

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

RE: Bruce Museum Renovation 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 PA 07-7, JSS, Sec. 13(e)(2) and the **TOWN OF GREENWICH** (hereinafter the "Applicant" or "contractor") acting herein by Peter J. Tesei, its duly authorized First Selectman.

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 May 13, 2016 (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 Bruce Museum Renovation 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 SEVEN HUNDRED FIFTY THOUSAND and NO/100 (\$750,000.00) DOLLARS (hereinafter, the "Grant" or the "Funding").

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.

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”** or “commission” means the Connecticut Commission on Human Rights and Opportunities;
2. **“Contract”** means this Agreement and any extension or modification of this Agreement;
3. **“Contractor”** means the Applicant and includes any successors or assigns of the Applicant;

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. **“Intellectual disability”** means a significant limitation in intellectual functioning and deficits in adaptive behavior that originated during the developmental period before eighteen years of age;
8. **“Marital status”** means being single, married as recognized by the State of Connecticut, widowed, separated or divorced;
9. **“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;
10. **“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 section 32-9n; and
11. **“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 term “**Contract**” does not include a contract where each contractor is (a) a political subdivision of the state, including, but not limited to, a municipality unless the contract is a municipal public works contract or quasi-public agency project contract, (b) any other state, as defined in Conn. Gen. Stat. section 1-267, (c) the federal government, (d) a foreign government, or (e) an agency of a subdivision, agency, state or government described in the immediately preceding items (a), (b), (c), or (d).

- (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, intellectual disability, 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, intellectual disability, 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 such 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 Conn. Gen. Stat. section 4a-60 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 Conn. Gen. Stat. sections 4a-60, 46a-68e, and 46a-68f and with each regulation or relevant order issued by the Commission pursuant to Conn. Gen. Stat. sections 46a-56, 46a-68e, 46a-68f, and 46a-86; and (e) 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 as relate to the provisions of Conn. Gen. Stat. sections 4a-60 and 46a-56. If the Contract is a public works contract, municipal public works contract or contract for a quasi-public agency project, the Contractor agrees and warrants that he or she will make good faith efforts to employ minority business enterprises as

subcontractors and suppliers of materials on such public works or quasi-public agency project.

- (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 Conn. Gen. Stat. section 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 statutes and 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 Conn. Gen. Stat. section 4a-60a, 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 Conn. Gen. Stat. section 4a-60a and with each regulation or relevant order issued by said Commission pursuant to Conn. Gen. Stat. section 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 Conn. Gen. Stat. section 4a-60a and section 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 Conn. Gen. Stat. section 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.

(1) The Applicant to the fullest extent permitted by law hereby agrees to indemnify and hold harmless the State from and against any liabilities, losses, damages, costs, or expenses, including attorneys' fees, arising out of or in connection with the presence of hazardous waste in connection with the Project, or any lien or claim under Conn. Gen. Stat. section 22a-452a, as amended, or other federal, state, or municipal statute, regulation, rule, law, or proceeding relating to environmental matters, which indemnity shall survive repayment in full of the Funding, and termination and/or release of the Project Documents.

(2) Disbursement of State funds may be subject to the completion of the appropriate Connecticut Environmental Policy Act ("CEPA") review of Project activities. If Project analysis and review under the provisions of CEPA is necessary, then DECD will contract a professional engineering/planning firm experienced in preparing CEPA documents, using funds appropriated to the Project. Said firm shall work at the direction of the DECD in assessing the Project activities in accordance with CEPA (C.G.S. Sec. 22a-1 and R.C.S.A. Sec. 22a-1a-1 to 22a-1a-12).

(3) 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 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 to the fullest extent permitted by law 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. Use Restriction. The Applicant represents and agrees that the Applicant's property located at 1 Museum Drive, Greenwich, CT is located within Bruce Park which has a deed restriction that said property shall forever be used for the purposes of a public park and that the existing building be used as a museum for so long as the same is proper and adequate for such purpose.

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 August 4, 2008 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 2.15 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. (a) Any unspent Funding shall become immediately due and payable by the Applicant to the State within ninety (90) days of the end date of the most recently approved Project Financing Plan and Budget. (b) 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.

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 her 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 forbear 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 proves 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 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; and

(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, 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 Town Hall, 101 Field Point Road, Greenwich, CT 06830 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 re-filing and re-recording, such documents and instruments in all public offices in which such filing or recording, or re-filing 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 assign 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, 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 this 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, her 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) The DECD requires submission of project design documents, specifications, construction bid documents and cost estimates for the Project as outlined in Schedule A. 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. Unless notified by DECD, for projects with a total project cost of \$250,000 or less, the Applicant will be required to certify that the project is in compliance with DECD design, bidding, contracting and construction monitoring

requirements. In these cases, it will be the responsibility of the Applicant to certify and submit the appropriate documentation during the pre-bid phase, construction phase and close-out phase of the project.

(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.

6.3 Pass-Through Agreement. This herein Assistance Agreement is expressly made subject to the Applicant entering into a Pass-Through Agreement with Bruce Museum, Inc., a copy of which is attached hereto as **SCHEDULE B.**

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

TOWN OF GREENWICH

By: _____
Name: Peter J. Tesei
Title: First Selectman
Duly Authorized

Dated: _____, 2016

**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

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 Builts)
- 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 at 50% project completion, if applicable: (AIA form G707A) Requires DECD concurrence.
- Final Application and Certificate for Payment (AIA form G702, and continuation sheet G703)

If the contractor has provided Contractor's Affidavit of Release of Liens (AIA form G706A) and lien waivers from major subcontractors and suppliers, a contractor may request the balance of retainage. If these documents are not provided, retainage can not be paid until 91 days after the date on the Certificate of Substantial Completion.

