

Exhibit A

Professional Services Agreement

**AGREEMENT BETWEEN  
THE BERKLEY GROUP AND  
CITY OF KELLER, TEXAS FOR  
PROFESSIONAL SERVICES**

This Agreement entered into on this \_\_\_\_ day of \_\_\_\_\_, 2023 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 City of Keller, a political subdivision of the State of Texas, having its administrative office at 1100 Bear Creek Pkwy., Keller, TX 76244, and hereafter called “the Client”.

**WITNESSETH:**

**WHEREAS**, the Client desires to retain the services of The Berkley Group to perform 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 State of Texas;

**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 \_\_\_\_\_, 2023 and shall continue such performance through \_\_\_\_\_, 2024 (“Term”). The Term may 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. 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. 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. 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:

\_\_\_\_\_  
Name

\_\_\_\_\_  
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.

- C. ***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 any requirements of the Texas 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. Escalation Clause. For on-site assignments, there will be a three (3) per cent escalation assessed on an annual basis to coincide with the fiscal year.

**SECTION 8. JURISDICTION AND VENUE.**

- A. This Agreement has been and shall be construed as having been made and delivered in the State of Texas and shall be governed by laws of the State of Texas, 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 Keller, Texas.

**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 }}**

Professional Services Agreement

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

**FOR CITY OF KELLER**

**ATTEST:**

\_\_\_\_\_

\_\_\_\_\_

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

Professional Services Agreement

**FOR THE BERKLEY GROUP**

**ATTEST:**

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

\_\_\_\_\_  
Andrew D. Williams, CEO

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





September 13, 2023

City of Keller  
ATTN: Ms. Sarah Hensley, Director of Community Development  
1100 Bear Creek Pkwy.  
Keller, TX 76244

**RE: Work Order 1: Planning Staff Services**

Dear Ms. Hensley:

We are pleased to present the associated scope and fee to provide Planning Staff Services to the City of Keller from October 1, 2023 until September 30, 2024.

If you have any questions or need additional information, please feel free to contact me at any time.

Sincerely,

A handwritten signature in black ink, appearing to read "Andrew D. Williams".

Andrew D. Williams, AICP  
Chief Executive Officer

I have reviewed the scope and fee for the associated work order and I hereby give the consultant notice to proceed for the work described herein.

\_\_\_\_\_  
Ms. Sarah Hensley, Director of Community Development

\_\_\_\_\_  
Date

## **I. SCOPE OF WORK**

The Berkley Group will provide Planning Staff Services to the City of Keller. With our team of professional planners, we will help manage the day-to-day workload for the Community Development Department. Responsibilities will include, but not be limited to, process and review applications for plats, development plans, site plans, special use permits, zoning verification letters, variance applications, zoning and ordinance amendments and other planning applications for compliance with all applicable standards. Responsible to assist in maintaining the highest of standards and compliance with the City's development strategies: the Unified Development Code, the Future Land Use Plan, urban planning practices, and other related local, state, and federal laws and regulations. The point of contact for this assignment is Michael D. Zehner, Director of Planning and Community Development.

The following assumptions shall apply:

### **ASSUMPTIONS**

1. **Initiation:** The City will provide up-to-date copies of the City's ordinances, master plans, and any other related documents within one week of a signed notice to proceed.
2. **Contact Person:** The City will provide a single staff person that will be responsible for collecting and transmitting data, resources, and other related information to the Berkley Group.
3. **Remote Access:** The City will provide Berkley Group staff with access to all necessary materials to complete assigned duties.

## **II. TERM OF SERVICE**

Beginning no earlier than October 1, 2023, the Berkley Group will be able to deliver up to four (4) hours of on-site work per week and 64 hours of off-site work per month. Beginning April 1, 2024, the Berkley Group will be able to deliver up to 40 hours of off-site work a month (includes, Planning and Zoning Commission or City Council involvement and on-call in-person needs). If additional support hours are required for a project, the hours may be increased by mutual agreement by both parties (\$100/hr). This work order will remain in effect until September 30, 2024.

## **III. FEE**

The fee for Planning Staff Services from October 1, 2023 to March 31, 2024 is \$7,500 per month. The fee for Planning Staff Services from April 1, 2024 to September 30, 2024 is \$100/per hour, up to \$4,000 per month. Any travel or lodging will be reimbursed at direct cost and mileage will be reimbursed at the active IRS rate. Payment will be made to the Berkley Group and invoiced monthly. Rates will be reviewed and updated annually.