

ATTACHMENT B

Original Keenan & Associates Agreement

**CONSULTANT/PROFESSIONAL SERVICES PROVIDER AGREEMENT
BY AND BETWEEN
THE CITY OF VICTORVILLE
AND
KEENAN & ASSOCIATES
FOR
PROPERTY & CASUALTY INSURANCE BROKERAGE & CONSULTING
SERVICES, PROJECT ESC20-106**

THIS CONSULTANT/PROFESSIONAL SERVICES PROVIDER AGREEMENT (hereinafter "Agreement"), is made and entered into by and between THE CITY OF VICTORVILLE, a municipal corporation located in the County of San Bernardino, State of California, hereinafter referred to as the "City", and Keenan & Associates, a California corporation, hereinafter referred to as "Consultant." City and Consultant are sometimes hereinafter referred to individually as a "Party" and collectively referred to as the "Parties."

RECITALS:

WHEREAS, the City requires Consultant/Professional Services for Property & Casualty Insurance Brokerage & Consulting Services; and

WHEREAS, Consultant represents that it is fully qualified to perform the consulting and/or professional services required for performance under this Agreement by virtue of its experience and the training, education and expertise of its principals and its employees; and

WHEREAS, in light of the facts set forth above, the City desires to retain the services of a qualified Consultant to provide, on an independent contractor basis, **Property & Casualty Insurance Brokerage & Consulting Services**; and

NOW THEREFORE, IN CONSIDERATION OF THE COVENANTS, CONDITIONS, AND PROMISES CONTAINED HEREIN AND FOR SUCH OTHER GOOD AND VALUABLE CONSIDERATION, RECEIPT OF WHICH IS HEREBY ACKNOWLEDGED, THE PARTIES HERETO AGREE AS FOLLOWS:

Section 1. RECITALS

The Recitals set forth above are true and correct and are hereby incorporated into this Agreement by this reference, as though set forth fully herein.

Section 2. SCOPE OF SERVICES

Consultant shall provide to the City those services set forth in the Scope of Services, attached hereto as Exhibit "A", and incorporated as part of this Agreement by this reference.

Section 3. COMPENSATION

The City shall pay to Consultant a sum not to exceed **Fifteen Thousand and 00/100 Dollars (\$15,000.00)** for faithful performance of the services to be rendered under this Agreement, subject to the Proposal provisions of Section 4, below. No expense reimbursements, including, but not limited to, reimbursements for travel, parking, lodging, and/or meals shall be paid to Consultant unless such expense reimbursements: (i) are specifically provided for and described by nature and type in Exhibit "A", below; (ii) appear on Consultant's monthly invoices to City; (iii) are supported by the appropriate receipts and other such documentation as the City shall require; and (iv) are directly related to the Scope of Services to be performed under this Agreement. In addition, any and all reimbursements shall be made in accordance with any City policy governing same.

Section 4. CONSULTANT'S PROPOSAL

The City shall pay Consultant as provided in the Consultant's Proposal, attached hereto as Exhibit "A", and incorporated as part of this Agreement by this reference. The provisions of Exhibit "A" notwithstanding, in order to receive payments, Consultant shall be required to submit to the City detailed monthly invoices which include, if applicable, a description of all services/tasks performed, the number of hours expended on each service/task, the name of the person performing the service/task, and expense reimbursement information, if any, as required by Section 3, above. Provided that services have been satisfactorily rendered, invoices shall be paid by the City approximately thirty (30) working days following receipt of Consultant's invoice.

Section 5. RESERVED

Section 6. TERM OF AGREEMENT

This Agreement shall be for an Initial Term commencing on July 1, 2020 (the "Commencement Date") and expiring on June 30, 2021 (the "Termination Date") (the "Term"), unless terminated earlier pursuant to Section 21 of this Agreement. From and after the Termination Date, and upon subsequent agreement by the Parties, this Agreement may continue on a month-to-month basis until terminated pursuant to Section 21 below.

Section 7. INDEPENDENT CONTRACTOR STATUS

It is the express intention of the Parties that Consultant is an independent contractor and not an employee, agent, joint venturer, or partner of the City. Nothing in this agreement shall be interpreted or construed as creating or establishing the relationship of employer and employee between the City and Consultant or any employee or agent of Consultant. Both Parties acknowledge that Consultant is not an employee for state or federal tax purposes or any other purpose. Consultant shall retain the right to perform services for others during the term of this agreement.

Section 8. REPRESENTATIONS AND ACKNOWLEDGMENTS REGARDING INDEPENDENT CONTRACTOR'S STATUS OF CONSULTANT

- a. Consultant represents and acknowledges the following:

(1) The City is not required to provide any training or legal counsel to Consultant or its employees in order for Consultant to perform the services described in this Agreement.

(2) Performance of the services described in this Agreement does not have to be integrated into the daily business operations of the City.

(3) The services described in this Agreement can be performed without the use of City equipment, materials, tools, or facilities, unless otherwise provided under a separate agreement.

(4) Nothing in this Agreement shall be interpreted to imply that the City must maintain any contractual relationship with Consultant on a continuing basis after termination of this Agreement.

(5) The City will not be requested or demanded to assume any liability for the direct payment of any salary, wage, or other such compensation to any person employed by Consultant to perform the services described in this Agreement.

(6) Consultant shall not at any time or in any manner represent that it or any of its officers, employees, or agents are employees of the City.

b. The City represents and acknowledges the following:

(1) Consultant is solely responsible for determining who, under the supervision or direction of Consultant, will perform the services set forth in this Agreement.

