

PROPERTY AND CASUALTY BROKER AND CONSULTING SERVICES AGREEMENT

This **Property and Casualty Broker and Consulting Services Agreement** ("Agreement") is made and entered into by and between **Hemet Unified School District** ("Client") and **Keenan & Associates** ("Keenan"), as of **July 1, 2020** ("Effective Date").

RECITALS

- A. **WHEREAS**, Client maintains a program of insurance coverages to insure against various losses and claims arising out of its day to day business activities;
- B. **WHEREAS**, Keenan is a specialty insurance services provider and, as such, is qualified to provide such insurance broker and consulting services; and
- C. **WHEREAS**, Client desires Keenan to provide, and Keenan desires to provide, the services described in this Agreement for the insurance coverages selected in Exhibit A ("Program") attached to and made a part of this Agreement.

The parties agree as follows:

AGREEMENT

1. **TERM**

The term of this Agreement is from the Effective Date through **June 30, 2023** ("Termination Date") and shall automatically renew for subsequent one (1) year periods unless either party gives the other at least sixty (60) days written notice of its intent not to renew.

2. **KEENAN SERVICES AND RELATIONSHIP OF THE PARTIES**

- A. Client elects and Keenan shall provide the services indicated below ("Services") with respect to the Program. A full description of the available services is provided in Exhibits B-1 through B-2 attached hereto and incorporated herein.

	Accept	Decline
Exhibit B-1: Broker Services	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Exhibit B-2: Consulting Services	<input checked="" type="checkbox"/>	<input type="checkbox"/>

- B. The relationship of Keenan and Client shall be that of an independent contractor and Keenan shall at all times remain responsible for its own operational and personnel expenses. Under no circumstance shall any employee of one party look to the other party for any payment or the provision of any benefit, including without exception, workers' compensation coverage. Except as may be expressly set forth in or contemplated by this Agreement, neither party shall have the right to act on behalf of the other, or to bind the other to any contract or other obligation.

- C. In providing the Services, Keenan shall act in an advisory and consultative capacity. Client shall retain the right to determine whether to act on or implement the information, recommendations, and suggestions provided by Keenan, and the manner by which any such action or implementation shall be undertaken. Except for Keenan's responsibilities with respect to funds obtained from or on behalf of Client, Keenan shall not be a fiduciary of Client.
- D. Keenan does not provide any legal, tax, or accounting service, advice, or opinion, and the Services shall not be interpreted as representing any such service, advice or opinion. Client shall consult its own tax and accounting experts on all tax, accounting, and financial matters and its own attorney on all legal issues and the application of any statute and/or regulation to its operations, including without limitation, the establishment and/or operation of the Programs.
- E. In providing its Services, Keenan shall comply with all applicable state and federal laws and regulations, and obtain and maintain all necessary licenses, registrations, and/or permits necessary for the performance of its duties under this Agreement.
- F. Keenan reserves the right to engage independent contractors and/or subcontractors to assist it in performing the Services. The use of such individuals shall not relieve either party of any of its duties under this Agreement.

3. **CLIENT'S DUTIES AND RESPONSIBILITIES**

- A. Client shall retain decision-making authority for its Programs, and shall manage the day-to-day activities of the Programs, except for those duties and/or functions expressly assigned to Keenan under this Agreement
- B. Client shall timely provide Keenan with information and access to such individuals, including its outside advisors and consultants, as may be necessary for Keenan to perform the Services. Keenan shall not be responsible for any delay in its performance that results from the failure of Client, or any person acting on behalf of Client, to make available any information or individual in a timely manner.
- C. All information provided to Keenan by Client, either in anticipation of or during the term of this Agreement, shall be complete and accurate, and Keenan may rely upon such information.
- D. If Client has selected brokerage services in Section 2 above, Client hereby appoints Keenan as its exclusive Broker of Record to secure quotes for the insurance required by the Program and for such additional coverages or insurance as Client may later designate in writing during the Term of this Agreement. To that end, Client shall, contemporaneously with the execution of this Agreement, execute the Broker of Record Designation attached hereto as Exhibit C, and hereby authorizes Keenan to present it to prospective insurers. With respect to those lines of insurance covered by this Agreement, and such additional lines of insurance as may later be designated by Client, Keenan shall have the exclusive authority and right to negotiate with insurance carriers and other coverage providers on

