

**CITY OF SWARTZ CREEK  
SWARTZ CREEK, MICHIGAN  
MINUTES OF THE COUNCIL MEETING  
DATE 10/25/2010**

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, Binder, Hicks, Hurt, Krueger, Porath, Shumaker.

Councilmembers Absent: None.

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

Others Present: Boots Abrams, Sharon Shumaker, Tommy Butler, Steve Shumaker, Wayne Kelley, Curtis Kelley, Todd Kamps, Bob Plumb, Jack Wheatley, Mary Carwile.

**APPROVAL OF MINUTES**

**Resolution No. 101025-01**

**(Carried)**

Motion by Mayor Pro-Tem Porath  
Second by Councilmember Hurt

**I Move** the Swartz Creek City Council hereby approve the Minutes of the Regular Council Meeting, held October 11, 2010, to be circulated and placed on file.

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

**APPROVAL OF AGENDA**

**Resolution No. 101025-02**

**(Carried)**

Motion by Councilmember Krueger  
Second by Councilmember Binder

**I Move** the Swartz Creek City Council approve the Agenda, as printed, for the Regular Council Meeting of October 25, 2010 to be circulated and placed on file.

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

**REPORTS AND COMMUNICATIONS:**

**City Manager’s Report**

**Resolution No. 101025-03**

**(Carried)**

Motion by Councilmember Shumaker  
Second by Councilmember Hurt

**I Move** the Swartz Creek City Council approve the City Manager’s Report of October 25, 2010, to be circulated and placed on file.

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

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

**MEETING OPENED TO THE PUBLIC:**

None.

**COUNCIL BUSINESS:**

**Public Hearing, Miller-Elms PUD Amendment**

**(Public Hearing)**

City Manager Bueche explained that the Southeast corner of Miller and Elms was always part of the Miller-Elms Planned Unit Development Commercial District since it’s inception around 1998. The owner of the property in question, Mr. Andoni, requested to have the original PDD amended to allow for other uses, such as a Family Farm & Home retail outlet center. Mr. Bueche stated that the plans are in front of the Planning Commission at this time, with the next Planning Commission meeting scheduled for November 16, 2010.

Mr. Bueche explained the conditions for approval for Family Farm & Home that are in the resolution.

Tommy Butler stated that he was all for the idea of Family Farm & Home.

Mary Carwile stated that she definitely wanted the TIS study done due to the railroad tracks and possible traffic backups due to a train stopping traffic as well as the traffic for Family Farm & Home. Ms. Carwile stated that the previous owner was a neglectful tenant with problems including garbage and rodents. Ms. Carwile also stated that the foot traffic going from the fast food restaurants to the trailer park causes a lot of garbage to be thrown on the ground. Ms. Carwile was concerned about construction noise and mess as well.

Wayne Kelley was concerned about semi truck traffic and if there would be enough room for them to turn into Family Farm & Home. City Manager Bueche stated that they have looked into it and it does meet the standards.

## **Zoning District Amendment, Miller-Elms Conceptual Planned Unit Development**

**Resolution No. 101025-04**

**(Carried)**

Motion by Councilmember Hicks  
Second by Councilmember Hurt

**WHEREAS**, the applicant is proposing a 6.2 acre conceptual Planned Unit Development project that includes a 25,000 square foot retail building on the east side, as well as conceptual layouts for a 3,840 sq. ft. commercial space, a 2,508 sq. ft. restaurant with drive through, and two 7,000 sq. ft. commercial buildings (the most southerly of which is not technically incorporated in this application); and

**WHEREAS**, the plan conceptually illustrates parking, traffic ingress and egress, internal traffic circulation, landscaping, drainage, and building area and spacing; and

**WHEREAS**, a public hearing was held by the Planning Commission on October 5, 2010 to hear comments related to this plan; and

**WHEREAS**, reviews were completed by staff, city consultants, and the Planning Commission; and

**WHEREAS**, the Planning Commission subsequently approved the conceptual plan with conditions; and

**WHEREAS**, the applicant intends to immediately follow an approval of the conceptual Planned Unit Development with a final site plan approval for a Family Farm & Home for the 25,000 square foot retail use.

**NOW, THEREFORE**, the Swartz Creek City Council hereby grants preliminary approval of the Southeast Miller & Elms Planned Unit Development Concept (Family Farm & Home), for property located at 4301 & 4315 Elms Rd., including two vacant parcels of land (Parcel numbers: 58-31-551-001, 58-31-551-002, 58-31-551-003, & 58-31-300-001); site plans dated 09/03/2010-Latitude Engineering Inc.

**BE IT FURTHER RESOLVED**, that the approval is contingent upon execution of a Planned Unit Development agreement, signed by all owners of interest in the property, which shall include, among other items:

1. A provision for the removal of the existing drive of the PUD to the planned access drive.
2. Inclusion of a ten (10) foot non-motorized path along the entire frontage of the development, which will connect to the existing trail network.
3. Development and performance standards for any and all special land uses, including outdoor sales and storage.
4. A requirement for all required construction documents, consultant recommendations, performance bonds, other governmental permitting, and

any and all items required by the zoning ordinance, the engineering standards manual, and all other applicable laws and regulations not otherwise waived.

Discussion Ensued.

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

**Zoning Code Amendment**

**(Discussion Topic)**

City Manager Bueche gave a brief update and provided a sample ordinance on the Medical Marijuana issue and possible zoning code issues related to it.

**2011 Debt Service Commitment**

**Resolution No. 101025-05**

**(Carried)**

Motion by Councilmember Binder  
Second by Councilmember Shumaker

**WHEREAS**, the City of Swartz Creek has an obligation to pay to the County of Genesee, the sum of \$57,276.85 to meet the bond and principal requirements on all bond obligations for water and sewer facilities in calendar 2011; and

**WHEREAS**, the City of Swartz Creek has such an obligation for the retirement of a western trunk sewer extension bond through approximately 2026, and

**WHEREAS**, there are several means by which the funds can be secured to meet this payment; and

**WHEREAS**, all various means of securing these funds have been reviewed and considered;

**NOW, THEREFORE, BE IT RESOLVED** by the City of Swartz Creek that the monies to meet the principal and interest requirements and all bond obligations for water and sewer facilities will be secured from the following funds:

**SOURCE OF FUNDS**

Cash on Hand -Sewer	<u>\$57,276.85</u>
<b>Sewer Funds Total</b>	<b>\$57,276.85</b>

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

**Heritage Village Association, Street Repair Special Assessment District**

**Resolution No. 101025-06**

**(Carried)**

Motion by Councilmember Hurt  
Second by Councilmember Binder

**WHEREAS**, the City Council set a public hearing for the regular meeting of October 25, 2010, to invite residents of Heritage Village Subdivision for the review of options related to the repair of the Association Streets; and

**WHEREAS**, in review, time constraints would be significantly less if such an invitational public hearing were set as a special meeting workshop instead of held as an agenda item at a regularly scheduled meeting.

**NOW, THEREFORE, I Move** that the City of Swartz Creek reschedule the planned invitational public hearing with resident homeowners of Heritage Village Subdivision, to a special Council Workshop Meeting to be held on Tuesday, November 9, 2010 at 6 pm at the Swartz Creek City Council Chambers, and further, direct the staff to send notices to homeowners inviting all to attend.

Discussion Took Place.

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

**Extend Swartz Ambulance Agreement**

**Resolution No. 101025-07**

**(Carried)**

Motion by Councilmember Krueger  
Second by CouncilmemberHurt

**I Move** the City of Swartz Creek enter into an agreement with Swartz Ambulance Company, of G-1225 West Hill Road Flint, as follows:

**PROFESSIONAL SERVICES AGREEMENT  
Between  
THE CITY OF SWARTZ CREEK  
And  
SWARTZ AMBULANCE SERVICES INC.**

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This agreement is made this 25<sup>th</sup> day of October, 2010 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 **Swartz Ambulance Service Inc**, a Michigan Domestic Profit Corporation, with principal offices at G-1225 West Hill Road, Flint Michigan 48507 ("Provider")

**WHEREAS**, the City desires to have at least one EMS Provider located within the City so as to provide its citizens with the benefits of emergency medical services and transportation; and

**WHEREAS**, the Provider has the necessary experience, qualifications, apparatus and equipment 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:  
November 1, 2010 through October 31, 2011.

**2. Scope of Services:**

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

A. Establish, maintain and staff a base of operations within the corporate limits of the City on a 24-hour basis.

B. Respond to medical requests consisting of, but not limited to Advanced Life Support (A.L.S.), Basic Life Support (B.L.S.), and transports.

C. Work under and within the Genesee County 911 Consortium Dispatch Center and the Genesee County Medical Control Board.

**3. Compensation:**

The Provider shall be compensated as follows:

Since having the Provider physically located within the City provides a benefit to the citizens of the City, in consideration for the Provider locating its base within the City and the additional operating costs incurred therein, the City shall pay the Provider \$1,000.00 for the period from November 1, 2010 through October 31, 2011 and \$2,500.00 for the period from November 1, 2011 through October 31, 2012.

**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. Licensure; Obligations to the City.**

The Provider shall maintain proper licensure for the company and all employees as set forth in state and local laws, rules and ordinances, for the operation of an emergency medical response and transport service. 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 shall be construed by the parties or by any other person as creating an employer-employee relationship. It is hereby expressly understood and agreed that the Provider is an independent contractor as that term is defined in Michigan law, and, as such, it 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 Provider's act(s), omission(s), fault(s) or negligence of any of its employees, officers, agents, subcontractors or representatives in its 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 emergency medical services within the City.

**10. Insurance.**

The Provider shall not commence work under this Agreement until it has procured and provided evidence of the insurance coverages required under this section. All coverages 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 coverages for the duration of the Agreement.

A. Commercial General Liability coverage of not less than one million dollars (\$1,000,000) per person and four million dollars (\$4,000,000) per occurrence combined single limit with the City, and its elected and appointed officials and employees named as Additional Insured's.

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

C. Commercial Automobile-Vehicle Insurance in the amount of not less than one million dollars (\$1,000,000) per person and four million dollars (\$4,000,000) per occurrence combined single limit per accident with the City, and its elected and appointed officials and employees.