(2) The City will not hire, supervise, or pay any employees or assistants working for Consultant pursuant to this Agreement. Nothing contained in this Agreement shall prevent the City from hiring Consultant's employees or assistants after termination of this Agreement.

(3) Nothing in this Agreement shall be interpreted to imply that Consultant must maintain any contractual relationship with the City on a continuing basis after termination of this Agreement.

(4) It is the sole responsibility of Consultant to set the hours in which Consultant performs or plans to perform the services set forth in this Agreement.

(5) Consultant is not required to devote full time to the business operations of the City in order to perform the services set forth in this Agreement.

(6) Unless deemed necessary under certain circumstances, Consultant is not required to perform the services set forth in this Agreement at City Hall or on City-owned property.

(7) Other than attendance at required public meetings and public hearings, and complying with the provisions of the Proposal set forth in Exhibit A and any procedural requirements set forth by law, Consultant is not required to perform the services set forth in this Agreement in any particular order or sequence.

(8) Nothing in this Agreement shall be interpreted to preclude Consultant from working for other persons or firms, provided that such work does not create a conflict of interest.

Section 9. **NOT AGENT OF THE CITY**

- a. Nothing contained in this Agreement shall be deemed, construed, or represented by the City or Consultant or by any third person to create the relationship of principal and agent.
- b. Consultant shall have no authority, express or implied, to act on behalf of the City in any capacity whatsoever as an agent, nor shall Consultant have any authority, express or implied, to bind the City to any obligation whatsoever.

Section 10. **LICENSES AND PERMITS**

Consultant represents that it has obtained and will maintain at all times during the Initial Term (and during the Option Period, if applicable) of this Agreement all business licenses, including but not limited to a City of Victorville business license, professional licenses or certifications, or permits necessary for performing the services described in this Agreement.

Section 11. **STANDARD OF PERFORMANCE; WARRANTY**

- a. Consultant agrees to perform all services required by this Agreement in a professional and competent manner, in accordance with the degree of skill and diligence which is normally employed by reputable professionals performing similar services under similar conditions in the same or similar locality. Such services shall also be performed in a manner which is reasonably satisfactory to **Keith C. Metzler, City Manager**, or his designee.
- b. By executing this Agreement, Consultant warrants that it:
 - (1) Has thoroughly investigated and considered the services and work to be performed;
 - (2) Has investigated the issues regarding the scope of services to be provided;
 - (3) Has carefully considered how the services and related work should be performed; and
 - (4) Fully understands the facilities, difficulties and restrictions associated with performance of the services required by this Agreement.

Section 12. **FAMILIARITY WITH WORK**

Should Consultant discover any latent or unknown conditions materially differing from those inherent in the services or as represented by the City, Consultant shall immediately inform the City of such fact and shall not provide any services, except at Consultant's risk, until written instructions are received from **Keith C. Metzler, City Manager**, or his designee.

Section 13. **CONFLICTS OF INTEREST**

Consultant covenants that it does not have any interest, nor shall it acquire any interest, directly or indirectly, which would conflict in any manner with the performance of Consultant's services under this Agreement. Consultant further covenants that in the performance of services under this Agreement, no officer, employee or agent of Consultant having such interest

shall be employed by it. In the event the City determines that Consultant must disclose its financial interests by completing and filing a Fair Political Practices Commission Form 700, Statement of Economic Interests, Consultant shall file such Form 700 with the City Clerk's Office pursuant to the written instructions provided by the City Clerk. Acquisition or maintenance of a conflicting interest by Consultant may result in termination of this Agreement by the City.

Section 14. **COMPLIANCE WITH LAWS**

Consultant shall comply with all local, state, and federal laws and regulations applicable to the services to be rendered hereunder, including any rule, regulation, or bylaw governing the conduct or performance of Consultant or its employees, officers, or board members.

Section 15. **COMMERCIAL GENERAL AND AUTOMOBILE LIABILITY INSURANCE**

a. Consultant shall procure and maintain at its own expense, during the Initial Term of this Agreement (and during the Option Period, if applicable), Commercial General Liability Insurance, of not less than One Million Dollars (\$1,000,000) per occurrence, and Two Million Dollars (\$2,000,000) in the aggregate, for bodily injury, personal injury, death, loss, or damage resulting from the wrongful or negligent acts by Consultant or its officers, employees, servants, volunteers, and agents and independent contractors.

b. Consultant shall further procure and maintain, at its own expense, during the Initial Term of this Agreement, (and during the Option Period, if applicable), Commercial Vehicle Liability Insurance covering personal injury and property damage, of not less than One Million Dollars (\$1,000,000) combined single limit, covering any vehicle utilized by Consultant or its officers, employees, servants, volunteers, agents and independent contractors in performing the services required by this Agreement.

Section 16. **WORKERS' COMPENSATION INSURANCE**

a. Consultant shall procure and maintain at its own expense, during the Initial Term of this Agreement (and during the Option Period, if applicable), Workers' Compensation Insurance, providing coverage as required by the California State Workers' Compensation Law.

b. If any class of employees employed by the Consultant pursuant to this Agreement is not protected by the California State Workers' Compensation Law, Consultant shall provide adequate insurance for the protection of such employees to the satisfaction of the City.

Section 17. **PROFESSIONAL LIABILITY INSURANCE**

Professional Liability Insurance or Errors and Omissions insurance as appropriate to Consultant's profession shall be required and written on a policy form specifically designed to provide coverage for and protect against the negligent acts, errors and omissions of the Consultant in the performance of the services required by this Agreement. A minimum limit of \$1,000,000 per claim and in the aggregate must be provided.

