



## MEMORANDUM

**To: Members of the Rappahannock-Rapidan Regional Commission**  
**From: Patrick L. Mauney, Executive Director**  
**Date: August 16, 2022**  
**Subject: On-Call General Planning Services Agreement**

The Commission has a number of regional planning projects either ongoing or likely to commence in the next year, including the five-year Regional Hazard Mitigation Plan update, potential Resiliency Plan/Appendix to that Hazard Mitigation plan, Commuter Assistance Program Strategic Plan, and Comprehensive Economic Development Strategy (CEDS).

The Berkley Group has an agreement with the George Washington Regional Commission (GWRC) that includes a cooperative procurement clause allowing other local governments to make use of their earlier procurement process and associated contracted rates. The resulting agreement that can be used by the Commission would offer blanket terms that would allow subsequent individual task orders to be issued, each with their own scope of services and fee.

Staff recommends execution of an agreement with the Berkeley Group for on-call general planning services. This agreement would allow staff to develop task orders where Berkley Group assistance may be cost-effective and beneficial to the timing and development of plans referenced above. The agreement does not preclude the Commission from seeking proposals via RFP or other procurement methods where that may be the more prudent approach.

The GWRC RFP and agreement as well as proposed RRRC agreement are attached for the Commission's consideration.

**REQUESTED ACTION:** Approval for staff to execute agreement for Non-Professional on-call general planning services with the Berkley Group

**AGREEMENT BETWEEN  
THE BERKLEY GROUP AND  
RAPPAHANNOCK-RAPIDAN REGIONAL COMMISSION,  
VIRGINIA FOR NON-PROFESSIONAL SERVICES**

This Agreement entered into on this \_\_\_\_ day of \_\_\_\_\_, 2022 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 Rappahannock-Rapidan Regional Commission, a political subdivision of the Commonwealth of Virginia, having its administrative office at 420 Southridge Pkwy #106, Culpeper, VA 22701, and hereafter called “the Client”.

**WITNESSETH:**

**WHEREAS**, the Client desires to retain the services of The Berkley Group to perform non-professional services, 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 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. 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 within the Fee Schedule plus an indirect cost rate for overhead as specified in each task order (“Compensation”).
- B. **Payment to The Berkley Group.** Client shall pay The 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.*** The Berkley Group shall commence performance of the Services on \_\_\_\_\_, 2022 and shall continue such performance through \_\_\_\_\_, 2023 (“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 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 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 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. Auxiliary Town Hall on-site assignments only – the Client shall provide appropriate office space, desk, phone, computer, internet access, e-mail account, paper, access to copy machines, vehicles and other reasonably necessary office equipment, supplies or facilities for The Berkley Group during the time that The Berkley Group is on site.

- C. Auxiliary Town Hall on-site assignments only – the Client shall defend The 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 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. Auxiliary Town Hall on-site assignments only – 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:

\_\_\_\_\_

\_\_\_\_\_

Title

\_\_\_\_\_

Phone Number

\_\_\_\_\_

email

The Berkley Group’s representative shall be:

Andrew D. Williams

Chief Executive Officer

Title

540-560-2202

Phone Number

[drew@bgllc.net](mailto: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' 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. Severability. If any provision of this Agreement shall be found invalid or unenforceable, the remainder of this Agreement shall be interpreted so as best to reasonably effect the intent of the parties.
- C. 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.
- D. 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.
- E. 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 Culpeper 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 }}**



Non-Professional Services Agreement

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

**FOR THE <<LOCALITY>>**

**ATTEST:**

\_\_\_\_\_

\_\_\_\_\_

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

Non-Professional Services Agreement

**FOR THE BERKLEY GROUP:**

**ATTEST:**

\_\_\_\_\_  
Darren K. Coffey, Principal

\_\_\_\_\_  
Andrew D. Williams,  
Chief Executive Officer

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

## Code of Virginia

### § 2.2-4304. Cooperative procurement.

A. 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, except for:

1. Contracts for architectural or engineering services; or
2. Construction in excess of \$200,000 by a local public body from the contract of another local public body that is more than a straight line distance of 75 miles from the territorial limits of the local public body procuring the construction. The installation of artificial turf or other athletic surfaces shall not be subject to the limitations prescribed in this subdivision. Nothing in this subdivision shall be construed to prohibit sole source or emergency procurements awarded pursuant to subsections E and F of § [2.2-4303](#).

In instances where any authority, department, agency, or institution of the Commonwealth desires to purchase information technology and telecommunications goods and services from another public body's contract and the procurement was conducted on behalf of other public bodies, such purchase shall be permitted if approved by the Chief Information Officer of the Commonwealth. Any public body that enters into a cooperative procurement agreement with a county, city, or town whose governing body has adopted alternative policies and procedures pursuant to subdivisions A 9 and A 10 of § [2.2-4343](#) shall comply with the alternative policies and procedures adopted by the governing body of such county, city, or town.

