

**UPPER PERKIOMEN SCHOOL DISTRICT
Education Center
2229 East Buck Road
Pennsburg, PA 18073**

**SPECIAL MEETING AGENDA
December 19, 2017
7:00 p.m.**

I. CALL TO ORDER

- A. Pledge of Allegiance
- B. Roll Call

II. PRESENTATIONS/DISCUSSION

- A. Temporary Stabilization of the Middle School Construction Project – Arif Azil, D’Huy Engineering, Inc. and Robert Breslin, Breslin Ridyard Fadero Architects

- B. Appointment of Facilities Committee

III. PUBLIC COMMENTS ON AGENDA ITEMS ONLY

IV. ACTION ITEMS:

- A. Motion to approve the addendum to the contract for D’Huy Engineering (Attachment A)

- B. Motion to approve the rates for Breslin Ridyard Fadero Architects (Attachment B)

V. PUBLIC COMMENTS

VI. ADJOURNMENT

**SUPPLEMENTAL AGREEMENT BETWEEN
OWNER AND CONSTRUCTION MANAGER**

THIS SUPPLEMENTAL AGREEMENT BETWEEN OWNER AND CONSTRUCTION MANAGER (the “**Supplement**”) is made and entered into as of this ___ day of _____, 2017, by and between Upper Perkiomen School District (the “**Owner**” or “**District**”) and D’Huy Engineering, Inc. (the “**Construction Manager**” or “**CM**”). The Owner and CM are referred to herein individually as “**Party**” and collectively as “**Parties**”. This Agreement shall be effective December 5, 2017.

WITNESSETH

WHEREAS, Owner and CM entered into an Agreement between Owner and Construction Manager dated October 13, 2016 (“**CM Agreement**”) related to the design and construction of a New Middle School in Upper Hanover Township, Montgomery County, Pennsylvania (“**Project**”);

WHEREAS, as of December 5, 2017, while the Project’s construction was underway, the District’s Board voted to stop the Project;

WHEREAS, the Owner has asked the CM to manage the process by which the Owner and the Project participants implement the following “**Closeout Work**”;

- a) To perform any work necessary to secure the work site,
- b) To perform all work necessary to protect the work in place,
- c) To stabilize the site, to otherwise comply with the requirements of the NPDES permit for the Project,
- d) To secure the site and materials,
- e) Except as stated above and as necessary to comply with applicable law, the NPDES permit, the Tri-Party Land Development and Financial Security Agreement for Upper Perkiomen School District (Middle School), to terminate all work on site, and,
- f) To terminate all work off site, including but not limited to orders for equipment that have been placed but not produced or delivered, orders for materials that have not been delivered or fabricated, and preparation of shop and coordination drawings.

WHEREAS, many of the services that are required from the CM during the implementation of the Closeout Work are not contemplated by the CM Agreement and are therefore considered Additional Services pursuant to section 8.1 of the CM Agreement (“**Closeout Additional Services**”); and

WHEREAS, the Parties desire to memorialize the terms and scope of any Basic and Construction Phase Services that the Owner may require and the Closeout Additional Services that CM will perform for Owner.

NOW THEREFORE, in consideration of the mutual promises made and based upon the terms, conditions, and provisions set forth herein, the Parties agree as follows:

1. Except as modified herein, all capitalized terms used herein shall have the same definitions as ascribed to them in the CM Agreement.

2. As of the date of this Supplement, and except to the extent otherwise set forth in the List of Services in Exhibit A, the CM shall have no responsibility to undertake and perform Basic Services described in Article 3.0 and Construction Phase Services set forth in Section 3.4 of the CM Agreement. The Basic and Construction Phase Services that the CM has agreed to continue to perform and the compensation that the Owner has agreed to provide for said Services are described in Exhibit A. The Closeout Additional Services that the CM has agreed to perform and the compensation that the Owner has agreed to provide for the CM's performance of those services are described in Exhibit B.

3. In addition to continuing to provide the Basic, Construction Phase, and Closeout Additional Services described in paragraph 2 above, the CM and Owner agree that, because the Owner has substantially changed the nature of the Project, modified the terms of the CM Agreement, and anticipates that it shall terminate the CM Agreement earlier than expected, the CM must reallocate resources consisting of field personnel, administrative expediter, BIM coordinator, Mechanical support and senior project oversight at a time when all of these staff have been assigned at a critical and early stage in the Project. As such, the Owner hereby agrees to compensate CM with an \$80,000 fee ("CM Modification Fee") that is based on a pro-rated adjustment of the CM fees anticipated by the CM Agreement for the construction phase with an adjustment for the critical additional staff assigned at the current time. Owner agrees to pay the CM Modification Fee in two installment payments of \$40,000.00 each, due on the earlier of either: a) within 30 and 60 days respectively of the execution of this Supplement; or b) upon 10 days' and 20 days' respective written notice of the Termination of the CM Agreement.

