

**Forest Service Handbook
National Headquarters - Washington Office
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Forest Service Handbook 5409.17 – Rights-Of-Way Acquisition Handbook

Chapter 60 – Road Right-of-way Construction and Use Agreements

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Approved by: Tina Johna Terrell, Associate Deputy Chief, NFS

Date approved: August 9, 2021

Responsible Staff:

Explanation of changes: Following is an explanation of the changes throughout the directive by section.

Posting Instructions: Amendments are numbered consecutively by handbook number and calendar year. Post by document; remove the entire document and replace it with this amendment. Retain this transmittal as the first page(s) of this document. The last amendment to this handbook was 5409.17-2016-1 to FSH 5409.17_60.

60.5: Makes minor revisions to the definitions for “deferred maintenance,” “maintenance,” “road storage,” and “supplement area.” Clarifies the definition for “tributary area.” Adds definitions for “abandon,” “supplement,” “road maintenance,” “recurrent maintenance,” “traffic-generated maintenance,” “non-traffic-generated maintenance,” “cooperator traffic,” and “Forest Service traffic.” Adds word “motor” to road storage definition.

64.2: Adds “non-system” to description of Non-Cost Share Easements.

65.04: Corrects name of Cooperative Road Maintenance Agreement, removes obsolete cross reference, inserts new cross reference, inserts term “reciprocal” to tie the Cooperative Road Maintenance Agreement to the Road Right-of-Way Construction and Use Agreement.

65.1: Removes obsolete cross reference; inserts new cross reference.

67.1: Changes the name of “Northern Rocky Mountain Region” to “Northern Region” in exhibit 02. Changes the name of “Wenatchee National Forest” to “Okanogan - Wenatchee National Forest” and corrects typographical error in exhibit 03.

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60.1 - Authority

(See FSM 5460.1).

60.2 - Objectives

(See FSM 5460.2 and 5467.02).

60.3 - Policy

(See FSM 5460.3 and 5467.03).

60.4 - Responsibility

(See FSM 5460.4 and 5467.04).

60.5 - Definitions

Abandon. Term used throughout this chapter to implicitly mean to give up completely as a course of action and relinquish all rights related to an acquired interest in a road.

Administrative Traffic. Traffic generated by the parties to a Road Right-of-Way Construction and Use Agreement for the protection, management, and utilization of land and resources. This includes traffic resulting from the preparation and administration of vegetation management projects, including commercial timber sales and land stewardship contracts; fire and fuel management projects; law enforcement; and infrastructure maintenance activities. It does not include commercial traffic associated with logging, such as log trucks, fallers, machine operators, or other commercial activities such as minerals developments and special uses.

Agreement. Term used throughout this chapter for the Road Right-of-Way Construction and Use Agreement containing the general requirements for an Agreement area.

Agreement Area. An area designated in exhibit A of the Agreement, where the parties intend to cooperatively develop, use, and maintain a road system that best serves their mutual needs.

Anticipated Use. The expected traffic use on a road over the next 20 years.

Associated Traffic. Vehicle use in support of commercial activity such as removal of forest products including fallers, machine operators, crews, and so on.

Balance Sheet. A listing by Agreement area of the obligations, payments, and offsetting (see definition for offsetting) excess costs for each Supplement to the Road Right-of-Way Construction and Use Agreement (Supplement).

Collection Right. The right of the constructing party to recover excess costs incurred on behalf of the cooperating party.

Commensurate Share. The proportion of maintenance and reconstruction associated with a National Forest System (NFS) road that is assignable to a commercial hauler for purposes of cost recovery under FSM 7730; and Title 36, Code of Federal Regulations, 212.5(c) (36 CFR 212.5 (c)).

Construction Cost. The cost of constructing or reconstructing a road or structure.

Contribution Value. The difference between the current cost of constructing a new road to an agreed to standard, and the current cost of reconstructing an existing road to the same standard.

Cooperator. An individual or entity that is a party to an investment sharing agreement, or is granted an easement for acquisition, construction, or maintenance of an NFS road pursuant to Title 16, United States Code, section 535 (16 U.S.C. 535).

Cooperator Traffic. Traffic generated by use of lands owned or controlled by the Cooperator, except such traffic as is generated by noncommercial recreational use of the Cooperator's lands.

Cost Share. Common term for Road Right-of-Way Construction and Use Agreements. The process of cooperating in the joint construction, use, and maintenance of a road or road system.

Design Element. A physical characteristic of a road (such as traveled way width, shoulder, slope, curve widening, or pavement structure) that is considered in its design.

Design Standard. The definitive length, width, depth, slope, or grade of a design element.

Engineering Cost. The cost of engineering a road or structure including surveys, design, testing, drawings, specifications, cost estimates, and construction inspection.

Engineering Cost Estimate. An estimate of the total construction cost of a road or structure prepared by a qualified engineer, or a person directly supervised by a qualified engineer, using cost data collected for similar work.

Excess Cost. The cost that a cooperator incurs in a particular Supplement to the Road Right-of-Way Construction and Use Agreement that exceeds its share of the cost of the facilities involved.

1. Excess Cost on a Commitment Basis. This is the amount of excess cost set out in the Supplement and is the sum of the "earned" and "unearned" excess costs for a particular road segment.

2. Unearned Excess Cost. When a shared road or road segment is planned but the work has not yet been accepted by all the sharing parties, the excess cost is an "unearned excess cost".

3. Earned Excess Cost. When a shared road or road segment has been constructed and/or reconstructed, and the parties have accepted the work in writing, the excess cost becomes an "earned excess cost".

Existing Road Value. The current cost of replacing a road with one of equal use, less a deduction for depreciation of structures, road surface, and so forth.

FLPMA. The acronym for the Federal Land Policy and Management Act of October 21, 1976 (43 U.S.C. 1715).

Forest Service Traffic. Traffic generated by use of NFS lands and other lands, exclusive of Cooperator traffic.

Forested Land. Land at least 10 percent occupied by trees of any size or historically having had such tree cover, and not currently developed for non-Forest use.

FRTA. The acronym for the Forest Roads and Trails Act of October 13, 1964 (16 U.S.C. 532-538).

Investment Share. The proportion of acquisition, construction, and maintenance costs associated with an NFS road that is assignable to a cooperator, a commercial hauler, or the Forest Service for purposes of "investment sharing" (FSM 7730.5).

Investment Sharing.

1. Provides for acquisition, construction, and maintenance of NFS roads pursuant to an investment sharing agreement or easement to meet mutual needs of the United States and others for access (16 U.S.C. 535; 36 CFR 212.9(a)-(c), (e), and (f));
2. Enters into a Cooperative Road Maintenance Agreement with a commercial hauler who is not a party to an investment sharing agreement for the agency to recoup the commercial hauler's investment share through the commercial hauler's contribution of funds or performance of maintenance or reconstruction required to accommodate the commercial hauler's use (16 U.S.C. 535); or
3. Requires a commercial hauler who is not a party to an investment sharing agreement or a Cooperative Road Maintenance Agreement to reimburse the Forest Service or, in lieu of reimbursement, perform maintenance or reconstruction required to accommodate the commercial hauler's use, for the commercial hauler's investment share (16 U.S.C. 535; 36 CFR 212.5(c) and 212.9(d)).

Off-highway Haul. The use of vehicles on NFS roads for hauling products that exceed the maximum weight, length, height, or width restrictions applicable to State or county road systems.

Offsetting. Process in which one party performs construction or reconstruction on a road in excess of its share to compensate for construction or reconstruction done by another party in excess of its share.

Public Road. A road under the jurisdiction of and maintained by a public road authority and open to public travel (23 U.S.C. 101(a)).

Qualified Engineer. An engineer who by experience, certification, education, or license is technically trained and experienced to perform the engineering tasks specified and is designated by the Director of Engineering, Regional Office. See FSM 7705.

Replacement Cost. The current cost of constructing a road to an equal standard.

Restoration. Work necessary to rebuild a road to its previously approved traffic-service level due to damage caused by exhaustion or unusual natural events such as floods.

Road Abandonment. Closing the road to traffic and returning the area to resource production. No future use of the land as a road is envisioned; easements are terminated, and the road is removed from the transportation system.

Road Construction or Reconstruction. Supervising, inspecting, actual building, and incurrence of all costs incidental to the construction or reconstruction of a road (36 CFR 212.1).

Road Maintenance. Ongoing work needed to preserve or restore a road, including the surface, shoulders, roadside, structures, and any traffic control devices that are necessary for safe and efficient use of the road, to the standards of its original construction or reconstruction or as otherwise agreed to by the parties.

1. Recurrent Maintenance. Road maintenance that is performed as needed on a continuing basis with accomplishment annually or more frequently.
2. Deferred Maintenance. For purposes of this chapter, road maintenance that is deferred for at least 1 year until it is needed or can be economically or efficiently performed.
3. Traffic-Generated Maintenance. Road maintenance, other than repair of major damage, that is necessary as a direct result of or to minimize the effect of traffic.

4. Non-Traffic-Generated Maintenance. Road maintenance that is necessary as a direct result of normal weathering or other factors that cannot be attributed to traffic.

Road Management Objectives (RMOs). RMOs document the intended purpose of an individual road in providing access to implement a land and resource management plan as well as decisions about applicable standards for the road. RMOs should be based on management area direction and access management objectives. RMOs contain design criteria, operation criteria, and maintenance criteria. See FSM 7709.59.11, Road Standard. The road as described and documented in the road plans, drawings, and specifications included in the most recent applicable supplement to the Road Right-of-Way Construction and Use Agreement. This description is expressed in measurements, items, and details included in the plans and specifications.

Road Storage. The process/action of closing a road to motor vehicle traffic and placing it in a condition that requires minimum maintenance to protect the environment and preserve the facility for future use. This is also known as Maintenance Level 1. See FSH 7709.59, section 62.32.

Road Use Permit. A written authorization issued (form FS-7700-41 or FS-7700-48) pursuant to 36 CFR 212, Subpart A, that allows an act or omission on an NFS road, or NFS road segment and associated transportation facilities that would otherwise be in violation of a traffic rule in effect on the road, including:

1. Use of a closed road to access non-Federal property (36 CFR 212.6(b));
2. Commercial hauling on a road where that use is otherwise restricted (36 CFR 212.9(d) and 261.54); and
3. Motor vehicle use on an NFS road that is not designated for that purpose (36 CFR 212.51(a)(8)). See FSM 7730.5.

Note that this is a different authorization than the permit issued to cooperators in Road Right-of-Way Construction and Use Agreements discussed in this chapter.

Subdivision. Any division, platting, or splitting of land with the purpose of increasing residential density for either full-time or part-time residents.

Supplement. A supplement to a Road Right-of-Way Construction and Use Agreement.

Supplement Area. That part of the Agreement area within which a cost share project occurs as described in a Supplement to the Road Right-of-Way Construction and Use Agreement (also commonly referred to as the Supplement).

Third-Party. Landowner other than the Government or a cooperating party.

Tributary Area. The land area eligible for roading and/or timber removal within a boundary that is determined by transportation analysis using break-even points for timber haul routes for normal logging systems, and practicable helicopter logging. The tributary area may extend beyond the agreement boundary.

See also FSM 5467.05 for additional definitions.

60.6 - Monitoring and Reviews

(See FSM 5467.06).

61 – Road Right-of-Way Construction and Use Agreement

Before entering into a Road Right-of-Way Construction and Use Agreement (Agreement), ensure that the potential cooperator(s) meet the criteria described in FSM 5467.2. In addition, preliminary discussions must include such key topics as the area to be developed, tentative transportation routes, land management objectives, land ownership, and timber availability.

Agreements may be developed to cover simple or complex situations. A simple case may cover a small drainage with a checkerboard ownership pattern and a single cooperator. Complex cases may involve large drainages with several owners, some of whom may be unwilling, unable, or not ready to cooperate. Ownership patterns, land topography, equipment capabilities, hauling requirements, public use, and traffic regulation are factors that may add to the complexity of cases. Complex cases that are difficult to negotiate may indicate a need to divide the larger agreement planning area into smaller areas.

The Agreement consists of three parts:

1. Preamble (sec. 61.1);
2. Body, containing 19 numbered sections (sec. 61.2); and
3. Eight exhibits are attached and incorporated within the Agreement as follows:

Exhibit A - Map of the Agreement area (sec. 61.1).

Exhibit B - Supplement No. _____ to Road Right-of-Way Construction and Use Agreement (sec. 62).

Exhibit C - Easement from the cooperator to the United States (sec. 63, ex. 01; sec.63.2).

Exhibit D - Easement from the United States to the cooperator (sec. 63.1; FSH 2709.12, sec. 31.2).

Exhibit E - Easement from the cooperator to the United States for non-cost share roads in an Agreement area (sec. 63, ex. 02; sec. 63.4).

Exhibit F - Easement from the United States to the cooperator for non-cost share roads in an Agreement area (sec. 63.3; FSH 2709.12, sec. 32.2).

Exhibit G - Permit from the cooperator to the United States (sec. 63, ex. 03; sec. 63.6).

Exhibit H - Permit from the United States to the cooperator (sec. 63.5; FSH 2709.12, sec. 41.24).

Section 61, exhibit 01, displays the format comprising the preamble, map of the Agreement area (exhibit A) and body of the Agreement. Section 62, exhibit 01, displays the Supplement to the Road Right-of-Way Construction and Use Agreement format (exhibit B). Section 63, exhibits 01, 02, and 03 displays the easements and permits from the cooperator to the United States (exhibits C, E, and G). Exhibits D, F, and H, displays the easements and permits from the Government to the cooperator found in FSH 2709.12, sections 31.2, 32.2, and 41.24 respectively.

All Agreements must be in the same format as displayed in section 61, exhibit 01. Any proposed changes in language or format, not provided by manual or handbook instructions, must be approved by the Chief.

ROAD RIGHT-OF-WAY CONSTRUCTION AND USE AGREEMENT

THIS AGREEMENT is entered into this ____ day of _____, 20____, by and between _____, hereinafter referred to as cooperator, and the United States of America, in accordance with the Act of October 13, 1964 (78 Stat. 1089; 16 U.S.C. 532-538), by and through the Regional Forester, Forest Service, Department of Agriculture, hereinafter referred to as Government.

WHEREAS, there is an area within and adjacent to the _____ National Forest and situate in the County(ies) of _____, State of _____ hereinafter called the Agreement area, and to be known as the _____ Agreement area, within the boundaries of which, as shown on the map marked exhibit A attached hereto and made a part hereof, the parties have need for establishing access roads to their intermingled land ownerships for managing, protecting, and utilizing resources therefrom; and

WHEREAS, Government and cooperator desire to join in developing and maintaining such roads serving their ownerships and to share costs thereof;

NOW THEREFORE, in consideration of the mutual benefits to be derived, the parties agree as hereinafter set forth.

Section 1 - Agreement Supplement Prerequisite to Joint Financing of Roads

In order for roads which are constructed hereafter or which are already constructed within the Agreement area to be jointly financed, there must be mutual agreement, prior to construction or prior to use by the other party of roads already constructed by one party, on each of the elements set forth in section 2 hereof, which Agreement will be expressed in a consecutively numbered supplement substantially in the form of exhibit B attached hereto.

Section 2 - Necessary Elements of Agreement Supplement

The elements to be agreed upon for a road to be jointly financed are:

a. Identification by name, or number of road or roads to be included, along with a map or plat showing as accurately as necessary for the road involved its location and length, all in accordance with procedures prescribed in section 3 hereof.

b. Plans and specifications for roads to be constructed, or reconstructed.

61 - Exhibit 01--Continued

c. Scheduling of construction or reconstruction, if any, and designation of party to perform such construction or reconstruction.

d. Estimated costs of construction or reconstruction based on engineering appraisals, both for roads built and to be built, but subject always to the limitation expressed in section 4 hereof; if the project is to be accomplished by contract, the costs may be determined on the basis of the lowest acceptable bid.

e. Proportion of estimated costs to be borne by each party determined by application of the principles stated in section 5 hereof.

f. Provision for each party's meeting its share of the cost, based upon methods provided in section 6 hereof.

Section 3 - Road Construction Plans

When either party is considering the construction of a road within the Agreement area, it will give notice in writing to the other party accompanied by a map showing the approximate location of the proposed road. Within no more than thirty (30) days after receiving such notice, the other party will inform the initiating party whether it is interested in having the road constructed as a jointly financed road.

If the road is not to be a jointly financed road, the initiating party may proceed as provided in section 13 hereof.

If the road is to be jointly financed, the initiating party will tentatively locate the road, or cause it to be located and plainly marked on the ground. When a location has been so marked, notification in writing will be given to the other party. Promptly thereafter, the route will be jointly inspected and agreed upon, and arrangements made for submission by the initiating party to the other party of such surveys, plans, and construction details as the parties agree are necessary. Agreement on location will not be unreasonably withheld nor conditioned by the other party upon either a relocation, or incorporation of features which add substantially to construction costs without a substantial and demonstrable benefit being preserved, or created in return.

Final approval of surveys, construction plans, right-of-way description, and estimated construction costs must be made in writing by the other party promptly after such submission, or if approval is withheld for reasonable cause, the parties must attempt to achieve agreement. Once the plans and estimated construction costs are agreed upon, the basis for cost sharing, if not previously agreed to, and the method of paying shared costs will be negotiated, and the Agreement supplement referred to in section 1 will be executed.

61 - Exhibit 01--Continued

Section 4 - Limitation on Cost Sharing for Roads

A party's right to participate in joint financing of a road within the Agreement area, and to enjoy the benefits of this Agreement with respect thereto will not be conditioned upon assumption of any more than that party's proportionate share of the estimated costs for constructing roads needed to serve the anticipated uses in the area tributary to the roads.

Section 5 - Basis for Cost Sharing

For all roads to be jointly financed within the Agreement area the basis for sharing will be determined in each supplement by application of the following principles:

a. Anticipated use of the roads by the public for noncommercial purposes and for public service traffic will be allocated to Government.

b. Anticipated use of the roads for commercial purposes will be allocated to the parties in proportion to the resources expected to generate such use which are owned or controlled by each party; provided, that commercial use attributable to nonparticipating parties will be allocated to Government unless otherwise agreed.

c. Anticipated use of the roads by each party for protection and administration; provided, that use for protection and administration attributable to nonparticipating parties will be allocated to Government.

d. Anticipated use of the roads attributable to use, and operation of commercial recreation activities will be allocated to the parties in accordance with the principle in item b.

Section 6 - Methods of Sharing Costs

The share of estimated construction costs to be borne by each party for each jointly financed road under this Agreement, whether the road is already constructed or is to be constructed, may be amortized by any one or a combination of the following methods:

a. By a party's performing or having performed construction or reconstruction on the jointly financed road to the extent of its share.

b. By a party's performing or having performed construction or reconstruction on another jointly financed road within an Agreement area in excess of its share for that other road.

61 - Exhibit 01--Continued

c. By a party's depositing funds with the constructing party either at the outset, or as construction or reconstruction progresses, or upon completion of construction, as the parties agree.

d. By haulers paying, at rates mutually agreed upon, as timber or other products from Government lands are transported over the roads constructed or reconstructed by cooperator. Such payments must be collected by the Government and paid to cooperator.

e. By cooperator paying, at rates mutually agreed upon, as timber or other products from cooperator's lands are transported over the roads constructed or reconstructed by Government.

