

**LACKAWANNA COUNTY
TAX COLLECTION COMMITTEE
Tax Collection Agreement
with
BERKHEIMER TAX ADMINISTRATOR**

Effective January 1, 2012
**LACKAWANNA COUNTY TAX COLLECTION COMMITTEE
Tax Collection Agreement
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- Notice to Collector of TCC Representatives
- Exhibit A -Taxing Authorities/Tax to Be Collected/Commencement Date
- Exhibit B .Collector Minimum Insurance Requirements
- Exhibit C .TCC Deposit Policy
- Exhibit D .TCC Tax Records Policy for Tax Collector

LACKAWANNA COUNTY TAX COLLECTION COMMITTEE
Tax Collection Agreement

This Agreement is made January 1, 2012, (“**Effective Date**”) between the Lackawanna County Tax Collection Committee (“**TCC**”), and Berkheimer Tax Administration, a Pennsylvania corporation (“**Collector**”).

Background. The Local Tax Enabling Act (“**LTEA**”), 53 P.S. §6924.101 *et seq.*, authorizes school districts and municipalities to levy income tax and other taxes on individuals and entities. The TCC is a government entity created and organized under Act 32 of 2008, which amended and restated the LTEA. Under Act 32, the TCC is required to appoint a tax collector to collect income tax and possibly other taxes throughout the Lackawanna County Tax Collection District (“**TCD**”), and to oversee the appointed tax collector's collection within the TCD.

The school districts and municipalities included in the TCD are listed in **Exhibit A**. These school districts and municipalities are referred to in this Agreement as “**Taxing Authorities.**” The Taxing Authorities that levy taxes as of the Effective Date that will be collected by Collector and the specific taxes Collector will collect for each Taxing Authority are noted in **Exhibit A**. The ordinances or resolutions of the Taxing Authorities that levy or otherwise relate to the taxes to be collected by Collector are referred to in this Agreement as the “**Enactments.**”

The Taxing Authorities hereby authorize the Lackawanna County Tax Collection Committee to enter into this Agreement on their behalf with the Collector, including those Taxing Authorities that appointed the Collector to commence collection of the Tax on their behalf commencing on January 1, 2012.

Intending to be legally bound, and in consideration of the mutual covenants contained in this Agreement and other valuable consideration, the parties agree as follows:

1. Designation as Tax Collector.

a. **Exclusive Tax Collector.** Except as otherwise expressly stated in this Agreement, the TCC designates Collector as the exclusive collector of tax throughout the TCD from individuals, entities, and employers required to pay or withhold tax (“**Taxpayers**”).

b. **Commencement Date.** Collector will commence tax collection under this Agreement on January 1, 2012 for certain Taxing Authorities as noted in Exhibit A, and will commence tax collection throughout the entire TCD on January 1, 2012.

2. **Tax.** The tax for which Collector is appointed as the exclusive collector is:

a. **Income Tax.** All earned income tax imposed by Taxing Authorities or other political subdivisions on TCD residents or on nonresidents working within the TCD.

b. **Local Services Tax-** on the privilege of engaging in an occupation imposed by the Taxing Authorities or other political subdivisions on taxpayers working within the TCD, only to the extent and for those municipalities and political subdivisions that authorize the TCC and the Tax Collector to collect such tax.

b. **Fines, Penalties, and Interest.** Collector will also collect all fines, penalties, and interest paid by a Taxpayer related to any of the taxes specified in this Section 2.

c. **Tax Definition.** The earned income, net profits and local services taxes, penalties and interest specified in this Section 2 are collectively referred to in this Agreement as the “**Tax.**”

d. **Delinquent Tax.** The tax for which Collector is appointed includes tax currently owed and

Delinquent Tax, except as otherwise expressly stated in this Agreement. A "Delinquent Tax" is any tax that remains unpaid in full sixty (60) days after the final tax returns are due. This includes all annual tax returns for individuals and both annual and quarterly returns for businesses and employers.

e. **Related Amounts.** Collection costs (excluding Act 192 fees and court costs), and other miscellaneous amounts related to or derived from Tax and owed by Taxpayers or other tax collectors to Taxing Authorities or Collector are referred to in this Agreement as "**Related Amounts.**" The "Related Amounts" shall not include investment earnings.

f. **Updated Tax List.** The TCC will update **Exhibit A** to reflect any changes in the specific taxes Collector will collect for each Taxing Authority under this Agreement. Collector will throughout the term of this Agreement collect the tax as reflected in the tax list in the latest version of Exhibit A of which the TCC has notified Collector.

3. Term of Agreement.

a. **Term.** The term of this Agreement will begin on January 1, 2012. Unless earlier terminated under Section 9 (Early Termination) below, the term will end at midnight three (3) years from the date on which Collector will commence tax collection under this Agreement throughout the entire TCD, with the result that the term will end at midnight on December 31, 2014.

b. *Extension of Term.*

This Agreement may be extended for a period of one (1) year upon expiration of the three (3) year term upon agreement of the parties. The provisions of this Agreement will govern the extended term, except for any written modification executed by the TCC and Collector (whether in the document memorializing the extension or otherwise).

4. Ongoing; Duties and Covenants of Collector. Collector agrees to the following:

a.. **General Duties.** Collector will collect, reconcile, administer, enforce, and receive the Tax and Related Amounts, including performance of all tax officer duties specified in LTEA, 53 P.S. § 6924.509. Collector will 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 Enactments, TCC policies, and this Agreement.

b. **Best Interests/Legal Compliance.** Collector will at all times act in the best interests of the TCC and the Taxing Authorities. Collector will 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, the Pennsylvania Right to Know Law, other applicable law, and TCC policies.

c. *Tax Collector Financial Information.*

(1) **TCC Audit of Tax Collector.** Pursuant to the requirements of LTEA, 53 P.S. § 6924.505(h), the TCC shall conduct an audit of its earned income/net profits tax administered by Collector no later than November 1. The annual TCC earned income/net profits tax audit and financial report will comply with all requirements of the American Institute of Certified Public Accountants, and DCED, and the annual audit and audit report will include and address: (i) The CPA's examination of Collector records relating to receipt, deposit, and disbursement of funds received or held under this Agreement; (ii) The CPA's reconciliation of Collector monthly and annual reports to the TCC with funds received and payable to the Taxing Authorities or

Taxpayers within the TCD; (iii) The CPA's conclusion concerning Collector compliance with the provisions of this Agreement relating to bonding, deposits, monthly and annual reports, distributions, tax records, unidentified funds, and calculation and deduction of Collector's compensation.; and (iv) The CPA's conclusion concerning Collector compliance with all LTEA requirements, and any CPA findings of noncompliance with the LTEA.

(2) **Annual Filing of the TCC Audit Report with DCED.** Collector will file with DCED by November 1 of each year a copy of the TCC annual earned income/net profits tax audit report.

(3) **Selection and Approval of TCC Earned income/net profits tax Auditor.** In accordance with the LTEA, 53 P.S. § 6924.505(h) (l), the TCC shall approve its selected CPA firm that will conduct the TCC earned income/net profit earned income/net profits tax audit of Collector under this Agreement.

(4) **SAS 70 Audit.** Each year Collector, at no cost to the TCC, will engage a certified public accountant to compile and formulate a report relative to the internal controls of the Collector in accordance with the SSAE Audit which has replaced the SAS Audit. Such audit will be completed on an annual basis by September 1 of each year.

(5) **TCC Review of Collector Financial Records.** The TCC may at any time engage an accounting firm to examine Collector's financial records relating to collection of funds received or held by Collector under this Agreement and inquire into any matter reasonably relevant to verifying compliance with this Agreement. If the TCC exercises this right, Collector will make requested records available for examination, arrange for review of Collector CPA audit work papers, and provide other cooperation as reasonably requested by the TCC accounting firm.

d. **Tax Collector Bond** Collector will provide a bond or bonds complying with the requirements of LTEA, 53 P.S. § 6924.509(d), and Department Regulation §125.49.

(1) **Bond Amount**

(i) **Initial Bond Amount.** Prior to initiating official duties, the Collector shall give and acknowledge a bond to the TCC. The bond shall be fixed in an amount equal to the maximum amount of TCC Taxes that may be in possession of the Collector at any given time or in an amount as authorized by the Bonding Guidelines as established by the Regulations of the Department of Community and Economic Development (the "Department") promulgated under and pursuant to § 509 (d) of Act 32 acknowledging the fiscal controls, insurance and other risk management and loss prevention measures maintained by Collector. The Collector's Bond shall meet the requirements of Department Regulation § 125.49 which requirement shall include but not be limited to requiring a bond, with one or more corporate sureties, which shall be surety companies authorized to do business in the Commonwealth of Pennsylvania and licensed by the Insurance Department.

(ii) **Annual Bond Review.** No later than April 1 of each year, the bond amount will be increased or decreased to the highest amount of TCC public funds held by Collector on any day during the preceding calendar year or in accordance with the requirements of Department Regulation §125.49.

(2) **Possible Reduction in Bond Amount.** The TCC may in its discretion authorize reduction in the bond amount to an amount less than the amount calculated under Section 4(d) (l) above. Any such determination to allow reduction of the bond amount will be based on Collector internal controls, insurance or other risk management and loss prevention measures the TCC deems sufficient to justify reduction of the bond amount. Factors that might be considered in connection with a requested reduction in bond amount include: (i) Collector capitalization and financial strength; (ii) Collector internal crime insurance or other insurance protection; and (iii) Strong Collector internal controls verified by the CPA. Any reduction in the bond amount must comply with any applicable DCED guidelines.

3) **Permissible Bonding Companies.** Collector's bond must be issued by an insurance company that is licensed in Pennsylvania, listed as a certified company acceptable for federal bonds as determined and published by Financial Management Service, a bureau of the U.S. Department of Treasury, rated at least "A" from A.M. Best or another nationally recognized rating agency, and otherwise acceptable to the TCC. The amount of the bond may not exceed the maximum net exposure per fidelity or surety risk as published by the Pennsylvania Insurance Department.

(4) **Bond Form Requirements.** In addition to all other requirements of LTEA, 53 P.S. § 6924.509(d) and DCED, the tax collector bond will comply with the following requirements: (i) The bond will provide joint and several liability of Collector and the surety company issuing the bond; (ii) The obligee under the bond will be the TCC. However, the bond will state that a claim may be made under the bond by the TCC or any Taxing Authority that levies Tax, and also by any other tax collection committee or political subdivision outside of the TCD to the extent the claim relates to amounts payable to political subdivisions other than the Taxing Authorities, to Taxpayers outside the TCD, or to other tax collectors; (iii) The bond will apply to any event or omission that occurs when the bond is in effect, even if the event or omission is discovered or reported to the surety company after expiration or termination of the bond; and (iv) The bond will be in form satisfactory to the TCC and will guarantee: (a) Collector's faithful accounting and payment over of all amounts paid to or received or held by Collector under this Agreement; (b) Collector's delivery to any successor tax collector appointed by the TCC of all tax records in a standardized electronic format; (c) Collector's faithful execution of all duties required of Collector under this Agreement; and (d) Advance written notice from the surety company issuing the bond to the TCC at least thirty (30) days prior to the effective date if the surety company terminates, reduces the amount of, or otherwise changes the terms of the bond.

(5) **Bond Delivery.** Collector will deliver to the TCC thirty (30) days prior to the date of commencement of collection services, the initial bond, properly executed by Collector and the surety company. Collector will deliver to the TCC any new bond or modification of a bond promptly after its effective date, properly executed by Collector and the surety company. Within thirty (30) days after such delivery to the TCC, Collector will give a copy of any bond in effect under this Agreement to each Taxing Authority that levies Tax. Within thirty (30) days of receiving a request, Collector will also provide a copy of any bond in effect under this Agreement to DCED, to any tax collection district other than the TCD seeking payment or distribution of Tax, and to any political subdivision other than the Taxing Authorities seeking payment or distribution of Tax. If any bond has an expiration date or any surety company issuing a bond notifies Collector of termination or change of terms of the bond, a new bond must be delivered to the TCC at least thirty (30) days before the effective date of the expiration, termination, or change in terms.

(6) **Bond Continuing after Termination of Agreement.** Collector will continue to provide a bond until six (6) months after the end of the term of this Agreement. The bond amount in effect after the end of the term of this Agreement must be at least twenty-five percent (25%) of the bond amount required immediately prior to the end of the term of this Agreement.

(7) **Failure to Provide Bond** Without limiting any other remedies available to the TCC, if Collector at any time fails to provide a bond in accordance with the requirements of this Section 4(d), Collector will be subject to the fines and penalties set forth in the LTEA.

(8) **Letter of Credit.** In lieu of a bond, Collector may provide a letter of credit or other third party guaranty in form satisfactory to the TCC provided such substitution complies with any applicable DCED guidelines.

e. Collector Office, Staff, Technology, Resources, and Safeguards

(1) **Office and Staff:** Collector's principal office is at the location set forth at the end of this Agreement after Collector's signature. Collector will at all times maintain at least one (1) office within the TCD that is open to Taxpayers and the public and has sufficient staff, technology and resources to allow Collector to interact in person or by telephone with Taxpayers, to answer questions, to receive returns and payments in person and by other means to fulfill its obligation under this Agreement. At the request of the TCC, Collector will reasonably make available additional staff at locations provided and designated by Taxing Authorities at the end of each quarterly filing period and during the week prior to the final return filing period, for the purpose of receiving returns and payments in person, providing any tax forms relating to collection of the Tax and answering questions of the public in person and by telephone.

(2) **Technology and Resources.** Subject to the tax collector compensation provisions set forth below, Collector will 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.

(3) **Taxpayer Assistance and Filing Options.** Collector will provide assistance to Taxpayers through operation of a toll-free phone number during normal business hours, counter/walk-in assistance at Collector's principal office and a website to provide information to Taxpayers and that Taxpayers may use to make credit card payments. Collector's website will include the Taxpayer Bill of Rights; tax regulations, policies, and procedures; and copies of tax returns and all other forms applicable to Taxpayers. Collector will also maintain the infrastructure and provide information necessary to receive tax returns and payments electronically.

(4) **Collector Warranties and Safeguards.** Collector warrants to the TCC that: (i) Collector will at all times have adequate technology and other resources to comply and will comply with all Best Practices listed in the "Information Technology Report" within the DCED document titled: "Earned Income Tax Consolidation System Best Practices Report -December 31, 2009." (ii) Collector will at all times have adequate technology to comply with all requirements of the LTEA and this Agreement. (iii) Collector will at all times have technology, policies, and procedures in place for the purpose of ensuring the security and confidentiality of information relating to and provided by Taxpayers, including social security numbers and other information, and avoiding a data breach or other improper disclosure of confidential information.

(5) **Subcontractors.** Collector may not assign or delegate duties to a subcontractor unless the TCC gives advance written consent. Nothing in this provision shall prohibit Collector from utilizing third party vendors to perform the services outlined in this Agreement or from assigning or delegating duties to a subcontractor or vendor affiliated with the Collector; in which event, Collector shall provide to the TCC a complete list of affiliated vendors and subcontractors.

f. Tax Revenue Deposits and Distributions to TCC.

(1) **Deposit Policy.** Collector has received a copy of the TCC Deposit Policy (**Exhibit C**) now in effect. In accordance with the TCC Deposit Policy as now in effect or of which the TCC in the future notifies Collector, Collector will promptly deposit all Tax collected or held by Collector under this Agreement. Such Tax belong to, are the property of, and will be held as a trust fund for the Taxing Authorities and other political subdivisions, including but not limited to, other TCCs serviced by Collector entitled to receive funds. Collector shall be responsible for all bank charges connected with such account. Such Tax will remain deposited in accordance with the TCC Deposit Policy until distributed in accordance with this Agreement. All that notwithstanding, the Collector shall be allowed to retain as its own property any investment earnings, not to exceed three and one-half percent (3.5%), on the Tax collected for the Taxing Authorities in the TCD under this Agreement. As such, those investment earnings shall not be included in the Related Amounts subject to

distribution by the Collector; however, Collector each month will allocate investment earnings in excess of three and one half percent (3.5%) derived from all Tax and Related Amounts collected or held by Collector under this Agreement to the proper Taxing Authorities. Collector will allocate investment earnings in excess of three and one half percent (3.5%) in accordance with this Section 4(f)(4) until directed otherwise by the TCC, at which time Collector will follow such future direction.

(2) ***Tax Collector Funds.*** Collector will deposit all Tax and Related Amounts (not including Collector compensation and reimbursable costs) for the TCC in an account which shall consist solely of Taxes and such Related Amounts collected by the Collector for the TCC and any other taxing authorities, including but not limited to, other TCCs for which Collector acts in that capacity. Such Tax and Related Amounts shall thereafter be deposited in accordance with this Agreement and the TCC Deposit Policy (**Exhibit C**) and any other requirements reasonably imposed by the TCC. Any such account may be held with a financial institution or local government investment trust.

(3) ***Accounting and Allocation of Funds.*** Collector will maintain an accounting system that accounts for all Tax and Related Amounts by allocating such amounts as promptly as possible to: (i) each Taxing Authority entitled to receive Tax and such Related Amounts; (ii) political subdivisions in other tax collection districts entitled to receive Tax and such Related Amounts; or (iii) funds that have not been sufficiently identified by Taxpayers to allow Collector determination of the Taxing Authority or other political subdivision to which the funds belong (“**Unidentified Funds**”). Collector will make all reasonable efforts to insure that “unidentified funds” shall be at a minimum.

(4) ***Distributions to the TCC.*** At the option and direction of the TCC, Collector shall additionally withhold a percentage amount as established by the TCC for the TCC to cover its own internal operations, expenses and administrative costs. Such additional withholding shall not reduce, proportionally or otherwise, the commission or compensation due Collector for services rendered under this Agreement.

g. Distributions. Collector will distribute Tax and Related Amounts in compliance with LTEA, 53 P.S. §6924.5 13, and as follows:

(1) ***Distributions to Taxing Authorities Within TCD.*** Collector will distribute by the end of the last business day of each week all Tax and Related Amounts held at the end of the prior week and identified as legally due to each Taxing Authority. In addition, at any time when the aggregate of Tax and Related amounts held by Collector and identified as legally due to Taxing Authorities exceeds \$2,000.00, Collector will on the next day distribute the amount identified as legally due to each Taxing Authority. Collector shall use its good faith and best efforts to identify those sums collected and/or received by it as legally due to Taxing Authorities. The TCC shall have the right to request and the Collector shall meet with the TCC regarding any concerns the TCC may have regarding monies reported by the Collector as “unidentified.”

(2) ***Distributions to Tax Collectors for Other TCDs.*** At the time of distributions to tax collectors for other tax collection districts, Collector will provide to such other tax collectors all information required in employer monthly and annual returns filed under LTEA, 53 P.S. §§ 6924.5 12(4), (5), and any other distribution information required by DCED.

Collector will distribute to the appropriate tax collector by the 20th day of each month all Tax held during the prior month and identified as legally due to specific political subdivisions outside the TCD, together with any investment earnings payable under this Agreement to such political subdivisions.

(i) *Special Rule for Certain Multi-Site Employers.* Notwithstanding the foregoing, Collector will distribute to the appropriate tax collector no later than thirty (30) days after the last day of the month following receipt all Tax identified as legally due to specific political subdivisions outside the TCD and received electronically from employers that operate in more than one tax collection district and have filed a notice pursuant to LTEA, 53 P.S. §6924.512(5), of intention to file combined returns and make combined payments with Collector. This amount will be distributed, together with any investment earnings payable under this Agreement to such political subdivisions.

(3) *Manner of Making Distributions.* Collector shall use ACH transfers (including notification) to make all distributions to Taxing Authorities in the TCC under this Agreement.

(4) *Statutory Interest Owed to Tax Collectors for Other TCDs.* If Collector pays interest at the statutorily prescribed rate to a tax collector for another TCD as a result of a claim of the other tax collector pursuant to LTEA, 53 P.S. §6924.513(b)(2) or § 6924.510(a), the interest paid will not be charged to the TCC or any Taxing Authority. However, Collector may deduct any such interest paid to other tax collectors from interest earned on Unidentified Funds.

(5) *Unidentified Funds and Receipts.* If Collector receives Tax and is unable to identify the Taxing Authority or other political subdivision entitled to the Tax within two (2) years of receipt, and if Collector has taken steps mandated by the **TCC Unidentified Tax Funds Policy**, as now in effect or of which the TCC in the future notifies Collector, Collector promptly thereafter will distribute the Tax to the municipality in which the Tax was collected.

(6) *Corrections to Distributions.* If Collector at any time, based on annual reconciliation of returns or otherwise, determines that a distribution was incorrect, Collector will make adjustments to future distributions as required to make corrections.

h. *Deductions of Amounts Owed TCC.* Collector will comply with TCC notice to deduct from any distribution otherwise due a Taxing Authority any amount the Taxing Authority owes the TCC, and will pay the amount deducted directly to the TCC.

i. *Reports to TCC and Taxing Authorities.*

(1) *Monthly Reports.* Within twenty (20) days after the end of each calendar month, Collector will provide a written report, in accordance with LTEA, 53 P.S. § 6924.509(b), in form prescribed by DCED, with additional information provided in form satisfactory to the TCC. The report will be provided to the TCC Secretary (as appropriate) and to the designated representative of each Taxing Authority for which Tax was collected during the prior month. The report will include the information set forth as follows:

(i) Report to the TCC shall include:

- (a) Collections summary totals of face Tax;
- (b) Collections summary totals of Tax penalty;
- (c) Collections summary totals of Tax interest;
- (d) TCC administrative costs withheld; and
- (e) Collector commission invoiced, said summary delineated by Taxing Authority within the TCC and identifying each Tax by tax year.

(ii) Report to the Taxing Authority shall include:

Detail to the specific taxpayer account (identified by assigned account number) and reporting detail of:

- (a) Collection of face Tax;
- (b) Collection of Tax penalty;
- (c) Collection of Tax interest;
- (d) Collection detailed by Tax Year;
- (e) Collection payment date; and
- (f) Collection receipt number, Aggregate details of items (a) through (c) above, in addition to:
- (g) Total amount received;
- (h) Total amount previously distributed during the reporting period;
- (i) Total amount distributed with the monthly report; and
- (j) Collector commission invoiced;

(iii) All other information required in monthly reports by this Agreement or DCED.

(iv) All other information reasonably requested by the TCC in order to understand receipts and distributions of Tax and Related Amounts, to assess Collector performance, and for other appropriate purposes, including, without limitation, a quarterly report on unidentified funds received by the Tax Collector, a quarterly litigation report and a quarterly report on refunds issued for over \$1,000.00.

(2) Annual Reports - Information Concerning Returns and Enforcement, and for the Protection of the TCC and Taxing Authorities. In addition to the foregoing Collector's monthly report, Collector shall within ninety (90) days of the final tax return reconciliation (completed on or about October 1 of each year) submit to the Secretary of the TCC (as appropriate) an Annual Report which shall include the following information broken down by Taxing Authority (as shown below):

- (i) Taxpayer information, including:
 - (a) Number of individual tax returns filed during the month and year to date.
 - (b) Number of individual non-filers identified during the month and year to date.
 - (c) Number of individual tax returns processed during the month and year to date.
 - (d) Number of individual tax returns remaining unprocessed, broken down by tax year.
 - (e) Number of employer tax returns filed during the month and year to date.
 - (f) Number of employer non-filers identified during the month and year to date.
 - (g) Number of employer tax returns processed during the month and year to date.
 - (h) Employer tax returns remaining unprocessed, broken down by tax year.

(ii) The report will summarize the information required in monthly reports by providing aggregate annual information.

Tax collection legal proceedings information required under Section 4(m) (8) (Enforcement Steps) below.

(iii) Tax Collector bond information required under Section 4(d) (l) (ii) (Tax Collector Bond) above.

(iv) Any felony convictions (other than a summary offense or driving under the influence) filed against Collector or any owner, officer, director, or key employee of Collector; and any criminal charges filed against any employee relating to theft or dishonesty.

(v) Any legal proceeding (arbitration, court action, or complaint filed with or investigation by a government body) filed, commenced, or made by a school district, municipality or other government body against Collector.

(vi) Any judgment for payment of money in excess of \$10,000 rendered in any legal proceeding against Collector or any of its subsidiaries or affiliated companies. (This does not include a judgment for a refund claim amount owed to a Taxpayer.)

(vii) Any legal proceeding (arbitration, court action, or complaint filed with or investigation by a government body) or claim filed, commenced, or made by any person, or any event that has occurred, in either case that could have a material adverse effect on Collector's ability to fulfill its obligations under this Agreement.

(viii) Any change of control of Collector, which shall mean: (a) any sale, lease, exchange, or other transfer (in one transaction or series of related transactions) of all or substantially all of the assets of Collector; or (b) the sale or transfer of a controlling ownership interest in Collector other than a transfer between or among Collector's shareholders and/or their spouses. Change in the form of entity (such as sub-chapter S to 1120(c) Corporation) for tax planning and business operation purposes shall not be restricted by this provision.

(ix) Failure by Collector to make any payment more than ninety (90) days after when due to any financial institution or any other party with respect to borrowed money.

(x) Any material adverse change in financial or business condition of Collector.

(xi) The occurrence of any of the events or omissions specified in Section 9(a) (Termination) below.

(3) **Certification of Reports.** Collector's monthly and annual reports will include Collector's certification that the reports are accurate and that Collector is in compliance with this Agreement, and explanation of any noncompliance.

(4) **Revenue Projection Assistance.** On request from a Taxing Authority or the TCC, Collector will provide revenue projection estimates for future budget planning.

(5) **Sterling Act Tax Credit Information for School Districts.** By November 1 of each year, Collector will provide, in form satisfactory to school districts and the TCC, Sterling Act tax credit information that school districts are required to provide to the Pennsylvania Department of Education pursuant to the Taxpayer Relief Act, 53 P.S. § 6926.503(b)(2). The report will be provided to the TCC Secretary, and to the Secretary of each school district for which Tax was collected during the prior year.

(6) **Data Breach Report.** If at any time Collector experiences a "breach of the security of the system" requiring notice of breach to affected Taxpayers under the Pennsylvania Breach of Personal Information Notification Act, 73 P.S. §2301 et seq., Collector will provide notice of the breach to the TCC Secretary. The notice shall be provided as promptly as possible and no later than the date when notice is given to affected Taxpayers. Collector will be responsible for all costs incurred as a result of a breach, including the cost of notifying affected Taxpayers.

j. **Tax Records.** Collector has received a copy of the TCC Tax Records Policy for Tax Collector (Exhibit D) now in effect. Collector will maintain at all times an updated Individual Taxpayer List and an Employer List and other Tax Records in accordance with LTEA, 53 P.S. §§ 6924.509(e) and 6924.513(a)(3), and the TCC Tax Records Policy for Tax Collector (Exhibit D), as now in effect, or of which the TCC in the future notifies Collector. Per LTEA, 53 P.S. § 6924.509(e), all Tax Records are the property of the TCC and the

Taxing Authority in which the Tax was collected.

k. **Refund Processing.** Collector will refund under LTEA, 53 P.S. § 6924.509(c), and the Local Taxpayer Bill of Rights, 53 Pa.C.S.A. §§ 8425 and 8426, on petition and proof by a Taxpayer, Tax paid and received by Collector or a Taxing Authority in excess of what is owed. Collector will consult with the TCC and receive TCC approval before issuing any refund in excess of \$1,000. Subject to the foregoing, Collector will process promptly all refund requests. Each Taxing Authority will at all times be responsible for the amount of any refund the Taxing Authority owes to any Taxpayer, whether such refunds relate to amounts collected during the term of this Agreement or prior to the term of this Agreement. Collector will deduct the refund amount from a distribution otherwise due the Taxing Authority responsible for the refund.

l. **Ongoing Duty to Maximize Collections.** Collector will endeavor to maximize Tax collections by ensuring that all Tax owed is paid, including the following steps:

(1) **Taxpayer Identification.** Collector will take steps to identify Taxpayers required to pay or withhold Tax or file returns. These steps will include the following:

(i) **Pennsylvania Department of Revenue Agreement.** Collector will use the information from state income tax returns provided by the state as a result of the information exchange agreement the TCC enters into with the Pennsylvania Department of Revenue pursuant to LTEA, 53 P.S. § 6924.509(g). The TCC will provide Collector with a copy of the information exchange agreement. If the TCC fails to provide a copy by the date upon which Collector commences Tax collection under this Agreement, Collector will provide a written reminder to the TCC to provide a copy. Collector will compare Collector's Individual Taxpayer List against the Pennsylvania Department of Revenue list at least annually.

(ii) **Dialogue with Taxing Authorities.** Collector will engage in ongoing dialogue with Taxing Authorities concerning Taxpayer identification, and will annually ask each Taxing Authority that levies Tax whether it wishes to receive, review, and comment on Collector's list of employers operating within the Taxing Authority and Collector's list of individual Taxpayers residing within the Taxing Authority. Collector will promptly provide copies of such lists if requested by the TCC or a Taxing Authority that levies Tax, and will promptly review and adjust its lists based on information provided by Taxing Authorities. Collector will annually ask each Taxing Authority that levies Tax to provide a list of new employers known to the Taxing Authority to be operating within the Taxing Authority's boundaries.

(iii) **Other Lists and Databases.** Collector will annually compare Collector's individual Taxpayer list against the county real estate tax duplicate. Collector will also endeavor to obtain other lists and databases of employers and individual Taxpayers for comparison to Collector's Individual Taxpayer List and Employer List.

(iv) **Commercial Census.** Within two years after Collector commences tax collection throughout the entire TCD, and at least every two (2) years thereafter, Collector will research the skip-trace and other databases to which Collector subscribes and accesses, for the purpose of determining and locating new (and previously unidentified) businesses and employers located on the roads designated or zoned for business and commercial purposes within the TCD. The TCC may waive or modify this requirement based on information provided by Collector concerning list comparisons and technology that provide comparable benefits.

(2) **Taxpayer Mailings.** Collector will annually provide tax return forms to all known employers and individual Taxpayers who have not previously indicated to Collector that they intend to receive and/or access their tax return forms or information electronically and accordingly file and/or report electronically. Collector will also during the year provide tax returns and related information to any employer or individual Taxpayers identified through Taxpayer identification steps and not included in the most recent annual mailing.

(3) **Mass Mailings and Amnesty Programs.** At the request of the TCC or the appropriate Taxing Authorities, Collector will implement amnesty programs and mass mailings to identify Taxpayers and collect Tax owed. Any amnesty program will comply with the TCC policy on abatement of interest or penalties adopted under Section 4(p) below.

(4) **Examination and Reconciliation of Tax Returns.** Collector will by October 1 of each calendar year examine all individual tax returns for the prior calendar year or years received by April 15 or the deadline established for the filing of individual final tax returns. Collector will as part of this process: (i) Determine if the correct amount of taxable income and Tax owed has been reported. (ii) Determine if the correct amount of Tax and any Related Amount has been paid, either directly by the individual Taxpayer or by an employer. (iii) Compare taxable income and Tax owed as reported with Tax payments received from individuals and employers. (iv) Compare taxable income and Tax owed as reported with available income information from available state income tax returns provided by the state. (v) Take other steps as appropriate to verify the correct amount of taxable income and Tax owed has been reported and paid. (vi) Determine if payments received during the year have been distributed to the correct Taxing Authority or other tax collector, and make adjustments to future distributions as required to make corrections.

(5) **Taxpayer Audits.** If Collector knows or suspects, based on information available to it, that the correct amount of taxable income has not been reported or that an employer has not correctly withheld or reported withholdings, Collector will, in accordance with LTEA, 53 P.S. §6924.509(f), conduct audits of the records of Taxpayers to determine Tax or Related Amounts owed and other violations, subject to the provisions of the TCC Act 192 Resolution.

(6) **Claims Against Other Tax Collectors.** Based on examination and reconciliation of tax returns and other available information, Collector will, in accordance with LTEA, 53 P.S. §6924.513(b), initiate claims against tax collectors for other tax collection districts for Tax or Related Amounts owed. In addition to other steps, such claims may include appeals in accordance with LTEA, 53 P.S. §6924.505(j), to the tax appeal board of another tax collection committee, and requests for DCED mediation pursuant to LTEA, 53 P.S. §6924.505(k). If Collector collects statutory interest from another tax collector on Tax owed, Collector will credit and distribute this interest to the Taxing Authority entitled to the Tax.

(7) **Delinquent Tax.** Except for Taxpayers subject to enforcement steps at the time Collector commences collecting Tax within a Taxing Authority, Collector will be responsible, at its expense except as otherwise expressly stated in this Agreement, for collection of all delinquent Tax, including Tax owed for tax years preceding the year during which Collector commences Tax collection under this Agreement, which the Taxing Authorities are legally entitled to collect. However, unless Collector and the Taxing Authority later agree that Collector will assume responsibility for collection, per LTEA, 53 P.S. § 6924.515(b) (4), Collector will not be responsible to collect delinquent Tax owed for 2011 or prior tax years if Collector receives written notice from a Taxing Authority that the Taxing Authority has made prior arrangements for collection of such delinquent Tax. As to Taxpayers subject to enforcement steps, any taxpayer account subject to legal proceedings, wage attachment, or payment plan commenced by the prior tax collector shall remain with the prior tax collector until such collection action is completed. Collector will aggressively pursue collection of delinquent Tax. Section 4(m) (6) below includes provisions relating to delinquent collection expenses.

m. **Enforcement Steps.** Collector will take all necessary and appropriate actions to collect Tax not paid when due and to ensure employer compliance, including without limitation when appropriate the following steps

(1) ***Pursuit of Taxpayers.*** In addition to annual mailings to individuals and employers included on the Collector's Individual Taxpayer List and Employer List and mailings during the year to employers and individuals believed to be required to pay or withhold Tax or file returns, Collector will use follow-up mailings and telephone calls to obtain individual Taxpayer and employer compliance or to correct erroneous information.

(2) ***Authorization to File and Prosecute Legal Proceedings.*** Subject to the terms of this Agreement, the TCC authorizes Collector to appear before any court, district justice, arbitration panel, tax appeal board, or DCED mediator or mediation panel in which legal proceedings may be brought to enforce obligations related to the Tax.

The TCC further authorizes Collector to compromise any Tax liability or otherwise settle legal proceedings brought by Collector to enforce obligations related to the Tax involving an amount in controversy of \$1,000 or less without prior TCC approval. Collector must obtain the relevant Taxing Authority's prior written approval before compromising or settling any Tax liability when the amount in controversy exceeds \$1,000.

(3) ***Criminal Prosecutions.*** Collector will initiate criminal prosecutions against Taxpayers to enforce obligations related to the Tax, as permitted by law, for: (i) Taxpayer failure to file a required return; (ii) employer failure to register, keep records, deduct Tax from employees, or pay Tax deducted from employees; (iii) refusal to permit a Collector agent to examine records; (iv) knowingly making any incomplete, false, or fraudulent return; and (v) attempting to avoid full disclosure of income in order to avoid payment of Tax. In order to allow Collector's legal counsel to assume charge of criminal prosecutions, in accordance with the Pennsylvania Rule of Criminal Procedure, Collector will take steps with the County District Attorney to obtain consent for this procedure. The TCC will cooperate with Collector by joining in such request or providing other information as appropriate.

(4) ***Wage Attachments.*** Collector will, in accordance with LTEA, 53 P.S. § 6924.702, attach wages to enforce individual Taxpayer obligations.

(5) ***Liens.*** Collector may, in accordance with the Municipal Tax Claim Law, 53 P.S. § 7101 *et seq.*, file liens against Taxpayer real estate to enforce obligations related to the Tax.

(6) ***Civil Proceedings.*** Collector will, in accordance with LTEA, 53 P.S. §§ 6924.509(h), 6924.510(e), 6924.513 (b)(2), and 6924.705, initiate civil proceedings to enforce obligations of Taxpayers, bonding companies, other tax collectors, or other persons or entities, related to the Tax. Any such legal proceedings will be initiated in the name of Collector as agent for a Taxing Authority under this Agreement. Such proceedings include district judge actions and county court actions. Proceedings against employers may include not just actions to collect Tax, but also actions to enforce employer obligations to provide information required under the LTEA in order to identify the Taxing Authority or other political subdivision to which funds belong. Taxing Authorities shall have the right to intervene in any civil proceeding, and to revoke the authorization of Collector to prosecute a civil proceeding and thereafter prosecute the civil proceeding directly in its own name. In the event of revocation, Collector will reasonably cooperate with the Taxing Authority in transitioning responsibility for the proceeding to the Taxing Authority or its designees.

(7) ***Enforcement Steps***

(i) **Filing Fees.** Collector will advance filing fees required and costs imposed by any court for any legal proceeding to enforce a Tax obligation. Unless and until paid by a Taxpayer, the Taxing Authority to which the Tax amount is owed is responsible for the filing fee. Collector will deduct the filing fees or costs (including any Act 192 fees) from a subsequent distribution to such Taxing Authority, and thereafter will credit the amount to the Taxing Authority if and when paid by a Taxpayer.

(ii) **District Judge Action Attorney Fees.** Collector will pay all attorney fees related to district justice actions. Such attorney fees will not be charged to the TCC or any Taxing Authority.

(iii) **Attorney Services for Other Legal Proceedings.** Collector will initiate or be involved in other legal proceedings, such as county court actions, bankruptcies, taxpayer refund requests, taxpayer or other appeals to the TCC Tax Appeal Board, and DCED mediation. For such proceedings, Collector will provide for attorney services.

However, Collector will be responsible for attorney fees only up to \$1,000 in connection with any one matter. Unless and until paid by a Taxpayer, the Taxing Authority affected by the claim will be responsible for attorney fees in excess of \$1,000 for any one matter payable to a lawyer who is not an employee of Collector. As to such fees, Collector will advance the amount and deduct the amount from a subsequent distribution to such Taxing Authority, and thereafter will credit the amount to the Taxing Authority if and when paid by a Taxpayer. Collector will consult with the TCC and request guidance when such legal expense will exceed \$1,000. In such cases, the TCC will generally consult with the TCC solicitor for advice, and will consult with the affected Taxing Authority as deemed appropriate. The TCC may at any time instruct Collector to cease proceeding with any legal claim or legal proceeding.

(iv) **Cases of General Interest to Multiple Taxing Authorities.** If the TCC decides that a legal proceeding involves a matter of general interest to multiple Taxing Authorities, the TCC may instruct Collector to charge any attorney fees in excess of \$1,000 to the interested Taxing Authorities pro rata in direct proportion to Tax collected for each Taxing Authority during the prior calendar year, or in another manner the TCC deems equitable.

(v) **Claims Against Collector.** Collector will be responsible for and pay all attorney fees or other expenses of any type related to claims by Taxing Authorities against Collector.

(vii) **Taxpayer Payment of Delinquent Collection Expenses.** Collector may, in accordance with LTEA, 53 P.S. § 6924.707, impose and collect from Taxpayers the reasonable costs (including attorney fees) incurred to provide notices of delinquency or to implement similar procedures to collect delinquent Tax. Collector will submit to the TCC a proposed schedule of collection costs to be imposed on Taxpayers, and will collect such amounts from Taxpayers after TCC approval of the schedule. Collector's annual report under Section 4(i)(3) above to the TCC and certain Taxing Authorities will include a listing of all costs collected during the year from Taxpayers in connection with collection of delinquent Tax. Collector may retain costs collected from Taxpayers pursuant to the approved schedule, except when the amounts represent filing or attorney fees previously charged to a Taxing Authority.

(8) **Collector Reporting on Legal Proceedings.** In addition to the other monthly reporting requirements in this Agreement, Collector's monthly reports to the TCC and certain Taxing Authorities will include: (i) An explanation of steps taken to identify Taxpayers required to pay or withhold Tax of file returns, including comparison of Collector Taxpayer lists against Pennsylvania Department of Revenue Taxpayer lists, the County real estate tax duplicate, and other lists of employers and individual Taxpayers; dialogue with Taxing

Authorities; survey conducted by traveling TCC roads; Taxpayer mailings; and mass mailings and amnesty programs. (ii) An explanation of the results of all such steps. (iii) a listing of all legal proceedings commenced by Collector under this Agreement during the prior month. (iv) All such legal proceedings commenced during prior months and remaining open. (v) All such legal proceedings commenced during prior months and closed during the month (including explanation of the result of such proceedings). (vi) Any expenses incurred in connection with any such legal proceedings that will be assessed against any Taxing Authority. (vii) The amount of costs collected from Taxpayers in connection with collection of delinquent Taxes. For purposes of monthly reports, legal proceedings will include Taxpayer audits, claims against other tax collectors, criminal prosecutions, wage attachments, liens, and civil proceedings. The report will identify the Taxpayer against whom or which the legal proceeding was commenced, except that names of Taxpayers will be omitted in listing audits.

(9) ***TCC and Taxing Authority Rights Preserved*** The TCC and Taxing Authorities reserve the right to initiate, or to intervene in as permitted by applicable law, legal proceedings in its or their names for enforcement of obligations related to the Tax. At the TCC's request, Collector will consult with the TCC on any pending legal proceeding.

(10) ***Enactment Validity***. If an Enactment is challenged in court, Collector will continue to collect the Tax levied under the Enactment until the Enactment is finally adjudicated as being invalid, unless otherwise enjoined by court order or otherwise directed by the TCC.

(11) ***Defense of Enactments***. Collector is not responsible to defend the validity, legality, or constitutionality of Enactments except to the extent that the legality of same is challenged in response to a legal proceeding filed by Collector. If the legality of an Enactment is challenged in response to a legal proceeding filed by Collector, Collector will defend the legality of the Enactment, subject to consultation with the TCC and the Taxing Authority that passed the Enactment, and the other conditions set forth in this Agreement.

n. ***TCC Tax Appeal Board***. Collector will participate in, and as appropriate defend against, appeals filed with the TCC Tax Appeal Board.

o. ***DCED Mediation***. Collector will participate in DCED mediation when a dispute is properly submitted to DCED mediation.

p. ***Abatement of Interest or Penalties/Amnesty Programs***. At the request of the TCC, Collector will recommend to the TCC a policy on abatement of interest or penalties that would otherwise be imposed for the non-reporting or under-reporting of Tax liability or for the non-payment of Tax, which policy shall apply if the Taxpayer voluntarily files delinquent returns and pays the Tax in full. The TCC will adopt a policy on abatement of interest or penalties subject to any rules or regulations promulgated by DCED pursuant to LTEA, 53 P.S. § 6924.509(i)(2). The policy may incorporate provisions allowing an amnesty program for a limited period of time.

p. ***Amounts Collected*** Collector will at all times act in the best interests of the TCC and the Taxing Authorities, will aggressively pursue collection of Tax, and will use all reasonable efforts to collect all Tax and Related Amounts owed to the Taxing Authorities. However, Collector does not guarantee that it will collect any particular amount for any Taxing Authority in any given tax year and does not guarantee collection of all Tax and Related Amounts owed. Collector is not required to collect any Tax or Related Amounts that Collector with the exercise of reasonable judgment determines uncollectable.

r. **Meetings with TCC.** At least annually, and more frequently if requested by the TCC, Collector will meet with TCC representatives to report on and discuss Tax collection activities, issues, and performance.

5. **Ongoing Duties and Covenants of the TCC.** The TCC agrees to the following:

a. **Authorized Representatives.** The TCC will notify Collector in writing of a specific individual or individuals who will act as authorized representatives of the TCC to make requests of, consult with, and receive information from Collector.

b. **Enactments.** The TCC has provided or promptly hereafter will provide or cause the Taxing Authorities to provide to Collector a copy of each Enactment and any amendments thereto currently in effect, and will provide or cause the Taxing Authority to provide a copy of any future Enactment or amendment promptly after adoption.

6. **Tax Collector Compensation.**

a. **Commission.** Collector will receive a commission as compensation for its services under this Agreement. Collector will bill each Taxing Authority monthly for its commission. Collector retains the right to withhold from future disbursements any commission unpaid after thirty (30) days from invoice date.

b. **Commission Amount.** Collector will receive a commission equal to **One and Four Hundred Twenty-Five One Thousandths Percent (1.425 %)** for Earned Income Tax and **One and Ninety-Five One Hundredths Percent (1.95%)** of local services tax, to be distributed by Collector to the Taxing Authorities (without subtracting amounts paid to the TCC under Section 4(h) above). The commission applies solely to distributions of Tax, and not to distributions of Related Amounts. The commission applies solely to distributions to the Taxing Authorities, and not to distributions to tax collectors for other tax collection districts. Sterling Act credits constitute a component of Tax collections. The commission represents payment for all of Collector's services and materials including, but not limited to, expenses for equipment, supplies, and personnel, but excluding items, if any, for which Collector is to be reimbursed as expressly stated elsewhere in this Agreement. CLIENT shall be liable for all postage charges incurred by BERKHEIMER.

c. **Expense Reimbursement.** In addition to delinquent tax collection costs, Collector is authorized to retain under Section 4(m)(6)(v) above, if any, and enforcement expenses (including Act 192 fees) under Section 4(m)(6) above, Collector will be reimbursed for expenses incurred in connection with Tax collection only if the TCC gives advance written approval for the expense. At no additional cost to the TCC, BERKHEIMER shall be permitted to collect and retain directly from each delinquent taxpayer owing the local services tax, 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"

d. **Tax Rate Increases.** If any Taxing Authority increases the rate of any Tax with the result that the annual Tax revenue collected for the Taxing Authority will increase by more than \$500,000, the TCC and Collector will agree on an equitable reduction in the applicable Tax collection commission.

e. **Delinquent Tax Collection Compensation.** Collector's sole compensation for Delinquent Tax collections shall consist of the Act 192 fees and costs on the schedule submitted to the TCC by the Collector.

7. **Confidentiality.** All information obtained by Collector as a result of Taxpayer declarations, returns, investigations, hearings, or verifications related to Tax collection is confidential. Collector will not divulge to any third party any confidential information. This prohibition does not include disclosure of otherwise confidential information for official purposes as authorized by any law, including without limitation disclosure to a lawyer or accountant retained by Collector or disclosure in a legal proceeding.

8. **Liability and Indemnification.**

a. **Enactment Compliance.** Collector will not be liable or responsible for failure of an Enactment to comply with applicable legal requirements.

b. **Collector Indemnification.** Collector will hold harmless and indemnify the TCC, the Taxing Authorities, their delegates, directors, elected officials, officers, employees, agents, and consultants, and any insurance company providing insurance to any of them, from and against any claim, loss, damage, liability, or expense (including reasonable attorney fees) arising from or relating to: (1) Collector loss of or failure to pay when owed, to the Taxing Authority, person, or entity to whom or which owed, any amount collected, earned, or otherwise held by Collector. (2) Collector failure to comply with any applicable law or regulation. (3) Collector breach of this Agreement. (4) Collector failure to take any action when the failure constitutes breach of a legal duty. (5) Collector acts or omissions of any nature, except for any action the TCC by written communication expressly and specifically directs Collector to take under circumstances when Collector does not have an obligation under this Agreement or applicable law or regulation to take such action in the absence of the TCC direction. For this purpose, a TCC written communication approving or consenting to an action taken or to be taken by Collector does not constitute a TCC direction to take such action. (6) Any investigation, legal proceeding, administrative action, or other action by any person, entity, or government body relating to or alleging any of the matters referred to in items (1) to (5) set forth in this Section. Collector will have no obligation to indemnify for loss, damage, liability, or expense relating to any investigation, legal proceeding, administrative action, or other action by any person, entity, or government body that is primarily a dispute between the TCC and one or more Taxing Authorities or to the extent the loss, damage, liability, or expense arises or results from a Taxing Authority or TCC action or omission, including, but not limited to, the provision of erroneous tax-related information.

c. **TCC Indemnification.** To the extent permitted by the Pennsylvania Political Subdivision Tort Claims Act and other applicable law, the TCC will hold harmless and indemnify Collector, its directors, officers, employees, agents, and consultants, and any insurance company providing insurance to any of them, from and against any claim, loss, damage, liability, or expense (including reasonable attorney fees) arising from or relating to: (1) TCC failure to comply with any applicable law or regulation. (2) TCC breach of this Agreement. (3) TCC failure to take action when the failure constitutes a breach of a legal duty. (4) Collector's compliance with a TCC notice to withhold and pay to the TCC amounts that would otherwise be distributed to the Taxing Authority. (5) Any investigation, legal proceeding, administrative action, or other action relating to or alleging any of the matters referred to in items (1) to (4) set forth in this Section. The TCC will have no obligation to indemnify for loss, damage, liability, or expense relating to any investigation, legal proceeding, administrative action, or other action by any person, entity, or government body to the extent the loss, damage, liability, or expense is attributable to a Taxing Authority or Collector action or omission.

d. **Collector Insurance.** In addition to Tax Collector Bond requirements in Section 4(d), Collector shall purchase from and maintain with a company lawfully authorized to do business in Pennsylvania insurance of the types and amounts listed in **Exhibit B**. Collector shall file with the TCC prior to commencement of collection under this Agreement certificates of insurance acceptable to the TCC. These certificates shall contain a provision

that coverages afforded under the policies will not be cancelled or allowed to expire until at least 30 days prior written notice has been given to the TCC.

9. Early Termination.

a. **TCC Early Termination Rights.** The TCC may end the term of this Agreement prior to the end of the term set forth in Section 3 (Term of Agreement) above by giving written termination notice to Collector if: (1) Collector or any owner, officer, or key employee of Collector is charged with a crime involving fraud, extortion, or dishonesty, or that reflects adversely on the credibility or integrity of Collector or the owner, officer, or key employee. (2) Collector engages or has engaged before or after the Effective Date in conduct that reflects adversely on Collector's credibility or integrity. (3) Collector fails to meet any annual mandatory education requirements prescribed by DCED under LTEA, 53 P.S. § 6924.508(e). (4) Collector fails to satisfy the requirements for appointment prescribed by DCED under LTEA, 53 P.S. § 6924.508(f). (5) Collector has misrepresented any material fact in Collector's response to the TCC RFP for Tax Collection Services. (6) The TCC does not approve of Collector's auditor in accordance with Section 4(c) (5) (Financial Statements) above. (7) Any Tax Collector bond expires or is terminated, and a new bond has not been delivered to the TCC in accordance with Section 4(d) (Tax Collector Bond) above. (8) The occurrence of any of the events or omissions specified in Sections 4(i) (2) (vii), (viii), (ix), or (x) (Reports to TCC and Taxing Authorities) above. (9) Collector is in material breach of any provision of this Agreement. (10) Collector's insolvency, bankruptcy, or cessation of business operations. (11) Any legislative or regulatory action or enactment or court decision occurs, which has the effect of prohibiting, preventing, inhibiting, or materially restricting Collector's ability, power, or authority to collect Tax.

b. **Collector Notice of Potential Termination Event.** Collector will give prompt written notice, in any event no later than the next monthly report, to the TCC if Collector becomes aware of any event or omission which could provide grounds for TCC termination under Section 9(a) above. After giving notice, Collector will comply with all TCC requests to provide further information regarding the event or omission specified in the notice.

c. **TCC Early Termination Notice to Collector.** A TCC termination notice under Section 9(a) above shall specify the reason for the termination and the termination effective date. If the sole cause for termination is material breach of this Agreement, and none of the other causes for early termination set forth in Section 9(a) applies, the termination effective date shall be at least thirty (30) days after the date of the termination notice, and Collector shall have thirty (30) days after the date of the termination notice within which to cure the breach or to take substantial steps to cure the breach to the satisfaction of the TCC. If Collector does not cure the breach or take substantial steps to cure the breach to the satisfaction of the TCC within thirty (30) days after the date of the termination notice, the termination will be effective on the termination effective date specified in the termination notice.

