

**AGREEMENT FOR COLLECTION OF
DELINQUENT MUNICIPAL CLAIMS ON BEHALF OF
CITY OF SCRANTON**

City of Scranton (“City”) and Portnoff Law Associates, Ltd. (“Portnoff”) hereby enter into this Agreement for Collection of Delinquent Municipal Claims on Behalf of City (the “Agreement”), pursuant to the following terms and conditions:

1. **Retention.** City hereby retains Portnoff to collect its delinquent refuse fee accounts for *in rem* collection pursuant to the Municipal Claims and Tax Liens Act, 53 P.S. § 7101, *et seq.*, as amended (the “MCTLA”) for tax years 2002 to 2020. Portnoff may exercise its discretion to refuse to accept or return any account with the consent of the City, and such consent will not be unreasonably withheld. The City specifically agrees that it will consent to the return of any account where Portnoff has a good faith belief that the balance contains amounts that may be found to be inaccurate, illegal or not authorized by law. All delinquent refuse fee accounts for tax years 2002 to 2020 that have been or will be placed with Portnoff for collection shall hereinafter be referred to individually as an “Account,” or collectively as the “Accounts.” During the term of this Agreement, Portnoff shall have the exclusive right to collect the Accounts until the Accounts are paid in full, as defined in Section 9(a) below. Specifically excluded from the scope of this Agreement are claims to be collected in *assumpsit*.

2. **Term.** The initial term of this Agreement shall expire on December 31, 2022. The City and Portnoff have the option to renew for additional one year terms by giving ninety (90) days written notice prior to the expiration of the term subject to legislative approval by City Council.

3. **Obligations of Portnoff.** Portnoff agrees, on behalf of City, to:

- (a) undertake the *in rem* collection of the Accounts in accordance with the MCTLA;
- (b) respond in a timely manner to all requests and inquiries by City for information concerning any Account;
- (c) provide online access to account holders for their Account;
- (d) collect, account for, and pay over to City, the Accounts collected pursuant to this Agreement, less any attorney fees and other charges, expenses and fees payable to Portnoff;
- (e) provide financial information to auditors working on behalf of City with respect to routine annual audits, at no additional charge to City; and
- (f) follow the laws, rules and ordinances of the City, including the City’s Code of Ethics (File of the Council No. 51, 2019 (as amended)).

4. Obligations of City. City agrees, as a condition precedent to Portnoff's obligations hereunder, to:

- (a) provide Portnoff with the following information as to each delinquent Account in electronic format: (i) name of property owner(s), (ii) property address, (iii) billing address, (iv) tax parcel number, (v) vehicle identification number (VIN) for mobile homes, (vi) assessed value of the property, (vii) docket numbers and copies of any liens, judgments or open litigation filed against the parcel by City, (viii) the amount of the delinquency, including an itemized and detailed breakdown of the dates and amounts of the following figures comprising the balance: principal, penalty, interest, finance charges, administrative fees, legal fees, costs, and any other individual charges, and (ix) an itemized and detailed breakdown of the dates and amounts of any payments or credits applied to the Account;
- (b) enact any and all ordinances required to: (i) authorize the entry into this Agreement by City; (ii) authorize Portnoff's attorneys to sign and file liens on behalf of City; and (iii) authorize the imposition upon the delinquent property owner(s) of all attorney fees, unreimbursed costs, and other charges, expenses and fees charged or incurred by Portnoff (collectively, "Portnoff's Fees and Costs"), and all attorney fees, unreimbursed costs, and other charges, expenses and fees charged or incurred by any attorney(s) retained by Portnoff (collectively, "Outside Attorneys' Fees and Costs"), in connection with any Account pursuant to the fee schedule attached hereto as Exhibit "A";
- (c) provide Portnoff with cooperation and candor at all times, and respond in a timely manner to all requests and inquiries Portnoff may have with regard to an Account or other matter related to this Agreement;
- (d) adopt a policy whereby requests for hardship exemptions can be properly evaluated, and Portnoff will assist, upon request, in the establishment and administration of such a policy without additional charge;
- (e) forward to Portnoff, in a timely manner, all legal notices received by City relating to any Account, property or property owner against which Portnoff is collecting delinquent municipal claims, including, but not limited to, all bankruptcy notices and notices of sale; and
- (f) with respect to any claim commenced by or against City that in any way relates to the collection of delinquent municipal claims or any Account: (i) inform Portnoff, in a timely manner, of such claim; (ii) keep Portnoff advised, in a timely manner, of any developments that arise; (iii) allow Portnoff to have meaningful involvement in City's prosecution or defense of the claim; and (iv) allow Portnoff to intervene as a party in any litigation.

