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OAKLAND UNIFIED
SCHOOL DISTRICT

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Memo

To Board of Education

From Tony Smith, Ph.D., Superintendent
Reginald L. Crowell, Risk Management Officer *RC*

Board Meeting Date June 23, 2010

Subject Approval by the Board of Education of a Retiree Reinsurance Program Services Agreement with Keenan & Associates for the 2010 - 2011 Fiscal Year

Action Requested Approval of Retiree Reinsurance Program Services Agreement between Oakland Unified School District and Keenan & Associates for Account Management Services in an amount not to exceed \$25,000 for the period of July 1, 2010 through June 30, 2011.

Background
A one paragraph explanation of why the consultant's services are needed. District needs and desires consultants to apply for health care reimbursement amounts for its retirees health benefits program up to \$350,000.00. Consultant possesses all technical knowledge, resources and management skills to perfect Oakland Unified School District's application pursuant to the provisions of the Patient Protection and Affordable Care Act of 2010 as amended.

Discussion
One paragraph summary of the scope of work. Oakland Unified School District's consultant and broker of record will provide OUSD with a feasibility study to help determine the approximate amount of any potential reimbursement, valuation and attestation services, and actuary and account management services.

Recommendation Approval of Retiree Reinsurance Program Services Agreement between Oakland Unified School District and Keenan & Associates for Account Management Services in an amount not to exceed \$25,000 for the period of July 1, 2010 through June 30, 2011.

Fiscal Impact Fund 01 Resource Code 0000 Benefits Administration not to exceed \$25,000.00

Attachments Retiree Reinsurance Program Services Agreement

RETIREE REINSURANCE PROGRAM SERVICES AGREEMENT

This **Retiree Reinsurance Services Agreement** ("Agreement") is entered into by and between Oakland Unified School District ("Client") and **Keenan & Associates** ("Keenan"), as of **June 1, 2010**.

RECITALS

WHEREAS, pursuant to the Patient Protection and Affordable Care Act of 2010, as amended, the federal government will establish a temporary reinsurance program ("Program") to reimburse participating employment-based plans for a portion of costs associated with the provision of health insurance coverage to early retirees.

WHEREAS, Client desires to apply for reimbursement under the Program;

WHEREAS, Client desires assistance with the filing of its application for reimbursement under the Program ("Application");

NOW, THEREFORE, it is hereby agreed as follows:

1. KEENAN SERVICES

- A. Client hereby retains Keenan to perform the following services in connection with the Program :

	Accept	Decline
Feasibility Study (Exhibit A)	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Valuation and Attestation (Exhibit B)	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Application and Account Management (Exhibit C)	<input checked="" type="checkbox"/>	<input type="checkbox"/>

The specific services to be provided by Keenan are as described in Exhibits A through C, attached to and made a part of this Agreement.

- B. The relationship of Keenan and Client shall be that of an independent contractor and Keenan shall at all times remain responsible for its own operational and personnel expenses. Under no circumstance shall any employee of one party look to the other party for any payment or the provision of any benefit, including without exception, workers' compensation coverage. Except as may be expressly set forth in or contemplated by this Agreement, neither party shall have the right to act on behalf of the other, or to bind the other to any contract or other obligation.
- C. Except for the limited purpose of providing the Valuation/Attestation, if applicable, Keenan shall not provide any accounting, financial, or tax service, advice, or opinion.

Client shall consult its own attorney on all legal issues and its own tax advisors, accountants and financial experts on all tax and financial matters.

- D. Keenan shall follow the procedures to be established by the Department of Health and Human Services (“HHS”) for the preparation, completion, and submission of the Application and any Attestation/Valuation that may be required.
- E. The services provided to Client are non-exclusive and Keenan reserves the right to provide the same or similar services to other clients who may be in the same industry, business, or service as Client.
- F. Keenan reserves the right to engage independent contractors to assist in performing the services that are the subject of this Agreement, provided, however, that Keenan shall remain ultimately responsible for the compliance of any such contractors with the terms of this Agreement.
- G. **Keenan shall not be responsible for any delay in the preparation, completion or submission of the Application or Valuation/ Attestation (if required), if the Client, or any other person acting on behalf of the Client, including vendors, carries, and providers, fails to provide the Keenan with all required information, or to timely perform any task that is the responsibility of Client or such other person.**

