



Strong Parks final.pdf Appals  
Final - Parks Dept

**New York State Office of Parks,  
Recreation and Historic Preservation**

Albany, New York 12238

[www.nysparks.com](http://www.nysparks.com)

**Andrew M. Cuomo**

Governor

**Rose Harvey**

Commissioner

March 7, 2013

Donald Reeb  
5 Norwood Street  
Albany, NY 12203-3410

VIA email:  
[donreeb@gmail.com](mailto:donreeb@gmail.com)

**Re: Freedom of Information (FOIL) Request #039-13**  
EPF-406087 - McKownville Reservoir Park

Dear Mr. Reeb:

Attached is the information you requested in regards to the above mentioned FOIL request.

By law, I am required to inform you that you have 30 days by which to appeal this determination. Appeals must be directed to Patrick A. Bradford, General Counsel, to the address contained on the letterhead.

Sincerely,

Petra M. Larsen  
Records Access Officer

*Strong Parks - appendix 18*

APPENDIX X-MODIFICATION AGREEMENT FORM

*Fall - Parks Dept*

Period From: **October 20, 2006 to December 31, 2010**

Agency Code: **49070**  
Project #: **EPF-406087-SC**  
Contract #: **C406087**

Funding Amount for Period: **\$99,000.00**

This is an AGREEMENT between THE STATE OF NEW YORK, acting by and through the Office of Parks, Recreation and Historic Preservation, having its principal office at Agency Building One, Empire State Plaza, Albany, New York 12238 (hereinafter referred to as the STATE), and the **Town of Guilderland**, having its principal office at **PO Box 339, Guilderland, New York 12084** (hereinafter referred to as the CONTRACTOR), for modification of Contract Number **C406087**, as amended in the attached Appendix B.

All other provisions of said AGREEMENT shall remain in full force and effect.

IN WITNESS WHEREOF, the parties hereto have executed this AGREEMENT as of the dates appearing under their signatures.

CONTRACTOR:

STATE AGENCY:

**Town of Guilderland**

New York State Office of Parks, Recreation and Historic Preservation

By:

By:

Printed Name:

Date:

Printed Title:

State Agency Certification:

"In addition to the acceptance of this contract, I also certify that original copies of this signature page will be attached to all other exact copies of this contract."

Date:

STATE OF NEW YORK )

COUNTY of )

) SS.:  
)

On the \_\_\_\_\_ day of \_\_\_\_\_ in the year \_\_\_\_\_, before me, the undersigned, personally appeared \_\_\_\_\_, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity (ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

\_\_\_\_\_  
(Notary Public, State of New York)

ATTORNEY GENERAL:

Approved:

Thomas P. DiNapoli  
State Comptroller

By \_\_\_\_\_

Date \_\_\_\_\_

Town of Guilderland  
McKownville Reservoir Park  
EPF-406087-SC

APPENDIX B – BUDGET

The detailed estimated budget for the project as outlined in this AGREEMENT is as follows:

**EXPENSES:**

<b>Pre-Development</b>	\$ 36,568.48
To include: design and engineering	
<b>Development</b>	<u>\$191,585.09</u>
To include: path, footbridge, fence	
<b>TOTAL COST</b>	<b>\$228,153.57</b>

**FUNDING BREAKDOWN:**

STATE Share \$ 99,000.00  
CONTRACTOR Share \$129,153.57

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Final Parks Dept*

STATE AGENCY (Name & Address):

**New York State Office of Parks,  
Recreation and Historic  
Preservation  
Agency Building One  
Empire State Plaza  
Albany, New York 12238**

NYS COMPTROLLERS NUMBER: **C406087**

NYS AGENCY NUMBER: **EPF-406087-SC**

ORIGINATING AGENCY CODE: **49070**

REGION: **SC**

CONTRACTOR (Name & Address):

**Town of Guilderland  
Route 20  
PO Box 339  
Guilderland, New York 12084**

TYPE OF PROGRAM

**ENVIRONMENTAL PROTECTION FUND**

**PKS**

CHARITIES REGISTRATION NUMBER:  
**N/A**

INITIAL CONTRACT PERIOD:

FROM: **October 20, 2006**

TO: **December 31, 2008**

FEDERAL TAX ID NUMBER:  
**14-6002220**

MUNICIPALITY NUMBER:  
**010335500000**

FUNDING AMOUNT FOR INITIAL PERIOD:  
**\$99,000.00**

STATUS

MULTI-YEAR TERM: (if applicable)

CONTRACTOR A  
SECTARIAN ENTITY

FROM: **N/A**

TO: **N/A**

CONTRACTOR **Municipality A**  
NON-FOR-PROFIT ORGANIZATION

**APPENDICES ATTACHED AND PART OF THIS AGREEMENT:**

APPENDIX A...Standard Clauses for All New York State Contracts

APPENDIX A1...Clauses Required by Office of Parks, Recreation and Historic Preservation

APPENDIX B...Budget

APPENDIX C...Payment and Reporting Schedule

APPENDIX D...Program Workplan

APPENDIX X...Modification Agreement Form (to accompany modified appendices for changes in term or consideration on an existing period or for renewal periods)

APPENDIX E...Special Conditions and Requirements

APPENDIX F...Program Specific Requirements

IN WITNESS THEREOF, the parties hereto have executed or approved this AGREEMENT on the dates below their signatures.

PROJECT NUMBER: **EPF-406087-SC**

CONTRACT NUMBER: **C406087**

CONTRACTOR:  
**Town of Guilderland**

STATE AGENCY:  
New York State Offices of Parks, Recreation, and  
Historic Preservation

By:

By:

Printed Name:

Date:

Printed Title:

State Agency Certification:

Date:

“In addition to the acceptance of this contract, I also certify that original copies of this signature page will be attached to all other exact copies of this contract.”

STATE OF NEW YORK        )  
  ) SS.:  
COUNTY OF                    )

On the        day of                                    in the year                                    , before me, the undersigned, personally appeared                                    , personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their/ capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

Notary Public, State of New York

ATTORNEY GENERAL:

STATE COMPTROLLER:

## STATE OF NEW YORK AGREEMENT

This AGREEMENT is hereby made by and between the State of New York agency (STATE) and the public or private agency (CONTRACTOR) identified on the face page hereof.

### WITNESSETH:

WHEREAS, the STATE has the authority to regulate and provide funding for the establishment and operation of program services and desires to contract with skilled parties possessing the necessary resources to provide such services; and

WHEREAS, the CONTRACTOR is ready, willing and able to provide such program services and possesses or can make available all necessary qualified personnel, licenses, facilities and expertise to perform or have performed the services required pursuant to the terms of this AGREEMENT.

NOW THEREFORE, in consideration of the promises, responsibilities and covenants herein, the STATE and the CONTRACTOR agree as follows:

### **I. Conditions of Agreement**

A. This AGREEMENT may consist of successive periods (PERIOD), as specified within the AGREEMENT or within a subsequent Modification Agreement(s) (Appendix X). Each additional or superseding PERIOD shall be on the forms specified by the particular State agency, and shall be incorporated into this AGREEMENT.

B. Funding for the first PERIOD shall not exceed the funding amount specified on the face page hereof. Funding for each subsequent PERIOD, if any, shall not exceed the amount specified in the appropriate appendix for that PERIOD.

C. This AGREEMENT incorporates the face pages attached and all of the marked appendices identified on the face page hereof.

D. For each succeeding PERIOD of this AGREEMENT, the parties shall prepare new appendices, to the extent that any require modification, and a Modification Agreement (the attached Appendix X is the blank form to be used). Any terms of this Agreement not modified shall remain in effect for each PERIOD of the AGREEMENT. To modify the AGREEMENT within an existing PERIOD, the parties shall revise or complete the appropriate appendix form(s). Any change in the amount of consideration to be paid, or change in the term, is subject to the approval of the Office of the State Comptroller. Any other modifications shall be processed in accordance with agency guidelines as stated in Appendix A1.

E. The CONTRACTOR shall perform all services to the satisfaction of the STATE. The CONTRACTOR shall provide services and meet the program objectives summarized in the Program Workplan (Appendix D) in accordance with: provisions of the AGREEMENT; relevant laws, rules and regulations, administrative and fiscal guidelines; and where applicable, operating certificates for facilities or licenses for an activity or program.

F. If the CONTRACTOR enters into subcontracts for the performance of work pursuant to this AGREEMENT, the CONTRACTOR shall take full responsibility for the acts and omissions of its subcontractors. Nothing in the subcontract shall impair the rights of the STATE under this AGREEMENT. No contractual relationship shall be deemed to exist between the subcontractor and the STATE.

G. Appendix A (Standard Clauses for All New York State contracts, attached hereto and made a part hereof) takes precedence over all other parts of the AGREEMENT.

## **II. Payment and Reporting**

A. The CONTRACTOR, to be eligible for payment, shall submit to the STATE's designated payment office (identified in Appendix C) any appropriate documentation as required by the Payment and Reporting Schedule (Appendix C) and by agency fiscal guidelines, in a manner acceptable to the STATE.

B. The STATE shall make payments and any reconciliations in accordance with the Payment and Reporting Schedule (Appendix C). The STATE shall pay the CONTRACTOR, in consideration of contract services for a given PERIOD, a sum not to exceed the amount noted on the face page hereof or in the respective Appendix designating the payment amount for that given PERIOD. This sum shall not duplicate reimbursement from other sources for CONTRACTOR costs and services provided pursuant to this AGREEMENT.

C. The CONTRACTOR shall meet the audit requirements specified by the STATE.

## **III. Terminations**

A. This AGREEMENT may be terminated at any time upon mutual written consent of the STATE and the CONTRACTOR.

B. The STATE may terminate the AGREEMENT immediately, upon written notice of termination to the CONTRACTOR, if the CONTRACTOR fails to comply with the terms and conditions of this AGREEMENT and/or with any laws, rules, regulations, policies or procedures affecting this AGREEMENT.

C. The STATE may also terminate this AGREEMENT for any reason in accordance with provisions set forth in Appendix A1.

D. Written notice of termination, where required, shall be sent by personal messenger service or by certified mail, return receipt requested. The termination shall be effective in accordance with the terms of the notice.

E. Upon receipt of notice of termination, the CONTRACTOR agrees to cancel, prior to the effective date of any prospective termination, as many outstanding obligations as possible, and agrees not to incur any new obligations after receipt of the notice without approval by the STATE.

F. The STATE shall be responsible for payment on claims pursuant to services provided and costs incurred pursuant to terms of the AGREEMENT. In no event shall the STATE be liable for expenses and obligations arising from the program(s) in this AGREEMENT after the termination date.

