

MUNICIPALITY OF MONROEVILLE
ALLEGHENY COUNTY, PENNSYLVANIA

RESOLUTION 01-09

A RESOLUTION OF THE MUNICIPALITY OF MONROEVILLE
AUTHORIZING THE PROPER OFFICIALS TO ENTER INTO AN
AGREEMENT WITH H.A. BERKHEIMER, INC. TO COLLECT
DELINQUENT EARNED INCOME AND OCCUPATION PRIVILEGE TAXES
AS AN AGENT OF THE MUNICIPALITY OF MONROEVILLE

WHEREAS, the Municipality of Monroeville has participated with the Gateway School District and the Borough of Pitcairn as part of an Intergovernmental Cooperation Committee (Committee); and

WHEREAS, the committee has identified the collection of delinquent taxes as a cooperative project that could benefit the jurisdictions involved; and


WHEREAS, proposals for service have been received, presented, and evaluated by the committee and the respective elected officials; and

WHEREAS, the proposal of H.A. Berkheimer, Inc. is the most cost effective for the collection of Delinquent Earned Income and Occupation Privilege Taxes.


NOW, THEREFORE, BE IT RESOLVED, this 13th day of February, 2001, that the proper officials are authorized to enter into an agreement attached hereto and made a part hereof for the collection of Delinquent Earned Income and Occupation Privilege Taxes.

ATTEST:

MUNICIPALITY OF MONROEVILLE



Marshall W. Bond
Municipal Manager



Abe J. Comuanle
Mayor

ENTERED INTO LEGAL BOOK: February 23, 2001

AGREEMENT

THIS AGREEMENT, made and entered into, in duplicate this _____ day of _____, _____, by and between the Intergovernmental Cooperation Committee Representing the Gateway School District, Municipality of Monroeville and the Borough of Pitcairn, Allegheny County, Pennsylvania, hereinafter referred to as "CLIENT," and H.A. BERKHEIMER, INC., t/a Berkheimer Associates, of Bangor, Northampton County, Pennsylvania, hereinafter referred to as "BERKHEIMER."

WITNESSETH:

WHEREAS, pursuant to the enactment of the General Assembly of the Commonwealth of Pennsylvania, certain political subdivisions, including CLIENT, are authorized to levy, assess, and collect local taxes and/or charges, including those herein specified; and

WHEREAS, CLIENT, by Resolution/Ordinance has levied, assessed, and provided for the collection of those taxes and/or charges herein specified; and

WHEREAS, the enactments of the General Assembly of the Commonwealth of Pennsylvania and the Resolutions/Ordinances of the CLIENT specify that any such political subdivision may provide for the creation of such bureaus or the appointment and compensation of such officers, clerks, collectors, and other assistants and employees as may be deemed necessary for the assessment and collection of the herein specified taxes and/or charges and the collection of delinquent taxes and/or charges imposed under the authority of said enactments; and

WHEREAS, the delinquent taxes and/or charges referred to in this Agreement shall be defined and limited to the following:

AL
DELINQUENT EARNED INCOME & OCCUPATION PRIVILEGE TAXES

WHEREAS, CLIENT and BERKHEIMER have negotiated this Agreement whereby and whereunder CLIENT will hire BERKHEIMER to collect said delinquent taxes and/or charges; and

WHEREAS, the terms and form of this written Agreement, in which the parties have embodied the verbal understanding heretofore reached by them, have been submitted to, approved by, and the execution hereof authorized by Resolution/Ordinance of CLIENT duly and regularly passed.

NOW THEREFORE, the parties hereto, each intending to be legally bound hereby, do covenant and agree as follows:

1. CLIENT does hereby designate and employ BERKHEIMER as Collector of the herein specified delinquent taxes and/or charges for the period beginning **January 1, 2001**, and ending **December 31, 2003**.

2. BERKHEIMER agrees:

a. to notify each delinquent account via first-class mail using a "Delinquent Notice" form specifying the taxes, charges and costs, as applicable.

b. to issue, when appropriate, a "Final Notice Prior to Wage Attachment" form to each delinquent account prior to wage attachment pursuant to information obtained from either the CLIENT or the initial mailing outlined in Paragraph 2(a).

c. to demand, collect, and receive from employers of individuals with delinquent accounts, pursuant to relevant laws, any moneys due and owing and any charges or costs accrued thereto by issuance of a "Notice of Wage Attachment" form.

d. to levy payment of said taxes, charges and costs, as provided by law, by distress of goods and chattels of individuals with delinquent accounts by serving a "Distraint for Delinquent Accounts" form.

e. to notify, when appropriate, each delinquent who fails to reply to any or all of the above actions a "Third and Final Notice" form setting forth total amount due including total costs and charges.

f. to forward a representative sample of all delinquent accounts to BERKHEIMER's Legal Department for legal process, which may include:

- (1) initial legal letter;
- (2) legal letter with copy of complaint;
- (3) lawsuit through any court of competent jurisdiction in Pennsylvania;
and/or
- (4) constable or sheriff sale of property.

BERKHEIMER agrees to provide the legal counsel of BERKHEIMER's Legal Department and retain local legal counsel in southwestern Pennsylvania (Pittsburgh area) at no extra expense to CLIENT. CLIENT agrees to be billed periodically for any costs charged by the courts in processing legal matters. Upon successful prosecution of delinquent accounts, court costs are ultimately paid by the delinquent taxpayer and returned to CLIENT.

g. to determine, at its discretion, the number and extent of the aforementioned remedies to be employed in the collection process. When it is determined that collection efforts have reached an economical point of diminishing return, BERKHEIMER shall have no further responsibility under this Agreement for securing money due to CLIENT. In that event, CLIENT may contract with BERKHEIMER for further collection services.

