

**PROPERTY AND CASUALTY
CLAIMS ADMINISTRATION SERVICES AGREEMENT**

This **Property and Casualty Claims Administration Services Agreement** ("Agreement") is made and entered into by and between **Beverly Hills Unified School District** ("Client") and **Keenan & Associates** ("Keenan"), as of **July 1, 2018** ("Effective Date"). Client and Keenan are also referred to individually as a "party" and collectively as the "parties."

In consideration of the mutual obligations contained herein, the Parties agree as follows:

1. **TERM**

The term of this Agreement is from **July 1, 2018** through **June 30, 2021** ("Term") unless extended or terminated earlier as provided herein.

2. **KEENAN RESPONSIBILITIES AND SCOPE OF SERVICES**

- A. Keenan shall provide Client with the services described in the attached Exhibits A that are checked below:

Exhibit A-1 – Administrative Services
Exhibit A-2 – Adjustment Services
Exhibit A-3 – Investigative Services
Exhibit A-4 – Additional Investigative Services



- B. The Claims that are covered by this Agreement include all currently open claims and those accidents, incidents or claims reported to Keenan in writing on or after the effective date of this Agreement for which Client has financial responsibility as part of the coverage or insurance (the "Coverage") provided by the Insurance Policy or Memorandum of Coverage issued by **Southern California ReLiEF**. Such claims shall be referred to hereafter as "Claims."
- C. Keenan shall perform its obligations hereunder as 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.
- D. Keenan's services are limited to the specific obligations described herein and Keenan is authorized to act on behalf of Client as expressly stated in this Agreement. Except for Keenan's responsibilities with respect to funds obtained from or held on behalf of Client, Keenan shall not be a fiduciary of Client.
- E. Keenan agrees to comply with all applicable State and Federal Laws that relate to the Coverage.

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

- A. Client shall retain final authority and responsibility to approve the resolution of all Claims that are within the member retained limits and is responsible for all other aspects of the Coverage, except for the services to be provided by Keenan under this Agreement.
- B. Client shall provide Keenan with all applicable information in a timely manner so that Keenan can fulfill its obligations under this Agreement. Client certifies that all information provided to Keenan shall be complete, accurate and timely and that Keenan may rely upon such information without further investigation or review. Client understands and agrees that such information has not been audited by Keenan and Client shall remain liable for its accuracy.
- C. To the extent Keenan requires the assistance of Client's staff or any third parties who are assisting, advising or representing Client to fulfill its obligations hereunder, Client shall have its staff and these third parties assist Keenan.
- D. If a trust account is opened by Keenan on behalf of the Client, Client hereby agrees to fund such trust account and to maintain a minimum balance, during the Term of this Agreement, of at least an amount sufficient to ensure that there are sufficient funds available to pay all appropriate and properly submitted Claims. If Claims exceed the balance in the trust account Client shall be responsible for covering those Claims. Keenan agrees to notify the Client if there are any deficiencies in the minimum balance of the trust account when Claims exceed the account balance. All deficiencies in the minimum balances in the trust account are due and payable upon receipt of notice from Keenan. Client hereby agrees to provide funds to sufficiently fund the trust account in a timely manner. Keenan shall not, under any circumstances or occurrences, be responsible for funding any deficiencies in the trust account; nor, shall it be responsible for the payment of any appropriate and properly submitted Claims.
- E. Client acknowledges and agrees that Keenan will use its discretion in its role as Claims administrator. In such capacity, Keenan shall have no responsibility or liability for actions taken or payments approved, unless it shall be determined that Keenan acted in willful misconduct or in a manner that was grossly negligent.
- F. Client understands that Keenan is not providing any legal, tax or accounting services or advice and agrees to seek the counsel of its own attorney on all legal issues or matters and consult with its own tax and accounting experts on all tax and accounting issues and matters relating to the Claims Services.

4. **COMPENSATION**

Keenan shall receive compensation for the services rendered under this Agreement as provided in the attached Exhibit B.

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 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.
 - v. Either party shall have the right to terminate at any time without cause or penalty upon sixty (60) days prior written notice to the other party.
- B. In the event of termination pursuant to Section 9A above, Keenan shall be paid for the full value of all services rendered through the date of termination.
- C. If Client requests that Keenan continue to provide services under this Agreement after its expiration, Keenan may agree to provide services and the Agreement shall be extended on a month-to-month basis until terminated by either party. In such case, compensation shall be paid to Keenan on a monthly basis, under the then current rates.

10. **DISPOSITION OF FILES**

- A. All files on each Claim shall be the property of Client. However, Keenan shall be entitled to keep a copy of such files and documents as may be necessary to demonstrate its performance under this Agreement.
- B. In the event of the expiration or termination of this Agreement, Keenan shall return all files to Client unless Client requests Keenan to continue to process any file(s), which file(s) Keenan will continue to process on a fee basis as negotiated.

11. **OWNERSHIP OF RECORDS**

- A. Records of the services provided under this Agreement shall be the property of Client. However, Keenan shall be entitled to keep a copy of such files and documents as may be necessary to demonstrate its performance under this Agreement.
- B. In the event of the expiration or termination of this Agreement, Keenan shall return all Client files except as may otherwise be agreed to, in writing, between Keenan and Client.

