

OHIO PUBLIC WORKS COMMISSION

PROJECT GRANT AGREEMENT

CLEAN OHIO CONSERVATION FUND

Pursuant to Ohio Revised Code 164.26, this Project Grant Agreement (this "Agreement") is entered into this date, **05/21/2014**, 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 **Western Reserve Land Conservancy** (hereinafter referred to as the "Recipient"), located at **3850 Chagrin River Road, Moreland Hills, OH 44022**, in respect of the project named **Lower Big Creek**, and as described in Appendix A of this Agreement, to provide an amount not to exceed **Five Hundred Sixty-One Thousand, Two Hundred Twenty-Five Dollars (\$ 561,225)** 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: **199-01017**

OPWC Project Control No. **CAHAE**

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 through 164.27;

WHEREAS, pursuant to Revised Code Section 164.25, 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 reasonable based on the criteria specified in the Law; 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 Law 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, Revised Code Sections 164.20 through 164.27 permit a grant of funds for such projects to be expended or provided only after the appropriate natural resources assistance council has submitted the application for such Project funds to the Director and subsequent approval of the application by the Director in accordance with Revised Code Section 164.25;

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

WHEREAS, the Project has been duly approved by the Director pursuant to Revised Code Section 164.25;

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 indicates another or different meaning or intent.

"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 single office or official of the Recipient and as designated in Appendix B, pursuant to Section 8 hereof, or his authorized designee as per written notification to the Director.

"Chief Fiscal Officer" means the single office or official of the Recipient and as designated in Appendix B, 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.

"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 Revised Code Sections 164.20 through 164.27. 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 of 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 as described more particularly in Appendix A.

"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 percent (25%) of the total Cost of Project set forth in 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 Resources Assistance Council" means the natural resources assistance council created pursuant to Ohio Revised Code Section 164.21 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 Revised Code Sections 164.20 through 164.27 as described in divisions (A) and (B) of Revised Code Section 164.22

"Notice to Proceed" means notice issued by the 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:

(A) 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 pursuant to division (A) of this section shall emphasize the following:

(1) The support of comprehensive open space planning and incorporation of aesthetically pleasing and ecologically informed

design;

(2) The enhancement of economic development that relies on recreation and ecotourism in areas with relatively high unemployment and lower incomes;

(3) The protection of habitat for rare, threatened, and endangered species or the preservation of high quality, viable habitat for plant and animal species;

(4) The preservation of existing high quality wetlands or other scarce natural resources within the geographical jurisdiction of the council;

(5) The enhancement of educational opportunities and provision of physical links to schools and after-school centers;

(6) 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 this state and to the state's natural heritage. Projects shall not include hydromodification projects such as dams, dredging, sedimentation, and bank clearing and shall not accelerate untreated water runoff or encourage invasive nonnative species;

(7) The reduction or elimination of nonnative, invasive species of plants or animals; and

(8) The proper management of areas where safe fishing, hunting, and trapping may take place in a manner that will preserve a balanced natural ecosystem.

(B) 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, without limitation, 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 proposed pursuant to division (B) of this section shall emphasize the following:

(1) The increase of habitat protection;

(2) Inclusion as part of a stream corridor-wide or watershed-wide plan;

(3) The provision of multiple recreational, economic, and aesthetic preservation benefits;

(4) The preservation or restoration of floodplain and streamside forest functions;

(5) The preservation of headwater streams; and

(6) 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 designated in Appendix B, 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 164.2 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 the 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 the 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, 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 superceded. 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, works importing the singular number shall include the plural number, and vice versa. The terms "hereof", "hereby", "hereto", "hereunder", and similar terms refer to this Agreement and the 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 (the "Funds").

SECTION 3. Matching Funds. The Recipient shall, at a minimum, contribute not less than twenty-five percent (25%) 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. In the event that the total actual Project costs exceed the estimated Cost of Project identified in Appendix D, the 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 Revised Code Sections 164.20 through 164.27 and any requirements for land acquisition set forth in this Agreement, including without limitation the 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, the 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 the 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) a copy of the performed appraisal according to the specifications provided by the Director; (d) 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 the signed escrow agreement among Recipient, Title Agent and the 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 the OPWC.