Section 7 - Right-of-Way Conveyances

As soon as the roads are located, and the Agreement Supplement has been executed as above provided, each party will grant easements to the other for such roads, and concomitant rights-of-way across lands or interests in lands each may own. Easements will be in substantially the form attached hereto as exhibits C and D. Either party will issue when requested a permit in lieu of an easement.

Section 8 - Road Construction, Inspection, and Acceptance

The parties agree that written acceptance of road work by both parties is essential to the accomplishment of the cooperative objective. Each party will keep the other informed of construction progress, and the other will make periodic inspection as it deems necessary, and will currently raise in writing any objections to the work performed. Right-of-way timber will be disposed of as provided in the easements or permits unless otherwise agreed.

Ten (10) days prior to the expected completion of any construction, the constructing party will give written notice as to the completion date of a project, and the other party will, within thirty (30) days after receipt of the notice, make a final inspection, and give written notice of rejection or acceptance of the project. If weather or other conditions prevent inspection within said thirty-day period, the time during which such conditions prevail will be excluded in determining the thirty (30)-day period. Rejection may only be based upon failure to comply with the stated plans and specifications. A rejection notice will identify the items of work to complete the project in accordance with the stated plans and specifications. Acceptance will not be unreasonably withheld. In case of rejection, the items of work identified in the notice will be promptly done; thereupon, the road will be deemed accepted.

61 - Exhibit 01--Continued

Section 9 - Maintenance

Maintenance must be performed on jointly financed roads in accordance with the easements or permits granted in accordance with section 7 herein, pursuant to a Road Maintenance Agreement separately entered into, and in accordance with the Annual Maintenance Plan made at the Annual Meeting as provided for in section 12 hereof. Use by a party's licensee will be the maintenance responsibility of that party. Maintenance must be performed so as to preserve the road to standards of original construction or reconstruction.

Section 10 - Additional Capital Expenditures

If exhaustion or severe damage or destruction occurs to any portion of a road jointly financed under this Agreement, or if it is mutually agreed reconstruction or betterment, or a road is needed, the parties will endeavor to agree upon: (1) the work to be performed, and (2) the share of cost to be borne by each. Agreement must be expressed in a Supplement substantially in the form of exhibit B.

It is intended that the share of the cost to be borne by each party will be determined by application of the principles stated in section 5. Except that, restoration work needed within five (5) years of the construction or reconstruction of a road will be shared using the shares in the Supplement by which the work was agreed upon. Payment of shares must be by any one or a combination of the methods stated in section 6.

Section 11 - Annual Accounting

A mutual accounting by the parties to this Agreement must be made as of each December 31.

The accounting will determine the debits and credits accrued on a commitment and earned basis by each party in the year just completed with respect to their obligations under this Agreement for new construction, reconstruction, and restoration involving capital expenditures. Any failure by either party to meet its commitments in any Supplement in a timely fashion must be identified, and remedial action taken to reduce delays in meeting commitments.

The accounting will also determine the debits and credits accrued by each party during the year just completed, with respect to their agreed maintenance obligations for roads in the Agreement area, and will achieve a net balance for the year between the parties, with respect to maintenance matters. In those areas where deposits are not being made for the cost of deferred maintenance, the shares incurred by the parties will be agreed to and documented in writing.

61 - Exhibit 01--Continued

Section 12 - Annual Meeting

On or before the ____ day of _____ of each year, the parties must meet to apprise each other of their logging and use plans, and of anticipated road construction or reconstruction needs for the coming year toward the objective of efficiently developing the Agreement area.

Each party will make available for examination or provide a long-term plan, covering the next four (4) or more years to the other party or parties to the Agreement. The plan must be in accordance with the jointly developed long-term transportation plan for the area and include anticipated sales areas, road construction or reconstruction, seasons and volume of haul, and any other information that will affect the joint development and use of the road system in the Agreement area.

At such annual meeting, the parties will also agree on and document in writing the Annual Maintenance Plan for the coming season. The Annual Maintenance Plan will use the Road Maintenance Agreement as a reference, and include the following information:

- a. The anticipated volume of traffic, the type of vehicle use (such as load height, weight, and width), the conditions of use, provisions for preventing or repairing major damage caused by use, the work to be performed, and estimated cost of doing it.
- b. The method of measuring total use and the means of apportioning such total use to each party, in order to comply with the easements or permits covering jointly financed roads within the Agreement area.
- c. Designation of the maintainer and roads, road segments, and classes of work for which the maintainer is responsible.
- d. How the planned program is to be financed.

The Annual Maintenance Plan must also include provisions for maintenance on roads in storage and, when appropriate, deferred maintenance work to be performed.

Section 13 - Roads Not Jointly Financed

When a party desiring to construct a particular road or road segment is informed by the other party that it has no need for the road, and will not share construction costs, the initiating party may proceed alone. It will prepare maps showing the proposed location of the road or road segment on the land of the other party, and will furnish such maps to the other party along with construction specifications, and a description of the proposed location. The other party

61 - Exhibit 01--Continued

will promptly issue a permanent easement in the appropriate form attached hereto marked exhibits E and F for a road considered permanent by the initiating party, or will issue a permit in the form attached hereto marked exhibits G and H for a road considered temporary by the initiating party. The other party may refuse to issue the easement or permit for the proposed location only if the proposed location would unreasonably conflict with existing or planned facilities or improvements, or would unduly interfere with logging of the said party's timber, or if the proposed construction specifications are not adequate to prevent undue damage to adjacent resources or values. In the case of a refusal for such reasons, the parties will endeavor to agree upon a reasonable and practicable alternative route, or change in specifications.

Section 14 - No Rights of Use Without Cost Sharing

Except as provided in the easement, permit, or other title document, a party who has not shared in costs of constructing a road or a road segment on lands of either party within the Agreement area, in accordance with sections 4 and 5 herein, will make no use of the road or road segment until it pays, or makes arrangements acceptable to the other party to pay its share in accordance with section 6. A party will at all times have the right to acquire rights of use in a road or road segment within the Agreement area in accordance with the principles for sharing costs stated in section 5 and by one or more of the methods of payment prescribed in section 6.

Section 15 - Rights of Entry Upon Land of Other Party

Either party, upon giving notice in writing to the other party, will have the right to go, and be upon the lands of the other party within the Agreement area to the extent necessary for purposes related to, or connected with this Agreement.

Section 16 - Change in Ownership

When a transfer of ownership of a party's lands within the Agreement area occurs, the parties must update all records for the affected roads and determine the outstanding obligations.

All outstanding obligations as of the date of conveyance attributable to such lands are to be satisfied by payment, or other provisions between the parties hereto.

Section 17 - Termination

This Agreement may be terminated by either party upon at least ninety (90) days prior written notice, except that such termination will in no way affect any permit, right-of-way grant, or easement deed that may have been executed by either party hereto prior to such notice, or any

61 - Exhibit 01--Continued

other operations dependent upon its continuance, which are in progress at time of notice; provided, that such termination will in no way affect the agreement of the parties hereto with respect to any obligations incurred under this Agreement until a full settlement has been made.

Section 18 - Federal Requirements

No resident commissioner nor member of or delegate to Congress will be admitted to any share, or part of this Agreement, or to any benefits that may arise therefrom, unless this Agreement is made with a corporation for its general benefit.

Where applicable any contract, agreement, or understanding entered into pursuant to this Agreement providing for work to be performed will include the requirements of Federal laws, Executive Orders, and regulations except that no present or future administrative rules or regulations will reduce the rights herein.

Section 19 - Notices and Payments

Until notice is given by either party to change the address for delivery of notices and payments, all notices and payments to cooperator must be delivered to ____ [address] ____ and all notices to Government must be delivered to Supervisor, _____ National Forest, _____ [address] _____ and all payments to Government must be delivered to the collection officer at the same address.

IN WITNESS WHEREOF, the parties hereto have caused this Road Right-of-Way Construction and Use Agreement to be properly executed by their authorized representatives on the day and year first above written.

_____	UNITED STATES OF AMERICA
(Cooperator's Name)	
By _____	_____
Title _____	Regional Director (<i>as delegated by the R.F.</i>)
	Forest Service
	Department of Agriculture

Below is a discussion of the sections of the Agreement together with acceptable modifications not requiring special approval.

61.1 - Preamble and Map of the Agreement Area

The Preamble is the first section of the Agreement. It displays the names of the parties, the date the Agreement was executed, the general location of the Agreement area (incorporate the map as exhibit A), and a general statement of the purpose for the Agreement.

1. Parties to Agreement. The Agreement is written for two parties. To accommodate more than one cooperator in a single agreement, modify the Agreement as follows:
 - a. Paragraph One. Expand the second line as necessary to permit naming the additional cooperating parties. Insert the word "collectively" after the word "hereinafter" in the third line. The cooperating parties are then referred to collectively as the cooperator in the Agreement.
 - b. Section 19. Expand this section to accommodate the addresses of all cooperators.
 - c. Signature Block. Expand the signature block to provide for signing by all parties.
2. Location. Indicate the State, county(ies), and National Forest.
3. Agreement Area. Identify the area within which the parties intend to cooperatively develop and use a road system. Agreement areas may be as large or as small as necessary to meet the joint development needs of all the parties. It is not necessary to include all lands, or resources that may be tributary to the existing or planned transportation system since the timber, or other resources outside of the Agreement area must be included when determining each party's capital or buy-in share. Do not include large blocks of solid ownership within the Agreement area when the other party is not interested in cost sharing. Include only the area in which the road system(s) will be jointly developed.

Economic factors, topographic limitations, operating plans, and mutual needs for road development ordinarily are principal determinants of the area the Agreement is to cover. Delineate the area agreed upon for cooperative development on a legible map.
4. Ownership. Show each party's land ownership within the Agreement area on exhibit A.

61.2 - Body of the Agreement

The Agreement provides the general principles needed to construct, reconstruct, maintain, and share use of a joint road system. The Agreement contains 19 sections.

Section 1 - Agreement Supplement Prerequisite to Joint Financing of Roads. In order for roads to be jointly financed and used, the parties shall document and agree to the work and shares in consecutively numbered Supplements to the Road Right-of-Way Construction and Use Agreement (exhibit B). The Agreement provides the guiding principles, but does not obligate the parties to build or share in any roads; sharing in roads is accomplished through executed supplements.

Section 2 - Necessary Elements of Agreement Supplement. Either party may initiate a Supplement. When the parties have reached agreement on the following elements, the initiating party may prepare a Supplement:

- a. Identification of the road or roads.
- b. Plans and specifications.
- c. Construction or reconstruction and assignment of work each party is to perform.
- d. Estimated costs.
- e. Proportion of costs the parties are to bear.
- f. Method of sharing.

See section 62 for detailed direction of the preceding elements.

Section 3 - Road Construction Plans. Usually, the parties are aware of the other's construction plans and needs from the information exchanged at the annual meeting (see sec. 12 of the Agreement). To avoid delays in road construction, it is essential for the parties at the field level to maintain close working relationships and frequent contacts.

A party considering the construction of a road within the Agreement area shall give the other party written notice, and a map showing the approximate location of the proposed road. Within 30 days of receipt of the notice, the other party shall inform the initiating party whether or not that party is interested in joint financing of the construction. The time limitation is to prevent unnecessary or unwarranted delays by either party. Consequently, by mutual agreement, this time period may be extended.

When the parties agree to finance the proposed road jointly, the initiating party takes the lead in reaching final agreement on the elements of a Supplement.

Detailed instructions for Travel Management are in FSM 7700. Following are considerations peculiar to the Cooperative Road Program:

a. Location. The objective of the Cooperative Road Program is to develop a road system that serves the needs of all parties. Route selection and road specifications must aim toward that objective. Factors to consider include ownership patterns, topography, location of timber stands and other resources, probable directions of haul, recreation access needs, watershed protection, erosion-prevention requirements, and other issues.

Close coordination between the parties is essential in all phases of route selection and determination of the road needed. Together, the parties shall determine the general location and specifications of a project before making the survey. This will avoid costly relocation and resurvey work.

b. Plans and Specifications. Constructing a road adequate to serve the joint needs may result in a lower cost, and a better road for the cooperators than if they had proceeded independently. Consequently, there must be agreement if plans and specifications recognize all anticipated use. Success at negotiating the size and scope of projects may be facilitated by segmenting the road, and mutually developing the plans and specifications for each segment.

The Forest Service must agree to share in the construction or reconstruction costs only when the standards of the facility will adequately and safely serve the total needs of the parties. A Supplement for an existing substandard road must provide for reconstruction to the standard needed to serve the needs of both parties.

When an agreement between the parties cannot be reached on location, plans, specifications, and cost estimates, and further delay may be detrimental to planned programs and uses, either party may construct the road on its own land (see 66.8). However, when the parties continue to disagree on road location and standards, the Forest Service will consider alternative solutions for its access needs.

c. Cost Estimate. The method of determining costs of new construction or reconstruction for the purpose of cost sharing must be clear, and have the approval of the qualified Engineer. In general, use the same method to determine each party's construction costs. See section 64.3 for additional direction on cost estimates.

Section 4 - Limitation on Cost Sharing for Roads. This section of the Agreement is intended to insure that no party to the Agreement pays more than its proportionate share of the total cost of the road built to a standard that is necessary to serve the needs of all parties in proportion to anticipated use.

Section 5 - Basis for Cost Sharing. This section of the Agreement states the principles for allocating the anticipated use of a cost share road between the parties. All uses relate in some way to the tributary area (acres) accessed by the road. Since an acre is a

common unit of measure between the lands of the cooperator and the Government, it will be used as the basis for allocating road construction, reconstruction, and restoration costs.

In recognition of the differences in the tributary lands, the base unit for establishing shares is the tributary suitable land expressed in acres. Calculate shares based on each party's share of the tributary acres, including suitable lands and other tributary lands converted to equivalent suitable acres. Section 64.42, exhibits 01 and 02, are examples of methods for calculating suitable acres.

Section 6 - Methods of Sharing Costs.

a. Cooperator. A cooperator may meet its agreed share of costs by:

- (1) Constructing, reconstructing, or improving a cost share road.
- (2) Depositing with the Forest Service its share of the cost in advance of construction, reconstruction, or improvements.
- (3) Granting a reciprocal right of similar value to the road use sought.
- (4) Making arrangements with the Government to do more than its agreed share of constructing, reconstructing, or improving another cost share road.
- (5) Making payment as its timber is hauled over the road at a rate within the limits, and to the total amount specified in the Supplement.
- (6) Any combination of items in paragraphs (1) through (5).

b. Government. The Government may meet its agreed share of costs by:

- (1) Constructing, reconstructing, or improving cost share roads or road segments with appropriated funds, or as a requirement of purchasers of products from lands of the United States.
- (2) Making payments as construction or reconstruction by the cooperator is completed and accepted.
- (3) Purchasing its share of an existing road owned by the cooperator with appropriated funds.
- (4) Charging haulers of products from NFS lands and making payment to the cooperator.
- (5) Any combination of items in paragraphs (1) through (4).

Section 7 - Right-of-Way Conveyances. In most cases, easements for cost share roads are exchanged concurrently with, or soon after, execution of the Supplement. Section 63

provides instructions on modifications and additions for easements and permits associated with the Agreement.

This section of the Agreement further provides that either party will issue a permit in lieu of an easement when requested. On an existing road, a permit specific to the Agreement (see exhibits G and H) may be requested in lieu of an easement when the parties have met the requirements of sharing, and paying in sections 4, 5, and 6 of the Agreement. If the road permit is included in a Supplement, the methods of payment specified in section 6 of the Agreement may be used. If the road permit is not included in a Supplement, use the methods of payment specified in FSM 7730. Payment made in the permit will be credited in future cost sharing. Do not use permits to delay sharing in a project.

When the parties decide not to cost share a proposed road within the Agreement area, section 13 of the Agreement specifies the documents to be granted.

The cost share easements and permits are shown as exhibits C through H.

Section 8 - Road Construction, Inspection, and Acceptance. Completion and acceptance of road construction, reconstruction, or improvement within a reasonable time, or by the time agreed to is essential to accomplishing cooperative objectives. A party's failure to inform the other on construction progress, or the other party's failure to inspect and respond does not meet the objectives. Consequently, each party needs to adhere to the requirements under this section.

This section provides for the disposal of right-of-way timber in accordance with the terms of the easements or permits. The easements specify cutting and decking the merchantable timber for disposal by the timber owner, unless otherwise agreed upon. The disposal of the right-of-way timber is best handled and documented in the road plans and specifications, fact sheet, and Supplement. This, however, does not preclude disposal by means other than cutting and decking along the right-of-way. Any negotiated timber disposal plan or activity outside of the provisions of the easements or permits must be in writing.

The constructing party receives credit for its excess costs when the other party accepts the construction in writing. A refusal to accept any construction project may be made only for failure to comply with the stated plans and specifications. Prepare such plans and specifications in sufficient detail to ensure their meaning to both parties.

Section 9 - Maintenance. This section provides for road maintenance on jointly financed roads in accordance with easements or permits granted, and a Cooperative Road Maintenance Agreement separately entered into by the parties. A Cooperative Road Maintenance Agreement may cover multiple cost share agreements and administrative units. A written Annual Maintenance Plan is a requirement. See FSM 7732, Road Operation and Maintenance Manual (sec. 24, Maintenance Conducted by Cooperators) and FSH 7709.59, Road System Operations and Maintenance Handbook for direction concerning maintenance of cooperative roads.

Section 10 - Additional Capital Expenditures. This section provides for restoration of jointly financed roads that have been exhausted, heavily damaged, or destroyed. It also provides for reconstruction to accommodate traffic more safely and efficiently. The parties need to reach an agreement, and document in a Supplement the work each is to perform and costs to be shared.

Neither party will perform additional capital expenditures on any cooperative road system without first seeking assistance from the cooperating party. Any party that performs work under this section without the other's concurrence can expect to bear the full cost.

In an emergency, such as the complete destruction of a road section, the constructing party shall perform the minimum work necessary to open the road and prevent further damage until execution of a Supplement. The constructing party must make every effort to inform the other party, and reach agreement on the extent of the emergency work.

Restoration occurs most frequently as a result of major damage from floods, or other extraordinary natural causes. Each party is responsible for promptly reaching an agreement to restore a road to the standard existing prior to the damage, and shall share the cost of the restoration. Accumulated deferred maintenance is not restoration work.

Restoration required within five years of the completion and acceptance date of construction or reconstruction of a road will be shared using the same percentages in the Supplement under which the road segment was shared. If the road was an existing road found to be adequate for the needs of both parties, and no additional work was necessary in the Supplement, the five-year period begins with the date of execution of the Supplement. Parties will share the cost of restoration work required after five years using the principles stated in section 5 of the Agreement.

Reconstruction is work performed to increase road capacity, reduce user transportation costs, eliminate progressive environmental damage, or improve traffic safety. A proposal to reconstruct a road must be based on a thorough analysis of the RMOs, future transportation facility needs for commodity transport and other purposes, traffic management alternatives, and investment economics. In evaluating the expected investment return to the parties from reconstruction of a road, consider the timber transport benefits accruing to the parties from saving in maintenance and hauling costs, as well as any saving they may realize from an extended operating season, or use of more efficient log-carrying vehicles.

To determine cost shares in reconstruction, apply the principles stated in section 5. Where the parties agree that there has been no substantial change in the area tributary to the road from that used in determining the shares in the original construction, use the original cost share percentages.

Neither party may unilaterally reconstruct a road in such a way as to diminish the other party's interest in the road. The Forest Service must not proceed unilaterally with

reconstruction of a jointly owned road until it has made every effort to negotiate a Supplement covering the work.

