

CITY OF MIDDLETOWN
BOARD OF ESTIMATE AND APPORTIONMENT AGENDA
JULY 1, 2025 - 6:45 PM
COMMON COUNCIL CHAMBERS

1. PLEDGE OF ALLEGIANCE
2. ROLL CALL
3. APPROVAL OF MINUTES
 - 3.1. Nothing this evening.
4. NEW BUSINESS
 - 4.1. Resolution Authorizing Sale of City-Owned Parcel to New Beginnings Church – 11 Mulberry Street

WHEREAS, the New Beginnings Church, located at 11 Mulberry Street in the City of Middletown, has installed a sidewalk and stairway on the south side of its property to improve pedestrian access between the church, its café, and the adjacent municipal parking lot; and

WHEREAS, a recent survey conducted by Fusco Engineering & Surveying has determined that the sidewalk and stairway encroach approximately 1.9 feet onto a grassed strip owned by the City of Middletown, adjacent to the municipal lot, for a length of approximately 60 feet and a total encroachment area of approximately 114 square feet; and

WHEREAS, the sidewalk and stairway not only serve the church and its visitors but also improve public access from the parking lot to the City sidewalk along Mulberry Street;

NOW, THEREFORE, BE IT RESOLVED that the Common Council of the City of Middletown hereby authorizes the Corporation Counsel to draft an agreement conveying the affected portion of City-owned land, approximately 114 square feet, to New Beginnings Church for the sum of One Dollar (\$1.00), and authorizes the Mayor to execute said agreement and any related documentation necessary to complete the transfer.

- 4.2. Resolution Authorizing Amendment No. 2 to Clark Patterson Lee (CPL) Contract – Additional Construction Phase Services Related to NUCO Delays

WHEREAS, CPL, the City's engineering consultant for the referenced project, previously entered into a professional services agreement with the City of Middletown, which was amended under Contract Amendment No. 1 to provide

additional compensation related to delays caused by NUCO Painting Corp.; and

WHEREAS, despite those efforts, NUCO has not yet completed their contractual obligations, and CPL has continued to provide essential additional construction phase services to manage ongoing project needs and communications with stakeholders including NUCO, the bonding company, T-Mobile, and EFC, and to resolve project-related issues including paint finish deficiencies; and

WHEREAS, CPL has submitted a proposal requesting additional compensation for these services in the form of **Contract Amendment No. 2**, in the amount of **\$20,500**, as follows:

- Services through April 18, 2025 – **\$15,500** (Lump Sum)
- Estimated services from April 19, 2025 to Project Completion – **\$5,000** (Hourly)

WHEREAS, these additional costs are a direct result of the contractor's failure to complete the project on time, and the Agreement between the City and NUCO includes a Liquidated Damages clause of \$500 per day for failure to meet the Final Completion date of November 30, 2023; and

WHEREAS, as of April 18, 2025, NUCO is 536 days beyond the Final Completion date, equating to **\$267,500** in accrued liquidated damages, and CPL's total delay-related service costs now total approximately **\$72,000**, which should be recoverable from liquidated damages assessed against NUCO;

NOW, THEREFORE, BE IT RESOLVED that the Common Council of the City of Middletown, in concurrence with the Board of Estimate and Apportionment, hereby authorizes the Mayor to execute **Amendment No. 2** to the CPL contract in the amount of **\$20,500** for additional construction phase services as described, and further authorizes that said compensation be paid from any liquidated damages recovered or withheld from NUCO Painting Corp.'s contract balance.

4.3. Resolution Authorizing Contract Amendment for Additional Construction Phase Services for the New Water Storage Tanks Project

WHEREAS, the City of Middletown entered into a professional services agreement with CPL for design and construction phase services related to the New Water Storage Tanks Project, which includes the replacement of the Mountain Avenue and High Barney tanks; and

WHEREAS, the original construction contract with DN Tanks established a Substantial Completion date of August 31, 2024, and a Final Completion date of September 30, 2024; and

WHEREAS, the discovery of PCB-contaminated soils under the former Mountain

Avenue Tank and associated regulatory delays have extended the project timeline, requiring removal approvals, additional sitework, and project oversight; and

WHEREAS, CPL has continued to provide critical services beyond their originally contracted scope, including coordination with contractors, NYSDEC, and NYSEFC, processing pay applications and change orders, and conducting weekly SWPPP (Stormwater Pollution Prevention Plan) inspections—services which were impacted by revised NYSDEC regulations requiring SWPPP inspections be performed directly by CPL personnel; and

WHEREAS, CPL has submitted a request for a contract amendment in the amount of **\$90,000** for these additional construction-related services, including:

- **\$70,000 (Lump Sum)** for services provided through April 18, 2025, and
- **\$20,000 (Estimated Hourly)** for services through projected project closeout at the end of June 2025;

WHEREAS, CPL has indicated that these costs may be eligible for reimbursement through the NYSEFC contingency funding already available to the project, in addition to covering PCB soil removal and disposal costs;

NOW, THEREFORE, BE IT RESOLVED that the Common Council of the City of Middletown, in concurrence with the Board of Estimate and Apportionment, hereby authorizes a contract amendment in the amount of **\$90,000** to CPL for additional construction phase services associated with the New Water Storage Tanks Project, and further authorizes the Mayor to execute all documents necessary to effectuate this amendment, subject to Corporation Counsel review, and to pursue reimbursement of such costs through available NYSEFC contingency funding.

5. WATER/SEWER/LAWN MAINTENANCE ADJUSTMENT
6. ADJOURNMENT