

Kelso City Council Agenda

Regular Meeting, 6:00 pm
June 2, 2015
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**

Invocation:

Pastor Chris Davis, Abundant Life Nazarene

Roll Call to Council Members:

1. Approve Minutes:

1.1. May 19, 2015 – Regular Meeting

2. Presentation:

2.1. Community Solar Power Project – Inovus

3. Public Hearing

3.1. 6 Year Transportation Improvement Program

4. Consent Items:

5. Citizen Business:

6. Council Business:

6.1. Discussion – Neighborhood Improvement & Community/Economic Revitalization
Program

7. Action/Motion Items:

7.1. Ordinance, 1st Reading

7.1.1. Amend KMC 9.04 State Criminal Statutes Adopted

Kelso City Council Agenda

Regular Meeting, 6:00 pm
June 2, 2015
City Hall, Council Chambers
203 South Pacific
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7.2. Ordinance, 2nd Reading

7.2.1. Wetlands Mitigation Conservation Easement

7.3. Resolution

7.3.1. Declare Surplus of Personal Property

Other Items:

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

Pastor Nick Stumbo, East Hills Alliance Church, 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 Rick Roberson, Jared Franklin, Dan Myers, David Futcher, Gary Archer, and Todd McDaniel. Councilmember Schimmel was absent. The Council conceded that Councilmember Schimmel's absence was excused because it was city business related.

Minutes: Upon motion by Councilmember McDaniel, seconded by Councilmember Myers, 'Approve the Minutes of the 5/5/15 Regular Meeting,' motion carried, all voting yes.

PROCLAMATION:

Mayor Futcher read a proclamation declaring May 17th – 23rd, as “**National Public Works Week**” in the City of Kelso. Public Works Superintendent Randy Johnson accepted the proclamation.

PRESENTATIONS:

Comcast Cable: Comcast Director of Government Affairs Tess Fields and a team of her colleagues provided a presentation, that involved the history of cable TV, the significance of a franchise right-of-way, and an update of the products and services provided to the residents.

Finance/Utility Department Report: Finance Director/City Clerk Brian Butterfield provided a presentation of the department's personnel and an overview highlighting the department's various functions and duties.

CONSENT AGENDA:

1. **Auditing of Accounts:** \$ 1,688,995.08

Upon motion by Councilmember Myers, seconded by Councilmember Archer, 'Approve the Consent Agenda and the Auditing of Accounts in the amount of \$ 1,688,995.08,' motion carried, all voting yes.

CITIZEN BUSINESS:

Rick Von Rock, 400 N. 7th Ave., spoke about an app for the City of Kelso website. Mayor Futcher offered to assist Mr. Von Rock with the app after the meeting.

COUNCIL BUSINESS:

Discussion – Amending the City Charter: City Attorney Janean Parker and City Manager Steve Taylor provided an overview of the city charter that showed comparisons of certain provisions to the state’s Optional Municipal Code. After a lengthy deliberation, the Council directed staff to bring this item back for further discussion.

Councilmember Schimmel arrived at 7:43 p.m.

Contract Award – 2015-Intersection Reconstruction Project at Minor Road & Brynion Street: Upon motion by Councilmember Roberson, seconded by Councilmember Myers, ‘Award the Bid to Advanced Excavating Specialists, LLC.’ City Engineer Mike Kardas addressed the cost of the asphalt. Discussion followed. Motion carried, all voting yes.

MOTION ITEMS:

Ordinance No. (1st Reading) – Wetlands Mitigation Conservation Easement: The Deputy Clerk read the proposed ordinance by title only. Upon motion by Councilmember Schimmel, seconded by Councilmember Myers, ‘Pass on 1st 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) Announced that the new Kelso-Longview Visitor’s Guide is now available. 2) Asked the Council for direction regarding a community solar power project presentation by Inovus. The Council approved the presentation for the June 2nd meeting. 3) Provided an update on the annexation proposal for the incorporated area (doughnut hole) from the county. 4) Provided an update on the Shoreline Master Program. 5) Clarified comments made in the Comcast Cable presentation. He commented that Kelso is in the process of negotiating a new franchise agreement with Comcast.

COUNCIL REPORTS:

Gary Schimmel: Spoke about the Community Report Card event that he attended earlier in the evening.

Todd McDaniel: No report.

Gary Archer: Reminded everyone that Memorial Day is next Monday and to drive safe. He asked everyone to make time for the people that are working the American Legion Poppy Program fundraiser event.

Dan Myers: No report.

Jared Franklin: 1) Acknowledged the anniversary of the eruption of Mt. St. Helens. 2) Spoke about a training opportunity for government employees.

Rick Roberson: No report.

David Futcher: No report.

There being no further business, Mayor Futcher adjourned the meeting at 8:12 p.m.