10. **Effect of Termination.** When the term of this Agreement ends, except as otherwise agreed in writing between the TCC and Collector, the following provisions will apply:

a. **Tax Collector Status Ends.** Collector will cease to be the exclusive collector of Tax throughout the TCD, and the exclusive collector of Tax throughout the TCD after the termination effective date will be the new tax collector designated by the TCC.

b. **Collector Announcement.** Collector will promptly post an announcement on its website that Collector is no longer designated as tax collector for the TCC, which announcement will include the name of the new tax collector as specified in written notice from the TCC to Collector.

c. **Collector Communications.** When Collector is contacted in its capacity as tax collector for the TCC, Collector will advise that Collector is no longer designated as tax collector for the TCC and will advise of the name of the new tax collector as specified in written notice from the TCC to Collector.

d. **TCC Notice to Taxpayers.** The TCC will notify, or cause the new tax collector for the TCC to notify, in writing, Taxpayers and other tax collectors that after the termination effective date all Tax and communications concerning Tax should be directed to the new tax collector, including Tax attributable to time periods before the termination effective date. This includes processing tax returns related to activities, earnings, or withholding prior to the termination effective date.

e. **Funds and Communications Received After Termination Effective Date.** Collector will promptly after receipt transfer to the new tax collector any checks, electronic fund transfers, tax returns, or other communications received by Collector in its capacity as tax collector or former tax collector for the TCC.

f. **Unidentified Funds.** Collector will promptly transfer to the new tax collector any Unidentified Funds collected or held by Collector in its capacity as tax collector for the TCC, together with all information in Collector's possession relating to the Unidentified Funds and any investment earnings on such funds in excess of interest earned at a rate of three and one half percent (3.5%).

g. **Collector Summary Report.** Collector will promptly provide the TCC with a report summarizing the status of: (1) Open Taxpayer audits. (2) Open claims against other tax collectors. (3) Taxpayers then identified as delinquent. (4) Open legal proceedings, wage attachments, payment plans, and liens filed and not yet satisfied. (5) All other information reasonably requested by the TCC or the new tax collector.

h. **Tax Records Transfer.** Collector will promptly transfer all Tax Records to the new tax collector as directed by the TCC and in accordance with the **TCC Tax Records Policy for Tax Collector (Exhibit D)**. Collector may keep a copy of Tax Records for Collector reference as needed for delinquent Tax matters Collector will continue to handle or in case of any dispute that continues or arises after the end of the term.

i. **Taxpayers Subject to Enforcement Steps.** Unless directed otherwise by the TCC, any Taxpayer account subject to legal proceedings, wage attachment, or payment plan commenced by Collector shall remain with Collector until such collection action is completed, and Collector will be compensated for such collections as provided under this Agreement. Collector will take all steps necessary or appropriate as reasonably directed by the TCC for smooth transition of responsibility for collection of Tax subject to legal proceedings, wage attachment, or payment plan.

j. **Collector Cooperation.** Collector will cooperate and take all other steps necessary or appropriate for smooth transition of Tax collection services from Collector to the new tax collector.

k. **Collector Financial Information.** Collector will deliver required financial information and reports, in accordance with Section 4(c) (Tax Collector Financial Information) above, for the calendar year in which the termination effective date occurs.

l. **Collector Bond** Collector will provide a bond for a period of six (6) months in accordance with the requirements of Section 4(d) (Tax Collector Bond) above, and in the amount required under Section 4(d)(6).

m. **Collector Distributions.** As to funds received prior to the termination effective date, Collector will make distributions in accordance with Section 4(g) (Distributions) above.

n. **Collector Monthly Reports.** Collector will file monthly reports, in accordance with Sections 4(i)(1), (2) (Reports to TCC and Taxing Authorities) above, until Collector has filed a final monthly report accounting for

all funds held by Collector in its capacity as tax collector for the TCC.

o. **Collector Annual Report.** Collector will provide a written annual report, in accordance with Section 4(i) (3) (Reports to TCC and Taxing Authorities) above, for the final year during which monthly reports have been filed.

p. **Surviving Provisions of Tax Collection Agreement.** In addition to all provisions in this Section 10, the provisions of Sections 4(b) (Best Interest/legal Compliance), 4(h) (Deduction for Amounts owed TCC), 46) (Tax Records), 7 (Confidentiality), 8 (Liability and Indemnification) above, and Sections 11 (Dispute Resolution), 12 (Notices), 14 (Miscellaneous) below, and any other provisions relating to obligations of the parties after the end of the term, will survive the end of the term of this Agreement.

q. **Release.** In the event the TCC ends the term of this Agreement under Section 9(a) (Early Termination) above with the reasonable belief that grounds exist for such action, Collector releases the TCC from all liability to Collector arising from or related to the termination. Notwithstanding the foregoing, Collector will be entitled to all compensation for Tax collected before or for which Collector is authorized to collect after the termination effective date.

11. Dispute Resolution.

a. **Choice of Law.** This Agreement shall be governed by Pennsylvania law.

b. **DCED Mediation.** Any dispute arising from or related to this Agreement subject to mandatory DCED mediation will first be submitted to DCED in accordance with LTEA, 53 P.S. § 6924.505(k). Other disputes may be submitted for DCED mediation if all parties agree.

c. **Jurisdiction.** Any dispute between the TCC and Collector arising from or related to this Agreement that is not resolved by discussion or mediation will be submitted to the jurisdiction of the Lackawanna County Court of Common Pleas in Scranton, Pennsylvania.

12. **Notices under this Agreement.** All communications and notices under this Agreement will be in writing and will be deemed given at the earlier of the time when actually delivered, when mailed by first class or express mail, postage prepaid, or other courier service with charges prepaid, or when sent by facsimile or email transmission (with confirmation from the recipient) -addressed as set forth after each party's signature at the end of this Agreement (or to such other address as a party has substituted or added by notice pursuant to this Section).

13. **Transition to Collection under this Agreement.** Collector agrees to take the following steps as part of the transition to tax collection under this Agreement:

a. **Tax Records Procurement or Creation.** Promptly after the Effective Date, Collector will use best efforts to obtain from the current tax collector for each Taxing Authority copies of all Tax Records (other than bank account statements) required under Section 3 of the TCC Tax Records Policy for Tax Collector (Exhibit D). To the extent such information cannot be obtained from the then-current tax collector, Collector will use best efforts to obtain such information from the Taxing Authority. If Collector is the then-current tax collector, Collector will create or maintain such information. Collector will also use best efforts to obtain or maintain copies of such information updated to the date Collector will commence tax collection under this Agreement, so that Collector will have all information needed to begin collecting Tax on the date specified in Section 1(b)

(Commencement Date) above.

b. **Advertisement.** On or before November 1 prior to the date Collector commences tax collection under this Agreement, Collector will advertise in a newspaper of general circulation within the TCD. The advertisement will include Collector's contact information, website address, and other information to help ensure Taxpayer communications and payments are directed to the correct tax collector.

c. **Notice to Employers.** On or before November 1 prior to the date Collector commences tax collection under this Agreement, Collector will notify in writing all employers within the TCD. The notice will include Collector's contact information, website address, and other information to help ensure employer communications and payments are directed to the correct tax collector.

d. **Notice to Individuals.** On or before December 1 prior to the date Collector commences tax collection under this Agreement, Collector will notify in writing all individuals residing in the TCD who pay or are believed to owe Tax. The notice will include Collector's contact information, website address, and other information to help ensure Taxpayer communications and payments are directed to the correct tax collector.

e. **Fund Transfers from Prior Tax Collector.** Collector will arrange with the prior tax collector for transfer to Collector of any checks, electronic fund transfers, tax returns, or other communications received by the prior tax collector after the date when Collector commences collecting Tax within a Taxing Authority served by the prior tax collector.

f. **Transfer of Unidentified Funds from Prior Tax Collector.** Collector will arrange with the prior tax collector for transfer to Collector of any Unidentified Funds collected or held by the prior tax collector in its capacity as tax collector for a Taxing Authority prior to the date Collector commences collecting Tax within the Taxing Authority.

g. **Tax Return Processing.** After the date when Collector commences collecting Tax within a Taxing Authority, except as otherwise provided for Taxpayers subject to enforcement steps: (1) All Tax and Related Amounts owed by Taxpayers residing or located within the Taxing Authority or owed to the Taxing Authority will be paid to Collector, including Tax and Related Amounts owed for time periods before the date Collector commences collecting Tax. (2) All tax returns will be filed with Collector, including tax returns relating to time periods before the date Collector commences collecting Tax.

h. **Delinquent Tax.** Collector will collect delinquent Tax as specified in Section 4(1)(7) (Delinquent Tax) above.

i. **Other Measures.** Collector will take all other reasonable measures deemed necessary or appropriate by Collector or the TCC to educate Taxpayers about Collector's appointment, and about Act 32, LTEA, and Collector requirements, or to ensure smooth transition of tax collection services from the prior tax collector.

j. **TCC Tax Collection Transition Plan.** Collector will assist the TCC in developing, and will comply with other steps required by, the **TCC Tax Collection Transition Plan**.

14. Miscellaneous.

a. **Payment of TCC Costs to Enforce Agreement.** Collector will pay all costs, including attorney fees

and other expenses, incurred by the TCC in enforcing this Agreement irrespective of whether legal proceedings are filed.

b. **Entire Agreement.** This Agreement represents the entire Agreement between the TCC and Collector, supersedes any prior agreements between the TCC and Collector, and supersedes any prior agreements between any Taxing Authority and Collector related to collection of the Tax.

c. **Modification.** Any modification of this Agreement must be in writing and signed by the TCC and Collector to be valid.

d. **Independent Contractor.** Collector is providing tax collection services under this Agreement as an independent contractor. Collector has no authority to create obligations for or legally bind the TCC or any Taxing Authority except as expressly authorized in this Agreement or applicable law.

e. **Assignment or Subcontracting.** Collector will not assign, transfer, subcontract, or delegate any of its rights or responsibilities under this Agreement without prior written approval from the TCC, provided that this provision shall not prohibit Collector from hiring vendors to provide to it supplies or services necessary for Collector to fulfill its obligations under this Agreement.

f. **Successors.** This Agreement is binding upon the parties' successors and assigns.

g. **Severability.** If any portion of this Agreement is invalid or unenforceable, the validity and enforceability of the remaining provisions shall not be affected or impaired thereby.

h. **Section Headings.** The headings contained in this Agreement are for convenience of reference only and are not to be used in interpreting the Agreement.

i. **Interpretation.** The parties are equally responsible for the consummation of this Agreement. Alleged ambiguity in this Agreement shall not be construed against either party.

