



## CITY COUNCIL STAFF REPORT

DATE: June 4, 2014 Consent

SUBJECT: APPROVE AMENDMENT NO. 4 TO CONSULTING SERVICES AGREEMENT FOR LOSS CONTROL AND REGULATORY SERVICES WITH KEENAN & ASSOCIATES

FROM: David H. Ready, City Manager

BY: Department of Human Resources

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### SUMMARY:

The City entered into a consulting services agreement in 2009 to establish regulatory compliance for safety programs as required under OSHA and other entities. This agreement has provided the City with on-site assistance in the implementation, coordination and oversight of the OSHA required safety programs and training.

### RECOMMENDATION:

1. Approve Amendment No. 4 to consulting services agreement for Loss Control and Regulatory Services with Keenan & Associates, in the amount of \$65,000.
2. Authorize The City Manager to execute all necessary documents.

### STAFF ANALYSIS:

The City Council entered into a consulting services agreement for Loss Control and Regulatory Compliance Services in July of 2009. The work in this agreement culminated with the City adoption of the Revised City of Palm Springs' Injury and Illness Prevention Program (IIPP) in 2011.

The City Manager's Office, Human Resources Department, and the City Attorney's Office identified there was a need to provide essential staff support in the maintenance of the IIPP and develop and maintain compliance programs. Keenan & Associates has performed this work since 2011. This amendment specifies that Keenan & Associates will continue to perform this work, by providing on-site assistance for up to two days per week to maintain and update the IIPP and compliance programs; as well as coordination and overseeing the enforcement of all safety rules and policies of the City,

and the provisions of the IIPP for OSHA and required staff training. The total cost of this additional work will not exceed \$65,000 through June 30, 2015.

This essential agreement continues to maintain, enhance and ensure requirements of compliance under the safety programs, as well as promoting safety in work place.

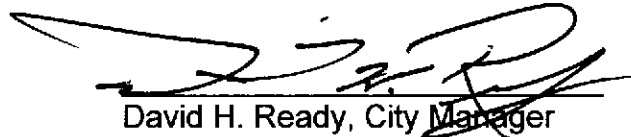
FISCAL IMPACT:

This cost for the loss control and compliance services pursuant to this agreement, not to exceed \$65,000 is currently budgeted in the FY 2014/2015.




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Perry Madison, Director  
Department of Human Resources



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David H. Ready, City Manager



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James Thompson  
Chief of Staff/City Clerk

Attachments:  
Amendment 4

**AMENDMENT NO. 4  
TO  
CONSULTING SERVICES AGREEMENT  
Loss Control and Regulatory Compliance Services, Keenan & Associates  
(Agreement No. 5862)**

THIS FOURTH AMENDMENT to the Consulting Services Agreement No. 5862 for Loss Control and Regulatory Compliance Services is made and entered into to be effective on the 1<sup>st</sup> day of July 2014 by and between the City of Palm Springs, a California charter city and municipal corporation (hereinafter referred to as the City) and Keenan & Associates, a California corporation (hereinafter referred to as Consultant) collectively, the "Parties".

**RECITALS**

- A. City and Consultant previously entered into a consulting services agreement for Loss Control and Regulatory Compliance Services, which was made and entered into on July 1, 2009 (the "Agreement"). The Agreement was continued thru June 30, 2014.
- B. Section 3.3 of the Agreement provides that the Agreement may be amended at any time with the mutual written consent of the Parties for Additional Services.
- C. City and Consultant desire to amend the Agreement to authorize Consultant perform on-site Loss Control services eight (8) hours a day, two (2) days per week in amount not-to-exceed \$65,000 for the period July 1, 2014 thru June 30, 2015.

**AGREEMENT**

- 1. Amendment to Section 3.1, Exhibit "A" of the Agreement entitled "Compensation of Consultant": Exhibit "A" of the Agreement concerning, total compensation, is hereby amended to read as follows:

"Compensation of Consultant": For the services rendered pursuant to this Agreement under Amendment No. 4, Consultant shall be compensated and reimbursed \$65,000 for on-site Loss Control services for the period of July 1, 2014 thru June 30, 2015.

- 2. Amendment to Section 4.2, Exhibit "A" of the Agreement, entitled "Schedule of Performance": Exhibit "A" of the Agreement is hereby amended to include the following additional provisions:

"Safety Compliance Plans maintenance and enhancements; hazardous materials plan development; OSHA required job specific training; and related loss control services" as described in the attached Scope of Services attached to this agreement as Exhibit "B".

Effective July 1, 2014 through June 30, 2015, Consultant shall provide on-site and off-site Loss Control services approximately averaging twelve (12) hours per week. In addition, the Consultant shall provide a total of thirteen (13) additional days of specialized loss control services including live compliance trainings, technical oversight assistance, on-site inspections and hazard analysis, and further compliance program evaluation, to be utilized at the City's discretion.

