


AGREEMENT

THIS AGREEMENT, Made and entered into, in duplicate, this _____ day of _____, By and Between **NORTHUMBERLAND COUNTY TAX COLLECTION COMMITTEE, NORTHUMBERLAND 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.”

WITNESSETH:

WHEREAS, Act No. 511 of the 1965 General Assembly of the Commonwealth of Pennsylvania, enacted December 31, 1965, and effective January 1, 1966, known as the “Local Tax Enabling Act” (“LTEA”), authorizes certain political subdivisions to levy, assess and collect a tax on salaries, wages, commissions, compensation and earned income of individuals, as therein with more particularity specified, generally and hereinafter referred to as the “**Earned Income Tax**”; and

WHEREAS, municipalities and school districts (“Taxing Authorities”) located within the CLIENTs Tax Collection District (“TCD”) have levied, assessed and provided for the collection of an Earned Income Tax under the LTEA; and

WHEREAS, Section 505 of the LTEA, 53 P.S. § 69204.505, authorizes CLIENT to appoint and oversee a tax officer for the TCD for the collection of the earned income tax; and

WHEREAS, BERKHEIMER has represented to CLIENT that it is competent, experienced and qualified to perform in the capacity of Earned Income Tax Officer 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 Earned Income Tax levied by the Taxing Authorities; 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 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 Officer/Collector.** CLIENT does hereby designate and employ BERKHEIMER as the exclusive Earned Income Tax Officer levied by Taxing Authorities located in the CLIENT's TCD for the term commencing on January 1, 2012 and ending on December 31, 2012, and as may be renewed. Said term shall be deemed to include all quarterly collections and all annual collections of tax via final returns for each tax year herein. BERKHEIMER shall perform all of the duties and shall have all of the powers of the exclusive Tax Officer of the CLIENT for the collection of the Earned Income Tax, as conferred and designated by the tax enactments of the Taxing Authorities located in CLIENT's TCD, by the applicable provisions of the LTEA and any successor laws thereto. To the extent applicable to BERKHEIMER in its capacity as such Tax Officer, BERKHEIMER shall be subject to the requirements, provisions, and penalties provided in the tax enactments of the Taxing Authorities located in CLIENT's TCD; the LTEA and any successor laws thereto.

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

(a) to collect, reconcile, administer, enforce, and receive the earned income tax, penalties, interest, collection costs, investment earnings, and other miscellaneous amounts related to or derived from the earned income tax, including performance of all tax officer duties specified in Section 509 of the LTEA, 53 P.S. §6924.509. BERKHEIMER shall perform all duties and have all powers granted for this purpose by the LTEA, regulations promulgated by the Pennsylvania Department of Community and Economic Development (“DCED”), other applicable law, the earned income tax enactments of the Taxing Authorities, TCC policies, and this Agreement.

(b) to at all times act in the best interests of the TCC and the Taxing Authorities. BERKHEIMER shall comply with all applicable federal, state, and local laws, rules, and regulations, including the Local Taxpayer Bill of Rights, 53 Pa.C.S.A. §8421 et seq., the LTEA, DCED rules and regulations, other applicable law, and TCC policies;

(c) 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, in accordance with the requirements of Section 509(d) of the LTEA, 53 P.S. § 6924.509(d);

(d) 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 the appropriate Taxing Authorities all collected sums identified by BERKHEIMER as legally due them in accordance with the applicable provisions of the LTEA; and to disburse all collected sums identified by BERKHEIMER as legally due to the appropriate Tax Authorities within the TCD at least twice weekly or more frequently as collections warranted;

(e) to provide to the secretary of the CLIENT and to the Secretary of each Taxing Authority located in the CLIENT's TCD a monthly written report, on forms prescribed by

the DCED, showing a breakdown of all income taxes collected during the previous month, income generated from investments, penalties, costs and other money received, collected, expended and distributed for each Taxing Authority and all money distributed to tax officers for other tax collection districts;

(f) to perform all necessary work and supply all forms, equipment, computer hardware and software, facilities, and other materials necessary to efficiently fulfill its obligations under this Agreement;

(g) to provide assistance to taxpayers through operation of a toll-free phone number during normal business hours, counter walk-in assistance at BERKHEIMER's principal office, and a website to provide information to taxpayers, including without limitation, Taxpayer Bill of Rights; tax regulations, policies, and procedures; and copies of tax returns and all other forms applicable to taxpayer and that taxpayers may use to make credit card payments. BERKHEIMER shall also maintain the infrastructure and provide information necessary to receive tax returns and payments electronically.

