

**FIRE DISTRICT ASSOCIATION OF CALIFORNIA
EMPLOYMENT BENEFITS AUTHORITY
Professional Services Agreement**

This Agreement is made and entered into this 1st day of July, 2009, by and between the FIRE DISTRICT ASSOCIATION OF CALIFORNIA EMPLOYMENT BENEFITS AUTHORITY, a California joint powers authority, hereinafter referred to as "FDAC EBA," and SMITH MOORE & ASSOCIATES, hereinafter referred to as "Smith," and entered into in the City of Sacramento, County of Sacramento, State of California. Effective on July 1, 2009, FDAC EBA and Smith mutually agree and promise the following:

1. **PURPOSE OF ENGAGEMENT.** FDAC EBA hereby engages Smith to provide administrative services generally defined as follows: Smith will provide administrative services with respect to the administration and coordination of the health and welfare benefit program operated by FDAC EBA for existing and retired employees, officers and members of the legislative body of its member agencies. Said administrative duties include Board and committee oversight and planning; coordination and control of all consultants retained by FDAC EBA; oversight and management of all FDAC EBA contracts, including, but not limited to third party administrator contracts, broker services agreements, and agreements with other consultants such as attorneys, accountants and actuaries; coordination with other professional associations; planning and execution of conferences; and any other duties as necessary to fulfill and implement FDAC EBA's strategic goals and initiatives as now adopted or as may be amended or adopted during the term of this Agreement.

2. **SCOPE OF SERVICES.** Beginning July 1, 2009, FDAC EBA engages Smith to provide all necessary personnel, materials and services to fully and completely perform those services described more completely in the Scope of Services attached hereto, marked Exhibit A and incorporated herein by this reference. Smith shall provide those services reasonably required and requested to carry out the described Scope of Services and will take reasonable steps to keep FDAC EBA informed of progress. Smith agrees to perform the required services described herein, upon the terms and conditions and in consideration of the payments stated in this Agreement. For matters concerning administration of this contract, Smith will communicate with FDAC EBA through the President of the Board of Directors of FDAC EBA.

3. **INDEPENDENT CONTRACTOR.** Smith is an independent contractor and shall not at any time be considered an employee of FDAC EBA during the term of this engagement. FDAC EBA shall have neither the right nor the obligation to exercise any control or direction whatsoever over the method or manner in which Smith shall perform the services to be provided under this Agreement.

4. **CLIENT'S DUTIES.** FDAC EBA agrees to cooperate with Smith and be reasonably available to confer with Smith upon request, to keep Smith informed of developments, and to disclose to Smith all facts and circumstances of which FDAC EBA is aware which may bear upon the handling of the services outlined herein in a timely manner. FDAC EBA agrees to provide Smith with such documents and information as it may possess relating to the contract, and to abide by this Agreement.

5. **FEES AND BILLING PRACTICES.** FDAC EBA agrees to pay Smith for services provided under this Agreement at the rates shown in Exhibit B attached hereto and hereby made a part of this Agreement. In no event shall Smith be entitled to compensation for extra work unless a written authorization or Amendment to this Agreement describing the work and payment terms has been executed by FDAC EBA prior to the commencement of

the services. Any such extra work in addition to the work or services described in Exhibit A shall be performed by Smith according to the rates or charges listed in Exhibit B. In the event that no rate or charge is listed for a particular type of extra work, Smith shall be paid for the extra work at a rate to be mutually agreed upon prior to commencement of the extra work.

6. DISCHARGE AND WITHDRAWAL. FDAC EBA may discharge Smith at any time, without cause, by giving Smith a sixty (60) day written notice of termination. Smith may withdraw with FDAC EBA's advance written consent, or at any time after having given FDAC EBA written notice and a reasonable period within which to retain the services of other professionals, but in no event less than 120 days.

After Smith's services conclude, Smith will deliver all original files to FDAC EBA, along with any funds or property of FDAC EBA in Smith's possession. Smith agrees not to destroy any original files without prior written consent of FDAC EBA. When Smith's services conclude, all unpaid charges will become due and payable upon receipt of a final Statement of Charges to the termination date and after receipt by FDAC EBA of all materials and supplies identified above,

7. ENTIRE AGREEMENT; MODIFICATION. With respect to the subject matter hereof, this Agreement supersedes any and all previous negotiations, proposals, commitments, writings, and understandings of any nature whatsoever between FDAC EBA and Smith. This Agreement and all of the covenants and conditions set forth herein may be modified or amended only by a writing duly authorized and executed by FDAC EBA and Smith.

8. INSURANCE AND BONDING. Smith shall obtain and maintain insurance and bonding during the term hereof as prescribed in Exhibit C. Smith shall furnish evidence of such coverage.

