



TRAFFIC PLANNING AND DESIGN, INC.

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Professional Services Agreement

Date:	March 31, 2021	Client:	Borough of West Chester
Client Address:	401 E. Gay Street		
	West Chester, PA 19380		
Client Contact:	Michael Perrone, Borough Manager		
Project Name:	High Street Corridor - Preliminary Design		
Municipality/County/State:	Borough of West Chester, Chester County, PA		
TPD Project Manager:	Randy Waltermyer, AICP		
TPD Project No.:	WCBO.00021		

Traffic Planning and Design, Inc. (TPD) is pleased to submit this Professional Services Agreement (PSA) regarding the Preliminary Design of the High Street Corridor Improvements. This Agreement will be between TPD and West Chester Borough ("Client").

ASSUMPTIONS

This Agreement has been prepared under the following assumptions, which reflect TPD's current understanding of the project:

General

- » This Agreement is for tasks associated with **Preliminary Design** of the High Street corridor as detailed in the December 2020 South High Street Corridor Plan. Upon concurrence of the Preliminary Design, TPD will prepare a separate agreement for elements of the project that proceed to Final Design and ultimately construction.
- » High Street is a PennDOT State Route throughout the Project Limits.
- » This project will be designed in accordance with PennDOT and West Chester Borough standards.
- » All Preliminary Plans and Documents prepared under this agreement will be developed under the PennDOT HOP delivery process. If federal funding becomes available for the project, TPD will issue a proposal supplement to adjust the design plans to comply with all standards for State and Federally funded transportation projects.
- » There is a HSIP project currently being worked on by PennDOT to construct new Traffic Signals at the High Street intersections with University Avenue and Sharpless Street. The project team will coordinate with PennDOT on their design.

Project Goals/Deliverables

This Agreement assumes that the team will work towards preparing the following Goals and Deliverables during this **Preliminary Design Phase**:

- » Coordination with the HSIP Project, PennDOT, West Chester Borough and Stakeholders.
- » Detailed Field Survey of the Project Limits.
- » Scope of proposed improvements based off various design aspects.
- » List of Required Right-of-Way and Easements.
- » List of Potential Utility Conflicts and Relocations.
- » List of Impacts to Properties along the project limits.
- » 30% Design Level Preliminary Design Plan Set and Documents
- » Preliminary Selection of Project Materials.
- » Preliminary Opinion of Cost for the proposed improvements.
- » List of required project approvals and associated timeline.
- » Phasing Plan for project implementation.

SEPTA Coordination

SEPTA provides service along High Street. TPD will coordinate with SEPTA and PennDOT with regards to possible bus stop modifications and relocations – especially at the High Street / Linden Street intersection, based upon ongoing discussions.

Traffic Signalization

This Agreement does not include traffic signal design at any intersections. A separate proposal will be prepared should traffic signal design and/or interconnection with nearby signals be required for this phase.

Traffic Impact Study/Analysis

This proposal does not include additional traffic impact study work.

Right of Way

It is assumed that Right of Way or easement dedication and associated plan/deed preparation is not required for this phase. Any work necessary for Right-of-Way dedication will be identified, but advanced in a supplemental agreement.

Utilities

Regarding underground utilities, TPD will contact PA One Call to confirm the depth, location, type and size of all underground utilities within the project limits. However, TPD is not responsible for the field verification of underground utilities including the depth, location, type or size of existing pipes, manholes, laterals and valves. TPD is not responsible for any errors or omissions by the surveyor or utility companies including, but not limited to, the depth, location, type or size of existing pipes, manholes, laterals and valves. There are firms that are underground utility specialists that we can refer to you upon request. The cost of these specialists is not included in this proposal.

Opinions of Probable Construction Cost

Evaluation of Client's or owner's Project budget, and/or estimates of construction cost, if included in TPD's Scope of Services, represent TPD's best judgment as a design professional familiar with the construction industry. It is recognized, however, that TPD does not have control over the cost of labor, materials, or equipment, over the contractor's methods of determining bid prices, or over competitive bidding, market, or negotiating conditions. Accordingly, TPD cannot and does not warrant or represent that bids or negotiated prices will not vary from the project budget proposed, established or approved by the Client or owner, if any, or from any statement of probable construction cost or other cost estimate or evaluation prepared by TPD.

