

IMPLEMENTING AGREEMENT

for the

STANFORD UNIVERSITY HABITAT CONSERVATION PLAN

by and between

THE BOARD OF TRUSTEES OF THE LELAND STANFORD JUNIOR UNIVERSITY  
UNITED STATES FISH AND WILDLIFE SERVICE

March 2013

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## 1.0 PARTIES

This Implementing Agreement is made by and between The Board of Trustees of the Leland Stanford Junior University (Stanford University) and the United States Fish and Wildlife Service (FWS).

These entities may be referred to as the “Parties” and individually as a “Party.” Stanford University may be referred to as the “Permittee.”

## 2.0 RECITALS AND PURPOSES

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

(a) Portions of Stanford University have been determined to provide, or potentially provide, habitat for the following Listed Species: California tiger salamander, California red-legged frog and San Francisco garter snake;

(b) The FWS has jurisdiction over the conservation, protection, restoration and management of native wildlife species, including the California tiger salamander, California red-legged frog, and San Francisco garter snake and the habitat necessary for biologically sustainable populations of these species within the United States pursuant to the Endangered Species Act (ESA), and other provisions of federal law;

(c) Permittee has developed a series of measures, described in the 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 to clarify the provisions of the HCP and the processes the Parties intend to follow to ensure the successful implementation of the HCP in accordance with the Permit and applicable federal 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 ESA or in regulations adopted by the FWS under the ESA have the same meaning as in the ESA and those implementing regulations, unless this Agreement expressly provides otherwise.

**3.2 “Agreement”** means this Implementing Agreement, which incorporates the HCP by reference.

**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 Parties 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 6.6 of the HCP. Changed Circumstances are not Unforeseen

Circumstances.

**3.4 “Covered Activities”** means certain activities carried out by Permittee on Covered Lands that may result in incidental Take of Covered Species. Covered Activities means the academic programs, ongoing operation and maintenance of Stanford University and a certain amount of future development described in section 3.0 of the HCP for which incidental Take is authorized by the FWS pursuant to the Permit.

**3.5 “Covered Lands”** means the lands owned by Permittee upon which the Permit authorizes incidental Take of Covered Species and the lands to which the HCP's conservation and mitigation measures apply. These lands are described in section 1.1.2 of the HCP.

**3.6 “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): California tiger salamander (*Ambystoma californiense*), California red-legged frog (*Rana aurora draytonii*), San Francisco garter snake (*Thamnophis sirtalis tetrataenia*).

**3.7 “ESA”** means the Federal Endangered Species Act of 1973, as amended (16 U.S.C § 1531 et seq.) and all rules, regulations and guidelines promulgated pursuant to that Act.

**3.8 “FWS”** means the United States Fish and Wildlife Service, an agency of the United States Department of Interior.

**3.9 “HCP”** means the habitat conservation plan prepared by Stanford University.

**3.10 “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.

**3.11 “Permit”** means the incidental Take Permit issued by the FWS to Permittee pursuant to Section 10(a)(1)(B) of the ESA for Take incidental to Covered Activities at Stanford University, as the Permit may be amended from time to time.

**3.12 “Permittee”** means Stanford University.

**3.13 “Stanford University”** means The Board of Trustees of Leland Stanford Junior University.

**3.14 “Take”** means to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect any listed or unlisted Covered Species or attempt to engage in any such conduct. Harm means an act that actually kills or injures a member of a Covered Species, including an act that causes significant habitat modification or degradation where it actually kills or injures a member of a Covered Species by significantly impairing essential behavioral patterns, including breeding, feeding or sheltering.

**3.15 “Unforeseen Circumstances”** means changes in circumstances affecting a Covered Species or geographic area covered by the HCP that could not reasonably have been anticipated by plan developers and the FWS at the time of the HCP's

negotiation and development, and that result in a substantial and adverse change in the status of the Covered Species.

#### **4.0 OBLIGATIONS OF THE PARTIES**

**4.1 Obligations of Permittee.** Permittee will fully and faithfully perform all obligations assigned to it under this Agreement, the Permit, and the HCP.

**4.2 Obligations of the FWS.** Upon execution of this Agreement by all Parties, and satisfaction of all other applicable legal requirements, the FWS will issue Permittee a Permit under Section 10(a)(1)(B) of the ESA, authorizing incidental Take by Permittee of the listed Covered Species resulting from Covered Activities on Covered Lands.

**4.2.1 Permit coverage.** The Permit will identify all Covered Species. The Permit will take effect for the Listed Covered Species at the time the Permit is issued.

