITY OF GAINESVILLE, FLORIDA:**

23 **Section 1.** The Employer hereby establishes a money purchase retirement plan
24 (the "Plan") in the form of the ICMA Retirement Corporation Governmental Money
25 Purchase Plan & Trust, pursuant to the specific provisions of the Adoption Agreement
26 (attached hereto as Exhibit 1), which Plan shall be maintained for the exclusive benefit of
27 eligible employees and their beneficiaries.

28 **Section 2.** The Employer hereby executes the Declaration of Trust of the ICMA

1 Retirement Trust (attached hereto as Exhibit 2), intending this execution to be operative
2 with respect to any retirement or deferred compensation plan subsequently established by
3 the Employer, if the assets of the Plan are to be invested in the ICMA Retirement Trust.

4 **Section 3.** The Employer hereby agrees to serve as Trustee under the Plan and to
5 invest funds held under the Plan in the ICMA Retirement Trust.

6 **Section 4.** The City Manager shall be the coordinator for the Plan; shall receive
7 reports, notices, etc., from the ICMA Retirement Corporation or the ICMA Retirement
8 Trust; shall cast, on behalf of the Employer, any required votes under the ICMA
9 Retirement Trust; may delegate any administrative duties relating to the Plan to
10 appropriate departments; and is authorized to execute all necessary agreements with the
11 ICMA Retirement Corporation incidental to the administration of the Plan.

12 **Section 5.** This resolution shall take effect immediately upon adoption.

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14 **PASSED AND ADOPTED** this 8th day of November, 2004.

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PEGEEN HANRAHAN
MAYOR

ATTEST:

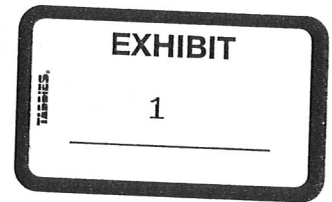

KURT M. LANNON
CLERK OF THE COMMISSION

Approved as to form and legality


MARION J. RADSON
CITY ATTORNEY

NOV - 9 2004

ICMA RETIREMENT CORPORATION
GOVERNMENTAL MONEY PURCHASE PLAN & TRUST
ADOPTION AGREEMENT



Account Number 10- 8827

The Employer hereby establishes a Money Purchase Plan and Trust to be known as (the "Plan") in the form of the ICMA Retirement Corporation Governmental Money Purchase Plan and Trust. The Plan shall be known as:

City of Gainesville Employees 401a Plan [906]

This Plan is an amendment and restatement of an existing defined contribution money purchase plan.

Yes No

If yes, please specify the name of the defined contribution money purchase plan which this Plan hereby amends and restates: _____

I. Employer Name: City of Gainesville [902]

II. The Effective Date of the Plan shall be the first day of the Plan Year during which the Employer adopts the Plan, unless an alternate Effective Date is hereby specified:
01/01/2005

III. Plan Year will mean:

The twelve (12) consecutive month period which coincides with the limitation year. (See Section 5.04(i) of the Plan.) [803]

The twelve (12) consecutive month period commencing on 01/01/2005 and each anniversary thereafter. [803]

IV. Normal Retirement Age (not to exceed age 65) shall be age 55. [288]

V. ELIGIBILITY REQUIREMENTS:

1. The following group(s) of Employees are eligible to participate in the Plan:

- All Employees
- All Full-Time Employees
- Salaried Employees
- Non-union Employees
- Management Employees
- Public Safety Employees
- General Employees
- Other (specify below):
All Regular Employees

The group specified must correspond to a group of the same designation that is defined in the statutes, ordinances, rules, regulations, personnel manuals or other material in effect in the state or locality of the Employer.

2. The Employer hereby waives or reduces the requirement of a twelve (12) month Period of Service for participation. The required Period of Service shall be N/A write N/A if an Employee is eligible to participate upon employment).

[344]

If this waiver or reduction is elected, it shall apply to all Employees within the Covered Employment Classification.

3. A minimum age requirement is hereby specified for eligibility to participate. The minimum age requirement is N/A (not to exceed age 21). Write N/A if no minimum age is declared.

[341]

VI. CONTRIBUTION PROVISIONS

REPLACE WITH ATTACHMENT

1. The Employer shall contribute as follows (choose one):

Fixed Employer Contributions With Or Without Mandatory Participant Contributions.