The Regional Forester may approve exceptions after thorough review of the RMOs, economic analysis, the negotiations with the cooperator, and any special circumstances affecting the decision. The Regional Forester shall send a copy of each approval to the Washington Office, Director of Engineering.

Section 11 - Annual Accounting. When executing a Supplement, base the relative excess costs on past or planned construction or reconstruction work. Maintain the record of the relative status of the excess cost balances within an Agreement area on a balance sheet.

Excess costs are those dollar amounts committed, or expended by one party over and above that party's calculated share. Enter on the balance sheet the excess cost from each new Supplement, and actions that directly affect the status of the Agreement, such as cash payments and transfers between Agreement areas. The balance sheet shows the contractual obligations of the Agreement.

The parties shall render an accounting on both the commitment and earned basis as of each December 31. The earned and unearned excess cost must be included in the annual accounting. The parties must promptly reconcile any differences in their records. The Regional Forester shall audit the financial accounting records on a periodic schedule, not to exceed five years.

The credits earned by the parties must remain in reasonable balance considering the stage and pace of development, the size of the share, reasonable completion time of the work agreed to, and the opportunities for offsetting work the parties are to perform. Occasionally, one party may lag behind in credits earned. In such cases, consider making cash payments for a share of the existing road system, and adjusting constructing parties in current and planned Supplements. Neither party should remain in arrears for extended periods of time without making specific arrangements for meeting its share of the cost.

See FSM 5467.6 for direction on the management of excess cost balances.

Section 12 - Annual Meeting. This section provides that the parties meet annually to exchange long- and short-term activity plans. Usually, the parties have already discussed road construction or reconstruction for the coming season by this time, or are in the process of reaching agreement on these issues.

The parties shall also agree on and document in writing the Annual Maintenance Plan for the coming season. Important considerations include the anticipated volume of traffic, designation of who will conduct the maintenance work, and which party is financially responsible for what share of each road segment.

Some of the information shared by the cooperator may be sensitive to their operations. The Government will consider such information for the purpose of planning under the

Agreement. When requested by the cooperator, keep the information confidential as proprietary to the extent authorized by law.

Section 13 - Roads Not Jointly Financed. These roads are defined as either permanent or temporary roads on which there are no plans for joint financing, and joint maintenance. Such roads are necessary for commercial hauling by the constructing party only. Right-of-way grants for construction of such roads provide for unrestricted use of the road by the grantor for purposes of protection and administration, and for removal of right-of-way timber. These grants also provide for the grantor to use the road for commercial hauling only after bearing a proportionate share of the cost.

Act promptly on right-of-way requests for non-cost share roads. Deny such requests only for justifiable reasons, such as a severe conflict with existing or planned facilities, or a design that is inadequate to prevent undue damage to the land. The parties shall endeavor to agree upon a mutually acceptable alternate route, or specification to avoid denial of a right-of-way.

See section 63 for direction on right-of-way instruments to issue for non-cost share roads.

Section 14 - No Rights of Use Without Cost Sharing. This section provides that either party may acquire rights of use (cost share easements) in an existing road, or a road to be constructed within the Agreement area in accordance with the provisions of sections 5 and 6. When the parties agree to share in a road, a Supplement must be completed and easements exchanged prior to use or construction. When one party declines to share costs of a road planned for construction, a non-cost share easement or permit for the road may be granted to the constructing party. If later there is a need for commercial use of the road by the non-constructing party (typically the grantor), negotiate for a cost share easement or road use permit, and terminate the non-cost share easement.

This section further provides that neither party will use any road within the Agreement area until it pays, or makes satisfactory arrangements to provide for its share of the road, in accordance with section 6 of the Agreement.

There is no intent under this section to prohibit administrative travel of either party.

Section 15 - Rights of Entry Upon Land of Other Party. This section provides that the initiating party may enter lands of the other party for any purpose deemed necessary in connection with the Agreement. The party desiring to enter upon the lands of the other must give notice in writing, and briefly state the purpose and extent of the use. A primary reason for occupancy in advance of the grant of easements or permits is to locate and survey a proposed road. Notice of such entry serves to initiate an exchange of advance planning information, and keeps the landowner informed of the location of work crews, or other activities upon its land.

Section 16 - Change in Ownership. This section provides that the parties agree, document, and make provisions to satisfy all outstanding obligations associated with the Cost Share Program upon change in ownership of the parties' lands. Outstanding

balances include those owed for construction, use, maintenance, deferred maintenance, or any other funds and work included under the Agreement. Without satisfactory arrangements, billing must be made for balances.

Changes in ownership can occur with changes in cooperator business structure, land exchange, or sale. A party anticipating in a land ownership change is encouraged to open discussions with the cooperating party as early as possible to minimize disruptions, and provide for future working relationships.

With major changes in ownership, the parties must evaluate the need for a future cooperative relationship. Use the joint development criteria in FSM 5467.2 to make the assessment, and identify any acquired lands that have not shared in the road.

Easements and other right-of-way documents executed by the parties remain in effect after termination of the Agreement. The easements are considered to be appurtenant to the land served by the easements. In addition, maintenance obligations specified in cost share easements continue to accrue even though the Agreement has been terminated.

If work remains to be accomplished under a Supplement at the time of a change in ownership, the parties shall make appropriate arrangements for accomplishment of the work in the future, or prepare an amendment to the Supplement if the work is cancelled.

When land ownership changes, advise new landowners of the status of the road, their rights and obligations of use, and the limitations of the Forest Service relative to maintenance.

When a cost share cooperator proposes to subdivide land accessed by a FRTA cost share easement, ideally the local public road authority will agree to take over management of the road, and Forests should approach the local road authority to enlist their support. Forests must emphasize the long-term benefits to the local road authority of greater control and oversight involving the road's use and maintenance. In that case, Forests should terminate the FRTA cost share easement, and grant a FRTA public road easement (FS-2700-9f) to the local road authority. Direction on when it is appropriate for local authorities to assume jurisdiction on NFS roads is found in FSM 7703.3.

Often the local road authority is unwilling to take over control and management of the subject road. In that case, Forests should request that the landowner (prior to or concurrent with subdividing their land) relinquish their FRTA cost share easement and replace it with a Federal Land Policy and Management Act (FLPMA) easement. A FLPMA easement is preferable to a FRTA easement, in part, because it provides a better tool for managing and protecting forest resources, and it indemnifies the United States against claims that are a result of actions caused by the Grantee's use or occupancy of the easement. Simultaneously, the Forest Service should also enter into a separate Cooperative Road Maintenance Agreement with the landowner that will bind all present and future landowners using the road for residential access. The Cooperative Road Maintenance Agreement may provide for formation of an association of residents of the

prospective subdivision that will be responsible for road maintenance. Direction on maintenance conducted by associations is found in FSM 7732.25.

A major issue in obtaining the landowner's willingness to terminate a FRTA easement in exchange for a FLPMA easement has been the landowner's objection to a term FLPMA easement. Therefore, on a case-by-case basis with the approval of the Office of the General Counsel (OGC), where a cooperator or successor is relinquishing a perpetual FRTA easement, an in-kind perpetual FLPMA easement may be considered.

If neither of the two preceding scenarios can be negotiated, the third approach is to maintain the FRTA cost share easement, and implement a Cooperative Road Maintenance Agreement as described in the preceding paragraph. Implement the Cooperative Road Maintenance Agreement prior to or concurrent with subdividing the land.

Pre-1994 cost share easements can be problematic. In cases where the landowner is unwilling to relinquish their pre-1994 FRTA easement, the process described above must be followed with the addition that the Forest Service asks the cooperator to amend the easement to clarify maintenance obligations, and traffic control regulations and rules when the land is subdivided for residential purposes. Ask the cooperator to amend pre-1994 cost share easements to provide for traffic control regulations, rules, and other provisions to accommodate development for short- or long-term residential purposes, as soon as it is known the cooperator is planning to subdivide property accessed by a FRTA cost share easement. Record the easement amendment as soon as it is signed and notarized. Cooperators operating under pre-1994 easements are under no obligation to agree to amend their easement terms to address maintenance and traffic control issues.

Section 17 - Termination. The Agreement provides for termination at the option of either party. The intent is to provide for an orderly rather than abrupt termination that could occur in absence of such a clause. This clause also emphasizes that termination does not affect any rights-of-way granted by either party, or any unfulfilled obligations of the parties.

Section 18 - Federal Requirements. Agreements must contain the standard clause prohibiting resident commissioners or members of, or delegates to Congress from participating in the Agreement, or any benefits that arise therefrom, unless made with a corporation for its general benefit.

The standard nondiscrimination clause does not apply to agreements of this nature. However, any contracts or understandings entered into for work to be performed pursuant to its terms must contain the nondiscrimination clause or any other applicable requirement of Federal law, Executive Order, or regulation. This section further provides that no present or future administrative rules or regulations will reduce the rights of the cooperator under the Agreement.

The third and fourth paragraphs of this section acknowledge that the Agreement is to be interpreted in accordance with Federal law, and is subject to all applicable Federal laws including the Anti-deficiency Act (31 U.S.C. 1341), and the Federal Tort Claims Act (28 U.S.C. Part VI, ch. 171), and that if any element of the Agreement deemed contrary to law, that element is severed from the Agreement which will otherwise continue in force and effect.

Section 19 - Notices and Payments. This section designates where the cooperating parties are to deliver notices and payments. The address may be changed with written notice to the other party. The person authorized to execute agreements will give such notice of change.

62 - Supplement to the Agreement

A prerequisite to joint financing of roads within an Agreement area is the development and execution of a Supplement to the Road Right-of-Way Construction and Use Agreement. A Supplement may be prepared by any party to the Agreement. Exhibit 01 labeled as exhibit B displays the Supplement format.

Any number of Supplements may be written within an Agreement area. One Supplement may include provisions for:

1. Any number of road projects,
2. New construction planned by one or both parties,
3. Reconstruction of a previously cost share road,
4. Either party's buying into an adequate road,
5. Either party's buying into a substandard road with provisions to bring it to a standard adequate for all parties, or
6. Any combination of the preceding provisions in paragraphs 1 to 5.

As the parties agree to include additional roads or segments of roads in the jointly financed road system, prepare consecutively numbered Supplements to the Agreement.

EXHIBIT B

SUPPLEMENT NO. _____ TO

{ *Name of Agreement* }

ROAD RIGHT-OF-WAY CONSTRUCTION AND USE AGREEMENT

WHEREAS _____ hereinafter referred to as "Cooperator", and the UNITED STATES OF AMERICA, by and through the Regional Forester, Forest Service, Department of Agriculture, hereinafter referred to as "Government", on the _____ day of _____, 20____, entered into a Road Right-of-Way Construction and Use Agreement, hereinafter referred to as "Agreement", providing for construction and use of roads within the Agreement area within and adjacent to the _____ National Forest in _____ County, State of _____, and

WHEREAS, said Agreement provides that a Supplement thereto will be executed to cover any jointly financed roads, and

WHEREAS, the parties have now determined that the roads hereinafter described are to be jointly financed roads,

NOW, THEREFORE, in accordance with the provisions of said Agreement, the parties agree as follows:

1. Identification of Road(s)

The road(s) to be jointly financed (is) (are) as follows:

2. Plans and Specifications

3. Construction Program and Agreed Costs

a. Construction program

b. Cost estimates

62 - Exhibit 01--Continued

4. Basis of Cost Sharing

The parties agree that the share of the cost of construction or reconstruction to be borne by each party (is set forth below) (is set out in schedule ____ attached hereto).

5. Method of Payment

6. Continued Effectiveness of Agreement

Except as otherwise specifically agreed herein, all terms, provisions and agreements of the aforesaid Agreement must be and continue in full force and effect.

IN WITNESS WHEREOF, the parties hereto have caused this _____
Supplement to be properly executed by their authorized representatives on this ____ day of
_____, 20____.

(Cooperator's Name)

UNITED STATES OF AMERICA

By _____

By _____

Title _____

Title _____

The Supplement consists of a preamble, six numbered sections, and at least one numbered exhibit which are a map of the Supplement Agreement area. Supplement exhibits are numbered to avoid confusion with the alphabetical Agreement exhibits. Below is a detailed explanation of the preamble and sections of the Supplement.

62.1 - Supplement Preamble

The Supplement preamble identifies the cooperating parties, the name of the Agreement area, and the date of execution of the Agreement. Use the exact names and dates as shown in the Agreement.

62.2 - Identification of Road(s) - Section 1

Identify each road or road segment included in the Supplement under a separately lettered paragraph giving the road name, number, termini, and length.

The following clause may be used as suggested wording for identifying each road included in the Supplement:

" Bear Creek Road, Number 100, beginning at a point in the SW ¼ Sec. 10, T. 11 N., R. 6 E., B.M., being approximately 5.0 miles in length, ending at a point in the NE ¼ Sec. 31, T. 11 N., R. 6 E., B. M., and the approximate location is shown on Exhibit 1, colored in red."

Alternate wording for this clause may be:

" Bear Creek Road, Number 100, starting at its junction with Clear Lake Road, Number 101 in the NW ¼ SW ¼ Section 10, T. 11 N., R. 6 E., Boise Meridian, being approximately 5.0 miles in length, and ending in the NW ¼ NE ¼ Section 31, T. 11 N., R. 6 E., Boise Meridian, and the approximate location is shown on Exhibit 1, colored in red."

In the preceding sample clauses, "Exhibit 1" is a separate map attached to the Supplement. It may be a copy of the basic Agreement area map "Exhibit A" to the standard Agreement, with information added, or a map specifically prepared for use with the Supplement. Clearly identify the roads or road segments covered by the Supplement on this map so there is no confusion with roads covered by prior Supplements, or roads that may be covered by future Supplements.

62.3 - Plans and Specifications - Section 2

Minimum engineering requirements apply to all roads built regardless of constructing party, or land ownership. For roads and related structures, use standard terms and specifications that are commonly used in the area. Include or reference plans and specifications for each road in the Supplement. It is equally acceptable to attach a copy of the plans and specifications for the project or projects to the Supplement, or to reference plans and specifications on file at the Forest Supervisor's and cooperator's offices.

Depending upon the method selected, use one of the following paragraphs:

1. "The road (will be) (has been) constructed in accordance with the (plans and) specifications filed with both parties in their respective offices at _____ and _____."
2. "The road (will be) (has been) constructed in accordance with the (plans and) specifications attached hereto and made a part hereof and marked exhibit(s)_____."
3. "The road to be cost shared in this Supplement is an existing road (buy-in without reconstruction). The original construction plans and specifications for this road are no longer available. Following are the agreed-to standards for the existing road:"

McKay Creek Road No. 1022

- Eighteen (18) foot running surface (M.P. 0.00 to M.P. 1.77)
- Fourteen (14) foot running surface (M.P. 1.77 to M.P. 3.48)
- Native material running surface (some sub-grade reinforcement)
- 2 - 3 turnouts per mile
- Clearing five (5) feet beyond top-of-cut to toe-of-fill
- 6% maximum sustained grade, 8% maximum pitch
- Additional drainage provided by culverts, ditches, and drainage dips

62.4 - Construction Program and Agreed Costs - Section 3

Specifically recite the construction each party has performed or intends to perform, the agreed-upon construction plans and specifications, and agreed-upon costs the parties are to share in each Supplement.

1. Construction Program. Include only those roads in a Supplement for which the parties have reached agreement. Large road systems may require several Supplements before all existing roads have been cost shared. On the other hand, if the parties have reached agreement, all existing roads plus any new ones to be constructed may be included in a single Supplement.
2. Agreed Costs. Recite in the Supplement only the total agreed-upon cost to be shared by individual roads or collectively. The following is suggested wording to show the construction program and agreed-to costs:

"Government (Cooperator) has constructed (intends to construct) (intends to reconstruct) the road identified in section 1 of this Supplement at an agreed upon cost to be shared (of \$_____) (as determined by the lowest bid acceptable to the parties plus engineering and right-of-way acquisition costs)."

When using the procedure of the lowest acceptable bid, include in the case file a letter of acceptance together with a stated amount each party is to bear.

Costs attributable either directly or indirectly to off-highway hauling equipment is assigned to the party acquiring or reserving the right on the road. Show these costs separately, and assign them to the respective party.

When the parties agree that each has already borne its proportionate share of an existing road, the following wording is suggested:

"It is agreed each of the parties has borne its proportionate share of the road identified in section 1 of this Supplement."

3. Cost Estimates. Cost estimates may be attached to the Supplement as an exhibit, or filed with the respective parties. It is preferable to incorporate the estimates in the fact sheet, and file the material with the respective parties. Cost estimates may be presented in a table, such as the example in 62.4, exhibit 02, or use one of the following paragraphs:

"Cost estimates are agreed upon by the parties as set forth in the papers filed with them in their respective offices."

"Cost estimates are agreed upon as set forth in exhibit _____ attached hereto, and made a part hereof."

4. Completion Time. When time of completion is important, the construction program must indicate the intent of the constructing party to complete the work by a specified date. When no completion date is stated, it is understood that the work is to be completed within a reasonable time.

This clause only sets forth the construction program and agreed costs. The parties shall complete agreed upon work, and have the work accepted to receive credit. The acceptance must be in writing. If they do not perform the work within reasonable time limits, considerable imbalances may exist even though the agreed-to construction program appears to be in balance on the Agreement balance sheet.

5. Alternative Construction. Situations arise where one party for reasons beyond its control, or through unforeseen changes in its operating plans, is unable to complete assigned construction. If the other party has no immediate need for the planned road(s) or elects not to proceed with the construction, terminate the entire Supplement, or the portion that is no longer applicable. If the other party elects to do the project, amend the Supplement to show the change in work assignment and shares.

It is acceptable to display a summary of the construction program, and agreed costs in a table such as the example in exhibit 02. Regions may develop a format that is accepted, or standard locally. In the electronic version of this directive, double click on exhibit 02 to activate an Excel worksheet which may be modified to suit local needs.

62.4 - Exhibit 02

Supplement Roads and Agreed Costs

ROAD NO. & SEGMENT	MAP EXHIBIT	USA \$	COOP \$	TOTAL \$	USA CONST MILES	COOP CONST MILES	SURFACE	ENG. COST ESTIMATE/MI
22N36-1	A	\$35,750	\$0	\$35,750	0.55	0.00	Aggregate	\$65,000.00
22N36-2	A	\$97,500	\$0	\$97,500	1.50	0.00	Aggregate	\$65,000.00
23N44-1	B	\$28,500	\$45,600	\$74,100	0.75	1.20	Native	\$38,000.00
21N22-1	C	\$0	\$58,500	\$58,500	0.00	0.65	Chip Seal	\$90,000.00
21N22-2	C	\$0	\$40,500	\$40,500	0.00	0.45	Chip Seal	\$90,000.00
21N22-3	C	\$0	\$49,500	\$49,500	0.00	0.55	Chip Seal	\$90,000.00
TOTALS		\$161,750	\$194,100	\$355,850				

62.5 - Basis of Cost Sharing - Section 4

The principles of determining the shares of the parties are in section 5 of the Agreement (sec. 61, ex. 01). The process for calculating shares is in section 64.42.

The final excess cost in a Supplement is the difference between the total excess costs of each of the parties. Only one of the parties in a two-party Agreement will have a final excess cost. In a multi-party Agreement, more than one party may have a final excess cost. Display the excess cost using the same principles as a two-party Agreement.

