

CITY OF WILKES-BARRE  
PENNSYLVANIA



# CITY COUNCIL AGENDA

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CITY COUNCIL

WORK SESSION

DATE: September 28, 2010

TIME: 6:00 P.M.

6:00 P.M. **Jim Ryan, City Clerk**

1. Resolution giving approval to the Luzerne County Tax Claim Bureau to accept the bid they have received on 21 West Elm Street.
2. Resolution authorizing the disposition of records from the OCED/Housing Offices.
3. Resolution granting approval to Canvas Specialties representing the Hardware Bar et al to install overhanging signs.

CITY COUNCIL  
WORK SESSION  
SEPTEMBER 28, 2010

**-ORDINANCE FOR SECOND AND FINAL READING-**

**FILE OF COUNCIL NO. 20 OF 2010** – AN ORDINANCE OF THE CITY OF WILKES-BARRE, LUZERNE COUNTY, PENNSYLVANIA, AMENDING THE CODE OF ORDINANCES OF THE CITY OF WILKES-BARRE TO ESTABLISH UNIFORM FEES AND RATES THAT PRIVATE AND CONTRACT TOWING COMPANIES MAY CHARGE TO OWNERS OF VEHICLES TOWED IN CITY OF WILKES-BARRE, AND TO REQUIRE ALL TOWING COMPANIES OPERATING IN THE CITY OF WILKES TO REGISTER ANNUALLY WITH THE CITY AND OBTAIN A LICENSE TO OPERATE A TOWING COMPANY IN THE CITY OF WILKES-BARRE.

6:10 P.M.    **Mayor Thomas M. Leighton (see attached)**

**CITY OF WILKES-BARRE  
Pennsylvania**

**Thomas M. Leighton**  
Mayor



40 East Market Street  
Wilkes-Barre, PA 18711-0451

(570) 208-4152 phone  
(570) 208-4101 fax

OFFICE OF THE  
MAYOR

**MAYOR'S AGENDA**

**WORK SESSION**

**WILKES-BARRE CITY COUNCIL**

**SEPTEMBER 28, 2010**

**ORDINANCE**

**PENNSYLVANIA INFRASTRUCTURE BANK: AN ORDINANCE OF THE COUNCIL OF THE CITY OF WILKES-BARRE, LUZERNE COUNTY, PENNSYLVANIA (THE "CITY"), AUTHORIZING AND DIRECTING THE INCURRENCE OF NONELECTORAL DEBT IN THE AGGREGATE PRINCIPAL AMOUNT NOT TO EXCEED TWO MILLION NINETY THOUSAND DOLLARS (\$2,090,000), PURSUANT TO THE ACT OF THE GENERAL ASSEMBLY OF THE COMMONWEALTH OF PENNSYLVANIA, 53 P.A.C.S. CHAPTERS 80-82, AS AMENDED, KNOWN AS THE LOCAL GOVERNMENT UNIT DEBT ACT (THE "ACT"). (First Reading- Title Only)**

**RESOLUTIONS**

Authorizing the proper City officials to enter into an agreement with the Diamond City Partnership for the Business Improvement District.

Authorizing the proper City officials to enter into a contract modification with Sordoni Construction Services, Inc. in conjunction with the Intermodal Transportation Facility/Parking Garage Project.

Authorizing the proper City officials to enter into a change order with G. Weinberger Co. in conjunction with the Intermodal Transportation Facility/Parking Garage Project.

Authorizing the proper City officials to enter into a change order with Popple Construction, Inc. in conjunction with the Intermodal Transportation Facility/Parking Garage Project.

Authorizing the proper City officials to enter into a change order with Berger Construction in conjunction with the Intermodal Transportation Facility/Parking Garage Project.

Authorizing the proper City officials to enter into change orders with Walsh Electrical, Inc. in conjunction with the Intermodal Transportation Facility/Parking Garage Project.

Authorizing the proper City officials to enter into a change order with Walsh Electrical, Inc. in conjunction with the Intermodal Transportation Facility/Parking Garage Project.

Authorizing the proper City officials to enter into a change order with Mar Paul Construction Co. in conjunction with the Intermodal Transportation Facility/Parking Garage Project.

**CITY OF WILKES-BARRE  
PENNSYLVANIA**



# **CITY COUNCIL AGENDA**

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**CITY COUNCIL**

**SEPTEMBER 30, 2010**

**PLEDGE OF ALLEGIANCE**

**ROLL CALL**

**CONSENT AGENDA (RESOLUTIONS)**

**CONSENT AGENDA (ORDINANCES)**

**PRESENTATIONS BY COUNCIL MEMBERS**

**PUBLIC DISCUSSION**

**ADJOURNMENT**

CITY COUNCIL  
SEPTEMBER 30, 2010

**CONSENT AGENDA (RESOLUTIONS)**

Giving approval to the Luzerne County Tax Claim Bureau to accept the bid they received on 21 West Elm Street.

Authorizing the disposition of records from the OCED/Housing Offices.

Granting approval to Canvas Specialties (representing the Hardware Bar et al) to install overhanging signs.

Enter into an agreement with the Diamond City Partnership for the Business Improvement District.

Enter into a change order with Sordoni Construction Services, Inc. in conjunction with the Intermodal Transportation Facility/Parking Garage Project.

Enter into a change order with G. Weinberger Co. in conjunction with the Intermodal Transportation Facility/Parking Garage Project.

Enter into a change order with Popple Construction, Inc. in conjunction with the Intermodal Transportation Facility/Parking Garage Project.

Enter into a change order with Berger Construction in conjunction with the Intermodal Transportation Facility/Parking Garage Project.

Enter into a change order with Walsh Electrical Inc. in conjunction with the Intermodal Transportation Facility/Parking Garage Project.

Enter into a change order with Walsh Electrical Inc. in conjunction with the Intermodal Transportation Facility/Parking Garage Project.

Enter into a change order with Mar Paul Construction Co. in conjunction with the Intermodal Transportation Facility/Parking Garage Project.

**MINUTES**

Of the Parking Authority of the City of Wilkes-Barre of August 17, 2010.

Of the Regular Session of City Council of September 16, 2010.

CITY COUNCIL  
SEPTEMBER 30, 2010

CONSENT AGENDA (ORDINANCES)

**FILE OF COUNCIL NO. 20 OF 2010** – AN ORDINANCE OF THE CITY OF WILKES-BARRE, LUZERNE COUNTY, PENNSYLVANIA, AMENDING THE CODE OF ORDINANCES OF THE CITY OF WILKES-BARRE TO ESTABLISH UNIFORM FEES AND RATES THAT PRIVATE AND CONTRACT TOWING COMPANIES MAY CHARGE TO OWNERS OF VEHICLES TOWED IN THE CITY OF WILKES-BARRE, AND TO REQUIRE ALL TOWING COMPANIES OPERATING IN THE CITY OF WILKES-BARRE TO REGISTER ANNUALLY WITH THE CITY AND OBTAIN A LICENSE TO OPERATE A TOWING COMPANY IN THE CITY OF WILKES-BARRE. (SECOND AND FINAL READING)

**FILE OF COUNCIL NO. 23 OF 2010** – AN ORDINANCE OF THE COUNCIL OF THE CITY OF WILKES-BARRE, LUZERNE COUNTY, PENNSYLVANIA (THE “CITY”), AUTHORIZING AND DIRECTING THE INCURRENCE OF NONELECTRAL DEBT IN THE AGGREGATE PRINCIPAL AMOUNT NOT TO EXCEED TWO MILLION NINETY THOUSAND DOLLARS (\$2,090,000), PURSUANT TO THE ACT OF THE GENERAL ASSEMBLY OF THE COMMONWEALTH OF PENNSYLVANIA, 53 PA.C.S. CHAPTERS 80-82, AS AMENDED, KNOWN AS THE LOCAL GOVERNMENT UNIT DEBT ACT (THE “ACT”). (FIRST READING – ON TITLE)

**FILE OF COUNCIL NO. 24 OF 2010** – AN ORDINANCE ADOPTING A CABLE FRANCHISE AGREEMENT WITH SERVICE ELECTRIC CABLE TV, INC. TO OPERATE AND MAINTAIN A CABLE TELEVISION SYSTEM IN THE CITY OF WILKES-BARRE. (FIRST READING)



Wilkes-Barre, Pa. \_\_\_\_\_

Resolution No. \_\_\_\_\_

*BE IT RESOLVED by the City Council of the City of Wilkes-Barre:*

That, the City of Wilkes-Barre hereby gives approval to the Luzerne County Tax Claim Bureau to accept the bid they have received on the property located at 21 West Elm Street (RE: Repository Tax Sale 73-1-284-2 H10NW2 019 040).

Submitted by \_\_\_\_\_

**ROLL CALL**

**YEAS**

**RESOLUTIONS**

**NAYS**

**CITY OF WILKES-BARRE  
PENNSYLVANIA**

**Jim Ryan, City Clerk  
40 East Market Street  
Wilkes-Barre, PA 18711  
Telephone 570-208-4117**



**Cathy Payne, Assistant City Clerk  
Lisa Sanfilippo, Legislative Clerk  
Fax 570-208-4171  
TDD 570-208-4139**

**OFFICE OF THE CITY CLERK**

**MEMORANDUM**

**To: Members of City Council**

**From: Jim Ryan, MMC  
City Clerk**

**Date: September 23, 2010**

**RE: Tax Claim Bureau Consent**

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Pennsylvania statutory law mandates that any entity having tax claims against a property must be notified when that property is considered at a Private Bid Tax Sale.

If the County Tax Claim Bureau is inclined to accept a bid for the property written approval must be given by all entities having claims against it.

The Luzerne County Tax Claim Bureau would like Council's approval to accept the bid for the property located at 21 West Elm Street. (See Attachment)

The approximate total amount of City tax owed through 2009 is \$859.18. If sold, the City would not receive any portion of the sale proceeds. That amount would be retained by the County to help pay for any fees/processing costs associated with the sale.

The potential benefit to the City, County and School District is that the property will be returned to the active paid tax rolls.

Thank you.

# Northeast Revenue Service LLC

Agent for Luzerne County Tax Claim Bureau

**RECEIVED**

August 10, 2010

AUG 13 2010

Wilkes-Barre City  
Attn: James Ryan, City Clerk  
40 E. Market Street  
Wilkes-Barre, PA 18711

WILKES-BARRE CITY  
CLERK'S OFFICE  
TIME: \_\_\_\_\_  
INITIALS: \_\_\_\_\_

RE: Repository Tax Sale  
73-1-284-2 H10NW2 019 040  
21 W. Elm Street  
Muyiwa, James N.

Prospective Bidder:  
David Chipps  
479 S. River Street  
Wilkes-Barre, PA 18702

To Whom It May Concern:

Please be advised that the Luzerne County Tax Claim Bureau has received a bid on the repository tax property listed above. The Bureau is inclined to accept the bid. In accordance with recent Pennsylvania statutory law, you are hereby notified as follows:


The proposed bid amount is \$741.00.

The Bureau respectfully requests your written consent to sell this property at the above stated bid; and

Your consent should be mailed, hand delivered, and/or telefaxed to Luzerne County Tax Claim Bureau within seven (7) days of this communication.

Thank you for anticipated cooperation. If you have any questions please feel free to contact me at 825-1512.

