

RESOLUTION ^{# 71}

A RESOLUTION AMENDING THE CHESTERFIELD FLEXIBLE BENEFIT PLAN.

WHEREAS, the City of Chesterfield on December 19, 1988, passed a resolution adopting and making available to the employees of the City of Chesterfield a Flexible Benefit Plan under Section 125 of the Internal Revenue Code; and

WHEREAS, it has been determined that in addition to the benefits as provided by the original adoption of this plan, it would be in the best interests of the City of Chesterfield and of its employees, to provide a supplemental life insurance program to be available through the Flexible Benefits Program.

NOW THEREFORE BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF CHESTERFIELD, ST. LOUIS COUNTY, MISSOURI, AS FOLLOWS:

The City Council hereby readopts and establishes the City of Chesterfield Flexible Benefits Plan to include a supplemental life insurance provision, which shall be administered in accordance with Section 125 of the Internal Revenue Code.

Passed and adopted this 4th day of DECEMBER, 1989.

Judith M. Heston
MAYOR

ATTEST:

Lynne Greene
Deputy CITY CLERK

**CITY OF CHESTERFIELD
FLEXIBLE BENEFIT PLAN**

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CITY OF CHESTERFIELD
FLEXIBLE BENEFIT PLAN

ARTICLE 1

Preamble

The purpose of this Plan is to permit Members to choose among fringe benefits available to be purchased on their behalf by the Employers. This Plan is intended to be a cafeteria plan as defined in section 125(d) of the Code.

The provisions of this Plan shall be effective as of January 1, 1989.

ARTICLE 2

Definitions

Each word and phrase defined in this Article 2 shall have the following meaning whenever such word or phrase is capitalized and used herein unless a different meaning is clearly required by the context of the Plan.

Section 2.01 Account. The individual account established on the books of the Employers under Section 9.01 in the name of each Member for the purpose of accounting for contributions allocated to and benefits paid for a Member.

Section 2.02 Council. The City Council of the City.

Section 2.03 Committee. The City of Chesterfield Employee Benefits committee as described in Section 10.01.

Section 2.04 Code. The Internal Revenue Code of 1986, as amended from time to time.

Section 2.05 City. City of Chesterfield

Section 2.06 Compensation. A Member's basic pay, including bonuses, overtime and commissions, as determined by the Committee, for personal services rendered in the course of employment with the City, including contributions under Section 4.01 on a Member's behalf.

Section 2.07 Employee. Any person employed by the City who is eligible for benefits under a Medical Plan but excluding any person covered by a collective bargaining agreement between an Affiliated Company and a bargaining unit of employees, unless

coverage under this Plan is provided for under the collective bargaining agreement.

Section 2.08 Employer. The City of Chesterfield.

Section 2.09 ERISA. The Employee Retirement Income Security Act of 1974, as amended from time to time.

Section 2.10 Highly Compensated Member. A Member who is:

- (a) an officer;
- (b) a shareholder owning more than 5 percent of the voting power or value of all classes of stock;
- (c) otherwise treated as highly compensated under section 125 of the Code; or
- (d) a spouse or dependent (within the meaning of Code section 152) of one of the above.

Section 2.11 Medical Plan. Any plan of the City other than this Plan which provides medical care benefits (including dental care benefits) for employees generally.

Section 2.12 Member. Any Employee who has become eligible to participate in the Plan in accordance with Section 3.01 and who has not ceased to be an Employee.

Section 2.13 Period of Coverage. The Plan Year, except that it may be a fraction of a Plan Year as provided in Section 5.03.

Section 2.14 Plan The City of Chesterfield Flexible
Benefit Plan, as set forth herein.

Section 2.15 Plan Year. January 1 to December 31.

ARTICLE 3

Eligibility Requirements

Section 3.01 Eligibility. An Employee shall become a Member as of the later of:

- (a) January 1, 1989
- (b) the date the Employee becomes eligible for coverage under a Medical Plan;
- (c) the date of the Employee's coverage under this Plan through the adoption of this Plan by the Employee's employing entity; or
- (d) the date the Employee makes his or her salary reduction election.

Section 3.02 Enrollment and Membership. The Committee shall notify in writing each Employee who becomes a Member of the Plan and shall explain the rights, privileges and duties of a Member of the Plan. Each Member may elect to participate as of the date on which he or she becomes eligible in accordance with Section 3.01 by completing and delivering to the Committee an election of benefits form on the forms provided therefor by the Committee. Participants in the Medical Plan, as described in Sections 4.01 and 6.02, will be considered as having elected to participate in the Plan unless they deliver a form to the Committee waiving participation in the Plan.

ARTICLE 4

Contributions

Section 4.01 Insurance Contributions. For any Plan Year, each Member may elect to have contributed to his or her Account a specified amount of his or her Compensation for such Plan Year to pay for benefits under a Medical Plan. The amount of such contributions shall be determined in accordance with the type of coverage the Member elects under his or her Medical Plan and in accordance with the terms of such Plan. The maximum amount which a Member may elect shall be the maximum contribution which may be elected by such Member under such Medical Plan.

ARTICLE 5

Elections

Section 5.01 In General. Elections of contributions and benefits shall be made at the time, in the manner and subject to the conditions specified by the Committee which shall prescribe uniform and nondiscriminatory rules for such elections. Members may elect whether or not to have salary reduction contributions made on their behalf to a Medical Plan under Section 4.01. The Committee may require either that a Member affirmatively elect salary reduction contributions or affirmatively elect not to have salary reduction contributions made on his or her behalf.

Section 5.02 Period of Coverage. Except as provided in Sections 5.03 and 5.05, any Member electing contributions and benefits must make an irrevocable election for a Period of Coverage of an entire Plan Year.

Section 5.03 Fractional Periods of Coverage. Members who become eligible to participate in the middle of a Plan Year may elect to participate during a Period of Coverage which lasts until the end of the current Plan Year. In such cases, the interval commencing the day after their elections are made and ending at the end of the current Period of Coverage shall be deemed to be their Period of Coverage. Such Members must elect to participate no later than 30 days after becoming eligible to do so or within such other time limit as the Committee may prescribe.

Section 5.04 Timing of Elections. Elections of contributions and benefits for a Period of Coverage shall be made prior to such Period of Coverage, provided that where a Member commences or recommences participation in the middle of a Period of Coverage, he or she shall make elections prior to commencement of participation.

Section 5.05 Changes of Election. Elections of contributions and/or benefits may not be changed in the middle of a Period of Coverage unless:

(a) such change is on account of and consistent with a change in family status or such other change which, pursuant to Code section 125 and the regulations thereunder, permits an event in such election (e.g., because of marriage, divorce, death of a spouse or dependent or other decrease in the number of a Member's dependents, birth or adoption of a child or other increase in the number of a Member's dependents, or change in the employment status of a Member of his or her spouse);

(b) the Committee rules permit such a change; and

(c) if applicable, such change is permitted by the Medical Plan covering the Member.

For purposes of this Section, a failure to elect shall be considered an election and a change from or to a zero amount of contributions shall be considered a change of an election. Changes in elections shall only be effective as to contributions and benefits following the effective date of such changes.

Section 5.06 Medical Plans. Elections of contributions and benefits under Section 4.01 shall be subject to the rules governing elections of benefits under a Member's Medical Plan.

ARTICLE 6

Benefits

Section 6.01 Benefits Available. Subject to Article 9, Members may elect one or more of the following benefits;

- (a) Medical Plan Benefits.
- (b) Cash.

Section 6.02 Medical Plan Benefits. Contributions under Section 4.01 may be used to purchase benefits under a Medical Plan for the Member, and his or her spouse and dependents (as defined in Code section 105(b)), subject to the limitations on coverage and benefits provided by the terms of such Plan.

Section 6.03 Cash Benefits. Members may also receive cash benefits in lieu of salary reduction to fund the benefits described in Sections 6.01(a). Cash benefits in any Plan Year shall be equal to the maximum permissible salary reduction which the Member could elect under Section 4.01 for such Plan Year less salary reduction contributions actually elected by the Member under such sections.

ARTICLE 7

Limitations on Benefits

Section 7.01 Coverage. Amounts for a particular Benefit may only be paid for expenses incurred during the Period of Coverage elected for such Benefit and only from contributions made for such Benefit during such Period of Coverage.

Section 7.02 Medical Plan. Coverage and limitations for a Member's Medical Plan benefits shall be as set forth in the Member's Medical Plan.

ARTICLE 8

Nondiscrimination

Section 8.01 Reduction of Contributions and Benefits. The Committee may reject any election and reduce the amount of contributions or nontaxable benefits to the extent the Committee deems necessary to assure that the Plan does not discriminate in favor of Highly Compensated Members in violation of Code section 125 or any other applicable provision of law or to prevent taxation of key employees under the provisions of Code section 125(b) (2). Any rejection of elections or any reduction of contributions or benefits shall be made by the Committee on a reasonable and nondiscriminatory basis. Contributions which may not be paid out because of benefit reductions imposed by this Section 8.01 shall be forfeited.

Section 8.02 Prohibition of Discrimination. Any discretionary acts to be taken under the terms and provisions of this Plan by the Committee or by the Employers shall be uniform in their nature and application to all those similarly situated, and no discretionary acts shall be taken that would be discriminatory under the provisions of the Code relating to cafeteria plans, medical reimbursement plans or dependent care assistance plans as such provisions now exist or may from time to time be amended.

ARTICLE 9

Accounts

Section 9.01 Accounts. A separate Account shall be maintained for each Member to reflect the amount of contributions on his or her behalf under Article 4 and the cost of all benefits paid to the Member or on the Member's behalf under the Plan with subaccounts for each of the possible Benefits.

Section 9.02 Contributions Made. Contributions on behalf of a Member shall be credited to the Account and appropriate subaccount of such Member.

Section 9.03 Benefits Provided. The cost of benefits provided to a Member shall be charged to the Account and appropriate subaccount of such Member.

Section 9.04 Assignment of Benefits. Any interest in a Member's Account may not be assigned, transferred or alienated in any manner whatsoever by any Member or beneficiary.

ARTICLE 10

Administration of the Plan

Section 10.01 Appointment of the Committee. The administration of the Plan, as provided herein, including the payment of all benefits to Members or their beneficiaries, shall be the responsibility of the City of Chesterfield Employee Benefits Committee, which shall be the administrator of the Plan. In addition, the Committee and each member thereof shall be named fiduciaries of the Plan. The Committee shall consist of a Chairperson and at least two other persons appointed from time to time by the Company who shall serve at the pleasure of the Board, without compensation, unless otherwise determined by the Board.

Section 10.02 Conduct of Committee Business. The Committee shall elect its Chairperson who shall be a member of the Committee and a Secretary who may or may not be a member of the Committee. It shall appoint such subcommittees as it shall deem necessary and appropriate. The Committee shall conduct its business according to the provisions of this Article 11 and shall hold regular meetings in any convenient location. A majority of all of the members of the Committee shall have power to act, and the concurrence or dissent of any member may be by telephone, wire, cablegram or letter.

Section 10.03 Records and Reports of the Committee. The Committee shall keep such written records as it shall deem

necessary or proper, which records shall be open to inspection by the City. The Committee shall prepare and submit to the City an annual report which shall include such information as the Committee deems necessary or advisable.

Section 10.04 Administrative Powers and Duties. The Committee shall have the power to take all actions required to carry out the provisions of the Plan and shall further have the following powers and duties, which shall be exercised in a manner consistent with the provisions of the Plan:

(a) To construe and interpret the provisions of the Plan, and make rules and regulations under the Plan to the extent deemed advisable by the Committee;

(b) To decide all questions as to eligibility to become a Member in the Plan and as to the rights of Members under the Plan;

(c) To file or cause to be filed all such annual reports, returns, schedules, descriptions, financial statements and other statements as may be required by any federal or state statute, agency, or authority;

(d) To obtain from the City and Employees such information as shall be necessary to the proper administration of the Plan;

(e) To determine the amount, manner, and time of payment of benefits hereunder;

(f) To contract with such insurance carriers or other

suppliers as may be necessary to provide for benefits;

(g) To communicate to any insurer or other contract supplier of benefits under this Plan in writing all information required to carry out the provisions of the Plan;

(h) To notify the Members of the Plan in writing of any amendment or termination of the Plan, or of a change in any benefits available under the Plan;

(i) To prescribe such forms as may be required for Employees to make elections under this Plan; and

(j) To do such other acts as it deems reasonably required to administer the Plan in accordance with its provisions, or as may be provided for or required by law.

Section 10.05 Fiduciary Duties. The Committee and any other fiduciary within the meaning of ERISA shall discharge their duties solely in the interest of Members and their beneficiaries and:

(a) for the exclusive purpose of providing benefits to Members and their beneficiaries and defraying reasonable expenses of administering the Plan;

(b) with the care, skill, prudence, and diligence under the circumstances then prevailing that a prudent man acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of a like character and with like aims;

(c) to the extent a fiduciary possesses and exercises investment responsibilities, by diversifying investments so as

to minimize the risk of large losses, unless under the circumstances it is clearly prudent not to do so; and

(d) in accordance with the documents and instruments governing the Plan insofar as such documents and instruments are consistent with the provisions of ERISA.

Section 10.06 Allocation or Delegation of Duties and Responsibilities. In furtherance of their duties and responsibilities under the Plan, the Committee and the Council may, subject always to the requirements of Section 10.05,

(a) Employ agents to carry out nonfiduciary responsibilities;

(b) Employ agents to carry out fiduciary responsibilities (other than trustee responsibilities as defined in section 405(c)(3) of ERISA);

(c) Consult with counsel, who may be of counsel to the City; and

(d) Provide for the allocation of fiduciary responsibilities (other than trustee responsibilities as defined in section 405(c)(3) of ERISA) among Committee members, in the case of the Committee, and among members of the Council, in the case of the Board.

Section 10.07 Procedure for the Allocation or Delegation of Fiduciary Duties. Any action described in subsections (b) or (d) of Section 10.06 may be taken by the Committee or the Council only in accordance with the following Procedure:

(a) Such action shall be taken by a majority of the Committee or the Council, as the case may be, in a resolution approved by a majority of such Committee or Council;

(b) The vote cast by each member of the Committee or the Council for or against the adoption of such resolution shall be recorded and made a part of the written record of the Committee's or Council's proceedings; and

(c) Any delegation of fiduciary responsibilities or any allocation of fiduciary responsibilities among members of the Committee or the Council may be modified or rescinded by the Committee or the Council according to the procedure set forth in subsections (a) and (b) of this Section 10.07.

ARTICLE 11

Amendment and Termination

Section 11.01 Amendment of Plan. The Council or the committee may amend any or all provisions of this Plan at any time by written instrument identified as an amendment of the Plan effective as of a specified date.

Section 11.02 Termination of Plan. The City establishes the Plan with the intention of maintaining it indefinitely. However, since future conditions effecting the City cannot be anticipated or foreseen, the City must necessarily and does hereby reserve the right to terminate the Plan at any time.

Section 11.03 Preservation of Rights. Termination or amendment of the Plan shall not affect the rights of any Member in his or her Account, or the right to claim reimbursement for expenses incurred prior to such termination or amendment as the case may be, to the extent such amount is payable under the terms of the Plan prior to the effective date of such termination or amendment.

ARTICLE 12

Adoption of Plan

Section 12.01 In General. The Plan may be adopted by the City with the approval of the Council. In addition, the Plan may be separately adopted by separate business units within the City provided that such adoption is with the approval of the Council. Any entity adopting the Plan shall file a notice of adoption with the Committee which shall specify which of its Employees are covered by the Plan, and the effective date or dates of the adoption.

ARTICLE 13

Miscellaneous

Section 13.01 Funding. The obligations of the Employers under this Plan may but need not be funded through contributions to a trust or otherwise. Nothing contained in the Plan shall give a Member any right, title or interest in any property of the City.

Section 13.02 Indemnification. To the extent permitted by law, the Employers shall indemnify and hold harmless the Committee, Members, and Employee, and any other person or persons to whom the Employers or the Committee have delegated fiduciary or other duties under the Plan, against any and all claims, losses, damages, expenses, and liabilities arising from any act or failure to act that constitutes or is alleged to constitute a breach of such person's responsibilities in connection with the Plan under ERISA or any other law, unless the same is determined to be due to gross negligence, willful misconduct, or willful failure to act.

Section 13.03 Titles and Headings. The titles and headings of the Articles and Sections of this instrument are placed herein for convenience of reference only, and in the case of any conflicts, the text of this instrument, rather than the titles or headings, shall control.

Section 13.04 Number. Wherever used herein, the singular shall include the plural and the plural shall include the singular, except where the context requires otherwise.

Section 13.05 Applicable Law. The provisions of this Plan shall be construed according to the laws of the State of Missouri, except as superseded by federal law, and in accordance with the Code and ERISA. The Plan is intended to be a cafeteria plan under section 125(d) of the Code, and shall be construed accordingly.

Section 13.06 Assignment of Benefits. Any interest under the Plan may not be assigned, transferred or alienated in any manner whatsoever by any Member of beneficiary.

IN WITNESS WHEREOF, The City of Chesterfield, by action of its Council, has caused this instrument to be executed by its officer thereunto duly authorized, this 19th day of December, 1988, effective January 1, 1989.

THE CITY OF CHESTERFIELD

By Michael S. Jensen

ATTEST:

Gene M. Schneider

CITY OF CHESTERFIELD
FLEXIBLE BENEFIT PLAN
SUMMARY PLAN DESCRIPTION

Effective:
January 1, 1989

CITY OF CHESTERFIELD
FLEXIBLE BENEFIT PLAN
SUMMARY PLAN DESCRIPTION

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Effective Date: January 1, 1989

Plan year: January 1 to December 31

Plan Name: City of Chesterfield
Flexible Benefit Plan

Plan Sponsor (Employer): City of Chesterfield

Employer Identification Number: 43-1484652

Plan Administrator: City of Chesterfield

SUMMARY FOR THE
CITY OF CHESTERFIELD
FLEXIBLE BENEFIT PLAN

1. WHAT IS THE PURPOSE OF THIS PLAN?

This plan was developed to allow employees of the City of Chesterfield to use before-tax earnings to purchase optional benefits under the Plan. The Plan enables employees to choose to pay for benefits with before-tax earnings.