Client's behalf, and Client shall not seek or acquire quotes directly from any insurance carrier or other coverage provider during the term of this Agreement. Client authorizes Keenan to provide representatives of prospective insurers and other coverage providers with all information regarding Client, its operations, employees, and financial status as may be necessary for such insurer or coverage provider to evaluate Client's suitability for coverage and to prepare a quote.

4. **COMPENSATION**

- A. Keenan's fees for the Services rendered pursuant to this Agreement shall be as described in the attached Exhibit D. Any Services provided to Client that are outside of or in addition to those described in Exhibit B-1 and B-2 shall be subject to additional fees.
- B. Consistent with industry practices, insurers may pay insurance brokers, such as Keenan, indirect compensation based upon volume efficiencies, client renewals, marketing services, product development, technology investments and other additional services. Keenan seeks written assurances from insurers that any such indirect compensation that it may receive will not adversely impact the pricing or coverage terms that Keenan is able to obtain for its clients. The parties agree that any indirect compensation described in this paragraph shall not be considered part of Keenan's "commission or fees" as such term may be used elsewhere in this Agreement.

5. **INSURANCE**

Keenan shall procure and maintain during the term of this Agreement the following insurance coverages, and shall provide certificates of insurance to Client upon Client's request.

- A. Workers' Compensation: Coverage in conformance with the laws of the State of California and applicable federal laws;
- B. General Liability: Coverage (including motor vehicle operation) with a Two Million Dollar (\$2,000,000) limit of liability for each occurrence and a Two Million Dollar (\$2,000,000) aggregate limit of liability; and
- C. Errors and Omissions: Coverage with a Two Million Dollar (\$2,000,000) limit of liability for each occurrence and a Two Million Dollar (\$2,000,000) aggregate limit of liability.
- D. Cyber Liability/Privacy: Coverage with a Two Million Dollar (\$2,000,000) limit of liability for each occurrence and a Two Million Dollar (\$2,000,000) aggregate limit of liability.

6. **INDEMNIFICATION**

If either party breaches this Agreement, then the breaching party shall defend, indemnify and hold harmless the non-breaching party, its officers, agents and employees against all claims, losses, demands, actions, liabilities, and costs (including, without limitation, reasonable attorneys' fees and expenses) arising from such breach. In addition, if Keenan (i) becomes the subject of a subpoena or is otherwise compelled to testify or (ii) becomes the subject of a claim, demand, action or liability brought or asserted by any individual or entity other than the

Client ("Third-Party Demand") relating to or arising out of the Services and such Third-Party Demand is not a direct result of Keenan's negligence or willful misconduct, then Client shall defend, indemnify and hold Keenan harmless from all losses, payments, and expenses incurred by Keenan in resolving such Third-Party Demand.

7. **LIMITATION OF LIABILITY**

Notwithstanding anything to the contrary in this Agreement, in no event shall either party be liable for any punitive damages, fines, penalties, taxes or any indirect, incidental, or special damages incurred by the other party, its officers, employees, agents, contractors or consultants whether or not foreseeable and whether or not based in contract or tort claims or otherwise, arising out of or in connection with this Agreement even if advised of the possibility of such damage. Keenan's liability under this Agreement shall further be limited to, and shall not exceed, the amount of its available insurance coverage, but not exceeding the limits of coverage outlined in Section 5.