Document in the Supplement the percentage share and dollar amount of agreed costs each party is to bear for each road or road segment. Use a tabular format similar to exhibit 03, and include it in the Supplement. In this table, clearly show how the parties stand in relation to their shares for each project, and the excess costs that have not been offset. In the electronic version of this directive, double click on exhibit 03 to activate and save as an Excel worksheet.

62.5 - Exhibit 03

Basis of Cost Sharing

ROAD NO. & SEGMENT	Total Agreed to Cost	Government			Cooperator			Excess Costs	
		Contribution	Share %	Share \$	Contribution	Share %	Share \$	Govt for Cooperator (Cooperator Owes Govt)	Cooperator for Govt (Govt owes Cooperator)
764 A-B	\$46,535	\$46,535	67.25%	\$31,295	\$0	32.75%	\$15,240	\$15,240	\$0
764 B-C	\$16,191	\$16,191	45.50%	\$7,367	\$0	54.50%	\$8,824	\$8,824	\$0
764 C-D	\$46,092	\$24,103	75.25%	\$34,684	\$21,989	24.75%	\$11,408	\$0	\$10,581
8881 A-B	\$39,632	\$18,545	28.69%	\$11,370	\$21,087	71.31%	\$28,262	\$7,175	\$0
8881 B-C	\$24,518	\$0	26.39%	\$6,470	\$24,518	73.61%	\$18,048	\$0	\$6,470
8881 C-D	\$75,221	\$0	48.55%	\$36,520	\$75,221	51.45%	\$38,701	\$0	\$36,520
TOTALS	\$248,189	\$105,374		\$127,706	\$142,815		\$120,483	\$31,239	\$53,571
								Govt owes Cooperator \$22,332	

62.6 - Method of Payment - Section 5

Treat the excess cost of the party to a Supplement in one or a combination of the following ways:

1. The cooperator or Government may amortize excess costs of the other by transfer of credits from a previous Supplement. Clearly state the amount and source of the credit transfer. The amount transferred must not exceed the excess costs to be amortized under the current Supplement. Any unused excess cost under a previous Supplement would stay in the accounts under the previous Supplement, and be protected by the collection right included in that Supplement. Suitable language follows:

"It is intended that Government (cooperator) excess cost of \$ _____ incurred under this Supplement will be amortized by the transfer of cooperator (Government) excess cost of \$ _____ incurred under Supplement No. _____ of _____ 20____, leaving an unamortized Government (cooperator) excess cost of \$ _____ under this Supplement."

2. The Government may settle its remaining unamortized share of costs after transfer of credits from previous Supplements by any one or a combination of the following methods:

- a. By transfer of Government excess costs incurred under future Supplements within the Agreement area.
- b. By the cooperator's exercising a collection right.
- c. By payments to the cooperator from appropriated funds.

Use the following clause:

"Government agrees to bear its (remaining unamortized) proportionate share of costs under this Supplement by one, or a combination of the following methods:

(1) By transfer of excess costs incurred by the Government under future Supplements.

(2) By the cooperator charging haulers of products from Federal lands at the rate of ____\$ per thousand board feet (MBF), or an equivalent unit measure for products hauled over any shared road in the Agreement area, or at such higher rate as may be approved by the Regional Forester. The Government must collect such payments and pay them to the cooperator. Lump sum payment is preferable to payments on an as-hauled basis.

(3) By payments to the cooperator from appropriated funds available for such purposes, after completion of road construction, or a portion thereof by the cooperator and acceptance by the Government.

Provided that, the total amount received by the cooperator from transfer of excess costs incurred by the Government under future Supplements, charges to haulers of products from Federal lands hauled over shared roads in the Agreement area, and payments from appropriated funds available for such purposes must not exceed the total outstanding cooperators excess cost balance incurred within the Agreement area.

Any obligation of the Government made under this Supplement is contingent upon passage of appropriations by Congress. The Government will make no payment or charges until such appropriation becomes available for expenditure."

This clause follows the clause that transfers Government excess costs from prior Supplements. If there were no transfer of excess costs from prior Supplements, delete the words "*remaining unamortized*" in the first paragraph of this subsection (2c).

This clause does not create an obligation, or provide documentary support for an obligation against appropriated funds. At the time, the Regional Forester elects to exercise the alternative of payment from appropriated funds, and prepare the documentation needed to establish proper obligation control. Identify on the documents the Supplement containing the excess costs covered by the payment.

The minimum collection rate must be at least \$3 per MBF, or equivalent unit of measure. Specify a higher minimum rate when necessary to ensure that the collection right covers the excess costs incurred. Although the excess cost may be collected from any timber being hauled over shared roads within the Agreement area, for the purposes of determining a minimum rate, calculate the minimum rate by dividing the unamortized net excess costs under the Supplement by the maximum opposite party timber volume that is tributary to any segment of road covered by the Supplement. Round up the calculated minimum rate to the next dollar.

3. The Cooperator may settle its share of the costs by prior deposit of funds for the work. The following wording is suggested:

"The Cooperator intends to bear its (remaining unamortized) proportionate share, or a portion thereof, by depositing \$_____ in the appropriate account with the Government prior to the start of construction for use in performing its share of the work."

If the Cooperator uses this method to bear all, or a portion of the Government excess costs, this clause must follow the clause that transfers cooperator excess costs from prior Supplements. If there is no transfer of excess costs from prior Supplements, delete the words "*remaining unamortized*". Recover by Government collection right (para. 4) any portion of the Government's excess costs not amortized by transfer of cooperator excess costs from prior Supplements, and deposits with the Government prior to start of construction.

4. If the Government has excess costs not offset or otherwise amortized, use the following clause:

Unless amortized by other credits, it is intended that the Government will recover Governments excess costs incurred under this Supplement according to section 6 of the Agreement.

It is agreed the Government may recover its excess costs by charges to cooperator at the rate of \$_____ per MBF, or equivalent unit measure for its products hauled over the road, or any other shared road in the Agreement area; or at such higher rate as may be approved by Cooperator, until such time as the amounts paid by such means or by credits received from Cooperator will total the outstanding Government excess cost balance incurred within the Agreement area. Lump sum payment is preferable to payments on an as-hauled basis."

Do not include a Government collection right clause in the easement. The right of the Government to collect appears only in the Supplement.

Determine the minimum rate to insert in this clause as described in paragraph 2 of this section. That is, calculate the minimum rate by dividing the unamortized net excess costs under the Supplement by the maximum cooperator timber volume that is tributary to any segment of road(s) covered by the Supplement.

62.7 - Continued Effectiveness of Agreement - Section 6

This section provides for the continuance of the terms and provisions of the Agreement except as the parties may otherwise agree to in the Supplement. Any Supplement can change arrangements under previous Supplements provided the parties recognize the obligations previously incurred. Any of the items under the Supplement (sections 1 through 5) are subject to modification by any subsequent Supplement.

63 - Easements and Permits

This section applies primarily to easements and permits included in the Agreement. However, the section also addresses differences that arise in other cost sharing arrangements.

There are four basic easements attached to the Agreement as exhibits C, D, E, and F. Direction on the standard clauses, optional clauses, and acceptable modifications to these easements is in sections 63.1, 63.2, 63.3, and 63.4 respectively. These easements are:

1. Exhibit C - Easement, from the Cooperator to the United States (sec. 63; ex. 01; sec. 63.2).
2. Exhibit D - Easement, from the United States to the Cooperator (sec. 63.1; FSH 2709.12, sec. 31.2).
3. Exhibit E - Easement, from the cooperator to the United States for non-cost share roads in an Agreement area (sec. 63, ex. 02; sec. 63.4).

4. Exhibit F - Easement, from the United States to the Cooperator for non-cost share roads in an Agreement area (sec. 63.3; FSH 2709.12, sec. 32.2).

Permits attached to the Agreement as exhibits G and H are for construction and use of temporary, non-cost share roads. Other types of permits, including road use permits (Form FS-7700-41), are useful under special situations. Direction on permits is in sections 63.5 and 63.6 respectively.

1. Exhibit G - Permit, from the Cooperator to the United States (sec. 63, ex. 03; sec. 63.6).
2. Exhibit H - Permit, from the United States to the Cooperator (sec. 63.5; FSH 2709.12, sec. 41.24).

From the Cooperator to the United States

EXHIBIT C

EASEMENT

THIS EASEMENT, dated this ____ day of _____, 20____, from _____ a _____ of the State of _____ hereinafter called "Grantor," to the United States of America, hereinafter called "Grantee,"

WITNESSETH:

Grantor, for and in consideration of _____ received by Grantor, does hereby grant to Grantee and its assigns, subject to existing easements and valid rights, a perpetual easement for a road along and across a strip of land, hereinafter defined as the "premises," (over and across the following described lands in the County of _____, State of _____;) 1/ (Over and across the lands in the County of _____, State of _____, as described on exhibit A attached hereto).1/

The word "premises" when used herein means said strip of land, whether or not there is an existing road located thereon. Except where it is defined more specifically, the word "road" will mean roads now existing or hereafter constructed on the premises or any segment of such roads.

(The location of said premises is shown 1/ (approximately)1/ on exhibit ____ attached hereto.) 1/

(Said premises are more specifically described by a centerline description contained in exhibit ____ attached hereto.)1/

Said premises will be _____ on each side of the centerline with such additional width as required for accommodation and protection of cuts and fills. If the road is located substantially as described herein, the centerline of said road as constructed is hereby deemed accepted by Grantor and Grantee as the true centerline of the premises granted. If any subsequent survey of the road shows that any portion of the road, although located substantially as described, crosses lands of the Grantor not described herein, the easement will be amended to include the additional lands traversed; if any lands described herein are not traversed by the road as constructed, the easement traversing the same will be terminated in the manner hereinafter provided.

1/ Strike out if not applicable.

63 - Exhibit 01--Continued

The acquiring Agency is the Forest Service, Department of Agriculture.

This grant is made subject to the following terms, provisions, and conditions applicable to Grantee, its permittees, contractors, and assigns:

A. Except as hereinafter limited, Grantee will have the right to use the road on the premises without cost for all purposes deemed necessary or desirable by Grantee in connection with the protection, administration, management, and utilization of Grantee's lands or resources, now or hereafter owned or controlled, subject to such traffic-control regulations and rules as Grantee may reasonably impose upon or require of other users of the road. Grantee will have the right to construct, reconstruct, and maintain roads within the premises.

Grantee alone may extend rights and privileges for use of the premises to other Government Departments and Agencies, States, and local subdivisions thereof, and to other users including members of the public except users of lands or resources owned or controlled by Grantor or its successors: Provided, that such additional use also will be controlled by Grantee so it will not unreasonably interfere with use of the road by Grantor, or cause the Grantor to bear a share of the cost of maintenance greater than Grantor's use bears to all use of the road.

B. Grantee will have the right to cut timber upon the premises to the extent necessary for constructing, reconstructing, and maintaining the road. Timber so cut will, unless otherwise agreed to, be cut into logs of lengths specified by the timber owner and decked along the road for disposal by the owner of such timber.

C. Grantor will have the right to charge, and to enforce collections from purchasers of timber or other materials when removed from Grantee's lands over the road at such rate per unit of material hauled, or at such higher rate as may be approved by the Regional Forester, as set forth in the _____ Road Right-of-Way Construction and Use Agreement dated _____, until such time as the amounts paid by such means or by credits received from Grantee must total the amount set forth in said Agreement. Timber or other materials hauled by Grantor from lands of the Grantee will be regarded as though hauled by someone else.

D. The costs of road maintenance will be allocated on the basis of respective uses of the road.

During the periods when either party uses the road or Grantee permits use of the road by others for hauling of timber or other materials, the party so using or permitting such use will perform or cause to be performed, or contribute or cause to be contributed that share of maintenance occasioned by such use of the road.

63 - Exhibit 01--Continued

On any road maintained by Grantor, Grantor will have the right to charge purchasers of National Forest timber and other commercial haulers, or to recover from available deposits held by Grantee for such purchasers or haulers, reasonable maintenance charges based on the ratio that said hauling bears to the total hauling on such road. Grantee will prohibit noncommercial use unless provision is made by Grantee, or by the noncommercial users to bear proportionate maintenance costs.

This easement is granted subject to the following reservations by Grantor, for itself, its permittees, contractors, assigns, and successors in interest:

1. The right to use the road for all purposes deemed necessary or desirable by Grantor in connection with the protection, administration, management, and utilization of Grantor's lands or resources, now or hereafter owned or controlled, subject to the limitations herein contained, and subject to such traffic-control regulations and rules as Grantee may reasonably impose upon, or require of other users of the road without reducing the rights hereby reserved: Provided, however, that any timber or other materials hauled by the Grantor from lands now owned by third parties in the Agreement area as shown on exhibit ____ attached hereto will be treated as though hauled by someone else and: Provided further, that the right to use the road for the purpose of operating and moving specialized logging vehicles, and other equipment will not be restricted, except as follows:

2. The right to cross and re-cross the premises and road at any place by any reasonable means, and for any purpose in such manner as will not interfere unreasonably with use of the road.

3. The right to all timber now or hereafter growing on the premises, subject to Grantee's right to cut such timber as hereinbefore provided.

4. The right to require any user of the road for commercial or heavy hauling purposes to post security guaranteeing performance of such user's obligations with respect to maintenance of the road, and with respect to payment of any charges hereinbefore stated as payable to Grantor for use of the road: Provided, the amount of such security will be limited to the amount reasonably necessary to secure such payment, as approved by the Regional Forester.

5. The right to require any user of the road for commercial hauling to procure, to maintain, and to furnish satisfactory evidence of liability insurance in a form generally acceptable in the trade and customary in this area, insuring said party against liability arising out of its operation on the premises. The amount of insurance that may be required will be established by the Grantee based on the amount customarily carried by commercial haulers in this area: Provided, it is customary in the industry in this locality to require liability insurance at the time commercial users are allowed to use the road.

63 - Exhibit 01--Continued

(Provided, that so long as the _____ Road Right-of-Way Construction and Use Agreement dated _____ remains in full force and effect, the terms and conditions thereof will govern all aspects of use of the premises, including, but not limited to, (1/construction), reconstruction, and maintenance of the road and the allocation and payment of costs thereof.)1/

If for a period of five (5) years the Grantee must cease to use, or preserve for prospective future use, the road, or any segment thereof, for the purposes granted, or if at any time the Regional Forester determines that the road, or any segment thereof, is no longer needed for the purpose granted, the easement traversed thereby must terminate. In the event of such nonuse or of such determination by the Regional Forester, the Regional Forester must furnish to the Grantor, its successors, or assigns a statement in recordable form evidencing termination.

IN WITNESS WHEREOF, Grantor has caused this instrument to be executed by its duly authorized officers, and its corporate seal to be hereunto affixed on the day and year first above-written.

By _____
[Name]

By _____
[Name]

This is to certify that the interest in real property conveyed by the attached Grant Deed in favor of the UNITED STATES OF AMERICA, is hereby accepted by the undersigned officer on behalf of the United States of America pursuant to authority granted in the Act of October 13, 1964, (16 U.S.C. 532-538) and the Grantee consents to the recordation thereof.

[Name]
Forest Supervisor

Date

[This space is for the State specific acknowledgement and notary signature and seal]

From the Cooperator to the United States for Non-Cost Share Roads in an Agreement area

EXHIBIT E

EASEMENT

THIS EASEMENT, dated this _____ day of _____, 20____, from _____ a _____ of the State of _____ hereinafter called "Grantor," to the United States of America, hereinafter called "Grantee,"

WITNESSETH:

Grantor, for and in consideration of the grant of reciprocal easements received by Grantor, does hereby grant to Grantee and its assigns, subject to existing easements and valid rights, a perpetual easement for a road along and across a strip of land, hereinafter defined as the "premises," 1/ (over and across the following described lands in the County of _____, State of _____;) 1/(over and across the lands in the County of _____ State of _____, as described on exhibit. _____ attached hereto).

The word "premises" when used herein means said strip of land whether or not there is an existing road located thereon. Except where it is defined more specifically, the word "road" will mean roads now existing or hereafter constructed on the premises, or any segment of such roads.

(The location of said premises is shown (approximately) 1/ on exhibit _____ attached hereto.) 1/

(Said premises are more specifically described by a centerline description contained in exhibit _____ attached hereto.) 1/

Said "premises" shall be _____ on each side of the centerline with such additional width as required for accommodation, and protection of cuts and fills. If the road is located substantially as described herein, the centerline of said road as constructed is hereby deemed accepted by Grantor and Grantee as the true centerline of the premises granted. If any subsequent survey of the road shows that any portion of the road, although located substantially as described, crosses lands of the Grantor not described herein, the easement must be amended to include the additional lands traversed; if any land described herein is not traversed by the road as constructed, the easement traversing the same will be terminated in the manner hereinafter provided.

1/ Strike out if not applicable.

63 - Exhibit 02--Continued

The acquiring agency is the Forest Service.

This grant is made subject to the following terms, provisions, and conditions:

A. Grantee, its permittees, contractors, and assigns will have the right to cut timber upon the premises to the extent necessary for constructing, reconstructing, and maintaining the road. Timber so cut will, unless otherwise agreed to, be cut into logs of lengths specified by the timber owner, and decked along the road for disposal by the owner of such timber.

B. Grantor will have the right to use for all useful purposes the road(s) to be constructed, subject to traffic control regulations as provided in 36 Code of Federal Regulations (CFR), Part 212.5(a)(1) and (2), the bearing of road maintenance costs proportionate to use as provided in 36 CFR 212.5(d), and the bearing of the cost of construction proportionate to use 36 CFR 212.9.

The foregoing notwithstanding, this easement is granted subject to the following reservations by Grantor, for itself, its permittees, contractors, assigns, and successors in interest:

1. The right to use the road without costs for all purposes deemed necessary, or desirable by Grantor in connection with the protection and administration of Grantor's lands or resources, now or hereafter owned or controlled, and for removal of timber cut on the premises in construction of the road, subject to the limitations herein contained.

2. The right to cross and re-cross the premises and road at any place by any reasonable means, and for any purpose in such manner as will not unreasonably interfere with use of the road.

3. The right to all timber now or hereafter growing on the premises, subject to Grantee's right to cut such timber as herein before provided.

(Provided that so long as the _____ Road Right-of-Way Construction and Use Agreement dated _____ remains in full force and effect, the terms and conditions thereof will govern all aspects of use of the premises including, but not limited to (construction), reconstruction, and maintenance of the road.) 1/

1/ Strike out if not applicable.

63 - Exhibit 02--Continued

If for a period of five (5) years the Grantee will cease to use, or preserve for prospective future use, the road, or any segment thereof, for the purposes granted, or if at any time the Regional Forester determines that the road, or any segment thereof, is no longer needed for the purposes granted, the easement traversed thereby will terminate. In the event of such nonuse or of such determination by the Regional Forester, the Regional Forester will furnish to the Grantor, its successors, or assigns a statement in recordable form evidencing termination.

IN WITNESS WHEREOF, Grantor has caused this instrument to be executed by its duly authorized officers, and its corporate seal to be hereunto affixed on the day and year first above-written.

By _____
[Name]

By _____
[Name]

This is to certify that the interest in real property conveyed by the attached Grant Deed in favor of the UNITED STATES OF AMERICA, is hereby accepted by the undersigned officer on behalf of the United States of America pursuant to authority granted in the Act of October 13, 1964, (16 U.S.C. 532-538) and the Grantee consents to the recordation thereof.

