Draft Agreement Between

Tennessee Valley Authority
and
Roane County Community Advisory Group

For Funding Technical Assistance
To the Community Affected by
Kingston Fossil Plant Ash Recovery Site

I. SCOPE OF AGREEMENT

This Agreement is entered into this _____ day of _____, 2009, by and between Tennessee Valley Authority (TVA) and the Roane County Community Advisory Group (RCCAG).

On May 11, 2009, EPA and TVA entered into an Administrative Order and Agreement on Consent (AOC), Docket No. CERCLA-04-2009-3766, pursuant to which TVA agreed to provide and administer $50,000 to be used by a qualified community group that is representative of the area in and around the Kingston Fossil Plant Ash Recovery Site (Site) to hire its own technical advisor (such funding is hereinafter referred to as the "TAP Funds"). The technical advisor (TA) will interpret and help the community understand and comment on data and Site-related documents generated during the non-time-critical removal process.

To implement the TAP provision in the AOC for the Site, the RCCAG is entering into this Agreement with TVA, who will provide and administer up to $50,000 of its funds to be used by the RCCAG (1) to hire a TA who can help group members understand Site cleanup issues and (2) to enable the group to share this information with others in the community.

Subject to the Termination Clause, this Agreement will cover the period from the execution of this Agreement through the non-time-critical removal process. The parties to this Agreement may agree to revise the duration of this Agreement pursuant to Section VII.D.

II. GENERAL STATEMENT OF DUTIES

A. Duties of the RCCAG

1. The RCCAG appoints Brenda Timm as the Manager for this Agreement. The Manager is the only person authorized by the RCCAG to amend this Agreement.

2. By no later than [insert date], the RCCAG will notify TVA that it has employed its previously approved (by EPA and TVA) selection for the TA position, and will provide a list of anticipated TA deliverables and associated costs. The RCCAG

agrees that the TA will not begin work until one week after [insert same date as above].

3. In order to communicate with and educate the community affected by the Site, the RCCAG agrees to:

   a) Make the TA's reports, summaries, and other Site-related documents available to community members;
   b) Accommodate reasonable information requests and suggestions by community members;
   c) Publicize, organize, and host meetings with the affected community on an "as needed basis"; and
   d) Arrange to have the TA present and available at such meetings, to the extent practicable.

4. The RCCAG agrees to request funds for TAP activities in accordance with Sections II.C. and II.E. of this Agreement.

5. On a quarterly basis beginning [insert date], the RCCAG agrees to provide TVA with a progress report, which should include, at a minimum:

   a) A detailed list of TA deliverables and the RCCAG's activities and expenditures;
   b) A calendar of its upcoming meetings and other activities relating to the TAP; and
   c) An explanation of any current problems or disputes between the parties.

B. The Duties of TVA

1. TVA has designated Katie Kline as the point of contact for this Agreement and general TAP issues. Katie Kline shall serve as the primary contact with the RCCAG and also may respond to the public's inquiries and questions about the Site and/or TAP.

2. TVA agrees to provide funds for TAP activities in accordance with Sections II.C. and II.E. of this Agreement.

3. On a quarterly basis beginning November 1, 2009 TVA must provide a progress report to the EPA with a copy to the RCCAG. The progress report shall include, at a minimum:

   a) A detailed list of TAP services that have been paid for or are pending payment by TVA and the amount of remaining TAP funds still available;
   b) A calendar of upcoming activities relating to the TAP;
   c) An explanation of any current problems or dispute between the parties; and
   d) With the copy to EPA, a copy of the RCCAG's most recent quarterly report.

4. TVA agrees that it may not direct the TA or the RCCAG to perform specific tasks or services that are not in accordance with this Agreement.

