



Board Office Use: <b>Legislative File Info.</b>	
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## Board Cover Memorandum

**To** Board of Education

**From** Sondra Aguilera, Acting Superintendent  
Lisa Grant-Dawson, Chief Business Officer  
Rebecca Littlejohn, Risk Management Officer

**Meeting Date** September 14, 2022

**Subject** Services Agreement with Keenan & Associates

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**Ask of the Board**  Approve Service Agreement  
 Ratify Service Agreement

**Services** *Keenan & Associates to provide Loss Control Inspections to all District locations. Such inspections are required under the Memorandum of Coverage for Northern California Relief, the Joint Powers Authority (JPA) the District belongs to for Property and Liability Excess coverage.*

**Term** Start Date: July 1, 2021 End Date: June 30, 2023

**Not-To-Exceed Amount** *Ninety one thousand, one hundred fifty eight dollars (\$91.158)*

**Competitively Bid** No

If the Service Agreement was not competitively bid and the not-to-exceed amount is more than \$96,700, list the exception(s) that applies (requires Legal review/approval and may require a resolution): Less than \$96,700

**In-Kind Contributions** N/A

**Funding Source(s)** *Risk Management, Resource 9031 – Property & Liability*

**Background**

*OUSD is part of Northern California ReLiEF (NCR) a Joint Powers Authority (JPA) for excess property and liability coverage beyond our self-insured retention levels. As part of the Memorandum of Coverage for NCR, all participating Districts in the JPA must go through a Loss Control inspection every two years with one year off for those Districts with a Risk Manager or Safety Manager. This helps ensure Districts are adequately maintaining their facilities and reducing the potential fiscal liability on the pool.*

**Attachment(s)**

- Service Agreement – Exhibit A Scope of Work [Click or tap here to enter text.](#)

## SERVICES AGREEMENT 2022-2023

This Services Agreement (“Agreement”) is a legally binding contract entered into between the Oakland Unified School District (“OUSD”) and the below named entity or individual (“VENDOR,” together with OUSD, “PARTIES”):  
Keenan & Associates

The PARTIES hereby agree as follows:

1. **Term.**

- a. This Agreement shall start on the below date (“Start Date”):  
July 1, 2022

If no Start Date is entered, then the Start Date shall be the latest of the dates on which each of the PARTIES signed this Agreement.

- b. The work shall be completed no later than the below date (“End Date”):  
June 30, 2023

If no End Date is entered, then the End Date shall be the first June 30 after the Start Date. If the term set forth above would cause the Agreement to exceed the term limits set forth in Education Code section 17596, the Agreement shall instead automatically terminate upon reaching said term limit.

2. **Services.** VENDOR shall provide the services (“Services”) as described in #1A and #1B of **Exhibit A**, attached hereto and incorporated herein by reference. To the extent that there may be a school closure (e.g., due to poor air quality, planned loss of power, COVID-19) or similar event in which school sites and/or District offices may be closed or otherwise inaccessible, VENDOR shall describe in #1B of **Exhibit A** whether and how its services would be able to continue.

3. **Alignment and Evaluation.**

- a. VENDOR agrees to work and communicate with OUSD staff, both formally and informally, to ensure that the Services are aligned with OUSD’s mission and are meeting the needs of students as determined by OUSD.



- Privacy Agreement (“CSDPA”) or CSDPA Exhibit E (available here).
- (ii) If VENDOR is not a software vendor, it agrees to access or receive identifiable student data, other than directory information, only after executing the OUSD Data Sharing Agreement (available here).
  - (iii) Notwithstanding Paragraph 28 (Indemnification), should VENDOR access or receive identifiable student data, other than directory information, without first executing a separate data sharing agreement, VENDOR shall be solely liable for any and all claims or losses resulting from its access or receipt of such data.
- c. All confidentiality requirements, including those set forth in the separate data sharing agreement, extend beyond the termination of this Agreement.
7. **Copyright/Trademark/Patent/Ownership.** VENDOR understands and agrees that all matters produced under this Agreement, excluding any intellectual property that existed prior to execution of this Agreement, shall be works for hire as defined under Title 17 of the United States Code, and all copyrights in those works are the property of OUSD. These matters include, without limitation, drawings, plans, specifications, studies, reports, memoranda, computation sheets, the contents of computer diskettes, artwork, copy, posters, billboards, photographs, videotapes, audiotapes, systems designs, software, reports, diagrams, surveys, source codes or any other original works of authorship, or other documents prepared by VENDOR, its employees, or its subcontractors in connection with the Services performed under this Agreement. VENDOR cannot use, reproduce, distribute, publicly display, perform, alter, remix, or build upon matters produced under this Agreement without OUSD’s express written permission. OUSD shall have all right, title and interest in said matters, including the right to register the copyright, trademark, and/or patent of said matter in the name of OUSD. OUSD may, with VENDOR’s prior written consent, use VENDOR’s name in conjunction with the sale, use, performance and distribution of the matters, for any purpose and in any medium.
8. **Compensation.** OUSD agrees to pay VENDOR for satisfactorily performing Services in accordance with this Paragraph, Paragraph 10

(Invoicing), and #1C in **Exhibit A**.

- a. The compensation under this Agreement shall not exceed:  
**\$91,158**

This sum shall be for full performance of this Agreement and includes all fees, costs, and expenses incurred by **VENDOR** including, but not limited to, labor, materials, taxes, profit, overhead, travel, insurance, permitted subcontractor costs, and other costs.