3. The costs and charges referred to hereinabove are to be charged against the delinquent taxpayer account, unless otherwise specified, and shall be the same as those allowed by law as outlined in the constable's fee bill and other pertinent enactments.

4. BERKHEIMER further agrees:

a. to supply, at its expense, all papers, forms, notices, postage, computer equipment and personnel necessary to efficiently collect the herein specified delinquent taxes and/or charges levied by CLIENT.

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

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

d. to submit a report with disbursements reconciling all money processed by BERKHEIMER.

e. to provide "lock boxes," i.e., mail drop off locations at the Municipality of Monroeville, Borough of Pitcairn and the Gateway School District for the convenience of taxpayers to facilitate payment of delinquent taxes.

f. to provide at no charge a representative/staff to interface with delinquent taxpayers for no less than four hours per week with the maximum of eight hours per week.

5. CLIENT agrees:

a. to provide to BERKHEIMER office space within the Municipality of Monroeville at no charge for the express purposes of allowing BERKHEIMER to provide representatives to interface with and assist taxpayers.

b. to compensate and reimburse BERKHEIMER for all of BERKHEIMER's services and for all materials furnished, including but not limited to, expenditures made by BERKHEIMER for equipment, supplies, personnel and related expenses, in an amount equal the percentage of gross collections by Berkheimer as set forth in Exhibit "A" that is attached hereto, which compensation and reimbursement shall be known as BERKHEIMER's commission. CLIENT agrees to pay BERKHEIMER such commission(s) on gross amounts paid over by BERKHEIMER to CLIENT not later than the fifteenth (15th) day following each

monthly reconciliation payment by BERKHEIMER to CLIENT. BERKHEIMER further agrees that, pursuant to the authority vested in the CLIENT under the Local Tax Enabling Act, 53 P.S. §6901 *et seq.*, the costs and charges of collection incurred shall be charged against the delinquent taxpayer as penalties for nonpayment, contingent upon the procedures necessarily undertaken for the collection of such account.

c. CLIENT shall save harmless and indemnify BERKHEIMER from and against any and all loss, damage, or claim for actual or attempted collection of said taxes and/or charges arising from incorrect, illegal, or improper information submitted by CLIENT to BERKHEIMER or arising from the withholding of correct, legal, or proper information by CLIENT from BERKHEIMER.

- 6. BERKHEIMER shall have no responsibility in defending any constitutional issues of the tax or any issues of the validity of the taxing Resolution/Ordinance. Such responsibility shall be borne by CLIENT. Furthermore, CLIENT agrees to indemnify, hold free, and save harmless BERKHEIMER from any lawsuits or actions concerning the constitutionality or validity of the empowering Resolution/Ordinance.
- 7. The covenants and provisions of the Agreement shall be binding the period beginning **January 1, 2001**, and ending **December 31, 2003**. Either party may terminate this Agreement at the expiration of the term hereby created, by giving to the other ninety (90) days written notice prior to the actual ending date of the current contract term of intention to do so; but in default of such notice, this Agreement, with all the conditions and covenants thereof, shall continue for the additional period of **one year** and so on for **one-year periods** until terminated by either party giving to the other ninety (90) days written notice of intention to terminate said Agreement at the expiration of the then current term.
- 8. Concurrently with the execution hereof, CLIENT has delivered to BERKHEIMER copies of the enactments adopting the herein specified taxes and/or charges, approving these Articles of Agreement, and appointing BERKHEIMER as collector of said taxes and/or charges. CLIENT agrees to deliver to BERKHEIMER within thirty (30) days after enactment, all amendments to said documents.
- 9. Any dispute, controversy or claim arising out of or under this agreement or its performance shall first be negotiated by the parties, and if an acceptable resolution does not result shall be submitted to arbitration which shall be exclusive, final, binding and conducted in accordance with the Pennsylvania's Uniform Arbitration Act, 42 Pa.C.S.A. §7301 *et seq.*, and shall be nonappealable except in accordance with such act. Each party shall appoint one such arbitrator, and a third arbitrator shall be chosen by the two arbitrators aforementioned within five days after their appointment. The decision of the majority of such arbitrators shall be binding and conclusive upon the parties hereto. The appointment of such

arbitrators shall be made within five days after receiving notice from any one of the parties hereto to make such appointment. The failure of any one of the parties to so appoint an arbitrator, shall authorize the other to make an appointment for it. If such two arbitrators shall fail or be unable within five days to select a third arbitrator, then and in such event, any Judge of the Common Pleas Court of the county in which the CLIENT is located, upon application made by any one of the parties hereto for that purpose, is authorized and empowered to appoint such additional arbitrator.

- 10. This Agreement represents the entire Agreement between the parties, and any modification of same must be in writing to be valid.

IN WITNESS WHEREOF, the parties have executed this Agreement on the day and date above written.

~~Intergovernmental Cooperation Committee Representing Gateway School District, the Municipality of Monroeville & The Borough of Pitsaun~~

BY: _____

ATTEST:

Secretary

H.A. BERKHEIMER, INC.
t/a Berkheimer Associates

BY: _____
John D. Berkheimer, President

ATTEST:

Henry U. Sandt, Jr., Secretary/Treasurer

EXHIBIT "A"

<u>CONTRACT TERM</u>	<u>RATE</u>
January 1, 2001 to December 31, 2001	8%

January 1, 2002 to December 31, 2002

9%

January 1, 2003 to December 31, 2003

10%