

**EZ REIMBURSE®
ADMINISTRATIVE AGREEMENT**

[Revised 111103]

THIS ADMINISTRATIVE AGREEMENT is made and effective this 1st day of October, 2003 (hereinafter referred to as the “**Effective Date**”), by and between **FRINGE BENEFITS MANAGEMENT COMPANY**, a Florida corporation (hereinafter referred to as the “**Administrator**”), and the **CITY OF MIAMI BEACH**, Florida (hereinafter referred to as the “**Employer**”).

RECITALS

WHEREAS, the **Employer** has adopted a Medical Expense Flexible Spending Plan and a Dependent Care Flexible Spending Plan (collectively hereinafter the “**Plan**”), for its employees; and

WHEREAS, the **Employer** desires to secure the services of the **Administrator** to administer the Plans; and

WHEREAS, **Administrator** desires to provide the specialized knowledge and expertise to administer the Plans.

NOW, THEREFORE, in consideration of the mutual covenants and promises contained herein, the receipt and sufficiency of which are hereby acknowledged, the **Employer** and **Administrator** agree as follows:

ARTICLE I
Definitions

For the purpose of this **Agreement**, the following words and phrases shall have the meaning assigned to them below, unless the context otherwise requires:

(a) “**Agreement**” means this **Agreement** and any exhibits, schedules or other documents attached hereto at the time of the execution of this **Agreement**, as the same may be amended or extended.

(b) “**Benefits**” means the Medical Expense Flexible Spending Account and the Dependent Care Flexible Spending Plan.

(c) “**Contribution**” means the amount of compensation directed to the Plans.

(d) “**Eligible Employee**” means any eligible employee shall be eligible to participate hereunder as of the date he satisfies the eligibility conditions for the Employer’s group medical plan.

(e) “**FSA**” or “**Flexible Spending Account**” means the **Employer’s** Medical Expense Flexible Spending Account or Dependent Care Flexible Spending Account maintained under a Reimbursement Plan.

(f) “**Participant**” means any Eligible Employee who has elected to participate in any one of the Plans.

(g) “**Plan Year**” means the three hundred sixty-five day period(s) during which a Plan is in effect.

(h) “**Controlling Documents**” means (i) this **Agreement**, (ii) the Plan Document(s), (iii) the **Administrator’s** response to **Employer’s** Request for Proposals, and (iv) **Employer’s** Request for Proposals.

ARTICLE II

Appointment of Administrator

The **Employer** hereby appoints and authorizes the **Administrator**, and the **Administrator** hereby accepts such appointment and authorization, to provide to the **Employer** the services described herein.

ARTICLE III

Contract and Document Priority

In the event of a discrepancy between the **Controlling Documents**, the order of priority shall be as follows: (i) this **Agreement**, (ii) the Plan Document(s), (iii) **Administrator’s** Response to **Employer’s** Request for Proposals submitted March 19, 2003, (iv) the **Administrator’s** Documentation of Services and Pricing proposal, and (v) **Employer’s** Request for Proposals No. 23-02/03.

ARTICLE IV

Duties and Responsibilities of the Administrator

The **Administrator** shall provide services in accordance with Exhibit A (**Administrator’s** Response to **Employer’s** Request for Proposals) and Exhibit B (Documentation of Services). In the event of a discrepancy between Exhibits A and B, the order of priority shall be as follows: (i) Exhibit B - Documentation of Services, and (ii) Exhibit A - **Administrator’s** Response to **Employer’s** Request for Proposals.

ARTICLE V
Representations of the Administrator

The **Administrator** represents and warrants unto the **Employer** the following:

(a) Neither the **Administrator** nor any officer, stockholder, director, or employee of the **Administrator**, nor any affiliate of the **Administrator** (hereinafter collectively referred to as the **Administrator**), is subject to any present or past litigation or administrative proceeding of or before any court or administrative body which would have a materially adverse effect on the **Administrator**, or its ability to discharge its responsibilities under this **Agreement**, or which would impair the ability of the **Administrator** to act as a fiduciary, nor, to its knowledge, is any such litigation or proceeding presently threatened against any of them or their property.

(b) The **Administrator**, to the best of its knowledge, is presently in compliance with all existing laws and regulations, a violation of which would or could materially adversely affect the **Administrator's** operations or would or could materially adversely affect its ability to fulfill its obligations and undertakings set forth in this **Agreement**.