The Employer shall contribute on behalf of each Participant _____ % of earnings or \$ _____ for the Plan Year (subject to the limitations of Article V of the Plan). Each Participant is required to contribute _____ % of earnings or \$ _____ for the Plan Year as a condition of participation in the Plan. (Write "0" if no contribution is required.) If Participant Contributions are required under this option, a Participant shall not have the right to discontinue or vary the rate of such contributions after becoming a Plan Participant.

The Employer hereby elects to "pick up" the Mandatory/Required Participant Contribution.

Yes No

[621]

The pick-up provision specifies that the contribution is treated, for federal income tax purposes, as though it is made by the employer. The pick-up provision allows the employee to defer taxes on the employee mandatory contribution. The actual result is the same as if the contribution were a reduction in that employee's salary by the amount of the contribution. Picked up contributions are NOT exempt from Social Security tax

[Note to Employer: A determination letter issued to an adopting Employer is not a ruling by the Internal Revenue Service that Participant contributions that are picked up by the Employer are not includable in the Participant's gross income for federal income tax purposes. The Employer may seek such a ruling.

[Ricked up contributions are excludable from the Participant's gross income under section 414(h)(2) of the Internal Revenue Code of 1986 only if they meet the requirements of Rev. Rul. 81-35, 1981-1 C.B. 255. Those requirements are (1) that the Employer must specify that the contributions, although designated as employee contributions, are being paid by the Employer in lieu of contributions by the employee; and (2) the employee must not have the option of receiving the contributed amounts directly instead of having them paid by the Employer to the plan.]

Fixed Employer Match of Participant Contributions.

The Employer shall contribute on behalf of each Participant _____% of Earnings for the Plan Year (subject to the limitations of Article V of the Plan) for each Plan Year that such Participant has contributed _____% of Earnings or \$_____. Under this option, there is a single, fixed rate of Employer contributions, but a Participant may decline to make the required Participant contributions in any Plan Year, in which case no Employer contribution will be made on the Participant's behalf in that Plan Year.

Variable Employer Match Of Participant Contributions.

The Employer shall contribute on behalf of each Participant an amount determined as follows (subject to the limitations of Article V of the Plan):

_____ % of the contributions made by the Participant for the Plan Year (not including Participant contributions exceeding _____% of Earnings or \$_____);

PLUS _____% of the contributions made by the Participant for the Plan Year in excess of those included in the above paragraph (but not including Participant contributions exceeding in the aggregate _____% of Earnings or \$_____).

Employer Contributions on behalf of a Participant for a Plan Year shall not exceed \$_____ or _____% of Earnings, whichever is _____ more or _____ less.

2. Each Participant may make a voluntary (unmatched), after-tax contribution, subject to the limitations of Section 4.05 and Article V of the Plan.

Yes No

3. Employer contributions and Participant contributions shall be contributed to the Trust in accordance with the following payment schedule: (please circle one choice)

[611]

- | | | |
|----------------|-------------|------------------|
| 0 Bi-Weekly | 1 Weekly | 2 Semi-Weekly |
| 3 Bi-Monthly | 4 Monthly | 5 Semi-Monthly |
| 6 Bi-Quarterly | 7 Quarterly | 8 Semi-Quarterly |
| 9 Bi-Annually | 10 Annually | 11 Semi-Annually |

VII. EARNINGS

Earnings, as defined under Section 2.09 of the Plan, shall include:

- (a) Overtime Yes No
- (b) Bonuses Yes No

VIII. LIMITATION ON ALLOCATIONS

If the Employer maintains or ever maintained another qualified plan in which any Participant in this Plan is (or was) a participant or could possibly become a participant, the Employer hereby agrees to limit contributions to all such plans as provided herein, if necessary in order to avoid excess contributions (as described in Sections 5.02 and 5.03 of the Plan).

1. If the Participant is covered under another qualified defined contribution plan maintained by the Employer, the provisions of Section 5.02(a) through (f) of the Plan will apply unless another method has been indicated below.

- Other Method. (Provide the method under which the plans will limit total Annual Additions to the Maximum Permissible Amount, and will properly reduce any excess amounts, in a manner that precludes Employer discretion.)

2. If the Participant is or has ever been a participant in a defined benefit plan maintained by the Employer, and if the limitation in Section 5.03 of the Plan would be exceeded, then the Participant's Projected Annual Benefit under the defined benefit plan shall be reduced in accordance with the terms thereof to the extent necessary to satisfy such limitation. If such plan does not provide for such reduction, or if the limitation is still exceeded after the reduction, annual additions shall be reduced to the extent necessary in the manner described in Sections 5.02 and 5.02. The methods of avoiding the limitation described in this paragraph will not apply if the Employer indicates another method below.