## **IV. Indemnification**

A. The CONTRACTOR shall be solely responsible and answerable in damages for any and all accidents and/or injuries to persons (including death) or property arising out of or related to the services to be rendered by the CONTRACTOR or its subcontractors pursuant to this AGREEMENT. The CONTRACTOR shall indemnify and hold harmless the STATE and its officers and employees from claims, suits, actions, damages and costs of every nature arising out of the provision of services pursuant to this AGREEMENT.

B. The CONTRACTOR is an independent contractor and may neither hold itself out nor claim to be an officer, employee or subdivision of the STATE nor make any claim, demand or application to or for any right based upon any different status.

## **V. Property**

Any equipment, furniture, supplies or other property purchased pursuant to this AGREEMENT is deemed to be the property of the STATE except as may otherwise be governed by Federal or State laws, rules or regulations, or as stated in Appendix A1.

## **VI. Safeguards for Services and Confidentiality**

A. Services performed pursuant to this AGREEMENT are secular in nature and shall be performed in a manner that does not discriminate on the basis of religious belief, or promote or discourage adherence to religion in general or particular religious beliefs.

B. Funds provided pursuant to this AGREEMENT shall not be used for any partisan political activity, or for activities that may influence legislation or the election or defeat of any candidate for public office.

C. Information relating to individuals who may receive services pursuant to this AGREEMENT shall be maintained and used only for the purposes intended under the contract and in conformity with applicable provisions of laws and regulations, or specified in Appendix A1.



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Development of McKownville Reservoir Park  
EPF-406087-SC

**STANDARD CLAUSES FOR NYS CONTRACTS**

The parties to the attached contract, license, lease, amendment or other agreement of any kind (hereinafter, "the contract" or "this contract") agree to be bound by the following clauses which are hereby made a part of the contract (the word "Contractor" herein refers to any party other than the State, whether a contractor, licensor, licensee, lessor, lessee or any other party):

1. **EXECUTORY CLAUSE.** In accordance with Section 41 of the State Finance Law, the State shall have no liability under this contract to the Contractor or to anyone else beyond funds appropriated and available for this contract.
2. **NON-ASSIGNMENT CLAUSE.** In accordance with Section 138 of the State Finance Law, this contract may not be assigned by the Contractor or its right, title or interest therein assigned, transferred, conveyed, sublet or otherwise disposed of without the previous consent, in writing, of the State and any attempts to assign the contract without the State's written consent are null and void. The Contractor may, however, assign its right to receive payment without the State's prior written consent unless this contract concerns Certificates of Participation pursuant to Article 5-A of the State Finance Law.
3. **COMPTROLLER'S APPROVAL.** In accordance with Section 112 of the State Finance Law (or, if this contract is with the State University or City University of New York, Section 355 or Section 6218 of the Education Law), if this contract exceeds \$15,000 (or the minimum thresholds agreed to by the Office of the State Comptroller for certain S.U.N.Y. and C.U.N.Y. contracts), or if this is an amendment for any amount to a contract which, as so amended, exceeds said statutory amount, or if, by this contract, the State agrees to give something other than money when the value or reasonably estimated value of such consideration exceeds \$10,000, it shall not be valid, effective or binding upon the State until it has been approved by the State Comptroller and filed in his office. Comptroller's approval of contracts let by the Office of General Services is required when such contracts exceed \$30,000 (State Finance Law Section 163.6.a).
4. **WORKERS' COMPENSATION BENEFITS.** In accordance with Section 142 of the State Finance Law, this contract shall be void and of no force and effect unless the Contractor shall provide and maintain coverage during the life of this contract for the benefit of such employees as are required to be covered by the provisions of the Workers' Compensation Law.
5. **NON-DISCRIMINATION REQUIREMENTS.** To the extent required by Article 15 of the Executive Law (also known as the Human Rights Law) and all other State and Federal statutory and constitutional non-discrimination provisions, the Contractor will not discriminate against any employee or applicant for employment because of race, creed, color, sex, national origin, sexual orientation, age, disability, genetic predisposition or carrier status, or marital status. Furthermore, in accordance with Section 220-e of the Labor Law, if this is a contract for the construction, alteration or repair of any public building or public work or for the manufacture, sale or distribution of materials, equipment or supplies, and to the extent that this contract shall be performed within the State of New York, Contractor agrees that neither it nor its subcontractors shall, by reason of race, creed, color, disability, sex, or national origin: (a) discriminate in hiring against any New York State citizen who is qualified and available to perform the work; or (b) discriminate against or intimidate any employee hired for the performance of work under this contract. If this is a building service contract as defined in Section 230 of the Labor Law, then, in accordance with Section 239 thereof, Contractor agrees that neither it nor its subcontractors shall by reason of race, creed, color, national

origin, age, sex or disability: (a) discriminate in hiring against any New York State citizen who is qualified and available to perform the work; or (b) discriminate against or intimidate any employee hired for the performance of work under this contract. Contractor is subject to fines of \$50.00 per person per day for any violation of Section 220-e or Section 239 as well as possible termination of this contract and forfeiture of all moneys due hereunder for a second or subsequent violation.

6. **WAGE AND HOURS PROVISIONS.** If this is a public work contract covered by Article 8 of the Labor Law or a building service contract covered by Article 9 thereof, neither Contractor's employees nor the employees of its subcontractors may be required or permitted to work more than the number of hours or days stated in said statutes, except as otherwise provided in the Labor Law and as set forth in prevailing wage and supplement schedules issued by the State Labor Department. Furthermore, Contractor and its subcontractors must pay at least the prevailing wage rate and pay or provide the prevailing supplements, including the premium rates for overtime pay, as determined by the State Labor Department in accordance with the Labor Law.
7. **NON-COLLUSIVE BIDDING CERTIFICATION.** In accordance with Section 139-d of the State Finance Law, if this contract was awarded based upon the submission of bids, Contractor affirms, under penalty of perjury, that its bid was arrived at independently and without collusion aimed at restricting competition. Contractor further affirms that, at the time Contractor submitted its bid, an authorized and responsible person executed and delivered to the State a non-collusive bidding certification on Contractor's behalf.
8. **INTERNATIONAL BOYCOTT PROHIBITION.** In accordance with Section 220-f of the Labor Law and Section 139-h of the State Finance Law, if this contract exceeds \$5,000, the Contractor agrees, as a material condition of the contract, that neither the Contractor nor any substantially owned or affiliated person, firm, partnership or corporation has participated, is participating, or shall participate in an international boycott in violation of the federal Export Administration Act of 1979 (50 USC App. Sections 2401 et seq.) or regulations thereunder. If such Contractor, or any of the aforesaid affiliates of Contractor, is convicted or is otherwise found to have violated said laws or regulations upon the final determination of the United States Commerce Department or any other appropriate agency of the United States subsequent to the contract's execution, such contract, amendment or modification thereto shall be rendered forfeit and void. The Contractor shall so notify the State Comptroller within five (5) business days of such conviction, determination or disposition of appeal (2NYCRR 105.4).
9. **SET-OFF RIGHTS.** The State shall have all of its common law, equitable and statutory rights of set-off. These rights shall include, but not be limited to, the State's option to withhold for the purposes of set-off any moneys due to the Contractor under this contract up to any amounts due and owing to the State with regard to this contract, any other contract with any State department or agency, including any contract for a term commencing prior to the term of this contract, plus any amounts due and owing to the State for any other reason including, without limitation, tax delinquencies, fee delinquencies or monetary penalties relative thereto. The State shall exercise its set-off rights in accordance with normal State practices including, in cases of set-off pursuant to an audit, the finalization of such audit by the State agency, its representatives, or the State Comptroller.
10. **RECORDS.** The Contractor shall establish and maintain complete and accurate books, records, documents, accounts and other evidence directly pertinent to performance under this contract (hereinafter,

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Development of McKownville Reservoir Park  
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collectively, "the Records"). The Records must be kept for the balance of the calendar year in which they were made and for six (6) additional years thereafter. The State Comptroller, the Attorney General and any other person or entity authorized to conduct an examination, as well as the agency or agencies involved in this contract, shall have access to the Records during normal business hours at an office of the Contractor within the State of New York or, if no such office is available, at a mutually agreeable and reasonable venue within the State, for the term specified above for the purposes of inspection, auditing and copying. The State shall take reasonable steps to protect from public disclosure any of the Records which are exempt from disclosure under Section 87 of the Public Officers Law (the "Statute") provided that: (i) the Contractor shall timely inform an appropriate State official, in writing, that said records should not be disclosed; and (ii) said records shall be sufficiently identified; and (iii) designation of said records as exempt under the Statute is reasonable. Nothing contained herein shall diminish, or in any way adversely affect, the State's right to discovery in any pending or future litigation.

**11. IDENTIFYING INFORMATION AND PRIVACY NOTIFICATION.**

(a) FEDERAL EMPLOYER IDENTIFICATION NUMBER and/or FEDERAL SOCIAL SECURITY NUMBER. All invoices or New York State standard vouchers submitted for payment for the sale of goods or services or the lease of real or personal property to a New York State agency must include the payee's identification number, i.e., the seller's or lessor's identification number. The number is either the payee's Federal employer identification number or Federal social security number, or both such numbers when the payee has both such numbers. Failure to include this number or numbers may delay payment. Where the payee does not have such number or numbers, the payee, on its invoice or New York State standard voucher, must give the reason or reasons why the payee does not have such number or numbers.

(b) PRIVACY NOTIFICATION. (1) The authority to request the above personal information from a seller of goods or services or a lessor of real or personal property, and the authority to maintain such information, is found in Section 5 of the State Tax Law. Disclosure of this information by the seller or lessor to the State is mandatory. The principal purpose for which the information is collected is to enable the State to identify individuals, businesses and others who have been delinquent in filing tax returns or may have understated their tax liabilities and to generally identify persons affected by the taxes administered by the Commissioner of Taxation and Finance. The information will be used for tax administration purposes and for any other purpose authorized by law.

(2) The personal information is requested by the purchasing unit of the agency contracting to purchase the goods or services or lease the real or personal property covered by this contract or lease. The information is maintained in New York State's Central Accounting System by the Director of Accounting Operations, Office of the State Comptroller, 110 State Street, Albany, New York 12236.

