

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

FELLENZER II

ENGINEERING LLP



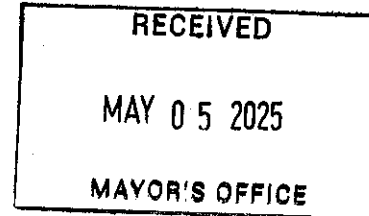
Principals:

Mark D. Fellenzer, P.E., LEED AP
John D. Fellenzer, P.E., MBA, LEED Green Associate

Founder:

Archie D. Fellenzer, Jr., P.E.
(1924 - 2014)

May 2, 2025



City of Middletown
Middletown City Hall
16 James Street
Middletown, NY 10940

Attn: Mr. Jacob Tawil, P.E.
Commissioner of Public Works

5670 775-6919

RE: New Beginnings Church Sidewalk Encroachment

The New Beginnings Church located at 11 Mulberry Street has an installed sidewalk on the south side of the property that has recently been surveyed by Fusco Engineering and Surveying, and found to be approximately 1.9 feet over the property line, and encroaching into a grassed area adjacent to a City of Middletown parking lot.

This sidewalk is to provide easy and safe access from the municipal lot to the church and the church cafe. The sidewalk also improves access from the lot to the City sidewalk on Mulberry Street by limiting the natural slope of the parking lot by use of the sidewalk and stairways.

The church is respectfully requesting an area variance to the encroachment of the church sidewalk and stairway about 1.9 feet beyond their property line on to the grassed strip up to the edge of the City of Middletown parking lot.

The length of the variance request is about 60 feet while the width is about 1.9 feet for a total of about 114 square feet.

Attached is a copy of the property survey showing the area of encroachment.

Please consider this request as it will help all users of the municipal lot to more safely access the church property, as well as the Mulberry Street sidewalk.

Should you have any questions, please advise.

Very truly yours,

Mark D. Fellenzer, P.E.
Principal

MDF/sb
Enclosure

cc: Mayor Joseph DeStefano

NOTES:

1. ONLY COPIES FROM THE ORIGINAL OF THIS SURVEY MARKED WITH AN ORIGINAL OF THE LAND SURVEYOR'S INKED SEAL OR HIS/HER EMBOSSED SEAL SHALL BE CONSIDERED TO BE VALID TRUE COPIES.
2. CERTIFICATIONS INDICATED HEREON SIGNIFY THAT THIS SURVEY WAS PREPARED IN ACCORDANCE WITH THE EXISTING CODE OF PRACTICE FOR LAND SURVEYORS ADOPTED BY THE NEW YORK STATE ASSOCIATION OF PROFESSIONAL LAND SURVEYORS. SAID CERTIFICATIONS SHALL RUN ONLY TO THE PERSON FOR WHOM THE SURVEY IS PREPARED, AND ON HIS/HER BEHALF TO THE TITLE COMPANY, GOVERNMENTAL AGENCY AND LENDING INSTITUTION LISTED HEREON. CERTIFICATIONS ARE NOT TRANSFERABLE TO ADDITIONAL INSTITUTIONS OR SUBSEQUENT OWNERS.
3. UNDERGROUND IMPROVEMENTS OR ENCROACHMENTS, IF ANY, ARE NOT SHOWN HEREON.
4. REFERENCE: A MAP ENTITLED, "DISPOSITION MAP URBAN RENEWAL AREA No. 1", AS FILED IN THE ORANGE COUNTY CLERK'S OFFICE ON MAY 2, 1967, AS MAP No. 2259. REFERENCE: DEED LIBER 13913 AT PAGE 1215.
5. SUBJECT TO AN ACCURATE AND UP TO DATE TITLE REPORT.
6. SUBJECT TO ANY EASEMENTS OR AGREEMENTS OF RECORD, IF ANY.

AREA = 0.292 +/- ACRES

TAX MAP SECTION 35, BLOCK 2 LOT 6

REVISIONS		APPROVED
DATE	DESCRIPTION	
6/13/25	ORIGINAL PREPARATION	SPD

TITLE: LOT LINE CHANGE FOR LANDS OF:

NEW BEGINNINGS HOUSE OF WORSHIP
CITY of MIDDLETOWN
ORANGE COUNTY, NEW YORK

DOLSON SURVEYING SERVICES
30 TARA TERRACE
PORT JERVIS, NEW YORK 12771
MOBILE: (845) 551-8786

JOB NO.	DWG NO.	REV
25-002	25-002SUR	1
SCALE 1"=30'	E-MAIL DSSDOLSON@LIVE.COM	SHEET 1 OF 1

CERTIFIED:

- NEW BEGINNINGS HOUSE OF WORSHIP
- DAVID SOTO

UNAUTHORIZED ALTERATION OR ADDITION TO THIS PLAN IS A VIOLATION OF SECTION 7206(2) OF THE NEW YORK STATE EDUCATION LAW. COPIES OF THIS MAP NOT HAVING THE SEAL OF THE SURVEYOR OR ENGINEER SHALL NOT BE USED. CERTIFICATIONS ARE NOT TRANSFERABLE TO ADDITIONAL INSTITUTIONS OR SUBSEQUENT OWNERS. USE OF UNSEALED COPIES OF THIS DOCUMENT IN ANY COURT, FINANCIAL OR LAND TRANSACTION, OR FILING WITH ANY PUBLIC AGENCY OR OFFICE IS AN UNAUTHORIZED USE AND A VIOLATION OF FEDERAL COPYRIGHT LAWS.

