FOR FWS USE ONLY
A/R 31420-7-0284
Federal Funds and Codes:
See each Task Order (TO)
ABC: See TO BOC: 411C
CFDA No. N/A FAADS Type N/A

"BLANKET" COOPERATIVE AGREEMENT
NO. 301817J095
BETWEEN THE
U.S. FISH AND WILDLIFE SERVICE
AND THE
APPALACHIA OHIO ALLIANCE

I. RECIPIENT:

Appalachia Ohio Alliance
P.O. Box 1151
Logan, OH 43138

EIN: [redacted]
DUNS: [redacted]

II. FINANCIAL AUTHORITY & AWARD AMOUNT:

"BLANKET" COOPERATIVE AGREEMENT No.301817J095 (hereinafter simply referred to as the "Agreement.") sets the terms under which separate Task Orders may subsequently be issued to the Recipient. Both the "blanket" and Task Order(s) numbers are to be reported in all related correspondence between the parties.

AMOUNT FUNDED: No federal funds have been allocated or obligated under this "blanket" Agreement, but such funds may be committed by one or more Task Orders issued by the U.S. Department of the Interior, Fish and Wildlife Service under this Agreement. Funding for the Task Orders will be derived solely from account # 0239 (SOCCO/Leading Creek Restoration, OH) and account # 0113 (Southern Ohio Coal, OH) in the U.S. Department of the Interior's Natural Resource Damage Assessment and Restoration (NRDAR) Fund, which were established pursuant to the Consent Decree of March 22, 1996, and the Amended Consent Decree of November 21, 2003, captioned United States v. Southern Ohio Coal Co., Case No. C2-96-0097, U.S. District Court, Southern District of Ohio, Eastern Division (hereinafter, the Consent Decrees).

FEDERAL FUNDS DATA: This information will be provided in detail on each Task Order that obligates NRDAR funding under this Agreement.

CATALOG OF FEDERAL DOMESTIC ASSISTANCE (CFDA) No.: [not applicable; the NRDAR funds are not federal funds appropriated by the U.S. Congress]

III. STATUTORY ENABLING AUTHORITY:

This Agreement between the U.S. Department of the Interior, Fish and Wildlife Service (hereinafter, the "FWS" or "Service") and the Appalachia Ohio Alliance (hereinafter, the "AOA" or "Recipient") is entered into under the authority of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) as amended (42 U.S.C. 9607(f)), the Federal Water Pollution Control Act (FWPCA) as amended (33 U.S.C. 1251 et seq.), and the Fish and Wildlife Coordination Act of 1934 (FWCA) as amended (16 U.S.C. 661 et seq.). These laws authorize the federal government, states and Indian tribes to recover damages for injuries to natural resources and their supporting ecosystems, belonging to, managed by, appertaining to, or otherwise controlled by them and to enter into cooperative agreements with non-profit conservation organizations to restore those natural resources. Through Executive Orders and the National Contingency Plan (NCP), the President has designated the Secretary of the Interior to act on behalf of the public as trustee for natural resources and their supporting ecosystems that are managed or controlled by the Department of the Interior.

IV. PURPOSE:

This Agreement shall facilitate the cooperation between the two parties in fulfilling the restoration activities outlined in the Final Natural Resource Restoration Plan and Environmental Assessment for the Leading Creek Stream System (hereinafter, the "Restoration Plan"), specifically Alternative C (The Restoration Plan is attached and incorporated herein as **Attachment 1**). Particularly, the AOA will assist the FWS in restoring, rehabilitating, replacing, and/or acquiring habitat as replacement for that injured by hazardous substance releases. Funding for this work is derived solely from the Leading Creek Improvement Account.

V. SCOPE OF WORK AND RESPONSIBILITIES OF THE PARTIES:

Both parties to this Agreement shall be substantially involved in the activities needed to accomplish the goals set forth herein. To that end, the FWS and the AOA agree to provide all necessary personnel, materials, services, facilities and funds for performance of this Agreement, more particularly as follows:

A. The FWS will:

1. Issue Task Orders to the AOA for all restoration, rehabilitation, replacement, and/or acquisition activities to be undertaken. Each Task Order shall include a detailed description of the work to be performed and the anticipated budget for said work, and shall be signed by both the FWS and the AOA;

2. Provide funding to the AOA for implementation of the work specified in the Task Orders;

3. Designate a Service Project Officer (SPO) for each Task Order issued under this Agreement, and will inform the AOA of any change in the assigned SPO by providing written notification thereof; and

4. Provide intermittent oversight to confirm that a project is completed in a timely manner and according to the terms of the Task Order applicable to the subject project. The FWS will maintain written records of its oversight activities and will provide timely copies of the same to the AOA.