(c) The **Administrator** is in good standing with the State of Florida and all departments and agencies thereof, and is appropriately licensed under the laws of the **Employer's** domiciliary state to perform all obligations imposed upon **Administrator** under the **Controlling Documents**, including functioning as a third party administrator.

(d) The **Administrator** has and shall maintain the capability to adequately carry out the record keeping and reporting requirements of the **Plan** including access to the necessary computer and data retention equipment needed to provide such record keeping and reporting.

(e) The **Administrator** agrees that all employee records, accounts and information therein regarding the **Plan** shall be the property of the **Employer** and agrees that the **Administrator** shall not sell, provide, or in any way disseminate such information without the prior written consent of the **Employer**.

ARTICLE VI
Compensation

The parties hereto recognize and agree that the **Administrator** shall be entitled to receive compensation in connection with the **Administrator's** services hereunder. Such compensation shall be in accordance with the **Administrator's** Pricing Proposal.

ARTICLE VII
Escheatment

The State of Florida requires escheatment of unclaimed moneys which are represented by uncashed checks, which are unprocessed by the **Participants** after several years, relative to their participation in the **Plan**. The **Administrator** is required by law to escheat these moneys after the period prescribed by law has elapsed. To the extent permitted by the laws of Florida, the **Administrator** may assess a reasonable charge from such individual account balances for the accounting and processing of these moneys relative to the escheatment process.

ARTICLE VIII
Responsibilities of the Employer

In order to facilitate the performance of the **Administrator's** obligations hereunder in an efficient manner, and to ensure the successful implementation and administration of the **Plan**, the **Employer** shall provide the **Administrator** with such information as is necessary to enable the **Administrator** to carry out its duties and obligations under this **Agreement** on a timely basis. Such information shall be provided in a format as is reasonably requested by the **Administrator**.

Employer further:

a. Appoints **Administrator** for the performance of the services required to be provided by the **Administrator** during the term of this **Agreement** with respect to the benefits offered by the **Administrator** under, and in conjunction with, the **Plans**.

b. Agrees:

1. To give **Administrator** reasonable access to **Employer's** employees.
2. To distribute approved plan literature and documentation (including, without limitation, education and enrollment materials and any material required to be distributed to employees or benefit participants by applicable law.)
3. To provide **Administrator**, on an annual basis, with scheduled payroll dates and the corresponding dates or deadlines for the submission of employee payroll deduction authorizations for each such payroll date (hereinafter the "**Payroll Cutoff Date**"), prior to the inception of any plan year.
4. To provide appropriate payroll data and other necessary data and information to enable **Administrator** to meet its obligations hereunder.

5. To warrant to **Administrator** that all properly executed payroll deduction and reduction authorization forms which are received by the **Employer** on or before the **Payroll Cutoff Date** will be expeditiously processed and implemented for the payroll period with respect to which such **Payroll Cutoff Date** is applicable.

6. To remit payroll reduction data and contributions, in a format mutually agreed upon by the parties, to the depository account designated by **Administrator**, subject to the **Employer's** reasonable approval, in a prompt and expeditious manner immediately after each payroll date.

7. With respect to the **Medical Flexible Spending Accounts**, to advance to **Administrator**, if requested, funds sufficient to cover net claims checks written which exceed payroll deduction amounts received from the **Employer**. **Administrator** agrees to reimburse such funds to the **Employer** when the deficit is cured.

8. Funding and Payment of Claims for the Plan Benefits.

A. The **Employer** shall:

- (1) make sufficient funds available from its general assets, in employer's name at a financial institution selected by both **Employer** and **Administrator**, to facilitate and enable the timely processing and payment of Claims under the Plan (the "Account"); and
- (2) to the extent applicable, grant **Administrator**, and/or its agent for debit card transactions, withdrawal authority over the Account sufficient to enable it to pay benefits under the **Employer's** FSA Plans; and
- (3) deposit additional funds in the Account (at the request of **Administrator**) in order to reestablish the Maintenance Deposit at the end of each Claim processing cycle (or such earlier time specified by **Administrator**),
- (4) to the extent applicable, provide a mechanism to deduct any ineligible card transactions through payroll that have not been repaid to the Account by the participant through check or money order; or alternatively agree to accept the loss as part of the risk of the plan.

If, at any time, the amount of reimbursement benefits payable under the applicable Plan provisions exceeds the amount deposited by the **Employer** in the Account, the **Employer** shall transfer an amount necessary to the Account to fulfill its reimbursement obligations under the applicable Plan before any further reimbursement benefit payment is made. **Administrator** is under no obligation to advance funds on behalf of the **Employer**.