MAYOR

CITY CLERK

AGENDA SUMMARY SHEET

Business of the City Council City of Kelso, Washington

SUBJECT TITLE:

Public Hearing for Resolution to amend the current
Six-Year Transportation Improvement Program
(2015-2020)

Agenda Item: _____

Dept. of Origin: Community Dev/Engineering

For Agenda of: June 2, 2015

Cost of Item: _____

City Manager: Steve Taylor

PRESENTED BY:

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

AGENDA ITEM ATTACHMENTS:

Six-Year Transportation Improvement Program

SUMMARY STATEMENT:

A public hearing is required to update the Six-Year Transportation Improvement Program.

RECOMMENDED ACTION:

2016 - 2021 TIP

Projects		2016	2017	2018	2019	2020	2021	Program/Project Total
Citywide Pavement Preservation	T-1	\$ 545,000	\$ 150,000	\$ 400,000	\$ 150,000	\$ 400,000	\$ 200,000	\$ 1,845,000
Sidewalk Improvement Program	T-2	\$ 50,000	\$ -	\$ 50,000	\$ -	\$ 50,000	\$ -	\$ 150,000
CHAP Street Overlay/Minor Road Restoration	T-3	\$ 400,000	\$ 400,000	\$ 200,000	\$ -	\$ -	\$ -	\$ 1,000,000
Yew Street Reconstruction/Construction	T-4	\$ 1,410,500						\$ 1,410,500
S. Kelso RR Crossing Environmental Permitting	T-5	\$ 400,000	\$ 500,000					\$ 900,000
West Main Revitalization Project/Construction	T-6	\$ 750,000						\$ 750,000
Functional Classification Study	T-7	\$ 100,000						\$ 100,000
Streetlight Upgrades and Enhancements	T-8		\$ 50,000	\$ 250,000				\$ 300,000
5th Avenue Streetscape	T-9		\$ 130,000	\$ 520,000				\$ 650,000
Oak Street Revitalization	T-10			\$ 100,000	\$ 400,000			\$ 500,000
Grade Street Corridor Enhancements	T-11					\$ 400,000	\$ 1,500,000	\$ 1,900,000
W. Main St. Phase 2 Design	T-12			\$ 500,000				\$ 500,000
W. Main St. Phase 2 Right of Way Acquisition	T-13				\$ 4,500,000			\$ 4,500,000
W. Main St. Phase 2 Construction	T-14					\$ 2,000,000		\$ 2,000,000
Talley Way Corridor & Bridge Design	T-13						\$ 2,500,000	\$ 2,500,000
								\$ -
		\$ 3,655,500	\$ 1,230,000	\$ 2,020,000	\$ 5,050,000	\$ 2,850,000	\$ 4,200,000	\$ 19,005,500

AGENDA SUMMARY SHEET

Business of the City Council City of Kelso, Washington

SUBJECT TITLE: Neighborhood Improvement
and Community/Economic Revitalization
Program Discussion

Dept. of Origin: _____ City Manager _____

For Agenda of: _____ June 2, 2015 _____

Originator: Steve Taylor

City Attorney: **Janean Parker**

City Manager: **Steve Taylor**

PRESENTED BY:

Steve Taylor

Agenda Item Attachments:

Presentation

Program Guidelines

SUMMARY STATEMENT:

The City Manager will give a presentation outlining the components of the Neighborhood Improvement and Community/Economic Revitalization (NICER) Program.

RECOMMENDED ACTION:



Neighborhood Improvement & Community/Economic Revitalization (NICER) Program

Council Presentation
Steve Taylor
June 2, 2015

What is NICER?

- Targeted investment of CDBG “program income” dollars on eligible infrastructure and nuisance abatement projects
- Council approved \$450,000 in 2015 budget from “HUD Grant Fund”
- Purpose is to enhance neighborhood appearance and improve infrastructure to spur investment in new businesses and housing.

Funding

- City has retained “program income” from the repayment of loans through a federal Community Development Block Grant (CDBG) housing rehabilitation program. (1988, 1991, 1993, 1996)
- CDBG contracts are closed; no new loans issued since 2010
- City is allowed to spend program income dollars on any CDBG-eligible project—Kelso is writing grants to itself
- Submit reports annually to Wa Dept of Commerce on the use of program income and outstanding balances

NICER Projects

- West Main Street Revitalization (Streetscape)
\$300,000
- West Kelso Sub-Area Plan -- \$50,000 (estimate)
- Neighborhood Nuisance Abatement Enhancement
\$90,000 (estimate)
- Condemned Structure Abatement Program
\$42,000 (Pilot project – 4 homes)

West Main Street Revitalization

- Create pedestrian-friendly, urban destination that appeals to residents and visitors and encourages new investment in West Kelso's commercial district.
- Includes new pavement, sidewalks, crosswalks, landscaping, street lighting and stormwater facilities
- Funded through multiple sources -- \$1,000,000 est.
- Design currently under way with expected completion by June 2016

West Kelso Sub-Area Plan

- Create stakeholder approved plan for revitalizing West Kelso neighborhood into vibrant, pedestrian-friendly, urban area with mixture of housing options, retail, and other service related businesses.
- Develop new zoning and development regulations for West Kelso.
- Identify opportunities for investment in housing, parks, and public facilities.
- Planning study RFP closed on May 29th; Significant interest received from consultants; Commence effort this summer.

Neighborhood Nuisance Abatement Enhancement

- Provide additional nuisance abatement staffing within specific boundaries of city (CDBG-required)
 - West Kelso
 - North Kelso
 - South Kelso
- Swiftly identify and mitigate code violations
- Overhaul of nuisance abatement code (aligning closely with Longview's process)
- Employ new technology to increase efficiency in delivering notices and case follow-up

Condemned Structure Abatement Program

- Improve neighborhoods through removal of uninhabitable structures, and facilitating development of new housing and public open space
- Focus on irreparable, condemned housing
- Receive donation of property where applicable, abate nuisance, and prepare lots for sale
- Options: sell lots to private or non-profit entities; use for public open space; give lots to low-income housing providers
- Give priority to recouping costs of abatement

Pilot Project Candidate



Pilot Project Candidate



Condemned Structure Abatement Program

- Provides option for property owners unable to abate public safety nuisances to turn over to City
- City pays expenses to clear title, remove structures, and prepare lot for sale
- Primary responsibility to abate nuisances remains with property owners
- Pilot program is limited to 4 properties
- All properties with condemned structures that are nuisances will be provided with notice and order to abate (or enter into a voluntary compliance agreement)

NICER Program Income Reuse Plan Terms

- Plan is approved by Commerce for five-year interval (expires April 1, 2020)
- Program income dollars must be spent in accordance with CDBG regulations
- Income earned below \$35,000 in one year is not subject to program income guidelines (can be used for any general government purpose)

NICER Program Income Reuse Plan Terms

- 10% of approved funds can be used to offset cost of administering NICER program
- Any program income held by the City will offset future CDBG grant awards dollar-for-dollar (i.e. Make investments now in order to receive future CDBG funding)



Questions?



AUTHORIZATION TRANSMITTAL

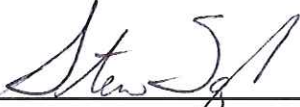
FROM: Stephen Taylor, City Manager
City of Kelso

TO: Connie Rivera, Department of Commerce

DATE: April 2, 2015

RE: City of Kelso Neighborhood Improvement & Community/Economic
Revitalization (NICER) Program

The CDBG Program Income Reuse Plan described below for the City of Kelso is hereby authorized. The program will be in effect from April 2, 2015 to April 1, 2020. Budget appropriations for sustainment of the program must be approved by the Kelso City Council for each year of the program.



Steve Taylor, City Manager

4/2/2015

Date



City of Kelso

Neighborhood Improvement and Community/Economic Revitalization (NICER) Program

Overview and CDBG Program Income Use Guidelines

Introduction

The Kelso City Council appropriated \$450,000 of federal CDBG program income dollars in the City's 2015 budget to fund the initial priority Neighborhood Improvement and Community/Economic Revitalization (NICER) projects which are eligible funding activities as defined by the Department of Housing and Urban Development. Due to Kelso's overall low median household income, program income dollars can be used for eligible activities anywhere within the City's incorporated boundaries. The proposed projects include:

1. West Main Street Revitalization Project – Improvement of streetscape public facilities in West Kelso.
2. West Kelso Sub-Area Plan -- Production of a comprehensive sub-area plan for the West Kelso Neighborhood that includes new land-use designations, zoning and development regulations, a housing market analysis, and public facilities and parks needs assessments.
3. Neighborhood Nuisance Abatement Enhancement -- Bolster the City's part-time code enforcement program and keep ahead of nuisance occurrences that are contributing to the deterioration of Kelso's North, South, and West residential neighborhoods.
4. Condemned Structure Abatement Program -- Acquire properties containing condemned, uninhabitable residential structures, demolish structures, and prepare lots for new residential construction or other public use.

Execution of the initial infrastructure and planning projects within the NICER Program is projected to extend into 2016, thus necessitating a budget amendment authorizing expenditures for subsequent years. The nuisance abatement and condemned structure abatement projects will be on-going for five (5) years through June 30th, 2020. Program funding for all relevant projects will be presented to the City Council for consideration during the biennial budget process.

Together, these projects and programs will help make Kelso a NICER place in which to live, work, and do business.

Program Income Funding

NICER will be primarily funded through CDBG program income returned to the City through its administration of a low-income housing rehabilitation loan program that began in the late 1980's. (CDBG Contract Nos. 1-88-443-08, 1-91-744-09, 1-93-742-010, 1-96-745-005) While a number of loans are still outstanding, the CDBG grant contracts are closed, and the City has not issued any new rehabilitation loans since 2010. No future loans under this program are anticipated to be issued by the City.

