

CUSTODIAL MANAGEMENT SERVICES AGREEMENT

THIS AGREEMENT, made this _____ day of _____, 20_____,
by and between **Custodial Management Contractor**, a _____,
hereinafter referred to as ----- **“CMC,”**

A N D

WARREN COUNTY SCHOOL DISTRICT, a Pennsylvania School District,
hereinafter referred to as ----- **“WCSD.”**

WHEREAS, CMC has experience in providing professional facilities
management services, including management of custodial services; and

WHEREAS, WCSD seeks management of its custodial services; and

WHEREAS, WCSD desires to retain CMC for the purposes and upon the terms
and conditions set forth herein.

NOW, THEREFORE, in consideration of the mutual covenants herein
contained, the Parties agree as follows:

SECTION 1

Definitions:

Agreement: The Custodial Management Services Agreement, including all
Exhibits thereto.

Employees of CMC: Employees of the CMC filling the following positions:
Custodial Manager, Assistant Custodial Manager, Trainer/Coach, Head Custodian at
Warren Area Elementary Center, Head Custodian at Beaty-Warren Middle School, Head
Custodian at Eisenhower Middle/Senior High School, Head Custodian at Youngsville
Middle/Senior High School, Head Custodian at Youngsville Elementary/Middle School,
and Head Custodian at Warren Area High School.

Custodial Employees: Employees of the WCSD carrying out custodial functions
who are represented by the Warren County Education Support Personnel Association (but
not including Administrative Support/Confidential Technical Employees).

EXHIBIT I

Custodial Functions: Those functions associated with the routine cleaning of the WCSD facilities, including daily, as well as other periodic, tasks together with certain maintenance tasks as set forth elsewhere in this Agreement and the attachments thereto.

Facilities: All of the buildings and associated grounds owned or leased by the Warren County School District as existing during the term of this Agreement.

Management Services: Training, management and direction of the Custodial Employees.

School: Warren County School District.

SECTION 2

Services to be Provided by CMC:

2.1. Management Services:

CMC agrees to supply the expertise and personnel necessary to carry out the Management Services. The training, management and direction shall be provided in accordance with the statements, proposals and presentations, and descriptions of the physical areas and duties as set forth in the documents attached hereto as Exhibit _____ and incorporated herein.

2.2. Related Administrative Services:

CMC shall, upon request, perform all administrative responsibilities which relate to the employment of the Custodial Employees by the WCSD, including but not necessarily limited to maintenance of time records and furnishing to WCSD the data from which it can formulate its regular payroll for the Custodial Employees.

2.3. Training Materials:

CMC will provide one full-time Trainer/Coach. The CMC will, at its sole cost and expense, provide and maintain all necessary training equipment, films, slides, literature, daily work and project schedules, indices, standard operational procedures, training manuals, and other materials used to train the Custodial Employees. Such materials shall, at all times, remain the property of CMC.

2.4. Permits and Licenses:

CMC shall, at its sole cost and expense, procure all licenses and permits which are required in order to render the services described in this Section 2.

SECTION 3

Allocation of Costs for Services:

3.1. Costs to be Absorbed by CMC:

CMC shall be solely responsible for the direct operating costs incurred in connection with the provision of the services described in Section 2 above. The term “direct operating costs” as utilized in the preceding sentence means the costs associated with the supply of personnel, uniforms, supplies, equipment, and materials directly attributable to the provision of said services, and includes (but is not limited to) the following costs: (i) salaries of CMC personnel; (ii) all transportation costs of CMC personnel; (iii) uniforms for all Custodial Employees and all CMC employees; (iv) training materials described in Section 2.3; (v) all supplies and equipment outlined herein, and (vi) all taxes and fees currently imposed by federal, state or local authorities at the commencement of services in connection with the provision of the services described in Section 2. In the event federal, state or local agencies impose new or additional sales or use taxes, fees, premiums, etc. (but not new or additional income, social security or other taxes associated with the employment of personnel) during the term of this Agreement and subsequent to the commencement of services, the Contract Amount shall be adjusted to reflect such change.

