



**CITY OF MIDDLETOWN  
COMMON COUNCIL MEETING AGENDA  
DECEMBER 9, 2025**

[IGNORE\_INDENT]

1. PLEDGE OF ALLEGIANCE
2. ROLL CALL
3. REMARKS OF THE MAYOR
4. NEW BUSINESS
  - 336- Resolution Authorizing an Amended and Restated Lease Agreement with the  
25 Regional Economic Community Action Program Inc. (RECAP)
  - 337- Resolution Authorizing an Amended and Restated Agreement with the Regional  
25 Economic Community Action Program, Inc. (RECAP)
  - 338- Resolution Authorizing an Assignment and Assumption Agreement with the  
25 Middletown O&W Local Development Corporation (LDC)
5. ADJOURNMENT



**CITY OF MIDDLETOWN, NEW YORK  
COMMON COUNCIL  
RECORD OF VOTE**

THE FOLLOWING WAS PRESENTED

By: None  
 Seconded by: None  
 Date of Adoption: December 9, 2025  
 Index No: 336-25

**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 an Amended and Restated Lease Agreement with the Regional Economic Community Action Program Inc. (RECAP)**

BE IT RESOLVED; that the Common Council of the City of Middletown, NY concurs with the Board of Estimate and Apportionment authorizes an amended and restated lease agreement with the Regional Economic Community Action Program Inc. (RECAP) to lease the O & W Building at 2 Low Avenue, Middletown, NY.

BE IT FURTHER RESOLVED; that the Common Council of the City of Middletown, NY concurs with the Board of Estimate and Apportionment authorizes the Mayor to sign the agreement, subject to minor changes to be reviewed by Corporation Counsel.

Prepared by:  
 Maria Bruni, Director of Economic and Community Development

**Attachments:**

1.	Amended and Restated RECAP Lease
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## AMENDED AND RESTATED LEASE AGREEMENT

This Amended and Restated Lease Agreement (this "Lease") is entered into as of [\_\_\_\_\_] , 2025, by and between the **CITY OF MIDDLETOWN**, a New York municipal corporation having a principal office at 16 James Street, Middletown, New York, 10940, together with its successors and assigns, hereinafter referred to as "Landlord," and **REGIONAL ECONOMIC COMMUNITY ACTION PROGRAM INC.**, a New York non-profit domestic corporation having an address at 40 Smith Street, Middletown, New York, 10940, hereinafter referred to as "Tenant."

### RECITALS

**WHEREAS**, Landlord and Tenant previously entered into that certain Lease Agreement dated September 26, 2025, whereby Landlord agreed to lease to Tenant and Tenant agreed to lease from Landlord the Ontario & Western railroad station (O&W Building) located at 2 Low Avenue, Middletown, New York, together with outdoor play space at same location, comprising a total of approximately 26,400 feet as shown on the site plan prepared by Fusco Engineering, entitled "FORMER O&W STATION REHABILITATION & RESTORATION", which is attached hereto as Exhibit A (the "Demised Premises"), and to be used as a Head Start program with additional child care provided by Tenant, for a term commencing after a Certificate of Occupancy is issued following the rehabilitation and development of the Demised Premises (the "Initial Lease"); and

**WHEREAS**, the Landlord and Tenant hereby amend and restate the Initial Lease in its entirety as set forth below.

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

1. **Letting of Premises.** The Landlord hereby agrees to lease to the Tenant, and the Tenant hereby agrees to lease from the Landlord, the Demised Premises, commencing with and for the term described in Section 2 below.

2. **Term.** The Tenant shall be entitled to have and hold the Demised Premises with the appurtenances, rights, and privileges for a fifteen (15) year term (the "Initial Term") beginning with the first day after the month in which a Certificate of Occupancy is issued permitting occupancy of the Demised Premises (the "Commencement Date"), subject to renewal as described in Section 6 below. The Tenant has not used or occupied the Demised Premises and shall have no right to use or occupy the Demised Premises prior to the Commencement Date.

3. **Rent.** Annual rent for the Initial Term shall be \$22.00 per square foot, payable in advance in monthly installments commencing on the Commencement Date and continuing each and every month thereafter for the Initial Term. Annual rent shall increase 2% each year of the Initial Term.

4. **Utility Charges and Assessments.** Tenant is responsible for separately metered electricity, heat, water, and sewer, the structural components of which will be maintained by the Landlord. Tenant is responsible for all other utilities, including, but not limited to, telephone, cable, and internet services.

5. **Security.** The parties have agreed that there shall be no security deposit.

6. **Renewal.** This Lease may, at the option of the Tenant, be renewed for a fifty-nine (59) month term beginning on the first day of the month following the expiration of the Initial Term, on the same terms and conditions as are specified herein, except that the rent shall be calculated annually based upon the current fair market rent value. This value shall be calculated annually by a professional appraiser agreed upon by the parties. The Tenant must give written notice to the Landlord of its intention to renew not later than one hundred eighty (180) days prior to the expiration of the Initial Term.

7. **Maintenance.**

- a. The Tenant must maintain the Demised Premises in a clean and orderly fashion at all times.
- b. The Tenant must provide for preventive pest control services in the Demised Premises.
- c. The Landlord shall maintain parking lots and public sidewalks, including snow removal and lighting. The Tenant is responsible to maintain any interior sidewalks.
- d. The Tenant shall maintain the outdoor play space.
- e. The Landlord shall install and maintain a non-chain link fence a minimum of 6 feet high along the railway side, the length of the property, for security.
- f. The Landlord shall provide landscaping and trash removal services.

8. **Repairs and Improvements.**

- a. The Landlord shall, prior to the Commencement Date, provide all renovations and improvements described in the document dated September 25, 2025, drafted by Fusco Engineering and Land Surveying DPC, entitled Former O&W Station Rehabilitation Project No. 21-088, attached hereto as Exhibit B.
- b. The Landlord shall take care of the Demised Premises, fixtures and appurtenances, and Landlord shall make all repairs necessary to put and keep the premises in good order and condition at its own cost and expense, except for those repairs incidental to the Tenant's day-to-day occupancy of the Demised Premises (including maintenance and upkeep of the operating systems). All damage or injury to the Demised Premises and to the fixtures, appurtenances and equipment thereof or to the building or to its fixtures, appurtenances and equipment which may be caused by the carelessness, omission, neglect, improper conduct, or other act of the Tenant or its employees, agents, or visitors (whether invited or uninvited) shall be repaired, restored, or replaced by the Tenant. Reasonable wear and tear shall

be excepted from the Tenant's obligation and responsibility to the condition of the Demised Premises.

- c. During the Term, the Tenant reserves the right to make minor alterations or installations, including but not limited to, installation of telephone and/or electrical outlets, erection or relocation of movable partitions, etc., subject to Landlord's confirmation that such alterations will comply with applicable approvals from and restrictions imposed by the National Park Service.
- d. The Tenant may make major improvements or alterations, provided that such improvements/alterations are (1) made with Landlord's consent (which the parties acknowledge and agree may be conditioned on approval from the National Park Service and Landlord's and its affiliates' lenders and other financing sources, including, without limitation, a historic tax credit investor), and (2) acceptance of the work by the Commissioner of Public Works. The costs of any such major improvements/alterations shall be borne by the Tenant.
- e. Any fixtures or equipment installed by the Landlord shall not be removed by the Tenant at any time unless the Landlord consents in writing.
- f. The Tenant shall at the end of the term quit and surrender the Demised Premises in as good of order and condition as when received, normal wear and tear and damage by the elements excepted.