B. Subject to the provisions of §§ [2.2-1110](#), [2.2-1111](#), [2.2-1120](#) and [2.2-2012](#), any authority, department, agency, or institution of the Commonwealth may participate in, sponsor, conduct, or administer a cooperative procurement arrangement on behalf of or in conjunction with public bodies, private health or educational institutions or with public agencies or institutions of the several states, territories of the United States, or the District of Columbia, for the purpose of combining requirements to effect cost savings or reduce administrative expense in any acquisition of goods and services, other than professional services. A public body may purchase from any authority, department, agency or institution of the Commonwealth'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. In such instances, deviation from the procurement procedures set forth in this chapter and the administrative policies and procedures established to implement this chapter shall be permitted, if approved by the Director of the Division of Purchases and Supply.

Pursuant to § [2.2-2012](#), such approval is not required if the procurement arrangement is for telecommunications and information technology goods and services of every description. In instances where the procurement arrangement is for telecommunications and information technology goods and services, such arrangement shall be permitted if approved by the Chief Information Officer of the Commonwealth. However, such acquisitions shall be procured competitively.

Nothing herein shall prohibit the payment by direct or indirect means of any administrative fee that will allow for participation in any such arrangement.

C. As authorized by the United States Congress and consistent with applicable federal regulations, and provided the terms of the contract permit such purchases:

1. Any authority, department, agency, or institution of the Commonwealth may purchase goods and nonprofessional services, other than telecommunications and information technology, from a U.S. General Services Administration contract or a contract awarded by any other agency of the U.S. government, upon approval of the director of the Division of Purchases and Supply of the Department of General Services;
2. Any authority, department, agency, or institution of the Commonwealth may purchase telecommunications and information technology goods and nonprofessional services from a U.S. General Services Administration contract or a contract awarded by any other agency of the U.S. government, upon approval of the Chief Information Officer of the Commonwealth; and
3. Any county, city, town, or school board may purchase goods and nonprofessional services from a U.S. General Services Administration contract or a contract awarded by any other agency of the U.S. government.



George Washington Regional Commission  
406 Princess Anne Street  
Fredericksburg, Virginia 22401  
(540) 373-2890  
Fax (540) 899-4808  
[www.gwregion.org](http://www.gwregion.org)

Tim Ware  
Executive Director

October 4, 2017

**RFP#:** GWRC 2018-01

**Title:** Three-Year Contract for On-Call General Planning Consultant Services for the George Washington Region (Planning District 16) in Virginia

**Issuing Agency:** The George Washington Regional Commission  
406 Princess Anne Street  
Fredericksburg, Virginia 22401

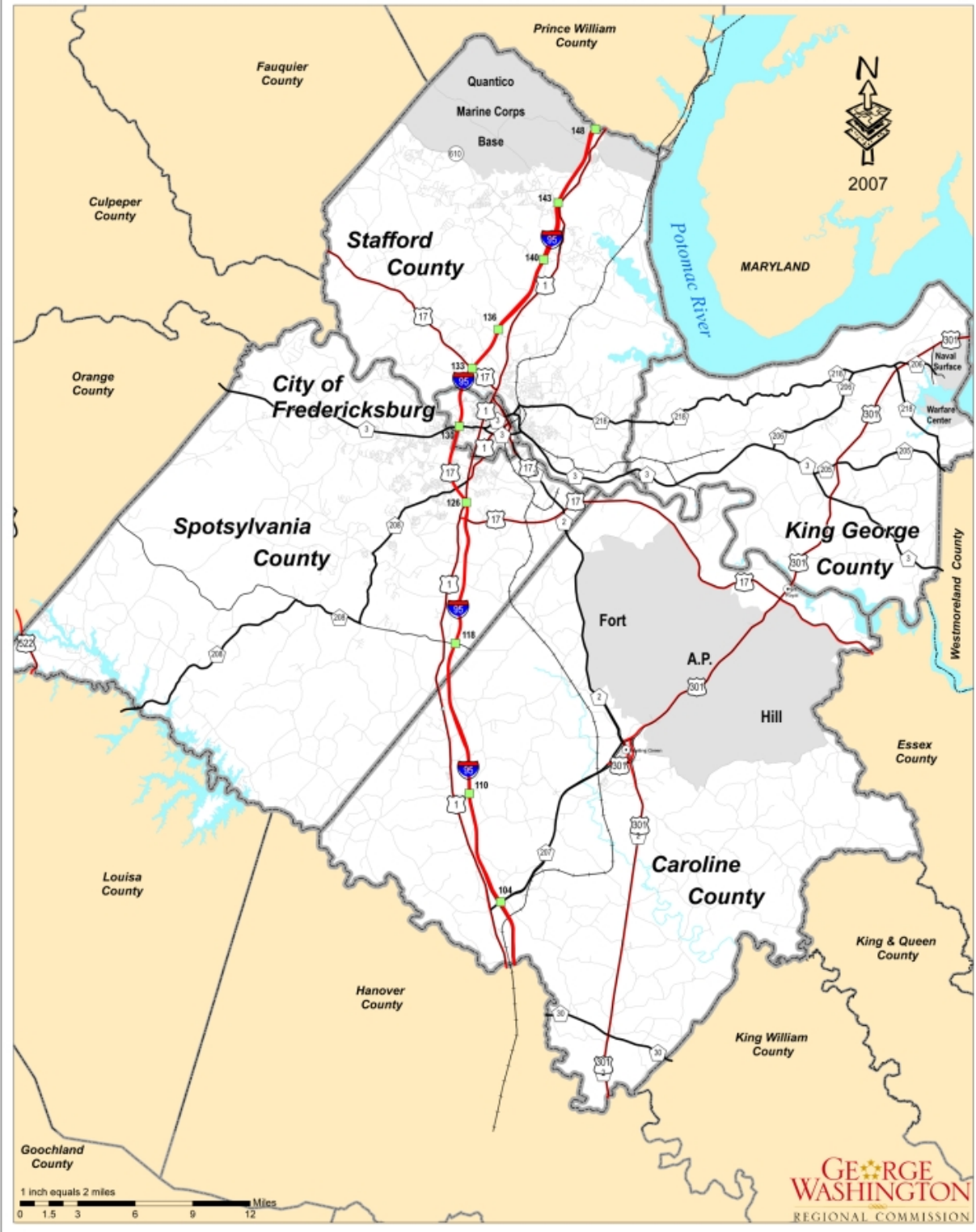
**Period of Contract:** January 1, 2018 through December 31, 2020  
**(Initial)**

**Proposals Will be Received Until:** October 25, 2017  
2:00 p.m. (noon)

**All Inquiries to:** Timothy J. Ware, GWRC Executive Director  
Phone: (540) 373-2890 Fax: (540) 899-4808  
E-Mail: [ware@gwregion.org](mailto:ware@gwregion.org)

**Pre-proposal Conference:** None

# GWRC REGION - VIRGINIA PLANNING DISTRICT 16



# George Washington Regional Commission

## Request for Proposals

### On-Call Services

#### Purpose

The George Washington Regional Commission (GWRC) is seeking proposals from qualified firms interested in being included on an on-call list for GWRC's On-Call Consultant Program. The GWRC represents a five-county region including the Counties of Caroline, King George, Spotsylvania, Stafford, the City of Fredericksburg and all towns contained within their boundaries.

Periodically, GWRC requires professional planning, public works, or other government administration services and technical expertise to supplement its professional staff. To meet this need, GWRC is issuing this request for proposals (this "RFP") for nonprofessional services from one or more firms with extensive expertise in government administration that can provide public services in one or more of the following areas:

- Current and long-range planning (*e.g.*, update of Comprehensive Plan)
- Code enforcement and revisions (*e.g.*, update of Zoning Ordinance, Subdivision Ordinance)
- Public outreach and meeting facilitation (*e.g.*, meetings with elected and appointed bodies, Town Hall meetings)
- Local Government project development and management (*e.g.*, transportation projects)
- Public works (*e.g.*, water and sewer utility)
- Environmental Services (*e.g.*, Storm Water management)
- Other local government administration

#### Proposal Inquiries/Point of Contact

One (1) original and five (5) hard copies of the proposal should be submitted in a sealed envelope or package clearly marked "GWRC On-Call Consultant Program" by **2:00 PM on Wednesday, October 25, 2017** (the "Application Deadline").

In addition to the hard copy proposals, one (1) full-color, digital copy in .pdf file format should also be submitted by the Application Deadline via email to [ware@gwregion.org](mailto:ware@gwregion.org). The hard copy proposals should be delivered to:

Tim Ware, Executive Director  
George Washington Regional Commission  
406 Princess Anne St  
Fredericksburg, Va 22401

Potential Offerors must limit all contact, whether verbal or written, pertaining to this RFP, to the designated point of contact for the duration of the RFP process. Failure to do so may jeopardize further consideration of an Offeror's proposal.

### **Duration and Rate Schedule**

The duration of any resultant contract will be three years, with an option for up to two (2) additional one-year terms.

The maximum compensation allowable during the possible duration period of this contract will be up to \$1,000,000, for the total duration of a contract with GWRC, whether it is three or more years, for each team selected. Services procured under this contract will be conducted on as Task Order basis and each Task Order will be tied to specific secured funding to support the work thereunder. The total contract value limits shall not apply to other political subdivisions use of this cooperative procurement and the resulting local con Task Order(s) with various consultant teams.

### **RIDER CLAUSE**

This solicitation is being conducted on behalf of other public bodies pursuant to Section 2.2-4304 of the Virginia Public Procurement Act (Va. Code § 2.2-4300 *et seq.*). The resultant contract(s) may be extended by a contracting firm(s) to other public bodies at the stated contract prices, in accordance with the contract terms. It is each contracting firm's responsibility to notify other jurisdictions of the availability of contract(s).

Any jurisdiction "riding" the resultant contract(s) may enter into its own contract with the successful firm(s). Contracts entered into with a participating jurisdiction may contain general terms and conditions unique to that jurisdiction. GWRC will not be held liable for any contract between a contracting firm and another jurisdiction.

### **SUBMISSION OF PROPOSAL**

#### **General Requirements**

All responses to the requested information should be answered thoroughly, but be as succinct as possible. The responses to information requested in the Specific Requirements below should be fully contained within the body of the response. No firm may submit more than one proposal.

#### **Specific Requirements**

Firms must submit the following information, in the order listed below, and all other information identified in this RFP. Failure to provide any of the listed items may result in elimination from consideration.



The submittal shall include the following items:

### **Letter of Interest**

At a minimum, the letter of interest should include the following:

- a. The name and address of the firm and the state(s) in which organized.
- b. The name, address, telephone number, and email address of the designated contact and principals authorized to conduct negotiations for the firm.
- c. A brief description of the firm's interest in performing the required services.
- d. A description of previous experience with the proposed services and products.

### **Description of Qualifications and Experience**

Qualifications and experience must address the requirements of this RFP in accordance with the specific scope of services being requested. At a minimum, this section should include the following:

- a. Overview of the firm, including size of organization and types of services provided.
- b. Applicable individual and corporate Virginia licensing and/or certification information.
- c. Applicable experience in one or more of the areas: current and long range planning, code enforcement, public outreach and meeting facilitation, municipal project development and management, public works, other local governmental administration.
- d. 2 Samples of work.
- e. 3 Client references, with contact information.

### **Evaluation**

Proposals shall be evaluated by the Proposal Evaluation Committee using the following criteria:

- a. 30 Points - Expertise, experience, and qualifications of the firm's personnel in each discipline that may provide services relevant to the RFP. In addition, the expertise, experience, and qualifications of any subconsultants will be scored within this category.
- b. 25 Points - Expertise and past experience of the firm in providing services on other contracts or on projects of similar size, scope and features as those required for the Scope of Services on this RFP.
- c. 15 Points - Evidence of past successful performance relative to ability to complete projects on schedule and within the estimated budget.
- d. 10 Points - Firm's work plan for the proposed services relative to the firm's existing workload.

- e. 10 Points – References for projects completed by the firm, which are similar to the types of services proposed.
- f. 5 Points - Geographic location of the firm’s office(s) where the proposed services would be performed in relation to the geographic area served by GWRC.
- g. 5 Points - Size of the firm relative to the services the firm proposes to provide

Generally, the Selection Committee will consider the firm's overall suitability to provide the services outlined in this request within the time, budget and operational constraints that may be present, and the comments and/or recommendations of the firm's previous clients, references and others.

All respondents must demonstrate financial responsibility as evidenced by the firm carrying Professional Liability Insurance. The successful proposer shall maintain insurance to protect their entity and GWRC and/or other public bodies from claims under the Workmen's Compensation Act, and from any other claim for damages for personal injury, including death, and for damages to property which may arise from operations under this contract, whether such operations be by the proposer or by any subcontractor or anyone directly employed by either of them.

The Selection Committee shall have the right, before awarding any contract, to require a proposer to submit such evidence of his qualifications as it may deem necessary and may consider any evidence available to it concerning the financial, technical, and other qualifications and abilities of a proposer.

**Award of Contract:**

a. A review committee of GWRC staff and selected officials (the "Selection Committee") will review the proposals and invite the most qualified firms to engage in discussions, and/or informal interviews.

b. GWRC intends to engage in individual discussions and/or interviews with a limited number of offerors deemed fully qualified, responsible and suitable on the basis of initial responses. Proposers shall be encouraged to elaborate on their qualifications, performance data, and staff expertise relevant to the proposed contract. Proprietary information from competing proposers (including any data on estimated man-hours or rates and the plan for accomplishing the scope of work) will not be disclosed to the public or to competitors provided such information is duly marked as "Proprietary Information" by the Proposer and the designation is justified as required by Virginia Code Section 2.2-4342. At the conclusion of the discussions, and/or informal interviews, on the basis of evaluation factors published in the Request for Proposal and all information developed in the selection process to this point, GWRC shall select in the order of preference two or more offerors whose professional qualifications and proposed services are deemed most meritorious.

c. Should GWRC determine in writing and in its sole discretion that only one offeror is fully qualified or that one offeror is clearly more highly qualified and suitable than the others under consideration, a contract may be negotiated and awarded to that offeror.

d. A contract is expected to be awarded within 45 days of issuance of the RFP. GWRC reserves the right to reject any and all proposals, and to waive formalities. Firms will not be compensated for time spent preparing responses to this RFP.

f. The proposer(s) to whom the contract is awarded shall, within twenty days after prescribed documents are presented for signature, execute and deliver to GWRC the contract forms and any other required forms or certifications.

e. Contracts awarded as a result of this RFP will provide that the same contract terms shall, during the term of the contract, be extended to all of the Purchasers. Due to the nature of the On-Call Consultant Program, GWRC does not guarantee that any minimum quantity of services will be purchased during the term of a contract. Selected firms will be “on call” to provide services to the Purchasers.

## **Proposer’s Representation**

### **General Terms and Conditions**

CONTRACTUAL CLAIMS: The procedure for filing contractual claims is set forth in Section 2.2-4363 of the *Code of Virginia*.

APPLICABLE LAWS AND COURTS: This solicitation and any resulting contract shall be governed in all respects by the laws of the Commonwealth of Virginia and any litigation with respect thereto shall be brought in the courts of the Commonwealth. The Contractor shall comply with all applicable federal, state and local laws, rules, and regulations.

