

FINAL APC AND USFS SETTLEMENT AGREEMENT

NOT EXECUTED

AGREEMENT BETWEEN
ALABAMA POWER COMPANY AND THE UNITED STATES FOREST SERVICE
REGARDING RELICENSING ISSUES RELATED TO THE
WARRIOR RIVER PROJECT

This Agreement is entered into this the ____ day of _____, 2005, by and between Alabama Power Company (“Alabama Power”) and the United States Department of Agriculture, through the U.S. Forest Service-National Forests in Alabama-Bankhead National Forest (“Forest Service”) with respect to the Warrior Hydroelectric Project (FERC No. 2165) (“Project”).

Whereas, the Project consists of two developments, the Smith development and the Bankhead development, the Smith development being located in Walker, Winston, and Cullman counties in north central Alabama, on Sipsey Fork, a tributary of Mulberry Fork and a headwater stream of the Warrior River (“Warrior River”), and the Bankhead development being located downstream of the Smith development on the Warrior River in Tuscaloosa County in west central Alabama; and

Whereas, the current license for the Project was issued by the Federal Energy Regulatory Commission (“FERC”) on September 1, 1957 and expires on August 31, 2007; and

Whereas, Alabama Power intends to file with FERC an application for a new license for the Project on or before August 31, 2005; and

Whereas, Alabama Power has an obligation under Section 10 (a)(1) of the Federal Power Act to provide for beneficial public uses, including recreation, with respect to the Project.

Whereas, approximately 2691.44 acres of Project lands at the Smith development are within the Bankhead National Forest, which national forest is under the supervision of the Forest Service; and

Whereas, under the requirements of Section 4(e) of the Federal Power Act, the Forest Service has authority to submit to FERC such conditions as the Forest Service deems necessary for the adequate protection and utilization of the Bankhead National Forest, and such conditions must be included by FERC in any new license it issues for the Project; and

Whereas, the Forest Service has other license conditioning authorities and responsibilities under various provisions of the Federal Power Act with respect to the Project; and

Whereas, through extensive research, data and information collection, site inspections and discussions with Alabama Power, the Forest Service has determined the appropriate scope and amount of measures that are necessary for the adequate protection and utilization of the Bankhead National Forest as related to the Smith development and that these measures, if implemented, will satisfy its Section 4(e) authority and its other conditioning authorities and responsibilities under the Federal Power Act with regard to the Project; and

Whereas, Alabama Power is willing to assist the Forest Service in implementing these measures by providing funding and services to the Forest Service during the term of the new license for the project to address fully all of the Forest Service's issues related to the relicensing of the Project.

NOW THEREFORE, because the parties have determined to resolve recreation, ecological and cultural resource issues related to their duties and responsibilities under the Federal Power Act, and in consideration of the mutual covenants of the parties described herein, and other good and valuable consideration, Alabama Power and the Forest Service agree and covenant as follows:

Part I – General Provisions

Section 1.1 Purpose of the Agreement. The purpose of this Agreement is to resolve all pending recreation, ecological and cultural resources issues with respect to the Forest Service's Section 4(e) authority and all other Forest Service conditioning authorities and responsibilities under the Federal Power Act and other federal law to recommend terms or conditions for the Project (hereinafter collectively referred to as "the Forest Service's Conditioning Authority"). This Agreement sets forth Alabama Power's commitment to a level of funding during the term of a new license to be issued by FERC, and represents a cooperative effort between Alabama Power and the Forest Service to address the Project's effects on the recreational, ecological and cultural resources of the Bankhead National Forest. By entering into this Agreement, each party acknowledges that the Agreement reasonably, fairly, appropriately and completely resolves all present issues related to the Forest Service's Conditioning Authority for the Project.