8. **DISPUTE RESOLUTION**

- A. In the event of any dispute arising out of or relating to this Agreement, such dispute shall be resolved by submission to binding arbitration before Judicial Arbitration & Mediation Services ("JAMS") or ADR Services, at the claimant's choice, in Los Angeles County, California, before a retired judge or justice. If the parties are unable to agree on a retired judge or justice, the selected arbitration service (JAMS or ADR Services) will select the arbitrator.
- B. In any such arbitration, the parties shall be entitled to take discovery in accordance with the provisions of the California Code of Civil Procedure, but either party may request that the arbitrator limit the amount or scope of such discovery, and in determining whether to do so, the arbitrator shall balance the need for the discovery against the parties' mutual desire to resolve disputes expeditiously and inexpensively.
- C. The prevailing party in any action, arbitration, or proceeding arising out of or to enforce any provision of this Agreement will be awarded reasonable attorneys' fees and costs incurred in that action, arbitration, or proceeding, or in the enforcement of any judgment or award rendered.

9. **TERMINATION**

- A. This Agreement may be terminated upon the occurrence of any of the following events:
 - i. By either party upon the dissolution or insolvency of either party;
 - ii. By either party following the filing of a bankruptcy petition by or against either party (if the petition is not dismissed within sixty (60) days in the case of an involuntary bankruptcy petition);
 - iii. If the application of any law, rule, regulation, or court or administrative decision prohibits the continuation of this Agreement or would cause a penalty to either party if the Agreement is continued, and if the Agreement cannot be amended to conform to such law, rule, regulation, or court or administrative decision in a

manner that would preserve the original intent of the parties with respect to their rights and duties under this Agreement; or

- iv. By the non-breaching party if a breach of this Agreement is not cured within thirty (30) days following receipt of written notice of the breach from the non-breaching party.
- B. By either Party without cause or penalty by providing at least sixty (60) days advance written notice to the other.
- C. In the event of termination pursuant to Section 9 above, Keenan shall be paid for the full value of all services rendered through the date of termination.

10. **SOLICITATION OF EMPLOYEES**

During the Term, and for a period of twelve (12) months following any termination or expiration of the Agreement, neither party shall solicit the employment or engagement of any employee or agent of the other party that interacted directly with the soliciting party; provided, however, the foregoing provision shall not prevent either party from soliciting for employment or employing an employee who responds to general solicitations or advertisements in periodicals including newspapers and trade publications, so long as such solicitations or advertisements are not specifically directed at the employee(s) of the other party.

11. **PROPRIETARY INTERESTS**

Keenan shall retain the copyright and the sole right of ownership to the form and format of any report, tool, schedule, exhibit, assessment, analysis, or other deliverable, that is created or developed by Keenan in performing the Services and provided to Client by Keenan in any media whatsoever. Client shall, however, remain the owner of the content of any such deliverable and any Client data or information that was provided to Keenan for the performance of the Services. Any deliverable created by Keenan for Client shall be used for Client's internal purposes and shall not be used, without the written consent of Keenan, for Client's commercial gain, nor shall it be distributed to or shared by Client with any third person, except as may be necessary to accomplish the intent and purpose of this Agreement.

12. **MARKETING**

Keenan may use Client's name in its representative client list. Keenan shall obtain Client's written consent before using Client's name for any other purpose.

13. **OTHER RELATIONSHIPS**

The Services provided to Client are non-exclusive and Keenan reserves the right to provide the same or similar services to other clients who may be in the same industry, business, or service as Client.

