



# The City of Massillon, Ohio

Francis H. Cicchinelli, Jr., *Mayor*  
330.830.1700

Michael J. Loudiana  
Dir. of Public Safety & Service  
330.830.1702

## Engineering Department

Keith A. Dylewski, P.E.

City Engineer

Phone: 330.830.1722 • Fax: 330.830.1786

April 14, 2008

Ohio Department of Natural Resources  
2045 Morse Road – Bldg. C-4  
Columbus, Ohio 43229  
ATTN: Mr. Param Johar

RE: Massillon Nature Preserve  
LWCF - #39-01299

Mr. Johar:

We are in receipt of your letter dated March 19, 2008 regarding the above referenced project and offer the following responses:

- 1) The gas well locations along with a square footage area of their coverage have been shown on the attached map. There are no enclosures around said gas wells.
- 2) All highlighted easement documents are attached and are shown on the attached map. Also attached as requested is the agreement with the Ohio Public Works Commission. Please see the following explanations regarding the ingress and egress easements.
  - a. **Easement for driveway purposes, Volume 1257, Page 588;**  
As stated in the easement document this easement was granted for the driveway that runs in a north south direction along the easterly property line of outlot 1036.

**b. Easement for ingress and egress Imaging Number 97031310;**

This easement was granted to Mr. Cottrill by the City of Massillon for the purposes of Mr. Cottrill having access to his land by crossing over outlot 799 which is owned by the City of Massillon. Said outlot 799 serves as a biking and walking trail. The City of Massillon purchased the former railroad property in 1997 and granted the easement to allow Mr. Cottrill to access his property on the south side of the walking/biking trail. Since Mr. Cottrill no longer owns the property the easement no longer affects the property.

**c. Easement for Imaging Number 98000290;**

Mr. Cottrill purchased a 6-acre tract of land from Mrs. Skipper in June 1997. This land is shown on the attached map as the flag-shaped parcel on the east and south sides of the property. However, Mrs. Skipper retained ownership of the remaining acreage and the buildings. By selling this land Mrs. Skipper effectively cut off her legal frontage from Skyland Ave. Therefore, it was necessary to obtain an easement from Mr. Cottrill to allow her legal access to the buildings. After her death in 2003 the remaining acreage was also transferred to Mr. Cottrill and subsequently to the City of Massillon. At the time of annexation in 2006, both parcels were combined into Out Lot 1036, eliminating the need for this easement.

If you have any questions or need any additional information please contact my office at (330) 830-1722.

Sincerely,



KEITH A. DYLEWSKI, P.E.  
CITY ENGINEER

FOR AND IN CONSIDERATION OF ONE AND NO/00 R/W # 399  
Dollars per lineal rod for each rod of line pipe laid on the premises herein described  
to be paid when said pipeline is laid, H. Mae Skipper a widow

VOL 4256 PAGE 721

herein called Grantor, do(es) hereby give, grant, bargain, sell and convey unto The  
Canton Oil & Gas Company, a Division of Helden & Blake Corporation, an Ohio corporation,  
of 7555 Freedom Avenue, N.W., North Canton, Ohio 44720, herein called Grantee, its suc-  
cessors and assigns, the right-of-way to lay, operate, maintain, repair, relocate and  
remove a pipeline, with the right to change the size of and/or relay such line pipe at  
any time, with drips, valves and other necessary appurtenances thereto for the transpor-  
tation of petroleum, natural gas and their constituents on, over, through and across the  
lands of the Grantor, with the right of ingress and egress to and from such pipeline,  
such lands of the Grantor being described as follows, to wit:

Situated in Lot -, Section 3, Tuscarawas Township, Stark  
County, State of Ohio, bounded substantially as follows, to wit:

- On the North by lands of SMELL TRACTS - R & G MARKS
- On the East by lands of SKYLAND AVE - BORDER - GALE - DRAGE - KEAYAD
- On the South by lands of SECTION LINE - JOSEPH
- On the West by lands of JOSEPH - E. BLICK

The Grantor shall fully use and enjoy the above described premises except for  
the purposes herein granted to the Grantee. The Grantee hereby agrees to pay the Grantor  
for damages which might arise to crops, buildings, drain tile and fences in the laying,  
maintaining, repairing, changing, relocating and removing such pipeline. If said damages  
cannot be mutually agreed upon, the same shall be ascertained and determined by three  
disinterested persons, one appointed by the Grantor, one by the Grantee and the third by  
the two so appointed. The award of such three persons shall be final and conclusive.

All payments hereunder shall be made by the Grantee to the Grantor by check,  
money order, draft or cash, payable and mailed or delivered to:

H. Mae Skipper 2069 Skyland NW Massillon, Ohio 44696  
who is hereby authorized to receive and receipt for the same.

It is understood that this grant contains and expresses all the agreements and  
obligations of the parties hereto and no covenant, agreement or obligation not expressed  
herein shall be imposed upon the parties hereto, their heirs, successors and assigns.  
This grant shall be binding upon the Grantor and Grantee, their heirs, successors and  
assigns.

The within right-of-way written in the singular "pipeline" shall be construed  
to mean the plural "pipelines" and the roddage amount shall be for all pipelines laid  
and not for each pipeline laid.

IN WITNESS WHEREOF, the Grantor has hereunto set her signature (s) this  
13<sup>th</sup> day of May, 1980.

Signed and acknowledged  
in the presence of:

Candace J. Hoover  
Robert E. Allen

H. Mae Skipper

TRANSFER  
NOT NECESSARY  
JUN 02 1980  
WILLIAM B. BOWMAN  
AUDITOR STARK COUNTY  
Deputy

IN COMPLIANCE  
WITH ORC 319.202  
JUN 2 1980  
WILLIAM B. BOWMAN  
STARK COUNTY AUDITOR  
EXP. FEE/DEPT. DEPUTY

STATE OF Ohio : COUNTY OF Stark : SS: BEFORE ME, a Notary Public in and  
for said County and State, personally appeared the above named

H. Mae Skipper  
acknowledged that she did sign the foregoing instrument and that the same is her  
free act and deed.

IN TESTIMONY WHEREOF, I have hereunto set my hand and official seal this 13<sup>th</sup> day of  
May, 1980

ROBERT E. ALLEN  
Notary Public, State of Ohio  
My Commission Expires Jan. 25, 1985

Robert E. Allen 04428  
NOTARY PUBLIC

THIS INSTRUMENT WAS PREPARED  
BY HELDEN & BLAKE CORPORATION

RECEIVED FOR RECORD  
JUN 2 1980  
COUNTY RECORDS  
YONKOS

10794

RECEIVED FOR RECORD  
JUN 2 1980  
COUNTY RECORDS  
YONKOS  
JUN 3 1980  
COUNTY RECORDS  
YONKOS  
PAGE 721  
KINGSTON L. MCGEE  
RECORDED

10794 1ST

A. SKIPPER COMM. #2-3265  
PROGRAM 89-M

021504

CONSOLIDATION OF OIL AND GAS LEASES

KNOW ALL MEN BY THESE PRESENTS: That BELDEN & BLAKE CORPORATION, an Ohio corporation of 7555 Freedom Avenue, N.W., North Canton, Ohio 44720, the owner and holder of the Lessee's interest in the oil and gas leases hereinafter described, does hereby elect, as each of said leases provides, to consolidate, dedicate, and form an oil and gas development unit of 40 acres in Tuscarawas Township, Stark County, Ohio, which leases, as recorded, are incorporated herein by reference as though fully rewritten, said unit and leases further described in Exhibit A attached hereto and made a part hereof.

In accordance with the terms and conditions of each of such leases, the 1/8th royalty as therein provided shall be owned by the Lessors in the percentages herein provided, and any monies payable for such 1/8th royalty interest shall be distributed to the following named persons in the following percentages:

|   |  |            |
|---|--|------------|
| A. Mae Skipper                            | RD #2, 2069 Skyland Avenue NW<br>Massillon, OH 44646 | 88.750000% |
| Richard H. Smeyres and<br>Mary E. Smeyres | 1899 Skyland Avenue NW<br>Massillon, OH 44646        | 11.250000% |

Under the terms and conditions of each of such leases, the lands herein consolidated shall be considered a single tract of land for the purpose of drilling, and a well commenced upon any of the lands herein consolidated shall have the same effect as though such well was commenced upon each of the leases and lands hereinabove described.

IN WITNESS WHEREOF, the Lessee has hereunto set its hand by its Officers being thereunto duly authorized this 29th day of December, 1989.

Signed and acknowledged  
in the presence of:

Dena J. Vitale  
Richard H. Smeyres  
Dena J. Vitale  
Richard H. Smeyres

BELDEN & BLAKE CORPORATION

By: H.S. Belden  
Henry S. Belden, IV,  
Chief Executive Officer

By: J.M. Vitale  
Joseph M. Vitale,  
Assistant Secretary

|        |   |
|--------|---|
| INDEX  | 1 |
| DESCR  |   |
| C-REF  | 2 |
| COMP'D | m |

STATE OF OHIO )  
COUNTY OF STARK ) SS:

Before me, a Notary Public in and for said County and State, personally appeared the above named Henry S. Belden IV and Joseph M. Vitale, Chief Executive Officer and Assistant Secretary, respectively, who acknowledged that they did sign the foregoing instrument for and on behalf of Belden & Blake Corporation, and that the same is their free act and deed and the free act and deed of said Corporation.

IN TESTIMONY WHEREOF, I have hereunto set my hand and official seal at North Canton, Ohio, this 29th day of December, 1989.

Nancy W. McLaughlin  
Notary Public

NANCY McLAUGHLIN  
NOTARY PUBLIC, STATE OF OHIO  
MY COMMISSION EXPIRES MAY 3, 1992

RECORDED THIS DATE  
JANET WEIR CREIGHTON  
STARK COUNTY RECORDER

This instrument prepared by:  
BELDEN & BLAKE CORPORATION

90 JUN 19 AM 10:52

FEE 13.00  
3.00 (2) 17.00

A. SKIPPER COMM. #2-3265

## EXHIBIT A-1

L #5665 That portion of that certain oil and gas lease from A. Mae Skipper, a widow, dated September 24, 1963, and recorded in Volume 131, Page 91, covering 84 acres of land, more or less, described as follows:

Known as and being part of the Southeast Quarter of Section 3, Township 12 North (Tuscarawas), Range 10 West in Stark County, Ohio, covering 35.5 acres of land, more or less, insofar and only insofar as said portion of said oil and gas lease covers all oil and gas produced from the premises from the surface down to and including the Clinton Sand formation or the stratigraphic equivalent thereto, more fully described by the plat attached hereto and made a part hereof and marked Exhibit A-2.

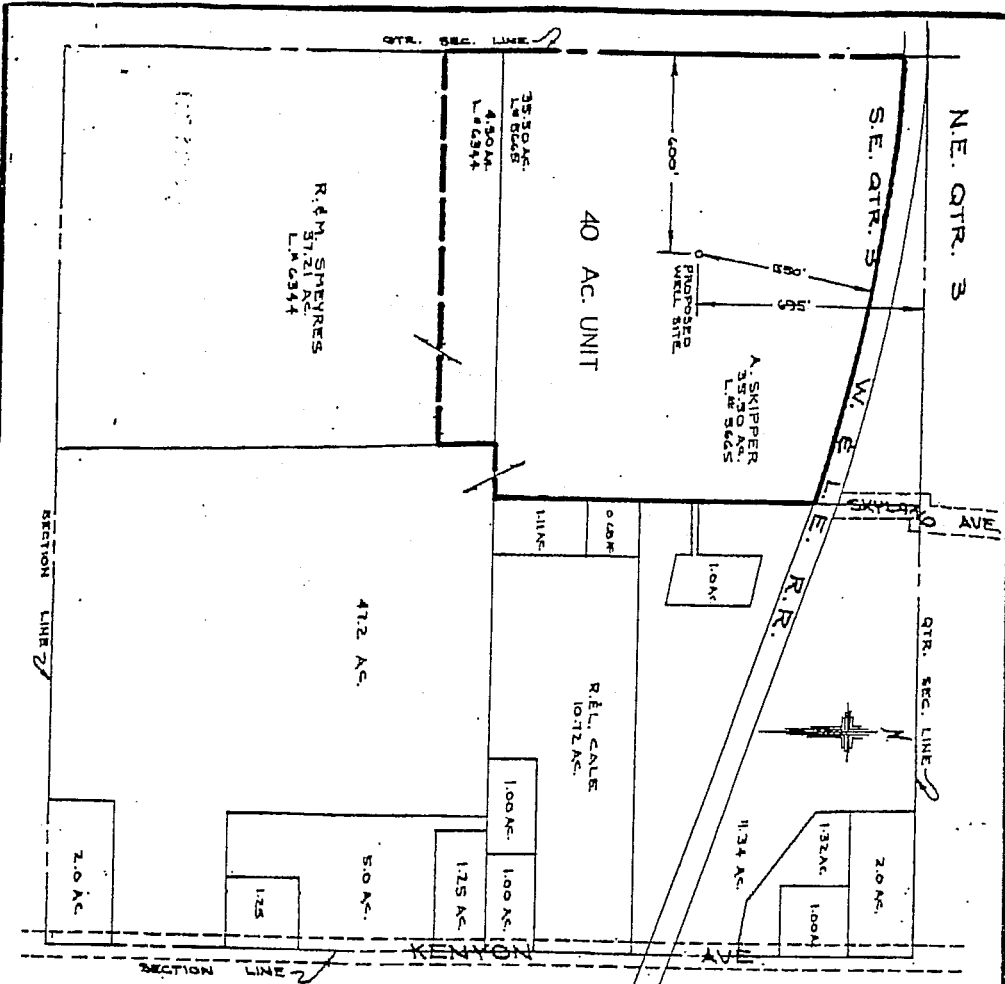
L #6344 That portion of that certain oil and gas lease from Cecil J. Joseph, single, dated May 2, 1966, and recorded in Volume 138, Page 1, covering 67 acres of land, more or less, described as follows:

Known as and being part of the Southeast Quarter of Section 3, Township 12 North (Tuscarawas), Range 10 West in Stark County, Ohio, covering 4.5 acres of land, more or less, insofar and only insofar as said portion of said oil and gas lease covers all oil and gas produced from the premises from the surface down to and including the Clinton Sand formation or the stratigraphic equivalent thereto, more fully described by the plat attached hereto and made a part hereof and marked Exhibit A-2.

