

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, SS.

SUPERIOR COURT
BUSINESS LITIGATION SESSION
C.A. NO.

| | | |
|------------------------------------|---|--------------------|
| <hr/> | | |
| LMH-LANE CABOT YARD JOINT VENTURE, |) | |
| |) | |
| Plaintiff, |) | E-FILED 10/15/2021 |
| |) | |
| v. |) | PO |
| |) | |
| MASSACHUSETTS BAY TRANSPORTATION |) | |
| AUTHORITY, |) | |
| Defendant. |) | |
| |) | |
| <hr/> |) | |

COMPLAINT and JURY DEMAND

COMES NOW Plaintiff, LMH-Lane Cabot Yard Joint Venture (“LMH-Lane” or “Plaintiff”), by and through its undersigned counsel, and brings this Complaint against Defendant, Massachusetts Bay Transportation Authority (“MBTA” or “Defendant”), and states as follows:

PARTIES and JURISDICTION

1. Plaintiff, LMH-Lane, is the joint venture comprised of The Lane Construction Corporation, with a principal place of business at 90 Fieldstone Court, Cheshire, Connecticut 06410 and LMH-CMC JV, which, in turn, is comprised of LM Heavy Civil Construction, LLC (“LMH”), with a principal place of business at 100 Hancock Street, Suite 901, Quincy, Massachusetts 02171;; and Cooperativa Muratori & Cementisti- C.M.C. Di Ravenna Societa Cooperativa (LMH’s parent company) with a principal place of business in Ravenna, Italy.

2. Defendant, MBTA, is “a body politic of the Commonwealth of Massachusetts created by Chapter 563, Section 18 of the Acts of 1964 of the Commonwealth.” MBTA maintains a principal place of business at 10 Park Plaza, Boston, Massachusetts 02116.

3. The claims set forth in this Complaint are within the general jurisdiction of the Superior Court pursuant to G.L. c. 212, § 4 in that they exceed \$50,000.00 in value.

4. Venue is proper in Suffolk County in that MBTA has a principal place of business in Suffolk County. Pursuant to Superior Court Administrative Directive 17-1, venue is also proper in the Business Litigation Section of the Superior Court and venue is otherwise proper in Suffolk County pursuant to G.L. c. 223, § 1.

PROJECT BACKGROUND

5. On or about April 13, 2018, MBTA solicited electronic bids for the project entitled “MBTA Contract No. R44CN02, Cabot Yard & Maintenance Facility Improvements, South Boston, Massachusetts” (“Cabot Yard Project” or “Project”).

6. MBTA had previously hired HNTB Corporation, 300 Apollo Drive, Chelmsford, Massachusetts 01824 to prepare the designs, plans, and specifications for solicitation of the public bids for the Cabot Yard Project by MBTA.

7. MBTA and HNTB Corporation estimated the work of the Cabot Yard Project to cost \$216,811,000.00.

8. The work at the Cabot Yard Project included: (a) the rebuilding of the existing multi-acre storage and maintenance area at the Cabot Yard campus on Dorchester Avenue that supports the operations of MBTA’s Red Line Heavy Rail Rapid Transit System and Bus System; and (b) the replacement and upgrade of many of the elements of the existing Cabot Rail Yard

and Cabot Maintenance Facility to allow for improved and safe operation, proper maintenance, and reliable service for the augmented and replaced new Red Line vehicles.

9. The work at the Cabot Yard Project included, *inter alia*, site work, track work, structural work, electrical work, traction power work, signal work, communications work, architectural work, building systems work, and new equipment to be installed at the Cabot Yard Maintenance Facility.

10. The Cabot Yard Project site was to remain operational during the work of the contract, requiring the contractor to coordinate with Red Line operations and with MBTA.

11. MBTA divided the work of the Cabot Yard Project into seven specific contract milestone dates of varying length through milestone number 7.

12. MBTA required the milestones be performed in successive order and be completed within the specified milestone dates set forth in the general conditions of the contract.