METES & BOUNDS LANDS TO BE CONVEYED TO LOT 35-2-6 FROM LOT 35-2-7

All that certain piece or parcel of land lying and being in the City of Middletown, County of Orange and State of New York and being more particularly bounded and described as follows:

BEGINNING at a point on the southerly bounds of Mulberry Street, said point being the northwesterly corner of lands herein; running thence

S 53°37'40" E a distance of 99.00 feet; thence

N 36°22'20" E a distance of 2.00 feet; thence

N 53°37'40" W a distance of 99.00 feet; thence

S 37°00'00" W a distance of 2.00 feet to the point or place of **BEGINNING**.

Containing an area of 198 Square Feet



**CITY OF MIDDLETOWN, NEW YORK
BOARD OF ESTIMATE
RECORD OF VOTE**

THE FOLLOWING WAS PRESENTED

By: None
Seconded by: None
Date of Adoption: July 1, 2025
Index No: 187-25

I hereby certify that the attached is a true copy of a Resolution and/or Local Law adopted by the City of Middletown Common Council.

Richard P. McCormack
Clerk to the Common Council

Names	Ayes	Noes	Abstain	Absent
Ald. Tobin				
Ald. Jean-Francois				
Ald. Johnson				
Ald. Wray				
Ald. Kleiner				
Ald. Green				
Ald. Witt				
Ald. Masi				
Pres. Rodrigues				
Total				

I hereby approve the attached Resolution/Local Law.

Joseph M. DeStefano, Mayor

Date

**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.

Prepared by:

Attachments:

1.	Highland Ave Tank Amendment 2 Proposal 2025.04.18
----	---



April 18, 2025

Mr. Jacob S. Tawil, P.E., Commissioner of Public Works
City of Middletown
16 James St.
Middletown, NY 10940

**Re: Highland Avenue Water Storage Tank Rehabilitation
Proposal for Additional Professional Services – Amendment No. 2**

Dear Jacob:

We are providing the following summary and fee request for additional construction phase services for the referenced project, as recently discussed.

Our Contract Amendment No. 1 for the project provided compensation for additional services through early May 2024 related to NUCO Painting Corp.'s (NUCO) delays in completing the project. In the 11 months since then, we have invested considerable additional effort to bring the project to completion, but NUCO has still not completed their obligations under their contract with the City. This additional effort includes:

- NUCO communications
- Bonding company communications
- T-Mobile communications
- EFC communications
- Paint finish issue resolution

As discussed at our meeting, we are requesting additional compensation for our added efforts to help bring the project to completion. At present, those efforts amount to \$15,500 beyond our currently contracted fees through Amendment No. 1. Our remaining additional effort required will not be fully known until the project is closed out, but we anticipate it to be approximately an additional \$5,000, for an estimated total of \$20,500 which we are requesting as a contract amendment, as follows:

Additional Construction Services – Amendment No. 2

Provided through April 18, 2025	\$ 15,500.00	Lump Sum*
April 19, 2025 to Project Completion	<u>\$ 5,000.00</u>	Estimate, Hourly
Total Amendment No. 2	\$ 20,500.00	

*Hourly backup can be provided upon request.

Based on this \$20,500 figure and the \$51,469 Additional Construction Services component of Amendment No. 1 which was due to NUCO's delays, we estimate that our total additional



fees on the project related to NUCO's delays will be approximately \$72,000. These additional services should be compensated from Liquidated Damages taken from NUCO's contract.

The Agreement between the City and NUCO includes Liquidated Damages of \$500 per day for failure to meet the Final Completion Date, and stipulated a Substantial Completion date of October 31, 2023 and a Final Completion date of November 30, 2023. The tank was placed back into service on February 17, 2024 which we consider the actual Substantial Completion date. Final Completion has not yet been achieved.

As of April 18, 2025, NUCO is 536 days beyond the contractual Final Completion date, which is equivalent to \$267,500 and which will continue to accrue at \$500 per day until Final Completion of the Work is achieved. We recommend that at minimum, the City impose liquidated damages sufficient to cover CPL's fees related to NUCO's delays.

If this proposal is acceptable, please provide an authorized signature in the designated space below and return one copy.

We appreciate the opportunity to be of service to the City of Middletown and look forward to the completion of this important project. Please contact us if you have any questions or need additional information.

Very truly yours,

CPL

A blue ink signature of David A. Chase, written in a cursive style.