14. **CONFIDENTIALITY**

- A. As a result of their relationship under this Agreement each party may gain access to confidential information concerning the other. For purposes of this Agreement, the term “Confidential Information” includes, without limitation, i) any information or data about a party’s business operations, clients, employees, marketing plans, method of operation, trade secrets, and financial performance; ii) information about any individual participating in the Programs, such as name, address, social security number, compensation, and medical history, and iii) any other information about a party that is not available to the general public. Neither party shall, without the written consent of the other release, disclose, or disseminate the other party’s Confidential Information except as is necessary for the performance of the Services.
- B. In the event that either party becomes the subject of a subpoena or court order compelling the disclosure of the other party’s Confidential information, that party shall immediately notify the other so that the party whose Confidential Information is being sought can take such action as may be necessary to prevent or limit the release of its Confidential Information.
- C. Neither party shall be deemed to be in breach of this Section 14 if it has notified the other before it releases the Confidential Information pursuant to a subpoena or court order, and the party whose Confidential Information was requested fails to provide, before the deadline for disclosure, a copy of court order quashing the subpoena or otherwise limiting the original demand for the Confidential Information.
- D. If, as a result of the Services, Keenan becomes the recipient of any information designated as Protected Health Information (“PHI”) under the Health Insurance Portability and Accountability Act of 1996 (“HIPAA”), Keenan shall execute a Business Associate Agreement (as defined by HIPAA) which shall govern Keenan’s obligations with respect to such PHI.

15. **GENERAL**

- A. This Agreement, its recitals and all attached exhibits constitute the entire understanding of the parties related to the subject matter of the Agreement, and supersede all prior and collateral statements, presentations, communications, reports, agreements or understandings, if any, related to such matter(s).
- B. The obligations of this Agreement (other than Keenan’s obligation to perform services and Client’s obligation to pay for such services, if any, except as provided under Section 9B applies) shall survive the expiration or termination of this Agreement.
- C. This Agreement is made for the benefit of the parties and is not intended to confer any third-party benefit or right. The enforcement of any remedy for a breach of this Agreement or claim related to the Services may only be pursued by the parties to this Agreement.

- D. No modification or amendment to this Agreement shall be binding unless in writing and signed by authorized representatives of both parties. Any waiver or delay by a party in enforcing this Agreement shall not deprive that party of the right to take appropriate action at a later time or due to another breach. This Agreement shall be interpreted as if written jointly by the parties.
- E. Any provision determined by a court of competent jurisdiction to be partially or wholly invalid or unenforceable shall be severed from this Agreement and replaced by a valid and enforceable provision that most closely expresses the intention of the invalid or unenforceable provision. The severance of any such provision shall not affect the validity of the remaining provisions of this Agreement.
- F. Neither party shall be liable or deemed to be in default for any delay or failure in performance under this Agreement resulting, directly or indirectly, from acts of God, civil or military authority, acts of public enemy, war, accidents, fires, explosions, earthquakes, floods, power outages, failure of computer systems, machinery or supplies, vandalism, strikes, or other work interruptions, or any similar or other cause that is beyond the reasonable control of either party. Each party shall make a good faith effort to perform under this Agreement in the event of any such circumstances, and shall resume full performance of its contract duties once the cause of the delay has abated.
- G. All notices hereunder shall be in writing and shall be sent to the parties at the addresses as set forth below, or to such other individual or address as a party may later designate. Notices shall be sent via personal delivery, courier service, United States mail (postage pre-paid, return receipt requested), express mail service, electronic mail, or fax. Notice shall be effective when delivered, or if refused, when delivery is attempted. Notices delivered during non-working hours shall be deemed to be effective as of the next business day.

If the notice relates to a legal matter or dispute, a copy shall be sent to:

Keenan and Associates
2355 Crenshaw Blvd., Ste. 200
Torrance, CA 90501
Attn: Legal Department
Fax: (310) 533-0573

- H. This Agreement may be executed in counterparts and by fax signatures and each shall be deemed to be an original.

[This Space Intentionally Left Blank]

- I. Each person signing this Agreement on behalf of a party represents and warrants that he or she has the necessary authority to bind such party and that this Agreement is binding on and enforceable against such party.

