



**CITY OF MIDDLETOWN
BOARD OF ESTIMATE AND APPORTIONMENT MINUTES
NOVEMBER 18, 2025**

[IGNORE_INDENT]

Roll Call

Present: Mayor DeStefano, Alderman Masi

Absent: Council President Rodrigues

Approval of Minutes

Motion by: Mayor DeStefano **Seconded by:** Alderman Masi

AYES: Mayor DeStefano, Alderman Masi

NAYS: None

ABSTAIN: None

New Business

Authorization to approve the agreement related to financial transaction and other related arrangements for the O&W Building Project

WHEREAS, Middletown O&W Local Development Corporation, a New York not-for-profit corporation (“LDC”), Middletown O&W Station Managing Member, LLC, a New York limited liability company (“Managing Member”), Middletown O&W Station, LLC, a New York limited liability company (“Landlord”), and Middletown O&W Station Prime Tenant, LLC, a New York limited liability company (the “Prime Tenant”, and together with the Managing Member, the Landlord, and the LDC, the “Transaction Parties,” and each, a “Transaction Party”) intend to enter into certain financing transactions and related arrangements in connection with the rehabilitation, development and construction of the historic O&W Railway into a 26,400 square foot multi-service community, childhood education, and support services center (the “Project”), located at 2 Low Avenue f/k/a 2-20 Low Avenue, Middletown, NY 10940 (the “Property”);

WHEREAS, certain Transaction Parties desire to enter into a federal New Markets Tax Credit transaction (the “NMTC Transaction”) pursuant to which Landlord would accept loans in the aggregate principal amount of approximately \$11,720,000 (the “QLICI Loan”), which will be used to partially finance the Project;

WHEREAS, certain Transaction Parties desire to enter into a federal and state historic tax credit financing transaction (the “HTC Transaction”) with NTCIC NY Historic Preservation Fund, LLC, a Delaware limited liability company (“HTC Investor”), as the federal historic tax

credit investor and the state historic tax credit investor, to partially finance the Project, whereby the Landlord intends to redevelop the Property in such manner to qualify for the tax credits allowable under Section 47 of the Internal Revenue Code and State HTC Act (as defined in the Prime Tenant OA) in connection with the “certified rehabilitation” of a “certified historic structure” (collectively, the “Historic Tax Credits”);

WHEREAS, as a condition to closing the NMTC Transaction and the HTC Transaction, certain financing parties require that the City of Middletown (the “City”) make and provide certain guarantees and indemnities, and perform certain other actions as described herein; and

WHEREAS, the Common Council (the “Council”) of the City has determined that the City will receive substantial direct and indirect benefits from the NMTC Transaction and the HTC Transaction and certain other transactions related thereto (as further described herein), and hereby approves and adopts the following resolutions.

New Markets Tax Credit Transactions

WHEREAS, in connection with the NMTC Transaction, DV-O&W Station QEI, LLC, a Delaware limited liability company (“Investment Fund”), desires to make a “qualified equity investment” (as such term is defined in Section 45D of the Internal Revenue Code) (the “QEIs”) in each of (i) NTCIC Sub-CDE (as defined below) pursuant to that certain Amended and Restated Operating Agreement of NTCIC Sub-CDE, and (ii) ESNMC Sub-CDE (as defined below) pursuant to that certain Amended and Restated Operating Agreement of ESNMC Sub-CDE, and the QLICI Lenders (as defined below) desire to accept the QEIs;

WHEREAS, in connection with the NMTC Transaction, NTCIC-O&W, LLC, a Delaware limited liability company (“NTCIC Sub-CDE”) and ESNMC Subsidiary CDE XIX, LLC, a New York limited liability company (“ESNMC Sub-CDE”, and together with NTCIC Sub-CDE, the “QLICI Lenders”, and each, a “QLICI Lender”), desire to make the QLICI loan to the Landlord, and Landlord desires to accept the QLICI Loan, pursuant to that certain Loan and Security Agreement (“QLICI Loan Agreement”), by and among the QLICI Lenders and the Landlord;