This drilling unit containing 40 acres of land, more or less, to be conveyed hereunder.

EXHIBIT A-2

A. SKIPPER COMMUNITY WELL No. 2 - 3265



PLAT OF A PART OF THE S.E. QTR. OF SEC. 3, T.12N., (TUSCARAWAS), R.10W., STARK CO., OHIO.

PROPOSED WELL TO BE DRILLED BY BELDEN & BLAKE AND COMPANY LIMITED PARTNERSHIP NO.

I HEREBY CERTIFY THAT ALL DRILLING OR PRODUCING WELLS WITHIN 1000 FEET AND ALL BUILDINGS AND STREAMS WITHIN 150 FEET HAVE BEEN SHOWN, THERE ARE NO DRILLING UNIT LINES NEARER THAN 500 FEET, THAT THIS PLAT IS TRUE AND CORRECT AND WAS PREPARED ACCORDING TO THE CURRENT STATE OF OHIO, DEPARTMENT OF NATURAL RESOURCES, DIVISION OF OIL AND GAS REGULATIONS.

JAY T. DUNLAP - REG. SUR. #6250

COUNTY-STARK STATE-OHIO. SIGNED AND ACKNOWLEDGED BEROH HE, A NOTARY PUBLIC THIS 20TH DAY OF SEPT. 1989

ROBERT F. BECKLE NOTARY PUBLIC  
 Notary Public, State of Ohio  
 1007 Station Square, S.W. 10th  
 Cleveland, Ohio 44115

SCALE: 1" = 400' 1-09/21/89  
 GROUND ELEVATION = 1035

LANDOWNER:  
 SURFACE: A. SKIPPER  
 MINERALS: A. SKIPPER

OHIO CO-ORDINATE SYSTEM  
 X = 2,252,000 ; Y = 419,125  
 N.W. QTR. MASSILLON C. D.

#423868---\$2.00 I.R.S. \$4.50

C.S. MILLER, et al

To

DOYLE R. SKIPPER  
A. MAE SKIPPER

WARRANTY DEED.

Know all Men by these Presents, That C.S. Miller and Elizabeth Miller, husband and wife, Nan E. Ressler, Widow, Clara B. Miller, Single Ada M. Groff and B. W. Groff, wife and husband, Alice Shepler and Leter H. Shepler, wife

and husband, Helen Miller and S. J. Miller, wife and husband, the Grantors, for the consideration of One Dollar and other good and valuable consideration (\$1.00) received to their full satisfaction of Doyle R. Skipper and A. Mae Skipper, the Grantees, do Give, Grant, Bargain, Sell and Convey unto the said Grantee, their heirs and assigns, the following described premises, situated in the Township of Tuscarawas, County of Stark and State of Ohio:

FIRST TRACT:- Being a part of the Southeast Quarter os Section No. Three (3), Tuscarawas Township, and being bounded and described as follows: Beginning at the Northwest corner of said Quarter Section and running thence Eastward along the Quarter Section Line One Thousand Three Hundred Eighty-five (1385.0) feet; thence Southward One Thousand Three Hundred Nineteen and five-tenths (1319.5) feet to a point which is One Thousand Three Hundred Sixty-one and six-tenths (1361.6) feet West of the Section Line; thence Westward One Thousand Three Hundred Sixty (1360.0) feet, and thence Northward One Thousand Two Hundred Ninety-five (1295.0) feet to the place of beginning, containing Forty-one (41.0) Acres.

Excepting Two and five-tenths (2.5) Acres owned by The Wheeling & Lake Erie Railway Company, leaving Thirty-eight and five-tenths (38.5) acres.

SECTOND TRACT:- Being a part of the Southeast Quarter of Section No. Three (3), Tuscarawas Township, and being bounded and described as follows: Beginning at the Southeast corner of said Quarter Section and running thence Westward along the Section Line One Thousand Four Hundred Ninety-five (1495.0) feet; thence Northward One Thousand Three Hundred Forty-five and seven-tenths (1345.7) feet to a point; thence Eastward One Thousand Five Hundred Sixty-three (1563.0) feet to the Section line, and thence Southward along the Section Line One Thousand Three Hundred Forty-five (1345.0) feet to the place of beginning, containing Forty-seven and two-tenths (47.2) Acres.

TOGETHER with the use for lane purposes of a strip of land which was and now is used in connection with the premises above described and which extends in a north and south direction and is contiguous to the entire west side of a tract of land now owned or heretofore owned by Thomas Tripp. be the same more or less, but subject to all legal highways.

To Have and to Hold the above granted and bargained premises, with the appurtenances thereof, unto the said Grantee, their heirs and assigns forever.

And we, C. S. Miller, Elizabeth Miller, Nan E. Ressler, Clara B. Miller, Ada M. Groff, B. W. Groff, Alice Shepler, Lester H. Shepler, Helen Miller and S. J. Miller, the said Grantor do for ourselves and our heirs, executors and administrators, covenant with the said Grantee, their heirs and assigns, that at and until the unsealing of the presents, we are well seized of the above described premises, as a good and indefeasible estate in FEE SIMPLE, and have good right to bargain and sell the same in manner and form as above written, and that the same are free from all incumbrances whatsoever SAVE AND EXCEPT certain right of way agreement in favor of The East Ohio Gas Company recorded in Vol. 423, Page 46, and a certain oil and gas lease in favor of The East Ohio Company.

and that We will Warrant and Defend said premises, with the appurtenances thereunto belonging, to the said Grantee, their heirs and assigns, against all lawful claims and demands whatsoever except as noted above.

And for valuable consideration ..... do hereby remise, release and forever quit-claim unto the said Grantee, ..... heirs and assigns, all....., right and expectancy of Dower in the above described premises.



In Witness Whereof, We have hereunto set our hands, the 23rd day of October, in the year of our Lord one thousand nine hundred and thirty-nine.

Signed and acknowledged in presence of

Charles W. Myers  
Sherlock H. Evans  
Clara E. Gabriel ) Witnesses to  
Donna E. Drummer ) signature of Alice  
Shepler & Lester H. Shepler

C. S. Miller  
Elizabeth Miller  
Nan E. Ressler  
Clara B. Miller  
Ada M. Groff  
B.W. Groff  
Alice Shepler  
Lester H. Shipler

State of Ohio, Stark County, ss. Before me, a Notary Public in and for said County and State, personally appeared the above named C.S. Miller and Elizabeth Miller, husband and wife, Nan E. Ressler, Widow, Clara B. Miller, Single, Ada M. Groff and B. W. Groff, wife and husband, who acknowledged that they did sign the foregoing instrument and that the same is their free act and deed. In Testimony Whereof, I have hereunto set my hand and official seal, at Massillon, Ohio, this 23 day of October, A.D. 1939.

Sherlock H. Evans (Seal)  
Notary Public  
SHERLOCK H. EVANS  
Clerk of Court  
Stark County, Massillon, Ohio.  
My Commission Expires Dec. 31, 1939

In Witness Whereof we have hereunto set our hands the 27th day of October, in the year of our Lord one thousand nine hundred and thirty-nine.

Signed and acknowledged in the presence of

John D. Donnet  
Marion W. Donnet

S. J. Miller  
Helen M. Miller

STATE OF MARYLAND, CITY OF BALTIMORE, SS. Before me, a Notary Public, in and for said City and state, personally appeared the above named S. J. Miller and Helen M. Miller, husband and wife, who acknowledged that they did sign the foregoing instrument and that the same is their free act and deed, and I hereby certify that on this 27th day of October, in the year Nineteen Hundred Thirty-nine, before the subscriber, a Notary Public, personally appeared S. J. Miller and Helen Miller, his wife, and that each acknowledged the foregoing deed to be their respective act.

In Testimony Whereof, I have hereunto set my hand and official seal at Baltimore, Maryland, this 27th day of October, A.D. 1939.

John Donnet (Seal)  
NOTARY PUBLIC  
John Donnet

STATE OF OHIO COUNTY OF LUCAS SS. Before me, a Notary Public, in and for said county and state, personally appeared the above named Alice Mary Shepler and Lester H. Shepler, wife and husband, who acknowledged that they did sign the foregoing instrument and that the same is their free act and deed.

IN TESTIMONY WHEREOF, I have hereunto set my hand and official seal at Toledo, Ohio, this 30th day of October, A.D. 1939

Donna E. Drummer (Seal)  
NOTARY PUBLIC  
DONNA E. DRUMMER  
Notary Public, Lucas County, Ohio  
My Commission Expires Dec. 21, 1939

Received for Record Dec. 14, 1939

At 3:55 P.M.

Recorded Dec. 29, 1939

Frank J. Shisler---Recorder

Transferred Dec. 14, 1939

HK MF

RECORDED THIS DATE  
JANE VIGNOS  
STARK COUNTY RECORDER

97 JUN -9 AM 11: 35

FEE 22.00

97031310

EASEMENT

KNOW ALL MEN BY THESE PRESENTS, that **The City of Massillon, Ohio**, an Ohio Municipal Corporation, hereinafter referred to as s"Grantor" for the sum of One Dollar and other valuable consideration (\$1.00 + O.R.V.) paid by **Daniel D. Cottrill, Jr.**, unmarried, hereinafter referred to as "Grantee", does hereby grant and convey unto Grantee, his heirs and assigns forever, a non-exclusive easement and right of way upon a 0.049 acre tract, situated in the Township of Tuscarawas, County of Stark and State of Ohio. Said easement area is specifically depicted on the survey prepared by Ronald L. Smith, Professional Land Surveyor, dba. Ron Smith Surveying, dated 2-20-97, which is attached hereto as "EXHIBIT A", and specifically incorporated herein, by reference.

SUBJECT to the conditions as follows:

- 1) Use for ingress and egress only
- 2) Non-exclusive easement rights
- 3) For residential purposes only
- 4) Trail users to have the right-of-way
- 5) Maintenance shall be at the sole responsibility of the Grantee, shall be solely at the Grantees cost and be pre-approved by the Grantor.

The easement and right of way is for the benefit of the said Grantee, his heirs and assigns forever, as an easement in gross, and shall be deemed to run with the land. TO HAVE AND TO HOLD unto said Grantee, his heirs and assigns forever, the easement and right of way as an easement in gross, for the use and benefit of Grantee, his heirs, assigns, agents, employees, tenants, visitors, licensees, and all persons using the same for the benefit of the Grantee to freely pass and repass on foot or with vehicles for all lawful purposes incident and proper to the enjoyment of Grantee's easement.

It is further agreed that the Grantor shall not obstruct or permit obstruction of said easement and right of way in any manner whatsoever.

Grantee shall not make any improvements within said easement without approval of Grantor. Any improvements made by Grantee shall be at Grantee's sole expense. The Grantee shall remove, relocate or reconstruct any improvements made by Grantee, at Grantee's expense as deemed necessary by Grantor for public purposes.

The conveyances and covenants contained herein shall be binding upon and shall inure to the benefit of the heirs, successors and assigns of the parties hereto.

|             |                    |
|-------------|--------------------|
| INDEX       |                    |
| DESCRIPTION | <i>[Signature]</i> |
| CROSS REF   |                    |

97006656

72-06189 35E (3)18

STATE OF OHIO, COUNTY OF STARK, SS:

The foregoing instrument was acknowledged before me this 6 day of June, 1997, by Daniel D. Cottrill, Jr., unmarried.