David A. Chase, P.E., LEED AP
Principal

A blue ink signature of Timothy J. Moot, written in a cursive style.

Timothy J. Moot, P.G.
Vice President

Proposal Accepted By:

Signature: _____
City of Middletown

Date: _____



**CITY OF MIDDLETOWN, NEW YORK
BOARD OF ESTIMATE
RECORD OF VOTE**

THE FOLLOWING WAS PRESENTED

By: None
Seconded by: None
Date of Adoption: July 1, 2025
Index No: 188-25

I hereby certify that the attached is a true copy of a Resolution and/or Local Law adopted by the City of Middletown Common Council.

Richard P. McCormack
Clerk to the Common Council

Names	Ayes	Noes	Abstain	Absent
Ald. Tobin				
Ald. Jean-Francois				
Ald. Johnson				
Ald. Wray				
Ald. Kleiner				
Ald. Green				
Ald. Witt				
Ald. Masi				
Pres. Rodrigues				
Total				

I hereby approve the attached Resolution/Local Law.

Joseph M. DeStefano, Mayor

Date

**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.

Prepared by:

Attachments:

1.	New Water Tanks Additional Services Proposal 2025.05.06
----	---



May 6, 2025

Mr. Jacob S. Tawil, P.E., Commissioner of Public Works
City of Middletown
16 James St.
Middletown, NY 10940

**Re: New Water Storage Tanks
Proposal for Additional Construction Phase Services**

Dear Jacob:

We are providing the following summary and fee request for additional construction phase services for the New Water Storage Tanks project to replace the Mountain Avenue and High Barney tanks, as recently discussed. This request is due to two factors:

Construction Time Extension due to PCB Soils

The original construction contract between the City and DN Tanks included a Substantial Completion date of August 31, 2024 and a Final Completion date of September 30, 2024. As you are aware, the project is still not complete, partially due to the presence of PCB-contaminated soils discovered under the original Mountain Avenue Tank, which are still awaiting removal from the site pending the required approvals. Also, final sitework needs to be completed at both sites.

Our Construction Related Services fee, as per our original September 1, 2015 proposal, was intended to provide services through the original Final Completion date. The current Final Completion date per Change Order is May 31, 2025, or 8 months past the original date, but based on the status of the PCB soil removal and the remaining sitework to follow, we believe that this date will be exceeded and are assuming that construction may continue until the end of June 2025. Throughout this time, we have been providing ongoing services including PCB Soils-related services (coordination with contractors, NYSDEC, testing firm, etc.), weekly SWPPP inspections, Construction Administration services (Contractor coordination, pay applications, change orders, allowances, etc.), and NYSEFC coordination.

SWPPP Inspection Requirements

To satisfy the MWBE participation requirements associated with the NYSEFC funding, CPL subcontracted our onsite project representation services during the original construction timeframe to KARC Planning Consultants. However, due to changes in NYSDEC regulations requiring SWPPP inspectors to be under the direct supervision of a qualified professional (PE, LA, or CPESC) employed by the same company, KARC's onsite project representative was not able to perform the SWPPP inspection services which he otherwise would have been able to do while already onsite, requiring CPL to perform the SWPPP inspections. This additional effort was not contemplated in our 2015 proposal, as the regulations at that time would have permitted KARC to perform the SWPPP inspections.



As discussed at our meeting, we are requesting additional compensation for these additional efforts to help bring the project to completion. To date, those efforts amount to \$70,000 beyond our currently contracted fees. Our remaining additional effort required will not be fully known until the project is closed out, but we anticipate it to be approximately an additional \$20,000, for an estimated total of \$90,000 which we are requesting as a contract amendment, as follows:

Additional Construction Services	
Provided through April 18, 2025	\$ 70,000.00 Lump Sum*
April 19, 2025 to Project Completion**	<u>\$ 20,000.00</u> Estimate, Hourly
Total Amendment	\$ 90,000.00

* Hourly backup can be provided upon request. Includes services provided since the original Final Completion date of September 30, 2024, as well as SWPPP inspections during the original construction timeframe.

** Assumed to be end of June 2025.

The City should be able to use EFC contingency funding for these Additional Construction Services, in addition to using that funding for the PCB soils removal and disposal. While the final costs for PCB soils removal and disposal will not be known until those services are completed since the exact extent of required soils removal cannot be determined until the removal is actually taking place, based on our best estimate at this time it appears that the remaining EFC contingency funding will likely be sufficient for both our Additional Construction Services and the PCB soils removal and disposal.

If this proposal is acceptable, please provide an authorized signature in the designated space below and return one copy.

We appreciate the opportunity to be of service to the City of Middletown and look forward to the completion of this important project. Please contact us if you have any questions or need additional information.

Very truly yours,
CPL

David A. Chase, P.E., LEED AP
Principal

Timothy J. Moot, P.G.
Vice President

Proposal Accepted By:

Signature: _____
City of Middletown

Date: _____