ANTI-DISCRIMINATION: By submitting their proposal, Offerors certify to GWRC that they will conform to the provisions of the Federal Civil Rights Act of 1964, as amended, as well as the Virginia Fair Employment Contracting Act of 1975, as amended, where applicable, the Virginians With Disabilities Act, the Americans With Disabilities Act, and Section 2.2-4311 of the *Virginia Public Procurement Act (VPPA)*. If the award is made to a faith-based organization, the organization shall not discriminate against any recipient of goods, services, or disbursements made pursuant to the contract on the basis of the recipient's religion, religious belief, refusal to participate in a religious practice, or on the basis of race, age, color, gender or national origin and shall be subject to the same rules as other organizations that contract with public bodies to account for the use of the funds provided; however, if the faith-based organization segregates public funds into separate accounts, only the accounts and programs funded with public funds shall be subject to audit by the public body. (*Code of Virginia*, Section 2.2-4343.1E).

In every contract over \$10,000 the provisions below apply:

During the performance of this contract, the Contractor agrees as follows:

*The Contractor will not discriminate against any employee or applicant for employment because of race, religion, color, sex, national origin, age, disability, or any other basis prohibited by state law relating to discrimination in employment, except where there is a bona fide occupational qualification reasonably necessary to the normal operation of the Contractor. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause.*

*The Contractor, in all solicitations or advertisements for employees placed by or on behalf of the contractor, will state that such Contractor is an equal opportunity employer.*

*Notices, advertisements and solicitations placed in accordance with federal law, rule or regulation shall be deemed sufficient for the purpose of meeting these requirements.*

The Contractor will include the provisions of the above in every subcontract or purchase order over \$10,000, so that the provisions will be binding upon each subcontractor or vendor.

**ETHICS IN PUBLIC CONTRACTING:** By submitting their proposals, Offerors certify that their proposals are made without collusion or fraud and that they have not offered or received any kickbacks or inducements from any other Offeror, supplier, manufacturer or subcontractor in connection with their proposal, and that they have not conferred on any public employee having official responsibility for this procurement transaction any payment, loan, subscription, advance, deposit of money, services or anything of more than nominal value, present or promised, unless consideration of substantially equal or greater value was exchanged.

**IMMIGRATION REFORM AND CONTROL ACT OF 1986:** By entering into a written contract, the Contractor certifies that the Contractor does not, and shall not, during the performance of the contract for services in the Commonwealth, knowingly employ an unauthorized alien as defined in the federal Immigration Reform and Control Act of 1986.

**DEBARMENT STATUS:** By submitting their proposal, Offerors certify that they are not currently debarred by the Commonwealth of Virginia from submitting proposals on contracts for the type of services covered by this solicitation, nor are they an agent of any person or entity that is currently so debarred.

**PAYMENT:**

Invoices for services and accepted deliverables shall be submitted by the Contractor directly to the payment address shown on the contract. All invoices shall show the contract number, Social Security number (for individual contractors) or the federal employer identification number (for proprietorships, partnerships, and corporations).

Any payment terms requiring payment in less than 30 days will be regarded as requiring payment 30 days after invoice or delivery, whichever occurs last. This shall not affect offers of discounts for payment in less than 30 days, however.

All services provided under this contract that are to be paid for with public funds shall be billed by the contractor at the contract price, regardless of which public agency is being billed.

The following shall be deemed to be the date of payment: the date of postmark in all cases where payment is made by mail; the date of submission where payment is made electronically; or the date of offset when offset proceedings have been instituted as authorized under the Virginia Debt Collection Act.

Unreasonable Charges. Under certain emergency procurements and for most time and material purchases, final job costs cannot be accurately determined at the time orders are placed. In such cases, Contractors are on notice that final payment in full is contingent on a determination of reasonableness with respect to all invoiced charges. Charges which appear to be unreasonable will be researched and challenged, and that portion of the invoice held in abeyance until a settlement can be reached. Upon determining that invoiced charges are not reasonable, GWRC shall promptly notify the Contractor, in writing, as to those charges which it considers unreasonable and the basis for the determination. A Contractor may not institute legal action unless a settlement cannot be reached within thirty (30) days of notification.

CHANGES TO THE CONTRACT: Changes can be made to the contract in any of the following ways:

The parties may agree in writing to modify the scope of the contract. An increase or decrease in the price of the contract resulting from such modification shall be agreed to by the parties as a part of their written agreement to modify the scope of the contract.

