

**AGREEMENT BETWEEN
THE BERKLEY GROUP AND
TOWN OF ABINGDON FOR
NONPROFESSIONAL SERVICES**

This Agreement entered into on the 12th day of October, 2018, by and between The Berkley Group, LLC, a limited liability corporation organized under the laws of the Commonwealth of Virginia, having offices at P.O. Box 181, Bridgewater, Virginia 22812 (Federal EIN # 27-3021021), and hereafter called "The Berkley Group", and Town of Abingdon, a political subdivision of the Commonwealth of Virginia, having its administrative office at 133 West Main Street, Abingdon, Virginia, 24210, and hereafter called "the Client".

WITNESSETH:

WHEREAS, the Client has a vacancy in the position of Town Manager, and pursuant to Section 4.10 of its Charter its Council is filling the vacancy of that position on an interim basis;

WHEREAS, the Client desires to retain the services of The Berkley Group to perform nonprofessional services defined by the Code of Virginia;

WHEREAS, The Berkley Group desires to provide the Client with such services as authorized by the Client, and represents that it is organized and authorized to conduct business within the Commonwealth of Virginia;

WHEREAS, pursuant to Virginia Code Section 2.2-4304, Cooperative procurement, Any public body may participate in, sponsor, conduct, or administer a cooperative procurement agreement on behalf of or in conjunction with one or more other public bodies, or public agencies or institutions or localities of the several states, of the United States or its territories, the District of Columbia, or the U.S. General Services Administration, for the purpose of combining requirements to increase efficiency or reduce administrative expenses in any acquisition of goods and services. A public body may purchase from another public body's contract even if it did not participate in the request for proposal or invitation to bid, if the request for proposal or invitation to bid specified that the procurement was being conducted on behalf of other public bodies;

WHEREAS, George Washington Regional Commission issued a request for proposals as a cooperative procurement for other public bodies for certain nonprofessional services for which The Berkley Group was awarded the contract;

WHEREAS, the Client desires to participate in said cooperative procurement agreement to obtain certain nonprofessional services; and

WHEREAS, the Client by vote of its Town Council authorized the Client to enter into such agreement;

NOW, THEREFORE, for and in consideration of the promises, the mutual benefits to the parties from entering into this Agreement, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto covenant and agree as follows.

SECTION 1. STATEMENT/SCOPE OF WORK.

- A. The Berkley Group will provide services to Client as set forth in the attached Scope of Services (“Scope of Services”/“Services”) attached hereto as Exhibit A and a part hereof.
- B. The Berkley Group will use both its staff and Subcontractors to provide the Services to Client.
- C. The Berkley Group and its Subcontractors, and their respective employees, are and shall remain independent contractors in performing the Services under this Agreement.
- D. Services shall be performed and completed by The Berkley Group within the time frames set forth in the Scope of Services or a Task Order, as appropriate, time being of the essence of this provision.

SECTION 2. COMPENSATION, METHOD OF PAYMENT, TIME OF PERFORMANCE AND TERMINATION.