2. CLIENT’S DUTIES AND RESPONSIBILITIES

- A. Client shall retain ultimate responsibility for the completion and submission of its Application.
- B. Client shall take all necessary action as may be required by HHS to enable Keenan to prepare, complete, and file the Application and Valuation/Attestation (if applicable) on its behalf.
- C. Client shall provide Keenan with timely access to such information and individuals, including such of client’s outside advisors and consultants, as may be necessary for Keenan to prepare, complete and submit the Application and Valuation/Attestation.
- D. All information provided to Keenan for the purposes of this Agreement shall be complete and accurate, and Keenan may rely upon such information without independent verification or validation.
- E. **Client understands and acknowledges that there is limited funding for the Program, and that Program funds will be disbursed on a “first come – first served” basis. The timely submission of an Application does not guarantee that the Client will receive reimbursement under the Program. Keenan shall have no liability for the failure of client to receive any reimbursement from the Program, unless the failure is the result of the gross negligence or willful misconduct of Keenan.**

4. **COMPENSATION**

- A. Keenan's fees for the services described in this Agreement shall be as described in Exhibit D.
- B. Payment shall be due upon receipt of Keenan's invoice. Any balance not paid within thirty (30) days following the date on the invoice shall be deemed late. Interest on any late payment shall accrue, as of the date of Keenan's original invoice, at the rate of 1 ½ percent per month, or the maximum interest rate permitted by applicable law, whichever is lower.

5. **INSURANCE**

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

- A. Workers' Compensation: Coverage in conformance with the laws of the State of California and applicable federal laws;
- B. General Liability: Coverage (including motor vehicle operation) with a One Million Dollar (\$1,000,000) limit of liability for each occurrence and a Two Million Dollar (\$2,000,000) aggregate limit of liability; and
- C. Errors and Omissions: Coverage with a One Million Dollar (\$1,000,000) limit of liability for each occurrence and a Two Million Dollar (\$2,000,000) aggregate limit of liability.

6. **INDEMNIFICATION**

If either party breaches this Agreement, then the breaching party shall defend, indemnify and hold harmless the non-breaching party, its officers, agents and employees against all claims, losses, demands, actions, liabilities, and costs (including, without limitation, reasonable attorneys' fees and expenses) arising from such breach. In addition, if Keenan (i) becomes the subject of a subpoena or is otherwise compelled to testify or (ii) becomes the subject of a claim, demand, action or liability brought or asserted by one of Client's employees, Plan beneficiaries, or Plan vendors ("Third-Party Demand") relating to the Services and such Third-Party Demand is not a direct result of Keenan's gross negligence or willful misconduct, then Client shall defend, indemnify and hold Keenan harmless from all losses, payments, and expenses incurred by Keenan in resolving such Third-Party Demand.

7. **LIMITATION OF LIABILITY**

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

to, and shall not exceed, the amount of the total fees paid by Client pursuant to this Agreement.

8. DISPUTE RESOLUTION

- A. Disputes arising out of or relating to this Agreement, other Agreements between the parties, or any other relationship involving Client and Keenan (whether occurring prior to, as part of, or after the signing of this Agreement) shall first be resolved by good faith negotiations between representative of the parties with decision-making authority. If either party determines that the dispute cannot be resolved through informal negotiation then the dispute shall be submitted to non-binding mediation. The site of the mediation and the selection of a mediator shall be determined by mutual Agreement of the parties. If the dispute is not resolved through mediation within sixty (60) days following the first notification of a request to mediate, then either party shall have the right to require the matter to be resolved by final and binding arbitration in accordance with the Commercial Arbitration Rules of the American Arbitration Association, or such other arbitration procedures as may be agreed to in writing by the Parties. Negotiation, mediation, and arbitration shall be the exclusive means of dispute resolution between Client and Keenan and their respective members, agents, employees and officers.
- B. Arbitration shall be before a single arbitrator in the County of Alameda, California. The Arbitrator shall apply the Federal Arbitration Act and California substantive law, and shall accompany the award with a reasoned opinion. The arbitrator shall have no authority to award punitive or other damages not measured by the prevailing party's actual damages. The prevailing party shall be entitled to an award of reasonable attorneys' fees. A judgment of any court having jurisdiction may be entered upon the award.
- C. Either party may apply to the arbitrator seeking injunctive relief until the arbitration award is rendered or the controversy is otherwise resolved. Either party also may, without waiving any remedy under this Agreement, seek from any court having jurisdiction any interim or provisional relief that is necessary to protect the rights or property of that party, pending the establishment of the arbitral tribunal (or pending the arbitral tribunal's determination of the merits of the controversy).