Section 18. **ADDITIONAL INSURED**

Notwithstanding any inconsistent statement in any required insurance policies or any subsequent endorsements attached thereto, all insurance policies, except for the Workers' Compensation and Professional Liability, shall be endorsed to name the City and its officers, employees, servants, volunteers, agents and independent contractors, including, without limitation, the City Attorney, as Additional Insureds.

Section 19. **WAIVER OF SUBROGATION RIGHTS**

Consultant shall require the carriers of all required insurance policies, with exception to Professional Liability, to waive all rights of subrogation against the City and its officers, employees, servants, volunteers, agents, and independent contractors and subcontractors. Each policy of insurance shall be endorsed to reflect such waiver.

Section 20. **PROOF OF INSURANCE COVERAGE; REQUIRED ENDORSEMENTS**

a. Consultant shall secure from a good and responsible company or companies authorized to transact insurance business in the State of California, the policies of insurance required by this Agreement and furnish to the City Clerk certificates of insurance evidencing the required coverage, and policy endorsements at least one (1) business day prior to the commencement of any services to be performed under this Agreement.

b. The policies and certificates of insurance shall be endorsed to provide that in the event of cancellation or amendment of any required insurance policy for any reason whatsoever, the City shall be notified by mail, postage prepaid, not less than thirty (30) days before the cancellation or amendment is effective. In the case of cancellation for non-payment, ten (10) days advance written notice shall be given.

c. Each policy and certificate of insurance shall be endorsed to provide that the policy shall not be terminated or expire without first providing thirty (30) days written notice to the City of such termination or expiration.

d. Each policy and certificate of insurance shall be endorsed to provide that the policy will be maintained throughout the Initial Term (and during the Option Period, if applicable), of this Agreement.

e. The Commercial General Liability and Vehicle Liability policies shall be endorsed to contain the following provision: "For any claims related to this Agreement, Consultant's coverage shall be primary with respect to the City. Any insurance maintained by the City shall be in excess of Consultant's insurance and shall not contribute with it."

Section 21. **TERMINATION OR SUSPENSION**

a. This Agreement may be terminated or suspended without cause by either Party at any time, provided that the Party initiating the termination provides the other Party at least thirty (30) days advance written notice of such termination or suspension. In the event of such termination, the City shall only be liable for payment under the payment provisions of this Agreement for satisfactory services rendered or supplies actually furnished prior to the effective date of termination.

b. This Agreement may be terminated or suspended with cause by either Party at any time, provided that the Party initiating termination provides the other Party at least ten (10) days advance written notice of such termination or suspension. In the event of such termination, the City shall only be liable for payment under the payment provisions of this Agreement for satisfactory services rendered or supplies actually furnished prior to the effective date of termination.

Section 22. **TIME OF THE ESSENCE**

Time is of the essence in the performance of this Agreement.

Section 23. **INDEMNIFICATION**

a. Except as set forth in Subsection b of this Section 23, and to the fullest extent permitted by law, Consultant shall immediately defend, indemnify, and hold harmless the City, its officers, employees, representatives, and agents (the "City Indemnitees"), from and against those actions, suits, proceedings, claims, demands, losses, costs, and expenses, including legal costs and reasonable attorneys' fees, for any personal injuries, deaths, or property damage, including property owned by the City (collectively "Claims") which may arise out of Consultant's negligence or willful misconduct in the performance of the services described in this Agreement, unless such Claims are proven to be caused by the negligence or willful misconduct of the City Indemnitees.

b. The provisions of this Subsection b apply only in the event that Consultant is a design professional within the meaning of California Civil Code section 2782.8 ("Design Professional"). The term Design Professional, as defined in said section, is limited to licensed architects, licensed landscape architects, registered professional engineers, professional land surveyors, and the business entities that offer such services in accordance with the applicable provisions of the California Business and Professions Code.

(1) Notwithstanding the provisions of Subsection a above, to the extent that the services to be provided under this Agreement are those of a Design Professional, Consultant's duty to indemnify, hold harmless, and defend the City Indemnitees shall be limited to the extent that any Claims arise out of, pertain to, or relate to the negligence, recklessness, or willful misconduct of the Consultant, its officers, agents, employees or subconsultants in the performance of the services described in this Agreement.

(2) In no event shall the costs of defense charged to Consultant exceed the Consultant's proportionate percentage of fault, except as otherwise set forth in said Civil Code section 2782.8, the provisions of which are incorporated into this Agreement by this reference. Nothing in this Subsection b shall be construed to require Consultant to provide indemnification for Claims caused by the active negligence or willful misconduct of the City Indemnitees.

c. The City does not and shall not waive any rights that it may have against Consultant under this Section, because of the acceptance by the City, or the deposit with the City, of any insurance policy or certificate required pursuant to this Agreement. The hold harmless and indemnification provisions of this Section 23 shall apply regardless of whether said insurance policies are determined to be applicable to the claim, demand, damage, liability, loss, cost, or expense described herein.

d. The obligation to indemnify and defend, as set forth in this Section 23, is binding on the successors, assigns, or heirs of Consultant and shall survive the expiration or any early termination of this Agreement.

Section 24. REPORTS

Upon request by **Keith C. Metzler, City Manager**, or his designee, or as otherwise required by this Agreement, including but not limited to, the Scope of Services set forth in Exhibit "A", Consultant shall prepare and submit reports to the City concerning Consultant's performance of the services required by this Agreement.

