

ICMA Retirement Corporation
doing business as **MissionSquare Retirement**

Adoption Information

401 Profit-Sharing Plan
Document Restatement

MissionSquare
RETIREMENT



**MissionSquare Retirement
401 Profit-Sharing Plan Document Restatement**

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Plan Document Restatement Process

Adopting the amended and restated **MissionSquare Retirement Governmental Profit-Sharing Plan** is easy and will ensure that your plan is updated in accordance with current IRS regulations.

Six-Year IRS Review Schedule

The IRS has a six-year review schedule for the 401 plan documents MissionSquare Retirement makes available to public sector employers, to ensure they're updated to reflect legislative and regulatory changes. Following the IRS schedule, we submitted updated plan documents for IRS review and approval in 2018, and the IRS provided us with favorable opinion letters for the new documents in 2020.

New, Easier Paperless Adoption Process

We're partnering with ftwilliam.com, a subsidiary of Wolters Kluwer, to provide a paperless process. An authorized plan representative will simply need to access the agreement online, review it, and sign it on or before March 15, 2022.

Individually Designed Plan Documents

If your plan uses an individually designed plan document, check with your plan's legal counsel to ensure your document is updated in accordance with IRS regulations. You may find value in reviewing the MissionSquare Retirement documents, as the information may be helpful as you consider future amendments. Now may also be a good time to consider adopting MissionSquare Retirement's model plan documents.

Need Assistance?

As always, contact MissionSquare Plan Services at (800) 326-7272 with any questions.

Instructions for Adopting the New Plan Document

- STEP 1:** Review the Overview section on page 4 of this document for important information related to the new document and the adoption process.
- STEP 2:** Determine whether any formal action is required by your legislative body and/or plan administrative committee to adopt the new plan document. If action is required, refer to the suggested affirmative statement or suggested resolution (as applicable) on pages 6 and 7.
- STEP 3:** Review and sign an updated adoption agreement for your plan.
- **Log into the Plan Sponsor website** - A plan representative authorized to sign plan documents should log into EZLink to access the 401 Restatement Portal. (On the Plan Documents page, select your 401 plan, then select Forms & Publications, then Plan Documents.)
 - **Access the 401 Restatement Portal by clicking Go to Plan Documents within EZLink** - Review the updated adoption agreement, which has been pre-populated to reflect your plan's previous elections wherever possible. If no changes are necessary, and your plan doesn't use an explanatory addendum or attachment that must be updated, sign the agreement as indicated in the portal.
 - *Addendums/Attachments* - If you've previously included an addendum/attachment with your adoption agreements, you'll likely need to submit an updated document with your new adoption agreement. Modifying the language in the plan document may prevent your plan from being able to rely on the favorable IRS letter we received. If your addendum modifies any provision of the plan in a material way, our IRS letter will not cover your plan.
 - 401(k) plan sponsors can only review the Bipartisan Budget Act (BBA) Amendment and determine if they'd like to adopt any of the new features. This document will automatically append to 401 Profit-Sharing Plans as required by law, but generally only applies to 401 Profit-Sharing Plans with the 401(k) feature. As changes are made to the base plan document, profit-sharing plan sponsors are also required to sign the BBA Amendment.
- STEP 4:** Save your completed documents for your records.

If you have any questions, email MissionSquare Plan Adoption Services at planadoptionservices@msqplanservices.org.

Overview/Q&A

Why do plan sponsors need to sign a new adoption agreement?

The IRS requires documents to be updated in accordance with legislative and regulatory changes. We received a favorable opinion letter from the IRS indicating that our document had been updated properly, and plan sponsors who use our document are required to adopt the new/restated document as soon as possible.

What has changed?

While the plan document has been updated in accordance with IRS guidelines, it's largely unchanged, with these key exceptions:

- **457 Deferred Compensation Plan Matching Contributions** - The 401 document now includes an *option* for employer matching contributions based on a participant's elective deferrals to a 457 Deferred Compensation Plan. Plans that include this type of matching contribution no longer need to submit an attachment or addendum with their adoption agreement.
- **In-Service Withdrawals** - Withdrawals participants can take while employed are no longer limited to two per year. This only applies to plans that offer in-service withdrawals.
- **Trust Document** - The IRS has mandated that the trust document become a separate stand-alone document. No action is needed unless you are opening a new plan, in which case you'll need to sign a trust agreement.
- **The Bipartisan Budget Act** - Only applicable to 401 Profit-Sharing Plans that have the 401(k) feature, this legislation added some additional options pertaining to hardship withdrawals available in 401(k) plans. These options don't generally apply to 401 Profit-Sharing Plans, but they are required additions to the plan, and profit-sharing plan sponsors are required to sign.