Street Trees and Landscaping

It is assumed that detailed Landscaping design is not required in this Preliminary Design Phase and therefore not covered under this agreement. TPD will propose preliminary plantings in accordance with the borough ordinances on the Preliminary Plans.

Project Wide Excluded Services

All tasks not included in the Scope of Work of this Proposal are specifically excluded. For example, this proposal does not include the following:

- » PennDOT HOP Submissions and Plan Approvals.
- » Environmental, historic, or archaeological studies.
- » Noise studies, noise mitigation analysis/design.
- » Air quality analyses.
- » Environmental permitting with DEP or Army Corps (e.g., NPDES Permit, Joint Permit, General Permit).
- » Traffic Impact Studies.
- » Additional traffic counts. All traffic counts will be obtained from the traffic study for this project.
- » Maintenance and Protection of Traffic/Traffic Control Plans/Temporary Traffic Signal Plans.
- » Services related to a Permit for Temporary Closure of Sidewalks and/or Roadway Lanes.
- » Structural design (e.g., bridges, culverts, retaining walls, sound barriers, joint details, sheeting and shoring, sign structures), or structural inspection.
- » Geotechnical design.
- » Pavement Design.
- » Soil borings, roadway borings, or related permits.
- » Erosion and Sedimentation Control Plans/Narrative.
- » Post Construction Stormwater Management Plans/Narrative.
- » Infiltration Testing, Analysis, or Design.
- » Right-of-Way or Property/Deed Research beyond what is completed by the Project Surveyor.
- » Right-of-Way Plans, or any services related to right-of-way acquisition or traffic signal easements, such as coordination with neighboring property owners, metes-and-bounds descriptions, preparation of exhibits, etc.
- » Design of new or relocated utility facilities (above-ground or underground).
- » Obtaining permits for utility relocations, utility installations, or subsurface utility engineering.
- » Subsurface Utility Engineering (SUE), underground facility location, subsurface investigation of any type.
- » PUC or railroad coordination.
- » Preparation of construction quantities, tabulation sheets, summary sheets, construction cost estimates, or specifications/special provisions.
- » Design services during construction including, but not limited to, contractor submittal review.
- » Construction bid services, such as bid package preparation or contract preparation.
- » Construction management/monitoring services, or consultation during construction.
- » Construction inspection services.

- » As-built traffic signal plans.
- » Detailed Maintenance and Protection of Traffic Plans
- » Detailed ADA Curb Ramp Plans and Documents

Note: TPD is fully capable of providing or subcontracting all of the services listed above and will do so as the need arises after proper authorization from the Client.

Out of Scope or Additional Services

Any service requested that is not described in the above Scope of Services section will be billed on an hourly basis according to the current fee schedule, plus expenses. Before proceeding with such services, TPD will inform Client of the need for additional services. This proposal does not include the cost of modifications to the plans due to design changes. These items will be billed on an out-of-scope basis. TPD is not responsible for time delays due to these changes.

If Client disagrees with any of these assumptions, please notify TPD at your earliest convenience, so that revisions to this Agreement document can be made accordingly. Otherwise, upon authorization, we will proceed using the assumptions listed above.

SCOPE OF SERVICES

The following tasks will be completed by TPD in preparing the Design for this project.

TASK I. PROJECT COORDINATION

1. Meet with PennDOT team working on the HSIP Traffic Signal Project. Discuss the design details and anticipated timing of the HSIP project. Determine a coordination plan between the HSIP project and High Street Corridor Project.
2. Meet with West Chester Borough and stakeholders to discuss the anticipated improvements, potential conflicts, and schedule of the High Street Corridor Project.

TASK II. FIELD SURVEY

1. Obtain survey within project limits at a level of detail necessary for PennDOT HOP plans and PennDOT Traffic Signal Plans. This service is to be provided by a Surveying firm as a sub-consultant to Traffic Planning and Design, Inc.