SCHEDULE B
(Pass-Through Agreement)

PASS-THROUGH AGREEMENT

By and Among

BRUCE MUSEUM, INC.

The TOWN OF GREENWICH,

And

The STATE OF CONNECTICUT

(acting by and through its

Commissioner of the Department of Economic and Community Development),

THIS PASS-THROUGH AGREEMENT (the "Agreement") is entered into as of its Effective Date (as said term is defined in Section 3.11 of this Agreement) by and among the **TOWN OF GREENWICH** a Connecticut municipal corporation, with offices located at 101 Field Point Road, Greenwich, Connecticut, acting herein by and through Peter J. Teresi, its First Selectman, duly authorized, (herein called the "**Town**"), the **BRUCE MUSEUM, INC.**, a Connecticut not-for-profit corporation, acting herein by and through its Executive Director, Peter C. Sutton, with a principal place of business located at One Museum Drive, Greenwich, Connecticut (the "**Museum**"), and the **STATE OF CONNECTICUT**, acting herein by and through its **Commissioner of the Department of Economic and Community Development**, with an office located at 505 Hudson Street, Hartford, Connecticut 06106 ("the **State**").

WITNESSETH THAT,

WHEREAS, pursuant to a certain Assistance Agreement between the State and the Town, a copy of which is attached hereto as **Exhibit A** and is made a part hereof (the "**Assistance Agreement**"), the State has agreed to provide the Town with a grant in the amount of **SEVEN HUNDRED FIFTY THOUSAND AND NO/100 DOLLARS (\$750,000.00)** (the "**State Funds**") for a project entitled "Bruce Museum Renovations Project" (the "**Project**"); and

WHEREAS, the Town shall grant the State Funds to the Museum on the condition that the Museum shall then implement the Project pursuant to the Assistance Agreement; and

WHEREAS, the Town, Museum and the State have approved the Financing Plan and Budget; and

WHEREAS, the Museum is willing to utilize the State Funds, through periodic disbursement(s) for the intended uses and purposes of the Project (the "**Disbursements**", each a "**Disbursement**"), and the State will agree to permit the same, subject to compliance with and satisfaction of the terms and conditions set forth in this Agreement.

NOW, THEREFORE, in consideration of the mutual obligations, covenants, and promises of the parties herein contained, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, State, Museum, and the Town hereby agree as follows:

Article 1

1.1 Agreement to Provide Funds. On the basis of and in reliance on the representations, warranties and covenants of the Museum in this Agreement and any other documents incident hereto, and subject to compliance with and full satisfaction of each of the terms and conditions of this Agreement, the Town agrees to deliver and pass through the State Funds to the Museum.

1.2 Terms and Conditions. The parties hereto acknowledge and agree that the Museum's use of the State Funds shall be bound by the terms and conditions of the Assistance Agreement, as if the Museum were a party to the Assistance Agreement, and Museum shall have the same obligations to the Town and to the State as Town has to the State thereunder. By execution hereof, Museum hereby assumes all of the obligations of the Town as set forth in the Assistance Agreement and makes the same representations, covenants, warranties and agreements as the Town as if the Museum were a party to the Assistance Agreement. Museum hereby agrees to indemnify and hold Town harmless with respect to any and all claims made by the State with respect to the enforcement by the State of any obligation of Town under the Assistance Agreement.

Article 2

2.1 Compliance with Laws, Regulations, Rules, and Executive Orders. Museum hereby agrees to abide and be bound by all of the Rules, Regulations, Laws and Executive Orders, including but not limited to those employment practices and nondiscrimination requirements set forth in Section 2.10 of the Assistance Agreement.

2.2 Insurance The Museum shall maintain all required insurance in amounts, form, substance and quality acceptable to the State and the Town, as described more fully in **Exhibit B**, attached hereto and made a part hereof. A certificate evidencing such insurance shall be delivered to the Commissioner at the time of execution of this Agreement, and annually thereafter for the duration of the Project Financing Plan and Budget.

2.3 Campaign Contribution and Solicitation Prohibitions. For all State contracts as defined in C.G.S. sec. 9-612 having a value in a calendar year of \$50,000 or more or a combination or series of such agreements or contracts having a value of \$100,000 or more, the authorized signatory to this Agreement expressly acknowledges receipt of the State Elections Enforcement Commission's notice advising state contractors of state campaign contribution and solicitation prohibitions, and will inform its principals of the contents of the notice. This notice, SEEC Form 11, is attached hereto as **Exhibit C**.

2.4. Tax Exempt Status. Museum: (i) is an organization described in section 501(c)(3) of the Internal Revenue Code (the "Code"), or corresponding provisions of prior law and that is not a "private foundation" as defined in the Code; (ii) it has received a letter or letters from the Internal Revenue Service to such effect; (iii) such letter or letters have not been modified, limited or revoked; (iv) is in compliance with all terms, conditions and limitations, if any, contained in such letter; (v) the facts and circumstances which form the basis of such letter as represented to the Internal Revenue Service continue to substantially exist; and (vi) is exempt from Federal income taxation under section 501(a) of the Code.

Article 3

3.1 Notices. Any and all notices or other communications required or permitted under this Agreement shall be in writing and shall be sufficiently given when delivered in person to, or sent by, first-class mail, postage prepaid, addressed as follows:

If to: Bruce Museum, Inc.
One Museum Drive
Greenwich, CT 06830

If to : Town of Greenwich
Town Hall
101 Field Point Road
Greenwich, CT 06083

If to State:
Department of Economic and Community Development
505 Hudson Street
Hartford, Connecticut 06106-7106
Attn: Commissioner of Economic and Community Development

With a copy to:
Assistant Attorney General - Housing
55 Elm Street
Hartford, Connecticut 06106

or to such other address or person as shall be designated from time to time by notice.

