


COUNTY OF MILWAUKEE
INTER-OFFICE COMMUNICATION

DATE: April 24, 2017
TO: Theodore Lipscomb, Sr., Milwaukee County Board Chairman
FROM: Colleen Foley, Deputy Corporation Counsel 
SUBJECT: Request to Initiate Lawsuit

Per Milwaukee County General Ordinance (MCGO) § 1.11(c)(4)2(b), the Office of Corporation Counsel requests approval to initiate legal action concerning the prevailing wage rate paid for the UWM Innovation Campus Residence Inn Project.

As background, on February 15, 2011, Milwaukee County, the UWM Real Estate Foundation, Inc., and UWM Innovation Park, LLC, entered into a Development Agreement for the construction of the UWM Innovation Campus Residence Inn. The Development Agreement contained certain terms and conditions by which the property would be developed in accordance with labor standards and wages in applicable labor contracts in the construction industry. The development agreement also describes default procedure, including a formal 30 day notice and opportunity to cure defaults, as well as available remedies.

Thereafter, Tosa Hotel, LLC acquired from Innovation Park the subject real property underlying the Development Agreement via a commercial offer to purchase. Tosa Hotel, LLC initially contracted for the development with general contractor VJS Construction Services, which it replaced with Core Construction of Indiana, LLC (Core). In the summer of 2016, subcontractor Trillium Construction notified the Office of Economic Development that project workers were not being paid the proper prevailing wage rate. The Audit Division conducted an investigation and determined that Core paid workers the residential, not building or heavy construction commercial prevailing wage rate. The parties attempted to reach resolution, including the drafting of a settlement and release agreement, but could not reach consensus on final numbers due to Core's non-participation.

In late November of 2016, Core retained counsel and required additional time to evaluate documentation. In February of 2017, Economic Development finalized its pay differential numbers at \$725,450, factoring in all available information concerning which subcontractors received fringe benefits and/or were paid in full. Core continues to verify its numbers against what Milwaukee County provided and continues to assert the accuracy of the residential prevailing wage rate despite the State's Department of Workforce Development's confirmation to the contrary. Negotiations continue. The Office of Corporation Counsel nonetheless requests authorization to proceed with litigation should those negotiations again reach an impasse. An exact cost of litigation is unknown, but will likely exceed the \$10,000 threshold set by ordinance.

The Office of Corporation Counsel deems this matter critical in terms of enforcing social policies contained in development agreements entered into by Milwaukee County. It is requested that this item be marked for closed session pursuant to Wis. Stat. § 19.85(1)(g), so that committee members may receive oral or written advice and updates from counsel in this matter.