9. **Compliance.** The Landlord shall ensure that the Demised Premises comply with all laws, rules, orders, ordinances, and regulations of any entity having jurisdiction over the Demised Premises. The Tenant, in its use of the Demised Premises, agrees to comply with all applicable laws, rules, orders, ordinances, and regulations.

10. **Landlord's Right of Entry.** The Tenant shall permit the Landlord (and Landlord's and its affiliates' lenders and other financing sources, including, without limitation, a historic tax credit investor) at all usual proper times to enter the Demised Premises for the purposes of inspection or sale; and suffer the Landlord to make repairs and improvements to all parts of the building and to comply with all governmental orders and requirements applicable to the building. The Tenant shall permit the Landlord during the one hundred eighty (180) days prior to the expiration of this Lease to place the usual notices of advertisement for rental upon the exterior of the Demised Premises, and to show the Demised Premises to prospective lessees. The Landlord (and Landlord's and its affiliates' lenders and other financing sources, including, without limitation, a historic tax credit investor), in exercising its rights under this Section 10, shall not unreasonably interfere with the Tenant's access, use, and occupancy of the Demised Premises.

11. **Quiet Enjoyment.** The Landlord covenants with the Tenant that the Tenant, upon complying with the terms of this Lease, shall and may peacefully and quietly enjoy the Demised Premises.

12. **Early Termination.** Commencing after the seventh (7<sup>th</sup>) year of the Term, the Tenant shall have the right of early termination of this Lease, provided that the Tenant provides

Landlord with **one hundred and twenty (120) days prior notice** of its intent to terminate, and pays the Landlord any amounts owed under this Lease.

13. **Notice.** Any notices or demands from Landlord to Tenant or from Tenant to Landlord shall be in writing and shall be deemed duly served by regular mail, addressed to Tenant at the address set forth herein or such other address as Tenant shall have designated by notice in writing to the Landlord; if to the Landlord, at the address of the Landlord set forth herein, or such other address as Landlord shall have last designated by notice in writing to the Tenant. Notice shall be deemed served when mailed or when hand delivered.

14. **Personal Property.** Any and all articles of personal property including, but not limited to, business and trade fixtures, machinery, equipment, cabinet work, furniture, movable partitions, carpeting, water coolers, and radio owned or installed by the Tenant at its sole expense are and shall remain the property of the Tenant and may be removed by Tenant at any time during the term of this Lease. Upon expiration of this Lease, Landlord may require the Tenant to remove all such personal property. If such property is removed at any time, the cost of repairing any damage to the building arising from such removal shall be paid by the Tenant.

15. **Signs.** The Tenant may post and maintain such signs and notices as is reasonably required to inform the public as to its location in the Demised Premises. All signs must be pre-approved by Landlord and by the applicable municipal building department and/or architectural review board.

16. **Subletting.** It is understood and agreed by and between the parties hereto that the Tenant may not sublet or assign any portion of the Demised Premises without the prior approval of the Landlord.

17. **Indemnification by Tenant.** The Tenant shall hold harmless and indemnify the Landlord and its officers, employees, and agents to the fullest extent permitted by law from and against any and all liability, obligations, losses, claims, and damages whatsoever, attributable to or caused by the negligence of Tenant or its employees, agents, clients, or visitors, provided that any such claims, causes of action, judgments, liabilities, damages, losses, costs, or expenses of the Landlord are not incurred or do not result from the negligence or the intentional wrongdoing of the Landlord or any of its members, officers, agents, or employees.

18. **Indemnification by Landlord.** The Landlord shall hold harmless and indemnify the Tenant and its officers, employees, and agents to the fullest extent permitted by law from and against any and all liability, obligations, losses, claims, and damages whatsoever, attributable to or caused by the negligence of Landlord or its employees or agents, provided that any such claims, causes of action, judgments, liabilities, damages, losses, costs, or expenses of the Tenant are not incurred or do not result from the negligence or the intentional wrongdoing of the Tenant or any of its members, officers, agents, or employees.

19. **Insurance.** The Tenant shall maintain throughout the term of this Lease, and any renewal thereof, at its own cost and expense, liability insurance naming the Landlord, the Landlord's lenders, and other financing parties as additional insureds, as they may require, for bodily injury and property damage with a combined limit of Two Million (\$2,000,000.00) Dollars

for loss/Four Million (\$4,000,000.00) Dollars for aggregate, together with primary noncontributory and waiver of subrogation for Landlord, or such other insurance as is acceptable to Greg Townsend of Marshall & Sterling and/or Landlord, and the Landlord shall be provided with a certificate thereof prior to Tenant's occupancy. The Tenant shall also provide the Landlord with a Certificate of Insurance showing workmen's compensation coverage. The Tenant shall also maintain throughout the term of the Lease, and any renewal thereof, casualty insurance sufficient to insure the value of goods and equipment stored or utilized in the subject building by the Tenant, since Landlord will be exempt from any and all liability for any damage to property possessed by Tenant caused by or resulting from steam, electricity, gas, water, rain, ice, snow, wind, or any leak or flow from or into any part of the building, or from any natural catastrophe or act of God, or from any other cause or happening whatsoever unless said damage be caused by or be due to the negligence of the Landlord or its members, officers, employees, or agents.

20. **Casualty.** Tenant must give Landlord prompt notice of fire, accident, damage, or dangerous or defective condition. Landlord is not required to repair or replace any equipment, fixtures, furnishings, or decorations unless originally installed by Landlord. If the fire or other casualty is caused by an act of neglect of Tenant, Tenant's employees, agents, clients, or visitors (whether invited or uninvited), then all repairs must be made at Tenant's expense. Landlord has the right to demolish or rebuild the building if there is substantial damage by fire or other casualty that endangers the structural integrity of the building. Landlord may cancel this Lease within thirty (30) days after the substantial fire or casualty by giving Tenant notice of Landlord's intention to demolish or rebuild. This Lease will end thirty (30) days after Landlord's cancellation notice to Tenant. Tenant must deliver the Demised Premises to Landlord on or before the cancellation date in the notice. If the Lease is cancelled, Landlord is not required to repair the premises or building. The cancellation does not release Tenant of liability in connection with the fire or casualty.

21. **Default.** If Tenant defaults with respect to any of the covenants herein contained, the Landlord may re-enter the Demised Premises by summary proceeding or otherwise, and the same to have again, re-possess, and enjoy. The Tenant expressly waives the service of any notice in writing of intention to re-enter. Tenant shall not be deemed to be in default under this Lease unless (A) in the case of a payment default, Tenant shall fail to cure such default within ten (10) days after Landlord shall have given Tenant written notice of such default, and (B) in the case of non-payment default, Tenant shall fail to cure such default within thirty (30) days after Landlord shall have given Tenant written notice of such default (or, if such non-payment default cannot reasonably be cured within such thirty (30) day period, Tenant shall have failed to commence such cure within such thirty (30) day period and, after such commencement, diligently pursued such cure to completion); provided, however, that any violation of the use restrictions set forth in Section 23, below, shall be a material default giving rise to an immediate right of termination of this Lease to the extent permitted by applicable law, notwithstanding any notice and/or cure rights that may be afforded to Tenant elsewhere in this Lease, including in this Section 21.

22. **Late Charge.** Notwithstanding the default provisions in Paragraph 21, above, in the event any payment of rent is not received within fifteen (15) days after it is due, a late charge of 5% of the entire payment shall be due to Landlord. Such late charge shall be paid with the next monthly rental payment.

23. **Use Restrictions.** Tenant shall not:

- a. conduct in the Demised Premises, or permit any subtenant or occupant of the premises to conduct in the Demised Premises, any use that is now or hereafter prohibited by the federal new markets tax credit program set forth in Section 45D of the Internal Revenue Code and the regulations thereunder (the “New Markets Tax Credit Program”) including, but not limited to:
  - i. rental to others of residential rental property, as defined in Section 168(e)(2)(A) of the Internal Revenue Code;
  - ii. any trade or business consisting predominately of the development or holding of intangibles for sale or license;
  - iii. a trade or business consisting of the operation of any private or commercial golf course, country club, massage parlor, hot tub facility, suntan facility, racetrack or other facility used for gambling, or any store the principal business of which is the sale of alcoholic beverages for consumption off premises;
  - iv. any trade or business the principal activity of which is farming, or
  - v. any activity that will cause the Premises to constitute a qualified low income building or that will utilize or benefit from the low income housing tax credit pursuant to Section 42 of the Internal Revenue Code;
- b. use or occupy the Premises for any unlawful purpose or in any manner that will constitute waste, nuisance or unreasonable annoyance to Landlord or any other party.

24. **Cooperation with Landlord.** The Tenant shall cooperate with Landlord to comply with all New Markets Tax Credit Program and Historic Tax Credit reporting requirements imposed on Landlord or related parties by their respective lenders and/or investors, including delivery of annual community benefits reports and financial reporting.

25. **Assignability.** The Landlord is authorized to assign its rights and obligations under this Lease to any entity directly or indirectly controlled by the City of Middletown or the Middletown O& W Local Development Corporation.

26. **Counterparts.** This Lease may be executed at different times and in any number of counterparts, each of which when so executed shall be deemed to be an original and all of which taken together shall constitute one and the same agreement. Delivery of an executed counterpart of a signature page to this Lease by facsimile or e-mail shall be as effective as delivery of a manually executed counterpart of this Lease.

*[signature page follows]*

IN WITNESS WHEREOF, the parties hereto have caused this Amended and Restated Lease Agreement to be executed as of the date first written above.

**LANDLORD:**

**City of Middletown**

By: \_\_\_\_\_

Name: Joseph M. DeStefano

Title: Mayor

**TENANT:**

**Regional Economic Community Action Program Inc.**

By: \_\_\_\_\_

Name: Charlie Quinn

Title: Chief Executive Officer

**Exhibit A**

Demised Premises

See attached.

**Exhibit B**

Capital Improvements

See attached.

## AMENDED AND RESTATED LEASE AGREEMENT

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### RECITALS

**WHEREAS**, Landlord and Tenant previously entered into that certain Lease Agreement dated September 26, 2025, whereby Landlord agreed to lease to Tenant and Tenant agreed to lease from Landlord the Ontario & Western railroad station (O&W Building) located at 2 Low Avenue, Middletown, New York, together with outdoor play space at same location, comprising a total of approximately 26,400 feet as shown on the site plan prepared by Fusco Engineering, entitled "FORMER O&W STATION REHABILITATION & RESTORATION", which is attached hereto as Exhibit A (the "Demised Premises"), and to be used as a Head Start program with additional child care provided by Tenant, for a term commencing after a Certificate of Occupancy is issued following the rehabilitation and development of the Demised Premises (the "Initial Lease"); and

**WHEREAS**, the Landlord and Tenant hereby amend and restate the Initial Lease in its entirety as set forth below.

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- c. The Landlord shall maintain parking lots and public sidewalks, including snow removal and lighting. The Tenant is responsible to maintain any interior sidewalks.
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- b. The Landlord shall take care of the Demised Premises, fixtures and appurtenances, and Landlord shall make all repairs necessary to put and keep the premises in good order and condition at its own cost and expense, except for those repairs incidental to the Tenant's day-to-day occupancy of the Demised Premises (including maintenance and upkeep of the operating systems). All damage or injury to the Demised Premises and to the fixtures, appurtenances and equipment thereof or to the building or to its fixtures, appurtenances and equipment which may be caused by the carelessness, omission, neglect, improper conduct, or other act of the Tenant or its employees, agents, or visitors (whether invited or uninvited) shall be repaired, restored, or replaced by the Tenant. Reasonable wear and tear shall

be excepted from the Tenant's obligation and responsibility to the condition of the Demised Premises.

- c. During the Term, the Tenant reserves the right to make minor alterations or installations, including but not limited to, installation of telephone and/or electrical outlets, erection or relocation of movable partitions, etc., subject to Landlord's confirmation that such alterations will comply with applicable approvals from and restrictions imposed by the National Park Service.
- d. The Tenant may make major improvements or alterations, provided that such improvements/alterations are (1) made with Landlord's consent (which the parties acknowledge and agree may be conditioned on approval from the National Park Service and Landlord's and its affiliates' lenders and other financing sources, including, without limitation, a historic tax credit investor), and (2) acceptance of the work by the Commissioner of Public Works. The costs of any such major improvements/alterations shall be borne by the Tenant.
- e. Any fixtures or equipment installed by the Landlord shall not be removed by the Tenant at any time unless the Landlord consents in writing.
- f. The Tenant shall at the end of the term quit and surrender the Demised Premises in as good of order and condition as when received, normal wear and tear and damage by the elements excepted.

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Landlord with **one hundred and twenty (120) days prior notice** of its intent to terminate, and pays the Landlord any amounts owed under this Lease.

13. **Notice.** Any notices or demands from Landlord to Tenant or from Tenant to Landlord shall be in writing and shall be deemed duly served by regular mail, addressed to Tenant at the address set forth herein or such other address as Tenant shall have designated by notice in writing to the Landlord; if to the Landlord, at the address of the Landlord set forth herein, or such other address as Landlord shall have last designated by notice in writing to the Tenant. Notice shall be deemed served when mailed or when hand delivered.

14. **Personal Property.** Any and all articles of personal property including, but not limited to, business and trade fixtures, machinery, equipment, cabinet work, furniture, movable partitions, carpeting, water coolers, and radio owned or installed by the Tenant at its sole expense are and shall remain the property of the Tenant and may be removed by Tenant at any time during the term of this Lease. Upon expiration of this Lease, Landlord may require the Tenant to remove all such personal property. If such property is removed at any time, the cost of repairing any damage to the building arising from such removal shall be paid by the Tenant.

15. **Signs.** The Tenant may post and maintain such signs and notices as is reasonably required to inform the public as to its location in the Demised Premises. All signs must be pre-approved by Landlord and by the applicable municipal building department and/or architectural review board.

16. **Subletting.** It is understood and agreed by and between the parties hereto that the Tenant may not sublet or assign any portion of the Demised Premises without the prior approval of the Landlord.

17. **Indemnification by Tenant.** The Tenant shall hold harmless and indemnify the Landlord and its officers, employees, and agents to the fullest extent permitted by law from and against any and all liability, obligations, losses, claims, and damages whatsoever, attributable to or caused by the negligence of Tenant or its employees, agents, clients, or visitors, provided that any such claims, causes of action, judgments, liabilities, damages, losses, costs, or expenses of the Landlord are not incurred or do not result from the negligence or the intentional wrongdoing of the Landlord or any of its members, officers, agents, or employees.

18. **Indemnification by Landlord.** The Landlord shall hold harmless and indemnify the Tenant and its officers, employees, and agents to the fullest extent permitted by law from and against any and all liability, obligations, losses, claims, and damages whatsoever, attributable to or caused by the negligence of Landlord or its employees or agents, provided that any such claims, causes of action, judgments, liabilities, damages, losses, costs, or expenses of the Tenant are not incurred or do not result from the negligence or the intentional wrongdoing of the Tenant or any of its members, officers, agents, or employees.

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for loss/Four Million (\$4,000,000.00) Dollars for aggregate, together with primary noncontributory and waiver of subrogation for Landlord, or such other insurance as is acceptable to Greg Townsend of Marshall & Sterling and/or Landlord, and the Landlord shall be provided with a certificate thereof prior to Tenant's occupancy. The Tenant shall also provide the Landlord with a Certificate of Insurance showing workmen's compensation coverage. The Tenant shall also maintain throughout the term of the Lease, and any renewal thereof, casualty insurance sufficient to insure the value of goods and equipment stored or utilized in the subject building by the Tenant, since Landlord will be exempt from any and all liability for any damage to property possessed by Tenant caused by or resulting from steam, electricity, gas, water, rain, ice, snow, wind, or any leak or flow from or into any part of the building, or from any natural catastrophe or act of God, or from any other cause or happening whatsoever unless said damage be caused by or be due to the negligence of the Landlord or its members, officers, employees, or agents.

20. **Casualty.** Tenant must give Landlord prompt notice of fire, accident, damage, or dangerous or defective condition. Landlord is not required to repair or replace any equipment, fixtures, furnishings, or decorations unless originally installed by Landlord. If the fire or other casualty is caused by an act of neglect of Tenant, Tenant's employees, agents, clients, or visitors (whether invited or uninvited), then all repairs must be made at Tenant's expense. Landlord has the right to demolish or rebuild the building if there is substantial damage by fire or other casualty that endangers the structural integrity of the building. Landlord may cancel this Lease within thirty (30) days after the substantial fire or casualty by giving Tenant notice of Landlord's intention to demolish or rebuild. This Lease will end thirty (30) days after Landlord's cancellation notice to Tenant. Tenant must deliver the Demised Premises to Landlord on or before the cancellation date in the notice. If the Lease is cancelled, Landlord is not required to repair the premises or building. The cancellation does not release Tenant of liability in connection with the fire or casualty.

21. **Default.** If Tenant defaults with respect to any of the covenants herein contained, the Landlord may re-enter the Demised Premises by summary proceeding or otherwise, and the same to have again, re-possess, and enjoy. The Tenant expressly waives the service of any notice in writing of intention to re-enter. Tenant shall not be deemed to be in default under this Lease unless (A) in the case of a payment default, Tenant shall fail to cure such default within ten (10) days after Landlord shall have given Tenant written notice of such default, and (B) in the case of non-payment default, Tenant shall fail to cure such default within thirty (30) days after Landlord shall have given Tenant written notice of such default (or, if such non-payment default cannot reasonably be cured within such thirty (30) day period, Tenant shall have failed to commence such cure within such thirty (30) day period and, after such commencement, diligently pursued such cure to completion); provided, however, that any violation of the use restrictions set forth in Section 23, below, shall be a material default giving rise to an immediate right of termination of this Lease to the extent permitted by applicable law, notwithstanding any notice and/or cure rights that may be afforded to Tenant elsewhere in this Lease, including in this Section 21.

22. **Late Charge.** Notwithstanding the default provisions in Paragraph 21, above, in the event any payment of rent is not received within fifteen (15) days after it is due, a late charge of 5% of the entire payment shall be due to Landlord. Such late charge shall be paid with the next monthly rental payment.

23. **Use Restrictions.** Tenant shall not:

- a. conduct in the Demised Premises, or permit any subtenant or occupant of the premises to conduct in the Demised Premises, any use that is now or hereafter prohibited by the federal new markets tax credit program set forth in Section 45D of the Internal Revenue Code and the regulations thereunder (the "New Markets Tax Credit Program") including, but not limited to:
  - i. rental to others of residential rental property, as defined in Section 168(e)(2)(A) of the Internal Revenue Code;
  - ii. any trade or business consisting predominately of the development or holding of intangibles for sale or license;
  - iii. a trade or business consisting of the operation of any private or commercial golf course, country club, massage parlor, hot tub facility, suntan facility, racetrack or other facility used for gambling, or any store the principal business of which is the sale of alcoholic beverages for consumption off premises;
  - iv. any trade or business the principal activity of which is farming, or
  - v. any activity that will cause the Premises to constitute a qualified low income building or that will utilize or benefit from the low income housing tax credit pursuant to Section 42 of the Internal Revenue Code;
- b. use or occupy the Premises for any unlawful purpose or in any manner that will constitute waste, nuisance or unreasonable annoyance to Landlord or any other party.

Any lender (and its direct and indirect members) providing financing with respect to the Demised Premises shall be an express third party beneficiary of this Section 23 entitled to enforce such provisions as if it were a direct party hereto.

24. **Cooperation with Landlord.** The Tenant shall cooperate with Landlord to comply with all New Markets Tax Credit Program and Historic Tax Credit reporting requirements imposed on Landlord or related parties by their respective lenders and/or investors, including delivery of annual community benefits reports and financial reporting.

25. **Assignability.** The Landlord is authorized to assign its rights and obligations under this Lease to any entity directly or indirectly controlled by the City of Middletown or the Middletown O& W Local Development Corporation.

26. **Counterparts.** This Lease may be executed at different times and in any number of counterparts, each of which when so executed shall be deemed to be an original and all of which taken together shall constitute one and the same agreement. Delivery of an executed counterpart of a signature page to this Lease by facsimile or e-mail shall be as effective as delivery of a manually executed counterpart of this Lease.

27. **Mortgages.** This Lease is and shall be subordinate to all existing and future mortgages and deeds of trust (each, a "Mortgage") encumbering the Demised Premises. Said subordination shall be self-executing but, at the written request of Landlord, Tenant shall execute such further assurances as Landlord deems desirable to confirm such subordination. In addition, upon the written request of Landlord or the holder of any Mortgage, Tenant shall execute such instruments as such party reasonably deems necessary to evidence said subordination and attorn to the applicable holder of the Mortgage.

*[signature page follows]*

IN WITNESS WHEREOF, the parties hereto have caused this Amended and Restated Lease Agreement to be executed as of the date first written above.

**LANDLORD:**

**City of Middletown**

By: \_\_\_\_\_

Name: Joseph M. DeStefano

Title: Mayor

**TENANT:**

**Regional Economic Community Action Program Inc.**

By: \_\_\_\_\_

Name: Charlie Quinn

Title: Chief Executive Officer

**Exhibit A**

Demised Premises

See attached.











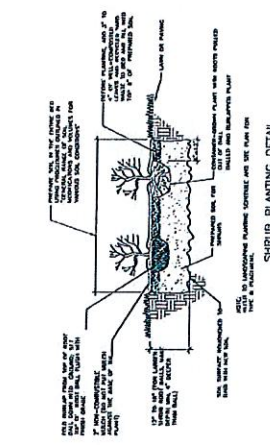
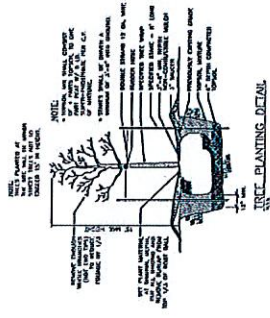
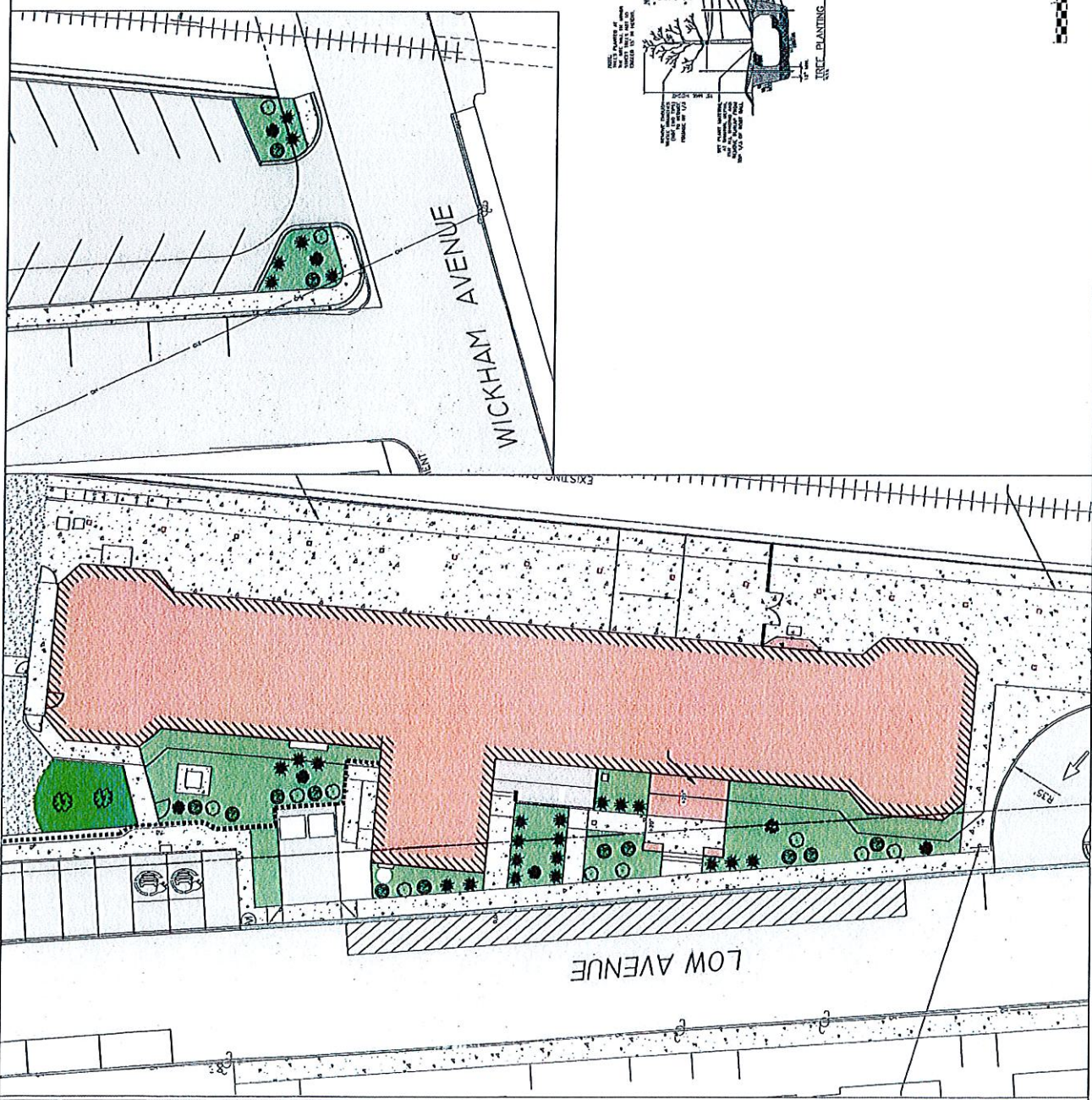
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DATE: \_\_\_\_\_

PROJECT: \_\_\_\_\_

PROFESSIONAL ENGINEER'S SEAL & SIGNATURE OF SURVEYOR, LANDSCAPE ARCHITECT

REGISTERED PROFESSIONAL ENGINEER

FUSCO ENGINEERING & LAND SURVEYING, D. P.C.

CONSULTING ENGINEERS

GRAPHIC SCALE: 1" = 10' x 10'

PROJECT NO. C-401











**Exhibit B**

Capital Improvements

See attached.

4915-6656-3712.1

# FUSCO

ENGINEERING &  
LAND SURVEYING, D.P.C.



233 East Main Street  
Middletown, NY 10940

Phone: (845)344-5863  
Fax: (845)956-5865

*Consulting Engineers*

*Alfred A. Fusco, Jr.*  
*P.E. Principal*

*Alfred A. Fusco, III*  
*General Manager*

September 25, 2025

Jacob Tawil  
Commissioner of DPW  
City of Middletown  
16 James Street  
Middletown, NY 10940

Re: Former O&W Station Rehabilitation Project  
Project #21-088

Dear Jacob,

I've enclosed the breakdown of Recaps fit up with the building shell from Butler, (GC).

Butler Construction (GC) – Includes Allowances  
Interior with playground : \$6,960,670.00 –Recap  
Core & Shell: \$18,123,751.00 - City  
Total Base Bid: \$25,084,421.00

Dynamic Systems Inc. (MC) – Includes Allowances  
Interior Fit Up \$3,384,400.00 – Recap  
Core & Shell \$1,454,400.00 – City  
Total \$4,838,800.00

Hauser Bros (PC) – Includes Allowances  
Interior Fit Up \$704,420.00 – Recap  
Core & Shell \$1,833,580.00 – City  
Total \$2,538,000.00

Pantel Electric (EC)  
Interior Fit Up \$130,000.00 – Recap  
Core & Shell \$1,402,000.00 – City  
Total: \$1,532,000.00

Recap Interior Fit Up & Playground  
General Contractor (GC) \$6,960,670.00  
Mechanical Contractor (MC) \$3,384,400.00  
Plumbing Contractor (PC) \$704,420.00  
Electrical Contractor (EC) \$130,000.00  
Recap Total \$11,179,490.00

233 East Main Street  
Middletown, NY 10940  
(845)344-5863



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City Core& Shell

General Contractor (GC)	\$18,123,751.00
Mechanical Contractor (MC)	\$1,454,400.00
Plumbing Contractor (PC)	\$1,833,580.00
<u>Electrical Contractor (EC)</u>	<u>\$1,402,000.00</u>
City Total	\$22,813,731.00

City Total	\$22,813,731.00
<u>Recap Total</u>	<u>\$11,179,490.00</u>
Project Total	\$33,993,221.00

\*Additional soft costs to be paid by Recap.....\$ 427,000.00  
to Fusco, outside of the above for interior  
design & construct management in accordance  
with Recap's requirements.  
(Not included in project total provided above)

Please advise if you have any questions.

Respectfully,

A handwritten signature in black ink, appearing to read "Alfusco", written over a light blue horizontal line.

Alfred A. Fusco, Jr., P.E.  
Fusco Engineering  
& Land Surveying, D.P.C.

Cc: Mayor Joseph DeStefano  
Katie Gass, City of Middletown  
Maria Bruni, City of Middletown  
Caitlin McNamara, City of Middletown  
Heather Decker, Recap  
Charles Quinn, Recap  
Alfred A. Fusco, Jr., P.E., FE&LS



**CITY OF MIDDLETOWN, NEW YORK  
COMMON COUNCIL  
RECORD OF VOTE**

THE FOLLOWING WAS PRESENTED

By: None  
 Seconded by: None  
 Date of Adoption: December 9, 2025  
 Index No: 337-25

**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 an Amended and Restated Agreement with the Regional Economic Community Action Program, Inc. (RECAP)**

BE IT RESOLVED; that the Common Council of the City of Middletown, NY concurs that the Board of Estimate and Apportionment authorizes an Amended and Restated agreement with the Regional Economic Community Action Program, Inc. (RECAP) for the O&W Building at 2 Low Avenue, Middletown, NY.

BE IT FURTHER RESOLVED; that the Common Council of the City of Middletown, NY concurs that the Board of Estimate and Apportionment authorizes the Mayor to sign the agreement, subject to minor changes being by the Mayor and reviewed by Corporation Counsel.

Prepared by:  
 Maria Bruni, Director of Economic and Community Development

**Attachments:**

1.	Amended and Restated RECAP Capital Agreement
----	--



## AMENDED AND RESTATED AGREEMENT

This Amended and Restated Agreement (this “Agreement”) is entered into as of [\_\_\_\_], 2025, by and between the City of Middletown, a New York municipal corporation having a principal office at 16 James Street, Middletown, New York, 10940, together with its successors and assigns (the “City”), and Regional Economic Community Action Program, Inc., a New York non-profit domestic corporation have an address at 40 Smith Street, Middletown, New York, 10940 (“RECAP”).

### RECITALS

**WHEREAS**, RECAP shall lease and operate the Head Start program, and other child care services, including a playground, located at 2 Low Avenue (f/k/a 2-20 Low Avenue), Middletown, New York (the “Project”), pursuant to that certain Amended and Restated Lease Agreement dated on or about the date hereof by and between the City, as landlord, and RECAP, as tenant (as amended from time to time, the “Lease”);

**WHEREAS**, the Project will provide the above programs and services which will be of substantial benefit to the residents of Orange County;

**WHEREAS**, the City shall perform or cause to be performed the work necessary to implement the Project, and RECAP desires to support the capital improvement of the Project in order to promote and enhance the public benefit; and

**WHEREAS**, this Amended and Restated Agreement amends and restated in its entirety that certain Agreement entered into between the parties on September 26, 2025 concerning the same subject matter.

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

#### **Article I. DEFINITIONS**

**Capital Improvement** shall mean the reconstruction and rehabilitation of the property located at 2 Low Avenue, Middletown, New York, as described in a document dated September 25, 2025, drafted by Fusco Engineering and Land Surveying DPC, titled Former O&W Station Rehabilitation Project #21-088 and attached hereto as Exhibit A.

#### **Article II. SCOPE OF WORK**

Section 2.01 The City shall cause the Project to be designed, constructed, and completed in accordance with applicable federal, state, and local laws.

Section 2.02 The City's estimated cost for this Project is \$11,179,490.00. The City or its affiliates have received New Markets tax credits and have apportioned \$1,064,986.00 to RECAP’s fit-up of the Project. The City and RECAP agree to cap the obligation to RECAP for the fit-up in the amount of \$9,800,000.00 (the “Principal Amount”).

### **Article III. OWNERSHIP AND CONTROL**

All Capital Improvements shall be owned by the City or its affiliates.

### **Article IV. FUNDING AND PAYMENT**

Payments shall be made by RECAP based upon an annual calculation by the City which will be transmitted to RECAP in the month of August of each year. RECAP is obligated to pay interest on the \$9,800,000.00 Principal Amount beginning in October 2026, and continuing each year thereafter at the rate reflected in the annual calculation provided by the City. Beginning in October 2027, RECAP shall be responsible to pay in addition to interest, principal payments on the \$9,800,000.00 Principal Amount as reflected in the annual calculation provided by the City and this obligation continues for each year thereafter. The Principal Amount may be reduced by RECAP pre-paying principal each year until October 2030. RECAP further agrees that in the event any payment due hereunder is not received within forty-five (45) days after it is due, a late charge of 5% of such payment shall be due to the City. The City's calculation of currently anticipated principal and interest payments is attached hereto as Exhibit B. So long as the City or its affiliates retain ownership of the Capital Improvements and the Lease remains in effect, the City will reduce the Principal Amount by \$343,200.00 annually, which shall be reflected in the annual calculation provided by the City. All payments due from RECAP to the City under this Agreement are subordinate to the obligation of RECAP to make any and all payments due under the Lease.

### **Article V. TERMINATION AND CORPORATE GUARANTEE**

This Agreement shall terminate when the debt associated with the Capital Improvements is fully paid by RECAP, without regard to the term or termination of the Lease. The City may terminate this Agreement if RECAP fails to make timely payments or otherwise violates this Agreement, and this termination may include acceleration of the entire debt. By executing this Agreement RECAP hereby provides a corporate guarantee to pay all accumulated debts, with interest, generated by this Agreement.

### **Article VI. MISCELLANEOUS**

Section 6.01 This Agreement shall be governed by and construed under the laws of the State of New York.

Section 6.02 This Agreement contains the entire understanding of the parties and may only be amended by written instrument duly authorized by both parties.

Section 6.03 This Agreement may be executed at different times and in any number of counterparts, each of which when so executed shall be deemed to be an original and all of which taken together shall constitute one and the same agreement. Delivery of an executed counterpart of a signature page to this Agreement by facsimile or e-mail shall be as effective as delivery of a manually executed counterpart of this Agreement.

*[signature page follows]*

**IN WITNESS WHEREOF**, the parties have executed this Agreement as of the date first written above.

**THE CITY:**

**City of Middletown**

By: \_\_\_\_\_

Name: Joseph M. DeStefano

Title: Mayor

**RECAP:**

**Regional Economic Community Action Program Inc.**

By: \_\_\_\_\_

Name: Charlie Quinn

Title: Chief Executive Officer

**Exhibit A**

Capital Improvements

See attached.

**Exhibit B**

Payment Schedule

See attached.

## AMENDED AND RESTATED AGREEMENT

This Amended and Restated Agreement (this “Agreement”) is entered into as of December [12], 2025, by and between the City of Middletown, a New York municipal corporation having a principal office at 16 James Street, Middletown, New York, 10940, together with its successors and assigns (the “City”), and Regional Economic Community Action Program, Inc., a New York non-profit domestic corporation have an address at 40 Smith Street, Middletown, New York, 10940 (“RECAP”).

### RECITALS

**WHEREAS**, RECAP shall lease and operate the Head Start program, and other child care services, including a playground, located at 2 Low Avenue (f/k/a 2-20 Low Avenue), Middletown, New York (the “Project”), pursuant to that certain Amended and Restated Lease Agreement dated on or about the date hereof by and between the City, as landlord, and RECAP, as tenant, as assigned by City to Middletown O&W Station Prime Tenant, LLC, a New York limited liability company (“HTC Tenant”) pursuant to that certain Assignment and Assumption Agreement, dated as of the date hereof (as assigned and as may be amended from time to time, the “Lease”);

**WHEREAS**, the Project will provide the above programs and services which will be of substantial benefit to the residents of Orange County;

**WHEREAS**, the City shall perform or cause to be performed the work necessary to implement the Project, and RECAP desires to support the capital improvement of the Project in order to promote and enhance the public benefit; and

**WHEREAS**, this Amended and Restated Agreement amends and restated in its entirety that certain Agreement entered into between the parties on September 26, 2025 concerning the same subject matter.

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

#### **Article I. DEFINITIONS**

**Capital Improvement** shall mean the reconstruction and rehabilitation of the property located at 2 Low Avenue, Middletown, New York, as described in a document dated September 25, 2025, drafted by Fusco Engineering and Land Surveying DPC, titled Former O&W Station Rehabilitation Project #21-088 and attached hereto as Exhibit A.

#### **Article II. SCOPE OF WORK**

Section 2.01 The City shall cause the Project to be designed, constructed, and completed in accordance with applicable federal, state, and local laws.

Section 2.02 The City's estimated cost for this Project is \$11,179,490.00. The City or its affiliates have received New Markets tax credits and have apportioned \$1,064,986.00 to RECAP's fit-up of the Project. The City and RECAP agree to cap the obligation to RECAP for the fit-up in the amount of \$9,800,000.00 (the "Principal Amount").

### **Article III. OWNERSHIP AND CONTROL**

All Capital Improvements shall be owned by the City or its affiliates.

### **Article IV. FUNDING AND PAYMENT**

Payments shall be made by RECAP based upon an annual calculation by the City which will be transmitted to RECAP in the month of August of each year. RECAP is obligated to pay interest on the \$9,800,000.00 Principal Amount beginning in October 2026, and continuing each year thereafter at the rate reflected in the annual calculation provided by the City. Also beginning in October 2026, RECAP shall be responsible to pay in addition to interest, principal payments on the \$9,800,000.00 Principal Amount as reflected in the annual calculation provided by the City and this obligation continues for each year thereafter. The Principal Amount may be reduced by RECAP pre-paying principal each year until October 2030. RECAP further agrees that in the event any payment due hereunder is not received within forty-five (45) days after it is due, a late charge of 5% of such payment shall be due to the City. The City's calculation of currently anticipated principal and interest payments is attached hereto as Exhibit B. So long as the City or its affiliates retain ownership of the Capital Improvements and the Lease remains in effect, the City will reduce the Principal Amount by \$343,200.00 annually, which shall be reflected in the annual calculation provided by the City. All payments due from RECAP to the City under this Agreement are subordinate to the obligation of RECAP to make any and all payments due under the Lease.

### **Article V. TERMINATION AND CORPORATE GUARANTEE**

This Agreement shall terminate when the debt associated with the Capital Improvements is fully paid by RECAP, without regard to the term or termination of the Lease. The City may terminate this Agreement if RECAP fails to make timely payments or otherwise violates this Agreement, and this termination may include acceleration of the entire debt. By executing this Agreement RECAP hereby provides a corporate guarantee to pay all accumulated debts, with interest, generated by this Agreement.

### **Article VI. MISCELLANEOUS**

Section 6.01 This Agreement shall be governed by and construed under the laws of the State of New York.

Section 6.02 This Agreement contains the entire understanding of the parties and may only be amended by written instrument duly authorized by both parties.

Section 6.03 This Agreement may be executed at different times and in any number of counterparts, each of which when so executed shall be deemed to be an original and all of which taken together shall constitute one and the same agreement. Delivery of an executed counterpart

of a signature page to this Agreement by facsimile or e-mail shall be as effective as delivery of a manually executed counterpart of this Agreement.

*[signature page follows]*

**IN WITNESS WHEREOF**, the parties have executed this Agreement as of the date first written above.

**THE CITY:**

**City of Middletown**

By: \_\_\_\_\_  
Name: Joseph M. DeStefano  
Title: Mayor

**RECAP:**

**Regional Economic Community Action Program Inc.**

By: \_\_\_\_\_  
Name: Charlie Quinn  
Title: Chief Executive Officer

**Exhibit A**

Capital Improvements

See attached.

**Exhibit B**

Payment Schedule

See attached.

**RECAP's Portion of Debt Service**

Year	Principal	Interest	P + I	
2026	-	409,052	409,052	BANs
2027	400,000	433,552	833,552	
2028	455,000	494,291	949,291	Bonds
2029	455,000	490,032	945,032	
2030	475,000	469,921	944,921	
2031	500,000	448,546	948,546	
2032	520,000	425,596	945,596	
2033	545,000	401,312	946,312	
2034	575,000	374,771	949,771	
2035	600,000	345,618	945,618	
2036	635,000	313,938	948,938	
2037	670,000	279,140	949,140	
2038	705,000	241,084	946,084	
2039	745,000	200,124	945,124	
2040	790,000	155,945	945,945	
2041	840,000	108,071	948,071	
2042	890,000	56,159	946,159	
2043	-	-	-	
2044	-	-	-	
2045	-	-	-	
2046	-	-	-	
2047	-	-	-	
2048	-	-	-	
2049	-	-	-	
2050	-	-	-	
<b>Totals</b>	<b>\$ 9,800,000</b>	<b>\$ 5,647,151</b>	<b>\$ 15,447,151</b>	
<b>Less Grants</b>	<b>\$ (400,000)</b>			
<b>Total Cost to RECAP</b>	<b>\$ 9,400,000</b>	<b>\$ 5,647,151</b>	<b>\$ 15,047,151</b>	

**Assumptions**

All debt issued through the City on a taxable basis.

**BANs:**

Issued 10/14/2025 with principal and interest due annually.  
Grant receipt of \$400,000 used to make paydown in 2027.

Interest rate assumptions:

First year: 4.174% *actual received*  
Annual increase: 0.250%

**Bonds:**

Issued 10/12/2027 to redeem outstanding BANs.  
Principal due annually on 10/1. Interest due semiannually on 4/1 and 10/1.  
Final maturity of 10/1/2042 (max term to match the Lease term).  
Amortized on a Level Debt Service basis.  
Prevailing Taxable "A" market rates (as of 8.27.25) + 0.50% for potential market movement.  
True Interest Cost (TIC): 5.68%

Issue	Amount	Date
2025 BAN	\$9,800,000	10/13/2021
2026 Paydow	0	
2026 BAN	\$9,800,000	10/12/2022
2027 Paydow	(400,000)	
2027 Bonds	\$9,400,000	10/11/2023



**CITY OF MIDDLETOWN, NEW YORK  
COMMON COUNCIL  
RECORD OF VOTE**

THE FOLLOWING WAS PRESENTED

By: None  
 Seconded by: None  
 Date of Adoption: December 9, 2025  
 Index No: 338-25

**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 an Assignment and Assumption Agreement with the Middletown O&W Local Development Corporation (LDC)**

BE IT RESOLVED; that the Common Council of the City of Middletown concurs with Board of Estimate and Apportionment authorizes an Assignment and Assumption Agreement with the Middletown O&W Local Development Corporation (LDC)

BE IT FURTHER RESOLVED; that the that the Common Council of the City of Middletown concurs with Board of Estimate and Apportionment authorizes the Mayor to sign the agreement, subject to minor changes to to be reviewed by Corporation Counsel.

Prepared by:

**Attachments:**

1.	O&W ASSIGNMENT & ASSUMPTION AGREEMENT
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**ASSIGNMENT AND ASSUMPTION AGREEMENT**

This **ASSIGNMENT AND ASSUMPTION AGREEMENT** (this “**Assignment**”) is dated as of the [10<sup>th</sup>] day of December, 2025 (the “**Effective Date**”), by and between **THE CITY OF MIDDLETOWN**, a New York municipal corporation (“**Assignor**”), and **MIDDLETOWN O&W STATION PRIME TENANT, LLC**, a New York limited liability company (“**Assignee**”).

**RECITALS:**

**A.** As of the Effective Date, Assignor is the fee owner of that certain real property located at 2 Low Avenue, Middletown, New York (the “**Land**”), and the building thereon known as the N.Y. Ontario & Western Railway Station (the “**Building**,” and together with the Land, the “**Property**”).

**B.** On September 26, 2025, Assignor entered into that certain Lease Agreement with respect to the Property by and between Assignor, as landlord, and Regional Economic Community Action Program, Inc., a New York nonprofit corporation (“**RECAP**”), as tenant, which Lease Agreement is being amended and restated in its entirety in the form attached hereto as Exhibit A as of the Effective Date (the “**RECAP Lease**”), which RECAP Lease has an initial term commencing after completion of the Rehabilitation (as hereinafter defined).

**C.** As of the Effective Date, Assignor is leasing the Property to Middletown O&W Station, LLC, a New York limited liability company (“**Ground Lessee**”), pursuant to that certain Ground Lease dated as of the Effective Date by and between Assignor, as landlord, and Ground Lessee, as tenant (the “**Ground Lease**”).

**D.** Ground Lessee is financing and undertaking the historic rehabilitation and redevelopment of the Building into the childcare services headquarters for RECAP (the “**Rehabilitation**”) in a manner that qualifies for the historic rehabilitation tax credit allowed for qualified rehabilitation expenditures incurred in connection with the “certified rehabilitation” of a “certified historic structure” (the “**Historic Tax Credit Transaction**”) pursuant to Section 47 of the Internal Revenue Code of 1986, as amended from time to time, or any corresponding provision or provisions of prior or succeeding law and N.Y. Tax. Law §210-B(26) as amended.

**E.** In connection with the Historic Tax Credit Transaction, Ground Lessee and Assignee have entered into that certain HTC Lease dated as of the Effective Date, pursuant to which Ground Lessee will lease the Property to Assignee for a term commencing upon completion of the Rehabilitation.

**F.** To facilitate the Historic Tax Credit Transaction, Assignor desires to assign all of its right, title, and interest in and to the RECAP Lease to Assignee.

**NOW, THEREFORE**, in consideration of and in reliance upon the above recitals, the terms, covenants, and conditions contained in this Assignment, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Assignor and Assignee agree as follows:

1. **Recitals; Definitions.** The foregoing Recitals are incorporated into this Assignment as if fully re-written herein.

2. **Assignment of RECAP Lease.** Effective as of the Effective Date, Assignor hereby gives, grants, bargains, sells, conveys, transfers, and sets over unto Assignee, its successors and assigns, all of Assignor's right, title, and interest in and to the RECAP Lease.

3. **Assumption.** Assignee hereby accepts and assumes the foregoing assignment and obligations of Assignor, as landlord, under the RECAP Lease, arising from and after the Effective Date, and covenants and agrees that, from and after the Effective Date, Assignee will assume, observe, perform, fulfill, and be bound by all terms, covenants, conditions, and obligations of the landlord under the RECAP Lease.

4. **Further Amendment.** This Assignment may not be further modified or amended except in a writing signed by all the parties hereto.

5. **Authorization.** The individuals executing this Assignment for and on behalf of the parties hereto represent and warrant that they have been duly authorized to execute this Assignment and that all corporate action necessary to the execution of this Assignment has been taken and done.

6. **Partial Invalidity.** If any term or provision of this Assignment, or the application thereof to any person or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this Assignment, or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby, and each term and provision of this Assignment shall be valid and enforced to the fullest extent permitted by applicable law.

7. **Successors and Assigns.** The terms and conditions of this Assignment shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and assigns.

8. **Counterparts and Electronic Signature.** This Assignment may be executed in counterparts, each of which shall be deemed an original, but together shall constitute one and the same instrument. Each party agrees that this Assignment may be electronically signed (including, without limitation, via DocuSign), and that any electronic signatures appearing on this Assignment are the same as handwritten signatures for the purposes of validity, enforceability, and admissibility.

9. **Governing Law.** This Assignment shall be construed in accordance with the substantive laws of the State of New York, without regard to any choice of law provisions therein.

*[Signature Page Follows]*

**IN WITNESS WHEREOF**, the undersigned have caused this Assignment to be executed as of the Effective Date.

**ASSIGNOR:**

**The City of Middletown,**  
a New York municipal corporation

By: \_\_\_\_\_  
Joseph M. DeStefano, Mayor

**ASSIGNEE:**

**Middletown O&W Station Prime Tenant, LLC,**  
a New York limited liability company

By: Middletown O&W Station Managing Member, LLC,  
a New York limited liability company,  
its managing member

By: Middletown O&W Local Development Corporation,  
a New York not-for-profit corporation,  
its sole member

By: \_\_\_\_\_  
Name: Joseph M. DeStefano  
Title: President

**Exhibit A**

**RECAP Lease**

See attached.