2. WHO IS ELIGIBLE TO PARTICIPATE?

If you were a full time employee, eligible to participate in the Medical Plan, of the City of Chesterfield on the Effective Date of the Plan, you are automatically eligible to participate in this Plan.

If not, you may participate in this Plan on the first day of the month following the day you become eligible to participate in the Medical Plan of the City of Chesterfield.

3. WHEN DO I ELECT TO MAKE THE CONTRIBUTIONS IN ORDER TO PURCHASE BENEFITS UNDER THE PLAN?

Prior to the date of entering the Plan and prior to the beginning of each Plan Year, you will have the opportunity to elect to contribute (on a form furnished by the Employer) a portion of your compensation to pay for employee benefits.

Your contributions will be made from your before-tax compensation. When you make your contributions from your before-tax compensation, you will reduce your compensation for tax purposes.

4. WHAT ARE THE BENEFITS AVAILABLE TO ME?

A participant may choose under this Plan to receive their full compensation for any plan year in cash or to have a portion of it applied by the City toward the cost of one or more of the following optional benefits:

- (a) Employee dental insurance premium costs paid by the employee;
- (b) Dependent dental insurance premium costs paid by the employee;
- (c) Dependent medical insurance premium costs paid by the employee.

The company may elect to add, delete, or change any benefits under this Plan. Your participation shall terminate when you leave employment, if you are no longer eligible under the terms of any insurance policies, or when insurance coverage terminates, whichever happens first.

5. IF I ELECT TO REDUCE MY COMPENSATION UNDER THE PLAN, WILL I HAVE TO PAY ADDITIONAL TAXES AT THE END OF THE YEAR?

No. By using salary reduction to pay for optional benefits, the amount of compensation used to pay the cost of optional benefits is no longer subject to taxation. Therefore, the salary reduction will not cause the employee to owe any additional taxes at the end of the year. However, since your salary will be reduced, a smaller social security contribution will be made on your behalf. This may reduce your future social security benefits.

6. CAN I CHANGE MY ELECTION DURING A PLAN YEAR?

Once you have made an election you may not change during the plan year unless you have a "change in family status". This would include marriage, divorce, death of a spouse or child, birth or adoption of a child, or termination of employment of a spouse.

7. WHAT ELSE DO I NEED TO KNOW?

As a participant in the City of Chesterfield Flexible Benefit Plan, you are entitled to certain rights and protections under the Employee Retirement Income Security Act of 1974 (ERISA). ERISA provides that all plan participants shall be entitled to:

- (a) Examine, without charge, at the plan administrator's office, all plan documents, and copies of all documents filed by the plan with the U.S. Department of Labor, such as detailed annual reports and plan descriptions.
- (b) Obtain copies of all plan documents and other plan information upon request of the plan administrator. The administrator may make a reasonable charge for the copies.

In addition to creating rights for plan participants, ERISA imposes duties upon the people who are responsible for the operation of the employee benefit plan. The people who operate your Plan, called "fiduciaries" of the Plan, have a duty to do so prudently and in the interest of you and other Plan participants.

No one, including your employer or any other person, may fire you or otherwise discriminate against you in any way to prevent you from obtaining a benefit or exercising your rights under ERISA.

Under ERISA, there are steps you can take to enforce your rights. For instance, if you request materials from the plan and do not receive them within thirty (30) days, you may file suit in a federal court. In such a case, the court may request the plan administrator to provide the materials, unless the materials were not sent because of reasons beyond the control of the administrator. If you have a claim for benefits which is denied or ignored, in whole or in part, you may file suit in a state or federal court.

If it should happen that plan fiduciaries misuse the Plan's money, or if you are discriminated against for asserting your rights, you may seek assistance from the U.S. Department of Labor, or you may file suit in a federal court. The court will decide who should pay court costs and legal fees. If you have any questions about your Plan, you should contact the plan administrator.

If you have any questions about this statement or about your rights under ERISA, you should contact the nearest Area Office of the U.S. Labor-Management Services Administration, Department of Labor.

The previous questions and answers give you a brief description of this cafeteria plan. The complete Plan is a legal document which includes these provisions and numerous others. In the event of any inconsistency between this description and the actual provisions of the Plan, the Plan Document will govern.