

**REGULAR MEETING OF THE COMMON COUNCIL
OF THE CITY OF PLATTSBURGH, NEW YORK**

May 19, 2016

5:30 P.M.

MINUTES

Present: Mayor James Calnon, Councilors Rachele Armstrong (W1), Mike Kelly (W2), Paul O'Connell (W4), Becky Kasper (W5), Joshua Kretser (W6)

Absent: Councilor Dale Dowdle (W3)

1. MINUTES OF THE PREVIOUS MEETING:

RESOLVED: That the Minutes of the regular meeting of the Common Council held on May 5, 2016 are approved and placed on file among the public records of the City Clerk's Office.

By Councilor Kasper; Seconded by Councilor Kretser
Roll call: Councilors Armstrong, Kelly, O'Connell, Kasper, Kretser
(All voted in the affirmative)

2. PAYROLLS OF VARIOUS DEPARTMENTS:

RESOLVED: That the payrolls of the various Departments of the City of Plattsburgh for the weeks ending May 11, 2016 in the amount of \$ 366,936.57 and May 18, 2016 in the amount of \$ 179,132.49 are authorized and allowed and the Mayor and the City Clerk are hereby empowered and directed to sign warrants drawn on the City Chamberlain for the payment thereof.

By Councilor Kasper; Seconded by Councilor Kelly
Roll call: Councilors Armstrong, Kelly, O'Connell, Kasper, Kretser
(All voted in the affirmative)

3. REPORTS OF CITY OFFICES & COMMITTEE REPORTS:

- Report of Fire and Ambulance Responses for the weeks of May 5 - 18, 2016
- Report from the Building Inspector's office May 17, 2016
- Report of Public Hearing held by the Zoning Board of Appeals on May 16, 2016

RESOLVED: That the reports as listed are hereby ordered received and placed on file among the public records of the City Clerk's Office.

By Councilor Kretser; Seconded by Councilor Armstrong
Discussion: Yes
Roll call: Councilors Armstrong, Kelly, O'Connell, Kasper, Kretser
(All voted in the affirmative)

4. CORRESPONDENCE OR RECOMMENDATIONS FROM BOARDS: None

5. AUDIT OF CLAIMS:

RESOLVED: That the bills Audited by the Common Council for the weeks ending May 13, 2016 in the amount of \$ 758,915.37 and May 20, 2016 in the amount of \$ 937,389.23 are authorized and allowed and the Mayor and City Clerk are hereby authorized and directed to sign warrants drawn on the City Chamberlain for the payment thereof.

By Councilor Armstrong; Seconded by Councilor Kretser
Roll call: Councilors Armstrong, Kelly, O’Connell, Kasper, Kretser
(All voted in the affirmative)

6. PERSONS ADDRESSING COUNCIL: None

7. OTHER ITEMS:

A. SHAPE UP CLINTON COUNTY ACTIVATING PUBLIC SPACES AND CREATING OPPORTUNITIES FOR HEALTHY LIVING

WHEREAS, the Foundation of CVPH Medical Center, Inc is acting as fiscal agent for a grant from the New York State Health Foundation.

WHEREAS, the City of Plattsburgh provides recreational services to citizens of the State of New York and visitors to the State of New York within its jurisdiction.

WHEREAS, the Foundation of CVPH Medical Center, Inc desires to provide grant funding to the City of Plattsburgh to provide the aforementioned recreational services.

NOW, THEREFORE, in consideration of the promises and the mutual covenants herein contained, and for other good and valuable consideration, the receipt of which is hereby acknowledged, the Foundation of CVPH Medical Center, Inc and the City of Plattsburgh (collectively, the “Parties”) hereby agree to “Exhibit A Agreement on use of Grant Funding”. The entire text of which has been distributed to and read by the members of the Common Council, is hereby enacted without the reading thereof and a copy of “Exhibit A” is made part of the minutes of this meeting

By Councilor Kretser; Seconded by Councilor Kelly
Discussion: None
Roll call: Councilors Armstrong, Kelly, O’Connell, Kasper, Kretser
(All voted in the affirmative)

ACTION TAKEN: Adopted
Follow up Action: None

B. RESOLVED: In accordance with the request therefore the Common Council approves the Boy Scouts of America to hold day camp programs at US Oval on June 25 and at the Plattsburgh City

Beach on July 16.

By Councilor Kelly; Seconded by Councilor O'Connell

Discussion: None

Roll call: Councilors Armstrong, Kelly, O'Connell, Kasper, Kretser

(All voted in the affirmative)

ACTION TAKEN: Adopted

Follow up Action: None

C. RESOLVED: In accordance with the request therefore the Common Council approves Contract # 2014-21 "Instrumentation – Water Pollution Control Plant and Water Filtration Plant." be extended to June 27, 2017 with Total Control System Services, Inc. \$60,000 has been budgeted for 2016.

By Councilor Kasper; Seconded by Councilor Armstrong

Discussion: None

Roll call: Councilors Armstrong, Kelly, O'Connell, Kasper, Kretser

(All voted in the affirmative)

ACTION TAKEN: Adopted

Follow up Action: None

D. RESOLVED: In accordance with the request therefore the Common Council approves Contract # 2015-25 "Electrical Services for Water Pollution Control Plant." be extended to June 27, 2017 with Triangle Electrical Systems, Inc. \$140,750 has been budgeted for 2016.

By Councilor O'Connell; Seconded by Councilor Armstrong

Discussion: None

Roll call: Councilors Armstrong, Kelly, O'Connell, Kasper, Kretser

(All voted in the affirmative)

ACTION TAKEN: Adopted

Follow up Action: None

E. RESOLVED: In accordance with the request therefore the Common Council approves Clinton Masonic Charities, Inc permission to hold a Street Drive on August 13, 2016.

By Councilor Kretser; Seconded by Councilor Kasper

Discussion: None

Roll call: Councilors Armstrong, Kelly, O'Connell, Kasper, Kretser

(All voted in the affirmative)

ACTION TAKEN: Adopted

Follow up Action: None

F. RESOLVED: In accordance with the request therefore the Common Council approves MLD to write-off unpaid final bills from February 1, 2015 to February 28, 2015 in the total amount of \$5,010.82. The percentage of write-offs for this period is .20%.

By Councilor Armstrong; Seconded by Councilor Kelly

Discussion: None
Roll call: Councilors Armstrong, Kelly, O'Connell, Kasper, Kretser
(All voted in the affirmative)
ACTION TAKEN: Adopted
Follow up Action: None

G. RESOLVED: In accordance with the request therefore the Common Council approves MLD to advertise for bids for PMLD Bid No. 2016-6-1 "Sale of Salvaged & Scrap Materials." Bid Opening Date: June 28, 2016 at 11:00 am.

By Councilor Kelly; Seconded by Councilor Kasper
Discussion: None
Roll call: Councilors Armstrong, Kelly, O'Connell, Kasper, Kretser
(All voted in the affirmative)
ACTION TAKEN: Adopted
Follow up Action: None

H. RESOLVED: In accordance with the request therefore the Common Council approves MLD to advertise for bids for PMLD Bid No. 2016-6-2 "Aerial Truck with Line Service Body." Bid Opening Date: June 28, 2016 at 11:00am.

By Councilor Kelly; Seconded by Councilor Kretser
Discussion: None
Roll call: Councilors Armstrong, Kelly, O'Connell, Kasper, Kretser
(All voted in the affirmative)
ACTION TAKEN: Adopted
Follow up Action: None

I. RESOLVED: In accordance with the request therefore the Common Council approves MLD to advertise for bids for PMLD Bid No. 2016-6-3 "Distribution Substation Maintenance and Relay Calibration Halsey, Miller, Durand, Wall & North Margaret Substations." Bid Opening Date: June 28, 2016 at 11:15 am.

By Councilor Kelly; Seconded by Councilor Armstrong
Discussion: None
Roll call: Councilors Armstrong, Kelly, O'Connell, Kasper, Kretser
(All voted in the affirmative)
ACTION TAKEN: Adopted
Follow up Action: None

J. THE MAYOR HANDS DOWN THE REAPPOINTMENT OF COMMISSIONER OF THE PLATTSBURGH HOUSING AUTHORITY BOARD TO CLAYTON MORRIS EFFECTIVE MAY 20, 2016 TO APRIL 6, 2021.

Roll call: Councilors Armstrong, Kelly, O'Connell, Kasper, Kretser
(All voted in the affirmative)

ACTION TAKEN: Adopted

Follow up Action: None

K. RESOLVED: In accordance with the request therefore the Common Council approves City Engineer to advertise for bids for Contract # 2016-06 "Fort Brown Drive Resurfacing;" Contract # 2016-07 "Sandra Avenue Resurfacing;" Contract # 2016-09 "Miscellaneous Paving."

By Councilor O'Connell; Seconded by Councilor Kretser

Discussion: None

Roll call: Councilors Armstrong, Kelly, O'Connell, Kasper, Kretser

(All voted in the affirmative)

ACTION TAKEN: Adopted

Follow up Action: None

L. RESOLVED: In accordance with the request therefore the Common Council approves City Engineer to advertise for bids for Contract # 2016-08 "Lorraine Street Reconstruction."

By Councilor Armstrong; Seconded by Councilor Kelly

Discussion: None

Roll call: Councilors Armstrong, Kelly, O'Connell, Kasper, Kretser

(All voted in the affirmative)

ACTION TAKEN: Adopted

Follow up Action: None

M. RESOLVED: In accordance with the request therefore the Common Council approves Mayor to sign Engineering Consultant Agreement with Waterfront Solutions for Plattsburgh City Marina. The cost for this service is \$7,700 and funding is available through Capital Project H5110.48 "Plattsburgh City Marina."

By Councilor Kretser; Seconded by Councilor Kasper

Discussion: None

Roll call: Councilors Armstrong, Kelly, O'Connell, Kasper, Kretser

(All voted in the affirmative)

ACTION TAKEN: Adopted

Follow up Action: None

N. RESOLVED: In accordance with the request therefore the Common Council approves Mayor to sign Engineering Consultant Agreement with Stantec Consulting Services, Inc for Fort Brown & Sandra Avenue Improvements. The cost for this service is \$15,000 and funding is available through Capital Project H5110.50 "2015 Street Resurfacing" and H5110.57 "2016 Street Resurfacing."

By Councilor Armstrong; Seconded by Councilor Kasper

Discussion: None

Roll call: Councilors Armstrong, Kelly, O'Connell, Kasper, Kretser

(All voted in the affirmative)

ACTION TAKEN: Adopted

Follow up Action: None

O. RESOLVED: In accordance with the request therefore the Common Council approves Mayor to sign Engineering Consultant Supplemental Agreement # 1 with Stantec Consulting Services, Inc for Saranac River Trail Phase 2, PIN 7805.88; D034636. The cost for this service is \$59,065.92 and funding is available through Capital Project H5110.58 “2016 Saranac River Trail – Phase II.”

By Councilor Kelly; Seconded by Councilor Kretser
Discussion: None
Roll call: Councilors Armstrong, Kelly, O’Connell, Kasper, Kretser
(All voted in the affirmative)
ACTION TAKEN: Adopted
Follow up Action: None

P. RESOLVED: In accordance with the request therefore the Common Council approves CHA Extra Work Order No. 7 “Mead Dam Spillway.” The cost is \$24,500 and funding is available from Capital Project H8320.68.

By Councilor O’Connell; Seconded by Councilor Armstrong
Discussion: None
Roll call: Councilors Armstrong, Kelly, O’Connell, Kasper, Kretser
(All voted in the affirmative)
ACTION TAKEN: Adopted
Follow up Action: None

Q. RESOLVED: In accordance with the request therefore the Common Council approves WPCP Contract #2016-05 “Removal, Disposal and Replacement of Activated Carbon” be awarded to Carbon Activated Corporation for the total quoted cost of \$31,250.

By Councilor Kretser; Seconded by Councilor Armstrong
Discussion: None
Roll call: Councilors Armstrong, Kelly, O’Connell, Kasper, Kretser
(All voted in the affirmative)
ACTION TAKEN: Adopted
Follow up Action: None

R. RESOLVED: In accordance with the request therefore the Common Council approves the City Chamberlain to revise capital project H5110.38 to finalize the project for closing, by removing the Old Base Marina Flood Damage segment of the project that in being carried as a new capital expenditure in the 2016 spending plan.

By Councilor Armstrong; Seconded by Councilor Kelly
Discussion: None
Roll call: Councilors Armstrong, Kelly, O’Connell, Kasper, Kretser
(All voted in the affirmative)
ACTION TAKEN: Adopted

Follow up Action: None

S. RESOLVED: In accordance with the request therefore the Common Council approves the City Chamberlain to create capital project H5110.59 to provide for the cost to complete the Old Base Marina Flood Damage project to be funded by FEMA as listed in the 2016 capital expenditure plan.

By Councilor Kelly; Seconded by Councilor Kasper
Discussion: Yes
Roll call: Councilors Armstrong, Kelly, O’Connell, Kasper, Kretser
(All voted in the affirmative)
ACTION TAKEN: Adopted
Follow up Action: None

T. RESOLVED: In accordance with the request therefore the Common Council approves an Addendum to Marina Management Agreement to adjust staffing and sale of goods.

By Councilor Kretser; Seconded by Councilor Armstrong
Discussion: Yes
Roll call: Councilors Armstrong, Kelly, O’Connell, Kasper, Kretser
(All voted in the affirmative)
ACTION TAKEN: Adopted
Follow up Action: None

U. Motion to waive rule 4 for initial consideration “Request that the Memorandum of Agreement between the City of Plattsburgh and AFSCME Local 788 for a three year term retroactive to July 1, 2015 and continuing through June 30, 2018 shall be and hereby is ratified and approved and the Mayor shall be and hereby is authorized to execute a collective bargaining agreement containing its terms on behalf of the City” and “Request from the City Chamberlain to transfer within the General Fund Budget \$20,000 to cover the contract service labor for customer service support from the Finance and Data Processing payroll budgets while filling permanent positions through civil service. The 2016 General Fund Budget total will not be changed as a result of this transfer.”

By Councilor Kasper; Seconded by Councilor O’Connell

Roll call: Councilors Armstrong, Kelly, O’Connell, Kasper, Kretser
(All voted in the affirmative)
ACTION TAKEN: Adopted

RESOLVED: In accordance with the request therefore the Common Council approves that the Memorandum of Agreement between the City of Plattsburgh and AFSCME Local 788 for a three year term retroactive to July 1, 2015 and continuing through June 30, 2018 shall be and hereby is ratified and approved and the Mayor shall be and hereby is authorized to execute a collective bargaining agreement containing its terms on behalf of the City.

By Councilor Armstrong; Seconded by Councilor Kasper

Discussion:

Mayor Calnon said this is a negotiation that I sat in on from start to finish which has not always been the way negotiations have gone. I think the Union appreciated that and it really helped move the agreement along much more quickly. The last few sessions the Union President and I spent an awful lot of time talking about various issues and really trying to be protective of the things that the other side really needed to have. In the end, of course, nobody is satisfied that means you've struck a good agreement. It was really one of the most respectful and honest negotiations I've been in. The first union that adopted the stream lining of the health care system that we proposed in January of our first year here to all unions. This was the first one we actually negotiated with and I think it ends up being a good solid agreement. One of the most outstanding parts of it was that a team of union and management people met for a couple of months prior to really getting in to the negotiations on trying to clean up the language. As in any agreement as it gets modified over time little inconsistencies build their way in. There may be something that wasn't covered by law now is let's get those out. The thing wasn't even gender neutral for example just lots of little things. The committee spent a long time doing that. They identified probably 10 or 11 legal issues that we sent out and adopted revisions to bring them in to compliance with laws that exist now. Remarkably good work and it will be a much easier contract to deal with going forward. In general, we hope that will reduce the number of grievances with the clarity of the contract because both sides of the agreement should understand what their roles and responsibilities are. So really good work and I'm really glad to see that they ratified it and I thank you for doing the same.

[**Councilors** thanked the Mayor for his efforts]

Roll call: Councilors Armstrong, Kelly, O'Connell, Kasper, Kretser
(All voted in the affirmative)
ACTION TAKEN: Adopted

RESOLVED: In accordance with the request therefore the Common Council approves the City Chamberlain to transfer within the General Fund Budget \$20,000 to cover the contract service labor for customer service support from the Finance and Data Processing payroll budgets while filling permanent positions through civil service. The 2016 General Fund Budget total will not be changed as a result of this transfer.

By Councilor Kasper; Seconded by Councilor Armstrong
Discussion: None
Roll call: Councilors Armstrong, Kelly, O'Connell, Kasper, Kretser
(All voted in the affirmative)
ACTION TAKEN: Adopted

8. TRAVEL REQUEST:

A. RESOLVED: In accordance with the request therefore the Common Council approves Assessor Kathy Livingston to attend "Analysis of Operating & Expense Statements" on June 10, 2016 in Herkimer, NY. The total cost will not exceed \$521.

By Councilor Kelly; Seconded by Councilor O'Connell
Discussion: None
Roll call: Councilors Armstrong, Kelly, O'Connell, Kasper, Kretser
(All voted in the affirmative)
ACTION TAKEN: Adopted
Follow up Action: None

B. RESOLVED: In accordance with the request therefore the Common Council approves Assessor Kathy Livingston to attend "Real Property System Version 4: Nuts & Bolts" from July 11-14, 2016 in Ithaca, NY. The total cost will not exceed \$756.

By Councilor Armstrong; Seconded by Councilor Kretser
Discussion: None
Roll call: Councilors Armstrong, Kelly, O'Connell, Kasper, Kretser
(All voted in the affirmative)
ACTION TAKEN: Adopted
Follow up Action: None

9. RESOLUTIONS FOR INITIAL CONSIDERATION:

1. Request that the Memorandum of Agreement between the City of Plattsburgh and AFSCME Local 788 for a three year term retroactive to July 1, 2015 and continuing through June 30, 2018 shall be and hereby is ratified and approved and the Mayor shall be and hereby is authorized to execute a collective bargaining agreement containing its terms on behalf of the City. **(Move to agenda under "Other Items" Letter U)**

2. Request from the City Chamberlain to transfer within the General Fund Budget \$20,000 to cover the contract service labor for customer service support from the Finance and Data Processing payroll budgets while filling permanent positions through civil service. The 2016 General Fund Budget total will not be changed as a result of this transfer. **(Move to agenda under "Other Items" Letter U)**

10. NEW BUSINESS:

Councilor Kretser reminded everyone about the Destination Downtown event Sunday, May 22, 2016 from 11am to 4pm.

11. CLOSING PUBLIC COMMENTS: None

Motion to Adjourn by Councilor O'Connell; Seconded by Councilor Kasper
Roll call Councilors Armstrong, Kelly, O'Connell, Kasper, Kretser
(All voted in the affirmative)

MEETING ADJOURNED: 5:51pm

Exhibit A
Agreement on use of Grant Funding

This AGREEMENT ON THE USE OF GRANT FUNDING (this "Agreement") is made and entered into, as of _____ ("Effective Date"), by and between The Foundation of CVPH Medical Center, Inc. having its principal office at 74 Beekman St., Plattsburgh, NY, 12901 ("Company"), and the City of Plattsburgh, an individual ("Municipality"), located at 41 City Hall Place, Plattsburgh, NY 12901.

WHEREAS, the Company is acting as fiscal agent for a grant from the New York State Health Foundation.

WHEREAS, the Municipality provides recreational services to citizens of the State of New York and visitors to the State of New York within its jurisdiction.

WHEREAS, the Company desires to provide grant funding to Municipality to provide the aforementioned recreational services.

NOW, THEREFORE, in consideration of the promises and the mutual covenants herein contained, and for other good and valuable consideration, the receipt of which is hereby acknowledged, Company and Municipality (collectively, the "Parties") hereby agree as follows:

1. Grant of Funds. Municipality and Company have mutually agreed that Company shall provide grant funds and Municipality shall expend grant funds to retrofit surfaces from 4 Tennis courts and 1 Volley Ball court to permanent Pickle Ball courts ("Grant Purpose"). Municipality shall only expend grant funds for the Grant Purpose and shall be responsible to account to Company for the use of the funds as reasonably requested by Company from time to time. Municipality shall also participate in periodic meetings coordinated by the Foundation of CVPH staff overseeing grant implementation, and be available as needed to determine the needs of their residents and the programming and services provided and mutually agreed on by all involved parties.
2. Term. This engagement shall commence on the Effective Date and shall continue in full force and effect through the Termination Date, unless terminated earlier as set forth below. This Agreement may only be extended thereafter by mutual agreement of the parties.
 - a. Termination by Company. Company may terminate this Agreement immediately upon Municipality's material breach of any provision of this Agreement.
 - b. Termination by Municipality. Municipality may terminate this Agreement at any time, with termination effective thirty (30) days after Municipality's delivery to Company of written notice of termination. Municipality also may terminate this Agreement immediately for a material breach by Company if Company's material breach of any provision of this Agreement is not cured within five (5) days after the date of Municipality's written notice of breach.
3. Compensation. The Company and Municipality mutually agree on a sum of \$20, 711.00 for the entire project (the "Project Fee"). Reimbursement of the Project Fee will be conducted as follows: (i) if possible the Foundation of CVPH will pay all costs and expenses of the Grant Purpose directly and (ii) if it is not possible for the Foundation of CVPH to pay directly, then the municipality shall pay directly, and reimbursement will be made after an invoice is submitted by the Municipality to CVPH with all agreed upon costs clearly outlined and receipts provided. CVPH's obligation to pay directly or reimburse expenses shall be limited to the Project Fee.
4. Expenses. The Municipality shall be primarily liable for all expenses incurred while performing the Grant Purpose. This includes, without limitation, license fees, memberships and dues; automobile and other travel

expenses; meals and entertainment; insurance premiums; and all salary, expenses and other compensation paid to Municipality's agents, if any, hired by Municipality to complete the work under this Agreement. The Foundation of CVPH shall be secondarily liable only up to the Project Fee.