WHEREAS, in connection with the NMTC Transaction, to induce the QLICI Lenders to make the QLICI Loans, and to induce the Investment Fund to make the QEIs, the City desires to enter into (i) that certain Environmental Indemnity Agreement (the “Environmental Indemnity”), by and among Landlord, the City and LDC, as indemnitors (the “Indemnitors”), for the benefit of the QLICI Lenders, pursuant to which the Indemnitors will indemnify and hold the QLICI Lenders harmless against and from certain environmental obligations for which the QLICI Lenders may incur liability; (ii) that certain Guaranty of Payment, Performance and Completion (the “Guaranty”), by the City and LDC, for the benefit of the QLICI Lenders, pursuant to which the City will guaranty the payment and performance of certain obligations of the Landlord, as borrower, due under the QLICI Loan Agreement, (iii) that certain Community Benefits Agreement (“Community Benefits Agreement”), by and among the City, the Landlord, and the QLICI Lenders; and (iv) that certain QALICB Recapture Indemnity by Landlord, LDC, and the City for the benefit of Valley National Bank, a national banking association (the “QALICB Indemnity”);

WHEREAS, in connection with the NMTC Transaction, the City intends to enter into that certain Assignment and Assumption of Construction Contracts (“Assignment of Contracts”), pursuant to which the City shall assign to Landlord all of the City’s rights, title an interest in and to the Contracts, as that term is defined in the Assignment of Contracts, and in accordance with the terms and conditions contained therein; and

WHEREAS, the Council has determined that it is desirable and in the best interests of the City to enter into the Environmental Indemnity, the Guaranty, the Community Benefits Agreement, the Assignment of Contracts, and the QALICB Indemnity, and perform its obligations thereunder.

NOW, THEREFORE, BE IT RESOLVED, that the City is authorized to enter into, and to exercise its rights and perform its obligations under the Environmental Indemnity, the Guaranty, the Community Benefits Agreement, the Assignment of Contracts, and the QALICB Indemnity; and

FURTHER RESOLVED, that any duly elected or appointed officer, manager, or member, as applicable (collectively, the “Authorized Representatives”, and each, an “Authorized Representative”), including, without limitation, Joseph M. DeStefano, as Mayor of the City, be, and hereby is, authorized and directed for and on behalf of the City to (i) execute and deliver, in connection with the QEIs, QLICI Loan and the NMTC Transaction, the Guaranty, the Environmental Indemnity, the Community Benefits Agreement, the Assignment of Contracts, the QALICB Indemnity, and any and all other security agreements, promissory notes, pledges or assignments of any collateral, indemnities, certificates, affidavits, financing statements, flow of funds memoranda, applications, notices, community benefits agreements, subordination agreements, and any other instruments, agreements or certificates of any kind or nature whatsoever relating thereto to which each is a respective party, and (ii) take, from time to time, any other actions which they shall, in their discretion, determine to be appropriate to effect the transactions contemplated by the resolutions hereinabove adopted, all as negotiated and agreed upon by them and as they approve as being in the best interests of the City, and the execution and delivery of any such document or instrument or the taking of any such action by them shall constitute conclusive evidence that the terms and conditions contained in said documents or instruments have been determined to be appropriate by them on behalf of the City and shall be conclusive evidence of their authority so to do.