12. **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 of 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.

13. **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.

14. **OTHER RELATIONSHIPS**

- A. Client also understands that Keenan or its affiliates may provide services for other entities that also participate in the same pool as Client and or maintain Coverage with Keenan for similar insurance needs and that Keenan may be separately compensated for those additional services. Such services may include, without limitation, providing similar services for other members of the pool or providing other services for insurers or reinsurers that may provide coverage under the pool.
- B. Client understands that Keenan or its affiliates may provide Client with other services or insurance coverage not provided in this Agreement and receives compensation related to such other services including, without limitation, loss control services, joint powers administration, insurance brokerage services, reinsurance, obtaining other reinsurance coverage for Client, Claims administration, investigative services, financial processing and other related services.
- C. In the event a Claim is reported to Keenan and it is determined that the claimants or cross-complainants are also clients of Keenan to whom Keenan is also committed to serve by contract, Keenan shall notify the Client of the actual or potential conflict of interest. In such event, Client shall either waive the conflict or retain the services of another investigator/adjuster to administer the Claim, and Keenan shall assist the Client in obtaining such service.

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 set forth in this Agreement other than Keenan's obligation to perform the Services and Client's responsibility to pay for the Services shall survive the expiration or termination of this Agreement. Nothing in this Section 14 shall, however, be interpreted as relieving Client of its obligation to pay for any Services rendered by Keenan prior to the termination date of this Agreement.
- C. If any person or entity attempts to pursue any claim or remedy based upon or arising in any way out of this agreement, to the extent such claim or remedy is permitted, then such person or entity shall be bound by the terms of this Agreement.

- D. No modifications or amendments to this Agreement shall be binding unless in writing and signed by authorized representatives from 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 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 payments and invoices are due and payable upon presentation by Keenan. In the event Client fails to pay any invoice within thirty days of presentation, Keenan shall be entitled to receive interest on such outstanding invoice from the date of presentation at the rate of (a) 1½ percent per month or (b) the maximum interest rate permitted by applicable law, whichever is lower.
- H. 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

I. This Agreement may be executed in counterparts and by fax signatures.

J. 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>Beverly Hills Unified School District</u>		<u>Keenan & Associates</u>	
<u>Signature:</u>		<u>Signature:</u>	
<u>By:</u>		<u>By:</u>	Steven V. Moccardini
<u>Title:</u>		<u>Title:</u>	Vice President
<u>Address:</u>		<u>Address:</u>	2355 Crenshaw Blvd., Ste. 200
			Torrance, CA 90501
<u>Telephone:</u>		<u>Telephone:</u>	(310) 212-0363 ext. 2624
<u>Attention:</u>		<u>Attention:</u>	Brad Keenan
<u>E-mail:</u>		<u>E-mail:</u>	bkeenan@keenan.com

EXHIBIT A-1
ADMINISTRATIVE SERVICES

1. Keenan agrees to provide, during the term of this Agreement, the following administrative services:
 - A. Provide Client a tabulated Monthly Status Report on all active Claims, indicating the open or closed status of each reported Claim assigned to Keenan, the details of each Claim, the payments during the month and the reserve status.
 - B. If requested by Client, Keenan shall establish a trust account from which Claims that are within the member retained limits are paid. If an account has already been established on the Client's behalf, Keenan shall continue to maintain the account upon renewal of services. Keenan will provide transaction registers of all such expenditures. The Client will maintain a balance adequate to pay bills and expenditures, on a monthly basis from the account and will reimburse said account promptly on a monthly basis in the amount the account is depleted, as outlined in the Agreement.
 - C. Provide for the payment of Claims, according to the guidelines given by Client, to the extent that there are funds available in Client's trust account.

EXHIBIT A-2
ADJUSTMENT SERVICES

1. Keenan agrees to provide, during the term of this Agreement, the following adjustment services on each Claim:
 - A. The maintenance of a file on each Claim reported to Keenan.
 - B. Periodic review and adjustment of reserves on all open Claims.
 - C. Whenever investigation results in a determination that Client sustained a liability to a third party, Keenan shall process any such Claim for settlement in accordance with the Coverage and instructions and policies of Client presented to Keenan in writing.
 - D. Investigate, evaluate and adjust all Claims by a covered party in accordance with the terms of the Coverage.
 - E. Notification of Client's primary and excess coverage providers of all Claims, which exceed Client's retained limit and maintenance of liaison between the Coverage providers and the Client on matters affecting the adjustment of such Claims and seek reimbursements for loss in excess of retention or deductible.
 - F. Pursue and direct subrogation/third-party recovery against any party responsible or partially responsible for loss incurred by Client, in accordance with the terms of the "Memorandum of Coverage" or "Insurance Policy" and, if a recovery is successful, the reimbursement of any amounts (net of subrogation effort expenses) shall be made in inverse order, to the extent of each party's disbursement: first to the reinsurer; then to the pool where the Client is a member and then to the Client.
 - G. Recommendation of rejection of Claims when appropriate pursuant to relevant provisions of Title 1, Division 3.6, Part 3, Chapter 2, of the Government Code of the State of California.
 - H. Attempt to obtain Release Agreements on behalf of Client in connection with the settlement of Claims.
 - I. Retain defense and coverage counsel in accordance with approved guidelines for the Coverage. Files referred to counsel will be sent with the appropriate instructions to advise counsel of the steps which are being authorized. All legal bills are to be reviewed for the nature of the work performed and reasonableness of the time charged.