**12. EQUAL EMPLOYMENT OPPORTUNITIES FOR MINORITIES AND WOMEN.**

In accordance with Section 312 of the Executive Law, if this contract is: (i) a written agreement or purchase order instrument, providing for a total expenditure in excess of \$25,000.00, whereby a contracting agency is committed to expend or does expend funds in return for labor, services, supplies, equipment, materials or any combination of the foregoing, to be performed for, or rendered or furnished to the contracting agency; or (ii) a written agreement in excess of \$100,000.00 whereby a contracting agency is committed to expend or does expend funds for the acquisition, construction, demolition, replacement, major repair or renovation of real property and improvements thereon; or (iii) a written agreement in excess of \$100,000.00 whereby the owner of a State assisted housing

project is committed to expend or does expend funds for the acquisition, construction, demolition, replacement, major repair or renovation of real property and improvements thereon for such project, then:

(a) The Contractor will not discriminate against employees or applicants for employment because of race, creed, color, national origin, sex, age, disability or marital status, and will undertake or continue existing programs of affirmative action to ensure that minority group members and women are afforded equal employment opportunities without discrimination. Affirmative action shall mean recruitment, employment, job assignment, promotion, upgradings, demotion, transfer, layoff, or termination and rates of pay or other forms of compensation;

(b) at the request of the contracting agency, the Contractor shall request each employment agency, labor union, or authorized representative of workers with which it has a collective bargaining or other agreement or understanding, to furnish a written statement that such employment agency, labor union or representative will not discriminate on the basis of race, creed, color, national origin, sex, age, disability or marital status and that such union or representative will affirmatively cooperate in the implementation of the contractor's obligations herein; and

(c) the Contractor shall state, in all solicitations or advertisements for employees, that, in the performance of the State contract, all qualified applicants will be afforded equal employment opportunities without discrimination because of race, creed, color, national origin, sex, age, disability or marital status.

Contractor will include the provisions of "a", "b", and "c" above, in every subcontract over \$25,000.00 for the construction, demolition, replacement, major repair, renovation, planning or design of real property and improvements thereon (the "Work") except where the Work is for the beneficial use of the Contractor. Section 312 does not apply to: (i) work, goods or services unrelated to this contract; or (ii) employment outside New York State; or (iii) banking services, insurance policies or the sale of securities. The State shall consider compliance by a contractor or subcontractor with the requirements of any federal law concerning equal employment opportunity which effectuates the purpose of this section. The contracting agency shall determine whether the imposition of the requirements of the provisions hereof duplicate or conflict with any such federal law and if such duplication or conflict exists, the contracting agency shall waive the applicability of Section 312 to the extent of such duplication or conflict. Contractor will comply with all duly promulgated and lawful rules and regulations of the Governor's Office of Minority and Women's Business Development pertaining hereto.

**13. CONFLICTING TERMS.** In the event of a conflict between the terms of the contract (including any and all attachments thereto and amendments thereof) and the terms of this Appendix A, the terms of this Appendix A shall control.

**14. GOVERNING LAW.** This contract shall be governed by the laws of the State of New York except where the Federal supremacy clause requires otherwise.

**15. LATE PAYMENT.** Timeliness of payment and any interest to be paid to Contractor for late payment shall be governed by Article 11-A of the State Finance Law to the extent required by law.

**16. NO ARBITRATION.** Disputes involving this contract, including the breach or alleged breach thereof, may not be submitted to binding

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arbitration (except where statutorily authorized), but must, instead, be heard in a court of competent jurisdiction of the State of New York.

**17. SERVICE OF PROCESS.** In addition to the methods of service allowed by the State Civil Practice Law & Rules ("CPLR"), Contractor hereby consents to service of process upon it by registered or certified mail, return receipt requested. Service hereunder shall be complete upon Contractor's actual receipt of process or upon the State's receipt of the return thereof by the United States Postal Service as refused or undeliverable. Contractor must promptly notify the State, in writing, of each and every change of address to which service of process can be made. Service by the State to the last known address shall be sufficient. Contractor will have thirty (30) calendar days after service hereunder is complete in which to respond.

**18. PROHIBITION ON PURCHASE OF TROPICAL HARDWOODS.** The Contractor certifies and warrants that all wood products to be used under this contract award will be in accordance with, but not limited to, the specifications and provisions of State Finance Law §165. (Use of Tropical Hardwoods) which prohibits purchase and use of tropical hardwoods, unless specifically exempted, by the State or any governmental agency or political subdivision or public benefit corporation. Qualification for an exemption under this law will be the responsibility of the contractor to establish to meet with the approval of the State.

In addition, when any portion of this contract involving the use of woods, whether supply or installation, is to be performed by any subcontractor, the prime Contractor will indicate and certify in the submitted bid proposal that the subcontractor has been informed and is in compliance with specifications and provisions regarding use of tropical hardwoods as detailed in §165 State Finance Law. Any such use must meet with the approval of the State; otherwise, the bid may not be considered responsive. Under bidder certifications, proof of qualification for exemption will be the responsibility of the Contractor to meet with the approval of the State.

**19. MACBRIDE FAIR EMPLOYMENT PRINCIPLES.** In accordance with the MacBride Fair Employment Principles (Chapter 807 of the Laws of 1992), the Contractor hereby stipulates that the Contractor either (a) has no business operations in Northern Ireland, or (b) shall take lawful steps in good faith to conduct any business operations in Northern Ireland in accordance with the MacBride Fair Employment Principles (as described in Section 165 of the New York State Finance Law), and shall permit independent monitoring of compliance with such principles.

**20. OMNIBUS PROCUREMENT ACT OF 1992.** It is the policy of New York State to maximize opportunities for the participation of New York State business enterprises, including minority and women-owned business enterprises as bidders, subcontractors and suppliers on its procurement contracts.

Information on the availability of New York State subcontractors and suppliers is available from:

NYS Department of Economic Development  
Division for Small Business  
30 South Pearl St -- 7<sup>th</sup> Floor  
Albany, New York 12245  
Telephone: 518-292-5220

A directory of certified minority and women-owned business enterprises is available from:

NYS Department of Economic Development

Division of Minority and Women's Business Development  
30 South Pearl St -- 2nd Floor  
Albany, New York 12245  
<http://www.empire.state.ny.us>

The Omnibus Procurement Act of 1992 requires that by signing this bid proposal or contract, as applicable, Contractors certify that whenever the total bid amount is greater than \$1 million:

(a) The Contractor has made reasonable efforts to encourage the participation of New York State Business Enterprises as suppliers and subcontractors, including certified minority and women-owned business enterprises, on this project, and has retained the documentation of these efforts to be provided upon request to the State;

(b) The Contractor has complied with the Federal Equal Opportunity Act of 1972 (P.L. 92-261), as amended;

(c) The Contractor agrees to make reasonable efforts to provide notification to New York State residents of employment opportunities on this project through listing any such positions with the Job Service Division of the New York State Department of Labor, or providing such notification in such manner as is consistent with existing collective bargaining contracts or agreements. The Contractor agrees to document these efforts and to provide said documentation to the State upon request; and

(d) The Contractor acknowledges notice that the State may seek to obtain offset credits from foreign countries as a result of this contract and agrees to cooperate with the State in these efforts.

**21. RECIPROCITY AND SANCTIONS PROVISIONS.** Bidders are hereby notified that if their principal place of business is located in a country, nation, province, state or political subdivision that penalizes New York State vendors, and if the goods or services they offer will be substantially produced or performed outside New York State, the Omnibus Procurement Act 1994 and 2000 amendments (Chapter 684 and Chapter 383, respectively) require that they be denied contracts which they would otherwise obtain. NOTE: As of May 15, 2002, the list of discriminatory jurisdictions subject to this provision includes the states of South Carolina, Alaska, West Virginia, Wyoming, Louisiana and Hawaii. Contact NYS Department of Economic Development for a current list of jurisdictions subject to this provision.

**22. PURCHASES OF APPAREL.** In accordance with State Finance Law 162 (4-a), the State shall not purchase any apparel from any vendor unable or unwilling to certify that: (i) such apparel was manufactured in compliance with all applicable labor and occupational safety laws, including, but not limited to, child labor laws, wage and hours laws and workplace safety laws, and (ii) vendor will supply, with its bid (or, if not a bid situation, prior to or at the time of signing a contract with the State), if known, the names and addresses of each subcontractor and a list of all manufacturing plants to be utilized by the bidder.

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APPENDIX A1

Clauses Required by  
Office of Parks, Recreation and Historic Preservation

1. Changes to Budget and Program Workplan. Changes shall not be made in the work described in the Program workplan as described in Appendix D or the proposed expenditure of funds as shown in the Budget, Appendix B, without the prior written approval of the STATE. Such approval will be granted if the changes are not substantive and do not alter the scope, intent or basic elements of the contract. Changes may be made in the Budget to reallocate funds between budget items provided such changes do not exceed twenty percent of the total value of the contract and have the STATE's written approval. Changes in the Program Workplan which are substantive or alter the scope, intent or basic elements of the contract, or Budget changes which are in excess of twenty percent of the total value of the contract, if agreed to by the STATE, will be implemented by an amendment to this AGREEMENT. (See Section I, Paragraph D of the AGREEMENT).
2. Termination.
  - A. In the event the project cannot be completed as agreed upon by the STATE and the CONTRACTOR, the CONTRACTOR shall bring it to a point of recreational usefulness agreed upon by the STATE and the CONTRACTOR.
  - B. The CONTRACTOR agrees that the benefit to be derived by the United States, the State of New York and the CONTRACTOR from compliance with the terms of this agreement is the preservation, protection and net increase in the availability and quality of public outdoor recreation facilities and resources available to the people of the United States, the State of New York and the CONTRACTOR and such benefit exceeds to an immeasurable and unascertainable extent the amount of money furnished under this agreement. Further, payment to the STATE of an amount equal to the amount of money made available under this agreement would be inadequate compensation for any breach by the CONTRACTOR of this agreement. Therefore, the appropriate remedy in the event of a breach of this agreement by the CONTRACTOR shall be the specific performance of this agreement.
3. Participation by New York State Businesses and Minority Group Members and Women with Respect to State Contracts; Omnibus Procurement Act. It is the policy of New York State to maximize opportunities for the participation of minorities and women as employees, and of New York State business enterprises, as subcontractors and suppliers on its procurement contracts.
  - A. Omnibus Procurement Act Provisions.
    - I. Information on the availability of New York State subcontractors and suppliers is available from:

Empire State Development  
Division Minority and Women's Business Development  
30 South Pearl Street  
Albany, NY 12245  
Phone: (518) 292-5250 / Fax: (518) 292-5803

Note: When requesting lists of potential subcontractors and suppliers please identify the SIC code, size and location of vendors.
    - II. If located in a foreign country the contractor is hereby notified that New York State may seek to obtain and assign or otherwise transfer offset credits created by this contract to third parties located in New York State. The contractor agrees to cooperate with the State in efforts to get foreign countries to recognize offset credits created by this contract.
  - B. Equal Employment Opportunity Provisions.
    - I. The CONTRACTOR and its subcontractors shall undertake or continue existing programs of affirmative action to ensure that minority group members and women are afforded equal employment opportunities without discrimination because of race, creed, color, national origin, sex, age, disability or marital status.

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For these purposes, affirmative action shall apply in the areas of recruitment, employment, job assignment, promotion, upgrading, demotion, transfer, layoff, or termination and rates of pay or other forms of compensation.

