

ADMINISTRATIVE SERVICES AGREEMENT  
BETWEEN  
FLEXIBLE BENEFIT ADMINISTRATORS, INC.  
AND  
CITY OF DALTON, GA



This AGREEMENT (the "Agreement") is made and entered into by and between Flexible Benefit Administrators, Inc. ("FBA"), Mark III Employee Benefits ("Broker") and the Group named above ("Employer").

Employer represents and FBA acknowledges that:

- Whereas, Employer has established one or more health plans for its employees that are subject to COBRA regulations
- Whereas, FBA offers to assist with Employer's administrative needs (the "Program") that includes the following:
  - Consolidated Omnibus Budget Reconciliation Act of 1985(COBRA), as amended, and the related regulations and interpretations by the Internal Revenue Service and Department of Labor
  - Whereas, Employer desires FBA to perform certain administrative services with respect to the Program as more fully described in this Agreement and the Exhibits, and FBA is willing to perform those services

In consideration of the promises and mutual covenants contained in this Agreement, Employer and FBA agree to the terms, conditions, and limitations of this Agreement. The payment of any fees hereunder on or after the Effective Date shown below will also be deemed to constitute written acceptance of the Agreement and the Fees.

Any existing group contract or agreement between the Employer and FBA that is being replaced by this Contract is terminated when this one becomes effective.

EMPLOYER CODE: **DALT**

CONTRACT EFFECTIVE DATE: **August 01, 2018**

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1. Services: FBA shall provide those services described in the Exhibit(s) to this Agreement.
  - a. Nature of Services:
    - i. Administrative Services Only- Employer understands and agrees that FBA's sole function under this Agreement is to provide administrative services in accordance with the terms of this Agreement. Under the terms of this Agreement, FBA does not render investment advice, is not an "administrator" as defined in §3(16) of the Employee Retirement Income Security Act of 1974, as amended ("ERISA"), and is not a trustee or a fiduciary, as these terms or other analogous terms may be defined under applicable state, local, or federal law, and does not provide consulting, legal, tax or accounting advice with respect to the creation, adoption or operation of the Program or any portion thereof.
    - ii. Discontinuance of Services Inconsistent with Role- If, based on changes in the regulations governing the Program or the interpretation of the regulations, there is a reasonable likelihood that any service being, or to be, provided under this Agreement by FBA could constitute a discretionary function and thereby subject FBA to classification as a "fiduciary" under applicable state, local or federal law with respect to the Program, and such service could not be restructured in a manner that would not subject FBA to classification as a "fiduciary" under applicable state, local or federal law, then FBA, upon reasonable notice to Employer may decline to thereafter provide that service. The failure to provide any such service shall not constitute a breach of FBA's obligations under this Agreement.
    - iii. Compliance Responsibility- Employer is solely responsible for ensuring that the Program complies with all applicable provisions of the Internal Revenue Code, DOL, ERISA and any applicable state and local laws governing the Program.
      - In the Business Associate Agreement, Employer shall be referred to as "Plan Sponsor" and FBA shall be referred to as "Business Associate"
  - b. Reliance Upon Data: All services provided by FBA hereunder shall be based on information supplied by Employer or designee or agent of Employer (as designated by Employer). Employer acknowledges that the timely provision of accurate, consistent and complete Program Data in the format specified by FBA is essential to its delivery of services, and Employer is responsible for ensuring such timely and accurate data is delivered to FBA in FBA's approved format. For these purposes, "Program Data" means all data and records supplied to FBA, obtained by FBA or produced by FBA (based on data or records supplied to, or obtained by, FBA) in connection with performing the services pursuant to this Agreement. Program Data includes, but is not limited to, current participant names, addresses, status and coverage elections.

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- c. Data in Electronic Format: Employer agrees that administrative, contribution and recordkeeping data shall be provided by the Employer in an electronic format acceptable to FBA and will be updated by the Employer as FBA requires for proper processing. If the data is not submitted in an electronic format or if the format of the data requires additional translation, formatting or cleansing, FBA reserves the right to approve or refuse such submission and to charge additional data-handling fees as required.
- d. Reliance Upon Persons Designated by Employer: Employer will provide names and other contact information to identify persons authorized by Employer to take actions for, or provide information with respect to, the Program. Until notified of a change, FBA may reasonably rely upon this information and may act upon instructions received from and/or on information provided by these named persons. FBA has the right to assume that those persons continue to be authorized until notified otherwise.
- e. Customer Service:  
Customer Service Representatives- Customer service representatives will be available at a toll free telephone number to assist Employer and participants.  
Internet Services- FBA will provide access to the FBA Web site as described in paragraph 1 (f) of this Agreement to allow participants and Employer to access certain account information and for participants to review COBRA program elections and make online payments.  
Participant Statement of Account- Participants will have access to their accounts through FBA's Web site as described in paragraph 1 (f) of this Agreement.
- f. Benefits Information Portals:
  - i. Participant Portal- FBA will provide Program participants will access to FBA's portal system. This system will allow online payments. Participants will also have online access to the following:
    - Real-time history of eligibility dates and payment processing;
    - Account management with transaction history and account balance; and
    - payment data
  - ii. Employer Data Portal- FBA will provide Employer and Employer's designated administrator with access to FBA's employer data portal system. The employer portal system provides Employer with the ability to upload COBRA event data and review reports.

