1. PLEDGE OF ALLEGIANCE

2. ROLL CALL (COUNCIL CLERK)

3. APPROVAL OF MINUTES Council Meeting April 07, 2020

4. CORRESPONDENCE, COMMUNICATIONS AND REPORTS (COUNCIL CLERK)

5. FOR THE GOOD OF THE CITY (PUBLIC PARTICIPATION)

6. REMARKS OF DEPARTMENT HEADS

7. PUBLIC HEARINGS AND GRIEVANCES
   - Public Hearing for Sanitation Plan.

8. PETITIONS AND COMPLAINTS (NOTHING THIS EVENING)

9. REMARKS OF THE MAYOR

10. REMARKS OF THE ALDERMAN AND REPORTS OF COMMITTEES

11. UNFINISHED BUSINESS (NOTHING THIS EVENING)

12. NEW BUSINESS (RESOLUTIONS)
   - Resolution to approve a change in the 2019-2020 capital budget for the Fire Department.
   - Resolution to authorize the Mayor to sign a lease with AT&T for Antenna Space at 31 ½ Kennedy Terrace.
   - Resolution to approve the Vacant and Foreclosed Property Registration Ordinance.
   - Resolution to approve the Vacant and Foreclosed Property Registration contract.
   - Resolution to approve the SEQRA for the South Street Parking lot Project.
   - Resolution to approve and submission of the Amendment to the Community Development Block Grant (CDBG) 2019 Action Plan to receive CDBG Coronavirus Aid.
   - Resolution to authorize the Treasurer to transfer $1,288.00 within the Police Department 2020 budget.
CITY OF MIDDLETOWN
COMMON COUNCIL MEETING AGENDA
MAY 05, 2020

- Resolution to rescind resolution #228-19 passed on October 15, 2019, to award the bid for Midland Avenue Extension New Curbs and Sidewalks to make funds available for the DRI funded GI Parking lots project.
- Resolution to authorize the Treasurer to sign a professional services agreement with Springbrook (KVS) to provide the programming for installation of a new fixed asset system.
- Resolution to accept the bid for the Green Infrastructure Project.
- Resolution to accept the bid for the ADA Curbs and Sidewalks Project.

13. LOCAL LAWS (NOTHING THIS EVENING)
14. AUDIT OF CLAIMS AND ACCOUNTS (FINANCE COMMITTEE CHAIR)
15. ADJOURNMENT

The agenda is tentative and established on all accessible information at this time. Items may be eliminated at any time. Resolutions are added on an emergency basis.
1. Pledge of Allegiance- Pres. Rodrigues asked all to rise for the pledge.


3. Approval of Minutes


All in favor

4. Correspondence

John Naumchik-Nothing this evening.

5. For the Good of the City

No public participation due to the Coronavirus

6. Remarks of Dept. Heads

Jacob Tawil/Commissioner DPW-

Partition among the Councilmen and Council Pres. at the suggestion of the Council Pres. to create partitions because of the Coronavirus. Isolating the aldermen from each other to provide the social separation.
Water flushing system continues which is the fire hydrants in the city. Doing 1st Ward and 4th Ward. Should be done hopefully 2-3 weeks.

Be careful when you do laundry.

The Mayor reminded me to sign up for Nixel.

Yard waste pick up started yesterday. The first couple of weeks the load is heavy it is going to take us some time to cover the city. Everything inside containers or inside bags, nothing loose. Check out our website.

Like the Mayor advised everyone spring clean-up has been postponed.

Electronic drop off day of May 23rd that is something, we don’t know what is going to happen with the virus; things change from day to day. Right now it is May 23rd, will keep you posted if there is any change. The whole idea is to keep our men separated so whatever we have to do to keep our men from each other minimum of 6 ft. We will continue to do that.

Word of thanks to our men. Everybody has the luxury of sheltering in place and staying home. Except for First Responders, nurses, doctors, people who work in hospitals, ambulances, Firefighters, Police and DPW. We have to keep the WTP running, still have to have WWTP running, pick up garbage, yard waste, clean the streets. I tip my hat off to all our men and women in DPW. Some work at home. We ordered laptops so that they can go and work from home. All of them opted to stay at the office because they thought they would be productive. That is DPW Administration, personnel. Again I take my hat off to each and every one in DPW including the ladies in our office because they chose to stay here and do their job and serve the public.

Contractors-We have Davidge Park Expansion, bid open is May 14th. If you are interested pick up the plans and addendum. We can send electronically.

20 inch high pressure main and 12 inch high pressure main replacement from the Water Treatment Plant through Davidge Park Expansion and through Monhagen Ave. that is out for bid. Bid opening is April 30th.

Also opened bids on March 27th for the DRI of downtown. Downtown parking lot and green infrastructure implementation. Bids are being evaluated right now with engineer Lehman & Getz and they will get back to us. Will meet with the Mayor and contractors and go from there.

Walkway that is the Mayor’s project- between East Main and Orchard. We had pre-construction meeting and hoping construction will start next week.
Ald. Masi- Jacob am I correct because the holiday happens to be Friday, garbage pick-up is regular schedule?

Commissioner Tawil- Friday (Determined we are off Friday) Recyclables on Saturday.

Ald. Masi-Garbage pick-up is still the same.

Commissioner Tawil-Yes.

Ald. Johnson- Davidge Park Expansion still looking at Fall 2021 or Spring 2022?

Commissioner Tawil-Looking to start this project this year and will go into next year.

Ald. Kleiner- Reservoir Trails do you know where we are on that?

Commissioner Tawil- No I don’t.

John Naumchik-Some of you probably know the Presidential Primary was discontinued we will not have it. That was scheduled for April 28th and also early voting is canceled for that day. It is going to be changed to June 23rd and if you received this card in the mail it is wrong. It was sent out after they had canceled it. I talked to the Board of Elections today they are going to be sending out new cards with the corrected dates. Presidential Primary will now be changed to June 23rd. Early voting June 13-21.

7. Public Hearings & Grievances
No public participation due to the Coronavirus

Petitions & Complaints
John Naumchik-Nothing this evening.

8. Remarks of the Mayor

Mayor DeStefano-Let me open with what Jacob brought up about thanking all City employees, First responders, doctors, nurses, EMT’s, sanitation workers, they are really doing a tremendous job. As most you know or should know we are doing some work from home from City Hall with some employees. We are trying to reduce the density of City Hall. These other fellas and ladies are out in the street every day with the weather dealing with some of the issues that to be honest with you I wouldn’t want to deal with. That is one of the reasons why we delayed spring clean-up. We are not canceling it. We had postponed it indefinitely until we get a better idea of how this coronavirus thing is going to work out. We will give a 30 day notice before we implement and reschedule. It could be July or August whenever it is, your ward you will know 30 days in advance.
In regard to other city services and personnel. We do have at least 4 city employees that have tested positive and we have 2 more out being tested. It is a serious problem and our thoughts and prayers go to all of them, their families as they suffer through this. The City is standing behind them with offering them Family Medical Leave that is just something we can do as a community. Once they are better they will come back to work that is the amazing part of this whole thing. Some of them, really wanted to come back to work earlier but we required medical clearance to come back for obvious reasons not only for their benefit but for the benefit of the co-workers.

So to have a small city like us to have 4+ people that is significant.

The actions that we have taken I mentioned some in the last meeting, parks are open. The equipment in the playgrounds are closed. The swings, slides, playground equipment, basketball hoops have been removed in all parks. We do that for a reason an obvious reason. In doing so we try to encourage as much activity still with people out walking, walking through the parks. We have had a couple of calls about tennis. Why are we allowing tennis courts to remain open Chris is monitoring it on a daily basis along with her staff. Tennis is usually a one on one game apparently there might be times 2 on 2. People are advised to have social distancing and play the game the way they need to. If we find to be abusive and I'm not riding up there every day, Chris is monitoring it. Chris Brinkerhoff our Superintendent of Parks and at some point she feels that we should close them then we will. Apparently right now at this point she doesn’t feel the need to do so because she doesn’t believe the facility is being violated.

In the area of the coronavirus itself and the state action and local action. As you know the Governor has extended the NY Pause Enforcement until April 29th. He issued on April 1st additional task force formed a task force in order to address abuses. So they have this task force is going out with State Police going to different businesses they believe might not be allowed to be open. The business that would like to stay open has to file unless they are on the essential business list. They need to file with the state a request to have their property deemed essential and if they are not there are substantial fines.

The biggest local issue of this is and some of this is on Facebook and the phone calls that we have with the county and the state of NY every day is Kiryas Joel and Palm Tree. I know there are a lot of people beating up on the Governor for not doing something or containing like they did in New Rochelle, the Kiryas Joel. I think what people have a misunderstanding about what containment and what quarantine are. What happened in New Rochelle at the beginning of the crisis and it created a containment zone that did not mean people could not go in or go out of Kiryas Joel. It was sending additional resources trying to contain the disease in New Rochelle. They sent the National Guard, the National Guard did not do law enforcement, the National Guard did public duties cleaning properties and assisting New Rochelle and trying to keep the spread from going out of New
Rochelle throughout the rest of the state. Obviously it didn’t work. It worked for New Rochelle because New Rochelle people started doing social distancing and started doing other things that were recommended by Dr. Fauci and the federal government. The word containment zone has been thrown around about Kiryas Joel quite frequently and even the Governor even has thrown out why isn’t he doing something about it. Well he did, he issued an Executive Order about 3 weeks ago the responsibility for enforcing the state law or state executive order lies with the local communities. So if Middletown is having a lot of abuse with this Executive Order that people are gathering in the parks, people are ignoring it, houses of worship then it is up to Middletown to police Middletown. Just like the situation with Kiryas Joel and Palm Tree, it is up to the State Police who are the primary response and the Sheriff’s office who are also county wide police force and they have mutual aid that accessible to them. In case where something happens they need additional police resources they would call upon all communities in Orange County to send whatever they can to assist them. From what I am told it is getting better they do have an occasional large event; funeral, wedding.

My …to the County on conference calls is that there needs to be a police presence in Kiryas Joel and Palm because we are potentially all affected when they get infected they are taking up room in our hospitals; it is a concern. So it should concern us here in Middletown just as much as it concerns the people in Monroe and adjacent town.

Not all the people in Kiryas Joel have been doing this. They are a village or town of 30,000+ people but there are abuses and I encouraged that both the State Police and the Sherriff’s presence and have been doing that for a couple of weeks.

On April 1st we offered to send Middletown Police if need be as part of the county wide mutual aid calls.

On April 1st the Governor then re-issued the order with creating this task force and doubling the fines. So now you can be fined for abusing the Executive Order of public gatherings you can be fined up to a $1,000 and I think there could also be criminal penalties imposed. The Governor is not going to be coming down from Albany on a horse and arrest people. It is up to local government and we have been encouraging county government and county Sheriff, State Police to do what they were told to do through this Executive Order. Hopefully we are going to see some action; I know several supervisors, mayors throughout the county I did hear from them after we had quite a discussion on some of the calls. They are supportive of the idea, they want, we want and I think most people want a police presence Kiryas Joel that would reduce the public gathering and put an end to the large gatherings. Whether they are a house of worship or not. Houses of worship are not closed, they are not allowed to have to have large gatherings. You can go to St. Joseph’s to the chapel and pray if you want. You need to practice social distancing, you can go to any church or mosque or synagogue in the area and do
the same. If they have their doors open it is not illegal to have their doors open. It is illegal though to have large weddings or large funerals and large events. They need to crack down not on a call basis they need to crack down on a presence basis so they are not responding to an incident rather they are trying to prevent an incident. Because that gathering is going to be causing problems for all of us here in Orange County.

Ald. Johnson-When you say large is it more than 10, more than 100.

Mayor DeStefano-The guidelines are 10 and with social distancing is 6ft. In the state of Florida in Tampa there was a minister down there that was ignoring the rules they arrested him. He had 1,000’s of people at his event. I know it is tough to arrest someone who is a religious leader in the community but they are going to jeopardize all our lives then we need to take correct action.

We as a county we are all unified. The State Police have had an increase presence, I don’t know what the Sherriff’s office is finding down there right now. As I said if necessary there is help with the rest of us.

I just want people in Middletown understand we are all involved in this. Whether we are close to Kiryas Joel or not close to Kiryas Joel and I am not criticizing the whole community because we have had pockets at times of people themselves here in the City. Where the police have broken it up and they get a warning, we take names if we catch you a 2nd time then you are going to get a fine and if you get caught a 3rd time you are probably going to be arrested. That is the message they need to send down there. That is for the protection of all of us.

The other thing we have been working on the Governor’s Executive order or amend them almost on a daily basis and I am sure many of you and many of the public are watching him on television or his website ny.gov there are a lot of economic development plans that business owners need to start getting involved in. Not only on a federal level but on a state level even county level. County Executive, Maria Bruni has been working with her department Economic Development here in the city putting the programs together that are available. Putting them on line, Facebook, social media, website just letting people know what programs are available out there for their business. The PPE program about payroll federal program, IDA program that the County Executive has been talking about it is going to be a local program for small businesses. Could be working capital available to businesses or borrowing against your last 3 months payroll to cover future expenses. Even homeowners there about contacting their banks, mortgage deferred and tenants’ rights issues that are out there.

Go to our Economic Development page, Maria, Caitlin, Patty and Jean are doing a good job putting this all together for us. If you have any questions you can call them, they will contact Empire State Development and try to get some answers for you. There is a guide for business that has been posted now for probably
April 2nd it was update the last time. It will continue to be updated. We did receive a grant through our Community Development Program $292,000. We are waiting for confirmation on how that money can be spent. We know it is corona related to Community Development programs, we need more specific guidelines before we see …money locally.

We’ve also received notification and you might have read about in the paper over the last few days through Congressman Maloney’s office a $3+million grant Transportation Corona related. Again the guidelines are not out how you can spend that money we are hoping it is in the area of infrastructure. It is transportation money not operational money we don’t operate a public transportation system. We are assuming that since they granted us this transportation money it can be used in other ways. Jacob is reviewing the guidelines from that that were provided to our Economic Development. I spoke to Ernest, Congressman Maloney Office they are also getting more information as it comes forward through the federal government.

We do know one thing, the money cannot be spent on city operational stuff. Either one shot grant that will have a significant impact on us.

Why do we need help? Our projections based on sales tax lose, uncollected taxes and so on. Primarily the main drive is the sales tax we are projecting a $5.1million shortfall for 2020. Significant money. One of the reasons why we have that big rainy day fund called Fund Balance in our budget. We will not be laying off people as a result of the coronavirus. We are going to maintain services, continue to move projects ahead, tap into as many resources as we can on a federal, state, and county level. We are not laying anyone off. I think it would be shame after having all these dedicated employees working through this then to say we are short a few dollars we are going to lay you off now for all your hard work and all your courage. That is our gratitude. We are not doing that. So that is a strong message to our workforce that although we have to go into our reserves we will get through this and will move ahead.

That is one of our mottos now that we are trying to think of through Economic & Development and our business community is we want to start thinking about tomorrow. We know that this is a horrible thing we are all going through especially those families that are directly impacted. But, we know that there is also a tomorrow. We are planning for that tomorrow because we need to rebound from this as quickly as possible and we will.

In order to do that a lot of these programs that I just mentioned and referenced through Maria’s office are driven by census data. We are in a position right now where we have only had 34% of our properties respond to the census. Understandable bad timing. I know a friend of mine from St. Joseph days put up a post on Facebook and he said furthest thing from my mind right now. I said Bob this is important stuff I understand could be the furthest thing from your
mind but we need to start thinking about tomorrow. We need to start thinking how these resources are going to come back into Middletown. If we don’t count everybody we are going to lose money in our future budgets. Then we will be faced with long term process of possible reduction of services, reduction of staff and so on. Now this won’t come out of course until I think 2022 around there when the final numbers are out. But our sales tax agreement is coming up. Our sales tax agreement with Orange County is based solely upon the allocation of sales tax money between the 3 cities based on population gathered from the census. So, you don’t respond to the census, we drop our population although we have more people living here. We lose our resources, we lose access to that sales tax money, increase potential decrease in our revenue. We are shot for 10 yrs. Because we don’t get another bite at this for another 10 yrs.

We have these census tracks that were identified. We monitor it daily on where we are getting the lowest response through the mailing. When everything clears up it there will be census folks going door to door. They are called enumerators. They will be assisting people, trying to encourage people to sign up for the census. I think a lot of the work has to be done by you folks right here. Contacting your constituents, we are doing mailings, met with the School District yesterday, Kevin Witt. Asking about the site food drop off, we will be handing out the brochures asking people to call, you don’t have to do it by mail, you can call, different languages. Our brochure is in 3 languages; English, Spanish, Chinese. We are doing everything we can to get counted. It is so important for everyone to participate, make sure you count the babies in your house, make sure you count everyone in your house that was there on April 1st. Whoever was living with you on April 1st is the criteria for the census. We need Middletown counted, let’s get our fair share of federal and state money and do the responsible thing.

Now ending on a positive note, up on the screen-video. A lot of things we can do in a community and we are doing a lot of things. We are doing some home delivery, our police are delivering groceries to some seniors/disabled folks who are unable to get to the grocery store, we have our senior dept. calling their log of seniors who are in their system. Checking on them, talking to them just giving them some company. Next week we will be call them about the census. Our Rec. Dept. is bagging, bagging essentials; milk, bread, toilet paper at times when we are able to get them. Trying to work with Cornell Cooperative through Dr. Johnson to have a food bank where we can do distribution on an honor system of course. To people who really need it. Not to supplement people, people with needs. Being delivered door to door. Some cases we are picking up prescriptions, the Police Dept. has really stepped up.

They also stepped up in other ways that provide services, they stepped up in a way where a lot of kids are missing birthday parties. It is emotional for them and I guess Lt. Thoelen being a father himself recognized it and came up with a plan that is not only a good plan. It has had such positive impact in the community and
started for kids and now we had a 90 yr. old the other day. His family called and they wanted it. (Showing video)

The Fire Dept. joined in and it has been a huge success. Only one negative not really negative just one person said he did not want to happen to them, it was Ald. Joe Masi whose birthday is Sunday. He turns 75 he has made a specific request we not do that for him. And we won’t.

I know the Rec. Dept. is coming up with other ideas. Chalking your driveway, sending messages, keeping kids active and encourage people that tomorrow is coming and it will be a better day.

Ald. Kleiner-On the agenda a resolution on the updated security system.

Mayor DeStefano-Yes. We have a door system at City Hall that is really somewhat backwards. For example the side doors you can’t lock with people in the building because there is no fire door on that side. So it is violation of fire code. Some doors don’t close well. That is not what motivated at all. What motivated is the covid and the need at times to seal the building to keep it shut and to allow employee access. We are going with same system at the Fire House with the FOB’s. Every city employee on their keychain will have scan and scan into the doors, the doors will be programmed for different board members so that they can get in. May be the night of the board meeting only without having someone to be there. It is a program. Also at the same time we are examining something that started in 9/11 and then when we had the court shooting it was discussed again and that is limiting access into city hall with one door for the public. Right now into our building you have 3 doors that the public can come in and out of. Times like this you understand what the need to restrict access to the building. Naturally you have 2 other doors in the lobby area. We are examining options of course it has to be ADA accessible. My plan is to look at the lobby between the court and the Police Station as the new entrance both front and rear so you then can go into the court, court security or then come into city Hall through the side door. That is my plan, we are looking at it, examining it. First step was to install the equipment, we are hoping it is going to be reimbursable under one of the grant programs because it is a reaction to corona. You can’t get an answer what is fundable or not yet but we decided to go ahead to do it under the Emergency Order right now it is somewhat unbearable. We went with the same company that did the Fire House so we will have comparable equipment. Also plans to do other city buildings. The Rec. Center, I think the Water Treatment Plant already has it. Also know who went into the building. Security measure both short term for the Corona-virus and long term for security.

Ald. Johnson-With respect to the census when is the deadline to respond to the census.
Mayor DeStefano-Extended to August for the first response. Usually April 1st, if you misplaced your mail by the way and you don’t have your registration number you can still do it. The best thing is to call the number and they will walk you through it. Very simple. On line it takes may be 5-8 min. on the phone probably may be more or less. Not long either way. We are providing all the phone numbers, on the screen and providing them in the parks. Doing them in our water billing that is coming out May 1st, there will be a flyer in there also. I talk about it a lot because it is so important.

Ald. Johnson-The enumerators may or may not go door to door with covid, are they volunteers or paid.

Mayor DeStefano-They are paid by the state. We legally cannot help someone fill out the census. We as a city. Enumerators are paid by the Census Bureau, the information is protected. There are no citizenship question on it. One thing we really need to do is because some of the census tracks have large Latino population, we are doing outreach with the community trying to get people to respond to the census.

As you know there was a big scare that Pres. Trump started with the citizen question. Fill out the census we are going to deport you, all those fears. Supreme Court or some court knocked that down and said they cannot include that on the census. The information you put in the census cannot be accessed for 72 yrs. It might be more 92 yrs. I know it is a long time 70+ plus years. There is no fear of filling out the census form. No fear the government is coming in and get your information and whether you are undocumented or whether you are some person who doesn’t want to provide government with any more information. Once you fill out that form or call in your information that is it no one sees it again.

9. Remarks of the Aldermen

Ald. Masi-Civil Service/ the firemen’s exam which we have over 100 people who signed up already which was scheduled for April 28th has been postponed. The State hasn’t come up with any date, if you follow along on our website we will put it up there as soon as we find out. You are going to get a letter anyway, it is an admission notice you will get that ahead of time. You will know when the new date is.

Same for the ones that we have 3 exams scheduled for May. I am assuming that they too will be postponed. However, at this particular date they haven’t. The important one right now not that one test is more important than the other.

I said April 28th it is April 25th. There are over 100 people who signed up for the firemen’s exam that has been postponed.
Shout out to and I know all my colleagues are going to basically say the same thing. Not only to our staff you need your garbage picked up, you need things done and we have the staff that is doing it. They deserve a lot of credit along with City Hall is staffed, each one of our departments are open, not open to the public. These people are still here working.

Of course the police, fire, ambulance, ems, emts, first responders we have to be very thankful for them. Today when I was driving to the grocery store I had to stop and get some gas and I thought you know what, gas station is open there is an attendant there that person is doing something for us. When I went to the grocery store I had my mask and if we keep the social distancing I think we will get through this. I thought too all the people at the register and the ones that are stocking the shelves we owe them a debt of gratitude. The nurses, doctors it is unbelievable. We are pretty lucky to have people pulling together and I think if we continue the social distancing we will get through this sooner than later. But please don’t think that when it levels off well ok we can get back out there, remember if you wear the mask you are actually taking care of other people. That is the important thing you certainly don’t want to get it and you certainly don’t want to be a carrier.

The Mayor brought up my birthday and I know a couple of people had contacted the Police Dept. and I think one of the reasons I was against it if you know me and my past anytime a bunch of police cars pull up in front of my house I get a little nervous. Police Dept., Fire Dept. I thank you.

Ald. Tobin-Thank you to the first responders and all essential workers. They are literally risking their lives out there. Let’s do our part like Ald. Masi said we keep that curve down.

My thoughts and prayers going out to the families or people affected by the Coronavirus.

Ald. Green-I echo to our first responders, police, fire, ems, emts, doctors, nurses, custodians, store clerks thank you. They are doing work on the front lines. Our DPW doing phenomenal job, City workers can’t thank everyone enough. Thank you.

This is one of those times where unfortunately thinking that it is not going to happen to me, is not a safe thing to do. Basically have to be out there smart. If you need to go out make sure it is essential only, wear a mask. Don’t go out, don’t go near large groups. Parks are closed in terms of playground equipment doesn’t mean you take your kids out and have groups gathered outside the gate. Unfortunately we see that in some communities.

I do want to say one thing I did see on Facebook this morning it kind of made me sick at first. It was a post that showed a guy driving in a car with a mask and
gloves on and it said if you are doing this what is the point? You are alone in your car. For a minute I thought that why would I wear a mask or gloves while driving my car alone? It took me 2 seconds to realize that well maybe this guy was the doctor who got off a 12 hr. shift and he needed to get food at a drive thru and may be he knew that you know if he had that mask on he wouldn’t infect someone or potentially pass it along. So there are reasons for people doing the right thing and it is not times where you need to do the cool thing and be out without gloves, without a mask. I have my hand sanitizer with me at all times.

With the Police and Fire Depts. going to the birthdays. It is a wonderful thing. You see the smile on the kids’ faces, that video alone was just phenomenal.

Someone did say it was a waste of resources. Not at all. This is what keeping people going. Keep up the great work police, fire everyone who is doing that.

Ald. Johnson-I concur with the wisdom of my colleagues with respect to appreciation.

I want to talk about gloves for a second. I was in the supermarket and a lady in front of me was kind of stressed, she had gloves on, she took her left hand glove off went to do the credit card, she actually put it in her mouth for a second, she looked at me and said I screwed that up. I said yeah. There is a sequence here. If you went to the supermarket and you touched the basket and you thought it might be contaminated in my opinion as a veterinarian and somebody that knows a little bit about viruses. You should not be wearing those gloves in your car, you just now took that contaminated gloves, you did not wash it, you got back into your vehicle, turn steering wheel so I’m not sure unless you put on a 2nd pair of gloves you should be driving around with gloves on. When I went into the supermarket the other night about 8 on Sunday the parking lot was littered with gloves that is tantum as medical waste. That is tantum amount leaving a heroin needle in the parking lot and you did that and you left. You want some 19 yr. old kid collecting baskets to go and be told you need to go and pick up all those gloves. Good news gloves inside out is probably not infectious. Point is what is wrong with people that you would do that?

Zombie housing is moving forward having been told by administration, Mr. Smith ...committee. Representative is willing to do a virtual presentation if needed, as far as I understand it we are going to try at the next meeting.

The Mayor mentioned the greening program has been at Cornell for a long time. What they do is they collect produce, could be stuff people brought to a farm market and had left over, or not enough people to harvest the crop. If you had 3 acres of strawberries and you couldn’t get to, Cornell would send volunteers to harvest them and distribute them. Mayor came up with the idea may be redistribute through the City.
Kiryas Joel issue- I am accredited veterinarian in the State of NY and I'm trained somewhat in infectious disease. If there was a horse farm and a ...disease came onto that farm that farm would be quarantined. No horses in no horses out. If I got called to treat that horse I would have a certain amount of clothing, I would have to put it on step across the line and do the work. Contamination line, clean line. I would take everything off at contamination line and then go on the clean side. When you have a community that is a hot pocket of disease I do not see it as socio economic, I don't see it as discriminatory I see as population medicine. You need to contain that infection, that population regardless who that population tends to be. I applaud all the efforts who monitor that population.

Ald. Kleiner- Coincidentally this is April 7th World Health Day. This year, by coincidence featuring nurses, midwives. If you have a midwife this would be a good year to have one and have a birth at home. Again, you can’ thank people enough who are out there putting their lives on the line and everyone from city employees to grocery store workers. Particularly in the war zone, in the hospitals fighting this and people haven’t paid attention. We had 23 deaths in Orange County yesterday and people say that like we are trying to keep the number down they haven’t talked about what kind of deaths those were. Some people have. The suffering from what you read about is just unbelievable. We can’t possibly thank those people enough but what we could do we have a war time president, Commander-in-Chief who says he is a war time president. Yet he says it is up to the states to fight this war. Can you imagine in WWII, the ...if you are nice enough to me and kiss my whatever may be I will send you some helmets and guns. We will see who fight this war, United States of America. This is a national problem and this is a hell of a way to go to war. We are starting to get it right and hopefully the numbers will start to level out and come down, it will run its course. We know from 1918 we know what a pandemic could do. We know one of the major problems in 1919 was to where to pile all the bodies because people where dying so fast. A lesson we should have learned.

We also see in Wisconsin they are holding election today. Even though the governor did an executive order to postpone it and police did an executive order trying to extend absentee ballots. It got overturned by the Wisconsin Supreme Court, then absentee ballot extension got overturned by US Supreme Court 5-4 surprise, surprise if your favorite candidate was not on the ballot 3 yrs. ago. These are the consequences you are getting. It is unbelievable you could make people do that and right now Sen. Metzger vote by mail Senate bill # will support it and if you send any comments to the Governor and again, the governor has really stepped up and done a hell of a job in NYS. I would urge everyone to support that bill. It is really important we don’t know what will be. The September election but certainly for June to have to have an excuse on the absentee ballot you will be out of county when you have a stay at home order. It is mind boggling.
While people are stuck at home and recommend book list to read while you are home; one of them should be the United States Constitution. We all take an oath to defend it and preserve it and I know one person who took an oath to defend it who never read it obvious. I certainly urge people to read Article 2 that is the one he found out about this year. It does not let him do anything he wants. Look at Article 2 and see if you could find out about signing statements. The part where it says part of your duties are to see that the laws be faithfully executed. I don’t see anything about signing statements. I don’t see anything about power of levy tariffs either. If you find it let me know.

I was going to mention about the trash I saw the same thing and the gloves and I’ve seen pictures of hillsides, banks just covered with gloves. It is like picking up after your dog, pick up after your own trash and try to keep everyone safe. It is not just for you.

Who would think what I would be wishing people is a safe Easter and a safe Passover. Please stay at home, observe it the best you can and stay safe.

Ald. Jean-Francois-First I like to say my condolences to everyone who lost their loved one to this horrible virus. Please everyone take care of yourself.

Our first responders I don’t know what else to say. My hat goes out to all first responders. This was an important job from the beginning but with this chaos going on, these people have been very powerful.

The other day when the virus first started they were saying, there was a rumor going around this virus is not killing African-Americans. People don’t be silly, don’t be stupid take care of yourself. Virus doesn’t matter if you are rich or poor whatever the case might be. Don’t believe in that. Data is not in yet. Statistics basically saying 60% of people dying is actually African-American. Take care of yourself, take care of your family don’t believe what you are hearing. Everybody is dying of that; regardless of color, this is very serious.

Happy birthday. (Ald. Masi)

Ald. Burr-I also would like to thank the first responders, DPW and all people involved.

Joe, happy birthday. Miguel thank you for our safety shields much appreciated.

10. Unfinished Business

John Naumchik-Nothing this evening.
11. New Business

69.20 Resolution to approve the 2019 Service Award program list for the City of Middletown Fire Department and authorize the City Clerk to sign the approval form.

On motion of Ald. Masi seconded by Ald. Green

RESOLVED, that the Common Council of the City of Middletown, NY, does hereby concur with the Board of Estimate and Apportionment to approve the 2019 Service Award program attached list for the City of Middletown Fire Department and authorize the City Clerk to sign the attached approval form.


70.20 Resolution to approve a one year agreement for Ambulance Service from Mobile Life Support Services Inc.

On motion of Ald. Tobin seconded by Ald. Jean-Francois

RESOLVED, that the Common Council of the City of Middletown, NY, does hereby concur with the Board of Estimate and Apportionment to approve and authorize the Mayor to sign the attached Ambulance Service agreement for one year, ending April 1, 2021, from Mobile Life Support Services Inc. until a new contract is agreed upon and approved by Corporation Counsel.

71.20 Resolution to approve the request of 2-8 South Street to extend the note one year to 2021 which Equilibrium Brewery II will pay 6% on the extended $100,000.00 principal payment which the City will invoice monthly.

On motion of Ald. Green seconded by Ald. Kleiner

WHEREAS; Equilibrium Brewery II at 2-8 South Street is making a new request regarding their 2020 mortgage payment to the City. This request comes in the wake of the COVID-19 crisis and the restrictions to their operations and loss of inventory, and

WHEREAS; the Board of Estimate and Apportionment has approve the request to extend the note one year to 2021 which Equilibrium Brewery II will pay 6% on the extended $100,000.00 principal payment which the City will invoice monthly.

SO LET IT BE RESOLVED; that the Common Council of the City of Middletown, NY, does hereby concur with the Board of Estimate and Apportionment to approve the request to extend the note one year to 2021 which Equilibrium Brewery II will pay 6% on the extended $100,000.00 principal payment which the City will invoice monthly.


72.20 Resolution to approve the sale of 15 Houston Avenue Extension, City Tax Map Section 43, Block 7, Lot 13 and authorize the Mayor to sign all documents of the sale.

On motion of Ald. Johnson seconded by Ald. Jean-Francois

WHEREAS, the City of Middletown advertised for proposals to purchase the property located at 15 Houston Avenue Extension, City Tax Map Section 43, Block 7, Lot 13, (“Premises”), owned by the City, and

WHEREAS, the Board of Estimate accepted the proposal of Janet Walters to purchase the Premises for the sum of $41,500.00.

NOW THEREFORE BE IT RESOLVED by the Common Council of the City of Middletown that it hereby concurs with the Board of Estimate that the Premises may be sold to Janet Walters for the sum of $41,500.00, subject to the terms and provisions contained in the attached Contract of Sale, prepared by the Corporation Counsel, and it is further

RESOLVED that the Mayor and Corporation Counsel are authorized to approve amendments to the attached Contract that do not modify the purchase price.

73.20 Resolution to approve an emergency purchase for a security system for City Hall in the amount of $47,500.00.

On motion of Ald. Masi seconded by Ald. Kleiner

RESOLVED; that the Common Council of the City of Middletown, NY, does hereby concur with the Board of Estimate and Apportionment to approve the attached emergency security system proposal, in response to the COVID 19 virus situation, in the amount of $47,500.00 from New York Security Systems, Inc. for the security of the City Hall building.

LET IT BE FURTHER RESOLVED; that the Common Council of the City of Middletown, NY, does hereby concur with the Board of Estimate and Apportionment to fund the emergency purchase in response to the COVID 19 virus situation from the capital account H.0894.900.


12. Local Laws
   John Naumchik-Nothing this evening.

13. Audit of Claims and accounts

   On motion of Ald. Masi seconded by Ald. Johnson

   I move that the accounts be audited the claims be adjusted and the Treasurer be authorized to issue warrants for their payment.


14. Adjournment

   There being no further business meeting adjourned at 9:01 PM

   Respectfully submitted,

   Karen Sisco
City of Middletown

Public Hearing
Sanitation Plan for City of Middletown
May 05, 2020 at 8:00PM

PLEASE TAKE NOTICE that the City of Middletown Common Council will hold an informal public hearing on the new Sanitation Plan on Tuesday, May 05, 2020, commencing at 8:00PM. The draft plan will be available for viewing on the City website at www.middletown-ny.com. The public hearing shall be conducted via video/tele-conference and live on Channel 20 for viewing.

In order to ensure the health, safety and welfare of the City residents the Common Council will not have the public at this public hearing but will be televised live on Channel 20. Members of the public may also access the public hearing to ask questions by clicking on the link below:

https://middletown-ny.digitaltownhall.com/

PLEASE TAKE FURTHER NOTICE that the public hearing is being held in accordance with the New York State Public Officers Law and Executive order 202.1 ("EO 202.1") issued on March 12, 2020, by New Sate Governor Andrew Cuomo, which suspended Article 7 of the Public Officers Law, to the extent necessary to permit any public body to meet and take such actions authorized by the law without permitting in public in-person access to meetings and authorizing such meeting to be held remotely by conference call or similar service, provided that the public has the ability to view or listen to such proceeding and that such meetings are recorded and late transcribed, etc.

For any person unable to participate at the time of meeting, email comments may be submitted in advance to jnaumchik@middletown-ny.com.

Accordingly, NO IN-PERSON ATTENDANCE IS PERMITTED FOR THE MEETING. Public comment shall be permitted and all person participating shall be entitled to be heard. Please note that all meetings will be recorded.

BY ORDER OF THE COMMON COUNCIL,
CITY OF MIDDLETOWN, NEW YORK

John C. Naumchik
City Clerk

Dated: April 30, 2020

Published in THR on April 30, 2020
SANITATION PLAN
2020

MAY 5, 2020
CITY OF MIDDLETOWN
Authored by: JOSEPH M. DEresteANO, MAYOR
CHANGES IN SANITATION PICK-UP

Move to Mechanical Arm

This proposal that is being presented to the common council will focus on replacing the existing system of picking up municipal solid waste, (MSW) that requires one driver and two back on loaders with a system that requires only one person using the mechanical arm packer trucks. The current system of manual pick up is no longer effective. This type of work during all types of weather conditions and heavy lifting results in high injury rates and staffing shortages. These shortages, historically covered by other DPW agencies and the result in some cases is a backlog of other work.

The city currently picks up MSW on a Ward system, one ward per day (4 Wards) with the fifth day for recycling.

*The plan includes the reduction of sanitation staffing through attrition*

*with result being a net savings to City of Middletown taxpayers.*
The city explored two options to improve sanitation pickup. One was privatization of the service. Private companies submitted proposals in response to a RFP and the results were very favorable to the taxpayers with an estimated savings over a million dollars per year.

This option required the consent of the local CSEA union. While the city offered to protect employees and share these savings with all city employees in the form of additional pay for remaining employees, the union rejected it.

We moved on to the other option under consideration, the mechanical arm. In September of 2018, I submitted to the common council a draft proposal with options for consideration. The implementation of the mechanical arm system will require significant capital investment and new legislation. I will detail in this report my recommendations for each.

By utilizing the mechanical arm equipped packer system, the city will retain control of a vital city service by continuing the use of city employees and management. At the same time, we can reduce the burden on taxpayers and improve working conditions for the men / women in the Sanitation Department thus further reducing workmen’s compensation costs.

As part of the planning, one of the vendors did bring the mechanical arm truck to the garage for demonstration purposes.

This plan will also increase recycling rates, which are abysmal in the city hovering around 6% for many years.

Our projections indicate that when fully implemented, reducing staff through attrition, increased recycling, savings on workmen’s compensation costs and other potential savings, the city can expect a savings of up to $500,000 annually.

Based upon feedback from some council members and recognizing that our current sanitation fleet is old and in need of replacement, I recommend that we no longer consider a phase in period (original proposal was 2018) and go directly to implement this plan citywide in 2020. This will include a trial period of purchasing containers, training staff on operation of trucks, renting one or two trucks, evaluation of routes and
any necessary changes to our current operations that may be required due to the new pick up operation.

This proposal will save taxpayers money, improve work conditions for our employees and help make our city cleaner.

Capital Investment

1. The cost of each truck is approximately $300,000. The city will need three.
2. Excluding condominium’s and apartment complexes, estimated we would need 15,000, 95-gallon bins. We should plan on at least a 200, 65-gallon bins for seniors and those who are unable to handle the larger bin. Sanitation Equipment Corporation of Totowa, NJ estimated the cost of each bin with the quantity we would require to be in the area of $55 each for the 95-gallon and $50 each for the 65-gallon.
3. Bins for the DMU and single property apartment complexes estimated to be in the area of 500.
4. Total capital outlay- Bins approximately $880,000
   Trucks approximately $900,000 (minimum)

Legislation Required

1. Require every housing unit with the exception of apartment complexes and condominiums to have at least one of MSW bins and one Recycle bin.
2. One and Two family homes receive one set of bins at no charge. Three family on up require an additional charge of $100 for the third set of bins and $100 annually thereafter for each additional set required. For example, 5 unit building, 5 sets of bins, first two free.
3. Standalone apartment buildings that have private pick up are exempt from number 2 above.
4. Apartment complexes and Condominiums picked up by the City will only continue with central garbage depots at each complex. Individual units are not eligible for pick up unless able to accommodate storage of bins. This is on the discretion of the Commissioner of DPW.
5. Townhouses, where the ownership is fee simple are eligible but properties must have storage abilities for containers, ie garage that does not negatively affect the neighbors.

6. Bins remain the property of the City of Middletown. Replacement bins are available at cost. It is the property owner’s responsibility to maintain the bins. Defective containers replaced at no cost at the discretion of the Public Works Commissioner. Bins will be coded and make it a violation to use someone else’s bin. Will require random scanning to detect.

7. Property owner will be responsible for placement of the bin adjacent to their driveway, free from any parked vehicles to allow the mechanical arm to pick up container.

8. Legislation requiring the property owner comply with rules regarding how much MSW can fit in the bins. Filling too much may result in no pick up and frequent abuse may require the property owner to purchase additional bins.

9. Due to volume of MSW around the holidays, common council must designate certain holidays to allow for curbside use of heavy-duty large garbage bags placed alongside the bins. For example, Christmas through New Year’s. We must put an end to the use of small supermarket type bags to help keep our streets clean.

DMU Zone
This zone is unique and special legislation will be required. Many buildings do not have the area for storing cans. For this reason and more, the city currently picks up trash 7 days per week. We also provide designated spots in the downtown area for owners / tenants to bring their trash directly to a trash depot. We will be adding an additional depot on Orchard St. in the new parking area across from the former Thrall Library. These depots are for the exclusive use of DMU tenants / residents. Need legislation to ensure that any dumping by any person not in the DMU is a violation punishable by fine. We would encourage DMU property owners and businesses to use these depots rather than place trash in front of their buildings or placing trash in the litter baskets that are scattered in the downtown area.
OPTION 1.

1. Any business, tenant or resident that places their trash in any place other than the garbage depot or one of the city trash bins will be subject to a fine determined by the common council. I believe it should be significant enough to deter future violations because tracking down violators is extremely time consuming. Heavy-duty users such as restaurants and bars are encouraged to use the depots.

2. DMU building owner will be eligible for one of each bin per property. Additional bins available with a maximum of three per property at the same cost as listed in for homeowners. The building owner must be able to store the bins on their own property, out of street view.

3. Placement of bins on sidewalks prior to 9pm is a violation and bins and removed from the sidewalk by 10am the following day. This requires new legislation.

4. These bins must be accessible to the mechanical arm of the truck. DMU pick up may require additional person to maneuver bins and place them in reach of the arm.

5. During winter months the property owner must have the snow removed from their sidewalk / curb area in the area they place the bin.

OPTION 2

Allow for the use of heavy duty garbage bags for curbside pickup during certain holidays and in the DMU. All other regulations stay in place. This would reduce the bin purchase amount. Including this option may defeat our objective.

SUMMARY

City Council should hold public hearings and get feedback from our residents. This is a proposal only for consideration by the Board.

TEAM MEMBERS

Joseph M. DeStefano, Mayor
J. Miguel Rodrigues, Common Council President
Joseph G. Masi, Finance Chairman
Jude Jean-Francois, Public Works Chairman
Jacob Tawil, Commissioner of Public Works
Mark Pengel, Deputy Commissioner of Public Works
Donald Paris, City Treasurer
RESOLVED; that the Common Council of the City of Middletown concurs with the Board of Estimate and Apportionment to approve a change in the 2019-2020 capital budget for a "Fire Police Van" including lettering, radios & emergency warning lights totaling $44,000 replaced with a Four-Door Pickup Truck with a cap that would better serve the Fire Departments needs which will be budget neutral.
Please add this request to the next Board of Estimate agenda:

From: MFD Treasurer
Sent: Thursday, April 23, 2020 2:10 PM
To: Donald Paris; Janet Gallo
Cc: John Naumchik; Don Luis
Subject: BOE request RE: Voucher # 20202011

Please add this updated request to the next Board of Estimate agenda:

The 2019-2020 Capital Budget lists a "Fire Police Van" including lettering, radios & emergency warning lights totaling $44,000. The Fire Department determined a Four-Door Pickup Truck with a cap would better service our needs. We request the Board of Estimate recommend and the Common Council approve this change, which is budget neutral.

Thanks,
Bill Kelder
MFD Treasurer

(Correct font, should be able to just cut & paste)

From: Donald Paris <dparis@middletown-ny.com>
Sent: Monday, April 6, 2020 3:54 PM
To: MFD Treasurer <mfdtreasurer@middletown-ny.com>
Cc: Janet Gallo <jgallo@middletown-ny.com>
Subject: RE: Voucher # 20202011

Bill,
Please prepare and item for the next BOE changing the vehicle that was approved to what was purchased, why the change occurred and that the price was no higher.
Thanks,
Don

Donald J. Paris
Treasurer
(845) 346-4153
(845) 343-1101 Fax
doaris@Middletown-NY.com
From: MFD Treasurer
Sent: Friday, April 3, 2020 8:06 AM
To: Donald Paris <dparis@middletown-ny.com>
Cc: Janet Gallo <jgallo@middletown-ny.com>
Subject: Voucher # 20202011

The Capital Item for this purchase was entitled Fire Police Van when we in fact purchased a Chevrolet Silverado Pickup. Janet pointed out that the title should be changed. Please seek the appropriate approvals to do this.

Thanks,
Bill
RESOLVED; that the Common Council of the City of Middletown concurs with the Board of Estimate and Apportionment to authorize the Mayor to sign the attached lease with AT&T for Antenna Space at 31 ½ Kennedy Terrace approved by Corporation Counsel.
April 1, 2020

To: Alex Smith

Fm: Bob Altenbach, on behalf of AT&T

Re: AT&T / City of Middletown Agreements

Dear Alex,

Please find enclosed herein documents pertaining to the Agreement we have recently negotiated. Can you please:

- have the City sign and notarize both sets of the agreements;
- have the City complete the W-9;
- have the City complete the Payment Direction form (highlighted areas)

Once all have been completed above, please place JUST THE AGREEMENTS into the pre-addressed FEDEX labeled for AT&T (Large Pak)

Please place the completed W-9 and Payment Direction Form in the pre-addressed FEDEX labeled Bob Altenbach (Envelope) THEN PLACE IN AT&T FEDEX PAK

Then mail the AT&T FEDEX.

AT&T will then fully execute and return the agreements to me. I will review the agreements for completion, then scan a copy for my files and return 1 original fully executed set back to you for the City’s use.

Thank you for your consideration in this matter,

Bob Altenbach
Site Acquisition Specialist

NETWORK BUILDING + CONSULTING
1777 Sentry Parkway West | VEVA Bldg 17, Suite 400 | Blue Bell, PA | 19422
P 267.460.0122 x2023 | M 410.336.2209 | networkbuilding.com
STRUCTURE LEASE AGREEMENT

THIS STRUCTURE AGREEMENT ("Agreement"), dated as of the latter of the signature dates below (the "Effective Date"), is entered into by City of Middletown, a State of New York municipal corporation, having a mailing address of 16 James Street, Middletown, NY 10940 ("Landlord") and New Cingular Wireless PCS, LLC, a Delaware limited liability company, having a mailing address of 1025 Lenox Park Blvd. NE, 3rd floor, Atlanta, GA 30319 ("Tenant").

BACKGROUND

Landlord owns or controls that certain plot, parcel or tract of land, as described on Exhibit 1, improved with a structure (the "Structure"), together with all rights and privileges arising in connection therewith, located at 31 1/2 Kennedy Terrace, in the County of Orange, State of New York (collectively, the "Property"). Landlord desires to grant to Tenant the right to use a portion of the Property in accordance with this Agreement.

The parties agree as follows:

1. **LEASE OF PREMISES.** Landlord hereby leases to Tenant a portion of the Property consisting of:

   (a) approximately 300 square feet including the air space above such rooftop/basement/ground space, as described on attached Exhibit 1, for the placement of Tenant's Communication Facility;

   (b) space for any structural steel or other improvements to support Tenant's equipment (collectively, the space referenced in (a) and (b) is the "Equipment Space");

   (c) that certain space on the Structure, as generally depicted on Exhibit 1, each measuring twenty (20) contiguous linear feet wide and ten (10) contiguous linear feet deep, including the air space above same, where Tenant shall have the right to install its antennas and other equipment (collectively, the "Antenna Space"); and

   (d) those certain areas where Tenant's conduits, wires, cables, cable trays and other necessary connections are located between the Equipment Space and the Antenna Space, and between the Equipment Space and the electric power, telephone, and fuel sources for the Property (hereinafter collectively referred to as the "Connection Space"). Landlord agrees that Tenant shall have the right to install connections between Tenant's equipment in the Equipment Space and Antenna Space; and between Tenant's equipment in the Equipment Space and the electric power, telephone, and fuel sources for the Property, and any other improvements. Landlord further agrees that Tenant shall have the right to install, replace and maintain utility lines, wires, poles, cables, conduits, pipes and other necessary connections over or along any right-of-way extending from the aforementioned public right-of-way to the Premises. The Equipment Space, Antenna Space, and Connection Space, are hereinafter collectively referred to as the "Premises."

2. **PERMITTED USE.** Tenant may use the Premises for the transmission and reception of communications signals and the installation, construction, maintenance, operation, repair, replacement and upgrade of communications fixtures and related equipment, cables, accessories and improvements, which may include a suitable support structure, associated antennas, equipment shelters or cabinets and fencing and any other items necessary to the successful and secure use of the Premises (the "Communication Facility"), as well as the right to test, survey and review title on the Property; Tenant further has the right but not the obligation to add, modify and/or replace equipment in order to be in compliance with any current or future federal, state or local mandated application, including, but not limited to, emergency 911 communication services, at no additional cost to Tenant or Landlord (collectively, the "Permitted Use"). Landlord and Tenant agree that any portion of the
Communication Facility that may be conceptually described on Exhibit 1 will not be deemed to limit Tenant’s Permitted Use. If Exhibit 1 includes drawings of the initial installation of the Communication Facility, Landlord’s execution of this Agreement will signify Landlord’s approval of Exhibit 1. For a period of ninety (90) days following the start of construction, Landlord grants Tenant, its subtenants, licensees and sublicensees, the right to use such portions of Landlord’s contiguous, adjoining or surround property (the “Surrounding Property”), which includes, without limitation, the remainder of the Structure, as may reasonably be required during construction and installation of the Communication Facility. Tenant has the right to install and operate transmission cables from the equipment shelter or cabinet to the antennas, electric lines from the main feed to the equipment shelter or cabinet and communication lines from the Property’s main entry point to the equipment shelter or cabinet, install a generator and to make other improvements, alterations, upgrades or additions appropriate for Tenant’s Permitted Use, including the right to construct a fence around the Premises or equipment, install warning signs to make individuals aware of risks, install protective barriers, install any other control measures reasonably required by Tenant’s safety procedures or applicable law, and undertake any other appropriate means to secure the Premises or equipment at Tenant’s expense. Tenant has the right, at no additional cost, to install, modify, supplement, replace, upgrade, expand the Communication Facility (including, for example, increasing the number of antennas or adding microwave dishes) or relocate the Communication Facility within the Premises at any time during the Term. Tenant will be allowed to make such alterations to the Property in order to ensure that the Communication Facility complies with all applicable federal, state or local laws, rules or regulations. In the event Tenant desires to modify or upgrade the Communication Facility, in a manner that requires an additional portion of the Property (the “Additional Premises”) for such modification or upgrade, Landlord agrees to lease to Tenant the Additional Premises, upon the same terms and conditions set forth herein, except that the Rent shall increase, in conjunction with the lease of the Additional Premises by the amount equivalent to the then-current per square foot rental rate charged by Landlord to Tenant times the square footage of the Additional Premises. Landlord agrees to take such actions and enter into and deliver to Tenant such documents as Tenant reasonably requests in order to effect and memorialize the lease of the Additional Premises to Tenant.

3. **TERM.**
   (a) The initial lease term will be five (5) years (the “Initial Term”), commencing on the Effective Date. The Initial Term will terminate on the fifth (5th) anniversary of the Effective Date.
   (b) This Agreement will automatically renew for five (5) additional five (5) year term(s) (each additional five (5) year term shall be defined as an “Extension Term”), upon the same terms and conditions set forth herein unless Tenant notifies Landlord in writing of Tenant’s intention not to renew this Agreement at least sixty (60) days prior to the expiration of the Initial Term or the then-existing Extension Term.
   (c) Unless (i) Landlord or Tenant notifies the other in writing of its intention to terminate this Agreement at least six (6) months prior to the expiration of the final Extension Term, or (ii) the Agreement is terminated as otherwise permitted by this Agreement prior to the end of the final Extension Term, this Agreement shall continue in force upon the same covenants, terms and conditions for a further term of one (1) year, and for annual terms thereafter (“Annual Term”) until terminated by either party hereto by giving to the other party hereto written notice of its intention to so terminate at least six (6) months prior to the end of any such Annual Term. Monthly Rent during such Annual Terms shall be equal to the Rent paid for the last month of the final Extension Term. If Tenant remains in possession of the Premises after the termination of this Agreement, then Tenant will be deemed to be occupying the Premises on a month-to-month basis (the “Holdover Term”), subject to the terms and conditions of this Agreement.
   (d) The Initial Term, any Extension Terms, any Annual Terms and any Holdover Term are collectively referred to as the “Term.”

4. **RENT.**
   (a) Commencing on the first day of the month following the date that Tenant commences construction (the “Rent Commencement Date”), Tenant will pay Landlord on or before the fifth (5th) day of each calendar month in advance, Four Thousand and No/100 Dollars ($4,000.00) (the “Rent”), at the address set forth above. In any partial month occurring after the Rent Commencement Date, the Rent will be prorated. The initial Rent payment will be forwarded by Tenant to Landlord within forty-five (45) days after the Rent Commencement Date.
(b) Upon the commencement of each Extension Term, the monthly Rent will increase by Ten percent (10%) over the Rent paid during the previous five (5) year term.

(c) All charges payable under this Agreement such as utilities and taxes shall be billed by Landlord within one (1) year from the end of the calendar year in which the charges were incurred; any charges beyond such period shall not be billed by Landlord, and shall not be payable by Tenant. The foregoing shall not apply to monthly Rent which is due and payable without a requirement that it be billed by Landlord. The provisions of this subsection shall survive the termination or expiration of this Agreement.

5. APPROVALS. Landlord agrees that Tenant’s ability to use the Premises is contingent upon the suitability of the Premises and Property for the Permitted Use and Tenant’s ability to obtain and maintain all governmental licenses, permits, approvals or other relief required of or deemed necessary or appropriate by Tenant for its use of the Premises, including without limitation applications for zoning variances, zoning ordinance amendments, special use permits, and construction permits (collectively, the “Government Approvals”). Landlord authorizes Tenant to prepare, execute and file all required applications to obtain Government Approvals for the Permitted Use and agrees to reasonably assist Tenant with such applications and with obtaining and maintaining the Government Approvals. In addition, Tenant shall have the right to initiate the ordering and/or scheduling of necessary utilities.

(b) Tenant has the right to obtain a title report or commitment for a leasehold title policy from a title insurance company of its choice and to have the Property surveyed by a surveyor of its choice.

(c) Upon approval by the Commissioner of Public Works for the City of Middletown (which shall not be unreasonably withheld, conditioned or delayed), Tenant may also perform and obtain, at Tenant’s sole cost and expense, soil borings, percolation tests, engineering procedures, environmental investigation or other tests or reports on, over, and under the Property, necessary to determine if Tenant’s use of the Premises will be compatible with Tenant’s engineering specifications, system, design, operations or Government Approvals.

6. TERMINATION. This Agreement may be terminated, without penalty or further liability, as follows:

(a) by either party on thirty (30) days prior written notice, if the other party remains in default under Section 15 of this Agreement after the applicable cure periods;

(b) by Tenant upon written notice to Landlord, if Tenant is unable to obtain, or maintain, any required approval(s) or the issuance of a license or permit by any agency, board, court or other governmental authority necessary for the construction or operation of the Communication Facility as now or hereafter intended by Tenant; or if Tenant determines, in its sole discretion that the cost of or delay in obtaining or retaining the same is commercially unreasonable;

(c) by Tenant, upon written notice to Landlord, if Tenant determines, in its sole discretion, due to the title report results or survey results, that the condition of the Premises is unsatisfactory for its intended uses;

(d) by Tenant upon written notice to Landlord for any reason or no reason, at any time prior to commencement of construction by Tenant; or

(e) by Tenant upon sixty (60) days’ prior written notice to Landlord for any reason or no reason, so long as Tenant pays Landlord a termination fee equal to three (3) months’ Rent, at the then-current rate, provided, however, that no such termination fee will be payable on account of the termination of this Agreement by Tenant under any termination provision contained in any other Section of this Agreement, including the following: Section 5 Approvals, Section 6(a) Termination, Section 6(b) Termination, Section 6(c) Termination, Section 6(d) Termination, Section 11(d) Environmental, Section 18 Condemnation or Section 19 Casualty.
7. **INSURANCE.** During the Term, Tenant will purchase and maintain in full force and effect such general liability policy as Tenant may deem necessary. Said policy of general liability insurance per ISO form CG 00 01 or its equivalent will provide a combined single limit of One Million and No/100 Dollars ($1,000,000.00) per occurrence and in the aggregate. Notwithstanding the foregoing, Tenant shall have the right to self-insure such general liability coverage. Tenant’s insurance endorsements will include the Landlord as an Additional Insured with respect to this Agreement.

8. **INTERFERENCE.**
   (a) Prior to or concurrent with the execution of this Agreement, Landlord has provided or will provide Tenant with a list of radio frequency user(s) and frequencies used on the Property as of the Effective Date. Tenant warrants that its use of the Premises will not interfere with those existing radio frequency uses on the Property, as long as the existing radio frequency user(s) operate and continue to operate within their respective frequencies and in accordance with all applicable laws and regulations.
   
   (b) Landlord will not grant, after the Effective Date, a lease, license or any other right to any third party, if the exercise of such grant may in any way adversely affect or interfere with the Communication Facility, the operations of Tenant or the rights of Tenant under this Agreement. Landlord will notify Tenant in writing prior to granting any third party the right to install and operate communications equipment on the Property.
   
   (c) Landlord will not, nor will Landlord permit its employees, tenants, licensees, invitees, agents or independent contractors to interfere in any way with the Communication Facility, the operations of Tenant or the rights of Tenant under this Agreement. Landlord will cause such interference to cease within twenty-four (24) hours after receipt of notice of interference from Tenant. In the event any such interference does not cease within the aforementioned cure period, Landlord shall cease all operations which are suspected of causing interference (except for intermittent testing to determine the cause of such interference) until the interference has been corrected.
   
   (d) For the purposes of this Agreement, “interference” may include, but is not limited to, any use on the Property or Surrounding Property that causes electronic or physical obstruction with, or degradation of, the communications signals from the Communication Facility.

9. **INDEMNIFICATION.**
   (a) Tenant agrees to indemnify, defend and hold Landlord harmless from and against any and all injury, loss, damage or liability, costs or expenses in connection with a third party claim (including reasonable attorneys’ fees and court costs) arising directly from the installation, use, maintenance, repair or removal of the Communication Facility or Tenant’s breach of any provision of this Agreement, except to the extent attributable to the negligent or intentional act or omission of Landlord, its employees, invitees, agents or independent contractors.
   
   (b) Landlord agrees to indemnify, defend and hold Tenant harmless from and against any and all injury, loss, damage or liability, costs or expenses in connection with a third party claim (including reasonable attorneys’ fees and court costs) arising directly from the actions or failure to act of Landlord, its employees, invitees, agents or independent contractors, or Landlord’s breach of any provision of this Agreement, except to the extent attributable to the negligent or intentional act or omission of Tenant, its employees, agents or independent contractors.
   
   (c) The indemnified party: (i) shall promptly provide the indemnifying party with written notice of any claim, demand, lawsuit, or the like for which it seeks indemnification pursuant to this Section 9 and provide the indemnifying party with copies of any demands, notices, summonses, or legal papers received in connection with such claim, demand, lawsuit, or the like; (ii) shall not settle any such claim, demand, lawsuit, or the like without the prior written consent of the indemnifying party; and (iii) shall fully cooperate with the indemnifying party in the defense of the claim, demand, lawsuit, or the like. A delay in notice shall not relieve the indemnifying party of its indemnity obligation, except (1) to the extent the indemnifying party can show it was prejudiced by
the delay; and (2) the indemnifying party shall not be liable for any settlement or litigation expenses incurred before the time when notice is given.

10. **WARRANTIES.**

(a) Each of Tenant and Landlord (to the extent not a natural person) each acknowledge and represent that it is duly organized, validly existing and in good standing and has the right, power, and authority or capacity, as applicable, to enter into this Agreement and bind itself hereto through the party or individual set forth as signatory for the party below.

(b) Landlord represents, warrants and agrees that: (i) Landlord solely owns the Property as a legal lot in fee simple, or controls the Property by lease or license and solely owns the Structure; (ii) the Property is not and will not be encumbered by any liens, restrictions, mortgages, covenants, conditions, easements, leases, or any other agreements of record or not of record, which would adversely affect Tenant’s Permitted Use and enjoyment of the Premises under this Agreement; (iii) Landlord grants to Tenant sole, actual, quiet and peaceful use, enjoyment and possession of the Premises in accordance with the terms of this Agreement without hindrance or ejection by any persons lawfully claiming under Landlord; (iv) Landlord’s execution and performance of this Agreement will not violate any laws, ordinances, covenants or the provisions of any mortgage, lease or other agreement binding on Landlord; and (v) if the Property is or becomes encumbered by a deed to secure a debt, mortgage or other security interest, then Landlord will provide promptly to Tenant a mutually agreeable subordination, non-disturbance and attornment agreement executed by Landlord and the holder of such security interest in the form attached hereto as Exhibit 10(b).

11. **ENVIRONMENTAL.**

(a) Landlord represents and warrants, except as may be identified in Exhibit 11 attached to this Agreement, (i) the Property, as of the Effective Date, is free of hazardous substances, including asbestos-containing materials and lead paint, and (ii) the Property has never been subject to any contamination or hazardous conditions resulting in any environmental investigation, inquiry or remediation. Landlord and Tenant agree that each will be responsible for compliance with any and all applicable governmental laws, rules, statutes, regulations, codes, ordinances, or principles of common law regulating or imposing standards of liability or standards of conduct with regard to protection of the environment or worker health and safety, as may now or at any time hereafter be in effect, to the extent such apply to that party’s activity conducted in or on the Property.

(b) Landlord and Tenant agree to hold harmless and indemnify the other from, and to assume all duties, responsibilities and liabilities at the sole cost and expense of the indemnifying party for, payment of penalties, sanctions, forfeitures, losses, costs or damages, and for responding to any action, notice, claim, order, summons, citation, directive, litigation, investigation or proceeding (“Claims”), to the extent arising from that party’s breach of its obligations or representations under Section 11(a). Landlord agrees to hold harmless and indemnify Tenant from, and to assume all duties, responsibilities and liabilities at the sole cost and expense of Tenant for, payment of penalties, sanctions, forfeitures, losses, costs or damages, and for responding to any Claims, to the extent arising from subsurface or other contamination of the Property with hazardous substances prior to the Effective Date or from such contamination caused by the acts or omissions of Landlord during the Term. Tenant agrees to hold harmless and indemnify Landlord from, and to assume all duties, responsibilities and liabilities at the sole cost and expense of Tenant for, payment of penalties, sanctions, forfeitures, losses, costs or damages, and for responding to any Claims, to the extent arising from hazardous substances brought onto the Property by Tenant.

(c) The indemnification provisions contained in this Section 11 specifically include reasonable costs, expenses and fees incurred in connection with any investigation of Property conditions or any clean-up, remediation, removal or restoration work required by any governmental authority. The provisions of this Section 11 will survive the expiration or termination of this Agreement.

(d) In the event Tenant becomes aware of any hazardous materials on the Property, or any environmental, health or safety condition or matter relating to the Property, that, in Tenant’s sole determination, renders the condition of the Premises or Property unsuitable for Tenant’s use, or if Tenant believes that the leasing or continued leasing of the Premises would expose Tenant to undue risks of liability to a government agency or other
third party, then Tenant will have the right, in addition to any other rights it may have at law or in equity, to terminate this Agreement upon written notice to Landlord.

12. **ACCESS.** At all times throughout the Term of this Agreement, and at no additional charge to Tenant, Tenant and its employees, agents, and subcontractors, will have twenty-four (24) hours per day, seven (7) days per week pedestrian and vehicular access (“Access”) to and over the Property, from an open and improved public road to the Premises, for the installation, maintenance and operation of the Communication Facility and any utilities serving the Premises, only if it does not conflict with City Water Department routine or emergency operations. Landlord agrees to provide to Tenant such codes, keys and other instruments necessary for access at no additional cost to Tenant. Landlord, upon prior notice as described hereinbelow, agrees to allow Tenant access to the Premises during ordinary business hours (7:00 a.m. – 3:00 p.m., Monday through Friday) for regular maintenance and repairs, and twenty-four (24) hours a day, seven (7) days a week for unscheduled repairs and other emergency purposes. Access must be preceded by twenty-four (24) hour notice to the City, except for emergencies for which prior notice must be provided by telephone to the Department of Public Works (845-343-3169) during ordinary business hours or to the Middletown Police Department (845-343-3151) after business hours. Landlord acknowledges in the event Tenant cannot obtain Access to the Premises, Tenant will incur significant damage. If Landlord fails to provide the Access granted by this Paragraph 12, such failure shall be a default under this Agreement. If Tenant elects to utilize an Unmanned Aircraft System (“UAS”) in connection with its installation, construction, monitoring, site audits, inspections, maintenance, repair, modification, or alteration activities at the Property, Landlord hereby grants Tenant, or any UAS operator acting on Tenant’s behalf, express permission to fly over the applicable Property and Premises, and consents to the use of audio and video navigation and recording in connection with the use of the UAS, provided it is done in accordance with relevant laws and regulations.

13. **REMOVAL/RESTORATION.** All portions of the Communication Facility brought onto the Property by Tenant will be and remain Tenant’s personal property and, at Tenant’s option, may be removed by Tenant at any time during or after the Term. Landlord covenants and agrees that no part of the Communication Facility constructed, erected or placed on the Premises by Tenant will become, or be considered as being affixed to or a part of, the Property, it being the specific intention of Landlord that all improvements of every kind and nature constructed, erected or placed by Tenant on the Premises will be and remain the property of Tenant and may be removed by Tenant at any time during or after the Term. Tenant will repair any damage to the Property resulting from Tenant’s removal activities. Any portions of the Communication Facility that Tenant does not remove within one hundred twenty (120) days after the later of the end of the Term and cessation of Tenant’s operations at the Premises shall be deemed abandoned and owned by Landlord. Notwithstanding the foregoing, Tenant will not be responsible for the replacement of any trees, shrubs or other vegetation.

14. **MAINTENANCE/UTILITIES.**

   (a) Tenant will keep and maintain the Premises in good condition, reasonable wear and tear and damage from the elements excepted. Landlord will maintain and repair the Property and access thereto, the Structure, and all areas of the Premises where Tenant does not have exclusive control, in good and tenantable condition, subject to reasonable wear and tear and damage from the elements. Landlord will be responsible for maintenance of landscaping on the Property, including any landscaping installed by Tenant as a condition of this Agreement or any required permit.

   (b) Tenant will be responsible for paying on a monthly or quarterly basis all utilities charges for electricity, telephone service or any other utility used or consumed by Tenant on the Premises. In the event Tenant cannot secure its own metered electrical supply, Tenant will have the right, at its own cost and expense, to sub-meter from Landlord. When sub-metering is required under this Agreement, Landlord will read the meter and provide Tenant with an invoice and usage data on a monthly basis. Tenant shall reimburse Landlord for such utility usage at the same rate charged to Landlord by the utility service provider. Landlord further agrees to provide the usage data and invoice on forms provided by Tenant and to send such forms to such address and/or agent designated by Tenant. Tenant will remit payment within sixty (60) days of receipt of the usage data and required forms. Landlord shall maintain accurate and detailed records of all utility expenses, invoices and
payments applicable to Tenant’s reimbursement obligations hereunder. Within fifteen (15) days after a request from Tenant, Landlord shall provide copies of such utility billing records to the Tenant in the form of copies of invoices, contracts and cancelled checks. If the utility billing records reflect an overpayment by Tenant, Tenant shall have the right to deduct the amount of such overpayment from any monies due to Landlord from Tenant.

(c) As noted in Section 4(c) above, any utility fee recovery by Landlord is limited to a twelve (12) month period. If Tenant sub-meters electricity from Landlord, Landlord agrees to give Tenant at least twenty-four (24) hours advance notice of any planned interruptions of said electricity. Landlord acknowledges that Tenant provides a communication service which requires electrical power to operate and must operate twenty-four (24) hours per day, seven (7) days per week. If the interruption is for an extended period of time, in Tenant’s reasonable determination, Landlord agrees to allow Tenant the right to bring in a temporary source of power for the duration of the interruption. Landlord will not be responsible for interference with, interruption of or failure, beyond the reasonable control of Landlord, of such services to be furnished or supplied by Landlord.

(d) Tenant will have the right to install utilities, at Tenant’s expense, and to improve present utilities on the Property and the Premises. Landlord hereby grants to any service company providing utility or similar services, including electric power and telecommunications, to Tenant an easement over the Property, from an open and improved public road to the Premises, and upon the Premises, for the purpose of constructing, operating and maintaining such lines, wires, circuits, and conduits, associated equipment cabinets and such appurtenances thereto, as such service companies may from time to time require in order to provide such services to the Premises. Upon Tenant’s or service company’s request, Landlord will execute a separate recordable easement evidencing this grant, at no cost to Tenant or the service company.

(e) Landlord reserves the right, limited to once every twelve (12) years, or in the case of an emergency, to direct the Tenant to remove Tenant’s equipment so that the Landlord may perform maintenance or cleaning of the tower. Landlord shall give Tenant at least one hundred eighty (180) days prior written notice, or in the case of emergency forty-eight (48) hours telephonic notice, of the intended work and the opportunity, at Tenant’s cost and expense, to temporarily relocate and continue to operate its antennas, or otherwise secure the antennas or the Communication Facility generally, to protect them from damage and allow Tenant’s continued operation. Tenant will be permitted to install any type of temporary facility necessary to keep its Communication Facility operational, including a “COW” (Cell On Wheels), provided same does not cause any unreasonable interference with Landlord’s Water Department routine or emergency operations. Tenant must coordinate with Landlord to ensure no such unreasonable interference. Any maintenance or cleaning will be conducted by Landlord as diligently and expeditiously as possible.

15. DEFAULT AND RIGHT TO CURE.

(a) The following will be deemed a default by Tenant and a breach of this Agreement: (i) non-payment of Rent if such Rent remains unpaid for more than thirty (30) days after written notice from Landlord of such failure to pay; or (ii) Tenant’s failure to perform any other term or condition under this Agreement within forty-five (45) days after written notice from Landlord specifying the failure. No such failure, however, will be deemed to exist if Tenant has commenced to cure such default within such period and provided that such efforts are prosecuted to completion with reasonable diligence. Delay in curing a default will be excused if due to causes beyond the reasonable control of Tenant. If Tenant remains in default beyond any applicable cure period, then Landlord will have the right to exercise any and all rights and remedies available to it under law and equity.

(b) The following will be deemed a default by Landlord and a breach of this Agreement: (i) Landlord’s failure to provide Access to the Premises as required by Section 12 within twenty-four (24) hours after written notice of such failure; (ii) Landlord’s failure to cure an interference problem as required by Section 8 within twenty-four (24) hours after written notice of such failure; or (iii) Landlord’s failure to perform any term, condition or breach of any warranty or covenant under this Agreement within forty-five (45) days after written notice from Tenant specifying the failure. No such failure, however, will be deemed to exist if Landlord has commenced to cure the default within such period and provided such efforts are prosecuted to completion with reasonable diligence. Delay in curing a default will be excused if due to causes beyond the reasonable control of Landlord. If Landlord remains in default beyond any applicable cure period, then Tenant will have the right to exercise any and all rights and remedies available to it under law and equity.
16. **ASSIGNMENT/SUBLEASE.** Tenant will have the right to assign this Agreement or sublease the Premises and its rights herein, in whole or in part, with Landlord’s written consent, which will not be unreasonably withheld, conditioned or delayed. Notwithstanding the foregoing, Tenant will have the right to assign, sell or transfer its interest under this Agreement, in whole or in part, without Landlord’s consent to: (a) Tenant’s Affiliate; (b) to any entity with a net worth of at least Twenty Million Dollars ($20,000,000.00) or (c) any entity that acquires all or substantially all of Tenant’s assets in the market as defined by the Federal Communications Commission in which the Property is located. Upon notification to Landlord of such assignment, transfer or sale, Tenant will be relieved of all future performance, liabilities and obligations under this Agreement to the extent of such assignment.

17. **NOTICES.** All notices, requests and demands hereunder will be given by first class certified or registered mail, return receipt requested, or by a nationally recognized overnight courier, postage prepaid, to be effective when properly sent and received, refused or returned undelivered. Notices will be addressed to the parties hereto as follows:

If to Tenant: New Cingular Wireless PCS, LLC  
Attn: Network Real Estate Administration  
Re: Cell Site #: W-643; Cell Site Name: Watts Memorial Park NY (NY)  
Fixed Asset #: 14644766  
1025 Lenox Park Blvd. NE, 3rd floor  
Atlanta, Georgia 30319

With a copy to: New Cingular Wireless PCS, LLC  
Attn.: Legal Dept — Network Operations  
Re: Cell Site #: _W-643; Cell Site Name: Watts Memorial Park, NY (NY)  
Fixed Asset #: 14644766  
208 S. Akard Street  
Dallas, TX 75202-4206

The copy sent to the Legal Department is an administrative step which alone does not constitute legal notice.

If to Landlord: Commissioner of Public Works  
16 James Street  
Middletown, NY 10940

Either party hereto may change the place for the giving of notice to it by thirty (30) days’ prior written notice to the other party hereto as provided herein.

18. **CONDEMNATION.** In the event Landlord receives notification of any condemnation proceedings affecting the Property, Landlord will provide notice of the proceeding to Tenant within twenty-four (24) hours. If a condemning authority takes all of the Property, or a portion sufficient, in Tenant’s sole determination, to render the Premises unsuitable for Tenant, this Agreement will terminate as of the date the title vests in the condemning authority. The parties will each be entitled to pursue their own separate awards in the condemnation proceeds, which for Tenant will include, where applicable, the value of its Communication Facility, moving expenses, prepaid Rent, and business dislocation expenses. Tenant will be entitled to reimbursement for any prepaid Rent on a pro rata basis.

19. **CASUALTY.** Landlord will provide notice to Tenant of any casualty or other harm affecting the Property within twenty-four (24) hours of the casualty or other harm. If any part of the Communication Facility or the
Property is damaged by casualty or other harm as to render the Premises unsuitable, in Tenant’s sole determination, then Tenant may terminate this Agreement by providing written notice to Landlord, which termination will be effective as of the date of such casualty or other harm. Upon such termination, Tenant will be entitled to collect all insurance proceeds payable to Tenant on account thereof and to be reimbursed for any prepaid Rent on a pro rata basis. Landlord agrees to permit Tenant to place temporary transmission and reception facilities on the Property, but only until such time as Tenant is able to activate a replacement transmission facility at another location; notwithstanding the termination of this Agreement, such temporary facilities will be governed by all of the terms and conditions of this Agreement, including Rent. If Landlord or Tenant undertakes to rebuild or restore the Premises and/or the Communication Facility, as applicable, Landlord agrees to permit Tenant to place temporary transmission and reception facilities on the Property at no additional Rent until the reconstruction of the Premises and/or the Communication Facility is completed. If Landlord determines not to rebuild or restore the Property, Landlord will notify Tenant of such determination within thirty (30) days after the casualty or other harm. If Landlord does not so notify Tenant and Tenant decides not to terminate under this Section 19, then Landlord will promptly rebuild or restore any portion of the Property interfering with or required for Tenant’s Permitted Use of the Premises to substantially the same condition as existed before the casualty or other harm. Landlord agrees that the Rent shall be abated until the Property and/or the Premises are rebuilt or restored, unless Tenant places temporary transmission and reception facilities on the Property.

20. **WAIVER OF LANDLORD’S LIENS.** Landlord waives any and all lien rights it may have, statutory or otherwise, concerning the Communication Facility or any portion thereof. The Communication Facility shall be deemed personal property for purposes of this Agreement, regardless of whether any portion is deemed real or personal property under applicable law; Landlord consents to Tenant’s right to remove all or any portion of the Communication Facility from time to time in Tenant’s sole discretion and without Landlord’s consent.

21. **TAXES.**

   (a) Landlord shall be responsible for (i) all taxes and assessments levied upon the lands, improvements and other property of Landlord including any such taxes that may be calculated by a taxing authority using any method, including the income method, (ii) all sales, use, license, value added, documentary, stamp, gross receipts, registration, real estate transfer, conveyance, excise, recording, and other similar taxes and fees imposed in connection with this Agreement, and (iii) all sales, use, license, value added, documentary, stamp, gross receipts, registration, real estate transfer, conveyance, excise, recording, and other similar taxes and fees imposed in connection with a sale of the Property or assignment of Rent payments by Landlord. Tenant shall be responsible for (y) any taxes and assessments attributable to and levied upon Tenant’s leasehold improvements on the Premises if and as set forth in this Section 21 and (z) all sales, use, license, value added, documentary, stamp, gross receipts, registration, real estate transfer, conveyance, excise, recording, and other similar taxes and fees imposed in connection with an assignment of this Agreement or sublease by Tenant. Nothing herein shall require Tenant to pay any inheritance, franchise, income, payroll, excise, privilege, rent, capital stock, stamp, documentary, estate or profit tax, or any tax of similar nature, that is or may be imposed upon Landlord.

   (b) In the event Landlord receives a notice of assessment with respect to which taxes or assessments are imposed on Tenant’s leasehold improvements on the Premises, Landlord shall provide Tenant with copies of each such notice immediately upon receipt, but in no event later than thirty (30) days after the date of such notice of assessment. If Landlord does not provide such notice or notices to Tenant in a timely manner and Tenant’s rights with respect to such taxes are prejudiced by the delay, Landlord shall reimburse Tenant for any increased costs directly resulting from the delay and Landlord shall be responsible for payment of the tax or assessment set forth in the notice, and Landlord shall not have the right to reimbursement of such amount from Tenant. If Landlord provides a notice of assessment to Tenant within such time period and requests reimbursement from Tenant as set forth below, then Tenant shall reimburse Landlord for the tax or assessments identified on the notice of assessment on Tenant’s leasehold improvements, which has been paid by Landlord. If Landlord seeks reimbursement from Tenant, Landlord shall, no later than thirty (30) days after Landlord’s payment of the taxes or assessments for the assessed tax year, provide Tenant with written notice including evidence that Landlord has timely paid same, and
Landlord shall provide to Tenant any other documentation reasonably requested by Tenant to allow Tenant to evaluate the payment and to reimburse Landlord.

(c) For any tax amount for which Tenant is responsible under this Agreement, Tenant shall have the right to contest, in good faith, the validity or the amount thereof using such administrative, appellate or other proceedings as may be appropriate in the jurisdiction, and may defer payment of such obligations, pay same under protest, or take such other steps as permitted by law. This right shall include the ability to institute any legal, regulatory or informal action in the name of Landlord, Tenant, or both, with respect to the valuation of the Premises. Landlord shall cooperate with respect to the commencement and prosecution of any such proceedings and will execute any documents required therefor. The expense of any such proceedings shall be borne by Tenant and any refunds or rebates secured as a result of Tenant’s action shall belong to Tenant, to the extent the amounts were originally paid by Tenant. In the event Tenant notifies Landlord by the due date for assessment of Tenant’s intent to contest the assessment, Landlord shall not pay the assessment pending conclusion of the contest, unless required by applicable law.

(d) Landlord shall not split or cause the tax parcel on which the Premises are located to be split, bifurcated, separated or divided without the prior written consent of Tenant.

(e) Tenant shall have the right but not the obligation to pay any taxes due by Landlord hereunder if Landlord fails to timely do so, in addition to any other rights or remedies of Tenant. In the event that Tenant exercises its rights under this Section 21(e) due to such Landlord default, Tenant shall have the right to deduct such tax amounts paid from any monies due to Landlord from Tenant as provided in Section 15(b), provided that Tenant may exercise such right without having provided to Landlord notice and the opportunity to cure per Section 15(b).

(f) Any tax-related notices shall be sent to Tenant in the manner set forth in Section 17.

(g) Notwithstanding anything to the contrary contained in this Section 21, Tenant shall have no obligation to reimburse any tax or assessment for which the Landlord is reimbursed or rebated by a third party.

22. **SALE OF PROPERTY.**

(a) Landlord may sell the Property or a portion thereof to a third party, provided: (i) the sale is made subject to the terms of this Agreement; and (ii) if the sale does not include the assignment of Landlord’s full interest in this Agreement, the purchaser must agree to perform, without requiring compensation from Tenant or any subtenant, any obligation of Landlord under this Agreement, including Landlord’s obligation to cooperate with Tenant as provided hereunder.

(b) If Landlord, at any time during the Term of this Agreement, decides to rezone or sell, subdivide or otherwise transfer all or any part of the Premises, or all or any part of the Property or the Surrounding Property, to a purchaser other than Tenant, Landlord shall promptly notify Tenant in writing, and such rezoning, sale, subdivision or transfer shall be subject to this Agreement and Tenant’s rights hereunder. In the event of a change in ownership, transfer or sale of the Property, within ten (10) days of such transfer, Landlord or its successor shall send the documents listed below in this Section 22(b) to Tenant. Until Tenant receives all such documents, Tenant’s failure to make payments under this Agreement shall not be an event of default and Tenant reserves the right to hold payments due under this Agreement.

i. Old deed to Property
ii. New deed to Property
iii. Bill of Sale or Transfer
iv. Copy of current Tax Bill
v. New IRS Form W-9
vi. Completed and Signed Tenant Payment Direction Form
vii. Full contact information for new Landlord including phone number(s)

(c) Landlord agrees not to sell, lease or use any areas of the Property or the Surrounding Property for the installation, operation or maintenance of other wireless communication facilities if such installation, operation or maintenance would interfere with Tenant’s Permitted Use or communications equipment as determined by radio propagation tests performed by Tenant in its sole discretion. Landlord or Landlord’s prospective purchaser
shall reimburse Tenant for any costs and expenses of such testing. If the radio frequency propagation tests
demonstrate levels of interference unacceptable to Tenant, Landlord shall be prohibited from selling, leasing or
using any areas of the Property or the Surrounding Property for purposes of any installation, operation or
maintenance of any other wireless communication facility or equipment.

(d) The provisions of this Section 22 shall in no way limit or impair the obligations of Landlord under
this Agreement, including interference and access obligations.

23. **RIGHT OF FIRST REFUSAL.** Notwithstanding the provisions contained in Section 22, if at any time
after the Effective Date, Landlord receives a bona fide written offer from a third party seeking any sale,
conveyance, assignment or transfer, whether in whole or in part, of any property interest in or related to the
Premises, including without limitation any offer seeking an assignment or transfer of the Rent payments associated
with this Agreement or an offer to purchase an easement with respect to the Premises ("Offer"), Landlord shall
immediately furnish Tenant with a copy of the Offer. Tenant shall have the right within ninety (90) days after it
receives such copy to match the financial terms of the Offer and agree in writing to match such terms of the Offer.
Such writing shall be in the form of a contract substantially similar to the Offer but Tenant may assign its rights to
a third party. If Tenant chooses not to exercise this right or fails to provide written notice to Landlord within
the ninety (90) day period, Landlord may sell, convey, assign or transfer such property interest in or related to the
Premises pursuant to the Offer, subject to the terms of this Agreement. If Landlord attempts to sell, convey, assign
or transfer such property interest in or related to the Premises without complying with this Section 23, the sale,
conveyance, assignment or transfer shall be void. Tenant shall not be responsible for any failure to make payments
under this Agreement and reserves the right to hold payments due under this Agreement until Landlord complies
with this Section 23. Tenant’s failure to exercise the right of first refusal shall not be deemed a waiver of the rights
contained in this Section 23 with respect to any future proposed conveyances as described herein.

24. **MISCELLANEOUS.**

(a) **Amendment/Waiver.** This Agreement cannot be amended, modified or revised unless done in
writing and signed by Landlord and Tenant. No provision may be waived except in a writing signed by both
parties. The failure by a party to enforce any provision of this Agreement or to require performance by the other
party will not be construed to be a waiver, or in any way affect the right of either party to enforce such provision
thereafter.

(b) **Memorandum/Short Form Lease.** Contemporaneously with the execution of this Agreement,
the parties will execute a recordable Memorandum of Lease substantially in the form attached as Exhibit 24(b).
Either party may record this Memorandum of Lease at any time during the Term, in its absolute discretion.
Thereafter during the Term, either party will, at any time upon fifteen (15) business days’ prior written notice
from the other, execute, acknowledge and deliver to the other a recordable Memorandum of Lease.

(c) **Limitation of Liability.** Except for the indemnity obligations set forth in this Agreement, and
otherwise notwithstanding anything to the contrary in this Agreement, Tenant and Landlord each waives any
claims that each may have against the other with respect to consequential, incidental or special damages, however
caused, based on any theory of liability.

(d) **Compliance with Law.** Tenant agrees to comply with all federal, state and local laws, orders,
rules and regulations ("Laws") applicable to Tenant’s use of the Communication Facility on the Property.
Landlord agrees to comply with all Laws relating to Landlord’s ownership and use of the Property and any
improvements on the Property.

(e) **Bind and Benefit.** The terms and conditions contained in this Agreement will run with the
Property and bind and inure to the benefit of the parties, their respective heirs, executors, administrators,
successors and assigns.

(f) **Entire Agreement.** This Agreement and the exhibits attached hereto, all being a part hereof,
constitute the entire agreement of the parties hereto and will supersede all prior offers, negotiations and agreements
with respect to the subject matter of this Agreement. Exhibits are numbered to correspond to the Section wherein
they are first referenced. Except as otherwise stated in this Agreement, each party shall bear its own fees and
expenses (including the fees and expenses of its agents, brokers, representatives, attorneys, and accountants)
incurred in connection with the negotiation, drafting, execution and performance of this Agreement and the transactions it contemplates.

(g) **Governing Law.** This Agreement will be governed by the laws of the state in which the Premises are located, without regard to conflicts of law.

(h) **Interpretation.** Unless otherwise specified, the following rules of construction and interpretation apply: (i) captions are for convenience and reference only and in no way define or limit the construction of the terms and conditions hereof; (ii) use of the term “including” will be interpreted to mean “including but not limited to”; (iii) whenever a party’s consent is required under this Agreement, except as otherwise stated in the Agreement or as same may be duplicative, such consent will not be unreasonably withheld, conditioned or delayed; (iv) exhibits are an integral part of this Agreement and are incorporated by reference into this Agreement; (v) use of the terms “termination” or “expiration” are interchangeable; (vi) reference to a default will take into consideration any applicable notice, grace and cure periods; (vii) to the extent there is any issue with respect to any alleged, perceived or actual ambiguity in this Agreement, the ambiguity shall not be resolved on the basis of who drafted the Agreement; (viii) the singular use of words includes the plural where appropriate; and (ix) if any provision of this Agreement is held invalid, illegal or unenforceable, the remaining provisions of this Agreement shall remain in full force if the overall purpose of the Agreement is not rendered impossible and the original purpose, intent or consideration is not materially impaired.

(i) **Affiliates.** All references to “Tenant” shall be deemed to include any Affiliate of New Cingular Wireless PCS, LLC using the Premises for any Permitted Use or otherwise exercising the rights of Tenant pursuant to this Agreement. “Affiliate” means with respect to a party to this Agreement, any person or entity that (directly or indirectly) controls, is controlled by, or under common control with, that party. “Control” of a person or entity means the power (directly or indirectly) to direct the management or policies of that person or entity, whether through the ownership of voting securities, by contract, by agency or otherwise.

(j) **Survival.** Any provisions of this Agreement relating to indemnification shall survive the termination or expiration hereof. In addition, any terms and conditions contained in this Agreement that by their sense and context are intended to survive the termination or expiration of this Agreement shall so survive.

(k) **W-9.** As a condition precedent to payment, Landlord agrees to provide Tenant with a completed IRS Form W-9, or its equivalent, upon execution of this Agreement and at such other times as may be reasonably requested by Tenant, including any change in Landlord’s name or address.

(l) **Execution/No Option.** The submission of this Agreement to any party for examination or consideration does not constitute an offer, reservation of or option for the Premises based on the terms set forth herein. This Agreement will become effective as a binding Agreement only upon the handwritten legal execution, acknowledgment and delivery hereof by Landlord and Tenant. This Agreement may be executed in two (2) or more counterparts, all of which shall be considered one and the same agreement and shall become effective when one or more counterparts have been signed by each of the parties. All parties need not sign the same counterpart.

(m) **Attorneys’ Fees.** In the event that any dispute between the parties related to this Agreement should result in litigation, the prevailing party in such litigation shall be entitled to recover from the other party all reasonable fees and expenses of enforcing any right of the prevailing party, including reasonable attorneys’ fees and expenses. Prevailing party means the party determined by the court to have most nearly prevailed even if such party did not prevail in all matters. This provision will not be construed to entitle any party other than Landlord, Tenant and their respective Affiliates to recover their fees and expenses.

(n) **WAIVER OF JURY TRIAL.** EACH PARTY, TO THE EXTENT PERMITTED BY LAW, KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVES ITS RIGHT TO A TRIAL BY JURY IN ANY ACTION OR PROCEEDING UNDER ANY THEORY OF LIABILITY ARISING OUT OF OR IN ANY WAY CONNECTED WITH THIS AGREEMENT OR THE TRANSACTIONS IT CONTEMPLATES.

(o) **No Additional Fees/Incidental Fees.** Unless otherwise specified in this Agreement, all rights and obligations set forth in the Agreement shall be provided by Landlord and/or Tenant, as the case may be, at no additional cost. No unilateral fees or additional costs or expenses are to be applied by either party to the other party, for any task or service, including but not limited to, review of plans, structural analyses, consents, provision of documents or other communications between the parties.

(p) **Further Acts.** Upon request, Landlord will cause to be promptly and duly taken, executed, acknowledged and delivered all such further acts, documents, and assurances as Tenant may request from time to
Non-Tower Structure

time in order to effectuate, carry out and perform all of the terms, provisions and conditions of this Agreement and all transactions and Permitted Use contemplated by this Agreement.

[SIGNATURES APPEAR ON NEXT PAGE]
IN WITNESS WHEREOF, the parties have caused this Agreement to be effective as of the Effective Date.

"LANDLORD"

City of Middletown
a State of New York municipal corporation

By: __________________________
Print Name: __________________
Its: __________________________
Date: _________________________

"TENANT"

New Cingular Wireless PCS, LLC,
a Delaware limited liability company

By: AT&T Mobility Corporation

By: __________________________
Print Name: __________________
Its: __________________________
Date: _________________________

[ACKNOWLEDGMENTS APPEAR ON NEXT PAGE]
TENANT ACKNOWLEDGMENT

STATE OF ____________________
COUNTY OF ____________________

On the ____ day of ____________, 20__, before me personally appeared ____________________, and acknowledged under oath that he/she is the ______________ of AT&T Mobility Corporation, the Manager of New Cingular Wireless PCS, LLC, the Tenant named in the attached instrument, and as such was authorized to execute this instrument on behalf of the Tenant.

Notary Public: ______________________
My Commission Expires: ________________

LANDLORD ACKNOWLEDGMENT

STATE OF ____________________
COUNTY OF ____________________

On the ____ day of ____________, 20__, before me, personally appeared ____________________, who acknowledged under oath, that he/she is the person/officer named in the within instrument, and that he/she executed the same in his/her stated capacity as the voluntary act and deed of the Landlord for the purposes therein contained.

Notary Public: ______________________
My Commission Expires: ________________
EXHIBIT 1

DESCRIPTION OF PROPERTY AND PREMISES

Page 1 of 2

to the Structure Lease Agreement dated __________, 20____, by and between City of Middletown, a State of New York municipal corporation, as Landlord, and New Cingular Wireless PCS, LLC, a Delaware limited liability company, as Tenant.

The Premises are described and/or depicted as follows:

Notes:

1. THIS EXHIBIT MAY BE REPLACED BY A LAND SURVEY AND/OR CONSTRUCTION DRAWINGS OF THE PREMISES ONCE RECEIVED BY TENANT.
2. ANY SETBACK OF THE PREMISES FROM THE PROPERTY'S BOUNDARIES SHALL BE THE DISTANCE REQUIRED BY THE APPLICABLE GOVERNMENT AUTHORITIES.
3. WIDTH OF ACCESS ROAD SHALL BE THE WIDTH REQUIRED BY THE APPLICABLE GOVERNMENT AUTHORITIES, INCLUDING POLICE AND FIRE DEPARTMENTS.
4. THE TYPE, NUMBER AND MOUNTING POSITIONS AND LOCATIONS OF ANTENNAS AND TRANSMISSION LINES ARE ILLUSTRATIVE ONLY. ACTUAL TYPES, NUMBERS AND MOUNTING POSITIONS MAY VARY FROM WHAT IS SHOWN ABOVE.
Non-Tower Structure

EXHIBIT 10(b)

SUBORDINATION, NON-DISTURBANCE
AND ATTORNMENT AGREEMENT

[FOLLOWS ON NEXT PAGE]
Non-Tower Structure

SUBORDINATION, NON-DISTURBANCE
AND ATTORNMENT AGREEMENT

THIS SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT AGREEMENT ("Agreement"), dated as of the date below, between ____________________________, having its principal office at ____________________________, (hereinafter called "Mortgagor") and City of Middletown, a State of New York municipal corporation, having its principal office/residing at 16 James Street, Middletown, NY (hereinafter called "Landlord"), and New Cingular Wireless PCS, LLC, a Delaware limited liability company, having a mailing address of 1025 Lenox Park Blvd. NE, 3rd Floor, Atlanta, GA 30319 ("Tenant").

RECITALS:

A. Tenant has entered into a certain lease dated ________________, 20____, (the "Lease") with Landlord, covering property more fully described in Exhibit 1 attached hereto and made a part hereof (the "Premises"); and

B. Landlord has given to Mortgagor a mortgage (the "Mortgage") upon property having a street address of ____________________________, being identified as Lot _______ in Block ____________ in the City of Middletown, Orange County, State of New York ("Property"), a part of which Property contains the Premises; and

C. The Mortgage on the Property is in the original principal sum of ________________________ ($_______) Dollars, which Mortgage has been recorded in the appropriate public office in and for _____________ County, ________________________ ("Mortgage"); and

D. Tenant desires to be assured of continued occupancy of the Premises under the terms of the Lease and subject to the terms of this Agreement.

NOW, THEREFORE, in consideration of the mutual promises, covenants and agreements herein contained, the receipt and sufficiency of which are hereby acknowledged, the parties hereto, intending to be legally bound hereby, agree as follows:

1. So long as this Agreement will remain in full force and effect, the Lease is and will be subject and subordinate to the lien and effect of the Mortgage insofar as it affects the real property and fixtures of which the Premises forms a part (but not Tenant’s trade fixtures and other personal property), and to all renewals, modifications, consolidations, replacements and extensions thereof, to the full extent of the principal sum secured thereby and interest thereon, with the same force and effect as if the Mortgage had been executed, delivered, and duly recorded among the above-mentioned public records, prior to the execution and delivery of the Lease.

2. In the event Mortgagor takes possession of the Premises as mortgagee-in-possession, including but not limited to, by deed in lieu of foreclosure or foreclosure of the Mortgage, Mortgagor agrees not to affect or disturb Tenant’s right to possession of the Premises and any of Tenant’s other rights under the Lease in the exercise of Mortgagor’s rights so long as Tenant is not then in default, after applicable notice and/or grace periods, under any of the terms, covenants, or conditions of the Lease.

3. In the event that Mortgagor succeeds to the interest of Landlord or other landlord under the Lease and/or to title to the Premises, Mortgagor and Tenant hereby agree to be bound to one another under all of the terms, covenants and conditions of the Lease; accordingly, from and after such event, Mortgagor and Tenant will have the same remedies against one another for the breach of an agreement contained in the Lease as Tenant and Landlord had before Mortgagor succeeded to the interest of Landlord; provided, however, that Mortgagor will not be:
Non-Tower Structure

(a) personally liable for any act or omission of any prior landlord (including Landlord); or
(b) bound by any rent or additional rent which Tenant might have paid for more than the payment period as set forth under the Lease (one month, year etc.) in advance to any prior landlord (including Landlord).

4. In the event that Mortgagee or anyone else acquires title to or the right to possession of the Premises upon the foreclosure of the Mortgage, or upon the sale of the Premises by Mortgagee or its successors or assigns after foreclosure or acquisition of title in lieu thereof or otherwise, Tenant agrees not to seek to terminate the Lease by reason thereof, but will remain bound unto the new owner so long as the new owner is bound to Tenant (subject to paragraph 3 above) under all of the terms, covenants and conditions of the Lease.

5. Mortgagee understands, acknowledges and agrees that notwithstanding anything to the contrary contained in the Mortgage and/or any related financing documents, including, without limitation, any UCC-1 financing statements, Mortgagee will acquire no interest in any furniture, equipment, trade fixtures and/or other property installed by Tenant on the Property. Mortgagee hereby expressly waives any interest which Mortgagee may have or acquire with respect to such furniture, equipment, trade fixtures and/or other property of Tenant now, or hereafter, located on or affixed to the Property or any portion thereof and Mortgagee hereby agrees that same do not constitute realty regardless of the manner in which same are attached or affixed to the Property.

6. This Agreement will be binding upon and will extend to and benefit the successors and assigns of the parties hereto and to any assignees or subtenants of Tenant which are permitted under the Lease. The term “Mortgagee”, when used in this Agreement will be deemed to include any person or entity which acquires title to or the right to possession of the Premises by, through or under Mortgagee and/or the Mortgage, whether directly or indirectly.

7. This Agreement will be governed by the laws of the state in which the Premises are located, without regard to conflicts of law.

[Remainder of Page Intentionally Blank – Signature Page Follows]
IN WITNESS WHEREOF, the undersigned has caused this Agreement to be executed as of the last signature date below.

LANDLORD: City of Middletown
a State of New York municipal corporation

By: 
Print Name: 
Its: 
Date: 

TENANT: New Cingular Wireless PCS, LLC,
a Delaware limited liability company

By: AT&T Mobility Corporation
Its: Manager

By: 
Print Name: 
Its: 
Date: 

MORTGAGEE: 

By: 
Print Name: 
Its: 
Date: 

[ACKNOWLEDGMENTS APPEAR ON NEXT PAGE]
Non-Tower Structure

ACKNOWLEDGEMENTS

LANDLORD

STATE OF __________________________) ss:
COUNTY OF _________________________)

On the ___ day of __________, 20__, before me, personally appeared ________________________, who acknowledged under oath, that he/she is the person/officer named in the within instrument, and that he/she executed the same in his/her stated capacity as the voluntary act and deed of the Landlord for the purposes therein contained.

_________________________________
Notary

Public:

My Commission Expires: _______________________

TENANT

STATE OF __________________________) ss:
COUNTY OF _________________________)

On the ___ day of __________, 20__, before me personally appeared ________________________, who acknowledged under oath that he/she is the __________________________ of AT&T Mobility Corporation, the Manager of New Cingular Wireless PCS, LLC, the Tenant named in the attached instrument, and as such was authorized to execute this instrument on behalf of the Tenant.

Notary Public: _______________________
My Commission Expires: _______________________

MORTGAGEE

STATE OF __________________________) ss:
COUNTY OF _________________________)

On the ___ day of __________, 20__, before me, personally appeared ________________________, who acknowledged under oath, that he/she is the person/officer named in the within instrument, and that he/she executed the same in his/her stated capacity as the voluntary act and deed of the Mortgagee for the purposes therein contained.

Notary Public: _______________________
My Commission Expires: _______________________

2018 Structural Lease
4.17.2018
Non-Tower Structure

EXHIBIT 1
DESCRIPTION OF PROPERTY AND PREMISES
PAGE 1 of 2

The Premises are described and/or depicted as follows:
Non-Tower Structure

EXHIBIT 11

ENVIRONMENTAL DISCLOSURE

Landlord represents and warrants that the Property, as of the Effective Date, is free of hazardous substances except as follows:

N/A
Non-Tower Structure

EXHIBIT 12
STANDARD ACCESS LETTER

[FOLLOWS ON NEXT PAGE]
Non-Tower Structure

March 31, 2020

Building Staff / Security Staff
City of Middletown/DPW
16 James Street
Middletown, NY 10940

Re: Authorized Access granted to New Cingular Wireless PCS, LLC

Dear Building and Security Staff,

Please be advised that we have signed a lease with New Cingular Wireless PCS, LLC permitting New Cingular Wireless PCS, LLC to install, operate and maintain telecommunications equipment at the property. The terms of the lease grant New Cingular Wireless PCS, LLC and its representatives, employees, agents and subcontractors (“representatives”) 24 hour per day, 7 day per week access to the leased area.

To avoid impact on telephone service during the day, New Cingular Wireless PCS, LLC representatives may be seeking access to the property outside of normal business hours. New Cingular Wireless PCS, LLC representatives have been instructed to keep noise levels at a minimum during their visit.

Please grant the bearer of a copy of this letter access to the property and to leased area. Thank you for your assistance.

Landlord Signature
Non-Tower Structure

EXHIBIT 24(b)
MEMORANDUM OF LEASE
[FOLLOWS ON NEXT PAGE]
Non-Tower Structure

MEMORANDUM
OF
LEASE

This Memorandum of Lease is entered into on this __________________ day of __________________, 2020, by and between City of Middletown, a State of New York municipal corporation having its principal office/residing at 16 James Street, Middletown, NY (hereinafter called “Landlord”), and New Cingular Wireless PCS, LLC, a Delaware limited liability company, having a mailing address of 1025 Lenox Park Blvd NE, 3rd floor NE, Atlanta, GA 30319 (“Tenant”).

1. Landlord and Tenant entered into a certain Structure Lease Agreement ("Agreement") on the __________________ day of __________________, 2020, for the purpose of installing, operating and maintaining a communication facility and other improvements. All of the foregoing is set forth in the Agreement.

2. The initial lease term will be five (5) years commencing on the Effective Date of the Agreement, with five (5) successive automatic five (5) year options to renew.

3. The portion of the land being leased to Tenant and associated easements are described in Exhibit 1 annexed hereto.

4. The Agreement gives Tenant a right of first refusal in the event Landlord receives a bona fide written offer from a third party seeking any sale, conveyance, assignment or transfer, whether in whole or in part, of any property interest in or related to the Premises, including without limitation any offer seeking an assignment or transfer of the Rent payments associated with the Agreement or an offer to purchase an easement with respect to the Premises.

5. This Memorandum of Lease is not intended to amend or modify, and shall not be deemed or construed as amending or modifying, any of the terms, conditions or provisions of the Agreement, all of which are hereby ratified and affirmed. In the event of a conflict between the provisions of this Memorandum of Lease and the provisions of the Agreement, the provisions of the Agreement shall control. The Agreement shall be binding upon and inure to the benefit of the parties and their respective heirs, successors, and assigns, subject to the provisions of the Agreement.

IN WITNESS WHEREOF, the parties have executed this Memorandum of Lease as of the day and year first above written.

LANDLORD:

City of Middletown, a
A State of New York municipal corporation

By: ____________________________
Print Name: ____________________________
Its: ____________________________
Date: ____________________________

TENANT:

New Cingular Wireless PCS, LLC
a Delaware limited liability company

By: AT&T Mobility Corporation

By: ____________________________
Print Name: ____________________________
Its: Manager
Date: ____________________________

[ACKNOWLEDGMENTS APPEAR ON NEXT PAGE ]
TENANT ACKNOWLEDGMENT

STATE OF  
COUNTY OF  ) ss:

On the ___ day of __________, 20__, before me personally appeared ______________, and acknowledged under oath that he/she is the ______________ of AT&T Mobility Corporation, the Manager of New Cingular Wireless PCS, LLC, the Tenant named in the attached instrument, and as such was authorized to execute this instrument on behalf of the Tenant.

Notary Public: ____________________________
My Commission Expires: ________________

LANDLORD ACKNOWLEDGMENT

STATE OF  
COUNTY OF  ) ss:

On the ___ day of __________, 20__, before me, personally appeared ______________, who acknowledged under oath, that he/she is the person/officer named in the within instrument, and that he/she executed the same in his/her stated capacity as the voluntary act and deed of the Landlord for the purposes therein contained.

Notary Public: ____________________________
My Commission Expires: ________________
Non-Tower Structure

EXHIBIT 1

DESCRIPTION OF PROPERTY AND PREMISES

Page 1 of 2

to the Memorandum of Lease dated ____________, 20__, by and between City of Middletown, a State of New York municipal corporation, as Landlord, and New Cingular Wireless PCS, LLC, a Delaware limited liability company, as Tenant.

The Premises are described and/or depicted as follows:
Non-Tower Structure

W-9 FORM

[FOLLOWS ON NEXT PAGE]
WHEREAS, the Common Council of the City of Middletown recognizes that properties subject to foreclosure action or foreclosed upon and vacant properties (hereinafter referred to as “Registrable Properties”) located throughout the City lead to a decline in community and property value; create nuisances; lead to a general decrease in neighborhood and community aesthetic; create conditions that invite criminal activity; and foster an unsafe and unhealthy environment; and

WHEREAS, the Council recognizes that it is in the best interest of the public health, safety, and welfare to impose registration requirements for Registrable Properties located within the City to discourage Owners and Mortgagees of such properties from allowing their properties to be abandoned, neglected or left unsupervised.

NOW, THEREFORE, BE IT RESOLVED and ORDAINED by the Common Council of the City of Middletown:

Section 1. There is to be added to the Code of the City of Middletown a new Chapter 453, entitled "Vacant and Foreclosed Properties Registration" to read in its entirety as follows:

CHAPTER 453. VACANT AND FORECLOSED PROPERTIES REGISTRATION
Section 453-1. Purpose of this Chapter.

It is the purpose and intent of the Council to establish a process to address the deterioration, crime, and decline in value of City neighborhoods caused by property with foreclosing or foreclosed mortgages located within the City, and to identify, regulate, limit and reduce the number of these properties located within the City. It has been determined that Owner-occupied structures are generally better maintained when compared to vacant structures, even with a diligent off-site property Owner. Vacant structures or structures owned by individuals who are economically strained and unable to meet their mortgage obligations are often not properly or diligently maintained, which contribute to blight, declined property values, and have a negative impact on social perception of the residential areas where they are located. It is the Council’s further intent to establish a registration program as a mechanism to help protect neighborhoods from becoming blighted through the lack of adequate maintenance of properties that are in Foreclosure or Foreclosed, and to provide a mechanism to avert foreclosure actions through timely intervention, education, or counseling of property Owners.

Section 453-2. Definitions.

The following words, terms, and phrases, when used in this Chapter, shall have the meanings ascribed to them in this Section, except where the context clearly indicates a different meaning:

Default shall mean that the mortgagor has not complied with the terms of the mortgage on the property, or the promissory note, or other evidence of the debt, referred to in the mortgage.

Enforcement Officer shall mean any law enforcement officer, code enforcement officer, fire inspector, building inspector, or other person authorized by the City to enforce the applicable codes.

Evidence of Vacancy shall mean any condition that on its own, or combined with other conditions present, would lead a reasonable person to believe that the property is vacant. Such conditions may include, but are not limited to: overgrown and/or dead vegetation; past due Utility notices and/or disconnected Utilities; accumulation of trash junk or debris; abandoned vehicles, auto parts and/or materials; the absence of furnishings and/or personal items consistent with habitation or occupancy; the presence of an unsanitary, stagnant swimming pool; the accumulation of newspapers, circulars, flyers and/or mail; statements by neighbors, passers-by, delivery agents or government agents; and/or the presence of boards over doors, windows or other openings in violation of applicable code.

Foreclosure or Foreclosure Action shall mean the legal process by which a Mortgagee, or other lien holder, terminates or attempts to terminate a property Owner's
equitable right of redemption to obtain legal and equitable title to the Real Property pledged as security for a debt or the Real Property subject to the lien. The legal process is not concluded until the property obtained by the Mortgagee, lien holder, or their designee, by certificate of title, or any other means, is sold to a non-related bona fide purchaser in an arm’s length transaction to satisfy the debt or lien.

**Mortgagee** shall mean the creditor, including but not limited to, trustees; mortgage servicing companies; lenders in a mortgage agreement; any agent, servant, or employee of the creditor; any successor in interest; or any assignee of the creditor’s rights, interests or obligations under the mortgage agreement; or any other person or entity with the legal right to foreclose on the Real Property, excluding governmental entities.

**Owner** shall mean every person, entity, or Mortgagee, who alone or severally with others, has legal or equitable title to any Real Property as defined by this Chapter; has legal care, charge, or control of any such property; is in possession or control of any such property; and/or is vested with possession or control of any such property. The Property Manager shall not be considered the Owner.

**Property Manager** shall mean any party designated by the Owner as responsible for inspecting, maintaining and securing the property as required in this Chapter.

**Real Property** shall mean any residential or commercial land and/or buildings, leasehold improvements and anything affixed to the land, or portion thereof identified by a property parcel identification number, located in the City limits.

**Registrable Property** shall mean:

A. Any Real Property located in the City, whether vacant or occupied, that is encumbered by a mortgage subject to an ongoing Foreclosure Action by the Mortgagee or Trustee, has been the subject of a Foreclosure Action by a Mortgagee or Trustee and a Judgement has been entered, or has been the subject of a Foreclosure sale where the title was transferred to the beneficiary of a mortgage involved in the Foreclosure and any properties transferred under a deed in lieu of foreclosure/sale. The designation of a “foreclosure” property as “registrable” shall remain in place until such time as the property is sold to a non-related bona fide purchaser in an arm’s length transaction or the Foreclosure Action has been dismissed; or

B. Any property that is “vacant” as defined in this Section, below.

**Registry** shall mean a web-based electronic database of searchable Real Property records, used by the City to allow Mortgagees and Owners the opportunity to register properties and pay applicable fees as required in this Chapter.

**Semi-Annual Registration** shall mean six (6) months from the date of the first action that requires registration, as determined by the City, or its designee, and every
subsequent six (6) months. The date of the initial registration may be different than the date of the first action that required registration.

Utilities and Services shall mean any utility and/or service that is essential for a building to be habitable and/or perform a service necessary to comply with all City codes. This includes, but is not limited to, electrical, gas, water, sewer, lawn maintenance, pool maintenance, and snow removal.

Vacant shall mean any parcel of land in the City that contains any building that is not lawfully occupied for a period of at least sixty (60) days. A building shall not be considered vacant if:

(1) The owner is engaged in ongoing, good faith attempts to rent, sell or renovate as evidenced by proof of attempted sale or lease via contract with a realtor or appropriate listing, or by procurement of appropriate permits or contracts for renovation; and

(2) Such attempts do not exceed a period of one (1) year, and

(3) The property is not exhibiting “evidence of vacancy” as that term is defined in this Section, above.

Section 453-3. Establishment of a Registry.

There is hereby established a registry cataloging each Registrable Property within the City, containing the information required by this Chapter.

Section 453-4. Inspection and Registration of Real Property Under Foreclosure.

A. Any Mortgagee who holds a mortgage on Real Property located within the City shall perform an inspection of the property upon default by the mortgagor as evidenced by the filing of a Foreclosure Action.

B. Within fifteen (15) days of the date any Mortgagee files a Foreclosure Action, the Mortgagee shall register the Real Property with the City Registry, and, at the time of registration, indicate whether the property is Vacant, and if so shall designate in writing a Property Manager to inspect, maintain, and secure the Real Property subject to the mortgage under a Foreclosure Action. A separate registration is required for each property under a Foreclosure Action, regardless of whether it is occupied or vacant.

C. Initial registration pursuant to this section shall contain at a minimum the name of the Mortgagee, the mailing address of the Mortgagee, e-mail address, telephone number and name of the Property Manager and said person’s address, e-mail address, and telephone number.
D. At the time of initial registration each registrant shall pay a non-refundable Semi-Annual Registration fee of five hundred dollars ($500.00) for each property. Subsequent non-refundable Semi-Annual renewal registrations of properties and fees in the amount of five hundred dollars ($500.00) are due within fifteen (15) days of the expiration of the previous registration. Said fees shall be used to offset the costs of: (1) registration and registration enforcement, (2) code enforcement and mitigation related to Defaulted properties, (3) post-closing counseling and Foreclosure intervention limited to Owner-occupied persons in Default, which may not include cash and mortgage modification assistance, and (4) for any related purposes as may be adopted in the policy set forth in this Chapter. Said fees shall be deposited to a designated account in the City's Finance Department to be utilized for the cost of implementation and enforcement of this Chapter.

E. Property inspected pursuant to Subsection A above that remains in Foreclosure shall be inspected every thirty (30) days by the Mortgagee or Mortgagee’s designee. If an inspection shows a change in the property’s occupancy status the Mortgagee shall, within fifteen (15) days of that inspection, update the occupancy status of the property registration.

F. If the mortgage and/or servicing on a Registrable Property is sold or transferred, the new Mortgagee is subject to all the terms of this Chapter. Within fifteen (15) days of the transfer, the new Mortgagee shall register the property or update the existing registration. The previous Mortgagee(s) will not be released from the responsibility of paying all previous unpaid fees, fines, and penalties accrued during that Mortgagee’s involvement with the Registrable Property.

G. If the Mortgagee sells or transfers the Registrable Property in a non-arm’s length transaction to a related entity or person, the transferee is subject to all the terms of this Chapter. Within fifteen (15) days of the transfer, the transferee shall register the property or update the existing registration. Any and all previous unpaid fees, fines, and penalties, regardless of who the Mortgagee was at the time registration was required, including, but not limited to, unregistered periods during the Foreclosure process, are the responsibility of the transferee and are due and payable with the updated registration. The previous Mortgagee will not be released from the responsibility of paying all previous unpaid fees, fines, and penalties accrued during that Mortgagee’s involvement with the Foreclosed Property.

H. If the Foreclosing or Foreclosed Property is not registered, or the registration fee is not paid within thirty (30) days of when the registration or renewal is required pursuant to this section, a late fee equivalent to ten percent (10%) of the Semi-Annual Registration fee shall be charged for every thirty-day period (30), or portion thereof, the property is not registered and shall be due and payable with the registration.
I. This Section shall also apply to properties that have been the subject of a foreclosure sale where title is transferred to the Mortgagee as well as any properties transferred to the Mortgagee under a deed in lieu of foreclosure or by any other legal means.

J. Properties subject to this Section shall remain subject to the Semi-Annual Registration requirement, and the inspection, security, and maintenance standards of this Section as long as the property remains Registrable Property.

K. Failure of the Mortgagee and/or property Owner of record to properly register or to modify the registration to reflect a change of circumstances as required by this Chapter is a violation of this Chapter and shall be subject to the penalties and enforcement provided by Section 453-7, hereinbelow.

Section 453-5. Inspection and Registration of Real Property That Is Not Subject to a Mortgage In Foreclosure.

A. Any Owner of Vacant property located within the City shall within fifteen (15) days after the property becomes Vacant, register the Real Property with the City Registry.

B. Initial registration pursuant to this Section shall contain at a minimum the name of the Owner, the mailing address of the Owner, e-mail address, and telephone number of the Owner, and if applicable, the name and telephone number of the Property Manager and said person’s address, e-mail address, and telephone number.

C. At the time of initial registration each registrant shall pay a non-refundable Semi-Annual Registration fee of five hundred dollars ($500.00) for each Vacant property. Subsequent non-refundable Semi-Annual renewal registrations of Vacant properties and fees in the amount of five hundred dollars ($500.00) are due within fifteen (15) days of the expiration of the previous registration. Said fees shall be used to offset the costs of: (1) registration and registration enforcement, (2) code enforcement and mitigation related to Vacant properties, and (3) for any related purposes as may be adopted in the policy set forth in this Chapter. Said fees shall be deposited to a designated account in the City’s Finance Department to be utilized for the cost of implementation and enforcement of this Chapter.

D. If the property is sold or transferred, the new Owner is subject to all the terms of this Chapter. Within fifteen (15) days of the transfer, the new Owner shall register the Vacant property or update the existing registration. The previous Owner(s) will not be released from the responsibility of paying all previous unpaid fees, fines, and penalties accrued during that Owner’s involvement with the Vacant property.
E. If the Vacant property is not registered, or either the registration fee or the Semi-Annual Registration fee is not paid within thirty (30) days of when the registration or Semi-Annual Registration is required pursuant to this Section, a late fee shall be equivalent to ten percent (10%) of the Semi-Annual Registration fee shall be charged for every thirty (30) day-period, or portion thereof, the property is not registered and shall be due and payable with the registration. This Section shall apply to the initial registration and registrations required by subsequent Owners of the Vacant property.

F. Properties subject to this Section shall remain subject to the Semi-Annual Registration requirement, and the inspection, security, and maintenance standards of this Section as long as the property is Vacant.

G. Failure of the Owner to properly register or to modify the registration to reflect a change of circumstances as required by this Chapter is a violation of this Chapter and shall be subject to the penalties and enforcement provided by Section 453-7, hereinbelow.

H. Properties registered as a result of this Section are not required to be registered again pursuant to Section 453-4, above.


A. Properties subject to this Chapter shall be maintained and secured in accordance with all applicable codes of the City of Middletown and State of New York.

B. Properties subject to this Chapter shall also be maintained in a secure manner so as not to be accessible to unauthorized persons. A “secure manner” shall include, but not be limited to, the closure and locking of windows, doors, gates and other openings of such size that may allow a child to access the interior of the property or structure. Broken windows, doors, gates, and other openings of such size that may allow a child to access the interior of the property or structure must be repaired. Broken windows shall be secured by re-glazing of the window.

C. If a property is Registrable, and the property has become vacant, a Property Manager shall be designated by the Mortgagee and/or Owner to perform the work necessary to bring the property into compliance with all applicable codes, and the Property Manager must perform regular inspections to verify compliance with the requirements of this Chapter, and all other applicable codes.

D. When a property subject to this Chapter becomes Vacant, it shall be posted with the name and twenty-four (24) hour contact telephone number of the Property Manager. The Property Manager shall be available to be contacted by the City Monday through Friday between 9:00 a.m. and 5:00 p.m., legal holidays excepted. The sign shall be placed in a window facing the street and shall be
visible from the street. The posting shall be no less than eighteen (18) inches by twenty-four (24) inches and shall be of a font that is legible from a distance of forty-five (45) feet. The posting shall contain the following language with supporting information:

**THIS PROPERTY IS MANAGED BY _________________________________.**

**AND IS INSPECTED ON A REGULAR BASIS.**

**THE PROPERTY MANAGER CAN BE CONTACTED BY TELEPHONE AT ________________________________, OR BY EMAIL AT ________________________________.**

**E.** The posting required in Subsection D, above, shall be placed on the interior of a window facing the street to the front of the property so that it is visible from the street, or secured to the exterior of the building/structure facing the street to the front of the property so that it is visible from the street or if no such area exists, on a stake of sufficient size to support the posting in a location that is at all times visible from the street to the front of the property but not readily accessible to vandals. Exterior posting shall be constructed of and printed with weather-resistant materials.

**F.** Failure of the Mortgagee and/or property Owner of record to properly inspect and secure a property subject to this Chapter, and post and maintain the signage noted in this section, is a violation.

**G.** The City Commissioner of the Department of Public Works shall have the authority to require the Mortgagee or Owner affected by this Section, to implement additional maintenance and/or security measures including, but not limited to, securing any and all doors, windows or other openings, or other measures as may be reasonably required to help prevent further decline of the property.

**H.** If there is a finding that the condition of the property is posing a serious threat to the public health, safety, and welfare, then the Commissioner of Public Works may, in his or her discretion, abate the violations and charge the Mortgagee or Owner with the cost of the abatement. A report of the cost and expense of doing said work shall be submitted to the City Treasurer and shall then become a lien against the property where said work was performed.

**Section 453-7. Penalties for offenses.**

Any person who violates any provisions of this Chapter shall, upon conviction thereof, be subject to a fine of not less than $250 nor more than $1,000 or by imprisonment for a period not exceeding 15 days, or by both such fine and imprisonment. Each day that a violation is permitted to exist shall constitute a separate offense.
Section 2. Severability. The sections, paragraphs, sentences, clauses, and phrases of this Ordinance are severable, and if any phrase, clause, sentence, paragraph, or section of this Ordinance shall be declared unconstitutional or illegal by the valid judgment or decree of a court of competent jurisdiction, such unconstitutionality or illegality shall not affect any of the remaining phrases, clauses, sentences, paragraphs, and sections of this Ordinance.

Section 3. This Ordinance shall take effect immediately.
RESOLUTION

WHEREAS, the Common Council of the City of Middletown recognizes that properties subject to foreclosure action or foreclosed upon and vacant properties (hereinafter referred to as “Registrable Properties”) located throughout the City lead to a decline in community and property value; create nuisances; lead to a general decrease in neighborhood and community aesthetic; create conditions that invite criminal activity; and foster an unsafe and unhealthy environment; and

WHEREAS, the Council recognizes that it is in the best interest of the public health, safety, and welfare to impose registration requirements for Registrable Properties located within the City to discourage Owners and Mortgagees of such properties from allowing their properties to be abandoned, neglected or left unsupervised.

NOW, THEREFORE, BE IT RESOLVED and ORDAINED by the Common Council of the City of Middletown:

Section 1. There is to be added to the Code of the City of Middletown a new Chapter 453, entitled "Vacant and Foreclosed Properties Registration" to read in its entirety as follows:

CHAPTER 453. VACANT AND FORECLOSED PROPERTIES REGISTRATION

Section 453-1. Purpose of this Chapter.

It is the purpose and intent of the Council to establish a process to address the deterioration, crime, and decline in value of City neighborhoods caused by property with foreclosing or foreclosed mortgages located within the City, and to identify, regulate, limit and reduce the number of these properties located within the City. It has been determined that Owner-occupied structures are generally better maintained when compared to vacant structures, even with a diligent off-site property Owner. Vacant structures or structures owned by individuals who are economically strained and unable to meet their mortgage obligations are often not properly or diligently maintained, which contribute to blight, declined property values, and have a negative impact on social perception of the residential areas where they are located. It is the Council’s further intent to establish a registration program as a mechanism to help protect neighborhoods from becoming blighted through the lack of adequate maintenance of properties that are in Foreclosure or Foreclosed, and to provide a mechanism to avert foreclosure actions through timely intervention, education, or counseling of property Owners.
Section 453-2. Definitions.

The following words, terms, and phrases, when used in this Chapter, shall have the meanings ascribed to them in this Section, except where the context clearly indicates a different meaning:

**Default** shall mean that the mortgagor has not complied with the terms of the mortgage on the property, or the promissory note, or other evidence of the debt, referred to in the mortgage.

**Enforcement Officer** shall mean any law enforcement officer, code enforcement officer, fire inspector, building inspector, or other person authorized by the City to enforce the applicable codes.

**Evidence of Vacancy** shall mean any condition that on its own, or combined with other conditions present, would lead a reasonable person to believe that the property is vacant. Such conditions may include, but are not limited to: overgrown and/or dead vegetation; past due Utility notices and/or disconnected Utilities; accumulation of trash junk or debris; abandoned vehicles, auto parts and/or materials; the absence of furnishings and/or personal items consistent with habitation or occupancy; the presence of an unsanitary, stagnant swimming pool; the accumulation of newspapers, circulars, flyers and/or mail; statements by neighbors, passers-by, delivery agents or government agents; and/or the presence of boards over doors, windows or other openings in violation of applicable code.

**Foreclosure or Foreclosure Action** shall mean the legal process by which a Mortgagee, or other lien holder, terminates or attempts to terminate a property Owner's equitable right of redemption to obtain legal and equitable title to the Real Property pledged as security for a debt or the Real Property subject to the lien. The legal process is not concluded until the property obtained by the Mortgagee, lien holder, or their designee, by certificate of title, or any other means, is sold to a non-related bona fide purchaser in an arm's length transaction to satisfy the debt or lien.

**Mortgagee** shall mean the creditor, including but not limited to, trustees; mortgage servicing companies; lenders in a mortgage agreement; any agent, servant, or employee of the creditor; any successor in interest; or any assignee of the creditor's rights, interests or obligations under the mortgage agreement; or any other person or entity with the legal right to foreclose on the Real Property, excluding governmental entities.

**Owner** shall mean every person, entity, or Mortgagee, who alone or severally with others, has legal or equitable title to any Real Property as defined by this Chapter; has legal care, charge, or control of any such property; is in possession or control of any such
property; and/or is vested with possession or control of any such property. The Property Manager shall not be considered the Owner.

*Property Manager* shall mean any party designated by the Owner as responsible for inspecting, maintaining and securing the property as required in this Chapter.

*Real Property* shall mean any residential or commercial land and/or buildings, leasehold improvements and anything affixed to the land, or portion thereof identified by a property parcel identification number, located in the City limits.

*Registrable Property* shall mean:

A. Any Real Property located in the City, whether vacant or occupied, that is encumbered by a mortgage subject to an ongoing Foreclosure Action by the Mortgagee or Trustee, has been the subject of a Foreclosure Action by a Mortgagee or Trustee and a Judgement has been entered, or has been the subject of a Foreclosure sale where the title was transferred to the beneficiary of a mortgage involved in the Foreclosure and any properties transferred under a deed in lieu of foreclosure/sale. The designation of a “foreclosure” property as “registrable” shall remain in place until such time as the property is sold to a non-related bona fide purchaser in an arm’s length transaction or the Foreclosure Action has been dismissed; or

B. Any property that is “vacant” as defined in this Section, below.

*Registry* shall mean a web-based electronic database of searchable Real Property records, used by the City to allow Mortgagees and Owners the opportunity to register properties and pay applicable fees as required in this Chapter.

*Semi-Annual Registration* shall mean six (6) months from the date of the first action that requires registration, as determined by the City, or its designee, and every subsequent six (6) months. The date of the initial registration may be different than the date of the first action that required registration.

*Utilities and Services* shall mean any utility and/or service that is essential for a building to be habitable and/or perform a service necessary to comply with all City codes. This includes, but is not limited to, electrical, gas, water, sewer, lawn maintenance, pool maintenance, and snow removal.

*Vacant* shall mean any parcel of land in the City that contains any building that is not lawfully occupied for a period of at least sixty (60) days. A building shall not be considered vacant if:
(1) The owner is engaged in ongoing, good faith attempts to rent, sell or renovate as evidenced by proof of attempted sale or lease via contract with a realtor or appropriate listing, or by procurement of appropriate permits or contracts for renovation; and

(2) Such attempts do not exceed a period of one (1) year, and

(3) The property is not exhibiting "evidence of vacancy" as that term is defined in this Section, above.

Section 453-3. Establishment of a Registry.

There is hereby established a registry cataloging each Registrable Property within the City, containing the information required by this Chapter.

Section 453-4. Inspection and Registration of Real Property Under Foreclosure.

A. Any Mortgagee who holds a mortgage on Real Property located within the City shall perform an inspection of the property upon default by the mortgagor as evidenced by the filing of a Foreclosure Action.

B. Within fifteen (15) days of the date any Mortgagee files a Foreclosure Action, the Mortgagee shall register the Real Property with the City Registry, and, at the time of registration, indicate whether the property is Vacant, and if so shall designate in writing a Property Manager to inspect, maintain, and secure the Real Property subject to the mortgage under a Foreclosure Action. A separate registration is required for each property under a Foreclosure Action, regardless of whether it is occupied or vacant.

C. Initial registration pursuant to this section shall contain at a minimum the name of the Mortgagee, the mailing address of the Mortgagee, e-mail address, telephone number and name of the Property Manager and said person’s address, e-mail address, and telephone number.

D. At the time of initial registration each registrant shall pay a non-refundable Semi-Annual Registration fee of five hundred dollars ($500.00) for each property. Subsequent non-refundable Semi-Annual renewal registrations of properties and fees in the amount of five hundred dollars ($500.00) are due within fifteen (15) days of the expiration of the previous registration. Said fees shall be used to offset the costs of: (1) registration and registration enforcement, (2) code enforcement and mitigation related to Defaulted properties, (3) post-closing counseling and Foreclosure intervention limited to Owner-occupied persons in Default, which may not include cash and mortgage modification assistance, and
(4) for any related purposes as may be adopted in the policy set forth in this Chapter. Said fees shall be deposited to a designated account in the City's Finance Department to be utilized for the cost of implementation and enforcement of this Chapter.

E. Property inspected pursuant to Subsection A above that remains in Foreclosure shall be inspected every thirty (30) days by the Mortgagee or Mortgagee's designee. If an inspection shows a change in the property's occupancy status the Mortgagee shall, within fifteen (15) days of that inspection, update the occupancy status of the property registration.

F. If the mortgage and/or servicing on a Registrable Property is sold or transferred, the new Mortgagee is subject to all the terms of this Chapter. Within fifteen (15) days of the transfer, the new Mortgagee shall register the property or update the existing registration. The previous Mortgagee(s) will not be released from the responsibility of paying all previous unpaid fees, fines, and penalties accrued during that Mortgagee’s involvement with the Registrable Property.

G. If the Mortgagee sells or transfers the Registrable Property in a non-arm's length transaction to a related entity or person, the transferee is subject to all the terms of this Chapter. Within fifteen (15) days of the transfer, the transferee shall register the property or update the existing registration. Any and all previous unpaid fees, fines, and penalties, regardless of who the Mortgagee was at the time registration was required, including, but not limited to, unrecorded periods during the Foreclosure process, are the responsibility of the transferee and are due and payable with the updated registration. The previous Mortgagee will not be released from the responsibility of paying all previous unpaid fees, fines, and penalties accrued during that Mortgagee’s involvement with the Foreclosed Property.

H. If the Foreclosing or Foreclosed Property is not registered, or the registration fee is not paid within thirty (30) days of when the registration or renewal is required pursuant to this section, a late fee equivalent to ten percent (10%) of the Semi-Annual Registration fee shall be charged for every thirty-day period (30), or portion thereof, the property is not registered and shall be due and payable with the registration.

I. This Section shall also apply to properties that have been the subject of a foreclosure sale where title is transferred to the Mortgagee as well as any properties transferred to the Mortgagee under a deed in lieu of foreclosure or by any other legal means.
J. Properties subject to this Section shall remain subject to the Semi-Annual Registration requirement, and the inspection, security, and maintenance standards of this Section as long as the property remains Registrable Property.

K. Failure of the Mortgagee and/or property Owner of record to properly register or to modify the registration to reflect a change of circumstances as required by this Chapter is a violation of this Chapter and shall be subject to the penalties and enforcement provided by Section 453-7, hereinbelow.

Section 453-5. Inspection and Registration of Real Property That Is Not Subject to a Mortgage In Foreclosure.

A. Any Owner of Vacant property located within the City shall within fifteen (15) days after the property becomes Vacant, register the Real Property with the City Registry.

B. Initial registration pursuant to this Section shall contain at a minimum the name of the Owner, the mailing address of the Owner, e-mail address, and telephone number of the Owner, and if applicable, the name and telephone number of the Property Manager and said person’s address, e-mail address, and telephone number.

C. At the time of initial registration each registrant shall pay a non-refundable Semi-Annual Registration fee of five hundred dollars ($500.00) for each Vacant property. Subsequent non-refundable Semi-Annual renewal registrations of Vacant properties and fees in the amount of five hundred dollars ($500.00) are due within fifteen (15) days of the expiration of the previous registration. Said fees shall be used to offset the costs of: (1) registration and registration enforcement, (2) code enforcement and mitigation related to Vacant properties, and (3) for any related purposes as may be adopted in the policy set forth in this Chapter. Said fees shall be deposited to a designated account in the City’s Finance Department to be utilized for the cost of implementation and enforcement of this Chapter.

D. If the property is sold or transferred, the new Owner is subject to all the terms of this Chapter. Within fifteen (15) days of the transfer, the new Owner shall register the Vacant property or update the existing registration. The previous Owner(s) will not be released from the responsibility of paying all previous unpaid fees, fines, and penalties accrued during that Owner’s involvement with the Vacant property.

E. If the Vacant property is not registered, or either the registration fee or the Semi-Annual Registration fee is not paid within thirty (30) days of when the
registration or Semi-Annual Registration is required pursuant to this Section, a late fee shall be equivalent to ten percent (10%) of the Semi-Annual Registration fee shall be charged for every thirty (30) day-period, or portion thereof, the property is not registered and shall be due and payable with the registration. This Section shall apply to the initial registration and registrations required by subsequent Owners of the Vacant property.

F. Properties subject to this Section shall remain subject to the Semi-Annual Registration requirement, and the inspection, security, and maintenance standards of this Section as long as the property is Vacant.

G. Failure of the Owner to properly register or to modify the registration to reflect a change of circumstances as required by this Chapter is a violation of this Chapter and shall be subject to the penalties and enforcement provided by Section 453-7, herein below.

H. Properties registered as a result of this Section are not required to be registered again pursuant to Section 453-4, above.


A. Properties subject to this Chapter shall be maintained and secured in accordance with all applicable codes of the City of Middletown and State of New York.

B. Properties subject to this Chapter shall also be maintained in a secure manner so as not to be accessible to unauthorized persons. A “secure manner” shall include, but not be limited to, the closure and locking of windows, doors, gates and other openings of such size that may allow a child to access the interior of the property or structure. Broken windows, doors, gates, and other openings of such size that may allow a child to access the interior of the property or structure must be repaired. Broken windows shall be secured by re-glazing of the window.

C. If a property is Registrable, and the property has become vacant, a Property Manager shall be designated by the Mortgagee and/or Owner to perform the work necessary to bring the property into compliance with all applicable codes, and the Property Manager must perform regular inspections to verify compliance with the requirements of this Chapter, and all other applicable codes.

D. When a property subject to this Chapter becomes Vacant, it shall be posted with the name and twenty-four (24) hour contact telephone number of the Property Manager. The Property Manager shall be available to be contacted by the City Monday through Friday between 9:00 a.m. and 5:00 p.m., legal holidays
excepted. The sign shall be placed in a window facing the street and shall be visible from the street. The posting shall be no less than eighteen (18) inches by twenty-four (24) inches and shall be of a font that is legible from a distance of forty-five (45) feet. The posting shall contain the following language with supporting information:

THIS PROPERTY IS MANAGED BY ________________________________.
AND IS INSPECTED ON A REGULAR BASIS.
THE PROPERTY MANAGER CAN BE CONTACTED BY TELEPHONE AT
______________________________, OR BY EMAIL AT
______________________________.

E. The posting required in Subsection D, above, shall be placed on the interior of a window facing the street to the front of the property so that it is visible from the street, or secured to the exterior of the building/structure facing the street to the front of the property so that it is visible from the street or if no such area exists, on a stake of sufficient size to support the posting in a location that is at all times visible from the street to the front of the property but not readily accessible to vandals. Exterior posting shall be constructed of and printed with weather-resistant materials.

F. Failure of the Mortgagee and/or property Owner of record to properly inspect and secure a property subject to this Chapter, and post and maintain the signage noted in this section, is a violation.

G. The City Commissioner of the Department of Public Works shall have the authority to require the Mortgagee or Owner affected by this Section, to implement additional maintenance and/or security measures including, but not limited to, securing any and all doors, windows or other openings, or other measures as may be reasonably required to help prevent further decline of the property.

H. If there is a finding that the condition of the property is posing a serious threat to the public health, safety, and welfare, then the Commissioner of Public Works may, in his or her discretion, abate the violations and charge the Mortgagee or Owner with the cost of the abatement. A report of the cost and expense of doing said work shall be submitted to the City Treasurer and shall then become a lien against the property where said work was performed.

Section 453-7. Penalties for offenses.

Any person who violates any provisions of this Chapter shall, upon conviction thereof, be subject to a fine of not less than $250 nor more than $1,000 or by
imprisonment for a period not exceeding 15 days, or by both such fine and imprisonment. Each day that a violation is permitted to exist shall constitute a separate offense.

Section 2. Severability. The sections, paragraphs, sentences, clauses, and phrases of this Ordinance are severable, and if any phrase, clause, sentence, paragraph, or section of this Ordinance shall be declared unconstitutional or illegal by the valid judgment or decree of a court of competent jurisdiction, such unconstitutionality or illegality shall not affect any of the remaining phrases, clauses, sentences, paragraphs, and sections of this Ordinance.

Section 3. This Ordinance shall take effect immediately.
RESOLVED; that the Common Council of the City of Middletown concurs with the Board of Estimate and Apportionment to approve the attached Vacant and Foreclosed Property Registration contract which will be a third-party administrator collecting fees on vacant and foreclosed properties which the cost will be paid out of the new ordinance fee they collect at no cost to the City and authorize the Mayor to sign the contract upon Corporation Council approval.
AGREEMENT BETWEEN
CITY OF MIDDLETOWN, NEW YORK
AND
PROPERTY REGISTRATION CHAMPIONS, LLC

This Agreement is made as of this __ day of ____________, 20__ ("Effective Date") by and between Property Registration Champions, LLC, dba PROCHAMPS, a Florida limited liability company, with offices at 2725 Center Place, Melbourne, FL 32940 ("PRC"), and the City of Middletown a New York municipal corporation, with an address at 16 James Street, Middletown, NY 10940 ("CITY").

WHEREAS, in order to promptly and efficiently address the issues related to the maintenance of vacant and foreclosed residential and commercial properties, the Common Council recently enacted Chapter 453, Vacant and Foreclosed Properties Registration ("Ordinance") of the Middletown City Code, and

WHEREAS, pursuant to the Ordinance the CITY desires to enter into this Agreement with PRC in order to provide services authorized pursuant to the Ordinance, to register vacant, abandoned, and foreclosed properties (the "Properties"), so that the CITY can properly address violations of the CITY’s property maintenance and other codes; and

WHEREAS, PRC will also provide an electronic registration process that is cost-free and revenue neutral for the CITY; and

NOW THEREFORE, in consideration of the mutual covenants contained herein, and for other valuable consideration received, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows.

1. PRC RESPONSIBILITIES.

a. PRC will cite the CITY’s Ordinance to mortgagees and/or owners and proactively contact those who file a public notice of default, lis pendens, or any foreclosure action, take title to real property via foreclosure or other legal means, or become vacant in accordance with the Key Policy Requirements as outlined in Exhibit "A". PRC will electronically provide for registration of Properties in violation of Ordinance.

b. PRC will pay for all expenses, administrative costs and fees related to registration of Properties, except as provided in 1(c). PRC will monitor publicly recorded foreclosure filings for properties located within the jurisdictional area of the CITY, as well as utility data and any other data available to PRC. PRC will review and confirm the obligation to register properties pursuant to the Ordinance. PRC will monitor any changes to the obligation to register.

c. PRC will charge a fee ("Fee") as directed by the CITY to each registering party ("Registrant") to register all mortgagees and/or owners who comply with the Ordinance. PRC shall retain one hundred dollars ($100.00) of each collected Fee and remit the balance to the CITY. PRC shall forward payment of the CITY’s portion of the Fee to the CITY’s finance department no later than the fifteenth
AGREEMENT BETWEEN
CITY OF MIDDLETOWN, NEW YORK
AND
PROPERTY REGISTRATION CHAMPIONS, LLC

(15th) day of the following month. Should there be a fee required for public/official record data acquisition integral to the performance of the scope of work required under the terms and provisions of this contract, those charges shall be deducted from the remittance for the actual costs of said charges or subscriptions.

d. In the event the CITY’s Ordinance requires payment of late fees as part of the registration requirements, PRC shall collect all applicable late fees, retaining twenty percent (20%) of the fee, and remit the balance to the CITY pursuant to the monthly remittance schedule. All fees related shall be taken out of the CITY’s remittance provided in 1(c).

e. PRC agrees to provide a website for the registration of the Properties in order to enable compliance with the CITY’s ordinances. The website will direct Registrants to a hyperlink, www.PROCHAMPS.com. The website found at www.PROCHAMPS.com will automatically allow lenders and/or responsible parties to comply with the CITY’s property registration codes.

f. PRC responsibilities will commence on the Effective Date of this agreement.

2. INDEMNIFICATION.

a. **INDEMNIFICATION BY PRC.** PRC shall defend, indemnify, and hold harmless the CITY and its officers, employees, and agents, from and against all losses, expenses (including attorneys’ fees), damages, and liabilities of any kind resulting from or arising out of a breach of this Agreement by PRC and/or PRC's performance hereunder.

b. **INDEMNIFICATION BY CITY.** CITY shall defend, indemnify, and hold harmless PRC and its officers, employees, and agents, from and against all losses, expenses (including attorneys’ fees), damages, and liabilities of any kind resulting from or arising out of a failure by CITY to timely respond to a public records request.

3. **TERM and TERMINATION.** This Agreement shall terminate two (2) years from the Effective Date. This Agreement will automatically renew at the end of each term for a further term of one (1) year unless either party gives the other written notice of termination at least thirty (30) days prior to the end of the relevant term.

a. **TERMINATION FOR DEFAULT.** In the event that either party (the “Defaulting Party”) shall breach or fail to comply with any provision of this Agreement and such breach or failure shall continue for a period of thirty (30) days after the giving of written notice to the Defaulting Party, such other party
may terminate this Agreement immediately providing written notice of such
termination to the Defaulting Party.

b. **TERMINATION FOR INSOLVENCY.** This Agreement may be terminated by
the CITY in the event of the insolvency of PRC or the commencement by or
against the PRC of any case or proceeding under any bankruptcy, reorganization,
insolvency or moratorium law or any other law or laws for the relief of debtors or
the appointment of any receiver, trustee or assignee to take possession of the
properties of the PRC, unless such petition or appointment is set aside or
withdrawn or ceases to be in effect within thirty (30) days from the date of said
commencement or appointment or the liquidation or dissolution of the PRC.

4. **CONTRACT DOCUMENTS.** The following list of documents which are attached
hereto as exhibits to this Agreement shall be incorporated into this Agreement, as if fully
set forth herein by reference:

a. CITY Ordinance; Chapter 453.
   entitled “Vacant and Foreclosed Properties Registration”,
dated: ________________________.

5. **INSURANCE.** PRC shall maintain Errors and Omissions Insurance limits of liability
provided by such policy shall be no less than one million dollars ($1,000,000.00) to
ensure CITY the indemnification specified herein.

6. **OWNERSHIP AND USE OF DOCUMENTS.** All information collected by PRC from
registering parties in connection with the registration of a property pursuant to this
Agreement shall be the property of the CITY, and shall be provided to CITY upon
request. PRC shall be permitted to retain copies, including reproducible copies, of
drawings and specifications for information, reference and use in connection with PRC’s
endeavors.

7. **AUDIT, INSPECTION RIGHTS, AND RETENTION OF RECORDS.** PRC shall
maintain records pertaining to this agreement for a period of three years (3) from final
payment. Such records shall be subject to audit by the CITY on reasonable advanced,
written notice. The audit shall be conducted at the premises of the CITY on business
days only and during normal working hours. PRC shall comply with all Florida Public
Records Act (Chapter 119, Florida Statutes) requirements.

8. **INDEPENDENT CONTRACTOR.** This Agreement creates no relationship of joint
venture, partnership, limited partnership, agency, or employer-employee between the
parties, and the parties acknowledge that no other facts or relations exist that would
create any such relationship between them. Neither party has any right or authority to
assume or create any obligation or responsibility on behalf of the other party except as
provided by written instrument signed by both parties.
AGREEMENT BETWEEN
CITY OF MIDDLETOWN, NEW YORK
AND
PROPERTY REGISTRATION CHAMPIONS, LLC

9. NOTICES. Whenever any party desires to give notice unto any other party, it must be
given by written notice, sent by registered United States mail, with return receipt
requested, hand delivery or facsimile transmission with receipt of delivery, addressed to
the party for whom it is intended and the remaining party, at the places last specified, and
the places for giving of notice shall remain such until they shall have been changed by
written notice in compliance with the provisions of this section. Notice shall be deemed
to have been given upon receipt. For the present, PRC and the CITY designate the
following as the respective places for giving of notice:

CITY: City of Middletown
16 James Street
Middletown, NY 10940
Telephone No. (845) 346-4100
Attention: Joseph DeStefano, Mayor

PRC: David Mulberry, President/CIO
2725 Center Place
Melbourne, FL 32940
Telephone No. (321) 421-6639
Facsimile No. (321) 396-7776

10. AMENDMENTS.

a. AMENDMENTS TO AGREEMENT. It is further agreed that no modification,
amendment or alteration in the terms or conditions contained herein shall be
effective unless contained in a written document executed with the same formality
and of equal dignity herewith.

b. AMENDMENT OF FEES. In the event there are amendments to the Fees, PRC
will apply the fee that was in place for the registration period in question.

11. CITY DATA. CITY acknowledges prior to this Agreement registering Properties
governed by the original ordinance. On a date, agreed upon by PRC, prior to the Effective
Date of this Agreement, the CITY will provide PRC a digital file, in format agreeable to
PRC, containing all of the information of all Properties registered by the CITY. All
registrations and fees received by the CITY during the period from the data delivery date
to the Effective Date will be submitted to PRC and considered registrations by PRC
under the terms of this Agreement. If the CITY is unable to provide the agreed upon
digital file then the CITY will provide PRC all property registration information,
including but not limited to registration forms, to PRC for manual entry into the PRC
database. If manual entry of this information is required of PRC the CITY agrees to
compensate PRC five dollars ($5.00) per property.
12. ORDINANCE VIOLATION DATA. Whenever the CITY becomes aware of one or more ordinance violations upon a property registered pursuant to this Agreement, the CITY shall report the violation(s) to PRC, which shall maintain a record of all reported violations upon the property, in addition to data PRC maintains pursuant to this Agreement.

13. PUBLICITY. PRC may include CITY’s name and general case study information within PRC’s marketing materials and website.

14. CITY LOGO. CITY shall provide the CITY’s logo to PRC for the purposes as set forth in 1(a).

15. FORCE MAJEURE. Neither party to this Agreement shall be responsible for any delays or failure to perform any provision of this Agreement (other than payment obligations) due to acts of God, strikes or other disturbances, war, insurrection, embargoes, governmental restrictions, acts of governments or governmental authorities, or other causes beyond the control of such party.

16. LIMITATION OF LIABILITY. NEITHER PARTY SHALL BE LIABLE FOR ANY INDIRECT, INCIDENTAL, SPECIAL, PUNITIVE, OR CONSEQUENTIAL DAMAGES, OR ANY LOSS OF PROFITS, REVENUE, DATA, OR DATA USE.

17. BINDING AUTHORITY. Each person signing this Agreement on behalf of either party individually warrants that he or she has full legal power to execute this Agreement on behalf of the party for whom he or she is signing, and to bind and obligate such party with respect to all provisions contained in this Agreement.

18. LAWS AND ORDINANCES. PRC shall observe all laws and ordinances of the CITY, county, state, federal or other public agencies directly relating to the operations being conducted pursuant to this Agreement.

19. EQUAL EMPLOYMENT OPPORTUNITY. In the performance of this Agreement, PRC shall not discriminate against any firm, employee or applicant for employment or any other firm or individual in providing services because of sex, age, race, color, religion, ancestry or national origin.

20. WAIVER. Any failure by CITY to require strict compliance with any provision of this Agreement shall not be construed as a waiver of such provision, and CITY may subsequently require strict compliance at any time, notwithstanding any prior failure to do so.

21. SEVERABILITY. If any provision of this Agreement or application thereof to any person or situation shall to any extent, be held invalid or unenforceable, the remainder of
AGREEMENT BETWEEN
CITY OF MIDDLETOWN, NEW YORK
AND
PROPERTY REGISTRATION CHAMPIONS, LLC

this Agreement, and the application of such provisions to persons or situations other than
those as to which it shall have been held invalid or unenforceable shall not be affected
thereby, and shall continue in full force and effect, and be enforced to the fullest extent
permitted by law.

22. GOVERNING LAW. This Agreement shall be governed by the laws of the State of
New York with venue lying in Orange County, New York.

23. ATTORNEY'S FEES AND COSTS. In the event of a dispute arising out of this
Agreement, the prevailing party shall be entitled to recover reasonable attorney's fees,
paralegal expenses, and costs, including fees and costs incurred at all pretrial, trial and
appellate levels.

24. CONTINGENCY. This Agreement is contingent upon the Ordinance being passed by
the CITY within forty-five (45) days of the Agreement date. If the Ordinance is not
passed by that date or PRC does not consent to the Ordinance provisions then PRC can
declare this Agreement null and void without any further demands by the CITY.

25. ENTIRE AGREEMENT. This Agreement represents the entire and integrated
agreement between the CITY and the PRC and supersedes all prior negotiations,
representations or agreements, either written or oral.

[Remainder of this page intentionally left blank.]
AGREEMENT BETWEEN
CITY OF MIDDLETOWN, NEW YORK
AND
PROPERTY REGISTRATION CHAMPIONS, LLC

IN WITNESS WHEREOF, the parties hereto have affixed their hands and seals the day and year first above written.

CITY OF MIDDLETOWN, NEW YORK

_________________________________________  Date: __________________________

______________________________
Name, Title

PROPERTY REGISTRATION CHAMPIONS, LLC

_________________________________________  Date: __________________________

David Mulberry, President/CIO

Property Registration Champions, LLC
2725 Center Place
Melbourne, FL 32940
AGREEMENT BETWEEN
CITY OF MIDDLETOWN, NEW YORK
AND
PROPERTY REGISTRATION CHAMPIONS, LLC

Exhibit “A”

Key Policy Requirements

<table>
<thead>
<tr>
<th>Foreclosure:</th>
<th>Ordinance No.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Registration Fee</td>
<td>$500</td>
</tr>
<tr>
<td>Late Fee</td>
<td>Recurring 10% of Registration and Renewal Fee every 30 days</td>
</tr>
<tr>
<td>Registration Triggers</td>
<td>- Post-Filing (NOD(^i)/LP(^ii)), Occupied or Vacant</td>
</tr>
<tr>
<td></td>
<td>- REO(^iii), Occupied or Vacant</td>
</tr>
<tr>
<td>Renewal</td>
<td>6 months</td>
</tr>
<tr>
<td>Org Exemptions</td>
<td>Governmental entities and HOAs</td>
</tr>
<tr>
<td>Property Exemptions</td>
<td>N/A</td>
</tr>
<tr>
<td>Refund Policy</td>
<td>A non-refundable semi-annual registration and renewal fee per the ordinance</td>
</tr>
<tr>
<td>OMT Transfer</td>
<td>Report change of info within 15 days. Transferee is responsible for any and all previous unpaid fees, fines, and penalties.</td>
</tr>
<tr>
<td>Start Date for Registrations</td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Vacant Private Owner:</th>
<th>Ordinance No.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Registration Fee</td>
<td>$500</td>
</tr>
<tr>
<td>Late Fee</td>
<td>Recurring 10% of Registration and Renewal Fee every 30 days</td>
</tr>
<tr>
<td>Registration Triggers</td>
<td>Vacant/60 days/Private Owner*</td>
</tr>
<tr>
<td>Renewal</td>
<td>6 months</td>
</tr>
<tr>
<td>Org Exemptions</td>
<td>N/A</td>
</tr>
<tr>
<td>Property Exemptions</td>
<td>Vacant Lots</td>
</tr>
<tr>
<td>Refund Policy</td>
<td>A non-refundable semi-annual registration and renewal fee per the ordinance</td>
</tr>
<tr>
<td>OMT Transfer</td>
<td>New OMT is required to re-register the property and pay registration fee</td>
</tr>
<tr>
<td>Start Date for Registrations</td>
<td></td>
</tr>
</tbody>
</table>

*A property will not need to be registered if the owner is engaged in ongoing, good faith attempts to rent, sell or renovate; these attempts do not exceed one (1) year and the owner provides evidence of such.

\(^i\) NOD – Notice of Default
\(^ii\) LP – Lis Pendent
\(^iii\) REO – Real Estate Owned
WHEREAS, the City of Middletown Department of Public Works has proposed a project known as the South Street Parking Lots Improvement that involves work near the Washington Street intersection including replacement of various items, including concrete stairs, fencing, guiderails and improvement to landscaping, and

WHEREAS, the proposed action constitutes an Unlisted Action pursuant to the State Environmental Quality Review Act (“SEQRA”) regulations; and

WHEREAS, the City of Middletown Common Council has thoroughly reviewed and considered this request and the accompanying Short Environmental Assessment Form (“EAF”), and

WHEREAS, the City of Middletown Common Council has identified the relevant areas of environmental concern and thoroughly considered the criteria for determining significance set forth at 6NYCRR Part 617.7 (c);

WHEREAS, the Common Council is the only involved agency under SEQRA for this request.

NOW, THEREFORE, BE IT RESOLVED that the City of Middletown Common Council declares itself Lead Agency with respect to this proposed action, and be it
FURTHER RESOLVED that the City of Middletown Common Council hereby declares that the proposed action will not result in a significant adverse impact on the environment, and an environmental impact statement will not be prepared, and be it

FURTHER RESOLVED that this Negative Declaration is made pursuant to Article 8 of the Environmental Conservation Law (SEQRA).
Instructions for Completing

Part 1 – Project Information. The applicant or project sponsor is responsible for the completion of Part 1. Responses become part of the application for approval or funding, are subject to public review, and may be subject to further verification. Complete Part 1 based on information currently available. If additional research or investigation would be needed to fully respond to any item, please answer as thoroughly as possible based on current information.

Complete all items in Part 1. You may also provide any additional information which you believe will be needed by or useful to the lead agency; attach additional pages as necessary to supplement any item.

<table>
<thead>
<tr>
<th>Part 1 – Project and Sponsor Information</th>
</tr>
</thead>
<tbody>
<tr>
<td>City of Middletown</td>
</tr>
<tr>
<td>Name of Action or Project:</td>
</tr>
<tr>
<td>South Street Parking Lot Improvements</td>
</tr>
<tr>
<td>Project Location (describe, and attach a location map):</td>
</tr>
<tr>
<td>Municipal Parking Lots located on east side of South Street Immediately North and South of Washington Street Intersection</td>
</tr>
<tr>
<td>Brief Description of Proposed Action:</td>
</tr>
<tr>
<td>Improvements to Lots North of Washington:</td>
</tr>
<tr>
<td>- Replace existing concrete stairs and sidewalk between upper and lower parking lots. New stairs will include a canopy cover.</td>
</tr>
<tr>
<td>- New landscape planters.</td>
</tr>
<tr>
<td>- New landscape plantings.</td>
</tr>
<tr>
<td>- New ornamental fencing.</td>
</tr>
<tr>
<td>- New guide rail.</td>
</tr>
<tr>
<td>Improvements to Lot South of Washington:</td>
</tr>
<tr>
<td>- New ornamental fencing.</td>
</tr>
<tr>
<td>Name of Applicant or Sponsor:</td>
</tr>
<tr>
<td>City of Middletown (c/o Jacob Tawil, PE - Commissioner of Public Works)</td>
</tr>
<tr>
<td>Telephone: 845-343-3169</td>
</tr>
<tr>
<td>E-Mail: <a href="mailto:jlawil@middletown-ny.com">jlawil@middletown-ny.com</a></td>
</tr>
<tr>
<td>Address:</td>
</tr>
<tr>
<td>16 James Street</td>
</tr>
<tr>
<td>City/PO:</td>
</tr>
<tr>
<td>Middletown</td>
</tr>
<tr>
<td>State: NY</td>
</tr>
<tr>
<td>Zip Code: 10940</td>
</tr>
</tbody>
</table>

1. Does the proposed action only involve the legislative adoption of a plan, local law, ordinance, administrative rule, or regulation?  
   If Yes, attach a narrative description of the intent of the proposed action and the environmental resources that may be affected in the municipality and proceed to Part 2. If no, continue to question 2.  
   NO | YES

2. Does the proposed action require a permit, approval or funding from any other government Agency?  
   If Yes, list agency(s) name and permit or approval:  
   NO | YES

3. a. Total acreage of the site of the proposed action?  
    b. Total acreage to be physically disturbed?  
    c. Total acreage (project site and any contiguous properties) owned or controlled by the applicant or project sponsor?  
       Approx. 2 acres  
       < 0.15 acres  
       Approx. 2.60 acres

4. Check all land uses that occur on, are adjoining or near the proposed action:  
   ☑ Urban  ☐ Rural (non-agriculture)  ☐ Industrial  ☑ Commercial  ☑ Residential (suburban)  
   ☐ Forest  ☐ Agriculture  ☐ Aquatic  ☐ Other(Specify):  
   ☐ Parkland
<table>
<thead>
<tr>
<th></th>
<th>NO</th>
<th>YES</th>
<th>N/A</th>
</tr>
</thead>
<tbody>
<tr>
<td>5.</td>
<td>Is the proposed action,</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>a. A permitted use under the zoning regulations?</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>b. Consistent with the adopted comprehensive plan?</td>
<td></td>
<td></td>
</tr>
<tr>
<td>6.</td>
<td>Is the proposed action consistent with the predominant character of the existing built or natural landscape?</td>
<td></td>
<td></td>
</tr>
<tr>
<td>7.</td>
<td>Is the site of the proposed action located in, or does it adjoin, a state listed Critical Environmental Area?</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>If Yes, identify:</td>
<td></td>
<td></td>
</tr>
<tr>
<td>8.</td>
<td>a. Will the proposed action result in a substantial increase in traffic above present levels?</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>b. Are public transportation services available at or near the site of the proposed action?</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>c. Are any pedestrian accommodations or bicycle routes available on or near the site of the proposed action?</td>
<td></td>
<td></td>
</tr>
<tr>
<td>9.</td>
<td>Does the proposed action meet or exceed the state energy code requirements?</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>If the proposed action will exceed requirements, describe design features and technologies:</td>
<td></td>
<td></td>
</tr>
<tr>
<td>10.</td>
<td>Will the proposed action connect to an existing public/private water supply?</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>If No, describe method for providing potable water:</td>
<td></td>
<td></td>
</tr>
<tr>
<td>11.</td>
<td>Will the proposed action connect to existing wastewater utilities?</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>If No, describe method for providing wastewater treatment:</td>
<td></td>
<td></td>
</tr>
<tr>
<td>12.</td>
<td>a. Does the project site contain, or is it substantially contiguous to, a building, archaeological site, or district which is listed on the National or State Register of Historic Places, or that has been determined by the Commissioner of the NYS Office of Parks, Recreation and Historic Preservation to be eligible for listing on the State Register of Historic Places?</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>b. Is the project site, or any portion of it, located in or adjacent to an area designated as sensitive for archaeological sites on the NY State Historic Preservation Office (SHPO) archaeological site inventory?</td>
<td></td>
<td></td>
</tr>
<tr>
<td>13.</td>
<td>a. Does any portion of the site of the proposed action, or lands adjoining the proposed action, contain wetlands or other waterbodies regulated by a federal, state or local agency?</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>b. Would the proposed action physically alter, or encroach into, any existing wetland or waterbody?</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>If Yes, identify the wetland or waterbody and extent of alterations in square feet or acres:</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
14. Identify the typical habitat types that occur on, or are likely to be found on the project site. Check all that apply:

- [ ] Shoreline
- [ ] Forest
- [ ] Agricultural/grasslands
- [ ] Early mid-successional
- [ ] Wetland
- [ ] Urban
- [ ] Suburban

15. Does the site of the proposed action contain any species of animal, or associated habitats, listed by the State or Federal government as threatened or endangered?  
- [ ] YES
- [ ] NO

16. Is the project site located in the 100-year flood plan?  
- [ ] YES
- [ ] NO

17. Will the proposed action create storm water discharge, either from point or non-point sources?  
If Yes,  
   a. Will storm water discharges flow to adjacent properties?  
   - [ ] NO
   - [ ] YES
   
   b. Will storm water discharges be directed to established conveyance systems (runoff and storm drains)?  
   - [ ] NO
   - [ ] YES

If Yes, briefly describe:  
________________________________________________________________________________________
________________________________________________________________________________________

18. Does the proposed action include construction or other activities that would result in the impoundment of water or other liquids (e.g., retention pond, waste lagoon, dam)?  
If Yes, explain the purpose and size of the impoundment:  
________________________________________________________________________________________

19. Has the site of the proposed action or an adjoining property been the location of an active or closed solid waste management facility?  
If Yes, describe:  
________________________________________________________________________________________

20. Has the site of the proposed action or an adjoining property been the subject of remediation (ongoing or completed) for hazardous waste?  
If Yes, describe:  
________________________________________________________________________________________

I CERTIFY THAT THE INFORMATION PROVIDED ABOVE IS TRUE AND ACCURATE TO THE BEST OF MY KNOWLEDGE  

Applicant/sponsor/name: City of Middletown/Jacob Tawil, PE  
Date:  

Signature:  
Title: Commissioner of Public Works
### Part 1 / Question 7 [Critical Environmental Area]
No

### Part 1 / Question 12a [National or State Register of Historic Places or State Eligible Sites]
Yes

### Part 1 / Question 12b [Archeological Sites]
Yes

### Part 1 / Question 13a [Wetlands or Other Regulated Waterbodies]
Yes - Digital mapping information on local and federal wetlands and waterbodies is known to be incomplete. Refer to EAF Workbook.

### Part 1 / Question 15 [Threatened or Endangered Animal]
No

### Part 1 / Question 16 [100 Year Flood Plain]
No

### Part 1 / Question 20 [Remediation Site]
Yes
### Short Environmental Assessment Form

**Part 2 - Impact Assessment**

Part 2 is to be completed by the Lead Agency.

Answer all of the following questions in Part 2 using the information contained in Part 1 and other materials submitted by the project sponsor or otherwise available to the reviewer. When answering the questions the reviewer should be guided by the concept “Have my responses been reasonable considering the scale and context of the proposed action?”

<table>
<thead>
<tr>
<th>No, or small impact may occur</th>
<th>Moderate to large impact may occur</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Will the proposed action create a material conflict with an adopted land use plan or zoning regulations?</td>
<td>✓</td>
</tr>
<tr>
<td>2. Will the proposed action result in a change in the use or intensity of use of land?</td>
<td>✓</td>
</tr>
<tr>
<td>3. Will the proposed action impair the character or quality of the existing community?</td>
<td>✓</td>
</tr>
<tr>
<td>4. Will the proposed action have an impact on the environmental characteristics that caused the establishment of a Critical Environmental Area (CEA)?</td>
<td>✓</td>
</tr>
<tr>
<td>5. Will the proposed action result in an adverse change in the existing level of traffic or affect existing infrastructure for mass transit, biking or walkway?</td>
<td>✓</td>
</tr>
<tr>
<td>6. Will the proposed action cause an increase in the use of energy and it fails to incorporate reasonably available energy conservation or renewable energy opportunities?</td>
<td>✓</td>
</tr>
<tr>
<td>7. Will the proposed action impact existing: a. public / private water supplies?</td>
<td>✓</td>
</tr>
<tr>
<td>b. public / private wastewater treatment utilities?</td>
<td>✓</td>
</tr>
<tr>
<td>8. Will the proposed action impair the character or quality of important historic, archaeological, architectural or aesthetic resources?</td>
<td>✓</td>
</tr>
<tr>
<td>9. Will the proposed action result in an adverse change to natural resources (e.g., wetlands, waterbodies, groundwater, air quality, flora and fauna)?</td>
<td>✓</td>
</tr>
<tr>
<td>10. Will the proposed action result in an increase in the potential for erosion, flooding or drainage problems?</td>
<td>✓</td>
</tr>
<tr>
<td>11. Will the proposed action create a hazard to environmental resources or human health?</td>
<td>✓</td>
</tr>
</tbody>
</table>
Short Environmental Assessment Form
Part 3 Determination of Significance

For every question in Part 2 that was answered “moderate to large impact may occur”, or if there is a need to explain why a particular element of the proposed action may or will not result in a significant adverse environmental impact, please complete Part 3. Part 3 should, in sufficient detail, identify the impact, including any measures or design elements that have been included by the project sponsor to avoid or reduce impacts. Part 3 should also explain how the lead agency determined that the impact may or will not be significant. Each potential impact should be assessed considering its setting, probability of occurring, duration, irreversibility, geographic scope and magnitude. Also consider the potential for short-term, long-term and cumulative impacts.

☐ Check this box if you have determined, based on the information and analysis above, and any supporting documentation, that the proposed action may result in one or more potentially large or significant adverse impacts and an environmental impact statement is required.

☑ Check this box if you have determined, based on the information and analysis above, and any supporting documentation, that the proposed action will not result in any significant adverse environmental impacts.

<table>
<thead>
<tr>
<th>Common Council</th>
<th>Name of Lead Agency</th>
<th>05-05-20</th>
<th>Date</th>
</tr>
</thead>
<tbody>
<tr>
<td>Miguel Rodrigues</td>
<td>President of Common Council</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Print or Type Name of Responsible Officer in Lead Agency</th>
<th>Title of Responsible Officer</th>
</tr>
</thead>
<tbody>
<tr>
<td>Signature of Responsible Officer in Lead Agency</td>
<td>Signature of Preparer (if different from Responsible Officer)</td>
</tr>
</tbody>
</table>
RESOLVED; that the Common Council of the City of Middletown concurs with the Board of Estimate and Apportionment to approve and submission of the Amendment to the Community Development Block Grant (CDBG) 2019 Action Plan to receive CDBG Coronavirus Aid (CDBG-CV) and also to authorize the Mayor to sign all necessary documents and certifications regarding the Amendment and receipt of CDBG-CV funds.
AMENDMENT TO THE
COMMUNITY DEVELOPMENT BLOCK GRANT (CDBG) 2019 ACTION PLAN
TO RECEIVE CDBG CORONAVIRUS AID (CDBG-CV)

A. BACKGROUND
The City of Middletown is a recipient of a CDBG COVID-19 response grant (CDBG-CV) in accordance with the Coronavirus Aid, Relief and Economic Security Act (CARES Act), Public Law 116-136 to respond to the growing effects of the current public health crisis. The City of Middletown Office of Economic and Community Development (OECD) submitted a final 2019 Action Plan Component to the 2015-2019 Five-Year Consolidated Plan to the U.S. Department of Housing and Urban Development (HUD) June 18, 2019. A public comment period was undertaken from October 1, 2018 through October 31, 2018. Two public hearings were held September 17, 2018 and November 1, 2018.

The Amendment guidelines contained in the City’s Citizen Participation Plan require that an Amendment be undertaken whenever the needs, goals, priorities or funding identified in an Action Plan is changed in a material way, such that the same is no longer consistent with the initial proposed activity contained within the applicable Action Plan when adopted subsequent to modification made thereafter. The City of Middletown in response to a reallocation of CDBG grant funds and in an effort to respond to possible changed circumstances within the community has identified that there is a need to create an Amendment to the 2019 Action Plan.

At this time, The City of Middletown is submitting a substantial amendment to the approved 2019 Action Plan to address the following program changes:

- Amend the Action Plan budget/Project allocation to include additional projects and activities utilizing the CDBG-CV funds and any 2019 CDBG funds that may be available.

- Amend the grant completion date from December 31, 2019 to December 31, 2021.

B. AMENDMENT
The Amendment to the 2019 Action Plan involves an allocation of CDBG-CV funding from the federal department of Housing and Urban Development, in the amount of $292,206.

1. Amend the Action Plan budget/Project allocation to include additional projects and activities utilizing the CDBG-CV funds and any 2019 CDBG funds that may be available.

The Action Plan budget submitted on June 18, 2019 contained the following proposed projects and allocations:
2019 allocation $498,458
2019 Estimated Program Income allocated for admin $30,000 (2019)
Prior Year estimated program income allocated $116,800

<table>
<thead>
<tr>
<th>PROPOSED BUDGET</th>
<th>Grant</th>
<th>Program Income</th>
<th>Old EN $</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Administration</td>
<td>99,691</td>
<td>30,000 (2019)</td>
<td>0</td>
<td>129,691</td>
</tr>
<tr>
<td></td>
<td></td>
<td>15,000 (2014)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Multi Family Rehab</td>
<td>57,000</td>
<td>5000 (2018)</td>
<td>39,000 (2018)</td>
<td>118,500</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>17,500 (2017)</td>
<td></td>
</tr>
<tr>
<td>Code Enforcement</td>
<td>23,675</td>
<td>0</td>
<td>0</td>
<td>23,675</td>
</tr>
<tr>
<td>Homebuyer</td>
<td>0</td>
<td>1,800</td>
<td>0</td>
<td>1,800</td>
</tr>
</tbody>
</table>

498,458 146,800 165,790 0 811,048

*The amendment is in regards to the following allocation additions and additional proposed projects:

Estimated CDBG-CV Budget*

CDBG-CV allocation - $292,206.00

<table>
<thead>
<tr>
<th>Project</th>
<th>CDBG-CV</th>
</tr>
</thead>
<tbody>
<tr>
<td>Public Services</td>
<td>$73,765.00</td>
</tr>
<tr>
<td>Economic Development</td>
<td>$160,000.00</td>
</tr>
<tr>
<td>Administration and Planning*</td>
<td>$58,441.00</td>
</tr>
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<td>$292,206.00</td>
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* Please see Attachment 1 for detailed project and activity descriptions.

** The City is awaiting guidance on the amount of the CDBG-CV funding that can be used for administration and planning. For the purposes of this amendment it has been assumed that 20% of the grant may be used for this purpose as it is for regular CDBG grants. Should the percentage be less, the excess funds set aside for admin will be added to the Economic Development Project.
2. **Amend the grant completion date from December 31, 2019 to December 31 2021.**
   It is unknown how long the COVID 19 restrictions will last. While the City expects that its public service activities will be completed by the end of 2020, it may take longer for businesses to receive notification regarding other loans and grants for which they may have applied (to avoid duplication of benefits). Monitoring at the 6-month and 1-year marks will also keep these activities open longer than the public services activities.

**C. PUBLIC PARTICIPATION**

A 5-day public comment period on the Amendment was conducted beginning on Friday, May 1, 2020 and will end on Tuesday, May 5, 2020 in accordance with the HUD waiver dated Thursday, April 2, 2020 to allow a five-day comment period. Any persons wishing to obtain a copy of the Amendment may do so at the City of Middletown website: www.middletown-ny.com.

**D. PUBLIC COMMENT ON AMENDMENT**

Any persons wishing to provide comments on the Amendment may do so by writing to the Office of Economic and Community Development at the following address: Office of Economic and Community Development; City Hall; 16 James Street; Middletown, New York 10940 or by email to CommDev@Middletown-NY.com.
Attachment 1

A. Project and Activity Descriptions

1. Public Services
   24 CFR 570.201 (e) allows for the provision of public services (including labor, supplies, and materials) including but not limited to those concerned with employment, crime prevention, child care, health, drug abuse, education, fair housing counseling, energy conservation, welfare (but excluding the provision of income payments identified under § 570.207(b)(4)), homebuyer downpayment assistance, or recreational needs. The City of Middletown intends to use CDBG-CV funds to provide health and nutrition services to vulnerable populations in the City of Middletown. The City will develop policies and/or monitoring to prevent the duplication of benefits in accordance with HUD guidance.

a. Middletown Pantry
   As COVID-19 spreads throughout communities we are hearing more and more about how senior citizens are more vulnerable to the virus. However, the struggle for seniors, who are low-income and/or have underlying health issues, is to comply with the safety recommendations. “Older adults experiencing poverty tend to live on fixed incomes, have limited transportation options, and often experience difficulty meeting their basic nutritional needs. This makes them especially vulnerable when an unexpected life event or financial expense occurs, because they typically do not have sufficient savings or the ability to work more to make up for losses. During a pandemic, it could be deadly.” (Brookings Institute: https://www.brookings.edu/blog/the-avenue/2020/03/16/for-millions-of-low-income-seniors-coronavirus-is-a-food-security-issue/)

In the City of Middletown 11.3% of those 60 years and over and 11.8% of those 65 years and over live in poverty. Information on income by age, not relative to poverty, is not available. But one can assume that many moderate-income seniors are on a fixed income and one small disaster away from need. (2018 ACS 5-year estimates – Table S1701 - Poverty Status in the last 12 months)

Poverty is such in the City of Middletown that the Middletown Enlarged City School District provides their nearly 7400 students with free lunch and breakfast. Although the distribution of those meals has continued throughout the COVID-19 crisis, families who
have never had to resort to food banks or community kitchens have found themselves in need. Indeed, 25.8 percent of children 18 and under lived below the poverty level in the last 12 months.

In the last 30 days the City’s Recreation and Parks Department has received 129 referrals from other agencies regarding families who are in need. Mulberry House Senior Center outreach has identified over 100 persons in the last 30 days in need of nutrition assistance.

More households in need are identified each day. This activity would fund a grant for limited nutrition service. Each request would provide a basic nutrition package. This would enable the Pantry to distribute 1200 nutrition packs over the next 5 months.

b. Guild of St. Margaret Soup Kitchen
Since the COVID-19 restrictions started in New York State vulnerable individuals and families have lost jobs and along economic insecurity comes food insecurity. The Guild of St Margaret Soup Kitchen has fed the hungry in the City of Middletown for nearly 40 years. They have provided approximately 3000 meals a month over the last year. Since COVID-19 restrictions have been in place and they have migrated from dine-in meals to take out. The need is such that they are now serving 5100 meals a month and the numbers are rising.

As a result of current events their costs for food and supplies have risen. They have a budget deficit of $3300 a month.

This activity will cover the cost of food and supplies beyond the Kitchen’s annual budget through December 31, 2020. This will enable the Kitchen to serve approximately 16,800 additional meals.

c. Sanitation
The City of Middletown has 20 parks, public spaces and green spaces and a theatre. Playground equipment, picnic pavilions and other equipment/amenities as well as the theatre have been closed since the inception of COVID-19 restrictions. Before reopening these spaces, the equipment and amenities will need to be sanitized. This activity will fund the purchase of a hot water commercial pressure washer, commercial steam cleaners, steam extractor and other equipment to be used for cleaning and sanitizing.

2. Economic Development – COVID Small Business Loans (SBL-CV)
COVID-19 restrictions have hit the business community quite hard. Non-essential business shutdowns, social distancing and work force reduction have caused a downward economic spiral. Middletown had been riding a wave of economic prosperity that had encouraged
many new businesses to open, especially in downtown. In order to facilitate a return to normalcy and to retain jobs the City will utilize CDBG-CV funds to institute 0% loans to for profit businesses for up to $5000 for a 5-year term with a 6-month deferred payment for gap benefits to help them reopen. The City expects to be able to assist 32 businesses.

3. Administration and Planning
The City is awaiting guidance on the amount of the CDBG-CV funding that can be used for administration and planning. For the purposes of this amendment it has been assumed that 20% of the grant may be used for this purpose as it is for regular CDBG grants. Should the percentage be less, the excess funds set aside for admin will be added to the SBL-CV Project
CITY OF MIDDLETOWN
Office of Economic & Community Development

April 28, 2020

City of Middletown
Board of Estimate
16 James Street
Middletown, New York 10940

RE: Community Development Amendment to the CDBG Action Plan 2019/CDBG-CV

Dear Members:

I am requesting the approval and submission of the Amendment to the Community Development Block Grant (CDBG) 2019 Action Plan to receive CDBG Coronavirus Aid (CDBG-CV). Also authorization for the Mayor to sign all necessary documents and certifications regarding the Amendment and receipt of CDBG-CV funds. The allocation for the CDBG-CV is $292,206.00, the budget is outlined in the Amendment.

Thank you for your attention to this matter.

Maria Bruni, Director
Economic & Community Development
CITY OF MIDDLETOWN, NEW YORK
COMMON COUNCIL
RECORD OF VOTE

THE FOLLOWING WAS PRESENTED

By Ald.

Sec'd by Ald.

Date of Adoption  05-05-20

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RESOLVED; that the Common Council of the City of Middletown concurs with the Board of Estimate and Apportionment to authorize the Treasurer to transfer $1,288.00 within the Police Department 2020 budget to cover additional costs associated with the installation of a new water fountain in the following manner:

FROM  A.3120.470
Building Repairs

AMOUNT  $1,288.00

TO  A.3120.200
Equipment
Honorable Joseph DeStefano  
Mayor-City of Middletown and  
Board of Estimate and Apportionment  
16 James Street  
Middletown, NY 10940

Dear Mayor DeStefano and Members of the Board of Estimate,

I am requesting that the City of Middletown Common Council approve the following transfers within our 2020 budget lines:

From    | Amount | To        
---      | ---    | ---        
A.3120.470 | $1288 | A.3120.200  
Building repairs | Equipment

This transfer will cover the additional costs associated with the installation of a new water fountain.

Very truly yours,

[Signature]

John Ewanciw  
Chief of Police

JE:ccd
RESOLVED; that the Common Council of the City of Middletown hereby rescinds resolution #228-19 passed on October 15, 2019, to award the bid for Midland Avenue Extension New Curbs and Sidewalks to make funds available for the DRI funded GI Parking lots project.
Hi John,
Please place on the Council agenda a resolution rescinding the award of the referenced contract to Boyce. The Purpose is making this project funds available for the DRI funded GI Parking lots project.

Thank you
Jacob

Jacob S. Tawil, P.E. | Commissioner
Department of Public Works
City of Middletown | 16 James Street |
Middletown, New York 10940 |
T: 845-343-3169 | F: 845-343-4014

Please consider the environment before printing this email.

On Wednesday, April 29, 2020, 09:26:15 AM EDT, Jacob Tawil <jtawil14@yahoo.com> wrote:

Thanks Al. I spoke to Boyce yesterday as well. All good
Thanks and stay well

Sent from my iPhone
Please excuse any typographical errors.

On Apr 29, 2020, at 9:23 AM, Alfred A Fusco Jr <aafjr@fuscoengineering.com> wrote:

Jacob

Spoke to Boyce sending them letter, all set good luck with DRI

Al

Alfred A Fusco, Jr., P.E.
Fusco Engineering
& Land Surveying, P.C.
233 East Main Street
Middletown, New York 10940

Email: aafjr@fuscoengineering.com
Phone: (845) 344-5863
Hi Al,
I hope that you are doing well. One of our DRI main projects is low on funding, and we would like to put this Midland Ave project on hold for the time being, and will rebid at some point in the future, hopefully when more grants are available.

I just want to make sure that your office did not go forward with the award and that the Contractor Boyce never supplied any bonds to your office as it relates to the attached award.

Please advise by tomorrow if possible as we would like to cancel the Council Resolution of award.

Thanks
Jacob

Jacob S. Tawil, P.E. | Commissioner
Department of Public Works
City of Middletown | 16 James Street |
Middletown, New York 10940 |
T: 845-343-3169 | F: 845-343-4014

Please consider the environment before printing this email.

On Tuesday, April 28, 2020, 03:31:56 PM EDT, John Naumchik <jnaumchik@middletown-ny.com> wrote:

Attached

John C. Naumchik

City Clerk, Registrar/Clerk of the Common Council
Records Management Officer
City of Middletown, New York 10940
(845)346-4168 (desk)
(845)344-5428 (fax)

jnaumchik@middletown-ny.com

Please visit our website @ www.middletown-ny.com

<image001.jpg>
**CITY OF MIDDLETOWN, NEW YORK**  
**COMMON COUNCIL**  
**RECORD OF VOTE**

**THE FOLLOWING WAS PRESENTED**

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WHEREAS, bids were opened by the Board of Estimate and Apportionment on Tuesday, September 26, 2019, for the Midland Avenue Ext New Curbs & Sidewalks on the easterly/business side on Midland Ave Extension, and

WHEREAS, the Board of Estimate and Apportionment referred the bids to the Commissioner of Public Works for his review and recommendation to the Common Council of the City of Middletown, and,

WHEREAS, the Commissioner of Public Works recommends to the Common Council that the bid be awarded to Boyce Excavation.

NOW THEREFORE BE IT RESOLVED; that the Common Council of the City of Middletown concurs with the Commissioner of Public Works and awards the bid for the Midland Avenue Ext New Curbs & Sidewalks on the easterly/business side on Midland Ave Extension in the total amount of $160,560.00 plus 10% Contingency ($176,616) and Engineering Inspection time of $11,400 plus 10% ($12,540) totaling $189,156.00 with Curbs and Sidewalks will be constructed on the easterly/business side on Midland Ave Ext. There is a capital account established for the project H.956.900 that has a balance of $132,250 and a budget transfer balance is needed for the difference of $56,906 in the following manner:

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September 30, 2019

Honorable Jacob Tawil, P.E.
City of Middletown
Department of Public Works
16 James Street
Middletown, New York 10940

RE: Midland Avenue

Dear Commissioner Tawil,

The Board of Estimate and Appropriation asked me to give an approximate cost for each side. The cost for the east side with the business is approximately $160,560. The west side with the tracks is approximately $174,210. Both include the drainage.

We have enclosed a bid tabulation sheet. Also, we have vetted the low bidder and find Boyce Excavating's bid acceptable.

We remain respectfully yours,

Alfred A. Fusco, Jr., P.E.
FUSCO ENGINEERING &
LAND SURVEYING, P.C.
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<tr>
<td>61</td>
<td>$18</td>
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</tbody>
</table>

Midland Avenue Curb Sidewalk

September 26, 2019

Malson Enterprises
Monroe NY
Hi John,

We are respectfully requesting a Council Resolution awarding the bids received on 9/26/2019 to Boyce Excavation in the amount of $160,560 plus 10% contingency and Engineering Inspection. Curbs and Sidewalks will be constructed on the easterly/business side on Midland Ave Ext. Alternate bid in the amount of $174,210 for C&S on the westerly side will not be awarded.

I will provide the total project cost in couple of days.

We request that funds be allocated as needed as part of this resolution.

Please refer to enclosed Consultant letter for bids tabulations.

Thank you

Jacob

Jacob S. Tawil, P.E. | Commissioner
Department of Public Works
City of Middletown | 16 James Street |
Middletown, New York 10940 |
T: 845-343-3169 | F: 845-343-4014

Please consider the environment before printing this email.

On Monday, October 7, 2019 02:23:24 PM EDT, Katie Gass <kgass@middletown-ny.com> wrote:

Jacob,

See attached document as requested.

Katie Gass

Department of Public Works
October 8, 2019

Honorable Jacob Tawil, P.E.
City of Middletown
Department of Public Works
16 James Street
Middletown, New York 10940

RE: Midland Avenue

Dear Commissioner Tawil,

We have reviewed the bids for the curbs and sidewalks on Midland Avenue and recommend only one side is necessary.

We recommend a 10% contingency for the contract for unforeseen issues.

We are pleased to provide you with a quote for construction period services. Our fee will be $5,000.00 for shop drawings and approval of requisitions and an $80.00/hour inspection fee for our NICET 3 inspector to inspect the work product. We estimate 80 hours for part time inspections.

Please advise if this is acceptable.

Very truly yours,

Alfred A. Fusco, Jr., P.E.
FUSCO ENGINEERING & LAND SURVEYING, P.C.
AAF/cam

--

Total Project Estimated Cost: $171,960 x 1.15 = $192,162

Current Budget: 233 East Main Street
Middletown, NY 10940
Phone: (845) 344-5863
Fax: (845) 956-5865

19 Waywayup Lane
Port Jervis, NY 12771
Phone: (845) 956-5866
6. The Chief of Police is requesting within the 2019 Budget to fund upgrades and repairs to Cameras.

<table>
<thead>
<tr>
<th>From</th>
<th>Amount</th>
<th>To</th>
</tr>
</thead>
<tbody>
<tr>
<td>A.3120.10 Personal Services-Part-Time</td>
<td>$28,000</td>
<td>A.3120.200 Equipment</td>
</tr>
<tr>
<td>A.3120.433 Training</td>
<td>$10,000</td>
<td>A.3120.200 Equipment</td>
</tr>
</tbody>
</table>

7. The Middletown Recreation & Parks Department is requesting a resolution authorizing the receipt of a $400.00 donation from the Middletown Lions Club to go towards the development of the Disc Golf Course in Fancher Davidge Park. This amount is to be credited to T-43.

8. Chris Brinckerhoff is requesting a resolution to accept two donations. The first is $400.00 from the Lions Club to be credited to account T43. The second donation is for $485.00 from Middletown Little League to be credited to Parks Improvement, account A.7110.478.

9. Jacob Tawil is requesting a Council Resolution awarding the bids received on 9/26/2019 to Boyce Excavation in the amount of $160,560 plus 10% contingency ($176,616) and Engineering Inspection (not known at this time). Curbs and Sidewalks will be constructed on the easterly/business side on Midland Ave Ext.

There is a capital account established for the project H.956.900 that has a balance of $132,250 which is less than what is needed. The balance needed is unknown at this point. J. Tawil will provide it prior to the meeting.

<table>
<thead>
<tr>
<th>From</th>
<th>Amount</th>
<th>To</th>
</tr>
</thead>
<tbody>
<tr>
<td>Gen Fund Balance</td>
<td>TBD</td>
<td>H.956.900 Sidewalks Midland Ave</td>
</tr>
</tbody>
</table>

10. Jacob Tawil is requesting a transfer to cover the following unbudgeted items:

Transfer is needed for underground fuel tank removal at the Star Center located at 393 County Highway 78. This removal will clear the way for the state to complete the SEQRA process and for the City to purchase the property.

<table>
<thead>
<tr>
<th>From</th>
<th>Amount</th>
<th>To</th>
</tr>
</thead>
<tbody>
<tr>
<td>General Fund</td>
<td>$10,000</td>
<td>A.1490.400 Contractual Services</td>
</tr>
</tbody>
</table>
RESOLVED; that the Common Council of the City of Middletown concurs with the Board of Estimate and Apportionment to authorize the Treasurer to sign the attached professional services agreement with Springbrook (KVS) for $2,704.00 to provide the programming for installation of a new fixed asset system. The old system crashed this year and we have the software within the KVS package. This is a properly budgeted item.
April 30, 2020

To: The Board of Estimate
From: Don Paris

I am requesting authorization to sign a professional services agreement with Springbrook (KVS) for $2,704.00 to provide the programming for installation of new fixed asset system. The old system crashed this year and we have the software within the KVS package. This is a properly budgeted item.

Don
Middletown, NY - City of Enterprise FA Professional Services
May 15, 2020

Valerie Lenk
Account Manager
(503)820-2226
valerie.lenk@sprbrk.com
### Professional Services

<table>
<thead>
<tr>
<th>Product Name</th>
<th>Description</th>
<th>Qty</th>
<th>Sales Price</th>
<th>Total Price</th>
</tr>
</thead>
<tbody>
<tr>
<td>PS - Item Professional Services</td>
<td>Enterprise Fixed Assets: T&amp;M Services professional services</td>
<td>16.00</td>
<td>$169.00</td>
<td>$2,704.00</td>
</tr>
</tbody>
</table>

Grand Total: $2,704.00
## Order Detail

### General Information

<table>
<thead>
<tr>
<th>Customer Name</th>
<th>Middletown, NY - City of</th>
</tr>
</thead>
<tbody>
<tr>
<td>Customer Contact</td>
<td>Donald Paris</td>
</tr>
<tr>
<td>Customer Address</td>
<td>16 JAMES STREET, MIDDLETOWN, New York, 10940</td>
</tr>
<tr>
<td>Governing Agreement(s)</td>
<td>This Order Form is governed by the applicable Springbrook Professional Services terms found at <a href="https://sprbrk.box.com/v/sprbrk-svcs-terms">https://sprbrk.box.com/v/sprbrk-svcs-terms</a>.</td>
</tr>
<tr>
<td>Term(s)</td>
<td>-</td>
</tr>
</tbody>
</table>

### Order Terms

- **Order Start Date**: Unless otherwise specified in the Special Order Terms, Professional Services start on the date listed in this Order Form, the applicable Statement of Work, or the Governing Agreement, as applicable.

- **Order Duration**: Unless otherwise specified in the Special Order Terms, Professional Services continue for the duration as outlined in this Order Form, the applicable Statement of Work, or the Governing Agreement.

- **Special Order Terms**: In the event of an inconsistency between this Order Form, any governing agreement, purchase order, or invoice, the Order Form shall govern as it pertains to this transaction.

### Payment Terms

<table>
<thead>
<tr>
<th>Currency</th>
<th>USD</th>
</tr>
</thead>
<tbody>
<tr>
<td>Invoice Date</td>
<td>Unless otherwise stated in the Special Payment Terms, Invoices will be issued monthly as work is performed.</td>
</tr>
<tr>
<td>Payment Due Date</td>
<td>Unless otherwise stated in the Special Payment Terms or the Governing Agreement(s), all payments are due on the Invoice Date and payable net 30 days.</td>
</tr>
<tr>
<td>Special Payment Terms</td>
<td>None unless otherwise specified in this section.</td>
</tr>
</tbody>
</table>
# Springbrook

**Middletown, NY - City of - ORDER FORM**

## Accounts Payable Contact Information *(Required)*

<table>
<thead>
<tr>
<th>Name</th>
<th>Donald Paris</th>
</tr>
</thead>
<tbody>
<tr>
<td>Title</td>
<td>Treasurer</td>
</tr>
<tr>
<td>Phone Number</td>
<td>(645) 346-4153</td>
</tr>
<tr>
<td>Email Address</td>
<td><a href="mailto:dparis@middletown-ny.com">dparis@middletown-ny.com</a></td>
</tr>
<tr>
<td>Billing Address</td>
<td>16 JAMES STREET, MIDDLETOWN, New York, 10940</td>
</tr>
<tr>
<td>Delivery Address</td>
<td>16 JAMES STREET, MIDDLETOWN, 10940</td>
</tr>
<tr>
<td>Method of Invoicing</td>
<td>All invoices will be sent electronically to the Email Address provided above unless otherwise specified in Special Invoicing Needs.</td>
</tr>
<tr>
<td>Special Invoicing Need</td>
<td>Invoice Delivery by Post is Required</td>
</tr>
</tbody>
</table>

## Signature Section *(Required)*

<table>
<thead>
<tr>
<th>Vendor</th>
<th>Springbrook Holding Company, LLC</th>
</tr>
</thead>
<tbody>
<tr>
<td>Signed By</td>
<td>[Signature]</td>
</tr>
<tr>
<td>Date</td>
<td>4/30/2020</td>
</tr>
<tr>
<td>Title of Authorized Signatory</td>
<td>Head of Professional Services</td>
</tr>
<tr>
<td>Name (Print) of Authorized Signatory</td>
<td>Eric Wells</td>
</tr>
<tr>
<td>Customer</td>
<td>Middletown, NY - City of</td>
</tr>
<tr>
<td>Customer</td>
<td></td>
</tr>
<tr>
<td>Signed By</td>
<td></td>
</tr>
<tr>
<td>Date</td>
<td></td>
</tr>
<tr>
<td>Title of Authorized Signatory</td>
<td></td>
</tr>
<tr>
<td>Name (Print) of Authorized Signatory</td>
<td>Donald Paris</td>
</tr>
</tbody>
</table>

## Additional Signatures Section *(Optional)*

## Purchase Order Reference *(Optional)*

If Customer requires PO number on invoices, it **must** be provided to the right and Customer **must** provide Springbrook copy of the PO prior to invoice issuance. If no PO number provided prior to invoice issuance date, invoices issued on this Order Form will be valid without a PO reference.
WHEREAS, bids were opened by the Board of Estimate and Apportionment on March 26, 2020, for the Green Infrastructure Project, and

WHEREAS, the Board of Estimate and Apportionment referred the bids to the Commissioner of Public Works for his review and recommendation to the Common Council of the City of Middletown, and,

WHEREAS, the Commissioner of Public Works recommends to the Common Council that the construction contract be awarded to Boyce Excavating Co. and Lehman & Getz the Inspection Contract.

NOW THEREFORE BE IT RESOLVED; that the Common Council of the City of Middletown concurs with the Commissioner of Public Works and awards the bid for the Green Infrastructure Project in the total amount of $4,306,653.00 as per the attached letter from Lehman & Getz Engineering, P.C. dated April 30, 2020.
April 30, 2020

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

Re: Review of Bids – Green Infrastructure Project
    L&G #2218 & 2218.1

Dear Mr. Tawil:

We have reviewed the bids submitted on March 26, 2020 for the green infrastructure project. Bids were received from Boyce Excavating Co., Inc. and from Consorti Bros Paving and Sealcoating, Inc.

You have advised us that the City has decided to construct all phases of the project with the exception of Phase 3 (City Hall / Bank) and Phase 5 (Hanford Street). You’ve also indicated that the selected option for curbing is to construct granite curbs for all new curbing.

We have held discussions with representatives of the low bidder, Boyce Excavating, regarding questions that they raised on certain quantities shown on plans and on the bid form. Together we have clarified those issues and adjusted the quantities accordingly. Incorporating those adjustments, the total Boyce Excavating bid for the proposed project totals $4,306,653, as itemized below. We have applied the same adjustments to the bid received Consorti Bros Paving and Sealcoating, Inc. and calculated a total bid in the amount of $5,340,593.

<table>
<thead>
<tr>
<th>Phase</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Phase 1a – Staging Area:</td>
<td>$87,423.00</td>
</tr>
<tr>
<td>Phase 1b – Orchard Street:</td>
<td>529,458.00</td>
</tr>
<tr>
<td>Phase 2U - Union Street:</td>
<td>893,833.00</td>
</tr>
<tr>
<td>Phase 1bJ – James Street &amp; Festival Square:</td>
<td>1,380,553.00</td>
</tr>
<tr>
<td>Phase 2J – James Street:</td>
<td>763,505.00</td>
</tr>
<tr>
<td>Phase 4 – Erie Way Park:</td>
<td>651,881.00</td>
</tr>
<tr>
<td><strong>Total:</strong></td>
<td><strong>$4,306,653.00</strong></td>
</tr>
</tbody>
</table>

As we have discussed, the City will need to solicit separate bids for electrical work needed for the project. We are working to prepare those bid documents as soon as possible.

We have reviewed the bid documents submitted by Boyce Excavating, and found them to be complete. The company has successfully completed many projects for the City over the
course of many years. We therefore recommend that Boyce Excavating Co. Inc be hired to construct the green infrastructure project.

Sincerely,

Lehman & Getz Engineering, P.C.
David A. Getz, P.E.
ADA Curbs and Sidewalks Bids received on 3/26/2020 to Sun Up Construction. Final cost and language will be provided ASAP.
CITY OF MIDDLETOWN, NEW YORK
COMMON COUNCIL
RECORD OF VOTE

THE AUDIT OF THE COMMON COUNCIL

By Alderman Masi
Sec'd by Alderman

Date of Adoption: 05-05-20

<table>
<thead>
<tr>
<th>NAMES</th>
<th>AYES</th>
<th>NOES</th>
<th>ABSTAIN</th>
<th>ABSENT</th>
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</thead>
<tbody>
<tr>
<td>Ald. Ramkisson</td>
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<tr>
<td>Ald. Tobin</td>
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<tr>
<td>Ald. Kleiner</td>
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<td>Ald. Johnson</td>
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<tr>
<td>Ald. Jean-Francois</td>
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<td>Ald. Burr</td>
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<tr>
<td>Ald. Masi</td>
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<tr>
<td>Pres. Rodrigues</td>
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</table>

TOTAL

I MOVE THE ACCOUNTS BE AUDITED, THE CLAIMS ADJUSTED AND THE TREASURER BE AUTHOIZED TO ISSUE WARRENTS FOR THEIR PAYMENTS