3.2. Costs Not to be Absorbed by CMC:

The following costs are not “direct operating costs” and are not costs which CMC is to pay: (i) wages and all related payroll taxes and other employment related costs or contributions of Custodial Employees; (ii) expenses for the repair and maintenance of space provided to CMC by WCSD, pursuant to Section 12; and (iii) payroll and employment forms and documents (such as time cards, time sheets, application forms, evaluation forms, etc.) utilized by the WCSD in association with its Custodial Employees.

SECTION 4

Personnel:

4.1. CMC Personnel:

During the term of this Agreement, CMC agrees to provide the following personnel in order to carry out the services as set forth in Section 2 above:

(I) CMC shall provide two coordinating personnel in order to oversee and provide the services described in Section 2.1 above and one full-time trainer/coach as described in 2.3. One of such persons shall be a custodial manager who shall be CMC's chief representative to perform CMC's duties under this Agreement. Said custodial manager shall be the chief liaison with the WCSD, and shall have overall responsibility for the performance of CMC's duties as set forth herein. The other individual shall be a custodial supervisor who shall report to the custodial manager, and who shall be responsible for the day-to-day oversight of the field service personnel discussed in Section II below. In the absence of the custodial manager, the custodial supervisor shall carry out his or her duties. If the absence is greater than five (5) days, additional personnel will be added by the CMC. The qualifications of the coordination management personnel shall be subject to the approval of the WCSD. The full-time trainer/coach will be devoted solely to training new personnel and retraining custodial staff in the latest equipment usage and cleaning techniques.

(II) CMC agrees to provide a minimum of six (6) field service personnel. The primary duties of the field service personnel shall be to carry out the Management Services at the various WCSD Facilities. The Parties agree that CMC may fill one or more of the future Field Service Personnel positions by executing an amendment to this Agreement to adjust the contract amount. An absence of more than three (3) days will require additional personnel – not custodial management or trainers.

(III) The personnel described in Subparagraphs I and II above will be employees of CMC. CMC shall pay all of the said employees' salary, payroll and other taxes, fees, worker's compensation insurance and other charges or insurance levied or required by any federal, state or local statute in connection with their employment.

(IV) If any of the aforesaid CMC personnel are not acceptable to the WCSD, the WCSD may request, in writing, the removal of such personnel. Upon the receipt by CMC of such a request, CMC shall provide, within a reasonable time, a replacement reasonably acceptable to the WCSD.

4.2. WCSD Personnel:

All persons who were Custodial Employees on the date of this Agreement shall continue to be employees of the WCSD, and all persons employed by WCSD as Custodial Employees after the date of this Agreement shall be employees of the WCSD. CMC shall not, for any purpose, be deemed or construed to be an employer or a co-employer of any employee of the WCSD. CMC shall not be regarded as a party to any collective bargaining agreement or agreements to which the WCSD was or becomes a party. CMC shall, upon request by WCSD, make recommendations in connection with wage and wage-related matters for Custodial Employees, but CMC shall not make any decisions with respect to wages or working conditions for Custodial Employees. WCSD shall have the sole responsibility to hire, discipline and discharge its Custodial Employees. WCSD shall pay all wages and salaries of the Custodial Employees employed by it, and WCSD shall pay all payroll and other taxes, fees and other charges or insurance levied or required by any federal, state or local statute relating to the employment of the Custodial Employees. WCSD shall pay all worker's compensation insurance and claims for the Custodial Employees injured while working under the direction and supervision of CMC.

4.3. Certificates of Insurance:

The Parties agree to furnish to each other, upon request, Certificates of Insurance as evidence of the proper employee insurance coverage for the above-referenced employees employed by the respective Parties hereto.

SECTION 5

Materials and Supplies:

5.1. Supply of Materials by CMC:

CMC shall provide, at its sole cost and expense, all of the materials and supplies which are needed to perform the Custodial Functions.

5.2. Certificate of Tax Exemption:

If the WCSD is exempt from state and local sales and use taxes, WCSD shall furnish to CMC a certificate of tax exemption upon request.

5.3. Definition of Supplies:

The term supplies as used herein includes (but is not limited to) all required routine cleaning supplies and dispensers, germicides, mops and mop heads, buckets, ringers, floor finish, stripper, all purpose cleaner, carts, caddies, floor pads for machines, and carpet cleaning products.