- A. **Compensation.** Client shall compensate The Berkley Group for the Services performed based upon the terms described within the Scope of Services or the Task Order.
- B. **Payment to The Berkley Group.** Client shall pay The Berkley Group for the Services performed as set forth in the Payment Schedule included in the Scope of Services or Task Order. If no Payment Schedule is so included, Client shall make payment within thirty (30) days after receipt of a bill for services from The Berkley Group.
- C. **Term.** This Agreement shall commence on October 12, 2018, and shall continue for a period of three (3) months, and may be extended for a period of time upon mutual agreement by both parties pursuant to Section 6 of this Agreement, but shall remain subject to termination for convenience at any time pursuant to Section 2(D) or for non-appropriation of funding by Client.
- D. **Termination for Convenience.** Either the Client or The Berkley Group may terminate this Agreement at any time, by giving written notice to the other party of such termination and specifying the effective date thereof, but with a minimum of 30 calendar days of such termination.
- (1) In the event of termination, whether for convenience, non-appropriation or default, all finished and unfinished documents and other materials produced by The Berkley Group specifically for the Client shall be delivered to and become the property of the Client.
 - (2) In the event of termination, The Berkley Group shall be paid for the Services performed prior to the effective date of termination. Upon request, The Berkley Group will provide the Client with documentation of the Services performed prior to the effective date of termination.
- E. **Termination for Default [Breach or Cause].** The Client or The Berkley Group may terminate this Agreement for default for failure to comply with the terms of this Agreement or for reasonable cause by giving a written notice to the other party of such termination specifying the effective date thereof. The notice shall set forth the nature of the default of the Agreement.
- (1) In the event of termination by the Client, The Berkley Group shall be paid for Services performed up to the effective date of termination in accordance with the manner of payment set forth in the Agreement. If it is later determined that The Berkley Group had an excusable reason for not performing such as natural disasters or other events which are beyond the control of The Berkeley Group, the Parties may, but shall not be required to, agree for The Berkley Group to continue to provide the Services.

- (2) After receipt of written notice from the Client setting forth the nature of said breach or default, The Berkley Group may request, and the Client may, but shall not be required to, agree to provide The Berkley Group time to remedy any breach or default to the satisfaction of Client. If the Client does not agree to allow The Berkley Group to remedy the default, The Berkley Group shall immediately cease providing Services.

SECTION 3. RESPONSIBILITIES OF THE BERKLEY GROUP.

- A. The Berkley Group agrees to use the records and information gathered or otherwise used pursuant to this Agreement only for the advancement of the interests of Client, and as further provided in Section 5(D) of this Agreement.
- B. The Berkley Group will not substitute staff or Subcontractors assigned to this Agreement without the prior written consent of Client.
- C. The Berkley Group will provide all services under this Agreement in a manner consistent with applicable laws, professional standards and its best efforts.
- D. The Berkley Group, its staff and Subcontractors shall comply with Client's standards for acceptable workplace conduct and safety, and shall all times conduct themselves in a professional manner.
- E. The Berkley Group and its Subcontractors shall maintain at least One Million Dollars of commercial general liability insurance to cover their actions or omissions, and Workers' Compensation insurance in the statutory amount to cover work-related injuries to their employees. Upon request, the Berkley Group shall promptly provide the Client with evidence of such insurance.
- F. In the event that a Berkley Group employee is in a role to exercise disciplinary action against a jurisdiction's employee(s), such action shall be conducted in consultation with the employer (The Berkley Group), and in conformance with the jurisdiction's approved personnel manual, jurisdiction's Human Resource Manager (as applicable), jurisdiction's legal counsel, and the jurisdiction's governing body.

SECTION 4. RESPONSIBILITIES OF THE CLIENT.

- A. Without charge to The Berkley Group, Client agrees to provide all policies, information, communications, records, data, information and forms which are available to the Client and needed by The Berkley Group in order to perform the Services.
- B. The Client shall provide appropriate office space, desk, phone, computer, internet access, e-mail account, paper, access to copy machines, and other reasonably necessary office equipment, supplies or facilities for The Berkley Group during the time that The Berkley Group is on site.

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- C. The Berkley Group and its Subcontractors and their respective employees are Independent Contractors (IC), pursuant to Section 1(C) and maintain insurance as set forth in Section 3(E) herein.

The client shall avail the Berkley Group, its subcontractors and their respective employees, of all legal & equitable defenses that may arise out of their performance of duties on behalf of the client.

- D. The Client shall communicate any concerns about The Berkley Group staff or Subcontractor performance to The Berkley Group representative set forth in Section 5, unless otherwise specifically set forth within the Scope of Services.
- E. The Client agrees not to hire staff of The Berkley Group as Client's own employee during the Term of this Agreement, and for six (6) months following termination of this Agreement.

SECTION 5. ADMINISTRATION OF THE AGREEMENT.

