

**CITY OF SWARTZ CREEK
SWARTZ CREEK, MICHIGAN
MINUTES OF THE SPECIAL COUNCIL MEETING
DATE 12/20/2012**

The meeting was called to order at 6:00 p.m. by Mayor Krueger in the Swartz Creek City Council Chambers, 8083 Civic Drive.

Invocation and Pledge of Allegiance to the Flag.

Councilmembers Present: Abrams, Gilbert, Hicks, Hurt, Krueger, Porath, Shumaker.

Councilmembers Absent: None.

Staff Present: City Manager Paul Bueche, City Clerk Juanita Aguilar.

Others Present: Sharon Shumaker, Bob Plumb, Ron Schultz, Jim Florence, Boots Abrams.

APPROVAL OF AGENDA

Resolution No. 121220-01 **(Carried)**

Motion by Councilmember Porath
Second by Councilmember Hurt

I Move the Swartz Creek City Council approve the Agenda, as presented, for the Special Council Meeting of December 20, 2012, to be circulated and placed on file.

YES: Gilbert, Hicks, Hurt, Krueger, Porath, Shumaker, Abrams.

NO: None. Motion Declared Carried.

REPORTS AND COMMUNICATIONS:

City Manager's Report

Resolution No. 121220-02 **(Carried)**

Motion by Mayor Pro-Tem Abrams
Second by Councilmember Hurt

I Move the Swartz Creek City Council approve the City Manager's Report of December 20, 2012, to be circulated and placed on file.

Discussion Took Place.

YES: Hicks, Hurt, Krueger, Porath, Shumaker, Abrams, Gilbert.
NO: None. Motion Declared Carried.

All other reports and communications were accepted and placed on file.

MEETING OPENED TO THE PUBLIC:

None.

COUNCIL BUSINESS:

MDOT Performance Commitment for Governmental Agencies

Resolution No. 121220-03

(Carried)

Motion by Councilmember Shumaker
Second by Mayor Pro-Tem Abrams

WHEREAS, the City of Swartz Creek, herein after referred to as the "GOVERNMENTAL AGENCY", periodically applies to the Michigan Department of Transportation, herein after referred to as the "DEPARTMENT," for permits, referred to as "PERMIT," to construct, operate, use and/or maintain utility or other facilities, or to conduct other activities, on, over, and under State Highway right of way at various locations; within and adjacent to its corporate limits;

NOW THEREFORE, I MOVE, in consideration of the DEPARTMENT granting such PERMIT, the GOVERNMENTAL AGENCY agrees that:

1. Each party to this Agreement shall remain responsible for any claims arising out of their own acts and/or omissions during the performance of this Agreement, as provided by law. This Agreement is not intended to increase either party's liability for, or immunity from, tort claims, nor shall it be interpreted, as giving either party hereto a right of indemnification, either by Agreement or at law, for claims arising out of the performance of this Agreement.
2. Any work performed for the GOVERNMENTAL AGENCY will be solely as for the GOVERNMENTAL AGENCY and not as a contractor or agent of the DEPARTMENT. The DEPARTMENT shall not be subject to any obligations or liabilities by vendors and contractors of the GOVERNMENTAL AGENCY, or their subcontractors or any other person not a party to the PERMIT without its specific prior written consent and notwithstanding the issuance of the PERMIT. Any claims against the State of Michigan, the Michigan Transportation Commission, the DEPARTMENT, and all officers, agents and employees thereof and those contracting governmental bodies performing permit activities for the DEPARTMENT and all officers, agents, and employees thereof will be the sole responsibility of the GOVERNMENTAL AGENCY.

3. The GOVERNMENTAL AGENCY shall take no unlawful action or conduct, which arises either directly or indirectly out of its obligations, responsibilities, and duties under the PERMIT which results in claims being asserted against or judgment being imposed against the State of Michigan, the Michigan Transportation Commission, the DEPARTMENT, and all officers, agents and employees thereof and those contracting governmental bodies performing permit activities for the DEPARTMENT and all officers, agents, and employees thereof, pursuant to a maintenance contract. In the event that the same occurs, for the purposes of the PERMIT, it will be considered as a breach of the PERMIT thereby giving the State of Michigan, the DEPARTMENT, and/or the Michigan Transportation Commission a right to seek and obtain any necessary relief or remedy, including, but not by way of limitation, a judgment for money damages.

4. The GOVERNMENTAL AGENCY It will, by its own volition and/or request by the DEPARTMENT, promptly restore and/or correct physical or operating damages to any State Highway Right of Way resulting from the installation construction, operation and/or maintenance of the GOVERNMENTAL AGENCY'S facilities according to a PERMIT issued by the DEPARTMENT.

5. With respect to any activities authorized by PERMIT, when the GOVERNMENTAL AGENCY requires insurance on its own or its contractor's behalf it shall also require that such policy include as named insured the State of Michigan, the Transportation Commission, the DEPARTMENT, and all officers, agents, and employees thereof and those governmental bodies performing permit activities for the DEPARTMENT and all officers, agents, and employees thereof, pursuant to a maintenance contract.