- b. OUSD shall not pay and shall not be liable to **VENDOR** for any costs or expenses paid or incurred by **VENDOR** not described in **Exhibit A**.
- c. Payment for Services shall be made for all undisputed amounts no more frequently than in monthly installment payments within sixty (60) days after **VENDOR** submits an invoice to OUSD, in accordance with Paragraph 10 (Invoicing), for Services actually performed and after OUSD's written approval that Services were actually performed. The granting of any payment by OUSD, or the receipt thereof by **VENDOR**, shall in no way lessen the liability of **VENDOR** to correct unsatisfactory performance of Services, even if the unsatisfactory character of the performance was not apparent or detected at the time a payment was made. If OUSD determines that **VENDOR**'s performance does not conform to the requirements of this Agreement, **VENDOR** agrees to correct its performance without delay.
- d. Compensation for any Services performed prior to the Start Date or after the End Date shall be at OUSD's sole discretion and in an amount solely determined by OUSD. **VENDOR** agrees that it shall not expect or demand payment for the performance of such services.
- e. **VENDOR** acknowledges and agrees not to expect or demand payment for any Services performed prior to the PARTIES, particularly OUSD, validly and properly executing this Agreement until this Agreement is validly and properly executed and shall not rely on verbal or written communication from any individual, other than the President of the OUSD Governing Board, the OUSD Superintendent, or the OUSD General Counsel, stating that OUSD has validly and properly executed this Agreement.

9. **Equipment and Materials.** **VENDOR** shall provide all equipment,

materials, and supplies necessary for the performance of this Agreement.

10. **Invoicing.** Invoices furnished by VENDOR under this Agreement must be in a form acceptable to OUSD.
  - a. All amounts paid by OUSD shall be subject to audit by OUSD. Invoices shall include, without limitation: VENDOR name, VENDOR address, invoice date, invoice number, purchase order number, name of school or department to which Services were provided, name(s) of the person(s) performing Services, date(s) Services were performed, brief description of Services provided on each date, the total invoice amount, and the basis for the total invoice amount (e.g., if hour rate, the number of hours on each date and the rate for those hours).
  - b. If OUSD, at its sole discretion, determines an invoice fails to include the required elements, OUSD will not pay the invoice and will inform VENDOR of the missing items; VENDOR shall resubmit an invoice that includes the required elements before OUSD will pay the invoice.
  - c. Invoices must be submitted no more frequently than monthly, and within 30 days of the conclusion of the applicable billing period. OUSD reserves the right to refuse to pay untimely invoices.
  - d. OUSD reserves the right to add or change invoicing requirements. If OUSD does add or change invoicing requirements, it shall notify VENDOR in writing and the new or modified requirements shall be mandatory upon receipt by VENDOR of such notice.
  - e. To the extent that VENDOR has described how the Services may be provided both in-person and not in-person, VENDOR's invoices shall—in addition to any invoice requirement added or changed under subparagraph (c)—indicate whether the Services are provided in-person or not.
  - f. All invoices furnished by VENDOR under this Agreement shall be delivered to OUSD via email unless OUSD requests, in writing, a different method of delivery.
  
11. **Termination and Suspension.**
  - a. For Convenience by OUSD. OUSD may at any time terminate this Agreement upon thirty (30) days prior written notice to

VENDOR. OUSD shall compensate VENDOR for Services satisfactorily provided through the date of termination. Upon approval by OUSD legal counsel, the OUSD Superintendent or an OUSD Chief or Deputy may issue the termination notice without approval by the OUSD Governing Board, in which case this Agreement would terminate upon ratification of the termination by the OUSD Governing Board or thirty (30) days after the notice was provided, whichever is later.

- b. Due to Unforeseen Emergency or Acts of God. Notwithstanding Paragraph 19 (Coronavirus/ COVID-19) or any other language of this Agreement, if there is an unforeseen emergency or an Act of God during the term of this Agreement that would prohibit or limit, at the sole discretion of OUSD, the ability of VENDOR to perform the Services, OUSD may terminate this Agreement upon seven (7) days prior written notice to VENDOR. Upon approval by OUSD legal counsel, the OUSD Superintendent or an OUSD Chief or Deputy may issue the termination notice without approval by the OUSD Governing Board, in which case this Agreement would terminate upon ratification of the termination by the OUSD Governing Board or seven (7) days after the notice was provided, whichever is later.
- c. For Cause. Either PARTY may terminate this Agreement by giving written notice of its intention to terminate for cause to the other PARTY. Written notice shall contain the reasons for such intention to terminate. Cause shall include (i) material violation of this Agreement or (ii) if either PARTY is adjudged bankrupt, makes a general assignment for the benefit of creditors, or a receiver is appointed on account of its insolvency. Upon approval by OUSD legal counsel, the OUSD Superintendent or an OUSD Chief or Deputy may issue the termination notice without approval by the OUSD Governing Board, in which case this Agreement would terminate upon ratification of the termination by the OUSD Governing Board or three (3) days after the notice was provided, whichever is later, unless the condition or violation ceases or satisfactory arrangements for the correction are made.
- d. Upon termination, VENDOR shall provide OUSD with all materials produced, maintained, or collected by VENDOR pursuant to this Agreement, whether or not such materials are complete or incomplete or are in final or draft form.

