



Legislation Text

File #: 091182, Version: 1

091182

SUBSTITUTE 1

THE CHAIR

Substitute resolution to approve the settlement agreement in the matter of *Terra Engineering & Construction Corp. v. City of Milwaukee*.

This resolution authorizes settlement of litigation pending in the Circuit Court for Milwaukee County, State of Wisconsin, entitled *Terra Engineering & Construction Corp. v. City of Milwaukee*, Milwaukee County Circuit Court Case Number 06-C-1133, in the amount of Twenty Thousand and no/100 Dollars (\$20,000) for all damages of any nature, including contract and consequential damages, lost profits or other economic damages, interest, attorneys fees and costs, and any other claim for damages that could be brought concerning the subject matter of the litigation.

Whereas, The City of Milwaukee filed suit against Terra Engineering & Construction Corp. and its insurance company, CNA Insurance, and against Camp, Dresser & McKee, Inc. in Milwaukee County Circuit Court, Case No. 06-C-1133 alleging breach of contract and warranty, and Terra Engineering & Construction Corp. filed a counterclaim against the City of Milwaukee alleging the City had breached the contract by refusing to pay retained percentages; and

Whereas, All parties answered denying any breach of contract or wrongful conduct; and

Whereas, The City received a settlement in the sum of \$200,000 from CNA Insurance in the above referenced suit which settlement is referenced in Common Council File No. 071691, and as part of the settlement, the City assigned its claim against Camp, Dresser & McKee to CNA; however, Terra Engineering & Construction Corp. continued its counterclaim for retained percentages against the City of Milwaukee; and

Whereas, Terra Engineering & Construction Corp. has agreed to settle its counterclaim in the amount of Twenty Thousand and no/100 Dollars (\$20,000), for all damages, interest, attorney fees, costs, or other claims for damages of any nature that could have been brought, as set for the in the attached proposed Settlement Agreement and Mutual Release; now, therefore, be it

Resolved, By the Common Council of the City of Milwaukee, that the City Attorney be and hereby is authorized to execute the attached Settlement Agreement and Mutual Release, and such further documents as may be necessary and related thereto; and, be it

Further Resolved, That upon execution of the Settlement Agreement and Mutual Release, in a form approved by the City Attorney, the proper City officers be and hereby are authorized and directed to issue a City check in the amount of \$20,000 to Terra Engineering & Construction Corp; and, be it

Further Resolved, That these funds shall be charged to the Damages and Claims Fund, Account No. 0001 1490 636506 2631 S118.

City Attorney
MRH:
January 4, 2010
1047-2006-447:153434