Funds for land acquisition 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 the Recipient satisfies the terms and conditions of this Agreement, Recipient may elect to have Funds delivered by the 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 the OPWC a Disbursement Request Form and Certification in the form of Appendix E to this Agreement (the "Disbursement Request"), which shall identify the Title Agent as payee and shall be delivered after the Recipient's receipt of a Notice to Proceed and not more than sixty (60) days prior to Closing. The OPWC shall then deliver to the Title Agent Funds to be disbursed under this Agreement for the land acquisition, which Funds may be held, together with the Matching Funds, in an account subject to the terms and conditions of the Escrow Agreement. Any interest that accrues thereon shall be used by the Recipient for settlement costs. If the interest paid on such escrow account exceeds the settlement costs to be paid by the 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, the Recipient may request additional disbursements of Funds available under this Agreement relating to the land acquisition, 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 sixty (60) days of Closing, the Recipient shall deliver to the OPWC, or shall cause the Title Agent to deliver to the OPWC, a copy of the recorded Deed Restrictions and deed, or other instrument appropriate for the interest in the Land, and the executed settlement statement. **If the Recipient does not close within thirty (30) days of disbursement, the Recipient must contact the OPWC immediately.**

(b) Reimbursement Option. Provided that the Recipient satisfies the terms and conditions of this Agreement, the Recipient may elect to receive Fund proceeds for land acquisition directly from the OPWC after Closing. After Closing, which Closing shall not occur until the Recipient's submission of the Request to Proceed and the Recipient's receipt of the Notice to Proceed, the Recipient may submit a Disbursement Request to the OPWC for reimbursement of acquisition and other eligible costs. The 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 the 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 the Recipient has marketable title in and to the Land, and (v) such other documentation required by the OPWC. After receipt of such documentation, and subject to Recipient's compliance with the terms and conditions of this Agreement, the OPWC shall disburse Funds payable under this Agreement.

SECTION 6. Notice to Proceed - Site Improvements. The 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 Revised Code Sections 164.20 through 164.27 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 requests 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 improvement or other work on a Project shall be commenced within thirty (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 any new start date of construction. The Director will review such requests for extensions and may extend the start date.

SECTION 8. Disbursements for Site Improvements. All payments made by the OPWC for site improvements or other work shall be made directly to the Contractor that performed the work and originated the invoice, unless the request is for disbursement to the Recipient.

- (a) Project Administration Designation. The Recipient shall designate its Chief Executive Officer, Chief Fiscal Officer and Project Manager 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 is performed, as specified in its contract, 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/she considers appropriate and, if he/she approves such invoice, shall submit to the Director a Disbursement Request together with the information and certifications required by this Section. The aggregate dollar amount for such Disbursement Requests shall not exceed the grant amount set forth in Appendix C. Within five (5) Business Days following receipt of the Disbursement Request and all required information and certifications, the Director shall initiate a voucher in accordance with applicable State requirements for the payment of the amount set forth in the Disbursement Request as

long as items are deemed by the Director to be accurate and complete. 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 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 of this Agreement;
- (4) The Disbursement Request properly executed by the Chief Executive Officer and the Chief Fiscal 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 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. The Recipient shall hold such moneys uninvested pending payment to the Contractor.

- (c) 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.
- (d) 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 an amendment to this Agreement.
- (e) 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, the Recipient shall be responsible for such shortfall. In no manner shall this Agreement be deemed to obligate the OPWC for more than the grant money made available in Section 2 as set forth in Appendix C. Although the OPWC shall not be obligated to provide moneys beyond the grant money identified in this Agreement, the Recipient may request additional funds from the Natural Resources Assistance Council. In no event shall additional grant funds exceed seventy-five percent (75%) of the actual project costs.

SECTION 9. Deed Restrictions. The Recipient shall record the Deed Restrictions together with the deed. The 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, the Recipient or its successors and assigns as owner of the Land or interest therein, shall pay to the OPWC upon demand from the Director the following: 1) all grant funds disbursed under this Agreement; and 2) liquidated damages equal to one hundred percent (100%) of the Funds disbursed by the OPWC for the Project together with interest accruing at a rate equal to six percent (6%) per annum from the date of Recipient's receipt of the grant.

