

**COMMON COUNCIL MEETING
AUGUST 18, 2015
7:00 P.M.**

ORDER OF BUSINESS

- I. Call to Order
- II. Salute to the Flag
- III. Roll Call
- IV. Adoption of Agenda
- V. Proclamations
- VI. Communications and Presentations:
- VII. Public Participation
- VIII. Controller's Report
- IX. Old Business:
- X. New Business:
 - (a) Resolutions
 - (b) Ordinances:
 - (c) Local Laws:
 - (d) Introduction of Ordinances:
 - (e) Introduction of Local Laws:
 - (f) Committee Reports
 - (g) Scheduling of Committee Meetings
 - (h) Other
- XI. Executive Session
UPSEU MOA
- XII: Adjournment

6:30 p.m. Public Safety (called by Alderman Russo)

Discussion filing of position

6:45 p.m. COW – discussion on agenda items

RESOLUTIONS

Old Business

New Business

36.	RESOLUTION ADOPTING MINUTES	BEEKMAN
37.	RESOLUTION APPROVING AUDIT	HATZENBUHLER
.38	RESOLUTION AMENDING BUDGET – TRANSPORTATION	RUSSO
39.	RESOLUTION AMENDING BUDGET – ELEVATOR	MAYOR
40.	RESOLUTION AUTHORIZING AGREEMENT – INSURANCE	MAYOR
41.	RESOLUTION AMENDING BUDGET – WATER FUND	MAYOR
42.	RESOLUTION AUTHORIZING AGREEMENT – EAP	BARONE

Ordinances

Local Laws

CITY OF AMSTERDAM, NY
COMMON COUNCIL
AUGUST 18, 2015

RESOLUTION #15/16-36

RESOLUTION ADOPTING MINUTES OF THE LAST COMMON COUNCIL MEETING

BY: ALDERWOMAN BEEKMAN

RESOLVED, that the minutes of the Common Council meeting of August 4, 2015 are hereby adopted.

COMMON COUNCIL
City of Amsterdam, NY

	Aye	Nay
Alderman Russo		
Alderwoman Beekman		
Alderman Barone		
Alderwoman Hatzenbuhler		
Alderman Leggiero		

ANN M. THANE, MAYOR

DATED: _____, 2015

**CITY OF AMSTERDAM, NY
COMMON COUNCIL
AUGUST 18, 2015**

RESOLUTION #15/16-37

RESOLUTION APPROVING AUDIT

BY: ALDERWOMAN HATZENBUHLER

RESOLVED, the bills examined by the Common Council and reported herewith as correct and they are, allowed and ordered paid and the City Clerk is authorized and empowered to issue warrants in payment of same.

COMMON COUNCIL
City of Amsterdam, NY

	<u>Aye</u>	<u>Nay</u>
<u>Alderman Russo</u>		
<u>Alderwoman Beekman</u>		
<u>Alderman Barone</u>		
<u>Alderwoman Hatzenbuhler</u>		
<u>Alderman Leggiero</u>		

ANN M. THANE, MAYOR

DATED: _____, 2015

**CITY OF AMSTERDAM, NY
COMMON COUNCIL
AUGUST 18, 2015**

RESOLUTION #15/16-38

RESOLUTION AMENDING BUDGET - TRANSPORTATION

BY: ALDERMAN RUSSO

RESOLVED, the Controller is authorized to amend the 2015-2016 budget for receipt of insurance recovery, as follows:

INCREASE REVENUE:

CT-2680	Ins. Recovery	\$3,299.42
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INCREASE EXPENSE:

CT-5630-4070	Vehicle Repairs	\$3,299.42
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COMMON COUNCIL
City of Amsterdam, NY

	Aye	Nay

Alderman Russo		
Alderwoman Beekman		
Alderman Barone		
Alderwoman Hatzenbuhler		
Alderman Leggiero		

ANN M. THANE, MAYOR

DATED: _____, 2015

**CITY OF AMSTERDAM, NY
COMMON COUNCIL
AUGUST 18, 2015**

RESOLUTION #15/16-39

RESOLUTION AMENDING BUDGET – ELEVATOR SERVICE

BY: MAYOR THANE

RESOLVED, the Controller is authorized to amend the 2015-2016 budget to increase expense for annual elevator service at City Hall, as follows:

DECREASE EXPENSE:

A-1620-4000	Contractual	\$31.72 (bal. \$3,316.50)
F-8310-4000.10	Contractual	\$11.33 (bal. \$1,184.57)
G-8110-4137.10	Contractual	\$ 9.63 (bal. \$1,006.89)
CL-8160.4137.10	Contractual	\$ 3.96 (bal. \$414.60)

INCREASE EXPENSE:

A-1620-4027	Elevator Serv.	\$31.72
F-8310-4027	Elevator Serv.	\$11.33
G-8110-4027	Elevator Serv.	\$ 9.63
CL-8160.4027	Elevator Serv.	\$ 3.96

COMMON COUNCIL
City of Amsterdam, NY

	Aye	Nay

Alderman Russo		

Alderman Beekman		

Alderman Barone		

Alderman Hatzenbuhler		

Alderman Leggiero		

ANN M. THANE, MAYOR

DATED: _____, 2015

**CITY OF AMSTERDAM, NY
COMMON COUNCIL
AUGUST 18, 2015**

RESOLUTION #15/16-39

RESOLUTION AUTHORIZING AGREEMENT – INSURANCE

BY: MAYOR THANE

RESOLVED, the Mayor is authorized to sign a Medicare Advantage Agreement with Empire, and

FURTHER RESOLVED, the Mayor is authorized to sign an agreement with Carter, Young & Associates to offer employees the Cypress Advantage Plan and to execute all agreements related to coverage options related thereto.

COMMON COUNCIL
City of Amsterdam, NY

	Aye	Nay
Alderman Russo		
Alderman Beekman		
Alderman Barone		
Alderman Hatzenbuehler		
Alderman Leggiero		

ANN M. THANE, MAYOR

DATED: _____, 2015

**CITY OF AMSTERDAM, NY
COMMON COUNCIL
AUGUST 18, 2015**

RESOLUTION #15/16-41

RESOLUTION AMENDING BUDGET – WATER/DPW

BY: MAYOR THANE

RESOLVED, the Controller is authorized to amend the 2015-2016 budget to transfer funds from the Water Fund to the General Fund for work done by DPW, as follows:

DECREASE EXPENSE:

F-1990-4036	Contingency	\$8,081.14 (bal. \$11,640.69)
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INCREASE EXPENSE:

F-8310-4144	Public Works Supp.	\$8,081.14
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COMMON COUNCIL
City of Amsterdam, NY

	Aye	Nay
_____ Alderman Russo		
_____ Alderwoman Beekman		
_____ Alderman Barone		
_____ Alderwoman Hatzenbuhler		
_____ Alderman Leggiero		

ANN M. THANE, MAYOR

DATED: _____, 2015

**CITY OF AMSTERDAM, NY
COMMON COUNCIL
AUGUST 18, 2015**

RESOLUTION #15/16-42

RESOLUTION AUTHORIZING AGREEMENT – ST. MARY’S HOSPITAL (EAP)

BY: ALDERMAN BARONE

RESOLVED, the Mayor is authorized to sign the attached contract with St. Mary’s Hospital for the Employee Assistance Program for the period July 1, 2014 through June 30, 2016.

COMMON COUNCIL
City of Amsterdam, NY

	Aye	Nay
Alderman Russo		
Alderman Beekman		
Alderman Barone		
Alderman Hatzenbuhler		
Alderman Leggiero		

ANN M. THANE, MAYOR

DATED: _____, 2015

EMPLOYEE ASSISTANCE AGREEMENT ("EAP")

This agreement (the "Agreement") made the 1st day of July, 2015, by and between St. Mary's Healthcare, a New York not-for-profit corporation, with its principal office and place of business at 427 Guy Park Avenue, Amsterdam, New York 12010 (the "Hospital") and the City of Amsterdam, a New York (municipal corporation), with its principal office and place of business at 61 Church Street, Amsterdam, New York 12010 ("Corporation"). The Hospital and the Corporation may sometimes hereinafter be referred to individually as a "Party" or collectively as the "Parties".

