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**COMMONWEALTH OF MASSACHUSETTS**

SUFFOLK, SS.

SUPERIOR COURT  
BUSINESS LITIGATION SESSION  
C.A. NO.

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MASSACHUSETTS BAY TRANSPORTATION )  
AUTHORITY, )  
 )  
Plaintiff, )  
 )  
v. )  
 )  
ZURICH AMERICAN INSURANCE COMPANY; )  
FIDELITY AND DEPOSIT COMPANY OF )  
MARYLAND; LIBERTY MUTUAL INSURANCE )  
COMPANY; BERKSHIRE HATHAWAY )  
SPECIALTY INSURANCE COMPANY; and )  
NATIONAL UNION FIRE INSURANCE COMPANY )  
OF PITTSBURGH, PA t/d/b/a NATIONAL )  
UNION INSURANCE COMPANY OF )  
PITTSBURGH, PA, )  
 )  
Defendants. )  

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**COMPLAINT AND JURY DEMAND**

Massachusetts Bay Transportation Authority (“MBTA”) brings this Complaint and Jury Demand against Defendants, Zurich American Insurance Company, Fidelity and Deposit Company of Maryland, Liberty Mutual Insurance Company, Berkshire Hathaway Specialty Insurance Company, and National Union Insurance Company of Pittsburgh, PA t/d/b/a National Union Insurance Company of Pittsburgh, PA, (collectively the “Co-Sureties” or “Defendants”) for their collective bad-faith denial of MBTA’s claim under the Performance Bond (defined below), which is a material breach of such bond and in violation of M.G.L. c. 93A and c. 176D. In support thereof, MBTA alleges the following.

## INTRODUCTION

1. This is a breach of contract and bad faith insurance action brought under the provisions of Massachusetts General Laws, Chapter 93A, Section 9 (“Chapter 93A”) and Massachusetts General Laws, Chapter 176D, Section 3 (“Chapter 176D”).

2. LMH-Lane Cabot Yard Joint Venture (“LMH-Lane”) entered into Contract No. R44CN02 with MBTA, dated August 2, 2018 (the “Contract”), for the amount of \$213,817,000 to perform construction related to the rebuilding of and improvements to the existing Cabot Yard and Cabot Yard Maintenance Facility in South Boston, Massachusetts (the “Project”). (A true and correct copy of excerpts from Volume 1 of 3 of the Contract is attached hereto as Exhibit A, including the Performance Bond, as defined in Paragraph 3 below).

3. Co-Sureties issued a Performance Bond, Bond Nos. 9269565, 09254345, 268010438, 012207605, 47SUR300016010062, and 860888, in the penal sum of \$213,817,000.00, with the MBTA as the Obligee (the “Performance Bond”).

4. LMH-Lane materially breached the Contract and, in late January 2022, wrongfully abandoned the Project.

5. At the time it abandoned the Project, LMH-Lane had performed substantially less than half of the work required under the Contract.

6. As a result, on February 10, 2022, the MBTA terminated LMH-Lane under the Contract and, by letter dated February 11, 2022, requested the Co-Sureties promptly remedy the default of LMH-Lane and complete the Contract under the Performance Bond.

7. Despite having substantial evidence of LMH-Lane’s defaults and material breaches of the Contract, Co-Sureties failed to promptly remedy the default of LMH-Lane and, instead, asserted they needed to do an “investigation.”

8. On May 24, 2022, the Co-Sureties orally informed the MBTA they would not perform under the Performance Bond on the purported grounds the MBTA had failed to fulfill its obligations under the Contract. However, Co-Sureties failed to cite any provision of the Contract establishing an obligation the MBTA had failed to fulfill. The Co-Sureties then issued a written denial on June 10, 2022, on the same grounds.

9. By letter dated June 3, 2022, the MBTA informed the Co-Sureties that the oral denial of coverage was a material breach of the Performance Bond and in violation of Chapters 93A and 176D. Co-Sureties responded by letter dated July 3, 2022 and denied they had violated Chapters 93A and 176D.

10. Co-Sureties' denial of the MBTA's claim under the Performance Bond is a material breach of the Performance Bond and in violation of Chapters 93A and 176D. This lawsuit seeks remedies for that material breach and the violations of Chapters 93A and 176D.

### **PARTIES**

11. Plaintiff MBTA is a body politic and corporate and political subdivision of the Commonwealth of Massachusetts, pursuant to M.G.L. c. 161A, with a principal place of business at 10 Park Plaza, Boston, Massachusetts 02116.

12. Defendant Liberty Mutual Insurance Company ("Liberty Mutual") is a Massachusetts corporation with a principal place of business at 175 Berkeley Street, Boston, Massachusetts 02116. Liberty Mutual is a signatory and Surety for the Performance Bond. Liberty Mutual is the lead surety for the Co-Sureties.

13. Defendant Zurich American Insurance Company ("Zurich") is a New York corporation with a principal place of business at 299 Zurich Way, Schaumburg, IL 60196-1056. Zurich is a signatory and Surety for the Performance Bond.

14. Defendant Fidelity and Deposit Company of Maryland (“Fidelity”) is an Illinois corporation with a principal place of business at 299 Zurich Way, Schaumburg, IL 60196-1056. Fidelity is a signatory and Surety for the Performance Bond.

15. Defendant Berkshire Hathaway Specialty Insurance Company (“Berkshire Hathaway”) is a Nebraska corporation with a principal place of business at 1314 Douglas Street, Suite 1400, Omaha, Nebraska 68102-1944 and an office at 100 Federal Street, 20<sup>th</sup> Floor, Boston Massachusetts 02110. Berkshire Hathaway is a signatory and Surety for the Performance Bond.

16. Defendant National Union Fire Insurance Company of Pittsburgh, PA t/d/b/a National Union Insurance Company of Pittsburgh, PA (“National Union”) is a Pennsylvania corporation with a principal place of business at 1271 Avenue of the Americas, Floor 41, New York, New York 10020-1304. National Union is a signatory and Surety for the Performance Bond.

#### **JURISDICTION AND VENUE**

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

18. Pursuant to G.L. c. 212, § 3A, the damages sought are consistent with the jurisdictional civil money damage limits of this Court.

19. This Court maintains proper personal jurisdiction over all Defendants pursuant to G.L. c. 223A, § 3(a), (b) and (f).

20. Pursuant to Superior Court Administrative Directive 17-1, venue is proper in the Business Litigation Section of the Superior Court in Suffolk County because the claims asserted: (1) involve breaches of contract or fiduciary duties, fraud, misrepresentation, business torts or other violations involving business relationships; (2) involve claims of unfair trade practices involving complex issues; (3) involve claims by or against a business enterprise to which a



government entity is a party; and (4) involve complex issues that require close case management, including insurance coverage and construction matters.

## **FACTUAL BACKGROUND**

### **The Project and Contract**

21. The Project consists of the rebuilding of the existing multi-acre Cabot Yard and improvements to the existing Cabot Maintenance Facility in South Boston, Massachusetts, in order to receive the new Red Line Fleet and to bring the yard and facilities up to a state of good repair.

22. The “Work” under the Contract was defined to mean “all the construction, materials, equipment, and contractual requirements as specified, shown, or indicated in the Contract Documents, including all alterations, amendments, or extensions thereto made by authorized changes.”

23. The Work included sitework, trackwork, structural work, electrical work, traction power work, signal work, communications work, architectural work, building systems work, and new equipment. *See* Exhibit A (Contract R44CN02, General Conditions 00700), § 2.1(B).

24. LMH-Lane was obligated under Article 2.1 of the Contract to: “complete the Work to the satisfaction of the Engineer at the prices set forth and agreed upon. Where portions of the Work are described in general terms, but not in complete detail, the best general practice shall be followed.” Ex. A.

25. Under the Contract, LMH-Lane was responsible for furnishing all labor, superintendence, materials, tools, equipment, and incidentals necessary to complete the Project in a proper, thorough, and workmanlike manner. Ex. A, § 2.1(A).

26. MBTA did not guarantee the accuracy or completeness of the drawings, with respect to conditions or locations of subsurface utilities on the Project, expressly stating in the

Contract: (1) “[t]he Authority does not guarantee or represent that existing construction or conditions conform to the Drawings” (Article 1.3 F.); and (2) “[a]lthough the Contract Drawings may indicate the approximate location of existing subsurface utilities in the vicinity of the Work, accuracy and completeness of the information is not guaranteed by the Authority.” Ex. A, Article 5.10 C.

27. As such, the Contract expressly provided in Article 2.2 for changes to the Work, stating in pertinent part: “The Authority reserves the right at any time during the progress of the Work to make alterations to, deviations from, additions to, and deletions from the Contract Drawings and Specifications.” That same Article 2.2 further provided that: “Such changes shall not invalidate the Contract nor release the Surety.” Ex. A.

28. The Contract provided mechanisms in Article 2 for LMH-Lane to obtain cost or time increases to the Contract and obligated LMH-Lane to follow those mechanisms.

29. Section 01300 of the Contract also provided general requirements and procedures for communications with the Engineer, including providing for Requests for Information (“RFIs”) and Design Change Requests (“DCRs”). Ex. A.

30. The purpose of DCRs was to establish a procedure to modify the contract documents, including the plans, specifications and drawings.

31. The Contract expressly provided in General Conditions 00700, Part 2 for changes to the Work, and provided mechanisms for LMH-Lane to obtain cost or time increases, provided LMH-Lane followed the procedures laid out in the Contract.

32. Article 5.15 G. of the Contract provided that LMH-Lane was primarily responsible for safety on the Project, stating LMH-Lane “shall assume full responsibility for the safety of all his work.” Ex. A.

33. In addition, prior to starting work on the Project, the MBTA required LMH-Lane personnel to participate in a day-long right-of-way training course that addressed safety practices and requirements when working in or near a right of way. This training also included reporting requirements when someone has a safety concern.

**The Contractor: LMH-Lane**

34. LMH-Lane was a joint venture of LMH-CMC, JV and The Lane Construction Corporation (“Lane”). LMH-CMC, JV and Lane were each 50% joint venture partners.

35. Lane is a Connecticut corporation with its principal place of business at 90 Fieldstone Court, Cheshire, CT 06410. Lane had little or no experience with MBTA work prior to the Project.

36. The other joint venture partner of LMH-Lane, LMH-CMC, JV, was itself a joint venture with its principal office at 100 Hancock Street, Suite 901, Quincy, MA 02171. LMH-CMC, JV consisted of joint venture partners LM Heavy Civil Construction, LLC (“LMH”) and Cooperative Muratori & Cementisti – C.M.C. Di Ravenna Societa Cooperativa (“CMC”). LMH had substantial prior experience with MBTA work and was pre-qualified by the MBTA to perform rail work.

37. According to their joint venture agreement, Lane and LMH-CMC, JV each hold a 50% interest in the profits, losses, and liabilities of LMH-Lane. Lane and LMH-CMC, JV agreed to co-manage the Project through a four-member committee, with two members from each Lane and LMH-CMC, JV.

38. Based on its prior experience, LMH-CMC, JV was the Managing Partner for LMH-Lane for the performance of the Project.

39. Article 6.1 B. of the Contract required LMH-Lane to self-perform 50% of the work.

Ex A. LMH-Lane represented to the MBTA it would satisfy this requirement by having LMH-CMC, JV perform the rail work for the Project.

**LMH-CMC, JV's Insolvency**

40. In late 2018, shortly after the Contract was awarded on August 2, 2018, CMC, one of the joint venture partners of LMH-CMC, JV, initiated insolvency proceedings in Italy. As a result of CMC's insolvency, LMH-CMC, JV also became insolvent and was no longer able to perform work on the Project as of early 2019.

41. Due to LMH-CMC, JV's insolvency and inability to perform rail work on the Project, LMH-Lane was no longer able to satisfy the 50% self-performance obligations of the Contract. In addition, LMH-Lane was left without a pre-qualified MBTA rail contractor and an experienced joint venture partner with knowledge of the contractual procedures of the MBTA.

42. In fact, LMH-Lane ultimately admitted to the MBTA that by virtue of LMH essentially ceasing operations because of CMC's insolvency in Italy, LMH-Lane could not meet the 50% self-performance requirement of Article 6.1B of the Contract.

43. LMH-Lane's failure to satisfy the 50% self-performance requirement of Article 6.1B of the General Conditions of the Contract was a material breach of the Contract that LMH-Lane failed to cure before it wrongfully abandoned the Project.

44. Co-Sureties were well aware of LMH-CMC, JV's insolvency as of early 2019. In fact, on certain other MBTA projects, entities related to LMH-CMC, JV instructed the MBTA to make payments to a bank account controlled by Zurich, one of the Co-Sureties under the Contract.

45. Subsequently, Zurich negotiated take-over agreements with MBTA pursuant to which Zurich agreed to complete the work of certain entities related to LMH-CMC, JV on two other projects for the MBTA.

46. Zurich took steps to address the insolvency on those two projects before MBTA declared those entities in default. In fact, as part of the negotiations for the takeover agreements, Zurich expressly requested MBTA declare those entities in default.

47. Based on Zurich's knowledge of LMH-CMC, JV's financial insolvency, Co-Sureties knew or should have known as of early 2019 that LMH-Lane was likely to experience financial difficulties in performing the Project.

48. In fact, after LMH-CMC, JV became insolvent, LMH-Lane failed to pay subcontractors on the Project, including at least Terra Environmental, LLC, Sunrise Erectors, Inc., J.R. Vinagro Corporation, Managed Air Systems, LLC, U.S. Drywall, Inc., N/S Corporation, United Civil, Inc., William M. Collins, Inc., and Delta Beckwith Elevator Company.

49. Further, one of LMH-Lane's subcontractors, Mass Electric Construction Co. ("Mass Electric"), filed an arbitration demand against LMH-Lane in October 2020 asserting LMH-Lane had failed to pay substantial amounts due to Mass Electric.

50. Based on the foregoing, the MBTA believes Co-Sureties were aware LMH-Lane was having financial difficulties in performing the Project following the financial insolvency of LMH-CMC, JV.

**The Insolvency of LMH-CMC, JV Created Internal Turmoil Within LMH-Lane**

51. Unknown to MBTA at the time, the insolvency of LMH-CMC, JV created substantial internal turmoil within LMH-Lane that interfered with LMH-Lane's ability to progress the Project.

52. After LMH-Lane mobilized to the Project in mid-October 2018, LMH-CMC, JV began to abandon its obligations to LMH-Lane due to the insolvency of LMH-CMC, JV.

53. Due to the insolvency, the surety for LMH-CMC, JV began taking as collateral

construction equipment of LMH-CMC, JV. In addition, the financial problems of LMH-CMC, JV drove up the prices of subcontracts and supplies for LMH-Lane on the Project, required Lane to issue letters of credit to material suppliers, and created greater financial burdens for LMH-Lane, forcing Lane to fund the Project.

54. Lane attempted to address the turmoil created by the insolvency of LMH-CMC, JV by offering employment to the Chairman of LMH-CMC, JV. However, that offer was rejected and, instead, the Chairman of LMH-CMC, JV formed a new entity, which hired away key personnel of LMH-CMC, JV and left LMH-Lane without the key personnel necessary to perform and oversee rail yard work on the Project.

55. Frequent changes in management compromised LMH-Lane's ability to effectively manage the Project. The MBTA repeatedly raised this specific concern in letters to LMH-Lane, including on May 6, 2021.

56. LMH-CMC, JV also mismanaged the Project while acting as the managing partner of LMH-Lane, including: (i) failing to sufficiently staff the Project; (ii) failing to implement effective management systems, policies, and procedures; (iii) failing to properly schedule work; (iv) misrepresenting that LMH-Lane had a viable claim against MBTA due to permitting issues, when, in fact, it did not; (v) failing to devote sufficient equipment to the Project; (vi) placing two project managers on the Project with visa problems, which resulted in their lack of presence and management on the Project; (vii) failing to hold formal meetings to review budget, cost, or quantity analysis; and (viii) failing to properly plan the work, track costs and quantities, forecast and budget, and manage subcontractors and suppliers.

57. Among other issues, LMH-Lane was unable to effectively coordinate its subcontractors to perform the work. For example, in July 2019 LMH-Lane failed to notify the

MBTA in its look-ahead schedules that a temporary generator had been delivered to the project site and failed to ensure that the generator was installed before mobilizing its subcontractor to perform work that required the generator. This failure of management and coordination led to delays in the Project.

58. LMH-Lane was unable to properly progress the work. As documented in letters the MBTA sent in September 2019, as of that time LMH-Lane still had not identified a track installation subcontractor to perform the work that LMH-CMC, JV was supposed to perform.

59. LMH-Lane also lacked adequate machinery, equipment, and personnel to perform the work.

60. The mismanagement of LMH-Lane by LMH-CMC, JV caused delays, financial impacts, cost overruns, and claims from subcontractors such as Mass Electric and others.

61. In fact, the mismanagement of LMH-Lane by LMH-CMC, JV prevented LMH-Lane from progressing the work, performing the work for the bid cost, and submitting and processing timely pay applications.

**LMH-Lane Failed to Perform and Materially Breached the Contract**

62. As a result of LMH-CMC, JV's insolvency, LMH-Lane repeatedly failed to meet its contractual obligations to the MBTA and materially breached the Contract, including, without limitation, the following:

- LMH-Lane failed to timely complete the Work under the Contract. By the end of 2021, the Project was significantly delayed, and LMH-Lane was responsible for at least 521 days of unexcused delays;
- LMH-Lane failed and refused to provide a recovery schedule even though it was contractually obligated to do so and even though the MBTA instructed LMH-Lane to provide a recovery schedule;
- LMH-Lane disregarded, failed to understand, or refused to comply with Contract requirements for invoicing and repeatedly submitted incomplete, late,

and non-compliant change orders, invoices, cost proposals, daily reports /T&M Slips, and pay requisitions;

- LMH-Lane failed to properly advance the Work on the Carhouse and Yard;
- LMH-Lane failed to submit timely cost proposals for changes requested by the MBTA and failed to comply with Contract provisions for addressing changes to the Work;
- LMH-Lane submitted late Process Plans, which delayed and negatively impacted the Work. Moreover, once the Process Plans were submitted, LMH-Lane often proposed last minute changes to add or subtract work; and
- LMH-Lane failed to complete work, including but not limited: to failure to install Manhole CV-001; failure to devise, communicate, and implement a plan for temporary power at the Switch Houses; failure to complete the work at Zone C including failure to install the dust collector system, replace the undertrain, assemble and install prefabricated sheds, complete the new standpipe system, and complete the gas system; failure to install the stinger system in the Carhouse; failure to complete conduit cleaning and relining; failure to install the HVAC system in the Carhouse; and other failures.

63. The MBTA continually attempted to work with LMH-Lane to address LMH-Lane's failures of performance throughout the Project, but LMH-Lane refused to cooperate with the MBTA.

#### **LMH-Lane's Bad-Faith Letter Writing Campaign and Wrongful Abandonment**

64. Rather than cooperating with the MBTA, in 2021, LMH-Lane began an aggressive campaign of letter writing making bombastic, outlandish, and outright false assertions accusing the MBTA of breach of the Contract. These allegations culminated in LMH-Lane filing a lawsuit against the MBTA in October 2021 for breaches of the Contract and of the implied covenant of good faith and fair dealing.

65. In mid-December 2021, prior to a December 17<sup>th</sup> train incident, LMH-Lane demanded in writing that the MBTA terminate the Contract for convenience within 30 days or LMH-Lane would "exercise its legal rights." However, LMH-Lane was essentially demanding the



MBTA save LMH-Lane from the disastrous consequences of LMH-CMC, JV's financial insolvency as well as LMH-Lane's own failures to perform. As such, the MBTA would not agree to do so.

66. On January 31, 2022, LMH-Lane notified the MBTA it was abandoning the Project, citing a December 17, 2021 train incident as the "most concerning factor." But LMH-Lane was not working at the Project when this incident occurred and it was apparent LMH-Lane was using this incident as a pretense to abandon the Project, particularly because LMH-Lane had the primary responsibility for safety under the Contract and MBTA had discussed with LMH-Lane safety mitigation strategies for the December 17<sup>th</sup> train incident.

67. LMH-Lane's abandonment of the Project was a material breach of the Contract. LMH-Lane knew it was in deep financial trouble on the Project as of January 2022. In fact, based on LMH-Lane's lack of performance, an overrun of the Contract price in the ballpark of \$100 million was a possible scenario.

68. As such, rather than accepting a financial exposure that had the potential to bankrupt Lane (the remaining solvent joint venture partner), LMH-Lane abandoned the Project in a self-serving and bad faith effort to avoid that financial exposure and, instead, inflict it on the MBTA.

69. Because LMH-Lane likely had a general indemnity agreement with Co-Sureties, the MBTA believes that the primary purpose of LMH-Lane's trumped up attacks on the MBTA's conduct on the Project was to coerce the Co-Sureties into refusing to act under the Performance Bond once LMH-Lane abandoned the Project.

**The Co-Sureties' Failure to Promptly Remedy LMH-Lane's Default**

70. The Performance Bond provided that the Co-Sureties had an obligation to promptly

remedy the default of LMH-Lane, stating in pertinent part:

Whenever [LMH-Lane] shall be, and is declared by the [MBTA] to be in default under the Contract, the [MBTA] having performed [MBTA's] obligations thereunder, the Surety may promptly remedy the default or shall promptly

- 1) Complete the Contract in accordance with its terms and conditions; or
- 2) Obtain a bid or bids for completing the Contract in accordance with its terms and conditions, and upon determination by the Surety of the lowest responsible bidder, or, if the Authority elects, upon determination by the Authority and the Surety jointly of the lowest responsible bidder, arrange for a contract between such bidder and the Authority . . .

71. Co-Sureties failed to act promptly and failed to remedy the default of LMH-Lane.

72. In addition to Co-Sureties' knowledge as of early 2019 of the insolvency of LMH-CMC, JV, MBTA notified Co-Sureties of LMH-Lane's material breaches of the Contract in detail by letter dated November 23, 2021. Co-Sureties did not respond to the MBTA.

73. On Monday, January 24, 2022, the MBTA met with LMH-Lane and Co-Sureties to discuss resolution of LMH-Lane's failures to perform.

74. Subsequent to that meeting, the MBTA notified Co-Sureties of LMH-Lane's abandonment of the Project by letter dated February 1, 2022. The MBTA informed Co-Sureties that the MBTA intended to hold Co-Sureties fully responsible for LMH-Lane's breaches, abandonment, and default.

75. By letter dated February 10, 2022, the MBTA formally declared LMH-Lane in Default. And, by letter, dated February 11, 2022, the MBTA notified the Co-Sureties that the MBTA had declared LMH-Lane in Default and demanded the Co-Sureties perform their obligations under the Performance Bond.

76. Despite having knowledge and substantial evidence of LMH-CMC, JV's insolvency, material breaches of the Contract, and abandonment of the Project, Co-Sureties failed

to take prompt action under the Performance Bond to remedy the default of LMH-Lane and complete the Project.

77. Instead, Co-Sureties informed the MBTA they needed to conduct an “investigation” into the MBTA’s declaration of default. Co-Sureties’ purported investigation continued from early February through May 24, 2022, and was not done promptly.

78. Because the Project is an active site and completion of the Project is important to public transportation, MBTA repeatedly requested Co-Sureties provide a schedule for completion of their investigation, but Co-Sureties refused to provide any schedule.

79. At the MBTA’s request, Co-Sureties agreed to schedule weekly meetings so the MBTA could obtain regular and timely updates on the progress of the investigation, but Co-Sureties unilaterally cancelled at least half of the weekly meetings.

80. The MBTA fully cooperated with Co-Sureties’ investigation, including, without limitation: (1) granting Co-Sureties access to E-Builder, the document management system used by the MBTA containing the Project file; (2) providing access to the Project site on multiple occasions; (3) participating in multiple teleconferences with the Co-Sureties, including conferences in which MBTA Project representatives and engineers met with Co-Sureties’ representatives and engineers; (4) responding to written requests of Co-Sureties for documents, memoranda, emails, and letters; and (5) answering Co-Sureties’ technical and other questions about the Project.

81. Many of the questions posed by the Co-Sureties during the investigation did not appear to be relevant to a proper investigation into the LMH-Lane default, the MBTA termination of LMH-Lane, or the MBTA’s claim under the Performance Bond. Instead, those questions appeared to be pass-through requests from LMH-Lane.

82. The MBTA informed the Co-Sureties in more than one letter that some of the questions posed appeared to be funneled-through requests on behalf of LMH-Lane, but Co-Sureties did not respond to those letters or deny they were acting for LMH-Lane rather than conducting a proper investigation.

83. On or about May 11, 2022, Co-Sureties cancelled all remaining weekly meetings and asked to schedule an in-person meeting to discuss the Co-Sureties' findings of their investigation, which was then scheduled for May 24, 2022.

84. The MBTA requested an agenda for the in-person meeting, but Co-Sureties refused to provide an agenda stating only that the Co-Sureties would orally present their "findings."

85. When the MBTA asked whether the Co-Sureties would present any written findings or documentation at the May 24<sup>th</sup> meeting, the Co-Sureties responded, "No."

86. Despite having informed the MBTA on May 11, 2022 that they wished to share the findings of their investigation, which presumably already existed, the Co-Sureties sent the MBTA additional written questions the next day, on May 12, 2022.

87. The MBTA responded to the Co-Sureties' additional questions on May 23, 2022, and also provided the MBTA's preliminary findings regarding issues the Co-Sureties claimed to be investigating. (A true and correct copy of the MBTA's Findings are attached hereto as Exhibit B.)

88. Co-Sureties have falsely asserted that the MBTA's preliminary findings on issues the Co-Sureties were investigating somehow constituted an untimely investigation by the MBTA into LMH-Lane's default rather than a response to issues the Co-Sureties were raising during their pretense of an investigation.

89. At the in-person meeting, the Co-Sureties presented the finding that the MBTA had

failed to perform its obligations under the Contract on two purported grounds: (1) the Project was unsafe; and (2) the Project was not constructible due to four alleged design issues: Orangeburg conduit cleaning and relining, installation of the Stinger System, construction of the Signal Instrument House foundation, and construction of Manhole 20A.

90. The Co-Sureties failed to make any findings regarding whether or not LMH-Lane had defaulted under the Contract.

91. The Co-Sureties failed to identify any provision of the Contract the MBTA allegedly breached or failed to fulfill.

92. The Co-Sureties failed to make any findings regarding LMH-Lane's obligations for safety.

93. In fact, LMH-Lane had the primary obligation for safety on the Project and the MBTA fulfilled its obligations with respect to safety on the Project. LMH-Lane's safety obligations included, without limitation, taking full responsibility for the safety of LMH-Lane's work, preparing and operating under a detailed site-specific Safety Program, maintaining a full-time Safety supervisor, providing Right of Way safety training, and other obligations and training.

94. Instead, the Co-Sureties' findings were based on the self-serving assertions of LMH-Lane and fundamental misrepresentations regarding the MBTA's obligations under the Contract, and ignored information the MBTA had provided during the investigation. In fact, the Co-Sureties "findings" were simply Co-Sureties' adoption in whole of assertions LMH-Lane had made in late 2021 and early 2022, leading up to LMH-Lane's wrongful abandonment of the Project.

**The Co-Sureties' Denial of MBTA's Claim Was a  
Breach of the Performance Bond and a Violation of 93A and 176D**

95. Co-Sureties issued a written denial letter on June 10, 2022 (the "Denial Letter").

The Denial Letter acknowledged the Contract was to be substantially completed by January 4, 2022 but LMH-Lane had only completed 28% of the Work by that time.

96. The Denial Letter, therefore, confirmed LMH-Lane's woeful inability to advance the Work.

97. Despite the fact Co-Sureties' obligations under the Performance Bond arise after the MBTA declares LMH-Lane to be in default, the Co-Sureties made no findings as to whether LMH-Lane was in default. In fact, the Co-Sureties seemed to suggest in the Denial Letter that LMH-Lane was not in default, stating: "LMH-Lane provided information and documentation in support of its position that it was not in breach and that MBTA failed to perform its obligations under the Contract."

98. Co-Sureties' Denial Letter purported to make findings of "Design Deficiencies" based on cherry-picked, misrepresented, and out-of-context citations to terms of the Contract.

99. Co-Sureties misrepresented terms of the Contract, stating: "[n]o deviations from the drawings and specifications are to be made unless directed in writing by the Engineer duly authorized by the Authority to approve such deviation. General Conditions, § 3.3A."

100. However, to the contrary, General Conditions, § 3.3A actually states: "Attention is directed to Chapter 30, Section 39I of the General Laws of the Commonwealth which provides that no *willful and substantial* deviation from Contract Drawings and Specifications shall be made unless directed in writing by the Engineer duly authorized by the Authority to approve such deviation." (Emphasis added).

101. Similarly, Co-Sureties stated: "In the case of any discrepancies in the contract documents, the Contractor was to immediately report them to the MBTA and was instructed to neither commence any new work nor place any orders related to the matter in doubt until resolution

was made by the MBTA. Section 01010, § 1.9G.”

102. In context, however, that provision was part of a larger provision titled “Existing Conditions” which expressly stated: “MBTA does not guarantee or represent that all existing structures, utilities, and other conditions conform to the drawings. [LMH-Lane] shall visit the site and determine the existing conditions on the site and in the surrounding area that may affect the work. No claim for extra costs shall be allowed by the MBTA because of [LMH-Lane’s] unfamiliarity with observable site conditions.”

103. The “Existing Conditions” provision also imposed other obligations on LMH-Lane to conduct subsurface investigations necessary to verify the locations of both existing and abandoned utilities.

104. Co-Sureties adopted LMH-Lane’s contentions that “the design was not constructible, in several material respects” and purported to find “it is not possible to construct the remainder of the Project, as designed, per the contract documents.” Co-Sureties cited as examples, issues relating to “Conduit Cleaning and Relining,” “Signal Instrument House Foundation Conflict,” “Stinger System,” and “Manhole 20A.”

105. Co-Sureties did not cite any provision of the Contract that MBTA breached or failed to fulfill with respect to the examples of alleged design deficiencies. In addition, the Contract expressly authorized MBTA to make changes to the Work, including design changes, and further provided that “[s]uch changes shall not invalidate the Contract nor release the Surety.”

106. In addition, design changes being discussed between the MBTA and LMH-Lane that were not resolved before LMH-Lane wrongfully abandoned the Project do not constitute a failure of MBTA to fulfill its obligations under the Contract. Instead, the lack of resolution was caused by: (1) LMH-Lane’s failure to timely and diligently follow the provisions of the Contract;

and (2) LMH-Lane's wrongful abandonment and material breach of the Contract in late January 2022.

107. Co-Sureties' premise that the MBTA did not fulfill its obligations to LMH-Lane because the Contract was not amended to address these four issues at the time LMH-Lane wrongfully abandoned the Project is self-serving and the very essence of bad faith.

108. In addition, Co-Sureties' findings were not accurate in many respects and ignored information provided by the MBTA during Co-Sureties' purported investigation.

109. Bubbling of the Orangeburg conduit cited by the Co-Sureties was identified in the specifications for the Contract and no procedure was specified to repair the bubbling. For that reason, repair of the bubbling was a means and methods issue that was the responsibility of LMH-Lane.

110. LMH-Lane was responsible for the design of the Signal Instrument House Foundation and for addressing any conflict with existing infrastructure. In fact, the MBTA provided information to Co-Sureties during their investigation demonstrating that LMH-Lane was responsible for the design of the foundations. Co-Sureties ignored that information and the provisions of the Contract identified by the MBTA and adopted LMH-Lane's contrary, erroneous position on that issue.

111. The MBTA had issued a Design Change Request for the stinger system, but no cost proposal was finalized because installation of the stinger system was a low priority for LMH-Lane.

112. Co-Sureties' purported "findings" that the MBTA had failed to fulfill its obligations were seriously deficient because Co-Sureties failed to make any findings on the following issues:

- a. Whether LMH-Lane was in default under the Contract;
- b. Whether LMH-Lane breached its obligations under the Contract;



- c. Whether LMH-Lane's breaches of the Contract caused or contributed to any of the issues identified by the Co-Sureties in their Denial Letter;
- d. Whether LMH-Lane's breaches of the Contract caused or contributed to any of the alleged MBTA breaches and/or alleged MBTA failures to perform;
- e. Whether LMH-Lane had any safety obligations under the Contract;
- f. Whether LMH-Lane breached any of its safety obligations and/or whether LMH-Lane's citation to safety issues was a pretext for abandonment of the Project;
- g. Whether LMH-Lane's abandonment of the Project hindered, interfered with, obstructed, or otherwise negatively affected MBTA's ability to resolve outstanding issues including but not limited to those related to safety and constructability; and
- h. Whether LMH-Lane followed the contractual procedures for RFIs, DCRs, and change orders, including but not limited to as pertains to the conduit relining, SIH foundation, Stinger system, and Manhole 20A.

113. Based on these and other failures, Co-Sureties failed to conduct a reasonable and prompt investigation.

114. MBTA believes Co-Sureties were aware during their investigation that the cost to complete the Contract following LMH-Lane's wrongful abandonment of the Project had the possibility to equal or exceed a substantial part or all of the \$213,817,000 penal sum of the Performance Bond and, for that reason, chose to inflict the loss on MBTA rather than complying with their obligations under the Performance Bond.

115. The Co-Sureties' denial of the MBTA's claim was a material breach of the Performance Bond, wrongful, and in bad faith.

116. The MBTA has and will incur significant costs, damages, and expenses as a result of Co-Sureties' material breach of the Performance Bond and the wrongful and bad faith denial of the MBTA's claim under the Performance Bond.

117. Co-Sureties are liable to MBTA for the significant costs, damages, and expenses

MBTA has and will incur as a result of Co-Sureties' material breach of the Performance Bond and the wrongful and bad faith denial of the MBTA's claim under the Performance Bond.

**COUNT I**  
**VIOLATIONS OF CHAPTER 93A AND CHAPTER 176D**  
**MBTA v. Co-Sureties**

118. The MBTA incorporates all previous paragraphs of this pleading as though set forth fully herein.

119. Massachusetts Regulation of Business Practices for Consumers Protection Act, M.G.L.A. 93A § 1 *et seq.*, ("Chapter 93A") makes unlawful any unfair methods of competition and unfair or deceptive acts or practices in the conduct of any trade or commerce. M.G.L.A. 93A § 2.

120. Chapter 93A, Section 9 provides for a private cause of action as follows:

Any person, other than a person entitled to bring action under section eleven of this chapter, who has been injured by another person's use or employment of any method, act or practice declared to be unlawful by section two or any rule or regulation issued thereunder or any person whose rights are affected by another person violating the provisions of clause (9) of section three of chapter one hundred and seventy-six D may bring an action in the superior court, or in the housing court as provided in section three of chapter one hundred and eighty-five C whether by way of original complaint, counterclaim, cross-claim or third party action, for damages and such equitable relief, including an injunction, as the court deems to be necessary and proper.

M.G.L.A. 93A § 9.

121. A violation of Massachusetts Unfair Methods of Competition and Unfair and Deceptive Acts and Practices in the Business of Insurance, M.G.L.A. 176D § 3(9) ("Chapter 176D") is a *per se* violation of Chapter 93A.

122. Unfair methods of competition and unfair or deceptive acts or practices in the business of insurance include unfair claim settlement practices which consist of but are not limited to:

1. Misrepresenting pertinent facts or insurance policy provisions relating to

coverages at issue;

2. Failing to acknowledge and act reasonably promptly upon communications with respect to claims arising under insurance policies;
3. Failing to adopt and implement reasonable standards for the prompt investigation of claims arising under insurance policies;
4. Refusing to pay claims without conducting a reasonable investigation based upon all available information;
5. Failing to affirm or deny coverage of claims within a reasonable time after proof of loss statements have been completed;
6. Failing to settle claims promptly, where liability has become reasonably clear, under one portion of the insurance policy coverage in order to influence settlements under other portions of the insurance policy coverage; or
7. Failing to provide promptly a reasonable explanation of the basis in the insurance policy in relation to the facts or applicable law for denial of a claim or for the offer of a compromise settlement.

M.G.L.A. 176D § 3(9).

123. The Co-Sureties owed a duty to the MBTA to conduct a fair and impartial investigation.

124. The Co-Sureties' owed the MBTA a duty to ensure their determination was based on facts developed from a fair, impartial, and prompt investigation.

125. The Co-Sureties violated Chapter 93A, Section 9, as well as Chapter 176D including, but not limited to, in the following ways:

1. Failing to conduct a full and complete investigation in a reasonable period of time;
2. Failing to adopt and implement reasonable standards for the prompt investigation of claims arising under insurance policies;
3. Failing to consider all available information prior to concluding their investigation and rendering their findings;
4. Failing to provide promptly a reasonable explanation of the basis in the

insurance policy in relation to the facts or applicable law for denial of a claim, including by refusing to present all findings to the MBTA, intentionally omitting findings to present at a later date, and/or attempting to keep their investigation open and continuing even after denying MBTA's claims;

5. Failing to conduct a fair and impartial investigation;
6. Failing to ensure that their determinations were based on facts developed from a fair, impartial, and independent investigation;
7. Failing to identify provisions of the Contract that MBTA allegedly breached;
8. Failing to address whether LMH-Lane caused or contributed to the issues identified in the Denial Letter;
9. Failing to address whether the Contract could be performed through design changes and revisions as permitted under the Contract;
10. Ignoring information presented by MBTA during the investigation; and
11. Failing to address whether LMH-Lane breached its obligations to MBTA.

126. On June 3, 2022, the MBTA sent the Co-Sureties a Demand Letter asserting violations of Chapters 93A and 176D and demanding Co-Sureties remedy those violations. (A true and correct copy of MBTA's 93A Demand Letter is attached hereto as Exhibit C.)

127. On June 21, 2022, the MBTA sent the Co-Sureties a letter responding to the Co-Sureties' June 10, 2022 Denial and again notified the Co-Sureties of their violations of Chapters 93A and 176D and against demanded Co-Sureties remedy those violations. (A true and correct copy of MBTA's June 21, 2022 Letter is attached hereto as Exhibit D.)

128. Co-Sureties responded to MBTA's letters but failed to provide any reasonable settlement offer and refused to remedy their violations of Chapters 93A and 176D.

129. As a result of the Co-Sureties' unfair and deceptive acts and practices, the MBTA has suffered and will continue to suffer injury and loss of money including but not limited to the penal sum of the Performance Bond, damages incurred due to the MBTA's good faith efforts to

pursue its claims under the Performance Bond, and damages resulting from the Co-Sureties' denial of the MBTA's claim under the Performance Bond.

130. Co-Sureties are liable to the MBTA for the damages, injury, and loss of money suffered by MBTA, including but not limited to the penal sum of the Performance Bond, damages incurred due to the MBTA's good faith efforts to pursue its claims under the Performance Bond, and damages resulting from the Co-Sureties' denial of the MBTA's claim under the Performance Bond.

**COUNT II**  
**BREACH OF CONTRACT**  
**MBTA v. Co-Sureties**

131. The MBTA incorporates all previous paragraphs of this pleading as though set forth fully herein.

132. Co-Sureties entered into the Performance Bond.

133. Under the Performance Bond, Co-Sureties "are held and firmly bound unto Massachusetts Bay Transportation Authority as Obligee...in the amount of Two Hundred Thirteen Million, Eight Hundred Seventeen Thousand Dollars...."

134. Co-Sureties were contractually obligated to the MBTA to conduct a fair, impartial, and prompt investigation.

135. The Co-Sureties were contractually obligated to the MBTA to ensure that their determination was based on facts developed from a fair, impartial, and prompt investigation.

136. The Co-Sureties breached their contractual obligations to the MBTA based upon the aforementioned acts and omissions.

137. As a result of the Co-Sureties' breaches of their contractual obligations, the MBTA has suffered and continues to suffer losses and damages, which losses and damages are foreseeable.

138. Co-Sureties are liable to the MBTA for the losses and damages suffered by the MBTA because of their breaches of their contractual obligations.

**COUNT III**  
**BREACH OF THE IMPLIED**  
**COVENANT OF GOOD FAITH AND FAIR DEALING**  
**MBTA v. Co-Sureties**

139. The MBTA incorporates all previous paragraphs of this pleading as though set forth fully herein.

140. Co-Sureties have admitted they owed the MBTA a duty to conduct a fair, impartial, and prompt investigation.

141. The Co-Sureties have admitted they owed the MBTA a duty to ensure that their determination was based on facts developed from a fair, impartial, and prompt investigation.

142. Implied in the Performance Bond is the covenant that the Co-Sureties would deal with the MBTA fairly and in good faith.

143. Implied in the Performance Bond is the covenant that the Co-Sureties would conduct a fair and impartial investigation.

144. The Co-Sureties materially and willfully breached the implied covenant of good faith and fair dealing as evidenced by the acts and omissions described in this Complaint.

145. As a result of the Co-Sureties' breaches of the implied covenant of good faith and fair dealing, the MBTA has suffered and continues to suffer losses and damages.

146. Co-Sureties are liable to the MBTA for losses and damages suffered by the MBTA as a result of Co-Sureties' breaches of the implied covenant of good faith and fair dealing.

**PRAYER FOR RELIEF**

**WHEREFORE**, the MBTA respectfully requests that this Court:

1. Enter judgment in its favor against all Defendant on Counts I, II, and III;

2. Award MBTA their damages, including multiple damages under G.L. c. 93A, together with their costs and attorneys' fees and interest; and
3. Grant such other relief as the Court deems just and proper.

**JURY DEMAND**

The MBTA demands a trial by jury on all claims so triable.

Respectfully submitted,

MASSACHUSETTS BAY TRANSPORTATION  
AUTHORITY,

By its attorneys,



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*Of Counsel*

**EXHIBIT A**





MASSACHUSETTS  
BAY  
TRANSPORTATION  
AUTHORITY

CONTRACT SPECIFICATIONS  
for  
MBTA Contract No. R44CN02

CABOT YARD  
&  
MAINTENANCE FACILITY IMPROVEMENTS  
BOSTON, MASSACHUSETTS

CONFORMED SPECIFICATIONS  
VOLUME 1 OF 3 - Divisions 0-1

June, 2018

HNTB CORPORATION  
300 Apollo Drive  
Chelmsford, MA 01824

JACOBS ENGINEERING GROUP, INC.  
120 Saint James Avenue, 5th Floor  
Boston, MA 02116

**MASSACHUSETTS BAY TRANSPORTATION AUTHORITY**

**MASSACHUSETTS DEPARTMENT OF TRANSPORTATION**

Stephanie Pollack  
Secretary and Chief Executive Officer

**BOARD OF DIRECTORS**

Ruth Bonsignore, Chair

Dominic Blue

Lisa Calise

Timothy King

Brian Lang

Dean Mazzarella

Robert Moylan, Jr.

Steve Poflak

Joseph Sullivan

Betsy Taylor

Monica Tibbits-Nutt

**GENERAL MANAGER AND CEO OF THE MBTA**

Luis Manuel Ramirez

**ASSISTANT GENERAL MANAGER FOR CAPITAL DELIVERY**

Beth J. Larkin, P.E.

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**VOLUME 3 OF 3**

<b>CONSTRUCTION SPECIFICATIONS - CABOT MAINTENANCE FACILITY</b>	<b>SECTIONS 02060 TO 16950</b>
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TO: ALL PROSPECTIVE BIDDERS

FROM: CONTRACT ADMINISTRATION DEPARTMENT  
MASSACHUSETTS BAY TRANSPORTATION AUTHORITY

NOTE WELL:

PLEASE BE ADVISED THAT AN INFORMATIONAL BID FORM IS INCLUDED IN THE FRONT SECTION OF THE CONTRACT SPECIFICATIONS AND MUST NOT BE USED FOR BIDDING PURPOSES. BIDDERS MUST SUBMIT ALL BIDS ELECTRONICALLY USING EXPEDITE SOFTWARE AVAILABLE AT [WWW.BIDX.COM](http://WWW.BIDX.COM).

Prior to submitting an electronic bid over the Internet, each bidder must have a Digital Identification (ID) issued by the Authority, on file with Info Tech, Inc., and enabled by Info Tech, Inc. Using this Digital ID shall constitute the Bidder's signature for proper execution of the Proposal

ALL BIDS MUST BE SUBMITTED ELECTRONICALLY AT [WWW.BIDX.COM](http://WWW.BIDX.COM)

Interested parties can subscribe to the BidExpress on-line bidding exchange by following the instructions provided at [www.bidx.com](http://www.bidx.com) or by contacting:

Info Tech Inc.  
5700 SW 34th Street, Suite 1235  
Gainesville, FL 32608-5371  
email: [customer.support@bidx.com](mailto:customer.support@bidx.com)

**MASSACHUSETTS BAY TRANSPORTATION AUTHORITY  
10 PARK PLAZA, SUITE 5170  
BOSTON, MA 02116**

**NOTICE TO BIDDERS**

Electronic proposals for the following project will be received through the internet using Bid Express until the date and time stated below, and will be posted on [www.bidx.com](http://www.bidx.com) forthwith after the bid submission deadline. No paper copies of bids will be accepted. Bidders must have a valid digital ID issued by the Authority in order to bid on projects. Bidders need to apply for a digital ID with Bid Express at least 14 days prior to a scheduled bid opening date.

Electronic bids for MBTA Contract No. R44CN02, CABOT YARD & MAINTENANCE FACILITY IMPROVEMENTS, SOUTH BOSTON, MASSACHUSETTS, CLASS 1 – GENERAL TRANSIT CONSTRUCTION - \$50,000,000.00, CLASS 3 – TRACKWORK - \$35,000,000.00, CLASS 5 – ELECTRICAL - \$50,000,000.00, CLASS 7 – BUILDINGS - \$30,000,000.00, & PROJECT VALUE - \$216,811,000.00, can be submitted at [www.bidx.com](http://www.bidx.com) until two o'clock (2:00 p.m.) on June 12, 2018. Immediately thereafter, in a designated room, the Bids will be opened and read publicly.

Work under this contract consists of:

The rebuilding of the existing multi-acre Cabot Yard and improvements to the existing Cabot Maintenance Facility in South Boston, Massachusetts, in order to receive the new Red Line Fleet and to bring the yard and facilities to a state of good repair. The Work includes Sitework, Trackwork, Structural Work, Electrical Work, Traction Power Work, Signal Work, Communications Work, Architectural Work, Building Systems Work, and New Equipment.

*Each prospective bidder proposing to bid on this project must be prequalified in accordance with the Authority's "Procedures Governing Classification and Rating of Prospective Bidders." Copies may be obtained at [www.mbta.com](http://www.mbta.com). Requests for prequalification for this Project will not be accepted by the Authority after the tenth (10th) day preceding the date set for the opening of bids.*

*Prequalified bidders may obtain from the Contract Administration Office a "Request for Bid Form" which must be properly filled out and submitted for approval. Potential bidders must download and submit a completed "Request for Proposal Form" for approval to: [plans&specifications@mbta.com](mailto:plans&specifications@mbta.com). Please refer to Section, 00200 - Instruction to Bidders, Section, 1.12, Competency of Bidders, for additional prequalification requirements.*

Bidding documents may be downloaded from the MBTA FTP site, or delivered on CD via Fed Ex. Documents will be available starting at 9:00 AM on April 18, 2018. Contract Specifications and Drawings shall be available in portable data file (.pdf) format. Interested parties may request FTP site credentials or Fed Ex delivery of the project documents on CD by completing the request form on the project page at:  
[http://www.mbta.com/business\\_center/bidding\\_solicitations/current\\_solicitations/](http://www.mbta.com/business_center/bidding_solicitations/current_solicitations/)

Bidders attention is directed to Appendix 1, Notice of Requirement for Affirmative Action to Insure Equal Employment Opportunity; and to Appendix 2, Supplemental Equal Employment Opportunity, Anti-Discrimination, and Affirmative Action Program in the specifications. While there is no DBE goal associated with this contract, the Authority strongly encourages the use of Minority, Women and Disadvantaged Business Enterprises as prime contractors, subcontractors and suppliers in all of its contracting opportunities.

Bidders will affirmatively ensure that in regard to any contract entered into pursuant to this solicitation, minority and female construction contractors will be afforded full opportunity to submit Bids and will not be discriminated against on the grounds of race, color, religion, sex, age, or national origin in consideration for an award.

Bidders will be required to comply with Federal Equal Employment Opportunity Regulations and the President's Executive Order No. 11246 and any amendments or supplements thereto. Bidders will also be required to comply with the Governor's Executive Order No. 481, prohibiting the use of undocumented workers on State Contracts and any amendments and supplements thereto.

The Authority will conduct a site tour on **April 23, 2018**. Bidders are requested to be present in front of the **Cabot Maintenance Facility at 275 Dorchester Avenue, South Boston, Massachusetts**, at 10:00 a.m. to participate in the tour. Bidders are advised that they should have representation and identify who will be attending at this tour as no extra visits are planned. Please contact Project Manager, **Mr. Michael K. Fitzgerald, 20 Winthrop Square, 4<sup>th</sup> floor, Boston, Massachusetts 02110**, [MFITZGERALD@MBTA.com](mailto:MFITZGERALD@MBTA.com) to provide proper names of who will be attending the site tour.

A pre-bid conference will be held on **April 23, 2018** at 10:00 a.m. at **Cabot Maintenance Facility at 275 Dorchester Avenue, South Boston, Massachusetts**. Any request for interpretation of the Plans and Specifications should be submitted in writing at the same time. All questions during the bid phase should be directed to the MBTA Project Manager in writing or emailed to the contact information above. Questions are to be submitted no later than ten (10) days prior to the date set forth for the opening of the bids.

Bidders will be required to certify as part of their bids that they are able to furnish labor that can work in harmony with all other elements of labor employed or to be employed on the work.

This Contract is subject to minimum State wage rates as well as all other applicable labor laws.

Bid Guaranty shall consist of a bid deposit in the amount of five (5) percent of the value of the bid, in the form of a bid bond, cash, certified check, treasurer's or cashier's check.

The successful Bidder shall be required to furnish a Performance Bond and a Labor and Materials Payment Bond each for the full amount of the Contract price.

The Authority reserves the right to reject any or all Bids, to waive informalities, to advertise for new Bids or proceed to do the work otherwise, as may be deemed to be in the best interests of the Authority.

This information may be viewed at the MBTA website:

[http://www.mbta.com/business\\_center/bidding\\_solicitations/current\\_solicitations/](http://www.mbta.com/business_center/bidding_solicitations/current_solicitations/)

## MASSACHUSETTS BAY TRANSPORTATION AUTHORITY

Date: **April 13, 2018**

By: **Stephanie Pollack**  
Secretary and Chief  
Executive Officer of  
MassDOT

**Luis Manuel Ramirez**  
General Manager and  
CEO of the MBTA

## SECTION 00200

### INSTRUCTIONS TO BIDDERS

#### 1.1 BID FORMS AND DRAWINGS

##### A. Prequalification Prior to Requesting Bid Forms.

1. Prospective Bidders proposing to bid on any work to be awarded by the Authority shall be pre-qualified and certified in accordance with the Authority's "Procedures Governing Classification and Rating of Prospective Bidders", if the value of work to be bid added to the value of the Prospective Bidder's uncompleted work already under contract with the Authority will aggregate \$1,000,000 or more. (Also see Article 1.12 of this Section.)
2. For work aggregating under \$1,000,000, pre-qualification and certification is desirable, but not required.

##### B. Issuance of Bid Forms and Drawings.

1. Prequalified Bidders shall obtain from the Contract Administrator a "Request for Bid Forms" and submit same properly filled out to the Contract Administrator for approval. Authority will consider each "Request for Bid Forms" and determine whether or not the prospective Bidder will be permitted to submit an electronic bid using BidXpress Software.
2. The Notice to Bidders, Instructions to bidders, and Bid Form, specifying limits, location and description of the contemplated work, time within which the work must be completed, certain special requirements for the particular Contract, and estimates of the various quantities of the Work to be performed and materials to be furnished will be provided to permitted bidders. Permission to bid will also entitle the prospective Bidder to a set of Contract Drawings, Contract Specifications, and other Contract Documents relating to the contemplated work.
3. Copies of the aforementioned documents, for informational purposes only, are made available to interested parties as described in the Notice to Bidders for each construction project.

#### 1.2 INTERPRETATION OF BASIC ESTIMATE OF QUANTITIES

##### A. Bids will be compared on the estimate of quantities of work to be done, as shown in the Bid form.

1. Quantities in the Bid Form are approximate only, being given as a basis for the comparison of bids. Authority does not expressly or by implication agree that the actual amount of Work will correspond therewith, but reserves the right to increase or decrease the amount of any class or portion of the Work, as may be deemed necessary or expedient by the Authority.

##### B. Bidders shall submit their bid upon the following express condition which shall apply to and become part of every bid received, viz: An increase or decrease in the quantity for any item shall not be regarded as cause for an increase or decrease in the Contract unit prices, nor in the time allowed for completion of the Work, except as provided in the Contract. (Also see Section 00700, Article 2.03, and Section 01150, Articles 1.04 and 1.05.)



### 1.3 EXAMINATION OF CONTRACT DOCUMENTS AND SITE OF WORK

- A. Before submitting a Bid, each prospective Bidder shall (1) examine Contract Documents thoroughly; (2) visit the site to be familiar with observable conditions that may in any manner affect cost, progress, or performance of the Work; (3) be familiar with Federal, State, and local laws, ordinances, rules, and regulations that may in any manner affect cost, progress, or performance of the Work and; (4) study and correlate information thus determined with the Contract Documents.
- B. By submitting a bid the Bidder represents that every requirement of this Article and the following Article 1.04 has been complied with and that the Contract Documents are sufficient in scope and detail to indicate and convey understanding of all terms and conditions for performance of the Work.
- C. Complete information and authorization for the Bidders to view the site of the work on Massachusetts Bay Transportation Authority's property shall be obtained from the office of Mr. Michael Fitzgerald, Project Manager.
- D. The Authority will conduct an inspection tour of the site on April 23, 2018. Bidders are requested to be present at Cabot Maintenance Facility at 10:00 a.m. to participate in the tour. Bidders are advised that they should have representation at this tour as no extra visits are planned.
- E. In addition to visiting the site for the purposes as specified above the Bidders shall visit the site to ascertain pertinent local conditions readily determined by inspection and inquiry, such as the location, accessibility, traffic conditions and general character of the site, labor conditions, the character and extent of existing work within or adjacent thereto, and any other work being performed.
- F. The Authority does not guarantee or represent that existing construction or conditions conform to the Drawings. The Bidder shall visit the site and satisfy himself as to existing conditions. All necessary information shall be verified in the field before fabrication of new material. No claim for extra cost will be allowed by the Authority because of the Contractor's unfamiliarity with site conditions.

### 1.4 SUBSURFACE CONDITIONS DATA

- A. Exploratory borings have been taken at the project site. The boring locations and the boring logs are shown on the contract drawings.

### 1.5 PREPARATION OF BIDS

- A. Bid Prices.
  - 1. Bidder shall submit the Bid electronically after using Expedite Software to prepare the bid submission package. Bids are to be submitted at: <https://www.bidx.com>
  - 2. Price for any item, bid and contracted for, unless otherwise noted or specified, shall include full compensation for all materials, equipment, tools, labor, and incidental work necessary to complete the item to the satisfaction of Authority. Prices, without exception, shall be net, not subject to discount, and shall include all royalties and costs arising from patents, trademarks, and copyrights in any way involved in the Work.
  - 3. The Schedule of Bid Prices included in the electronic bid submission will be used for the indicating of the Bid price information specified above.



4. In the event that there is an error in the computed totals based upon the unit prices and estimated quantities, the unit prices shall govern.

B. Addenda.

1. Prospective Bidder shall acknowledge receipt of Addenda by noting the numbers of those received on the appropriate form contained in the electronic bid package.

C. Signatures.

1. Bid shall be submitted using secure electronic signature provisions built into the bid submission function of the InfoTech Inc.'s Expedite software.
  - a. If Bid is made by an individual, that person's name and post office address shall be stated.
  - b. If Bid is made by a firm, partnership, or corporation, it shall be signed by a person having such legal authority from said firm, partnership or corporation and the person so signing Bid shall give his own name and title (if any) in addition to the name and address of the firm, partnership, or corporation. If Bid is made by a firm or partnership, names and addresses of the individual members shall be given.
  - c. If Bid is made by a corporation, the name of the State under the laws of which the corporation was chartered and names and titles of the President, Treasurer, and Secretary or Clerk of the corporation shall be given.
  - d. If Bid is made by two or more individuals, a joint venture must be formed for the purpose of submitting such a bid. The joint venture company must be prequalified as described previously in section I.I.A.1

D. Affidavits.

1. Bidder shall certify on the affidavit form included with Bid that:
2. To the best of the Bidder's knowledge, said Bidder has not, either directly or indirectly, entered into any agreement, participated in any collusion, or otherwise taken any action in restraint of free competitive bidding in connection with such Contract.
3. Bids must contain the properly completed affidavit of non-collusion folder contained in the electronic bid submission package

## 1.6 DELIVERY OF BIDS

A. Prior to the time set for openings of Bids, Bidder shall submit Bid as follows:

1. All bids must be submitted using InfoTech Inc.'s Expedite software at [www.bidx.com](http://www.bidx.com)
2. A Bid may also be modified or withdrawn by a Bidder or the Bidder's authorized representative, using the capabilities to modify or withdraw bids at [www.bidx.com](http://www.bidx.com), but only if the withdrawal is made prior to the exact time set for opening of Bids. (Also see Section 00200, Article 1.8).

3. The only acceptable evidence to establish the time of bid submission is the receipt generated by the bid submission function of the Expedite software at [www.bidx.com](http://www.bidx.com).
4. Bidders are advised that the Bid Form must include a Bid price for each of the items listed on the Contract Schedule of Bid Prices. The omission of a Bid price for any of the items is cause for rejection of all Bid prices of the Bid.

#### **1.7 BID GUARANTY REQUIRED**

- A. In order to insure the faithful fulfillment of its term, each Bid shall be accompanied by a Bid Guaranty. Bid Guaranty shall be in the amount as specified in the "Notice to Bidders" in the form of an acceptable bid bond, cash, certified check, treasurer's or cashier's check issued to the MBTA by a responsible bank or trust company or by a surety or insurance company licensed or authorized by the Massachusetts Division of Insurance to engage in the business of surety in the Commonwealth and satisfactory to the Authority. Bid Guaranty shall be enclosed in a sealed envelope and be submitted with the Bid Form.

#### **1.8 WITHDRAWAL OF BIDS**

- A. Bidder may withdraw the Bid provided the request in writing is in the hands of Authority by the time set for opening Bids.
  1. When any such Bid is reached during the opening of the Bids, it will remain unread.

#### **1.9 PUBLIC OPENING OF BIDS**

- A. Bids will be publicly opened and the total price of each bid read at the time and place indicated in the "Notice to Bidders." Any person may at reasonable times and in the presence of a duly authorized representative of Authority examine any or all Bids after they have been opened and read.

#### **1.10 REJECTION OF BIDS**

- A. Bids which fail to meet the requirements of Articles 1.5, 1.6, and 1.7 of this Section or which are incomplete, conditional or obscure, or which contain additions not called for, erasures, alterations or irregularities of any kind or in which errors occur, or which contain abnormally high or abnormally low prices for any class or item of work, may be rejected as informal.
  1. On Federally Assisted (Financed) Projects, Bids will be rejected from any Bidder whose name appears on the U.S. Comptroller General's list of ineligible contractors for federally financed and assisted construction.
  2. Bidders are advised that the certificate pertaining to Ineligible Contractors on the electronic Bid Form must be completed in its entirety. Failure to fully complete and submit the required certification will be considered an informality and may render the Bid non-responsive.
- B. More than one Bid from the same Bidder, whether or not the same or different names appear on the signature page, will not be considered. Reasonable proof for believing that a Bidder is interested in more than one Bid for the Work contemplated will cause the rejection of all Bids made by the Bidder directly or indirectly. Any or all Bids will be rejected if there is reason for believing that collusion exists among Bidders. (See Article 1.14 of this Section.)

### **1.11 DISQUALIFICATION OF BIDDERS**

- A. Bidders whose Bids have been rejected because of evidence of collusion, as specified in Article 1.10 of this Section shall not be considered in future Bids for the same work and such Bidders may be disqualified from bidding on future work.

### **1.12 COMPETENCY OF BIDDERS**

- A. No contract will be awarded except to a responsible Bidder who has been prequalified and certified in accordance with the Authority's "Procedures Governing Classifications and Rating of Prospective Bidders" and adjudged capable of performing the class of work contemplated, when bid amount added to the value of Bidder's uncompleted work already under contract with Authority would aggregate \$1,000,000 or more.
- B. When Bidder prequalification is not required, low Bidder or lowest responsible Bidder (if requested by Authority) shall submit within five business days after the opening of bids, a post-qualification statement, duly signed and sworn to, outlining Bidder's experience, equipment and financial resources, on forms prescribed or furnished by Authority. A Bidder who fails to comply with this requirement will not be considered for Award of the Contract.
- C. To be considered skilled and experienced for Class 5 electrical work, the prospective Bidder must show to the satisfaction of the Authority that it has designed, constructed and installed equipment for complete electrical systems of the same general type as called for under this Contract for the MBTA or any other similar rail transportation operation of comparable size (Approx. \$15,000,000). If the Bidder is unable to satisfy all of the provisions for the design, construction and installation of the facility electrical systems on its own, the Bidder is encouraged to partner with organization(s) that provide the required complementary services. The prospective Bidder must submit in writing to Sean McDonnell ([smcdonnell@mbta.com](mailto:smcdonnell@mbta.com)) by May 18, 2018, the name of the Bidder's prequalified contractor(s) and a list of three similar projects of similar size. If the bidder is self-performing the work, please indicate such and provide information as required above.

### **1.13 MATERIAL GUARANTY**

- A. Bidder may be required to furnish without expense to the Authority a complete statement of the origin, composition, and manufacture of any or all materials proposed to be used in the construction of the work, together with samples, which may be subjected to the test required by Authority to determine the quality and fitness of the material.

### **1.14 CONSIDERATION OF BIDS**

- A. Authority reserves the right to reject any or all Bids, to waive technicalities, to advertise for new Bids, or proceed to do the Work as may be deemed to be in the best interests of the Authority.

### **1.15 AWARD OF CONTRACT**

- A. Contract will be awarded by Authority subject to the reservations of Article 1.14, within 30 days after the opening of Bids, to the lowest responsible and eligible Bidder. However, for Contracts requiring concurrence by other State or Federal agencies, the Contract will be awarded 45 days from the opening of Bids. The successful Bidder will be notified in writing by mail or otherwise that Bid has been accepted and that Contract has been awarded.
- B. Basis of Award. The Contract will be awarded by the Authority subject to the reservations of

Section 00200 Article 1.14 as specified above, within 60 calendar days after opening of Bids to the lowest responsible and eligible Bidder whose Total Estimated Contract Bid Price, based upon the proposed schedule [of unit, lump sum, and allowance] Bid Prices, is the lowest Bid received.

#### **1.16 CANCELLATION OF AWARD**

- A. Authority reserves the right to cancel the award of any contract at any time before the execution of the said contract by all parties without any liability against the Authority.

#### **1.17 RETURN OF BID GUARANTY**

- A. Bid Guaranty in the form specified in Article 1.07, except those of two lowest bidders will be returned within five days following opening of Bid.
- B. Bid Guarantees of lowest bidder and second lowest bidder will be retained until execution of the contract, previous to which, however, either Bidder who submitted cash, certified check, treasurer's or cashier's check as Bid Guaranty, may substitute a bid bond in an acceptable form furnished by a surety or insurance company licensed or authorized by the Massachusetts Division of Insurance to engage in the business of surety in the Commonwealth and satisfactory to the Authority.
- C. After 60 days from the opening of Bids (as specified in Article 1.15), low Bidder may withdraw the Bid and request return of the Bid Guaranty, in which case Bid Guaranty of lowest Bidder and second lowest Bidder will be returned and second lowest Bidder's Bid shall not be considered for award. After 60 days from the opening of Bids (as specified in Article 1.15), second lowest Bidder may withdraw the Bid and request return of the Bid Guaranty, in which case only Bid Guaranty of second lowest Bidder will be returned.

#### **1.18 CONTRACT BONDS REQUIRED**

- A. Performance Bond in the full amount of the Contract will be required by Authority to ensure faithful performance of the Contract.
- B. Labor and Materials Payment Bond in the full amount of the Contract will be required to be furnished by the Contractor to Authority as security for payment by the Contractor and subcontractors for labor, materials, and rental of equipment. Said security shall remain in force until the validity of all claims shall be determined and if valid, paid by the surety.
- C. Name of the agency or agent writing these bonds shall be identified with or on the bond.
  - 1. Surety may be a bond in an acceptable form furnished by a surety or insurance company licensed or authorized by the Massachusetts Division of Insurance to engage in the business of surety in the Commonwealth and satisfactory to the Authority.
  - 2. All Alterations, extensions of time, extra work and any other changes authorized under these specifications, or under any part of the Contract may be made without obtaining the consent of the surety or sureties on the Contract Bonds.

### **1.19 EXECUTION OF CONTRACT**

- A. Successful Bidder shall execute and deliver the Contract and furnish the required surety and certificate of insurance to Authority within 10 days after the date of the Notice of Award.
- B. Contract shall be in writing and shall be executed in the number of copies required by the Authority. One fully executed copy will be delivered to the Contractor.

### **1.20 FAILURE TO EXECUTE CONTRACT**

- A. Should successful Bidder fail to execute the Contract and furnish the surety and certificate of insurance within the time stipulated, Authority may, at its option, determine that Bidder has abandoned the Contract and thereupon Bid and acceptance shall be null and void. Guaranty accompanying Bid shall be retained and collected by Authority. It is agreed that this Article shall be construed and treated by the parties to the Contract not as imposing a penalty upon said Contractor for failing to fully execute The Contract as agreed on or before the time specified in Bid, but as liquidated damages to compensate Authority for additional costs incurred by Authority because of the failure of the Contractor to fully execute the Contract on or before the date specified in Bid.

### **1.21 INTERPRETATIONS OF BID DOCUMENTS**

- A. All questions about the meaning and intent of Bid Documents shall be submitted in writing, to the Capital Delivery Project Manager of the Massachusetts Bay Transportation Authority, at the address specified in the Notice to Bidders. To be given consideration, all questions must be received at least 10 days prior to the date fixed for the opening of Bids. An interpretation of all questions which Authority elects to give will be issued by written Addenda. Only questions answered by formal written Addenda will be binding. Oral communications or interpretations will be without binding legal effect. Addenda will be mailed, by certified mail with return receipt requested, to all who obtained Bid Documents. All Addenda so issued shall become part of the Bid Documents. Obvious discrepancies in Bid Documents which are not addressed by a Bidder in accordance with the above procedure will be construed against the successful Bidder should a dispute arise.
- B. A separate copy of the questions referring to meaning and intent of the Bid Documents shall be mailed to the Project Manager, at the address specified in the Notice to Bidders, and to be given consideration must be received at least 10 days prior to the date fixed for the openings of Bids. All interpretations the Authority elects to give will be made in the form of written Addenda to the Contract Documents, which Addenda shall become a part of the Bid Documents. The Addenda will be mailed to all persons who obtained Bid Documents in the manner described in the Notice to Bidders.

### **1.22 MASSACHUSETTS SALES AND USE TAX LAW OF 1967**

- A. Attention of Bidders is directed to the Massachusetts Sales Tax, Chapter 64H, Section 6, and the Massachusetts Use Tax, Chapter 64I, Section 7, which state that these taxes are not applicable to the sales of construction materials and supplies incorporated, consumed, employed or expended in Construction Contracts of this Authority. This exemption is also applicable to rental charges for construction vehicles, equipment and machinery rented, specifically for use on the site of the Authority's construction projects. Bidders are direct to exclude any allowance for Sales or Use Tax from their Bids as said tax would relate to the foregoing specific categories.



**1.23 NOT USED**

**1.24 DISADVANTAGED BUSINESS ENTERPRISE PARTICIPATION PROVISION**

A. Not applicable.

**1.25 BUY AMERICA**

A. Not applicable.

**1.26 FUEL AND ASPHALT PRICE ADJUSTMENT CLAUSE**

A. Should this Contract contain a fuel and asphalt price adjustment clause, the Supplementary Conditions of the Contract Specifications will provide information for baseline prices and application guidelines.

**1.27 PREBID CONFERENCE**

A. A Pre-bid Conference will be held on 4/23/2018 at 10:00 am at Cabot Maintenance Facility. It is imperative that prospective Bidders have a representative attend this meeting. Any request for interpretation of drawings and specifications should be submitted in writing at the same time.

**1.28 NOT USED**

**1.29 EQUAL EMPLOYMENT OPPORTUNITY (EEO)**

A. Attention of all Bidders is directed to Section 00700, General Conditions, Article 5.26, and Paragraph AA of the Supplementary Conditions. Compliance with these Specifications requires completion in full of the certification contained in the electronic bid package. Failure to comply fully and submit the required Certification may render the Bid non-responsive.

**1.30 BIDDER STATUS IDENTIFICATION**

A. Bidder's attention is directed to the applicable folder in the electronic bid package regarding status identification. Bidders are advised that the applicable section of the above must be completed in its entirety.

**1.31 CERTIFICATION OF DUMPING FACILITIES**

A. Bidders are advised that the Certification of Dumping Facilities folder in the electronic bid package must be completed in its entirety.

**1.32 RIGHT-TO-KNOW LAW**

A. Bidders are advised that the Right-to-Know Law Certification folder in the electronic bid package must be completed in its entirety.

**1.33 APPEALS AND PROTEST PROCEDURES**

A. **Introduction** -The following procedures apply to all MBTA procurements, including those that originate from and are the responsibility of the Materials Management Department (Goods and Services Purchases) and the Capital Delivery Department (Construction and Professional

Services contracts). Interested parties (Interested Party means an actual or prospective bidder, proposer or offeror whose direct economic interest would be affected by the award of a contract or by the failure to award a contract) must follow the procedures specified for the particular procurement that is being appealed/protested. In the event that an interested party has an appeal/protest for a procurement/contract that involves an area of responsibility not identified herein, the appeal/protest must be sent to the MBTA's Chief of Staff, General Manager's Office, Ten Park Plaza, Boston, for review. A protest will be processed in the time frames and structure as specified below. In addition, the MBTA will disclose information regarding the protest to the Federal Transit Administration (FTA) in writing.

## **B. PRE-BID APPEALS – CONSTRUCTION AND PROFESSIONAL SERVICES**

1. If it is the opinion of any interested party that the Specifications/Scope of Work or any other requirement of the proposed procurement are in any way ambiguous, incorrect, incomplete or restrictive, the interested party shall contact the Authority, in writing, via U.S. Mail and facsimile, at least ten (10) business days prior to the bid opening date or proposal submittal date. The letter should be addressed to the Director of Contract Administration of the MBTA at 100 Summer St., Suite 1200, Boston, MA 02110. The letter should identify the procurement that is underway (Contract/RFP number and description) and the specific issue to be addressed. Any protest about the content of a specification is waived if not filed prior to the bid opening or proposal submittal date. The Director of Contract Administration will review the interested party's protest and will respond, in detail, to each substantive issue raised by the interested party within three (3) business days. If the matter requires further evaluation, the Director of Contract Administration will notify the protesting party in writing (by facsimile and U.S. Mail) of the extended review period. A final response will be issued by the Director of Contract Administration upon final review of the matter. One of the following steps will be taken prior to the bid opening date or proposal submittal date:
  - a. The Authority may elect to conduct an informal conference on the merits of a protest with interested parties;
  - b. If, upon review, the Authority determines that a change should be made to the specification and/or the bid documents, an addendum will be issued to all interested parties;
  - c. If the Authority determines that no change should be made to the specification and/or the bid documents, but that it is necessary to clarify any point made by the interested party, a Letter of Clarification will be issued to all interested parties; or
  - d. If the Authority determines that neither a change nor a clarification should be made to either the specification or the bid documents, then, the interested party should be notified in a timely fashion in writing (by facsimile and telephone, if possible) of the Authority's determination.
2. If the interested party does not believe that the response addressed his/her concerns, he/she may appeal this decision to the General Counsel, in writing, prior to the bid opening date or the proposal submittal date. The matter will be reviewed and a response will be made in accordance with steps a. through d. above. The bids or proposals may be opened and the Authority may elect to proceed with an award during the pendency of a protest, if the Authority determines that:
  - a. The items to be procured are urgently required; or
  - b. Delivery or performance will be unduly delayed by failure to make the award promptly; or

c. Failure to make prompt award will otherwise cause undue harm to the MBTA.

3. ONCE THE GENERAL COUNSEL'S DETERMINATION HAS BEEN MADE, THE AUTHORITY'S DECISION IS FINAL AND WILL NOT BE RECONSIDERED UNLESS THERE IS ADDITIONAL INFORMATION WHICH WAS NOT AVAILABLE TO THE APPEALING PARTY AT THE TIME THE APPEAL WAS MADE.

**C. POST APPEALS -CONSTRUCTION & PROFESSIONAL SERVICES**

1. Post -Bid appeals by an interested party shall be made in writing via U.S. Mail and facsimile within three (3) business days of the bid opening date or the notification date of a selected proposer and shall be made as follows:
  - a. The initial protest or appeal shall be made to the Director of Contract Administration of the MBTA at 10 Park Plaza, Room 5170, Boston, MA 02116, who will collect the factual information pertaining to the appeal.
  - b. After discussion and appropriate review, the Director Contract Administration will forward a recommendation to the Assistant General Manager for Capital Delivery (AGM).
  - c. If the AGM does not concur with the recommendation, the AGM will obtain any other additional information required so that a determination can be made, at which time the interested party will be notified in writing of the Authority's determination within five (5) business days. If the matter requires further evaluation, the AGM will notify the protesting party in writing (by facsimile and U.S. Mail) of the extended review period. A final response will be issued by the AGM upon final review of the matter.
  - d. If the interested party does not agree with the determination, he/she may appeal directly to the Authority's General Counsel in writing within three (3) business days of the AGM's determination.
  - e. The General Counsel will review all facts of the appeal and will make a final determination and will advise the interested party of his decision within five (5) business days. If the matter requires further evaluation, the General Counsel will notify the protesting party in writing (by facsimile and US Mail) of the extended review period. A final response will be issued by the General Counsel upon final review of the matter.
2. ONCE THE GENERAL COUNSEL'S DETERMINATION HAS BEEN MADE, THE AUTHORITY'S DECISION IS FINAL AND WILL NOT BE RECONSIDERED UNLESS THERE IS ADDITIONAL INFORMATION WHICH WAS NOT AVAILABLE TO THE APPEALING PARTY AT THE TIME THE APPEAL WAS MADE.

**D. GENERAL INSTRUCTIONS/ INFORMATION**

1. In the event that the subject contract procurement is federally funded, all prospective interested parties are notified of the following:
  - a. FTA's review of the protest will be limited to the MBTA's failure to have or follow its written protest procedures. The appeal to FTA must be received by the cognizant FTA regional or Headquarters Office within five (5) working days of the date the protester knew or should have known of the violation. The protest/appeal is to be in accordance with FTA Circular 4220.1F (as periodically updated).
  - b. Note: The interested party must exhaust all administrative remedies with the MBTA before electing to pursue a protest with the Federal Transit Administration (FTA).



2. In the event that a protest is pending:
  - a. The MBTA reserves the right to proceed with the procurement, which may include the opening of bids or proposals and the subsequent award of a contract, regardless of the existence of a protest that is pending, in the event that a determination has been made that:
    1. The supplies or services to be contracted for are urgently required;
    2. Delivery or performance will be unduly delayed by failure to make award promptly;
    3. Failure to make a prompt award will otherwise cause undue harm to the MBTA or the Federal Government.
  3. If award is made, the procurement file will be documented to explain the basis of award. Written notice of the decision to proceed with the award will be sent to the protester and other interested parties.

#### **1.34 STANDARD PLANS**

- A. The Authority's "Railroad Operations Book of Standard Plans - Track and Roadway" is available at no charge on MBTA.com. Also, the MBTA's Standard Plan entitled "MBTA Railroad Operations - Commuter Rail Design Standards Manual", is available at no charge on MBTA.com.

#### **1.35 CERTIFICATION OF CONSTRUCTION EQUIPMENT STANDARD COMPLIANCE**

- A. The contractor certifies that all diesel construction equipment used in this contract shall have emission control devices installed, such as oxidation catalysts or particulate filters on the exhaust system side of the diesel combustion engine equipment.
- B. Bidders are advised that the MBTA Construction Equipment Standard Compliance folder in the electronic bid package must be completed in its entirety.

#### **1.36 CERTIFICATION OF UNDOCUMENTED WORKERS**

- A. The contractor certifies that all workers and employees used in this contract are legally documented workers and that the Contractor has verified the immigration status of all workers assigned to the Contract.
- B. Bidders are advised that the MBTA Contractor Certification for Undocumented Workers folder in the electronic bid package must be completed in its entirety.

#### **1.37 OSHA TRAINING CERTIFICATION**

- A. Attention of all Bidders is directed to Section 00700, General Conditions, Article 5.15, regarding worker safety training. Compliance with these Specifications requires completion in full of the certification contained in the electronic bid package. Failure to comply fully and submit the required Certification may render the Bid non-responsive.

#### **1.38 CONTRACTOR CERTIFICATION MBTA RETIREE PARTICIPATION DISCLOSURE**

- A. Bidders are advised that the MBTA Contractor Certification Retiree Participation Disclosure folder in the electronic bid package must be completed in its entirety.

**END OF SECTION**

MASSACHUSETTS BAY TRANSPORTATION AUTHORITY  
TRANSPORTATION BUILDING  
10 PARK PLAZA  
BOSTON, MASSACHUSETTS 02116-3975

FORM FOR BID

TO THE MASSACHUSETTS BAY TRANSPORTATION AUTHORITY

The undersigned hereby declares to have carefully examined the annexed form of Contract, Specifications and Plans therein referred to and also the sites upon which the Project Work is to be performed.

The undersigned proposes to furnish all labor, materials, and equipment required for Massachusetts Bay Transportation Authority Contract Contract No. R44CN02  
Cabot Yard and Maintenance Facility Improvements South Boston MA for the Massachusetts Bay Transportation Authority in accordance with the Plans and Specifications prepared by  
Hntb Corp. of BOSTON MA,

for the unit price, lump sum and allowance prices specified in the Schedule of Bid Prices, subject to additions and deductions according to the terms of the Specifications.

Accompanying this Bid Form is a bid deposit in the amount of five (5) percent of the value of the bid which shall become the property of the Massachusetts Bay Transportation Authority if, in case this Bid shall be accepted by said Authority, the undersigned shall fail to comply with the applicable statutes or fail as required hereby to execute the Contract with, and furnish bonds and certificates to, said Authority, within the time provided.

The undersigned also hereby declares that he is the only person interested in this Bid; that it is made without any connection with any other persons making any Bid for the same Work; that no person Authority is directly or indirectly interested in this Bid, or in any contract which may be made under it, or in expected profits to arise there from; and it is made without directly or indirectly influencing or attempting to influence any other person or corporation to bid or to refrain from bidding or to influence the bid of any other person or corporation and that this Bid is made in good faith, without collusion or connection with any person bidding for the same work; and that this Bid is made with distinct reference and relation to the Plans and Specifications prepared for this case and herein mentioned. The undersigned declares that in regard to the conditions affecting the work to be done and the labor and materials needed, this Bid is based solely on his own investigation and research and not in reliance upon any plans, surveys, measurements, dimensions, calculations, estimates or representations of any employee, officer, or agent of the Authority.

If the Bidder is a foreign corporation it agrees, in case this Bid is accepted, to comply with the applicable provisions of Massachusetts General Laws, Chapter 181, before the time for execution of the Contract, as hereinafter provided, occurs.

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Contract #:R44CN02 Bid Forms and Supplements Check: 9B69910E  
Form For Bid - 00410 - 1

MASSACHUSETTS BAY TRANSPORTATION AUTHORITY  
TRANSPORTATION BUILDING  
10 PARK PLAZA  
BOSTON, MASSACHUSETTS 02116-3975

FORM FOR BID

TO THE MASSACHUSETTS BAY TRANSPORTATION AUTHORITY (cont'd)

The undersigned proposes and agrees that, if within sixty (60) calendar days after the opening of bids, notice that the Bid has been accepted by the Authority shall be mailed to him at the business address given below, he shall execute the Contract and furnish a Performance Bond and also a Labor and Materials Payment Bond for the full amount of the Contract price, within ten (10) calendar days after the date of the Notice of Award.

The undersigned agrees to commence work within fifteen (15) calendar days from the date of the mailing of the executed Contract to the Contractor (Section 00700 of these Specifications) unless otherwise ordered in writing by the Engineer; and he shall complete the entire Work, fully and acceptably, as stipulated in Section 00700 Article 6.2 of the Project Specification.

The undersigned covenants that he has not employed or retained any company or person (other than a full time bona fide employee working for the Contractor) to solicit or secure this Contract, and that he has not paid or agreed to pay any company or person (other than such an employee) any gift, fee, contribution, percentage, or brokerage fee contingent upon or resulting from the award of this Contract. The Contractor warrants, represents and agrees that during the time this Contract is in effect, neither it nor any affiliated company, as hereinafter defined, participates in or cooperates with an international boycott, as defined in Section 999 (b) (3) and (4) of the Internal Revenue Code of 1954, as amended, or engages in conduct declared to be unlawful by Section 2 of Chapter 151E, Massachusetts General Laws. If there shall be a breach in the warranty representation and agreement contained in this paragraph, then without limiting such other rights as it may have, the MBTA shall be entitled to rescind this Contract. As used herein, an affiliated company shall be any business entity of which at least 51 percent of the ownership interests are directly or indirectly owned by the Contractor or by a person or persons or business entity or entities directly or indirectly owning at least 51 percent of the ownership interests of the Contractor, or which directly or indirectly owns at least 51 percent of the ownership interest of the Contractor.

Yes No I agree to all of the conditions and stipulations listed above.

ACKNOWLEDGEMENT OF ADDENDA

The undersigned acknowledges receipt of 5 addenda. (fill in #)

--

Bidder acknowledges and affirms that he/she has obtained and applied all addenda issued during the bidding period. Yes[X] No[ ]

Total Estimated Contract Bid Price: \$213,817,000.00

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Contract #:R44CN02 Bid Forms and Supplements Check: 9B69910E  
Addenda - 00410 - 3

MASSACHUSETTS BAY TRANSPORTATION AUTHORITY  
 Dept of Transportation  
 Schedule of Bid Prices

Page: 4  
 Date: 04-17-18  
 Revised: 06-08-18

Contract ID: R44CN02 Project(s): R44CN02  
 Letting Date: 06-12-18 Call Order: 001

Bidder: 4900 - LMH-LANE CABOT YARD JV

Line No.	Item Description	Approx. Quantity and Units	Unit Price		Bid Amount
			Dollars	Cts	Dollars  Ct
Section 0000 Base Items					
Alt Group A00					
0001	0130174 MAINTENANCE FACILITY	1.000 LS	81,292,000.00000		81,292,000.00
0002	0130429 TRAFFIC OFFICERS SERVICES	1.000 AN	100,000.00000		100,000.00
0003	0212170 REMOVE OBSTRUCTIONS	220.000 CY	1.00000		220.00
0004	0213202 RODENT CONTROL	1.000 AN	155,000.00000		155,000.00
0005	0222027 MATERIAL REMOVAL	1.000 AN	351,000.00000		351,000.00
0006	0222087 PIPELINE CLEANING	1.000 AN	150,000.00000		150,000.00
0007	0222108 ROCK EXCAVATION	100.000 CY	1.00000		100.00
0008	0222119 UNSUITABLE EXCAVATION	1,700.000 CY	225.00000		382,500.00
0009	0222442 TEST PITS	100.000 CY	500.00000		50,000.00

Contract #:R44CN02 Bid Forms and Supplements Check: 9869910E



MASSACHUSETTS BAY TRANSPORTATION AUTHORITY  
 Dept of Transportation  
 Schedule of Bid Prices

Page: 5  
 Date: 04-17-18  
 Revised: 06-08-18

Contract ID: R44CN02 Project(s): R44CN02  
 Letting Date: 06-12-18 Call Order: 001

Bidder: 4900 - LMH-LANE CABOT YARD JV

Line No.	Item Description	Approx. Quantity and Units	Unit Price		Bid Amount	
			Dollars	Cts	Dollars	Cts
0010	0227007 FILTER FABRIC	1,500.000 SY	1.25000		1,875.00	
0011	0275000 YARD IMPROVEMENTS	1.000 LS	*****	*****	111,649,805.00	
0012	0310049 CONCRETE CLEANING AND RESTORATION	25.000 SF	500.00000		12,500.00	
0013	0354009 STRUCTURAL CRACK REPAIR	200.000 LF	150.00000		30,000.00	
0014	6500000 RISK ALLOWANCE	1.000 RA	19,642,000.00000		19,642,000.00	
Section 0000 Total						213,817,000.00
TOTAL ESTIMATED CONTRACT BASE BID PRICE						213,817,000.00

ELIGIBLE CONTRACTOR CERTIFICATION - BOND

A BIDDER WILL NOT BE ELIGIBLE FOR AWARD OF A CONTRACT UNDER THIS INVITATION FOR BIDS UNLESS SUCH BIDDER HAS SUBMITTED AS A PART OF ITS BID THE FOLLOWING CERTIFICATION PERTAINING TO INELIGIBLE CONTRACTORS WHICH WILL BE DEEMED A PART OF THE RESULTING CONTRACT.

The LMH-LANE CABOT YARD JV hereby

-----  
(Name of Individual or Concern submitting this bid)

certifies that IT IS NOT INCLUDED on the Commonwealth of

-----  
Massachusetts - EOAF/DCPO - List of Debarred or Suspended Contractors, or the Concerns on Debarment List from the Massachusetts Attorney General's Fair Labor and Business Practices Division.

MASSIMO MARINO

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(Authorized Representative of Bidder)



EEO CERTIFICATION AND DBE ASSURANCE

It is a condition of this Contract, and shall be made a condition of each subcontract entered into pursuant to this Contract, that the Contractor and any subcontractor shall not require any laborer or mechanic employed in performance of the Contract to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous to his health or safety, as determined under construction safety and health standards (Title 29, Code of Federal Regulations, Part 1518, published in the Federal Register on April 17, 1971) promulgated by the United States Secretary of Labor, in accordance with Section 107 of the Contract Work Hours and Safety Standards Act, (83 Stat. 96).

The undersigned hereby certifies that he is able to furnish labor that can work in harmony with all other elements of labor employed or to be employed on the work.

The bidder hereby certifies he shall comply with the minority manpower ratio and specific action steps contained in the Appendices of the Supplementary Conditions in this Contract. The Contractor receiving the award of the Contract shall be required to obtain from each of its subcontractors and submit to the Contracting or administering agency prior to the performance of any work under said Contract a certification by said subcontractor, regardless of tier, that it will comply with the minority manpower ratio and specific affirmative action steps contained in these Appendices.

THE BIDDER ALSO CERTIFIES AND ASSURES THAT HE WILL MAKE SUFFICIENT REASONABLE EFFORTS TO MEET THE DISADVANTAGED BUSINESS ENTERPRISE (DBE) STATED GOAL ESTABLISHED FOR THIS CONTRACT.

Full name and address of the individual or concern submitting this bid:

Company Name: LMH-LANE CABOT YARD JV  
-----  
Address Line 1: 100 HANCOCK STREET SUITE 901  
-----  
Address Line 2:  
-----  
City/State/Zip: QUINCY, MA 02171  
-----  
Title: Other Duly Authorized Official  
-----  
Date: 06/12/18 (mm/dd/yy)  
-----

NOTICE: The person's title should be given, such as "owner" in the case of an individual, "partner" in the case of a general partnership, "president", "treasurer" or other authorized officer in the case of a Corporation.

BIDDERS MUST SET FORTH, ACCURATE AND COMPLETE INFORMATION AS REQUIRED BY THIS SOLICITATION. FAILURE TO DO SO MAY RENDER THE OFFER NONRESPONSIVE OR UNACCEPTABLE.

-----  
Contract #:R44CN02 Bid Forms and Supplements Check: 9B69910E

BIDDER'S DATA INCLUDING BUSINESS TYPE

NOTE: If the Bidder is a corporation, indicate state of incorporation; if a partnership, give full Names and addresses of all partners; if an individual, give residential address if different from business address; and if joint ventures, give names and addresses of all firms of the joint venture.

If a Corporation  
Incorporated in what State:

President:

Treasurer:

Secretary:

If a Partnership (Name all Partners):

Name of Partner:

Residence:

Name of Partner:

Residence:

If an Individual:

Name:

Residence:

If an Individual Doing Business Under a Firm Name:

Name of Firm:

Name of Individual:

Business Address:

Residence:

BIDDER'S DATA INCLUDING BUSINESS TYPE (cont'd)

NOTE: If the Bidder is a corporation, indicate state of incorporation; if a partnership, give full Names and addresses of all partners; if an individual, give residential address if different from business address; and if joint ventures, give names and addresses of all firms of the joint venture.

If a Joint Venture:

Name of Venture: LMH-LANE CABOT YARD JV

Business Address: 100 HANCOCK STREET SUITE 901 QUINCY, MA 02171

Name of Firm or Corporation: LM Heavy Civil Construction, LLC

Address: 100 HANCOCK STREET SUITE 901 QUINCY, MA 02171

Name of Firm or Corporation: THE LANE CONSTRUCTION CORPORATION

Address: 90 Fieldstone Court Cheshire, CT 06410

Name of Firm or Corporation: COOPERATIVA MURATORI & CEMENTISTI - C.M.C

Address: COOPERATIVA MURATORI & CEMENTISTI - C.M.C. di Ravenna

Name of Firm or Corporation:

Address:

If any of the joint ventures is a corporation a copy of the vote of the corporation authorizing the joint venture should be submitted to the MBTA.

The proposed surety on the bond to be given is:

Name: ZURICH AMERICAN INSURANCE COMPANY

Home Office Address Line 1: 1299 ZURICH WAY

Home Office Address Line 2:

City/State/Zip: SCHAUMBURG, IL 60196

Massachusetts Address Line 1 (If Different): 100 HIGH STREET SUITE 14

Massachusetts Address Line 2 (If Different):

City/State/Zip: BOSTON, MA 02110

-----  
Contract #:R44CN02 Bid Forms and Supplements Check: 9869910E  
Bidder Data - 00410 - 9

AFFIDAVIT OF NON-COLLUSION

State of MASSACHUSETTS  
-----

ss. : (Date) 06/12/18 (mm/dd/yy)  
-----

County NORFOLK  
-----

The undersigned being duly sworn, deposes and says that he is the  
Other Duly Authorized Official of a corporation

of LMH-LANE CABOT YARD JV  
-----

(Name of bidders as appearing in submitted bid)

for work in BOSTON on 06/12/18 (mm/dd/yy);  
-----

(City / Town)

(opening date of bids)

and certifies under penalties of perjury that this bid is in all  
respects bona fide, fair and made without collusion or fraud with any  
other person. As used in this paragraph the word "person" shall mean  
any natural person, joint venture, partnership, corporation or other  
business or legal entity.

MASSIMO MARINO  
-----

Name of Person Making Affidavit

06/12/18 (mm/dd/yy)  
-----

Date

A BIDDER WILL NOT BE ELIGIBLE FOR AWARD OF ANY CONTRACT UNDER THIS INVITATION FOR BIDS UNLESS SUCH BIDDER HAS SUBMITTED AS PART OF ITS BID THE FOLLOWING CERTIFICATION WHICH WILL BE DEEMED A PART OF THE RESULTING CONTRACT.

RIGHT-TO-KNOW LAW

CERTIFICATION

The Bidder hereby certifies that, if awarded this Contract, he will fully comply with the Massachusetts Right-to-Know Law, c. 470 of the Acts of 1983, (the Act.). In addition, he shall:

1. Obtain a Material Safety Data Sheet, (MSDS), for all substances or mixtures of substances which appear on the Massachusetts Substance List that he or any of his subcontractors brings to or uses on the worksite and will keep a copy of that MSDS on the worksite of this Contract.
2. Label each container of a substance or mixture of substances on the Massachusetts Substance List as required in §7 of the Act.
3. Provide the same training and non-technical instruction that he is required to provide under §15 of the Act to all MBTA employees who are exposed to the substance or to the mixture of substances. Training shall include instruction on the nature and effects of any substance or mixture of substances listed on the Massachusetts Substance List which the Bidder or any of his subcontractors brings to or uses on the worksite.
4. Provide to MBTA employees on the worksite the same protective equipment that the Bidder or any of his subcontractors provides to his employees.

I agree to all stipulations listed above. Yes[X] No[ ]

MASSIMO MARINO

-----  
Name of Authorized Representative of Bidder

Address of Bidder Line 1: 100 Hancock Street Suite 901

Address of Bidder Line 2: -----

City/State/Zip: Quincy, MA 02171  
-----

-----  
Contract #:R44CN02 Bid Forms and Supplements Check: 9B69910E

Right to Know - 00410 - 11

CERTIFICATION OF DUMPING FACILITIES

I, MASSIMO MARINO

-----  
have adequate dumping facilities available at:

Address Line 1: 228 SOUTH STREET

-----  
Address Line 2:

-----  
City/State/Zip: HOPEDALE, MA 01747  
-----

and that these facilities will be used in connection with work  
undertaken on this Contract and that such use will be in a manner  
compliant with State and Local requirements.

MASSIMO MARINO

-----  
Authorized Representative of Bidder

Address of Bidder Line 1: 100 Hancock Street Suite 901

-----  
Address of Bidder Line 2:

-----  
City/State/Zip: Quincy, MA 02171  
-----

Date: 06/12/18 (mm/dd/yy)  
-----

-----  
Contract #:R44CN02 Bid Forms and Supplements      Check: 9B69910E  
Dumping - 00410 - 12

CERTIFICATION OF EXAMINATION OF AVAILABLE SUBSURFACE DATA

Bidder certifies that it has either examined (yes) or not examined (no) the available Subsurface Conditions Data listed in Article 1.4 of the Instruction to Bidders.

A. GEOTECHNICAL Yes[X] No[ ] N/A[ ]

B. ENVIRONMENTAL Yes[X] No[ ] N/A[ ]

MASSIMO MARINO

-----  
(Authorized Representative of Bidder)

LMH-LANE CABOT YARD JV

-----  
(Name of Firm or Corporation)

Business Address Line 1: 100 Hancock Street Suite 901

Business Address Line 2: -----

City/State/Zip: Quincy, MA 02171

Date: 06/12/18 (mm/dd/yy)  
-----

-----  
Contract #:R44CN02 Bid Forms and Supplements Check: 9B69910E  
Subsurface - 00410 - 13

CERTIFICATION OF CONSTRUCTION EQUIPMENT STANDARD COMPLIANCE

I, MASSIMO MARINO, hereby

-----  
(Name of Authorized Representative of Bidder)

certify that all diesel construction equipment used in this contract has emission control devices installed, such as oxidation catalysts or particulate filters on the exhaust system side of the diesel combustion engine equipment.

Authorized Representative of Bidder: MASSIMO MARINO

-----  
Address of Bidder Line 1: 100 Hancock Street Suite 901

-----  
Address of Bidder Line 2:

-----  
City/State/Zip: Quincy, MA 02171

-----  
Date: 06/12/18 (mm/dd/yy)  
-----

-----  
Contract #: R44CNO2 Bid Forms and Supplements Check: 9869910E  
Equipment - 00410 - 14



CERTIFICATION OF UNDOCUMENTED WORKERS

Contractor Legal Name: LMH-LANE CABOT YARD JV  
-----

INSTRUCTIONS:

Executive Order 481 applies to all state agencies in the Executive Branch, including all executive offices, boards, commissions, agencies, departments, divisions, councils, bureaus, and offices, now existing and hereafter established. As it is the policy of the Executive Branch to prohibit the use of undocumented workers in the connection with the performance of state and federal contracts, all contracts entered after February 23, 2007 require that consultants, contractors and vendors, as a condition of receiving Commonwealth funds under any Executive Branch contract, make the following certification:

As evidence by the signature of the Authorized Signatory below, the Contractor certifies that under the pains and penalties of perjury that the Contractor shall not knowingly use undocumented workers in the connection with the performance of all Executive Branch contracts; that pursuant to federal requirements, the Contractor, shall verify the immigration status of all workers assigned to such contract without engaging in unlawful discrimination; and that the Contractor shall not knowingly or recklessly alter, falsify, or accept altered or falsified documents from any such worker(s). The Contractor understands and agrees that breach of any of these terms during the period of each contract may be regarded as a material breach, subjecting the Contractor to sanctions, including but not limited to monetary penalties, withholding of payments, contract suspension or termination.

Date: 06/12/18 (mm/dd/yy)  
-----

Print Name: MASSIMO MARINO  
-----

Title: Other Duly Authorized Official  
-----

Telephone: 617-845-8000  
-----

Fax: 617-845-8001  
-----

Email: TLE@LMHEAVYCIVIL.COM  
-----

The Contractor is required to fill out this Certification only and may provide a copy of the signed Certification for any contract executed with Executive Branch Department. A copy of this Certification must be attached to the "record copy" of all contracts with Contractors with the Contracting Department.

-----  
Contract #:R44CN02 Bid Forms and Supplements Check: 9B69910E  
Undocumented - 00410 - 15

CERTIFICATION OF WORK IN HARMONY AND OSHA TRAINING

M.G.L. Chapter 30, Section 39S-Certification of Work in Harmony and OSHA Training By signing this and submitting this bid or proposal, the prospective participant is providing the signed certification set out below.

The undersigned certifies under penalties of perjury, as required by M.G.L. Chapter 30, Section 39S: That the contractor is able to furnish labor that can work in harmony with all other elements of labor employed or to be employed in the work; (2) that all employees to be employed at the worksite will have successfully completed a course in construction safety and health approved by the United States Occupational Safety and Health Administration that is at least 10 hours in duration at the time the employee begins work and who shall furnish documentation of successful completion of said course with the first certified payroll report for each employee; and (3) that all employees to be employed in the work subject to this bid have successfully completed a course in construction safety and health approved by the United States Occupational Safety and Health Administration that is at least 10 hours in duration.

Additionally, the contractor shall comply with provisions set forth in Chapter 30 Section 39S and referenced in Specification 07000 - General Conditions, Section 5.15.K.2. Please note that this certification must be passed on to any and all contracts and subcontracts between the General Contractor and other parties.

Date: 06/12/18 (mm/dd/yy)

Authorized Bidder: MASSIMO MARINO

Title: Other Duly Authorized Official

Address of Bidder Line 1: 100 Hancock Street Suite 901

Address of Bidder Line 2:

City/State/Zip: Quincy, MA 02171

CONTRACTOR CERTIFICATION  
MBTA RETIREE PARTICIPATION DISCLOSURE

In accordance with the MBTA Hiring of MBTA Retirees Policy, Section 3.3 dated June 5, 2009, THE CONTRACTOR IS REQUIRED TO NOTIFY THE MBTA THAT A MBTA RETIREE HAS BEEN INCLUDED AS A MEMBER OF ITS TEAM.

Every contractor is required to notify the MBTA as part of the bidding process that a MBTA retiree will be included as a member of its team. The contractor shall be required to provide the name and date of retirement for each MBTA retiree on the team. Every MBTA retiree working for the MBTA under this condition shall do so in accordance with MGL, Chapter 268A, Section 5.

The Contractor certifies that the following MBTA Retirees are assigned to the team for this contract. Use additional pages as necessary.

Project Name: Cabot Yard and Maintenance Facility Improvements South B

Firm Name	Retiree Name	MBTA Retirement Date (mm/dd/yy)
NONE	NONE	

Authorized Bidder: MASSIMO MARINO

Title: Other Duly Authorized Official

Name of Firm or Corporation: LMH-LANE CABOT YARD JV

Date: 06/12/18 (mm/dd/yy)

-----  
Contract #:R44CN02 Bid Forms and Supplements Check: 9B69910E  
Retiree - 00410 - 17

BID BOND  
MBTA  
10 PARK PLAZA, BOSTON, MA

KNOW ALL MEN BY THESE PRESENTS THAT LMH-LANE CABOT YARD JV  
as principal, and  
as surety, who is duly licensed to act as surety in the Commonwealth  
of Massachusetts, are held and firmly bound unto the Massachusetts Bay  
Transportation Authority through  
as obligee. Not to be less than 5% of the bid price, lawful money of  
the United States of America, for the payment of which, well and truly  
to be made, we bind ourselves, our heirs, executors, administrators,  
successors and assigns, jointly and severally, firmly by these  
presents.

The condition of the above obligation is such that whereas the  
Principal has submitted to the Obligee /Owner a certain Bid, attached  
hereto and hereby made a part hereof, to enter into a contract in  
writing for the:

Cabot Yard and Maintenance Facility Improvements South Boston MA

NOW, THEREFORE, THE CONDITION OF THE ABOVE OBLIGATION is such, that if  
the bid shall be rejected or if the principal shall be awarded the  
contract for which the bid is submitted and shall execute the contract  
and give bond for the faithful performance thereof within fourteen  
(14) days after the award of same to the principal, then this  
obligation shall be null and void; but if the principal fails to so  
execute such contract and give performance bond as required by MGL  
Chapter 30, §39M, the surety shall, upon demand, forthwith pay to the  
obligee the amount set forth in the first paragraph hereof. The Surety  
for value received, hereby stipulates and agrees that the obligations  
of said Surety and its bond shall in no way be impaired or affected  
by any extension of time within which the Obligee/ Owner may accept  
the Bid and said Surety waives notice of any such extension. Provided  
further, that the bid may be withdrawn as provided by Section 00200  
Article 1.8 of the Standard Specifications.

Paid by certified check/submitted paper bond/bond not required for  
this bid? RESPONSE: Yes[X] No[ ]

\*\*\* Bidders paying by certified check or submitting paper bond forms  
must e-mail a copy of the certified check or bond forms to  
MBTABidBonds@MBTA.com prior to the bid opening date and time.

This Bid contains 5 amendment files

00000

Amended for added Addenda 06/01/2018 01:59 PM



**CONTRACT AND BOND FORMS**

**CONTRACT**

Individual Form	00510-2 - 00510-3
Corporation Form	00510-4 - 00510-5

**PERFORMANCE BOND**

00510-6 - 00510-7

**LABOR AND MATERIALS PAYMENT BOND**

00510-8

**ESCROW BID DOCUMENTS**

00510-9 - 00510-20

**NOTE:** Bond Forms are not to be filled out when submitting Bid Form.

**MASSACHUSETTS BAY TRANSPORTATION AUTHORITY**

**CONTRACT**

Clause 1. - This agreement, made this \_\_\_\_\_ day of \_\_\_\_\_  
in the year two thousand and \_\_\_\_\_ between the Massachusetts Bay Transportation  
Authority, and \_\_\_\_\_  
herein called the Contractor.

Clause 2. - Witnesseth, that the parties to this agreement, each in consideration of the agreements on  
the part of the other herein contained, do hereby agree, the Massachusetts Bay Transportation Authority for  
itself, and said Contractor for himself/themselves and his/their heirs, executors, administrators and assigns, as  
follows:

The Contractor agrees to furnish all equipment, machinery, tools and labor, to furnish and deliver all  
materials required to be furnished and delivered in and about the improvement and to do and perform all work  
under

in strict conformity with the provisions herein contained and of the Notice to Bidders, Bid Form,  
Supplementary Conditions, Addenda, and Specifications hereto attached and with plans referred to therein.  
All Specifications, Supplementary Conditions, Plans, Notice to Bidders, Addenda, and Bid Form are hereby  
specifically made a part of this contract as fully and to the same effect as if the same had been set forth at  
length herein.

Clause 3. - In consideration of the foregoing premises the Massachusetts Bay Transportation Authority  
agrees to pay as full compensation for everything furnished and done by the Contractor under this Contract,  
including all work required but not shown on the plans for the items herein mentioned, and also for all loss of  
damage arising out of the nature of the work aforesaid, or from the action of the elements (except as excluded  
in the Standard Specifications, Section 00700, Article 5.19, or the Supplementary Conditions thereto) or from  
any delay or from any unforeseen obstruction or difficulty encountered in the prosecution of the work, and for  
all risks of every description in connection with the work, and for all expenses incurred by or in consequence  
of the suspension or discontinuance of the work as herein specified, and for well and faithfully completing the  
work, and the whole thereof, as herein provided, such prices as are set out in the accompanying Bid Form and  
for all work required, for which there is no item in the Bid Form, such compensation as is provided for in the  
aforesaid Specifications.



In witness whereof, the said Contractor has/have hereto set his/their hands and seals, and the said Massachusetts Bay Transportation Authority has executed these present by its authorized representatives on the year and day above written.

By \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Contractor

**MASSACHUSETTS BAY TRANSPORTATION AUTHORITY**

**BY:**

\_\_\_\_\_  
Luis Manuel Ramirez  
General Manager & CEO

**APPROVED AS TO FORM:**

\_\_\_\_\_  
Susan D. Cobb  
Deputy General Counsel, MBTA  
Contracts and Procurement

(Corporation Form)

MASSACHUSETTS BAY TRANSPORTATION AUTHORITY

CONTRACT

Clause 1. - This agreement, made this 2nd day of August, in the year two thousand \_\_\_\_\_, between the Massachusetts Bay Transportation Authority, and LMH-Lane Cabot Yard JV herein called the Contractor.

Clause 2. - Witnesseth, that the parties to this agreement, each in consideration of the agreement on the part of the other herein contained, do hereby agree, the Massachusetts Bay Transportation Authority for itself, and said Contractor for itself and its successors and assigns, as follows:

The Contractor agrees to furnish all equipment, machinery, tools and labor, to furnish and deliver all materials required to be furnished and delivered in and about the improvement and to do and perform all work under MBTA Contract No. R44CN02 Cabot Yard and Maintenance Facility Improvements, South Boston

in a sum not to exceed **Two Hundred Thirteen Million, Eight Hundred Seventeen Thousand Dollars (\$ 213,817,000 )** based upon a schedule of unit, lump sum and allowance bid prices, in strict conformity with the provisions herein contained and of the Notice to Bidders, Bid Form, Supplementary Conditions, Addenda, and Specifications hereto attached, and with the plans referred to therein. All plans, Specifications, Supplementary Conditions, Notice to Bidders, Addenda, and Bid Form are hereby specifically made a part of this contract as fully and to the same effect as if the same had been set forth at length herein.

Clause 3. - In consideration of the foregoing premises the Massachusetts Bay Transportation Authority agrees to pay and the Contractor agrees to receive as full compensation for everything furnished and done by the Contractor under this contract, including all work required but not shown on the plans for the items herein mentioned, and also for all loss or damage arising out of the nature of the work aforesaid, or from the action of the elements (except as excluded in the Standard Specifications, Section 00700, Article 5.19 or the Supplementary Conditions thereto) or from any delay or from an unforeseen obstruction or any difficulty encountered in the prosecution of the work, and for all risks of every description connected with the work, and for all expenses incurred by or in consequence of the suspension or discontinuance of the work as herein specified, and for well and faithfully completing the work, and the whole thereof, as herein provided, such prices as are set out in the accompanying Bid Form, and for all work required, for which there is no item in the Bid Form, such compensation as is provided for in the aforesaid Specifications.

In witness whereof, the said Contractor has caused these presents to be signed in its name and behalf and its corporate seal to be hereto affixed by

MASSIMO MARINO Its Managing Director and Chairman of the Committee of the Joint Venture

and \_\_\_\_\_ its \_\_\_\_\_

thereto duly authorized, and the said Massachusetts Bay Transportation Authority has executed these presents by its authorized representatives on the year and day above written.

By:  \_\_\_\_\_

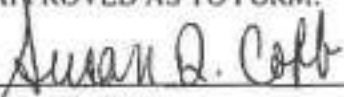
LMH-LANE CABOT YARD JOINT VENTURE Contractor

\_\_\_\_\_

MASSACHUSETTS BAY TRANSPORTATION AUTHORITY  
BY

  
\_\_\_\_\_  
Luis Manuel Ramirez  
General Manager & CEO

APPROVED AS TO FORM:

  
\_\_\_\_\_  
Susan D. Cobb  
Deputy General Counsel, MBTA  
Contracts and Procurement

## PERFORMANCE BOND

KNOW ALL MEN BY THESE PRESENTS: that LMH-Lane Cabot Yard JV  
100 Hancock Street, Suite 901 , Quincy, MA 02109 as Principal, hereinafter called Contractor, and

(Here insert full name and address or legal title of Surety)

as Surety, hereinafter called Surety, are held and firmly bound unto Massachusetts Bay Transportation Authority as Oblgee, hereinafter called Authority, in the amount of

Two Hundred Thirteen Million, Eight Hundred Seventeen Thousand Dollars

(\$ 213,817,000 ) for the payment whereof Contractor and Surety bind themselves, their heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

### WHEREAS,

Contractor has by written agreement dated \_\_\_\_\_, 20\_\_\_\_, entered into a contract with the Authority for MBTA Contract No. R44CN02 which contract is by reference made a part hereof, and is hereinafter referred to as the Contract.

NOW, THEREFORE, THE CONDITION OF THIS OBLIGATION is such that, if Contractor shall promptly and faithfully perform said Contract, then this obligation shall be null and void; otherwise it shall remain in full force and effect.

The Surety hereby waives notice of any alteration or extension of time made by the Authority.

Whenever Contractor shall be, and is declared by the Authority to be in default under the Contract, the Authority having performed Authority's obligations thereunder, the Surety may promptly remedy the default, or shall promptly

- 1) Complete the Contract in accordance with its terms and conditions, or
- 2) Obtain a bid or bids for completing the Contract in accordance with its terms and conditions, and upon determination by Surety of the lowest responsible bidder, or, if the Authority elects, upon determination by the Authority and the Surety jointly of the lowest responsible bidder, arrange for a contract between such bidder and the Authority, and make available as Work progresses (even though there should be a default or a succession of defaults under the contract or contracts of completion arranged under this paragraph) sufficient funds to pay the cost of completion less the balance of the contract price; but not exceeding, the amount set forth in the first paragraph hereof. The term "balance of the contract price," as used in this paragraph, shall mean the total amount payable by the Authority to Contractor under the Contract and any amendments thereto, less the amount properly paid by the Authority to Contractor.





Charles D. Baker, Governor  
Kacy E. Poite, Lieutenant Governor  
Stephanie Pollack, MassDOT Secretary & CEO  
Luis Manuel Ramirez, General Manager & CEO

**massDOT**  
Massachusetts Department of Transportation

Massimo Marino  
President/CEO  
LMH-Lane Cabot Yard JV  
100 Hancock Street, Suite 901  
Quincy, MA 02109

June 18, 2018

RE: MBTA Contract No. R44CN02- Cabot Yard and Maintenance Facility Improvements,  
South Boston, MA

---

Notice of Award

Dear Mr. Marino,

Please be advised that the Massachusetts Bay Transportation Authority has awarded referenced contract to your firm. Accordingly, a contract will be prepared for an amount not to exceed \$213,817,000.00 based upon the schedule of unit, lump sum and allowance bid prices submitted June 12, 2018.

It is requested that arrangements be made for furnishing of insurance certificates and execution of the contract and bond forms by your firm and surety with Mr. Sean McDonnell, Senior Manager of Construction Procurement, (617) 222-3133, in accordance with the requirements of Article 1.19, Instructions to Bidders, of the Standard Specifications.

You are further advised that Ms. Beth J. Larkin, P.E., Assistant General Manager for Capital Delivery, is designated as the Engineer in the management of this contract.

Sincerely,

Luis Manuel Ramirez  
General Manager & CEO

Bond Numbers Zurich 9269565 and 09254345  
Liberty 268010438 and 012207605  
Berkshire 47SUR300016010062  
National Union 860888

### PERFORMANCE BOND

KNOW ALL MEN BY THESE PRESENTS: that LMH-Lane Cabot Yard JV  
100 Hancock Street, Suite 901, Quincy, MA 02109 as Principal, hereinafter called Contractor, and

(Here insert full name and address or legal title of Surety)

as Surety, hereinafter called Surety, are held and firmly bound unto Massachusetts Bay Transportation Authority as Obligee, hereinafter called Authority, in the amount of

Two Hundred Thirteen Million, Eight Hundred Seventeen Thousand Dollars

(\$ 213,817,000 ) for the payment whereof Contractor and Surety bind themselves, their heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

WHEREAS,

Contractor has by written agreement dated August 2nd, 2018, entered into a contract with the Authority for MBTA Contract No. R44CN02 which contract is by reference made a part hereof, and is hereinafter referred to as the Contract.

NOW, THEREFORE, THE CONDITION OF THIS OBLIGATION is such that, if Contractor shall promptly and faithfully perform said Contract, then this obligation shall be null and void; otherwise it shall remain in full force and effect.

The Surety hereby waives notice of any alteration or extension of time made by the Authority.

Whenever Contractor shall be, and is declared by the Authority to be in default under the Contract, the Authority having performed Authority's obligations thereunder, the Surety may promptly remedy the default, or shall promptly

- 1) Complete the Contract in accordance with its terms and conditions, or
- 2) Obtain a bid or bids for completing the Contract in accordance with its terms and conditions, and upon determination by Surety of the lowest responsible bidder, or, if the Authority elects, upon determination by the Authority and the Surety jointly of the lowest responsible bidder, arrange for a contract between such bidder and the Authority, and make available as Work progresses (even though there should be a default or a succession of defaults under the contract or contracts of completion arranged under this paragraph) sufficient funds to pay the cost of completion less the balance of the contract price; but not exceeding, the amount set forth in the first paragraph hereof. The term "balance of the contract price," as used in this paragraph, shall mean the total amount payable by the Authority to Contractor under the Contract and any amendments thereto, less the amount properly paid by the Authority to Contractor.

Any suit under this bond must be instituted before the expiration of two (2) years from the date on which final payment under the Contract falls due.

No right of action shall accrue on this bond to or for the use of any person or corporation other than the Authority or the heirs, executors, administrators or successors of the Authority.

Signed and sealed this 2nd day of August 2018.

WITNESS:

PRINCIPAL: CMH-LANE CABOT YARD JV

MASSIMO MARINO, Managing Director and Chairman of the Committee of the JV  
(Title)

WITNESS:

SURETY: Zurich American Insurance Company \* see below for additional Sureties  
Fidelity and Deposit Company of Maryland

John B. O'Keefe

  
\* Cynthia L. Choren, Attorney-in-fact  
(Title)

\*Attach hereto proof of authority of officers or agents to sign bond.

Liberty Mutual Insurance Company (Seal)

  
Cynthia L. Choren, Attorney-in-Fact

National Union Insurance Company of  
Pittsburgh, PA (Seal)

  
Cynthia L. Choren, Attorney-in-Fact

Berkshire Hathaway Specialty Insurance Company (Seal)

  
Cynthia L. Choren, Attorney-in-Fact

John B. O'Keefe

John B. O'Keefe

John B. O'Keefe

**ACKNOWLEDGMENT BY SURETY**

STATE  
OF Missouri  
City of St. Louis } ss.

On this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, before me personally  
appeared Cynthia L. Choren, known to me to be the Attorney-in-Fact of  
Zurich American Insurance Company, Fidelity and Deposit Company of Maryland, Liberty Mutual  
Insurance Company, National Union Insurance Company of Pittsburgh, PA and  
Berkshire Hathaway Specialty Insurance Company, the corporation  
that executed the within instrument, and acknowledged to me that such corporation executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal, at my office in the aforesaid  
County, the day and year in this certificate first above written.

My Commission Expires: June 20, 2022  
(Seal)



Joann R. Frank  
Joann R. Frank  
Notary Public in the State of Missouri  
City of St. Louis  
Commission #14395672



**ZURICH AMERICAN INSURANCE COMPANY  
COLONIAL AMERICAN CASUALTY AND SURETY COMPANY  
FIDELITY AND DEPOSIT COMPANY OF MARYLAND  
POWER OF ATTORNEY**

KNOW ALL MEN BY THESE PRESENTS: That the ZURICH AMERICAN INSURANCE COMPANY, a corporation of the State of New York, the COLONIAL AMERICAN CASUALTY AND SURETY COMPANY, a corporation of the State of Maryland, and the FIDELITY AND DEPOSIT COMPANY OF MARYLAND a corporation of the State of Maryland (herein collectively called the "Companies"), by MICHAEL BOND, Vice President, in pursuance of authority granted by Article V, Section 8, of the By-Laws of said Companies, which are set forth on the reverse side hereof and are hereby certified to be in full force and effect on the date hereof, do hereby nominate, constitute, and appoint Pamela A. BEELMAN, Cynthia L. CHOREN, Heidi A. NOTHEISEN, Joann R. FRANK, Karen L. ROIDER, Debra C. SCHNEIDER, Sandra L. HAM and Brittany D. CLAVIN, all of St. Louis, Missouri, EACH its true and lawful agent and Attorney-in-Fact, to make, execute, seal and deliver, for, and on its behalf as surety, and as its act and deed: any and all bonds and undertakings, and the execution of such bonds or undertakings in pursuance of these presents, shall be as binding upon said Companies, as fully and amply, to all intents and purposes, as if they had been duly executed and acknowledged by the regularly elected officers of the ZURICH AMERICAN INSURANCE COMPANY at its office in New York, New York., the regularly elected officers of the COLONIAL AMERICAN CASUALTY AND SURETY COMPANY at its office in Owings Mills, Maryland., and the regularly elected officers of the FIDELITY AND DEPOSIT COMPANY OF MARYLAND at its office in Owings Mills, Maryland., in their own proper persons.

The said Vice President does hereby certify that the extract set forth on the reverse side hereof is a true copy of Article V, Section 8, of the By-Laws of said Companies, and is now in force.

IN WITNESS WHEREOF, the said Vice-President has hereunto subscribed his/her names and affixed the Corporate Seals of the said ZURICH AMERICAN INSURANCE COMPANY, COLONIAL AMERICAN CASUALTY AND SURETY COMPANY, and FIDELITY AND DEPOSIT COMPANY OF MARYLAND, this 17th day of April, A.D. 2017.

ATTEST:

ZURICH AMERICAN INSURANCE COMPANY  
COLONIAL AMERICAN CASUALTY AND SURETY COMPANY  
FIDELITY AND DEPOSIT COMPANY OF MARYLAND



By:   
Assistant Secretary  
Joshua Lecker

  
Vice President  
Michael Bond

State of Maryland  
County of Baltimore

On this 17th day of April, A.D. 2017, before the subscriber, a Notary Public of the State of Maryland, duly commissioned and qualified, MICHAEL BOND, Vice President, and JOSHUA LECKER, Assistant Secretary, of the Companies, to me personally known to be the individuals and officers described in and who executed the preceding instrument, and acknowledged the execution of same, and being by me duly sworn, deposed and said, that he/she is the said officer of the Company aforesaid, and that the seals affixed to the preceding instrument are the Corporate Seals of said Companies, and that the said Corporate Seals and the signature as such officer were duly affixed and subscribed in the said instrument by the authority and direction of the said Corporations.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my Official Seal the day and year first above written.





Constance A. Dunn, Notary Public  
My Commission Expires: July 9, 2019

**EXTRACT FROM BY-LAWS OF THE COMPANIES**

"Article V, Section 8, Attorneys-in-Fact. The Chief Executive Officer, the President, or any Executive Vice President or Vice President may, by written instrument under the attested corporate seal, appoint attorneys-in-fact with authority to execute bonds, policies, recognizances, stipulations, undertakings, or other like instruments on behalf of the Company, and may authorize any officer or any such attorney-in-fact to affix the corporate seal thereto; and may with or without cause modify or revoke any such appointment or authority at any time."

**CERTIFICATE**

I, the undersigned, Vice President of the ZURICH AMERICAN INSURANCE COMPANY, the COLONIAL AMERICAN CASUALTY AND SURETY COMPANY, and the FIDELITY AND DEPOSIT COMPANY OF MARYLAND, do hereby certify that the foregoing Power of Attorney is still in full force and effect on the date of this certificate; and I do further certify that Article V, Section 8, of the By-Laws of the Companies is still in force.

This Power of Attorney and Certificate may be signed by facsimile under and by authority of the following resolution of the Board of Directors of the ZURICH AMERICAN INSURANCE COMPANY at a meeting duly called and held on the 15th day of December 1998.

RESOLVED: "That the signature of the President or a Vice President and the attesting signature of a Secretary or an Assistant Secretary and the Seal of the Company may be affixed by facsimile on any Power of Attorney...Any such Power or any certificate thereof bearing such facsimile signature and seal shall be valid and binding on the Company."

This Power of Attorney and Certificate may be signed by facsimile under and by authority of the following resolution of the Board of Directors of the COLONIAL AMERICAN CASUALTY AND SURETY COMPANY at a meeting duly called and held on the 5th day of May, 1994, and the following resolution of the Board of Directors of the FIDELITY AND DEPOSIT COMPANY OF MARYLAND at a meeting duly called and held on the 10th day of May, 1990.

RESOLVED: "That the facsimile or mechanically reproduced seal of the company and facsimile or mechanically reproduced signature of any Vice-President, Secretary, or Assistant Secretary of the Company, whether made heretofore or hereafter, wherever appearing upon a certified copy of any power of attorney issued by the Company, shall be valid and binding upon the Company with the same force and effect as though manually affixed.

IN TESTIMONY WHEREOF, I have herunto subscribed my name and affixed the corporate seals of the said Companies,  
this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_



*David McVicker*

David McVicker, Vice President

**TO REPORT A CLAIM WITH REGARD TO A SURETY BOND, PLEASE SUBMIT ALL REQUIRED INFORMATION TO:**

Zurich American Insurance Co.  
Attn: Surety Claims  
1299 Zurich Way  
Schaumburg, IL 60196-1056



**THIS POWER OF ATTORNEY IS NOT VALID UNLESS IT IS PRINTED ON RED BACKGROUND.**

This Power of Attorney limits the acts of those named herein, and they have no authority to bind the Company except in the manner and to the extent herein stated.

Certificate No. 7703757

Liberty Mutual Insurance Company  
The Ohio Casualty Insurance Company West American Insurance Company

### POWER OF ATTORNEY

KNOWN ALL PERSONS BY THESE PRESENTS: That The Ohio Casualty Insurance Company is a corporation duly organized under the laws of the State of New Hampshire, that Liberty Mutual Insurance Company is a corporation duly organized under the laws of the State of Massachusetts, and West American Insurance Company is a corporation duly organized under the laws of the State of Indiana (herein collectively called the "Companies"), pursuant to and by authority herein set forth, does hereby name, constitute and appoint, Brittany D. Clavin; Cynthia L. Choren; Debra C. Schneider; Heidi A. Nolthuiser; JoAnn R. Frank; Karen L. Roeder; Kelsey M. Jones; Pamela A. Beelman; Sandra L. Ham

of the city of St. Louis, state of MO each individually if there be more than one named, its true and lawful attorney-in-fact to make, execute, seal, acknowledge and deliver, for and on its behalf as surety and as its act and deed, any and all undertakings, bonds, recognizances and other surety obligations, in pursuance of these presents and shall be as binding upon the Companies as if they have been duly signed by the president and attested by the secretary of the Companies in their own proper persons.

IN WITNESS WHEREOF, this Power of Attorney has been subscribed by an authorized officer or official of the Companies and the corporate seals of the Companies have been affixed thereto this 30th day of March, 2017



The Ohio Casualty Insurance Company  
Liberty Mutual Insurance Company  
West American Insurance Company

By: David M. Carey  
David M. Carey, Assistant Secretary

STATE OF PENNSYLVANIA  
COUNTY OF MONTGOMERY

On this 30th day of March, 2017, before me personally appeared David M. Carey, who acknowledged himself to be the Assistant Secretary of Liberty Mutual Insurance Company, The Ohio Casualty Company, and West American Insurance Company, and that he, as such, being authorized so to do, execute the foregoing instrument for the purposes therein contained by signing on behalf of the corporations by himself as a duly authorized officer.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed my notarial seal at King of Prussia, Pennsylvania, on the day and year first above written.



COMMONWEALTH OF PENNSYLVANIA  
Notarial Seal  
Teresa Pastella, Notary Public  
Upper Merion Twp., Montgomery County  
My Commission Expires March 20, 2021  
Member, Pennsylvania Association of Notaries

By: Teresa Pastella  
Teresa Pastella, Notary Public

This Power of Attorney is made and executed pursuant to and by authority of the following By-laws and Authorizations of The Ohio Casualty Insurance Company, Liberty Mutual Insurance Company, and West American Insurance Company which resolutions are now in full force and effect reading as follows:

**ARTICLE IV - OFFICERS** - Section 12 Power of Attorney Any officer or other official of the Corporation authorized for that purpose in writing by the Chairman or the President, and subject to such limitation as the Chairman or the President may prescribe, shall appoint such attorneys-in-fact, as may be necessary to act in behalf of the Corporation to make, execute, seal, acknowledge and deliver as surety any and all undertakings, bonds, recognizances and other surety obligations. Such attorneys-in-fact, subject to the limitations set forth in their respective powers of attorney, shall have full power to bind the Corporation by their signature and execution of any such instruments and to attach thereto the seal of the Corporation. When so executed, such instruments shall be as binding as if signed by the President and attested to by the Secretary. Any power or authority granted to any representative or attorney-in-fact under the provisions of this article may be revoked at any time by the Board, the Chairman, the President or by the officer or officers granting such power or authority.

**ARTICLE XIII - Execution of Contracts - SECTION 5. Surety Bonds and Undertakings.** Any officer of the Company authorized for that purpose in writing by the chairman or the president, and subject to such limitations as the chairman or the president may prescribe, shall appoint such attorneys-in-fact, as may be necessary to act in behalf of the Company to make, execute, seal, acknowledge and deliver as surety any and all undertakings, bonds, recognizances and other surety obligations. Such attorneys-in-fact subject to the limitations set forth in their respective powers of attorney, shall have full power to bind the Company by their signature and execution of any such instruments and to attach thereto the seal of the Company. When so executed such instruments shall be as binding as if signed by the president and attested by the secretary.

**Certificate of Designation** - The President of the Company, acting pursuant to the Bylaws of the Company, authorizes David M. Carey, Assistant Secretary to appoint such attorneys-in-fact as may be necessary to act on behalf of the Company to make, execute, seal, acknowledge and deliver as surety any and all undertakings, bonds, recognizances and other surety obligations.

**Authorization** - By unanimous consent of the Company's Board of Directors, the Company consents that facsimile or mechanically reproduced signature of any assistant secretary of the Company, wherever appearing upon a certified copy of any power of attorney issued by the Company in connection with surety bonds, shall be valid and binding upon the Company with the same force and effect as though manually affixed.

I, Renee C. Lewellyn, the undersigned, Assistant Secretary The Ohio Casualty Insurance Company, Liberty Mutual Insurance Company, and West American Insurance Company do hereby certify that the original power of attorney of which the foregoing is a full, true and correct copy of the Power of Attorney executed by said Companies, is in full force and effect and has not been revoked.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seals of said Companies this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.



By: Renee C. Lewellyn  
Renee C. Lewellyn, Assistant Secretary

Not valid for mortgage, note, loan, letter of credit, currency rate, interest rate or individual value guarantees.

To confirm the validity of this Power of Attorney call 1-610-832-8240 between 9:00 am and 4:30 pm EST on any business day.



**POWER OF ATTORNEY**

**American Home Assurance Company**  
**National Union Fire Insurance Company of Pittsburgh, PA.**  
Principal Bond Office: 175 Water Street, New York, NY 10038

Power No. **6426**

No. **17-B-194161**

**KNOW ALL MEN BY THESE PRESENTS:**

That American Home Assurance Company, a New York corporation, and National Union Fire Insurance Company of Pittsburgh, PA., a Pennsylvania corporation, does each hereby appoint

—**Pamela A. Beckman, Cynthia E. Choren, Heidi A. Notheisen, JoAnn E. Frank,  
Karen L. Roeder, Debra C. Schneider, Sandra L. Ham, Brittany D. Clavin** of St. Louis, Missouri—

its true and lawful Attorney(s)-in-Fact, with full authority to execute on its behalf bonds, undertakings, recognizances and other contracts of indemnity and writings obligatory in the nature thereof, issued in the course of its business, and to bind the respective company thereby.

**IN WITNESS WHEREOF**, American Home Assurance Company and National Union Fire Insurance Company of Pittsburgh, PA. have each executed these presents

this 27th day of March, 2018



*Michael Yang*

Michael Yang, Vice President

**STATE OF NEW YORK** )  
**COUNTY OF NEW YORK** ) ss.

On this 27th day of March, 2018, before me came the above named officer of American Home Assurance Company and National Union Fire Insurance Company of Pittsburgh, PA., to me personally known to be the individual and officer described herein, and acknowledged that he executed the foregoing instrument and affixed the seals of said corporations thereto by authority of his office.

*Juliana Hallenbeck*  
**JULIANA HALLENBECK**  
Notary Public - State of New York  
No. 019625871  
Qualified in West County  
My Commission Expires April 06, 2021

**CERTIFICATE**

Excerpts of Resolutions adopted by the Boards of Directors of American Home Assurance Company and National Union Fire Insurance Company of Pittsburgh, PA. on May 18, 1976:

"RESOLVED, that the Chairman of the Board, the President, or any Vice President be, and hereby is, authorized to appoint Attorneys-in-Fact to represent and act for and on behalf of the Company to execute bonds, undertakings, recognizances and other contracts of indemnity and writings obligatory in the nature thereof, and to attach thereto the corporate seal of the Company, in the transaction of its surety business,

"RESOLVED, that the signatures and attestations of such officers and the seal of the Company may be affixed to any such Power of Attorney or to any certificate relating thereto by facsimile, and any such Power of Attorney or certificate bearing such facsimile signatures or facsimile seal shall be valid and binding upon the Company when so affixed with respect to any bond, undertaking, recognizance and other contract of indemnity and writing obligatory in the nature thereof,

"RESOLVED, that any such Attorney-in-Fact delivering a secretarial certification that the foregoing resolutions still be in effect may insert in such certification the date thereof, said date to be not later than the date of delivery thereof by such Attorney-in-Fact."

I, Martin Bogge, Assistant Secretary of American Home Assurance Company and of National Union Fire Insurance Company of Pittsburgh, PA. do hereby certify that the foregoing excerpts of Resolutions adopted by the Boards of Directors of these corporations, and the Powers of Attorney issued pursuant thereto, are true and correct, and that both the Resolutions and the Powers of Attorney are in full force and effect.

**IN WITNESS WHEREOF**, I have hereunto set my hand and affixed the facsimile seal of each corporation

this \_\_\_\_\_ day of \_\_\_\_\_



*Martin Bogge*

Martin Bogge, Assistant Secretary



### Power Of Attorney

#### BERKSHIRE HATHAWAY SPECIALTY INSURANCE COMPANY NATIONAL INDEMNITY COMPANY / NATIONAL LIABILITY & FIRE INSURANCE COMPANY

Know all men by these presents, that **BERKSHIRE HATHAWAY SPECIALTY INSURANCE COMPANY**, a corporation existing under and by virtue of the laws of the State of Nebraska and having an office at 100 Federal Street, 20th Floor, Boston, Massachusetts 02110, **NATIONAL INDEMNITY COMPANY**, a corporation existing under and by virtue of the laws of the State of Nebraska and having an office at 3024 Harney Street, Omaha, Nebraska 68131 and **NATIONAL LIABILITY & FIRE INSURANCE COMPANY**, a corporation existing under and by virtue of the laws of the State of Connecticut and having an office at 100 First Stamford Place, Stamford, Connecticut 06902 (hereinafter collectively the "Companies"), pursuant to and by the authority granted as set forth herein, do hereby name, constitute and appoint: Debra C. Schneider, Sandra L. Ham, Karen L. Bolder, Pamela A. Beehman, JoAnn R. Frank, Heidi A. Notheisen, Cynthia L. Choren, 701 Market Street of the city of Saint Louis State of Missouri, their true and lawful attorney(s) in fact to make, execute, seal, acknowledge, and deliver, for and on their behalf as surety and as their act and deed, any and all undertakings, bonds, or other such writings obligatory in the nature thereof, in pursuance of these presents, the execution of which shall be as binding upon the Companies as if it has been duly signed and executed by their regularly elected officers in their own proper persons. This authority for the Attorney-in-Fact shall be limited to the execution of the attached bond(s) or other such writings obligatory in the nature thereof.

In witness whereof, this Power of Attorney has been subscribed by an authorized officer of the Companies, and the corporate seals of the Companies have been affixed hereto this date of April 12, 2018. This Power of Attorney is made and executed pursuant to and by authority of the Bylaws, Resolutions of the Board of Directors, and other Authorizations of BERKSHIRE HATHAWAY SPECIALTY INSURANCE COMPANY, NATIONAL INDEMNITY COMPANY and NATIONAL LIABILITY & FIRE INSURANCE COMPANY, which are in full force and effect, each reading as appears on the back page of this Power of Attorney, respectively.

BERKSHIRE HATHAWAY SPECIALTY  
INSURANCE COMPANY,

NATIONAL INDEMNITY COMPANY,  
NATIONAL LIABILITY & FIRE INSURANCE COMPANY,

By:

By:

David Fields, Executive Vice President

David Fields, Vice President

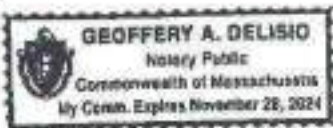


#### NOTARY

State of Massachusetts, County of Suffolk, ss:

On April 12, 2018 before me appeared David Fields, Executive Vice President of BERKSHIRE HATHAWAY SPECIALTY INSURANCE COMPANY and Vice President of NATIONAL INDEMNITY COMPANY and NATIONAL LIABILITY & FIRE INSURANCE COMPANY, who being duly sworn, says that his capacity is as designated above for such Companies; that he knows the corporate seals of the Companies; that the seals affixed to the foregoing instrument are such corporate seals; that they were affixed by order of the board of directors or other governing body of said Companies pursuant to its Bylaws, Resolutions and other Authorizations, and that he signed said instrument in that capacity of said Companies.

[Notary Seal]



Notary Public

I, Ralph Tortorella, the undersigned, Officer of BERKSHIRE HATHAWAY SPECIALTY INSURANCE COMPANY, NATIONAL INDEMNITY COMPANY and NATIONAL LIABILITY & FIRE INSURANCE COMPANY, do hereby certify that the above and foregoing is a true and correct copy of the Power of Attorney executed by said Companies which is in full force and effect and has not been revoked. IN TESTIMONY WHEREOF, see hereunto affixed the seals of said Companies this \_\_\_\_\_, 2018.



Officer

To verify the authenticity of this Power of Attorney please contact us at: (617) Surety Department, Berkshire Hathaway Specialty Insurance Company, 100 Federal Street, 20th floor, Boston MA 02110 (617) 916-2711, or by email at: Courtney.Walker@bhspci.com. THIS POWER OF ATTORNEY IS VOID IF ALTERED.  
To notify us of a claim please contact us at our 24-hour toll free number at (855) 453-8675, via email at claimservice@bhspci.com, via fax to (617) 507-8329, or via mail 500 Montague Tower Center, 1100 Abernethy Road, N. E., Suite 1100, Acworth, GA 30318



**BERKSHIRE HATHAWAY SPECIALTY INSURANCE COMPANY (BYLAWS)**

**ARTICLE V.**

**CORPORATE ACTIONS**

.....

**EXECUTION OF DOCUMENTS:**

.....

Section 6.(b) The President, any Vice President or the Secretary, shall have the power and authority:

- (1) To appoint Attorneys in fact, and to authorize them to execute on behalf of the Company bonds and other undertakings, and
- (2) To remove at any time any such Attorney-in-fact and revoke the authority given him.

**NATIONAL INDEMNITY COMPANY (BY-LAWS)**

**Section 4. Officers, Agents, and Employees:**

A. The officers shall be a President, one or more Vice Presidents, a Secretary, one or more Assistant Secretaries, a Treasurer, and one or more Assistant Treasurers none of whom shall be required to be shareholders or Directors and each of whom shall be elected annually by the Board of Directors at each annual meeting to serve a term of office of one year or until a successor has been elected and qualified, may serve successive terms of office, may be removed from office at any time for or without cause by a vote of a majority of the Board of Directors, and shall have such powers and rights and be charged with such duties and obligations as usually are vested in and pertain to such office or as may be directed from time to time by the Board of Directors; and the Board of Directors or the officers may from time to time appoint, discharge, engage, or remove such agents and employees as may be appropriate, convenient, or necessary to the affairs and business of the corporation.

**NATIONAL INDEMNITY COMPANY (BOARD RESOLUTION ADOPTED AUGUST 6, 2014)**

RESOLVED, That the President, any Vice President or the Secretary, shall have the power and authority to (1) appoint Attorneys-in-fact, and to authorize them to execute on behalf of this Company bonds and other undertakings and (2) remove at any time any such Attorney-in-fact and revoke the authority given.

**NATIONAL LIABILITY & FIRE INSURANCE COMPANY (BY-LAWS)**

**ARTICLE IV**

**Officers**

**Section 1. Officers, Agents and Employees:**

A. The officers shall be a president, one or more vice presidents, one or more assistant vice presidents, a secretary, one or more assistant secretaries, a treasurer, and one or more assistant treasurers, none of whom shall be required to be shareholders or directors, and each of whom shall be elected annually by the board of directors at each annual meeting to serve a term of office of one year or until a successor has been elected and qualified, may serve successive terms of office, may be removed from office at any time for or without cause by a vote of a majority of the board of directors. The president and secretary shall be different individuals. Election or appointment of an officer or agent shall not create contract rights. The officers of the Corporation shall have such powers and rights and be charged with such duties and obligations as usually are vested in and pertain to such office or as may be directed from time to time by the board of directors; and the board of directors or the officers may from time to time appoint, discharge, engage, or remove such agents and employees as may be appropriate, convenient, or necessary to the affairs and business of the Corporation.

**NATIONAL LIABILITY & FIRE INSURANCE COMPANY (BOARD RESOLUTION ADOPTED AUGUST 6, 2014)**

RESOLVED, That the President, any Vice President or the Secretary, shall have the power and authority to (1) appoint Attorneys-in-fact, and to authorize them to execute on behalf of this Company bonds and other undertakings and (2) remove at any time any such Attorney-in-fact and revoke the authority given.

Bond Numbers Zurich 9289565 and 09254345  
Liberty 268010438 and 012207605  
Berkshire 47SUR300016010062  
National Union 860888

**LABOR AND MATERIALS PAYMENT BOND**

Know all men by these presents, that LMH-Lane Cabot Yard JV  
100 Hancock Street, Suite 901, Quincy, MA 02109 as  
principal, and

as  
surety, are held and firmly bond unto the Massachusetts Bay Transportation Authority (MBTA) in the sum  
of Two Hundred Thirteen Million, Eight Hundred Seventeen Thousand Dollars  
(\$213,817,000) lawful money of the United States of America, to be paid to the MBTA, for which  
payments, well and truly to be made, we bind ourselves, our respective heirs, executors, administrators,  
successors and assigns, jointly and severally, firmly by these presents.

Whereas, the said principal has made a contract with the MBTA for the construction of MBTA Contract  
No. R44CN02 Now the condition of this obligation is such that if the principal and its subcontracts shall  
pay for all labor performed or furnished and for all materials and equipment used or employed in said  
contract and in: any and all duly authorized modifications, alterations, extensions, changes or additions  
thereto, all as set forth in Massachusetts General Laws, Chapter 149 Section 29 and Chapter 30 Section  
39A, then this obligation shall become null and void; otherwise it shall remain in full force and virtue, the  
rights and obligations of the principal, the surety and claimants being as set forth in said M.G.L. c. 149  
29.

The surety hereby stipulates and agrees that no change or modification in, or extension of time, or  
alterations or additions to the contract or in the work shall in any way affect its obligations on this Bond and  
does hereby waive notice of any such change, modification, extension, alteration or addition.

In witness whereof we hereunto set our hands and seals this 2<sup>nd</sup> day of August 2018

LMH-LANE CABOT YARD JV  
(Print Name of General Contractor/ Principal)

By: [Signature] MASSIMO MARINO, Managing Director of JV  
(Signature - Title)

Zurich American Insurance Company \* see below for additional Sureties  
Fidelity and Deposit Company of Maryland (Seal)  
(Print Name of Surety)

By Cynthia L. Choren  
(Signature - Title) Cynthia L. Choren, Attorney-in-Fact

Business Address 1299 Zurich Way, 5th Floor, Schaumburg, IL 60196-1056

Countersigned MA Resident Agent by [Signature] Craig A. Parrow

Address c/o Marsh USA Inc. 20 Church St., Hartford, CT 06103

Telephone No. 860-723-5784

Attach herewith proof of authority of officers or agents to sign the bond.

[Signature]  
John B. O'Keefe  
[Signature]  
John B. O'Keefe  
[Signature]  
John B. O'Keefe

Liberty Mutual Insurance Company (Seal)  
Cynthia L. Choren  
Cynthia L. Choren, Attorney-in-Fact  
National Union Insurance Company of  
Pittsburgh, PA (Seal)  
Cynthia L. Choren  
Cynthia L. Choren, Attorney-in-Fact  
Berkshire Hathaway Specialty Insurance Company (Seal)  
Cynthia L. Choren  
Cynthia L. Choren, Attorney-in-Fact



ACKNOWLEDGMENT BY SURETY

**LATE**

STATE OF Missouri  
City of St. Louis } ss.

On this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, before me personally appeared Cynthia L. Choren, known to me to be the Attorney-in-Fact of Zurich American Insurance Company, Fidelity and Deposit Company of Maryland, Liberty Mutual

Insurance Company, National Union Insurance Company of Pittsburgh, PA and Berkshire Hathaway Specialty Insurance Company, the corporation that executed the within instrument, and acknowledged to me that such corporation executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal, at my office in the aforesaid County, the day and year in this certificate first above written.

My Commission Expires: July 20, 2022  
(Seal)

Joann R. Frank  
Joann R. Frank  
Notary Public in the State of Missouri  
City of St. Louis  
Commission #14395672





**ZURICH AMERICAN INSURANCE COMPANY  
COLONIAL AMERICAN CASUALTY AND SURETY COMPANY  
FIDELITY AND DEPOSIT COMPANY OF MARYLAND  
POWER OF ATTORNEY**

KNOW ALL MEN BY THESE PRESENTS: That the ZURICH AMERICAN INSURANCE COMPANY, a corporation of the State of New York, the COLONIAL AMERICAN CASUALTY AND SURETY COMPANY, a corporation of the State of Maryland, and the FIDELITY AND DEPOSIT COMPANY OF MARYLAND a corporation of the State of Maryland (herein collectively called the "Companies"), by MICHAEL BOND, Vice President, in pursuance of authority granted by Article V, Section 8, of the By-Laws of said Companies, which are set forth on the reverse side hereof and are hereby certified to be in full force and effect on the date hereof, do hereby nominate, constitute, and appoint Pamela A. BEELMAN, Cynthia L. CHOREN, Heidi A. NOTHEISEN, Joann R. FRANK, Karen L. ROIDER, Debra C. SCHNEIDER, Sandra L. HAM and Brittany D. CLAVIN, all of St. Louis, Missouri, EACH its true and lawful agent and Attorney-in-Fact, to make, execute, seal and deliver, for, and on its behalf as surety, and as its act and deed; any and all bonds and undertakings, and the execution of such bonds or undertakings in pursuance of these presents, shall be as binding upon said Companies, as fully and amply, to all intents and purposes, as if they had been duly executed and acknowledged by the regularly elected officers of the ZURICH AMERICAN INSURANCE COMPANY at its office in New York, New York., the regularly elected officers of the COLONIAL AMERICAN CASUALTY AND SURETY COMPANY at its office in Owings Mills, Maryland., and the regularly elected officers of the FIDELITY AND DEPOSIT COMPANY OF MARYLAND at its office in Owings Mills, Maryland., in their own proper persons.

The said Vice President does hereby certify that the extract set forth on the reverse side hereof is a true copy of Article V, Section 8, of the By-Laws of said Companies, and is now in force.

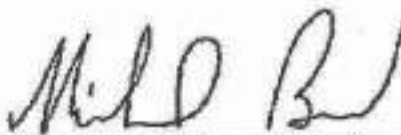
IN WITNESS WHEREOF, the said Vice-President has hereunto subscribed his/her names and affixed the Corporate Seals of the said ZURICH AMERICAN INSURANCE COMPANY, COLONIAL AMERICAN CASUALTY AND SURETY COMPANY, and FIDELITY AND DEPOSIT COMPANY OF MARYLAND, this 17th day of April, A.D. 2017.

ATTEST:

ZURICH AMERICAN INSURANCE COMPANY  
COLONIAL AMERICAN CASUALTY AND SURETY COMPANY  
FIDELITY AND DEPOSIT COMPANY OF MARYLAND



By:   
Assistant Secretary  
Joshua Lecker

  
Vice President  
Michael Bond

State of Maryland  
County of Baltimore

On this 17th day of April, A.D. 2017, before the subscriber, a Notary Public of the State of Maryland, duly commissioned and qualified, MICHAEL BOND, Vice President, and JOSHUA LECKER, Assistant Secretary, of the Companies, to me personally known to be the individuals and officers described in and who executed the preceding instrument, and acknowledged the execution of same, and being by me duly sworn, deposed and saith, that he/she is the said officer of the Company aforesaid, and that the seals affixed to the preceding instrument are the Corporate Seals of said Companies, and that the said Corporate Seals and the signature as such officer were duly affixed and subscribed to the said instrument by the authority and direction of the said Corporations.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my Official Seal the day and year first above written.





Constance A. Dana, Notary Public  
My Commission Expires: July 9, 2019

**EXTRACT FROM BY-LAWS OF THE COMPANIES**

"Article V, Section 8, Attorneys-in-Fact. The Chief Executive Officer, the President, or any Executive Vice President or Vice President may, by written instrument under the attested corporate seal, appoint attorneys-in-fact with authority to execute bonds, policies, recognizances, stipulations, undertakings, or other like instruments on behalf of the Company, and may authorize any officer or any such attorney-in-fact to affix the corporate seal thereto; and may with or without cause modify or revoke any such appointment or authority at any time."

**CERTIFICATE**

I, the undersigned, Vice President of the ZURICH AMERICAN INSURANCE COMPANY, the COLONIAL AMERICAN CASUALTY AND SURETY COMPANY, and the FIDELITY AND DEPOSIT COMPANY OF MARYLAND, do hereby certify that the foregoing Power of Attorney is still in full force and effect on the date of this certificate; and I do further certify that Article V, Section 8, of the By-Laws of the Companies is still in force.

This Power of Attorney and Certificate may be signed by facsimile under and by authority of the following resolution of the Board of Directors of the ZURICH AMERICAN INSURANCE COMPANY at a meeting duly called and held on the 15th day of December 1998.

RESOLVED: "That the signature of the President or a Vice President and the attesting signature of a Secretary or an Assistant Secretary and the Seal of the Company may be affixed by facsimile on any Power of Attorney...Any such Power or any certificate thereof bearing such facsimile signature and seal shall be valid and binding on the Company."

This Power of Attorney and Certificate may be signed by facsimile under and by authority of the following resolution of the Board of Directors of the COLONIAL AMERICAN CASUALTY AND SURETY COMPANY at a meeting duly called and held on the 5th day of May, 1994, and the following resolution of the Board of Directors of the FIDELITY AND DEPOSIT COMPANY OF MARYLAND at a meeting duly called and held on the 10th day of May, 1990.

RESOLVED: "That the facsimile or mechanically reproduced seal of the company and facsimile or mechanically reproduced signature of any Vice-President, Secretary, or Assistant Secretary of the Company, whether made heretofore or hereafter, wherever appearing upon a certified copy of any power of attorney issued by the Company, shall be valid and binding upon the Company with the same force and effect as though manually affixed.

IN TESTIMONY WHEREOF, I have hereunto subscribed my name and affixed the corporate seals of the said Companies, this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_



*David McVicker*

David McVicker, Vice President

**TO REPORT A CLAIM WITH REGARD TO A SURETY BOND, PLEASE SUBMIT ALL REQUIRED INFORMATION TO:**

Zurich American Insurance Co.  
Attn: Surety Claims  
1299 Zurich Way  
Schaumburg, IL 60196-1056



**THIS POWER OF ATTORNEY IS NOT VALID UNLESS IT IS PRINTED ON RED BACKGROUND.**

This Power of Attorney limits the acts of those named herein, and they have no authority to bind the Company except in the manner and to the extent herein stated.

Certificate No. 7703753

Liberty Mutual Insurance Company  
The Ohio Casualty Insurance Company West American Insurance Company

### POWER OF ATTORNEY

KNOWN ALL PERSONS BY THESE PRESENTS: That The Ohio Casualty Insurance Company is a corporation duly organized under the laws of the State of New Hampshire, that Liberty Mutual Insurance Company is a corporation duly organized under the laws of the State of Massachusetts, and West American Insurance Company is a corporation duly organized under the laws of the State of Indiana (herein collectively called the "Companies"), present to and by authority herein set forth, does hereby name, constitute and appoint, Brittany D. Clavin; Cynthia L. Chorer; Debra C. Schneider; Heidi A. Notheiser; JoAnn B. Frank; Karen L. Roider; Kelsey M. Jones; Pamela A. Beelman; Sandra L. Ham

all of the city of St. Louis state of MO each individually if there be more than one named, its true and lawful attorney-in-fact to make, execute, seal, acknowledge and deliver, for and on its behalf as surety and as its act and deed, any and all undertakings, bonds, recognizances and other surety obligations, in pursuance of these presents and shall be as binding upon the Companies as if they have been duly signed by the president and attested by the secretary of the Companies in their own proper persons.

IN WITNESS WHEREOF, this Power of Attorney has been subscribed by an authorized officer or official of the Companies and the corporate seals of the Companies have been affixed thereto this 30th day of March, 2017.



The Ohio Casualty Insurance Company  
Liberty Mutual Insurance Company  
West American Insurance Company

By: David M. Carey  
David M. Carey, Assistant Secretary

STATE OF PENNSYLVANIA ss  
COUNTY OF MONTGOMERY

On this 30th day of March, 2017, before me personally appeared David M. Carey, who acknowledged himself to be the Assistant Secretary of Liberty Mutual Insurance Company, The Ohio Casualty Company, and West American Insurance Company, and that he, as such, being authorized so to do, executes the foregoing instrument for the purposes therein contained by signing on behalf of the corporations by himself as a duly authorized officer.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed my notarial seal at King of Prussia, Pennsylvania, on the day and year first above written.



COMMONWEALTH OF PENNSYLVANIA  
Notarial Seal  
Teresa Pastella, Notary Public  
Upper Merion Twp., Montgomery County  
My Commission Expires March 28, 2021  
Member, Pennsylvania Association of Notaries

By: Teresa Pastella  
Teresa Pastella, Notary Public

This Power of Attorney is made and executed pursuant to and by authority of the following By-laws and Authorizations of The Ohio Casualty Insurance Company, Liberty Mutual Insurance Company, and West American Insurance Company which resolutions are now in full force and effect reading as follows:

**ARTICLE IV - OFFICERS - Section 12. Power of Attorney.** Any officer or other official of the Corporation authorized for that purpose in writing by the Chairman or the President, and subject to such limitation as the Chairman or the President may prescribe, shall appoint such attorneys-in-fact, as may be necessary to act in behalf of the Corporation to make, execute, seal, acknowledge and deliver as surety any and all undertakings, bonds, recognizances and other surety obligations. Such attorneys-in-fact, subject to the limitations set forth in their respective powers of attorney, shall have full power to bind the Corporation by their signature and execution of any such instruments and to attach thereto the seal of the Corporation. When so executed, such instruments shall be as binding as if signed by the President and attested to by the Secretary. Any power or authority granted to any representative or attorney-in-fact under the provisions of this article may be revoked at any time by the Board, the Chairman, the President or by the officer or officers granting such power or authority.

**ARTICLE XIII - Execution of Contracts - SECTION 5. Surety Bonds and Undertakings.** Any officer of the Company authorized for that purpose in writing by the chairman or the president, and subject to such limitations as the chairman or the president may prescribe, shall appoint such attorneys-in-fact, as may be necessary to act in behalf of the Company to make, execute, seal, acknowledge and deliver as surety any and all undertakings, bonds, recognizances and other surety obligations. Such attorneys-in-fact subject to the limitations set forth in their respective powers of attorney, shall have full power to bind the Company by their signature and execution of any such instruments and to attach thereto the seal of the Company. When so executed such instruments shall be as binding as if signed by the president and attested by the secretary.

**Certificate of Designation -** The President of the Company, acting pursuant to the Bylaws of the Company, authorizes David M. Carey, Assistant Secretary to appoint such attorneys-in-fact as may be necessary to act on behalf of the Company to make, execute, seal, acknowledge and deliver as surety any and all undertakings, bonds, recognizances and other surety obligations.

**Authorization -** By unanimous consent of the Company's Board of Directors, the Company consents that facsimile or mechanically reproduced signature of any assistant secretary of the Company, wherever appearing upon a certified copy of any power of attorney issued by the Company in connection with surety bonds, shall be valid and binding upon the Company with the same force and effect as though manually affixed.

I, Renee C. Llewellyn, the undersigned, Assistant Secretary, The Ohio Casualty Insurance Company, Liberty Mutual Insurance Company, and West American Insurance Company do hereby certify that the original power of attorney of which the foregoing is a full, true and correct copy of the Power of Attorney executed by said Companies, is in full force and effect and has not been revoked.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seals of said Companies this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.



By: Renee C. Llewellyn  
Renee C. Llewellyn, Assistant Secretary

Not valid for mortgage, note, loan, letter of credit, currency rate, interest rate or individual value guarantees.

To confirm the validity of this Power of Attorney call 1-610-832-8240 between 9:00 am and 4:30 pm EST on any business day.



**POWER OF ATTORNEY**

**American Home Assurance Company**  
**National Union Fire Insurance Company of Pittsburgh, PA.**  
Principal Bond Office: 175 Water Street, New York, NY 10038

Power No. **6432**

No. **07-B-104161**

**KNOW ALL MEN BY THESE PRESENTS:**

That American Home Assurance Company, a New York corporation, and National Union Fire Insurance Company of Pittsburgh, PA., a Pennsylvania corporation, does each hereby appoint

**—Patricia A. Beelman, Cynthia L. Choren, Heidi A. Notheisen, JoAnn B. Frank,  
Karen L. Roider, Debra C. Schneider, Saritra L. Ham, Britany D. Clavin, of St. Louis, Missouri—**

its true and lawful Attorney(s)-in-Fact, with full authority to execute on its behalf bonds, undertakings, recognizances and other contracts of indemnity and writings obligatory in the nature thereof, issued in the course of its business, and to bind the respective company thereby.

**IN WITNESS WHEREOF,** American Home Assurance Company and National Union Fire Insurance Company of Pittsburgh, PA. have each executed these presents

this 27th day of March, 2018



Michael Yang, Vice President

**STATE OF NEW YORK }  
COUNTY OF NEW YORK } ss.**

On this 27th day of March, 2018, before me came the above named officer of American Home Assurance Company and National Union Fire Insurance Company of Pittsburgh, PA., to me personally known to be the individual and officer described herein, and acknowledged that he executed the foregoing instrument and affixed the seals of said corporations thereto by authority of his office.

**JULIANA HALLENBECK**  
Notary Public - State of New York  
No. 0154625871  
Qualified in Essex County  
My Commission Expires April 18, 2021

**CERTIFICATE**

Excerpts of Resolutions adopted by the Boards of Directors of American Home Assurance Company and National Union Fire Insurance Company of Pittsburgh, PA. on May 18, 1976:

**"RESOLVED,** that the Chairman of the Board, the President, or any Vice President be, and hereby is, authorized to appoint Attorneys-in-Fact to represent and act for and on behalf of the Company to execute bonds, undertakings, recognizances and other contracts of indemnity and writings obligatory in the nature thereof, and to attach thereto the corporate seal of the Company, in the transaction of its surety business,

**"RESOLVED,** that the signatures and attestations of such officers and the seal of the Company may be affixed to any such Power of Attorney or to any certificate relating thereto by facsimile, and any such Power of Attorney or certificate bearing such facsimile signatures or facsimile seal shall be valid and binding upon the Company when so affixed with respect to any bond, undertaking, recognizance and other contract of indemnity and writing obligatory in the nature thereof;

**"RESOLVED,** that any such Attorney-in-Fact delivering a secretarial certification that the foregoing resolutions still be in effect may insert in such certification the date thereof, said date to be not later than the date of delivery thereof by such Attorney-in-Fact."

I, Martin Bogue, Assistant Secretary of American Home Assurance Company and of National Union Fire Insurance Company of Pittsburgh, PA. do hereby certify that the foregoing excerpts of Resolutions adopted by the Boards of Directors of these corporations, and the Powers of Attorney issued pursuant thereto, are true and correct, and that both the Resolutions and the Powers of Attorney are in full force and effect.

**IN WITNESS WHEREOF,** I have hereunto set my hand and affixed the facsimile seal of each corporation

this      day of



Martin Bogue, Assistant Secretary

65166(4/96)



### Power Of Attorney

#### BERKSHIRE HATHAWAY SPECIALTY INSURANCE COMPANY NATIONAL INDEMNITY COMPANY / NATIONAL LIABILITY & FIRE INSURANCE COMPANY

Know all men by these presents, that **BERKSHIRE HATHAWAY SPECIALTY INSURANCE COMPANY**, a corporation existing under and by virtue of the laws of the State of Nebraska and having an office at 100 Federal Street, 20th Floor, Boston, Massachusetts 02110, **NATIONAL INDEMNITY COMPANY**, a corporation existing under and by virtue of the laws of the State of Nebraska and having an office at 3024 Harney Street, Omaha, Nebraska 68131 and **NATIONAL LIABILITY & FIRE INSURANCE COMPANY**, a corporation existing under and by virtue of the laws of the State of Connecticut and having an office at 100 First Stamford Place, Stamford, Connecticut 06902 (hereinafter collectively the "Companies"), pursuant to and by the authority granted as set forth herein, do hereby name, constitute and appoint Debra C. Schweisler, Sandra L. Ham, Karen L. Rolder, Pamela A. Beelman, JoAnn R. Frank, Heidi A. Nothstein, Cynthia L. Chorro, 781 Market Street of the city of Saint Louis State of Missouri, their true and lawful attorney(s)-in-fact to make, execute, seal, acknowledge, and deliver, for and on their behalf as surety and as their act and deed, any and all undertakings, bonds, or other such writings obligatory in the nature thereof, in pursuance of these presents, the execution of which shall be as binding upon the Companies as if it has been duly signed and executed by their regularly elected officers in their own proper persons. This authority for the Attorney-in-Fact shall be limited to the execution of the attached bond(s) or other such writings obligatory in the nature thereof.

In witness whereof, this Power of Attorney has been subscribed by an authorized officer of the Companies, and the corporate seals of the Companies have been affixed hereto this date of April 12, 2018. This Power of Attorney is made and executed pursuant to and by authority of the Bylaws, Resolutions of the Board of Directors, and other Authorizations of **BERKSHIRE HATHAWAY SPECIALTY INSURANCE COMPANY, NATIONAL INDEMNITY COMPANY and NATIONAL LIABILITY & FIRE INSURANCE COMPANY**, which are in full force and effect, each reading as appears on the back page of this Power of Attorney, respectively.

BERKSHIRE HATHAWAY SPECIALTY  
INSURANCE COMPANY,

NATIONAL INDEMNITY COMPANY,  
NATIONAL LIABILITY & FIRE INSURANCE COMPANY,

By: \_\_\_\_\_  
David Fields, Executive Vice President

By: \_\_\_\_\_  
David Fields, Vice President

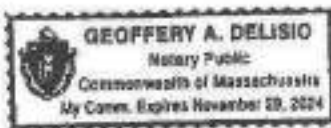


**NOTARY**

State of Massachusetts, County of Suffolk, ss:

On April 12, 2018 before me appeared David Fields, Executive Vice President of **BERKSHIRE HATHAWAY SPECIALTY INSURANCE COMPANY** and Vice President of **NATIONAL INDEMNITY COMPANY** and **NATIONAL LIABILITY & FIRE INSURANCE COMPANY**, who being duly sworn, says that his capacity is as designated above for such Companies; that he knows the corporate seals of the Companies; that the seals affixed to the foregoing instrument are such corporate seals; that they were affixed by order of the board of directors or other governing body of said Companies pursuant to its Bylaws, Resolutions and other Authorizations, and that he signed said instrument in that capacity of said Companies.

[Notary Seal]



Notary Public

I, Ralph Tortorella, the undersigned, Officer of **BERKSHIRE HATHAWAY SPECIALTY INSURANCE COMPANY, NATIONAL INDEMNITY COMPANY and NATIONAL LIABILITY & FIRE INSURANCE COMPANY**, do hereby certify that the above and foregoing is a true and correct copy of the Power of Attorney executed by said Companies which is in full force and effect and has not been revoked. IN TESTIMONY WHEREOF, see hereunto affixed the seals of said Companies this \_\_\_\_\_, 2018.

  
\_\_\_\_\_  
Officer

To verify the authenticity of this Power of Attorney please contact us at: Best Surety Department, Berkshire Hathaway Specialty Insurance Company, 100 Federal Street, 20th floor, Boston MA 02110 (617) 936-3971 or by email at: [Caroline.Walker@bhspci.com](mailto:Caroline.Walker@bhspci.com). THIS POWER OF ATTORNEY IS VOID IF ALTERED.  
To notify us of claim please contact us on our 24-hour toll free number at (855) 451-9975, via email at [claimnotice@bhspci.com](mailto:claimnotice@bhspci.com), via fax to (617) 507-8529, or via mail 500 Northpark Town Center, 1100 Abernethy Road, N.E., Suite 1100, Atlanta, GA 30338



**BERKSHIRE HATHAWAY SPECIALTY INSURANCE COMPANY (BYLAWS)**

ARTICLE V.  
CORPORATE ACTIONS

....  
EXECUTION OF DOCUMENTS:

....  
Section 6.(b) The President, any Vice President or the Secretary, shall have the power and authority:

- (1) To appoint Attorneys-in-fact, and to authorize them to execute on behalf of the Company bonds and other undertakings, and
- (2) To remove at any time any such Attorney-in-fact and revoke the authority given him.

**NATIONAL INDEMNITY COMPANY (BY-LAWS)**

Section 4. Officers, Agents, and Employees:

A. The officers shall be a President, one or more Vice Presidents, a Secretary, one or more Assistant Secretaries, a Treasurer, and one or more Assistant Treasurers none of whom shall be required to be shareholders or Directors and each of whom shall be elected annually by the Board of Directors at each annual meeting to serve a term of office of one year or until a successor has been elected and qualified, may serve successive terms of office, may be removed from office at any time for or without cause by a vote of a majority of the Board of Directors, and shall have such powers and rights and be charged with such duties and obligations as usually are vested in and pertain to such office or as may be directed from time to time by the Board of Directors; and the Board of Directors or the officers may from time to time appoint, discharge, engage, or remove such agents and employees as may be appropriate, convenient, or necessary to the affairs and business of the corporation.

**NATIONAL INDEMNITY COMPANY (BOARD RESOLUTION ADOPTED AUGUST 6, 2014)**

RESOLVED, That the President, any Vice President or the Secretary, shall have the power and authority to (1) appoint Attorneys-in-fact, and to authorize them to execute on behalf of this Company bonds and other undertakings and (2) remove at any time any such Attorney-in-fact and revoke the authority given.

**NATIONAL LIABILITY & FIRE INSURANCE COMPANY (BY-LAWS)**

ARTICLE IV

Officers

Section 1. Officers, Agents and Employees:

A. The officers shall be a president, one or more vice presidents, one or more assistant vice presidents, a secretary, one or more assistant secretaries, a treasurer, and one or more assistant treasurers, none of whom shall be required to be shareholders or directors, and each of whom shall be elected annually by the board of directors at each annual meeting to serve a term of office of one year or until a successor has been elected and qualified, may serve successive terms of office, may be removed from office at any time for or without cause by a vote of a majority of the board of directors. The president and secretary shall be different individuals. Election or appointment of an officer or agent shall not create contract rights. The officers of the Corporation shall have such powers and rights and be charged with such duties and obligations as usually are vested in and pertain to such office or as may be directed from time to time by the board of directors; and the board of directors or the officers may from time to time appoint, discharge, engage, or remove such agents and employees as may be appropriate, convenient, or necessary to the affairs and business of the Corporation.

**NATIONAL LIABILITY & FIRE INSURANCE COMPANY (BOARD RESOLUTION ADOPTED AUGUST 6, 2014)**

RESOLVED, That the President, any Vice President or the Secretary, shall have the power and authority to (1) appoint Attorneys-in-fact, and to authorize them to execute on behalf of this Company bonds and other undertakings and (2) remove at any time any such Attorney-in-fact and revoke the authority given.



# LMH Written of Consent


**LM HEAVY CIVIL CONSTRUCTION, LLC**  
**WRITTEN CONSENT OF THE BOARD OF MANAGERS**

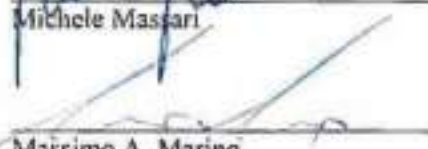
The undersigned, being all of the members of the Board of Managers of LM Heavy Civil Construction, LLC, a Massachusetts limited liability company (the "Company"), in accordance with the provisions of the Company's Third Amended and Restated Operating Agreement dated April 22, 2011 (the "Operating Agreement"), and the Massachusetts Limited Liability Company Act, do hereby consent to the adoption of the resolutions set forth on Schedule A hereto, without a meeting and, upon execution of this consent or a counterpart hereof by the Managers listed below, do hereby adopt such resolutions as if adopted at a meeting duly called and held at which a quorum was present and acting throughout.

IN WITNESS WHEREOF, we have set our hands to be effective as of February <sup>23</sup>~~2~~ 2018.

  
\_\_\_\_\_  
Roberto Macci

  
\_\_\_\_\_  
Gian Luca Menchini

  
\_\_\_\_\_  
Michele Mastari

  
\_\_\_\_\_  
Massimo A. Marino



**SCHEDULE A TO CONSENT VOTE**

**RESOLUTIONS ADOPTED BY THE MANAGERS OF  
LM HEAVY CIVIL CONSTRUCTION, LLC (the "Company")**

**RESOLVED:** That Massimo A. Marino, in his capacity as Chief Executive Officer of the Company (the "Chief Executive Officer"), be, and acting singly hereby is, authorized on behalf of the Company, either in its own capacity, or as the designated Managing Party under a Joint Venture with Cooperativa Muratori & Cementisti, C.M.C. di Ravenna Società Cooperativa, a cooperative based in Ravenna, Italy (the "Joint Venture"), to submit a bid (the "Bid"), and if awarded the contract subject to the Bid (the "Contract"), to execute the Contract in connection with that certain project for the Massachusetts Bay Transportation Authority (the "Owner") identified as the Cabot Yard and Maintenance Facility Improvements Project, identified as Contract Number R44CN02, located in Boston, Massachusetts (the "Project"), under which the Company, individually or as Managing Party of the Joint Venture, will provide certain construction services in accordance with the Contract;

**FURTHER RESOLVED:** That the Chief Executive Officer be, and acting singly hereby is, authorized on behalf of the Company, either in its own capacity, or as the designated Managing Party under the Joint Venture, to execute and deliver, for and on behalf of the Company, either in its own capacity, or as the designated Managing Party under the Joint Venture, any and all documents to be submitted in connection with the Bid, including, if awarded, the Contract, and to make any changes, modifications or additions to any of such documents that he deems necessary or advisable, and any and all such changes, modifications or additions are expressly authorized, ratified and confirmed by his execution thereof;

**FURTHER RESOLVED:** That the Chief Executive Officer be, and acting singly hereby is, empowered, authorized and directed to prepare and execute all other documents, instruments, certificates and agreements to which the Company, either in its own capacity, or the Joint Venture, shall be a party in connection with the Bid, the Contract and the Project, and to deliver all notices in connection therewith;

**FURTHER RESOLVED:** That the Chief Executive Officer be, and acting singly hereby is, empowered, authorized and directed to prepare, execute and deliver all such instruments or agreements, make all such filings and do all such other acts and things as in his opinion, may be necessary or appropriate in order to carry out the intent and purposes of the foregoing resolutions, and to the extent that any of the actions contemplated by the foregoing resolutions may already have been taken, such actions are hereby approved, ratified and confirmed in all respects as if said actions were taken subsequent to and in full accordance with these resolutions.



# LMH-CMC JV Agreement And Amendment for Cabot Yard

## ELEVENTH AMENDMENT TO JOINT VENTURE AGREEMENT

THIS ELEVENTH AMENDMENT TO JOINT VENTURE AGREEMENT, is made and entered into as of the 28<sup>th</sup> day of February, 2018 (this "Eleventh Amendment"), by and between LM Heavy Civil Construction, I.L.C, a Massachusetts limited liability company (referred to hereinafter as "LMH") and Cooperativa Muratori & Cementisti - C.M.C. Di Ravenna Societa Cooperativa, an Italian corporation (referred to hereinafter as "CMC"). LMH and CMC are referred to herein collectively as the "Joint Venturers," and singly as a "Joint Venturer."

WHEREAS, LMH and CMC are parties to that certain Joint Venture Agreement dated August 2, 2013 (the "Joint Venture Agreement"), pursuant to which LMH and CMC formed a Joint Venture (the "Joint Venture") for purposes of bidding on the performance of construction services associated with a certain project for the Massachusetts Bay Transportation Authority (hereinafter referred to as the "Owner") identified as the New Intermodal Center, Hingham, Massachusetts, MBTA Project No. S03CN03 (the "Hingham Project"), and if successful in the bid, to enter into a contract with the Owner for the performance of certain construction services in connection with the Hingham Project (the "Hingham Contract");

WHEREAS, on January 9, 2014, LMH and CMC executed a First Amendment to the Joint Venture Agreement (the "First Amendment"), pursuant to which the scope of the Joint Venture was expanded to allow the Joint Venture to perform certain construction services associated with another project for the Owner identified as the Repair/Rehabilitation of Merrimack and Washington Street Bridges, Washington Street, Haverhill, Massachusetts, MBTA Project No. B64CN01 ("Merrimack Project No. 1"), and to enter into a contract with the Owner for the performance of certain construction services in connection with Merrimack Project No. 1 (the "Merrimack Project No. 1 Contract");

WHEREAS, on March 19, 2014, LMH and CMC executed a Second Amendment to the Joint Venture Agreement (the "Second Amendment"), pursuant to which the scope of the Joint Venture was further expanded to allow the Joint Venture to perform certain construction services associated with another project for the Owner identified as the Rehabilitation of Merrimack River Bridge Piers Project, MBTA Project No. B64CN02 ("Merrimack Project No. 2"), and if successful in the bid, to enter into a contract with the Owner for the performance of certain construction services in connection with Merrimack Project No. 2 (the "Merrimack Project No. 2 Contract");

WHEREAS, on February 18, 2016, LMH and CMC executed a Third Amendment to the Joint Venture Agreement (the "Third Amendment"), pursuant to which the scope of the Joint Venture was further expanded to allow the Joint Venture to perform certain construction services associated with a project for the National Railroad Passenger Corporation Procurement Department ("Amtrak") identified as the Construction of New Fascia/Spandrel Beam and Catenary Relocation at Mile Road 224.25 on the Southwest Corridor located in Forrest Hills, Massachusetts (the "Amtrak Project"), and if successful in the bid, to enter into a contract with

Amtrak for the performance of certain construction services in connection with the Amtrak Project (the "Amtrak Contract");

WHEREAS, on November 7, 2016, LMH and CMC executed a Fourth Amendment to the Joint Venture Agreement (the "Fourth Amendment"), pursuant to which the scope of the Joint Venture was further expanded to allow the Joint Venture to perform certain construction services associated with a project for the Owner identified as the Green Line Extension – Build Built Service, Identified as Project No. E22N07 located in Boston-Somerville-Medford, Massachusetts (the "Green Line Extension Project"), and if successful in the bid, to enter into a contract with the Owner for the performance of certain construction services in connection with the Green Line Project (the "Green Line Extension Contract");

WHEREAS, on April 5, 2017, LMH and CMC executed a Fifth Amendment to the Joint Venture Agreement (the "Fifth Amendment"), pursuant to which the scope of the Joint Venture was further expanded to allow the Joint Venture to perform certain construction services associated with a project for the Owner identified as the Wellington Carhouse Expansion and Improvement Project, Identified as Project No. R32CN03 located in Medford, Massachusetts (the "Wellington Project"), and if successful in the bid, to enter into a contract with the Owner for the performance of certain construction services in connection with the Wellington Project (the "Wellington Contract");

WHEREAS, on April 27, 2017, LMH and CMC executed a Sixth Amendment to the Joint Venture Agreement (the "Sixth Amendment"), pursuant to which the scope of the Joint Venture was further expanded to allow the Joint Venture to perform certain construction services associated with a project for the Owner identified as the Wollaston Station Improvements and Quincy Center Garage Demolition Project, Identified as Project Number A47CN01, located in Quincy, Massachusetts (the "Wollaston Project"), and if successful in the bid, to enter into a contract with Owner for the performance of certain construction services in connection with the Wollaston Project (the "Wollaston Contract");

WHEREAS, on May 24, 2017, LMH and CMC executed a Seventh Amendment to the Joint Venture Agreement (the "Seventh Amendment"), pursuant to which the scope of the Joint Venture was further expanded to allow the Joint Venture to perform certain construction services associated with a project for the Owner identified as the Charlestown Bus Facility, Shoreline Stabilization and Yard Improvements Project, Identified as Project Number R54CN02, located in Charlestown, Massachusetts (the "Charlestown Project"), and if successful in the bid, to enter into a contract with Owner for the performance of certain construction services in connection with the Charlestown Project (the "Charlestown Contract");

WHEREAS, on August 27, 2017, LMH and CMC executed an Eighth Amendment to the Joint Venture Agreement (the "Eighth Amendment"), pursuant to which the scope of the Joint Venture was further expanded to allow the Joint Venture to perform certain construction services

associated with a project for the Owner identified as the Rail Bridges Replacement Design Build Project, identified as Project Number H91CN01, located in Melrose, Lawrence, Lynn, Wellesley, Weston and Somerville, Massachusetts (the "Rail Bridges Project"), and if successful in the bid, to enter into a contract with Owner for the performance of certain construction services in connection with the Rail Bridges Project (the "Rail Bridges Contract");

WHEREAS, on October 10, 2017, LMH and CMC executed a Ninth Amendment to the Joint Venture Agreement (the "Ninth Amendment"), pursuant to which the scope of the Joint Venture was further expanded to allow the Joint Venture to perform certain construction services associated with a project for the Owner identified as the Red Line and Orange Line Signal System Upgrade Project, identified as Contract Number Q09CN01, located throughout the Commonwealth of Massachusetts (the "Signal Upgrade Project"), and if successful in the bid, to enter into a contract with Owner for the performance of certain construction services in connection with the Signal Upgrade Project (the "Signal Upgrade Contract");

WHEREAS, on December 20, 2017, LMH and CMC executed a Tenth Amendment to the Joint Venture Agreement (the "Tenth Amendment"), pursuant to which the scope of the Joint Venture was further expanded to allow the Joint Venture to perform certain construction services associated with a project for the Owner identified as the South Shore Parking Garage Repairs Project, identified as Contract Number W46CN04, located in Boston, Massachusetts (the "South Shore Garage Project"), and if successful in the bid, to enter into a contract with Owner for the performance of certain construction services in connection with the South Shore Garage Project (the "South Shore Garage Contract");

WHEREAS, LMH and CMC wish to further amend the Joint Venture Agreement to permit the Joint Venture to bid on the performance of construction services associated with a project for the Owner identified as the Cabot Yard and Maintenance Facility Improvements Project, identified as Contract Number R44CN02, located in Boston, Massachusetts (the "Cabot Yard Project"), and if successful in the bid, to enter into a contract with Owner for the performance of certain construction services in connection with the Cabot Yard Project (the "Cabot Yard Contract");

WHEREAS, LMH and CMC have determined that it is in their best interest and the best interest of the Joint Venture to use the Joint Venture to perform the services on the Hingham Project, Merrimack Project No. 1, Merrimack Project No. 2, the Amtrak Project, the Green Line Extension Project, the Wellington Project, the Wollaston Project, the Charlestown Project, the Rail Bridges Project, the Signal Upgrade Project, the South Shore Garage Project and the Cabot Yard Contract; and

WHEREAS, LMH and CMC wish to further amend the Joint Venture Agreement to further expand the scope of the Joint Venture to permit the Joint Venture to submit a bid to the Owner on the Cabot Yard Project, and if successful in such bid, to enter into the Cabot Yard



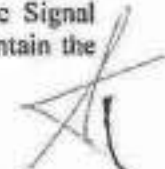
Contract and perform the services on the Cabot Yard Project, in addition to performing services in connection with the Hingham Project, Merrimack Project No. 1, Merrimack Project No. 2, the Amtrak Project, the Green Line Extension Project, the Wellington Project, Wollaston Project, the Charlestown Project, the Rail Bridges Project, the Signal Upgrade Contract, and the South Shore Garage Contract, and have therefore entered into this Eleventh Amendment.

NOW, THEREFORE, in consideration of the premises, the mutual covenants herein contained and other good and valuable consideration, the parties hereby agree as follows:

1. Expanded Scope of Joint Venture and Joint Venture Agreement. The Joint Venture Agreement is hereby amended to permit the Joint Venture to submit a bid to the Owner in connection with Cabot Yard Project and, if successful in such bid, to enter into the Cabot Yard Contract and perform any and all construction services called for in the Cabot Yard Contract on behalf of the Owner. All terms and conditions of the Joint Venture Agreement will apply to the Cabot Yard Project and the Cabot Yard Contract, as well as the Hingham Project and the Hingham Contract, Merrimack Project No. 1 and the Merrimack Project No. 1 Contract, Merrimack Project No. 2 and the Merrimack Project No. 2 Contract, the Amtrak Project and the Amtrak Contract, the Green Line Extension Project and the Green Line Extension Contract, the Wellington Project and the Wellington Contract, the Wollaston Project and the Wollaston Contract, the Charlestown Project and the Charlestown Contract, the Rail Bridges Project and the Rail Bridges Contract, the Signal Upgrade Project and the Signal Upgrade Contract, and the South Shore Garage Project and the South Shore Garage Contract.

2. Maintenance of Separateness for each Project and Contract. LMH, as the Managing Party of the Joint Venture, will maintain separate books of account for each of the Hingham Contract and the Hingham Project, Merrimack Project No. 1 and the Merrimack Project No. 1 Contract, Merrimack Project No. 2 and the Merrimack Project No. 2 Contract, the Amtrak Project and the Amtrak Contract, the Green Line Extension Project and the Green Line Extension Contract, the Wellington Project and the Wellington Contract, the Wollaston Project and the Wollaston Contract, the Charlestown Project and the Charlestown Contract, the Rail Bridges Project and the Rail Bridges Contract, the Signal Upgrade Project and the Signal Upgrade Contract, the South Shore Garage Project and the South Shore Garage Contract, and the Cabot Yard Project and the Cabot Yard Contract, and all terms and conditions of the Joint Venture Agreement will be applied individually to the Hingham Project, Merrimack Project No.1, Merrimack Project No. 2, the Amtrak Project, the Green Line Extension Project, the Wellington Project, the Wollaston Project, the Charlestown Project, the Rail Bridges Project, the Signal Upgrade Project, the South Shore Garage Project, and the Cabot Yard Contract to maintain the separateness and independence of each Project and Contract.

3. Miscellaneous



(a) No Amendment to Other Terms and Conditions. All terms and conditions of the Joint Venture Agreement, as modified by the First Amendment, the Second Amendment, the Third Amendment, the Fourth Amendment, the Fifth Amendment, the Sixth Amendment, the Seventh Amendment, the Eighth Amendment, the Ninth Amendment, the Tenth Amendment, and this Eleventh Amendment not specifically amended hereby shall remain in full force and effect.

(b) Counterparts. This Eleventh Amendment may be executed in multiple counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

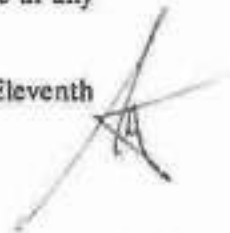
(c) Governing Law. This Eleventh Amendment shall be governed by, construed and enforced in accordance with the law of the Commonwealth of Massachusetts.

(d) Binding Effect. This Eleventh Amendment shall inure to the benefit of and be binding upon the parties hereto and their respective heirs, executors, administrators, successors and assigns.


(e) Entire Agreement. The parties hereto agree that the Joint Venture Agreement, as modified by the First Amendment, the Second Amendment, the Third Amendment, the Fourth Amendment, the Fifth Amendment, the Sixth Amendment, the Seventh Amendment, the Eighth Amendment, the Ninth Amendment, the Tenth Amendment, and this Eleventh Amendment, constitutes the entire agreement among the parties with respect to the subject matter hereof and supersedes all prior agreements and understandings between them as to such subject matter.

(f) Modifications. This Eleventh Amendment may not be altered, amended, modified, or otherwise changed in any respect except by a writing duly executed by all parties to this Eleventh Amendment. The parties agree that no claim will be made at any time or place that this Eleventh Amendment has been orally altered or modified.

IN WITNESS WHEREOF, the parties hereto have caused this Eleventh Amendment to be executed on the date and year first above written.




LM HEAVY CIVIL CONSTRUCTION, LLC



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By: MASSIMO MARINO  
Its: CHIEF EXECUTIVE OFFICER

COOPERATIVA MURATORI & CEMENTISTI - C.M.C. di RAVENNA  
SOCIETA COOPERATIVA



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By: ROBERTO MACRI  
Its: CHIEF EXECUTIVE OFFICER



## JOINT VENTURE AGREEMENT

THIS JOINT VENTURE AGREEMENT, made and entered into as of the 2<sup>nd</sup> day of August, 2013 (this "Agreement"), by and between LM Heavy Civil Construction, LLC, a Massachusetts limited liability company (referred to hereinafter as "LMH") and Cooperativa Muratori & Comentisi, C.M.C. di Ravenna, a cooperative based in Ravenna, Italy (referred to hereinafter as "CMC"). LMH and CMC are referred to herein collectively as the "Joint Venturers," and singly as a "Joint Venturer."

WHEREAS, the Massachusetts Bay Transportation Authority (hereinafter referred to as the "Owner") has advertised for bids for a certain project identified as the New Intermodal Center, Hingham, Massachusetts, MBTA Project No. S03CN03, and the construction services required thereunder (the "Project");

WHEREAS, LMH and CMC desire to form a joint venture to submit a joint bid (hereinafter referred to as the "Bid") to the Owner and, if the Bid is accepted, to enter into a contract (hereinafter referred to as the "Contract") with the Owner for the performance of such construction work, and the parties agree that during the term of this Agreement, or until the Joint Venture is terminated in accordance with the terms of this Agreement, they will not, directly or indirectly, submit any other proposal to the Owner relating to the Project or any other party for work on the Contract or the Project prior to the award of the Contract to any other party; and

WHEREAS, the parties desire to enter into this Agreement in order to fix and define between themselves their respective rights, obligations, interests and liabilities in connection with the submission of the Bid and the performance of the Contract in the event that it is awarded to the Joint Venture.

NOW, THEREFORE, in consideration of the mutual promises and agreements herein set forth, the parties hereby agree to and do hereby constitute themselves as Joint Venturers for the purpose of submitting the Bid to the Owner and in the event bid is successful, the performance of the Contract subject to the following terms and conditions:

(1) The bid shall be submitted and the Contract, if awarded to the parties hereto, shall be entered into in the name of the Joint Venture, and the obligations of the parties under the Bid and Contract shall be joint and several. The Contract, if awarded to the Joint Venture after the acceptance of the Bid, shall be carried out and performed by them under the name and style of a Joint Venture, and all money, equipment, materials, supplies and other property acquired by the Joint Venture in connection with the Contract and the Project shall be held in the name of the Joint Venture and for the account of the Joint Venture. The Joint Venture name shall be designated, as "LMH - C.M.C. di Ravenna Joint Venture."

(2) (a) Except as otherwise provided in Paragraphs (4) and (9) hereof, the respective interests of the Joint Venturers in and to the Contract, and the work to be performed under the Contract, and in and to all working capital, materials, supplies, tools, equipment and other property acquired by the Joint Venture for or in connection with the performance of the Contract, shall be as follows:



LMH 51%

CMC 49%

(b) Except as otherwise provided in Paragraphs (4) and (9) hereof, the net profits of the Joint Venture when realized shall be distributed in the following proportions and at such times as the Management Committee shall determine:

LMH 51%

CMC 49%

(c) The Joint Venturers agree that in the event any losses arise out of performance of the Contract, then each party hereto shall assume and pay its full share of such losses in the following proportions:

LMH 51% of the total loss

CMC 49% of the total loss

(d) The Joint Venturers agree that in the event any surety bonds or other financing is necessary in connection with performance of the Contract, each party will be responsible for its pro rata share of any bond premiums, and each party will execute any indemnity agreements or bank guaranties necessary in connection with obtaining such bonds or financing, and that each party's share of such matters shall be in the following proportions:

LMH 51%

CMC 49%

If for any reason any of the parties hereto sustains any liabilities or is required to pay any losses arising out of or directly connected with the submission of the Bid and/or the performance of the Contract, or the execution of any surety bonds or indemnity agreements in connection therewith, which are in excess of its proportionate share in the Joint Venture, in such proportions as are fixed in Paragraph (2) hereof, the other parties shall reimburse such party in such an amount or amounts as the losses paid and liabilities assumed by such party exceed its proportionate share of the total losses of the Joint Venture so that each member of the Joint Venture will then have paid its full proportionate share of such losses; and to that end each of the parties hereto agrees to indemnify the other party or parties against, and to hold it or them harmless from any and all such losses in excess of such party's or parties' proportionate share or shares thereof as set forth in paragraph (2) hereof. Provided, however, that the provisions of this subparagraph shall be limited to losses that are directly connected with, or arise out of, the submission of the Bid and/or the

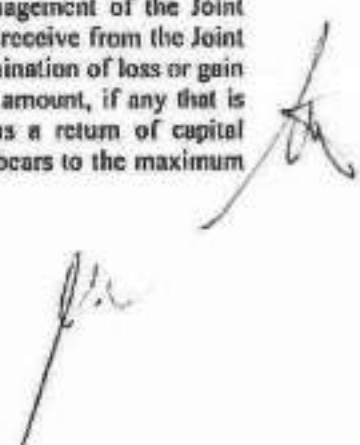
performance of the Contract and the execution of any bonds or indemnity agreements in connection therewith, and shall not relate to or include any incidental, indirect or consequential losses that may be sustained or suffered by any of the parties hereto.

(3) LMH is hereby designated and shall act as the Managing Party of the Joint Venture (the "Managing Party) and as such shall have general charge on a day-to-day basis and supervision over work to be performed under the Contract and all matters relating or incidental thereto, but subject in all respects to the direction and control of the Management Committee (defined and designated in paragraph (7) below). Any officer of the Managing Party, including the Joint Venture Representative (defined and designated in paragraph (8) below), shall have authority to execute documents and subcontracts on behalf of the Joint Venture, including any and all documents to be executed in connection with the Bid and the Contract, including the actual final Bid and Contract documents themselves.

The Management Committee shall establish general policies for the prosecution of the work and the performance of the Contract and determine general and specific matters relating to the prosecution of the work and the performance of the Contract as it may from time to time desire, including such matters as predetermination of the anticipated amount of working funds that may be required, selection of equipment and key personnel, approval of wage and salary schedule, approval of equipment rental rates, or purchase price, letting of major subcontracts or material purchases, approval of project progress scheduling, and return of surplus working funds theretofore advanced. LMH, as the Managing Party, shall implement the decisions of the Management Committee of the Joint Venture and shall otherwise provide such personnel, materials, tools, and equipment as contemplated under or necessary for performance of the Contract.

(4) The Joint Venturers shall from time to time determine the amount of working capital then required to carry out and perform the Contract, and each party shall contribute its proportionate share, as fixed in Paragraph (2) hereof, of such working capital whenever requested to do so. No interest shall be paid by the Joint Venture on any working funds so furnished. Such contributions shall be made within twenty (20) days after request thereof from the Management Committee. If any party shall fail or refuse, within such time, to contribute its share of such working capital such failure or refusal shall constitute a default hereunder unless all of the parties hereto consent, in writing, to an extension of time beyond the aforesaid twenty (20) days with respect to any particular call for working capital contribution by any one or more of the parties.

In the event of failure to so contribute its share of such working capital by any party, the party in default shall thereupon immediately cease to have any voice in the management of the Joint Venture, and its interest hereunder shall thereafter be limited to the right to receive from the Joint Venture, at such time after final completion of the Contract as a final determination of loss or gain there from shall have been made, only the return of that proportion of the amount, if any that is then determined by the Joint Venture to be available for distribution as a return of capital contributions, as the amount of capital contributed by the defaulting party bears to the maximum



amount of capital contributed by all of the parties hereto; and the interest of such defaulting party or parties in any profits realized by the Joint Venture shall be payable pro rata to the non-defaulting party or parties; provided, however, that the party so in default shall not be relieved of its obligation to assume and pay its share of any losses suffered by the Joint Venture in the proportion set out in Paragraph (2) hereof.

(5) All contributions to the joint working capital fund by the parties hereto and all other funds received by the Joint Venture in connection with the performance of the Contract, shall be deposited in such bank or banks as the Managing Party may designate. Withdrawals of such funds may be made in such form and by such persons as the Managing Party may from time to time authorize. The Joint Venture partners will indemnify the Joint Venture for the financial actions of their own personnel.

(6) The Joint Venturers shall from time to time execute such applications for bonds, bond indemnity agreements and other documents and papers as necessary in connection with the submission of the Bid for and the performance of the Contract.

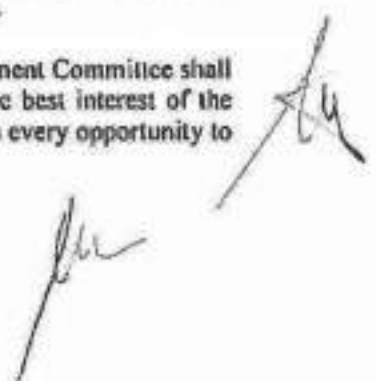
(7) If the Bid is accepted, the affairs of the Joint Venture other than day to day operation and supervision (which shall be managed by the Managing Party) will be managed and controlled by a Management Committee comprised of the following representatives of each Joint Venture party:

LMH: Massimo Marino (Chairman)

CMC : Roberto Macri, Michele Massari

Massimo Marino shall act as the Chairman of the Management Committee. During the course of construction, but no less than quarterly, and within thirty (30) days after substantial completion (i.e., receiving Notice of Substantial Completion from the Owner or reaching an agreement on the status of substantial completion by the Owner and the Joint Venture, whichever is earlier) of the Project, the Management Committee shall, where applicable, meet and discuss the following: (a) accounting, including the projected or estimated final profit or loss on the Project and expected income and costs to complete the Project, (b) a status report on the actual financial performance of the Joint Venture under the Contract to date, including comparison of budget/estimates to actual performance along with an explanation of any variances if substantial, (c) identification and evaluation of Joint Venture owned equipment (including list of equipment and location), including the fair market value of such equipment, and the plan of disposal of any such equipment at the completion of the Contract, and (d) evaluation of all personnel assigned to the Contract and the projected demobilization of such personnel as the Contract work is completed.

On any and all issues and disputes arising out of this agreement, the Management Committee shall meet and debate with the objective of reaching a unanimous decision in the best interest of the Joint Venture. All parties have equal say and voting rights and shall be given every opportunity to



put forward their views. The Management Committee shall meet on a quarterly basis while work on the Contract is in progress.

The meeting agenda will be prepared by the Chairman and will include a review of the performance of the work against the schedule and the Project's indicated outcome against the original estimate. Comments and suggestions of the parties as to job methods and procedures will be invited.

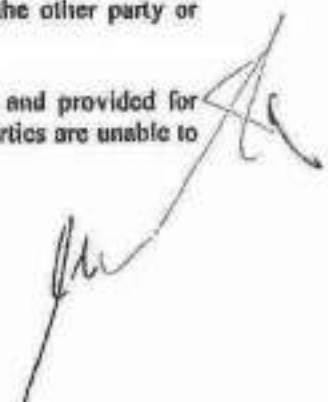
Any dispute hereunder shall be settled by arbitration in accordance with the Construction Industry Arbitration Rules of the American Arbitration Association, and judgment upon the award rendered by the Arbitrator(s) may be entered in any court having jurisdiction. Any such arbitration shall be held in Boston, Massachusetts. This agreement shall be governed by the laws of the Commonwealth of Massachusetts.

(8) The Managing Party shall at all times during the life of the Contract maintain a duly qualified representative of the Joint Venture, whose duty it shall be to oversee the project management and execute on the part of the Joint Venture any and all notices, directions, and instructions as may be given by the Owner. Massimo Marino is hereby designated as the Joint Venture Representative.

(9) In the event that either Joint Venturer shall be dissolved, be adjudicated a bankrupt by any court of competent jurisdiction, file a voluntary petition in bankruptcy, make an assignment for the benefit of its creditors or file a petition to take advantage of any insolvency statute, then such Joint Venturer shall thereupon cease to have any voice in the management of the Joint Venture, and such Joint Venturer's interest hereunder shall thereafter be limited to the right to receive from the Joint Venture at such time after final completion of the Contract as a final determination of loss or gain there from shall have been made, a return of the proportion of the amount, if any, that is then determined by the Joint Venture to be available for distribution as a return of capital contributions, as the amount of capital contributed by such dissolved, bankrupt or insolvent Joint Venturer bears to the maximum amount of capital contributed by all of the parties hereto; but such Joint Venturer shall nevertheless continue to be liable for its proportionate share of any loss of the Joint Venture in the percentage set forth in Paragraph (2) hereof. In any such event, the obligation of such dissolved, bankrupt or insolvent Joint Venturer to contribute working capital shall be assumed pro rata by the remaining Joint Venturer or Joint Venturers and the interest of such dissolved, bankrupt or insolvent Joint Venturer in any profits realized by the Joint Venture shall be payable ratably to the remaining Joint Venturers.

(10) No party hereto shall sell, assign or in any manner transfer its interest, or any part thereof, in this Joint Venture, without first obtaining the written consent of the other party or parties hereto.

(11) It is the intent of the parties hereto that the Bid contemplated and provided for herein shall be satisfactory and acceptable to all of the parties hereto. If the parties are unable to

A handwritten signature in black ink, appearing to be "Massimo Marino", is written over the bottom right portion of the page, overlapping the end of paragraph (11) and the page number.



agree upon the Bid or the filing of same with the Owner or if the Contract is awarded to another party, this Joint Venture Agreement shall terminate forthwith.

(12) No payment shall be made by the Joint Venture to any Joint Venturer in reimbursement of expenses incurred in connection with preparing the Bid and securing the award of the Contract. Neither of the Joint Venturers shall make any charge against the Joint Venture for any of its general overhead expense or for services rendered or expenses incurred by any of its officers or employees in connection with the work of the Joint Venture, except for such services or expenses rendered or incurred in actually carrying out the Contract work, or in assisting the Joint Venture pursuant to specific written request of or assignment by the Management Committee.

(13) Each of the parties hereto shall be the owner of an undivided interest in and to any and all plant, equipment, facilities, materials, supplies or other properties which may be acquired by the Joint Venture or which may be obtained as the result of the performance of the Contract. Such interests shall be in the proportions set forth in Paragraph (2) hereof. Upon completion of the Contract or at such other time or times as any of such properties are no longer needed by the Joint Venture, any such properties shall be either divided by the Joint Venturers or conveyed to them as tenants in common in proportion to their participation in the Joint Venture as set forth in Paragraph (2) hereof or sold on the open market and the proceeds thereof divided between the Joint Venturers in proportion to such participation. The Management Committee shall determine the manner of disposition at the time of disposition.


(14) Upon the final performance and completion of the Contract and after the disposition of the property of the Joint Venture, pursuant to paragraph (13) and the winding up of the Joint Venture, the profits or losses accrued in the performance of the Contract shall be divided between or paid by the parties, as the case may be, in accordance with their respective interests and shares in same, as hereinbefore provided, and this Agreement shall then terminate; provided that partial distribution of profits or return of working capital may be made quarterly or at such other earlier times as the Management Committee may determine.





(15) Except as hereinbefore otherwise provided, this Joint Venture Agreement shall inure to and for the benefit of, and be binding upon, the Joint Ventures, their successors, representatives and assigns, but shall not inure to the benefit of any other person, firm, or corporation.


LM HEAVY CIVIL CONSTRUCTION, LLC



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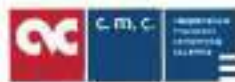
By: MASSIMO MARINO  
Its: CHIEF EXECUTIVE OFFICER

COOPERATIVA MURATORI & CEMENTISTI, C.M.C. di RAVENNA



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By: ROBERTO MACRI  
Its: CHIEF OPERATIONS OFFICER



# LMH-LANE CABOT YARD JV Joint Venture Agreement

**PREBID AND JOINT VENTURE AGREEMENT**

THIS PREBID AND JOINT VENTURE AGREEMENT ("Agreement") effective this 11 day of ~~May~~ <sup>June</sup> 2018, by and among the following parties:

**THE LANE CONSTRUCTION CORPORATION ("TLCC")**, A Connecticut Corporation with its principal office at 90 Fieldstone Court, Cheshire, CT 06410,

and

**LMH-CMC, JV**, a joint venture formed under the laws of the Commonwealth of Massachusetts, with its principal office at 100 Hancock Street, Suite 901, Quincy, MA 02171, composed of **LM Heavy Civil Construction, LLC**, a Massachusetts limited liability company, with its principal office at 100 Hancock Street, Suite 901, Quincy, MA 02171, ("LMH") and **Cooperativa Muratori & Cementisti - C.M.C. Di Ravenna Societa Cooperativa**, an Italian corporation ("CMC") (hereinafter collectively ("LMH/CMC JV"), jointly and severally. TLCC and LMH/CMC JV are hereinafter referred to individually as "Party" or collectively as "Parties".

**RECITALS**


(A) The Massachusetts Bay Transportation Authority ("Owner") has invited experienced and qualified contractors to submit bids for the Cabot Yard and Maintenance Facility Improvements Project, Identified as Contract No. R44CN02 in Boston, Massachusetts ("Project");

(B) The Parties have agreed to form a Joint Venture (the "Joint Venture") for the purpose of submitting a bid to the Owner (the "Bid") and, if successful in connection with such Bid, entering into a contract with the Owner (the "Contract") for the construction of the Project.

NOW, THEREFORE, IT IS AGREED:

**I. ESTIMATE**

Each Party hereto will prepare in good faith a separate estimate to its own satisfaction for the purpose of preparing the bid and if, after comparison of such estimates, the amount of such bid is agreed upon by the Parties hereto, then said bid shall be submitted to the Owner of the Project. The bid shall be subject to and not be submitted without the prior approval (including any necessary corporate approvals) and agreements of the Parties. No Party is obligated to consent to the submission of a bid, and either Party may withdraw from this Agreement prior to the bid being submitted, upon written notice to the other

  
Initials

Party. The withdrawing Party shall still be subject to Sections I(a) (Exclusivity), and both Parties shall be subject to the I (Bid Expenses), IX (Indemnity), X (Confidential Information) and XI (Solicitation of Employees) provisions of this Agreement. The non-withdrawing Party shall be relieved of the obligations contained in Section 1(a). If no agreement is reached by the Parties regarding the submission of the bid, this Agreement shall be terminated and of no further force or effect, and no Party shall be liable to another for failure to so agree. However, the remaining Party is free to continue the Joint Venture and submit a bid in a new name.

a) Except with respect to the right of a remaining Party as described in the preceding paragraph, the Parties agree that they will work exclusively with one another with respect to the Project and neither Party (including any affiliated companies, members or principals) may directly or indirectly participate as a member of any team seeking an award of the contract for the Project, or participate, collaborate or enter into discussions with, in any capacity, any third-party with respect to the Project, or any portion of it, except as is necessary to carry out the intent and purpose of this Agreement. For the avoidance of doubt, it is acknowledged and agreed that neither Party is precluded from independently submitting proposals NOT related to or encompassed by this Agreement or the Project or from performing work NOT related to or encompassed by this Agreement or the Project.

b) After submission of the bid, the Parties shall be jointly and severally bound by its provisions and no Party shall vary the same including, but not limited to, by negotiation with the Owner upon terms for Contract, without the written consent of the other Party.

All expenses incurred by any Party in estimating and preparing the bid shall be borne separately by such Party and shall not be considered as a part of the construction cost of the Project in the event the Contract is awarded to the Joint Venture. Expenses incurred by the Joint Venture pre-bid for dedicated subcontractors, such as design, and for other approved third-party costs will be shared in accordance with Section II. 3., (Participating Interest) and are subject to prior approval of all Parties.

## II. CONTRACT AWARD

1. Award. If the bid is accepted and a Contract for the Work on the Project (hereinafter, the "Work") is awarded by the Owner to the Parties, they shall associate as Parties in the Joint Venture and shall perform the Work in compliance with the terms of this Agreement and the Contract with the Owner. This Agreement extends only to the performance of the Work, which shall be performed and kept separate from all other business of the other Party. Each



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Party shall cooperate with the other to the fullest extent in order that the Work shall be duly, diligently and fully performed.

2. Joint Venture Name. The Parties will carry on their operations pursuant to this Agreement under the name "LMH-Lane Cabot Yard Joint Venture." JVThe Management Committee (as hereinafter defined) of the Joint Venture shall ensure that trade name certificates are filed and other appropriate registrations and prequalification's are made as may be required by law in all places where the Joint Venture is doing business.

3. Participating Interest. Subject to the provisions of Sections IV 2 (Participant Charges to the Joint Venture), IV 5 (Joint Venture Capital), V (Equipment) and VI (Defaults), the interests of the Parties (the "Participating Interests") in all moneys which may be derived from the performance of the Work, in all property, materials, equipment and other assets acquired by the Joint Venture, and in all profits, losses and liabilities (including liabilities under bond or indemnity Agreements) are as follows:

The Lane Construction Corporation	50%
LMH-CMC, JV	50%

All working capital shall be furnished by each Party, in accordance with the foregoing percentages, within ten (10) business days following a call for capital contributions made by the Managing Partner (as hereinafter defined) and as approved by the Committee.

### III. JOINT VENTURE MANAGEMENT

1. The management and control of the Joint Venture shall be joint, in which each Party shall have an equal voice. However, LMH-CMC, JV will act as the "Managing Partner" for the Project, will furnish the key personnel and make day-to-day operating decisions, and will advise the other Party of the plans, progress, and needs of the Joint Venture as the Work progresses.

- a. Massimo Marino is hereby appointed Managing Director and Chairman of the Committee of the Joint Venture, and shall continue in said capacity until his successor shall be duly appointed. Other principal officers shall be nominated by LMH-CMC, JV, as Managing Partner, subject to the approval of the Committee. The Managing Director shall be the officer of the Joint Venture having overall responsibility for the conduct of the Joint Venture's affairs, and shall have actual charge of the business of the Joint Venture, subject to the terms of this Agreement and to the general instructions and control of the Committee. The Project Manager, when nominated by the Managing Partner and appointed by the Committee, shall be the senior official of

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the Joint Venture in charge at the Project, and shall have direct charge and supervision of the Work subject to the terms of this Agreement, the instructions of the Managing Director, and the general instructions and control of the Committee. The Managing Director, any Associate Managing Director that may be appointed by the Committee, and the Project Manager, are each hereby authorized to execute individually on behalf of the Joint Venture any and all actions for and in the name of the Joint Venture, subject to the provision of this Agreement. After presentation to approval of the Committee, the Managing Director and the Project Manager shall have the authority to certify claims, whether under the Contract Disputes Act of 1978 or otherwise, on behalf of the Venture. For claims in excess of Five Hundred Thousand Dollars (\$500,000), the Committee's approval may be conditioned upon the claim being reviewed and supported by legal counsel acceptable to the Parties. The Parties shall execute appropriate powers of attorney to implement the foregoing. Any action required to be taken under this Agreement by the Managing Director may be taken by any duly appointed Associate Managing Director. The Managing Director, the Associate Managing Directors and the Project Manager may appoint such assistants and delegate thereto such duties and responsibilities as they may determine. If for any reason the Managing Director, Associate Managing Directors or Project Manager shall be unable to continue in those positions, or if they should be removed by the Committee, their replacement shall be nominated by LMH-CMC, JV as Managing Partner, subject to the approval of the Committee.

- b. The Committee is hereby established composed of four (4) members (hereinafter, a "Member," and collectively, the "Members"): the Managing Director, who shall serve as Chairman, one other member appointed by the Managing Partner, and two members appointed by TLCC. Each Party may name an alternate for its Members. Whenever an alternate shall attend a meeting of the Committee in place of a Member, such alternate shall for all purposes be deemed a Member of the Committee. Members shall serve without remuneration from the Joint Venture.

The Committee Members shall be as follows:

**Member (LMH-CMC, JV)**

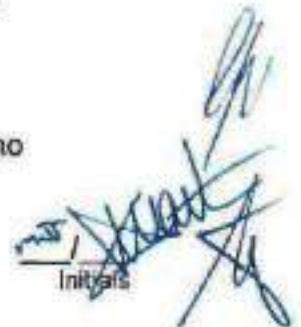
Massimo Marino  
(Managing Director)

Gianluca Menchini  
Steve Harrington  
(Alternate)

**Member (TLCC)**

Louis S. D'Amico

Joe Lark  
Alessandro Rivano  
(Alternate)

  
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- c. The Committee shall establish and publish general policies for the prosecution of the Work, which shall be binding upon the Project management. The Committee shall review and supervise periodically the operations of the Joint Venture, the activities of the Managing Director, Associate Managing Directors, and Project Manager, and all other matters relating to the business of the Joint Venture, including without limitation the preparation, submission and prosecution of major claims by the Joint Venture. The Committee shall regularly review the Work with the Project Manager. The Committee shall review, on at least a quarterly basis, economic forecasts of the Work, the status of the cash requirement of the Work and prepare schedules for cash management by capital calls or distribution. The Committee may approve the establishment of lines of credit and/or the borrowing of money by the Joint Venture. The Committee shall prepare and submit to the management of the Parties minutes of the Committee meetings within fifteen (15) days of the meeting.
  
- d. Meetings of the Committee may be called by the Chairman or by any Member or his alternate. Reasonable notice of the time and place of any meeting shall be given to each Member and alternate. Such notice may be waived by the written consent of each Member (or his alternate). In order for a meeting to be duly held, all Members and the Chairman, or their alternates, must be present. Matters before the Committee shall be determined by unanimous vote of Members present at a meeting duly held, or by written consent of each Member (or his alternate). If the Members of the Committee are unable to unanimously agree, the meeting shall be adjourned for a period not to exceed twenty-four (24) hours, after which adjournment the meeting shall be resumed. If the Parties are still unable to agree on actions to be taken, the Chairman may take such action(s) as he deems necessary in order to avoid the risk of damages or other adverse consequences to the Joint Venture, or to the proper and timely performance of the Contract and the Work by the Joint Venture. Any such actions taken by the Chairman shall be subject to the dispute resolution procedures set forth in Section XV.

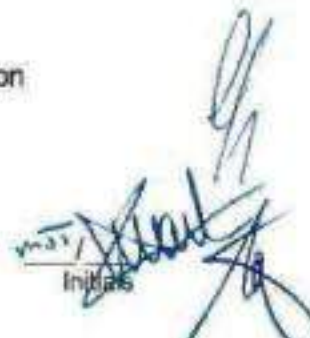
2. The following actions shall require the consent of all the Members and are not subject to the authority of the Chairman to take action in the event of a deadlock:

- a. The execution, approval, or taking of any action regarding any contract or transaction between the Joint Venture and a Party or an affiliate of a



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- Party, or entity in which a Party or an affiliate of a Party has a direct economic interest;
- b. Any activity outside the ordinary business transacted by the Joint Venture;
  - c. The contracting and incurring of any liability for or on behalf of the Joint Venture in its ordinary course of business in excess of Two Million Dollars (\$2,000,000);
  - d. The borrowing for or on behalf of the Joint Venture of money or the mortgaging, deeding in trust, pledging or otherwise encumbering of Joint Venture assets to secure repayment of the money;
  - e. The commitment of the Joint Venture to any improvement involving capital expenditures in excess of Two Hundred Fifty Thousand Dollars (\$250,000);
  - f. A Capital Call as provided in Section IV 6. (Joint Venture Capital);
  - g. Cash distribution from the Joint Venture to any Party;
  - h. The establishment of banking arrangements (including bank accounts, location and signing authorities);
  - i. The Joint Venture's insurance program, including amounts and changes thereto;
  - j. Approval of the auditors of the Joint Venture;
  - k. Approval of a business Plan or Joint Venture Budget;
  - l. Settlement of claims against the Joint Venture, or commencement and conduct of defense or settlement of claims or litigation involving the Joint Venture. Without limiting the generality of the foregoing, any decision to pursue, or not to pursue, claims (including bid protest/appeal) against the Joint Venture's client shall be subject to consent of both Parties;
  - m. Hiring of lawyers on behalf of the Joint Venture;
  - n. Approval of consent decrees, injunctions, or orders binding upon the Joint Venture;

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- o. Final approval of tax returns prior to filing and approval of any tax elections or any binding Tax Matters Agreements required or permitted to be made by the Joint Venture under the Code or Regulations;
- p. Any amendment to this Agreement;
- q. The admission of an additional Joint Venture Party;
- r. The continuation of the Joint Venture after a Dissolution Event (as hereinafter defined);
- s. The performance security package granted to the Owner pursuant to the contract;
- t. The Contract between the Joint Venture and the Owner;
- u. The entering into and the provisions of any labor management or collective bargaining Agreement on behalf of the Joint Venture;
- v. The investment of any securities, funds, or investment vehicles other than an interest bearing account;
- w. The issuance of any and all required bonds relating to the Joint Venture and the Project;
- x. Change or otherwise replace/modify the senior onsite management team, which includes the Project Manager; and
- y. Approval of any Change Orders with the Owner in excess of Five Hundred Thousand Dollars (\$500,000) or that require additional Contract time to complete.

#### IV. FINANCIALS

1. Financial Information, Bonds and Interparty Warranty. As a part of the bid, each Party hereto will execute the application and indemnity forms required by the sureties on the bid bonds. The expense of any required bid bonds or other forms of Contract security and required insurance shall be borne by the Parties in the proportion stated in Section II. 3. (Participating Interest) hereof. Each Party certifies, represents and warrants to the other its ability to provide its full share of any losses that may be incurred and that the foregoing certification, representation and warranty shall continue through completion of the Work and fulfillment of all obligations herein and under the Contract with the Owner.

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The Parties agree to exchange current, audited financial statements for their most recently completed fiscal year within thirty (30) days of signing of this Agreement. Arrangements and exchanges should be made by and between the CFO of each Party. Concerns regarding either Party's financial condition that are determined through the exchanged financials can be grounds for the termination of this Agreement, but only if such termination notice is executed and delivered within ten (10) days of receipt of the other Party's financial statements.

2. Participant Charges to the Joint Venture. Except as provided in Section IV(3) with respect to the Managing Party Fee, no charge shall be made by any Party against the Joint Venture on account of ordinary overhead or home office expense, taxes on or measured by income, interest on funds advanced as working capital, or time spent and expenses incurred in connection with the formation of policy for and the general management of the Joint Venture (including the transportation and other expenses in connection with attendance at meetings). Each Party shall be reimbursed, however, for the following:

- a. Salaries and payroll charges for any employee or officer assigned on a full-time basis to the Work or operations of the Joint Venture;
- b. The fair market or competitive lease value of tools, machinery, materials and equipment furnished to the Joint Venture;
- c. Such other direct costs and expenses as may be agreed upon in advance or subsequently approved by the Parties.

3. Managing Party Fee. The Managing Party shall be paid a fee equivalent to .075% of the Project cost (including costs incurred in the performance of base contract and change order work) ("Managing Party Fee") in consideration for the costs incurred by the Managing Party in performing those obligations set forth in Exhibit A. The Managing Party Fee shall be paid on a monthly basis upon Contract award until Project substantial completion plus three months.

4. Joint Venture Books and Records. A complete set of books of account and records, including monthly updated accrued balance sheets (See **Exhibit 3** attached hereto) correctly reflecting the business transactions of the Joint Venture, shall be maintained at the site of the Work, or elsewhere as the Committee may determine. Each Party shall have access to and the right to inspect the Work and all such books and records at any reasonable time. An annual audit of such books and records shall be made by an independent firm of accountants, appointed by the Committee. The Managing Partner shall furnish, and explain in an itemized and detailed manner to the other Parties on a monthly basis the job cost reports it normally prepares for one of its own projects, which includes a monthly forecast of the cost to complete the Work. Subject to

  
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reasonable notice, any Party may request that an itemized and detailed review of the forecast is conducted jointly with the Project Manager and the Project staff.

5. Bank Accounts. All funds advanced to or borrowed for the account of the Joint Venture, and all progress payments, final payments or other moneys received shall be deposited in a bank or banks to be selected by the Committee, in a general account or accounts in the name of the Joint Venture which shall be separate from any of the bank accounts maintained by any Party. In addition to such general bank accounts the Committee may establish such other bank accounts in the name of the Joint Venture for payroll or other special purposes as may be advisable for the handling of funds in connection with the Work. Funds may be withdrawn from said account only by checks signed by such person or persons as may be designated by the Committee. No payments shall be made or monies withdrawn from any Joint Venture bank account or accounts except for the purpose of the Joint Venture, unless a distribution to the Parties is unanimously agreed to by the Committee.

6. Joint Venture Capital. From time to time during the life of this Agreement the Managing Partner shall determine, subject to approval of the Committee, the amount required by contributions of capital to the Venture. Required capital shall be contributed in cash within the time period specified in Section II 3 (Participating Interest) hereof except that, upon the approval of the Committee, a Party's required contribution may be made in the form of equipment and/or materials. Any such equipment and/or materials contributed as capital in accordance herewith shall be free and clear of any and all liens, claims and encumbrances of any kind or nature.

All monies received by the Joint Venture, including working capital, shall be first used to pay the costs of performing the Work including, without limitation, the costs of labor, equipment, materials, supplies, facilities, taxes (other than income taxes), insurance, and services, and including reimbursement of the Parties for costs incurred by them for the account of the Joint Venture as set forth in Section IV 2 (Participant Charges to the Joint Venture) hereof. Interim returns of working capital and distributions of profit shall be made at such times as the Committee shall determine. Distribution to the Parties shall be in the following order of priority: (1) default interest, (2) return of excess contributions, (3) return of working capital, and (4) distribution of profit. Any interim payments shall be deemed to be provisional and subject to adjustment at the time of final settlement of the accounts of the Joint Venture. All loans of Joint Venture funds to the Parties shall be in proportion to the shares stated in Section II. 3 (Participating Interest) hereof, shall bear interest, and shall be on such other terms as the Committee shall determine.

Upon completion of the Work, or the earlier termination thereof, the affairs of the Joint Venture shall be wound up as soon as practicable; the Parties shall render a true and correct accounting, each to the other, of all reimbursable expenses

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incurred on account of the Work and all moneys received as a result thereof; the books of the Joint Venture shall be finally adjusted and closed; a final statement shall be prepared and a copy or copies thereof furnished to each Party; and any working capital not previously returned, plus profits not previously distributed or less losses incurred, shall be distributed to the Parties. The audited books of the Joint Venture shall be conclusive in establishing whether a profit has been realized or a loss sustained, and the amount thereof, and the proportionate respective interests of the Parties in such profit or losses.

7. Joint Venture Borrowings. Unless the Committee unanimously agrees in writing, the Joint Venture shall not borrow any sums of money.

8. Taxes. For income tax purposes, the Parties agree that the Venture shall not be taxed as an entity but each Party shall be taxed separately on its share of the profits of the Venture.

## V. ALLOCATIONS AND DISTRIBUTIONS

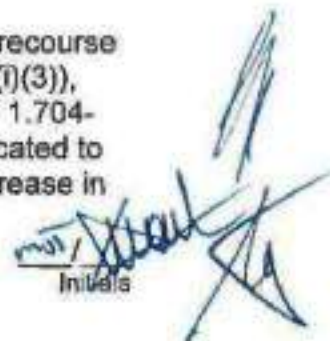
1. *Allocations of Net Profits and Net Losses from Operations*. Except as may be required by §704(c) of the Code, net Profits, net Losses and other items of income, gain, loss, deduction and credit shall be allocated among the Parties in proportion to their Participating Interests.

2. *Interim Distributions*. From time to time, the Parties shall determine in their reasonable judgment to what extent, if any, there is Cash Available for Distribution. To the extent such Cash Available for Distribution exists and the Parties have all approved such distribution, the Joint Venture shall make distributions to the Parties in accordance with their Participating Interests.

3. *Regulatory Allocations*. For each Fiscal Year, the following special allocations shall be made in the following order and priority

(a) *Partnership Minimum Gain*. If there is a net decrease in "partnership minimum gain" (within the meaning of Regulations section 1.704-2(d)), items of income and gain (determined in accordance with Regulations § 1.704-2(f)(6)) shall, to the extent required by the Regulations, be specially allocated to the Parties in an amount equal to the share of each Party of the net decrease in "partnership minimum gain" (determined in accordance with Regulations § 1.704-2(g)). This Section V.3(a) shall be applied consistently with and subject to the exceptions contained in the minimum gain chargeback requirements of Regulations § 1.704-2(f).

(b) *Partner Minimum Gain*. If there is a net decrease in "partner nonrecourse debt minimum gain" (within the meaning of Regulations section 1.704-2(i)(3)), items of income and gain (determined in accordance with Regulations § 1.704-2(i)(4)) shall, to the extent required by the Regulations, be specially allocated to the Parties in an amount equal to the share of each Party of the net decrease in

  
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"partner nonrecourse debt minimum gain" (determined in accordance with Regulations § 1.704-2(i)(5)). This Section V.2(b) shall be applied consistently with and subject to the exceptions contained in the "partner nonrecourse debt minimum gain" chargeback requirements of Regulations § 1.704-2(i)(4).

(c) *Qualified Income Offset.* If a Party unexpectedly receives any adjustment, allocation or distribution described in Regulations §§ 1.704-1(b)(2)(ii)(d)(4), (5) or (6), items of income and gain shall be specially allocated to the Party in an amount and manner sufficient to eliminate, to the extent required by the Regulations, the deficit balance in the Adjusted Capital Account of such Party as quickly as possible, provided that an allocation pursuant to this Section V.3(c) shall be made only to the extent that the relevant Party has a deficit balance in its Adjusted Capital Account after all other allocations provided for in this Section V.3 have been tentatively made, as if this Section V.3(c) were not in this Agreement. This Section V.3(c) shall be interpreted consistently with Regulations § 1.704-1(b)(2)(i)(d).

(d) *Gross Income Allocation.* If a Party has a deficit balance in its Capital Account at the end of any Fiscal Year that is in excess of the sum of (i) any amount such Party is obligated to restore pursuant to this Agreement and (ii) any amount such Party is treated as obligated to restore pursuant to the penultimate sentences of Regulations §§ 1.704-2(g)(1) and 1.704-2(i)(5), items of income and gain in the amount of such excess shall be specially allocated to such Party as quickly as possible, provided that an allocation pursuant to this Section V.3(d) shall be made only to the extent that the relevant Party has a deficit balance in its Capital Account in excess of such amount after all other allocations provided for in this Section V.3 have been tentatively made as if Section V.3(c) and this Section V.3(d) were not in this Agreement.

(e) *Nonrecourse Deductions.* "Nonrecourse Deductions" (within the meaning set forth in sections 1.704-2(b)(1) and 1.704-2(c) of the Regulations) for any Fiscal Year shall specially allocated to the Parties in accordance with their Participating Interests.

(f) *Partner Nonrecourse Deductions.* "Partner Nonrecourse Deductions" (within the meaning set forth in section 1.704-2(i)(2) of the Regulations) shall be specially allocated to the Parties who bear the economic risk of loss for the liability to which those deductions are attributable, determined in accordance with the principles of Regulations section 1.704-2(i)(1).

(g) *Basis Adjustments.* To the extent an adjustment to the adjusted tax basis of any Joint Venture asset pursuant to Code Sections 734(b) or 743(b) is required, pursuant to Section 1.704-1(b)(2)(iv)(m) of the Regulations, to be taken into account in determining Capital Accounts, the amount of such adjustment to the Capital Accounts shall be treated as an item of gain (if the adjustment increases the basis of the asset) or loss (if the adjustment decreases such basis)

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and such gain or loss shall be specially allocated to the Parties in a manner consistent with the manner in which their Capital Accounts are required to be adjusted pursuant to such section of the Regulations.

(h) *Curative Allocations.* The allocations set forth in Sections V.2(a) through (g) hereof (the "**Regulatory Allocations**") are intended to comply with certain requirements of Section 1.704-1(b) of the Regulations. It is the intent of the Parties that, to the extent possible, all Regulatory Allocations shall be offset either with other Regulatory Allocations or with special allocations of other items of Joint Venture income, gain, loss or deduction pursuant to this Section V.2. Accordingly, the Tax Matters Partner (designated below in V(1)) is hereby authorized and directed to make such offsetting allocations of Joint Venture income, gain, loss or deduction in any manner that the Tax Matters Partner deems appropriate so that, after such offsetting allocations are made, each Parties' Capital Account balance will be, to the extent possible, equal to the Capital Account balance such Party would have had if the Regulatory Allocations were not a part of this Agreement and all Joint Venture items had been allocated to the Parties solely pursuant to Section V.1 hereof.

4. *Section 704(c).* In accordance with Section 704(c) of the Code and the Regulations thereunder, income, gain, loss and deduction with respect to any property contributed to the capital of the Joint Venture shall, solely for tax purposes, be allocated among the Parties so as to take account of any variation between the adjusted basis of such property to the Joint Venture for federal income tax purposes and the initial Asset Value of such property. In the event the Asset Value of any Joint Venture asset is adjusted, subsequent allocations of income, gain, loss, and deduction with respect to such asset shall take account of any variation between the adjusted basis of such asset for federal income tax purposes and its Asset Value in the same manner as under Code Section 704(c) and the Regulations thereunder. Any elections or other decisions relating to such allocations shall be made by the Tax Matters Partner in any manner that reasonably reflects the purpose and intention of this Agreement. Allocations pursuant to Section V.2 and Section V.3 are solely for purposes of federal, state, and local taxes and shall not affect, or in any way be taken into account in computing, any Party's Capital Account or share of Profits, Losses, other items, or distributions pursuant to any provision of this Agreement.

## VI. TAXES

1. LMH-CMC, JV is hereby designated the Tax Matters Partner as defined in Section 6231(a) (7) of the Internal Revenue Code. The Tax Matters Partner is authorized to make any and all elections for federal, state and local purposes. The cost of outside attorneys or tax professions engaged by the Tax Matters Partner, if any, will be paid or reimbursed by the Joint Venture. The Tax Matters Partner's authority is limited such that it may not bind the other Party to an audit, administrative adjustment, settlement agreement and a petition for review of a

  
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final partnership administrative adjustment or any change in the Joint Venture's returns as filed that will affect the Parties' tax liability without approval by the other Party.

2. *Preparation of Tax Returns.* The Parties agree to provide to the Tax Matters Partner, as required, all information which may be necessary for the preparation of the Joint Venture's tax returns or which is needed in support of any tax audits and administrative or judicial proceedings with respect to such returns as filed. The Tax Matters Partner shall timely provide any Party with any reasonably requested tax information to enable such Party to fulfill its tax compliance obligations. The Tax Matters Partner shall prepare and file, or cause to be prepared and filed, all returns of the Joint Venture necessary for federal, state, and local income tax purposes. Copies of all income tax returns of the Joint Venture shall be furnished to each Party's senior tax officer for their review at least 60 days prior to the extended due date for their filing. The Party's K-1 forms will be distributed no later than July 15 of each year. If any Party intends to file a notice of inconsistent treatment under Code §6222(b), such Party shall, at least thirty (30) days prior to the filing of such notice, notify the other Party of such intent and the manner in which the Party's intended treatment of an item is (or may be) inconsistent with the treatment of that item by the Joint Venture, and advise the other Party of the reasons therefore. In addition, the Tax Matters Partner shall notify each Party prior to filing any amended income tax return or entering into any binding agreements with regard to income tax matters.

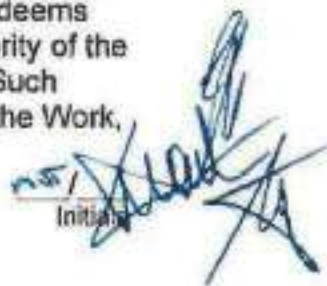
3. *754 Election.* The Joint Venture shall, if requested by any Party, make the election under Section 754 of the Code.

4. *Accrual Method of Accounting.* The records of the Joint Venture shall be maintained on an accrual method of accounting. Profits and losses will be ascertained in accordance with US Generally Accepted Accounting Principles ("GAAP").

5. *Partnership Classification.* No election shall be made by the Joint Venture or any Party for the Joint Venture to be excluded from the application of any of the provisions of Subchapter K, Chapter 1 of Subtitle A of the Code or from any similar provisions of any state tax laws. Neither the Parties nor the Joint Venture shall take any other action that would cause the Joint Venture to be treated in any manner other than as a partnership for federal income tax purposes.

## VII. EQUIPMENT

1. The Joint Venture shall purchase and acquire such equipment, machinery, tools, materials, supplies and other properties as the Managing Partner deems necessary for the performance of the Work subject to the superior authority of the Committee and to conformance with the provisions of this Agreement. Such properties shall be owned by the Joint Venture and upon completion of the Work,

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or before if no longer needed, shall be divided among and distributed to the Parties in accordance with their Participating Interests , or otherwise disposed of as decided by the Committee.

2. Any Party shall be entitled to purchase surplus Joint Venture equipment. The purchase price to the purchasing Party shall be the fair market value of the equipment as determined by the Committee, less ten percent (10%). If a Party has sold equipment to the Joint Venture, that Party shall have the first right to repurchase such equipment. Subject to the foregoing, if more than one Party wishes to purchase such equipment, the Committee shall determine the purchaser and such determination shall be final.

Although the Parties contemplate the purchase of primarily new or good used equipment for the prosecution of the Work, the Committee may determine it to be in the best interests of the Joint Venture to purchase or rent equipment from one or more of the Parties. In such event, any such purchase shall be at fair market value. The appraisal cost shall be for the account of the Joint Venture. Rental rates shall not exceed rental rates for comparable equipment available in the area of the Project.

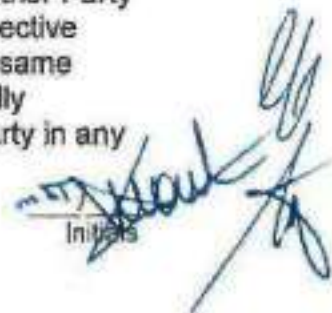
3. The Parties may agree, prior to bid, on a specific list of equipment to be furnished to the Joint Venture by each or any one of the Parties and on the fair value of such equipment. If any Party fails to furnish any equipment that such Party had agreed to furnish, that Party shall be responsible to reimburse the Joint Venture for all additional costs incurred by the Joint Venture to obtain substitute equipment from a different source. Equipment furnished to the Joint Venture shall remain on the Project until it is no longer needed for the Work, as determined by the Managing Partner and approved by the Committee, including in the event of bankruptcy by the contributing Party. Rental rates or purchase cost and all terms of any agreement between the Joint Venture and any Party shall require the unanimous approval of the Committee.

#### VIII. DEFAULTS

1. Defaults in Capital Contribution.

a. In the event of the failure of a Party to promptly contribute its share of working capital in the amounts and by the date set by the Managing Director, with the approval of the Committee:

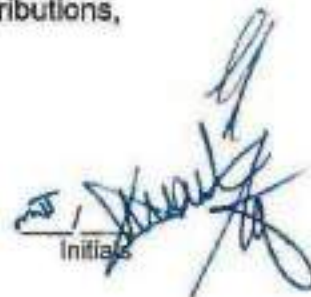
1. The defaulting Party's share of the profits of the Joint Venture shall be decreased, and the share of the other Party shall be increased proportionately, so that the respective interests of the Parties in the profits shall be in the same proportion as the amounts of working capital actually furnished, but in no event shall the share of any Party in any

  
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losses resulting from the performance of the Work be reduced or modified; reduction in a defaulting Party's share of the profits and increases in the shares of the other Party shall be calculated as of the time of each default in contributions and as of the time of each excess contribution by the other Party; the percentage by which a defaulting Party's share of profits has been so reduced will not be reinstated for any reason, however, the profit shares as so adjusted may be further adjusted to reflect any subsequent default or excess contributions; and

2. The defaulting Party shall pay default interest with respect to its uncontributed share at the lesser of (i) the rate of two percent above the reference prime rate of interest as listed daily in the Wall Street Journal, or (ii) the highest rate permitted by law. Payments of default interest shall be made to the Joint Venture for the accounts of the non-defaulting Party and payments shall continue until such time as full contributions of working capital and default interest have been paid or until final settlement of the Joint Venture accounts, whichever occurs first; and,
  3. The defaulting Party shall thereupon have no representative on the Committee and shall have no further right to participate in the affairs of the Joint Venture until all of the defaulted contributions and default interest have been paid to the Joint Venture.
  4. The defaulting Party shall execute and deliver all documents and do all other things necessary or expedient to facilitate the exercise of such right, and allow the non-defaulting Party to proceed with the performance of the Contract (including, but not limited to, the operation of any bank accounts in the name of the Joint Venture without reference to the defaulting Party). In such event, all reference in this Agreement to the administration and direction of the Joint Venture by the Parties (whether through the Committee or the Parties directly) shall be deemed to exclude the defaulting Party.
- b. The non-defaulting Party may also, in the name of the Joint Venture or in its own name, maintain an action against the defaulting Party to recover for the Joint Venture the amount of unpaid contributions, together with default interest to the date of payment.

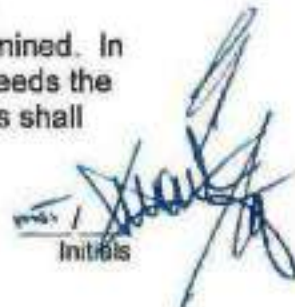
  
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2. General Default. The occurrence of any of the following, if not cured within fifteen (15) days of the date of occurrence, shall constitute an "event of default":

- a. the breach by any Party of any material term, covenant or condition of this Agreement including any of the warranties contained in Section IV 1 (Financial Information, Bonds and Interparty Warranty) of this Agreement;
- b. any Party becomes insolvent, or suffers or consents to or applies for the appointment of a receiver, trustee, custodian or liquidator of itself or any of its property, or generally fails to pay its debts as they become due, or makes a general assignment for the benefit of creditors;
- c. any Party files a voluntary petition in bankruptcy, or seeks reorganization, in order to effect a plan or other arrangement with creditors or other relief under the Bankruptcy Reform Act, Title 11 of the United States Code, as amended or re-codified from time to time ("Bankruptcy Code"), or under any state or federal law granting relief to debtors, whether now or hereafter in effect;
- d. any involuntary petition or proceeding pursuant to the Bankruptcy Code or any other applicable state or federal law relating to bankruptcy, reorganization, or other relief for debtors is filed or commenced against a Party, or
- e. a Party shall file an answer admitting the jurisdiction of the court and the material allegations of any involuntary petition; any Party is adjudicated as bankrupt, or an order for relief is entered by any court of competent jurisdiction under the Bankruptcy Code, or any other applicable state or federal law relating to bankruptcy, reorganization or other relief for debtors.

If the defaulting Party does not cure the default within the time specified, the non-defaulting Party may elect, in its discretion, immediately to terminate the defaulting Party's right to participate in the affairs of the Joint Venture, and it may complete the performance of the Work and otherwise wind up the affairs of the Joint Venture. Upon completion of the Work, the non-defaulting Party shall account to the defaulting Party or its successor, receiver, trustee, or other legal representative ("Representative"). The defaulting Party or its representative shall not be entitled to receive any payment from the Joint Venture until after completion of the Work and a full accounting has been made and determined. In the event the share of the losses chargeable to the defaulting Party exceeds the sums advanced by such Party, the defaulting Party or its representatives shall promptly pay the amount of such excess to the non-defaulting Parties.

  
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3. Remedies. Upon any Event of Default, the non-defaulting Party may elect the remedies outlined in this Section VIII, or any other remedy allowed by law. The remedies of the Parties set forth herein with respect to any Event of Default are in addition to, and not in derogation of, any other rights or remedies which any Party may otherwise have at law or equity.

#### IX. ASSIGNMENT

Except as otherwise provided herein, this Agreement shall inure to the benefit of, and be binding upon, the Parties, their successors, trustees, assigns, and legal representatives, but shall not inure to the benefit of any other persons, firm or corporation. The Parties shall not have the power or authority to assign their rights or delegate their duties under this Agreement and any such attempted assignment or delegation shall be void unless consented to in writing by both the Parties. Provided, however, the foregoing shall not be construed to prohibit any Party from granting a security interest in such Party's right, title and interest in the Joint Venture to such Party's principal lender, the Parties hereby agreeing in advance to the granting of such a security interest.

#### X. SPECIAL CONDITIONS – INTENTIONALLY OMITTED

#### XI. INDEMNITY AND INSURANCE

1. The Parties acknowledge that the Contract may require joint and several liability; however, and notwithstanding the foregoing, each Party hereby guarantees to the other that the liability and responsibility of each Party arising from or in connection with the carrying out of their respective responsibilities under this Agreement or the Contract shall be limited to the respective interests as set forth in Section II. 3. (Participating Interest) hereof, and shall indemnify and hold the other harmless from liabilities in excess of such respective shares no matter when incurred; provided, however, that no Party shall be obligated to indemnify and hold the other harmless against claims, losses, damages or liabilities resulting from the gross negligence or willful misconduct of the other or a material default by the other Party under the Agreement. No Party's indemnity obligation shall exceed its percentage interest in the Joint Venture stated in Section II. 3. (Participating Interest). The provisions of this paragraph shall be limited to claims, losses and liabilities that are directly related to or arise out of the performance and completion of the Work or the execution of any bonds or indemnity agreements in connection therewith, and shall not relate to or include any incidental, indirect or consequential losses or liabilities that may be sustained or suffered by a Party.

Subject to the provisions of Section XI.1., the Joint Venture shall indemnify and hold harmless any Party and each of its affiliates, and their respective directors, officers, representatives, employees, agents, successors and assigns

  
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from and against any claims, losses, damages and costs arising from or in connection with the carrying out of their respective responsibilities under this Agreement or the Contract, except for the gross negligence or willful misconduct of the individual Party.

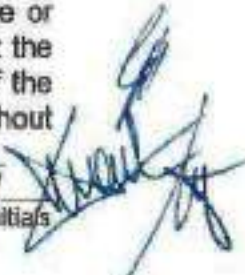
2. Each Party shall insure its indemnity duties and obligations referred to in this Agreement to the fullest extent that the Committee shall from time to time decide, and provide policies of insurance and receipts for paid up premiums, which shall be available for the Joint Venture's or a Party's inspection at all reasonable times, with sufficient notice, during the term of this Agreement.

3. Each Party (the "Indemnitor") shall indemnify and hold harmless the Joint Venture and the other Party, from and against any loss, expense, damage or injury (collectively "activity") it suffers or sustains by reason of any activities or obligations of the Indemnitor which are conducted or incurred outside the scope of this Agreement. These shall include, but not be limited to, activities which are in material breach of this Agreement or which are transacted in a grossly negligent fashion including, but not limited to, any judgment, settlement, award, reasonable attorney's fees or other costs or expense incurred in connection with the defense of any actual or threatened action, proceeding or claim. Notwithstanding the foregoing, except for a liability or obligation that a Party individually assumes or guarantees and which the Committee specifically approved and authorized in writing, neither the Joint Venture nor either Party shall be liable to indemnify the other Party for such liability, guaranty or obligation individually assumed.

4. Subject to the terms of the Contract and the decision of the Committee, the Parties shall implement the insurance program as set forth on Exhibit 5 attached hereto.

## XII. CONFIDENTIAL INFORMATION

1. Each of the Parties, to the extent of their respective rights and abilities to do so, shall exchange such information and data as are reasonably required of each to perform its part of this joint effort, subject to any confidentiality obligations to third parties. Each Party agrees to keep in confidence and to use the same degree of care as it uses with respect to its own confidential information to prevent the disclosure to third parties of all confidential and trade secret information and other data ("Confidential Data") received from any Party under this Agreement. Confidential Data received by any Party from any other shall be used only for purposes relating to the joint pursuit of the Work and providing assistance in pursuit of the Contract hereunder. Such restrictions shall not apply, however, to the extent such Confidential Data: (a) was in the public domain at the time of disclosure or later comes into the public domain; or (b) was known to the receiving Party at the time of disclosure; or (c) is authorized for disclosure by the written approval of the transmitting Party; or (d) is obtained by the receiving Party from a third party without

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restrictions as to the use or disclosure of the Confidential Data; or (e) is independently developed by the receiving Party without recourse to any Confidential Data provided under this Agreement; or (f) is required by law, on advice of counsel, to be disclosed.

2. Confidential Data may be disclosed in confidence to appropriate Owner representatives for proposal evaluation purposes and may be used in connection with the submission of a proposal hereunder.

3. Upon termination of this Agreement, Confidential Data shall be promptly returned to the disclosing Party upon request. All Confidential Data furnished hereunder may be destroyed by the custodian of such Confidential Data thirty (30) days following termination of this Agreement, if the return of such Confidential Data is not requested prior to such destruction. The recipient of any Confidential Data under this Agreement may retain, in its law or patent department files, one copy of Confidential Data transmitted pursuant to this Agreement solely for purposes of determining compliance with this Agreement. It is agreed that no license to any patents or other intellectual property of any Party is granted by this Agreement or by any discussions or by the disclosure of any Confidential Data hereunder.

The provisions of this clause shall survive the termination of the Agreement for three (3) years.

### **XIII. SOLICITATION OF EMPLOYEES**

Each Party agrees that upon entering into this Agreement and for a period of not less than one year following the earlier to occur of termination of this Agreement or Final Completion of the Contract, said Party and its subsidiaries and affiliates shall not make offers, enticements and/or inducements to cause employees of another Party to leave the employ of that Party and enter into employment with the other Party and/or any affiliate or subsidiary of the Party. This provision is limited to a Party's employee who participated in some material way with the Work and the Contract.

### **XIV. PUBLICITY**

Each Party may advertise as it thinks desirable subject to approval of the other Party. When the subject matter of any advertisement involves the other Party or the Work, such advertisements and relevant publication shall be subject to the prior written approval of the other Party and, where practicable, make due reference to and acknowledgement of the participation in and Work performed or to be performed by the other Party under the Contract.

### **XV. DURATION OF AGREEMENT**

  
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This Agreement shall be deemed to have started on the date hereof and shall continue until the earlier to occur of:

- a. The Parties jointly agree in writing not to bid for the Work.
- b. Award of the Contract by the Owner to another Entity, and the satisfactory subsequent settlement of all Joint Venture costs incurred to date.
- c. The Parties agree by mutual written consent to terminate the Agreement.
- d. In the event the Owner delays going forward with the procurement of the Project, this Agreement shall be revisited annually by both Parties within ten (10) days of the anniversary date. This shall include the exchange of then current financials if requested by either Party.

In the event the Owner awards the Work to the Joint Venture, this Agreement shall continue until the latest of any of the following occur:

- a. Until the Joint Venture affairs are concluded as provide in Section IV. 5. (Joint Venture Capital).
- b. Until all Joint Venture liabilities under the Contract have been settled.
- c. Until all bid protests or appeals are completed.

## **XVI. DISPUTES**

The Parties shall exhaust reasonable effort to resolve any disagreement or dispute, including intervention by the management of the respective Parties and resorting to mediation under the Construction Industry Mediation Rules of the American Arbitration Association, prior to resorting to binding arbitration, but if the issue has not been resolved within twenty (20) days of the date of any action or decision taken by the Chairman, any Party may initiate binding arbitration. Unresolved disputes shall be settled by binding arbitration in the Commonwealth of Massachusetts in accordance with the Construction Industry Rules of the American Arbitration Association then in effect, unless the Parties unanimously agree otherwise. The foregoing Agreement to arbitrate shall be specifically enforceable under the prevailing arbitration law. Notice of the Demand for Arbitration shall be filed in writing with the other Parties and with the American Arbitration Association. The prevailing Party in any arbitration shall be entitled to


  
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recover all costs and expenses, including reasonable attorney's fees incurred in the arbitration. The decision rendered by the arbitrator(s) shall be final and binding. Judgment upon award of arbitration may be entered in any Court having jurisdiction thereof

#### **XVII. MISCELLANEOUS**

- a. This Agreement and all questions arising thereunder and the Venture shall be governed by the laws of the Commonwealth of Massachusetts.
- b. The headings given to the paragraphs of this Agreement are for ease of reference only and shall not be relied upon or cited for any other purpose.
- c. The invalidity or unenforceability of any portion or provision of this Agreement shall in no way affect the validity or enforceability of any other portion or provision hereof. Any invalid or unenforceable portion or provision shall be deemed deleted from this Agreement, and the balance of this Agreement shall be construed and enforced as if this Agreement did not contain such invalid or unenforceable portion or provision.
- d. This Agreement constitutes the entire agreement between the Parties, and is subject to no other oral or written proposals, agreements or understandings whatsoever, and can only be supplemented or amended by a written document.
- e. The failure of a Party at any time to insist on strict performance or to not avail itself of any available rights under this Agreement does not constitute a waiver of those rights.
- f. Time shall be of the essence of this Agreement.
- g. The Parties agree to adopt and implement a Code of Ethics and an Anti-Corruption Policy that is in compliance with all applicable statutes, laws, rules, and regulations and in accordance with the individual business policies, procedures, and principles established by each Party. Throughout the effective period of this Agreement, each Party agrees:
  - (1) to act in accordance with the adopted Code of Ethics and Anti-Corruption Policy;
  - (2) to not make any offers or promises of payment or benefits aimed at corrupting public officials or private individuals;
  - (3) to not make any false claims to the government or owner or conduct any business in violation of anti-trust regulations; and

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(4) to disclose if it is, or has been disbarred, or suspended from working on federal, state, or local government funded projects and to disclose if it is listed on any international watch list maintained by the US Department of the Treasury, the US Department of Justice, or similar international terrorism, bribery, or corruption related listings maintained by other agencies or other countries.

If any of the Parties to this Agreement violates any of these provisions, or is debarred or suspended, or has a final judgment or conviction for violations of any ethics or anti-corruption related matter, then the other Parties shall be entitled, at their option, to declare the violating Party a defaulting Party and terminate this Agreement with immediate effect.

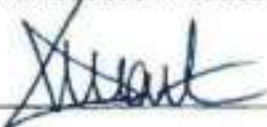
WITH EXHIBITS:

- 1.- Division of Services and Costs (10 pp.)
- 2.- NOT USED
- 3.- Project Reports (2 pp.)
- 4.- NOT USED
- 5- Insurance Program (2 pp.)

Handwritten signature and initials in blue ink. The initials "MST" are written above the signature. Below the signature, the word "Initials" is printed.

IN WITNESS WHEREOF, this Agreement has been duly executed as of the day  
and year first above written.

**THE LANE CONSTRUCTION CORPORATION**

By: 

Name: Giuseppe Quarta, EVP & COO

Attest: 

By: 

Name: Mark J. Tomkalski, EVP & CFO

Attest: 

**LMH-CMC, JV**

By: 

Name: LM Heavy Civil Construction, LLC

Attest: THOMAS LE

By: 

Name: Cooperativa Muratori & Cementisti - C.M.C. DI Ravenna Societa  
Cooperativa

By: 


Attest: MICHELE NICCOLI

By: 

  
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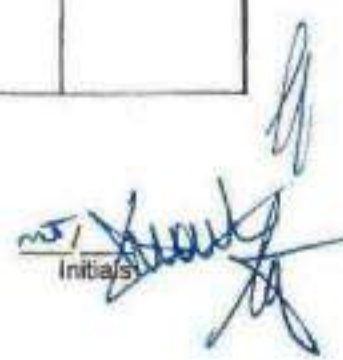
**EXHIBIT 1**  
**DIVISION OF SERVICES AND COSTS**

Description	Parties Cost Non- Reimbursable from Venture	Covered By Management Fee	Venture Cost  <small>Negotiated cost with Venture should be approved by Management Committee</small>
<b>1. Salaries &amp; Burdens</b>			
i.) Pre-Bid			
- All pre-bid salaries & burdens	X		
ii) Pre-Award			
- Managing Party's salaries & burdens		X	
iii) Post Award			
- Managing Party's Head Office Executives		X	
- Project Manager (On-site)			X
- Managing Party's Head Office Equipment Manager		X	
- Managing Party's Equipment Manager (On-site)			X
- Managing Party's Head Office Purchasing Agent		X	
- Managing Party's Purchasing Agent (On-site)			X
- Managing Party's Head Office Labor Relations Manager		X	

  
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Description	Parties Cost Non- Reimbursable from Venture	Covered By Management Fee	Venture Cost  Negotiated cost with Venture should be approved by Management Committee
- Managing Party's Labor Relations Manager (On-Site)			X
- Managing Party's Head Office Administration Manager		X	
- Managing Party's Head Office Human Resources		X	
- Managing Party's Personnel Department (On-site)			X
- Managing Party's Head Office Safety Personnel		X	
- Managing Party's Safety Personnel (On-site)			X
- Managing Party's Head Office Information Systems		*X see exception Item 5 (l)	
- Managing Party's Information Systems Personnel (On-site)			X
All staff hired or assigned to Venture and located on site or when in the Head Office prior to site office set-up			X
- Managing Party's Head Office accounting and payroll personnel when business system is on-site		X	

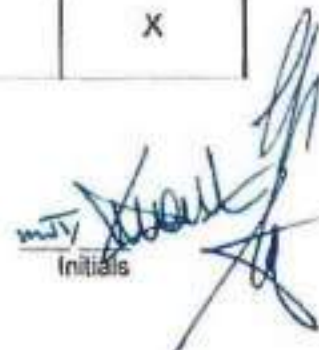
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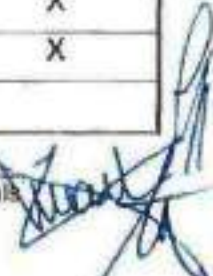
Description	Parties Cost Non- Reimbursable from Venture	Covered By Management Fee	Venture Cost  <small>Negotiated cost with Venture should be approved by Management Committee</small>
<ul style="list-style-type: none"> <li>- Managing Party's Head Office accounting and payroll personnel when :</li> <li>- 1) business system is in Head Office, and</li> <li>- 2) The Head Office is performing all Venture accounting and payroll functions.</li> </ul>			X
<ul style="list-style-type: none"> <li>- Managing Party's Head Office personnel when performing a specific assignment at the request of the Project Manager</li> </ul>			X
<ul style="list-style-type: none"> <li>- statutory burdens</li> </ul>	Allocated with Salaried Cost		
<ul style="list-style-type: none"> <li>- site allowances</li> </ul>	Allocated with Salaried Cost		
<ul style="list-style-type: none"> <li>- vehicle/car allowances</li> </ul>	Allocated with Salaried Cost		
2. Travel & Accommodation (Including Room & board)	Allocated with Salary Cost above. Only exception is when one of the above is required to travel for selection of equipment or to review a procedure used elsewhere that has application for the Project. When this is done at the request of the Project Manager, the Travel & Accommodations are a Venture Cost		
3. Personal Placement Fees	Allocated with Salaried Cost		
4. Moving Expenses	Allocated with Salaried Cost		
5. Data Processing			
i) Hardware			
<ul style="list-style-type: none"> <li>- in Head Office</li> </ul>		X	
<ul style="list-style-type: none"> <li>- on-site</li> </ul>			X

  
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Description	Parties Cost Non-Reimbursable from Venture	Covered By Management Fee	Venture Cost  Negotiated cost with Venture should be approved by Management Committee
- third party modifications to either Head Office or on-site equipment necessitated by project requirements.			X
ii) Software			
- in Head Office (unless required solely for adoption to Project software requirements)		X	
- on-site			X
- modifications to either Head Office or on-site software necessitated by project requirements including in-house programming expense			X
iii) On-Site Communication needs (including modem line, gateway and third party hook-up expense)			X
- On-site costs when using all or part of Head Office business system			X
- when business system is on-site			X
- other communication requirements of Venture (i.e. third party support modems, etc.)			X


  
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Description	Parties Cost Non- Reimbursable from Venture	Covered By Management Fee	Venture Cost  Negotiated cost with Venture should be approved by Management Committee
iv) Training			
- Managing Party's in-house training and support for Managing Parties employees		X	
- Non- Managing Parties employees			X
- third party training and support	Allocated as per hardware, software & communications		
6. Estimating Expenses			
- pre-award	X		
- post award			X
7. Engineering Expenses			
- pre-award	X		
- post award including Managing Party's in-house Head Office engineering expense.			*X in-house cost should be pre-approved by Management Committee
8. Scheduling Expenses			
- pre-award	X		
- post award			X
9. Licensing & Registration Fees			
- pre-award	X		
- post award			X
10. Legal Expenses			X
11. Insurance and Bonding			X

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Description	Parties Cost Non-Reimbursable from Venture	Covered By Management Fee	Venture Cost  Negotiated cost with Venture should be approved by Management Committee
12. Payroll Services (this does not include the direct payroll expense, only the cost of generating the payroll)			
<ul style="list-style-type: none"> <li>- Salaried</li> <li>- Hourly and salaried personnel on Venture payroll</li> </ul>		X	*X see item 1 (iii)
13. Accounting Services			*X see item 1 (iii)
14. Bonus/401(k) All personnel assigned to project by one or the other Parties	X		
15. Miscellaneous Office Supplies			
i) supplies shipped to job from inventory			X
ii) Venture Stationary, business cards, checks, etc.			X
iii) Courier Expenses			
<ul style="list-style-type: none"> <li>- originating on job site or from third parties to job site</li> </ul>			X
<ul style="list-style-type: none"> <li>- originating in Managing Party's Head Office</li> </ul>		*X except when Head Office Business Systems is being used & courier expense is to send Business System documents to job site. In this case, it is an Venture Charge	

  
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Description	Parties Cost Non- Reimbursable from Venture	Covered By Management Fee	Venture Cost  <small>Negotiated cost with Venture should be approved by Management Committee</small>
iv) Long Distance			
- originating on job site			X
- originating in Managing Party's Head Office		X	
v) Bank Charges			
- Venture Bank Accounts			X
vi) Office Space			
- pre-award	X		
- Head Office		X	
vi) Office Space, cont.			
- third party landlord			X
vii) Copying Charges			
- Head Office copy charges		X	
- third party copy charges			X
- on-site copy charges			X


  
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## EXHIBIT 1 CONT.

### INFORMATION AND SERVICES OF MANAGING PARTIES' HEAD OFFICE

The foregoing Table outlines the services to be provided by the Managing Party in return for the Management Fee. This narrative is intended to provide details on the nature and scope of those services.

#### 1. Salaries & Burdens

##### Pre-Award:

Prior to the award of the Project all salaries and burdens of the Managing Party's personnel who may be involved in negotiations with the Owner will be covered by the Management Fee. The only exception to this would be if the Management Committee determined it was in the Venture's interest to establish the Project team and begin detailed project planning. In that event, and with approval of the Management Committee the costs would be a Venture cost.

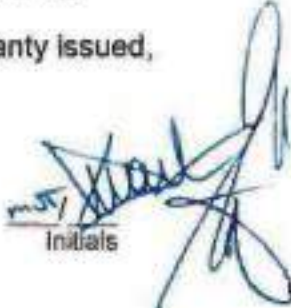
##### Post-Award:

Head Office management of the Managing Party will, in general, offer support and assistance to the Project Manager and staff regarding the due performance of the Project and the Contract subject to the superior authority of the Management Committee. More specifically their involvement will include, but is not limited to the following:

- a) Providing preliminary advice on technical and construction matters as well as on contractual issues prior to obtaining legal advice,
- b) Providing advice on union or labor issues, and
- c) Monitoring the performance of the Project Manger to ensure any critical contractual or financial issues are communicated to the Management Committee without delay.

The Head Office Equipment Manager will provide advice, support and assistance to the Venture Equipment Manager on the following:

- a) Selection and acquisition of plant, equipment and tools,
- b) Establishment of a preventative maintenance program (including record keeping and costing) for all plant, equipment and tools,
- c) Negotiation with plant and equipment suppliers on warranty issued, and

  
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- a) All matters relating to management of Venture plant and equipment.

The Head Office Purchasing Agent will provide advice, support and assistance to the Venture Purchasing Agent on the following

- a) Selection of subcontractors and suppliers,
- b) Negotiating and preparing purchase orders and subcontract agreements,
- c) Establishment of a program to track and monitor minority suppliers and subcontractors to ensure compliance with the Contract, and
- d) All matters relating to management of suppliers and subcontracts.

The Head Office Labor Relations will provide advice, support and assistance to the Venture Labor Relations Manager on the following:

- a) Discussions and negotiations with the various trade unions at Project startup,
- b) Negotiations and settlement of labor disputes which may arise during the course of the Project and,
- c) All matters relating to labor relations.

The Head Office Administration Manager will provide advice, support and assistance to the Venture Administration Manager on the following:

- a) Establishment and operation of the business system for all Project accounting functions (payroll, accounts payable, banking, tax accounts, receivables),
- b) Ensuring all payroll, taxation and accounting practices are in compliance with statutory requirements,
- c) Ensuring that Bonds and Guarantees are released at the earliest possible time for the benefit of the Venture,
- d) Establishment and operation of banking facilities in the name of the Venture as approved by the Management Committee,
- e) Obtaining and maintaining all required insurance coverage as approved by the Management Committee, as well as handling insurance claims,

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- f) Controlling the investment of surplus funds as approved by the Management Committee,
- g) Ensuring that all Project records are maintained and retained to comply with any statutory requirements,
- h) Selecting and coordinating with and external auditor as and when requested by the Management Committee and,
- i) All matters relating to the administration of the Contract and the business of the Venture.

The Head Office Safety Personnel will provide support and assistance to the Venture Safety Personnel on the following:

- a) Preparation of the Project Safety and Loss Control Program,
- b) Monitoring safety and loss control performance to ensure compliance with Contract or statutory requirements and,
- c) All matters relating to safety and loss control.

The Head Office Information Systems will provide advice, support and assistance to the Venture Information Systems Personnel on the following:

- a) To determine the system requirements, selection of hardware and software to operate the system and installation of the system,
- b) Troubleshooting system problems and,
- c) All matters relating to selection, installation and operation of information systems.

  
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## EXHIBIT 3

### PROJECT REPORTS

#### A. Project Status Report

On a monthly basis the Project Manager, with support from the Managing Party, will produce a Project Status Report. The report will be submitted to all Members of the Management Committee not later than the third Friday of the month following the month which the report covers. The contents of the report will include by will not necessarily be limited to the following:

##### **Executive Overview**

Presented in a narrative format to briefly capture the highlights of the various reports and schedules contained in greater detail in the remainder of the status report. It should outline major accomplishments of the month, Owner relations, labor relations and any major problems.

##### **Financial Summary**

A monthly financial statement calculated on the percentage completion basis.

##### **Progress Payment Summary**

A report which details the current contract revenue including approved changes, the revenue received to date and the holdback.

##### **Organizational Chart**

Outlining the reporting structure of the Project management team.

##### **Staff Schedule**

A simple bar chart schedule detailing the original planned and current forecast duration for each staff person included in the organizational chart.

##### **Construction Schedule**

CPM schedule at an appropriate level of detail.

##### **JV Asset List**

A listing of all plant, equipment, tools and other salvageable materials owned by the Venture with details on purchase value and current depreciated value.



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### **Equipment Schedule**

A simple bar chart listing all major equipment owned or rented by the Venture and planned durations.

### **Project Cost & Forecast Summary**

#### **B. Single Page Report**

A single page report covering, in summary totals format, the original cost, the fee and revenue, the changes in each due to approved change orders and quantity variations, and the forecasted final position. Costs will be broken down in four cost categories (labor, equipment, materials and subcontract). A graphic illustration of current revenue, fee variance and safety frequency over time will be included.

#### **C. Project Cost & Forecast Detail Report**

A complete report detailing original, to date and projected final quantities and costs by cost code and cost category.

#### **D. Subcontract Status Report**

A report listing all subcontracts entered into the Project and the current status of each, including revisions, balance to complete and retainage.

#### **E. Change Order Status Report**

A report listing all approved, unapproved and pending change orders on the Project. The value and current cost and revenue related to each will also be covered.

#### **F. Safety and Loss Control Report**

A report detailing Project safety statistics and details on claims.

#### **G. Photographs**

Photographs illustrating Project progress.

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## EXHIBIT 5

**PROJECT NAME:  
Cabot Yard and Maintenance Facility  
Contract No. R44CN02  
LMH-Lane Cabot Yard JOINT VENTURE**

### INSURANCE PROGRAM

The following will serve as a guideline for the Joint Venture Insurance Program, and will be modified upon agreement of the Parties in order to meet the requirements of the Contract.

1. Workers' Compensation in accordance with statutory requirements of the state in which the Project is being performed, and Employer's Liability insurance with limits of not less than \$1,000,000 for each accident. Such coverage to include Federal liability endorsements (USL&H and Maritime Coverage) where applicable. The deductible under such policy shall not exceed \$500,000 each accident.
2. Commercial General Liability insurance with not less than a \$2,000,000 combined single limit for any one occurrence, and \$4,000,000 in the aggregate on a "per project" basis. The deductible under such policy shall not exceed \$500,000 each occurrence.
3. Automobile Liability insurance on any owned, hired, or non-owned automobile with not less than a \$2,000,000 combined single limit for any one accident.
4. Excess Liability insurance with a limit of \$75,000,000 each occurrence and in the aggregate on a "per project" basis, following form of the underlying policies. Such coverage shall be excess of the primary Commercial General Liability, Employer's Liability, and Automobile Liability policies referenced above. Each Party shall assume its percentage share of any loss exceeding the \$75,000,000 limit provided to the Venture in their own respective excess liability programs.
5. Contractor's Equipment insurance covering all Venture owned, rented and leased equipment. The deductible amounts will be agreed upon by the Parties.
6. If agreed, "All-Risk" Builders' Risk insurance covering loss or damage to the Project. Such policy shall be in an amount equal to the full constructed value of the Project or such other amount as agreed to by the Parties and shall be maintained until final acceptance of the Project.

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7. As appropriate, Ocean Cargo and/or Hull & Machinery insurance covering materials or goods in transit or vessels involved in ocean going shipments and/or project work.
8. Contractor's Pollution Insurance with limits to be agreed upon by the Parties, but in no event less than \$5,000,000 per occurrence and in the aggregate, on an occurrence based form.
9. Any other such insurance as required by Contract or as agreed to by the Parties.
10. Commercial General Liability and Excess Liability coverage in the name of the Venture will include an extension of products and completed operations coverage with a minimum term to meet the greater of the statute of repose (or such other period of time over which a third party by law may bring suit) in the jurisdiction in which the Project is located.
11. The above insurance coverage shall include the Venture as the named insured and the individual Parties and the employees of the Venture as insureds or additional insureds where appropriate with a waiver of subrogation in favor of such insureds.
12. Deductibles and/or self-insured retentions, if any, under the policies referenced above, and arranged in the name of the Venture shall be borne by the Venture.
13. Any self-insured retention or deductible under any Workers' Compensation, General Liability or Automobile Liability policies covering each respective Party's employees assigned to the Project, but not covered by the Venture insurance described herein, shall be borne by each respective Party and shall not become a cost to the Venture.

If Professional Services are part of the Contract scope of work, (Design Firm), on behalf of the Venture, shall maintain Professional Liability insurance (including Errors and Omissions) covering (Design Firm's) design/Professional Services activities. Coverage shall be for limits of not less than (XXXXXX) per claim, unless higher limits are mandated by the Committee; provided however that this Project shall have the benefit of any such coverage in excess of such limit which (Design Firm) carries in the ordinary course of its business. Any sub-consultants of the (Design Firm) will maintain such Professional Liability limits as are mutually agreed by the Parties. All coverage shall be continued for a period of not less than five (5) years, (or such greater period if specified by the Owner) after acceptance of the completed Project by the Owner and evidence to this effect will be provided to the Venture. (Design Firm) agrees to notify the Venture of any reduction in coverage or material change at least thirty (30) days prior to such change, provided, further, that replacement shall be made of any coverage lost as a result of such reduction or change, as mutually agreed upon by the Venture.



Handwritten signature and initials, including the letters 'mst'.



# INSURANCE





# CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)  
07/03/2018

**THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.**

**IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must have ADDITIONAL INSURED provisions or be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).**

<b>PRODUCER</b> MARSH USA INC 30 CHURCH STREET 8TH FLOOR HARTFORD CT 06103 Attn: Alida Lynde (860) 723-6670	<b>CONTACT</b> PHONE: _____ FAX: _____ TAC. No. Ext: _____ TAC. No: _____ E-MAIL ADDRESS: _____														
CNI08229380-LC-JV-Cu/Po-18-19	<table border="1" style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th style="text-align: center;">INSURER(S) AFFORDING COVERAGE</th> <th style="text-align: center;">NAIC #</th> </tr> </thead> <tbody> <tr> <td>INSURER A : Liberty Mutual Fire Insurance Co</td> <td style="text-align: center;">23035</td> </tr> <tr> <td>INSURER B : American Guarantee and Liability Insurance Company</td> <td style="text-align: center;">26247</td> </tr> <tr> <td>INSURER C : Great American Insurance Co</td> <td style="text-align: center;">16691</td> </tr> <tr> <td>INSURER D : Allied World Specialty Insurance Company</td> <td style="text-align: center;">16624</td> </tr> <tr> <td>INSURER E : Ohio Casualty Insurance Company</td> <td style="text-align: center;">24074</td> </tr> <tr> <td>INSURER F :</td> <td></td> </tr> </tbody> </table>	INSURER(S) AFFORDING COVERAGE	NAIC #	INSURER A : Liberty Mutual Fire Insurance Co	23035	INSURER B : American Guarantee and Liability Insurance Company	26247	INSURER C : Great American Insurance Co	16691	INSURER D : Allied World Specialty Insurance Company	16624	INSURER E : Ohio Casualty Insurance Company	24074	INSURER F :	
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INSURER F :															

**COVERAGES**                      **CERTIFICATE NUMBER:** NYC-010010655-09                      **REVISION NUMBER:** 1

**THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.**

INSR LTR	TYPE OF INSURANCE	ADDL INSR	INSR NO	POLICY NO	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR  GENL AGGREGATE LIMIT APPLIES PER <input checked="" type="checkbox"/> POLICY <input checked="" type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC <input type="checkbox"/> OTHER: _____			TB2-Z11-8871M4-028	07/05/2018	04/05/2022	EACH OCCURRENCE \$ 2,000,000 DAMAGE TO RENTED PREMISES (Discontiguous) \$ 300,000 MED EXP (Any one person) \$ 10,000 PERSONAL & ADV INJURY \$ 2,000,000 GENERAL AGGREGATE \$ 4,000,000 PRODUCTS - COMPROP AGG \$ 4,000,000 \$
A	<input checked="" type="checkbox"/> AUTOMOBILE LIABILITY <input checked="" type="checkbox"/> ANY AUTO <input type="checkbox"/> OWNED AUTOS ONLY <input type="checkbox"/> SCHEDULED AUTOS <input checked="" type="checkbox"/> HIRED AUTOS ONLY <input checked="" type="checkbox"/> NON-OWNED AUTOS ONLY  *COMPCOLL \$1000*			AS2-Z11-8871M4-018	07/05/2018	04/05/2022	COMBINED SINGLE LIMIT (Per accident) \$ 2,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ \$
D	<input checked="" type="checkbox"/> UMBRELLA LIAB <input checked="" type="checkbox"/> OCCUR <input checked="" type="checkbox"/> EXCESS LIAB <input type="checkbox"/> CLAIMS-MADE <input type="checkbox"/> DED <input type="checkbox"/> RETENTION \$			SXS 9687556-00	07/05/2018	04/05/2022	EACH OCCURRENCE \$ 10,000,000
D				0311-4302 (\$25M x \$25M)	07/05/2018	04/05/2022	AGGREGATE \$ 10,000,000
E				EOD (22) 98947170 (\$25M x \$50M)	07/05/2018	04/05/2022	\$
A	<b>WORKERS COMPENSATION AND EMPLOYERS' LIABILITY</b> ANY PROFESSIONAL/INDEPENDENT EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below		F/N <input checked="" type="checkbox"/> N N/A	WC2-Z11-8871M4-038	07/05/2018	04/05/2022	<input checked="" type="checkbox"/> PER STATUTE <input type="checkbox"/> OTHER E.L. EACH ACCIDENT \$ 1,000,000 E.L. DISEASE - EA EMPLOYEE \$ 1,000,000 E.L. DISEASE - POLICY LIMIT \$ 1,000,000
C	CONTRACTORS POLLUTION			E317310 00 *SIR \$15,000*	07/05/2018	04/05/2022	PER POLLUTION CONDITION 10,000,000 AGGREGATE 10,000,000

**DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)**  
 Re: MBTA Contract No: R44CN02 - Cabot Yard & Maintenance Facility Improvements  
 Massachusetts Bay Transportation Authority is listed as an Additional Insured on a primary and non-contributory basis with respects to General Liability, Automobile Liability, Pollution and Excess/Umbrella policies.  
 Waiver of Subrogation is in favor of the Additional Insured with respects to Workers' Compensation.

<b>CERTIFICATE HOLDER</b> Massachusetts Bay Transportation Authority Treasurer/Controller 100 Summer Street, Suite 1200 Boston MA 02110	<b>CANCELLATION</b> SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.  AUTHORIZED REPRESENTATIVE of Marsh USA Inc Craig A. Farrow
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# CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)  
07/03/2018

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<b>PRODUCER</b> MARSH USA INC 20 CHURCH STREET, 8TH FLOOR HARTFORD, CT 06103  CNI08229380.LC.N-8R-18-22	<b>CONTACT NAME:</b> PHONE (A/C, H/O, Cell): _____ FAX (A/C, H/O): _____ E-MAIL: _____ ADDRESS: _____  <b>INSURER(S) AFFORDING COVERAGE</b> INSURER A: ACE American Insurance Company NAIC # 22667  INSURER B: _____ INSURER C: _____ INSURER D: _____ INSURER E: _____ INSURER F: _____
<b>INSURED</b> LMH Lane Cabot Yard JV 100 Hancock Street, Suite 901 Quincy MA 02171	

**COVERAGES**                      **CERTIFICATE NUMBER:** NYC-010310553-02                      **REVISION NUMBER:** 1

**THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.**

INSR LTR	TYPE OF INSURANCE	ADDITIONAL COVR	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
	<b>COMMERCIAL GENERAL LIABILITY</b> <input type="checkbox"/> CLAIMS-MADE <input type="checkbox"/> OCCUR  GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input type="checkbox"/> PRO. JECT <input type="checkbox"/> LOC OTHER: _____					EACH OCCURRENCE \$ DAMAGE TO RENTED PREMISES (EA OCCURRENCE) \$ MED EXP (Any one person) \$ PERSONAL & ADV INJURY \$ GENERAL AGGREGATE \$ PRODUCTS - COMP/OP AGG \$ \$
	<b>AUTOMOBILE LIABILITY</b> <input type="checkbox"/> ANY AUTO <input type="checkbox"/> OWNED AUTOS ONLY <input type="checkbox"/> SCHEDULED AUTOS <input type="checkbox"/> HIRED AUTOS ONLY <input type="checkbox"/> NON-OWNED AUTOS ONLY					COMBINED SINGLE LIMIT (EA ACCIDENT) \$ BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ \$
	<b>UMBRELLA LIME</b> <input type="checkbox"/> OCCUR <b>EXCESS LIAB</b> <input type="checkbox"/> CLAIMS-MADE DED    RETENTIONS					EACH OCCURRENCE \$ AGGREGATE \$ \$
	<b>WORKERS COMPENSATION AND EMPLOYERS' LIABILITY</b> ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER NUMBER EXCLUDED? (Mandatory in NH) If yes, describe in NH: DESCRIPTION OF OPERATIONS below	Y/N <input checked="" type="checkbox"/> N    N/A				<input type="checkbox"/> PER STATE <input type="checkbox"/> OTH-ER \$ L EACH ACCIDENT \$ \$ L DISEASE - EA EMPLOYEE \$ \$ L DISEASE - POLICY LIMIT \$
A	Builders Risk		11144391 001	07/05/2018	04/05/2022	Limit 213,817,000 Deductible 50,000

**DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)**  
 Evidence of Builders Risk coverage for MBTA Contract No. R40N02 - Cabot Yard & Maintenance Facility Project. Certificate holder is an additional insured as required by written contract.

\$213,817,000 Earthmovement Limit  
 \$25,000,000 Flood Limit  
 \$250,000 Deductible applies to Flood

<b>CERTIFICATE HOLDER</b>  Massachusetts Bay Transportation Authority 100 Summer Street, Suite 3200 Boston, MA 02110	<b>CANCELLATION</b>  SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.  AUTHORIZED REPRESENTATIVE of Marsh USA Inc. Craig A. Parrow
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# CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)  
07/01/2018

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<b>PRODUCER</b> MARSH USA, INC 20 CHURCH STREET, 8TH FLOOR HARTFORD, CT 06103	<b>CONTACT NAME:</b> <b>PHONE (A/C No. Ext):</b> <span style="float: right;"><b>FAX (A/C No.):</b></span> <b>E-MAIL ADDRESS:</b>												
CN108229380-LC/N-GR-18-22	<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <th style="text-align: center;">INSURER(S) AFFORDING COVERAGE</th> <th style="text-align: center;">NAIC #</th> </tr> <tr> <td>INSURER A: Westchester Fire Insurance Company</td> <td style="text-align: center;">10030</td> </tr> <tr> <td>INSURER B:</td> <td></td> </tr> <tr> <td>INSURER C:</td> <td></td> </tr> <tr> <td>INSURER D:</td> <td></td> </tr> <tr> <td>INSURER E:</td> <td></td> </tr> </table>	INSURER(S) AFFORDING COVERAGE	NAIC #	INSURER A: Westchester Fire Insurance Company	10030	INSURER B:		INSURER C:		INSURER D:		INSURER E:	
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INSURER A: Westchester Fire Insurance Company	10030												
INSURER B:													
INSURER C:													
INSURER D:													
INSURER E:													
<b>INSURED</b> Massachusetts Bay Transportation Authority 100 Summer Street Suite 1200 Boston, MA 02110													

**COVERAGES**                      **CERTIFICATE NUMBER:** NYC-010310885-03                      **REVISION NUMBER:** 1

**THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.**

RISK LTR	TYPE OF INSURANCE	AGGREGATE LIMIT	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
	<b>COMMERCIAL GENERAL LIABILITY</b> <input type="checkbox"/> CLAIMS-MADE <input type="checkbox"/> OCCUR  GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC OTHER:					EACH OCCURRENCE \$ DAMAGE TO RENTED PREMISES (Each occurrence) \$ MED EXP (Any one person) \$ PERSONAL & ADV INJURY \$ GENERAL AGGREGATE \$ PRODUCTS - COMPROP AGG \$ OTHER \$
	<b>AUTOMOBILE LIABILITY</b> <input type="checkbox"/> ANY AUTO <input type="checkbox"/> OWNED AUTOS ONLY <input type="checkbox"/> SCHEDULED AUTOS <input type="checkbox"/> HIRED AUTOS ONLY <input type="checkbox"/> NON-OWNED AUTOS ONLY					COVERED SINGLE LIMIT (See schedule) \$ BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ OTHER \$
	<input type="checkbox"/> UMBRELLA LIAB <input type="checkbox"/> OCCUR <input type="checkbox"/> EXCESS LIAB <input type="checkbox"/> CLAIMS-MADE  DED    RETENTIONS					EACH OCCURRENCE \$ AGGREGATE \$ OTHER \$
	<b>WORKERS COMPENSATION AND EMPLOYERS' LIABILITY</b> ANY PROHIBITION/PARTIAL INCLUSION/EXCLUSION OF OFFICER/MEMBER EXCLUDED? (Mandatory in RPR) If yes, describe under DESCRIPTION OF OPERATIONS below	Y/N <input checked="" type="checkbox"/> N    N/A				PER STATUTE    OTHER \$ EL EACH ACCIDENT \$ EL DISEASE - EA EMPLOYEE \$ EL DISEASE - POLICY LIMIT \$
A	<b>RAILROAD PROTECTIVE LIABILITY</b>		G71151487-001	0705/2018	0405/2022	EACH OCCURRENCE 5,000,000 POLICY AGGREGATE 10,000,000

**DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required):**  
 RE Evidence of Railroad Protective coverage for MBTA Contract No. R44C82 - Cabot Yard & Maintenance Facility Project.  
 Contractor: LMH - Lane Cabot Yard JV

<b>CERTIFICATE HOLDER</b>  Massachusetts Bay Transportation Authority 100 Summer Street Suite 1200 Boston, MA 02110	<b>CANCELLATION</b>  SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.  AUTHORIZED REPRESENTATIVE of Marsh USA Inc. Craig A. Parow
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**SECTION 00510  
ESCROW BID DOCUMENTS**

**THE REQUIREMENTS**

**A. Scope**

1. The purpose of this specification is to preserve the bid documents of the successful bidder (Contractor) for use by the parties in any claims, change orders, or litigation between the Authority and Contractor arising out of this contract.
2. The low bidder shall submit one (1) legible copy of all documentary information including, but not limited to, electronic files generated in preparation of bid prices for this project. This material is hereinafter referred to as "Escrow Bid Documents." The term "Escrow Bid Documents" as used in this specification means all writings, working papers, computer print outs, charts, and all other data compilations which contain or reflect information, data and calculations used by the Contractor to determine the bid in bidding for this project. The term "Escrow Bid Documents" also includes any manuals which are standard to the industry used by the Contractor in determining the bid to this project. Such manuals may be included in the bid documentation by reference. Such reference shall include the name and date of the Publication and the Publisher. The term does not include bid documents provided by the Authority for use by the Contractor in bidding on this project.
3. The low bidder shall certify that the Escrow Bid Documents constitute all of the information used in preparation of the Bid, and that no other bid preparation information shall be considered in resolving disputes or claims. The successful bidder also agrees that nothing in the Escrow Bid Documents shall change or modify the terms or conditions of the Contract Documents. In the event the Contractor omits information used in estimating its costs for the bid, then the Contractor will forfeit the ability, in connection with any claim, change, or litigation, to prove what it carried in its bid for the cost of the relevant item of work for which the information was omitted. For example, if the contractor has a claim for labor or material escalation and it omits from the Escrow Bid Documents the worksheets it prepared or the supplier quotes it received for the labor or materials for which escalation is claimed, then the Contractor will be precluded from presenting evidence of what it actually carried in its bid for labor or material.

**B. Submittal of Escrow Bid Documents**

1. The Escrow Bid Documents are to be submitted to the following Escrow Agent:

ATTN:

Robinson & Cole LLP  
One Boston Place, Suite 2500  
Boston, Ma 02108  
Attn: Matthew Lawlor, Esquire  
Phone: (617) 557-5948

2. The low bidder will be required to execute an escrow agreement with the Authority and the Escrow Agent in the form attached as Exhibit 3. The low bidder shall submit a signed Escrow Agreement in triplicate and the Escrow Bid Documents to the Escrow Agent in a sealed container acceptable to the Escrow Agent, no later than five business days following the Notice of Award. 24-hour advance notice to the Escrow Agent is required prior to submitting the Escrow Bid Documents. The construction contract will not be executed until the Bid Documentation Certification (Exhibit 1) and the Bid Documentation Delivery Certification (Exhibit 2) has been delivered as set forth in section B.3. The container shall be clearly marked "Bid Documentation" and shall also show on the face of the container the Contractor's name, the date of submittal and the Contract Number. Compliance with the provisions of Section 00510 is within the discretion of the Authority.
3. The bidder shall obtain certification from the Escrow Agent in the form attached as Exhibit 2 and will deliver that acknowledgement and a copy of the Bid Documentation Certification form (Exhibit 1) to the Authority within said 5 days.
4. The Escrow Bid Documents shall be accompanied with the certification (attached as Exhibit 1) signed by an individual authorized by the Bidder to execute Bids, stating that the material in the Escrow Bid Documents constitutes all the documentary information used in preparation of the Bid and that the Bidder has personally examined the contents of the Escrow Bid Documents container and has found that the documents in the container are complete and meets the requirements of this Section 00510.

C. Ownership

1. The Escrow Bid Documents are, and shall always remain, the property of the Contractor, subject to joint review by the Authority and the Contractor as provided herein. The Escrow Bid Documents are proprietary and secret information belonging to the Contractor.
2. The Authority stipulates and expressly acknowledges that the Escrow Bid Documents, as defined herein, constitute trade secrets. This acknowledgement is based on the Authority's express understanding that the information contained in the Escrow Bid Documents is not known outside the Bidder's business, is known only to a limited extent and only to a limited number of employees of the Bidder, is safeguarded while in the Bidder's possession, is extremely valuable to the Bidder and could be extremely valuable to the Bidder's competitor by virtue of it reflecting the Bidder's contemplated techniques of construction. The Authority acknowledges that the Bidder expended substantial sums of money in developing the information included in the Escrow Bid Documents and further acknowledges that it would be difficult for a competitor to replicate the information contained therein. The Authority further acknowledges that the Escrow Bid Documents include a compilation of information used in the bidder's business, intended to give the Bidder an opportunity to obtain an advantage over competitors who do not know of or use the contents of the documentation. The Authority further agrees to safeguard the Escrow Bid Documents, and all information contained therein, against disclosure to the fullest extent permitted by law.

D. Purpose

1. The purpose of the Escrow Bid Documents procedure is intended to create a spirit of cooperation in an atmosphere of honesty between the Authority and the Contractor.
2. Escrow Bid Documents will be used to assist in the negotiation of price adjustments and Change Orders and in the settlement of disputes and claims. They will not be used for pre-award evaluation of the contractor's anticipated methods of construction or to assess the contractor's qualifications for performing work.

E. Format and Content

1. Bidders may submit Escrow Bid documents in their usual cost estimation format; provided that all information is clearly presented and ascertainable. It is not the intention of this Article to cause the Bidder extra work during the preparation of the Bid, but to ensure that the Escrow Bid Documents will be adequate to enable complete understanding and proper interpretation for their intended use. The Escrow Bid Documents shall be in English.

F. Not used.

G. Payment:

There will be no separate payment for compilation of the data, container or cost of verification of the Escrow Bid Documents. All costs shall be included in the overall Contract bid price.

H. Storage

The Escrow Bid Documents of the successful low bidder will be placed in escrow for the life of the Contract with the Escrow Agent. The cost of storage will be paid by the Authority.

I. Examination

1. The Escrow Bid Documents shall be examined by both the Authority and the Contractor, at any time deemed necessary by the Authority and/or the Contractor; provided, however, that the Escrow Bid Documents may only be examined for the purpose of determining the costs carried in the Contractor's bid for those specific items of work that are the subject of negotiation of price adjustments and Change Orders or the settlement of disputes and claims. No other documents may be examined. The Authority may delegate review of relevant Escrow Bid Documents to members of its construction management staff and/or consultants.
2. Examination of the Escrow Bid Documents is subject to the following conditions:
  - a. As trade secrets, the Escrow Bid Documents are proprietary and confidential to the extent provided by law.



b. Access to the Escrow Bid Documents may take place only in the presence of duly designated representatives of both the Authority and the Contractor. The AUTHORITY and CONTRACTOR shall provide written direction signed by the AUTHORITY and CONTRACTOR to the ESCROW AGENT directing that the Escrow Bid Documents be made available for such joint examination. The Authority or the Contractor shall give at least 5 business days written notice to the other's project manager of its request to examine the Escrow Bid Documents. Refusal by Contractor to be present or to cooperate in any way in the review of the documents after the provision of the written notice by the Authority, will be the basis for the Authority to reject the claim.

3. The Escrow Bid Documents at all times remain the property of the Contractor and the Authority will take all reasonable steps necessary to protect confidentiality to the fullest extent permitted by law.
4. The Authority agrees to notify the Contractor of its receipt of any request made pursuant to M.G.L.c.66§10 to inspect or examine any material contained in the Escrow Bid Documents.

J. Final Disposition

The Escrow Bid Documents will be promptly returned to the Contractor by the Escrow Agent when all of the following have occurred: all disputes regarding the contract work have been settled, the contract work completed and Final Payment has been made and accepted. The AUTHORITY and the CONTRACTOR shall provide joint written confirmation of the above to the ESCROW AGENT to allow the ESCROW AGENT to release the Escrow Bid Documents.

Exhibit 1

BID DOCUMENTATION CERTIFICATION

THE UNDERSIGNED HEREBY CERTIFIES THAT THE BID DOCUMENTATION CONTAINED HEREIN CONSTITUTES ALL OF THE INFORMATION USED IN PREPARATION OF THE BID; THAT NO OTHER BID PREPARATION INFORMATION SHALL BE CONSIDERED IN RESOLVING DISPUTES OR CLAIMS; AND THAT I HAVE PERSONALLY EXAMINED THESE CONTENTS AND HAVE FOUND THAT THIS BID DOCUMENTATION IS COMPLETE AND MEET THE REQUIREMENTS OF SECTION 00510.

SIGNATURE: \_\_\_\_\_

NAME: MASSIMO MARINO

TITLE: Managing Director and Chairman of the Committee of the JV

CONTRACT NO. R44CN02

CONTRACTOR: LMH-Lane Cabot Yard JV

DATE: June 25th, 2018

EXHIBIT 2

Bid Documentation Delivery

--- CERTIFICATION ---

ROBINSON & COLE LLP, as ESCROW AGENT, identified in Massachusetts Bay Transportation Authority Contract No. R44CN02, hereby certifies that LMH-Lane Cabot Yard JV [NAME OF BIDDER] as identified by Massimo Manno, C.E.O. [REPRESENTATIVE OF BIDDER] has delivered to ESCROW AGENT's office for storage, a sealed container which BIDDER represents to be all documentation used in the preparation of BIDDER's bid, otherwise known as the "Escrow Bid Documents," as BIDDER represents it is required to do in accordance with the Contract Documents of the above referenced Contract, on this 25<sup>th</sup> day of June, 2018.

ROBINSON & COLE LLP

By: Michael S. Grano

Name: Michael S. Grano

Title: partner

Exhibit 3

ESCROW AGREEMENT

This ESCROW AGREEMENT (this "Agreement") is dated the 25<sup>th</sup> day of June, 2016, by and among the MASSACHUSETTS BAY TRANSPORTATION AUTHORITY (the "MBTA" or the "AUTHORITY"); LMH-Lane Cabot Yard JV ("BIDDER"); and Robinson & Cole LLP as Escrow Agent ("ESCROW AGENT").

RECITALS

WHEREAS, the AUTHORITY is a public body politic and corporate and political subdivision of the Commonwealth of Massachusetts created by Chapter 161A of the Massachusetts General Laws, as amended, which is presently engaged in a competitive bidding process governed by law to award a construction contract to the lowest responsible and eligible bidder for a construction project entitled R44CN02 (the "Contract"); and

WHEREAS, BIDDER has submitted a bid on the Contract and is the low bidder therefore; and

WHEREAS, Section 00510 of the documents for the Contract (the "Contract Documents") requires the low bidder to submit, within five business days following the Notice of Award, one copy of all documentary information generated in preparation of bid prices for the Contract, which information is hereinafter referred to as "Escrow Bid Documents," to ESCROW AGENT together with a certification in the form contained in the Contract Documents; and

WHEREAS, ESCROW AGENT, for stated consideration, is willing to assume the obligations of ESCROW AGENT as agreed herein;

NOW, THEREFORE, for consideration mutually acknowledged, the AUTHORITY, BIDDER and ESCROW AGENT hereby agree as follows:

1. Escrow of Bid Documents. BIDDER shall comply with the provisions of Section 00510 of the Contract Documents by delivering a complete copy of the Escrow Bid Documents to ESCROW AGENT in a sealed container acceptable to the Escrow Agent within the required time limit and otherwise complying with Section 00510 of the Contract Documents together with the required Bid Documentation Certification (Exhibit 1 of Section 00510). BIDDER will receive from ESCROW AGENT a Bid Documentation Delivery Certification (Exhibit 2 of Section 00510) at the time BIDDER delivers the Escrow Bid Documents to ESCROW AGENT. BIDDER will deliver an original of ESCROW AGENT's Bid Documentation Delivery Certification and a copy of BIDDER's Bid Documentation Certification to the AUTHORITY within the required time limit.
2. Protection of Bid Documents. The AUTHORITY shall comply with the provisions of Section 00510 of the Contract Documents regarding receipt, storage, and use of the Escrow Bid Documents and will safeguard the Escrow Bid Documents and all information contained therein against disclosure to the fullest extent permitted by law.
3. Holding of Bid Documents by ESCROW AGENT. ESCROW AGENT is hereby expressly authorized and agrees to receive, store, safeguard, release, and return the Escrow Bid Documents during the duration of the Contract as set forth in this Agreement..



4. Return/Release of Bid Documents. ESCROW AGENT is expressly authorized to release the Escrow Bid Documents only under the following circumstances:

(a) In order to return the Escrow Bid Documents to BIDDER if the AUTHORITY informs ESCROW AGENT in writing that BIDDER and the AUTHORITY have not executed the Contract; or

(b) For joint examination by the AUTHORITY and BIDDER after delivery of a written direction signed by both the AUTHORITY and BIDDER; or

(c) For return to BIDDER when ESCROW AGENT has received joint written confirmation from the AUTHORITY and BIDDER that all of the following have occurred: all disputes regarding the Contract work have been settled, the Contract work completed and Final Payment has been made and accepted; or

(d) Upon joint written direction from the Authority and Bidder, either under such circumstances as is provided for in Section 00510 of the Contract Documents, or as otherwise directed by mutual agreement of the AUTHORITY and BIDDER, which direction shall be delivered in writing by the AUTHORITY, signed by both parties, to ESCROW AGENT.

5. ESCROW AGENT'S Obligations and Protection. AUTHORITY and BIDDER further acknowledge and agree as follows:

(a) That ESCROW AGENT (i) shall not be responsible for any of the agreements referred to herein but shall be obligated only for the performance of such duties as are specifically set forth in this Escrow Agreement; (ii) shall not be obligated to take any legal or other action hereunder which might in its judgment involve any expense or liability unless it shall have been furnished with acceptable indemnification; (iii) may rely on and shall be protected in acting or refraining from acting upon any written notice, instruction, instrument, statement, request or document furnished to it hereunder and believed by it to be genuine and to have been signed or presented by the proper person, and shall have no responsibility for determining the authenticity or accuracy thereof; and (iv) may consult counsel satisfactory to it, including counsel internal to ESCROW AGENT, and the opinion of such counsel shall be full and complete authorization and protection in respect of any action taken, suffered or omitted by it hereunder in good faith and in accordance with the opinion of such counsel.

(b) That neither ESCROW AGENT nor any of its partners, officers, or employees shall be liable to anyone for any action taken or omitted to be taken by it or any of its partners, officers, or employees hereunder except in the case of gross negligence or willful misconduct. The AUTHORITY and BIDDER, jointly and severally, covenant and agree to indemnify ESCROW AGENT and hold it harmless without limitation from any loss, liability, or expense of any nature incurred by ESCROW AGENT arising out of or in connection with this Agreement or with the administration of its duties hereunder, including but not limited to legal fees and other costs and expenses of defending or preparing to defend against any claim or liability unless such loss, liability, or expense shall be caused by ESCROW AGENT's willful misconduct or gross negligence. In no event shall ESCROW AGENT be liable for indirect, special, or consequential damages. Notwithstanding any provision of this Agreement to the contrary, ESCROW AGENT'S liability shall be limited to the value of its compensation hereunder.

(c) That the AUTHORITY shall pay or reimburse ESCROW AGENT for any legal fees incurred by ESCROW AGENT in connection with the preparation of this Agreement and in addition compensate ESCROW AGENT for its services hereunder in accordance with the Revised Estimate for

MBTA Bid Escrow Agent Services dated December 18, 2009. ESCROW AGENT shall be entitled to reimbursement on demand for all expenses incurred in connection with the administration of the escrow created hereby which are in excess of its compensation for normal services hereunder, including without limitation, payment of any legal fees incurred by ESCROW AGENT in connection with resolution of any claim by any party hereunder.

(d) That ESCROW AGENT may at any time for any reason or for no reason resign as ESCROW AGENT hereunder by giving sixty (60) days prior written notice of resignation to AUTHORITY and BIDDER. Prior to the effective date of the resignation as specified in such notice, AUTHORITY will issue to ESCROW AGENT a written instruction authorizing redelivery of the Escrow Bid Documents to another escrow agent that AUTHORITY selects subject to the reasonable consent of BIDDER. If, however, AUTHORITY shall fail to name such a successor escrow agent within forty (40) days after the notice of resignation from ESCROW AGENT, BIDDER shall be entitled to name such escrow agent within twenty (20) days. If no successor escrow agent is named by AUTHORITY or BIDDER within said sixty (60) day period, ESCROW AGENT may apply to a court of competent jurisdiction for appointment of a successor escrow agent.

(e) That ESCROW AGENT's service as escrow agent under this Agreement shall not be construed as constituting legal representation of either AUTHORITY or BIDDER and both AUTHORITY and BIDDER expressly acknowledge, with reference to the rules of professional conduct governing lawyers that ESCROW AGENT's service hereunder is not intended to prevent either the AUTHORITY or BIDDER from retaining ESCROW AGENT as its counsel in any matter, nor shall it be asserted by the AUTHORITY or BIDDER as grounds for disqualifying ESCROW AGENT from representing any client in a matter in which the AUTHORITY's and/or BIDDER's interests are directly adverse to or otherwise different from those of ESCROW AGENT's client. ESCROW AGENT will not knowingly disclose to any such client directly adverse to AUTHORITY and/or BIDDER any confidential information about AUTHORITY and/or BIDDER which ESCROW AGENT has acquired or will acquire pursuant to its services provided in accordance with this Agreement.

(f) That it is the intent of BIDDER and the AUTHORITY that the Escrow Bid Documents remain the sole property of BIDDER.

(g) That the AUTHORITY's maximum obligation under this Agreement is \$15,000. In the AUTHORITY's discretion, the maximum obligation may be increased by written agreement signed by the AUTHORITY and ESCROW AGENT.

6. Dispute Resolution. It is understood and agreed that should any dispute arise with respect to the delivery, ownership, right of possession, access to and/or disposition of the Escrow Bid Documents, or should any such claim be made upon such documents by a third party, ESCROW AGENT upon receipt of written notice of such dispute or claim by the parties hereto or by a third party, is authorized and directed to retain in its possession without liability to anyone, all or any of said Escrow Bid Documents until such dispute shall have been settled either by the mutual agreement of the parties involved or by a final order, decree, or judgment of a court of the United States of America, the time for perfection or any appeal of such order, decree, or judgment having expired. At any time after the ESCROW AGENT becomes aware of a dispute or claim or at any time after one year after the contract completion date in the Contract, ESCROW AGENT may, but shall be under no duty whatsoever to, after thirty days prior written notice to the AUTHORITY and BIDDER, institute or defend any legal proceedings related to the Escrow Bid Documents, including without limitation, commencement of an action in the nature of an interpleader in a court of competent jurisdiction, after depositing the Escrow Bid Documents therewith, for a determination of the

respective rights of the AUTHORITY and BIDDER, and, in such case, recover from the AUTHORITY, ESCROW AGENT's costs and expenses including reasonable attorneys' fees .

7. Consent to Jurisdiction and Service. AUTHORITY and BIDDER hereby absolutely and irrevocably consent and submit to the jurisdiction of the courts of the Commonwealth of Massachusetts and of any Federal court located in said Commonwealth in connection with any actions or proceedings brought against AUTHORITY and BIDDER brought by ESCROW AGENT arising out of or relating to this Escrow Agreement. In any such action or proceeding, AUTHORITY and BIDDER hereby absolutely and irrevocably agree that the service thereof may be made by certified or registered mail directed to AUTHORITY or BIDDER, as the case may be, at their respective addresses in accordance with Section 9 hereof.

8. Force Majeure. Neither AUTHORITY nor BIDDER nor ESCROW AGENT shall be responsible for delays or failure in performance resulting from acts beyond its control. Such acts shall include but not be limited to acts of God, strikes, lockouts, riots, acts of war, epidemics, governmental regulations imposed after the fact, fire, communication line failures, power failures, earthquakes or other disasters.

9. Notices. Any notice permitted or required hereunder shall be deemed to have been duly given if delivered personally or if mailed certified or registered mail, postage prepaid, to the parties at their addresses set forth below or to such other address as they hereafter designate.



IF to AUTHORITY:

Massachusetts Bay Transportation Authority  
100 Summer Street, 12th Floor  
Boston, MA 02110  
Attention: Assistant General Manager for Capital Delivery  
with a copy to MBTA Project Manager for the Contract

IF to BIDDER:

LMH-LANE CABOT YARD JV  
100 HANCOCK STREET SUITE 901  
QUINCY, MA 02171  
Attention: JOSEPH TOFFOLONI

IF to ESCROW AGENT:

Robinson & Cole LLP  
One Boston Place, Suite 2500  
Boston, MA 02108  
Attention: Matthew J. Lawlor, Esq.

10. Binding Effect. This Agreement shall be binding upon the respective parties hereto and their heirs, executors, successors, and assigns.

11. Modification/Termination. This Agreement may not be altered, modified, or terminated without the express written consent of the parties hereto. No course of conduct shall constitute a waiver of any of the terms and conditions of this Agreement, unless such waiver is specified in writing, and then only to the extent so specified. A waiver of any terms and conditions of this Agreement on one occasion shall not constitute a waiver of the other terms of this Agreement, or of such terms and conditions or any other occasion.

12. Governing Law. This Agreement shall be governed by and construed under the laws of the Commonwealth of Massachusetts.

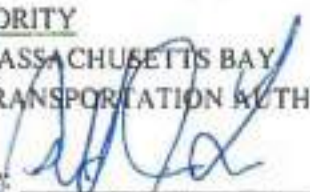
13. Counterparts. This Agreement may be executed in multiple counterparts, each of which shall be deemed an original, but all of such counterparts shall together constitute but one and the same instrument.



IN WITNESS WHEREOF, the parties hereto have executed this Agreement effective as of the day and year first written above.

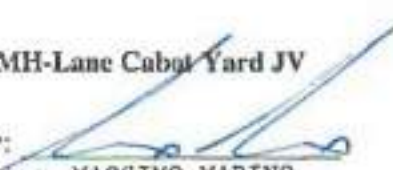
AUTHORITY

MASSACHUSETTS BAY  
TRANSPORTATION AUTHORITY

By:   
Name: Beth J. Larkin, P.E.  
Title: Assistant General Manager for  
Capital Delivery

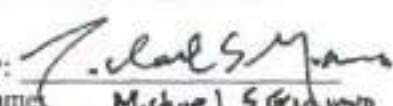
BIDDER

LMH-Lane Cabot Yard JV

By:   
Name: MASSIMO MARINO  
Title: Managing Director

ESCROW AGENT

ROBINSON & COLE LLP

By:   
Name: Michael S. Gagliardi  
Title: partner

## GENERAL CONDITIONS

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**SECTION 00700**  
**GENERAL CONDITIONS**

**PART I - DEFINITION OF TERMS**

**1.1 DEFINITION OF TERMS**

- A.** Wherever in the Bid or Contract Documents the following terms, or pronouns in place of them, are used, the intent and meaning shall be as follows:
1. **Acceptance** - Formal written acceptance by the Authority of the completed Work.
  2. **Addenda** - Written interpretations of and/or revisions to the Bid Documents issued by the Authority prior to opening of Bids.
  3. **Alteration** - A change or substitution in the form, character, or detail of the Work done or to be done within the original scope of the Contract.
  4. **Authority** - Massachusetts Bay Transportation Authority, created by Chapter 563, Section 18 of the Acts of 1964, of the Commonwealth, the Party of the First Part to the Contract.
  5. **Award** - Award by the Authority of a Contract.
  6. **Bid** - Offer of the Bidder for the Work when submitted on the prescribed Bid Form, properly signed, dated, and guaranteed, and which includes the schedule of bid items.
  7. **Bid Documents** - Documents provided by the Authority for the purpose of soliciting Bids for the Work. Bid Documents will include, as applicable, Standard Specifications, Contract Specifications, Contract Drawings, MBTA Geotechnical Data Reports, Bid Form, and Addenda.
  8. **Bid Form** - Forms issued by the Authority requesting bids for a specific Contract and includes the Notice to Bidders, Instructions to Bidders, and Form for Bid.
  9. **Bid Security (Bid Guaranty)** - The cash, cashier's or treasurer's check, certified check, or Bidder's Bond accompanying the Bid submitted by the Bidder, as a guaranty that the Bidder will enter into a Contract with the Authority for the performance of the Work and furnish acceptable bonds and insurance if the Contract is awarded to the Bidder.
  10. **Bidder** - An individual, firm, partnership, corporation, or combination thereof, submitting a Bid for the Work on the prescribed Bid Form.
  11. **Chairman of the Board of Directors of the Authority** - Chief Executive Officer or designee, such designee acting within the scope of the particular duties entrusted to him.
  12. **Change Order** - A document executed and issued to the Contractor by the Authority amending the Contract.
  13. **Commonwealth** - Commonwealth of Massachusetts.
  14. **Contract Documents** - The Standard Specifications, Contract Specifications, Bid, and Contract Drawings revised to incorporate all changes made during the Bid period by

Addenda and to incorporate information included in the Bid accepted by the Authority and all authorized changes to the Contract issued subsequent to the execution of the Contract in accordance with the most recent MBTA Change Order Guidelines.

15. **Contract** - The written agreement executed by the Authority and the Contractor, setting forth the obligations of the Parties there under. Further, any and all executed changes made in accordance with the MBTA Change Order Guidelines.
16. **Contract Administrator** - Manager of the Office of Contract Administration or his designee.
17. **Contract Bonds** -
  - a. **Performance Bond** - A bond executed by the Contractor and the Contractor's Sureties in the full amount of the contract to ensure the faithful performance of the contract.
  - b. **Labor and Materials Payment Bond** - A bond executed by the Contractor and the Contractor's Sureties in the full amount of the Contract to ensure the payment of labor, materials, and rental of equipment.
18. **Contract Drawings** - Plans, profiles, typical cross sections, general cross sections, elevations, and details list as referenced on the Drawing Index, or amendments thereto, and working drawings and shop drawings approved by the Engineer, all of which show locations, character, dimensions, and details of the Work.
19. **Contract Item** - A specifically described unit of work for which a price is provided in the Contract.
20. **Contract Specifications** - A set of documents issued by the Authority for the intended Work which includes the Notice to Bidders, Instructions to Bidders, Bid Form, Contract Forms, Contract Bond Forms, Supplementary Conditions, technical provisions, and other requirements, forms and exhibits identified therein.
21. **Contract Time** - Number of calendar days allowed or specified date(s) for completion of the Contract.
22. **Contractor** - The individual, firm, partnership, corporation, or combination thereof, private, municipal or public, including joint ventures, which, as an independent contractor, has entered into Contract with the Authority, as Party or Parties of the Second Part, and who is referred to throughout the Contract Documents by singular number.
23. **Days** - Every day shown on the calendar, Saturdays, Sundays and holidays included.
24. **Engineer** - The General Manager of the Authority or designee acting within the scope of the particular duties entrusted to this person.
  - a. Design Engineer and/or Consultant HNTB, Corp. has been retained by the Authority as engineering consultant during the construction of the Cabot Yard Rebuild Work. The terms "Design Engineer" and "Consultant" are at times interchangeable.
  - b. Design Engineer and/or Consultant Jacobs Engineering Group, Inc.. has been retained by the Authority as engineering consultant during the construction of the Cabot Carhouse Improvements Work. The terms "Design Engineer" and "Consultant" are at times interchangeable.
25. **Engineer's Estimate of Quantities** - List of quantities of work estimated to be performed as contained in the Bid.

26. Extra Work - Work which is not included in the Contract as awarded but found to be necessary for the satisfactory completion of the Contract within its intended scope, and bears a reasonable subsidiary relation to the full execution of the Work originally described in the Contract.
27. Extra Work Order - An order in writing issued by the Engineer to the Contractor prior to performing the Extra Work, setting forth the Extra Work to be done, the basis of payment and time adjustments, if any. Following the issuance of an Extra Work Order, a Change Order will be executed to amend the Contract Documents.
28. Force Majeure – Acts of God, strikes, lockouts, riots, acts of war, epidemics, governmental regulations imposed after the fact, fire, communication line failures, power failures, earthquakes or other disasters.
29. Form for Bid - see Bid Form.
30. General Manager - Shall be the Chief Executive Officer of the Authority, and shall have general direction, supervision and control of the conduct of the business, property, personnel and affairs of the Authority except as may be otherwise prescribed by law or by the regulations of the Board of Directors.
31. General Terms - Wherever the words "required," "determined," "directed," "specified," "authorized," "ordered," "given," "designated," "considered necessary," "deemed necessary," "Permitted," "reserved," "suspended," "established approval," "approved," "disapproved," "acceptable," "unacceptable," "suitable," "accepted," "satisfactory," "unsatisfactory," "sufficient," "insufficient," "rejected," "condemned," or words of like import are used, they shall be understood to imply "by the Engineer" or "to the Engineer," unless the context clearly indicates a different meaning.
32. Indicated - A term meaning as shown on the Contract Drawings, as described in the Specifications, or as required by other Contract Documents.
33. Manager of Contract Administration – the Manager of the Office of Contract Administration for the Massachusetts Bay Transportation Authority or his designee.
34. MBTA Transit System - Authority Transit System, including right-of-way, pavement, tracks, facilities, structures, equipment, appurtenances, and other property of the Authority.
35. Non-System facilities - Facilities which are not a part of the MBTA Transit System.
36. Notice to Bidders - That portion of the Bid which advertises for Bids for a specific Contract. Notice to Bidders will indicate time and place for submitting and for opening of Bids, location of the Work, a brief description of the Work to be provided, and bid security required.
37. Notice to Proceed - Written notice from the Authority to the Contractor to proceed with the Work.
38. Project - That specific portion of MBTA Transit System indicated in the Contract Documents.
39. Provide - In reference to work to be performed by the Contractor, "provide" means furnish, install, and (as applicable) test complete in place.



40. Reference Utility Standards - Drawings and specifications, published by municipalities, utility companies, and railroads which are included or referenced in the Contract Documents.
41. Specifications - Directions, provisions, and requirements contained in the Contract Specifications.
42. Subcontractor - The individual, firm, partnership, corporation, vendor, supplier, or combination thereof to whom the Contractor, with written approval of the Authority, sublets any part of the contract.
43. Supplementary Conditions - Supplements and additions to the General Conditions.
44. Surety - Corporate body bound with and for the Contractor for the full and complete performance of the Contract and for the payment of all legal debts pertaining to the Work, and who executed the Contract Bonds.
45. U.S. Department of Transportation (DOT) - Secretary of the U.S. Department of Transportation, and other person authorized to perform the functions of that office, including representatives of the Federal Transportation Administration (FTA).
46. Value Engineering - The systematic application of recognized techniques which identify the function of a product or service, and provide the necessary function or service reliably at lower overall cost.
47. Work - All the construction, materials, equipment, and contractual requirements as specified, shown, or indicated in the Contract Documents, including all alterations, amendments, or extensions thereto made by authorized changes.
48. Working Drawings and Shop Drawings - Any supplementary drawings or similar data which the Contractor is required to submit to the Engineer for approval, including but not necessarily limited to erection, falsework, and formwork drawings; dewatering; bending diagrams and bar schedules for reinforcing steel; calculations; and manufacturers' catalog information and data.

## PART 2 - SCOPE OF WORK

### 2.1 INTENT OF THE CONTRACT

- A. Intent of the Contract is to provide for the construction and completion in every detail of the Work. The Contractor shall complete the Work to the satisfaction of the Engineer at the prices set forth and agreed upon. Where portions of the Work are described in general terms, but not in complete detail, the best general practice shall be followed. Only materials and workmanship of best standard quality shall be used. The Contractor shall, unless otherwise specified, furnish all labor, superintendence, materials, tools, equipment and incidentals necessary to complete the Work in a proper, thorough, and workmanlike manner.
- B. Work consists of the rebuilding of the Cabot Yard including but not limited to Sitework, Trackwork, Structural Work, Traction Power Work, Signal Work, and Communications Work and upgrades and improvements to the Cabot Maintenance Facility. The Work is further described in Section 01010 SUMMARY OF THE WORK.

## 2.2 CHANGES IN THE WORK

- A. The Authority reserves the right at any time during the progress of the Work to make alterations to, deviations from, additions to, and deletions from the Contract Drawings and Specifications. Such changes shall not invalidate the Contract nor release the surety. The Contractor agrees to accept the Work as changed, the same as if it had been a part of the original Contract. Such changes will be authorized in writing by the Engineer. The Contractor shall accept as full compensation for Work, except as specified in Paragraphs B. and C., the Contract unit prices stipulated in the Contract for the actual quantity of work provided in an acceptable manner. Such changes shall not invalidate the Contract, nor any part thereof.
- B. Wherever an alteration, deviation, addition, or deletion involves a change in the nature of design or in the type of construction which increases or decreases the cost of performance of the Work or requires the Contractor to furnish materials or provide work of a kind not susceptible of classification for payment under any of the items scheduled in the Bid, the Authority and the Contractor may enter into Supplementary Agreements covering the work to be done and the manner and method of payment therefor. If the Contractor and the Authority disagree on increased or decreased costs, the changes shall be by a Change Order.
- C. If the changes, in the opinion of the Engineer, are of sufficient magnitude as to require additional time to complete the Contract, such time adjustment may be made in accordance with the provisions of Article 6.8.

## 2.3 EXTRA WORK

- A. The Contractor shall do any work not herein provided for when and as ordered in writing by the Engineer, such written order to contain particular preference to this Article and to designate the work to be done as Extra Work.
- B. Unless specifically noted in the Change Order, Extra Work will not extend the time of completion of the Contract as stipulated in Article 6.8 A.6.
- C. Determination of the Engineer will be final upon all questions concerning the amount and value of Extra Work (except as provided in Article 5.19).
- D. Payment for Extra Work will be as specified in Section 01151 - MEASUREMENT AND PAYMENT.

## 2.4 CONTRACTOR COST REDUCTION PROPOSALS VALUE ENGINEERING

- A. The Contractor may submit cost reduction Proposals for changing the Contract requirements. The Proposals shall be based upon a sound study made by the Contractor indicating that the Proposal:
  - 1. Will result in a net reduction in the total Contract cost to the Authority;
  - 2. Will not impair any essential form, fit, function, or characteristic of the Work, such as safety, service life, reliability, economy of operation, ease of maintenance, and necessary standardized features;
  - 3. Will not require an unacceptable extension of the Contract completion time; and
  - 4. Will require a Change Order to the Contract.
- B. Cost reduction or Value Engineering Proposals shall be processed in the same manner as prescribed for any Contract initiated Proposal which would necessitate issuance of a Change Order. The



Contractor shall submit the following information as a minimum, with each Cost reduction Proposal:

1. A description of the difference between the existing Contract requirements and the proposed change, and the comparative advantages and disadvantages of each;
  2. An itemization of the requirements of the Contract which must be changed if the Proposal is adopted and a recommendation as how to make such change (e.g., suggested revision);
  3. An estimate of the reduction in Contract performance costs that will result from adoption of the Proposal, taking into account the cost of implementation by the Contractor (including any amount attributable to subcontracts in accordance with Paragraph E. below and the basis for the estimate).
  4. A statement of the time by which a Change Order must be issued so as to obtain the maximum cost reduction during the remainder of this Contract, noting any effect of the Contract delivery schedule.
- C. The Authority will not be liable for any delay in acting upon, or for failure to act upon, any Value Engineering Proposal submitted pursuant to this Article. The decision of the Authority as to the acceptance of any such Proposal shall be final. The Authority may accept in whole or in part, any Proposal submitted pursuant to this Article by issuing a Change Order. Unless and until a Change Order is issued, the Contractor shall remain obligated to perform in accordance with the terms of the Contract.
- D. If a Value Engineering (cost reduction) Proposal is accepted and applied, an equitable adjustment in the Contract price and in any other affected provisions will be made. The equitable adjustment in the Contract price will be established by determining the total estimated decrease in the Contractor's cost of performance resulting from the accepted changes, taking into account the Contractor's cost of implementing the change (including any amount attributable to subcontracts in accordance with Paragraph E. below). The Contract price shall be reduced by such total estimated decrease in the cost of performance minus 50 percent of the difference between the amount of such total estimated decrease and any ascertainable collateral costs to the Authority which must reasonably be incurred as a result of application of the cost reduction Bid.
- E. The Contractor shall include appropriate value engineering arrangements in any subcontract which, in the judgment of the Contractor, is of such a size and nature as to offer reasonable likelihood of cost reductions. In computing any equitable adjustment in the Contract price under Paragraph D., the Contractor's cost of implementation of a Value Engineering Proposal which is accepted shall include any implementation cost of a Subcontractor and any value engineering incentive payments to a Subcontractor, which clearly pertain to such Proposal and which are incurred, paid or accrued in the performance of a subcontract.
- F. The Contractor may restrict the Authority's right to see any portion of the Contractor's Proposal by marking it with the following requirement:
1. This data, furnished pursuant to Article 2.4 of the General Conditions of Contract No. R44CN02 may not be duplicated, used or disclosed, in whole or in part, for any purpose except for evaluation, unless the Proposal is accepted by the Authority. This restriction does not limit the Authority's right to use information contained in this data if it is or has been obtained, or is otherwise available, from the Contractor or from another source, without limitations. When this Proposal is accepted by the Authority, the Authority will have the right to duplicate, use, and disclose any data in any manner and for any purpose whatsoever, and have others do so whether under this or any other Authority contract.
- G. Contract modifications made as a result of this Article will state that they are made pursuant to it.

## 2.5 INCREASED OR DECREASED CONTRACT QUANTITIES

- A. The Contractor shall accept as payment in full, so far as Contract Items are concerned, payment at the original bid contract unit prices for up to 100% of the units in the bid. The Engineer may order omitted from the work any items or portions of work. Such omissions shall not operate as a waiver of any conditions of the Contract nor invalidate any of the provisions thereof, nor shall the Contractor have any claim for anticipated profit or overhead.
- B. When the accepted quantities of work reach 75% of the quantities in the Bid Form and the Contractor anticipates that known work will require a quantity of units in excess of the units in the bid, the Contractor shall notify the Authority that additional quantities of work will be required, and submit a proposed cost to complete the work in excess of the bid units. If the Authority is in agreement, an Extra Work Order Authorization Letter (EWOAL) will be issued to the Contractor for a not to exceed amount. No payment will be made against a unit price pay item after expenditure of 100% of the quantity in the bid. After 100% of the units in the bid have been expended, the Contractor will proceed on a time and materials basis, or as directed in the EWOAL, until such time as a final lump sum can be negotiated for the extra work scope. Once agreement is reached a Change Order will be issued in accordance with SECTION 01151 – MEASUREMENT AND PAYMENT - SECTION 1.5 – PAYMENT FOR EXTRA WORK.
- C. Except as specified herein, no payment will be made for any increased expenses, loss of expected reimbursement, loss of anticipated profits or loss of overhead absorption, suffered or claimed by the Contractor either directly or indirectly from such increased or decreased quantities or from unbalanced allocation among the Contract Items of overhead expense on the part of the Contractor and subsequent loss of expected reimbursement, or from any other cause.

## 2.6 RIGHTS IN THE USE OF MATERIALS FOUND ON THE WORK.

- A. Contractor, with prior written approval of the Engineer, may take suitable ledge, gravel, sand, loam, clay, or other material from within the location lines of the Contract and use it on the same Contract for other purposes than for forming embankments. If such use necessitates securing additional material for forming embankments, the Contractor shall replace, at no additional expense to the Authority, material of at least similar quality. The Contractor shall not excavate or remove any material which is not within the excavation as indicated by the Contract Documents without written approval. Excavated material suitable for use shall not be wasted, unless otherwise directed.

## 2.7 ARCHEOLOGICAL AND PALEONTOLOGICAL SALVAGE

- A. The Contractor's attention is directed to the United States Department of Transportation, Federal Highway Administration, Federal Aid Highway Program Manual, Volume 7, Chapter 7, Section 4, subject "Archaeological and Paleontological Salvage", incorporating Policy and Procedure Memorandum 20-7, dated March 31, 1979, and to the Commonwealth of Massachusetts, Acts of 1973, Chapter 1155.
- B. In compliance with these procedures and legislation, the Contractor shall exercise special care during his operations to avoid injury to underground prehistoric and historic archaeological remains or paleontological remains. Should any archaeological or paleontological remains be encountered during any phase of construction, the Contractor shall immediately suspend all work in the area and shall notify the Engineer. The Engineer shall immediately notify the State Archaeologist and the Massachusetts Historical Commission. All construction work in that area will be temporarily delayed while the State Archaeologist and representatives of Massachusetts Historical Commission inspect the site to determine the importance of the discovery. Areas of prehistorical, historical, or



paleontological significance shall be carefully protected in accordance with the above referenced manual and shall not be disturbed by the Contractor until so directed by the Engineer.

- C. Contractor shall receive no extra compensation for such special care, unless said compensation is authorized in writing by the Engineer as specified under Section 01151 - MEASUREMENT AND PAYMENT, Part 1 "Payment for Extra Work" Article. Material from such areas shall be carefully protected, and if necessary to remove specimens, the Contractor shall do so only at the Engineer's direction, and after an authorized agent has witnessed or otherwise referenced their locations.

## 2.8 WARRANTY OF WORK

- A. Neither final acceptance, final payment nor any provision in the Contract Documents nor partial or entire use or occupancy of the premises by the Authority shall constitute an acceptance of work not done in accordance with the Contract Documents or relieve the Contractor of liability with respect to any express warranties or responsibility for faulty materials or workmanship.
- B. Except where longer periods of warranty are specified for certain items, the Contractor warrants all work done under the Contract to be free from faulty materials and workmanship for a period of one year from date of acceptance thereof.
- C. Upon receiving notification from the Authority, the Contractor shall immediately make the required repairs or replacements to any work found defective. If repairs or replacements are not started within 10 days from the date of notification and prosecuted to completion, the Authority reserves the right to employ others to complete the Work. The Contractor agrees, upon demand, to pay the Authority all amounts which it expends for such repairs or replacements.
- D. All remedied Work shall carry the same warranty as the original work starting with the date of acceptable replacement or repair.

## 2.9 CHANGED CONDITIONS

In accordance with Chapter 30, Section 39N of the General Laws of the Commonwealth, as amended, the following paragraph shall apply to the Contract:

- A. If during the progress of the Work, the Contractor or the Awarding Authority discovers that the actual subsurface or latent physical conditions encountered at the site differ substantially or materially from those indicated in the Contract Documents either the Contractor or the Authority may request an equitable adjustment in the Contract price of the Contract applying to work affected by the differing site conditions. A request for such an adjustment shall be in writing and shall be delivered by the party making such claim to the other party as soon as possible after such conditions are discovered. Upon receipt of such a claim from a Contractor, or upon its own initiative, the Authority will make an investigation of such physical conditions, and, if they differ substantially or materially from those indicated in the Contract Documents or from those ordinarily encountered and generally recognized as inherent in work of the character provided for in the Contract Documents and are of such a nature as to cause an increase or decrease in the cost of performance of the Work or a change in the construction methods required for the performance of the Work which results in an increase or decrease in the cost of the Work, the Authority will make an equitable adjustment in the Contract price and the Contract will be modified in writing accordingly.
  - 1. Filing, investigation, and settlement of all claims made under said Chapter and Section shall be as follows:
    - a. The Contractor shall promptly and before such conditions are disturbed, notify the Engineer in writing describing in full detail the subsurface or latent physical conditions at the site where it is maintained, that conditions differ substantially or

materially from those conditions indicated in the Contract Documents. The Engineer will promptly investigate the conditions and will promptly submit a written report of its findings and determinations to the Contractor, and if it is found that such conditions as have been described in detail by the Contractor do exist and in fact do so differ materially or substantially, an equitable adjustment will be made and the Contract modified in writing accordingly. No such claim of the Contractor will be allowed unless the Contractor has given the detailed notice specified, or shall it be allowed if such conditions are disturbed prior their investigation by the Engineer.

- b. No adjustment or allowance of any kind except as provided in Article 6.8 will be made to the Contractor due to delay or suspension of the Work or any portion thereof where the actual subsurface or latent physical conditions encountered at the site differ substantially and materially from those indicated in the Contract Documents.
  - c. No claim will be approved and no adjustment or allowance made when encountering subsurface or latent physical conditions at the site that differ substantially and materially from those indicated in the Contract Documents unless such conditions were in existence at the time of the Award of the Contract.
  - d. Any dispute concerning a question of fact under the Subsection which is not disposed of by agreement shall be decided by the engineer.
  - e. If as provided in (a) of this Subsection an equitable adjustment is to be made or contemplated, the Contractor shall submit promptly in writing to the Engineer an itemized statement of the details and amount of work together with his estimated costs for the same and the Engineer shall require the Contractor to keep actual costs and certify the same to the Authority in writing.
- B.** If the Contractor and the Authority fail to agree on an equitable adjustment to be made under this Article, then the Contractor shall accept as full payment for the Work in dispute an amount determined in accordance with Section 01151 - MEASUREMENT AND PAYMENT.

## **2.10 CONTRACTOR PROPOSED CHANGES**

- A.** Contractor may at any time submit to the Engineer for the Engineer's review and approval or denial, proposed changes to the Contract Documents which will benefit the Authority. Upon acceptance of the proposed changes, the provisions of Article 2.2 and 2.4 (as applicable) shall apply. Denial of a proposed change shall neither provide the Contractor with any basis for claim for damages nor release the Contractor from contractual responsibilities.

## **2.11 COMMUNITY RELATIONS**

- A.** The Contractor shall establish and maintain a continuing liaison with persons residing or doing business in the vicinity of the Project site, for the purpose of minimizing inconveniences resulting from construction, and shall appoint a representative, acceptable to the Engineer, for community relations. The representative shall have the authority to act directly, or through the Contractor's approved Superintendent, regarding all valid requests or complaints. Information as to their disposition by the Contractor, shall be furnished to the Engineer. The name and telephone number of the Contractor's community relations representative shall be furnished to those residents or businessmen in the community who might reasonably be expected to be affected by the construction.



### PART 3 - CONTROL OF WORK

#### 3.1 AUTHORITY OF THE ENGINEER

- A.** The Engineer will decide all questions relating to interpretation of the Contract Documents, and may alter, adjust, and approve same when necessary; all questions relating to quality, quantity, value, and acceptability of materials to be furnished and work provided or to be provided; all questions relating to progress of the Work and need for and manner of correcting same, and also the need for and terms of delays and suspensions; all questions relating to the need for and terms of Extra work; all questions relating to the supervision, control and direction of Work on the site and the use thereof; and all questions as to the acceptable fulfillment of the Contract by the Contractor.
- B.** Attention of the Contractor is directed to the following limitations on the scope of the duties entrusted to the Engineer.
1. The Regulations of the Authority's Board of Directors state that the General Manager is authorized to approve, without prior authorization of the Board, issuance of Change Orders or Extra Work Orders, pursuant to any Agreement previously authorized by the Board or the General Manager, in a total amount not exceeding 7% or \$5,000,000.00 above the contract price of such Agreement, whichever is greater; provided that if the issuance of any such Change Order or Extra Work Order would result in exceeding said 7% or \$5,000,000.00 limitation or if the issuance of any one such Change Order or Extra Work Order would require an expenditure by the Authority of an amount exceeding \$5,000,000.00, it shall not be issued without prior authorization of the Board.
  2. The General Manager, as provided by the Regulations of the Board of Directors, has delegated to the Assistant General Manager for Capital Delivery the power to approve, without prior authorization of the General Manager or the Board, the issuance of Change Orders or Extra Work Orders, pursuant to any agreement previously authorized by the Board or the General Manager, in a total amount not exceeding 7% or \$500,000.00 above the contract price of such agreement, whichever is greater; provided that if the issuance of any such Change Order or Extra Work Order would result in exceeding said 7% or \$500,000.00 limitation or if the issuance of any one such Change Order or Extra Work Order would require an expenditure by the Authority of an amount exceeding \$500,000.00, it shall not be issued without prior authorization.
  3. The General Manager, as provided by the Regulations of the Board of Directors, has delegated to the Chief Engineer for Capital Delivery, and Senior Directors, the power to approve, without prior authorization of the General Manager or the Board, the issuance of Change Orders or Extra Work Orders, pursuant to any agreement previously authorized by the Board or the General Manager, in a total amount not exceeding 7% or \$250,000.00 above the contract price of such agreement, whichever is greater; provided that if the issuance of any such Change Order or Extra Work Order would result in exceeding said 7% or \$250,000.00 limitation or if the issuance of any one such Change Order or Extra Work Order would require an expenditure by the Authority of an amount exceeding \$250,000.00, it shall not be issued without prior authorization.
  4. The General Manager, as provided by the Regulations of the Board of Directors, has delegated to the Directors of Capital Delivery, the power to approve, without prior authorization of the General Manager or the Board, the issuance of Change Orders or Extra Work Orders, pursuant to any Contract or other Agreement previously authorized by the Board or the General Manager, in a total amount not exceeding 7% or \$100,000.00 above the contract price of such agreement, whichever is greater; provided that if the issuance of any such Change Order or

Extra Work Order would result in exceeding said 7% or \$25,000.00 limitation or if the issuance of any such Change Order or Extra Work Order would require an expenditure by the Authority of an amount exceeding \$100,000.00, it shall not be issued, without prior authorization.

5. Employees of the Authority are not authorized to request work to be performed or service to be provided other than as specified above. The Authority will not accept any responsibility whatsoever for extra work performed for which there is no specific proper authorization.

### **3.2 CONTRACT DRAWINGS**

- A. Contract Drawings showing the general arrangement and such details as necessary to give a comprehensive idea of the construction contemplated will be furnished by the Authority. As work progresses, the Contract Drawings may be supplemented by the Engineer as required to amplify or control the work. The Contractor shall perform the work required by such supplements without additional compensation, except as provided by the Contract.

### **3.3 CONFORMITY WITH DRAWINGS AND SPECIFICATIONS**

- A. Attention is directed to Chapter 30, Section 391 of the General Laws of the Commonwealth which provides that no willful and substantial deviation from Contract Drawings and Specifications shall be made unless directed in writing by the Engineer duly authorized by the Authority to approve such deviation. Chapter 30, Section 391 further provides that in order to avoid delays in the prosecution of the Work, such deviation may be authorized by a written order of the Engineer authorized to approve such deviation, and that within 30 days thereafter such written order shall be confirmed by a certificate of the Authority.
- B. All work provided and all materials furnished shall be in conformity with the lines, grades, cross sections, dimensions, details, gradations, physical, and chemical characteristics of materials and other specific requirements of the Contract. Where the terms "in conformity with" "in agreement with" "in compliance with" or terms of like exactness occur in the Contract Documents, they shall be understood to imply "in reasonable close conformity with".
- C. Where definite tolerances are specified in the Contract, such tolerances shall fix the limits of conformity. Where tolerances are not specified in the Contract, the Engineer will determine the limits of conformity in each individual case and such determination shall be final and conclusive and mutually accepted by all parties.
- D. If materials or the finished product in which the materials are used are not within conformity with the Contract Documents, but acceptable work has been produced, the Engineer will make a determination whether the work shall be accepted and remain in place. The Engineer will document the basis of acceptance by Contract modification which will provide for an appropriate adjustment in the Contract price for such work or materials as he deems necessary to conform to his determination based on engineering judgment, and in accordance with current construction practices.
- E. If the Engineer finds the materials, or the finished product in which the materials are used or the work provided, are not in conformity with the Contract Documents and have resulted in an inferior or unsatisfactory product, the work or materials shall be removed and replaced or otherwise corrected by the Contractor and at no additional expense to the Authority.
- F. Deviations from the Contract Drawings and approved Shop or Working drawings, that may be required by the need of the construction, will be determined by the Engineer and authorized by him in writing.



### **3.4 COORDINATION OF CONTRACT DRAWINGS, CONTRACT SPECIFICATIONS, AND STANDARD SPECIFICATIONS**

- A.** Contract Drawings (including Authority Standards as may be referenced therein), Contract Specifications, and all supplementary documents are essential parts of the Contract, and a requirement occurring in one is as binding as though occurring in all. They are intended to be complementary and to describe and provide for a complete Work. In the event of any discrepancy between a Drawing and figures written thereon, the figures, unless obviously incorrect, are to govern over scaled dimensions. Contract Drawings will govern over Contract Specifications. Where work is to be accepted by a municipality, railroad, or utility company, the Reference Utility Standards which apply to their materials and workmanship will govern.
- B.** The Contractor shall take no advantage of any apparent error or omission in the Contract Documents. If the Contractor discovers, such an error or omission, the Engineer shall be notified immediately. The Engineer will then make such corrections and interpretations as may be deemed necessary to fulfill the intent of the Contract.

### **3.5 COOPERATION BY CONTRACTOR**

- A.** The Contractor will be given three copies of the Contract Documents. The Contractor may request and the Authority may approve furnishing additional copies of Contract Drawings, either full or half-size. The Contractor shall have one copy of The Contract Documents on the work site and available for reference at all times during the prosecution of the Work.
- B.** Prior to starting Work the Contractor shall designate in writing the name, title, qualifications, and experience of his proposed representative who, upon approval by the Engineer, shall have complete authority to represent and to act for the Contractor. A facsimile of the authorized representative's signature shall be furnished to the Engineer. The authorized representative or a substitute acceptable to the Engineer shall be present at the work site at all times while work is actually in progress on the Project. Arrangements for responsible supervision acceptable to the Engineer shall be made for emergency work which may be required during periods when Work is suspended. The Contractor shall notify the Engineer, in writing, of any proposed change of his representative, and shall provide identical information for approval of the new representative.
- C.** The Contractor shall ascertain that the materials and workmanship are in accordance with the Contract Documents. The Contractor shall preserve baseline monuments, benchmarks, and other controls for the Work.
- D.** The Contractor shall carry on his work under the direction of the Engineer such that representatives of Utility Owners, State, or Municipal Departments may enter on the work site without interference to make changes in their facilities which may be affected by the Work. The Contractor shall have no claim for, or use of any delay which may be due to or result from work of Utility Owners, State or Municipal Departments. No allowance of any kind will be made except as provided in Article 6.8. Nothing contained herein shall be construed to hold the Contractor responsible for any acts or omissions by such Utility Owners, State or Municipal Departments, or their contractors.
- E.** The Contractor is responsible for providing two (2) week look ahead schedules, submittal logs, RFI logs and issue logs at each bi-weekly meetings. At a minimum, the topics discussed at each bi-weekly meeting shall include safety issues, status of RFI's, submittals and change orders, outstanding non-conformance reports, issues involving operations, community and/or a municipality, old and new business. The Contractor is responsible for maintaining up to date schedules at all times as the schedule is the basis for payment. The Contractor is responsible for attendance and participation in pre-construction and progress meetings with the MBTA. These meetings address all project issues including safety and schedule. The Contractor may be

responsible to attend additional special meetings that may be necessary to resolve issues of an immediate or short term nature that cannot wait until the regularly scheduled progress meetings.

### 3.6 ADJACENT CONTRACTS

- A. The Authority reserves the right at any time to contract for and perform other or additional work on or near the Work covered by the Contract. The intent of this Article is to provide for the cooperation of contractors where the Authority deems it expedient or necessary and in the best interest of the Authority to let separate contracts for the performance of other work on or near the location of the Work being performed under the Contract, but it is not intended to indicate an intention on the part of the Authority to let separate contracts for work within the scope of or necessary for the successful completion of the Contract.
- B. When separate contracts are let within the limits of any one project (either prior to Award of Contract, as specified in the Bid, or as specified above), each contractor shall conduct their work so as not to interfere with or hinder the progress or completion of the work being performed by other contractors. Contractors working on the same project shall cooperate with each other as directed.
- C. Each contractor involved shall assume all liability, financial or otherwise, in connection with its contract and shall protect and save harmless the Authority from any and all damages or claims that may arise because of inconvenience, delay, or loss experienced because of the presence and operations of other contractors working within the limits of the same project. No allowance of any kind will be made except as provided in Article 6.8.
- D. The Contractor shall arrange the work and shall place and dispose of the materials being used so as not to interfere with the operations of other contractors within the limits of the same Project. The Contractor shall join the work with that of others in an acceptable manner and perform the work in proper sequence to that of others.

### 3.7 LINE AND GRADE

- A. The Authority will establish primary control for the Work, both horizontal and vertical. The Authority will provide the Contract or Project centerline and such benchmarks and basic tie-in points on or near construction site as in its judgment are necessary for the proper control of the Work. Monuments, stakes, and marks set by the Authority shall be preserved by the Contractor. If such monuments, stakes, or marks are destroyed or damaged, they may be replaced by the Authority. The Contractor will be charged the cost of replacing monuments, stakes, or marks destroyed or damaged by reason of his operations. The replacement cost will be deducted from payment for the Work.
- B. The Contractor shall proceed from the controls established by the Authority to make all surveys and layouts necessary to conform all of the work to the requirements of the Contract Documents; shall provide qualified engineering and other personnel for the purpose; and shall be solely responsible for the accuracy of the line and grade features of his Work.
- C. The Authority will make such checks, as necessary, of the control work established by the Contractor as the Work progresses. The Contractor will be informed of results of such checks but the Authority by so doing will in no way relieve the Contractor of responsibility for accuracy of the Contract control. The Contractor shall provide such assistance as may be required for checking purposes when requested by the Authority.
- D. The Contractor shall notify the Authority a reasonable time in advance of his needs, of the time and place the Contractor plans to provide the Work for which such primary control will be needed. The



Authority will furnish the Contractor with such primary lines, grades, and elevations as it deems necessary by such time so as not to delay the Contractor's operations. The Authority, however, will not be held responsible for any delay resulting from lack of such information if the Contractor fails to notify the Authority sufficiently in advance of the Contractor's needs.

### **3.8 AUTHORITY AND DUTIES OF ENGINEER'S ASSISTANTS**

- A.** The Engineer may appoint assistants and representatives. The assistants and representatives are authorized to inspect work and materials, to give directions pertaining to the Work or to the safety and convenience of the public, to approve or reject materials and to make measurements of quantities.
- B.** In case of any dispute arising between the Contractor and the Engineer's assistants, as to materials furnished or the manner of providing work, the Engineer's assistants are authorized to reject materials or to suspend work until the dispute is referred to and decided by the Engineer.
- C.** The Engineer's assistants are not authorized to revoke, alter, enlarge, relax, or release any requirements of these Specifications nor to issue instructions contrary to the Contract Drawings and Specifications.
- D.** The Engineer's assistants will not act as foremen or perform other duties for the Contractor.

### **3.9 INSPECTION OF WORK**

- A.** All materials and each part or detail of the Work shall be subject to inspection by the Engineer. The Engineer shall at all times have access to the Work and be furnished with information and assistance by the Contractor as required to make a complete and detailed inspection.
- B.** The Contractor, if requested by the Engineer, shall before acceptance of the Work, remove or uncover such portions of the finished Work as directed. After examination, the Contractor shall restore said work to the standard required by the Contract Documents. Should Work exposed or examined prove accessible, the uncovering, or removing, and the replacing of the covering or making good of the parts removed will be paid for as Extra Work. Should Work exposed or examined prove unacceptable, the uncovering or removing and the replacing of the covering or making good of the parts removed, will be at no additional expense to the Authority.
- C.** Any Work done or materials used without authorization by the Engineer may be ordered removed and replaced at no additional expense to the Authority.
- D.** The Contractor shall furnish written information to the Engineer stating the original sources of supply of all materials manufactured away from the Work site. This information shall be furnished at least two weeks (or as otherwise required by the Engineer) in advance of the incorporation in the Work of such materials.
- E.** When any unit of government or critical subdivision is to pay a portion of the Cost of the Work, its respective representatives shall have the right to inspect the Work. Such inspection shall in no sense make any unit of government or political subdivision a party to this Contract, and shall in no way interfere with the rights of either party hereunder.
- F.** Inspection of Work shall not relieve the Contractor of any of his obligations to fulfill the requirements of the Contract Documents.

- G. Failure to reject any defective Work or materials shall not in any way prevent later rejection when such defect is discovered, nor obligate the Authority to make final acceptance.
- H. The Contractor shall give prior notice to the Engineer when Work on the various items is to be performed by him or his subcontractors. If Work is suspended on any item, prior notice shall be given to the Engineer before resumption of such Work. Except in the case of an unforeseen emergency, neither the Contractor nor any subcontractor shall perform any Work requiring inspection at hours other than during the normal workday without prior approval of the Engineer.

### **3.10 REMOVAL OF DEFECTIVE OR UNAUTHORIZED WORK**

- A. Defective Work shall be promptly remedied, or removed and replaced, notwithstanding that such Work has previously been inspected and approved or estimated for payment. If the Work or any part thereof shall be found defective at any time, the Contractor shall, at no additional expense to the Authority, make good such defect in a satisfactory manner.
- B. Work performed beyond the lines and grades shown on the Contract Drawings or established by the Engineer, and extra Work done without written authorization, will be considered unauthorized Work and the Contractor will receive no compensation therefor. If required by the Engineer, unauthorized work shall be remedied, removed, or replaced at no additional expense to the Authority.
- C. Upon failure of the Contractor to remedy, remove, or replace defective or unauthorized Work, or to comply promptly with any requirement of the engineer made under this Article 3.10, the Authority may cause defective or unauthorized Work to be remedied, removed, or replaced by others and deduct the costs thereof from any monies due or to become due to the Contractor.

### **3.11 FINAL ACCEPTANCE (ALSO SEE ARTICLE 5.24)**

- A. Upon substantial completion of the Work, the Contractor shall present, in writing, to the Authority its certification that the Work has been substantially completed. Within 21 days thereafter, the Authority as a result of its inspection of the Work will present to the Contractor either a Written declaration that the Work has been substantially completed or an itemized list of incomplete or unsatisfactory Work items required by the Contract sufficient to demonstrate that the Work has not been substantially completed. The Authority may include with such list a notice setting forth a reasonable time, which shall not in any event be prior to the Contract completion date, within which the Contractor must achieve substantial completion of the Work. If the Authority fails to respond, by presentation of a written declaration or itemized list as aforesaid, to the Contractor's certification within the 21-day period, the Contractor's certification shall take effect as the Authority's declaration that the Work has been substantially completed.
- B. If the Work or any part thereof is not acceptable to the Engineer at the time of the inspection, the Contractor will be notified in writing of the particular defects or parts to be remedied before final acceptance. If the Contractor has not arranged within a period of five days after the date of transmittal of such notice of non-acceptability, to complete the Work as directed by the Engineer, the Authority may, without further notice and without in any way affecting the Contract, make such other arrangements as may be considered necessary to insure satisfactory completion of the Contract. The cost of completing such Work will be deducted from any moneys due or which may become due to the Contractor under the Contract.
- C. Substantial completion, for the purposes of this Article, shall mean either that the Work required by the Contract has been completed except for Work having a Contract price of less than one percent of the then adjusted total contract price, or substantially all of the Work has been completed and



opened to public use except for minor incomplete or unsatisfactory Work items that do not materially impair the usefulness of the Work required by the Contract.

1. See Section 01151 - MEASUREMENT AND PAYMENT, for Final Acceptance and Final Payment.

#### **PART 4 - CONTROL OF MATERIALS**

##### **4.1 TRADE NAMES AND ALTERNATIVES**

- A.** An item equal to that named or described in the specifications may be furnished by the Contractor, and the naming of any commercial name, trademark, or other identification shall not be construed to exclude any item or manufacturer not mentioned by name or as limiting competition, but shall establish a standard of equality only. An item will be considered equal to the item so named or described if:
  1. it is at least equal in quality, durability, appearance, strength, safety, reliability, operability, maintainability, and design;
  2. it will perform at least equally the function imposed by the general design for the Work being contracted for; and
  3. it conforms substantially, even with deviations to the detailed requirements for the item specified.
- B.** For each item of material the specifications shall provide for either a minimum of three brands of material or a description of material which can be met by a minimum of three manufacturers or producers and for the equal of any one of said named or described materials.
- C.** Burden of proof as to the quality and suitability of alternatives shall be upon the Contractor. The Contractor shall furnish, in writing, all information necessary as required by the Engineer at no additional cost to the Authority. Requests for review of alternative materials will not be accepted by the Engineer from anyone other than the Contractor. The Engineer will be the sole judge as to the quality and suitability of alternative materials and the Engineer's decision will be final.
- D.** Information furnished shall state whether or not acceptance of the alternative material for use in the Work will require a change in the Contract Drawings or Specifications to adapt the design to the alternative and whether or not incorporation or use of the alternative in connection with the Work is subject to payment of any license fee or royalty. The Authority does not pay license fees or royalties. Where use of an alternative material involves redesign of or changes to other parts of the Work, the cost and the time required to effect such redesign or changes will be considered in evaluating the suitability of the alternative material and the Contractor shall pay charges incurred by the Authority for such redesign or change.
- E.** No tests nor action relating to the approval of alternative materials will be made until the request for substitution is made in writing by the Contractor accompanied by complete data as to the equality of the materials proposed. Such request shall be made in ample time to permit approval without delaying the Work, but such requests need not be made less than 30 days after receipt of Notice to Proceed.
- F.** Whenever classification, rating, or other certification by a body, such as UL, NEMA, or AREA, is a part of the specification for any material, proposals for use of alternative materials shall be accompanied by reports from the listed or equivalent independent testing laboratory indicating compliance with specification requirements.
- G.** The Contractor shall pay costs of testing required to prove equality of the material proposed.

- H. Approval of an alternative material shall be only for the characteristics or use named in such approval, and shall not be used to change or modify any Contract requirement, or to establish a basis for subsequent approval for material to be used on any other phase of the Work of the Massachusetts Bay Transportation Authority Transit System.

#### 4.2 CERTIFICATES OF COMPLIANCE

- A. The use of certain materials on the basis of a notarized certificate of compliance may be allowed under the following conditions: Before such materials are incorporated into the Work, the Contractor shall submit to the Engineer, for approval, copies of the manufacturer's or supplier's statement for each kind of such material furnished. The statement shall contain the following information:

1. Contract to which the material is consigned;
2. Name of the Contractor to which the material is supplied;
3. Kind of material supplied;
4. Quantity of material represented by the certificate;
5. Means of identifying the consignment, such as label, marking, seal number, etc.;
6. Date and method of shipment;
7. Statement to the effect that the material has been tested and found in conformity with the pertinent parts of the Contract;
8. Results of all required tests including the chemical analysis in the case of metal; or in lieu of furnishing the results a statement that the results of all required tests pertinent to the certificate and not submitted shall be maintained available by the undersigned for a period of not less than 3 years from date of final acceptance;
9. Signature of a person having legal authority to bind the supplier.

- B. If the Contractor has new materials purchased for use on a previous Authority contract which have never been used and which comply with the Contract Documents, these materials may be furnished and installed in the Work provided the Contractor submits his own sworn statement certifying that such materials were purchased for use on a previous contract (name and identifying such contract) and that certificates of compliance were furnished for such materials on the previous contract, to which reference can be made.

1. Costs involved in furnishing the certificates shall be borne by the Contractor.
2. Materials used on the basis of a certificate of compliance may be sampled and tested at any time. The fact that material is used on the basis of a certificate of compliance shall not relieve the Contractor of responsibility for incorporating material in the Work which conforms to the requirements of the Contract Documents and Specifications and any such material not conforming to such requirements will be subject to rejection, whether in place or not.
3. The Engineer reserves the right to refuse to permit the use of materials on the basis of a certificate of compliance alone.

- C. Certification of specification compliance shall be furnished for all materials and installation of the same as specified throughout the construction specifications. (See sample Certificate of Compliance included at the end of this section.)

#### 4.3 AUTHORITY-FURNISHED MATERIALS

- A. There will be no Authority furnished materials for this work.



#### **4.4 DEFECTIVE MATERIALS**

- A.** Contractor furnished materials not conforming to the requirements of the Contract Documents will be rejected, whether in place or not. Rejected material shall be removed immediately from the site of the Work unless otherwise permitted by the Engineer. No rejected material, the defects of which have been subsequently corrected, shall be used in the Work unless approved in writing by the Engineer. If the Contractor fails to comply promptly with a request by the Engineer, made under the provisions of this Article, the Engineer may cause the removal and replacement of rejected material and the cost thereof will be deducted from any moneys due or to become due the Contractor.

#### **4.5 ASBESTOS MATERIALS**

- A.** Contractor shall not furnish or install asbestos or any material containing asbestos under this Contract.

#### **4.6 BANNED MATERIALS**

- A.** Lead Paints: Contractor shall not furnish or install lead containing paint on any surfaces within the limits of this Contract. A lead containing paint is defined by the Consumer Product Safety Commission's Paint Poisoning Prevention Act of 1979 as any coating whose dried film contains greater than 0.06% by weight of lead.

### **PART 5 - LEGAL RELATIONS AND RESPONSIBILITY TO THE PUBLIC**

#### **5.1 LAWS TO BE OBSERVED**

- A.** The Contractor shall keep fully informed concerning all requirements of law, including all state and federal laws, county and municipal ordinances, and regulations which in any manner affect those engaged or employed in the Work, or the materials used in the Work, or such orders and decrees of bodies or tribunals having jurisdiction or authority over the same. The Contractor shall protect, indemnify and hold harmless the Authority and the Engineer, and all of their officers, agents, and employees against all claims and liabilities arising from or based on the violation of any such requirement of law whether by the Contractor, his employees, agents, or subcontractors. If any discrepancy or inconsistency is discovered in the Contract Documents in relation to any such requirements of law, the Contractor shall immediately report the facts to the Engineer in writing. The Contract shall be governed by the laws of the Commonwealth.
- B.** The Contractor, if a foreign corporation (a corporation established, organized, or chartered under laws other than those of the Commonwealth) shall comply with the provisions of Chapter 181 of the General Laws as amended. The Contractor shall file with the Authority a certificate of the State Secretary stating that such corporation has complied with Chapter 181 and the date of such compliance.
- C.** Other out-of-state business organizations, such as individual proprietorship, partnership, and joint ventures, shall appoint an agent in this Commonwealth for the service of legal process and furnish a copy of such appointment to the State Secretary prior to the issuance of a contract by the Authority.
- D.** Work shall be in accordance with the Massachusetts State Building Code.

1. The Contractor shall protect and indemnify the Authority and its representatives against any claim or liability arising from or based on the violation of any law, ordinance, safety code, regulation, order or decree whether caused by the Contractor, its employees or its subcontractors employed on the Project.
  2. Such laws, ordinances, codes, regulations, orders, or decrees may restrict and limit the Contractor's working hours or use of certain types of equipment on the Project. The Contractor shall become familiar with such restrictions and limitations prior to submitting a Bid.
  3. The Contractor shall give all necessary notices, obtain all permits as required and pay all government taxes, fees, and other costs in connection with the Work. The Contractor shall file all necessary drawings, prepare all documents, and obtain all necessary approvals of all governmental departments which have jurisdiction. The Contractor shall obtain all required Certificates of Inspection prior to acceptance and final payment for the Work. Compensation for conforming to all provisions of this Article 5.1, except as may be provided otherwise in Supplementary Conditions, shall be considered as included in the prices for the various Contract Items of Work and no additional compensation will be allowed therefor.
- E. Without limiting the Contractor's responsibility for ascertaining and complying with all applicable laws, ordinances, regulations, orders, and decrees, the Contractor's attention is called particularly to Division I, General Requirements, Section 01560 - TEMPORARY CONTROLS.

## 5.2 PERMITS AND LICENSES

- A. The Contractor shall procure all permits and licenses, pay all charges, fees, and taxes and give all notice necessary and incidental to the due and lawful prosecution of the Work.

## 5.3 MOTOR VEHICLES

- A. Motor vehicles (except vehicles used solely for transporting employees to and from the Contract location) used wholly or in part within the Commonwealth by the Contractor or a subcontractor, or by a person directly or indirectly employed by them in the execution of the Contract, shall be registered in the Commonwealth and bear Massachusetts registration plates.
- B. Motor vehicles used solely for transporting employees to and from the Contract location shall be registered as required under General Laws, Chapter 90, Section 3, of the Commonwealth, as amended.
- C. A vehicle shall not be driven on any way, as defined in Section 1 of Chapter 90 of the General laws of the Commonwealth, unless it is constructed or loaded so as to prevent any of its load from dropping, shifting, leaking, or otherwise escaping therefrom, except that sand may be dropped for the purpose of securing traction, or water or other substance may be sprinkled on such a way in cleaning or maintaining the same. (General Laws, Chapter 85, Section 30, of the Commonwealth as amended.)
- D. All Diesel Construction Equipment must have emission control devices installed, such as oxidation catalysts or particulate filters on the exhaust system side of the diesel combustion engine equipment.

## 5.4 INSURANCE REQUIREMENTS

- A. The Contractor shall carry Commercial General Liability Insurance for personal injury, bodily injury and property damage with limits not less than \$1,000,000 per occurrence, \$1,000,000



aggregate covering all work performed under this Contract. The insurance should include the following:

1. All operations.
2. Contractual liability.
3. Coverage for the so-called "X, C, U" hazards, i.e., collapse of building, blasting, and damage to underground property.
4. Completed operations hazard for a period of at least two years following acceptance by the Authority of the completed Contract.
5. Use of watercraft, aircraft when applicable.

**B. Pollution Liability Insurance**

1. The Contractor or his designated Subcontractor shall carry Pollution Liability in an amount not less than \$1,000,000 per occurrence and \$5,000,000 aggregate, for sudden and gradual occurrences arising out of the work being performed under this Contract including, but not limited to, all hazardous material identified under this Contract.
2. The Contractor shall designate the disposal site and furnish a Certificate of Insurance from the Disposal Facility for Environmental Impairment Liability insurance covering liability for sudden and accidental occurrences in the amount of not less than \$3,000,000 per occurrence and \$6,000,000 aggregate and shall also include liability for non-sudden occurrences in the amount of not less than \$5,000,000 per occurrence and \$10,000,000 aggregate.
3. The Contractor shall designate the hauler and furnish a Certificate of Insurance from the hauler for Automobile Liability insurance with endorsement MCS90 for the liability arising out of the transportation of hazardous material with an amount not less than \$5,000,000 annual aggregate.
4. Certificates of Insurance shall clearly state the hazardous materials exposure identified under the contract.

**C. Automobile Liability Insurance - including the use of all vehicles; owned, leased, hired and non-owned, with limits not less than \$1,000,000 combined single limit covering all work performed under the Contract.**

**Railroad Protective Insurance**

1. The Contractor shall furnish, with respect to the operations of the Contractor or any of the Contractor's subcontractors performing within the Railroad right-of-way, broad form Railroad Protective Liability Insurance covering all work performed under this Contract in the amount of not less than \$5,000,000 per occurrence, \$10,000,000 aggregate combined bodily injury and property damage.
2. The insurance hereinbefore shall be written on an occurrence basis.
3. The MBTA and applicable railroads shall be named insured on the insurance hereinbefore.
4. The Contractor shall furnish to the MBTA and railroad companies a signed original of the policy for Railroad Protective Liability prior to entry upon the railroad right-of-way.
5. All certificates shall be endorsed to provide 30 days notice to each named insured by the insurance company before any change or cancellation of the policies.
6. The required Railroad Protective Insurance provided herein must be in the form commonly referred to as the AAR-AASHTO- Form (not Oregon).
7. Original policies and certificates shall be made out to the MBTA and applicable railroads and mailed to:

MBTA: Treasurer-Controller  
Massachusetts Bay Transportation Authority  
10 Park Plaza

Boston, MA 02116  
Tel. (617) 222-3064

AMTRAK: General Superintendent  
230 Congress Street  
Boston, MA 02110  
Tel. (617) 654-2020

CSX: General Manager  
Conrail  
1 Bell Crossing Road  
RD. #2, Box 145  
Selkirk, NY 12158-9618  
Tel. (518) 767-6111

- D. The Contractor shall carry Worker's Compensation Insurance, including Employers Liability Insurance as provided by Massachusetts General Laws, Chapter 152, as amended, covering all work performed by him under the Contract.
- E. The Contractor shall carry Umbrella Liability Coverage with limits of not less than \$10,000,000 per occurrence, covering all work performed by him under this Contract.
- F. The Contractor shall carry Builder's Risk Insurance (All Risks' form) on a 100 percent completed value basis for the full insurable portion of such Work for the benefit of the Authority, the Contractor and all Subcontractors.
- G. The required insurance coverages hereinbefore specified shall be placed with insurance companies licensed by the Massachusetts Division of Insurance to do business in the Commonwealth of Massachusetts and having a Best's rating of B+ or better, shall be taken out before the Contract is commenced and be kept in full force and effect throughout the term of the Contract, shall be primary to and non-contributory to any insurance or self-insurance maintained by the MBTA, and shall require that the MBTA be given at least 30 days advance written notice in the event of any cancellation or materially adverse change in coverage. All such required insurance, with the possible exception of Pollution Liability Insurance, shall be written on an occurrence basis form, as opposed to a claim made basis form. The MBTA shall be named as an additional insured under the Commercial General Liability, Automobile Liability, Umbrella, Pollution Liability, and Builder's Risk Insurance Policies. The Workers' Compensation and Employers' Liability Insurance Policies shall include a waiver of subrogation in favor of the MBTA which precludes these insurers from being able to make any subrogation claims against the MBTA. All such required insurance shall not contain any exclusions for acts of terrorism, and shall fully cover any acts of terrorism, irrespective of whether such acts of terrorism are caused by domestic or foreign terrorists, and irrespective of whether such acts of terrorism are certified or non-certified by the Secretary of the Treasury, in concurrence with the Secretary of State and the Attorney General of the United States, to be an act of terrorism pursuant to the federal Terrorism Risk Insurance Act of 2002. All such insurance as is required of the Contractor shall be provided by or on behalf of all subcontractors to cover their operations performed. The Contractor shall be held responsible for any modifications, deviations or omissions in the compliance with these requirements by the subcontractors. At the inception date of the Contract and throughout the term of the Contract, the MBTA shall be provided with certificates of insurance evidencing that such insurance policies are in place and provide coverage as required. The following statement affirming that coverage completely complies with contract requirements shall be included in the special items section of the certificate or in an attached special items addendum page:



The aforementioned insurance coverages completely comply with Article 5.4  
Insurance Requirements Paragraphs A - I of MBTA Contract No. R44CN02.

- H. In the event it is determined during excavation or construction that an asbestos condition does exist, a Licensed Asbestos Contractor shall be employed by the Contractor to perform the asbestos containment and abatement work. Prior to asbestos containment and abatement work, the Contractor shall, through the Licensed Asbestos Contractor obtain insurance in amounts and types specified by the Authority, naming the MBTA as an additional insured as its interest appears under this Contract.
- I. Payment for this work will be made in accordance with the provisions of Specifications CYR-02080 and CMF-02080.

#### **5.5 PATENTED DEVICES, MATERIALS, AND PROCESSES**

- A. The Contractor shall indemnify and save harmless the Authority and all persons acting for or on behalf of the Authority from all claims and liability of any nature or kind, and all damages, costs and expenses, including attorney's fees, arising from or occasioned by an infringement or alleged infringement of any patents or patent rights on any invention, process, material, equipment, article, or apparatus, or any part thereof, furnished and installed by the Contractor, or arising from or occasioned by the use or manufacture thereof, including their use by the Authority. In case such materials, equipment, devices, or processes are held to constitute an infringement and their use enjoined, the Contractor, at his expense, shall:
  - 1. Secure for the Authority the right to continue using said materials, equipment, devices, or processes by suspension of the injunction or by procuring a license or licenses; or
  - 2. Replace such materials, equipment, devices, or processes with non-infringing materials, equipment, devices, or processes; or
  - 3. Modify them so that they become non-infringing, or remove the enjoined materials, equipment, devices, or processes and refund the sums paid therefor without prejudice to any other rights of the Authority or the Engineer.
- B. When Federal Funds are involved, patent rights to any patentable result arising out of the Work, as well as all information, designs, specifications, know-how, data, and findings, shall be made available to the Government for public use, unless the Federal Department involved shall, in specific cases where it is legally permissible, determine that it is in the public interest that it not be so made available.

#### **5.6 RESTORATION OF SURFACES OPENED BY PERMIT**

- A. Contractor shall not allow any party to make an opening in a street or highway for any purpose except upon the direction of the Engineer and the presentation of a duly authorized permit or other instrument. The holder of such a permit or instrument shall be considered in the same class as a contractor on an adjacent contract, and the provisions of Articles 3.5 and 3.6 shall apply.

#### **5.7 FEDERAL PARTICIPATION**

- A. (Applicable only to contracts where the cost of any portion thereof is paid out of federal funds). Attention is directed to the provisions of the Federal Transportation Act of 1964 (U.S. Public Law 88-365), as modified or amended, and any other provisions of law, or amendments thereto whereby such federal participation is authorized, and any regulations properly and lawfully promulgated

thereunder, under which the United States shall aid the individual states in the development of efficient and coordinated mass transportation systems. When the United States government is to pay any portion of the cost of the Contract, the above act of Congress provides that the construction work and labor in each State shall be done in accordance with the laws of that State and applicable federal laws. The Work embraced in the Contract will, therefore, be subject to such inspection by representatives of the U.S. Department of Transportation or other such Federal Agency as may be necessary to meet the above requirements. Such inspection shall, however, in no sense make the United States government a party to the Contract, and will in no way interfere with the rights of either party hereunder.

**5.8 RELATIONS WITH RAILROAD AND RESPONSIBILITY FOR DAMAGE TO RAILROAD**

- A. Provisions in these General Conditions, which require the Contractor to protect property against damage, and which place upon the Contractor all responsibility for damage to property, injury to persons, and loss, expense, and delay to the owners of property and others, shall also apply to railway lines or railroads, their tenants, licenses, and utility companies which jointly own or use facilities with a railroad company (hereinafter collectively and severally referred to as "Railroad"), the same as in connection with other kinds of property.
- B. General and special requirements concerning the Contractor's relations with Railroad will be set forth in the Supplementary Conditions. The Contractor shall conform to those requirements in the conduct of his work under the Contract.
- C. The Contractor shall be solely and directly responsible to the owners and operators of such properties for any damage, injury, expense, loss, or delay which may result from the carrying out of the work to be done under the Contract; and if specified in the Supplementary Conditions, the Contractor shall give bond or insurance of the kind and in the amount therein specified to each corporation, company, partnership, or individual owning or operating any of the properties affected, in guarantee of this responsibility. Any extension of time granted the Contractor in which to complete the Contract shall not relieve him or his surety from this responsibility.
- D. If any of the Work required to be done by the Contractor may obstruct the tracks of a Railroad or in any way endanger the operation of its trains and the services of a flagman or flagmen or other railroad protective personnel are required by the Chief Engineer of the Railroad and men are assigned by him for the protection of the property and traffic of the Railroad against hazards capable of being caused by the Contractor, the cost of all such flagging and protective services shall be borne by the Contractor and no compensation therefor will be made other than that provided by the Contract unit prices. The provisions of this paragraph do not apply to the tracks of the MBTA or to the operations of its trains thereon. Required flagmen and other protective personnel for such purposes will ordinarily be furnished by the Authority at no cost to the Contractor.

**5.9 USE OF EXPLOSIVES**

- A. Explosives, when necessary for use in the Work, shall not be brought within the Contract limits or onto property under the jurisdiction of the Authority, without the prior approval of the Authority.
- B. Explosives shall be stored safely under lock and key. The storage places shall be marked conspicuously DANGEROUS EXPLOSIVES and be in the care of a competent watchman at all times. Storage, handling, and use of explosives shall conform to the regulations of the Massachusetts Department of Public Safety, federal regulations and local ordinances relating thereto.



- C. The Contractor shall be responsible for all damages resulting from the use of explosives. The Contractor shall exercise care not to endanger life and property, including new Work. When directed, the number and size of the charges shall be reduced. Flagmen shall be provided, when directed, to warn and keep traffic from the danger area. All persons within the danger area shall be warned and given time to withdraw.
- D. Prior to start of the blasting, the Contractor shall give at least a 48-hour notice and a schedule of his operations thereof to the operating official, company, or companies leasing, owning, or responsible for pipes, conduits, poles, wires, railroad tracks, or any other public or private utility which may be endangered by the blasting in order that a representative of said owner or lessee may be present at the site. The Contractor shall take proper precautions to prevent injury to said properties during all blasting operations.

#### 5.10 PROTECTION AND RESTORATION OF PROPERTY

- A. The Contractor shall, at no additional expense to the Authority, preserve and protect from injury all property either public or private along and adjacent to the proposed Work. The Contractor shall be responsible for and shall repair at no additional expense to the Authority any and all damage and injury thereto, arising out of or in consequence of any act or omission, neglect or misconduct in the execution of the Work, or in consequence of the nonexecution thereof by the Contractor or his employees or subcontractors in the performance of the Work covered by the Contract prior to completion and acceptance thereof. The Contractor shall be solely responsible for any trespass upon adjacent property or injury thereto, resulting from or in connection with his operations. The Contractor shall be liable for any claims that may be made on account of the felling of trees or the deposit of debris of any kind upon private property. Special care shall be exercised during blasting operations to avoid injury to underground structures and utilities.
- B. Written notice shall be given by the Contractor to all public service corporations or officials owning or having charge of public or private utilities of his intention to commence operations affecting such utilities at least five days, exclusive of Saturdays, Sundays, and legal holidays in advance of the start of such operations in accordance with Chapter 82, Section 40 of the General Laws of the Commonwealth, as amended. The Contractor shall, at the same time, file a copy of said notice with the Engineer.
- C. Although the Contract Drawings may indicate the approximate location of existing subsurface utilities in the vicinity of the Work, accuracy and completeness of the information is not guaranteed by the Authority. Before commencing any work or operations which may endanger or damage subsurface structures, the Contractor shall carefully locate all such structures and conduct his operations in such manner as to avoid damage thereto. When necessary, the Contractor shall cooperate with representatives of public service and utility companies in order to avoid damage to their structures by furnishing and erecting suitable supports, props, shoring, or other means of protection. The Contractor shall not interrupt live services until new services have been provided. All abandoned services shall be plugged or otherwise made safe and secure. Compensation for conforming to all provisions of this Article 5.10, unless compensation is authorized in writing by the Engineer, as specified in Article 2.3, Extra Work, or as may be Conditions, shall be considered as included in the prices for the various Contract items of Work and no additional compensation will be allowed therefor.
- D. If the Contractor desires to temporarily relocate a utility, other than those contemplated by the Authority, he shall make the necessary arrangement with the appropriate utility company and make reimbursement for the cost thereof at no additional expense to the Authority.
- E. Access to fire hydrants and fire alarm boxes shall be maintained by the Contractor throughout the prosecution of the Work. Hydrants, alarm boxes, and standpipe connections shall be kept clear of

obstructions and kept visible at all times. If visibility cannot be maintained, the Contractor shall provide clearly visible signs and lights showing the locations of fire hydrants, fire alarm boxes, or standpipe connections. Utility companies and municipal agencies having facilities within the limits of the Work shall have access to their facilities at all times for inspection and repair.

- F. Land monuments and property marks shall be carefully protected by the Contractor and if necessary to remove the same, he shall do so only at the Engineer's direction and after an authorized agent has witnessed or otherwise referenced their location.
- G. The Contractor shall protect and preserve natural surroundings and roadside growth either within or adjacent to the project site from damage or injury due to these operations. The Contractor shall not, except by written permission of the Engineer, remove, destroy, or trim roadside trees or shrubs. Trees or landscape features carelessly scarred or damaged by the Contractor's operations shall be removed and replaced or neatly trimmed and restored to their original condition as required by the Engineer. The Contractor shall be responsible for all damage to roadside growth due to his operations and shall, without compensation, satisfactorily repair or replace all such damaged growth. Scars on trees shall be painted as soon as possible with an approved tree paint.
- H. The Contractor shall protect existing structures, shall provide lights and fences and take all other precautions that may be necessary to protect life and property at no additional expense to the Authority. The Contractor shall carry on all operations and use equipment of such types that noise resulting from construction operations will be kept to a minimum. Barriers and bridges shall be provided for the protection and use of the public and for the protection of the Work as necessary. The Contractor shall provide and maintain access for occupant and customer entrance to and exit from all adjacent buildings and property at all times. All temporary facilities required for the general protection of the public and the Work shall be subject to approval of the Authority.
- I. Prior to commencing Work, the Contractor shall record the existing condition of abutting property. The Contractor shall obtain the necessary permission for entry and cause a detailed examination to be made of such abutting property as the Contractor deems necessary, as required in the Supplementary Conditions, or as directed by the Engineer. The Contractor shall invite the owner, in writing or by registered mail, to be present during the examination. A representative of the Authority shall also be invited. A complete report of the existing conditions, including photographs, if required, shall be made in triplicate, and signed by the Contractor. One copy shall be delivered to the owner, one to the Authority and one shall be retained by the Contractor. If at any time thereafter a claim for damages or alleged damages is filed by the owner or tenant, the Contractor shall make further detailed examinations. A representative of the Authority will be invited to attend. All facts as to changes between the then existing conditions of said property and those which existed at the time of the original examination shall be noted and recorded in-triplicate. One copy of this report shall be delivered to the owner, one to the Authority, and one shall be retained by the Contractor.
  - 1. In the event that the Contractor cannot obtain from the owner of such abutting property permission to enter upon the property for such examination, the Contractor shall immediately notify the Authority.
  - 2. For these detailed examinations, the Contractor shall employ an independent person who has had previous experience in examining or surveying the conditions of the property and who shall be approved by the Authority.
- J. The Contractor shall conform to all requirements of this Article and shall serve written notice to all Utility Owners or officials and to all others concerned with or having charge of public or private-owned utilities, of his intention to commence operations affecting such utilities at least one week in advance of the beginning of such operations. The Contractor shall at the same time file a copy of said notices with the Engineer.



- K. The Contractor shall confine his movements and operations insofar as possible to the area within the limits of the Work, and the area outside the limits of the Work shall not be disturbed except as directed.
- L. All costs of work included in this subsection shall be borne by the Contractor and no separate payment will be made to the Contractor.

#### **5.11 FOREST PROTECTION - NOT USED**

#### **5.12 PROTECTION OF FENCES**

- A. By constructing temporary fences, or by other adequate means, the Contractor shall restrain stock from leaving the lands wherein they are confined or from trespassing which would be made possible by, or which might result from, the removal or destruction of existing fences or the carrying out of any part of the Work under the Contract. The Contractor shall be responsible for all loss, injury, or damage that may result from the Contractor's failure to restrain stock as above provided. Compensation for erecting and maintaining temporary fences and for otherwise providing for the restraint of stock shall be considered as included in the prices for the various Contract Items and no additional compensation will be allowed therefor.
- B. If the Contractor is ordered by the Engineer to construct new right of way fences or to move and reconstruct existing fences, such Work shall be paid for at the unit price bid for same, or as Extra Work.
- C. The Contractor shall use care to avoid damaging existing fences. The Contractor shall repair or replace at no additional expense to the Authority, and to the satisfaction of the Engineer, all fences which are in any way damaged by Contract operations.
- D. Tearing down and removal of fences occurring within the right-of-way limits shall be considered to be a part of the clearing and grubbing work as set forth in the Contract Specifications, and payment therefor included in the payment for clearing and grubbing.

#### **5.13 SAFEGUARDING OF EXCAVATIONS**

- A. Contractor shall provide safeguards and protection around and in the vicinity of excavations necessary to prevent and avoid the occurrence of damage, loss, injury, and death to property, animals, and persons because of such excavations. Liability for any such damage, loss, injury, or death shall rest with the Contractor.

#### **5.14 DISPOSAL OF MATERIALS OUTSIDE THE WORK SITE**

- A. Unless otherwise specified in the Contract Specifications, the Contractor shall make his own arrangements for disposing of waste and excess materials outside the work site at no additional expense to the Authority.
- B. Prior to disposing of material outside the Work site, the Contractor shall obtain written permission from the owner on whose property the disposal is to be made. The Contractor shall file with the Engineer the permit, or a certified copy thereof, together with a written release from the property owner absolving the Authority from any and all responsibility in connection with the disposal of material on said property.

- C. When material is disposed of as provided in Paragraph B. and the disposal location is visible from an MBTA System track or a public highway, the Contractor shall dispose of the material in a manner to the satisfaction of the Engineer and the Owner.
- D. Unless otherwise provided in the Contract Specifications, full compensation for all costs involved in disposing of materials as above specified, including all costs of hauling, shall be considered as included in the price paid for the Contract Item involving such materials and no additional compensation will be allowed therefor.

#### 5.15 SAFETY AND FIRST AID REQUIREMENTS

- A. The Contractor shall have a full-time (all working hours/one each shift) on-site experienced Safety Supervisor/Representative, whose sole responsibility is on-site safety management. The Contractor shall submit, within five (5) working days after receipt of notification of contract award, to the Engineer (Authority Resident Engineer) a detailed site-specific Safety Program, including the name, experience, and qualifications of the Contractor's full-time, on site Safety Supervisor/Representative and alternate. In the absence of the Safety Representative (e.g. vacation, sick leave, short term shift work not exceeding two weeks) the contractor must assign a full time Authority approved alternate Safety Supervisor/Representative to this contract. All safety submittals must be approved by the Engineer (MBTA Safety Department) prior to the start of construction. No work at the job site shall begin until the Engineer has reviewed and commented on the Contractor's safety program and safety representatives. Implementation and enforcement of the safety program for the forces of the Contractor and all subcontractors shall be the responsibility of the General Contractor.
- B. The Contractor's full-time Safety Supervisor/Representative shall have a thorough knowledge of construction safety and OSHA regulations. If, in the opinion of the Engineer, the Contractor's safety representative is not effective in carrying out the assigned duties as described below, the Engineer may request, in writing, that the Contractor replace the safety representative.

Contractors Safety Supervisors/Representatives and alternate are classified into levels with their qualifications based upon the extent of their construction safety supervisory experience and capabilities, and the nature of each individual contract. All contracts require a Class III Full-time Safety Supervisor/Representative unless otherwise specified. Qualifications for each classification shall include, at minimum:

##### Class I

Basic safety and health training (minimum requirement: successful completion of OSHA 10 hour Construction Safety and Health training course):

- Two years of experience as a construction safety supervisor where safety was 100% of the position responsibility
- Working knowledge of safety regulations and hazard control measures
- Demonstrated ability to conduct safety training
- Working knowledge of safety specific contract hazardous work procedures Physically able to perform the job.

##### Class II

Five years of experience as a construction safety supervisor, three of which include full-time on-site construction safety experience (minimum requirement: successful completion of OSHA 30 hour Construction Safety and Health training course):

- Specialized safety training relevant to the project



- Demonstrated ability in creating a safe work environment
- Working knowledge of safety regulations and hazard control measures
- Demonstrated ability to conduct safety training
- Working knowledge of safety specific contract hazardous work procedures
- Physically able to perform the job.

### **Class III**

Seven years of experience as a construction safety supervisor, five of which include full-time on-site construction safety experience (minimum requirement: successful completion OSHA 30 hour Construction Safety and Health or OSHA's Instructor #500 Training course):

- Specialized safety training relevant to the project
- Demonstrated ability in creating a safe work environment.
- Working knowledge of safety regulations and hazard control measures.
- Demonstrated ability to conduct safety training.
- Working knowledge of safety specific contract hazardous work procedures.
- Physically able to perform the job.

- C. The duties of the Safety Supervisor/Representative shall include maintenance of the Contractor's safety program, enforcement of safe practices, and the use of safety equipment and personal protective equipment, and other such activities as may be required by OSHA and the Engineer to maintain job safety and accident prevention. The safety representative shall not be replaced, terminated, nor reassigned without the written approval of the Engineer. A minimum transition of two weeks shall occur. Vacancies in these positions must be filled within two weeks of the vacancy occurring. The Safety Representative shall be assigned full-time to the contract and shall not be utilized concurrently on any other MBTA contract or any other projects outside this MBTA contract.
- D. Attention of the Contractor is, specifically directed to the General and Supplementary Conditions of this Contract, which shall be made a condition of each subcontract entered into pursuant to the Contract. Further, that the Contractor and any subcontractor shall not require any laborer or mechanic employed in performance of the Contract to work in surroundings or under working conditions which are unsanitary, hazardous, or dangerous to health or safety, as determined under construction safety and health standards (Title 29, Code of Federal Regulations, Part 1518, Published in the Federal Register on April 17, 1971) promulgated by the United States Secretary of Labor, in accordance with Section 107 of the Contract Work Hours and Safety Standards Act (83 Stat. 96). This contract will require all contractors and subcontractors to comply one hundred percent (100%) with OSHA's fall protection standard.
- E. The Authority may stop any work that it considers to be unsafe.
- F. The Contractor shall notify the Engineer 48 hours prior to bringing in any hoisting equipment (cranes, etc.) on the Authority's property. Equipment must be inspected by the Engineer (MBTA Safety Department) before being used on the work site.
- G. The Contractor shall assume full responsibility for the safety of all his work. He shall perform work in a manner that will insure the safety of personnel and the work; and not expose personnel and equipment to hazardous or potentially hazardous conditions. All work in the construction of the project shall comply with the requirements of the U.S. Department of Labor Occupational Safety and Health Administration (OSHA) provisions, as well as those of State and local regulations. Safe breathing levels must conform to the Massachusetts Department of Environmental Protection (DEP) standards. In the case of conflict of regulations, the most stringent regulations shall apply.

- H. The Contractor shall provide at the site such equipment and medical facilities as are necessary to supply first-aid service to any person who may be injured in the progress of the work. At least one individual member of the contractor's staff, properly qualified with current certification (Red Cross or equivalent) in basic first aid and cardiopulmonary resuscitation (CPR), must be continuously present, on the site at all times when work is in progress. This individual must also have a general knowledge regarding blood borne pathogens. First-aid equipment shall be complete in all respects. The Contractor shall also have standing arrangements for the removal and hospital treatment of any employee who may be injured or who may become ill.
- I. The Contractor shall promptly report in writing to the Authority all accidents whatsoever arising out of or in connection with the performance of the work, whether on or adjacent to the site, which cause death, personal injury or property damage, giving full details and statements of witnesses. In addition, if death, or serious injuries or serious damages are caused, the accident shall be reported immediately by telephone to the Authority.
- J. If any claim is made by any third person against the Contractor or any subcontractor on account of any accident, the Contractor shall promptly report the fact in writing to the Authority, giving full details of the claim.

K. REQUIRED TRAINING

1. All workers (including subcontractors and vendors) employed by the Contractor who work on or around the Authority's Rapid Transit system (including stations, maintenance facilities, track area right-of-way on and /or adjacent to the power traction system, etc.) shall be required to attend MBTA's Right of Way (ROW) training. Contractors, subcontractors, and vendors must take initial 8 hour training if they have never taken the training before. If they have taken MBTA ROW training, they would need to attend a refresher training every 2 years. All costs for this training shall be at the sole expense of the Contractor. To register for the "Right of way Safety" class, contact:

Supervisor and Chief Rules Examiner of Training  
Cabot RTL Training  
275 Dorchester Avenue, 2nd floor  
Telephone: (617) 222-5377

2. For projects affecting the commuter rail, all workers (including subcontractors and vendors) employed by the Contractor who come within the limits of the railroad right-of-way, must have completed Keolis's Roadway Worker Protection (RWP) Class. A certification from this class is valid for 1 year from date of issue. Workers are required to comply with Keolis's Safety Requirements throughout the entire construction period. The RWP Class will be provided under the jurisdiction of Keolis's Safety Trainer who will be responsible to ensure that the Contractor, subcontractor and respective employees have attended the RWP Class. This training class must be retaken annually. All costs in connection with complying with Keolis's Safety Requirements will be at the sole expense of the Contractor.
3. All workers (including subcontractors and vendors) employed by the Contractor who work on or around those portions of the Authority's Commuter Rail system (including stations, trackways, maintenance facilities, and electrification facilities), or other railroad facilities, that are operated by Amtrak, Pan Am Southern, Pan Am Railways, CSX Transportation, Mass Coastal Railroad, Bay Colony Railroad, the Providence and Worcester Railroad, or other railroad entities shall comply with the Railway Worker Protection (RWP) training policies, and attend training classes, as required by the respective operating railroad. All costs for this training shall be at the sole expense of the Contractor.



4. The Contractor shall certify that all employees to be employed at the worksite shall have successfully completed a course in construction safety and health. The course must be approved by the United States Occupational Safety and Health Administration, and it must be at least 10 hours in duration per MGL, 30.39S. The Contractor shall submit documentation of successful completion of said course with the first certified payroll report for each employee.
- L. All personnel working on the project site, within the MBTA construction project limits are required to wear high visibility reflective orange safety vests, similar to the standard MBTA equipment. In addition, all personnel working in the MBTA track area or on the platform will require the use of MBTA flagman.
- M. Work activities necessitating the traction power system (third rail and trolley wire) deenergization will require the services of an Authority power lineman on site at all times.
- N. The Contractor will be required to comply with the applicable requirements of the Environmental Protection Agency's National Emission Standards for Hazardous Air Pollutants, Part 51, Chapter 1, Title 40, Code of Federal Regulations, Subpart B, effective April 6, 1973, and as amended October 5, 1975 (Published October 14, 1975, in the Federal Register), and also subpart M published in June 1984.
- O. All equipment used by the contractor on Authority property must be inspected by the Engineer (MBTA System wide maintenance and Improvement representative) prior to use on the work site and shall not be used if considered unsafe or not conforming to Authority specifications. All contractor/subcontractor equipment (including hi-rail) operators must be trained, certified, and properly licensed for each specific piece of equipment they will operate. The contractor/subcontractor must keep a copy of the Manufacturers Operating Manual or instructions onboard the hi-rail equipment at all times. The contractor/subcontractor hi-rail vehicles must be equipped with an exhaust gas purifier, and the hi-rail equipment used shall comply with requirements of the hi-rail equipment manufacturer. Documentation of same must be readily available and provided to the Authority upon inspection. If the contractor/subcontractor equipment is involved in a derailment or a near miss incident or accident which caused injury or exposed personnel to injury and/or caused damage to Authority property, that equipment is subject to the Authority's Impound Policy/Procedure. Contractor equipment to be used on or in the vicinity of the tracks shall be in first-class condition, so as to positively prevent any failure that would cause delay in Authority operations or damage to its property or compromise the health and safety of personnel working on the project. Equipment shall not be placed or operated within fouling distance (15' from the centerline) of track without first obtaining the permission of the Authority.
- P. The Authority will not compensate the Contractor for delays or denials to work when the Contractor is in violation of the above regulations.
- Q. Heavy Equipment used in tunnel operations must utilize Fire Resistant hydraulic fluids and conform to OSHA 20 CFR 1926.800 (m)(8), and the Massachusetts Fire Prevention Regulations {527 CMR 1.03 (8)} and the Boston Fire Prevention Code {Section 1.05 (b)}.

#### 5.16 RESPONSIBILITY FOR DAMAGE CLAIMS

- A. The Contractor shall indemnify, defend, and save harmless the Authority and all its officers, agents, and employees against all suits, claims, or liability of every name and nature, for or due to any injuries to persons or damage to property arising out of or in consequence of the arts of the Contractor in the performance of the Work covered by the Contract or failure to comply with the terms and conditions of said Contract, whether by the Contractor or the Contractor's employees or subcontractors.

- B. The Contractor shall be held responsible for any and all claims for damage to underground structures and utilities due to the Contractor's operations or to the operations of any of the Contractor's subcontractors.
- C. The Authority agrees to indemnify the Contractor against loss by reason of the liability to pay damages to others for entry upon any land included within and adjoining the boundaries of the area within which the Work is to be provided as set forth in the Contract Documents applying to such Contract or any approved changes thereof or for damage sustained upon any lands adjoining said land by reason of the flowage or drainage of water thereto or therefrom, in any case wherein such damages and interest or easement in such adjoining area, provided that the Authority acting by an authorized representative thereof has issued a notice in writing to the Contractor prior to the making of any entry upon such premises directing or permitting the Contractor to proceed with the Contract and to make such entry upon the premises for the purpose of providing the Work required by said Contract, or any approved alteration thereof, and provided, further, that the Contractor has given notice in writing to the Authority within 15 days after receiving notice of any claim to come in and settle the same and upon the commencement of any action against the Contractor to come in and defend said action, but in no event shall any such damage claim be compromised or adjusted without the written consent of the Authority. The provisions of this Article shall in no way relieve the Contractor from any liability for damage to property of others caused by the Contractor's negligence or that of the Contractor's employees nor shall they be construed to require the Authority to indemnify the Contractor against any loss resulting from such acts of negligence.

#### **5.17 CLAIMS AGAINST CONTRACTOR FOR PAYMENT OF LABOR AND MATERIALS**

- A. The Contractor shall be responsible for prompt payment for all services, labor, equipment, and materials furnished by or through the Contractor for purposes of the Contract.
  - 1. Forthwith after the Contractor receives payment for a periodic estimate, the Contractor shall pay to each subcontractor the amount paid for the labor performed and the materials furnished by that subcontractor, less any amount specified in any court proceedings barring such payment and also less any amount claimed due from the subcontractor by the Contractor.
  - 2. Not later than the sixty-fifth day after each subcontractor substantially completes its work in accordance with the Contract Documents, the entire balance due under the subcontract less amounts retained by the Authority as the estimated cost of completing the incomplete and unsatisfactory items of work, shall be due the subcontractor; and the Authority will pay that amount to the Contractor. The Contractor shall forthwith pay to the subcontractor the full amount received from the Authority less any amount specified in any court proceedings barring such payment and also less any amount claimed due from the subcontractor by the Contractor.
  - 3. Each payment made by the Authority to the Contractor pursuant to subparagraphs 1. and 2. of this Article for the labor performed and the materials furnished by a subcontractor shall be made to the Contractor for the account of that subcontractor; and the Authority will take reasonable steps to compel the Contractor to make each such payment to each such subcontractor. If the Authority has received a demand for direct payment from a subcontractor for any amount which has already been included in a payment to the Contractor or which is to be included in a payment to the Contractor for payment to the subcontractor as provided in subparagraphs 1. and 2, the Authority shall act upon the demand as provided in this Article.
  - 4. If, within 70 days after the subcontractor has substantially completed the subcontract work, the subcontractor has not received from the Contractor the balance due under the subcontract, including any amount due for extra labor and materials furnished to the



Contractor, less any amount retained by the Authority as the estimated cost of completing the incomplete and unsatisfactory items of Work, the subcontractor may demand direct payment of that balance from the Authority. The demand shall be by a sworn statement delivered to or sent by certified mail to the Authority, and a copy shall be delivered to or sent by certified mail to the Contractor at the same time. The demand shall contain a detailed breakdown of the balance due under the subcontract work. Any demand made after substantial completion of the subcontract work shall be valid even if delivered or mailed prior to the seventieth day after the subcontractor has substantially completed the subcontract work. Within 10 days after the subcontractor has delivered or so mailed the demand to the Authority and delivered or so mailed a copy to the Contractor, the Contractor may reply to the demand. The reply shall be by a sworn statement delivered to or sent by certified mail to the Authority and a copy shall be delivered to or sent by certified mail to the subcontractor at the same time. The reply shall contain detailed breakdown of the balance due under the subcontract, including any amount due for extra labor and materials furnished to the Contractor and of the amount due for each claim made by the Contractor against the subcontractor.

5. Within 15 days after receipt of the demand by the Authority, but in no event prior to the seventieth day after substantial completion of the subcontract work, the Authority will make direct payment to the subcontractor of the balance due under the subcontract, including any amount due for extra labor and materials furnished to the Contractor, less any amount (1) retained by the Authority as the estimated cost of completing the incomplete or unsatisfactory items of work, (2) specified in any court proceedings barring such payment, or (3) disputed by the Contractor in the sworn reply; provided, that the Authority will not deduct from a direct payment any amount as provided in part (3) if the reply is not sworn to, or for which the sworn reply does not contain the detailed breakdown required by subparagraph 4. The Authority will make further direct payment to the subcontractor forthwith after the removal of the basis for the deductions from direct payments made as provided in parts (1) and (2) of this subparagraph.
6. The Authority will forthwith deposit the amount deducted from a direct payment as provided in part (3) of subparagraph 5. in an interest-bearing joint account in the names of the Contractor and the subcontractor in a bank in Massachusetts selected by the Authority or agreed upon by the Contractor and the subcontractor and shall notify the Contractor and the subcontractor of the date of the deposit and the bank receiving the deposit. The bank shall pay the amount in the account, including accrued interest, as provided in an agreement between the Contractor and the subcontractor or as determined by decree of a court of competent jurisdiction.
7. All direct payments and all deductions from demands for direct payments deposited in an interest bearing account or accounts in a bank pursuant to subparagraph 6, shall be made out of amounts payable to the Contractor at the time of receipt of a demand for direct payment from a subcontractor and out of amounts which later became payable to the Contractor and in the order of receipt of such demands from subcontractors. All direct payments will discharge the obligation of the Authority to the Contractor to the extent of such payment.
8. The Authority will deduct from payments to the Contractor amounts which, together with the deposits in interest-bearing accounts pursuant to subparagraph 6, are sufficient to satisfy all unpaid balances of demands for direct payment received from subcontractors. All such amounts shall be earmarked for such direct payments, and the subcontractors shall be right in such deductions prior to any claims against such amounts by creditors of the Contractor. Subcontractor, for contracts awarded as provided in paragraph (a) of Section Thirty-Nine M, Chapter Thirty shall mean a person approved by the Authority in writing as a person performing labor or both performing labor and furnishing materials pursuant to a contract with the Contractor.

**5.18 PAYMENT OF TAXES**

- A. Contract prices paid for the Work shall include full compensation for all taxes which the Contractor is required to pay whether imposed by federal, state, or local government, including, without being limited to, federal excise tax.
- B. However, attention is directed to the Massachusetts Sales Tax, Chapter 64H, Section 6 and the Massachusetts Use Tax, Chapter 64I, Section 7, which state that these taxes are not applicable to the sales of construction materials and supplies incorporated, consumed, employed or expended in construction projects of the Authority. This exemption is also applicable to rental charges for construction vehicles, equipment, and machinery rented, specifically for use on the site of the Authority's construction projects. Bidders are directed to exclude any allowance for Sales or Use Tax from their Bid Form as said tax would relate to the foregoing specific categories. The MBTA Sales Tax Exemption Number is E-042-323-989.

**5.19 CLAIMS OF CONTRACTOR FOR COMPENSATION**

- A. No person or corporation, other than the signer of the Contract as Contractor, now has any interest hereunder, and no claim shall be made or be valid; and neither the Authority nor any member, agent, or employee thereof, shall be liable for, or be held to pay, any money except as provided in Article 2.2, 2.3, 2.4, 2.5, and Section 01150 - MEASUREMENT AND PAYMENT, of these Standard Specifications and Clause 3 of the Contract.
- B. All claims of the Contractor for compensation other than as provided for in the Contract due to any act of omission or commission by the Authority or its agents must be made in writing to the Engineer within 10 days after the beginning of any work or the sustaining of any damage due to such act. Such written statement shall contain a description of the nature of the Work provided or damage sustained; and the Contractor, shall on or before the fifteenth day of the month succeeding that in which such Work is performed or damage sustained file with the Engineer an itemized statement of the details and amount of such work or damage. Unless such statement shall be made as required, the claim for compensation shall be forfeited and invalidated, and the Contractor shall not be entitled to payment due to any such work or damage. Such notice by the Contractor and the keeping of costs by the Engineer shall not in any way be construed as proving the validity of the claim. The provisions of this paragraph shall not apply to changes in quantities as provided under Article 2.5 or to Extra Work ordered by the Engineer in writing.
- C. On the basis of information provided in writing by the Contractor's own employees, servants, or agents, the Contractor shall certify, in writing, that the Work for which he is claiming payment, other than as provided for in the Contract, is work actually performed, and the costs as shown are the amounts legally due for providing such Work for which payment is claimed.
- D. The Engineer will determine all questions as to the amount and value of such Work, and the fact and extent of such damage and will notify the Contractor in writing of this determination.
- E. Acceptance by the Contractor of the final payment made under the provisions of Section 01150 - MEASUREMENT AND PAYMENT shall operate as and shall be a release to the Authority and every member, agent, and employee thereof, from all claim and liability to the Contractor for anything done or furnished for, or relating to, the Work, or for any act or neglect of the Authority or of any person relating to or affecting the Work except the claim against the Authority for the remainder, if any there be, of the amounts kept or retained as provided in Article 5.17. For claims for extensions of time, see Article 6.8.



## 5.20 OPENING PORTIONS OF CONTRACT FOR OPERATION

- A. Any portion of the Work which is in acceptable condition for operation may be opened for MBTA Transit System operation as directed in writing by the Engineer, but such opening for operation shall not be construed as an acceptance of the Work or part thereof, nor shall it act as a waiver of any of the provisions of the Contract Specifications or of the Contract; provided, however, that on such portions of the Contract as are opened for such use, the Contractor shall not be required to assume any expense entailed in maintaining the MBTA Transit System for operation. The Authority will be responsible for maintenance and any damage to the Work caused solely by MBTA Transit System operation on any portion of the Contract which has been opened to operation as stipulated above, and it may order the Contractor to repair or replace such damage, where upon the Contractor shall make such repairs at Contract unit prices so far as the same are applicable, or as Extra Work under the provisions of Article 2.3, if there are no applicable items in the Contract.
- B. If the Contractor is dilatory in completing shoulders, drainage structures, or other features of the nontransit system portion of the Work, the Engineer may order all or a portion of the nontransit system portion of the Work open to traffic, but in such event the Contractor shall not be relieved of his liability and responsibility during the period the Work is so opened prior to final acceptance. The Contractor shall conduct the remainder of his construction operations so as to cause the least obstruction to traffic.

## 5.21 CONTRACTOR'S RESPONSIBILITY FOR THE WORK

- A. Until final written acceptance of the Work, the Contractor shall have the charge and care of the Work. The Contractor shall take every necessary precaution against injury or damage to the Work by action of the elements, or from any other cause, whether arising from the execution or the nonexecution of the Work, and especially when blasting is to be done.
- B. Except as provided in Article 2.9, the Contractor shall bear all losses resulting from or due to the amount or the character of the work or because the nature of the land in or on which the Work is done is different from that which was estimated or expected, or due to bad weather or other causes.
- C. The Contractor shall rebuild, repair, restore, and make good all injuries or damages to any portion of the Work occasioned by any cause before its completion and final acceptance, and shall bear the expense thereof, except damage to the Work due to war, whether or not declared civil war, insurrection, rebellion or revolution, or to any act or condition incident to any of the foregoing, to "Acts of God" (limited to hurricane, tornado, cyclone and earthquake as classified by the United States Weather Bureau for the particular locality and for the particular season of the year and in addition thereto, damages resulting directly from flooding from any of the aforementioned "Acts of God"). The repair of such damages shall be done by the Contractor and paid for at the respective Contract unit prices for the quantity and items of Work involved. In any case in which the estimate for replacing such Work or repairing such damage caused by war, whether or not declared, civil war, insurrection, rebellion or revolution, or to any act or condition incident to the foregoing, or an "Act of God" combined with any previously authorized Extra Work results in a change of such magnitude as to be incompatible with competitive bid status, the Authority reserves the right to terminate the Contract and to call for new bids and award a new Contract for such Work. In the event a Contract is terminated for such reason, the Authority will pay the Contractor such sum as may be due for Work performed up to the date of the "Act of God", or of damage directly due to war, whether or not declared, civil war, insurrection, rebellion or revolution, or to any act or condition incident to any of the foregoing and will also take over and pay for any material stored at the site of the Work provided said material was intended to be and could have been incorporated into the Work; the Authority will also take over and pay for any material which was being especially fabricated for incorporation into the Work, provided, however, that as a condition precedent to the

Authority's liability for such material, the Contractor is legally liable therefore and the material was intended to be and could have been incorporated in the Work.

- D. Issuance of an estimate on any part of the Work done will not be construed as final acceptance of any Work completed up to that time.
- E. Should the Contractor fail to take prompt action whenever conditions make it necessary, the Authority will make emergency repairs or cause the same to be made, with the stipulation that the costs for such repairs shall be charged against the Contractor and deducted from moneys due the Contractor.
- F. In case of suspension of Work from any cause whatever, the Contractor shall be responsible for the Contract and shall take such precautions as may be necessary to prevent damage to the Work, provide suitable drainage and shall erect any necessary temporary structures, signs, or other facilities at no additional expense to the Authority. The Contractor shall also maintain in an acceptable growing condition all living material in newly established plantings, seeding, and sodding furnished under the Work, and take adequate precautions to protect new tree growth and other important vegetative growth against injury.

#### **5.22 CONFLICT OF INTEREST**

- A. It is understood and agreed that no gift, loan, or other thing of value has been or shall be given to any employee, agent, or officer of the Authority in connection with the award or performance of the Contract. Also no employment shall be given to and no renting, leasing, or purchasing of equipment, supplies, or materials shall be arranged or made with or through any employee, agent, or officer of the Authority by the Contractor.
- B. No Board Member, officer or employee of the Authority, officer or employee of any independent authority or political subdivision of the Commonwealth of Massachusetts, officer, employee or elected official of the Commonwealth of Massachusetts, officer, employee or elected official of any city, county or town within the Commonwealth of Massachusetts, officer, employee or elected official of any city, county or town authority within the Commonwealth of Massachusetts, during his/her tenure and for one year thereafter shall have any interest, direct or indirect, in this contract or the proceeds thereof.
- C. No member of or delegate to the Congress of the United States shall be admitted to any share or part of this contract or to any benefit arising therefrom.

#### **5.23 PERSONAL LIABILITY OF AUTHORITY OFFICIALS**

- A. In carrying out any of the provisions of the Contract Documents, or in exercising any power or authority granted to them by or within the scope of the Contract, there shall be no liability upon the Directors, Engineer, or their authorized representatives, either personally or as officials of the Authority, it being understood that in all such matters they act solely as agents and representatives of the Authority.

#### **5.24 NO WAIVER OF LEGAL RIGHTS**

- A. Authority shall not be precluded or stopped by any measurement, estimate, or certificate made either before or after the completion and acceptance of the Work and payment therefore, from showing the true amount and character of the Work provided and materials furnished by the Contractor, nor from showing that any such measurement, estimate, or certificate is untrue or is incorrectly made,



nor that the Work or materials do not in fact conform to the Contract. The Authority shall not be precluded or stopped, notwithstanding any such measurement, estimate, or certificate and payment in accordance therewith, from recovering from the Contractor or the Contractor's sureties, or both, such damage as it may sustain by reason of the Contractor's failure to comply with the terms of the Contract. Neither the acceptance by the Authority, or any representative of the Authority, nor any payment for or acceptance of the whole or any part of the work, nor any extension of time, nor any possession taken by the Authority, shall operate as a waiver of any portion of the Contract or of any power herein reserved, or of any right to damages. A waiver of any breach of the Contract shall not be held to be a waiver of any other or subsequent breach. Any remedy provided in the Contract shall be taken and construed as cumulative, that is, in addition to each and every other remedy herein provided; and the Authority shall also be entitled as of right to writ of injunction against any breach of any of the provisions of the Contract.

**5.25 LABOR, LODGING, BOARD, MAXIMUM HOURS OF EMPLOYMENT, KEEPING OF PAYROLL RECORDS**

- A. Every employee in public work shall lodge, board, and trade where and with whom the employee elects; and no person or person's agents or employees under contract with the Authority for the doing of public work, shall directly or indirectly require as a condition of employment therein, that the employee shall lodge, board, or trade at a particular place or with a particular person (Chapter 149, Section 25 of the General Laws of the Commonwealth).
- B. No laborer, workman, mechanic, foreman, or inspector working within this Commonwealth, in the employ of the Contractor, subcontractor, or other person doing or contracting to do the whole or a part of the Work contemplated by the Contract, shall be required or permitted to work more than 8 hours in any one day or more than 48 hours in any one week, or more than six days in any one week, except in cases of emergency. The Authority or the Contractor or any subcontractor may employ laborers, workmen, mechanics, foremen, and inspectors for more than 8 hours in any one day in the work to be done or under the Contract when, in the opinion of the Commissioner of Labor and Industries, public necessity so requires. (Chapter 149, Section 34 of the General Laws of the Commonwealth, as amended.)
- C. Upon request of the Engineer or the Massachusetts Department of Labor and Industries, the Contractor shall furnish certified copies of any or all payrolls for the Contract, showing the name, address, and occupational classification of each employee on said Works, and the hours worked by, and the wages paid to each such employee. Such payroll shall also include the rates paid for rented trucks or rental equipment of any kind used on the Work. This requirement shall also apply to the work of any subcontractor, having a subcontract for any of the Work performed on the Contract. Such records shall be kept in such manner as the Commissioner of Labor and Industries shall prescribe, and shall be open to inspection by the Engineer or any authorized representative of the Department of Labor and Industries at any reasonable time and as often as may be necessary.
- D. In case the Work covered by the Contract is financed from federal funds, the above provisions relative to the hours of employment shall be subject to such revision and amendment as are required by the Rules and Regulations controlling the expenditures of such federal funds.

**5.26 EQUAL OPPORTUNITY CLAUSE**

- A. During the performance of the Contract, the Contractor agrees as follows:
- B. The Contractor shall not discriminate against any employee or applicant for employment because of race, creed, color, religion, sex, or national origin. The Contractor shall take affirmative action to ensure that applicants are employed, and that employees are treated during employment without

regard to their race, creed, color, religion, sex, or national origin. Such action shall include, but not be limited to, the following: Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.

- C. The Contractor shall, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants shall receive consideration for employment, without regard to race, creed, color, religion, sex, or national origin.
- D. The Contractor shall send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice advising the said labor union or workers' representatives of the Contractor's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
- E. The Contractor shall comply with all provisions of Executive Order 11246 of September 24, 1965, as amended, and of the rules, regulations and relevant orders of the Secretary of Labor.
- F. The Contractor shall furnish all information and reports required by Executive Order 11246 of September 24, 1965, as amended, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records and accounts of investigation to ascertain compliance with such rules, regulations, and orders.
- G. In the event of the Contractor's noncompliance with the nondiscrimination clauses of the Contract or with any of the said rules, regulations or orders, the Contract may be cancelled, terminated or suspended in whole or in part and the Contractor may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, as amended and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, as amended or by rules, regulations, or orders of the Secretary of Labor, or as otherwise provided by law.
- H. The Contractor shall include the portion of the sentence immediately preceding paragraph A. and the provisions of paragraphs A. through G. in every subcontract or purchase order unless exempted by rules, regulations or orders of the Secretary of Labor issued pursuant to Section 204 of Executive Order 11246 of September 24, 1965, as amended so that such provisions shall be binding upon each subcontractor or vendor. The Contractor shall take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance. Provided, however that in the event a Contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the administering agency, the Contractor may request the United States to enter into such litigation to protect the interests of the United States.
- I. Applicable Massachusetts and Federal Anti-Discrimination Requirements are contained in the Appendix to the Bid Conditions, Affirmative Action Requirements, Equal Employment Opportunity of the Supplementary Conditions.

**5.27 REQUIREMENTS OF CHAPTER 30, SECTION 39R OF GENERAL LAWS OF THE COMMONWEALTH OF MASSACHUSETTS**

- A. The words defined below shall have the meaning stated whenever they appear in this subsection:



1. "Contractor" means any person, corporation, partnership, joint venture, sole proprietorship, or other entity awarded a contract pursuant to Section 39M of Chapter 30.
2. "Contract" means any contract awarded or executed pursuant to Section 39M of Chapter 30.
3. "Records" means books of original entry, accounts, checks, bank statements and all other banking documents, correspondence, memoranda, invoices, computer printouts, tapes, discs, papers and other documents or transcribed information of any type, whether expressed in ordinary or machine language.
4. "Independent Certified Public Accountant" means a person duly registered in good standing and entitled to practice as a certified public accountant under the laws of the place of this person's residence or principal office and who is in fact independent. In determining whether an accountant is independent with respect to a particular person, appropriate consideration should be given to all relationships between the accountant and that person or any affiliate thereof. Determination of an accountant's independence shall not be confined to the relationships existing in connection with the filing of reports with the awarding authority.
5. "Audit", when used in regard to financial statements, means an examination of records by an independent certified public accountant in accordance with generally accepted accounting principles and auditing standards for the purpose of expressing a certified opinion thereon, or, in the alternative, a qualified opinion or a declination to express an opinion for stated reasons.
6. "Accountant's Report", when used in regard to financial statements, means a document in which an independent certified public accountant indicates the scope of the audit which she has made and sets forth her opinion regarding the financial statements taken as a whole with a listing of noted exceptions and qualifications, or an assertion to the effect that an overall opinion cannot be expressed. When an overall opinion cannot be expressed the reason therefore shall be stated. An accountants report shall include as a part a signed statement by the responsible corporate officer attesting that management has fully disclosed all material facts to the independent certified public accountant, and that the audited financial statement is a true and complete statement of the financial condition of the contractor.
7. "Management", when used herein, means the chief executive officers, partners, principals or other person or persons primarily responsible for the financial and operational policies and practices of the contractor.
8. Accounting terms, unless otherwise defined herein, shall have a meaning in accordance with generally accepted accounting principles and auditing standards.

**B.** Subsection A2 hereof notwithstanding, every agreement or contract awarded or executed pursuant to Section 39M of Chapter 30 shall provide that:

1. The Contractor shall make, and keep for at least six years after final payment, books, records, and accounts which in reasonable detail accurately and fairly reflect the transactions and dispositions of the Contractor, and
2. until the expiration of six years after final payment, the awarding authority, office of inspector general, and the deputy commissioner of capital planning and operations shall have the right to examine any books, documents, papers or records of the Contractor or of his/her subcontractors that directly pertain to, and involve transactions relating to, the Contractor or his/her subcontractors, and
3. if the agreement is a contract as defined herein, the Contractor shall describe any change in the method of maintaining records or recording transactions which materially affect any statements filed with the awarding authority, including in his/her description the date of the change and reasons therefore, and shall accompany said description with a letter from the Contractor's independent certified public accountant approving or otherwise commenting on the changes, and

4. if the agreement is a contract as defined herein, the Contractor has filed a statement of management on internal accounting controls as set forth in paragraph C. below prior to the execution of the contract, and
  5. if the agreement is a contract as defined herein, the Contractor has filed prior to the execution of the contracts and will continue to file annually, an audited financial statement for the most recent completed fiscal year as set forth in paragraph D. below.
- C. Every Contractor awarded a contract shall file with the awarding authority a statement of management as to whether the system of internal accounting controls of the Contractor and its subsidiaries reasonably assures that:
1. transactions are executed in accordance with management's general and specific authorization;
  2. transactions are recorded as necessary
    - a. to permit preparation of financial statements in conformity with generally accepted accounting principles, and
    - b. to maintain accountability for assets;
  3. access to assets is permitted only in accordance with management's general or specific authorization; and
  4. the recorded accountability for assets is compared with the existing assets at reasonable intervals and appropriate action was taken with respect to any difference.

Every Contractor awarded a contract shall also file with the awarding authority a statement prepared and signed by an independent certified public accountant, stating that she has, examined the statement of management on internal accounting controls, and expressing an opinion as to

1. whether the representations of management in response to this paragraph and paragraph B. above are consistent with the result of management's evaluation of the system of internal accounting controls; and
  2. whether such representations of management are, in addition, reasonable with respect to transactions and assets in amounts which would be material when measured in relation to the applicants financial statements.
- D. Every Contractor awarded a contract by the Commonwealth or by any political subdivision thereof shall annually file with the awarding authority during the term of the contract a financial statement prepared by an independent certified public accountant on the basis of an audit by such accountant. The final statement filed shall include the date of final payment. All statements shall be accompanied by an accountants report.
- E. The office of inspector general, the deputy commissioner for capital planning and operations and any other awarding authority shall enforce the provisions of this section. The deputy commissioner of capital planning and operations may after providing an opportunity for the inspector general and other interested parties to comment, promulgate pursuant to the provisions of Chapter 30A such rules, regulations and guidelines may be applicable to all awarding authorities. A Contractor's failure to satisfy any of the requirements of this section may be grounds for disqualification pursuant to Section 44C of Chapter 149.
1. Note: The record retention aspects of this subsection apply to all contracts awarded by the Authority regardless of value. The requirements relative to the internal auditing and management controls, including the filing of an annual statement, apply to contracts awarded with a value greater than \$100,000.



## PART 6 - PROSECUTION AND PROGRESS

### 6.1 SUBLETTING OR ASSIGNMENT OF CONTRACT

- A. The Contractor shall give personal attention to the fulfillment of the Contract and shall keep the Work under control.
- B. The Contractor shall not sublet, sell, transfer, assign, or otherwise dispose of the Contract or any portion thereof, or of the Contractor's right, title, or interest therein, without written consent of the Authority. If consent is given, the Contractor shall be permitted to sublet a portion thereof, but shall provide with the Contractor's own organization, Work amounting to not less than 50 percent of the original total Contract amount, except that any items designated in the Contract as "specialty items" may be provided by subcontract and the amount of any such specialty items provided by subcontracts may be deducted from the total amount in computing the amount of Work required to be provided by the Contractor's own organization. No subcontracts, or transfer of contract, shall in any case release the Contractor from liability under the Contract and bonds.
- C. Consent to sublet any part of the Work shall not be construed to be an approval of the said subcontract or of any of its terms, but shall operate only as an approval of the making of a subcontract between the Contractor and subcontractor.
- D. A subcontractor (vendor, or supplier) will be recognized only in the capacity of an employee or agent of the Contractor, and the subcontractor's removal may be required as in the case of an employee.
- E. As soon as practicable after execution of the Contract, the Contractor shall submit to the Authority applications for approval of subcontractors for any part of the Work A is proposed to sublet. In addition to stating the name and address of the proposed subcontractor each application shall give the items, or any portions thereof, proposed to be sublet by item number and description, and the total value of the Work proposed to be sublet based on the primary contract unit prices where established or, where not established, on the approved breakdown estimate of a lump sum price required under Section 01151 - MEASUREMENT AND PAYMENT, and not on the amount of the subcontract. The application shall also show other pertinent information in order to enable the Authority to ascertain whether the proposed subcontractor is reliable and able to perform the work.
- F. The Contractor shall direct the attention of subcontractors to the requirements of:
  - 1. Article 5.4 regarding insurance, and also to the Minimum Wage Rates and Health and Welfare and Pensions Fund Contributions as determined by the Commission of Labor and Industries of the Commonwealth and also to the provisions of Article 5.25 and 5.26; and:
  - 2. Chapter 30, General Laws of the Commonwealth, Section 39L, requires under 1, above that the Commonwealth and every county, city, town, district, board, commission shall not enter into a contract for such Work with, and shall not approve as a subcontractor furnishing labor and materials for a part of any such Work, a foreign corporation which has not filed with the Authority a certificate of the State Secretary stating that such corporation has complied with Sections 3 and 5 of Chapter 181 and the date of such compliance. Chapter 181, Section 3, requires foreign corporations to appoint the Secretary of the Commonwealth as an attorney for service of process, and Section 5, Chapter 181, requires foreign corporations to file certain documents with the Secretary of State which will permit them to do business in Massachusetts.
- G. The Contractor shall direct the attention of subcontractors and of all suppliers of material to the requirements of Article 3.9, and Section 01400 - QUALITY ASSURANCE, regarding facilities for the Engineer and his inspectors.

## 6.2 PROSECUTION OF WORK

- A. Commencement of Work, Milestones, and Liquidated Damages: The Contractor shall commence Work within fifteen (15) calendar days from the date of the mailing of the executed contract to the Contractor unless otherwise ordered in writing by the Engineer; and he shall complete the specified milestones within the days specified below from the date of the mailing of the executed contract to the Contractor.
- B. The Contractor shall complete the Work in accordance with the following milestones:
1. Milestone #1 (MS #1) - Complete 15-ton Crane Installation for turnover to the MBTA **no later than 415 calendar days after Notice to Proceed.**
  2. Milestone #2 (MS #2)-Complete all Work in Cabot Yard Rebuild Zones CYR-A, CYR-B, and CYR-C for turnover to the MBTA **no later than 632 calendar days after Notice to Proceed.**
  3. Milestone #3 (MS #3) - Complete Work in Cabot Maintenance Facility Zone M for turnover to the MBTA **no later than 643 calendar days after Notice to Proceed.**
  4. Milestone #4 (MS #4) - Complete all Work in Cabot Yard Rebuild Zone CYR-F Phases 53, 54, and 55 for turnover to the MBTA **no later than 858 calendar days after Notice to Proceed.**
  5. Milestone #5 (MS #5) - Complete all Work in Cabot Yard Rebuild Zone CYR-D, CYR-E, and remaining CYR-F Phases for turnover to the MBTA **no later than 1,212 calendar days after Notice to Proceed.**
  6. Milestone #6 (MS #6) - Substantial Completion of the Cabot Yard & Maintenance Facility Improvements Work **no later than 1,251 calendar days after Notice to Proceed.**
  7. Milestone #7 (MS #7) - Final Completion of the Cabot Yard & Maintenance Facility Improvements **no later than 90 calendar days after Contract Milestone #6 – Substantial Completion.**

These contract milestones are further defined below:

### Milestone #1

Complete installation of the two new 15-ton bridge cranes. All bridge cranes are required to have been tested, inspected, and fully functional and turned over for operational use by the MBTA.

### Milestone #2

Complete all site work and track work in Cabot Yard Rebuild Zones CYR-A, CYR-B, and CYR-C and complete the connection from the test track to the car house Track 1 in Zone CYR-E for turnover to the MBTA. The milestone work shall include all sitework, all trackwork, and all related systems with the exception of the existing signal and traction power cables, which may be reused until new cable can be installed. The composite of existing cables and the work for this milestone shall have been tested, inspected, and safety certified and shall be ready for operational use by MBTA vehicles. The final signal and traction power cables and cutover shall be completed before Contract Milestone 7, and the completed, final systems shall again be tested, inspected, and safety certified and shall be ready for operational use by MBTA vehicles.



Milestone #3

The completion of work within Zone M located within the Cabot Maintenance Facility. The work in this zone, except for the wheel truing machine, shall have been tested, inspected, and safety certified shall be ready for operational use by the MBTA.

Milestone #4

Complete all site work and track work in Cabot Yard Rebuild, CYR Zone F Phases 53, 54, and 55 for turnover to the MBTA. The milestone work shall include all sitework, all trackwork, and all related systems with the exception of the existing signal and traction power cables which may be reused until new cable can be installed. The composite of existing cables and the work for this milestone shall have been tested, inspected, and safety certified and shall be ready for operational use by MBTA vehicles. The final signal and traction power cables and cutover shall be completed before Contract Milestone 7 and the completed, final systems shall again be tested, inspected, and safety certified and shall be ready for operational use by MBTA vehicles.

Milestone #5

The completion of all remaining work within Cabot Yard for turnover to the MBTA. This milestone includes all drainage, track, traction power, signals, communications, and all other work required by the Contract Documents within these zones. This work is to be fully tested, inspected, commissioned, and safety certified prior to the milestone date and shall be ready for operational use by MBTA vehicles.

Milestone #6

Substantial Completion of the Work, which is defined as the completion of all remaining work within Cabot Yard and the Cabot Maintenance Facility for turnover to the MBTA for use except for minor incomplete or unsatisfactory work items that do not materially impair the usefulness of the work required by the Contract.

Milestone #7

Final Completion of the work, for which all physical Work is complete, including punch list items, and the Contractor has completely demobilized from the project site, all as-built documents have been submitted and approved, and all close-out paperwork has been completed and approved.

C. Access Restraints

Access Restraint #1: Construction Work in Cabot Maintenance Facility Zone Q cannot start until November 2020. The existing paint booth will be utilized as a staging area for the carhouse staff to store materials required to maintain the existing fleet of trains.

D. Damages

In the event the Contractor fails to complete the specified milestones within the days specified, liquidated damages will be assessed pursuant to Section 00700, Article 6.09 of the General Conditions for each calendar day of delay in the completion of the specified milestones as follows:

Milestone Liquidated Damages

Milestone #1 \$2,600/calendar day  
Milestone #2 \$7,550/calendar day  
Milestone #3 \$1,550/calendar day

Milestone #4 \$7,550/calendar day  
Milestone #5 \$8,050/calendar day  
Milestone #6 \$13,950/calendar day

In no event shall the total amount of liquidated damages for failure to complete the above milestones within the days specified exceed \$13,950.00 for any one day.

- E. Should the prosecution of the Work for any reason be discontinued, the Contractor shall notify the Engineer at least 24 hours in advance of resuming operations.
- F. If in the Engineer's judgment it is necessary at any time, the Contractor shall when directed, employ such forces and equipment for one or more additional shifts as will be required to insure the proper and timely completion of the Work.
- G. The Contractor shall not provide work at any time when conditions are unsuitable for its execution, safety, and permanence. This provision shall not be interpreted as constituting any waiver, release, or lessening of the Contractor's obligation to bring the Work to entire completion within the Contract time stipulated therefor.
- H. The Contractor shall not receive any additional compensation for the requirements of this Article.

### 6.3 REMOVAL OR DEMOLITION OF BUILDINGS AND LAND TAKINGS

- A. When the removal or demolition of buildings within the Contract limits is done under other and separate contracts, the provisions of Article 3.6 shall apply. The Authority will not be held liable for any expense to the Contractor due to any delay or interference with his Work, due to removal or demolition of the buildings, or due to any failure to remove or demolish any buildings, or due to the necessary land takings.
- B. No allowance of any kind will be made except as provided in Article 6.8.

### 6.4 LIMITATIONS OF OPERATIONS

- A. This Article 6.4 – LIMITATIONS OF OPERATIONS includes requirements related to phasing, scheduling, sequencing the Work, construction limitations, and permitting continuous occupancy and operations by the Authority throughout the construction period. The General Contractor is responsible for overall coordination of the work and all Subcontractors in accordance with the requirements of this Article.
  - 1. The General Contractor is responsible for overall coordination of the work and all Subcontractors in accordance with the requirements of this Article.
  - 2. Requirements in this Section 6.4 apply to all trades and all Subcontractors.
  - 3. The Contractor will conduct the Work at all times in such a manner and in such sequence as will assure the least disruption to the Authority's operations, and least interference with vehicular, marine, and pedestrian traffic, operations of railroads, and existing portions of the MBTA Transit System, and occupant and consumer entrance to and exit from the building and property. The Contractor shall have due regard to the location of detours and to the provisions for handling traffic. The Contractor shall not open up work to the prejudice or detriment of work already started.
  - 4. To minimize disruption to the Authority's operations, specific phasing, construction methods or procedures may be indicated. Where methods are enumerated or indicated by inference, the Contractor shall comply with those requirements.



5. Nothing in this Section shall be construed as limiting the Contractor's responsibility for coordination of the work, materials and methods, meeting the project construction schedule, or for the safety of persons or property.
6. The Contractor shall conduct his work in such manner and at such times and with such precautions and safeguards, including but not limited to, debris shields or other protective screens, as the Engineer may require for the purpose of avoiding interference with the safe and continuous operation of the facility.
7. The contractor shall allow the MBTA to relocate materials within the work zone. A minimum of one weeks' notice shall be provided for the coordination of relocating materials.
8. The Contractor shall make maximum effort to minimize the amount of traffic to and from the site, which includes scheduling of deliveries, maximizing loads per delivery, and other measures as may be required to avoid public nuisance.

Material movement will be limited to the following hours without the prior approval of the Authority:

- a. 8:00 AM - 12:00 PM First Shift
  - b. 5:00 PM - 9:00 PM Second Shift
  - c. 1:00 AM - 5:00 AM Third Shift
9. It is expected that multiple work shifts, including weekends, will be necessary for the Contractor to complete the work of this contract within the contract duration. It is required that all costs associated with these efforts are to be included in the Contractor's bid.
  10. Cooperate with the Authority and perform the work to minimize conflicts and not interfere with the Authority's continued usage of the facilities. The Work to be performed shall be limited to provide the least possible interference with the Occupants. Contractor shall be limited to the operational times as identified in this section 6.4, with additional guidance on operational times in the Work Zones.
  11. Unless otherwise specified, the Contractor is specifically prohibited from conducting any operations next to or over the tracks that have a potential to adversely impact the operation of MBTA revenue service during normal revenue hours. The Authority will consider the property, facilities and operations fouled or subject to hazard when the following occurs:
    - a. When an object or operation is, or can be brought nearer than fifteen (15) feet to the centerline of an operating track;
    - b. When cranes, trucks, power shovels or any other equipment items are working in such a position that failure with or without load could occur.
  12. No work impacting Authority operations, vehicular flow or pedestrian flow will be allowed on the following dates, holidays, or special events:
    - a. New Year's Day
    - b. President's Day
    - c. Patriots Day
    - d. July 4<sup>th</sup> and July 4<sup>th</sup> holiday observance
    - e. Day Before and After Thanksgiving Day
    - f. Thanksgiving Day
    - g. Christmas Eve/Christmas Day
    - h. December 31<sup>st</sup>
  13. Access for Bridge Inspection and Maintenance: The Contractor shall coordinate with and provide full access to MassDOT to perform routine bridge inspections and maintenance

under any of the bridges over the yard or right of way. This access includes access along the right of way to access the bridges.

14. The contractor must maintain a clear fire lane, in accordance with any fire department requirements, and delivery vehicle access at all times to buildings on the Cabot campus. Any short-term restriction of the fire lane must be approved by the fire department and MBTA.
  15. The Contractor may need to provide supplemental laydown and staging areas to support all the construction activities throughout the duration of this contract at no additional cost to the MBTA. See provisions for Staging Areas, Laydown Areas, and Short-Term Storage Areas in Specification 01010, section 1.8.C.
  16. Contractor laydown areas are to be within limits shown on the plans. Contractor will need to work with Carhouse staff for designated delivery areas. Contractor on-site vehicle parking is limited to ten (10) spaces within the Contractor laydown area and must not impact access for emergency vehicles.
  17. Prior to the Contractor leaving any work site, at the completion of each work day, the Contractor shall ensure that the site is in proper condition to permit normal operations to resume.
  18. The Contractor must contact MBTA Power 2 weeks and then again 48 hours in advance of any power switch over. For all work the Contractor shall provide a two-week look ahead schedule in addition to 48-hour notification for approval.
  19. The Contractor is only permitted to have track outages on one side of the facility (north or south) at a time. Contractor must sequence the Work in accordance with the Operations Restrictions and Suggested Construction Phasing Plans to always provide access to either the north or south tracks to permit train movements around the Yard.
  20. The contractor must coordinate the Work such that access in and out of the Maintenance Facility is maintained to all tracks from at least one side (north or south) at all times. For example, when the contractor is working in the Maintenance Facility Zone 1 with tracks 3 & 4 North out of service, work in Zone CYR-E Phase 38 cannot be performed, which would block access to tracks 3 & 4 from the south.
  21. The Contractor shall vacate the premises after final acceptance. This includes the removal of all equipment, field offices, personnel, waste, etc., from the premises.
  22. Prior to vacating a work zone the Contractor shall remove all equipment, waste and debris from said area.
  23. The Contractor is required to maintain access for Red Line vehicles at the Cabot Track 1 crossover connection to the adjacent Red Line Test Track / Red Line Vehicle Delivery Track at all times unless the Contractor has received approval from the MBTA for a track closure/track outage.
- B. The following limitations apply to the Contractor's activities for working in Cabot Yard (CYR).**
1. **Yard Operations:** The work will be conducted such that the yard will remain functional at all times to support Red Line operations and Red Line vehicle maintenance activities except when limited service and maintenance outage periods are agreed with and provided by the MBTA for Contractor to progress of the work.
  2. **Trackwork:** The construction of trackwork will be done primarily during outage periods to minimize impacts to Red Line operations.
  3. **Site Access:** Most construction access to and from the site will take place at the main entrance gate at Dorchester Avenue. Refer to Section 01010 SUMMARY OF THE WORK for additional provisions and coordinate this access with MBTA.



4. **Coordination with Other Projects:** The work will be carried out in cooperation with other work in the immediate area such as construction of the Red Line Test Track. Refer to Section 01010 for more information.
5. **Weekend Work**
  - a. The staging plans for this Contract are predicated on a significant amount of the work being performed on weekends when the MBTA can minimize the need for vehicle movements into and out of the Yard for revenue service by using other Red Line facilities to store the trains for weekend service. The weekend work windows are detailed below.
  - b. **Weekend Outages:** Weekend Outages for Track Replacement will be provided by the MBTA to the Contractor and will extend from 4:00 am on Saturday until 2:00 am on Monday. At the completion of each weekend outage, the track must be fully complete and operational for a turnover and use by the MBTA.
  - c. **Early Access Weekend Outages:** One Early Access Weekend Outage will be provided by the MBTA to the Contractor. The Early Access Weekend Outages will extend from 10:00 pm on Friday until 2:00 am on Monday. At the completion of the early access weekend outage, the track must be fully complete and operational for a turnover and use by the MBTA. It is anticipated that the Early Access Outage will be required to complete the work in Zone CYR-F, Phase 48.
  - d. **Long Weekend Outage:** One Long Weekend Outage will be provided by the MBTA to the Contractor. The Long Weekend Outage will extend from 4:00 am on Saturday until 2:00 am on Tuesday and may be requested on either Columbus Day, Veterans Day, Labor Day, or Memorial Day. The ability to schedule work for Long Weekend Work may be limited by the MBTA's service calendar for special events that weekend. Plan the Long Weekend with MBTA at least 6 months in advance. At the completion of the Long Weekend Outage, the track must be fully complete and operational for a turnover and use by the MBTA. It is anticipated that the Long Weekend Outage will be required for Zone CYR-D, Phase 27.
  - e. It is important to note that there is a time required for powering down by MBTA forces at the start of the work window. There is also a time required for powering up, signal testing, and running a test train at the end of the work window. Exact times will vary depending on the location and work being accomplished. The contractor shall coordinate with the MBTA on a site-specific basis.
  - f. **Unavailable Weekends.** In addition to the holidays listed in 6.4A of this specification section 00700, the Contractor must anticipate there will be a minimum of eight (8) weekends per construction season (April 1-November 30), when the Contractor will be denied access and not be allowed work of any type in the Yard. The Contractor shall not be entitled to any additional compensation or extension in time for these eight (8) weekends per year.
6. **Weekday Work**
  - a. The construction of work required by the Contract other than trackwork – such as site work, structural work, traction power work, signal work, and communications work – may be carried out during normal working hours providing a power outage is not required, and is approved by the MBTA.
  - b. The MBTA pulls trains out of Cabot Yard to support weekday operations and some trains may pull in after rush hour, approximately 10 AM. After 10 AM and until approximately 3 PM, there is opportunity to perform work within the Yard under flagging protection. This includes activities such as de-energizing the third rail in some areas. This work must be of the type that it is limited in area and will not result in a track or tracks being out of service for longer than the time necessary for

the work crew to safely move away from the work site when notified by the flagger and to restore power. The Contractor shall coordinate with the MBTA regarding the types and durations of work to be done under flagging protection and to arrange for the flaggers. Generally, flagging protection will not be available during days when it is snowing or snow is forecast in the Greater Boston area.

7. Work Zones within the Yard:

- a. For planning purposes, the yard has been divided into six work zones designated as Zone CYR-A, Zone CYR-B, Zone CYR-C, Zone CYR-D, Zone CYR-E, and Zone CYR-F. These zones are shown on the contract drawings and are separate and distinct from the zones identified in the Cabot Maintenance Facility documents.
- b. Phasing Plans: The Contract Drawings include phasing plans that subdivide the six work zones into phases and describe the work within each phase.

8. Work Zone Provisions:

- a. Zone CYR-A: The work in this Zone shall be accomplished so as to maintain a minimum of two transit vehicle routes into and out of the Yard. As indicated on the phasing plans, the wash track may be utilized as one of these routes, as coordinated and approved by the MBTA and with the work within the Carhouse. The availability of the wash tracks allows for an extended outage however must be phased to allow the wash bay work to be completed as required by the Contract Documents. Phases 23 and 24 have been allocated a 3 week and 2 week outage, respectively. Other work in Zone CYR-A shall take place on weekend outages.
- b. Zone CYR-B: The work in this zone shall be accomplished over two weekend outages and the outages must be on consecutive weekends. Straight routes through the crossover will be made available by the Contractor to MBTA for its use on all weekdays between these two weekend outages. The work in this zone is limited to two consecutive weekend outages.
- c. Zone CYR-C: The yard leads shall be rehabilitated with work on only 1 of the 2 tracks permitted at any one time. At least one of the two lead tracks into the yard shall be maintained as access for Red Line operations during at least one shift during a weekend outage. In no case shall both yard leads be unavailable outside of the defined weekend work window. If there is a failure of a revenue service train during this time, the MBTA will notify the Contractor on Saturday afternoon at approximately 3 PM that it may need to pull in a train or trains to the yard Saturday evening between 6PM and 12AM. The Contractor shall accommodate these pullbacks as a condition of the work and this shall not be cause for claiming cost or delay of the work.
- d. Zone CYR-D: There are overlapping turnouts in Zone CYR-D Phase 27 that have been allocated a Long Weekend Outage. All other work in this area shall take place on regular weekend outages, unless coordinated with an adjacent outage in the Maintenance Facility. When one or more tracks at the North end of the Car House will be inaccessible due to ongoing Car House work, the corresponding yard tracks may be available for weekday work.
- e. Zone CYR-E. All work in this shall take place on weekend outages, unless coordinated with an adjacent outage in the Maintenance Facility. The Contractor is encouraged to coordinate work in this zone with outages in the Car House. When one or more tracks at the South end of the Car House will be inaccessible due to ongoing Car House work, the corresponding yard tracks may be available for weekday work.
- f. Zone CYR-F. The work for the storage tracks in Zone CYR-F Phase 53 have been allotted a two-week continuous outage and Phase 54 & 55 have each been allotted



a four-week continuous outage. The entire allotted outage for Phases 53, 54 and 55 will not exceed 10 weeks. Phase 48 has been allotted an Early Access Weekend. The remaining work shall take place on weekend outages. The work on the loop shall take place on a series of weekend outages. The loop track shall be available to the MBTA during all weekdays.

9. The Contractor is strongly encouraged to coordinate Work in Zones CYR-D and CYR-E to coincide with the associated track outage inside the maintenance facility. For example, CYR-Phase 31 trackwork could be performed when Zone L in the maintenance facility is in construction and Tracks 5 and 6 north are out of service. This is typical of all tracks leading into and out of the maintenance facility.
  10. Yard Diversion Requests: Normal workhours are 7:00 am to 3:30 pm, Monday through Friday. All weekend or extended hours of work are subject to the approval of the Authority. The Contractor shall submit in writing to the Engineer all requests for weekend or extended hours of operation a minimum of 21 calendar days prior to the date of the requested diversion. The granting of extended hours or weekend work hours shall be entirely at the discretion of the Authority. Provisions for the diversions and diversion requests include:
    - a. All proposed diversions must be identified clearly in the baseline construction schedule.
    - b. It is the responsibility of the Contractor to propose, submit requests, coordinate and determine with the MBTA the approved diversion/shutdown dates.
    - c. Twenty-one (21) calendar days are required after the Contractor requests the shutdown in writing before the request can be approved.
    - d. In order for the diversion/shutdown windows to be approved by the MBTA, the Contractor must demonstrate that all supporting civil, power and signal elements necessary for the safe and proper operation of the new trackwork and to facilitate the complete normal operation of the Cabot Yard once the track is restored at the end of the diversion period.
    - e. The MBTA has the right to re-schedule the diversion/shutdown 48-hours in advance of the actual shutdown and this shall not be cause for claiming cost or delay of the work.
    - f. The Contractor's diversion/shutdown request must include a list of work activities broken down on an hourly basis with crew sizes and onsite responsible person, as well as all other details necessary to ensure all required work to complete the track tie-in and restoration of normal yard activities can be finished within the diversion period.
  11. The Contractor shall be advised of the access and operational limitations at Midland Bridge, which is governed by a "Level 1" designation by the MBTA System Safety Department. The Contractor shall abide by these restrictions at all times.
- C. The following limitations apply to the Contractor's activities while working on the Cabot Maintenance Facility (CMF).
1. The Contractor is to cooperate with the Authority and perform the work to minimize conflicts and not interfere with the Authority's continued usage of the facilities. The Work to be performed shall be limited to provide the least possible interference with the Occupants. Contractor shall be limited to the operational times as identified in this Section 6.4, with additional guidance on operational times in the Work Zones.
  2. The Contractor shall provide trailers for staff prior to commencing work that impacts the offices, locker rooms and breakroom in Zones A and C.

3. Except as otherwise noted, the Authority's occupation and operations in the Cabot Maintenance Facility will continue unabated throughout the duration of the construction contract. The Cabot Maintenance Facility is continuously operated twenty-four hours a day and seven days a week. Work can be performed on 1st shift, 2nd shift, or 3rd shift except when specified otherwise. The Authority's work shifts are as follows:
  - a. First work shift: 6:00 AM to 2:30 PM.
  - b. Second work shift: 2:30 PM to 11:00 PM.
  - c. Third work shift: 11:00 PM to 6:00 AM.
4. Contractor to provide safe egress for maintenance facility personnel at all times.
5. The Cabot Maintenance Facility zoning plan is shown on Construction Zone Drawings (CMF-G-0010 thru CMF-G-015).
6. Construction Phasing Provisions:
  - a. The Contractor shall provide 6 weeks' written notice to the MBTA prior to occupying a work zone.
  - b. Work in the Cabot Maintenance Facility is restricted to one zone at a time for zones with similar hatching (see drawing CYR-G-002). Contractor may work in up to 2 Cabot Maintenance Facility zones simultaneously if the zones have different hatching and are not adjacent, with the following exceptions:
    - Zone F – once the North Interior build structure is complete (concrete, steel, CMU), and all work outside of the electronics building is complete including hoist LI-42 fully operational, and the contractor's work is limited to inside the electronics building, the contractor may move to another work zone. Zone F shall be completed prior to Zone D to allow for relocation of Cabot Maintenance Facility staff from the Zone D to Zone F offices prior to commencement of Zone D construction activities.
    - Zone D – once the South Interior build structure is complete (concrete, steel, CMU), and the contractor's work is limited to inside the locker rooms, break rooms and offices, the contractor may move to another work zone.
    - Zone M/N/O: The contractor will be allotted a 30 continuous calendar day period to complete the installation of the new wheel truing machine (MA-71) and car puller system (MO-72). The contractor will be allowed access to these three zones at once to perform this limited scope of work. All other work in these zones must be phased one zone at a time.
    - Zone M and N: Work in these zones are restricted to second and third shift.
  - c. Tracks 1 – 2: All work between Tracks 1 through 2 must be performed by Zone. Each Zone will be limited in length to two car lengths (140 feet) and two tracks wide, except for Zones A1 and A2, the Zones are as follows:
    - 1) Zone A1 – Track 1 South; column line T to Z; 1 to 2
    - 2) Zone A2 – Track 2 South; column line T to Z; 1 to 2
    - 3) Zone B – Tracks 1 and 2; column line M to S; 1 to 2
    - 4) Zone C – Tracks 1 and 2; column line E to L; 1 to 2
    - Work in one Zone must be completed in its entirety prior to moving to the next Zone; sequence to be proposed by contractor and approved by the MBTA.



- Construction of the 15-ton bridge/cranes shall be phased such that one bridge crane is operational and accessible for MBTA use at all times throughout construction.
- d. Zone D, E, F: All work in Zones D, E, and F must be performed by Zone as follows:
- 1) Zone F – column line E to L; 2 to 3
  - 2) Zone D – Crew Quarters; column line T to Z; 2 to 3
  - 3) Zone E – column line M to S; 2 to 3
- Work in one Zone must be completed in its entirety prior to moving to the next Zone, with the exception of both Zones D and F as described in paragraph 6.b above.
  - One truck lift shall remain operational and accessible for MBTA use at all times throughout construction.
  - One 7.5 ton crane shall remain operational and accessible for MBTA use at all times throughout construction.
  - Work in the existing South Interior Building and paint booth must be coordinated and phased with the MBTA.
  - The AC switchgear, located in the basement of the North Building, shall be removed after the new substation has been tested and is on-line and all power has been cutover to the new system.
- e. Pit Tracks 3–6: All work between Tracks 3 through 6 must be performed by Zone. Each Zone will be limited in length to two car lengths (140 feet) and two tracks wide, the Zones are as follows:
- 1) Zone G – Tracks 3 and 4 South; column lines T to Z
  - 2) Zone J – Tracks 5 and 6 South; column lines T to Z
  - 3) Zone H – Tracks 3 and 4 Middle; column lines M to S
  - 4) Zone K – Tracks 5 and 6 Middle; column lines M to S
  - 5) Zone I – Tracks 3 and 4 North; column lines E to L
  - 6) Zone L – Tracks 5 and 6 North; column lines E to L
- All Work in these Zones is limited to April 1 to November 1
  - Work in one Zone must be completed in its entirety prior to moving to the next Zone; sequence to be proposed by contractor and approved by the MBTA.
  - Work can be performed on 1st shift, 2nd shift, or 3rd shift.
  - Contractor must notify MBTA Power 2 weeks and then again 48 hours in advance of commencing work in any Zone. Contractor will perform temporary modifications necessary to shut down power within the work zone, while providing power to the remainder of the track. All work must have a two-week look ahead in addition to 48-hour notification.
  - Work in Zone J cannot be performed at the same time as Zone M; Work in Zone K cannot be performed at the same time as Work in Zone N; Work in Zone L cannot be performed at the same time as work in Zone O; Work in Zone E cannot be performed at the same time as work in Zone H.
- f. Tracks 7 – 8: All work between Tracks 7 through 8 must be performed in 4 phases. Each phase will be limited in length to two car lengths (140 feet) and two tracks wide, the zones are as follows:
- 1) Phase 1 Zone M – Track 7 and 8 South; column line T to Z; 4 to 5

- 2) Phase 2 Zone N – Track 7 and 8 Middle; column line M to S; 4 to 5
  - 3) Phase 3 Zone O – Tracks 7 and 8 North; column line E to L; 4 to 5
  - 4) Phase 4 Zone Q – Tracks 7 and 8; column line A to E; 4 to 5
- Work in one zone must be completed in its entirety prior to moving to the next zone; sequence to be proposed by contractor and approved by the MBTA.
  - The installation of the new wheel truing machine and car puller system is limited to a 30 calendar day continuous period. During this time, the contractor will be granted access through Zone M, N and O to perform this limited scope of work. All other work in these Zones must be performed sequentially. The new wheel truing machine must be installed and fully operational and turned over to the MBTA within 30 days of the start of demolition of the existing wheel truing machine.
  - Work in Zones O, N, and M must be performed on 2nd and/or 3rd shift. MBTA access for use of the wheel truing machine will be provided at all times during 1<sup>st</sup> shift, with the exception of the 30 calendar day outage described above.
  - Work in Zone M cannot be performed at the same time as Zone J; Work in Zone N cannot be performed at the same time as Work in Zone K; Work in Zone O cannot be performed at the same time as work in Zone L.
- g. Track 9: All work on Track 9 Zone R shall be performed in 1 phase.
- Work in Zone R is limited to the winter months, December 1 through March 15.
  - Zone R shall require a shutdown of Track #9 for the duration of the installation of the new wheel wash.
- h. The work in Zone P must be performed in phases. The canopy is to be constructed one location at a time such that no more than two (2) tracks are out of service.
- i. Zone F: Sequence the work in this zone in conformance with the contract drawings.
- j. Replacement of the roof and windows shall be limited to March 15 to November 30. All truss reinforcement must be completed prior to installation of new roof.
- k. The Construction Sequencing and Phasing Plan (CSSP) is to:
- 1) Explain the Contractor's construction sequencing between zones for the project to ensure it has optimized planning.
  - 2) Identify interim conditions and relationships between the sequencing.
  - 3) Demonstrate continuity of delivery, storage, installation and construction activities.
  - 4) Identify mitigation measures to correct impacts to the cycle of manufacturing, delivery, storage and installation.
- l. The MBTA has approved and accepted the zoning/sequencing described in the construction documents. If the contractor proposes alternative zoning/sequencing, the alternatives must be provided in writing to the MBTA for approval six (6) weeks prior to commencing work. Regardless of the sequencing plan used, the CSSP shall be prepared to satisfy the Contract requirements and limitations. Criteria for acceptance of the CSSP will be as follows:
- 1) The CSSP does not increase inconvenience to the Authority.
  - 2) There is a scheduling benefit to the Authority.



- 3) Meeting Contract completion and milestone dates; and Limitations of Operations including those specified in this Article.
  - 4) Constraints on access to various work zones and areas, including those specified in this Article.
  - 5) Maintaining Red Line operations (revenue and non-revenue hours)
  - 6) Providing for all testing specified, including testing to be performed by the Authority. In particular, allowing for vehicle testing and systems inspection/testing by the Authority while construction activities are ongoing in the maintenance facility prior to startup.
  - 7) Providing specified lead-time for work by utility companies.
- m. Prior to demolition of existing North Interior Building, which is to be removed in its entirety, install the temporary Air Room Trailer in Zone N. The Air Room operations must be maintained 24/7 until the North Interior Building is complete.
- n. Prior to demolition and rehabilitation of the South Interior Building, temporary trailers are to be installed and fully functional. The trailers are to be located on the south side of the building and one office trailer in Zone N. The requirements are as follows:
- 1) Lockers for 110 personnel
    - a) Foreman – 15 lockers
    - b) Woman Repair – 4 lockers
    - c) Male Repair – 91 lockers
  - 2) Showers – three separate areas with separate access:
    - a) One (1) shower for Foreman
    - b) Four (4) showers for Repairers (Men)
    - c) Two (2) showers for Repairers (Women)
  - 3) Break Rooms with hookups for Washer/Dryer, cooktop, microwave, refrigerator – provide three separate areas with separate access:
    - a) Foreman
    - b) Women Repair
    - c) Male Repair
  - 4) Separate office trailer (Zone N in Carhouse)
    - a) Superintendent/Supervisors/Payroll Clerk – total of 5 personnel
    - b) Foreman –total of 10 personnel.
    - c) Trailers to meet required fire regulations.
- o. Bus Operations cannot be impacted by work or deliveries.
- p. All Traction Power work to be performed by Contractor.
- q. Contractor to coordinate with Carhouse Staff and have an approved Construction Process Plan per Specification 01300, Section 1.5 for roof work prior to delivering materials or commencing any roof work.

## 6.5 CHARACTER OF WORKMEN, METHODS, AND EQUIPMENT

- A. The Contractor shall at all times employ sufficient labor and equipment to prosecute the several classes of work to full completion in the manner and time required by the Contract Documents.

- B. The Contractor shall provide all cutting, fitting, and patching of the work that may be required to make its several parts fit together properly, and shall not endanger any work by cutting, excavating, or otherwise altering the work or any part thereof.
- C. All workmen shall have sufficient skill and experience to perform the Work assigned to them. Workmen engaged in special work or skilled work shall have sufficient experience in such work and in the operation of the equipment required to perform all work properly and satisfactorily.
- D. Any person employed by the Contractor or by any subcontractor who, in the Engineer's judgment, does not perform the work in a proper and skilled manner or is intemperate or disorderly or otherwise unsatisfactory or not employed in accordance with the provisions of Article 5.25, shall at the written request of the Engineer, be removed by the Contractor or subcontractor employing such person, and shall not be employed again in any portion of the Work without the approval of the Engineer.
- E. Should the Contractor fail to take the necessary action to remove such person or persons as required above, or fail to furnish suitable and sufficient personnel for the proper prosecution of the Work, the Engineer may suspend the Work by written notice until such orders are complied with.
- F. The Contractor shall employ engineers registered in the Commonwealth of Massachusetts, qualified superintendents, foremen, and other supervisory employees to plan all construction operations and to represent the Contractor at all of the several parts of the Work and they shall be present at all times while the Work entrusted to them is in progress and shall be informed thoroughly regarding the Work.
- G. All equipment used on the Work shall be of sufficient size and in such mechanical condition as to meet the requirements of the Work and to produce a satisfactory quality of work. Equipment used on any portion of the Work shall be such that no injury to the transit system, city streets, highways, or adjacent property will result from its use.
- H. When methods and equipment to be used by the Contractor in accomplishing the construction are not prescribed in the Contract, the Contractor may use any methods or equipment that demonstrate to the satisfaction of the Engineer the ability to accomplish the Work in conformity with the requirements of the Contract.
- I. When the Contract Documents specify the methods and equipment by which the construction shall be performed, such methods and equipment shall be used unless otherwise authorized in writing by the Engineer. If the Contractor desires to use a method or type of equipment other than that specified, such authority should be requested in writing from the Engineer. The request shall include a full description of the methods and equipment proposed to be used as an explanation of the reasons for desiring to make the change. If written approval is given, it will be on the condition that the Contractor shall be fully responsible for producing construction work in conformity with the Contract requirements. If after trial use of the substituted methods or equipment, the Engineer determines that the Work produced does not meet Contract requirements, the Contractor shall discontinue the use of the substitute method or equipment and shall complete the remaining construction with the specified methods and equipment. The Contractor shall remove the deficient Work and replace it with Work of specified quality, or take such other corrective action as the Engineer may direct. No changes will be made in basis of payment for the construction items involved nor in Contract time as a result of authorizing a change in methods or equipment under these provisions.
- J. Prior to the Contractor's selection of the job superintendent, a detailed resume must be submitted to the Authority for approval. Included in the job superintendent's requirements are:



1. Commonwealth of Massachusetts Department of Public Safety License for Construction Supervisor without any restrictions.
2. A minimum of 10 years of related construction experience.

The above requirements may only be waived by the Director of Construction.

#### **6.6 DELAY AND SUSPENSION OF WORK**

- A. The Engineer has the authority to delay the commencement of the Work and delay or suspend any portion thereof, for such period or periods as it may be deemed necessary, because of conditions beyond the control of the Authority or the Contractor, for the failure of the Contractor to correct conditions unsafe for the general public; for failure to carry out provisions of the Contract; for failure to carry out orders; for causes and conditions considered unsuitable for the prosecution of the Work; for acts of third persons not a party to the Contract; or for any other cause, condition, or reason deemed to be in the public interest.
- B. Upon receipt of written order of the Engineer, the Contractor shall immediately delay the commencement of the Work or delay or suspend any portion thereof in accordance with said order. Work shall not be suspended or delayed without prior written approval or order of the Engineer. The work shall be resumed when conditions warrant or deficiencies have been corrected and the conditions of the Contract satisfied as ordered or approved in writing by the Engineer. The Contractor's attention is also directed to the requirements of Section 01560 - TEMPORARY CONTROLS, Part 1 "Laws to be Observed" Article, and Article 5.21 herein which shall govern during any period of temporary or partial suspension of work.

#### **6.7 CLAIM FOR DELAY OR SUSPENSION OF WORK**

- A. The Contractor shall have no claim for damages of any kind due to any delay in commencement of the Work or any delay or suspension of any portion thereof, except as hereinafter provided.
  1. Attention is directed to Section 39.0 of Chapter 30 which requires that every contract subject to the provisions of Section 39M of Chapter 30 contain the following provisions a. and b. in their entirety and, in the event a suspension, delay, interruption, or failure to act by the Authority increases the cost of performance to any subcontractor, that subcontractor shall have the same rights against the Contractor for payment for an increase in the cost of his performance as provisions a. and b. give the Contractor against the Authority, but nothing in provisions a. and b. shall in any way change, modify, or alter any other rights which the Contractor or the subcontractor may have against each other.
    - a. The Authority may order the Contractor in writing to suspend, delay, or interrupt all or any part of the Work for such period of time as it may determine to be appropriate for the convenience of the Authority; provided, however, that if there is a suspension, delay, or interruption for 15 days or more or due to a failure of the Authority to act within the time specified in the Contract, the Authority will make an adjustment in the Contract price for any increase in the cost of the Contract but shall not include any profit to the Contractor on such increases; and provided further, that the Authority will not make any adjustment in the Contract price under this provision for any suspension, delay, interruption, or failure to act to the extent that such is due to any cause for which this Contract provides for an equitable adjustment of the Contract price under any other contract provision.
    - b. The Contractor shall submit the amount of a claim under provision a. to the Authority in writing as soon as practicable after the end of the suspension, delay, interruption, or failure to act and, in any event, not later than the date of final payment under the Contract and, except for costs due to a suspension order, the

Authority shall not approve any costs in the claim incurred more than 20 days before the Contractor notified the Authority in writing of the act or failure to act involved in the claim.

## 6.8 DETERMINATION AND EXTENSION OF CONTRACT TIME FOR COMPLETION

- A. The Contractor shall complete, entirely, and in an acceptable manner, the Work required under the Contract within the time stated in the Bid Form, except that the Contract time for completion shall be adjusted as follows:
1. If the Contract is not awarded as contemplated by Section 00100 of the Contract Specifications, then the number of days allowed for the completion of the Work will be computed from the date of receipt of the Contract by the Contractor or the date on which the Contractor was ordered to commence work whichever is later. For the purpose of this paragraph, the Contractor will be presumed to have received the Contract on the day following the mailing of the executed Contract to the Contractor by the Authority. If the Contract specifies a specific calendar date for completion and the Contract is not awarded as contemplated by Section 00100, of the Contract Specifications then the Contractor will be entitled to an extension of time equivalent to the number of days elapsed from 60 days (45 days if Federal funds are involved) after the opening of bids up to and including the day of receipt of the executed Contract by the Contractor or the date on which the Contractor was ordered to commence Work whichever is later.
  2. In case commencement of work is delayed or any part thereof is delayed or suspended by the Authority (except for unsuitable weather, winter months, or reasons caused by the fault or neglect of the Contractor), the Contractor will be granted an extension of time in which to complete the Work or any portion of the Work required under the Contract equivalent to the duration of the delay less a reasonable period of time within which the Contractor could have done necessary preliminary work.
  3. When delay occurs due to Force Majeure, the time for completion of the Work shall be extended as determined by the Engineer to be equitable.
  4. An "Act of God" as used in this Article is understood to imply an earthquake, flood, cyclone, or other cataclysmic phenomenon of nature beyond the power of the Contractor to foresee or make preparation in defense of. A rain, windstorm or other natural phenomenon of normal intensity, based on United States Weather Bureau reports, for the particular locality and for the particular season of the year in which the Work is being prosecuted, shall not be construed as an "Act of God" and no extension of time will be granted for delays resulting therefrom. Within the scope of acts of the Government, consideration will be given to properly documented evidence that the Contractor has been delayed in obtaining any material or class of labor because of any assignment of preference ratings by the Federal Government or its agencies to other defense contracts.
  5. In case the Work is delayed by public or private utility owners or municipal agencies, see Article 3.5.
  6. Each Extra Work Order or Change Order as issued will include a statement of additional time, if any, that is agreed upon by the Contractor and the Engineer required for the completion of the Contract by reason of this Extra Work Order or Change Order, and no other time allowance due to the performance of the Work covered by such Extra Work Order or Change Order will be allowed.
- B. An extension of time will not be granted for any delay or any suspension of the Work due to the fault of the Contractor, nor if a written request for an extension of time on account of delay due to any of the aforesaid causes is not filed within 15 days of the date of the commencement of the delay nor if the request is based on any claim that the Contract period as originally established was inadequate.



- C. Contract period has been carefully considered and has been established for reasons of importance to the Authority. This time limit will be enforced.
- D. The probable slow-down or curtailment of Work during inclement weather and winter months has been taken into consideration in determining the total time required to complete the Contract- hence no extension of time will be allowed due to this reason.

#### **6.9 FAILURE TO COMPLETE WORK ON TIME**

- A. On or before the date stated in the Contract Specification for completion, or the date to which the time of completion will have been extended under the provisions of Article 6.8, the Work shall have been performed in accordance with the terms of the Contract. The time in which the various portions and the whole of the Contract are to be Provided and the Work is to be completed is an essential part of the Contract.
- B. See Section 6.2D Liquidated Damages.
- C. Whatever sum of money may become due and payable to the Authority by the Contractor under this Article may be retained out of money belonging to the Contractor in the hands and possession of the Authority. This Article shall be construed and treated by the parties to the Contract not as imposing a penalty upon the Contractor for failing fully to complete the Work as agreed on or before the time specified in the Contract Specification (as it may have been extended in accordance with Article 6.8), but as liquidated damages to compensate the Authority for all additional costs incurred by the Authority because of the failure of the Contractor fully to complete said Work on or before the date of completion specified in the Contract Specification (as it may have been extended).
- D. Permitting the Contractor to continue and finish the Work or any part of it after the time fixed for its completion, or after the date to which the time for completion may have been extended, shall not operate as a waiver on the part of the Authority of any of its rights under the Contract.

#### **6.10 TERMINATION OF CONTRACT**

- A. If the Contractor shall be adjudged bankrupt, or make a general assignment for the benefit of creditors, or if a receiver shall be appointed of the Contractor's property, or if the work to be done under the Contract shall be abandoned, or if the Contract or any part thereof shall be sublet without the previous written consent of the Authority, or if the Contract or any claim there under shall be assigned by the Contractor otherwise than as herein specified, or at any time the Engineer certifies in writing to the Authority that the Work, or any part thereof, is unnecessarily or unreasonably delayed, or that the Contractor has violated any of the provisions of the Contract, the Authority may, by written notice, instruct the Contractor to discontinue the Work, or any part thereof, and thereupon the Contractor shall discontinue such Work or such part thereof, as the Authority may designate, and the Authority will require the surety or sureties to complete the Contract.
- B. If the Engineer determines that the rate of progress as reflected by the Contractor's CPM submitted and approved in accordance with the requirements of Section 01300 - SUBMITTALS, is not satisfactory, the Authority, instead of notifying the Contractor to discontinue the Work or any part thereof, may notify the Contractor from time to time to increase the force, equipment, and plant, or any of them, employed on the whole or any part of the Work, stating the amount of increase required; and unless the Contractor shall, within five working days after any such notice, increase such force, equipment, and plant to the extent required therein, and maintain and employ the same from day to day until the completion of the Work or such part thereof or until the conditions as to the rate of progress shall, in the Engineer's judgment, be fulfilled; or unless the Contractor submits and receives approval of a revised CPM indicating the Work being completed on time, the Authority

may employ and direct the labors of such additional force, equipment, and plant as may, in the Engineer's judgment, be necessary to insure the completion of the Work or such part thereof within the time specified, or at the earliest possible date thereafter, and charge the expense thereof to the Contractor. Neither the notice from the Authority to the Contractor, to increase the force, equipment, or plant, nor the employment of additional force, equipment, or plant by the Authority shall be held to prevent a subsequent notice from the Authority to the Contractor to discontinue Work under the provisions of the preceding portion of this Article.

- C. The Engineer may exercise the rights under this paragraph to rectify adverse conditions described in Article 3.10, Removal of Defective or Unauthorized Work, and Article 4.4, Defective Material, and notify the Contractor's bonding company to take the necessary appropriate action to remedy the situation. It shall be understood that when the Authority exercises its rights hereinbefore described, the breach of Contract by the Contractor does not itself constitute termination unless stipulated by the Authority. The Contractor shall, as directed by the Engineer, continue other works of the Contract.
- D. All expenses charged under this Article will be deducted and paid by the Authority out of any moneys then due or to become due the Contractor under the Contract, or any part thereof, and in such accounting, the Authority will not be held to obtain the lowest figures for the Work of completing the Contract or any part thereof, or for insuring its proper completion, but all sums actually paid therefore shall be charged to the Contractor. In case the expenses so charged are less than the sum which would have been payable under the Contract if the same had been completed by the Contractor, the Contractor will be entitled to receive the difference; and in case such expenses shall exceed the said sum, the Contractor shall pay the amount of the excess to the Authority upon completion of the Work without further demand being made therefor.

#### 6.11 TERMINATION FOR CONVENIENCE

- A. If the Engineer determines that it is in the public interest to do so, the Engineer may notify the Contractor to discontinue all work, or any part thereof, such notice shall be given to the Contractor in writing and thereupon the Contractor shall discontinue such work, or such part thereof, as the Engineer may designate.
- B. If the Engineer notifies the Contractor to discontinue all work, or any part thereof, the Engineer shall pay and the Contractor shall accept, as full payment for all work done and materials provided, the following sums:
  - 1. For all completed items of work for which there are unit prices provided in the contract.
    - a. The original contract unit prices.
  - 2. For all work on partially completed items.
    - a. A sum agreed to by the Contractor and the Engineer or:
      - 1) The actual costs for direct labor, materials (less salvage value, if any) and use of equipment, plus 10% of this total for overhead; and
      - 2) the actual cost for Workmen's Compensation and Employer's Liability, Insurance, Health, Welfare and Pension benefits, Social Security deductions, and Employment Security Benefits; and
      - 3) 6 percent of the total of (a) and (b) for profit and;
      - 4) the estimated proportionate cost of surety bonds; and
      - 5) the actual cost to the Contractor for work performed by a Subcontractor, plus 10 percent of such cost. No allowance shall be made for general superintendence and the use of small tools and manual equipment,

3. For costs of settlement as:
  - a. Reasonable and necessary accounting, legal, clerical and other costs of work discontinuance; and reasonable and necessary storage, transportation and other costs incurred for the preservation, protection or disposition of the discontinued work.
  - b. When requested by the Engineer, the Contractor shall furnish itemized statements of the cost of the work performed and shall give the Engineer access to all accounts, bills and vouchers, relating thereto and unless the Contractor, when requested, shall furnish such itemized statements and access to all accounts, bills and vouchers, he shall not be entitled to payment for the work for which such information is sought by the Engineer.
  - c. The Contractor shall not be paid and the Contractor shall not have any claims for loss of anticipated profits, for loss of expected reimbursement or for any increased expenses resulting directly or indirectly from the discontinuance of any or all, work or from unbalanced allocation, among the contract item, of overhead expense on the part of the bidder and subsequent loss of expected reimbursement therefor or for any other cause. The Contractor shall incorporate the provisions of this section as provisions in its contracts with each of its subcontractors.



**CERTIFICATE OF COMPLIANCE**  
(Manufacturer of Fabricated Material)

Date \_\_\_\_\_ 20\_\_

WE HEREBY CERTIFY THAT

\_\_\_\_\_  
(Description, or Kind of Material)

Furnished to \_\_\_\_\_  
(Name of Contractor Prime or Sub)

For Use on \_\_\_\_\_ Federal No. \_\_\_\_\_  
(Project No.)

In the Amount of \_\_\_\_\_  
(Quantity Represented)

Identify by \_\_\_\_\_  
(Label, Marking, Seal No., Consignment, or Waybill No.)

Shipped on \_\_\_\_\_ 20\_\_ Delivered on \_\_\_\_\_ 20\_\_

Shipped via \_\_\_\_\_  
(Method of Shipment, Car No., or Truck No.)

**MEETS THE REQUIREMENTS OF THE PERTINENT PROJECT PLANS, SUPPLEMENTARY CONDITIONS AND SPECIFICATIONS OF THE MASSACHUSETTS BAY TRANSPORTATION AUTHORITY, IN ALL RESPECTS, PROCESSING, PRODUCT TESTING AND INSPECTION CONTROL OF RAW MATERIALS ARE IN CONFORMANCE WITH ALL APPLICABLE SPECIFICATIONS, DRAWINGS AND/OR STANDARDS OF ALL ARTICLES FURNISHED.**

All records and documents pertinent to this certificate and not submitted herewith will be maintained available by the undersigned for a period of not less than three years from date of final payment by the MBTA.

(Manufacturer of Supplier)

Signed by \_\_\_\_\_

Title \_\_\_\_\_ NOTARY STAMP  
Notarized Signature of Person having Legal Authority to bind the Supplier

**INSTRUCTIONS**

1. The above is a suitable sample of an acceptable certificate.
2. Certificate is to be submitted in triplicate to the Engineer prior to, or on delivery of, material.
3. The following regulation is applicable to all projects involving Federal Funds.

Section 1001 of Title 18 of the United States Code (Criminal Code and Criminal Procedure) is applicable to this statement. (Section 1001 of Title 18, among other things, provides that whoever knowingly and willfully makes or uses a document or writing containing any false, fictitious or fraudulent statement or entry, in any matter within the jurisdiction of any Department or Agency of the United States shall be fined not more than \$10,000 or imprisoned not more than five years, or both).

**END OF SECTION**



## SECTION 01300

### SUBMITTALS

#### PART 1 – GENERAL

##### 1.1 DESCRIPTION

- A. This Section specifies the general requirements and procedures for preparing and transmitting data to the Engineer for his information, acceptance, or approval. Detailed requirements for submittals are specified in applicable Sections of these Standard Specifications and in the Construction Specifications.

##### 1.2 RELATED SECTIONS

- A. Section 01322 CONSTRUCTION SCHEDULE
- B. Section 01332 e-BUILDER PROJECT MANAGEMENT SYSTEM REQUIREMENTS
- C. Section 01400 QUALITY ASSURANCE

##### 1.3 SUBMITTALS (SHOP DRAWINGS, WORKING DRAWINGS, AND MISCELLANEOUS)

###### A. Definitions

1. Shop Drawings: Original drawings, submitted to the Engineer by the Contractor pursuant to the Work, including, but not limited to: stress sheets, working drawings, diagrams, illustrations, schedules, performance charts, brochures, erection plans, falsework plans, framework plans, cofferdam plans, bending diagrams for reinforcing steel, or other supplementary plans or similar data which are prepared by the Contractor or a Subcontractor, manufacturer, supplier or distributor, and which the Contractor is required to submit for review and approval by the Engineer.
2. Working Drawings: Contractor prepared plans for temporary structures and facilities. Working Drawings for elements of work which may affect safety of persons or property included but are not limited to Contractor's plans for temporary structures such as decking, temporary bulkheads, support of utilities, and for such other work as may be required for construction but which do not become an integral part of completed project.

Miscellaneous Submittals: Those submittals directly related to the work (non-administrative) including quality assurance program, resume of QA Managers, warranties, guarantees, maintenance agreements, maintenance of traffic plan, project photographs, survey data and reports, physical work records, quality testing and certifying reports, record and as-built drawings and data, operating and maintenance manuals, security and protection lists (including keying) and other similar information and materials not defined as shop drawings, working drawings, product data, samples mockups or sample panels.

- B. Within 15 calendar days of receipt of Notice to Proceed, submit to the Engineer, a Schedule of all submittals required by the contract. Submit schedules for submission of shop drawings, working drawings, mock-ups, sample panels, product literature and miscellaneous submittals in that order of priority which reflects sequence of construction requirements, project schedule logistics, and include

anticipated review time that may be required by Contractor and Engineer for these submissions. If complexity of submittal requires more time for review, show approximate extended number of days required. Show all submittals on progress schedules required by Sections 01322 CONSTRUCTION SCHEDULE. Submittal schedules shall contain the following information as a minimum:

1. Submittal number, including revisions.
2. Specification section and paragraph reference.
3. Submittal title and description
4. Date needed to support construction schedule.
5. Date sent to Engineer.
6. Date returned from Engineer
7. Comments. Included within this section will be references to any new RFIs issued as a result, reasons for delay and any other relevant information.

### C. General Procedures

Transmit submittals sufficiently in advance of construction requirements to permit a maximum of 30 calendar days for checking and appropriate action by Engineer.

Submit all work-related submittals as defined in this Section and as required by Contract Documents on a Transmittal Form; Prepare draft of required transmittal form and submit it to Engineer for acceptance. At a minimum, furnish: transmittal forms sequentially numbered and show contract number, project name, date; names of subcontractors, suppliers, manufacturers, and required specification references; category and type of submittal, purpose, description, distribution record (for both transmittals and submittals) and signature of transmitter.

1. Examine and check submission for accuracy, completeness, and compliance with Contract before delivery to Engineer.

Stamp and sign each submission with following statement: "Having checked this submission, we certify that it conforms to the requirements of the Contract in all respects, except as otherwise indicated."

By reviewing and approving each submittal, Contractor represents that he has determined and verified materials, field measurements and field construction criteria related thereto, and has checked and coordinated information contained within such submittals with requirements of Work and Contract.

Submit one construction material or one drawing per submittal review.

2. Maintain at site of Work a complete up-to-date, organized file of all past and current submittals including an index and locating system, which identifies the status of each submission.
  - a. Assign sequential numbers to each submittal.
  - b. Assign new submittal numbers to all re-submissions and cross-reference to previous submittals.
3. Certify shop drawings, working drawings and calculations as submitted by a professional engineer registered in the Commonwealth of Massachusetts when required by individual Specification Sections. Convey, or be accompanied by, information sufficient to completely explain the structures, machines, or systems described and their intended manner of use. When professional certification is required by Contract requirements, Engineer is entitled to rely upon accuracy and completeness of such calculations and certifications.

4. Engineer's Review and Action

- a. The Engineer will review and approve or take other appropriate action upon Contractor's submittals only for the limited purpose of reviewing for conformance with information given and design concept expressed in Contract requirements. The Engineer's action will be taken as to cause no delay in Work or in activities of Contractor. Review of such submittals is not conducted for purpose of determining accuracy and completeness of other details such as dimensions and quantities, or for substantiating instructions for installation or performance of equipment or systems, all of which remain responsibility of Contractor as required by Contract. Engineer's review will not constitute approval of safety precautions or, unless specifically stated by Engineer, of any construction means, methods, techniques, sequences or procedures. Engineer's review of a specific item does not indicate approval of entire assembly of which the item is a component.
- b. Time required for review of submittals and resubmittals by Engineer will be a maximum of 30 calendar days, except as otherwise specified.
- c. All Contractors' submittals will be stamped with one of following dispositions:
  1. Accepted as Submitted
  2. Accepted with Comments
  3. Revise and Resubmit
  4. For Information Only
- d. Handle re-submissions in the same manner as first submittals. On re-submissions, direct specific attention in writing to revisions other than the corrections on previous submissions. Make any correction required by Engineer.
- e. Failure of any material to pass specified tests is sufficient cause for refusal to consider, under this Contract, further samples of same brand or make of that material. Engineer reserves right to disapprove any material or equipment previously proven unsatisfactory in service.
- f. Samples of various materials on site, stored or in place may be taken by Engineer for testing. Samples failing to meet Contract requirements will automatically void approval of items tested. Replace such materials or equipment to meet Contract requirements. When tests are required, make only one test of each sample. Samples that do not meet specified requirements will be rejected. Additional testing of samples will be made by Engineer at Contractor's expense.

D. Requirements for Shop Drawings

1. Shop drawings shall include stress sheets, fabrication details, bending schedules for reinforcing steel, location and details of construction joints in concrete, catalog cuts of equipment or fixtures, wiring or piping diagrams, data sheets and performance curves for electrical, mechanical, or other equipment and any other supplementary data required by the Engineer.
2. Detail drawings for cribs, cofferdams, falsework, shoring, decking, form work, and for other temporary work and methods of construction the Contractor proposes to use, will be required to be furnished. Such drawings shall be subject to review, but details of design will be left to



the Contractor who shall be responsible for the safety and successful construction of the Work. Drawings, the original design for which is the responsibility of the Contractor, shall bear the seal of a Professional Engineer registered in the Commonwealth.

3. Shop drawings shall show design, dimensions, connections, and other details necessary to insure that the Contract Documents are accurately interpreted. Shop drawings shall show proper connections with adjoining work in detail. Where adjoining work requires shop drawings, such drawing must be submitted for approval at the same time so that connections can be accurately checked.
  4. Shop drawings shall establish the actual detail of all manufactured or fabricated items, indicate proper relation to adjoining work and amplify design details of mechanical and electrical equipment in the physical spaces in any structure and incorporate minor changes of design or construction details to suit actual conditions. Where separate sections or trades are involved, shop drawings shall be coordinated and where required by the Engineer shall be submitted in composite form (coordination drawings) clearly designating which trade will perform which work; the words "work by others" will not be accepted.
  5. All requests for approval of materials and equipment and submissions of drawings shall indicate the corresponding number of the section and paragraph of the Specifications and reference to the Contract Drawing sheet numbers under which each of the above are required, and the Construction Performance Monitoring (CPM) activity number.
  6. All shop drawings shall be thoroughly checked by the Contractor for compliance with the Contract Documents before submitting them to the Engineer for approval and shall bear the Contractor's stamp of approval certifying that they have been so checked. Shop drawings submitted without the stamp of approval and certification, or which are incomplete, contain numerous errors, have not been checked, or have been checked only superficially will be returned unchecked by the Authority for resubmission by the Contractor. The Contractor shall certify: "This shop drawing has been thoroughly checked and complies with the Contract Documents and field measurements and the item fits with adjoining work except as noted."
  7. In checking shop drawings, the Contractor shall verify all dimensions and field conditions and shall check and coordinate the shop drawings with the requirements of all other Sections, adjoining materials or trades whose work is related thereto, as required for the proper and complete installation of the work.
  8. Nothing in the above shall be construed to hold the Contractor liable for the design of any of the permanent structures.
- E. When submitting shop drawings or working drawings for approval or review by the Engineer, the following procedures shall apply:
1. Submit to the Engineer with such promptness as to cause no delay in his work, electronic files of the shop drawings, checked and approved by him, of all shop drawings and detail drawings required for the work.
  2. The Engineer will make a prompt decision on approval of such Drawings no later than 30 days after submittal; but if such decision requires extended investigation and study, the Engineer will, within 30 days after the receipt of the submission, give the party making the submission written notice of the reason why the decisions cannot be made within the 30 day period and the date by which the decisions will be made.
  3. Markings of approval, or of corrections required, will be made by the Engineer and record copies made by the Engineer for his own use will be at the Authority's expense.



4. If the Engineer requires corrections, make such corrections, and resubmit the drawings to the Engineer for approval. If corrections are still required, the same procedure shall be carried out until the drawings are acceptable.
5. All items shown on shop drawings shall be clearly identified with their location in the Contract, or by the sheet or detail number in which they appear, in order to facilitate checking by the Authority.
6. Provide hard copies if required by authority having jurisdiction.

#### 1.4 QUALITY CONTROL

##### A. Samples and Tests

1. Inspection and sampling of materials will be carried out, ordinarily at the source or at the site of the Contract Work in accordance with established policies and procedures of the Authority, but the Authority will not assume any obligation for the inspection and sampling of materials at the source. Responsibility for incorporating satisfactory material in the Work rests entirely with the Contractor.
2. Furnish to the Engineer samples specified in the various specification sections. Prepay shipping charges on samples. Materials or equipment for which samples are required shall not be used in the Work until approved in writing by the Engineer.
3. Unless otherwise indicated, submit not less than two identical samples of each type required. Label each sample indicating:
  - a. Name of project and contract number;
  - b. Name of contractor and subcontractor;
  - c. Material or equipment represented;
  - d. Source;
  - e. Name of producer and brand (if any);
  - f. Specification Section, article, and paragraph; and
  - g. Location in project.
4. Transmit a letter submitting each shipment of samples and containing the information required in Article 1.04C of this Section. Enclose a copy of the submittal letter with the shipment and a copy to the Engineer. Approval of a sample shall be only for the characteristics and use named in the submittal and approval, and will not be construed to change or modify any Contract requirement. Before submitting samples, the Contractor shall assure himself that the materials or equipment will be available in the quantities required in the Contract, as no change nor substitution will be permitted after a sample has been approved unless approved by the Engineer in writing.
5. Approved samples not damaged in testing may be incorporated in the finished work if marked for identification and approved by the Engineer. Materials incorporated in the Work shall match the approved samples.
6. Failure of any material to pass the specified tests will be sufficient cause for refusal to consider, under the Contract, any further samples of the same brand, make, or source of that material. The Engineer reserves the right to disapprove any material, which has previously proven unsatisfactory in service.

7. Samples of various materials or equipment delivered on the site or in place may be taken by the Engineer for testing. Failure of samples to meet Contract requirements will automatically void previous approvals of the item tested.

## 1.5 CONSTRUCTION PROCESS PLANS

- A. The Contractor shall submit Construction Process Plans for each activity, phase change or zone change that present impacts to the Operation of the facility or the public way. The Contractor shall prepare a listing of activities requiring a process plan and submit for review to the Authority within 30 days of notice to proceed. The Contractor shall include in the schedule the submission, review and approval of each Construction Process Plan in accordance with the submittal schedule requirements defined in Specification Section 01300 SUBMITTALS. The Contractor shall schedule a pre-activity meeting and invite representatives from the Authority to review each Construction Process Plan prior to final submission.
- B. A draft Construction Process Plan must be uploaded to e-Builder at least fourteen (14) calendar days in advance of work and at least seven (7) calendar days prior to a pre-activity meeting. Each plan shall include/address the following (as applicable):
  1. Associated drawings and specifications from the Contract Documents
  2. Associated Submittals required for prosecuting the particular work activity, which must be approved prior to submittal of the Construction Work Plan
  3. Associated Requests for Information (RFI's)
  4. Options
  5. Related Change Orders
  6. Purchases
  7. Deliveries
  8. Shop Drawings, Product Data and quality control samples
  9. Possible conflicts
  10. Compatibility problems
  11. Time schedules
  12. Weather limitations
  13. Manufacturer's specifications
  14. Compatibility of materials
  15. Acceptability of substrates
  16. Temporary facilities & signage
  17. Space and access limitations
  18. Governing regulations
  19. Safe Work Plans (including Hazard Analysis with site specific work site hazards and safe work practices)
  20. Inspection and testing requirements
  21. Required performance results
  22. Recording requirements
  23. Protection
  24. Quality assurance/quality control
  25. Noise Control
  26. Community Impact
  27. MBTA Operations and/or Facilities Impact
  28. Proposed Traffic Control & Staging Areas
  29. Rigging/staging
  30. Proposed equipment to be used

- C. The draft plans must also include reference to all Contractor Requests for Information (RFIs) and Submittals that pertain to the work identified in the plan. All applicable RFI's and Submittals must be completed prior to uploading plan to e-Builder.
- D. After pre-activity meeting minutes have been agreed to, all comments from the meeting must be incorporated into a final Construction Process Plan. This plan must be submitted and approved by the Authority prior to the start of related work.

## 1.6 REQUESTS FOR INFORMATION

- A. Upon discovery of the need for interpretation of the Contract Documents, the Contractor shall prepare and submit an MBTA Request for Information (RFI) on the form included at the end of this Section. RFIs shall not be used to request approval of submittals, request approval of design changes or substitutions, nonconforming conditions, or requests for changes to Contract schedule and/or Quantities.
  - 1. RFIs shall be issued by the Contractor to the Engineer. RFIs submitted by entities other than the Contractor will be returned with no response.
  - 2. Coordinate and submit RFIs in a prompt manner so as to avoid delays in the work.
- B. Content of the RFI: Include a detailed, legible description of item needing interpretation and the following:
  - 1. Project Name
  - 2. Contract Number
  - 3. Date
  - 4. Name of Contractor
  - 5. RFI Number, numbered sequentially
  - 6. Specification Section number and title and related paragraphs, as appropriate
  - 7. Drawing number and detail references, as appropriate
  - 8. Field dimensions and conditions, as appropriate
  - 9. Contractor's suggested solution(s). If Contractor's solution(s) impact the Contract Completion Date or Quantities, Contractor shall state the impact in the RFI.
  - 10. Contractor's signature
  - 11. Attachments: Include drawings, descriptions, measurements, photos, Product Data, Shop Drawings, and other information necessary to fully describe item needing interpretation.
- C. RFI Log: Prepare, maintain, and submit a log of RFIs organized by the RFI number containing the following information:
  - 1. Project Name
  - 2. Project Contract Number
  - 3. Name of Contractor
  - 4. RFI number and Revision Indicator
  - 5. RFI Description
  - 6. Date RFI was submitted
  - 7. Date Response Required
  - 8. Date Response Received
  - 9. Date Closed

**D. Engineer's Action:**

1. Engineer will review each RFI, determine action required and return to the Contractor within 14 days. Any change to the Contract Completion Date or Quantities may result in a change being submitted under Article 2 – Scope of Work of Section 0700 of the General Conditions.
2. Engineer will review RFI and determine if response is a change to contract documents as described above. If a change or substitution is requested, a Design Change Request form must be completed.

**1.7 DESIGN CHANGE REQUEST**

1. The purpose of the MBTA Design Change Request included at the end of this section is to obtain approval to modify the contract documents. Requester will provide a detailed description of the design change. Attach additional sheets if needed to best describe the situation and forward to the Engineer.
2. The Engineer will provide the response and attach any required design change sketches or specification modifications. The Engineer will then forward to the MBTA Project Manager for review and approval by MBTA departments.

**PART 2 – PRODUCTS**

Not used.

**PART 3 – EXECUTION**

Not used.

**PART 4 – MEASUREMENT AND PAYMENT**

**4.1 GENERAL**

- A. No separate measurement or payment will be made for the work required under this Section. All costs in connection therewith will be considered incidental to the item or items of Work to which they pertain.

**END OF SECTION**



<b>T</b> <b>MBTA Request For Information</b> <b>RFI No.</b>	
<b>CONTRACTOR:</b>	<b>CONTRACT NO.</b>
<b>AFFECTED DOCUMENT (S): SPEC:</b> _____	
<b>DWG (S):</b> _____	<b>OTHER</b> _____
<b>DESCRIPTION:</b>	
<b>JUSTIFICATION:</b>	
<b>SIGNATURE:</b>	<b>DATE:</b> / /
<b>RESPONSE:</b>	
<b>DESIGNER:</b>	<b>DATE:</b> / /
<b>MBTA PROJECT MGR:</b>	<b>DATE:</b> / /

## MBTA DESIGN CHANGE REQUEST (DCR)

**DCR No.:** \_\_\_\_\_

Contract No.: \_\_\_\_\_ Contract Name: \_\_\_\_\_

Reference Documents:  Spec. \_\_\_\_\_  Dwg. \_\_\_\_\_  Other \_\_\_\_\_

**DESCRIPTION OF CHANGE AND REASON FOR CHANGE:**

*(Attach additional sheets as required)*

Requested By:  
(Signature)

Organization:

Title:

Date:

**DISPOSITION:**

**Design Change Approval:**

\_\_\_\_\_  
Engineering Consultant

\_\_\_\_\_  
Date

\_\_\_\_\_  
MBTA Project Manager

\_\_\_\_\_  
Date

\_\_\_\_\_  
Director, QA

\_\_\_\_\_  
Date

\_\_\_\_\_  
Other

**EXHIBIT B**

**MBTA PRELIMINARY FINDINGS REGARDING LMH-LANE DEFAULT,  
MATERIAL BREACHES AND ABANDONMENT OF THE CABOT YARD PROJECT**

**May 23, 2022**

**I. BACKGROUND**

The Massachusetts Bay Transportation Authority (“hereinafter the “MBTA”) contracted with LMH-Lane Cabot Yard Joint Venture (hereinafter “LMH-Lane”) by MBTA Contract No. R44CN02 to perform the Cabot Yard & Maintenance Facility Improvements Project (the “Project”). LMH-Lane was a joint venture between Lane Construction Corporation and LMH-CMC, JV. LMH-CMC, JV, in turn was a joint venture between LM Heavy Civil Construction, LLC (“LMH”) and Cooperativa Muratori & Cementisti-C.M.C. Di Ravenna Societa Cooperativa (“CMC”). LMH-Lane was the lowest eligible, responsible bidder for the Project with a bid price of \$213,817,000.00. LMH-Lane’s bid on the Cabot Yard Project included LMH as a pre-qualified entity to perform trackwork. The Contract also had self-performance requirements for LMH-Lane (as discussed further below). On or about August 2, 2018, LMH-Lane and the MBTA entered into the Contract in the sum of \$213,817,000.00.

Zurich American Insurance Company, Fidelity and Deposit Company of Maryland, Liberty Mutual Insurance Company, Berkshire Hathaway Specialty Insurance Company, and National Union Insurance Company of Pittsburgh, PA, (together the “Co-Sureties”) issued on behalf of LMH-Lane Performance and Payment Bonds (the “Bonds”) in the penal sum of \$213,817,000.00.

CMC filed for bankruptcy in late 2018. As a result, by early 2019 LMH-CMC JV was no longer able to perform the Project and, as a result, LMH was unable to perform trackwork leaving LMH-Lane without a certified MBTA track contractor. This rendered LMH-Lane non-compliant with the 50% self-performance requirement of Article 6.1B of the Contract. MBTA subsequently approved up to \$10 Million of trackwork, but also reminded LMH-Lane that it needed to bring the Project into compliance with the 50% self-performance requirement of the Contract. *See* MBTA Letters 174 and 365. LMH-Lane’s choice to sublet the trackwork and the sitework resulted in LMH-Lane remaining non-compliant and LMH-Lane ultimately admitted that “because of LMH essentially ceasing operations because of CMC’s bankruptcy in Italy, LMH-Lane could not meet the 50% self-performance requirement of Article 6.1B of the Contract.” *See* LMH-Lane Letter 524 dated November 3, 2021.

On January 31, 2022, LMH-Lane issued a Notice of Demobilization to the MBTA, declaring that it had abandoned the Project on the pretense of a safety issue relating to an incident for which LMH-Lane was not even present at the Project. The MBTA terminated LMH-Lane for default by letter dated February 10, 2022. On February 11, 2022, the MBTA requested Co-Sureties to remedy the default of LMH-Lane and complete the Contract under Performance Bond Nos. 9269565, 09254345, 268010438, 012207605, 47SUR300016010062, and 860888.



## **The MBTA has Complied With and Participated In the Co-Sureties' Investigation**

In response to MBTA's request that Co-Sureties remedy the default of LMH-Lane and complete the Contract under the Performance Bond, lead Surety, Liberty Mutual Insurance Company, informed the MBTA that the Co-Sureties had opened an investigation into the MBTA's declaration of default. Since that time, Co-Sureties have visited the Project on April 5, 2022 and April 28, 2022. Following the April 28, 2022 site visit, the Co-Sureties submitted a Memorandum to the MBTA requesting documents and asking questions, which the MBTA responded to. The Co-Sureties also had a teleconference with the MBTA on April 19, 2022, after which the Co-Sureties submitted a Memorandum with even more questions that the MBTA responded to on April 22, 2022. The Co-Sureties then emailed additional questions on April 22, 2022, which the MBTA responded to on April 27, 2022.

The Co-Sureties' investigation also involved submitting written questions to the MBTA on March 8, 18, 25, 31, April 22, and May 3, 6, 12 and 19, 2022. The MBTA answered the Co-Sureties' questions through written responses on March 16, 25, 31, April 6, 27, May 6, 10 and 23, 2022. MBTA has fully cooperated with Co-Sureties and answered all questions asked during site visits and in written questions. The MBTA has also provided the Co-Sureties with access to E-Builder, which contains correspondence and other documents relating to the Project.

Based on the MBTA's investigation, including the responses to the Co-Sureties' questions, the MBTA has determined that LMH-Lane materially defaulted under the Contract and that the MBTA performed its obligations on the Project.

## **II. LMH-LANE CABOT YARD JV MATERIALLY BREACHED ITS CONTRACTUAL OBLIGATIONS**

### **LMH LANE'S FAILURE TO PAY ITS SUBCONTRACTORS**

The MBTA quickly learned that, even prior to the MBTA's termination letter, LMH-Lane was routinely failing to pay its subcontractors in material breach of the Contract. In fact, LMH-Lane had systematically failed to pay its subcontracts well before any of the events which LMH-Lane complained of in its January 31, 2022 Notice of Demobilization.

The MBTA is aware of the following subcontractors of LMH-Lane that were not paid timely in material breach of the Contract:

- Terra Environmental, LLC issued its Demands for Direct Payment on March 9 and 15, 2022, claiming that LMH-Lane had failed to pay \$399,134.10 in invoices dating back to September 29, 2021;
- Sunrise Erectors, Inc. sent its Demand for Direct Payment on February 24, 2022, asserting LMH-Lane had failed to pay \$591,470.00 on invoices dated July 2020, April 2021, May 2021 June 2021, July 2021, August 2021, and September 2021, and further asserting LMH-

Lane only “recently” made a single payment of just over \$183,000 on the total outstanding balance of more than \$770,000;

- J.R. Vinagro Corporation issued a Demand for Direct Payment on March 3, 2022, claiming LMH-Lane failed to pay \$169,305.53 on invoices dating August 2020, November 2020, July 2021, September 2021, and December 2021, a span of more than fifteen (15) months of invoices ignored by LMH-Lane;
- Massachusetts Electric Construction Co. (“MEC”) filed an arbitration against LMH-Lane in March 2020, alleging LMH-Lane breached its subcontract with MEC and failed to compensate MEC for costs incurred by MEC on the Project;
- WM Collins, N/S Corporation, Delta Beckwith, United Civil and Nortrak have all contacted MBTA regarding LMH-Lane’s failure to make payments; and
- Managed Air Systems, LLC (“Managed Air”), contacted the MBTA on March 28, 2022, citing extreme financial distress caused by LMH-Lane’s refusal to pay an outstanding balance of \$613,496.06 and asserting that LMH-Lane’s refusal to pay Managed Air was causing Managed Air to consider closing its doors permanently.

Failure to pay subcontractors is an unmistakable breach of the Contract. *See* General Conditions Article 5.17, “The Contractor [LMH-Lane] shall be responsible for prompt payment for all services, labor, equipment, and materials furnished by or through the Contractor for purposes of the Contract.” *See also* General Conditions Article 6.1. These breaches were systematic and began more than sixteen (16) months before LMH-Lane’s Notice of Demobilization or any of the issues LMH-Lane complained of.

### **LMH LANE’S MATERIAL BREACHES OF PERFORMANCE**

1. There is No Dispute that LMH-Lane Did not Comply with the Self-Performance Requirements of Article 6.1B of the Contract. *See* LMH-Lane Letter 524; *See* MBTA Letters 174, 340 and 365.
2. LMH-Lane Abandoned of the Project without Justification. *See* LMH-Lane Letter No. 1807-300-590-W and MBTA Letter dated February 25, 2022.
3. LMH-Lane failed to provide supporting documentation to justify its assertions of alleged design defect and differing site conditions claims and then abandoned the Project less than one week later. *See* MBTA’s numerous Letters identifying LMH-Lane’s dilatory and shoddy invoicing practices, *Letter Nos. 090 dated October 24, 2019, No. 124 dated June 29, 2020, No. 125 dated June 29, 2020, No. 128 dated July 27, 2020, No. 172 dated May 28, 2021, No. 218 dated July 13, 2021, No. 222 dated July 19, 2021, No. 272 dated August 20, 2021, No. 344 dated October 21, 2021, and No. 367 dated December 2, 2021.*

4. LMH-Lane's Unexcused Delays of at Least 521 days are a Material Breach of the Contract Articles 6.2, 6.8, 6.9, and 6.10 of the General Conditions. *See* MBTA Letter 388.
5. LMH-Lane's Refusal to Timely Provide Schedule Recoveries was a Material Breach of the Contract's Construction Schedule Section 1322 – 1.4-A and B, Construction Schedule Section 1322 – 1.11-C, and General Conditions Article 3.5E. *See* MBTA Letter Nos. 167, 273 and 281.
6. LMH-Lane's refusal to provide schedule recoveries was a breach of Section 01332 and Article 3.5E. of the General Conditions. Schedule Recovery is a clear requirement of the Contract. *Specification Section 01322, Article 1.11C.*
7. LMH-Lane Repeatedly Submitted Incomplete, Late, and Non-Compliant Cost Proposals, Daily Reports (T&M Slips) and Pay Requisitions in Material Breach of General Conditions Article 1.1A(14) and (15) and Article 1.8, as well as Specification 01151 – Measurement and Payment, paragraph 1.5.B.1 and 1.7. *See* MBTA Letter Nos. 90, 124, 125, 128, 172, 218, 222, 239, 272, 344 and 367; MBTA Letter dated February 25, 2022 responding to LMH-Lane Letter No. 585.
8. LMH-Lane failed to submit a cost proposal for DCR-12 for more than 700 days. *See* MBTA Letter 237. There are also many other cost proposals for DCRs that LMH-Lane failed to submit.
9. LMH-Lane Failed to Properly Advance Work on the Carhouse and Yard. *See* LMH-Lane Letter Nos. 551 and 590; *See also* Feb. 25, 2022 MBTA Letter addressing in full LMH-Lane's assertions. LMH-Lane materially breached the Contract by abandoning the Project and failing in numerous aspects to advance the work, including, as follows:
  - a. LMH-Lane did not complete the work at Zone C including failing to install the dust collector system, replace the undertrain, complete the new standpipe system, and complete the gas system.
  - b. Failure to Install the Stinger System (power for the trains): *See MBTA Letter No. 067 dated August 23, 2019; Contract Drawing CMF-TP-0001 – Staging Plans.*
  - c. Failure to adhere to LMH-Lane's Schedule Update No. 29 for Zone D work in the Yard, failure to provide a Phasing Plan demonstrating that LMH-Lane had necessary long lead-time items to complete Zone D, and ultimate failure to complete the work for Zone D. *See MBTA Letter No. 375 dated December 29, 2021; January 25, 2022 Email from Seth DeMello and attached Spreadsheet.*

10. LMH-Lane's late submission of Process Plans delayed and negatively impacted the work and was a material breach of the Contract Specification Section 10300, Article 1.5. *See MBTA Letter No. 312 dated September 9, 2021.*
11. Failure to install Manhole CV-001 that was the subject of RFI-713.
12. Failure to devise, communicate, and implement a plan for temporary power at the Switch Houses in breach of Specification Section 01500.
13. LMH-Lane failed to meet the Contract requirements pertaining to time frames for submitting Process Plans and once the plans were submitted, LMH-Lane often proposed last minute changes to add or subtract work. (The Process Plan for Track 9 South was submitted one day before the diversion.) *See, e.g., MBTA Letters No. 037 dated May 29, 2019, No. 039 dated June 5, 2019, No. 188 dated May 27, 2021, No. 234 dated July 27, 2021, No. 245 dated August 4, 2021, and No. 323 dated September 23, 2021.*

### **III. THE MBTA PERFORMED ALL OBLIGATIONS AND DID NOT BREACH THE CONTRACT**

The MBTA's primary contractual obligation is to make payment:

In consideration of the foregoing promises the Massachusetts Bay Transportation Authority agrees to pay and the Contractor agrees to receive as full compensation for everything furnished and done by the Contractor under this contract, including all work required but not shown on the plans for the items herein mentioned, and also for all loss or damage arising out of the nature of the work aforesaid, or from the action of the elements (except as excluded in the Standard Specifications, Section 00700, Article 5.19 or the Supplementary Conditions thereto) or from any delay or from an unforeseen obstruction or any difficulty encountered in the prosecution of the work, and for all risks of every description connected with the work, and for all expenses incurred by or in consequence of the suspension or discontinuance of the work as herein specified, and for well and faithfully completing the work, and the whole thereof, as herein provided, such prices as are set out in the accompanying Bid Form, and for all work required, for which there is no item in the Bid Form, such compensation as is provided for in the aforesaid Specifications.

*See Contract Section 00510-4, Clause 3; See also Specification 01151-3 – Measurement and Payment, including but not limited to Section 1.3 Scope of Payments; 1.5 Payment for Extra Work; and 1.7 Partial Payments.*

Payment for work other than that provided for in the Contract due to any act or omission by the MBTA was governed by General Conditions Section 00700-3 Article 5.19:



All claims of the Contractor for compensation other than as provided for in the Contract due to any act of omission or commission by the Authority or its agents must be made in writing to the Engineer within 10 days after the beginning of any work or the sustaining of any damage due to such act. Such written statement shall contain a description of the nature of the Work provided or damage sustained; and the Contractor, shall on or before the fifteenth day of the month succeeding that in which such Work is performed or damage sustained file with the Engineer an itemized statement of the details and amount of such work or damage. Unless such statement shall be made as required, the claim for compensation shall be forfeited and invalidated, and the Contractor shall not be entitled to payment due to any such work or damage. Such notice by the Contractor and the keeping of costs by the Engineer shall not in any way be construed as proving the validity of the claim. The provisions of this paragraph shall not apply to changes in quantities as provided under Article 2.5 or to Extra Work ordered by the Engineer in writing.

General Conditions Section 00700-3 Article 5.19.

Thus, the MBTA was required to make payments for work under the Contract and for work other than provided in the Contract, but not unconditionally. LMH-Lane was required to submit sufficient documentation and follow the contracted-for procedures. The MBTA made all payments to LMH-Lane where LMH-Lane submitted a compliant pay application, including the necessary documentation required by the Contract.

The documentation demonstrating MBTA's payments to LMH-Lane is available on E-Builder, at 04 Construction; 08 GC Requests. The documents in this subfolder demonstrate LMH-Lane's pay requests or applications that were reviewed, approved, and paid by the MBTA. LMH-Lane's failure to submit a full and complete package resulted in back-and-forth between the MBTA and LMH-Lane, which caused significant delay in approval of pay requests. In fact, LMH-Lane's submission of erroneous invoices on many occasions required the MBTA to assist LMH-Lane multiple times to prepare proper invoices in order to facilitate payment (as recorded in E-builder).

In addition to the MBTA's compliance with its payment obligations, the MBTA complied with its other contractual obligations. The MBTA's investigation has revealed the following findings that the MBTA did not breach its obligations under the Contract.

1. The MBTA did not prevent LMH-Lane from performing Conduit Re-lining.
  - a. LMH-Lane failed to advance conduit relining work for more than a year and half through its own means and methods (as required by the Contract). *See* MBTA Feb. 2, 2022 letter response to LMH-Lane Letter No. 585; *MBTA Response to RFI-237*; *See Specification Section CYR-16300, Articles 3.1A, 3.2B.4 and 3.2B5.*
  - b. LMH-Lane failed to respond to the MBTA regarding conduit relining for over a year-and-a-half and did not identify any means and methods to conduct the work. *See LMH-Lane Letters No. 1807-300-253-W dated March 19, 2021, No. 1807-300-*

264-W dated April 9, 2021, and No. 1807-300-278-W dated April 22, 2021; see also MBTA's response to RFI-237; See also MBTA Feb. 2, 2022 letter response to LMH-Lane Letter No. 585

- c. Even if LMH-Lane believed it would be impossible to satisfy the Contract requirements pertaining to conduit relining, it ignored the Contract mechanisms available to address its concerns over the Contract Specifications and site conditions including through a Design Change Request ("DCR"). See *Specification Section 01300, Articles 1.6D and 1.7; Specification Section 01400, Articles 1.1B and 1.4A; Design Change Request Form included in Specification Sections 01300 and 01400; Article 2.2 of the General Conditions; See also MBTA Feb. 2, 2022 letter response to LMH-Lane Letter No. 585.*
2. The December 17, 2021 Safety Incident was not a material breach of the Contract, and LMH-Lane's attempt to use the Incident as a reason to abandon the Project is a red herring when LMH-Lane was already in material breach of several contractual provisions (as set forth above) and LMH-Lane did not meaningfully attend and participate in the significant MBTA meetings and Q&A sessions, nor did LMH-Lane raise any concerns following the MBTA's additional safety protocol implementation. See MBTA Feb. 2, 2022 letter response to LMH-Lane Letter No. 585; See MBTA Letter No. 377 dated January 5, 2022.
3. The Carhouse
    - a. **Stinger System:** As stated above, the Contract and the MBTA permitted LMH-Lane to install the Stinger System on a zone-by-zone basis, and the MBTA did not prevent LMH-Lane from completing this work. See *MBTA Letter No. 067 dated August 23, 2019; Contract Drawing CMF-TP-0001 – Staging Plans; See MBTA Letter No. 067 dated August 23, 2019; See also MBTA Feb. 2, 2022 letter response to LMH-Lane Letter No. 551.*
    - b. **Electrical Feeds and Gas Lines Issues were Caused by LMH-Lane:** All of LMH-Lane's layout and constructability conflicts related to the electrical feeds and gas lines that power the HVAC system were a product of LMH-Lane's own means and methods. See *MBTA Letter No. 002 dated September 21, 2018; See RFI No. 256 Light Fixture Installation Conflicts, dated August 6, 2021, and MBTA's August 26, 2019 Response (conflicts with lighting fixtures due to steam line left in place requiring light fixtures to be adjusted), RFI No. 449 Electrical Ductbank and Existing Steam Line Conflict, dated July 16, 2020, and MBTA's July 21, 2020 Response (steam line conflict with new ductbank in basement), RFI No. 502 Dust Collect Duct and Existing Steam Pipe and Crane Conflict, dated January 7, 2021 and MBTA's January 25, 2021 Response (conflicts among dust collector, steam line, and overhead crane), and RFI No. 516 HVAC Duct and Existing Steam Conflict in Zone M, dated November 10, 2020 and MBTA's November 19, 2020 Response (existing steam line conflict with HVAC system in Zone M); See also MBTA Feb. 2, 2022 letter response to LMH-Lane Letter No. 551.*

- c. **Zone F Slab Conduits:** The Conduits in Zone F Slab were a differing site for which the MBTA issued Work Directive 606 on May 13, 2019, and LMH-Lane submitted Proposed Change Order (“PCO”) 26 in response. The MBTA paid for some of the PCO and was willing to further adjust the Contract Price upon receipt of required backup documentation including time and materials (“T&M”) slips and related backup documentation within 24 hours of performing the work reflected in the slips. *See MBTA Change Order Guidelines; General Conditions at 1.1A – Definitions of Contract and Contract Documents.* LMH-Lane did not provide signed T&M slips or the necessary backup documentation for the purported work. *See also* MBTA Feb. 2, 2022 letter response to LMH-Lane Letter No. 551.
- d. **Water Pipe Burst:** When a water pipe burst and caused flooding, the MBTA issued a Work Directive to address the situation, which is the subject of LMH-Lane’s PCO-91, and ultimately paid LMH-Lane nearly \$1 Million for work pursuant to PCO-91A and B, and approved over \$700,000 more for PCO-91C and D. LMH-Lane, however, did not submit required documentation supporting payment requisition and ultimately abandoned the Project before the work was completed.
- e. **LMH-Lane did not request Access to Zone M:** LMH-Lane never requested access to Zone M in accordance with the Contract Documents, as it did for access to Zones C, F and I, and was unprepared to access Zone M when LMH-Lane did not have acceptable maintenance platforms and did not provide an acceptable Zone M Process Plan. *See LMH-Lane Letters No. 1807-300-002-W dated September 16, 2018, and No. 1807-300-116-W dated January 14, 2020; Submittal MF01300-006-00; LMH-Lane Letter No. 1807-300-399-W dated July 23, 2021.*
- f. **LMH-Lane’s Baseline Schedule did not call for access to Zone M:** LMH-Lane argues in its Letter No. 1807-300-256-W dated March 25, 2021, that “Project Schedule, in accordance with Article 6.2, Prosecution of Work of the Contract, depicts a flow of Work in Zone M prior to Zone L”, however, Zone L is not mentioned in Article 6.2 and LMH-Lane’s Baseline Schedule depicted completing fifteen zones in approximately two and one-half years (November 2018 through March 2021), before going into Zone L. LMH-Lane completed only two zones in the Carhouse since it mobilized to the Carhouse belatedly in April 2019. *See* MBTA Feb. 2, 2022 letter response to LMH-Lane Letter No. 551.
- g. **LMH-Lane was not ready to perform work in Zone M:** As of the end of 2019, LMH-Lane had not provided an acceptable submittal for the necessary maintenance platforms to access the roofs of new Red Line cars, and those platforms had not been fabricated. *See LMH-Lane’s Submittals MF05100-031-00 and -032-00.* LMH-Lane’s Maintenance Platform Shop Drawings were returned “Revise and Resubmit” on December 10, 2019. LMH-Lane resubmitted MF05100-031-01 and -032-01 Maintenance Platform Shop Drawings on January 13, 2020, and the

MBTA accepted these submittals with comments later in January. *See* MBTA Feb. 2, 2022 letter response to LMH-Lane Letter No. 551.

- h. **LMH-Lane was limited to two (2) zones at a time in the Carhouse, and had not completed its work in Zones C and F.** *See* MBTA Feb. 2, 2022 letter response to LMH-Lane Letter No. 551.
  - i. **Temporary Heat:** LMH-Lane failed to provide the submittal identifying its plan for temporary heat as required prior to prosecuting the work requiring removal of the existing heating system in Zone L of the Carhouse. *See MBTA Letters No. 143 dated March 8, 2021, and No. 226 dated July 21, 2021; Specification Section 01300, Article 1.5B, Item 2; Specification Section 01568; See* MBTA Feb. 2, 2022 letter response to LMH-Lane Letter No. 551.
  - j. **Failure to Coordinate Carhouse and Yard Work in Zone L:** LMH-Lane failed to coordinate the Carhouse and Yard work relevant to Zone L. LMH-Lane was supposed to complete Tracks 1 and 2 during weekend outages (*see General Conditions, Article 6.4B*), but these tracks are still out of service after three years. Moving into Zone L would mean that Tracks 1, 2, 5 and 6 would all be out of service. This was an unacceptable level of outages in Cabot Yard, which the Contract required to remain in operation throughout construction. *See* MBTA Feb. 2, 2022 letter response to LMH-Lane Letter No. 551.
  - k. **LMH-Lane failed to provide necessary documentation for Zone F Load Calculations:** The Contract required LMH-Lane to consider stresses in the existing structure due to construction loads, however, LMH-Lane failed to provide necessary documentation, including data sheets, for the specific equipment to be used. *Contract Drawing S-0001 Note 10.* The MBTA offered to meet with LMH-Lane on these issues and issued Non-Conformance Report (“NCR”) 68 because LMH-Lane brought in a manlift that was not approved for use on the concrete slab in Zone F. LMH-Lane did not respond to the MBTA. *See* MBTA Feb. 2, 2022 letter response to LMH-Lane Letter No. 551.
  - l. **Zone C was not Completed, and the MBTA only took control over certain areas where LMH-Lane’s long delay was creating a hardship on MBTA.** *See* MBTA Feb. 2, 2022 letter response to LMH-Lane Letter No. 551.
4. The Yard
- a. LMH-Lane’s complaints regarding refusal of access or limiting phases are so vague such that the MBTA has had no opportunity to meaningfully respond.
  - b. **LMH-Lane did not Submit Necessary Diversion Requests for Weekend Work:** Weekend work is only allowed if there is a timely diversion request (three weeks in advance of the request), which LMH-Lane consistently failed to submit. *General*



*Conditions, Article 6.4B.10. See also* MBTA Feb. 2, 2022 letter response to LMH-Lane Letter No. 551, including regarding LMH-Lane’s scheduling and Process Plan issues. In fact, LMH-Lane did not ever comply with the requirement to submit diversion requests three weeks in advance.

- c. **LMH-Lane never provided a Phasing Plan that demonstrated it had all the long lead-time items necessary to complete Zone D:** The MBTA requested a walk-through to confirm LMH-Lane had the materials necessary to perform the work in Zone D but LMH-Lane refused to participate. *See MBTA Letter No. 375 dated December 29, 2021.* On January 25, 2022, LMH-Lane provided a Switch Delivery Storage Schedule that indicated it did not have TO23 – a requirement for Zone D – and that the shipping date for that turnout was unknown. *See January 25, 2022 Email from Seth DeMello and attached Spreadsheet.* TO23 was finally delivered to the site as of February 3, 2022 – after LMH-Lane had already abandoned the work.
- d. **There was no phasing issue for Turnouts:** The Contract requires LMH-Lane to provide and install new Turnouts SW44, SW42, and SW41. Contrary to LMH-Lane’s statement, there was no phasing issue that inhibited installation of SW42, LMH-Lane submitted its Process Plan related to SW44 only 8 days before the first diversion and failed to follow its own intended critical path as set forth in its Baseline Schedule, and LMH-Lane simply never ramped-up with the resources needed to meet its schedule. *See* MBTA Feb. 2, 2022 letter response to LMH-Lane Letter No. 551.
- e. **The MBTA agreed that SW41 did not need to be completed, and LMH-Lane’s related complaints are a red herring.** *See* LMH-Lane’s Schedule Update 29, which shows this work being performed over the weekend of April 15, 2023; *See also* MBTA Feb. 2, 2022 letter response to LMH-Lane Letter No. 551.
- f. **LMH-Lane’s stockpile of welded rail stringers on top of the proposed routing for new utilities created the conflict with the new location of MH20A.** *See MBTA Letter No. 359 dated November 16, 2021 for a Map.* Moreover, LMH-Lane did not have MH20A available to complete its work at the time of its proposed diversion. *See MBTA Letters No. 213 dated July 9, 2021, and No. 216 dated July 13, 2021.*
- g. **LMH-Lane’s Zone C Complaints are a red herring:** Work on existing drainage structures and the existing bridge did not affect LMH-Lane’s ability to work on other areas, and LMH-Lane did not have the capacity to perform additional trackwork as is evident by LHM-Lane’s election not to even start work in Zones A or B. *See LMH-Lane Submittal MF01300-007-01 Construction Process Plan Review Comments for Zone I, dated March 5, 2020, Note 2 (“Trackwork: As of the date of this submission...[LMH-Lane] does not have an MBTA approved track*

*subcontractor.*”); See also MBTA Feb. 2, 2022 letter response to LMH-Lane Letter No. 551.

- h. **LMH-Lane work in Zone A was not held up by the Midland Bridge survey:** LMH-Lane never provided the tie dapping plan it was required to provide. *Specification Section 01010, Article 1.9; See Drawing CYR-K-502, Note 3.* LMH-Lane performed the work as requested. Nothing was held up. LMH-Lane followed up by submitting an RFI on June 9, 2021 and the MBTA responded on June 10, 2021. *See RFI-632; See also MBTA Feb. 2, 2022 letter response to LMH-Lane Letter No. 551.*
- i. **LMH-Lane’s Process Plan Zone A, Phase 19, Track 9 was untimely and would have caused an impermissible shut down of use of the crossover in that area.** *See MBTA Letter No. 312 dated September 9, 2021; See Specification Section 10300, Article 1.5; See also MBTA Feb. 2, 2022 letter response to LMH-Lane Letter No. 551.*
- j. **LMH-Lane had coordination issue related to Manhole CV-001, and LMH-Lane did not respond to RFI-713 or complete the work.** *See MBTA Feb. 2, 2022 letter response to LMH-Lane Letter No. 551.*
- k. **Installation of new power ductbank along the Vehicle Maintenance alleyway was not the critical path for establishing power distribution for the new Substation and Carhouse, and LMH-Lane never requested access to the area long the Vehicle Maintenance alleyway.** *See MBTA Feb. 2, 2022 letter response to LMH-Lane Letter No. 551.*
- l. **Test Pits: LMH-Lane failed to properly invoice the MBTA for the test pits.** *See also MBTA Feb. 2, 2022 letter response to LMH-Lane Letter No. 551.*
- m. **The MBTA obtained the permit from MassDOT to access the MassDOT Vent Building, but LMH-Lane had already abandoned the work.** *See LMH-Lane’s Schedule Update No. 29 (access was not a critical activity) and MBTA Feb. 2, 2022 letter response to LMH-Lane Letter No. 551.*
- n. **LMH-Lane had no plan for temporary power:** Temporary power is part of LMH-Lane’s scope, yet LMH-Lane was unable to provide a plan to MBTA upon request. *Specification Section 01500; See also MBTA Feb. 2, 2022 letter response to LMH-Lane Letter No. 551.*
- o. **The Stairs Design was not defective:** MBTA issued a DCR to change the stairs to a pre-engineered, over-the-counter, metal stair/platform system that is moveable and adjustable, LMH-Lane knew what it must purchase to perform this work, yet LMH-Lane never provided a cost proposal. The MBTA closed the RFI-700 on the stair design change on November 8, 2021.

- p. **NCRs.** There were multiple NCRs issued that were never closed out per Contract requirements.

#### 5. **Schedule:**

- a. LMH-Lane refused to meet with the MBTA and PHM to defend its TIA-05. The MBTA went to extraordinary lengths – above and beyond the Contract requirements – to help LMH-Lane mitigate delays and recover time, which are set forth in MBTA February 2, 2022 letter response to LMH-Lane Letter No. 551.
- b. The MBTA never issued any stop work orders on the Project. The only mandated work stoppage was due to COVID-19 and the MBTA granted a time extension.
- c. All of the MBTA’s Work Directives, RFIs, DCRs, and PCOs have been reasonable and appropriate, as addressed in detail in MBTA Feb. 2, 2022 letter response to LMH-Lane Letter No. 551.
- d. The MBTA issued Work Directives for sequencing changes related to SW44 and SW42, as well as SW09, SW10, and SW12, so that these turnouts would best accommodate the new, heavier Red Line cars. The MBTA also issued a Work Directive for temporary installation of SW09, SW10, and SW12 because LMH-Lane stated it could complete all three of these turnouts during a single five-day diversion. These changes to work sequence were not overly burdensome on LMH-Lane, who was unable to adhere to its own Schedule. *See* MBTA Feb. 2, 2022 letter response to LMH-Lane Letter No. 551.
- e. The Contract documents instructed LMH-Lane to expect to encounter mercury related to equipment and stated that hazardous materials may be present in sediments. *Specification Section 02081*. LMH-Lane’s complaints related to DSCs for mercury are unwarranted.
- f. LMH-Lane’s cost proposals for Extra Work lacked clarity and/or supporting documentation such that the MBTA needed more review time, which would have been avoided if LMH-Lane submitted accurate proposals.

#### 6. **Permits**

- a. The MBTA timely engaged OPSI related to the building permit applications, and LMH-Lane was not prepared to begin the work any earlier for reasons unrelated to building permits. *See* MBTA Feb. 2, 2022 letter response to LMH-Lane Letter No. 551.
- b. The MBTA timely applied for an EPA permit and included the necessary documents in its bid-proposal. *See RFI-80, “PCBs Approval Plan,” submitted*

*December 11, 2018 and responded to December 20, 2018 (“Please see attached letter and email regarding Conditional Approval from the US EPA with regards to the Remediation plans related to PCBs in the Carhouse relating to US EPA outlined in Appendix S. EPA Amendment #4 of the Contract Documents.”). See MBTA Feb. 2, 2022 letter response to LMH-Lane Letter No. 551.*

- c. There was no significant delay in the MBTA’s review of environmental work plans. The Contract allowed the MBTA 30 days to review and return these submittals. The MBTA took 39 days to respond to the initial HMMP submittal. The MBTA returned all subsequent submittals for the HMMP and dust monitoring plans in 30 days or less (6 days in one instance).

#### **7. Other**

- a. LMH-Lane’s Process Plans were deficient, untimely, and failed to meet Contract requirements. *See, e.g., MBTA Letters No. 037 dated May 29, 2019, No. 039 dated June 5, 2019, No. 188 dated May 27, 2021, No. 234 dated July 27, 2021, No. 245 dated August 4, 2021, and No. 323 dated September 23, 2021; See MBTA Feb. 2, 2022 letter response to LMH-Lane Letter No. 551.*

#### **IV. CONCLUSION**

The MBTA has determined that LMH-Lane committed repeated, material breaches of its obligations under the Contract. LMH-Lane’s breaches began well-before the issues it now complains of in an attempt to blame the MBTA for its failures. Conversely, the MBTA has complied with all of its contractual obligations, including primarily its obligation to issue payment when LMH-Lane submitted sufficient and compliant pay applications.



**EXHIBIT C**

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Re: MBTA Contract Number R44CN02 (the "Contract")  
Cabot Yard and Maintenance Facility Improvements

Dear Ms. Craddock,

Under the provisions of Massachusetts General Laws, Chapter 93A, Section 9 ("93A") and Chapter 176D, Section 3 ("176D"), the Massachusetts Bay Transportation Authority ("MBTA") hereby makes written demand that Co-Sureties<sup>1</sup> immediately fulfill their obligations under the Performance Bond (defined below) for the above-referenced Contract for the Cabot Yard and Maintenance Facility Improvements Project (the "Project") by remedying the default of LMH-Lane Cabot Yard Joint Venture ("LMH-Lane") and completing the Contract. In the event Co-Sureties fail to do so, MBTA intends to pursue legal action, including seeking all relief available under 93A and 176D. Co-Sureties' failure to respond will subject Co-Sureties to treble damages, attorneys' fees, costs, and possibly injunctive relief. Further, in the event Co-Sureties fail to fulfill their obligations under the Performance Bond, MBTA may consider appropriate referrals to oversight agencies for further review, including review for violations of Massachusetts General Laws, Chapter 12, §§ 5A-5O.

### Background

MBTA contracted with LMH-Lane to perform the Project by Contract dated August 2, 2018. LMH-Lane was a joint venture consisting of two partners: LMH Heavy Civil Construction, LLC ("LMH") and The Lane Construction Corporation ("Lane"). LMH was pre-qualified by MBTA to perform track work, but Lane was not. Co-Sureties issued a Performance Bond, Nos. 012207605, 268010438, 9269565, 09254345, 860888, and 47SUR30006010062 (collectively the "Performance Bond"), guaranteeing LMH-Lane's performance of the Contract and the Project.

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<sup>1</sup> Co-Sureties shall mean collectively Zurich American Insurance Company, Fidelity and Deposit Company of Maryland, Liberty Mutual Insurance Company, National Union Insurance Company of Pittsburgh, PA, and Berkshire Hathaway Specialty Insurance Company.

In late 2018 or early 2019, LMH became financially insolvent and was unable to further perform under the Contract. After the insolvency of LMH, LMH-Lane struggled to complete the work. In fact, as of late January 2022, the Project was far behind schedule, work was not progressing, LMH-Lane had committed multiple breaches of the Contract, and LMH-Lane abandoned the Project.

MBTA formally declared LMH-Lane in default on February 10, 2022. By letter dated February 11, 2022, MBTA demanded Co-Sureties fulfill their obligations under the terms of the Performance Bond, remedy the default of LMH-Lane and complete the Contract. Rather than fulfilling their obligations under the Performance Bond, Co-Sureties asserted they needed to conduct an “investigation.” Between February 11, 2022 and May 24, 2022, Co-Sureties requested information from the MBTA, access to MBTA’s E-builder electronic document site, meetings with MBTA engineers, and access to the Project, all of which MBTA provided. MBTA fully cooperated with Co-Sureties’ investigation.

During a meeting at the MBTA’s offices in Boston on Tuesday, May 24, 2022, Co-Sureties presented their purported “findings” regarding the material breach, default and abandonment by LMH-Lane of the Contract. Co-Sureties never contested that LMH-Lane was in default of the Contract. Instead, the Co-Sureties asserted MBTA had not fulfilled its “obligations” under the Contract: (1) by failing to provide a “safe” site; and (2) because the Contract had not been amended at the time of LMH-Lane’s abandonment of the Project to address four “design” issues that had arisen during the Project. Based on these findings, Co-Sureties informed MBTA they were denying MBTA’s claim under the Performance Bond for completion of the Contract. *See Exhibit A.*

Prior to the May 24<sup>th</sup> meeting, MBTA presented to Co-Sureties “MBTA Preliminary Findings Regarding LMH-Lane Default, Material Breaches and Abandonment of the Cabot Yard Project” (the “MBTA Preliminary Findings”) *See Exhibit B.* Co-Sureties did not address the MBTA Preliminary Findings during the meeting.

By letter dated May 6, 2022, MBTA advised Co-Sureties that MBTA had been forced to take certain emergency measures and that additional emergency measures would be required if Co-Sureties had not confirmed within 14-days of the date of the letter (i.e., by May 20<sup>th</sup>) that they would fulfill their obligations under the Performance Bond. *See Exhibit C.* Co-Sureties did not respond to that letter prior to or during the May 24<sup>th</sup> meeting.

### Analysis

Chapter 93A makes unlawful all unfair methods of competition and unfair or deceptive acts or practices in the conduct of any trade or commerce. Additionally, under 176D, unfair methods of competition and unfair or deceptive acts or practices in the business of insurance include: (1) misrepresenting pertinent facts or provisions relating to coverages at issue; (2) failing to adopt and implement reasonable standards for the prompt investigation of claims; (3) refusing to pay claims without conducting a reasonable investigation based upon all available information; (4)



failing to effectuate prompt, fair and equitable settlement of claims in which liability has become reasonably clear; (5) failing to settle claims promptly, where liability has become reasonably clear, under one portion of the coverage in order to influence settlements under other portions of the coverage; and (6) failing to provide promptly a reasonable explanation of the basis for the denial of a claim.

Co-Sureties' denial of MBTA's claim was a breach of the Performance Bond, wrongful, and in bad faith. Co-Sureties failed to identify any provision of the Contract the MBTA failed to fulfill. Instead, the Co-Sureties' purported "findings" were based on self-serving assertions of LMH-Lane and fundamental misrepresentations regarding the MBTA's obligations under the Contract. The Co-Sureties' findings also ignored information provided by the MBTA to the Co-Sureties during the investigation. Based on the purported findings of Co-Sureties, Co-Sureties' denial of the MBTA's claim under the Performance Bond is a violation of 93A and 176D.

**A. The Co-Sureties Failed to Conduct a Prompt and Reasonable Investigation**

The Co-Sureties' obligations to complete the Contract were triggered by MBTA's declaration of LMH Lane's default on February 10, 2022. Under the express language of the Performance Bond ("whenever Contractor shall be, and is declared by the Authority to be in default"), Co-Sureties were obligated on February 10, 2022 to promptly remedy LMH-Lane's default. Rather, than promptly remedying the default of LMH-Lane, Co-Sureties asserted they needed to conduct an "investigation."

Under Massachusetts law, Co-Sureties had an obligation to act promptly, which may include time to investigate depending on the circumstances but conditioned on Co-Sureties applying reasonable standards to complete any such investigation promptly. *American Manufacturers Mutual Ins. Co. v. Town North Brookfield*, Civ. Act. No. 03-40266-TSH, 2006 WL 8458636, \*18-19 (August 10, 2006). In this case, the circumstances establish that Co-Sureties had more than sufficient time prior to the MBTA's formal declaration of default on February 10, 2022 to investigate LMH Lane's default. Specifically, LMH became insolvent in or around January 2019 and Co-Sureties were aware of that insolvency for more than three years. Further, one of LMH Lane's subcontractors, Massachusetts Electric Construction Co. ("MEC"), filed a demand for arbitration in March 2020 alleging, among other things, that LMH Lane had "failed to remit payments due to MEC for completed work," including work within the scope of the subcontract. As such, Co-Sureties were aware of significant issues with LMH Lane's ability to perform work under the Contract for a long time prior to February 2022. The Co-Sureties failed to conduct a prompt investigation.

Nor was the investigation reasonable. The Co-Sureties' purported "findings" are nothing more than rehashed versions of the false assertions about MBTA's obligations made by LMH-Lane during the Project. Indeed, many of the requests and technical questions posed to MBTA by Co-Sureties during the "investigation" related to issues of no relevance or marginal relevance to the determination of LMH-Lane's default and MBTA's obligations under the Contract. In fact, it appeared that many (if not all) of Co-Sureties' requests were merely funneled-through requests



of LMH-Lane. Indeed, MBTA's letters of April 22 and April 27 to Co-Sureties addressed those concerns and Co-Sureties did not respond to those letters prior to the May 24<sup>th</sup> meeting. Under the circumstance, it appears Co-Sureties had made the decision long before May 24<sup>th</sup> to adopt Lane's position that MBTA failed to fulfill its obligations under the Contract and then conducted the pretense of an investigation searching for selective facts Co-Sureties could cite in support of LMH-Lane's position and Co-Sureties' wrongful denial of coverage under the Performance Bond. Based on Co-Sureties purported findings, Co-Sureties did not conduct a reasonable investigation.

With respect to Co-Sureties purported findings, MBTA communicated with LMH Lane on many, if not all, of those issues by letter dated November 23, 2021. In that letter, MBTA explained in detail LMH-Lane's lack of progress, poor performance, unexcused delays, and many other performance failures on the Project. MBTA further advised LMH Lane in that same letter that the MBTA was considering all options, including, but not limited to termination of the Contract and a "declaration of a default under the terms of the Performance Bond." And, the MBTA copied Co-Sureties on that letter.

Instead of curing its defaults in performance after receiving MBTA's November 23<sup>rd</sup> letter, LMH Lane engaged in a bad faith letter writing campaign falsely claiming MBTA failed to fulfill its obligations under the Contract in an obvious and desperate attempt to deflect attention from its own material breaches as well as creating a pretense for demanding Co-Sureties not honor their obligations under the Performance Bond. However, MBTA's letter to Co-Sureties, dated February 25, 2022, provided a point-by-point refutation of all of LMH Lane's false claims in that regard.

In late January 2022, LMH Lane abandoned the Project directly contrary to the terms of the Contract and MBTA believes Co-Sureties were aware of LMH Lane's abandonment of the Project. Simply put, prior to MBTA's declaration of default on February 10, 2022, Co-Sureties had more than sufficient time to investigate LMH-Lane's specific and numerous material breaches and failures of performance under the Contract. Under the circumstances, Co-Sureties' purported investigation that took more than three months was not conducted promptly but, instead, MBTA believes it was a stall and delay tactic to make it appear Co-Sureties were actually considering MBTA's claim.

Based on the foregoing, the Co-Sureties did not reasonably and promptly investigate LMH-Lane's default and material breaches of the Contract. Co-Sureties also failed and refused to provide any written findings prior to the May 24<sup>th</sup> oral denial and presented only cursory "findings" with no reference to actual contractual provisions. Indeed, the Co-Sureties' oral presentation of the findings of their investigation lasted less than 20 minutes, despite the fact Co-Sureties acknowledged the Project was a "highly complex undertaking." Significantly, the Co-Sureties failed to address and made no finding as to whether LMH-Lane materially breached the Contract and abandoned the Project contrary to LMH-Lane's obligations under the Contract. Nor did the Co-Sureties cite any contractual provisions related to the MBTA's purported failure to fulfill its obligations under the Contract.

**B. The Co-Sureties “Safety” Findings were Unsupported and a Self-Serving Pretext That Failed to Address LMH-Lane’s Abandonment**

The Co-Sureties asserted at the May 24<sup>th</sup> meeting that “there remains an unresolved life safety issue on [the Project].” See Exhibit A. However, the Co-Sureties did not cite any provision of the Contract related to safety obligations the MBTA allegedly failed to fulfill. In addition, the Co-Sureties failed to consider that LMH-Lane’s purported safety concern was an obvious pretext for abandoning the Project which LMH-Lane was unable to complete due to its own systemic failures.

Although the Co-Sureties’ “findings” included assertions that there were seven (7) safety incidents during LMH-Lane’s time on the Project, LMH-Lane itself cited only the train incident on December 17, 2021 as its reason for abandoning the Project in late January 2022 (and LMH-Lane was not even present on site when this incident occurred). The Co-Sureties expressed concern that no “root cause” for the train incident had been identified and apparently used the lack of “root cause” as a basis for claiming an unresolved life safety issue. However, the Co-Sureties failed to address the fact that MBTA implemented remedial measures and added safety protocols after the train incident, discussed those remedial measures and safety protocols with LMH-Lane and LMH-Lane continued to work on the Project for more than a month after the train incident. The Co-Sureties also failed to address the fact that LMH-Lane had the primary obligation for safety of the work site under Article 5.15 of the General Conditions of the Contract. Finally, the Co-Sureties did not cite any provision of the Contract that established the MBTA had failed to fulfill its obligations under the Contract with respect to the train incident or any of the other safety incidents.

Indeed, the timing of LMH-Lane’s abandonment of the Project made it obvious LMH-Lane was using the train incident as a pretext for abandoning the Project. In fact, in the months leading up to LMH-Lane’s abandonment of the Project, LMH-Lane repeatedly requested the MBTA terminate the Contract for convenience to relieve LMH-Lane of the disastrous consequences of its own failures to perform under the Contract. However, the MBTA refused to do so and, when it became clear to LMH-Lane that MBTA would not do so, LMH-Lane developed the pretext of a “safety” concern as a cover for its abandonment of the Project and material breach of the Contract. The Co-Sureties never addressed any of these facts but, instead, merely adopted LMH-Lane’s pretext for abandoning the Project. Co-Sureties engaged in bad faith with respect to the purported findings on safety.

**C. The Co-Sureties Ignored the Contract and the Pertinent Facts in Wrongfully Finding it is Not Possible to Complete the Project**

During the May 24<sup>th</sup> meeting, Co-Sureties made purported findings that the Contract could not be completed as designed because of four issues: (1) conduit relining; (2) installation of the stinger system; (3) construction of the foundation for the Switch Instrument House (“SIH”); and (4) installation of Manhole 20A. The essential premise of Co-Sureties’ allegations regarding these four issues is that the MBTA did not provide a complete design. That premise is entirely false.



The MBTA did, in fact, provide a complete design for the Project and LMH-Lane submitted a bid based on that design. The fact certain design issues may have arisen during the performance of Contract does not constitute a failure of MBTA to fulfill its obligations under the Contract. In fact, the terms of the Contract expressly stated that the MBTA “does not guarantee or represent that existing construction or conditions conform to the Drawings” and expressly provided contractual mechanisms for LMH-Lane to obtain changes to the work, including changes to the design and for changed conditions on the Project. The Co-Sureties’ assertions that design changes being discussed between LMH-Lane and MBTA were not finalized and resolved at the time of LMH-Lane’s abandonment of the Project does not constitute a failure of the MBTA to fulfill its obligations under the Contract. To the contrary, the sole reasons those issues were not resolved were: (1) LMH-Lane’s failure to timely and diligently follow the provisions of the Contract; and (2) LMH-Lane’s abandonment and material breach of the Contract in late January 2022. As such, the Co-Sureties’ premise that the MBTA did not fulfill its obligations to LMH-Lane because the Contract was not amended to address these four issues at the time LMH-Lane abandoned the Project is self-serving and the very essence of bad faith.

Co-Sureties also ignored pertinent facts and information provided by MBTA during the investigation. Co-Sureties asked questions and MBTA responded to the factual issues regarding conduit relining, the stinger system, the SIH, and Manhole 20A during the Co-Sureties’ investigation and in the MBTA Preliminary Findings.<sup>2</sup> The information provided by MBTA demonstrated LMH-Lane failed to diligently prosecute and perform the work or follow the terms of the Contract for addressing these issues. And Co-Sureties did not identify any provision of the Contract the MBTA failed to fulfill with respect to these four issues.

Significantly, Co-Sureties completely ignored pertinent information MBTA provided to Co-Sureties as well as terms of the Contract. For example, Co-Sureties asserted at the May 24<sup>th</sup> meeting that LMH-Lane had no design obligations under the Contract. With respect to the SIH, Co-Sureties asserted LMH-Lane had claimed during the Project it had no design obligation for the SIH and the Co-Sureties could not find any design obligations of LMH-Lane in the Contract. However, the Contract had many design obligations that were LMH-Lane’s responsibility. *See, e.g.,* CMF-02080-1.1.C, CMF-02221-3.1.D, CMF-02371-1.1.A, CMF-02371-1.3.A, CMF-05511-1.3.C.

In fact, MBTA told Co-Sureties in the MBTA April 13, 2022 comments to Co-Sureties’ Jobsite Visit Memorandum that LMH-Lane did have obligations for the design of the foundations for the SIH, stating as follows:

- a. SIH Foundation Issue.
  - i. Discussed potential conflicts between the SIH foundation and existing duct bank.

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<sup>2</sup> MBTA incorporates, by reference, the responses to Co-Sureties technical questions between February 11, 2022 and May 24, 2022 regarding conduit relining, the stinger system, the SIH, and Manhole 20A.

- ii. MBTA was not aware of the issue
- iii. MBTA to review LMH-Lane letter 436 on the issue and advise.
- iv. Regarding LMH-Lane Letter -436, 2<sup>nd</sup> para., "As MBTA is aware LMH-Lane does not have a design obligation . . ."
  - 1. This is a false statement, therefore, the third and fourth paragraphs are not valid.
  - 2. In accordance Specification CYR-16807-2.1.A (partial excerpt) "The pre-cast concrete foundations to be furnished and installed under this Contract shall be **foundations specifically designed for the support of signal instrument houses . . .**"
  - 3. Per LMH-Lane Submittal CY03300-021-1 (partial excerpt) "Design Foundation and Connections . . ." This LMH-Lane submittal is an acknowledgement of LMH-Lane's contract obligation in connection with foundation design."

In addition, the LMH-Lane submittal for the SIH states that underground obstructions need to be verified before fabrication of the footings/foundations. Accordingly, LMH-Lane was contractually responsible for the design of the foundation for the SIH, including addressing any obstructions. Co-Sureties' contrary assertion, therefore, ignores both the specifications of the Contract and the information provided by the MBTA.

Co-Sureties engaged in bad faith with respect to the purported findings on conduit relining, the stinger system, the SIH, and Manhole 20A.

### Conclusion

All of the foregoing unfair or deceptive acts or practices are unlawful under 93A and 176D. *See R.W. Granger & Sons v. J&S Insulation*, 435 Mass. 66 (2001) in which the Massachusetts Supreme Judicial Court affirmed an award of double damages and attorneys' fees against a payment bond surety pursuant to M.G.L. Chapter 176D and 93A based on its, "inexplicably tardy and inadequate offer," "other 'cavalier' . . . conduct," failure to, "conduct 'a reasonable investigation' of [its principal's] dispute with [Plaintiff] both prior to and after the jury verdict in violation of G.L. c. 176D Section 3(9), "fail[ure] to exercise its duty to 'affirm or deny coverage of claims within a reasonable period of time after proof of loss statements have been completed,' in violation of G.L. c. 176D, Section 3(9) and fail[ure] to effectuate 'prompt, fair and equitable settlements of claims in which liability has become reasonably clear.' . . . forcing an insured 'to initiate litigation to recover amounts due . . . by offering substantially less than the amounts ultimately recovered" and "presentation to [plaintiff] of a 'manifestly inadequate offer of settlement . . . compell[ing] [Plaintiff] to 're-commence litigation.'"

As a result of the Co-Sureties' unfair and deceptive acts and practices, the MBTA has suffered and will continue to suffer injury and loss of money including but not limited to the penal sum of the Performance Bond, damages incurred due to MBTA's good faith efforts to pursue its claims

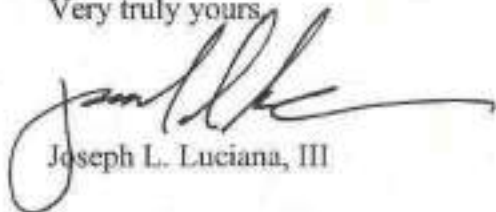


under the Performance Bond, and damages resulting from the Co-Sureties' denial of the MBTA's claim under the Performance Bond. The Co-Sureties' exposure for the MBTA's expected completion and internal costs, treble damages, interest, costs and attorney's fees will be well in excess of the penal sum of the bond. Therefore, the MBTA hereby demands that the Co-Sureties perform under the Performance Bond, including remedying LMH-Lane's default and completing the Contract. The Co-Sureties' failure to perform under the Performance Bond will cause significant, immediate, and irreparable harm to the MBTA and the public interest.

The MBTA reserves the right to refer the Co-Sureties handling of this matter to the appropriate regulatory authorities for further review and action, including review for violations of Massachusetts General Laws, Chapter 12, §§ 5A-5O.

Chapter 93A gives you the opportunity to make a good-faith response to this letter within thirty (30) days, including a written tender of settlement. Your failure to do so could subject you to treble damages, attorneys fees' and costs if the MBTA is forced to institute legal action.

Very truly yours,



Joseph L. Luciana, III

cc: R. LeBoeuf (all via email)  
K. Carey  
M. Kalowski  
A. Friedman

# **EXHIBIT A**

Transcript of May 24<sup>th</sup> Co-Sureties/MBTA Meeting at MBTA's offices in Boston, Massachusetts (excluding introductions and safety briefing):<sup>1</sup>

CHRISTINA CRADDOCK

I want to begin by thanking everyone for being here, both by teams and in person. Over the last 90 days, MBTA has cooperated with our investigation and providing documentation, information to us, and that cooperation has been greatly appreciated. We can't thank you enough for it. While we could have sent a letter advising you of our findings, out of respect because we've been working together for 90 days we wanted to have this discussion in person.

On February 11<sup>th</sup>, MBTA sent a letter to the Co-sureties advising that it was terminating LMH Lane on this project and demanding that the Co-sureties perform.

Co-sureties obligations under the bond don't arise unless and until first MBTA has performed its obligations under the bond, under the contract and then has declared LMH-Lane to be in default.

MBTA declared LMH-Lane to be in default on February 10th, 2022, so the Co-sureties then had to determine whether or not MBTA had performed its obligations under the contract.

As everybody on this phone knows, this contract was a highly complex undertaking, requiring a high degree of coordination between all of the parties.

Uh.

To begin with, with respect to our investigation, there remains an unresolved life safety issue on this project.

Cabot Yard is an active rail yard and maintenance facility under MBTA's control, and MBTA is responsible for the safety of all who work on its active rail yard and maintenance facility.

Uh.

The MBTA is responsible for setting the safety policy and all who work on the site are responsible for complying with all of those safety policies. If the Co-sureties had a duty to perform under the bond and we solicited bonds for the completion of this project, we would have to be able to assure those contractors that sufficient safety protocols are in place to ensure the safety of them and their workers.

On this project, based on our investigation, there were seven separate safety incidents on the project, but most recently there was a runaway train incident in December of 2021 that caused property damage.

LMH-Lane had been working on the other side of that damaged garage door shortly before that incident occurred.

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<sup>1</sup> This transcript was prepared by counsel for MBTA based on the written transcript and review of the audio/video recording.

According to documents produced by MBTA, MBTA had an instituted that safety stand down and conducted the meeting on the site with the contractor in early January 2022.

But at the time of the stand down and the meeting, MBTA didn't know the root cause of the incident and didn't know what caused the training cars to detach, and that's based on their own report and then the detailed in that report. Without knowing the root cause of the incident and what caused the detachment there's no way of knowing that [?] into the coupling or stopping the movement that had preceded the detachment or would ensure that the incident wouldn't recur. To date, we haven't been provided with the results of the investigation into the incident that determined the root cause, the detachment or information regarding the related safety protocols necessary to prevent recurrence based on that root cause.

According to our investigation, MBTA admitted its obligations to ensure the railyard and the facility were safe and at this point the Co-sureties could not put a contractor on this project and assure them that sufficient safety protocols are in place to ensure their safety and the safety their workers.

Our investigation, continued into the status of the construction and the work remaining to be completed.

As we all know, this was a design bid build contract.

MBTA assumed responsibility for the design, the plans and specifications for this project.

Lane as well as the other bidders relied upon MTA's design, plans and specifications in submitting its bid for the constructions of project, and it was awarded the contract based on the bid.

The contract specifically provides that the drawings, plans and specifications are essential parts of the contract and that no deviation from the contract drawings and specifications can be made unless directed in writing by MBTA.

If discrepancies are found in the contract documents, The LMH lane was to report them to MBTA, and according to the contract, no new work was To be commenced, nor any orders placed related to that affected area or scope of work until MBTA resolved the issue.

If the Co-sureties had a duty to perform under the bond, they would be responsible for engaging a contractor to complete the construction of this project in accordance with those contract documents.

Based on our investigation, as of the date of the declaration of the default, it is not possible to construct the remainder of the Cabot Yard project as called for in the contract and contract documents.

While we discovered many issues and we'll detail them in a letter post after this meeting, I will highlight some of the major ones.

First being conduit relining.



The conduit cleaning and relining is an issue that affects a significant portion of the site. In fact, almost the entire yard.

The contract specifically details how the Orangeburg pipe was to be cleaned and relined.

The scope was limited to cleaning and relining.

While the specification references the likelihood of bubbling in the Orangeburg pipe, it did not include or direct responsibility for repairs required as a result of it being the bubble.

At the time of bidding, this issue was brought up by one of the bidders and a question was raised as to what should be done if a conduit obstruction couldn't be cleaned as detailed in the spec. MBTA responded to that question that in the event that that occurred, the contractor was to notify MBTA and MBTA was to provide suitable direction as to adequacy.

LMH-Lane, based on our investigation, was unable to clean the Orangeburg pipe using the method detailed or as required in the contract. And in 2019 it submitted an RFI to MBTA seeking direction as to how this work was to be done.

MBTA responded that the cleaning procedure in the contract should be followed, and it added a requirement that LMH Lane should also perform work to clear the bubbles that it found in the conduit.

As LH Lane went on, it confirmed that the conduits could not be cleaned using the method required in the contract.

Uh.

According to the documentation we've seen MBTA and LMH-Lane went back and forth discussing and trying alternate methods to try to clean the conduits, but the contract documents were never amended or changed to reflect the new method of cleaning and relining. As of the date of termination when we were called upon to perform the conduit relining cannot be done as called for in the contract documents. Again, this work effects almost the entire yard and has to be completed before the track work can be done.

Another issue we identified was the stinger system.

In 2019, it was discovered that the design structure was not strong enough to support the Stinger system. In October an RFI was issued, in addition to the issue with the structural support, this RFI was issued because there was a new trolley bus height and a potential conflict with the Stinger system.

In November, two more RFIs were issued where they determined a potential conflict between the height of the blacksmith sheds that might interfere with the terminal bus bar, which doesn't affected the design of for the Stinger system. MBTA responded that it would issue a DCR to address the issues for the Stinger system. In January 2020, MBTA issued DCR 30 addressing the structural support issue but advising that DCR 31 would be issued to address the blacksmith shed locations.

In the interim, MBTA discussed with LMH Lane and MBTA approved LMH Lane's suggestion that the Stinger system be installed as a whole on a run by run the length of the car house as opposed to in sections by zone.

Then, in August of 2020, LH Lane issued a cost proposal for DCR 30.

There was no action taken on LMH-Lane's proposal. In September of 2021, over a year later, LMH-Lane withdrew the cost proposal advising the pricing was no longer valid for that work.

We haven't seen anything more with respect to DCR 31 related to the blacksmith sheds or any further action with respect to DCR 30.

The DCRs we inquired during our investigation about the impact of the DCR and MBTA advised us that the DCRs were not a change to the contract as it's not a direction to proceed with work. It was merely a suggestion that this might be a change requesting a proposal that until there was a direction to proceed or a change in the contract documents, this was merely a discussion about a possible change.

The contract documents were never amended or changed to incorporate a new design for the Stinger system, addressing either the structural support the trolley bus height or the blacksmith shed locations.

As of the date of termination, the stinger system cannot be constructed as called for in the contract documents, and this affects the entire carhouse.

Another issue was the Signal Instrument House foundation. It's referred to in the contract as the Central Instrument House, but there are references throughout the correspondence and documents referring to it either as the SIH, the signal instrument house, or the CIH the satellite instrument house, but the drawings for the CIH/SIH foundation specify a footings and pier foundation, a specific type of foundation.

In June 2021, LMH-Lane submitted their RFI announcing that the foundation design conflicted with existing duct bank infrastructure. Now they suggested in this RFI the possibility that maybe MBTA might want to move the SIH south and that might avoid this conflict, but they requested direction from MBTA as to how to proceed in this work.

In August of 2021, MBTA responded, telling Lane to redesign the SIH foundation based on the conflicts, and it added requirements that they should add access paths and railings to [?].

MBTA also advised that they were OK if Lan wanted to move the SIH south.

On August 23rd, LMH Lane advised MBTA by letter that it didn't have any design obligations and in fact we haven't been able to find any design obligations on behalf of LH Lane in this contract. It was MBTA's responsibility to either redesign the foundation to avoid the conflict or change the contract to move the SIH south.

The contract documents were never amended or changed to incorporate a new design for the SiH foundation.

As of the date of termination, the SIH foundation or CIH foundation cannot be constructed as called for in the contract documents.

Now this work effects almost everything in the South Yard. You can't remove the duct bank under switch 41 until this work is done.

Another issue is manhole 20A.

In September of 2021, LMH-Lane issued an RFI advising that the proposed manhole 20A and associated duct bank running between Manhole 20A and the existing switch two could not be constructed as designed to a due to a conflict with the existing underground infrastructure.

In November of 2021, MBTA acknowledged the conflict.

The contract documents have not been amended or changed to incorporate a new design for Manhole 20a or the associated duct bank.

As of the date of termination, manhole 20A and the associated duct bank cannot be constructed as called for in the contract documents.

This work affects the entire South yard.

These are just a few examples of what we have found that based on our investigation, MBTA failed to perform its obligations under the contract by failing to provide a complete design for this work to be completed. There's no way that the Co-sureties could put this contract out for bid because it is not possible to construct the remainder of the Cabot Yard project as called for in the contract and contract documents.

While there may be finite scopes of work that could be performed, because sureties under the bond are required to bid the completion of the contract as a whole and due to the fact that there are significant scopes of work that cannot be constructed as called for in the contract and no deviation is allowed for, from, those contracting contract documents that can't be done.

In addition, given the unresolved life safety issues, the Co-sureties are unable to assure any potential contractor that sufficient safety protocols are in place to ensure its safety or the safety of its work.

As a result of all this, and as a result of our investigation, the Co-sureties have to deny this claim.

We know that this is not what MBTA wanted to hear, MBTA has a project needs to be completed and there's got to be a great creative solution out there.

But this claim on the performance bond is not that solution.

And we'll have a letter detailing.

JOE LUCIANA

When will you have a letter to us?

CHRISTINA CRADDOCK

Umm, around two weeks.

JOE LUCIANA

So. I would say at this point. Thank you.

LISA LEPORE

Thank you very much.

CHRISTINA CRADDOCK

Thank you.

JOE LUCIANA

We'll be in touch.

CHRISTINA CRADDOCK

Thank you. Great. Thank you.

And I got your letter last night. I did not get time to because I flew in late, so we'll review it.

JOE LUCIANA

Take your time.

I suspect we'll be spending some time together. We'll have plenty of time to go over.

LISA LEPORE

OK, we'll adjourn the meeting. Thank you all. Thank you.



# **EXHIBIT B**

**MBTA PRELIMINARY FINDINGS REGARDING LMH-LANE DEFAULT,  
MATERIAL BREACHES AND ABANDONMENT OF THE CABOT YARD PROJECT**

**May 23, 2022**

**I. BACKGROUND**

The Massachusetts Bay Transportation Authority (“hereinafter the “MBTA”) contracted with LMH-Lane Cabot Yard Joint Venture (hereinafter “LMH-Lane”) by MBTA Contract No. R44CN02 to perform the Cabot Yard & Maintenance Facility Improvements Project (the “Project”). LMH-Lane was a joint venture between Lane Construction Corporation and LMH-CMC, JV. LMH-CMC, JV, in turn was a joint venture between LM Heavy Civil Construction, LLC (“LMH”) and Cooperativa Muratori & Cementisti-C.M.C. Di Ravenna Societa Cooperativa (“CMC”). LMH-Lane was the lowest eligible, responsible bidder for the Project with a bid price of \$213,817,000.00. LMH-Lane’s bid on the Cabot Yard Project included LMH as a pre-qualified entity to perform trackwork. The Contract also had self-performance requirements for LMH-Lane (as discussed further below). On or about August 2, 2018, LMH-Lane and the MBTA entered into the Contract in the sum of \$213,817,000.00.

Zurich American Insurance Company, Fidelity and Deposit Company of Maryland, Liberty Mutual Insurance Company, Berkshire Hathaway Specialty Insurance Company, and National Union Insurance Company of Pittsburgh, PA, (together the “Co-Sureties”) issued on behalf of LMH-Lane Performance and Payment Bonds (the “Bonds”) in the penal sum of \$213,817,000.00.

CMC filed for bankruptcy in late 2018. As a result, by early 2019 LMH-CMC JV was no longer able to perform the Project and, as a result, LMH was unable to perform trackwork leaving LMH-Lane without a certified MBTA track contractor. This rendered LMH-Lane non-compliant with the 50% self-performance requirement of Article 6.1B of the Contract. MBTA subsequently approved up to \$10 Million of trackwork, but also reminded LMH-Lane that it needed to bring the Project into compliance with the 50% self-performance requirement of the Contract. *See* MBTA Letters 174 and 365. LMH-Lane’s choice to sublet the trackwork and the sitework resulted in LMH-Lane remaining non-compliant and LMH-Lane ultimately admitted that “because of LMH essentially ceasing operations because of CMC’s bankruptcy in Italy, LMH-Lane could not meet the 50% self-performance requirement of Article 6.1B of the Contract.” *See* LMH-Lane Letter 524 dated November 3, 2021.

On January 31, 2022, LMH-Lane issued a Notice of Demobilization to the MBTA, declaring that it had abandoned the Project on the pretense of a safety issue relating to an incident for which LMH-Lane was not even present at the Project. The MBTA terminated LMH-Lane for default by letter dated February 10, 2022. On February 11, 2022, the MBTA requested Co-Sureties to remedy the default of LMH-Lane and complete the Contract under Performance Bond Nos. 9269565, 09254345, 268010438, 012207605, 47SUR300016010062, and 860888.

### **The MBTA has Complied With and Participated In the Co-Sureties' Investigation**

In response to MBTA's request that Co-Sureties remedy the default of LMH-Lane and complete the Contract under the Performance Bond, lead Surety, Liberty Mutual Insurance Company, informed the MBTA that the Co-Sureties had opened an investigation into the MBTA's declaration of default. Since that time, Co-Sureties have visited the Project on April 5, 2022 and April 28, 2022. Following the April 28, 2022 site visit, the Co-Sureties submitted a Memorandum to the MBTA requesting documents and asking questions, which the MBTA responded to. The Co-Sureties also had a teleconference with the MBTA on April 19, 2022, after which the Co-Sureties submitted a Memorandum with even more questions that the MBTA responded to on April 22, 2022. The Co-Sureties then emailed additional questions on April 22, 2022, which the MBTA responded to on April 27, 2022.

The Co-Sureties' investigation also involved submitting written questions to the MBTA on March 8, 18, 25, 31, April 22, and May 3, 6, 12 and 19, 2022. The MBTA answered the Co-Sureties' questions through written responses on March 16, 25, 31, April 6, 27, May 6, 10 and 23, 2022. MBTA has fully cooperated with Co-Sureties and answered all questions asked during site visits and in written questions. The MBTA has also provided the Co-Sureties with access to E-Builder, which contains correspondence and other documents relating to the Project.

Based on the MBTA's investigation, including the responses to the Co-Sureties' questions, the MBTA has determined that LMH-Lane materially defaulted under the Contract and that the MBTA performed its obligations on the Project.

## **II. LMH-LANE CABOT YARD JV MATERIALLY BREACHED ITS CONTRACTUAL OBLIGATIONS**

### **LMH LANE'S FAILURE TO PAY ITS SUBCONTRACTORS**

The MBTA quickly learned that, even prior to the MBTA's termination letter, LMH-Lane was routinely failing to pay its subcontractors in material breach of the Contract. In fact, LMH-Lane had systematically failed to pay its subcontracts well before any of the events which LMH-Lane complained of in its January 31, 2022 Notice of Demobilization.

The MBTA is aware of the following subcontractors of LMH-Lane that were not paid timely in material breach of the Contract:

- Terra Environmental, LLC issued its Demands for Direct Payment on March 9 and 15, 2022, claiming that LMH-Lane had failed to pay \$399,134.10 in invoices dating back to September 29, 2021;
- Sunrise Erectors, Inc. sent its Demand for Direct Payment on February 24, 2022, asserting LMH-Lane had failed to pay \$591,470.00 on invoices dated July 2020, April 2021, May 2021 June 2021, July 2021, August 2021, and September 2021, and further asserting LMH-

Lane only “recently” made a single payment of just over \$183,000 on the total outstanding balance of more than \$770,000;

- J.R. Vinagro Corporation issued a Demand for Direct Payment on March 3, 2022, claiming LMH-Lane failed to pay \$169,305.53 on invoices dating August 2020, November 2020, July 2021, September 2021, and December 2021, a span of more than fifteen (15) months of invoices ignored by LMH-Lane;
- Massachusetts Electric Construction Co. (“MEC”) filed an arbitration against LMH-Lane in March 2020, alleging LMH-Lane breached its subcontract with MEC and failed to compensate MEC for costs incurred by MEC on the Project;
- WM Collins, N/S Corporation, Delta Beckwith, United Civil and Nortrak have all contacted MBTA regarding LMH-Lane’s failure to make payments; and
- Managed Air Systems, LLC (“Managed Air”), contacted the MBTA on March 28, 2022, citing extreme financial distress caused by LMH-Lane’s refusal to pay an outstanding balance of \$613,496.06 and asserting that LMH-Lane’s refusal to pay Managed Air was causing Managed Air to consider closing its doors permanently.

Failure to pay subcontractors is an unmistakable breach of the Contract. *See* General Conditions Article 5.17, “The Contractor [LMH-Lane] shall be responsible for prompt payment for all services, labor, equipment, and materials furnished by or through the Contractor for purposes of the Contract.” *See also* General Conditions Article 6.1. These breaches were systematic and began more than sixteen (16) months before LMH-Lane’s Notice of Demobilization or any of the issues LMH-Lane complained of.

#### **LMH LANE’S MATERIAL BREACHES OF PERFORMANCE**

1. There is No Dispute that LMH-Lane Did not Comply with the Self-Performance Requirements of Article 6.1B of the Contract. *See* LMH-Lane Letter 524; *See* MBTA Letters 174, 340 and 365.
2. LMH-Lane Abandoned of the Project without Justification. *See* LMH-Lane Letter No. 1807-300-590-W and MBTA Letter dated February 25, 2022.
3. LMH-Lane failed to provide supporting documentation to justify its assertions of alleged design defect and differing site conditions claims and then abandoned the Project less than one week later. *See* MBTA’s numerous Letters identifying LMH-Lane’s dilatory and shoddy invoicing practices, *Letter Nos. 090 dated October 24, 2019, No. 124 dated June 29, 2020, No. 125 dated June 29, 2020, No. 128 dated July 27, 2020, No. 172 dated May 28, 2021, No. 218 dated July 13, 2021, No. 222 dated July 19, 2021, No. 272 dated August 20, 2021, No. 344 dated October 21, 2021, and No. 367 dated December 2, 2021.*



4. LMH-Lane's Unexcused Delays of at Least 521 days are a Material Breach of the Contract Articles 6.2, 6.8, 6.9, and 6.10 of the General Conditions. *See* MBTA Letter 388.
5. LMH-Lane's Refusal to Timely Provide Schedule Recoveries was a Material Breach of the Contract's Construction Schedule Section 1322 – 1.4-A and B, Construction Schedule Section 1322 – 1.11-C, and General Conditions Article 3.5E. *See* MBTA Letter Nos. 167, 273 and 281.
6. LMH-Lane's refusal to provide schedule recoveries was a breach of Section 01332 and Article 3.5E. of the General Conditions. Schedule Recovery is a clear requirement of the Contract. *Specification Section 01322, Article 1.11C.*
7. LMH-Lane Repeatedly Submitted Incomplete, Late, and Non-Compliant Cost Proposals, Daily Reports (T&M Slips) and Pay Requisitions in Material Breach of General Conditions Article 1.1A(14) and (15) and Article 1.8, as well as Specification 01151 – Measurement and Payment, paragraph 1.5.B.1 and 1.7. *See* MBTA Letter Nos. 90, 124, 125, 128, 172, 218, 222, 239, 272, 344 and 367; MBTA Letter dated February 25, 2022 responding to LMH-Lane Letter No. 585.
8. LMH-Lane failed to submit a cost proposal for DCR-12 for more than 700 days. *See* MBTA Letter 237. There are also many other cost proposals for DCRs that LMH-Lane failed to submit.
9. LMH-Lane Failed to Properly Advance Work on the Carhouse and Yard. *See* LMH-Lane Letter Nos. 551 and 590; *See also* Feb. 25, 2022 MBTA Letter addressing in full LMH-Lane's assertions. LMH-Lane materially breached the Contract by abandoning the Project and failing in numerous aspects to advance the work, including, as follows:
  - a. LMH-Lane did not complete the work at Zone C including failing to install the dust collector system, replace the undertrain, complete the new standpipe system, and complete the gas system.
  - b. Failure to Install the Stinger System (power for the trains): *See MBTA Letter No. 067 dated August 23, 2019; Contract Drawing CMF-TP-0001 – Staging Plans.*
  - c. Failure to adhere to LMH-Lane's Schedule Update No. 29 for Zone D work in the Yard, failure to provide a Phasing Plan demonstrating that LMH-Lane had necessary long lead-time items to complete Zone D, and ultimate failure to complete the work for Zone D. *See MBTA Letter No. 375 dated December 29, 2021; January 25, 2022 Email from Seth DeMello and attached Spreadsheet.*

10. LMH-Lane's late submission of Process Plans delayed and negatively impacted the work and was a material breach of the Contract Specification Section 10300, Article 1.5. *See MBTA Letter No. 312 dated September 9, 2021.*
11. Failure to install Manhole CV-001 that was the subject of RFI-713.
12. Failure to devise, communicate, and implement a plan for temporary power at the Switch Houses in breach of Specification Section 01500.
13. LMH-Lane failed to meet the Contract requirements pertaining to time frames for submitting Process Plans and once the plans were submitted, LMH-Lane often proposed last minute changes to add or subtract work. (The Process Plan for Track 9 South was submitted one day before the diversion.) *See, e.g., MBTA Letters No. 037 dated May 29, 2019, No. 039 dated June 5, 2019, No. 188 dated May 27, 2021, No. 234 dated July 27, 2021, No. 245 dated August 4, 2021, and No. 323 dated September 23, 2021.*

### **III. THE MBTA PERFORMED ALL OBLIGATIONS AND DID NOT BREACH THE CONTRACT**

The MBTA's primary contractual obligation is to make payment:

In consideration of the foregoing promises the Massachusetts Bay Transportation Authority agrees to pay and the Contractor agrees to receive as full compensation for everything furnished and done by the Contractor under this contract, including all work required but not shown on the plans for the items herein mentioned, and also for all loss or damage arising out of the nature of the work aforesaid, or from the action of the elements (except as excluded in the Standard Specifications, Section 00700, Article 5.19 or the Supplementary Conditions thereto) or from any delay or from an unforeseen obstruction or any difficulty encountered in the prosecution of the work, and for all risks of every description connected with the work, and for all expenses incurred by or in consequence of the suspension or discontinuance of the work as herein specified, and for well and faithfully completing the work, and the whole thereof, as herein provided, such prices as are set out in the accompanying Bid Form, and for all work required, for which there is no item in the Bid Form, such compensation as is provided for in the aforesaid Specifications.

*See Contract Section 00510-4, Clause 3; See also Specification 01151-3 – Measurement and Payment, including but not limited to Section 1.3 Scope of Payments; 1.5 Payment for Extra Work; and 1.7 Partial Payments.*

Payment for work other than that provided for in the Contract due to any act or omission by the MBTA was governed by General Conditions Section 00700-3 Article 5.19:

All claims of the Contractor for compensation other than as provided for in the Contract due to any act of omission or commission by the Authority or its agents must be made in writing to the Engineer within 10 days after the beginning of any work or the sustaining of any damage due to such act. Such written statement shall contain a description of the nature of the Work provided or damage sustained; and the Contractor, shall on or before the fifteenth day of the month succeeding that in which such Work is performed or damage sustained file with the Engineer an itemized statement of the details and amount of such work or damage. Unless such statement shall be made as required, the claim for compensation shall be forfeited and invalidated, and the Contractor shall not be entitled to payment due to any such work or damage. Such notice by the Contractor and the keeping of costs by the Engineer shall not in any way be construed as proving the validity of the claim. The provisions of this paragraph shall not apply to changes in quantities as provided under Article 2.5 or to Extra Work ordered by the Engineer in writing.

General Conditions Section 00700-3 Article 5.19.

Thus, the MBTA was required to make payments for work under the Contract and for work other than provided in the Contract, but not unconditionally. LMH-Lane was required to submit sufficient documentation and follow the contracted-for procedures. The MBTA made all payments to LMH-Lane where LMH-Lane submitted a compliant pay application, including the necessary documentation required by the Contract.

The documentation demonstrating MBTA's payments to LMH-Lane is available on E-Builder, at 04 Construction; 08 GC Requests. The documents in this subfolder demonstrate LMH-Lane's pay requests or applications that were reviewed, approved, and paid by the MBTA. LMH-Lane's failure to submit a full and complete package resulted in back-and-forth between the MBTA and LMH-Lane, which caused significant delay in approval of pay requests. In fact, LMH-Lane's submission of erroneous invoices on many occasions required the MBTA to assist LMH-Lane multiple times to prepare proper invoices in order to facilitate payment (as recorded in E-builder).

In addition to the MBTA's compliance with its payment obligations, the MBTA complied with its other contractual obligations. The MBTA's investigation has revealed the following findings that the MBTA did not breach its obligations under the Contract.

1. The MBTA did not prevent LMH-Lane from performing Conduit Re-lining.
  - a. LMH-Lane failed to advance conduit relining work for more than a year and half through its own means and methods (as required by the Contract). *See* MBTA Feb. 2, 2022 letter response to LMH-Lane Letter No. 585; *MBTA Response to RFI-237*; *See Specification Section CYR-16300, Articles 3.1A, 3.2B.4 and 3.2B5.*
  - b. LMH-Lane failed to respond to the MBTA regarding conduit relining for over a year-and-a-half and did not identify any means and methods to conduct the work. *See LMH-Lane Letters No. 1807-300-253-W dated March 19, 2021, No. 1807-300-*

*264-W dated April 9, 2021, and No. 1807-300-278-W dated April 22, 2021; see also MBTA's response to RFI-237; See also MBTA Feb. 2, 2022 letter response to LMH-Lane Letter No. 585*

- c. Even if LMH-Lane believed it would be impossible to satisfy the Contract requirements pertaining to conduit relining, it ignored the Contract mechanisms available to address its concerns over the Contract Specifications and site conditions including through a Design Change Request ("DCR"). *See Specification Section 01300, Articles 1.6D and 1.7; Specification Section 01400, Articles 1.1B and 1.4A; Design Change Request Form included in Specification Sections 01300 and 01400; Article 2.2 of the General Conditions; See also MBTA Feb. 2, 2022 letter response to LMH-Lane Letter No. 585.*
2. The December 17, 2021 Safety Incident was not a material breach of the Contract, and LMH-Lane's attempt to use the Incident as a reason to abandon the Project is a red herring when LMH-Lane was already in material breach of several contractual provisions (as set forth above) and LMH-Lane did not meaningfully attend and participate in the significant MBTA meetings and Q&A sessions, nor did LMH-Lane raise any concerns following the MBTA's additional safety protocol implementation. *See MBTA Feb. 2, 2022 letter response to LMH-Lane Letter No. 585; See MBTA Letter No. 377 dated January 5, 2022.*
3. The Carhouse
    - a. **Stinger System:** As stated above, the Contract and the MBTA permitted LMH-Lane to install the Stinger System on a zone-by-zone basis, and the MBTA did not prevent LMH-Lane from completing this work. *See MBTA Letter No. 067 dated August 23, 2019; Contract Drawing CMF-TP-0001 – Staging Plans; See MBTA Letter No. 067 dated August 23, 2019; See also MBTA Feb. 2, 2022 letter response to LMH-Lane Letter No. 551.*
    - b. **Electrical Feeds and Gas Lines Issues were Caused by LMH-Lane:** All of LMH-Lane's layout and constructability conflicts related to the electrical feeds and gas lines that power the HVAC system were a product of LMH-Lane's own means and methods. *See MBTA Letter No. 002 dated September 21, 2018; See RFI No. 256 Light Fixture Installation Conflicts, dated August 6, 2021, and MBTA's August 26, 2019 Response (conflicts with lighting fixtures due to steam line left in place requiring light fixtures to be adjusted), RFI No. 449 Electrical Ductbank and Existing Steam Line Conflict, dated July 16, 2020, and MBTA's July 21, 2020 Response (steam line conflict with new ductbank in basement), RFI No. 502 Dust Collect Duct and Existing Steam Pipe and Crane Conflict, dated January 7, 2021 and MBTA's January 25, 2021 Response (conflicts among dust collector, steam line, and overhead crane), and RFI No. 516 HVAC Duct and Existing Steam Conflict in Zone M, dated November 10, 2020 and MBTA's November 19, 2020 Response (existing steam line conflict with HVAC system in Zone M); See also MBTA Feb. 2, 2022 letter response to LMH-Lane Letter No. 551.*



- c. **Zone F Slab Conduits:** The Conduits in Zone F Slab were a differing site for which the MBTA issued Work Directive 606 on May 13, 2019, and LMH-Lane submitted Proposed Change Order (“PCO”) 26 in response. The MBTA paid for some of the PCO and was willing to further adjust the Contract Price upon receipt of required backup documentation including time and materials (“T&M”) slips and related backup documentation within 24 hours of performing the work reflected in the slips. *See MBTA Change Order Guidelines; General Conditions at 1.1A – Definitions of Contract and Contract Documents.* LMH-Lane did not provide signed T&M slips or the necessary backup documentation for the purported work. *See also* MBTA Feb. 2, 2022 letter response to LMH-Lane Letter No. 551.
- d. **Water Pipe Burst:** When a water pipe burst and caused flooding, the MBTA issued a Work Directive to address the situation, which is the subject of LMH-Lane’s PCO-91, and ultimately paid LMH-Lane nearly \$1 Million for work pursuant to PCO-91A and B, and approved over \$700,000 more for PCO-91C and D. LMH-Lane, however, did not submit required documentation supporting payment requisition and ultimately abandoned the Project before the work was completed.
- e. **LMH-Lane did not request Access to Zone M:** LMH-Lane never requested access to Zone M in accordance with the Contract Documents, as it did for access to Zones C, F and I, and was unprepared to access Zone M when LMH-Lane did not have acceptable maintenance platforms and did not provide an acceptable Zone M Process Plan. *See LMH-Lane Letters No. 1807-300-002-W dated September 16, 2018, and No. 1807-300-116-W dated January 14, 2020; Submittal MF01300-006-00; LMH-Lane Letter No. 1807-300-399-W dated July 23, 2021.*
- f. **LMH-Lane’s Baseline Schedule did not call for access to Zone M:** LMH-Lane argues in its Letter No. 1807-300-256-W dated March 25, 2021, that “Project Schedule, in accordance with Article 6.2, Prosecution of Work of the Contract, depicts a flow of Work in Zone M prior to Zone L”, however, Zone L is not mentioned in Article 6.2 and LMH-Lane’s Baseline Schedule depicted completing fifteen zones in approximately two and one-half years (November 2018 through March 2021), before going into Zone L. LMH-Lane completed only two zones in the Carhouse since it mobilized to the Carhouse belatedly in April 2019. *See* MBTA Feb. 2, 2022 letter response to LMH-Lane Letter No. 551.
- g. **LMH-Lane was not ready to perform work in Zone M:** As of the end of 2019, LMH-Lane had not provided an acceptable submittal for the necessary maintenance platforms to access the roofs of new Red Line cars, and those platforms had not been fabricated. *See LMH-Lane’s Submittals MF05100-031-00 and -032-00.* LMH-Lane’s Maintenance Platform Shop Drawings were returned “Revise and Resubmit” on December 10, 2019. LMH-Lane resubmitted MF05100-031-01 and -032-01 Maintenance Platform Shop Drawings on January 13, 2020, and the

MBTA accepted these submittals with comments later in January. *See* MBTA Feb. 2, 2022 letter response to LMH-Lane Letter No. 551.

- h. **LMH-Lane was limited to two (2) zones at a time in the Carhouse, and had not completed its work in Zones C and F.** *See* MBTA Feb. 2, 2022 letter response to LMH-Lane Letter No. 551.
- i. **Temporary Heat:** LMH-Lane failed to provide the submittal identifying its plan for temporary heat as required prior to prosecuting the work requiring removal of the existing heating system in Zone L of the Carhouse. *See MBTA Letters No. 143 dated March 8, 2021, and No. 226 dated July 21, 2021; Specification Section 01300, Article 1.5B, Item 2; Specification Section 01568; See* MBTA Feb. 2, 2022 letter response to LMH-Lane Letter No. 551.
- j. **Failure to Coordinate Carhouse and Yard Work in Zone L:** LMH-Lane failed to coordinate the Carhouse and Yard work relevant to Zone L. LMH-Lane was supposed to complete Tracks 1 and 2 during weekend outages (*see General Conditions, Article 6.4B*), but these tracks are still out of service after three years. Moving into Zone L would mean that Tracks 1, 2, 5 and 6 would all be out of service. This was an unacceptable level of outages in Cabot Yard, which the Contract required to remain in operation throughout construction. *See* MBTA Feb. 2, 2022 letter response to LMH-Lane Letter No. 551.
- k. **LMH-Lane failed to provide necessary documentation for Zone F Load Calculations:** The Contract required LMH-Lane to consider stresses in the existing structure due to construction loads, however, LMH-Lane failed to provide necessary documentation, including data sheets, for the specific equipment to be used. *Contract Drawing S-0001 Note 10*. The MBTA offered to meet with LMH-Lane on these issues and issued Non-Conformance Report (“NCR”) 68 because LMH-Lane brought in a manlift that was not approved for use on the concrete slab in Zone F. LMH-Lane did not respond to the MBTA. *See* MBTA Feb. 2, 2022 letter response to LMH-Lane Letter No. 551.
- l. **Zone C was not Completed, and the MBTA only took control over certain areas where LMH-Lane’s long delay was creating a hardship on MBTA.** *See* MBTA Feb. 2, 2022 letter response to LMH-Lane Letter No. 551.

#### 4. The Yard

- a. LMH-Lane’s complaints regarding refusal of access or limiting phases are so vague such that the MBTA has had no opportunity to meaningfully respond.
- b. **LMH-Lane did not Submit Necessary Diversion Requests for Weekend Work:** Weekend work is only allowed if there is a timely diversion request (three weeks in advance of the request), which LMH-Lane consistently failed to submit. *General*

*Conditions, Article 6.4B.10. See also MBTA Feb. 2, 2022 letter response to LMH-Lane Letter No. 551, including regarding LMH-Lane's scheduling and Process Plan issues. In fact, LMH-Lane did not ever comply with the requirement to submit diversion requests three weeks in advance.*

- c. **LMH-Lane never provided a Phasing Plan that demonstrated it had all the long lead-time items necessary to complete Zone D:** The MBTA requested a walk-through to confirm LMH-Lane had the materials necessary to perform the work in Zone D but LMH-Lane refused to participate. *See MBTA Letter No. 375 dated December 29, 2021. On January 25, 2022, LMH-Lane provided a Switch Delivery Storage Schedule that indicated it did not have TO23 – a requirement for Zone D – and that the shipping date for that turnout was unknown. See January 25, 2022 Email from Seth DeMello and attached Spreadsheet. TO23 was finally delivered to the site as of February 3, 2022 – after LMH-Lane had already abandoned the work.*
- d. **There was no phasing issue for Turnouts:** The Contract requires LMH-Lane to provide and install new Turnouts SW44, SW42, and SW41. Contrary to LMH-Lane's statement, there was no phasing issue that inhibited installation of SW42, LMH-Lane submitted its Process Plan related to SW44 only 8 days before the first diversion and failed to follow its own intended critical path as set forth in its Baseline Schedule, and LMH-Lane simply never ramped-up with the resources needed to meet its schedule. *See MBTA Feb. 2, 2022 letter response to LMH-Lane Letter No. 551.*
- e. **The MBTA agreed that SW41 did not need to be completed, and LMH-Lane's related complaints are a red herring.** *See LMH-Lane's Schedule Update 29, which shows this work being performed over the weekend of April 15, 2023; See also MBTA Feb. 2, 2022 letter response to LMH-Lane Letter No. 551.*
- f. **LMH-Lane's stockpile of welded rail stringers on top of the proposed routing for new utilities created the conflict with the new location of MH20A.** *See MBTA Letter No. 359 dated November 16, 2021 for a Map. Moreover, LMH-Lane did not have MH20A available to complete its work at the time of its proposed diversion. See MBTA Letters No. 213 dated July 9, 2021, and No. 216 dated July 13, 2021.*
- g. **LMH-Lane's Zone C Complaints are a red herring:** Work on existing drainage structures and the existing bridge did not affect LMH-Lane's ability to work on other areas, and LMH-Lane did not have the capacity to perform additional trackwork as is evident by LHM-Lane's election not to even start work in Zones A or B. *See LMH-Lane Submittal MF01300-007-01 Construction Process Plan Review Comments for Zone I, dated March 5, 2020, Note 2 ("Trackwork: As of the date of this submission...[LMH-Lane] does not have an MBTA approved track*

*subcontractor.*"); See also MBTA Feb. 2, 2022 letter response to LMH-Lane Letter No. 551.

- h. **LMH-Lane work in Zone A was not held up by the Midland Bridge survey:** LMH-Lane never provided the tie dapping plan it was required to provide. *Specification Section 01010, Article 1.9; See Drawing CYR-K-502, Note 3.* LMH-Lane performed the work as requested. Nothing was held up. LMH-Lane followed up by submitting an RFI on June 9, 2021 and the MBTA responded on June 10, 2021. *See RFI-632; See also MBTA Feb. 2, 2022 letter response to LMH-Lane Letter No. 551.*
- i. **LMH-Lane's Process Plan Zone A, Phase 19, Track 9 was untimely and would have caused an impermissible shut down of use of the crossover in that area.** *See MBTA Letter No. 312 dated September 9, 2021; See Specification Section 10300, Article 1.5; See also MBTA Feb. 2, 2022 letter response to LMH-Lane Letter No. 551.*
- j. **LMH-Lane had coordination issue related to Manhole CV-001, and LMH-Lane did not respond to RFI-713 or complete the work.** *See MBTA Feb. 2, 2022 letter response to LMH-Lane Letter No. 551.*
- k. **Installation of new power ductbank along the Vehicle Maintenance alleyway was not the critical path for establishing power distribution for the new Substation and Carhouse, and LMH-Lane never requested access to the area long the Vehicle Maintenance alleyway.** *See MBTA Feb. 2, 2022 letter response to LMH-Lane Letter No. 551.*
- l. **Test Pits: LMH-Lane failed to properly invoice the MBTA for the test pits.** *See also MBTA Feb. 2, 2022 letter response to LMH-Lane Letter No. 551.*
- m. **The MBTA obtained the permit from MassDOT to access the MassDOT Vent Building, but LMH-Lane had already abandoned the work.** *See LMH-Lane's Schedule Update No. 29 (access was not a critical activity) and MBTA Feb. 2, 2022 letter response to LMH-Lane Letter No. 551.*
- n. **LMH-Lane had no plan for temporary power:** Temporary power is part of LMH-Lane's scope, yet LMH-Lane was unable to provide a plan to MBTA upon request. *Specification Section 01500; See also MBTA Feb. 2, 2022 letter response to LMH-Lane Letter No. 551.*
- o. **The Stairs Design was not defective:** MBTA issued a DCR to change the stairs to a pre-engineered, over-the-counter, metal stair/platform system that is moveable and adjustable, LMH-Lane knew what it must purchase to perform this work, yet LMH-Lane never provided a cost proposal. The MBTA closed the RFI-700 on the stair design change on November 8, 2021.



- p. **NCRs.** There were multiple NCRs issued that were never closed out per Contract requirements.

#### 5. **Schedule:**

- a. LMH-Lane refused to meet with the MBTA and PHM to defend its TIA-05. The MBTA went to extraordinary lengths – above and beyond the Contract requirements – to help LMH-Lane mitigate delays and recover time, which are set forth in MBTA February 2, 2022 letter response to LMH-Lane Letter No. 551.
- b. The MBTA never issued any stop work orders on the Project. The only mandated work stoppage was due to COVID-19 and the MBTA granted a time extension.
- c. All of the MBTA's Work Directives, RFIs, DCRs, and PCOs have been reasonable and appropriate, as addressed in detail in MBTA Feb. 2, 2022 letter response to LMH-Lane Letter No. 551.
- d. The MBTA issued Work Directives for sequencing changes related to SW44 and SW42, as well as SW09, SW10, and SW12, so that these turnouts would best accommodate the new, heavier Red Line cars. The MBTA also issued a Work Directive for temporary installation of SW09, SW10, and SW12 because LMH-Lane stated it could complete all three of these turnouts during a single five-day diversion. These changes to work sequence were not overly burdensome on LMH-Lane, who was unable to adhere to its own Schedule. *See* MBTA Feb. 2, 2022 letter response to LMH-Lane Letter No. 551.
- e. The Contract documents instructed LMH-Lane to expect to encounter mercury related to equipment and stated that hazardous materials may be present in sediments. *Specification Section 02081*. LMH-Lane's complaints related to DSCs for mercury are unwarranted.
- f. LMH-Lane's cost proposals for Extra Work lacked clarity and/or supporting documentation such that the MBTA needed more review time, which would have been avoided if LMH-Lane submitted accurate proposals.

#### 6. **Permits**

- a. The MBTA timely engaged OPSI related to the building permit applications, and LMH-Lane was not prepared to begin the work any earlier for reasons unrelated to building permits. *See* MBTA Feb. 2, 2022 letter response to LMH-Lane Letter No. 551.
- b. The MBTA timely applied for an EPA permit and included the necessary documents in its bid-proposal. *See RFI-80, "PCBs Approval Plan," submitted*

*December 11, 2018 and responded to December 20, 2018 ("Please see attached letter and email regarding Conditional Approval from the US EPA with regards to the Remediation plans related to PCBs in the Carhouse relating to US EPA outlined in Appendix S. EPA Amendment #4 of the Contract Documents.")*. See MBTA Feb. 2, 2022 letter response to LMH-Lane Letter No. 551.

- c. There was no significant delay in the MBTA's review of environmental work plans. The Contract allowed the MBTA 30 days to review and return these submittals. The MBTA took 39 days to respond to the initial HMMP submittal. The MBTA returned all subsequent submittals for the HMMP and dust monitoring plans in 30 days or less (6 days in one instance).

#### **7. Other**

- a. LMH-Lane's Process Plans were deficient, untimely, and failed to meet Contract requirements. See, e.g., *MBTA Letters No. 037 dated May 29, 2019, No. 039 dated June 5, 2019, No. 188 dated May 27, 2021, No. 234 dated July 27, 2021, No. 245 dated August 4, 2021, and No. 323 dated September 23, 2021*; See MBTA Feb. 2, 2022 letter response to LMH-Lane Letter No. 551.

#### **IV. CONCLUSION**

The MBTA has determined that LMH-Lane committed repeated, material breaches of its obligations under the Contract. LMH-Lane's breaches began well-before the issues it now complains of in an attempt to blame the MBTA for its failures. Conversely, the MBTA has complied with all of its contractual obligations, including primarily its obligation to issue payment when LMH-Lane submitted sufficient and compliant pay applications.

## Joe Luciana

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**From:** Joe Luciana  
**Sent:** Monday, May 23, 2022 5:05 PM  
**To:** Craddock, Christina  
**Cc:** Adam Friedman - Chiesa Shahinian & Giantomasi PC (afriedman@csglaw.com); LeBoeuf, Roger (MBTA); Peter Nigra; Thomas Hayman; Lisa Lepore (llepore@MBTA.com); Carey, Kathleen; Francis Powell; Campbell, Brian; Chris (Christopher.Onell@mottmac.com)  
**Subject:** RE: Cabot Yard  
**Attachments:** MBTA Findings Regarding LMH-Lane Material Breaches and Abandonment of the Cabot Yard Project - May 23 2022.pdf

Christina:

In connection with the meeting tomorrow, enclosed please find MBTA Preliminary Findings Regarding LMH-Lane Default, Material Breaches and Abandonment of the Cabot Yard Project.

You have indicated that, during the meeting, the Co-Sureties intend to present "findings" regarding Co-Sureties' investigation of the default of LMH-Lane. However, you have also indicated that Co-Sureties will not present the findings in writing. Under the circumstances, MBTA will certainly listen to Co-Sureties' presentation of "findings." However, because Co-Sureties are not providing any written "findings during or in advance of the meeting, you should be aware that the MBTA may not be in a position to respond to Co-Sureties' "findings." Accordingly, the MBTA reserves all rights to respond to such "findings" at an appropriate time.

If you have any questions or would like to discuss please let me know. In the meantime, we will plan to see you tomorrow morning.

Joseph L. Luciana, III  
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**From:** Craddock, Christina <Christina.Craddock@LibertyMutual.com>  
**Sent:** Monday, May 23, 2022 8:23 AM

**To:** Joe Luciana <JLuciana@dflegal.com>

**Cc:** Adam Friedman - Chiesa Shahinian & Giantomasi PC (afriedman@csglaw.com) <afriedman@csglaw.com>; LeBoeuf, Roger (MBTA) <rleboeuf@MBTA.com>; Peter Nigra <pnigra@dflegal.com>; Thomas Hayman <tom.hayman@nelsonmullins.com>; Lisa Lepore (llepore@MBTA.com) <llepore@MBTA.com>; Carey, Kathleen <kcarey@MBTA.com>

**Subject:** RE: Cabot Yard

**Importance:** High

Joe,

You advised in your May 12, 2022 e-mail below that the MBTA would advise of the location for our May 24<sup>th</sup> meeting.

We have yet to receive that information from you.

Please let us know the location for the May 24, 2022 meeting.

Kindest regards.

Christina Craddock  
Senior Surety Claims Counsel  
Southeast Region Surety Claims  
Liberty Mutual Surety  
P.O. Box 34526  
Seattle, WA 98124-1526  
678.417.3913 Direct Line  
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**Liberty Mutual.**  
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**From:** Joe Luciana <JLuciana@dflegal.com>

**Sent:** Thursday, May 12, 2022 11:14 AM

**To:** Craddock, Christina <Christina.Craddock@LibertyMutual.com>

**Cc:** Adam Friedman - Chiesa Shahinian & Giantomasi PC (afriedman@csglaw.com) <afriedman@csglaw.com>; LeBoeuf, Roger (MBTA) <rleboeuf@MBTA.com>; Peter Nigra <pnigra@dflegal.com>; Thomas Hayman <tom.hayman@nelsonmullins.com>

**Subject:** {EXTERNAL} Cabot Yard

Christina:

Per your request for an in-person meeting on either Monday, May 23 or Tuesday, May 24 to discuss the Co-Sureties' "findings" for its investigation of the default of LMH-Lane, the MBTA is available on Tuesday, May 24<sup>th</sup> at 9:00 a.m. The



MBTA will advise of the location of the meeting. Please provide an agenda and a list of representatives of the Co-Sureties who will be in attendance. In the meantime, if you have any questions please let me know.

Joseph L. Luciana, III  
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Pittsburgh, Pennsylvania 15222

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# EXHIBIT C

## DFL | LEGAL

DINGESS, FOSTER, LUCIANA,  
DAVIDSON & CHLEBOSKI LLP

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May 6, 2022

**Via Email (Christina.Craddock@LibertyMutual.com)**

Christina Craddock, Esq.  
Senior Surety Claims Counsel  
Liberty Mutual  
P.O. Box 34526  
Seattle, Washington 98124-1526

Re:   Principal:    LMH-Lane Cabot Yard JV  
      Contract:    MBTA Contract No. R44CN02, dated August 2, 2018 ("Contract")  
      Obligee:     Massachusetts Bay Transportation Authority  
      Bond Nos.:  NY-18-003 MBTA R44CN02 – Cabot Yard & Maintenance Facility  
                  Improvements, Boston, MA  
      Co-Sureties: Liberty Mutual Insurance Company/Zurich American Insurance  
                  Company/Fidelity and Deposit Company of Maryland/National  
                  Union Fire Insurance Company/Berkshire Hathaway Specialty  
                  Insurance Company

Dear Christina:

As you know, LMH-Lane Joint Venture ("LMH-Lane") abandoned the Cabot Yard and Maintenance Facility Improvements Project ("Project") on January 31, 2022. *See LMH-Lane Letter No. 1807-300-590-W; MBTA Letter No. 388.* The MBTA has advised in previous correspondence that, as a consequence of LMH-Lane's default and abandonment of an active yard and Project site, the MBTA has been forced to take certain emergency measures to ensure ongoing operations and site safety, is operating under various temporary and limited emergency procurements, and that these short-term expenditures are the reasonable costs necessary to mitigate the resulting damages from LMH-Lane's default and abandonment of the Project and ease the anticipated transition from LMH-Lane to the Co-sureties' completion contractor.

The MBTA has previously advised that, although it acknowledges the Co-sureties have asserted the right to conduct an investigation, Co-sureties have an obligation under Massachusetts law to complete their investigation promptly, and that prolonged inaction by the Co-sureties is exacerbating the harm to the MBTA. As such, the MBTA plans to take additional affirmative steps to advance the work and mitigate further damages and delays on the project as discussed further below. As of the date of this letter, the Co-sureties' investigation is apparently still ongoing despite the fact it has been approximately three months since the MBTA declared LMH-Lane in default.

The MBTA is writing to advise that if it does not receive confirmation from the Co-sureties within 14-days of this letter that Co-sureties will remedy the default of LMH-Lane and complete work under the Contract, MBTA will be forced to take additional emergency measures. These measures may include but not be limited to:

- Continuity of Operations and Safety as a result of LMH Lane abandonment
- Supply of Heating system for Red Line Vehicle Maintenance Building
- Stinger System
- Completion and Certificate of Occupancy for the Parts and Storage Building
- Vehicle Maintenance Building outstanding repairs and rehabilitation
- Inspection, purchase, delivery and installation of 42 Rail Turnouts:
- Inspection, purchase, delivery and installation of other material and equipment

The MBTA will provide the Co-sureties with copies of the supporting documents when they are issued.

As well, the MBTA will continue to work to mitigate costs resulting from LMH-Lane's default and abandonment of the Project. The MBTA asks the Co-sureties to work to ensure the same. Should the Co-sureties wish to fund these obligations or timely source alternatives, please notify me immediately. However, if the Co-sureties fail to fund these obligations or make timely source alternatives, the MBTA will advise the Co-sureties of the costs of these emergency measures and will expect Co-sureties to reimburse MBTA for those costs under the terms of the performance bond.

The MBTA reserves all of its rights, claims, and defenses, at law and in equity, as well as under the terms of the Contract and bonds, including but not limited to its right to back charge or otherwise recover the costs incurred as a result of your Principal's default and abandonment on the Project. The MBTA maintains this reservation of rights in full force and effect unless expressly revoked by the MBTA in writing.

Please do not hesitate to contact me if you have any further questions or need further assistance.

Very truly yours,

*/s/ Joseph L. Luciana, III*

Joseph L. Luciana, III

JLL/baf

cc: (all via email)  
R. LeBoeuf ([rleboeuf@mbta.com](mailto:rleboeuf@mbta.com))  
K. Carey ([kcarey@mbta.com](mailto:kcarey@mbta.com))



T. Hayman ([t.hayman@nelsonmullins.com](mailto:t.hayman@nelsonmullins.com))  
C. Spindler ([cspindler@dflegal.com](mailto:cspindler@dflegal.com))  
Adam Friedman ([afriedman@csglaw.com](mailto:afriedman@csglaw.com))

## Joe Luciana

---

**From:** Joe Luciana  
**Sent:** Friday, May 6, 2022 5:03 PM  
**To:** Craddock, Christina  
**Cc:** LeBoeuf, Roger (MBTA); Carey, Kathleen; Thomas Hayman; Peter Nigra; Adam Friedman - Chiesa Shahinian & Giantomasi PC (afriedman@csglaw.com); Lepore, Lisa  
**Subject:** RE: LMH-Lane Cabot Yard JV Claim No. 012207605 Claimant MBTA  
**Attachments:** Letter to Christina Craddock - May 6 2022.pdf

Christina:

Enclosed is our letter dated May 6, 2022 regarding the above-referenced matter.

Joseph L. Luciana, III  
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Pittsburgh, Pennsylvania 15222

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**EXHIBIT D**



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DAVIDSON & CHLEBOSKI LLP

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June 21, 2022

Via Email (Christina.Craddock@LibertyMutual.com)

Christina Craddock, Esq.  
Senior Surety Claims Counsel  
Liberty Mutual  
P.O. Box 34526  
Seattle, Washington 98124-1526

Re: MBTA Contract Number R44CN02 (the "Contract")  
Cabot Yard and Maintenance Facility Improvements

Dear Ms. Craddock,

This letter will respond to yours, dated June 10, 2022, in which Co-Sureties denied the claim of the Massachusetts Bay Transportation Authority ("MBTA") under the Performance Bond for the above-referenced Contract. MBTA also understands that your letter constitutes Co-Sureties' response to MBTA's letter, dated June 3, 2022, making a demand under Massachusetts General Laws, Chapter 93A, Section 9 (the "93A Letter"). Your letter confirms that Co-Sureties have not made any proposal to settle or resolve the violations of 93A or Chapter 176D, Section 3 ("176D") identified in the 93A Letter. MBTA will, therefore, proceed as necessary to remedy those violations.

Your letter also confirms that Co-Sureties' denial of MBTA's claim under the Performance Bond was wrongful, in violation of 93A and 176D, and a material breach of the Performance Bond, for the following reasons, among others:

- Your letter states: "LMH-Lane provided information and documentation in support of its position that it was not in breach and that MBTA failed to perform its obligations under the Contract." MBTA provided extensive information to Co-Sureties proving beyond any doubt LMH-Lane materially breached the Contract. Despite that, Co-Sureties failed to make any findings on that issue. Your letter confirms that Co-Sureties merely accepted LMH-Lane's self-serving assertions that it did not breach the Contract. Co-Sureties' failure to make findings on LMH-Lane's breach is a violation of 93A, 176D and a material breach of the Performance Bond.
- Your letter asserts that there were design deficiencies on the Project for conduit relining, signal instrumentation house foundation conflict, the stinger system and manhole 20A and further states: "[a]t the time MBTA terminated LMH-Lane, these design deficiencies had not been resolved, and the contract documents had not been changed or amended to reflect a resolution thereof." The descriptions of these issues in your letter do not point to any



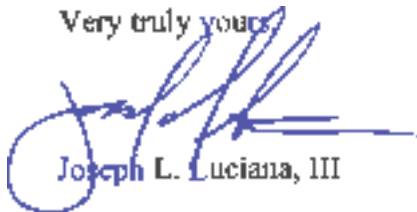
provision of the Contract that MBTA breached. The issues described in your letter are not unusual on any construction project and are resolved through contractual mechanisms such as RFIs, DCRs and change orders. In fact, the Co-Sureties' assertions that design changes being discussed between LMH-Lane and MBTA were not finalized and resolved at the time of LMH-Lane's abandonment of the Project does not constitute a failure of the MBTA to fulfill its obligations under the Contract. To the contrary, the sole reasons those issues were not resolved were: (1) LMH-Lane's failure to timely and diligently follow the provisions of the Contract; and (2) LMH-Lane's abandonment and material breach of the Contract in late January 2022. As such, the Co-Sureties' premise that the MBTA did not fulfill its obligations to LMH-Lane because the Contract was not amended to address certain "design" issues at the time LMH-Lane abandoned the Project is a violation of 93A, 176D and a material breach of the Performance Bond.

- With respect to the signal instrument house foundation, your letter adopts LMH-Lane's erroneous assertion that it had no obligations for the design of the foundation. My June 3<sup>rd</sup> letter identified the contractual provisions that demonstrated this assertion of LMH-Lane was false. Your letter ignores that information in violation of 93A and 176D and constitutes a material breach of the Performance Bond.
- Your letter asserts that there is an "unresolved life safety issue" on the project. That assertion is false. Moreover, your assertion that "MBTA refused to provide the requested information [on root cause]" is a willful and intentional misrepresentation in violation of 93A and 176D. In fact, MBTA provided the available information Co-Sureties requested regarding the December 17, 2021 train incident. And, in my April 22<sup>nd</sup> letter to you, MBTA informed Co-Sureties that MBTA's report of the train incident had been submitted to the Massachusetts Department of Public Utilities ("DPU") and [w]hen that report is accepted by the DPU and finalized, the MBTA will provide a copy of it to the Co-Sureties." Your letter also failed to address the fact that LMH-Lane had the primary obligation for safety of the work site under Article 5.15 of the General Conditions of the Contract. Finally, the Co-Sureties did not cite any provision of the Contract that established the MBTA had failed to fulfill its obligations under the Contract with respect to the train incident or any other safety incident on the Project. Co-Sureties' assertion of an unresolved life safety issue is a violation of 93A, 176D and a material breach of the Performance Bond.

As a result of the Co-Sureties' unfair and deceptive acts and practices, the MBTA has suffered and will continue to suffer injury and loss of money including but not limited to the penal sum of the Performance Bond, damages incurred due to MBTA's good faith efforts to pursue its claims under the Performance Bond, and damages resulting from the Co-Sureties' denial of the MBTA's claim under the Performance Bond. The Co-Sureties' exposure for the MBTA's expected completion and internal costs, treble damages, interest, costs and attorney's fees will be well in excess of the penal sum of the bond. Therefore, the MBTA hereby demands again that the Co-Sureties perform under the Performance Bond, including remedying LMH-Lane's default and completing the Contract. The Co-Sureties' failure to perform under the Performance Bond will cause significant, immediate, and irreparable harm to the MBTA and the public interest.

The MBTA reserves the right to refer the Co-Sureties handling of this matter to the appropriate regulatory authorities for further review and action, including review for violations of Massachusetts General Laws, Chapter 12, §§ 5A-5O.

Very truly yours,



Joseph L. Luciana, III

cc: R. LeBocuf (all via email)  
K. Carey  
M. Kalowski  
A. Friedman  
B. Krulick