As mentioned above, the activities the City proposes to undertake are CDBG-eligible, and the City is, in essence, writing grants to itself to supplement infrastructure replacement, perform land use and comprehensive planning, enhance code enforcement efforts, and provide working capital for the condemned structure abatement program. Use of program income currently deposited in the City's HUD Fund (Account Nos. 2, 3 & 6) will comply with the applicable CDBG regulations (i.e. procurement, environmental review, Davis-Bacon labor standards, Minority and Women Business Enterprise standards, etc.), state statute, and the City's current policies.

Revenue earned by the City in any calendar year totaling less than \$35,000 from the repayment of outstanding loans or liens, or generated from the sale of abated properties remediated through this program will be considered *miscellaneous revenue* not subject to the CDBG Program Income guidelines. In a year when \$35,000 or more is earned from these activities, the revenue will be considered *program income* and be accounted for and expended in accordance with applicable federal guidelines.

The City intends to allocate up to ten percent (10%) of annual appropriated funds to offset the cost of administering the NICER Program and its appendant projects.

NICER Projects

1) West Main Street Revitalization Project

The goal of the West Main Street Revitalization project is to capitalize on the investments made through the West Main Street Realignment Project by creating a pedestrian friendly, urban, destination that will appeal to residents and visitors, increase patronage of existing businesses, incite new private investment, and encourage the revitalization of existing development.

The City has made a significant investment in West Kelso with the construction of the West Main Realignment project. The realignment resulted in traffic travelling through West Kelso being redirected from West Main Street onto Catlin and leaving West Main as a prime area for redevelopment into a

pedestrian-friendly West Kelso destination location. The project will include pedestrian scale lighting, new parking configurations, pavement replacement, shorter crosswalks, street trees, landscaping elements, and other attached permanent improvements. The total estimated cost of the project is approximately \$1,000,000. The City has secured several other funding sources and expects \$300,000 of the overall cost to be funded through CDBG program income.

2) West Kelso Sub-Area Plan

The goal of the West Kelso Sub-Area Plan is to create a stakeholder approved plan for revitalizing the West Kelso neighborhood into a vibrant, mixed use, pedestrian-friendly, urban area with a mixture of housing options, retail, and other service related businesses.

West Kelso is a small neighborhood that is geographically separated from the rest of the City of Kelso and bordered by the City of Longview on north, south, and west sides and the Cowlitz River on the east. The neighborhood is split by two major thoroughfares carrying travelers from I-5 through Kelso and into Longview with businesses located primarily along Cowlitz Way and West Main. The northern and southern portions are mostly residential with an elementary school located in the northern portion and Cowlitz County Regional Justice Center located in the south. The southern portion shares the southern City limit line with the Cowlitz County Fairgrounds and Event Center, which is located in neighboring Longview.

The homes in this neighborhood are primarily older, single family structures that are renter occupied and in a state of significant disrepair, many meeting the Washington State definition of "blighted property." The majority of residents in West Kelso are low-income. However, there are owner occupied well-maintained homes located here, some with historical significance as well as numerous well-established businesses along the transportation corridors.

Because of substantial investment in infrastructure in West Kelso, there have been significant changes to the character of the West Kelso Neighborhood as a whole and as the investment continues in the form of the West Main Street Revitalization Project, and the proposed final phase of the West Main Realignment, those changes will further affect the existing home, property, and business owners. In addition to the physical changes to the area, the City has recently adopted an update to its Comprehensive Plan, and is beginning an overhaul of the development regulations which is scheduled to be completed in early 2016. The City sees great potential for this neighborhood to develop into a vibrant, mixed use, pedestrian friendly, urban area with a mixture of housing options, retail, and other service related businesses. In order to encourage this type of development, all of West Kelso has been designated as a special study area in the Comprehensive Plan and on the Future Land Use Map to ensure that supportive land use and zoning designations are assigned and appropriate development regulations are implemented in accordance with the outcomes of an involved public participation effort.

The City plans to hire a consultant to prepare the sub area plan. The scope of work will include:

- Extensive public outreach
- Research and analysis of existing conditions
- Renderings and graphic displays of potential future development patterns
- Zoning and land use designation recommendations
- Identification of other potential tools that could be employed by the City to encourage revitalization and reinvestment in this neighborhood
- Report preparation
- Presentation of findings and recommendations to the City’s Planning Commission and City Council

The cost of the consultant as well as the costs for executing public outreach and other related costs identified in the contract will be funded exclusively through CDBG Program income.

3) Neighborhood Nuisance Abatement Enhancement

The short term goal of Neighborhood Nuisance Abatement Enhancement program is to overhaul the City’s current nuisance abatement program complete with an additional part time code enforcement officer for the budgeted years, new technology to increase staff efficiency, and a contingency for legal fees associated with complicated cases. The long-term goal is a program that is well-known throughout the community and is not only capable of mitigating nuisances in an effective, timely, and professional manner but will encourage residents to self-enforce and mitigate issues before a violation occurs.