Historic Tax Credit Transactions

WHEREAS, in connection with the HTC Transaction, (i) Prime Tenant will lease the Property from HTC Landlord pursuant to the terms of that certain HTC Lease (“HTC Lease”), by and between Prime Tenant and Landlord, whereby Landlord has agreed to pass through the Historic Tax Credits arising from Landlord’s rehabilitation of the Property to Prime Tenant under Section 50 of the Code and the State HTC Act; and (ii) the HTC Investor will be admitted as the investor member of Prime Tenant and will contribute a capital contribution of approximately \$10,191,573 (“HTC Equity”), pursuant to the terms and conditions of that certain Amended and Restated Operating Agreement of Prime Tenant (“Prime Tenant OA”); (iii) the City will enter into that certain Development Agreement, (“Development Agreement”), by and between Landlord and the City; and (iv) Landlord will enter into that certain Bridge Loan Agreement (“Bridge Loan Agreement”), by and between Landlord and Lincoln Savings Bank, an Iowa state banking corporation (“LSB”), pursuant to which LSB agrees to lend to Landlord the Loan Proceeds, as that term is defined in the Bridge Loan Agreement, for the purposes of and subject to all of the terms contained therein, and the City shall enter into that certain Repayment and Completion Guaranty (the “Bridge Loan Guaranty”) for the benefit of LSB, pursuant to which

the City shall guaranty certain obligations due by Landlord under the Bridge Loan Agreement; WHEREAS, to induce the HTC Investor to enter into the HTC Transaction, contribute the HTC Equity, and become investor member of the Prime Tenant pursuant to the Prime Tenant OA, the City desires to enter into (i) that certain Guaranty (the “HTC Guaranty”) in favor of HTC Investor, pursuant to which the City will guaranty the payment and performance of certain obligations of (i) the Managing Member due under the Master Tenant OA and that certain Amended and Restated Operating Agreement of Landlord, (ii) the City, due under the Development Agreement as Developer, and (iii) Prime Tenant and Landlord due under the HTC Lease; and

WHEREAS, the Council has determined that it is desirable and in the best interests of the City to take action as required to facilitate the HTC Transaction, including without limitation, entering into the Development Agreement, the HTC Guaranty, and the Bridge Loan Guaranty, and performing its obligations thereunder.

NOW, THEREFORE, BE IT RESOLVED, that in connection with the HTC Transaction, the City, as applicable, is authorized to enter into, execute and/or deliver, and exercise its rights and to perform its obligations under the Development Agreement, the HTC Guaranty, the Bridge Loan Guaranty, and any and all agreements, documents, guaranties, assignments, certificates, and other instruments to which the City is, or will be, a party, as are contemplated or required by the HTC Guaranty or Development Agreement, or as any Authorized Representative deems necessary or desirable in connection with the HTC Transaction; and

FURTHER RESOLVED, that the Authorized Representatives be, and hereby are, authorized and directed, on behalf of the City to (i) execute and deliver, perform under, file or cause to be filed, as applicable or necessary, the HTC Guaranty and the Development Agreement, and any and all other agreements, documents, certificates, and other instruments any Authorized Representative deems necessary or advisable in order to carry into effect the intent of the foregoing resolutions or to comply with or perform under the documents approved or authorized by the foregoing, and (ii) take from time to time any other actions which any Authorized Representative deems necessary or advisable in order to carry into effect the intent of the foregoing resolutions or to comply with or perform under the documents approved or authorized by the foregoing, all as negotiated and agreed upon by them and as they approve as being in the best interests of the City, and the execution and delivery of, or performance under, any such document or instrument or the taking of any such action by them shall constitute conclusive evidence that the terms and conditions contained in said documents or instruments have been determined to be appropriate by them on behalf of the City and shall be conclusive evidence of their authority so to do.

Ground Lease, RECAP Lease, Capital Agreement, and Funding

WHEREAS, the City is the fee owner of the Property, and in connection with the Project, desires to lease the Property to Landlord pursuant to that certain Lease between the City and Landlord (the “Ground Lease”);

WHEREAS, the City is party to that certain Lease Agreement (the “RECAP Lease”), dated September 26, 2025, by and between the City and Regional Economic Community Action Program Inc., a New York non-profit corporation (“RECAP”), and in connection with the HTC Transaction, the City desires to (i) amend and restate the RECAP Lease in its entirety, pursuant to that certain Amended and Restated Lease Agreement between the City and RECAP, as amended, restated or otherwise modified from time to time (the “A&R RECAP Lease”); and (ii) assign the A&R RECAP Lease to the Prime Tenant;

WHEREAS, the City is party to that certain Agreement between the City and RECAP (the “Capital Agreement”), concerning capital expenditures for the Project, and the City desires to amend and restate the Capital Agreement in its entirety pursuant to that certain Amended and Restated Agreement between the City and RECAP, as amended, restated or otherwise modified from time to time (the “A&R Capital Agreement”);

WHEREAS, to allow for the successful completion of the Project and potential funding of contingent obligations of the City, the Council has agreed to authorize additional funding for the Project up to ten percent (10%) of the Project’s expected budget, the utilization of which may be authorized by the City as the City shall deem necessary, in its sole discretion (the “Additional Funding”); and

WHEREAS, the Council has determined it to be in the best interest of the City to (i) enter into the Ground Lease, (ii) amend and restate the Capital Agreement and enter into the A&R Capital Agreement; (iii) amend and restate the RECAP Lease and enter into the A&R RECAP Lease; and (iv) authorize the Additional Funding.

NOW, THEREFORE, BE IT RESOLVED, that City be, and hereby is, authorized to (i) enter into the Ground Lease, (ii) amend and restate the Capital Agreement and enter into the A&R Capital Agreement; (iii) amend and restate the RECAP Lease and enter into the A&R RECAP Lease; (iv) assign the A&R RECAP Lease to the Prime Tenant pursuant to that certain Assignment of Amended and Restated Lease Agreement among Prime Tenant, the City, and RECAP; and (v) utilize the Additional Funding when and as the City shall deem necessary; and

FURTHER RESOLVED, that the Authorized Representatives be, and hereby are, authorized and directed, for and on behalf of the City to (i) execute and deliver, perform under, file or cause to be filed, as applicable or necessary, in connection with the transactions contemplated by the resolutions hereinabove adopted, the Ground Lease, the RECAP Lease, as amended and restated, the Capital Lease, as amended and restated, and any and all other instruments, agreements, documents amendments or certificates of any kind or nature whatsoever; and (ii) take from time to time any other actions which they shall in their discretion determine to be appropriate to effect the transactions contemplated by the resolutions hereinabove adopted, all as negotiated and agreed upon by them and as they approve as being in the best interests of the City, and the execution and delivery of any such document or instrument or the taking of any such action by them shall constitute conclusive evidence that the terms and conditions contained in said documents or instruments have been determined to be appropriate by them on behalf of the City and shall be conclusive evidence of their authority so to do.

General Resolutions

RESOLVED, that the Authorized Representatives be, and each of them individually hereby is, authorized and empowered for and on behalf of the City, to (i) take or cause to be taken any and all such further actions, perform such other acts and to prepare, execute and deliver, or cause to be prepared, executed and delivered, and where necessary or appropriate file or cause to be filed with the appropriate governmental authorities all such other instruments and documents, including but not limited to all certificates, contracts, bonds, agreements, documents, instruments, receipts or other papers, (ii) incur and pay or cause to be paid all fees and expenses and (iii) engage such persons, all as such Authorized Representatives shall in their

judgment determine to be necessary or appropriate to carry out fully the intent and purposes of the foregoing resolutions (including, without limitation, the consummation and performance of all transactions and other acts thereby contemplated or incident thereto), and any such document executed or act performed by them or any of them shall be conclusive evidence of their or his/her authority so to do;

FURTHER RESOLVED, that all actions previously taken by the City or any Authorized Representative in connection with the transactions and matters contemplated by the foregoing resolutions are hereby adopted, ratified, confirmed and approved in all respects; and FURTHER RESOLVED, that the Common Council of the City of Middletown, NY, concurs with the Board of Estimate and Appointment and hereby approves and adopts the aforementioned resolutions and any form of specific resolution to carry into effect the purpose and intent of the foregoing resolutions, or covering authority included in matters authorized in the foregoing resolutions is hereby adopted and incorporated herein by reference, and the respective Secretary of the City, or the person responsible for maintaining the records of the City, is hereby authorized and directed to insert a copy thereof in the minute books of the City following the record of this action and to certify the same as having been duly adopted hereby.