4. Full Force and Effect. This modifying Amendment is supplemental to the Agreement and is by reference made part of said Agreement. All of the terms, conditions, and provisions, thereof, unless specifically modified herein, shall continue in full force and effect. In the event of any conflict or inconsistency between the provisions of this Amendment and any provisions of the Agreement, the provisions of this Amendment shall in all respects govern and control.
  
5. Corporate Authority. The persons executing this Amendment on behalf of the Parties hereto warrant that (1) such party is duly organized and existing, (ii) they are duly authorized to execute and deliver this Amendment on behalf of said party, (iii) by so executing this Amendment, such party is formally bound to the provisions of this Amendment, and (iv) the entering into this Amendment does not violate any provision of any other agreement to which said party is bound.

IN WITNESS WHEREOF, the parties have executed this Amendment as of the dates stated below.

**ATTEST:**

**“CITY”  
CITY OF PALM SPRINGS, CA.**

By \_\_\_\_\_  
James Thompson, City Clerk

By \_\_\_\_\_  
David H. Ready, City Manager

Date: \_\_\_\_\_

Date: \_\_\_\_\_

**APPROVED AS TO FORM:**

By \_\_\_\_\_  
City Attorney

Date: \_\_\_\_\_

**“CONSULTANT”  
Keenan & Associates**

Date: \_\_\_\_\_

By \_\_\_\_\_  
John Stephens, Sr. Vice President

**Exhibit "A"**

**Consulting Services Agreement; Loss Control and Regulatory Compliance Services,  
Keenan & Associates**

**CONSULTING SERVICES AGREEMENT**  
**Loss Control and Regulatory Compliance Services, Keenan & Associates**

THIS AGREEMENT FOR CONSULTING SERVICES (the "Agreement") is made and entered into this 1<sup>st</sup> day of July, 2009, by and between the City of Palm Springs, a California charter city and municipal corporation ("City"), and Keenan & Associates, a California corporation, ("Consultant").

**RECITALS**

- A. City requires the services of a professional consultant to provide Loss Control and Regulatory Compliance Services, ("Project").
- B. Consultant has submitted to City a proposal to provide Loss Control and Regulatory Compliance Services, to City pursuant to the terms of this Agreement.
- C. Based on its experience, education, training, and reputation, Consultant is qualified to provide the necessary services to City for the Project and desires to provide such services.
- D. City desires to retain the services of Consultant for the Project.

NOW, THEREFORE, in consideration of the promises and mutual agreements contained herein, City agrees to retain and does hereby retain Consultant and Consultant agrees to provide services to the City as follows:

**AGREEMENT**

**1. CONSULTANT SERVICES**

**1.1 Scope of Services.** In compliance with all terms and conditions of this Agreement, Consultant shall provide Loss Control and Regulatory Compliance services to City as described in the Scope of Services/Work attached to this Agreement as Exhibit "A" and incorporated herein by reference (the "services" or "work"), which includes the agreed upon schedule of performance and the schedule of fees. Consultant warrants that all services and work shall be performed in a competent, professional, and satisfactory manner in accordance with all standards prevalent in the industry. In the event of any inconsistency between the terms contained in the Scope of Services/Work and the terms set forth in the main body of this Agreement, the terms set forth in the main body of this Agreement shall govern.

**1.2 Compliance with Law.** All services rendered under this Agreement shall be provided by Consultant in accordance with all applicable federal, state, and local laws, statutes and ordinances and all lawful orders, rules, and regulations promulgated thereunder.

**1.3 Licenses and Permits.** Consultant shall obtain at its sole cost and expense such licenses, permits, and approvals as may be required by law for the performance of the services required by this Agreement.

1.4 **Familiarity with Work.** By executing this Agreement, Consultant warrants that it has carefully considered how the work should be performed and fully understands the facilities, difficulties, and restrictions attending performance of the work under this Agreement.

## 2. **TIME FOR COMPLETION.**

The time for completion of the services to be performed by Consultant is an essential condition of this Agreement. Consultant shall prosecute regularly and diligently the work of this Agreement according to the agreed upon schedule of performance set forth in Exhibit "A." Consultant shall not be accountable for delays in the progress of its work caused by any condition beyond its control and without the fault or negligence of Consultant. Delays shall not entitle Consultant to any additional compensation regardless of the party responsible for the delay.

## 3. **COMPENSATION OF CONSULTANT**

3.1 **Compensation of Consultant.** For the services rendered pursuant to this Agreement, Consultant shall be compensated and reimbursed, in accordance with the schedule of fees set forth in Exhibit "A," which total amount shall not exceed \$74,050.

