

**CONTRACT**

**FOR**

**PROFESSIONAL PLANNING SERVICES**

**AS AFFORDABLE HOUSING PLANNER (ANNUAL CONTRACT)**

**FOR THE BOROUGH OF ALPHA, WARREN COUNTY, NEW JERSEY**

**THIS AGREEMENT** is made as of this 26<sup>th</sup> day of July, 2022

**BETWEEN:**

Borough of Alpha  
1001 East Boulevard  
Alpha, NJ 08865

hereinafter referred to as CLIENT

**AND**

Kyle McManus Associates, LLC  
2 East Broad Street, Second Floor  
Hopewell, NJ 08525

who shall be the AFFORDABLE HOUSING PLANNER hereinafter referred to as PLANNER.

**WHEREAS**, the CLIENT desires to engage the PLANNER to serve as the Affordable Housing Planner for the purpose of rendering planning services when the need arises and upon the request of THE LAND USE BOARD and BOROUGH COUNCIL AND MAYOR; and

**WHEREAS**, by entering into this CONTRACT, the CLIENT acknowledges that the services to be performed by the PLANNER shall be considered a "Professional Service" in accordance with N.J.S.A. 40A:11-1 et. seq.; and

**WHEREAS**, James Kyle, PP, AICP of Kyle McManus Associates, LLC shall be designated as the Affordable Housing Planner on behalf of the CLIENT; and

**WHEREAS**, PLANNER certifies that it is in compliance with Pay-to-Play Laws, P.L.2004, c.19 and P.L.2005, c.271, including any applicable local ordinance(s) addressing political contributions, effective as of the date of this agreement.

**NOW, THEREFORE**, the CLIENT and PLANNER, in consideration of their mutual covenants and promises, agree as follows:

**SECTION I -- PROFESSIONAL SERVICES OF THE PLANNER**

The PLANNER shall provide basic professional planning services as required by CLIENT which may include the following:

1. Serve as affordable housing consultant to the CLIENT;
2. Provide technical and planning advice to the CLIENT;

3. Review the applications, reports, and plans submitted by others to the CLIENT;
4. Consult with others and the CLIENT with respect to the foregoing matters, and all other planning matters, related to the duties and responsibilities of the CLIENT;
5. Furnish pertinent reports, counseling, and advice to the CLIENT as required;
6. Review and/or prepare Master Plans and development ordinances.
7. Provide professional planning and zoning studies, reports and testimony as requested by the CLIENT.
8. Perform such other duties and functions as may be requested by the CLIENT; and
9. Attend meetings of the CLIENT as directed.

## SECTION II -- CLIENT'S RESPONSIBILITIES

The CLIENT agrees to:

- A. Make such records and information available to the PLANNER as may be required to assist him in the performance of his duties.
- B. Authorize and direct committees, employees, and agents of the CLIENT to consult with the PLANNER at all reasonable times upon the request of the PLANNER regarding:
  1. The work and services to be done or rendered by the PLANNER and/or others in the employ of the CLIENT;
  2. The applications, plans, and reports to be reviewed by the PLANNER, submitted by others to the CLIENT;
  3. The coordination of PLANNER'S professional services for any project or application; and,
  4. Any and all other matters, as requested by the PLANNER, relating to the work and services of the PLANNER.
- C. Submit to the PLANNER all relevant applications, plans, and reports prepared by others within such time to allow PLANNER ample opportunity to properly review same, consult with respect thereto and to make any necessary reports to the CLIENT, without the PLANNER causing a delay in the progress of the work.
- D. Authorize the PLANNER to undertake additional services related to special projects ("Additional Services") if deemed necessary. Such authorization shall be by resolution of the CLIENT and memorialized in writing between the parties prior to commencement of said services. The

PLANNER shall be compensated for Additional Services in accordance with the negotiated fee agreed to between CLIENT and PLANNER, which shall be memorialized in the resolution authorizing the Additional Services.

### SECTION III – COMPENSATION OF THE PLANNER

- A. For the services rendered by the PLANNER under this Agreement, the CLIENT shall pay and the PLANNER shall receive the following described sums:
1. Professional Services:

For all professional services provided pursuant to Section I of this Agreement, the PLANNER shall be compensated at a rate consistent with Exhibit B. On any task for which the PLANNER is to be compensated from an escrow account for review and/or inspection services, CLIENT shall cooperate with the PLANNER and communicate the escrow account status throughout the extent of the application process or construction to assist PLANNER in ensuring that there are adequate funds for the services requested. At any time an escrow account is less than \$1,500, CLIENT shall provide immediate notice to PLANNER so that PLANNER can assess the prospective services requested and compare same to the escrow account balance prior to any further performance. All other work performed by staff other than the PLANNER will be billed in accordance with the Rate Schedule attached as Exhibit B.
  2. Additional Services:

For the additional services performed under Section II of this Agreement, the PLANNER shall be compensated in accordance with the negotiated fee as set forth in writing between the parties.
  3. Attendance at Meetings:

The PLANNER shall attend scheduled workshop and public meetings of the CLIENT as requested. The PLANNER shall be compensated for said meetings consistent with Exhibit B. Should PLANNER attend a meeting which does not commence due to lack of a quorum or lack of sufficient voting members, PLANNER shall be compensated for a minimum of two (2) hours of time.
  4. Additional Expenses:

Expenses for postage and production of documents (including photo copies and color and/or other exhibits) and all other expenses specifically related to the work performed under this Agreement shall be reimbursed to the PLANNER in accordance Exhibit B.
- B. Vouchers or invoices shall be issued monthly for services performed. Such billings shall be due when rendered. In the event CLIENT or a Developer/Applicant has a dispute with an invoice (or any portion of an invoice), CLIENT or Developer/Applicant shall nevertheless pay all undisputed invoices, or undisputed portions thereof, no later than 60 days from the date of the invoice.

PLANNER agrees to negotiate any and all disputes in good faith with an effort of resolving the dispute within sixty (60) days of the subject invoice date.

- C. In the event CLIENT requires PLANNER'S services beyond the termination date specified in SECTION V, PLANNER'S Schedule of Rates shall be subject to an equitable adjustment in January to reflect changes in the various elements that comprise the rates. All adjustments will be in pursuant to an agreement reached between the CLIENT and the PLANNER reduced to writing and deemed a modification of this Agreement.

#### **SECTION IV – PERIOD OF SERVICE**

This Agreement shall have an effective commencement date of January 1, 2022 and shall terminate on December 31, 2022. Should the PLANNER'S services be required beyond that time, the PLANNER'S compensation for such work shall be subject to renegotiation, provided however, compensation shall not be lower than the rate provided in this agreement.

#### **SECTION V – STATUS OF PLANNER**

1. To the extent permitted by law, the PLANNER, when engaged in the performance of duties and services as MUNICIPAL PLANNER set forth herein (including specifically in Section I hereof), shall, only in the event of litigation, have the status of an agent of the Municipality for the sole and limited purposes of Title 59 Immunity (P.L.1972, c.45) allowing PLANNER to therefore be entitled to all immunities normally afforded to a MUNICIPAL employee or agent under Title 59.
2. The CLIENT, subject to appropriation and availability of funds, authorizes the PLANNER to secure any and all professional, technical and non-technical staff which may from time to time be necessary in the performance of the services required. It is expressly agreed and understood that services will be provided and certain functions will be performed on behalf of the CLIENT, pursuant to the terms of this proposal, by employees of Kyle McManus Associates, LLC.
3. The professional, technical and non-technical staff referred to in subpart 2 hereof, when they are engaged on behalf of the CLIENT in the performance of the duties and services referred to in Section I hereof, shall be afforded Title 59 Immunity, to the extent permitted by law, as set forth in subpart 1, hereof.

#### **SECTION VI – OWNERSHIP AND REUSE OF DOCUMENTS**

1. All final plans and specifications, ordered by the CLIENT and prepared by the PLANNER shall become the joint property of the CLIENT and the PLANNER. At the completion of work or in the event of termination, all work sheets and internal office communications of the PLANNER, including drawings, sketches, calculations, field notes and memoranda are and shall remain the property of the PLANNER, as instruments of service. The CLIENT, at its expense, may obtain extra prints of final drawings and specifications.
2. All documents including drawings and specifications prepared by the PLANNER pursuant to this Agreement are Instruments of Service with respect to a specific project. They are not intended or represented to be suitable for reuse of the CLIENT or others on extensions of the project or on any other project. Any reuse without written verification or adaptation by the PLANNER for the specific purpose

intended will be at the CLIENT's sole risk, with no liability or exposure to PLANNER; and the CLIENT shall indemnify and hold harmless PLANNER from all claims, damages, losses and expenses including attorney's fees arising out of or resulting from such unauthorized use. Any such verification or adaptation will entitle PLANNER to further compensation at rates to be agreed upon by the CLIENT and PLANNER.

#### **SECTION VII – INSURANCE AND INDEMNIFICATION**

1. PLANNER shall secure and maintain Workman's Compensation Insurance (as required by Law) and General Liability Insurance (as required by contract) to protect the PLANNER and/or Its Employees and agents from claims for bodily injury, death or property damage which may arise from the performance of services pursuant to this proposal. The limits of said Liability Insurance shall not be less than \$1,000,000 with a \$2,000,000 excess liability coverage. The PLANNER shall provide Certificates of Insurance to the CLIENT prior to the performance of any services.
2. PLANNER shall also provide and maintain Professional Liability (Errors and Omissions) Insurance for claims which arise from any negligent performance of the PLANNER pursuant to this agreement. The limits of PLANNER'S Professional Liability insurance are currently \$1,000,000 per claim.
3. The CLIENT acknowledges that although the PLANNER is to cooperate with and make recommendations to the CLIENT with respect to planning matters related to the services provided by PLANNER, the final decisions are within the CLIENT's discretion and are to be made by the CLIENT.