Sincerely,

  
Sean Shamany  
Tax Claim Bureau, Director  
Northeast Revenue Service, LLC

RUN DATE: 08-17-10  
 RUN TIME: 14:26:47  
 RUN USER: sshamany

LUZERNE COUNTY TAX CLAIM BUREAU  
 200 N. RIVER STREET  
 WILKES-BARRE, PA 18711-1001

PAGE NUM: 1  
 RPT ID: TCB\_STMT

(570) 825-1512

OWNER: MUYIWA JAMES N  
 1120 BUSHWICK AVE APT 4  
 BROOKLYN NY 11221-4803

PARCEL: 73-H10NW2-019-040-000  
 LOCATION: 21 W ELM ST  
 DESCRIPTION: 73-1-284-2  
 DISTRICT: WILKES-BARRE WARD 1

A.V.  
 58300

STATEMENT OF ACCOUNT

TAX YEAR 2006	FACE	PENALTY	INTEREST	COST	TOTAL	PAID/EXON	BALANCE	
COUNTY	199.29	19.93	64.27	500.00	783.49	0.00	783.49	
CITY/BORO/TWP	150.06	22.51	48.39	0.00	220.96	0.00	220.96	
SCHOOL	613.20	61.32	197.76	0.00	872.28	0.00	872.28	
BALANCE DUE 2006							1876.73	
TAX YEAR 2007	FACE	PENALTY	INTEREST	COST	TOTAL	PAID/EXON	BALANCE	
COUNTY	199.29	19.93	46.33	105.00	370.55	0.00	370.55	
CITY/BORO/TWP	150.06	22.51	34.89	0.00	207.46	0.00	207.46	
SCHOOL	623.70	62.37	145.01	0.00	831.08	0.00	831.08	
BALANCE DUE 2007							1409.09	
TAX YEAR 2008	FACE	PENALTY	INTEREST	COST	TOTAL	PAID/EXON	BALANCE	
COUNTY	199.29	19.93	28.40	85.00	332.62	0.00	332.62	
CITY/BORO/TWP	150.06	22.51	21.38	0.00	193.95	0.00	193.95	
SCHOOL	651.00	65.10	92.77	0.00	808.87	0.00	808.87	
BALANCE DUE 2008							1335.44	
TAX YEAR 2009	FACE	PENALTY	INTEREST	COST	TOTAL	PAID/EXON	BALANCE	
COUNTY	0.00	0.00	0.00	65.00	65.00	0.00	65.00	
CITY/BORO/TWP	196.93	29.54	10.34	0.00	236.81	0.00	236.81	
SCHOOL	864.70	86.47	45.40	0.00	996.57	0.00	996.57	
BALANCE DUE 2009							1298.38	
IF PAID BY 08-31-2010 (INTEREST CHANGES MONTHLY)							TOTAL BALANCE DUE	5919.64



Wilkes-Barre, Pa. \_\_\_\_\_

Resolution No. \_\_\_\_\_

*BE IT RESOLVED by the City Council of the City of Wilkes-Barre:*

Resolved, by the City Council of the City of Wilkes-Barre, Luzerne County, Pennsylvania, that

Whereas, by virtue of Resolution No. R0022-09, adopted February 26, 2009, the City of Wilkes-Barre declared its intent to follow the schedules and procedures for the disposition of records as set forth in the Municipal Records Manual approved December 16, 2008, and

Whereas, in accordance with Act 428 of 1968, each individual act of disposition shall be approved by resolution of the governing body of the municipality;

Now, Therefore, Be It Resolved that the City Council of Wilkes-Barre, Luzerne County, Pennsylvania, in accordance with the above cited Municipal Records Manual, hereby authorizes the disposition of the following public records:

Office/Department OCED/Housing

<u>Box Number, Record title, dates</u>	<u>Cubic Feet</u>
420, See Attached	1.23
421, See Attached	1.23
422, See Attached	1.23
485, See Attached	1.23
487, See Attached	1.23
488, See Attached	1.23
489, See Attached	1.23
495, See Attached	1.23
496, See Attached	1.23
497, See Attached	1.23
499, See Attached	1.23
502, See Attached	1.23
503, See Attached	1.23
505, See Attached	1.23
506, See Attached	1.23
507, See Attached	1.23

Submitted by \_\_\_\_\_

**ROLL CALL**

**YEAS**

**RESOLUTIONS**

**NAYS**

Resolution No. \_\_\_\_\_

Date: \_\_\_\_\_

<u>Box Number, Record title, dates</u>	<u>Cubic Feet</u>	<u>Box Number, Record title, dates</u>	<u>Cubic Feet</u>
509, See Attached	1.23	912, See Attached	1.23
510, See Attached	1.23	919, See Attached	1.23
513, See Attached	1.23	921, See Attached	1.23
514, See Attached	1.23	922, See Attached	1.23
515, See Attached	1.23	923, See Attached	1.23
516, See Attached	1.23	924, See Attached	1.23
517, See Attached	1.23	1022, See Attached	1.23
522, See Attached	1.23	1024, See Attached	1.23
524, See Attached	1.23	1025, See Attached	1.23
527, See Attached	1.23	1026, See Attached	1.23
529, See Attached	1.23	1027, See Attached	1.23
530, See Attached	1.23	1028, See Attached	1.23
535, See Attached	1.23	1029A, See Attached	1.23
536, See Attached	1.23	1030, See Attached	1.23
537, See Attached	1.23	1031, See Attached	1.23
638, See Attached	1.23	1995 OCD Time Sheets	1.23
639, See Attached	1.23		
648, See Attached	1.23		
650, See Attached	1.23		
651, See Attached	1.23		
652, See Attached	1.23		
653, See Attached	1.23		
655, See Attached	1.23		
659, See Attached	1.23		
661, See Attached	1.23		
662, See Attached	1.23		
670, See Attached	1.23		
671, See Attached	1.23		
675, See Attached	1.23		
696, See Attached	1.23		
697, See Attached	1.23		
698, See Attached	1.23		
699, See Attached	1.23		
701, See Attached	1.23		
702, See Attached	1.23		
703, See Attached	1.23		
704, See Attached	1.23		
705, See Attached	1.23		
706, See Attached	1.23		
710, See Attached	1.23		
713, See Attached	1.23		
726, See Attached	1.23		
727, See Attached	1.23		
728, See Attached	1.23		
731, See Attached	1.23		
732, See Attached	1.23		
733, See Attached	1.23		
734, See Attached	1.23		



Wilkes-Barre, Pa. \_\_\_\_\_

Resolution No. \_\_\_\_\_

*BE IT RESOLVED* by the City Council of the City of Wilkes-Barre:

Whereas, Canvas Specialties representing the Hardware Bar et al wishes to install 4 picture frame back lit awnings in front of the Hardware Bar (2), Bourbon Street Saloon and Reflex; and

Whereas, said signs will overhang the sidewalk by approximately 18+ inches.

Now, Therefore, Be It Resolved by the Wilkes-Barre City Council that approval is hereby contingent upon satisfaction of the following requirements:

File the following with the City Attorney's Office:

1. File liability insurance naming the City as an insured for any liability connected with the said request.
2. File a Release and Save Harmless Agreement.
3. The applicant and a successor shall file current liability naming the City as an insured.

Submitted by \_\_\_\_\_

ROLL CALL

YEAS

RESOLUTIONS

NAYS



Wilkes-Barre, Pa. \_\_\_\_\_

Resolution No. \_\_\_\_\_

*BE IT RESOLVED* by the City Council of the City of Wilkes-Barre:

THAT, the proper City officials are hereby authorized to enter into an agreement with the Diamond City Partnership for the Business Improvement District as attached.

Submitted by \_\_\_\_\_

ROLL CALL

YEAS

RESOLUTIONS

NAYS

**Downtown Wilkes-Barre Business Improvement District  
Level of Service Agreement  
For the period February 1, 2010 through June 30, 2012**

Agreement made this \_\_\_\_\_ day of \_\_\_\_\_, 2010 between the

**Diamond City Partnership, Inc. for the Downtown Wilkes-Barre  
Business Improvement District**  
2 Public Square  
Wilkes-Barre, PA 18710

(hereinafter referred to as the "DWBBID") and the

**City of Wilkes-Barre, Pennsylvania**  
40 East Market Street  
Wilkes-Barre, PA 18711

(hereinafter referred to as the "City").

The purpose of this agreement is to state the commitments, terms, and conditions jointly agreed to by the City of Wilkes-Barre and the Diamond City Partnership, Inc. as required by the Final Plan for the Downtown Wilkes-Barre Business Improvement District.

**NOW, THEREFORE**, in consideration of the mutual promises herein contained, the parties hereto agree as follows:

**I. PROGRAM OBJECTIVE:**

The City will do its part to ensure that the DWBBID is a successful private-sector initiative that supplements – not replaces – basic municipal services. To this end, the City is committed to maintaining the present base level of police and sanitation services provided to the BID Service Area, and to working with the DWBBID to coordinate public safety, sanitation, and other municipal services within the DWBBID Service Area.

**II. MAINTENANCE OF POLICE SERVICES**

The Wilkes-Barre Police Department ("Police Department") shall maintain and fund the base level of police staffing, including the base level of patrols by beat officers, within the DWBBID Service Area. The base staffing level is hereby defined as:

- One (1) officer assigned to Zone 4 car patrol in Downtown during each of the three daily shifts.
- Other officers as assigned, from time to time, at the discretion of the Chief of Police.

The Police Department shall not reduce the base staffing level assigned to the DWBBID Service Area unless there is a citywide reduction in forces, in which case the City shall reduce base police coverage of the BID Service Area on a pro rata basis.

The Police Department shall coordinate regular base police patrols within the DWBBID service area with the BID Detail patrols to be funded and administered by the DWBBID. This shall include a regular schedule of meetings between the appropriate City and/or police officials and the management of the DWBBID.

### **III. PROVISION OF DWBBID – FUNDED POLICE SERVICES**

The Downtown BID Detail shall be staffed no less than 40 hours per week. This Downtown Detail shall be funded through DWBBID funds, and its duties shall be governed by a written job description that is attached hereto as Appendix 1. That job description shall be prepared, and revised as necessary, by the appropriate City and/or police officials in coordination with the DWBBID.

DWBBID management will work directly with a designated police official to coordinate the operations of the Downtown BID Detail. In addition, the Police Department shall provide the DWBBID with a written incident report for the DWBBID Service Area at least once per month.

The Downtown BID Detail will be conducted solely by fully trained Police Department officers. Assigned officers shall at all times be employees of the Police Department and be subject to the direction, control and discipline of the Police Department.

The Police Department will have the sole responsibility for paying, as applicable, the salary, taxes, employee benefits, workers' compensation insurance, unemployment compensation, and all other expenses related to the assigned staff (including uniforms, equipment, bicycles, etc. necessary to perform Downtown BID Detail activities.

### **IV. INSURANCE AND INDEMNIFICATION**

The City of Wilkes-Barre shall furnish and maintain liability insurance in appropriate amounts to insure against any and all losses resulting from any intentional or negligent acts resulting in the bodily injury or death of an individual or individuals, or property damage, caused by the assigned staff. The City hereby agrees to hold the DWBBID harmless for and to indemnify the DWBBID against any negligent or intentional acts committed by the assigned staff while said staff is conducting program activities.

### **V. MAINTENANCE OF PUBLIC WORKS SERVICES**

The Department of Public Works is committed to supporting Downtown Wilkes-Barre as an area attractive to businesses, visitors, and residents. DCP has played a significant role in improving the cleanliness of Downtown and in assisting property owners in fulfilling their responsibility to keep their sidewalks free of litter. The City of Wilkes-Barre is committed to building upon the

effective partnership between the Department of Public Works and DCP when the DWBBID takes effect.