WITNESSETH:

WHEREAS, the Hospital operates an employee assistance program ("EAP") to assist employers in providing early intervention services to employees having health, family, financial, alcohol, drug or other personal issues; and

WHEREAS, the Corporation would like to retain the Hospital to establish an EAP and provide such early intervention services when needed to employees of the Corporation, subject to the terms, covenants and provisions herein contained.

NOW, THEREFORE, in consideration of the premises and other good and valuable consideration exchanged between the Parties hereto, the receipt and sufficiency of which is hereby acknowledged, the Parties hereto agree as follows:

1. **Obligations of the Hospital.** The Hospital during the term of this Agreement shall establish for the Corporation an employee assistance program designed to assist employees in identifying and resolving personal concerns, including, but not limited to, health, marital, financial, family, alcohol, drug, legal, emotional and other personal issues which may affect job performance at the Corporation (the "EAP Services"). Each employee in the EAP will be entitled to receive up to three (3) visits with an EAP counselor at no cost to the employee. If counseling or services are needed beyond three (3) sessions, the employee shall be referred to an appropriate community agency. Any and all agency referral fees will be paid for by the employee. EAP Services will be available to each employee of the Corporation and family members residing in the same household. All counseling services shall be confidential to the extent required by applicable law, rule and regulation and the policies and procedures of the Hospital, as established from time to time. Access to an EAP counselor shall be Mondays through Fridays, between the hours of 8:00 a.m. and 4:30 p.m. at the offices of the Hospital's Employee Assistance Program Office, 430 Guy Park Avenue, Amsterdam New York, the Hospital's Canajoharie Family Health Center, 48 Erie Boulevard, Canajoharie, New York and the Hospital's Johnstown Family Health Center, 700 South Perry Street, Johnstown, New York. Crisis services shall be available through the Hospital's Comprehensive Mental Health and Alcoholism Center ("CMHAC"). The Corporation agrees that an employee may refer himself or herself to an EAP counselor without formal notification to the Corporation. Further, supervisory personnel of the Corporation may refer an employee to an EAP counselor for job related problems. At no time may the Corporation require an EAP counselor to divulge any

information regarding the utilization of EAP Services by an employee or the scope of EAP Services received by an employee. Notwithstanding the foregoing, if an employee is required or mandated to utilize the EAP Services as a condition of continued employment or in connection with a disciplinary matter with the Corporation, an EAP counselor, upon the written consent of an employee, may confirm that the employee kept a scheduled appointment with an EAP Counselor. The Hospital, semi-annually, will provide to the Corporation a utilization report in form and content satisfactory to the Parties. The EAP counselor shall be under the supervision of an individual who is certified in or licensed as a counseling profession with a minimum of two (2) years treatment experience in the outpatient setting. The program supervision shall be provided by the Director of Alcoholism Services and the Coordinator of EAP, both of whom shall be employees of the Hospital. In addition to the foregoing, the Hospital shall, during the term of this Agreement, and at the request of the Corporation, provide up to four (4) supervisory training sessions regarding the early identification of employees needing referral.

2. **Obligations of the Corporation.** The Corporation, during the term of this Agreement, agrees to provide to its employees with a total of four (4) paycheck stuffers as supplied by the Hospital, describing the availability of the EAP Services, which paycheck stuffers will be distributed to each employee with his or her paycheck. The Corporation will prominently display promotional materials furnished by the Hospital to the Corporation regarding availability of the EAP Services.