2. Compensation: In consideration for its services provided hereunder, Broker and/or Employer shall pay FBA in accordance with the Fee Schedule provided. If Broker paying, broker agrees to pay FBA administrative fees through the duration of their retaining agent of record with the Employer. If Broker loses agent of record, Employer may be responsible for paying fees throughout the duration of

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the contract. FBA may amend the Fee Schedule for services not yet rendered with Employer's written consent. Fees are invoiced and payable monthly. The monthly invoice will include:

- a. Invoices will be sent out on or before the 15<sup>th</sup> day of each month. Monthly charges are based on participation for the month prior and will not be adjusted for any employees who terminate during the month. Eligibility is based on information provided by Employer to FBA, and must be received by FBA the 1<sup>st</sup> business day of the month.
- b. Additional optional services agreed upon by Employer and FBA

All fees are due at the time they are invoiced and Broker/Employer agrees to pay all fees due within 30 days after receipt of the invoice date ("Grace Period"), provided, however, that if Employer in good faith disputes the calculation of fees set forth on an invoice and notifies FBA of such dispute within 30 days after receipt of the invoice, the number of days such dispute is unresolved following such notification shall not be counted in determining the 30-day Grace Period applicable to such invoice. As set forth in section 6, late payment may result in termination of the agreement or in late charges for each month invoices are past due.

3. FBA not Legal Counsel: Employer understands and agrees that it shall review with its legal and/or tax counsel all documents provided to it by FBA and that Employer should consult such counsel on any questions concerning Employer's responsibility under this Agreement, the Program documents, and the legal sufficiency of any documents provided by FBA. Employer understands that neither FBA nor any of FBA's affiliates, agents, or subcontractors are permitted to provide Employer with legal or tax advice. Employer acknowledges that it will not rely on any information provided as if it were legal or tax advice.
4. Notice of Errors: All information supplied to Employer or participant will be deemed correct if notice of transactional errors is not given to FBA by the participant or the Employer within 90 days of issuance of any payment, confirmation, or other information. If FBA receives timely notice, FBA will use reasonable efforts to correct transactional errors. FBA will not be liable for damages of any kind resulting from such errors.
5. Indemnification:
  - a. Indemnification of FBA: Employer shall hold harmless and indemnify FBA and its employees, directors, officers, agents, and subcontractors (collectively, "FBA Indemnitees") from and against any loss, damage, liability, claims, costs and expenses, including reasonable attorney's fees, to which FBA Indemnitees may become subject, which result from:
    - i. Any misrepresentation or nonfulfillment of any terms of this Agreement by Employer, a participant, or any other individual including, but not limited to, liabilities resulting from the provision of inaccurate, untimely, or incomplete information to FBA or the failure to provide FBA with clear instructions as to distributions;
    - ii. Any failure of the Employer to provide timely and accurate Program Data;

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- iii. Any failure by the Employer of the requirements of applicable state, local and/or federal laws;
- iv. The making by FBA of any payment based upon instructions that FBA reasonably believes to be authorized; and
- v. Any action, conduct, or activity taken by FBA, or any inaction by FBA, at the direction of Employer, provided that FBA reasonably believes the direction to be valid and is not negligent in the execution of such directions.

b. **Indemnification of Employer:** FBA shall hold harmless and indemnify Employer and its employees, officers, and directors (collectively, "Employer Indemnitees") from and against any loss, damage, liability, claims, costs and expenses, including reasonable attorneys' fees, to which Employer Indemnitees may become subject, which are caused directly by the negligence or willful misconduct by FBA. The liability of FBA (and its affiliates, agents and subcontractors) hereunder, regardless of the theory or form of action, shall not exceed the aggregate of the total amount of fees paid by Employer hereunder.

c. **General Conditions of Indemnification:** As a condition to receive indemnification, the party seeking indemnification shall:

- i. Give written notice to the indemnifying party of an indemnified claim, demand or action within 15 days after it has knowledge thereof;
- ii. Permit the indemnifying party at its option to assume control of the defense of such claim, demand or action;
- iii. Give full cooperation in the investigation and defense on request;
- iv. Use its best efforts to mitigate the damages; and
- v. Not compromise or settle such claim, demand or action without the indemnifying party's written consent.