EXHIBIT A-3
INVESTIGATIVE SERVICES

1. Keenan agrees to provide, during the term of this Agreement, the following investigative services:
 - A. Receipt and examination of all reports of Claims.
 - B. Initiate investigation through in-house review of Claims, where the nature of the Claim warrants such investigation or when requested by Client; such investigation to include telephonic or written contact with claimant, witnesses, or employees of Client.
 - C. Provide a report to Client with the findings of such investigation and information regarding any potential for subrogation/third-party recovery.
 - D. Assignment to and monitoring of all experts, consultants and field investigators appropriate for the type of Claim presented.
2. Client shall make available to Keenan all employees of Client who are witnesses to an incident or accident or who have knowledge of the event or incident, which is the subject matter of a Claim. If possible, Client shall provide Keenan with photographs and engineering drawings or other descriptive material of all conditions of Client property which are alleged to be dangerous or that were damaged in the events which produced the Claim under investigation.

EXHIBIT A-4
ADDITIONAL INVESTIGATIVE SERVICES

1. If necessary to determine probable liability/damage or deny coverage of a Claim and if a third-party recovery is pursued, Keenan shall conduct additional investigation of such Claims, where the nature of the Claim warrants such investigation or when requested by Client as follows:
 - A. Additional Investigative Services shall include additional contact with claimant, witnesses, or employees of Client, and other additional investigative services, such as professional photography, laboratory services, property damage appraisals, taking statements from witnesses away from the premises of Keenan, on-site investigation, copying material and other records, trial preparation and professional engineering services including, but not limited to, map preparation, accident reconstruction, material analysis and premises evaluation (collectively, "Additional Investigative Services").
2. Keenan agrees to manage and monitor the activities of any such vendors involved in the potential recovery and to assist them in the provision of such services.
3. Client agrees to pay for the cost of Additional Investigative Services. The invoice for such services shall be due and payable upon presentation. Client acknowledges that Additional Investigative Services may be provided by independent third-party vendors or by employees or affiliates of Keenan; provided that the rates charged by Keenan employees or affiliates shall be at market rates.

EXHIBIT A-5
SECTION 111 REPORTING SERVICES

1. Section 111 of the Medicare, Medicaid and SCHIP Extension Act of 2007 ("Section 111") requires the reporting of certain liability settlements and/or payments to the Center for Medicare Services ("CMS"). Client is the Responsible Reporting Entity ("RRE"), as defined under Section 111, for any liability payment or settlement made by it from its own funds.

For each claim managed by Keenan under the Agreement, Keenan shall, in its capacity as TPA, perform the following services:

- a. Determine whether or not a Section 111 report ("Report") must be filed; and
 - b. File any required Reports on behalf of Client.
2. When a claim payment or settlement exceeds Client's retained limit or deductible ("MRL/Deductible"), Keenan, as Client's TPA, shall file a Report with respect to the portion of the payment made from the client's MRL/Deductible. The coverage provider, **Southern California ReLiEF**, is responsible for submitting a Report with respect to any payments made by the coverage provider.
3. It is the Client's responsibility to timely provide Keenan with all information in its possession that is required for the filing of a 111 Report. Keenan shall not be responsible for any penalty or fine that is assessed for a failure to file a timely, accurate and/or complete Report if such failure was the result of the failure of the Client or any third party to provide Keenan with all information necessary to file a timely, accurate, and complete Report.
4. Keenan cannot issue a payment to a claimant until all information required for the filing of a Report has been received.
5. Keenan shall have no responsibility to file a Report for any payment or settlement made by Client without the involvement of Keenan. In such cases, Client, or its designee, shall be solely responsible for its own Section 111 compliance. This includes, without limitation, the determination of whether or not a Report must be submitted, as well as the preparation and submission of all required Reports.

EXHIBIT B COMPENSATION

1. Client agrees to pay Keenan fees calculated as follows:

A. For the period of July 1, 2018-June 30, 2019:

V.P./A.V.P./Claims Manager -	\$92.75 per hour
Senior Claims Examiner -	\$87.50 per hour
Claims Examiner -	\$77.50 per hour
Expenses -	42% of hourly billings
Minimum per file charge	One hour

2. Fees for subsequent contract years, as applicable, will be determined based upon Keenan's then-current hourly rate. Keenan shall provide Client notice of the rates for subsequent years at least sixty (60) days before the beginning of the applicable contract year.
3. Invoices will be issued quarterly for fees for time and expense actually accrued, if any, and are due and payable upon receipt of the invoice.
4. Any balance not paid within thirty (30) days following the date on the invoice shall be deemed late. Interest on any late payment shall accrue as of the date of Keenan's original invoice at the rate of (a) 1½ 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.