(h) to deliver to CLIENT and each Taxing Authority an Independent Service Auditor's Report relating to internal controls prepared by a CPA in accordance with SAS No. 70 covering the prior calendar year;

(i) to advise CLIENT of any errors which it may discover committed in the collection of the Taxing Authorities' Earned Income Taxes prior to BERKHEIMER's tenure as Earned Income Tax officer, including but not limited to errors in tax distributions and/or inaccurate tax records, which may have been caused or created by the Taxing Authorities' or their 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 and the Taxing Authorities hereby indemnify 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.

3. **Compensation.** CLIENT agrees to compensate and reimburse BERKHEIMER ~~for all of BERKHEIMER's services and for 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 **One and seventy-five one-hundredths percent (1.75%)** of the gross Earned Income Tax collected by BERKHEIMER, which compensation and reimbursement shall be known as "BERKHEIMER's commission." Tax payments that are subject to Sterling Act credits under the LTEA because the taxpayer is subject to a like tax under the Sterling Act constitute a component of ~~tax collections~~ gross Earned Income Taxes collected for purposes of BERKHEIMER's commission. 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.

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 and the Taxing Authorities located in CLIENT's TCD, as desired and deemed necessary by CLIENT, to be used for official purposes only.

5. **Duties of Client.** CLIENT and/or the Taxing Authorities located in CLIENT's TCD, expressly agree to do the following

(a) at their 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 their tax enactments;

(b) provide BERKHEIMER with their 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 'Taxing Authorities' tax rolls during its tenure as Tax Officer, using those resources available to it; however, CLIENT and the Taxing Authorities bear 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 Earned Income Tax herein 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;

(e) provide to BERKHEIMER all necessary appointment resolutions, confidentiality resolutions, tax enactment and other documents not previously identified herein for the collection of the Earned Income Tax; and

(f) to provide, at CLIENT's expense, legal representation on any matter relative to the validity and constitutionality of the Taxing Authorities' earned income tax enactments.

6. **Audit.** BERKHEIMER agrees to provide, at its expense, a complete annual audit by a firm of Certified Public Accountants, designated by BERKHEIMER, and approved by CLIENT, as required by law. Through this Agreement, CLIENT approves the firm of Certified Public Accountants selected by BERKHEIMER to conduct this independent audit. Except as set forth in

this Agreement, 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. BERKHEIMER shall file a copy of the audit report with the Taxing Authorities located within the CLIENT's TCD and with the DCED on or before September 1st of the succeeding year.

7. **Non-liability of Berkheimer & Disclaimer.** CLIENT and the Taxing Authorities located within the CLIENT's TCD shall hold harmless and indemnify BERKHEIMER from and against any and all loss, damage or claim for actual or attempted Earned Income Tax collection(s) arising from:

(a) incorrect, illegal or improper tax records submitted by CLIENT and/or the Taxing Authorities to BERKHEIMER;

(b) incorrect, illegal or improper tax information submitted by taxpayers and/or employers located within Taxing Authorities' 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 and/or the Taxing Authorities from BERKHEIMER;

(e) the withholding of correct, legal and proper information by taxpayers and/or employers located within the Taxing Authorities' 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 and/or the Taxing Authorities' within the CLIENT's TCD that it will collect a sum certain for any given Taxing