The PLANNER shall not be liable in any way for any decision of the CLIENT (or consequences thereof) which (i) are not in accordance with the recommendations of the PLANNER, or (ii) are based on or related to any failure on the part of the CLIENT to accept or follow any recommendations of the PLANNER. In such event, the CLIENT hereby releases the PLANNER from any and all liability and waives any and all claims against the PLANNER arising out of or relating to any such decisions or the consequences thereof, and agrees to indemnify, defend, and save harmless the PLANNER against loss, liability, claim, damage, and expense, including reasonable counsel fees, arising out of or relating to any such decisions or the consequences thereof.

4. PLANNER agrees subject to the provisions herein, to indemnify and hold the CLIENT harmless from any damage, liability or cost (including reasonable attorneys' fees and costs of defense) to the extent caused by PLANNER's negligent acts, errors or omissions (and those of his or her contractors, subcontractors or consultants or anyone for whom the PLANNER is legally liable) in the performance of professional services under this Agreement.

The CLIENT agrees subject to the provisions herein, to indemnify and hold PLANNER harmless from any damage, liability or cost (including reasonable attorneys' fees and costs of defense) to the extent caused by the CLIENT's negligent acts, errors or omissions.

#### **SECTION VIII – LITIGATION AND ADDITIONAL INVESTIGATION**

If requested by the client or directed by subpoena or court order, or in response to an Open Public Records Act ("OPRA") request, the PLANNER shall prepare for AND appear in litigation matters or provide project documents on behalf of the CLIENT or make investigations or reports in connection therewith in accordance

with Exhibit B, specifically the Public Client Litigation Rate Schedule, or other consideration for such additional compensation as the PLANNER and CLIENT shall previously agree to in writing.

#### **SECTION IX -- ENTIRE AGREEMENT**

This Agreement represents the entire agreement between the CLIENT and the PLANNER relating to the subject matter hereof and no representations or agreements made by either party or by any representative of either party in the negotiations leading to this Agreement or otherwise which are not expressed in this Agreement shall be binding on either party.

No change in, addition to, or modification of any provision of this Agreement shall be effective unless made by written agreement signed by the party to be charged with such change, addition, or modification.

#### **SECTION X -- STATUTORILY REQUIRED AFFIRMATIVE ACTION CLAUSES**

The PLANNER and the CLIENT hereby incorporate by reference into this Agreement the mandatory language of Subsection 3.4(a) and the mandatory language of Section 5.3 of the Regulations promulgated by the Treasurer of the State of New Jersey pursuant to P.L. 1975, c. 127 and N.J.S.A. 10:5-31, as amended and supplemented from time to time, and PLANNER agrees to comply fully with the terms, provisions and conditions of Subsection 3.4(a), and Section 3.4(a) shall be applied subject to the terms of Subsection 3.4(d) of the Regulations.

The Affirmative Action Language set forth in Exhibit A is also made a part hereof.

#### **SECTION XI -- AMERICANS WITH DISABILITIES ACT**

The PLANNER and the CLIENT do hereby agree that the provisions of Title II of the Americans with Disabilities Act of 1990 ("Act") (U.S.C. Sec. 12101 et seq.), which prohibit discrimination on the basis of disability by public entities in all services, programs, and activities provided or made available by public entities, and the rules and regulations promulgated pursuant thereunto, are made a part of this Agreement.

#### **SECTION XII -- CONTROLLING LAW**

The laws of the State of New Jersey shall govern this Agreement.


#### **SECTION XIII -- SUCCESSORS AND ASSIGNS**


Each Party to the Agreement is hereby bound to the terms and conditions contained in this Agreement and the legal representatives, successors and assignees of this Agreement, if any, shall also be bound to the terms and conditions contained herein.

#### **SECTION XIV - SEVERABILITY**


Any provision of this Agreement held to be void and unenforceable under any law or regulation shall be stricken, and all remaining provisions shall continue to be valid and binding upon the parties to this Agreement.

IN WITNESS WHEREOF, the CLIENT and PLANNER have caused this Instrument to be executed in its respective name and behalf as of the day and year herein written.