The failure of City to fully comply with any of its obligations in Sections 4(a) through 4(f) above shall constitute grounds to terminate this Agreement. In the event that City is unable to provide Portnoff with the information required in Section 4(a) in electronic format, City may hire Portnoff to convert the data into electronic format at an hourly rate of \$60.00. In the event that the data provided contains errors or is not calculated or recorded in a manner that will allow Portnoff, in its discretion, to proceed with collection, City may hire Portnoff to reconcile the records at an hourly rate of \$100.00. In either instance, Portnoff will not proceed without express approval from City.

5. Bankruptcy of Property Owner. In the event that Portnoff receives notice of a property owner's bankruptcy filing at least thirty (30) days prior to the deadline for filing proofs of claim in a Chapter 13 bankruptcy case, Portnoff will file a proof of claim on behalf of City for all pre-petition Accounts that have been placed with Portnoff for collection. Unless City enters into a separate agreement with Portnoff to represent City in the property owner's bankruptcy case, Portnoff will cease its collection efforts on all Accounts for the bankrupt property owner while the bankruptcy case is open, and will resume collections after the case is closed.

6. Mobile Homes and Trailers. As set forth in Section 4(a) above, City shall provide Portnoff with the vehicle identification number (VIN) for each mobile home and trailer associated with an Account. Portnoff shall not be obligated to proceed with collection on any Account where the mobile home or trailer is taxed separately from the real estate.

7. Consideration. In consideration of Portnoff's performance of its obligations under this Agreement, City hereby agrees that Portnoff may incur the attorney's fees and other charges, expenses and fees in the amounts set forth in Exhibit "A" hereto, or as amended by future ordinance of City, which amounts City acknowledges are fair and reasonable, and to reimburse Portnoff for any cost or expense incurred by Portnoff in the performance of its obligations under this Agreement, subject to Section 9 below. City agrees that Portnoff's Fees and Costs and Outside Attorneys' Fees and Costs, in connection with any Account, shall be part of the lien on the real property subject to the Account, and shall remain part of the lien until satisfied by payment in full. To the extent that City's outstanding obligations to Portnoff under this Agreement for Portnoff's Fees and Costs and Outside Attorneys' Fees and Costs exceed \$50,000, City's liability shall be limited to \$50,000, with all amounts owed to Portnoff for Portnoff's Fees and Costs and Outside Attorneys' Fees and Costs in excess of \$50,000 being paid by City upon collection thereof by City or City's third-party collector. Specifically excluded from the \$50,000 limitation are any monies owed to Portnoff in connection with the notice of delinquent claim and fee shifting under Section 10 below.

8. Outside Attorneys. Portnoff shall be permitted, at its discretion, to hire outside attorneys to assist Portnoff in the collection of the Accounts under this Agreement. The fees of such outside attorneys shall not exceed the amounts referenced in Exhibit "A" hereto, or as amended by future ordinance of City.

9. Payment and Reimbursement of Portnoff's Charges, Expenses and Fees. Except as set forth in this Section 9 and Sections 10 and 15 below, Portnoff shall attempt to collect Portnoff's Fees and Costs and Outside Attorneys' Fees and Costs directly from the delinquent property owner(s), pursuant to the MCTLA. Portnoff will not pursue payment of Portnoff's Fees and Costs or Outside Attorneys' Fees and Costs directly from City, unless:

- (a) City suspends collection on any Account prior to payment in full for non-economic reasons. The failure to approve Portnoff's request to list any real property for sheriff's sale shall be deemed a suspension of collection. City shall not incur any liability to Portnoff for suspending collection on any Account prior to payment in full if Portnoff agrees that suspension is warranted. An Account shall not be considered to be "paid in full" unless all of Portnoff's Fees and Costs and all of Outside Attorneys' Fees and Costs, in connection with any Account, are paid in full; or
- (b) collection of any Account is discontinued, dismissed or delayed due to an error on the part of City; or
- (c) City sells, assigns or transfers any Account to any person(s), entity or entities, other than Portnoff; or
- (d) this Agreement is terminated and City instructs Portnoff to cease collection of any Account; or
- (e) this Agreement is terminated by Portnoff pursuant to Section 4 above.

In the event of the occurrence of any of the actions set forth in Sections 9(a) through 9(e) above, City immediately shall pay to Portnoff all outstanding Portnoff's Fees and Costs and all outstanding Outside Attorneys' Fees and Costs, in connection with any Account, subject to the \$50,000 limitation set forth in Section 7 above, with all amounts owed to Portnoff for Portnoff's Fees and Costs and Outside Attorneys' Fees and Costs in excess of \$50,000 being paid by City upon collection thereof by City or City's third-party collector.

In the event that any payment or partial payment on any Account is made directly to City, or should City be obligated to make any payment to Portnoff under this Agreement, City shall immediately tender said payment to Portnoff. Should City fail to tender to Portnoff any payment owed to Portnoff within ninety (90) days of Portnoff's request therefor, City agrees that Portnoff shall be permitted to withhold the amount of said payment from City's remittances.

10. Notice of Delinquent Claim and Fee Shifting. On behalf of City, Portnoff shall provide property owners with notice of the delinquent claim and fee shifting required under Section 7106 of the MCTLA. City shall pay to Portnoff a one-time charge of \$40.00, plus applicable postage, per Account, to partially cover the costs associated with: (i) setting up a computerized file and data base for the Account; (ii) providing the initial notice of delinquent claim and fee shifting; (iii) communicating with property owners and establishing and monitoring hardship plans and payment plans; and (iv) accounting to City for any monies received in response to the initial notice. Portnoff will not invoice City for this one-time charge until Portnoff has

cumulatively collected delinquent refuse fees in excess of the total amount of the invoice. City agrees that this one-time charge is not included in the \$50,000.00 limitation set forth in Section 7 above. City shall adopt an ordinance that authorizes charging the above amounts to the delinquent property owner, and upon collection, City shall be reimbursed for the one-time charge listed above. If Portnoff learns of new or additional owners during the course of collection, Portnoff shall send a notice of delinquent claim and fee shifting to each new or additional owner and may charge the Account \$40.00 per additional notice sent, plus applicable postage.

11. Application of Payments Received by Portnoff. Amounts recovered by Portnoff pursuant to this Agreement will be applied to the Accounts in the following order of priority: (i) reimbursement of costs and expenses incurred by Portnoff or any attorney(s) retained by Portnoff; (ii) attorney fees and other charges, expenses and fees charged by Portnoff or any attorney(s) retained by Portnoff; and (iii) amounts payable to City, including the face amount of the municipal claim, the penalty, reimbursement of amounts paid by City under Section 10 above, and interest.

12. Remittance by Portnoff. Portnoff will remit funds collected no less frequently than once per month, and weekly when the collected funds exceed \$1,000. Remittance will be made directly to City's designated account via an automated clearing house (ACH) transfer.

13. Reporting by Portnoff. For each remittance, Portnoff will send City a detailed accounting in an easy-to-read format via email. In the event that City requires additional accounting information, record organization or custom financial reporting, City shall be charged at an hourly rate of \$60.00 for this service, with a minimum charge of \$25.00 per request.

14. Payoff Information. Portnoff shall provide payoff information in response to requests made by third parties, including, but not limited to, mortgage companies and title insurance companies. In consideration of providing payoff information, Portnoff shall be permitted to charge the requestor a fee not to exceed \$25.00 per parcel. This Section 14 does not apply to requests made under the Pennsylvania Right-to-Know Law, 65 P.S. § 67.101, *et seq.*

15. Rights on Termination by Portnoff. Upon termination of this Agreement, Portnoff shall have the exclusive option to continue to act, pursuant to the terms and conditions of this Agreement, as the exclusive collector of all Accounts that have not been paid in full, as defined in Section 9(a) above. In the event that this Agreement is terminated by either City or Portnoff, and Portnoff ceases to act as the exclusive collector of any Account, City:

- (a) shall immediately execute and deliver any documents that are necessary to allow Portnoff to formally withdraw its appearance in any and all pending litigation;
- (b) shall immediately pay to Portnoff all unreimbursed costs and expenses incurred by Portnoff or incurred by any attorney(s) retained by Portnoff, in connection with any Account subject to the \$50,000.00 limitation set forth in Section 7 above, with all amounts owed to Portnoff for Portnoff's Fees and Costs and Outside Attorneys' Fees and Costs in excess of \$50,000 being paid by City upon collection thereof by City or City's third-party collector;

- (c) agrees that Portnoff shall be entitled to retaining and charging liens on the Accounts, collections, recoveries, municipal claims and client papers of City to secure the payment of Portnoff's Fees and Costs and Outside Attorneys' Fees and Costs, in connection with any Account; and
- (d) agrees that Portnoff's Fees and Costs and Outside Attorneys' Fees and Costs, in connection with any Account, shall be part of the lien on the real property subject to the Account, and shall remain part of the lien until satisfied by payment in full.

16. Rights of Termination by City. The City shall have the right to immediately terminate this Agreement by giving written notice of said termination to Portnoff, in the event of the following:

- (a) Portnoff fails to fulfill in a timely and proper manner its obligations under this Agreement;
- (b) Portnoff is found to have violated the laws of the United States, the Commonwealth of Pennsylvania and/or the City of Scranton, including the City's Code of Ethics (File of the Council No. 51, 2019 (as amended)); or
- (c) Portnoff is found to have committed fraud, criminal activity or malfeasance in the execution of this Agreement or a similar agreement with another municipality.

In the event that City terminates this Agreement and requests the return of any Account to City, or the transfer of any Account to any person(s), entity or entities other than Portnoff, in addition to the rights listed in Sections 15(a) through 15(d) above, City also shall immediately pay to Portnoff all of Portnoff's Fees and Costs and all of Outside Attorneys' Fees and Costs, in connection with any such Account subject to the \$50,000.00 limitation set forth in Section 7 above, with all amounts owed to Portnoff for Portnoff's Fees and Costs and Outside Attorneys' Fees and Costs in excess of \$50,000 being paid by City upon collection thereof by City or City's third-party collector.

17. Indemnity and Liability. Portnoff shall indemnify, defend and hold harmless City from any and all errors or omissions of Portnoff in the collection of the Accounts, including from any civil action brought by a resident(s) or property owner(s) of the City which challenges the legality of this Agreement and/or Portnoff's ability to perform under this Agreement. City shall indemnify, defend and hold harmless Portnoff from and against any and all losses, damages, claims, judgments, and costs of defense, including attorney fees, arising from any and all acts or omissions of City in connection with the property owner(s) or the collection of the Accounts, including, but not limited to, the placement for collection with Portnoff of an Account that is determined to be unauthorized by law in whole or in part, or the providing of incorrect, inaccurate or incomplete information by City, or the failure of City to provide information to Portnoff, or the failure of City to fulfill any of its obligations under this Agreement.

18. Conflict of Interest Waiver. There may be situations where Portnoff represents more than one municipal creditor holding liens on a given property. To the extent that the property is sold at a sheriff's sale free and clear of liens and encumbrances, a potential conflict of

interest could arise, given that the sale may divest all or part of the claims of one or more clients. Because distribution of the sale proceeds is made by the sheriff's office in accordance with established law, Portnoff does not believe that representing multiple municipalities will impede Portnoff's ability to fairly and effectively represent each client. City confirms that it is aware of this issue and agrees to waive any potential conflict of interest that may arise.

19. Arbitration. City and Portnoff agree that any dispute arising out of, or relating to, this Agreement, or the subject matter thereof, whether sounding in tort, contract or otherwise, shall be submitted to binding arbitration, to be conducted by a single arbitrator agreed to by City and Portnoff in accordance with the rules of the American Arbitration Association, in lieu of any judicial determination of the dispute. In the event the parties are unable to agree upon an arbitrator, either party may petition the Court of Common Pleas of Lackawanna County for the appointment of an independent arbitrator. Both parties waive the right to bring judicial proceedings in connection with any dispute arising under or relating to this Agreement, including the right to a trial by jury.

20. Choice of Law. This Agreement shall be interpreted in accordance with the laws of the Commonwealth of Pennsylvania.

21. Assignment. Neither City nor Portnoff shall assign this Agreement, or any part of this Agreement, without the prior written consent of both City and Portnoff.

22. Modification. No term of this Agreement may be changed or modified without the written consent of both City and Portnoff.