Can we make changes to certain provisions of our plan?

Yes. If you determine that changes are necessary, contact our Plan Adoption Services Team at planadoptionervices@msqplanservices.org and they'll work with you to make the necessary changes.

Time Frame

Submit your adoption agreement on or before March 15, 2022. This will allow sufficient time for us to process your agreement before the IRS deadline of July 31, 2022.

Failure to execute a new adoption agreement will put the plan at risk of losing its qualified status.

Questions

If you have any questions, email MissionSquare Plan Adoption Services at planadoptionervices@msqplanservices.org.

Trust Agreement

MissionSquare Retirement Governmental Profit-Sharing Plan Trust Agreement

The Employer hereby adopts and designates this Trust ("the Trust") to receive and hold the assets of the MissionSquare Retirement Governmental Profit-Sharing Plan ("the Plan"). The Trust is adopted and designated in accordance with Section 2.24 of the Plan. The Trust shall hold all of the assets of the Plan derived from Employer and Employee contributions under the Plan, plus any income and gains thereon, less any losses, expenses and distributions to Participants and Beneficiaries. All capitalized terms in this instrument shall be interpreted consistent with Article II of the Plan.

- I. **Trust.** A trust is hereby created to hold all of the assets of the Plan for the exclusive benefit of Participants and Beneficiaries, except that taxes and expenses may be paid from the Trust as provided in Section III below. The trustee shall be the Employer or such other person which agrees to act in that capacity hereunder.
- II. **Investment Powers.** The trustee or the Plan Administrator, acting as agent for the trustee, shall have the powers listed in this Section II with respect to investment of the Trust assets, except to the extent that the investment of the Trust assets is controlled by Participants, pursuant to Sections 6.01 and 13.03 of the Plan.
 - (a) To invest and reinvest the Trust without distinction between principal and income in common or preferred stocks, shares of regulated investment companies and other mutual funds, bonds, notes, debentures, mortgages, certificates of deposit, contracts with insurance companies including but not limited to insurance, individual or group annuity, deposit administration, guaranteed interest contracts, and deposits at reasonable rates of interest at banking institutions including but not limited to savings accounts and certificates of deposit. Assets of the Trust may be invested in securities that involve a higher degree of risk than investments that have demonstrated their investment performance over an extended period of time.
 - (b) To invest and reinvest all or any part of the assets of the Trust in any common, collective or commingled trust fund that is maintained by a bank or other institution and that is available to employee plans qualified under section 401 of the Code, or any successor provisions thereto, and during the period of time that an investment through any such medium shall exist, to the extent of participation of the Plan, the declaration of trust of such common, collective, or commingled trust fund shall constitute a part of the Plan.
 - (c) To invest and reinvest all or any part of the assets of the Trust in any group annuity, deposit administration or guaranteed interest contract issued by an insurance company or other financial institution on a commingled or collective basis with the assets of any other plan or trust qualified under section 401(a) of the Code or any other plan described in section 401(a)(24) of the Code, and such contract may be held or issued in the name of the Plan Administrator, or such custodian as the Plan Administrator may appoint, as agent and nominee for the Employer. During the period that an investment through any such contract shall exist, to the extent of participation of the Plan, the terms and conditions of such contract shall constitute a part of the Plan.

- (d) To hold cash awaiting investment and to keep such portion of the Trust in cash or cash balances, without liability for interest, in such amounts as may from time to time be deemed to be reasonable and necessary to meet obligations under the Plan or otherwise to be in the best interests of the Plan.
- (e) To hold, to authorize the holding of, and to register any investment to the Trust in the name of the Plan, the Employer, or any nominee or agent of any of the foregoing, including the Plan Administrator, or in bearer form, to deposit or arrange for the deposit of securities in a qualified central depository even though, when so deposited, such securities may be merged and held in bulk in the name of the nominee of such depository with other securities deposited therein by any other person, and to organize corporations or trusts under the laws of any jurisdiction for the purpose of acquiring or holding title to any property for the Trust, all with or without the addition of words or other action to indicate that property is held in a fiduciary or representative capacity but the books and records of the Plan shall at all times show that all such investments are part of the Trust.
- (f) Upon such terms as may be deemed advisable by the Employer or the Plan Administrator, as the case may be, for the protection of the interests of the Plan or for the preservation of the value of an investment, to exercise and enforce by suit for legal or equitable remedies or by other action, or to waive any right or claim on behalf of the Plan or any default in any obligation owing to the Plan, to renew, extend the time for payment of, agree to a reduction in the rate of interest on, or agree to any other modification or change in the terms of any obligation owing to the Plan, to settle, compromise, adjust, or submit to arbitration any claim or right in favor of or against the Plan, to exercise and enforce any and all rights of foreclosure, bid for property in foreclosure, and take a deed in lieu of foreclosure with or without paying consideration therefor, to commence or defend suits or other legal proceedings whenever any interest of the Plan requires it, and to represent the Plan in all suits or legal proceedings in any court of law or equity or before any body or tribunal.
- (g) To employ suitable consultants, depositories, agents, and legal counsel on behalf of the Plan.
- (h) To open and maintain any bank account or accounts in the name of the Plan, the Employer, or any nominee or agent of the foregoing, including the Plan Administrator, in any bank or banks.
- (i) To do any and all other acts that may be deemed necessary to carry out any of the powers set forth herein.