5.4. Expendable Supplies:

All the other provisions hereof notwithstanding, CMC agrees to provide at its sole cost and expense the expendable supplies in connection with the operation of the WCSD's custodial department. Such expendable supplies include (but are not limited to) toilet tissue, paper towels, deodorants, washroom soap, nitrile gloves and plastic container liners.

5.5. Laundering of Mops:

CMC shall be responsible, at its sole cost and expense, to launder all mops and mop heads utilized in the carrying out of the Custodial Tasks.

SECTION 6

Equipment:

6.1. Equipment Provided by CMC:

CMC shall provide and maintain, at its sole cost and expense, all such equipment, including but not limited to an on-site computer and all computer hardware and software, necessary to carry out the Management Services, and vehicles necessary to carry out both the Custodial Functions and the Management Services described herein. Said custodial equipment (not including vehicles and computers and related hardware and software) shall be new, have a minimum value of \$150,000.00, and be provided by CMC within the first year of the three (3) year term of this Agreement. CMC shall be responsible to maintain all equipment (including computers, hardware and software) and vehicles in good working order and to upgrade the same at its sole cost and expense throughout the term of this Agreement, including any costs for parts and labor, at no additional charge to the WCSD.

6.2. Equipment Cost:

For purposes of this Agreement, CMC shall depreciate all of the custodial equipment provided by it on a straight-line basis over five (5) years. Title to said

equipment shall pass to the WCSD at no additional cost to the WCSD at the end of said five (5) year depreciation period. Should this Agreement be terminated prior to the end of the five (5) year depreciation period, the WCSD may purchase from CMC any equipment provided by CMC at the then depreciated value (depreciated to the nearest month). In any transfer of equipment provided by CMC, WCSD shall remove from such equipment or cover all CMC identifying marks. WCSD reserves the right to evaluate the replacement or acquisition costs of custodial equipment provided by CMC; in the event WCSD disagrees with said cost, the WCSD reserves the right to request CMC to purchase alternative custodial equipment (which equipment is substantially similar to that recommended by CMC) from suppliers recommended by WCSD.

SECTION 7

Compensation:

7.1. Contract Amount:

Subject to adjustment as provided in the following sentences, the contract amount shall be the monthly figures set forth below. If the management services commence on a day other than the first day of the month, or if the management services terminate on a day other than the last day of the month, the contract amount for the first or last month shall be prorated on the basis of the number of days within such first or last month in which management services were provided. The contract amount shall be, for supplies, equipment, and service, the monthly amount of \$_____.

7.2. Payments of the Contract Amount:

Commencing on the first day of the Management Services and on the first day of each month thereafter, WCSD shall pay to CMC the Contract Amount, less any amount to be credited to WCSD for prepayment or for a poor performance deduction. If any payment of the Contract Amount is not paid in full within thirty (30) days of its due date, the unpaid portion shall bear interest at the rate of one percent (1%) per month, commencing with the due date until such portion has been paid. If any payment under this Agreement is past due more than thirty (30) days, CMC shall have the right to require that WCSD make payment to CMC not less than one (1) week in advance of the provision of services to ensure that CMC is paid on a timely basis.

7.3. Reduction in Contract Amount Due to Prepayment:

WCSD may, at its option, prepay the contract amount on a quarterly, semi-annual or annual basis at the beginning of each such quarter, semi-annual or annual period. In the event that WCSD chooses to prepay the contract amount, CMC will provide WCSD the then applicable percentage rate(s) for discount which CMC makes available to all of its customers. Said rates are a function of the annual percentage interest rate and an annual amortization schedule and, therefore, said rates cannot be stated for the entire term of this contract. However, the discount rates in effect at the making of this contract are as follows: quarterly _____; 6-month _____; and annual _____.

7.4. Poor Performance Deduction::

Amounts of up to five percent (5%) of the monthly fee may be deducted for poor performance including, but not limited to, incomplete work, unsatisfactory work, or work which is otherwise unacceptable to the WCSD. If any deficiencies are found during either weekly or monthly inspections, as set forth under Paragraph 13.2, below, or by WCSD personnel during routine visits to the facilities and such deficiencies are not corrected by CMC within seven (7) business days after the inspection or discovery of the deficiency, the monthly amount due to CMC shall then be subject to the deduction of up to five percent (5%) of the next month's fee due to be paid to it by the WCSD.