Any deductible or self-insured retention must be declared to and approved by the City. In addition, the total dollar value of all claims paid out on the policy shall be declared. At the option of the City, either: The insured shall reduce or eliminate such deductibles or self-insured retention as respects to the City, its officials, employees and volunteers; or the Provider shall procure a bond guaranteeing payment of losses and related investigation, claim administration and defense expense.

The Provider shall furnish the City with certificates of insurance for all coverages requested and with original endorsements for those policies requiring the Additional Insureds' status. All certificates of insurance must provide the City with not less than 30 days advance written notices in the event of cancellation for non-payment of premium or any other reason, 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 the above referenced officers, employees and agents as Additional Insureds. The Provider must provide, upon request, certified copies of all insurance policies. If any of the above coverages 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. The Provider shall ensure that all Subcontractors utilized obtain and maintain all insurance coverages required by this Agreement.

**11. Interpretation.**

If 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. Nondiscrimination.**

The Provider will not discriminate against any employee or applicant for employment because of race, color, creed, religion, ancestry, national origin, sex, disability or other handicap, age, marital status, or status with regard to public assistance. The Provider will take affirmative action to insure that all employment practices are free from such discrimination. Such employment practices include but are not limited to the following: hiring, upgrading, demotion, transfer, recruitment, or recruitment advertising, layoff, termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship.

**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, **Swartz Ambulance Service Inc**, G-1225 West Hill Road, Flint Michigan 48507, or to such other address as may be designated in writing by the Provider from time to time.

**17. Records / Reports.**

The City, at its discretion, may require the Provider to prepare and submit to the City Manager, periodic reports that reflect the number of runs in the City, run types (BLS-ALS) call date and times and response times and dates.

If the Provider is unable to staff the Emergency Medical Services Response Base in a manner outlined within Section 2A of this agreement, the Provider shall notify, in writing, the Office of the City Manager within one business day of such closure.

Excepting such records that are protected by privacy statutes, all documents, information, reports and the like prepared and/or generated by the Provider as a result of this Agreement shall become the sole property of the City. The Provider agrees that said documents are confidential information intended for the sole use of the City and that it 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 Michigan law.

**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 medical and emergency practices. In entering into this Agreement, the City is relying upon the professional reputation, experience, certification and ability of the Provider. The Provider agrees that all of the obligations required by it pursuant to this Agreement shall be performed by its officers, employees, agents and subcontractors working under its direction and control. 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 of termination of this Agreement shall turn over and give to the City all pertinent records, date and information to 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.

**THE CITY OF SWARTZ CREEK**

**SWARTZ AMBULANCE SERVICES INC.**

BY: \_\_\_\_\_  
**RICHARD ABRAMS**, Mayor

BY: \_\_\_\_\_  
**JUANITA AGUILAR**, City Clerk

BY: \_\_\_\_\_  
Its:

BY: \_\_\_\_\_  
Its:

**BE IT FURTHER RESOLVED**, that the City authorize a final payment to Woodside Builders for the last two months of occupancy at the now vacated Swartz Ambulance base at 5304 Miller Road, payment not to exceed \$1,500.

Discussion Ensued

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

**MEETING OPENED TO THE PUBLIC**

Boots Abrams questioned when yard waste stops for the season. DPS Director Tom Svrcek stated that it was extended to around the first of December.

**REMARKS BY COUNCILMEMBERS:**

Councilmember Hicks questioned if there would be a new appointee for the Park Board. Ms. Hicks stated that she has someone that is interested. Ms. Hicks made the comment that last year an ambulance was called for her husband and that if Swartz Ambulance had not been so close that her husband may have been hours from a major heart attack and probably would have died.

Councilmember Shumaker spoke about drives that are two lanes out and one lane in. Mr. Shumaker stated that the lanes are not striped and therefore ineffective. Mr. Shumaker stated concern that issues such as this are not being followed up on.

Councilmember Krueger wanted to remind everyone to vote on November 2, 2010. Mr. Krueger stated that Genesee County is holding their 6<sup>th</sup> annual Planning forum on Friday, February 5<sup>th</sup> from 8am to 12pm.

Mayor Pro-Tem Porath stated that he will miss a Council meeting either on the 8<sup>th</sup> and 9<sup>th</sup> or the 15<sup>th</sup> and 16<sup>th</sup> due to work commitments.

Mayor Abrams spoke about the GAIN meeting and GAIN receiving an award from the Auto Theft Prevention Agency. Mr. Abrams stated that the Karegnondi Water Authority has their first board meeting on Wednesday, October 26, 2010 at 3:00pm at the Flint City Hall.

**Adjournment**

**Resolution No. 101025-08**

**(Carried)**

Motion by Councilmember Shumaker  
Second by Councilmember Hicks

**I Move** the City of Swartz Creek adjourn the Regular Session of the City Council meeting at 9:17 p.m.

YES: Unanimous Voice Vote.

NO: None. Motion Declared Carried.

Richard Abrams, Mayor

Juanita Aguilar, City Clerk