

# Kelso City Council Agenda

Regular Meeting, 6:00 pm  
February 16, 2016  
City Hall, Council Chambers  
203 South Pacific  
Kelso, WA 98626



\*\*Special accommodations for the handicapped and hearing impaired are available  
by special arrangement through the City Clerk's Office at 360-423-0900\*\*

## **Roll Call to Council Members:**

## **Invocation:**

Pastor Nick Stumbo, East Hills Alliance Church

## **1. Approve Minutes:**

1.1. February 2, 2016 – Regular Meeting

## **2. Presentation:**

2.1. Library Annual Report

2.2. Certificate of Achievement in Excellence for Financial Reporting Award

## **3. Consent Items:**

3.1. Auditing of Accounts

## **4. Citizen Business:**

## **5. Council Business:**

5.1. Interlocal Agreement – Reimbursable Work by Cowlitz County

5.2. Contract – Stormwater Low Impact Development Code

5.3. Lodging Tax Advisory Committee Funding Request

## **6. Action/Motion Items:**

6.1. Ordinance, 1st Reading

6.1.1. Interfund Loan to Arterial Street Fund

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- 6.2. Ordinance, 2<sup>nd</sup> Reading
  - 6.2.1. Conservation Easement
- 6.3. Ordinance, 2nd Reading
  - 6.3.1. Shopping Cart Regulations
- 6.4. Resolution
  - 6.4.1. Renaming the Kelso Commons Park

## **7. Workshop:**

- 7.1. Goals and Action Plan Update

## **Other Items:**

- City Manager Report
- Staff/Dept Head Reports
- Council Reports
- Other Business
- Executive Session

Pastor Marv Kasemeier, New Song Worship Center, gave the invocation. Mayor David Futcher led the flag salute. The Regular Meeting of the Kelso City Council was called to order by Mayor Futcher. Councilmembers in attendance were Kim Lefebvre, Larry Alexander, Rick Roberson, David Futcher, Nancy Malone, and Jim Hill. Todd McDaniel was absent.

**Minutes:** Upon motion by Councilmember Lefebvre, seconded by Councilmember Roberson, 'Approve the 1/19/16 Regular Meeting,' motion carried all voting.

**PRESENTATIONS:**

**West Main Streetscape Project:** Otak Senior Project Manager Tim Kraft provided an update on the project and presented a street and landscape design.

**Kelso Police Department Annual Report:** Chief of Police Andrew Hamilton provided an informative presentation for the 2015 KPD Annual Report.

**CONSENT AGENDA:** None.

**CITIZEN BUSINESS:**

**Rick Von Rock,** 400 North 7<sup>th</sup> Avenue, spoke about an average monthly billing for utility services.

**MOTION ITEMS:**

**Ordinance No. (1<sup>st</sup> Reading) Conservation and Access Easement – Hart's Lake Property:** The Deputy Clerk read the proposed ordinance by title only. Upon motion by Councilmember Roberson, seconded by Councilmember Lefebvre, 'Pass on 1<sup>st</sup> reading, 'AN ORDINANCE OF THE CITY OF KELSO GRANTING A CONSERVATION AND ACCESS EASEMENT OVER THE HART'S LAKE PROPERTY, PARCELS WI36-01-001 and 24125, TO FORTERRA NW,' motion passed, all voting yes.

**MANAGER'S REPORT:**

**Steve Taylor:** 1) Had City Engineer Mike Kardas brief the Council on funding options for the Yew Street Project and the renovation of Minor Road. Lengthy discussion followed. The Council gave direction for Staff to pursue the funding options discussed for the two projects. 2) Commented that he would like the '15 Minute SWOT' documents back to him by Feb. 8<sup>th</sup>. 3) Asked that councilmembers who would like to tour the city facilities to let him know. 4) Commented that the scheduling of department orientation sessions for councilmembers is in process.

**COUNCIL REPORTS:**

**Jim Hill:** Reported on the Project Homeless event that he attended last Thursday.

**Nancy Malone:** No report.

**Rick Roberson:** Spoke about average monthly billing.

**Kim Lefebvre:** No report.

**Larry Alexander:** Commented that the Parks Board recently voted in favor of changing the name of the Kelso Commons Park.

**David Futcher:** 1) Commented about the last Airport Board meeting that he attended. 2) Spoke about his recent tour of the Cowlitz 2 Fire & Rescue Station. 3) Reported on a recent meeting with the new Cowlitz County PUD General Manager Steve Kern.

**WORKSHOP:**

**2016 Open Government Trainings Act:** City Attorney Janean Parker conducted a basic training session regarding public records and open public meetings.

There being no further business, Mayor Futcher adjourned the meeting at 8:15 p.m.

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**MAYOR**

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**CITY CLERK**

# **AGENDA SUMMARY SHEET**

## **Business of the City Council City of Kelso, Washington**

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**SUBJECT TITLE:** Recognition for  
Excellence in Financial Reporting  
Presentation to Brian Butterfield

**Agenda Item:** \_\_\_\_\_

**Dept. of Origin:** City Manager's Office

**For Agenda of:** Feb. 16, 2016

**Originator:** Steve Taylor

**PRESENTED BY:**

Steve Taylor, City Manager

**City Attorney:** **Janean Parker**

**City Manager:** **Steve Taylor**

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**Agenda Item Attachments:**

Press Release

**SUMMARY STATEMENT:**

The City's Finance Director, Brian Butterfield, has been recognized with an Award of Financial Reporting Achievement for his role as primary individual responsible for preparing the award-winning financial reports for 2015.

A certificate of achievement will be presented to Mr. Butterfield.

**RECOMMENDED ACTION:**

None



## Press Release

### FOR IMMEDIATE RELEASE:

For information contact: Jessica Bronstein  
jbronstein@kelso.gov  
(360) 577-3301

### **The City of Kelso's Finance Department is Recognized for Excellence in Financial Reporting**

*Kelso, WA – February 3, 2016*

The Government Finance Officers Association (GFOA) of the United States and Canada has awarded the City of Kelso the Certificate of Achievement in Financial Reporting for its comprehensive annual financial report (CAFR) for the fiscal year ended December 31, 2015. The certificate represents an impressive achievement by the City and its staff for attaining the highest form of recognition in the area of governmental accounting and financial reporting. The City's Finance Director, Brian Butterfield, has also been recognized with an Award of Financial Reporting Achievement for his role as the primary individual responsible for preparing the award-winning report. This is the eleventh consecutive year the City has received this award and a presentation recognizing this achievement will be conducted at the Kelso City Council meeting on February 16th at 6:00 pm.

The CAFR has been judged by an impartial panel to meet the high standards of the program including demonstrating a constructive "spirit of full disclosure" to clearly communicate its financial story and motivate potential users and user groups to read the CAFR.

The GFOA is a nonprofit professional association serving approximately 17,500 government finance professionals with offices in Chicago, IL and Washington, D.C.

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# **AGENDA SUMMARY SHEET**

## **Business of the City Council City of Kelso, Washington**

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### **SUBJECT TITLE:**

Request and Agreements for reimbursable work by Cowlitz County: Herbicide Vegetation Management, Mechanical Vegetation Management, Striping, Chip Seal, and Reimbursable Work as requested.

**Agenda Item:** \_\_\_\_\_

**Dept. of Origin:** Public Works Department

**For Agenda of:** February 16, 2016

**Cost of Item:** Not to exceed \$125,000.00

**City Manager:** Steve Taylor

### **PRESENTED BY:**

Randy Johnson  
Public Works Superintendent

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### **AGENDA ITEM ATTACHMENTS:**

Proposed Request for Reimbursable Work not to exceed \$125,000.00

### **SUMMARY STATEMENT:**

To enter into an agreement with Cowlitz County for Herbicide Vegetation Management, Mechanical Vegetation Management, Equipment Rental, Striping and Reimbursable Work as Requested, the City Manager's Signature is required.

Cowlitz County Department of Public Works will perform this work on a reimbursable basis not to exceed amount of \$125,000.00.

### **FINANCIAL SUMMARY:**

Herbicide Vegetation Management, Striping and Reimbursable Work as Requested is budgeted in the 2016 City Street Fund.

Mechanical Vegetation Management is budgeted in the 2016 Drainage Fund.

### **RECOMMENDED ACTION:**

Staff recommends council to authorize the City Manager's signature for the Request and Agreement for Reimbursable Work by Cowlitz County.

**REQUEST AND AGREEMENT**  
**For**  
**REIMBURSABLE WORK BY COWLITZ COUNTY, WASHINGTON**

**REQUEST:** It is requested that the following work be performed by the Cowlitz County Department of Public Works on a reimbursable basis:

Chip Seal, Striping, Herbicide Vegetation Management, Ditching, Sweeping and other Reimbursable work as requested

Desired completion date:           9/31/16          

Total not to exceed: \$           125,000.00          

The undersigned agrees to pay promptly for the above services at the regular Cowlitz County rates for work performed for outside agencies.

The undersigned further agrees to provide all necessary easements, permits and rights-of-way, and to protect Cowlitz County and save it harmless from all claims for damages against the County which may result from said work, except actual negligence by the County in effecting the work desired. Cowlitz County will be released from all further liability on satisfactory completion and acceptance of the work.

**REQUESTING AGENCY:**

City of Kelso

\_\_\_\_\_  
Agency  
P.O. Box 819

\_\_\_\_\_  
Mailing Address  
Kelso, WA 98626

\_\_\_\_\_  
City, State, Zip Code

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date

**APPROVAL BY THE COWLITZ COUNTY DEPARTMENT OF PUBLIC WORKS:**

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

**APPROVAL BY COWLITZ COUNTY:**

**RESOLUTION NO.:** \_\_\_\_\_

**BOARD OF COUNTY COMMISSIONERS  
OF COWLITZ COUNTY, WASHINGTON**

\_\_\_\_\_  
Date

\_\_\_\_\_  
Chairman

ATTEST:

\_\_\_\_\_  
Commissioner

\_\_\_\_\_  
Clerk of the Board

\_\_\_\_\_  
Commissioner



# AGENDA SUMMARY SHEET

## **Business of the City Council City of Kelso, Washington**

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**SUBJECT TITLE:**  
LID Code and Manual Update

**Agenda Item:** \_\_\_\_\_

**Dept. of Origin:** \_\_\_\_\_ Engineering \_\_\_\_\_

**For Agenda of:** \_\_\_\_\_ February 16, 2016 \_\_\_\_\_

**PRESENTED BY**  
Michael Kardas, P.E.  
Community Development Director/City Engineer

**Cost of Item:** \_\_\_\_\_ \$125,480.00 \_\_\_\_\_

**City Manager:** \_\_\_\_\_ Steve Taylor \_\_\_\_\_

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**AGENDA ITEM ATTACHMENTS:**

Professional Services Agreement  
Otak Scope of Work and Proposed Fee

**SUMMARY STATEMENT:**

The City of Kelso is subject to requirements of the National Pollutant Discharge Elimination Systems (NPDES) Western Washington Phase II Municipal Stormwater Permit (permit), issued by Washington Department of Ecology. The current permit requires the City to update its program for controlling runoff from new development, redevelopment, and construction sites by June 30, 2017. The primary objectives of the update are: 1) to make low impact development (LID) the preferred and commonly used approach to site development and 2) to adopt and enforce standards for stormwater control that are equivalent to Appendix 1 of the permit. In 2015, the consulting firm Otak wrote a project plan for Kelso to accomplish these objectives.

The City sent a request for proposal to five well-qualified firms to implement the project plan. Otak provided the sole response. Otak and the City developed a scope of work and then negotiated a price of \$125,480 to perform the work. The work includes the following general tasks:

- Draft updated language to include LID in the KMC, the Engineering Design Manual and Standard Plans & Specifications and then present an ordinance to the council for changes to the code and standards.
- Present drafts to a number of stakeholders for review and comments including City staff, the Kelso Stormwater Advisory Committee, a new Stakeholder Advisory Committee, the Planning Commission and the community at large.
- Train City staff on implementing the changes and train the community on the new codes and standards.

**FINANCIAL SUMMARY:**

Funds to cover the costs of the Professional Services Agreement will come from the \$50,000 2015 stormwater capacity grant and the NPDES Compliance budget item in the Drainage Fund.

**RECOMMENDED ACTION:**

Engineering staff recommends that council moves to authorize the City Manager to execute the contract with Otak in the amount specified.

## PROFESSIONAL SERVICES AGREEMENT

This Agreement ("Agreement") is dated effective this \_\_\_\_\_ day of \_\_\_\_\_, 2016. The parties ("Parties") to this Agreement are the City of Kelso, a Washington municipal corporation ("City"), and Otak, Inc. ("Consultant").

A. The City seeks the temporary professional services of a skilled independent consultant capable of working without direct supervision in the capacity of a civil engineering consultant, and is familiar with the City's municipal code, resolutions, regulations and policies.

B. The Consultant has the requisite skill and experience necessary to provide such services and has obtained a City of Kelso business license to perform these services.

NOW, THEREFORE, the Parties agree to the following terms and conditions:

### 1. SERVICES.

1.1 The Consultant agrees to furnish all personnel, materials, equipment and supervision and to otherwise do all things necessary for or incidental to the performance of the work set forth below and more particularly described in the Consultant's Scope of Work attached hereto and incorporated by this reference ("Services").

This work will include updates to the City's ordinances, engineering design manual and standard plans and specifications to incorporate Low Impact Development (LID). The Consultant will facilitate public involvement as well as train City staff and the community on LID implementation.

1.2 Compliance With Laws. All duties of the Consultant or designees shall be performed in accordance with all applicable federal and state laws and city ordinances as now existing or hereafter adopted or amended.

1.3 The Consultant shall control and direct the performance of the work. The City reserves the right to inspect, review and approve the work to assure that it has been completed as specified prior to payment.

1.4 Performance Standard. All duties by the Consultant or his designees shall be performed in a manner consistent with the degree of skill and care ordinarily exercised by members of consultant's profession under similar circumstances, at the same time and in the same or a similar locale, performed to the City's satisfaction, within the time period prescribed by this Agreement and pursuant to the direction of the City Manager or designee.

### 2. TERM.

The Term of this Agreement shall commence on February 16, 2016 and shall continue until the completion of the Services, but in any event no later than August 31, 2017. This Agreement may be extended for additional periods of time upon the mutual written agreement of the City and the Consultant. During any term, this Agreement may be terminated, with or without cause by either Party, by giving ninety (90) days written notice to the other party.

3. COMPENSATION.

3.1 Total Compensation. In consideration of the Consultant performing the Services, the City agrees to pay an amount not to exceed \$119,480.00.

3.2 Compensation Rates. Compensation for Services shall be based on the attached compensation schedule not to exceed \$119,480.00.

3.3 Method of Payment. Payment by the City for the Services will only be made after the Services have been performed and an itemized billing statement has been submitted in the form specified by the City and approved by the appropriate City representative, which shall specifically set forth the Services performed, the name of the person performing such Services, and the hourly labor charge rate for such person. Payment shall be made on a monthly basis thirty (30) days after receipt of such billing statement.

3.4 Consultant Responsible for Taxes. The Consultant shall be solely responsible for the payment of any taxes imposed by any lawful jurisdiction as a result of performance and payment under this Agreement.

4. REPRESENTATIONS.

4.1 The Consultant represents that it has the requisite training, skill and experience necessary to provide the Services and is appropriately accredited and licensed by all applicable agencies and governmental entities.

5. INDEPENDENT CONSULTANT.

5.1 It is the intention and understanding of the Parties that the Consultant shall be an independent consultant. The Consultant or his or her employees or agents performing under this Agreement are not employees or agents of the City. The Consultant will not hold himself or herself out as nor claim to be an officer or employee of the City. The Consultant will not make any claim of right, privilege, or benefit which would accrue to an employee under law. The City shall neither be liable for nor obligated to pay sick leave, vacation pay or any other benefit of employment, nor to pay any social security or other tax which may arise as an incident of employment. The Consultant shall pay all income and other taxes as due. Industrial or any other insurance which is purchased for the benefit of the Consultant shall not be deemed to convert this Agreement to an employment contract.

5.2 It is recognized that the Consultant may or will be performing professional services during the term for other parties and that the City is not the exclusive user of the Consultant's services; provided, however, that the performance of other professional services shall not conflict with or interfere with the Consultant's ability to perform the Services. The Consultant agrees to resolve any conflict in favor of the City.

6. INDEMNIFICATION.

6.1 Consultant Indemnification. The Consultant shall defend, indemnify and hold the City, its officers, officials, employees and volunteers harmless from any and all claims, injuries, damages, losses or suits including reasonable attorney fees, to the extent caused by the intentional or negligent acts, errors, or omissions of the consultant in the performance of this Agreement, except for injuries and damages caused by the sole negligence of the City.

6.2 Should a court of competent jurisdiction determine that this Agreement is subject to RCW 4.24.115, then, in the event of liability for damages arising out of bodily injury to persons or damages to property caused by or resulting from the concurrent negligence of the Consultant and the City, its officers, officials, employees, and volunteers, the Consultant's liability hereunder shall be only to the extent of the Consultant's negligence. It is further specifically and expressly understood that the indemnification provided herein constitutes the Consultant's waiver of immunity under Industrial Insurance, Title 51 RCW, solely for the purposes of this indemnification. This waiver has been mutually negotiated by the parties. The provisions of this section shall survive the expiration or termination of this Agreement.

7. INSURANCE.

7.1 The Consultant shall procure and maintain for the duration of the Agreement, a the insurance policies described below against claims for injuries to persons or damage to property which may arise from or in connection with the performance of the work hereunder by the Consultant, their agents, representatives, employees or subconsultants.

A. Commercial General Liability insurance shall be written with limits no less than \$1,000,000 each occurrence, \$2,000,000 general aggregate and a \$2,000,000 products-completed operations aggregate limit and further shall be written on ISO occurrence form CG 00 01 and shall cover liability arising from premises, operations, independent consultants, products-completed operations, stop gap liability, personal injury and advertising injury, and liability assumed under an insured contract. The Commercial General Liability insurance shall be endorsed to provide the Aggregate Per Project Endorsement ISO form CG 25 03 11 85. There shall be no endorsement or modification of the Commercial General Liability insurance for liability arising from explosion, collapse or underground property damage. The City shall be named as an insured under the Consultant's Commercial General Liability insurance policy with respect to the work performed for the City using ISO Additional Insured endorsement CG 20 10 10 01 and Additional Insured-Completed Operations endorsement CG 20 37 10 01 or substitute endorsements providing equivalent coverage.

B. Workers' Compensation coverage as required by the Industrial Insurance laws of the State of Washington.

7.2 Other Insurance Provisions. The insurance policies are to contain, or be endorsed to contain, the following provisions for Commercial General Liability insurance:

A. The Consultant's insurance coverage shall be primary insurance as respect the City. Any Insurance, self-insurance, or insurance pool coverage maintained by the City shall be excess of the Consultant's insurance and shall not contribute with it.

B. The Consultant's insurance shall be endorsed to state that coverage shall not be cancelled by either party, except after thirty (30) days prior written notice by certified mail, return receipt requested, has been given to the City.

7.3 Verification of Coverage. Consultant shall furnish the City with original certificates and a copy of the amendatory endorsements, including but not necessarily limited to the additional insured endorsement, evidencing the insurance requirements of the Consultant before commencement of the work.

8. EQUAL OPPORTUNITY EMPLOYER.

In the performance of all Services under this Agreement, the Consultant, or its employees, agents, subconsultants or representatives, shall not discriminate against any person because of sex, age (except minimum age and retirement provisions), race, color, creed, national origin, marital status or the presence of any disability, including sensory, mental, or physical handicaps, based upon a bona fide occupational qualification in relationship to hiring and employment. The Consultant shall comply with the Washington Law Against Discrimination (Chapter 49.60 RCW) and with any other applicable federal or state law or local ordinance regarding non-discrimination. Any material violation of this provision shall be grounds for immediate termination of this Agreement by the City and, in the case of the Consultant's breach, may result in ineligibility for further City agreements.

9. INTELLECTUAL PROPERTY-- Warranty of Noninfringement

Consultant represents and warrants that the Consultant is either the author of all deliverables to be provided under this Agreement or has obtained and holds all rights necessary to carry out this Agreement. Consultant further represents and warrants that the Services to be provided under this Agreement do not and will not infringe any copyright, patent, trademark, trade secret or other intellectual property right of any third party.

10. CONFIDENTIALITY.

The Consultant agrees that all materials containing confidential information received pursuant to this Agreement shall not be disclosed without the City's express written consent. Consultant agrees to provide the City with immediate written notification of any person seeking disclosure of any confidential information obtained for the City.

11. WORK PRODUCT.

All work product, including records, files, documents, plans, computer disks, magnetic media or material which may be produced or modified by the Consultant while performing the Services shall belong to the City. Upon written notice by the City during the Term of this Agreement or upon the termination or cancellation of this Agreement, the Consultant shall

deliver all copies of any such work product remaining in the possession of the Consultant to the City.