- A. All notices and communications with respect to the terms of this Agreement and the performance of the Services shall be through the Party Representatives. The Party Representatives are:

Client's representative shall be:

Wayne Craig

Mayor

Title

(276) 628-3167

Phone Number

wcraig@abingdon-va.gov

email

The Berkley Group's representative shall be:

Darren K. Coffey

Chief Executive Officer

Title

(434) 981-2026

Phone Number

darren@bgllc.net

email

- B. ***Incorporated Provisions.*** This Agreement shall be performed in accordance with the

applicable, required contractual provisions set forth in the Client's purchasing or procurement regulations, and the Virginia Public Procurement Act, §§ 2.2-4300, *et seq.*, VA Code Ann., in effect at the time of this Agreement, pertaining to non-discrimination § 2.2-4310 and - 4311, compliance with immigration laws § 2.2-4311.1, drug-free workplace § 2.2-4312, which provisions are incorporated herein by reference.

C. ***Contractual.*** Disputes with respect to this Agreement shall be governed by § 2.2-4363 VA Code Ann. or similar provision in Client's purchasing or procurement ordinances or regulations.

D. ***Ownership and Status of Documents.***

- (1) All documents prepared by The Berkley Group specifically for the Client shall become the property of the Client upon completion of Services, or the earlier termination of this Agreement. The Berkley Group shall have the right to retain appropriate copies of all such documents for its records upon client' approval, and to reuse any template documents which it prepared for the Client. All materials, including without limitation, documents, drawings, drafts, notes, designs, computer media, electronic files and lists, including all additions to, deletions from, alterations of, and revisions in the foregoing (together the "Materials"), which are furnished to The Berkley Group by Client or which are development in the process of performing the Services, or embody or relate to the Services, the Client Information or the Innovations (as defined below), are the property of Client, and shall be returned by The Berkley Group to Client promptly at Client's request together with any copies thereof, and in any event promptly upon expiration or termination of this Agreement for any reason.
- (2) All documents prepared by The Berkley Group specifically for the Client shall become the property of the Client upon completion of Services, or the earlier termination of this Agreement. The Berkley Group shall have the right to retain appropriate copies of all such documents for its records, and to reuse any template documents which it prepared for the Client.
- (3) Records provided to The Berkley Group by the Client and records prepared by The Berkley Group specifically for the Client shall be kept confidential by The Berkley Group until released or approved for release by the Client. The Berkley Group will cooperate with the Client in complying with the requirements of § 2.2-4342 VA Code Ann. and any requirements of the Virginia Freedom of Information Act applicable to such records.
- (4) The Berkley Group shall maintain financial records, supporting documents, statistical records, and other records pertinent to this Agreement for three (3) years from the date of final payment, and make those records available to the Client upon written request.

SECTION 6. CHANGES TO AGREEMENT.

A. Any modification or change to this Agreement must be set forth in a written

Addendum to this Agreement and signed by authorized representatives of both parties.

- B. The parties hereto may, from time to time, propose changes in the attached Scope of services or in The Berkley Group's performance requirements. Such changes must be mutually agreed upon by the parties in writing, signed by the authorized representatives of both parties.

SECTION 7. MISCELLANEOUS PROVISIONS.

- A. Protection of Confidential Information. The Berkley Group agrees that at all times during or subsequent to the performance of the Services, The Berkley Group will keep confidential and not divulge, communicate, or use Client's Information, except for The Berkley Group's own use during the Term of this Agreement to the extent necessary to perform the Services. The Berkley Group further agrees not to cause the transmission, removal or transport of tangible embodiments of, or electronic files containing, Client's Information from Client's principal place of business, without prior written approval of Client.
- B. Liability. The Client shall not be liable for injury or death occurring to The Berkley Group or any of its employees or other assistants in the course of performing this Agreement unless the harm or death is caused by the Client's gross negligence.
- C. Hold Harmless. The Berkley Group hereby indemnifies and holds harmless the Client, its subsidiaries, and affiliates, and their officers and employees, from any damages, claims, liabilities, and costs, including reasonable attorney's fees, or losses of any kind or nature whatsoever ("Loss") which may in any way arise from the Services performed by The Berkley Group hereunder, the work of employees of The Berkley Group while performing the Services of The Berkley Group hereunder, or any breach or alleged breach by The Berkley Group of this Agreement, including the warranties set forth herein. The Client shall retain control over the defense of, and any resolution or settlement relating to, such Loss. The Berkley Group will cooperate with the Client and provide reasonable assistance in defending any such claim.
- D. Taxes. The Client shall not be liable for taxes, Worker's Compensation, unemployment insurance, employers' liability, employer's FICA, social security, withholding tax, or other taxes or withholding for or on behalf of The Berkley Group or any other person consulted or employed by The Berkley Group in performing Services under this Agreement. All such costs shall be The Berkley Group's responsibility.

SECTION 8. JURISDICTION AND VENUE.

- A. This Agreement has been and shall be construed as having been made and delivered in the Commonwealth of Virginia and shall be governed by laws of the

Commonwealth of Virginia, both as to interpretation and performance.

- B. Any action of law, suit of equity, or judicial proceeding for the enforcement of this Agreement or any provisions thereof shall be instituted and maintained only in a court of competent jurisdiction in the County of Washington, Virginia.

SECTION 9. SEVERABILITY.

If, for any reason, any part, term, or provision of this Agreement is held by a court of competent jurisdiction to be illegal, invalid, void or unenforceable, the remaining parts, terms, and provisions shall not be affected, and the rights and obligations of the parties shall be construed and enforced as if the Agreement did not contain the particular part, term, or provision held to be illegal, invalid, void, or unenforceable.

{{ SIGNATURE PAGES TO FOLLOW }}

Non-Professional Services Agreement

IN WITNESS WHEREOF the parties hereto have caused this AGREEMENT to be executed the day and year first hereinabove written.

THE TOWN OF ABINGDON,
a Virginia municipal corporation

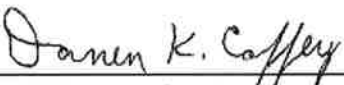
By: Wayne Craig
Mr. Wayne Craig, Mayor

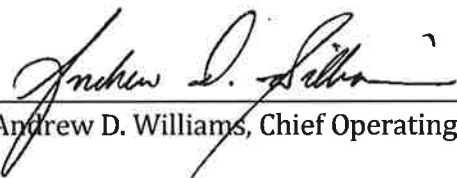
APPROVED AS TO FORM:

[Signature]
Town Attorney

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THE BERKLEY GROUP,
a Virginia limited liability company

By: 
Darren K. Coffey, Chief Executive Officer

By: 
Andrew D. Williams, Chief Operating Officer

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EXHIBIT A
SCOPE OF SERVICES

EXHIBIT A
WORK ORDER 1: SCOPE OF SERVICES FOR INTERIM TOWN MANAGER
TOWN OF ABINGDON, VIRGINIA

The Berkley Group will provide Interim Town Manager services to the Town. Mr. Kenneth F. Vittum will be the individual assigned to provide services.

The Interim Town Manager's responsibilities will include executing Town Council's vision, managing day-to-day operations of town staff, facilitating citizen requests, attending Council meetings, and implementing/enforcing Town ordinances, policies and regulations. It is anticipated that Mr. Vittum will be on-site for an average of 32 hours per week. The cost to provide this service is \$11,750/month for the Term listed in the Agreement.

The Town will provide a vehicle for in-town business. Mileage will be reimbursed for travel to and from Mr. Vittum's permanent residence (anticipated one round trip per week).

The Town will provide suitable lodging accommodations for Mr. Vittum. In the event that the Town does not secure suitable lodging accommodations, The Berkley Group will invoice the Town for these expenses on a monthly basis.

We are in agreement with the services and basis for fee determination in this Scope of Services for Interim Town Manager and hereby grant the consultant notice to proceed for the work herein specified.

Wayne Craig _____ Date 10/11/18
Mr. Wayne Craig, Mayor