BOARD WORKSHOP
Virtual Meeting
May 27, 2021 – 7:00 p.m.

AGENDA

I. CALL TO ORDER
a. Pledge of Allegiance
b. Roll Call

II. APPROVAL OF MINUTES
a. Motion to approve the April 22, 2021 Board Workshop Minutes (Attachment A)

III. PRESENTATIONS
a. Motion to approve the following Board Policy Revisions, Adoptions and Repeals - First Reading (Attachment B)
1. Policy 818 Contracted Services (Repeal and Replace)

b. 2021-22 Instructional Model Plans - In-Person & Virtual Offerings

c. 2021-22 Update from Finance Committee Meeting on 2021-22 Budget Discussions

IV. PUBLIC COMMENTS ON ACTION ITEMS

V. PERSONNEL
a. **RETIREMENT**
i. **Maureen Newman**, Administrative Assistant, submitted her intent to retire from the District, effective August 5, 2021.
b. **APPOINTMENTS**
i. **SUPPORT STAFF**
1. **Alivia Lopez,** Part-Time Athletic Administrative Assistant, to be hired subject to review of employment history and required credentials at $13.53/hour, effective May 24, 2021.
2. **Carly Harnish,** Reading Assistant for Marlborough Elementary School, to be hired subject to review of employment history and required credentials at 11.75/ hour, 5 hours per-day for 175 days.
ii. **SUPPLEMENTAL**
1. **POWER UP! AND READY TO LEARN! CAMP SUPPORT STAFF EMPLOYEES,** for a maximum of 90 hours, for the 2021-2022 school year, 13.00/hour.

NAME	POSITION
Lauren Maginnis	Paraprofessional

2. **EXTENDED SCHOOL YEAR SUPPORT STAFF EMPLOYEES,** for a maximum of 55.5 hours, for the 2021-2022 school year at $13.00/hour.

NAME	POSITION
Samantha Adair- Babel	Paraprofessional
Kim Reilly	Paraprofessional
Jessica Lane	Paraprofessional

3**. EXTENDED SCHOOL YEAR PROFESSIONAL EMPLOYEES**, for a maximum of 63 hours, for the 2021-2022 school year at $37.00/hour per Professional Contract

NAME	POSITION
Emmanuel Alden	Teacher
Sue Hetrick	Teacher
Alison Johnson	Nurse
Anthony Pond	Teacher
Vaune Klepac	Teacher (substitute)
Jamye Keiser	Teacher
Melissa Teller	Behavior Specialist

4**. MENTORS,** for 2020-2021; Mentors to be paid at contracted rate of $500.

Mentor	Payment (Full Year 100%)
Nicole Hower	Full Year- 100%
Lisa Greco	Full Year- 100%
Theresa Schlatterer	Full Year- 100%
Chad Rutherford	Full Year- 100%
Janice Lonergan	Full Year- 100%
Audrey Latshaw	Full Year- 100%
Kimberly Diffenderfer	Full Year- 100%
Rachel Kollar	Full Year- 100%
Casey Lewis	Full Year- 100%
Jennifer Bamford	Full Year- 100%

Nancy Haff	Full Year- 100%

5. **CURRICULUM WRITERS,** for 2021-2022

Name	Course/Grade Level	Contract	Type
Jill Smerdon	8th ELA	$900	Revision
Deb Macioge	MS Health	$1,350	Revision
John Brittain, Cheryl Stotsenburg	MS PE	$1,350/2	Shared Revision
Luke Verna	MS Computers/Technology Ed	$1,350	Revision
Rich Kressly	MS Technology Ed	$1,350	Revision
Blake Bardman	Advanced Engineering & Design	$900	Revision
Dan Moyer	Creative Design & Engineering	$900	Revision
Blake Bardman	Energy Systems	$900	Revision
Blake Bardman	Engineering Design	$900	Revision
Dan Moyer	Multi-Material Fabrication	$900	Revision
Dan Moyer	Team Design	$900	Revision
Michael Calvello, Alicia Austin	English 9	$900/2	Shared Revision
Danielle Hawthorne	English 10	$900	Revision
Brian Hansley	English 11	$900	Revision
Tasha Rushatz, Tim Herbert	English 12	$900/2	Shared Revision
Rachel Schmeckenbecher, Briana Wolfgang	Spanish III	$900/2	Shared Revision
Rachel Schmeckenbecher	Spanish IV	$900	Revision
Bethany Smolinsky	French III	$900	Revision
Petra Marx-Abend	German I, II	$1800	Revision
Monica Griffith, Deb Burns	Accounting I	$900/2	Shared Revision
Monica Griffith, Deb Burns	Accounting II	$900/2	Shared Revision
Monica Griffith, Deb Burns	Accounting III	$900/2	Shared Revision
Monica Griffith	Yearbook/Advanced Publications	$900	Revision

6. **CUSTODIAL STAFF FOR SUMMER SEASONAL EMPLOYMENT,** effective June 21, 2021.

Name	2020-2021 Rate	Max Hours
Brendan Noska (New)	11.25	40
Shane Clark (New)	11.25	32 (8 per day max)

Reily Knize (Returning)	11.50	32 (8 per day max)
Tegan Farina (Returning)	11.50	32 (8 per day max)
Abigail Breyer (Returning)	11.50	40
Samantha Hannon (Returning)	11.50	40
Gina Bryan (Food Service, Returning)	11.75	32
Jaime Squiccimara (Food Service, Returning)	11.50	32
Halana Wall (Food Service, Returning)	11.50	32
Deborah Benner (Food Service, Returning)	11.75	32
Julie West (Food Service, New)	11.25	32

C. **LEAVES OF ABSENCE**

i. **Scott Voth**, approve Family and Medical Leave beginning on April 20, 2021 through the end of the 2020-2021 School Year.

ii. **Robin Lerro**, approve Uncompensated Leave from April 28, 2021 through May 28, 2021.

iii. **Pamela McGovern**, approve extension to Family and Medical Leave until June 14, 2021.

VI. ACTION ITEMS

A. Motion to appoint Daniel Direso as Business Administrator for a term commencing on July 1, 2021, and ending June 30, 2024, and approve the Employment Agreement with Daniel Direso which contains a first year annual salary of $127,500.00 and is on file in the Office of the Human Resources Director.

B. Motion to approve a Proclamation from the Upper Perkiomen Board of School Directors to the Class of 2021 graduates. (Attachment C)

C. Motion to approve the Waiver of Formal Hearing Agreements for two students whose names are on file in the Office of the Superintendent.

D. Motion to approve the election of Daniel Direso as Board Secretary for the Upper Perkiomen Board of School Directors for a four-year term, effective July 1, 2021 and bonded as per School Code.

E. Motion to approve the election of Stephen Cunningham as Treasurer for the Upper Perkiomen Board of School Directors, without salary, for the 2021-22 school year and bonded as per School Code.

F. Motion to approve a contract for $62,000 with Teaching, Learning, Succeeding for Professional Development throughout the 2021-2022 School Year.

G. Motion to approve a title change for Mrs. Carol Giblin from Assistant Director of Special Education to Director of Special Education as is reflected in the Act 93 Agreement.

H. Motion to approve the resolution and the agreement with H.A. Berkheimer for the collection of the Per Capita Tax under LTEA (Local Tax Enabling Act). (Attachments D & E)

I. Motion to approve a three (3) year contract extension with Christmas City Studio for Student Photography Services beginning with the 2021-22 school year and ending with the 2023-2024 school year.

J. Motion to approve the Proposal for Post Development Traffic Impact Study with Barry Isett & Associates in the estimated amount of up to $13,500.00 for the Middle School as required by the final land development agreement. (Attachment F)

VI. COMMITTEE REPORTS

a. Special Education & Pupil Services Committee – Judy Maginnis
b. Curriculum & Instruction Committee – Dr. Kerry Drake
c. Extracurricular Committee – Peg Pennepacker
d. Facilities Committee – Melanie Cunningham
e. Finance Committee – Melanie Cunningham
f. Policy Committee – Peg Pennepacker
g. Western Montgomery Career & Technology Center – Stephen Cunningham
h. Montgomery County Intermediate Unit – Judy Maginnis
i. Legislative Liaison Report – Peg Pennepacker
j. Upper Perkiomen Education Foundation – Mike Elliott
k. Regional Planning Commission Representative – Dr. Kerry Drake

VII. PUBLIC COMMENTS

VIII. BOARD COMMENTS

IX. ADJOURNMENT

Attachment A

UPPER PERKIOMEN SCHOOL DISTRICT
2229 East Buck Road
Pennsburg PA 18073

BOARD WORKSHOP
April 22, 2021

CALL TO ORDER

The Board Workshop of the Board of School Directors of the Upper Perkiomen School District was called to order by President Melanie Cunningham, at 7:00 p.m. as a virtual meeting.

The following Board members attended: Melanie Cunningham, Stephen Cunningham, Dr. Kerry Drake, Mike Elliott, Dana Hipszer, Raeann Hofkin, Judy Maginnis, Keith McCarrick, and Peg Pennepacker. Administration in attendance were: Allyn Roche, EdD., Andrea Farina, EdD., Sandra Kassel, Kimberly Bast, Doug Kenwood, and Georgiann Fisher. Others in attendance were: Kyle Somers, Jennifer Hartzell, and Deb Burns.