- e. If OUSD, at its sole discretion, develops health and safety concerns related to the **VENDOR's** provision of Services, then the OUSD Superintendent or an OUSD Chief or Deputy may, upon approval by OUSD legal counsel, issue a notice to **VENDOR** to suspend the Agreement, in which case **VENDOR** shall stop providing Services under the Agreement until further notice from OUSD. OUSD shall compensate **VENDOR** for Services satisfactorily provided through the date of suspension.
12. **Legal Notices.** All legal notices provided for under this Agreement shall be sent: (i) via email to the email address set forth below, (ii) personally delivered during normal business hours or (iii) sent by U.S. Mail (certified, return receipt requested) with postage prepaid to the other **PARTY** at the address set forth below.

**OUSD**

Name: Joshua R. Daniels  
Site/Dept: Office of General Counsel  
Address: 1000 Broadway, Suite 440  
City, ST Zip: Oakland, CA 94607  
Phone: 510-879-8535  
Email: ousdlegal@ousd.org

**VENDOR**

Name: Keenan & Associates  
Title: Attn: Legal Department  
Address: 2355 Crenshaw Blvd. Ste 200  
City, ST Zip: Torrance, CA 90510  
Phone:  
Email: Click or tap here to enter text.

Notice shall be effective when received if personally served or emailed or, if mailed, three days after mailing. Either **PARTY** must give written notice of a change of mailing address or email.

13. **Status.**
- a. This is not an employment contract. **VENDOR**, in the performance of this Agreement, shall be and act as an independent contractor. **VENDOR** understands and agrees that it and any and all of its employees shall not be considered

employees of OUSD, and are not entitled to benefits of any kind or nature normally provided employees of OUSD and/or to which OUSD's employees are normally entitled, including, but not limited to, State Unemployment Compensation or Worker's Compensation. VENDOR shall assume full responsibility for payment of all Federal, State, and local taxes or contributions, including unemployment insurance, social security and income taxes with respect to VENDOR's employees.

- b. If VENDOR is a natural person, VENDOR verifies all of the following:
  - (i) VENDOR is free from the control and direction of OUSD in connection with VENDOR's work;
  - (ii) VENDOR's work is outside the usual course of OUSD's business; and
  - (iii) VENDOR is customarily engaged in an independently established trade, occupation, or business of the same nature as that involved in the work performed for OUSD.
- c. If VENDOR is a business entity, VENDOR verifies all of the following:
  - (i) VENDOR is free from the control and direction of OUSD in connection with the performance of the work;
  - (ii) VENDOR is providing services directly to OUSD rather than to customers of OUSD;
  - (iii) the contract between OUSD and VENDOR is in writing;
  - (iv) VENDOR has the required business license or business tax registration, if the work is performed in a jurisdiction that requires VENDOR to have a business license or business tax registration;
  - (v) VENDOR maintains a business location that is separate from the business or work location of OUSD;
  - (vi) VENDOR is customarily engaged in an independently established business of the same nature as that involved in the work performed;
  - (vii) VENDOR actually contracts with other businesses to provide the same or similar services and maintains a clientele without restrictions from OUSD;
  - (viii) VENDOR advertises and holds itself out to the public as available to provide the same or similar services;
  - (ix) VENDOR provides its own tools, vehicles, and equipment to perform the Services;

- (x) VENDOR can negotiate its own rates;
- (xi) VENDOR can set its own hours and location of work; and
- (xii) VENDOR is not performing the type of work for which a license from the Contractor's State License Board is required, pursuant to Chapter 9 (commencing with section 7000) of Division 3 of the Business and Professions Code.

14. **Qualifications and Training.**

- a. VENDOR represents and warrants that VENDOR has the qualifications and ability to perform the Services in a professional manner, without the advice, control or supervision of OUSD. VENDOR will performed the Services in accordance with generally and currently accepted principles and practices of its profession for services to California school districts and in accordance with applicable laws, codes, rules, regulations, and/or ordinances. All VENDOR employees and agents shall have sufficient skill and experience to perform the work assigned to them.
- b. VENDOR represents and warrants that its employees and agents are specially trained, experienced, competent and fully licensed to provide the Services identified in this Agreement in conformity with the laws and regulations of the State of California, the United States of America, and all local laws, ordinances and/or regulations, as they may apply, if VENDOR was selected, at least in part, on such representations and warrants.

15. **Certificates/Permits/Licenses/Registration.** VENDOR's employees or agents shall secure and maintain in force such certificates, permits, licenses and registration as are required by law in connection with the furnishing of Services pursuant to this Agreement.

16. **Insurance.**

- a. Commercial General Liability Insurance. Unless specifically waived by OUSD as noted in **Exhibit A**, VENDOR shall maintain Commercial General Liability Insurance, including automobile coverage, with limits of at least one million dollars (\$1,000,000) per occurrence, and two million dollars (\$2,000,000) aggregate, for corporal punishment, sexual misconduct, harassment, bodily injury and property damage. Coverage for corporal punishment,

sexual misconduct, and harassment may either be provided through General Liability Insurance or Professional Liability Insurance. The coverage shall be primary as to OUSD and shall name OUSD as an additional insured with the additional insured endorsement provided to OUSD within 15 days of effective date of this Agreement (and within 15 days of each new policy year thereafter during the term of this Agreement). Evidence of insurance shall be attached to this Agreement or otherwise provided to OUSD upon request. Endorsement of OUSD as an additional insured shall not affect OUSD's rights to any claim, demand, suit or judgment made, brought or recovered against VENDOR. The policy shall protect VENDOR and OUSD in the same manner as though each were separately issued. Nothing in said policy shall operate to increase the Insurer's liability as set forth in the policy beyond the amount or amounts shown or to which the Insurer would have been liable if only one interest were named as an insured.