*M. R. Percival*

Notary Public

*My Commission has  
no expiration date*

This instrument was prepared by: Mark R. Percival, Attorney at Law

JANET WEIR CREIGHTON  
Stark County Auditor

FEE *Cipf*

JUN 09 1997

~~TRANSFERRED~~  
~~TRANSFER NOT NECESSARY~~

DEPUTY *J. Fullen*  
IN COMPLIANCE WITH ORC 319:202

IN WITNESS WHEREOF, the Grantor and Grantee have hereunto set their hands, this 6  
day of June, 1997.

SIGNED & ACKNOWLEDGED  
IN THE PRESENCE OF:

Mary Ann Coyne

(PRINT NAME) Mary Ann Coyne

Mary Lou Reed

(PRINT NAME) Mary Lou Reed

Mark R. Percival

(PRINT NAME) Mark R. Percival

Diane M. Kane

(PRINT NAME) Diane M. Kane

STATE OF OHIO, COUNTY OF STARK, SS:

The foregoing instrument was acknowledged before me this 6<sup>th</sup> day of June,  
by Francis H. Cicchinelli, Jr., Mayor, and by Alan W. Climer, Safety Service Director of  
The City of Massillon, Ohio, an Ohio Municipal Corporation, on behalf of the corporation.

GRANTOR:

THE CITY OF MASSILLON, OHIO

by: Francis H. Cicchinelli, Jr.  
Francis H. Cicchinelli,  
Jr., its Mayor

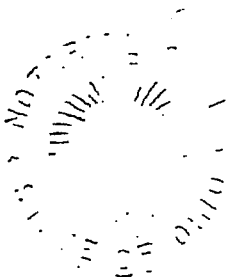
by: Alan W. Climer  
Alan W. Climer, its  
Safety Service Director

GRANTEE:

Daniel D. Cottrill, Jr.  
Daniel D. Cottrill, Jr.

Mary Ann Coyne  
Notary Public

MARY ANN COYNE  
Notary Public, State of Ohio  
My Comm Expires 4-13-2000



**DESCRIPTION OF A 0.049 ACRE TRACT  
INGRESS-EGRESS EASEMENT  
FOR**

**DANIEL D. COTTRILL, JR.**

*Situated in the Township of Tuscarawas, the County of Stark and the State of Ohio.*

*Being a part of the Southeast Quarter of the Section 3 in Township 1, R-10 and also being a part of a 2.22 acre tract conveyed to the City of Massillon by deed in Volume 998, Page 464 of the Stark County Deed Records and being more fully described as follows:*

*Beginning at an iron pin set in the south line of said 2.22 acre tract, said point being in the east line of a 38.5 acre tract conveyed to A. Mae Skipper (2568-519), said point also being the northeast corner of a 6.069 acre tract to be conveyed to Daniel D. Cottrill, Jr. and being located the following three (3) courses from the northeast corner of the southeast quarter of Section 3:*

- 1) South 03 deg. 25 min. 05 sec. West, 1307.15 feet along said quarter section line to a point;*
- 2) North 86 deg. 34 min. 15 sec. West, 1358.64 feet to an iron pin found at the southeast corner of said 6.069 acre tract;*
- 3) North 03 deg. 38 min. 40 sec. East, 1005.21 feet along the east line of said 6.069 acre tract to an iron pin set;*

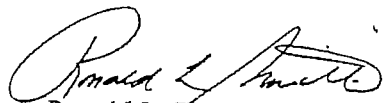
*Thence from this "TRUE PLACE OF BEGINNING" with the south line of said 2.22 acre tract and the north line of said 6.069 acre tract, North 64 deg. 20 min. 40 sec. West, 32.36 feet to an iron pin set at the northwest corner of said 6.069 acre tract;*

*Thence leaving said south line, North 03 deg. 38 min. 40 sec. East, 71.19 feet to an iron pin set in the north line of said 2.22 acre tract at the southwest corner of a 0.039 acre tract also being conveyed to Daniel D. Cottrill, Jr.;*

*Thence with said north line, South 64 deg. 20 min. 40 sec. East, 32.36 feet to an iron pin set in the east line of said 38.5 acre tract at the southeast corner of said 0.039 acre tract;*

*Thence leaving said north line, South 03 deg. 38 min. 40 sec. West, 71.19 feet to the "TRUE PLACE OF BEGINNING" containing 0.049 acres of land, more or less, but subject to all legal highways, rights of way, easements and leases of record.*

*Survey and description by Ronald L. Smith, Registration No. 5324. All iron pins set were 5/8" by 30" with a cap stamped Ron Smith 5324. Bearings were oriented to the 1.11 acre tract (3402-399).*



Ronald L. Smith 2/20/97  
Professional Land Surveyor  
**RON SMITH SURVEYING**  
4180 Murray Road NW  
Dover, Ohio 44622

EASEMENT

KNOWN ALL MEN BY THESE PRESENTS, that Daniel D. Cottrill, Jr., unmarried, hereinafter referred to as "Grantor" for the sum of One Dollar and other valuable consideration (\$1.00 + O.V.C.) paid by A. Mae Skipper, hereinafter referred to as "Grantee", does hereby grant and convey unto Grantee, her heirs and assigns forever, an easement for ingress and egress over property conveyed by A. Mae Skipper to Daniel D. Cottrill, Jr. by instrument recorded in Stark County Imaging #97031310 and will be limited to the area where the present driveway of A. Mae Skipper passes over the property of Daniel D. Cottrill, Jr.

IN WITNESS WHEREOF, the Grantor has hereunto set his hand, this 12<sup>th</sup> day of June, 1997.

SIGNED & ACKNOWLEDGED  
IN THE PRESENCE OF:

Doris M. Lower  
Doris M. Lower

Daniel D Cottrill Jr  
Daniel D. Cottrill, Jr. - Grantor

|             |    |
|-------------|----|
| INDEX       | 6  |
| DESCRIPTION |    |
| CROSS REF   | BC |

STATE OF OHIO, STARK COUNTY, SS:

The foregoing instrument was acknowledged before me this 12<sup>th</sup> day of June, 1997, by Daniel D. Cottrill, Jr., unmarried.

Doris M. Lower  
NOTARY PUBLIC  
DORIS M. LOWER S  
NOTARY PUBLIC  
STATE OF OHIO  
MY COMMISSION EXPIRES DEC 26, 2001

This instrument was prepared by: Mark R. Percival, Attorney at Law  
JANET WEIR CREIGHTON  
Stark County Auditor  
FEE EX P

JAN 05 1998

~~TRANSFERRED~~  
~~TRANSFER NOT NECESSARY~~  
DEPUTY [Signature]  
IN COMPLIANCE WITH ORC 319.202

98 JAN 15 AM 10:28  
16.000 FM  
2.00  
19.00  
STARK COUNTY RECORDER

61  
35 E (3) 11.1  
72-06318



# The Ohio Public Works Commission

65 East State Street, Suite 312, Columbus, Ohio 43215-4213

## Commissioners

Chair -  
Joseph B. Williams

John L. Frola, Jr  
Blair A. Hillyer  
Todd Ketchner  
Merlin "Boots" Sheets  
William N. Morgan  
James W. Sumner

## Director

W. Laurence Bicking

06/01/2007

Kern Kaminski  
Director of Parks And Recreation  
The City of Massillon  
505 Erie Street North  
Massillon, OH 44646

Subdivision Code : 151-48244

Dear Mr. Kaminski,

SUBJECT: Notification of Project Approval  
Project No.: CSDAB  
Project Name: Massillon Nature Preserve

The City of Massillon's request for financial assistance from the Ohio Public Works Commission has been approved for the project entitled Massillon Nature Preserve in the amount of \$ 250,000.

This Grant has been assigned project number CSDAB. Please use this number when calling or writing this office.

The project's Chief Executive Officer, **Hon. Francis Cicchinelli, Jr.**, has received copies of the Project Agreement for review, execution, and return to this office. The Project Agreement details the local responsibilities associated with your acceptance of this financial assistance. Enclosed is an unsigned reference copy of the Project Agreement for your records. You must not move forward with this project until you have confirmed that these agreements have been executed and one copy has been returned to the Commission.

As the Project Manager, you will need to access the Commission's web site to down-load your Project Manager's Packet. Our web site is located at [www.pwc.state.oh.us](http://www.pwc.state.oh.us). Once there, click on the link "Clean Ohio Program" and then click on the link "Project Managers Page". As Project Manager, you will be responsible for seeing that the local responsibilities are met. The following project materials will assist you in managing the project:

- 1) **Appendix E Instructions** - Instructions detailing the proper completion of the Appendix E form for disbursement of OPWC funds.
- 2) **EEO Packet** - Details on how to comply with the State's EEO requirements.
- 3) **In-Kind Time Reporting Form and Instructions** - a reporting form and instructions for reporting/reimbursement of in-kind equipment and personnel costs.
- 4) **ODOT Equipment Rates** - used for reporting in-kind contributions by the Recipient.
- 5) **Request to Proceed Instructions and Form** - this will be a frequently used document by the Recipient.

- 6) **Real Estate Purchase Contract** - a sample real estate purchase contract which may be used by the Recipient for land purchases. The Recipient may elect to use this version or some other version drafted by legal counsel. **A purchase contract must be submitted with the Request to Proceed.**
- 7) **Selecting Title Insurance Companies in Ohio** - a narrative on how to select a title insurance company for your project.
- 8) **Deed Restriction Language** - sample deed restriction language. Recipient should at a minimum include this language. Additional language may be added at the discretion of the recipient.
- 9) **Pre-Closing Disbursement Process** - a flow chart describing the pre-closing disbursement option.

Your local share of this project will be the percentage of actual costs approved by the Commission based on the Participation Percentages as defined in Appendix D of the agreement.

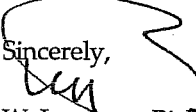
To facilitate timely payments, your contractors for this project are encouraged to enroll in the Auditor of State's Electronic Fund Transfer (EFT) Program. Once enrolled, all disbursements made by us will be completed electronically from the Auditor of State to your contractor's bank account. This procedure replaces mailing warrants and reduces payment processing time by at least two to three business days. To apply for EFT please call the EFT Division at (800) 282-0370, at the Auditor of State's office if you have any questions.

For those projects that plan to use Commission funds for land acquisition, please refer to Section 5 and Appendix F of the Project Agreement for details on disbursement procedures. There are basically two options by which a Recipient may request funds for land acquisition. There is a "Pre-Closing Option" and a "Reimbursement Option". For those Recipients that elect to use the "Pre-Closing Option", the grant recipient must select a Title Insurance Company to serve as an escrow agent. A standardized "Escrow Agreement" is provided in Appendix F. Appendix F is executed between the Recipient, the Ohio Public Works Commission, and the Escrow Agent. A signed Appendix F must be submitted with the Request to Proceed if the recipient elects to use the "Pre-Closing Option". If you elect to use the "Pre-Closing Option", please submit your disbursement request to the OPWC at least 30 days prior to your scheduled closing date.

**We will not make a disbursement to any vendor or contractor unless you have notified us of their status as an authorized vendor or contractor through the submission of a "Request to Proceed" in advance of your disbursement request.**

Please be advised that for projects that are \$5,000 and over, Section 4733.17 of the Ohio Revised Code requires that no political subdivision of the State of Ohio shall engage in the acquisition or construction of any public work involving the practice of professional engineering or professional surveying, for which plans, specifications, and estimates have not been made by, **and the construction thereof inspected by,** a licensed professional engineer or professional surveyor.

Please examine the enclosed materials carefully. Should you have any questions please do not hesitate to call your OPWC Program Representative, **Melvin Gravely**, at 614/752-8118. If you are not able to obtain web access to the Project Managers Page, please call your program representative and a packet will be sent to you.

Sincerely,  
  
W. Laurence Bicking  
Director  
Enclosure



**OHIO PUBLIC WORKS COMMISSION**

**PROJECT GRANT AGREEMENT**

**CLEAN OHIO CONSERVATION FUND**

Pursuant to Ohio Revised Code 164.26, this Project Agreement is entered into this date, **06/01/2007** by and between the State of Ohio, acting by and through the Director of the Ohio Public Works Commission (hereinafter variously referred to as the "Director" or the "OPWC"), located at 65 East State Street, Suite 312, Columbus, Ohio 43215, and **The City of Massillon** (hereinafter referred to as the "Recipient"), located at **Municipal Government Center, One James Duncan Plaza Massillon, OH 44646-**, in respect of the project named **Massillon Nature Preserve**, and as described in Appendix A of this Agreement, (hereinafter referred to as the "Project") to provide an amount not to exceed **Two Hundred Fifty Thousand Dollars (\$ 250,000)** for the sole and express purpose of financing or reimbursing costs of the Project as more fully set forth in this Agreement and the Appendices attached hereto.

