

**CITY OF SWARTZ CREEK  
SWARTZ CREEK, MICHIGAN  
MINUTES OF THE COUNCIL MEETING  
DATE 09/24/2012**

The meeting was called to order at 7:00 p.m. by Mayor Abrams in the Swartz Creek City Council Chambers, 8083 Civic Drive.

Invocation and Pledge of Allegiance to the Flag.

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

Councilmembers Absent: Binder.

Staff Present: City Manager Paul Bueche, City Clerk Juanita Aguilar, DPS Director Tom Svrcek.

Others Present: Tommy Butler, Boots Abrams, Bob Plumb, Sharon Shumaker, Steve Shumaker, Jim Florence, Ron Schultz, John Gilbert, Lou Fleury.

**Resolution No. 120924-01**

**(Carried)**

Motion by Councilmember Hurt  
Second by Councilmember Hicks

**I Move** the Swartz Creek City Council excuse the absence of Councilmember Binder due to the poor health of her fiancée.

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

**APPROVAL OF MINUTES**

**Resolution No. 120924-02**

**(Carried)**

Motion by Councilmember Porath  
Second by Councilmember Hurt

**I Move** the Swartz Creek City Council hereby approve the Minutes of the Regular Council Meeting held September 10, 2012, to be circulated and placed on file.

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

## APPROVAL OF AGENDA

**Resolution No. 120924-03**

**(Carried)**

Motion by Mayor Pro-Tem Krueger  
Second by Councilmember Hurt

**I Move** the Swartz Creek City Council approve the Agenda, as printed, for the Regular Council Meeting of September 24, 2012, to be circulated and placed on file.

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

## REPORTS AND COMMUNICATIONS:

### City Manager's Report

**Resolution No. 120924-04**

**(Carried)**

Motion by Councilmember Shumaker  
Second by Councilmember Hurt

**I Move** the Swartz Creek City Council approve the City Manager's Report of September 24, 2012, to be circulated and placed on file.

Discussion took place.

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

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

## MEETING OPENED TO THE PUBLIC:

None.

## COUNCIL BUSINESS:

### Bid Award & Appropriation, Winshall Drive Sanitary Sewer Repair Project

**Resolution No. 120924-05**

**(Carried)**

Motion by Councilmember Hicks  
Second by Councilmember Hurt

**WHEREAS**, the City conducts an ongoing sanitary sewer maintenance program wherein annually, segments of the sewer lines are televised and then relined with PVC; and

**WHEREAS**, the 2012 sanitary sewer relining project targeted a section of the City's sanitary sewer along the backyards of residents on the north side of Winshall between Durwood and Daval, the camera inspection disclosing two breaks in the line in the 5200 block of Winshall; and

**WHEREAS**, the City's Engineer, Rowe Professional Services Inc., reviewed all possible options for repair and have recommended the only fix is the full excavation and replacement of the damaged sections; and

**WHEREAS**, Rowe has conducted a site survey, developed construction plans and let for bid a package for repair with five returns ranging from \$146,500 to \$181,000, with the low bidder being Joe Raica Excavating of Fowlerville Michigan.

**NOW THEREFORE, I Move** the City of Swartz Creek award the bid for the repair of the Winshall Drive Sanitary Sewer Project to the low bidder Joe Raica Excavating of Fowlerville Michigan, in the amount of \$146,500, in accordance with the construction plans and specifications as drafted and bid by the City's Engineer, funds to be appropriated from 591 sanitary sewer.

**BE IT FURTHER RESOLVED** that the City allow for a 10% contingency for any undisclosed expenses related to the excavation project and any additional engineering inspection costs associated with the project.

**BE IT FURTHER RESOLVED** that the Mayor and City Clerk are directed to execute a construction contract and any other associated documents on behalf of the City

Discussion Ensued.

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

NO: None. Motion Declared Carried.

**Extend Professional Services Agreement, Zettel Consulting**

**Resolution No. 120924-06**

**(Carried)**

Motion by Councilmember Hurt  
Second by Councilmember Hicks

**I Move** the City of Swartz Creek enter into a Professional Services Agreement with Adam Zettel of Zettel Consulting Services, to provide consulting services for Zoning, Planning, DDA, Grants, and Water Distribution System, and further, direct the Mayor and City Clerk to execute the agreement on behalf of the City, agreement as follows:

**PROFESSIONAL SERVICES AGREEMENT**  
*Between*  
**THE CITY OF SWARTZ CREEK**  
*And*  
**ZETTEL CONSULTING**

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This agreement is made this 14<sup>TH</sup> day of September, 2012 by and between the **City of Swartz Creek**, a Michigan Municipal Corporation, with principal offices at 8083 Civic Drive, Swartz Creek, Michigan 48473 ("City") and **Zettel Consulting**, with principal offices at 5023 Holland Street, Swartz Creek Michigan 48473 ("Provider")

**WHEREAS**, the City desires to employ a consultant for planning, zoning, DDA, community development, and water system administration; and

**WHEREAS**, the Provider has the necessary experience and qualifications to provide the above described professional services and is willing to provide those services to the City.