- b. Workers' Compensation Insurance. Unless specifically waived by OUSD as noted in **Exhibit A**, VENDOR shall procure and maintain at all times during the performance of such work, Workers' Compensation Insurance in conformance with the laws of the State of California (including, but not limited to, Labor Code section 3700) and Federal laws when applicable. Employers' Liability Insurance shall not be less than one million dollars (\$1,000,000) per accident or disease.

17. **Testing and Screening.**

- a. Tuberculosis Screening. Unless specifically waived by OUSD as noted in **Exhibit A**, VENDOR is required to screen employees who will be working at OUSD sites for more than six hours. VENDOR agents who work with students must submit to a tuberculosis risk assessment as required by Education Code section 49406 within the prior 60 days. If tuberculosis risk factors are identified, VENDOR agents must submit to an intradermal or other approved tuberculosis examination to determine that he/she is free of infectious tuberculosis. If the results of the examination are positive, VENDOR shall obtain an x-ray of the lungs. VENDOR, at its discretion, may choose to submit the agent to the examination instead of the risk assessment.
- b. Fingerprinting/Criminal Background Investigation. Unless

specifically waived by OUSD as noted in **Exhibit A**, for all VENDOR employees, subcontractors, volunteers, and agents providing the Services, VENDOR shall ensure completion of fingerprinting and criminal background investigation, and shall request and regularly review subsequent arrest records. VENDOR confirms that no employee, subcontractor, volunteer, or agent providing the Services has been convicted of a felony, as that term is defined in Education Code section 45122.1. VENDOR shall provide the results of the investigations and subsequent arrest notifications to OUSD.

Waivers are not available for VENDORS whose employees, subcontractors, volunteers, and agents will have any contact with OUSD students.

- c. VENDOR shall use either California Department of Justice or Be A Mentor, Inc. (<http://beamentor.org/OUSDPartner>) fingerprinting and subsequent arrest notification services.
- d. VENDOR agrees to immediately remove or cause the removal of any employee, representative, agent, or person under VENDOR's control person from OUSD property upon receiving notice from OUSD of such desire. OUSD is not required to provide VENDOR with a basis or explanation for the removal request.

**18. Incident/Accident/Mandated Reporting.**

- a. VENDOR shall notify OUSD, via email pursuant to Paragraph 12 (Legal Notices), within forty-eight (48) hours of learning of any significant accident or incident caused by VENDOR and in connection with the provision of Services during this Agreement, where 'significant' is determined within VENDOR's reasonable discretion. Examples of a significant accident or incident include, without limitation, an accident or incident that involves law enforcement, possible or alleged criminal activity, or possible or actual exposure to a communicable disease such as COVID-19. VENDOR shall properly submit required accident or incident reports within one business day pursuant to the procedures specified by OUSD. VENDOR shall bear all costs of compliance with this Paragraph.
- b. To the extent that an employee, subcontractor, agent, or representative of VENDOR is included on the list of mandated reporters found in Penal Code section 11165.7, VENDOR

agrees to inform the individual, in writing that they are a mandated reporter, and describing the associated obligations to report suspected cases of abuse and neglect pursuant to Penal Code section 11166.5.

**19. Coronavirus/COVID-19.**

- a. Through its execution of this Agreement, VENDOR declares that it is able to meet its obligations and perform the Services required pursuant to this Agreement in accordance with any shelter-in-place (or similar) order or curfew (or similar) order (“Orders”) issued by local or state authorities and with any social distancing/hygiene (or similar) requirements.
- b. To the extent that VENDOR provides Services in person and consistent with the requirements of Paragraph 10 (Invoicing), VENDOR agrees to include additional information in its invoices as required by OUSD if any Orders are issued by local or state authorities that would prevent VENDOR from providing Services in person.
- c. Consistent with the requirements of Paragraph 18 (Incident/Accident/Mandated Reporting), VENDOR agrees to notify OUSD, via email pursuant to Paragraph 12 (Legal Notices), within twelve (12) hours if VENDOR or any employee, subcontractor, agent, or representative of VENDOR (i) tests positive for COVID-19 or shows or reports symptoms consistent with COVID-19 and (ii) has been on OUSD property or has been in prolonged close contact with any OUSD student or student’s family member, staff, agents, representatives, officers, consultants, trustees, and volunteers within 48 hours of testing positive for COVID-19 or the development of symptoms consistent with COVID-19.
- d. In addition to the requirements of subparagraph (c), VENDOR agrees to immediately adhere to and follow any OUSD directives regards health and safety protocols including, but not limited to, providing OUSD with information regarding possible exposure of OUSD student or student’s family member, staff, agents, representatives, officers, consultants, trustees, and volunteers to VENDOR or any employee, subcontractor, agent, or representative of VENDOR and information necessary to perform contact tracing, as well as complying with any OUSD testing and vaccination requirements.