**4.2.2 “No surprises” assurances.** Provided that Permittee has complied with its obligations under the HCP, this Agreement, and the Permit, the FWS 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).

**4.3 Interim obligations upon a finding of Unforeseen Circumstances.** If the FWS makes 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. This Agreement is intended to specify the obligations of the Parties under the HCP, recognizing that the HCP is a conservation plan and is intended to be incorporated into the Permit by reference. In the event of any direct contradiction, conflict or inconsistency between the terms of the HCP and the Permit, the terms of the Permit shall control. In the event of any direct contradiction, conflict or inconsistency between the terms of this Agreement and the Permit, the terms of the Permit shall control. In the event of any direct contradiction, conflict or inconsistency between this Agreement and the HCP, the terms of this Agreement shall control. In all other cases, the provisions of this Agreement and the HCP shall be interpreted to be consistent with and complementary to each other.

#### **6.0 TERM**

**6.1 Initial Term.** This Agreement and the HCP shall be effective upon the date that the FWS issues the Permit. This Agreement, the HCP and Permit will remain in effect for a period of fifty (50) years from the issuance of the original Permit, except as provided below.



## **6.2 Permit Suspension or Revocation.**

**6.2.1. Generally.** The FWS may suspend or revoke the Permit, in whole or in part, for cause in accordance with applicable laws and regulations in force at the time of such suspension or revocation. (These regulations are currently codified at 50 C.F.R. §§ 13.27, 17.22(b)(8), 17.32(b)(8)). Such suspension or revocation may apply to the entire Permit, or only to specific Covered Species, Covered Activities or portions of the Covered Lands. Except where the FWS determines that emergency action is necessary to avoid jeopardizing the continued existence of a Covered Species, it will not suspend or revoke the Permit without first (1) requesting the Permittee to take appropriate remedial actions, and (2) providing the Permittee with written notice of the facts or conduct which may warrant the suspension or revocation and an adequate and reasonable opportunity for the Permittee to demonstrate why suspension or revocation is not warranted, utilizing the procedures provided at 50 C.F.R. §§13.26, 13.27 or the relevant regulations then in effect. Permittee and the FWS will act in good faith to identify mutually agreeable modifications of the action(s) or conduct that may warrant a suspension or revocation, remedial actions, and any other actions necessary to avoid the suspension or revocation of the Permit. The Parties may choose to use the dispute resolution procedures described in section 12.5 of this Agreement to facilitate their good faith efforts to avoid Permit suspension or revocation.

**6.2.2 Circumstances Likely to Constitute Jeopardy to Species.** In the event of circumstances which appreciably reduce the likelihood of survival and recovery of a Covered Species in the wild, the FWS may suspend the Permit on an emergency basis, in whole or in part, without resorting to the procedures specified above. The period of such emergency suspension shall not last longer than ninety (90) days.

**6.2.3 Reinstatement of Suspended Permit.** In the event the FWS suspends the Permit, in whole or in part, as soon as possible but no later than ten (10) days after such suspension, the FWS shall meet and confer with the Permittee concerning how the suspension can be lifted. At the conclusion of any such conference, the FWS shall identify reasonable, specific actions, if any, necessary for the Permittee to effectively redress the deficiencies giving rise to the suspension. In making this determination, the FWS shall consider the requirements of the ESA and its regulations, the conservation needs of the Covered Species, the terms of the Permit and of this Agreement and any comments or recommendations received during the meet and confer process. As soon as possible, but not later than thirty (30) days after the conference, the FWS shall send Permittee written notice of any available, reasonable actions, necessary to effectively redress the deficiencies giving rise to the suspension. Upon performance or completion, as appropriate, of such actions, the FWS shall immediately reinstate the Permit. It is the intent of the Parties that in the event of any total or partial suspension of the Permit, all Parties shall act expeditiously and cooperatively to reinstate the Permit.

## **6.3 Surrender of the Permit.**

**6.3.1 Generally.** Permittee may surrender the Permit in accordance with the FWS' regulations in force on the date of such surrender. (These regulations are currently codified at 50 C.F.R. §§ 13.26, 17.22(b)(7), 17.32(b)(7).)

**6.3.2 Procedure for Surrender.** If Permittee elects to surrender the

Permit before expiration of the full term of the HCP, Permittee will provide notice to the FWS at least 120 days prior to the planned surrender. 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 surrender, and the status of Permittee's compliance with all other terms of the HCP. With regard to surrender of the Permit, the FWS will give notice to Permittee stating whether any post-surrender mitigation is required for Take of any Covered Species. If post-surrender mitigation is owed, the FWS will identify the amount and terms of such mitigation, and the basis for the conclusions. If the FWS determines that no post-surrender mitigation is required, then all obligations assumed by the Parties under the Permit and this Agreement will terminate upon the issuance of such determination. If Permittee disagrees with the FWS' determination regarding post-surrender mitigation for any Covered Species, the Permittee will provide the FWS with a written statement explaining the basis for any disagreement, and if applicable, alternative mitigation and the basis for the conclusion that such alternative mitigation is adequate. The Parties will act in good faith to resolve their differences regarding post-surrender mitigation, and may choose to use the dispute resolution procedures described in section 12.5 of this Agreement.

**6.4 Extension of the Permit.** Upon Agreement of the Parties and compliance with all applicable laws and regulations, the FWS may extend the Permit beyond its initial term. If Permittee desires to extend the Permit, it will so notify the FWS at least 180 days before the then-current term is scheduled to expire. Extension of the Permit constitutes extension of the HCP and this Agreement for the same amount of time, subject to any modifications that the FWS may require at the time of extension.

## **7.0 FUNDING**

**7.1 General funding obligation.** Permittee warrants that it has, and will expend, the funds identified in Section 6.5 of the HCP, as such funds may be necessary to fulfill its obligations under the HCP. Permittee will ensure that all required mitigation, conservation, monitoring, and reporting and adaptive management measures are adequately funded throughout the term of this Agreement. Permittee will promptly notify the FWS of any material change in Permittee's financial ability to fulfill its obligations. In addition to providing any such notice, Permittee will provide the FWS with an annual report for each year during the term of the Permit.

## **8.0 MONITORING AND REPORTING**

**8.1 Generally.** The Permittee will implement the HCP monitoring and adaptive management program as provided in this Section and further described in Section 4.5 and 4.6 of the HCP. The Permittee may delegate monitoring responsibilities to the FWS or qualified third parties, including but not limited to public agencies, private conservation organizations, the HCP Conservation Program Manager, Stanford University scientists and qualified University personnel, and contractors. However, the Permittee will remain responsible for ensuring that the monitoring and adaptive management program is fully funded and implemented.

The overarching purpose of the Stanford HCP monitoring and adaptive management program is to inform and refine HCP implementation so that it may achieve the HCP's biological goals and objectives.

**8.2 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 pursuant to Section 6.4 of the HCP.

**8.3 Other reports.** Permittee will provide, within 30 days of being requested by the FWS, any additional information in its possession or control related to implementation of the HCP that is requested by the FWS for the purpose of assessing whether the terms and conditions of the Permit and the HCP, including the HCP's adaptive management plan, are being fully implemented.

**8.4 Certification of reports.** All reports will include the following certification from a responsible Stanford University official who supervised or directed preparation of the report:

I certify that, to the best of my knowledge, after appropriate inquiries of relevant persons involved in the preparation of this report, the information submitted is true, accurate, and complete.

**8.5 Monitoring by FWS.** Permittee acknowledges that the FWS may conduct inspections and monitoring in connection with the Permit in accordance with their regulations. (See 50 C.F.R. § 13.47). Permittee shall cooperate fully with such inspecting and monitoring.

## **9.0 CHANGED CIRCUMSTANCES**

**9.1 Permittee-initiated response to Changed Circumstances.** Changed Circumstances identified and planned for in the HCP are specifically listed in section 6.6.2 of the HCP. In the event one of those specific Changed Circumstances occurs, Permittee shall implement the remedial conservation measures identified in section 6.6.2 for the specific Changed Circumstance. As long as the HCP is being properly implemented, the FWS shall not require Permittee to implement any conservation measures that are not listed in section 6.6.2 of the HCP to respond to Changed Circumstances. The Parties agree that section 6.6 of the HCP addresses all reasonably foreseeable Changed Circumstances and describes specific responses for them; other changes not identified as Changed Circumstances shall be treated as Unforeseen Circumstances.

Permittee shall notify the FWS in accordance with Section 6.6.2 of the HCP within 10 days upon learning that any of the Changed Circumstances listed in section 6.6.2 of the HCP has occurred. After learning of the Changed Circumstances, Permittee will initiate responsive actions in the manner described in section 6.6.2 of the HCP, to the extent necessary to mitigate the effects of the Changed Circumstances on Covered Species, and will report to the FWS on its actions. Permittee will initiate such actions without awaiting notice from the FWS. Such actions are provided for in the HCP, and hence do not constitute Unforeseen Circumstances or require amendment of the Permit or HCP.

**9.2 FWS-initiated response to Changed Circumstances.** If the FWS determines that a Changed Circumstance has occurred and that Permittee has not responded in accordance with section 6.6.2 of the HCP, the FWS shall notify Permittee specifically what Changed Circumstance has occurred, any known or suspected effects on the Covered Species, and the remedial measures that the FWS deems appropriate.

The Permittee will then have 30 days to respond to the notice, and if Permittee does not concur with the FWS, the FWS and Permittee will confer to develop a mutually agreeable solution. Following the meet and confer, Permittee shall make the required changes expeditiously. Within thirty (30) days after the meet and confer, Permittee shall report on its action(s). Such changes are provided for in the HCP, and hence do not constitute Unforeseen Circumstances or require amendment of the Permit or HCP.

**9.3 Listing of species that are not Covered Species.** In the event that a non-Covered Species that may be affected by Covered Activities becomes listed under the ESA, Permittee will implement the “no Take/no jeopardy/no adverse modification” measures identified by the FWS until the Permit is amended to include such species, or until the FWS notifies Permittee that such measures are no longer needed to avoid jeopardy to, Take of, or adverse modification of the critical habitat of the non-Covered Species.

## **10.0 ADAPTIVE MANAGEMENT**

**10.1 Permittee-initiated adaptive management.** Permittee will implement the adaptive management provisions in section 4.5 of the HCP, when changes in management practices are necessary to achieve the HCP’s biological objectives, or to respond to monitoring results or new scientific information. Permittee will make such changes without awaiting notice from the FWS, and will report to the FWS on any actions taken pursuant to this section.

**10.2 FWS-initiated adaptive management.** If the FWS determines that one or more of the adaptive management provisions in the HCP have been triggered and that Permittee has not changed its management practices in accordance with section 4.5 of the HCP, the FWS shall notify Permittee and specifically identify the adaptive management measure(s) that the FWS deems appropriate. The Permittee will then have 30 days to respond to the notice, and if Permittee does not concur with the FWS, the FWS and Permittee will confer to develop a mutually agreeable solution. Within 30 days after the meet and confer, Permittee will make the required changes and report to the FWS that initiated the adaptive management on its actions. Such changes are provided for in the HCP, and hence do not constitute Unforeseen Circumstances or require amendment of the Permit or HCP, except as provided in this section.

**10.3 Reductions in mitigation.** Permittee will not implement adaptive management changes that may result in less mitigation than provided for Covered Species under the original terms of the HCP, unless the FWS first provides written approval. Permittee may propose any such adaptive management changes by notice to the FWS, specifying the adaptive management modifications proposed, the basis for them, including supporting data, and the anticipated effects on Covered Species, and other environmental impacts. Within 120 days of receiving such a notice, the FWS will either approve the proposed adaptive management changes, approve them as modified, or notify Permittee that the proposed changes constitute permit amendments that must be reviewed under Section 11.2 of this Agreement.

**10.4 No increase in Take.** This section does not authorize any modifications that would result in an increase in the amount and nature of Take, or increase the impacts of Take, of Covered Species beyond that analyzed under the original HCP and

any amendments thereto. Any such modification must be reviewed as a permit amendment under Section 11.2 of this Agreement.

## **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 the other Party in accordance with Section 6.7.2 of the HCP. If, for any reason, a Party objects to a proposed modification, it must be processed as an amendment of the Permit in accordance with subsection 11.2 of this section. The FWS will not propose or approve minor modifications to the HCP or this Agreement if the FWS determines that such modifications would result in operations under the HCP that are significantly different from those analyzed in connection with the original HCP, adverse effects on the environment that are new or significantly different from those analyzed in connection with the original HCP, or additional Take not analyzed in connection with the original HCP.

(b) Minor modifications to the HCP and Agreement 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) correction of any maps or exhibits to correct errors in mapping or to reflect previously approved changes in the Permit or HCP;

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

(4) the addition of CDFG as a reviewing, consulting, participating, or approving party for any action that could result in take of a Covered Species, or benefit a Covered Species, listed as threatened or endangered under the California Endangered Species Act; and

(5) other changes that do not result in adverse effects to Covered Species beyond that analyzed in the HCP and the associated biological opinion, and do not limit the ability of the Permittee to achieve the biological goals and objectives of the HCP.

(c) Any other modifications to the HCP or Agreement will be processed as amendments of the Permit in accordance with subsection 11.2 of this section.

**11.2 Amendment of the Permit.** Amendments to the Permit may be proposed by any Party. 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. All Permit amendments are subject to all then applicable legal requirements, including but not limited to the ESA, the National Environmental Policy Act, and the FWS' permit regulations. All Permit amendments are subject to the written approval of the Permittee and the FWS and will not take effect until such written approval is provided to all

Parties.

**11.3 Future Land Transactions.** Nothing in this Agreement, the HCP or Permit limits the Permittee's right to acquire additional lands. Any lands that may be acquired, however, will not be covered by the Permit except upon amendment of the Permit as provided in Section 11.2 of this Agreement.

## **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 Permit, and the HCP.

**12.2 No monetary damages.** No Party shall be liable in monetary 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 Permit 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 to utilize any available legal or equitable 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 commenced an action in federal court, the Parties may use the following process to attempt to resolve disputes:

(a) The aggrieved Party will notify the other Party 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 CONSULTATIONS WITH OTHER PUBLIC AGENCIES**

**13.1 Section 7 Consultations with FWS.** Nothing in this Agreement is intended to alter the obligation of a federal agency to consult the FWS pursuant to Section 7 of ESA (16 U.S.C. §1536(a)). Unless otherwise required by law or regulation, in any consultation under Section 7 involving the Permittee and a proposed development project, enhancement, or other activity determined to be within the scope of the HCP on the Covered Lands that may adversely affect one or more Covered Species, the FWS shall ensure that the biological opinion for the proposed project is consistent with the biological opinion issued for the HCP and Permit, provided that the proposed project is consistent with the HCP and the Permit, and taking into account the best available scientific and commercial information regarding the Covered Species. Unless otherwise required by law or regulation, the FWS shall not impose measures on Permittee for Covered Species in excess of those that have been or will be required by this Agreement, HCP, and Permit. Before completing a Section 7 consultation for a Covered Activity in which the FWS proposes to require a measure beyond the requirements of this Agreement, the HCP, or the Permit, the FWS shall meet and confer with Permittee to discuss alternatives to the establishment of the measures that would meet the applicable legal or regulatory requirements.

### **14.0 MISCELLANEOUS PROVISIONS**

**14.1 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.

**14.2 Notices.** Any notice permitted or required by this Agreement shall be in writing, delivered personally, or by overnight mail, to the persons listed below, or shall be deemed given five (5) calendar days, excluding weekends and federally recognized holidays, 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 Party in writing. Notices may be delivered by facsimile or other electronic means, provided that they are also delivered personally or by overnight or certified mail. Notices shall be transmitted so that they are received within the specified deadlines.

Deputy Manager  
United States Fish and Wildlife Service  
Pacific Southwest Region  
2800 Cottage Way, Room W-2606

Sacramento, California 95825  
Telephone: 916-414-6464  
Facsimile: 916-414-6486

Stanford University  
Vice President for Land, Buildings and Real Estate  
3160 Porter Drive, Suite 200  
Palo Alto, CA 94304-8442

**14.3 No federal contract.** Notwithstanding any language to the contrary in this Agreement, this Agreement is not intended to create, and shall not be construed to create an enforceable contract between the FWS and Permittee under federal law with regard to the Permit. The sole purpose of this Agreement as between the FWS and Permittee is to clarify the provisions of the HCP and the processes the Parties intend to follow to ensure the successful implementation of the HCP in accordance with the Permit and applicable federal law.

**14.4 Availability of funds.** Implementation of this Agreement and the HCP by the FWS 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 FWS 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.

**14.5 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.

**14.6 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 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.

**14.7 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 FWS to seek penalties or otherwise fulfill its responsibilities under the ESA. Moreover, nothing in this Agreement is intended to limit or diminish the legal obligations and responsibilities of the FWS as an agency 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 Covered Lands.



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

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

**14.10 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 Permit shall be governed by the FWS' regulations in force at the time.

**14.11 Severability.** If any provision of this Agreement or the HCP is found invalid or unenforceable, such provision 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.

IN WITNESS WHEREOF, THE PARTIES HERETO have executed this Implementing Agreement to be in effect as of the date the Permit is issued.

BY \_\_\_\_\_ Date \_\_\_\_\_  
Deputy Manager  
United States Fish and Wildlife Service  
Pacific Southwest Region  
Sacramento, California

BY \_\_\_\_\_ Date \_\_\_\_\_  
Vice President, Land, Building, and Real Estate  
The Board of Trustees of the Leland Stanford Junior University  
Stanford, California