C. Payment of Costs Covered by This Agreement

1. The RCCAG may perform any of the following activities with the TAP Funds:

   a) Retain a technical advisor to help the community understand the nature of the environmental and public health issues at this Site and the various stages of the non-time-critical related investigations and activities, including the Engineering Evaluation/Cost Analysis (EE/CA), the selection and implementation of the non-time-critical removal action, and the EE/CA Action Memorandum. This technical assistance should contribute to the public's ability to participate in the decision-making process by improving the public's understanding of overall conditions and activities at the Site.
   b) Undertake activities that communicate Site information to the public through newsletters, the Internet, public meetings or other similar activities.
   c) Provide no more than $1,000 for one-time health and safety training for the selected TA to gain access to the Site.

2. If requested by the RCCAG, TVA will provide up to $5,000 of the award amount to fund estimated initial startup costs. This advance payment may be used only for the purchase of supplies, postage, payment of the first deposit to open a bank account, rental of equipment, first month's rent of office space, solicitation of a TA and other reasonable start up costs that are specifically described in a request from the group. This advance payment should not be used for contracts for TAs or other contractors.

3. The RCCAG agrees to submit requests for reimbursement to TVA on a monthly basis. A copy of each request shall also be sent to EPA. Such requests for reimbursement may include, but not be limited to:

   a) Invoices from the TA that the RCCAG has reviewed and found consistent with the work executed.
   b) Documentation and/or invoices for the RCCAG's activities and expenses.

4. TVA agrees to respond to all requests for reimbursement submitted by the RCCAG within 15 days of receipt. Generally, TVA's response shall include payment in full. If TVA's response does not include the payment in full, TVA shall send a letter explaining why costs were not reimbursed. A copy of such a letter shall also be sent to EPA.

D. Other Donations from TVA

1. In addition to TAP Funds, TVA may donate other goods and in-kind services to the RCCAG. Types of services may include:

   a) In-kind services to help the RCCAG develop a website for their use and purposes,
   b) In-kind services in the form of setting up a database for the RCCAG to access sampling results and other pertinent information. This could be linked to their website, and
   c) Space in the Community Outreach Center for the RCCAG to make their information available to the public.

E. Costs Not Covered by This Agreement

1. Under the TAP and this Agreement, the RCCAG will not receive reimbursement for any of the following activities:

   a) Activities related to lawsuits, litigation or other legal actions, including attorney fees and/or the TA's fees for assisting an attorney with a legal action or preparing for and serving as an expert witness at any legal proceeding regarding or affecting the Site;
   b) Tuition or other training expenses for the RCCAG's members or TA (except as provided above);
   c) Any activities or expenditures for RCCAG members' travel;
   d) Generation of new, primary data such as well drilling and testing, including split sampling;
   e) Reopening or challenging final decisions such as the EE/CA Action Memorandum or conducting disputes with EPA;
   f) Generation of new health data through biomedical testing (e.g., blood or urine testing), clinical evaluations, health studies, surveillance, registries, and/or public health interventions;
   g) Parties or celebrations; or
   h) Political activity and lobbying.

      (1) For purposes of this Agreement, "political activity and lobbying" are defined to include:

         (a) Attempts to influence the outcomes of any Federal, State, or local election, referendum, initiative, or similar procedure, through in-kind or cash contributions, endorsements, publicity, or similar activity;
         (b) Establishing, administering, contributing to, or paying the expenses of a political party, campaign, political action committee, or other RCCAG established for the purpose of influencing the outcomes of elections;
         (c) Attempts to influence the introduction of Federal or State legislation (or the enactment or modification of any pending Federal or State legislation) through communication with any member or employee of Congress or the State legislature (including efforts to influence State or local officials to engage in similar lobbying activity), or with any government official in connection with a decision to sign or veto enrolled legislation;
         (d) Attempts to influence the introduction of Federal or State legislation (or the enactment or modification of any pending Federal or State legislation) by preparing, distributing or using publicity or propaganda, or by urging members of the general public or any segment thereof to contribute to or participate in any mass demonstration, march, rally, fundraising drive, lobbying campaign, or letter writing or telephone campaign; or
         (e) Legislative liaison activities, including attendance at legislative sessions or committee hearings, gathering information regarding legislation, and analyzing the effect of legislation, when such activities are carried on in support of or in knowing preparation for an effort to engage in unallowable lobbying.