3.2 **Method of Payment.** In any month in which Consultant wishes to receive payment, Consultant shall no later than the first working day of such month, submit to City in the form approved by City's finance director, an invoice for services rendered prior to the date of the invoice. Payments shall be based on the hourly rates as set forth in Exhibit "A" for authorized services performed. City shall pay Consultant for all expenses stated thereon, which are approved by City consistent with this Agreement, within thirty (30) days of receipt of Consultant's invoice.

3.3 **Changes.** In the event any change or changes in the Scope of Services/Work is requested by City, the parties hereto shall execute a written amendment to this Agreement, setting forth with particularity all terms of such amendment, including, but not limited to, any additional fees. An amendment may be entered into:

A. To provide for revisions or modifications to documents or other work product or work when documents or other work product or work is required by the enactment or revision of law subsequent to the preparation of any documents, other work product, or work;

B. To provide for additional services not included in this Agreement or not customarily furnished in accordance with generally accepted practice in Consultant's profession.

3.4 **Appropriations.** This Agreement is subject to and contingent upon funds being appropriated therefore by the City Council of City for each fiscal year covered by the Agreement. If such appropriations are not made, this Agreement shall automatically terminate without penalty to City.

## 4. **PERFORMANCE SCHEDULE**

4.1 **Time of Essence.** Time is of the essence in the performance of this Agreement.

4.2 **Schedule of Performance.** All services rendered pursuant to this Agreement shall be performed pursuant to the agreed upon schedule of performance set forth in Exhibit "A." The extension of any time period must be approved in writing by the Contract Officer.

4.3 **Force Majeure.** The time for performance of services to be rendered pursuant to this Agreement may be extended because of any delays due to unforeseeable causes beyond the control and without the fault or negligence of Consultant, including, but not limited to, acts of God or of a public enemy, acts of the government, fires, earthquakes, floods, epidemic, quarantine restrictions, riots, strikes, freight embargoes, and unusually severe weather if Consultant shall within ten (10) days of the commencement of such condition notify the Contract Officer who shall thereupon ascertain the facts and the extent of any necessary delay, and extend the time for performing the services for the period of the enforced delay when and if in the Contract Officer's judgment such delay is justified, and the Contract Officer's determination shall be final and conclusive upon the parties to this Agreement.

4.4 **Term.** Unless earlier terminated in accordance with Section 9.5 of this Agreement, this Agreement shall continue in full force and effect for a period of three years (FY 09-10, FY 10-11, FY 11-12), commencing on July 1, 2009, and ending on June 30, 2012, unless extended by mutual written agreement of the parties.

## 5. **COORDINATION OF WORK**

5.1 **Representative of Consultant.** The following principal of Consultant is hereby designated as being the principal and representative of Consultant authorized to act in its behalf with respect to the services and work specified herein and make all decisions in connection therewith: John Stephens, Senior Vice President. It is expressly understood that the experience, knowledge, education, capability, and reputation of the foregoing principal is a substantial inducement for City to enter into this Agreement. Therefore, the foregoing principal shall be responsible during the term of this Agreement for directing all activities of Consultant and devoting sufficient time to personally supervise the services hereunder. The foregoing principal may not be changed by Consultant without prior written approval of the Contract Officer.

5.2 **Contract Officer.** The Contract Officer shall be the City Manager, or his/her designee. It shall be the Consultant's responsibility to keep the Contract Officer, or his/her designee, fully informed of the progress of the performance of the services and Consultant shall refer any decisions that must be made by City to the Contract Officer. Unless otherwise specified herein, any approval of City required hereunder shall mean the approval of the Contract Officer.

5.3 **Prohibition Against Subcontracting or Assignment.** The experience, knowledge, education, capability, and reputation of Consultant, its principals and employees, were a substantial inducement for City to enter into this Agreement. Therefore, Consultant shall not contract with any other individual or entity to perform in whole or in part the services required hereunder without the express written approval of City. In addition, neither this Agreement nor any interest herein may be assigned or transferred, voluntarily or by operation of law, without the prior written approval of City.



5.4 Independent Contractor. Neither City nor any of its employees shall have any control over the manner, mode, or means by which Consultant, its agents or employees, perform the services required herein, except as otherwise set forth herein. Consultant shall perform all services required herein as an independent contractor of City and shall not be an employee of City and shall remain at all times as to City a wholly independent contractor with only such obligations as are consistent with that role; however, City shall have the right to review Consultant's work product, result, and advice. Consultant shall not at any time or in any manner represent that it or any of its agents or employees are agents or employees of City.