The services provided by the City's Department of Public Works shall continue to be:

- Daily litter basket collection (at least five (5) times per week);
- Manual and mechanical street cleaning (at least four (4) times per month);
- Street and sewer repair and maintenance (as required);
- Streetlight maintenance (as required);
- Mixed refuse and recycling collection from residential households (once per week);
- When appropriate, electrical hookup and other setup for all parades, festivals, and other public events; and
- Maintenance of Public Square (as required)

The Department of Public Works will not reduce the base level of personnel assigned to the DWBBID Service Area unless there is a citywide reduction in forces, in which case the City shall reduce base Public Works coverage of the BID Service Area on a pro rata basis.

## **VI. BILLING AND COLLECTION**

The Diamond City Partnership shall contract, on a fee basis, for the billing and collections for DWBBID. In the event of delinquencies, the Diamond City Partnership shall work with the City of Wilkes-Barre to file on a timely basis and execute on municipal liens and judgments against properties that are one year delinquent in payment of their DWBBID assessment and by processing delinquent properties for sheriff's sale, pursuant to the requirements of the Pennsylvania Neighborhood Assistance District Act.

## **VII. SERVICES TO BE PROVIDED BY DWBBID**

The services to be provided by DWBBID are outlined in the attached Final BID Plan. The Downtown Manager, who will administer the DWBBID on a daily basis, will be the person responsible for daily management of DWBBID activities and contracted services. In the event that the position of Downtown Manager is vacant, the DWBBID Board shall take the responsibility for DWBBID management.

## **VIII. COORDINATION BETWEEN CITY OF WILKES-BARRE AND DWBBID**

To ensure appropriate coordination between the City of Wilkes-Barre and the DWBBID, representatives of the City of Wilkes-Barre, as designated by the Mayor, shall meet with the DWBBID management and representatives as designated by the DWBBID Board, no less than once every quarter during the life of the DWBBID. In addition, the Police Department shall provide the DWBBID with a written incident report for the DWBBID Service Area at least once per month.

If, due to extraordinary circumstances, the base level of services provided to the DWBBID Service Area by the Police Department and the Department of Public Works must be reduced, the City shall notify the Board of the DWBBID, in writing, of said reductions.

#### **IX. COMPENSATION**

For the Downtown BID Detail services herein agreed to be performed, the DWBBID shall pay the City of Wilkes-Barre an annual amount not to exceed \$50,000 during each year of DWBBID operation. In addition, the average base amount allocated by DWBBID for the purchase of security cameras and monitoring equipment for the DWBBID service area shall be \$0.00.

In each subsequent year, these yearly amounts shall be calculated based upon the duly adopted DWBBID annual budget for each subsequent year during the term of this agreement.

The City of Wilkes-Barre shall submit a quarterly invoice to the DWBBID for an amount equal to one quarter of the yearly compensation for Downtown BID Detail services. For the period of February 1, 2010 through July 31, 2010, that amount shall equal \$12,500 per quarter.

#### **X. TERM OF AGREEMENT**

This agreement is binding for the entire five-year term of the DWBBID, which, for purposes of program administration, shall run from February 1, 2010 through June 30, 2012.

#### **XI. MISCELLANEOUS PROVISIONS**

This Agreement shall be construed under and in accordance with the laws of the Commonwealth of Pennsylvania, and all obligations of the parties created hereunder are performable in the City of Wilkes-Barre, Pennsylvania.

This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective legal representatives, successors or assigns where permitted by the agreement.

This Agreement constitutes the sole and only agreement of the parties hereto and supersedes any prior understanding or written or oral agreements between the parties with respect to the subject matter contained herein.

IN WITNESS WHEREOF, with the intent to be legally bound hereby, the parties have duly executed this Agreement.

By the City of Wilkes-Barre:

---

Thomas M. Leighton, Mayor

Attest:

---

Bernard Mengerhausen,  
City Controller

---

Jim Ryan, City Clerk

By the Diamond City Partnership, for the  
Downtown Wilkes-Barre Business Improvement District:

---

Elizabeth Graham, Chair



Wilkes-Barre, Pa. \_\_\_\_\_

Resolution No. \_\_\_\_\_

*BE IT RESOLVED* by the City Council of the City of Wilkes-Barre:

WHEREAS, the City of Wilkes-Barre is constructing the Intermodal Transportation Facility/Parking Garage Project on South Washington St.; and,

WHEREAS, the City Council of the City of Wilkes-Barre has awarded the contract with Sordoni Construction Services, Inc. for Construction Management of the Intermodal Transportation Facility/Parking Garage Project; and,

WHEREAS, additional services are required as a result of the delay in project completion and increases in project scope.

NOW, THEREFORE, BE IT RESOLVED, by the City Council of the City of Wilkes-Barre that the proper City officials are hereby authorized to enter into this contract modification with Sordoni Construction Services, Inc., in the amount of \$148,500.00 for additional services in conjunction with the Intermodal Transportation Facility/Parking Garage Project.

FURTHER, that the Construction Contingency Line in the Project Budget will be reduced by this amount.

Submitted by \_\_\_\_\_

ROLL CALL

YEAS

RESOLUTIONS

NAYS

**Change Order Request**



45 Owen Street  
Forty-Fort, PA 18704  
Ph : 570-287-3161  
Fx : 570-287-0298  
www.sordoni.com

**Number:** 166  
**Date:** 8/30/10  
**Job:** 4615 Wilkes - Barre Inter Modal

**To:** Sordoni Construcion Services  
45 Owne Street  
Forty Fort, PA 18704

**Description:** CM Services Contract Adjustment

We request that the Contract amount to date be adjusted for the following reason(s):  
Refer to Sordoni Construction Services' letter, dated 08/26/2010 for a detailed explanation.

The total amount to provide this work is ..... \$148,500.00  
(Please refer to attached sheet for details.)

The schedule will be Unchanged.

If you have any questions, please contact me at 570-283-6248.

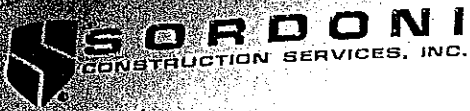
Please sign and return one copy to our office, signifying your acceptance and our approval to proceed.

Architect / Owner Rep.: \_\_\_\_\_

Submitted by: Stephen Parashac  
Project Manager

Approved by: \_\_\_\_\_  
Date: \_\_\_\_\_

Cc: McCormick, Marie (Wilkes Barre City), Frati, Butch (Wilkes Barre City), Chorey, Bev (Sordoni Construction Svs., Inc)



45 Owen Street  
Forty-Fort, PA 18704  
Ph : 570-287-3161  
Fx : 570-287-0298  
www.sordoni.com

Change Order Request 166 Price Breakdown  
Continuation Sheet

Description: CM Services Contract Adjustment

Item	Description	Labor	Material	Equipment	Subcontract	Other	Price
0101	***General Conditions***					\$148,500.00	\$148,500.00

Subtotal: \$148,500.00

Total: \$148,500.00



Wilkes-Barre, Pa. \_\_\_\_\_

Resolution No. \_\_\_\_\_

*BE IT RESOLVED by the City Council of the City of Wilkes-Barre:*

WHEREAS, the City of Wilkes-Barre is constructing the Intermodal Transportation Facility/Parking Garage Project on South Washington St.; and,

WHEREAS, the City has awarded the contract for Plumbing to G. Weinberger Co. for the Intermodal Transportation Facility/Parking Garage Project; and,

WHEREAS, a contract change is necessary due to project delays (see attached).

NOW, THEREFORE, BE IT RESOLVED, that the City Council of the City of Wilkes-Barre hereby authorizes the proper City officials to enter into a change order, details of which are hereby attached, with G. Weinberger Co. for an increase in the amount of \$22,170.74.

FURTHER, that the amount of this change order be budgeted from the Construction Contingency line in the project budget.

Submitted by \_\_\_\_\_

ROLL CALL

YEAS

RESOLUTIONS

NAYS

**Change Order Request**



45 Owen Street  
Forty-Fort, PA 18704  
Ph : 570-287-3161  
Fx : 570-287-0298  
www.sordoni.com

Number: 162  
Date: 8/2/10  
Job: 4615 Wilkes - Barre Inter Modal

To: G. Weinberger Co.  
231 Oak Street  
Old Forge, PA 18518  
Ph: (570) 457-2231 Fax: (570) 457-9231

Description: Project Delays - Labor and Material Cost Escalation

We request that the Contract amount to date be adjusted for the following reason(s):

We request that G. Weinberger's contract for Bid Package No. 3.5 - Plumbing - be increased for the following reasons resulting from various project delays:

- COR Reference No. 1 - Material, dated May 6, 2010 (Rev. July 26, 2010) in the amount of \$8,100.63
- COR Reference No. 2 - Labor, dated May 6, 2010 (Rev. July 26, 2010) in the amount of \$14,070.11

Milestone dates that relate to Bid Package No. 3.5 - Plumbing - are:

- a) Bid Due Date - November 29, 2006
- b) Wilkes-Barre City's Notice of Award Letter - January 2, 2007
- c) Contract Date - January 2, 2007
- d) Anticipated Completion Date - December 2007
- e) Actual Completion Date for Bid Package No. 3.5 - June 2010

The total amount to provide this work is ..... \$22,170.74  
(Please refer to attached sheet for details.)

The schedule will be Unchanged.

If you have any questions, please contact me at 570-283-6248.

Please sign and return one copy to our office, signifying your acceptance and our approval to proceed.

Architect / Owner Rep.: \_\_\_\_\_

Submitted by: Stephen Parashac  
Project Manager

Approved by: \_\_\_\_\_

Date: \_\_\_\_\_

Cc: McCormick, Marie (Wilkes Barre City), Frati, Butch (Wilkes Barre City), Chorey, Bev (Sordoni Construction Svs., Inc)



45 Owen Street  
Forty-Fort, PA 18704  
Ph : 570-287-3161  
Fx : 570-287-0298  
www.sordoni.com

### Change Order Request 162 Price Breakdown Continuation Sheet

Description: Project Delays - Labor and Material Cost Escalation

Item	Description	Labor	Material	Equipment	Subcontract	Other	Price
1540	Plumbing				\$22,170.74		\$22,170.74
						Subtotal:	\$22,170.74
						Total:	\$22,170.74



Wilkes-Barre, Pa. \_\_\_\_\_

Resolution No. \_\_\_\_\_

*BE IT RESOLVED* by the City Council of the City of Wilkes-Barre:

WHEREAS, the City of Wilkes-Barre is constructing the Intermodal Transportation Facility/Parking Garage Project on South Washington St.; and,

WHEREAS, the City has awarded the contract for Site Concrete, Paving, Finish Grading and Miscellaneous Work to Popple Construction, Inc.; and,

WHEREAS, an increase to the original contract is being requested as a result of scope changes and field conditions (See Change Order Request attached).

NOW, THEREFORE, BE IT RESOLVED, that the City Council of the City of Wilkes-Barre hereby authorizes the proper City officials to enter into a change order, details of which are hereby attached, with Popple Construction, Inc. for an increase in the amount of \$74,226.20.

FURTHER, that the Construction Contingency Line in the Project Budget will be reduced by this amount.

Submitted by \_\_\_\_\_

ROLL CALL

YEAS

RESOLUTIONS

NAYS

**Change Order Request**



45 Owen Street  
Forty-Fort, PA 18704  
Ph : 570-287-3161  
Fx : 570-287-0298  
www.sordoni.com

Number: 165  
Date: 8/18/10  
Job: 4615 Wilkes - Barre Inter Modal

To: Popple Construction Inc  
202 Main Street  
Lafin, PA 18702  
Ph: (570)823-0531 Fax: (570)823-3352

Description: Additional miscellaneous work

We request that the Contract amount to date be adjusted for the following reason(s):

Miscellaneous additional items of work as listed on and documented with Attachment "A" and as directed and approved by the Owner.

The total amount to provide this work is ..... \$74,226.20  
(Please refer to attached sheet for details.)

The schedule will be Unchnaged.

If you have any questions, please contact me at 570-283-6248.

Please sign and return one copy to our office, signifying your acceptance and our approval to proceed.

Architect / Owner Rep.: \_\_\_\_\_

Submitted by: Stephen Parashac  
Project Manager

Approved by: \_\_\_\_\_  
Date: \_\_\_\_\_

Cc: McCormick, Marie (Wilkes Barre City), Frati, Butch (Wilkes Barre City), Chorey, Bev (Sordoni Construction Svs., Inc)



45 Owen Street  
Forty-Fort, PA 18704  
Ph : 570-287-3161  
Fx : 570-287-0298  
www.sordoni.com

### Change Order Request 165 Price Breakdown Continuation Sheet

Description: Additional miscellaneous work

Item	Description	Labor	Material	Equipment	Subcontract	Other	Price
0204	Site Concrete - Sub				\$74,226.20		\$74,226.20
						Subtotal:	\$74,226.20
						Total:	\$74,226.20

# ATTACHMENT "A"

**Wilkes-Barre Intermodal  
Wilkes-Barre, PA**

**Popple Construction COR 165**

August 18, 2010

	Popple		RFI Response		
COR	Invoice	\$	Scope	Field	
Ref. No.	Date	Value	Increase	Condition	Backcharge
1	17-Jun-2009	\$1,742.24			\$1,742.24
5	14-Oct-2009	\$23,190.56	\$23,190.56		
6	29-Oct-2009	\$853.59		\$853.59	
7	29-Oct-2009	\$1,930.30	\$1,930.30		
8	10-Dec-2009	\$2,815.11		\$2,815.11	
9	3-Mar-2010	(\$250.00)	(\$250.00)		
14	18-May-2010	\$675.00	\$675.00		
15	19-May-2010	\$15,075.79	\$15,075.79		
16	3-Jun-2010	\$27,512.80	\$27,512.80		
23	30-Jul-2010	\$680.87	\$680.87		
<b>TOTALS</b>		<b>\$74,226.26</b>	<b>\$68,815.32</b>	<b>\$3,668.70</b>	<b>\$1,742.24</b>



Wilkes-Barre, Pa. \_\_\_\_\_

Resolution No. \_\_\_\_\_

*BE IT RESOLVED* by the City Council of the City of Wilkes-Barre:

**WHEREAS**, the City of Wilkes-Barre is constructing the Intermodal Transportation Facility/Parking Garage Project on South Washington St.; and,

**WHEREAS**, the City has awarded the contract for General Construction #2 to Berger Construction for the Intermodal Transportation Facility/Parking Garage Project; and,

**WHEREAS**, a contract change is necessary due to increases in the scope of the job and to address field conditions (see attached).

**NOW, THEREFORE, BE IT RESOLVED**, that the City Council of the City of Wilkes-Barre hereby authorizes the proper City officials to enter into a change order, details of which are hereby attached, with Berger Construction for an increase in the amount of \$109,702.46.

**FURTHER**, that the amount of this change order be budgeted from the Construction Contingency line in the project budget.

Submitted by \_\_\_\_\_

**ROLL CALL**

**YEAS**

**RESOLUTIONS**

**NAYS**

**Change Order Request**



45 Owen Street  
Forty-Fort, PA 18704  
Ph : 570-287-3161  
Fx : 570-287-0298  
www.sordoni.com

Number: 164  
Date: 8/3/10  
Job: 4615 Wilkes - Barre Inter Modal

To: Berger Construction  
P.O. Box 239  
Freeland, PA 18224  
Ph: (570) 636-2666 Fax: (570) 636-0177

Description: Additional miscellaneous work

We request that the Contract amount to date be adjusted for the following reason(s):

Miscellaneous additional items of work as listed on and documented with Attachment "A" .

The total amount to provide this work is ..... \$109,702.46  
(Please refer to attached sheet for details.)

The schedule will be Unchanged.

If you have any questions, please contact me at 570-283-6248.

Please sign and return one copy to our office, signifying your acceptance and our approval to proceed.

Architect / Owner Rep.: \_\_\_\_\_

Submitted by: Stephen Parashac  
Project Manager

Approved by: \_\_\_\_\_  
Date: \_\_\_\_\_

Cc: McCormick, Marie (Wilkes Barre City), Frati, Butch (Wilkes Barre City), Chorey, Bev (Sordoni Construction Svs., Inc)



45 Owen Street  
Forty-Fort, PA 18704  
Ph : 570-287-3161  
Fx : 570-287-0298  
www.sordoni.com

### Change Order Request 164 Price Breakdown Continuation Sheet

Description: Additional miscellaneous work

Item	Description	Labor	Material	Equipment	Subcontract	Other	Price
0612	Gen Construction - Sub				\$109,702.46		\$109,702.46
						<b>Subtotal:</b>	<b>\$109,702.46</b>
						<b>Total:</b>	<b>\$109,702.46</b>

# ATTACHMENT "A"

## Wilkes-Barre Intermodal Wilkes-Barre, PA

Berger Construction Co.'s COR No. 164

August 2, 2010

COR Ref. No.	Berger CR No.	SCS RFI No.	Value	RFI Response Scope WCR	Field Condition	Backcharge
1	23	338	\$1,470.61	\$1,470.61		\$0.00
2	39	351	\$1,473.90	\$1,473.90		\$0.00
3	40	---	\$9,454.00	\$9,454.00		\$0.00
4	42	---	\$36,875.76	\$36,875.76		\$0.00
5	43	354	\$2,845.70	\$2,845.70		\$0.00
6	45	---	\$9,439.60	\$9,439.60		\$0.00
7	46	---	\$1,422.43	\$1,422.43		\$0.00
8	47	---	\$833.00	\$833.00		\$0.00
9	48	---	\$14,919.00	\$14,919.00		\$0.00
10	49	---	\$745.20	\$745.20		\$0.00
11	50	323	\$1,652.85	\$1,652.85		\$0.00
12	51	---	\$2,698.88		\$2,698.88	\$0.00
13	54	---	\$15,433.95	\$15,433.95		\$0.00
14	55	---	\$933.35	\$933.35		\$0.00
15	56	---	\$9,504.23	\$9,504.23		\$0.00
<b>Totals</b>			<b>\$109,702.46</b>	<b>\$107,003.58</b>	<b>\$2,698.88</b>	<b>\$0.00</b>



Wilkes-Barre, Pa. \_\_\_\_\_

Resolution No. \_\_\_\_\_

*BE IT RESOLVED* by the City Council of the City of Wilkes-Barre:

WHEREAS, the City of Wilkes-Barre is constructing the Intermodal Transportation Facility/Parking Garage Project on South Washington St.; and,

WHEREAS, the City has awarded the Electrical contract to Walsh Electrical, Inc.; and,

WHEREAS, an increase in the contract amount is being requested for various scope changes, as noted on the attached Change Order Requests.

NOW, THEREFORE, BE IT RESOLVED, that the City Council of the City of Wilkes-Barre hereby authorizes the proper City officials to enter into the attached Change Orders to the contract with Walsh Electrical, Inc. for increases of \$10,643.16 and \$653.13.

FURTHER, that the Construction Contingency Line in the Project Budget will be reduced by this amount.

Submitted by \_\_\_\_\_

ROLL CALL

YEAS

RESOLUTIONS

NAYS

**Change Order Request**



45 Owen Street  
Forty-Fort, PA 18704  
Ph : 570-287-3161  
Fx : 570-287-0298  
www.sordoni.com

**Number:** 163  
**Date:** 8/3/10  
**Job:** 4615 Wilkes - Barre Inter Modal

**To:** Walsh Electrical Inc.  
916 Oak Street  
Scranton, PA 18508  
Ph: (570)969-2442 Fax: (570)969-9484

**Description:** Additional Electrical Work

We request that the Contract amount to date be adjusted for the following reason(s):

Additional electrical work per breakdown listed in Attachment "A" and supported by Walsh Electrical's referenced invoices.

The total amount to provide this work is ..... \$10,643.16  
(Please refer to attached sheet for details.)

The schedule will be Unchanged.

If you have any questions, please contact me at 570-283-6248.

Please sign and return one copy to our office, signifying your acceptance and our approval to proceed.

Architect / Owner Rep.: \_\_\_\_\_

Submitted by: Stephen Parashac  
Project Manager

Approved by: \_\_\_\_\_

Date: \_\_\_\_\_

Cc: McCormick, Marie (Wilkes Barre City), Frati, Butch (Wilkes Barre City), Chorey, Bev (Sordoni Construction Svs., Inc)

Street  
t, PA 18704  
610-287-3161  
610-287-0298  
www.sordoni.com

Change Order Request 163 Price Breakdown  
Continuation Sheet

Description: Additional Electrical Work

Item	Description	Labor	Material	Equipment	Subcontract	Other	Price
1601	Electrical				\$10,643.16		\$10,643.16

Subtotal: \$10,643.16

Total: \$10,643.16

# ATTACHMENT "A"

## Wilkes-Barre Intermodal Wilkes-Barre, PA

Walsh Electrical's COR No. 163

August 2, 2010

Walsh Ref. No.	SCS RFI No.	Dollar Value	RFI / Scope Increase	Field Condition	Backcharge
1	---	\$269.08	\$269.08		
2	349	\$1,719.03			\$1,719.03
3	349	\$1,886.47			\$1,886.47
4	350	\$561.91	\$561.91		
5	350	\$822.78	\$822.78		
6	350	\$662.42	\$662.42		
7	---	\$451.02	\$451.02		
8	---	\$171.88		\$171.88	
9	---	\$1,165.41	\$1,165.41		
10	---	\$1,851.00		\$1,851.00	
11	---	\$1,082.16		\$1,082.16	
<b>Totals</b>		<b>\$10,643.16</b>	<b>\$3,932.62</b>	<b>\$3,105.04</b>	<b>\$3,605.50</b>

**Change Order Request**



45 Owen Street  
Forty-Fort, PA 18704  
Ph : 570-287-3161  
Fx : 570-287-0298  
www.sordoni.com

Number: 167  
Date: 9/2/10  
Job: 4615 Wilkes - Barre Inter Modal

To: Walsh Electrical Inc.  
916 Oak Street  
Scranton, PA 18508  
Ph: (570)969-2442 Fax: (570)969-9484

Description: Additional Electrical Work Directed by Pennoni and the Owner

We request that the Contract amount to date be adjusted for the following reason(s):

Additional electrical work, as directed by Pennoni and the Owner, to change the full time normal lighting operation on Levels 2, 3, 4, 5, and roof poles to operate via photo eye and existing contactors. Refer to attached e-mails on the subject matter. Also included is Walsh Electric's Invoice #10818, dated 08/24/2010.

The total amount to provide this work is ..... \$653.13  
(Please refer to attached sheet for details.)

The schedule will be Unchanged.

If you have any questions, please contact me at 570-283-6248.

Please sign and return one copy to our office, signifying your acceptance and our approval to proceed.

Architect / Owner Rep.: \_\_\_\_\_

Submitted by: Stephen Parashac  
Project Manager

Approved by: \_\_\_\_\_

Date: \_\_\_\_\_

Cc: McCormick, Marie (Wilkes Barre City), Frati, Butch (Wilkes Barre City), Chorey, Bev (Sordoni Construction Svs., Inc)



45 Owen Street  
Forty-Fort, PA 18704  
Ph : 570-287-3161  
Fx : 570-287-0298  
www.sordoni.com

### Change Order Request 167 Price Breakdown Continuation Sheet

**Description:** Additioinal Electrical Work Directed by Pennoni and the Owner

Item	Description	Labor	Material	Equipment	Subcontract	Other	Price
1601	Electrical				\$653.13		\$653.13

**Subtotal:** \$653.13

**Total:** \$653.13



Wilkes-Barre, Pa. \_\_\_\_\_

Resolution No. \_\_\_\_\_

*BE IT RESOLVED* by the City Council of the City of Wilkes-Barre:

WHEREAS, the City of Wilkes-Barre is constructing the Intermodal Transportation Facility/Parking Garage Project on South Washington St.; and,

WHEREAS, the City has awarded the Electrical contract to Walsh Electrical, Inc.; and,

WHEREAS, an increase in the contract amount is being requested due to project delays, as noted on the attached Change Order Request.

NOW, THEREFORE, BE IT RESOLVED, that the City Council of the City of Wilkes-Barre hereby authorizes the proper City officials to enter into the attached Change Orders to the contract with Walsh Electrical, Inc. for an increase of \$98,292.67.

FURTHER, that the Construction Contingency Line in the Project Budget will be reduced by this amount.

Submitted by \_\_\_\_\_

ROLL CALL

YEAS

RESOLUTIONS

NAYS

**Change Order Request**



45 Owen Street  
Forty-Fort, PA 18704  
Ph : 570-287-3161  
Fx : 570-287-0298  
www.sordoni.com

Number: 161

Date: 8/2/10

Job: 4615 Wilkes - Barre Inter Modal

To: Walsh Electrical Inc.  
916 Oak Street  
Scranton, PA 18508  
Ph: (570)969-2442 Fax: (570)969-9484

Description: Project Delays - Labor and Material Cost Escalation

We request that the Contract amount to date be adjusted for the following reason(s):

We request that Walsh Electrical's contract for Bid Package 3.8 - Electrical - be increased as a result of various project delays affecting the length of their contract time.

Reference is made to Walsh Electrical's substantiated claim (attached), dated July 7, 2010.

Milestone dates that relate to Bid Package 3.8 - Electrical - are:

- a) Bid Due Date.....November 29, 2006
- b) Wilkes-Barre City's Notice of Award letter .....January 2, 2007
- c) Contract Date.....January 2, 2007
- d) Anticipated Completion Date.....December 2007
- e) Actual Completion Date.....July 2010

The total amount to provide this work is ..... \$98,292.67  
(Please refer to attached sheet for details.)

The schedule will be Unchanged.

If you have any questions, please contact me at 570-283-6248.

Please sign and return one copy to our office, signifying your acceptance and our approval to proceed.

Architect / Owner Rep.: \_\_\_\_\_

Submitted by: Stephen Parashac  
Project Manager

Approved by: \_\_\_\_\_

Date: \_\_\_\_\_

Cc: McCormick, Marie (Wilkes Barre City), Frati, Butch (Wilkes Barre City), Chorey, Bev (Sordoni Construction Svs., Inc)



5 Owen Street  
Forty-Fort, PA 18704  
Ph : 570-287-3161  
Fx : 570-287-0298  
www.sordoni.com

### Change Order Request 161 Price Breakdown Continuation Sheet

Description: Project Delays - Labor and Material Cost Escalation

Item	Description	Labor	Material	Equipment	Subcontract	Other	Price
1601	Electrical				\$98,292.67		\$98,292.67
						<b>Subtotal:</b>	<b>\$98,292.67</b>
						<b>Total:</b>	<b>\$98,292.67</b>



Wilkes-Barre, Pa. \_\_\_\_\_

Resolution No. \_\_\_\_\_

*BE IT RESOLVED* by the City Council of the City of Wilkes-Barre:

WHEREAS, the City of Wilkes-Barre is constructing the Intermodal Transportation Facility/Parking Garage Project on South Washington St.; and,

WHEREAS, the City Council of the City of Wilkes-Barre has awarded the contract with Mar Paul Construction Co. for General Construction #1 of the Intermodal Transportation Facility/Parking Garage Project; and,

WHEREAS, a contract change is necessary due to design changes and to address field conditions resulting in scope increases (see attached).

NOW, THEREFORE, BE IT RESOLVED, by the City Council of the City of Wilkes-Barre that the proper City officials are hereby authorized to enter into a change order with Mar Paul Construction Co. in the amount of \$85,564.73, as outlined in the attached, in conjunction with the Intermodal Transportation Facility/Parking Garage Project.

FURTHER, that the amount of this change order will be budgeted from Construction Contingency in the project budget.

Submitted by \_\_\_\_\_

ROLL CALL

YEAS

RESOLUTIONS

NAYS

**Change Order Request**



45 Owen Street  
Forty-Fort, PA 18704  
Ph : 570-287-3161  
Fx : 570-287-0298  
www.sordoni.com

**Number:** 168  
**Date:** 9/20/10  
**Job:** 4615 Wilkes - Barre Inter Modal

**To:** Mar Paul Company Inc.  
1335 Senator Robert Mellow Dr  
Jessup, PA 18434  
Ph: (570)489-4400 Fax: (570)489-7500

**Description:** Additional items of work

We request that the Contract amount to date be adjusted for the following reason(s):

Miscellaneous additional items of work as listed on and documented with Attachment "A" and as directed and approved by the Owner.

The total amount to provide this work is ..... \$85,564.73  
(Please refer to attached sheet for details.)

The schedule will be Unchanged.

If you have any questions, please contact me at 570-283-6248.

Please sign and return one copy to our office, signifying your acceptance and our approval to proceed.

Architect / Owner Rep.: \_\_\_\_\_

Submitted by: Stephen Parashac  
Project Manager

Approved by: \_\_\_\_\_

Date: \_\_\_\_\_

Cc: McCormick, Marie (Wilkes Barre City), Frati, Butch (Wilkes Barre City), Chorey, Bev (Sordoni Construction Svs., Inc)



45 Owen Street  
Forty-Fort, PA 18704  
Ph : 570-287-3161  
Fx : 570-287-0298  
www.sordoni.com

Change Order Request 168 Price Breakdown  
Continuation Sheet

Description: Additional items of work

Item	Description	Labor	Material	Equipment	Subcontract	Other	Price
0330	Cast In Place Concrete				\$85,564.73		\$85,564.73
						<b>Subtotal:</b>	<b>\$85,564.73</b>
						<b>Total:</b>	<b>\$85,564.73</b>

# ATTACHMENT "A"

## Wilkes-Barre Intermodal Wilkes-Barre, PA

Mar-Paul's COR No. 168

September 20, 2010

Mar-Paul Ref. No.	Mar-Paul Invoice Date	Dollar Value	Scope Increase	Field Condition
1	2/19/2010	\$27,928.00	---	\$27,928.00
2	2/19/2010	\$8,727.00	\$8,727.00	---
3	6/7/2010	\$24,681.37	\$24,681.37	---
4	6/7/2010	\$4,941.23	\$4,941.23	---
5	6/7/2010	\$3,196.48	\$3,196.48	---
6	6/7/2010	\$13,540.64	\$13,540.64	---
7	6/7/2010	\$2,550.01	\$2,550.01	---
<b>Totals</b>		<b>\$85,564.73</b>	<b>\$57,636.73</b>	<b>\$27,928.00</b>

FILE OF COUNCIL

No. 20 of 2010

-----  
PRESENTED IN CITY COUNCIL August 19, 2010  
-----

**AN ORDINANCE OF THE CITY OF WILKES-BARRE, LUZERNE COUNTY, PENNSYLVANIA, AMENDING THE CODE OF ORDINANCES OF THE CITY OF WILKES-BARRE TO ESTABLISH UNIFORM FEES AND RATES THAT PRIVATE AND CONTRACT TOWING COMPANIES MAY CHARGE TO OWNERS OF VEHICLES TOWED IN CITY OF WILKES-BARRE, AND TO REQUIRE ALL TOWING COMPANIES OPERATING IN THE CITY OF WILKES-BARRE TO REGISTER ANNUALLY WITH THE CITY AND OBTAIN A LICENSE TO OPERATE A TOWING COMPANY IN THE CITY OF WILKES-BARRE.**

RECITALS

**WHEREAS**, the Council of the City of Wilkes-Barre has enacted the Code of the City of Wilkes-Barre which contains, *inter alia*, provisions for the health, safety and welfare of the residents and visitors to the City of Wilkes-Barre; and

**WHEREAS**, City Council has been advised that towing companies in City of Wilkes-Barre are charging arbitrary fees and rates for towing vehicles in City of Wilkes-Barre and engaging in certain towing practices, which Council views as unfair and which adversely affects the welfare of the residents of City of Wilkes-Barre; and

**WHEREAS**, City Council has recommended that the City regulate the fees and rates that are charged by towing companies to owners of vehicles towed in City of Wilkes-Barre, and also that towing companies be required to obtain an annual license from the City of Wilkes-Barre for the privilege of operating a towing company in the City of Wilkes-Barre; and

**WHEREAS**, Council has determined that it is in the best interests of the welfare of the residents of City of Wilkes-Barre to regulate the fees and rates charged by towing companies to owners of vehicles that are towed within the City of Wilkes-Barre, and to require that towing companies obtain an annual license from City of Wilkes-Barre in order to insure that said towing companies are charging the fees and rates established herein;

**WHEREAS**, this Ordinance is not intended to, nor shall it regulate, in any manner, the prices, fees or costs for consensual tows within the City of Wilkes-Barre.

**NOW, THEREFORE, BE IT ORDAINED** by the City Council of the City of Wilkes-Barre, and it is hereby ordained by authority of same as follows:

I. The City of Wilkes-Barre's Code of Ordinances is amended to add the following new Chapter as follows:

### ***REGULATING PRIVATE/PUBLIC TOWING COMPANIES***

**SECTION 1. PURPOSE.** The purpose of this ordinance is to provide a convenient and regulated towing service for the timely removal of motor vehicles damaged, abandoned, immobilized, illegally parked or disabled on public or private property within the City and regulate fees and rates for services, and to require that private towing companies obtain an annual license from the Municipality of City of Wilkes-Barre for the privilege of operating a towing company in City of Wilkes-Barre. The purpose of this Ordinance is specifically not to regulate consensual towing, in any manner, including, but not limited to, their fees, costs or prices.

**SECTION 2. DEFINITIONS:** For purposes of this Ordinance, the following words shall have the following meanings:

**Business.** Business is the physical place/establishment where employees report to work, equipment is stored and dispatched to and from, all company dealings take place, record keeping and daily activity, etc., is performed. For purposes of this ordinance, a business shall have employees at the business address at a minimum of normal business hours, which is defined as 8:00 a.m. to 5:00 p.m., Monday through Friday, exclusive of national holidays.

**Chief of Police.** The Chief of Police of the City of Wilkes-Barre or his/her designee.

**Custodian.** A person having permission from the vehicle owner to exercise care and/or control over a vehicle. This permission shall be in the form of power of attorney.

**Motor Vehicle.** As defined in the Pennsylvania Motor Vehicle Code ("Vehicle Code").

**Municipality.** The City of Wilkes-Barre, Luzerne County, Commonwealth of Pennsylvania.

**Non-Consensual Tows.** Any tow by the Towing Company which is not specifically authorized by the owner of the Motor Vehicle, including, but not limited to, any tow from a public or private parking lot or parking area where the vehicle owner had no authority or permission to park or stand in that lot or area, and/or where the parking lot or parking area owner has directed the removal of the Motor Vehicle. Unless the owner of the motor vehicle is present and specifically authorizes the removal of that vehicle at the time the tow occurs, the tow shall be deemed a Non-Consensual Tow.

**Person.** An individual, firm, partnership, association, employee, corporation, company, or organization of any kind.

**Private Parking Lot.** A non-municipal parking lot open to the public or used for parking without charge by a business or other entity, or a non-municipal parking lot used for parking with charge.

**Private Property.** Real property owned by an individual, firm, partnership, association, corporation, company or organization including private parking lots as defined in the Vehicle Code.

**Property Owner.** An individual, firm, partnership, association, corporation, company, organization, or designee representing the owner of the property from which the vehicle is being towed.

**Towing Company.** Any business engaged in the towing, removing, or storing of motor vehicles at the request of the City of Wilkes-Barre or at the request of private property owners. This includes the towing company owner and its employees and agents.

**Towing Company Owner.** Any person(s) having financial interest in a licensed towing company. This does not include persons who are solely employed by the towing company.

**Wrecker.** A vehicle designed and used for removing and transporting motor vehicles. This term shall also include a rollback truck, tow truck, or other vehicles commonly used to perform towing services.

**SECTION 3. ANNUAL LICENSE REQUIRED.** A towing license is required for any towing company engaged in the business of towing vehicles from private or public property in the City of Wilkes-Barre. A tower shall be licensed annually in accordance with the provisions of this Section.

A. **Application for License.** Applications for license shall be submitted to the Code Enforcement Office upon forms prepared and made available by the City. The

application form(s) shall be properly completed, signed and accompanied by the application and license fee.

- B. **Issuance of License(s).** A license to tow vehicles shall be issued only to towing companies that comply with the provisions of this Ordinance.
- C. **License Fee.** The license fee under this Ordinance for the original application for a private towing license shall be established by Council and set forth in the City of Wilkes-Barre Towing Fee Schedule (Attachment 'A'), and may be amended from time to time by Resolution of Council. The application fee shall be nonrefundable.
- D. **License Renewal.** All licenses, except those terminated for just cause as provided herein, are subject to an annual renewal fee that shall be established by Council and set forth in the Fee Schedule, and may be amended from time to time by Resolution of Council. The renewal fee shall be paid within the first quarter of each calendar year. If a license is not renewed within the first quarter of each calendar year, a new license must be obtained at the license fee set forth in Attachment 'A' of this Ordinance.
- E. **Changes to License Information.** All licensed towing companies shall be required to notify the Code Enforcement Office within 24 hours of any modifications to information provided in the tower's license application.
- F. **2010 License Requirements.** The City shall require that all Towing Companies affected by this Ordinance obtain a license for 2010 by October 15, 2010. The City of Wilkes-Barre shall not require a fee for the 2010 license. All fees shall commence on January 1, 2010.

**SECTION 4. STORAGE FACILITY.** For all Non-Consensual Tows within the City of Wilkes-Barre:

- A. The storage facility shall be owned or leased by the Towing Company.
- B. The storage facility shall comply with zoning regulations applicable in the jurisdiction where the facility is located.
- C. The storage facility shall be, at a minimum, enclosed by a secured fence or building. When enclosed by a fence, the fence shall be a minimum of 6 feet in height and made of a sturdy material such as a chain link, wooden slats, or other

approved material. All gates shall be secured with locks or other security mechanisms to reasonably prevent entry by unauthorized persons.

- D. The towing company is responsible for the security of the stored vehicles.
- E. The Towing Company shall establish a system convenient to the vehicle owner to provide for release of towed vehicles from the storage facility 24 hours a day, 7 days a week.
- F. Release of towed vehicles under a private towing license shall be completed within a 2-hour time period following receipt of the request of the owner/custodian to release the towed vehicle during normal business hours.
- G. Release of personal property from a towed vehicle that is not attached to the vehicle shall be made within a 2-hour time period following receipt of the request of the owner/custodian to return the property. No fee shall be charged for the return of personal property from a towed vehicle that is not attached to the vehicle. The 2-hour release period shall be applicable only during normal business hours of the private towing company.

**SECTION 5. MAXIMUM FEE AND RATE SCHEDULE FOR TOWING SERVICES.**

Fees and rates for towing by licensed towing companies by Class of vehicle, as set forth in the Fee Schedule, below, and for storage and related services, shall be established by Council and set forth in the City of Wilkes-Barre Fee Schedule, and may be amended from time to time by resolution of Council. The fees established for towing and storage for Non-Consensual Tows are the maximum fees that may be assessed.

**A. Fees for Private Tows:** Maximum Towing fees (including use of dollies and any other needed equipment or labor) for Non-Consensual Tows shall be established by Council and set forth in the City of Wilkes-Barre Fee Schedule; Attachment 'A', for the following classes of vehicles for each wrecker required to complete the tow request:

- (1) Class 1            Light Duty less than 5000 lbs
- (2) Class 2            Light Duty 5,001 – 10,000 lbs
- (3) Class 3            Medium Duty 10,001 – 26,000 lbs
- (4) Class 4            Medium Duty 26,001- 60,000 lbs

(5) Class 5            Heavy Duty 60,000 – 80,000 lbs

(6) In the event fees other than authorized are charged because of unusual circumstances, the City shall be notified in writing within 72 hours after the tow of the fee charged. No vehicle shall be removed under the authority of this ordinance if, at the time of the intended removal, the owner or custodian of the vehicle is present and expresses a willingness and intention to remove the vehicle immediately. However, for Non-Consensual Tows, the Towing Company shall charge no more than the fees established by Council and set forth in the City of Wilkes-Barre Fee Schedule which may be amended from time to time by resolution of Council for responding to the scene and the limited services provided. The Towing Company shall make reasonable accommodations to permit the owner/custodian to obtain payment for the fee charged.

(7) Once the vehicle to be towed is secured to wrecker, the Towing Company is entitled to the fee listed in the Fee Schedule.

**B. Storage Fees.** Maximum fees chargeable by a licensed private towing company against a vehicle owner/custodian for the storage of towed vehicles obtained through a Non-Consensual Tow, shall be established by Council and set forth in the City of Wilkes-Barre Fee Schedule, and may be amended from time to time by resolution of Council, for the following:

(1) A maximum fee for the first 24-hour period from the time the wrecker arrived at the scene.

(2) A maximum fee for each calendar day or portion thereof after the first 24 hours for all classes of vehicles.

(3) **Overnight Vehicle Release Fee.** A Towing Company may assess the vehicle owner or custodian a reasonable fee in addition to the towing fee and any other applicable fees to release a vehicle to its owner or custodian between the hours of 10:00 p.m. and 6:00 a.m. On request from the vehicle owner, the towing company shall release the vehicle to the owner or operator within a two (2) hour period from time of request. The towing company shall notify the vehicle owner/custodian in advance of the additional overnight vehicle release fee.

(4) **Protection Fee.** A Towing Company may assess the vehicle owner or custodian a fee in addition to the towing fee and any other applicable fees for covering motor vehicles or safeguarding the vehicle within a towing facility with open convertible tops, open windows and/or open areas that will allow weather to penetrate the interior of the vehicle.

**(5) Method of Payment.** Due to the unexpected and costly nature of persons having their vehicles towed, for Non-Consensual Tows, Towing Companies shall, in addition to cash payment, accept at least 2 major credit cards for payment of towing and storage services, and shall not charge a premium or additional fee for using a credit card over and above the cost of processing passed through to the credit card processing company.

**SECTION 6. PROHIBITED ACTS.** For any Non-Consensual Tow, a Towing Company shall not:

- a. Sub-contract towing services without City approval
- b. Tow or remove a vehicle from or within public rights-of-way without the consent of the owner or operator of the vehicle, or without authorization of the City.
- c. Tow or remove a vehicle from or within private property without specific authorization from the property owner as outlined in Section 7 of the ordinance.
- d. Charge or invoice or collect fees in excess of those specifically designated in the Fee Schedule for Non-Consensual Tows.
- e. Conduct a Non-Consensual Tow by removing a vehicle from private property without using a wrecker, ensuring that the vehicle to be towed is securely and safely attached to the wrecker before moving.

**SECTION 7. AUTHORIZATION FOR REMOVAL FROM PRIVATE PROPERTY.**

No motor vehicle shall be removed from private property under the authority of this Ordinance through a Non-Consensual Tow unless:

- a. Written authorization for the vehicle to be removed is provided to the authorized Towing Company, in duplicate, signed by the owner or agent of the owner or the person having control of the property upon which the vehicle is left unattended. The authorization form shall be similar to the one hereinafter set forth and shall be completed at the time the vehicle is to be towed by the aforementioned person or persons. Copies of the authorization forms shall be provided to the Wilkes-Barre City Police Department upon 24 hours notice.

“You are hereby authorized to tow the following illegally parked vehicle from the private parking lot/space indicated below. This lot is either owned and/or leased by (name of lot owner/manager). The vehicle and location are described as follows”:

MAKE:

MODEL:  
 YEAR (if known):  
 COLOR:  
 LICENSE NUMBER/STATE: \_\_\_\_\_  
 LOT/LOCATION \_\_\_\_\_  
 Name/Address of Towing Service: \_\_\_\_\_  
 Authorized signature of property owner \_\_\_\_\_  
 Please print name here \_\_\_\_\_

b. No vehicle shall be towed from a Private Parking Lot through a Non-Consensual Tow unless the Lot is posted at the time the vehicle is towed, notifying the public and the operator of the vehicle who violates those restrictions of any parking restrictions. Posting shall be in conformance to the Rules and Regulations set forth in Annex A, Title 67, Transportation, Part I, Department of Transportation, Subpart A, Vehicle Code Provision, Article VIII, Administration and Enforcement, Chapter 217, Posting of Private Parking Lots.

c. No vehicle shall be removed under the authority of this Ordinance if, at the time of the intended removal, the owner or custodian of the vehicle is present and expresses a willingness and intention to remove the vehicle immediately from the Private Parking Lot. In these instances, the Towing Company shall charge no more than \$50.00 for responding to the scene and the limited services provided. The Towing Company shall make reasonable accommodations to permit the owner/custodian to obtain payment for the fee charged. Once the tow truck leaves the scene, the Towing Company is entitled to the fees as listed in the Fee Schedule.

**SECTION 8. REPOSSESSIONS.**

Repossession towers, acting in their capacity as a reposessor, are exempt from this ordinance so long as they comply with all appropriate state & local statutes and ordinances.

**SECTION 9. COMPLAINTS AGAINST LICENSED TOWING COMPANIES.**

The City shall notify the Towing Company owner within 14 days of receipt of any complaint against a Towing Company that will be investigated by the City.

**SECTION 10. TERMINATION OF LICENSE.**

Any Towing Company or its employee(s) who violates any provision of this Chapter may be subject to administrative sanctions ranging from written warning to termination of license, in addition to any fines levied. The Towing Company shall be notified in writing no less than 5 calendar days prior to the termination of its license. The notice of termination shall state the reason(s) for termination and the effective date of termination. The Towing Company shall have 14 calendar days to appeal the termination in writing to the Wilkes-Barre City Traffic Committee. The Wilkes-Barre City Traffic Committee shall hold the hearing within 10 calendar

days of written receipt of the Towing Company's request for an appeal. The Towing Company may appeal the Traffic Committee's decision, in writing, to City Council within 10 calendar days of the receipt of the Traffic Committee's decision. City Council shall be required to review the decision of the Traffic Committee to determine whether the provisions of this Ordinance have been violated, and whether the decision of the Traffic Committee is in accordance with the Ordinance and applicable Pennsylvania Law. The Towing Company may appeal the decision of City Council to the Luzerne County Court of Common Pleas.

**SECTION 11. FINES AND PENALTIES FOR VIOLATION.**

Upon being found to be in violation of any provision of this Ordinance, in addition to the penalty listed in Section 10 above, a Towing Company may be fined not less than \$300.00 or more than \$600.00. Additionally, upon being found to be in violation of any provision of this Ordinance of this Chapter, a Towing Company may have its license revoked for a period of 1 year.

**SECTION 12. SEVERABILITY.**

The provisions of this Ordinance are declared to be severable. If any provision of this Ordinance is declared by a court of competent jurisdiction to be invalid or unconstitutional, such determination shall have no effect on the remaining provisions of this Ordinance or on the provisions of the City of Wilkes-Barre Administrative Code and the general Code of Ordinances.

**SECTION 13. AUTOMATIC REPEALER.**

All Ordinances or parts thereof inconsistent with the provisions of this Ordinance are hereby repealed to the extent of the inconsistency.

**SECTION 14. CONFLICTS**

All Ordinances or parts of Ordinances of the City of Wilkes-Barre in conflict with this Ordinance to the extent of such conflict, and no further, are hereby repealed. The provisions of this Ordinance are severable. If any part of this Ordinance is declared to be unconstitutional, illegal or invalid, the validity of the remaining provisions shall be unaffected thereby.

**SECTION 15. EFFECTIVE DATE OF ORDINANCE**

This Ordinance shall become effective ten (10) days after final adoption by Wilkes-Barre City Council.

ATTEST:

\_\_\_\_\_  
JAMES RYAN, CITY CLERK

# Attachment A

## Maximum Fee Schedule for Towing Services.

(a) **Private Property Towing.** The following fees are established for towing and storage services provided at the City of Wilkes-Barre's request by licensed Towing Companies or performed for private property owners and are the maximum fees that may be assessed for Non-Consensual Tows. Maximum fees for Non-Accident towing (including use of dollies) for each wrecker required to complete the tow request shall be:

(1) Class 1	Light Duty less than 5000 lbs	- \$100.00
(2) Class 2	Light Duty 5,001 – 10,000 lbs	- \$125.00
(3) Class 3	Medium Duty 10,001 – 26,000 lbs	- As Required (**)
(4) Class 4	Medium Duty 26,001- 60,000 lbs	- As Required (**)
(5) Class 5	Heavy Duty 60,000 – 80,000 lbs	- As Required (**)

(\*\*) Non-Accident towing fees for vehicles larger than 10,001 lbs. GVW or with dual rear wheels shall be commensurate with the service provided. The Chief of Police shall be notified in writing within 72 hours after the tow of the fee charged for all tows greater than 11,000 pounds.

(1) If the Towing Company is notified to cancel their response before a wrecker arrives at the scene, no fee may be charged. However, from the time the wrecker arrives at the scene through the point the Towing Company departs from the scene, the Towing Company may charge no more than \$25.00

(2) In the event fees other than authorized are charge because of unusual circumstances the Chief of Police shall be notified in writing within 72 hours after the tow of the fee charged.

(3) No vehicle shall be removed under the authority of this Ordinance if, at the time of the intended removal, the owner or custodian of the vehicle is present and expresses a willingness and intention to remove the vehicle immediately from the Private Parking Lot. In these instances, the Towing Company shall charge no more than \$50.00 for responding to the scene and the limited services provided. The Towing Company shall make reasonable accommodations to permit the owner/custodian to obtain payment for the fee charged. Once the tow truck leaves the scene, the Towing Company is entitled to the fees as listed in the Fee Schedule.

**(b) City-Authorized (Contract) Towing.** The following fees are established for towing and storage services provided at the City of Wilkes-Barre's request by licensed Towing Companies and are the maximum fees that may be assessed (accident and non-accident). Fees for City-authorized towing fees (including use dollies, flatbed trucks, etc.) for each wrecker required to complete the tow request shall be:

<b>(1)</b>	Class 1	Light Duty less than 5000 lbs	- \$100.00
		Accident Involved	- \$150.00
<b>(2)</b>	Class 2	Light Duty 5,001 – 10,000 lbs	- \$125.00
		Accident Involved	- \$175.00
<b>(3)</b>	Class 3	Medium Duty 10,001 – 26,000 lbs	- As Required (**)
<b>(4)</b>	Class 4	Medium Duty 26,001- 60,000 lbs	- As Required (**)
<b>(5)</b>	Class 5	Heavy Duty 60,000 – 80,000 lbs	- As Required (**)

(\*\*) Towing fees for vehicles larger than 10,001 lbs. GVW or with dual rear wheels shall be commensurate with the service provided. The Chief of Police shall be notified in writing within 72 hours after the tow of the fee charged for all tows greater than 11,000 pounds. In the event fees other than authorized are charge because of unusual circumstances, the Chief of Police shall be notified in writing within 72 hours after the tow of the fee charged.

**(1) Protection Fee.** A Towing Company may assess the vehicle owner or custodian a \$20.00 fee in addition to the towing fee and any other applicable fees for covering motor vehicles or safeguarding the vehicle within a towing facility with open convertible tops, open windows and/or open areas that will allow weather to penetrate the interior of the vehicle.

**(2) Authorized Winching Fees for Recovery.** For tows requiring winching service, towing companies may charge up to the following fees in addition to the towing charge: Per truck and 1 employee \$50.00.

**(3) Long Distance Tows.** If a vehicle owner or custodian requests to have their vehicle towed to a location other than the towers storage facility, a fee of up to \$5.00 per-mile fee (one-way) may be charged by the towing company in addition to the towing fee listed.

**(4) Clean Up Fees.** Towing Companies are required to clean up an accident scene. An additional charge of up to \$50.00 per accident may be assessed for required cleanup. This cleanup fee shall not be levied against each vehicle towed but shall be divided equally among all vehicles towed. If the clearing of the accident debris takes more than 30 minutes, the towing company may assess additional cleanup fees at the rate of \$10.00 per 15 minutes, or any part thereof, after the initial 30 minutes.

**(c) Storage/Release Fees** The following storage fees for Non-Consensual Tows may be assessed against the vehicle owner/custodian for the storage or towed vehicles, either by private or contract tower:

- (1) For the first 24-hour period from the time the wrecker arrived at the scene no charge;
- (2) Each calendar day or portion thereof after the first 24 hours for motor vehicles, For Class 1 or 2 vehicles: \$25.00;
- (3) Each calendar day or portion thereof after the first 24 hours for motor vehicles larger than 10,001 lbs. GVW or dual rear wheels \$30.00;
- (4) Each calendar day, or portion thereof, after the 10th day of storage for any motor vehicle \$50.00;
- (5) Overnight Vehicle Release Fee. A Towing Company may assess the vehicle owner or custodian a \$20.00 fee in addition to the towing fee and any other applicable fees to release a vehicle to its owner or custodian between the hours of 11:00 PM and 7:00 AM daily. When possible, the towing company shall notify the vehicle owner/custodian in advance of the additional overnight vehicle release fee.
- (6) Protection Fee. A towing company may assess the vehicle owner or custodian a \$20.00 fee in addition to the towing fee and any other applicable fees for covering motor vehicles or safeguarding the vehicle within a towing facility with open convertible tops, open windows and /or open areas that will allow weather to penetrate the interior of the vehicle.
- (7) Method of Payment. Due to the unexpected and costly nature of persons having their vehicles towed, towing companies shall, in addition to cash payment, accept at least 2 major credit cards for payment of towing and storage services.

**(d) Annual License Fee** The annual fee for application for a license to tow vehicles in the City of Wilkes-Barre is set by City Council at a rate of \$300 per company commencing January 1, 2011. This license is non-transferable. Any renewal of an existing license commencing January 1, 2012, shall only require a renewal fee of Two Hundred Fifty Dollars (\$250.00).

FILE OF COUNCIL

NO. 23 OF 2010

PRESENTED IN CITY COUNCIL ON SEPTEMBER 30, 2010

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AN ORDINANCE

OF THE COUNCIL OF THE CITY OF WILKES-BARRE, LUZERNE COUNTY, PENNSYLVANIA (THE "CITY"), AUTHORIZING AND DIRECTING THE INCURRENCE OF NONELECTORAL DEBT IN THE AGGREGATE PRINCIPAL AMOUNT NOT TO EXCEED TWO MILLION NINETY THOUSAND DOLLARS (\$2,090,000), PURSUANT TO THE ACT OF THE GENERAL ASSEMBLY OF THE COMMONWEALTH OF PENNSYLVANIA, 53 PA.C.S CHAPTERS 80-82, AS AMENDED, KNOWN AS THE LOCAL GOVERNMENT UNIT DEBT ACT (THE "ACT"). (FIRST READING – ON TITLE)

FILE OF COUNCIL

No. 24 of 2010

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PRESENTED IN CITY COUNCIL September 30, 2010  
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**AN ORDINANCE ADOPTING A CABLE FRANCHISE AGREEMENT WITH SERVICE  
ELECTRIC CABLE TV, INC. TO OPERATE AND MAINTAIN A CABLE  
TELEVISION SYSTEM IN THE CITY OF WILKES-BARRE**

WHEREAS, this is an Ordinance requiring that the providing of cable television service be authorized by franchise; granting a franchise to Service Electric Cable TV, Inc., a Pennsylvania Corporation, its successors and assigns, to install, operate and maintain a cable television system, together with other services; prescribing terms and conditions; also providing regulations for use of the system; and other legal requirements.

BE IT ENACTED AND ORDAINTED, and it is hereby enacted and ordained, as follows:

**SECTION 1. SHORT TITLE**

This Ordinance shall be known and may be cited as the "Service Electric Cable TV, Inc. Franchise Ordinance".

**SECTION 2. DEFINITIONS**

For the purpose of this Ordinance, the following terms, phrases, words and their derivations shall have the meaning given herein. When not inconsistent with the context, words

used in the present tense include the future, words in the plural number include the singular number, words in the singular number include the plural number, words in the singular number, and words in the masculine gender shall include the feminine gender. The word "shall" is always mandatory and not merely directory.

(a) "**Municipality**" is the City of Wilkes-Barre, Luzerne County, Pennsylvania, a Pennsylvania Third Class City operating and existing through a Home Rule Charter, acting through its duly constituted governing body.

(b) "**Cable Television System**" or "**System**" shall mean any facility or group of facilities which, in whole or in part, receives, modifies or originates various services, including, but not limited to, television, FM radio or other electrical signals for the purpose of transmitting or distributing such signals by wire, cable or other means to subscribing members of the public or to selected customers, as herein contemplated. This definition shall include those systems which do occupy or cross over or under the public ways and places of Municipality.

(c) "**Franchisee**" is Service Electric Cable TV, Inc., its successors and assigns.

(d) "**Person**" is any person, firm, partnership, association, corporation, Franchisee or organization of any kind.

(e) For the purpose of this Agreement, revenue from the sale of Internet Access Service transmitted via the cable system shall not be considered Gross Revenue. Notwithstanding the above, if the FCC or other government agency or any court of competent jurisdiction determines that such Internet Access Service is a Cable Service or should any government agency or any court of competent jurisdiction permit, in any way, Internet Access Service and/or telephone service to be included, in any way, in a Franchise Agreement or if a franchise fee to the City of Wilkes-Barre or any municipality is permitted by law, then the

Franchise subject to this Agreement shall be obligated to include any Internet Access Service revenue and telephone service in its calculation of Gross Revenues and shall pay a franchise fee on such revenue, to the extent required of all other Cable Television Systems in the Municipality.

### **SECTION 3. COMPETITIVE FRANCHISE REQUIRED**

Applicable law, including Section 621 of the Cable Communications Policy Act of 1984, envisions that residents of the City of Wilkes-Barre will be afforded access to multiple, competitive cable television service providers.

### **SECTION 4. GRANT OF AUTHORITY**

Having determined that the availability of competitive cable television service would afford significant social, educational and entertainment benefits to the public in Municipality, the Franchisee has demonstrated its ability to provide a high quality of such service, responsive to the needs and desires of residents of the Municipality, and such future service can best be assured by the granting of a franchise to the Franchisee; and that Franchisee has the legal, character, financial, technical and other qualifications to construct, erect, own, operate and maintain the cable television system servicing the Municipality, the Municipality hereby grants unto the Franchisee the right and privilege to construct, erect, operate and maintain a cable television system in, under, over, along, across or upon the public streets, highways, sidewalks, rights-of-way and places within the boundaries of the Municipality, to the extent permitted by law. Municipality grants Franchisee permission to attach or otherwise affix or install its cables and other equipment to and in the facilities of any public utility even though the same may occupy or cross over or under the public ways and places of Municipality.

**SECTION 5. FRANCHISE TERM**

THIS GRANT SHALL BE FOR A FIVE-YEAR PERIOD BEGINNING ON ITS ENACTMENT DATE AND ENDING ON SEPTEMBER 30, 2015. Thereafter, the franchise shall automatically be renewed for two (2) consecutive FIVE-YEAR renewal terms unless either party terminates the same with ninety (90) days notice prior to the date of termination for the respective term. Following the second renewal term, the franchise shall renew from year to year unless notice is given in writing by the Municipality to the Franchisee no later than ninety (90) days from the end of the then existing term.

**SECTION 6. ACCEPTANCE OF FRANCHISE**

This grant is made upon the express condition that the Franchisee, within thirty (30) days after written notice is given to the Franchisee that this Ordinance has taken effect and becomes operative, shall file with the City Clerk or other duly authorized official of the Municipality a written acceptance of the same. When this Ordinance shall have been accepted by the Franchisee, such ordinance and acceptance shall constitute a contract between the Municipality and the Franchisee for all the uses, services and purposes set forth in this Ordinance. Except as may be otherwise provided by State and Federal law, order or regulation, the rights and obligations of Municipality and Franchisee shall be those specified herein and shall not be enlarged, diminished or altered by unilateral action of Municipality during the term of the franchise or renewal thereof. The Franchisee, by its acceptance of the provisions of this Ordinance, binds itself to provide the necessary quality cable television system, as well as any other local services which are deemed required and necessary by the Municipality and/or which may be permitted as part of the gross revenue by applicable statute or court of law, and to

establish, operate and maintain the local cable television system contemplated in this Ordinance, continuing without substantial interruption except for causes beyond its control until the expiration of the term of this grant. In the event that said Franchisee fails to file said written acceptance within the time hereinabove specified, this grant shall be of no effect and void.

#### **SECTION 7. INSTALLATION AND EXTENSION OF SERVICE**

Franchisee shall serve all residents of Municipality except to the extent that factors render providing service impracticable or technically unfeasible, provided the Franchisee has made a good faith effort to provide such service to the residents of the Municipality who cannot receive service. Any dwelling unit within one hundred twenty-five feet (125 ft.) aerial distance of the cable plant shall be entitled to a standard installation rate. For any dwelling unit in excess of one hundred twenty-five feet (125 ft.) aerial distance or that requires an underground installation beyond one hundred twenty five (125) feet, Franchisee shall extend service at a rate not to exceed Franchisee's actual cost of Installation from its main distribution system.

#### **SECTION 8. SERVICES TO COMMUNITY FACILITIES**

Upon request the Franchisee shall provide the Municipality a maximum of 13 cable drops and one outlet with a set-top box for basic service with each drop to the Municipality buildings designated by the Municipality, which may include, in the Municipality's discretion, City Hall, Police Headquarters, Police Stations, Fire Stations and other Municipal buildings. Each cable drop shall be installed in the Municipal building(s) concurrent with the construction and activation of Franchisee's System serving residential customers adjacent to the location

designated for each Municipal cable drop. Service shall also be provided to and for any future City Building designated during the term of this Agreement.

**SECTION 9. REGULATORY ACTION**

The performance by the Franchisee hereunder is subject to limitations, restrictions, or requirements now existing or which may henceforth be imposed by law, rule, or order of the Federal Communications Commission or other government, board, commission or authority. The Franchisee shall not be deemed in default of any of the requirements of this Ordinance to the extent it acts in compliance with, or refrains from doing anything prohibited by such law, rule or order.

**SECTION 10. CONDITION OF STREET OCCUPANCY**

(a) All transmission and distribution structures, lines, and equipment erected by the Franchisee within the Municipality shall be so located as to cause minimum feasible interference with the proper use of streets, alleys and other public ways, roads and places, and to cause minimum feasible interference with the rights or reasonable convenience of property owners who adjoin any of the said streets, alleys or other public ways, roads and places. The Franchisee shall obtain any required permits prior to construction.

(b) In case of any disturbance of pavement, sidewalk, driveway or other surfacing by Franchisee, Franchisee shall, at its expense and in a manner approved by the Municipality, replace and restore the same in as good condition as before said work was commenced.

(c) Franchisee shall ensure that its contractor(s) obtain any and all licenses and permits required by the Municipality for the types of work to be performed.

**SECTION 11. COMPLIANCE WITH STANDARDS**

Franchisee's construction and maintenance of the transmission and distribution system shall be in accordance with applicable state and federal laws or regulations now in effect or later enacted regulating or affecting Franchisee's installation or operation.

**SECTION 12. FRANCHISEE LIABILITY – INDEMNIFICATION**

The Franchisee shall save the Municipality harmless from all loss sustained on account of any suit, judgment, execution, claim or demand whatsoever, resulting solely from the operation of the Franchisee in the construction, operation or maintenance of its system in the Municipality. The Municipality shall notify the Franchisee within ten (10) days after the presentation of any claim or demand, either by suit or otherwise, made against the Municipality on account of any damages or losses as aforesaid resulting from the operation of the Franchisee. Thirty (30) days from the enactment date of this Ordinance, the Franchisee shall furnish satisfactory evidence in writing that it has in force public liability insurance of not less than \$1,000,000.00 for a single occurrence and an additional \$1,000,000.00 in the aggregate, for all claims asserted against the Franchisee during an insurance year, and shall name the City of Wilkes-Barre as an additional insured. The policy shall be duly issued by an insurance Franchisee or insurance companies authorized to do business in this Commonwealth.

**SECTION 13. LANDLORD – TENANT**

(a) No landlord shall demand payment from Franchisee for permitting Franchisee to provide cable television service on or within said landlord's property or premises. Provided, however, that such landlord may be entitled to reasonable reimbursement for any direct expenses incurred by him in connection with the installation of cable television service, and to just compensation for any permanent occupation of his property resulting from the installation of Franchisee's facilities therein.

(b) No landlord shall interfere with the installation of cable television facilities upon his property or premises nor shall such landlord discriminate in rental charges, or otherwise, between tenants who receive cable service and those who do not. No landlord shall demand or accept payment from any tenant, in any form, for permitting cable television service on or within his property or premises.

(c) As used in this Section, the term "landlord" means any individual or entity owning, controlling, leasing, operating or managing leased residential premises.

#### **SECTION 14. FRANCHISE PAYMENTS**

Beginning on the date Franchisee commences providing cable television service in the City and continuing during the balance of the term hereof or any extension thereto as provided in Section 5, as compensation for the rights conferred upon it by this Ordinance, including the privilege of engaging in the business of operating a cable television system in Municipality, Franchisee shall pay annually to Municipality a fee equal to three (3%) percent of gross revenues collected by Franchisee from charges for optional cable television service. Franchisee shall be required to adjust the percentage accordingly within thirty (30) days notice of an Executive Order of the Mayor of the City of Wilkes-Barre, and/or resolution of City Council; provided,

that such Executive Order or resolution of City Council applies to all Cable Television Systems operating in the Municipality and is otherwise in accordance with the Federal Communications Act of 1934, as amended by the Telecommunications Act of 1996 and subsequent law. No amendment to this Ordinance or Agreement shall be necessary to adjust this percentage.

“Gross Revenues” shall not include charges for or revenues from: any taxes billed to and collected from subscribers; services other than the transmission and distribution of television signals, subject specifically to Section 2(e) above; advertising payments; the leasing of cable channels (which shall not include premium subscription channels, pay-per-view services, or video-on-demand); furnishing other communications and non-broadcast television services either directly or as a carrier for another party, subject specifically to Section 2(e) above; installation charges and fees for move, reconnections, inspection, repairs or modifications of any installations; any other income derived by the Franchisee.

Payment of such annual fee shall be made in two (2) installments: on or before July 1 (commencing with July 1 in the year following the year in which Franchisee commences to provide cable television service in the City) and the balance not later than October 31, both installments calculated on revenues for the first and second half, respectively, of the previous calendar year. Such annual fee shall not be reduced by the amount of any tax, assessment, fee or other charge imposed, levied made or collected by Municipality upon or other charge imposed, levied, made or collected by Municipality upon or from Franchisee for the privilege of engaging in the business of operating a cable television system in Municipality. Provided, however, such business privilege tax shall only be attributable to revenue collected from customers located within the Municipality.

“Basic cable television service” shall mean that tier of cable television service to which all users must subscribe in order to obtain cable television service and for which a charge is made.

“Optional cable television service” shall mean the furnishing of television programming for which a per tier, per channel, or per program charge is made additional to that for basic television service.

**SECTION 15. PUBLICATION COSTS**

The Franchisee shall assume the cost of publication of this Ordinance as such publication is required by law and shall pay the same upon demand by the Municipality.

**SECTION 16. SEPARABILITY**

If any section, subsection, sentence, clause, phrase or portion of this Ordinance is for any reason held illegal, invalid or unconstitutional by any court of competent jurisdiction or by any state or federal regulatory agency having jurisdiction, such portion shall be deemed a separate, distinct and independent provision and such holding shall not affect the validity of the remaining portions of this Ordinance.

**SECTION 17. ORDINANCE REPEALED**

Any Ordinances or parts of Ordinances and Resolutions, including but not limited to Ordinance No. 12 of 1989 adopted April 13, 1989, in conflict with the provisions of this Ordinance are hereby repealed.

**SECTION 18. ENACTMENT**

This Ordinance shall become effective ten (10) days from final passage before Wilkes-Barre City Council.

The Ordinance is hereby duly executed and ordered into law this \_\_\_ day of \_\_\_\_\_, 2010.

ATTEST:

\_\_\_\_\_  
JAMES RYAN, CITY CLERK

\_\_\_\_\_  
THOMAS M. LEIGHTON, MAYOR

\_\_\_\_\_  
BERNARD MENGERINGHAUSEN  
CITY CONTROLLER