Authority in any given tax year. BERKHEIMER shall not be responsible to defend or uphold the validity, legality, or constitutionality of the Taxing Authorities' Earned Income 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 any given Taxing Authority. To the extent BERKHEIMER advises CLIENT and/or the Taxing Authorities of any errors which it may discover committed in the collection of the Taxing Authorities' Earned Income Tax prior to BERKHEIMER's tenure as Earned Income Tax officer, including but not limited to errors in tax distributions and/or inaccurate tax records, which may have been caused or created by the CLIENT and/or the Taxing Authorities or their 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 and the Taxing Authorities hereby indemnify 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 Taxing Authorities' 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 and/or the Taxing Authorities 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 and/or the Taxing Authorities 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 and/or the Taxing Authorities 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** and so on for **one-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)~~one (1) 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)~~one (1) 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 an 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 Tax Collection Districts 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 its 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's Tax Collection District. BERKHEIMER shall not be required to deliver to CLIENT any source documents such as taxpayer returns or filings. 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 are the Taxing Authorities' Earned Income Tax Resolutions/Ordinances and other pertinent materials relating to the Earned Income Tax as adopted from time to time by the Taxing Authorities' located within the CLIENT's TCD. Concurrently with the execution hereof, CLIENT has delivered to BERKHEIMER a copy of the Taxing Authorities' Earned Income Tax Resolutions and/or Ordinances, of the Resolution approving these Articles of Agreement and appointing BERKHEIMER as Tax Officer, and other pertinent materials relating to the Earned Income Tax.

In the event that any Taxing Authority'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 Earned Income Tax until such time that the alleged invalidity has been finally adjudicated or such repeal finalized. If any provision of any Taxing Authority'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.

11. **Miscellaneous Charges.** At no additional cost to the CLIENT, BERKHEIMER shall be permitted to collect and retain directly from each delinquent taxpayer, a processing fee of **Five Dollars (\$5.00)** for each delinquent tax year, a handling fee of **Three Dollars (\$3.00)** for each payment received by BERKHEIMER from such delinquent taxpayer which represents less than the full amount of taxes due (i.e., partial payments only), and a service fee of **Twenty-nine Dollars (\$29.00)** for any check returned "Non Sufficient Funds", "Stopped Payment" or "Account Closed". In addition to the aforestated commission ~~and initial file establishment charge~~, the costs of collecting delinquent taxes incurred by BERKHEIMER may be assessed to and recovered from 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 and/or the specific Taxing Authorit(ies) 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/or the specific Taxing Authorit(ies) and thereafter will ~~credit~~ credit and reimburse the amount of these costs and fees to the CLIENT and/or the specific Taxing Authorit(ies) if and when it is paid by the delinquent taxpayer. CLIENT and/or the specific Taxing Authorit(ies) shall

be solely responsible for and fully reimburse BERKHEIMER for all costs of any legal proceedings undertaken to administer, enforce or otherwise collect Earned Income Tax.

CLIENT and/or the specific Taxing Authorit(ies) shall be responsible for any legal expenses relative to any matter pertaining to the validity and constitutionality of the Taxing Authorities' earned income tax enactments. Additionally, the parties acknowledge and agree that BERKHEIMER is authorized to retain any investment interest, income and/or excess bank earning credits to offset any bank item processing fees incurred by BERKHEIMER. For purposes of this provision, "interest" or "investment interest" as used herein shall not mean penalties or interest imposed by statute or earned income tax ordinance/resolution on delinquent taxpayers.

12. **Interest.** Notwithstanding any other provisions of this Agreement, the parties agree and acknowledge that any monies that remain unidentified or 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. For purposes of this provision, "interest" or "investment interest" as used herein shall not mean penalties or interest imposed by statute or earned income tax ordinance/resolution on delinquent taxpayers.

13. **Non-Competition.** During the Term of Appointment and/or any renewal thereof, and for the one (1) 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 or 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 that shall be exclusive, final, binding and conducted in accordance with the Pennsylvania's Uniform Arbitration Act, 42 Pa.C.S.A. §7301 *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 Northumberland 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.

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:
Jason Budman, Secretary
Northumberland County Tax Collection Committee
3 Swallow Court
Milton, PA 17847

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.

**NORTHUMBERLAND COUNTY TAX
COLLECTION COMMITTEE,
NORTHUMBERLAND COUNTY**

BY: _____
Patricia A. McNamara, President

BY: _____

ATTEST:

BY: _____
David R. Gordon, Esq.,
Assistant Secretary

BY: _____
Secretary

berkheimer
tax administrator