5. Ensure that this Agreement and the Task Orders issued there-under are authorized under the terms of the aforementioned Consent Decrees and the Restoration Plan.

B. <u>The AOA shall:</u>

1. Assist the FWS in identifying lands that meet the acquisition and habitat restoration criteria for natural resource damage projects. Any property identified for potential acquisition, easement, environmental Covenant, or habitat restoration must at least have a physical connection to a high quality stream, the majority of the stream being designated as Warmwater Habitat, Exceptional Warmwater Habitat, or State Resource Waters;

2. Use its best efforts to acquire real estate outright or to obtain a Conservation Easement or Environmental Covenant on property identified by the FWS and the AOA as property suitable for acquisition. The AOA shall be responsible, per Task Order, for all work associated with the acquisition of real estate or easements or Environmental Covenants such as title work, surveying, and appraisals. Any real estate purchased outright shall become the property of the AOA, and land use restrictions shall be placed on said property in a manner consistent with the terms of the correlating Task Order, typically by means of an Environmental Covenant that will run with the land in perpetuity. Any Conservation Easement obtained shall be in the name of the AOA and shall specify the land use restrictions set forth in the correlating Task Order. Land use restrictions, Environmental Covenants, and/or Conservation Easements shall be recorded by the AOA in the County where the real estate is located;

3. Designate a Recipient Project Officer (RPO) for Task Orders issued under this Agreement and inform the FWS of any changes in said RPO by providing written notification thereof;

4. Maintain a project file throughout the course of the project, to include, at a minimum, the following documents: the "blanket" Cooperative Agreement, Task Orders, Conservation Easements, Environmental Covenants, acquisition documents, the Restoration Plan, invoices, quarterly progress reports, receipts, and any other documents as required in Section V;

5. Inspect completed projects annually for the life of each project to insure adherence to restoration project specifications and land use restrictions, and report any inconsistencies or violations to the SPO within 10 working days of discovery of said

violation;

6. Provide written quarterly reports to the SPO specifying those items delineated in Section V. herein; and

7. Recognize the FWS in all written and verbal references of restoration projects or land acquisitions, including signs and plaques.

C. The AOA and FWS mutually agree to:

1. Meet as necessary to coordinate and expedite the land acquisition process, and to coordinate habitat restoration projects as may be deemed necessary, acceptable and appropriate;

2. Work together in drafting land use restrictions when property is being acquired or a Conservation Easement is being obtained. In all instances, existing "natural areas" shall be perpetually protected from development and agricultural activities. "Natural areas" shall include (but are not limited to) riparian corridors and high quality woodlands; and

3. Cooperate in the final inspection of the land acquisition site(s) prior to purchase, unless it is mutually deemed to be unnecessary.

VI. AGREEMENT PERIOD:

The parties hereto have agreed that this Agreement shall remain in effect for five (5) years from the final date of execution by their authorized representatives. This period of performance should not be confused with the period of availability of the federal funds obligated under any Task Orders issued against this "blanket" agreement; the availability of federal funding is determined by the actual funds involved as well as federal financial regulations. Near the end of the five-year period, the parties will review it to determine whether renewal will be needed.

VII. REPORTING REQUIREMENTS:

A. Situation Reports: Recipient shall promptly inform the Service Project Officer (SPO) of all events that could significantly impact the scope or objectives of the Agreement, such as (1) problems, delays, or adverse conditions that may materially impair meeting the objectives of the award; and (2) favorable developments that could result in meeting the objectives sooner or at less cost than anticipated.

B. Performance Reports: Performance reports shall be submitted on a quarterly basis to the SPO. Each quarterly report shall be due within 30 days following the end of the evaluated quarter, and shall succinctly identify:

a. activities conducted during the period, referenced by Task Order numbers;

b. problems encountered during the period;
c. schedule variances and corrective actions, if necessary;
d. projected activities for the next quarter;
e. status of projects under construction; and,
f. supporting documents related to or appertaining to expenditures by the AOA and cost accounting of funds received from the FWS, such as receipts and time cards.

C. Financial Status Reports: The Service has hereby determined that SF-270 "Request for Advance or Reimbursement" submissions will be sufficient records in lieu of SF269A (Short Form) "Financial Status Report" submissions because of the inclusion of copies of supporting financial documents within the aforementioned quarterly progress reports. However, a final SF269A will nevertheless be required for each Task Order in which SF-270's were used in lieu of periodic SF269A reports but all of the SF-270's submitted were requests for advances of the authorized federal funding. A SF-272 "Report of Federal Cash Transactions" must also be submitted whenever federal funds are advanced but not used within a calendar quarter cycle of release. All of these federal forms are readily available through a simple internet search using their form numbers.

