

**SNOW PLOWING, SNOW REMOVAL  
AND ANTI-SKID AGREEMENT**

**THIS AGREEMENT**, made and entered into as of this **11<sup>th</sup> day of October, 2021** by and between **WARREN COUNTY SCHOOL DISTRICT**, with offices at 6820 Market Street, Russell, Pennsylvania, ----- **"FIRST PARTY"**,

**AND**

**WARREN SNOW REMOVAL OF 27 WILLIAMS STREET, RUSSELL, PA 16345**

----- **"SECOND PARTY"**

WITNESSETH THAT:

**RECITALS**

- A. First Party is a School District which, in the conduct of its affairs, requires the services of an independent contractor to provide the services, supplies and equipment required to perform snow plowing, snow removal and the application of anti-skid materials at **Sheffield Area Elementary School** and **Sheffield Area Middle/High School** owned by First Party (First Party is sometimes hereinafter referred to as "School District" or "the District"); and
- B. Second Party is an independent contractor with the equipment, training, experience and ability to provide said supplies, services, repair or materials which are required by First Party (Second Party is sometimes hereinafter referred to as "Bidder" or "Contractor"); and
- C. First Party has solicited bids for the work stated in Paragraph A, above, according to its General Bid Requirements and Snow Plowing Conditions; and
- D. Second Party has submitted its bid or bids to First Party on terms and conditions which are acceptable to First Party; and
- E. First party has awarded the contract to Second Party subject to execution of this written Agreement containing terms and conditions acceptable to the School District.

**NOW THEREFORE**, the Parties hereto, in consideration of the foregoing recitals and of the covenants and Agreements herein contained, agree to and with other as follows:

1. First Party agrees to retain Second Party on an as-needed basis to provide services to First Party in the conduct of First Party's affairs, said services, to include but not be limited to those specifications contained in this Agreement and its incorporated Exhibits. Second Party agrees that when First Party needs Second Party to provide services in accordance with the terms of this Agreement, Second Party shall give the work needed by First Party priority over any work that may be needed by Second Party's other customers.

2. Upon completion of any service rendered by Second Party, Second Party shall have the principal or assistant principal of the school where the service was performed sign a proof of service form attached hereto and incorporated as Exhibit "A". A proof of service form must be signed by the principal or assistant principal within forty-eight (48) hours after the completion of any and all services rendered by the Second Party. The form can be sent to the principal or assistant principal via facsimile and returned to the Second Party via facsimile after it has been signed by the principal or assistant principal. No payment for a particular service will be made unless a corresponding signed proof of service form is submitted with the invoice.

3. Payment shall be rendered by the District in accordance with the Contractor's cost per trip amount for snow plowing and anti-skid application and the Contractor's cost per hour for snow removal (as defined in the BIDDING INSTRUCTIONS and contained in the Contractor's bid proposal). If a partial plowing or anti-skid application is required, the proof of service form (that must be signed by the principal or assistant principal) and the Contractor's invoice must both specify exactly which services were performed. The Contractor's invoice must both specify exactly which services were performed. The Contractor's invoice should then charge an appropriate percentage of the total cost per trip amount. Any invoice that does not comply with these requirements will not be paid by the District.

4. The manner of compensation for the services contemplated herein is set forth in the attached Exhibit "B". Payment will be made only upon the submission of invoices and corresponding signed proof of service forms by Second Party to First Party at the address set forth above.

5. Invoices and corresponding signed proof of service forms received by the twentieth (20) of the month should be processed at the following month's board meeting.

6. Second Party shall complete snow plowing and anti-skid duties, as above set forth, on or before 6:30 a.m. on weekdays (Monday thru Friday). Second Party shall be permitted to perform

snow plowing service for First Party if there is at least two (2) inches of unplowed snow on the designated property of First Party, or Second Party is requested to do so by the Director of Buildings and Grounds or his designee, the principal, or assistant principal of the school in question. No Contractor shall apply anti-skid materials at any of the schools without first obtaining permission from the WCSD Operations Manager or his designee, the principal, or assistant principal of the school in question. Additionally, no services of any kind shall be rendered by the Second Party after 6:30 a.m., and/or on a weekend day or holiday unless such service is specifically requested by the WCSD Operations Manager or his designee, the principal, or assistant principal of the school in question. Last, Second Party shall not perform any service that First Party has indicated to Second Party is to be performed by First Party. Second Party understands and agrees that any invoice containing services that do not comply with these requirements will not be paid by the District. If the Contractor has any questions concerning services or the circumstances under which any service is to be provided, the Contractor is to telephone David Undercoffer at 723-5227 (24 hour/ 7 days per week)

7. Whenever snow removal is requested by First Party, it shall be removed from all sidewalks without curbs, bus ramps, driveways, garbage container areas, entrances, and areas adjacent to steps. Snow will be plowed to prevent snow from accumulating against any buildings. Snow removal operations will be conducted during periods of no activity at the school at a time agreed to by the First and Second Party.

8. Contractor is not responsible for hand shoveling unless snow is blocking any of the areas referenced in Section 7 of this Agreement or any private right of ways and driveways along the Beaty Warren Middle School property which may be blocked by the contractor's plowing.

9. Second Party must have the equipment and materials necessary to spread large quantities of anti-skid materials. Such anti-skid materials shall be applied to the roadways on said School District properties including traffic lanes in the parking lot, but shall not be applied to parking lots. Second Party will not be compensated by the District for the use of any anti-skid materials at an unapproved school or on a parking lot.

10. The anti-skid to be applied shall be applied at the rate of tens (10) pounds for every fifty (50) feet of two (2) lane roadway. Second Party will not be compensated by the District for the use of any anti-skid materials in excess of said amount.

11. Snow removal will be completed by backhoe or loader with a minimum one cubic yard bucket. Snow removal will include the movement of snow piles that have accumulated as a result of snow plowing and that will impact parking or traffic. Payment shall be rendered by the District in accordance with the Second Party's cost per hour for snow removal (as defined in the BIDDING INSTRUCTIONS and contained in the Second Party's bid proposal). Authorization for snow removal on any premises will be at the discretion of the First Party.

12. The District shall be entitled to liquidated damages in the amount of SEVENTY-FIVE DOLLARS (\$75.00) per day per school from the Second Party for each day that the Second Party does not perform snow plowing services when either the depth of unremoved snow exceeds two (2) inches or the Second Party has been contacted by the District to perform snow removal services. The District shall be entitled to liquidated damages in the amount of SEVENTY-FIVE DOLLARS (\$75.00) per day per school from the Second Party for each day that the Second Party does not apply anti-skid materials when requested to do so by the WCSD Operations Manager or his designee, the principal, or the assistant principal of the school in question. The Parties agree that the actual damages that would be suffered by the District in the event of a breach by the Second Party would be difficult to estimate accurately and that the foregoing dollar amount is a reasonable approximation of such damages and is not intended as a penalty against the Second Party. The Parties also agree that such liquidated damages represent the sole and exclusive remedy for the District against the Second Party for the failure to perform the required snow removal services.

13. Second Party will be liable and financially responsible for any and all damage to School District property caused by Second Party or Second Party's agents or employees including, but not limited to, shrubs, lawn, blacktop, sidewalks, curbs, railings, equipment, fencing, etc.

14. Second Party represents and acknowledges that Second Party and its agents and employees are independent Contractor and are not agents, servants or employees of First Party. The Parties understand that Second Party or its agents or employees, acting under the scope of this contract, have no authority to assume or create any obligation whatsoever, express or implied, on behalf of or in the name of First Party or to bind First Party in any manner whatsoever.

15. All expenses associated with the provisions of services, supplies, or equipment by Second party including, but not necessarily limited to, supplies, gasoline, anti-skid materials, transportation

costs, telephone costs, liability and other insurance, fines, penalties, workmen's compensation and the like, shall be borne and provided by the Second Party and the Second Party shall be solely responsible for the payment thereof. Second Party understands and acknowledges that because Second Party is an independent Contractor, First Party shall not provide workmen's compensation coverage or be responsible for the withholding of any federal, state or local taxes or FICA payments.

16. Except as set forth in the succeeding paragraph, under no circumstances will the First Party be required to pay a fuel surcharge.

17. If the price of gasoline for the lowest octane level of unleaded gasoline exceeds FOUR DOLLARS (\$4.00), the Second Party shall be entitled to a TEN PERCENT (10%) increase in compensation as determined by the cost per trip amount submitted by the Second Party in his or her BID PROPOSAL. The Parties agree that the fuel cost used to determine whether the cost of gasoline has exceeded FOUR DOLLARS (\$4.00) shall be the price per gallon at the United Refining outlet located at Pennsylvania Avenue and Hickory Street in Warren, Pennsylvania. In the event that gasoline is no longer sold at this location, the Parties agree to utilize the price at the next United Refining outlet located closest to the Warren County Courthouse. At any time during the term of this contract that the price shall exceed said amount the increased level of compensation shall be in effect; however, the increased level of compensation shall end when the price equals or falls below FOUR DOLLARS (\$4.00) per gallon.

18. Second Party shall be retained to the extent that First Party has jobs to be done. This Agreement may be terminated by the First Party upon the giving of THIRTY (30) days written notice to the Second Party.

19. Second Party shall not sub-contract, alienate, transfer or assign any terms or rights hereunder to any third party without the express written consent of First Party. In the event that written approval is so given by First Party, this Agreement and all of the terms contained herein shall be binding upon the transferees, successors and assigns of the Parties hereto.

20. Second Party Agrees to procure and maintain, at its sole cost and expense, through the commencement of work on this project through and including completion of any and all work to be performed under this Agreement, the policies of insurance and in the specified minimum amounts as set forth at Exhibit "C" attached hereto and made a part hereof. Such policies shall also have the First Party as additional insured.

21. Prior to the commencement of any work or services contemplated by this Agreement, Second Party shall furnish to First Party certificates, in duplicate, on a form acceptable to First Party, signed by authorized representatives of the insurance companies providing the coverage, evidencing all insurance coverages and extensions in limits required to be carried by Second Party under the provisions of this Agreement. Upon request, Second Party shall provide to First Party the originals or certified copies of said insurance policies for First Party to review.

Failure to secure the insurance coverages or the failure to comply fully with any of the insurance provisions of this Agreement shall in no way act to relieve Second Party from the obligations of this Agreement, any provisions herein to the contrary notwithstanding. In the event that liability for any loss or damage is denied by the underwriter or underwriters, in all or in part, because of breach of said insurance by Second Party or for any other reason, or if Second Party fails to maintain any of the insurance herein required, or is said coverage shall be inadequate to meet and satisfy all claims and demands, Second Party shall hold harmless, defend and indemnify First Party, its agents, employees, directors, officers, servants and insurers against any and all claims, demands, costs and expenses, including attorney's fees. Notwithstanding anything to the contrary herein, Second Party's indemnification obligations under this Agreement (express or implied) shall not be limited in amount or scope to coverage provided by insurance which is required to be obtained by Second Party under the terms hereof.

All insurance policies required of the Second Party under the terms of this Agreement shall contain provisions that underwriters have no rights of recovery or subrogation against First Party, its agents, directors, officers, employees, servants or insurers, it being the intention of the Parties that the insurance so effected shall protect all such parties and be the primary if not the sole coverage for any and all losses covered by the prescribed insurance.

22. Second Party shall defend, protect, indemnify and save First Party and First Party's employees, agents, and officers harmless against any and all claims, demands and causes of action of every kind and character, including attorney's fees, arising in favor of any person on account of personal injuries or death or damage to property occurring, growing out of, incident to or resulting, either directly or indirectly, from the work to be performed by Second Party in accordance with this Agreement. Second Party's duties and obligations in accordance with this provision shall survive the termination of this Agreement and shall apply regardless of when a claim, demand, or cause of action of any kind is asserted.

23. In performing the work and providing the services contemplated herein, Second Party agrees to comply with all local, state and federal laws and regulations; to bear the costs and expenses thereof; and to defend, protect, indemnify and save First Party and First Party's employees, agents, and officers harmless for any violations thereof in accordance with Section 22 of this Agreement. Second Party also agrees to immediately report to First Party all details of every environmental upset or spillage and fully cooperate in all clean-up and reclamation activities by providing labor and equipment in order to restore and protect the environment. Any clean up and reclamation activities performed by First Party shall not relieve Second Party of any of its duties, responsibilities, or liabilities under this Agreement.

24. Any and all persons executing this Agreement on behalf of Second Party represent and warrant that he or she has full right and authority to execute this instrument and to bind such party to the terms, conditions and provisions contained herein.

25. The Parties hereto agree that they conduct completely separate business and affairs and that they are separate entities and are not partners or joint ventures in any sense whatsoever. The services and equipment to be provided by Second Party to the First Party shall be completed or delivered in a good, workmanlike, and timely manner. Nothing contained herein is intended, nor shall be construed as reserving to First Party the right or power to exercise control over the business practices of Second Party or the manner or fashion in which Second Party provides or delivers its services and materials to First Party.

26. The initial term of this Agreement shall commence on the day first above written and conclude June 30, 2022 (The "2021-2022 Contract"). Thereafter, this Agreement shall automatically renew for additional one-year terms (from July 1 through June 30), pursuant to the same terms and conditions, unless either Party provides written notice of termination to the other Party on or before July 1<sup>st</sup> of the applicable year. Notwithstanding the foregoing, under no circumstances shall the total term of this Agreement extend beyond June 30 2026.

27. The exhibits attached hereto are incorporated as a part of this Agreement.

28. The Parties agree that if the FIVE THOUSAND DOLLAR (\$5,000.00) bond guaranteeing performance of this contract (as described in the BIDDING INSTRUCTIONS) is not furnished within twenty (20) days after the award of this contract, this Agreement shall become null and void.

29. All Second Party personnel who shall be on Warren County School District site shall have a current criminal background and child abuse clearances. Copies of said clearances must be provided to the School District before an employee or agent of the Second Party is permitted to enter upon School District property.

30. Prior to the commencement of any work or services contemplated by this Agreement, Second Party shall arrange and attend a mandatory meeting at each contracted location with the Principal and/or the Assistant Principal; Head Custodian; and Mr. David Undercoffer, WCSD Operations Manager or his designee. The agenda for this meeting shall include, as a minimum: discussion of plowing and anti-skid requirements; request for service procedures; proof of service form procedures (to include drop off and pick-up process); and exchange of contact information.

31. It is further understood and agreed between the Parties that this Agreement is the complete agreement between the Parties with respect to the work to be performed hereunder and that there are no written or oral understandings or agreements, directly or indirectly connection with this Agreement, that are not incorporated herein. This Agreement may be amended, modified, or waived only by written agreement signed by the Parties hereto.

32. All sections, sentences, and provisions contained in this Agreement are severable. Should any section, sentence, or provision of this Agreement be rendered void, invalid or unenforceable by any court of law (or arbitrator), for any reason, such a determination shall not render void, invalid, or unenforceable any other section, sentence, or provision of this Agreement, and the remainder of this Agreement shall remain in full force and effect and binding on the Parties hereto.

Additionally, any court (or arbitrator) construing this Agreement is expressly granted the authority to, and requested to, revise any invalid or unenforceable section, sentence, or provision of this Agreement in order to render same enforceable and then to enforce the revised section, sentence, or provision against the Parties hereto as if the invalid section, sentence, or provision had never been inserted.

**IN WITNESS WHEREOF**, the Parties hereto, intending to be legally bound hereby, have caused this Agreement to be executed the day and year first above written.



ATTEST: (SEAL)

\_\_\_\_\_  
Secretary

FIRST PARTY

WARREN COUNTY SCHOOL DISTRICT

\_\_\_\_\_(SEAL)  
BY:

SECOND PARTY  
CONTRACTOR

\_\_\_\_\_(SEAL)  
BY: