

MEMORANDUM OF AGREEMENT OF JULY 30, 1943

THIS AGREEMENT, made and entered into as of the 30th day of July 1943, by and between TENNESSEE VALLEY AUTHORITY (hereinafter called the "Authority"), a corporation created by an act of Congress known as the Tennessee Valley Authority Act of 1933; the STATE OF NORTH CAROLINA (hereinafter called the "State"), acting by and through its Governor, its Council of State, and its State Highway and Public Works Commission; SWAIN COUNTY (hereinafter called the "County"), a political subdivision of the State of North Carolina, acting by and through The Board of Commissioners for the County of Swain; and UNITED STATES DEPARTMENT OF THE INTERIOR (hereinafter called the "Department"), acting herein for the use and benefit of the National Park Service of said Department,

W I T N E S S E T H:

WHEREAS, the Authority, pursuant to the powers vested in it by the Tennessee Valley Authority Act of 1933, is engaged in the construction of a hydroelectric development, known as the Fontana Project, consisting of a dam and reservoir on the Little Tennessee River in North Carolina, said dam being located approximately ten (10) miles upstream from the Tennessee-North Carolina State line; and

WHEREAS, the Forney Creek Road District has heretofore issued bonds for and constructed a road or highway extending from Deals Gap on the west to Bryson city on the east, said road following a course north of the Little Tennessee and Tuckasegee Rivers and south of

the present southern boundary of the Great Smoky Mountains National Park (hereinafter referred to as the "Park"); and

WHEREAS, the County has heretofore assumed full liability for all principal of and interest on the bonds issued for the construction of said road as aforesaid, and in 1940 issued its own refunding bonds (and interest funding bonds) in the place of all such bonds then outstanding and unpaid; and

WHEREAS, the State has heretofore assumed jurisdiction and control of said Deals Gap-Bryson City road, which is now known as North Carolina State Highway No. 288, and of all other public roads connecting therewith; and

WHEREAS, the reservoir to be constructed and operated by the Authority as a part of said Fontana Project will submerge, flood, or otherwise adversely affect a substantial portion of said Highway 288 east of the site of the Fontana Dam, together with other public roads connecting with said Highway 288; and

WHEREAS, the War Production Board has indicated that it would not approve or permit the reconstruction or relocation of said Highway 288 so long as the present war emergency and the shortage of labor, materials, and equipment resulting therefrom continue to exist; and

WHEREAS, said Highway 288 as now constructed does not furnish or afford a high standard of service, and it is recognized by the parties hereto that the reconstruction or relocation of said road on an equivalent basis after the war emergency or at any other future time would not constitute a wise or efficient expenditure of public funds; and

WHEREAS, there are now held in private ownership certain lands (hereinafter described in section 1 of this agreement) aggregating approximately forty-four thousand four hundred (44,400) acres in area, located within the limits of the County south of the present southern

boundary of the Park and north of the Little Tennessee and Tuckasegee Rivers, all of which acreage (along with certain other acreage now in private ownership) was originally proposed for inclusion within the boundaries of the Park; and

WHEREAS, the acquisition of said land described in section 1 hereof by the United States of America and the inclusion thereof within the boundaries of the Park would serve to extend said boundaries substantially as originally contemplated, and would also establish a basis for the construction by the Department of a park standard road over and across said land; and

WHEREAS, the Department regards a park standard road connection between Deals Gap and Bryson city as an important link in a planned "around the Park" road, has included the same as part of a Master Plan for the development of the Park (extended as aforesaid), and, subject to inclusion of the aforesaid additional acreage within the Park area, is agreeable to initiating construction of the Park portion of such a road as soon after the present war as funds are made available therefor by Congress; and

WHEREAS, the parties hereto desire to provide for and agree upon the extension of the Park boundaries as aforesaid, the closing and ultimate replacement of Highway 288, and the immediate and final settlement and disposition of all claims which the State and the County may at any time have against the Authority or the United States of America by reason of the flooding, taking, or closing of said Highway 288 and the other roads hereinafter described or referred to, all in the manner and upon the terms and conditions hereinafter specified, and all to the end and purpose of avoiding unwise and inefficient expenditures of public funds and of capturing certain benefits for the region affected and the public generally;

NOW, THEREFORE, in consideration of the premises and of the mutual covenants and promises hereinafter contained, it is hereby mutually agreed by and between the parties hereto as follows:

1. Promptly upon the execution of this agreement, the Authority shall, to the extent it has not already done so, in the name of the United States of America, commence and thereafter prosecute in a systematic, orderly, and diligent manner the acquisition by the purchase, the exercise of eminent domain, or otherwise, of the land identified on the map attached to and hereby made a part of this agreement as Exhibit A as "Land Proposed for Transfer to U.S. Department of Interior," the land to be so acquired being more particularly described as follows:

All that land, except that part hereinafter excluded, lying in Swain County, North Carolina, on the north side of the Little Tennessee and Tuckasegee Rivers, and south of the Great Smoky Mountains National Park, extending from Twenty Mile Ridge on the west to the divide between Lands Creek and Peachtree Creek on the east, the east boundary of the area being approximately 2 miles west of Bryson City, North Carolina, the said area being bounded as follows:

- (1) On the west and north by the present boundary line of the Great Smoky Mountains National Park;
- (2) On the east by the divide between Lands Creek and Peachtree Creek (the nearest property line being the true boundary) but including the two tracts along the Tuckasegee River formerly owned by A.E. Lowe and A.L. and W.C. Nichols and acquired by the Authority from Nantahala Power and Light Company under tract designations FR-262 and FR-264;
- (3) On the south by proposed Fontana Lake (1710 contour) from the east boundary to a point on the edge of the lake approximately 3600 feet as measured along the shore (1710 contour) in a northerly direction from the axis of Fontana Dam; thence first with the north boundaries thence the west boundary of two tracts of land acquired by the Authority from Nantahala Power and Light Company and Carolina Aluminum Company, respectively, under tract designations FR-438 and FR-16 to a point 150 feet north of the center line of the principal access road to Fontana Dam and approximately 100 feet west of Lewellyn Branch, thence along a line parallel to and 150 feet north of said center line in a general westerly direction to an intersection with the boundary line of the Great Smoky Mountains National Park on the south end of Twenty Mile Ridge and east of Twenty Mile Creek.

Excepting and excluding from the area above defined (1) all those lands owned by the North Carolina Exploration Company, consisting of some three or four tracts of land situated in approximately 1920 acres, more or less, and (2) all land upstream from Fontana Dam having the elevation of its present ground surface below the plane of the 1710-foot (m.s.l.) contour).

The above described land contains a net total of approximately 44,400 acres, more or less.

Provided, however, that the Authority may at its election postpone the acquisition or the taking of any steps in connection with the acquisition of all or any part of or interest in the following property:

The tract of land owned by the North Carolina Mining Corporation situated on the north side of the Sugar Fork tributary of Hazel Creek approximately 2 miles north of Proctor and being the tract of land conveyed by Walter S. Adams and wife, Melind, to the North Carolina Mining Corporation by deed dated March 29, 1901, and recorded in the Office of the Register of Deeds of Swain County, North Carolina, in Deed Book 29, Page 238, the said tract containing 196 acres, more or less.

until a date six months after the cessation of the hostilities in which the United States is now engaged, it being recognized by the parties hereto that the mining of said tract of land and the removal of such minerals as may be contained therein may be of importance to the prosecution of the war.

It is recognized and agreed that any or all of the lands acquired by the Authority under this section may be subject to outstanding rights of way, easements, and/or mineral rights; that any of said lands acquired from the Aluminum Company of America or any of its subsidiaries may be subject to rights of way one hundred fifty (150) feet in width for any transmission line or lines of any of said companies which may be constructed to interconnect any of the plants of said companies with the power system of the Authority, the location of such rights of way to be as agreed upon from time to time by said

companies or any of them and the Authority; and that any of said lands acquired from Carolina Aluminum Company may be subject to any or all of the following perpetual rights, easements, and privileges in favor of Carolina Aluminum Company, its successors and assigns, as the owner or owners of the dam site of the Cheoah Development and as appurtenant thereto:

(a) The rights at all times without limitation or restriction to flood by the waters of the reservoir impounded by the Cheoah Dam or any other dam erected on or near the site thereof, the said properties to an elevation of 1276.63 feet above mean sea level and to flood said properties to such additional elevations as may result from wave action, floods, and other high water conditions.

(b) The right in the discretion of Carolina Aluminum Company, its successors or assigns, to remove from the shore of Cheoah Reservoir and the land under said reservoir and to destroy or otherwise dispose of silt, drift, timber, vegetation, and other matter, and to use said shore and land for such purposes and any other purpose reasonably connected with the maintenance and operation of the Cheoah development, together with the right of ingress, egress, and regress for such purposes with tools, vehicles, and equipment across said properties.

It is further understood and agreed that in the purchase or other acquisition of the aforesaid land as herein provided, the Authority shall be privileged to follow and abide by its standard policies and procedures, as the same may be varied or amended from time to time, pertaining to the acquisition of lands or interest therein. The Authority shall not be responsible and shall incur no liability under this section for any delay or delays in the acquisition of title to any of said land caused by or attributable to title searches or other studies, condemnation proceedings or other litigation, or caused by or attributable to any act or circumstance which is incident to or reasonably related to such acquisition or which is beyond the Authority's control, it being the intention of the parties that the Authority shall incur no liability for any delays in the acquisition of any land under this

section resulting from any cause whatsoever other than the willful failure or refusal of the Authority to take any step necessary to effect such acquisition.

2. Immediately following its acquisition in accordance with section 1 hereof of all of the land described in said section, the Authority shall assign and transfer to the Department, for the use and benefit of the National Park Service and for inclusion as a part of the Park, the right of possession and all other right, title, and interest which the Authority may have in and to said land, and shall also grant to the Department, its agents, servants and invitees the right of access to and use of all lands of the United States in the Authority's custody lying upstream from Fontana Dam between the land to be transferred to the Department hereunder and low watermark on Fontana Lake, together with the right of access to and the use of the waters of said lake, for the purpose of constructing and maintaining thereon boating and recreational facilities, piers, docks, and related equipment, and of performing all other acts which may be reasonably necessary to the administration and use, as a part of the Park, of the lands to be transferred to the Department under this section 2; provided, however, that said assignment, transfer, and grant shall be effected by an agreement of transfer between the Authority and the Department substantially in the form attached to and made part hereof as Exhibit B, and shall be subject to all of the terms, conditions, provisions, exceptions, exclusions, and reservations contained in said Exhibit B, and shall also be subject to all those rights, easements, and interest (whether or not now listed or specified in said Exhibit B) which have been or may be reserved or left outstanding at the time of the Authority's acquisition of the lands described in section 1, as permitted or contemplated by said section 1; provided further that, prior to the execution of said transfer agreement, a metes

and bounds description of the lands to be transferred to the Department thereunder shall be incorporated therein in substitution for the description of said lands now contained in Exhibit B; and provided further that if the Authority shall at any time have acquired all of the land described in section 1, with the exception of all or any part of or interest in the North Carolina Mining Corporation tract separately described in said section 1, the Authority and the Department shall then enter into an agreement of transfer, as aforesaid, with respect to so much of the land described in section 1 as the Authority shall then have acquired, and in such case said North Carolina Mining Corporation tract, or the part thereof or interest therein not initially transferred by the Authority to the Department, shall be the subject of a separate and subsequent agreement of transfer between the Authority and Department, such subsequent agreement of transfer to be consistent with the provisions of this agreement and substantially in the form attached hereto as Exhibit B, and to be executed immediately following the Authority's acquisition of the part of or interest in said tract not covered by the initial agreement of transfer.

The parties recognize and agree that, as an incident to the construction, maintenance, and operation of the Fontana Project, the Authority will acquire certain lands and rights and interests in land in addition to those specified to be acquired under section 1 hereof and to be transferred under this section 2. The acquisition of such additional lands and rights and interests in land shall not give rise to any obligation on the part of the Authority to transfer the same, or any part thereof or interest therein, to the Department, and the Authority's sole obligation under sections 1 and 2 of this agreement shall be to effect the acquisition of the lands specified in section 1 and to transfer the



possession and control of said lands to the Department along with the additional rights of access and use specified in the preceding paragraph, all as herein specifically provided.

3. The Department agrees to enter into an agreement or agreements of transfer with the Authority as provided by section 2 hereof, and, pursuant to and subject to the provisions of such agreement or agreements, to accept an assignment and transfer of the lands described in section 1 hereof, together with the additional rights of access and use specified in section 2. The Department further agrees that, forthwith upon the execution and delivery of such an agreement of transfer, it will extend the present boundaries of the Park to embrace and include the land transferred thereby.

4. The Department represents and states that it has evolved a Master Plan for the development of the Park as extended by the addition of the lands described in section 1 hereof, and that said Master Plan includes an “around the Park” road, of which the Park section of a projected road between Deals Gap and Bryson City constitutes an important link. Subject to the transfer by the Authority to the Department of the land described in section 1 as herein provided, the Department agrees that, as soon as funds are made available for that purpose by Congress after the cessation of the hostilities in which the United States is now engaged, the Department will construct or cause to be constructed the following described sections of road, all of said sections being hereinafter collectively referred to as the “Park Road”:

(a) A section of road beginning at a point on the Fontana Dam Access Road near the crossing of Fax Branch, and extending to a point on the western boundary of the land identified on Exhibit A as the property of North Carolina Exploration Company.

(b) A section of road beginning at the eastern boundary of said North Carolina Exploration Company land and extending to the eastern boundary of the Park as extended hereunder.

(c) A section of road across said North Carolina Exploration Company land connecting the ends of the sections of road described in paragraphs (a) and (b) above.

(d) A section of road beginning at a point in the road described in paragraph (a) above, and extending in a generally southerly direction to the west abutment of Fontana Dam.

Provided, however, that in lieu of the sections of road described in paragraphs (a), (b), and (c) above, the Department may at its election construct or cause to be constructed, as a part of the Park Road, a continuous section of road beginning at a point on the Fontana Dam Access Road near the crossing of Fax Branch and extending around the aforesaid property of the North Carolina Exploration Company (through existing Park lands) to the eastern boundary of the Park as extended hereunder. In the event of such election on the part of the Department, the Department shall nevertheless construct or cause to be constructed, as a part of the Park Road, the section of road described in paragraph (d) above, which section shall in such case commence on said alternative section of Park Road at a point west of the lands identified on Exhibit A as the property of North Carolina Exploration Company. Upon commencement or construction of the Park Road, Authority shall transfer and assign to the Department its right of possession, and all its other right, title, and interest in and to the land required for the right of way of that portion of the road described in paragraph (d) above which lies within the boundaries of Fontana Dam Reservation. The Department shall secure and provide for itself all such easements and rights of way as may be necessary for the construction and maintenance of any portion of the Park Road which may be located upon or across any of said North Carolina Exploration Company.

If and when funds are made available by the Congress for said Park Road as aforesaid, the location and type of said road, the method and manner of constructing the same, and all standards and specifications therefor shall be determined by Department in its sole discretion; provided, however, that said Park Road when constructed shall as a minimum standard be finished throughout its length with a dustless surface not less than twenty (20) feet in width; and provided, further, that said Park Road shall connect at the eastern boundary of the Park, as extended hereunder, at a point to be selected by the Department, with the road which is to be constructed by the State in accordance with and subject to the provisions of section 6 hereof.

The obligation of the Department to construct or provide for the construction of a Park Road as defined in this section 4 shall be subject to and contingent in all respects upon the appropriation by Congress of all funds necessary for such construction, and failure on the part of Congress for any reason to make such appropriations shall not constitute a breach or violation of this agreement by the Department or any other party hereto.

5. Following completion of the Park Road to be constructed by the Department subject to the provisions of section 4, the Department may in its discretion bar said road to commercial use, and restrict the same solely to pleasure and tourist traffic.

6. At such time as the Department shall commence the construction of the Park Road pursuant to section 4 hereof, the State shall forthwith proceed to acquire good and sufficient easements and rights of way for, and shall construct, a road commencing at a point on U.S. Highway 19 in Bryson City, North Carolina, and extending to a point on the eastern boundary of the Park (as extended hereunder) to be selected and designated by

the Department, the point so designated by the Department to be such as to provide for the connection of the State road provided for in this section with the Park Road described in section 4. The easements and rights of way to be acquired by the State for said Bryson City-Park Boundary Road shall be not less than two hundred (200) feet in width outside the corporate limits of Bryson City. In all other respects, except for the termini thereof as above provided, the location and type of said road, the method and manner of constructing the same, and all standards and specifications therefor shall be determined by the State in its sole discretion; provided, however, that said road when constructed by the State shall as a minimum standard be finished throughout its length with a dustless surface not less than twenty (20) feet in width.

7. Following completion of the construction of the Fontana project by the Authority, the Authority, on its own behalf and as agent of the United States of America, shall quitclaim to the State all of the right, title, and interest which it or the United States of America may have in and to the so-called Fontana Access Road heretofore constructed by the Authority from U.S. Highway 129 near Deals Gap to the left (east) abutment of the Fontana Dam, including all bridges, culverts, and other facilities constituting a part of said access road. In connection with and as a part of the transfer of said access road to the State as aforesaid, the Authority shall also:

(a) Transfer and quitclaim or cause to be transferred and quitclaimed to the State all easements and rights of way acquired by the Authority as agent of the United States appurtenant to those portions or sections of said access road which may be located outside the limits of land of the United States in the custody of the Authority, together with such land as the Authority, as agent of the United States, may hold or acquire in fee west of a point on the north right of way line of said access road approximately one hundred (100) feet west of Lewellyn Branch, and between said north right of way line and the Cheoah Reservoir of Carolina Aluminum Company. For the purposes hereof, the north right of way line of said access road west of said point approximately one hundred (100) feet west of

Lewellyn Branch shall be deemed to be a line parallel to and one hundred fifty (150) feet north of the center line of said access road.

(b) Grant and quitclaim or cause to be granted and quitclaimed to the State suitable easements and rights of way for the maintenance of all of the portions of said access road which are located on land of the United States in the custody of the Authority, where such land is not included in the land to be transferred and quitclaimed to the State under paragraph (a) immediately preceding.

(c) Transfer and assign or cause to be transferred and assigned to the State an agreement between the Authority and Carolina Aluminum Company dated May 5, 1943, relating to an easement for the construction and maintenance of the bridge located on said Fontana Access Road across the Little Tennessee River, together with all rights, privileges, and interests of the Authority and the United States in, to, and under said agreement.

The State agrees that it will, by formal agreement with the Authority and Carolina Aluminum Company, accept an assignment of the aforesaid agreement of May 5, 1943, and assume all of the duties and obligations of the Authority and the United States of America thereunder, so as to effect the substitution of the State for the Authority and the United States of America for all of the purposes of said agreement as contemplated by section 3 thereof. The State further agrees that, forthwith upon the transfer of said access road as aforesaid, it will open and thereafter maintain said access road for public travel, take over at the expense of the State the maintenance, repair, and upkeep thereof, and thereafter forever hold the Authority and the United States of America harmless on account of any loss, damage, or injury sustained by any person or persons using the same; provided, however, that in transferring said access road to the State as aforesaid, the Authority may reserve the right, but shall have no obligation, to maintain, flatten, plant grass or shrubbery upon, or otherwise modify the slopes of cuts and embankments adjacent to any portion or portions of said access road between the south end of the Little Tennessee River Bridge and the left (east) abutment of Fontana Dam.

8. Forthwith upon the execution of this agreement, the State, as a means of cooperating with and assisting the Authority in the purchase of the land described in section 1 hereof, and in the settlement of the problems incident or related thereto, shall pay to the Authority the sum of One Hundred Thousand Dollars (\$100,000), such payment to be made for the purposes of and pursuant to the authority contained in S.B.198 enacted at the 1943 Session of the North Carolina Legislature and approved March 5, 1943.

9. Promptly upon the execution of this agreement, the Authority shall pay to the State Treasurer of North Carolina, Treasurer ex officio of the North Carolina Local Government Commission, in trust for the County, the sum of Four Hundred Thousand Dollars (\$400,000), said State Treasurer of North Carolina being hereby designated by the County to receive and receipt for said sum on the County's behalf.

Prior to or simultaneously with the payment of said sum to said State Treasurer of North Carolina, the County shall enter into a trust agreement governing the management and disbursement of said trust fund. Said trust agreement shall be subject to the approval of the North Carolina Local Government Commission, and shall provide that said sum shall be applied by the trustee exclusively to the payment of the principal of road bonds of the County which are now outstanding and unpaid. The County agrees that said trust agreement, once entered into with the approval of the North Carolina Local Government Commission, shall not be amended, revoked, or supplemented except with the written consent and approval of said Local Government Commission.

Delivery to said State Treasurer, as Treasurer ex officio of the North Carolina Local Government Commission, of the Authority's check in the amount of Four Hundred

Thousand Dollars (\$400,000), payable to his order as trustee for the County, shall operate as a complete fulfillment and discharge of all obligations of the Authority under this section 9.

10. The State and the County hereby agree that they will, forthwith upon receipt of a request from the Authority so to do, by instrument or instruments in form suitable for recording, transfer, assign, convey, and quitclaim unto the Authority and the United States of America all right, title, and interest which they and the public may have in and to that portion or section of existing North Carolina State Highway 288 between Fax Branch and Watkins Branch, in and to all other roads or portions or sections of road (irrespective of elevation) located upon or across any of the land described in section 1 hereof and/or any of the land identified on Exhibit A hereto as the property of North Carolina Exploration Company, and in and to all other roads or portions or sections of road in the County lying north of the Little Tennessee and Tuckasegee Rivers east of Fontana Dam below elevation 1715 (m.s.l.), including all bridges, culverts, and other facilities constituting a part of any of said roads or portions or sections of road, together with all easements and rights of way appurtenant thereto. The State and the County further agree that they will, forthwith upon receipt of a request from the Authority so to do, take or procure the taking of any and all action which may be necessary and appropriate to vacate and abandon all of the roads and portions or sections of road to be conveyed and quitclaimed as provided in this paragraph, and to close the same to the use of the public. Until such time as the Authority shall request the conveyance and the vacation, abandonment, and closing of the roads or portions or sections of road referred to in this paragraph, all such roads or portions or sections of road referred to in this

paragraph, all such roads or portions or sections of road shall retain their present status and continue to be used and maintained as public roads or highways.

In consideration of the premises and of the covenants and promises of the Authority and the Department in and under this agreement, the State and the County, for themselves, their respective successors, representatives, and assigns, shall and do hereby, jointly and severally, release, acquit, and discharge the Authority, its successors and assigns, and its agents and employees, and the United States of America, of and from all obligations, liability, claims and demands of every nature, character, or description, whether now or hereafter existing, arising out of or in any way connected with the inundation, closing, or taking, under or as the result of this agreement or as the result of the construction, maintenance, or operation of Fontana Dam or Fontana Reservoir, of North Carolina State Highway 288, or any portion or section thereof, wheresoever located, or of any other road or roads or section or sections of road (irrespective of elevation) located wholly or partially upon or across any of the land described in section 1 hereof or any of the land identified on Exhibit A hereto as the property of North Carolina Exploration Company, or of any road or roads or section or sections of road lying north of the Little Tennessee and Tuckasegee Rivers below elevation 1715 (m.s.l.), together with all obligations, liability, claims, and demands arising out of or in any way connected with any impairment of the efficiency, value, usability, or convenience of any portion (irrespective of elevation or location) of said Highway 288 or of any of said other roads or sections of road, not so inundated, closed, or taken; and the State and the County expressly agree that they will not, jointly or severally, maintain or attempt to maintain any suit or cause of the action against the Authority, its agents or employees, or the



United States of America based upon or arising out of any such inundation, closing, taking, or impairment, it being the intention hereof that the covenants and promises of the Authority and the Department herein contained shall constitute and effect and be accepted as an immediate, complete, and final payment and discharge of all such obligations, liability, claims, and demands; provided, however, that nothing herein contained shall apply to or preclude any action by the State or the County to enforce compliance or to recover damages for noncompliance by the Authority or the Department with their respective covenants and promises herein made.

11. Anything in section 10 to the contrary notwithstanding, the State does not release or waive or agree not to enforce any claim, demand, or “action over” which it may now or hereafter have against the Authority or the United States, and which is based upon an obligation or liability which the State may have to incur to any landowner by reason of his being deprived of access to land owned by him in Swain County, North Carolina, where such obligation or liability on the part of the State arises out of the inundation, flooding, closing, or other impairment, under or as the result of this agreement or as the result of the construction, maintenance, or operation of Fontana Dam or Fontana Reservoir, of existing North Carolina State Highway 288 between Fax Branch and Watkins Branch; and the Authority hereby expressly agrees to indemnify the State against and safe it harmless from any such obligation or liability; provided, however, that whenever such obligation or liability exists or is alleged or claimed to exist on the part of the State in favor of any landowner, the State shall not, except pursuant to a judicial judgment or decree, pay compromise, settle, or otherwise dispose of such obligation or liability or any claim, demand, suit, or action based thereon without the written consent

of the Authority; and provided further that the Authority shall at all times have and exercise full control over the defense, settlement, and disposition of all claims, demands, suits, and actions filed with or against the State in respect of any such obligation or liability, and may compromise, settle, or dispose of the same in any manner or by any method or procedure which it may see fit to adopt in its solo discretion.

Whenever any claim, demand, suit, or action is made or filed with or against the State in respect of an actual or alleged obligation or liability on the part of the State of the kind referred to in the preceding paragraph of this section, the State shall promptly, and in any event within ten (10) days after receipt of formal written notice thereof by the State or summons issued by any court and served on the State, give the Authority written notice of the making or filing of such claim, demand, action, or suit, so as to permit the Authority to defend, compromise, settle, or otherwise dispose of the same as herein provided, or if the State shall, otherwise than pursuant to judicial judgment or decree, pay, compromise, settle, or otherwise dispose of any such claim, demand, action, or suit without the written consent of the Authority, then and in either or any of such events, the Authority shall be relieved and discharged of any obligation to indemnify the State against or save it harmless from any obligation or liability in respect of such claim, demand, suit, action, or any renewal thereof.

12. This agreement may be simultaneously executed and delivered in any number of counterparts, and each such counterpart shall be deemed an original.

IN WITNESS THEREOF, the parties hereto have caused this agreement to be executed by their proper representatives thereunto duly authorized as of the day and year first above written.

Attest:

s/ Gladys M. Burkhart  
Assistant Secretary

TENNESSEE VALLEY AUTHORITY

By s/ Arthur S. Jaudrey (Seal)  
Acting General Manager

STATE OF NORTH CAROLINA

By s/ J. Melville Broughton (Seal)  
Governor

And by Council of State

By s/ J. Melville Broughton (Seal)  
Chairman

Attest:

s/ Ina L. Ferrell  
Secretary

And by State Highway and Public Works  
Commission

By s/ D.B. McCrary (Seal)  
Acting Chairman

SWAIN COUNTY, NORTH CAROLINA

By The Board of Commissioners for the  
County of Swain

Attest:

s/ D.R. Welch

By s/ R.D. Estes (Seal)  
Chairman

UNITED STATES DEPARTMENT OF  
THE INTERIOR

By s/ Harold L. Ickes  
Secretary