Section 25. RECORDS

a. Consultant shall keep such books and records as shall be necessary to perform the services required by this Agreement and enable **Keith C. Metzler, City Manager**, or his designee, to evaluate the cost and the performance of such services.

b. Books and records pertaining to costs shall be kept and prepared in accordance with generally accepted accounting principles.

c. **Keith C. Metzler, City Manager**, or his designee, shall have full and free access to such books and records at all reasonable times, including the right to inspect, copy, audit, and make records and transcripts from such records.

d. Records and supporting documents pertaining to the use of funds paid to Consultant hereunder shall be retained by Consultant and made available to **Keith C. Metzler, City Manager**, or his designee, for purposes of performing an audit for a period of five (5) years from the date of termination of this Agreement.

Section 26. RESERVED

Section 27. CONFIDENTIALITY; OWNERSHIP OF WORK

a. Any and all documents and information obtained from the City or prepared by Consultant for the City shall be kept strictly confidential unless otherwise provided by applicable law. All City data, documents and information shall be returned to the City upon termination of the Agreement.

b. Any drawings, specifications, reports, records, documents, or other materials prepared by Consultant in the performance of services under this Agreement shall not be released publicly without the prior written approval of **Keith C. Metzler, City Manager**, or his designee, or as required by applicable law.

c. Consultant shall not disclose to any other entity or person any information regarding the activities of the City, except with the prior written approval of **Keith C. Metzler, City Manager**, or his designee, or as required by applicable law.

d. All original documents, reports, designs, computer files and all other materials prepared by Consultant in the course of performing the services pursuant to this Agreement, whether completed or in progress, are the property of the City and shall be surrendered to the City upon the completion of Consultant's services or when requested by **Keith C. Metzler, City**

Manager, or his designee. Such materials may be used, reused or otherwise disposed of by the City without the permission of Consultant.

e. Consultant's covenants under this Section 27 shall survive the termination of this Agreement.

Section 28. PRINCIPAL REPRESENTATIVES

a. **John Stephens, Senior Vice President** is designated as the principal representative of Consultant for purposes of communicating with the City on any matter associated with the performance of the services set forth in this Agreement.

b. **Keith C. Metzler, City Manager**, or his designee, shall be the principal representative of the City for purposes of communicating with Consultant on any matter associated with the performance of the services set forth in this Agreement.

c. Either Party may designate another individual as its principal representative by giving written notice of such designation to the other Party.

Section 29. MODIFICATIONS AND AMENDMENTS; EXTRA SERVICES

a. This Agreement may be modified or amended only by a written instrument signed by both Parties.

b. During the Initial Term, the City may request that the Consultant perform Extra Services. As used herein, "Extra Services" means any services, which are determined by the City to be necessary for the proper completion of **Property & Casualty Insurance Brokerage & Consulting Services**, but which the Parties did not reasonably anticipate would be necessary at the execution of this Agreement. A written instrument signed by both Parties shall be required to authorize performance of and payment for Extra Services.

Section 30. ENTIRE AGREEMENT

a. This Agreement supersedes any and all prior or contemporaneous agreements, either oral or written, between the City and Consultant with respect to the subject matter of this Agreement.

b. This Agreement contains all of the covenants and agreements between the Parties with respect to the subject matter of this Agreement, and each Party to this Agreement acknowledges that no representations, inducements, promises, or agreements have been made by or on behalf of any Party, except those covenants and agreements in this Agreement.

c. No agreement, statement, or promise with respect to the subject matter of this Agreement, which is not contained in this Agreement, or in a valid modification or amendment to this Agreement, shall be valid or binding on either Party.

Section 31. AMBIGUITIES

This Agreement is in all respects intended by each Party hereto to be deemed and construed to have been jointly prepared by the Parties and the Parties hereby expressly agree that any uncertainty or ambiguity existing herein shall not be interpreted against either of them.

Notwithstanding the foregoing, the Parties agree that **Exhibit "A"** is attached hereto for reference purposes and to the extent there are any ambiguities, inconsistencies or conflicts between the terms of this Consultant/Professional Services Standard Provider Agreement and **Exhibit "A"** the terms of this Consultant/Professional Services Standard Provider Agreement shall control and nothing set forth in **Exhibit "A"** shall be deemed to supersede any of the provisions of this Consultant/Professional Services Standard Provider Agreement.

a. Any notice to be provided pursuant to this Agreement shall be in writing, and all such notices shall be delivered by personal service or by deposit in the United States mail, certified or registered, return receipt requested, with postage prepaid, and addressed to the Parties as follows:

To the City: Keith C. Metzler, City Manager
City of Victorville
14343 Civic Drive
Victorville, CA 92392

To Consultant: John Stephens, Senior Vice President
Keenan & Associates
4202 Riverwalk Pkwy, Suite 400
Riverside, CA 92505

b. Notices, payments, and other documents shall be deemed delivered upon receipt by personal service or as of the second (2nd) day after deposit in the United States mail.

Section 33. **NON-LIABILITY OF CITY OFFICERS AND EMPLOYEES**

No officer or employee of the City shall be personally liable to Consultant, or any successor in interest, in the event of any default or breach by the City or for any amount, which may become due to Consultant or to its successor(s), or for any breach of any obligation of the terms of this Agreement.

Section 34. REVIEW BY ATTORNEYS

Each Party hereto has had its attorney(s) review this Agreement and all related documents. Each Party hereto has consulted with its attorney(s) and has negotiated the terms of this Agreement based on such consultation.