6. **Duration; Termination; Successor Record-keeper:**

- a. **Effective Date:** The Effective Date shall be as defined on the Face page of this Agreement.
- b. **Duration:** It is expected that this Agreement will automatically renew one (1) year from the Effective Date for a second one (1) year term, unless terminated earlier by either party with at least ninety (90) days advance notice prior to the end of the first one (1) year term or pursuant to paragraph 6(c) below. Specific to the City of Dalton, (a) the contract shall terminate absolutely and without further obligation on the part of the county or municipality at the close of the calendar or fiscal year in which it was executed and at the close of each succeeding calendar or fiscal year for which it may be renewed as provided in this Code section, and (b) Broker will be responsible for paying for administrative fees associated with the COBRA Administration incurred in each calendar or fiscal year renewal term, if renewed.

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- c. Termination for Cause: FBA may terminate this Agreement and discontinue services immediately upon notice to Employer if:
  - i. Law enactment or interpretation to prohibit the continuance of this Agreement, upon the effective date of such law or interpretation;
  - ii. Employer fails to pay any invoice prior to the expiration of the Grace Period
  - iii. Employer's agreement with FBA to provide or administer the Program coverage is terminated or discontinued for any reason; or
  - iv. Employer ceases to be subject to the regulations set forth under the COBRA regulations Employer may terminate this Agreement for cause immediately upon notice to FBA in the event that Employer's agreement with FBA to provide or administer Program coverage is materially changed and services under this Agreement are no longer required.
- d. Successor Record-keeper: Upon termination, the parties agree that FBA shall have no further duty or responsibility to Employer under this Agreement except as provided in this paragraph 6(d). FBA will use reasonable efforts to transfer all relevant non-proprietary information concerning the Program that FBA deems necessary for future operations, in FBA's standard format, to Employer or to a successor service provider. Any reasonably unforeseeable costs or expenses incurred by FBA in effecting this transfer may be invoiced by FBA and, if so invoiced, shall be paid by Employer unless waived in writing by FBA. Employer agrees that FBA may charge reasonable fees for the provision of requested records or reports that FBA previously provided.
- e. Survival of Indemnification: Employer acknowledges and agrees that the indemnification provisions of paragraph 6 of this Agreement shall survive the termination of this Agreement.

7. Notices: Any notice or other communication required under this Agreement shall be in writing and shall be delivered personally, sent by facsimile transmission, by electronic mail or sent by certified, registered or express mail, postage prepaid. Any such notice shall be deemed given when delivered personally, or if sent by facsimile transmission or electronic mail, upon the date stated on the written confirmation received by the sender, or, if mailed, three (3) days after the date of deposit in the U.S. mail, to the address shown on the Face Page of this Agreement, or such other address that is provided by one Party or the other.

8. Entire Agreement; Amendment: This Agreement, including the Exhibits hereto, which are specifically incorporated herein by reference contains the entire Agreement between the parties hereto with respect to the subject matter hereof, and there are no other arrangements written or oral, relating to the subject matter hereof other than those explicitly set forth herein or attached hereto. This Agreement may be amended at any time, but only when agreed to in writing by the parties.