Subdivision Code : **151-48244**

OPWC Project Control No. **CSDAB**

WHEREAS, pursuant to Revised Code Section 164.02, the Ohio General Assembly created the Ohio Public Works Commission (the "OPWC");

WHEREAS, pursuant to Revised Code Section 164.27 the Ohio General Assembly created the Clean Ohio Conservation Fund to be administered by the OPWC;

WHEREAS, pursuant to Revised Code Section 164.21 the Ohio General Assembly created natural resources assistance councils for the purpose of approving or disapproving of applications for project grants under Revised Code Sections 164.20 to 164.27;

WHEREAS, pursuant to Section 164.25 of the Revised Code, the Director of the OPWC must approve applications for grants submitted by natural resources assistance councils if all of the following apply: i) the approval of the application by the applicable natural resources assistance council was reasonably based on the criteria specified in the Act; ii) the application for a grant and the proposed project for which the grant is to be used comply with all other requirements of the Act related to natural resources and parks and recreation grants; and; iii) the amount of the financial assistance, when added to all other financial assistance provided during the calendar year for projects within the district for which a natural resources assistance council was appointed, does not exceed the district's allocation of money from the Clean Ohio Conservation Fund pursuant to Revised Code Section 164.27;

WHEREAS, Sections 164.20 to 164.27 of the Revised Code permit a grant of funds for such projects to be expended or provided only after the appropriate natural resource council has submitted the application for such Project funds to the Director and subsequent approval of the application by the Director in accordance with Section 164.25 of the Revised Code;

WHEREAS, the Recipient desires to receive funding for a project eligible for grant funds pursuant to Revised Code Sections 164.20 to 164.27 as described in Appendix A of this Agreement (the "Project");

WHEREAS, the Project described in Appendix A of this Agreement has been duly approved by the Director pursuant to Section 164.25 of the Revised Code;

NOW, THEREFORE, in consideration of the promises and covenants herein contained, the undersigned agree as follows:

**SECTION 1. Definitions and General Provisions.** The following words and terms as hereinafter used in this Agreement shall have the following meanings unless otherwise herein provided and unless the context or use clearly indicates another or different meaning or intent.

"Act" means Chapter 164 of the Revised Code, enacted and amended thereunder,

together with Chapter 164-1 of the Ohio Administrative Code (the "Administrative Code").

"Bond Counsel" means an attorney or firm of attorneys of nationally recognized standing on the subject of municipal bonds satisfactory to the Director.

"Business Day" means a day of the year on which banks located in Columbus, Ohio and in New York, New York are not required or authorized by law to remain closed and on which The New York Stock Exchange is not closed.

"Chief Executive Officer" means the Chief Executive Officer of the Recipient and as designated pursuant to Section 8 hereof or his authorized designee as per written notification to the Director.

"Chief Fiscal Officer" means the Chief Fiscal Officer of the Recipient and as designated pursuant to Section 8 hereof or his authorized designee as per written notification to the Director.

"Closing" means the closing by Recipient of the acquisition of fee simple interest in the Land, or such other interest therein approved by the Director.

"Code" means the Internal Revenue Code of 1986, as amended. Each reference to a section of the Code herein shall be deemed to include the United States Treasury Regulations in effect, whether temporary or final, with respect thereto and applicable to the Infrastructure Bonds or the use of the proceeds thereof.

"Contractor" means a person who has a direct contractual relationship with the Recipient and is (i) the manufacturer of all or a portion of the Project, or (ii) the provider of labor, materials or services in connection with the acquisition, site improvements, construction, reconstruction, expansion, improvement or engineering of the Project, or both.

"Cost of Project" means the costs of acquiring, constructing, reconstructing, expanding, improving and engineering Projects and shall also be deemed to include costs of financing as well as preliminary costs, including but not limited to, planning costs, design costs, engineering costs, costs of appraisals, environmental assessments, and archeological surveys.

"Deed Restrictions" means the deed restrictions to be recorded with respect to the Land, which deed restrictions shall be subject to the Director's approval and shall be commensurate with the nature and purpose of the Land as stated in the Recipient's application for grant funds under Sections 164.20 to 164.27 of the Revised Code. The Deed Restrictions shall be perpetual and shall not be amended, released, extinguished or otherwise modified without the prior written approval of the Director, in the Director's sole discretion, who shall have full enforcement authority, as set forth more specifically in Section 9 of this Agreement.

"Governing Body" means the board of county commissioners or a county council if a county; the legislative authority if a municipal corporation; the board of township trustees if a township; the commission of a soil and water conservation district; the board of trustees of a joint recreation district; the board of park commissioners of a park district; or the entity with

appropriate authority to bind other similar park authorities.

“Land” means the real property required for the Project.

“Local Political Subdivision” means a county, municipal corporation, township, conservancy district, soil and water conservation district, joint recreation district, park district, or other similar park authority.

“Matching Funds” means the amount and nature of the moneys or resources to be used by the Local Political Subdivision or Nonprofit Organization for the Project. Such funds shall constitute not less than twenty five per cent of the total Cost of Project set forth on Appendix D and may consist of money by any person, any Local Political Subdivision, the State of Ohio, or the federal government or of contributions in-kind by such parties through purchase or donation of equipment, land, easements, labor, or materials necessary to complete the Project.

“Natural Resource Assistance Council” means the natural resources assistance council created pursuant to Section 164.21 of the Revised Code as well as its members and officers.

“Nonprofit Organization” means an organization that is exempt from federal income taxation pursuant to Section 501(a) of the Code and described in Section 501(c) of the Code and that has as one of its designated activities, as indicated on United States Internal Revenue Service form 1023 “recognition of exemption”, an activity that is directly related to the purposes for which grants may be issued under Sections 164.20 to 164.27 of the Revised Code as described in divisions (A) and (B) of Section 164.22 of the Revised Code.

“Notice to Proceed” means notice issued from OPWC pursuant to Section 4 of this Agreement.

“OPWC” means the Ohio Public Works Commission created pursuant to Revised Code Section 164.02

“Private Business Use” means use (directly or indirectly) in a trade or business or activity carried on by any Private Person (other than a Nonprofit Organization) other than use as a member of, and on the same basis as, the general public.

“Private Person” means any person, firm, entity or individual who or which is other than a “governmental unit” as that term is used in Sections 141 and 148 of the Code.

“Project” means the project set forth in Appendix A that proposes to do either of the following:

- 1) Provide for open space acquisition and related development of those open spaces, including the acquisition of easements. Open space acquisition projects include acquisition of land or rights in land for parks, forests, wetlands, natural areas that protect an endangered plant or animal population, other natural areas, and connecting corridors for natural areas. Related development projects include projects for the construction or enhancement of facilities that are

necessary to make an open space area accessible and useable by the general public. Projects proposed for open space acquisition and related development must emphasize the following:

- (a) The support of comprehensive open space planning and incorporation of aesthetically pleasing and ecologically informed design;
  - (b) The enhancement of economic development that relies on recreation and ecotourism in areas with relatively high unemployment and lower incomes;
  - (c) The protection of habitat for rare, threatened, and endangered species or the preservation of high quality, viable habitat for plant and animal species;
  - (d) The preservation of existing high quality wetlands or other scarce natural resources within the geographical jurisdiction of a council;
  - (e) The enhancement of educational opportunities and provision of physical links to schools and after-school centers;
  - (f) The preservation or restoration of water quality, natural stream channels, functioning floodplains, wetlands, streamside forests, and other natural features that contribute to the quality of life in Ohio and to the state's natural heritage; projects cannot include hydromodification projects such as dams, dredging, sedimentation, and bank clearing and must not accelerate untreated water runoff or encourage invasive nonnative species;
  - (g) The reduction or elimination of nonnative, invasive species of plants or animals; and
  - (h) The proper management of areas where safe fishing, hunting, and trapping may take place in a manner that will preserve a balanced natural ecosystem.
- (2) Protect and enhance riparian corridors or watersheds, including the protection and enhancement of streams, rivers, lakes, and other waters of the state. Such projects may include the reforestation of land or the planting of vegetation for filtration purposes, the fee simple acquisition of lands for the purpose of providing access to riparian corridors or watersheds or for other purposes necessary for the protection and enhancement of riparian corridors or watersheds, and the acquisition of easements for the purpose of protecting and enhancing riparian corridors or watersheds. Projects for the protection and enhancement of riparian corridors or watersheds must emphasize the following:
- (a) The increase of habitat protection;
  - (b) Inclusion as part of a stream corridor-wide or watershed-wide plan;

- (c) The provision of multiple recreational, economic, and aesthetic preservation benefits;
- (d) The preservation or restoration of floodplain and streamside forest functions;
- (e) The preservation of headwater streams; and
- (f) The restoration and preservation of aquatic biological communities.

Projects cannot initiate or perpetuate hydromodification projects such as dams, ditch improvement, or channelization.

“Project Manager” means the principal employee or agent of the Recipient having administrative authority over the Project and as designated pursuant to Section 8 hereof, or his authorized designee as per written notification to the Director.

“Reimbursing” means the use of funds disbursed to the Recipient, as part of a grant made to the Recipient pursuant to Revised Code Sections 164.20 to 164.27, as reimbursement to the Recipient for costs integral to the completion of the Project that were incurred and paid by it and which did not in any way inflate costs of the Project.

“Request to Proceed” means the written request from Recipient to OPWC submitted pursuant to Section 5 of this Agreement.

“State” means the State of Ohio.

“Title Agent” means a title insurance company or title agent selected by the Recipient and approved by OPWC, which Title Agent shall be duly licensed and in good standing under the laws of the State.

Any reference herein to public boards, commissions, departments, institutions, agencies, bodies or entities shall include those succeeding to their functions, duties or responsibilities by operation of law or who are lawfully performing their functions. Any reference to a section or provision of the Act, or to a section, provision or chapter of the Revised Code shall include such section, provision or chapter as from time to time may have been duly amended, modified, supplemented, or superseded. Words of the masculine or feminine gender shall be deemed and construed to include correlative words of the feminine, masculine and neuter genders. Unless the context shall otherwise indicate, words importing the singular number shall include the plural number, and vice versa. The terms “hereof,” “hereby,” “herein,” “hereto,” “hereunder” and similar terms refer to this Agreement and term “hereafter” means after, and the term “heretofore” means before the effective date of this Agreement.

**SECTION 2. OPWC Financial Assistance.** Subject to the terms and conditions contained herein, the OPWC hereby agrees to provide to the Recipient financial assistance not to

exceed the amount as set forth in Appendix C of this Agreement for the sole and express purpose of paying or reimbursing the costs certified to the OPWC under this Agreement for the completion of the Project described in Appendix A of this Agreement (the "Funds").

SECTION 3. Matching Funds. The Recipient shall, at a minimum, contribute not less than twenty five percent of the total Cost of Project as set forth in Appendix D of this Agreement. The Matching Funds shall be for the sole and express purpose of paying or reimbursing the costs certified to the OPWC under this Agreement for the completion of the Project as defined and described in Appendix A of this Agreement. In the event that the total actual Project costs exceed the estimated Cost of Project identified in Appendix D, OPWC shall not be required to increase the maximum amount of the grant provided herein and the Recipient shall increase its Matching Funds to meet such actual Cost of Project.

SECTION 4. Notice to Proceed - Land Acquisition. The acquisition of the Land shall not occur until the Director has issued a written Notice to Proceed for Land Acquisition to the Recipient (the "Notice to Proceed"). Such Notice to Proceed will not be issued until the Director has received a Request to Proceed acceptable to the Director and is assured that the Recipient has complied with all requirements for the approval of a grant under Sections 164.20 to 164.27 of the Revised Code and any requirements for land acquisition set forth in this Agreement, including, without limitation, OPWC's approval of the proposed Deed Restrictions and Title Agent. The Notice to Proceed also shall specify the time frame for the Closing.

SECTION 5. Land Acquisition Disbursement. To initiate the purchase of the Land, Recipient must first complete and submit a written Request to Proceed to the Director prior to Closing. The Request to Proceed must name the proposed Title Agent and must indicate the amount of Funds requested from OPWC for the Land acquisition, including expected settlement costs, based upon the participation ratio and the amount of funds expected from any Matching Funds. The Request to Proceed must contain, as attachments: (a) a copy of the proposed Deed Restrictions; (b) a copy of the executed purchase agreement with respect to, or such other agreement to convey an interest in, the Land between the Recipient and the Land owner; (c) evidence satisfactory to the Director that Recipient will acquire marketable title to the Land at Closing; and (d) if the Recipient desires to elect the pre-closing option described below, (i) a copy of a signed escrow agreement among Recipient, Title Agent and OPWC, executed by Recipient and Title Agent, substantially in the form of Appendix F of this Agreement (the "Escrow Agreement") and (ii) if the Title Agent is an agent for a title insurance company, rather than a title company itself, a closing protection letter issued by the title insurance company to OPWC.