Section 35. WAIVER

a. No waiver shall be binding unless executed in writing by the Party making the waiver.

b. No waiver of any provision of this Agreement shall be deemed, or shall constitute, a waiver of any other provision, whether similar, nor shall any such waiver constitute a continuing or subsequent waiver of the same provision.

c. Failure of either Party to enforce any provision of this Agreement shall not constitute a waiver of the right to compel enforcement of such provision or any of the remaining provisions of this Agreement.

Section 36. ASSIGNMENT

This Agreement shall not be assigned by either Party without prior written consent of the other Party.

Section 37. CARE OF WORK

The performance of services by Consultant or the payment of money by the City shall not relieve Consultant from any obligation to correct any incomplete, inaccurate, or defective work at no further cost to the City, when such incomplete, inaccurate or defective work is due to the negligence of Consultant.

Section 38. CAPTIONS AND HEADINGS

The captions and headings contained in this Agreement are provided for identification purposes only and shall not be interpreted to limit or define the content of the provisions described under the respective caption or heading.

Section 39. SUCCESSORS, HEIRS, AND ASSIGNS

Except as otherwise expressly provided herein, this Agreement shall be binding upon the successors, endorsees, assigns, heirs, and personal representatives of each of the Parties to this Agreement and, likewise, shall inure to the benefit of the successors, endorsees, assigns, heirs, and personal representatives of each of the Parties.

Section 40. GENDER

In this Agreement, unless the context clearly requires otherwise, the masculine, feminine and neuter genders and the singular and the plural shall include one another.

Section 41. SEVERABILITY

If any one or more of the sentences, clauses, paragraphs, or sections contained herein is declared invalid, void, or unenforceable by a court of competent jurisdiction, the same shall be deemed severable from the remainder of this Agreement and shall not affect, impair, or invalidate any of the remaining sentences, clauses, paragraphs, or sections contained herein.

Section 42. GOVERNING LAW

The validity of this Agreement and any of its terms or provisions, as well as the rights and duties of the Parties under this Agreement, shall be construed pursuant to and in accordance with California law.

Section 43. **DEFAULT**

a. Failure or delay by any Party to this Agreement to perform any material term or provision of this Agreement shall constitute a default under this Agreement; provided however, that if the Party who is otherwise claimed to be in default by the other Party commences to cure, correct, or remedy the alleged default within fifteen (15) days after receipt of written notice specifying such default and shall diligently complete such cure, correction, or remedy, such Party shall not be deemed to be in default hereunder.

b. The Party claiming that a default has occurred shall give written notice of default to the Party in default, specifying the alleged default. Delay in giving such notice shall not constitute a waiver of any default nor shall it change the time of default; provided, however, the injured Party shall have no right to exercise any remedy for a default hereunder without delivering the written default notice, as specified herein.

c. Any failure or delay by a Party in asserting any of its rights or remedies as to any default shall not operate as a waiver of any default or of any rights or remedies associated with a default.

d. In the event that a default by any Party to this Agreement may remain uncured for more than fifteen (15) days following written notice, as provided above, the injured Party shall be entitled to seek any appropriate remedy or damages by initiating legal proceedings.

Section 44. **CUMULATIVE REMEDIES**

Except with respect to rights and remedies expressly declared to be exclusive in this Agreement, the rights and remedies of the Parties are cumulative and the exercise by either Party of one or more of such rights or remedies shall not preclude the exercise by it, at the same or different times, of any other rights or remedies for the same default of any other default by the other Party.

Section 45. **VENUE**

All proceedings involving disputes over the terms, provisions, covenants, or conditions contained in this Agreement and all proceedings involving any enforcement action related to this Agreement shall be initiated and conducted in the applicable court or forum in San Bernardino County, California.

Section 46. **ATTORNEYS' FEES**

In the event any action, suit, or proceeding is brought for the enforcement of, or the declaration of any right or obligation pursuant to this Agreement, or as a result of any alleged breach of any provision of this Agreement, the prevailing Party in such suit or proceeding shall be entitled to recover its costs and expenses, including reasonable attorneys' fees, from the losing Party, and any judgment or decree rendered in such a proceeding shall include an award thereof.

Section 47. EFFECTIVENESS OF AGREEMENT

This Agreement shall not be binding upon the City, until signed by the authorized representative(s) of Consultant, approved by the City's Risk Manager, and executed by the authorized City personnel or Mayor.

**Section 48. REPRESENTATIONS OF PARTIES AND PERSONS
EXECUTING AGREEMENT**

a. Each of the Parties to this Agreement hereby represents that all necessary and appropriate actions of their governing bodies have been taken to make this Agreement a binding obligation of each of the Parties hereto.

b. The persons executing this Agreement warrant that they are duly authorized to execute this Agreement on behalf of and bind the Parties each purports to represent.

Section 49. COUNTERPARTS

This Agreement may be executed by the Parties in counterparts, and when executed by each of the Parties, each counterpart shall be deemed to be a part of this Agreement.

(END OF THIS PAGE)

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed as of the dates written below.