- Other Method. (Note to Employer: Provide below language which will satisfy the 1.0 limitation of section 415(e) of the Code. Such language must preclude Employer discretion. See section 1.415-1 of the Regulations for guidance.)

3. The limitation year is the following 12-consecutive month period:
Calendar Year

IX. VESTING PROVISIONS

The Employer hereby specifies the following vesting schedule, subject to (1) the minimum vesting requirements as noted and (2) the concurrence of the Plan Administrator.

<u>Years of Service Completed</u>	<u>Percent Vesting</u>
Zero	<u>100</u> %
One	<u> </u> %
Two	<u> </u> %
Three	<u> </u> %
Four	<u> </u> %
Five	<u> </u> %
Six	<u> </u> %
Seven	<u> </u> %
Eight	<u> </u> %
Nine	<u> </u> %
Ten	<u> </u> %

- X. Loans are permitted under the Plan, as provided in Article XIII:

Yes No

[751]

- XI. The Employer hereby attests that it is a unit of state or local government or an agency or instrumentality of one or more units of state or local government.
- XII. The Plan Administrator hereby agrees to inform the Employer of any amendments to the Plan made pursuant to Section 14.05 of the Plan or of the discontinuance or abandonment of the Plan.
- XIII. The Employer hereby appoints the ICMA Retirement Corporation as the Plan Administrator pursuant to the terms and conditions of the ICMA RETIREMENT CORPORATION GOVERNMENTAL MONEY PURCHASE PLAN & TRUST.

The Employer hereby agrees to the provisions of the Plan and Trust.

- XIV. The Employer hereby acknowledges it understands that failure to properly fill out this Adoption Agreement may result in disqualification of the Plan.
- XV. An adopting Employer may not rely on a determination letter issued by the National or District Office of the Internal Revenue Service as evidence that the Plan is qualified under Section 401 of the Internal Revenue Code. In order to obtain reliance with respect to plan qualification, the Employer must apply to the appropriate key district office for a determination letter.

In Witness Whereof, the Employer hereby causes this Agreement to be executed on this _____ day of _____, 200_____.

EMPLOYER

By: _____

Title: Interim City Manager

Attest: _____

ACCEPTED: ICMA RETIREMENT CORPORATION

Paul F. Gallagher

Title: Corporate Secretary

Norma Richardson

Attest:

**ATTACHMENT TO THE CITY OF GAINESVILLE'S
GOVERNMENTAL MONEY PURCHASE PLAN AND TRUST
ADOPTION AGREEMENT
(PLAN #108827)**

Section VI.I. Fixed Employer Contributions With or Without Mandatory Participant Contributions.

A. The Employer shall contribute on behalf of each Participant 0% of Earnings or \$----- for the Plan Year (subject to the limitations of Article V of the Plan). Mandatory Participant Contributions

- are required
- are not required

to be eligible for this Employer Contribution.

B. Notwithstanding Section 4.03 of the Plan, each Employee eligible to participate in the Plan shall be given the opportunity to irrevocably elect to participate in the Mandatory Participant Contribution portion of the Plan by electing to contribute 5%, 15%, or 25% of the Employee's Earnings to the Plan for each Plan Year (subject to the limitations of Article V of the Plan). The Employer shall "pick-up" this contribution in accordance with Code section 414(h)(2). These contributions shall be accounted for in the Participant Contribution Account, and shall be nonforfeitable by the Participant at all times.

Newly eligible employees shall be provided an election window of 30 calendar days from the date of initial eligibility during which they may make the election to participate in the Mandatory Participant Contribution portion of the Plan. Participation in the Mandatory Participant Contribution portion of the Plan shall begin the first of the month following the end of the election window.

If the employee does not make an election in the initial year of eligibility, the election to participate in the Mandatory Participant Contribution portion of the Plan

- may
- may not

be made in a later year. If a later election is allowed, an annual election window of 30 calendar days shall be provided during which the election may be made. The election window shall run from November 1 to November 30. Participation in the Mandatory Participant Contribution portion of the Plan shall begin the first of the year following the year of the election.

An Employee's election is irrevocable and shall remain in force until the Employee terminates employment or ceases to be eligible to participate in the Plan. In the event of re-employment to an eligible position, the Employee's original election will resume. In no event does the Employee have the option of receiving the pick-up contribution amount directly.