4. If the Owner fails to make payments to the CM in accordance with this Supplement, such failure shall be considered substantial nonperformance and cause for termination of performance of CM's services. Either party may terminate the CM Agreement or this Supplement upon not less than seven days' written notice should the other party fail to substantially perform in accordance with the terms of this Agreement through no fault of the party initiating the termination, or for convenience and without cause. Termination by either party is subject to the terms set forth in paragraph 3 above and, upon termination; the Owner shall compensate CM for services performed prior to termination, Reimbursable Expenses incurred, and costs attributable to termination. If the CM elects to terminate services, CM shall have no liability to the Owner for delay or damage caused the Owner because of such termination.

5. After the date of execution of this Supplement, the Owner may request and the CM may agree to perform certain Additional Services that are defined as services not set forth in Exhibits A or B. Any Additional Services will be performed by CM only upon the Owner's written authorization to proceed and will be compensated pursuant to Paragraph 3 above. Owner agrees to provide written approval of any Additional Service Proposal within five (5) days of receipt of such request from CM. If Owner fails to approve or reject in writing within five (5) days of receipt, CM can assume Owner has approved the Additional Service Proposal, including the reasonable request for compensation therein, and start the services as if written authorization was received from Owner.

6. The CM shall perform its services consistent with the skill and care ordinarily provided by construction managers practicing in the same or similar locality and under the same or similar circumstances. The CM makes no other representations or any warranty or guarantee of any kind, express or implied, with respect to its services. To the extent that the CM makes recommendations based on its knowledge and experience, the Parties agree that those recommendations are subject to Owner review and that the Owner ultimately makes decisions and is responsible for such decisions.

7. The Owner shall work with the Architect, General Contractor, and others and advise and consult with the Owner as necessary to develop the new Plan for the Closeout Work at the Project site ("Closeout Plan") and to monitor the Closeout Work. CM shall coordinate its services with those services provided by the Owner and the Owner's consultants and contractors and shall keep the Owner reasonably informed about the progress and quality of the Closeout Work completed, and promptly report to the Owner known deviations from the Closeout Plan. If the CM becomes aware of conditions that it believes are hazardous, then the CM will identify the conditions to the Architect and Owner and coordinate possible ways to address said conditions; however, under no circumstance will the CM be responsible to the Owner, Architect, Contractor, or to any third party for the safety of the site. The CM shall be entitled to rely on the accuracy and completeness of the services and information furnished by the Owner and the Owner's consultants and contractors. To the extent that the CM determines that it is necessary to visit the site, such visits shall be for the purpose of becoming generally familiar with the progress of the Closeout Work to determine whether, in general, the Closeout Work is being performed in a manner indicating that it is being performed consistent with the intent of the Owner's Closeout Plan. The CM shall not be required to make continuous or exhaustive onsite inspections and shall not be responsible for the quality or quantity of any work or services performed by any other project participant, entity or person. In exchange for CM's agreement to participate in the Closeout process, the Owner its agents, representatives, attorneys, employees, insurers, predecessors, successors and assigns, if any, do hereby release and forever discharge CM and its officers, shareholders, employees, insurers, from any and all claims, whether known or unknown, demands, contract balances, invoices, damages, costs, expenses, attorneys' fees, or causes of action related to: a) the use, reuse, or alteration of the Project Site for any purpose not expressly contemplated in the CM Agreement; and/or b) to the extent arising out of the development of the Closeout Plan or the implementation of the Closeout Work, except to the extent that CM shall be responsible for its own negligent acts or omissions.

8. The Owner shall furnish all legal, insurance, and accounting services including auditing services that may be reasonably necessary at any time for the Closeout Work and/or Plan.

9. The CM shall have no control over, or charge of, or responsibility for the means, methods, techniques, sequences, procedures, safety precautions or programs in connection with construction, Project Closeout Work or Plan, or the maintenance of the Project site upon completion of the Closeout Work. The CM shall not be responsible for Contactor's failure to perform the Closeout Work in accordance with the Closeout Plan or requirements of the Owner, Architect, Contract Documents, laws, regulations, permits and/or any Closeout Contract Documents. The CM shall not have control over or charge of, and shall not be responsible for, acts or omissions of the Contractor or Multiple Prime Contractors, Subcontractors, or their agents or employees, or any other persons or entities performing portions of the Closeout Work.