BY:   
[Municipal Witness]

BOROUGH OF ALPHA  
BY:   
[Municipal Signature]  
Mayer COUNCIL PRESIDENT

KYLE MCMANUS ASSOCIATES, LLC

BY:   
James Kyle, PP/AICP  
Principal/Owner

**EXHIBIT A**

**N.J.S.A. 10:5-31 and N.J.A.C. 17:27  
MANDATORY EQUAL EMPLOYMENT OPPORTUNITY LANGUAGE  
Goods, Professional Services and General Service Contracts  
(Mandatory Affirmative Action Language)**

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

The contractor or subcontractor, where applicable, will not discriminate against any employee or applicant for employment because of age, race, creed, color, national origin, ancestry, marital status, affectional or sexual orientation or sex. Except with respect to affectional or sexual orientation, the contractor will take affirmative action to ensure that such applicants are recruited and employed, and that employees are treated during employment, without regard to their age, race, creed, color, national origin, ancestry, marital status, affectional or sexual orientation or sex. Such action shall include, but not be limited to the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the Public Agency Compliance Officer setting for the provisions of this nondiscrimination clause.

The contractor or subcontractor, where applicable will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to age, race, creed, color, national origin, ancestry, marital status, affectional or sexual orientation or sex.

The contractor or subcontractor, where applicable, will send to each labor union or representative or workers with which it has a collective bargaining agreement or other contract or understanding, a notice, to be provided by the agency contracting officer, advising the labor union or workers' representative of the contractor's commitments under this act and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

The contractor or subcontractor, where applicable, agrees to comply with any regulations promulgated by the Treasurer pursuant to N.J.S.A. 10:5-31 et seq., as amended and supplemented from time to time and the Americans with Disabilities Act.

The contractor or subcontractor agrees to make good faith efforts to employ minority and women workers consistent with the applicable county employment goals established in accordance with N.J.A.C. 17:27-5.2 or a binding determination of the applicable county employment goals determined by the Division, pursuant to N.J.A.C. 17:27-5.2.

The contractor or subcontractor agrees to inform in writing its appropriate recruitment agencies including, but not limited to, employment agencies, placement bureaus, colleges, universities, labor unions, that it does not discriminate on the basis of age, creed, color, national origin, ancestry, marital status, affectional or sexual orientation or sex, and that it will discontinue the use of any recruitment agency which engages in direct or indirect discriminatory practices.



The contractor or subcontractor agrees to revise any of its testing procedures, if necessary, to assure that all personnel testing conforms with the principles of job-related testing, as established by the statutes and court decisions of the State of New Jersey and as established by applicable Federal law and applicable Federal court decisions.

In conforming with the applicable employment goals, the contractor or subcontractor agrees to review all procedures relating to transfer, upgrading, downgrading and layoff to ensure that all such actions are taken without regard to age, creed, color, national origin, ancestry, marital status, affectional or sexual orientation or sex, consistent with the statutes and court decisions of the State of New Jersey, and applicable Federal law and applicable Federal court decisions.

The contractor shall submit to the public agency, after notification of award but prior to execution of a goods and services contract, one of the following three documents:

Letter of Federal Affirmative Action Plan Approval  
Certificate of Employee Information Report  
Employee Information Report Form AA302

The contractor and its subcontractors shall furnish such reports or other documents to the Division of Contract Compliance and EEO as may be requested by the Division from time to time in order to carry out the purposes of these regulations, and public agencies shall furnish such information as may be requested by the Division of Contract Compliance & EEO for conducting a compliance investigation pursuant to Subchapter 10 of the Administrative Code at N.J.A.C. 17:27.

**EXHIBIT B**

**2022 PUBLIC CLIENT RATE SCHEDULE**

Licensed Professional Planner- Principal \$142/hour  
Licensed Professional Planner – Associate \$130/hour  
Licensed Professional Planner – Senior Project Manager \$125/hour  
Licensed Professional Planner – Project Manager \$120/hour  
Assistant Planner \$90/hour  
GIS Technician \$80/hour  
Assistant Professional \$75/hour  
Administrative Assistant \$60/hour

Outside (pass-thru) Services Cost +10%  
Postage, Federal Express, UPS, DHL Cost  
Paper Black/White Copy/Prints (8.5"x11") \$0.10/Sheet  
Paper Black/White Copy/Prints (11"x17") \$0.20/Sheet  
Paper Color Copy/Prints (8.5"x11") \$0.50/Sheet  
Paper Color Copy/Prints (11"x17") \$2.50/Sheet  
Large format Color Copy/Prints (24"x36") \$40/Sheet

Travel For Regularly Scheduled Meetings No Charge  
Travel For All Other Meetings and Other Municipal Business At Rates Noted Above

**2022 PUBLIC CLIENT LITIGATION RATE SCHEDULE**

Licensed Professional Planner- Principal \$190/hour  
Licensed Professional Planner – Associate \$175/hour  
Licensed Professional Planner – Senior Project Manager \$170/hour  
Licensed Professional Planner – Project Manager \$165/hour  
Assistant Planner \$135/hour  
GIS Technician \$125/hour  
Assistant Professional \$75/hour  
Administrative Assistant \$60/hour