**NOW, THEREFORE**, the City and the Provider AGREE AS FOLLOWS:

**1. Agreement Term.**

The term of this Agreement shall be for the following period:  
**September 24, 2012 through November 30, 2013.**

**2. Scope of Services:**

The scope of services to be performed by the Provider is as follows:

- A. Consulting services for the administration of planning, zoning and Zoning Board of Appeals, including, but not limited to, the attendance at meetings, budget finance, site plan review, Planning Commission packets, ordinance updates, Master Plan, Trailway Plan and Park Plan, or other duties that the City Manager may determine necessary.
- B. Consulting Services for the administration of the Downtown Development Authority including, but not limited to, the attendance at meetings, related budget and finance or other duties that the City Manager may determine necessary.
- C. Consulting services for the administration of the City's Water Distribution System, including, but not limited to, creation and monitoring of a new comprehensive paperwork documentation system for repairs, maintenance, tracking and reporting, rate review and calculations, assistance with budget, finance and capital improvements, or other duties that the City Manager may determine necessary.
- D. Consulting services for grant maintenance including, but not limited to application, reporting, documentation and the continuation of existing sources, CDBG and EECBG.
- E. Consulting services for community development projects, as needed.

**3. Compensation:**

The Provider shall be compensated as follows:  
The City shall pay the Provider an hourly rate of **\$75** per hour, detailed invoice submitted monthly at the first of the month for the previous month, net due 20 days.

**4. Applicable Law.**

This Agreement shall be governed by and in accordance with the laws of the State of Michigan applicable to contracts made and to be performed in this state.

## **5. Obligations to the City.**

*The Provider shall maintain all licenses currently held, including, but not limited to AICP and S-2 water distribution operator. The Provider shall remain current and not be in default of any obligations due to the City including, but not limited to, the payment of taxes, fines, penalties, licenses or other monies due to the City. Violations of this clause shall constitute a substantial and material breach of this Agreement. Such breach shall constitute good cause for the termination of this Agreement should the City determine to terminate on a basis other than convenience.*

## **6. Disclaimer of Contractual Relationship.**

*Nothing contained in the Agreement Documents shall create any contractual relationship between the City and any Subcontractor of the Provider.*

## **7. Independent Contractor**

*No provision of this Agreement herein contained shall be construed by the parties or by any other person as one creating an employer-employee relationship. It is hereby expressly understood and agreed that the Provider is an independent contractor as that phrase has been defined and interpreted by the Courts of the State of Michigan, and, as such, he/she is not entitled to any benefits not otherwise specified herein.*

## **8. Hold Harmless and Indemnification:**

*To the fullest extent permitted by law, the Provider agrees to defend, pay on behalf of, indemnify, and hold harmless the City, its elected and appointed officials, employees and volunteers and others working on behalf of the City against any and all claims, demands, suits, or loss, including all costs connected therewith, and for any damages which may be asserted, claimed or recovered against or from the City, its elected and appointed officials, employees, volunteers or others working on behalf of the City, by reason of personal injury, including bodily injury or death and/or property damage including loss of use thereof, which may arise as a result of his act, omissions, faults and negligence or any of his employees, agents and representative in performance of this Agreement.*

## **9. Non Exclusive**

*Nothing in this contract shall be deemed to grant the provider an exclusive franchise or an exclusive right to provide any such services defined in this agreement, or otherwise, within the City.*

## **10. Insurance.**

*The Provider shall not commence work under this Agreement until he/she or it has procured and provided evidence of insurance required under this section. All coverage's shall be placed with insurance companies licensed and admitted to do business in the State of Michigan unless otherwise approved by the City. Policies shall be reviewed by the City for completeness and limits of coverage. All coverage's shall be with insurance carriers acceptable to the City. The Provider shall maintain the following insurance coverage's for the duration of the Agreement.*

*A. Commercial General Liability coverage of not less than five hundred thousand dollars (\$500,000 per person and per occurrence combined single limit with the City, and including all elected and appointed officials, all employees and volunteers, all boards, commissions and/or authorities and their board members, employees and volunteers, named as Additional*

*Insured. The coverage shall be primary as to the Additional Insured's, and not contributing with any other insurance or similar protections available to the Additional Insured's, whether said other available coverage be primary, contributing or excess.*

*B. Workers Compensation Insurance in accordance with Michigan statutory requirements including Employer's Liability Coverage.*

*C. Commercial Automobile-Vehicle Insurance in accordance with Michigan statutory requirements.*