3.2 Cross Default. Any breach or default by Museum or Town of one or more of the terms or conditions contained within this Agreement shall be an Instance of default under the Assistance Agreement and any and all other agreements between the State, Museum and/or the Town.

3.3 Jurisdiction. Museum and the Town agree that the execution of this Agreement and the other documents executed by Museum and the Town and delivered to the State in connection with this Agreement, and the performance of its obligations hereunder and thereunder, shall be deemed to have a Connecticut situs and Museum and the Town 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, Museum and the Town hereby specifically and irrevocably consent to the jurisdiction of the courts of the State of Connecticut with respect to all matters concerning this Agreement or any of the other documents executed by Museum and the Town and delivered to the State in connection with this Agreement or the enforcement thereof in any action initiated by the Commissioner or which the Commissioner voluntarily joins as a party.

3.4 Governing Law. The laws of the State of Connecticut shall govern all aspects of this Agreement, including execution, interpretation, performance, and enforcement.

3.5 No Waiver. Neither failure nor delay on the part of the Town or the State in exercising any right under this Agreement shall operate as a waiver of such right, nor shall any single or partial exercise of any such right preclude any further exercise thereof or the exercise of any other right. No waiver of any provision of this Agreement or consent to any departure by the Town therefrom shall be effective unless the same shall be in writing, signed on behalf of the Town or the State, and the same shall be effective only with respect to such signatory party and only in the specific instance for which it is given. No notice to or demand on the Museum in any case shall entitle the Museum to any other or further notices or demands in similar or other circumstances, or constitute a waiver of the right of the Town or the State to take other or further action in any circumstances without notice or demand.

3.6 Remedies Cumulative. All powers and remedies given by this Agreement shall be cumulative and in addition to those otherwise provided by law.

3.7 Counterparts. This Agreement may be executed in several counterparts, each of which shall be deemed an original for all purposes.

3.8 Binding of All Successors and Assigns. All the terms and provisions of this Agreement shall be binding on and inure to the benefit of the parties hereto, and their respective successors, assigns, and legal representatives, provided, nevertheless that the obligations of the Museum hereunder shall apply and remain in effect only so long as the Museum shall be responsible for the management of the Bruce Museum under agreement with the Town.

3.9 Severability. The invalidity, illegality, or unenforceability of any one or more of the provisions of this Agreement shall not affect the validity, legality, or enforceability of the remaining provisions hereof or thereof.

3.10 Headings. The headings of the articles, sections, and paragraphs used in this Agreement are for convenience only and shall not be read or construed to affect the meaning or construction of any provision.

3.11 Effective Date. This Agreement shall be effective upon the date that the Assistance Agreement is approved by the Attorney General of the State following the execution of this Agreement by the parties hereto (the "**Effective Date**").

3.12 No Third-Party Beneficiary. No contractor, subcontractor, mechanic, materialman, laborer, vendor, or other person dealing with the Museum shall be, nor shall any of them be deemed to be, third-party beneficiaries of this Agreement, but each such person shall be deemed to have agreed (a) that they shall look to the Museum as their sole source of recovery if not paid, and (b) except as otherwise agreed to by Town and the State and any such person in writing, they may not enter any claim or bring any such action against the Town and/or the State under any circumstances. Except as provided by law, or as otherwise agreed to in writing between the Town, the State and such person, each such person shall be deemed to have waived in writing all right to seek redress from the Town or the State under any circumstances whatsoever.

3.13 Indemnification. The Museum shall indemnify and hold the State and the Town harmless from any and all losses, liabilities, injuries, suits, actions, proceedings, and claims arising out of or relating to the Project and all documents executed in conjunction herewith.

3.14 Sovereign Immunity. The Museum recognizes that the State is sovereign and agrees not to make any claim of a right to use the defense of sovereign immunity as the agent of the State without the prior written consent of the Commissioner to be granted in her sole discretion. Nothing contained herein may be construed as a waiver or limitation by the Commissioner of the State's sovereign immunity.

3.15 Prejudgment Remedy and Waiver. THE MUSEUM AGREES THAT THE TRANSACTION OF WHICH THIS AGREEMENT IS A PART IS A COMMERCIAL TRANSACTION AND NOT A CONSUMER TRANSACTION AND WAIVES ANY RIGHT TO NOTICE, PRIOR HEARING, AND ANY OTHER RIGHTS IT MAY HAVE UNDER CHAPTER 903a OF THE CONNECTICUT GENERAL STATUTES, AS MAY BE AMENDED, OR OTHER APPLICABLE LAW AFFECTING PREJUDGMENT REMEDIES AND THE STATE MAY INVOKE ANY PREJUDGMENT REMEDY AVAILABLE TO IT IN CONNECTION WITH ANY CLAIM THE STATE MAY HAVE AGAINST THE MUSEUM PURSUANT TO THIS AGREEMENT, INCLUDING, BUT NOT LIMITED TO, GARNISHMENT, ATTACHMENT, FOREIGN ATTACHMENT AND REPLEVIN, WITH RESPECT TO ANY TANGIBLE OR INTANGIBLE PROPERTY (WHETHER REAL OR PERSONAL) OF THE MUSEUM, TO ENFORCE THE PROVISIONS OF THIS AGREEMENT, WITHOUT GIVING THE CITY ANY NOTICE OR OPPORTUNITY FOR A HEARING AND THE MUSEUM AUTHORIZES THE ATTORNEY FOR THE STATE TO ISSUE A WRIT FOR A PREJUDGMENT REMEDY WITHOUT COURT ORDER, PROVIDED THE COMPLAINT SHALL SET FORTH A COPY OF THIS WAIVER.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the Effective
Date.

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

By: _____
Catherine H. Smith
Its Commissioner

Date: _____

TOWN OF GREENWICH

By: _____
Peter J. Tesei
Its First Selectman
Duly Authorized

Date: _____, 2016

BRUCE MUSEUM, INC.

By: _____
Peter C. Sutton
Its Executive Director

Date: _____, 2016

EXHIBIT A

Assistance Agreement

EXHIBIT B

INSURANCE REQUIREMENTS FOR NON-PROFIT AND FOR PROFIT ENTITIES

(A) Museum shall procure and maintain for the duration of the approved Project Financing Plan and Budget the following types of insurance, in amounts no less than the stated limits, against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work hereunder; provided however, that if this project is (i) financial assistance of less than \$100,000, (ii) a planning grant, or (iii) a predevelopment loan, only items 1 and 2 as set forth herein shall apply:

- 1) **Commercial General Liability:** \$1,000,000 combined single limit per occurrence for bodily injury, personal injury and property damage. Coverage shall include Premises and Operation, Independent Contractors, Product and Completed Operations and Contractual Liability. If a general aggregate is used, the general aggregate limit shall apply separately to this Agreement or the general aggregate limit shall be twice the occurrence limit.
- 2) **Workers' Compensation and Employer's Liability:** Statutory coverage in compliance with compensation laws of the State of Connecticut. Coverage shall include Employer's Liability with a minimum limit of \$100,000 each accident, and \$500,000 Disease – Policy limit, \$100,000 each employee.
- 3) **Automobile Liability:** \$1,000,000 combined single limit per accident for bodily injury. Coverage extends to owned, hired and non-owned automobiles. If the vendor/contractor does not own an automobile, but one is used in the execution of the contract, then only hired and non-owned coverage is required. If a vehicle is not used in the execution of the contract then automobile coverage is not required.
- 4) **Directors and Officers Liability:** \$1,000,000 per occurrence limit of liability; provided, however, that Directors and Officers Liability insurance shall not be required for limited liability corporations or limited partnerships.
- 5) **Comprehensive Crime Insurance:** \$100,000 limit for each of the following coverages: Employee Dishonesty (Form O), Forgery/Alteration (Form B), and Money and Securities coverage for Theft, Burglary, Robbery, Disappearance and Destruction.
- 6) **Builders Risk:** (Construction Phase) With respect to any work involving the construction of real property during the construction project, if DECD is taking a collateral position in the property, the Museum shall maintain Builder's Risk insurance providing coverage for the entire work at the project site. Coverage shall be on a Completed Value form basis in an amount equal to the projected value of the project. Museum agrees to endorse the State of Connecticut and Town of Greenwich as a Loss Payee.

- 7) **Property Insurance:** (Post Construction) If DECD is taking a collateral position in the property, the Museum shall maintain insurance covering all risks of direct physical loss, damage or destruction to real and personal property and improvements and betterments (including flood insurance if property is within a duly designated Flood Hazard Area as shown on Flood Insurance Rate Maps (FIRM) set forth by the Federal Emergency Management Agency (FEMA)) at 100% of Replacement Value for such real and personal property, improvements and betterments or the maximum amount available under the National Flood Insurance Program. The State of Connecticut and Town shall be listed as a Loss Payee.

(B) Additional Insurance Provisions

- 1) The State of Connecticut Department of Economic and Community Development, the Town of Greenwich, their respective officials and employees shall be named as Additional Insureds on the Commercial General Liability policy. Additional Insured status is not required for items (A)2 through (A)7 above.
- 2) Described insurance shall be primary coverage and Museum and Museum's insurer shall have no right of subrogation recovery or subrogation against the State of Connecticut.
- 3) Museum shall assume any and all deductibles in the described insurance policies.
- 4) Without limiting Museum's obligation to procure and maintain insurance for the duration identified in (A) above, each insurance policy shall not be suspended, voided, cancelled or reduced except after thirty (30) days prior written notice by certified mail has been given to the State of Connecticut and the Town of Greenwich, with the exception that a ten (10) day prior written notice by certified mail for non-payment of premium is acceptable.
- 5) Each policy shall be issued by an Insurance Company licensed to do business by Connecticut Department of Insurance and having a Best Rating of A-, VII, or equivalent or as otherwise approved by DECD.

Exhibit C

NOTICE TO EXECUTIVE BRANCH STATE CONTRACTORS AND PROSPECTIVE STATE CONTRACTORS OF CAMPAIGN CONTRIBUTION AND SOLICITATION BAN

This notice is provided under the authority of Connecticut General Statutes 9-612(g)(2), as amended by P.A. 10-1, and is for the purpose of informing state contractors and prospective state contractors of the following law (italicized words are defined below):

Campaign Contribution and Solicitation Ban

No *state contractor, prospective state contractor, principal of a state contractor or principal of a prospective state contractor*, with regard to a *state contract* or *state contract solicitation* with or from a state agency in the executive branch or a quasi-public agency or a holder, or principal of a holder of a valid prequalification certificate, shall make a contribution to (i) an exploratory committee or candidate committee established by a candidate for nomination or election to the office of Governor, Lieutenant Governor, Attorney General, State Comptroller, Secretary of the State or State Treasurer, (ii) a political committee authorized to make contributions or expenditures to or for the benefit of such candidates, or (iii) a party committee (which includes town committees).

In addition, no holder or principal of a holder of a valid prequalification certificate, shall make a contribution to (i) an exploratory committee or candidate committee established by a candidate for nomination or election to the office of State senator or State representative, (ii) a political committee authorized to make contributions or expenditures to or for the benefit of such candidates, or (iii) a party committee.

On and after January 1, 2011, no state contractor, prospective state contractor, principal of a state contractor or principal of a prospective state contractor, with regard to a state contract or state contract solicitation with or from a state agency in the executive branch or a quasi-public agency or a holder, or principal of a holder of a valid prequalification certificate, shall **knowingly solicit** contributions from the state contractor's or prospective state contractor's employees or from a *subcontractor* or *principals of the subcontractor* on behalf of (i) an exploratory committee or candidate committee established by a candidate for nomination or election to the office of Governor, Lieutenant Governor, Attorney General, State Comptroller, Secretary of the State or State Treasurer, (ii) a political committee authorized to make contributions or expenditures to or for the benefit of such candidates, or (iii) a party committee.

Duty to Inform

State contractors and prospective state contractors are required to inform their principals of the above prohibitions, as applicable, and the possible penalties and other consequences of any violation thereof.

Penalties for Violations

Contributions or solicitations of contributions made in violation of the above prohibitions may result in the following civil and criminal penalties:

Civil penalties--\$2000 or twice the amount of the prohibited contribution, whichever is greater, against a principal or a contractor. Any state contractor or prospective state contractor which fails to make reasonable efforts to comply with the provisions requiring notice to its principals of these prohibitions and the possible consequences of their violations may also be subject to civil penalties of \$2000 or twice the amount of the prohibited contributions made by their principals.

Criminal penalties--Any knowing and willful violation of the prohibition is a Class D felony, which may subject the violator to imprisonment of not more than 5 years, or \$5000 in fines, or both.

Contract Consequences

In the case of a state contractor, contributions made or solicited in violation of the above prohibitions may result in the contract being voided.

In the case of a prospective state contractor, contributions made or solicited in violation of the above prohibitions shall result in the contract described in the state contract solicitation not being awarded to the prospective state contractor, unless the State Elections Enforcement Commission determines that mitigating circumstances exist concerning such violation.

The State shall not award any other state contract to anyone found in violation of the above prohibitions for a period of one year after the election for which such contribution is made or solicited, unless the State Elections Enforcement Commission determines that mitigating circumstances exist concerning such violation.

Additional information may be found on the website of the State Elections Enforcement Commission, www.ct.gov/seec. Click on the link to "Lobbyist/Contractor Limitations."

Definitions:

"State contractor" means a person, business entity or nonprofit organization that enters into a state contract. Such person, business entity or nonprofit organization shall be deemed to be a state contractor until December thirty-first of the year in which such contract terminates. "State contractor" does not include a municipality or any other political subdivision of the state, including any entities or associations duly created by the municipality or political subdivision exclusively amongst themselves to further any purpose authorized by statute or charter, or an employee in the executive or legislative branch of state government or a quasi-public agency, whether in the classified or unclassified service and full or part-time, and only in such person's capacity as a state or quasi-public agency employee.

"Prospective state contractor" means a person, business entity or nonprofit organization that (i) submits a response to a state contract solicitation by the state, a state agency or a quasi-public agency, or a proposal in response to a request for proposals by the state, a state agency or a quasi-public agency, until the contract has been entered into, or (ii) holds a valid prequalification certificate issued by the Commissioner of Administrative Services under section 4a-100. "Prospective state contractor" does not include a municipality or any other political subdivision of the state, including any entities or associations duly created by the municipality or political subdivision exclusively amongst themselves to further any purpose authorized by statute or charter, or an employee in the executive or legislative branch of state government or a quasi-public agency, whether in the classified or unclassified service and full or part-time, and only in such person's capacity as a state or quasi-public agency employee.

"Principal of a state contractor or prospective state contractor" means (i) any individual who is a member of the board of directors of, or has an ownership interest of five per cent or more in, a state contractor or prospective state contractor, which is a business entity, except for an individual who is a member of the board of directors of a nonprofit organization, (ii) an individual who is employed by a state contractor or prospective state contractor, which is a business entity, as president, treasurer or executive vice president, (iii) an individual who is the chief executive officer of a state contractor or prospective state contractor, which is not a business entity, or if a state contractor or prospective state contractor has no such officer, then the officer who duly possesses comparable powers and duties, (iv) an officer or an employee of any state contractor or prospective state contractor who has managerial or discretionary responsibilities with respect to a state contract, (v) the spouse or a dependent child who is eighteen years of age or older of an individual described in this subsection, or (vi) a political committee established or controlled by an individual described in this subsection or the business entity or nonprofit organization that is the state contractor or prospective state contractor.

"State contract" means an agreement or contract with the state or any state agency or any quasi-public agency, let through a procurement process or otherwise, having a value of fifty thousand dollars or more, or a combination or series of such agreements or contracts having a value of one hundred thousand dollars or more in a calendar year, for (i) the rendition of services, (ii) the furnishing of any goods, material, supplies, equipment or any items of any kind, (iii) the construction, alteration or repair of any public building or public work, (iv) the acquisition, sale or lease of any land or building, (v) a licensing arrangement, or (vi) a grant, loan or loan guarantee. "State contract" does not include any agreement or contract with the state, any state agency or any quasi-public agency that is

exclusively federally funded, an education loan or a loan to an individual for other than commercial purposes or any agreement or contract between the state or any state agency and the United States Department of the Navy or the United States Department of Defense.

“State contract solicitation” means a request by a state agency or quasi-public agency, in whatever form issued, including, but not limited to, an invitation to bid, request for proposals, request for information or request for quotes, inviting bids, quotes or other types of submittals, through a competitive procurement process or another process authorized by law waiving competitive procurement.

“Managerial or discretionary responsibilities with respect to a state contract” means having direct, extensive and substantive responsibilities with respect to the negotiation of the state contract and not peripheral, clerical or ministerial responsibilities.

“Dependent child” means a child residing in an individual’s household who may legally be claimed as a dependent on the federal income tax of such individual.

“Solicit” means (A) requesting that a contribution be made, (B) participating in any fund-raising activities for a candidate committee, exploratory committee, political committee or party committee, including, but not limited to, forwarding tickets to potential contributors, receiving contributions for transmission to any such committee or bundling contributions, (C) serving as chairperson, treasurer or deputy treasurer of any such committee, or (D) establishing a political committee for the sole purpose of soliciting or receiving contributions for any committee. Solicit does not include: (i) making a contribution that is otherwise permitted by Chapter 155 of the Connecticut General Statutes; (ii) informing any person of a position taken by a candidate for public office or a public official, (iii) notifying the person of any activities of, or contact information for, any candidate for public office; or (iv) serving as a member in any party committee or as an officer of such committee that is not otherwise prohibited in this section.

“Subcontractor” means any person, business entity or nonprofit organization that contracts to perform part or all of the obligations of a state contractor’s state contract. Such person, business entity or nonprofit organization shall be deemed to be a subcontractor until December thirty first of the year in which the subcontract terminates.

“Subcontractor” does not include (i) a municipality or any other political subdivision of the state, including any entities or associations duly created by the municipality or political subdivision exclusively amongst themselves to further any purpose authorized by statute or charter, or (ii) an employee in the executive or legislative branch of state government or a quasi-public agency, whether in the classified or unclassified service and full or part-time, and only in such person’s capacity as a state or quasi-public agency employee.

“Principal of a subcontractor” means (i) any individual who is a member of the board of directors of, or has an ownership interest of five per cent or more in, a subcontractor, which is a business entity, except for an individual who is a member of the board of directors of a nonprofit organization, (ii) an individual who is employed by a subcontractor, which is a business entity, as president, treasurer or executive vice president, (iii) an individual who is the chief executive officer of a subcontractor, which is not a business entity, or if a subcontractor has no such officer, then the officer who duly possesses comparable powers and duties, (iv) an officer or an employee of any subcontractor who has managerial or discretionary responsibilities with respect to a subcontract with a state contractor, (v) the spouse or a dependent child who is eighteen years of age or older of an individual described in this subparagraph, or (vi) a political committee established or controlled by an individual described in this subparagraph or the business entity or nonprofit organization that is the subcontractor.

ENVIRONMENTAL CERTIFICATE AND INDEMNITY AGREEMENT

THIS ENVIRONMENTAL CERTIFICATE AND INDEMNITY AGREEMENT is being delivered to the **CONNECTICUT DEPARTMENT OF ECONOMIC AND COMMUNITY DEVELOPEMENT**, constituting a political subdivision of the State of Connecticut, with its principal place of business located at 505 Hudson Street, Hartford, Connecticut (hereinafter the "Department") to induce the Department to grant the sum of up to SEVEN HUNDRED FIFTY THOUSAND and no/100 DOLLARS ((\$750,000.00 hereinafter "the Grant")), **THE TOWN OF GREENWICH** (hereinafter the "Applicant") and **THE BRUCE MUSEUM INC.**, (hereinafter "the Contractor"), a not for profit membership corporation organized under the laws of the State of Connecticut and having its principal offices at the Bruce Museum, One Museum Drive, Greenwich, Connecticut 06830.

The Applicant and the Contractor maintain facilities at the locations set forth in **Schedule A** attached hereto (the "Premises"). The term "Premises" includes any real estate owned and/or occupied by both the Applicant and the Contractor of which the Premises has been a part within the past three (3) years. The Applicant owns that Premises listed on **Schedule A** and the Contractor operates the Bruce Museum located on the Premises.

To induce the Department to make the Grant to the Applicant which in turn make a grant to the Contractor, the Applicant and the Contractor, for other good and valuable considerations, the receipt and sufficiency of which are hereby acknowledged, the Applicant and the Contractor hereby certify and agree as follows:

1. The terms described below shall have the following meanings:

(a) "Environmental Condition(s)" means circumstances with respect to soil, surface waters, ponds, ground waters, stream sediments, air and similar environmental media both on and off of the Premises, resulting from any activity, inactivity or operations occurring on/or off of the Premises, that could pursuant to applicable Environmental Laws require Site Remediation Measures and/or that may result in claims, demands and liabilities by or against any Applicant or, to the extent caused by the Contractor, the Contractor, or any third party including, but not limited to, governmental entities.

(b) "Release" means releasing, spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, disposing or dumping of Hazardous Materials. The term "Release" shall be accorded the broadest possible interpretation and shall include the definition as provided in the Resource Conservation and Recovery Act, 42 U.S.C. 6901, et seq. ("RCRA"), or the Comprehensive Environmental Response Compensation and Liability Act of 1980, 42 U.S.C. 9601, et seq. ("CERCLA"). This term shall be interpreted to include the past, present and future tense, as appropriate.

(c) "Environmental Law(s)" means any and all Federal, state, local or municipal laws, rules, orders, regulations, statutes, ordinances, codes, guidelines, policies or requirements of any governmental authority regulating or imposing standards of liability or standards of conduct

(including common law) concerning air, water, solid waste, hazardous waste, Hazardous Materials, worker and community right-to-know, hazard communication, noise, radioactive material, resource protection, health protection and similar environmental, health, safety, and local government concerns (to the extent they relate to Hazardous Materials) as may now or at any time hereafter be in effect.

