

**WHATCOM COUNTY CONTRACT
INFORMATION SHEET**

Whatcom County Contract No.

2024 03015

Originating Department:	WC Park & Recreation
Division/Program: <i>(i.e. Dept. Division and Program)</i>	Administration (8010) / Administration (801000)
Contract or Grant Administrator:	Bennett Knox
Contractor's / Agency Name:	Sierra Pacific Land & Timber Co.
Is this a New Contract? If not, is this an Amendment or Renewal to an Existing Contract? Yes <input type="radio"/> No <input checked="" type="radio"/>	
Yes <input checked="" type="radio"/> No <input type="radio"/> If Amendment or Renewal, (per WCC 3.08.100 (a)) Original Contract #: _____	
Does contract require Council Approval? Yes <input checked="" type="radio"/> No <input type="radio"/> If No, include WCC: _____	
Already approved? Council Approved Date: _____ (Exclusions see: Whatcom County Codes 3.06.010, 3.08.090 and 3.08.100)	
Is this a grant agreement? Yes <input type="radio"/> No <input checked="" type="radio"/> If yes, grantor agency contract number(s): _____ CFDA#: _____	
Is this contract grant funded? Yes <input type="radio"/> No <input checked="" type="radio"/> If yes, Whatcom County grant contract number(s): _____	
Is this contract the result of a RFP or Bid process? Contract _____ Yes <input type="radio"/> No <input checked="" type="radio"/> If yes, RFP and Bid number(s): _____ Cost Center: _____	
Is this agreement excluded from E-Verify? No <input type="radio"/> Yes <input checked="" type="radio"/> If no, include Attachment D Contractor Declaration form.	
If YES, indicate exclusion(s) below: <ul style="list-style-type: none"> <input type="checkbox"/> Professional services agreement for certified/licensed professional. <input type="checkbox"/> Goods and services provided due to an emergency <input type="checkbox"/> Contract work is for less than \$100,000. <input type="checkbox"/> Contract for Commercial off the shelf items (COTS). <input type="checkbox"/> Contract work is for less than 120 days. <input type="checkbox"/> Work related subcontract less than \$25,000. <input type="checkbox"/> Interlocal Agreement (between Governments). <input type="checkbox"/> Public Works - Local Agency/Federally Funded FHWA. 	
Contract Amount:(sum of original contract amount and any prior amendments): \$ <u>\$100,000</u>	Council approval required for; all property leases, contracts or bid awards exceeding \$40,000 , and professional service contract amendments that have an increase greater than \$10,000 or 10% of contract amount, whichever is greater, except when: <ol style="list-style-type: none"> 1. Exercising an option contained in a contract previously approved by the council. 2. Contract is for design, construction, r-o-w acquisition, prof. services, or other capital costs approved by council in a capital budget appropriation ordinance. 3. Bid or award is for supplies. 4. Equipment is included in Exhibit "B" of the Budget Ordinance. 5. Contract is for manufacturer's technical support and hardware maintenance of electronic systems and/or technical support and software maintenance from the developer of proprietary software currently used by Whatcom County.
This Amendment Amount: \$ _____	
Total Amended Amount: \$ <u>\$100,000</u>	
Summary of Scope: _____	
This agreement between Sierra Pacific Land and Timber Company (Grantor) and Whatcom County and Western Washington University (grantees) provides for perpetual, non-exclusive easement for public access to Canyon Lake Community Forest across Sierra Pacific-owned lands. The agreement also includes a maintenance agreement stipulating County responsibility for proportional costs associated with road maintenance and resurfacing.	
Term of Contract: Perpetual	Expiration Date: n/a

Contract Routing: 1. Prepared by: <u>Bennett Knox</u>	Date: <u>2/13/2024</u>
2. Attorney signoff: <u>Chris Quinn (via e-mail)</u>	Date: <u>2/13/2024</u>
3. AS Finance reviewed: <u>Andrew Tan (via e-mail)</u>	Date: <u>2/13/2024</u>
4. IT reviewed (if IT related): _____	Date: _____
5. Contractor signed: <input checked="" type="checkbox"/>	Date: <u>2/5/24 or 1/24/24</u>
6. Executive contract review: _____	Date: _____
7. Council approved, if necessary: <u>AB2024-148</u>	Date: <u>2/20/24</u>
8. Executive signed: <input checked="" type="checkbox"/>	Date: <u>3/11/24</u>
9. Original to Council: _____	Date: _____

COUNTY ORIGINAL

WHATCOM COUNTY
CONTRACT NO.
202403015

File for Record at Request Of:

Whatcom County Parks and Recreation
3373 Mount Baker Highway
Bellingham, WA 98226

DOCUMENT TITLE:
EASEMENT AGREEMENT

GRANTOR:
Sierra Pacific Land & Timber Company, a Delaware Corporation

GRANTEES:
WHATCOM COUNTY, a Washington Municipal Corporation and
WESTERN WASHINGTON UNIVERSITY, a Washington Public Institution of Higher
Education

ABBREVIATED LEGAL DESCRIPTION

Burdened Properties: Portions of Sections 22, 23, 24, and 25, Township 39 North, Range 5 East,
and Portions of Section 19, 30, and 31 Township 39 North, Range 6 East, W.M.

Benefitted Property: Portions of Sections 4 and 5, Township 38 North, Range 6 East, and
Portions of Sections 29, 30, 32, and 33, Township 39 North, Range 6 East, W.M.

ASSESSOR'S TAX PARCEL NUMBERS:

Burdened Properties: 390522 458409 0000; 390522 458147 0000; 390522 498030 0000;
390523 209072 0000; 390523 195333 0000; 390523 334202 0000; 390524 335196 0000;
390524 196332 0000; 390524 464334 0000; 390525 191370 0000 (portion); 390619 240287
0000; 390630 222333 0000; 390630 157067 0000; 390631 375466 000

Benefitted Property: 390633 010265 0000

(Previously 380604 149141; 380604 287196; 380604 416418; 380605 067456; 380605 284419;
380605 645293; 390629 276230; 390630 183313; 390632 069334; 390632 126141; 390632
333466; 390632 350198; 390633 063199; 390633 132066; 390633 182220; 390633 266410;
390633 383328)

EASEMENT AGREEMENT

THIS EASEMENT AGREEMENT ("Agreement") is entered into as of the 5th day of February, 2024, ("Effective Date") by and among Sierra Pacific Land & Timber Company, a Delaware for Profit Corporation ("Grantor"), Whatcom County, a political subdivision of the State of Washington ("Grantee"), and Western Washington University, a Washington Public Institution of Higher Education ("Grantee") (together, "Grantees").

RECITALS

- A. WHEREAS, Grantor is the owner of the real property located in Whatcom County, Washington, legally described on attached **Exhibit A** (the "Burdened Properties").
- B. WHEREAS, Whatcom County and Western Washington University are the owners of the real property located in Whatcom County known as the Canyon Lake Community Forest, legally described herein and on attached **Exhibit B** (the "Benefitted Property").
- C. WHEREAS, Grantor desires to grant to Whatcom County and Western Washington University a perpetual, non-exclusive easement for public access across the Burdened Properties, which shall include vehicular access for forest management, maintenance, educational, cultural, scientific, recreational purposes, and related activities on and within the Benefitted Property.
- D. WHEREAS, Whatcom County will make a one-time payment to Grantor in the amount of \$100,000 for maintenance and improvement costs incurred by Grantor necessary to further this Agreement.
- E. WHEREAS, Grantor and Grantees agree that in exchange for this new Agreement, the parties will terminate the existing easement rights in Sections 23, 24, and 25, Township 39 North, Range 5 East, and in Section 30, Township 39 North, Range 6 East, W.M., described in the Statutory Warrantee Deed dated December 1, 1998, filed at Whatcom Auditor's Number 1981200071, as shown approximately on **Exhibit C hereto**, except with respect to the reserved easement rights in Section 30, Township 39 North, Range 6 East, W.M., described therein and as shown approximately therein on **Exhibit C thereto**.
- F. WHEREAS, Grantor and Grantees agree that this Agreement supersedes any prior agreement pertaining to the easement area addressed herein.

PROVISIONS

IN CONSIDERATION of the mutual covenants of the parties and other valuable consideration as provided herein, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. **Grant of Access Easement.** Grantor hereby grants and conveys to Whatcom County and Western Washington University ("Grantees"), and its successors and assigns, a permanent, non-exclusive easement (the "Easement") over the Burdened Properties, with said Easement area ("Easement Area") being forty (40) feet in width, twenty (20) feet either side of the centerline, across, over and through certain segments of the existing forest roads 5200 and 5230 (the "Road"), shown approximately in **Exhibit C**, which is located within and on the Burdened Properties.
 - a. **Conveyance Easement.** Grantor hereby conveys the Easement, free of charge, to Grantees subject to the terms of this Agreement.

- b. Purpose of Easement. The Easement is conveyed with the intent to provide ingress and egress, including motor vehicle access, to and from lands owned or hereafter acquired by Whatcom County and Western Washington University, and specifically including the Benefitted Property, for Permitted Activities. "Permitted Activities" shall include 1) recreational and maintenance activities including educational, cultural, and scientific activities and 2) forest management of Benefitted Property, as legally defined in **Exhibit B**.
- c. Maintenance/Improvement Costs. Within ninety (90) days of the Effective Date of this Agreement, Whatcom County agrees to pay the Grantor a one-time payment in the sum of \$100,000 for improvement and maintenance costs incurred by Grantor for the Easement Area necessary to further its use under Agreement.
- d. Revocable. This Easement is revocable by Grantor as provided in Section 1(l)(iv) and Section 4 of this Agreement. Grantees agree that Grantor may revoke this Easement, notwithstanding any expenditure, regardless of amount, Grantees may incur related to the use of Easement. Grantees acknowledge Grantor's limited right to revocation as a potential remedy available to Grantor under this Agreement.
- e. Non-exclusive. This Easement is non-exclusive and Grantor shall have the right to enter and use the Burdened Properties for any purpose that will not unreasonably interfere with the rights granted to Grantees under this Agreement.
- f. Encumbrances. The Easement is subject to all easements, leases, liens, conditions, restrictions, encumbrances, and claims of title ("Encumbrances") that affect the Burdened Properties. Grantor shall provide Grantees copies of Encumbrances before the Effective Date.
- g. No Warranty. Grantees accept the Easement (including, without limitation, all Grantor-owned improvements) in its present condition and without any representation or warranty by Grantor as to the condition of such Easement or the Burdened Properties. Grantor shall not be responsible for or liable to Grantees for any defect or change of conditions in the Easement or the Burdened Properties or any damage occurring thereto or for the existence of any violation of any municipal, county, state or federal law, order, rule, regulation or ordinance.
- h. Permittees. The Grantees may permit their respective employees, agents, contractors, licensees, lessees, herein individually referred to as "Permittee" and collectively referred to as "Permittees", to exercise the rights granted to the Grantees herein. Acts or omissions of the Permittees operating under this Agreement shall be deemed an act of the respective Grantee. Restrictions or requirements placed on the Grantees herein shall apply equally to the Permittees.

- i. Signs. At Whatcom County's sole cost, Whatcom County shall erect and maintain signage at each point of entry to the Easement Area that communicates Grantor's ownership of the Burdened Properties, trail use restrictions, user experience warnings, and prohibitions on campfires, fires, and flames of any kind, and smoking. Whatcom County shall also erect signs announcing closures of the Burdened Properties or Easement Area due to fire danger and Grantor operations as required in Section 3(e)(iii). Grantees may erect and maintain additional signs within the Easement Area to alert trail users to trail features, trail hazards, direction of travel, and location, as Grantees deem appropriate. Signage shall be timely approved by Grantor prior to signs being erected. Signs shall be erected by Whatcom County thirty (30) days prior to Grantees allowing public access to Easement Areas. Whatcom County shall erect and maintain conspicuous signs within the Easement Area as necessary to warn Permittees and public visitors of the existence of any known dangerous artificial latent condition, including, but not limited to, posts, bollards and any other structure intended to prevent entrance into any portion of the Easement Area or the Burdened Properties by motorized vehicular traffic.
- j. Limiting Access Outside Easement Area. Grantees shall take measures intended to restrict Permittees and public visitors from accessing portions of the Burdened Properties outside the Easement Area as follows:
 - i. At Whatcom County's sole cost, Grantees shall erect gates at the entrance to Grantor's spur roads known as 5200, 5232, 5234, 5240, 5250, 5260, and 5270. Gates shall be of a design consistent with the standards of construction for forest management roads in the area, including features as, but not limited to, 6" diameter steel members, concrete post footings, and a bell style locking mechanism. Locations shall be as close to the edge of the Easement Area as practical but installed in a location or in such a manner which four-wheel drive vehicles cannot bypass. Locations of gates shall be timely approved by Grantor prior to installation by Whatcom County. Gates shall be installed within one hundred eighty (180) days after the Effective Date of this agreement.
 - ii. Whatcom County shall be responsible for gate maintenance and repair due to vandalism, ensuring gates are closed and locked during hours the Easement Area is not open to Permittees or the public, and responding to Permittees and public visitors who become trapped behind locked gates.
 - iii. Whatcom County shall provide reasonable enforcement to address prohibited, unauthorized, and criminal activities by its Permittees and public visitors when using the Easement Area.
- k. Individual Use. Use of the Easement Area for recreational purposes shall be for individual use by Permittees and members of the public. The Easement Area may not be used by Grantees, its Permittees, or members of the public, for organized events or races without Grantor's prior written approval.

I. Recreational Use Immunity. Grantees and Grantor understand and agree to all of the following:

- i. Members of the public who use the Easement Area for Permitted Activities shall be allowed to do so without any fee charged by either party that would result in loss of immunity provided by RCW 4.24.210;
- ii. Grantor is entering into this Agreement at the request of Grantees;
- iii. Grantor is giving Grantees and its Permittees and members of the public permission to come upon the Easement Area to perform Permitted Activities, and Grantor does not expressly invite and has not in the past expressly invited Grantees or members of the public to enter the Easement Area or the Burdened Properties. Nothing in this Agreement shall be construed to constitute an invitation by Grantor to visit or come onto the Burdened Properties or the Easement Area; and
- iv. In the event a reviewing court fails to enforce this Section 1.I. and find that Grantor possesses Recreational Use Immunity, Grantor may terminate this Agreement and revoke the Easement. Grantees acknowledge Grantor's limited right to revocation as a potential remedy available to Grantor under this Agreement.

2. Obligations of Parties.

- a. Whatcom County shall pay the costs associated with recording of the Easement. Except as expressly provided in this Agreement, each party shall bear all other costs and expenses incurred by such party in connection with this transaction.
- b. Within ninety (90) days of the Effective Date of this Agreement, Grantees shall relinquish and reconvey to Grantor, its successors and agents, its permanent non-exclusive easement upon, over, under, through, across, and along rights-of-way approximately 8,260 feet in length and approximately 40 feet in width, as shown approximately in red cross-hatched, on Exhibit C.

3. Reservations.

- a. Reserved Rights. Grantor reserves the right to conduct the following activities upon the Burdened Properties and retains the following rights; *provided, however*, that Grantor shall make reasonable efforts to exercise its reserved rights in a manner consistent with Grantees' Permitted Activities:
 - i. to construct, reconstruct, maintain and use ditches, flumes, roads, trails, tracks, pipe, signal, telegraph, telephone, communication and

power transmission lines and facilities in, upon and over the Burdened Properties;

- ii. all water rights appurtenant to the Burdened Properties and the right to all water subject to appropriation and use thereon, except such water as may be reasonably necessarily and beneficially used by Grantees in connection with the Permitted Activities;
- iii. the exclusive rights to all minerals, including, but not limited to, oil, gas and hydrocarbon substances, within or underlying the Burdened Properties or that may be produced therefrom and all trees and timber thereon, including the right to cut and remove said trees and timber and to prospect on the Burdened Properties for said water and said minerals and to mine, drill for and remove the same; and
- iv. the right to use said Burdened Properties for any and all purposes consistent with Grantees' conduct of the Permitted Activities.

b. Gates. Grantor shall have the right to erect and maintain locked gates across any road entering the Burdened Properties. Grantor will provide Grantees a mechanism to open Grantor's gates within the Easement Area. Grantees shall keep all gates locked at all times when not actively entering or exiting a gated section of the Easement Area.

c. Damage or Destruction. If Grantees or their Permittees cause the destruction of any of Grantor's land, crops, grass, trees, livestock, improvements or other property on the Burdened Properties in excess of the impact reasonably expected under the Permitted Activities, Grantees shall promptly repair or pay the full replacement value of such damaged property (regardless of amortization) to Grantor, at Grantor's reasonable discretion. Notwithstanding the above, or elsewhere in this Agreement, the extent of the liability Western Washington University may assume under this Agreement is limited to that covered under the State of Washington Tort Claims Act and Self-Insurance Liability Program ("SILP"). Grantees or their Permittees shall not destroy any land survey monuments marking local control points, geodetic control points, and land boundary survey corners on the Burdened Properties without prior written approval from Grantor, which shall not be unreasonably withheld. Land survey monuments on the Burdened Properties that must necessarily be disturbed or destroyed during construction or maintenance activities authorized hereunder must be adequately referenced and replaced, at the Grantees' expense, under the direction of a professional land surveyor licensed in the State of Washington, 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 ("DNR") regulations pertaining to preservation of such monuments. As directed under Chapter 332-120 of the Washington Administrative Code, a land surveyor or engineer must submit an application with the Department of Natural Resources for permission to temporarily remove or destroy a survey monument.

- d. **Condemnation.** If any portion of the Burdened Properties shall be taken or condemned for public use (including conveyance by deed in lieu of or in settlement of condemnation proceedings), this Agreement shall automatically terminate on the sooner of the order of possession or the date of the final order of condemnation. Grantees may receive compensation from the condemning governmental agency only for the taking and damaging of Grantees' improvements on the Easement Area. Any other compensation or damages arising out of such taking or condemnation awarded to Grantees shall be assigned by Grantees to Grantor.

- e. **Closures:**
 - i. **Fire Closures.** Grantor reserves the right to close the Burdened Properties and the Easement Area to entry and prohibit Permitted Activities during periods of high fire danger, in Grantor's sole and absolute discretion. Grantor shall communicate closures due to high fire danger to Grantees in writing at least twenty-four (24) hours in advance, whenever possible.

 - ii. **Operational Closures.** Grantees acknowledges that Grantor manages the Burdened Properties for revenue producing renewable resource extraction, and that Grantor will periodically require temporary access restrictions during land management activities, such as road construction, forest stand management, timber felling and extraction, and other activities. Grantor reserves the right to close the Easement Area or portions thereof to entry and/or prohibit the Activity during periods of such land management activities, in Grantor's sole and absolute discretion. Grantor shall communicate closures to Grantees in writing ninety (90) days in advance of such forestry operations, except in event of an emergency.

 - iii. **Public Notice of Closures.** Upon written notice of fire or operational closures, Whatcom County shall provide the public notice of the closure of the Easement Area within seventy-two (72) hours of notification, by erecting and maintaining temporary closure signs at each point of access to the Easement Area, at trailhead kiosks and at logical trail junctions enabling trail users to avoid the closed area. Whatcom County shall, as reasonably possible, use external website

communication postings available to the public, social media postings, and other methods, to communicate closures to potential public users of the Easement Area.

iv. In addition to Grantees' right hereunder to establish hours of access for Permittees and members of the public, Grantees shall have the right to close the Easement Area to its Permittees and members of the public at any time in the event Grantees determine, in their sole discretion, that such a closure is necessary for operational or safety reasons and Grantees shall notify Grantor of any such closures as soon as reasonably possible so that Grantor's actions do not inadvertently interfere with such closure by Grantees.

f. Weather Damage. The Easement Area shall not be used when continued use will result in excessive long-term resource damage due to high soil moisture, freeze-thaw conditions, or other similar conditions and Grantor may close the Easement Area to Grantees' Permittees and the public during any such period.

g. Restrictions on Use.

h. Prohibited Activity. Unless previously agreed to in writing by Grantor, Grantees shall not allow or conduct any of the following activities in the Easement Area:

- i. smoking, campfires, fire and flame of any kind;
- ii. exploring for, mining, extracting or removing any minerals of any kind or character, including, without limitation, oil, natural gas, hydrocarbon substances, geothermal steam, brines or minerals in solution, quarry, stone, sand or gravel;
- iii. creating or leaving any waste of any kind or nature whatsoever;
- iv. removing any earth or soil;
- v. destroying, cutting or removing any standing or lying timber, trees or firewood, except as reasonably required for construction, maintenance, and repair of the Easement Area by Grantees;
- vi. creating or causing any nuisance;
- vii. committing any unlawful or immoral acts; and

viii. displaying any sign or notice other than as specified in this Agreement.

i. Benefitted Property. As legally described in Exhibit B, the benefit of the Easement as to the Grantees is intended to, and does, include that land known as Canyon Lake Community Forest.

j. Grantor's Right to Relocate the Easement Area. Grantor shall be entitled to relocate the Easement Area at any time or times so long as the Grantees' access to the Benefitted Properties for Permitted Activities is not thereby unreasonably restricted or impaired.

k. Insurance.

i. Grantees, as political subdivisions of the State of Washington, may be self-insured for all exposures to tort liability, general liability, property damage liability, and vehicle liability arising out of the Grantees' negligence, as provided in statute. Grantees shall provide Grantor with a certificate of insurance or other proof of coverage prior to commencing Permitted Activities within the Easement Area.

ii. Workers' Compensation insurance, which includes a waiver of subrogation if jurisdictionally permissible, conforming to all applicable statutory requirements of the State of Washington;

iii. Regardless of the minimum statutory requirements of the State of Washington, Employer's Contingent Liability insurance which includes a waiver of subrogation if jurisdictionally permissible, with minimum limits of no less than \$1,000,000;

iv. Commercial General Liability ("CGL") insurance shall be maintained with minimum limits of \$1,000,000 each occurrence; and \$1,000,000 General Aggregate. CGL insurance shall include a waiver of subrogation if jurisdictionally permissible, be written on ISO occurrence form CG 00 01 or equivalent and shall cover liability arising from premises, operations, independent contractors, personal injury and advertising injury, and liability assumed under an insured contract (including the tort liability of another assumed in a business contract). Such CGL insurance shall name and include Grantor and all parents, subsidiaries and affiliates of Grantor, and their respective officers, directors, agents and employees (all of the foregoing collectively, the "Additional Insureds"), as additional insureds using ISO additional insured endorsement CG 20 10 04 13 or its equivalent; and

v. Commercial Automobile Liability ("CAL") insurance shall be maintained with minimum limits of \$1,000,000 per accident. CAL insurance shall include a waiver of subrogation if jurisdictionally permissible and shall include coverage for any owned, non-owned, leased or hired vehicle written on an insurance industry standard form (CA 00 01) or equivalent. Such CAL insurance shall name and include Grantor as additional insureds.

l. All policies and coverage procured by Grantees as required herein (collectively, "Policies") shall include a separation of insureds clause. The Policies shall not include a deductible in excess of \$10,000 per loss without Grantor's written approval. The Policies shall be endorsed to include (i) a waiver of subrogation where required, (ii) for any coverage as to which any Additional Insured is named and included as an additional insured, a provision that specifies the Policies are primary and that any insurance or self-insurance maintained by Grantor or any other Additional Insured shall not contribute with it and (iii) that the applicable waiver of subrogation shall not affect the Grantor's right, or any other additional insured's right, to recover under such insurance policy. If Grantor or any other Additional Insured has other insurance that is applicable to any loss on an excess or contingent basis, the amount of Grantees' liability under the Policies cannot be reduced by the existence of such other insurance. Grantees shall provide Grantees' insurance agent or broker with a complete copy of all insurance requirements set forth in this Section 3.

m. All Policies described shall be procured to the satisfaction of Grantor and shall be underwritten by an insurer acceptable to Grantor (must be rated A-: VII or better in the A.M. Best's Key Rating Guide and licensed to do business in the state in which the Property is located). At Grantor's election, Grantor shall be entitled to inspect original Policies or require complete certified copies of Policies at any time. Prior to entering the Property, Grantees shall furnish Grantor with certificates of insurance and endorsements of all required insurance for Grantees. Such certificate of insurance shall provide that the coverage required herein shall not be cancelled or reduced except by written notice to Grantor, giving at least thirty (30) days prior to the effective date of such cancellation or reduction. In the event the coverage evidenced by any such certificate is cancelled or reduced, Grantees shall procure and furnish to Grantor, before the effective date of such cancellation or reduction, a new certificate conforming to the above requirements. If Grantees have failed for any reason to secure the Policies to the satisfaction of Grantor upon execution of this Agreement, or if Grantor has not been furnished a certificate of insurance as aforesaid within twenty (20) days from the Effective Date, then Grantor shall have the right, in addition to any other remedy available to it, to (i) immediately terminate this Agreement on

written notice to Grantees or (ii) secure any or all of said Policies and Grantees shall immediately reimburse Grantor for the cost of such Policies upon request by Grantor.

- n. If Grantees' CAL required by Section 3(a)(iv) above covers scheduled automobiles only, in no event shall Grantees operate, on any property owned by Grantor or any parent, subsidiary or affiliate of Grantor, any automobile that is not specifically listed on the schedule of insured automobiles issued by Grantees' insurer as required in this Section 3.
- o. Grantees shall require any subcontractors to maintain in full force and effect commercially reasonable insurance coverage substantially similar in form and substance to the insurance coverage required of Grantees in this Section 3, including applicable waiver of subrogation and additional insured requirements, as appropriate to the nature of subcontractors' operations, each with minimum limits of no less than \$2,000,000 each occurrence and/or general aggregate, as applicable, unless otherwise agreed to by Grantor in writing. Grantees shall be solely responsible for monitoring compliance by such subcontractors with the aforementioned insurance requirements.
- p. Notwithstanding any other provision of this Agreement, and separate and apart from any obligation of Grantees to indemnify, if Grantees' insurance carrier fails or refuses to defend or indemnify pursuant to an additional insured endorsement because of a failure to obtain an additional insured endorsement, policy deductible, self-insured retention or unauthorized coverage deletion, Grantees shall stand in the place of its insurer and defend and indemnify to the same extent that an insurer issuing the coverage as required herein would under applicable law.
- q. Whatcom County, as a Grantee herein, may satisfy its insurance obligations in Section 3 through Whatcom County's participation in a joint self-insurance program, through the Washington Counties Risk Pool (WCRP).
 - i. Whatcom County is a member of the Washington Counties Risk Pool (the "Pool"), as authorized by RCW 48.62.031, and the Whatcom County is covered by the Pool's Joint Self-Insurance Liability Program. The Pool's Joint Self-Insurance Liability Program was created by interlocal cooperative agreement amongst the Pool's member counties to share risks by "jointly, self-insuring" certain third-party liabilities. The Pool is not an insurance company. Claims that are covered under a Memorandum of Liability Coverage ("MLS") from the Pool and were submitted under Chapter 4.96 RCW ("Actions against political subdivisions, municipal and quasi-municipal corporations") against the Whatcom County, its employees, officers,

volunteers and agents and/or actions in connection with or incidental to the performance of an agreement/contract which the Whatcom County and/or its officers, employees or volunteers are found to be liable for will be paid by the Pool and/or Whatcom County.

- r. Western Washington University, as a Grantee herein, may satisfy its insurance obligations in Section 3 through its participation in the State of Washington Self-Insurance Liability Program ("SILP"), which provides liability insurance coverage up to \$5 million per occurrence with no deductible. A certificate of insurance will be issued by the Washington State Office of Risk Management to Grantor. Western Washington University may satisfy its workers compensation obligations in Section 3 by its industrial insurance account provided by the Washington State Department of Labor and Industries (L&I). A certificate of insurance will be issued by L&I and provided to Grantor.
- s. All insurance certificates or other evidence of coverage required to be submitted to Grantor pursuant to this Section 3 shall be sent to:

Sierra Pacific Land & Timber Company
c/o Sierra Pacific Industries Contracts Administrator
PO Box 496014
Redding, CA 96049
ATTN: Insurance Administrator
E-mail: insurance@spi-ind.com

t. Indemnification.

(a) Grantees shall indemnify and hold harmless the Grantor Indemnitees (as defined below) from and against all claims, liabilities, losses, damages or expenses arising out of or relating to all acts, failures to act or other conduct of (i) Grantee (or Grantee's employees, agents, representatives, independent contractors, material and equipment suppliers and any other entity or individual for whom Grantee is responsible) and (ii) Grantees' Permittees and members of the public entering and using the Easement Area and/or any area of the Burdened Properties or the Benefitted Property (such third parties described in the foregoing clauses (i)-(ii) being hereinafter referred to as the "Grantee Parties"), whether occurring in connection with Grantee's or any Grantee Party's completed or ongoing operations, except for those injuries, claims, liabilities, losses, damages or expenses caused by the negligence or willful act of any one or any combination of the Grantor Indemnitees.

Grantees' total liability to the Grantor Indemnitees for any claims, liabilities, losses, damages or expenses caused in part by the negligence or other fault of Grantees or any Grantee Party and in part by the negligence or other fault of any one or any combination

of the Grantor Indemnitees or any other negligent entity or individual, shall not exceed the percentage share that Grantee's and any Grantee Party's negligence or other fault bears to the total negligence or other fault of the Grantor Indemnitees and all other entities and individuals. This indemnity provision is not intended to and shall not in any way limit the extent of any insurance coverage available to any of the Grantor Indemnitees under any insurance policy purchased and maintained by Grantee (even coverage for any one or any combination of the Grantor Indemnitees' negligence).

"Grantor Indemnitees" shall mean Grantor and its successors, assigns, directors, employees, agents, representatives, parents, subsidiaries and affiliates. Grantees agree to being added to any arbitration or litigation with third parties in which the Grantor Indemnitees allege indemnification or contribution from Grantees.

Grantor acknowledges that notwithstanding the above, or elsewhere in this Agreement, Western Washington University is an institution of higher education of the State of Washington and may only assume liability, such as indemnification and hold harmless of another party, to the extent allowed under State of Washington Tort Claims Act and Self-Insurance Liability Program ("SILP").

(b) In claims against any person or entity indemnified under this Section 3 by an employee of Grantee, a subcontractor, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, the indemnification obligation shall not be limited by a limitation on amount or type of damages, compensation or benefits payable by or for Grantee or its independent contractors, subcontractors, or material suppliers of any tier under workers' compensation acts, disability benefit acts or other employee benefit acts. After mutual negotiation of the parties, Grantee waives immunity as to the Grantor Indemnitees only under Title 51 RCW, "Industrial Insurance." THIS PROVISION HAS BEEN MUTUALLY NEGOTIATED BETWEEN THE GRANTOR AND THE GRANTEE, AND THE GRANTEE HEREBY WAIVES THIS IMMUNITY. SS JML Initials by Grantees JML Initials by Grantor

4. Maintenance Agreement. Grantor and Grantees have entered into Maintenance Agreement attached as **Exhibit D**, the terms of which are integrated into this Agreement. In the event Grantees fail to perform as provided in the Maintenance Agreement, Grantor shall provide Grantees written notice of intent to terminate this Easement. If Grantees do not perform within ninety (90) days of Grantees' receipt of the notice, Grantor may terminate all rights under this Agreement.
5. Easement to Run with Land; Binding Effect. This Easement shall run with the land as to all property burdened and benefitted thereby, including any partition or division of such property. The provisions of this Agreement shall be binding upon and inure to the benefit of the parties and their respective successors and assigns with respect to the Benefitted Properties, in the case of the Grantees, or the Burdened Properties, in the case of Grantor.

6. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Washington (without regard to the principles thereof relating to conflicts of laws)
7. Compliance with Laws. In connection with use of the Easement Area, Grantees shall at all times comply with all applicable laws, statutes, ordinances, rules, regulations, and other governmental requirements.
8. Not a Public Dedication. Nothing contained in this Agreement shall be construed as a gift or dedication of any portion of the Easement Area to the general public as a road or for any public use or purpose whatsoever except to the extent expressly set forth herein.
9. Disputes. Each of the provisions of this Agreement shall be enforceable independently of any other provision of this Agreement and independent of any other claim or cause of action. In the event of any dispute arising under this Agreement, including disputes arising under the Maintenance Agreement (**Exhibit D** hereto), the parties shall first attempt to resolve the matter through direct negotiation between the representatives of the parties. If the representatives are unable to resolve the issue within thirty (30) days after presentation of the dispute, then each of the parties hereto agree to resolve any dispute by binding arbitration. Such arbitration shall be in accordance with the rules and procedures of the American Arbitration Association (AAA). Notwithstanding any AAA rules and procedures or any other provisions or any state or federal laws, the parties agree that the arbitrators shall not consider or award punitive damages as a remedy. Upon a party's request, AAA shall provide the parties a list of arbitrators each of whom have experience and expertise with respect to construction. Upon each of the party's receipt of such list, each party shall have ten (10) days to select an arbitrator. The two selected arbitrators shall then select a third arbitrator within thirty (30) days from the date the initial two arbitrators were selected and the matter subject to arbitration shall be arbitrated within sixty (60) days after the selection of the third arbitrator. The place of arbitration shall be Bellingham, Washington.
10. No Waiver of Rights or Remedies. Any party's failure to exercise any right or remedy under this Agreement, delay in exercising any such right or remedy, or partial exercise of any such right or remedy, shall not constitute a waiver of that or any other right or remedy hereunder. A waiver of any breach of any provision of this Agreement shall not constitute a waiver of any succeeding breach of such provision or a waiver of such provision itself. No waiver of any provision of this Agreement shall be binding on a party unless such waiver is set forth in writing and signed by the affected party.

Notwithstanding any provision of this Agreement, the Parties stipulate that the Grantees herein expressly retain all rights and remedies that may be available to Grantees for purposes of acquiring legal access to the Benefitted Properties, including but not limited to action for condemnation of the easement area described herein. The parties stipulate that any such condemnation proceeding will not be subject to the arbitration provision above. Nothing in this Agreement shall be construed as a waiver, restriction or limitation of such Grantees' rights and remedies in this regard.

11. **Notices.** All notices under this Agreement shall be in writing. Notices 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, or to such other or additional address as any party may specify by notice to the other party. Any notice delivered in accordance with this Section 14 shall be deemed given when actually received or, if earlier, (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 next business day after delivery to the service or, if different; on the day designated for delivery, or (c) in the case of any notice mailed by certified U.S. mail, upon receipt of the return receipt:

To Grantor:

SIERRA PACIFIC LAND & TIMBER CO.
Attention: General Counsel
19794 Riverside Avenue
Anderson, CA 96007
Phone: 530-378-8000

To Grantees:

WHATCOM COUNTY EXECUTIVE'S OFFICE
Attention: _____
311 Grand Avenue, Suite #108
Bellingham, WA 98225
Phone: 360-676-6717

WESTERN WASHINGTON UNIVERSITY

Attention: Vice President for Business &
Financial Affairs
516 High Street
Bellingham, WA 98225
Phone: 360-650-3000

12. **Waiver.** Any party's failure to exercise any right or remedy under this Agreement, delay in exercising any such right or remedy, or partial exercise of any such right or remedy, shall not constitute a waiver of that or any other right or remedy hereunder. A waiver of any breach of any provision of this Agreement shall not constitute a waiver of any succeeding breach of such provision or a waiver of such provision itself. No waiver of any provision of this Agreement shall be binding on a party unless such waiver is set forth in writing and signed by the affected party.
13. **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 or amended except by the written agreement of the parties. The parties agree to execute any additional documents reasonably necessary to effectuate the provisions and purpose of this Agreement.
14. **Severability.** If any provision of this Agreement is held invalid, illegal, or unenforceable, then (i) such provision shall be enforceable to the fullest extent permitted by applicable law, and (ii) the validity and enforceability of the other provisions of this Agreement shall not be affected and all such provisions shall remain in full force and effect.

15. Construction and Interpretation. The headings or titles of the sections of this Agreement are intended for ease of reference only and shall have no effect whatsoever on the construction or interpretation of any provision of this Agreement; references herein to sections are to sections of this Agreement unless otherwise specified.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the Effective Date.

Sierra Pacific Industries:

Sierra Pacific Land and Timber Company

By: [Signature]
Title: CEO

STATE OF WASHINGTON

County of King

On this _____ day of _____, 2023, before me personally appeared _____ [name] to me known to be the _____ [title], executed the within and foregoing instrument and acknowledged the said instrument to the free and voluntary act and deed of said agency, for the uses and purposes therein mentioned, and on oath stated that he was authorized to execute said instrument.

In Witness Whereof I have hereunto set my hand and affixed my official seal the day and year first above written.

See Attached

Signature of Notary Public
Printed Name: _____
Notary Public in and for the State of Washington
Residing at _____
My commission expires _____

ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California
County of Shasta)

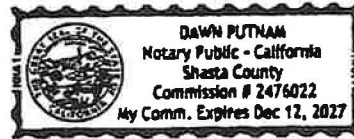
On February 5, 2024 before me, Dawn Putnam
(insert name and title of the officer)

personally appeared Mark Emmerson,
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature *Dawn Putnam* (Seal)



Whatcom County:

WHATCOM COUNTY, a political subdivision
of the State of Washington

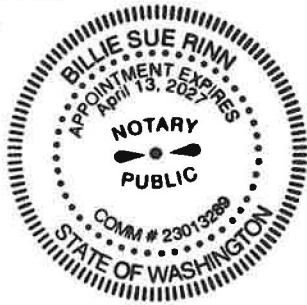
By: Satpal Sidhu
Satpal Sidhu, Whatcom County Executive

STATE OF WASHINGTON

County of Whatcom

On this 11th day of March, ~~2023~~ ²⁰²⁴, before me personally appeared
Satpal Sidhu to me known to be the Whatcom County Executive, executed the within and
foregoing instrument and acknowledged the said instrument to the free and voluntary act and
deed of said agency, for the uses and purposes therein mentioned, and on oath stated that he was
authorized to execute said instrument.

In Witness Whereof I have hereunto set my hand and affixed my official seal the day and year first
above written.



Billie Sue Rinn

Signature of Notary Public
Printed Name: Billie Sue Rinn
Notary Public in and for the State of Washington
Residing at Bellingham
My commission expires 4/13/27

Western Washington University:

WESTERN WASHINGTON UNIVERSITY, a Public
Higher Education Institution

By: Joyce Lopes
Joyce Lopes, Vice President for Business &
Financial Affairs

STATE OF WASHINGTON

County of Whatcom

On this 24th day of January, 2023, before me personally appeared Joyce
Lopes to me known to be the Vice President for Business & Financial Affairs, executed the within
and foregoing instrument and acknowledged the said instrument to the free and voluntary act and
deed of said agency, for the uses and purposes therein mentioned, and on oath stated that he was
authorized to execute said instrument.

In Witness Whereof I have hereunto set my hand and affixed my official seal the day and year first
above written.



Mary B. Seaton

Signature of Notary Public
Printed Name: Mary B. Seaton
Notary Public in and for the State of Washington
Residing at Ferndale, WA
My commission expires: 02-24-2027

EXHIBIT A
(BURDENED PROPERTIES)

PARCEL 101:

THE EAST HALF OF THE NORTHEAST QUARTER OF SECTION 22, TOWNSHIP 39 NORTH, RANGE 5 EAST OF W.M., SITUATE IN WHATCOM COUNTY, WASHINGTON.

Tax Parcel 390522 458409 0000

PARCEL 102:

THE EAST HALF OF THE SOUTHEAST QUARTER OF SECTION 22, TOWNSHIP 39 NORTH, RANGE 5 EAST OF W.M., SITUATE IN WHATCOM COUNTY, WASHINGTON.

Tax Parcel 390522 458147 0000 and 390522 498030 0000

PARCEL 103:

THE SOUTH HALF OF THE SOUTHWEST QUARTER OF SECTION 23, TOWNSHIP 39 NORTH, RANGE 5 EAST, W.M., SITUATE IN WHATCOM COUNTY, WASHINGTON.

Tax Parcel 390523 209072 0000

PARCEL 104:

THE NORTHWEST QUARTER OF SECTION 23, TOWNSHIP 39 NORTH, RANGE 5 EAST OF W.M., SITUATE IN WATCOM COUNTY, WASHINGTON.

Portion Tax Parcel 390523 195333 0000 and 390523 334202 0000

PARCEL 105:

THE NORTH HALF OF THE SOUTHWEST QUARTER; AND THE EAST HALF OF SECTION 23, TOWNSHIP 39 NORTH, RANGE 5 EAST OF W.M., SITUATE IN WHATCOM COUNTY, WASHINGTON.

Portion Tax Parcel 390523 195333 0000 and 390523 334202 0000

PARCEL 106:

ALL OF SECTION 24, TOWNSHIP 39 NORTH, RANGE 5 EAST OF W.M., EXCEPTING THEREFROM GOVERNMENT LOT 1; THE EAST HALF OF THE NORTHWEST QUARTER AND THE EAST HALF OF THE NORTHEAST QUARTER, SITUATE IN WHATCOM COUNTY, WASHINGTON.

Tax Parcel 390524 335196 0000

PARCEL 107:

GOVERNMENT LOT 1; THE EAST HALF OF THE NORTHWEST QUARTER; AND THE EAST HALF OF THE NORTHEAST QUARTER, SECTION 24, TOWNSHIP 39 NORTH, RANGE 5 EAST OF W.M., SITUATE IN WHATCOM COUNTY, WASHINGTON.

Tax Parcel 390524 196332 0000 and 390524 464334 0000

PARCEL 108:

GOVERNMENT LOTS 1, 2, AND THE EAST HALF OF THE NORTHWEST QUARTER, THE NORTHEAST QUARTER. ALL IN SECTION 25, TOWNSHIP 39 NORTH, RANGE 5 EAST OF W.M., SITUATE IN WHATCOM COUNTY, WASHINGTON.

Portion Tax Parcel 390525 191370 0000

PARCEL 121:

ALL OF SECTION 19, TOWNSHIP 39 NORTH, RANGE 6 EAST OF W.M., SITUATE IN WHATCOM COUNTY, WASHINGTON.

Tax Parcel 390619 240287 0000

PARCEL 123:

ALL OF SECTION 30, TOWNSHIP 39 NORTH, RANGE 6 EAST OF W.M., EXCEPTING THEREFROM GOVERNMENT LOT 4 AND THE SOUTHWEST QUARTER OF THE SOUTHEAST QUARTER THEREOF, AND EXCEPT THE SOUTHEAST QUARTER OF THE SOUTHEAST QUARTER THEREOF. SITUATE IN WHATCOM COUNTY, WASHINGTON.

Tax Parcel 390630 222333 0000

PARCEL 124:

GOVERNMENT LOT 4 AND THE SOUTHWEST QUARTER OF THE SOUTHEAST QUARTER, SECTION 30,
TOWNSHIP 39 NORTH, RANGE 6 EAST OF W.M., SITUATE IN WHATCOM COUNTY, WASHINGTON.

Tax Parcel 390630 157067 0000

PARCEL 126:

GOVERNMENT LOT 1, SECTION 31, TOWNSHIP 39 NORTH, RANGE 6 EAST OF W.M., SITUATE IN WHATCOM
COUNTY, WASHINGTON.

Tax Parcel 390631 375466 000

Situate in Whatcom County, State of Washington.

EXHIBIT B

(BENEFITTED PROPERTIES)

PARCEL 380604:

GOVERNMENT LOTS 1, 2, 3 AND 4; THE SOUTH HALF OF THE NORTHWEST QUARTER, THE SOUTH HALF OF THE NORTHEAST QUARTER, THE NORTHEAST QUARTER OF THE SOUTHWEST QUARTER AND THE NORTH HALF OF THE SOUTHEAST QUARTER, SECTION 4, TOWNSHIP 38 NORTH, RANGE 6 EAST OF W.M., SITUATE IN WHATCOM COUNTY, WASHINGTON.

Portion Tax Parcel 390633 010265 0000

PARCEL 380605:

GOVERNMENT LOTS 1, 2 3 AND 4, SECTION 5, TOWNSHIP 38 NORTH, RANGE 6 EAST OF W.M., SITUATE IN WHATCOM COUNTY, WASHINGTON.

Portion Tax Parcel 390633 010265 0000

PARCEL 390629:

ALL OF SECTION 29, TOWNSHIP 39 NORTH, RANGE 6 EAST OF W.M., EXCEPT THE NORTH HALF OF THE NORTH HALF THEREOF, SITUATE IN WHATCOM COUNTY, WASHINGTON.

Portion Tax Parcel 390633 010265 0000

PARCEL 390630:

THE SOUTHEAST QUARTER OF THE SOUTHEAST QUARTER OF SECTION 30, TOWNSHIP 39 NORTH, RANGE 6 EAST OF W.M., SITUATE IN WHATCOM COUNTY, WASHINGTON.

Portion Tax Parcel 390633 010265 0000

PARCEL 390632-A:

GOVERNMENT LOTS 1 AND 2, THE NORTH HALF OF THE NORTHEAST QUARTER, AND THE SOUTHEAST QUARTER OF THE NORTHEAST QUARTER, ALL IN SECTION 32, TOWNSHIP 39 NORTH, RANGE 6 EAST OF W.M., SITUATE IN WHATCOM COUNTY, WASHINGTON.

Portion Tax Parcel 390633 010265 0000

PARCEL 390632-B:

THE SOUTHWEST QUARTER OF THE NORTHWEST QUARTER; THE SOUTHWEST QUARTER; THE SOUTHWEST QUARTER OF THE NORTHEAST QUARTER; THE SOUTHEAST QUARTER OF THE NORTHWEST

QUARTER; THE SOUTHEAST QUARTER, ALL IN SECTION 32, TOWNSHIP 39 NORTH, RANGE 6 EAST OF W.M., SITUATE IN WHATCOM COUNTY, WASHINGTON.

Portion Tax Parcel 390633 010265 0000

PARCEL 390633-A:

THE WEST HALF OF THE NORTHWEST QUARTER, THE NORTHEAST QUARTER OF THE SOUTHWEST QUARTER AND ALL OF THE SOUTHEAST QUARTER, EXCEPT THE SOUTHWEST QUARTER THEREOF, ALL IN SECTION 33, TOWNSHIP 39 NORTH, RANGE 6 EAST OF W.M., SITUATE IN WHATCOM COUNTY, WASHINGTON.

Portion Tax Parcel 390633 010265 0000

PARCEL 390633-B:

THE NORTHWEST QUARTER OF THE SOUTHWEST QUARTER; THE SOUTH HALF OF THE NORTHEAST QUARTER; THE NORTH HALF OF THE NORTHEAST QUARTER; THE EAST HALF OF THE NORTHWEST QUARTER; THE SOUTH HALF OF THE SOUTHWEST QUARTER; THE SOUTHWEST QUARTER OF THE SOUTHEAST QUARTER; ALL IN SECTION 33, TOWNSHIP 39 NORTH, RANGE 6 EAST OF W.M., SITUATE IN WHATCOM COUNTY, WASHINGTON.

Portion Tax Parcel 390633 010265 0000

EXHIBIT C

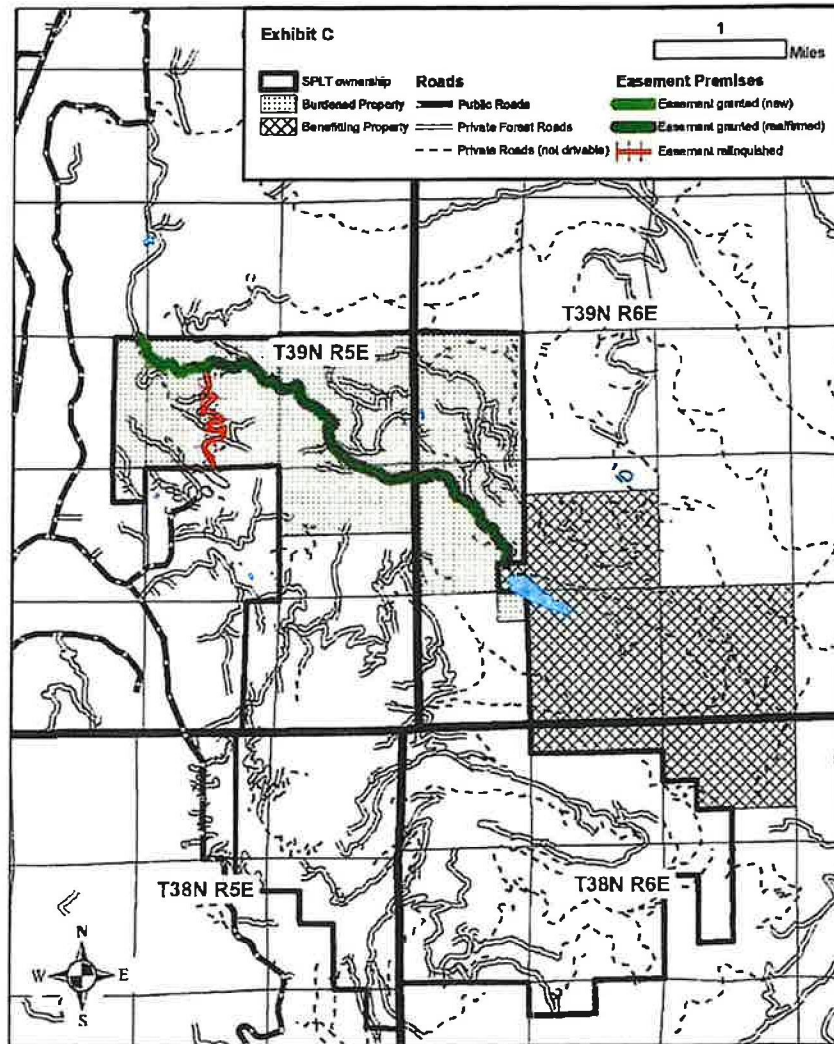


EXHIBIT D.

MAINTENANCE AGREEMENT

THIS MAINTENANCE AGREEMENT ("Maintenance Agreement") is entered into as of the 11th day of March, 2024 ("Effective Date"), by and among Sierra Pacific Land & Timber Company, a Delaware Corporation ("Grantor"), Whatcom County, a political subdivision of the State of Washington, and Western Washington University, a Washington Public Institution of Higher Education (together, "Grantees"). This Maintenance Agreement is an express provision of the Easement Agreement between Grantor and Grantees, and compliance with this Maintenance Agreement is required by the Easement Agreement. Maintenance requirements agreed to herein shall only apply to those sections of roadway, road structure and road facilities located within the Easement Area.

1. **Definitions.** The following definitions shall apply to this Maintenance Agreement:
 - a. **Road Maintenance and Resurfacing.** Road Maintenance and Resurfacing means the work normally necessary to preserve and keep the roadway, road structure and road facilities as nearly as possible in their present condition or as hereafter improved or as hereinafter specified to be improved. Examples of work constituting Road Maintenance and Resurfacing include road grading and ditching; culvert replacement of less than 48 inches in diameter; brush cutting and spraying; dust abatement; road surface patching; road surface rock replacement; minor asphalt repair and replacement; landslide removal less than one hundred (100) cubic yards; bridge inspections; structure maintenance; and other similar actions.
 - b. **Signs and Gates.** Signs and Gates means those road notice and control fixtures installed as a condition of the easement.
 - c. **Inordinate Damage.** Inordinate Damage means large slides or road prism failures (100 cubic yards or greater); drainage structure replacements (bridges or culverts 48 inches in diameter and larger); and other similar actions.
 - d. **Substantial Resurfacing.** Substantial Resurfacing means road resurfacing requiring greater than one hundred (100) cubic yards of asphalt or gravel and specified road segment drainage structure upgrades.
2. **Future Maintenance Costs.** The cost of road maintenance and resurfacing for roads subject to this Maintenance Agreement shall be allocated based on the actual use of such roads by Grantor and Whatcom County, as determined through the process identified in Section 3 of this Maintenance Agreement.
3. **Maintenance Actions & Cost Allocations**
 - a. Grantor shall, at its sole cost, be responsible for gate maintenance and repair for gates installed in the Easement Area at its discretion, so long as Grantor's gates do not unreasonably interfere with Grantees' reasonable use of Easement Area.

- b. Grantor shall, at its sole cost, be responsible for maintenance and repair of signs installed within the Easement Area at its discretion.
- c. Whatcom County shall be responsible for maintaining signage installed by the Grantees as a requirement of, or allowed as part of, the Easement Agreement and this Maintenance Agreement.
- d. Whatcom County shall be responsible for gate maintenance and repair, for gates it is obligated to install as part of the Easement Agreement, due to vandalism, ensuring gates are closed and locked during hours the Easement Area is not open to Grantees or the public, and responding to Grantees and public visitors who become trapped behind locked gates.
- e. Road Maintenance:
 - 1. Grantor shall be responsible for conducting all maintenance on roads to meet applicable regulatory standards for industrial forestry operations.
 - 2. The costs of road maintenance shall be allocated based on the use of roads as determined at an annual meeting between both parties as follows:
 - i. Grantor and Whatcom County will each determine the amount of vehicle traffic attributable to their respective uses using either business records or traffic surveys.
 - ii. Whatcom County's annual proportional share of maintenance costs shall be determined by its percentage of use of roads within the Easement Area multiplied by the actual costs incurred by Grantor to maintain such roads.
 - iii. Whatcom County shall determine its annual percentage vehicle traffic as follows:
 - 1. By January 1st, 2025 Whatcom County shall install vehicle counters at both end of the easement: 1) first gate along road 5230 and 2) at the entrance to Canyon Lake Community Forest. Both counters shall be set to zero on the first day of the calendar year. The annual percentage of Grantees use shall be determined using the formula $(\text{Value A} - \text{Value B}) / \text{Value A}$. Where the values are the following:
 - a. Value A: The total counter value at the first gate along road 5230
 - b. Value B: The total counter value at the end of the easement at the entrance to Canyon Lake Community Forest.
 - iv. Grantor and Whatcom County shall meet annually to reconcile the previous year's cost of maintenance and resurfacing, based on the previous year's use. At a minimum, both parties shall bring the following information to the meeting: (i) the volume of Grantor's commercial traffic occurring on the road in the prior year; (ii) the volume of Whatcom County's recreational traffic on the road in the prior year; and (iii) the amount of money expended by Grantor in the prior year to maintain the roads. Grantor and Whatcom County will each determine the amount of vehicle traffic attributable to their respective uses using either business records or traffic surveys. In the event Whatcom County is unable to accurately determine the volume of

recreational traffic on the road in the prior year, then Whatcom County's use will be deemed to be the prior year's traffic volume determined through the use of traffic surveys or business records, or 5,000 vehicle trips, whichever is greater.

- v. For the first year of the agreement (beginning January 1st, 2024), Whatcom County's use will be deemed to be 5,000 vehicle trips.
 - vi. The parties acknowledge that Western Washington University's use of the Easement Area as a co-owner of Canyon Lake Community Forest and its access for limited periodic seasonal research and educational experiences (up to 50 vehicle trips per year) is de minimus. Therefore, the parties agree that Western Washington University's de minimus use will be accounted for as recreational traffic as noted above. Accordingly, Western Washington University will not financially contribute to annual maintenance activities. If Western Washington University's de minimus use changes, the parties may seek a mutually acceptable written amendment to this Maintenance Agreement.
- f. Should Inordinate Damage to a road occur which is not caused by an authorized user of a road in the Easement Area, Grantor and Whatcom County shall meet and confer to discuss the extent of Inordinate Damage, and any required repairs. Thereafter, Grantor and Whatcom County shall share in the costs to repair Inordinate Damage as provided in Section 3 above; provided, however, that Whatcom County shall pay repair costs to Grantor in advance of Grantor commencing work on Inordinate Repairs. Grantor may, in its sole discretion, limit or restrict access to the Easement Area prior to completing repairs of Inordinate Damage.
- g. All work shall be performed in a proper workmanlike manner, conforming to applicable standards of construction for forest management roads in the area, and consistent with all applicable rules and regulations, including without limitation, the Washington Forest Practice Act, Title 76 RCW of the Washington State Code.
4. **Default/Remedies.** In the event Whatcom County fails to perform as required by this Maintenance Agreement, Grantor may provide Grantees' written notice of intent to terminate the Easement Agreement and revoke the Easement specifying the circumstances constituting the default and requesting Whatcom County remedy the default within a period of time specified therein, which shall be no less than 90 days following receipt of such notice. Thereafter, in the event Whatcom County fails to perform as required by this Maintenance Agreement after such notice by Grantor, Grantor may terminate the Easement Agreement and revoke the Easement as to both Whatcom County and Western Washington University. This section 4 of the Maintenance Agreement provides for Grantor's sole and exclusive remedy for failure of Whatcom County to perform under this Maintenance Agreement.
5. **Governing Law.** This Maintenance Agreement shall be governed by and construed in accordance with the laws of the State of Washington (without regard to the principles thereof relating to conflicts of laws)..

6. Notices. All notices under this Maintenance Agreement shall be in writing. Notices 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, or to such other or additional address as any party may specify by notice to the other party. Any notice delivered in accordance with this Section 6 shall be deemed given when actually received or, if earlier, (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 next business day after delivery to the service or, if different; on the day designated for delivery, or (c) in the case of any notice mailed by certified U.S. mail, upon receipt of the return receipt.

To Grantor:

SIERRA PACIFIC LAND &
TIMBER COMPANY
Attention: General Counsel
19794 Riverside Avenue
Anderson, CA 96007
Phone: 530-378-8000

To Grantee Whatcom County:

WHATCOM COUNTY EXECUTIVE'S
OFFICE
Attention: _____
311 Grand Avenue, Suite #108
Bellingham, WA 98225
Phone: 360-676-6717

With a copy to:

SIERRA PACIFIC LAND &
TIMBER COMPANY
Attention: District Manager
14353 McFarland Road
Mount Vernon, WA 98273

To Grantee Western Washington University:

WESTERN WASHINGTON UNIVERSITY
Attention: Vice President for Business &
Financial Affairs
516 High Street Bellingham, WA 98225
Bellingham, WA 98225
Phone: 360-650-3000

7. Waiver. Any party's failure to exercise any right or remedy under this Maintenance Agreement, delay in exercising any such right or remedy, or partial exercise of any such right or remedy, shall not constitute a waiver of that or any other right or remedy hereunder. A waiver of any breach of any provision of this Maintenance Agreement shall not constitute a waiver of any succeeding breach of such provision or a waiver of such provision itself. No waiver of any provision of this Maintenance Agreement shall be binding on a party unless such waiver is set forth in writing and signed by the affected party.

8. Integrated agreement; modifications. This Maintenance Agreement and the Easement Agreement constitute the entire agreement and understanding of the parties with respect to the subject matter described therein, and supersedes all prior negotiations and representations. This Maintenance Agreement shall not be modified or amended except by the written agreement of the parties. The parties agree to execute any additional documents reasonably necessary to effectuate the provisions and purpose of this Maintenance Agreement.

9. Severability. If any provision of this Maintenance Agreement is held invalid, illegal, or unenforceable, then such provision shall be enforceable to the fullest extent permitted by

applicable law, and the validity and enforceability of the other provisions of this Maintenance Agreement shall not be affected and all such provisions shall remain in full force and effect.

10. Construction and Interpretation. The headings or titles of the sections of this Maintenance Agreement are intended for ease of reference only and shall have no effect whatsoever on the construction or interpretation of any provision of this Agreement; references herein to sections are to sections of this Maintenance Agreement unless otherwise specified.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date set forth above.

SIERRA PACIFIC LAND & TIMBER COMPANY

By: 

Title: CEU

WHATCOM COUNTY

By: 

Satpal Sidhu, Whatcom County Executive

WESTERN WASHINGTON UNIVERSITY

By: 

Joyce Lopes, Vice President for Business & Financial Affairs