15. Definitions.

a. **Collector** -as defined in the preface to this Agreement on Page 1

b. **-CPA** -as defined in Section 4(c)(l).

c. **DCED** -as defined in Section 4(a).

d. **Effective Date** -as defined in the preface to this Agreement on Page 1

e. **Enactments** -as defined in the Background Section on Page 1.

f. **LTEA** -as defined in the Background Section on Page 1

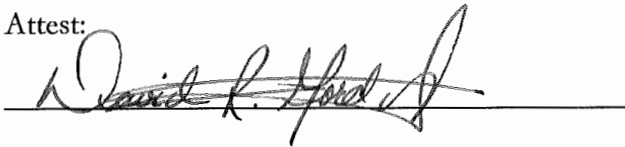
g. **Person** -any individual, entity, corporation (including any non-profit corporation), general or limited partnership, limited liability company, joint venture, estate, trust, association, organization, labor union, or other governmental body.

h. **Political Subdivision** -a city of the second class, city of the second class A, city of the third class, borough, town, township of the first class, township of the second class, school district of the first class A, school district of the second class, school district of the third class, school district of the fourth class, or municipal authority, located in the Commonwealth of Pennsylvania.

- i. *Related Amounts* -as defined in Section 2(e).
- j. *Tax* -as defined in Section 2(c).
- k. *Taxing Authorities* -as defined in the Background Section on Page 1.
- l. *Taxpayers* -as defined in Section 1(a).
- m. *Tax Records* -as defined in the **Tax Records Policy for Tax Collector** (Exhibit D), as now or in the future in effect. The policy as now in effect is attached to this Agreement.
- n. *TCC* -as defined in the preface to this Agreement on Page 1
- o. *TCD* -as defined in the Background section on Page 1.
- p. *Unidentified Funds* -as defined in Section 4(f) (3).

IN WITNESS WHEREOF, the parties have executed this Agreement as of the Effective Date.

Attest:



BERKHEIMER TAX ADMINISTRATOR:

By: Patricia A. McNamara

Title: President

Street Address:

(principal office and mailing address)

50 N. 7th St.

Bangor PA 18013

Facsimile Number: 610-588-5765

Email Address: pmcnamara@hab-inc.com

LACKAWANNA COUNTY
TAX COLLECTION COMMITTEE:

Attest:

Laurin Byrnes

By: William A. Lazor

Title: Chairman

Street Address:

(principal office and mailing address)

10 200 East Grove St

Clark Summit PA 18411

Facsimile Number: _____

Email Address: WLAZOR@KKDCPAS.COM

Notice to Collector of TCC Representatives

Until further notice from the TCC, the following are the individuals who will act as authorized representatives of the TCC to make requests of, consult with, and receive information from Collector.

1. TCC Primary Contact Person

Name: William R LAZOR
Title: CHAIRMAN
Street Address: c/o 200 East Grove St
Clarks Summit PA 18411

Email Address: WLAZOR@KKBCPAS.COM

2. TCC First Alternate Contact Person

Name: Louise E. Brzuchalski
Title: Secretary
Street Address: c/o 200 East Grove St.
Clarks Summit, PA 18411

Email Address: lbrzuchalski@mbkllaw.com

3. TCC Second Alternate Contact Person

Name: _____

Title: _____

Street Address: _____

Email Address: _____

Exhibit B

Collector Minimum Insurance Requirements

(in addition to tax collector bond)

Insurance Type	Minimum Limits
Commercial general liability, including contractual liability (with TCC and taxing authorities named additional insureds; coverage primary to other coverage TCC may have)	\$1,000,000 per occurrence \$2,000,000 aggregate
Vehicle liability (including owned, rented, non-owned, and uninsured and underinsured motorist coverage)	\$1,000,000 per occurrence \$2,000,000 aggregate
Excess/umbrella liability	\$1,000,000 per occurrence \$1,000,000 aggregate
Workers' compensation	Per Pennsylvania statutory limits \$1,000,000 employer liability per accident \$1,000,000 employer liability disease per employee \$1,000,000 employer liability disease policy limit
Employee dishonesty, including third party funds and computer fraud (applicable to all employees and independent contractors)	\$1,000,000

- 1. The deductible under any insurance policy required hereunder shall not exceed \$25,000.*

- 2. Insurance must be issued by an insurance company that is licensed in Pennsylvania and has a minimum A.M. Best rating of "A-", class VII. If insurance is provided through a trust, risk retention group, pool, or similar entity, re-insurers must satisfy these qualifications, and additional requirements might apply.*

- 3. The Certificate of Insurance filed by Collector must be signed by a licensed insurance representative and contain a provision that coverages afforded under the policies will not be cancelled or allowed to expire until at least 30 days prior written notice has been given to the TCC.*

- 4. The above limits may be achieved either on a stand-alone basis or in combination with Excess or Umbrella Liability policy.*

Exhibit C

LACKAWANNA COUNTY TAX COLLECTION COMMITTEE

Deposit and Investment Policy

1. **Policy Scope and Legal Authority.** The Local Tax Enabling Act (LTEA), 53 P.S. § 6924.505(1), requires the Lackawanna County Tax Collection Committee (TCC) to adopt an annual budget and pay TCC operating expenses. LTEA, 53 P.S. § 6924.509(a)(6), requires the TCC to adopt a policy governing tax funds held by a TCC appointed tax collector. The purpose of this policy is to provide for deposit of all funds held by the TCC, and of all funds collected or held by a TCC appointed tax collector under a tax collection agreement between the TCC and the tax collector. All such funds shall be deposited in accordance with this policy. Legal authority and rules pertaining to this policy include: LTEA, 53 P.S. §§6924.505(1), 6924.509(a) (6); Pennsylvania law applicable to pooled collateral, 72 P.S. § 3836-1 *et seq.*; and the Pennsylvania Intergovernmental Cooperation Act, 53 Pa.C.S.A. § 2301 *et seq.*

2. **Deposit Ownership.**

a. **Tax Collector Funds.** All deposits made by the Tax Collector of funds subject to this policy will be made in the name of the tax collector in one or more accounts appropriately designated as including the Tax funds collected for the Lackawanna County Tax Collection Committee. Such amounts belong to, are the property of, and shall be held by the Tax Collector in trust for taxing authorities located within the jurisdiction of the TCC. Such amounts will remain deposited in accordance with this policy until distributed in accordance with the Tax Collection Agreement between the TCC and the Tax Collector.

3. **Tax Collector Funds.** All deposits made by the Tax Collector of funds subject to this policy will be deposited, and held in one account with a financial institution which account shall not include any funds used to pay the operating expenses of the Tax Collector.

4. **General Standard of Care.** In making deposits, the Tax Collector shall observe the standard of care that would be observed by a prudent person dealing with property of another.

5. **Permitted Deposits.** Funds may be deposited only in financial institutions insured by FDIC or another U.S. government instrumentality (amounts above insurance limit must be collateralized).

6. **Due Diligence -General**

a. Selection of depository institutions and custodians must be based on legality, quality of service, experience, reputation, integrity, creditworthiness, capitalization, and other relevant factors. The Tax Collector should deal only with those having substantial experience and a high level of capitalization.

b. The Tax Collector may not deposit funds with or through a financial institution if the TCC has advised the tax collector that the financial institution is not acceptable to the TCC.

7. **Due Diligence -Required Information**

a. All depository institutions (*except for fully insured deposits and except as stated in the last sentence of this paragraph*), and custodians shall be required to submit as part of the Tax Collector due diligence investigation: (1) Their rating, if any, from a nationally recognized rating agency. (2) Their most recent

audited annual financial statements. (3) Information concerning any fidelity or other surety bonds, errors and omissions insurance, and any other insurance available to protect against possible loss, including names of insurance companies, coverage limits, and scope of coverage. (4) Information concerning the internal and external audit procedures applicable to investments, collateral, or investment services. (5) If a depository institution or custodian, a written statement that the institution is “well capitalized” as defined in applicable federal regulations. (6) Other information the TCC or tax collector deems relevant. *For depository institutions or custodians with a high rating from a nationally recognized rating agency, the information submissions under this paragraph may be waived,*

8. Due Diligence -Minimum Requirements

a. Depository institutions are limited to financial institutions insured by FDIC or another U.S. government instrumentality. For deposits not fully insured by federal insurance, minimum requirements are that depository institutions shall have equity (capital and surplus) of more than \$50,000,000; and shall be “well capitalized” as defined in applicable federal regulations. In addition, the TCC or Tax Collector making the deposit shall determine, based on review of the information provided by the depository institution and other appropriate investigation, that the depository institution is financially strong.

b. As to custodians for deposit collateral, Pennsylvania law limits such custodians to banks or trust companies. Custodians for collateral, or for any investment, shall be limited to banks or trust companies. Custodians shall be “well capitalized” as defined in applicable federal regulations. A custodian shall either have equity of more than \$50,000,000; or alternatively shall provide, from a holding company that has equity of not less than \$50,000,000, that is “well capitalized,” and that owns the custodian, written assurance that if the custodian should have insufficient assets at any time to meet any obligation to the Tax Collector, the holding company will provide adequate capital to the custodian to enable it to meet all obligations to the Tax Collector. If a custodian is qualified based on a holding company assurance letter, the holding company shall provide all information required under this policy to be provided by a custodian. In addition, the Tax Collector making the deposit shall determine, based on review of the information provided by the custodian and other appropriate investigation, that the custodian is financially strong.

9. Deposit Collateral.

a. Except for deposits fully insured by federal insurance, the TCC or Tax Collector making a deposit shall require that depository institutions provide collateral to secure repayment of the deposit.

b. Pooled collateral is permitted in accordance with the requirements of 72 P.S. § 38361 *et seq.*, and the following additional requirements:

(1) Prior to the Tax Collector making a deposit secured by pooled collateral, the Tax Collector shall require the depository institution to provide a written commitment documenting the collateral pledge. The commitment should include the following and other normal and appropriate terms: (a) A statement of the Tax Collector funds secured by the pool. (b) Identification of the custodian holding the pooled collateral, and prohibition against change of the custodian unless advance written notice is given to the Tax Collector making the deposit including the identity of the new custodian. (c) A copy of the current custodian and pledge agreement between the depository institution and the custodian holding the pooled collateral. (d) A statement of the minimum requirements for assets in the security pool. (e) A statement that the pool is pledged solely for the benefit of public bodies or entities holding public funds and maintaining with the depository institution deposit accounts secured by the pool of pledged assets. (f) A statement of the minimum excess collateral coverage, measured by market value, maintained by the depository institution over the amount of all public funds secured by the pool. (g) Authorization of immediate withdrawal of all TCC or tax collector funds together with accrued

interest, without any penalty for early withdrawal, if the excess collateral coverage falls below the specified minimum excess collateral coverage. (h) A requirement that the depository institution maintain daily records of secured public funds and collateral maintained in the pool for public funds. (i) A requirement that the depository institution make reports on deposits and collateral to the TCC or tax collector making the deposit on request by the TCC or tax collector, including in the report the total amount of public funds on deposit and the total amount and market value of collateral in the pool to secure such public funds. (j) A requirement that the pooled collateral arrangements comply in all respects with applicable law.

