



**TOWN OF ABINGDON, VIRGINIA
TOWN COUNCIL MID-MONTH MEETING
TUESDAY, JANUARY 19, 2021 – 2:30 pm
TOWN HALL - COUNCIL CHAMBERS**

DRAFT AGENDA

Please note there will be an opportunity during the meeting for citizens to address the Town Council when the Mayor declares public comments open. We request that anyone addressing the Council, sign up, approach the podium when called, state your first and last name, and provide your complete mailing address.

A. WELCOME – Mayor Webb

B. ROLL CALL – Kim Kingsley, Clerk

C. APPROVAL OF AGENDA – Mayor Webb

D. PUBLIC COMMENTS – Please place your name on the sign-up sheet provided and comments are limited to three (3) minutes per person.

E. PETITION(S) AND PUBLIC HEARINGS

F. PROCLAMATIONS

G. NEW BUSINESS

1. Discussion regarding Request for Proposal for Zoning and Subdivision Ordinance update – *James Morani, Town Manager*
2. Discussion regarding Historic Preservation Plan – *Jason Boswell, Director of Community Development*

H. RESOLUTIONS

I. UNFINISHED BUSINESS

1. Discussion regarding sale of Hassinger House – *James Morani, Town Manager*

J. MISCELLANEOUS BUSINESS AND COMMUNICATIONS FROM TOWN MANAGER

K. COUNCIL MEMBER REPORTS

L. CLOSED SESSION

M. ADJOURN



MEMORANDUM

TO: Town Council
FROM: James Morani, Town Manager
DATE: January 13, 2021

RE: Zoning and Subdivision Ordinance Update

The RFP for the Zoning and Subdivision Code Update closed on December 2, 2020. Staff scored the proposals and made a recommendation to the Town Manager, who authorized competitive negotiation with the selected firm, The Berkley Group. Attached is a memo from Director of Community Jason Boswell explaining staff's recommendation. Also attached is the proposed agreement with The Berkley Group for these services.

JM

Attachment(s)



Community Development Department Memorandum

■ **DATE:** 12/15/2020
■ **TO:** JAMES MORANI, TOWN MANAGER
■ **FROM:** Jason C. Boswell, Director of Community Development
■ **RE:** 12/15/2020 RFP Zoning and Subdivision Ordinance Update

As you know, a Request for Proposal was submitted to eVA on November 3, 2020, concerning the Town of Abingdon's Zoning and Subdivision Ordinance update. The RFP deadline for submittals was December 4, 2020. The Town received three proposals from consulting firms, two of which were companies based in Virginia and the third being a company based in Ohio.

After the proposals were received, five staff members reviewed the proposals and scored them based on criteria included in the RFP, which, were provided to you in a separate correspondence. Staff scorecards reflect a unanimous decision to award the project to The Berkley Group.

The Berkley Group recently conducted a Land Use Evaluation for the Town of Abingdon to address inconsistencies and staff concerns with the existing Zoning and Subdivision Ordinance as it relates to state statutes. During that evaluation, The Berkley Group also revised the Town of Abingdon's Sign Ordinance to align the ordinance with federal and state statutes, as well as draft an enforceable sign code.

Taking The Berkley Group's previous work on the code into consideration and staff's scoring of the proposals received, staff recommends that The Berkley Group be awarded the project and enter into competitive negotiations pursuant to the VA Public Procurement Act.

**AGREEMENT BETWEEN
THE BERKLEY GROUP AND
TOWN OF ABINGDON, VIRGINIA FOR
NON-PROFESSIONAL SERVICES**

This Agreement entered into on this ____ day of _____, 2021 by and between The Berkley Group, LLC, a limited liability company 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 the 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 desires to retain services for a comprehensive update to the Town of Abingdon's Zoning and Subdivision Ordinance as a result of a RFP process by which The Berkley Group responded on December 4, 2020; and

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;

NOW, THEREFORE, the parties do mutually agree as follows:

SECTION 1. STATEMENT/SCOPE OF WORK.