ARTICLE IX
Responsibilities of Administrator

A The **Administrator** shall:

- (1) to the extent applicable, provide each Participant with a debit card, card holder agreement, and instructions for using the card, and
- (2) provide each Participant with receipt transmittal forms, reimbursement forms and instructions for filing Medical and Dependent Care FSA reimbursement Claims; and provide each Participant with information regarding FSA payroll deposits and claims withdrawals; and
- (3) provide the **Employer** with written monthly reports summarizing the previous period's Medical and Dependent Care FSA activities; and
- (4) timely address participant Change in Family Status forms; and
- (5) conduct its business in accordance with the HIPAA guidelines regarding protected health information (PHI)
- (6) based upon information supplied by the **Employer** and upon written request each plan year, **Administrator** shall assist the **Employer** in determining discrimination testing percentages for the cafeteria plan 25% concentration test, the dependent care plan 25% concentration test and the dependent care plan 55% average benefits test and communicate its findings and recommendations in writing to **Employer**. The **Employer** shall be responsible for interpreting the percentages provided by **Administrator** and for ensuring compliance with all applicable nondiscrimination requirements. All other discrimination testing (eligibility and benefits tests) shall be the responsibility of **Employer**; and
- (7) receive electronic and paper Claims, and expeditiously review such Claims to determine what amount, if any is due and payable with respect thereto; and

- (8) disburse the benefit payments it determines to be due (provided the **Employer** has sufficient funds in the Account) in accordance with the provisions of the Plan and the following procedure(s):
- (A) valid reimbursement for Medical and Dependent Care FSA benefits shall be paid by **Administrator** as soon as sufficient funds have been deposited by the **Employer** in the Account (with respect to such Claims) by, to the extent applicable, authorizing a valid debit card transaction at point of sale, or mailing a check in the appropriate amount(s) directly to the Participants at their home addresses; and
 - (B) if the amount of the (otherwise) reimbursable Dependent Care FSA Claim exceeds the amount the Participant had withheld for Dependent Care benefits, the excess shall be carried forward (within the same Plan Year) and treated as an Eligible Employment Related Expense for that month; and
 - (C) Claims of less than \$5.00 may be carried forward and aggregated with future Claims until the reimbursable amount is greater than \$5.00, provided, however, that the entire amount of the reimbursable Claims shall be paid after the close of the Plan Year without regard to the \$5.00 threshold; and
- (9) notify claimants in writing as to any electronic or paper Claims which are denied or deemed ineligible for reimbursement because of inadequate Claim substantiation or improper Claim form submission; and
- (10) provide to the claimant a process to appeal a decision related to any Claims which **Administrator** deems not to be reimbursable pursuant to the terms of the Plan and/or the reimbursement practices and procedures established by the **Employer**; and to appeal a breach of privacy as provided under HIPAA.

ARTICLE X
HIPAA

Employer agrees:

- a. not use or further disclose protected health information (PHI) other than as permitted or required by the plan documents or as required by law;
- b. ensure that any agents, including subcontractors, to whom it provides PHI received from Health Plan agree to the same restrictions and conditions that apply to Plan Sponsor with respect to such information;
- c. not use or disclose PHI for employment-related actions or decisions;
- d. not use or disclose PHI in connection with any other benefit or employee benefit plan or Plan Sponsor;
- e. Report to the Health Plan's designee any PHI use or disclosure that it becomes aware of which is inconsistent with the uses or disclosures provided for;
- f. make PHI available to an individual based on HIPAA's access requirements;
- g. make PHI available for amendment and incorporate any PHI amendments based on HIPAA's amendment requirements;
- h. make available the information required to provide an accounting of disclosures;
- i. make its internal practices, books and records relating to the use and disclosure of PHI received from the Health Plan available to the Secretary of the U.S. Department of Health and Human Services to determine the health plan's compliance with HIPAA;
- j. ensure that adequate separation between the group health plan and the plan sponsor is established as required by HIPAA; and
- k. if feasible, return or destroy all PHI received from the Health Plan that Plan Sponsor still maintains in any form and retain no copies of such PHI when no longer needed for the specified disclosure purpose. If return or destruction is not feasible, Plan Sponsor will limit further uses and disclosures to those purposes that make the return or destruction infeasible.