GWRC may order changes within the general scope of the contract at any time by written notice to the contractor. Changes within the scope of the contract include, but are not limited to, items such as services to be performed, the method of packing or shipment, and the place of delivery. The Contractor shall comply with the notice upon receipt. The Contractor shall be compensated for any additional costs incurred as the result of such order and shall give GWRC a credit for any savings. Said compensation shall be determined by one of the following methods:

By mutual agreement between the parties in writing; or

By agreeing upon a unit price or using a unit price set forth in the contract, if the work to be done can be expressed in units, and the Contractor accounts for the number of units of work performed, subject to GWRC's right to audit the Contractor's records and/or to determine the correct number of units independently; or

By ordering the Contractor to proceed with the work and keep a record of all costs incurred and savings realized. A markup for overhead and profit may be allowed if provided by the contract. The same markup shall be used for determining a decrease in price as the result of savings realized. The Contractor shall present GWRC with all vouchers and records of expenses incurred and savings realized. GWRC shall have the right to audit the records of the Contractor as it deems necessary to determine costs or savings. Any claim for an adjustment in price under this provision must be asserted by written notice within thirty (30) days from the date of receipt of the written order from GWRC. If the parties fail to agree on an amount of adjustment, the question of an increase or decrease in the contract price or time for performance shall be resolved in accordance with the procedures for resolving disputes provided by the Disputes Clause of this contract or, if there is none, in accordance with the disputes provided 2.2-4363 of the Code of Virginia. Neither the existence of a claim nor a dispute resolution process, litigation

or any other provision of this contract shall excuse the contractor from promptly complying with the changes ordered by GWRC or with the performance of the contract generally.

DEFAULT: In case of failure to deliver services in accordance with the contract terms and conditions, GWRC, after due oral or written notice, may procure them from other sources and hold the Contractor responsible for any resulting additional purchase and administrative costs. This remedy shall be in addition to any other remedies which GWRC may have.

DRUG-FREE WORKPLACE: During the performance of this contract, the Contractor agrees to (i) provide a drug-free workplace for the Contractor's employees; (ii) post in conspicuous places, available to employees and applicants for employment, a statement notifying employees that the unlawful manufacture, sale, distribution, dispensation, possession, or use of a controlled substance or marijuana is prohibited in the Contractor's workplace and specifying the actions that will be taken against employees for violations of such prohibition; (iii) state in all solicitations or advertisements for employees placed by or on behalf of the contractor that the Contractor maintains a drug-free workplace; and (iv) include the provisions of the foregoing clauses in every subcontract or purchase order of over \$10,000, so that the provisions will be binding upon each subcontractor or vendor.

For the purposes of this section, "drug-free workplace" means a site for the performance of work done in connection with a specific contract awarded to a Contractor, the employees of whom are prohibited from engaging in the unlawful manufacture, sale, distribution, dispensation, possession or use of any controlled substance or marijuana during the performance of the contract.

AUTHORIZATION TO CONDUCT BUSINESS IN THE COMMONWEALTH: A Contractor organized as a stock or nonstock corporation, limited liability company, business trust, or limited partnership or registered as a registered limited liability partnership shall be authorized to transact business in the Commonwealth as a domestic or foreign business entity if so required by Title 13.1 or Title 50 of the Code of Virginia or as otherwise required by law. Any business entity described above that enters into a contract with GWRC pursuant to the Virginia Public Procurement Act shall not allow its existence to lapse or its certificate of authority or registration to transact business in the Commonwealth, if so required under Title 13.1 or Title 50, to be revoked or cancelled at any time during the term of the contract. GWRC may void any contract with a business entity if the business entity fails to remain in compliance with the provisions of this section.

#### SPECIAL TERMS AND CONDITIONS

AUDIT: The contractor shall retain all books, records, and other documents relative to this contract for five (5) years after final payment, or until audited by the Commonwealth of Virginia, whichever is sooner. GWRC, its authorized agents, and/or state auditors shall have full access to and the right to examine any of said materials during said period.

**CANCELLATION OF CONTRACT:** GWRC reserves the right to cancel and terminate any resulting contract, in part or in whole, without penalty, upon 30 days written notice to the contractor. In the event the initial contract period is for more than 12 months, the resulting contract may be terminated by either party, without penalty, after the initial 12 months of the contract period upon 60 days written notice to the other party. Any contract cancellation notice shall not relieve the contractor of the obligation to deliver and/or perform on all outstanding orders issued prior to the effective date of cancellation.

**CONFIDENTIALITY OF INFORMATION:** Contractor agrees to observe complete confidentiality with respect to all aspects of any confidential information, proprietary data and/or trade secrets and any parts thereof, whether such material is GWRC's or other manufacturer, vendor or distributor to which contractor or contractor's personnel may gain access while engaged by GWRC. Revealing, copying or using in any manner whatsoever any such contents which have not been authorized by GWRC is strictly prohibited. The restrictions herein shall survive the termination of this agreement for any reason and shall continue in force and effect and shall be binding upon the contractor, its agents, employees, successors, assigns, subcontractors or any party claiming an interest in this agreement on behalf of or under the rights of the contractor following any termination. Contractor shall advise all Contractors' agents, employees, successors, assigns, or subcontractors that are engaged by GWRC of the restrictions, present and continuing, set forth herein. Contractor must receive written permission from Regional Council to advertise the work being done for the Council. Contractor shall defend and incur all costs, if any, for actions which arise as a result of non-compliance by Contractor, its agents, employees, successors, assigns, or subcontractors regarding the restrictions herein.