III. Taxes and Expenses. All taxes of any and all kinds whatsoever that may be levied or assessed under existing or future laws upon, or in respect to the Trust, or the income thereof, and all commissions or acquisitions or dispositions of securities and similar expenses of investment and reinvestment of the Trust, shall be paid from the Trust. Such reasonable compensation of the Plan Administrator, as may be agreed upon from time to time by the Employer and the Plan Administrator, and reimbursement for reasonable expenses incurred by the Plan Administrator in performance of its duties hereunder (including but not limited to fees for legal, accounting, investment and custodial services) shall also be paid from the Trust. However, no person who is a fiduciary within the meaning of section 3(21)(A) of ERISA and regulations promulgated thereunder, and who receives full-time pay from the Employer may receive compensation from the Trust, except for expenses properly and actually incurred.

- IV. Payment of Benefits.** The payment of benefits from the Trust in accordance with the terms of the Plan may be made by the Plan Administrator, or by any custodian or other person so authorized by the Employer to make such disbursement. Benefits under the Plan shall be paid only if the Plan Administrator, custodian or other person, or the Employer if directing such person, decides in his/her discretion that the applicant is entitled to them. The Plan Administrator, custodian or other person shall not be liable with respect to any distribution of Trust assets made at the direction of the Employer.

- V. Valuation of Accounts.** As of each Accounting Date, the Plan assets held in each investment fund offered shall be valued at fair market value and the investment income and gains or losses for each fund shall be determined. Such investment income and gains or losses shall be allocated proportionately among all Account balances on a fund-by-fund basis. The allocation shall be in the proportion that each such Account balance as of the immediately preceding Accounting Date bears to the total of all such Account balances, as of that Accounting Date. For purposes of this Trust, all Account balances include the Account balances of all Participants and Beneficiaries.

- VI. Participant Loan Accounts.** Participant Loan Accounts shall be invested in accordance with Section 13.03 of the Plan. Such Accounts shall not share in any investment income and gains or losses of the investment funds described in Section 6.01.

SIGNATURE & DATE

Employer & Trustee: _____ (“the Employer”)

Signature of Authorized Representative: _____

Print Name: _____

Title: _____

Attest: _____

Date: __/__/____
 (M) (D) (Y)

52582-0621-W2778

**AFFIRMATIVE STATEMENT
FOR ADOPTING A SECTION 401 PROFIT-SHARING PLAN**

Name of Employer: _____ State: _____ Plan Number: **10**_____

WHEREAS, the Employer has employees rendering valuable services; and

WHEREAS, the establishment of a profit-sharing retirement plan serves the interest of the Employer by enabling it to provide reasonable retirement security for its employees, by providing increased flexibility in its personnel management system, and by assisting in the attraction and retention of competent personnel; and

WHEREAS, the Employer hereby adopts or has previously adopted the Declaration of Trust of VantageTrust Company dated May 2001, intending this execution to be operative with respect to any retirement or deferred compensation plan subsequently established, if the assets of the plan are to be invested in the trust created by such Declaration of Trust (the "VantageTrust");

NOW THEREFORE, as a duly authorized agent of the Employer, I hereby:

ESTABLISH or REESTABLISH the Employer's 401(a) profit-sharing plan (the "Plan") in the form of the:

MissionSquare Retirement Governmental Profit-Sharing Plan, pursuant to the specific provisions of the Adoption Agreement (executed copy attached hereto); or

The plan document provided by the Employer (executed copy attached hereto).