THE CITY OF VICTORVILLE

By: 
Keith C. Metzler,
City Manager

Dated: May 15, 2020

KEENAN & ASSOCIATES

By: 
John Stephens,
Senior Vice President

Dated: MAY 11, 2020

THE CITY OF VICTORVILLE

By: 
Chuck Buquet,
Risk Manager

Dated: 5/20/2020

APPROVED AS TO STANDARD
FORM:

By: 
Andre de Bortnowsky,
City Attorney

Dated: 5.20.20

EXHIBIT A

SCOPE OF SERVICES/ CONSULTANT'S COST PROPOSAL

See Attachment

City of Victorville

Property & Casualty Insurance Consultant/Broker Services Proposal

May 1, 2020

Presented By:

Vanessa Peña
Account Executive
4202 Riverwalk Pkwy., Suite 400
Riverside, CA 92505
800.654.8347, ext 1169
909.815-3744 cell
vpena@keenan.com

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EXECUTIVE SUMMARY

Keenan & Associates is pleased to present our proposal for Property & Casualty Insurance Brokerage & Consulting Services to the City of Victorville. Our commitment to the success of the City's programs will be supported by hands-on service by the most senior Property & Casualty members of our organization. We are confident you will find our capabilities, outlined in this proposal, represent the highest level of service available and that Keenan is uniquely qualified to form a strategic partnership in the following areas:

- **Public Agency Focus and Reinsurance / Marketing Expertise** – We have more than 47 years of experience in delivering Brokerage and Consulting Services to public agencies throughout California. We place more than \$250 million of reinsurance for California public entities representing more than \$80 billion of property value and \$50 billion of WC payroll. We use our standing in the public entity reinsurance marketplace to negotiate the broadest terms and conditions, while keeping our customers' costs to a minimum. We are specialists and understand how to serve public agencies.
- **Service** – We are first and foremost a service organization – service to our customers and our communities. That is what we are known for; our “brand” in the industry. Our utilization of Keenan personnel on your behalf goes far beyond the traditional staffing of our competitors.
- **WC Claims Consulting & Analytics** - We have a very extensive WC Claims and Medical Management division and while we are not proposing on TPA or recommending the City to change your claims handling, our resources and experience enable us to provide unique consultation and strategies to further reduce your claim costs.

The Keenan solution includes a fully integrated platform offering unique insurance marketing strategies, risk management resources and loss cost mitigation. Our approach reduces our clients' overall cost of risk and our high client retention rates are proof positive.

For these reasons, we enthusiastically and confidently offer the City of Victorville our insurance consultative services. We hope we have adequately conveyed our qualifications within this proposal and thank you for the opportunity present our capabilities.

KEENAN PROFILE

OVERVIEW OF KEENAN

Keenan is a California C Corporation. In April 2017 Keenan joined AssuredPartners, Inc. AssuredPartners, is privately held and acquires and invests in insurance brokerage businesses (property and casualty, employee benefits, surety and MGUs) across the United States, Canada and in London. Founded in March of 2011, AssuredPartners is one of the fastest growing insurance brokerages and has grown to more than \$1.3 billion in annualized revenue with 180 offices throughout the United States, Canada and London. Keenan is the public entity leader for AssuredPartners and provides national public entity expertise. We have a national footprint to help us negotiate the most favorable coverage terms and conditions for our clients and allows us to provide an even broader spectrum of public entity risk management support services.

KEENAN PUBLIC AGENCY DIVISION

Keenan's Public Agency Division provides high quality, innovative products and services that add value, increase reliability and provide financial security for our clients' property and liability, workers' compensation, and employee benefits programs. As an organization, we place insurance covering more than \$80 billion of insured property values and more than \$50 billion in covered payroll.

We believe an integrated approach allows us to provide our clients with the highest level of consultation. To do so, we have developed a wide range of services, including

- Risk Management Consultation
- Claims Administration
- Full Range of Insurance Brokerage
- JPA Management and Consulting
- Loss Control Consultation and Services
- Financial Analysis and Planning for Creative Funding Options

KEENAN OFFICES AND STAFFING

Keenan has nine (9) offices throughout California, with more than 750 employees. This enables us to provide immediate service to our clients. It also gives us an understanding of California's public agencies statewide.

PHASE I: P&C INSURANCE CONSULTATIVE SERVICES

PROPERTY & CASUALTY INSURANCE AND RISK MANAGEMENT PROGRAM ASSESSMENT

The City of Victorville asked Keenan to provide a proposal to evaluate its current excess insurance and risk management program with PERMA and ERMA.

Keenan & Associates is a California municipal risk management specialist with knowledge of competitive property and casualty programs, both stand-alone and pooled (JPAs) available to California cities. We believe it is important for the City to look at various viable alternatives. Since Keenan itself provides proprietary programs and services, we are intimately familiar with coverage and service nuances applicable to California city risk. Our products and services include consulting, brokerage, pool administration, claims administration, loss control, in-person and web-based training, claims analytics, financial management and risk management. A fully integrated approach allows us to evaluate various competitive options with knowledge, expertise, and integrity. The City will receive a consultative report, including a fully executable plan of action for the City to use in identifying and ultimately choosing the best possible options.

OBJECTIVES

- Examine the efficacy of the City's current casualty insurance programs in the areas of governance, administration, coverage, services and cost
- Perform a detailed analysis of the City's casualty (including Workers' Compensation) losses in all areas of coverage over the past 10 years, including potential loss development, and the impact of losses on the City's cost of risk
- Evaluate the City's internal risk management resources and performance relative to risk
- Identify alternative options best aligned with our findings and the City's risk management philosophy for the fiscal year and beyond
- Provide an action plan to thoroughly explore options from a position of strength provided by the knowledge gained in the evaluation process

The approach we believe best suits the City's objectives involves two phases, which will provide the City with objective recommendations and an achievable action plan.

PHASE I

The first phase, culminating in a written report and presentation of findings, will be completed within an agreed upon timeframe, typically 3 months from date of contract inception. This phase covers the first three objectives outlined above. In summary, the goal of phase 1 is to review the coverage provided to the City through its membership of PERMA and ERMA and analyze whether the City's premium history is aligned with its claim experience, as compared to alternatives.

