

AGREEMENT

THIS AGREEMENT, Made and entered into, in duplicate, this _____ day of _____, _____, By and Between the **WARREN COUNTY SCHOOL DISTRICT**, located in Warren 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, including CLIENT, 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, CLIENT, has levied, assessed and provided for the collection of an Earned Income Tax under the LTEA; and

WHEREAS, Section 10 of said Act of 1965, 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, BERKHEIMER has represented to CLIENT that it is competent, experienced and qualified to perform in the capacity of delinquent Earned Income 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 CLIENT's delinquent Earned Income Taxes; 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 Delinquent Tax Collector.** CLIENT does hereby designate and employ BERKHEIMER as the exclusive Delinquent Tax Collector of the Earned Income Tax levied by CLIENT for the term commencing January 1, 2013, and ending December 31, 2014, and as may be renewed. BERKHEIMER may not assign or subcontract, in whole or in part, this Agreement or any of its rights, duties, obligations, or responsibilities hereunder without the CLIENT's express consent or authorization; provided, however, that this shall not preclude or prevent BERKHEIMER from hiring or otherwise using outside vendors to fulfill its duties under this Agreement, with the understanding that Berkheimer shall remain responsible and liable to CLIENT for the actions or omission of any such outside vendors.

2. **Duties of Berkheimer.** In the collection of CLIENT's delinquent Earned Income Taxes, 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 Earned Income Tax levied by CLIENT;

(b) to promptly deposit all sums collected by it in a banking institution in an account designated as Berkheimer Delinquent Collections Account and pay over to CLIENT the gross sums collected by BERKHEIMER during each calendar month not later than the twenty-fifth (25th) day of the next succeeding month;

(c) to submit recommendations for exoneration on a regular basis for any of the forty-one (41) reasons outlined on the exoneration code if applicable to taxing body;

(d) to submit a report with disbursements reconciling all money processed by BERKHEIMER; to notify each delinquent account via first-class mail using a “Delinquent Notice” form specifying the taxes, charges and costs, as applicable;

(e) to issue, when appropriate, a “Final Notice Prior to Wage Attachment” form to each delinquent account prior to wage attachment pursuant to information obtained from either the CLIENT or the initial mailing outlined herein;

(f) to demand, collect, and receive from employers of individuals with delinquent accounts, pursuant to relevant laws, any moneys due and owing and any charges or costs accrued thereto by issuance of a “Notice of Wage Attachment” form;

(g) to levy payment of said taxes, charges and costs, as provided by law, by distress of goods and chattels of individuals with delinquent accounts by serving a “Distraint for Delinquent Accounts” form;

(h) to notify, when appropriate, to each delinquent who fails to reply to any or all of the above actions a “Third and Final Notice” form setting forth total amount due including total costs and charges;

(i) to forward a representative sample of all delinquent accounts to BERKHEIMER's Legal Department for legal process, which may include: an initial legal letter; a legal letter with copy of complaint; a lawsuit *through any court of competent jurisdiction in Pennsylvania*; and/or constable or sheriff sale of property; and

(j) to determine, at its discretion, the number and extent of the aforementioned remedies to be employed in the collection process. When it is determined that collection efforts have reached an economical point of diminishing return, BERKHEIMER shall have no further responsibility under this Agreement for securing money due to CLIENT. In that event, BERKHEIMER shall advise CLIENT in writing of such and CLIENT, at CLIENT's discretion, may contract with BERKHEIMER for further collection services. In such case, BERKHEIMER agrees to provide its legal counsel at no extra expense to CLIENT, and CLIENT agrees to be billed periodically for any costs that are charged by the courts in processing said legal matters. Upon successful prosecution of delinquent accounts, court costs are ultimately paid by the delinquent taxpayer and returned to CLIENT.

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 **ten percent (10%)** of the gross delinquent Earned Income Tax collected by BERKHEIMER, which compensation and reimbursement shall be known as "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. BERKHEIMER acknowledges and agrees that said postage charges, the 10% Berkheimer commission, and any costs charged by the courts when section 2(j) of this Agreement is applicable shall be the only amounts CLIENT must pay to BERKHEIMER pursuant to the terms of this Agreement. In the event of a conflict between the preceding sentence and any other term or condition of this Agreement, the parties agree that the preceding sentence shall govern and control.

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 lists or records of delinquent taxables;
- (c) 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 delinquent Earned Income Taxes 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;

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

(e) Upon the mutual agreement of BERKHEIMER's and CLIENT, provide at CLIENT's expense, legal representation through its solicitor on any matter relative to the collection, enforcement, administration and/or the validity or constitutionality of CLIENT's Earned Income 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 CLIENT's appointed liaison.

7. **Liability.** CLIENT shall release and absolve BERKHEIMER from and against any and all loss, damage or claim for actual or attempted collection of delinquent taxes 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.

Notwithstanding the foregoing, the parties hereto agree that this provision shall not be construed to in any way limit CLIENT's ability to assert any defenses, including, but not limited to, the defense of immunity.