<u>Hemet Unified School District</u>		<u>Keenan & Associates</u>	
<u>Signature:</u>		<u>Signature:</u>	
<u>By:</u>	Darrin Watters	<u>By:</u>	John Stephens
<u>Title:</u>	Deputy Superintendent, Business Services	<u>Title:</u>	Sr. Vice President
<u>Address:</u>	1791 W Acacia Ave	<u>Address:</u>	2355 Crenshaw Blvd., Ste. 200
	Hemet, CA 92545		Torrance, CA 90501
<u>Telephone:</u>	[Insert Number]	<u>Telephone:</u>	310-212-0363
<u>Attention:</u>	Lucy Dressel, Dir Safety/Risk Mgmt/Benefits	<u>Attention:</u>	Brent Chavez
<u>E-mail:</u>	ldressel@hemetUSD.org	<u>E-mail:</u>	bchavez1@keenand.com

EXHIBIT A **LINES OF COVERAGE**

Keenan shall perform the services described in Exhibits B-1 and/or B-2 for the lines of coverage as indicated below, and for such other lines as Client may later designate:

B1 B2 Neither

Workers' Compensation	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
General Liability Insurance	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Directors and Officers Liability Insurance (Primary and Side A DIC forms)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Commercial Property Insurance	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Boiler and Machinery Insurance	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Automobile Insurance	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Crime Insurance	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Fiduciary Responsibility Insurance	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Employed Lawyers Professional Liability Insurance	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Kidnap and Ransom Insurance	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Travel Accident Insurance	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Pollution Liability	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Underground Storage Tank Pollution Liability	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Miscellaneous Liability Insurance			
Security Guard General Liability	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Airport Liability	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
International General Liability Insurance	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Special Events Insurance	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Miscellaneous Facility Bonds	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

EXHIBIT B-1 BROKERAGE SERVICES

Keenan shall perform the following Brokerage Services for those lines of coverage indicated in Exhibit A and for such other lines as Client may later designate:

1. Plan Review – Keenan shall review Client’s current insurance program(s) and provide information and recommendations regarding insured and/or self-insured options, as requested by Client.
2. Insurance Needs Assessment – Keenan shall work with client to determine Client’s insurance needs.
3. Insurance Marketing Plan – Keenan shall prepare and present to Client its plan for marketing Client to various carriers and/or Coverage providers. In furtherance of its plan, Keenan shall contact those markets that it has determined most likely to meet Client’s needs, as made known to Keenan, but shall not necessarily contact every available market for the particular Coverage being sought. In so far as practical, Keenan shall honor Client’s timely and reasonable requests to contact specific markets, but Keenan shall not be obligated to present Client to any carrier or Coverage provider which Keenan has determined would not be willing to quote Client’s business or would not give a competitive quote.
4. Insurance Marketing Results – Keenan shall present to the client in summary format information concerning all markets and carriers approached. The summary shall include, as applicable: name of carrier and Coverage providers approached, limits, premium, and deductible. The summary shall also include the names of any carriers or Coverage providers who declined to provide a quote.
5. Review of Insurance Options – Keenan shall present along with the Marketing Results a comparison summary highlighting the significant terms and/or differences among the various Coverages quoted. This summary is provided for Client’s convenience only. It is Client’s responsibility to ask questions and to request any additional information that it deems necessary for it to make an informed decision regarding its insurance or self-insurance program.
6. Obtain Coverage – Once the Client has made its decision, Keenan shall take all steps necessary to communicate Client’s decision to the carrier selected and to have the carrier or other Coverage provider bind Coverage on behalf of the Client.
7. Implementation – Keenan shall assist Client in the preparation and distribution of materials relating to the implementation of its insurance program(s).
8. Ongoing Service – Keenan shall act as a liaison between the Client and its insurance carrier or coverage provider.

EXHIBIT B-2 CONSULTING SERVICES

Keenan shall perform the following services for those lines of coverage selected Exhibit A and for such other lines of coverage as Client may later select:

1. Claim Analyst Advocacy

- Claim file reviews will consist of carrier oversight to ensure aggressive claim resolution and reserve integrity. Claim file reviews will be no more frequent than quarterly and can be via telephonic/video conference or in-person.
- Training session no more than twice per year on topics such as basic/advanced workers' compensation, claim reporting, employer level investigation, FEHA/Interactive process, etc.
- Informational support such as distribution of Client Briefings, legislative updates, self-insured assessments, etc.

