

DEC 97

CONTRACT NO. \_\_\_\_\_

AGREEMENT  
BETWEEN  
ROANE COUNTY, TENNESSEE  
AND  
TENNESSEE VALLEY AUTHORITY

THIS AGREEMENT, made and entered into as of the \_\_\_\_ day of \_\_\_\_\_, 1997, by and between ROANE COUNTY (County), a Political Subdivision of the State of Tennessee, and the TENNESSEE VALLEY AUTHORITY (TVA), a corporate agency and instrumentality of the United States, organized and existing pursuant to the Tennessee Valley Authority Act of 1933, 16 U.S.C. Sections 831 - 831dd (1988).

WITNESSETH:

WHEREAS TVA, pursuant to its statutory authority as set out in the Tennessee Valley Authority Act of 1933, as amended, is engaged in the operation of Kingston Fossil Plant, located in Roane County, Tennessee, approximately two miles north of the Town of Kingston; and

WHEREAS TVA has explored alternative ways to deliver coal that would increase the efficiency of the coal delivery process as the current arrangement requires a two-line transfer and substantially increases TVA's fuel transportation costs; and

WHEREAS based on review of many possibilities TVA has decided to construct an alternate access railroad extending to the plant site, the general location of the railroad being shown on the map attached to and hereby made a part of this agreement as Exhibit B; and

WHEREAS such construction of said access railroad will require TVA to make adjustments in certain portions of Swan Pond Circle Road (railroad grade crossings); and

WHEREAS such construction will result in the closing of, and temporarily detouring of traffic, or other adverse effects upon Swan Pond Circle Road; and

WHEREAS by this agreement, County and TVA desire to define their respective rights and obligations relating to the road adjustments of Swan Pond Circle Road;

NOW THEREFORE, in consideration of the premises and of the mutual covenants and promises herein contained, the parties hereby agree as follows:

I

OBLIGATIONS OF TVA

TVA shall:

1. At its expense, in accordance with applicable TVA procedures, provide, either by its own work forces or by contract, for the surveying, design, and construction necessary for adjustments to the portions of Swan Pond Circle Road as described and specified in the descriptive schedule which is attached to and hereby made a part of this agreement as Exhibit A. The adjustments shall be as generally shown in Exhibit B and shall be in accordance with the standards set out in Exhibit A and TVA Construction Specification No. T-1 for Site Development, Highway, Railroad, and Bridge Construction.

2. Provide for the relocation or adjustment, if necessary, of telephone, electric, and any other utility which must be relocated or adjusted as a result of the construction described in section I.1.
3. Convey to County, upon completion of the construction described in section I.1, such easements and rights of way as are necessary for the roadway, subject to such outstanding rights as may be vested in third parties. Nothing herein shall in any way affect County's existing rights in the roadway nor in any way affect the prior status or character of the roadway.
4. Automatic flashing signals with gates, railroad crossbuck signs, and pavement markings shall be installed, in accordance with the *Manual on Uniform Traffic Control Devices*, by TVA without expense to the County at the railroad grade crossings and shall not be removed so long as said access railroad continues to remain in use and operation.
5. Be solely responsible for the operation, repair, and upkeep of the automatic flashing signals with gates to be installed at the railroad grade crossings, which signals shall be deemed to be railroad (rather than road or highway) facilities.

## II

### OBLIGATIONS OF COUNTY

County shall:

1. Permit TVA to make adjustments to the sections of road listed in accordance with Exhibits A and B and cooperate with TVA in the making of said modification. County hereby expressly stipulates, covenants, and agrees that the performance of the

modification of Swan Pond Circle Road as provided herein is adequate and sufficient adjustment of said County highway on account of the construction of the alternate access railroad for Kingston Fossil Plant.

2. Take such action as may be necessary or appropriate to vacate said sections of road and to take such other and further action as may be necessary to temporarily close the same to the use of the public.
3. Detour traffic as necessary to aid construction by TVA.
4. Accept the conveyances described in Article I.3.
5. Cooperate fully with TVA in the accomplishment of the construction of the railroad grade crossings and take any action in connection therewith which may be reasonably requested by TVA, and to execute and deliver to TVA, in form suitable for recording, any deeds, documents, resolutions, or other instruments which may be necessary or desirable to carry out any portions or provisions of this agreement.
6. Upon TVA's completion of the work which TVA has agreed to perform in accordance with its designs and specifications, assume sole and exclusive ownership and maintenance responsibility for such road.
7. Be responsible for the upkeep, care, and maintenance of all traffic control markings, signs, and devices on, along, and across the roadway.

### III

#### RELEASE

Upon completion by TVA of the construction work provided for under section I.1 in accordance with the standards and specifications set out in Exhibit A and after TVA's transfer of easements

and rights of way under section I.3, County shall release, acquit, and discharge TVA, the United States, and their agents and employees from any and all obligations, liabilities, claims, and demands of County related to such construction work provided for herein.