Motion by: Alderman Masi **Seconded by:** Mayor DeStefano

AYES: Mayor DeStefano, Alderman Masi

NAYS: None

ABSTAIN: None

Authorization to Re -levy 2024 Water/Sewer Delinquent Accounts to the 2026 Tax Roll

Requesting from the Board of Estimate authorization to re -levy 2024 water and sewer delinquent bills into the 2026 real property tax bills in the following amounts:

Unpaid Sewer: 524 Parcels = \$291,712.75

Unpaid Water: 526 Parcels = \$410,694.79

Motion by: Mayor DeStefano **Seconded by:** Alderman Masi

AYES: Mayor DeStefano, Alderman Masi

NAYS: None

ABSTAIN: None

Authorization to Re-levy 2024 Misc Delinquent Bills to the 2026 Tax Roll

Requesting from the Board of Estimate authorization to re -levy 2024 Miscellaneous delinquent bills into the 2026 real property tax bills in the following amounts:

Unpaid Miscellaneous Bills: 86 Parcels = \$28,993.51

Motion by: Mayor DeStefano **Seconded by:** Alderman Masi

AYES: Mayor DeStefano, Alderman Masi

NAYS: None

ABSTAIN: None

Authorization to Approve the Young Explosive Fireworks Exhibition agreement

Requesting the approval of Young Explosives Fireworks Exhibition agreement and to authorize the Mayor to sign the 2026 agreement.

The 2026 fireworks display will be held on Wednesday, July 1, 2026 at Fancher Davidge

Park. This is a budgeted item.

Upon consultation with our corporation counsel Mr. Smith this service is deemed as a professional service.

Motion by: Mayor DeStefano **Seconded by:** Alderman Masi

AYES: Mayor DeStefano, Council President Rodrigues, Alderman Masi

NAYS: None

ABSTAIN: None

Authorization to Amend Original Resolution to Accept Donation for the Emergency Food Assistance Program

Request to Accept Donations for the Emergency Food Assistance Program

Please accept donations totaling \$630 for the Emergency Food Assistance Program. These funds will be used to purchase food gift cards for individuals and families experiencing financial hardship as a result of the government shutdown and delays in receiving SNAP benefits.

*It is requested that the \$630 in donations be deposited into **revenue line 2705.00 – Gifts and Donations**, and that **expense line 7020.00 – Use of Recreation Donations** be increased accordingly to allow for the purchase of food gift cards.*

Thank you,

Motion by: Alderman Masi **Seconded by:** Council President Rodrigues

AYES: Mayor DeStefano, Council President Rodrigues, Alderman Masi

NAYS: None

ABSTAIN: None

Resolution Accepting a \$1,140 Donation for the Middletown Fire Department

*Be it resolved that the Common Council of the City of Middletown concurs with the Board of Estimate and Apportionment and hereby accepts a check in the amount of **\$1,140.00** from **Latitude Digital on behalf of Ford Motor Company**, representing proceeds from the test-drive fundraiser held in September; and*

Be it further resolved that the 2025 General Fund Budget be amended as follows:

Action	Account #	Description	Amount
Increase	A.3410.492	Firefighter Recognition	\$1,140.00

Be it further resolved that said funds shall be deposited into the above-referenced account.

Motion by: Council President Rodrigues **Seconded by:** Alderman Masi

AYES: Mayor DeStefano, Council President Rodrigues, Alderman Masi

NAYS: None

ABSTAIN: None

Water/Sewer/Lawn Maintenance Adjustment

Adjournment

@ 7: 27 P.M.

Motion by: Council President Rodrigues **Seconded by:** Alderman Masi

AYES: Mayor DeStefano, Council President Rodrigues, Alderman Masi

NAYS: None

ABSTAIN: None