5.5 Personnel. Consultant agrees to assign the following individuals to perform the services set forth herein. Consultant shall not alter the assignment of the following personnel without the prior written approval of the Contract Officer. Acting through the City Manager, the City shall have the unrestricted right to order the removal of any personnel assigned by Consultant by providing written notice to Consultant.

<u>Name:</u>	<u>Title:</u>
<i>John Stephens</i>	<i>Senior Vice President</i>
<i>Marco Guardi</i>	<i>Assistant Vice President, Loss Control</i>

## 6. INSURANCE

Consultant shall procure and maintain, at its sole cost and expense, policies of insurance as set forth in Exhibit "B," which is attached hereto and is incorporated herein by reference.

## 7. INDEMNIFICATION.

To the fullest extent permitted by law, Consultant shall defend (at Consultant's sole cost and expense), indemnify, protect, and hold harmless City, its elected officials, officers, employees, agents, and volunteers (collectively the "Indemnified Parties"), from and against any and all liabilities, actions, suits, claims, demands, losses, costs, judgments, arbitration awards, settlements, damages, demands, orders, penalties, and expenses including legal costs and attorney fees (collectively "Claims"), including but not limited to Claims arising from injuries to or death of persons (Consultant's employees included), for damage to property, including property owned by City, from any violation of any federal, state, or local law or ordinance, and from errors and omissions committed by Consultant, its officers, employees, representatives, and agents, which Claims arise out of or are related to Consultant's performance under this Agreement, but excluding such Claims arising from the negligence or willful misconduct of the City, its elected officials, officers, employees, agents, and volunteers. Under no circumstances shall the insurance requirements and limits set forth in this Agreement be construed to limit Consultant's indemnification obligation or other liability hereunder.

## 8. RECORDS AND REPORTS

8.1 Reports. Consultant shall periodically prepare and submit to the Contract Officer such reports concerning the performance of the services required by this Agreement as the Contract Officer shall require.

8.2 Records. Consultant shall keep such books and records as shall be necessary to properly perform the services required by this Agreement and enable the Contract Officer to evaluate the performance of such services. The Contract Officer 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.

8.3 Ownership of Documents. All drawings, specifications, reports, records, documents, and other materials prepared by Consultant in the performance of this Agreement shall be the property of City and shall be delivered to City upon request of the Contract Officer or upon the termination of this Agreement, and Consultant shall have no claim for further employment or additional compensation as a result of the exercise by City of its full rights or ownership of the documents and materials hereunder. Consultant may retain copies of such documents for its own use. Consultant shall have an unrestricted right to use the concepts embodied therein.

8.4 Release of Documents. All drawings, specifications, reports, records, documents, and other materials prepared by Consultant in the performance of services under this Agreement shall not be released publicly without the prior written approval of the Contract Officer.

8.5 Cost Records. Consultant shall maintain all books, documents, papers, employee time sheets, accounting records, and other evidence pertaining to costs incurred while performing under this Agreement and shall make such materials available at its offices at all reasonable times during the term of this Agreement and for three (3) years from the date of final payment for inspection by City and copies thereof shall be promptly furnished to City upon request.

## 9. ENFORCEMENT OF AGREEMENT

9.1 California Law. This Agreement shall be construed and interpreted both as to validity and to performance of the parties in accordance with the laws of the State of California. Legal actions concerning any dispute, claim, or matter arising out of or in relation to this Agreement shall be instituted in the Superior Court of the County of Riverside, State of California, or any other appropriate court in such county, and Consultant covenants and agrees to submit to the personal jurisdiction of such court in the event of such action.

9.2 Waiver. No delay or omission in the exercise of any right or remedy of a non-defaulting party on any default shall impair such right or remedy or be construed as a waiver. No consent or approval of City shall be deemed to waive or render unnecessary City's consent to

or approval of any subsequent act of Consultant. Any waiver by either party of any default must be in writing and shall not be a waiver of any other default concerning the same or any other provision of this Agreement.

**9.3 Rights and Remedies are Cumulative.** 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 or any other default by the other party.

**9.4 Legal Action.** In addition to any other rights or remedies, either party may take legal action, in law or in equity, to cure, correct, or remedy any default, to recover damages for any default, to compel specific performance of this Agreement, to obtain injunctive relief, a declaratory judgment, or any other remedy consistent with the purposes of this Agreement.

**9.5 Termination Prior to Expiration of Term.** City reserves the right to terminate this Agreement at any time, with or without cause, upon thirty (30) days written notice to Consultant, except that where termination is due to the fault of Consultant and constitutes an immediate danger to health, safety, and general welfare, the period of notice shall be such shorter time as may be determined by the City. Upon receipt of the notice of termination, Consultant shall immediately cease all services hereunder except such as may be specifically approved by the Contract Officer. Consultant shall be entitled to compensation for all services rendered prior to receipt of the notice of termination and for any services authorized by the Contract Officer thereafter. Consultant may terminate this Agreement, with or without cause, upon thirty (30) days written notice to City.