- II. No later than seven days after being notified of the award of this contract the CONTRACTOR shall submit an Equal Employment Opportunity (EEO) policy statement to the STATE.
  - III. The CONTRACTOR's EEO policy statement shall contain, but not necessarily be limited to, and the CONTRACTOR, as a precondition to entering into a valid and binding State contract, shall, during the performance of the contract, agree to the following:
    - (a) The CONTRACTOR will not discriminate against any employee or applicant for employment because of race, creed, color, national origin, sex, age, disability or marital status, will undertake or continue existing programs of affirmative action to ensure that minority group members and women are afforded equal employment opportunities without discrimination, and shall make and document its conscientious and active efforts to employ and utilize minority group members and women in its work force on State contracts.
    - (b) The CONTRACTOR shall state in all solicitations or advertisements for employees that, in performance of this contract, all qualified applicants will be afforded equal employment opportunities without discrimination because of race, creed, color, national origin, sex, age, disability or marital status.
    - (c) At the request of the STATE the CONTRACTOR shall request each employment agency, labor union, or authorized representative of workers with which it has a collective bargaining or other agreement or understanding, to furnish a written statement that such employment agency, labor union, or representative will not discriminate on the basis of race, creed, color, national origin, sex, age, disability or marital status and that such union or representative will affirmatively cooperate in the implementation of the CONTRACTOR's obligation herein.
  - IV. No later than seven days after being notified of the award of this contract the CONTRACTOR may be required to submit to the STATE a staffing plan of the anticipated work force to be utilized on this contract or, where required, information on the CONTRACTOR's total work force, including apprentices, broken down by specified ethnic background, gender, and Federal Occupational Categories or other appropriate categories specified by the STATE. The form of staffing plan shall be supplied by the STATE.
  - V. On a schedule to be determined by the STATE, and in a form and manner required by the STATE, the CONTRACTOR shall submit to the STATE a work force utilization report, of the work force actually utilized on this contract, broken down by specified ethnic background, gender, and Federal occupational Categories or other appropriate categories specified by the STATE. The form of the staffing plan shall be supplied by the STATE.
  - VI. The CONTRACTOR shall include the language of sub-paragraphs (I) through (V) in every subcontract in such a manner that the requirements of the provisions will be binding upon each subcontractor as to work in connection with this contract, including the requirement that subcontractors shall undertake or continue existing programs of affirmative action to ensure that minority group members and women are afforded equal employment opportunities without discrimination, and, when requested, provide to the CONTRACTOR information on the ethnic background, gender, and Federal Occupational Categories of the employees to be utilized on this contract.
  - VII. The CONTRACTOR agrees to comply with all applicable Federal, State and local Civil Rights and Human Rights laws with reference to equal employment opportunities and the provision of services.
- C. Minority/Women Owned Business Enterprise Provisions.
- I. A directory of minority and women-owned business enterprises is available from:

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Empire State Development  
Division Minority and Women's Business Development  
30 South Pearl Street  
Albany, NY 12245  
Phone: (518) 292-5250 / Fax: (518) 292-5803

- II. Definition. For the purposes of these clauses, the following definition shall apply:
- (a) "Certified business" shall mean either a business certified as a minority or women-owned business enterprise pursuant to section 314 of the Executive Law.
  - (b) "Director" shall mean the Director of the Division of Minority and Women's Business Development established by section 311 of the Executive Law.
  - (c) "Minority group member" shall mean a United States citizen or permanent resident alien who is and can demonstrate membership in one of the following groups:
    - (1) Black persons having origins in any of the Black African racial groups;
    - (2) Hispanic persons of Mexican, Puerto Rican, Dominican, Cuban, Central or South American of either Indian or Hispanic origin, regardless of race;
    - (3) Native American or Alaskan native persons having origins in any of the original peoples of North America;
    - (4) Asian and Pacific Islander persons having origins in any of the Far East countries, South East Asia, the Indian subcontinent or the Pacific Islands.
  - (d) "Minority-owned business enterprises" shall mean a business enterprise, including a sole proprietorship, partnership or corporation that is:
    - (1) at least fifty-one percent owned by one or more minority group members;
    - (2) an enterprise in which such minority ownership is real, substantial and continuing;
    - (3) an enterprise in which such minority ownership has and exercises the authority to control independently the day-to-day business decisions of the enterprise; and
    - (4) an enterprise authorized to do business in this state and independently owned and operated.
  - (e) "Subcontract" shall mean an agreement providing for total expenditures in excess of \$25,000 for the construction, demolition, replacement, major repair, renovation, planning or design of real property and improvements thereon between a contractor and any individual or business enterprise, including a sole proprietorship, partnership, corporation or not-for-profit corporation, in which a portion of a contractor's obligation under a state contract is undertaken or assumed.
  - (f) "Women-owned business enterprise" shall mean a business enterprise, including a sole proprietorship, partnership or corporation that is:
    - (1) at least fifty-one percent owned by one or more United States citizens or permanent resident aliens who are women;
    - (2) an enterprise in which the ownership interest of such women is real, substantial and continuing;
    - (3) an enterprise in which such women ownership has and exercises the authority to control independently the day-to-day business decisions of the enterprise ; and
    - (4) an enterprise authorized to do business in this state and independently owned and operated.

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III. Utilization Program Waivers.

- (a) If goals have been established by the STATE for the participation of certified M/WBE's on this agreement, at the direction of the STATE, but in no case later than execution of the agreement the contractor shall submit to the STATE a utilization program on forms to be provided by the STATE. The utilization program shall list all subcontractors and suppliers the contractor intends to use on the contract and indicate which are certified M/WBE's.
- (b) The STATE will review the utilization program and will issue to the contractor a written notice of acceptance or deficiency within twenty days of receipt. A notice of deficiency shall include;
  - (1) the name of any M/WBE which is not acceptable for the purpose of complying with M/WBE participation goals;
  - (2) elements of the contract scope of work which the STATE has determined can be reasonably structured by the contractor to increase the likelihood of participation of M/WBES; and
  - (3) other information which the STATE determines to be relevant to the utilization program.
- (c) The contractor shall respond to the notice of deficiency within seven days of receipt by submitting to the STATE a written statement which remedies the deficiencies in the original plan. If the written remedy which the contractor submits is not timely or is found by the STATE to be inadequate, the STATE shall so notify the contractor within five days and direct the contractor to submit a request for a partial or total waiver of M/WBE participation goals on forms to be provided by the STATE. The request for waiver must be submitted within five days of the contractors receipt of a notice that the statement of remedy was untimely or inadequate.
- (d) A contractor who has made good faith efforts to obtain commitments from M/WBE subcontractors and suppliers prior to submitting its utilization program may request a waiver at the same time it submits its utilization program. If a request for waiver is submitted with the utilization program, and is not accepted by the STATE at that time, the provisions of clauses (b) and (c), regarding the notice of deficiency and written remedy will apply. In this case, the contractor may submit a second request for waiver as directed by the STATE.
- (e) If the contractor does not submit a request for waiver, or if the STATE determines that the utilization program does not indicate that the M/WBE participation goals will be met and that the good faith efforts of the contractor have been inadequate to justify the granting of the request for waiver, the STATE shall terminate the contract, or if the contract has not been executed, the STATE shall withdraw from contract negotiations. Notice of termination or withdrawal, along with a denial of a request for waiver, where applicable, shall be delivered to the contractor no later than twenty days after the STATE receives the request for waiver.
- (f) The contractor shall attempt to utilize, in good faith, any MBE or WBE identified within its utilization program, at least to the extent indicated in the program.

IV. Administrative Hearing on Disqualification of Contractor.

- (a) If the STATE disqualifies the contractor on the ground that the contractor has failed to remedy deficiencies in its utilization program or document good faith efforts to remedy such deficiencies, the contractor shall be entitled to an administrative hearing, on the record, before a hearing officer appointed by the STATE, to review the determination of disqualification of the contractor.
- (b) The hearing officer's determination shall be a final administrative determination of the STATE and shall be reviewable by a proceeding brought pursuant to the Civil Practice Law and Rules, provided such proceeding is commenced within thirty days of notice given by certified mail, return receipt requested, rendering such final administrative determination in accordance with the provisions of
- (c) section 313 of the Executive Law.

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- (d) Such review shall be commenced in the Supreme Court, Appellate Division, Third Department, and shall be heard and determined in preference to all other civil business pending therein, except election matters, irrespective of position on the calendar. Appeals taken to the Court of Appeals of the State of New York shall be subject to the same preference.
- V. Good Faith Efforts. In order to show that it has made good faith efforts to comply with the M/WBE participation goals of this contract, the contractor shall submit such documentation as will enable the STATE to make a determination in accordance with the following criteria:
- (a) Did the contractor submit a completed, acceptable utilization program and EEO program aimed at meeting the goals for the participation of minorities and women in the contract?
  - (b) Did the contractor place advertisements in appropriate general circulation, trade and minority or woman-owned publications in a timely fashion?
  - (c) Did the contractor make written solicitations to women and minority-owned business enterprises listed in the directory of certified businesses in a timely fashion and include plans, specifications and contract terms. Did the businesses solicited respond in a timely fashion?
  - (d) Could the contractor have reasonably structured the work to be performed under subcontracts so as to increase the likelihood of participation by certified businesses?
  - (e) Did the contractor attend any prebid or preaward meetings scheduled by the STATE with M/WBE's which the STATE determined were capable of performing work or supplying materials on the contract?
  - (f) Were the subcontract terms and conditions offered to M/WBE's comparable to those offered in the ordinary course of the contractor's business to other subcontractors on the contract?
  - (g) Did the contractor make payments to M/WBE subcontractors and suppliers in a timely fashion?
- VI. Reports. The contractor shall submit, and shall require subcontractors to submit, reports showing the participation of all business enterprises on this contract, including minority and women-owned business enterprises on forms and at intervals to be established by the STATE. Reports not submitted at such times as shall be required by the STATE shall be cause for the STATE to delay implementing scheduled payments to the contractor.
- VII. Contractor's Failure or Inability to Meet M/WBE Participation Goals.
- (a) If the contractor, after making good faith efforts, is unable to comply with a contract's M/WBE participation goals, the contractor may submit a request for a partial or total waiver on forms provided by the STATE. If the documentation required with the request for a waiver is complete, the STATE shall evaluate the request and issue a written notice of acceptance or denial within twenty days of receipt.
  - (b) If the STATE, upon review of the contractor's utilization program and compliance reports, determines that the contractor is failing or refusing to comply with M/WBE participation goals, and no waiver has been issued in regards to such non-compliance, the STATE may issue a notice of deficiency to the contractor. The contractor must respond to the notice within seven days of receipt. This response may include a request for partial or total waiver of M/WBE participation goals.
- VIII. Contractor and Agency Complaints, Arbitration.
- (a) If the contractor submits a request for a waiver of M/WBE participation goals and the STATE denies the request or fails to respond within twenty days of receiving it, the contractor may file a complaint with the Director according to the provisions of section 316 of Article 15-A of the Executive Law. The complaint must be filed within twenty days of the STATE's receipt of the request for waiver, if the STATE has not responded in that time, or within twenty days of a notification that the request has been denied by the STATE.



