

RESOLUTION NO. 55 - 2017

Moved by: Paul J. [Signature]

A Resolution approving a professional services agreement with Traffic Planning and Design, Inc. to update traffic signal and school zone permit plans at various locations in the City.

WHEREAS, the City desires to update its traffic signal and school zone permit plans at various locations in the City; and

WHEREAS, the City seeks to enter into a professional services agreement with Traffic Planning and Design, Inc. to create the updated permit plans; and

WHEREAS, the services will be performed for a flat fee of \$8,990.00; and

WHEREAS, a copy of the agreement is attached hereto as Exhibit "A" for approval.

NOW, THEREFORE, BE IT AND IT IS HEREBY RESOLVED BY THE COUNCIL OF THE CITY OF HARRISBURG, that the agreement with Traffic Planning and Design, Inc. is approved.

BE IT FURTHER RESOLVED that the Mayor, City Controller and other appropriate City officials are authorized and directed to take all steps necessary to further effectuate the purpose of this Resolution.

I second this resolution [Signature]

YEAS		NAYS
	MR. ALLATT	
	MR. MADSEN	
	MS. DANIELS	
	MS. HODGES	
	MR. JOHNSON	
	MR. MAJORS	
	MS. WILLIAMS	
Yeas	7	
Nays	0	

Passed by City Council September 12, 2017

Wanda R. O. Williams

President of City Council

Attest

[Signature]
City Clerk

- Approved
- Returned to City Council with objections

Exhibit “A”



TRAFFIC PLANNING AND DESIGN, INC.

WWW.TRAFFICPD.COM

Professional Services Agreement

Date: May 26, 2017 Client: City of Harrisburg

Client Address: Office of the City Engineer

123 Walnut Street

Suite 212

Harrisburg, PA 17101

Client Contact: Wayne Martin, P.E.

Project Name: ARLE Signal Designs

Municipality/County/State: City of Harrisburg, Dauphin County, PA

TPD Project Manager: Michael Mudry, P.E., PTOE

TPD Project No.: CHBG.00006

Traffic Planning and Design, Inc. (TPD) is pleased to submit this Professional Services Agreement ("Agreement") regarding the above-referenced project (the "Project"). Included in this Agreement are sections regarding **Assumptions, Scope of Services, Fee Estimate and Standard Terms and Conditions**. This Agreement will be between TPD and City of Harrisburg ("Client"). In order for TPD to begin our services, we request that Client review this Agreement and return a signed authorization to our office. We appreciate the opportunity to be of service on this Project.

ASSUMPTIONS

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

- » For this proposal, we have assumed that the existing signal permit plans will be provided by PennDOT/Borough in either PDF format or CADD format. If existing plans are of unacceptable quality or do not exist, a scope/fee adjustment may be required. If existing plans are of unacceptable quality or do not exist, TPD will review options with the City before proceeding with work.
- » This scope of services does not include any traffic counts, traffic studies, traffic analysis, roadway design, construction drawings, bid documents, inspection services or engineering services during construction.
- » **13th Street & Market Street** – Update Traffic Signal Permit to match existing/proposed conditions. Revise crosswalk type, pedestrian countdown displays, 12" heads, backplates, and signage.
- » **N. 6th Street & Verbeke Street** - Update Traffic Signal Permit to match existing/proposed conditions. Revise crosswalk type, pedestrian countdown displays, 12" heads, backplates, and signage. Incorporate proposed gore areas shown on concept sketch titled "Broad Street – Opt 3" prepared by Navarro & Wright Consulting Engineers, Inc.

- » **13th Street & Sycamore Street** – Update Traffic Signal Permit to match existing/proposed conditions. Revise crosswalk type, pedestrian countdown displays, 12” heads, backplates, and signage. Review/revise school zone flashing permit to show revised crosswalk type.
- » **SR 3007 (S. 19th St.) and SR 3012 (Derry St.) and Berryhill Street** - Update Traffic Signal Permit to match existing/proposed conditions. Revise crosswalk type, pedestrian countdown displays, 12” heads, backplates, and signage. Review Engineering and Traffic Study prepared by HRG for one-way directional change of Kensington Street between 19th and 21st Streets. Prepare signing plan for directional one-way change. Review/revise school zone flashing permits to show revised crosswalk type including extending the school zone along Berryhill Street.
- » **13th & Walnut** – update traffic signal permit to show “piano-key” crosswalk markings.
- » If PennDOT requires additional plan changes beyond those outlined above, a scope/fee adjustment may be required depending upon the extent of their requested changes. If this occurs, TPD will review options with the City before proceeding with work.