SECTION 10. Retainage. Except as provided in the second sentence of this Section, the Recipient shall comply in all respects with the requirements of Revised Code Sections 153.12, 153.13, 153.14, and 153.63, or other Law applicable to it including, but not limited to the provisions thereof, to the extent applicable to the 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 Revised Code Section 153.63. The 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 Revised Code Sections 153.12, 153.13, 153.14, and 153.63. All such amounts deposited into the escrow account established pursuant to Revised Code Section 153.63, 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. The 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) The 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 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 Revised Code Section 164.23(A)(6).
- (b) The 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) The 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) The 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) The 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;
- (e) The Recipient is not the subject or nor has it initiated any claim or cause of action that would give rise to any liability which would in any way inhibit the 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 Revised Code Section 164.22;
 - (ii) All of the Project is owned, or will be owned, by the Recipient or another Nonprofit Organization approved by the Director;

- (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 the 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. The Recipient shall, and shall require that all contractors and subcontractors working on the Project, comply with the equal opportunity requirements contained in Section 164.07(A) of the Revised Code and rule 164-1-32 of the Administrative Code;
- (k) Prevailing Wage. The Recipient shall comply and shall require that all Contractors and subcontractors working on the Project comply with the prevailing wage requirements contained in Revised Code Sections 164.07(B) and 4115.03 through 4115.16; 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 (100%) 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 reasonably require.

SECTION 14. Audit Rights. The Recipient shall, at all reasonable times, provide the Director access to 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 and specific to 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 to remedy or otherwise satisfactorily resolve 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, good, or supplies of the Project sufficient to impose upon the Director any of the obligations specified in Revised Code Section 126.30. Provided that the Recipient is not a Local Political Subdivision, the Recipient shall indemnify and hold harmless the Director, the 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, the Recipient's use or application of the funds being provided by the OPWC hereunder and the 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 the Recipient to comply with any of the terms or conditions contained herein. Upon such termination, the Recipient shall be obligated to return any moneys delivered to the 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 Project, 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 supersede 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 in no way affects 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 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 No. **CAHAE** as of the date first written above.

RECIPIENT

GRANTOR

STATE OF OHIO, OHIO PUBLIC WORKS
COMMISSION

Richard Cochran, President and CEO

By: _____
Michael Miller, Director

Western Reserve Land Conservancy
3850 Chagrin River Road

Moreland Hills, OH 44022

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

WITNESS

WITNESS

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: **Lower Big Creek**

b) SPECIFIC DESCRIPTION: **This project takes place in Cleveland's Old Brooklyn and Brooklyn Centre neighborhoods. The project consists of the "Henninger" property, which is bordered by Lower Big Creek to the north, Pearl Road to the west, and Henninger Road to the south. The property comprises 11 parcels: PPNs 911015, 911009, 911005, 911019, 913037, 911002, 906011, 906007, 911010, 915001, and 911003. There is 1 deed on the property.**

c) PROJECT TYPE; MAJOR COMPONENTS: **This project consists of fee simple acquisition of about 25 acres of former landfill located along Big Creek, a riparian buffer area and tributary to the Cuyahoga River.**

d) PROJECT EMPHASIS: **This project provides recreational and economic benefits, preserves riparian area, protects water quality, and supports comprehensive open space planning.**

e) TERMS OF EASEMENTS **Western Reserve Land Conservancy will acquire the property on a fee simple basis and encumber it with a conservation easement that limits use of the property to passive public park activities. The property shall be subject to OPWC-required deed restrictions that run with the land in perpetuity.**

f) PUBLIC ACCESS INFORMATION **The property will be open to the general public for passive recreational and outdoor educational purposes such as walking, hiking, jogging, bird watching, nature study, and photography. Access to the property will be available via Pearl Road and by trail connection to the Cleveland Metroparks Zoo. The Land Conservancy will work with the City of Cleveland, Old Brooklyn CDC, and Cleveland Metroparks to seek public input for the development of a comprehensive open space plan and a strategy for restoration of the property.**

g) OWNERSHIP MANAGEMENT OPERATION **Western Reserve Land Conservancy will acquire the 11 parcels in fee and hold a conservation easement on the property. The city of Cleveland has expressed interest in working with the Land Conservancy and the Cleveland Metroparks to own the property long-term, with management of land and resources by Metroparks.**

The grant recipient shall notify the director of the Ohio Public Works Commission before the start of any activity that involves oil and gas exploration or drilling, or any activity that affects the status of mineral rights, including the sale, assignment, transfer, lease, exchange, conveyance, unitization, or other encumbrance of said mineral rights. Upon its receiving notification, the Ohio Public Works Commission shall notify the chairperson and liaison of the District One Natural Resources Assistance Council.