9. INDEMNIFICATION. Smith shall indemnify, defend, protect, and hold harmless FDAC EBA, and its officers, employees, volunteers and agents from and against any liability, losses, claims, damages, expenses, demands, and costs (including, but not limited to, attorney, expert witness and consultant fees, and litigation costs) of every type and description to which it may be subjected or put to by reason of or resulting from: (1) the performance of or failure to perform the services specified in this Agreement or any other obligations of this Agreement by Smith or its employees; (2) any alleged negligent act or omission of Smith, or its employees in connection with any acts performed or required to be performed pursuant to this Agreement. This indemnification is effective and shall apply whether or not any such action is alleged to have been caused in part by FDAC EBA as a party indemnified hereunder. This indemnification shall not include any claim arising from the sole negligence or willful misconduct of the FDAC EBA or its agents and/or employees. Smith's obligations under this indemnification provision shall survive the termination, or completion of the services specified in this Agreement.

FDAC EBA shall indemnify, defend, protect and hold harmless Smith, and its officers, employees, volunteers and agents from and against any and all liability, losses, claims, damages, expenses, demands, and costs (including but not limited to, attorney, expert witness and Smith's fees, and litigation costs) of every type and description to which it may be subjected or put to by reason of or resulting from: (1) the performance of or failure to perform the services specified in this Agreement or any other obligations of this Agreement by FDAC EBA or FDAC EBA's officers, employees, and agents; (2) any alleged negligent act or omission of FDAC EBA, or its employees or agents in connection with any acts performed or required to be performed pursuant to this Agreement. This indemnification shall not include any claim arising from the sole negligence or willful

misconduct of Smith or its employees. FDAC EBA's obligations under this indemnification provision shall survive the termination, or completion of services specified in this Agreement.

10. PRINCIPAL SERVICE PROVIDER. Catherine Smith Moore shall be the designated Administrator. Delegation of core duties to any other individual must be approved by the FDAC EBA Board of Directors.

11. EFFECTIVE DATE. This Agreement will take effect on July 1, 2009 once approved and executed by the Parties.

12. TERM OF AGREEMENT. This Agreement shall be for a term of three years and shall terminate on June 30, 2012 unless specifically discharged or withdrawn earlier pursuant to Section 6 or amended or extended by the Parties in writing. FDAC EBA shall not be responsible for payment for services initiated subsequent to termination without prior written approval of FDAC EBA.

Date: 6/14/09

SMITH MOORE & ASSOCIATES
("Smith")

By: Catherine A. Smith
Catherine A. Smith

Date: 6/16/2009

FIRE DISTRICT ASSOCIATION OF CALIFORNIA
EMPLOYEE BENEFITS AUTHORITY
("FDAC EBA")

By: Mike McMurry
Mike McMurry
President, Board of Directors

EXHIBIT A

FDAC EMPLOYMENT BENEFITS AUTHORITY SCOPE OF SERVICES ADMINISTRATOR

As the administrator of the FDAC Employment Benefits Authority (FDAC EBA), Smith Moore & Associates would be responsible and accountable for the following:

Governance

- Plan and attend quarterly Board of Directors meetings (contract to include no more than six per fiscal year)
- Distribute (and where appropriate, develop) Board meeting materials
- Maintain Board of Directors roster
- Maintain (and develop, as requested) governing documents
- Develop annual calendar of Board of Directors meetings

Accounting

- Develop annual fiscal-year budget
- Work with external CPA/auditor to ensure annual audit and filings
- Prepare financial reporting for the Board of Directors meetings
- Investment portfolio oversight (when applicable)
- Maintain accurate financial records of all FDAC EBA funds
- Handle day-to-day bookkeeping responsibilities

Membership and Member Services

- Verify FDAC membership for all FDAC EBA participants (follow up with those that are not to ensure compliance)
- Be available as a resource for member (answer questions, help resolve issues, etc.)
- Develop resources for members (risk management training, online document referrals, etc.)
- Monitor status of programs
- Maintain database of FDAC EBA members and contacts
- Serve as liaison between FDAC EBA and members
- Develop/maintain new member guidelines

Communications

- Be responsible for all information dissemination to FDAC EBA members
- Develop/maintain FDAC EBA website (X hours of website design allotted per fiscal year)
- Coordinate articles/ads for FDAC Report
- Coordinate sponsorship opportunities for FDAC
- Responsible to proof/approve marketing materials developed by broker

General Administration

- Monitor status of programs
- Selection/recommendation of vendors/consultants
- Monitor and manage vendor/consultant contracts
- Develop/maintain policy and procedures manual
- Coordinate open enrollment
- Coordinate development of annual calendar/timeline
- Be available to answer questions
- Attend Board meetings as requested
- Ensure prompt filing of taxes
- Ensure annual audit
- Ensure compliance with JPA agreement/bylaws
- Ensure compliance with established policies/procedures

**EXHIBIT B
SCHEDULE OF RATES AND CHARGES
SMITH MOORE & ASSOCIATES**

This schedule is intended to establish the full compensation for all personnel, materials and services that shall be paid to Smith for the services rendered pursuant to Exhibit A of this Agreement. In addition, it shall establish the hourly rates and charges to be used should additional services be necessary during the term of this Agreement. These rates and charges will establish the basis for any negotiations related to additional services to be provided by Smith.