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.

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

TPD's Scope of Services under this Agreement shall include the following tasks:

1. TPD will conduct a field view of all intersections, school zones, and streets outlined in the assumptions section above.
2. TPD will revise the traffic signal permit plans/school zone permit plans for the following locations:
 - a. 13th Street & Market Street
 - b. N. 6th Street & Verbeke Street
 - c. 13th Street & Sycamore Street
 - d. 13th & Walnut Street
 - e. Foose School
 - f. SR 3007 & SR 3012/Berryhill Street
 - g. Scott Elementary School
3. TPD will prepare a signage plan to reverse the one-way street pattern on Kensington Street between 19th and 21st Streets.
4. TPD will submit plans to City Engineer for review; then submit plans to PennDOT for approvals.
5. Upon approval from PennDOT, TPD will print mylars of the approved signal plans for signature by the City and PennDOT.

FEES AND EXPENSES

Professional Services

TPD's flat fee for the professional services noted in the Scope of Services is **\$8,990.00.**

Expenses

Expenses such as copies, prints, postage, mileage, next-day mail, and hand-delivery of materials are **not** included in the estimated fee for professional services, and will be billed in addition to professional services.

Meetings

The costs for attending meetings are **NOT** included in the fee estimate for professional services, unless such meetings are specifically included in the Scope of Services. All meetings not specifically covered in the Scope of Services will be attended at Client's request (or at Client's attorney's request) and will be billed hourly using TPD's applicable fee schedule at the time of the meeting. TPD will provide our current fee schedule for relevant personnel upon Client request.

Special Cost Provision

If, as part of any legal proceeding associated with this project, any TPD employee is subpoenaed for deposition or testimony purposes, Client will be billed at TPD's hourly rate (in effect at the time of deposition) for those services plus any related expenses.

TPD Standard 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.

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. 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

TPD will strive to perform services under this Agreement in a manner consistent with that level of care and skill ordinarily used by members of the subject profession currently practicing in the same locality under similar conditions. No other representation and no warranty or guarantee, express or implied, is included or intended in this Agreement, or in any report, opinion, document, or otherwise.

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:
 - 1) upon seven days written notice if Client demands that TPD furnish or perform services contrary to TPD's responsibilities as a licensed professional; or
 - 2) upon seven days 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 upon 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 Constructor'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 Constructor, or the safety precautions and programs incident thereto, for security or safety at the Project site, nor for any failure of a Constructor to comply with laws and regulations applicable to such Constructor's furnishing and performing of its work. TPD shall not be responsible for the acts or omissions of any Constructor. TPD neither guarantees the performance of any Constructor nor assumes responsibility for any Constructor'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 or modified by a TPD representative.
 - b. Signatures transmitted via facsimile or in PDF format by electronic mail shall be binding upon the parties hereto with the same force and effect as original signatures.
 - c. This Agreement may be executed in any number of counterparts, each of which when so executed shall be deemed an original, but all counterparts together shall constitute one and the same instrument and may be transmitted electronically with the same legal effect as if manually signed originals had been delivered.

AUTHORIZATION PAGE

Confidentiality

~~Client agrees that the Scope of Services and related provisions included in this Agreement represent a valuable and unique work product developed by TPD specifically for this project, which may not be used or disclosed by Client for any purpose without TPD's express consent in writing. This specifically precludes Client from utilizing the enclosed Scope of Services for the purpose of soliciting competitive bids from other engineering companies, unless TPD has been compensated for our services in developing the Scope of Services and related provisions. Client also agrees to keep the terms of this Agreement confidential, and that any unauthorized use or disclosure of TPD's Agreement, Standard Terms and Conditions, or related rate schedule constitutes a violation of applicable state laws, regarding, without limitation, unfair competition, misappropriation, and trade secrets.~~

Client Acceptance of Services Agreement

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.