APPROVAL OF MINUTES

Motion by Stephen Cunningham, seconded by Keith McCarrick, to approve the **March 25, 2021 Board Workshop Minutes** (Attachment A). Motion carried; all voted aye.

PRESENTATIONS

a. Board Policy Revisions, Adoptions and Repeals – First Reading (Attachment B)

1. Policy 227 Controlled Substance-Paraphernalia (repeal and replace) (Proposed / Current)
2. Policy 233: Suspension and Expulsion (repeal and replace) (Proposed / Current)
3. Policy 233 AR: Suspension and Expulsion (repeal and replace) (Proposed / Current)

Dr. Farina discussed the policies that were reviewed multiple times since fall. She asked the Board to pay close attention to the change of language in the policies.

b. 2021-22 Budget Update and Report from Finance Committee

Sandy Kassel presented a Power Point explaining the preliminary 2021-2022 budget. The adoption of the proposed final budget will be on May 13, 2021. Mrs. Kassel presented the many sections of the overall budget. She explained the expenditure summary highlights including staffing additions, new/additional contracted services and the full-day kindergarten program. Mrs. Kassel talked about the revenue needed to support the expenditures and showed different millage increases. A slide showing Real Estate Tax Revenue was shared to help explain the additional tax generated and fund balance needed. Mrs. Kassel invited questions or requests from the Board.

Dr. Roche shared that a communication went out to all public and non-public school families today which asked for next year's intentions which could change the charter school increased costs in the budget.

Dr. Drake asked what the current fund balance is for regular and capital and how much was transferred last year. He questioned what the predicted deficit amount was for last year and said that he thinks the deficit will be a break even based on the predictions this year.

Mrs. Kassel explained the costs that need to be paid no matter what this year especially charter schools.

PUBLIC COMMENTS ON ACTION ITEMS

None

PERSONNEL

Motion by Stephen Cunningham, seconded by Keith McCarrick, to approve the **Personnel Report as presented:**

a. **RESIGNATIONS**
   - **i. Melanie Kulp**, Athletic Administrative Assistant resigned her employment with the District, effective April 23, 2021.
   - **ii. Stephanie Cooper**, Custodian, resigned her employment with the District, effective April 13, 2021.
   - **iii. Stephen Gale,** Technology Assistant resigned his employment with the District on April 16, 2021 at the conclusion of the 2020-2021 school year.
   - **iv. Rachel Plank,** Spanish Teacher, resigned her employment with the District on April 16, 2021 at the conclusion of the 2020-2021 School Year.

b. **APPOINTMENTS**
   - i. **Support Staff:**
     - a. **Gloria Matthews**, as Cafeteria/Playground Aide at the 4th and 5th Grade Center, effective date to be determined, to be hired subject to employment history review, at 10.50/hour.

   - ii. **Supplemental:**

Area	Position	Name	Schedule	Salary
Middle School	Chorus Advisor	Amanda Maldonado	A	$1620.00

c. **LEAVES OF ABSENCE**
   - i. **Tessa Kiesel-** approve Maternity Leave beginning on or approximately August 24, 2021 and continuing on Family and Medical Leave of Absence until November 19, 2021.
   - ii. **James Karom-** approve Family and Medical Leave beginning on March 16, 2021 and continuing up until June 8, 2021.
   - iii. **Tina Shoup** - approve Uncompensated Leave from April 6, 2021 through April 28, 2021.
   - iv. **James Coleman-** approve Family and Medical Leave beginning on April 12, 2021 continuing up until June 21, 2021.

ACTION ITEMS

Motion by Stephen Cunningham, seconded by Keith McCarrick, to approve **Action Items a, b, c, and d:**

a. Motion to approve **an increase in the Paraprofessional rate for the Extended School Year program** from $10.00/hour to $13.00/hour and additional $2.00/hour for Personal Care Assistant effective June 28, 2021.

b. Motion to **establish the Paraprofessional rate for the Power UP! Camp and Ready to Learn! Camp** (both grant funded programs) at $13.00/hour effective June 28, 2021.

c. Motion to approve **an environmental services proposal from TRC Environmental Corporation** of Exton, PA in the amount $7,900 to produce asbestos abatement specifications in support of the Energy Performance Contracting (GESA) project.

d. Motion to approve **the recommendation from the Facilities Committee for the purchase and installation of the Hereford Kindergarten Furniture from Corbett, Inc.** out of the capital projects fund not to exceed $164.336.92

Motion carried; all voted aye.

COMMITTEE REPORTS

a. Special Education & Pupil Services Committee – Judy Maginnis

Judy Maginnis said a meeting was not held so there was not a report.

Dr. Drake shared information that Knoebels Amusement Park became a certified autism center. Knoebels partnered with The International Board of Credentialing. The team at Knoebels had received specialized training to have the knowledge, skills, temperament and expertise to cater to all children including those with special needs and offer specialized services to guests who have autism or other special needs.

b. Curriculum & Instruction Committee – Dr. Kerry Drake

No report.

c. Extracurricular Committee – Peg Pennepacker

Peg Pennepacker reported that invited guests who attended were Michele Burns, Middle School yearbook advisor and Bobby Kurzweg, Athletic Director. Mrs. Burns shared a slide presentation about the members assignments and goals for the yearbook club. Mr. Kurzweg shared a spring sports update and said the season is going well and stated that the students and coaches are performing like rock stars. The committee talked about the outdoor basketball courts at the high school and working on bringing them up to playable conditions. The next meeting is scheduled for May 20, 2021.

d. Facilities Committee – Melanie Cunningham

Melanie Cunningham reported that they talked about the full-day kindergarten furniture costs, the GESA projects updates and that the new chiller at the high school is just about finished. They talked about the new outdoor lighting repairs and samples of classroom lighting. Mrs. Cunningham said there should be a ribbon cutting at the playground at Marlborough soon, new exterior cameras at Hereford and she referenced the trees that were cut down at Marlborough. The next meeting is scheduled for May 20, 2021. Mrs. Cunningham is hoping to have an extra meeting either May 6, or 10, 2021 to discuss the GESA Phase 1b.

e. Finance Committee – Melanie Cunningham

Melanie Cunningham reported that the budget presentation was just given that evening and she did not have more to add to it. Mrs. Cunningham wanted to say that her personal opinion is that she does not want to cut anything and she does not want to raise taxes. The next meeting is scheduled for May 3, 2021.

f. Policy Committee – Peg Pennepacker

Peg Pennepacker said the committee continues to move through the 200 level policies. Ms. Pennepacker reported that an in-depth discussion was held concerning Policy 214 Class Rank. District administration, high school administration, school board members and community members were present to contribute to the conversation. Dr. Farina added that there are many differing thoughts and sentiments on that topic. The next meeting is scheduled for May 17, 2021.

g. Western Montgomery Career & Technology Center – Stephen Cunningham
Stephen Cunningham reported that the students are taking their NOCTI exams. He said there are over 400 applications for the next year, and there are plans for a feasibility study.

h. Montgomery County Intermediate Unit – Judy Maginnis
No report.

i. Legislative Liaison Report – Peg Pennepacker
Peg Pennepacker reported that there are a lot of things happening legislatively currently. At the federal level President Biden released the 2021-22 proposed budget. Ms. Pennepacker explained some of the educational components in the budget and the state level budgets. Senate Bill 248 was passed which designates March 6th of each year Persian Gulf War Veterans Day. Ms. Pennepacker talked about the House Bills that speak to charter school students and dual enrollment and home-school students being allowed to participate in co-curricular activities that merge with extra-curricular activities with a required academic class. She discussed the recent PSERS Board vote and the charter school reform bill.

j. Upper Perkiomen Education Foundation – Mike Elliott
Mike Elliott shared that the Upper Perkiomen Education Foundation will be distributing yard signs and that parents can purchase other items for any age students.

k. Regional Planning Commission Representative – Dr. Kerry Drake
No report

PUBLIC COMMENTS

Jennifer Hartzell, East Greenville, asked Peg Pennepacker what the bill number was for the charter school dual enrollment, it is HB358.

Deb Burns, UPHS teacher, asked if Dr. Drake's information about Knoebels could be shared with the faculty and parents in some fashion.

BOARD COMMENTS

Mike Elliott is happy to see that the district is going to work with the Kiwanis organization, he would also like to see work be done on the outdoor basketball courts, and thanked Dr. Drake on the information about Knoebels.

Kyle Somers spoke to the Board about the Supreme Court case of Mahanoy Area School District; the hearing will be held April 28th at 10:00 am and it can be viewed on C-Span.

Kerry Drake, wanted to make sure he did not leave a negative impression with the budget. He said he is happy with the changes that have been made with moving forward and in the right direction. He said what is important is that if we need things, we need them and it is good to have an accurate forecast of the budget.

ADJOURNMENT

Motion by Stephen Cunningham, seconded by Mike Elliott, to **adjourn the meeting at 8:05 p.m**. Motion carried; all voted aye.

