

FHWA Agreement No. DTFH71-02-X-00025

Forest Service Agreement No. 02-MU-11086001-008

TDOT Agreement No.

MEMORANDUM OF AGREEMENT

among

TENNESSEE DEPARTMENT of TRANSPORTATION

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 Tennessee Department of Transportation; 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 Tennessee Department of Transportation hereinafter called "TDOT"; 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 executed a Forest Highway Statewide Agreement, effective July 2, 1997, 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 Tennessee; and

WHEREAS, said Statewide Agreement provided that this Memorandum of Agreement, hereinafter called the "MOA", be entered into which specifies the responsibilities of each party for maintenance of FH at Land Between the Lakes National Recreation Area (LBL) within the State of Tennessee, the reimbursement procedures to transfer funds, and the process for determining the reimbursement amount for maintenance performed by the TDOT; 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 Tennessee; 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 TDOT 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 TDOT 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. TDOT Reimbursement. At the annual meeting provided for in item 5, the amount of annual reimbursement to the TDOT 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 TDOT shall be covered by an amendment to this MOA.
5. Annual Meeting and Continuing Consultation. The TDOT, 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 TDOT; 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 Forest Service; the Chief District Engineer or delegate for the TDOT; 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 TDOT.

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 TDOT 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.

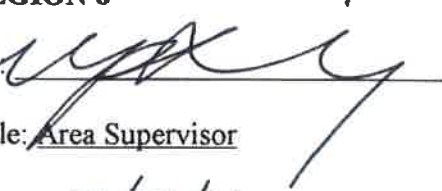
**TENNESSEE DEPARTMENT of
TRANSPORTATION**

By: 

Title: Secretary of Transportation

Date: _____

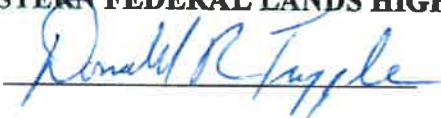
**U.S. DEPARTMENT OF AGRICULTURE
FOREST SERVICE
REGION 8**

By: 

Title: Area Supervisor

Date: 7/22/02

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

By: 

Title: Acting Division Engineer

Date: 6/20/02

Schedule A

Land Between The Lakes NRA
State of Tennessee


 Area Supervisor


 TDOT Official

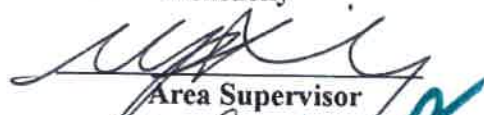
7/22/02
 Date

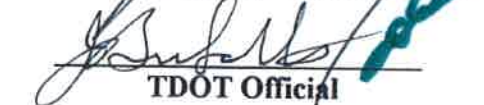
 Date

<u>ROAD NAME</u>	<u>ROAD NO.</u>	<u>TERMINI</u>	<u>LENGTH (Miles)</u>
The Trace	100	LBL Boundary to TN/KY State Line	14.0
Lake Front Drive	206	FDR 230 to FDR 172	16.9
Fire Tower Road	211	FDR 100 to FDR 206	1.5
Piney Entrance Road	234	FDR 230 to Piney CG Entrance	0.4
FT. HENRY	230	US 79/SH76 to FDR 100	8.0
	232/		
Boswell Landing Road	233	FDR 230 to Boswell Landing Lake Access	1.1
Brandon Spring Road	226	FDR100 to Brandon Spring Group Camp Gate	1.2
		Total	43.1 miles

FOREST HIGHWAY MAINTENANCE PLAN

Land Between The Lakes NRA
State of Kentucky


Area Supervisor


TDOT Official

7/22/02
Date

Date

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

Length 43.1 miles

MAINTENANCE RESPONSIBILITY

<u>Activity</u>	<u>Maintenance Responsibility</u>		<u>Frequency Per Year</u>
	<u>USFS</u>	<u>TDOT</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	TDOT 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: Inspection		X	Once every 2 years
Posting		X	As needed
Regulatory, Warning Sign/Pavement Mark. Pavement marking		X	As needed
Directional and Guide Signage	X		As needed



**STATE OF TENNESSEE
DEPARTMENT OF TRANSPORTATION**
SUITE 400, JAMES K. POLK BUILDING
NASHVILLE, TENNESSEE 37243-0349

J. BRUCE SALTSMAN, SR.
COMMISSIONER

DON SUNDQUIST
GOVERNOR

June 28, 2002

Mr. Robert T. Jacobs
Regional Forester
Forest Service, Southern Region (R-8)
1720 Peachtree Road NW
Atlanta, Georgia 30309

Dear Mr. Jacobs:

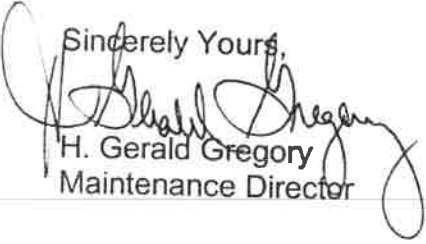
Re: Land Between the Lakes – Memorandum of Agreement
DTFH71-02-X-00025

The Tennessee Department of Transportation has signed the Memorandum of Agreement (3 copies) enclosed and forward these agreements for Forest Service signature.

Upon execution, please return one original to this office and one to the Eastern Federal Lands Highway Division.

If you have questions or comments, please advise.

Sincerely Yours,


H. Gerald Gregory
Maintenance Director

Enclosure

CC: Mr. Dennis Cook
Mr. Jim Jeffers
Mr. Charles S. Boyd, Jr.