23. Severability and Waiver. In the event that any portion of this Agreement is declared invalid by legislation, or order, decree or judgment of a court, this Agreement shall be construed as if such portion had not been inserted herein, and the remainder of the Agreement shall be enforced with the invalid term omitted. The failure of either party to insist upon a strict performance of any of the terms or provisions of this Agreement, or to exercise any option, right or remedy herein contained, shall not be construed as a waiver or as a relinquishment for the future enforcement of such term, provision, option, right or remedy, but the same shall continue and remain in full force and effect. No waiver by either party of any term or provision hereof shall be deemed to have been made unless expressed in writing and signed by such party.

24. Headings. The headings used in the sections, paragraphs and clauses of this Agreement are inserted for convenience only and shall not be deemed to constitute a part of this Agreement.

25. Effective Date. This Agreement shall become binding and effective upon the execution of this Agreement by both City and Portnoff, provided, however, that Portnoff's obligation to perform under this Agreement shall not begin until Portnoff has accepted as satisfactory City's delinquent account data. By executing this Agreement, City warrants that it has the legal authority to enter into this Agreement.

26. **Entire Agreement.** This Agreement constitutes the entire agreement among the parties hereto concerning the subject matter set forth herein and supersedes all prior or contemporaneous oral and/or written agreements and representations not contained herein concerning the subject matter of this Agreement. The parties acknowledge that they have had the opportunity to have this Agreement reviewed by counsel of their own choosing and to negotiate the terms hereof, and that no party is deemed the drafter of this Agreement.

CITY OF SCRANTON

Dated: 3/18/2021

By: *Paige G. Cognetti*
Name: Paige G. Cognetti
Title: Mayor

Dated: 3.18.2021

Attest: *L. Reed*
Name: Lori Reed
Title: City Clerk

PORTNOFF LAW ASSOCIATES, LTD.

Dated: 4/14/2021

By: *Michelle R. Portnoff*
Michelle R. Portnoff, Esquire
President

CITY OF SCRANTON


ATTEST:

BY: 
Lori Reed, City Clerk

Date: 3.18.2021

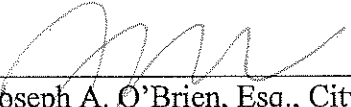
BY: 
Paige G. Cagnetti, Mayor

Date: 3/18/2021

BY: 
John Murray, City Controller

Date: 3.19.2021

APPROVED AS TO FORM:

BY: 
Joseph A. O'Brien, Esq., City Solicitor

Date: 17 May 21

EXHIBIT "A"

Legal Fees

Initial review and sending first legal demand letter	\$175.00
File Lien and prepare Satisfaction	\$250.00
Prepare Writ of Scire Facias	\$250.00
Prepare and mail letter under Pa. R.C.P. 237.1	\$ 50.00
Prepare Default Judgment	\$175.00
Research, prepare and obtain Re-issued Writ	\$175.00
Prepare Praecipe to Amend	\$100.00
Prepare Motion to Amend	\$150.00
Present Motion to Amend	\$ 50.00
Obtain vehicle identification number (VIN) for mobile home	\$100.00
Prepare Motion for Alternate Service	\$250.00
Present Motion for Alternate Service	\$ 50.00
Prepare Motion to Consolidate Claims	\$250.00
Present Motion to Consolidate Claims	\$ 50.00
Prepare Motion to Add United States as Defendant	\$175.00
Present Motion to Add United States as Defendant	\$ 50.00
Prepare Writ of Execution	\$800.00
Attendance at sale; review schedule of distribution and resolve distribution issues	\$400.00
Prepare Motion to Continue Sheriff Sale	\$ 50.00
Present Motion to Continue Sheriff Sale	\$ 50.00
Prepare Petition for Free and Clear Sale	\$400.00
Present Petition for Free and Clear Sale	\$ 50.00
Services not covered above	At an hourly rate between \$75-\$275 per hour

Collection Fees

Notice of delinquent claim and fee shifting	\$ 40.00 per notice, plus applicable postage
Bookkeeping fee for payment plan of 3 months or less	\$ 25.00
Bookkeeping fee for payment plan of more than 3 months	\$ 50.00
Handling fee for returned check	\$ 25.00

Payoff Fee

Providing guaranteed payoff to third parties	\$ 25.00
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