7.5. Adjustment of the Contract Amount – Changes in Services:

The Contract Amount has been established on the basis of the total square footage of the facilities, as well as the job descriptions and specific duties set forth in this Agreement and the attachments thereto. Except as set forth below, if the total square footage of the facilities to be serviced by CMC or the Custodial Employees is enlarged, reduced, or altered in any manner there shall be an increase or decrease, as the case may be, in the Contract Amount, which shall be reflected in the first payment to be made following such increase, reduction, or alteration. The Parties shall mutually agree as to the size of the adjustment to the Contract Amount before such adjustment is implemented. However, there shall be no amendment to the Contract Amount in the event that such change is de minimus.

SECTION 8

Insurance:

CMC shall procure and maintain, at its sole cost and expense, throughout the entire term of the Agreement, insurance from an insurance company licensed to do business in the State of Pennsylvania and in the specified minimum amounts, set forth at Exhibit "B" attached hereto and made a part hereof. Prior to the commencement of any work or services contemplated by the Agreement, CMC shall furnish to the School District certificates of insurance, signed by authorized representatives of the insurance company, evidencing all insurance coverage and extensions in limits required to be carried by CMC under the terms of the Agreement. Said insurance shall include, but not be limited to, general liability, automobile liability, personal liability, property damage, and worker's compensation insurance. Full coverage must be provided for CMC's employees, agents, and representatives; the School District, its employees, agents, and representatives; any subcontractor; and any member of the public who may be injured or suffer harm from any act of CMC, its employees, representatives, or agents. The School District shall be named as an additional insured on all insurance policies of CMC. Comprehensive general bodily injury and property damage liability insurance in the combined single limit of at least one million dollars (\$1,000,000.00), with a general aggregate limit of fifty million dollars (\$50,000,000.00), shall be maintained at all times by CMC. Such insurance shall include, but not be limited to, coverage of all vehicles, personal injury liability, property damage liability, blanket contractual liability, products liability, employment claims, and workers' compensation, all of which is required to meet if not exceed the statutory limits.

The required insurance coverage shall be in effect at all times during the entire term of this contract, including any time during which the contract is extended beyond the original three (3) year term. Certificates of insurance must contain a thirty (30) day cancellation and/or modification clause with a requirement of written notice to the School Board by the insurance company. In the event of cancellation, CMC shall obtain insurance in the same amount and for the same coverage from another carrier prior to the date of cancellation. Should CMC be unable to obtain replacement insurance, the School District has the right to terminate the Agreement as of the date that the insurance coverage is terminated without being required to give any prior notice to CMC.

Proof of insurance shall be provided by CMC to the School District upon request of the School District. Failure to maintain the insurance coverage or failure to comply fully with the

insurance provisions shall in no way act to relieve the Successful Bidder from the obligations referenced herein (including but not limited to the hold harmless/indemnification obligations), any provisions hereof to the contrary notwithstanding. All insurance policies required of the Successful Bidder shall contain provisions that underwriters shall have no rights of recovery or subrogation against the School District, its agents, directors, officers, employees, or Board Members, it being the intention that the insurance so effected shall protect all such parties and that said insurance shall be primarily liable for any and all losses covered by the described insurance.

SECTION 9

Indemnification:

9.1. Indemnification of WCSD:

CMC agrees to indemnify and hold WCSD and its Board of Directors, officers, administrators, and employees harmless from any liability (including reasonable attorney's fees and costs of litigation) imposed against WCSD by reason of the negligent, reckless or willful acts or omissions of CMC or its employees in performing its services and duties under this Agreement.

WCSD may defend itself, at CMC's expense, from any claim or lawsuit which may arise out of the negligent, reckless or willful acts or omissions of CMC or its employees in performing its services and duties under this Agreement. Alternatively, WCSD may elect to have CMC provide WCSD with legal representation at CMC's sole cost and expense.

9.2. Indemnification of CMC:

WCSD agrees to indemnify and hold CMC and its partners, directors, officers, and employees harmless from any liability (including reasonable attorney's fees and costs of litigation) imposed against CMC by reason of the negligent, reckless or willful acts or omissions of WCSD or its employees.