The City currently employs one part-time nuisance abatement officer that is responsible for all code enforcement duties throughout the entire City. Before that employee was hired in July of 2012, the position had been vacant for over a year and a half due to budget constraints and was historically a full time position. Active code enforcement was not possible during the time the position was vacant due to limited staff which resulted in the accumulation of unaddressed complaints and issues. When the City was able to fill the position budgetary constraints required that it only be on a part time basis despite the sizeable backlog of complaints. At this point, there are still a considerable number of complaints and not enough staffing to address them in a timely fashion. This is especially true considering complaints have increased from 188 in 2012 to 390 in 2014 as word about a nuisance abatement officer spread through the community. An additional part time officer would dramatically increase the number and frequency of inspections while also increasing the visibility and awareness of the program throughout the community. Additional code enforcement staffing resources paid with CDBG program income funds will be deployed to the emphasis areas of South, West, and North Kelso to best coincide nuisance abatement efforts with planned neighborhood revitalization infrastructure investments.

Neighborhood boundaries are described below:

- West Kelso – all property within City limits located on the west side of the Cowlitz River.
- North Kelso – all property within City limits bordered by Allen Street to the south, the Cowlitz River to the west, Interstate 5 to the east and the City’s incorporated boundary to the north

- South Kelso – all property within City limits bordered by Allen Street to the north, the Cowlitz River to the west, Interstate 5 to the east, and SR 432 to the south.

The City's current nuisance abatement code has not had a significant update since 2003 and has considerable room for improvement. The City is revamping its current nuisance abatement code and procedures, and is imitating an effective model of code enforcement originally drafted by the City of Spokane Valley, Washington and currently implemented by our neighboring City of Longview. This effort in isolation will greatly increase the effect of our efforts at the current staffing level. The intent is that by updating our code, streamlining our processes, updating our equipment and technology, and increasing our enforcement staff to two part-time nuisance abatement officers, within a two-year timeframe we will have caught up on the backlog of complaints, established a more efficient and effective program, and set a community precedent for swiftly mitigating code violations. At that time, the needs of the program will be reevaluated. The enhanced nuisance abatement program, including its operational and administrative expenses, is also CDBG funding-eligible, and the City will be drawing upon its program income balance to increase staff hours and reimburse the legal costs associated with increased abatement efforts.

4) Condemned Structure Abatement Program

The goal of the Condemned Structure Abatement Program is to improve city neighborhoods block-by-block through the removal of irreparable and uninhabitable structures, replacing them with new housing stock and public open space that serves to increase the stability and vitality of the community.

The City has identified numerous abandoned and condemned residential structures that meet the definition of being "nuisances" where refurbishment and renovation are not economical. Prior to the City taking official action to abate the nuisances using this program, the nuisance abatement department will have exhausted the codified options to encourage the property owner to bring their property into compliance. When the process has reached a point where legal action is the City's "next step" every effort will be made to contact the property owners and determine whether they have the ability or desire to clean up their properties and/or demolish the condemned structures. If the property owners state that they intend to bring their property up to code, a mutually agreed upon plan for compliance and timeline will be established through the code enforcement department. If the property owner is unable or unwilling to mitigate the issues, the City will accept the transfer of property and outstanding tax liabilities, if applicable, and follow up with demolition, abatement, and clearing title for future use. If the property owner refuses to take steps to mitigate the violations, the City will take the abatement process to the foreclosure stage and acquire properties through the lien process. Once the City has acquired the properties through voluntary transfer or the lien process the City will follow up with demolition, abatement, and clearing title for future use. Only abandoned, uninhabitable structures will be considered for abatement under this program.

Once the properties are ready for alternate use, the City will determine whether to sell the properties outright to private or non-profit parties, develop the properties for a public purpose (e.g. park, community garden, etc.), or give the property to low-income housing providers. Non-profit groups like Lower Columbia Community Action Programs and Habitat for Humanity will be given opportunities to

expand their low-income housing provision efforts in line with their missions and the community's needs. In most instances, the City will endeavor to recoup the cost of acquiring and abating the nuisance properties, and seek opportunities that result in improved housing stock within distressed neighborhoods.

The City will use nuisance abatement inspections, citizen complaints, neighborhood organizations, and other departments or agencies to identify potential properties for consideration in this program. The identification and condemnation process will be done in close concert with the City's nuisance abatement officer and building official with oversight from the City Manager's department and the City Attorney. The City currently has a list of eight condemned properties identified as being beyond economically viable repair. Two of those properties are considered high priorities due to their condition and visibility within the neighborhood, and two others are considered high/medium priorities. These properties will be the pilot projects for this program. The priority rating is based on health and safety concerns, visibility in the neighborhood, amount of delinquent taxes, overall condition and value of the property, previous knowledge of owner's intentions, access, and mitigation costs.

Costs associated with acquiring and abating the properties for subsequent sale and improvement will be borne by the City. These costs include transferring the title, clearing any outstanding tax liabilities, legal fees associated with the foreclosure and lien process, costs of demolition, capping of utilities, debris removal and disposal, mitigation of hazardous materials, and costs associated with the subsequent conveyance of the property. The intent will be to recoup the associated costs through the sale or transfer of the property and placing those proceeds back into the City's HUD Program Income Fund for sustainability of program.