TASK III. INITIAL EVALUATION

1. Coordinate project scope, design tasks, and schedule with the project team and internal design team.
2. Once the survey is provided to TPD in electronic format, review the survey for compliance with the TPD requirements and prepare to utilize for design plans.
3. Request pavement design history, construction plans, and right-of-way plans from PennDOT and West Chester Borough for the project area.
4. Complete a PA One Call and review potential utility conflicts.
5. Visit the site to obtain field measurements, determine existing drainage patterns, evaluate the constructability of the proposed layout, and obtain digital photos necessary for the preparation of the preliminary design.

TASK IV. PRELIMINARY ROADWAY DESIGN – 15% DESIGN

1. Complete preliminary horizontal design of High Street Corridor Improvements to determine the project impacts and associated construction cost.
2. Complete preliminary vertical design of High Street Corridor Improvements to determine the project impacts and associated construction cost.
3. Complete preliminary roadway drainage design of High Street Corridor Improvements to determine the project impacts and associated construction cost.
4. Prepare Presentation Plans to present to West Chester Borough, PennDOT and Stakeholders.
5. Meet with West Chester Borough, PennDOT, and Stakeholders to present the Preliminary Design and discuss potential revisions.

TASK V. PRELIMINARY DESIGN PLANS – 30% DESIGN

1. Based off coordination with West Chester Borough, PennDOT and Stakeholders revise the preliminary design, as necessary.
2. Prepare the following Preliminary Plans in PennDOT HOP Plan format:
 - o Title Sheet
 - o Existing Conditions sheet
 - o Construction Plans
 - o Elevation and Drainage Plans
 - o Signing and Pavement Marking Plans
 - o Typical Sections and Roadway Construction Details

TASK VI. PENNDOT DRAINAGE DESIGN/REPORT

Complete drainage design to evaluate the existing drainage patterns and comparing to the post-construction drainage areas to determine the extent of the drainage improvements. PennDOT criteria will be applied when determining the distance between inlets, pipe sizing, and the acceptable amount of shoulder/lane encroachment. A Drainage Narrative will be prepared to compile all assumptions and results.

TASK VII. CONSTRUCTION COST ESTIMATE

Prepare a construction cost estimate based on the preliminary design plans prepared in Tasks V.

Fee for Services

The services described above will be provided based on TPD's current fee schedule. TPD's fee for these professional services is **\$80,000.00**. TPD will not proceed with services beyond this fee unless first obtaining additional authorization from Client.

{Continue to next Page for TPD Standard Terms and Conditions}

Terms and Conditions

1. Payment Terms

- a. *Invoices:* TPD shall prepare invoices in accordance with its standard invoicing practices and submit the invoices to Client on a monthly basis. Invoices are due and payable within 30 days of receipt. If Client fails to make full payment on any undisputed amount due to TPD within 30 days after receipt of TPD's invoice, then (1) the amounts due to TPD will be increased at the rate of 1.5% per month (or the maximum rate of interest permitted by law, if less), and (2) in addition TPD may, after giving seven days written notice to Client, suspend services under this Agreement until TPD has been paid in full all amounts due. Client waives any and all claims against TPD for any such suspension.
- b. *Payment:* As compensation for TPD providing or furnishing services, Client shall pay TPD as set forth in TPD's Professional Services Agreement. If Client disputes an invoice, either as to amount or entitlement, then Client shall promptly advise TPD in writing of the specific basis for doing so, and may withhold only that portion so disputed, and must pay the undisputed portion. Client agrees to reimburse TPD for all costs and expenses incurred in connection with the collection of invoices due here under, including reasonable attorney's fees.

2. Instruments of Service

- a. All Documents are Instruments of Service. TPD shall retain the copyright thereto, and an ownership and property interest therein whether or not the project is completed.
- b. TPD grants Client a non-exclusive license to use the Instruments of Service solely and exclusively for the purpose of constructing, using, maintaining, altering and adding to the Project, provided that the Client substantially performs its obligations, including prompt payment of all sums when due, under this Agreement. Client may make and retain copies of documents for information and reference in connection with use on the project by Client. The non-exclusive license and copyright do not come into existence until payment is made and that any license or copyright that has come into existence is automatically terminated for failure to make any payment due under this Agreement.
- c. Such documents are not intended or represented to be suitable for reuse by Client or others on extensions of the specific project for which they were prepared or on any other project. Any such reuse or modification without written verification or adaptation by TPD, as appropriate for the specific purpose intended, will be at Client's sole risk and without liability or legal exposure to TPD or to TPD's Consultants. Client shall defend, indemnify and hold harmless TPD and TPD's Consultants from all claims, damages, losses, economic damages and expenses, including attorneys' fees arising out of or resulting from such reuse or modification.