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- (b) If the contractor fails to respond to a notice of deficiency, the STATE may file a complaint with the Director pursuant to section 316 of Article 15-A of the Executive Law.
  - (c) A complaint shall set forth the facts and circumstances giving rise to the complaint together with a demand for relief.
  - (d) The party filing a complaint, whether the contractor or the STATE, shall deliver a copy to the other party. Both the complaint and the copy shall be delivered by either personal service or by certified mail, return receipt requested.
  - (e) Upon receipt of a complaint, the Director shall provide the party against whom the complaint has been filed with an opportunity to respond to the complaint. If within thirty days of receipt of the complaint, the Director is unable to resolve the complaint to the satisfaction of the STATE and the contractor, the complaint shall be referred to the American Arbitration Association for resolution pursuant to section 316 of Article 15-A of the Executive Law and the applicable requirements of Article 75 of the Civil Practice Law and Rules.
  - (f) Upon conclusion of the arbitration proceedings, the arbitrator will submit to the Director his or her award regarding the alleged violation of the contract or the refusal of the STATE to grant a waiver request by the contractor. The award of the arbitrator with respect to an alleged violation of the contract or the refusal of the state agency to grant a waiver shall be final and may be vacated or modified only as provided by Article 75 of the Civil Practice Law and Rules.
  - (g) Upon conclusion of the arbitration proceedings and the rendition of an award, the arbitrator will also recommend to the Director a remedy, including, if appropriate, the imposition of sanctions, fines or penalties. The Director will either:
    - (1) adopt the recommendation of the arbitrator;
    - (2) determine that no sanctions, fines or penalties should be imposed; or
    - (3) modify the recommendation of the arbitrator, provided that such modification shall not expand upon any sanction recommended or imposed by any new sanction, or increase the amount of any recommended fine or penalty.
  - (h) The Director, within ten days of receipt of the arbitrator's award and recommendations, will file a determination of such matter and shall cause a copy of such determination to be served upon the parties by personal service or by certified mail, return receipt requested. The determination of the Director as to the imposition of any fines, sanctions, or penalties shall be reviewable pursuant to Article 78 of the Civil Practice Law and Rules.
  - (i) The determination of the STATE or the contractor to proceed with a complaint shall not preclude the STATE, in its discretion, from pursuing any-other remedies which it may have pursuant to law and the contract.
- IX. Subcontracts. The contractor will include the provisions of sub-paragraphs (v) and (viii) above in every subcontract, as defined in sub-paragraph (ii), in such a manner that such provisions will be binding upon the subcontractor as to work in connection with this contract.
4. Non-Discrimination. The CONTRACTOR shall not limit access or discriminate in the operation of the facilities against any person on the basis of place of residence, race, creed, color, national origin, sex, age, disability or marital status.

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APPENDIX B - BUDGET

The detailed estimated budget for the project as outlined in this AGREEMENT is as follows:

**EXPENSES:**

Pre-Development	\$ 12,200.00
To include: design and engineering	
Acquisition	\$225,000.00*
To include: 8.4 acres (donation)	
Development	\$ 77,500.00
To include: pedestrian path; footbridge; gazebo; picnic tables	
Administration	\$ 9,800.00
To include: audit; project sign; construction supervision; grant administration	
<b>TOTAL COST</b>	<b>\$324,500.00</b>

**FUNDING BREAKDOWN:**

STATE Share           \$ 99,000.00  
CONTRACTOR Share \$225,500.00

\*Original appraisal reports shall be prepared for each parcel to be acquired (fee simple, in rem, donation) in accordance with the STATE's standards and shall be submitted to and approved by the STATE. Once the STATE's review is complete, the "Appendix B-Budget" and the Funding Amount (identified on the face page hereof) may be amended as appropriate to reflect the fair market value as determined by the STATE. In no instance will the Funding Amount be adjusted upward. A fully executed amendment to reflect any appropriate adjustment must be on file with the STATE prior to the release of any funds.

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APPENDIX C - PAYMENT AND REPORTING SCHEDULE  
ACQUISITION AND DEVELOPMENT

I. Amount of Grant Award: **\$99,000.00**

II. The STATE agrees to make available to the CONTRACTOR a sum not to exceed the funding amount identified on the face page hereof. The STATE share shall cover no more than fifty percent of eligible expenditures for any reimbursement request under this AGREEMENT. The grant reimbursement rate is determined by the ratio of funding amount to the total project cost in accordance with the budget (Appendix B).

III. The STATE'S share of the project cost as set forth in this AGREEMENT shall be paid to the CONTRACTOR in installment payments as follows:

A. INSTALLMENTS: CONTRACTOR shall be reimbursed as expenditures accrue for costs incurred from the project as outlined in APPENDIX B. Payments shall be made upon review and approval of appropriate plans, specifications, and expenditure and project documentation to the satisfaction of the STATE and clear title documentation to the satisfaction of the Attorney General. No more than 3 installments shall be allowed prior to the final installment.

B. A FINAL INSTALLMENT of not less than 10% of the STATE'S share of the total cost shall be made upon, to the satisfaction of the STATE: (1) completion of the project, (2) expenditure and project documentation, (3) review and approval of the Project Completion Report, (4) performance of a Final On-Site Inspection by the STATE, (5) if an amendment is required, a fully executed document must be on file prior to release of final reimbursement and formal close-out of the project, (6) documentation verifying the recording of the Preservation Covenant (a copy of the recorded document, showing Liber and Page Number) for Historic Preservation projects only, (7) for Parks projects, documentation verifying the recording of the Conservation Easement (a copy of the recorded document, showing Liber and Page Number) if project is sponsored by a not-for-profit organization, a list of facilities developed and acres acquired, an as-built and as-acquired site map\* and a final boundary map\*. When parkland is involved, a map of the entire park, even if the subject of the grant involves property that is less than the entire park. The boundary map should show both: {a} the actual boundaries of the entire park in yellow, and in enough detail to be legally sufficient to identify the parkland, and {b} the actual boundaries of those parcels that are the subject of an acquisition or donation, color-coded and keyed to the "Schedule 1 - Summary Sheet Per Parcel" form. Acceptable methods of identification are: {1} metes and bounds (preferred), {2} deed references, {3} adjoining water bodies or other natural landmarks, {4} government survey, {5} adjoining ownerships and/or {6} adjoining easements of record. Where one or more of these methods are not suitable for identification, measurements from permanent locators may be used. It is recommended that the map itself clearly show pertinent features such as roads, road names and numbers, bodies of water, buildings, structures, etc. The map must also identify all known outstanding rights and interests held by others, as well as known easements, deed/lease restrictions, reversionary interests, etc. The map must also include the title and number of the project, date of map preparation and name and signature of authorized officer, (8) approval by the STATE of documentation showing efforts made to satisfy requirements for the participation by New York State Businesses and Minority Group Members and Women with Respect to State Contracts, (9) Capital construction projects and/or acquisition projects with a grant amount of \$99,999 or less shall provide an *Agreed Upon Procedure Review* of the grant, performed by a certified public accountant currently licensed by the NYS Board of Public Accountancy, in accordance with attestation standards established by the American Institute of Certified Public Accountants and in accordance with *Government Auditing Standards* issued by the Comptroller General of the United States of America. Capital construction projects and/or acquisition projects with a grant amount of \$100,000 or more shall provide an audit of the *Statement of Contract Revenues and Contract*

\*May be prepared on one map.

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*Expenditures* as performed by a certified public accountant currently licensed by the NYS Board of Public Accountancy in accordance with auditing standards generally accepted in the United States of America and the standards applicable to financial audits contained in *Government Auditing Standards*, issued by the Comptroller General of the United States.

**IV.** Payment shall be made upon approval by the STATE and audit and warrant of the State Comptroller of vouchers executed by an authorized officer of the CONTRACTOR accompanied by such receipts and documents verifying expenditures as may be required by the STATE.

**V.** The CONTRACTOR shall submit, with each payment request, a certificate executed by an authorized officer, which shall attest that said payment does not duplicate a request for payment, or any payment received, from any other source for goods or services under this AGREEMENT.

**VI.** The designated payment office shall be New York State Office of Parks, Recreation and Historic Preservation, Agency Building One, Empire State Plaza, Albany, New York 12238, and Attention: Grants Unit, 16th Floor.

**VII.** Within fifteen days of receiving the voucher, the STATE shall notify the CONTRACTOR of any problem with the voucher; for example, whether there are mistakes on the voucher or additional documents must be submitted. Once the CONTRACTOR has submitted a voucher to the STATE, the STATE will review and audit the voucher and submit it to the State Comptroller within thirty days.

**VIII.** The STATE shall make periodic inspections of the project both during its implementation and after its completion to assure compliance with this AGREEMENT. The CONTRACTOR shall allow the STATE unrestricted access to work during the preparation and progress of the work, and provide for such access and inspection by the STATE in all construction contracts relating to the project.

**IX.** The CONTRACTOR can receive reimbursements of all or any part of the above referenced schedule provided the appropriate expenditure and project documentation is submitted and approved by the STATE

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APPENDIX D - PROGRAM WORKPLAN

**I. PROJECT NARRATIVE:** The Town of Guilderland will develop a neighborhood park at the site formerly used as the McKownville Reservoir. This project will transform an unsightly and underutilized property into a resource that will be of value both to the neighboring residential community and to people working or shopping at the adjoining Stuyvesant Plaza/Executive Park retail and office complex.

**II. Article 15A PARTICIPATION:**

The STATE has established the following goals for the participation of certified minority and women-owned businesses (M/WBE's) on this project:

MBE's 8% of total dollar value

WBE's 5% of total dollar value

**III. PROJECT SCHEDULE:**

The following Schedule is a recommended timeframe for monitoring major thresholds, which will result in completion of the grant by the scheduled ending date. This does NOT describe all the required steps involved in meeting these thresholds, nor is it intended to be a precise calendar. Nevertheless, not only is the schedule to be used as a monitoring tool by the CONTRACTOR and by the STATE, non-adherence to these timeframes without acceptable justification will be used as criteria in determining grant cancellation. The project documentation listed below should be submitted for approval/acceptance by the STATE as follows:

<u>ITEM</u>	<u>DATE DUE</u>
<b>THE FOLLOWING ITEMS MUST BE SATISFIED BEFORE STARTING THE BIDDING PROCESS</b>	
Documentation of clear title as required by the Attorney General's Office	March 2007
A copy of the Solicitation/RFP for design services	April 2007
Ground Disturbance Documentation	April 2007
Final Plans and Specifications	May 2007
<b>UPON SATISFACTION OF THE ABOVE, PROCEED WITH THE FOLLOWING:</b>	
Construction Bidding Process Commences	June 2007
Bid Award	July 2007
M/WBE Utilization Program	July 2007
Start of Construction	August 2007
M/WBE Reports	MONTHLY BEGINNING August 2007
Payment Requests	ONGOING
Project Completion	December 2008
Close-out Documentation Requirements (See Appendix C)	January 2009

APPENDIX X – MODIFICATION AGREEMENT FORM

Period From: Agency Code: 49070

To: Project #:

Funding Amount for Period: Contract

This is an AGREEMENT between THE STATE OF NEW YORK, acting by and through the Office of Parks, Recreation and Historic Preservation, having its principal office at Agency Building One, Empire State Plaza, Albany, New York 12238 (hereinafter referred to as the STATE), and the \*Contractor\* having its principal office at Address (hereinafter referred to as the CONTRACTOR), for modification of Contract Number C \_\_\_\_\_, as amended in attached Appendix \_\_\_\_\_.