The Parties, after separate negotiations and discussions, have determined that the following compensation amounts shall apply to the various portions of the Scope of Services detailed in Exhibit A.

1. General Association Operations:

A. FDAC EBA agrees to pay to Smith monthly for all services and indirect supplies necessary to coordinate and administer the General Operations of FDAC EBA. FDAC EBA agrees that the compensation to Smith shall be \$4,000 monthly (\$48,000 annual), and shall increase annually by a percentage equal to the calculated consumer price index for the previous year.

The above compensation amounts shall be full compensation to Smith and shall include all non-direct expenditures on behalf of FDAC EBA by Smith.

B. In addition to the basic compensation set forth in Paragraph A above, FDAC EBA shall reimburse Smith for all reasonable expenses, other than office lease costs, that are incurred directly for FDAC EBA, or as a share of agreed-upon charges. These expenses may include, but are not limited to, out-of-town travel, stationery, printing, postage, dues and other expenses related to appropriate representation of FDAC EBA; and shall be payable on periodic demand of the Administrator, but not more than once each month. Such charges and categories shall be reviewed and adjusted as necessary by the FDAC EBA Board of Directors as appropriate, but not less than once each year. To these ends, the Board of Directors will establish a detailed budget including a ceiling on expenses for the aforementioned charges.

Expenses in excess of those set forth by the Board of Directors and any travel outside the Sacramento area are to be approved in advance by the FDAC EBA President.

The monthly fees set forth above have been established through extensive review and research of Smith Moore & Associates as well as negotiations for anticipated effort required to administer the FDAC EBA work program.

**EXHIBIT C
INSURANCE AND BONDING REQUIREMENTS
SMITH MOORE & ASSOCIATES**

A. Insurance. Smith shall procure and maintain, for the duration of this Agreement, insurance against claims for injuries to persons or damages to property, which may arise from, or in connection with, the performance of the work hereunder by Smith, its agents, representatives, employees, sub-consultants or professionals.

1. Minimum Scope of Insurance

Coverage shall be at least as broad as:

- a. Insurance Services Office Commercial General Liability coverage (occurrence form CG 0001).
- b. Insurance Services Office form number CA 0001 (Ed. 1/87) covering Automobile Liability, code 1 (any auto) or provide evidence of non-owned and hired auto liability coverage (if no owned autos).
- c. Workers' Compensation insurance as required by the State of California and Employer's Liability Insurance.

2. Minimum Limits of Insurance

Smith shall maintain limits no less than:

- a. General Liability: \$1,000,000 per occurrence for bodily injury and property damage liability coverage, and \$1,000,000 per person or organization for personal injury and advertising injury liability coverage. If Commercial General Liability insurance or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit.
- b. Automobile Liability: \$1,000,000 per accident for bodily injury and property damage.
- c. Employer's Liability: \$1,000,000 per accident for bodily injury or disease.

3. Deductibles and Self-Insured Retentions

Any deductibles or self-insured retentions must be declared to and approved by FDAC EBA. At the option of FDAC EBA, either: the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects FDAC EBA, its officers, officials, employees and volunteers; or Smith shall provide a financial guarantee satisfactory to FDAC EBA guaranteeing payment of losses and related investigations, claim administration and defense expenses.

4. Other Insurance Provisions

The commercial general liability and automobile liability policies are to contain, or be endorsed to contain, the following provisions:

- a. FDAC EBA, its officers, officials, employees and volunteers, are to be covered as additional insureds as respects: liability arising out of work or operations performed by or on behalf of Smith; or automobiles owned, leased, hired or borrowed by Smith.
- b. For any claims related to the services performed, Smith's insurance coverage shall be primary insurance as respects FDAC EBA, its officers, officials, employees and volunteers. Any insurance or self-insurance maintained by FDAC EBA, its officers, officials, employees or volunteers shall be in excess of Smith's insurance and shall not contribute with it.
- c. Each insurance policy required by this clause shall be endorsed to state that coverage shall not be cancelled by either party, except after thirty (30) days' prior written notice by certified mail, return receipt requested, has been given to FDAC EBA.

5. Acceptability of Insurers

Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A:VII, unless otherwise acceptable to FDAC EBA.

6. Verification of Coverage

Smith shall furnish FDAC EBA with original certificates and amendatory endorsements effecting coverage required by this clause prior to commencing any activity pursuant to this Agreement. All certificates and endorsements are to be received and approved by FDAC EBA before work commences. FDAC EBA reserves the right to require complete, certified copies of all required insurance policies, including endorsements affecting the coverage required by this Agreement, at any time.