Funds for acquisition of Land shall be disbursed to the Recipient, as part of a grant to the Recipient pursuant to Revised Code Sections 164.20 through 164.27, pursuant to the pre-closing option and/or the reimbursement option, as described in subsections 5(a) and 5(b), respectively.

(a) Pre-Closing Option. Provided that Recipient satisfies the terms and conditions of this Agreement, Recipient may elect to have Funds delivered by OPWC to the Title Agent prior to Closing, subject to the terms and conditions of this Agreement and the Escrow Agreement.

Recipient shall make such election, if at all, by delivering to OPWC a Disbursement Request Form and Certification in the form of Appendix E to this Agreement (the "Disbursement Request"), which Disbursement Request shall identify the Title Agent as payee and shall be delivered after Recipient's receipt of a Notice to Proceed and not more than sixty (60) days prior to Closing. OPWC shall then deliver to the Title Agent Funds to be disbursed under this Agreement for the acquisition of the Land, which Funds may be held, together with the Matching Funds, in an interest bearing account subject to the terms and conditions of the Escrow Agreement. If such account is interest bearing, the interest that accrues thereon shall be used by Recipient for settlement costs. If the interest paid on such escrow account exceeds the settlement costs to be paid by Recipient, then such funds shall be applied to the Cost of Project. If all of the conditions to the release of Funds set forth in the Escrow Agreement have been satisfied, the Title Agent shall release the escrowed Funds at Closing and apply the same to the Land acquisition costs in accordance herewith and the settlement statement executed and delivered at the Closing. After Closing, Recipient may request additional disbursements of Funds available under this Agreement relating to the acquisition of the Land, including costs incurred in connection with appraisal of the Land, closing costs, title search, environmental assessments and other eligible costs, pursuant to the procedure set forth in Section 5(b) of this Agreement. Within thirty (30) days of Closing, Recipient shall deliver to OPWC, or shall cause the Title Agent to deliver to OPWC, a copy of the recorded Deed Restrictions and deed, or other instrument appropriate for the interest in the Land.

(b) Reimbursement Option. Provided that Recipient satisfies the terms and conditions of this Agreement, Recipient may elect to receive Fund proceeds for Land acquisition directly from OPWC after Closing. After Closing, which Closing shall not occur until Recipient's submission of the Request to Proceed and Recipient's receipt of the Notice to Proceed, the Recipient may submit a Disbursement Request to OPWC for reimbursement of acquisition and other eligible costs. Recipient shall attach to the Disbursement Request a copy of: (i) the executed and recorded deed, or such other instrument conveying the interest approved by the Director, with respect to the Land acquired by Recipient, (ii) a copy of the recorded Deed Restrictions, (iii) a copy of the executed settlement statement, (iv) certification, or other documentation acceptable to the Director, from the Title Agent that Recipient has marketable title in and to the Land, and (v) such other documentation required by OPWC. After receipt of such documentation, and subject to Recipient's compliance with the terms and conditions of this Agreement, OPWC shall disburse Funds payable under this Agreement.

SECTION 6. Notice to Proceed – Site Improvements. Recipient shall not commence, or cause to be commenced, any site improvements or other work on the Land until the Director has issued a Notice to Proceed to the Recipient. Such Notice to Proceed will not be issued until the Director is assured that the Recipient has complied with all requirements for the approval of a grant under Sections 164.20 to 164.27 of the Revised Code and has completed any Land acquisition required by the Project. A Notice to Proceed shall be required for all project prime contractors or direct procurement initiated by the Recipient following execution of this Agreement.

SECTION 7. Project Schedule. The Recipient may apply to the Director in writing for



an extension of the date of Closing. Such request for extension must specify the reasons for delay and the date such acquisition will close. The Director will review such requests for extension and may, at the Director's sole discretion, extend the date of Closing.

Any site improvements or other work on a Project shall be commenced within 30 days of the date set forth in Appendix A, Page 2 for the start of site improvements, or this Agreement may become null and void, at the sole option of the Director. However, the Recipient may apply to the Director in writing for an extension of the date to initiate such site improvements or other work. The Recipient shall specify the reasons for the delay in commencement and provide the Director with a new start of construction date. The Director will review such requests for extensions and may, at the Director's sole discretion, extend the start date.

**SECTION 8. Disbursements for Site Improvements.** All payments made by OPWC for site improvements or other work shall be made directly to the Contractor that performed the work and originated the invoice, unless the OPWC expressly authorizes in writing Recipient to use another method of reimbursement. Such authorization from OPWC shall specify the reimbursement method to be used.

(a) **Project Administration Designation.** Recipient shall designate its Chief Executive Officer, Chief Fiscal Officer and Project Manager as set forth in Appendix B of this Agreement.

(b) **Disbursements to Contractors to Pay Costs of the Project.** The Recipient shall require that as work on the Project, and as specified in its contract, is performed, a Contractor shall promptly submit a detailed project specific invoice to the Project Manager. Within three (3) Business Days following receipt of such invoice from a Contractor, the Project Manager shall review the invoice and, if found to be accurate, shall so certify in writing, forwarding said certification together with a copy of the invoice to the Chief Fiscal Officer. Within five (5) Business Days following receipt of such invoice and certification from the Project Manager, the Chief Fiscal Officer shall conduct such reviews as he considers appropriate and, if he approves such invoice, shall submit to the Director a Disbursement Request together with the information and certifications required by this Section 8(b). The aggregate dollar amount for such Disbursement Requests shall not exceed the grant amount set forth on Appendix C. Within five (5) Business Days following receipt of the Disbursement Request and all required information and certifications, the Director shall, if such items are deemed by the Director to be accurate and complete, initiate a voucher in accordance with applicable State requirements for the payment of the amount set forth in the Disbursement Request. Upon receipt of a warrant from the Auditor of State drawn in connection with a voucher initiated in accordance with the terms of the preceding sentence, the Director shall forward it, by regular, first class, United States mail or electronic funds transfer, to the contractor or other authorized recipient designated in the Disbursement Request.

Prior to any disbursement from the OPWC, the following documents shall be submitted to the Director by the Recipient:

- (1) If the request is for disbursement to a Contractor, an invoice submitted to the

Recipient by the Contractor, which invoice requests payment of such sums in connection with its performance of the Project;

(2) If the request is for disbursement to the Recipient under another method of reimbursement approved as set forth above, a bill of sale, paid invoice or other evidence satisfactory to the Director that payment of such sums has been made by the Recipient in connection with the portion of the Project for which payment is requested;

(3) The Project Manager's certification pursuant to this Section 8(b) of this Agreement;

(4) The Disbursement Request properly executed by the Chief Fiscal Officer and the Chief Executive Officer; and

(5) Such other certificates, documents and other information as the Director may reasonably require.

If the Director finds that the documents are in compliance with the requirements of this Agreement, the Director is authorized and directed to cause the disbursement of moneys for payment of the identified Project costs. A copy of all such documents submitted to the Director shall be retained by the Director. In the event that any money is disbursed to the Recipient pursuant to this Section 8(b) of this Agreement to pay a portion of an invoice submitted by a Contractor, the Recipient shall expend such money to pay such Contractor for costs of the Project within twenty-four (24) hours after receipt thereof. Recipient shall hold such moneys uninvested pending payment to the Contractor.

(c) Disbursement Submittal Deadlines. The Recipient shall submit no more than one Disbursement Request per calendar month.

(d) Limitations on Use. No part of the moneys delivered to the Recipient pursuant to Section 2 hereof is being or will be used to refinance, retire, or redeem all or any part of any governmental obligations regardless of whether the interest on such obligations is or was excluded from gross income for federal income tax purposes unless prior approval by the Director is given.

(e) Project Scope. The physical scope of the Project shall be limited to the Project description set forth in Appendix A of this Agreement. In the event that circumstances require a change in such physical scope, such changes must be approved through the execution of a formal Amendment to this Agreement.

(f) Excess Moneys. In the event that the Recipient determines that it will no longer require all or any portion of the moneys provided pursuant to Section 2 hereof for authorized Project purposes, such as acceptable construction bids being received in dollar amounts significantly below project budget-related cost estimates, the Recipient shall mail, by first-class mail postage prepaid, a written notice to the Director. Such notice shall state (1) that the

Recipient does not intend to use certain moneys made available to it pursuant to Section 2 hereof for authorized Project purposes and (2) the amount of such moneys no longer required. Upon receipt of such notice, the moneys specified therein shall no longer be available to pay costs relating to the Project.

(g) Project Cost Overruns. In the event that the Recipient determines that the moneys provided pursuant to Section 2 hereof, together with the Matching Funds, are insufficient to pay in full the costs of the Project, Recipient shall be responsible for such shortfall. In no manner shall this Agreement be deemed to obligate OPWC for more than the grant money made available in Section 2 as set forth on Appendix C. Although OPWC shall not be obligated to provide moneys beyond the grant money identified in this Agreement, Recipient may apply to the Director for additional grant money in order to meet such additional costs. The Director may approve or recommend such additional funds only if the Recipient demonstrates to the Director's satisfaction that such funding is necessary for the completion of the Project and that the cost overrun was the result of circumstances beyond the Recipient's control, that it could not have been avoided with the exercise of due care, and that such circumstances could not have been anticipated at the time of the Recipient's initial application. In no manner shall this section be construed to entitle Recipient to receive additional grant money and the determination of whether such additional moneys may be provided shall be in the Director's sole discretion. In no event shall the grant funds provided by OPWC to the Recipient exceed seventy five percent of the actual project costs.

(h) Project Completion Report. By executing the Project Completion Report section provided in Appendix E, page 2, of this Agreement, the Recipient certifies that the Project is completed, and that the Recipient will submit no additional invoices. When executed, this section represents the complete understandings between the OPWC and Recipient as to the status of the Project. No other agreements, negotiations, conversations, or any other communications of any form may be submitted as evidence of the Status of the Project. The OPWC will not accept or receive disbursement requests subsequent to Recipient's execution of the Project Completion Report.

SECTION 9. Deed Restrictions. Recipient shall record the Deed Restrictions together with the deed or other instrument conveying the interest in Land. Recipient agrees that the Deed Restrictions shall be perpetual and shall not be amended, released, extinguished or otherwise modified without the prior written approval of the Director, at the Director's sole and absolute discretion, who shall have full enforcement authority with respect to the Deed Restrictions. If any amendment, release, extinguishment or other modification of the Deed Restrictions should occur without the prior written approval of the Director, Recipient, or its successors and assigns as owner of the Land or interest therein, shall pay to OPWC upon demand from the Director an amount equal to the greater of: (a) two hundred percent (200%) of the Funds disbursed by OPWC for the Project, together with interest accruing thereon at a rate equal to six percent (6%) per annum from the date of disbursement; or (b) two hundred percent (200%) of the fair market value of the Project.

SECTION 10. Retainage. Except as provided in the second sentence of this Section,

Recipient shall comply in all respects with the requirements of Sections 153.12, 153.13, 153.14, and 153.63 of the Revised Code, or other law applicable to it, including, but not limited to, the provisions thereof, to the extent applicable to Recipient, which require the holding of certain amounts from payments to be made to Contractors and the deposit of such amounts into an escrow account established pursuant to Section 153.63 of the Revised Code. Upon written notification to and approval of the Director, Recipient may use its legally applicable construction contract requirements for the project, including, but not limited to, its legally applicable requirements, if any, for the retaining of certain amounts from payments to be made to contractors in lieu of the requirements of Sections 153.12, 153.13, 153.14, and 153.63 of the Revised Code. All such amounts deposited into the escrow account established pursuant to Section 153.63 of the Revised Code if applicable or as required by any other applicable law shall be paid by the Recipient from the Matching Funds, or other local source of funds, and shall not be paid from the moneys provided to the Recipient pursuant to Section 2 hereof.

SECTION 11. Conditions to Financial Assistance and its Disbursement. OPWC's obligations hereunder, including its obligation to make financial assistance available to the Recipient pursuant to the terms of this Agreement, are contingent upon compliance by the Recipient with the following conditions:

(a) Recipient's acquisition and commitment of the Matching Funds necessary for the completion of the Project, its compliance with all other provisions of this Agreement, and its compliance with the provisions of Chapter 164 of the Revised Code and Chapter 164-1 of the Administrative Code. The Recipient shall set forth in Appendix D of this Agreement, a description of the manner or mechanisms of providing Matching Funds pursuant to division (D) of Section 164.23(A)(6) of the Revised Code.