9. TERMINATION

- A. This Agreement may be terminated upon thirty (30) days advance written notice from one party to the other.
- B. In the event of termination pursuant to Section 9A above, Keenan shall be paid for the full value of its services through the date of termination. Services shall be valued based upon an hourly rate of \$200/hr.

10. GENERAL

- A. This Agreement, its recitals and all exhibits attached to the Agreement contain the entire understanding of the parties related to the subject matter covered by this Agreement and


supersedes all prior and collateral statements, presentations, communications, reports, Agreements or understandings, if any, related to such matter(s).

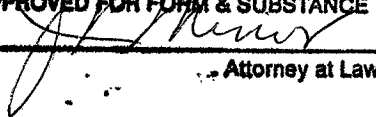
- B. The obligations set forth in this Agreement other than Keenan's obligation to perform the Services and Client's responsibility to pay for such services shall survive the expiration or termination of this Agreement. Nothing in this Section 10B shall, however, be interpreted as relieving Client of its obligation to pay for any Services rendered by Keenan during the term of this Agreement.
- C. This Agreement is made for the benefit of the parties and is not intended to confer any third party benefit or right. The enforcement of any remedy for a breach of this Agreement or claim related to the Services may only be pursued by the parties to this Agreement.
- D. No modification or amendment to this Agreement shall be binding unless it is in writing and signed by authorized representatives from both parties. Any waiver or delay by a party in enforcing this Agreement shall not deprive that party of the right to take appropriate action at a later time or due to another breach. This Agreement shall be interpreted as if written jointly by the parties.
- E. Any provision determined by a court of competent jurisdiction to be partially or wholly invalid or unenforceable shall be severed from this Agreement and replaced by a valid and enforceable provision that most closely expresses the intention of the invalid or unenforceable provision. The severance of any such provision shall not affect the validity of the remaining provisions of this Agreement.
- F. Neither party shall be liable or deemed to be in default for any delay or failure in performance under this Agreement resulting, directly or indirectly, from acts of God, civil or military authority, acts of public enemy, war, accidents, fires, explosions, earthquakes, floods, power outages, failure of computer systems, machinery or supplies, vandalism, strikes, or other work interruptions, or any similar or other cause that is beyond the reasonable control of either party. Each party shall make a good faith effort to perform under this Agreement in the event of any such circumstances, and shall resume full performance once the cause of the delay has abated.
- G. All notices hereunder shall be in writing and sent to the parties at the addresses as set forth below, or to such other individual or address as a party may later designate. Notices shall be sent via personal delivery, courier service, United States mail (postage pre-paid, return receipt requested), express mail service, electronic mail, or fax. Notice shall be effective when delivered, or if refused, when delivery is attempted. Notices delivered during non-working hours shall be deemed to be effective as of the next business day.

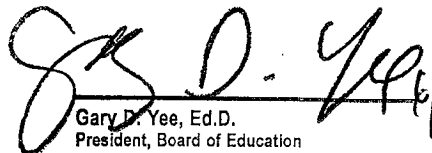
If the notice relates to a legal matter or dispute, a copy shall be sent to:

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

- H. This Agreement may be executed in counterparts by fax signatures and each shall be deemed to be an original.
- I. Each person signing this Agreement on behalf of a party represents and warrants that he or she has the necessary authority to bind such party and that this Agreement is binding on and enforceable against such party.

<u>Oakland Unified School District</u>		<u>Keenan & Associates</u>	
<u>Signature:</u>		<u>Signature:</u>	
<u>By:</u>		<u>By:</u>	John Scatterday
<u>Title:</u>		<u>Title:</u>	Senior Vice President
<u>Address:</u>	1025 2 nd Ave.	<u>Address:</u>	2355 Crenshaw Blvd., Ste. 200
	Oakland, CA 94606		Torrance, CA 90501
<u>Telephone:</u>		<u>Telephone:</u>	310 212-0363
<u>Fax:</u>		<u>Fax:</u>	
<u>Attention:</u>		<u>Attention:</u>	
<u>Date:</u>		<u>Date:</u>	6/7/10

OAKLAND UNIFIED SCHOOL DISTRICT
Office of General Counsel
APPROVED FOR FORM & SUBSTANCE
By:  Attorney at Law

