

RESOLUTION NO. 1009-02

RESOLUTION REGARDING WEBER CONTRACT

WHEREAS, the City of Wells (hereinafter "City") and Michael C. Weber and Cindy M. Weber (hereinafter "Webers") entered into a contract dated October 8, 2008 entitled Property Development And Construction Easement Agreement (hereinafter the "Contract"); and

WHEREAS, the Contract provided for the installation of certain utilities on the Webers' property; and

WHEREAS, Paragraph 3 of the Contract provides: "After completion of contractor's work, City shall restore Owner's property to its "pre-construction" condition. City shall repair (or Owner shall be compensated for) all disturbed turf and landscaped areas"; and

WHEREAS, the City solicited and received bids for restoration work to be done on the premises requesting responses to work described in an Estimate A and an Estimate B; and

WHEREAS, the primary difference between the work to be done in Estimate A and Estimate B is that Estimate A calls for restoration by seeding and Estimate B calls for restoration by sodding; and

WHEREAS, in all other utility restoration projects done by the City, restoration of turf has been done by seeding of disturbed areas and not by sodding; and

WHEREAS, the City received 3 responses to its request for bids from Customized Landscape, Inc., Stone Werx Landscaping Artists, and Winchester Landscaping; and

WHEREAS, Customized Landscape, Inc. was the lowest responsive bid with a total for Estimate A (seed) of \$15,378.60; and, for Estimate B, (sod) \$26,743.22; and

WHEREAS, the bid from Customized Landscape, Inc. includes an additional item beyond that required for restoration in the sum of \$1,200.00 for 37,000 additional square feet of seed, reducing the amount quoted for restoration work to \$14,240.00, plus applicable sales tax of \$860.00, for a total of \$14,100.60; and

WHEREAS, the City determines that the contract, based on past practices of the City in doing restoration work by seeding and the lack of contract definition to require sod, to override the City's common practice, that the prices contained in Estimate A are the appropriate amounts to reflect the cost to restore the premises to its pre-construction condition; and

WHEREAS, Estimate B also contains 4 new landscape lights, 2 new 2" trees and stump removal, which were not included in Estimate A, and total \$5,095.00, plus applicable sales tax of \$22.43, which when added to the adjusted Estimate A total \$14,781.03; and

WHEREAS, under the Contract, the City has the option to compensate the Webers for the cost of restoration to pre-construction condition; and

WHEREAS, the bid of Customized Landscape, Inc. responsive to Estimate A with the adjustments discussed above constitutes the amount of compensation to which Webers are entitled under the Contract; and

WHEREAS, the City desires to fulfill its obligations under the Contract by compensating the Webers, as opposed to contracting with Customized Landscape, Inc. to undertake the work; and

WHEREAS, the tender of payment by the City should be time limited to bring this matter to a conclusion;

NOW, THEREFORE, based on the foregoing recitals, be it resolved by the City Council of the City of Wells as follows:

1. That the City shall tender a check to the Webers in the amount of \$14,781.03, conditioned upon the following:
 - a. The check must be cashed within 14 days of mailing the same to the Webers.
 - b. That the check shall contain a restrictive endorsement indicating that the Webers, by negotiating the check, agree that it is in full and final settlement of the City's obligations under the Contract.
2. That the bids received from Customized Landscape, Inc., Stone Werx Landscaping Artists, and Winchester Landscaping are hereby rejected and the City Administrator is directed to notify the Bidders of the same.

Motion by _____, Second by _____. Ayes _____ Nays _____

Adopted this _____ day of _____, 2009, by the City Council of the City of Wells.

Mayor

ATTEST:

City Clerk