All other provisions of said AGREEMENT shall remain in full force and effect.

IN WITNESS THEREOF, the parties hereto have executed or approved this AGREEMENT on the dates appearing under their signatures.

CONTRACTOR:

STATE AGENCY:

New York State Offices of Parks, Recreation, and Historic Preservation

By:

By:

Printed Name:

Date:

Printed Title:

State Agency Certification:

“In addition to the acceptance of this contract, I also certify that original copies of this signature page will be attached to all other exact copies of this contract.”

Date:

STATE OF NEW YORK )  
 ) SS.:  
COUNTY OF )

On the \_\_\_\_\_ day of \_\_\_\_\_ in the year \_\_\_\_\_, before me, the undersigned, personally appeared \_\_\_\_\_, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their/ capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

(Notary Public)

STATE COMPTROLLER

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APPENDIX E - SPECIAL CONDITIONS AND REQUIREMENTS  
PKS PROJECTS

**\*I.** With the commencement of the project, the CONTRACTOR shall erect a project sign at the project site noting the State's assistance to the project. The project sign specifications are available from the STATE. The project sign shall remain in place in **perpetuity**.

**II.** In the event of any unanticipated archeological discoveries, the CONTRACTOR shall stop all work and notify the STATE immediately. Work shall not resume until the STATE determines how any previously undiscovered archeological remains will be treated. Special attention shall be given to any discovery of burials, graves, or human remains.

**\*III.** The CONTRACTOR shall provide the following documentation to the STATE prior to the final execution of this AGREEMENT:

A copy of the Good Faith Effort Program Outline.

**IV.** Original appraisal reports shall be prepared for each parcel to be acquired (fee simple, in rem, donation) in accordance with the STATE's standards and shall be submitted to and approved by the STATE. Once the STATE's review is complete, the "Appendix B-Budget" and the Funding Amount (identified on the face page hereof) may be amended as appropriate to reflect the fair market value as determined by the STATE. In no instance will the Funding Amount be adjusted upward. A fully executed amendment to reflect any appropriate adjustment must be on file with the STATE prior to the release of any funds.

**V.** This project may require permits from either the NYS Department of Environmental Conservation (DEC) and/or the US Army Corp of Engineers (COE). Contact DEC and COE to determine if any permits are needed. A copy of the permit(s) or a letter (s) from the appropriate Agency which states that no permit is required must be filed with the STATE.

**VI.** The CONTRACTOR shall provide clear title documentation to the satisfaction of the Attorney General.

**VII.** Pursuant to Section 441.1(b) of the Rules and Regulations for the Environmental Protection Act of 1993, eligible acquisition projects shall include acquisition within three years prior to the application deadline. For purposes of this AGREEMENT, the retroactive window opened 5/26/03.

**\*Conditions noted with an asterisk must be satisfied prior to commencement of work on this project.**

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APPENDIX F - PROGRAM SPECIFIC REQUIREMENTS

**I. Construction Requirements.**

A. Any consultant contract in the amount of twenty-five thousand dollars (\$25,000) or more for architectural, engineering or design services shall be awarded on a competitive basis after the CONTRACTOR has developed and publicized a Request for Proposal; a copy of the Request for Proposal and documentation of all responses shall be included with submission by the CONTRACTOR of any voucher for payment for such services.

B. Contract plans, specifications, and cost estimates shall be submitted to the STATE for review prior to the letting of any construction contract by the CONTRACTOR. Once all changes have been made and agreed to by the STATE and the CONTRACTOR, the CONTRACTOR shall submit three copies of the plans, specifications and cost estimates to the STATE. The STATE shall verify that the plans, specifications and cost estimates are in conformance with the work described in "APPENDIX B - BUDGET" and shall so notify the CONTRACTOR in writing; the STATE shall further verify that appropriate documents have been prepared by a professional licensed to practice in the State of New York. A complete set shall be returned to the CONTRACTOR by the STATE and shall be kept on the project site at all times. All plans and specifications as reviewed shall become part of this AGREEMENT, and no change or revision may be made to such plans and specifications without the express written consent of the STATE.

C. Contracts for construction in excess of twenty thousand dollars (\$20,000) shall be awarded after competitive bidding in accordance with the provisions of the General Municipal Law. A certified copy of a summary of all bids shall be submitted to the STATE prior to awarding a contract, and an executed copy of the construction contract will thereafter be submitted to the STATE.

D. The CONTRACTOR shall be responsible for assuring that the project is designed and constructed in conformance with the Uniform Federal Accessibility Standards (UFAS -- Appendix A to 41 CFR part 101- 19.6), the Americans with Disabilities Act Accessibility Guidelines (ADAAG -- Appendix A to 28 CFR part 36) and the New York State Uniform Fire Prevention and Building Code (parts 1100-1102 of Title 9 NYCRR). Where there are discrepancies among the sets of standards with regard to a particular design /construction requirement, the one providing for the greatest degree of accommodation for the disabled shall apply.

E. It is the CONTRACTOR'S responsibility to assure that all work on the project complies with all applicable state and/or local laws including, but not limited to, zoning ordinances and building codes.

F. All purchase contracts involving an expenditure of more than ten thousand dollars (\$10,000) shall be awarded to the lowest responsible bidder furnishing the required security after advertisement for sealed bids in the manner provided for in section 103 of the General Municipal Law.

G. It is the CONTRACTOR's responsibility, pursuant to Section 57 of the Workers' Compensation Law, to maintain for STATE audit and review either proof that they have Workers' Compensation coverage for any employees, or a waiver statement from the New York State Department of Labor. The CONTRACTOR must also obtain from any contractor or sub-contractor hired to provide a service pursuant to this AGREEMENT, similar proof or waiver from the contractor or sub-contractor, and must maintain such documentation on file for audit.

H. Goods and services which are not required by this contract to be procured by the CONTRACTOR pursuant to competitive bidding must be procured in a manner so as to assure the prudent and economical use of grant moneys, to facilitate the acquisition of goods and services of maximum quality at the lowest possible cost under the circumstances, and to guard against favoritism, improvidence, extravagance, fraud and corruption.



Town of Guilderland  
Development of McKownville Reservoir Park  
EPF 406087-SC

**II. Fees.** The CONTRACTOR may charge a reasonable fee for the use of any facility, which is part of the project.

A. Except for the imposition of a differential fee schedule for non-residents of the municipality in which the project is located, the establishment of any preferential user fee for any person or entity is prohibited. Fees charged to non-residents shall not exceed twice those charged to residents.

B. Where there is no charge for residents but a fee is charged to non-residents, non-resident fees cannot exceed fees charged for residents at comparable State or local public facilities.

C. Reservation, membership or annual permit systems available to residents must also be available to non-residents and the period of availability must be the same for both residents and non-residents.

D. This provision does not apply to non-resident fishing and hunting license fees.

**III. Funding.** The CONTRACTOR hereby certifies that the funds made available by the STATE under this AGREEMENT shall not supplant local funds already appropriated or identified by the CONTRACTOR for the project.

**IV. Termination.** The CONTRACTOR shall complete the project as set forth in this AGREEMENT, and failure to render satisfactory progress or to complete the project to the satisfaction of the STATE may be deemed an abandonment of the project and cause for the suspension or termination of any obligation of the STATE. In the event the CONTRACTOR should be deemed to have abandoned the project for any reason or cause other than a national emergency or an Act of God, all monies paid to the CONTRACTOR by the STATE and not expended in accordance with this AGREEMENT shall be repaid to the STATE upon demand. If such monies are not repaid within one year after such demand, the State Comptroller of the State of New York may cause to be withheld from any State assistance to which the CONTRACTOR would otherwise be entitled an amount equal to the monies demanded (see Section III of this AGREEMENT).

**V. Alienation.**

A. The CONTRACTOR shall not at any time sell or convey any facility acquired or developed pursuant to this AGREEMENT or convert such facility to other than public park purposes without the express authority of an act of the Legislature, which shall provide for the substitution of other lands of equal fair market value and reasonably equivalent usefulness and location to those to be discontinued, sold or disposed of, and such other requirements as shall be approved by the STATE.

B. In addition to the provisions of subparagraph (A) of this section, and notwithstanding anything to the contrary contained herein, the CONTRACTOR shall not sell, lease or otherwise convey in any manner or permit a change in use of the project, in whole or in part, unless it shall have first received the approval of the STATE.

C. The CONTRACTOR agrees to own or hold by lease and to maintain and operate the project in **perpetuity**. The CONTRACTOR shall not authorize the operation of the project, or any portion thereof, by any other person, entity, or organization pursuant to any management agreement, lease or other arrangement without first obtaining the written approval of the STATE.

