

**AGREEMENT BETWEEN
BERKLEY GROUP, LLC AND
TOWN OF CAPE CHARLES, VIRGINIA FOR
ON CALL CONSULTING SERVICES**

This Agreement entered into on this ____ day of _____, 20__ by and between 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 # 273021021), and hereafter called "Berkley Group", and the Town of Cape Charles, a political subdivision of the Commonwealth of Virginia, having its administrative office at 2 Plum Street, Cape Charles, Virginia 23310, and hereafter called "the Client".

WITNESSETH:

WHEREAS, the Client desires to retain the services of the Berkley Group to perform on call consulting services, and

WHEREAS, 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, the GEORGE WASHINGTON REGIONAL COMMISSION issued a request for proposals as a cooperative procurement for other public bodies for nonprofessional services, for which Berkley Group was awarded the contract;

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

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

SECTION 1. STATEMENT/SCOPE OF WORK.

- A. Berkley Group will provide services to Client once issued individual Work Orders for each task assigned constituting the Scope of Services ("Scope of Services" / "Services") as set forth in this Agreement.
- B. Berkley Group will use both its staff and independent contractors it engages (the "Subcontractors") to provide the Services to Client.

- C. Berkley Group and its Subcontractors are and shall remain independent contractors with respect to the Client in their provision of the Services under this Agreement.

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

- A. **Compensation.** Client shall compensate Berkley Group for the Services performed based upon the terms described within the Fee Schedule plus an indirect cost rate for overhead as specified in each task order ("Compensation"). For interim staff assignments, the parties agree to increase the Compensation by three percent (3%) per cent on an annual basis to coincide with the Client's fiscal year.
- B. **Payment to the Berkley Group.** Client shall pay Berkley Group for the Services performed as set forth in the payment schedule for each 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. **Time of Performance.** Berkley Group shall commence performance of the Services on _____ and shall continue such performance through _____ ("Term"). The Term shall automatically renew each year for up to five (5) years and may thereafter be extended for additional periods by written agreement of the parties pursuant to Section 6 of this Agreement but shall remain subject to termination for non-appropriation of funding.
- D. **Termination for Convenience.** Either the Client or 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 Berkley Group specifically for the Client shall become the property of the Client.
 - (2) In the event of termination, Berkley Group shall be paid for the Services performed up to the effective date of termination. For any incomplete services, the Client will provide Berkley Group with compensation equivalent to 80% 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 up to the effective date of termination.
 - (3) Termination for non-appropriation of funds by the Client shall be made pursuant to this section.
- E. **Termination for Breach.** The Client or Berkley Group may terminate this Agreement for a material breach of the terms of this Agreement by giving 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 breach of the Agreement.
- (1) In the event of termination of this Agreement by the Client pursuant to this Section 2.E., Berkley Group shall be paid for Services performed up to the

effective date of such termination in accordance with the manner of performance set forth in the Agreement. If it is later determined by Berkley Group that Berkley Group had an excusable reason for not performing, such as natural disasters, pandemics, or other events that are beyond the control of Berkley Group, the parties may agree for the Berkley Group to continue to provide the Services under this Agreement.

- (2) After receipt of written notice from the Client setting forth the nature of such breach pursuant to this Section 2.E., Berkley Group may request, and the Client may agree, to provide Berkley Group time to remedy any breach or default to the satisfaction of Client. If the Client does not agree to allow Berkley Group to remedy the breach, Berkley Group shall have the right to immediately cease providing Services and receive Compensation earned for all Services rendered through the final date that the Services are rendered by Berkley Group.

SECTION 3. RESPONSIBILITIES OF THE BERKLEY GROUP.

- A. 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. Berkley Group will provide all services under this Agreement in a manner consistent with applicable laws, professional standards and its best efforts.
- C. Berkley Group, its staff and Subcontractors shall comply with Client's standards for acceptable workplace conduct and safety, and shall at all times conduct themselves in a professional manner.
- D. 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.
- E. 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 Berkley Group, Client agrees to provide all policies, information, communications, records, data, information and forms which are available to the Client and needed by 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 Berkley Group staff or Subcontractor performance to Berkley Group representative set forth in Section 5, unless otherwise specifically set forth within the Scope of Services.