12. BOOKS AND RECORDS.

The Consultant agrees to maintain books, records, and documents that sufficiently and properly reflect all direct and indirect costs related to the performance of the Services and maintain such accounting procedures and practices as may be deemed necessary by the City to assure proper accounting of all funds paid pursuant to this Agreement. These records shall be subject, at all reasonable times, to inspection, review, or audit by the City, its authorized representative, the State Auditor, or other governmental officials authorized by law to monitor this Agreement.

13. NON-APPROPRIATION OF FUNDS.

If sufficient funds are not appropriated or allocated for payment under this Agreement for any future fiscal period, the City will not be obligated to make payments for Services or amounts incurred after the end of the current fiscal period, and this Agreement will terminate upon completion of all remaining Services for which funds are allocated. No penalty or expense shall accrue to the City in the event this provision applies.

14. GENERAL PROVISIONS.

14.1 Entire Agreement. This Agreement contains all of the agreements of the Parties with respect to any matter covered or mentioned in this Agreement and no prior agreements shall be effective for any purpose.

14.2 Modification. No provisions of this Agreement may be amended or modified except by written agreement signed by the Parties.

14.3 Full Force and Effect. Any provision of this Agreement which is declared invalid or illegal shall in no way affect or invalidate any other provision hereof and such other provisions shall remain in full force and effect.

14.4 Assignment. Neither the Consultant nor the City shall have the right to transfer or assign, in whole or in part, any or all of its obligations and rights hereunder without the prior written consent of the other party.

14.5 Successors in Interest. Subject to the foregoing Subsection, the rights and obligations of the Parties shall inure to the benefit of and be binding upon their respective successors in interest, heirs and assigns.

14.6 Attorney Fees. In the event either party brings a lawsuit to enforce the terms of this Agreement, or arising from a breach of this Agreement, the prevailing party shall be entitled to its costs and reasonable attorneys' fees for bringing or defending against the action.

14.7 No Waiver. Failure or delay of the City to declare any breach or default immediately upon occurrence shall not waive such breach or default. Failure of the City to

declare one breach or default does not act as a waiver of the City's right to declare another breach or default.

14.8 Governing Law. This Agreement shall be governed by and interpreted in accordance with the laws of the State of Washington.

14.9 Venue. The venue for any dispute related to this Agreement or for any action to enforce any term of this Agreement shall be Cowlitz County, Washington.

14.10 Authority. Each individual executing this Agreement on behalf of the City and the Consultant represents that such individuals are duly authorized to execute and deliver this Agreement on behalf of the Consultant or the City.

14.11 Notices. Any notices required to be given by the Parties shall be delivered at the addresses set forth below. Any notices may be delivered personally or may be deposited in the United States mail, postage prepaid, to the address set forth below. Any notice so posted in the United States mail shall be deemed received three (3) days after the date of mailing.

14.12 Performance. Time is of the essence of this Agreement in each and all of its provisions in which performance is a factor.


14.13 Remedies Cumulative. Any remedies provided for under the terms of this Agreement are not intended to be exclusive, but shall be cumulative with all other remedies available to the City at law or in equity.

14.14 Counterparts. This Agreement may be executed in any number of counter-parts, which counterparts shall collectively constitute the entire Agreement.

Executed on the dates written below.

CONSULTANT

CITY OF KELSO

By:   
Printed Name: Tim Kraft  
Title: Vice President

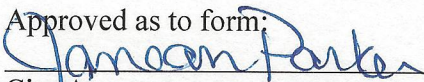
By: \_\_\_\_\_  
Printed Name: Steve Taylor  
Title: City Manager

Address: Otak, Inc.  
700 Washington Street, Suite 401  
Vancouver, WA 98660

Address: City of Kelso  
P.O. Box 819  
Kelso, WA 98626

Date: 2-1-2016

Date: \_\_\_\_\_

Approved as to form:  
  
City Attorney

# Scope of Work

## LID Code and Manual Update

### City of Kelso

Otak Project No. 17854  
January 22, 2016

### Project Understanding

The City of Kelso is subject to requirements of the National Pollutant Discharge Elimination Systems (NPDES) Western Washington Phase II Municipal Stormwater Permit (permit), issued by Washington Department of Ecology (Ecology). The current permit requires the City to update its program for controlling runoff from new development, redevelopment, and construction sites. The primary objectives of the update are: 1) to make low impact development (LID) the preferred and commonly used approach to site development and 2) to adopt and enforce standards for stormwater control that are equivalent to Appendix 1 of the permit.

In 2014, Otak wrote a project plan for accomplishing these objectives in Kelso.

The required process for meeting the objective of making LID the preferred and commonly used approach to site development is described in detail in *Integrating LID into Local Codes: A Guidebook for Local Governments*, which is referenced by the permit. This process entails intensive municipal staff involvement. This scope of work describes a collaborative effort between Otak and various City staff to achieve the requirements of the permit. Generally, Otak plans, leads, coordinates, participates in, and creates final deliverables for tasks. City staff participates by using their unique knowledge of local land development standards and practices to compare them with LID practices.

Stormwater engineering standards will be updated by adopting either the 2014 *Stormwater Management Manual for Western Washington* (SWMMWW) or the *Clark County Stormwater Manual* (CCSM).

The permit-required deadline for updating the City's codes and practices is June 30, 2017.

### Task I: LID Code Review

#### Task I.1: LID Gap Analysis

Otak will review the City's land development codes to identify opportunities to incorporate LID principles into the City's development standards. We will review:

- Title 12 – Streets
- Title 13 – Public Services
- Title 15 – Building and Construction
- Title 16 – Subdivisions
- Title 17 – Planning and Zoning
- Title 18 – Environment



Scope of Work  
Continued

- Kelso Engineering Design Manual
- Standard Plans and Specifications

We will produce a gap analysis that lists Kelso standards that prohibit or impede the application of LID principles by analyzing 12 topic areas that play a role in the creation of impervious surfaces, loss of native vegetation, and stormwater management. The review process will closely follow the process described in *Integrating LID into Local Codes: A Guidebook for Local Governments*.

**Deliverables**

- Initial LID Gap Analysis

**Task 1.2: Assemble and Train City Staff**

Otak will work with the City's project manager to identify staff with responsibilities for setting and enforcing the City's land use, engineering, public safety, and critical areas policies. These staff will be requested to participate in the process. City team members will provide substantive review and feedback during the project. A smaller subset of City leaders will provide guidance and decisions based on recommendations.

Otak will host a 3 or 4-hour kickoff meeting and training session for City team members. This meeting may also include KSAC members.

**Deliverables**

- PowerPoint presentation
- 3 or 4-hour kickoff meeting and training session
- List of recommended additional reading for staff and KSAC

**Task 1.3: Gap Analysis Review**

We have found that the LID Gap Analysis can identify hundreds of opportunities for incorporating LID principles and removing barriers to use of LID BMPs. Therefore, City staff will need to review and give feedback on the initial analysis. Otak will divide the initial LID Gap Analysis (Task 1.1) into sections for targeted review by City team members. City staff will review the initial LID Gap Analysis and give feedback on local circumstances and likelihood of City/community support of potential changes.

Feedback will be gathered at the initial kickoff meeting and training session, through written communications, and through additional group meetings.

Otak will record and summarize staff review and feedback and will update the LID Gap Analysis.

**Deliverables**

- Initial LID Gap Analysis divided for targeted review by staff
- Up to three group meetings of 2 hours each
- Memo summarizing discussions and feedback received

- Updated LID Gap Analysis

#### **Task 1.4: Prioritization and Selection**

Based on team feedback, stakeholder feedback, and experience, Otak will narrow down and prioritize the list of topics or code titles to address in the LID code update and begin to develop concepts for how to update the selected standards.

##### **Assumption**

- City leaders will review and approve the recommendation or provide additional feedback

##### **Deliverable**

- Written recommendation and concept-level ideas for selected topics or standards

#### **Task 2: Manual Reviews**

We will review and compare the suitability, including advantages and disadvantages, of both the SWMMWW and the CCSM to meet Kelso's stormwater regulatory needs and provide a recommendation. If requested, we will review and recommend customizations to WSDOT's *Highway Runoff Manual* for use on public linear projects. [Note: the HRM's infeasibility criteria for low impact development best management practices are not allowed for use by other agencies, requiring some degree of customization to use the manual.]

We will review Chapters 1, 2, 3 and 4 of the Kelso Engineering Design Manual (KEDM) to identify updates needed to comply with the permit. The question of maintaining, changing, or deleting the City's local stormwater facility design criteria will be addressed with the City's project manager and through public involvement (see Task 6).

##### **Assumption**

- Feedback from the SAC and KSAC on local facility design criteria will occur early in the stakeholder outreach process (Task 6).

##### **Deliverables**

- Written recommendation on selection of a manual or manuals for adoption
- Written recommendation for updates to KEDM needed to comply with SWMMWW and other updates to address the City's priorities for local stormwater facility design criteria

#### **Task 3: Municipal Code and Manual Update**

After approval of concepts and recommendations from Tasks 1 and 2, Otak will draft updates to the City's development codes, engineering standards, standard drawings/details, and enforceable documents as needed to incorporate LID principles and LID BMPs and to bring stormwater engineering standards into compliance with the 2014 SWMMWW.

The extent of this task is dependent on the scope and degree of LID code updates recommended and approved in Task 1.

## Scope of Work Continued

The City team will continue to be involved as reviewers. We will provide two rounds of review for each updated document or drawing.

### **Deliverables**

- Draft and final updated codes, engineering standards, standard drawings/details
- Strikeout and underlined versions of the final text-based documents

### **Assumptions**

For the purpose of budgeting this project, we have developed some assumptions about the degree of effort for the LID code update. These assumptions may change as needed to accommodate the City's priorities as discovered through the process.

- Text update to 6 code titles or chapters, or agreed equivalent, where one title/chapter is approximately 30-50 pages (i.e. updates to approximately 300 pages of original material)
- Revision to or production of up to 10 drawings (standard plans or details)

## **Task 4: Adoption**

This task will include briefing elected officials on LID and the KEDM update, presenting proposed revisions, and following the formal adoption process.

### **Task 4.1: City Council**

We will address City Council on three different occasions. Near the beginning, we will present at a workshop to introduce Council members to the concepts of LID and the update process and will obtain policy direction to use in the review of the initial LID Gap Analysis and recommendation of updates. After final drafts of updates have been produced, we will present at a second workshop to inform City Council of the proposed changes. Finally, we will be present at a public hearing for adopting new codes and standards.

### **Deliverables**

- 3 PowerPoint presentations
- Presentation at 2 Council workshops
- Attendance at one Council public hearing

### **Task 4.2: Planning Commission**

We will present proposed changes to development codes to the Planning Commission on two occasions. We will present recommended and concept-level updates to obtain feedback before drafting updates. After amended development codes have been finalized, we will present and facilitate a Planning Commission meeting.

For this task, we will use PowerPoint presentations developed for City Council

### **Deliverables**

- Presentations at two Planning Commission meetings

### **Task 4.3: Outside Reviews**

Proposed updates will require review under the State Environmental Policy Act (SEPA) and may require review by the Department of Commerce. Otak will complete the SEPA Checklist and provide it to the Planning Department for action with a Determination of Non-Significance (DNS). If needed, Otak will assist the City in submitting a complete packet of materials for a 60-day review by Department of Commerce prior to adoption.

#### **Deliverables**

- SEPA Checklist draft and final
- Completed DNS form
- Draft code updates suitable for Department of Commerce Review

### **Task 5: Implementation**

The City will need to ensure its staff that is responsible for land use planning, plan review, engineering review, inspection, enforcement, and maintenance of stormwater infrastructure are trained on new standards and methods. The City may also need to develop or modify internal policies and procedures.

#### **Task 5.1: Staff Training and Tools**

Otak will develop tools as needed for City staff to accept, review, permit, and inspect, and maintain low impact developments and LID BMPs. Otak will also provide training to staff.

Preparation topics may include:

- Updated site plan submittal requirements
- New required site assessments and tests, especially for geotechnical site investigations and infiltration testing
- Updated road standards (e.g. permeable pavements on roads)
- New types of stormwater facilities
- Additional inspection requirements
- Updated maintenance standards

We will provide a variety of tools, depending on needs, including:

- Flow chart / decision tree
- Application completeness checklist
- Reviewer checklist
- Inspection forms

#### **Deliverables**

- One 4-hour training session for permit review staff
- One 2-hour training for operations staff
- Other deliverables (tools) to be determined

Scope of Work  
Continued

### **Task 5.2: Community Training**

We will provide training and tools for the development, building, and real estate communities to introduce them to new development codes and stormwater engineering standards.

Topics may include:

- Site planning using LID principles
- Hiring qualified engineers, sub-contractors (e.g. landscaping professionals), and other professionals to meet requirements
- Performing new required assessments and tests, especially for geotechnical site investigations and infiltration testing
- Using new design specifications for compost, permeable paving materials, bioretention soil mix, and native plants
- Finding trained installers for permeable pavements and bioretention
- Installing and maintaining permeable pavements and bioretention
- Recognizing and understanding LID BMPs and other stormwater management facilities during real estate transactions

We will provide a variety of tools, depending on needs and City priorities, including:

- LID sizing tool
- Simplified submittal forms for small sites
- Brochures
- FAQs
- Design checklist

#### **Deliverables**

- One 4-hour training session for developer/builder/real estate community
- Other deliverables (tools) to be determined

### **Task 6: Public Involvement**

The project will involve substantial public involvement, including formation of a non-permanent Stakeholder Advisory Committee (SAC) and continuous involvement of the Kelso Stormwater Advisory Committee (KSAC). Public involvement will begin early, and public input will be used in the steps to recommend development code updates, develop concepts for updates, review and update the local stormwater facility requirements, and prepare final code and manual updates.

#### **Task 6.1: Stakeholder Advisory Committee**

Otak will work with the City project manager to identify potential SAC members and to coordinate and lead the SAC. Otak will prepare a committee invitation, solicit members, plan

and coordinate meetings, develop a committee charter, create meeting agendas, facilitate meetings, and take notes.

The SAC will meet five or six times during an 18-month period. Otak will provide materials, such as memos and drafts, to members in advance of each meeting. If meetings are to be advertised to the public, City staff will take the necessary steps to advertise each meeting. Otak will make presentations at and will facilitate SAC meetings.

**Deliverables**

- Committee invitation and charter
- Meeting schedule
- Meeting agendas and notes
- Drafts and materials for meetings
- Meeting notes

**Assumptions**

- The City will make the final selection of committee members
- SAC meetings will be held at a City facility

**Task 6.2: Kelso Stormwater Advisory Committee**

KSAC will be an integral component of the public involvement effort, and the committee may meet as often as monthly during the course of the project, depending on workload. At a minimum, the committee will meet quarterly on its typical schedule.

KSAC input will be invited and considered during each step of the process. KSAC will consider the initial LID Gap Analysis, the updated LID Gap Analysis, LID update recommendations and concepts, stormwater manual adoption recommendation, and drafts of updated codes, manuals, and standard drawings and plans.

At the first KSAC meeting after start of the project, Otak will present an introduction to LID and the stormwater and code update process (similar to the presentation anticipated to introduce City Council to these concepts). Members will also be invited to attend the kickoff meeting and training session discussed in Task 1.2.

At each subsequent meeting, Otak will present an update and lead a discussion. Otak will provide materials for review by KSAC members in advance of each meeting.

**Deliverables**

- One PowerPoint presentation
- Drafts and materials for meetings
- Meeting notes

**Task 6.3: Community Communications**

We will assist the City in informing the general public about this process.

Scope of Work  
Continued

Otak will provide brief posts including text and illustrations for placement on the City's website or social media sites.

Otak will present at and facilitate one or two Open Houses geared toward the general public. The community will be invited through posts on the City's web site and possibly using other means.

**Deliverables**

- Six website or social media posts each comprising no more than 300 words and two photos or illustrations
- Four Open House display boards
- Comment cards
- Open House summary(ies)

**Task 6.4: Public Involvement Tracking and Summary**

Throughout the public involvement process, Otak will capture public comments from the general public in a log. Comments from SAC and KSAC will be summarized in meeting notes.

We will describe the public involvement effort and review the public comments received in a summary report. Appendices will include original public input materials, such as comment cards, correspondence, and meeting notes.

**Assumptions**

- For public comment received directly by City staff or through the City's social media accounts, if used, City staff will forward data to Otak.

**Deliverables**

- Public comment log
- Public Involvement Summary, draft and final

**Task 7: Project Management**

Otak will plan, manage, and execute the tasks described in this scope of work in accordance with the schedule, budget, and quality expectations that are established. Otak will coordinate regular meetings with the City's team and will document decisions and action items as they arise.

Otak will prepare a summary of the results of the review and revision process as outlined in Section S5.C.4(f)(ii) of the City's municipal stormwater permit.

**Deliverables**

- Coordinate monthly status meetings
- Create and keep a log of decisions and implementation status

Scope of Work  
Continued

- Prepare a summary of the results of the review and revision process
- Submit monthly progress reports with billings





# **AGENDA SUMMARY SHEET**

## **Business of the City Council**

### **City of Kelso, Washington**

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**SUBJECT TITLE:**

Agenda Item: \_\_\_\_\_

2016 Lodging Tax Request

Dept. of Origin: Lodging Tax Committee

For Agenda of: February 16, 2016

**PRESENTED BY:**

City Manager: Steve Taylor

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**AGENDA ITEM ATTACHEMENTS:**

- February 8, 2016 – Meeting Minutes (Draft)
- Exhibit A – Kelso Chamber of Commerce Funding Request
- Exhibit B – City of Kelso Funding Request

**SUMMARY STATEMENT:**

On January 13, 2016, the City received an email from the Kelso-Longview Chamber of Commerce requesting \$1,111.50 to place a City of Kelso advertisement in the 2016 Visitor's Guide published by the Chamber. 12,000 copies of the guide will be printed and published April 30, 2016. The guides are distributed to patrons of the Visitor's Center and are included in visitor and relocation packets made for local events, groups staying at our hotels, and people moving into our area.

On February 8, 2016, an LTAC meeting was held to evaluate the funding request. The committee unanimously agreed, with Bill Marcum abstaining, to recommended the approval of \$1,111.50 to the Kelso-Longview Chamber of Commerce for a City of Kelso ad in the 2016 Visitor's Guide.

On February 5, 2016, the City completed an application requesting \$2,000 for the annual rent and leasehold/excise tax for WSDOT Airspace Lease for the area of the Visitor's Center. Due to a portion of the building being used for Chamber of Commerce Operations, a rent of \$1,000 per year has been agreed upon via the City and WSDOT now that the use of the building is not strickly for vehicle traffic. The \$2,000 will bring us current for last year and for this year.

On February 8, 2016, an LTAC meeting was held to evaluate the funding request. The committee unanimously agreed, to recommended the approval of \$2,000 to the City of Kelso for the rent and leasehold/excise tax required for the WSDOT Airspace Lease for the Visitor's Center.

**RECOMMENDED ACTION(S):**

Move to approve the recommended allocation of the City's Lodging Tax funds.



**Lodging Tax Advisory Committee  
Meeting Minutes  
February 8, 2016  
City of Kelso, Executive Session**

Call to order:

Committee Chair Todd McDaniel called the meeting to order at 1:58 p.m.

Those present were as follows:

**Lodging Tax Committee Members**

Todd McDaniel, Council Rep  
Pam Fierst  
Bill Marcum  
Syed Pasha

**Staff**

Steve Taylor, City Manager  
Brian Butterfield, Finance Director  
Jessica Bronstein, Executive/Legal Assistant

**Minutes:**

Syed Pasha made the motion to approve the minutes from the December 2, 2015, meeting, seconded by Bill Marcum. Motion carried, all voting 'yes'.

**Funding Overview:**

The LTAC Committee reviewed the applications received from the Chamber of Commerce and City of Kelso and discussed funding availability, total amount of funding requested, and estimated revenue for 2016. The total cost of the Chamber's request is \$1,111.50. The City of Kelso's request is \$2,000.

Discussion was had for both applications noting the usefulness and cost effectiveness of the visitor's guides as well as what the changes to WSDOT's Airspace Lease are that now requires the payment of an annual fee due to a portion of the Visitor's Center being used for Chamber of Commerce Operations.

Pam Fierst made the motion to forward a recommendation to the Kelso City Council for approval of the requested amount of \$2,000.00 to the City of Kelso. Syed Pasha seconded the motion. Motion passed, all voting 'yes'.

With no further comments, the meeting was adjourned at 2:20 p.m.