BOND ACT/EPF

FINAL ON-SITE INSPECTION REPORT

*Study Part of Mudge - Pdf*  
*Fail*  
*NYS State Parkes Dept*

Project #: EPF-406087  
Date of Inspection: 4/5/11  
Project Period: 10/20/06 – 12/31/10  
Project Title: McKownville Reservoir Park  
Type:  Acquisition  Development  Combination  
Date Project Work Completed: 12/31/10

Inspector: Cathy Jepson  
Title: Regional Grants Administrator  
Agency: OPRHP

Accompanied by: Donald Csaposs  
Title: Grant Administrator  
Agency: Town of Guilderland

Prior Inspections Date:

Findings:

Has work been completed in accord with Appendix B of the contract:  
If no, explain in comment section.  Yes  No  N/A

Have there been changes in facilities and/or site location?  
If yes, explain below and cite date of approved amendment  Yes  No  N/A

Have provisions been made to make facilities and programs  
accessible to the handicapped?  Yes  No  N/A

Are there any features which detract from the area?  
If yes, explain below and indicate recommended corrective action  
or other conclusion  Yes  No  N/A

Has relocation, if any, been completed?  
If no, explain in comment section.  Yes  No  N/A

Does present maintenance and operation appear to be satisfactory?  
If no, explain in comment section.  Yes  No  N/A

Is the Program sign prominently displayed and photograph included?  
If no, explain in comment section.  Yes  No  N/A

Are photos included?  
If no, explain in comment section  Yes  No  N/A

Have there been changes to the approved boundary map?  
If yes, explain in comment section  Yes  No  N/A

Has a final boundary map been established?  Yes  No  N/A  
If no, explain in comment section

Has the local sponsor been told (verbally and in writing) what a boundary map is and the implication of alienation of use under Program rules and regulations?  Yes  No  N/A  
If no, explain in comment section

Does the design of the facility appear to be satisfactory?  Yes  No  N/A

Has the facility(ies) been constructed in accord with approved plans and specifications and does it meet the expectations originally envisioned?  Yes  No  N/A  
If no, explain in comment section

Do the materials appear to be of satisfactory quality for the facility developed?  Yes  No  N/A  
(If no, explain in comment section)

If grant conditions have been imposed (Appendix E of Agreement), have they been satisfied?  Yes  No  N/A  
If no, explain in comment section

Comments / Explanation to Questions:

Notes to Future Inspectors/Other Significant Information:

Photos are included.  Yes  No

Important supportive documentation referenced in the report is attached.  Yes  No  N/A

Inspected by Signature: *Cathy Jesson*  
Date: *4/5/11*

Reviewed by: Signature:  
Title:  
Date:

TOWN OF GUILDERLAND - McKOWNVILLE PARK  
AND STORMWATER PROJECT  
AGREED-UPON PROCEDURES  
CONTRACT CLOSEOUT REPORT  
CONTRACT NO. C406087  
NYS AGENCY: EPF 406087-SC

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# Marvin and company, p.c.

CERTIFIED PUBLIC ACCOUNTANTS AND CONSULTANTS

## INDEPENDENT ACCOUNTANTS' REPORT ON APPLYING AGREED-UPON PROCEDURES

Kevin J. McCoy  
Thomas W. Donovan  
Frank S. Venezia  
James E. Amell  
Carol A. Hausamann  
Benjamin R. Lasher  
Daniel J. Litz  
Karl F. Newton  
Kevin P. O'Leary  
Timothy A. Reynolds

To the Members of the Town Board  
Town of Guilderland

We have performed the procedures enumerated below, which were agreed to by the Town of Guilderland (the Town) and the New York State Office of Parks, Recreation, and Historic Preservation (the specified parties) solely to assist in evaluating the Town of Guilderland's assertion that the revenues and expenditures submitted under the Town of Guilderland - McKownville Park and Stormwater Project (Contract No. C406087) are allowable based on the contract provisions, guidelines, rules and regulations, and the policies prescribed by the New York State Office of Parks, Recreation and Historic Preservation. The Town's management is responsible for the accuracy of the amounts in the accompanying Schedule of Revenue and Expenditures and the supplemental schedules of Project Expenditures by Vendors and Matching Funds by Funding Source for the Town of Guilderland - McKownville Park and Stormwater Project (Contract No. C406087). This agreed-upon procedures engagement was performed in accordance with attestation standards established by the American Institute of Certified Public Accountants and in accordance with *Government Auditing Standards* issued by the Comptroller General of the United States. The sufficiency of these procedures is solely the responsibility of those parties specified in the report. Consequently, we make no representation regarding the sufficiency of procedures described below either for the purpose for which this report has been requested or for any other purpose.

11 British American Blvd.  
Latham, NY 12110  
Ph: 518-785-0134  
Fx: 518-785-0299

Our procedures and findings are as follows:

### Procedure #1

Verify that all payments claimed by the Town of Guilderland in the Town of Guilderland - McKownville Park and Stormwater Project Schedule of Contract Revenue and Expenditures for the period February 1, 2007 through December 31, 2010, were made by examining cancelled checks, payee endorsement, and/or other evidentiary material.

### Findings

No exceptions were found as a result of applying the procedure.

Email  
webmaster@marvinpcpa.com  
Web  
http://www.marvinpcpa.com



Procedure #2

In cases where "force account expenditures" (salaries of the grantee's staff), verify that Time and Attendance/Payroll documentation existed supporting the charge for personnel used in the Town of Guilderland - McKownville Park and Stormwater Project.

Findings

No force account expenditures were included in the Town of Guilderland - McKownville Park and Stormwater Project Schedule of Contract Revenue and Expenditures.

Procedure #3

In cases where donations of labor, materials, equipment, supplies, and real property were claimed, verify that the donations were applicable to the Town of Guilderland - McKownville Park and Stormwater Project, that values assigned to donations were legitimate and all donations were matched by documented eligible expenditures for the Town of Guilderland - McKownville Park and Stormwater Project.

Findings

No donations of labor, materials, equipment, supplies, or real property were included in the Town of Guilderland - McKownville Park and Stormwater Project Schedule of Revenue Contract Expenditures.

Procedure #4

Verify that the Town of Guilderland - McKownville Park and Stormwater Project Schedule of Project Expenditures by Vendors supported the documented eligible project expenses.

Findings

No exceptions were found as a result of applying the procedure.

Procedure #5

Verify that the Town of Guilderland - McKownville Park and Stormwater Project Schedule of Revenues by Source clearly identified the source of all eligible matching funds.

Findings

No exceptions were found as a result of applying the procedure.

We were not engaged to, and did not, conduct an examination, the objective of which would be the expression of an opinion on management's assertion. Accordingly, we do not express such an opinion. Had we performed additional procedures, other matters might have come to our attention that would have been reported to you.

This report is intended solely for the use of the Town of Guilderland Town Board and the New York State Office of Parks, Recreation, and Historic Preservation and is not intended to be and should not be used by anyone other than those specified parties.

*Marvin and Company, P.C.*

January 19, 2012

**TOWN OF GUILDERLAND - McKOWNVILLE PARK  
 AND STORMWATER PROJECT  
 CONTRACT CLOSEOUT REPORT - AGREED-UPON PROCEDURES  
 CONTRACT NO. : C406087  
 NYS AGENCY: EPF-406087-SC  
 SCHEDULE OF CONTRACT REVENUES AND EXPENDITURES  
 FOR THE PERIOD FEBRUARY 1, 2007 THROUGH DECEMBER 31, 2010**

<u>REVENUES</u>	<u>As Submitted</u>	<u>Adjustments</u>	<u>As Adjusted</u>
Parks Contract C406087	\$ 99,000		\$ 99,000
NYS DOT MM	200,000		200,000
NYS DOT SDF	150,000		150,000
DASNY GRANT #4316	50,000		50,000
Donation Stuyv. Plaza	<u>100,000</u>		<u>100,000</u>
Total Revenues	<u>599,000</u>		<u>599,000</u>
<b>EXPENDITURES</b>			
Pre Development			
Design & Engineering	74,963		74,963
Development Construction	<u>543,785</u>		<u>543,785</u>
Total Expenditures	<u>618,748</u>		<u>618,748</u>
<b>Deficiency</b>	<u>\$ (19,748)</u>		<u>\$ (19,748)</u>



**TOWN OF GUILDERLAND - McKOWNVILLE PARK  
AND STORMWATER PROJECT  
CONTRACT CLOSEOUT REPORT - AGREED-UPON PROCEDURES  
CONTRACT NO. : C406087  
NYS AGENCY: EPF-406087-SC  
NOTES TO SCHEDULE OF CONTRACT REVENUES AND CONTRACT  
EXPENDITURES  
FEBRUARY 1, 2007 THROUGH DECEMBER 31, 2010**

**1. CONTRACT DESCRIPTION**

Contract # C406087 dated February 13, 2007 is an agreement between the Town of Guilderland and the New York State Office of Parks, Recreation and Historic Preservation (NYS OPRHP). The contract provides for NYS OPRHP to reimburse the Town of Guilderland for up to 50% (maximum of \$99,000) of the budgeted \$228,154 of eligible project expenditures, as listed in Appendix B of the contract for the development of McKownville Park.

**2. BASIS OF ACCOUNTING AND ACCOUNTING POLICIES**

The schedule of contract revenues and contract expenditures has been prepared on the accrual basis.

Revenue Recognition - Contract and matching revenue is recognized when project expenditures are incurred in compliance with the terms of the contract, irrespective of the filing of claims for reimbursement of actual cash receipts.

Construction Expenditures - Construction costs are recognized when incurred and have been recorded as contract expenditures in the financial statement in accordance with contract terms, rather than being capitalized.

Use of Estimates - The eligible expenses are subject to review by NYS OPRHP upon submission of required detail information and proof of payment. Management is required to determine allowable expenses under the contract, and generally consults with NYS OPRHP in matters of judgement; however, the final determination of allowable expenses will be made by NYS OPRHP upon final submission of project costs.

**3. NYS OPRHP CONTRACT REVENUE AND UN-REIMBURSED CONTRACT COSTS**

The following schedule presents the contract revenue recognized at December 31, 2010 from NYS OPRHP based on contract revenue and un-reimbursed project cost at December 31, 2010.

Contract revenue:	<u>\$ 99,000</u>
Un-reimbursed costs at December 31, 2010:	<u>\$ 99,000</u>

**TOWN OF GUILDERLAND - McKOWNVILLE PARK  
 AND STORMWATER PROJECT  
 CONTRACT CLOSEOUT REPORT - AGREED-UPON PROCEDURES  
 CONTRACT NO. : C406087  
 NYS AGENCY: EPF-406087-SC  
 SCHEDULE OF PROJECT EXPENDITURES BY VENDORS  
 FOR THE PERIOD FEBRUARY 1, 2007 THROUGH DECEMBER 31, 2010**

<u>Contract/Vendor Name</u>	<u>Description</u>	<u>Total Paid Amount</u>
Long Lumber Supply	Development Fence	\$ 1,788
Delaware Engineering, P.C.	Design and Engineering	74,963
M. Sullivan Construction	Construction, Drainage, Paths, Footbridge, Amenities	<u>541,997</u>
	Total Paid	<u>\$ 618,748</u>

**TOWN OF GUILDERLAND - McKOWNVILLE PARK  
 AND STORMWATER PROJECT  
 CONTRACT CLOSEOUT REPORT - AGREED-UPON PROCEDURES  
 CONTRACT NO. : C406087  
 NYS AGENCY: EPF-406087-SC  
 SCHEDULE OF REVENUES BY SOURCE  
 FOR THE PERIOD FEBRUARY 1, 2007 THROUGH DECEMBER 31, 2010**

**A. Source of Matching Funds**

NYS DOT MM	\$ 200,000
NYS DOT SD	150,000
DASNY GRANT	50,000
Donations Stuyv. Plaza	100,000
Sub-Total A	<u>500,000</u>

**B. Source of Other Revenues**

OPRHP Grant Contract	<u>99,000</u>
Sub-Total B	<u>99,000</u>
<b>Grand Total (A plus B)</b>	<u><u>\$ 599,000</u></u>



# Marvin and company, p.c.

CERTIFIED PUBLIC ACCOUNTANTS AND CONSULTANTS

## INDEPENDENT AUDITORS' REPORT ON INTERNAL CONTROL OVER FINANCIAL REPORTING AND ON COMPLIANCE AND OTHER MATTERS ON APPLYING AGREED-UPON PROCEDURES FOR THE TOWN OF GUILDERLAND – McKOWNVILLE PARK PROJECT PERFORMED IN ACCORDANCE WITH GOVERNMENT AUDITING STANDARDS

Kevin J. McCoy  
Thomas W. Donovan  
Frank S. Venezia  
James E. Amell  
Carol A. Hausamann  
Benjamin R. Lasher  
Daniel J. Litz  
Karl F. Newton  
Kevin P. O'Leary  
Timothy A. Reynolds

To the Members of the Town Board  
Town of Guilderland  
Guilderland, New York

We have performed the agreed upon procedures for the Town of Guilderland - McKownville Park and Stormwater Project (Town) and have issued our report thereon dated January 19, 2012. We conducted the agreed upon procedures in accordance with attestation standards established by the American Institute of Certified Public Accountants and in accordance with the standards applicable to attestation engagements contained in *Government Auditing Standards*, issued by the Comptroller General of the United States.