- e. VENDOR shall bear all costs of compliance with this Paragraph, including but not limited to those imposed by this Agreement.
20. **Assignment.** The obligations of VENDOR under this Agreement shall not be assigned by VENDOR without the express prior written consent of OUSD and any assignment without the express prior written consent of OUSD shall be null and void.
21. **Non-Discrimination.** It is the policy of OUSD that in connection with all work performed under Contracts there be no discrimination because of race, color, ancestry, national origin, religious creed, physical disability, medical condition, marital status, sexual orientation, gender, or age; therefore, VENDOR agrees to comply with applicable Federal and California laws including, but not limited to, the California Fair Employment and Housing Act beginning with Government Code section 12900 and Labor Code section 1735 and OUSD policy. In addition, VENDOR agrees to require like compliance by all its subcontractor (s). VENDOR shall not engage in unlawful discrimination in employment on the basis of actual or perceived; race, color, national origin, ancestry, religion, age, marital status, pregnancy, physical or mental disability, medical condition, veteran status, gender, sex, sexual orientation, or other legally protected class.
22. **Drug-Free/Smoke Free Policy.** No drugs, alcohol, and/or smoking are allowed at any time in any buildings and/or grounds on OUSD property. No students, staff, visitors, VENDORS, or subcontractors are to use controlled substances, alcohol or tobacco on these sites.
23. **Waiver.** No delay or omission by either PARTY in exercising any right under this Agreement shall operate as a waiver of that or any other right or prevent a subsequent act from constituting a violation of this Agreement.
24. **No Rights in Third Parties.** This Agreement does not create any rights in, or inure to the benefit of, any third party except as expressly provided herein.
25. **Conflict of Interest.**
- a. VENDOR shall abide by and be subject to all applicable, regulations, statutes, or other laws regarding conflict of interest.

VENDOR shall not hire any officer or employee of OUSD to perform any service by this Agreement without the prior approval of OUSD Human Resources.

- b. VENDOR affirms to the best of his/her/its knowledge, there exists no actual or potential conflict of interest between VENDOR's family, business or financial interest and the services provided under this Agreement, and in the event of change in either private interest or services under this Agreement, any question regarding possible conflict of interest which may arise as a result of such change will be brought to OUSD's attention in writing.
  - c. Through its execution of this Agreement, VENDOR acknowledges that it is familiar with the provisions of section 1090 *et seq.* and section 87100 *et seq.* of the Government Code, and certifies that it does not know of any facts which constitute a violation of said provisions. In the event VENDOR receives any information subsequent to execution of this Agreement which might constitute a violation of said provisions, VENDOR agrees it shall notify OUSD in writing.
26. **Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion.** Through its execution of this Agreement, VENDOR certifies to the best of its knowledge and belief, that it and its principals are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency according to Federal Acquisition Regulation Subpart 9.4, and by signing this contract, certifies that this vendor does not appear on the Excluded Parties List (<https://www.sam.gov/>).
27. **Limitation of OUSD Liability.** Other than as provided in this Agreement, OUSD's financial obligations under this Agreement shall be limited to the payment of the compensation described in Paragraph 8 (Compensation). Notwithstanding any other provision of this Agreement, in no event shall OUSD be liable, regardless of whether any claim is based on contract or tort, for any special, consequential, indirect or incidental damages, including, but not limited to, lost profits or revenue, arising out of, or in connection with, this Agreement for the Services performed in connection with this Agreement.
28. **Indemnification.**

- a. To the furthest extent permitted by California law, VENDOR shall indemnify, defend and hold harmless OUSD, its Governing Board, agents, representatives, officers, consultants, employees, trustees, and volunteers (“OUSD Indemnified Parties”) from any and all claims or losses accruing or resulting from injury, damage, or death of any person or entity arising out of VENDOR’s performance of this Agreement. VENDOR also agrees to hold harmless, indemnify, and defend OUSD Indemnified Parties from any and all claims or losses incurred by any supplier, VENDOR, or subcontractor furnishing work, services, or materials to VENDOR arising out of the performance of this Agreement. VENDOR shall, to the fullest extent permitted by California law, defend OUSD Indemnified Parties at VENDOR’s own expense, including attorneys’ fees and costs, and OUSD shall have the right to accept or reject any legal representation that VENDOR proposes to defend OUSD Indemnified Parties.
  - b. To the furthest extent permitted by California law, OUSD shall indemnify, defend, and hold harmless VENDOR, its Board, agents, representatives, officers, consultants, employees, trustees, and volunteers (“VENDOR Indemnified Parties”) from any and all claims or losses accruing or resulting from injury, damage, or death of any person or entity arising out of OUSD’s performance of this Agreement. OUSD shall, to the fullest extent permitted by California law, defend VENDOR Indemnified Parties at OUSD’s own expense, including attorneys’ fees and costs.
29. **Audit.** VENDOR shall establish and maintain books, records, and systems of account, in accordance with generally accepted accounting principles, reflecting all business operations of VENDOR transacted under this Agreement. VENDOR shall retain these books, records, and systems of account during the term of this Agreement and for three (3) years after the End Date. VENDOR shall permit OUSD, its agent, other representatives, or an independent auditor to audit, examine, and make excerpts, copies, and transcripts from all books and records, and to make audit(s) of all billing statements, invoices, records, and other data related to Services covered by this Agreement. Audit(s) may be performed at any time, provided that OUSD shall give reasonable prior notice to VENDOR and shall conduct audit(s) during VENDOR’S

normal business hours, unless VENDOR otherwise consents.