Section 1.2 No Additional Recommended Measures or License Conditions. Because the measures provided for in this Agreement resolve all of the parties' pending issues related to the relicensing of the Project, the Forest Service hereby expresses its present intent not to propose, establish, support or communicate to FERC, any state or federal agency, any other stakeholder in the Project relicensing proceeding, or to any court (either federal or state), arbitrator, mediator or dispute resolution panel any recommended measure or mandatory license condition that expands upon, departs from, is in addition to, or is in any way inconsistent with the measures to be taken and the contributions to be made by Alabama Power described in Part II of this Agreement.

In the event the Forest Service, prior to the effective date of the new license for the Project, proposes, establishes, supports, or communicates any such additional recommended measure or mandatory license condition or otherwise exercises any additional Forest Service Conditioning Authority beyond those measures provided for in this Agreement, the parties shall meet to discuss in good faith whether the additional measure, mandatory license condition or exercise of Forest Service Conditioning Authority can be achieved consistent with the purposes and intent of this Agreement. If the parties are unable to agree that such additional measure, mandatory license condition or exercise of Forest Service Conditioning Authority is consistent with the purposes and intent of this Agreement, or is otherwise an appropriate requirement, either party may terminate this Agreement by providing written notice to the other party.

Section 1.3 Additional Measures During License Term. In the event either party obtains or develops information during the term of the new license issued by FERC for the Project indicating a need for additional measures beyond those provided for in this Agreement, the parties shall meet in good faith to discuss this new information and the need for additional

measures. If the parties cannot agree on the need for additional measures, each party retains the right to utilize its authority under the Federal Power Act, or other legal authority, to secure any additional measures.

Section 1.4 Inclusion in New License of Agreement Provisions. Alabama Power will submit this Agreement as a part of its application for new license for the Project to be filed with FERC no later than August 31, 2005. It is the desire of both Alabama Power and the Forest Service that all of the provisions of Part II of this Agreement, including all exhibits hereto, be included in enforceable license articles in a new license issued to Alabama Power by FERC for the Project. To facilitate FERC's assistance in fulfilling the parties' desire in this regard, Alabama Power and the Forest Service will provide to FERC a Proposed Settlement License Article consistent with the terms and conditions of this Agreement.

Section 1.5 Effective Date. The "Effective Date" of this Agreement shall be the date that the new license for the Project issued by FERC is final and no longer subject to administrative appeal or judicial review. In no event shall the "Effective Date" be more than two (2) years after the date that FERC issues the license order for the Project.

Section 1.6 Term of Agreement. The term of this Agreement shall begin on the Effective Date, and shall continue to the expiration or termination of the new license for the Project.

Section 1.7 No Interference or Inconsistency. The Forest Service acknowledges that the operation of the Project, as proposed in its license application, by Alabama Power under a new license is consistent with this Agreement and will not interfere or be inconsistent with the purpose for which the Bankhead National Forest was created or acquired.

Section 1.8 Basis of Forest Service Decisions. The Forest Service acknowledges that in evaluating and determining the appropriate scope and amount of measures that are necessary to address the Forest Service's Conditioning Authority, the Forest Service has exercised its independent judgment and lawful discretion, and has based its determination of the necessity and adequacy of these measures on substantial evidence.

Section 1.9 Consistency with New License. It is the express desire of both Alabama Power and the Forest Service that the terms and conditions of the new license for the Project to be issued by FERC not be inconsistent with this Agreement.

Section 1.10 Non-severability of Terms. The terms of this Agreement are not severable from each other. This Agreement is made with the understanding that each term is in consideration and support of every other term, and each term is a necessary part of the entire Agreement. If any part of the Agreement is determined to be unenforceable, the parties shall discuss alternative means of ensuring the intentions of the parties can be carried forward.

Section 1.11 Entire Agreement. This Agreement constitutes the entire agreement with respect to the subject matters dealt with herein. Unless expressly contained herein, no prior representation, understanding, or communication, whether written or verbal, related to the subject matter of this Agreement, shall be considered a part of this Agreement.

Section 1.12 Communication to FERC in Support of Agreement. Within one (1) year following the filing by Alabama Power of the license application for the Project, the Forest Service shall submit written correspondence to FERC attaching this Agreement and Exhibits A and B. Exhibit B, prepared in consultation with Alabama Power, will describe in detail the various programs and projects identified in Exhibit A. This Settlement Agreement and accompanying Exhibits shall be the full and complete resolution of all present issues related to the Forest Service's Conditioning Authority.

Section 1.13 No Third Party Beneficiaries. This Agreement shall not create, and shall not be construed to create, any right or interest as a third party beneficiary in any public or private entity or any individual not a party to this Agreement, and shall not authorize any non-party to maintain a suit at law or equity pursuant to this Agreement. The duties, obligations and responsibilities of both Alabama Power and the Forest Service with respect to third parties shall remain as imposed under applicable law.

Section 1.14 Authorities Maintained. Nothing herein is intended or shall be construed to affect or limit the authority of either Alabama Power or the Forest Service to fulfill its statutory, regulatory or contractual obligations under applicable law.

Section 1.15 No Partnership Created. This Agreement does not and shall not be deemed to create a partnership or joint enterprise between Alabama Power and the Forest Service.

Section 1.16 Paragraph Titles for Convenience Only. The paragraph titles in this Agreement are intended solely for the convenience of the parties, and shall not be used to interpret either the wording of the paragraphs or the parties' intent with respect thereto.

Section 1.17 Notification or Correspondence. Any notification required by this Agreement or any correspondence from one party to the other relative to this Agreement shall be mailed to the following respective addresses:

If to Alabama Power

R. M. Akridge
General Manager, Hydro
Southern Company Services, Inc.
600 North 18th Street
Birmingham, Alabama 35203

If to the Forest Service

Steve Rickerson
Forest Supervisor
National Forests in Alabama
2946 Chestnut Street
Montgomery, AL 36107

Section 1.18 No Precedents Established. This Agreement is made upon the express understanding that it constitutes a settlement to resolve all issues related to the Forest Service's Conditioning Authority relative to the relicensing of the Project. Neither party shall be deemed

to have admitted, consented or otherwise accepted any judgment, opinion or principal of the other party underlying or believed to underlie any of the specific terms or conditions of the Agreement unless expressly stated herein. Nothing in this Agreement is intended to be or shall be construed as a precedent with regard to any other proceeding, either regulatory or judicial.

Section 1.19 Environmental Review of Measures. An analysis of the impacts of implementing this Agreement shall be contained in the Applicant Prepared Environmental Assessment for the Warrior Hydroelectric Project, which will be filed with FERC as part of Alabama Power's application for new license for the Project.

Section 1.20 Conditions Subsequent to the Effectiveness of this Agreement. The withdrawal by FERC of its order issuing new license for the Project ("License Order"), the vacating of the License Order by a court of competent jurisdiction, the rejection by Alabama Power of the License Order, and any other event or circumstance that causes the License Order to become invalid shall each be considered a Condition Subsequent to the effectiveness of this Agreement. In the event a Condition Subsequent occurs, this Agreement shall automatically terminate and neither party thereafter shall have any rights or further obligations with respect to this Agreement.

Part II – Alabama Power Commitments to Resource Mitigation

Section 2.1 Amount of Contributions. Alabama Power will provide contributions to the Forest Service during the term of the new license for the Project in the amount of seven million five hundred seventy-seven thousand dollars (\$7,577,000) (net present value) to be used by the Forest Service to meet Bankhead National Forest Plan objectives for recreational, ecological and cultural resources needs and to mitigate for ongoing project impacts to the Bankhead National Forest. These contributions are comprised of a combination of cash contributions and the value of services to be provided by Alabama Power, and will be paid or provided for the purposes and commensurate with the annual value amounts and guidelines as identified in this agreement, and the attached Exhibits A and B, respectively.

Section 2.2 Use of Cash Contributions in Subsequent Years. If in any year the Forest Service does not expend all funds contributed by Alabama Power for that year, the remaining unexpended balance may be used by the Forest Service in subsequent years for the purposes for which the contributions have been made and scheduled as designated in the attached Exhibits A and B.

Section 2.3 Annual Reports to Alabama Power and Forest Service. No later than February 15 of each year during the term of this Agreement, the Forest Service shall submit to Alabama Power a report describing generally how the cash contributions provided to the Forest Service under this Agreement have been spent in the preceding year. The level of detail of these reports shall be such as is necessary to assure Alabama Power that the contributions generally have been applied to meet the various purposes identified in the attached Exhibits A and B. No later than February 15 of each year during the term of this Agreement, Alabama Power shall submit to the Forest Service a report describing generally how Alabama Power has performed the services requested by the Forest Service under this Agreement. The level of detail of the report shall be such as is necessary to assure the Forest Service that Alabama Power has fulfilled its responsibilities as detailed in the attached Exhibits A and B.

Section 2.4 Term of New License. Alabama Power anticipates receiving a new license from FERC with a term of fifty (50) years, and, for this reason, the attached Exhibits A and B contains a schedule reflecting contribution amounts and purposes for each year of this fifty (50) year term. In the event FERC issues a new license for the Project with a term of less than fifty (50) years, Alabama Power will provide annual contributions to the Forest Service in the amounts and for the purposes identified in the attached Exhibits A and B for each year of the new license term, and, at the expiration or termination of the new license for the Project, Alabama Power shall have no further obligation to provide contributions to the Forest Service under this Agreement.

Section 2.5 Method of Delivery of Cash Contributions. In each calendar year during the term of this Agreement, Alabama Power shall submit to the Forest Service one (1) payment representing the total cash contribution to be paid for that particular year as specified in the attached Exhibit A, as may be adjusted in accordance with Section 2.8. The payment, will be in the form of a single check made payable to “U.S. Forest Service – National Forests in Alabama,” and shall be transmitted to the Forest Service no later than October 1 of each year by first-class mail to the address identified in Section 1.17.

Section 2.6 Method of Valuation and Delivery of Alabama Power Services.

(a) The services to be provided by Alabama Power under Section 2.1 (other than the Cultural Resources Services described in Section 2.7) shall be valued on an “at cost” basis, which shall include, but not be limited to, Alabama Power’s cost of direct labor, assigned labor overheads, supplies, laboratory analyses, data analyses and reporting, travel, consultants, and other costs related to the services provided. The value of services may be adjusted annually based on changes in labor, material and other costs. The value of the services to be provided by Alabama Power shall be escalated annually, beginning in January 2008, using the data from the Consumers Price Index for All Urban Consumers as developed by the U.S. Department of Labor, Bureau of Labor Statistics, and developing linear curve fits using 30 years of data as a base.

(b) No later than September 30 of each year during the term of this Agreement, the Forest Service shall provide to Alabama Power a detailed written description of the specific services it desires Alabama Power to provide in the subsequent calendar year for the purposes and in the amounts described in the attached Exhibits A and B. In the written description, the Forest Service may request a reapportionment of the value of services for that particular year to be delivered by Alabama Power for the different Ecological subject areas specified in Exhibits A and B. In addition, the Forest Service may request that several years’ worth of services value identified in Exhibit A and B be aggregated and/or reapportioned for delivery in a subsequent year. Alabama Power will endeavor in good faith to accommodate such requests for reapportionment or aggregation of the value of services to be provided.

Section 2.7 Valuation and Method of Delivery of Cultural Resources Services.