## **10. CITY OFFICERS AND EMPLOYEES; NON-DISCRIMINATION**

**10.1 Non-Liability of City Officers and Employees.** No officer or employee of City shall be personally liable to the Consultant, or any successor-in-interest, in the event of any default or breach by City or for any amount which may become due to the Consultant or its successor, or for breach of any obligation of the terms of this Agreement.

**10.2 Covenant Against Discrimination.** Consultant covenants that, by and for itself, its heirs, executors, assigns, and all persons claiming under or through them, that there shall be no discrimination or segregation in the performance of or in connection with this Agreement regarding any person or group of persons on account of race, color, creed, religion, sex, marital status, disability, sexual orientation, national origin, or ancestry.

## **11. MISCELLANEOUS PROVISIONS**

**11.1 Notice.** Any notice, demand, request, consent, approval, or communication either party desires or is required to give to the other party or any other person shall be in writing and either served personally or sent by pre-paid, first-class mail to the address set forth below. Either party may change its address by notifying the other party of the change of address in writing. Notice shall be deemed communicated seventy-two (72) hours from the time of mailing if mailed as provided in this Section.

To City:

City of Palm Springs  
Attention: City Manager/ City Clerk  
3200 E. Tahquitz Canyon Way  
Palm Springs, California 92262

To Consultant:

Keenan & Associates  
Attention: John Stephens, Senior Vice  
President  
901 Calle Amanecer, Suite 200  
San Clemente, CA 92673

11.2 **Integrated Agreement.** This Agreement contains all of the agreements of the parties and cannot be amended or modified except by written agreement.

11.3 **Amendment.** This Agreement may be amended at any time by the mutual consent of the parties by an instrument in writing.

11.4 **Severability.** In the event that any one or more of the phrases, sentences, clauses, paragraphs, or sections contained in this Agreement shall be declared invalid or unenforceable by valid judgment or decree of a court of competent jurisdiction, such invalidity or unenforceability shall not affect any of the remaining phrases, sentences, clauses, paragraphs, or sections of this Agreement, which shall be interpreted to carry out the intent of the parties hereunder.

11.5 **Authority.** The persons executing this Agreement on behalf of the parties hereto warrant that they are duly authorized to execute this Agreement on behalf of said parties and that by so executing this Agreement the parties hereto are formally bound to the provisions of this Agreement.

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[SIGNATURE PAGE SEPARATELY ATTACHED]

IN WITNESS WHEREOF, the parties have executed this Agreement as of the dates stated below.

"CITY"  
City of Palm Springs

Date: Aug. 5 2009

By: [Signature]  
David H. Ready  
City Manager

APPROVED BY CITY COUNCIL

6-24-09 UB A5867  
R 22534

APPROVED AS TO FORM:

ATTEST

By: [Signature]  
Douglas C. Holland,  
City Attorney

By: [Signature]  
James Thompson,  
City Clerk

"CONSULTANT"  
Keenan & Associates

Date: 7/21/09

By: [Signature]  
(name)  
JOHN C. STEPHENS  
(~~president~~) SR. VICE PRESIDENT

Date: \_\_\_\_\_

\_\_\_\_\_  
(name)  
\_\_\_\_\_  
(secretary)

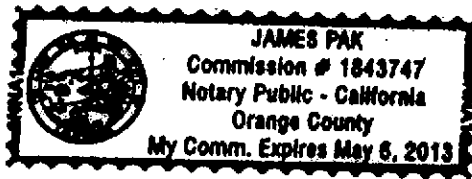
**CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT**

State of California

County of Orange

On July 27, 2009 before me, James Pak, Notary Public

personally appeared John C. Stephens



who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature \_\_\_\_\_

Notary Public

Place Notary Seal Above

**OPTIONAL**

*Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.*

**Description of Attached Document**

Title or Type of Document: Consulting Services Agreement

Document Date: July 27, 2009 Number of Pages: 14

Signer(s) Other Than Named Above: N/A

**Capacity(ies) Claimed by Signer(s)**

Signer's Name: John C. Stephens

- Individual
- Corporate Officer — Title(s): \_\_\_\_\_
- Partner —  Limited  General
- Attorney in Fact
- Trustee
- Guardian or Conservator
- Other: \_\_\_\_\_

RIGHT THUMBPRINT OF SIGNER

Top of thumb here

Signer is Representing: \_\_\_\_\_

Keenan & Associates

Signer's Name: \_\_\_\_\_

- Individual
- Corporate Officer — Title(s): \_\_\_\_\_
- Partner —  Limited  General
- Attorney in Fact
- Trustee
- Guardian or Conservator
- Other: \_\_\_\_\_