APPENDIX A - PAGE 2

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	09/26/2013	02/01/2015
b) Acquisition Dates	05/01/2014	02/01/2015
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 an 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.) **Richard Cochran / President and CEO** to act as the Chief Executive Officer
- 2.) **Dennis Bower / Chief Financial Officer** to act as the Chief Fiscal Officer
- 3.) **Jeffrey Schiffman / Conservation Project Manager** to act as the Project Manager

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 **Five Hundred Sixty-One Thousand, Two Hundred Twenty-Five Dollars (\$ 561,225)**. This financial assistance shall be provided in the form of a grant.

APPENDIX D

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 Western Reserve Land Conservancy's Percentage Contribution as amounting to a minimum total value of **36%** percent of the total Project Cost. The OPWC participation percentage shall be **64%** 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	\$ 881,623
a.) Acquisition Expenses	\$ 730,000
Fee Simple	\$ 730,000
Easement	\$ 0
b.) Planning and Implementation:	\$ 151,623
Appraisal	\$ 6,750
Title Work	\$ 0
Closing costs	\$ 576
Environmental Assessments	\$ 144,297
Design	\$ 0
Other Eligible Planning Costs	\$ 0
c.) Site Improvements:	\$ 0
d.) Permits, Advertising, Legal:	\$ 0
e.) Contingencies:	\$ 0
f.) Total Estimated Costs:	\$ 881,623

APPENDIX D

Page 2

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 **Western Reserve Land Conservancy's** Percentage Contribution as amounting to a minimum total value of **36%** percent of the total Project Cost. The OPWC participation percentage shall be **64%** 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 or Force Account	\$ 0
b.) Applicant Contributions	\$ 193,188
c.) Other Public Revenues	
Land Water Conservation Fund	\$ 0
Nature Works	\$ 0
Ohio Environmental Protection Agency	\$ 0
Ohio Department of Natural Resources	\$ 0
Other Public Revenues	\$ 127,210
d.) Private Contributions	\$ 0
Subtotal Local Resources	=====
	\$ 320,398
e.) Clean Ohio Conservation Fund	\$ 561,225
Funds from Other NRAC	\$ 0
Dist Project ID	
Subtotal Clean Ohio Resources	=====
	\$ 561,225
f.) Total Financial Resources:	=====
	\$ 881,623

**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 **Western Reserve Land Conservancy, 199-01017, 501C(3)** (the "Recipient"), dated **05/21/2014**, 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 **Lower Big Creek, CAHAE**.

EXPENDITURES PROGRESS:	(1) AS PER <u>AGREEMENT</u>	(2) PAID PRIOR <u>TO THIS DRAW</u>	(3) AS PART OF <u>THIS DRAW</u>	(4) PAID TO DATE <u>(Column 2 + 3)</u>
a.) Acquisition Expenses	\$ 730,000	\$ _____	\$ _____	\$ _____
b.) Planning and Implementation	\$ 151,623	\$ _____	\$ _____	\$ _____
c.) Site Improvements	\$ 0	\$ _____	\$ _____	\$ _____
d.) Permits, Advertising, Legal	\$ 0	\$ _____	\$ _____	\$ _____
e.) Contingencies	\$ 0	\$ N/A	\$ N/A	\$ N/A
f.) Total Estimated Costs:	\$ 881,623	\$ _____	\$ _____	\$ _____

FINANCING PROGRESS:	(1) AS PER <u>AGREEMENT</u>	(2) USED PRIOR <u>TO THIS DRAW</u>	(3) AS PART OF <u>THIS DRAW</u>	(4) USED TO DATE <u>(Column 2 + 3)</u>
1.2				
g.) Clean Ohio Fund	\$ 561,225	\$ _____	\$ _____	\$ _____
Other NRAC	\$ 0	\$ _____	\$ _____	\$ _____
	Dist Project ID			
h.) Local Share				
1) In-kind Contributions	\$ 0	\$ _____	\$ _____	\$ _____
2) Applicant Contributions	\$ 193,188	\$ _____	\$ _____	\$ _____
i.) Other Public Revenues				
1) Nature Works	\$ 0	\$ _____	\$ _____	\$ _____
2) LWCF	\$ 0	\$ _____	\$ _____	\$ _____
3) OEPA	\$ 0	\$ _____	\$ _____	\$ _____
4) ODNR	\$ 0	\$ _____	\$ _____	\$ _____
5) Other Revenues	\$ 127,210	\$ _____	\$ _____	\$ _____
6) Private Contributions	\$ 0	\$ _____	\$ _____	\$ _____
j.) Total Local	\$ 320,398	\$ _____	\$ _____	\$ _____
k.) Total Resources (g+j for each column)	\$ 881,623	\$ _____	\$ _____	\$ _____

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

Is this the final request for disbursement of OPWC funds? YES NO

If the answer is YES or if this disbursement uses the remainder of your OPWC assistance, your project file will be closed upon processing this request. As described in Appendix D of the Project Agreement, your minimum Percentage Contribution is 36% of the total project cost.

AUTHORIZED CERTIFICATIONS

**All signatures must be original and in color ink.
(Note: Changes to project officials must be submitted in writing.)**

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 _____%.

**Jeffrey Schiffman, Conservation Project
Manager**

_____/_____/_____
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. 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_____.

Dennis Bower, Chief Financial Officer

CFO Phone: () _____

Richard Cochran, President and CEO

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 **Western Reserve Land Conservancy**) 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: _____
(initial)

Approval by: _____
(signature)

Auditor: _____
(initial)

Date: ____/____/____

APPENDIX F

ESCROW AGREEMENT Lower Big Creek CAHAE

This Escrow Agreement (this "Agreement") is made as of the ____ day of _____, 20____, by and among **THE STATE OF OHIO, acting by and through the DIRECTOR OF THE OHIO PUBLIC WORKS COMMISSION**, (the "Director" or the "OPWC"), Western Reserve Land Conservancy ("Recipient"), and _____ ("Escrow Agent").

RECITALS

A. **Western Reserve Land Conservancy** 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. **Western Reserve Land Conservancy** 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. **Western Reserve Land Conservancy** and the OPWC have entered into a Grant Agreement funded through the Clean Ohio Conservation Fund dated **05/21/2014**.

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 **Western Reserve Land Conservancy** 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 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 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 (60) 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:

Western Reserve Land Conservancy
3850 Chagrin River Road

Moreland Hills, OH 44022

(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, 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 the Grant 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)
Richard Cochran, President and CEO

ESCROW AGENT:

(Signature)

(City, State, Zip)



The Ohio Public Works Commission
65 East State Street, Suite 312, Columbus, Ohio 43215-4213

Commission Chair Michael Keenan *Director* Michael Miller
Commissioners Patrick Ginnetti William Woodard Thomas Hitchcock
 Alan Ross Tom Waniewski

05/21/2014

Richard Cochran
President and CEO
Western Reserve Land Conservancy
3850 Chagrin River Road
Moreland Hills, OH 44022

Re: Project Number CAHAE

Dear Mr. Cochran:

Your request for financial assistance from the Ohio Public Works Commission has been approved for the project entitled Lower Big Creek in the amount of \$ 561,225. Please adhere to the following:

- Review the document carefully to be sure you understand your responsibilities and to check that it accurately describes and defines your project. If there are errors or information that needs to be revised please contact us.
- Changes to officers may be noted in a transmittal letter.
- Do not separate the pages of the Agreement.
- Sign both copies of the Agreement and have your signature witnessed.
- Return one copy of the Agreement to us and retain one for your records.
- Use the above referenced project number in your correspondence with our office.

Do not proceed with acquisition, construction or purchase of materials until the following has been completed:

- Return one executed copy of the Agreement.
- For land acquisition, provide a Request to Proceed prior to closing; for site improvements, provide a Request to Proceed once bidding is complete.
- Receive a Notice to Proceed from us.

The Project Manager named in the Agreement will receive a separate mailing pertaining to our program requirements detailed on our web site at <http://www.pwc.state.oh.us/GSCdefault.html> including the Request to Proceed, contractual requirements for bid documents, and reporting of in-kind or force account contributions. Also available on our website is the Advisory Document; a searchable document that describes OPWC policies, select statutory provisions in the Ohio Revised Code, and administrative rules in the Ohio Administrative Code. Please familiarize yourself with our requirements, especially those provided in our Deed Restriction language.

If you have any questions about any aspect of the program, please do not hesitate to call your Program Representative, Lou Mascari, at 614/752-8117.

Respectfully,

Michael Miller
Director

cc: NRAC



The Ohio Public Works Commission
65 East State Street, Suite 312, Columbus, Ohio 43215-4213

Commission Chair Michael Keenan *Director* Michael Miller
Commissioners Patrick Ginnetti William Woodard Thomas Hitchcock
 Alan Ross Tom Waniewski

05/21/2014

Richard Cochran
President and CEO
Western Reserve Land Conservancy
3850 Chagrin River Road
Moreland Hills, OH 44022

Re: Project Number CAHAE

Dear Mr. Cochran:

Your request for financial assistance from the Ohio Public Works Commission has been approved for the project entitled Lower Big Creek in the amount of \$ 561,225. Please adhere to the following:

- Review the document carefully to be sure you understand your responsibilities and to check that it accurately describes and defines your project. If there are errors or information that needs to be revised please contact us.
- Changes to officers may be noted in a transmittal letter.
- Do not separate the pages of the Agreement.
- Sign both copies of the Agreement and have your signature witnessed.
- Return one copy of the Agreement to us and retain one for your records.
- Use the above referenced project number in your correspondence with our office.

Do not proceed with acquisition, construction or purchase of materials until the following has been completed:

- Return one executed copy of the Agreement.
- For land acquisition, provide a Request to Proceed prior to closing; for site improvements, provide a Request to Proceed once bidding is complete.
- Receive a Notice to Proceed from us.

The Project Manager named in the Agreement will receive a separate mailing pertaining to our program requirements detailed on our web site at <http://www.pwc.state.oh.us/GSCdefault.html> including the Request to Proceed, contractual requirements for bid documents, and reporting of in-kind or force account contributions. Also available on our website is the Advisory Document; a searchable document that describes OPWC policies, select statutory provisions in the Ohio Revised Code, and administrative rules in the Ohio Administrative Code. Please familiarize yourself with our requirements, especially those provided in our Deed Restriction language.

If you have any questions about any aspect of the program, please do not hesitate to call your Program Representative, Lou Mascari, at 614/752-8117.

Respectfully,

Michael Miller
Director

cc: NRAC



The Ohio Public Works Commission
65 East State Street, Suite 312, Columbus, Ohio 43215-4213

<i>Commission Chair</i>	Michael Keenan	<i>Director</i>	Michael Miller
<i>Commissioners</i>	Patrick Ginnetti Alan Ross	William Woodard Tom Waniewski	Thomas Hitchcock

05/21/2014

Dennis Bower, Chief Financial Officer
Western Reserve Land Conservancy
3850 Chagrin River Road
Moreland Hills, OH 44022

Dear Mr. Bower:

SUBJECT: Notification of Project Approval
Project No.: CAHAE
Project Name: Lower Big Creek

Western Reserve Land Conservancy's request for financial assistance has been approved for the project listed above in the amount of \$ 561,225. 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 Project Agreement. The project's Chief Executive Officer, Richard Cochran, has been mailed the Agreement for review, execution and return to our office. You may view the Agreement on our web site at <http://www.pwc.state.oh.us/GSCdefault.html>.

As the Chief Fiscal Officer designated in the Project Agreement, your role in carrying out the project is important. The following information is available on our web site on the Chief Financial Officers Page (Financial Tab) to assist you.

