

FHWA Agreement No. DTFH71-02-X-00024
Forest Service Agreement No.
KTC Agreement No.

02-MU-11086001-006

Orig - Finance 7/18/02
cc: ATT
PLD
Agree BK + File moA

MEMORANDUM OF AGREEMENT

among

KENTUCKY TRANSPORTATION CABINET

and

**U.S. DEPARTMENT OF TRANSPORTATION
FEDERAL HIGHWAY ADMINISTRATION
EASTERN FEDERAL LANDS HIGHWAY DIVISION**

and

**U.S. DEPARTMENT OF AGRICULTURE
FOREST SERVICE
SOUTHERN REGION
LAND BETWEEN THE LAKES NATIONAL RECREATION AREA**

The purpose of this Memorandum of Agreement is to establish the roles, responsibilities, funding, and procedures by which the Kentucky Transportation Cabinet; the Department of Transportation, Federal Highway Administration, Eastern Federal Lands Highway Division; and the U.S. Department of Agriculture, Forest Service, Southern Region, Land Between the Lakes National Recreation Area will jointly participate in the maintenance of Forest Highways at Land Between The Lakes National Recreation Area.

WITNESSETH:

WHEREAS, The Land Between the Lakes Protection Act of 1998, hereinafter called "LBL Act" transferred the administrative jurisdiction of Land Between the Lakes National Recreation Area from the Tennessee Valley Authority to the Secretary of Agriculture so that the Recreation Area may be managed as a unit of the National Forest System; and,

WHEREAS, Section 514 (a) of the LBL Act provided that the road known as "The Trace" and every other paved road within the Recreation Area (including any road constructed to secondary standards) shall be considered to be a forest highway; and,

WHEREAS, Section 514 (b)(1) of the LBL Act provided that the States shall be responsible for the maintenance of forest highways within the Recreation Area; and Section 514 (b)(2) provided that, to the maximum extent provided by law, from funds appropriated to the Department of Transportation and available for purposes of highway construction and maintenance, the Secretary of Transportation shall reimburse the States for all or a portion of the costs of maintenance of forest highways in the Recreation Area; and,

WHEREAS, the Kentucky Transportation Cabinet, hereinafter called "KTC"; United States Department of Agriculture, Forest Service, Southern Region, hereinafter called "FS"; and the U.S. Department of Transportation, Federal Highway Administration, Eastern Federal Lands Highway Division, hereinafter called "FHWA", hereinafter referred to collectively as the Parties, have developed a Forest Highway Statewide Agreement, hereinafter referred to as the "Statewide Agreement", providing for cooperative planning, programming, survey, design, construction, and maintenance of Forest Highways (FH) in the State of Kentucky; and

WHEREAS, said Statewide Agreement provided that this Memorandum of Agreement, hereinafter called the "MOA", be entered into and serve as the Project Agreement, which specifies the responsibilities of each party for maintenance of FH at Land Between the Lakes National Recreation Area (LBL) within the State of Kentucky, the reimbursement procedures to transfer funds, and the process for determining the reimbursement amount for maintenance performed by the KTC; and

WHEREAS, nothing in this Agreement is to be construed to be conflicting with existing laws, regulations, and prescribed responsibilities;

WHEREAS, it is mutually beneficial to establish the responsibilities of each party at Land Between the Lakes National Recreation Area (LBL) within the State of Kentucky; and,

NOW, therefore, in consideration of the above premises, the parties hereto agree as follows:

1. Intent to Cooperate. It is the intention of the parties under this agreement to cooperate as follows:
 - a. Agree that those roads identified as Forest Highways in the LBL Act should be maintained to a standard adequate to accommodate safely and economically all traffic that uses such roads.
 - b. Agree on the identification of roads or road segments that meet the criteria in Schedule A.