- **Examination of current program and claims administration practices**

- Information procurement and review
 - JPA Insurance Memorandum of Coverage/Insurance Policies, current, for all Excess Liability (General, Excess, Public Officials, Employment Practices Liability, and Pollution) and Excess Workers' Compensation
 - Premium Allocation

- **Detailed Loss Analysis**

- Information procurement and review
 - Loss retention history, if any, last 10 years
 - Loss runs reports, currently valued, last 10 years,
 - Large loss review (> \$50k incurred value), last 10 years
 - Application of reasonable loss development analysis
 - Actuarial reports, if any, last 3 years
 - Loss trend analysis, type and value

- **City risk management resources and performance assessment**

- Information procurement and review
 - Organization charts, job descriptions and staffing for risk management
 - City and JPA representation and involvement
 - Policy and procedure documents
 - Return to Work
 - Claim reporting and follow up
 - Accident investigation
 - Communication protocols, internal and external
 - Accountability
- Interviews with City's management and staff relative to risk management program:
 - Culture
 - Expectations
 - Resources
 - Training, internal and external
 - Communication and efficacy

- **Report & Presentation to City**

- Written description of information received and reviewed, interviews conducted
- Summary of all Phase 1 findings and conclusions with recommendations for Phase 2 of assessment
- Oral presentation to be done remotely or via telephone or video conferencing to audience specified by City

PHASE II: P&C BROKERAGE SERVICES

PROPERTY & CASUALTY BROKERAGE SERVICES

Phase 2 will be implemented based on acceptance of recommendations in the Phase 1 report and agreed upon timeframes to be determined by the City. This process would likely begin the end of the calendar year given the six-month advance withdrawal provisions. If the City decides to progress with Phase 2, Keenan will facilitate the marketing process and coordinate timely delivery of competitive options for the next fiscal year. We will work with the City to evaluate options and recommend action to allow the City to make decisions it feels appropriate to meet its needs. We will actively involve providers of products and services to make sure they are able to adequately demonstrate their value and differentiation.

As your broker/consultant, we've developed a very extensive process to help identify exposures, determine appropriate coverage needs and contain costs. This is a process that is approached newly each year in order to evaluate all exposures and current insurance in place.

This is an ongoing process broken up into several phases.

PHASE I

Kick-Off and Strategic Plan Development

Shortly after contracting with the City, the Keenan Service team will meet with the management team to discuss and understand your current position and philosophy pertaining to the following:

- Risk tolerance
- Program placement expectations & timeline
- Understanding and comfort with various program structures
- Expectations for stewardship report
- Potential program structures
- Political issues within City Council /or Community

Once the strategic plan development has been determined, the program analysis and development begins.

Our work will include:

Assessment of Risk Tolerance

Utilizing our in-house resources, we will review the financial statements and meet with appropriate personnel to assess the City's financial risk tolerance.

Historic Loss Stratification Analysis

This analysis will reforecast historic losses at various levels to identify the loss exposures within their indicated tolerance as well as provide a pricing comparison where historic losses have been transferred.

Alternative Risk Financing Options

Once the Loss Stratification and Analysis has been completed we will develop various ideal retained versus transfer pricing models to discuss with your management team and use as a benchmark in developing the cost/benefit analysis of all program structures offered by all alternative programs, including the current program.

From a program structure standpoint, we provide innovative thinking in how to structure your insurance program that can significantly reduce the City's long-term costs while maintaining the right coverage for the City's exposures.

Catastrophic Modeling

Catastrophic modeling FEMA separates fact versus fiction about what limits of coverage are really needed for earthquake and flood. A risk assessment earthquake analysis using your current statement of values shall be conducted to demonstrate how to structure programs that protect the City of Victorville in cost-effective ways.

PHASE II

Marketing

We specialize in public agency insurance and we have great relationships and market clout to negotiate the broadest terms and conditions with the lowest premiums. We spend an extensive amount of time developing the City of Victorville's story and underwriting data to present while meeting with the excess and re-insurance markets located domestically in the United States as well as markets in London and Bermuda. Our approach is to provide the answers before they ask questions to ensure that there is absolute clarity of the submission, program objectives, to develop viable economic coverage options to present to Management staff.

Submission Development

The Keenan Placement Specialists will work with your management staff to:

- Review all underwriting data is collected and applications are completed as needed to meet underwriting criteria
- Understand any significant changes in exposure or losses
- Work with Management staff to understand what changes have been made to address new exposures and significant changes to claim activity, as a result thereof

Once the underwriting information is received and processed, our placement specialists will prepare the submission that includes the objectives outlined during the strategic plan development.

Pre-Renewal Meeting

The Keenan Service team will meet with management staff to provide a current update of the insurance marketplace, present projected rate changes and renewal premium indications to allow you to manage budget development. Any new potential coverage options shall be discussed at that time including providing thorough education for any options that may be unfamiliar to you from its current program structure.

Carrier Negotiations

Our team leadership and placement specialists will work with markets to develop the best possible coverage, terms and conditions for the City of Victorville. We approach carriers in London, Bermuda and domestically in the United States to ensure we access all public entity markets. We work on a fixed fee so we ensure commissions are taken out and all quotes are "net" of commission. For difficult to place coverages such as DIC, we utilize a wholesaler broker to access specialty markets.