(a) The Cultural Resources services will be provided to the Forest Service in the form of study reports on cultural resources, which Alabama Power will prepare in compliance with Section 106 of the National Historic Preservation Act of 1966. The Forest Service may use these study reports to manage cultural resources within the Bankhead Forest or for any other purpose not inconsistent with this Agreement. However, because these study reports may contain sensitive information with respect to the location of archeological, tribal, historical or other

cultural materials, the Forest Service shall treat these reports as confidential, and shall not provide or distribute these study reports or any information contained therein to any person, agency, or other entity without first obtaining the express written consent of Alabama Power after consultation with FERC.

(b) The value of the Cultural Resources services identified in the attached Exhibit A is an estimate of the cost of studies to be performed by Alabama Power in compliance with Section 106 of the National Historic Preservation Act of 1966. In the event that the actual cost of the study reports in a year is less than the amount estimated in the attached Exhibit A, the difference in value shall not be carried forward for use in subsequent years. Similarly, in the event that the actual cost of the study reports in a year is greater than the amount estimated in the attached Exhibit A, the difference shall not be deducted from the value of Cultural Resources services to be provided in subsequent years.

Section 2.8 Escalation of Contribution Value. The value of the contributions and services to be provided by Alabama Power shall be escalated annually, beginning in January 2008, using the data from the Consumers Price Index for All Urban Consumers as developed by the U.S. Department of Labor, Bureau of Labor Statistics, and developing linear curve fits using 30 years of data as a base.

Section 2.9 No Direction by Alabama Power of Expenditures. Alabama Power shall have no responsibility or authority to direct, review or approve the manner or method in which the Forest Service expends the cash contributions or utilizes the services provided by Alabama Power hereunder, other than to receive and review the annual reports submitted by the Forest Service under Section 2.3 herein.

Section 2.10 Annual Meeting. After the Forest Service provides to Alabama Power the written description of the specific services it desires Alabama Power to provide in a subsequent calendar year as provided for in Section 2.6 (b), but before December 31 of each year, the parties shall meet at a mutually convenient time and location to discuss the requested services, the reports provided to each other under Section 2.3, and any other appropriate matter that may be related to this Agreement or the Project.

Part III – Enforcement of Settlement and Dispute Resolution

Section 3.1 Enforcement of Settlement Provisions. Though it is the desire of both Alabama Power and the Forest Service that all of the provisions of Part II of this Agreement be included in enforceable license articles in the new license issued by FERC for the Project, the parties recognize that FERC may not include all, or any, of the provisions of Part II of this Agreement in the new license. If FERC determines that it does not have jurisdiction to adopt or enforce some or all of the provisions of Part II of this Agreement and therefore does not include such provision or provisions in the new license, the parties nonetheless agree that they shall be bound by the entire Agreement, including the provision or provisions omitted by FERC from the new license. As to the provisions of Part II of this Agreement that FERC may include in enforceable articles in the new license, enforcement of such provisions shall be pursued in accordance with FERC's rules and regulations and in accordance with applicable procedures in the Federal Power Act.

Section 3.2 Dispute Resolution. In the event any dispute arises between Alabama Power and the Forest Service with respect to any aspect of this Agreement, Alabama Power and the Forest Service will engage in good faith discussions to resolve such dispute. If, after engaging in good faith discussions, the parties are unable to resolve a dispute that involves an obligation included in a license article in the new license, Alabama Power and the Forest Service will petition FERC to use its Office of Alternative Dispute Resolution (ADR) to help facilitate a resolution to the dispute. If, after engaging in good faith discussions, the parties are unable to resolve a dispute that does not involve an obligation included in a license article in the new license for the Project, then, at the request of either party, Alabama Power and the Forest Service shall jointly retain the services of an independent professional mediator to assist in resolving the dispute. Notwithstanding the foregoing, both Alabama Power and the Forest Service reserve their rights to seek specific performance of this Agreement in a court or federal regulatory agency of competent jurisdiction.

Agreed to and accepted by Alabama Power Company,

By _____

Dated: _____

Agreed to and accepted by U.S. Department of Agriculture, through the U.S. Forest Service-National Forests in Alabama-Bankhead National Forest

By _____

Dated: _____