**INDEPENDENT CONTRACTOR:** The Contractor shall be considered an independent contractor and neither the Contractor, nor personnel employed by the contractor, are in any sense to be considered employees or agents of GWRC, or of the Commonwealth of Virginia.

**OWNERSHIP OF MATERIAL:** All materials generated under this contract shall be considered work made for hire. GWRC shall have all rights, title and interest in or to all products, work plans, project reports, designs, programs, databases and documentation developed or generated under this contract including without limitation unlimited rights to use, duplicate, modify or disclose any part thereof, in any manner and for any purpose and the right to permit or prohibit any other person including the contractor from doing so. To the extent the Contractor may be deemed at any time to have any of the foregoing rights the Contractor agrees to assign and does hereby assign such rights to GWRC.

**CONFLICT OF INTEREST:** GWRC reserves the right to determine if a conflict of interest exists between the Contractor or their affiliates and the work of GWRC. The Contractor shall continue to disclose during the term of the contract to GWRC any situations in which potential conflict of interest could arise, present the facts of the situation and offer an opinion as to whether the situation involves a conflict. The Contractor shall agree to accept the decision of GWRC as to whether or not a conflict exists.



November 12, 2021

Mr. Drew Williams  
The Berkley Group  
P.O. Box 181  
Bridgewater, Va. 22812

Dear Drew:

This letter is to notify you that the George Washington Regional Commission is renewing the Standard Agreement for On-Call General Planning Services dated December 5, 2017 for an additional one-year term. The Agreement is currently set to expire on December 31, 2021; however, per the Agreement, the time of performance may be extended by up to two one year increments. The new term will expire on December 31, 2022.

Sincerely,



Chip Boyles  
Executive Director

cc: Kate Gibson, GWRC Deputy Director  
Darren K. Coffey, Berkley Group Director of Strategic Partnerships  
M. Bryant Phillips, Berkley Group Chief Financial Officer  
Kelsey Wong, Business Development Manager

Enclosures: Standard Agreement for On-Call General Planning Services, dated December 5, 2017

**STANDARD AGREEMENT  
FOR ON-CALL GENERAL PLANNING SERVICES**

This AGREEMENT made and entered into this 5th day of December 2017, by and between GEORGE WASHINGTON REGIONAL COMMISSION, hereinafter referred to as the "CLIENT" and THE BERKLEY GROUP, LLC. (hereinafter referred to as the "CONSULTANT") with an office located at P.O. Box 181, Bridgewater, Virginia 22812.

**WITNESSETH:**

WHEREAS, the CLIENT desires to engage the services of the CONSULTANT to provide general planning services and the CONSULTANT has signified its willingness to furnish such support:

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

**Article 1: Scope of CONSULTANT'S Services**

The Consultant agrees to perform in a good and professional manner those services requested from time-to-time by the CLIENT, developed into Task Orders by the CONSULTANT and approved as to scope, schedule, staffing and cost by the CLIENT and included in Attachment A, which is attached hereto and incorporated in the AGREEMENT.

**Article 2: Information and Services to be Provided by the CLIENT**

The completion of the services to be performed by the CONSULTANT under the AGREEMENT is contingent upon the timely receipt from the CLIENT, at no cost to the CONSULTANT, of services, data, and reports which is incorporated in the AGREEMENT.

**Article 3: Time of Performance**

The services of the CONSULTANT will begin on January 1, 2018 and will expire three years from that (12/31/2020), except that, by mutual agreement, the CLIENT and the CONSULTANT may extend the time of performance by up to two one year increments.

**Article 4: Compensation**

A. CONSULTANT'S Compensation

The CONSULTANT shall be compensated for services rendered under this Agreement on a lump sum basis which shall include labor, burden, direct expenses and profit. The total compensation amount for all work during the Time of Performance for

this contract shall not exceed \$2,000,000 and shall be paid in accordance with the CONSULTANT'S approved Task Orders in Attachment A.

B. Method of Payment

Payment shall be made in response to monthly invoices and documentation of costs, based on demonstrated progress in completing the Scope of Services delineated in Attachment A. The CLIENT shall reimburse CONSULTANT within thirty (30) days of receipt of the approved invoice.

**Article 5: Additional Work/Changes**

Work not specifically described under "Task Orders" in Attachment A must be approved by supplemental agreement to those Task Orders by the CLIENT before it is undertaken by the CONSULTANT. Special cases may arise under this contract where a supplemental agreement covering such change cannot be processed and delays to CLIENT would result. Such work in these cases can be authorized by a letter from the CLIENT, to be followed by the supplemental agreement. If the CONSULTANT is of the opinion that any work it has been directed to perform is beyond the scope of this agreement and constitutes extra work, the CONSULTANT shall promptly notify the CLIENT in writing. In the event the CLIENT finds that such work does provide extra compensation to the CONSULTANT for doing this work on the same basis as covered under "Compensation" and as provided under a written Amendment to this Agreement.

**Article 6: Records/Audits**

The CONSULTANT shall maintain complete and accurate books, documents, papers, accounting records, and other evidence with respect to allowable costs incurred and manpower expended under this AGREEMENT. All such records shall be maintained on the basis of generally-accepted accounting principles and shall be clearly identified and readily accessible. The CONSULTANT shall provide access during regular business hours to authorized representative of the CLIENT to such data and records, and the right to inspect and audit all data and records of the CONSULTANT relating to its performance under the AGREEMENT.