5. Legal Compliance. The Municipality is responsible for compliance with all applicable laws, statutes, rules, regulations and ordinances that may apply to the performance of the Grant Purposes under this Agreement, and hereby represents and warrants that it is in compliance with the same as of the Effective Date and further represents that throughout the duration of providing any services, that the Municipality will remain in compliance. Municipality further represents and warrants that Municipality has obtained all necessary business permits and licenses that may be required to carry out the Grant Purposes, including any permits that might be required by the State or locality in which Municipality performs the Grant Purposes and agrees to maintain such required permits for the duration of the time performing the Grant Purposes.

6. Conflicts of Interest; Confidentiality. Municipality represents that it is free to enter into this Agreement and that this engagement does not violate the terms of any agreement between Municipality and any third party and that Municipality has provided to the Company all prior agreements regarding confidentiality, intellectual property assignment, covenants not to compete, and employee and customer non-solicitation obligations which are, or could be, in effect at the time the engagement commenced. Further, Municipality, in rendering its duties shall not utilize any confidential information or trade secrets in which it does not have a proprietary interest.

7. Identification of Subcontractors. It shall be a breach of this Agreement by Municipality to subcontract any part of this Agreement without the consent of Company. Municipality shall provide reasonably notice to Company of any proposed subcontract relationship. Failure of Company to consent within five (5) days shall be deemed consent.

8. Independent Contractor Relationship.

a. Independent Contractor Status. This Agreement shall not render Municipality or any of Municipality's agents an employee, partner, agent of, or joint venturer with Company for any purpose. Municipality is and will remain an independent contractor in its relationship to Company and Municipality's agents are not and will not become Company's employees. Company shall not be responsible for withholding taxes with respect to Municipality's compensation hereunder. The Company shall report all payments made to Consultant on a calendar year basis using IRS Form 1099, if required by law. Municipality agrees to report all such payments to the appropriate federal, state and local taxing authorities, if required by law. Company shall not and shall have no obligation to: (a) (i) withhold FICA (Social Security and Medicare taxes) from Municipality's payments or make FICA payments on Municipality's or Municipality's agent's behalf, (ii) make state or federal unemployment compensation contributions or payments on Municipality's or Municipality's agent's behalf, or (iii) withhold state or federal income tax from Municipality's payments (collectively referred to as "Taxes"); or (b) obtain workers' compensation insurance or any other insurance coverage of any kind on behalf of Municipality or Municipality's agents (collectively the "Insurances"). If Municipality hires employees to perform any work under this Agreement, Municipality shall cover them with workers' compensation insurance and provide Company with a certificate of workers' compensation insurance before the employees begin the work. Neither Municipality nor Municipality's agents are eligible to participate in any employee health, vacation pay, sick pay or other fringe benefit plan of Company (collectively "Benefits"). If any government agency or court determines that Municipality should be reclassified as an employee, Municipality hereby waives any right to Company Benefits and acknowledges and understands that such reclassification shall not entitle Municipality to any Benefits offered to Company's employees. Municipality and Company agree that: (a) Municipality has the right to perform Grant Purposes for others during the term of this Agreement; (b) Municipality has the sole right to control and direct the means, manner and method by which the Grant Purposes required by this Agreement will be performed; (c) Municipality has the right to perform the

Grant Purposes required by this Agreement at any location or time; (d) Municipality has the right to hire assistants as subcontractors, or to use employees to provide the Grant Purposes required by this Agreement.

b. Method of Performing Grant Purposes; Results. In accordance with the Grant Purpose, Municipality will determine the method, details and means of performing the Grant Purposes required by this Agreement. Company shall have no right to, and shall not, control the manner or determine the method of performing Municipality's Grant Purposes. Municipality shall provide the Grant Purpose for which Municipality is engaged to the reasonable satisfaction of Company.