10. Any claim, dispute or other matter in question arising out of or related to this Agreement subject to, but not resolved by, mediation shall be subject to litigation. Causes of action between the parties to this Supplement pertaining to acts or failures to act shall be deemed to have accrued and the applicable statutes of limitations shall commence to run not later than the date of issuance of the final payment for CM.

11. While the CM will endeavor to coordinate and monitor the Contractor's efforts to store, protect and/or cancel delivery of Owner purchased materials, systems and equipment, CM is not responsible for the resale, resale value, diminution in value or any claims, costs, or damages, of any kind with respect to those materials, systems or equipment.

12. Owner acknowledges that it is not aware of any claims, or any circumstances which may give rise to claims, against CM, arising out of CM services performed pursuant to the CM Agreement, as of the date of execution of this Supplement.

13. To the fullest extent allowable by law and to the extent covered by the Owner's applicable insurance policies, the Owner agrees, to indemnify, defend and hold CM harmless from any claim, liability or cost (including reasonable attorneys' fees and defense costs) arising or allegedly arising out of the Project, including the Closeout Services, caused by the Owner, its employees, contractors, consultants or other parties for whom the Owner is responsible.

14. In the event that any provision of this Supplement is determined to be invalid or unenforceable as to any person or circumstance, then the remainder of the Supplement shall be unaffected thereby, as shall the application of any such provision to any other person or circumstance.

15. Both parties to this Supplement have been represented by counsel, who have participated in the review and negotiation of this Supplement.

16. This Supplement may be executed in multiple counterparts each of which, when executed and delivered, shall be an original and constitute one and the same instrument.

Electronic signatures shall have the same force and effect as original signatures on hard documents.

17. The provisions of this Supplement shall control in the event there is any contrary or inconsistent language in the CM Agreement and this Supplement.

IN WITNESS WHEREOF, the parties have caused this Supplement to be duly executed as of the day and year first above written.

Upper Perkiomen School District

D'Huy Engineering, Inc.

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

DATED: _____, 2017.

DATED: _____, 2017.

EXHIBIT A

CONSTRUCTION PHASE SERVICES

- Production of public records upon request;
- Assist with required security badging, criminal history reports, employment verification forms pursuant to CM Agreement Sections 3.4.1.1, 3.4.1.2;
- Pursuant to Sections 3.4.6 and 3.4.8 of the CM Agreement, Maintain Project Management Software as necessary and maintain and develop cash flow reports;
- Review of pay applications and change order documents related to construction activities prior to Closeout Work;
- Deliver keys, manuals, drawings, warranty documents, lien waivers, and other closeout documentations pursuant to CM Agreement Section 3.4.18;
- Archive project documents to date;
- Project Management Software documentation and archiving;
- Document work performed between November 30th and December 5th, 2017;
- Pursuant to Section 3.4.4 of the CM Agreement, assist in collecting Contractor Prevailing Wage documents;
- Pursuant to Sections 3.4.12, 3.4.12.1, 3.4.13, and 3.4.14 of the CM Agreement, continue to review Contractor requests for changes, assist in negotiating Change Orders and review and advise on any work completed prior to the termination of the Construction Contracts;
- Document all work performed through December 5, 2017;
- Archive and turnover Project Documents through December 5, 2017, including updating and filing of Project Management Software.

Compensation

- The fee for the Closeout Additional Services listed above shall be on a time and expense basis based on the attached fee schedule.