Renewal Presentation

The Keenan Service team will present a proposal outlining the expiring program and proposed renewal options in a clear and concise manner. A coverage comparison will be included along with the carrier quotations, coverage forms and compensation disclosure for full transparency. The Service team is always available to attend internal meetings to present proposals and answer any questions or concerns that may arise.

Coverage Finalization

The Service team will work with you in submitting the formal bind order and coverage subjectivities, as needed. All insurance binders, invoices and certificates of insurance shall be issued to confirm the coverage placement selected.

Stewardship Report

Deliver stewardship report based upon the standards set at the strategic plan development and identified throughout the year. The results are presented in a format that can be understood by key stakeholders to Board of Directors and members.

YOUR KEENAN TEAM

Vanessa Peña will be designated as the City's lead consultant and directly and engaged in account management services. Vanessa is based out of Keenan's Riverside office, along with additional support from Keenan's corporate offices in Torrance, California.

KEENAN SERVICE TEAM

Vanessa Peña, CRIS, AIS – Account Executive, Primary Management Contact



**Vanessa Peña, CRIS,
AIS**

Account Executive/
Lead Consultant

Vanessa Peña, Account Executive, joined Keenan in 2010. Vanessa has been in the insurance industry since 1997 and has expertise with account management, market placement and construction programs. Over the past nine years Vanessa has been working exclusively with California public agencies by helping manage their risks specializing in areas of insurance, re-insurance, self-insurance and risk management consultative services.

Vanessa is responsible for account management, operations and business development of municipalities, special districts and public agencies in Southern California. As the City's lead consultant, Vanessa will oversee account management services, marketing services, and provide consultative services to help identify solutions to reduce the City's overall costs while protecting the City's financial stability. Vanessa is a graduate of the University of Redlands with a Bachelor of Science degree in Business. She is a licensed Fire & Casualty Agent/Broker and has earned a professional designation as Construction Risk Insurance Specialist (CRIS) and Associate in Insurance Service (AIS).

Jessica Blushi – Assistant Vice President, Casualty Marketing Expert**Jessica Blushi**Assistant, Vice
President

Jessica Blushi, Assistant Vice President of P&C Marketing, has been helping California public agencies manage their risks for over 15 years. Jessica specializes in the areas of insurance, re-insurance, self-insurance and risk management. Prior to joining Keenan, Jessica's industry experience included serving as an account manager with Alliant Insurance Services specializing in large municipal accounts. Jessica's experience in the self-insurance and risk management areas was further developed when she served as the Underwriting Manager for CSAC Excess Insurance Authority where she was very involved in CSAC EIA's administration of the JPA's Property and Casualty Programs. Jessica supervised the underwriting staff, provided oversight of prospective member underwriting and cost allocation models, and also provided risk management consulting and other member services. Jessica has also served as a pool administration and risk management consultant with Bickmore Risk Services. Jessica will be the lead casualty marketing placement specialist in placing the City's excess liability program. Jessica studied Business Administration at California State University, Fullerton and maintains a Fire and Casualty Insurance Broker's license.

Rena Svetic – Senior Account Manager, Property & Ancillary Marketing Expert**Reva Svetic, AINS,
ARM**P&C Marketing / Sr.
Account Manager

Rena Svetic has a wide range of expertise within the insurance industry, where she currently specializes in Public Agency placement of earthquake coverage and ancillary lines of business. She joined Keenan in 2002 and led the streamlining of the Property and Casualty appraisal process for public agencies. As business liaison for Online Client Applications, she worked with IT on program development, simplified the communication process, and conducted trainings. In her role as Marketing Sr. Account Manager, placement of earthquake, crime, cyber, management liability, and storage tank coverages became her niche and will be carried out for the City. Rena holds a Bachelor Degree in Business Administration and the Insurance designations of AINS and ARM.

Monica Mojarro – Account Manager, Service & Administration**Monica Mojarro**

Account Manager

Monica Mojarro joined Keenan in 2011 and provided administrative and internal account support to the Vice President of Property & Casualty and the P&C Integrated Service Team. As Account Manager, Monica is responsible for day to day client servicing and account management services including: policy renewal preparation and submission, risk management and coverage inquiries, insurance contract compliance review, coordination of online safety training, facilitating carrier inspections and loss controls services, as needed. Monica is a graduate of California State University Long Beach, and she obtained her Master's Degree in Public Administration with a concentration in employer/employee relations. Monica is a licensed Property & Casualty Broker/Agent.

Additional support will be provided by the following Keenan Corporate Support Team subject matter experts / specialists.

CORPORATE SUPPORT TEAM

- **John Stephens** – Senior Vice President, P&C Practice Leader & Reinsurance Expert
- **Eric Lucas** – Vice President, Property & Liability Claims Oversight
- **Amy Donovan** – Vice President, Legislative and Regulatory Affairs
- **Eric Preston** – Vice President, Safety & Risk Management Services
- **Christine Gerbasi** – Vice President, Workers' Compensation & Return to Work

FEE/COST PROPOSAL

Keenan works with more than 950 public agencies in California and has an incredible understanding of the risks and costs driving up public entity insurance premiums. In the past couple of years, we have helped four (4) cities with the exact same services that the City of Victorville has requested and have helped saved them a combined \$1.3 million in addition to enhancing coverage terms. The average City has saved approximately \$330,000.

Keenan's proposed fee structure is as follows:

- \$15,000 flat fee inclusive of the all services outlined in the consultative services proposal to be provided to the City of Victorville. **Should the City bind insurance coverage with Keenan in phase II, set fees will be credited towards brokerage/marketing fee services for the proposed program year.**