13. The Cabot Yard Project was to be substantially completed 1,340 days after issuance of a notice to proceed.

14. Because some of the work on the Cabot Yard Project involved subsurface work, MBTA included in the bidding documents various geotechnical data and geotechnical investigations of the Cabot Yard Project site and geotechnical data was included in Appendix P, Geotechnical Report of the Plans and Specifications.

15. Prior to solicitation of bids for the Cabot Yard Project, MBTA issued Addendum Nos. 01 through 06 to the designs, plans, and specifications, and those addenda were included at Appendix U to the designs, plans, and specifications for the Cabot Yard Project.

16. The Cabot Yard Project involved the construction and reconstruction of a public work by the Commonwealth or a political subdivision thereof and, accordingly, the Cabot Yard

Project is governed by the public bidding statutes at G.L. c. 30, § 39M and other related statutes found in G.L. c. 30, including, but not limited to, G.L. c. 30, § 39F (payments to subcontractors), G.L. c. 30, § 39G (payment to general contractor of periodic and final estimates), G.L. c. 30, § 39I (impermissible deviation from plans and specifications), G.L. c. 30, § 39N (equitable adjustments for differing or latent physical site conditions), G.L. c. 30, § 39O (equitable adjustments due to written suspension of work orders), G.L. c. 30, § 39P (decisions by public awarding authority must be made within 30 days), and G.L. c. 149, § 27 (prevailing wages payable on public works projects).

17. MBTA directed all interested general contractors to submit sealed general bids for the Cabot Yard Project based upon the designs, plans, and specifications promulgated by MBTA and prepared by HNTB Corporation on June 12, 2018, via electronic format at www.bidx.com.

18. LMH-Lane prepared and submitted a bid for the Cabot Yard Project and extensively relied on MBTA's designs, plans and specifications in the preparation of its bid.

19. MBTA prequalified LMH-Lane, as well as other general contractors, to submit a bid to MBTA for the Cabot Yard Project in accordance with MBTA's "procedures governing classification and rating of prospective bidders."

20. On or about June 12, 2018, MBTA received general public bids for the Cabot Yard Project prepared in accordance with the plans, specifications, and Addenda Nos. 1 through 6 therewith.

21. As required by G.L. c. 30, § 39M, MBTA publicly opened and read the general bids submitted by all prequalified and responding general bidders.

22. LMH-Lane was the lowest eligible, responsive, and responsible bidder for the Cabot Yard Project with a bid price of \$213,817,000.00.

23. On or about August 2, 2018, LMH-Lane and MBTA entered into a contract (the “Contract”) in the sum of \$213,817,000 for the Cabot Yard Project.

24. LMH-Lane and MBTA, pursuant to the Contract, agreed that LMH-Lane would perform “in strict conformity with the provisions herein contained and of the Notice to Bidders, Bid Form, Supplementary Conditions, Addenda, and Specifications” (Contract and Bond Forms 00510-2 at Clause 2) and all applicable plans referred to therein. Moreover, LMH-Lane and MBTA agreed, pursuant to the Contract, that “[a]ll Plans, Specifications, Supplementary Conditions, Notice to Bidders, Addenda, and Bid Form are specifically made part of this contract as fully and to the same effect as if the same had been set forth at length herein.” *Id.*

25. As required by the bid solicitation and G.L. c. 149, § 29, LMH-Lane provided a performance bond and a labor and materials payment bond, each in the penal sum of \$213,817,000.00, naming LMH-Lane as principal and MBTA as obligee. The performance bond and the labor and materials payment bond were issued by co-sureties of Zurich American Insurance Company, Liberty Mutual Insurance Company, Berkshire Hathaway Specialty Insurance Company, and National Union Insurance Company of Pittsburgh, Pennsylvania.

26. On or about August 2, 2018, MBTA, through the Massachusetts Department of Transportation (“MDOT”), issued a notice to proceed to LMH-Lane and also directed LMH-Lane to submit a 90-day initial schedule within 10 days of the notice to proceed and a baseline schedule within 45 days of the notice to proceed.

27. In accordance with the notice to proceed issued by MBTA, LMH-Lane began its work on the Cabot Yard Project on or about August 12, 2018.

28. LMH-Lane submitted the required initial construction schedule and baseline schedule to MBTA in accordance with the contractual milestone set forth in the bidding

documents, and LMH-Lane reasonably and justifiably anticipated performing the work on the Cabot Yard Project in accordance with the construction schedules and the contractual milestone specified by MBTA.

29. MBTA approved the initial construction schedule and subsequently approved the construction baseline schedule on December 28, 2018.

MBTA'S FAILURE TO OBTAIN PERMITS

30. On or about October 18, 2018, LMH-Lane applied for a building permit to the Commonwealth of Massachusetts Office of Public Safety and Inspections (the "Office of Public Safety Inspections"). In support of the application for building permit, LMH-Lane submitted a copy of the plans and specifications for the Cabot Yard Project that had been prepared by MBTA.

31. In response to LMH-Lane's application for a building permit, the Office of Public Safety and Inspections raised concerns involving the design inclusion of two temporary trailers, the presence of which the Office of Public Safety and Inspections contended improperly added additional combustion load to the building.

32. LMH-Lane immediately notified MBTA of the inability to obtain the building permit due to design issues of MBTA's making, for which MBTA was solely responsible, and LMH-Lane immediately notified MBTA that the issue could have cost and schedule impacts.

33. LMH-Lane requested a response to the questions raised by the Office of Public Safety and Inspections within four days so as not to jeopardize the schedule.

34. MBTA took over four weeks to respond to LMH-Lane's request for information.

35. In the building permit application process, the Office of Public Safety and Inspections also advised LMH-Lane that MBTA failed to include a copy of a report describing the condition and performance of the existing car house fire standpipe system.

36. LMH-Lane immediately notified MBTA of the concerns raised by the Office of Public Safety and Inspections associated with this deficiency that was MBTA's sole responsibility, and LMH-Lane further advised that there could be cost and schedule impacts associated with the lack of information.

37. MBTA undertook direction of many weeks of testing regarding the existing fire standpipe system, and it was not until January 11, 2019, that LMH-Lane was able to obtain the building permit necessary to proceed with the work.

38. LMH-Lane was unable to timely secure a building permit because of problems associated with the existing fire suppression system and code violations with the original project design.

39. On September 27, 2018, the Massachusetts plumbing inspector advised that an application for a plumbing permit would not be accepted until concerns with the original Cabot Yard Project's plumbing design were resolved.

40. On or about October 29, 2018, the Massachusetts plumbing inspector and MBTA's engineer met on site and determined that MBTA would modify the original Cabot Yard Project design to relocate certain equipment outside of the footprint of the building.

41. Relocation of the work in question required a survey of the building's existing sanitary sewer and associated appurtenances.

42. It took more than five months for MBTA to perform and publish its survey, and revised Cabot Yard Project plumbing drawings were not issued until April 1, 2019.

43. Because of MBTA's failure to provide an acceptable plumbing design, LMH-Lane did not obtain a plumbing permit that was necessary to proceed with the work until April 29, 2019, more than seven months after the plumbing inspector first raised concerns regarding MBTA's plumbing design of the Cabot Yard Project.

44. During the Cabot Yard Project, on or about June 4, 2019, the gas inspector for the Commonwealth of Massachusetts issued a stop work order because of an undisclosed design change of the gas service lines supporting the car house and the parts and equipment storage building.

45. MBTA's engineer failed or refused to notify the plumbing inspector for the Commonwealth of Massachusetts regarding the modifications to the Cabot Yard Project's original design, and the failure to notify the plumbing inspector resulted in a sixteen-day stop work order.

46. MBTA's failure to timely secure the permits for which it was responsible materially delayed and impacted the critical path of the Cabot Yard Project.

MBTA'S FAILURE TO OBTAIN ENVIRONMENTAL PROTECTION AGENCY APPROVALS AND TIMELY APPROVE SUBMITTED WORK PLANS

47. To proceed with the Cabot Yard Project, MBTA was required to secure an approval from the Environmental Protection Agency for an amendment to the existing permit governing the remediation of polychlorinated biphenyls ("PCBs") in the car house building and yard.

48. MBTA filed a request with the Environmental Protection Agency seeking approval of the amendment to the existing permit only a few days before the bids for the Cabot Yard Project were due.

49. Before MBTA could approve LMH-Lane's work plans for environmental remediation, the Environmental Protection Agency had to approve the amendment filed by MBTA.

50. LMH-Lane and MBTA could not perform any environmental remediation on the Cabot Yard Project until MBTA obtained approval of the amendment from the Environmental Protection Agency.

51. LMH-Lane first submitted environmental remediation work plans to MBTA for approval in the fall of 2018.

52. Unbeknownst to LMH-Lane, MBTA had not received the necessary approvals from the Environmental Protection Agency in the fall of 2018.

53. MBTA unnecessarily, unreasonably, and without justification delayed the approval process of the environmental remediation plan submitted by LMH-Lane to give off the false impression that it was delays associated with LMH-Lane's environmental remediation plan that were delaying the start of environmental remediation work when the real reason such work could not have been performed was because MBTA did not obtain the necessary Environmental Protection Agency approval.

54. MBTA also wrongfully delayed and rejected LMH-Lane's excavation materials management plan and LMH-Lane's dust monitoring and dust, vapor, and odor control plan to cover up its inability to obtain the necessary Environmental Protection Agency approvals.

55. MBTA's failure to timely secure the approval of the Environmental Protection Agency materially delayed and impacted the critical path of the Cabot Yard Project. MBTA's unreasonable and wrongful rejections of work plans also materially delayed and disrupted the critical path of the Cabot Yard Project.

DIFFERING SITE CONDITIONS

56. MBTA had superior knowledge regarding the existing subsurface conditions and existing subsurface structural conditions on the Cabot Yard Project.

57. MBTA did not disclose the actual Cabot Yard Project subsurface conditions nor did MBTA properly depict or disclose the existing subsurface structural conditions in the bidding documents.

58. Upon commencement of the work, LMH-Lane discovered eighteen previously undisclosed electrical conduits buried within and underneath the car house concrete slab.

59. These previously undisclosed electrical conduits were discovered upon the commencement of demolition work in the car house.

60. Demolition work was halted in the car house due to the presence of the undisclosed electrical conduits.

61. As a result of the discovery of the previously undisclosed electrical conduits, MBTA required LMH-Lane to perform extra work to identify and relocate the live electrical conduits without unnecessarily interrupting the existing train service.

62. LMH-Lane began the work of locating the undisclosed electrical conduits in April 2019 and LMH-Lane continued with this extra work task until mid-December 2019, when the last power source was successfully relocated.

63. Identifying and relocating the previously undisclosed electrical conduits in the car house was a particularly time consuming task because MBTA required the car house be fully operational while this work was taking place.

64. LMH-Lane encountered additional differing site conditions in July 2019 when LMH-Lane discovered previously undisclosed and unsafe levels of mercury in the soil to be excavated in the yard.

65. The Contract documents promulgated by MBTA failed to identify mercury contamination anywhere on the Cabot Yard Project site except for limited instances when mercury was located within some existing equipment.

66. The contract documents promulgated by MBTA failed to identify any contamination in the area being excavated by LMH-Lane near the duct banks.

67. LMH-Lane encountered differing site conditions on the Cabot Yard Project within the definition of the statutory differing site conditions clause, G.L. c. 30, § 39N, and the differing site conditions on the Cabot Yard Project severely delayed, disrupted, and impacted LMH-Lane's performance on the Cabot Yard Project.

68. LMH-Lane provided timely notice to MBTA regarding the existence of each of the differing site conditions that impacted and delayed LMH-Lane's performance on the Cabot Yard Project.

69. MBTA failed or refused to grant LMH-Lane an extension of time to its period of Contract performance related to the differing site conditions LMH-Lane encountered on the Cabot Yard Project.

70. MBTA failed or refused to grant LMH-Lane an equitable adjustment to its Contract value regarding the differing site conditions on the Cabot Yard Project as required by G.L. c. 30, § 39N.

MBTA'S DEFECTIVE DESIGN DOCUMENTS

71. MBTA, in promulgating design documents pursuant to G.L. c. 39, § 39M, impliedly warranted to LMH-Lane that the design documents were reasonably complete and sufficient to perform the work of the Cabot Yard Project.

72. MBTA required LMH-Lane to rely upon the designs, plans, and specifications MBTA provided, and knew or should have known that LMH-Lane would rely extensively on MBTA's designs, plans, and specifications in preparing its bid.

73. The design documents promulgated by MBTA, and as interpreted by MBTA and its designers, HNTB Corporation and Jacobs Engineering Group, Inc., did not properly depict the existing conditions on the Cabot Yard Project and did not properly specify the nature and extent of the work to be performed on the Cabot Yard Project.

74. The design documents promulgated by MBTA contained numerous material negligent misrepresentations and omissions regarding major elements of work to be performed at the Cabot Yard Project.

75. MBTA failed to properly specify, detail, and describe major items of work required for the completion of the Cabot Yard Project, including, but not limited to: (a) failure to design the Stinger System properly to enable construction within the contractual limitations of operations; (b) failure to properly design the Paint Booth; (c) failure to account for overhead gantry cranes in the design of the dust collector system; (d) lack of coordination between Carhouse designs and Yard Work designs; and (e) failure to provide documentation showing that the buildings were up to code at the start of the Cabot Yard Project.

76. LMH-Lane has been and continues to be required to perform extensive additional and unanticipated work because of the deficient design documents promulgated by MBTA for the Cabot Yard Project.

77. MBTA's defective designs, plans, and specifications materially delayed and impacted LMH-Lane's performance, causing LMH-Lane to incur time impacts and additional expense on the Cabot Yard Project, for which LMH-Lane has provided MBTA with proper and timely notice under the Contract.

78. LMH-Lane has requested additional time and an equitable adjustment to its Contract price arising out of and related to the defective and deficient design documents and MBTA failed or refused to grant LMH-Lane additional time or additional cost, despite the existence of deficient design documents.

MBTA'S FAILURE TO PAY CHANGE ORDERS AND WORK DIRECTIVES

79. Major renovation and rehabilitation construction projects, such as the Cabot Yard Project, often require unanticipated additional or extra work to complete the specified scopes of work.

80. To date, LMH-Lane had submitted at least 697 requests for information to clarify defects in the design documents and to obtain necessary design information to complete the Cabot Yard Project.

81. MBTA's responses to requests for information have often resulted in re-designs, which require extra work, and resulted in additional costs to LMH-Lane and, in some cases, delays to the Project schedule.

82. When MBTA's responses to requests for information result in extra work that result in time and/or cost impacts, LMH-Lane submits proposed change order requests ("PCO") to MBTA in accordance with the Contract.

83. MBTA has also issued numerous design change requests to LMH-Lane, in which MBTA contemplates making a change to the design of the Project and requests LMH-Lane to prepare a cost proposal, including possible schedule impacts, should MBTA decide to move forward with the work.

84. Preparing costs proposals in response to design change requests is a time intensive task that diverts resources from LMH-Lane's and its subcontractors' primary focus of performing base Contract work.

85. Instead of timely reviewing and processing cost proposals in an organized manner and telling LMH-Lane whether or not to incorporate the proposed work, MBTA randomly selects cost proposals to discuss, in some instances months after the cost proposals are submitted, and the pricing information in them has gone stale.

86. MBTA's failure to timely process these cost proposals makes it impossible for LMH-Lane to plan its work and results in significant wasted time and expenses in preparing the proposals.

87. Because of, *inter alia*, design changes necessitated by the responses to requests for information and extra work resulting from design change requests, LMH-Lane has to date issued 155 PCOs to MBTA regarding necessary additional work on the Cabot Yard Project.

88. MBTA has also issued several work directives under the Contract, in which it directs LMH-Lane to perform extra work or to resequence work in the field and for which

MBTA agrees to pay LMH-Lane on a time and materials basis (“T&M”) as set forth in the Contract.

89. Pursuant to the Contract, LMH-Lane is required to submit daily time sheets reflecting the hours and quantities of work performed when performing work on a T&M basis.

90. MBTA is required to timely review and sign off on the time slips so that they can be incorporated into a final T&M cost proposal once the scope of extra work is completed so that LMH-Lane and its subcontractors can be paid for the work in place.

91. MBTA has routinely and unjustifiably: (a) delayed reviewing and executing LMH-Lane’s time slips; (b) arbitrarily rejected LMH-Lane’s time slips without justification, in some instances after MBTA’s own inspectors signed off that the time and quantities stated in the time slips were correct; and (c) arbitrarily rejected LMH-Lane T&M costs proposals because the time slips were not approved by MBTA, even though it was MBTA who refused to review them in the first place. MBTA’s tactics have resulted in LMH-Lane not getting paid for work that was put in place and that MBTA requested and accepted.

92. MBTA has repeatedly failed to act fairly and in good faith in processing and negotiating PCOs and cost proposals, and MBTA did not act timely and in good faith in reviewing and approving PCOs and cost proposals necessary to complete the work of the Cabot Yard Project.

93. As the result of said conduct, LMH-Lane’s schedule of performance has been and continues to be delayed, disrupted, and materially impacted, and LMH-Lane has incurred losses and damages for which it has not been compensated.

MBTA'S FAILURE TO GRANT TIME EXTENSIONS AND PAY FOR DELAY COSTS

94. LMH-Lane has encountered extensive issues for which MBTA is responsible, including, *inter alia*, MBTA-caused permit delays, differing site conditions, numerous design deficiencies, extensive design changes, and extensive unanticipated additional work on the Cabot Yard Project, all of which have materially impacted and delayed LMH-Lane's period of Contract performance.

95. LMH-Lane has timely and properly requested extensions of time to its period of Contract performance to account for differing site conditions, design issues, design defects, and additional work on the Cabot Yard Project.

96. As of the date of this Complaint, LMH-Lane has submitted no less than four (4) Requests for Equitable Adjustments ("REA"), including Time Impact Analyses ("TIA") for schedule impacts through November 2020, seeking a time extension of at least 845 calendar days to Project Milestone 6 (Substantial Completion) and additional time-related costs in the amount of \$25,888,351.80. Of the total \$25,888,351.80 that LMH-Lane has sought for additional costs through November, 2020, \$7,307,393.94 of that amount is for costs incurred by LMH-Lane subcontractor, Mass. Electric Construction Co.

97. MBTA has failed or refused to grant LMH-Lane sufficient days of time extension to LMH-Lane's period of Contract performance on the Cabot Yard Project.

98. MBTA has failed or refused to grant LMH-Lane any additional time-related costs resulting from the schedule delays set forth in the REAs.

99. MBTA has wrongfully and in bad faith refused to grant LMH-Lane appropriate time extensions and additional costs despite MBTA's permit delays, differing site conditions, defective design documents, design changes, and additional work.

100. LMH-Lane has continued to suffer schedule impacts beyond November 2020 and will be required to submit additional REAs and TIAs documenting further schedule impacts because of MBTA's continuing breaches of Contract.

MBTA'S FAILURE TO PAY REQUISITIONS IN A TIMELY MANNER

101. MBTA is obligated to process and pay requisitions in accordance with the Contract and in accordance with G.L. c. 30, § 39G, the public payment statute governing payment of periodic and final requisitions.

102. MBTA has willfully failed and/or refused to process and pay LMH-Lane's periodic requisitions in accordance with the Contract and in accordance with G.L. c. 30, § 39G.

103. MBTA has acted arbitrarily, capriciously, and willfully in creating issues to avoid timely payment to LMH-Lane under the Contract and under G.L. c. 30, § 39G.

104. MBTA has intentionally and wrongfully failed to comply with the terms of the Contract and G.L. c. 30, § 39G regarding payment of periodic requisitions.

105. LMH-Lane's performance has been and continues to be materially delayed and impacted because of the failure of MBTA to properly and timely pay LMH-Lane's periodic requisitions for payment.

MBTA'S SUSPENSIONS OF WORK

106. As a publicly bid construction project in the Commonwealth of Massachusetts, G.L. c. 30, § 39O(a) governs issuance of and compensation for suspensions of work.

107. Because of differing site conditions, deficient design documents, unanticipated extra work, and design changes, MBTA has issued numerous stop work orders to LMH-Lane on the Cabot Yard Project.

108. Pursuant to G.L. c. 30, § 39O, the awarding authority is required as a matter of law to “make an adjustment in the contract price for any increase in the cost of performance of the contract...” because of written stop work orders.

109. LMH-Lane has properly and timely submitted REAs to its Contract price and period of contract performance because of MBTA’s issuance of written stop work orders on the Cabot Yard Project.

110. MBTA has failed or refused to grant LMH-Lane Cabot Yard Joint Venture additional costs and additional time related to the written stop work orders issued by MBTA on the Cabot Yard Project.

MBTA’S ACTIVE INTERFERENCE

111. MBTA had superior and inherent knowledge of the actual conditions of the Cabot Yard Project, which was withheld from prospective bidders and was not properly depicted in the bidding documents.

112. MBTA knew, or reasonably should have known, based upon its inherent and superior knowledge that the designs promulgated by MBTA for bidding on the Cabot Yard Project were deficient and incomplete.

113. MBTA wrongfully withheld this superior and inherent knowledge and wrongfully failed to disclose said knowledge in the bidding documents.

114. MBTA and its representatives, including but not limited to, HNTB Corporation and Jacobs Engineering Group, Inc., have wrongfully delayed approving work plans, PCOs, schedule revisions, REAs, and requests for design information necessary for LMH-Lane to proceed with the work of the Cabot Yard Project.

115. MBTA, its representatives, and its sub-consultants, including but not limited to, HNTB Corporation and Jacobs Engineering Group, Inc., have actively interfered with LMH-Lane's performance on the Cabot Yard Project by, *inter alia*: (a) materially changing LMH-Lane's approved construction schedule; (b) issuing numerous written stop work orders on the Cabot Yard Project; (c) failing to timely respond to requests for information needed by LMH-Lane to proceed with the work on the Cabot Yard Project; (d) materially delaying, disrupting, and impacting LMH-Lane's performance on the Cabot Yard Project; and (e) redirecting LMH-Lane's work crews and construction sequences.

116. As a result of the aforesaid acts and omissions, LMH-Lane's performance has been and continues to be materially delayed, disrupted, and impacted and LMH-Lane has incurred and continues to incur extensive and unanticipated additional costs on the Cabot Yard Project.

117. All conditions precedent to the bringing of this action have occurred or have been waived.

COUNT I
(Breach of Contract)

118. LMH-Lane incorporates by reference the allegations set forth in Paragraphs 1 through 117 above as though fully set forth herein.

119. The Contract is a valid, binding, and enforceable contract.

120. LMH-Lane has performed and continues to perform in accordance with its contractual obligations.

121. MBTA has materially and willfully breached the contract with LMH-Lane by, *inter alia*, engaging in the aforementioned acts and omissions.

122. LMH-Lane has suffered and continues to suffer losses and damages and is owed the sum of at least \$30,000,000.00 as the direct and proximate result of MBTA's material ongoing breaches of the Contract.

123. LMH-Lane is entitled to a judgment against MBTA in the sum of at least \$30,000,000.00 to date for the matters set out herein, plus interest at the rate of twelve percent per annum from the date of the breach until paid pursuant to G. L. c. 231, §6C, attorneys' fees, and costs.

124. The material and willful breaches of the Contract by MBTA, including but not limited to the failure to disclose existing site conditions, the promulgation of deficient design documents, the failure to properly design major elements of work necessary to proceed with the work, continuing manipulation of the Project schedule by continually redirecting the sequence of work, and other intentional actions to interfere with the logical sequence and progression of work on the Project are ongoing and LMH-Lane therefore anticipates, and fully expects, it will issue additional PCOs, REAs, and extra work cost proposals during its continued work on the Project, and it reserves all rights to amend this Complaint, as necessary.

COUNT II

(Breach of the Implied Covenant of Good Faith and Fair Dealing)

125. LMH-Lane incorporates by reference the allegations set forth in Paragraphs 1 through 117 above as though fully set forth herein.

126. Implied in the Contract is the covenant that MBTA would deal with LMH-Lane fairly and in good faith and that MBTA would not do anything to harm or hinder LMH-Lane's performance.

127. MBTA materially and willfully breached the implied covenant of good faith and fair dealing based upon the aforementioned acts and omissions.

128. As the result of MBTA's willful and material breaches of the implied covenant of good faith and fair dealing, LMH-Lane has suffered and continues to suffer losses and damages.

129. LMH-Lane is entitled to entry of judgment against MBTA for all damages, costs, expenses, and attorneys' fees arising out of or related to MBTA's breaches of the implied covenant of good faith and fair dealing.

130. MBTA's breaches of the implied covenant of good faith and fair dealing are ongoing and LMH-Lane reserves all rights to amend this Complaint, as necessary.

COUNT III
(Quantum Meruit)

131. LMH-Lane incorporates by reference the allegations set forth in Paragraphs 1 through 117 above as though fully set forth herein.

132. LMH-Lane has supplied labor, materials, supplies, goods, and services to MBTA, which MBTA accepted.

133. MBTA has gained the full benefit of the labor, materials, supplies, goods, and services provided by LMH-Lane.

134. MBTA has failed or refused to compensate LMH-Lane for the fair and reasonable value of the labor, materials, supplies, goods, and services provided by LMH-Lane and accepted by MBTA.

135. Under the equitable doctrine of quantum meruit, LMH-Lane is entitled to entry of judgment against MBTA for the fair and reasonable value of the labor, materials, supplies, goods and services provided by LMH-Lane, plus interest, attorneys' fees and costs.

WHEREFORE, LMH-Lane prays the following relief against MBTA:

A. On Count I, that judgment be entered in favor of LMH-Lane and against MBTA in

the amount of at least \$30,000,00.00, plus interest at the rate of 12% per annum

- calculated from the date of the breach until payment pursuant to G.L. c. 231, § 6C,
plus costs and attorneys' fees;
- B. On Count II, that judgment be entered in favor of LMH-Lane and against MBTA in
the amount of all damages and costs incurred resulting from MBTA's breaches of the
implied covenant of good faith and fair dealing;
- C. On Count III, as an alternative to Counts I and II above, that judgment be entered in
favor of LMH-Lane and against MBTA under the equitable doctrine of quantum
meruit for the fair and reasonable value of all labor, materials, supplies, goods and
services, and equipment supplied by LMH-Lane; and
- D. That this Honorable Court grant LMH-Lane such other and further relief that this
Court deems equitable and just.

**LMH-LANE DEMANDS TRIAL BY JURY
PURSUANT TO MASS. R. CIV. P. 38(b)**

Dated: October 15, 2021

Respectfully submitted,

**LMH-LANE CABOT YARD JOINT
VENTURE,**

By its attorneys,

/s/ John J. McNamara

John J. McNamara

BBO No. 557882

LANE McNAMARA LLP

257 Turnpike Road, Suite 240

Southborough, MA 01772

(508) 905-1010

jmcnamara@lanemcnamara.com