



NEW JERSEY SCHOOLS DEVELOPMENT AUTHORITY

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Via E-Mail, Facsimile, First Class Mail,
and Federal Express

February 21, 2008

Thomas Gilbane
President
Gilbane Building Company
3150 Brunswick Pike, Suite 300
Lawrenceville, NJ 08648

Re: Region 7 Contract for Project Management Services
Contract No. PM 0021-P01
TERMINATION FOR CAUSE
NOTICE OF TERMINATION

Dear Mr. Gilbane:

Please be advised that this letter shall constitute notice by New Jersey Schools Development Authority ("NJSDA") to Gilbane Building Company ("Gilbane") that NJSDA hereby deems that Gilbane has materially breached the above-referenced contract (the "Contract"), and is therefore terminating the Contract for cause. In accordance with Paragraph 6.2 of the Contract, this letter is a formal Notice of Termination ("Notice"). Pursuant to this provision, Gilbane is hereby directed to commence correction of the material breaches of its contractual obligations within seven (7) calendar days of the date of this letter. Failure to timely cure the deficiencies listed herein shall result in termination of the Contract in seven days from the date of this Notice.

Paragraph 6.2 of the Contract outlines categories of events, each of which constitute a material breach for which NJSDA may terminate this Contract for cause. Paragraph 6.2 says, in pertinent part:

Without prejudice to any other remedy, [NJSDA] may terminate this Agreement if [Gilbane]: (i) disregards laws, ordinances, rules, regulations or orders of any public body having jurisdiction; . . . or (x) violates or breaches the Contractual Documents or any provision or material term thereof.

With respect to the Neptune Midtown Community School which is currently under reconstruction due to design and construction errors and project management failures, NJSDA has determined that Gilbane has committed the following breaches of the Contract, which breaches Gilbane is required to cure within seven days:

1. In violation of Contract paragraph 6.2.1(x), Gilbane failed to perform an adequate review of the design of the Project as to its “clarity, coordination, constructability, consistency [and] completeness.” See, Contract, Scope of Services, ¶¶ E2.2, E3.1, E4.1, E4.6. In particular, Gilbane’s failure to provide a competent constructability review of the design of the cavity wall and roof as required by the Contract, has resulted in (i) key elements of the final cavity wall design as shown on the drawings were unbuildable; (ii) incorporation into the final design drawings inadequate or incomplete details for flashings, end dams, and other customary water management elements; (iii) incorporation into the final design drawings virtually no flashings or water management elements in the pilasters or the roof parapet wall; and (iv) incorporation into the roof design unbuildable roofing elements, and elements appropriate for roof renovation rather than new roof construction.
2. In violation of Contract paragraph 6.2.1(i), Gilbane failed to ensure that the design of the cavity wall and roof were detailed in accordance with the requirements of the New Jersey Uniform Construction Code.
3. In violation of Contract Special Conditions paragraph H9.1.3, requiring, among other things, that Gilbane “inspect all work-in-progress for compliance with the Construction Contract Documents. . .”, Gilbane failed to perform adequate quality control inspections of the work-in-progress by failing to identify deficiencies in the selection and installation of the exterior sheathing and cavity wall componentry.
4. In violation of Contract Special Conditions paragraph H9.2, requiring Gilbane to “monitor the Construction Work . . . [and to] endeavor to guard [the project] against defects and deficiencies in the Construction Work. . .” Gilbane failed to monitor the performance of, and guard against defects in, the contractor’s installation of the exterior sheathing, exterior masonry, waterproofing, and roofing.
5. In violation of Contract Special Conditions paragraph H9.2, Gilbane failed to monitor the performance of the contractor’s protection of the work while in progress thus resulting in the exterior sheathing being exposed to the elements for durations far in excess of the sheathing manufacturers’ recommendations, permitting the sheathing to become wet and develop mold growth.
6. In violation of Contract Special Conditions paragraph H 9.1.3 and H9.2, Gilbane failed to timely determine that elements of the as-built structure had become infested with mold and failed to make timely recommendations to NJSDA for correction of the mold infiltration.
7. In violation of Contract Special Conditions paragraphs C.5 and H.6, requiring Gilbane to “advise [NJSDA] about and facilitate resolution of any issues that will have an impact on the cost, schedule and successful delivery of [the project] . . .” and to submit written, monthly reports concerning “. . . current and potential problems deemed of sufficient importance to require [NJSDA] monitoring or action . . .” Gilbane failed to appropriately advise NJSDA and facilitate resolution of the mold issue, recommend an appropriate course of action to

resolve the mold problem, and to include information concerning the mold problem in its monthly reports.

8. In violation of Contract paragraph 5.12, Gilbane has failed to indemnify, protect and/or defend NJSDA from liability for the costs associated with the reconstruction of the Project resulting, in significant part, from the negligent acts of Gilbane in failing to properly carry out its duties as project manager on behalf of NJSDA.

The performance failures listed above constitute separate events of default by Gilbane under the Contract. While this letter sets forth in detail Gilbane's multiple breaches of the Contract with respect to the Neptune Midtown Community School project, please note that this Notice of Termination applies to the entirety of the Contract, including all of the projects currently being managed by Gilbane under this particular Contract, including, but not limited to, projects known as:

<u>District</u>	<u>School</u>
Asbury Park	Middle School Thurgood Marshal Elementary School Bradley Elementary School
Neptune	Middle School Gables Elementary School Green Grove Elementary School Shark River Hills Elementary School Summerfield Elementary School
Barneгат	Collins Elementary School Dunfee Elementary School Herbelt Elementary School New Elementary School Brackman Middle School High School Addition
Vineland	Veterans Memorial Intermediate School Veterans Elementary School

When the mold infiltration at Neptune Midtown Community School first became apparent to NJSDA, we spoke with representatives of Gilbane, the contractor and project architect about mediating the responsibility for and cost of the correction of the mold infiltration. To that end, the parties agreed to mediate the dispute in the spring of 2007. Since that time, in addition to its contractual obligations to create and maintain records related to the Project, Gilbane has had an obligation to preserve evidence related to the Project, including paper and electronic records. By this letter, we again remind you of your obligation in this regard. More specifically, this also extends to all forms of electronic data, including documents within your computer systems, on any servers, in any databases and in your electronic mail system.

In accordance with NJSDA's obligations under the Contract, NJSDA will continue to evaluate Gilbane's current Amendment Request and any open invoices, however, be advised that NJSDA reserves all of its financial rights under paragraph 6.2.3. Please note that nothing in this letter shall operate to waive any right NJSDA may have under the Contract, or to release any claim NJSDA may have against Gilbane.

Please direct any communications regarding this Notice or Gilbane's intent to cure, through your legal counsel to John E. Clark, Esq. at the SDA office in Trenton.

Upon the effective date of Termination, February 29, 2008, please have representatives available to turn over all project files and associated project materials in Gilbane's possession to NJSDA. Regina Bleck, NJSDA Vice President, Project Management, will contact George Cavallo and Sam Tuzza to make arrangements for the turn over.

Very truly yours,

A handwritten signature in black ink, appearing to read "Scott A. Weiner". The signature is written in a cursive style with a large, sweeping initial "S".

Scott A. Weiner
Chief Executive Officer

SAW/la

cc: Dennis Cornick, Gilbane (via E-mail and Fedex)
George Cavallo, Gilbane (Via E-mail and Fedex)
Sam Tuzza, Gilbane (via E-mail and Fedex)
Barry Zubrow
Regina M. Bleck, AIA
Gerald T. Murphy
John E. Clark, Esq.
Janesa Urbano, Esq.