c. Instrumentalities. Municipality agrees to provide all tools and instrumentalities, if any, required to perform the Grant Purposes under this Agreement.

d. Limitations on Authority. Municipality shall have no right, power or authority to bind Company, its subsidiaries or affiliates to the fulfillment of any condition, contract or obligation or to create any liability binding on Company, its subsidiaries or affiliates.

e. Requisite skills. Municipality specifically acknowledges and agrees that it has the requisite knowledge, expertise, experience and training to perform the Grant Purposes, and that the Company will not provide Municipality with any training concerning the manner or methods of performance of the Grant Purposes, nor will it provide Municipality with any tools or equipment to complete the Grant Purposes.

9. Limitation of Liability.

MAXIMUM AGGREGATE LIABILITY. TO THE MAXIMUM EXTENT PERMISSIBLE BY LAW, COMPANY'S MAXIMUM LIABILITY FOR ANY DAMAGES ARISING OUT OF OR RELATED TO THIS AGREEMENT, WHETHER IN CONTRACT (INCLUDING, WITHOUT LIMITATION, BREACH OF WARRANTY), TORT (INCLUDING, WITHOUT LIMITATION, NEGLIGENCE) OR OTHERWISE, WILL IN NO EVENT EXCEED, IN THE AGGREGATE, THE TOTAL AMOUNTS PAID TO MUNICIPALITY FOR GRANT PURPOSES PURSUANT TO THIS AGREEMENT.

WAIVER OF DAMAGES. TO THE MAXIMUM EXTENT PERMISSIBLE BY LAW COMPANY WILL NOT BE LIABLE TO MUNICIPALITY FOR ANY INDIRECT, INCIDENTAL, SPECIAL, OR CONSEQUENTIAL DAMAGES, OR ANY LOSS OF REVENUE, BUSINESS, OR PROFITS.

12. Successors and Assigns; No Third Party Beneficiary Rights. All of the provisions of this Agreement shall be binding upon and inure only to the benefit of the parties hereto and their respective heirs, if any, successors, and assigns. No provision of this Agreement shall in any way inure to the benefit of any third party (including the public at large) so as to constitute any such person a third party beneficiary of this Agreement or any provision hereof, or otherwise give rise to any cause of action in any person not a party hereto.

13. Choice of Law. The construction, interpretation, and performance of this Agreement shall be governed by and construed in accordance with the laws of New York without regard to conflicts of laws principles.

15. Waiver. Waiver by one party hereto of breach of any provision of this Agreement by the other shall not operate or be construed as a continuing waiver.

16. Assignment. Municipality shall not assign any of its rights under this Agreement, or delegate the performance of any of its duties hereunder, without the prior written consent of Company.

17. Notices. All notices, demands, consents, approvals or other communications ("Notices") required or permitted in connection with this Agreement shall be in writing and shall be personally served, mailed by

registered or certified air mail, postage prepaid, or by overnight courier service, service fee prepaid to the address of each party above, or to such other addresses as may be designated by each Party in writing from time to time in accordance with this Section 17, with a hard copy to follow via air mail or overnight courier service in accordance with this Section 17. If such Notice is served personally, notice shall be deemed constructively made at the time of such personal service. If such Notice is given by mail, such Notice shall be conclusively deemed given five days after deposit thereof in the United States mail addressed to the party to whom such Notice is to be given.

18. Modification or Amendment. No amendment, change or modification of this Agreement shall be valid unless in writing signed by the parties hereto.

19. Entire Understanding. This Agreement and any Addendum attached hereto constitute the entire understanding and agreement of the parties, and any and all prior agreements, understandings, and representations are hereby terminated and canceled in their entirety and are of no further force and effect.

20. Unenforceability of Provisions. If any provision of this Agreement, or any portion thereof, is held to be invalid and unenforceable, then the remainder of this Agreement shall nevertheless remain in full force and effect.

21. Executed Counterparts; Facsimiles. This Agreement may be executed in any number of counterparts, and all counterparts shall be considered together as one agreement. The parties hereto agree that facsimile signatures shall be as effective as if originals.

IN WITNESS WHEREOF the undersigned have executed this Agreement as of the day and year first written above.

The Foundation of CVPH Medical Center, Inc.

By: _____

Title: Kerry Haley, Executive Director

Date: _____

City of Plattsburgh

By: _____

Title: James E. Calnon, Mayor

Date: _____