



John L. Salomone
Town Manager

TOWN OF NEWINGTON

131 CEDAR STREET
NEWINGTON, CONNECTICUT 06111

MAYOR STEPHEN WOODS

NEWINGTON TOWN COUNCIL

**Conf. Room L-101 (Lower Level) – Town Hall
131 Cedar Street**

AGENDA

July 22, 2014

7:00 P.M.

-
- I. PLEDGE OF ALLEGIANCE
 - II. ROLL CALL
 - III. PUBLIC PARTICIPATION – IN GENERAL (**In Person/Via Telephone**)
 - IV. CONSIDERATION OF OLD BUSINESS (**Action May Be Taken**)
 - A. Town Hall Renovation Project – Discussion/Updates
 - B. Acceptance of Grant Funding – Former National Welding Building
 - C. Consideration of Canceling the August 26, 2014 Town Council Meeting
 - V. CONSIDERATION OF NEW BUSINESS (**Action May Be Taken by Waiving the Rules**)
 - A. Request for Bid Waiver – MRAP Project
 - VI. RESIGNATIONS/APPOINTMENTS (**Action May Be Taken**)
 - A. Appointments to Boards and Commissions
 1. Affordable Housing Monitoring Agency
 2. Commission on Aging and Disabled
 3. Balf-Town Committee
 4. Board of Education Roof Replacement Project Building Committee
 5. Capitol Region Council of Governments
 6. Committee on Community Safety
 7. Conservation Commission
 8. Development Commission
 9. Downtown Revitalization Committee
 10. Employee Insurance & Pension Benefits Committee
 11. Environmental Quality Commission
 12. Board of Ethics
 13. Fair Rent Commission
 14. Newington Housing Authority
 15. Open Space Committee
 16. Human Rights Commission

17. Newington School Career Technical Program Renovation Project Building Committee
18. Open Space Committee
19. Board of Parks and Recreation
20. School Improvements Project Building Committee
21. STEM Academy PBC
22. Senior & Disabled Center Roof Replacement Project Building Committee
23. Standing Insurance Committee
24. Town Plan & Zoning Commission
25. Tri-Town Community Cable Access
26. Vehicle Appeals Board
27. West Meadow Cemetery Expansion Project Building Committee
28. Zoning Board of Appeals

VII. TAX REFUNDS (**Action Requested**)

VIII. MINUTES OF PREVIOUS MEETINGS (**Action Requested**)

- A. Regular Meeting, 7/8/14

IX. WRITTEN/ORAL COMMUNICATIONS FROM THE TOWN MANAGER, OTHER TOWN AGENCIES AND OFFICIALS, OTHER GOVERNMENTAL AGENCIES AND OFFICIALS AND THE PUBLIC

X. COUNCIL LIAISON/COMMITTEE REPORTS

XI. PUBLIC PARTICIPATION – IN GENERAL (**In Person/Via Telephone**)
(3 MINUTE TIME LIMIT PER SPEAKER ON ANY ITEM)

XII. REMARKS BY COUNCILORS

XIII. EXECUTIVE SESSION RE: COLLECTIVE BARGAINING

XIV. ADJOURNMENT



John Salomone
Town Manager

TOWN OF NEWINGTON

131 CEDAR STREET
NEWINGTON, CONNECTICUT 06111

OFFICE OF THE TOWN MANAGER

MEMORANDUM

To: Newington Town Council
From: John L. Salomone, Town Manager
Date: July 18, 2014
Re: Town Hall Renovations – Further Discussion

An item will be on the July 22 Town Council agenda for follow-up to the June 24 Public Hearing and July 8 Town Council meeting and for general updates/discussion of the Town Hall and Mortensen Community Center project.

There is no formal Council action required regarding the project at the July 22 meeting.

AGENDA ITEM: IVB

DATE: 7-22-14

RESOLUTION NO. _____

RESOLVED:

That the Newington Town Council hereby approves the acceptance of grant funding in the amount of \$2,000,000 from the State of Connecticut Department of Economic and Community Development for a project entitled "National Welding Demolition, Remediation, and Re-use Project" and authorizes John L. Salomone, Town Manager, to make, execute and approve on behalf of the Town of Newington the following documents:

- 1) Assistance Agreement by and Between the State of Connecticut Acting by the Department of Economic and Community Development and the Town of Newington re: National Welding Demolition, Remediation and Re-use Project
- 2) Certificate of Applicant
- 3) Declaration of Restrictive Use Covenant
- 4) Escrow Agreement
- 5) Negative Pledge and Agreement
- 6) Affidavit of Commercial Transaction and Statutory Waiver of Notice and Hearing

and John L. Salomone, Town Manager, is further authorized to execute any and all other documents he determines are necessary to secure the grant.

MOTION BY: _____

SECONDED BY: _____

VOTE: _____

**ASSISTANCE AGREEMENT BY AND BETWEEN
THE STATE OF CONNECTICUT
ACTING BY THE DEPARTMENT OF ECONOMIC AND COMMUNITY
DEVELOPMENT
(An Equal Opportunity Employer)
AND
THE TOWN OF NEWINGTON**

RE: National Welding Demolition Remediation and Re-use Project

This **ASSISTANCE AGREEMENT** (the "Agreement") is made and entered into by and between the **STATE OF CONNECTICUT**, (hereinafter the "State"), acting herein by Catherine H. Smith, its Commissioner of Economic and Community Development (hereinafter the "Commissioner"), pursuant to Section 32-763 of the Connecticut General Statutes and the **TOWN OF NEWINGTON** (hereinafter the "Applicant" or "contractor") acting herein by John Salomone, its duly authorized Town Manager.

WITNESSETH:

WHEREAS, the governing body of the Applicant has submitted to the State a series of documents, including an acceptance letter in response to a proposal submitted to it by the Commissioner dated January 30, 2014, (the "Commissioner's Proposal"), an Application for Financial Assistance, a resolution from the Applicant's appropriate organizational body authorizing the Applicant to submit said Application, a Project Financing Plan and Budget, and exhibits, if any, and has caused to have submitted an Opinion of Counsel and other documents (all, together with all other documents and agreements executed by the Applicant in connection with this Agreement, hereinafter the "Project Documents") for a project entitled National Welding Demolition Remediation and Re-use Project (hereinafter the "Project") and has represented to the State that it can rely upon the information within the Project Documents as being accurate and complete;

WHEREAS, in reliance upon the information submitted by or caused to be submitted by the Applicant, the State, has approved funding for the Project; and

WHEREAS, the State and the Applicant desire to define the terms and conditions upon which such financial assistance will be made available to the Applicant.

NOW THEREFORE, in consideration of the mutual promises of the parties hereto, and of the mutual benefits to be gained by the performance thereof, the State and the Applicant hereby agree as follows:

ARTICLE 1 - STATE OBLIGATIONS

1.1. Financial Assistance. The State hereby agrees, subject to the terms of this Agreement and its Exhibits and in reliance upon the facts and representations set forth in the Project Documents, to provide financial assistance to the Applicant for the Project in the form of a grant in an amount not to exceed TWO MILLION AND NO/100 DOLLARS (\$2,000,000.00) (hereinafter, the "Funding") or 50% of the total cost of the Project as set forth in the most recently approved Project Financing Plan and Budget.

ARTICLE 2 - APPLICANT WARRANTIES, COVENANTS, AND OBLIGATIONS

The Applicant represents, warrants and covenants as follows, and further covenants that on and after the closing and for so long as this Agreement or any clause thereof shall remain in effect:

2.1. Form of Business Entity. The Applicant is a municipal corporation duly created and validly existing under the laws of the State of Connecticut. Further, the Applicant will preserve and maintain its existence as a municipal corporation duly organized, validly existing, and in good standing under the laws of Connecticut.

2.2. Ability to Conduct Business. The Applicant has all franchises, permits, licenses, and other similar authorizations necessary for the conduct of its business as now being conducted by it, and it is not aware of any state of facts that would make it impossible or impractical to obtain any similar authorization necessary for the conduct of its business as planned to be conducted. The Applicant is not in violation, nor will the transactions contemplated by the Agreement or the Project Documents to which it is a party, cause a violation of the terms or provisions of any such franchise, permit, license, or similar authorization.

2.3. Authorization to Enter Into and Execute Project Documents. The execution and delivery of the Project Documents and this Assistance Agreement by the Applicant, and the performance of its obligations thereunder are within its power, have been duly authorized by all necessary action on its part, and are not in contravention of law nor in contravention of its organizational documents or governing bylaws (including its charter) or of the provisions of any indenture, agreement, or undertaking to which it, its principals or employees are parties or by which they are bound.

2.4. Other Authorization Unnecessary. No consent, license, or approval from any governmental authority is or will be necessary for the valid execution and delivery by the Applicant of the Project Documents. The Applicant agrees that nothing in the Agreement relieves it from any obligation under law to obtain any such license, consent, or approval.

2.5. Agreement to Undertake Project. The Applicant agrees to undertake and complete the Project as described in the Commissioner's Proposal.

2.6. Obstacles to Entering and Executing Project.

(A) Existing Suit or Other Actions. There is no action, suit, proceeding or investigation at law, in equity, or before any court, public board, arbitrator, or body, pending or, to the Applicant's knowledge, threatened against or affecting it, which could or might adversely

affect the Project, any of the transactions contemplated by the Project Documents, the validity of the Project Documents, or the Applicant's ability to discharge its obligations under the Project Documents.

(B) Default of Existing Orders or Instruments. The Applicant is not in default beyond any applicable notice and grace periods with respect to any order of any court, arbitrator, or governmental body which could or might adversely affect the Project, or any of the transactions contemplated by the Project Documents or the validity of the Project Documents, or the Applicant's ability to discharge its obligations under the Project Documents. In addition, the Applicant is not in default beyond any applicable notice and grace periods in the performance, observance or fulfillment of any of the terms, obligations, covenants, conditions, or provisions contained in any agreement or instrument to which the Applicant is a party or to which its property is subject, which default, together with all such defaults, singularly or in the aggregate, may have a materially adverse effect on the business, assets, liabilities, financial condition, results of operations or business prospects of the Applicant.

(C) Instance of Default. No Instance of Default (as defined in Section 4.1) hereof has occurred or is continuing, and the Applicant has no knowledge of any currently existing facts or circumstances which, with the passage of time or the giving of notice, or both, would constitute an Instance of Default.

2.7. Material Adverse Change.

(A) Financial Condition. There has been no material adverse change in the financial condition of the Applicant since the date of application for the Funding that has not been previously disclosed in writing to the Commissioner.

(B) Representations in Documents. All financial statements, including, without limitation, balance sheets and profit and loss statements, delivered to the Commissioner are correct and complete, and fairly present the financial position and results of operations of the Applicant at the times of and for the periods reflected by such financial statements. The financial statements and all other written statements furnished by the Applicant in connection with the Funding do not contain any untrue statement of material fact and do not omit any material fact whose omission would make the statements contained therein or herein misleading.

(C) Other Facts. There is no fact which the Applicant has not disclosed to the Commissioner in writing, which writing, if any, is attached hereto as Exhibit A, which materially and adversely affects or, as far as the Applicant can reasonably foresee, is reasonably likely to prove to affect materially and adversely the business, operations, properties, prospects, profits, or condition of the Applicant. Further, the Applicant will notify the Commissioner, in writing, promptly of any material adverse change in the financial condition or business prospects of the Applicant.

2.8. Use of State Funding. The Funding shall be used for the Project as set forth in the Commissioner's Proposal and in accordance with the most recently approved Project Financing Plan and Budget. The Funding shall be used for that purpose and for no other purpose.

(A) Additional Costs above Funding. Any amount in excess of the amount of the Funding that may be necessary to cover the cost of the Project as set forth in the most recently approved Project Financing Plan and Budget shall be the responsibility of the Applicant and shall not be covered by the Funding. The Applicant shall, as a minimum, provide the level and sources of funding as indicated in the Project Documents, and shall expend those funds in accordance with the Project Financing Plan and Budget.

(B) Budget. The Project Financing Plan and Budget most recently approved by the Commissioner shall constitute the budget for the Project. The Project Financing Plan and Budget may be amended by request of the Applicant if such request is approved in writing by the Commissioner. Approval by the Commissioner of any revised Project Financing Plan and Budget shall not constitute or imply a revision of the amount of the Funding.

2.9. Payment of Other Obligations. The Applicant will pay and discharge promptly when due and payable all taxes, assessments and governmental charges levied or imposed upon it, its property, or any part thereof, or upon its income or profits, or any part thereof, as well as all lawful claims for labor, materials and supplies, which, if unpaid, might by law become a lien or charge upon its property, provided that such charges need not be paid while being contested by the Applicant in good faith and by appropriate legal proceedings so long as adequate book reserves have been established with respect thereto and the Applicant's title to, and its right to use, its property is not materially and adversely affected thereby. The Applicant also agrees to pay all taxes or duties levied or assessed upon said sum against the State or the obligation evidenced hereby and to pay all costs, expenses, and attorneys' reasonable fees incurred by the State in any proceeding for the collection of the obligations evidenced hereby upon the happening of an Instance of Default as provided for in the Project Documents or in any litigation or controversy arising from or connected with the Project Documents.

2.10. Compliance with Laws, Regulations, Rules, and Executive Orders. In the administration and execution of the Project, the Applicant shall comply with all pertinent provisions of local, State and Federal law applicable to it and/or its properties and/or its business, and maintain its property in good repair. Failure to do so shall constitute an Instance of Default by the Applicant under this Agreement. The Applicant agrees to provide each labor union or representative of workers with which such Applicant has a collective bargaining agreement or other contract or understanding and each vendor with which such Applicant has a contract or understanding, a notice to be provided by the Commission on Human Rights and Opportunities advising the labor union or workers' representative of the Applicant's commitments under this section, and to post copies of such notice in conspicuous places available to be seen by employees and applicants for employment.

Specifically, but not by way of limitation, the Applicant agrees to the following:

(A) For the purposes of subsection (B) of this section 2.10, the following terms are defined as follows:

1. "Commission" means the Commission on Human Rights and Opportunities;
2. "Contract" and "contract" means the Agreement and any extension or modification of the Agreement;
3. "Contractor" and "contractor" include any successors or assigns of the Contractor or contractor;
4. "Gender identity or expression" means a person's gender-related identity, appearance or behavior, whether or not that gender-related identity, appearance or behavior is different from that traditionally associated with the person's physiology or assigned sex at birth, which gender-related identity can be shown by providing evidence including, but not limited to, medical history, care or treatment of the gender-related identity, consistent and uniform assertion of the gender-related identity or any other evidence that the gender-related identity is sincerely held, part of a person's core identity or not being asserted for an improper purpose.
5. "Good faith" means that degree of diligence which a reasonable person would exercise in the performance of legal duties and obligations;
6. "Good faith efforts" shall include, but not be limited to, those reasonable initial efforts necessary to comply with statutory or regulatory requirements and additional or substituted efforts when it is determined that such initial efforts will not be sufficient to comply with such requirements;
7. "Marital status" means being single, married as recognized by the State of Connecticut, widowed, separated or divorced;
8. "Mental disability" means one or more mental disorders, as defined in the most recent edition of the American Psychiatric Association's "Diagnostic and Statistical Manual of Mental Disorders", or a record of or regarding a person as having one or more such disorders;
9. "Minority business enterprise" means any small contractor or supplier of materials fifty-one percent or more of the capital stock, if any, or assets of which is owned by a person or persons: (1) who are active in the daily affairs of the enterprise, (2) who have the power to direct the management and policies of the enterprise, and (3) who are members of a minority, as such term is defined in subsection (a) of Connecticut General Statutes § 32-9n; and
10. "Public works contract" means any agreement between any individual, firm or corporation and the State or any political subdivision of the State other than a municipality for construction, rehabilitation, conversion, extension, demolition or repair of a public building, highway or other changes or improvements in real property, or which is financed in whole

or in part by the State, including, but not limited to, matching expenditures, grants, loans, insurance or guarantees.

For purposes of subsection (B) of this section 2.10, the terms “Contract” and “contract” do not include a contract where each contractor is (a) a political subdivision of the state, including, but not limited to, a municipality, (b) a quasi-public agency, as defined in Conn. Gen. Stat. Section 1-120, (c) any other state, including but not limited to any federally recognized Indian tribal governments, as defined in Conn. Gen. Stat. Section 1-267, (d) the federal government, (e) a foreign government, or (f) an agency of a subdivision, agency, state or government described in the immediately preceding items (a), (b), (c), (d) or (e).

(B) (1) (a) The contractor agrees and warrants that in the performance of the Contract such contractor will not discriminate or permit discrimination against any person or group of persons on the grounds of race, color, religious creed, age, marital status, national origin, ancestry, sex, gender identity or expression, mental retardation, mental disability or physical disability, including, but not limited to, blindness, unless it is shown by such contractor that such disability prevents performance of the work involved, in any manner prohibited by the laws of the United States or of the State of Connecticut; and the contractor further agrees to take affirmative action to insure that applicants with job-related qualifications are employed and that employees are treated when employed without regard to their race, color, religious creed, age, marital status, national origin, ancestry, sex, gender identity or expression, mental retardation, mental disability or physical disability, including, but not limited to, blindness, unless it is shown by the contractor that such disability prevents performance of the work involved; (b) the contractor agrees, in all solicitations or advertisements for employees placed by or on behalf of the contractor, to state that it is an “affirmative action-equal opportunity employer” in accordance with regulations adopted by the Commission; (c) the contractor agrees to provide each labor union or representative of workers with which the contractor has a collective bargaining agreement or other contract or understanding and each vendor with which the contractor has a contract or understanding, a notice to be provided by the Commission, advising the labor union or workers’ representative of the contractor’s commitments under this section and to post copies of the notice in conspicuous places available to employees and applicants for employment; (d) the contractor agrees to comply with each provision of this Section and Connecticut General Statutes §§ 46a-68e and 46a-68f and with each regulation or relevant order issued by said Commission pursuant to Connecticut General Statutes §§ 46a-56, 46a-68e and 46a-68f; and (e) the contractor agrees to provide the Commission on Human Rights and Opportunities with such information requested by the Commission, and permit access to pertinent books, records and accounts, concerning the employment practices and procedures of the contractor as relate to the provisions of this Section and Connecticut General Statutes § 46a-56. If the contract is a public works contract, the contractor agrees and warrants that he will make good faith efforts to employ minority business enterprises as subcontractors and suppliers of materials on such public works projects.

(2) Determination of the contractor’s good faith efforts shall include, but shall not be limited to, the following factors: The contractor’s employment and subcontracting

policies, patterns and practices; affirmative advertising, recruitment and training; technical assistance activities and such other reasonable activities or efforts as the Commission may prescribe that are designed to ensure the participation of minority business enterprises in public works projects.

(3) The contractor shall develop and maintain adequate documentation, in a manner prescribed by the Commission, of its good faith efforts.

(4) The contractor shall include the provisions of subsection (1) of this section 2.10(B) in every subcontract or purchase order entered into in order to fulfill any obligation of a contract with the State and such provisions shall be binding on a subcontractor, vendor or manufacturer unless exempted by regulations or orders of the Commission. The contractor shall take such action with respect to any such subcontract or purchase order as the Commission may direct as a means of enforcing such provisions including sanctions for noncompliance in accordance with Connecticut General Statutes §46a-56; provided if such contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the Commission, the contractor may request the State of Connecticut to enter into any such litigation or negotiation prior thereto to protect the interests of the State and the State may so enter.

(5) The contractor agrees to comply with the regulations referred to in this Section as they exist on the date of this Contract and as they may be adopted or amended from time to time during the term of this Contract and any amendments thereto.

(6) (a) The contractor agrees and warrants that in the performance of the Contract such contractor will not discriminate or permit discrimination against any person or group of persons on the grounds of sexual orientation, in any manner prohibited by the laws of the United States or the State of Connecticut, and that employees are treated when employed without regard to their sexual orientation; (b) the contractor agrees to provide each labor union or representative of workers with which such contractor has a collective bargaining Agreement or other contract or understanding and each vendor with which such contractor has a contract or understanding, a notice to be provided by the Commission advising the labor union or workers' representative of the contractor's commitments under this section, and to post copies of the notice in conspicuous places available to employees and applicants for employment; (c) the contractor agrees to comply with each provision of this section and with each regulation or relevant order issued by said Commission pursuant to Connecticut General Statutes § 46a-56; and (d) the contractor agrees to provide the Commission with such information requested by the Commission, and permit access to pertinent books, records and accounts, concerning the employment practices and procedures of the contractor which relate to the provisions of this Section and Connecticut General Statutes § 46a-56.

(7) The contractor shall include the provisions of the foregoing subsection (6) of this section 2.10(B) in every subcontract or purchase order entered into in order to fulfill any obligation of a contract with the State and such provisions shall be binding on a subcontractor, vendor or manufacturer unless exempted by regulations or orders of the

Commission. The contractor shall take such action with respect to any such subcontract or purchase order as the Commission may direct as a means of enforcing such provisions including sanctions for noncompliance in accordance with Connecticut General Statutes § 46a-56; provided, if such contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the Commission, the contractor may request the State of Connecticut to enter into any such litigation or negotiation prior thereto to protect the interests of the State and the State may so enter.

(C) Executive Order No. Three. This Agreement is subject to the provisions of Executive Order No. Three of Governor Thomas J. Meskill promulgated June 16, 1971 and, as such, this Agreement may be cancelled, terminated or suspended by the State Labor Commissioner for violation or of noncompliance with said Executive Order No. Three, or any State or Federal Law concerning nondiscrimination, notwithstanding that the Labor Commissioner is not a party to this Agreement. The parties to this Agreement, as part of the consideration hereof, agree that said Executive Order No. Three is incorporated herein by reference and made a part hereof. The parties agree to abide by said Executive Order and agree that the State Labor Commissioner shall have continuing jurisdiction in respect to Agreement performance in regard to nondiscrimination, until the Agreement is completed or terminated prior to completion. The Applicant agrees as part consideration hereof, that this Agreement is subject to the guidelines and rules issued by the State Labor Commissioner to implement Executive Order No. Three and that it will not discriminate in its employment practices or policies, will file all reports as required, and will fully cooperate with the State and the State Labor Commissioner.

(D) Executive Order No. Sixteen. This Agreement is subject to, and Applicant hereby agrees to abide by Executive Order No. Sixteen of Governor John G. Rowland promulgated August 4, 1999, and, as such, the Agreement may be cancelled, terminated or suspended by the State for violation or noncompliance with said Executive Order No. Sixteen.

(E) Executive Order No. Seventeen. This Agreement is subject to the provisions of Executive Order No. Seventeen of Governor Thomas J. Meskill promulgated February 15, 1973, and, as such, this Agreement may be cancelled, terminated or suspended by the Commissioner or the State Labor Commissioner for violation of or noncompliance with said Executive Order No. Seventeen, notwithstanding that the Labor Commissioner may not be a party to this Agreement. The parties to this Agreement, as part of the consideration hereof, agree that the Executive Order No. Seventeen is incorporated herein by reference and made a part hereof. The parties agree to abide by said Executive Order and agree that the contracting agency and the State Labor Commissioner shall have joint and several continuing jurisdiction in respect to Agreement performance in regard to listing all employment openings with the Connecticut Employment Service.

(F) Environmental Laws. As determined by DECD, the environmental site assessments, survey, reports and remedial action plans will be prepared for real estate subject to Project activities. A professional firm licensed to practice in the State of Connecticut shall prepare the reports. The scope of investigations and report shall conform to the applicable Department of Energy and Environmental Protection laws and regulations, and the applicable

American Standards for Testing Materials document standards. Copies of all reports shall be made available to DECD.

If the Applicant and/or other parties for the subject properties within the project area have conducted Environmental Site Assessments, copies of such documents must be submitted to DECD.

2.11. Conflict of Interest. The Applicant will adopt and enforce measures appropriate to assure that no member of the Applicant's governing bodies and none of its officers or employees shall have or acquire voluntarily an interest in any agreement or proposed agreement in connection with the undertaking or carrying out of the Project.

2.12. Notification of Instance of Default by Applicant. The Applicant shall notify the Commissioner promptly of the occurrence of any default hereunder or under any of the other Project Documents, or any other document, instrument or agreement to which the Applicant or its properties are subject and of the actions it intends to take in order to cure such default in a timely manner.

2.13. Representations in Other Documents. All statements contained in any certificate, financial statement, legal opinion or other instrument delivered by or on behalf of the Applicant or any Guarantor pursuant to or in connection with this Agreement shall constitute representations and warranties made under this Agreement. All representations and warranties made under this Agreement shall be made at and as of the date of this Agreement, and at and as of the date of receipt of the Funding. All representations and warranties made under this Agreement shall survive the execution and delivery hereof and shall not be deemed to have been waived by any investigation made or not made by the State. The Project Documents to which the Applicant is a party, when delivered, will be legal, valid, and binding obligations of the Applicant, enforceable against it in accordance with their respective terms.

2.14. Indemnification. The Applicant shall and hereby agrees to indemnify, defend, and hold State, and its agents, officials, and employees, harmless from and against any and all suits, damages, claims, causes of actions, demands, judgments, penalties, costs, expenses, attorney's fees, and any and all injuries to persons or property and all other matters arising out of or incurred in connection with the performance by the Applicant of the terms, conditions, and covenants of this Agreement or in connection with the Project.

2.15. Negative Pledge. The Applicant agrees that it will execute a Negative Pledge and Agreement ("Negative Pledge") in a form acceptable to the Commissioner, which Negative Pledge shall provide that the Applicant shall not sell, lease, transfer, assign, or in any way encumber or otherwise dispose of the Applicant's property, and located at 690 Cedar Street, Newington, CT (the "Project Property") in whole or in part, without first obtaining the written consent of the Commissioner. The Negative Pledge shall be recorded on the Newington land records by Applicant upon its execution.

2.16 Use Restriction. The Applicant covenants and agrees that the Applicant's Project Property shall be used as Transit Oriented Development for a term of ten (10) years. Applicant agrees that it shall execute a Declaration of Restrictive Covenant ("the Covenant") in a form acceptable to the Commissioner, which shall be filed on the land records of the Town of Newington by Applicant. The Covenant shall be enforceable by the State and shall provide that any conveyance of Applicant's property shall be subject to the terms of the Covenant.

ARTICLE 3 - PROJECT ADMINISTRATION

3.1. Records. The Applicant shall maintain records in a complete, businesslike manner, including full, accurate and current minutes and records of the Project in a form satisfactory to the Commissioner. The Applicant will furnish to the Commissioner or his designee, at such times as the Commissioner shall determine, any document, data, and information relating to the Project in possession of the Applicant which is requested by the Commissioner. The Commissioner, or his designee, shall, for the purpose of determining the proper disposition of the Funding, have the right at any time during normal business hours to inspect the minutes, records, books, files, documents, payrolls, employment contracts and conditions, contracts, and any other papers or electronic records of the Applicant, or to make inspection of any physical location of the Applicant. The Applicant shall aid and cooperate with any such inspection.

3.2 Payment to Applicant. In order to permit the State to make payment to the Applicant with respect of the Funding, the Applicant agrees as follows:

(A) Office of the State Comptroller Electronic Fund Transfer Automated Clearing House ("ACH")(EFT) Program. Upon the execution of this Agreement, the Applicant shall provide current, verifiable bank account information for accounts with Applicant's bank to the Office of the State Comptroller ("OSC") by submitting a completed Electronic Funds Transfer ACH (EFT) Election Form, available at <http://www.osc.ct.gov/apd/eftprogram/index.html> , and such additional information as the OSC may require.

(B) Requisition Form. In order to bring about the transfer of moneys to the account designated under subsection (A) above (the "Account"), the Applicant shall requisition funds on forms provided by the Commissioner and in the manner prescribed by this Agreement. Payment to the Applicant will be made based upon said requisition forms.

(C) Preagreement Costs. Unless authorized by the Commissioner in writing, no costs incurred prior to April 26, 2013 are eligible for payment from the Funding.

3.3. Insurance. Intentionally Omitted

3.4. Personal Service Contracts. All Project cost items of personal service, except those to be performed by volunteers and those to be performed by employees of the Applicant who will not receive extra compensation for such service, shall be performed pursuant to a written contract, and the Applicant shall, upon request, provide the Commissioner with copies of all such contracts.

3.5. Inspections. The Commissioner shall from time to time, in his discretion, during regular business hours, have the right of making an inspection of the Applicant's Property that is subject to any restriction under Section 2.14 of this Agreement, and the Applicant shall assist the Commissioner in said inspection and shall make available such books and other records as the Commissioner may reasonably request.

3.6. Audit. Each Applicant subject to a federal and/or state single audit must have an audit of its accounts performed annually. The audit shall be in accordance with the DECD Audit Guide, located at <http://www.ct.gov/ecd/cwp/view.asp?a=1096&q=249676> , and the requirements established by federal law and state statute. All Applicants not subject to a federal and/or state single audit shall be subject to a Project-specific audit of its accounts within ninety (90) days of the completion of the Project or at such times as required by the Commissioner. Such audit shall be in accordance with the DECD Audit Guide. An independent public accountant as defined by generally accepted government auditing standards (GAGAS) shall conduct the audits. At the discretion and with the approval of the Commissioner, examiners from the Department of Economic and Community Development may conduct Project-specific audits.

3.7. Repayment to State Based Upon Audit. In the event that an audit referred to in section 3.6 above demonstrates that the actual expenditures made by the Applicant in connection with the Project are less than the maximum allowable amounts for disbursement by the State, as set forth in section 1.1 above, any such excess disbursement made by the State in respect of the Funding shall become immediately due and payable by the Applicant to the State. Upon repayment by the Applicant of such excess amount of the Funding which has been disbursed to the Applicant, the stated amount of the Funding under this Agreement shall be amended, as applicable, so as to evidence the actual amount of the Funding which has been received by the Applicant.

3.8. Reports. The Applicant shall furnish upon request to the State within ninety (90) days of the end of each of the Applicant's fiscal year(s) for each year that this Agreement remains in effect, or earlier as determined by the Commissioner, such financial and other information that the Commissioner may require at his discretion.

3.9. Semi-Annual Project Financial Statements. The Applicant shall provide a semi-annual unaudited Balance Sheet and cumulative Statement of Program Cost to the Commissioner in the approved DECD project statement format as outlined in the most current Accounting Manual located at <http://www.ct.gov/ecd/cwp/view.asp?a=1096&q=249670>. This information will be required to be provided within 30 days after June 30th and December 31st until the expiration date of the Project Financing Plan and Budget, as may be amended from time to time.

ARTICLE 4 - DEFAULT

4.1. Instances of Default. The occurrence of any of the following events shall constitute a default under this Agreement (an "Instance of Default"):

(A) Breach of Agreement. If the Applicant fails to perform any act, duty, obligation or other agreement contained herein or in any other Project Document or fails to forebear from any unpermitted act, or if the Applicant abandons or terminates the Project, or takes such steps that such an abandonment or termination is imminent.

(B) Misrepresentation. If any representation or warranty made by the Applicant or caused to be made for the Applicant in any of the Project Documents prove at any time to be incorrect in any material respect.

(C) Receivership or Bankruptcy. If the Applicant shall: (i) apply for or consent to the appointment of a receiver, trustee or liquidator of all or a substantial part of any of its assets; (ii) be unable or admit in writing its inability to pay its debts as they mature; (iii) file or permit the filing of any petition or reorganization or the like under any insolvency or bankruptcy law, or the adjudication of it as a bankrupt, or make an assignment for the benefit of creditors or consent to any form of arrangement for the satisfaction, settlement or delay of debt or the appointment of a receiver for all or any part of its properties; or (iv) any action shall be taken by Applicant for the purpose of effecting any of the foregoing.

(D) Condemnation or Seizure. If any Federal, state or local governmental instrumentality, body or agency shall condemn, seize or otherwise appropriate, or take custody or control of all or any substantial portion of the properties or assets of Applicant.

(E) Lack of Adequate Security. If the State, at any time and in good faith, deems itself to be insecure. For the purposes of this Agreement, the State shall be entitled to deem itself insecure when some event occurs, fails to occur or is threatened or some objective condition exists or is threatened which materially impairs the prospects of the Applicant's business, or which materially affects the financial condition or business operations of Applicant. Also included is the actual or threatened waste, removal, or demolition of, or material alteration to, any significant part of the Applicant's property.

(F) Violation of Terms in Other Project Documents. The occurrence of a default or violation under any of the Project Documents.

4.2. Events in Instances of Default.

(A) Notice of Default. If the Applicant defaults or shall commit or allow any breach of the Applicant's covenants, agreements and other obligations under this Agreement, material or otherwise, including, without limitation, an Instance of Default, hereunder, the Commissioner shall notify the Applicant of the default in writing (“Notice of Default”).

(B) Opportunity to Cure. Upon the occurrence of an Instance of Default, the Commissioner may determine that permitting an opportunity to cure a default could jeopardize the Project or security, or would not be in the best interests of the State. Under those circumstances, no opportunity to cure need be given and the Commissioner may seek other remedies. Without in any way limiting the preceding right to act without providing the opportunity to cure, the Commissioner may provide the Applicant thirty (30) days after the Notice of Default, or such

longer period of time as the Commissioner may determine and set forth in writing, to cure or remedy the default or breach. Said cure or remedy will not be effective unless accepted, in writing, by the Commissioner.

(C) Remedies. Upon the occurrence of an Instance of Default, the State, acting by the Commissioner, shall have, to the full extent permitted by law, each and all of the following remedies in addition to those provided for in other portions of this Agreement:

(1) To suspend all further payments by the State to the Applicant until such noncompliance is cured to the satisfaction of the Commissioner;

(2) To proceed to enforce the performance or observance of any obligations, agreements, or covenants of the Applicant or any Guarantor in this Agreement or the Project Documents;

(3) To declare the entire amount of the Funding to be immediately due and payable and to bring any and all actions at law or in equity as may be necessary to enforce said obligation of repayment. In such Instances of Default, the Applicant hereby agrees to repay immediately to the State the entire amount of the Funding received, and liquidated damages equal to five percent (5%) of the total amount of the Funding received;

(4) The right to a writ of mandamus, injunction or similar relief against the Applicant because of such default or breach;

(5) The right to maintain any and all actions at law or suits in equity, including receivership or other proper proceedings, to cure or remedy any defaults or breaches of covenants under this Agreement;

(6) The Applicant agrees that all expenditures incurred by State under the Project Documents are other than principal, and the principal of this Agreement after maturity or acceleration or upon an event of default or after a judgment hereon, shall bear interest at the rate of fifteen percent (15%) per annum from the date of demand, acceleration, default or judgment as applicable.

(7) The State may collect costs associated with collection efforts as outlined in section 2.9 of this Agreement

ARTICLE 5 - MISCELLANEOUS PROVISIONS

5.1. Nonwaiver. If the State does not exercise, or delays in exercising, or exercises in part any of the State's rights and remedies set forth in this Agreement for the curing or remedying of any default or breach of covenant or condition, or any other right or remedy, in no event shall such non-exercise, delay or partial exercise be construed as a waiver of full action by the State or a waiver of any subsequent default or breach of covenant or condition. Nothing in this Agreement

may be construed as a waiver or limitation by the Commissioner of the State's sovereign immunity.

5.2. Severance. If any court determines any provision or provisions of this Agreement to be invalid, the remainder of this Agreement shall not be thereby affected.

5.3. Agreement Date. This Agreement shall become effective as of the date of its approval by the Attorney General of the State of Connecticut or his designee.

5.4. Originals. This Agreement shall be executed in three (3) counterparts, each of which shall be deemed an original, but which together shall constitute one and the same instrument.

5.5. Multiple Applicants. If there is more than one Applicant, the obligations hereunder and under the Project Documents, shall be joint and several.

5.6. Notices. Any notice to the Applicant pursuant hereto or pursuant to any of the Project Documents may be served in person or by mail. Any such requirement shall be deemed met by any written notice personally served at the principal place of business of the Applicant, at Town Hall, 131 Cedar Street, Newington, CT 06111, or at such other address as the Applicant shall notify the Commissioner, or mailed by depositing it in any post office station or letter box enclosed in a postage-paid envelope addressed to the Applicant at or at such other address as provided above. Any notice to the State, Department, or Commissioner shall be addressed to the Commissioner at 505 Hudson Street, Hartford, CT 06106. Any notice served upon the State, Department, or Commissioner under this Agreement or any other Project Document shall be effective only upon receipt by the Commissioner.

5.7. Waivers by Applicant. The Applicant and all others who may become liable for all or any part of this obligation do hereby waive demand, presentment for payment, protest, notice of protest and notice of non-payment of this Agreement and do hereby consent to any number of renewals or extensions of the time of payment hereof and agree that any such renewals or extensions may be made without notice to any of said parties and without affecting their liability herein and further consent to the release of any part or parts or all of the security for the payment hereof and to the release of any party or parties liable hereon, all without affecting the liability of the other persons, firms or corporations liable for the payment of this Agreement.

5.8. Gender, Number and Captions. The use of a personal pronoun shall refer to all persons regardless of the proper grammatical term; the singular includes the plural; and, captions for sections are included only for reference and do not modify or effect the terms, conditions and provisions of any document, agreement or instrument.

5.9. Modification. This Agreement may not be modified or amended in any manner except in a written agreement executed by all of the parties hereto. In the event that the Applicant seeks modification in the form of a consent or a subordination to financing required by the Applicant in its normal course of business, the Applicant shall request such modification in writing to the Commissioner not less than thirty (30) days prior to the date such modification is

required. The Applicant shall promptly reimburse the State for expenses, including reasonable attorneys' fees, incurred in negotiating and entering into such modification.

5.10. Provision of Other Documents. Upon the request of the Commissioner, the Applicant shall execute and deliver or cause to be executed and delivered such further documents and instruments and do such further acts and things as the Commissioner may request in order to effectuate more fully the purposes of this Project, to secure more fully the payment of the Funding in accordance with its terms, and to vest more completely in and assure to the Commissioner its rights under the Project Documents. Without limiting the generality of the foregoing, the Applicant will join with the Commissioner in executing such financing statements, agreements, notices or other documents or instruments as the Commissioner shall deem necessary or desirable to create, preserve, protect, maintain or enforce its rights and interests in and its liens on the property of the Applicant. The Applicant shall pay the cost of filing and recording, or refiling and re-recording, such documents and instruments in all public offices in which such filing or recording, or refiling or re-recording, is deemed by the Commissioner to be necessary or desirable.

5.11. Assignment. This Agreement and any of the documents related hereto and the rights, duties, or obligations thereunder may not be assigned by the Applicant without the written consent of the Commissioner. Any assignment made without the written consent of the Commissioner shall be void and of no force or effect.

5.12. Survival of Representations. For the purposes of this Agreement, the term "Applicant" shall mean and include any successor or assigns of Applicant including any representative of Applicant under the provisions of any state or Federal law governing bankruptcy, insolvency, receivership or reorganization. All warranties, representations and covenants made by the Applicant in this Agreement or in any of the Project Documents or in any certificate or instruments delivered to the State in connection with the Funding shall be considered to have been relied upon by the Commissioner and shall survive until the later of: (i) ten (10) years after receipt of the last installment of the Funding; or (ii) repayment in full of the Funding. This Agreement and the other Project Documents shall be binding upon and inure to the benefit of the successors and assigns of each of the parties; provided, however, that nothing in this provision shall imply that the Applicant has the right or authority to assign its rights, duties or obligations hereunder or under any of the Project Documents without the written consent of the Commissioner.

5.13. Governing Documents. In the event of any conflict between this Agreement and any of the Project Documents, this Agreement shall be controlling.

5.14. Third Parties. This Agreement is between the State and the Applicant only and shall not be relied upon by any third party. Without limiting the foregoing, the State shall have no liability to any party whatsoever (including, without limitation, the Applicant, any Guarantor or anyone conducting business with any of the foregoing) in the event the State, for any reason at any time, determines not to advance the Funding or any portion thereof for any reason or otherwise exercises its rights under this Agreement or any other Project Documents.

5.15. Governing Laws. The laws of the State of Connecticut shall govern this Agreement and the Project Documents.

5.16. Jurisdiction. The Applicant agrees that the execution of the Agreement and the other Project Documents, and the performance of its obligations hereunder and thereunder, shall be deemed to have a Connecticut situs, and the Applicant shall be subject to the personal jurisdiction of the courts of the State of Connecticut with respect to any action the Commissioner, his successors or assigns may commence hereunder or thereunder. Accordingly, the Applicant hereby specifically and irrevocably consents to the jurisdiction of the courts of the State of Connecticut with respect to all matters concerning this Agreement or any of the other Project Documents or the enforcement thereof in any action initiated by the Commissioner or which the Commissioner voluntarily joins as a party.

ARTICLE 6 - SPECIAL CONDITIONS

6.1. Construction Compliance.

(a) DECD requires submission of project design documents, specifications, construction bid documents and cost estimates for the Project as outlined in Schedule A attached. All submissions are subject to review, comment, and/or approval by the DECD's Office of Financial Review and Special Projects /or the DECD Commissioner.

(b) The Applicant shall submit for review and comment the following construction-related documents: a) bid package(s) including procedures for bidding; b) bid selection process and results; c) bonding and insurance requirements; d) copies of contracts; e) updated list of project contractors; f) schedule of values; g) payment requisitions and change orders.

(c) DECD requirements for approval of the release of fund for construction include review of construction documents, latest updated budget, submittal of bidding process, project schedule and cash flow updates, monthly reports, and any appropriate back up materials as may be needed for review such as application and certificate of payment (AIA Document G702) approved by the architect and/or engineer, appropriate invoices, etc.

6.2. Administrative and Project Monitoring Plan. The Applicant shall be required to submit to the DECD a project administration plan, acceptable to the DECD, that describes how they will document and monitor the financial and construction oversight of the State funds as required by the Assistance Agreement and as approved in the DECD's Project Financing Plan and Budget. The purpose of the plan is to assure the completion of the project within the approved Financing Plan and Budget and the appropriate use of State funds. The plan should address how State funds will be disbursed in conjunction and in accordance with all contractual agreements. The plan should include the process that they will undertake to approve payment requisitions and project construction change orders.

IN WITNESS WHEREOF, the parties hereto make and enter into this Agreement.

TOWN OF NEWINGTON

By: _____
Name: John Salomone
Title: Town Manager
Duly Authorized

Dated: _____

**STATE OF CONNECTICUT
DEPARTMENT OF ECONOMIC
AND COMMUNITY DEVELOPMENT**

By: _____
Name: Catherine H. Smith
Title: Commissioner
Duly Authorized

Dated: _____

Approved as to Form:

OFFICE OF THE ATTORNEY GENERAL

By: _____
Name:
Title:
Duly Authorized

Dated: _____

EXHIBIT A

[Applicant's Writings]
NONE

SCHEDULE A

Schedule of Submissions and Approvals required for State Assistance

The DECD will require the Applicant to provide certain documents prior to the start of construction and through the completion of the project. In addition, DECD will require certain reviews and opportunities for comment during design and construction, through the completion of the project. The following outlines some of these documents and some of the anticipated DECD approvals:

Submissions to DECD – Start of Project to Construction Completion:

- Schematic Design Plans
- Consultant Contracts
- Consultant Engineering Reports (including civil/site, environmental, geotechnical, and structural).
- CGS 25-68(d) Floodplain Certification Submission (if applicable)
- Appraisal Reports
- Historic and Archeological Surveys, Reports, and Mitigation Deliverables (if applicable)
- Affirmative Action Compliance Reports
- Applicant Bylaws
- Applicant Conflict of Interest Policy
- Cumulative Statement of Program Cost and Project Balance Sheet
- Applicant Single Audit Act Reports
- Third Party Special Inspection Reports
- Monthly Progress Reports by Applicant (format to be approved by DECD)
- Meeting Minutes and Correspondence (between owner, architect, and/or contractor)

DECD Site Development Involvement: DECD requires on and off-site project access on regular basis for review of design and construction developments.

Submissions to DECD Upon Completion of Construction:

- Annual Audit & Management Reports
- Cumulative Statement of Project Cost and Project Balance Sheet
- Certificate of Occupancy (where applicable)
- Record documents (As built)
- Certificate of Substantial Completion (AIA form G704)
- Contractor's Affidavit of Payment of Debts and Claims (AIA form G706)
- Contractor's Affidavit of Release of Liens (AIA form G706A)
- Subcontractors and Suppliers Release or Waiver of Liens
- Consent of Surety Company to Final Payment (AIA G707)
- Consent of Surety to a Reduction in or Partial Release of Retainage, if applicable: (AIA form G707A)
- Final Application and Certificate for Payment (AIA form G702, and continuation sheet G703)

91 Days after Certificate of Substantial Completion has been issued, the General Contractor may submit his request for the balance of his Retainage (AIA form G702).

CERTIFICATE OF APPLICANT

This certificate is delivered to the **STATE OF CONNECTICUT**, acting herein by its **Commissioner of Economic and Community Development** (the "State") by the undersigned, **TOWN OF NEWINGTON** (the "**Applicant**") in connection with the closing of a certain grant (the "Grant") by the State to the Applicant in the original grant amount not to exceed **\$2,000,000.00**, as authorized by various grant documents (the "Grant Documents").

In connection therewith, the undersigned Applicant hereby certifies and agrees as follows:

1. It has disclosed to the State:

(a) Any and all orders, decrees, or judgments of any court or governmental agency relating to the Applicant;

(b) All private or governmental actions, suits or proceedings against the Applicant whether pending or threatened and all judgments, decrees, or orders binding upon or enjoining the Applicant.

2. To the best of its knowledge and belief:

(a) No adverse change in the financial or any other condition of the Applicant has occurred since the Applicant submitted an application for the grant to the State;

(b) The Applicant is in compliance with all of the terms and conditions of all permits, licenses, franchises, orders or approvals necessary to operate its businesses;

(c) The Applicant has all licenses, permits, approvals, accreditations, written waivers and other authorizations as are necessary in order to enable it to own and conduct its business as currently conducted and occupy and use its real and personal properties without incurring any material liability, and the Applicant is in compliance with the terms and conditions of all such permits, licenses, franchises, orders or approvals;

(d) The Applicant has conducted and is conducting its business in compliance with applicable federal, state, local or foreign or other laws, regulations or orders or other requirements of any governmental, regulatory or administrative agency or authority or court or other tribunal relating to it, and the Applicant is not now charged with and is not now under investigation with respect to, any possible material

violation of any applicable law, regulation, order or requirement relating to any of the foregoing in connection with the businesses of the Applicant, and the Applicant has filed all reports required to be filed with any governmental, regulatory or administrative agency or authority;

(e) The Applicant is not in violation and has not received any notice of any asserted or pending material violation by the Applicant, of any applicable health or safety requirement by whatever governmental entity imposed;

(f) There are no federal tax claims or liens assessed or filed against the Applicant, and no demand has been made upon the Applicant by a District Director of Internal Revenue for any taxes due to the United States of America; and

(g) There are no judgments against the Applicant unpaid or unsatisfied, entered in any state or federal court.

3. This is a commercial transaction, and no portion of the grant proceeds are intended for the personal, family, or household purposes of the Applicant.

4. The Applicant has been represented by independent legal counsel in connection with and at the closing of the Grant.

Dated this ___ day of July, 2014.

Applicant:

TOWN OF NEWINGTON

By _____

John Salomone
Its Town Manager
Duly Authorized

Subscribed and sworn to before me this ___ day of
July, 2014.

Commissioner of the Superior Court
Notary Public
My Commission Expires:

After recording, please return to:
State of Connecticut
Department of Economic Community Development
Office of Housing and Community Development
505 Hudson Street
Hartford, CT 06106

DECLARATION OF RESTRICTIVE USE COVENANT

This DECLARATION OF RESTRICTIVE USE COVENANT (the “Declaration”) is made as of this ____ day of _____, 2014 by the **TOWN OF NEWINGTON**, a municipal corporation organized and existing under the laws of the State of Connecticut, (“**Applicant**”) in favor of the **STATE OF CONNECTICUT**, acting by and through its **DEPARTMENT OF ECONOMIC AND COMMUNITY DEVELOPMENT** (“**State**”)

WITNESSETH:

WHEREAS, pursuant to a certain Assistance Agreement of even date herewith (the “**Assistance Agreement**”), which Assistance Agreement is incorporated herein by reference and is made a part hereof as if it was set forth in full herein, the State has agreed to provide certain financial assistance to Applicant to be used for a project entitled “National Welding Demolition Remediation and Re-use Project” (the “**Project**”); and

WHEREAS, the State is willing to provide said financial assistance to the Applicant on the condition that Applicant agrees that with respect to a certain parcel of land known as 690 Cedar Street, Newington, CT and more particularly bounded and described on Schedule A attached hereto (the “**Subject Property**”), the Subject Property shall be used in a manner consistent with the purposes set forth in the Assistance Agreement.

NOW THEREFORE, in consideration of the premises and the covenants herein contained, the State and the Applicant hereby agree as follows:

1. Use Restriction. For a period of ten (10) years commencing on date hereof, the Subject Property shall be used as a Transit Oriented Development in accordance with the terms and conditions of the Assistance Agreement, and in the event that the Subject Property is not so used, for any reason whatsoever, no further development of the Subject Property shall take place without the prior written approval of the State, acting by the Commissioner of the Department of Economic and Community Development. “Transit-Oriented Development” means the development of residential, commercial and employment centers within one-half mile or walking distance of public transportation facilities including rail and bus rapid transit and services that meet transit supportive standards for land uses, built environmental densities and walkable environments, in order to facilitate and encourage use of those services.

2. Further Conveyance. The Applicant agrees that any conveyance made by it of the Subject Property of any part thereof shall specifically state that it is subject to the terms of this Declaration.

3. Project Documents. Applicant hereby agrees that this Agreement shall constitute one of the Project Documents as such term is defined in the Assistance Agreement. All capitalized terms used but not otherwise defined herein shall have the meaning ascribed to such terms in the Assistance Agreement.

4. Default. Any violation of the covenants of Applicant set forth in Section 1 of this Agreement shall constitute a default under this Agreement. Applicant agrees and acknowledges that the occurrence of a default under this Agreement shall constitute an Instance of Default under the Assistance Agreement.

5. Injunctive Relief. Applicant acknowledges that any damages which the State may sustain upon a violation of this Agreement may be difficult to measure and ascertain and further agrees that any violation of the terms of this Agreement shall be subject to injunctive relief in addition to any other remedies available to the State (i) at law or in equity or (ii) under the terms of the Assistance Agreement.

6. Expenses. Applicant shall be liable to pay, upon demand, all costs and expenses, including reasonable attorney's fees and expenses, incurred by the State in enforcing or in taking any action necessary to preserve and protect its rights under this Agreement.

7. Governing Law. It is the intention of the parties and it is expressly understood that this Agreement and the rights hereto are expressly governed by and are to be enforced in accordance with the laws of the State of Connecticut.

8. Bind and Inure. All rights and remedies of the parties under this Agreement shall inure to any assignee of the State and shall bind any successors and assigns of Applicant.

9. Notices. All notices, requests or demand to or upon a party to this Agreement shall be given or made by the other party hereto in writing and shall be sent certified mail, postage prepaid, return receipt requested, addressed to the addressee at the address set forth below.

If to the State:

Department of Economic and Community Development
505 Hudson Street
Hartford, CT 06106

With a copy to:

Attorney Nicholas Paindiris
Brown Paindiris & Scott, LLP
2252 Main Street
Glastonbury, CT 06033

If to the Applicant:

Town of Newington
Town Hall
131 Cedar Street
Newington, CT 06111
Attention: Town Manager

No other method of giving any notice, request or demand is hereby precluded provided such shall not be deemed given until such notice is actually received at the address of the addressee.

[SIGNATURE PAGE TO FOLLOW]

Schedule A
Legal Description

ESCROW AGREEMENT

This ESCROW AGREEMENT is made this ____ day of July, 2014 by and between the **STATE OF CONNECTICUT**, acting herein by its **Commissioner of Economic and Community Development** (the "**State**"), and the **TOWN OF NEWINGTON**, a Connecticut municipal corporation, acting herein by John Salomone, its duly authorized Town Manager (the "**Applicant**").

WITNESSETH

WHEREAS, pursuant to the terms of a certain Assistance Agreement of even date herewith (the "**Assistance Agreement**"), the State has agreed to grant to the Applicant the amount of \$2,000,000.00 (the "**Financial Assistance**"); and

WHEREAS, prior to paying over to Applicant the proceeds of the Financial Assistance, counsel to the State must approve the form and content of the Assistance Agreement and the other documents executed in connection with the Financial Assistance as set forth on **Schedule A** attached hereto ("**Assistance Documents**");

WHEREAS, the parties hereto would like to provide for the terms under which said Assistance Documents shall be held and the Financial Assistance proceeds delivered to Applicant.

NOW THEREFORE, in consideration of the promises and the agreements contained herein, the State and Applicant agree as follows:

1. After execution of the Assistance Documents, Applicant shall deliver the same to the Attorney General of the State of Connecticut for approval. Except for the Negative Pledge and Agreement and Declaration of Restrictive Use Covenant which may be filed upon the execution thereof, the State shall not sell, release, transfer or assign the Assistance Documents until such time as the Financial Assistance proceeds, or any part thereof, are delivered to Applicant.

2. At such time as the Attorney General of the State of Connecticut approves the Assistance Documents, and provided that no default in the terms of the Assistance Documents has occurred and remains uncured, the Financial Assistance proceeds shall be delivered to Applicant in accordance with the terms of the Assistance Agreement.

3. Upon approval of the Assistance Documents by the Attorney General of the State of

Connecticut and the delivery to Applicant of the Financial Assistance proceeds or any portion thereof, the State shall be released from the obligations set forth in Section 1 hereinabove.

IN WITNESS WHEREOF, the parties have made and entered into this Agreement as of the date set forth above.

TOWN OF NEWINGTON

By _____

John Salomone
Its Town Manager

Dated: _____, 2014

**STATE OF CONNECTICUT, DEPARTMENT
OF ECONOMIC AND COMMUNITY
DEVELOPMENT**

By: _____

Catherine H. Smith
Its Commissioner, Duly Authorized

Dated: _____, 2014

Schedule A
Assistance Documents

Assistance Agreement by and between the State and the Applicant;

Certificate of Applicant;

Affidavit of Commercial Transaction and Statutory Waiver of Notice and Hearing;

Negative Pledge and Agreement

Declaration of Restrictive Use Covenant

After recording, please return to:
State of Connecticut
Department of Economic Community Development
Office of Housing and Community Development
505 Hudson Street
Hartford, CT 06106

NEGATIVE PLEDGE AND AGREEMENT

This NEGATIVE PLEDGE AND AGREEMENT (the “Agreement”) is made as of this _____ day of _____, 2014 by **THE TOWN OF NEWINGTON**, a municipal corporation organized and existing under the laws of the State of Connecticut, (“**Applicant**”) in favor of the STATE OF CONNECTICUT, acting by and through its **DEPARTMENT OF ECONOMIC AND COMMUNITY DEVELOPMENT** (“**State**”)

WITNESSETH:

WHEREAS, pursuant to a certain Assistance Agreement of even date herewith (the “**Assistance Agreement**”), which Assistance Agreement is incorporated herein by reference and is made a part hereof as if it was set forth in full herein, the State has agreed to provide certain financial assistance to Applicant to be used for a project entitled National Welding Demolition Remediation and Re-use Project” (the “**Project**”); and

WHEREAS, the State is willing to provide said financial assistance to the Applicant on the condition that Applicant agrees that with respect to a certain parcel of land located at 690 Cedar Street, Newington, CT and more particularly bounded and described on **Schedule A** attached hereto (the “**Subject Property**”), it shall not, without the express prior written consent of the State: (i) grant to any other party a lien, mortgage, security interest or other encumbrance of whatsoever sort or nature or (ii) lease, sell, assign, transfer, convey or otherwise dispose of any portion of the Subject Property.

NOW THEREFORE, in consideration of the premises and the covenants herein contained, the State and the Applicant hereby agree as follows:

1. Negative Pledge. Applicant hereby agrees that, until such time as the Applicant has fulfilled its obligations contained herein and in the Assistance Agreement and in any of the other Project Documents, including without limitation, obligations to repay all or any part, of the Funding pursuant to the Assistance Agreement, it shall not, without first obtaining the express written consent of the Commissioner:

a. create, assume, grant or suffer to exist, any mortgage, pledge, encumbrance, lien, security interest or charge of any kind, voluntarily or involuntarily, upon the Subject Property; or

b. lease, sell, assign, convey, transfer or otherwise dispose of the Subject Property, in whole or in part, except as contemplated by the Assistance Agreement.

2. Project Documents. Applicant hereby agrees that this Agreement shall constitute one of the Project Documents as such term is defined in the Assistance Agreement. All capitalized terms used but not otherwise defined herein shall have the meaning ascribed to such terms in the Assistance Agreement.

3. Default. Any violation of the covenants of Applicant set forth in Section 1 of this Agreement shall constitute a default under this Agreement. Applicant agrees and acknowledges that the occurrence of a default under this Agreement shall constitute an Instance of Default under the Assistance Agreement.

4. Injunctive Relief. Applicant acknowledges that any damages which the State may sustain upon a violation of this Agreement may be difficult to measure and ascertain and further agrees that any violation of the terms of this Agreement shall be subject to injunctive relief in addition to any other remedies available to the State (i) at law or in equity or (ii) under the terms of the Assistance Agreement.

5. Expenses. Applicant shall be liable to pay, upon demand, all costs and expenses, including reasonable attorney's fees and expenses, incurred by the State in enforcing or in taking any action necessary to preserve and protect its rights under this Agreement.

6. Governing Law. It is the intention of the parties and it is expressly understood that this Agreement and the rights hereto are expressly governed by and are to be enforced in accordance with the laws of the State of Connecticut.

7. Bind and Inure. All rights and remedies of the parties under this Agreement shall inure to any assignee of the State and shall bind any successors and assigns of Applicant.

8. Notices. All notices, requests or demand to or upon a party to this Agreement shall be given or made by the other party hereto in writing and shall be sent certified mail, postage prepaid, return receipt requested, addressed to the addressee at the address set forth below.

If to the State:

Department of Economic and Community Development
505 Hudson Street
Hartford, CT 06106

With a copy to:

Attorney Nicholas Paindiris
Brown Paindiris & Scott, LLP
2252 Main Street
Glastonbury, CT 06033

If to the Applicant:
Town of Newington
Town Hall
131 Cedar Street
Newington, CT 06111
Attention: Town Manager

No other method of giving any notice, request or demand is hereby precluded provided such shall not be deemed given until such notice is actually received at the address of the addressee.

[SIGNATURE PAGE TO FOLLOW]

IN WITNESS WHEREOF, Applicant has executed this Agreement as of the date first above written.

WITNESS

APPLICANT
TOWN OF NEWINGTON

By _____
John Salomone
Its Town Manager
Duly Authorized

STATE OF CONNECTICUT:

: ss. Newington

COUNTY OF HARTFORD :

On the _____ day of July, 2014, personally appeared JOHN SALOMONE, Town Manager of the TOWN OF NEWINGTON, Signer and Sealer of the foregoing instrument and acknowledged the same to be his free act and deed and the free act and deed of the TOWN OF NEWINGTON, before me.

Commissioner of the Superior Court
Notary Public
My Commission Expires:

**AFFIDAVIT OF COMMERCIAL TRANSACTION AND STATUTORY WAIVER
OF NOTICE AND HEARING**

PERSONALLY APPEARED **John Salomone**, the Town Manager of the **TOWN OF NEWINGTON** (the "**Applicant**") and swore to the truth of the following:

The Applicant is about to enter into a commercial transaction with the **STATE OF CONNECTICUT**, acting herein by its **Commissioner of Economic and Community Development** (the "**State**").

Such transaction contemplates the awarding of \$2,000,000.00 in the form of a grant from the State to the Applicant as evidenced by an Assistance Agreement (the "**Agreement**").

The funding is a "commercial transaction", as defined by Section 52-278a of the Connecticut General Statutes and is not a consumer transaction. The funding is also a Connecticut transaction and shall be governed by Connecticut law.

THE APPLICANT ACKNOWLEDGES THAT IT HAS THE RIGHT UNDER SECTIONS 52-278a THROUGH 52-278n, OF THE CONNECTICUT GENERAL STATUTES SUBJECT TO CERTAIN LIMITATIONS, TO NOTICE OF AND HEARING ON THE RIGHT OF THE STATE TO OBTAIN A PREJUDGMENT REMEDY, SUCH AS ATTACHMENT OR GARNISHMENT, UPON COMMENCING ANY LITIGATION AGAINST APPLICANT. NOTWITHSTANDING, APPLICANT HEREBY WAIVES ALL RIGHTS TO NOTICE, JUDICIAL HEARING, OR PRIOR COURT ORDER IN CONNECTION WITH ANY PREJUDGMENT REMEDIES RELATING TO SAID GRANT. APPLICANT ALSO WAIVES ANY AND ALL OBJECTIONS WHICH APPLICANT MIGHT OTHERWISE BE ABLE TO ASSERT, NOW OR IN THE FUTURE, TO THE EXERCISE OR USE BY THE STATE OF ANY RIGHT OF SETOFF, REPOSSESSION OR SELF-HELP AS MAY PRESENTLY EXIST UNDER STATUTE, INCLUDING THE UNIFORM COMMERCIAL CODE AND COMMON LAW.

THIS WAIVER IS EXECUTED PURSUANT TO SECTION 52-278f OF THE CONNECTICUT GENERAL STATUTES AND FOR THE PURPOSE OF INDUCING THE STATE TO ENTER INTO SAID COMMERCIAL TRANSACTION.

Dated this ___ day of July, 2014.

Applicant:

TOWN OF NEWINGTON

By: _____

John Salomone
Its Town Manager
Duly authorized

Subscribed and sworn to before me, the
undersigned, this ____ day of July,
2014.

Commissioner of the Superior Court
Notary Public
My Commission Expires: _____



John Salomone
Town Manager

TOWN OF NEWINGTON

131 CEDAR STREET
NEWINGTON, CONNECTICUT 06111

OFFICE OF THE TOWN MANAGER

MEMORANDUM

To: Newington Town Council
From: John Salomone, Town Manager
Date: July 18, 2014
Re: Consideration of Canceling an Upcoming Meeting

The subject of cancelling the August 26 Town Council Meeting is on the July 22 Town Council agenda, with action possible on July 22 or August 12. The Council has, in the past, voted to cancel an August meeting if there are no pressing matters for consideration. A special meeting can be called in the event of any emergency or pressing matter that may arise after the cancellation.

Attach.

AGENDA ITEM: _____

DATE: _____

RESOLUTION NO. _____

RESOLVED:

That the Newington Town Council hereby alters its meeting schedule by canceling its regular meeting scheduled for August 26, 2014.

MOTION BY: _____

SECONDED BY: _____

VOTE: _____



John Salomone
Town Manager

TOWN OF NEWINGTON

131 Cedar Street Newington, Connecticut 06111

Police Department



Richard C. Mulhall
Chief of Police

Memorandum

To: John Salomone, Town Manager
From: Chief Richard Mulhall
Date: July 17, 2014
Re: Request for Bid Waiver – MRAP Project

In March of 2014, we were made aware of an armor vehicle that was available to the Newington Police Department through a federal military surplus program. We investigated the vehicle and found that the chassis was new as was the power plant, a CAT engine, and drive train. This is a standard configuration that can be serviced by the Highway mechanical staff. We had them review the vehicle and confirmed this before accepting the vehicle.

The vehicle, a BAE Caiman, will serve as an armor vehicle for our SWAT unit, and it would also serve the town as a heavy Rescue Vehicle. This vehicle will be immediately available for deployment during critical incidents and disasters. It is a six wheel all drive system with a tall height clearance for clearing debris during natural or manmade disasters. The value of these vehicles has been set at \$733,000. There was no cost to the town for accepting the vehicle. We determined that we would need the following upgrade to allow for proper SWAT and Rescue use:

Roof front facing LED emergency lighting wiring and control system	\$5,628
Rear ICC lights with red and blue LEDs wiring to control system	\$2,845
Rotating hatch & gun Port. Removal of defective system and replace with LE unit	\$11,560
Back up camera with 5" monitor with constant view with low light capabilities	\$3,055
Front camera with 5" monitor with constant view with low light capabilities	\$2,828
2 Exterior equipment boxes 9' long for equipment storage with locking doors	\$5,120
2 Door drip edges welded above doors and all seals replaced	\$1,498
2 Go lights (spot lights) with internal controls front passenger/driver sides	\$2,530
Safety Step passenger side to allow entrance to vehicle. Original system missing	\$1,795
2 Bench seats with under storage and back padding. Heavy duty with non-rip fabric	\$6,048
2 Safety door stops – new reinforced for door weight	\$4,248
3 Shooting Ports 3 – 7" driver, passenger, rear sides	\$5,960
Radio System preparation package	<u>\$1,250</u>
Total	\$54,365

Given the nature of the vehicle any modifications would have to be done by an armor vehicle company due to the specialized nature of the armor and configuration. The region has a long standing business relationship with Lenco of Pittsfield MA, as we did purchase three armor vehicles from them for regional use. This is the closest company available to us within reasonable driving distance.

We are asking the Town Council for a bid waiver as this vehicle is specialized, and only an armor vehicle builder is capable of handling the many issues for modifications due to the armor nature of the vehicle. We need to ensure that any modification does not compromise the armor protection. Lenco has the capabilities of handling the equipment, possesses the correct tools to work on the vehicle, and the expertise to ensure that the vehicles protective capabilities will be maintain. We will be funding this request through our Drug Asset Forfeiture account.

Each of the items above deal with safety and functional needs to ensure the vehicle will deliver superior service to our citizens

AGENDA ITEM: VI.A.

DATE: 7-22-14

RESOLUTION NO.: _____

RESOLVED:

That the Newington Town Council hereby makes the following appointment(s):

7. Conservation Commission

7 Members, 3 Alternates
4 year term - staggered
Party Max.: 5 members, 2 alternates

Name	Address	Party	Term	Replaces
Alternate: Tim Manke	65 Rosewood Drive	R	Immediate - 11/30/15	Vacant

MOTION BY: _____

SECONDED BY: _____

VOTE: _____

AGENDA ITEM: VII

DATE: 7-22-14

RESOLUTION NO. _____

RESOLVED:

That property tax refunds in the amount of \$ 3,178.69 are hereby approved in the individual amounts and for those named on the "Requests for Refund of an Overpayment of Taxes," certified by the Revenue Collector, a list of which is attached to this resolution.

MOTION BY: _____

SECONDED BY: _____

VOTE: _____

TAX REFUNDS – July 22, 2014

Brittany McDermott Figueredo 58 Carriage Hill Drive Newington, CT 06111	\$29.38
Donna Desimone 55 Raynel Road Newington, CT 06111	\$28.41
Helen Geiger 31 Standard Street Newington, CT 06111	\$39.71
Richard and Eleanor Simonides 270 Field Street Newington, CT 06111	\$145.24
Constantine Costas 47 Magnolia Street Newington, CT 06111	\$41.17
Govindasamy Guharajan or Manimozhi Guharajan 22 Elliott Street Newington, CT 06111	\$61.68
MTP Auto Leasing Svc. Inc. 247-25 Jericho Turnpike Bellerose, NY 11426	\$1,574.46
Gelco Corporation Three Capital Drive Eden Prairie, MN 55344	\$319.55
Gretchen Goodmaster 145 Walnut Street Naugatuck, CT 06770	\$45.52
MTP Auto Leasing Inc. 247-25 Jericho Turnpike Bellerose, NY 11426	\$813.70
Charlotte Etier 12000 Chase Crossing Circle, Apt. 4 North Bethesda, MD 20852	\$23.30
Elzbieta Steg 15 Brick Walk Lane Newington, CT 06111	\$56.57
Total	\$ 3,178.69