DECLARATION OF TRUST

This Declaration of Trust (the "Group Trust Agreement") is made as of the 19th day of May, 2001, by **VantageTrust Company**, which declares itself to be the sole Trustee of the trust hereby created.

WHEREAS, the ICMA Retirement Trust was created as a vehicle for the commingling of the assets of governmental plans and governmental units described in Section 818(a)(6) of the Internal Revenue Code of 1986, as amended, pursuant to a Declaration of Trust dated October 4, 1982, as subsequently amended, a copy of which is attached hereto and incorporated by reference as set out below (the "ICMA Declaration"); and

WHEREAS, the trust created hereunder (the "Group Trust") is intended to meet the requirements of Revenue Ruling 81-100, 1981-1 C.B. 326, and is established as a common trust fund within the meaning of Section 391:1 of Title 35 of the New Hampshire Revised Statutes Annotated, to accept and hold for investment purposes the assets of the Deferred Compensation and Qualified Plans held by and through the ICMA Retirement Trust.

NOW, THEREFORE, the Group Trust is created by the execution of this Declaration of Trust by the Trustee and is established with respect to each Deferred Compensation and Qualified Plan by the transfer to the Trustee of such Plan's assets in the ICMA Retirement Trust, by the Trustees thereof, in accord with the following provisions:

1. **Incorporation of ICMA Declaration by Reference; ICMA By-Laws.** Except as otherwise provided in this Group Trust Agreement, and to the extent not inconsistent herewith, all provisions of the ICMA Declaration are incorporated herein by reference and made a part hereof, to be read by substituting the Group Trust for the Retirement Trust and the Trustee for the Board of Trustees referenced therein. In this respect, unless the context clearly indicates otherwise, all capitalized terms used herein and defined in the ICMA Declaration have the meanings assigned to them in the ICMA Declaration. In addition, the By-Laws of the ICMA Retirement Trust, as the same may be amended from time-to-time, are adopted as the By-Laws of the Group Trust to the extent not inconsistent with the terms of this Group Trust Agreement.

Notwithstanding the foregoing, the terms of the ICMA Declaration and By-Laws are further modified with respect to the Group Trust created hereunder, as follows:

- (a) any reporting, distribution, or other obligation of the Group Trust vis-à-vis any Deferred Compensation Plan, Qualified Plan, Public Employer, Public Employer Trustee, or Employer Trust shall be deemed satisfied to the extent that such obligation is undertaken by the ICMA Retirement Trust (in which case the obligation of the Group Trust shall run to the ICMA Retirement Trust); and
 - (b) all provisions dealing with the number, qualification, election, term and nomination of Trustees shall not apply, and all other provisions relating to trustees (including, but not limited to, resignation and removal) shall be interpreted in a manner consistent with the appointment of a single corporate trustee.
2. **Compliance with Revenue Procedure 81-100.** The requirements of Revenue Procedure 81-100 are applicable to the Group Trust as follows:
 - (a) Pursuant to the terms of this Group Trust Agreement and Article X of the By-Laws, investment in the Group Trust is limited to assets of Deferred Compensation and Qualified Plans, investing through the ICMA Retirement Trust.

- (b) Pursuant to the By-Laws, the Group Trust is adopted as a part of each Qualified Plan that invests herein through the ICMA Retirement Trust.
 - (c) In accord with the By-Laws, that part of the Group Trust's corpus or income which equitably belongs to any Deferred Compensation and Qualified Plan may not be used for or diverted to any purposes other than for the exclusive benefit of the Plan's employees or their beneficiaries who are entitled to benefits under such Plan.
 - (d) In accord with the By-Laws, no Deferred Compensation Plan or Qualified Plan may assign any or part of its equity or interest in the Group Trust, and any purported assignment of such equity or interest shall be void.
3. **Governing Law.** Except as otherwise required by federal, state or local law, this Declaration of Trust (including the ICMA Declaration to the extent incorporated herein) and the Group Trust created hereunder shall be construed and determined in accordance with applicable laws of the State of New Hampshire.
4. **Judicial Proceedings.** The Trustee may at any time initiate an action or proceeding in the appropriate state or federal courts within or outside the state of New Hampshire for the settlement of its accounts or for the determination of any question of construction which may arise or for instructions.

IN WITNESS WHEREOF, the Trustee has executed this Declaration of Trust as of the day and year first above written.

VANTAGETRUST COMPANY

By: Paul F. Gallagher

Name: Paul F. Gallagher

Title: Assistant Secretary