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CITY OF DANBURY

155 DEER HILL AVENUE
DANBURY, CONNECTICUT 06810

ENGINEERING DEPARTMENT
(203) 797-4641
FAX (203) 796-1586

WILLIAM J. BUCKLEY, JR., P.E.
DIRECTOR OF PUBLIC WORKS / CITY ENGINEER

March 3, 2005

Honorable Mark D. Boughton
Common Council ✓
City of Danbury
155 Deer Hill Avenue
Danbury, CT 06810

Dear Mayor Boughton and Common Council Members:

East Ditch Storm Drain
Metro-North Railroad/City of Danbury
Force Account Agreement
Project No. 01-16

Enclosed please find a copy of the February 28, 2005 letter with attachments sent to me by J. G. Williams of Metro-North Railroad.

The proposed East Ditch storm drain (which is presently out to bid) will cross Metro-North railroad tracks in the vicinity of the railroad station. The City's contractor is required to work on the railroad track crossing over two weekends. The tracks must be removed and sheeting installed over the first weekend. Over the second weekend, the area will be excavated and the box culvert installed. Metro-North will remove and restore the tracks each weekend. They will also supply flagmen and other services.

We ask that the Common Council authorize Mayor Mark D. Boughton to execute the enclosed force account agreement. The Metro North fee will be charged to the 21st Century Danbury bond issue East Ditch line item.

If you have any questions, please give me a call.

Very truly yours,



William J. Buckley, Jr., P.E.
Director of Public Works/City Engineer

Encl.

C: Eric L. Gottschalk, Esq., with encl (original)
Dena R. Diorio
Ronald G. Litke, P.E.

RECEIVED

MAR 03 2005

ENGINEERING DEPT.



Metro-North Railroad

420 Lexington Avenue, 12th Floor, New York, NY 10017

February 28, 2005

Mr. William Buckley
City of Danbury
City Hall
155 Deer Hill Avenue
Danbury, CT 06810

RE: Metro-North Railroad/City of Danbury
Force Account Agreement
Installation Storm Drain Culvert-Danbury Station
City of Danbury, CT
FILE: M-C-359 FA

Dear William:

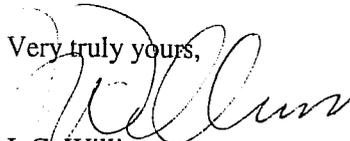
Enclosed please find two (2) original railroad force account agreement dated March 1, 2005 for the Railroad Force and support services for the installation of one (1) 5-foot x 10-foot wide box culvert storm drain crossing under and across the Danbury Railroad tracks at station 19+15± and the still River Channel located at Danbury Station, in connection with the City of Danbury Drainage Project, in the City of Danbury, in the State of Connecticut.

Please have the agreements signed on behalf of the City of Danbury and return originals to this office – Metro-North Railroad, 420 Lexington Avenue, 12th Floor, New York, NY 10017 for further handling. along with a draft in the amount of \$ 95,600.00 payable to Metro-North Railroad for the force account cost estimates of the project.

Please complete Metro-North Certificate of Insurance with proper coverage and named insureds on the Railroad Protective Insurance and additional insureds on the General and Automobile Liability Insurance by your contractor. Please have form authorized and signed by a notary public and return the original form to this office with the Agreement.

Should you have any questions regarding this matter, please contact Mr. Jim Horn of my staff at (212) 499-4504.

Very truly yours,


J. G. Williams
Asst. Director
Administration

cc: R. Litke, Roald Haestad, Inc.
D. Willard
K. Schmidt



Metro-North Railroad

CERTIFICATE OF INSURANCE

M-C-359 FA

CONTRACT NAME:

CONTRACT NUMBER:

PRODUCER:

ADDRESS:

PHONE NUMBER:

CERTIFICATE ISSUANCE DATE:

INSURED:

CO
LTR

COMPANIES AFFORDING COVERAGE

A

B

C

D

E

F

G

CERTIFICATE
HOLDER:

COVERAGES (See Notes 1 and 2)

CO LTR	TYPE OF INSURANCE	POLICY NUMBER	EFFECTIVE DATE	EXPIRATIO N DATE	LIMITS	
	GENERAL LIABILITY (Check all that apply): <input type="checkbox"/> Comprehensive Form <input type="checkbox"/> Undergrnd Expl. & Collapse Haz. <input type="checkbox"/> Products/Completed Oper. <input type="checkbox"/> Contractual <input type="checkbox"/> Independent Contractors <input type="checkbox"/> Broad Form Property Dam. <input type="checkbox"/> Personal Injury				BODILY INJURY OCC.	\$
					BODILY INJURY AGG.	\$
					PROPERTY DAMAGE OCC.	\$
					BI & PD COMBINED OCC.	\$
					BI & PD COMBINED AGG.	\$
					PERSONAL INJURY AGG.	\$
	AUTOMOBILE LIABILITY (Check all that apply): <input type="checkbox"/> Any Auto <input type="checkbox"/> Owned Autos <input type="checkbox"/> Hired Autos <input type="checkbox"/> Non-owned Autos				BODILY INJURY (Per Person)	\$
					BODILY INJURY (Per Accident)	\$
					PROPERTY DAMAGE	\$
					BODILY INJURY & PROPERTY DAMAGE COMBINED	\$
	EXCESS LIABILITY (Check all that apply): <input type="checkbox"/> Umbrella Form <input type="checkbox"/> Other Than Umbrella Form	NO RETENTION/ DEDUCTIBLE			EACH OCCURENCE	\$
					AGGREGATE	\$
	WORKER'S COMPENSATION AND EMPLOYER'S LIABILITY				<input type="checkbox"/> STATUTORY LIMITS	
					EMPLOYER'S LIABILITY	\$2,000,000.00
	BUILDER'S RISK (See Note 3)				FULL CONTRACT VALUE	
	RAILROAD PROTECTIVE LIABILITY (See back of this form for named insureds)				EACH OCCURENCE	\$2,000,000.00
					AGGREGATE	
	PROFESSIONAL LIABILITY					
	OTHER					
	OTHER					

CERTIFICATE OF INSURANCE

ADDITIONAL INSUREDS (See Note 4)

(Check all that apply):

- Metro-North Commuter Railroad Company
- Metropolitan Transportation Authority
- Connecticut Department of Transportation
- American Premier Underwriters, Inc. & its affiliates
- Consolidated Rail Corporation
- National Railroad Passenger Corp. (Amtrak)
- NJ Transit Rail Operations Inc.
- CSX Transportation Inc. & New York Central Lines LLC
- Delaware & Hudson Railway Company, Inc.
- Norfolk Southern Railway Company & Pennsylvania Lines LLC
- Housatonic Railroad Company
- Providence & Worcester Railroad Company
-

NAMED INSUREDS (RAILROAD PROTECTIVE INS. AND/OR BUILDER'S RISK INS. - See Note 4) (Check all that apply):

- Metro-North Commuter Railroad Company
- Metropolitan Transportation Authority
- Connecticut Department of Transportation
- American Premier Underwriters, Inc. & its affiliates
- Consolidated Rail Corporation
- National Railroad Passenger Corp. (Amtrak)
- NJ Transit Rail Operations Inc.
- CSX Transportation Inc. & New York Central Lines LLC
- Delaware & Hudson Railway Company, Inc.
- Norfolk Southern Railway Company & Pennsylvania Lines LLC
- Housatonic Railroad Company
- Providence & Worcester Railroad Company
-

NOTE 1: The subscribing insurance company(s), authorized to do business in the State of New York, certifies that insurance of the kinds and types and for limits of liability herein stated, covering the Contract herein designated, has been procured by and furnished on behalf of the insured Contractor and is in full force and effect for the period listed on the front of this Certificate of Insurance. In addition, the subscribing insurance company(s) certifies that the insurance limits for General Liability Insurance are not amended by deductible clauses of any nature except as has been disclosed to and approved by Metro-North; and that coverage is afforded for the insured Contractor's obligations under that provision of the contract providing for indemnification of the Indemnified Parties, including Metro-North, named therein. Any exclusion applying to construction or demolition operations on or within fifty (50) feet of a railroad has been voided; and any employer liability exclusion which may otherwise operate to exclude claims for bodily injury asserted by an employee of an additional insured shall be voided.

NOTE 2: The subscribing company(s) agrees that no policy referred to herein shall be changed or canceled until thirty (30) days written notice has been given to Metro-North Commuter Railroad Company, 347 Madison Avenue, 11th Floor, New York, New York 10017, Attention: MTA Standards Enforcement and Claims Analyst.

NOTE 3: Builder's Risk Insurance includes Metro-North Commuter Railroad Company and Metropolitan Transportation Authority, (and where contractually required, Connecticut Department of Transportation and/or American Premier Underwriters, Inc.) as Named Insureds as their interests may appear.

NOTE 4: All references to Named Insureds and Additional Insureds include those entities' directors, officers, employees, partners, agents, subsidiaries and affiliates.

NOTE 5: This certificate is issued to the certificate holder in consideration of the agreement entered into with the Named Insured. It is understood and agreed that the certificate holder relies on the certificate as a basis for continuing such agreement/s with the Named Insured.

AUTHORIZED INSURER/PRODUCER _____

BY _____
(signature)

TITLE _____

STATE OF _____)
) s.s.
 COUNTY OF _____)

On this _____ day of _____ 19____, before me personally came _____, to

Me known, who being duly sworn, did depose and say that he/she resides in _____,

that he/she is the _____ of the corporation described in _____ and which executed the foregoing Certificate of Insurance,

that he/she is fully authorized to execute the foregoing Certificate of Insurance

(Notary Public)

METRO-NORTH COMMUTER RAILROAD COMPANY

FORCE ACCOUNT AGREEMENT

AGREEMENT made as of the 1st day of ^{March} ~~January~~, 2005, by and between METRO-NORTH COMMUTER RAILROAD COMPANY ("Metro-North"), a public benefit subsidiary corporation of the Metropolitan Transportation Authority ("MTA"), having its principal office at 347 Madison Avenue, New York, New York 10017 and City of Danbury having offices at 155 Deer Hill Avenue, Danbury, CT 06810 ("Company").

W I T N E S S E T H:

WHEREAS, Company desires Metro-North to provide Force Account and support services for the installation of one (1) 5-foot wide box culvert storm drain crossing under and across the Danbury Railroad tracks at station 19+15+ and the still River Channel located at Danbury Station, in connection with the City of Danbury Drainage Project, in the City of Danbury, in the State of Connecticut.

WHEREAS, it is the purpose of this Agreement to establish the terms and conditions pursuant to which Metro-North will be reimbursed for any and all costs it incurs in supplying certain labor and material to the Company during the conduct of this Project.

NOW, THEREFORE, the parties intending to be legally bound, agree as follows:

1. Services to be Provided. Metro-North forces will provide all labor and at any time Metro-North should deem flagmen, watchmen, inspectors and/or communication and signal services desirable or necessary to protect its property or operations, or its employees, patrons, or licensees, during the work of constructing the Project for Company, Metro-North shall have the right to arrange for such flagmen, watchmen, inspectors and/or communication and signal services, at the sole expense of Company which expense, together with overhead percentages, Company agrees to pay directly to Metro-North. However, it is agreed that the furnishing, or failure to furnish, flagmen, watchmen, inspectors and/or communication and signal services by Metro-North shall not release Company from any and all liabilities assumed by Company under the terms, conditions and covenants of this Agreement.

2. Force Account Estimate. The estimated cost of Metro-

Agreement is set forth in Appendix A attached to, and by reference incorporated in, this Agreement. Invoices for all labor and materials provided by Metro-North will be based on actual cost at the time the services are provided. The estimated cost of Metro-North's services shall be paid upon execution of this Agreement. In the event that the cost of the services provided by Metro-North exceeds the estimate, Company agrees to pay the amount of Metro-North's billings for such additional cost within thirty (30) days of receipt. In the event the actual cost of the services provided is less than the amount of the estimate paid by Company, Metro-North will refund the difference within thirty (30) days of conclusion of the work. Payment for retroactive wages will apply only to the actual time employees were paid for work on this project. Billings for such costs will be rendered after said wage adjustments have been paid to the employees.

3. Force Account Insurance (when required only, please note this insurance covers Metro-North employees only). Metro-North shall procure, provide, and thereafter maintain in effect during the life of this Agreement for and in behalf of Metro-North any and all insurance deemed necessary by Metro-North.

All policies will be endorsed to provide that the insurance companies shall give thirty (30) days notice in writing to Company if the policies are to be terminated or if any changes are to be made in them which will affect Metro-North's provision of those services described in paragraph 1 of this Agreement.

Metro-North's providing of such insurance shall not be deemed a limitation on any liability of Company arising under the terms of this Agreement. The premium paid by Metro-North for such insurance coverage shall be reimbursed by Company in accordance with the provisions of paragraph 2 of this Agreement.

4. No Third Party Rights. No third-party is intended to be benefitted by the provisions of this Agreement, and only the parties hereto may enforce any rights created hereunder.

5. Assignment/Modification. Company shall not assign this Agreement or its benefits without the written consent of Metro-North. Any such assignment, or attempt to assign, without written consent of Metro-North is void. This Agreement shall be modified only by mutual, written consent of the parties.

6. Compliance with Applicable Law. Company at its expense, shall comply with all federal, state and local laws, regulations and ordinances applicable to the Project. This Agreement shall be interpreted under the laws of the State of New York.

7. Force Majeure. Any obligations of Metro-North hereunder shall be subject to "Force Majeure", which shall include, but not be limited to, labor disruptions such as strikes.

8. Other Terms and Conditions. None.

IN WITNESS WHEREOF, the parties hereto have caused this Instrument, and any designated counterparts, to be executed the day and year first above written.

APPROVED
AS TO FORM 210

METRO-NORTH COMMUTER RAILROAD
COMPANY

WITNESS: _____

BY: _____

TITLE: _____

DATE: _____

City of Danbury

WITNESS: _____

BY: _____

TITLE: _____

DATE: _____

ATTACHMENT "A"

DESCRIPTION OF CONDUCTOR-FLAGMAN WORK RULES

BASE RATE

Conductors are paid at 70%, 75%, 80%, 85%, and 90% of payscale, respectively, for the first five years of service, and 100% of payscale thereafter.

A conductor flag is entitled to payment for the full eight-hour shift regardless of whether he actually worked that time. Thus, three (3) and seven (7) hour work periods are paid at the full eight hour rate.

OVERTIME

A conductor flag is entitled to 1-½ times salary after the first eight (8) hours service in one day computed from the time he leaves his headquarters until the time he returns. In addition, a conductor who has completed forty (40) hours service in the payweek will be paid 1-½ times salary for any additional work in that payweek.

DEADHEADING TIME

Flagging personnel are also paid for "Deadheading," which is travel time from their headquarters, to and from the project, via a scheduled train. Arranging to man an assignment by a scheduled train can add hours to the actual productive worktime.

MEAL ALLOWANCES

Metro-North is obligated to pay Conductor Flagmen by agreement .75 hour meal allowance whenever assigned to flag duty away from headquarters.



Metro-North Railroad

FORCE ACCOUNT ESTIMATE

BY: K. Schmidt
DT: 25-Feb-05

Project Name: Danbury East Ditch Storm Sewer
Project Owner: City Of Danbury
Location: Danbury Yard - Danbury Branch
Duration: 5 Weeks

TRANSPORTATION

Labor-flag	30.00 Mandays	@	\$370 /day	\$11,100
Trainmaster	0.00 Mandays	@	\$370 /day	\$0
Subtotal Labor				\$11,100
Labor Additives	177%			\$19,647
Expenses	30.00 Mandays	@	\$30 /day	\$900
Subtotal Transportation				\$31,647

ENGINEERING & INSPECTION

Engineering	3.00 Mandays	@	\$300 /day	\$900
Inspection	12.00 Mandays	@	\$280 /day	\$3,360
Subtotal Labor				\$4,260
Labor Additives	177%			\$7,540
Expenses	15.00 Mandays	@	\$30 /day	\$450
Subtotal Engineering & Inspection				\$12,250

TRACK DEPARTMENT

Trackman	52.00 Mandays	@	\$270 /day	14040
Supervisor	4.00 Mandays	@	\$325 /day	1300
Subtotal Labor				\$15,340
Labor Additives	177%			27152
Expenses	56.00 Mandays	@	\$30 /day	\$1,680
Subtotal Track Department				\$44,172

Project Subtotal	\$88,069
Material/Equipment	\$7,500
Total	\$95,569

Rounded Total	\$95,600
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Notes

Note 1: Rates are for estimating purposes only. Rates will be adjusted to actual rates in effect at the time the work is performed.

Note 2: MTA Metro-North Railroad overhead rates used for calculations are the I & C rates (excluding force account insurance) dated 1/1/05. Billing to be to City Of Danbury.