BERKHEIMER and BERKHEIMER's agents, employees, and any outside vendors utilized by BERKHEIMER pursuant to section 1 of this Agreement shall comply with all applicable federal, state, and local laws, regulations, and ordinances. BERKHEIMER shall and will defend, indemnify and hold and save harmless CLIENT and CLIENT's employees, agents, and Board of School Directors from and against any and all causes of action or liability associated with BERKHEIMER or BERKHEIMER's employees, agents, representatives, or outside vendors (i) violation of the terms and conditions of this Agreement; (ii) violation of any federal, state, or local law, regulation, or ordinance; or (iii) act or omission relative to the collection of delinquent earned income taxes, unless said act or omission is a result of CLIENT submitting incorrect, illegal or improper tax records to BERKHEIMER (see section 7(a) of this Agreement) or CLIENT withholding correct, legal or proper information from BERKHEIMER (see section 7(b) of this Agreement). BERKHEIMER's duties and obligation in accordance with this provision shall survive the termination of this Agreement and shall cover all claims, regardless of when a claim is asserted.

BERKHEIMER shall release and absolve CLIENT from and against any and all loss, damage or claim for actual or attempted collection of delinquent taxes arising from:

(a) incorrect, illegal or improper tax information submitted by any source, other than CLIENT, to BERKHEIMER.

(b) the withholding of correct, legal and proper information by any source, other than CLIENT, from BERKHEIMER.

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 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 CLIENT. To the extent BERKHEIMER advises CLIENT of any errors which it may discover committed in the collection of CLIENT's Earned Income Tax, 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, CLIENT hereby releases BERKHEIMER from all liability relative to uncollected tax revenue caused by said errors. 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 PURPOSES FOR THE SERVICES TO BE PROVIDED HEREUNDER.

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 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.** If requested by CLIENT while this Agreement is in effect, BERKHEIMER shall provide CLIENT with copies of any record that is created or maintained by BERKHEIMER pursuant to carrying out the services encompassed by this Agreement. In the event that this Agreement is terminated for any reason, the parties agree that all records created or maintained by BERKHEIMER pursuant to carrying out the services encompassed by this Agreement shall be the property of the CLIENT and shall be delivered to client within 30 business days of the effective date of any such termination. In the event of termination of this Agreement, BERKHEIMER reserves the right to retain copies 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. 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. Unless legally precluded from doing so, BERKHEIMER shall 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 that is – purchased and/or created and utilized by BERKHEIMER in the tax collection process is, and shall remain, the exclusive property of BERKHEIMER. Any computer hardware or software, not otherwise created by BERKHEIMER, that is purchased by CLIENT and utilized by BERKHEIMER is and shall remain the exclusive property of CLIENT.

10. **Tax Enactment/Regulations.** Incorporated by reference into this Agreement is the CLIENT's Earned Income Tax Resolution/Ordinance and other pertinent materials relating to the Earned Income Tax as adopted from time to time by CLIENT. Concurrently with the execution hereof, CLIENT has delivered to BERKHEIMER a copy of the Earned Income 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 Earned Income 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 compensation owed to BERKHEIMER pursuant to the terms of this Agreement 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 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 Earned Income Tax Resolution and/or Ordinance and to the rules and regulations pertaining thereto.

11. **Miscellaneous Charges.** In addition to the aforesaid commission, the costs of collecting delinquent taxes incurred by BERKHEIMER may be assessed to the taxpayer and retained by BERKHEIMER as allowed by law. Said costs shall be established by CLIENT via a separate Resolution approved by CLIENT'S Board of School Directors. BERKHEIMER will advance the required filing fees and any costs imposed by the court for any legal proceeding to enforce a tax obligation. With the exception of only costs charged by the courts when section 2(j) of this Agreement is applicable, under no circumstances shall CLIENT be liable for any portion of the aforementioned fees. 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. **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.

15. **Independent Contractor.** The rights and duties hereby granted to and assumed by BERKHEIMER are those of an independent contractor only. Nothing contained herein shall be so construed as to create an employment, agency or partnership relationship between CLIENT and either BERKHEIMER or BERKHEIMER's agents, employees or representatives.

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 7, 9, and 13 pertaining to liability, tax collection records, and CLIENT's non-competition with BERKHEIMER 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:
Warren County School District
589 Hospital Drive, Suite A
North Warren, PA 16365
Attention: Director of Business Services

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 and approved by CLIENT's Board of School Directors at a publicly held meeting to be valid. This Agreement shall binding upon and inure to the benefit of the parties hereto and their respective successors and assigns.

19. **Termination of Existing Agreements** The parties hereto mutually agree that any previous agreements entered into between the parties relative to the collection of delinquent earned income taxes, including but not limited to the agreement between the parties dated August 10, 1998, have been terminated as of December 31, 2012, with the understanding that this

Agreement shall govern the relationship between the parties hereto commencing on January 1, 2013, and continuing thereafter

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

H.A. BERKHEIMER, INC.

WARREN COUNTY SCHOOL DISTRICT

BY: _____
Patricia A. McNamara, President

BY: _____
President, Board of School Directors

ATTEST:

BY: _____
Henry U. Sandt, Jr., Secretary/Treasurer

BY: _____
Secretary, Board of School Directors