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9. **Construction:** In the event of a dispute regarding the meaning of any of the terms of this Agreement, the terms shall be given a reasonable construction and shall not be construed against either party on the basis of such party's participation in the preparation of the Agreement.
10. **Binding Effect: No Assignment:** This Agreement shall be binding upon and inure to the benefit of the parties and their respective successors, assigns and legal representatives. Neither this Agreement, nor any right hereunder, may be assigned by any party without the written consent of the other parties hereto. Notwithstanding the foregoing, this Agreement may be assigned by FBA to a successor entity without prior written consent of Employer.
11. **Representations and Warranties:** FBA makes no statutory, express, or implied representations or warranties of any kind with respect to the services or FBA's performance of services under the Agreement, including, without limitation, those of merchantability and fitness for a particular purpose, which, without limiting the foregoing, are disclaimed by FBA. No descriptions or specifications, whether or not incorporated into the Agreement, no provisions of marketing or sales materials, and no statement made by any sales representative in connection with the services shall constitute representations or warranties of any kind.
12. **Headings:** The headings in this Agreement are for reference only, and shall not affect the interpretation of this Agreement.
13. **Severability:** If any word, phrase, sentence, paragraph, provision or section of this Agreement shall be held, declared, pronounced or rendered invalid, void, unenforceable or inoperative for any reason by any court of competent jurisdiction, governmental authority, statue or otherwise, such holding, declaration, pronouncement or rendering shall not adversely affect any other word, phrase, sentence, paragraph, provision or section of this Agreement, which shall otherwise remain in full force and effect and be enforced in accordance with its terms.
14. **Governing Law:** This Agreement shall be performed, construed and interpreted in accordance with the laws of the state of Georgia without regard to conflict of laws principles. The forum for any legal disputes will be settled in the state of Georgia, with FBA and Employer consenting to the personal jurisdiction therein.
15. **Third Party Beneficiaries:** The provisions of this Agreement are solely for the benefit of the parties hereto and their affiliates and are not intended to confer upon any person except the parties hereto any rights or remedies of any kind.
16. **Unforeseen Circumstances:** Neither FBA nor Employer shall be liable for any default or delay in the performance of its respective services and obligations under this Agreement if and to the extent such default or delay is primarily caused, directly or indirectly by:
  - a. Fire, flood, elements of nature or other acts of God;
  - b. Any outbreak or escalation of hostilities, terrorist actions, war, riots or civil disorders in any country;

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- c. Any act or omission of the other party or any governmental authority; or
- d. Nonperformance of a third party of any similar cause beyond the reasonable control of FBA or Employer, as applicable, including without limitation, failures or fluctuations in telecommunications or other equipment.

In any such event, FBA or Employer, as applicable, shall be excused from any further performance and observance of the obligations so affected only for as long as such circumstances prevail and it continues to use reasonable efforts to recommence performance or observance as soon as practicable.

**17. Writing and Signature; Electronic Transactions:** Unless otherwise explicitly required by law,

- a. Any requirement for writing under this Agreement may be rendered in any form that can reliably reproduce an accurate physical record of the communication and authenticate the source, including but not limited to facsimile transmission, electronic mail, or Internet transmission.
- b. Any requirement of a signature under this Agreement may be rendered in any form clearly indicated by the signatory to be a signature or which complies with instructions directly given to the signatory as to the proper form of indicating a signature in an electronic or voice response environment. Appropriate forms include, but are not limited to, personal identification numbers rendered over the Internet, and facsimile transmissions.
- c. Notwithstanding a) or b), above, the recipient of any writing or signature under this Agreement may require the confirmation of any writing or signature in physical form (such as hand or typewritten or the equivalent) with a manual signature.
- d. Employer represents that the Program document(s) will allow for transactions to be made by electronic means. Under the Program document(s) and this Agreement together, notices, consents and other actions by or on behalf of, or with respect to, the Program, its participants and their respective beneficiaries ("Program Transactions") may be affected, in whole or in part, by electronic means. Any Program Transactions relating to services provided under this Agreement may be initiated or effected by Employer, the Program, a participant or a beneficiary by use of FBA-authorized electronic means, Internet access system (including FBA website) or telephone service line. Use of electronic means for Program Transactions is subject to the terms and conditions established by FBA and disclosed to Employer and participants, and electronic transactions shall be binding on the parties if FBA, acting in good faith, believes that such transactions are authorized by Employer, a participant, or beneficiary, as applicable.

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18. Taxes, Fees and Assessments; The Employer will pay any and all taxes, licenses, and fees, if any, levied by any local, state, or federal authority in connection with the Program.
19. Acceptance: Signature below will constitute acceptance of this Agreement. The payment of any fees hereunder on or after the Effective Date shown below will also be deemed to constitute written acceptance of the Agreement and the Fees.

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## EXHIBIT A

### Administration and Recordkeeping Services for Consolidated Omnibus Budget Reconciliation Act

FBA will provide the following administrative services under this Agreement, as elected by Employer to be offered to participants under the Program:

- Consolidated Omnibus Budget Reconciliation Act (COBRA)

1. Enrollment and Communication:

- Initial Right Notification: FBA will provide its standard initial rights notification letter to newly covered employees and spouses of the Employer Plan informing them of their rights under COBRA. These notices will be sent via accountable mail within the time frame required by COBRA .
- Qualifying Event Notification: FBA will provide its standard qualifying event notification letter and election notice to all eligible qualified beneficiaries under the Employer Plan. These notices will be sent via accountable mail within the time frame required by COBRA .