Program Authorization



Steve Taylor, City Manager

4/2/2015

Date

AGENDA SUMMARY SHEET

Business of the City Council City of Kelso, Washington

SUBJECT TITLE: AN ORDINANCE OF THE CITY OF KELSO AMENDING CHAPTER 9.04 OF THE KELSO MUNICIPAL CODE TO UPDATE THE CRIMINAL STATUTES WHICH HAVE BEEN ADOPTED BY REFERENCE, TO ADOPT AN ADDITIONAL STATUTE BY REFERENCE MAKING IT AN OFFENSE TO FAIL TO REGISTER AS A SEX OFFENDER AND RE-ADOPTING THOSE STATUTES WHICH ARE UNCHANGED.

Agenda Item: _____

Dept. of Origin: Prosecuting Attorney

For Agenda of: June 2, 2015

Originator: _____

City Attorney: **Janean Parker**

City Manager: **Steve Taylor**

PRESENTED BY:

Steve Taylor

Agenda Item Attachments:

Proposed Ordinance
Exhibit A - RCW 9A.44.132

SUMMARY STATEMENT:

The City has adopted numerous state criminal statues allowing the City's prosecuting attorney to bring forward criminal charges should one of the referenced laws be violated. RCW 9A.44.130 has been adopted and requires that qualified individuals register as sex offenders. The proposed ordinance adopts RCW 9A.44.132 that outlines the process and penalties if an individual fails to register appropriately.

RECOMMENDED ACTION:

Make a motion to approve Ordinance amending KMC 9.04 on first reading.

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF KELSO AMENDING CHAPTER 9.04 OF THE KELSO MUNICIPAL CODE TO UPDATE THE CRIMINAL STATUTES WHICH HAVE BEEN ADOPTED BY REFERENCE, TO ADOPT AN ADDITIONAL STATUTE BY REFERENCE MAKING IT AN OFFENSE TO FAIL TO REGISTER AS A SEX OFFENDER AND RE-ADOPTING THOSE STATUTES WHICH ARE UNCHANGED.

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

SECTION 1. Kelso Municipal Code Amended. That Kelso Municipal Code, Chapter 9.04, be and the same is hereby amended and reenacted to provide as follows:

9.04.010 Statutes Adopted.

Pursuant to the authority contained in RCW 35A.13.180, there is hereby adopted by this reference the following Washington State Statutes as though each was set forth in full herein, together with any and all amendments hereafter made to said statutes by the Legislature:

- 7.80.160 Notice, Failure to Sign, Nonappearance – Failure to Satisfy Penalty.
- 9.03.010 Abandoning, discarding refrigeration equipment.
- 9.03.020 Permitting unused equipment to remain on premises.
- 9.03.40 Keeping or storing equipment for sale – Defense.
- 9.40.100(1) Tampering with fire alarm or equipment – false alarm.
- 9.41.180 Setting spring trap.
- 9.41.230 Aiming or discharging firearms.
- 9.41.250 Dangerous weapons.
- 9.41.260 Dangerous exhibitions.
- 9.41.270 Carry or exhibit dangerous weapon.
- 9.41.280 Carry dangerous weapons on school facilities.
- 9.45.062 failure to deliver leased personal property
- 9.45.240 Fraud – telephone service.
- 9.46.170 Gambling commission – False entries or refusal to produce records.
- 9.46.185 Aid and abet gambling violation.
- 9.46.190 Fraud or deceit – Gambling.
- 9.46.195 Obstruction of public servant – Gambling.
- 9.46.196 Cheating other participant – Gambling.
- 9.46.198 Working in gambling activity without license.

9.46.240 Gambling information, transmitting or receiving.
9.61.230 Telephone calls to harass.
9.61.240 Permit telephone calls to harass.
9.61.250 Where deemed committed.
9.91.020 Operating railroad, steamboat, vehicle, etc., while intoxicated.
9.91.025 Unlawful bus conduct.
9.91.060 Leaving children unattended in parked automobile.
9A.36.041 Assault in the fourth degree.
9A.36.050 Reckless endangerment.
9A.36.070 Coercion.
9A.36.150 Interfering with the Reporting of Domestic Violence.
9A.40.070 Custodial Interference Second Degree.
[9A.44.130 Sex/Kidnapping Offender Registration.](#)
[9A.44.132 Sex/Kidnapping Offender – Fail to Register.](#)
9A.46.020 Harassment definition.
9A.46.030 Place where committed.
9A.46.040 Court-ordered requirements upon person charged.
9A.46.060 Crimes included in harassment.
9A.46.080 Order restricting contact – Violation.
9A.46.110 Stalking.
9A.48.050 Reckless burning in the second degree.
9A.48.090 Malicious mischief in the third degree.
9A.50.020 Interfere with healthcare facility.
9A.50.030 – Penalty.
9A.52.060 Burglar tools.
9A.52.070 Criminal trespass – first degree.
9A.52.080 Criminal trespass – second degree.
9A.52.100 Vehicle prowling – second degree.
9A.56.010 and
9A.56.020 Theft – definitions and defense.
9A.56.050 Theft – third degree.
9A.56.060 Unlawful issuance of bank checks.
9A.56.170 Possessing stolen property – third degree.
9A.56.180 Obscuring identification of machine.
9A.56.220 Theft of cable television services.
9A.60.040 Criminal impersonation.
9A.72.040 False swearing.
9A.72.150 Tampering with physical evidence.
9A.76.020 Obstructing a public servant.
9A.76.030 Refusing to summon aid for a peace officer.
9A.76.040 Resisting arrest.
9A.76.050 Rendering criminal assistance – definition.
9A.76.060 Rendering criminal assistance – relative.
9A.76.070 Rendering criminal assistance – first degree.
9A.76.080 Rendering criminal assistance – second degree.
9A.76.090 Rendering criminal assistance – third degree.