The financial reports may be submitted with the performance (progress) reports, so long as the reporting period requirements for each type of report are met. For each financial report, the Recipient shall stipulate whether it uses a cash or accrual basis (the Service prefers receiving cash basis reports, but will accept accrual-based reports if that is the Recipient's regular system of accounting; once an agreement begins, its financial reporting basis is not to be changed unless the Service concurs). Recipient shall retain financial records related to this agreement in accordance with 43 CFR 12.953.

All progress and final reports, other reports, or publications produced under this award shall employ the metric system of measurements to the maximum extent practicable. Both metric and inch-pound units (dual units) may be used if necessary during any transition period(s). However, the Recipient may use non-metric measurements to the extent that the Recipient has supporting documentation that the use of metric measurements is impracticable or is likely to cause significant inefficiencies or loss of markets to the Recipient, such as when foreign competitors are producing competing products in non-metric units.

VIII. PAYMENT PROVISIONS:

A. Funding Limits: The Service shall provide obligated federal funds to the Recipient in an amount not exceeding the amount designated within each Task Order issued under this "blanket" Agreement. Each Task Order shall "stand alone" in its financial obligation, and shall be modified to the mutual agreement of the parties hereto if funds obligated there-under are ultimately insufficient or more than is needed. In any event, the Recipient shall not accrue expenditures to be charged to the Service, nor shall the Service be obligated to reimburse the Recipient for, expenditures in excess of the federally authorized amount of the applicable Task

Order without pre-approved modification of the existing federal funding limits.

B. Other Contributions: In-kind services and monetary contributions may be contributed by the Recipient and third parties to this Agreement. These other contributions shall be outlined within the applicable Task Order(s).

C. Future Funding: The Service may voluntarily add funding for projects authorized under this Agreement through obligations included within Task Orders issued there-under. In any event, the Government's decision to add future funding under this Cooperative Agreement will be contingent upon the availability of NRDAR funding from the aforementioned Consent Decrees or other authorized sources.

D. Sub-awards/Contracts: Recipient shall notify the Service Project Officer (SPO) in writing of all sub-recipients of this financial assistance (whether the sub-recipient receives money or other property or services in lieu of money). This information shall be included within the reports required under Article VII "Reporting Requirements."

E. Travel Costs: Travel expenses incurred by the Recipient exclusively in direct performance of this Agreement shall be allowable costs but shall not exceed the area-specific per diem and lodging rates listed in the Federal Travel Regulations [www.gsa.gov/perdiem]. Airfare and other particular rates must be fair market value and reasonable under the circumstances. No travel expenses of federal employees shall be paid or reimbursed from the federal funds obligated under this agreement.

F. Advances/Reimbursements: A Recipient that is willing and able to expedite disbursals following receipt of advanced funds may request an advance of the federal funds obligated under this agreement. Recipient should limit advance payment requests to the amount of capital needed to cover costs payable during its initial disbursement cycle. As an alternative, Recipient may initially or thereafter choose to seek periodic reimbursement for allowable costs incurred.

G. Expenditure of Funds: Recipient should expend funds as generally shown in its proposal and budget within each Task Order, but need not be exact in spending or reimbursement per budget category. At termination of each Task Order or of this "blanket" Agreement, or if Recipient is otherwise unable to complete the provisions of this Agreement, all federally-advanced monies which either prove to be cancelable obligations, or unallowable in accordance with applicable OMB Circulars, shall be returned to the appropriate NRDAR account(s).

H. Invoicing: Recipient shall submit a signed and certified original of each request for payment made under this Agreement. Each invoice shall be delivered to the Service Project Officer for initialed approval, necessary for further processing. Invoicing frequency is at Recipient's discretion except that it may not occur more frequently than monthly. Invoices are to be accompanied by legible copies of receipts, work records, and other such supporting documentation as is available and applicable. Recipient is not to invoice for amounts in excess of the Service-obligated funds.

Federal invoicing form SF270 "Request for Advance or Reimbursement" should be used in requesting advance or reimbursement payments. This form can be found at http://www.whitehouse.gov/omb/grants/sf270.pdf. It is not mandatory, however, and Recipient may instead use its standard invoicing form, provided it includes the following information:

1. The "blanket" Cooperative Agreement no. 301817J095 as well as the specific Task Order number for which it pertains;

2. The project period for the costs claimed;

3. Current and cumulative expenditures by cost categories in the approved Task Order budget (when applicable) and any other supporting data such as legible copies of receipts and time sheets; and

4. A certification, signed by an authorized representative of the Recipient, that the invoice is correct and that the invoiced request for federal funds is within the authorized by the Agreement.

I. Payment: Under the Debt Collection Improvement Act of 1996 (P.L.104-134), federal payments are made via direct Electronic Funds Transfer (EFT) to recipients' bank accounts. Enrollment in the Automated Clearing House (ACH) database is a prerequisite of EFT from the Service, so no federal payments can be issued if ACH enrollment is not completed and maintained. If not currently enrolled, Recipient must complete a SF 3881 "ACH Vendor/ Miscellaneous Payment Enrollment Form" (available from the Service Project Officer's office or at http://www.gsa.gov/Portal/gsa/ep/formslibrary.do?formType=SF). It is to be forwarded to the Service Project Officer (SPO) for authorization and processing. Recipient must maintain enrollment in ACH until federal payments have been completed or, if the agreement is terminated, until settlement of accounts has occurred.

IX. CONTRACTING AND PROJECT OFFICERS:

A. The Service Project Officer (SPO) is responsible for monitoring the performance of work under this Cooperative Agreement. However, no understanding, agreement, modification, change order or other matter materially deviating from the terms of this Agreement shall be effective or binding upon the Government unless formalized by proper documentation executed by a sufficiently warranted Service Contracting Officer (SCO). If Recipient and the SPO disagree materially as to proper responsibilities under the Agreement or as to its scope, Recipient should promptly seek direction from the SCO in writing or via E-mail because acting outside the terms and conditions of this Agreement could result in partial or full rejection of invoiced amounts.

B. Service Contracting Officer (SCO):
Ken Kaseforth
USFWS / Region 3/ ABA-CFM
Bishop Whipple Federal Building
1 Federal Drive
Phone: (612) 713-5219
Fax: (612) 713-5151

Fort Snelling, MN 55111 kenneth_kaseforth@fws.gov

NOTE: Each Task Order issued under 301817J095 may list another sufficiently warranted SCO, who will be responsible for administering that particular Task Order.

C. Service Project Officer (SPO):
[Each Task Order will list the NAME of this official]
U.S. Fish and Wildlife Service
[OFFICE NAME]
[ADDRESS] Phone: #
[ADDRESS] Fax: #
[CITY, STATE, ZIP CODE] [EMAILADDRESS]@fws.gov

D. Recipient Project Officer:
[Each Task Order will list the NAME of this official]
Appalachia Ohio Alliance
[ADDRESS] Phone: #
[ADDRESS] Fax: #
[CITY, STATE ZIPCODE] [EMAIL@ADDRESS]

X. PROPERTY AND PROCUREMENT STANDARDS:

The FWS has not authorized the AOA to incur expenses for capital equipment, legal fees and/or personal property to be chargeable to the FWS. Expenses for legal services related to property deeds, acquisition, and closing may be requested when they relate to a specific property acquisition or enhancement.

XI. SPECIAL PROVISIONS:

A. Tort Liability of the Parties: Each party hereto agrees that, to the extent allowed under law, it will be responsible only for its own acts or omissions and the results thereof, whether based in negligence, recklessness or willfulness, and neither party shall be responsible for the negligent, reckless or willful acts or omissions of the other party and the results thereof. Each party will therefore assume all risks and liability to itself, its agents and employees, for any injury to persons or property resulting from actions or operations of itself, its agents or employees and for any loss, cost, damage or expense resulting at any time from any and all causes due to any acts, or negligence, or the failure to exercise proper precautions of or by itself or its own employees or agents to this Agreement. Where both parties are found to share liability, the degree of each party's liability shall be limited to its degree of culpability. The torts liability of the Federal Government will be determined under the Federal Tort Claims Act (28 U.S.C. 2761 et seq.) while the liability of the Recipient will be determined by applicable federal and state laws.

B. Printing:

1. Recipients of federal assistance are encouraged to use the federal

Government Printing Office (GPO) to reduce the cost of printing and publishing needs that are paid for by (or payable from) the federal funds provided under authority of this "blanket" Agreement. If interested in exploring the capabilities of the GPO and how to make use of their many services, contact Donna Cyrwus at (312) 353-3916 ext 14, (312) 519-5381 (mobile) or dcyrwus@gpo.gov.