#### IV

#### DISPUTES

It is expressly understood and agreed between the parties that in the event of any differences of opinion between the parties hereto regarding the performance of the work provided herein or any question of fact arising hereunder, such difference of opinion shall be resolved by the Chairman, Roane County Board of Commissioners and TVA's Vice President of Fuel Supply & Engineering, acting jointly. If they are unable to agree, either party may bring suit in a court of competent jurisdiction.

#### V

#### SUCCESSORS AND ASSIGNS

This contract shall inure to the benefit of and be binding upon the respective successors and assigns of the parties hereto.

#### VI

#### CONGRESSIONAL INTEREST

No member of or delegate to Congress or Resident Commissioner, or any officer, employee, special Government employee, or agent of TVA or County shall be admitted to any share or part of this agreement or to any benefit that may arise therefrom, but this provision shall not be

construed to extend to a corporation or unit of Government contracting for its or for the public's general benefit.

## VII

### TERMINATION

Should this contract be terminated during construction for any reason, the public road facilities will be restored to a condition reasonably satisfactory to the County.

## VIII

### ENTIRE AGREEMENT

This agreement contains the entire agreement and understanding between TVA and the County. There are no oral understanding, terms, or conditions not herein recited, and neither party has relied upon any representations not contained in this agreement. All prior oral understandings, terms, or conditions are deemed to be merged in this agreement and the same may not be changed or supplemented orally by either party.

## IX

### DISCLAIMER OF AGENCY

Neither County nor any other person performing services under this agreement, other than an actual employee of TVA, shall be considered as an agent or employee of the United States or TVA, and the United States, TVA, their agents and employees assume no liability to County or any third party for damages to property, both real and personal, or personal injuries, including death, arising out of or in any way connected with the activities conducted under this agreement.

IN WITNESS WHEREOF, the parties hereto have executed these presents, in triplicate, each part being an original, as of the day and year first above written.

TENNESSEE VALLEY AUTHORITY

OGC

\_\_\_\_\_  
Joseph Dickey  
Senior Executive Officer

ATTEST:

ROANE COUNTY, a Political Subdivision  
of the State of Tennessee - acting by and  
through its duly elected and constituted  
Board of Commissioners to Wit:

\_\_\_\_\_  
( )  
Chairman  
Board of Commissioners

\_\_\_\_\_  
( )  
Commissioner  
Post 1

\_\_\_\_\_  
( )  
Commissioner  
Post 2

## EXHIBIT A

### SCHEDULE ATTACHED TO AND FORMING A PART OF AN AGREEMENT BETWEEN TENNESSEE VALLEY AUTHORITY AND ROANE COUNTY, TENNESSEE, IN REGARD TO ROAD CROSSINGS AND CONSTRUCTION REQUIRED DUE TO CONSTRUCTION OF THE ACCESS RAILROAD AT KINGSTON FOSSIL PLANT

The sections of road which are included in this contract are as follows:

#### Description

1. This project consists of a grade crossing of the access railroad to Kingston Fossil Plant and the county road, Swan Pond Circle Road. Swan Pond Circle Road is a loop road which intersects Swan Pond Road, to the west, in two places. At one end, the road begins at the northern intersection with Swan Pond Road approximately 300 feet northeast of Swan Pond Church, and extends in a northeasterly direction to intersect the proposed access railroad approximately 3000 feet northeast of the intersection of Swan Pond Circle Road and Emory Heights Road. The work required consists of clearing, grading and drainage, installing culverts, and the installation of a highway grade crossing with crossing signals and gates.
2. This project consists of a grade crossing of the access railroad to Kingston Fossil Plant and the county road, Swan Pond Circle Road. Swan Pond Circle Road is a loop road which intersects Swan Pond Road, to the west, in two places. At one end, the road begins at the southern intersection with Swan Pond Road approximately 800 feet southeast of Swan Pond Church and extends in a easterly direction approximately 600 feet to intersect the proposed access railroad. The work required consists in readjusting



the grade of the present road to meet the grade of the access railroad and the installation of a highway grade crossing with crossing signals and gates.

Grade crossings of the TVA access railroad shall consist of a rubber panel crossing which shall be constructed in accordance with the manufacturer's specifications. TVA will install and will thereafter maintain at its expense automatic flashing light signals and gates of standard type at this grade crossing. All work shall be performed on existing county right-of-way or TVA right-of-way. The section of road included in this project shall be constructed with a minimum 22-ft-wide traveled way pavement. The roadbed shall have a width of not less than 26 feet, shoulder edge to shoulder edge. The minimum pavement shall consist of 1 1/2-inch compacted asphaltic concrete surface and 2 1/2-inch compacted bituminous concrete leveling course, and a 6-inch-thick crushed stone stabilized base, uniformly applied in three two-inch layers, each layer wet, rolled, and compacted. Such construction shall be performed in accordance with TVA Specification No. T-1 for Site Development, Highway, Railroad, and Bridge Construction, and other published specifications as needed.

**EXHIBIT B**

**LOCATION OF RAILROAD  
GRADE CROSSINGS AT  
SWAN POND CIRCLE ROAD**