*The Provider shall furnish the City with certificates of insurance for all coverage's requested and with original endorsements for those policies requiring the Additional Insured status. All certificates of insurance must provide the City with not less than 30 days advance written notices in the event of cancellation, non-payment of premium, non-renewal or any material change in policy coverage. In addition, failure to mail such notice shall impose no obligation or liability of any kind upon the City, its agent or representatives. All certificates must identify the City as the Certificate Holder and additional insured party. The Provider must provide, upon request, certified copies of all insurance policies. If any of the above coverage's expire during the term of this Agreement, the Provider shall deliver renewal certificates and/or policies to the City at least ten days prior to the expiration date.*

#### **11. Interpretation.**

*In the event any provision contained herein shall be determined by a court of competent jurisdiction or an appropriate administrative tribunal or official to be contrary to any provision of law or to be unenforceable for any reason, then, to the extent necessary and possible to render the remainder of this agreement enforceable, such provision may be modified or severed by such court or administrative tribunal or official having jurisdiction over this Agreement and the interpretation thereof, or the parties hereto, so as to, as nearly as possible, carry out the intention of the parties to this Agreement, considering the purpose of the entire Agreement as it relates to such provision.*

#### **12. Laws and Ordinances.**

*The Provider shall obey and abide by all of the laws, rules and regulations of the Federal Government, State of Michigan, Genesee County and the City of Swartz Creek, applicable to the performance of this agreement, including, but not limited to, labor laws.*

#### **13. Modifications/Changes.**

*Any modification to this Agreement must be in writing and signed by the authorized employee, officer, board or council representative authorized to make such contractual modifications pursuant to the state law and local ordinances.*

#### **14. Non-Assignability.**

*The Provider shall not assign or transfer any interest in this Agreement without the prior written consent of the City Manager.*

#### **15. Non-Disclosure/Confidentiality.**

*Upon delivery as provided in Paragraph 1 (Change in Scope of Services) hereof, the documents prepared by the Provider shall be the property of the City. The Provider agrees that said documents are*

*confidential information intended for the sole use of the City and that he/she will not disclose any such information, or in any other way make such documents public, without the express written approval of the City Manager or the order of a court of competent jurisdiction or as required by the laws of the State of Michigan.*

**16. Notices.**

*Notices to the City shall be deemed sufficient if in writing and mailed, postage prepaid, addressed to the City Manager, City of Swartz Creek, 8083 Civic Drive, Swartz Creek Michigan 48473, or to such other address as may be designated in writing by the City Manager from time to time.*

*Notices to the Provider shall be deemed sufficient if in writing and mailed, postage prepaid, addressed to the Provider, Zettel Consulting, 5023 Holland Street, Swartz Creek Michigan 48473, or to such other address as may be designated in writing by the Provider from time to time.*

**17. Records / Reports.**

*The Provider shall prepare and submit all such reports as may be required or requested by the City Manager or to the City Manager.*

**18. Severability.**

*The invalidation of one or more terms of this Agreement shall not affect the validity of the remaining terms.*

**19. Standards of Performance.**

*The Provider agrees to exercise independent judgment and to complete performance under this Agreement in accordance with sound professional practices. In entering into this Agreement, the City is relying upon the professional reputation, experience, and ability of the Provider. The Provider agrees that all of the obligations required by he/she pursuant to this Agreement shall be performed by him, her or it. The continued effectiveness of this Agreement during its term or any renewal term shall be contingent, in part, upon the Provider maintaining any required certifications in accordance with the requirements of state or local law, rule or ordinance.*

**20. Termination.**

*This Agreement may be terminated by either party hereto by submitting a notice of termination to the other party. Such notice shall be in writing and shall be effective thirty (30) days from the date it is submitted unless otherwise agreed to by the parties hereto. The Provider, upon receiving such notice and prorated payment upon termination of this Agreement shall turn over and give to the City all pertinent records, data and information by the date of termination.*

**21. Time of Service/Performance.**

*The Provider's services shall commence immediately upon receipt of the notice to proceed and shall be carried out forthwith and without unreasonable delay.*

**22. Whole Agreement Clause.**

*This written agreement embodies the entire agreement between the parties hereto, and additions, deletion or modification hereto must be in writing and signed by both parties.*

The City and the Provider have executed this Agreement as of the date first above written.