- C. For interim or on-going staff assignments, the Client shall defend Berkley Group and its respective staff or Subcontractor in any legal proceedings by a third party arising out of the performance of duties on behalf of the Client.
- D. The Client agrees not to hire staff of 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:

Name:

Title:

Phone Number:

email:

Berkley Group's representative shall be:

Andrew D. Williams

Chief Executive Officer

540-560-2202

drew@bgllc.net

- 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 in effect at the time of this Agreement, including the Virginia Public Procurement Act, Va. Code §§ 2.2-4300, *et seq.*, ; Va. Code § 2.2-4310 and – 4311 (nondiscrimination); Va. Code § 2.2-4311.1 (immigration); and Va. Code § 2.2-4312 (drug free workplace), which provisions are incorporated herein by reference.
- C. ***Contractual.*** Disputes with respect to this Agreement shall be governed by Va. Code § 2.2-4363 and all similar provisions in Client's purchasing or procurement regulations.
- D. ***Ownership and Status of Documents.***
 - (1) All documents prepared by Berkley Group specifically for the Client shall become the property of the Client upon completion of Services, or the earlier termination of this Agreement. 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 (collectively referred to as the "Materials"), which are furnished to Berkley Group by Client or which are developed in the process of performing the Services, or embody or relate to the Services, are the property of Client, and shall be returned by 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 Berkley Group specifically for the Client shall be kept confidential by Berkley Group until released or approved for release by the Client. 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) 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 Berkley Group's performance requirements. Such changes must be mutually agreed upon by the parties in writing and signed by the authorized representatives of both parties.

SECTION 7. MISCELLANEOUS PROVISIONS.

- A. Protection of Confidential Information. Berkley Group agrees that at all times during or subsequent to the performance of the Services, 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. 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. Hold Harmless. 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, provided that such damages, claims, liabilities, costs, including reasonable attorney's fees, or losses, must be attributable to bodily injury, sickness, disease or death, or injury to or destruction of tangible property which may in any way arise from the negligent acts, errors, or omissions of Berkley Group and its Subcontractors, and which arise out of Berkley Group's performance of its professional services under this Agreement, or any breach or alleged breach by Berkley Group of this Agreement, including the warranties set forth herein ("Loss"). Berkley Group's indemnification obligations under this clause shall not extend to claims or liabilities arising from the Client's negligence, gross

negligence, willful misconduct, or breach of this Agreement. The parties agree that Berkley Group's indemnification obligations shall not exceed the monetary amount paid by the Client for Berkley Group's services rendered. The parties further agree that Berkley Group's obligation to indemnify any Loss under this Agreement shall not arise until liability for such Loss has been determined by a court of competent jurisdiction, or by mutual agreement of the parties. The obligations and rights of indemnification under this clause shall survive the termination or expiration of this Agreement.

- C. 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 Berkley Group or any other person consulted or employed by Berkley Group in performing Services under this Agreement. All such costs shall be Berkley Group's responsibility.
- D. Jurisdiction and Venue. This Agreement shall be construed pursuant to the laws of the Commonwealth of Virginia without regard to conflict of laws provisions. The parties agree to submit to the exclusive jurisdiction and venue of the Circuit Court of the County of Rockingham, Virginia, or the United States District Court, Western District, Harrisonburg Division, over any action, suit, or proceeding arising out of or relating to this Agreement, and the parties irrevocably submit to the jurisdiction of such courts for any such action, suit, or proceeding. Severability. The provisions of this Agreement are severable, and if any one or more provisions may be determined to be illegal or otherwise unenforceable, in whole or in part, the remaining provisions and any partially unenforceable provisions to the extent enforceable shall nevertheless be binding and enforceable.
- E. Waiver. Any waiver of a default under this Agreement must be made in writing signed by the waiving Party and shall not be a waiver of any other default concerning the same or any other provision of this Agreement. No delay or omission in the exercise of any right or remedy shall impair such right or remedy or be constructed as a waiver. A consent to or approval of any act shall not be deemed to waive or render unnecessary consent to or approval of any other or subsequent act.
- F. Successors and Assigns. To the extent permitted by state law, Berkley Group may assign this Agreement to any subsidiary or corporate affiliate, or to any successor or assign (whether direct or indirect, by purchase, merger, consolidation, or otherwise) to all or substantially all of the business or assets of Employer. The Client may not assign this Agreement or any part hereof without the prior written consent of Berkley Group. Any purported assignment by the Client shall be null and void from the initial date of such purported assignment.
- G. Attorney's Fees. In the event any party initiates any proceedings to enforce the terms of this Agreement, the prevailing party shall be entitled to an award of its reasonable attorney's fees and costs.
- H. Headings; Recitals. Headings of the sections and paragraphs of this Agreement are intended solely for convenience of the parties, and no provision of this Agreement is

to be construed by reference to the caption or heading of any section or paragraph. The recitals of this Agreement are hereby incorporated into this Agreement as if restated herein.

- I. Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which taken together shall constitute one and the same instrument.

{{ SIGNATURE PAGES TO FOLLOW }}

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

**FOR TOWN OF CAPE CHARLES, A POLITICAL SUBDIVISION OF THE COMMONWEALTH
OF VIRGINIA**

Signature

Date: _____

FOR BERKLEY GROUP, LLC

Darren K. Coffey, Principal

Andrew D. Williams, CEO

Date: _____