      (2) For purposes of this Agreement, "political activity and lobbying" does not include:

(a) Providing a technical and factual presentation of information on a topic relating to the Site through hearing testimony, statements or letters to Congress or the State legislature, or subdivision or member, in response to a documented request made by the recipient member or legislative body or subdivision.
(b) Submission of comments to EPA or another federal agency during a public comment period.

2. Under the TAP and this Agreement, the RCCAG will not receive reimbursement for any of the following expenses:

a) The value of any volunteer or donated services it receives.
b) Costs of alcoholic beverages.
c) Costs of promotional items and memorabilia, including gifts and souvenirs.
d) Costs of donations by the RCCAG to others.
e) Entertainment costs, including costs of amusement, social activities, ceremonials and costs relating thereto (such as meals and lodging).
f) Costs of any fines or penalties.
g) Costs of goods or services for personal use of the RCCAG's members or employees.

3. This Agreement merely prohibits the RCCAG from requesting TAP funds for any of these activities or expenses. The RCCAG reserves the right to engage in such activities or incur such costs at its own expense.

III. SELECTION OF TECHNICAL ADVISOR

1. Candidates for the TA position shall submit completed applications to the RCCAG, with copies to EPA. Once it has received all the TA applications, the RCCAG will review them and then select, prepare and submit a written evaluation of its first- and second-choice selections. The evaluations must demonstrate that each candidate meets the minimum requirements as defined below, and contain an analysis explaining the basis for the selections. The RCCAG will send its first- and second-choice selections and corresponding evaluations to EPA, with a copy to TVA.

2. To be eligible, a TA must possess the following credentials:

a) Demonstrated knowledge of environmental removal issues by proven work experience in such fields for more than five years,
b) A Bachelor of Science degree in a relevant discipline (for example, biochemistry, toxicology, public health, environmental sciences, engineering, environmental law and planning, hydrogeology, civil engineering, and solid waste management practices),
c) A proven ability to translate technical information into terms understandable to lay people,
d) Proven experience in making technical presentations in a public meeting or hearing setting, and
e) Demonstrated writing skills.

3. The selected, qualified TA will be independent of TVA. TAs are ineligible if they or any immediate family members are:

a) An employee of, an appointee with, or contractor for TVA or otherwise hold a position that would create a conflict of interest with their ability to perform the duties of the TA in an unbiased manner,
b) Currently applying for a position with or bidding for any other contract position with TVA, or have a substantial financial interest or other substantial involvement with TVA,
c) A party to or associated with an organization that is a party to any current or past legal proceeding adverse to TVA,
d) The person who wrote the specifications for the contract and/or who helped screen or select the contractor,
e) Doing work at the Kingston Site for the Federal or state government or any other entity, or
f) On the "List of Parties Excluded from Federal Procurement or NonProcurement Programs."

4. TVA and EPA must accept RCCAG's first choice, provided the selected TA meets the minimum requirements as defined above. TVA shall notify EPA within fifteen (15) days of the receipt of the group's selected candidate if TVA believes that the advisor does not meet the above definition of "independent", is not qualified, or was not properly selected. Within thirty (30) days of the receipt of the group's selected candidate, EPA will notify RCCAG, the TA, and TVA either that the selected candidate is accepted, or that the agency believes the TA does not meet the above definition of "independent," is not qualified, or was not properly selected.

IV. DISPUTE RESOLUTION

TVA and the RCCAG should attempt to resolve informally any issues concerning the use, administration, or payment of funds pursuant to this Agreement, or the performance of other substantive provisions arising out of, or relating to this Agreement or the breach of it. During such a process, the parties shall, to the extent practicable, continue administering, managing, and providing the services required under this Agreement that are not in dispute.

In the event TVA and the RCCAG cannot reach resolution on an issue concerning the use, administration, or payment of funds pursuant to this Agreement, each party agrees to notify EPA of the dispute and to work with EPA to resolve it.

To the extent that issues or situations arise that are not specifically addressed by this Agreement, the parties agree to refer to EPA for guidance and must generally interpret and implement all provisions of this Agreement with the spirit and purpose of a TAP.