### Internal Control Over Financial Reporting

11 British American Blvd.  
Latham NY 12110  
Ph. 518-785-0134  
Ex. 518-785-0299

Management of the Town is responsible for establishing and maintaining effective internal control over financial reporting. In performing our agreed upon procedures engagement, we considered the Town's internal control over financial reporting in evaluating our findings for those procedures, but not for the purpose of expressing an opinion on the effectiveness of the Town's internal control over financial reporting. Accordingly, we do not express an opinion on the effectiveness of the Town's internal control over financial reporting.

Email  
webmaster@marvincpa.com  
Web  
http://www.marvincpa.com

*A deficiency in internal control* exists when the design or operation of a control does not allow management or employees, in the normal course of performing their assigned functions, to prevent, or detect and correct misstatements on a timely basis. *A material weakness* is a deficiency, or a combination of deficiencies, in internal control, such that there is a reasonable possibility that a material misstatement will not be prevented, or detected and corrected on a timely basis.

Our consideration of internal control over financial reporting was for the limited purpose described in the first paragraph of this section and was not designed to identify all deficiencies in internal control over financial reporting that might be deficiencies, significant deficiencies, or material weaknesses. We did not identify any deficiencies in internal control over financial reporting that we consider to be material weaknesses, as defined above.



Compliance and Other Matters

As part of our agreed upon procedures engagement, we performed tests of its compliance with certain provisions of laws, regulations, contracts and grant agreements, noncompliance with which could have a direct and material effect on the determination of financial amounts reported on the schedule of contract revenues and expenditures. However, providing an opinion on compliance with those provisions was not an objective of our audit and, accordingly, we do not express such an opinion. The results of our tests disclosed no instances of noncompliance or other matters that are required to be reported under *Government Auditing Standards*.

This report is intended solely for the information and use of the management of the Town of Guilderland, the Town Board, state awarding agencies and is not intended to be and should not be used by anyone other than these specified parties.

*Marvin and Company, P.C.*

January 19, 2012

Final Report Narrative  
Project I.D. # EPF406087-OSC Contract # D 031760

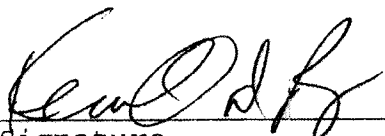
6. The construction project was put out for open competitive bid. Certified M/WBE contractors in the Upstate NY/Capitol Region area were researched utilizing the Empire State Development Corporation MBE/WBE database. This research disclosed no certified M/WBE General Construction contractors for this project size (\$500K) and type (Heavy Highway/Drainage). A copy of the advertisement for bids was sent to Linda Holding Company in Greene County and to Bombard Excavating Company in Broadalbin. Linda Holding neither picked up plans nor submitted a bid. Bombard Excavating did not pick up plans and was not present for the bid opening. Bombard did submit a bid, but its late arrival caused it to be disqualified.

7. The major work items outlined in Appendix B were completed, with the exception of the gazebo. It was determined that the gazebo would have to be eliminated from the project in an effort to keep within the budgeted amount. The gazebo is regarded as a future addition to the park.

Financial Audit Certification

I, Kenneth D. Runion, being the Chief Executive  
(name)  
Officer of the Town of Guilderland hereby certify  
(institution name)  
that grant funds received under Contract # C406087 and  
related expenditures as identified in the **attached** detailed  
schedule "**Summary of Grant Expenditures by Vendor and by Funding  
Source**", were managed and expended in accordance with all  
applicable laws, regulations, project agreement terms and  
program/project guidelines, and that the Town of Guilderland  
(institution name)  
complied, in all material respects with the applicable laws,  
regulations, project agreement terms and program/project  
guidelines that relate to the grant including the issuance of  
bonds, receipt of donations and matching of funds.  
I also assert that all required documentation is on file and will  
be available for audit upon request for a period of six years  
from the ending date on the contract; and that the expenditures  
on the attached detailed summary are true and correct.

Jan. 18, 2012  
Date

  
Signature

Kenneth D. Runion  
Town Supervisor

CHIEF EXECUTIVE OFFICER'S SIGNATURE MUST BE NOTARIZED;  
USE EITHER THE MUNICIPAL OR CORPORATION FORMAT AS  
APPROPRIATE.

By:

Title:

STATE OF NEW YORK )  
 ) SS.:  
COUNTY OF Albany )

On this 18<sup>th</sup> day of January in the year 2012, before me, the undersigned, a Notary Public in and for said State, personally appeared Kenneth D. Runion, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(~~s~~) whose name(~~s~~) is (~~are~~) subscribed to the within instrument and acknowledged to me that he/~~she~~/~~they~~ executed the same in his/~~her~~/~~their~~ capacity(~~ies~~), and that by his/~~her~~/~~their~~ signature(~~s~~) on the instrument, the individual(~~s~~), or the person upon behalf of which the individual(~~s~~) acted, executed the instrument.

  
Notary Public, State of New York


STACIA SMITH-BRIGADIER  
Notary Public, State of New York  
No. 4760401  
Qualified in Albany County  
Commission Expires 3/31/14



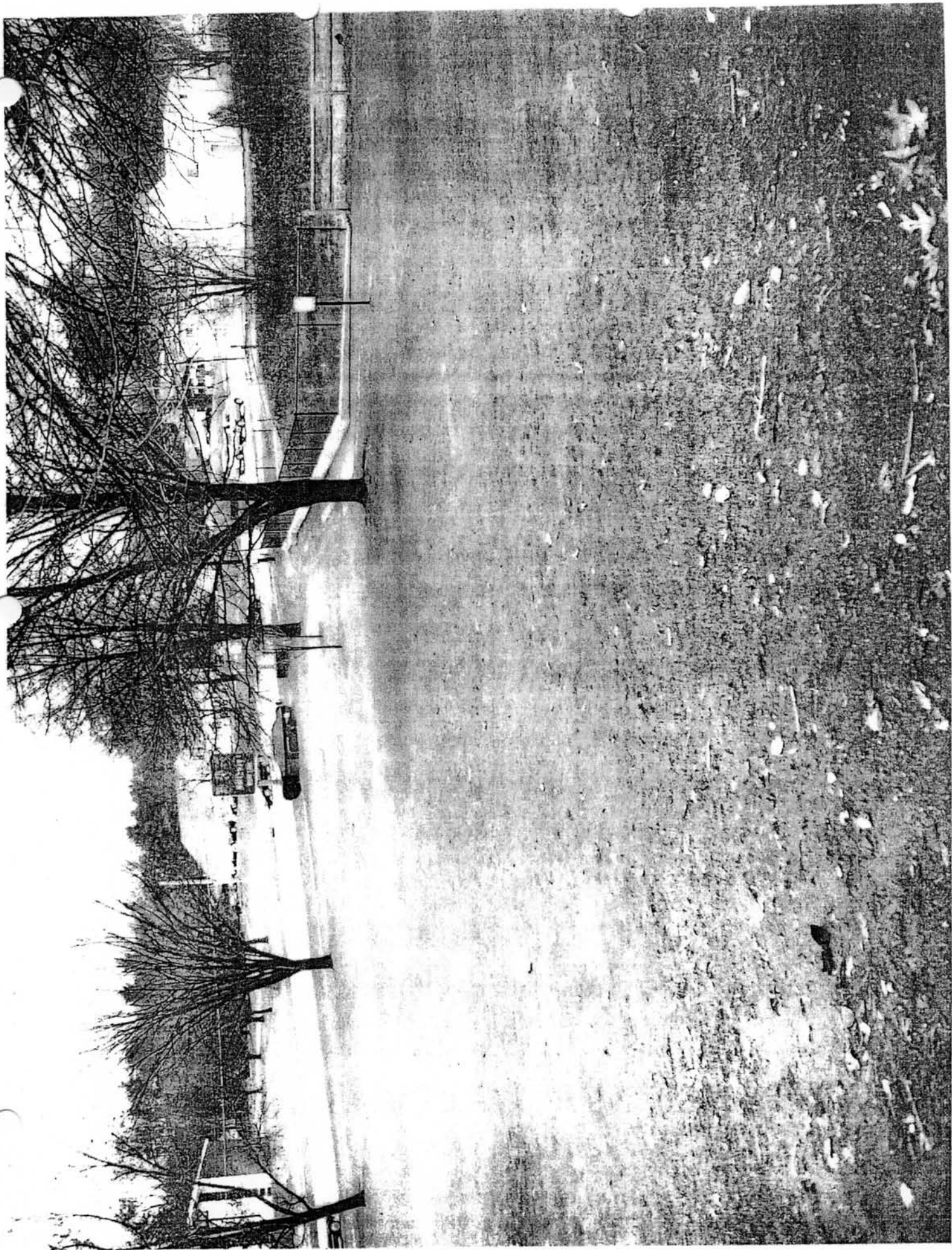
Financial Audit Certification

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complied, in all material respects with the applicable laws,  
regulations, project agreement terms and program/project  
guidelines that relate to the grant including the issuance of  
bonds, receipt of donations and matching of funds.  
I also assert that all required documentation is on file and will  
be available for audit upon request for a period of six years  
from the ending date on the contract; and that the expenditures  
on the attached detailed summary are true and correct.

3/15/2011  
Date

  
Signature

Kenneth D. Runion  
Town Supervisor



22













## Legal Description of the Subject Property

The subject property is located at 1515 Western Avenue in a neighborhood commonly known as "McKownville" in the town of Guilderland, Albany County, New York State and is identified as Tax Map No.52.04-2-4.

The subject property consists of 8.4 +/- acres of land per public records.

### Tax Map:

