IMPLEMENTING AGREEMENT

For the Fruit Growers Supply Company Multi-Species Habitat Conservation Plan

November 5, 2012

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1.0 PARTIES

The parties to this Implementing Agreement (IA) are Fruit Growers Supply Company (Permittee), the United States Fish and Wildlife Service (FWS), and the National Marine Fisheries Service (NMFS). In this Agreement, FWS and NMFS are collectively referred to as the Services.

2.0 RECITALS AND PURPOSES

2.1 Recitals. The parties have entered into this Agreement in consideration of the following facts:

(a) Commercial forest lands owned and managed by Permittee in Siskiyou County, California have been determined to provide, or potentially provide, habitat for the following listed species: the northern spotted owl, coho salmon and Yreka phlox;

(b) Commercial forest lands owned and managed by Permittee in Siskiyou County, California have also been determined to provide, or potentially provide, habitat for the following unlisted species: Chinook salmon and Klamath Mountains Province steelhead; and

(c) Permittee has developed a series of measures, described in the multi-species habitat conservation plan (HCP), to minimize and mitigate to the maximum extent practicable the effects of take of covered species incidental to Permittee's covered activities.

2.2 Purposes. The purposes of this Agreement are:

(a) To ensure implementation of each of the terms of the HCP;

(b) To describe remedies and recourse should any party fail to perform its obligations as set forth in this Agreement; and,

(c) To provide assurances to Permittee that as long as the terms of the HCP, the permits, and this Agreement are properly implemented, no additional mitigation will be required of Permittee with respect to covered species beyond requirements of the HCP and the permits, except as provided for in this Agreement or required by law.

3.0 DEFINITIONS

The following terms as used in this Agreement will have the meanings set forth below:

3.1 Terms defined in Endangered Species Act. Terms used in this Agreement and specifically defined in the Endangered Species Act (ESA) or in regulations adopted by

the Services under the ESA have the same meaning as in the ESA and those implementing regulations, unless this Agreement expressly provides otherwise.

3.2 Adjustment Area means privately held commercial timberland within the drainages that is included in the HCP area of analysis and that was not within the initial plan area[1]. This includes lands that are eligible for addition to the Plan Area through acquisition, subject to the terms and conditions imposed by the IA.

3.3 Changed circumstances means changes in circumstances affecting a covered species or the geographic area covered by the HCP that can reasonably be anticipated by the Permittee and that can reasonably be planned for in the HCP (e.g., the listing of a new species, or a fire or other natural catastrophic event in areas prone to such event.) Changed circumstances and the planned responses to those circumstances are described in Section 8.2.1 of the HCP. Changed circumstances are not unforeseen circumstances.

3.4 Covered activities means certain activities carried out by Permittee within the Plan Area that may result in incidental take of covered species. Covered activities means the following activities related to timber management, provided that these activities are otherwise lawful: activities associated with timber harvest, road construction and maintenance, silviculture, stand regeneration, harvest of minor forest products, quarrying stone and gravel for use in logging roads and landings, fire prevention, and those activities necessary to carry out all mitigation and conservation measures identified in the HCP and/or the permits. Covered activities are more specifically described in Chapter 2 of the HCP.

3.5 Covered Species means the following species, each of which the HCP addresses in a manner sufficient to meet all of the criteria for issuing an incidental take permit under ESA 10(a)(1)(B): northern spotted owl (federally listed as threatened), coho salmon Southern Oregon/Northern California Coasts evolutionarily significant unit (ESU) (federally listed as threatened), Yreka phlox (federally listed as endangered), Chinook salmon Upper Klamath and Trinity Rivers ESU (not currently federally listed), and Klamath Mountains Province steelhead ESU (not currently federally listed).

3.6 HCP means the multi-species habitat conservation plan prepared by Permittee for the Plan Area.

3.7 Listed Species means a species (including a subspecies, or a distinct population segment of a vertebrate species) that is listed as endangered or threatened under the ESA.

3.8 "Permit" or "Permits" means the incidental take permits issued by the Services to Permittee pursuant to Section 10(a)(1)(B) of the ESA for take incidental to

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[1] "Initial Plan Area", defined in Section 1.2.1 of the HCP, means Permittee's land ownership as of the effective date of the permits (152,163 acres in three management units as described above). Figure 1-1 of the HCP depicts the Initial Plan Area based on the ownership as of January 2009.

covered activities within the Plan Area as the permits may be amended from time to time.

3.9 **Permittee** means Fruit Growers Supply Company.

3.10 **Plan Area** means all privately owned commercial timberlands within the drainages that, over the term of the HCP, are either included within the initial plan area[2] or are eligible for coverage by the HCP as provided in the IA (see "Adjustment Area" above). This represents the entire acreage analyzed in the HCP and the Environmental Impact Statement (EIS) prepared pursuant to the National Environmental Policy Act (NEPA) to support the HCP's provisions, allowing for additions and deletions of lands from the Plan Area over the term of the HCP and permits. Lands within the Adjustment Area may be added to the HCP over the term of the permits without amendment, given the proper analysis and approval by the Services, and subject to the limitation that a maximum of 10 percent of the initial plan area (15,217 acres) can be added over the term of the permits.

3.11 **Take** means to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect any listed or unlisted wildlife covered species or attempt to engage in any such conduct. Harm means an act that actually kills or injures a fish or wildlife covered species, including an act that causes significant habitat modification or degradation where it actually kills or injures a fish or wildlife covered species by significantly impairing essential behavioral patterns, including breeding, spawning, rearing, migrating, feeding or sheltering.

3.12 **Unforeseen circumstances** means, pursuant to 50 C.F.R. 17.3 and 222.102, changes in circumstances affecting a species or geographic area covered by a conservation plan that could not reasonably have been anticipated by plan developers and the Services at the time of the conservation plan's negotiation and development, and that result in a substantial and adverse change in the status of the covered species.

3.13 **Unlisted species** means a species (including a subspecies, or a distinct population segment of a vertebrate species) that is not listed as endangered or threatened under the ESA.

4.0 OBLIGATIONS OF THE PARTIES

4.1 **Obligations of Permittee.** Permittee will fully perform all obligations assigned to it under the HCP, this Agreement, and the permits, including, in particular, those measures provided for under the Aquatic Species Conservation Program described in Section 5.2 of the HCP, the Terrestrial Species Conservation Program described in Section 5.3 of the HCP, all reporting and monitoring requirements, and HCP responses to changed circumstances described in Section 8.2.1 of the HCP.

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[2] Id.

4.2 Obligations of the Services. Upon execution of this Agreement by all parties, and satisfaction of all other applicable legal requirements, the Services will each issue Permittee a permit under Section 10(a)(1)(B) of the ESA, authorizing incidental take by Permittee of the listed fish and wildlife covered species under the jurisdiction of the respective Service resulting from covered activities within the Plan Area. Because take of listed plant species is not prohibited under the federal ESA and therefore is not authorized under the FWS Section 10(a)(1)(B) permit, the Yreka phlox is listed on the FWS Section 10(a)(1)(B) permit in recognition of the conservation measures and benefits provided for this plant species under the HCP. Any reference in this Agreement or in the HCP to incidental take or take of covered species shall, for the purpose of incidental take authorized under the FWS Section 10(a)(1)(B) permit, refer solely to species on the covered species list other than the Yreka phlox.

4.2.1 Permit coverage. The permits will identify all covered species. The permits will take effect for listed covered species at the time the permits are issued. Subject to compliance with all other terms of this Agreement and the HCP, the permits will take effect for an unlisted covered species upon the listing of such species as detailed in Section 8.2.1.2 of the HCP.

4.2.2 "No surprises" Assurances. Provided that Permittee has complied with its obligations under the HCP, this Agreement, and the permits, the Services can require Permittee to provide mitigation beyond that provided for in the HCP only in accordance with the "no surprises" regulations at 50 C.F.R.17.22(b)(5), 17.32(b)(5), 222.307(g).

4.3 Interim obligations upon a finding of unforeseen circumstances. If the Services make a finding of unforeseen circumstances, during the period necessary to determine the nature and location of additional or modified mitigation, Permittee will avoid contributing to appreciably reducing the likelihood of the survival and recovery of the affected species.

5.0 INCORPORATION OF HCP

The HCP and each of its provisions are intended to be, and by this reference are, incorporated herein. In the event of any direct contradiction between the terms of this Agreement and the HCP, the terms of this Agreement will control. In all other cases, the terms of this Agreement and the terms of the HCP will be interpreted to be supplementary to each other.

6.0 TERM

6.1 Initial Term. This Agreement and the HCP will become effective with regard to each permit, on the date the applicable Service issues the permit. As to each permit, this Agreement, the HCP, and the permit will remain in effect for a period of 50

years from issuance of the original permit, except as provided below.

6.2 Permit suspension or revocation. Either Service may suspend or revoke its respective permit for cause in accordance with the laws and regulations in force at the time of such suspension or revocation. Such suspension or revocation may apply to an entire permit, or only to specific (1) covered species, (2) covered activities, or (3) portions of the Plan Area. However, in the event of suspension or revocation, Permittee's obligations under this Agreement and the HCP will continue, until the applicable Service determines that all take of covered species that occurred under the suspended or revoked permit has been fully mitigated in accordance with the HCP. To the extent practicable, the Services shall use the procedure set forth in Section 6.3.2 in determining whether all take of covered species that occurred prior to permit suspension or revocation has been fully mitigated in accordance with the HCP. At a minimum, Permittee shall be required to comply with Section 8.4.7 of the HCP.

6.3 Relinquishment of the permit(s).

6.3.1 Generally. Permittee may relinquish either permit in accordance with the regulations of the Services in force on the date of such relinquishment. (These regulations are currently codified at 50 C.F.R. 13.26, 17.22(b)(7), 17.32(b)(7), 220.306(d).) Notwithstanding relinquishment of either permit, Permittee will be required to provide post-relinquishment mitigation for any take of covered species that the applicable Service determines will not have been fully mitigated under the HCP by the time of relinquishment. Permittee's obligations under the HCP and this Agreement under the relinquished permit will continue until the applicable Service notifies Permittee that no post-relinquishment mitigation is required, or that all post-relinquishment mitigation required by the Service is completed. In particular, Permittee acknowledges that most impacts to the northern spotted owl and its habitat will occur during the first decade of the FWS permit, and that, therefore, relinquishment of the FWS permit will result in a requirement for post-relinquishment mitigation in accordance with Section 8.4.7 (Early Termination) of the HCP. Unless the parties agree otherwise, the Services may not require more mitigation than would have been provided if Permittee had carried out the full term of the HCP.

6.3.2 Procedure for relinquishment. If Permittee elects to relinquish one or both permits before expiration of the full term of the HCP, Permittee will provide notice to the applicable Service(s) at least 120 days prior to the planned relinquishment. Such notice will include a status report detailing the nature and amount of take of the covered species, the mitigation provided for take of those species prior to relinquishment, and the status of Permittee's compliance with all other terms of the HCP. If relinquishment of the FWS permit occurs, then within 120 days after receiving a notice and status report meeting the requirements of this paragraph, FWS will give notice to Permittee identifying the post-relinquishment mitigation owed for impacts to the northern spotted owl. With regard to relinquishment of either permit, the applicable Service will give notice to Permittee stating whether any post-relinquishment mitigation is required for take of any other covered species. If post-relinquishment mitigation is owed for take

of any other covered species, the applicable Service will identify the amount and terms of such mitigation, and the basis for the Service's conclusions. If the applicable Service determines that no post-relinquishment mitigation is required for take of any other covered species, then all obligations assumed by the parties under the applicable permit and this Agreement with regard to such other covered species will terminate upon the Service's issuance of such notice. If Permittee disagrees with the applicable Service's determination regarding post-relinquishment mitigation for any covered species, the parties may choose to use the dispute resolution procedures described in Section 12 of this Agreement. Permittee will continue to carry out its obligations under the HCP until any such dispute is resolved. If the parties are unable to agree, the applicable Service will have the final authority to determine whether Permittee is required to provide any post-relinquishment mitigation for take of any other covered species covered by the relinquished permit and the extent of post-relinquishment mitigation required for take of any covered species covered by the relinquished permit. Notwithstanding the foregoing, Permittee does not waive any rights that may be available under the law to challenge the Services final determination. Upon permit relinquishment, no take of any covered species covered by the relinquished permit, with the exception of take required to perform outstanding mitigation obligations as determined by the applicable Service, will be authorized; however, the permit will not be cancelled until the applicable Service determines that all post-relinquishment mitigation has been completed, including, with regard to the FWS permit, all post-relinquishment mitigation required for impacts to the northern spotted owl.

6.4 Treatment of unlisted species. For purposes of Paragraph 6.2 and 6.3, unlisted covered species will be treated as though they were listed species in determining the amount of take and the mitigation required.

6.5 Extension of the permit. Upon agreement of the parties and compliance with all applicable laws, either permit may be extended beyond its initial term under regulations of the applicable Service in force on the date of such extension. If Permittee desires to extend a permit, it will so notify the applicable Service at least 180 days before the then-current term is scheduled to expire. Extension of a permit constitutes extension of the HCP and this Agreement for the same amount of time, subject to any modifications that the Service may require at the time of extension.

7.0 FUNDING - Permittee warrants that it has, and shall expend, such funds as may be necessary to fulfill its obligations under the HCP. Permittee shall promptly notify the Services of any material change in its financial ability to fulfill its obligations. In addition, in order to ensure that adequate funding will be provided to carry out Permittee's obligations under the permits and HCP, the following shall occur:

7.1 Permittee shall submit the Yearly Expenditure Report (YER) as provided in Paragraph 8.2. Prior to commencing any activity authorized by the HCP for a calendar year, FGS must provide the YER to the Services for their review and concurrence. If either Service does not concur that the YER (1) accurately identifies Permittee's

obligations under the HCP, IA and permits during the upcoming year, or (2) identifies adequate funding to carry out Permittee's obligations for that year, the parties shall meet as soon as practicable to resolve the dispute and may utilize the informal dispute resolution process provided in Section 12. If, after a period of 60 days to allow for discussion among the parties, the Services do not concur that the YER is adequate, the Services may suspend the permits in accordance with applicable regulations.

7.2 Permittee shall, as soon as practicable following of the issuance of a permit by either USFWS or NMFS, whichever occurs first, post Security in the form of a Letter of Credit (LOC) substantially in the form of Exhibit 1 hereto as an additional form of assurance that adequate funding will be provided for the HCP. The permits shall not become effective to authorize take until a LOC acceptable to the Services and CDFG has been posted.

7.3 The Principal Sum of the LOC shall be in the amount of $258,210. The LOC must be issued by a financial institution chartered by the United States or State of California, or by an insurance firm authorized to operate in the State of California and subject to the jurisdiction of the State of California in the conduct of its business. Effective on _____, and each five-year anniversary thereafter during the term of the permits, the amount of the LOC shall be adjusted (1) using the calculations contained in Section 7.4 below, and (2) for inflation using 2010 dollars as a baseline.

7.4 The Principal Sum of the LOC shall be determined as follows:

(a) Timber Harvest Plan (THP) Related Activities - Based on a list of THPs (as per California Public Resource Code Sections 4581-4592) located in Class A Watersheds within the Plan Area (Table 4-13 in Chapter 4 of the HCP) to be operated on during the calendar year. The amount will include a *road component* and an *area component.*

(i) *Road Component* shall be calculated according to the following schedule for all roads appurtenant to proposed THPs or Notices of Timber Operations, which lie within Class A designated lands in the Plan Area: (a) $5000/mile for all road segments within Class I WLPZs; (b) $2500/mile for all road segments within Class II WLPZs; (c) $1000/mile for all road segments within EEZs and ELZs which are established for Class III Watercourses, inner gorges and connected headwall swales; (d) for each new, reconstructed or temporary Class I watercourse crossing, additional security in the amount of $2000/crossing shall be required. Where an existing Class I watercourse crossing will be used without modification, additional security in the amount of $500/crossing shall be required; (e) for each new, reconstructed or temporary Class II watercourse crossing, additional security in the amount of $1000/crossing shall be required. Where an existing Class II watercourse crossing will be used without modification, additional security in the amount of $500/crossing shall be required; (f) for each new, reconstructed or temporary Class III watercourse crossing, additional security in the amount of $500/crossing shall be required. Where an existing Class III watercourse crossing will be used without modification, additional security in the amount of $250/crossing shall be required.

