

SETTLEMENT AND RELEASE AGREEMENT

This Settlement and Release Agreement (hereinafter "Agreement") is entered into on December 30, 2016, by and between the following five parties: (1) the Sweetwater Union High School District, a public entity (hereinafter "District"); (2) Gilbane Building Company, a Rhode Island Corporation (hereinafter "Gilbane"); (3) the Seville Group, Inc., a California Corporation, dba, SGI Construction Management (hereinafter "SGI"); (4) Gilbane/SGI, a joint venture (hereinafter "Gilbane/SGI JV"); and (5) San Diegans For Open Government, a California Corporation (hereinafter "SanDOG"), each referred to herein as a "Party" or all collectively referred to herein as the "Parties."

RECITALS

- A. WHEREAS, on or about May 14, 2007, the District entered into an agreement with the Gilbane/SGI JV to perform certain Interim Program Management Services for Proposition O Projects.
- B. WHEREAS, on or about May 14, 2007, the District entered into a Program Management Agreement with the Gilbane/SGI JV to perform Program Management Services to complete a certain Proposition BB Project for the District.
- C. WHEREAS, on or about May 17, 2007, the District entered into a Program Management Agreement with the Gilbane/SGI JV to perform program management services with respect to certain Proposition O projects approved by the voters in November 2006.
- D. WHEREAS, on or about June 8, 2007, Gilbane and SGI entered into a "joint venture agreement" to perform Program Management Services for the District.
- E. WHEREAS, on or about December 10, 2007, the District entered into a First Amendment To The Contract For The Interim Program Management Proposition "O" with the Gilbane/SGI JV which extended the term of the Interim Program Management Contract.
- F. WHEREAS, on or about May 29, 2008, the District entered into an Amendment/Supplement To Program Management Agreement with the Gilbane/SGI JV to include Construction Services.
- G. WHEREAS, on or about April 20, 2010, the District entered into Amendment No. 2 to Program Management Agreement between the District and Gilbane/SGI JV.
- H. WHEREAS, on or about June 1, 2010, the District entered into a Program and Project Management Agreement with SGI. (Recitals A-H may hereinafter be collectively referred to the as the "Contracts")

- I. WHEREAS, on or about January 24, 2012, SanDOG filed a verified complaint for a declaratory and injunctive relief and a petition for writ of mandate in San Diego Superior Court, Case No. 37-2012-0091137-CU-MC-CTL against the District as defendants and respondent and against HAR Construction, Inc. (“HAR”), Gilbane, SGI and Seville Construction Services, Inc. (hereinafter “SCS”) (the “SanDOG Action”). Each of the Defendants and Respondents filed answers denying the allegations set forth in the SanDOG Action.
- J. WHEREAS, on or about July 25, 2014, the District filed a verified complaint for violations of California Government Code § 1090, et seq. against Gilbane, SGI and the Gilbane/SGI JV in San Diego Superior Court, Case No. 37-2014-0025070-CU-MC-CTL (the “Sweetwater Action”). Each of the Defendants filed answers denying the allegations set forth in the Sweetwater Action.
- K. WHEREAS, on or about December 16, 2014, the Honorable Eddie C. Sturgeon ordered the consolidation of the SanDOG and Sweetwater Actions, with the Sweetwater action being the as the lead case.
- L. WHEREAS, on or about June 27, 2016, the District entered into a settlement agreement in a separate but partially related case with HAR in San Diego Superior Court, Case No. 37-2011-0078945-CU-BC-SC (hereinafter the “Har Action”) in which the District filed a cross-complaint against Gilbane/SGI JV and other parties. Gilbane/SGI JV filed an answer denying the allegations in the Har Action.
- M. WHEREAS, on or about February 24, 2016, related to the SanDOG and Sweetwater Actions, the Court of Appeal Fourth Appellate District issued its opinion in Sweetwater High School District v. Gilbane (2015) 245 Cal.App.4th 19 and that appeal is currently under review by the California Supreme Court in case no. S233526 (hereinafter the “Appeal Action”).
- N. WHEREAS, the Parties, each of them, wish to settle all issues between them that are or could have been raised between them in the Sweetwater Action, the SanDOG Action and Appeal Action, as well as any claims arising from any transaction or occurrence between them related to the above-referenced Contracts and/or liabilities pursuant to the terms of this Agreement.