**Article 7: Ownership of Documents**

Upon completion or termination of this contract, all documents prepared by the CONSULTANT or furnished to the CONSULTANT by the CLIENT shall be delivered to and become the property of the CLIENT. All calculations, plans, specification and other data prepared under this contract shall be made available, upon request, to the CLIENT without restriction or limitation on this further use. The CONSULTANT may, at its own expense, have copies made of the documents or any other data it has furnished the CLIENT under this contract without restriction or limitation on their further use by the CONSULTANT.

The CONSULTANT shall not be liable for use by the CLIENT of said plans, documents, or other data for any purpose other than for the purpose for which this AGREEMENT has been exhausted.

**Article 8: Termination**

The CLIENT and the CONSULTANT will have the right to terminate the AGREEMENT by written notice to the other party at least Ten (10) days prior to the specified effective date of such termination. In such event, all finished and unfinished documents and work papers prepared by the CONSULTANT under this AGREEMENT will, at the option of the CLIENT, become the CLIENT's property, and the CONSULTANT will be paid for services satisfactorily rendered up to the date of such termination, plus reasonable termination costs. Neither lost profit nor anticipatory profit will be paid.

**Article 9: Excusable Delays**

The CONSULTANT will not be in default by reason of any failure in performance of this AGREEMENT in accordance with its terms (including any failure by the CONSULTANT to make progress in the "prosecution of the work hereunder which endangers such performance) if such failure arises out of causes beyond the control and without the fault or negligence of the CONSULTANT. Such causes may include, but are not restricted or limited to, acts of God, or of the public enemy, acts of the government in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, and unusually severe weather but in every case the failure to perform must be beyond the control and without the fault or negligence of the CONSULTANT. An excusable delay will permit CONSULTANT an extension of time for such reasonable period as may be mutually agreed upon between the parties.

**Article 10: Indemnification**

The CONSULTANT shall hold harmless and indemnify the CLIENT, its officers, directors, and employees from and against losses, liabilities, expenses, and costs, including, without limitation, reasonably attorney's fees and costs, that may be based on any injury to person's or property to the extent caused by the negligent performance of services under this AGREEMENT by the CONSULTANT or any person employed by the CONSULTANT.

**Article 11: Contingent Fees**

The CONSULTANT warrants that it has not employed or retained any company or person, other than a bonafide employee working solely for the CONSULTANT, to solicit or secure this contract and that it has not paid or agreed to pay any company or person, other than a bonafide employee working solely for the CONSULTANT, any fee, commission, percentage, brokerage fee, gifts or any other

consideration, contingent upon or resulting from the award or making of this contract. For breach or violation of this warranty, the CLIENT shall have the right to annul this contract without liability.

**Article 12: Conflict of Interest**

The CONSULTANT certifies that to the best of its knowledge no CLIENT employee or office of any public agency interest in the AGREEMENT has any pecuniary interest in the business of the CONSULTANT and that no person associated with the CONSULTANT has any interest that would conflict in any manner or degree with the performance of the AGREEMENT.

**Article 13: Compliance with Laws**

The CONSULTANT shall at all times observe and comply with all laws, ordinances, and regulations of the state, federal, county and city governments which may, in any manner, affect the performance of the AGREEMENT.

**Article 14: Assignability**

The CONSULTANT shall not assign any interest in the AGREEMENT and shall not transfer any interest in the same (whether by assignment or novation), without prior written consent of the CLIENT; provided, however, that claims for money due or to become due to the CONSULTANT from the CLIENT under this AGREEMENT may be assigned to any commercial bank or other financial institution without such approval.

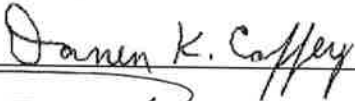

**Article 15: Personnel**

All of the services will be performed by the CONSULTANT; and none of the work or services covered by this AGREEMENT will be subcontracted without prior written approval of the CLIENT. The CONSULTANT represents that it has, or will secure at its own expense, all personnel required to carry out and perform the Scope of Services of this AGREEMENT. Such personnel will not be employees of or have any relationship with any of the members of the Client. Such personnel will be fully qualified and will be authorized under state and local law to perform such services.

**IN WITNESS WHEREOF**, the **CLIENT** and the **CONSULTANT** have executed this **AGREEMENT** on the date and year first above written.

<b>CLIENT:</b>	<b>CONSULTANT:</b>
George Washington Regional Commission	Berkley Group, LLC

**SIGNATURES**

 (Berkley Group, LLC)  
 (GWRC)

**TYPED NAMES**

\_\_\_\_\_  
Darren K. Coffey (Berkley Group, LLC)  
\_\_\_\_\_  
Timothy Ware (GWRC)

**TITLES**

\_\_\_\_\_  
Chief Executive Officer (Berkley Group, LLC)  
\_\_\_\_\_  
Executive Director (GWRC)