

..Number

130180

..Version

SUBSTITUTE 1

..Reference

071038, 101002, 110086, 110087

..Sponsor

THE CHAIR

..Title

Substitute resolution relating to a settlement in the matter of *Hispanic Chamber of Commerce of Wisconsin, et al. v. City of Milwaukee v. D. Wilson Consulting Group LLC, et al.*

..Analysis

This resolution authorizes the City Attorney to execute an agreement settling and releasing claims brought in the litigation titled, *Hispanic Chamber of Commerce of Wisconsin, et al. v. City of Milwaukee v. D. Wilson Consulting Group LLC, et al.*

The proposed settlement will result in payment to the City of \$175,000 by third-party defendants, and a release of liability for fees and costs of claimant's attorneys.

The settlement agreement provides for continued suspension of enforcement of ss. 370-15-1-a and b and 370-21-1 and 2 which established participation goals for woman and minority businesses contracting with City departments, and requires that these provisions be repealed within a reasonable time following execution of the settlement agreement.

..Body

Whereas, The City of Milwaukee commissioned a study by Mason Tillman Associates, resulting in a report entitled "Study to Determine the Effectiveness of the City's Emerging Business Enterprise Program," dated August 2007, which found indications that emerging business enterprises in certain types of contracts may have been underutilized relative to their availability by City departments; and

Whereas, Upon recommendation of Mason Tillman Associates, funds were appropriated by resolutions beginning with the adoption of File Number 071038, to support the conduct of a formal disparity study; and

Whereas, A disparity study (study) was conducted by D. Wilson Consulting Group, LLC (Wilson), D. Wilson Consulting Group, LLC (Wilson) under contract with the City (Contract No. B0000008430, executed on or about January 16, 2009), summarized in a report authored by Wilson titled "Disparity Study for the City of Milwaukee" and dated December 20, 2010; and

Whereas, Following receipt of the study, a copy of which is appended to File Number 101002, the City enacted revisions to the City Charter and the City Code upon passage of File Numbers 110086 and 110087 which redesigned the emerging business enterprise program as minority, woman and small business enterprise programs and

established city department contracting participation goals based upon race and gender; and

Whereas, A civil action was initiated against the City by the Hispanic Chamber of Commerce of Wisconsin, Inc. (“HCCW”), joined by the American Indian Chamber of Commerce of Wisconsin, Inc. (“AICCW”), now titled *Hispanic Chamber of Commerce of Wisconsin, et al. v. City of Milwaukee v. D. Wilson Consulting Group, LLC, et al.*, Case No. 12-CV-545, currently pending in the United States District court for the Eastern District of Wisconsin; and

Whereas, The City brought claims against third parties Wilson and Wilson’s insurer Gemini Insurance Company (“Gemini”) bringing these parties into the pending litigation; and

Whereas, Claimants HCCW and AICCW in part challenged the participation goals established for woman- and minority-owned business enterprises in ss. 370-15-1-a and b and 370-21-1 and 2 of the Code; and

Whereas, The City Attorney advises that an agreement for settlement of all claims has been reached among the interested parties including Wilson, Gemini, HCCW, AICCW and the City, a draft of which is attached to this file; and

Whereas, On February 18, 2013, the City of Milwaukee suspended enforcement of the race- and gender-based participation provisions of Chapter 370, specifically, s. 370-15-1-a and b and 2-a and b; and s. 370-21-1 and 2; and

Whereas, The suspension of ss. 370-15-1-a and b, 2-a and b and 370-21-1 and 2 will remain in place until the City repeals those provisions from the City Code of Ordinances.

Whereas, The City intends to repeal s. 370-15-1-a and b, 2-a and b and s. 370-21-1 and 2 from the City Code of Ordinances upon introduction and passage of appropriate legislation within a reasonable time period following the execution of the agreement authorized by this resolution; and

Whereas, The City agrees that no new race- or gender-based contract preference goals will be enacted based upon the Wilson disparity study; and

Whereas, Third-party defendants Wilson, Gemini, or both, have agreed to ensure that payments of fees and costs shall be made to attorneys representing claimants against the City in total amounts equaling \$115,000; and

Whereas, Third-party defendants Wilson, Gemini, or both, have agreed to ensure that a payment of \$175,000 is made to the City of Milwaukee; and

Whereas, Neither the City nor any other party to the proposed settlement agreement admits any liability for claims asserted in this litigation which are entirely and completely released upon the terms of the proposed settlement agreement; now therefore, be it

Resolved, By the Common Council of the City of Milwaukee, that the City Attorney is authorized to enter into a settlement of the litigation titled *Hispanic Chamber of Commerce of Wisconsin, et al. v. City of Milwaukee v. D. Wilson Consulting Group LLC, et al.* on the terms and conditions contained in the proposed Settlement Agreement and Mutual Releases appended to this file.

..Requestor

City Attorney

..Drafter

Richard L. Withers

LRB147097-1.1

06/3/2013