- A. The Berkley Group will provide services to Client in accordance with Exhibit "A" regarding scope of services for updating the Town of Abingdon's Zoning and Subdivision Ordinance and as set forth in this Agreement.
- B. The Berkley Group will use both its staff and Subcontractors to provide the Services to Client.
- C. The Berkley Group and its Subcontractors are and shall remain independent contractors in performing the Services under this Agreement.

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 in Exhibit "A" ("Compensation").
- B. **Payment to The Berkley Group.** Client shall pay The Berkley Group for the Services performed as set forth in the Work Order. All invoices shall be due within thirty (30) days of the invoice date. Payments later than sixty (60) days shall be subject to a fifteen percent (15%) late charge fee.

C. ***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, at least 30 days before such effective date.

- (1) In the event of termination, all finished and unfinished documents and other materials produced by The Berkley Group specifically for the Client shall 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. For any incomplete services, Client will provide The Berkley Group with compensation equivalent to the approximate percentage of the total executed Work Order value for the assigned task. Upon request, The Berkley Group will provide the Client with documentation of the Services performed prior to the effective date of termination.
- (3) Termination for non-appropriation by the Client shall be made pursuant to this section.

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 by giving a written notice to the other party of such termination specifying the effective date thereof, at least 15 days before such effective date. 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 performance 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 Berkley Group, the Parties may 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 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 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 commercial general liability insurance to cover their actions or omissions. Upon request, shall provide the Client with evidence of such insurance.
- F. The Berkley Group shall perform in accordance with, and shall not violate, applicable laws, rules or regulations, and standards prevailing in the industry and The Berkley Group shall obtain all permits or permissions required to comply with such laws, rules or regulations.

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, and not to include any confidential files or documents subject to confidentiality laws.
- B. 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.

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:

James Morani

Town Manager

Title

276-628-3167

Phone Number

jmorani@abingdon-va.gov

email

The Berkley Group's representative shall be:

Andrew D. Williams

Chief Executive Officer

Title

540-560-2202

Phone Number

drew@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 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's 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) 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.

- (3) 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.

- E. Warranty of Capacity to Execute Agreement. The Parties warrant that no other person or entity has, or has had, any interest in these claims except as otherwise stated, and that the signatories have the sole right to execute this Agreement. The Parties have not assigned or otherwise disposed of any of these claims. The Parties warrant that they are operating under no impairment that prevents them from understanding this Agreement and executing the same. The Parties have read this Agreement completely, their attorneys have explained it to them, and the Parties understand and voluntarily accept its terms.
- F. Headings. The headings in this Agreement are for reference only and shall not affect the interpretation of this Agreement.
- G. Entire Agreement. This Agreement and the documents to be delivered hereunder constitute the sole and entire agreement of the parties to this Agreement with respect to the subject matter contained herein, and supersede all prior and contemporaneous understandings and agreements, both written and oral, with respect to such subject matter. In the event of any inconsistency between the statements in the body of this Agreement and the Exhibits, the statements in the body of this Agreement will control.
- H. Successors and Assigns. This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and permitted assigns. Neither party may assign its rights or obligations hereunder without the prior written consent of the other party, which consent shall not be unreasonably withheld or delayed. No assignment shall relieve the assigning party of any of its obligations hereunder.
- I. No Third-Party Beneficiaries. This Agreement is for the sole benefit of the parties hereto and their respective successors and permitted assigns and nothing herein, express or implied, is intended to or shall confer upon any other person or entity any legal or equitable right, benefit or remedy of any nature whatsoever under or by reason of this Agreement.
- J. Waiver. No waiver by any party of any of the provisions hereof shall be effective unless explicitly set forth in writing and signed by the party so waiving. No waiver by any party shall operate or be construed as a waiver in respect of any failure, breach or default not expressly identified by such written waiver, whether of a similar or different character, and whether occurring before or after that waiver. No failure to exercise, or delay in exercising, any right, remedy, power or privilege arising from this Agreement shall operate or be construed as a waiver thereof; nor shall any single or partial exercise of any right, remedy, power or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, remedy, power or privilege.

- K. Additional Documents. All parties agree to cooperate fully and execute any and all supplementary documents and to take all additional actions, which may be necessary or appropriate to give full force and effect to the basic terms and intent of this Agreement.
- L. Interpretation; Construction. The terms of this Agreement have been fully negotiated by the parties, and no party is deemed to be the drafter of this Agreement. Any rule of construction to the effect that any ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of this Agreement.