3. **Compensation.** As compensation to the Hospital for establishing the EAP Service program and providing services thereunder, as herein outlined, the Corporation shall pay to the Hospital a fee of **\$17.00 for each full time employee** of the Corporation (the "Per Employee Fee"). Based on current data provided to the Hospital, the Corporation has, on the date hereof, **200 full time employees.** Therefore the initial fee due the Hospital hereunder shall be **\$3,400.00**, one-half of which will be due and payable contemporaneously with the Corporation's entry into this Agreement, and the remaining balance will be due and payable on January 1, 2016 (the "Total Projected Fee"). Payments shall be remitted to Employees Assistance Program ("EAP") of St. Mary's Healthcare, Attention: CMHAC Account, 427 Guy Park Avenue, Amsterdam, New York 12010. The Corporation, upon execution of this Agreement by both Parties, and on the first day of the sixth (6) month thereafter, will provide the Hospital with a list of the full-time employees then employed by the Corporation. Increases or decreases of up to five (5%) percent in the number of full-time employees shall not cause an adjustment to the Total Projected Fee due hereunder. However, an adjustment in the Total Projected Fee will be made, effective as of the first day of the sixth month following execution of this Agreement by both Parties, at the Per Employee Fee for increases or decreases of more than five (5%) percent in the number of full-time employees from the number of full-time employees which were employed by the Corporation upon execution of this Agreement.

4. **Term and Termination.** The term of this Agreement shall be **one (1) year**

commencing on July 1, 2015 and ending on June 30, 2016. This Agreement shall terminate at the end of the one (1) year term hereof, unless extended in writing by the Parties and shall further terminate upon the occurrence of an event of default as provided in paragraph 7 hereof.

5. **Regulatory Compliance.** The Parties agree that this Agreement is intended to comply with all state and federal laws, rules and regulations including, but not limited to, the Medicare and Medicaid, Fraud and Abuse Statute, the Stark III Statute and Regulations and all regulations governing use of facilities financed with tax exempt bonds ("Laws"). If, at any time, this Agreement is found to violate any applicable provision of these Laws, or if either Party has a reasonable belief that this Agreement creates a material risk of violating the Laws, and after consultation with the other Party, and thirty (30) days after written notice to the other Party, the Parties shall renegotiate the portion of this Agreement that creates the violation of the Laws. If the Parties fail to reach agreement within one hundred twenty (120) days following said written notice, this Agreement shall terminate at the written option of the Party seeking to reform the Agreement.

6. **Ethical and Religious Directives.** All services provided hereunder shall be provided in a manner consistent with the Ethical and Religious Directives for Catholic Health Care Services as promulgated by the National Conference of Catholic Bishops, Washington, D.C. of the Roman Catholic Church, or its successor.

7. **Default.** The occurrence of any of the following events shall constitute an event of default hereunder:

(a) the failure of either Party within ten (10) days of receipt of written notice from the other to comply with any of the terms and conditions hereof to be complied with by the Party;

(b) the failure of any warranty, representation or statement made hereunder by either Party to the other to be true and correct when made and furnished; or

(c) if either Party shall discontinue business, make a general assignment for the benefit of creditors, apply for or consent to the appointment of a receiver, trustee or liquidator for all or any part of its assets, be adjudicated bankrupt or insolvent, file any voluntary petition in bankruptcy or file a petition or answer seeking any arrangement with creditors or seeking to take advantage of any other law relating to the relief of debtors generally.

Upon the occurrence of an event of default the injured Party may immediately terminate this Agreement as provided in paragraph 4 hereof and pursue all legal and equitable rights and remedies available to the aggrieved Party.

8. **Corporate Responsibility.** The Hospital has in place a Corporate Responsibility Program ("CRP") which has as its goal to ensure that the Hospital complies with federal, state and local laws and regulations. The CRP focuses on risk management, the promotion of good corporate citizenship, including the commitment to uphold a high standard of ethical and legal business practices, and the prevention of misconduct. The Corporation acknowledges the Hospital's commitment to corporate responsibility and agrees to provide all services pursuant to this Agreement in accordance with the CRP, the Hospital's Code of Conduct and Medicare billing requirements. The Corporation shall comply with the CRP and shall assist the Hospital as needed in the educational and investigational components of the CRP.

9. **Exclusion from State and Federal Health Care Programs.** Each Party represents and warrants to the other that it has not been, nor is about to, be excluded from participation in any State or Federal Healthcare Program. The Corporation agrees to notify the Hospital within one (1) business day of the Physician's receipt of a notice of intent to exclude or actual notice of exclusion from any such program. The listing of the Corporation or any Corporation-owned subsidiary in the Office of Inspector General's exclusion list (OIG website), the General Services Administration's Lists of Parties Excluded from Federal Procurement and Nonprocurement Programs (GSA website) for excluded individuals and entities, or the New York State List of Disqualified Providers shall constitute "exclusion" for purposes of this Section. In the event that the Corporation is excluded from any State or Federal Healthcare Program, this Agreement shall immediately terminate. For the purposes of this Section, the term "Federal Healthcare Program" shall have the meaning given such term in 42 C.F.R. §1001.2.