[Name]
Forest Supervisor

Date

[This space is for the State specific acknowledgement and notary signature and seal]

EXHIBIT G

PERMIT

Permission is hereby granted to the UNITED STATES OF AMERICA, acting by and through the Forest Service, USDA, hereinafter called the Permittee, to use, subject to the conditions set out below, the following described lands:

[Insert legal description here]

This permit covers a right-of-way _____ miles in length and containing approximately _____ acres, and is issued for the purpose of constructing, reconstructing, maintaining, and using a road for the protection, administration, management, and utilization of lands and the resources thereof now or hereafter owned or controlled by the Permittee.

1. This permit is subject to all valid rights existing on this date.
2. The Permittee will cut only such timber as necessary in clearing for road construction, reconstruction, and maintenance. Timber so cut will, unless otherwise agreed to, be cut into logs of lengths specified by _____ and decked along the road for disposal by _____.
3. The Permittee will do everything reasonably within the Permittee's power to prevent forest fires, and will not allow disposal of material by burning in open fires during the closed season established by law, without a written permit from the proper fire protection agency.
4. The Permittee must fully repair all damage, other than ordinary wear and tear, to roads and trails caused by the Permittee in exercise of the privileges granted by this permit.
5. This permit will terminate _____, or earlier when requested by the Permittee; provided that the permit may be terminated, or suspended upon breach of any of the conditions herein.
6. The right-of-way covered by this permit will be _____ on each side of the centerline as shown on the attached plat with such additional width as required for accommodation, and protection of cuts and fills.

63 - Exhibit 03--Continued

7. In consideration for this use the Permittee has granted reciprocal rights-of-way to _____.

8. Construction of the road must be in accordance with the specifications set forth in exhibit attached hereto.

9. The Permittee will provide maintenance so that at the termination of this permit, the road will be in a condition equal to that normally prevailing on roads of like standard, and unless otherwise agreed to, lead-off drainage and water barriers to prevent erosion will be constructed on the road as directed by the _____.

10. Use of roads constructed under authority of this permit will be subject to control by the Permittee, except that they will at all times be open to use by _____ employees on official business.

The exercise of any of the privileges granted hereby constitutes acceptance of all conditions of this permit.

(Date)

(Signature of issuing officer)

(Title)

This permit is accepted subject to the conditions herein set forth.

(Date)

(Signature of Permittee)

(Title)

63.1 - Cost Share Easement, United States to the Cooperator

A discussion of exhibit D is found in FSH 2709.12, section 31.2.

63.11 - Requirements for Qualifying Under an Existing Agreement

1. Requirements to qualify for the grant of an easement for a road constructed under the Agreement are:
 - a. Cooperators shall have already constructed, agreed to construct, or made suitable arrangements with the Government for bearing their proportionate share.
 - b. Cooperators shall convey to the United States easements needed by the Forest Service to make the road a usable unit of the transportation system. Generally, they can meet this requirement by granting easements for the intervening segments of a joint road across the cooperator's lands. This requirement does not apply where a cooperative road is situated entirely on Forest Service-administered land, and there is no need to obtain an easement from the Cooperator.
2. Where it is necessary to obtain third-party easements to make the cooperative road a usable unit in the Forest Transportation System, do not grant easements across NFS lands until the Government or the Cooperator has acquired access across the third-party lands with sufficient interest to convey the easement to the other party(ies). Include the cost of acquiring the easements across the third-party lands in the cost to be shared by the parties to the Agreement.

63.12 - Contents

Grant easements only in the standard format (FS-2700-9d), except for modifications that follow. The Washington Office, Director of Lands and Realty Management (hereafter referred to as the Washington Office, Director of Lands) shall approve any changes other than those discussed in this section. Send the recommended change together with the reason for the change to the Washington Office, Director of Lands.

Both the Government's and the Cooperator's easements have parallel language. The Government and the Cooperator do not own identical rights. However, the rights of use owned by each party are uniform over the entire road, except where off-highway hauling, and subdivision clauses are used. Neither party may act to diminish the other party's interest in a cost share road by unilateral action.

Because of the parallel language of the two easements, the following direction on the Forest Service easement provisions, reservation, and other clauses to the cooperator includes references to the corresponding sections of the easement to be granted by the Cooperator to the United States.

The format of the easement from the United States to the Cooperator contains alternate language so that the same format may be used regardless of the constructing party. Omit the inappropriate

alternate language. The format of the easement from the Cooperator to the United States (ex. C, sec. 63, ex. 01) contains similar alternate language. The following references are to the provisions of the cost share easement (see FSH 2709.12, sec. 31.2, ex. 01).

1. Provision A. Provision A in the standard easement anticipates third-party ownership in the Agreement area. It also anticipates that the Government is to assume the proportionate share of the cost attributable to the use generated by these lands. It is worded so that it is possible to use the Grantee's rights to serve lands it now owns, or later acquires outside the Agreement area, but not lands it subsequently acquires inside the Agreement area. Any timber or other materials the Grantee hauls from lands in the Agreement area that are owned by third-parties on the date of the easement is treated as though the material is hauled by someone else.

When the Government assumes a share for third-party lands outside the Agreement area, delete the words "in the Agreement area". The lands included as part of the Government's share are subject to road use fees, and other conditions the Government imposes on its haulers.

The referenced exhibit may be a copy of the Agreement's exhibit A map showing the third-party lands (see sec. 61.1), or a list of third-party lands to which the proviso applies.

The third-party land proviso may be deleted when there are no tributary third-party lands, or the third-party lands are not included in negotiating shares in the Agreement.

Follow direction on Travel Planning in FSM 7710 to identify the minimum road system needed for safe and efficient travel and for administration, utilization, and protection of cooperator and NFS lands. This includes performance of Travel Analysis (FSM 7712; FSH 7709.55, ch. 20), and use of RMOs to document the intended purpose, design criteria, and operation and maintenance criteria (FSM 7714).

Use the following broad limitation after the second paragraph, except in those cases where the cooperator will be allowed to use off-highway equipment:

"Subject to compliance with legal dimensions, and weights of motor vehicles imposed by State law on comparable public roads or highways: Provided, that dimensions, weights, and configuration of equipment or vehicles must not exceed the capacity of bridges and other structures, and provided further, that cleared equipment must not be used on paved roads."

Where use of off-highway hauling is appropriate and clause E is inserted in the easement to the Cooperator in accordance with of FSH 2709.12, section 31.4, use the following insert:

"Except for vehicles authorized in paragraph E of this easement, all use is subject to compliance with legal dimensions, and weights of motor vehicles imposed by State law on comparable public roads and highways: Provided, that dimensions, weights,

and configuration of equipment, or vehicles will not exceed the capacity of bridges and other structures, and Provided further, that cleated equipment will not be used on paved roads."

The easement defines the Grantee's legal rights and limitations. As special circumstances require, the Forest Service may grant permission by permit or other means for use of the road that exceeds the limitations in the easement, such as off-highway loads. Administer the roads covered by the easement to serve the mutual needs of the Forest Service and the Cooperator as fully as possible.

In limiting the Cooperator's use, the Forest Service cannot go beyond the limitations expressed in the easements. The Cooperator cannot exceed the limitations on use in the easement without Forest Service permission. The Forest Service cannot withhold permission without justifiable reason, and it must give permission when necessary to meet special needs when this is possible without impairing safe use by other traffic, or without damaging the roads. Whether such permission is granted by permit in each case or by other means, or not granted is within the discretion of the Regional Forester.

The corresponding language in the easement from the cooperator is in reservation 1 of the easement granted by the Cooperator.

2. Provision B. The easement language is self-explanatory. There is no corresponding clause in the easement from the Cooperator.

3. Provision C. This clause permits the Grantee to implement a charge for the removal of commercial products from the grantor's lands. The corresponding language is also in provision C in the easement from the Cooperator. The provision provides another means for the Forest Service to pay the Government's share.

When the initial road construction is by the Cooperator, this clause ensures that the cooperator may recover its excess costs if the Forest Service cannot contribute its agreed share of the road by offsetting construction. When the initial road construction is by the Government, the clause ensures that the Cooperator has an opportunity to recover excess costs if the Cooperator improves the road, or makes additional capital expenditures through a later Supplement.

If the Cooperator later performs additional work, and incurs excess costs under a new Supplement, the collection right in the easement also applies to the additional excess costs in the new Supplement.

The collection right clause in both the Government and the Cooperator easements is effective to the extent provided for in the Supplements. Consequently, whether a road is partly on easements granted to the cooperator, and partly on easements the Cooperator has granted to the Government, makes no difference because the Supplement defines the amount and rate of collection. The roads may be located on more than one easement.

The amount the cooperator may collect from users of the road on any particular easement will be the Cooperator's excess costs, less the value of offsets as set forth in the Supplements.

The amount of a collection right is not a Government obligation. Therefore, do not use appropriated funds to extinguish, or diminish that amount except through offsetting construction, unless section 5 of the Supplement provides for the use of funds appropriated for that purpose.

When there is a concern with the tributary land outside the Agreement area, use a collection right against a specified volume of outside timber to resolve the problem. See section 66.2 for direction on this special problem and the easement language to use.

4. Provision D. The easement language is self-explanatory. The corresponding language in the easement from the cooperator to the Government is provision B.

5. Provision E. This is the road maintenance clause. The corresponding language is provision D in the easement from the Cooperator. Road maintenance includes all work required for the safe and efficient use, and preservation of the road.

Neither the Government easement nor the Cooperator easement gives the Cooperator the unqualified right to maintain for and collect from all users. The Cooperator may do so only if the Forest Service agrees, and the Cooperator requires its permittees to meet their maintenance obligation by depositing funds. The Forest Service can require timber purchasers, or other commercial haulers it permits to use the road to perform their share of maintenance; to deposit funds with the Forest Service for their share of the maintenance as provided in 36 CFR 212.5(d); or to pay the Grantee (Cooperator) their share of maintenance costs. In the case of a timber purchaser, the terms of the timber sale contract must provide any requirement to pay for, rather than perform, the maintenance share (FSM 2450). Also, the Forest Service can pay funds collected for maintenance to the cooperator under a Cooperative Road Maintenance Agreement for the Cooperator to do all or a designated amount of the maintenance.

Each party has the right to maintain the road, and the obligation to bear the costs of maintenance attributable to its use. Thus, it is essential that the cooperating parties agree on arrangements for doing the maintenance. A written agreement is necessary to achieve a satisfactory level, and proper coordination of maintenance. Develop the specific arrangements for maintenance in the provisions of the easements under which the parties constructed the road.

6. Provision F. The easement language is self-explanatory. The corresponding language is in reservation 4 in the easement from the Cooperator. This right of the Grantee (Cooperator) to require security provides assurance to the Cooperator that other users will meet their obligations. Since the Forest Service normally collects the user payments and forwards them to the Cooperator, there is no need to impose this requirement on most users.

7. Provision G. This is the liability insurance clause included in most easements. The corresponding language in the easement from the Cooperator is reservation 5. The Grantee's right to require commercial haulers to carry liability insurance will apply only when the insurance requirement is customary in the industry in that locality. Therefore, it is necessary for the Forest Service to make a determination that insurance is customary before the clause becomes operative. If it is determined that only certain classes of commercial users customarily carry liability insurance in a locality, the right to require insurance will apply only to those classes of users.

The Grantee can only require insurance to cover operations on the road, and the right-of-way. See FSM 5460.5 for a definition of a commercial hauler, and limitations (provision A) on the amount the Grantee may require.

8. Provision H. The easement language requires the Grantee to submit a written request for use of chemicals in clearing the right-of-way. The Forest Supervisor shall respond in writing. There is no corresponding clause in the easement from the Cooperator.

9. Provision I. This clause restricts use of the easement for access to developments used for short- or long-term residential purposes, unless and until agreement on traffic control regulations, rules, and provisions to accommodate such use are agreed upon. When no agreement has been reached, regulate use of the affected roads for access to subdivisions by posting the road under provisions in 36 CFR 212 and 36 CFR 261.

FRTA easements granted under the Cost Share Program prior to January 1, 1994, do not contain this clause. However, the cooperating parties shall work together to develop procedures to accommodate development for commercial or recreational purposes, prior to the development or change of ownership. See section 61.2, No. 16, for direction on addressing situations where a cooperator is proposing to subdivide land for recreational or commercial development.

In addition, provision I provides that traffic control regulations also need to be agreed to by the Grantor (the Forest Service) and the Grantee (the Cooperator). The most expedient and efficient approach is to work with the cooperator as soon as possible after the Cooperator has stated their intention to subdivide their land, and there is an indication that the local road authority may be unwilling to take over jurisdiction, and management of the road.

Direction for implementing traffic control regulations and rules are described in FSH 7709.59, chapter 20. Especially relevant considerations are described in the following paragraphs.

State traffic laws apply to NFS roads unless in conflict with designations or orders under 36 CFR 261.

One means for regulating traffic is through implementation of requirements in 36 CFR 212.5, Road System Management. Rules that automatically apply to all NFS roads are in 36 CFR 261.12, and 36 CFR 261.54 describes optional rules that can be implemented with the issuance of an order.

Once agreement has been reached on appropriate traffic rules, implement the rules by issuing orders that are prepared at the Forest level. See FSH 7709.59, chapter 23.2 for requirements for preparing and posting orders.

10. Reservation 1. The easement language is self-explanatory. The corresponding language in the easement from the Cooperator is the first paragraph of provision A.

11. Reservation 2. The easement language is self-explanatory. The corresponding language in the easement from the Cooperator is the second paragraph of provision A.

12. Reservation 3. The easement language is self-explanatory. The corresponding language in the easement from the Cooperator is reservation 2.

13. Reservation 4. The easement language is self-explanatory. The corresponding reservation in the easement from the Cooperator is reservation 3.

14. Reference to the Road Right-of-Way Construction and Use Agreement. If the easements granted are in connection with an Agreement, include the optional clause referring to the Agreement in both the Government and Cooperator easements.

15. Termination Clause. The termination clause provides the Forest Service with a simple way to terminate the easement, or any segment thereof, if the Grantee no longer needs it. See FSH 2709.12, chapter 30, section 38 for direction. There is a corresponding termination clause in the easement from the Cooperator. The language differs because of the different procedures required in terminating easements.

16. Seal of Department of Agriculture. If State law requires the seal of the Department of Agriculture, or if the Grantee requests it, send the easement to the Washington Office, Director of Lands, after execution by the authorized Regional official. The Washington Office will have the seal affixed by the Office of the Secretary and return the easement.

63.13 - Issuance Procedure

The exchange of easements is typically an outcome of a Supplement; therefore, no formal application is necessary. The parties decide upon the clauses, limitations, and conditions during negotiation. Prepare the easements concurrently, or immediately following the preparation of Supplements. Either party may prepare the easements.

Execute and deliver the Government easement to the Cooperator concurrently with, or as soon as practical, following the execution and delivery of the Supplement documenting that the Cooperator has borne, or has agreed to bear, its proportionate investment share in the road, and has agreed to convey the related easements needed by the Forest Service.

63.2 - Cost Share Easement, Cooperator to the United States

See exhibit 01 of this chapter for the standard format of exhibit C. It closely parallels language in the easement from the Government to the Cooperator so that when the parties on a road project exchange easements, the interest acquired and rights of use owned by the cooperator and by the Government are uniform over the entire road.

Use the standard format except for modifications approved herein. Submit any other changes in the standard format, together with the reason for such change, to the Washington Office, Director of Lands, for approval. See section 63.1 for direction on points common to the cooperator and Government easements.

Statements concerning the clauses in the Government easement are equally applicable to parallel clauses in the cooperator easement. Therefore, most of the discussion of the Cooperator easement clauses in this section is by reference to direction on corresponding clauses in the Government easement. Additional explanation and reference to corresponding clauses in the Government easement follow:

1. Provision A. The language corresponding to the first paragraph of this provision is reservation 1 of the easement from the Government. The language corresponding to the second paragraph is reservation 2 of the Government easement (sec. 63.12).

Where use of off-highway hauling is appropriate, and clause (reservation) 6 (section 63.21, ex. 01) is inserted in the easement to the Government in accordance with section 63.21, add the following to provision A:

"Except for vehicles authorized in paragraph 6 of this easement, all use is subject to compliance with legal dimensions, and weights of motor vehicles imposed by State law on comparable public roads and highways: Provided, that the dimensions, weights, and configuration of equipment or vehicles will not exceed the capacity of bridges and other structures, and Provided further, that cleated equipment will not be used on paved roads."

2. Provision B. The corresponding language is Government easement provision D (sec. 63.1).

3. Provision C. This is the collection-right clause. The corresponding language is Government easement provision C (sec. 63.2). See section 66.2 for changes required when granting collection rights on timber, or other material outside the Agreement area.

4. Provision D. This is the maintenance clause. The corresponding language is Government easement provision E.

5. Reservation 1. Insert the general or specific limitations in the companion Government easement, provision A, at the end of the reservation.

6. Reservation 2. The corresponding language is Government easement reservation 3.

7. Reservation 3. The corresponding language is Government easement reservation 4.

8. Reservation 4. The corresponding language is Government easement provision F.
9. Reservation 5. The corresponding language is Government easement provision G.
10. Reference to Road Right-of-Way Construction and Use Agreement. If the easement granted is in connection with an Agreement, use the optional clause referring to the Agreement.
11. Termination. The easement language is self-explanatory.

63.21 - Easement, Off-Highway Hauling

1. The easement format in exhibit 01 of this section may be modified to reserve the right to use off-highway hauling (OHH) vehicles in the following situations if the Cooperator requests it, and agrees to bear all of the increased costs of constructing and maintaining the road that result from, or are needed to accommodate the increased dimensions or weight:
 - a. Where the Forest Service is buying into an existing road system which the owner is currently using for OHH, or which has considerable OHH history;
 - b. In an existing Agreement area where roads with existing OHH rights are being extended, unless there is a need to restrict the hauling to highway loads; or
 - c. In new Agreement areas where the Cooperator is the dominant landowner has an established OHH road system with a recent history of OHH use, and continued OHH use is reasonably anticipated in the future.

Except as noted in paragraphs 2 to 2b, authorize OHH by inserting the easement clause into exhibit C (sec. 63, ex. 01). This clause is an additional reservation to the 5 standard reservation clauses of the easement's reserved rights section titled "This easement is granted subject to the following reservations by Grantor, for itself, its permittees, contractors, assigns, and successors in interest." This clause must be inserted exactly as it appears in exhibit 01.

2. Where the following situations exist, the OHH language and format of prior easements exchanged within the specific Agreement area may be used in lieu of that in exhibit 01:
 - a. The entire road network within the Cost Share Agreement area is essentially in place and actively being used for OHH, the majority of the easements have already been provided, and what are remaining are needed only to complete documentation of the existing system; or
 - b. A written agreement already exists that commits the Forest Service to an easement format, or provisions different than those in exhibit 01.
3. Direction on the administration of OHH use is in FSH 2709.12, section 31.42. The direction on suspension and temporary modification applies to use reserved in reservation 6. However, there is no provision for termination of the right reserved by the grantor.

63.21 - Exhibit 01

**Easement Clause for Reservation of Off-Highway Hauling
Rights Across Cooperator's Land**

Subject to the provisions of this clause, Grantor reserves the right to use vehicles with dimensions and weight in excess of limitations provided by State law for use on State highways (herein referred to as "off-highway hauling") over the following NFS roads or road segments for the purpose of hauling forest products: 1/

Road Name

Road Number

Termini

The following off-highway hauling rights are reserved subject to the following terms and conditions:

A. Vehicles Authorized 1/ 2/

- a. A combined weight of vehicle and load must not exceed _____ pounds on the front axle and _____ pounds on each additional axle.
- b. Total height of vehicle and load must not exceed _____ feet.
- c. The overall length of vehicle and its load, including trailers, must not exceed _____ feet.
- d. The overall width of vehicle and load must not exceed _____ feet.
- e. A maximum of _____ additional trailer units per pulling vehicle are authorized.
- f. The use of cleated equipment on paved roads is prohibited.