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 Washington County, 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 FOLLOW}}

The Berkley Group and Client hereby agree to the terms of this Agreement by signing below.

FOR THE TOWN OF ABINGDON

ATTEST:

James Morani, Town Manager

Date: _____

FOR THE BERKLEY GROUP:

ATTEST:

Darren K. Coffey, Principal

Andrew D. Williams, Principal

Date: _____

EXHIBIT "A"
SCOPE OF WORK: ZONING AND SUBDIVISION ORDINANCES UPDATE
DECEMBER 17, 2020

Deliverables:

The Scope of Work to update the Town of Abingdon's Zoning and Subdivision Ordinances will include the deliverables as outlined below:

1. The Town will receive an updated Zoning Ordinance. This will be submitted in digital (pdf) and word (.docx) format to the Town.
2. The Town will receive an updated Subdivision Ordinance. This will be submitted in digital (pdf) and word (.docx) format to the Town.
3. The Town will receive an updated Land Use Map in Esri-compatible GIS format.

Assumptions:

The specific tasks required as part of this scope of work are outlined under Fees. The following assumptions shall apply:

1. **Initiation:** The town will provide up-to-date copies of the current zoning ordinance and map in original format (.docx and Esri-compatible GIS)
2. **Public Input Workshop:** The Berkley Group will facilitate one public input workshop. The workshop will include a brief introduction to the Zoning and Subdivision Ordinance update followed by an interactive small group discussion on land use and zoning issues. The town will advertise and promote the meeting and coordinate meeting location and set up. The Berkley Group will provide a summary overview of results of the public input workshop for Council/Commission consideration.
3. **Stakeholder Interviews:** The Berkley Group will conduct up to four interviews with stakeholder groups, which will be identified and coordinated by town staff. It is assumed that stakeholder interviews will be conducted on the same day as the public workshop, or virtually by Zoom/phone. The Berkley Group will summarize the results of the stakeholder interviews for Council/Commission consideration.
4. **Survey:** The Berkley Group will conduct an open link community-wide survey utilizing the online SurveyMonkey tool. The survey will also be provided to the town as a PDF to be distributed in hard copy format. The town will collect hard copy surveys and transmit them electronically to the Berkley Group for manual entry into SurveyMonkey.
5. **Project Webpage:** The Berkley Group will provide information for a project webpage to be hosted on the Town website and managed by the Town.
6. **Joint Work Sessions:** This scope of work assumes that meetings facilitated by The Berkley Group will be conducted as joint work sessions between the Planning Commission and Town Council. The bodies will work in conjunction to reach consensus and provide direction on the topics presented during each work session.
7. **Work session with Staff / Other Input:** The "Work session with Staff / Other Input" will be utilized to collect information directly related to the Zoning and Subdivision ordinance update and coordinate joint work sessions with town staff. It is not intended to provide auxiliary staff support for additional meetings or require formalized meeting materials.

8. **Joint Public Hearing:** The scope of work assumes a single joint public hearing between the Planning Commission and Town Council.
9. **Comments & Revisions:** Comments from the Council/Commission will be provided in a consolidated comment response format to The Berkley Group for review and consideration prior to each joint work session. The fee estimate for drafting and final revisions are based on revisions directed during the work sessions identified in the scope of work. This also includes incorporating edits/revisions from one legal review. Revisions associated with additional work sessions, meetings, or reviews will require a scope amendment and additional fee.
10. **Meeting Cancellations:** Meetings and work sessions cancelled for reasons other than as required under the Town or The Berkley Group's Covid-19 policies or federal or state Covid-19 rules and regulations with notice of less than 10 business days will be counted toward the scoped work sessions, and the client will be charged for the preparation hours for the cancelled meeting. The Berkley Group will use reasonable efforts to not duplicate work.
11. **Public Notification:** The town will be responsible for public notification requirements (e.g., newspaper ads and mailings) associated with the project.
12. **Historic District:** This scope of work does not include historic district surveys, review and recommendation of additional buildings/areas to be incorporated into Abingdon's historic district boundaries, or historic district architectural design guidelines.
13. **Sign Ordinance:** The scope of work does not anticipate major changes to the Sign Ordinance. Minor amendments may be incorporated as necessary to align the recently-adopted sign ordinance sections with the remainder of the ordinance.
14. **Draft Ordinance:** Prior to public hearings and adoption, The Berkley Group will provide a clean draft ordinance and summary memo highlighting major changes. Due to the often extensive structural changes of a comprehensive zoning and subdivision ordinance update, The Berkley Group's scope does not include redline/strikethrough-underline draft.
15. **Legal Review:** Legal review is to be undertaken by the town attorney. External legal review is not included as part of The Berkley Group scope of work.
16. **Post-Adoption Services:** This scope of work does not include post-adoption services (e.g., updated forms, handouts, or submittal checklists. Post-adoption services may be separately scoped if desired by the town.
17. **Covid-19 Policy:** The town will execute and abide by The Berkley Group's COVID-19 policy.