2. Compliance With Applicable Governing Law: Employer is solely responsible for maintaining the Plan, including the establishment of eligibility and paying all benefits owed or established under the Plan to its participants. FBA will provide basic Plan information, such as participant counts, that is readily available on its systems to assist Employer with complying with the requirements of the DOL and COBRA law, but it reserves the right to charge an additional fee for extended services, as it deems appropriate.

3. Administration and Recordkeeping:

- Participant Accounts: FBA will establish participant accounts for each Plan participant for whom it received complete enrollment information. FBA will determine if employees are eligible under the terms of COBRA with information provided by the eligible participant.
- Participant Files: FBA will maintain physical or electronic files for all participants for whom participant accounts have been established. These files will include enrollment forms and all other written correspondence and documents concerning each participant's account, and if applicable, records of any such actions conducted through the internet or electronic means.
- Transfer of Funds: Collected premiums will be distributed by one of the following methods. FBA will retain the collected 2% COBRA Administration fee.
  - If the plans under COBRA administration are fully-insured, FBA will return all collected premiums to each individual carrier. Premiums are disbursed no later than the 25<sup>th</sup> of

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each month by check or EFT transfer to the carrier. Disbursements include a detailed reporting for funding accountability.

- ii. If the plans under COBRA administration are self-insured, FBA will return all collected premiums to Employer. Premiums are disbursed no later than the 25<sup>th</sup> of each month by check or EFT transfer to Employer. Disbursements include a detailed reporting for funding accountability.
- d. Ongoing Administrative Processes:
  - i. Timely Communication Mailings- Upon receipt of complete information from Employer, within the applicable time frame required by COBRA or upon the effective date of coverage, whichever is later, FBA's will send standard Initial Rights Notifications and Qualifying Event Notifications via first-class USPS mailing.
  - ii. Payment of COBRA Premiums- FBA will collect, track, process and remit the insurance premiums paid by the qualified beneficiaries in accordance with the terms and conditions of this Agreement. Participants can pay COBRA premiums by check, money order or automatic recurring ACH without any additional charges. FBA will also provide an additional option to pay COBRA premiums online with a credit card or a single occurrence ACH; these options may include charges by the online third-party vendor. FBA will mail standard payment coupons that should accompany all check and money order submission of premiums. FBA represents that all COBRA payment methods are compliant with COBRA regulations.
  - iii. Maximum Coverage Period- FBA will notify qualified beneficiaries if COBRA coverage terminates earlier than the end of the maximum period of coverage applicable to the qualifying event that entitled the individual to COBRA coverage. The notice will be provided as soon as administratively practicable after FBA determines that COBRA coverage will be terminated early. COBRA period will be extended in cases of disability and second qualifying events based on the rules of COBRA.
  - iv. Insurance Carrier Updates- FBA will coordinate with Employer and insurance carriers on any questions pertaining to a qualified beneficiary's COBRA eligibility and payment status. If permitted by the carriers, qualified beneficiaries electing COBRA coverage will be moved from the Employer billing statement to a separate COBRA subgroup statement that is sent to FBA on behalf of the Employer. Enrollment and termination updates will be communicated directly with the insurance carriers and will be updated in accordance with COBRA eligibility regulations.
  - v. Communication with COBRA Participants- Using FBA's standard communications, FBA will maintain communication with the qualified beneficiaries who have elected COBRA coverage concerning eligibility status, Medicare eligibility, advance termination notice

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for the individual conversion, verification of termination, change of address, benefit and rate changes.

- vi. Open Enrollment- Once open enrollment rates have been provided, FBA will send standard system generated open enrollment/rate change letters during open enrollment. FBA will make any insurance carrier updates for election coverage changes and will issue new payment coupons to correspond with rate changes.
- vii. Reports- FBA will provide Employer with standard reports that will summarize all COBRA activity that occurred for each active/pending COBRA participant. Reporting will also provide a listing of all newly covered employees who received an initial rights notification.

Signatures:

You should read and understand this agreement. It is a legal and binding contract.

Company Name: **Flexible Benefit Administrators, Inc.**

Signature: \_\_\_\_\_

Printed Name: G. Landon Browning III

Title: Vice President

Company Name: **City of Dalton**

Signature: Jason Parken

Printed Name: Jason Parken

Title: City Administrator

Company Name: **Mark III Employee Benefits**

Signature: \_\_\_\_\_

Printed Name: \_\_\_\_\_

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