B. Compliance with State and Local Laws - Except as expressly provided in this reservation, the Grantor must comply with all Federal, State, and local laws pertaining to the use of vehicles, and roads.

1/ Listing of roads and their respective permitted vehicles may be shown in a table attached to the easement.

2/ Vehicle dimensions, weight, and configuration which can be safely accommodated will be determined for each road or road segment based on the capacity of the road in its present condition, or as planned to be improved for immediate use. Omit non-applicable items.

63.21 - Exhibit 01--Continued

C. Costs Borne by Grantor - The Grantor will bear the costs of construction, reconstruction, repair, and maintenance, which are attributable to use of roads for off-highway hauling. Attributable costs are all expenditures made, or required in excess of costs normally required for construction, reconstruction, repair, and maintenance of roads designed to accommodate weight and width limitations under State law in effect at the time of construction.

D. Liability of Grantor - The Grantee disclaims any and all liability arising from the Grantor's utilization of off-highway hauling pursuant to this Reservation, and Grantor will defend and indemnify the United States for any claim arising from such use.

E. Temporary Modification of Terms and Conditions of Use - Upon written notice to Grantor, the Grantee may temporarily modify the width, weight, length, and height limitations herein upon a determination that off-highway hauling is causing, or may cause material damage to roads, bridges, and associated facilities; or is a hazard to public health and safety. Unless otherwise agreed in writing, such modifications will remain in effect until the hazard is abated, and all damage repaired. All damage caused by off-highway hauling must be repaired at Grantor's expense. Except in emergencies involving health or safety, the Grantee will consult with the Grantor before suspending off-highway hauling.

F. Suspension of Off-Highway Hauling - The Grantee may suspend, without incurring liability to Grantor or any other party, all off-highway hauling use reserved herein for, and during such time as the United States determines that such use poses an immediate threat to public health or safety until such threat is abated. Grantor must suspend all off-highway hauling use upon receipt of written notice of suspension, or upon any later date specified in the notice. Grantor's breach of the covenants contained in this Reservation may, at the option of the Grantee, result in suspension of off-highway hauling until Grantor has corrected all problems arising from past breaches, and paid any damages resulting from breach. The Grantee may require satisfactory bonds or other assurances when it deems them necessary to protect the Government. Except in emergencies involving health or safety, the Grantee will consult with the Grantor before suspending off-highway hauling.

G. Disputes - All disputes will be handled through normal administrative appeal regulations of the Secretary of Agriculture. The parties at all times reserve their rights to judicial remedies. Should Grantor challenge any order of suspension or modification in any administrative or judicial forum, such order will remain in effect during the pendency of such proceedings; unless a stay is granted as part of the administrative or judicial review process.

H. Authorized Official - Authorities of the Grantee or the Forest Service provided herein, must be exercised by the Forest Supervisor, or other authorized officer.

63.3 - Non-Cost Share Easement, United States to the Cooperator

Direction on qualifications for grant of a non-cost share easement is discussed in FSH 2709.12, section 32.1. The easement must be in the standard format (FS-2700-9e, found in FSH 2709.12, sec. 32.2, ex. 01) and attached as exhibit F. The Agreement requires approval of location, and standard of the road to be built on the easement.

Section 13 of the Agreement provides for the granting of a right-of-way by one party to the other whenever there are no plans for joint financing of the particular road.

The Government reservation of the right to use the road without costs is limited to protection, and administration of Government lands or resources and to the removal of timber cut on the premises by the Grantee. If the Government later determines that it has a need for commercial use of the road constructed on the easement, it may acquire such rights by complying with the provisions of section 14 of the Agreement.

63.4 - Non-Cost Share Easement, Cooperator to the United States

This easement format for exhibit E is displayed in section 63, exhibit 02. The format closely parallels the Government easement for non-cost share roads (FSH 2709.12, sec. 32). The Cooperator's right of use without cost is limited to the same uses as granted in the Government's non-cost share easement. However, there is a provision in this easement that permits use for all purposes subject to Government traffic-control regulations, the bearing of proportionate maintenance costs, and the bearing of proportionate construction costs.

63.5 - Permit, United States to the Cooperator

Permits for temporary, non-cost share roads must be in the standard form noted in FSH 2709.12, section 41.24, exhibit 01, and included as exhibit H.

Cooperators may apply by filing maps showing the proposed location, together with construction specifications, and other requirements specified in section 13 of the Agreement. Construction for temporary roads will require analysis under the National Environmental Policy Act (NEPA) (FSH 1909.15, ch. 30). Work with the Cooperator to ensure the application is ready for NEPA analysis. The Forest Service and the Cooperator may need to negotiate which party will conduct the NEPA analysis. The Cooperator is responsible for financing the NEPA analysis. Consider cost recovery fee collection direction as a means of streamlining the NEPA effort if it appears likely the Forest Service will produce some or all of the NEPA analysis (FSH 2709.11, ch. 20). Issue such permits promptly unless one of the situations described under section 13 exists. If one of the situations exists, the parties should endeavor to agree upon a reasonable and practical solution.

A permit for use of an existing road within the Agreement area must be authorized using form FS-7700-41, Non-Federal Commercial Road Use Permit. A road use permit may be issued when the parties have agreed to meet the terms of the permit, including investment sharing, and maintenance commensurate with use.

63.6 - Permit, Cooperator to the United States

The permit for a temporary non-cost share road must be in the format displayed in section 63, exhibit 03, and labeled as exhibit G. The form closely parallels the permit issued by the Forest Service under similar conditions.

64 - Negotiating Supplements

A prerequisite for successful negotiations is an understanding by the parties that a single road system can serve their intermingled lands at less cost than each party constructing, and maintaining its own road system.

To prepare a Supplement, the parties shall agree for each road segment on the:

1. Exact location and detailed specifications.
2. Estimated costs.
3. Share of costs that each party is to bear.
4. Construction program (schedule and responsible party).
5. Provision for each party to meet its share (sections 61.2 and 62.6).

Action on several of these steps usually occurs at the same time. However, it is important that completion of each step be in proper order.

In developing a cost share Supplement, it is crucial that the parties have a mutual understanding of the basis, and procedure for determining proportionate shares. The parties shall agree on the tributary area, and the classification of the land into suitable, not suitable, and special areas. The most successful procedure is for the parties to work together in securing and analyzing the tributary area, and other information needed to make the calculation of shares.

The objective in negotiating a Supplement is for the parties to bear their proportionate investment share of costs without pressuring for the best bargain at the other's expense.

64.1 - Fact Sheet

Before drafting a Supplement, prepare a fact sheet and place it in the file. The order and format may vary, but the fact sheet must include the following items:

1. Heading. The heading identifies the Agreement and Supplement number. Supplements are consecutively numbered based on their anticipated order of execution.
2. Area. Provide a general description of the Supplement area and cite a local geographic monument, such as a town, mountain range, or drainage.
3. Cooperating parties. List all parties to the Agreement in this section, and identify any party not sharing in the Supplement. A party that elects not to share in a project may not use the roads for commercial purposes until other written authorization is granted.
4. Identification of road(s) and road segments. List each road by name, identification number, designated segment, and length. Attach a map, labeled exhibit 1, showing the location of each road and road segment.
5. History of existing and planned roads. Discuss the following for each road or road segment:
 - a. Who constructed existing roads, when they were constructed and, if constructed on another party's land, under what authority they were constructed. If existing roads were constructed or reconstructed under the Agreement, identify the Supplement.
 - b. Construction/reconstruction assigned to each party, and the anticipated completion date(s).
 - c. Other facts relating to existing roads that may affect cost or shares, such as RMOs, third-party easements acquired by either party that are assigned or subordinated to the other party, past road use, reverse-haul route or a different haul route for future timber, legal opinions, and so forth.
6. Plans and specifications. Identify the construction and reconstruction plans and specifications, state when and by whom they were approved, and state where they are located.
7. Construction and reconstruction costs. Identify the basis of determining the costs, the agreed upon costs, and the construction party by road or road segment.

8. Each party's share. Calculate each party's share of the road by applying the principles in section 61.2, section 64.4 (see section 64.42, ex . 01 and 02 for sample worksheets) and FSM 5467.2. There is one formula used to calculate shares. The calculations may be included in the text, or attached as a separate exhibit.

Include a summary of each party's share and excess cost in the body of the fact sheet, or attached as a separate exhibit (see sec. 62.5, ex. 03).

9. Provisions for payment. State the proposed method(s) of payment based on the methods in section 6 of the Agreement. Section 62.6 gives specific wording to be used in the Supplement for the amortization methods(s) and may be adequate.

10. Estate to be acquired. State what property rights are to be exchanged between the parties, usually these are cost share easements in the format attached to the Agreement. If this is the case for all roads in the Supplement, state that standard cost share or non-cost share easements will be exchanged.

Some Supplements or individual roads in a Supplement may have conditions, or exceptions from the standard cost share or non-cost share easement, such as off-highway hauling rights, and third-party easements. In these cases, identify the specific roads, and specify the limitation or condition.

11. Summary of current financial obligations. Show the financial obligations for the entire Agreement by attaching, or referencing a balance sheet (see sec. 61.2; and FSM 5467.5).

12. Signatures. The signature page is to be signed by the District Ranger, Forest Supervisor, or cost share specialist for the Government, and by a designated field representative of the Cooperator.

64.2 - Valuing Rights-of-Way Areas

Cost share easements, non-cost share easements, and permits are the right-of-way documents exchanged in Agreement areas. Each right-of-way has value, and is accountable.

1. Cost Share Easements. The value of the easement is the value of the land within the right-of-way. Unless land values are unusually high, detailed appraisals are not necessary. The National Agricultural Statistics Service (NASS) publishes a survey of agricultural land values every five years. This survey is the basis of the *Linear Right-of-Way Rental Fee Schedule*, and in appropriate instances can form the basis for a determination of bare land value. Data is published by county. One can navigate to the survey data from the NASS website (<http://www.nass.usda.gov>). Each NASS State Office organizes its reports and website slightly different; therefore, on the first visit to the site, it may take some effort to find the desired information. Generally, the value of non-irrigated cropland must most closely approximate timber land value.

NASS agricultural census reports may be accessed directly at: http://www.agcensus.usda.gov/Publications/2007/Online_Highlights/County_Profiles/

Do not include timber value because it remains the property of the owner.

Where the easement includes an existing road, the land value is the value of the easement. Determine the contribution value of the existing road as outlined in section 66.1.

Establish the value of the easements granted by each party for each road or road segment to be shared. Include these values in the construction cost to be shared.

2. Non-Cost Share Easements. Within an Agreement area, the Government or the Cooperator may grant non-cost share easements to the other party for non-system and permanent roads constructed at the sole expense of the Grantee. The value of the easement is the land value as calculated in paragraph 1 but the accounting of the value may be:

a. Value Offset. These grants are made under the assumption that reciprocal grants have been, or will be made to the Grantor as needed for similar non-cost share roads. Therefore, it is assumed that the consideration is offsetting, and the grants are made without charge upon request. The consideration is the grant of reciprocal easements when needed by the Grantor in similar circumstances within the Agreement area.

b. Value Credited. In those Agreement areas where it is anticipated that one party will grant more non-cost share easements than the other, the parties may agree to value non-cost share easements, and credit the value to the granting party.

Document the value in a fact sheet, or a jointly signed letter, and enter the value on the balance sheet as a credit to the grantor's account. The credit entry is shown in the same manner as a collection right payment.

The parties should not switch between the two methods of accounting for the value of the non-cost share easements within an Agreement area. Where there is a concern by either party that the values are not offsetting, the value of the non-cost share easement will be calculated, and credited on the balance sheet for the Agreement.

3. Permits. Permits are normally granted for construction of temporary roads. However, a Cooperator may request and receive a permit in lieu of an easement on a road of the other party. The valuation is to be consistent with the type of use granted and is determined as follows:

a. Permit for Construction of Temporary Roads. Neither party charges for these permits, but grants them on a reciprocal basis as needed within an Agreement area.

b. Permit in Lieu of an Easement. When requested, either party will issue a permit in lieu of an easement when the requirements of sharing and paying in sections 4, 5, and

6 of the Agreement have been met. If the road use permit is valued and included in a Supplement, use the methods of payment specified in section 6. If the road use permit is not included in a Supplement, use the methods of payment specified in FSM 7730. Ensure that the valuation is consistent with sections 4, 5 and 6.

64.3 - Construction Costs

1. Methods for Determining Construction Costs. The principal methods for determining the construction cost to be shared are as follows:
 - a. Engineering Cost Estimate. This method is a preconstruction engineering estimate of cost by construction item made, and agreed to by all parties in advance of construction. This requires an engineering design adequate to determine construction items, costs, and performance. Unit prices used to estimate costs must reflect current contract prices experienced in the area. The engineering cost estimate in the Supplement may differ from the allowance for timber purchaser credit in a timber sale contract (FSM 2454).
 - b. Contract Bid. This method uses the contract price, after competitive bidding, for a contractor to build a road. When using this method, always include a provision to enable rejection of any, or all bids to ensure that competitive bids are in line with an engineering cost estimate. This method requires the same engineering standards as required for the method shown in paragraph 1.
 - c. Post-Construction Engineering Cost Estimate. This method does not identify the quantity of a construction item but does establish, using the current contract prices in the area, the unit price of each construction item. The Supplement must include the unit prices, a provision for amending to reflect the as constructed quantities or contract quantities, and the maximum cost the parties agree to share.
 - d. Equipment Unit Rates. This method determines the total cost by the application of the unit rates for equipment use. The Supplement must include the equipment rates, a provision for amending to reflect the total equipment use, and the maximum cost the parties agree to share. This method is most applicable to emergency reconstruction or repairs.
2. Requirements for All Methods of Determining Costs. In any method used to establish the cost to be shared, include such elements of cost as survey and design, engineering supervision, project overhead, right-of-way purchases, and materials furnished.
 - a. Engineering Costs. In some existing Agreement areas, the parties have agreed that the engineering costs associated with survey, design, and supervision are offsetting between the parties. In the future, if these costs are not offset by each party doing their proportionate share of the work, credit the costs to the performing party, and include them in the calculation of shares.

b. Specialist Costs. The parties shall share the direct cost of those specialists required by law on the same basis as road construction costs. For the purpose of this Agreement, specialists include those professionals who are not directly involved in the design or construction of the road, but whose expertise is necessary to meet the requirements of NEPA, the National Historic Preservation Act, the Endangered Species Act, and other laws or regulations that serve to control, limit, or modify road construction activities.

The party that requires the services of specialists to meet its administrative needs, or to check or review the work of specialists furnished by the other party, shall provide and pay for the services of such specialists.

c. Costs of Existing Roads. A cooperating party will not receive credit for excess costs incurred on roads it has constructed across lands of the other party, unless the original instrument under which the road was constructed provided for cost sharing, or there is sufficient documentation of the intent to share costs.

When an existing road was included in a Supplement, and the parties to the Supplement fully met their proportionate investment shares, neither party is obligated to bear further shares of the cost of the road should the road be included in a future Supplement. This does not preclude future sharing in the improvements of that road.

Treat any road constructed by a Cooperator that fulfills the requirements of a National Forest timber sale contract as though constructed by the Government.

See section 66 for valuation of interests in existing roads contributed by one of the parties.

64.4 - Determining Shares

The intent of the Cost Share Program is to equitably share road construction, reconstruction, and restoration costs between the Cooperator and the Government for the jointly-owned road system within the Agreement areas, and on roads where cost share easements are held.

Traditionally, the primary use of these roads has been for timber hauling. However, the joint road system provides access to a multitude of different uses occurring on the lands within and immediately adjacent to Cost Share Agreement areas, including those associated with developed and dispersed recreation, mining, oil and gas development, and so forth. In some cases, the joint road system provides access to trailheads. Trails from these trailheads often provide access to areas where roads are prohibited. RMOs are critical for identification of these various potential uses and purposes that may be involved with a NFS road.

All uses relate in some way to the tributary land area accessed by the road. Since an acre is a common unit of measure between the lands of the cooperator and the Government, it will be used as the basis for allocating road construction, reconstruction, and restoration costs.

All of the tributary lands do not have equal impacts on the road system. In recognition of the differences in the tributary lands, the base unit for establishing shares is the tributary suitable

land expressed in acres. Calculate shares based on each party's share of the tributary acres, including suitable lands, and other tributary lands converted to equivalent suitable acres. Do not count lands more than once in determining the tributary acres.

64.41 - Land Categories

Use the following land category definitions in calculating the shares of each party:

1. Tributary Area. The land area eligible for roading and/or timber removal within a boundary determined by transportation analysis using break-even points for timber haul routes for normal logging systems, and practicable helicopter logging. The tributary area may extend beyond the Agreement boundary.
2. Suitable Land. Land within the tributary area managed and suitable for timber production.
3. Not Suitable Land. Land within the tributary area not managed for timber production because:
 - a. The Secretary or the Chief has withdrawn it from consideration for timber harvesting.
 - b. It is not capable of producing crops of industrial wood.
 - c. Timber management is inconsistent with or not cost efficient in meeting the management requirements, and multiple-use objectives specified in the National Forest Land and Resource Management Plan.
 - d. The Cooperator has withdrawn it from consideration for timber harvesting to meet multiple-use objectives documented in a company management plan, or a cooperative or regulatory agreement with Federal, State, or local entities.
 - e. Timber harvest is prohibited by Federal, State, or local law, such as designated wilderness areas.
4. Special Areas. Areas of land that generate significant or atypical road use within the Agreement area. These may include, for example, areas like commercial gravel sites, mines, gas and oil development, intense recreation sites, heavy use organization camps, and roads with atypical use, such as through roads.
5. Non-Forest Land. Land within the tributary area not capable of producing trees such as streams, lakes, rock slides, natural meadows, and so forth.

64.42 - Share Calculations

The premise in cooperative road development is that the parties share costs in proportion to anticipated use of the road by the respective parties. However, this proportion may be increased

or decreased by either party's specifically agreeing to assume road use not generated by its lands. The Government assumes the use attributed to third-party lands unless otherwise agreed.

Calculate shares of the cooperating parties for construction, reconstruction, and restoration by converting all uses to an equivalent suitable land acre. Light traffic is an integral part of the total traffic of a suitable acre. Light traffic would include recreational traffic in light trucks (pick-ups), and all-terrain vehicles. Traffic use, including light traffic, generated on not suitable land, classified as special areas, is included as part of the conversion to suitable acres in the calculation of shares. Examples of special areas include trailheads, developed recreation sites, and other special areas that may be agreed to by the parties. Do not include an area twice, and do not include any additional consideration for light traffic.

The special area category allows the parties to equate differences in land uses on the not suitable lands within the tributary area to an acre of suitable land. In addition, roads with atypical use unrelated to the tributary area, such as through roads, may be treated as special areas.

Conversions for special areas should relate the atypical road use to road use from a suitable land acre. Equivalent vehicle units, weight comparisons, traffic counts, and other methods of conversion may be used. Conversion factors for special areas must be approved by the Regional Forester.