9.3. Indemnification Regarding Hazardous Substances:

WCSD acknowledges its obligation to identify the presence, if any, of asbestos and other hazardous substances (individually or collectively "Hazardous Substances") on WCSD's premises, and its responsibility to appoint the Asbestos Hazard Emergency Response Act (AHERA) "designated person". WCSD agrees that under no circumstance shall CMC be or act in the capacity of the "designated person". WCSD agrees that CMC

shall not be responsible to detect, handle, encapsulate, remove or dispose of or be responsible for exposure of persons to Hazardous Substances at any time. WCSD agrees to indemnify and hold CMC harmless from any liability imposed against CMC, including costs and reasonable attorney's fees, by reason of the presence of Hazardous Substances on WCSD's premises, or for any actions done or failed to be done by WCSD in connection with Hazardous Substances.

9.4. Indemnification Regarding Compliance With Law:

In connection with the performance of the work and services contemplated by this contract, CMC agrees to comply with all laws, rules and regulations, whether federal, state, county or municipal (including but not limited to Act 34 and 151 clearances), which are now or in the future may be applicable to its business, equipment and employees engaged in CMC's provision of materials and/or services to WCSD. CMC shall defend, protect and indemnify and save WCSD, its Board of Directors, officers, administrators and employees harmless against any and all claims, demands, investigations and causes of action of every kind or character (including attorney's fees and costs) filed or made concerning, alleging, growing out of or arising from any any violation by CMC of the above-referenced laws, regulations or rules.

WCSD may defend itself, at CMC's expense, from any claim or lawsuit which may arise out of any violation by CMC of the above-referenced laws, regulations or rules.

Alternatively, WCSD may elect to have CMC provide WCSD with legal representation at CMC's sole cost and expense.

9.5. Survival:

The provisions of this Section 9 shall cover all claims or violations regardless of when they are asserted or occur and shall survive the termination of this Agreement.

SECTION 10

Agreements Concerning Employees of a Party:

10.1. Agreements:

Except as set forth below, at no time during the term of this Agreement and for a period of one (1) year thereafter will either Party call upon any employee of the other Party or persons who were employees with the other within the then previous twelve (12) months to employ, hire or otherwise interfere with the contractual relationships of such

employees, without the prior written approval of the other Party; nor will either Party directly or indirectly, for itself or on behalf of or in connection with, any other person, firm, partnership, corporation, association or facility, solicit, hire, employ or take away any such employee from the other Party. The Parties agree that this provision is for the protection of their respective legitimate business interests, and is not intended to restrict the employment rights of individuals. The preceding sentences notwithstanding, this provision shall in no way restrict the WCSD from employing any field service personnel who, prior to becoming employees of CMC were employees of the WCSD or previous custodial management contractors.

10.2. Remedies for Breach:

If either Party breaches the above provision, the offended Party shall have the right to apply to a court of competent jurisdiction for an injunction to restrain the offending Party from employing such employee, and for an order to enforce the terms of this provision so breached, and the offending Party shall be liable to the offended Party for all reasonable attorney's fees, costs and expenses incurred by it to enforce this covenant.

SECTION 11

Term:

11.1. Initial Term:

The term of this Agreement shall be for an initial period of three (3) years commencing July 1, 2010, and ending June 30, 2013; the first day of the provision of Management Services shall be July 1, 2010. On and after the date of this Agreement and prior to the WCSD's obligation to pay any fee to CMC, CMC shall be afforded access to the WCSD Facilities in order to allow CMC to better acquaint itself with the Facilities and to commence implementation of this Agreement.

11.2. Renewal:

At the mutual election of the Parties, this Agreement may be renewed for a term of no more than three (3) years after the expiration of the initial term, upon mutual agreement, in one (1) year increments only. The intent to renew shall be signified by letter, acknowledgment or other writing expressing the intention of the Party to renew.

11.3. Effective Law:

If the maximum term allowed by law for the initial term or a given renewal term is less than the period therefor specified above, then the term so affected shall be construed to be for the maximum term allowed by law.