9A.76.100 Compounding.
9A.76.130 Escape – third degree.
9A.76.160 Introducing contraband.
9A.76.175 Making false or misleading statement to a public servant.
9A.84.010 Riot.
9A.84.020 Failure to disperse.
9A.84.030 Disorderly conduct.
9A.84.040 False reporting.
9A.88.010 Indecent exposure.
9A.88.030 Prostitution.
9.68A.090 Communication with a minor for immoral purposes.
10.14.120 Anti-harassment.
10.14.170 Civil Anti-harassment.
10.99.040 District Court protection order.
10.99.050 Violation – Condition of Sentence.
26.28.080 Selling or giving tobacco to minors.
26.28.085 Applying tattoo to a minor.
26.50.110 Superior Court – Protection Order – violation.
13.32A.080 Harboring runaway.
46.16.010(2) Trip permit violation.
66.44.200 Selling liquor to intoxicated person.
66.44.270 Furnish, possess, use alcohol – minor.
69.50.4013 Possession of a controlled substance – Penalty – Possession of useable marijuana or marijuana infused product.
69.50.4014 Possession of forty grams or less of marijuana – Penalty.
69.50.412 Prohibited acts: E-Penalties
69.50.420 Violation-Juvenile driving privileges.
69.50.425 Misdemeanor violations – Minimum penalties.
69.50.445 Opening a package of or consuming marijuana, useable marijuana, or marijuana-infused product in view of general public – Penalty.
70.155.080 Possession of tobacco by minors.

9.04.012 Cause for dismissal.

Nothing herein contained shall cause dismissal of any pending charges at the time the ordinance codified in this chapter goes into effect.

9.04.014 Copy to be kept on file.

At least one authenticated copy of the ordinance codified in this chapter and a copy of the entire text of each statute adopted by reference herein shall be kept in the city clerk's office and under his/her direction, together with any amendments made by the legislature.

9.04.16 Exemptions.

The city is declared to be exempt from the provisions of subsection (4) of RCW 9.41.050, which provides that “no person may carry a firearm unless it is unloaded and is enclosed in an opaque case or secure wrapper”.

9.04.020 Violation – Penalty.

Violation of any of the provisions contained in this chapter shall be punished as provided by state law, as now existing or as hereafter amended.

SECTION 2. 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 3. Effective Date. This Ordinance shall be in full force and effect five 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 _____, 2015.

MAYOR

ATTEST/AUTHENTICATION:

CITY CLERK

APPROVED AS TO FORM:

CITY ATTORNEY

PUBLISHED: _____

RCW 9A.44.132

Failure to register as sex offender or kidnapping offender.

(1) A person commits the crime of failure to register as a sex offender if the person has a duty to register under RCW 9A.44.130 for a felony sex offense and knowingly fails to comply with any of the requirements of RCW 9A.44.130.

(a) The failure to register as a sex offender pursuant to this subsection is a class C felony if:

(i) It is the person's first conviction for a felony failure to register; or

(ii) The person has previously been convicted of a felony failure to register as a sex offender in this state or pursuant to the laws of another state.

(b) If a person has been convicted of a felony failure to register as a sex offender in this state or pursuant to the laws of another state on two or more prior occasions, the failure to register under this subsection is a class B felony.

(2) A person is guilty of failure to register as a sex offender if the person has a duty to register under RCW 9A.44.130 for a sex offense other than a felony and knowingly fails to comply with any of the requirements of RCW 9A.44.130. The failure to register as a sex offender under this subsection is a gross misdemeanor.

(3) A person commits the crime of failure to register as a kidnapping offender if the person has a duty to register under RCW 9A.44.130 for a kidnapping offense and knowingly fails to comply with any of the requirements of RCW 9A.44.130.

(a) If the person has a duty to register for a felony kidnapping offense, the failure to register as a kidnapping offender is a class C felony.

(b) If the person has a duty to register for a kidnapping offense other than a felony, the failure to register as a kidnapping offender is a gross misdemeanor.