RIGHT THUMBPRINT OF SIGNER

Top of thumb here

Signer is Representing: \_\_\_\_\_

**EXHIBIT "A"**

**CONSULTANT'S  
SCOPE OF SERVICES/WORK**

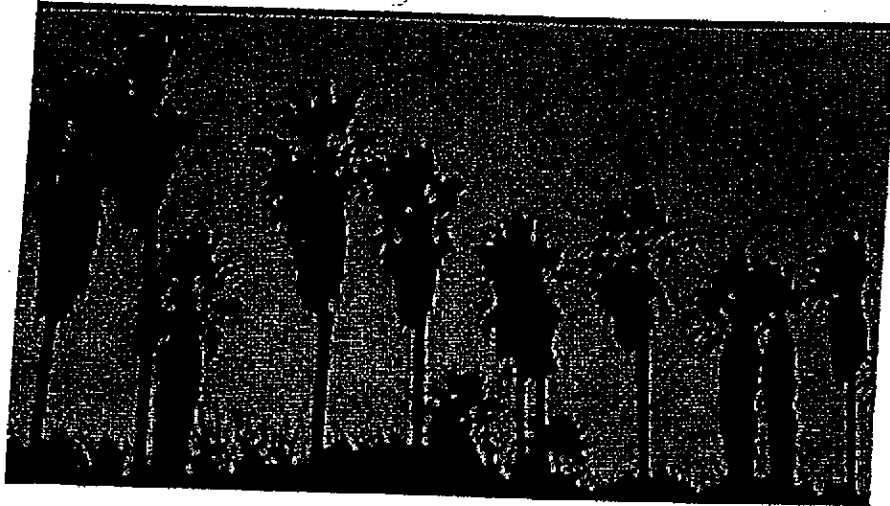
Including,

Schedule of Fees

And

Schedule of Performance

# CITY OF PALM SPRINGS



## Loss Control Service Proposal Amendment to Broker Contract

February 20, 2009

*Presented By:*

**John Stephens, Senior Vice President  
Property & Casualty Practice Leader  
[jstephens@keenan.com](mailto:jstephens@keenan.com)**

**Marco Guardi, ARM, MPA  
Assistant Vice President - Loss Control  
[mguardi@keenan.com](mailto:mguardi@keenan.com)**

**Keenan & Associates  
901 Calle Amanecer, Suite 200  
San Clemente, CA 92673  
949-940-1760 (Phone)  
949-369-0324 (Fax)**



## CITY OF PALM SPRINGS

### Rent A Safety Professional (RASP) Program

The City of Palm Springs has asked Keenan & Associates to provide a loss control proposal to assist the City meet its regulatory obligations. We are pleased to provide the following proposal which outlines Loss Control services that will be provided. The services listed are customized to help the City understand and develop a strategy to meet the various regulatory requirements in the most efficient, cost effective manner. The program services were developed based on the information provided by the City and discussions with Captain Ventura from the City's Fire Department.

Keenan will assign a dedicated Loss Control consultant to the City and this Consultant will be responsible for ensuring the services listed in this program are provided as well as any other matters related to this program. Although the Consultant may provide many of the services to the City, other consultants with specialized areas of expertise may be called upon to provide some of the services. The goal of this service program is to assist the City with establishing an efficient and effective safety program.

#### The program primary goals are:

- Assist the City with Cal/OSHA and Fed/OSHA compliance
- Raise awareness of regulatory responsibilities
- Keep City abreast of regulatory changes and their potential impacts to City operations
- Reduce the Frequency of Work Related Injuries

The success of the program, in large part, will depend on the commitment of the City. By accepting this program, the City agrees:

- It is demonstrating its commitment to providing a safe and healthful workplace for employees
- To designate an individual to coordinate and facilitate the program services with the Consultant

To facilitate a focused safety program and safety culture, the assigned Consultant will assist organizing and participating in City Safety Committee meetings. The City will be responsible for establishing the make-up of the committee and the frequency of meetings and the Consultant, in cooperation with the City, will identify topics for meeting agendas and prepare support documentation for the meetings.