- c. Provide for informal meetings and informal consultation on a regular basis to discuss and agree on action with respect to the roads identified pursuant to Schedule A.
 - d. Provide for regular and adequate maintenance of roads identified in Schedule A, including the assignment of maintenance responsibilities.
 - e. Provide for reimbursement, from funds identified by the Secretary of Transportation, to KTC for all or a portion of the costs of maintenance of those roads identified in Schedule A.
2. Identification of Roads. A list of roads and segments of roads which meet the criteria in item 1a is agreed upon and is marked "Schedule A" and attached as part of this agreement. Schedule A may be modified from time to time by agreement between the parties, by adding or removing roads or road segments, or by altering the description of a road or road segments, to give it proper identity. Each such modification shall be indicated by a revised Schedule A bearing the signatures of the parties or their authorized representatives and the effective date of the revision.
 3. Maintenance Plans. At the annual meeting provided for in item 5, plans for maintaining the roads listed in Schedule A shall be agreed upon. Such plans shall include assignment of responsibility for maintenance, or particular elements of maintenance, to the KTC or the FS for each road or segment of road listed in Schedule A.

Maintenance shall include the upkeep of the entire transportation facility including surface and shoulders, parking and side areas, structures, and such traffic control devices as are necessary for its safe and efficient utilization.

Maintenance plans shall provide for prompt changes in maintenance assignments during the period of the plan upon agreement by the parties or their designated representatives.

4. KTC Reimbursement. At the annual meeting provided for in item 5, the amount of annual reimbursement to the KTC for maintenance of roads listed in Schedule A shall be agreed upon. Funds will be authorized by the FHWA through a Federal-Aid Project Agreement (PR-2) in accordance with the Statewide Agreement. If other Federal funds are made available, the procedures to reimburse the KTC shall be covered by an amendment to this MOA.
5. Annual Meeting and Continuing Consultation. The KTC, the FS, and the FHWA shall meet at least once each year to review matters covered by this MOA and to agree on actions to implement this MOA including, but not limited to, (1) approval of changes in the listing of roads on Schedule A; (2) approval of the annual maintenance plan; (3) approval of the reimbursement amount to the KTC; and (4) proposed construction projects if funding is identified. It is also the intent of the parties to arrange for continuing consultation between their representatives with the objective of reaching prompt agreement by the parties on all matters of mutual concern that are covered by this MOA. The Area Supervisor of the Land Between The Lakes National Recreation Area for the FS; the Chief District Engineer or delegate for the KTC; and the Forest Highway Program Manager or delegate for the FHWA shall be responsible for making arrangements for formal meetings and continuing consultation. In addition, the aforementioned officials have the authority to approve changes to the Schedule A, approve the annual maintenance plan, and to recommend to FHWA the amount of annual reimbursement due the KTC.

6. Modification and Termination.

- a. This MOA may be modified by mutual consent.
- b. This MOA may be terminated by either party upon at least 60 days prior written notice, except that such termination shall in no way affect or change any commitment made authorizing the use of roads for purposes for which Federal funds were expended, or any operation in progress at time of notice, and provided that such termination shall in no way affect the agreement of the parties hereto with respect to any obligations incurred under this MOA until a full settlement has been made.

7. Miscellaneous.

- a. Nothing herein contained shall be construed to obligate the Forest Service, the FHWA, or the KTC beyond the extent of available funds allocated or programmed for this work, or contrary to applicable laws, rules, and regulations.
- b. No Member of, or Delegate to, the Congress, or Resident Commissioner, shall be admitted to any share or part of this agreement or to any benefits that may arise there from, unless it is made with a corporation for its general benefit.
- c. Where applicable, any contract, agreement, or understanding entered into pursuant to this agreement providing for work to be performed shall include the requirements of Federal laws, Executive orders, and Regulations.
- d. The Parties accept responsibility for any property damage, injury, or death caused by the acts or omissions of their respective employees, acting within the scope of their employment, or their contractors, to the fullest extent permitted by law. All claims will be handled pursuant to applicable law.
- e. In the event that a claim is brought under the Federal Tort Claims Act (28 USC 2671, et seq) against any Federal Party, alleging that the basis for the claim is related to the performance of this MOA; it shall be the responsibility of the Party receiving the claim to coordinate with any other Federal Party regarding investigation, settlement, or litigation arising from such claim. All other Parties to this MOA will cooperate in this effort.
- f. **Lobbying Prohibition:** The parties shall abide by the provisions of 18 U.S.C. Section 1913, Lobbying with Appropriated Moneys, which states:

No part of the money appropriated by any enactment of Congress shall, in the absence of express authorization by Congress, be used directly or indirectly to pay for any personal service, advertisement, telegram, telephone, letter, printed or written matter, or other device, intended or designed to influence in any manner a Member of Congress, to favor or oppose, by vote or otherwise, any legislation or appropriation by Congress, whether before or after the introduction of any bill or resolution proposing such legislation or appropriation; but this shall not prevent officers or employees of the United States or of its departments or agencies from communicating to Members of Congress on the request of any Member or to Congress, through the proper official channels, requests

for legislation or appropriations which they deem necessary for the efficient conduct of public business.

Whoever, being an officer or employee of the United States or of any department or agency thereof, violates or attempts to violate this section, shall be fined under this title or imprisoned not more than one year, or both; and after notice and hearing by the superior officer vested with the power of removing him, shall be removed from office or employment.

This MOA becomes effective on the date of the last approving signature.

**KENTUCKY
TRANSPORTATION CABINET**

By: James T. Ledell, III
Title: Secretary of Transportation

Date: 7.8.02

**DEPARTMENT OF AGRICULTURE
FOREST SERVICE
REGION 8**

By: [Signature]
Title: Area Supervisor

Date: 7/10/02

**DEPARTMENT OF TRANSPORTATION
FEDERAL HIGHWAY ADMINISTRATION
EASTERN FEDERAL LANDS HIGHWAY DIVISION**

By: Donald R. Tuggle
Title: Acting Division Engineer

Date: 6/20/02

**APPROVED AS TO FORM AND LEGALITY
KENTUCKY TRANSPORTATION CABINET**

By: [Signature]
General Counsel

Date: 7-8-02

Schedule A

Land Between The Lakes NRA
State of Kentucky


Area Supervisor

7/10/02
Date

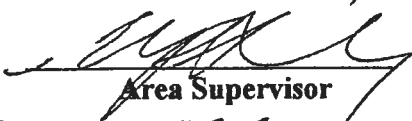

KTC Official

7-8-02
Date

<u>ROAD NAME</u>	<u>ROAD NO.</u>	<u>TERMINI</u>	<u>LENGTH (Miles)</u>
The Trace	100	TN/KY State Line to N. Boundary of LBL (13.0 mi. Lyon Co/17.0 mi. Trigg Co.)	30.0
Kentucky Lake Drive	101	FDR 100 to FDR 100	2.4
Hillman Ferry	110	FDR 100 to Hillman Ferry CG Entrance	0.9
Old Ferry Road West	114	FDR 100 to Birmingham Ferry CG Entrance	3.3
Old Ferry Road East	117	FDR 100 to Eddyville Ferry Lake Access	7.1
Cravens Bay	118	FDR 117 to Cravens Bay (end of asphalt)	3.0
Bethlehem Cemetery	122	FDR 117 to Bethlehem Cemetery (end of asphalt)	0.6
Silver Trail	133	FDR 100 to Woodlands Nature Station	3.1
Energy Lake Road	134	FDR 135 to Energy Lake Dam (end of asphalt)	3.0
Bugg Springs Road	134	Woodlands Nature Station to FDR 135	3.0
Mulberry Flat	135	FDR 100 to Taylor Bay Lake Access	6.5
Van Morgan Drive	163	FDR 100 to US 68/SH 80	0.7
Lick Creek/Laura Furnace Creek	165	FDR 100 to FDR100	9.8
Rushing Creek	172	FDR 100 to Rushing Creek CG Entrance	<u>2.2</u>
Total			75.6 miles

FOREST HIGHWAY MAINTENANCE PLAN

Land Between The Lakes NRA
State of Kentucky


Area Supervisor

7/10/02
Date


KTC Official

7.8.02
Date

Road Name/No. (All roads listed on Schedule A)

Length 75.6 miles

MAINTENANCE RESPONSIBILITY

<u>Activity</u>	<u>Maintenance Responsibility</u>		<u>Frequency Per Year</u>
	<u>USFS</u>	<u>KTC</u>	
Asphalt Surface Repair		X	As needed
Asphalt Surface Treatment		X	As per schedule
Asphalt Surface Overlay		X	As per schedule
Slide Removal		X	As needed
Roadside Vegetation (mowing)	X	X	KTC to mow to bottom ditch (2 times per year) FS option to mow beyond bottom of ditch as needed.
Culvert Cleaning		X	As needed
Culvert Replacement		X	As needed
Major Drainage Structures/Bridges		X	As needed
Miscellaneous Structures		X	As needed
Bridge: Posting		X	As needed
Regulatory, Warning Sign/Pavement Markings Pavement marking		X	As needed
Directional and Guide Signage	X		As needed



Commonwealth of Kentucky
Transportation Cabinet

James C. Codell, III
Secretary of Transportation

Frankfort, Kentucky 40622

Paul E. Patton
Governor

July 9, 2002

Clifford C. Linkes, P.E.
Deputy Secretary

Mr. William Lisowsky
Area Supervisor, Region 8
U.S. Department of Agriculture Forest Service
Land Between the Lakes
100 Van Morgan Drive
Golden Pond, Kentucky 42211

Dear Mr. Lisowsky:

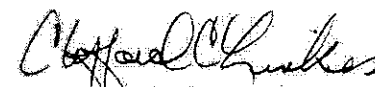
Subject: HFPP-15
Memorandum of Agreement
DIFH71-02-X-00024

Enclosed for your review and execution are three originals of the Memorandum of Agreement (MOA) among the Kentucky Transportation Cabinet (KYTC); the Federal Highway Administration (FHWA), Eastern Federal Lands Highway Division; and the Forest Service, Land Between the Lakes (LBL) National Recreation Area.

Please execute all three originals, and retain one original for your office. Please return one of the remaining originals via Federal Express to Acting Division Engineer Donald R. Tuggle, Federal Highway Administration, 21400 Ridgetop Circle, Sterling, VA 20166-6511 and the other original to Secretary James C. Codell, III, Kentucky Transportation Cabinet, State Office Building, Room 1002, 501 High Street, Frankfort, KY 40622.

If you should have any questions regarding the three enclosed originals of this MOA, please contact Mike Hancock at 502/564-3730.

Sincerely,


Clifford C. Linkes, P.E.
Deputy Secretary

ECL:MWI:EDCC

Enclosures (3 Original MOAs)

c/copy of enc: Jose Sepulveda, FHWA Division Administrator, Frankfort, KY
Donald R. Tuggle, Acting Division Engineer, Sterling, VA
Robert T. Jacobs, Regional Forester, Forest Service, Southern Region (R-8), Atlanta, GA
James C. Codell, III, KYTC Secretary
J. M. Yowell, KYTC State Highway Engineer
Mike Hancock, KYTC Deputy State Highway Engineer



KENTUCKY TRANSPORTATION CABINET
"PROVIDE A SAFE, EFFICIENT, ENVIRONMENTALLY SOUND, AND FISCALLY RESPONSIBLE TRANSPORTATION SYSTEM
WHICH PROMOTES ECONOMIC GROWTH AND ENHANCES THE QUALITY OF LIFE IN KENTUCKY"
"AN EQUAL OPPORTUNITY EMPLOYER M/F/D"