

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss

SUPERIOR COURT
C.A. NO.

In the Matter of

Gilbane/Hunt, A Joint Venture, Gilbane
Building Company, and Hunt Construction
Group.

ASSURANCE OF DISCONTINUANCE, PURSUANT TO G. L. C. 93A, § 5

I. INTRODUCTION

1. The Commonwealth of Massachusetts, through the Office of Attorney General Maura Healey (“AGO”), Gilbane Building Company (“Gilbane”), Hunt Construction Group (“Hunt Construction”), and Gilbane/Hunt, A Joint Venture (“Gilbane/Hunt”) (hereinafter, collectively referred to as the “Parties”) voluntarily enter into this Assurance of Discontinuance (“Assurance” or “AOD”) pursuant to G.L. c. 93A, § 5.

2. Pursuant to its statutory authority, the AGO conducted an investigation (the “Investigation”) into representations made by Gilbane/Hunt to the City of Worcester and to the Worcester Redevelopment Authority (“WRA”) throughout its bid for, participation in, and construction of the Polar Park stadium in Worcester, Massachusetts (the “Polar Park Project”) regarding its commitments to, and compliance with, certain project goals and requirements related to woman and minority-owned business enterprise (“W/MBE”) participation.

3. As a result of the Investigation, the AGO alleges that Gilbane/Hunt violated G.L. c. 12, § 5B and G.L. c. 93A, § 2 by engaging in the conduct described below in Section II (the “Covered Conduct”).

4. The AGO agrees to accept this AOD on the terms and conditions contained herein, pursuant to the Massachusetts Consumer Protection Act, G.L. c. 93A, § 5, in lieu of litigation.

5. Gilbane/Hunt, Gilbane, and Hunt Construction neither admit nor deny the allegations contained in this AOD.

II. PARTIES

6. Gilbane Building Company is an entity incorporated in Rhode Island with a corporate address of 7 Jackson Walkway in Providence, Rhode Island and with a principal place of business at 10 Channel Center St. in Boston, Massachusetts.

7. Hunt Construction Group, Inc. is an entity incorporated in Indiana with a corporate address of 2450 S Tibbs Avenue in Indianapolis, Indiana.

8. Gilbane/Hunt is an entity formed by agreement between Gilbane and Hunt Construction for the purpose of bidding for and constructing the Polar Park Project. According to its Joint Venture Agreement, and unless either party elects to extend it, the entity will be dissolved upon completion of the Polar Park Project.

III. COVERED CONDUCT

Based upon the Investigation, the AGO alleges Gilbane/Hunt violated G.L. c. 12, § 5B(a)(1), (2), (8), (9) and G.L. c. 93A, § 2 as follows:

9. On February 8, 2019, the WRA issued a Request for Proposals (the "RFP") inviting construction management firms to submit bids for the role of Construction Manager At-Risk on the Polar Park Project.

10. By submitting a bid in response to the RFP, and unless an objection was specifically noted, bidders accepted the terms set forth in the RFP including the WRA's Responsible Employer & Inclusionary Participation Policy ("REIPP") and the Technical (Non-Price) Proposal Response Form ("TPRF"). The REIPP required, among other things, that "every contractor at every tier . . . commit to a goal of utilizing" certified W/MBE firms "for at least twenty percent of the total value of contracts and subcontracts" made by the bidder. The TPRF additionally stated that the bidder "shall use best efforts to meet or exceed . . . the utilization of minority firm goals that have been established for this project." The REIPP further required that bidders provide the WRA with a monthly update on the status of W/MBE participation on the Polar Park Project.

11. Gilbane/Hunt submitted its proposal in response to the RFP to the WRA on or around February 27, 2019 (the "Bid").

12. In addition to the terms that Gilbane/Hunt accepted in responding to the RFP, Gilbane/Hunt's Bid further noted that it was "committed" to meeting the project's W/MBE participation goals, that it would implement a "robust action plan" to ensure that those goals were met, and that it had already undertaken efforts to engage with a specific Worcester-based W/MBE company for the Polar Park Project. Gilbane entered into a mentor-protégé agreement with that W/MBE company on February 8, 2019.

13. Gilbane/Hunt intentionally included these statements to emphasize its commitment to diversity and inclusion, including W/MBE participation, and to differentiate itself from other bidders.

14. On or about March 5, 2019, in connection with its Bid for the Polar Park Project, a team of Gilbane/Hunt executives made a presentation (the "Bid Presentation") to the

selection committee required by G.L. c. 149, § 6(a), (the “Selection Committee”). The Bid Presentation, and the PowerPoint slides that accompanied it, showcased Gilbane/Hunt’s plans for “Community Outreach”, “Workforce Development”, “Subcontractor Procurement”, and plans to require W/MBE participation by subcontractors on the Polar Park Project. Gilbane-/Hunt’s Bid Presentation also expressly featured participation by the W/MBE company referenced in its Bid, and assigned the owner of that company the title of “third base coach” for the Polar Park Project.