Respectfully Submitted,

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Jessica Bronstein, Recording Secretary



# CITY OF KELSO LODGING TAX FUNDING REQUEST 2016



**Amount of Lodging Tax Requested: \$ 1,111.50**

Organization/Agency Name: Kelso Longview Chamber of Commerce

Name of Event/Activity/Facility: 2016 Visitor Guide

Total Cost of Event/Activity/Facility: \$30,000.00

Activity Start Date: Annual Publication, May 2016      Activity End Date: May 2017

Contact Name and Title: Karen Sisson

Federal Tax ID Number: 91-0298640

Mailing Address: 105 N. Minor Road

City: Kelso      State: WA      Zip: 98632

Phone: 360.423.8400

Email Address: ksisson@kelsolongviewchamber.org

Check all service categories that apply to this application:

- Tourism Promotion/Marketing
- Operation of a Special Event/Festival designed to attract tourists
- Operation of a Tourism Promotion Agency
- Operation of a Tourism-Related Facility owned or operated by non-profit organization
- Operation and/or Capital Costs of a Tourism-Related Facility owned by a municipality

Check which one of the following applies to your agency:

- Non-Profit (*Attach copy of current non-profit corporate registration with Washington Secretary of State*)
- Public Agency

## CERTIFICATION

I am an authorized agent of the organization/agency applying for funding. I understand that:

- I am proposing a tourism-related service for 2016. If awarded, my organization intends to enter into a Municipal Services Contract with the City; provide liability insurance for the duration of the contract naming the City as additional insured and in an amount determined by the City; and file for a permit to use City property, if applicable.
- The City of Kelso will only reimburse those costs actually incurred by my organization/agency and only after the service is rendered, paid for if provided by a third party, and a signed Request for Reimbursement form (or other form acceptable to the City) has been submitted to the City, including copies of invoices and payment documentation.
- My agency will be required to submit a report documenting economic impact results in a format determined by the City.

Printed or Typed Name: Karen A. Sisson

Signature: Karen A. Sisson

Date: 01.05.2016

## Supplemental Questions

**1. Describe your tourism-related activity or event.**

- Describe why tourists will travel to Kelso to attend your event/activity/facility.

The Visitors Guide has information on the many events happening in Kelso and Longview throughout the year between May 1, 2016 and December 31, 2016. It is distributed at hotel, motels, restaurants, local realtors, Kelso Visitor Center and to people looking to relocate to the area. 12,000 total copies will be printed and distributed.

**2. (The estimates in question #2 are required by State law)**

As a direct result of your proposed tourism-related service, provide an estimate of:		
	Estimated Number of Attendees	Methodology*
a. Overall attendance at your proposed event/activity/facility	N/A	N/A
b. Number of people who will travel more than 50 miles for your event/activity	N/A	N/A
c. Of the people who travel more than 50 miles, the number of people who will travel from another country or state	N/A	N/A
d. Of the people staying overnight, the number of people who will stay in <b>PAID</b> accommodations (hotel/motel/bed-breakfast) in Kelso	N/A	N/A
e. Of the people staying overnight, the number of people who will stay in <b>UNPAID</b> accommodations in Kelso	N/A	N/A
f. Number of paid lodging room nights resulting from your proposed event/ activity/facility (example: 25 paid rooms on Friday and 50 paid rooms on Saturday = 75 paid lodging room nights)	N/A	N/A

**\*Please select the appropriate methodology from the list below.**

Direct Count  
Indirect Count  
Representative Survey

Informal Survey  
Structured Estimate  
Other – Please Describe



# CITY OF KELSO

## LODGING TAX FUNDING REQUEST

### 2016



- **Direct Count:** Actual count of visitors using methods such as paid admissions or registrations, clicker counts at entry points, vehicle counts or number of chairs filled. A direct count may also include information collected directly from businesses, such as hotels, restaurants or tour guides, likely to be affected by an event.
- **Indirect Count:** Estimate based on information related to the number of visitors such as raffle tickets sold, redeemed discount certificates, brochures handed out, police requirements for crowd control or visual estimates.
- **Representative Survey:** Information collected directly from individual visitors/ participants. A highly structured data collection tool, based on a defined random sample of participants and the results can be reliably projected to the entire population attending an event and includes margin of error and confidence level.
- **Informal Survey:** Information collected directly from individual visitors or participants in a non-random manner that is not representative of all visitors or participants. Informal survey results cannot be projected to the entire visitor population and provide a limited indicator of attendance because not all participants had an equal chance of being included in the survey.
- **Structured Estimate:** Estimate produced by computing known information related to the event or location. For example, one jurisdiction estimated attendance by dividing the square footage of the event area by the international building code allowance for persons (3 square feet).
- **Other:** (please describe)

3. Describe the prior success of your event/activity/facility in attracting tourists.

The Visitors Guide helps keep visitors in the area by pointing out the many attractions, events and outdoor activities in Cowlitz County. Our goal is to provide a publication that excites and draws tourist, new business and new residents to Kelso and Longview.

Outside tourist dollars are good for local economy.

4. Describe how you will promote your event/activity/facility to attract tourists.

5. Describe how you will promote, if applicable, lodging establishments, restaurants, and businesses located in the City of Kelso.

6. Are you applying for Lodging Tax funds from another community (yes or no)? If yes, list the other jurisdiction(s) and amount(s) requested.

7. What will you cut from your proposal or do differently if full funding for your request is not available or recommended?

## Application Instructions and General Guidelines

**Application Deadline: Friday, July 31, 2015 @ 5:00 p.m. – received at Kelso City Hall.**  
**To be eligible for consideration, your complete proposal must be received by the deadline.**

**Please submit original AND 5 copies to:**

Amy  
Mullerleile

Amy Mullerleile

Assistant to City Manager  
203 S. Pacific # 218  
P.O. Box 819  
Kelso, WA 98626

- ⇒ **You must complete and sign the cover sheet with this packet.**
- ⇒ **You may type the questions and answers on separate sheets of paper.**
- ⇒ **Please number each page in your packet, except for the optional brochures/information.**

### **Attach:**

1. Itemized budget for your event/activity/program/facility (income and expenses).
2. Description and budget showing how you intend to use the amount requested from the City of Kelso.
3. A copy of your agency's current non-profit corporate registration with the Washington Secretary of State.
4. A copy of your agency's City of Kelso business license, if applicable.
5. (Optional) Brochures or other information about your event/activity/program/facility, in particular items showing recent tourism promotion efforts.

## General Information

The proposal and all documents filed with the City are public records. The City may choose to post on its website copies of the proposals and attached documents.

The Kelso City Council has created a Lodging Tax Advisory Committee to conduct an annual process to solicit and recommend Lodging Tax funded services for City Council consideration. The City of

Kelso will only consider proposals for use of the Lodging Tax Fund from public and non-profit agencies.

**HIGH PRIORITY** will be given to tourism activities that:

- Have a demonstrated potential or high potential from the Committee's perspective to result in overnight stays by tourists in lodging establishments within the City of Kelso.
- Promote Kelso and/or events, activities, and places in the City of Kelso to potential tourists from outside Cowlitz County.
- Have demonstrated or high potential from the Committee's perspective to result in documented economic benefit to Kelso.
- Have a demonstrated history of success in Kelso, or are proposed by a group with a demonstrated history or high potential of success with similar activities.
- Minimize duplication of services where appropriate and encourage cooperative marketing and/or includes an element of cooperation or partnership.
- Provide, maintain, operate, or enhance City-owned tourism facilities or infrastructure.

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#### **Kelso Lodging Tax Advisory Committee Considerations**

In developing its recommendations, the Committee considers:

- The estimated amount of Lodging Tax Funds available for the coming year.
- Thoroughness and completeness of the proposal.
- Percent of the proposal request to the event/facility promotions budget and overall revenues.
- Percent of increase over prior year Kelso Lodging Tax funded proposals, if any.
- Projected economic impact within the City of Kelso, in particular projected overnight stays in Kelso lodging establishments.
- The applicant's history of tourism promotion success.

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#### **State Law Excerpts**

##### **RCW 67.28.1816 – Use of Lodging Tax Fund.**

Lodging tax revenue under this chapter may be used, directly by any municipality or indirectly through a convention and visitor's bureau or destination marketing organization for:

- a. Tourism marketing;
- b. The marketing and operations of special events and festivals designed to attract tourists;
- c. Supporting the operations and capital expenditures of tourism-related facilities owned or operated by a municipality or a public facilities district created under chapters 35.57 and 36.100 RCW; or
- d. Supporting the operations of tourism-related facilities owned or operated by nonprofit organizations described under 26 U.S.C. Sec. 501(c)(3) and 26 U.S.C. Sec 501(c)(6) or the internal revenue code of 1986, as amended.

##### **RCW 67.28.080 – Definitions.**

- "Municipality" means any county, city or town of the state of Washington.
- "Operation" includes, but is not limited to, operation, management, and marketing.
- "Person" means the federal government or any agency thereof, the state or any agency, subdivision, taxing district or municipal corporation thereof other than county, city or town, any private corporation, partnership, association, or individual.



- "Tourism" means economic activity resulting from tourists, which may include sales of overnight lodging, meals, tours, gifts, or souvenirs.
- "Tourism promotion" means activities and expenditures designed to increase tourism, including but not limited to advertising, publicizing, or otherwise distributing information for the purpose of attracting and welcoming tourists; developing strategies to expand tourism; operating tourism promotion agencies; and funding marketing of special events and festivals designed to attract tourists.
- "Tourism-related facility" means real or tangible personal property with a usable life of three or more years, or constructed with volunteer labor, and used to support tourism, performing arts, or to accommodate tourist activities.
- "Tourist" means a person who travels from a place of residence to a different town, city, county, state, or country, for purposes of business, pleasure, recreation, education, arts, heritage, or culture.



# CITY OF KELSO LODGING TAX FUNDING REQUEST 2016



**Amount of Lodging Tax Requested: \$ 2,000**

Organization/Agency Name: City of Kelso

Name of Event/Activity/Facility: Rent and Leasehold/Excise Tax for WSDOT Airspace Lease for area around the Visitor's Center

Total Cost of Event/Activity/Facility: \$2,000

Activity Start Date: January 1, 2016

Activity End Date: December 31, 2016

Contact Name and Title: Steve Taylor, City Manager

Federal Tax ID Number: 91-600-1252

Mailing Address: P.O. Box 819

City: Kelso

State: WA

Zip: 98626

Phone: 360-577-3301

Email Address: staylor@kelso.gov

Check all service categories that apply to this application:

- Tourism Promotion/Marketing
- Operation of a Special Event/Festival designed to attract tourists
- Operation of a Tourism Promotion Agency
- Operation of a Tourism-Related Facility owned or operated by non-profit organization
- Operation and/or Capital Costs of a Tourism-Related Facility owned by a municipality

Check which one of the following applies to your agency:

- Non-Profit (*Attach copy of current non-profit corporate registration with Washington Secretary of State*)
- Public Agency

## CERTIFICATION

I am an authorized agent of the organization/agency applying for funding. I understand that:

- I am proposing a tourism-related service for 2016. If awarded, my organization intends to enter into a Municipal Services Contract with the City; provide liability insurance for the duration of the contract naming the City as additional insured and in an amount determined by the City; and file for a permit to use City property, if applicable.
- The City of Kelso will only reimburse those costs actually incurred by my organization/agency and only after the service is rendered, paid for if provided by a third party, and a signed Request for Reimbursement form (or other form acceptable to the City) has been submitted to the City, including copies of invoices and payment documentation.

- My agency will be required to submit a report documenting economic impact results in a format determined by the City.

Printed or Typed Name: Steve Taylor

Signature: 

Date: 2/5/2016

## Supplemental Questions

**1. Describe your tourism-related activity or event.**

- Describe why tourists will travel to Kelso to attend your event/activity/facility.

Lodging tax funds currently provide for the operations and maintenance of the visitor’s center at Minor Road. The visitor’s center is located on property owned by WSDOT. WSDOT has recently updated the airspace lease agreement with the City and is now requiring an annual lease payment and applicable leasehold excise tax for the ground on which the center is located. The lease payment is required to account for the non-motorist activities conducted on the site by the Chamber of Commerce—who operates the visitor’s center on behalf of the City. The approximate amount of the annual payment is \$1,000.00. The City is requesting \$2,000.00 to remit this payment for 2015 and 2016. In future years this cost will be allocated to the Chamber’s annual visitor’s center operations budget.

**2. (The estimates in question #2 are required by State law)**

As a direct result of your proposed tourism-related service, provide an estimate of:		
	Estimated Number of Attendees	Methodology*
a. Overall attendance at your proposed event/activity/facility	0	
b. Number of people who will travel more than 50 miles for your event/activity	0	
c. Of the people who travel more than 50 miles, the number of people who will travel from another country or state	0	
d. Of the people staying overnight, the number of people who will stay in <b>PAID</b> accommodations (hotel/motel/bed-breakfast) in Kelso	0	
e. Of the people staying overnight, the number of people who will stay in <b>UNPAID</b> accommodations in Kelso	0	
f. Number of paid lodging room nights resulting from your proposed event/ activity/facility <i>(example: 25 paid rooms on Friday and 50 paid rooms on Saturday = 75 paid lodging room nights)</i>	0	

**\*Please select the appropriate methodology from the list below.**

Direct Count  
Indirect Count  
Representative Survey

Informal Survey  
Structured Estimate  
Other – Please Describe

- **Direct Count:** Actual count of visitors using methods such as paid admissions or registrations, clicker counts at entry points, vehicle counts or number of chairs filled. A direct count may also include information collected directly from businesses, such as hotels, restaurants or tour guides, likely to be affected by an event.
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- **Informal Survey:** Information collected directly from individual visitors or participants in a non-random manner that is not representative of all visitors or participants. Informal survey results cannot be projected to the entire visitor population and provide a limited indicator of attendance because not all participants had an equal chance of being included in the survey.
- **Structured Estimate:** Estimate produced by computing known information related to the event or location. For example, one jurisdiction estimated attendance by dividing the square footage of the event area by the international building code allowance for persons (3 square feet).
- **Other:** (please describe)

3. Describe the prior success of your event/activity/facility in attracting tourists.

N/A

4. Describe how you will promote your event/activity/facility to attract tourists.

N/A

5. Describe how you will promote, if applicable, lodging establishments, restaurants, and businesses located in the City of Kelso.

N/A

6. Are you applying for Lodging Tax funds from another community (yes or no)? If yes, list the other jurisdiction(s) and amount(s) requested.

No

7. What will you cut from your proposal or do differently if full funding for your request is not available or recommended? N/A

## Application Instructions and General Guidelines

**Application Deadline: Friday, July 31, 2015 @ 5:00 p.m. – received at Kelso City Hall.**

**To be eligible for consideration, your complete proposal must be received by the deadline.**

**Please submit original AND 5 copies to:**

Jessica Bronstein  
Executive/Legal Assistant  
203 S. Pacific # 218  
P.O. Box 819  
Kelso, WA 98626

- ⇒ **You must complete and sign the cover sheet with this packet.**
- ⇒ **You may type the questions and answers on separate sheets of paper.**
- ⇒ **Please number each page in your packet, except for the optional brochures/information.**

**Attach:**

1. Itemized budget for your event/activity/program/facility (income and expenses).
2. Description and budget showing how you intend to use the amount requested from the City of Kelso.
3. A copy of your agency's current non-profit corporate registration with the Washington Secretary of State.
4. A copy of your agency's City of Kelso business license, if applicable.
5. (Optional) Brochures or other information about your event/activity/program/facility, in particular items showing recent tourism promotion efforts.

# **AGENDA SUMMARY SHEET**

## **Business of the City Council City of Kelso, Washington**

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### **SUBJECT TITLE:**

LED Streetlight Project Fund Transfer

Agenda Item: \_\_\_\_\_

Dept. of Origin: \_\_\_\_\_ Finance \_\_\_\_\_

For Agenda of: \_\_\_\_\_ February 16, 2016 \_\_\_\_\_

Cost of Item: \_\_\_\_\_ \$318,690 \_\_\_\_\_

### **PRESENTED BY:**

Brian Butterfield

City Manager: Steve Taylor \_\_\_\_\_

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### **AGENDA ITEM ATTACHMENTS:**

Project Costs & Energy Savings for Selected Options table  
Ordinance to transfer funds from the Debt Service Fund to the Arterial Street Fund

### **SUMMARY STATEMENT:**

In the February 17, 2015 council meeting, council authorized the City Manager to secure a low-cost loan for the Citywide LED Streetlight Conversion Project. The City Manager proposes to internally fund the City's portion of the project with the Debt Service Fund. The project will cost \$511,956 and construction is more than 80% complete. The City's portion of the project is \$318,690 with the remainder being funded by a Department of Commerce grant and a Cowlitz PUD utility incentive.

### **FINANCIAL SUMMARY:**

The project is budget neutral and attached is the post-audit summary on project costs. Repayment of the loan is made from cost savings due to lower energy use by the LED streetlights. This does not include savings due to lower maintenance costs. Annual savings are estimated at \$32,571. This amount is based on a 10-year financing term at 3.0% interest rate and includes an annual rate of energy increases at 1.5%.

The interest rate on the loan will be based on the rate set by the Local Government Investment Pool. An amount not to exceed \$320,000 is proposed to be transferred from the Debt Service Fund to the Arterial Street Fund.

### **RECOMMENDED ACTION:**

City staff recommends that council move to approve the ordinance to authorize the transfer of funds from the Debt Service Fund to the Arterial Street Fund for the Citywide LED Streetlight Conversion Project.

**Project Name: City of Kelso Streetlights**  
**December 10, 2015**

**I. PROJECT COSTS & ENERGY SAVINGS FOR SELECTED OPTIONS**

PROJECT COSTS	Mech, Water, General	Lighting	Total Project Costs
Engineering Audit		\$ 2,500	\$ 2,500
Estimated Labor and Material Cost	\$ -	\$ 355,886	\$ 355,886
M,W,G Design @ 10.0% of Labor & Material	\$ -		\$ -
Lighting Design @ 4.0% of Labor & Material		\$ 13,363	\$ 13,363
Construction Mgt @ 8.0% of Labor & Material	\$ -	\$ 26,958	\$ 26,958
Bonding @ 1.5% of Labor & Material	\$ -	\$ 5,011	\$ 5,011
ESCO Overhead and Profit @ 18.0% of Labor & Material	\$ -	\$ 60,655	\$ 60,655
1st Year of Ameresco M&V			\$ 1,880
Subtotal:	\$ -	\$ 464,372	\$ 466,252
Construction Contingency @ 5.0% of CC	\$ -	\$ 16,704	\$ 16,704
<b>Subtotal - Maximum Project Cost:</b>	<b>\$ -</b>	<b>\$ 481,076</b>	<b>\$ 482,956</b>
Est. Sales Tax @ 8.0% of Maximum Project Cost		\$ -	\$ -
0 Additional Years of M&V - Ameresco (includes tax)			\$ -
1 Years of M&V - DES			\$ -
DES Project Management Fees			\$ 29,000
<b>TOTAL PROJECT PRICE:</b>	<b>\$ -</b>	<b>\$ 481,076</b>	<b>\$ 511,956</b>
Estimated Utility Incentive	\$ -	\$ 70,266	\$ 70,266
Comm. Request Grant Request			\$ 123,000
Estimated Client Net Cost (excluding add'l years M&V)			\$ 318,690
Client Initial Cash Payment of Non-State Dollars			\$ -
Client Initial Cash Payment of State Dollars			\$ -
<b>Amount to be Financed by Client:</b>			<b>\$ 318,690</b>
<b>Year 1 Estimated Cash Flow:</b>			<b>\$ 5,860</b>
Year 1 Cash Flow Based on Guaranteed Energy Savings (95%):			\$ 3,711

**ECONOMIC ASSUMPTIONS**

Interest Rate :	3.00%
Financing Term:	10 years
Payments/year:	2
Est Annual Rate of Energy Increases:	1.50%
Savings Guarantee:	95%
Simple Payback Period Including Fees:	9.8

**Grant Metrics**

Comm. Request	\$ 123,000
Non state funds	\$ 388,956
State funds	\$ -
<b>Total</b>	<b>\$ 511,956</b>
Leverage	3.18

ANNUAL ENERGY SAVINGS	Mechanical	Water	Lighting	General	Total	Annual Svg
Electrical Savings (kWh)	0	0	420,353	0	420,353	\$ 32,571
Electrical Savings (kW)	0	0	0	0	0	\$ -
Nat Gas Savings (Therms)	0	0	0	0	0	\$ -
Oil (DESI)	0	0	0	0	0	\$ -
Propane (DESI)	0	0	0	0	0	\$ -
Water Savings (CCF)	0	0	0	0	0	\$ -
<b>\$ Saved</b>	<b>\$ -</b>	<b>\$ -</b>	<b>\$ 32,571</b>	<b>\$ -</b>	<b>\$ 32,571</b>	<b>\$ 32,571</b>

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ORDINANCE NO. \_\_\_\_\_

**AN ORDINANCE OF THE CITY OF KELSO AUTHORIZING THE TRANSFER OF FUNDS FROM THE DEBT SERVICE FUND TO THE ARTERIAL STREET FUND AND PROVIDING FOR THE REPAYMENT OF SUCH LOAN**

WHEREAS, the City finds that certain monies need to be expended from said Arterial Street Fund to partially cover the “Citywide LED Streetlight Conversion Project” construction expenditures for 2016; and

WHEREAS, the City estimates annual savings from the completion of the project of approximately \$35,500 and said funds will meet amortized payment of such; and

WHEREAS, the City desires to transfer monies from the Debt Service Fund to the Arterial Street Fund to cover said expenditures with the intent of repaying the Debt Service Fund for a period of ten years;

NOW, THEREFORE,

THE CITY COUNCIL OF THE CITY OF KELSO DO ORDAIN AS FOLLOWS:

**SECTION 1** That the City is authorized to transfer the sum of not more than \$320,000 from the Debt Service Fund to the Arterial Street Fund to cover expenditures for 2016.