(b) Recipient shall execute any and all other documents and certificates as deemed necessary by the Director, subject to the opinion of counsel to the Director, as well as any required by changes in State or Federal law, on the date hereof or at any time hereafter in connection with the financial assistance and disbursement of moneys pursuant to this Agreement, including any amendments to this Agreement.

SECTION 12. Representations, Warranties and Covenants of Recipient. The Recipient represents, warrants and covenants for the benefit of the OPWC as follows:

(a) Recipient is a Local Political Subdivision or Nonprofit Organization with all the requisite power and authority to acquire and/or construct or improve, or provide for the construction or improvement of, and operate the Project under the laws of the State and to carry on its activities as now conducted;

(b) Recipient has the power to enter into and perform its obligations under this Agreement and has been duly authorized to execute and deliver this Agreement;

(c) This Agreement is the legal, valid and binding obligation of the Recipient, subject to certain exceptions in the event of bankruptcy and the application of general principles of

equity;

(d) Recipient has complied with all procedures, prerequisites, and obligations for Project application and approval under Chapter 164 of the Revised Code and Chapter 164-1 of the Administrative Code; and

(e) Recipient is not the subject of nor has it initiated any claim or cause of action that would give rise to any liability which would in any way inhibit Recipient's ability to carry out its performance of this Agreement according to its terms.

(f) Use of Proceeds. With respect to the Project to be financed by moneys provided pursuant to Section 2 hereof:

(i) The total Cost of Project shall not and will not include any cost which does not constitute costs as provided in Section 164.22 of the Revised Code;

(ii) All of the Project is owned, or will be owned, by the Recipient or another Nonprofit Organization;

(iii) The Recipient shall not use any of the moneys to pay or reimburse the Recipient for the payment of or to refinance costs incurred in connection with the acquisition, construction, improvement and equipping of property that is used or will be used for any Private Business Use; and

(iv) The Recipient may depart from any of its agreements contained in subparagraph (iii) if it delivers to the Director, at the Recipient's expense, an opinion of Bond Counsel that to do so would not adversely affect the exclusion of interest on the Infrastructure Bonds from gross income for federal income tax purposes and such opinion is accepted by the Director.

(g) General Tax Covenant. The Recipient shall not take any action or fail to take any action which would adversely affect the exclusion of interest on the Infrastructure Bonds from gross income for federal income tax purposes;

(h) Sufficiency of Moneys. The Recipient has sufficient moneys in addition to those provided to Recipient pursuant to Section 2 of this Agreement to fund the Project to completion;

(i) Ohio Products. The Recipient shall, to the extent practicable, use, and shall cause all of its Contractors and subcontractors to use, Ohio products, materials, services and labor in connection with the Project;

(j) Equal Employment Opportunity. Recipient shall require that all contractors and subcontractors working on the Project comply with the equal employment opportunity requirements for the utilization of minorities and females pursuant to Chapter 123 of the Administrative Code, the Governor's Executive Order of 1972, and Governor's Executive Order

(k) Prevailing Wage. Recipient shall comply, and shall require that all Contractors and subcontractors working on the Project comply, with the prevailing wage requirements contained in Sections 4115.03 to 4115.16 of the Revised Code; and

(l) Construction Bonds, Insurance and Supervision.

(i) The Recipient shall require that each of its Contractors furnish a performance and payment bond in an amount at least equal to 100 percent of its contract price as security for the faithful performance of its contract.

(ii) The Recipient shall require that each of its construction contractors and each subcontractor maintain during the life of its contract or subcontract, appropriate Workers Compensation Insurance, Public Liability, Property Damage and Vehicle Liability Insurance.

(iii) The Recipient shall provide and maintain competent and adequate project management covering the supervision and inspection of the development and construction of the Project and bearing the responsibility of ensuring that construction conforms with the approved surveys, plans, profiles, cross sections and specifications and certifying to the OPWC and the Recipient at the completion of construction that construction is in accordance with the approved surveys, plans, profiles, cross sections and specifications or approved amendments thereto.

**SECTION 13. Progress Reports.** The Recipient shall submit to the OPWC, at the OPWC's request, summary reports detailing the progress of the Project pursuant to this Agreement and any additional reports containing such information as the OPWC may from time to time reasonably require. The Recipient shall submit to the OPWC a final report on forms prescribed by the OPWC, detailing the results of the Project and the expenditure of funds made pursuant to this Agreement. The Recipient shall submit the final report to the OPWC no later than 90 days after completion of the Project.

**SECTION 14. Audit Rights.** The Recipient shall, at all reasonable times, provide the Director or his representative access to and a right to inspect all sites and facilities involved in the Project and access to and a right to examine or audit any and all books, documents and records, financial or otherwise, relating to the Project or to ensure compliance with the provisions of this Agreement. The Recipient shall maintain all such books, documents and records for a period of three (3) years after the termination of this Agreement, and such shall be kept in a common file to facilitate audits and inspections. All disbursements made pursuant to the terms of this Agreement shall be subject to all audit requirements applicable to State funds. The Recipient shall ensure that a copy of any final report of audit prepared in connection with the Project, regardless of whether the report was prepared during the pendency of the Project or following its completion, is provided to the Director within ten (10) days of the issuance of the report. The Recipient simultaneously shall provide the Director with its detailed responses to each and every negative or adverse finding pertaining to the Project and contained in the report. Such responses shall indicate what steps will be taken by the Recipient in remedying or

otherwise satisfactorily resolving each problem identified by any such finding. If the Recipient fails to comply with the requirements of this Section or fails to institute steps designated to remedy or otherwise satisfactorily resolve problems identified by negative audit findings, the Director may bar the Recipient from receiving further financial assistance under Chapter 164 of the Revised Code until the Recipient so complies or until the Recipient satisfactorily resolves such findings.

SECTION 15. General Assembly Appropriation. The Recipient hereby acknowledges and agrees that the financial assistance provided under this Agreement is entirely subject to, and contingent upon, the availability of funds appropriated by the General Assembly for the purposes set forth in this Agreement and in Chapter 164 of the Revised Code. The Recipient further acknowledges and agrees that none of the duties and obligations imposed by this Agreement on the Director shall be binding until the Recipient has complied with all applicable provisions of Chapter 164 of the Revised Code and Chapter 164-1 of the Administrative Code and until the Recipient has acquired and committed all funds necessary for the full payment of the Matching Funds applicable to the Project.

SECTION 16. Indemnification. Nothing in this Agreement shall be construed as conferring any legal rights, privileges, or immunities, or imposing any legal duties or obligations, on any person or persons other than the parties named in this Agreement, whether such rights, privileges, immunities, duties, or obligations be regarded as contractual, equitable, or beneficial in nature as to such other person or persons. Nothing in this Agreement shall be construed as creating any legal relations between the Director and any person performing services or supplying any equipment, materials, goods, or supplies for the Project sufficient to impose upon the Director any of the obligations specified in Section 126.30 of the Revised Code. Provided that the Recipient is not a Local Political Subdivision (as defined in this Agreement), the Recipient shall indemnify and hold harmless the Director, OPWC, the State and their respective officers, directors, members, agents and employees from any and all liability arising out of or pursuant to this Agreement, Recipient's use or application of the funds being provided by OPWC hereunder and Recipient's construction or management of the Project.

SECTION 17. Termination. The OPWC's obligations under this Agreement shall immediately terminate upon the failure of Recipient to comply with any of the terms or conditions contained herein. Upon such termination, Recipient shall be obligated to return any moneys delivered to Recipient pursuant to the provisions of this Agreement. In the absence of any such failure, this Agreement shall terminate and the obligations of the parties hereto shall be deemed to be satisfied on the date on which all of the Infrastructure Bonds, of which the proceeds were used to pay or reimburse the costs of the Projects, have been retired.

SECTION 18. Governing Law. This Agreement shall be interpreted and construed in accordance with the laws of the State. In the event any disputes related to this Agreement are to be resolved in a Court of Law, said Court shall be located in the courts of Franklin County, State of Ohio.

SECTION 19. Severability. If any of the provisions of this Agreement or the application

thereof to any person or circumstance shall for any reason or to any extent be held invalid or unenforceable, the remainder of this Agreement and the application of this provision to such other persons or circumstances shall not be affected thereby, but rather shall be enforced to the greatest extent permitted by law.

SECTION 20. Entire Agreement. This Agreement and its Appendices and Attachments attached hereto contain the entire understanding between the parties and supersedes any prior understandings, agreements, proposals and all other communications between the parties relating to the subject matter of this Agreement, whether such shall be oral or written.

SECTION 21. Captions. Captions contained in this Agreement are included only for convenience of reference and do not define, limit, explain or modify this Agreement or its interpretation, instruction or meanings and are in no way intended to be construed as part of this Agreement.

SECTION 22. Notices. Except as otherwise provided hereunder, any notices required hereunder shall be in writing and shall be deemed duly given when deposited in the mail, postage prepaid, return receipt requested, by the sending party to the other party at the addresses set forth below or at such other addresses as party may from time to time designate by written notice to the other party.

SECTION 23. No Waiver. If either party hereto at any time fails to require performance by the other of any provision of this Agreement, such failure shall in no way affect the right to require such performance at any time thereafter, nor shall the waiver by either party of a breach or default under any provision of this Agreement, be construed to be a waiver of any subsequent breach or default under that provision or any other provision of this Agreement.

SECTION 24. Acceptance by Recipient. This Agreement must be signed by the Chief Executive Officer of the Recipient and returned to, and received by, the OPWC within forty-five (45) days of the date written on the first page of this Agreement. Failure of the Recipient to return a fully executed copy of this Agreement to the OPWC within the forty-five (45) day limit described herein



will result in this Agreement being declared null and void. However, upon the Recipient presenting the Director with a written explanation of the need to extend this forty-five (45) day limit, the Director, in his sole discretion, may extend the forty-five (45) day limit.

SECTION 25. Assignment. Neither this Agreement nor any rights, duties or obligations described herein shall be assigned by either party hereto without the prior written consent of the other party.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement for Project #CSDAB as of the date first written above.

RECIPIENT

GRANTOR

\_\_\_\_\_  
Hon. Francis Cicchinelli, Jr., Mayor  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
City, State & Zip Code  
\_\_\_\_\_

STATE OF OHIO, OHIO PUBLIC WORKS COMMISSION

By: \_\_\_\_\_  
W. Laurence Bicking, Director

Ohio Public Works Commission  
65 East State Street  
Suite 312  
Columbus, OH 43215

WITNESS

WITNESS

REFERENCE COPY  
DO NOT RETURN

REFERENCE COPY  
DO NOT RETURN

APPROVED  
FINANCE & ADMINISTRATION

\_\_\_\_\_  
*[Signature]*

## APPENDIX A

### PROJECT DESCRIPTION AND COMPLETION SCHEDULE

1) PROJECT DESCRIPTION / PHYSICAL SCOPE:

The Project, for which the provision of financial assistance is the subject of this Agreement, is hereby defined and described as follows:

a) **PROJECT NAME: Massillon Nature Preserve**

b) **SPECIFIC DESCRIPTION: Known as and being Parcel numbers 72-06317, 72-06318, 72-06319, and 72-05262. Situated on the western edge of the City of Massillon, county of Stark, State of Ohio. The northern access to the property is located on Skyland Drive NW, off of Wooster Street NW in Tuscarawas Township. The eastern access to the property is located off of Kenyon Avenue SW**

**(Project Location Zip Code - 44647-)**

c) **PROJECT TYPE; MAJOR COMPONENTS: The City of Massillon would like to preserve approximately 78.6 acres of land on the west side of Massillon. This endeavor is used to help preserve green space and future park land for the residents of Western Stark County.**

d) **PROJECT EMPHASIS: The project emphasis is to maintain a nature preserve on the Western side of the City of Massillon. This use of green space will provide for future increased population.**

e) **TERMS OF EASEMENTS There are no easements.**

f) **PUBLIC ACCESS INFORMATION Access is located off of Kenyon Avenue in Massillon, but most importantly this Nature Preserve is located directly on the Sippo Valley Trail. The general public will have complete availability to this Nature Preserve similar to all other Massillon Parks (from dawn to dusk). If and when the planning process takes place, the residents of Stark County will be involved in the planning and developing process.**

g) **OWNERSHIP MANAGEMENT OPERATION The City of Massillon will be the sole owner of the property. The Parks and Recreation Department will be in charge of the management and operation of the Nature Preserve.**

2) PROJECT SCHEDULE:

The Project, for which the provision of financial assistance is the subject of this Agreement, shall be pursued and completed in accordance with the following schedule:

| <u>ACTIVITY</u>           | <u>START DATE</u> | <u>COMPLETION DATE</u> |
|---------------------------|-------------------|------------------------|
| a) Plan Dates             |                   |                        |
| b) Acquisition Dates      | 06/01/2007        | 12/01/2007             |
| c) Site Improvement Dates |                   |                        |

**NOTE:** Land Acquisition and Site Improvements must begin within 30 days of the date(s) set forth herein for the start of land acquisition and site improvements, or this Agreement may become null and void, at the sole option of the Director. However, the Recipient may apply to the Director in writing for any extensions of these dates. The Recipient shall specify the reasons for the delay in the start of these activities and provide the Director with a new set of dates. The Director will review such requests for extensions and may extend the start date, providing that the Project can be completed within a reasonable time frame.

