

When recorded return to:  
Department of Natural Resources  
Pacific Cascade Region  
Attn: Wayde Schaible  
601 Bond Rd  
P.O. Box 280  
Castle Rock WA 98611

**STATE OF WASHINGTON  
DEPARTMENT OF NATURAL RESOURCES  
HILARY S. FRANZ, Commissioner of Public Lands**

**EASEMENT EXCHANGE**

**Grantor(s):** State of Washington Department of Natural Resources/City of Camas

**Grantee(s):** City of Camas / State of Washington Department of Natural Resources

**Legal Description:** West half SW 1/4, and the SW 1/4 NW 1/4 and NE 1/4 NW 1/4, S10, T2N, R4E, W.M., State of Washington, Clark County

**Assessor's Property Tax Parcel or Account Number:** DNR parcel no.137913-000; City of Camas Parcel no. 137914-000

**DNR Easement No.** 55-097441/ 50-097442

This Agreement is between CITY OF CAMAS herein called "Exchanger" and the STATE OF WASHINGTON, acting by and through the Department of Natural Resources, herein called "State" dated as of \_\_\_\_\_ "Effective Date".

**Consideration.** In exchange for the mutual promises and covenants herein contained, and other good and valuable consideration, the mutual receipt and sufficiency of which is hereby acknowledged, the parties agree to the following terms and conditions.

**Conveyances.**

- A. To State. Exchanger hereby grants and conveys, to State, its successors and assigns, a permanent, non-exclusive easement over a parcel of land in Clark County legally described as set forth in Exhibit A, said easement to be sixty (60) feet in width running thirty (30) feet on each side of a center line of a road located approximately as shown on Exhibit B hereafter individually and collectively referred to as Easement Area or Road.
- B. To Exchanger. State hereby grants and conveys, to Exchanger, its successors and assigns, a permanent, non-exclusive easement over a parcel of land in Clark County legally described as set forth in Exhibit A, said easement to be sixty (60) feet in width running thirty (30) feet on each side of a center line of a road located approximately as shown on Exhibit B hereafter individually and collectively

referred to as Easement Area or Road.

**Purpose.** The easements are conveyed to provide ingress and egress to and from lands owned or hereafter acquired by each party for resource management and administrative activities, including, but not limited to:

- Hauling timber products, valuable materials such as sand, gravel, stone and minerals, special forest products such as tree boughs and brush,
- Performing management activities associated with forestlands, such as reforestation, routine ongoing inventory and stocking control,
- Leasing and managing communication, grazing and agricultural sites, and
- Leasing for resource activities consistent with county zoning and other terms and conditions included in this easement.

Authorized use shall include the right to travel, maintain, repair, construct or reconstruct each respective Easement Area subject to the restrictions set forth hereafter. No rights of public access are granted by either party under this Agreement.

**Nature of Estate.** These easements shall be deemed appurtenant to real property located in Clark County legally described as set forth in Exhibit C (hereafter Benefited Parcels); *Provided*, however, that either party may add after acquired property as a Benefited Parcel, subject to agreement between the parties pertaining to re-allocation of easement costs pertaining to such after acquired property.

**Reservations.** Each fee owner reserves all rights incident to fee ownership of the Easement Area on their respective lands and the profits thereon (including timber) and the right of use for any purpose including but not limited to the right to remove profits within the Easement Area on its land; the right at all times to cross and re-cross the Easement Area at any place on grade or otherwise; and the right to use, maintain, patrol, reconstruct or repair the Easement Area so long as it does not unreasonably interfere with the rights granted herein. Each fee owner may grant to third parties any and all rights reserved on its land.

Timber or other profits of the land may be removed by the easement holder where reasonably necessary to use the easement area, but the fee owner shall be entitled to the market value of the material removed.

**Export Restrictions.** Any export-restricted timber originating from state land under this Agreement shall not be exported until processed. Exchanger shall comply with all applicable requirements of WAC 240-15-015 (relating to the prohibitions on export and substitution), WAC 240-15-025 (relating to reporting requirements), and WAC 240-15-030 (relating to enforcement). All export restricted timber from state lands shall be painted and branded in compliance with WAC 240-15-030(2). If Exchanger knowingly violates any of the prohibitions in WAC 240-15-015, Exchanger shall be barred from bidding on or purchasing export restricted timber as provided. Exchanger shall comply with the Export Administration Act of 1979 (50 U.S.C. App. Subsection 2406(i)) which prohibits the export of unprocessed western cedar logs harvested from state lands.

**Compliance with Laws.** For all activities conducted pursuant to this Agreement, each party shall, at its own expense, comply with all applicable laws.

**Permittees.** Each easement holder may permit its respective employees, agents, contractors, subcontractors, licensees, lessees, purchasers of timber or other profits and their agents, herein individually referred to as "Permittee" and collectively referred to as "Permittees", to exercise the rights granted to the easement holder herein. Acts or omissions of the Permittees operating under this Agreement shall be deemed an act of the easement holder. Restrictions or requirements placed on the easement holder herein shall apply equally to the Permittees.

**Maintenance.** Maintenance is defined as work normally necessary to preserve and keep the Roads in their present condition or as hereafter improved. At a minimum, the Roads will be maintained to meet applicable forest practices standards set forth in Chapter 222-24 WAC as now written or hereafter amended.

When a Road is being used solely by one party, that party shall be solely responsible for maintaining that portion of the Road so used to the standards existing at the time sole use is commenced. During periods when either party and/or other parties with an easement or license jointly use the Road(s), or any portion thereof, the cost of maintenance and resurfacing shall be allocated among such users on the basis of their respective use including that of their Permittees.

During periods of joint maintenance, the users shall meet at times to be set by mutual agreement and establish necessary maintenance provisions. Such provisions shall include, but not be limited to the following:

- (1) The appointment of a maintainer, which may be one of the parties or any third party, to perform all recurrent maintenance;
- (2) The extent of resurfacing necessary to keep the Road to the standard originally constructed or thereafter improved, and to reduce environmental impacts; and
- (3) A method of payment by which each party using the Road or a portion thereof shall pay its pro rata share of the cost of maintenance and resurfacing.

**Repairs.** Each party shall repair, or cause to be repaired at its sole cost, that damage to the Road arising out of the easement holder's use, which is in excess of that which it would cause through normal and prudent usage. Damage caused by an unauthorized user shall be repaired at the expense of the easement holder if the easement holder is the sole user of the road, the fee owner if the fee owner is the sole user of the road and shared jointly if there is joint use of the road.

**Improvements.** The easement holder will not make improvements to the Easement Area without prior written consent of the fee owner, which shall not be unreasonably withheld. Unless the parties agree in writing to share the cost of improvements, improvements shall be at the sole expense of the improver. Any improvements to the Easement Area shall become the property of the fee owner unless otherwise agreed in writing.

**Compliance with Habitat Conservation Plan.** The Easement Area is located within an area that is subject to the State's Habitat Conservation Plan adopted in connection with Incidental Take Permit No. PRT-812521 as supplemented by Permit No. 1168 (collectively "ITP"). As long as the Habitat Conservation Plan remains in effect, Exchanger and all Permittees acting under Exchanger shall comply with the terms and conditions set forth in Exhibit D while operating on the Easement Area located on state owned land.

**Prior Right.** The easements granted by this Agreement are subject to all matters of public record.

**Operational Restrictions.** Site-specific operational requirements are listed in Exhibit E. Non-compliance with these requirements shall constitute a breach of the easement and may result in the fee owner requiring the easement holder to suspend operations until the breach is remedied.

**Construction/Operation Plan(s).** Thirty (30) days prior to any construction or reconstruction of a Road by an easement holder on lands of the fee owner, the easement holder will submit a written plan of construction to the fee owner outlining the construction or activity for approval, which shall not be unreasonably withheld. All construction and reconstruction shall comply with applicable state and local laws. In the event of an emergency that requires immediate action to protect person or property, an easement holder may take reasonable corrective action without prior notice to the fee owner, but in such case will notify fee owner within 24 hours.

**Notice of Operation.** When an easement holder or one of its Permittees plans to use any portion of the Road for the purpose of hauling timber or other profits, such party shall notify the fee owner thereof at least five (5) days prior to the commencement of such use, advising of the portion of Road to be used, the approximate dates when such use will begin and end, and of the approximate volumes of timber, forest products, or other profits to be hauled and promptly upon the completion of such use notify the other party thereof.

**Waste.** An easement holder shall not cause nor permit any filling activity to occur in or on the Easement Areas, except by prior written approval of the fee owner. An easement holder shall not deposit refuse, garbage, or other waste matter or use, store, generate, process, transport, handle, release, or dispose of any hazardous substance, or other pollutants in or on the Easement Areas except in accordance with all applicable laws. The term hazardous substance means any substance or material as those terms are now or are hereafter defined or regulated under any federal, state, or local law including but not limited to the Resource Conservation and Recovery Act (42 USC § 6901 *et seq.*), Comprehensive Environmental Response, Compensation and Liability Act (CERCLA 42 USC § 9601 *et seq.*), or the Washington Model Toxic Control Act (RCW 70.105D). An easement holder shall immediately notify the fee owner if the easement holder becomes aware of any release or threatened release of hazardous substance on the Easement Area or adjoining property. If a release of hazardous substance occurs in, on, under, or above the Easement Area arising out of any action of the easement holder or its Permittees, the easement holder shall, at its sole expense, promptly take all actions necessary or advisable to clean up, contain, and remove the hazardous substance in accordance with applicable laws.

**Survey Markers.** An easement holder shall not destroy any land survey corner monuments and reference points (including but not limited to corner markers, witness objects, or line markers) without prior written approval from the landowner, which shall not be unreasonably withheld. Monuments or reference points that must necessarily be disturbed or destroyed during road construction or maintenance activities must be adequately referenced and replaced, at the easement holder's cost, under the direction of a State of Washington Professional Land Surveyor, in accordance with all applicable laws of the State of Washington in force at the time of construction, including but not limited to RCW 58.24, and all Department of Natural Resources regulations pertaining to preservation of such monuments and reference points.

**Insurance.** The State of Washington, including all its agencies and departments, is self-insured for all exposures to tort liability, general liability, property damage liability and vehicle liability, as provided in statute, but only as respects the negligence of State.

Before using any of said rights granted herein and at its own expense, the Exchanger shall obtain and keep in force during the term of this agreement and require its Permittees to obtain while operating on the Easement area, the following liability insurance policies, insuring Exchanger against liability arising out of its operations, including use of vehicles. In addition State shall require its Permittees to comply with the same insurance requirements. The limits of insurance, which may be increased by mutual agreement of both parties, as deemed necessary, shall not be less than as follows:

- (a) Commercial General Liability (CGL) insurance with a limit of not less than \$1,000,000 per each occurrence or Personal Liability insurance, as applicable, under a personal liability policy, commercial liability insurance policy, or package property and liability insurance policy. If such CGL insurance contains aggregate limits, the general aggregate limits shall be at least twice the "each occurrence" limit, and the products-completed operations aggregate limit shall be at least twice the "each occurrence" limit.
- (b) Employer's liability ("Stop Gap") insurance, and if necessary, commercial umbrella liability insurance with limits not less than \$1,000,000 each accident for bodily injury by accident or \$1,000,000 each employee for bodily injury by disease.
- (c) Business Auto Policy (BAP) insurance, and if necessary, commercial umbrella liability insurance with a limit of not less than \$1,000,000 per accident, with such insurance covering liability arising out of "Any Auto".
- (d) Exchanger shall comply with all State of Washington workers' compensation statutes and regulations. Except as prohibited by law, Exchanger waives all rights of subrogation against State for recovery of damages to the extent they are covered by workers compensation, employers' liability, commercial general liability or commercial umbrella liability insurance. All contractors, subcontractors, or other permittees of Exchanger and State must comply with all State of Washington workers' compensation statutes and regulations.

All insurance should be purchased on an occurrence basis and should be issued by companies admitted to do business within the State of Washington and have a rating of A- or better in the most recently published edition of Best's Reports. Any exception to Exchanger's obligation to provide and maintain insurance (including its Permittees) shall be reviewed and approved in advance by the Risk Manager for the Department of Natural Resources. Any exception to the State's obligation to provide and maintain insurance (including its Permittees) shall be reviewed and approved by the Exchanger. If an insurer is not admitted, all insurance policies and procedures for issuing the insurance policies must comply with Chapter 48.15 RCW and 284-15 WAC.

The State of Washington, Department of Natural Resources, its elected and appointed officials, agents and employees shall be named as an additional insured by the Exchanger on all general liability, excess, and umbrella insurance policies required by this Agreement.

Before using any said rights granted herein, Exchanger shall furnish State with a certificate(s) of insurance, executed by a duly authorized representative of each insurer, showing compliance with the insurance requirements specified above. Certificate(s) must reference State's easement number. State shall furnish, upon request, a certificate of insurance showing compliance with the insurance requirements specified above.

State shall be provided written notice before cancellation or non-renewal of any insurance referred to herein, as prescribed in statute (RCW48.18 or RCW 48.15).

Exchanger shall include all Permittees as insureds under all required insurance policies or require separate certificates of insurance and endorsements for each. Exchanger shall require its Permittees to provide certificates of insurance to Exchanger and require Permittee's sub-contractors to be insured under the Permittee's policy or have in its possession separate certificates of insurance and endorsements for each. Failure of Permittees to comply with Exchanger's insurance requirements does not limit Exchanger liability or responsibility.

State shall require its Permittees provide certificates of insurance to State and shall require Permittee's sub-contractors to be insured under the Permittee's or have in its possession separate certificates of insurance and endorsements for each. Failure of Permittees to comply with State's insurance requirements does not limit State's liability or responsibility.

State and Exchanger shall furnish upon request certificates of insurance and endorsements for any or all Permittees.

All insurance provided by the Exchanger in compliance with this agreement shall be primary. Exchanger waives all rights against State for recovery of damages to the extent these damages are covered by general liability or umbrella insurance maintained pursuant to this agreement.

By requiring insurance herein, the parties do not represent that coverage and limits will be adequate to protect the other party, and such coverage and limits shall not limit the parties' respective liability and obligations under the indemnities and reimbursements granted in this agreement.

If Exchanger is self-insured, Exchanger certifies that it is self-insured for all the liability exposures, its self-insurance plan satisfies all State requirements, and its self-insurance plan provides coverage equal to that required in the Agreement. Exchanger shall provide to State evidence of its status as a self-insured entity. Upon request by State, Exchanger shall provide a written description of its financial condition and/or the self-insured funding mechanism. Exchanger shall provide State with at least thirty (30) days written notice prior to any material changes to Exchanger's self-insured funding mechanism.

**Indemnity by the State.** State shall defend, indemnify and hold harmless the Exchanger from all claims that arise out of the negligence of State or its Permittees in their use of the easement. A "claim" as used in this section means any financial loss, claim, suit, action, damage, or expense, including but not limited to attorneys' fees, attributable to bodily injury, sickness, disease or death, or injury to or destruction of tangible property including the resulting loss of use. Notwithstanding the foregoing, State's obligation to defend, indemnify, and hold harmless the Exchanger from any judgment, decree or arbitration award shall extend only to the percentage of negligence of State and its Permittees in contribution to such claim. State waives its immunity under Title 51 RCW only to the extent it is required to indemnify, defend and hold harmless Exchanger and its Permittees. This indemnification shall survive the expiration or termination of the easement.

**Indemnity by the Exchanger.** Exchanger shall defend, indemnify and hold harmless State from all claims that arise out of the negligence of the Exchanger or its Permittees in their use of the easement. A "claim" as used in this section means any financial loss, claim, suit, action, damage, or expense, including but not limited to attorneys' fees, attributable to bodily injury, sickness, disease or death, or injury to or destruction of tangible property including the resulting loss of use. Notwithstanding the foregoing, Exchanger's obligation to defend, indemnify, and hold harmless State from any judgment, decree or arbitration award shall extend only to the percentage of negligence of Exchanger and its Permittees in contribution to such claim. Exchanger waives its immunity under Title 51 RCW only to the extent it is required to indemnify, defend and hold harmless State and its Permittees. This indemnification shall survive the expiration or termination of the easement.

**Notice.** Unless otherwise specified herein, any notices required or permitted under this Agreement may be (i) delivered personally, (ii) delivered by a recognized national overnight delivery service, or (iii) mailed by certified United States mail, postage prepaid and return receipt requested. Notices to any party shall be directed to the address set forth below in this section, or to such other additional address as any party may specify by notice to the other party. Any notice delivered in accordance with this section shall be deemed given (a) in the case of personal delivery, on the day of delivery, (b) in the case of any notice delivered by a recognized national overnight delivery service, on the day of delivery to this service, or (c) in the case of any notice mailed by certified U.S. mail, upon receipt of the return receipt.

To State:  
DEPARTMENT OF NATURAL RESOURCES  
601 Bond Rd  
P.O. box 280  
Castle Rock WA 98611

To Exchanger:  
CITY OF CAMAS  
616 NE 4<sup>th</sup> Avenue  
Camas WA 98607

**Integrated agreement; modifications.** This Agreement constitutes the entire agreement and understanding of the parties with respect to the subject matter of the Agreement and supersedes all prior negotiations and representations. This Agreement shall not be modified except by written approval of both parties. The parties agree to execute any additional documents reasonably necessary to effectuate the provisions and purposes of this Agreement.

**Severability.** If any provision of this Agreement is held to be invalid or unenforceable, it shall not affect the validity of any other provision herein, and to this end the provisions of this Agreement are declared to be severable. If any such invalidity becomes known or apparent to the parties, the parties agree to negotiate promptly in good faith in an attempt to amend such provision as nearly as possible to be consistent with the intent of this Agreement.

**Waiver.** Failure of either party to insist upon the strict performance of any of the terms and conditions of this Agreement, or failure to exercise any rights or remedies provided in this Agreement or by law, or to notify the other party in the event of breach, shall not release the other party of any of its obligations under this Agreement, nor shall any purported oral modification or rescission of this Agreement by either party operate as a waiver of any of the terms hereof. No waiver by either party of any breach, default, or violation of any term, warranty, representation, agreement, covenant, right, condition, or provision of this Agreement shall constitute waiver of any subsequent breach, default, or violation of the same or other term, warranty, representation, agreement, covenant, right, condition, or provision.

**Successors and Assigns.** This Agreement shall be binding upon and shall inure to the benefit of the parties, their successors and assigns.

**Construction.** The terms of this Agreement shall be given their ordinary meaning unless defined herein and shall not be presumptively construed against either party.

**Exhibits.** All exhibits referenced in this Agreement are incorporated as part of the Agreement.

**Headings.** The headings in this Agreement are for convenience only and are not intended to, and shall not be construed to, limit, enlarge, or affect the scope or intent of this Agreement nor the meaning of any of its provisions.

**Counterparts.** This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, and all of which counterparts together shall constitute the same instrument which may be sufficiently evidenced by one counterpart. Execution of this Agreement at different times and places by the parties shall not affect its validity so long as all the parties execute a counterpart of this Agreement.



IN WITNESS WHEREOF, the parties hereto have executed this instrument, in duplicate to become effective as of the day and year first above written.

CITY OF CAMAS

Dated: \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
By:  
Title:  
Address:  
Phone:

STATE OF WASHINGTON  
DEPARTMENT OF NATURAL RESOURCES

Dated: \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
By: Angus W. Brodie  
Title: Deputy Supervisor of State Uplands



Approved as to Form only  
This 16th day of May, 2014  
by Ryan Jarvis  
Assistant Attorney General  
for the State of Washington

## INDIVIDUAL ACKNOWLEDGEMENT

State of Washington

County of \_\_\_\_\_

I certify that I know or have satisfactory evidence that \_\_\_\_\_ is the person who appeared before me, and said person acknowledged that (he/she) signed this instrument and acknowledged it to be (his/her) free and voluntary act for the uses and purposes mentioned in this instrument.

Dated: \_\_\_\_\_

(Seal or stamp)

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Print Name)

Notary Public in and for the State of Washington,  
residing at \_\_\_\_\_.

My appointment expires \_\_\_\_\_.

## REPRESENTATIVE ACKNOWLEDGEMENT

State of Washington

County of \_\_\_\_\_

I certify that I know or have satisfactory evidence that \_\_\_\_\_ is the person who appeared before me, and said person acknowledged that (he/she) signed this instrument, on oath stated that (he/she) was authorized to execute the instrument and acknowledged it as the \_\_\_\_\_ of \_\_\_\_\_ (City of Camas) to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

Dated: \_\_\_\_\_

(Seal or stamp)

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Print Name)

Notary Public in and for the State of Washington,  
residing at \_\_\_\_\_.

My appointment expires \_\_\_\_\_.

## STATE ACKNOWLEDGEMENT

State of Washington

County of Clark

I certify that I know or have satisfactory evidence that \_\_\_\_\_ is the person who appeared before me, and said person acknowledged that he/she signed this instrument, on oath stated that he/she was authorized to execute the instrument and acknowledged it as the \_\_\_\_\_ of the Department of Natural Resources of the State of Washington to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

Dated: \_\_\_\_\_

(Seal or stamp)

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Print Name)

Notary Public in and for the State of Washington,  
residing at \_\_\_\_\_.

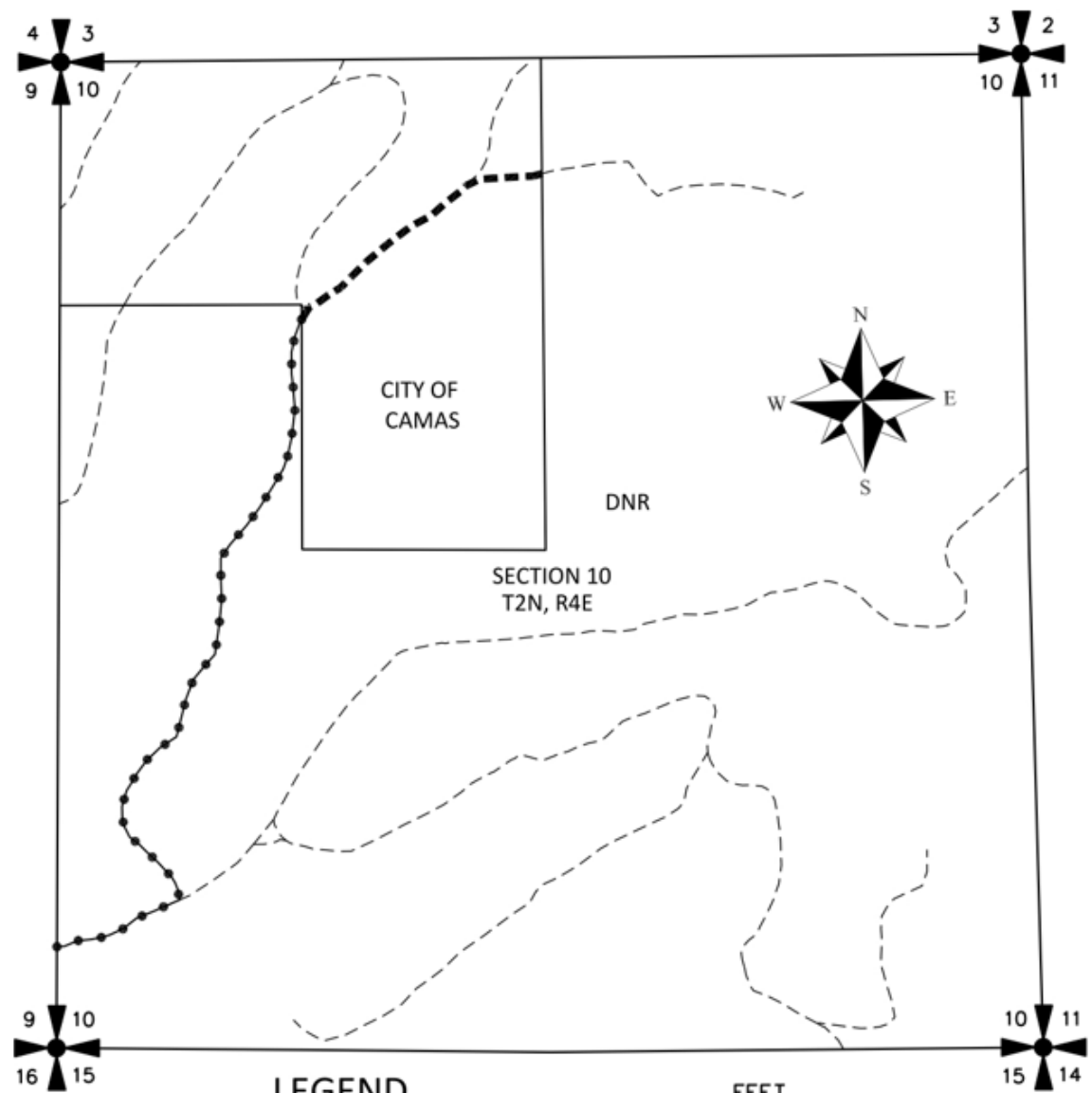
My appointment expires \_\_\_\_\_.

**EXHIBIT A**  
**Burdened Parcels**





**State (DNR):** The Southwest quarter of the Northwest quarter AND the West half of the Southwest quarter of Section 10, Township 2 North, Range 4 East, W.M., Clark County.

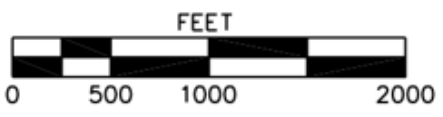
**City of Camas:** The East half of the Northwest quarter of Section 10, Township 2 North, Range 4 East, W.M., Clark County.

**EXHIBIT B**  
**Easement Area**



**LEGEND**

-  SECTION CORNER
-  EXISTING ROADS
-  60' WIDE EASEMENT AREA - STATE TO CITY OF CAMAS  
LENGTH: 4,240 FT.  
AREA: 5.8 ACRES
-  60' WIDE EASEMENT AREA - CITY OF CAMAS TO STATE  
LENGTH: 1,570 FT.  
AREA: 2.2 ACRES



**EXHIBIT C**  
**Benefited Parcels**

**State (DNR):** The Northeast quarter and the South half of Section 10, Township 2 North, Range 4 East, W.M., Clark County.

**City of Camas:** The Northwest quarter of the Northwest quarter AND the East half of the Northwest quarter of Section 10, Township 2 North, Range 4 East, W.M., Clark County.

**EXHIBIT D**  
**HCP Requirements**

- 1) Exchanger shall immediately notify State of the following:
  - a) That Exchanger has discovered locations of any species listed by the U.S. Fish and Wildlife Service as threatened or endangered species (listed species) under the Endangered Species Act as such list may be updated from time to time; and
  - b) That Exchanger has located any live, dead, injured, or sick specimens of any listed species.
- 2) Notification required in subsection 1) must in all circumstances occur as soon as practicable but in any event within 24 hours.
- 3) Exchanger may be required to take certain actions to help State safeguard the well-being of any live, injured or sick specimen of any listed species until the proper disposition of such specimen can be determined by State.
- 4) Any application for a Forest Practices Permit submitted by Exchanger for activities on the State Easement Area must identify that the State Easement Area is covered by the HCP.



## **EXHIBIT E**

### **OPERATIONAL REQUIREMENTS**

Examples (Delete examples before finalizing document):

- Roads may not be used when continued use will result in excessive damage due to weather or other conditions.
- No snow removal without permission from the landowner.
- Gates must be kept closed when not hauling.
- All methods of chemical weed control on State Land shall be approved in writing by State prior to beginning such activities. No aerial spraying is permitted on State land without prior approval by State.