6. The incorporation by the DEPARTMENT of this resolution as part of a PERMIT does not prevent the DEPARTMENT from requiring additional performance security or insurance before issuance of a PERMIT.

7. This resolution shall continue in force from this date until cancelled by the GOVERNMENTAL AGENCY or the DEPARTMENT with no less than thirty (30) days prior written notice to the other party. It will not be cancelled or otherwise terminated by the GOVERNMENTAL AGENCY with regard to any PERMIT which has already been issued or activity which has already been undertaken.

BE IT FURTHER RESOLVED, that the following position(s) are authorized to apply to the DEPARTMENT for the necessary permit to work within State Highway Right of Way on behalf of the GOVERNMENTAL AGENCY.

1. Paul Bueche, City Manager, and/or City Manager for the City of Swartz Creek
2. Thomas Svrcek, Public Works Director, and/or Public Works Director for the City of Swartz Creek
3. Louis Fleury, P.E., Rowe Professional Services, Swartz Creek City Engineer
4. Peter LaMourie P.E. PTOE, Progressive AE, Swartz Creek City Traffic Engineer
5. Ryan Minkus P.E. PTOE, Progressive AE, Swartz Creek City Traffic Engineer

I HEREBY CERTIFY that the foregoing is a true copy of a resolution adopted by the Swartz Creek City Council, for the City of Swartz Creek, Genesee County, at a Special Council meeting held on the 20th day of December 2012, Swartz Creek City Hall, 8083 Civic Drive, Swartz Creek Michigan

Discussion Took Place.

YES: Hurt, Krueger, Porath, Shumaker, Abrams, Gilbert, Hicks.

NO: None. Motion Declared Carried.

Morrish Road Bridge Project, MDOT Agreement

Resolution No. 121220-04

(Carried)

Motion by Councilmember Hicks
Second by Councilmember Hurt

I Move the City of Swartz Creek enter into an agreement with the Michigan Department of Transportation (MDOT), a copy of which is attached hereto, for the construction of the Morrish Road Bridge over the West Branch of the Swartz Creek, funded by MDOT Critical Bridge Funding Program, and further, direct the Mayor and City Clerk to execute the agreement on behalf of the City.

Discussion Took Place.

YES: Krueger, Porath, Shumaker, Abrams, Gilbert, Hicks, Hurt.

NO: None. Motion declared carried.

Appropriation, Purchase BS & A Module

Resolution No. 121220-05

(Carried)

Motion by Councilmember Gilbert
Second by Councilmember Hurt

WHEREAS, the City of Swartz Creek maintains all its accounting, tracking, assessing, tax and financial data on a multi level municipal software platform produces by BS&A of Bath Michigan; and

WHEREAS, the City chose this vendor based on its reliability, maintenance, support and its use by the vast majority of municipalities in the state; and

WHEREAS, the City currently utilizes nearly all the modules with the exception of the building module, having opted to track building services via simple spread sheets; and

WHEREAS, the City's staff has been reviewing a change to BS&A building and in the course of review, finds that efficiency, accounting and records tracking can be greatly improved by implementing this module;

WHEREAS, the City's purchasing ordinance provides for competitive and cooperative bids, but also allows for exceptions in certain circumstances, text as follows: Chapter 2, Article VI, Division 3, Sec 2-402(a), 2, i & ii "...The city council may, at the request of the City Manager, authorize the City Manager to negotiate a contract for the purchase of any product, material or service with a provider of such product, material or service without regard to the requirements of this section relative to purchases where the city council finds:

- i. Due to circumstances beyond the control of the city, the market for such product, material or service is not competitive even though such product, material or service is normally competitive in nature; and
- ii. The economic interests of the city are best served by negotiating a contract with a provider of the product, material or service without requesting sealed bids."; and

WHEREAS, the City finds that the market for such product is not competitive even though such product, material or service is normally competitive in nature.

NOW, THEREFORE, I Move the City of Swartz Creek appropriate an amount not to exceed \$8,560 to BS&A Software of Bath Michigan, for the purchase and installation of its Building Software Tracking and Accounting Module, costs to be distributed across funds as determined by the City's Finance Director.

Discussion Ensued.

YES: Porath, Shumaker, Abrams, Gilbert, Hicks, Hurt, Krueger.

NO: None. Motion Declared Carried.

MEETING OPENED TO THE PUBLIC:

None.

REMARKS BY COUNCILMEMBERS:

Councilmember Shumaker spoke about a resident, Paul Spaniola, that is going to be a centurion next month. Mr. Shumaker requested a proclamation from the City for Mr. Spaniola.

Councilmember Gilbert wished everyone a Merry Christmas.

Mayor Pro-Tem Abrams asked when the lights by the SPO plant would be changed to blinking. City Manager Bueche stated that he is working on it.

Adjournment

Resolution No. 121220-06

(Carried)

Motion by Mayor Pro-Tem Abrams
Second by Councilmember Shumaker

I Move the City of Swartz Creek adjourn the Special Session of the City Council meeting at 6:36 p.m.

YES: Unanimous Voice Vote.

NO: None. Motion Declared Carried.

David A. Krueger, Mayor

Juanita Aguilar, City Clerk