**SECTION 2** That the City agrees to repay the Debt Service Fund in full from monies the City will receive from Street Lights – Power & Maintenance savings. Interest shall be charged on said loan at the rate set by the Local Government Invest Pool (LGIP).

**SECTION 3** This Ordinance shall be in full force and effect 5 days after its passage and publication of summary as required by law.



**ADOPTED** by the City Council and **SIGNED** by the Mayor this 1st day of March, 2016.

ATTEST/AUTHENTICATION:

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MAYOR

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CITY CLERK

APPROVED AS TO FORM:

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CITY ATTORNEY

PUBLISHED:

# AGENDA SUMMARY SHEET

## Business of the City Council City of Kelso, Washington

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**SUBJECT TITLE: Ordinance Amendment (2<sup>nd</sup> Reading)** Granting a conservation and access easement over the Hart's Lake property (parcels WI36-01-001 and 24125) to Forterra NW

**Agenda Item:** \_\_\_\_\_

**Dept. of Origin:** \_\_\_\_\_ City Council \_\_\_\_\_

**For Agenda of:** \_\_\_\_\_ February 16, 2016 \_\_\_\_\_

**Originator:** \_\_\_\_\_ Steve Taylor \_\_\_\_\_

**PRESENTED BY:**

Steve Taylor, City Manager

**City Attorney:** Janean Parker

**City Manager:** Steve Taylor

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**Agenda Item Attachments:**

Ordinance  
Conservation and Access Easement to Forterra NW

**SUMMARY STATEMENT:**

The City Council previously authorized a wetland mitigation lease agreement with Habitat Bank, LLC allowing the use of 240 acres of real property extending south from the Coweeman River into the hills east of Aldercrest as a wetland and fish/wildlife habitat mitigation bank. Prior to obtaining regulatory approval of the mitigation bank, Habitat Bank must secure a conservation easement over the property to preserve, in perpetuity, the wetland and conservation enhancement measures that are to be constructed as part of the project. Forterra NW is the organization that was chosen by Habitat Bank to ensure the preservation of the enhancements over time. An earlier version of this conservation easement was previously approved by Council through Ordinance 15-3847. Subsequent comments from various state and federal agencies that make up the mitigation bank review team have necessitated an amendment of the previously adopted conservation easement instrument.

The attached document outlines the requirements, rights, and expectations of the City (as landowner and grantor), Forterra, and Habitat Bank in maintaining, preserving, and using the property over time. The City has preserved the right of public access to the property for low-impact, passive recreational activities.

**OPTIONS:**

- 1) Move to approve the ordinance on second reading granting a conservation and access easement to Forterra NW on the Harts Lake (Jacobsen Land Trust) property;
- 2) Do not approve the ordinance.

3) Direct staff to negotiate amended provisions within the easement document.

**RECOMMENDED ACTION:**

Approve the ordinance on second reading granting the conservation easement to Forterra NW.

ORDINANCE NO. \_\_\_\_\_

**AN ORDINANCE OF THE CITY OF KELSO GRANTING A CONSERVATION AND ACCESS EASEMENT OVER THE HART'S LAKE PROPERTY, PARCELS WI36-01-001 and 24125, TO FORTERRA NW**

WHEREAS, the City owns approximately 240 acres of real property along the Coweeman River that was transferred in 2002 from the Department of Natural Resources; and

WHEREAS, the City acquired the property for open space preservation; and

WHEREAS, the City has entered into an agreement with Habitat Bank, LLC for the development of a wetland mitigation project at this property that would improve the wetland and wildlife habitat conservation values at that site and would allow that credits for such work be purchased for wetland mitigation purposes elsewhere throughout the City;

WHEREAS, as a part of this development, the City must reserve an easement over the property to preserve the wetland and conservation enhancement measures that are to be constructed; and

WHEREAS, this Easement with Forterra NW will preserve the land in perpetuity for wetland and conservation purposes while allowing passive recreational uses;

NOW, THEREFORE,

THE CITY COUNCIL OF THE CITY OF KELSO DO ORDAIN AS FOLLOWS:

**SECTION 1.** Amendment. This Agreement amends, supersedes and replaces the easement granted in Ordinance no. 15-3847.

Easement Approved. The City hereby approves the grant of a Conservation and Access Easement, substantially as set forth in Exhibit A attached hereto, over the Property known as Hart's Lake, Tax Parcel Nos WI-01-001 and 24125, and more particularly described the legal description attached to Exhibit A to Forterra NW a Washington non-profit corporation.

**SECTION 2.** City Manager Authorization. The City Manager is authorized to execute a Conservation and Access Easement, substantially in the form attached hereto as Exhibit A, and to execute such other documents and to take such other action as may be necessary to accomplish the conveyance of the Easement to Forterra NW.

**SECTION 3.** The provisions of this Ordinance are declared to be severable. If any provision, clause, sentence, or paragraph of this Ordinance or the application thereof to any person, establishment, or circumstances shall be held invalid, such invalidity shall not affect the other provisions or application of this Ordinance.

**SECTION 4.** This Ordinance shall be in full force and effect 5 days after its passage and publication of summary as required by law.

**ADOPTED** by the City Council and **SIGNED** by the Mayor this \_\_\_\_ day of \_\_\_\_\_, 2016.

ATTEST/AUTHENTICATION:

\_\_\_\_\_  
MAYOR

\_\_\_\_\_  
CITY CLERK

APPROVED AS TO FORM:

\_\_\_\_\_  
CITY ATTORNEY

PUBLISHED:\_\_\_\_\_

When recorded return to:

Forterra NW  
901 Fifth Ave., Suite 2200  
Seattle, WA 98164

## CONSERVATION EASEMENT AND ACCESS EASEMENT

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Grantor: City of Kelso

Grantee: Forterra NW

Abbr. legal description: E ½ of E ½, SW ¼ of NE ¼, NW ¼ of SE ¼, Sec. 36, T 8 N, R 2 W

Legal Description: Exhibit A, p.18

Assessor's Tax Parcel Number: WI36-01-001; 24125

Auditor File No. of Documents Assigned, Released, or Amended: n/a

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THIS CONSERVATION EASEMENT ("Easement") and Access Easement are made by the City of Kelso, a Washington municipality, having an address at \_\_\_\_\_ ("Grantor"), in favor of Forterra NW, a Washington non-profit corporation, having an address of 901 Fifth Ave., Suite 2200, Seattle, WA 98164 ("Grantee") (collectively "Parties").

### 1. RECITALS

**1.1.** Grantor is the sole owner in fee simple of that certain real property (the "Protected Property") in Cowlitz County, Washington, more particularly described in Exhibit A (legal description) and shown on Exhibit B (site map), which are attached and incorporated into this Easement by this reference.

**1.2.** The Protected Property possesses wetlands and other fish and wildlife habitat ("Conservation Values"). Wetlands, other fish and wildlife habitat and old growth and secondary growth forested uplands on the Protected Property that are preserved, restored, enhanced, or otherwise created after the effective date of this Easement shall also be considered Conservation Values.

**1.3.** The Conservation Values are a result of the Protected Property's inherent ecological potential and of the existing and/or anticipated restoration and enhancement of wetlands and other habitats on the Protected Property by Habitat Bank, LLC ("Mitigation Sponsor"). The foregoing preservation, restoration and enhancement is intended to qualify the Protected Property for use as mitigation for development elsewhere in Washington State ("Mitigation").

**1.4.** This Easement is a condition of the Mitigation.

**1.5.** Grantor and Grantee intend that the Conservation Values be preserved and maintained in perpetuity by permitting only those land uses on the Protected Property that do not impair or interfere with the Conservation Values, which include, but are not limited to, such restoration, enhancement, agricultural and recreational uses as further provided in this Easement.

**1.6.** Grantee is a publicly supported, tax-exempt nonprofit organization, qualified under Sections 501(c)(3) and 170(h) of the Internal Revenue Code of 1986, as amended, and also qualified as a nonprofit nature conservancy corporation under RCW 64.04.130 and RCW 84.34.250, whose primary purpose is to promote the preservation of open space and critically important ecological systems in Washington State.

**1.7.** Grantee agrees, by accepting this Easement, to preserve and protect in perpetuity the Conservation Values and enforce the provisions hereof, unless this Easement is sooner terminated as expressly provided for herein.

**1.8.** The Parties acknowledge that this Easement does not provide standards or criteria regarding the effectiveness of Habitat Bank, LLC's restoration or enhancement of the Protected Property and that this Easement is not intended to provide a basis for ensuring the effectiveness of such restoration and enhancement or to obligate Grantee to ensure such effectiveness. The Parties further acknowledge that such standards and criteria and the ability to ensure the effectiveness thereof are provided for elsewhere.

## **2. CONVEYANCE AND CONSIDERATION**

**2.1.** For the reasons stated above, and in consideration of the mutual covenants, terms, conditions, and restrictions contained in this Easement, and other good and valuable consideration provided by the Parties, the receipt and sufficiency of which is hereby acknowledged, Grantor hereby voluntarily grants, conveys, and warrants to Grantee a conservation easement in perpetuity over the Protected Property, consisting of certain rights in the Protected Property, as set forth in this Easement, subject only to the restrictions contained in this Easement.

**2.2.** This conveyance is a conveyance of an interest in real property under the provisions of RCW 64.04.130 and RCW 84.34.210.

**2.3.** This grant shall be subject to only those easements, restrictions, interests, and water rights that are set forth in Exhibit C, which is attached and incorporated into this Easement by this reference ("Permitted Exceptions"). The Permitted Exceptions include, but are not limited to, that certain Agreement for Use of Property executed on August 20, 2013 and recorded February 20, 2015 at AFN 3517294, as amended by instrument executed February 19, 2015 and recorded February 20, 2015 at AFN 3517293.

**2.4.** Grantor expressly intends that this Easement run with the land and that this

Easement shall be binding upon Grantor's successors and assigns.

**2.5.** This Easement does not transfer any water or water rights. This Easement also does not transfer, or create any entitlement in, any credit from, or rights in, the Mitigation.

### **3. PURPOSE**

The purpose of this Easement is to assure that the Protected Property will be retained forever predominantly in its condition as old growth forest, upland, streams, wetland and other aquatic and riparian habitat of fish, wildlife, and plants, providing the old growth forest, wetland, aquatic and riparian functions and values described in the Baseline Documentation, and to prevent any use of, or activity on, the Protected Property that will impair or interfere with the Conservation Values (the "Purpose"). Grantor intends that this Easement will confine the use of, or activity on, the Protected Property to such uses and activities that are consistent with this Purpose.

### **4. RIGHTS CONVEYED TO GRANTEE**

To accomplish the Purpose of this Easement, the following rights are conveyed to Grantee by this Easement:

**4.1. Identification and Protection.** To preserve and protect in perpetuity, unless sooner terminated as expressly provided under this Easement, and to enhance by mutual agreement, the Conservation Values.

**4.2. Access.**

4.2.1. To enter the Protected Property annually, at a mutually agreeable time and upon prior written notice to Grantor, for the purpose of making a general inspection to monitor compliance with this Easement.

4.2.2. To enter the Protected Property at such other times as are necessary if Grantee reasonably believes that a violation of the Easement is occurring or has occurred, for the purpose of mitigating or terminating the violation and otherwise enforcing the provisions of this Easement. Such entry shall be upon prior reasonable notice to Grantor, and Grantee shall not in any case unreasonably interfere with Grantor's use and enjoyment of the Projected Property.

4.2.3. Solely in furtherance of the purposes described in this Section 4, Grantor hereby grants and conveys to Grantee a non-exclusive easement for ingress and egress to the Protected Property, of a duration commensurate with the duration of this Easement, on, over and across all other easements, rights-of-way, or other property of the Grantor whereby Grantor has access to the Protected Property as of and/or after the effective date of the Easement.

4.2.4. To enter the Protected Property, at mutually agreeable times and upon prior written notice to Grantor, to exercise any other affirmative rights as expressly provided for herein.



**4.3. Injunction and Restoration.** To enjoin any use of, or activity on, the Protected Property that is inconsistent with the Purpose of this Easement, and to undertake the restoration of such areas or features of the Protected Property as may be damaged by uses or activities inconsistent with the provisions of this Easement, all in accordance with Section 9.

**4.4. Enforcement.** To enforce the terms of this Easement, consistent with Section 9.

**4.5. Assignment.** To assign, convey, or otherwise transfer Grantee's interest in the Protected Property in accordance with Section 13 and subject to Section 11.4.

**4.6. Baseline Documentation.**

4.6.1. As further provided in Section 4.6.2 below, Grantee shall document specifically the Conservation Values in an inventory of relevant features of the Protected Property, which Grantee shall maintain on file at its offices and which shall be incorporated into this Easement by this reference ("Baseline Documentation"). The Baseline Documentation shall consist of reports, maps, photographs, and other documentation that provide, collectively, an accurate representation of the Protected Property. The Baseline Documentation is intended to serve as an objective, although nonexclusive, information baseline for monitoring compliance with the terms and conditions of this Easement. Grantee shall timely provide Grantor with a copy of the Baseline Documentation.

4.6.2. The Parties acknowledge and agree that through the process of developing the Mitigation there may be prepared by the Mitigation Sponsor from time to time such annual reports, "as-built" plans, and other documentation of the condition of the Protected Property ("Mitigation Plans & Reports") sufficient to constitute the Baseline Documentation. Promptly after Grantor's receipt thereof from the Mitigation Sponsor, Grantor agrees to provide Grantee with a copy of each such document constituting a Mitigation Plan or Report. The Parties further agree that Grantee may, but shall have no obligation to, independently obtain any other information for the purpose of establishing or updating the Baseline Documentation.

## **5. GRANTOR'S RESERVED RIGHTS AND OBLIGATIONS**

**5.1. General.** Grantor reserves for itself and its successors and assigns all rights accruing from ownership of the Protected Property, including, but not limited to, the right to sell, lease, and devise the Protected Property and the right to engage in, or permit or invite others to engage in, any use of, or activity on, the Protected Property that is not inconsistent with the Purpose of the Easement and that is not prohibited by this Easement. Without limiting the generality of this Section 5.1, Grantor specifically reserves for itself and its successors and assigns, the following uses and activities:

**5.2. Agricultural Use.** The following agricultural activities are permitted: grazing, grass cutting, and baling hay; *provided* that such activities are carried out in compliance with federal, state, and local regulations, and *further provided that* portions of the Protected Property once restored pursuant to the Mitigation (up to the entirety of the Protected Property), shall not be used for such agricultural activities unless specifically authorized by the Mitigation Sponsor.

**5.3. Recreation.** The undertaking of recreational activities that is non-motorized, non-commercial, low-impact, and dispersed (*i.e.*, not occurring in a confined area), including by members of the general public, such as hiking, bird watching, horseback riding, fishing, and hunting; *provided* that such activities are conducted in a manner and intensity that does not adversely affect the Conservation Values. Notwithstanding the foregoing, Grantor shall not construct improvements in furtherance of the foregoing uses and activities, including, but not limited to new trails, *except* that Grantor may install temporary, seasonal devices, such as removable hunting blinds provided that they do not adversely affect the Conservation Values.

**5.4. Road and Trail Maintenance.** The use, maintenance, or replacement of existing roads and trails necessary to maintain, restore, or enhance the Conservation Values or to facilitate access within the Protected Property necessary for uses and activities expressly allowed in this Section 5 unless such maintenance or replacement would adversely affect the Conservation Values, *except* as may otherwise be approved by Grantee.

**5.5. Fences.** The construction and maintenance of fences within or around the Protected Property provided that the design and location shall not adversely affect the Conservation Values.

**5.6. Habitat Stewardship, Restoration, and Enhancement.** Constructing, installing, planting, maintaining, and engaging in other activities to maintain or further restore or enhance the Conservation Values in accordance with the requirements of the Mitigation and any final construction or management plans and bid specifications subsequently developed in conformance with said requirements, which may include, but are not limited to: planting and irrigating plants; removing and controlling weeds; installing and maintaining ditches, berms, dikes, wells, log weirs and other water control and production structures (“Water Control Structures”); diking wetland areas; altering or manipulating ponds and water courses; and creating new wetlands, water impoundments, or water courses. Motorized and mechanized vehicles may be used in furtherance of, and to facilitate, the foregoing activities, provided that any off-road use thereof does not adversely affect the Conservation Values. If Grantor has conveyed or assigned its rights to engage in the activities described in this Section 5.6 to Grantee or third parties, Grantor covenants to not interfere with such restoration and/or enhancement, including, but not limited to, by the exercise of any rights reserved to Grantor under this Easement.

**5.7. Maintenance.** Taking various actions necessary to protect the Conservation Values, Water Control Structures, ditches, canals, agricultural improvements, and other features of the Protected Property, to insure that neighboring properties are not adversely impacted by any activities or conditions on or caused by the Protected Property, provided that the conduct of such maintenance activities itself does not adversely affect the Conservation Values.

**5.8. Signs.** The installation and maintenance of signs, *provided* that such installation does not adversely affect the Conservation Values, and *further provided* that signs in excess of twenty-five (25) square feet in area shall not be permitted.

**5.9. Protection of Health or Safety.** The undertaking of other activities necessary to protect human health or safety, or that are actively required by and subject to compulsion of any governmental agency with authority to require such activity; *provided* that any such activity shall be conducted so that significant adverse impacts on the Conservation Values are avoided, or, if avoidance is not possible, minimized to the greatest extent possible under the circumstances.

**5.10 Grantor's Obligations/Access & Non-Interference.** Grantor shall provide access for the purpose of implementing the long-term management and maintenance plan of the Mitigation ("Plan"). Grantor, furthermore, shall refrain from impeding or otherwise interfering with implementation of the Plan. Activities in furtherance of the Plan are to be carried out by Habitat Bank, LLC, or its assignee. Such activities may include, but are not limited to, maintenance and repair of Water Control Structures; maintenance, repair, removal, or abandonment of structural elements of the Mitigation; and removal of invasive plant species.

## **6. USES AND ACTIVITIES INCONSISTENT WITH THE PURPOSE OF THE EASEMENT**

**6.1. General.** Any use of, or activity on, the Protected Property inconsistent with the Purpose of this Easement is prohibited, and Grantor acknowledges and agrees that it will not conduct, engage in, or permit any such use or activity. Without limiting the generality of the foregoing, the following uses of, or activities on, the Protected Property, although not an exhaustive list of inconsistent uses or activities, are inconsistent with the Purpose of this Easement and shall be prohibited:

**6.2. Subdivision.** The legal or "de facto" division or subdivision of the Protected Property, which shall include, but not be limited to, any subdivision, short subdivision, platting, binding site plan, testamentary division, or other process by which the Protected Property is divided into lots or in which title to different portions of the Protected Property are held by different owners, *except* in any such circumstance that such division or subdivision is exclusively in furtherance of the Mitigation or the Purpose of this Easement or is approved by the Grantee. This prohibition shall not be interpreted to preclude any lot line adjustment that does not create a number of lots that is greater than the number of lots in existence on the effective date of this Easement.

**6.3. Construction.** The placement, installation, or construction of any buildings, structures, or other improvements of any kind, including, but not limited to, roads, railroads, utilities, cellular phone towers, septic systems, wells, recreational facilities, and parking lots, *except* as expressly provided in Sections 5.3, 5.4, 5.5, 5.6, 5.8 and 5.9 above.

**6.4. Alteration of Land.** The alteration of the surface of the land, including, without limitation, the excavation or removal of soil, sand, gravel, rock, peat, or sod, *except* in

conjunction with a use or activity expressly allowed in Sections 5.2, 5.4, 5.6, 5.7 and 5.9 above.

**6.5. Erosion or Water Pollution.** Any use or activity that causes or is likely to cause significant soil degradation or erosion or significant pollution of any surface or subsurface waters. For the purposes of this Easement, the uses and activities expressly allowed under and performed in accordance with Sections 5.2, 5.4, 5.6, 5.7 and 5.9 above shall be deemed to not violate this prohibition.