ARTICLE XI
Confidential Nature of Information

Each of the parties hereto agrees, to the extent permitted by law, to mutually safeguard and keep confidential any and all information obtained from the other party with respect to the personnel of the **Employer** and each **Participant**, or any other category of data identified in writing by either party to the other party as being confidential. Unless otherwise required by law, all information obtained by the **Administrator** from any individual employee, whether such employee becomes a **Participant** or not, shall be treated as confidential between the **Employer** and the **Administrator** and shall not be disclosed to any other person, firm or corporation without the written consent of the **Employer** or employee.

ARTICLE XII
Duration of the Agreement

A. This **Agreement** shall be effective for an initial term of two (2) years commencing the 1st day of October, 2003 (the "**Effective Date**") and ending the 30th day of September, 2005 (the "**Termination Date**"); provided, however, that either party may terminate the **Agreement** at the end of any **Plan Year** by providing the other party with one hundred twenty (120) days notice of its intent that the **Agreement** expire at the end of the then current plan year. At the end of the initial period, the **Employer** may elect to renew this **Agreement** for two (2) consecutive one (1) year renewal periods. Thereafter the parties may, upon mutual agreement, renegotiate or extend the duration of this **Agreement**.

B. The parties agree, however, that in the event of the termination of this **Agreement**, regardless of the reason or basis for such termination, whether under the provisions of Article XI or the attainment of the **Termination Date** without extension, the provisions of Article IX shall survive such termination.

ARTICLE XIII
Termination For Cause

If the **Administrator** materially fails to fulfill in a timely and proper manner its obligations under this **Agreement**, or if the **Administrator** shall materially violate any of the terms of this **Agreement**, the **Employer** shall inform the **Administrator** in writing of such failure or violation. The **Administrator** shall then have thirty (30) business days within which to correct such failure or violation, or if the default or violation is such that it cannot, with reasonable effort, be cured within such period, to commence good faith efforts to cure the default within such period and to pursue thereafter with due diligence. If the **Administrator's** failure or violation is not corrected to the **Employer's** satisfaction, the **Employer** shall have the right to immediately terminate this **Agreement**. The **Employer** shall cooperate with the **Administrator**

in the resolution of any violation or failure to perform under this **Agreement**. Any such termination shall be subject to the provisions of Article X(B).

ARTICLE XIV
Miscellaneous Provisions

(a) This **Agreement** shall not in any way prevent the **Administrator** from performing for others services similar to or of the type to be performed hereunder.

(b) All records, documents and information collected and/or maintained by others in the course of the administration of the **Agreement** shall be made accessible to the **Employer** for purposes of inspection, reproduction and audit during normal business hours at the **Administrator's** corporate headquarters and at the **Employer's** convenience and expense.

(c) The relationship between the **Administrator** and the **Employer** shall at all times be that of independent contractor.

(d) All communications relating to the day-to-day activities shall be exchanged between the Account Representative appointed by the Administrator and by the Employer. The Administrator's Account Representative and the Employer's Administrator shall be designated promptly upon commencement of Services.

All other notices and communications in writing required or permitted hereunder may be delivered personally to the representatives for the Administrator and the Employer listed below or may be mailed by registered mail, postage prepaid (or airmailed if addressed to an address outside of the city of dispatch).

Until changed by notice in writing, all such notices and communications shall be addressed as follow:

To Consultant: James A. Snyder, Senior Vice-President
Fringe Benefits Management Company
3101 Sessions Road
Tallahassee, Florida 32303
1-850-425-6200
850-425-6220 Fax

To Employer: City of Miami Beach, Fl.
T. C. Adderly, Human Resources Director
1700 Convention Center Drive, 3rd Floor
Miami Beach, Fl. 33139
305-673-7000 ext 6469
305-673-7529
E-mail: tcadderly@miamibeachfl.gov

With Copies to: Office of the City Attorney
Attn: Murray H. Dubbin
City of Miami Beach, Fl.
1700 Convention Center Drive
Miami Beach, Fl. 33139

Notices hereunder shall be effective: If delivered personally, on delivery; if mailed to an address in the city of dispatch, on the day following the date mailed; and if mailed to an address outside the city of dispatch on the seventh day following the date mailed.

(e) This **Agreement** may be executed in any number of counterpart copies, each of which when fully executed shall be considered as an original. This **Agreement** shall not be binding upon the parties until it is signed by both parties.

(f) This **Agreement** shall be governed by and construed according to the laws of the State of Florida. This **Agreement** shall be enforceable in Miami-Dade County, Florida, and if legal action is necessary by either party with respect to the enforcement of any or all of the terms or conditions herein, exclusive venue for the enforcement of same shall lie in Miami-Dade County, Florida.

BY ENTERING INTO THE AGREEMENT, CITY AND CONSULTANT EXPRESSLY WAIVE ANY RIGHTS EITHER PARTY MAY HAVE TO A TRIAL BY JURY OF ANY CIVIL LITIGATION RELATED TO, OR ARISING OUT OF, THIS AGREEMENT.

(g) The **Administrator**, being an independent contractor and not an employee of the **Employer**, agrees to carry adequate public liability and other appropriate forms of insurance, and to pay all taxes incident hereunto. The **Employer** shall have no liability to the **Administrator** except as specifically provided in this **Agreement**.

(h) The **Administrator** agrees to defend, indemnify and hold harmless the **Employer**, its employees and agents, against any and all claims, losses, damages, expenses, attorney's fees, liabilities and tax penalties and interest, exclusive of tax assessments, arising from any act or omission of the **Administrator** or its employees relating to the management of the **Plan** or the compliance and sufficiency of the **Plan** for the **Employer**. **Administrator** does not assume any responsibility for the correct treatment of any **Eligible Employee** or **Participant**'s income tax return, nor the reporting of taxable or nontaxable benefits as income by any **Eligible Employee** or **Participant**.

(i) In the event that either party shall bring an action against the other based upon an alleged breach of this **Agreement** or the **Plan** by the other, or shall be forced to defend any action arising out of or in any way related to this **Agreement** or the **Plan**, and shall prevail in any such action or proceeding, then, in addition to any and all damages to which such prevailing party is entitled, such party shall be entitled to recover all costs and expenses incurred in prosecuting or defending such action, or proceeding, and appellate review thereof, including, but not limited to court costs and usual, customary and reasonable attorney's fees.

(j) This written **Agreement** contains the sole and entire agreement between the parties regarding the subject matter thereof, superseding any and all other agreements between them. The parties acknowledge and agree that neither of them has made any representation with respect to the subject matter of this **Agreement** or any representations inducing the execution and delivery hereof except such representations as are specifically set forth herein, and each party acknowledges that it has relied on its own judgment in entering into the **Agreement**. The parties further acknowledge that any statements or representations that may have previously been made by either of them to the other are void and of no effect and that neither of them has relied thereon in dealing with the other.

No waiver or modification of this **Agreement** or of any covenant, condition, or limitation herein contained shall be valid unless in writing and duly executed by the party to be charged therewith. Furthermore, no evidence of any waiver or modification shall be offered or received in evidence in any proceeding or litigation between the parties arising out of or affecting this **Agreement**, or the rights or obligations of any party hereunder, unless such waiver or modification is in writing and duly executed. The provisions of this paragraph may not be waived except as herein set forth.

(k) Except as otherwise provided, any action of law or suit in equity or at law for the enforcement of this **Agreement** or any provision thereof shall be instituted in a court of competent jurisdiction and venue for such actions.

(l) The headings appearing in this **Agreement** have been inserted for the purpose of convenience and ready reference. They do not purport, and shall not be deemed, to define, limit or extend the scope or intent of the corresponding articles, sections or paragraphs.

(m) This **Agreement** shall be binding on and inure to the benefit of the respective parties and their respective heirs, legal representatives, successors, and assigns to the extent permitted by Florida law.

(n) No waiver of any breach of this **Agreement** shall be held to be a waiver of any other or subsequent breach. Failure of **Employer** to enforce at any time any of the provisions of this **Agreement** shall in no way be construed to be a waiver of such provisions nor in any way affect the validity of this **Agreement** or any part thereof, or the right of **Employer** to hereafter enforce each and every provision of this **Agreement**.

(o) The undersigned parties hereby stipulate and agree that, unless otherwise expressly prohibited by relevant state statute, regulation, municipal or local government charter, ordinance or regulation, municipalities, local governments, or other governmental agencies are authorized to purchase such goods and services as are provided for in the Administrative Agreement, under the same terms and conditions as set forth therein, except as mutually agreed to by Administrator and such municipality, local government, or other governmental agency.

Signed and agreed this 16th day of December, 2003.

FRINGE BENEFITS MANAGEMENT COMPANY

By: [Signature]
James A. Snyder, Senior Vice President

Attest: [Signature]
Secretary

CITY OF MIAMI BEACH

[Signature]
Mayor

Attest: [Signature]
City Clerk

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EZ Reimburse Administrative Agreement
RFP

[Revised 111103]

**APPROVED AS TO
FORM & LANGUAGE
& FOR EXECUTION**

[Signature] 12-12-03
City Attorney Date