

Intergovernmental Agreement for Etowah HCP Implementation Organization

This Intergovernmental Agreement is made pursuant to the powers granted by the Georgia Constitution of 1983, Article 9, Section 3, Paragraph I, by and between Bartow County, Cherokee County, Cobb County, Dawson County, Forsyth County, Paulding County, Pickens County and the Cities of Acworth, Canton, Cartersville, Dallas, Dawsonville, Emerson, Jasper, Holly Springs, Kennesaw, Marietta, Roswell, Waleska, and Woodstock, political subdivisions of the State of Georgia, hereinafter called “local governments” and the University of Georgia (“UGA”) for the provision of services as described below:

In consideration of the mutual promises and benefits described herein, the local governments and UGA agree as follows:

1. Intent

1.1. The Etowah Habitat Conservation Plan, (“HCP”), represents a collaborative effort between local governments; state, regional, and federal agencies; universities; NGOs; developers; and other stakeholders to ensure that development in the Etowah River basin has a minimal impact on water quality and imperiled fish habitat. In order to meet this goal, the participating local governments agree to contract with the University of Georgia (“UGA”) for coordination and oversight of implementation of the HCP. Participation in this organization will also be a condition of the HCP, and therefore of the Incidental Take Permit issued by the U.S. Fish and Wildlife Service (“FWS”) to each local government.

2. Formation of the HCP Implementation Organization

2.1. An over-arching coordinating body, hereinafter called the “Etowah HCP Implementation Organization,” is hereby created to assist and interact with the above local governments in the implementation and administration of the ordinances and policies of the HCP. Enforcement of the terms of the Etowah HCP and Incidental Take Permit shall be legally the right and responsibility of FWS.

2.2. The HCP Implementation Organization will consist of no more than four (4) paid employees and a volunteer HCP Board consisting of one representative of each of the local governments participating in the HCP, as well as ex officio representatives of the FWS and from the Georgia Department of Natural Resources. UGA shall provide the paid staff, obtain office space, and provide office supplies and other resources necessary for the implementation and administration of the HCP. The HCP Board shall enter into a memorandum of understanding with UGA regarding these services.

2.2.1 The Board shall provide oversight to the staff of the Implementation Organization regarding their duties under this agreement.

2.2.2 The memorandum of understanding with UGA for services shall provide for UGA to have the following duties:

A. Provide staff to coordinate implementation of the HCP, provide training, provide administrative support, provide liaison to FWS and the Georgia Department of Natural Resources, provide advice on enforcement and administration of HCP, and other similar duties. Staff shall report to the HCP Board as that body determines.

B. Pay the benefits, travel expenses, and salary of staff.

C. Provide office space, supplies, vehicles (or reimbursement), and other necessary resources to allow staff to perform its function.

D. Provide administrative and financial reporting to the HCP Board. Provide an annual budget for approval.

E. Explore and procure additional funding for HCP implementation and monitoring; and assist the member local governments in seeking grants and funding for the HCP program.

2.3. The parties to this agreement agree that the HCP Board shall have the authority to supervise UGA in its performance of this Agreement, and to determine the details of the role of UGA in implementing and administering the HCP, and enter into the memorandum of understanding with UGA. The Board shall approve UGA's proposed budget for the performance of the functions specified under this contract. The Board shall have the authority to approve additional staff beyond four, or to reduce staff. The parties to this Agreement agree that the total annual fee for UGA's services will not exceed \$600,000.00 in the first year. The HCP Board shall have the authority to approve increases in the annual contract amount in future years, based on the budget submission of UGA.

3. Duties of the HCP Implementation Organization

3.1. Pursuant to the above-mentioned contract, the duties of the HCP Implementation Organization (Organization), as performed by the Board and more specifically the UGA staff, shall include the following:

3.1.1 Oversee implementation of the HCP. Such work shall include assisting participating local governments in the enforcement of HCP ordinances and policies. These ordinances and policies include, but are not limited to, stormwater management, erosion and sedimentation control, stream buffers, utility stream crossings, and road/stream crossings.

3.1.2 Coordinate the biological monitoring of the Etowah River basin to determine water quality and the status of fish populations.

3.1.3 Administer the adaptive management process. The adaptive management process is the means by which the Organization responds to changes in environmental or other conditions that affect the anticipated take level of

imperiled species. The adaptive management process shall occur at least annually, or sooner if threshold criteria are exceeded.

- 3.1.4 Train both local government staff and the development community regarding the HCP ordinances and policies. Additionally, the Organization shall train local government staff and officials in the implementation and enforcement of the HCP ordinances and policies.
- 3.1.5 Explore and procure funding for the HCP Implementation Organization, and assist the member local governments in finding and securing grants and other sources of funding to implement the HCP.
- 3.1.6 Collect implementation fees from local governments. Such fees will have been set by the Etowah HCP Steering Committee, approved by local governments, and shall be used to fund implementation of the HCP. The fee schedule is set forth in Exhibit A attached hereto. The parties to this Agreement agree that fees may be changed by a majority vote of the HCP Board. If a local government does not pay the required implementation fee, it may be removed from the HCP Board by approval of a majority of its members. This shall also subject the local government to potential revocation of its Incidental Take Permit by FWS.

4. Employees

- 4.1. UGA shall hire and manage the employees that implement the provisions of this agreement, and they shall remain employees of UGA. UGA shall develop job descriptions of such positions which shall be subject to approval by the HCP Board.

5. Amendments

- 5.1. Amendments to this Agreement may be proposed by any member of the Board or party to this Agreement and shall be adopted by affirmative resolution of the Board and of the individual legislative bodies of a majority of the member local governments.

6. Duration

- 6.1. This Agreement shall remain in full force and effect until:
 - 6.1.1 Twenty-five (25) years from the effective date of this Agreement; or
 - 6.1.2 All parties agree in writing to terminate this Agreement by resolution adopted by each.
- 6.2. Any local government shall be permitted to withdraw from this Agreement upon passage of a resolution to that effect and ninety (90) days notice to the other parties. The withdrawal of one party from this Agreement shall not terminate the Agreement. Withdrawal shall subject the local government to the consequences

of not being subject to the Incidental Take Permit issued by U.S. Fish and Wildlife Service.

- 6.3. UGA may withdraw from its role under this Agreement at any time with 90 days' notice. Such withdrawal shall terminate the Agreement upon the effective date of UGA's withdrawal, unless all remaining parties thereto agree to a substitute organization to fulfill UGA's role and adopt such amendment in writing.
- 6.4. UGA and any other subsequent provider of services serves at the discretion of the HCP Board and may be terminated upon a majority vote of the Board.

7. Legal Status

- 7.1. This Agreement may be executed in multiple counterparts by the local governments and UGA. Should any section or provision of this Agreement be declared by the courts to be unconstitutional or invalid, such declaration shall not affect the validity of the Agreement as a whole or any part thereof other than the part so declared to be unconstitutional or invalid.
- 7.2. The local governments represent that their signatories signing below are duly authorized to execute this agreement on behalf of the local government.

IN WITNESS WHEREOF, the parties have executed this agreement this _____ day of _____, 2006

EXHIBIT A

Implementation

The fee per disturbed acre shall be \$85.00 This fee shall be collected by each jurisdiction.

In the event there is no disturbed acreage in a jurisdiction in a particular year, no impact fee will be owed or collected.