This Services Agreement prepared by:



Michael Mudry, P.E., PTOE
Senior Project Manager

Client Authorization (CHBG 00006 – ARLE Signal Designs)

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

Signature: _____ Date: _____

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.

Traffic Planning and Design, Inc. (TPD)
1426 North Third Street, Suite 250
Harrisburg, PA 17102
Phone 717.234.1430
www.trafficpd.com

ADDENDUM

CITY OF HARRISBURG TERMS & CONDITIONS

The attached Proposal, Agreement, or Contract ("This Agreement" or "Agreement") is hereby amended by this Addendum to include the following terms and provisions as if fully set forth in the Agreement. Notwithstanding any conflicting or contrary terms in this Agreement, the terms and conditions of this Addendum shall control over those in the Agreement.

1. EFFECTIVE DATE. This Agreement shall become effective on the date the last party hereto signs the Agreement, as indicated by the date next to that party's signature ("Effective Date").

2. TERMINATION.

Termination for Loss of Grant Funds. If all or any portion of CITY'S payment obligations under this Agreement are grant funded (whether via a private, local government, state and/or federal grant program or any combination thereof), the CITY shall have the right to suspend or terminate this Agreement and/or a Purchase Order (without penalty) with immediate effect by written notice to CONTRACTOR due to expiration, suspension or termination of the grant program(s).

Termination for Non-Appropriation of Funds. The CITY's obligation to make payments during any CITY fiscal year succeeding the current fiscal year shall be subject to availability and appropriation of funds. When funds (CITY, State and/or Federal) are not appropriated or otherwise made available to support continuation of performance of this Agreement in a subsequent fiscal period, the CITY shall have the right to terminate this Agreement and/or a Purchase Order (without penalty) with immediate effect by written notice to CONTRACTOR.

Termination for Cause. In the event of termination for cause, CONTRACTOR shall not later than five days after termination deliver to CITY copies of all Work Product prepared in connection with this Agreement.

3. PAYMENT FOR SERVICES. See Agreement.

4. ADDITIONAL PAYMENT TERMS. A Purchase Order Number and Notice to Proceed issued by the CITY is required prior to commencing work. The Purchase Order date (order date) is required to precede the invoice or application for payment for checks to be issued. **Submission of invoicing or payment applications prior to receipt of a Purchase Order will result in severe payment processing delays or non-payment of services, without liability upon the CITY.**

If the CONTRACTOR has not received payment within (45) calendar days of CITY'S receipt of invoicing or application of payment, the CONTRACTOR may assess interest on the undisputed portions of invoicing or payment applications computed at the rate of one-half of one percent per month (6% per annum).

5. WORK PRODUCT OWNERSHIP. Any plans, drawings, blue prints, field notes, data, specifications, calculations, works, ideas, discoveries, inventions, products, or other such

information, whether or not copyrightable, trade markable, patentable (collectively, the "Work Product") developed in whole or in part by the CONTRACTOR in connection with the Services shall automatically become the exclusive property of the CITY. No license or conveyance of any such rights to the CONTRACTOR is granted or implied under this Agreement. CONTRACTOR, without further consideration, agrees to sign all documents necessary to confirm or perfect the exclusive ownership of the CITY to the Work Product. The terms of this Paragraph shall survive termination of this Agreement.

6. INSURANCE. The parties agree that for the duration of this Agreement the CONTRACTOR shall maintain Primary/Non-Contributory insurance coverage, which shall include all terms, conditions and amounts required by the CITY.

Coverage shall be demonstrated through a current Certificate of Insurance provided to the CITY no later than the time of execution of this Agreement, a copy of which shall be attached hereto, incorporated herein by reference and marked as Exhibit "A;" or by any replacement or updated post-execution Certificate that may be required from time to time by the CITY. The Certificate shall state that CONTRACTOR's insurance is Primary/Non-Contributory, name the CITY of Harrisburg as an Additional Insured and contain a provision requiring 30 days' notice prior to cancellation. All deductibles are the sole responsibility of Contactor (and its subcontractors and consultants) to pay and/or indemnify.