3. Standard of Care

The standard of care for all professional engineering and related services performed or furnished by TPD under this Agreement will be the care and skill ordinarily used by members of the subject profession practicing under similar circumstances at the same time and in the same locality. TPD makes no warranties or guarantees, express or implied, under this Agreement or otherwise, in connection with any services performed or furnished, or in any report, opinion, document, by TPD.

4. Limitation of Liability

- a. To the fullest extent permitted by law, the total liability in the aggregate, of TPD and TPD's officers, directors, employees, agents, and independent professional associates, and any of them, to Client and anyone claiming by, through or under Client, for any and all injuries, claims, losses, expenses, or damages whatsoever arising out of or in any way related to TPD's services, the project, or this Agreement, from any cause or causes whatsoever, including but not limited to, the negligence, errors, omissions, strict liability, breach of this Agreement, misrepresentation, or breach of warranty of TPD or TPD's officers, directors, employees, agents or independent professional associates, or any of them, shall not exceed the total compensation received by TPD under this Agreement or \$50,000 whichever is greater.

- b. Client and TPD agree to a mutual waiver of special, incidental, indirect, or consequential damages including but not limited to defense costs, attorney's fees, loss of profits, loss of use arising out of, resulting from, or in any way related to the project or this Agreement.
- c. TPD shall not be responsible for any acts or omissions, or accuracy of data and or information supplied upon which TPD may rely, of any Client, contractor, subcontractor, or supplier, or any agents or employees or any other persons acting on behalf of Client, contractor, subcontractor, or supplier; or for any decision made on interpretations or clarifications of information supplied by Client, contractor, subcontractor, or supplier without consultation and advice of TPD.

5. Termination

- A. The obligation to continue performance under this Agreement may be terminated:
 - 1. For cause,
 - a. By either party upon 30 days written notice in the event of substantial failure by the other party to perform in accordance with the Agreement's terms through no fault of the terminating party. Failure to pay TPD for its services is a substantial failure to perform and a basis for termination.
 - b. By TPD:
 - (i) Upon written notice if Client demands that TPD furnish or perform services contrary to TPD's responsibilities as a licensed professional; or
 - (ii) Upon written notice if TPD's services are delayed for more than 60 days for reasons beyond TPD's control.
 - c. TPD shall not be obligated to resume services under the Agreement until Client has paid all sums previously due and owed by Client.
 - d. TPD shall have no liability to Client on account of a termination for cause by TPD.
 - e. Notwithstanding the foregoing, this Agreement will not terminate as a result of a substantial failure under Paragraph 5.A.1.a if the party receiving such notice begins, within seven days of receipt of such notice, to correct its substantial failure to perform and proceeds diligently to cure such failure within no more than 30 days of receipt of notice.
 - 2. For convenience, by Client, effective five business days after TPD's receipt of written notice from Client.
- B. In the event of any termination under Paragraph 5, TPD will be entitled to invoice Client and to receive full payment for all services performed or furnished in accordance with this Agreement, plus reimbursement of expenses incurred through the effective date of termination in connection with providing the services, and TPD's consultants' charges, if any.

6. Successors and Beneficiaries

- a. TPD and Client each is hereby bound and the successors, executors, administrators, and legal representatives of TPD and Client are hereby bound to the other party to this Agreement and to the successors, executors, administrators, and legal representatives (and said assigns) of such other party, in respect of all covenants, agreements, and obligations of this Agreement.
- b. Unless expressly provided otherwise, nothing in this Agreement shall be construed to create, impose, or give rise to any duty owed by Client or TPD to any Constructor, other third-party individual or entity, or to any surety for or employee of any of them. All duties and responsibilities undertaken pursuant to this Agreement will be for the sole and exclusive benefit of the Client named in TPD's Professional Services Agreement and TPD and not for the benefit of any other party.