The information detailed in this Appendix A shall serve as the basis for Project monitoring purposes and for determining Project acceptance upon its completion. In the event that circumstances require a change in physical scope, such changes must be approved through the execution of a formal Amendment to this Project Agreement.

## APPENDIX B

### PROJECT ADMINISTRATION DESIGNATION

The Project Administration Designation required by Section 6(a) of this Agreement, and in accordance with the definitions set forth in Section 1 of this Agreement, for the sole purpose of administering the Project, as defined and described in Appendix A of this Agreement, under Chapter 164 of the Revised Code and Chapter 164-1 of the Administrative Code is hereby established as follows:

The Recipient designates:

- 1.) **Hon. Francis Cicchinelli, Jr. / Mayor** to act as the Chief Executive Officer  
email:
- 2.) **Bill Hamit / City Auditor** to act as the Chief Fiscal Officer  
email: **bhamit@massillonohio.com**
- 3.) **Kenn Kaminski / Director of Parks And Recreation** to act as the Project Manager  
email:

**NOTE:** Upon any change in such a designation, the Recipient shall immediately provide written notification to the OPWC.

## APPENDIX C

### PROVISION OF FINANCIAL ASSISTANCE

As authorized by Section 2 of this Agreement for the sole and express purpose of financing the Project defined and described in Appendix A of this Agreement, the estimated costs of which are set forth and described in Appendix D of this Agreement, the OPWC hereby agrees to provide financial assistance, subject to the terms and conditions contained in this Agreement, from the Clean Ohio Conservation Fund which constitutes the proceeds of the Infrastructure Bonds, in an amount not to exceed **Two Hundred Fifty Thousand Dollars (\$ 250,000)**. This financial assistance shall be provided in the form of a grant.

**LOCAL SUBDIVISION CONTRIBUTION, PROJECT FINANCING AND EXPENSES SCHEME AND DISBURSEMENT RATIO**

1) OPWC/LOCAL SUBDIVISION PARTICIPATION PERCENTAGES: For the sole and express purpose of financing/reimbursing costs of the Project defined and described in Appendix A of this Agreement, the estimated costs of which are set forth and described in this Appendix D, the Recipient hereby designates The City of Massillon's Percentage Contribution as amounting to a minimum total value of **62%** percent of the total Project Cost. The OPWC participation percentage shall be **38%** percent. However, in the event of a cost over-run, the maximum OPWC dollar contribution shall not exceed the amount identified in Appendix C.

2) PROJECT FINANCING AND EXPENSES SCHEME: The Recipient further designates the Project's estimated financial resources and estimated costs certified to the OPWC under this Agreement for the Project as defined and described in Appendix A of this Agreement to consist of the following components:

|  |            |
|--|------------|
| 1.1 PROJECT ESTIMATED COSTS: Total dollars     | \$ 650,000 |
| a.) Acquisition Expenses                       | \$ 650,000 |
| Fee Simple Purchase                            | \$ 650,000 |
| Easement Purchase                              | \$ 0       |
| Other Eligible Acquisition Expenses            | \$ 0       |
| b.) Planning and Implementation:               | \$ 0       |
| Appraisal                                      | \$ 0       |
| Closing costs                                  | \$ 0       |
| Title Search                                   | \$ 0       |
| Environmental Assessments                      | \$ 0       |
| Design   | \$ 0       |
| Other Eligible Planning Costs                  | \$ 0       |
| c.) Construction or Enhancement of Facilities: | \$ 0       |
| d.) Permits, Advertising, Legal:               | \$ 0       |
| e.) Contingencies:                             | \$ 0       |
| f.) Total Estimates Costs:                     | \$ 650,000 |

**LOCAL SUBDIVISION CONTRIBUTION, PROJECT FINANCING AND EXPENSES SCHEME AND DISBURSEMENT RATIO**

1) OPWC/LOCAL SUBDIVISION PARTICIPATION PERCENTAGES: For the sole and express purpose of financing/reimbursing costs of the Project defined and described in Appendix A of this Agreement, the estimated costs of which are set forth and described in this Appendix D, the Recipient hereby designates The City of Massillon's Percentage Contribution as amounting to a minimum total value of **62%** percent of the total Project Cost. The OPWC participation percentage shall be **38%** percent. However, in the event of a cost over-run, the maximum OPWC dollar contribution shall not exceed the amount identified in Appendix C.

2) PROJECT FINANCING AND EXPENSES SCHEME: The Recipient further designates the Project's estimated financial resources and estimated costs certified to the OPWC under this Agreement for the Project as defined and described in Appendix A of this Agreement to consist of the following components:

**1.2 PROJECT FINANCIAL RESOURCES:**

|   |                        |
|---|------------------------|
| a.) In-Kind Contributions                 | \$ 0                   |
| b.) Applicant Contributions (Local Funds) | \$ 0                   |
| c.) Other Public Revenues                 |                        |
| Nature Works                              | \$ 0                   |
| Land Water Conservation Fund              | \$ 0                   |
| Ohio Environmental Protection Agency      | \$ 0                   |
| Ohio Water Development Authority          | \$ 0                   |
| Community Development Block Grant         | \$ 0                   |
| Ohio Department of Natural Resources      | \$ 200,000             |
| Other Public Monies                       | \$ 0                   |
| d.) Private Contributions                 | \$ 200,000             |
| Subtotal Local Resources                  | <hr/> <hr/> \$ 400,000 |
| e.) Clean Ohio Conservation Fund          | \$ 250,000             |
| Funds from Other NRAC                     | \$ 0                   |
| Dist Project ID                           |                        |
| Subtotal Clean Ohio Resources             | <hr/> <hr/> 250,000    |
| f.) Total Financial Resources:            | <hr/> <hr/> \$ 650,000 |

**OHIO PUBLIC WORKS COMMISSION  
APPENDIX E - DISBURSEMENT REQUEST FORM AND CERTIFICATION**

DISBURSEMENT REQUEST NUMBER: \_\_\_\_\_

STATEMENT REQUESTING THE DISBURSEMENT OF FUNDS FROM THE CLEAN OHIO CONSERVATION FUND PURSUANT TO SECTION 6 OF THE PROJECT AGREEMENT (the "Agreement") EXECUTED BETWEEN THE DIRECTOR OF THE OHIO PUBLIC WORKS COMMISSION (the "Director") AND The City of Massillon, 151-48244, Stark County (the "Recipient"), DATED 06/01/2007, FOR THE SOLE AND EXPRESS PURPOSE OF FINANCING THE CLEAN OHIO CONSERVATION PROJECT DEFINED AND DESCRIBED IN APPENDIX A OF THE AGREEMENT (the "Project") AND NAMED AND NUMBERED AS Massillon Nature Preserve, CSDAB.

**EXPENDITURES PROGRESS:**

|                                 | (1)<br>AS PER<br>AGREEMENT | (2)<br>PAID PRIOR<br>TO THIS DRAW | (3)<br>AS PART OF<br>THIS DRAW | (4)<br>PAID TO DATE<br>(Column 2 + 3) |
|---------------------------------|----------------------------|-----------------------------------|--------------------------------|---------------------------------------|
| a.) Acquisition Expenses        | \$ 650,000                 |                                   |                                |                                       |
| b.) Planning and Implementation |                            | \$ _____                          | \$ _____                       | \$ _____                              |
| c.) Construction Costs          | \$ 0                       | \$ _____                          | \$ _____                       | \$ _____                              |
| d.) Permits, Advertising, Legal | \$ 0                       | \$ _____                          | \$ _____                       | \$ _____                              |
| e.) Contingencies               | \$ 0                       | \$ _____                          | \$ _____                       | \$ _____                              |
|                                 | \$ 0                       | \$ N/A                            | \$ N/A                         | \$ N/A                                |
| f.) Total Estimated Costs:      | \$ 650,000                 | \$ _____                          | \$ _____                       | \$ _____                              |

**FINANCING PROGRESS:**

|   | (1)<br>AS PER<br>AGREEMENT | (2)<br>USED PRIOR<br>TO THIS DRAW | (3)<br>AS PART OF<br>THIS DRAW | (4)<br>USED TO DATE<br>(Column 2 + 3) |
|---|----------------------------|-----------------------------------|--------------------------------|---------------------------------------|
| 1.2   |                            |                                   |                                |                                       |
| g.) Clean Ohio Fund                         | \$ 250,000                 | \$ _____                          | \$ _____                       | \$ _____                              |
| Other NRAC                                  | \$ 0                       | \$ _____                          | \$ _____                       | \$ _____                              |
| Dist Project ID                             |                            |                                   |                                |                                       |
| h. Local Share                              |                            |                                   |                                |                                       |
| 1) In-kind Contributions                    | \$ 0                       | \$ _____                          | \$ _____                       | \$ _____                              |
| 2) Applicant Contributions                  | \$ 0                       | \$ _____                          | \$ _____                       | \$ _____                              |
| i.) Other Public Revenues                   |                            |                                   |                                |                                       |
| 1) Nature Works                             | \$ 0                       | \$ _____                          | \$ _____                       | \$ _____                              |
| 2) LWCF                                     | \$ 0                       | \$ _____                          | \$ _____                       | \$ _____                              |
| 3) OEPA                                     | \$ 0                       | \$ _____                          | \$ _____                       | \$ _____                              |
| 4) OWDA                                     | \$ 0                       | \$ _____                          | \$ _____                       | \$ _____                              |
| 5) CDBG                                     | \$ 0                       | \$ _____                          | \$ _____                       | \$ _____                              |
| 6) ODNR                                     | \$ 0                       | \$ _____                          | \$ _____                       | \$ _____                              |
| 7) Other Revenues                           | \$ 200,000                 | \$ _____                          | \$ _____                       | \$ _____                              |
| 8) Private Contributions                    | \$ 0                       | \$ _____                          | \$ _____                       | \$ _____                              |
|   | \$ 200,000                 | \$ _____                          | \$ _____                       | \$ _____                              |
| j. Total Local                              | \$ 400,000                 | \$ _____                          | \$ _____                       | \$ _____                              |
| k. Total Resources<br>(g+j for each column) | \$ 650,000                 | \$ _____                          | \$ _____                       | \$ _____                              |

Note: Column total for Line (k) must be equal to the column totals for line (f) ]



OPWC FUNDS DISBURSEMENT PROGRESS:

Disbursement Request # \_\_\_\_\_

Is this the final request for disbursement of OPWC funds? ..... YES NO
If the answer is YES, skip to the section entitled "FINAL DISBURSEMENT REQUEST and PROJECT COMPLETION REPORT".

- N) Total project costs claimed as part of this draw (Total in F(3)) ..... \$
O) Disbursement Ratio ..... %
P) Amount of OPWC funds hereby requested for Disbursement (N x O) (Becomes G(3)) ..... \$

FINAL DISBURSEMENT REQUEST and PROJECT COMPLETION REPORT:

Project Completion Date \_\_\_/\_\_\_/\_\_\_

By completing this section the subdivision certifies that the project is completed and no additional invoices will be submitted to the OPWC.

- Q) Total project costs (F(2) +F(3)) [if F(2) + F(3) > F(1) use the amount on F(1)] ..... \$
R) The City of Massillon's Percentage Participation Level (if cost overrun, percentage does not apply) ..... 62%
S) The City of Massillon minimum dollar contribution (QxR) ..... \$
T) The City of Massillon costs paid to date (Total in J(2)) ..... \$
U) Total still owed toward Local Share (S-T) ..... \$
V) Total project costs claimed as part of this draw(Total in F (3)) ..... \$
W) Total still owed toward Local Share (U) ..... \$
X) Amount of OPWC funds hereby requested for Disbursement (V-W) ..... \$
(Becomes G(3))

Construction funds currently held in escrow by The City of Massillon and not reported on the previous page ..... \$

[NOTE: Total in G(4) (sum of G(2) + G(3)) may not exceed total in G(1) (refer to instructions).]

PROJECT MANAGER CERTIFICATION:

I hereby certify that the work items invoiced and included herein are exclusively associated with the Project, have been completed in a satisfactory manner, and are otherwise in accord with the terms and conditions of the Agreement. This request reflects project completion at an estimated \_\_\_%.