10. **Status of Parties.** It is expressly understood and agreed that in the performance of services under this Agreement, each Party and its agents and employees shall at all times act as independent contractors with respect to the other Party and not as employees or agents of such other Party. Further, it is expressly understood and agreed by the Parties that nothing contained in this Agreement shall be construed to create a joint venture, partnership, association, or other affiliation or like relationship between the Parties, it being specifically agreed that their relationship shall remain that of independent Parties to a contractual relationship as set forth in this Agreement. In no event shall either Party be liable for the debts or obligations of the other, except as otherwise specifically provided in this Agreement. Neither Party shall not have any claim under this Agreement or otherwise against the other Party for vacation pay, paid sick leave, retirement benefits, social security, workers compensation, health, disability, professional malpractice, or unemployment insurance benefits or other employee benefits of any kind.

11. **Indemnification.** Each Party agrees to indemnify and hold the other Party harmless of and from any and all liability of any nature or kind arising, or alleged to have arisen, out of the negligence or willful misconduct of the indemnifying Party.

12. **Assignment by the Hospital.** This Agreement may be assigned by the Hospital as a result of reorganization, merger, consolidation or name change.

13. **Entire Agreement.** This Agreement contains the entire understanding between the Parties hereto with respect to the subject matter hereof and supersedes all previous contracts or agreements between the Parties with respect to the subject matter hereof.

14. **Waiver of Breach.** The waiver by either Party of a breach or violation of any provision of this Agreement shall not operate as, nor be construed to be, a waiver of any subsequent breach hereof.

15. **Governing Law.** This Agreement shall be construed, governed and enforced in accordance with the laws of the State of New York.

16. **Amendments.** This Agreement may be amended, changed or altered only by an instrument in writing signed by the Parties hereto.

17. **Judicial Interpretation.** Should any provision of this Agreement require judicial interpretation, the court interpreting or construing the Agreement shall not apply a presumption that the terms hereof shall be more strictly construed against the Party who itself or through its agent prepared the same, it being agreed that both Parties have participated in the preparation of this Agreement.

18. **Confidentiality.** The Corporation and the Hospital agree that each, together with their employees, agents, and representatives, shall maintain all information shared, generated, obtained, and/or collected as confidential in a manner consistent with applicable state and federal law, and of the Hospital and the Hospital Medical Staff Bylaws, Rules, Regulations, policies and/or procedures.

19. **Invalidity.** The invalidity or unenforceability of any particular provision of this Agreement shall not affect the other provisions hereof and this Agreement shall be construed in all respect as if such unenforceable or invalid provision had been omitted herefrom. Further, it is agreed that should any statute or law be enacted or rule or regulation promulgated by any agency, bureau or department having jurisdiction over the Hospital which could contravene any provision of this Agreement, then, in that event, the Parties hereto agree that the pertinent provisions of any such statute, law, rule or regulation shall supersede the provisions of this Agreement.

20. **Access to Records.** In accordance with Federal regulations, each Party agrees to retain for a period of four (4) years after services are furnished under this Agreement, and to allow the Secretary of Health and Human Services, the Comptroller General, or their representatives, to have access upon request to this Agreement and to such books, documents and records that may be necessary to verify the nature and extent of the costs of the services furnished under this Agreement.

21. **Binding Effect.** This Agreement shall be binding upon and inure to the benefit of the Parties hereto and their respective successors and permitted assigns.

22. **Paragraph Headings.** The paragraph headings contained herein are for convenience in reference only and shall not operate to change or modify the terms of this Agreement.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement on the date, month and year first above written.

ST. MARY'S HEALTHCARE

CITY OF AMSTERDAM

By: 
Victor Giulianelli, President/CEO

By: _____

Printed Name: _____

Date: 7-30-15

Date: _____