7. Dispute Resolution

Prior to the initiation of any legal proceedings, Client and TPD agree to negotiate each dispute between them in good

faith during the 30 days after notice of dispute. If negotiations are unsuccessful in resolving the dispute, then the dispute shall be mediated. If mediation is unsuccessful, then the parties may exercise their rights at law.

8. *General Conditions*

- a. TPD shall complete its services in accordance with the schedule identified in the Professional Services Agreement or if no time period is specified, within a reasonable period of time.
- b. If, through no fault of TPD, such periods of time or dates are changed, or the orderly and continuous progress of TPD's services is impaired, or TPD's services are delayed or suspended, then the time for completion of TPD's services, and the rates and amounts of TPD's compensation, shall be adjusted equitably.
- c. TPD shall not at any time supervise, direct, control, or have authority over any Contractor's work, nor shall TPD have authority over or be responsible for the means, methods, techniques, sequences, or procedures of construction selected or used by any Contractor, or the safety precautions and programs incident thereto, for security or safety at the Project site, nor for any failure of a Contractor to comply with laws and regulations applicable to such Contractor's furnishing and performing of its work. TPD shall not be responsible for the acts or omissions of any Contractor. TPD neither guarantees the performance of any Contractor nor assumes responsibility for any Contractor's failure to furnish and perform its work.
- d. TPD's opinions (if any) of probable construction cost are to be made on the basis of TPD's experience, qualifications, and general familiarity with the construction industry. However, because TPD has no control over the cost of labor, materials, equipment, or services furnished by others, or over contractors' methods of determining prices, or over competitive bidding or market conditions, TPD cannot and does not guarantee that proposals, bids, or actual construction cost will not vary from opinions of probable construction cost prepared by TPD. If Client requires greater assurance as to probable construction cost, then Client agrees to obtain an independent cost estimate.
- e. If any term or provision of this Agreement shall be held to be invalid or illegal, such term or provision shall not affect the validity or enforceability of the remaining terms and provisions of this Agreement.
- f. This Agreement is to be governed by the law of the state in which the project is located.

9. *Total Agreement*

- a. This Agreement (together with any expressly incorporated attachments), constitutes the entire agreement between TPD and Client and supersedes all prior written or oral understandings. This Agreement may only be amended, supplemented, or modified by a duly executed written instrument by both parties.
- b. This Agreement may be executed by way of original, facsimile, PDF or electronic signature and transmitted electronically. The Agreement may be executed in counterpart, each of which shall be deemed an original, but all counterparts together shall constitute one and the same Agreement.

{Continue to next page for Authorization Page}

AUTHORIZATION PAGE

Terms and Conditions for this Professional Services Agreement

TPD's standard Terms & Conditions below shall be considered part of this Professional Services Agreement

Confidentiality

Client agrees that any unauthorized use or disclosure of TPD's standard Terms and Conditions or rate schedule constitutes a violation of applicable state laws, regarding, without limitation, unfair competition, misappropriation, and trade secrets.

Client Acceptance

TPD's offer of services under this Agreement shall remain valid for thirty (30) calendar days from the date of this agreement. Acceptance of the Agreement after the end of the thirty (30) day period shall be valid only if TPD elects, in writing, to reaffirm the agreement, and waives its right to re-evaluate and resubmit the agreement. In order for TPD to begin our services, we request that Client review this Agreement and return the signed authorization to our office.

Prepared by:

This Services Agreement prepared by:

Traffic Planning and Design, Inc. (TPD)



Joseph Janos, P.E.

This Services Agreement approved by:

Traffic Planning and Design, Inc. (TPD)



Joseph Platt, P.E., Vice President

Client Authorization (TPD Job # WCBO.00021)

Client authorizes TPD to proceed with the services as described within this Agreement:

Signature: _____

Name (Please Print): _____

Position: _____ Firm: _____

Date: _____ E-mail Address: _____

Phone Number: _____

Please retain one copy for your file and forward an executed copy to TPD.