

**RESOLUTION AUTHORIZING PROFESSIONAL SERVICES AGREEMENT WITH  
THE NISHUANE GROUP FOR PLANNING AND ZONING CONSULTING SERVICES**

**WHEREAS**, N.J.S.A. 40:55D-24 empowers the planning board of a municipality to “employ, or contract for, and fix the compensation of ... experts as it may deem necessary” and further provides that “the governing body shall make provision in its budget and appropriate funds for the expenses of the planning board”; and

**WHEREAS**, West Orange Municipal Ordinance §25-46.6 provides that the Planning Board may employ or contract for the services of experts and other additional staff and services as the Board shall deem necessary and proper to aid in the performance of its duties, the Board’s expenditures for such staff and services shall not exceed the amount appropriated by the Council in the municipal budget; and

**WHEREAS**, West Orange Municipal Ordinance §25-46.7 describes the powers and duties of the Planning Board, all of which require the input of advice and guidance from a professional planning expert, including planning advice on c variance applications associated with site plan and subdivision submissions (N.J.S.A. 40:55D-25), zoning ordinance amendments and new zoning ordinances promulgated by the Council to determine if such proposed ordinances are in compliance with the Master Plan (N.J.S.A. 55D-26), and review of capital projects (N.J.S.A. 55D-31) ; and

**WHEREAS**, N.J.S.A. 40:55D-71 provides that the governing body shall make provisions in the budget and appropriate funds for the expenses of the board of adjustment which include experts that the board of adjustment shall deem necessary, not exceeding the amount appropriated by the governing body; and

**WHEREAS**, West Orange Municipal Ordinance §25-47.7 describes the powers and duties of the Zoning Board of Adjustment which include applications for land use where expert planning testimony is necessary and indispensable to assist the board in their duties; and

**WHEREAS**, the Planning Board and Zoning Board of Adjustment of the Township of West Orange have expressed by adopted resolutions the appointment of an expert planner, The Nishuane Group, as necessary experts to assist each of the respective boards in carrying out their duties required by both the MLUL and the Township of West Orange Municipal Ordinances; and

**WHEREAS**, West Orange Municipal Code §25-55 provides that the Planning Board and/or Zoning Board of Adjustment shall require fees and escrow deposits ...and such funds shall be utilized to pay the cost of professional fees, including for engineering, legal, planning and/or traffic experts, concerning an application for development submitted by an applicant”; and

**WHEREAS**, the court in the case of Flama Const. Corp. v. Franklin Tp. 201 *N.J. Super* 488, 506 (App. Div. 1985) held “imposing such fees is within the authority of the planning board or board of adjustment, and that it is consistent with their role as *quasi-judicial bodies*”; and

**WHEREAS**, the case of Planning Bd. of Leonia v. Borough Council of Leonia, 222 *N.J. Super.* 207, 211-212 (Law Div. 1987) held that:

neither the limiting language [of N.J.S.A. 40:55D-24] as to attorneys nor the silence as to experts grants the council any power to actively or passively interfere with the board's selection of professionals. The lack of statutory constraints within N.J.S.A 40:55D-24 on expert appointments must be construed as a delegation of unbridled discretionary power to the board. Therefore, the council resolutions purporting to direct who should act as board engineer, what work that person could or could not perform, and refusal to release funds in payment of authorized vouchers, were an impermissible attempt to arrogate the board's appointive power to itself and are void; and

**WHEREAS**, for the calendar year of 2025 to date, Nishuane Group was paid \$43,666.25 from escrow funds and \$670.25 from non-escrow funds; and

**WHEREAS**, the absence of a planning expert to assist the boards in their consideration of land use applications will prohibit the planning board and zoning board from considering completed land use applications which can result in applicants claiming default approvals as per N.J.S.A. 40:55D-10.4; and

**WHEREAS**, appropriating additional funds to The Nishuane Group will allow the Planning Board to proceed with land use applications in progress, specifically, PB-24-01 related to West Essex Highlands, an inclusionary affordable housing project that was the subject of a court settlement agreement dated April 17, 2020 and for which the Applicant escrow are fees which become due to Nishuane Group as part of its escrow obligations; and

**WHEREAS**, increasing the budget limit for payment of services to Nishuane Group will not result in significant payment to Nishuane Group from Township funds but will allow payments to continue from land use applicant escrow accounts, thus allowing land use applications to continue uninterrupted; and

**WHEREAS**, N.J.S.A. 40:55D-50 provides that final approval of site plans and major subdivisions must be considered by the planning board within 45 days after submission of a complete application, failure to increase the budget limit of payment of services to Nishuane Group will open the Township up to automatic default approvals from land use applicants who have submitted completed land use applications but which cannot proceed to a hearing before either the Planning Board or Zoning Board of Adjustment within the time limits prescribed by statute; and

**WHEREAS**, N.J.S.A. 40:55D-73 provides that failure of the Zoning Board of Adjustment to render a decision on an application for development within 120 days shall result in a decision in favor of the applicant; and

**WHEREAS**, the Zoning Board of Adjustment currently has numerous pending applications which have been deemed complete so that the 120-day timeclock is running which requires action by this Board; and

**NOW, BE IT HEREBY RESOLVED**, by the Township Council of the Township of West Orange that for the remainder of the calendar year 2025, the Township Council authorizes the Township to enter into the professional services agreement with Nishuane Group annexed hereto as Exhibit “A” for services performed on behalf of the Planning Board and Zoning Board of Adjustment not to exceed (“NTE”) \$75,000; and

**BE IT FURTHER RESOLVED** that a certified copy of this Resolution be delivered forthwith to Mayor McCartney, Mr. Smeraldo and the Municipal Clerk.

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**Karen J. Carnevale, R.M.C.**  
**Municipal Clerk**

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**Joe Krakoviak**  
**Council President**

**Adopted: September 8, 2025**