(ii) *Area Component* shall be calculated at the rate of $500/acre for all proposed WLPZs and those EEZs or ELZs which are established for Class III watercourses, inner gorges and connected headwall swales.

(b) Other Out-of-Pocket Expenses Identified in YER, Not THP-Related – Other out-of-pocket expenditures identified in a Services-approved YER related to implementation of those HCP tasks not covered by Section 7.4(a)(i) above.

(c) The minimum principal sum of the LOC shall be $200,000.

7.5 As provided in Section 7.12 below, the LOC will list CDFG as the beneficiary to the LOC. In so doing, the LOC will provide that it has been established pursuant to the terms of the HCP, and that it is intended by Permittee and the Services as security for the performance of out-of-pocket obligations under the HCP. The LOC shall include terms of presentment and drawing consistent with the Services' obligation to first engage in dispute resolution under Paragraph 12.5. In the event that either of the Services determines that there has been an instance requiring enforcement of Permittee's obligations under the HCP, the Service will provide CDFG with a certification of this fact in the form of Attachment A-1 to the LOC in Exhibit 1 hereto and direction on the manner, means and appropriate draw amount by which the outstanding obligation shall be addressed. The demand shall be limited to the amount reasonably determined by the relevant Service(s), in consultation with CDFG, as necessary to fully redress the instance of non-compliance. The Services shall provide written notice to Permittee within three (3) business days after CDFG makes the demand.

7.6 Notwithstanding the approved 50 year term of the HCP and permits, if the permits are revoked in accordance with Section 6.2 or relinquished in accordance with Section 6.3, Permittee shall maintain the LOC for 365 days following the expiration, revocation, or relinquishment of the HCP and permits. In the event that CDFG makes one or more drawings on the LOC during a calendar year and the permits are not revoked, relinquished, or expired at the end of the same calendar year, then Permittee shall replenish and renew the LOC for the next calendar year during the permit term in the Principal Sum specified above for that particular year in the term of the permits.

7.7 Should the issuer of the LOC become insolvent, file for bankruptcy, begin dissolution proceedings under State law, or otherwise become unable to provide reasonable assurances of its ability to honor the LOC, then Permittee shall (a) within ten (10) days from the date Permittee becomes aware that such circumstances exist provide notice thereof to the Services and CDFG of such an occurrence; and (b) within sixty (60) days from the date Permittee becomes aware that such circumstances exist secure a replacement LOC (substantially in the form of Exhibit 1 unless an alternative form is approved by the Services and CDFG) or an adequate performance and/or payment bond (if this form of security has been approved by the Services and CDFG) of the requisite amount. Permittee shall notify CDFG and the Services when a replacement LOC is in place. Upon receipt of such notice, the Services shall cancel the prior LOC in accordance with Section 7.11 herein below within ten (10) business days.

7.8 Within 365 days following the expiration, revocation, or relinquishment of the permits, the Services shall complete any determination with respect to outstanding obligations under the permits and cancel the LOC in accordance with Section 7.11 herein below if the LOC still in effect.

7.9 NMFS and USFWS agree that they will not each individually direct CDFG to draw upon the LOC for the same factual circumstance or event.

7.10 The Services agree that, prior to directing CDFG to make a draw of the LOC, they shall first provide Permittee with written notice of the failure to comply and an opportunity to cure pursuant to dispute resolution procedures provided in Paragraph 12.5 of this Agreement. If the Services determine that the dispute resolution process has not resolved the noncompliance within sixty (60) days of initiation by written notice, the Services shall consult with one another about the instance of non-compliance, the manner and means by which the noncompliance shall be remedied, and the appropriate sum to be drawn on the LOC to remedy the noncompliance. In the event there is a disagreement between NMFS and USFWS, the Regional Directors of the agencies shall consult to resolve any such dispute. However, nothing in this section limits the authority of either Service to direct CDFG to access up to Principal Sum of the LOC to redress the non-compliance. Further, nothing in this section affects the legal authorities of the Services as provided in Sections 12.4 and 13.8.

7.11 The Parties agree that, in order to cancel the LOC, the Services must either (a) execute a Certificate of Cancellation in form substantially similar to the form of Attachment B to the LOC in Exhibit 1 hereto if CDFG is no longer a beneficiary to the LOC; or (b) issue an Instruction of Cancellation in the form of Exhibit 2 hereto directing CDFG to execute a certificate of cancellation if CDFG is a beneficiary to the LOC.

7.12 CDFG will, subject to the execution of the Memorandum of Agreement among Permittee, the Services and CDFG in the form of Exhibit 3 hereto ("MOA"), and throughout the term of the MOA, be designated as a beneficiary on the LOC. CDFG may, subject to the limits of CDFG's authority, draw upon the LOC for all or any portion of the amount of the Security only in the event CDFG determines, after consultation with the Services, that the implementation of the HCP and permits is no longer consistent with those provisions of California Fish and Game Code section 2050 *et seq.* authorizing incidental take of any covered species that is also listed for protection under the California Endangered Species Act (a "draft Determination of Inconsistency"). In this event, CDFG may draw on the LOC, in the manner provided below, and through the use of a Certificate of Drawing in the form of Attachment A to the LOC in Exhibit 1 hereto, to pay for any outstanding obligations under the HCP necessary to bring Permittee's HCP or permits back into consistency.

(a) Prior to making a demand on the LOC, CDFG shall first provide Permittee with a written notice and justification of the draft Determination of Inconsistency and a sixty-day opportunity to consult with CDFG on the merits of the determination and/or a

cure acceptable to CDFG. In the event of an "Emergency," as defined herein below in Paragraph 7.12(f), CDFG may include within the written notice and justification of the draft Determination of Inconsistency a Declaration of an Emergency and explanation of the basis for such a Declaration of an Emergency. Under a Declaration of an Emergency, Permittee shall be provided with a seven-day opportunity to consult with CDFG on the merits of the draft Determination of Inconsistency and/or a cure acceptable to CDFG. If CDFG determines that Permittee has not resolved the circumstances giving rise to the draft Determination of Inconsistency within sixty (60) days of receiving written notice from CDFG (or within seven (7) days for a Declaration of Emergency), CDFG shall consult with both Services concerning the circumstances resulting in the draft Determination of Inconsistency, and the manner, means, and appropriate draw amount by which any outstanding obligations shall be remedied. In the event there is a disagreement between CDFG and either of the Services, the Regional Administrators of the Services and the Director of CDFG shall consult to resolve the dispute. If the Services and CDFG are unable to resolve the dispute after such consultation, notwithstanding the unresolved dispute, the Director of CDFG may draw on the LOC after providing notice to the Services and Permittee that the consultation is concluded.

(b) In the event CDFG draws upon all or any portion of the LOC, Permittee is required to replenish the amount of the LOC in accordance with Paragraph 7.4 above, provided that CDFG has provided the Services and Permittee with written confirmation that the Consistency Determination is still valid or has been restored. If the Consistency Determination is not still valid or restored, the LOC shall be replenished and maintained in accordance with subsection 7.13.

(c) Conversion of the LOC to a Bond is permissible if Permittee, the Services, and CDFG agree that Security in the form of a Bond is appropriate. In that event, the terms LOC and Bond shall have the same meaning under this Agreement.

(d) CDFG will not make a demand on the LOC to redress the same event for which the Services have made a determination under Paragraph 7.5 to enforce Permittee's obligations unless CDFG has made a draft Determination of Inconsistency after the completion of the corrective action by Permittee at the direction of the Services.

(e) There may be instances when the Services determine that there has been noncompliance with the HCP or permits that does not result in a Determination of Inconsistency by CDFG. In those instances, CDFG will consult with the Services for their direction on the manner, means and appropriate draw amount by which any mitigation debt shall be remedied.

(f) For purposes of this Paragraph 7.12(a), "Emergency" means a sudden, unexpected occurrence, in which the actions of Permittee pose a clear and imminent danger, demanding immediate action to prevent or mitigate loss of, or damage to, fish and wildlife subject to the Consistency Determination, where such actions are not specifically authorized in the HCP.

7.13 In the event CDFG withdraws its Consistency Determination at any time during the duration of the permits and HCP, or any party withdraws from the MOA provided in Paragraph 7.12(a) above, Permittee shall maintain the LOC provided in Paragraph 7.2 for 365 days following such withdrawal (the "Termination Period"). During the Termination Period, the Services and Permittee shall consult to determine whether (1) a new form of financial assurances will be incorporated into the HCP and this IA; (2) the LOC may be assigned to a mutually acceptable beneficiary other than CDFG; or (3) the form of financial assurances shall revert to an accounting reserve as provided in Paragraph 7.14 below. Any assignment of the LOC to a new beneficiary other than CDFG shall require the express written consent of both the Services and Permittee upon terms acceptable to the Services and Permittee. At the conclusion of the Termination Period, the Services shall instruct CDFG to cancel the LOC in accordance with Paragraph 7.11 herein above and the form of financial assurances shall revert to those provided in Paragraph 7.14 below unless otherwise agreed to in writing by the Services and Permittee.

7.14 In furtherance of the commitments made in Section 7.0 and in accordance with the terms provided above in Paragraph 7.13, if the LOC provided for in Sections 7.2 – 7.13 shall cease to be provided as an assurance for the performance of the HCP and permits, Permittee shall ensure that adequate funding will be provided for the components of the HCP with out-of-pocket costs, and Permittee shall, by January 1 of each year during the permit terms provide the Services with:

(a) A letter from Permittee's Vice-President with authority over the Permittee's Northern California forestry operations (the "VP CA Forestry Letter") verifying that for that fiscal year Permittee has budgeted an amount adequate to assure compliance with the HCP for that fiscal year as represented in the YER. Attached to the VP CA Forestry Letter shall be an acknowledgement from Permittee's Chief Financial Officer that the funds needed to fully implement the commitments of the HCP have been budgeted for that fiscal year, and Permittee's Board of Directors has approved the budget for that fiscal year.

(b) As part of the funding assurances process, Permittee shall continue to comply with Section 7.1 above.

8.0 MONITORING AND REPORTING

8.1 Planned periodic reports. As described in the HCP, Permittee will submit periodic reports describing its activities and results of the monitoring program provided for in the HCP.

8.2 Yearly Expenditure Report. By January 1st of each calendar year during the Permit Term, and following the adoption of Permittee's company budget by its Board of Directors (which normally occurs by the end of November of the prior year),

Permittee will provide the Services with a Yearly Expenditure Report (YER). The YER will identify all HCP obligations undertaken the prior year, and the funds expended to implement those obligations. The YER will also identify: (1) all HCP-required obligations Permittee will implement in the upcoming calendar year (e.g., monitoring, surveying, road work), (2) the funds budgeted for those purposes, (3) whether the budgeted funds are THP-related or not, and 4) all out-of-pocket expenditures required to carry out the obligations (e.g., hiring of outside specialists).

8.3 Other reports. Permittee will provide, within 30 days of being requested by the Services, any additional information in its possession or control related to implementation of the HCP that is requested by the Services for the purpose of assessing whether the terms and conditions of the permits and the HCP are being fully implemented.

8.4 Reporting of Land Transactions. Permittee shall notify the Services of any transfer of ownership of real property or harvesting rights therein subject to this Agreement at the time of transfer of ownership, except where prior notification occurs pursuant to Section 10. Such notice shall describe the lands to be transferred with particularity, identify the name and address of the transferee and include a detailed map showing the transferred lands.

8.5 Certification of reports. All reports will include the following certification from a responsible company official who supervised or directed preparation of the report:

> Under penalty of law, I certify that, to the best of my knowledge, after appropriate inquiries by myself and/or persons under my control of all relevant persons involved in the preparation of this report, the information submitted is true, accurate, and complete.

8.6 Confidential Information. Permittee may designate, by notifying the Services in writing, any trade secrets, commercial or financial information provided to the Services as exempt from disclosure by the Services pursuant to a request made under the Freedom of Information Act (FOIA), because such trade secret, commercial or financial information is privileged or confidential. Should such trade secret, commercial or financial information be responsive to a FOIA request, the Services will contact Permittee prior to releasing any such information so as to allow Permittee a reasonable opportunity to protect the information from release. This provision is not intended to limit the applicability of FOIA.

8.7 Monitoring by Services. Permittee acknowledges that the Services may conduct inspections and monitoring in connection with the permit in accordance with their regulations. See 50 C.F.R. 13.21(e)(2), 13.47, 220.301(j). Permittee shall cooperate fully with such inspections and monitoring.

9.0 CHANGED CIRCUMSTANCES

9.1 Permittee-initiated response to changed circumstances. Permittee will give notice to the Services within ten days after learning that any of the changed circumstances listed in Section 8 of the HCP has occurred. As soon as practicable thereafter, but no later than 30 days after learning of the changed circumstances, Permittee will modify its activities in the manner described in Section 8 of the HCP, to the extent necessary to mitigate the effects of the changed circumstances on covered species, and will report to the Services on its actions. Permittee will make such modifications without awaiting notice from the Services.

9.2 Service-initiated response to changed circumstances. If the Services determine that changed circumstances have occurred and that Permittee has not responded in accordance with Section 8 of the HCP, the Services will so notify Permittee and will direct Permittee to make the required changes. As soon as practicable thereafter, but no later than 30 days after receiving such notice, Permittee will make the required changes and report to the Services on its actions. Such changes are provided for in the HCP, and hence do not constitute unforeseen circumstances or require amendment of the permits or HCP.

10.0 LAND TRANSACTIONS

10.1 Acquisition of land by Permittee. Nothing in this Agreement, the HCP, or the permits limits Permittee's right to acquire additional lands. Acquisition of any lands either 1) outside of the Adjustment Area or 2) within the Adjustment Area, in excess of 15,217 cumulative acres over the Permit Term, will not be covered by the permits except upon amendment of the permits as provided in Section 11.2 of this Agreement. Acquisition of up to 15,217 cumulative acres over the Permit Term within the Adjustment Area may be covered by the permits through the minor modification process in Section 11.1.

If Permittee elects to add commercial timberlands to the Plan Area pursuant to the minor modification process, Permittee shall submit to the Services as part of the notice required under Section 11.1, a description of the lands it intends to add, along with a summary of relevant characteristics they share with existing Plan Area lands. Characteristics relevant to planning and implementation of the Plan may include geology and geomorphology, climate, vegetation, habitat conditions (including water temperature, channel and habitat type, large woody debris inventory, estuarine conditions, and northern spotted owl habitat typing), salmonid population estimates and Covered Species occurrence and status. The Services have presumed that commercial timberlands within the Adjustment Area share similar relevant characteristics and, therefore, that adding such lands to the Plan Area during the term of the permits will not likely result in adverse effects on the Covered Species different from those analyzed in connection with the original Plan. Unless the Services object in writing to Permittee within 60 days of receipt of the submission described herein, the subject lands shall be included in the Plan Area subject to the

15,217 cumulative acre limit on additional lands provided above. The Services may object to a Permittee election by providing a written statement with specific reasons why the Services believe the presumption described herein is incorrect. In that case, the Services and Permittee shall confer in good faith and pursue the dispute resolution mechanisms set forth in Paragraph 12.5 in an effort to reach an agreement. Until concurrence is reached, such lands will not become part of the Plan Area except pursuant to the amendment process set forth in Paragraph 11.2.

10.2 Disposal of land by Permittee. Permittee's transfer of ownership or control of any lands within the Plan Area will require prior review by the Services and an amendment of the permits in accordance with Section 11.2 of this Agreement, except that transfers of Plan Area lands may be processed as minor modifications in accordance with Section 11.1 of this Agreement if:

(a) The land will be transferred to an agency of the federal government and, prior to transfer, the Services have determined that transfer will not compromise the effectiveness of the HCP based on adequate commitments by that agency regarding management of such land;

(b) The land will be transferred to a non-federal entity that has entered into an agreement acceptable to the Services (e.g., an easement held by California Department of Fish and Game with the Services as third-party beneficiaries) to ensure that the lands will be managed in such a manner and for such duration so as not to compromise the effectiveness of the HCP;

(c) The land will be transferred to a non-federal entity that, prior to completion of the land transaction, has agreed to be bound by the HCP and assumed the permits as they apply to the transferred land or has obtained incidental take permits covering the transferred lands following normal permit procedures covering all species then covered by the permits; or

(d) The total amount of Plan Area lands to be transferred does not exceed 15,217 cumulative acres over the Permit Term, and the Services determine that each land transfer will not have a material impact on the ability of the Permittee to comply with the requirements of the HCP and the terms and conditions of the permits. In the case of a proposed land transfer that involves land committed as mitigation under the HCP or land where incidental take of northern spotted owls is authorized under the HCP, Permittee shall comply with the applicable mitigation requirements set forth in Section 8.4.6 of the HCP, unless the proposed transferee has assumed the permits as they apply to the transferred lands or obtained new incidental take permits for all species then covered by the permits on the transferred lands.

Except as provided herein, all other transfers of land from the Plan Area shall require an amendment to the Plan pursuant to Section 11.2.

10.3 Yreka Phlox. Prior to transferring any Plan Area lands that are habitat for

the Yreka phlox, Permittee shall notify the entity acquiring the land that the species occurs on such land and that the HCP includes measures to conserve the species.

11.0 MODIFICATIONS AND AMENDMENTS

11.1 Minor modifications.

(a) Any party may propose minor modifications to the HCP or this Agreement by providing notice to all other parties. Such notice shall include a statement of the reason for the proposed modification and an analysis of its environmental effects, including its effects on operations under the HCP and on covered species. The parties will use reasonable efforts to respond to proposed modifications within 60 days of receipt of such notice. Proposed modifications will become effective upon all parties' written approval. If, for any reason, a receiving party objects to a proposed modification, it must be processed as an amendment of the permits in accordance with Subsection 11.2 of this section. The Services will not propose or approve minor modifications to the HCP or this Agreement if the Services determine that such modifications would result in (1) operations under the HCP that are significantly different from those analyzed in connection with the original HCP, (2) adverse effects on the environment that are new or significantly different from those analyzed in connection with the original HCP, or (3) additional take not analyzed in connection with the original HCP.

(b) Minor modifications to the HCP and IA processed pursuant to this subsection may include but are not limited to the following:

(1) corrections of typographic, grammatical, and similar editing errors that do not change the intended meaning;

(2) corrections of any maps or exhibits to correct errors in mapping or to reflect previously approved changes in the permits or HCP;

(3) minor changes to survey, monitoring or reporting protocols; and

(4) those additional minor changes identified in Section 8.4.1 of the HCP that meet the criteria specified in subsection (a), including acquisition of up to 15,217 cumulative acres over the Permit Term within the Adjustment Area, as identified in Paragraph 10.1 above.

(c) Any other modifications to the HCP or IA will be processed as amendments of the permits in accordance with Subsection 11.2 of this section.

11.2 Amendment of the HCP, Permits and Agreement. The HCP, permits and this Agreement may be amended in accordance with all applicable legal requirements, including but not limited to the ESA, NEPA, and the Services' permit regulations. The party proposing the amendment shall provide a statement of the reasons

for the amendment and an analysis of its environmental effects, including its effects on operations under the HCP and on covered species.

12.0 REMEDIES, ENFORCEMENT, AND DISPUTE RESOLUTION

12.1 In general. Except as set forth below, each party shall have all remedies otherwise available to enforce the terms of this Agreement, the permits, and the HCP.

12.2 No monetary damages. No party shall be liable in damages to any other party or other person for any breach of this Agreement, any performance or failure to perform a mandatory or discretionary obligation imposed by this Agreement, or any other cause of action arising from this Agreement.

12.3 Injunctive and temporary relief. The parties acknowledge that the covered species are unique and that their loss as species would result in irreparable damage to the environment, and that therefore injunctive and temporary relief may be appropriate to ensure compliance with the terms of this Agreement.

12.4 Enforcement authority of the United States. Nothing contained in this Agreement is intended to limit the authority of the United States government to seek civil or criminal penalties or otherwise fulfill its enforcement responsibilities under the ESA or other applicable law.

12.5 Dispute resolution. The parties recognize that disputes concerning implementation of, compliance with, or termination of this Agreement, the HCP, and the permits may arise from time to time. The parties agree to work together in good faith to resolve such disputes, using the informal dispute resolution procedures set forth in this section, or such other procedures upon which the parties may later agree. However, if at any time any party determines that circumstances so warrant, it may seek any available remedy without waiting to complete informal dispute resolution.

12.5.1 Informal dispute resolution process. Unless the parties agree upon another dispute resolution process, or unless an aggrieved party has initiated administrative proceedings or suit in federal court as provided in this section, the parties may use the following process to attempt to resolve disputes:

(a) The aggrieved party will notify the other parties of the provision that may have been violated, the basis for contending that a violation has occurred, and the remedies it proposes to correct the alleged violation.

(b) The party alleged to be in violation will have 30 days, or such other time as may be agreed, to respond. During this time it may seek clarification of the information provided in the initial notice. The aggrieved party will use its best efforts to provide any information then available to it that may be responsive to such inquiries.

(c) Within 30 days after such response was provided or was due, representatives of the parties having authority to resolve the dispute will meet and negotiate in good faith toward a solution satisfactory to all parties, or will establish a specific process and timetable to seek such a solution.

(d) If any issues cannot be resolved through such negotiations, the parties will consider non-binding mediation and other alternative dispute resolution processes and, if a dispute resolution process is agreed upon, will make good faith efforts to resolve all remaining issues through that process.

13.0 MISCELLANEOUS PROVISIONS

13.1 No partnership. Neither this Agreement nor the HCP shall make or be deemed to make any party to this Agreement the agent for or the partner of any other party.

13.2 Notices. Any notice permitted or required by this Agreement shall be in writing. Any notice shall be delivered personally to the persons listed below, or shall be deemed given five (5) days after deposit in the United States mail, certified and postage prepaid, return receipt requested and addressed as follows, or at such other address as any party may from time to time specify to the other parties in writing. Notices may be delivered by facsimile or other electronic means, provided that they are also delivered personally or by certified mail. Notices shall be transmitted so that they are received within the specified deadlines.

Deputy Regional Director
United States Fish and Wildlife Service
2800 Cottage Way, Room W-2606
Sacramento, California 95825-1890
Telephone: 916-414-6464
Telefax: 916-414-6486

cc: Field Supervisor
Yreka Fish and Wildlife Service
1829 South Oregon Street
Yreka, California 96097
Telephone: 530-842-5763
Telefax: 530-842-4517

Regional Administrator
National Marine Fisheries Service
501 W. Ocean Blvd., Suite 4200
Long Beach, CA 90802

Telephone: (562) 980-4000
Telefax: (562) 980-4027

cc: National Marine Fisheries Service
1655 Heindon Rd.
Arcata, CA 95521
Telephone: (707) 825-5175
Telefax: (707) 825-4840

Vice President, Northern Operations
Fruit Growers Supply Company
1216 Fruit Growers Rd
Hilt CA 96044
Telephone: (530) 475-3452
Telefax: (530) 475-3398

cc: General Counsel
Fruit Growers Supply Company
14130 Riverside Drive
Sherman Oaks, CA 91423
Telephone: (818) 986-6480
Telefax: (818) 783-1941

13.3 Entire Agreement. This Agreement, together with the HCP and the permits, constitutes the entire agreement among the parties. It supersedes any and all other agreements, either oral or in writing, among the parties with respect to the subject matter hereof and contains all of the covenants and agreements among them with respect to said matters, and each party acknowledges that no representation, inducement, promise or agreement, oral or otherwise, has been made by any other party or anyone acting on behalf of any other party that is not embodied herein.

13.4 Elected officials not to benefit. No member of or delegate to Congress shall be entitled to any share or part of this Agreement, or to any benefit that may arise from it.

13.5 Availability of funds. Implementation of this Agreement and the HCP by the Services is subject to the requirements of the Anti-Deficiency Act and the availability of appropriated funds. Nothing in this Agreement will be construed by the parties to require the obligation, appropriation, or expenditure of any money from the U.S. Treasury. The parties acknowledge that the Services will not be required under this Agreement to expend any federal agency's appropriated funds unless and until an authorized official of that agency affirmatively acts to commit to such expenditures as evidenced in writing.

13.6 Duplicate originals. This Agreement may be executed in any number of duplicate originals. A complete original of this Agreement shall be maintained in the official records of each of the parties hereto.

13.7 No third-party beneficiaries. Without limiting the applicability of rights granted to the public pursuant to the ESA or other federal law, this Agreement shall not create any right or interest in the public, or any member thereof, as a third-party beneficiary hereof, nor shall it authorize anyone not a party to this Agreement to maintain a suit for personal injuries or damages pursuant to the provisions of this Agreement. The duties, obligations, and responsibilities of the parties to this Agreement with respect to third parties shall remain as imposed under existing law.

13.8 Relationship to the ESA and other authorities. The terms of this Agreement shall be governed by and construed in accordance with the ESA and applicable federal law. In particular, nothing in this Agreement is intended to limit the authority of the Services to seek penalties or otherwise fulfill their responsibilities under the ESA. Moreover, nothing in this Agreement is intended to limit or diminish the legal obligations and responsibilities of the Services as agencies of the federal government. Nothing in this Agreement will limit the right or obligation of any federal agency to engage in consultation required under Section 7 of the ESA or other federal law; however, it is intended that the rights and obligations of Permittee under the HCP and this Agreement will be considered in any consultation affecting Permittee's use of the Plan Area.

13.9 References to regulations. Any reference in this Agreement, the HCP, or the permits to any regulation or rule of the Services shall be deemed to be a reference to such regulation or rule in existence at the time an action is taken.

13.10 Applicable laws. All activities undertaken pursuant to this Agreement, the HCP, or the permits must be in compliance with all applicable state and federal laws and regulations.

13.11 Successors and assigns. This Agreement and each of its covenants and conditions shall be binding on and shall inure to the benefit of the parties and their respective successors and assigns. Assignment or other transfer of the permits shall be governed by the Services' regulations. Currently the Services' regulations regarding permit transfer are found at 50 C.F.R. 13.25(b) and 222.305.

13.12 Severability. If any provision of this Agreement or the HCP is found invalid or unenforceable, such provisions shall be enforced to the maximum extent possible, and the other provisions shall remain in effect to the extent they can be reasonably applied in the absence of such invalid or unenforceable provision.

13.13 Incorporation of Cal-Fire Archaeology Program Review Process. In order to comply with Section 106 National Historic Preservation Act requirements for the

protection of cultural and historic resources, the Permittee agrees to implement the applicable Cal-Fire Archaeology Program Review Process conducted during THP preparation and review. The Permittee also agrees to abide by Cal-Fire regulations regarding the protection of historic and cultural resources throughout the permit term.

IN WITNESS WHEREOF, THE PARTIES HERETO have executed this Implementing Agreement to be in effect as of the date that the Services issue the permits.

BY _____ Date 11-27-2012

Alexandra Pitts
Deputy Regional Director, Pacific Southwest Region
United States Fish and Wildlife Service
Sacramento, California

BY _____ Date 28 NOV 2012

FOR Rodney R. McInnis
Regional Administrator, Southwest Region
National Marine Fisheries Service
Long Beach, California

BY _____ Date 11/15/12

Charles Brown, Vice President
Northern Operations and Strategic Planning
Fruit Growers Supply Company

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