THE CITY OF ASHEVILLE

STAFF REPORT

Council Meeting Date: October 24, 2023

Subject: Disparity Study Results

Staff Resource(s): Nikki Reid, Community & Economic Development Director;
Frank McGowan, Community & Economic Development Interim Asst. Director

Action Requested: Receive a report of the executive summary of Miller 3 Consulting's Disparity Study for the City of Asheville and adopt a resolution with two (2) key actions:

- Accept the Disparity Study report conducted by Miller 3 Consulting.
- Extend/Continue the race- and gender-conscious measures of the Asheville Business Inclusion Policy that are currently set to expire on November 1, 2023, for an additional five (5) year period.

Background:

- The City's previous Disparity Study showed a compelling governmental interest for the implementation of additional measures to cure systematic and discriminatory inequalities in the City's public contracting.
- The Disparity Study further provided the necessary legal basis for the City of Asheville to create a new Ashville Business Inclusion Policy which prescribed narrowly tailored race and gender conscious procedures by which the City may use to more adequately address the ongoing effects of marketplace discrimination on City contracts.
- The Asheville City Council adopted the current Asheville Business Inclusion policy on October 27, 2020, with an effective date of January 1, 2021.
- In order to comply with the five (5) year federal law limitation, and sunset provision within the Asheville Business Inclusion policy of November 1, 2023, the City entered into a contract with Miller 3 Consulting to conduct a new Disparity Study and to evaluate the City's Asheville Business Inclusion Policy and program and make recommendations that would meet any applicable legal standard appropriate to the City of Asheville.
- Beginning in October 2022, Miller 3 Consulting undertook a review of the City's purchasing and contracting activities.
- Staff from all departments were engaged in providing the necessary data to the firm in order for the analysis to be completed.
- Miller 3 Consulting has completed their review and a Draft Final Report of the Disparity Study is complete.
- The results of the Disparity Study show clear evidence of ongoing inequalities within the public contracting marketplace.
- Based upon these findings, both Miller 3 and City staff recommend a continuation of the Asheville Business Inclusion Policy updated to address the most recent disparities.
- Once the new Disparity Study is accepted and the existing policy extended, staff will develop an implementation plan based on the recommendations, which will include proposed policy revisions and programmatic improvements.

Vendor Outreach Efforts: N/A

Council Goal(s):

- Improve/Expand Core Services

Committee(s):

- Equity and Engagement Committee, 10/17/2023, unanimously approved

Pro(s):

- Given the continued existence of contracting disparities, the completed Disparity Study provides the legal basis for the City to continue the operation of a race- and gender-conscious purchasing and contracting policy.
- The 2023 Disparity Study will replace the previous study completed in 2018 and guide the particulars of any future revisions to the City's Business Inclusion contracting policy.

Con(s):

- Implementation of the recommendations will require staff time to consider next steps.

Fiscal Impact:

- The Disparity Study was funded in FY 2022-23. Miller 3 Consulting was selected to complete this work for a contracted total of $321,748.
- While Council acceptance of the study and extension of the policy require no additional City resources at this time, implementing the recommendations may require significant operating investments.

Suggested Motion:

- Motion to (1) accept the 2023 Disparity Study as the legal basis of a compelling governmental interest of ongoing marketplace discrimination in public contracting, and as framework to continue the City's narrowly tailored race- and gender- conscious contracting program; and (2) extend/continue the race- and gender- conscious measures of the Asheville Business Inclusion Policy for an additional five year period based upon the data reflected in the Disparity Study and community engagement prior to its current expiration date of November 1, 2023.

Attachment(s):

- Resolution
- Disparity study report

RESOLUTION NO. 23-____

RESOLUTION TO ACCEPT THE DISPARITY STUDY REPORT CONDUCTED BY MILLER 3 CONSULTING & EXTEND/CONTINUE RACE- AND GENDER-CONSCIOUS MEASURES OF THE ASHEVILLE BUSINESS INCLUSION POLICY FOR AN ADDITIONAL FIVE (5) YEAR PERIOD

WHEREAS, the City of Asheville has committed to Equity and Inclusion within all City practices to include City purchasing and contracting; and

WHEREAS, the legal allowance for a race- and gender- conscious program as reflected in the Asheville Business Inclusion (ABI) Policy is currently set to expire on November 1, 2023; and

WHEREAS, the City of Asheville contracted with Miller 3 Consulting in 2022 to review City purchasing and contracting practices ("the Disparity Study") and to evaluate the City's Asheville Business Inclusion Policy and program, and make recommendations that would meet any applicable constitutional requirements appropriate to the City of Asheville; and

WHEREAS, Miller 3 Consulting has completed their Disparity Study and presented the results to Asheville City Council; and

WHEREAS, the results indicated that some minority-owned and women-owned business, viewed together, received lower participation in city purchasing and contracts compared to business availability within the City's relevant market area, thus displaying substantial disparities in areas of City purchasing and contracting; and

WHEREAS, the Disparity Study demonstrated a compelling governmental interest to address ongoing marketplace discrimination and disparities in public contracting, and for the continuation of narrowly tailored measures to address these racial and gender disparities, both of which are supported by both substantial statistical evidence and anecdotal evidence of discrimination; and

WHEREAS, such a compelling government interest has been accepted by Federal courts as legally sufficient for government entities to incorporate a race- and gender-conscious purchasing and contracting policy which is narrowly tailored to remedy the aforementioned disparities; and

WHEREAS, continuing the City's current policy, updated to address the most recent data, will promote equal opportunity through City purchasing and contracts which will enhance competition on City projects and promote equal opportunity and full participation by all segments of the business community;

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF ASHEVILLE THAT:

1. The City Council of the City of Asheville accepts the 2023 Disparity Study as

evidence of a compelling government interest to continue a narrowly tailored race- and gender-conscious purchasing and contracting program; and

2. Extend/continue the race- and gender-conscious measures of the Asheville Business Inclusion Policy, which will be updated to reflect the data provided by the Disparity Study and community engagement, that are currently set to expire on November 1, 2023, for an additional five year period.

Read, approved and adopted this the 24th day of October, 2023.

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City Clerk Mayor

Approved as to form:

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City Attorney