2. Loss Control Advocacy

- Liaison between the client and the carrier to ensure client questions are being answered and issues are being resolved.
- Trend Analysis annually (if workers' compensation loss data is provided by carrier) to determine loss drivers and provide recommendations to reduce frequency and severity.

EXHIBIT C
BROKER OF RECORD DESIGNATION

This letter confirms that as of **July 1, 2020**, the organization listed below (“Client”) has appointed Keenan & Associates (“Keenan”) as the Broker of Record in connection with the following coverages:

Excess Workers' Compensation
Underground Storage Tank

and such additional coverages (the “Coverage”) or insurance as Client may from time-to-time request from Keenan. Keenan is authorized to provide a copy of this letter to any insurer to demonstrate Keenan’s authority to obtain the Coverage. This appointment rescinds any previous appointment Client may have made with respect to the Coverage and shall remain in full force and effect until cancelled in writing with sixty (60) days advance notice.

Keenan is an insurance services provider with special expertise in the insurance and services needs of California school districts, municipalities, health care providers and their related entities. As such, Keenan will present to Client those products and services that Keenan believes will be most likely to meet the needs of Client. Keenan shall perform its duties as an independent contractor and shall not be treated as an officer, employee, agent or fiduciary of Client.

Client authorizes Keenan to provide representatives of identified insurance companies and other entities which may offer coverage with such Client information as may be requested. Keenan shall be entitled to receive all commissions and other compensation that may be paid in conjunction with the placement, implementation and servicing of the Coverage.

Acknowledged and agreed to by:

<u>Hemet Unified School District</u>		<u>Keenan & Associates</u>	
<u>Signature:</u>		<u>Signature:</u>	
<u>By:</u>	Darrin Watters	<u>By:</u>	John Stephens
<u>Title:</u>	Deputy Superintendent, Business Services	<u>Title:</u>	Sr. Vice President
<u>Address:</u>	1791 W Acacia Ave	<u>Address:</u>	2355 Crenshaw Blvd., Ste. 200
	Hemet, CA 92545		Torrance, CA 90501
<u>Telephone:</u>	(951) 765-5100 ext. 5001	<u>Telephone:</u>	310-212-0363
<u>Attention:</u>	Lucy Dressel, Dir Safety/Risk Mgmnt/Benefit	<u>Attention:</u>	Brent Chavez
<u>E-mail:</u>	ldressel@hemetUSD.org	<u>E-mail:</u>	(951) 715-0190 x1182

EXHIBIT D COMPENSATION

1. As compensation for its provision of the Services for the Coverages listed only, Keenan shall receive an annual fee as follows:
 - a. 2020-2021 = **twenty thousand dollars (\$20,000)**
 - b. 2021-2022 = **twenty thousand dollars (\$20,000)**
 - c. 2022-2023 = **twenty thousand dollars (\$20,000)**

Should any additional lines of coverage not listed be added during this Agreement, additional fee(s) and additional commission(s) will be negotiated at the time such coverages are added.

2. Client will be invoiced for the full amount of the annual fee. Any balance not paid within thirty (30) days following the date of the invoice shall be deemed late. Interest on any late payment shall accrue as of the date of Keena's original invoice at the rate of (a) 1 ½ percent per month, or (b) the maximum interest rate permitted by applicable law, whichever is lower. Keenan shall have the right to suspend its Services if any balance owed by Client is more than sixty (60) days late.
3. Keenan shall also retain any commissions from insurance carriers and/or other vendors directly for the placement of any insurance coverage for coverages listed other than Coverage listed herein. Client shall have no responsibility for the payment of any such commission to Keenan. Client acknowledges that commissions paid by insurers to Keenan that are directly related to the insurance coverage purchased by Client as part of the Coverage may impact the pricing that Keenan is able to obtain for Client for such coverage.