## PROGRAM SERVICES

### 1. Compliance Needs Assessment

Evaluate the City's operations to determine the application of and compliance status with Cal/OSHA regulations. This will be achieved by:

- a. Comprehensive review of current written compliance programs and plans; health and safety policies and procedures.
- b. Field verification of current program, plan, policy and procedure implementation throughout City operations;
- c. Assessment report identifying program, plan, policy and procedure deficiencies

### 2. Compliance Program, Plan, Policy and Procedure Development

If it is determined existing City programs, plans, policies and procedures are not in compliance, Keenan will modify or amend them accordingly with input from the City. If it is determined that required written compliance programs, plans, policies and procedures are not in place, they will be provided and customized specific to the City's operations. Plans to be reviewed, evaluated and amended include but are not limited to:

Injury & Illness Prevention Plan	Lockout/Tagout Plan	Repetitive Motion Injury Prevention Plan
Hazard Communication Plan	Confined Space Entry Plan	Heating Conservation Plan
Bloodborne Pathogens Exposure Control Plan	Respiratory Protection Plan	Heat Illness Prevention Plan

Additionally, Keenan will provide consulting services necessary to assist the City successfully implement such programs, plans, policies and procedures to achieve compliance with Cal/OSHA regulations as well as reduce the number of injuries.

### 3. Hazardous Material Inventory

Chief Ventura from the City's Fire Department suggested we include Hazardous Materials Inventory as the City apparently has not done this for several years. An inventory of hazardous material used by and stored at city facilities, will be conducted annually. This inventory will assist with the City's compliance towards Cal/OSHA's Hazard Communication regulation. Upon completion of the inventory, the City will receive a report outlining the material name and quantities used and stored at each city facility. This inventory will serve as the foundation for compiling and distributing Material Safety Data Sheets (MSDS) throughout the City facilities using *Keenan's Online MSDS system*, a feature of the Hazardous Material Inventory service.

#### 4. Employee Training

In conjunction with the Program Services #1 and #2 outlined above, Keenan will provide six (6) one-hour training sessions annually. All trainings will be provided on dates and times convenient for the City. All trainings will be conducted by Keenan Loss Control Consultants who are members of the American Society of Safety Engineers. Suggested training topics include but are not limited to:

Accident Investigation	Forklift, Aerial, & Boomlift Certification (Certified Instructor)	Hearing Conservation
Asbestos Awareness	Grounds	Heat Illness Prevention
Bloodborne Pathogen Exposure Control	Hand/Power Tool Safety	IIPP (Illness & Injury Prevention Program)
Custodial	Hazard Communication	Ladder safety
Electrical Safety	Hazardous Waste Management	Library Ergonomics
Fire Safety	Health and Wellness	Lockout-Tagout
Machine Guarding	Personal Protective Equipment (PPE)	Respiratory Protection
Self Inspection	Back safety/job ergonomics; bus drivers, maintenance workers, office staff (preventing back injuries, strains, sprains)	Defensive Driving (Certified NSC instructors)
Hazard Recognition	Preventing Slips/Trips/Falls	Stress Management
Utility Cart	Sexual Harassment	Workplace Violence

#### Addendum to Broker of Record Agreement

In conjunction with the City's Broker of Record agreement with Keenan & Associates, the services described above will be provided through an addendum to the agreement as follows:

Policy Year 2009/2010	\$32,250
Policy Year 2010/2011	\$24,250
Policy Year 2011/2012	\$17,550

- o Fees include Professional Time, Preparation and Scheduling, Travel Time, Follow Up Analytical Reports and Clerical Support/Word Processing.

The structure above reflects the greater effort expended in Policy Year 2009/2010 to review, develop and establish programs, plans, policies and procedures. In anticipation of establishing programs, plans, procedures and policies, activities in Policy Year 2010/2011 will focus on implementing and ensuring the effectiveness of these items. Activities in Policy Year 2011/2012 will mainly focus on maintaining the City's safety program and measuring the program's success.

# **EXHIBIT "B"**

## **INSURANCE PROVISIONS**

**Including**

**Verification of Coverage,**

**Sufficiency of Insurers,**

**Errors and Omissions Coverage,**

**Minimum Scope of Insurance,**

**Deductibles and Self-Insured Retentions, and**

**Severability of Interests (Separation of Insureds)**

## Insurance

Consultant shall procure and maintain, at its sole cost and expense, and submit concurrently with its execution of this Agreement, in a form and content satisfactory to the City, public liability and property damage insurance against all claims for injuries against persons or damages to property resulting from Consultant's performance under this Agreement. Consultant shall also carry workers' compensation insurance in accordance with California workers' compensation laws. Such insurance shall be kept in full force and effect during the term of this Agreement, including any extension thereof, and shall not be cancelable without thirty (30) days advance written notice to City of any proposed cancellation. Certificates of insurance evidencing the foregoing and designating the City, its elected officials, officers, employees, agents, and volunteers as additional named insureds by original endorsement shall be delivered to and approved by City prior to commencement of services. The procuring of such insurance and the delivery of policies, certificates, and endorsements evidencing the same shall not be construed as a limitation of Consultant's obligation to indemnify City, its elected officials, officers, agents, employees, and volunteers.