- Instructions for the completion of Appendix E describe how to complete the Appendix E (disbursement form) that is attached to the Agreement. This three-page form must always contain original color-inked signatures of the three authorized authorities. If any of the authorities change we must be notified in writing. The disbursement process is also described in Sections 5 and 8 of the Project Agreement. 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 Section 1 of the Agreement.
- W-9 and Vendor Information forms are only required for those vendors who have not done business with the State of Ohio, and if you'll be requesting us to pay your vendors directly.
- To facilitate timely payments for this project your vendors are encouraged to enroll in the Ohio Shared Services' EFT Program if they have not previously done so. This can reduce processing time by 2-3 business days in that disbursements are completed electronically to your vendor's bank account.
- A sample "Payment Confirmation Letter" which will be mailed to you for all disbursements made for this project. Letters are mailed monthly during the third week for the prior month's activity.

For those projects which provide 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". If electing the Pre-Closing Option, you 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 electing this option. *If you do not close within thirty (30) days of disbursement contact us immediately.*

Dennis Bower
05/21/2014
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In addition, we require a Closing Protection Letter to be provided by the parent company of the title agency. *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. Within thirty (30) days after closing, you must furnish to the OPWC copies of the Settlement Statement, recorded conveyance instrument and recorded deed restrictions.*

We recommend that you meet with your Project Manager to discuss the disbursement process and your respective responsibilities. For a more detailed explanation of the disbursement process, you should refer to Section 5 and Section 8 of the Project Agreement.

Please note that a change has been made to the Deed Restriction (Section 9) language in the Agreement. Any entity that fails to comply with the program's long-term ownership or control requirements must repay the grant together with liquidated damages equal to 100% of the funds disbursed by the OPWC for the project plus interest.

If you have any questions please feel free to contact your Program Representative, Lou Mascari, at 614/752-8117.

Respectfully,

Michael Miller
Director



The Ohio Public Works Commission

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

Commission Chair Michael Keenan *Director* Michael Miller

Commissioners Patrick Ginnetti William Woodard Thomas Hitchcock
Alan Ross Tom Waniewski

05/21/2014

Jeffrey Schiffman
Conservation Project Manager
Western Reserve Land Conservancy
3850 Chagrin River Road
Moreland Hills, OH 44022

Dear Mr. Schiffman:

SUBJECT: Notification of Project Approval
Project No.: CAHAE
Project Name: Lower Big Creek

Western Reserve Land Conservancy's request for financial assistance has been approved for the project listed above in the amount of \$ 561,225. The project's Chief Executive Officer has been mailed the Agreement for review, execution, and return to this office. You may view the Agreement on our web site at <http://www.pwc.state.oh.us/GSCdefault.html>.

As the Project Manager you will be responsible for seeing that the local responsibilities are met. The following information is available on our web site on the Project Managers page (Project Tab) to assist you.

- Request to Proceed instructions and form - Land acquisition cannot take place prior to submission and acceptance of this documentation.
- Advisory Document, and Local Match Policy, Prepays & In-Kind.
- Contractual requirements for bid documents for site improvements.
- 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.
- Title insurance company selection.
- Required Deed Restriction Language - Recipient should at a minimum include this language. Additional language may be added at the discretion of the recipient as long as there is no conflict. Please note any entity that fails to comply with the program's long-term ownership or control requirements must repay the grant together with liquidated damages equal to 100% of the funds disbursed by the O PWC for the project.
- Pre-Closing Disbursement Process - Flow chart describing the pre-closing disbursement option.

Jeffrey Schiffman
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To facilitate timely payments for this project, your contractors are encouraged to enroll in the Ohio Shared Services' EFT Program if not previously done so. Once enrolled, all disbursements made by us will be completed electronically to your contractor's bank account. This procedure replaces mailing warrants and reduces payment processing time by at least two to three business days. This information is contained on the Financial Tab on our web site and has been shared with the project's designated Chief Financial Officer.

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. In addition, we require a Closing Protection Letter to be provided by the parent company of the title agency. *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. Within thirty (30) days after closing, you must furnish to the OPWC copies of the Settlement Statement, recorded conveyance instrument and recorded deed restrictions.*

Respectfully,

Michael Miller
Director