(4) Unless relieved of the duty to register pursuant to RCW 9A.44.141 and 9A.44.142, a violation of this section is an ongoing offense for purposes of the statute of limitations under RCW 9A.04.080.

[2011 c 337 § 5; 2010 c 267 § 3.]

Notes:

Application -- 2010 c 267: See note following RCW 9A.44.128.

AGENDA SUMMARY SHEET

Business of the City Council City of Kelso, Washington

SUBJECT TITLE: Ordinance (2nd 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: _____ June 2, 2015 _____

Originator: _____ Steve Taylor _____

PRESENTED BY:

Steve Taylor, City Manager

City Attorney: **Janean Parker**

City Manager: **Steve Taylor**

Agenda Item Attachments:

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.

The attached easement 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. 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 _____, 2015.

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**

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

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 and other fish and wildlife habitat on the Protected Property that are 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 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 Cowlitz County 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 cause more than a *de minimis* adverse impact on 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 impact the Conservation Values. For purposes of this Easement, the term “more than a *de minimis* adverse impact” means more than an insubstantial or slight adverse or detrimental impact.

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 cause more than a *de minimis* adverse impact on 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 cause more than a *de minimis* adverse impact on 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 cause more than a *de minimis* adverse impact on the Conservation Values.

5.8. Signs. The installation and maintenance of signs, *provided* that such installation does not cause more than a *de minimis* adverse impact on 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 Section 5 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 Section 5 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 Section 5 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* as expressly provided in Section 5 above or in conjunction with a use or activity expressly allowed in Section 5 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 provided in Section 5 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. Succession. If at any time (a) it becomes impossible for Grantee to ensure compliance with the covenants, terms, conditions and restrictions contained in this Easement, (b) the Grantor and the Mitigation Sponsor, or the Mitigation Sponsor alone, determine that this

Easement should be assigned due to any reasons of actual non-performance by the Grantee, including, but not limited to, circumstances under which actual non-performance occurs because Grantee is the holder of both the fee title to the Protected Property and this Easement, (c) Grantee ceases to exist or to be authorized to acquire and hold conservation easements under RCW 64.04.130 and 84.34.210 (or any successor provision(s) then applicable), or (d) Grantee is otherwise released from its liabilities and obligations under the Easement, then, if Grantee has been provided forty five (45) days prior notice and opportunity to cure any non-performance or otherwise remedy any other circumstance forming the basis of any transfer under this Section 13.2, and subject to the Preventative Discussion provisions under Section 8.2 above if applicable, Grantee's rights and obligations under this Easement shall become vested and fall upon such other entity as may be designated by the Mitigation Sponsor and approved by the Grantor, which has purposes similar to Grantee's and is authorized to acquire and hold conservation easements under RCW 64.04.130 or RCW 84.34.210 (or the successor statutes then applicable), to the extent that such entity accepts and assumes the obligations of the Grantee under this Easement; *provided* that if such vesting is deemed to be void under the Rule Against Perpetuities, the rights and obligations under this Easement shall vest in such organization as a court having jurisdiction shall direct, pursuant to the applicable Washington law and with due regard to the Purpose of this Easement. Grantee shall cause any approved assignment under this provision to be recorded in the Official Records of Cowlitz County, Washington, and shall notify the Mitigation Sponsor and the Grantor of such assignment.

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 _____, 2015.

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 _____ 2015, 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 _____ 2015, 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 ½ of the E ½, the SW ¼ of the NE ¼, and the NW ¼ of the SE ¼ 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

SUBJECT TITLE: Declare certain items as surplus and no longer of any further use to the city.

Agenda Item: _____

Dept. of Origin: Public Works

For Agenda of: 6/2/15

Originator: Superintendent of Public Works

City Attorney: _____

PRESENTED BY: Randy Johnson

City Manager: _____

Agenda Item Attachments:

Copy of proposed resolution declaring certain items as surplus.

SUMMARY STATEMENT:

The items are no longer of any further use to the City of Kelso and will be sold. They have both been replaced.

RECOMMENDED ACTION:

Declare the following items as surplus and to be sold as follows:

1997 EZ-Liner Stencil Unit AL-110

1995 KPD Radar Trailer

RESOLUTION NO. _____

**A RESOLUTION OF THE CITY OF KELSO, WASHINGTON,
DECLARING CERTAIN PERSONAL PROPERTY OF THE CITY
OF KELSO TO BE SURPLUS AND DIRECTING THE
DISPOSITION THEREOF.**

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

SECTION 1. The item(s) of personal property listed below are hereby declared to be surplus and no longer necessary use to the City:

Year/Make	Vehicle Identification Number	City Fleet Number
1997	EZ-Liner Stencil Unit AL-110	
1995	KPD Radar Trailer	

SECTION 2. The personal property described herein shall be disposed of according to city policy.

ADOPTED by the City Council and **SIGNED** by the Mayor this _____ day of _____, 2015.

MAYOR

ATTEST/AUTHENTICATION:

CITY CLERK

APPROVED AS TO FORM:

CITY ATTORNEY