A. Minimum Scope of Insurance. The minimum amount of insurance required hereunder shall be as follows:

1. Comprehensive general liability and personal injury with limits of at least one million dollars (\$1,000,000.00) combined single limit coverage per occurrence and two million dollars (\$2,000,000) general aggregate;
2. Automobile liability insurance with limits of at least one million dollars (\$1,000,000.00) per occurrence;
3. Professional liability (errors and omissions) insurance with limits of at least one million dollars (\$1,000,000.00) per occurrence and two million dollars (\$2,000,000) annual aggregate; and,
4. Workers' Compensation insurance in the statutory amount as required by the State of California and Employer's Liability Insurance with limits of at least one million dollars \$1 million per occurrence. If Consultant has no employees, Consultant shall complete the City's Request for Waiver of Workers' Compensation Insurance Requirement form.

For any claims related to this Agreement, Consultant's insurance coverage shall be primary insurance as respects City and its respective elected officials, officers, employees, agents, and volunteers. Any insurance or self-insurance maintained by City and its respective elected officials, officers, employees, agents, and volunteers shall be in excess of Consultant's insurance and shall not contribute with it. For Workers' Compensation and Employer's Liability Insurance only, the insurer shall waive all rights of subrogation and contribution it may have against City, its elected officials, officers, employees, agents, and volunteers.

B. Errors and Omissions Coverage. If Consultant provides claims made professional liability insurance, Consultant shall also agree in writing either (1) to purchase tail insurance in the amount required by this Agreement to cover claims made within three years of

the completion of Consultant's services under this Agreement, or (2) to maintain professional liability insurance coverage with the same carrier, or equivalent coverage with another company, in the amount required by this Agreement for at least three years after completion of Consultant's services under this Agreement. Consultant shall also be required to provide evidence to City of the purchase of the required tail insurance or continuation of the professional liability policy.

C. Sufficiency of Insurers. Insurance required herein shall be provided by authorized insurers in good standing with the State of California. Coverage shall be provided by insurers admitted in the State of California with an A.M. Best's Key Rating of B++, Class VII, or better, unless otherwise acceptable to the City.

D. Verification of Coverage. Consultant shall furnish City with both certificates of insurance and endorsements, including additional insured endorsements, effecting all of the coverages required by this Agreement. The certificates and endorsements are to be signed by a person authorized by that insurer to bind coverage on its behalf. All proof of insurance is to be received and approved by the City before work commences. City reserves the right to require Consultant's insurers to provide complete, certified copies of all required insurance policies at any time. Additional insured endorsements are not required for Errors and Omissions and Workers' Compensation policies.

Verification of Insurance coverage may be provided by: (1) an approved General and/or Auto Liability Endorsement Form for the City of Palm Springs or (2) an acceptable Certificate of Liability Insurance Coverage with an approved Additional Insured Endorsement with the following endorsements stated on the certificate:

1. *"The City of Palm Springs, its officials, employees, and agents are named as an additional insured..." ("as respects City of Palm Springs Contract No. \_\_\_" or "for any and all work performed with the City" may be included in this statement).*
2. *"This insurance is primary and non-contributory over any insurance or self-insurance the City may have..." ("as respects City of Palm Springs Contract No. \_\_\_" or "for any and all work performed with the City" may be included in this statement).*
3. *"Should any of the above described policies be canceled before the expiration date thereof, the issuing company will mail 30 days written notice to the Certificate Holder named." Language such as, "endeavor to" mail and "but failure to mail such notice shall impose no obligation or liability of any kind upon the company, its agents or representative" is not acceptable and must be crossed out.*
4. Both the Workers' Compensation and Employers' Liability policies shall contain the insurer's waiver of subrogation in favor of City, its elected officials, officers, employees, agents, and volunteers.

In addition to the endorsements listed above, the City of Palm Springs shall be named the certificate holder on the policies.

All certificates of insurance and endorsements are to be received and approved by the City before work commences. All certificates of insurance must be authorized by a person with authority to bind coverage, whether that is the authorized agent/broker or insurance underwriter. Failure to obtain the required documents prior to the commencement of work shall not waive the Consultant's obligation to provide them.

E. **Deductibles and Self-Insured Retentions.** Any deductibles or self-insured retentions must be declared to and approved by the City prior to commencing any work or services under this Agreement. At the option of the City, either the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the City, its elected officials, officers, employees, agents, and volunteers; or, Consultant shall procure a bond guaranteeing payment of losses and related investigations, claim administration, and defense expenses. Certificates of Insurance must include evidence of the amount of any deductible or self-insured retention under the policy. Consultant guarantees payment of all deductibles and self-insured retentions.

F. **Severability of Interests (Separation of Insureds).** This insurance applies separately to each insured against whom claim is made or suit is brought except with respect to the limits of the insurer's liability.