



MEMORANDUM

To: Mayor and Council

From: Anthony J. Snipes, Assistant City Manager *AJS*

Date: June 6, 2013

Subject: Update on Prevailing Wage Audit on the Marriott Marquis Hotel

The purpose of this memo is to provide you with a status update on the progress to date regarding the prevailing wage audit on the Marriott Marquis Hotel. On January 11, 2013, I sent a memo to Council regarding the Marriott Marquis Hotel (being developed by White Lodging) construction and prevailing wage status. In that memo, it was relayed that staff would be initiating a wage audit consistent with the standard practices in place for construction contracting at the City of Austin.

Staff initiated the audit in February 2013 by requesting access to the project site and six weeks of certified payroll to review. Site access was granted and the requested certified payroll was provided in a timely fashion. Review of the payroll showed that 13 workers were due a cumulative amount of approximately \$5,000 in back wages. White Lodging was advised of this finding, in accordance with standard procedures, through the Voluntary Corrective Action Plan (VCAP) process on February 20th. After extensions and reminders, White Lodging signed the VCAP "provisionally" on March 15th – stating that they wanted to "preserve all rights under the City's previous position" (meaning the alternative plan of compliance authorized by the previous Assistant City Manager) and indicated that they were "making a limited payment of wages...so that we can continue discussions."

On March 22nd, staff sent a new VCAP to White Lodging reiterating the requirements for compliance. These requirements included proof of payment of the back wages due to the City by April 5th and additional payroll records due by March 29th. Interviews with workers were to be scheduled by March 29th. On March 27th, the VCAP was again signed "provisionally" with the same message received on March 15th. Again after

multiple reminders, no additional response was received from White Lodging and the requested information was not provided.

In an effort to continue to work with White Lodging on prevailing wage compliance, White Lodging was provided with a final opportunity for compliance by certified letter on Friday of last week (May 31st). The outstanding documentation was due Tuesday, June 4th. The response received back was non-specific and was not what was requested – rather, it was a letter that continued to establish their position as contrary to the existing interpretation, again referring back to the interpretation previously authorized. They requested that the issue be placed on the first available City Council agenda for clarification and ratification of the initial position.

A copy of the May 31st letter and the response received from White Lodging is attached to this memorandum. Staff has received a public information request for the response received by the City regarding the May 31st letter to White Lodging and that information will be released to the requestor while we consider the appropriate next steps.

xc: Marc A. Ott, City Manager
 Anthony J. Snipes, Assistant City Manager
 Michael McDonald, Deputy City Manager



City of Austin

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Contract Management Department, 105 W. Riverside Drive, Suite 205, Austin, Texas 78704 Telephone 512/974-7749

May 31, 2013

Deno Yiankes dyiankes@whitelodging.com
President, CEO,
Investments & Development
White Lodging Services Corporation

The purpose of this letter is to provide you a final opportunity to comply with the City of Austin Prevailing Wage requirements associated with the Council approved Development Fee Waiver Ordinance for the Marriott Marquis Hotel that is being developed by White Lodging Services Corporation.

Currently outstanding are two Voluntary Corrective Action Plans (VCAP) that the Contract Management Department issued to White Lodging. The first VCAP was issued on February 20, 2013. The VCAP requested that White Lodging comply with the following:

- 1) Provide back wages to 13 workers who were incorrectly classified as carpenters. The correct wage classification to be used was carpenter (form building only).
- 2) As proof of performance of payment as noted in item 1, provide copies of both sides of cancelled checks and pay stubs.
- 3) In order to determine if any back wages are due to employees hired as carpenters' helpers, Contract Management Department request permission to interview four individuals as a representative sampling of all employees.

White Lodging provided an incomplete response to the VCAP on March 15, 2013. The Contract Management Department issued White Lodging a second VCAP on March 22, 2013, reiterating requirements for compliance noted on the VCAP issued on February 20, 2013. In addition, the second VCAP requested payroll documentation for all employees from project inception to date for which payroll had previously been provided. White Lodging provided a provisional response to the second VCAP issued, however the response was also incomplete.

In order for White Lodging to be in compliance of the City's Prevailing Wage program associated with the Council approved fee waiver for the Marriott Marquis Hotel, White Lodging needs to provide the following:

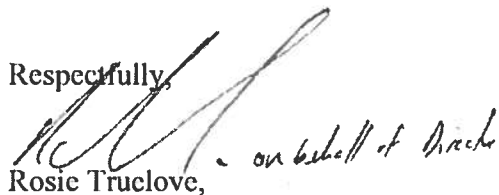
- 1) Proof of payment of back wages to 13 workers who were incorrectly classified as carpenters by providing copies of both sides of cancelled checks and pay stubs.

- 2) Provide a date, time, and location for Contract Management Department Wage Compliance Staff to interview four individuals as a representative sampling of employees hired as carpenters' helpers.
- 3) Provide payroll documentation in paper or electronic format for all employees from project inception to the date of this letter with the exception of payroll that has already been provided.

You have until noon on Tuesday, June 4, 2013 to provide the three items noted above in hard copy format to Rolando Fernandez (512) 974-7749 at 105 W. Riverside Drive, Suite 205, Austin, TX 78704. Failure to comply with this request will result in my notification to Mayor and Council of White Lodging's failure to comply with the City's Prevailing Wage requirements associated with the Council approved Development Fee Waiver Ordinance for the Marriott Marquis. As a result of this failure to comply, White Lodging would need to reimburse the City for all development fee waivers provided.

I look forward to receiving the required information to confirm that White Lodging is in compliance with the City's Prevailing Wage program, and hope for the City to continue its valued partnership with White Lodging.

Respectfully,



on behalf of Director

Rosie Truclove,
Director, Contract Management Department

Cc: Anthony Snipes, Assistant City Manager
Rolando Fernandez, Assistant Director, Contract Management Department
Richard Suttle, Attorney for White Lodging



June 4, 2013

Rosie Truelove
Director
Contract Management Department
City of Austin
105 West Riverside Drive
Suite 205
Austin, Texas 78704

Dear Ms. Truelove,

We are in receipt of your May 31, 2013 letter alleging that we are not in compliance with the "City's prevailing Wage requirements associated with the Council approved Development Fee Waiver Ordinance." Your letter contradicts the correspondence we received from the Assistant City Manager on August 16, 2011 related to the prevailing wage issue. It was pursuant to the Assistant City Manager's confirmation that we commenced construction of the hotel under the fee waiver ordinance (which also had an August 31, 2012 deadline for commencement of construction).

Since we now have two City Staff interpretations of the ordinance and we commenced construction in good faith under the initial interpretation (we would not have commenced under the new interpretation) we request this issue be placed on the first available City Council agenda for clarification and ratification of the City's initial position.

In the meantime, we will continue under the direction we received from the Assistant City Manager in 2011.

Sincerely,

Deno Yiankes
President, CEO
Investments & Development
White Lodging Services Corporation

Cc: Anthony Snipes, Assistant City Manager
Rolando Fernandez, Assistant Director, Contract Management Department
Richard Suttle, Attorney for White Lodging

Our Team : YOUR ADVANTAGE