_____
Sandra M. Kassel, Board Secretary

Attachment B
First Reading

Book: Policy Manual
Section: 800 Operations
Title: Contracted Services Personnel
Code: 818
Status: From PSBA

Purpose

In its effort to provide cost-effective programs, the Board **uses outside independent** contractors **for a variety of purposes**. The District **is required to ensure that such contractors comply with certain legal requirements regarding contractor employees involved in the delivery of** services **to the District.** This policy is adopted to **outline those requirements and the manner in which the District shall direct and monitor contractor compliance.**

Definitions

For purposes of this policy, contractor employee shall include an individual who:

1. **Is employed or offered employment by an independent contractor or a subcontractor of an independent contractor, or is an individual independent contractor; and**
2. **Has or will have direct contact with children.**

Direct Contact with Children - the possibility of care, supervision, guidance or control of children or routine interaction with children.[1]

For purposes of this policy, independent contractor shall mean an individual or entity that contracts with the District to provide services.

Authority

The **District** is required by law to ensure that independent contractors and **contractor** employees comply with the mandatory background check requirements for criminal history and child abuse **certifications, the employment history review requirement, and the arrest and conviction reporting requirements.**[2][3][4]

Guidelines

Prior to using contracted services, a written contractual agreement shall be entered into between the District and the independent contractor and maintained centrally by the District in a manner similar to that for other contracts. Requests for proposals, bid specifications for proposals and resulting contracts shall specify the following:

1. **Mandatory requirements for criminal history background checks, child abuse certifications, employment history reviews, and arrest and conviction reporting for contracted services involving direct contact with children, as mandated by law and set forth in this policy.[5]**
2. **A requirement that all contracted transportation providers provide a program of drug and alcohol testing for covered drivers. A covered driver shall include any contractor employee who drives, operates or is in the actual physical control or movement of a school bus or a commercial vehicle owned, leased or operated by the independent contractor in connection with School District services.[6][7][8][9][10]**
3. **That failure to comply with this policy and the requirements for criminal history background checks and child abuse certifications, employment history reviews, and required reporting of employee arrests, convictions or other misconduct by an independent contractor or contractor employee shall be grounds for termination of the contract.**

The Superintendent or designee shall review all information provided pursuant to this policy and determine if information is disclosed that precludes employment or continued service of an independent contractor or contractor employee.[2][3][4][5][11]

Information submitted by an independent contractor or contractor employee in accordance with this policy shall be maintained centrally in a manner similar to that for school employees.

Independent contractors shall obtain and submit new certifications every sixty (60) months.

Pre-Employment Requirements

Employment History Review -

Independent contractors shall conduct an employment history review, in compliance with state law, prior to assignment of a **contractor** employee to perform work for the District **in a position or assignment involving direct contact with children.** The independent contractor may use the information for the purpose of evaluating an applicant's fitness to be hired or for continued employment of a current **contractor** employee and may report the information as permitted by law.[4]

Independent contractors shall inform the District, in writing, upon receipt of an affirmative response to any of the abuse and sexual misconduct background questions for a contractor employee. If the District objects to the assignment, the independent contractor may not assign the contractor employee to the District.[4]

Independent contractors shall, upon request, provide the District to which a contractor employee is assigned access to the employee's employment history review records.

Criminal History -

Prior to assignment of contractor employees to perform work for the District in a position or assignment involving direct contact with children, contractor employees shall **submit an official** child abuse **clearance statement and state and federal** criminal history background checks **(certifications) as required by law.**[2][3]

Contractor employees shall report, on the designated form, all arrests and convictions as specified on the form. **Contractor** employees shall likewise report arrests and/or convictions that occur subsequent to initially submitting the form. Failure to accurately report such arrests and convictions may subject the individual to denial of employment/contract, termination if already hired/contracted, and/or criminal prosecution.[3]

Tuberculosis Test -

Contractor employees providing services for students shall undergo a test for tuberculosis in accordance with the regulations and guidance of the Pennsylvania Department of Health.[12][13]

Arrest and Conviction Reporting Requirements

All independent contractors shall adopt policies and procedures that require their employees, who are providing services to the District and who have direct contact with children, to notify the **independent** contractor, in writing, within seventy-two (72) hours of the occurrence, of an arrest or conviction required to be reported by law. **Contractor** employees shall also be required to report to the **independent** contractor, within seventy-two (72) hours of notification, that the employee has been **named** as a perpetrator in **a founded or indicated report pursuant to** the Child Protective Services Law. **The policies and procedures shall also include the provision that the** failure **on the part of contractor employees** to **make such a timely notification** shall subject **them** to disciplinary **action**, including termination.[3][11]

If the **independent** contractor receives notice of such arrest or conviction **or** that the **contractor** employee has been **named** as a perpetrator in **a founded or indicated report,** from either the **contractor** employee or a third party, the **independent** contractor shall immediately report, in writing, that information to the **Superintendent or designee.**

The independent contractor shall immediately require a contractor employee to submit new certifications when there is a reasonable belief that the employee was arrested for or has been convicted of an offense required to be reported by law, was named as a perpetrator in a founded or indicated report, or has provided written notice of such occurrence.[3][11]

Contractor employees who provide transportation services shall immediately notify the independent contractor and the District's transportation supervisor of any traffic citations or the suspension, revocation or cancellation of operating privileges.[14]

Educator Misconduct

If the Superintendent reasonably suspects that conduct being reported involves an incident required to be reported under the Educator Discipline Act, the Superintendent or designee shall notify the Pennsylvania Department of Education, in accordance with applicable law, regulations and Board policy 317.1.[15][16]

Training

Independent contractors shall provide their employees who have direct contact with children with mandatory training on child abuse recognition and reporting. The training shall include, but not be limited to, the following topics:[1]

1. Recognition of the signs of abuse and sexual misconduct and reporting requirements for suspected abuse and sexual misconduct.
2. Provisions of the Educator Discipline Act, including mandatory reporting requirements.[17]
3. District policy related to reporting of suspected abuse and sexual misconduct.[18]
4. Maintenance of professional and appropriate relationships with students.[19]

Employees of independent contractors who have direct contact with children are required to complete a minimum of three (3) hours of training every five (5) years.[1]

Contractor employees shall attend orientation and training sessions, as appropriate to the nature of their service. When training is provided for school employees relating to the legal obligations of employers and educational institutions, consideration shall be given to which contractor employees should also receive that training.

Child Abuse Reporting

All contractor employees who have reasonable cause to suspect that a child is the victim of child abuse shall make a report of suspected child abuse in accordance with applicable law, Board policy and administrative regulations.[18][20]

Confidentiality

No contractor employee shall be permitted access to confidential student information unless the District has determined that such access is necessary for the contractor employee to fulfill his/her responsibilities. Contractor employees with access to confidential student information shall maintain the confidentiality of that information in accordance with Board policies and procedures and applicable law. If a contractor employee has questions about the confidentiality of student information, the contractor employee should consult with the building principal.[21][22]

Legal

1. 24 P.S. 1205.6

2. 23 Pa. C.S.A. 6344

3. 24 P.S. 111

4. 24 P.S. 111.1

5. 55 PA Code 3490.132

6. 49 CFR Part 382

7. 67 PA Code 71.3

8. 75 Pa. C.S.A. 1612

9. 75 Pa. C.S.A. 3802

10. Pol. 810.1

11. 23 Pa. C.S.A. 6344.3

12. 24 P.S. 1418

13. 28 PA Code 23.44

14. 75 Pa. C.S.A. 1606

15. 24 P.S. 2070.9a

16. Pol. 317.1

17. 24 P.S. 2070.1a et seq

18. Pol. 806

19. Pol. 824

20. 23 Pa. C.S.A. 6311

21. Pol. 113.4

22. Pol. 216

24 P.S. 1362

22 PA Code 8.1 et seq

23 Pa. C.S.A. 6301 et seq

75 Pa. C.S.A. 1601 et seq

Pol. 610

Pol. 810

Attachment C

PROCLAMATION

WHEREAS, the Board of Directors, of the Upper Perkiomen School District, of Montgomery County in the Commonwealth of Pennsylvania, takes great pleasure in acknowledging notable achievements of young adults in the community; and

WHEREAS, the Board of Directors wish to applaud the

UPPER PERKIOMEN SCHOOL DISTRICT
GRADUATING HIGH SCHOOL SENIOR CLASS OF 2021

WHEREAS, graduation is an exciting time. It marks both an ending and a beginning; it evokes warm memories of the past and big dreams for the future; and

WHEREAS, today is a milestone. It tells you how far you've come. In the words of Ralph Waldo Emerson:

"What lies behind us and what lies before us are tiny matters compared to what lies within us"

WHEREAS, the Board of Directors declares

June 10, 2021 a Celebratory **DAY** for all the graduating seniors of Upper Perkiomen School District

THEREFORE, be it Proclaimed that the Board of Directors of the Upper Perkiomen School District offer our warmest congratulations on your upcoming graduation.

PROCLAIMED this 27th day of May, 2021.