30. **Litigation.** This Agreement shall be deemed to be performed in Oakland, California and is governed by the laws of the State of California, but without resort to California's principles and laws regarding conflict of laws. The Alameda County Superior Court shall have jurisdiction over any litigation initiated to enforce or interpret this Agreement.
31. **Incorporation of Recitals and Exhibits.** Any recitals and exhibits attached to this Agreement are incorporated herein by reference. VENDOR agrees that to the extent any recital or document incorporated herein conflicts with any term or provision of this Agreement, the terms and provisions of this Agreement shall govern.
32. **Integration/Entire Agreement of Parties.** This Agreement constitutes the entire agreement between the PARTIES and supersedes all prior discussions, negotiations, and agreements, whether oral or written. This Agreement may be amended or modified only by a written instrument executed by both PARTIES.
33. **Severability.** If any term, condition or provision of this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions will nevertheless continue in full force and effect, and shall not be affected, impaired or invalidated in any way.
34. **Provisions Required By Law Deemed Inserted.** Each and every provision of law and clause required by law to be inserted in this Agreement shall be deemed to be inserted herein and this Agreement shall be read and enforced as though it were included therein.
35. **Captions and Interpretations.** Section and paragraph headings in this Agreement are used solely for convenience, and shall be wholly disregarded in the construction of this Agreement. No provision of this Agreement shall be interpreted for or against a PARTY because that PARTY or its legal representative drafted such provision, and this Agreement shall be construed as if jointly prepared by the PARTIES.
36. **Calculation of Time.** For the purposes of this Agreement, "days"

refers to calendar days unless otherwise specified and “hours” refers to hours regardless of whether it is a work day, weekend, or holiday.

37. **Counterparts and Electronic Signature.** This Agreement, and all amendments, addenda, and supplements to this Agreement, may be executed in one or more counterparts, all of which shall constitute one and the same amendment. Any counterpart may be executed and delivered by facsimile or other electronic signature (including portable document format) by either PARTY and, notwithstanding any statute or regulations to the contrary (including, but not limited to, Government Code section 16.5 and the regulations promulgated therefrom), the counterpart shall legally bind the signing PARTY and the receiving PARTY may rely on the receipt of such document so executed and delivered electronically or by facsimile as if the original had been received. Through its execution of this Agreement, each PARTY waives the requirements and constraints on electronic signatures found in statute and regulations including, but not limited to, Government Code section 16.5 and the regulations promulgated therefrom.
38. **W-9 Form.** If VENDOR is doing business with OUSD for the first time, VENDOR acknowledges that it must complete and return a signed W-9 form to OUSD.
39. **Agreement Publicly Posted.** This Agreement, its contents, and all incorporated documents are public documents and will be made available by OUSD to the public online via the Internet.
40. **Signature Authority.**
  - a. Each PARTY has the full power and authority to enter into and perform this Agreement, and the person(s) signing this Agreement on behalf of each PARTY has been given the proper authority and empowered to enter into this Agreement.
  - b. Notwithstanding subparagraph (a), only the Superintendent, Chiefs, Deputy Chiefs, and the General Counsel have been delegated the authority to sign contracts for OUSD, and only under limited circumstances, which require ratification by the OUSD Governing Board. VENDOR agrees not to accept the signature of another other OUSD employee as having the proper authority and empowered to enter into this Agreement or as

legally binding in any way.

- a. Notwithstanding Paragraph 11, if this Agreement is executed by the signature of the Superintendent, Chiefs, Deputy Chiefs, or General Counsel under their delegated authority, and the Board thereafter declines to ratify the Agreement, the Agreement shall automatically terminate on the date that the Board declines to ratify it. OUSD shall compensate VENDOR for Services satisfactorily provided through the date of termination. Upon termination, VENDOR shall provide OUSD with all materials produced, maintained, or collected by VENDOR pursuant to this Agreement, whether or not such materials are complete or incomplete or are in final or draft form.

41. **Contract Contingent on Governing Board Approval.** OUSD shall not be bound by the terms of this Agreement unless and until it has been (i) formally approved by OUSD’s Governing Board or (ii) validly and properly executed by the OUSD Superintendent, the General Counsel, or a Chief or Deputy Chief authorized by the Education Code or Board Policy, and no payment shall be owed or made to VENDOR absent such formal approval or valid and proper execution.

IN WITNESS WHEREOF, the PARTIES hereto agree and execute this Agreement and to be bound by its terms and conditions:

**VENDOR**

Name: Eric Preston

Signature:    
 0B449A70B7204CD...

Position: Vice President - Loss Control

Date: 8/29/2022

*One of the terms and conditions to which VENDOR agrees by its signature is subparagraph (e) of Paragraph 8 (Compensation), which states that VENDOR acknowledges and agrees not to expect or demand payment for any Services performed prior to the PARTIES, particularly OUSD, validly and properly executing this Agreement until this Agreement is validly and properly executed and shall not rely on verbal or written communication from any individual, other than the President of the OUSD Governing Board, the OUSD Superintendent, or the OUSD General Counsel, stating that OUSD has validly and properly executed this Agreement. VENDOR specifically*

*acknowledges and agrees to this term/condition on the above date.*

**OUSD**

Name: Gary D. Yee

Signature: 

Position: President, Board of Education Date: 9/14/2022

- Board President
- Superintendent
- Chief/Deputy Chief/Executive Director

Name: Kyla Johnson Trammell

Signature: 

Position: Secretary, Board of Education Date: 9/14/2022

**Approved as to form by OUSD Staff Attorney Joanna Powell on 8/25/22.**

Signature: 