15. Based on the representations in Gilbane/Hunt’s Bid and in the Bid Presentation, including those representations pertaining to W/MBE goals, the WRA awarded Gilbane/Hunt the contract for the Polar Park Project.

16. Gilbane/Hunt signed the Construction Management Agreement on July 19, 2019, and in doing so, agreed to commit to a goal of 20% combined W/MBE participation, to ensure that subcontractors at all tiers be subject to the 20% W/MBE participation goal, and agreed to submit to the WRA a “monthly progress report” detailing the status of various aspects of the project, “for the preceding month,” including W/MBE participation status.

17. Once the Polar Park Project began, however, Gilbane/Hunt did not award work to the W/MBE company featured in its Bid and Bid Presentation as the “third base coach” until the Polar Park Project was substantially complete in May 2021. Further these contracts with Gilbane/Hunt were only for the rental of dumpsters and for a negligible amount of unskilled labor.

18. In addition, despite its representations that it would utilize “best efforts” and implement a “robust action plan” to maximize W/MBE participation, Gilbane/Hunt failed to track the actual rate of W/MBE participation on the Polar Park Project until the issue was identified in April 2021.

19. Since Gilbane/Hunt did not track the actual rate of W/MBE participation on the Polar Park Project prior to April 2021, it did not provide accurate numbers to reflect the real-time status of the project's W/MBE participation. Such information was necessary for the WRA to monitor the real-time status of W/MBE participation in relation to Gilbane/Hunt's 20% goal. Instead, Gilbane/Hunt misrepresented the real-time status of W/MBE participation on the Polar Park Project and misled the WRA by reporting contracted rather than real-time figures.

20. For example, Gilbane/Hunt awarded an \$18 million contract to a subcontractor on August 29, 2019 that required the subcontractor to commit to a goal of 15% W/MBE participation. For the next 17 months, despite the subcontractor reporting to Gilbane/Hunt that it achieved less than 3% W/MBE participation, Gilbane/Hunt reported the projected 15% participation rate to the WRA on a monthly basis.

21. Moreover, at the WRA's monthly meeting on February 12, 2021, approximately three months before the ballpark's opening day, Gilbane/Hunt's representative expressly stated that the W/MBE participation rate on the Polar Park Project was 18% when, in fact, the actual rate was less than 12%.

22. In addition, in its monthly invoices submitted for payment to the City of Worcester, Gilbane/Hunt falsely certified that its performance was in compliance with all of its contract obligations. But by failing to utilize "best efforts" to achieve the Polar Park Project's W/MBE goal, failing to track the actual rate of W/MBE participation on the Polar Park Project, and failing to accurately report the paid-to-date status of W/MBE participation on the Polar Park Project to the WRA, Gilbane/Hunt was not in compliance with Construction Management Agreement that it signed with the WRA.

23. By making material misrepresentations in its Bid and its Bid Presentation for the Polar Park Project, by making material misrepresentations to the WRA regarding the project-to-date status of W/MBE participation, and by falsely certifying its compliance with its contract to the City of Worcester in its invoices for payment, Gilbane/Hunt violated Massachusetts law including G.L. c. 12, § 5B and G.L. c. 93A, § 2.

24. Additionally, by failing to disclose the existence of the AGO's Investigation as required in filings to the Massachusetts Department of Capital Asset Management and Maintenance ("DCAMM"), including Statements of Qualifications filed on September 28, 2021 and July 14, 2022, and its application for Contractor Certification filed on June 7, 2022, Gilbane violated Massachusetts law including G.L. c. 12, § 5B.

IV. PAYMENT TO THE AGO

25. Gilbane/Hunt agrees to pay to the AGO a total of \$1,900,000 (the "Settlement Amount") to be paid, in full, by January 3, 2023.

26. Gilbane/Hunt shall make payment of the Settlement Amount by wire transfer in accordance with wiring instructions provided by the AGO.

V. COMPLIANCE MONITORING

27. Gilbane and Hunt Construction shall each, on or before February 1, 2023, enter into a contract with an independent monitor approved by the AGO (the "Monitor") to establish, at the expense of and for each of the respective companies, a compliance program including annual independent site and record audits (collectively, the "Independent Compliance Program"). The Compliance Monitor will identify specific parameters for implementation of the Independent Compliance Program, but at a minimum will include:

- i. The Monitor shall establish and implement the Independent Compliance Program to ensure compliance with all contract requirements and state laws pertaining to W/MBE and disadvantaged business participation on construction projects for public agencies, as defined in G.L. c. 149, § 44A(1), in which Gilbane or Hunt Construction are participating in the Commonwealth of Massachusetts, regardless of whether participation is in the capacity of prime contractor or subcontractor. This shall include but not be limited to quarterly verifications of W/MBE reports submitted in connection with such projects, in which Gilbane or Hunt Construction participates on or after February 1, 2023 and such additional time until the Compliance Monitor finalizes the specific parameters for implementation of the Independent Compliance Program. The Independent Compliance Program will also ensure that Gilbane and Hunt Construction accurately track and report W/MBE participation rates throughout the Compliance Period as defined below.
- ii. The Compliance Programs shall continue for a period of three (3) years from the date of its commencement (the “Compliance Period”) until February 1, 2026.
- iii. At the end of the first year of the Compliance Period, the Monitor shall conduct an on-site and record audit of a representative

sample, chosen by the Monitor, of all W/MBE certifications and W/MBE reports submitted to state or local entities in connection with public construction projects. The Monitor shall complete such annual audits at the end of each year of the Compliance Period.