 6/24/10
Gary D. Yee, Ed.D.
President, Board of Education

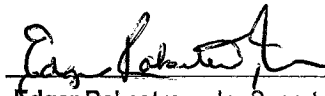
 6/24/10
Edgar Rakestraw, Jr., Secretary
Board of Education

Exhibit A Feasibility Study

- Keenan will review Client's data to estimate the approximate amount of reimbursement that might be available to Client under the program.
- The purpose of the Feasibility Study is to allow Client to determine whether the filing of an Application may be beneficial.
- The Feasibility Study is not intended to provide an exact determination of Client's potential reimbursement, nor does it guarantee that any reimbursement will be obtained from the Program. **Keenan shall have no liability to the Client for the services rendered pursuant to this Exhibit A if the amount of actual reimbursement is less than the amount suggested by the Feasibility Study or if Client fails to obtain reimbursement.**

Exhibit B
Valuation and Attestation Services

- The process for performing the Valuation and Attestation shall be as described in the guidance or regulations to be issued by HHS regarding to the filing of an Application. In the event that HHS does not proscribe the process for performing a Valuation and/or Attestation, then the Valuation and Attestation Services shall be conducted in a manner mutually agreed upon in writing by the parties.
- Keenan shall assign a licensed actuary (“Actuary”) who is an active member of the American Academy of Actuaries to perform the Valuation and Attestation Services. Actuary shall not act as Account Manager, Authorized Representative or Designee in conjunction with any Application as long as (s)he is registered as an Actuary for the Program.

Name of Actuary: Christine Hough Actuary #: 379221

Email address: Chough@keenan.com

- Actuary will complete such actuarial registration process or other steps as may be required by HHS in order to perform the Valuation and Attestation Services.
- If required by HHS, Client shall designate Actuary as its “assigned actuary” and take any other steps that may be required of Client by HHS in order for Actuary to perform Valuation and Attestation Services.
- For each Valuation, Client shall provide the Actuary with all such information as may be required by HHS or otherwise necessary for the Actuary to provide the Valuation and Attestation Services.
- If the Valuation demonstrates that the Client meets the requirements of the Program, then Actuary shall provide an Attestation, in such manner as may be required by HHS.
- Neither Keenan nor Actuary shall perform any other service with respect to Client’s Application except as expressly set forth and agreed to in writing by both parties.

Exhibit C
Account Management Services

- Keenan will assist Client with the preparation, completion and submission of its Application.
- Keenan shall provide an individual to serve as Client's Account Manager for the purposes of Client's Application for the Program Client shall designate this individual as its Account Manager. Following its appointment by the Client as the Account Manager, Keenan will perform all tasks incident to the preparation, completion and submission of the Application that, pursuant to applicable law or regulation, may be delegated to it by the Client.

Designated Account Manager **[Insert Name of Designated Person]**

Email address: **[Insert Email Address]**

- The Application shall be prepared, completed and submitted in accordance with procedures to be established by HHS.
- Keenan shall not perform any act in conjunction with Client's application that is outside the scope of its authority as the Account Manager.
- Keenan will provide a maximum of 10 hours of Client telephonic assistance in completing the application or reconciliation process. Additional telephonic consultation is available at the rate of rate of \$200 per hour.
- Keenan will audit data submissions and request corrections as necessary.
- Keenan will complete Actuarial Attestation if required by the Program.
- Keenan shall promptly advise Client of any necessary action that is required of Client and Client shall promptly take such action.
- Keenan will facilitate the collection and submissions of all required data, including those of outside vendors, carriers, or providers as may be required.
- Keenan will arrange and participate in quarterly or semi-annual update calls with the client. The frequency of the calls will be determined by mutual agreement of the parties.
- Keenan will provide the Client with a quarterly status report.
- **It may take up to three weeks following Keenan's receipt of all required information (including the Valuation/Attestation, if applicable), and/or authorizations from the Client or third party for an Application to be completed and submitted.**

Exhibit D
Fees and Compensation

Feasibility Study

One Time Fee: \$2500

To be invoiced upon completion

Valuation and Attestation

One Time Fee: \$3000

To be invoiced upon completion

Account Management Services

In exchange for the Account Management Services Keenan shall receive 5% percent of the Client's reimbursement, or \$25,000 whichever is greater. Keenan shall invoice Client shall for 50% of the anticipated reimbursement amount or \$12,500, whichever is greater, approximately thirty days following the submission of a completed Application. The remainder of the Account Management Services Fee shall be invoiced following receipt of reimbursement from the Program.