



TRAFFIC PLANNING AND DESIGN, INC.

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Professional Services Agreement

Date: November 20, 2019 Client: Exeter Township

Client Address: 4975 DeMoss Road
(no PO Boxes) Reading, PA 19606

Client Contact: Mr. John Granger, Manager

Project Name: Old Friedensburg Road Noise Monitoring/Township Noise Ordinance
Consultation Services

Municipality/County/State: Exeter Township, Berks County, PA

TPD Project Manager: Greg Richardson, P.E.

TPD Project No.: EXTO.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 **Scope of Services, Schedule, Fee Estimate and Standard Terms and Conditions.**

This Agreement will be between TPD and Exeter Township ("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.

SCOPE OF SERVICES

Upon Client's authorization, TPD will perform the following tasks for this project:

TASK I. NOISE MONITORING

1. Conduct property boundary noise monitoring in the vicinity of 123 Old Friedensburg Road to document existing ambient sound levels. The monitoring will occur on a typical weekday and Saturday.
2. Conduct property boundary noise monitoring in the vicinity of 123 Old Friedensburg Road to document sound levels when motorized vehicles are being utilized on the property. The monitoring will occur on a typical weekday and Saturday.

3. Prepare a report documenting the results of Tasks I.1. and I.2.

TASK II. TOWNSHIP NOISE ORDINANCE

1. Assist the Township with updating/enhancing the existing noise ordinance.
2. Attend two (2) meetings with the Township (one staff and one public) to discuss the results of Tasks I and II.1.

FEES AND EXPENSES

Professional Services

The estimated cost for performing the tasks listed in the Scope of Services, including expenses, is not-to-exceed **\$9,500.00**

Out of Scope Work

Any work requested that is not described in the provided scope of services sections or any changes to the actual scope of work that occur based on unforeseen circumstances will be identified by TPD to Exeter Township and an approved Out of Scope Agreement will be developed for approval prior to TPD performing such additional tasks.

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.

{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 calendar days of receipt. If Client fails to make full payment on any undisputed amount due to TPD within 30 calendar 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 (7) calendar days written notice to Client, suspend services under this Agreement until TPD has been paid in full all amounts due. TPD shall not be obligated to resume services under the Agreement until Client has paid all sums previously due and owed by Client. 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. Drawings, specifications and other documents prepared by TPD and TPD's consultants are Instruments of Service for use solely with respect to this Project. This includes documents in electronic form. TPD and TPD's consultants shall be deemed the authors and owners of their respective Instruments of Service and shall retain all common law, statutory and other reserved rights, including copyrights 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 does not come into existence until payment is made and any license that has come into existence is automatically terminated upon TPD's suspension of services under Paragraph 1 a. for Client's failure to make any payment due under this Agreement.
- c. Instruments of Service 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, any 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 waive against each other, and the other's employees, officers, directors, agents, insurers, partners, and consultants, any and all claims for or entitlement to special, incidental, indirect, or consequential damages arising out of, resulting from, or in any way related to this Project or Agreement.
- c. TPD may rely upon the accuracy and completeness of, and shall not be responsible for, any acts or omissions in any data, design elements and information supplied by Client, or by any contractor, subcontractor, supplier, agent or employee or any other person acting on behalf of Client.

5. *Termination*

- A. The obligation to continue performance under this Agreement may be terminated:
 1. For cause,
 - a. By either party upon 30 calendar 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.
 - b. By TPD:
 - i. Upon seven (7) calendar days written notice if Client demands that TPD furnish or perform services contrary to TPD's responsibilities as a licensed professional; or
 - ii. Upon seven (7) calendar days written notice if TPD's services are delayed for more than 60 calendar days for reasons beyond TPD's control.
 - iii. Upon seven (7) calendar days' written notice if Client fails to pay TPD for its services in accordance with contract terms.
 - c. TPD shall have no liability to Client on account of a termination for cause by TPD.
 - d. 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 (7) calendar 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 calendar days of receipt of notice.
 2. For convenience, by Client, effective five (5) calendar 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*

Disputes shall be initiated by written notice. Prior to the initiation of any legal proceedings, Client and TPD agree to negotiate a resolution to each dispute between them in good faith during the 30 calendar days after receiving written notice of the dispute. If negotiations are unsuccessful in resolving the dispute, then the dispute shall be mediated. A written request for mediation may be made by either party. The receiving party shall respond within ten (10) business days, and the initial mediation session shall be held within thirty (30) business days of the request. The parties shall share equally the costs and expenses of the mediation, except that each party shall bear the cost of its own legal representation. If mediation is unsuccessful, then the parties may exercise their rights at law. Either party may proceed in accordance with applicable law to meet filing deadlines, but any litigation shall be stayed for a reasonable period to negotiate and mediate the dispute as set forth in this paragraph.

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

Use of Agreement

Client agrees that the Scope of Services and related provisions in this Agreement represent a valuable and unique work product developed by TPD specifically for this project. As such, it may not be used or disclosed by Client for any purpose without TPD's express consent in writing unless required to be released as part of a Right to Know Request. This specifically precludes Client from utilizing the enclosed Scope of Services for the purpose of soliciting competitive bids from other companies, unless TPD has been compensated for our services in developing the Scope of Services and related provisions.

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/Approved by:

Traffic Planning and Design, Inc. (TPD)



Greg Richardson, P.E. – Executive Vice-President

Client Authorization (EXTO.00006 – Old Friedensburg Road Noise Monitoring)

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

Signature: _____ Date: _____

Name (Please Print): _____

Title: _____ Firm: _____

E-mail Address: _____ Phone Number: _____

Billing Address*: _____

** (If different than first page)* _____

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

Headquarters for Traffic Planning and Design, Inc. (TPD)
2500 East High Street, Suite 650
Pottstown, PA 19464
Phone 610.326.3100
www.trafficpd.com