2. All publications by Recipient concerning or arising out of this federal assistance shall be subject to prior review and comment by the Service. Recipient shall give the Service a reasonable period of time, normally at least 30 days, to review and comment on the proposed publication.

3. All articles, booklets, books and other published documents that the Service has approved for printing shall bear the appropriate Service logo, supplied by the Service Project Officer (SPO), on the first page inside the cover, complete with the following statement:

> Partial [OR] Full [AS APPROPRIATE] funding for this program is supported by a Cooperative Agreement from the U.S. Department of the Interior, Fish and Wildlife Service. Mention of trade names or commercial products does not constitute their endorsement by the U.S. Government.

NOTE: Authorship by the Recipient shall not incur any privileges of copyright, nor restriction on distribution, against the Service or other entities within the federal Government.

4. Articles or other publications not approved by the Service shall bear, on the first page inside the cover the following disclaimer:

> The views and conclusions contained in this document are those of the authors and should not be interpreted as representing the opinions or policies of the U.S. Government. Mention of trade names or commercial products does not constitute their endorsement by the U.S. Government.

5. The Recipient shall send two copies of each publication produced under this Agreement, whether print or electronic, to the Natural Resources Library, and two additional copies to the FWS National Conservation Training Center (NCTC). Each copy shall be sent with a transmittal that identifies the sender and the publication, and states that the publication is intended for deposit in the Natural Resources Library/Conservation Library/Publications Unit as appropriate. The addresses are:

Two copies: U.S. Department of the Interior
Natural Resources Library
Interior Service Center
Gifts and Exchanges Section
1849 C Street, N. W.

Washington, D.C. 20240-0002

One copy: U.S. Fish and Wildlife NCTC
Conservation Library
698 Conservation Way
Shepherdstown, WV 25443-4024

One copy: U.S. Fish and Wildlife NCTC
Publications Unit
698 Conservation Way
Shepherdstown, WV 25443-4020

C. Recipients of cooperative agreements, and/or their sub-awards, are encouraged to adopt and enforce on-the-job seat belt use policies and programs for their employees when operating company-owned, rented, or personally owned vehicles. These measures include, but are not limited to, conducting education, awareness, and other appropriate programs for their employees about the importance of wearing seat belts and the consequences of not wearing them.

XII. GENERAL PROVISIONS:

A. As applicable, the U.S. Fish and Wildlife Service's "General Provisions for Financial Assistance" are incorporated into this agreement by this reference as **Attachment A.**

B. The "Assurances" (SF 424B or SF 424D as applicable) and Form DI-2010, "U.S. Department of the Interior, Certifications Regarding Debarment, Suspension and Other Responsibility Matters, Drug-Free Workplace requirements and Lobbying", which are prerequisites to award of federal assistance, is also incorporated by reference into this agreement, as **Attachment B**. Sub-recipients must also complete and abide by these Assurances forms; their certification documents will be maintained by the Recipient of this award.

XIII. MODIFICATIONS:

Either party may propose changes of scope or objectives of this "blanket" Agreement at any time during its scheduled period of performance. However, a modification will become effective only when mutually memorialized and executed in writing by authorized representatives of the parties hereto. A proposed increase or decrease in federal funding or a request for an extension of the period of availability of funds or a change of key persons in research projects are three examples of changes requiring formal modification.

XIV. TERMINATION:

If Recipient fails to comply with the material terms and conditions of this agreement, the Service may exercise any of the remedies listed under 43 CFR 12.83, including the right to unilaterally terminate this award of federal assistance in whole or in part. The Service may also terminate this agreement in whole or in part with consent of the Recipient.

Recipient may terminate this agreement in whole or in part at any time by providing the Service with written notification of the reasons for taking this action, listing the effective date and, in the case of partial termination, the portion to be terminated. In the event of such partial termination, the Service may unilaterally determine that the award purposes cannot be met, in which case the Service may terminate the agreement in whole.

In any event, upon notice of early termination, neither party shall incur any new obligations or unnecessary expenditures under this Agreement and shall mitigate existing obligations to the extent reasonably possible. The parties hereby agree that they will make good faith efforts to agree to termination conditions, including the effective date and, where termination is partial, the portion to be terminated.

XV. DOCUMENT EXECUTION:

In witness whereof, the following authorized representatives of the parties hereto have memorialized and executed Cooperative Agreement No. 301817J095:

For the
U.S. FISH AND WILDLIFE SERVICE:

Ken Kaseforth

Contracting Officer, Region 3

5/29/07
Date

For the
APPALACHIA OHIO ALLIANCE

Name:

Title: President

5-22-07
Date