- iv. For each on-site and record audit required above, the Monitor will prepare a comprehensive written report and provide the same to the False Claims Division of the AGO with a copy to the company being monitored.
- v. During the Compliance Period, the Monitor and the AGO shall have full discretion to require Gilbane and Hunt Construction to produce any additional documentation pertaining to W/MBE commitments, participation, and reporting related to the Independent Compliance Program and to provide any employees or subcontractors for interviews as requested. Gilbane and Hunt Construction agree to fully comply with any such requests for W/MBE information and documentation.
- vi. As to any deficiencies reported to the AGO by the Monitor, Gilbane and Hunt Construction will have thirty (30) days to submit a response which details either why the Monitor's report is inaccurate, or how Gilbane and/or Hunt Construction are planning to address the issues raised by the report. If the report identifies any need for disclosure or correction of past submissions or

statements to a state or local entity, Gilbane and/or Hunt Construction shall take prompt steps to correct any such submissions or statements.

- vii. With respect to Gilbane, the Monitor will take additional steps to verify and ensure Gilbane's accurate reporting to DCAMM of the information required by G.L. c. 149A, § 5d(3), or similar information required by DCAMM, in all filings including, but not limited to, Statements of Qualifications and annual certifications.

28. Upon reasonable request from the AGO, Gilbane and Hunt Construction will provide non-privileged documents and/or affidavits to demonstrate their compliance with the terms of paragraph 27 of this AOD.

VI. RELEASE

29. In consideration of the foregoing and except to enforce the obligations set forth in Section V herein, and conditioned upon full payment of the Settlement Amount, the Commonwealth forever discharges and releases Gilbane/Hunt, Gilbane, and Hunt Construction and their respective officers, directors, employees, agents, parents, subsidiaries, affiliates, and related entities from civil liability to the Commonwealth pursuant to G.L. c. 12, § 5B and G.L. c. 93A, § 2 arising from the Covered Conduct.

VII. NOTICES AND CHANGE OF ADDRESS

30. Any notices or communications transmitted between Gilbane/Hunt, Gilbane, or Hunt Construction and the AGO pursuant to this AOD shall be provided in writing by first class mail and email to the AGO or Gilbane/Hunt or their successors, as follows:

AGO:

Sean Hildenbrandt, AAG
False Claims Division
Office of the Attorney General
One Ashburton Place
Boston, MA 02108
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Gilbane/Hunt:

Gilbane/Hunt
c/o Brian Dunphy
Mintz, Levin, Cohn, Ferris, Glovsky, and Popeo, P.C.
1 Financial Center
Boston, MA 02111
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Gilbane:

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1 Financial Center
Boston, MA 02111
BDunphy@mintz.com

Hunt Construction:

Gilbane/Hunt
c/o Brian Dunphy
Mintz, Levin, Cohn, Ferris, Glovsky, and Popeo, P.C.
1 Financial Center
Boston, MA 02111
BDunphy@mintz.com

VIII. MISCELLANEOUS

31. By signing below, the Parties agree to comply with all the terms of this

AOD.

32. This AOD may be enforced only by the Parties hereto.

33. This AOD does not constitute an approval by the AGO of any of Gilbane/Hunt, Gilbane, or Hunt Construction's business acts and practices, and the Parties will make no representations to the contrary.

34. This AOD contains the complete agreement between the Parties. No promises, representations, or warranties other than those set forth in this AOD have been made by any of the Parties. This AOD supersedes all prior communications, discussions, or assurances, if any, of the Parties, whether orally or in writing.

35. This AOD may not be changed, altered, or modified, except by order of the Court or by written agreement of the Parties.

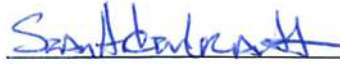
36. This AOD may be executed in counterparts, each of which constitutes an original and all of which constitute one and the same AOD.

37. Gilbane/Hunt, Gilbane, and Hunt Construction acknowledge that this AOD was discussed and negotiated by their attorneys, and that the Parties were provided an opportunity to discuss with legal counsel.

38. The undersigned signatories acknowledge that execution of this AOD is voluntary and authorized.

39. This AOD and its provisions will be effective on the date this AOD is filed with the Superior Court for Suffolk County.

COMMONWEALTH OF MASSACHUSETTS
MAURA HEALEY, Attorney General



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December 21, 2022

Gilbane/Hunt, A Joint Venture



By its attorney, Brian Dunphy

December 21, 2022

Gilbane Building Company



By its attorney, Brian Dunphy

December 21, 2022

Hunt Construction Group



By its attorney, Brian Dunphy

December 21, 2022