## EXHIBIT A

- 1A. **General Description of Services to be Provided:** *Provide a description of the service(s) VENDOR will provide.*  
See attached "Exhibit A."
- 1B. **Description of Services to be Provided During School Closure or Similar Event:** *If there is a school closure (e.g., due to poor air quality, planned loss of power, COVID-19) or similar event in which school sites and/or District offices may be closed or otherwise inaccessible, would services be able to continue?*
- No, services would not be able to continue.
- Yes, services would be able to continue as described in 1A.
- Yes, but services would be different than described in 1A. Please briefly describe how the services would be different.  
Click or tap here to enter text.
- 1C. **Rate of Compensation:** *Please describe the basis by which compensation will be paid to VENDOR:*
- Hourly Rate: \$Click or tap here to enter text. per hour
- Daily Rate: \$Click or tap here to enter text. per day
- Weekly Rate: \$Click or tap here to enter text. per week
- Monthly Rate: \$Click or tap here to enter text. per month
- Per Student Served Rate: \$Click or tap here to enter text. per student served
- Performance/Deliverable Payments: Describe the performance and/or deliverable(s) as well as the associated rate(s) below:  
Click or tap here to enter text.
2. **Specific Outcomes:** *(A) What are the expected outcomes from the services of this Agreement? Please be specific. For example, as a result of the service(s): How many more OUSD students will graduate from high school? How many more OUSD students will attend school 95% or more? How many more OUSD students will have meaningful internships and/or paying jobs? How many more OUSD students will have access to, and use, the health services they need? (B) Please describe the measurable outcomes specific to the services. Please complete the sentence prompt: "Participants will be able to..." C. If applicable, please provide details of program participation. Please complete the sentence prompt: "Students will..."*  
Safety and loss inspections to protect students and staff.

3. **Alignment with School Plan for Student Achievement – SPSA (required if using State or Federal Funds):** *Please select the appropriate option below:*
- Action Item included in Board Approved SPSA (no additional documentation required) – Item Number:  
Click or tap here to enter text.
  - Action Item added as modification to Board Approved SPSA – School site must submit the following documents to the Strategic Resource Planning for approval through the Escape workflow process:
    - Meeting announcement for meeting in which the SPSA modification was approved.
    - Minutes for meeting in which the SPSA modification was approved indicating approval of the modification.
    - Sign-in sheet for meeting in which the SPSA modification was approved.
4. **Adapting Services for Students with Disabilities:** If VENDOR will provide direct services to students under this Agreement, describe the manner in which services will be accommodated, modified, or otherwise adapted to meet the unique needs of students with disabilities:  
N/A
5. **Waivers:** *OUSD has waived the following. Confirmation of the waiver is attached herewith:*
- Commercial General Liability Insurance (Waiver only available, at OUSD's sole discretion, if VENDOR's employees, subcontractors, volunteers, and agents will have no contact (in-person **or virtual**) with OUSD students, and the compensation not-to-exceed amount is \$25,000 or less.)
  - Corporal Punishment Insurance Coverage. (Waiver only available, at OUSD's sole discretion, if VENDOR's employees, subcontractors, volunteers, and agents will have no contact (in-person or virtual) with OUSD students.)
  - Workers' Compensation Insurance (Waiver only available, at OUSD's sole discretion, if VENDOR has no employees.)
  - Tuberculosis Screening (Waiver only available, at OUSD's sole discretion, if VENDOR's employees, subcontractors, volunteers, and

agents will have no in-person contact with OUSD students.)

Fingerprinting/Criminal Background Investigation (Waiver only available, at OUSD's sole discretion, if VENDOR's employees, subcontractors, volunteers, and agents will have no contact (in-person **or virtual**) with OUSD students.)

## EXHIBIT A

### Keenan's Services\*

#### Property and Liability Inspection and Audit Program

An on-site inspection of sites owned/operated by the District should be conducted at least every two (2) years by a qualified third-party Loss Prevention Specialist. In addition, the District should conduct periodic, regular self-inspections. The self-inspection conducted by District personnel should include documentation of all findings and recommended corrective action.

The purpose of the inspection program is to identify and control hazards before people are injured or losses occur. This can help to reduce the frequency and severity of claims and to mitigate the losses resulting from known liability exposures. An inspection conducted by a knowledgeable person, with the results communicated properly to management, conveys recognition of the hazards.

#### Inspection Services

Keenan's property and liability inspection program meets the Northern California ReLiEF (NCR) guidelines. Documentation will be provided in an inspection report that lists hazards identified.

#### Value

The inspection process has moved forward to focus on High Priority loss exposures and District Wide recommendations while adhering to the NCR Guidelines regarding the number of sites inspected. Value to the District will be enhanced by the evolution of the process and focus on the past loss drivers and a more focused inspection process.

#### Report Format

Keenan has invested in report-writing software that allows us to upload findings directly from your sites during the physical inspection. An email of immediate hazards can also be sent to District personnel during the inspection process. The system is now robust enough to photograph Medium Priority findings in addition to High Priority findings, for District review as part of the physical inspection. Keenan will continue to provide reports to you in a user-friendly format. The report is Web-based and will be accessible through the P&C Bridge. It can be downloaded into a PDF file or an Excel file, which will give the capability to sort by a number of criteria.