Segmentation of a road to determine shares is needed only when there are significant and measurable differences that produce inequities for any of the parties. Segmentation must be considered at:

1. Road intersections.
2. Points where ownership changes, including third-party ownership.
3. Major areas of attraction (special areas).
4. Major changes in construction costs.
5. Any point where there is a change in constructing party.
6. Any point where there is a significant change in anticipated use, such as change in direction of haul.

Use the following procedure to determine the cooperating parties' shares in the construction, reconstruction, or restoration of a road under a new Supplement. See section 61.2, section 10, for the procedures for determining shares for restoration required within five years of the completion, and acceptance of a cost share project.

1. Step 1 - Determine Tributary Area. Determine the boundary of the area eligible for road construction, and timber removal using the transportation analysis process, considering breakeven points for timber hauling routes for anticipated logging systems. Even though timber production is the primary purpose of a Cost Share Agreement, the

area may also include lands managed for uses other than timber production, such as recreation sites, commercial gravel sites, mines, gas and oil development, and so forth.

When the tributary area includes only suitable lands, determine each party's share based on the relationship each party's tributary land is to the total tributary area.

See exhibit 01, for an example of this one-step procedure.

When the tributary area includes both suitable and not suitable lands, determine the parties' shares as outlined in step 2 as follows:

Step 2 - Determine Suitable Area Equivalent Acres. When the tributary area includes both suitable and not suitable lands, adjust the parties' tributary suitable acreage to recognize uses on not suitable land. Equate the anticipated use on these areas to an acre of suitable land.

a. Special Areas.

(1) Count the system trailheads that provide access to lands outside the tributary area. Each trailhead is the equivalent of 50 acres of suitable land.

(2) Determine the acreage of the developed recreation sites and associated buffer areas. Include this acreage as equivalent suitable land.

(3) Identify other special areas. Adjust the acreage of these areas by a factor that equates the road use generated by these lands to that of an equal area of suitable land. The Cooperator and the Regional Forester jointly develop this conversion factor to suitable acres.

b. Forested Land. Determine the acreage of forested land that is designated not suitable. Using the best information available, include acre equivalents where:

(1) Timber harvest is delayed for a reasonable period of time. Include the entire acreage as suitable land.

(2) Timber harvest is not prohibited but the anticipated removal is uncertain. Include 30 percent of the acreage as suitable land. This percentage may be increased if the best information available indicates the harvest will be greater than the 30 percent.

(3) Timber harvest is prohibited. Include 10 percent of the acreage as suitable land.

c. Non-Forest Land. Determine the area classified as non-Forest land and not included in the above items. Include 10 percent of the non-forested acreage as suitable land if there are significant differences in the acreage between the cooperating parties.

Do not include any area twice, and do not give additional consideration for other light traffic.

3. Step 3 - Share Totals. Add the suitable acres and the suitable area equivalent acres, and allocate by ownership to the cooperating parties. Calculate each party's share based on its respective tributary suitable land compared to the total suitable land as expressed in acres.

See exhibit 02, for an example of this three-step procedure.

64.42 - Exhibit 01

**Sample Calculation of Shares
(total area is suitable land)**

PROJECT IDENTITY: Deer Creek Road #462, Segment A

PARTY IDENTITY:	Cooperator	Government	Third Party	Total
PROJECT COST INCURRED:		\$60,000		\$60,000
CALCULATIONS: 1. Suitable Land: <u>1000</u> Acres @ 100%.	400	500	100	1,000

2. Share Totals

$$\text{Cooperator: } \frac{400}{1000} \times \$60,000 = \$24,000$$

$$\text{Government } \frac{500 + 100}{1000} \times \$60,000 = \$36,000$$

64.42 - Exhibit 02

Sample Calculation of Shares (area includes suitable and not suitable land)

PROJECT IDENTITY: Long John Road #737, Segment A

<u>PARTY IDENTITY:</u>	Cooperator	Government	Third-Party	Total
<u>PROJECT COST INCURRED:</u>		\$60,000		\$60,000
<u>CALCULATIONS:</u>				
1. Suitable Land: 790 Ac. @ 100%	300	390	100	790
2. Not Suitable Land				
<u>Special Areas</u>				
a. Trailheads 1 # @ 50 Ac./site		50		50
b. Level. Rec. Site 10 Ac. @ 100%		10		10
c. Other ____ Ac. @ ____ *				
*As agreed by the Regional Forester and the cooperator.				
<u>Forested Land</u>				
a. Harvest delayed ____ Ac. @ 100%				
b. Harvest Restricted ____ Acres @ 30% +				
c. Harvest Prohibited <u>100</u> Acres @ 10%		10		10
<u>Non-Forest Land</u>				
<u>100</u> Acres @ 10%	10			10
TOTAL	310	460	100	870

3. Share Totals

Cooperator: $\frac{310}{870} \times \$60,000 = \$21,379$

Government: $\frac{460 + 100}{870} \times \$60,000 = \$38,621$

64.5 - Forest Roads and Trails Act (FRTA) Agreement to the Facts

There may be areas where cooperative road development and exchange of easements outside of an Agreement area is necessary or desirable, or where the development of an Agreement is not appropriate or justified. The Forest Service and qualifying Cooperators (see FSH 2709.12, secs. 31 and 35.1; FSM 2732.1-2; FSM 5467.2) with clear title can exchange reciprocal easements where commercial use of roads are anticipated. The road design and standard, location, costs, shares, estate to be acquired, and summary of financial obligations are documented in a FRTA agreement to the facts (FRTA agreement), and signed by both parties.

FRTA agreements use and follow cost share principles. Like Cost Share Supplements, FRTA agreements can be written for road projects, new road construction and reconstruction, buying in to an adequate road, buying in to a substandard road with provisions, and obligations to bring it to a standard adequate for all parties or any combination of the above.

64.51 - FRTA Agreement

Prior to writing a FRTA agreement, the parties shall agree for each road segment using the criteria found at section 64. The order and format may vary but the FRTA agreement must include the following items:

1. Heading. The heading identifies the name of the FRTA agreement and the Cooperator.
2. Area. Provide a general description of the FRTA Agreement area, and cite a local geographic monument or landmark. Identify the National Forest, Ranger District, and summarize acres accessed.
3. Cooperating parties. List all parties to the FRTA agreement, and identify the initiating party.
4. Identification of roads and road segments. List the legal description (by 40-acre subdivision or lot) of each road, road name, identification number, designated segment and length, and beginning/ending point for each segment. Attach a detailed map at a scale that plainly shows the ownership, and location of each road and road segment, and label as exhibit 1.
5. History of existing and planned roads. List the following for each road or road segment:
 - a. Constructing party by road, when constructed, and authority to construct if constructed on a third-party's land. Identify any previous cost sharing.
 - b. Planned work assignment of each party and the anticipated completion date.
 - c. Constructing party by segment for new construction.
 - d. Parties sharing in each segment.

- e. Any other facts or details that may affect costs or shares, such as third-party easements, previous investment sharing, land adjustments, RMOs, and change in haul routes.
 - f. Name, date of signature, and location of NEPA document.
6. Plans and specifications. List plans by name, location, signatories, and date of approval.
 7. Costs of construction or reconstruction. Provide the basis for estimating costs, date of cost guide, date and signatories to approved costs, constructing party for each segment, and identify any cost to cure items.
 8. Costs to be borne by each party. Calculate each party's share of the road by applying the principles in sections 61.2 and 64.4, and FSM 5467.2. There is one formula used to calculate shares. Convert suitable acres based on Forest Plan land allocations if necessary. The calculations may be included in the text, or attached as a separate exhibit. Summarize each party's share, cost, and excess cost for each road segment.
 9. Consideration to pay. Provide details of excess cost amortization, and method of payment. Payment for road value can be made to the Cooperator upon signature of the FRTA agreement by both parties. Payment for land value which is contained in the easement grant can be made to the Cooperator upon receipt of the Final Title Opinion from the Regional Attorney.
 10. Estate to be acquired. Identify parties to receive FRTA Forest Road Easements (FS-2700-9g) or FRTA Private Road Easements (FS-2700-9h). Also, identify any previously exchanged easements. See FSH 2709.12, section 35.2, and FSM 2732.2 for easement formats.
 11. Summary of financial obligations. Provide an excess cost summary for the FRTA agreement.
 12. Signatures. The signature page is to be signed by those Forest Supervisors delegated to do so. Otherwise, the signatory is the Regional Director of Engineering.

Payment of excess costs owed to the Forest Service in a FRTA agreement must be a one-time lump sum payment made in advance of the easement granted to the Cooperator. The payment may be a cash deposit, an exchange of easements, or a combination of these methods. See section 64.51, item 9, regarding payments to the Cooperator.

65 - Managing the Cost Share Road System

Although cost share roads are jointly owned by the parties to an Agreement, the Forest Service has the authority and responsibility to manage the cost share road system. Utilizing the Travel Management process (see FSH 7709.59 (Zero Code), sec. 06, ex. 01), the Forest Service determines RMOs that document the intended purpose of an individual road in providing access to implement a land and resource management plan, as well as applicable standards for the road.

RMOs contain design criteria, operation criteria, and maintenance criteria necessary to ensure the safe and efficient use of the cost share roads by all users.

Public use of a NFS road is discretionary. As the Road Manager, the Forest Service establishes traffic regulations necessary to ensure the safe and efficient use of the cost share roads by all users. The Agency must address safety items, but may elect to close the road to all users until appropriated funds are available to repair unsafe conditions, for example, closing an unsafe bridge to all traffic until the bridge is repaired or replaced. With the approval of the Forest Service, the Cooperator may unilaterally elect to make the repairs needed to correct unsafe conditions.

Operate and maintain the cost share road system in accordance with the provisions of the Road Right-of-Way Construction and Use Agreement, easements, Cooperative Road Maintenance Agreement, and Annual Maintenance Plans. Maintain the road system by a joint, coordinated effort between the Forest Service and the Cooperators.

When a Supplement is signed, the Cooperator and Forest Service enter into joint ownership of the roads that have been designed to a mutually agreed standard. While the Forest Service is the Road Manager, roads that are included in Cost Share Agreements are jointly owned, and items such as maintenance and changing the maintenance level of these roads must be negotiated between the Forest Service and the Cooperator(s).

65.04 - Responsibility

It is the responsibility of the Regional Forester and Forest Supervisor (FSM 5467.04) to:

1. Manage cost share road maintenance in accordance with the terms, provisions, and concepts contained in the Cooperative Road Maintenance Agreement (FSH 7709.59, sec. 63.22), Road Right-of-Way Construction and Use Agreement, and reciprocal easements.
2. Develop with the Cooperator an Annual Maintenance Plan encompassing all cost share roads that enacts the provisions of the Cooperative Road Maintenance Agreement.
3. Maintain a fiscal accounting of cost share road maintenance and excess cost balances.
4. Inspect and document maintenance performance.
5. Incorporate the reconstruction of roads in a Supplement.
6. Manage third-party access and maintenance through permits or easements.
7. Train the operation and maintenance personnel in the requirements and principles of the Cost Share Program. Training must be conducted jointly with the Cooperator, to the extent possible.

65.1 - Deferred Maintenance

For purposes of this chapter, “deferred maintenance” means outstanding obligations for road maintenance incurred through road use or natural processes (such as log haul, woody plant growth) where the maintenance work has not yet been performed. Deferred maintenance includes work that is postponed one or more years until such time as the road maintenance work is needed, funding is available, or the work can be economically or efficiently performed. Deferred maintenance obligations include the performance of maintenance, and required preservation of the roads for future use. See FSH 7709.59, sec. 63.22, Exhibit 01, for procedures and use of a Cooperative Forest Road Agreement, and identifications of deferred maintenance items.

A FRTA cost share easement conveys a recordable ownership interest in a road. When a Cooperator or the Forest Service conveys any or all of their tributary lands, and applicable easements to a new owner or terminates their rights on a jointly financed road, the outstanding recurrent and deferred maintenance obligations are calculated by the parties. The obligations only apply to maintenance items. Capital items including bridges, large culverts, and large road structures are not included in the deferred maintenance accounting.

To calculate the deferred maintenance obligation for minor structures (cattle guards, corrugated metal pipes, signs, gates, barricades, signs, and so forth), the parties agree on structure life, and quantities of each item for the roads involved. Separate items into similarly valued groups. Use the Forest/Regional cost guide, or local rates for valuation of the replacement structures. Agree to the remaining life of the structures. The deferred maintenance obligation for minor structures is the depreciated life (or years of ownership in the road) multiplied by the replacement value. For example: A culvert (corrugated metal pipe or CMP) has an agreed to life of 50 years. At the time of calculation, the parties agree the culvert has 20 years remaining life; the replacement value is \$500. The deferred maintenance obligation = $30 \text{ yr} / 50 \text{ yr} (0.6 \text{ yr}) \times \$500 = \$300$. Use the most current Supplement to determine the share of the cost attributed to the appropriate party based on the segment(s) where the structure(s) occur.

The deferred maintenance obligation for traffic generated surface replacement is calculated on the basis of the number of equivalent units assignable to each party responsible for road surface wear. Separate roads by surface type. Prepare a spreadsheet with road number, length, entry points, segment percentages, and enter the number of traffic units assignable to both Forest Service and Cooperator. The spreadsheet must display work in chronological order starting at the present time, and working backwards to when the road was last brought up to the current documented construction standard, or original constructed standard (whichever is applicable). To determine costs, calculate the amount of surface material lost, or calculate the reconditioning and/or resurfacing cost using the Forest/ Regional cost guide or local rates. In cases where traffic units are not available or where only one party has kept records of haul volumes, the parties can agree to a wear rate, for example, 15 MMBF = 1” of crushed aggregate; 20 MMBF = 1” of pit run.

To calculate the deferred maintenance obligation for roadside brushing, determine the current cost per mile for roadside brushing using the current Regional/Forest cost guide or local rates. Determine the brushing cycle for the roads involved, and also when the roads were last brushed.

The deferred maintenance obligation for brushing is the depreciated life, for example, days or months since the road was last brushed, divided by the brushing cycle multiplied by the length of the segment, then multiplied by the cost per mile. Use the most current Supplement to determine the share of the cost attributed to the appropriate party based on the segment(s) where the brushing occurs. In cases where the Agreement and Cooperative Road Maintenance Agreement have been terminated, regardless of whether the original Cooperator or a successor-in-interest owns land served by the roads with an appurtenant FRTA cost share easement, the maintenance obligations conveyed in FRTA easements remain in effect.

In these cases, and until the FRTA cost share easements are terminated, the landowner has a share of recurrent and deferred maintenance. Use the same methodology as though the landowner was a Cooperator. This does not preclude the landowner from meeting their obligations by performing mutually agreed to work for which they receive credit. However, in the absence of mutually agreed to work, the landowner must be billed.

Where deferred maintenance deposits have been collected on roads with FRTA cost share easements, those funds must be used on the cooperative road system where the funds were generated. It would be inappropriate to use cost share deferred maintenance collections for work on NFS roads that are not part of the cooperative road system. This applies to situations where an Agreement and/or a Cooperative Road Maintenance Agreement are in full force and effect. It also applies to cases where the Agreement and/or a Cooperative Road Maintenance Agreement have been terminated, but the FRTA cost share easements remain in place and deferred maintenance deposits have been collected.

66 - Special Situations

66.1 - Cost Sharing for Existing Road

When preparing a Supplement for an existing road owned by one party to an Agreement, treat the value contributed by the road as a cost the parties share. Determine the amount of credit for the existing road based on ownership rights, and its contributed value to the standard of road that meets the needs of the parties. See section 66.13 for valuing roads on acquired easements.

66.11 - Existing Road Not Being Reconstructed

If the present road is adequate to meet the foreseeable needs of the parties to the Agreement without reconstruction, the cost to be shared is the replacement cost, less depreciation of the road. The replacement cost is the present day cost of replacing the road with one of an equivalent standard at current prices. The following costs may be included, as appropriate, in the replacement cost:

1. Cost of clearing, excavating, grading, draining, stabilizing slopes, and surfacing. In most cases, determine such costs by multiplying existing quantity estimates by appropriate present-day unit costs less the cost of any deferred maintenance.
2. Depreciated cost of structures that meet the needs of all parties, such as bridges and culverts having at least 10 years remaining useful life. Replace or reconstruct inadequate

structures or structures with less than 10 years useful life remaining in the initial Supplement, unless all parties agree to replacement as stage construction in accordance with section 66.3.

3. Cost allowance for preconstruction and construction engineering if not included in paragraphs 1 and 2, unless treated differently in previous Supplements in the Agreement.
4. Value of land occupied by the easement, unless treated differently in previous Supplements in the Agreement.

After determining the appropriate replacement cost, less depreciation, or contribution value, calculate the shares as outlined in section 64.4.

It is acceptable to forgo the preceding process, and for the parties to come to a mutual agreement of the value of an existing road that does not need to be reconstructed.

66.12 - Existing Road to be Reconstructed

When an existing road is inadequate to meet the foreseeable joint needs of the cooperating parties, the Supplement that adds it to the joint road system will provide for its reconstruction to the minimum standard. The only alternative to immediate reconstruction is stage construction (see sec. 66.3).

The contribution value of the existing road is the difference between the current cost of constructing a new road to an agreed to standard, and the current cost of reconstructing an existing road to the same standard. Determine the cost of constructing a road to the agreed standard using current costs as if it were new construction, but adjust the cost for physical depreciation of the structures, or other components that are not new. Subtract from this cost, the costs of reconstruction needed to bring the existing road up to the agreed standard. The remainder is the contribution of the existing road.

After determining the appropriate contribution value and reconstruction cost, calculate the shares as outlined in section 64.4.

66.13 - Roads and Easements Across Third-Party Lands

Where either party acquires a right-of-way across a third-party property that provides all of the rights needed to make the road to be constructed a usable part of the system, and the other party to the Agreement has no outstanding easement rights, include easement acquisition costs, as well as road construction costs, in the costs to be shared.

Where the Cooperator has an outstanding easement that is permanent and adequate for the Cooperator's needs, but does not convey sufficient rights for an exchange of easements under the Agreement, either party may acquire the additional rights needed to make the road a usable part of the system.

If there is no existing road, share the costs of constructing the road; include the easement acquisition costs of either party in the costs to be shared. If there is an existing road, the parties share the cost of reconstruction, and also share easement acquisition costs, but do not share the

value of the existing road. Both parties are considered to have borne their proportionate share of the construction costs for the existing road.

Share the road construction cost or contribution value, as appropriate, as if the road was located on land owned by the easement-holding party, when either party has a permanent easement which conveys:

1. All of the rights needed to grant easements, and to control the use by others; and
2. The authority to permit use by the public.

66.2 - Collection Right Against Timber Outside the Agreement Area

The Government and the Cooperator shall agree to cost sharing of any road at the outset, and will base share determinations on the best possible estimates at the time the Supplement is written, whenever possible. Usually, the resources within the Agreement area provide the best basis for an estimate of likely use on the roads. If it is likely, however, that timber from outside the Agreement area will be hauled over the road, include an estimate of the acres of suitable land inside and outside the Agreement area that is tributary to the road when calculating the proportionate share of each party.

When the Government and the Cooperator cannot reach agreement on cost sharing because they disagree on the outside timber that may be hauled over the road, a collection right may be used to resolve the problem if the Cooperator constructs all or part of the road, or deposits funds in a cooperative account equal to the Cooperator's proportionate share. The collection right allows the Cooperator to collect a specified total amount at a specified rate from all haulers of timber from outside the Agreement area. When Cooperators bear their shares by offsetting construction in another road, do not grant a collection right for outside timber.