AGREEMENT

NOW, THEREFORE, in consideration of the foregoing recitals, the mutual understandings contained in this Agreement, and other good, valuable, and sufficient consideration, the Parties hereto agree as follows:

1. Incorporation of Recitals. The Recitals are incorporated into this Agreement as though fully set forth herein.

2. Settlement Terms.

2.1 Gilbane, by and through its insurance carrier Liberty Insurance Underwriters Inc. ("Liberty"), will pay to the District the sum of SEVEN MILLION FIVE HUNDRED THOUSAND DOLLARS AND NO CENTS (\$7,500,000.00) (the "Settlement Sum"). The Settlement Sum will be paid within thirty (30) business days of the final execution of this Agreement. Gilbane and Liberty each reserve their rights with respect to each other and each other alone as to any insurance coverage issues regarding payment of the Settlement Sum.

2.2 All Parties acknowledge that each party waives all claims as to any and all past and future attorneys' fees, expenses and costs, including expert and consultant fees, that have been and/or will be incurred by the Parties in connection with the Sweetwater Action, SanDOG Action and Appeal Action; provided, however, that with respect to any fees, expenses and costs, including expert and consultant fees, incurred by SanDOG in the filing of and their participation in the SanDOG Action and joint participation in the Sweetwater Action and Appeal Action, the District shall be solely responsible to pay the SanDOG fees, expenses and costs out of the Settlement Sum.

2.3 The Parties understand and agree that with the exception of the Settlement Sum and SanDOG fees, expenses and costs as stated above in sections 2.1 and 2.2, the Parties are not entitled to any other payments in any form or for any reason, from each other related to the Sweetwater Action, SanDOG Action, Appeal Action, Contracts and matters released in this Agreement.

3. Dismissals of the Sweetwater Action and SanDOG Action.

3.1. Upon receipt of the Settlement Sum and no more than ten (10) days thereafter, the District will dismiss with prejudice the Sweetwater Action, SanDOG will dismiss with prejudice the SanDOG Action, and the Parties will file a stipulation to dismiss with prejudice the Appeal Action. In conjunction with the payment of the Settlement Sum and the dismissals with prejudice, Defendants and Respondents in the Sweetwater Action and SanDOG Action will file dismissals with prejudice of any pending cross-complaints in the Sweetwater Action or SanDOG Action.

4. Releases.

4.1 Releases of Claims by the District and SanDOG.

The District and SanDOG hereby and forever release and discharge all actions, lawsuits, rights, claims and causes of action of every kind whatsoever (including without limitation actions, lawsuits, rights, claims and causes of action for fraud, breach of contract, breach of fiduciary duty, negligence, breach of any state and federal laws, violation of Contractors State License laws, violation of statutes including without limit California Government Code section 1090, et. seq., and rights under section 1092, common law conflict of interest claims, surety bond claims, compensatory and special damages, interest, penalties, forfeitures, punitive damages, specific performance, injunctive or declaratory relief, costs, defense, indemnity, attorney's fees and/or expert fees), whether known or unknown, that the District, SanDOG, and/or each of their respective agents, board members, representatives, employees, servants managers,

superintendents, officers, predecessors, successors, insurance carriers, reinsurers, sureties and/or assigns, has asserted, asserts or could assert against Gilbane, SGI, Gilbane/SGI JV, SCS, and/or each of their respective agents, owners, shareholders, board members, officers, employees, servants, managers, representatives, affiliates, parent companies, subsidiaries, insurance carriers, (including, but not limited to, Liberty), reinsurers, sureties, predecessors, successors and/or assigns based upon or arising out of the Sweetwater Action, the SanDOG Action, the Appeal Action, the Contracts, and/or any of the acts and omissions associated with or related to any of the matters set forth in the Recitals. In the settlement of the HAR case, HAR, SGI, Gilbane and the Gilbane/SGI Joint Venture have contemporaneously executed a release of any and all claims between them and anyone related to them using the same language as set forth above.

4.2 Release of Claims by Gilbane, SGI and Gilbane/SGI JV

Gilbane, SGI and Gilbane/SGI JV hereby and forever release and discharge all actions, lawsuits, rights, claims and causes of action of every kind whatsoever (including without limitation actions, lawsuits, rights, claims and causes of action for fraud, breach of contract, breach of fiduciary duty, negligence, breach of any state and federal laws, compensatory and special damages, interest, penalties, forfeitures, punitive damages, specific performance, injunctive or declaratory relief, costs, defense, indemnity, attorney's fees and/or expert fees), whether known or unknown, that Gilbane, SGI, Gilbane/SGI JV, and/or each of their respective agents, board members, representatives, employees, officers, shareholders, managers, servants, predecessors, successors, insurance carriers, reinsurers, sureties and/or assigns, has asserted, asserts or could assert against the District, SanDOG, and/or each of their respective agents, board members, representatives, insurance carriers, sureties, employees, servants, managers, predecessors, successors, and/or assigns based upon or arising out of the Sweetwater Action, the SanDOG Action, the Appeal Action, the Contracts, and any of the acts and omissions associated with or related to any of the matters set forth in the Recitals.

4.3 Mutual Releases by Gilbane, SGI and the Gilbane/SGI JV

Except as reserved in this paragraph below and section 4.4 below, Gilbane, SGI, Gilbane/SGI JV, and each of their respective officers, board members, shareholders, representatives, managers, agents, servants, employees, parent companies, affiliated companies, subsidiary companies, predecessors, successors, insurance carriers, reinsurers, sureties, and assigns hereby mutually release and forever discharge each other and each of their insurance carriers, reinsurers, sureties or related or successor entities, from any and all claims, actions, causes of action, contract obligations, contribution claims, rights of express and implied indemnity, of whatever kind or nature, known or unknown, suspected or unsuspected based upon or arising from any consultation, design, work, construction, supervision, political activity, oversight or management for the Sweetwater Union High School District from January 1, 2007 to the present in addition to any claims, rights of express and implied indemnity, contract obligations, actions or causes of action whether or not made in the Sweetwater Action, SanDOG Action or Appeal Action.

The Parties expressly acknowledge and agree that the releases contained herein shall extend to any and all claims, whether judicial, administrative, or otherwise, in any and all jurisdictions. However, the Parties expressly acknowledge and agree that nothing in this Agreement shall

release, waive or otherwise impact in any way Liberty's right to claim (in litigation or otherwise) that: (i) Liberty's payment of the \$7.5 million pursuant to Paragraph 2.1 of this Agreement is not covered under the Liberty policy issued to Gilbane; (ii) Liberty expressly reserves its rights to seek reimbursement of its payment of \$7.5 million from Gilbane; and (iii) that both Liberty and Gilbane expressly reserve any and all of their rights, remedies and defenses at law, in equity and under the policy in any subsequent litigation (or otherwise) related to Liberty's payment of the \$7.5 million (hereinafter, collectively the "Coverage Rights"). Completely separate and apart from the Coverage Rights, the Parties represent that they have shared a draft of this settlement agreement with their insurance carriers and conferred with their insurance carriers concerning the terms of this settlement, and the Parties and their carriers waive any contractual or legal rights to seek subrogation against the Parties and there are no rights of subrogation reserved.

4.4 Civil Code Section 1542 Waiver. The Parties acknowledge they are releasing all known and unknown claims related to the Sweetwater Action, the SanDOG Action, the Appeal Action, the Contracts, and any of the acts and omissions associated with or related to any of the matters set forth in the Recitals, and any other claims, defenses, or causes of action related to the Sweetwater Action, SanDOG Action, the Appeal Action, the Contracts, and any of the acts and omissions associated with or related to any of the matters set forth in the Recitals, and expressly waive all rights under California Civil Code section 1542 and under any other law providing that a general release does not extend to unknown or unsuspected claims which, if known, would have materially affected the settlement. California Civil Code section 1542 provides:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS SETTLEMENT WITH THE DEBTOR.

The Parties acknowledge that, except for matters expressly represented or recited herein, the facts and law in relation to this matter and the claims released by the terms of this Agreement may turn out to be different from the facts or law as now known to each Party or its counsel. Each Party therefore expressly assumes the risk of the existence of different or presently unknown facts or law and agrees that this Agreement shall be in all respects effective and binding as to such Party despite the possibility of new or different facts or law.

4.5 It is expressly understood and agreed that the possibility of unknown claims exists and has been explicitly taken into account in determining the consideration to be given for this Agreement and that a portion of the consideration, having been bargained for with full knowledge of the possibility of such unknown claims, was given in exchange for the release and discharge of the matters, claims, and/or rights covered by this Agreement.

4.6 This release shall not operate to release any claims the Parties may later have for the enforcement of the obligations created by this Agreement.

5. Representation and Warranty.

5.1 The Parties hereby each represent, covenant and warrant that they are authorized (individually or by their respective principals) to enter into and execute this Agreement and that they have not previously assigned or transferred any interest in any claim released or discharged in this Agreement, in whole or in part, or taken any other steps which would adversely affect the rights which are the subject of this Agreement. In the event that any of the above representations and/or warranties are breached or any of the representations and/or warranties contained in this subparagraph prove false, the breaching/misrepresenting Party hereby agrees to defend, indemnify and hold the other Party(ies) harmless from all damages, loss, liability, costs, and attorneys' fees resulting from said breach/misrepresentation.

6. Motion for Good Faith Settlement and Public Records Act

6.1 The Parties acknowledge that to the extent that any Party named in the District's cross-complaint in the Har Action does not reach a settlement agreement with the District, a motion and order for good faith settlement (if necessary), with notification to the remaining Parties, will be filed unless all Parties agree in the related case not to oppose such motion. Pending a determination as to whether a good faith settlement motion may be required, the District agrees to defend and indemnify Gilbane, SGI, and Gilbane/SGI JV from any cross-complaint of any non-settling Party in the Har Action subject to said cross-complaint being precluded or subject to dismissal under the good faith settlement motion.

6.2 The Parties acknowledge that the District is a public agency required by statutes such as the Public Records Act to disclose the terms and conditions of this Settlement Agreement. To the extent that the District is required to do so and respond to legitimate inquiries by the public, this Settlement Agreement may not be confidential. Otherwise, in any absence of a court order or as otherwise required, the Parties agree not to reveal to anyone other than their attorneys, owners, officers, board members, accountants, insurance carriers, reinsurers, experts, and/or tax preparers, the terms of this Agreement and all persons advised of the settlement will also be advised of the duty to keep the settlement and its terms confidential.

7. California Supreme Court Review

7.1 The District, Gilbane and Gilbane/SGI JV agree that the California Supreme Court shall be advised that the Sweetwater Action has been settled and request the Court not decide the matter and dismiss the appeal. The District, Gilbane and Gilbane/SGI JV do hereby acknowledge that under the Courts' rules the California Supreme Court may nonetheless still hear oral arguments and decide the matter currently under review in case no. S233526. The District, Gilbane and all Parties to this Agreement nonetheless acknowledge and agree that all terms and conditions of this Agreement are final and binding regardless of how the California Supreme Court may decide the matter under review in case no. S233526.

8. No Admission of Liability.

8.1 The Parties understand and agree that this Agreement is not to be construed as an admission of liability whatsoever on the part of any of them, and that the release is made in good

faith solely for the purpose of avoiding the burden and expense which would be imposed upon the Parties through an appeal.

9. SanDOG Attorneys' Fees.

9.1 District shall reimburse SanDOG for the attorney fees and other litigation costs it incurred in connection with the SanDOG Action, the Sweetwater Action, and the Appeal Action in the amount of Four Hundred and Twenty-Five Thousand Dollars (\$425,000.00) no later than 30 days after District receives the Settlement Sum. Reimbursement shall be made in the form of a check, warrant, or electronic transfer (at District's option) payable to "Briggs Law Corporation Trust Account" and delivered to Briggs Law Corporation ("BLC"). SanDOG and BLC shall have a lien against the Settlement Sum until the reimbursement payment has cleared the bank, at which time the lien shall automatically expire. Except as expressly authorized by this paragraph, SanDOG and BLC shall have no claim for attorney fees or costs against any of the other Parties, and SanDOG shall bear its own attorney fees and costs.

10. Consultation with Legal Counsel.

10.1 The Parties represent that they have consulted legal counsel prior to the execution of this Agreement and have executed this Agreement with full knowledge of its meaning and effect.

11. Jurisdiction and Authority of the Court.

11.1 The Parties to this Agreement expressly stipulate and agree that the Honorable Eddie C. Sturgeon, or any other assigned judge in the San Diego County Superior Court, is expressly authorized, pursuant to this Agreement, to enter any orders necessary to enforce the terms of this Agreement. In accordance with Evidence Code section 1123, the Parties specifically agree that: (1) this Agreement is admissible as evidence and subject to disclosure in any enforcement proceedings; and (2) the Parties intend for this Agreement to be binding and enforceable pursuant to the terms of Code of Civil Procedure section 664.6.

12. Execution of Terms of Agreement.

12.1 The Parties agree to perform any acts and execute any documents consistent with the terms and conditions of this Agreement which may be reasonably necessary or appropriate to effectuate the terms, conditions, and provisions hereof.

13. Attorneys' Fees Incurred in Resolving the Dispute.

13.1 Except for the enforcement of this Agreement, the Parties, each of them, agree except as set forth in sections 2.2 and 4.4, that they will each bear their own attorneys' fees, costs, and expenses, including expert and consultation fees, incurred in connection with the Sweetwater Action, SanDOG Action and Appeal Action and this Agreement, and the Parties will not seek attorneys' fees, costs, or expenses, including expert and consultant fees, incurred in connection with the Sweetwater Action, SanDOG Action and Appeal Action and this Agreement. Each party represents that it has paid all of their expert, consultant and attorney fees.

14. Drafting of Agreement.

14.1 This Agreement shall not be construed in favor of, or against, any Party by reason of the extent to which any Party or its counsel participated in the drafting of this Agreement.

15. Agreement Binding on Successors.

15.1 This Agreement, together with the releases, shall be binding upon and inure to the benefit of the Parties hereto and their respective heirs, executors, administrators, representatives, affiliated entities, parents, subsidiaries, agents, successors-in-interest, predecessors and assigns.

16. Entire Agreement.

16.1 This Agreement embodies the entire understanding and agreement between the Parties pertaining to the matters described herein and supersedes and cancels all prior oral or written agreements between the Parties. Each Party acknowledges that no Party, agent, or representative of the other Party has made any promise, representation, or warranty, express or implied, not expressly contained in this Agreement, that induced the Party to sign this document. No modification or amendment of this Agreement shall be valid unless agreed to in writing by the Parties.

17. Severability of Provisions.

17.1 Each provision of this Agreement, whether or not contained in separate paragraphs, shall be considered severable. If for any reason any such provisions or parts of such provisions thereof are determined to be invalid, unenforceable, or contrary to any existing or future applicable law or judicial ruling, such invalidity shall not impair the operation of or affect those portions of this Agreement that are valid, but in such event, this Agreement shall be construed and enforced in all respects as if such invalid or unenforceable provision or part of such provisions has been omitted.

18. Counterparts.

18.1 This Agreement may be executed in separate counterparts, the whole of which shall constitute a binding agreement. Facsimile signatures and email/PDF signatures, when received, shall have the same force and effect as original signatures.

19. Governing Law.

19.1 Should any Party to this Agreement bring legal action against the other to enforce this Agreement, the case shall be handled in Superior Court of California for the County of San Diego and pursuant to California law, and the party prevailing in such action shall be entitled to reasonable attorneys' fees which shall be fixed by the judge hearing the case, and such fee shall be included in the judgment, together with all costs.

WHEREFORE, the undersigned, having read the foregoing Settlement Agreement, and fully understanding it, agree to its terms, hereby execute this Agreement and make it effective on the date of the last signature hereto.

Dated: _____, 2016

Sweetwater Union High School District

By: _____

Print Name: _____

Title: _____

Dated: _____, 2016

San Diegans For Open Government

By: _____

Print Name: _____

Title: _____

Dated: _____, 2016

Gilbane Building Company

By: _____

Print Name: _____

Title: _____

Dated: January 4, 2016⁷

The Seville Group Inc.

By: Connie Flores

Print Name: CONNIE FLORES

Title: CEO

Dated: _____, 2016

Gilbane/SGI

By: _____

Print Name: _____

Title: _____