#### Areas Inspected

All school sites, District Offices, and Maintenance & Operations facilities will be visually inspected. Also included are adjacent areas to the sites for identification of any potential fire, water damage or student injury exposure to the District. A review of recent Property & Liability claim activity will be reviewed with the District prior to the inspection. Areas to be inspected include the following:

### **Playground Equipment**

Keenan will conduct an inspection of general conditions of the playground equipment with attention to:

1. Swing chairs
2. Swing pivot connections
3. Swing seats

Chains on any other apparatus such as ring sets and climbers, paying attention to end.

1. links and any other point of pivot or wear.
2. Movable apparatus connection points
3. Tread surfaces of ladders on slides and any other climbing apparatus.
4. Surfaces of slide bedways, slide rails teeter-totter seats, merry-go-round seats or any other surface that children regularly contact on the equipment.
5. Bolts and other fasteners for all connecting points on assembled equipment and checking to be sure bolts are not too long and extend into playing areas.
6. Wood equipment, especially for dry rot, deterioration and splinters.
7. Playground fall protection

### **Athletic Equipment**

Athletic equipment is similar in nature to playground equipment and will be inspected accordingly. Attention will be given to connections, pivot points, tread surfaces and surfaces that regularly contact the body. Weight equipment cables will be inspected for wear or fraying, and equipment joint welds will be checked for cracking.

### **Facilities Housing Playground & Athletic Equipment**

- Fields: Check for conditions of walkways, exposed roots, gopher holes, potholes, broken glass or other debris.
- Outside Courts: Check all surface conditions with attention to potholes, large cracks, raised surfaces and worn areas.
- Athletic Fields: Check for field conditions as noted under the field section. Check the condition of bleachers (seats, walkways side and back rails), player benches, field fencing and backstops.
- Swimming Pools: Check for clearly visible lifesaving equipment, emergency telephone numbers, pool rules and pool depth markings. Check the conditions of deck walking surfaces, bond beams, and stairs to lifeguard chairs, stairs to dive boards, dive board surfaces, pool fencing and bleachers. Inspect wet area electrical outlets for Ground Fault Interrupters. If the pool is indoors, check the condition of exits and exit lighting.

Gyms: Check the conditions of exits, exit ways, exit lighting, emergency lighting, bleachers and cables supporting movable basketball hoops.

Multi-Purpose Room: Same as Gyms.

### **Industrial Arts**

Inspect all shops with attention to:

1. Machine guarding
2. Exits
3. Housekeeping
4. Storage of flammable liquids
5. Conditions of electrical power cords
6. Conditions of hand power tools
7. Electrical equipment and connections
8. Ventilation
9. Fire extinguishers
10. Student/Guest use of personal protective equipment

### **Home Economics**

Inspect cooking and sewing rooms with attention to:

1. Machinery electrical wiring and connections
2. Floor and wall electrical outlets
3. Natural gas connections
4. Dryer venting
5. Accumulation of lint and other combustible debris
6. Cooking exhaust
7. Fire extinguishers

### **Public Assembly Areas**

Inspect multi-purpose rooms, cafeterias, theaters, gyms and other public assembly areas. Include inspection of:

1. Exits
2. Panic hardware
3. Exit lighting
4. Emergency lighting for installation and testing
5. Posting of maximum occupancy signs

### **Science Labs**

Special attention is given to eye protection for students and emergency response equipment such as:

1. Eye wash stations
2. Deluge showers
3. Fire blankets and fire extinguishers

Attention is also focused on overall laboratory conditions such as size and number of students regarding emergency egress, ventilation-both local and general, etc.

### **Follow-up Audit**

Northern California ReLiEF guidelines require a follow-up audit. After the inspection has been completed and the reports delivered, there will be a follow-up audit 90-180 days after the inspection. A consultant will visit the District and meet with appropriate personnel to determine the progress being made regarding the recommended high priority corrective actions noted in the inspection report.

### **Self-Inspection**

Documentation for self-inspections can be accomplished using inspection check sheets with a space for corrective action taken. The inspection will assist the District in developing a self-inspection check sheet that adequately identifies areas that should be inspected by District personnel. This sheet should contain a list of items to be inspected, a rating section for each item inspected (a section for comments) and section to list corrective action taken. The self-inspections should be performed regularly and include:

- Playground & Athletic Equipment
- Facilities Housing Playground & Athletic Equipment
- Public Assembly Areas
- Industrial Arts
- Home Economics
- Science Laboratories
- Common Areas & Grounds

### **Limitations**

Keenan's inspection services are intended to help clients identify and mitigate hazards and potential liability exposures. While we are confident that our services will help our clients create a safer environment, we do not represent or guarantee that we will be able to identify all potential hazards or offer a fail-safe mechanism for dealing with them. Consequently, we make no promise or representation that clients will recognize improved loss experience or premium savings as a result of these services.

Keenan's inspection services are not intended to substitute for regular, ongoing inspection and maintenance of a client's premises or equipment. Nor are they intended to replace any required inspection or service that is to be routinely performed by licensed or certified service professionals (e.g., HVAC contractor, electrician, plumber, elevator service personnel, etc.).

\*The goal of Keenan's loss control services is to (i) promote safety awareness, (ii) assist in the identification of conditions which may pose a risk of injury, and (iii) provide recommendations and/or suggestions to help mitigate the risks identified. While we are confident that Keenan's loss control services will help you to create a safer environment, we do not suggest that we will be able to identify all risk exposures or that following our recommendations will eliminate all risk of injury or result in improved loss experience.