When using a collection right against outside timber, limit the collection right against Government timber to the Agreement area by including the optional language "within the Agreement area shown on exhibit ____" in the second line of a standard easement provision C.

Add the following clause to both the Cooperator and Forest Service easements when the parties agree to a collection right against outside timber in lieu of the Government's bearing a larger share of the cost at the outset:

"The parties recognize that certain timber, or other materials may be transported over the road from lands not included in the Agreement area as shown on exhibit _____. Grant(or/ee) will therefore have the right for 25 (twenty-five) years from the date of this easement to charge and to enforce collections from persons removing timber or other materials from such lands over the road at the rate of \$_____ per MBF for timber (or \$_____ per ton for other materials), until the amounts paid by such means or by credits received from Grant(or/ee) will total \$_____. Timber or other materials hauled by Grant(or/ee) from such lands will be regarded as hauled by someone else. The charges authorized by this paragraph must be in addition to the total amount authorized for recovery by any other collection right conferred by the terms of this easement."

Limit the use of this collection right to those cases where the Forest Service and the Cooperator are very far apart in their estimates of the suitable land that is likely to develop from outside the Agreement area.

Determine the total amount of the cooperator collection right and the rate per MBF using the methodology in the case example displayed in exhibit 01.

66.2 - Exhibit 01

Case Example

Situation - The road costs \$30,000 to develop a suitable land area containing 350 acres of suitable Government land, and 150 acres of suitable cooperator land. There is an additional 100 acres of suitable Government land outside the Agreement area that may result in use of the road.

Problem - Government does not think that the suitable land outside the Agreement area will result in use of the road. Cooperator thinks it will and wants a collection right.

Solution - Have the Cooperator construct at least its proportionate share of the road based on the suitable lands within the Agreement area. In this case, the Cooperator must construct or deposit funds for at least \$9,000 worth of the road ($\$30,000 \times 150/500 = \$9,000$). If the Cooperator pays for or constructs at least \$9,000 of road construction costs, a collection right may be included for the cooperator to charge haulers of timber from the suitable lands outside the Agreement area. With the collection right, the Cooperator could charge haulers of such outside timber at an amount and rate as shown in the following calculation.

Calculation

1. Total cost of road = \$30,000
2. Total suitable land inside = 350 acres + 150 acres = 500 acres
$$\text{Percentage of cooperator share inside} = \frac{150 \text{ acres}}{500 \text{ acres}} = 30\%$$
3. Total suitable land inside and outside = 500 + 100 = 600 acres
4. Per acre collection right $\frac{\$30,000 \times 30\%}{600} = \15 per acre
5. Total allowable cooperator collection right = 100 x \$15 = \$1,500
6. Rate of collection per MBF = $\frac{\$1,500}{6,000 \text{ MBF (volume estimated)}}$ = \$0.25/MBF

Based on the above calculations, the Cooperator may implement a collection for the outside suitable lands at a rate for the timber hauled of \$0.25 per MBF until it has collected a total of \$1,500 or until 25 years have elapsed from the date of the grant.

66.3 - Stage Construction or Reconstruction

Stage construction or reconstruction may be used when both parties agree to its use. It may be used when an existing road is brought into an Agreement that is adequate for one party's immediate needs, but does not meet the foreseeable needs of both parties, and one party desires to use the road as it existed because of time, or money constraints.

Stage construction or reconstruction is appropriate in the case of temporary bridges, or other structures that still have useful life but need replacement in order to meet the foreseeable needs of both parties. It is also appropriate where existing roads or structures need restoration or partial restoration in order to meet current needs for access or environmental protection, and both parties agree to plan now for additional reconstruction at a later date to meet the parties' long-term needs.

When parties agree to stage construction or reconstruction, include the following documentation in the Supplement:

1. Items on which the parties agree to defer construction or reconstruction. When the parties agree that the items will be deferred longer than five years, describe the anticipated standard of the facility or work item deferred, and the need for a lower standard over the period of time until the road is constructed to the higher standard;
2. Construction specifications and standards for the current construction items;
3. Construction program with identification of the party responsible for completion of each item, and date that each item in the stage construction must be completed; and
4. Agreement by the parties that they are to share costs for all items to be completed within five years in the proportion calculated for the original Supplement. When the work is to be delayed for a period longer than five years, include the agreement by the parties that they will share the cost for the deferred work on the basis of each party's tributary lands at the time the deferred work is completed.

The stage construction or reconstruction will plan for construction of deferred items to begin within five years and to be completed promptly, unless otherwise agreed.

66.4 - Cost Share Actions and Endangered Species Act

Each proposed action to be taken under the Cost Share Program must comply with the Endangered Species Act (16 U.S.C. 1536(a)(2)). The Forest Service will facilitate biological evaluations, and applicable consultation processes with the agencies having designated authority

under this Act, to the extent compatible with other policies. Ensure that the processes of environmental analysis and associated biological evaluation, consultation with appropriate agencies, and inclusion of biological opinions, are performed prior to granting easements or permits. Further direction on environmental analysis requirements is in FSH 1909.15.

Existing easement rights require compliance with all applicable Federal and State laws, Executive Orders, and Federal regulations. In the event any other agency administering the requirements of the Endangered Species Act alters, or changes any legal rights granted, that agency is responsible for acquiring the additional rights through its own processes and procedures.

66.5 - Changing Road Standards

When a Supplement to an Agreement is signed, the Cooperator and Forest Service enter into joint ownership of the roads that have been designed to a mutually agreed standard. While the Forest Service is the Road Manager, roads that are included in Cost Share Agreements are jointly owned, and changing the road standard and maintenance level of these roads must be negotiated between the Forest Service and the Cooperator(s).

When a change in road standards is mutually agreeable, take the following steps to document the change, and ensure to the parties in an Agreement that the financial interests of the parties are properly managed:

1. Determine the new road standard(s) and document the change in the form of revised RMOs. See FSH 7709.59, chapter 10, for direction regarding road management objectives. Document RMOs in the RMO module of Infra-Travel Routes to record the new agreed to standard;
2. Reconcile all accounting and records for past Supplements (capital investment), and maintenance for the affected roads. The accounting must be clearly documented, and agreed upon by all parties. Maintain the required separation between maintenance, and capital investment by keeping work items identified as recurrent, or deferred maintenance in the maintenance accounting record, and documenting capital investment expenditures to change the current road standard in a Supplement;
3. Prepare and process a cost share fact sheet and Supplement documenting the revised road standard(s) to be used in the future management of the road(s). Clearly define the new road standard in the fact sheet. Capital investments needed to change from the current road standard to the new road standard are treated as construction/reconstruction using the normal cost sharing process. This process allows full use of the financial options available in the Agreement;
4. Update both road maintenance accounting records, and excess cost balance accounting records as necessary to reflect the agreement reached. The Supplement may be used to document the results of the reconciliation if the parties so desire. Maintenance funds may not be used to offset construction or reconstruction excess costs; and

5. Proceed with the joint use, management, and administration of the roads under the new road standard(s).

A typical change in road standard could be a reduction in the depth of rock surfacing. For example, a road was constructed with a surfacing of 6 inches of aggregate surfacing. Party "A" has hauled a large volume and the deferred maintenance records show that Party "A" has a responsibility to replace 3 inches of aggregate surfacing on the road. The parties agree that the road standard can be reduced from 6 inches to 3 inches of aggregate surfacing and meet the future needs of the parties. Update all maintenance accounts to the road standard as documented in the last Supplement. In the maintenance account, assign the responsibility for the 3 inches of aggregate surfacing to Party "A." Prepare a fact sheet and Supplement to document the new road standard. In this example, there are no capital investment costs to achieve the new road standard. Consequently, the Supplement would have no construction/reconstruction funds involved.

If the parties wish, the balances of the maintenance work (the 3 inches of aggregate owed) could be documented in the Supplement. Note that the deferred maintenance responsibility of Party "A" may be met by performing maintenance work on another road included in the Cooperative Road Maintenance Agreement.

66.6 - Road Storage and Road Abandonment

Road storage or road abandonment may require one or a combination of the following measures:

1. Blocking and draining the roadway. Waterways are to be in a self-maintaining condition, and erosion must be effectively prevented;
2. Removing culverts and bridges, and reestablishing the natural drainage configuration; and
3. Returning the roadway to resource production through natural or artificial vegetation (such as grass, browse, or trees).

66.61 - Road Storage

When the parties determine that a road will be used intermittently with the period between uses being more than a year, the road may be placed in a storage condition between uses. Emphasis is normally given to maintaining drainage facilities, and runoff patterns. If the standard of the road is changed in the process of placing the road in storage, share the construction/reconstruction cost to achieve the new standard using the normal cost sharing process and document in a Supplement (see sec. 66.5). When the road standard is not changed, treat the activity as maintenance (traffic or non-traffic generated), and account for it in the Annual Maintenance Plan. Maintain a record of deferred maintenance on the road.

66.62 - Road Abandonment

One or both parties may elect to abandon their interest in a road or road segment.

1. Take the following steps when both parties agree to abandon the road or road segment:

a. Determine the work needed to:

(1) Establish the roadway in a condition that is self-maintaining and erosion safe, and has a vegetative cover, and

(2) Comply with applicable State Best Management and Forest Practices Acts.

b. Determine the costs of the work, and the performing party. Allocate shares to the parties for the cost of abandoning the road on the basis of non-traffic generated maintenance (this is the same as the capital investment shares). Where the capital investment share is not documented, use the current process for calculating shares with the tributary area being that area accessed by the facility.

c. Reconcile all accounts for the road to be abandoned. Make a separate accounting for construction/reconstruction and maintenance. Non-traffic generated deferred maintenance obligation attributable to the segment(s) being abandoned are to be removed from the maintenance accounting. Traffic generated deferred maintenance obligations attributable to the segment(s) being abandoned are to be reconciled in the Annual Maintenance Plan.

d. Prepare a Supplement that documents the cost, payment, and mutual agreement to terminate the easement(s) prior to any work on the ground. The means of settlement of the maintenance accounts may be documented in the Supplement.

2. Take the following steps when one party elects to abandon a road or road segment undamaged by natural causes, but the other party needs the road at the constructed standard:

a. Determine any work needed that contributes to the preservation of the existing road, and corrects any deficiencies in the existing roadway to comply with applicable State Best Management and Forest Practices Acts.

b. Determine the cost of the work, and the performing party. Allocate shares for the preservation of the road to the parties on the basis of non-traffic generated maintenance based on capital investment share for the road or road segment. Where the capital investment share is not documented, use the current process for calculating shares with the tributary area being that area accessed by the facility.

c. Reconcile all accounts for the road to be abandoned by one party. Make a separate accounting for construction/reconstruction and maintenance. Traffic and non-traffic deferred maintenance obligations attributable to the segment(s) being abandoned are to be reconciled in the Annual Maintenance Plan.

- d. Prepare a Supplement that documents the cost, payment, and mutual agreement to terminate the easement(s) prior to any work on the ground. The means of settlement of the maintenance accounts may be documented in the Supplement.
3. Take the following steps when one party elects to abandon a road or road segment damaged by natural causes, but the other party needs the road:
 - a. Determine the work needed to:
 - (1) Comply with applicable State Best Management and Forest Practices Acts, and
 - (2) Correct, stabilize, and prevent future resource damage. This may be a separate project, or an integral part of the restoration of the facility by the party needing access.
 - b. Determine the costs of the work in paragraph a (above), and the performing party. Allocate shares to the parties on the basis of non-traffic generated maintenance (capital investment share) for the road or road segment. Where the capital investment share is not documented, use the current process for calculating shares with the tributary area being that area accessed by the facility.
 - c. Reconcile all accounts for the road to be abandoned. Make a separate accounting for construction/reconstruction and maintenance. Deferred maintenance items may be offset in the Annual Maintenance Plan.
 - d. Prepare a Supplement that documents the cost, payment, and mutual agreement to terminate the easement(s) prior to any work on the ground. The means of settlement of the maintenance accounts may be documented in the Supplement.

66.63 - Easement Termination

Either party may elect to terminate its acquired easement. See section 66.62 for the process to be followed.

66.7 - Terminated Road Right-of-Way Construction and Use Agreement

Section 17 of the Agreement (sec. 61, ex. 01) provides that either party may terminate the Agreement with a 90-day written notice. Termination of an Agreement does not affect any right-of-way document, or obligation incurred in a Supplement or Cooperative Road Maintenance Agreement.

66.71 - Settlement of Obligations

The obligations made under an Agreement remain in effect until satisfied in full under the terms of the Supplement, or other contractual arrangement. Upon notice of termination, update the annual accounting as provided in section 11 of the Agreement (sec. 61, ex. 01), and determine the outstanding obligations. All settlement arrangements must comply with the statute of limitations (28 U.S.C. 2401(a); 28 U.S.C. 2415-2416).

66.8 - Conflict Resolution

The objective of the Cost Share Program is to reach mutually agreeable solutions providing for cooperative development, use, and maintenance of a road system serving the needs of both parties, with the costs thereof shared equitably. The Agreement provides a framework for negotiation, but conflicts may arise between the parties. The parties shall strive to resolve conflict in a timely manner at the local level using available management tools, including assigned flexibility, and authority to make on-the-ground decisions. If for any reason the conflict is not resolved at the local level in a timely manner, formally or informally, elevate those issues not resolved to the next highest management level of both parties for resolution. Referring the conflict to the next highest management level for resolution is an expected action on occasion, and is considered a positive effort to reach eventual solution.

Unilateral actions may include reconstruction, restoration, maintenance or abandonment of a road, or termination of an Agreement. Neither party may act to diminish the other party's interest in a cost share road by unilateral action. Threats of unilateral action or termination of an Agreement rarely resolve conflict in a mutually satisfactory manner. In those situations where resolution of the conflict does require unilateral action by either party, the Regional Forester shall review the circumstances of the situation. The Regional Forester may approve or disapprove a Forest Service unilateral proposal after review of the RMOs, economic analysis, the history of negotiations, other special circumstances affecting the action, and the need to continue or terminate the Agreement. Send a copy of the decision on unilateral actions to the Washington Office, Director of Lands.

67 - Cost Share Reporting Instructions

67.1 - 5400-D Instructions for Summary of Excess Cost Balances Reporting

Prepare one 5400-D report for each Cooperator on each Forest (or Region if at Regional level). Forests with more than one Agreement with the same Cooperator, must submit only one 5400-D report displaying the cumulative costs of all Agreements with the same Cooperator. Cost Share Regions must also prepare a cumulative summary of all 5400-D cost share data.

Report Item 1. Construction Costs

Planned Construction Costs - Also referred to as “committed” construction costs, the value to be reported is the cumulative sum of each party’s contribution value for road segments as agreed in Supplements to an Agreement. Total costs include the value of existing roads (“buy-in” value), planned construction and reconstruction costs, and land value of the right-of-way. Values reported must reflect the current shared road system, including any amendments to Supplements.

Earned Construction Costs - Also referred to as “completed” construction costs, the value to be reported is the cumulative sum of planned construction costs for road segments for which all construction has been completed and accepted in writing.

Remaining Construction Costs - The cumulative value of road construction and reconstruction that has not been completed.

Report Item 2. Planned Excess

Excess costs are those costs incurred by a party that exceed its share of road value. Planned excess cost is the cumulative sum of all excess costs for each party in the Supplements to an Agreement.

Net planned excess cost is the amount of excess cost remaining after subtracting amortizations, cash payments, or transfers of balances from other Supplements or Agreement areas. The value of net planned excess cost is the current agreement balance (from the most recent “balance sheet” for the Agreement area).

Report Item 3. Earned Excess

Earned excess cost is the cumulative amount of each party’s planned excess cost for work actually completed (earned) and accepted in writing. To calculate, summarize each party’s excess cost for every road segment having uncompleted construction or reconstruction work. Subtract the total, which is unearned excess cost, from each party’s planned excess cost from item 2 above.

To calculate the deferred maintenance obligation for roadside brushing, determine the current cost per mile for roadside brushing using the current Regional/Forest cost guide or local rates. Determine the brushing cycle for the roads involved, and also when the roads were last brushed. The deferred maintenance obligation for brushing is the depreciated life, for example, days or months since the road was last brushed, divided by the brushing cycle multiplied by the length of the segment, then multiplied by the cost per mile. Use the most current Supplement to determine the share of the cost attributed to the appropriate party based on the segment(s) where the brushing occurs.

A report is prepared for each Cooperator on each unit. The electronic version of FSH 5409.17, 67.1, exhibit 01, is in an Excel spreadsheet format. Exhibits 02 and 03 are examples of various 5400-D reports displaying how they may appear when completed.

67.1 - Exhibit 01

SUMMARY - COST SHARE ROADS					
FS-5400-D					
Period Ending December 31, 2011					
			Cooperator Name	F.S.	TOTAL
CONSTRUCTION COSTS					
	PLANNED		\$0	\$0	\$0
	EARNED		<u>\$0</u>	<u>\$0</u>	<u>\$0</u>
	REMAINING		\$0	\$0	\$0

PLANNED EXCESS					
	F.S.		\$0		
	COOPERATOR		<u>\$0</u>		
	NET EXCESS		\$0		
EARNED EXCESS					
	F.S.		\$0		
	COOPERATOR		\$0		
() Denotes Government Excess Cost					

67.1 – Exhibit 02

Note: In this example, the State of Montana DNRC is a Cooperator with the Northern Region.

SUMMARY - COST SHARE ROADS State of Montana, DNRC					
FS-5400-D					
Period Ending December 31, 2010					
		State of Montana	U.S.		
				TOTAL	
CONSTRUCTION COSTS					
	PLANNED	\$909,086	\$3,557,622	\$4,466,708	
	EARNED	<u>\$686,832</u>	<u>\$3,492,739</u>	<u>\$4,179,571</u>	
	REMAINING	\$222,254	\$64,883	\$287,137	
<hr/>					
PLANNED EXCESS					
	F.S.	\$551,056	\$0	\$551,056	
	COOPERATOR	<u>\$519,379</u>	<u>\$0</u>	<u>\$519,379</u>	
	NET EXCESS	\$31,677	\$0	\$31,677	
<hr/>					
EARNED EXCESS					
	F.S.	\$543,014	\$0	\$543,014	
	COOPERATOR	<u>\$411,225</u>	<u>\$0</u>	<u>\$411,225</u>	
	NET EXCESS	\$131,789	\$0	\$131,789	

67.1-Exhibit 03

Note: In this example, the Cooperator is Longview Fibre, and the Road Right-of-Way Construction and Use Agreement is with the Okanogan -Wenatchee National Forest.

OKANOGAN - WENATCHEE NATIONAL FOREST						
SUMMARY - COST SHARE ROADS						
FS-5400-D						
Period Ending December 31, 2007						
			Longview Fibre		F.S.	TOTAL
CONSTRUCTION COSTS						
	PLANNED		\$0	TBD	\$0	\$0
	EARNED		\$0	<u>TBD</u>	<u>\$0</u>	<u>\$0</u>
	REMAINING		\$0		\$0	\$0
<hr/>						
PLANNED EXCESS						
	F.S.		\$0			\$0
	COOPERATOR		<u>\$241,310</u>			<u>\$241,310</u>
	NET EXCESS		\$241,310			\$241,310
EARNED EXCESS						
	F.S.		\$0			\$0
	COOPERATOR		<u>\$241,310</u>			<u>\$241,310</u>
	NET EXCESS		\$241,310			\$241,310
() Denotes Government Excess Cost						