Kenn Kaminski, Director of Parks And Recreation Date ( ) Phone

CHIEF EXECUTIVE OFFICER AND CHIEF FINANCIAL OFFICER CERTIFICATION:

The undersigned Chief Executive Officer and Chief Fiscal Officer of the Recipient, as both are designated in Appendix B of the Agreement, hereby request the Director to disburse financial assistance moneys made available to Project in Appendix C of the Agreement (inclusive of any amendment thereto) to the payee as identified below in the amount so indicated which amount equals the product of the Disbursement Ratio and the dollar value of the attached cost documentation which was properly billed to the Recipient in exclusive connection with the performance of the Project, or, in the case of a final disbursement request, the amount entered at Line V of this Appendix E. The undersigned further certify that:

- 1) Each item of project cost documentation attached hereto is properly payable out of the Clean Ohio Conservation Fund in accordance with the terms and conditions of the Agreement, and none of the items for which payment is requested has formed the basis of any payment heretofore made from the Clean Ohio Conservation Fund;
2) Each item for which payment is requested hereunder is or was necessary in connection with the performance of the project;
3) In the event that any of the money disbursed to the Recipient pursuant to this request is to be used to pay Project costs based on an invoice submitted by a vendor of which the Recipient's share is yet to be paid, the Recipient shall expend such money to pay such vendor for the Project costs within twenty-four (24) hours after receipt thereof. Recipient shall hold such money un-invested pending payment to the vendor;
4) This statement and attachments hereto shall be conclusive as evidence of the facts and statements set forth herein and shall constitute full warrant, protection, and authority to the Director for any actions taken pursuant hereto; and
5) This document evidences the approval of the undersigned Chief Executive Officer and Chief Fiscal Officer of each payment hereby requested and authorized.

IN WITNESS WHEREOF, the undersigned have executed this Disbursement Request Form and Certification as of this \_\_\_ day of \_\_\_, 20\_\_.

Note: All signatures must be original and in ink.

Bill Hamit, City Auditor

CFO Phone: ( ) -

Hon. Francis Cicchinelli, Jr., Mayor

**CONTRACTOR/VENDOR PAYEE IDENTIFICATION:**

Set forth the appropriate portion(s) of this Disbursement Request amount (all or part of the amount from G(3)) that is to be paid to each of the contractors/vendors (or The City of Massillon) identified below, and as are supported through accompanying copies of invoices or other evidence of expense.

1) AMOUNT TO BE PAID CONTRACTOR/VENDOR BY OPWC ..... \$ \_\_\_\_\_

PAYEE: \_\_\_\_\_

Address: \_\_\_\_\_

Phone: ( ) \_\_\_\_\_ - \_\_\_\_\_

Federal Tax ID #: \_\_\_\_\_

2) AMOUNT TO BE PAID CONTRACTOR/VENDOR BY OPWC ..... \$ \_\_\_\_\_

PAYEE: \_\_\_\_\_

Address: \_\_\_\_\_

Phone: ( ) \_\_\_\_\_ - \_\_\_\_\_

Federal Tax ID #: \_\_\_\_\_

3) AMOUNT TO BE PAID CONTRACTOR/VENDOR BY OPWC ..... \$ \_\_\_\_\_

PAYEE: \_\_\_\_\_

Address: \_\_\_\_\_

Phone: ( ) \_\_\_\_\_ - \_\_\_\_\_

Federal Tax ID #: \_\_\_\_\_

4) AMOUNT TO BE PAID CONTRACTOR/VENDOR BY OPWC ..... \$ \_\_\_\_\_

PAYEE: \_\_\_\_\_

Address: \_\_\_\_\_

Phone: ( ) \_\_\_\_\_ - \_\_\_\_\_

Federal Tax ID #: \_\_\_\_\_

|               |             |            |           |
|---------------|-------------|------------|-----------|
| OPWC Use Only |             | Accounting | MBE       |
| Approval by   | (Signature) | (initial)  | (initial) |
|               |             | Auditor    | Other     |
|               |             | (initial)  | (initial) |
| Date:         |             |            |           |

APPENDIX F

ESCROW AGREEMENT  
Massillon Nature Preserve  
CSDAB

This Escrow Agreement (this "Agreement") is made as of the \_\_\_\_\_ day of \_\_\_\_\_, 200\_, by and among **THE STATE OF OHIO, acting by and through the DIRECTOR OF THE OHIO PUBLIC WORKS COMMISSION**, (the "Director" or the "OPWC"), **The City of Massillon** ("Recipient"), and \_\_\_\_\_ ("Escrow Agent").

RECITALS

A. **The City of Massillon** has applied for grant funds for a project eligible for funding pursuant to Sections 164.20 through 164.27 of the Ohio Revised Code (the "Grant").

B. **The City of Massillon** has entered into an agreement (the "Contract") with \_\_\_\_\_ ("Seller") for the purchase of fee simple title, or acquisition of such other interest approved by OPWC, of property of Seller located at \_\_\_\_\_ (the "Property"). A copy of the Contract is attached hereto as Exhibit A.

C. **The City of Massillon** and OPWC entered into that certain Ohio Public Works Commission Project Grant Agreement Clean Ohio Conservation Fund dated **06/01/2007** with respect to the Grant and the conditions and obligations with respect thereto (the "Grant Agreement").

D. Pursuant to the terms of the Grant Agreement, OPWC desires to deposit in escrow with Escrow Agent the Grant funds to be disbursed to **The City of Massillon** for the purchase of the Property, or interest therein, in accordance with the terms of this Agreement.

AGREEMENT

NOW, THEREFORE, in consideration of the foregoing, the covenants and agreements contained herein and other valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto mutually agree as follows:

§1. Escrow of Funds. Subject to the terms and conditions of the Grant Agreement, OPWC will disburse to Escrow Agent Grant funds available to Recipient, which disbursement shall be made by a check sent to Escrow Agent via regular U.S. Mail, or by such other means determined by the Director in the Director's sole discretion, prior to the closing date as scheduled under the Contract (the "Escrow Funds"). The Escrow Funds shall be held by Escrow Agent, together with any funds of Recipient made available prior to closing, in an interest bearing account on the terms and conditions hereinafter set forth.

§2. Delivery of Escrow Funds. Upon confirmation by Escrow Agent that the following conditions have been satisfied, Escrow Agent shall disburse the Escrow Funds, together with all interest earned and received thereon, to Recipient in connection with the closing of the purchase of the Property or other interest therein:

(a) Escrow Agent has confirmed that Recipient has sufficient funds to complete the purchase of, or acquisition of other interest approved by the Director in and to, the Property (the "Closing") and to pay all costs, fees and expenses to be paid by Recipient with respect thereto as disclosed on the

settlement statement prepared by Escrow Agent and signed by Recipient and Seller (the "Settlement Statement").

(b) Upon recording of the Conveyance Instrument (as defined in subsection (d) of this Section 2), (i) Recipient will hold marketable title to the Property or (ii) if Recipient is acquiring an interest in the Property other than fee simple, as approved by the Director, Seller holds marketable title to the Property and has granted a valid interest in the Property to Recipient pursuant to the Contract.

(c) If the Contract requires, or Recipient has requested and agreed to pay for, a title insurance policy with respect to the Property (the "Title Policy"), Escrow Agent, as title insurer or agent therefor, is prepared to issue the Title Policy to Recipient.

(d) Escrow Agent is prepared to record, on the date of Closing, (i) the deed, or other instrument appropriate for the interest in the Property to be conveyed pursuant to the Contract, from Seller to Recipient with respect to the Property (the "Conveyance Instrument"), and (ii) the deed restrictions approved by the Director with respect to the Property (the "Deed Restrictions").

(e) If Escrow Agent is an agent of a title insurance company, Escrow Agent has caused an insured closing letter to be issued to OPWC by such title insurance company with respect to Escrow Agent's acts in connection with the Closing and Escrow Agent's performance of its obligations under this Agreement.

§3. Recorded Instruments. Within thirty (30) days of Closing, Escrow Agent shall furnish to OPWC copies of the Settlement Statement, recorded Conveyance Instrument and recorded Deed Restrictions.

§4. Unused Escrow Funds. In the event that a Closing does not occur when required under the Contract, or in the event that the Closing does occur but Escrow Funds remain in an account with Escrow Agent, the Escrow Agent shall notify OPWC in writing promptly thereafter. After receipt of such notice, OPWC shall deliver written instructions to Escrow Agent directing Escrow Agent's release of the Escrow Funds. Immediately upon Escrow Agent's receipt of such notice from OPWC, Escrow Agent shall release the Escrow Funds, or balance thereof, in accordance with OPWC's written instructions.

§5. Notices. Any and all notices to be provided under this Agreement shall be addressed to the party to receive such notice at the address set forth below:

(a) if to OPWC, addressed to:

State of Ohio  
Ohio Public Works OPWC  
65 East State Street, Suite 312  
Columbus, Ohio 43215  
Attention: Director

(b) if to Recipient, addressed to:

**The City of Massillon**  
**Municipal Government Center**  
**One James Duncan Plaza**  
**Massillon, OH 44646-**

(c) if to Escrow Agent:

or at such other place or places or to such other person or persons as OPWC, Escrow Agent, or Recipient may designate by notice to the other parties. Notices hereunder may be given by registered or certified mail, return receipt requested, or by nationally recognized overnight courier service with written acceptance of delivery. Notice shall be deemed delivered (i) if by registered or certified mail, three (3) business days after deposit of the same with the U.S. Postal Service or (ii) if by overnight courier service, on the date evidenced by the written acceptance of delivery.

§6. Deposit of Escrow Funds. By its execution hereof, Recipient acknowledges that the deposit of the Escrow Funds into escrow with Escrow Agent does not confer any rights or claims to the Escrow Funds by Recipient unless all of the conditions in Section 2 above and the conditions as set forth in the Grant Agreement, have been satisfied.

§7. Disputes. If any disagreement or dispute shall arise between or among any of the parties hereto and/or any other persons resulting in adverse claims and demands being made for a Escrow Funds or any portion thereof or any accrued interest thereon, Escrow Agent shall immediately return the Escrow Funds to OPWC, whereupon Escrow Agent shall have no further obligations under this Agreement and Recipient and OPWC shall hold harmless Escrow Agent from any and all claims relating to this Agreement other than those arising from Escrow Agent's fraud, bad faith, negligence or intentional misconduct.

§8. Indemnification. Nothing in this Agreement shall be construed as conferring any legal rights, privileges, or immunities, or imposing any legal duties or obligations, on any person or persons other than the parties named in this Agreement, whether such rights, privileges, immunities, duties, or obligations be regarded as contractual, equitable, or beneficial in nature as to such other person or persons. Nothing in this Agreement shall be construed as creating any legal relations between the Director and any person performing services or supplying any equipment, materials, goods, or supplies for the Project sufficient to impose upon the Director any of the obligations specified in Section 126.30 of the Revised Code. Provided that the Recipient is not a Local Political Subdivision (as defined in this Agreement), the Recipient shall indemnify and hold harmless the Director, OPWC, the State and their respective officers, directors, members, agents and employees from any and all liability arising out of or pursuant to this Agreement, Recipient's use or application of the funds being provided by OPWC hereunder and Recipient's construction or management of the Project.

§9. Time of Essence. Time is of the essence in the performance of the obligations set forth in this Agreement.

§10. Governing Law. This Agreement shall be deemed to be made in and in all respects shall be interpreted, construed, and governed by and in accordance with the laws of the State of Ohio.

§11. Beneficiary. This Agreement is not intended to confer any rights or remedies upon any person or party other than Escrow Agent, Recipient and OPWC.

§12. Construction. Wherever possible, the terms of this Agreement shall be construed and interpreted so as to be effective and valid under Ohio law. If any provision of this Agreement or any document contemplated hereby shall be deemed invalid or prohibited under Ohio law, such provision shall be invalid or prohibited only to the extent of such invalidity or prohibition, and Escrow Agent, Recipient and OPWC shall promptly consult and attempt to agree on a legally acceptable modification that gives effect to the commercial objectives of the

unenforceable or invalid provision, and every other provision of such document shall remain in full force and effect.

§13. Modification. Neither this Agreement nor any provision hereof may be modified or amended except by an instrument in writing signed by all the parties hereto, and then only to the extent set forth in such instrument.

§14. Counterparts. This Agreement may be executed in any number of counterparts, each which shall be deemed to be an original instrument, but all such counterparts together shall constitute but one agreement.

IN WITNESS WHEREOF, the parties hereto have caused this Escrow Agreement to be executed by their respective duly authorized representatives as of the date first above written.

**RECIPIENT:**

\_\_\_\_\_  
(Signature)

**Hon. Francis Cicchinelli, Jr., Mayor**

**ESCROW AGENT:**

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(City, State, Zip)