Upper Perkiomen School District Board of Directors

_____

Melanie Cunningham, Board President

Attachment D

RESOLUTION NO. _____

A RESOLUTION OF THE GOVERNING BOARD OF UPPER PERKIOMEN SCHOOL DISTRICT , MONTGOMERY, PENNSYLVANIA, AUTHORIZING, EMPOWERING AND DIRECTING THE PROPER OFFICERS OF THE GOVERNING BOARD TO EXECUTE AN AGREEMENT WITH BERKHEIMER WHEREUNDER BERKHEIMER IS RETAINED AS THE EXCLUSIVE TAX OFFICER FOR THE COLLECTION, ADMINISTRATION, RECEIPT AND ENFORCEMENT OF THE PROVISIONS OF THE RESPECTIVE TAX ENACTMENT OF THE GOVERNING BOARD LEVYING AND ASSESSING THE PER CAPITA TAX FOR THE TERM HEREIN DEFINED, TOGETHER WITH SUCH EXTENSIONS AS MAY BE AGREED UPON, SAID TAX ENACTMENT HAVING BEEN ADOPTED UNDER AND PURSUANT TO THE AUTHORITY OF THE PENNSYLVANIA LOCAL TAX ENABLING ACT (ACT 511, P.L. 1257); AND APPROVING AND ADOPTING THE RULES AND REGULATIONS PREPARED BY BERKHEIMER TO ADMINISTER AND ENFORCE THE PER CAPITA TAX.

WHEREAS, the Local Tax Enabling Act (LTEA), authorizes certain political subdivisions, including, **UPPER PERKIOMEN SCHOOL DISTRICT, MONTGOMERY COUNTY,** to levy, assess and collect a tax on adult residents, as therein with more particularity specified, generally and hereinafter referred to as the **"PER CAPITA TAX;"** and

WHEREAS, **UPPER PERKIOMEN SCHOOL DISTRICT, MONTGOMERY COUNTY**, by Resolution and/or Ordinance, has levied, assessed and provided for the collection of such **PER CAPITA TAX**; and

WHEREAS, the LTEA, specifies that any such political subdivision may provide for the creation of such bureaus or the appointment and compensation of such officers, clerks, collectors and other assistants and employees as may be deemed necessary for the assessment and collection of taxes imposed under the authority of that Act; and

WHEREAS, **UPPER PERKIOMEN SCHOOL DISTRICT, MONTGOMERY COUNTY**, and Berkheimer have negotiated an Agreement whereby and whereunder it will hire Berkheimer to collect the **PER CAPITA TAX** levied by **UPPER PERKIOMEN SCHOOL DISTRICT, MONTGOMERY COUNTY**, and

WHEREAS, **UPPER PERKIOMEN SCHOOL DISTRICT, MONTGOMERY COUNTY,** recognizes the legal obligation and practical necessity for Berkheimer to establish and maintain consistent rules and regulations to be used in the efficient administration and collection of said taxes;

THEREFORE, **BE IT RESOLVED** that:

1. **UPPER PERKIOMEN SCHOOL DISTRICT, MONTGOMERY** hereby **appoints BERKHEIMER** as its exclusive **collector** of its **PER CAPITA TAX** for the initial term commencing **July 1, 2021** and ending **June 30, 2023** and any subsequent renewal terms thereafter, said initial and renewal periods to include all quarterly and annual collections pertinent to the tax years therein. This appointment resolution shall be deemed to encompass any renewal terms agreed upon by the parties without further reenactment of this resolution or re-appointment.
2. Further, **BERKHEIMER** is authorized to retain any costs of collection incurred in recovering delinquent taxes and assessed to the delinquent taxpayer as allowed by law.
3. Further, **UPPER PERKIOMEN SCHOOL DISTRICT, MONTGOMERY COUNTY,** APPROVES AND ADOPTS the Agreement negotiated with Berkheimer for the collection of the **PER CAPITA TAX**.
4. Any resolution or part of this resolution conflicting with the provisions of this resolution be and the same are hereby repealed to the extent of such conflict.

ENACTED into a RESOLUTION this _____ day of _____, _____.

BY: _____

_____

_____

ATTEST:

_____

AGREEMENT

THIS AGREEMENT, Made and entered into, in duplicate, this _____ day of _____, _____, By and Between **UPPER PERKIOMEN SCHOOL DISTRICT , MONTGOMERY**, **COUNTY**, Pennsylvania, hereinafter referred to as "CLIENT," and **H. A. BERKHEIMER**, **INC.**, a Pennsylvania corporation, with its principal offices at 50 North Seventh Street, Bangor, Northampton County, Pennsylvania, trading as "Berkheimer Tax Administrator"

( ), hereinafter referred to as "BERKHEIMER."

W I T N E S S E T H:

WHEREAS, the "Local Tax Enabling Act" ("LTEA"), authorizes certain political subdivisions, including CLIENT, to levy, assess and collect a tax on adult residents, as therein with more particularity specified, generally and hereinafter referred to as the **"Per Capita Tax"**; and

WHEREAS, CLIENT, has levied, assessed and provided for the collection of an Per Capita Tax under the LTEA; and

WHEREAS, BERKHEIMER has represented to CLIENT that it is competent, experienced and qualified to perform in the capacity of Per Capita Tax Collector for CLIENT; and

WHEREAS, CLIENT and BERKHEIMER have negotiated an Agreement whereby and whereunder CLIENT will appoint and/or hire BERKHEIMER to exclusively collect the Per Capita Tax levied by CLIENT; and

WHEREAS, the terms and form of this written Agreement, in which the parties have embodied the verbal understanding heretofore reached by them, have been submitted to, approved by and the execution hereof authorized by Resolution and/or Ordinance of CLIENT duly and regularly passed;

NOW, THEREFORE, in consideration of the foregoing, the mutual covenants herein contained and other good and valuable consideration, the parties hereto, each intending to be legally bound hereby, do covenant and agree as follows:

1. **Designation as Tax Collector.** CLIENT does hereby designate and employ BERKHEIMER as the exclusive Collector of the Per Capita Tax levied by CLIENT for the term commencing **July 1, 2021** and ending **June 30, 2023**, and as may be renewed. Said term shall be deemed to include all quarterly collections for each tax year herein. BERKHEIMER shall perform all of the duties and shall have all of the powers of the exclusive Tax Collector of the CLIENT for the collection of the Per Capita Tax, as conferred and designated by the Ordinances of the CLIENT, by the applicable provisions of the LTEA and any successor laws thereto. To the extent applicable to BERKHEIMER in its capacity as such Tax Collector, BERKHEIMER shall be subject to the requirements, provisions, and penalties provided in the Ordinances of the CLIENT, the LTEA and any successor laws thereto.

2. **Duties of Berkheimer.** In the collection of CLIENT's Per Capita Tax, BERKHEIMER agrees as follows:

(a) to perform, at its expense, all of the necessary work and/or labor and to supply all necessary forms, notices, modern accounting equipment, facilities and materials and all else necessary to efficiently administer, enforce and collect the Per Capita Tax levied by CLIENT;

(b) to exclusively collect, administer, receive and enforce the provisions of CLIENT's Per Capita Tax enactments, the LTEA and any subsequent laws relative to same;

(c) to collect and receive the taxes, fines, interest and penalties levied and imposed by CLIENT's tax enactments and maintain a record showing the amount received by it from each taxpayer paying same and the date of such collection and receipt;

(d) to furnish to CLIENT a bond with corporate surety in an amount sufficient to cover collections which, under the terms hereto, shall remain undistributed in the control of BERKHEIMER at any time;

(e) to promptly deposit all sums collected by it in a banking institution of its choice and in an account designated as "Berkheimer Tax Account," which need not be separate and segregated from other taxes or funds of other taxing bodies collected by BERKHEIMER, and to disburse to CLIENT all collected sums identified by BERKHEIMER as legally due CLIENT during each calendar month, reconciling disbursements not later than the twenty-fifth (25^{th}) day of the next succeeding month;

(f) to provide to CLIENT, on or about the twentieth (20^{th}) day of each calendar month, a written report identifying separately, without individual names or amounts, all taxes, interest, penalties and fines collected under this Agreement during the preceding calendar month; and

(g) to advise CLIENT of any errors which it may discover committed in the collection of CLIENT's Per Capita Tax prior to BERKHEIMER's tenure as Per Capita Tax Collector, including but not limited to errors in tax distributions and/or inaccurate tax records, which may have been caused or created by the CLIENT or its duly elected or appointed officials, agents or tax collectors, past or present, and to correct said errors to the best of its ability. To the extent that BERKHEIMER is required to correct said prior collection errors, CLIENT hereby indemnifies BERKHEIMER from and against any and all loss, damage or claim relative to uncollected tax revenue caused by said prior collection errors and/or BERKHEIMER's inability to correct same.

(h) to be responsible, at its expense, for the collection of all delinquent taxes which BERKHEIMER is legally entitled to collect, for which CLIENT can provide adequate documentation for tax years prior to those set forth in this Agreement in addition to those taxes which become delinquent during the term of this Agreement. CLIENT does hereby designate BERKHEIMER

and/or its counsel to appear before any court of competent jurisdiction on behalf of CLIENT for the purpose of such delinquent collections. The costs of collection incurred by BERKHEIMER may be assessed to the taxable and retained by BERKHEIMER as allowed by law.

3. **Compensation**. CLIENT agrees to compensate and reimburse BERKHEIMER for all of BERKHEIMER's services and for all materials furnished including, but not limited to, expenditures made by BERKHEIMER for equipment, supplies, personnel and related expenses, except postage, in an amount equal to Seventy-five cents ($.75) per bill printed, plus postage, provided that Berkheimer is also the appointed collector of these taxes for all of the municipalities within the School District except for Red Hill Borough, which compensation and reimbursement shall be known as "BERKHEIMER's commission." If Berkheimer is not the appointed collector of these taxes for the municipalities within the School District except Red Hill Borough, then Berkheimer's commission shall remain Seventy-five cents ($0.75) per bill printed, plus postage, which shall be paid solely by CLIENT.

This commission rate shall be effective throughout the term of this Agreement except in the event of a change in the rate of the tax levy. In the event of such change the rate of commission shall be immediately open for negotiation and be considered as a change in the terms of the agreement. CLIENT agrees that BERKHEIMER shall retain said commission from the proceeds of any tax sums collected and shall not be transmitted with the monthly reconciliation payment. CLIENT shall be liable for all postage charges incurred by BERKHEIMER. BERKHEIMER shall account for and provide CLIENT a breakdown and itemization of commission and expenditures, including postage charges with the monthly reconciliation payment.

4. **Client Contact.** CLIENT agrees to appoint a specific individual or individuals as its authorized representative to make requests upon and receive any and all tax information and

records from Berkheimer, relative to the collection of taxes for CLIENT, as desired and deemed necessary by CLIENT, to be used for official purposes only.

5. **Duties of Client.** CLIENT expressly agrees to do the following:

(a) at its sole expense, publish all legal notices required to be published in any newspaper of general circulation and/or in the necessary legal journals by the laws of the Commonwealth of Pennsylvania in the enactment and/or administration of the CLIENT's tax enactment;

(b) provide BERKHEIMER with its most recent tax records and tax rolls;

(c) provide to BERKHEIMER information sufficient to maintain and update said tax records and rolls. The parties agree and acknowledge that BERKHEIMER shall use its best reasonable efforts to update CLIENT's tax rolls during its tenure as Tax Collector, using those resources available to it; however, CLIENT bears the ultimate responsibility for updating said tax rolls;

(d) designate and authorize BERKHEIMER to appear before any district court, or other local court, including without limitation, any court of common pleas in which legal proceedings may be brought for the purpose of collecting Per Capita Tax herein;

(e) provide to BERKHEIMER all necessary appointment resolutions, confidentiality resolutions, tax enactments and other documents not previously identified herein for the collection of the Per Capita Tax and to give BERKHEIMER actual and/or apparent authority to settle any lawsuit brought by BERKHEIMER for the collection of the Tax. BERKHEIMER shall use its best judgment and expertise in settling said collection lawsuits; and

(f) at BERKHEIMER's election and with CLIENT's approval, provide at CLIENT's expense, legal representation through its solicitor on any matter relative to the collection, enforcement, administration and/or the validity and constitutionality of the CLIENT's Per Capita Tax.

6. **Audit.** Except as set forth in this provision, or as otherwise required by law, BERKHEIMER shall not be required to either submit to or provide for any other type of audit or inspection of tax collection records. Notwithstanding the foregoing, nothing in this provision shall prevent or preclude CLIENT from obtaining copies of its tax records from BERKHEIMER vis-à-vis CLIENTs appointed liaison.

7. **Non-liability of Berkheimer & Disclaimer.** CLIENT shall hold harmless and indemnify BERKHEIMER from and against any and all loss, damage or claim for actual or attempted Per Capita Tax collection(s) arising from:

(a) incorrect, illegal or improper tax records submitted by CLIENT to BERKHEIMER;

(b) incorrect, illegal or improper tax information submitted by taxpayers and/or employers located within CLIENT's jurisdiction, to BERKHEIMER;

(c) incorrect, illegal or improper tax information submitted by any other source to BERKHEIMER, including without limitation, another tax collector or taxing district, upon which BERKHEIMER can reasonably be expected to rely upon;

(d) the withholding of correct, legal or proper information by CLIENT from BERKHEIMER;

(e) the withholding of correct, legal and proper information by taxpayers and/or employers located within CLIENT's jurisdiction, from BERKHEIMER; and

(f) the withholding of correct, legal and proper information by any other source from BERKHEIMER, including without limitation, another tax collector or taxing district, upon which BERKHEIMER can reasonably be expected to rely upon.

BERKHEIMER does not expressly or impliedly guarantee to CLIENT that it will collect a sum certain for CLIENT in any given tax year. BERKHEIMER shall not be responsible to

defend or uphold the validity, legality, or constitutionality of CLIENT's Per Capita Tax Ordinance/Resolution except to the extent that the legality of same is challenged in response to a collection suit filed by BERKHEIMER for and on behalf of CLIENT. To the extent BERKHEIMER advises CLIENT of any errors which it may discover committed in the collection of CLIENT's Per Capita Tax prior to BERKHEIMER's tenure as Per Capita Tax Collector, including but not limited to errors in tax distributions and/or inaccurate tax records, which may have been caused or created by the CLIENT or its duly elected or appointed officials, agents or tax collectors, past or present, and to correct said errors to the best of its ability and to the extent that BERKHEIMER is required to correct said prior collection errors, CLIENT hereby indemnifies BERKHEIMER from and against any and all loss, damage or claim relative to uncollected tax revenue caused by said prior collection errors and/or BERKHEIMER's inability to correct same. BERKHEIMER shall not be ultimately responsible for the maintenance or update of and does not guarantee the accuracy of CLIENT's tax rolls.

BERKHEIMER DOES NOT MAKE ANY EXPRESS OR IMPLIED WARRANTY OF ANY KIND. SPECIFICALLY, THERE IS NO EXPRESS OR IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE FOR THE SERVICES TO BE PROVIDED HEREUNDER.

BERKHEIMER shall not be liable to CLIENT for any damage arising from any event that is out of the control of BERKHEIMER. BERKHEIMER shall not be liable for any requested and proven taxpayer refunds or interest thereon. Neither shall BERKHEIMER be liable to CLIENT for indirect, special, incidental, exemplary, consequential, or any other form of monetary damages, including without limitation, lost revenue, or for the loss of data or information of any kind, however caused, and arising out of or in connection with the performance of BERKHEIMER, or the provision of services or performance hereunder, whether based in contract, tort or any other legal theory, and

whether or not BERKHEIMER has been aware of the possibility of such damages. Any damages not excluded by this provision or the Agreement in general shall be limited to proven direct damages that CLIENT shall have the duty to mitigate.

8. **Renewal.** Either party may terminate this Agreement at the expiration of the term created herein by giving to the other written notice of its intention to do so at least ninety (90) days prior to the actual ending date of the current term of appointment; however, in default of such notice, this Agreement, with all the conditions and covenants thereof, shall continue in full force and effect for the additional period of **one (1) year** for **one (1) year periods** thereafter until terminated by either party giving to the other ninety (90) days written notice of intention to terminate said Agreement prior to the expiration of the then current term. In the event of termination of this Agreement, either at the expiration of initial collection term or subsequent renewal terms, BERKHEIMER shall complete, and have the opportunity and right to complete its tax collections for the then current term and shall be compensated accordingly under the terms of this Agreement.

9. **Records.** BERKHEIMER shall deliver to CLIENT alphabetical lists of all taxpayers located in the CLIENT's jurisdiction at the time the Agreement expires and reports of payments posted by BERKHEIMER during the preceding tax year upon termination of this Agreement and at the end of any two (2) year extension period, more fully described herein. In the event of termination of this Agreement, either at the expiration of initial collection term or subsequent renewal terms, BERKHEIMER reserves the right to retain said information/records until such time that it has fully completed its obligations under this Agreement to collect taxes for the term set forth herein or any subsequent renewal term for a period not to exceed two (2) years. Any taxpayer account(s) under or subject to civil or criminal litigation commenced by BERKHEIMER, wage garnishment, and/or payment plan, shall remain with BERKHEIMER until such collection action is completed and BERKHEIMER shall be compensated for such collections pursuant to the terms of

this Agreement.. BERKHEIMER shall have the right to deliver said information to CLIENT in a form it so chooses and mutually agreeable to both parties. In the event that the parties cannot agree upon an acceptable format to deliver said records, BERKHEIMER shall deliver said records in a universal computer, Delimited, flat data file. Moreover, in the event said records or information are contained within and made a part of similar records relating to the collection of taxes of other political subdivisions whose taxes are also collected by BERKHEIMER, then in that event, the CLIENT shall not be entitled to receive non-CLIENT records. However, CLIENT shall have the right to make copies of said records or to examine same in the office of BERKHEIMER for the purpose of obtaining such information as it relates solely and exclusively to the collection of the tax from taxpayers of CLIENT. BERKHEIMER shall not be required to deliver to CLIENT any source documents such as taxpayer returns or filings. In no event shall BERKHEIMER be required to deliver said information/records to any person or entity other than to CLIENT, including but not limited to any successor tax collectors. Computer hardware and software utilized by BERKHEIMER in the tax collection process is, and shall remain, the exclusive property of BERKHEIMER.

10. **Tax Enactment/Regulations.** Incorporated by reference into this Agreement is the CLIENT's Per Capita Tax Resolution/Ordinance and other pertinent materials relating to the Per Capita Tax as adopted from time to time by CLIENT. Concurrently with the execution hereof, CLIENT has delivered to BERKHEIMER a copy of the Per Capita Tax Resolution and/or Ordinance of CLIENT, of the Resolution and/or Ordinance approving these Articles of Agreement and appointing BERKHEIMER as Tax Collector/Collector, and other pertinent materials relating to the Per Capita Tax of CLIENT. In the event that the CLIENT's tax enactment is declared invalid or repealed for any reason whatsoever following the execution of this Agreement, CLIENT shall remain liable to BERKHEIMER for any and all reasonable costs and expenses incurred and collection fees for services rendered by BERKHEIMER in the collection of the Per Capita Tax until such time that

the alleged invalidity has been finally adjudicated or such repeal finalized. If any provision of the CLIENT's tax enactment is challenged in a court of competent jurisdiction, BERKHEIMER shall be permitted to continue with its collection efforts until final adjudication, unless otherwise enjoined by the court. CLIENT agrees to deliver to BERKHEIMER, within thirty (30) days after enactment, all amendments to the Per Capita Tax Resolution and/or Ordinance and to the rules and regulations pertaining thereto.

11. **Miscellaneous Charges.** In addition to the aforestated commission, the costs of collecting delinquent taxes incurred by BERKHEIMER may be assessed to the taxpayer and retained by BERKHEIMER as allowed by law. BERKHEIMER will advance the required filing fees and any costs imposed by the court for any legal proceeding to enforce a tax obligation. Unless and until paid by the taxpayer, the CLIENT shall be liable for the aforementioned fees. BERKHEIMER will deduct the filing fees or costs (including any Act 192 fees) from a subsequent distribution of tax to CLIENT and thereafter will credit the amount to the CLIENT if and when it is paid by the taxpayer. CLIENT shall be solely responsible for and fully reimburse BERKHEIMER for all costs of any legal proceedings undertaken to administer, enforce or otherwise collect Per Capita Tax. At BERKHEIMER's election, CLIENT shall make available at CLIENT's expense, the CLIENT's solicitor for purposes of conducting any legal proceedings on the CLIENT's behalf and related legal representation. Additionally, the parties acknowledge and agree that BERKHEIMER is authorized to retain excess bank earning credits to offset any bank item processing fees incurred by BERKHEIMER.

12. **Interest.** Notwithstanding any other provisions of this Agreement, the parties agree and acknowledge that any monies that remain unidentified or which are to be forwarded to other taxing districts may be held by BERKHEIMER in an interest bearing account until CLIENT or BERKHEIMER determines where said monies should be paid. Any interest accrued on such funds

shall be retained by BERKHEIMER as its compensation for the handling, processing and distribution of such funds with no additional charge being made to CLIENT for this service.

13. **Non-Competition.** During the Term of Appointment and/or any renewal thereof, and for the two (2) year extension period thereafter, CLIENT agrees not to solicit or hire for employment any current or past employee of BERKHEIMER for services as an independent contractor, employee of otherwise in such a capacity that competes with the services and/or business of BERKHEIMER.

14. **Dispute Resolution.** Any dispute, controversy or claim arising out of or under this agreement or its performance shall first be negotiated by the parties, and if an acceptable resolution does not result shall be submitted to arbitration which shall be exclusive, final, binding and conducted in accordance with the Pennsylvania's Uniform Arbitration Act, 42 Pa.C.S.A. §7321.1 *et seq.,* and shall be nonappealable except in accordance with such act. Each party shall appoint one such arbitrator, and a third arbitrator shall be chosen by the two arbitrators aforementioned within five days after their appointment. The decision of the majority of such arbitrators shall be binding and conclusive upon the parties hereto. The appointment of such arbitrators shall be made within five days after receiving notice from any one of the parties hereto to make such appointment. The failure of any one of the parties to so appoint an arbitrator shall authorize the other to make an appointment for it. If such two arbitrators shall fail or be unable within five days to select a third arbitrator, then and in such event, any Judge of the Common Pleas Court of Northampton County, upon application made by any one of the parties hereto for that purpose, is authorized and empowered to appoint such additional arbitrator.

15. **Breach of Contract.** If a party breaches any material term of this Agreement and fails to remedy the breach within sixty (60) days of receipt of written notice from the non-breaching party, the non-breaching party may terminate this Agreement for cause. Any other claims for damages

resulting from the alleged breach must be handled through the dispute resolution process set forth in paragraph 14 above.

Notwithstanding the preceding, CLIENT may terminate this Agreement immediately, upon written notice, for Berkheimer's willful or gross misconduct, neglect of its duties hereunder, or an investigation, arrest or conviction, or plea of guilty or non contest relating to a crime involving fraud, theft or deception.

16. **Effect of Termination.** In the event that this Agreement is terminated at the end of any Term of Appointment or renewal thereof, and upon BERKHEIMER's completion of its collections, no term, right, or duty imposed by this Agreement upon a party, with the exception of those rights contained in paragraphs 9, 13 and 14 pertaining to tax collection records, CLIENT's non-competition with BERKHEIMER and the dispute resolution process, shall be deemed or construed to survive the termination of the Agreement as a whole.

17. **Notices.** Any notice given hereunder by either party to the other shall in writing and shall be deemed given when delivered personally or five (5) days after being sent by certified mail, return receipt requested, as follows

If to the CLIENT:
Sandra Kassel, Business Administrator
Upper Perkiomen SD
2229 E Buck Rd. Ste 3
Pennsburg, PA 18073

If to BERKHEIMER:
50 North Seventh Street
Bangor, PA 18013
Attention: Client Services Department

18. **Miscellaneous.** In the event that any phrase, clause, sentence or paragraph of this Agreement is declared invalid by any court of competent jurisdiction, this Agreement shall survive such declaration of invalidity as regards all portions of the Agreement not specifically declared invalid. The headings contained in this Agreement are for the convenience of the parties only. This Agreement shall be deemed to have been made under and shall be governed by the laws of the Commonwealth of Pennsylvania. This Agreement represents the entire Agreement between the parties and any modification of same must be in writing to be valid. This Agreement shall binding upon and inure to the benefit of the parties hereto and their respective successors and assigns.

IN WITNESS WHEREOF, the parties have executed this Agreement the day and year as above written.

H.A. BERKHEIMER, INC.

BY: Patti McNamara
Patricia A. McNamara, President

ATTEST:

BY: [redacted]
Henry U. [redacted]r

UPPER PERKIOMEN SCHOOL DISTRICT
MONTGOMERY COUNTY

BY: _____

BY: _____
Secretary

berkheimer
tax administrator

Attachment F

BARRY ISETT & associates INC
MULTI-DISCIPLINE ENGINEERS AND CONSULTANTS
85 South Route 100, Allentown, PA 18106
610.398.0904 610.481.9098
barryisett.com

May 21, 2021
Project #1025116.000

Ms. Sandra Kassel, Business Administrator
Upper Perkiomen School District
2229 East Buck Road
Pennsburg, PA 18073

Dear Ms. Kassel:

RE: UPPER PERKIOMEN MIDDLE SCHOOL
Upper Hanover Township, Montgomery County, Pennsylvania
Proposal for Post-Development Traffic Impact Study

In accordance with your request, Barry Isett & Associates, Inc. (Isett) is pleased to provide this proposal for transportation engineering services to prepare a post-development traffic impact study for the above-referenced project.

PROPOSAL BASIS

1. The project site is located at 901 Montgomery Ave in Pennsburg, Upper Hanover Township, Pennsylvania. The new middle school was recently constructed and opened in the Fall of 2019. Isett prepared the original traffic impact study for the new middle school project.
2. The post-development traffic impact study is required as a condition of the final land development approval and the scope of the study is based on the letter from the Township Traffic Engineering Consultant, Sandy Koza of McMahon Associates, dated September 1, 2017.
3. The scope of services for the post-development study is proposed as two separate tasks: (1) Collect the current traffic data and compare it to the original traffic projections, and (2) analyze the levels of service and traffic impacts if any current traffic movements exceed the original traffic projections. The second task will not be necessary if the current traffic movements do not exceed the original traffic projections.
4. The scope of services does not include any significant revisions to the study that the Township may require, or the design of any improvements that may be necessary to mitigate any impacts due to increased traffic levels.

SCOPE OF SERVICES

Our Scope of Services is limited to the following:

A. Traffic Data Collection and Comparison

1. Conduct Manual Turning Movement Traffic Counts from 6-9AM and from 2-6PM at the following five intersections:

- SR 0663 and Montgomery Avenue/Schoolhouse Road
- Montgomery Avenue and Middle School Bus Only Driveway
- Montgomery Avenue and Middle School Main Driveway
- Montgomery Avenue/High School Egress Only Driveway and Walt Road/11th Street
- SR 0029 and 11th Street

2. Conduct Manual Turning Movement Counts, including pedestrian activity, from 7AM – 6PM at the intersection of Montgomery Avenue and 8th Street.
3. Prepare a table comparing the projected 2019 build traffic volumes (from the Transportation Impact Study for Upper Perkiomen School District Proposed Middle School, last revised October 12, 2016) with the 2021 traffic counts. Should the 2021 traffic counts indicate that all movements at all intersections are less than the projected 2019 volumes then no further analyses are required.
4. Prepare a report summarizing the above tasks and submit the report to Upper Hanover Township.

B. Traffic Impact Study

1. Should the traffic count comparison indicate the 2019 build traffic volumes were underestimated, capacity analyses of the six study intersections will be required. Synchro 10 software will be used. A table comparing the 2019 build Levels of Service with the 2021 Levels of Service will be prepared. Should improvements at an intersection be required to mitigate Level of Service deficiencies, recommendations will be made.
2. Obtain accident reports for the intersection of Montgomery Avenue and 8th Street for the last five years.
3. Prepare a traffic signal warrant analysis addressing the Eight-Hour, Four-Hour, Peak-Hour, Pedestrian, and Crash History Warrants for the intersection of Montgomery Avenue and 8th Street.
4. Prepare a letter report summarizing the above tasks and submit the report to Upper Hanover Township.

SCHEDULE

Data collection will be performed prior to Memorial Day, and the analysis (if needed) and report is anticipated to be completed by June 30, 2021.

COMPENSATION

The services described above shall be provided for the following lump sum fees to be billed on a monthly basis:

A.	Traffic Data Collection and Comparison	$6,300.00
B.	Traffic Impact Study	$7,200.00

QUALIFICATONS/EXCLUSIONS

1. Any and all review/submission fees required by the reviewing agencies (if applicable) are the Client's responsibility.
2. The cost of reimbursable expenses that are in addition to the basic services will be itemized separately. Reimbursable expenses include mileage, long distance telephone calls, postage and handling, next day mail, preparation of materials for electronic transfer, reproductions, photographs, and construction prints.

3. Prior to performing tasks outside the Scope of Services, Isett will provide an estimate of the additional cost, based on the attached hourly rate schedule, and will obtain approval from Client/Owner. Examples of items outside the scope of work include additional meetings and tasks not specifically listed above.
4. This proposal is based upon preparing one complete report in accordance with scope of services. Revisions to the report necessitated by changes required by the municipality or other factors beyond Isett's control will require additional compensation to be negotiated.
5. When project work is suspended for more than six months, fees will be renegotiated. The fee listed above is based upon our design portion of the work being completed by end of calendar year 2021. Should the project be extended through no fault of Isett, we reserve the right to renegotiate the remaining services.
6. Insurance coverage or limits (including professional liability insurance) requested in excess of that normally carried would be a reimbursable expense and itemized separately.
7. Digital information generated in the process of developing plans and specifications for this project is only for use in preparing said plans. Release of digital information to anyone not party to this agreement without prior, fair compensation constitutes a transfer of full liability to the releasing party.

The attached standard contract terms and conditions shall be made a part of this agreement.

If, after you have reviewed this proposal, you are satisfied with the terms, please sign and return it to us, as it will serve as our agreement for this work. If work authorization is not approved, there is no obligation for Isett to complete the work. This proposal is valid for 60 days from issuance.

We appreciate the opportunity to serve you and look forward to the successful completion of this work.

Sincerely,

James A. Mazeika, P.E., LEED AP
Engineering Manager

Attachments

ACCEPTED BY:

_____ DATE: _____
(Sign name)

_____
(Print name and title)

BARRY ISETT & associates INC

MULTI-DISCIPLINE ENGINEERS AND CONSULTANTS

PROJECT MANAGEMENT	
Sr. Engineering Manager	$190.00
Engineering Manager	$170.00
Sr. Project Manager	$150.00
Project Manager	$125.00
Grants Specialist	$105.00
Project Support	$ 65.00
DESIGN/DRAFTING/MODELING	
Sr. Project Professional/Designer	$150.00
Project Professional/Designer	$125.00
Staff Professional	$110.00
Sr. Project Technician	$105.00
Project Technician	$ 90.00
Staff Technician	$ 75.00
GIS Specialist	$140.00
ENVIRONMENTAL	
Sr. Environmental Scientist	$130.00
Project Environmental Scientist	$110.00
Staff Environmental Scientist	$ 95.00
SURVEY	
Chief Surveyor	$150.00
Professional Surveyor	$120.00
Survey Crew Chief	$105.00
Survey Crew/GPS Crew	$170.00
Survey Crew (Three-person)	$235.00
SITE OBSERVATION	
Sr. Construction Manager	$150.00
Construction Manager	$130.00
Construction Building Official	$110.00
Construction Inspector	$ 90.00
FORENSIC	
Forensic Engineering Manager	$190.00
Sr. Forensic Engineer/Architect	$165.00
Expert Investigator	$250.00
Assistant Investigator	$165.00
Expert Witness Testimony/Depositions	$325.00*
Emergency Response (One-person)	$250.00
Emergency Response (Two-person)	$425.00
GEOTECHNICAL, CONSTRUCTION INSPECTIONS & MATERIALS TESTING	
Sr. Geotechnical Engineer	$180.00
Geotechnical Engineer/Geologist	$145.00
Staff Geotech	$100.00
Special Inspector/Geotechnical Assistant	$ 85.00
Field Technician	$ 65.00
Laboratory Manager	$ 85.00
Laboratory Technician	$ 65.00

*Billed in 4-hour increments where noted

2021 Fee Schedule

NOTE: The cost of reimbursable expenses that are in addition to the basic services will be itemized separately. Reimbursable expenses include mileage; priority/express mail and packages; preparation of materials for electronic transfer; hand delivery of materials; reproductions; prints; and any additional insurance coverage or limits (including professional liability insurance) requested in **excess** of that normally carried.

Costs relating to any outside services contracted directly by Isett will be passed on to the client and may have up to a 15% service charge.

When related to a project, the following rates will be charged for reimbursable expenses:

Listed prices are for black and white prints only (additional charge for color prints).

Photocopies	$0.18 per sheet
Large Format Copies	$0.35 per square foot
Large Format Plotting (tiff, cal, plt, pdf, jpeg)	$0.40 per square foot
Large Format Scans	$0.45 per square foot
Large Format Plotting (dwg's)	$0.60 per square foot

Above rates are subject to change if conditions warrant. Reimbursables subject to Sales Tax.

Effective: 1/1/21

CIVIL/SURVEYING – STANDARD CONTRACT TERMS AND CONDITIONS

1. DUTIES AND RESPONSIBILITIES
1.1 Engineer agrees to provide those professional services as agreed to in the scope of services.

2. RESTRICTIONS ON USE OF DOCUMENTS
2.1 It is understood that the drawing(s) rendered under this agreement will be prepared in accordance with the agreed scope and will pertain only to the subject project. Use of the drawings, information or data contained therein for other purposes is at user's sole risk and responsibility.
2.2 Client agrees that all documentation including drawings and other work Engineer furnished to Client or Client's agents, which Engineer does not receive compensation for under the terms of this agreement shall remain Engineer's property and shall be returned upon demand and shall not be used for any purpose whatsoever.
2.3 Plans, CADD disks, and specifications, as instruments of service, are and shall remain the property of Engineer, whether the project for which they are intended is executed or not. The plans, CADD disks and specifications shall not be used by Client on other projects, for additions to this project, or for completion of this project by others, except by agreement in writing with the appropriate compensation to Engineer, provided Engineer is not in default under this agreement.

3. STANDARD OF CARE
3.1 Services performed by Engineer under the agreement will be conducted in a manner consistent with that level of care and skill ordinarily exercised by members of the profession practicing under similar circumstances in the same or similar locality. Our professional services will be performed, our findings will be obtained, and our recommendations prepared in accordance with generally accepted principals of surveying and engineering practice. This warranty is in lieu of all other warranties either expressed or implied.
3.2 Boundary surveys shall be based upon deeds of record and available physical evidence. Unless otherwise specified, Engineer's services do not include research beyond that which is necessary to provide data relative to establishment of boundary lines; rights-of-way, easements, and other matters which may affect the property are specifically excluded except as otherwise provided.
3.3 Plans, drawings, and supporting information required for municipal review shall be prepared in accordance with applicable ordinances and in accordance with Client's instructions. Modifications required by the municipality, or Client shall be made at Client's expense. Due to frequent changes in rules, regulations and interpretations by authorities, Engineer cannot guarantee that any submission will be considered complete or that any agency will issue a permit or approval.
3.4 The location of underground utilities, if shown, shall be based upon surface evidence and/or utility records. Client agrees to advise Engineer of known or suspected underground features or structures which could affect services provided herein, and further agrees to hold Engineer harmless for damages to underground structures where locations are based upon available information, or were not called to Engineer's attention.

4. OBSERVATION SERVICES
4.1 If required under the scope of services Engineer will provide personnel to observe and report on specific aspects or phases of construction in accordance with the agreed scope of services. If observational services are required, Engineer's services do not include supervision or direction of the actual work of the contractor, his employees, agents, or subcontractors. Client agrees to notify the contractor accordingly. The contractor shall also be informed by Client that neither the presence of Engineer's field representative nor the observation by Engineer shall excuse the contractor for defects or omissions in his work.
4.2 It is understood that the Engineer shall not be held responsible for any errors or omissions on the part of the contractor, including, but not limited to the contractor's failure to adhere to the plans and specifications regardless of whether or not Engineer is performing observational services. This provision shall be included in the contract between Client and his contractor.
4.3 It is understood that the contractor shall be solely and completely responsible for working conditions on the job site, including safety of all persons and property during the performance of the work, and that these requirements shall apply continuously and not be limited to normal working hours. Any monitoring of the contractor's performance conducted by our personnel is not intended to include review of the adequacy of the contractor's safety measures in, on or near the construction site.
4.4 Engineer shall not be held responsible for any contractor's failure to observe or comply with the Occupational Health and Safety Act of 1970, and regulations or standards promulgated thereunder, or any state, county, or municipal law or regulation of similar import or intent.
4.5 It is understood that if Engineer's scope of services does not include observation services, then Client assumes all responsibility for interpretation of the Contract Documents and for construction observation, and Client waives any claims against Engineer that may in any way be connected thereto. Client agrees to the fullest extent permitted by law to indemnify and hold harmless Engineer, its officers, directors, employees and subconsultants against all damages, liabilities or costs, including reasonable attorneys' fees and defenses costs, arising out of or in any way connected with the performance of such services by other persons or entities and from any and all claims arising from modifications, clarifications, interpretations, adjustment or changes made to the Contract Documents to reflect changed field or other conditions.

5. TERMINATION, SUSPENSION
5.1 This agreement may be terminated by either party upon written notice. In the event of termination, Engineer shall be paid for services performed to the termination date plus reasonable termination expenses.
5.2 In the event of termination or suspension for more than three (3) months, prior to completion of all services contemplated by the agreement, Engineer may complete such analysis and records as are necessary to complete his files and may also complete a report on the services performed on the date of notice of termination or suspension. The expenses of termination or suspension shall include all costs of Engineer in reporting, completed data, completing such analysis records and reports.
5.3 Client shall make no request of Engineer that, in Engineer's reasonable opinion, would be contrary to Engineer's professional responsibilities to protect the public. Client shall take all actions and render all reports required of Client in a timely manner. Should Client fail to do so, Client agrees Engineer has the right to exercise its professional judgment in reporting to public officials. Client agrees to take no action against or attempt to hold Engineer liable in any way for carrying out what Engineer reasonably believes to be its public responsibility. Client agrees, to the fullest extent permitted by law, to indemnify and hold harmless Engineer, its officers, directors, employees and subconsultants against all damages, liabilities or costs arising out of or in any way connected with Engineer's notifying or failing to notify appropriate public officials.

6. INVOICES, PAYMENTS
6.1 Engineer will submit invoices to Client monthly and a final invoice upon completion of services. Payment is due upon presentation of invoice and is past due thirty (30) days from invoice date. Client agrees to pay a service charge of one and one-half (1-1/2) percent per month (18% per annum) or fraction thereof on past due payments under this agreement. If an invoice remains unpaid for a period in excess of sixty (60) days Barry Isett & Associates, Inc., reserves the right to pursue all appropriate remedies including stopping work and retaining all drawings without recourse.
6.2 Payment to Engineer is a material consideration of this agreement. Therefore, Engineer has a right to suspend services for non-payment. Engineer shall not be liable, nor in any way be responsible for damages, delays or increased costs that may occur as a result of Engineer's suspension of services. Client shall hold harmless, indemnify, and defend Engineer for claims that arise due to any suspension.
6.3 It is further agreed that in the event a lien or suit is filed to enforce payment under this agreement Engineer shall be reimbursed by Client for all court costs and reasonable attorney's fees in addition to accrued service charges.

7. DISPUTES
7.1 In the event that Client institutes suit or arbitration against Engineer because of any alleged failure to perform, or for any alleged error, omission, or negligence, and if such suit or arbitration is dropped or dismissed, or if judgment is rendered for Engineer, Client agrees to reimburse Engineer or pay any and all costs and any and all other expense of defense, immediately following dropping or dismissal of the case or immediately upon judgment being rendered on behalf of Engineer.

8. WARRANTY OF AUTHORITY TO SIGN
8.1 The person signing this contract warrants they have authority to sign as, or on behalf of, Client for whom or for whose benefit that Engineer's services are rendered, and also that, if Client is a corporation, that the person signing this contract shall be personally liable, if necessary, for all monies owed under this agreement. If such person does not have such authority, he agrees that he is personally liable for all breaches of this contract and that in any action against him for breach of such warranty a reasonable attorney fee shall be included in any judgment rendered.
8.2 If a proposal is submitted to Client and Client fails to return a signed copy of the proposal but knowingly allows Engineer to proceed with services, then Client shall be deemed to have accepted the terms of the proposal and these Standard Terms and Conditions.

9. CHOICE OF LAW
9.1 This contract shall be construed in accordance with the laws of the Commonwealth of PA.

10. SEVERABILITY
10.1 In the event that any provisions herein shall be deemed invalid or unenforceable, the other provisions hereof shall remain in the full force and effect, and binding upon the parties hereto.

11. REMEDY
11.1 If the services performed by Engineer are faulty, Client's exclusive remedy shall be for Engineer to re-perform such services to the extent necessary to correct the fault therein without charge to Client or damages limited to those amounts set forth in Warranty, Liability, and Indemnification.
11.2 All claims, disputes, and other matters in question between Engineer and Client, not in excess of $200,000.00 arising out or for relating to, the contract documents or the breach thereof, shall be resolved as follows:
11.3 A written demand for non-binding mediation, which shall specify in detail the facts of the dispute, and within ten (10) days from the date of delivery of the demand, shall be submitted to "Judicate Headquartered in Philadelphia." The mediator's fee shall be shared equally by the parties. If the dispute has not been resolved by mediation, the matter shall then be submitted to arbitration in accordance with paragraph 11.5.
11.4 No mediation, arbitration, arising out of or relating to this agreement, shall include, by consolidation, joinder or in any other manner, any additional person not a party to this agreement except by written consent containing a specific reference to this agreement, and signed by Engineer, Client, and any other person sought to be joined. Any consent to mediation, arbitration involving an additional person or persons shall not constitute consent to mediation, arbitration of any dispute not described herein. This agreement to mediate, arbitrate (and any agreement to mediate, arbitrate) with an additional person or persons duly consented to by the parties to this agreement shall be specifically enforceable under the prevailing mediation, arbitration law.
11.5 Any dispute between the parties that is to be resolved by arbitration shall be settled and decided by arbitration conducted by the American Arbitration Association in accordance with the Construction Industry Arbitration Rules of the American Arbitration Association, as then in effect. Any such arbitration shall be held and conducted in Trexlertown, PA. In no event shall the demand for arbitration be made after the date when institution of legal or equitable proceedings based on such claim, dispute or other matter in question would be barred by the applicable statute of limitations. The award rendered by the arbitrators shall be final and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction thereof.

12. VALIDITY
12.1 It is understood that this agreement is valid for a period of sixty (60) days after which time, if it is not rejected by Client, Engineer reserves the right to revise or withdraw this agreement.

13. CHANGES IN THE WORK
13.1 The stated total fee constitutes Engineer's estimate of the effort required to complete the project as Engineer understands it to be defined. For those projects involving conceptual or process development work, activities often are not fully definable in the initial planning. In any event, as the project progresses, the facts developed may dictate a change in direction, additional effort, or suspension of effort, which may alter the scope. Engineer will inform Client of such situations so that negotiations or change in scope and adjustments to the time of performance can be accomplished as required. If such change, additional effort, or suspension of effort results in an increase or decrease in the cost of or time required for performance of the services, whether or not changed by any order, an equitable adjustment shall be made and the agreement modified accordingly.

14. WARRANTY, LIABILITY, AND INDEMNIFICATION
14.1 Engineer's liability for damages due to error, omission or professional negligence shall be limited to the amount not to exceed $50,000.00 or Engineer's fee, whichever is less. If Client prefers not to limit Engineer's professional liability to this sum, Engineer will waive this limitation upon Client's request provided that Client agrees to pay an additional consideration for this waiver, prior to commencement of services.
14.2 Client agrees at their/its sole cost and expense to indemnify, defend and hold harmless, Engineer, its subsidiaries, affiliates, officers, employees, and consultants or such other who may have assisted Engineer in the rendering of its services in connection with the project from and against, for any in respect of, and all claims, liabilities, costs, and expenses, including, but without limitation, reasonable attorney's fees and other costs and expenses incident to any claim, demand, suit actions, suffered, sustained or require to be paid by Engineer as a result of any claims, demands or legal proceedings which may be asserted by any party other than Client and in any way relates to any act or error, omission, negligence, carelessness or breach of duty, contractual or otherwise on the part of Engineer in connection with the project. In the event Client is required to defend Engineer under the last paragraph, Engineer shall have the right to counsel of its own choosing.
14.3 Client agrees to be entirely liable for providing any/all contractors working on this project with the latest revisions of all plans.
14.4 Notwithstanding any other provision of this Agreement, and to the fullest extent permitted by law, neither Client nor Engineer, their respective officers, directors, partners, employees, contractors or subconsultants shall be liable to the other or shall make any claim for any incidental, indirect or consequential damages arising out of or connected in any way to the Project or to this Agreement. This mutual waiver of consequential damages shall include, but is not limited to, loss of use, loss of profit, loss of business, loss of income, loss of reputation and any other consequential damages that either party may have incurred from any cause of action including negligence, strict liability, breach of contract and breach of strict or implied warranty. Both Client and Engineer shall require similar waivers of consequential damages protecting all the entities or persons named herein in all contracts and subcontracts with others involved in this project.