EXHIBIT B

CLOSEOUT ADDITIONAL SERVICES SCOPE AND FEE

Scope

1. Participate in site visits with the Owner to memorialize the Owner's directives as to the Closeout Plan with respect to the site and the materials, equipment and conditions currently on the Project Site;
2. Prepare minutes regarding results of site visits and review any Owner directives, Closeout Plan, or Site and Architectural plans for the purpose of understanding the Owner's and Architect's intent for the site;
3. Inventory on site material and assist Owner and Architect in providing information to Contractors for action required for each item;
4. Request that Contractors provide information on status and termination of all off-site activities and provide comments and information to Owner on status of materials, orders, and equipment;
5. Review, assist with, document, and observe the Montgomery County Conservation District requirements for site restoration;
6. Review, coordinate, document, and observe Upper Hanover Township requirements for site restoration;
7. Assist with final accounting, archiving reports, and closing the Construction Testing contract;
8. Assist with final accounting, archiving reports, and closing the Waste Management contract;
9. Assist with closing Testing-Adjusting-Balancing agency contract;
10. Assist with closing Commissioning Agent contract;
11. Track costs for purchased material deliveries and status provided by Contractors;
12. Inventory any material deliveries and off-site stored material lists provided by Contractors;
13. Review status of approved submittals to confirm no additional work is taking place;
14. Provide as built drawing information for the Architect to document;
15. Review costs submitted by contractors for termination and assist with final accounting and closeout of the four (4) Prime Contracts;
16. Photo document existing site conditions at termination;
17. Photo document stored materials not delivered to the site;
18. Verify and observe Contractors' de-mobilization activities;
19. Observe and verify site restoration activities after December 5th, 2017;
20. Observation and documentation of site stabilization activities required by Montgomery County Conservation District and the Township;
21. Coordinate and record Owner and Architect directives for removal, restoration, or closure of all improvements currently made on site;
22. Participate in additional design and Closeout meetings with Architect, Contractor and Owner, preparing meeting minutes and distributing to each attendee;

23. Provide on-site representative only as needed. The General Contractor will continue to provide the CM on site trailer space, and utility services will remain in place as provided by and paid for by the Owner;
24. Compliance with Laws: See Section 3.06;
25. Environmental Impact: See Section 3.07;
26. Testing: See Section 3.08;
27. Review of Pay Applications and Change Order documents for closeout;
28. Transmit requests for interpretations and information (3.4.11);
29. Monthly Reports; and
30. Perform other assignments for termination of construction contracts requested by Owner subject to mutual agreement by Construction Manager and Owner subject to the terms of this Supplement.

Compensation

The fee for the Closeout Additional Services listed above shall be on a time and expense basis based on the attached fee schedule.

**D'HUY ENGINEERING, INC.
FEE SCHEDULE**

Effective January 1, 2017

	<u>Hourly Rate</u>
Senior Principal	\$200.00
Principal	\$175.00
Senior Project Manager	\$155.00
Licensed Professional Engineer	\$150.00
Licensed Architect	\$150.00
Project Designer/Project Manager	\$145.00
Technical Specialists	\$145.00
Intern Architect	\$120.00
Engineer	\$120.00
Field Representative	\$130.00
Engineer in Training	\$105.00
Senior CAD Operator	\$105.00
CAD Operator	\$90.00
Research Assistant/Data Processor	\$70.00

EXHIBIT "A"**HOURLY RATE AND REIMBURSABLE EXPENSES SCHEDULE****Breslin Ridyard Fadero Architects**

June 1, 2016

Revised October 1, 2017

I. HOURLY RATE SCHEDULE

<u>PAY GRADE</u>	<u>JOB TITLE</u>	<u>HOURLY RATE</u>
1 Architectural Aide	Drafting Apprentice	\$ 63.00
2 Secretary	Specifications Typist	\$ 71.50
3 Administrative Secretary	Office Manager	\$ 82.00
5 Draftsperson	Senior Draftsperson	\$ 105.00
6 Architect I	Design Associate	\$ 115.50
7 Architect II	Licensed Architect Project Manager LEED A.P. Specifications Writer Construction Administrator	\$ 141.75
8 Architect III	Licensed Architect Senior Designer	\$ 157.50
9 Firm Principal	Officer of the Firm Senior Management	\$ 252.00
10 Consultants		1.25 times the amount billed to the Architect

II. REIMBURSABLE EXPENSES SCHEDULE

Transportation	\$.54 per mile *
Tolls	at cost x 1.0
Agency Approvals	at cost x 1.0
Postage	at cost x 1.0
CD Roms/Electronic Discs	at cost x 1.0
Backhoe Rental	at cost x 1.0
8-1/2" x 11" black and white copies	\$ 0.15
11" x 17" black and white copies	\$ 0.25
8-1/2" x 11" color copies	\$ 2.75
11" x 17" color copies	\$ 4.50
11" x 17" color plots	\$ 4.50
15" x 21" opaque bond plots	\$ 5.50
30" x 42" opaque bond plots	\$ 6.50
30" x 42" color opaque bond plots	\$ 8.00
30" x 42" mounted boards	\$ 30.00

* to be adjusted equal to Federal Government mileage reimbursement standards