(2) The Tax Collector making the deposit shall make periodic requests for collateral reports from all depository institutions holding funds that are subject to this policy. Reports should be requested at the inception of any deposit arrangement and at predetermined intervals thereafter.

c. If specific collateral is provided rather than pooled collateral, the collateral pledge agreement shall be in form satisfactory to TCC or tax collector legal counsel.

10. **Legal Counsel.** TCC or tax collector legal counsel shall be requested to review documents establishing relationships with depository institutions and custodians; and other documents as appropriate to ensure compliance with this policy and applicable law. Legal counsel need not review documents relating to opening standard bank accounts, specific certificates of deposit, or specific security transactions. However, legal counsel should be requested to review any unusual documents or circumstances. The rules set forth in this investment policy may be modified or waived with written approval by TCC legal counsel.

11. **Independent CPA Audit.** All deposit transactions shall be subject to annual public funds audit by the TCC in accordance with the Tax Collection Agreement.

Exhibit D

Tax Records Policy for Tax Collector

LACKAWANNA COUNTY TAX COLLECTION COMMITTEE

Tax Records Policy for Tax Collector

1. **Policy Scope and Legal Authority.** The Local Tax Enabling Act (LTEA), 53 P.S. § 6924.509(e), requires the Lackawanna County Tax Collection Committee (TCC) to adopt a tax records policy. The purpose of this policy is to provide for creation and maintenance of Tax Records by the Tax Collector. Legal authority and rules pertaining to this policy include: LTEA, 53 P.S. §§ 6924.501, 6924.509(e), and 6924.5 13(a)(3); the Municipal Records Act, 53 Pa.C.S.A. § 1381 *et seq.*; and the Pennsylvania Local Government Records Committee Statements of Policy -Local Government Records, 46 Pa. Code § 15.1, *et seq.*

2. **Definitions.** For purposes of this policy, the terms set forth below have the following meanings:

“**DCED**” means the Pennsylvania Department of Community and Economic Development.

“**Enactment**” means any ordinance, resolution, or regulation of a Taxing Authority that levies or otherwise relates to any Tax.

“**Related Amounts**” means collection costs, investment earnings, and other miscellaneous amounts related to or derived from collection or investment of Tax revenue by Tax Collector.

“**Tax**” means any tax collected by the Tax Collector, and also all fines, penalties, and interest paid by a Taxpayer related to any of such taxes.

“**Tax Collector**” means a TCC appointed tax collector in its capacity as tax collector under a Tax Collection Agreement with the TCC.

“**Tax Record**” is defined in LTEA, 53 P.S. § 6924.501, and for purposes of this policy includes tax returns and supporting schedules; correspondence with a Taxpayer, Taxpayer accountant, or other Taxpayer representative; and account books and other documents, obtained or created by the Tax Collector as part of administration or collection of Tax. The term includes Tax Receipt Information and Distribution Information required by LTEA, 53 P.S. §§ 6924.509(e) and 6924.5 13(a) (3), and includes paper records and electronic records. The term “electronic records” includes data and information inscribed on a tangible medium or stored in an electronic or other medium and which is retrievable in perceivable form.

“**Taxing Authority**” means any school district or municipality encompassed within the TCD.

“**Taxpayer**” means any individual, entity, or employer required to pay or remit Tax.

“**TCC**” means Lackawanna County Tax Collection Committee.

“**TCD**” means Lackawanna County Tax Collection District.

3. **Tax Records to be Created or Maintained.** All Tax Collectors will maintain a computer Tax Record database, containing at least the following Tax Records:

a **Tax Receipt Information.** Per LTEA, 53 P.S. § 6924.509(e) and the Enactments, for each type of Tax,

a separate record showing: all Tax and Related Amounts received from or refunded to each Taxpayer, other tax collectors, and all other sources within or outside the TCD; dates of receipt; and any other Tax receipt information required by DCED. Per 32 P.S. § 5007.1, for earned income tax, the amount of Tax received from each Taxpayer or other tax collector and attributable to the increased earned income tax rate, if any, levied by a municipality for open space lands.

b. **Distribution Information.** Per LTEA, 53 P.S. § 6924.513(a) (3) and the Enactments, for each type of Tax, a separate record showing: all Tax and Related Amounts distributed by Tax Collector, including all information required in employer quarterly, monthly, and annual returns filed under LTEA, 53 P.S. §§ 6924.512(4) and (5) and the Enactments; distribution dates; the Taxing Authority or tax collector to which Tax or Related Amounts are distributed; and any other distribution information required by DCED. Per 32 P.S. § 5007.1, for earned income tax, the amount of Tax distributed to each Taxing Authority or tax collector and attributable to the increased earned income tax rate, if any, levied by a municipality for open space lands.

c. **Reports to TCC.** Copies of all monthly and annual reports to the TCC and Taxing Authorities under Section 4(i) of the Tax Collection Agreement between the TCC and the Tax Collector.

d. **Enactments.** Copies of all Enactments.

e. **Tax List.** For each type of Tax collected, a separate list of the tax rate and any applicable exemption in each geographic jurisdiction.

f. **Delinquent Tax Collection Costs.** A list showing delinquent tax collection costs authorized by the TCC to be assessed against Taxpayers pursuant to LTEA, 53 P.S. § 6924.707(a).

g. **Tax Returns.** Copies of tax returns and supporting schedules, and correspondence with a Taxpayer, Taxpayer accountant, or other Taxpayer representative, filed with or received by Tax Collector.

h. **LST Exemption Certificates.** For Local Services Tax, copies of all exemption certificates filed with Tax Collector.

i. **Other TCD Claims.** Copies of claims filed by Tax Collector against tax collectors for other tax collection districts, claims filed by tax collectors for other tax collection districts against Tax Collector, and correspondence with tax collectors for other tax collection districts related to such claims.

j. **State Lists.** All lists of Taxpayers obtained from the Pennsylvania Department of Revenue.

k. **Individual Taxpayer List.** For each type of Tax collected, a separate alphabetical list of all individuals or entities that paid or were required to pay Tax in the prior calendar year, and all individuals or entities that are currently required to pay Tax.

l) **Employer List.** For each type of Tax, an alphabetical list of all employers that remitted or were required to withhold and remit Tax in the prior calendar year, and all employers that are currently required to withhold and remit Tax.

m. **Multi-Site Employer List.** For income tax, an alphabetical list of all employers that have filed a notice of intention to file combined returns and payments with the Tax Collector pursuant to LTEA, 53 P.S. § 6924.5 12(5).

n. **Delinquent Payment Taxpayer List.** For each type of Tax, a separate alphabetical list of all

individuals or entities required to pay tax that have failed to pay tax when due.

o. **Delinquent Payment Employer List.** For each type of Tax, a separate alphabetical list of all employers required to withhold and remit tax that have failed to withhold and remit tax when required.

p. **Delinquent Tax Return Individual List.** For income, mercantile, and business privilege tax, a separate alphabetical list for each tax of all Taxpayers who have failed to file required returns.

q. **Delinquent Tax Return Employer List.** For each type of Tax, a separate alphabetical list of employers who have failed to file required returns.

r. **Enforcement Proceeding List.** For each type of Tax, a separate alphabetical list of all individuals, entities, or employers currently subject to criminal or civil litigation, wage attachment, lien, payment plan, or other collection efforts, including notations as to the status of each such account.

s. **Other Legal Requirements.** All other records a tax collector is required to create or maintain pursuant to LTEA, 53 P.S. § 6924.101 *et seq.*; DCED rules, regulations, or guidelines; or other applicable law.

4. Retention, Deletion, Use and Updating. of Tax Records. Tax Collector shall retain all Tax Records as electronic records for a period of at least 8 years after receipt or creation. Tax Records may be destroyed or deleted after this record retention period. Items 3(k) through 3(s) above shall be continually updated as necessary to reflect the addition or elimination of individuals, entities, or employers, or the resolution of delinquencies or enforcement proceedings. Collector will not sell or transfer any information received as Collector for the Lackawanna County TCC to any person or entity without the express written consent of the TCC.

5. Database Requirements.

a. Each different individual, entity, or employer listed in the database shall be assigned a single account number.

b. The database shall be searchable by name and taxpayer identification number.

6. Tax Records Satisfactory to TCC. Tax Collector shall at all times maintain the database and all Tax Records in form reasonably determined by the TCC to be satisfactory.

7. Electronic Tax Records. If not received or initially created as electronic records, Tax Collector shall electronically image all Tax Records as soon as possible after receipt or creation and will store all electronically imaged Tax Records in the database.

8. Tax Record Backup. At least weekly, Tax Collector shall backup the database of electronic Tax Records on tape. Tax Collector shall store backup tapes in an offsite fireproof location. Paper records may be destroyed after conversion to electronic records and backup in accordance with this Section.

9. Tax Record Ownership. Per LTEA, 53 P.S. § 6924.509(e), the database and all Tax Records are the property of the TCC and the Taxing Authority in which the Tax was collected. Tax Collector shall provide a copy of any Tax Record at any time-on request by the Taxing Authority or TCC.

10. Tax Record Copies. If copies of any Tax Records are requested by the TCC, Tax Collector will deliver the Tax Records as directed by the TCC in a format specified by the TCC. If a Taxing Authority requests copies of

any Tax Records relating to Tax collected by Tax Collector on behalf of the Taxing Authority, Tax Collector will deliver the Tax Records as directed by the Taxing Authority in the format specified by the Taxing Authority. Any time the TCC or a Taxing Authority specifies a digital format for delivery under this Section: (a) Data must be provided electronically in ASCII tab delimited format (.kt) or comma-separated values (.csv). Each file must contain a field name header recorder. (b) A file format must be provided for each file which cross references each field name in the data file. (c) The file format must contain field names, field descriptions, field lengths and field type (Text, Decimal, Integer, or Date). (d) Table definitions must be provided for each table used in the data file.

11. Tax Record Transfer. When the term of Tax Collector's appointment ends, Tax Collector will promptly transfer all Tax Records to the new tax collector as directed by the TCC. Tax Collector may keep a copy of Tax Records for reference as needed for delinquent Tax matters Collector will continue to handle or in case of any dispute that continues or arises after the end of the team.

12. Independent CPA Audit. The database and all Tax Records shall be subject to review at any time by the TCC or Tax Collector independent auditors.