/S/

I, **Adam Zettel, of Zettel Consulting**, do hereby declare that I am a Sole Proprietor performing work and/or services as an independent Contractor for the City of Swartz Creek, and will not employ any person(s) in the work to be performed for the City. As a Sole Proprietor with no employees, I further acknowledge that I am not subject to the Workers Compensation Act of the State of Michigan. In consideration of being awarded this work, I agree to hold harmless the City for any and all injuries or illness that I may sustain during the course of this work. I hereby agree to notify the City Manager in writing, prior to hiring any person(s), full time or part time, to assist with any work or services performed, and to secure Workers Compensation Insurance prior to any person beginning work or assisting in the performance of any work and that no such work will be subcontracted to any other subcontractor or entity. SIGNED: \_\_\_\_\_  
Dated: \_\_\_\_\_

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

### **Appropriation- Street Striping**

**Resolution No. 120924-07**

**(Carried)**

Motion by Councilmember Porath  
Second by Councilmember Hurt

**WHEREAS**, the City finds the need to re-stripe portions of its street system; and

**WHEREAS**, the City's Purchasing Ordinance, Chapter 2, Article VI, Section 2-406 provides for and encourages cooperative government purchasing practices; and

**WHEREAS**, the Genesee County Road Commission accepts and awards bids for the re-striping of roadways under its jurisdiction within the County; and

**WHEREAS**, the County Road Commission awarded a contract on October 1, 2011 to M&M Pavement Marking Inc., also DBA as D&D Striping Inc. of Grand Blanc Michigan, a copy of the contract award reviewed by the City Council; and

**WHEREAS**, the City finds that the costs cannot be matched do to volume of work, if attempts were made to bid on the open market or through private sources.

**NOW, THEREFORE, I MOVE** the City of Swartz Creek City accept the Genesee County Road Commission's cooperative purchasing extension and appropriate an amount not to exceed \$5,864 plus 15% contingency, for the striping of streets in accordance with the estimate, as follows:

**M & M Pavement Marking**

PO Box 530  
Grand Blanc, MI 48430

**Estimate**

Date	Estimate #
9/14/2012	1012

Name / Address
City of Swartz Creek 8085 Civic Drive Swartz Creek, MI 48075-4372

Description	Qty	Rate	Project
			Total
<small>Quantities are estimates only - Each road will be tagged when poured and actual painted line will be invoiced - If total quantities are less - actual line will be invoiced and invoice will reflect a lower cost. If quantities are more, actual line will be invoiced and a discount will be given so that the total invoice will not exceed the total price below of \$5,664.00 for budget reasons.</small>			
Solid Yellow	81,000	0.043	3,483.00
Strip Yellow	13,000	4.05	526.50
Strip White	2,500	9.05	22.63
Solid White - Lane Line	1,000	0.041	41.00
Solid White - Edge Line	40,000	0.041	1,640.00
<b>Total</b>			<b>\$5,264.00</b>

expenses to be distributed proportionate to use at the direction of the City's Finance Director.

Discussion Took Place.

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

NO: None. Motion Declared Carried.

**Shared Services Study, Final Report**

Mark Nottley made a brief presentation, going over his final report with the City Council.

**Resolution No. 120924-08**

**(Carried)**

Motion by Mayor Pro-Tem Krueger  
Second by Councilmember Hurt

**I Move** the City of Swartz Creek accept the final report prepared by Michigan Consulting Services of Ann Arbor, presented and authored by Principal Mark Nottley, and further, direct the staff to place on file and distribute accordingly.

Discussion Took Place.

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

NO: None. Motion Declared Carried.

## **MEETING OPENED TO THE PUBLIC:**

John Gilbert, 7459 Miller Road, asked if the new streetlights on Fortino Drive were set on concrete. Mr. Bueche stated that Consumers Energy installed the lights and he is not sure if there is concrete or not. Mr. Gilbert asked about street striping and walkways for Springbrook. Mr. Bueche stated that those things can possibly be done once the City takes control of the streets in Springbrook. Mr. Gilbert asked about 7425 Miller Road, questioning who put a large rock on the sidewalk when the lawn was mowed.

Tommy Butler, 40 Somerset, asked about a turn around on Seymour Road near the railroad tracks. Mr. Bueche stated that he thinks the railroad trucks caused that. Mr. Butler spoke about visiting another jurisdiction and seeing an employee using spray cans to paint stripes on the road instead of contracting the work out.

## **REMARKS BY COUNCILMEMBERS:**

Councilmember Shumaker stated that he likes the lights on Fortino Drive, that it enhances all of the buildings on Fortino Drive. Mr. Shumaker spoke about how crosswalks are marked in Howell and Fenton and suggested that the City take a look at how they are done.

Mayor Pro-Tem Krueger suggested establishing an economic development commission, possibly with the townships.

Councilmember Porath spoke about the I-69 corridor and asked if that was the same type of thing.

Mayor Pro-Tem Krueger stated that he spoke to the Chamber of Commerce about an economic development commission. Mr. Krueger also stated that the town that he grew up in, in Wisconsin, has something similar so he could advise a commission.

## **Adjournment**

**Resolution No. 120924-09**

**(Carried)**

Motion by Councilmember Shumaker  
Second by Councilmember Hurt

**I Move** the City of Swartz Creek adjourn the Regular Session of the City Council meeting at 8:55 p.m.

YES: Unanimous Voice Vote.  
NO: None. Motion Declared Carried.