V. TERMINATION

A. Termination Procedures

Before termination of any kind under this Agreement may be effected, the party initiating the termination must provide the other party and EPA: (1) not less than ten calendar days' written notice (delivered by certified mail, return receipt requested) of intent to terminate; and (2) an opportunity for consultation prior to termination.

B. Termination

1. Termination by Mutual Agreement
   Upon written mutual agreement of both parties to this Agreement, the parties may terminate this Agreement.

2. Termination for Default
   With the consent of EPA, this Agreement may be terminated in whole or in part, in writing, by any party in the event of substantial failure by another party to fulfill its obligations under this Agreement through no fault of the terminating party. A "substantial failure" under this Agreement includes, but is not limited to, the following: a determination by EPA that TVA or the RCCAG has failed to adequately and responsibly manage its TAP responsibilities.

VI. RECORD RETENTION AND AUDITS

The parties to this Agreement shall maintain books, records, documents, and other evidence directly pertinent to the performance of the TAP and this Agreement in accordance with generally accepted accounting principles and practices consistently applied. Such records must clearly detail acquisitions, work progress, reports, expenditures, and commitments indicating their relationship to established costs and schedules. In particular, the RCCAG shall make available to TVA upon request records which show that RCCAG expenditure of TAP Funds was in accordance with the requirements of this Agreement.

These records shall be retained for at least five years from the close out of this Agreement, unless audit, litigation, and/or any disputes are initiated before the end of the five-year retention period. The RCCAG may, at the close out of this Agreement, submit such records to TVA for the five-year period of record retention. TVA will obtain prior written approval from the RCCAG before any records may be destroyed after the record-retention period, unless the RCCAG has disbanded before the end of the record-retention period.

VII. GENERAL CLAUSES

A. EPA is Not a Party to this Agreement

This Agreement is required pursuant to the AOC EPA entered into with TVA; however, neither EPA nor any of its employees is, or will be, a party to this Agreement or any lower tier agreement.

B. The RCCAG is Not an Employee of TVA

The RCCAG shall be solely responsible to parties with whom it shall deal in carrying out the terms of this Agreement, and shall save TVA harmless against claims by third parties arising out of the performance of work under this Agreement, including, but not limited to, work performed by the person or entity retained to provide technical assistance to the RCCAG. However, the RCCAG shall not be liable for the negligent acts of TVA. For

purposes of this Agreement, the RCCAG and its members agree that they are not employees or agents of TVA and that they are independent of TVA.

C. Federal, State, and Local Laws

TVA shall be bound by all applicable Federal and State laws and City ordinances, rules, and regulations, to the extent TVA is legally subject to such laws, ordinances, rules, and regulations. All applicable laws, ordinances, rules, and regulations at any level of government shall, to the extent TVA is legally subject to them, be deemed to be incorporated herein and made a part of this Agreement.

D. Modifications of Agreement

The terms of the Agreement may be modified only by written mutual agreement of all parties to this Agreement as well as prior written notification to EPA.

E. Contact Information

For purposes of this Agreement, all correspondence directed to EPA or the parties should be sent to the following addresses:

EPA:
Stephanie Y. Brown
Community Involvement Coordinator
U.S. Environmental Protection Agency, Region 4
61 Forsyth St., SW
Atlanta, Georgia 30303
(404) 562-8450
brown.stephaniey@epa.gov

RCCAG:
Brenda Timm, Chair
Roane County Community Advisory Group
Post Office Box 1063
Kingston, TN 37763
(865) 951-9458
brentimm15@gmail.com

TVA:
Katie Kline
Senior Manager, Community Relations
Kingston Fossil Plant Ash Recovery Project
1134 Swan Pond Road
Harriman, Tennessee 37748
(865) 717-6508
kpbell@tva.gov

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the day and year first above written.

On behalf of the RCCAG

_____

Signature

_____

Type/Print Name

_____

Title

On behalf of TVA

_____

Signature

_____

Type/Print Name

_____

Title