**6.6. Removal of Trees and Other Vegetation.** The pruning, topping, cutting down, uprooting, girdling, or other destruction or removal of live and dead trees and other vegetation, *except* in conjunction with a use or activity expressly allowed in Sections 5.2, 5.4, 5.6, 5.7 and 5.9 above.

**6.7. Waste Disposal.** The disposal, storage, or Release of Hazardous Substances, rubbish, garbage, debris, unregistered vehicles, abandoned equipment, parts thereof, or other offensive waste or material. The term “Release” shall mean release, generation, treatment, disposal, storage, dumping, burying, or abandonment. The term “Hazardous Substances” shall mean any substances, materials, or wastes that are hazardous, toxic, dangerous, or harmful, or are designated as, or contain components that are, or are designated as, hazardous, toxic, dangerous, or harmful, and/or that are subject to regulation as hazardous, toxic, dangerous, or harmful or as a pollutant by any federal, state, or local law, regulation, statute, or ordinance, including, but not limited to, petroleum or any petroleum product.

**6.8. Mining.** The exploration for, or development and extraction of, oil, gas, coal, limestone, fossils, metals, geothermal resources, sand, gravel, or rock of any type on or below the surface of the Protected Property.

**6.9. Recreational Activities.** The undertaking of recreational activities and the installation or construction of improvements in furtherance of the same, *except* as expressly allowed under and performed in accordance with Section 5.3 above.

## 7. NOTICE AND APPROVAL

### 7.1. Notice.

7.1.1. Grantor. Certain provisions of this Easement may require Grantor to notify Grantee and/or to receive Grantee’s written approval prior to undertaking certain permitted uses and activities. The purpose of requiring Grantor to notify Grantee prior to undertaking these permitted uses and activities is to afford Grantee an adequate opportunity to ensure that the use or activity in question is designed and carried out in a manner consistent with the Purpose of this Easement. Whenever such notice is required, Grantor shall notify Grantee in writing not less than thirty (30) days prior to the date Grantor intends to undertake the use or activity in question. The notice shall describe the nature, scope, design, location, timetable, and any other material aspect of the proposed use or activity in sufficient detail to permit Grantee to make an informed judgment as to its consistency with the terms of this Easement and the Purpose thereof.

7.1.2. Grantee. Certain provisions of this Easement may require Grantee to give notice to Grantor prior to undertaking certain activities. Whenever such notice is required, Grantee shall notify Grantor in writing not less than thirty (30) days prior to the date Grantee intends to undertake the use or activity in question, unless otherwise provided for by this Easement.

7.2. Approval. Where approval by one of the Parties is required under this Easement, such approval shall be granted or denied in writing within thirty (30) days of receipt of a written request for approval, and such approval shall not be unreasonably withheld. Such approval may include reasonable conditions consistent with the Mitigation requirements that must be satisfied in undertaking the proposed use or activity. When approval is required under this Easement, and when such approval is not granted or denied within the time period and manner set forth in this Section 7.2, the non-approving party may conclusively assume the other party's approval of the use or activity in question.

7.3. Optional Consultation. If Grantor is unsure whether a proposed use or activity is prohibited by this Easement, Grantor may consult Grantee by providing Grantee a written notice describing the nature, scope, design, location, timetable, and any other material aspect of the proposed use or activity in sufficient detail to permit Grantee to make an informed judgment as to its consistency with the Purpose of this Easement and to provide comments thereon to Grantor. This Section 7.3 does not itself impose a requirement of prior approval of the activity described in any such notice; however, if Grantee does not provide written objections within thirty (30) days after receipt of Grantor's notice, Grantee shall be deemed to have approved of the proposed use or activity.

7.4. Addresses. Any notice, demand, request, consent, approval, or communication that either party desires or is required to give to the other shall be in writing and either served personally or sent by first class certified mail, postage prepaid, or by facsimile (if available) with original dispatched by certified mail, addressed as follows, or to such other address as either party from time to time shall designate by written notice to the other:

To Grantor:                   City of Kelso  
\_\_\_\_\_  
\_\_\_\_\_

To Grantee:                   Forterra NW  
901 Fifth Ave., Suite 2200  
Seattle, WA 98164

## 8. ALTERNATIVE DISPUTE RESOLUTION

8.1. Mediation/Arbitration. If a dispute arises between the Parties concerning the consistency of any present or proposed use or activity with the Purpose of this Easement, and if the Party intending such use or activity agrees not to continue or proceed with the use or activity pending resolution of the dispute, the Parties shall meet together to discuss the dispute and

attempt resolution. If the dispute is not resolved through preventive discussions, either party may thereafter refer the dispute to mediation by request made in writing to the other. Within thirty (30) days of the receipt of such a request, the Parties shall select a single mediator to hear the matter. The mediation shall be pursuant to the Washington State mediation statute then in effect. The foregoing provisions of this Section 8 shall not be applicable to Grantee's exercise of its rights pursuant to Section 4 hereof.

**8.2. Preventive Discussions.** Grantor and Grantee will promptly give the other notice of problems or concerns arising in connection with the other's actions under the Easement or the use of or activities or conditions on the Protected Property, and will meet as needed, but no later than fifteen (15) days after receipt of a written request for a meeting, to minimize the same.

## 9. JUDICIAL RESOLUTION

**9.1. Notice of Violation, Corrective Action.** If either party determines that the other is in violation of the terms of this Easement or that a violation is threatened, they shall give written notice to the other of such violation and demand corrective action sufficient to cure the violation and, where the violation involves injury to the Protected Property resulting from any use or activity inconsistent with the Purpose of this Easement, to restore the portion of the Protected Property so injured to its prior condition in accordance with a plan approved by Grantee.

**9.2. Failure to Respond.** Either party may bring an action as provided in Section 9.3 below if the other party:

9.2.1. Fails to cure the violation within thirty (30) days after receipt of a notice of violation; or

9.2.2. Under circumstances where the violation cannot reasonably be cured within a thirty (30) day period, fails to begin curing the violation within the thirty (30) day period and fails to continue diligently to cure such violation until finally cured.

**9.3. Action.**

9.3.1. **Injunctive Relief.** Either party may bring an action at law or in equity in a court having jurisdiction to enforce the terms of this Easement:

9.3.1.1. To enjoin the violation, *ex parte* as necessary and as allowed under the applicable civil rules, by temporary or permanent injunction; and

9.3.1.2. To require the restoration of the Protected Property to the condition that existed prior to any such injury.

9.3.2. **Damages.** The prevailing party shall be entitled to recover damages for violation of the terms of this Easement or injury to any Conservation Values protected by this Easement. Without limiting Grantor's liability in any way, Grantee shall first apply any damages

recovered to the cost of undertaking corrective or restoration action on the Protected Property.

**9.4. Emergency Enforcement.** If Grantee, in its sole discretion, determines that circumstances require immediate action to prevent or mitigate significant damage to the Conservation Values, Grantee may pursue its remedies under this Section 9 without prior notice to Grantor or without waiting for the period provided for cure to expire.

**9.5. Scope of Relief.** Grantee's rights under this Section 9 apply equally in the event of either actual or threatened violations of the terms of this Easement. Grantor agrees that Grantee's remedies at law for any violation of the terms of this Easement are inadequate and that Grantee shall be entitled to the injunctive relief described in this Section 9, both prohibitive and mandatory, in addition to such other relief to which Grantee may be entitled, including specific performance of the terms of this Easement, without the necessity of proving either actual damages or the inadequacy of otherwise available legal remedies. Grantee's remedies described in this Section 9 shall be cumulative and shall be in addition to all remedies now or hereafter existing at law or in equity.

**9.6. Costs of Enforcement.** IN THE EVENT A PARTY FINDS IT NECESSARY TO BRING AN ACTION AT LAW OR OTHER PROCEEDING AGAINST THE OTHER PARTY TO ENFORCE ANY OF THE PROVISIONS OF THIS EASEMENT, THE REASONABLE ENFORCEMENT EXPENSES, INCLUDING ATTORNEYS' AND CONSULTANTS' FEES (WHETHER INCURRED AT THE TRIAL, APPELLATE, OR ADMINISTRATIVE LEVEL) INCURRED BY THE PREVAILING PARTY, SHALL BE PAID BY THE OTHER PARTY.

\_\_\_\_\_  
Grantor [initials]

\_\_\_\_\_  
Grantee [initials]

**9.7. Discretion in Enforcement.** Enforcement of the terms of this Easement shall be at the discretion of each Party, and any forbearance by a Party (for purposes of this Section 9.7, the "Injured Party") to exercise its rights under this Easement in the event of any breach of any terms of this Easement by the other Party, or the other Party's agents, employees, contractors, invitees or licensees, shall not be deemed or construed to be a waiver by the Injured Party of such term of any of the Injured Party's rights under this Easement. No delay or omission by the Injured Party in the exercise of any right or remedy upon any breach by the other Party shall impair such right or remedy or be construed as a waiver. Notwithstanding the foregoing, nothing in this Easement shall be interpreted to waive or toll any applicable statutes of limitation.

**9.8. Acts Beyond Party's Control.** Neither Grantor nor Grantee shall be in default or violation as to any obligation created hereby and no condition precedent or subsequent shall be deemed to fail to occur if such party is prevented from fulfilling such obligation by, or such condition fails to occur due to:

9.8.1. Actions by trespasser upon the Protected Property (the category of trespassers would not include members of the public engaging in uses and activities that are expressly permitted under Section 5 above);

9.8.2. Forces beyond such party's reasonable control, including without limitation, destruction or impairment of facilities resulting from breakdown not resulting from lack of ordinary care and maintenance, flood, earthquake, slide, storm, lightning, fire, epidemic, war, riot, civil disturbance, sabotage, proceeding by court or public authority, or act or failure to act by court, public authority, or third party, which forces by exercise of due diligence and foresight such party could not reasonably have expected to avoid; or

9.8.3. Any action deemed reasonable by Grantor under emergency conditions to prevent, abate, or mitigate significant injury to the Protected Property resulting from such causes.

In the event the terms of this Easement are violated by acts of trespassers, Grantor agrees, at Grantee's option and expense, to join in any suit, to assign its right of action to Grantee, or to appoint Grantee its attorney in fact, for the purpose of pursuing enforcement action against the responsible parties if Grantor, in its discretion, elects not to pursue such action.

**9.9. Compliance Certificates.** Upon request by Grantor, Grantee shall within thirty (30) days execute and deliver to Grantor, or to any party designated by Grantor, any document, including a compliance certificate, that certifies, to the best of Grantee's knowledge, the status of Grantor's compliance with any obligation of Grantor contained in this Easement and otherwise evidences the status of this Easement

## **10. COSTS, LIABILITIES, TAXES, ENVIRONMENTAL COMPLIANCE, AND INDEMNIFICATION**

**10.1. Costs, Legal Requirements, Liabilities and Insurance.** Grantee shall bear no costs or liabilities of any kind related to the ownership, operation, upkeep, and maintenance of the Protected Property.

**10.2. Taxes and Other Costs.** Grantor shall pay all taxes, fees and charges assessed against the Protected Property by governmental authority as they become due, including taxes imposed upon, or incurred as a result of, this Easement, and shall furnish Grantee with satisfactory evidence of payment upon request. To preserve its rights under this Easement, Grantee may, but is in no event obligated to, make payment of any taxes upon five (5) days prior written notice to Grantor, in accordance with any bill, statement, or estimate procured from the appropriate authority, without inquiry into the validity of the taxes or the accuracy of the bill, statement or estimate, and the obligation to Grantee created by such payment will bear interest until paid by Grantor at the same rate imposed by the relevant governmental authority for the late payment of the tax so paid by Grantee.

**10.3. Control.** Nothing in this Easement shall be construed as giving rise, in the absence of a judicial decree, to any right or ability in Grantee to exercise physical or managerial control over the day-to-day operations of the Protected Property, or any of Grantor's activities on the Protected Property, or otherwise to become an operator with respect to the Protected Property within the meaning of the Comprehensive Environmental Response Compensation and Liability Act of 1980, as amended ("CERCLA"), and the Model Toxics Control Act, as amended ("MTCA").



**10.4. Grantor's Indemnification.** Grantor shall hold harmless, indemnify, and defend Grantee and its members, directors, officers, employees, agents, and contractors (collectively "Grantee Indemnified Parties") from and against all liabilities, penalties, costs, losses, damages, expenses, causes of action, claims, demands, or judgments, including, without limitation, reasonable attorneys' and consultants' fees, arising from or in any way connected with breach of its representations and warranties or injury to or the death of any person, or physical damage to any property, resulting from any act, omission, condition, hazardous material, or other matter related to or occurring on or about the Protected Property that is not a consequence of any action or omission of any of the Grantee Indemnified Parties on or about the Protected Property.

**10.5. Grantee's Indemnification.** Grantee shall hold harmless, indemnify, and defend Grantor and Grantor's members, directors, officers, employees, agents, and contractors (collectively "Grantor Indemnified Parties") from and against all liabilities, penalties, costs, losses, damages, expenses, causes of action, claims, demands, or judgments, including, without limitation, reasonable attorneys' and consultants' fees, arising from or in any way connected with injury to or the death of any person, or physical damage to any property, resulting from any act, omission, condition, or other matter related to or occurring on or about the Protected Property that is a consequence of Grantee's actions or omissions or the actions or omissions of Grantee's members, directors, officers, employees, agents, or contractors on or about the Protected Property.

## **11. EXTINGUISHMENT, CONDEMNATION, AND SUBSEQUENT TRANSFER**

**11.1. Extinguishment.** If circumstances arise in the future that render the Purpose of this Easement impossible to accomplish, this Easement can only be terminated or extinguished, whether in whole or in part, by the Parties' mutual agreement and with the written approval of the Mitigation Sponsor, or by judicial proceedings of a court having jurisdiction. Unless otherwise agreed to by the Parties, Grantee shall have no compensable interest in this Easement under such circumstances and Grantee acknowledges that its compensation relating to its obligations under this Easement is provided for under separate agreement with Habitat Bank, LLC. The immediately foregoing provision shall be limited solely to the circumstances described in this Section 11.1, and shall not be interpreted to have any application or inference to any other provision of, or circumstance under, this Easement, including, but not limited to, those provisions pertaining to Grantee's rights to enforce the terms of this Easement and Grantee's rights to damages to, or the cost of restoring, the Conservation Values.

**11.2. Condemnation.** If the Easement is taken, in the whole or in the part, by the exercise of the power of eminent domain, Grantee shall be entitled to compensation based upon the appraised value of this Easement. The immediately foregoing provision shall be limited solely to the circumstances described in this Section 11.2, and shall not be interpreted to have any application or inference to any other provision of, or circumstance under, this Easement, including, but not limited to, those provisions pertaining to Grantee's rights to enforce the terms of this Easement and Grantee's rights to damages to, or the cost of restoring, the Conservation Values.

**11.3. Subsequent Transfers.** Grantor agrees to:

11.3.1. Incorporate the terms of this Easement by reference in any deed or other legal instrument by which it divests itself of any interest in all or a portion of the Protected Property, including, without limitation, a leasehold interest;

11.3.2. Describe this Easement in and append it to any executory contract for the transfer of any interest in the Protected Property; and

11.3.3. Give written notice to Grantee of the transfer of any interest in all or a portion of the Protected Property prior to the date of such transfer. Such notice to Grantee shall include the name, address, and telephone number of the transferee or the transferee's representative.

The failure of Grantor to perform any act required by this Section 11.3 shall not impair the validity of this Easement or limit its enforceability in any way.

**11.4. No Merger.** In the event that Grantee acquires the fee title to the Protected Property, it is the Parties' intention that no merger of title shall take place that would merge the restrictions of this Easement with fee title to the Protected Property and thereby eliminate them, and that the restrictions on the use of the Protected Property, as embodied in this Easement, shall, in the event title becomes vested in Grantee, become and remain permanent and perpetual restrictions on the use of the Protected Property.

## **12. AMENDMENT**

If circumstances arise under which an amendment to or modification of this Easement would be appropriate, Grantor and Grantee are free to jointly amend this Easement upon approval of such amendment or modification by the Mitigation Sponsor. Any such amendment shall be recorded in the official records of Cowlitz County, Washington, and any other jurisdiction in which such recording is required.

## **13. ASSIGNMENT AND SUCCESSION**

**13.1. Assignment.** With Grantor's written approval, which shall not be unreasonably withheld, and the Mitigation Sponsor's written approval, this Easement is transferable, but Grantee may assign its rights and obligations under this Easement only to an organization that is authorized to acquire and hold conservation easements under RCW 64.04.130 or RCW 84.34.210 (or any successor provision(s) then applicable). As a condition of such transfer, Grantee shall require that the transferee exercise its rights under the assignment consistent with the Purpose of this Easement. Grantee shall notify Grantor in writing forty-five (45) days prior to such assignment at Grantor's last known address.

**13.2. Involuntary Succession.** If at any time the Corps and Ecology shall reasonably determine the Grantee is unable to carry out its responsibilities under this Easement, the Corps and Ecology shall have the right to notify both the Grantor and the Grantee in writing of this

determination and the reasons therefore. The Grantee shall have Ninety (90) days to cure the disability or if the disability cannot be cured within this period, the Grantee shall take reasonable steps toward curing the disability within this time period. However, if the Grantee is unwilling or unable to establish its capacity to carry out the Easement responsibilities, the Easement shall be assigned by the Grantee, by a legal representative of the Grantee, or by court order, to a qualified successor approved by the Grantor, the Corps and Ecology.

## 14. RECORDATION

Grantee shall record this Easement in a timely fashion in the official records of Cowlitz County, Washington, and in any other appropriate jurisdictions, and may re-record it at any time as may be required to preserve its rights in this Easement.

## 15. GENERAL PROVISIONS

**15.1. Controlling Law.** The interpretation and performance of this Easement shall be governed by the laws of the State of Washington.

**15.2. Liberal Construction.** Any general rule of construction to the contrary notwithstanding, this Easement shall be liberally construed in favor of the grant to effect the Purpose of this Easement. If any provision in this Easement is found to be ambiguous, an interpretation consistent with the Purpose of this Easement that would render the provision valid shall be favored over any interpretation that would render it invalid.

**15.3. Severability.** If any provision of this Easement, or its application to any person or circumstance, is found to be invalid, the remainder of the provisions of this Easement, or the application of such provision to persons or circumstances other than those as to which it is found to be invalid, as the case may be, shall not be affected.

**15.4. Entire Agreement.** Except as to any other written agreement between the Parties, all prior discussions, negotiations, understandings, communications, or oral agreements regarding this Easement have been superseded by, and are merged into, this Easement.

**15.5. No Forfeiture.** Nothing contained in this Easement will result in a forfeiture of Grantor's title in any respect.

**15.6. "Grantor" - "Grantee".** The terms "Grantor" and "Grantee," wherever used in this Easement, and any pronouns used in their place, shall be held to mean and include, respectively the above-named Grantor, and its successors and assigns, and the above-named Grantee, and its successors and assigns.

**15.7. Successors and Assigns.** The covenants, terms, conditions, and restrictions of this Easement shall be binding upon, and inure to the benefit of, the Parties to this Easement and their respective successors and assigns, and shall continue as a servitude running in perpetuity with the Protected Property, unless sooner terminated as expressly provided for herein. No term

or provision of this Easement is intended to be, or shall be, for the benefit of any person, firm, organization, or corporation not a party to this Easement, and no such other person, firm, organization, or corporation shall have any right or cause of action hereunder, *except* as expressly provided in Section 13 above.

**15.8. Termination of Rights and Obligations.** A party's rights and obligations under this Easement terminate upon transfer of the party's interest in the Easement or Protected Property, except that liability for acts or omissions occurring prior to transfer shall survive transfer.

**15.9. Counterparts.** The Parties may execute this Easement in two or more counterparts, which shall be signed by both Parties. Each counterpart shall be deemed an original instrument as against any party who has signed it. In the event of any disparity between the counterparts produced, the recorded counterpart shall be controlling.

**15.10. Recitals.** Each recital set forth above is fully incorporated into this Easement.

**15.11. Effective Date.** The effective date of this Easement is the date of recording of this Easement.

**15.12. Authority.** The individuals signing below, if signing on behalf of any entity, represent and warrant that they have the requisite authority to bind the entity on whose behalf they are signing.

**15.13. Captions.** The captions in this instrument have been inserted solely for convenience and ease of reference and are not a part of this Easement and shall have no effect upon construction or interpretation.

**16. SCHEDULE OF EXHIBITS**

**16.1.** Exhibit A -- Legal Description of Property Subject to Easement.

**16.2.** Exhibit B -- Site Map(s).

**16.3.** Exhibit C – Permitted Exceptions.

TO HAVE AND TO HOLD unto Grantee, its successors and assigns forever.

IN WITNESS WHEREOF, the undersigned Grantor has executed this Easement this \_\_\_\_ day of \_\_\_\_\_, 2016.

City of Kelso, Grantor

By \_\_\_\_\_

\_\_\_\_\_  
[print name/title]

Forterra NW does hereby accept the above Conservation Easement and Access Easement.

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

Forterra NW, Grantee

By \_\_\_\_\_

\_\_\_\_\_  
[print name/title]

STATE OF WASHINGTON        )  
  ) ss.  
COUNTY OF COWLITZ        )

On this \_\_\_\_ day of \_\_\_\_\_ 2016, before me, the undersigned, a Notary Public in and for the State of Washington, duly commissioned and sworn, personally appeared \_\_\_\_\_ to me known to be the \_\_\_\_\_ of the City of Kelso, the Washington municipality that executed the within and foregoing instrument, and acknowledged the said instrument to be the free and voluntary act and deed of said municipality for the uses and purposes therein mentioned, and on oath stated that he/she is authorized to execute the said instrument.

WITNESS my hand and official seal hereto affixed the deal and year in this certificate above written.

\_\_\_\_\_  
NOTARY PUBLIC in and for the State of  
Washington, residing at \_\_\_\_\_  
Print Name: \_\_\_\_\_  
My commission expires \_\_\_\_\_

STATE OF WASHINGTON        )  
  ) ss.  
COUNTY OF \_\_\_\_\_        )

On this \_\_\_\_ day of \_\_\_\_\_ 2016, before me, the undersigned, a Notary Public in and for the State of Washington, duly commissioned and sworn, personally appeared \_\_\_\_\_ to me known to be the \_\_\_\_\_ of Forterra NW, the Washington non-profit corporation that executed the within and foregoing instrument, and acknowledged the said instrument to be the free and voluntary act and deed of said corporation for the uses and purposes therein mentioned, and on oath stated that he/she is authorized to execute the said instrument.

WITNESS my hand and official seal hereto affixed the deal and year in this certificate above written.

\_\_\_\_\_  
NOTARY PUBLIC in and for the State of  
Washington, residing at \_\_\_\_\_  
Print Name: \_\_\_\_\_  
My commission expires \_\_\_\_\_

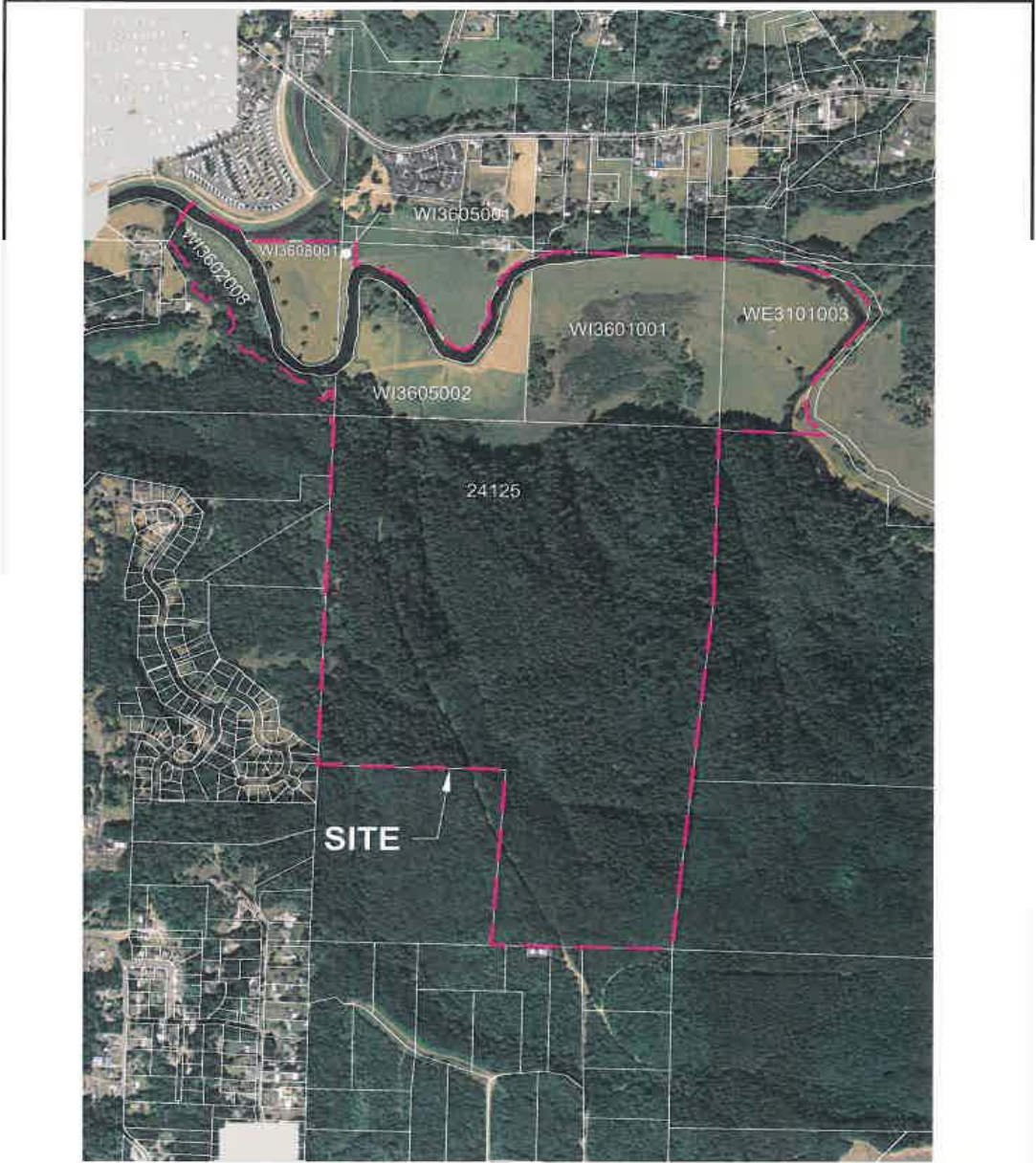
**EXHIBIT A OF CONSERVATION EASEMENT**  
**Legal Description of Property Subject to Conservation Easement**

The E  $\frac{1}{2}$  of the E  $\frac{1}{2}$ , the SW  $\frac{1}{4}$  of the NE  $\frac{1}{4}$ , and the NW  $\frac{1}{4}$  of the SE  $\frac{1}{4}$  of Section 36, Township 8 North, Range 2 West, Willamette Meridian, Cowlitz County, Washington, according to U.S. Government subdivision procedures.

**EXHIBIT B OF CONSERVATION EASEMENT**  
**Site Map**

*[see attached following this cover page]*





**EXHIBIT C OF CONSERVATION EASEMENT**  
**Permitted Exceptions**

- 3. EASEMENT AND THE TERMS AND CONDITIONS THEREOF:**  
**IN FAVOR OF: UNITED STATES OF AMERICA**  
**BY DECLARATION OF TAKING IN CAUSE NO. 257 IN UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF WASHINGTON, SOUTHERN DIVISION**  
**CERTIFIED COPY RECORDED AUGUST 12, 1941 UNDER AUDITOR'S FILE NO. 216066 IN VOL. 272, PAGE 313**  
**PURPOSE: PERPETUAL EASEMENT AND RIGHT OF WAY AND THE RIGHT IN PERPETUITY TO CONSTRUCT, OPERATE AND MAINTAIN ONE OR MORE ELECTRIC TRANSMISSION LINES AND NECESSARY COMMUNICATION LINES.**
- 4. EASEMENT AND THE TERMS AND CONDITIONS THEREOF:**  
**GRANTEE: OLYMPIC PIPE LINE COMPANY**  
**PURPOSE: RIGHT OF WAY FOR PIPE LINE CONSTRUCTION, OPERATION AND MAINTENANCE PURPOSES**  
**DATED: AUGUST 9, 1965**  
**RECORDED: AUGUST 25, 1965**  
**AUDITOR'S NO.: 613065 VOLUME: 720 PAGE: 1429**  
**AREA AFFECTED: SAID PROPERTY**
- 5. UNDERGROUND UTILITY EASEMENT AND THE TERMS AND CONDITIONS THEREOF:**  
**GRANTEE: PUBLIC UTILITY DISTRICT NO.1 OF COWLITZ COUNTY, WASHINGTON**  
**PURPOSE: RIGHT OF WAY EASEMENT FOR POWER UNDERGROUND**  
**DATED: JANUARY 22, 2003**  
**RECORDED: JANUARY 23, 2003**  
**AUDITOR'S NO.: 3172215**  
**AREA AFFECTED: SAID PROPERTY**
- CONTAINS COVENANT PROHIBITING STRUCTURES OVER SAID EASEMENT OR OTHER ACTIVITY WHICH MIGHT ENDANGER THE UNDERGROUND SYSTEM.**
- 6. EASEMENT AND THE TERMS AND CONDITIONS THEREOF:**  
**GRANTEE: MITCH WHARTON**  
**PURPOSE: CONSTRUCT AND MAINTAIN AN ACCESS ROADWAY SUITABLE FOR A SINGLE-FAMILY RESIDENCE**  
**DATED: JANUARY 21, 2003**  
**RECORDED: JANUARY 23, 2003**  
**AUDITOR'S NO.: 3172216**  
**AREA AFFECTED: SAID PROPERTY**
- 7. RESERVATION CONTAINED IN DEED FROM THE STATE OF WASHINGTON RECORDED UNDER AUDITOR'S FILE NO. 3144623 RESERVING TO THE GRANTOR ALL OIL, GASES, COAL, ORES, MINERALS, FOSSILS, ETC., AND THE RIGHT OF ENTRY FOR OPENING, DEVELOPING AND WORKING THE SAME, AND PROVIDING THAT SUCH RIGHTS SHALL NOT BE EXERCISED UNTIL PROVISION HAS BEEN MADE FOR FULL PAYMENT OF ALL DAMAGES SUSTAINED BY REASON OF SUCH ENTRY.**

**RIGHT OF THE STATE OF WASHINGTON OR ITS SUCCESSORS, SUBJECT TO PAYMENT OF COMPENSATION THEREFORE, TO ACQUIRE RIGHTS-OF-WAY FOR PRIVATE RAILROADS, SKID ROADS, FLUMES, CANALS, WATER COURSES OR OTHER EASEMENTS FOR TRANSPORTING AND MOVING TIMBER, STONE, MINERALS AND OTHER PRODUCTS FROM THIS AND OTHER PROPERTY, AS RESERVED IN DEED REFERRED TO ABOVE.**

**8. RESTRICTIONS IMPOSED BY INSTRUMENT RECORDED ON APRIL 4, 2002, UNDER AUDITOR'S FILE NO. 3144623, AS FOLLOWS:**

**THIS PROPERTY IS CONVEYED PURSUANT TO CHAPTER 8, SECTION 415, WASHINGTON LAWS OF 2001, SECOND SPECIAL SESSION, TO BE USED EXCLUSIVELY FOR OPEN SPACE OR RECREATION PURPOSES FOR A MINIMUM OF THIRTY YEARS FROM THE DATE OF THIS DEED.**

**9. AGREEMENT FOR USE OF PROPERTY AND THE TERMS AND CONDITIONS THEREOF:**

**BETWEEN: CITY OF KELSO  
AND: HABITAT BANK, LLC  
DATED: AUGUST 20, 2013  
RECORDED: FEBRUARY 20, 2015  
AUDITOR'S NO.: 3517294**

**10. AMENDMENT NO. 1 TO AGREEMENT FOR USE OF PROPERTY AND THE TERMS AND CONDITIONS THEREOF:**

**BETWEEN: CITY OF KELSO  
AND: HABITAT BANK, LLC  
DATED: FEBRUARY 19, 2015  
RECORDED: FEBRUARY, 20, 2015  
AUDITOR'S NO.: 3517293**

# AGENDA SUMMARY SHEET

## **Business of the City Council City of Kelso, Washington**

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**SUBJECT TITLE:** AN ORDINANCE OF THE CITY OF KELSO RELATING TO SHOPPING CART THEFT AND REGULATION AMENDING 9.04.010 AND ADDING A NEW CHAPTER 9.64 SHOPPING CART CONTROL TO THE KELSO MUNICIPAL CODE

**Agenda Item:** \_\_\_\_\_

**Dept. of Origin:** \_\_\_\_\_ City Manager \_\_\_\_\_

**For Agenda of:** \_\_\_\_\_ February 16, 2016 \_\_\_\_\_

**Originator:** \_\_\_\_\_ Steve Taylor \_\_\_\_\_

**City Attorney:** \_\_\_\_\_ Janean Parker \_\_\_\_\_

**City Manager:** \_\_\_\_\_ Steve Taylor \_\_\_\_\_

**PRESENTED BY:**

Steve Taylor, City Manager

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**Agenda Item Attachments:**

Proposed Ordinance

Exhibit A – Yakima Municipal Code Chapter 6.27 – Shopping Cart Regulations

Exhibit B – Auburn Municipal Code Chapter 8.18 – Abandoned Shopping Carts

**SUMMARY STATEMENT:**

As part of the recent updates to the nuisance abatement/code enforcement program staff has researched potential solutions to the issue of shopping carts that have been abandoned throughout the City. The proposed approach will require retail establishments to affix a sign to each cart identifying the name of the establishment or owner of the cart as well as post notification on their property that is it unlawful to remove carts from the premises.

The proposed ordinance adopts RCW 9A.56.270 which makes it a Class 3 civil infraction to remove carts from establishments meeting the criteria noted above in addition to creating a process for the retrieval, impoundment, and disposition of shopping carts and establishing a fee aimed at cost recovery.

The proposed ordinance has an effective date on March 1, 2016, in order to give staff time to send local retail establishments notice of the new requirements and offer them an opportunity to provide comments and feedback. Staff has been working with the neighboring City of Longview to address the roving nature of shopping carts.

Following previous discussions with Council in November 2015 regarding this issue, letters were sent out to local retailers known to use shopping carts informing them of the proposed change. No comments have been received to date.

The following article regarding shopping carts was published in The Daily News on February 21, 2005.

Chief Wayne Nelson thinks he has found a cure for the shopping cart blight that ails Kelso. The Kelso Police chief recently met with representatives from Target, Safeway, Sinnett's Marketplace and Dollar Tree and compiled a list of phone numbers that city employees may call to report stray shopping cart sightings. The store managers have agreed to collect the carts within a day or so of receiving calls, Nelson said.

Last week, Nelson handed out the list of contact numbers to police officers, city employees who drive city vehicles and eagle-eyed city councilmen.

Nelson said the store managers seemed willing to cooperate. "No one intended for their carts to be stolen and not returned," he said.

He originally hoped to set up one lost shopping cart hotline, but that didn't pan out because each store has its own corporate policy for how aggressively it deals with wandering carts, he said.

If the informal cart-corralling measure flops, the city may once again consider adopting an ordinance to address the issue, he said.

**RECOMMENDED ACTION:**

Move to approve on second reading an ordinance amending Chapter 9.04 State Criminal Statutes Adopted and adding Chapter 9.64 Shopping Cart Control to the Kelso Municipal Code.

ORDINANCE NO. \_\_\_\_\_

**AN ORDINANCE OF THE CITY OF KELSO RELATING TO SHOPPING CART THEFT AND REGULATION AMENDING 9A.56.270 AND ADDING A NEW CHAPTER 9.62 SHOPPING CART CONTROL TO THE KELSO MUNICIPAL CODE**

WHEREAS, shopping carts lost, stolen or abandoned on public and private property can obstruct access to sidewalks and streets, interfere with pedestrian and vehicular traffic, and impede emergency services creating a potential public safety hazard and harming public health and safety; and

WHEREAS, left unattended, lost, stolen, or abandoned shopping carts cause deteriorated community appearance and can create conditions of blight in the community; and

WHEREAS, the City has determined that abandoned shopping carts is becoming a more common problem within the City constituting a public nuisance; and

WHEREAS, the City wishes to deter the removal of shopping carts from businesses provide for the retrieval of lost, stolen, or abandoned shopping carts, and to prevent the accumulation of removed carts on public and private properties within the City;

NOW, THEREFORE,

THE CITY COUNCIL OF THE CITY OF KELSO DO ORDAIN AS FOLLOWS:

**SECTION 1. Kelso Municipal Code Chapter 9.04 Amended.** That Kelso Municipal Code Section 9.04.010 is hereby amended to add the following state statute to the list of statutes adopted by reference:

**RCW 9A.56.270 Shopping Cart Theft.**

**SECTION 2. Kelso Municipal Code Title 9 Amended.** That Kelso Municipal Code

Title 9 is hereby amended to add a new Chapter 9.64 as follows:

**Chapter 9.64 – Shopping Cart Control.**

9.64.010 Purpose.

The purpose of this Chapter is to prevent the unlawful removal of shopping carts from the premises of businesses and to provide for the prompt retrieval of lost, stolen, or abandoned shopping carts to promote public health, safety, and welfare.

9.64.020. Removal of shopping cart violation and penalties.

A. It is a Class 3 civil infraction as defined in RCW 7.80.120 for a person without written permission of the owner or person entitled to possession to abandon or to be in possession of a shopping cart that is the property of another more than 100 feet away from the parking area of the retail establishment or shopping cart containment area of the owner of the shopping cart.

B. This section shall apply only if: (1) the shopping cart has a sign permanently affixed to it that identifies the owner of the cart or the retailer, or both, (2) the retail establishment posts notification to the public of the procedure to be used for authorized removal of the cart from the premises and notifies the public that the unauthorized removal of the cart from the premises or parking area of the retail establishment, or the unauthorized abandonment of the cart, is unlawful, and lists a telephone number or address for returning carts;.

9.64.030 Shopping cart identification signs and notice required.

A. Every shopping cart made available for use by customers shall have the following: (a) a sign permanently affixed to it that identifies the owner of the cart or the retailer, or both; (b) notifies the public of the procedure to be utilized for authorized removal of the cart from the premises; (c) notifies the public that the unauthorized removal of the cart from the premises or parking area of the retail establishment, or the unauthorized possession of the cart, is unlawful; and (d) lists a telephone number or address for returning carts removed from the premises or parking area to the owner or retailer.

B. Every retail establishment providing shopping carts shall post in a conspicuous location on the retail establishment property a notification to the public that unauthorized removal of

shopping carts from the premises of the business and the unauthorized possession of a shopping cart is unlawful. The posted notification shall also contain the procedure to be utilized for authorized removal of the cart from the business premises and list a telephone number or address for returning carts removed from the premises.

C. Every retail establishment providing shopping carts shall keep on file with the City Police Department a current telephone number and physical address at which the retail establishment may be contacted for the purpose of reporting the location of abandoned, lost, or stolen shopping carts.

#### 9.64.040 Retrieval and impoundment procedures.

A. Impoundment with Notice. The City may impound a shopping cart which has affixed to it identification information as required by KMC 9.64.020(B), if the following conditions have been satisfied:

1. Location Outside of Premises. The shopping cart is located outside the premises or parking area of a retail establishment and is left unattended or discarded on public property owned by or under the control of the city, or on any right-of-way within the city, or on private property where the owner has consented to removal; and
2. Notice of the cart's discovery and location is given to the shopping cart's owner, retailer, or agent unless such notice has been voluntarily waived by the shopping cart's owner, retailer, or agent; and
3. Failure to Retrieve Cart. The shopping cart is not retrieved within forty eight (48) hours from the date notice is given. The forty-eight hours shall be calculated using only days Monday through Friday and will not include weekend days Saturday and Sunday.

B. Impoundment without Notice. A shopping cart may be impounded without notice if one of the following conditions is satisfied:

1. Hazardous Location. If a shopping cart will impede emergency services, or the normal flow of vehicular or pedestrian traffic, city enforcement personnel are authorized to immediately retrieve the shopping cart from public or private property and impound it. If the cart has identification information affixed, the owner will be notified and given



forty-eight hours to retrieve the cart before a collection fee is assessed using the time calculation listed in subsection (A)(3) of this section; or

2. Lack of Identification. If a shopping cart is unattended or discarded and located outside the premises or parking area of a retail establishment and does not have the required identification information affixed thereto as required by KMC 9.64.020(B), the city may immediately retrieve the shopping cart from public property owned by or under control of the city, any right-of-way within the city, or private property with the consent of the owner; or

3. Evidence of a Crime. Any lost or stolen shopping cart may be impounded as evidence in a criminal investigation.

9.64.050 Fees and disposition of carts.

A. Impounded Carts. When a shopping cart is impounded in accordance with this chapter, the city may charge a cart collection fee to the owner of a shopping cart. The fine shall be in the amount of twenty-five dollars per cart and each cart collected shall constitute a separate violation. Any owner having installed a locking device on its carts which has been disabled by one other than the owner or his agent shall be exempt from the fine.

B. Disposition of Carts. The city may sell or otherwise dispose of any cart not reclaimed within seven days from the date of notification to the owner or the owner's agent of the cart's discovery and location.

**SECTION 3. Severability.** The provisions of this Ordinance are declared to be severable. If any provision, clause, sentence, or paragraph of this Ordinance or the application thereof to any person, establishment, or circumstances shall be held invalid, such invalidity shall not affect the other provisions or application of this Ordinance.

**SECTION 4. Effective Date.** This Ordinance shall be in full force and effect 5 days after its passage and publication of summary as required by law.

**ADOPTED** by the City Council and **SIGNED** by the Mayor this \_\_\_\_ day of \_\_\_\_\_, 2016.

ATTEST/AUTHENTICATION:

\_\_\_\_\_  
MAYOR

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CITY CLERK

APPROVED AS TO FORM:

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CITY ATTORNEY

PUBLISHED: \_\_\_\_\_

**Chapter 6.27****SHOPPING CART REGULATIONS**

## Sections:

- 6.27.010 Purpose.
- 6.27.020 Declaration of nuisance.
- 6.27.030 Exemptions.
- 6.27.040 Definitions.
- 6.27.050 Shopping cart identification signs and notice required.
- 6.27.060 Retrieval and impoundment procedures.
- 6.27.070 Fees and disposition of carts.
- 6.27.080 Severability.

**6.27.010 Purpose.**

It is the primary purpose of this chapter to provide for the prompt retrieval of lost, stolen or abandoned shopping carts to promote public safety and improve the image and appearance of the city. It is a further purpose of this chapter to prevent the accumulation of illegally removed carts on public or private properties. (Ord. 2009-31 § 1 (part), 2009).

**6.27.020 Declaration of nuisance.**

Retail establishments provide shopping carts for the convenience of customers shopping on the premises of the businesses. Shopping carts that have been removed from the premises of the business and left abandoned on public or private property throughout the city constitute a public nuisance and a potential hazard to the health and safety of the public. Shopping carts abandoned on public and private property can create conditions of blight in the community, obstruct free access to sidewalks, streets and other rights-of-way, interfere with pedestrian and vehicular traffic on pathways, driveways, public and private streets, and impede emergency services. It is for these reasons that such lost, stolen, or abandoned shopping carts are hereby declared to be a public nuisance which shall be subject to abatement in the manner set forth in this chapter, or in any other manner provided by law. (Ord. 2009-31 § 1 (part), 2009).

**6.27.030 Exemptions.**

This chapter shall not apply to shopping carts that are removed for repair or maintenance authorized by the owner or owner's agent. (Ord. 2009-31 § 1 (part), 2009).

**6.27.040 Definitions.**

Except as otherwise expressly set forth herein, the following words and terms as used in this chapter shall have the following meanings:

“Abandoned shopping cart” means any shopping cart left unattended or discarded upon any public property owned by or under the control of the city, or left on any right-of-way within the city, or private property other than the premises of the retail establishment from which the shopping cart was removed.

“Authorized agent” means the owner, or an employee or authorized agent of the owner, entitled to possession of the shopping cart.

“Authorized customer” means a customer of the retail establishment, having the written permission of the owner or owner's agent to remove the shopping cart from the business premises.

“Enforcement personnel” means any police officer, code enforcement inspector, or designated staff employed by the city of Yakima.

“Lost or stolen shopping cart” means a shopping cart that is both:

- A. Marked with the identifying information required by YMC 6.27.050; and

B. Removed from the premises of a retail establishment by any person other than an authorized agent, an authorized customer, enforcement personnel, or a person with proof of ownership of the shopping cart.

“Owner” means any person or entity, in connection with the functions of a business, who owns, leases, possesses, or makes a shopping cart available to customers or the public.

“Parking area” means a parking lot or other property provided by a retail establishment for the use of customers of said retail establishment for the parking of customer vehicles. The parking area of a retail establishment located in a multistore complex or a shopping center shall include the entire parking area used by the multistore complex or shopping center.

“Premises” means any building, property, or other area upon which any retail establishment business is conducted or operated in the city of Yakima, including the parking area provided for customers in such retail establishment.

“Retail establishment” means any business located in the city of Yakima which offers or provides shopping carts for the use of the customers of such business regardless of whether such business is advertised or operated as a retail or wholesale business, and regardless of whether such business is open to the general public, is a private club or business, or is a membership store.

“Shopping cart” or “cart” means a motorized or non-motorized basket which is mounted on wheels or a similar device generally used in a retail establishment by a customer for the purpose of transporting goods of any kind. (Ord. 2009-31 § 1 (part), 2009).

**6.27.050 Shopping cart identification signs and notice required.**

A. Every shopping cart made available for use by customers shall have a sign permanently affixed to it that includes the identification of the retail establishment or owner of the shopping cart in accordance with RCW 9A.56.270 as adopted by YMC 6.68.020.

B. Every retail establishment shall post in a conspicuous location on the retail establishment property a notification to the public that unauthorized removal of shopping carts from the premises of the business and the unauthorized possession of a shopping cart is unlawful. The posted notification shall also contain the procedure to be utilized for authorized removal of the cart from the business premises.

C. Every retail establishment shall keep on file with the city of Yakima department of refuse a current telephone number and physical address at which the retail establishment may be contacted for the purpose of reporting the location of abandoned, lost, or stolen shopping carts. (Ord. 2009-31 § 1 (part), 2009).

**6.27.060 Retrieval and impoundment procedures.**

A. Impoundment with Notice. Enforcement personnel may impound an abandoned shopping cart which has affixed to it identification information as required by YMC 6.27.050, if the following conditions have been satisfied:

1. Location Outside of Premises. The shopping cart is located outside the premises or parking area of a retail establishment and is located on public property owned by or under the control of the city, or left on any right-of-way within the city, or on private property where the owner has consented to removal; and
2. Notice of the cart’s discovery and location is given to the shopping cart’s owner, retailer, or agent unless such notice has been voluntarily waived by the shopping cart’s owner, retailer, or agent; and
3. Failure to Retrieve Cart. The shopping cart is not retrieved within ninety-six hours from the date notice is given. The ninety-six hours shall be calculated using only days Monday through Friday and will not include weekend days Saturday and Sunday.

B. Impoundment without Notice. A shopping cart may be impounded without notice if one of the following conditions is satisfied:

1. Hazardous Location. If a shopping cart will impede emergency services, or the normal flow of vehicular or pedestrian traffic, city enforcement personnel are authorized to immediately retrieve the shopping cart from

Chapter 6.27 SHOPPING CART REGULATIONS

public or private property and impound it. If the cart has identification information affixed, the owner will be notified and given ninety-six hours to retrieve the cart before a collection fee is assessed using the time calculation listed in subsection (A)(3) of this section; or

2. Lack of Identification. If a shopping cart is abandoned and located outside the premises or parking area of a retail establishment and does not have the required identification information affixed thereto as required by YMC 6.27.050, city enforcement personnel are authorized to immediately retrieve the shopping cart from public property owned by or under control of the city, any right-of-way within the city, or private property with the consent of the owner; or

3. Evidence of a Crime. Any lost or stolen shopping cart as defined by YMC 6.27.040 may be impounded as evidence in a criminal investigation under YMC 6.68.020 or any other criminal investigation. (Ord. 2009-31 § 1 (part), 2009).

**6.27.070 Fees and disposition of carts.**

A. Impounded Carts. When a shopping cart is impounded in accordance with this chapter, the city may charge a cart collection fee to the owner of a shopping cart. The fine shall be in the amount of twenty-five dollars per cart and each cart collected shall constitute a separate violation. Any owner having installed a locking device on its carts which has been disabled by one other than the owner or his agent shall be exempt from the fine.

B. Disposition of Carts. The city may sell or otherwise dispose of any cart not reclaimed within seven days from the date of notification to the owner or the owner's agent of the cart's discovery and location. (Ord. 2009-31 § 1 (part), 2009).

**6.27.080 Severability.**

If any section, subsection, paragraph, sentence, clause or phrase of the ordinance codified in this chapter is declared invalid or unconstitutional for any reason, such decision shall not affect the validity of the remaining portions of the ordinance codified in this chapter. (Ord. 2009-31 § 1 (part), 2009).

**Chapter 8.18**

**ABANDONED SHOPPING CARTS**

Sections:

- 8.18.010 Definitions.
- 8.18.020 Findings – Purpose.
- 8.18.030 Regulations.
- 8.18.040 Nuisance – Enforcement.

**8.18.010 Definitions.**

The definitions set forth in this section shall govern the application and interpretation of this chapter:

- A. “Abandoned shopping cart” means any cart that has been removed, without written consent of the owner, from the owner’s business premises and is located on either public or private property.
- B. “Shopping cart” means a basket which is mounted on wheels or a similar device generally used in a retail or commercial establishment by a customer for the purpose of transporting goods of any kind.
- C. “Director” means the community development and public works director for the city of Auburn, or such other director or officer designated by the mayor to administer this chapter.
- D. “Owner” means any person or entity, who/which in connection with the conduct of a business, owns, leases, possesses, or makes a shopping cart available to customers or the public. For purposes of this chapter, “owner” shall also include the owner’s designated agent.
- E. “Premises” means the entire area owned, occupied, and/or utilized by an owner which provides shopping carts for use by customers or other persons, including any parking lot or other property provided by or on behalf of the owner for customer parking or use. (Ord. 6530 § 1, 2014; Ord. 6287 § 2, 2010; Ord. 5906 § 1, 2005.)

**8.18.020 Findings – Purpose.**

- A. Public Nuisance. Abandoned shopping carts constitute a public nuisance, create potential hazards to the health and safety of the public, and interfere with pedestrian and vehicular traffic in the city. The accumulation of wrecked and dismantled abandoned shopping carts on public property tends to create conditions that reduce property values, and promotes blight and deterioration.
- B. Intention. The intent of this chapter is to ensure that measures are taken to facilitate the retrieval of abandoned shopping carts in a manner consistent with state law.
- C. Applicability. This chapter shall apply to all owners of any business establishments or other commercial services within the city of Auburn that provide shopping carts for customer use or the public. (Ord. 6530 § 1, 2014; Ord. 5906 § 1, 2005.)

**8.18.030 Regulations.**

- A. Abandonment Prohibited. It shall be unlawful for any person to cause or permit any shopping cart to be abandoned upon any sidewalk, street or other public area, other than the premises of the owner of such shopping cart.
- B. Cart Identification Required.
  - 1. Every shopping cart owned or provided by any owner must have a sign permanently affixed to the shopping cart that contains all of the following information:
    - a. Identity of owner, business establishment, or both.

b. Notification to the public that the removal of the shopping cart from the premises is a violation of state law, and notification to the public of the procedure to be utilized for authorized removal of the cart from the premises.

c. The address or phone number of the owner of the business establishment for shopping cart return.

2. Any shopping cart found abandoned on public property that does not have the identification and information required by subsection B of this section, or does not have other ownership information or identification that is sufficient, in the city's determination, to allow the city to mail to the owner an invoice/notice of impoundment by certified mail, return receipt requested, may be removed from such public property and disposed of by the city in accordance with state law for disposition of abandoned property. The determination of whether there is sufficient information of ownership, where the identification requirements of subsection B of this section are not met, shall be in the sole discretion of the director. (Ord. 6530 § 1, 2014; Ord. 6046 § 1, 2006; Ord. 5906 § 1, 2005.)

#### **8.18.040 Nuisance – Enforcement.**

Abandoned shopping carts are declared to be a public nuisance. The city's enforcement rights for abandoned shopping carts are nonexclusive, and include the enforcement methods provided in this chapter and in this title of the city code, as well as any other methods for abatement of nuisances, and any other enforcement methods available under the law or in equity, including the following:

A. Civil Enforcement. Any owner who violates any provision of this chapter shall be subject to enforcement procedures for each violation in accordance with Chapter 1.25 ACC.

B. Impoundment, Retrieval and Notification.

1. As an alternative to civil enforcement or other methods of enforcement, the director may impound any abandoned shopping carts left on any public property owned by or under the control of the city, or left on any public right-of-way within the city. The director may hold impounded shopping carts at the city's maintenance and operations yard until retrieved by the owner or disposed of by the city as herein provided.

2. Whenever the director has impounded any abandoned shopping carts bearing the identification of ownership as required by ACC 8.18.030(B), or such other ownership information or identification that is sufficient, in the city's determination, to allow the city to mail to the owner an invoice/notice of impoundment by certified mail, return receipt requested, the director or designee shall mail an invoice/notice of impoundment by certified mail, return receipt requested, to the owner at the address shown on the shopping cart's identification label, or such address as is determined by the director to be appropriate to give reasonable notice to the owner where the identification requirements of ACC 8.18.030(B) are not met. Such invoice/notice shall advise that the impounded shopping carts may be redeemed at the city's maintenance and operations yard during the normal work day (between 8:00 a.m. and 3:00 p.m., Monday through Friday, except holidays) upon payment of the administrative impoundment fee of \$30.00 per shopping cart. The invoice/notice shall also advise the owner that if the impounded abandoned shopping carts are not retrieved within 14 days of the date of the invoice/notice, the abandoned shopping carts shall be subject to disposal by the city, and in addition to the \$30.00 administrative impoundment fee the owner shall also be obligated to pay an additional \$70.00 disposal fee, per shopping cart.

3. If the impounded abandoned shopping carts are not retrieved within 14 days of the date of the invoice/notice, the director shall be authorized to dispose of the abandoned shopping carts through whatever means or manner the director deems reasonable and appropriate. In the event of such disposal, the director is authorized to take appropriate steps to collect the \$30.00 administrative impoundment fee, as well as the additional \$70.00 disposal fee, per shopping cart. The shopping cart disposal fee shall be in addition to the administrative impoundment fee, and the administrative impoundment fee shall be due and owing regardless of whether or not the shopping carts are retrieved.

4. If an abandoned shopping cart is impounded that does not have the ownership identification information permanently affixed to it as required by ACC 8.18.030(B), or does not have other ownership information or

Exhibit B

Auburn Municipal Code

Page 3/3

Chapter 8.18 ABANDONED SHOPPING CARTS

identification that is sufficient, in the city's determination, to allow the city to mail to the owner an invoice/notice of impoundment by certified mail, return receipt requested, the director shall be authorized to dispose of it immediately, without any notice requirements. (Ord. 6530 § 1, 2014; Ord. 6046 § 2, 2006; Ord. 5906 § 1, 2005.)



# **AGENDA SUMMARY SHEET**

## **Business of the City Council City of Kelso, Washington**

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### **SUBJECT TITLE:**

A RESOLUTION OF THE CITY OF KELSO,  
WASHINGTON, RENAMING KELSO  
COMMONS PARK TO KELSO VETERANS  
PARK.

**Agenda Item:** \_\_\_\_\_

**Dept. of Origin:** Operations

**For Agenda of:** February 16, 2016

**Cost of Item:** \_\_\_\_\_

**City Manager:** Steve Taylor

### **PRESENTED BY:**

Randy Johnson  
Public Works Superintendent

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### **AGENDA ITEM ATTACHMENTS:**

Proposed Resolution  
DRAFT 1-21-2016 Park Board Minutes

### **SUMMARY STATEMENT:**

At the October 6, 2016 Council meeting, a citizen requested renaming Commons Park to something that would honor our Veterans. This request was taken to the next Park Board meeting (January 21, 2016) for consideration. Ideas and discussion followed. As a result, the Board made motion that "Kelso Veterans Park" be the replacement name to recommend to Council.

### **FINANCIAL SUMMARY:**

Cost of implementing potential signage to be determined.

### **RECOMMENDED ACTION:**

Staff recommends Council make a motion approve the Resolution to enact the name change on Commons Park.

**RESOLUTION NO. \_\_\_\_\_**

**A RESOLUTION OF THE CITY OF KELSO, WASHINGTON,  
RENAMING KELSO COMMONS PARK TO KELSO VETERANS PARK.**

WHEREAS, the Kelso Park Board had citizen request to consider a park name change to honor our Veterans; and

WHEREAS, upon thoughtful consideration and discussion at their January 21, 2016 meeting, the Park Board approved a motion to recommend renaming “Kelso Commons Park” to “Kelso Veterans Park”

THE CITY COUNCIL OF THE CITY OF KELSO DO HEREBY RESOLVE:

**SECTION 1.** That Kelso Commons Park be renamed to Kelso Veterans Park:

**ADOPTED** by the City Council and **SIGNED** by the Mayor this \_\_\_\_\_ day of \_\_\_\_\_, 2016.

\_\_\_\_\_  
MAYOR

ATTEST/AUTHENTICATION:

\_\_\_\_\_  
CITY CLERK

APPROVED AS TO FORM:

\_\_\_\_\_  
CITY ATTORNEY



## Parks and Recreation Department

203 S. Pacific Avenue, PO Box 819 Kelso, WA 98626



### Park Board Meeting

January 21, 2016

#### **Call to Order:**

Jerry Phillips called the meeting to order at 5:15 p.m. at City of Kelso City Hall Council Chambers, 203 S. Pacific Ave.

#### **Those present were as follows:**

##### **Park Board Members**

Jerry Phillips  
Dan Graves  
Bob Smith  
Pamela Jo (PJ) Enbusk

##### **Staff**

Randy Johnson, Public Works Superintendent  
Tim Mackin, Parks Lead  
Nina Caulfield, Recording Secretary

##### **Excused Absence**

Scott DeRosier

##### **Council Representation**

Larry Alexander

#### **Approval of Minutes:**

**MOTION:** Bob made the motion, seconded by PJ to approve the minutes of July 16, 2015. Motion carried, all in favor.

#### **Business:**

(Election of Park Board Officers was moved to end of meeting due to anticipated late arrival of one of the members.)

1. **Introduction of New Park Board Member**

Randy introduced new Council Representative Larry Alexander

2. **Discussion:**

##### **2016 League Agreements / Water Rate Changes**

Randy explained that the City Council has approved the changes to the rates for irrigation accounts held by the leagues that use Tam O'Shanter Park. The domestic water rates will remain the same while the irrigation rates would change to 25% of the normal rate. Members agreed to this change and the matter will be referred to City Council for approval.



## Parks and Recreation Department

203 S. Pacific Avenue, PO Box 819 Kelso, WA 98626



### **Park Support – Transfer of duties**

Nina and Randy shared that changes in staff and responsibilities in regard to parks and the Park Board have been made. Erica Geisler (Operation's Assistant) will now be responsible for the League agreements and Nina Caulfield will be leaving the Park Board as she moves to her new position as Project Coordinator in Engineering. A new employee will be taking over Nina's responsibilities with the Park Board.

### **Park Rename Request**

A citizen made a request at a prior Council meeting to rename the Commons Park to something that honored our Veterans. The Board discussed and agreed upon a name change to the Kelso Commons Park

**MOTION:** .PJ made a motion, Jerry seconded. Motion carried, all in favor to send the new name **Kelso Veterans Park** to the City Council for approval.

### 3. Park Updates – Tim Mackin

There are new LED lights in the 18 poles around the park. The park lost 2 large Ash trees during a recent wind storm. There has been no new activity on the bathroom project at Tam O'Shanter Park. JH Kelly has installed the plumbing. We are waiting for C&R to bring in a conveyer to lay the sand in preparation of concrete to be poured by Buddy Oliver. Scott is now taking the lead on this project as the SKNA dropped out.

### 4. Election of Officers

PJ nominated Scott for chair, Dan seconded. Hearing no other nominations, motion carried, all in favor.

Bob nominated Jerry for vice-chair, Dan seconded. Hearing no other nominations, motion carried, all in favor.

### 5. Park Board Comments

There was a discussion of the bylaws. Nina explained that if any changes were needed that now would be a good time. The Board discussed the attendance clause and decided not to put any extra restrictions on board members who volunteer and are hard to come by.

PJ welcomed the new Council Representative Larry Alexander.

**MOTION:** PJ made a motion to adjourn the meeting, Dan seconded. Motion carried, all in favor. Meeting adjourned at 5:40 pm.

Approved:



## Parks and Recreation Department

203 S. Pacific Avenue, PO Box 819 Kelso, WA 98626



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Scott DeRosier, Chair

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Nina Caulfield, Recording Secretary

DRAFT

**AGENDA SUMMARY SHEET**  
**Business of the City Council**  
**City of Kelso, Washington**

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**SUBJECT TITLE: 2015 BUDGET GOALS &  
ACTIONS DISCUSSION**

**Agenda Item:** \_\_\_\_\_

**Dept. of Origin:** \_\_\_\_\_ City Manager \_\_\_\_\_

**For Agenda of:** \_\_\_\_\_ February 16, 2016 \_\_\_\_\_

**Originator:** \_\_\_\_\_ Steve Taylor \_\_\_\_\_

**PRESENTED BY:**

Steve Taylor

**City Attorney:**     **Janean Parker**

**City Manager:**     **Steve Taylor**

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**Agenda Item Attachments:**

Progress Report – 2015 Budget Goals and Actions Plan  
2015-16 Departmental Accomplishments and Initiatives Summary  
Progress Report -- 2015 Supplemental Spending Request Matrix  
2016 SWOT Matrix (Sample)

**SUMMARY STATEMENT:**

The City Council annually discusses goals and priorities to shape and adjust the City's workplan and provide staff with appropriate direction on where to focus resources authorized within the adopted budget. Last year at this time, the Council reviewed the progress made on the 2014 work plan, discussed potential changes to the strategic goals, and considered staff's recommendations for the 2015 work plan. With four new councilmembers, it was determined that a broader discussion was necessary to reconsider the current strategic goals (listed below), and help prioritize new projects and initiatives for the 2016 work plan.

A brief environmental scan exercise known as a SWOT Analysis (Strengths, Weaknesses, Opportunities, Threats) was distributed to Council and Department Heads this month to complete for the February 16<sup>th</sup> workshop discussion. The summarized results and comments from the SWOT responses will be reviewed, leading into the "goals update" portion of the discussion. Council will be able to amend, add, or refine the goals based upon its priorities for the year ahead.

***2015 Budget GOALS***

- ***Well-maintained, reliable public infrastructure systems that encourage economic growth and enhance community quality.***
  
- ***Community renewal and economic growth that provides sustainable resources for public services and facilities.***

- ***Consistent, effective delivery of Kelso city services that meets or exceeds standards of professionalism and accountability.***
- ***Provide proactive and visionary regional leadership.***

The City Manager will deliver a progress report on the 2015 work plan, discuss the departmental accomplishments from the prior year and the planned/ongoing initiatives for 2016. Staff is seeking Council's input on new priorities which can be included in the 2016 work plan. It's important to understand that personnel and financial resources are both finite and limited, and the list of 2016 initiatives included in the departmental report represents items required by the City to perform or are the continuation of initiatives carried over from prior years. Substantive additions to the list of priorities will require either additional resources to perform or culling other actions from the final plan.

Staff will gather input from the workshop discussion and bring back the 2016 Goals and Actions work plan for consideration in March 2016.

**RECOMMENDED ACTIONS:**

- Review and discuss the 2015 Goals and Actions Plan and provide direction to staff on revisions to goals and work plan items.



## **Review: 2015 Budget Goals & Actions Plan**

***Goal: Well-maintained, reliable public infrastructure systems that encourage economic growth and enhance community quality.***

- **Action:** Advocate for funding assistance from the state legislature for the replacement of the Minor Road Reservoirs.
  - Received \$1.5 million legislative appropriation and \$4 million DWSRF loan to finance the improvements with least impact to ratepayers.
- **Action:** Deliver 2015 Capital Improvement Program that emphasizes investments in pavement preservation, water distribution and sewer collection infrastructure, and streetscape improvements.
  - Delivered Longview Water Intertie, NW 2<sup>nd</sup> Avenue Sewer Replacement, Jones Road Waterline, Minor & Mt. Brynion Rd Intersection, Talley Way Pavement Overlay (phase 1), and Kelso Depot Sidewalk Replacement
  - Finalized financing package and completed design of West Main Revitalization Streetscape project
- **Action:** Conduct parks and recreation needs assessment and master plan to identify and delineate future priority investments.
  - To be performed in 2016
- **Action:** Research and evaluate adequate and sustainable funding sources for street maintenance.
  - Legislature authorized additional Transportation Benefit District local funding options
  - Staff is preparing options for issuing bonds for Yew Street & Minor Road projects

***Goal: Community renewal and economic growth that provides sustainable resources for public services and facilities.***

- **Action:** Conduct West Kelso Sub-Area Plan and commence the update and review of applicable development regulations.
  - Final draft of Sub-Area Plan is being prepared, along with recommended design standards/development regulations.
- **Action:** Draft, review, adopt the complete update of the City's Development Code.
  - Development regulation overhaul will be brought to Planning Commission and Council by Q2 2016
- **Action:** Adopt Shoreline Master Plan Update.
  - Waiting for final sign-off by Ecology for adoption by Council in Q1 2016
- **Action:** Commence implementation of the Kelso NICER (Neighborhood Improvement & Community/Economic Revitalization) Program focusing on West Kelso planning efforts



and streetscape improvements in addition to citywide nuisance abatement enhancements.

- West Kelso Sub-Area Plan near completion; West Main St. Revitalization will be under construction in Q2-Q3 2016; Full-time nuisance abatement officer on board Feb. 1; condemned housing abatement program to be offered immediately to applicable property owners.
- **Action:** Commission and complete industrial master planning study and market analysis for the proposed Anchor Point Industrial Park.
  - Study is in final review stage and to be delivered for consideration in Q1 2016

**Goal: Consistent, effective delivery of Kelso city services that meets or exceeds standards of professionalism and accountability.**

- **Action:** Present 5-6 year Financial Forecast and draft corresponding department business plans.
  - Forecast is in final development stages to incorporate all major operational funds
  - Staff held performance management retreat to discuss major initiatives and department business planning – ongoing business planning efforts slated for 2016
- **Action:** Negotiate franchise agreements with Public Utility District and Comcast Cable.
  - Council approved Comcast Cable Franchise in Q4 2015; New PUD manager in place, staff will re-enter PUD franchise negotiations in 2016
- **Action:** Ensure adequate law enforcement staffing in the wake of pending retirements.
  - Council approved police staffing of Administrative Sergeant and additional patrol officer to “hire ahead” of planned and unplanned retirements; 2 new officers hired and trained with 3 more positions to fill
- **Action:** Invest in administrative support information systems and public records retention/disposition services.
  - Launched Open Budget Kelso application
  - Developing and implementing electronic claims processing for department admin assistants
  - Public Records Retention/Disposition services still under evaluation in 2016
- **Action:** Commence overhaul of City’s general policy manual.
  - Project pushed to 2016
- **Action:** Evaluate feasibility of public safety service enhancements (Traffic unit; administrative/supervision; community policing; targeted enforcement).
  - Law enforcement focus has been on hiring and training new officers in 2016
- **Action:** Research and evaluate adequate and sustainable funding sources for criminal justice/public safety functions.

- Evaluation will occur in 2016.

**Goal: Provide proactive and visionary regional leadership.**

- **Action:** Continue regional outreach and participation to enhance partnership opportunities with public and private sector organizations.
  - Kelso is well-represented on regional boards and commissions
  - Secured partnership with Winter Family, LLC regarding Anchor Point Industrial Feasibility Study
  - Continue to employ services from Longview, Cowlitz County, and Fire District 2
- **Action:** Review city charter and evaluate potential amendments to be brought forward for voter consideration.
  - Council reviewed the charter amendment and abandonment process as well as the areas of the charter that differ from RCW 35A (Optional Municipal Code)
- **Action:** Lead efforts to revise regional fee structure for 911 Emergency Communications.
  - City staff led process to amend the interlocal agreement and revise regional fee structure – adopted by 911 Council in Q4 2015
- **Action:** Support the effective governance of and infrastructure improvements to the SW Washington Regional Airport.
  - City increased funding level for airport operations and capital improvements
  - City assumed management of airport in Jan 2016 and is in process to hire permanent Airport Manager.

**Auxiliary task list**

- Evaluate criteria for establishing local improvement districts and grant funding to address curb, sidewalk, and drainage infrastructure.
- Addressing blight and encouraging revitalization in West Kelso north of Cowlitz Way.
- Implement city way-finding project to direct residents and tourists to city attractions and assets. (Discussed as possible Big Idea funding project)
- Action: Prepare options for restricting on-street parking in residential zones without adequate road width.



**Administration Department**  
Steve Taylor, City Manager



203 S. Pacific Avenue, PO Box 819 Kelso, WA 98626

**MEMORANDUM**

**TO:** Councilmembers, Department Heads

**FROM:** Steve Taylor, City Manager

**DATE:** January 20, 2016

**RE:** **2015-16 Accomplishments & Initiatives**

**Executive Administration**

**2015 Accomplishments**

- Adoption of Neighborhood Improvement & Community/Economic Revitalization (NICER) CDBG Program Income Re-use Plan and approval by Wa Dept. of Commerce
- S. Kelso Annexation Study
- Review of City Charter and presentation of options
- Cable Franchise Renewal with Comcast
- Assumption of Airport Management (transition into 2016)
- Received \$1.5 million legislative appropriation for Minor Road Reservoir replacement
- Awarded \$25 million in Transportation Revenue Package for Hazel Street Railroad Grade Separation
- Nuisance Abatement Program and Municipal Code Overhaul
- Enhanced Indigent Defense Program implemented
- Completed city-wide job description update
- Negotiated settlement of Love Overwhelming legal action
- Received CERB and private funding for Anchor Point Industrial Park feasibility study
- Developed and launched Open Budget Kelso application
- Amended regional 911 Interlocal Agreement and revised service fee structure
- Obtained County and Federal grant funding for W. Main Street Revitalization project
- Sister City Visit from Makinohara, Japan
- New Kelso.gov website launched
- Entered labor negotiations with AFSCME unit (Public Works)
- Provided leadership on regional and statewide boards, agencies and associations (Pathways 2020, 911 Emergency Comm Center, Cowlitz EDC, Chamber of Commerce, MRSC, SR 432/433 Exec Committee, MRSC, Wa City Managers Assn)

## **2016 Initiatives**

- Airport Management Services Assumption and FAA capital project delivery
- Review S. Kelso Annexation Feasibility
- Implement code enforcement and condemned housing abatement programs of the NICER initiative
- Legislative Advocacy – obtain early draw on \$25 million Hazel Street Grade Separation funding for environmental permitting
- Conduct Labor Contract Negotiations – Kelso PD (Officers & Records units), Teamsters, and AFSCME
- Perform Kelso Parks Master Planning effort
- Implement S. Kelso Revitalization Strategies recommendations
- Completion of Coweeman Mitigation Bank
- Negotiate PUD Franchise Agreement
- Craft new Humane Society Animal Control Agreement
- Update KLTV – Designated Access Provider Agreements
- Update Fireworks Code
- Develop formal recruitment and onboarding program for new employees
- Institute employee training and professional development program
- Commence overhaul of administrative and risk management policies
- Strengthen Sister City ties with Kelso, Scotland and Makinohara, Japan

## **Community Development Department**

### **2015 Accomplishments**

- Longview Water Intertie
- 2<sup>nd</sup> Avenue Sewer Replacement
- Jones Rd Waterline
- Minor and Brynion Intersection Repair
- Talley Way Overlay Phase 1
- Train Depot Sidewalk Repair
- Obtained \$4 million DWSRF low-interest loan for Minor Road Reservoir Replacement
- LED Streetlight Replacement (completion in Jan. 16)
- Shoreline Master Program Update (waiting for final Ecology sign-off)
- Comprehensive Plan Adoption

### **2016 projects planned and in progress**

- West Main Revitalization Construction
- S. Kelso Drive Water Main Design and Construction
- Minor Reservoir Design and Construction-Construction into 2017
- Small Diameter Water Main replacement Design and Construction
- 12th Ave and Lord Sewer Replacement
- Talley Way Overlay Phase 2

- 8th and Allen St Intersection Repair
- Sunrise and Miller Intersection Repair
- Yew Street Construction
- Minor Road Repair Phase 1-Allen Street to “dip”.
- Stormwater Catch Basin Replacement Project
- Small Drainage Repairs

### **2016 Engineering Program Initiatives**

- Update Kelso Engineering & Design Manual with new standard details and language to match development code updates
- Complete Water System Mapping

### **2016 Grant applications**

- Safe Routes to Schools-Wallace School Area focus
- City Hardship Assistance Program (CHAP) – Minor Road
- TIB – Arterial Preservation Program – South Pacific Avenue

### **2016 Planning Initiatives**

- Complete Development Code Updates
- Adopt and Implement West Kelso Sub-area Plan

## **Police Department**

### **2015 Accomplishments**

#### TRAINING

- 100% compliance with Washington Criminal Justice Training Commission Officer 24 hour yearly in-service training
- Trained two Officers as Field Training Officers for the new hires and future new hires
- Replaced and trained a Detective
- Trained an officer for Hostage Negotiations
- Attended National Executive Training which included the review of the President’s 21<sup>st</sup> Century Report

#### COMMUNITY OUTREACH

- Citizens Academy, National Night Out, Every 15 Minutes, South Kelso Neighborhood Association, Neighborhood Resource Coordination Council, and Shop With a Cop.
- Increased community communications by use of Social Media (Facebook) which had a dramatic increase in 2015. In January we had 1199 “Likes” and in December we had 3268 “Likes”. We currently have four department personnel serving as administrators for KPD’s Facebook page.

#### CHILD SAFETY

- Conducted table-top exercise with Cowlitz County DEM, Region 4 Homeland Security Group and the Kelso School District for an active shooter drill in three Kelso schools.

- Held ALICE (Alert, Lockdown, Inform, Counter, Evacuate) “train-the-trainer” class for several police and school agencies. Kelso Officer subsequently led training with Kelso School District employees.
- Worked as a lead on the re-formation of Cowlitz SAFE (School Alliance For Emergencies), whose mission is to bring Cowlitz County schools and law enforcement on the same page.
- Chief testified before state legislature on behalf of “Fight Crime Invest in Kids” (bill passed) advocating for grant funding for early childhood. Also worked with this group on obtaining funding for our local Head Start ECCAP program which was celebrated at Broadway School by table-top discussion and ended with reading to the children.

#### MISCELLANEOUS

- Recruited and hired two new police officers and sent them to the police academy.
- Creation of the Administrative Sergeant’s position, to be implemented in 2016
- Worked with community members and Love Overwhelming to minimize the problems which were created by the urban rest-stop and homeless population

#### **2016 Initiatives**

- Staffing - patrol
- Recruitment
- Training
- Strategic plan, mission and value statement
- Records – staffing; increase in incidents (paperwork), public records request, Concealed Pistol License applications and pistol transfer applications
- 21st-century policing study review evaluation of how Kelso compares
- Technology – equipment and staffing (in house)
- Participate in Chief for a Day program

## Finance & Administration Department

#### **2015 Accomplishments**

- Clean Audit – 8th straight year
- GFOA Award – 11th straight year
- Bond rating upgrade from A+ to AA-
- Transition utility collections to Clark County/Clark PUD lockbox
- Enhanced our utility payment options – Online and over the phone credit card payments now accepted

#### **2016 Initiatives**

- Banking transition
- Electronic voucher program
- Year-end close requirements
- CAFR/Annual Report
- Audit
- Five-year Financial Forecast

- 2017-2018 Budget Preparation/Adoption

## Library Department

### 2015 Accomplishments

- Hired Sylvia Yarbrough-Hall as our new full-time library Employee, and hired three part-time employees to fill open positions and help with increased library hours
- Increased Library hours 10 hours per week
- Reupholstered our aging library furnishings
- Completed an extensive weeding of our adult fiction and nonfiction collections

### 2016 Initiatives

- Complete children's computer hub
- Add two desks and four additional computer stations to the public computers
- Paint the inside of the library per the contract with the mall
- Complete the mural in the children's section
- Complete an extensive weeding of the children's fiction and nonfiction collections
- Replace aging chairs at the tables and computer work stations in the adult section
- Help the Library Board to form a foundation to help the Library Foundation secure large donations to benefit the library
- Continue working with the mall and other organizations to help with donations and programming here at the library

## Public Works Department

### 2015 Accomplishments

- Downtown Street Scape Project
- Clean up of old Water Treatment Plant area
- Street Sweeping – 2,800 miles
- Utility Locates – 1,277 department wide
- Cleanup of Talley Way fill site – removed 2,235 tons of material
- Fill Potholes – 25,500 Pounds of EZ Street Product Used
- Roadside Mowing Program
- Roadside Spraying Program
- City Wide Cross Walk Painting
- Facility Maintenance
- Drainage Maintenance
- Parks Maintenance
- Alley Maintenance
- Sign Maintenance
- Repair 18 inch Sewer Main on S. Pacific
- Install 180 ft. of 8 inch Sewer Main between Chestnut/Elizabeth
- Unidirectional Flushing Program – West Kelso, South Kelso from South Pacific to

Alder, Allen St. from S. Pacific to Kelso Dr. , Kelso Dr. from Allen St. to Tam O Shanter Way

- Annual Traffic Count Program

### **2016 Initiatives**

- Banners – Purchase New
- Chip Seal Program
- Landscape Improvements near Allen St., Depot, South 1<sup>st</sup>
- Culvert Inventory and Mapping
- Small Pavement Repairs
- Shop/Yard Cleanup
- Depot – Refurbish Exterior Doors
- Fire Hydrant Replacement Program
- Water System Repairs
- Sewer System Repairs
- Water Line Leak Detection
- Reservoir Inspection/cleaning
- SCADA Upgrades at the Water Treatment Plant
- Clean Ranney Collector Laterals
- Vehicle Replacement Program



## 2015 Supplemental Spending Matrix

### Projects Currently in Progress

#### Downtown Landscaping

**\$15,000**

*New plantings at eastern base of Allen Street bridge and pedestrian plaza. Project promotes downtown beautification and enhances public safety.*

#### Panic Alarm System

**\$10,000**

*Replaces obsolete and malfunctioning panic alarm system for City Hall, Public Works Shop, Library, and other city facilities as necessary.*

#### CERB Industrial Planning Grant

**\$20,000**

*City portion of match for industrial site feasibility study for Wasser & Winters property. Grant award decision scheduled for March 19th. Total project estimated to be \$100,000.*

**Sub-total** **\$45,000**

### One-time Expenditures

#### Accounting Software Upgrade

**\$20,000**

*Allows for direct entry, processing, and review of monthly claims by each department, replacing current handwritten process and saving significant staff time.*

#### Public Records Retention/Disposition

**\$25,000**

*Acquire consulting services and temporary staff to identify and process records in Finance and Building/Planning for retention and disposal in accordance with state CORE standards. Reduction of liability.*

#### Police Radios

**\$49,000**

*Current radios have outlived their life expectancies. Last purchase was 8 years ago. Newer radios would allow us to go digital. CCSO and LPD are currently looking to replace radio systems. This would also allow us to communicate with WSP units in our area.*

#### Administrative Policies Overhaul

**\$25,000**

*Acquire consulting services to draft updated city-wide policies and procedures in accordance with best practices and Washington Cities Insurance Authority guidelines.*

#### Performance Management Resources

**\$30,000**

*Obtain performance measurement software services and analyze key departmental functions and staffing models for effectiveness. Formally measure key performance indicators and benchmark against other communities nationwide.*

#### Street Repair Enhancement (2015 only)

**\$50,000**

*Allows for more substantial street repairs for smaller, high-priority segments that would not typically be scheduled for a larger capital project. Could be complete reconstruction of small segment or grind and inlay where appropriate. Current budget only \$20,000 to repair damaged guardrails, fences, or unexpected small projects.*

**Sub-total** **\$199,000**

### Recurring Expenditures *(3-year funding commitment recommended)*

#### Comm. Dev. Special Projects Manager

**\$93,000**

*New position (M-10) would report to the City Manager, enhance the City's planning capacity, and develop programs for community renewal, economic development, and neighborhood revitalization. Special projects include addressing blight, facilitating Downtown/W. Kelso development, and administering potential community renewal agency.*

<b>Police Services Sgt</b>	<b>\$94,000</b>
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*To act as a replacement for the vacant Captain 's position for Administrative functions and work with the large amount of new hires over the next five years. This position would give direct supervision to the detectives unit, SRO, and Evidence. This Sergeant would perform community outreach duties and cover the high-liability low-frequency policy items (WCIA). Sergeants do have the ability to work and cover overtime shifts under the contract (also retirement issues).*

<b>Library Service Enhancement</b>	<b>\$49,000</b>
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*Promotes employee from a Library Assistant II position to a Library Assistant III position to act as an assistant manager and maintain consistent operations in the Library Manager's absence. Replaces a Library Assistant I position that has been vacant for six years, allowing the expansion of library public hours to Monday-Friday 10-8 and Saturday 10-6. Expands current open hours from 48 to 58 per week and be more in line with the mall hours of operation.*

<b>Sub-total</b>	<b>\$236,000</b>
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<b>Total Requests</b>	<b>\$480,000</b>
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**Kelso Community 15-minute SWOT Analysis  
(Strengths, Weaknesses, Opportunities, Threats)**

Steve Taylor

**Strengths:**

*(What does Kelso have going for it?)*

1

2

3

4

5

**Weaknesses:**

*(Where does Kelso struggle?)*

1

2

3

4

5

**Opportunities:**

*(What could Kelso do, become, or take advantage of?)*

1

2

3

4

5

**Threats:**

*What can derail Kelso's efforts to achieve?*

1

2

3

4

5