Non-Professional Services Agreement

Fee:

The Scope of Work to update the Town of Abingdon's Zoning and Subdivision Ordinances will include the following tasks and associated fees:

Phase	Task	Task Description	Total Cost	Est. Hours
Investigation	A1	Kick-off Meeting with Staff (Virtual)	\$ 750.00	11
	A2	Document Review	\$ 740.00	12
	A3	Public Workshop	\$ 3,770.00	57
	A4	Public Outreach Survey (online & paper)	\$ 6,000.00	LS
	A5	Stakeholder Listening Sessions (4)	\$ 2,560.00	44
	A6	PC/Council Joint Kickoff	\$ 2,400.00	36
Development	B1	PC/Council Joint Work Sessions (up to 4)	\$ 8,400.00	140
	B2	Work Session with Staff / Other Input	\$ 2,570.00	38
	B3	Table of Contents / Ordinance Formatting	\$ 2,790.00	51
	B4	Definitions	\$ 4,870.00	83
	B5	Use Matrix	\$ 3,520.00	58
	B6	District Standards	\$ 4,820.00	82
	B7	Overlay & Special Districts	\$ 5,655.00	92
	B8	Use Performance Standards	\$ 4,670.00	78
	B9	Community Design Standards (Telecom, Lighting, Landscaping, etc.)	\$ 2,920.00	48
	B10	General and Administrative Provisions	\$ 2,720.00	44
	B11	Permit & Application Provisions	\$ 5,640.00	100
	B12	Zoning Map	\$ 4,185.00	69
	B13	Illustratives by Land Planning & Design Associates	\$ 23,000.00	LS
	B14	Subdivision Article	\$ 5,820.00	98
Adoption	C1	Open House (Public Draft Review)	\$ 4,180.00	64
	C2	PC/Council Draft Work Sessions (2)	\$ 4,030.00	65
	C3	Incorporate Final Revisions	\$ 3,220.00	52
	C4	Public Adoption (1 Joint PC/Council public hearing)	\$ 2,660.00	42
Subtotal			\$ 111,890.00	1,364
Non-direct expenses including, but not limited to, travel, printing, supplies, etc. (3% of project cost)			\$ 3,356.70	
TOTAL			\$ 115,246.70	

Non-Professional Services Agreement

Schedule:

The Berkley Group proposes to perform the tasks included in this Work Order according to the schedule outlined below. This schedule is predicated on the assistance of town staff in providing timely documentation, guidance, and scheduling of necessary meetings and work sessions.

Task		2021												2022			
		January	February	March	April	May	June	July	August	September	October	November	December	January	February	March	April
A	Kickoff Meeting w/ Staff																
	PC/Council Joint Kickoff		X														
	Public Input Workshop			X													
	Public Outreach Survey																
	Stakeholder Listening Sessions (up to 4)			X													
B	PC/Council Joint Work Sessions (up to 4)				X		X		X			X					
	Work Session w/ Staff (as needed)																
	Ordinance Development																
	Mapping & Graphics																
C	Open House and Public Review														X		
	PC/Council Joint Work Sessions (up to 2)													X		X	
	Incorporate Final Revisions																
	PC/Council Joint Hearings & Adoption																X

Note: "X" indicates proposed in-person meeting attendance.