7. INDEMNIFICATION. CONTRACTOR agrees to indemnify, hold harmless, and defend CITY and its agents, employees, directors, and elected and appointed officials from and against any and all claims (including Worker's Compensation Claims), damages, losses and expenses, including but not limited to court costs and reasonable attorneys' fees, for which CITY may be held liable of whatsoever kind or nature, including but not limited to injury (including death) to any person including the CITY's employees and damages to any property of whatsoever kind or nature, arising out of or in any manner connected with the services to be performed under this Agreement by CONTRACTOR, it's subcontractor, or any individual or legal entity working on behalf of or under CONTRACTOR's supervision or in any way connected with the use, misuse, maintenance, operation, or failure of any machinery or equipment (regardless of whether such machinery or equipment was furnished, rented, or loaned by CITY), whether due in whole or part to any act, omission, or negligence of CONTRACTOR, its subcontractor, or any individual or legal entity working on behalf of or under CONTRACTOR's supervision . CONTRACTOR shall not be responsible for any claims, damages, losses or expenses arising out of the CITY's negligence. The terms of this Paragraph shall survive termination of this Agreement.

8. DELAY/FORCE MAJURE. Neither party shall be liable for any delays resulting from acts of God, acts of third parties, orders of any kind of the government of the United States of America or of the Commonwealth of Pennsylvania or any of their departments, agencies, political subdivisions or officials, or any civil or military authority, equipment failures, strikes, severe weather conditions, fires, riots, wars, earthquakes, equipment or facility shortages or any other causes beyond its reasonable control.

9. APPLICABLE LAW & JURISDICTION. This Agreement shall be governed by and construed in accordance with the laws of the Commonwealth of Pennsylvania, without regard to conflict of law provisions thereof. Each party hereto consents to the exclusive jurisdiction of the state courts of Pennsylvania situate in the County of Dauphin, Pennsylvania or in the United States District Court for the Middle District of Pennsylvania for any litigation that may arise out of this Agreement and each party hereto waives any objection based on *forum non conveniens* or any other objection to such venue. The United Nations Convention on Contracts for Sale of Goods shall not apply.

CONTRACTOR:
Traffic Planning and Design, Inc.

By: _____ Date: _____
Michael Mudry, P.E., PTOE
Senior Project Manager

CITY:
City of Harrisburg

By: _____ Date: _____
Eric Papenfuse, Mayor

By: _____ Date: _____
Charlie DeBrunner, Controller

Approved as to Form and Legality:

By: _____ Date: _____
Law Bureau

INTER

OFFICE

MEMO

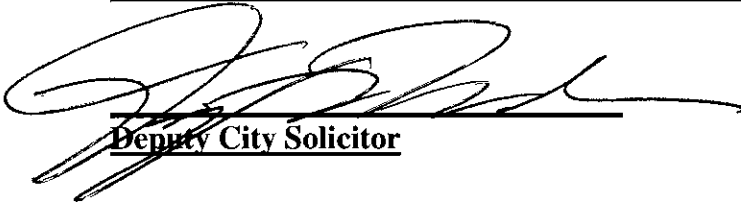
To: HARRISBURG CITY COUNCIL
From: Kirk Petroski, City Clerk
LEGISLATIVE APPROVAL FORM

Date: 6/9/17

LEGISLATIVE APPROVAL FORM/CERTIFICATE OF ACCEPTANCE

BILL NO. -2017 **RESOLUTION NO. -2017**

THE ABOVE LISTED ITEM WAS WRITTEN AND PREPARED FOR FINAL INTRODUCTION AT THE HARRISBURG CITY SOLICITOR'S OFFICE ON:


Deputy City Solicitor

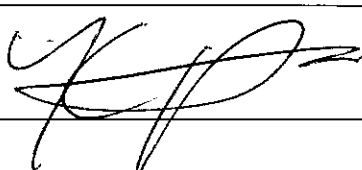
6/9/17
Date

Requested by Department/Bureau: Engineering

Department/Bureau Contact Person: Wayne Martin

For Action on or before:

The attached was received in the Office of the City Clerk for introduction on

Received by: 

Date: 6-9-17