SPECIFY that the assets of the Plan shall be held in trust, with the Employer serving as trustee ("Trustee"), for the exclusive benefit of the Plan participants and their beneficiaries. The assets shall be invested in the VantageTrust or in other qualified investment options of the Plan ("Plan Assets"), and they shall not be diverted to any other purpose. The Employer's beneficial ownership of Plan Assets shall be held for the further exclusive benefit of the Plan participants and their beneficiaries;

SPECIFY that the _____ (title) shall be the coordinator for the Plan; shall receive reports, notices, etc., from MissionSquare Retirement or the VantageTrust; shall cast, on behalf of the Employer, any required votes under the VantageTrust; may delegate any administrative duties relating to the Plan to appropriate departments; and is authorized to execute all necessary agreements with MissionSquare Retirement incidental to the administration of the Plan; and

AFFIRM that the Employer hereby agrees to serve as Trustee under the Plan.

Date: _____

(Title of Designation Agent)

(Signature)

RESOLUTION FOR A LEGISLATIVE BODY RELATING TO A PROFIT-SHARING PLAN

Resolution of _____ (Employer Name).

Plan Number: **10**_____

WHEREAS, the Employer has employees rendering valuable services; and

WHEREAS, the establishment of a profit-sharing retirement plan benefits employees by providing funds for retirement and funds for their beneficiaries in the event of death; and

WHEREAS, the Employer desires that its profit-sharing retirement plan be administered by MissionSquare Retirement:

NOW THEREFORE BE IT RESOLVED that the Employer hereby establishes or has established a profit-sharing retirement plan (the "Plan") in the form of: (Select one)

- The MissionSquare Retirement Governmental Profit-Sharing Plan, pursuant to the specific provisions of the Adoption Agreement (executed copy attached hereto).
- The plan document provided by the Employer (executed copy attached hereto).

The Plan shall be maintained for the exclusive benefit of eligible employees and their beneficiaries; and

BE IT FURTHER RESOLVED that the Employer hereby adopts the Declaration of Trust of VantageTrust Company dated May 2001, intending this adoption to be operative with respect to any retirement or deferred compensation plan subsequently established by the Employer, if the assets of the Plan are to be invested in the trust created by such Declaration of Trust (the "VantageTrust") that provides for the commingled investment of retirement funds.

BE IT FURTHER RESOLVED that the Employer hereby agrees to serve as trustee under the Plan and to invest funds held under the Plan in the VantageTrust or in any other qualified investment options for the plan; and

BE IT FURTHER RESOLVED that the _____ use title of official, not name) shall be the coordinator for the Plan; shall receive reports, notices, etc., from MissionSquare Retirement or the VantageTrust; shall cast, on behalf of the Employer, any required votes under the VantageTrust; may delegate any administrative duties relating to the Plan to appropriate departments; and

BE IT FURTHER RESOLVED that the Employer hereby authorizes _____ (use title not name) to execute all necessary agreements with MissionSquare Retirement incidental to the administration of the Plan.

I, _____ Clerk of the _____ (City, County, etc.) of _____, do hereby certify that the foregoing resolution proposed by _____ (Council Member, Trustee, etc.) of _____, was duly passed and adopted by the _____ (Council, Board, etc.) of _____ the (City, County, etc.) of _____ at a regular meeting thereof assembled this _____ day of _____, 20 _____, by the following vote:

AYES:
NAYS:
ABSENT:
(SEAL)

Clerk of the (City, County, etc.)

Plan Sponsors Using Individually Designed Plan Documents

If you use your own individually designed plan, check with your plan's legal counsel to ensure your document is up to date.

Are you interested in adopting MissionSquare Retirement's standard plan document?

If you decide that you no longer want to maintain an individually designed plan document, you may adopt MissionSquare's Governmental Profit-Sharing Plan document by following the instructions on page 3.

Adopting MissionSquare's plan document provides the following additional advantages:

- MissionSquare's 401 plan document is generally designed to provide employers and participants with as much flexibility as possible within IRS guidelines.
- Adopting MissionSquare's 401 plan document relieves you from the burden and cost of continually reviewing and revising your plan document in response to changes in the Internal Revenue Code (IRC) and related regulations. MissionSquare maintains the document in compliance with all IRC and regulatory requirements.
- MissionSquare seeks favorable private letter rulings respecting the plan's eligibility status from the IRS for its 401 plan documents. This is important because a plan deemed ineligible by the IRS could result in a significant tax liability to all plan participants.

Instructions

Follow the instructions on page 3 to adopt the MissionSquare plan document. In addition to submitting an adoption agreement for the plan, you'll need to submit an affirmative statement or resolution as well as the trust agreement. The trust agreement is provided on page 4, and templates you may utilize for your affirmative statement or resolution are provided for your convenience on pages 6 and 7, respectively.

Please retain for your records any documents you return to MissionSquare Retirement. These documents will be part of your formal plan document.