

**RESOLUTION OF THE REPRESENTATIVE TOWN MEETING
OF THE TOWN OF DARIEN AUTHORIZING AN EASEMENT TO DRAIN
TO THE STATE OF CONNECTICUT, DEPARTMENT OF TRANSPORTATION**

WHEREAS, the Town is about to undertake a major renovation project with respect to the Ox Ridge Elementary School; and

WHEREAS, the Ox Ridge Elementary School abuts a state highway commonly referred to as Connecticut Route 124; and

WHEREAS, the State of Connecticut considers the school to be a major traffic generator and therefore, requires a permit from the Office of State Traffic Administration (OSTA); and

WHEREAS, as a condition for application of the permit, the state requires an Easement to Drain over the Town property; and

WHEREAS, the Easement to Drain would formalize conditions that already exist on said property.

NOW THEREFORE, BE IT RESOLVED, that the Representative Town Meeting of the Town of Darien hereby authorizes said Easement to Drain and authorizes the First Selectman to execute documents to establish said Easement to Drain, all of this as more particularly set forth in the documents and map attached hereto and made a part hereof.

Executive Summary

Date: August 25, 2020
To: Seth Morton, Moderator, Representative Town Meeting
From: Kate Clarke Buch, Town Administrator
RE: Items for the September RTM meeting

The purpose of this memo is to brief you on three separate items that need to be addressed by the RTM at its September meeting.

Ox Ridge Easement – As you know, the Ox Ridge Elementary School is located on a state road. The State of Connecticut considers the school to be a major traffic generator. As such, the project requires an OSTA permit. As a condition for approval of the permit, the State is requesting a drainage easement on our property. Currently, water runs off Route 124 (Mansfield Avenue) onto the Ox Ridge Elementary School property. The State is requesting an easement that would allow this to continue into perpetuity. The easement would actually formalize a situation that already exists. It would prohibit us from building any structure within the easement area that would prevent the water from flowing naturally onto the Ox Ridge Elementary School property and into the catch basin.

STEAP Grant – The State has funded the Small Town Economic Assistance Program for the first time in several years. The Town is preparing an application for a grant under the STEAP program. The State requires that there be an authorizing resolution passed by the local legislative body, which authorizes the First Selectman to accept such grant if awarded, and enter into and execute any and all agreements, contracts and documents necessary to obtain said 2020 STEAP Grant with the State of Connecticut. This authorizing resolution needs to be submitted to the administering agency within thirty days of grant award notice if such resolution is not available at time of application. We do not know at this time if we will be awarded a grant, nor do we know when the grant may be awarded, starting the thirty day time frame for passage of the authorizing resolution. Therefore, we are seeking the authorizing resolution in advance, for an amount not to exceed \$128,205, which is the maximum grant award. The grant requires that the Town provided matching funds for the subject project, but does not require that the match be a specific dollar amount or percentage of the project cost or grant award. At the time of the writing of this memo, we have several projects under consideration for our application. We can provide an update on the specific project for which the grant application is submitted at the time of the Rules Committee meeting.

Metro North Lease – Several months ago, representatives from Metro North approached the Town with a request to lease a portion of one of the train station parking lots. Metro North is looking to temporarily relocate some of its employees to allow for appropriate social distancing in their workplace. After some discussion, the Board of Selectmen was agreeable to entering into discussions with Metro North to sub-let to them a portion of the Noroton Heights Railroad Station parking lot on the inbound (Heights Road) side. Town Counsel is currently in discussion with attorneys representing Metro North on lease terms. Town Counsel has opined that this lease would need the approval of the RTM prior to execution.

Executive Summary

Date: August 25, 2020
To: Seth Morton, Moderator, Representative Town Meeting
From: Jennifer Charneski, Finance Director
RE: Authorization of Municipal CRF Submission

The State of Connecticut received federal CARES Act funds. The State established the Municipal Coronavirus Relief Fund (CRF) program to provide municipalities with reimbursement for Covid-19 related expenses. Darien's allocation is \$40,282 for reimbursement of expenditures through June 30, 2020. It is expected that the State will allocate additional funds for expenditures incurred after July 1, 2020.

The submission for CRF funds must be authorized by the RTM. A final report of the invoices and amounts to be submitted will be provided prior to the RTM meeting.

Municipalities must maximize other available federal funding sources before seeking reimbursement through the CRF program. Town and BOE expenditures and funding sources are as follows:

	Expenditures	Estimated Reimbursement					CARES- Municipal CRF (5)	Total Estimated Reimbursement	Total Not Reimbursed
		Secretary of the State (1)	Health Dept Preparedness grant (2)	ESSERF- Schools (3)	Local health district grant (4)	FEMA (5)			
Town	173,046	(5,985)	(5,160)	-	(19,055)	(107,134)	(17,713)	(155,047)	17,999
BOE (6)	316,618	-	-	(134,611)	-	(136,505)	(22,569)	(293,685)	22,933
Total	489,664	(5,985)	(5,160)	(134,611)	(19,055)	(243,639)	(40,282)	(448,732)	40,931

Notes:

- (1) Reimbursement for election related items
- (2.) Existing Health Department grant. Expenses have been submitted for
- (3) First source of federal funding for BOE. Allocation is \$134,611. BOE prepares submission to the State.
- (4) First source of federal funding for Town. Darien allocation is \$31,840.93. Estimated eligible expenses total \$19,055. Health department prepares submission.
- (5) Reimburse 75% of eligible expenses. Most of our expenses are eligible.
 - Submitted claim for \$85,751 on 5/22. Expect to receive 75% reimbursement.
 - Second claim being prepared by Emergency Management Director.
 Second funding source for Town & BOE.
- (5) Final source of funding for Town & BOE. Darien's allocation is currently \$40,282.
- (6) Does not include \$324,840 of food service expenditures (\$311,612 for salaries and \$13,228 food expenses). Not sure if these will be reimbursable.

CURTIS, BRINCKERHOFF & BARRETT, P.C.

ATTORNEYS AND COUNSELORS AT LAW

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STAMFORD, CONNECTICUT 06901-1416

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T. WARD CLEARY
1946-1988
RICHARD L. BRINCKERHOFF
1949-2005
JOHN D. HERTZ
1957-2002
JANE F. DONOVAN
1967-2003

FREDERICK M. TOBIN
RETIRED

August 13, 2020

VIA EMAIL: Andrew.Greenberg@mtacd.org

Andrew Greenberg
Associate Director, Transaction Management
Real Estate Department
Metropolitan Transit Authority
2 Broadway
New York, New York 10004

RE: Town of Darien Noroton Heights Commuter Parking Lot
Heights Rd., Darien, CT

Dear Mr. Greenberg,

Our client, the Town of Darien, has authorized us to submit this offer to sublease the above-referenced premises based on the following terms and conditions:

- Property Address: 325 Heights Rd., Darien, CT
- Space: A portion of the commuter parking lot situated north of the Metro-North Railroad tracks and south of Heights Rd., which portion lies west of the entrance into the parking lot nearest The Depot-Darien Youth Center, as delineated on the attached Exhibit A ("Subleased Premises").
- Sublessor Name: Town of Darien ("Town")
- Sub-Tenant Name: Metro-North Railroad/Metropolitan Transit Authority ("MNR")
- Use of the subleased space: MNR will use the Subleased Premises to house five temporary construction trailers, 15 work trucks and four container boxes, and for parking for employees.

Rentable square footage: Approximately 30,000 rentable square feet, as shown on Exhibit A.

Term: Two years from date of initial possession, subject to earlier termination if 1) MNR no longer needs the space to service its work at its facility located in Springdale/Stamford, CT and provides the Town with sixty-days advance notice; or 2) the State of Connecticut Department of Transportation exercises its rights to terminate the Primary Lease (defined *infra*):

Possession Date: To be determined

Rent commencement: Upon possession

Monthly base rent: \$5,500/monthly

Expenses: MNR to pay in an amount proportionate to the Subleased Premises any real estate or other taxes attributable to its use and possession of the Subleased Premises

Utilities: MNR shall pay for all its utility expenses including electricity, heat, water, telephone, sewer and internet access, including connection costs

Landlord's Work: None; Subleased Premises taken "AS IS"

Tenant's Work: Prepare and submit for Town's approval a survey of the Subleased Premises.

Install a chain link fence with privacy screen and gate access across the width of subleased premises at its eastern end. Install additional fencing with privacy screens around the remaining perimeters if requested by the Town.

Install all necessary water, sewer, data and power connections and install utility pole with overhead wires and meter, subject to Town approval and in compliance with local ordinances and regulations

Install security lighting and cameras as determined by MNR, subject to Town approval

Hazardous Materials: No hazardous materials or major construction materials will be stored at the Subleased Premises.

Security Deposit: \$5,500.00

Sublet and Assignment: MNR shall have no right to sublet or assign the Subleased Premises

Signage Rights: MNR may post signs subject to local zoning regulations and Town approval

Access/Business Hours: 24 hours a day, 7 days a week

Broker: None

Default: Town shall provide MNR with written notice of any default and provide MNR with ten days to cure any monetary default, and thirty days to cure any non-monetary default

Indemnification/Insurance: MNR shall indemnify, hold harmless and defend the Town for claims arising from the use of the Subleased Premises, negligent acts or omissions of MNR, and for MNR's breach of, or default under, the Lease. MNR shall list the Town as an additional insured and provide proof of the following insurance coverage for itself and for any third-party contractors it may retain to perform work at the Subleased Premises:

- 1). Commercial General Liability:
\$2,000,000 per occurrence, \$3,000,000 aggregate each claim for bodily injury, personal injury, property damage, contractual liability and products /completed operations.
- 2). Automobile Liability and Physical Damage Coverage:
\$500,000 combined single limit per occurrence for any auto, including statutory uninsured/underinsured motorists coverage and \$1,000 medical payments. Policy to include collision and comprehensive coverage for any auto used for the purpose of this contract.
- 3). Workers' Compensation:
Coverage A / Workers' Compensation: statutory limits as required by the Labor Code of the State of Connecticut. Coverage B / Employer's Liability: limits of \$100,000 each accident, \$500,000 disease/policy limit, \$100,000 disease/each employee. If the Contractor decides not to procure workers' compensation in accordance with Connecticut law, the Contractor agrees to comply with the Connecticut Workers' Compensation Act's (Act) requirements for withdrawing from the

provisions of the Act, including, but not limited to, filing the appropriate notice of withdrawal with the commissioner. The Contractor is wholly responsible for taking the actions necessary to withdraw from the provisions of the Act. In lieu of procuring workers' compensation insurance and providing the Town with proof thereof, the Contractor agrees to hold the Town of Darien, the Darien Board of Education, their respective boards and commissions, officers, agents, officials, employees, servants, volunteers, contractors and representatives harmless from any and all suits, claims, and actions arising from personal injuries sustained by the Contractor or Contractor's employees during the course of the performance of this contract, however caused.

4). Crime & Fidelity:

Coverage A - \$1,000,000 Employee Theft

Coverage B - \$1,000,000 Forgery & Alteration

Coverage C - \$1,000,000 Theft of Monies & Securities

Coverage D - \$1,000,000 Robbery & Safe Burglary

The above-named coverages shall provide third party coverage. The Contractor shall provide that the bonding company name the Town of Darien as Joint Loss Payee for purposes of the sublease.

5). Professional Liability:

\$1,000,000 per occurrence, \$3,000,000 aggregate each claim.

6). Personal Property:

"All risk" insurance on a replacement cost basis to cover the value of personal property belonging to MNR and others (including but not limited to the personal property of subcontractors) located on Town property while in use or in storage for the duration of the contract. Deductible not to exceed \$1,000. MNR agrees that the Town will not assume any responsibility for the Contractor's personal property.

MNR's policies shall be written by insurance companies licensed to do business in the State of Connecticut, with a Best's rating of no less than A:VII, or otherwise deemed acceptable by the Town's Administrative Officer.

MNR shall provide that all insurance policies include a waiver of subrogation clause that states that it is agreed that in no event shall the insurance company have any right of recovery against the Town. If MNR is self-insured, it is agreed that in no event shall MNR have any right of recovery against the Town.

The Contractor's insurance coverage shall be primary insurance with respect to the Town. Any insurance or self-insurance maintained by the Town shall be excess of the Contractor's insurance and shall not contribute with it. Coverage shall state that the Contractor's insurance shall apply separately to each insured against whom a claim is made or suit is brought and that any failure to comply with the claim reporting provisions of the policy shall not affect coverage provided to the Town.

Repairs:

MNR shall be solely responsible for, repairing and maintaining the subleased premises, including snow and ice removal.

Upon termination, MNR will remove all its equipment, materials, fencing and utility connections from the subleased premises and restore the subleased premises to their present condition as they existed prior to the sublease, including restoring any disturbances to the asphalt overlay. If MNR fails to complete restoration within 60 days of sublease termination, the Town may undertake restoration directly and MNR will reimburse the Town for any expenses the Town incurs for such restoration work.

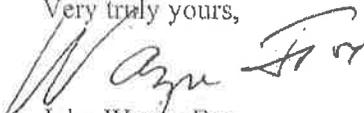
Subordination:

This sublease shall be expressly subject and subordinate to all of the terms, provisions, covenants, agreements and conditions of the primary lease between the State of Connecticut Department of Transportation and the Town, as amended and supplemented, pertaining to the Property ("Primary Lease").

This is only an offer to sublease the Premises on the terms and conditions contained herein and this is not a binding legal agreement. Such offer is subject to the terms and conditions of the Primary Lease and is expressly conditioned on obtaining any and all consents as required by the Primary Lease and the Standard Railroad Lease Specifications and Standards referenced in the Primary Lease, as well as all required municipal approvals. In addition, this offer shall not be binding on Sublessor until a satisfactory sublease agreement has been mutually executed and exchanged.

We look forward to your earliest response.

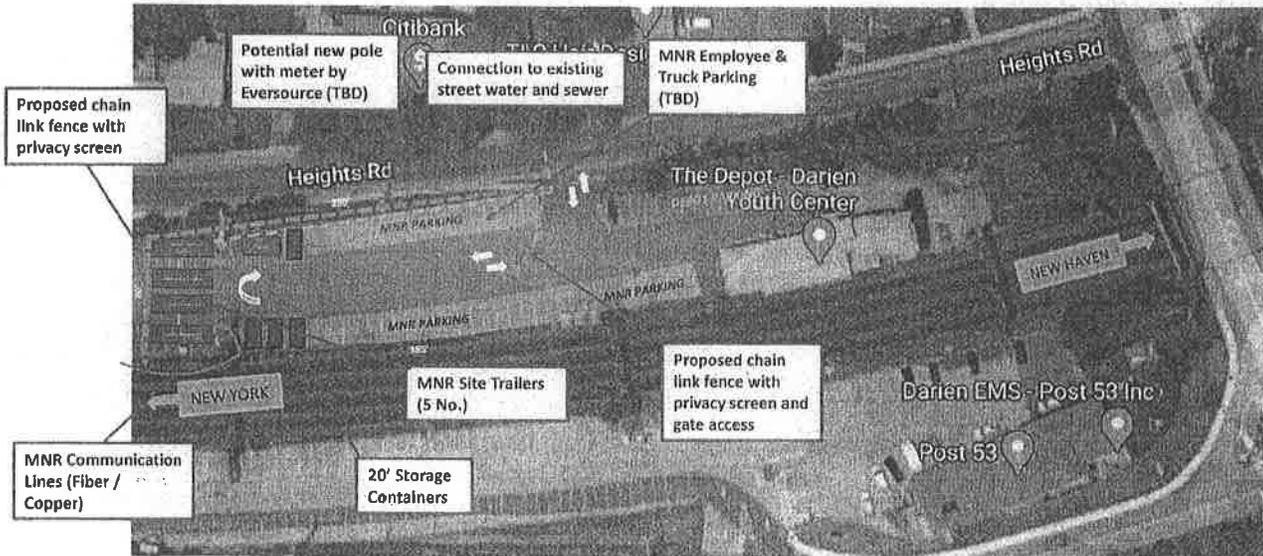
Very truly yours,



John Wayne Fox

JWF/ljl

EXHIBIT A



Noroton Heights Station Parking Lot – Proposed Layout for Metro-North Trailers

Rev3

EASEMENT TO DRAIN

KNOW YE THAT, **TOWN OF DARIEN**, a municipal corporation (Grantor), organized and existing under the laws of the State of Connecticut and having its principal place of business located at 2 Renshaw Road in the Town of Darien, County of Fairfield and State of Connecticut, acting herein by Jayme J. Stevenson, First Selectman of the Town of Darien, hereunto duly authorized, for good and valuable consideration received to its full satisfaction of the State of Connecticut, does hereby give and grant unto the said **STATE OF CONNECTICUT** (Grantee), its successors and assigns forever, that certain full and perpetual Easement to Drain, under, over, and across portions of land of the Town of Darien, located on the westside of Mansfield Avenue, situated in the Town of Darien, State of Connecticut as more particularly shown on a map to be filed in the Darien Town Clerk's Office and entitled: "Map Showing Easement acquired from the Town of Darien by the State of Connecticut, Department of Transportation, 395 Mansfield Avenue (CT Route 124) dated July, 2020."

The above-described Easement to Drain is conveyed subject to such rights and easements as appear of record.

The above-described Easement to Drain is conveyed subject to any and all provisions of any ordinance, municipal regulation, or public or private law.

TO HAVE AND TO HOLD the Easement to Drain for the aforesaid purposes unto the said State of Connecticut, its successors and assigns forever.

IN WITNESS WHEREOF, said Town of Darien has caused its hand to be set and corporate seal to be affixed hereto this ____ day of _____, A. D. 2020.

Signed, Sealed and Delivered
in the presence of

TOWN OF DARIEN

Witness

(L.S.)

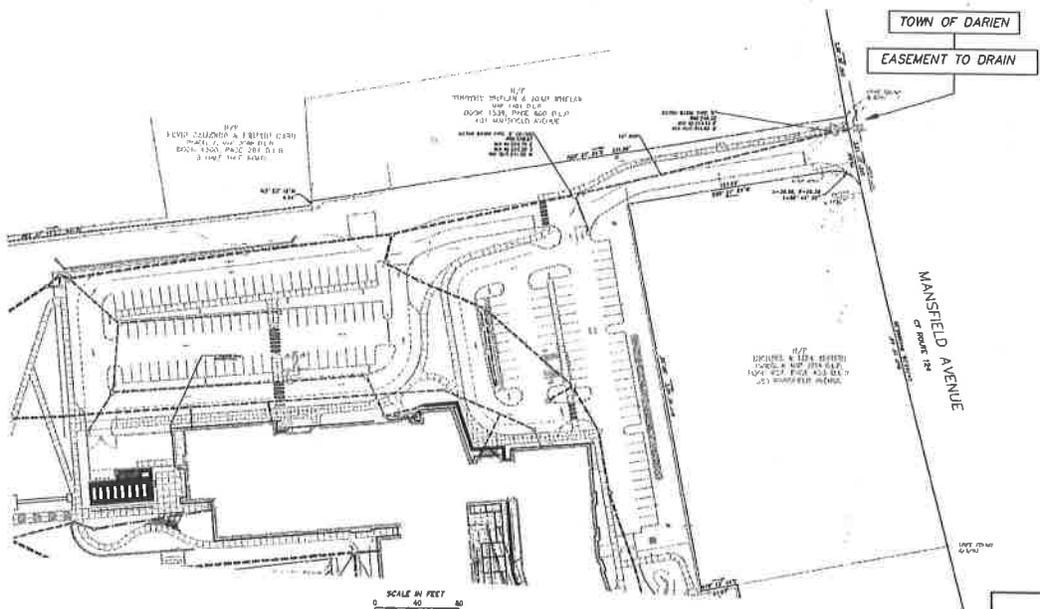
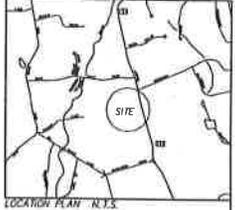
Jayme J. Stevenson
Duly Authorized, First Selectman of the Town
of Darien

Witness

STATE OF Connecticut)
) ss: Darien
COUNTY OF Fairfield)

The foregoing Instrument was acknowledged before me this ____ day of _____, A. D. 2020, by Jayme J. Stevenson, First Selectman, hereby authorized on behalf of the Town of Darien.

Notary Public
My Commission Expires:
Commissioner of the Superior Court



SCALE IN FEET
0 40 80

DATE	REVISION	REC. BY
8/28/2020	CT DOT COMMENT REVISION	DT DOT

DRAWN BY: GAC DATE 7/21/20
CHECKED BY: BAE DATE 7/23/20

- MAP REFERENCE**
- PROPERTY AND REPRESENTATIVE SURVEY RECORDS ON FILE AT THE ARCHIVE SERVICE, CONNECTICUT DEPARTMENT OF REVENUE, TOWN OF DARIEN, SCALE 1"=40' DATED BY 1/15/2018 REVISOR: B. MESS.
 - REFERENCE IS MADE TO PARCELS B & C, AS DEPICTED ON MAP AREA B/E.
 - BY STATE SCHOOL, 395 MANSFIELD AVENUE, DARIEN, CONNECTICUT. PREPARED BY WILLIAM WENBY ASSOCIATES LLC, DATED MARCH 14, 2018.
 - CONNECTICUT STATE HIGHWAY DEPARTMENT "RIGHT OF WAY MAP - TOWN OF DARIEN - DARIEN - NEW CANAAN ROAD" DATED 2012, 100' WID. 200' SHEET 3 OF 3.

- NOTES**
- ALL SURVEY AND DATA HAVE BEEN OBTAINED IN ACCORDANCE WITH THE REGULATIONS OF CONNECTICUT STATE ARCHIVES, RECORDS AND DOCUMENTS DIVISION AND THE "GENERAL REQUIREMENTS FOR SURVEY AND MAPS IN THE STATE OF CONNECTICUT" ENFORCED BY THE CONNECTICUT DEPARTMENT OF LAND SURVEYING AND REGISTERED TO THE YEAR.
 - THIS PLAN CONFORMS TO A HORIZONTAL ACCURACY CLASS 0.
 - THE TYPE OF SURVEY PERFORMED IS A COMPILATION PLAN AND IS INTENDED TO SHOW THE LOCATION OF PROPOSED EASEMENT RELATIVE TO EXISTING PROPERTY LINES.
 - ARROW AND BEARING REFER TO THE CONNECTICUT STATE PLANE COORDINATE SYSTEM (NAD 83) AND ARE BASED ON THE SURVEY POINT.

TO THE BEST OF MY KNOWLEDGE AND BELIEF THIS MAP IS SUBSTANTIALLY CORRECT AS DEPICTED AND NOTED HEREIN.

MADE A CERTAIN FILE OR BEEN
APPROVED BY THE TOWN OF DARIEN, CONNECTICUT
DATE: _____
TOWN NO. _____
PROJECT NO. _____
SERIAL NO. _____ TITLE LAND SURVEYOR
SHEET 1 OF 1 DATE 7-10-2020

COMPILATION PLAN

TOWN OF DARIEN
MAP SHOWING EASEMENT ACQUIRED FROM
THE TOWN OF DARIEN
BY
THE STATE OF CONNECTICUT
DEPARTMENT OF TRANSPORTATION
395 MANSFIELD AVENUE (CT ROUTE 124)
SCALE 1"=40' DATE JULY 2020

MARIO D. ROLKE, P.E. TRANSPORTATION CHIEF ENGINEER
BUREAU OF ENGINEERING AND CONSTRUCTION

From: monicamcnally@optonline.net
Sent: Monday, September 14, 2020 4:35 PM
To: ergo0107@yahoo.com; werner.domittner@gmail.com; casey.haverstick@gmail.com; Lindsay Kelly; Liz Bacon; Patrick Keane; Richard Poli; Rolf Obin; Terry Duffy; Wade, Cecil; frank.adelman@gmail.com; monicamcnally@optonline.net
Subject: Additional info on MNR Lease Resolution

Hello everyone-

Below please find a link for the Planning and Zoning Commission meeting On 9/8/20 where the MNR lease is discussed - beginning at minute 1:57 through 23:53. The Commission did not support the proposal, but did indicate potential support for a different location-the LeRoy West Lot.

MNR has not approved the Term Sheet thus there is no Lease for any RTM committee to vote on. At this time it appears that this item will be tabled until the full RTM meeting in October, but it will be advantageous for us to discuss and get a sense on our committee's position.

<https://vimeo.com/456215460>

Thank you,
Monica