

RESOLUTION NO. 99-3

A RESOLUTION TO ADOPT A FLEXIBLE BENEFIT PLAN FOR THE EMPLOYEES OF THE CITY OF MARCO ISLAND; PROVIDING FOR ITS ADMINISTRATION AND IMPLEMENTATION; REPEALING ALL OTHER RESOLUTIONS IN CONFLICT; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the City of Marco Island (hereafter referred to as Employer) has employees rendering valuable services; and

WHEREAS, the establishment of a Flexible Benefit Plan (hereafter referred to as the Plan) for such employees serves the interests of the Employer by enabling it to provide reasonable insurance 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, this Plan is intended to qualify as a "cafeteria plan" under Section 125 of the Internal Revenue Code of 1986, as amended; and

WHEREAS, the Employer desires that its Plan be administered by the City in conjunction with its Third Party Administrator or Duly Authorized Agent; and

WHEREAS, the Employer has determined that the establishment of the Plan serves the above objectives; and

NOW, THEREFORE, BE IT RESOLVED, that the form of Flexible Benefit Plan attached hereto as Exhibit A is hereby approved and adopted and that the proper officers of the Employer are hereby authorized and directed to execute one or more counterparts of the Plan.

RESOLVED, that the Administrator shall be instructed to take such actions that are deemed necessary and proper in order to implement the Plan, and to set up adequate accounting and administrative procedures to provide benefits under the Plan.

THIS RESOLUTION shall become effective immediately upon its adoption.

Passed in open and regular session of the City Council of the City of Marco Island, Florida, this 1st day of February, 1999.

Attest:



A. William Moss
City Manager/City Clerk



David E. Brandt, Chairman

ARTICLE I

EXHIBIT "A"

Introduction

1.1 **Purpose of the Plan.** This document constitutes the Flexible Benefit Plan (hereinafter called the Plan) for City of Marco Island (hereinafter called the Employer). The purpose of the Plan is to provide the employees of the Employer a choice of benefits offered by the Employer.

1.2 **Effective Date.** The Plan is effective as of March 1, 1998. The first Plan year will end February 28, 1999 and each succeeding Plan year will renew each March 1 thereafter.

1.3 **Plan Administration. Plan Year.** The Plan is administered by McCreary Corporation (hereinafter referred to as the Plan Administrator) and the basis of a plan year identified as ending February 28 of any succeeding year.

1.4 **Plan Status.** This Plan is intended to qualify as a "cafeteria plan" under Section 125 of the Internal Revenue Code of 1986, as amended, and is to be interpreted in a manner consistent with the requirements of Section 125.

1.5 **Benefits.** The Plan includes various benefits established by the Employer (described in supplements attached) forming a part of the Plan. Supplements may by amendment be attached to and form a part of this Plan to offer additional benefit programs to employees (hereinafter called Programs.) Supplements may also by amendment be deleted or removed from this Plan. The Employer reserves the right to discontinue or change the offering of any benefit at its sole discretion.

ARTICLE II**Participation**

2.1 **Eligibility.** Each employee meeting the eligibility requirements will be eligible to participate in the Plan, provided they enroll within 30 days of becoming eligible. Employees must file a written agreement electing to participate in the Plan as is required by and on a form provided by the Plan Administrator.

2.2 **Period of Coverage.** An employee's coverage with respect to any other benefit under the Plan shall be the plan year (or the remaining portion of the year in which the employee first becomes eligible to participate in the Plan).

2.3 **Termination of Participation.** The benefits for any employee or covered dependent will terminate on the earliest of:

- (a) The date the Plan is terminated;
- (b) The date a specific coverage or benefit is discontinued;
- (c) With respect to a covered dependent, the date such dependent ceases to be a dependent;

- (d) The day the employee ceases to qualify as a participant as a result of termination of employment or failure to make the required contributions, if any;
- (e) The day the employee terminates membership in a group or class of employees eligible for benefits; or
- (f) IAW R&R promulgated by I.R.S.

2.4 Notice of Eligibility. The Employer shall notify employees of their eligibility to participate in the Plan and of the terms of the Plan. Each employee will be furnished with a copy of a summary plan description.

ARTICLE III

Contributions

3.1 Employer Contributions. The Employer will pay the administrative costs of the Plan at such times and in such amounts as shall be necessary from its general assets. Nothing herein shall require the Employer to segregate or set aside any funds of other property for the purpose of paying any amounts under the Plan.

3.2 Employee Contributions. Employees shall make any contributions required of them under the Plan. An employee may elect in writing on a form prepared and filed with the Plan Administrator on or before the date he first becomes eligible to participate in the Plan, and on or before the first day of any plan year thereafter, to reduce his compensation for such plan year and to contribute the amount of such salary reduction to the Plan as his required contribution under the Plan. Pursuant to such written election form, the employee shall also apportion his salary reduction contributions among the benefits provided for in the Plan for which the employee or his covered dependents qualify. In no event shall the sum of the amounts apportioned by the employee to each benefit exceed the total amount of his salary reduction contribution over the period of the plan year.

3.3 Salary Reduction. Salary reduction contributions will be through payments made periodically corresponding to payroll withholding beginning with the first regularly scheduled payday for the plan year for which the employee's written election is made (or the first regularly scheduled payday which is on or after the date the employee first becomes eligible to participate in the Plan if a salary reduction agreement has previously been properly executed). The Plan Administrator will establish rules and regulations with respect to salary reduction agreements hereunder in accordance with applicable law and regulations issued by the Department of the Treasury under Section 125 of the Code. Employee contributions shall be used to provide benefits under the Plan or to pay premiums to modified or fully self-funded programs, insurance companies, health maintenance organizations of other organizations or institutions or provider to provide such benefits as soon as reasonably practical. All employee's salary reduction contributions which are not used to provide plan benefits for such plan year as provided in the preceding sentence shall not at any time be returned or repaid to employees but shall be forfeited.

3.4 Changes. An employee may not revise the rate of his salary reductions or discontinue making salary reduction contributions except as following:

- (a) The employees may file a written election form with the Plan Administrator on or before the end of any plan year revising the rate of their contributions

or discontinuing such contributions effective as of the first regularly scheduled payday of the following plan year.

- (b) The employee's contributions will automatically terminate as of the date his plan participation terminates.
- (c) The employees may file a written election form with the Plan Administrator to revoke any prior election and to make a new election with respect to the remaining portion of a plan year on account of and consistent with a change in family status, including marriage, divorce, the death of the employee's spouse or child, the birth or adoption of a child, which revocation and new election will be effective as of the date it is approved by the Plan Administrator.
- (d) As provided for by R/R promulgated by I.R.S.

For purposes of this section, any election by an employee to change the apportionment of his salary reduction contributions among the various benefits provided for in the Plan will be considered a revision of the rate of his contributions.

ARTICLE IV

Employee Accounts

4.1 Employee's Benefits Accounts. For the purpose of providing employees with the choice of which one or more of the benefits under the Plan are to be provided to the employee, the Plan Administrator shall establish with respect to each employee an account to reflect each benefit elected by the employee (hereinafter called the Benefits Accounts).

4.2 Payment of Benefits. Benefits payable under the Plan for or on behalf of an employee or covered dependent shall be paid weekly.

4.3 Designation of Beneficiaries. Each employee or covered dependent from time to time may name any person to whom the employee's or covered dependent's benefits under the Plan are to be paid if the employee or covered dependent dies before he receives all such benefits. Appropriate forms will be provided for this purpose.

ARTICLE V

Administration

5.1 Administrator. The Plan Administrator is responsible for the day-to-day operations of the Plan.

5.2 Plan Administrator's Duties. Except as otherwise provided the Plan Administrator shall have the following powers, rights and duties:

- (a) To adopt rules of procedure.
- (b) To construe and interpret the Plan.

- (c) To furnish the Employer with information.
- (d) To make a determination as to a benefit.
- (e) To report after the end of each plan year to the employer.

The Plan Administrator shall have no power to modify any of the terms of the Plan.

5.3 Information Required for Plan Administration. The information furnished to the Administrator by the Employer as to an employee's periods of employment, terminations, leaves of absence, reemployment and compensation will be conclusive for all persons.

5.4 Decision of Plan Administrator Final. Subject to applicable law, any decision on any matter within the discretion of the Plan Administrator made in good faith shall be binding.

5.5 Review of Benefit Determination. If a claim for group medical or dependent care is denied, the Plan Administrator shall within 90 days furnish a written notice specifying the reasons for the denial.

5.6 Uniform Rules. The Plan Administrator shall apply uniform rules to all employees.

ARTICLE VI

Funding, Amendment, and Termination of the Plan

6.1 Funding. The Plan shall be maintained on an unfunded basis.

6.2 Amendment. The Employer shall have the right from time to time, to amend, in whole or in part, any or all of the provisions of this Plan.

6.3 Termination. The Employer shall have the right to terminate this Plan.

ARTICLE VII

General Provisions

7.1 Nonassignability. Benefits under the Plan are not in any way subject to the debts of other obligations of the persons entitled thereto and may not voluntarily or involuntarily be sold, transferred or assigned.

7.2 No Guarantee. Neither the establishment of the Plan nor any modification thereof, nor the creation of any fund or account, nor the payment of any benefits shall be construed as giving to any employee or other person any legal or equitable right against the Employer or Administrator except as herein provided.

7.3 Gender and Number. Words denoting the masculine gender shall include the feminine and neutral genders and the singular shall include the plural and plural shall include the singular wherever required by the contract.

7.4 Limitation of Liability. Except for its or their willful misconduct or gross neglect, neither the Employer nor the Administrator shall in any way be subject to any legal liability to any employee for any cause or reason or thing whatsoever in connection with this Plan.

7.5 Participant Litigation. In any action any person having or claiming to have an interest in this Plan shall not be necessary parties to such action and shall not be entitled to any notice except as required by applicable law.

7.6 Notice. Waiver of Notice. Each participant must file with the Plan Administrator in writing his post office address. Any communication, statement or notice addressed to such a person at his last post office address as filed with the Plan Administrator will be binding upon such person for all purposes of the Plan, and the Employer shall not be obliged to search for or ascertain the whereabouts of any such person. Any notice required under the Plan may be waived by the person entitled to notice.

7.7 Data. Each employee or covered dependent must furnish the Employer such documents, evidence or information as the Employer considers necessary or desirable for the purpose of administering the Plan.

7.8 Mistake of Fact. Any mistake shall be corrected when it becomes known and adjustment made by reason thereof.

7.9 Taxes. The Employer or any other organization providing benefits under the Plan may withhold from any payment such amount as may be required to comply with the Internal Revenue Code.

7.10 Severability. Any provisions held illegal for any reason, shall not effect the remaining provisions of the Plan.

7.11 Applicable Law. The Plan shall be construed according to the Internal Revenue Code of 1986, as amended. The Plan is intended to meet the requirements of Section 125. The Plan shall be construed according to the laws of the State of Florida. Any changes promulgated by Federal and/or state statute, rule or regulation are automatically incorporated into this Plan by reference, and this Plan is hereby adopting the minimum requirements of such statute, rule, or regulation unless said requirements are permissive and this Plan addresses the subject matter directly or indirectly.

Supplement

Health Expense Reimbursement Benefits Under Flexible Benefit Plan

1. Purpose. The purpose of this Supplement is to provide for the reimbursement of certain medical, dental, and vision expenses to employees. This supplement constitutes the medical/dental/vision reimbursement plan of the Employer. The benefit provided under this supplement is a "reimbursement benefit."

2. Amount of Premium Payment Benefit. Subject to the conditions and limitations of the Plan, each year each employee may elect in writing on a form filed with the Plan Administrator on or before the date he first becomes eligible to participate in the plan, and on or before the first day of any plan year thereafter, to be reimbursed from the Employee's Flexible Spending Account for health care costs (as defined in paragraph 3) incurred during that year with respect to him and to his family unit (as defined in paragraph 4) to the extent that such costs do not exceed an amount equal to the lesser of:

(a) the total health care costs paid by the employee and attributable to health services rendered during that plan year and regardless of whether such costs are paid by the employee during such plan year; or

(b) the amount allocated by the participant to this benefit.

3. Health Care Costs. The term "health care costs," as used in the Plan, means amounts paid by the employee because of deductible amounts, coinsurance provisions, exclusions from coverage or as a result of any other provision of the Employer's health care plan to the extent that such amount, if paid or reimbursed under such plans, would be excluded from the employee's taxable income. In no event shall health care costs include any item which is not included within the meaning of "medical care" as defined in Section 213 (d) of the Code for the employee and his family unit.

4. Family Unit. The term "family unit," as applied to any participant, means the employee, his spouse and such of his children as are dependents with the meaning of the Employer's health care plan.

5. Manner of Making Payments. As of the last day of each month, the Administrator shall reimburse each employee for the portion of his family unit's health care costs that is payable to him under paragraph 2, provided that the Plan Administrator receives evidence acceptable to it that such health care costs have been paid by the employee or any other member of the family unit and the Plan Administrator receives a signed statement from the employee that he has not and will not in the future deduct such costs as expenses on his individual Federal or state income tax returns.

6. Non-duplication of Benefits. An employee shall not be reimbursed for health care costs under this Plan to the extent that such costs are paid to or for the benefit of any individual included in his family unit, under the provisions of any other Plan.

Supplement

Child and Dependent Care Reimbursement Benefits Under Flexible Benefit Plan

1. **Purpose.** The purpose of this Supplement is to provide for the reimbursement of certain child and dependent care expenses to employees. This supplement constitutes the child and dependent expense reimbursement plan of the Employer. The benefit provided under this supplement is a "reimbursement benefit."
2. **Amount of Premium Payment Benefit.** Subject to the conditions and limitations of the Plan, each year each employee may elect in writing on a form filed with the Plan Administrator within the eligibility period to participate in the plan, and on or before the first day of any plan year thereafter, to be reimbursed from the Employee's Child and Dependent Care Flexible Spending Account costs (as defined in paragraph 3) incurred during that year with respect to him and to his family unit (as defined in paragraph 4) to the extent that such costs do not exceed an amount equal to the lesser of:
 - (a) the total child and dependent care costs paid by the employee and attributable to child and dependent care services rendered during that plan year and regardless of whether such costs are paid by the employee during such plan year;
 - or
 - (b) the amount allocated by the participant to this benefit.
3. **Costs.** The term "child and dependent care costs," as used in the Plan, means amounts paid by the employee for child and dependent care for in-house or on-site day care for at-home day care provided by third parties meeting applicable state law requirements and the qualifications set forth in Section 44A of the Code. In no event shall child and dependent care costs include costs for any person not included within the meaning of "qualifying individual" as defined in Section 44A (c) (1) of the Code.
4. **Manner of Making Payments.** As of the last day of each month, the Administrator shall reimburse each employee for the portion of the child and dependent care costs that is payable to him under paragraph 2, provided that the Plan Administrator receives evidence acceptable to it that such child and dependent care costs have been paid by the employee or any other member of the family unit and the Plan Administrator receives a signed statement from the employee that he has not and will not in the future deduct such costs as expenses on his individual Federal or state income tax returns.
5. **Non-duplication of Benefits.** An employee shall not be reimbursed for child and dependent care costs under this Plan to the extent that such costs are paid to or for the benefit of the employee, or to or for the benefit of any individual included in his family unit, under the provisions of any other Plan.

Supplement

Health Plan Premium Payment Benefits Under Flexible Benefit Plan

1. Purpose. The Purpose of this Supplement is to permit employees to pay the cost of coverage under the Health Plan by making salary reduction contributions to the Plan. The Supplement constitutes the Health Plan of the Employer. The benefit provided under this Supplement is a "premium payment benefit". The specific provisions of the Health Plan as set forth in a contract or policy issued by a company shall be considered a part of the Plan and incorporated herein by reference.

2. Amount of Premium Payment Benefit. Subject to the conditions and limitations of the Plan, each year each employee may elect in writing on a form filed with the Plan Administrator within the eligibility period to participate in the Plan, and on or before the first day of any plan year thereafter, to reduce his compensation or to forego an increase in his compensation and to contribute the amount of such salary reduction to the Plan as his Health Plan premium cost. The term "health plan premium cost", as used in the Plan, means the employees cost of the Health Plan Coverage.

Supplement

Optional Term Life Insurance Premium Payment Benefits Under Flexible Benefit Plan

1. **Purpose.** The purpose of this Supplement is to permit employees to pay the cost of coverage under the Optional Term Life Insurance Plan by making salary reduction contributions to the Plan. This Supplement constitutes the Optional Term Life Insurance Plan of the Employer. The benefit provided under this supplement is a "premium payment benefit." The specific provisions of the Optional Term Life Insurance Plan as set forth in a contract or policy issued by a company shall be considered a part of the Plan and incorporated herein by reference.

2. **Amount of Premium Payment Benefit.** Subject to the conditions and limitations of the Plan, each year each employee may elect in writing on a form filed with the Plan Administrator on or before the date he first becomes eligible to participate in the Plan, and on or before the first day of any plan year thereafter, to reduce his compensation or to forego an increase in his compensation and to contribute the amount of such salary reduction to the Plan as his optional term life insurance premium cost. The amount of optional term life insurance included in the Plan may not exceed \$50,000.

Supplement

Disability Coverage Payment Benefits Under Flexible Benefit Plan

1. Purpose. The purpose of this Supplement is to permit employees to pay the cost of coverage under the Disability Insurance Plan by making salary reduction contributions to the Plan. This supplement constitutes the Disability Insurance Plan of the Employer. The benefit provided under this supplement is a "premium payment benefit." The specific provisions of the Disability Insurance Plan as set forth in a contract or policy issued by a company shall be considered a part of the Plan and incorporated herein by reference.

2. Amount of Premium Payment Benefit. Subject to the conditions and limitations of the Plan, each year each employee may elect in writing on a form filed with the Plan Administrator on or before the date he first becomes eligible to participate in the plan, and on or before the first day of any plan year thereafter, to reduce his compensation or to forego an increase in his compensation and to contribute the amount of such salary reduction to the Plan as his Disability Insurance premium cost. The term "Disability Insurance premium cost," as used in the Plan, means the employee's cost of the Disability Insurance coverage.

Supplement

Accidental Death and Dismemberment Coverage Payment Benefits Under Flexible Benefit Plan

1. Purpose. The purpose of this Supplement is to permit employees to pay the cost of coverage under the Accidental Death and Dismemberment (AD & D) Insurance Plan by making salary reduction contributions to the Plan. This supplement constitutes the AD & D Insurance Plan of the Employer. The benefit provided under this supplement is a "premium payment benefit." The specific provisions of the AD & D Insurance Plan as set forth in a contract or policy issued by a company shall be considered a part of the Plan and incorporated herein by reference.

2. Amount of Premium Payment Benefit. Subject to the conditions and limitations of the Plan, each year each employee may elect in writing on a form filed with the Plan Administrator on or before the date he first becomes eligible to participate in the plan, and on or before the first day of any plan year thereafter, to reduce his compensation or to forego an increase in his compensation and to contribute the amount of such salary reduction to the Plan as his AD & D Insurance premium cost. The term "AD & D Insurance premium cost," as used in the Plan, means the employee's cost of the Accidental Death and Dismemberment Insurance coverage.