Such laws include, but are not limited to, RCRA, the Emergency Planning and Community Right to Know Act, 42 U.S.C. 11001, et seq., the Occupational Safety and Health Act, 29 U.S.C. 651, et seq., CERCLA, the Clean Air Act, 42 U.S.C. 7401, et seq., the Hazardous Materials Transportation Act, 49 U.S.C. 1801, et seq., the Toxic Substance Control Act, 15 U.S.C. 2601 et seq., the Federal Insecticide Fungicide and Rodenticide Act, 7 U.S.C. 136, et seq., the Clean Water Act, 33 U.S.C. 1251 et seq., the Safe Drinking Water Act, 42 U.S.C. 300f, et seq., and Title 22a of the Connecticut General Statutes, all as amended and effective on the date hereof and including subsequent amendments thereto.

(d) "Environmental Permit(s)" means any and all permits, approvals, licenses, registrations, certificates, plans, contingency plans, spill prevention control and countermeasure plans, consent agreements, consent orders, stipulations and authorizations which arise out of or are in any way related to Environmental Laws.

(e) "Hazardous Materials" shall mean each and every element, compound, chemical mixture, containment, pollutant, material, waste or other substance which is defined, determined or identified as hazardous or toxic under any Environmental Law or such solution or substance which may pose a present or potential hazard to human health or the environment.

(f) "Site Remediation Measure(s)" means any efforts of any government, or any Applicant, or its contractor, subcontractor or agent which are made, required, designed, initiated or maintained to ensure that Environmental Conditions are consistent with Environmental Laws or Environmental Permits, or to comply with Environmental Laws or Environmental Permits or to mitigate Environmental Conditions, and include, without limitation, investigation, site monitoring, containment, clean-up, transport, removal, disposal, restoration and other remedial efforts of any kind.

2. Except as disclosed on **Schedule B** attached hereto, Applicant represents and warrants that, to the best of its knowledge, except as set forth in Schedule B hereto, and the Contractor makes the same representations, for the period of time that it has been operating the Premises:

(a) Applicant and Contractor have duly complied with, all Environmental Laws and Environmental Permits. No proceedings have been commenced against, nor any notice received by, BMI concerning any alleged violation of any Environmental Law or Environmental Permit or the existence of any Environmental Condition with respect to the Premises.

(b) No Hazardous Materials of any kind are currently, or have at any time been, generated, stored, produced, treated, handled, disposed of or used on the Premises in violation of any Environmental Law or Environmental Permit.

(c) There has never been any Release of Hazardous Materials with respect to the Premises.

(d) The Premises are not now and have never been the site of an Environmental Condition.

(e) Applicant and Contractor have been issued all required Environmental Permits relating to the Premises.

(f) No Site Remediation Measures have been conducted on, or recommended or required for, the Premises, and Applicant and Contractor are unaware of any Environmental Condition that would lead to the implementation of such Site Remediation Measures.

3. Applicant and Contractor agree to promptly notify the Department if they becomes aware of (a) any Environmental Condition, (b) any Release, (c) the violation or alleged violation of any Environmental Law or Environmental Permit, or (d) any lien, action, notice of violation or administrative or judicial enforcement action concerning an Environmental Law and/or Environmental Permit and/or Environmental Condition and the Premises, including without limitation, any inspection report, notice of inspection, abatement notice, abatement order or notice of noncompliance, or notice by a third party. Applicant and Contractor shall promptly deliver to the Department any and all documentation or records *as* the Department may request in connection with such notice, charge, cause of action, demand, order or report. This provision specifically includes the creation of any lien pursuant to Section 22a-452a, of the Connecticut General Statutes or any similar laws or regulations. At their own cost, Applicant and Contractor will take or cause to be taken all actions which are necessary or desirable to remediate any Release or Environmental Condition or satisfy or comply with all Environmental Laws and Environmental Permits affecting the Premises, including Site Remediation Measures in connection with the Grant. Upon the request of the Department, Applicant and Contractor shall provide at their expense verification by an independent environmental consulting firm acceptable to the Department that the Applicant, Contractor, and the Premises are in compliance with all Environmental Laws and Environmental Permits.

4. Applicant and the Contractor hereby covenant and agree at all times to comply with, and perform all Site Remediation Measures in accordance with, all Environmental Laws and Environmental Permits affecting the Premises or any business or other activity conducted thereon.

5. Applicant, to the fullest extent permitted by law, and the Contractor, to the extent related to its operation of the Premises, hereby covenant and agree at all times, unconditionally, absolutely and irrevocably, and, to require all contractors performing work in connection with the Grant to indemnify, hold harmless and defend the State of Connecticut and the Department, its successors and assigns (collectively, the "Indemnities") from and against any and all liability, loss, damage, cost, fine, penalty, expense (including, without limitation, reasonable attorneys' and other professionals' fees and expenses), cause of action, suit, claim, demand or judgment of any nature pertaining to any breach of this

Agreement, any Hazardous Materials, any Release, any Environmental Condition, any violation of Environmental Laws and/or violation of Environmental Permits, whether caused by the Applicant, the Contractor or any other person (the "Indemnified Claims").

6. The obligations hereunder of Applicant and Contractor shall in no way, manner or respect be impaired, affected, reduced or released by reason of (a) the failure or delay by any Indemnatee to do or take any of the acts, actions or things described herein; or (b) any act or omission of any Indemnatee in connection with any notice, demand, warning or claim regarding Hazardous Materials on the Premises or the Indemnified Claims.

7. Each representation, warranty, covenant, agreement, undertaking and indemnification set out in this Agreement shall survive the making and repayment of the Grant if applicable and shall continue to be the joint and several liability, obligation and indemnification of the Applicant and the Contractor.

8. If any provision of this Agreement or the application thereof to any party or circumstances is held invalid or unenforceable, the remainder of this Agreement and the application of such provision or provisions to the other parties and circumstances will not be affected thereby, the provisions hereof being severable in any such instance.

9. The Applicant and the Contractor shall upon the written request of any of the Indemnitees, execute such further instruments and deliver such further documents as are necessary or appropriate to confirm the indemnification provided herein.

10. This Agreement shall be governed and construed in accordance with the laws of the State of Connecticut and shall be continuing, irrevocable and binding upon the Applicant, the Contractor and their respective successors and assigns and shall inure to the benefit of the Indemnitees, and their respective successors and assigns.

11. THE APPLICANT AND THE CONTRACTOR ACKNOWLEDGE THAT THIS AGREEMENT AND THE UNDERLYING TRANSACTIONS GIVING RISE HERETO CONSTITUTE COMMERCIAL BUSINESS TRANSACTIONS WITHIN THE STATE OF CONNECTICUT. IN THE EVENT OF ANY LEGAL ACTION BETWEEN THE APPLICANT, THE CONTRACTOR AND THE DEPARTMENT HEREUNDER, THE APPLICANT AND THE CONTRACTOR HEREBY EXPRESSLY WAIVE ANY RIGHTS WITH REGARD TO THE NOTICE, PRIOR HEARING AND ANY OTHER RIGHTS IT MAY HAVE UNDER THE CONNECTICUT GENERAL STATUTES, CHAPTER 903A, AS NOW CONSTITUTED OR HEREAFTER AMENDED, OR OTHER STATUTE OR STATUTES, STATE OR FEDERAL, AFFECTING PREJUDGMENT REMEDIES, AND THE DEPARTMENT MAY INVOKE ANY PREJUDGMENT REMEDY AVAILABLE TO IT, TO ENFORCE THE PROVISIONS OF THIS AGREEMENT, WITHOUT GIVING THE APPLICANT OR THE CONTRACTOR ANY NOTICE OR OPPORTUNITY FOR A HEARING.

ACCORDINGLY, THE APPLICANT, THE CONTRACTOR AND THE DEPARTMENT HEREBY EACH WAIVE THE RIGHT TO TRIAL BY JURY IN ANY

ACTION, DEFENSE, COUNTERCLAIM, CROSSCLAIM AND/OR ANY FORM OF PROCEEDING BROUGHT IN CONNECTION WITH THIS AGREEMENT.

FURTHER, THE APPLICANT AND THE CONTRACTOR HEREBY IRREVOCABLY (i) SUBMIT TO THE JURISDICTION OF ANY CONNECTICUT STATE OR FEDERAL COURT SITTING IN CONNECTICUT IN ANY ACTION OR PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT, (ii) AGREE THAT ALL CLAIMS IN RESPECT OF SUCH ACTION OR PROCEEDING MAY BE HEARD AND DETERMINED IN SUCH CONNECTICUT STATE OR FEDERAL COURT AND (iii) WAIVE TO THE FULLEST EXTENT THEY MAY EFFECTIVELY DO SO, THE DEFENSE OF ANY INCONVENIENT FORUM TO THE MAINTENANCE OF SUCH ACTION OR PROCEEDING. THE APPLICANT AND THE CONTRACTOR IRREVOCABLY CONSENT TO THE SERVICE OF ANY AND ALL PROCESS IN ANY SUCH ACTION OR PROCEEDING BY THE MAILING OF COPIES OF SUCH PROCESS IN THE MANNER SPECIFIED IN CHAPTER 599 OF THE CONNECTICUT GENERAL STATUTES, AS AMENDED. THE APPLICANT AND THE CONTRACTOR AGREE THAT A FINAL JUDGMENT IN ANY SUCH ACTION OR PROCEEDING SHALL BE CONCLUSIVE AND MAY BE ENFORCED IN OTHER JURISDICTIONS BY SUIT ON THE JUDGMENT OR IN ANY OTHER MANNER PROVIDED BY LAW.

12. The provisions of this Agreement shall govern and control over any inconsistent provision in any other document relating to the Grant, including, without limitation, any exculpatory provisions contained in any of said Documents, provided that under no circumstances shall the provisions of this Agreement be construed as in any way limiting the obligations of BMI under any of said documents.

13. The Applicant and the Contractor shall make any payment required to be made under this Agreement promptly and shall make such payment in immediately available funds in the amount thereof.

14. The Applicant and the Contractor have delivered and shall promptly deliver to the Department a copy of every environmental report or audit heretofore or hereafter performed with respect to any portion of the Premises.

15. The representations, warranties and covenants of Applicant and Contractor set forth in this Agreement shall continue ineffect for so long as the parties have liability hereunder for their representations, warranties, and covenants to the extent permitted by law and the Premises shall not be separated or transferred from the Applicant's parkland without amendment to this Agreement. The Applicant and Contractor acknowledge and agree that the covenants and obligations hereunder are separate and distinct from all obligations under any of said other documents. A default by the Applicant or Contractor in any respect under the terms of this Agreement shall constitute a default under the terms of said other documents.

Dated this _____ day of June, 2016

Department:

**CONNECTICUT DEPARTMENT OF
ECONOMIC AND COMMUNITY
DEVELOPMENT**

By: _____
Catherine H. Smith
Its Commissioner
Duly Authorized

Applicant:

TOWN OF GREENWICH

By: _____
Peter J. Tesei
Its First Selectman
Duly Authorized

The Contractor

BRUCE MUSEUM, INC.

By: _____
Peter C. Sutton
Its Executive Director
Duly Authorized

SCHEDULE A

Location of Applicant's Facilities