SECTION 12

Space and Other Accommodations Provided by WCSD:

12.1. Space and Utilities:

WCSD shall provide CMC with an office, storage space, warehouse and distribution services and facilities on WCSD's premises from which CMC shall conduct the services set forth in Section 2. The office designated for use by CMC shall be under the sole operational control of CMC, subject to WCSD's right to access for maintenance, safety inspection or emergency response, and the WCSD shall provide to CMC office furniture as well as shared access to a photocopier. WCSD shall also provide CMC with locker facilities for use by CMC's employees while in the performance of CMC's duties hereunder. The provision of such space shall include all utilities (including but not limited to water, sewer and electricity). Such space, warehousing and distribution services, locker facilities and utilities shall be provided without cost to CMC.

12.2. Other Benefits:

CMC's employees shall be entitled to eat in WCSD's cafeterias, and shall be entitled to the same discount on meals to which WCSD's own employees are entitled.

SECTION 13

Joint Review and Inspection:

13.1. Periodic Review:

Representatives of the Parties will meet on a regular basis to review CMC's performance of the services set forth in Section 2, and generally to review the results of operations under this Agreement in comparison with the expectation of the Parties. Except in unusual circumstances, the CMC representative will be the Custodial Manager. The WCSD representative will be appointed by the Superintendent, or his or her designee.

13.2. Inspections:

Weekly inspections shall be held every Friday while school is in session. If school is not in session on any Friday, then the inspection shall be held on the next school day immediately following the regularly scheduled inspection day. During the summer or any vacations or holidays, when school is not in session, all weekly inspections shall be held on Mondays. If any Monday is a legal holiday, the weekly inspection shall be held on the next regular business day. The CMC's Custodial Manager and a WCSD representative shall be in attendance at all weekly inspections. The CMC's Custodial Manager shall be responsible for responding to inquiries by the WCSD and for noting any and all areas of concern or deficiency.

Monthly inspections shall occur no later than the 7th day of every month. If school is not in session on the 7th day or if the 7th day is a legal holiday, the monthly inspection shall be held on the next regular business day. The CMC's Custodial Manager and a WCSD representative shall be in attendance at all monthly inspections. The CMC's Custodial Manager shall be responsible for responding to inquiries by the WCSD and for noting any and all areas of concern or deficiency.

Failure to hold either a weekly or monthly inspection shall not relieve the CMC or its duties and responsibilities hereunder.

SECTION 14

Termination:

14.1. Notice of Breach: Grace Period: Termination:

If one Party (the offending Party) breaches one or more of its obligations hereunder, the other Party (the offended Party) shall give the offending Party a notice which shall specify the nature of the breach. Except as set forth in Paragraph 14.2, below, the offending Party shall then have seven (7) days from the receipt of such notice to remedy a breach for failure to make any payment due to be made or fourteen (14) days in the case of any other failure. If, at the end of the time given, the offending party has not cured the breach, the offended Party may thereupon terminate this Agreement by giving the offending Party a written notice of termination and, at the expiration of the thirtieth day following the delivery of such notice, the Agreement shall be deemed to be terminated and the offended Party shall be relieved from the further performance of its obligations hereunder (except for those obligations which are elsewhere deemed to survive the termination of this Agreement).

14.2. Termination by CMC Based on WCSD's Failure to Pay Amounts Due:

Notwithstanding the provisions of Sections 14.1 and 7, CMC may terminate this Agreement upon thirty (30) days' prior written notice if WCSD's payments to CMC, as described herein, are in arrears more than sixty (60) days.

14.3 Termination by WCSD:

Except as may be set forth elsewhere in this Agreement, the WCSD has the right to terminate this Agreement without cause by providing to CMC sixty (60) days prior written notice of its intent to terminate.

SECTION 15

Notices:

15.1. Form of Notice and Delivery:

Any notice required or permitted under this Agreement shall be in writing and shall be delivered either personally or by Certified or Registered Mail, with proper postage prepaid --

If to CMC, to:

Attn: _____

If to WCSD, to:

Warren County School District

185 Hospital Drive

North Warren, PA 16365

Attn: Superintendent or Board President

In the event the date of actual receipt of any notice is not recorded, notices shall be deemed to have been received on the third day after post.

SECTION 16

General Provisions:

16.1. Appropriation of Funds:

If prior to the end of any fiscal year, WCSD (a) has not allotted funds for the succeeding fiscal year which can be used to make the payments which are or may become due in such succeeding fiscal year; (b) has no funds for the payment of obligations similar to those being performed under this Agreement; and (c) has no funds from any other sources which can be used to make payments in connection with this Agreement (a, b and c of this Paragraph shall be collectively referred to as “Non-Appropriation”), this Agreement shall be terminated at the end of the then-current fiscal year, and WCSD shall pay CMC all other amounts which are then due in connection with this Agreement, but unpaid. In the event of Non-Appropriation, CMC may request from the WCSD, an opinion of WCSD’s counsel explaining, in detail, the basis of the claimed Non-Appropriation, together with appropriate documentation supporting WCSD’s claim thereof. Upon the WCSD’s payment to CMC of all other amounts due, WCSD shall have no further obligation to CMC.

16.2. Severability:

If a court holds any part, term or provision of this Agreement to be unenforceable, the validity of the remaining portions or provisions shall not be affected, and the rights and obligations of the Parties shall be construed and enforced as if this Agreement did not contain the particular part, term or provision.

16.3. Headings:

The headings which appear in this Agreement have been inserted for the purpose of convenience and ready reference. They are not intended to, and shall not be deemed to, define, limit or extend the scope or intent of any provision hereof.

16.4. WCSD's Authority:

WCSD represents and warrants to CMC that WCSD has the requisite power and authority to enter into and perform the terms of this Agreement, and that WCSD has done and will continue to do all things necessary so that this Agreement will be valid, binding and legally enforceable upon WCSD.

16.5. Entire Agreement:

This Agreement has been negotiated and prepared by and for the Parties equally and shall not be construed as having been drafted by one party. When fully executed, it shall supersede any and all prior and existing agreements, either oral or in writing. This Agreement contains the entire agreement between the Parties hereto with respect to the subject matter hereof.

16.6. Amendments:

Any amendment or modification of this Agreement must be made in writing and signed by the Parties, and notwithstanding the actions of the Parties to the contrary, no oral modification shall be effective and legally binding unless such modification has been reduced to writing and has been signed by the Parties.

16.7. Cooperation:

Each Party agrees to perform all acts and deliver all documents which are reasonably necessary to carry out its responsibilities under this Agreement or to allow the other Party to perform its responsibilities.

16.8. Assignments:

This Agreement is not assignable by either Party without the prior written consent of the other Party, except for an assignment by either Party to a parent or a controlled subsidiary of that Party.

16.9. Choice of Law and Jurisdiction:

This Agreement shall be governed by the laws of the Commonwealth of Pennsylvania. The Parties agree to submit to the jurisdiction of the courts within the 37th Judicial District, Warren County, Commonwealth of Pennsylvania.

16.10. Non-Waiver:

No waiver of any default will be construed to be or constitute a waiver of any subsequent defaults.

16.11. Consequential Damages:

The Parties agree that in no case shall either Party be liable for any loss of business, consequential or indirect damages.

16.12. Force Majeure:

In the event CMC's performance under this Agreement is delayed in connection with any circumstance beyond CMC's control, including without limitation fires, floods, accidents, labor shortages, failure to secure materials from the usual sources of supply, strikes, riots, and national emergencies, the time for performance of CMC's performance shall be extended by the period of delay. In the event that such delay exceeds one hundred twenty (120) days, either Party may elect to terminate this Agreement. In said event, the Parties shall have no further obligation to one another, except for obligations which survive this Agreement and except to pay for services performed but unpaid, or to reimburse for services prepaid but not performed.

16.13 Counterparts:

This Agreement may be executed in one or more counterparts, each of which shall be a separate document, but all of which constitute one and the same instrument.

16.14. Pre-Bid Meeting Minutes:

Incorporated by references as if attached hereto are the pre-bid meeting minutes dated March 31, 2010, Addendum #__ dated _____.

IN WITNESS WHEREOF, the Parties have executed this Agreement the day and year first above written.

ATTEST: (SEAL)

Secretary

BY:

WARREN COUNTY SCHOOL DISTRICT

Secretary

BY: