

# Kelso City Council Agenda

Regular Meeting, 6:00 pm  
August 20, 2013  
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 Dave Martin, Emmanuel Lutheran Church

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

### **1. Approve Minutes:**

- 1.1. August 6, 2013 – Special Meeting
- 1.2. August 6, 2013 – Regular Meeting

### **2. Presentations:**

- 2.1. GFOA Award of Excellence
- 2.2. CGI Community Video Project

### **3. Public Hearing:**

- 3.1. Cannabis Land Use Moratorium Resolution

### **4. Consent Items:**

- 4.1. Professional Service Agreement – Street Condition Survey Consult
- 4.2. Lease Agreement – Train Depot Room 111
- 4.3. Contract – Fleet Maintenance
- 4.4. Auditing of Accounts

### **5. Citizen Business:**

### **6. Council Business:**

- 6.1. DOE Remedial Action Grant Agreement – 1124 North Pacific Avenue
- 6.2. Contract – Cleanup Brownfield Site – 1124 North Pacific Avenue

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- 6.3. Agreement – Wetland Mitigation Lease
- 6.4. Collective Bargaining Agreement – Teamsters Union

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

- 7.1. Ordinance, 1st Read
  - 7.1.1. Public Records Policy
- 7.2. Ordinance, 1st Read
  - 7.2.1. Special Events Permit Timeline
- 7.3. Ordinance, 1st Read
  - 7.3.1. Amendment – Procurement Policy Code, Chapter 3.40
- 7.4. Ordinance, 1st Read
  - 7.4.1. Addition and Amendment – Procurement Policy Code, Chapter 2.80
- 7.5. Resolution
  - 7.5.1. Cancellation of Warrants

## **Other Items:**

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

The Special Meeting of the Kelso City Council was called to order by Mayor David Futcher. Councilmembers in attendance were: Futcher, Lefebvre, Archer, Myers, Roberson, Schimmel and McDaniel.

**Minutes:** Upon motion by Councilmember Roberson, seconded by Councilmember Myers, 'Approve the Minutes of the 7/16/13 Regular Meeting,' motion carried, all voting yes.

**COUNCIL BUSINESS:**

**Kelso/Longview Chamber of Commerce Visitor Center Lease and Professional Services Operations Agreements:** Upon motion by Councilmember Lefebvre, seconded by Councilmember McDaniel, 'Approve both agreements,' motion carried, all voting yes.

**Department of Ecology Recycling Grant Agreement:** Upon motion by Councilmember McDaniel, seconded by Councilmember Roberson, 'Authorize the City Manager to enter into the grant agreement,' motion carried, all voting yes.

**Harris and Ayers Streets Sewer Replacement Project Contract Award – Advanced Excavation Specialists:** Upon motion by Councilmember Schimmel, seconded by Councilmember Lefebvre, 'Award the Sewer Replacement Project Contract to Advanced Excavation Specialists,' motion carried, all voting yes.

**EXECUTIVE SESSION:**

The Council convened into Executive Session at 7:10 p.m. to discuss personnel. It was announced that the Executive Session is expected to last approximately 10 minutes and that no action will be taken. There was no attorney present.

At 7:20 p.m. City Manager Steve Taylor announced that the session will be extended approximately 5 more minutes.

The Council reconvened into Special Session at 5:32 p.m.

There being no further business, Mayor Futcher adjourned the meeting at 5:32 p.m.

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**CITY CLERK**

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**MAYOR**

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: Futcher, McDaniel, Schimmel, Myers, Lefebvre, Roberson, and Archer.

**PROCLAMATION:**

Mayor Futcher read a proclamation declaring August 6, 2013, as “**National Night Out**” in the City of Kelso. Chief Andrew Hamilton accepted the proclamation and he commented that Officer Craig Christianson coordinated this year’s event.

**COUNCIL REPORTS:**

**Gary Archer:** No report.

**Kim Lefebvre:** No report.

**Rick Roberson:** No report.

**Dan Myers:** No report.

**Gary Schimmel:** No report.

**Todd McDaniel:** No report.

**Mayor Futcher:** No report.

There being no further business, Mayor Futcher adjourned the meeting at 6:06 p.m.

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**MAYOR**

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**CITY CLERK**

# **AGENDA SUMMARY SHEET**

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

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**SUBJECT TITLE:** A Resolution of the City of Kelso adopting findings of fact in support of Ordinance No. 13-3803 adopting a six-month moratorium within the City on the establishment, location, operation, licensing, maintenance, or continuation of marijuana related uses

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

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

**For Agenda of:** \_\_\_\_\_ August 20, 2013

**Originator:** \_\_\_\_\_

**City Attorney:** Janean Parker

**City Manager:** Steve Taylor

### **PRESENTED BY:**

Steve Taylor

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### **Agenda Item Attachments:**

Proposed Resolution

### **SUMMARY STATEMENT:**

On July 16, 2013, the City Council adopted Ordinance No. 13-3803 adopting a six-month moratorium on the establishment, location, operation, licensing, maintenance, or continuation of marijuana related land uses. Because of the unprecedented nature of the issue and, because the City lacks established regulations, an emergency existed which necessitated that the ordinance become effective immediately without providing an opportunity for the public to comment. Pursuant to Section 4 of Ordinance No. 13-3803, the City is obligated to conduct a public hearing to take public testimony and consider adopting further findings.

The proposed Resolution outlines findings and conclusions that support the six-month moratorium on the establishment, location, operation, licensing, maintenance, or continuation of marijuana related land uses.

### **RECOMMENDED ACTION:**

Move to adopt the resolution and findings of fact contained therein.

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

**A RESOLUTION OF THE CITY OF KELSO, WASHINGTON,  
ADOPTING FINDINGS OF FACT IN SUPPORT OF ORDINANCE  
NO. 13-3803 ADOPTING A SIX MONTH MORATORIUM ON THE  
ESTABLISHMENT, LOCATION, OPERATION, LICENSING,  
MAINTENANCE, OR CONTINUATION OF MARIJUANA  
RELATED USES.**

WHEREAS, on July 16th 2013, the City Council adopted Ordinance No. 13-3803 adopting a moratorium on the establishment, location, operation, licensing, maintenance, or continuation of marijuana related land uses; and

WHEREAS, pursuant to Ordinance No. 13-3803 and RCW 35.63.200, on August 20, 2013, the City held a public hearing where the City Council took public testimony, and considered the moratorium; and

NOW THEREFORE, THE CITY COUNCIL OF THE CITY OF KELSO DO  
HEREBY RESOLVE:

**SECTION 1.** Findings and conclusions in support of a moratorium. The City Council hereby adopts the following findings and conclusions in support of Ordinance No. 13-3803 adopting a six month moratorium on the establishment, location, operation, licensing, maintenance, or continuation of marijuana related land uses.

1. E2SSB 5073, codified at RCW 69.51A allows for “collective gardens” that provide for the growing and cultivating of up to 45 marijuana plants to serve no more than 10 qualifying patients.
2. Initiative 502 adopted in November 2012 and codified at RCW 69.51 and RCW 46.61 allows for the conditional production, processing, retail sale, and

use of recreational marijuana subject to rules to be promulgated by the state Liquor Control Board, and authorizes the Liquor Control Board to regulate and tax marijuana and license the producers, processors and retailers of marijuana.

3. The Liquor Control Board is in the process of adopting rules to implement the provisions of I-502 and is expected to adopt such rules in the fall of 2013.
4. Under existing federal law, the production, processing, sale and use of marijuana or medical marijuana is prohibited.
5. The City does not have any regulations addressing the marijuana related facilities or uses identified in I-502, RCW 69.51 and RCW 69.51A.
6. The City Council requires time to conduct appropriate research, to understand the extent of the changes provided in these new laws, to analyze the impacts of the land uses authorized under the laws, to analyze the potential liabilities under federal law, and to determine an appropriate regulatory framework for any new uses that are allowed under these laws.
7. The City requires time ensure that the proposed locations for these operations are appropriate and that any secondary impacts are minimized and mitigated, including but not limited to burglaries associated with cash and marijuana maintained on site, or an increase in other illegal activities.
8. The City Council concludes that a moratorium to preserve the status quo is necessary until the Liquor Control Board completes rules for regulating and licensing marijuana facilities and uses and until the City can study, draft, hold hearings and adopt appropriate regulations related to these uses.

**ADOPTED** by the City Council and **SIGNED** by the Mayor this \_\_\_\_\_ day of \_\_\_\_\_, 2013.

\_\_\_\_\_  
MAYOR

ATTEST/AUTHENTICATION:

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

APPROVED AS TO FORM:

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

# **AGENDA SUMMARY SHEET**

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

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### **SUBJECT TITLE:**

Consultant Award - Capitol Asset & Pavement Services Corporation updating the City's Street Condition Survey

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

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

**For Agenda of:** August 20, 2013

### **PRESENTED BY:**

David M. Sypher, P.E.  
Public Works Director

**Cost of Item:** \$14,900.00

**City Manager:** Steve Taylor

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### **AGENDA ITEM ATTACHMENTS:**

Capitol Asset & Pavement Services Corporation Professional Services Agreement  
Scope of Work  
RFP

### **SUMMARY STATEMENT:**

The adopted CIP provides for a street condition survey every 3 years. This program allows for the maximization of street life and therefore city funds. Street repair priority is essential to optimize planning efforts. The City received two Qualification responses and Capitol Asset & Pavement Services Corporation was selected.

Capitol Asset & Pavement Services Corporation shall provide an update to the City's Street Condition Survey to include all work necessary to confirm each of the City's street network segmentations making up approximately 65 centerline lane miles of improved streets for width, length, square feet, surface material type, functional class, and number of lanes. Excellent references were received from both the cities of Camas and Washougal in behalf of this Consultant.

### **FINANCIAL SUMMARY:**

\$30,000 was budgeted for a Street Condition Survey

### **RECOMMENDED ACTION:**

Staff recommends Council make a motion approving the City of Kelso to enter into the attached Professional Services Agreement with Capitol Asset & Pavement Services Corporation not to exceed \$14,900.00.

## PROFESSIONAL SERVICES AGREEMENT

This Agreement (“Agreement”) is dated effective this 20 day of August, 2013. The parties (“Parties”) to this Agreement are the City of Kelso, a Washington municipal corporation (“City”), and Capitol Asset & Pavement Services, Inc. (“Contractor”).

A. The City seeks the temporary professional services of a skilled independent contractor capable of working without direct supervision in the capacity of a paving evaluation and rating service who is experienced in procedures for surveying, sampling and reporting pavement conditions and is familiar with the City’s municipal code, resolutions, regulations and policies.

B. The Contractor has the requisite skill and experience necessary to provide such services.

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

### 1. SERVICES.

1.1 The Contractor agrees to furnish all personnel, materials, and services and to otherwise do all things necessary for or incidental to the performance of the work set forth below and more particularly described in the City of Kelso Request for Proposals and the Contractors Proposal for updating the City’s Street Condition Survey,” attached hereto and incorporated by this reference (“Services”).

**The Contractor shall provide an update to the City’s Street Condition Survey to include all work necessary to confirm each of the City’s street network segmentations making up approximately 65 centerline lane miles of improved streets for width, length, square feet, surface material type, functional class, and number of lanes. The Contractor shall collect, log, and report the data necessary to evaluate the street PCI and condition more particularly scoped as attached in the Contractor’s Proposal.**

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

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

1.4 Performance Standard. All duties by the Contractor or his designees shall be performed in a manner consistent with accepted practices for other similar services,

performed to the City's satisfaction, within the time period prescribed by this Agreement and pursuant to the direction of the City Manager or designee.

2. TERM.

The Term of this Agreement shall commence on August 21, 2013 and shall continue until the completion of the Services, but in any event no later than November 1, 2013. This Agreement may be extended for additional periods of time upon the mutual written agreement of the City and the Contractor.

3. TERMINATION.

During any term, the City may, upon ten (10) days written notice to the Contractor, terminate this Agreement. If this Agreement is so terminated, the City shall be liable only for the payment required under the Paragraph 4 of this Agreement for services rendered prior to the effective date of termination.

4. COMPENSATION.

4.1 Total Compensation. In consideration of the Contractor performing the Services, the City agrees to pay an amount not to exceed \$ 14,900.00

4.2 Method of Payment. Payment by the City for the Services will only be made after the Services have been performed and an itemized billing statement has been submitted in the form specified by the City and approved by the appropriate City representative, which shall specifically set forth the Services performed, Payment shall be made on a lump sum basis thirty (30) days after receipt of such billing statement.

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

5. REPRESENTATIONS.

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

6. INDEPENDENT CONTRACTOR.

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

of employment. The Contractor shall pay all income and other taxes as due. Industrial or any other insurance which is purchased for the benefit of the Contractor shall not be deemed to convert this Agreement to an employment contract.

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

## 7. INDEMNIFICATION.

7.1 Contractor Indemnification. The Contractor shall defend, indemnify and hold the City, its officers, officials, employees and volunteers harmless from any and all claims, injuries, damages, losses or suits including attorney fees, arising out of or in connection with the performance of this Agreement, except for injuries and damages caused by the sole negligence of the City.

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

## 8. INSURANCE.

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

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

performed for the City using ISO Additional Insured endorsement CG 20 10 10 01 and Additional Insured-Completed Operations endorsement CG 20 37 10 01 or substitute endorsements providing equivalent coverage.

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

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

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

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

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

## 9. EQUAL OPPORTUNITY EMPLOYER.

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

## 10. INTELLECTUAL PROPERTY-- Warranty of Noninfringement

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

## 11. CONFIDENTIALITY.

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

12. WORK PRODUCT.

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

13. BOOKS AND RECORDS.

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

14. NON-APPROPRIATION OF FUNDS.

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

15. GENERAL PROVISIONS.

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

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

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

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

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

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

15.7 No Waiver. Failure or delay of the City to declare any breach or default immediately upon occurrence shall not waive such breach or default. Failure of the City to declare one breach or default does not act as a waiver of the City's right to declare another breach or default.

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

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

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

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

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

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

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

Executed on the dates written below.

CONTRACTOR

By: Paul J Wigowski, President  
Printed Name: Paul Wigowski  
Title: President  
Address: PO Box 7840  
Salem, OR 97307  
Date: 7-29-2013

CITY OF KELSO

Printed Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Address: \_\_\_\_\_  
Date: \_\_\_\_\_

Approved as to form:

City Attorney \_\_\_\_\_

## Scope of Work

### TASKS, HOURLY ESTIMATES, AND COST

Task	Description	Estimated Hours/Cost
Kickoff Meeting & Data Gathering,	Upon entering into a contract with Capitol Asset & Pavement Services Inc. Our Senior Project Manager shall meet with city staff to discuss QA/QC plan, project schedule, work plan, and any errors found in the database. Other agenda items shall include, but are not limited to: contact information of city staff, local rules & regulations, press releases (if needed), traffic control, and obtaining any maintenance & rehabilitation history or other changes to be added to the database.	<b>Included at No additional Cost</b>
Migrate Existing Street Segment Spreadsheet	Capitol Asset & Pavement Services, Inc. after obtaining a copy of the street network spreadsheet from the City of Kelso, migrate all sections into a Streetsaver database.	<b>\$500</b>
GIS Linking	<p>CAPS Inc will set up the GIS section link within the Streetsaver Online program. A GIS street centerline file, provided by the City, will be imported into the Streetsaver 9.0 system. Then, using the GIS Toolbox Section Link feature, Caps Inc will link each database section to the appropriate street line segment in the GIS centerline.</p> <p>Maps will be produced detailing the current pavement condition of each street section, showing recommended treatments for each scenario (in budget options report), and forecasted condition of streets in five years if certain street maintenance funding levels are applied.</p>	<b>\$2000</b>
Verify Street Segment Information	After migration is complete, CAPS will review segment information for errors. Data will be verified both in office and out in the field. Some errors are best validated in the field (during inspections), such as section geometry (length, width, # of lanes) and surface type. Errors to be in office are: functional class, section area, year of construction. Errors will be corrected within the Streetsaver database. Also, any segments which were not contained in the spreadsheet	<b>\$1500</b>

	provided by the City will be added to the database during pavement inspection process.	
Distress Rating of Paved Streets in The City of Kelso's Pavement Management Database	A 2-person crew, led by our Senior Project Manager, will inspect approximately 65 centerline miles in the City of Kelso using the MTC rating methodology. This is done by windshield drive-by, and then turning around and walking the most representative area of the segment. Total area inspected to be at least 10% of the segment area. This inspection process is all gathered electronically with our own data collection software program that has built-in error protection to help assure accurate data collection.	<b>\$9,900</b>
Update Streetsaver database & submit draft inspection report	Capitol Asset & Pavement Services Inc. shall take all collected field data (inspections and validated segment information) and upload into The City of Kelso's Streetsaver pavement management database. A pavement condition index (PCI) shall be calculated based upon the distress rating data. After update is complete, an inspection unit report showing distress information for each inspection unit and a Pavement Condition Index (PCI) report for each segment shall be submitted to The City of Kelso for approval.	<b>Included @ no additional cost</b>
Streetsaver software training	CAPS will hold an one day, 4 hour training class at the City of Kelso, on the use of the Streetsaver 9.0 online Pavement Management software. This class will lead City staff through the entire program and instruct each student on the use of all aspects of the Streetsaver program.	<b>Included @ no additional cost</b>
Budget Options Report	Capitol Asset shall run various "what-if" scenarios projections within the Streetsaver program. Scenarios will analyze the effects of continuing the City's current street maintenance funding level, as well as the budget amounts required to maintain the current Pavement Condition Index (PCI), as increase the PCI by 5 points over 5 years.  CAPS Inc. will summarize findings in a 15-20 page <sup>1</sup> Budget Options report and make recommendations on how the jurisdiction can employ better treatment strategies. The report will include the overall pavement condition of the City's street network and summaries of the results of the needs and different scenarios analyses, along with the	<b>Included @ no additional cost</b>

<sup>1</sup> Report also will include appendix containing stock reports and maps from Streetsaver (not included in 15-20 page count)

	recommended budget scenario and street sections selected for treatment. Deliverables will include a draft copy of the report for review by the City, with a final report to follow based on feedback received from City staff. Three (3) hardcopies of the report as well as one electronic pdf copy will be included.	
Street Maintenance Presentation  <b>Schedule at request of City</b>	Capitol Asset shall assist City staff in creating and giving presentation(s) to City Council, detailing the findings of the pavement inspections and Budget Options Report. Presentation will focus on standard preservation practices and the current state of the city's street system.	<b>\$1000</b>
Streetsaver 9.0 online subscription	Capitol Asset shall pay for one year of Streetsaver online 9.0 subscription. Afterwards, if City of Kelso wishes to continue subscription, payment will need to be paid directly to MTC (Metropolitan Transportation Commission). Subscription currently costs \$1500 per year.	<b>Included @ no additional cost</b>
<b>Quoted costs include all travel, vehicle, and other costs.</b>		
	<b>Total Cost</b>	<b>\$14,900</b>

# Request for Proposals

The City of Kelso is requesting proposals for updating their Street Condition Ratings. The City will provide an updated spreadsheet listing the 485 +/- network segmentations making up approximately 65 center line lane miles of improved streets.

At a minimum, the update shall provide confirmation of each segment for width, length, square feet, surface material type, functional class, and number of lanes. Consultant shall provide confirmation that all City intersections are captured within the listed segments.

All street segments shall be field verified via distance measuring instrument (DMI). All data items listed above shall be reviewed and revised by the consultant as discrepancies are discovered. All data shall be checked for quality control to insure accuracy.

The evaluation of street PCI/OCI and condition will require distress data to be collected and logged including:

- Alligator Cracking
- Longitudinal Cracking
- Transverse Cracking
- Weather and raveling
- Rutting
- Utility Cuts/Patches

The consultant shall propose any other recommended additional data to be collected to provide valid PCI/OCI calculation/evaluations.

It is expected that, on the average, one sample unit will be inspected for each 200 lineal feet of roadway. Some variation from this procedure will be allowed to accommodate unique local conditions with previous notice to the City. Alternate approaches must be clearly presented and justified.

The final work product includes a report that proposes 2 or 3 options of how to package the data to best suit the needs of the City. The options may range from a simple spreadsheet update, to WSDOT pavement management shareware, to proprietary software options. Interface options to ArcView are required.

Proposals are due June 21, 2013, at 3:00 p.m.

Mail to: David Sypher, Public Works Director  
City of Kelso Public Works  
PO Box 819  
Kelso, WA 98626

Should you have any questions, please submit them in writing attention – David Sypher at the above address.

# **AGENDA SUMMARY SHEET**

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

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### **SUBJECT TITLE:**

Agreement: Suite 111 of the Train  
Depot with Cowlitz Transit Authority

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

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

**For Agenda of:** August 20, 2013

### **PRESENTED BY:**

David M. Sypher, P.E.  
Public Works Director

**Cost of Item:** N/A

**City Manager:** Steve Taylor

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### **AGENDA ITEM ATTACHMENTS:**

Proposed Lease Agreement

### **SUMMARY STATEMENT:**

Cowlitz Transit Authority contacted the City in early April 2013 with interest in utilizing the Kelso Train Station as a break location and transfer point for the new express route service that was implemented this year. They have requested to lease Suite 111 for a driver break area and would use the downstairs conference room for monthly driver remedial and new training programs. Negotiations have been completed by our consultant, Butch Henry, resulting in the attached proposed agreement.

The Train Depot facility is a perfect match as a multi-modal hub for both entities as designed. This usage agreement is a very positive addition to our regional transportation system network link.

### **FINANCIAL SUMMARY:**

The proposed lease will provide income to the city as listed in schedule A of the attached contract.

### **RECOMMENDED ACTION:**

Staff recommends council make a motion approving the City of Kelso to enter into the attached lease agreement for Suite 111 of the Train Depot and to authorize the City Managers signature on said agreement.

**LEASE FOR USE OF OFFICE SPACE  
AT THE KELSO TRAIN DEPOT**

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**THIS AGREEMENT** is made and entered into between the CITY OF KELSO, a municipal corporation (City), and **COWLITZ TRANSIT AUTHORITY**, (Lessee).

**W I T N E S S E T H :**

WHEREAS, the City is the owner of certain property called the Kelso Train Depot; and

WHEREAS, Lessee desires to lease certain office space (Suite 111) at the Kelso Train Depot; now, therefore,

THE PARTIES HERETO AGREE AS FOLLOWS:

**SECTION 1. TERM:** The lease term shall commence on August 21, 2013 and terminate twenty-four (24) months later for approximately 359 rentable square feet of retail space and downstairs restroom facilities available to employees located in the Kelso Train Depot, 501 South First Avenue, Kelso, WA 98626. This Lease will also allow for use of the downstairs conference room for a monthly training meeting, the time to be reserved with the City in advance by Lessee. This Lease may be extended upon written Agreement of the parties. Lessee shall have the option to extend the lease for two (2), twenty-four (24) month periods at the rent, terms and conditions set for herein, provided Lessee makes such request of the City in writing no later than thirty (30) days prior to expiration. Provided further, that the parties' agreement to extend shall be memorialized in the form of an executed addendum to this Agreement.

**SECTION 2. PAYMENT:** Lessee shall pay to the City of Kelso in accordance with Schedule A. Payment for the entire month's rent shall be made no later than the 1st day of each

month. In the event of an extension as described in Section 1, rent shall increase 2.5% annually. Lessor shall pay for all utilities, excluding but not limited to communications, telephone data, and internet.

**SECTION 3. INDEMNIFICATION:** Lessee agrees fully to indemnify, save, and hold harmless the City, its council members, officers, agents, or employees from and against all claims and actions and all expenses incidental to the investigation and defense thereof, based upon or arising out of damages or injuries to third persons or their property caused by the fault or negligence in whole or in part of Lessee, its agents, subtenants, or employees in the use and occupancy of the premises hereby leased; provided, that City shall give to Lessee prompt and reasonable notice of any such claims or actions, and Lessee shall have the right to investigate, compromise, and defend the same, and provided such claim is not the result of a negligent act of the City.

**SECTION 4. INSURANCE:** Lessee shall maintain comprehensive and general liability insurance for the protection of Lessee, directors, officers, agents, servants, and employees, insuring lessee against liability for damages because of personal injury, death, or damage to property, including loss of use thereof, and occurring on or in any way related to the premises leased or occasioned by reason of the operations of Lessee upon, in, and around the premises leased herein with insurance not less than one million dollars (\$1,000,000), combined single-limit or split limits equal to and not less than one million dollars (\$1,000,000) each for personal injury and property damage with respect to each occurrence. The City shall be named as an additional insured on the insurance policy or policies. Such insurance shall contain contractual coverage sufficiently broad to insure the provisions of Section 3, entitled "Indemnification."

**SECTION 5. TERMINATION:** This Lease shall automatically terminate at the end of two years from the date of its execution. This Lease may be terminated prior to the end of the lease term upon 30 days written notice to the other party.

**SECTION 6. USE OF PREMISES:** Lessee's intended use of the premises is for office and retail space in conjunction with its normal business operations. Lessee shall comply with all city and state laws governing said use. Lessor shall not lease the adjacent units to business that conducts identical business as the exiting Lessee's.

**SECTION 7. MAINTENANCE:** Lessee shall keep and maintain the leased premises in good condition. Lessee shall provide proper containers for trash and garbage and shall keep the leased premises free and clear of rubbish, debris, and litter at all times. The City shall maintain common areas of use and keep and maintain appropriate insurance for common areas.

**SECTION 8. EVENTS OF DEFAULT:**

**A. Default in Rent:** Failure of Lessee to pay any rent or other charge within ten (10) days after it's due.

**B. Default in other Covenants:** Failure of Lessee to comply with any term or condition or fulfill any obligation of this Lease, (other than the payment of rent or other charges), within thirty (30) days after written notice by City specifying the nature of the default with reasonable particularity. If the default is of such a nature that it cannot be completely remedied within the thirty (30) day period, this provision shall be complied with if Lessee begins correction of the default within the thirty (30) day period and thereafter proceeds with reasonable diligence and in good faith to effect the remedy as soon as practicable.

**C. Insolvency:** Insolvency of Lessee; an assignment by Lessee for the benefit of creditors; the filing by Lessee of a voluntary petition in bankruptcy; an adjudication that Lessee is bankrupt or the appointment of a receiver of the properties of Lessee; the filing of an involuntary petition of bankruptcy and failure of Lessee to secure a dismissal of the petition within thirty (30) days after filing; attachment of or the levying of execution of the leasehold interest and failure of Lessee to secure discharge of the attachment or release of the levy of execution within ten (10) days.

**D. Abandonment:** Failure of Lessee for fifteen (15) days or more to occupy the property for one or more of the purposes permitted under this Lease, unless such failure is excused under other provisions of this Lease.

**SECTION 9. REMEDIES OF DEFAULT:** In the event of a default, the City may, at its option, terminate the Lease by notice in writing by certified mail to Lessee. The notice may be given before or within thirty (30) days after the running of the grace period for default and may be included in a notice of failure of compliance. If the property is abandoned by Lessee in connection with a default, termination shall be automatic and without notice.

**A. Damages:** In the event of termination or default, City shall be entitled to recover immediately, without waiting until the due date of any future rent or until the date fixed for expiration of the lease term, the following amounts as damages:

1. Any excess of (a) the value of all of Lessee's obligations under this Lease, including the obligation to pay rent from the date of default until the end of the term, or (b) the reasonable rental value of the property for the same period as figured as of the date of default.
2. The reasonable costs of re-entry and re-letting, including, without limitation, the cost of clean-up, refurbishing, removal of Lessee's property and fixtures, or any other expense occasioned by Lessee's failure to quit the premises upon termination and to leave them in the required condition, any remodeling costs, attorney fees, court costs, broker commissions, and advertising cost.
3. The loss of reasonable rental value from the date of default until a new tenant has been, or with the exercise of reasonable efforts, could have been secured.

**B. Re-entry after Termination:** If the Lease is terminated for any reason, Lessee's liability to City for damages shall survive such termination, and the rights and obligations of the parties shall be as follows:

1. Lessee shall vacate the property immediately, remove any property of Lessee, including any fixtures which Lessee is required to remove at the end of the lease term, perform any clean-up, alterations, or other work required to leave the property in the condition required at the end of the term, and deliver all keys to the City.
2. City may re-enter, take possession of the premises and remove any person or property by legal action or by self-help with the use of reasonable force and without liability for damages.

**C. Re-letting:** Following re-entry or abandonment, City may re-let the premises and in that connection may:

1. Make any suitable alterations or refurbish the premises, or both, or change the character or use of the premises, but City shall not be required to re-let for any use or purpose (other than that specified by the Lease) which City may reasonably consider injurious to the premises, or to any tenant which City may reasonably consider objectionable.
2. Re-let all or part of the premises, alone or in conjunction with other properties, for a term longer or shorter than the term of this Lease, upon any reasonable terms and conditions, including the granting of some rent-free occupancy or other rent concession.

**SECTION 10. ASSIGNMENT OF INTEREST OR RIGHTS:** Lessee shall not have the right to assign rights under this Lease or sublease the premises without prior written approval of the City except as follows: Lessee shall have the right to assign rights to the extent held under this Lease subject to the restrictions and obligations contained in this Lease and otherwise imposed by law, Provided, however, that such assignment shall be authorized only to a parent company, subsidiary or affiliate of Lessee or any entity with which it merges or acquires at least substantially all assets or stock thereof.

Lessee shall have the right to sublease the premises, and may use reasonable and standard methods to advertise the availability of any subleased space, provided the sublease is for use of anything but retail jewelry and it does not conflict with any existing exclusive use rights of other tenant at the Depot.

**SECTION 11. NON-WAIVER:** Waiver by either party of strict performance of any provision of this Lease shall not be a waiver of or prejudice the party's right to require strict performance of the same provision in the future or of any other provision.

**SECTION 12. ATTORNEY FEES:** If suit or action is instituted in connection with any controversy arising out of this Lease, the prevailing party shall be entitled to recover, in addition to costs, such sum as the Court may adjudge as reasonable attorney fees.

**SECTION 13. TIME IS OF THE ESSENCE:** It is mutually agreed that time is of the essence in the performance of all covenants and conditions to be kept and performed under the terms of this Lease.

**SECTION 14. REDELIVERY:** Upon expiration of the lease term or earlier termination on account of default, Lessee shall deliver all keys to the City and surrender the leased premises in good condition. Depreciation and wear from ordinary use for the purpose for which the premises were let need not be restored, but all repairs for which the Lessee is responsible shall be completed to the latest practical date prior to such surrender.

**SECTION 15. BUSINESS INTERRUPTION:** Any interruption to Lessee's business occasioned by the City's maintenance or repair, which it is understood shall be done during City's normal working hours, shall not be compensable to Lessee.

**SECTION 16. NOTICES:** Any notices to either party pursuant to this Lease shall be in writing. Notices to the City shall be mailed to: PO Box 819, Kelso, WA 98626. Notices to Lessee shall be mailed to: **COWLITZ TRANSIT AUTHORITY, City of Longview, 1525 Broadway, Longview, WA 98632**

**SECTION 17. TENEANT IMPROVEMENTS.** Improvements to the interior space to accommodate Lessee shall be the responsibility of Lessee. To the extent such improvements constitute "fixtures" under the laws of the State of Washington, such tenant improvements shall belong to the City of Kelso upon the expiration or termination of the lease. Lessees shall have the specific right to install signage related to its business operations on the fascia of each exposed

sign of the premises, Provided that such signage shall comply with all state and local regulations and codes. Signage shall not constitute “Fixtures” under this Agreements; that upon expiration or termination of this Agreement Lessee shall remove said signage; and, that Lessee shall reimburse CITY for the cost of any necessary repairs caused by removal of signage.

**SECTION 18. CONDITION OF PREMESIS.** Lessee shall accept the premises, pending inspection approval an appropriate notification. Lessor shall maintain to reasonable standards, the common areas, the areas of roof, exterior doors, windows, exterior walls, underground plumbing, utilities, ewer lines, and structural portions of premises unless damaged, by Lessee.

**SECTION 19. PARKING.** Lessee, along with all other tenants of the Depot, shall have common use of all parking spaces within the Depot, subject to Lessees’ prior approval of parking ratios. City neither warrants nor confirms common parking availability, but represents the parking spots assigned to the Train Depot at the time of execution shall not be reduced.

**SECTION 20. HAZARDOUS WASTE.** Lessor warrants that it has no knowledge that the Depot contains hazardous material; that it has no knowledge of the release of any hazardous material at the Depot; and, that this Agreement shall not obligate the Lessee to any liability for cleanup, removal, relocation, or remediation of any hazardous material that may exist at the time of the execution of this Agreement.

**IN WITNESS WHEREOF**, the parties hereto have subscribed their names this \_\_\_\_\_  
day of \_\_\_\_\_, 20\_\_\_\_\_.

CITY OF KELSO:

LESSEE:

\_\_\_\_\_  
CITY MANAGER

\_\_\_\_\_  
TITLE:\_\_\_\_\_

ATTEST:

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

APPROVED AS TO FORM:

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

### Schedule A

The Lessee shall make payments to the Lessor on the first day of each month as follows:

Months: 1-6                      \$448.75/mo.

Months: 7-12                     \$493.63/mo.

Months: 13-24                    \$538.50/mo.

# **AGENDA SUMMARY SHEET**

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

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**SUBJECT TITLE:**

Authorize Fleet Maintenance Contract with  
Jacobsen's Chevron

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

**Dept. of Origin:** Public Works/Fleet Division

**For Agenda of:** August 20, 2013

**PRESENTED BY:**

David M Sypher, PE  
Public Works Director

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

**City Manager:** Steve Taylor

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**AGENDA ITEM ATTACHMENTS:**

Copy of Contract  
Fleet Maintenance Comparison Matrix

**SUMMARY STATEMENT:**

This contract would cover all vehicles up to 1 ½ ton service trucks. It would encompass the police fleet, all sedans, small pickups, service trucks and small dump trucks up to 1 ½ ton. The current service contract for this service is with Jacobsen's Chevron and was entered into October 2007. The proposed contract term is for 5 years.

Three contractors provided proposals. The top two contractors were Jacobsen's Chevron and T&T Tire Service. A comparison matrix is attached with specific selection criteria categories used to determine the successful proposal.

Jacobsen's offered: Shop rate of \$65.56, they have 4 ASE Certified technicians, 4 bays with 4 hoists, hours of operation are Monday-Friday 8:00 am to 5:30 PM and Saturday 8:00 am to 4:00 pm. They have their own tow truck services and offer a rate of \$65.56 per call and after hours it is \$73.56 per call. They are also DOT Inspection Approved as well.

T&T Tire Services offered: Shop Rate of \$70.00, they have 3 mechanics and no ASE Certified technicians, 3 bays with 2 hoists, hours of operation are Monday-Friday 8:00 am to 5:00 pm and Saturday 8:30 am to 2 pm. They would contract with Bumble Bee Towing for tow services at a rate of \$60.00 for the first 7 miles and \$3.50 each mile after, did not give a rate for after hours towing. They are not DOT Inspection Approved.

In order to keep our warranties intact, we would prefer to utilize a facility that has ASE Certified technicians.

**RECOMMENDED ACTION:**

It is recommended that City Council make a motion to approve the Fleet Maintenance Contract with Jacobsen's Chevron and authorize the City Manager's signature on the attached contract.

**MAINTENANCE/LABOR AGREEMENT  
FOR  
FLEET MAINTENANCE**

This Maintenance/Labor Agreement ("Agreement") is dated effective this \_\_\_\_ day of\_\_\_\_, 2013. The parties ("Parties") to this Agreement are the City of Kelso, a Washington municipal corporation ("City"), and Jacobsen's Chevron, a Washington corporation ("Contractor").

A. The City seeks the professional services of a skilled independent contractor capable of working without direct supervision, in the capacity of fleet maintenance for City-owned vehicles; and

B. The Contractor has the requisite skill and experience necessary to provide such services.

**NOW, THEREFORE**, the Parties agree as follows:

**1. Services.**

Contractor shall provide the services more specifically described in Exhibit "A" (Scope of Service) and Exhibit "B" (Operating Procedures for Vehicle Maintenance Services) attached hereto and incorporated by this reference ("Service"), in manner consistent with the accepted practices for the other similar services, performed to the City's satisfaction, within the time period prescribed by this contract. Contractor shall provide complete and keep updated information to the City as requested in Exhibit "C" during the term of this contract.

**2. Term.**

The term of this Agreement shall commence upon the effective date of this Agreement and shall continue until the completion of the Services, but in any event no later than July 1, 2018. This Agreement may be extended for additional periods of time upon the mutual written agreement of the City and the Contractor.

**3. Termination.**

Prior to the expiration of the Term, this Agreement may be terminated immediately, with or without cause by the City.

**4. Compensation.**

**4.1 Total Compensation.** In consideration of the Contractor performing the Services, the City agrees to pay the Contractor an amount not to exceed the sum of the following items:

Hourly shop rate.....\$ 65.56 /hr  
Parts mark-up over actual shop cost.....90% of the  
manufaturer's list 35 % over cost

**4.2 Method of Payment.** Payment by the City for the Services will only be made after the Services have been performed, a voucher or invoice is submitted in the form specified by the City, which invoice shall specifically describe the services performed, the name of

Contractor's personnel performing such services, the hourly labor charge rate for such personnel, and that the same is approved by the appropriate City representative. Payment shall be made on a monthly basis, within thirty (30) days after receipt of such voucher or invoice.

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

**5. Compliance with Laws.**

Contractor shall comply with and perform the Services in accordance with all applicable federal, state, and City laws including, without limitation, all City codes, ordinances, resolutions, standards and policies, as now existing or hereafter adopted or amended.

**6. Warranty.**

**6.1 Requisite Skill.** The Contractor warrants that it has the requisite training, skill and experience necessary to provide the Services and is appropriately accredited and licensed by all applicable agencies and governmental entities, including but not limited to being registered to do business in the City of Kelso by obtaining a City of Kelso business registration.

**6.2 Defective Services.** The Contractor shall, at its sole cost and expense, correct all Services performed which the City deems to have defects in workmanship and material discovered within one (1) year after the City's final acceptance of the Services.

**7. Independent Contractor/Conflict of Interest.**

It is the intention and understanding of the Parties that the Contractor shall be an independent contractor and that the City shall be neither liable nor obligated to pay Contractor sick leave, vacation pay or any other benefit of employment, nor to pay any social security or other tax which may arise as an incident of employment. The Contractor shall pay all income and other taxes as due. Industrial or any other insurance that is purchased for the benefit of the City, regardless of whether such may provide a secondary or incidental benefit to the Contractor, shall not be deemed to convert this Agreement to an employment contract. It is recognized that Contractor may or will be performing professional services during the Term for other parties; provided, however, that such performance of other services shall not conflict with or interfere with Contractor's ability to perform the Services. Contractor agrees to resolve any such conflicts of interest in favor of the City.

**8. Indemnification.**

**8.1** The Contractor shall defend, indemnify and hold the City, its officers, officials, employees and volunteers harmless from any and all claims, injuries, damages, losses or suits including attorney fees, arising out of or in connection with the performance of this Agreement, including the use of the premises owned by the City of Kelso, except for injuries and damages caused by the sole negligence of the City.

Should a court of competent jurisdiction determine that this Agreement is subject to RCW 4.24.115, then, in the event of liability for damages arising out of bodily injury to persons or damages to property caused by or resulting from the concurrent negligence of the Contractor and the City, its officers, officials, employees, and volunteers, the Contractor's liability

hereunder shall be only to the extent of the Contractor's negligence. It is further specifically and expressly understood that the indemnification provided herein constitutes the Contractor's waiver of immunity under Industrial Insurance, Title 51 RCW solely for the purpose of this indemnification. This waiver has been mutually negotiated by the parties. The provisions of this section shall survive the expiration or termination of this Agreement.

**8.2 Survival.** The provisions of this Section shall survive the expiration or termination of this Agreement with respect to any event occurring prior to such expiration or termination.

**9. Equal Opportunity Employer.**

In all Contractor services, programs or activities, and all Contractor hiring and employment made possible by or resulting from this Agreement, there shall be no discrimination by Contractor or by Contractor's employees, agents, subcontractors or representatives against any person because of sex, age (except minimum age and retirement provisions), race, color, creed, national origin, marital status or the presence of any disability, including sensory, mental or physical handicaps, unless based upon a bona fide occupational qualification in relationship to hiring and employment. This requirement shall apply, but not be limited to the following: employment, advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship. Contractor shall not violate any of the terms of Chapter 49.60 RCW, Title VII of the Civil Rights Act of 1964, the Americans with Disabilities Act, Section 504 of the Rehabilitation Act of 1973 or any other applicable federal, state or local law or regulation regarding non-discrimination. Any material violation of this provision shall be grounds for termination of this Agreement by the City and, in the case of the Contractor's breach, may result in ineligibility for further City agreements.

**10. Confidentiality.**

All information regarding the City obtained by Contractor in performance of this Agreement shall be considered confidential. Breach of confidentiality by Contractor will be grounds for immediate termination.

**11. Insurance.**

The Contractor agrees to carry as a minimum, the following insurance, in such forms and with such carriers who have a rating with a current A.M. Best rating of not less than A:VII.

**11.1** Workers' compensation and employer's liability insurance in amounts sufficient pursuant to the laws of the State of Washington;

**11.2** Commercial general liability insurance with limits no less than \$1,000,000 each occurrence, \$2,000,000 general aggregate and a \$2,000,000 products-completed operations aggregate limit.

**11.3** Automobile liability insurance with combined single limits of liability not less than \$1,000,000 for bodily injury, including personal injury or death, and property damage.

**11.4** Garage Liability or equivalent insurance with combined single limits of liability not less than \$3,000,000 for bodily injury, including personal injury or death, and property damage.

**11.5** Garage Keepers extra Legal Liability insurance of \$20,000 times maximum vehicle capacity.

**11.6** The Contractor shall include all sub-contractors as the insured under its policies, or shall furnish separate certificates of insurance and policy endorsements from each sub-contractor. Insurance coverage provided by sub-contractors as evidence of compliance with the insurance requirements of this Contract shall be subject to all of the requirements stated herein.

**11.7** The insurance policies are to contain, or be endorsed to contain, the following provisions for Automobile Liability and Commercial General Liability insurance:

1. The Contractor's insurance coverage shall be primary insurance as respect to the City. Any insurance, self-insurance, or insurance pool coverage maintained by the City shall be excess of the Contractor's insurance and shall not contribute with it.
2. The Contractor's insurance shall be endorsed to state that coverage shall not be cancelled by either party, except after thirty (30) days prior written notice by certified mail, return receipt requested, has been given to the City.

The City shall be named as additional insured on all such insurance policies, with the exception of Workers' Compensation coverage. Contractor shall provide certificates of insurance, concurrent with the execution of this Agreement, evidencing such coverage and, at City's request, furnish the City with copies of all insurance policies and with evidence of payment of premiums or fees of such policies. All insurance policies shall contain a clause of endorsement providing that they may not be terminated or materially amended during the Term of this Agreement, except after thirty (30) days prior written notice to the City. If Contractor's insurance policies are "claims made" or "claims paid", Contractor shall be required to maintain tail coverage for a minimum period of three (3) years from the date this Agreement is actually terminated. Contractor's failure to maintain such insurance policies shall be grounds for the City's immediate termination of this Agreement.

The provisions of this Section shall survive the expiration or termination of this Agreement with respect to any event occurring prior to such expiration or termination.

**12. Work Product.** All originals and copies of work product, including plans, sketches, layouts, designs, design specifications, records, files, computer disks, magnetic media or material which may be produced or modified by Contractor while performing the Services shall belong to the City. At the termination or cancellation of this Agreement, all originals and copies of any such work product remaining in the possession of Contractor shall be delivered to the City.

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

**14. Clean Up.** At any time ordered by the City and immediately after completion of the Services, the Contractor, shall, at its own expense, clean up and remove all refuse and unused materials of any kind resulting from the Services. In the event the Contractor fails to perform the necessary clean up, the City may, but in no event is it obligated to, perform the necessary clean up and the costs thereof shall be immediately paid by the Contractor to the City and/or the City may deduct its costs from any remaining payments due to the Contractor.

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

**16. General Provisions.**

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

**16.2 Modification.** No provision of this Agreement may be amended or modified except by written agreement signed by the Parties.

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

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

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

**16.6 Attorney Fees.** In the event either of the Parties defaults on the performance of any terms of this Agreement or either Party places the enforcement of this Agreement in the hands of an attorney, or files a lawsuit, each party shall pay all its own attorneys' fees, costs and expenses. The venue for any dispute related to this agreement shall be Cowlitz County, Washington.

**16.7 No Waiver.** Failure or delay of the city to declare any breach or default immediately upon occurrence shall not waive such breach or default. Failure of the City to declare one breach or default does not as a waiver of the City's right to declare another breach or default.

**16.8 Governing Law.** This agreement shall be made in and shall be governed by and interpreted in accordance with the laws of the State of Washington. Jurisdiction and venue shall lie in Cowlitz County Superior Court.

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

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

**16.11 Captions.** The respective captions of the Sections of this Agreement are inserted for convenience of reference only and shall not be deemed to modify or otherwise affect any of the provisions of this Agreement.

**16.12 Performance.** Time is of the essence of this Agreement and each and all of its provisions in which performance is a factor. Adherence to completion dates set forth in the description of the Services is essential to the Contractor's performance of this Agreement.

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

**16.14 Counterparts.** This Agreement may be executed in any number of counterparts, which counterparts shall collectively constitute the entire Agreement.

**16.15 Compliance with Ethics Code.** If a violation of the City's Ethics Resolution No. 91-54, as amended, occurs as a result of the formation and/or performance of this Agreement, this Agreement may be rendered null and void, at the City's option.

**16.16 Equal Opportunity to Draft.** The parties have participated and had an equal opportunity to participate in the drafting of this Agreement, and the Exhibits, if any, attached. No ambiguity shall be construed against any party upon a claim that that party drafted the ambiguous language.

**16.17 Notice of Location Change, Business Wind Up, or Bankruptcy.** Contractor shall have the duty to give advance written notice to City of any change in location from its current business location, any intention to wind up its business affairs, or any intention to file bankruptcy as soon as any such decision is made; that in the event of location change, business wind up, or bankruptcy, City shall have the right to terminate this Agreement immediately.

**16.18 Wash & Vacuum Services.** Upon request, Contractor shall perform wash or vacuum services to City vehicles at a cost of \$8.00 washing and vacuuming included with service per vehicle and in a manner equaling the standards in the community for such services.

**16.19 Delivery of Vehicles Under Warranty.** When service is due, needed, or obligated to be performed under vehicle warranty the Contractor shall keep records reflecting all warranty service work performed by all dealers to each and every City vehicle to include a record mileage put on City vehicles in relation to this service, the time and date of service, a description of service to be performed; that a copy of such records shall be delivered to the City upon its request, and which records may be disclosed pursuant to public disclosure requirements set forth in RCW 42.17, et. sec.

**16.20 Priority to City Fleet.** In consideration to covenants expressed herein, Contractor promises to give priority to the service of City vehicles over each and every customer it may have.

**16.21 Emergency Call Out.** Contractor agrees that its duties under this Agreement shall not be suspended in the event of any Act of God, emergency, or combination thereof; that performance of this contract all circumstances shall be to the same extent, efficiency, and timeliness as otherwise agreed to be performed under this Agreement. Full service will be made available in case of said emergency regardless of time or day needed.

**16.22 No Preferential Treatment to City Employees.** Pursuant to RCW 42.23, et. sec., no City Official shall receive a private benefit arising out of this Agreement; that the duties of Contractor under this Agreement are shall benefit the City of Kelso as an entity and not any individual City Official or City employee. No City of Kelso employee discounts will be permitted.

**16.23 Warranty of Signature.**

The undersigned warrant their authority to bind their principles to this Agreement.

DATED the day and year set forth above.

CITY OF KELSO

By: \_\_\_\_\_  
Stephen Taylor, City Manager  
PO Box 819  
Kelso, WA 98626

ATTEST:

\_\_\_\_\_  
City Clerk

APPROVED AS TO FORM:

\_\_\_\_\_  
City Attorney

CONTRACTOR

By: Lyndon Bull  
(Signature)

Lyndon Bull  
(Name)

Its: MANAGER  
(Title)

1427 Ocean Beach Hwy  
(Address)

360 423-3870  
(Phone)

**[Individual Notary]**

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

On this day personally appeared before me, \_\_\_\_\_, to me known to be the individual described in and who executed the foregoing instrument, and on oath swore that he/she/they executed the foregoing instrument as his/her/their free and voluntary act and deed for the uses and purposes therein mentioned.

GIVEN my hand and official seal this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
\_\_\_\_\_  
(typed/printed name of notary)  
Notary Public in and for the State of Washington.  
My commission expires \_\_\_\_\_

**[Corporate Notary]**

STATE OF WASHINGTON )  
 ) ss.  
COUNTY OF Cowlitz )

On this day personally appeared before me Lynden Brill, to me known to be the representative of Jacobson Chevron that executed the 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 was authorized to execute said instrument and that the seal affixed, if any, is the corporate seal of said corporation.

GIVEN my hand and official seal this 13<sup>th</sup> day of August, 2013.

Traci R. Howard  
\_\_\_\_\_  
Traci R. Howard

(typed/printed name of notary)  
Notary Public in and for the State of Washington.  
My commission expires April 19, 2015



FLEET MAINTENANCE COMPARISONS  
August 2013

VENDOR	Shop Rate	ASE Certified	# of Technicians	# Bays Available	With Hoists	Work Week	Towing	Contract Towing	DOT INSPECTION APPROVED
Jacobsen's Towing	\$ 65.56	4	5	4	4	M-F 8-5:30 Sat 8-4 Sun Closed	65.56 After hours 73.56	Self	Yes
T&T Tire Service	\$ 70.00	0	3	3	2	M-F 8-5:00 Sat 8:30-2 Sun-Closed	See note for rate	Bumble Bee Towing	NO
Wheeler's	See notes	1	3	8	2	M-F 8-5 Sat am by appt, Sun Closed	79.99 After hours 94.25	Carl's	NO

NOTES:

**T&T:**

Contract Towing-\$60.00 1st 7 miles, \$3.50 each mile after.

**Wheeler's:**

Shop Rate: Year 1 & 2-\$75.00, year 3-4 \$79.50 and year 5-\$82.50

# **AGENDA SUMMARY SHEET**

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

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### **SUBJECT TITLE:**

Agreement Department of Ecology Remedial Action Grant G1400027 for the cleanup of the former Terry's Salvage yard brownfield site 1124 N. Pacific Ave.

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

**Dept. of Origin:** Community Development

**For Agenda of:** August 20, 2013

**Cost of Item:** \$555,300

### **PRESENTED BY:**

Nancy Malone  
Planning Manager

**City Manager:** Steve Taylor

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### **AGENDA ITEM ATTACHMENTS:**

Department of Ecology Remedial Action Grant Agreement G1400027

### **SUMMARY STATEMENT:**

In 2004, the Department of Ecology did a site hazard assessment and listed the property on the state's Hazardous Sites List. After this, Terry's Salvage ceased operation at the site. In 2010-2011 the city removed an abandoned building and scrap car parts from the site, which is now vacant benefit of the WA State Department of Commerce's Neighborhood Stabilization Program Grant funds of \$77,499.72.

In 2009, Ecology awarded the city a \$200,000 Integrated Planning Grant and \$100,000 Environmental Assessment Grant. These grants funded the assessment of contamination and options for cleanup and possible redevelopment of the site conducted by Maul Foster & Alongi, Inc.

This Remedial Action Grant for \$555,300 will help the city pay for removal and redevelopment of the former Terry's Salvage yard brownfield site at 1124 N. Pacific Ave., Kelso, WA. This cleanup will remove both contamination and waste materials, bring in clean fill material and work on the redevelopment proposal of the site.

Once Ecology determines that the cleanup is complete this site will be removed from the Hazardous Sites List.

After the cleanup is complete, the city, together with Lower Columbia CAP, proposes cottage style, single-family housing for low to moderate income families.

### **RECOMMENDED ACTION:**

Staff recommends council to approve the city manager's signature on the Remedial Action Grant Agreement with the Department of Ecology.



REMEDIAL ACTION GRANT AGREEMENT G1400027  
BETWEEN THE  
STATE OF WASHINGTON, DEPARTMENT OF ECOLOGY  
AND  
CITY OF KELSO

This is a binding agreement entered into by and between the state of Washington, Department of Ecology, hereinafter referred to as “ECOLOGY,” and the City of Kelso, hereinafter referred to as the “RECIPIENT,” to carry out the activities described herein.

RECIPIENT ADDRESS	203 S Pacific Ave, #208 Kelso, WA 98626
RECIPIENT REPRESENTATIVE	Steven Taylor, City Manager
RECIPIENT PROJECT MANAGER	Nancy Malone, 360-423-9922
RECIPIENT FINANCIAL MANAGER	Brian Butterfield, 360-423-0900
ECOLOGY FINANCIAL MANAGER	Lydia Lindwall, 360-407-6067
ECOLOGY PROJECT MANAGER	Guy Barrett, 360-407-7115
FUNDING SOURCE	Local Toxics Control Account (LTCA)
MAXIMUM ELIGIBLE COST	\$617,000
STATE GRANT SHARE	\$555,300
RECIPIENT GRANT SHARE	\$61,700
MAXIMUM STATE SHARE PERCENT	90%
FEDERAL TAX IDENTIFICATION NUMBER	91-6001252
EFFECTIVE DATE OF THE AGREEMENT	June 1, 2013
EXPIRATION DATE OF THE AGREEMENT	June 30, 2014

**PART 1: SITE HISTORY AND BACKGROUND**

**Site Description:**

The former Terry's Salvage Yard site (Site), located in the City of Kelso within Cowlitz County. An auto salvage yard was operated on the site from the 1950s through 2010. The site consists of two parcels and is approximately 0.72 acres in size. The RECIPIENT acquired the property through judicial foreclosure in 2012. The Site is currently a vacant lot.

In 2010, the RECIPIENT cleared the property, demolishing the former garage and disposing of car tires, auto parts, and solid and hazardous waste. This effort was supported by funds from the US Department of Housing and Urban Development's Neighborhood Stabilization Program.

**Problem to be Addressed:**

A Phase I and Phase II environmental assessment and cleanup alternative analysis was conducted under an earlier Integrated Planning Grant with ECOLOGY. Through the site assessment widespread contamination was found in shallow soil but cleanup levels in groundwater were not exceeded. The areas with the highest concentrations of contaminants have been delineated horizontally and vertically and align with the location of the most intensive historic activities at the site.

**Purpose of the Project:**

The purpose of this project is to remove all contaminated soil consistent with the Cleanup Action Plan in the agreed order for the site. The Facility Site Id for the site is 74599527.

**PART 2: SCOPE OF WORK**

The tasks set forth below summarize the RECIPIENT's activities to be performed under this agreement. Costs are limited to those approved by ECOLOGY in the current budget.

**TASK 1: ENGINEERING DESIGN AND CONSTRUCTION**

This task funds RECIPIENT costs ECOLOGY determines reasonable and necessary to complete the following remedial activities in accordance with the scope of work in the agreed order for the site:

- Excavation and disposal of contaminated soil
- Sampling collection and analysis
- Preparation of cleanup reports

**PART 3: FUND SOURCE AND BUDGET**

**A. FUND SOURCE**

Total Eligible Project Cost		\$617,000
<b>Fund</b>	<b>Fund Share (%)</b>	<b>Maximum Fund Amount</b>
Local Toxics Control Account (LTCA)	90%	\$555,300
<b>Match Requirement</b>	<b>Match Share (%)</b>	<b>Match Amount</b>
Cash Match	10%	\$61,700

**B. BUDGET**

<u>Grant Tasks</u>	<u>Estimated Eligible Cost</u>	<u>Estimated Maximum Fund Amount</u>
1. Engineering Design and Construction	\$617,000	\$555,300
TOTAL:	\$617,000	\$555,300

**C. BUDGET CONDITIONS**

1. Any work performed or costs incurred prior to the effective date or after the expiration date of this agreement is at the sole expense of the RECIPIENT.
2. Overhead is eligible at a rate of up to 25 percent of RECIPIENT staff salaries and benefits for time devoted to tasks outlined in this agreement.
3. The RECIPIENT shall provide ECOLOGY a list of staff that will be working on the project, their title and role, the percentage of time they will devote to grant projects, their salary rate, and their benefit rate.
4. To increase or decrease state funding or change the scope of work, ECOLOGY requires a formal amendment. Reallocating funds among grant tasks may be performed through a letter amendment.

**PART 4: SPECIAL TERMS AND CONDITIONS**

**A. ARCHEOLOGICAL AND CULTURAL RESOURCES**

The RECIPIENT shall take reasonable action to avoid, minimize, or mitigate adverse effects to archeological or cultural resources. RECIPIENT shall immediately cease work and notify ECOLOGY if any archeological or cultural resources are found while conducting work under this agreement. In the event that historical or cultural artifacts are discovered at the project site, the RECIPIENT shall also notify the state historic preservation officer at the Department of Archaeology and Historic Preservation at (360) 586-3065. Applicability of the National Historic Preservation Act (NHPA) may require the RECIPIENT to obtain a permit pursuant to Chapter 27.53 RCW prior to conducting on-site activity with the potential to impact historic properties (such as invasive sampling, dredging, or cleanup actions).

**B. BILLING**

1. Unless otherwise approved in writing by the ECOLOGY Financial Manager, the RECIPIENT shall submit a payment request to ECOLOGY quarterly.
2. The RECIPIENT shall submit payment requests on ECOLOGY provided forms that include an A-19, B2, C2, E, and a progress report, unless alternative forms are approved by the ECOLOGY Financial Manager.
3. Except for the A-19, ECOLOGY prefers the electronic submittal of payment requests and backup documentation. If the RECIPIENT submits paper copies, the RECIPIENT must submit one copy to the ECOLOGY financial manager, and one copy to the ECOLOGY project manager.
4. The final payment request shall include a Final Project Report on ECOLOGY provided forms unless otherwise approved by the ECOLOGY Financial Manager.
5. In-kind services are not eligible for match.
6. Legal costs are not grant eligible.
7. Some costs require the ECOLOGY Financial Manager's approval. It is the RECIPIENT's responsibility to understand the eligibility of costs and their responsibility to obtain approvals prior to incurring costs. Costs incurred without required prior approvals may be at the sole expense of the RECIPIENT.

**C. DOCUMENTATION**

1. RECIPIENT shall include the supporting documentation for all expenses, including RECIPIENT salary and benefits. Supporting documentation includes contractor and subcontractor invoices and receipts, accounting records, or any other form of record that establishes the appropriateness of an expense.
2. ECOLOGY may request additional documentation if needed to determine if a cost will be allowed.
3. RECIPIENT shall provide clear and legible supporting documentation and present it organized by task as entered on the C2.

4. RECIPIENT accounting procedures shall include maintaining supporting documentation in a common grant file. This includes cancelled checks, invoices, purchase receipts, payroll records, time and attendance records, contract award documents, and vouchers sent to ECOLOGY. The Recipient shall keep all supporting documentation for audit purposes for at least three years after the expiration date of the agreement.

#### **D. EQUIPMENT ACQUISITION, USE MANAGEMENT, AND DISPOSITION**

**Equipment Acquisition:** The RECIPIENT may purchase equipment needed to accomplish the scope of work in the grant agreement, with written approval by ECOLOGY's Financial Manager. The RECIPIENT is responsible for any costs the Financial Manager does not approve.

Generally, the ECOLOGY Financial Manager will need the following information to evaluate requests to purchase equipment:

1. Description of the equipment, including identification of operation and maintenance items that are to be grant funded (such as insurance, repairs, fuel, etc.).
2. Justification for the purchase, including analysis of rent vs. purchase.
3. Total Cost, including estimate of operation and maintenance costs.
4. Useful life-expectancy of the equipment.

**Equipment Use:** During the effective dates of the agreement and any amendments thereto, equipment purchased with grant funds must be used to accomplish activities funded by the agreement. It may be used for activities not funded by the agreement as long as that use does not interfere with work on the originally authorized projects.

The RECIPIENT may not use the equipment to provide services for a fee to compete unfairly with private companies providing equivalent services, unless specifically permitted by statute.

The RECIPIENT agrees to make equipment purchased with grant funds available for use by ECOLOGY as long as that use does not interfere with work on the originally authorized projects.

**Equipment Management:** The RECIPIENT agrees to maintain and manage the equipment properly to optimize its life span. The RECIPIENT must have in place some form of inventory control system that includes a physical inventory to document where the equipment is being used, and a maintenance record that insures the equipment is being kept in good working condition.

**Equipment Disposition:** When the equipment is no longer needed for the originally authorized purpose, the RECIPIENT shall dispose of purchased equipment by sale for fair market value, ensuring the highest possible return. Proceeds shall be used for RECIPIENT's monitoring or other cleanup related activities.

**E. FAILURE TO COMMENCE AND SUSTAIN WORK**

In the event the RECIPIENT fails to commence work under this agreement within 3 months, or sustain work in accordance with the work schedule established in the order or decree for the site, ECOLOGY reserves the right to terminate this agreement.

**F. MINORITY AND WOMEN'S BUSINESS PARTICIPATION**

The RECIPIENT agrees to solicit and recruit, to the extent possible, certified minority-owned (MBE) and women-owned (WBE) businesses in purchases and contracts initiated after the effective date of this agreement.

Contract awards or rejections cannot be made based on MBE or WBE participation. M/WBE participation is encouraged, however, and the RECIPIENT and all prospective bidders or persons submitting qualifications should take the following steps, when possible, in any procurement initiated after the effective date of this agreement:

1. Include qualified minority and women's businesses on solicitation lists.
2. Assure that qualified minority and women's businesses are solicited whenever they are potential sources of services or supplies.
3. Divide the total requirements, when economically feasible, into smaller tasks or quantities, to permit maximum participation by qualified minority and women's businesses.
4. Establish delivery schedules, where work requirements permit, which will encourage participation of qualified minority and women's businesses.
5. Use the services and assistance of the State Office of Minority and Women's Business Enterprises (OMWBE) and the Office of Minority Business Enterprises of the U.S. Department of Commerce, as appropriate.
6. The RECIPIENT should report payments made to qualified firms to ECOLOGY at the time of submitting each invoice. Please include the following information on the ECOLOGY provided Form D:
  - i. Name and state OMWBE certification number (if available) of any qualified firm receiving funds under the invoice, including any sub-and/or sub-subcontractors.
  - ii. The total dollar amount paid to qualified firms under this invoice.

**G. PROCUREMENT AND CONTRACTS**

- a) The RECIPIENT certifies that it will follow its standard procurement procedures and/or applicable state law in awarding contracts; RECIPIENTS with no formal procurement procedures must certify that they have complied with the "Standards for Competitive Solicitation," found in the *Administrative Requirements for Recipients of Ecology Grants and Loans*, Ecology Publication #91-18 (Revised September 2005).
- b) Upon issuance, the RECIPIENT shall submit a copy of all requests for qualifications (RFQs), requests for proposals (RFPs), and bid documents relating to this grant agreement to ECOLOGY'S Project Manager.

Prior to contract execution, the RECIPIENT shall submit all draft documents and a copy of the draft proposed contract to the ECOLOGY Project Manager for review and approval. Following the contract execution, the RECIPIENT shall submit a copy of the final contract to ECOLOGY'S Project and Financial Managers.

## **H. REPORTING**

1. Progress Reports: The RECIPIENT shall submit progress reports with each payment request. The RECIPIENT shall submit a progress report no less frequently than quarterly, even if a payment request is not submitted. These reports shall be in accordance with the ECOLOGY-approved reporting format as indicated in the Remedial Action Grant Guidelines, or as otherwise approved by the ECOLOGY Financial Manager. ECOLOGY shall not approve payments without the required progress reports.
2. Spending Plans: The RECIPIENT shall submit a spending plan to ECOLOGY. The spending plan identifies the RECIPIENT'S quarterly billing projections. The RECIPIENT shall update the spending plan as needed throughout the term of the agreement upon request.
3. Final Project Report: In addition to the progress report that identifies the work performed during the latest billing period, the final payment request shall include a copy of the final project report. This report summarizes the project goals, purpose of the actions conducted, and outcomes of the project. ECOLOGY may withhold final payment pending RECIPIENT's submittal of the final project report.
4. Sampling data: The RECIPIENT shall submit all sampling data to ECOLOGY in both printed and electronic formats in accordance with WAC 173-340-840(5) and the Toxics Cleanup Program Policy 840: Data Submittal Requirements. ECOLOGY may withhold payment if the RECIPIENT does not submit sampling data.

## **I. STATE-WIDE VENDOR REGISTRATION**

RECIPIENT will receive payment for approved and completed work through Washington State's Department of Enterprise Services Statewide Payee Desk. To receive payment you must register as a state-wide vendor by submitting a state-wide vendor registration form and an IRS W-9 form at website,

<http://www.des.wa.gov/services/ContractingPurchasing/Business/VendorPay/Pages/default.aspx>. Contact DES at the Payee Help Desk at (360) 407-8180 or email [payeehelpdesk@des.wa.gov](mailto:payeehelpdesk@des.wa.gov) for any questions about the vendor registration process.

## **J. TRAINING**

The RECIPIENT agrees to participate in any ECOLOGY recommended or required trainings related to fulfilling the terms of the agreement.

## **K. USE OF EXISTING CONTRACTS**

The RECIPIENT may use existing contracts that conform to adopted procurement procedures and applicable state laws. The RECIPIENT shall submit a copy of the contract to ECOLOGY upon request. The grant eligibility of products or services secured by the RECIPIENT under existing contracts used to perform the scope of work in this agreement must be deemed allowable and reasonable by ECOLOGY prior to cost reimbursement.



**GENERAL TERMS AND CONDITIONS**  
**Pertaining to Grant and Loan Agreements of  
the Department of Ecology**

**A. RECIPIENT PERFORMANCE**

All activities for which grant/loan funds are to be used shall be accomplished by the RECIPIENT and RECIPIENT's employees. The RECIPIENT shall only use contractor/consultant assistance if that has been included in the agreement's final scope of work and budget.

**B. SUBGRANTEE/CONTRACTOR COMPLIANCE**

The RECIPIENT must ensure that all subgrantees and contractors comply with the terms and conditions of this agreement.

**C. THIRD PARTY BENEFICIARY**

The RECIPIENT shall ensure that in all subcontracts entered into by the RECIPIENT pursuant to this agreement, the state of Washington is named as an express third-party beneficiary of such subcontracts with full rights as such.

**D. CONTRACTING FOR SERVICES (BIDDING)**

Contracts for construction, purchase of equipment and professional architectural and engineering services shall be awarded through a competitive process, if required by State law. RECIPIENT shall retain copies of all bids received and contracts awarded, for inspection and use by the DEPARTMENT.

**E. ASSIGNMENTS**

No right or claim of the RECIPIENT arising under this agreement shall be transferred or assigned by the RECIPIENT.

**F. COMPLIANCE WITH ALL LAWS**

1. The RECIPIENT shall comply fully with all applicable Federal, State and local laws, orders, regulations and permits.

Prior to commencement of any construction, the RECIPIENT shall secure the necessary approvals and permits required by authorities having jurisdiction over the project, provide assurance to the DEPARTMENT that all approvals and permits have been secured, and make copies available to the DEPARTMENT upon request.

2. Discrimination. The DEPARTMENT and the RECIPIENT agree to be bound by all Federal and State laws, regulations, and policies against discrimination. The RECIPIENT further agrees to affirmatively support the program of the Office of Minority and Women's Business Enterprises to the maximum extent possible. If the agreement is federally-funded, the RECIPIENT shall report to the DEPARTMENT the percent of grant/loan funds available to women or minority owned businesses.

3. Wages And Job Safety. The RECIPIENT agrees to comply with all applicable laws, regulations, and policies of the United States and the State of Washington which affect wages and job safety.

4. Industrial Insurance. The RECIPIENT certifies full compliance with all applicable state industrial insurance requirements. If the RECIPIENT fails to comply with such laws, the DEPARTMENT shall have the right to immediately terminate this agreement for cause as provided in Section K.1, herein.

**G. KICKBACKS**

The RECIPIENT is prohibited from inducing by any means any person employed or otherwise involved in this project to give up any part of the compensation to which he/she is otherwise entitled or, receive any fee, commission or gift in return for award of a subcontract hereunder.

**H. AUDITS AND INSPECTIONS**

1. The RECIPIENT shall maintain complete program and financial records relating to this agreement. Such records shall clearly indicate total receipts and expenditures by fund source and task or object.

All grant/loan records shall be kept in a manner which provides an audit trail for all expenditures. All records shall be kept in a common file to facilitate audits and inspections.

Engineering documentation and field inspection reports of all construction work accomplished under this agreement shall be maintained by the RECIPIENT.

2. All grant/loan records shall be open for audit or inspection by the DEPARTMENT or by any duly authorized audit representative of the State of Washington for a period of at least three years after the final grant payment/loan repayment or any dispute resolution hereunder. If any such audits identify discrepancies in the financial records, the RECIPIENT shall provide clarification and/or make adjustments accordingly.

3. All work performed under this agreement and any equipment purchased, shall be made available to the DEPARTMENT and to any authorized state, federal or local representative for inspection at any time during the course of this agreement and for at least three years following grant/loan termination or dispute resolution hereunder.

4. RECIPIENT shall meet the provisions in OMB Circular A-133 (Audits of States, Local Governments & Non Profit Organizations), including the compliance Supplement to OMB Circular A-133, if the RECIPIENT expends \$500,000 or more in a year in Federal funds. The \$500,000 threshold for each year is a cumulative total of all federal funding from all sources. The RECIPIENT must forward a copy of the audit along with the RECIPIENT'S response and the final corrective action plan to the DEPARTMENT within ninety (90) days of the date of the audit report.

#### **I. PERFORMANCE REPORTING**

The RECIPIENT shall submit progress reports to the DEPARTMENT with each payment request or such other schedule as set forth in the Special Conditions. The RECIPIENT shall also report in writing to the DEPARTMENT any problems, delays or adverse conditions which will materially affect their ability to meet project objectives or time schedules. This disclosure shall be accompanied by a statement of the action taken or proposed and any assistance needed from the DEPARTMENT to resolve the situation. Payments may be withheld if required progress reports are not submitted.

Quarterly reports shall cover the periods January 1 through March 31, April 1 through June 30, July 1 through September 30, and October 1 through December 31. Reports shall be due within thirty (30) days following the end of the quarter being reported.

#### **J. COMPENSATION**

1. Method of compensation. Payment shall normally be made on a reimbursable basis as specified in the grant agreement and no more often than once per month. Each request for payment will be submitted by the RECIPIENT on State voucher request forms provided by the DEPARTMENT along with documentation of the expenses. Payments shall be made for each task/phase of the project, or portion thereof, as set out in the Scope of Work when completed by the RECIPIENT and approved as satisfactory by the Project Officer.

The payment request form and supportive documents must itemize all allowable costs by major elements as described in the Scope of Work. Instructions for submitting the payment requests are found in "Administrative Requirements for Ecology Grants and Loans", part IV, published by the DEPARTMENT. A copy of this document shall be furnished to the RECIPIENT. When payment requests are approved by the DEPARTMENT, payments will be made to the mutually agreed upon designee.

Payment requests shall be submitted to the DEPARTMENT and directed to the Project Officer assigned to administer this agreement.

2. Period of Compensation. Payments shall only be made for actions of the RECIPIENT pursuant to the grant/loan agreement and performed after the effective date and prior to the expiration date of this agreement, unless those dates are specifically modified in writing as provided herein.

3. Final Request(s) for Payment. The RECIPIENT should submit final requests for compensation within forty-five(45) days after the expiration date of this agreement and within fifteen (15) days after the end of a fiscal biennium. Failure to comply may result in delayed reimbursement.

4. Performance Guarantee. The DEPARTMENT may withhold an amount not to exceed ten percent (10%) of each reimbursement payment as security for the RECIPIENT's performance. Monies withheld by the DEPARTMENT may be paid to the RECIPIENT when the project(s) described herein, or a portion thereof, have been completed if, in the DEPARTMENT's sole discretion, such payment is reasonable and approved according to this agreement and, as appropriate, upon completion of an audit as specified under section J.6. herein.

5. Unauthorized Expenditures. All payments to the RECIPIENT may be subject to final audit by the DEPARTMENT and any unauthorized expenditure(s) charged to this grant/loan shall be refunded to the DEPARTMENT by the RECIPIENT.

6. Mileage and Per Diem. If mileage and per diem are paid to the employees of the RECIPIENT or other public entities, it shall not exceed the amount allowed under state law for state employees.

7. Overhead Costs. No reimbursement for overhead costs shall be allowed unless provided for in the Scope of Work hereunder.

## **K. TERMINATION**

1. For Cause. The obligation of the DEPARTMENT to the RECIPIENT is contingent upon satisfactory performance by the RECIPIENT of all of its obligations under this agreement. In the event the RECIPIENT unjustifiably fails, in the opinion of the DEPARTMENT, to perform any obligation required of it by this agreement, the DEPARTMENT may refuse to pay any further funds thereunder and/or terminate this agreement by giving written notice of termination.

A written notice of termination shall be given at least five working days prior to the effective date of termination. In that event, all finished or unfinished documents, data studies, surveys, drawings, maps, models, photographs, and reports or other materials prepared by the RECIPIENT under this agreement, at the option of the DEPARTMENT, shall become Department property and the RECIPIENT shall be entitled to receive just and equitable compensation for any satisfactory work completed on such documents and other materials.

Despite the above, the RECIPIENT shall not be relieved of any liability to the DEPARTMENT for damages sustained by the DEPARTMENT and/or the State of Washington because of any breach of agreement by the RECIPIENT. The DEPARTMENT may withhold payments for the purpose of setoff until such time as the exact amount of damages due the DEPARTMENT from the RECIPIENT is determined.

2. Insufficient Funds. The obligation of the DEPARTMENT to make payments is contingent on the availability of state and federal funds through legislative appropriation and state allotment. When this agreement crosses over state fiscal years the obligation of the DEPARTMENT is contingent upon the appropriation of funds during the next fiscal year. The failure to appropriate or allot such funds shall be good cause to terminate this agreement as provided in paragraph K.1 above.

When this agreement crosses the RECIPIENT's fiscal year, the obligation of the RECIPIENT to continue or complete the project described herein shall be contingent upon appropriation of funds by the RECIPIENT's governing body; Provided, however, that nothing contained herein shall preclude the DEPARTMENT from demanding repayment of ALL funds paid to the RECIPIENT in accordance with Section O herein.

3. Failure to Commence Work. In the event the RECIPIENT fails to commence work on the project funded herein within four months after the effective date of this agreement, or by any date mutually agreed upon in writing for commencement of work, the DEPARTMENT reserves the right to terminate this agreement.

## **L. WAIVER**

Waiver of any RECIPIENT default is not a waiver of any subsequent default. Waiver of a breach of any provision of this agreement is not a waiver of any subsequent breach and will not be construed as a modification of the terms of this agreement unless stated as such in writing by the authorized representative of the DEPARTMENT.

## **M. PROPERTY RIGHTS**

1. Copyrights and Patents. When the RECIPIENT creates any copyrightable materials or invents any patentable property, the RECIPIENT may copyright or patent the same but the DEPARTMENT retains a royalty-free, nonexclusive and irrevocable license to reproduce, publish, recover or otherwise use the material(s) or property and to authorize others to use the same for federal, state or local government purposes.

Where federal funding is involved, the federal government may have a proprietary interest in patent rights to any inventions that are developed by the RECIPIENT as provided in 35 U.S.C. 200-212.

2. Publications. When the RECIPIENT or persons employed by the RECIPIENT use or publish information of the DEPARTMENT; present papers, lectures, or seminars involving information supplied by the DEPARTMENT; use logos, reports, maps or other data, in printed reports, signs, brochures, pamphlets, etc., appropriate credit shall be given to the DEPARTMENT.

3. Tangible Property Rights. The DEPARTMENT's current edition of "Administrative Requirements for Ecology Grants and Loans", Part V, shall control the use and disposition of all real and personal property purchased wholly or in part with funds furnished by the DEPARTMENT in the absence of state, federal statute(s), regulation(s), or policy(s) to the contrary or upon specific instructions with respect thereto in the Scope of Work.

4. Personal Property Furnished by the DEPARTMENT. When the DEPARTMENT provides personal property directly to the RECIPIENT for use in performance of the project, it shall be returned to the DEPARTMENT prior to final payment by the DEPARTMENT. If said property is lost, stolen or damaged while in the RECIPIENT's possession, the DEPARTMENT shall be reimbursed in cash or by setoff by the RECIPIENT for the fair market value of such property.

5. Acquisition Projects. The following provisions shall apply if the project covered by this agreement includes funds for the acquisition of land or facilities:

a. Prior to disbursement of funds provided for in this agreement, the RECIPIENT shall establish that the cost of land/or facilities is fair and reasonable.

b. The RECIPIENT shall provide satisfactory evidence of title or ability to acquire title for each parcel prior to disbursement of funds provided by this agreement. Such evidence may include title insurance policies, Torrens certificates, or abstracts, and attorney's opinions establishing that the land is free from any impediment, lien, or claim which would impair the uses contemplated by this agreement.

6. Conversions. Regardless of the contract termination date shown on the cover sheet, the RECIPIENT shall not at any time convert any equipment, property or facility acquired or developed pursuant to this agreement to uses other than those for which assistance was originally approved without prior written approval of the DEPARTMENT. Such approval may be conditioned upon payment to the DEPARTMENT of that portion of the proceeds of the sale, lease or other conversion or encumbrance which monies granted pursuant to this agreement bear to the total acquisition, purchase or construction costs of such property.

#### **N. SUSTAINABLE PRODUCTS**

In order to sustain Washington's natural resources and ecosystems, the RECIPIENT is encouraged to implement sustainable practices where and when possible. These practices include use of clean energy, and purchase and use of sustainably produced products (e.g. recycled paper). For more information, see [www.ecy.wa.gov/sustainability..](http://www.ecy.wa.gov/sustainability..)

#### **O. RECOVERY OF PAYMENTS TO RECIPIENT**

The right of the RECIPIENT to retain monies paid to it as reimbursement payments is contingent upon satisfactory performance of this agreement including the satisfactory completion of the project described in the Scope of Work. In the event the RECIPIENT fails, for any reason, to perform obligations required of it by this agreement, the RECIPIENT may, at the DEPARTMENT's sole discretion, be required to repay to the DEPARTMENT all grant/loan funds disbursed to the RECIPIENT for those parts of the project that are rendered worthless in the opinion of the DEPARTMENT by such failure to perform.

Interest shall accrue at the rate of twelve percent (12%) per year from the time the DEPARTMENT demands repayment of funds. If payments have been discontinued by the DEPARTMENT due to insufficient funds as in Section K.2 above, the RECIPIENT shall not be obligated to repay monies which had been paid to the RECIPIENT prior to such termination. Any property acquired under this agreement, at the option of the DEPARTMENT, may become the DEPARTMENT'S property and the RECIPIENT'S liability to repay monies shall be reduced by an amount reflecting the fair value of such property.

#### **P. PROJECT APPROVAL**

The extent and character of all work and services to be performed under this agreement by the RECIPIENT shall be subject to the review and approval of the DEPARTMENT through the Project Officer or other designated official to whom the RECIPIENT shall report and be responsible. In the event there is a dispute with regard to the extent and character of the work to be done, the determination of the Project Officer or other designated official as to the extent and character of the work to be done shall govern. The RECIPIENT shall have the right to appeal decisions as provided for below.

#### **Q. DISPUTES**

Except as otherwise provided in this agreement, any dispute concerning a question of fact arising under this agreement which is not disposed of in writing shall be decided by the Project Officer or other designated official who shall provide a written statement of decision to the RECIPIENT. The decision of the Project Officer or other designated official shall be final and conclusive unless, within thirty days from the date of receipt of such statement, the RECIPIENT mails or otherwise furnishes to the Director of the DEPARTMENT a written appeal.

In connection with appeal of any proceeding under this clause, the RECIPIENT shall have the opportunity to be heard and to offer evidence in support of this appeal. The decision of the Director or duly authorized representative for the determination of such appeals shall be final and conclusive. Appeals from the Director's determination shall be brought in the Superior Court of Thurston County. Review of the decision of the Director will not be sought before either the Pollution Control Hearings Board or the Shoreline Hearings Board. Pending final decision of dispute hereunder, the RECIPIENT shall proceed diligently with the performance of this agreement and in accordance with the decision rendered.

**R. CONFLICT OF INTEREST**

No officer, member, agent, or employee of either party to this agreement who exercises any function or responsibility in the review, approval, or carrying out of this agreement, shall participate in any decision which affects his/her personal interest or the interest of any corporation, partnership or association in which he/she is, directly or indirectly interested; nor shall he/she have any personal or pecuniary interest, direct or indirect, in this agreement or the proceeds thereof.

**S. INDEMNIFICATION**

1. The DEPARTMENT shall in no way be held responsible for payment of salaries, consultant's fees, and other costs related to the project described herein, except as provided in the Scope of Work.

2. To the extent that the Constitution and laws of the State of Washington permit, each party shall indemnify and hold the other harmless from and against any liability for any or all injuries to persons or property arising from the negligent act or omission of that party or that party's agents or employees arising out of this agreement.

**T. GOVERNING LAW**

This agreement shall be governed by the laws of the State of Washington.

**U. SEVERABILITY**

If any provision of this agreement or any provision of any document incorporated by reference shall be held invalid, such invalidity shall not affect the other provisions of this agreement which can be given effect without the invalid provision, and to this end the provisions of this agreement are declared to be severable.

**V. PRECEDENCE**

In the event of inconsistency in this agreement, unless otherwise provided herein, the inconsistency shall be resolved by giving precedence in the following order: (a) applicable Federal and State statutes and regulations; (b) Scope of Work; (c) Special Terms and Conditions; (d) Any terms incorporated herein by reference including the "Administrative Requirements for Ecology Grants and Loans"; and (e) the General Terms and Conditions.

# **AGENDA SUMMARY SHEET**

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

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**SUBJECT TITLE:**

Award Contract for:  
Former Salvage Yard Soil Remediation

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

**Dept. of Origin:** Community Dev/Engineering

**For Agenda of:** August 20, 2013

**PRESENTED BY:**

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

**Cost of Item:** \$ 323,541.80

**City Manager:** Steve Taylor

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**AGENDA ITEM ATTACHMENTS:**

Bid Tabulation

**SUMMARY STATEMENT:**

In 2004, Department of Ecology listed the Terry's Salvage site on the State's Hazardous Sites List. They later ceased operation at this location. In 2010-2011 the City used Neighborhood Stabilization Program Grant funds to demolish an abandoned building and remove scrap metal. Soil contamination was discovered during the site cleanup process.

This project is the result of the discovery of that soil contamination. This contract will remove and dispose of approximately the top two to three feet of existing soil. This site will be graded with new topsoil and seeded.

**FINANCIAL SUMMARY:**

This project is funded by grants provided by the Washington State Department of Ecology and US Environmental Protection Agency. The qualified low bid for this project is \$91,177 below the Engineer's Estimate of \$414,719.

**RECOMMENDED ACTION:**

Staff recommends that the City Council award the above-referenced project to the lowest qualified bidder, Anderson Environmental Contracting in the amount of \$323,541.80.

**Bid Tabulation - August 9, 2013**

Item No.	Base Bid Description	Engineer's Estimate				Clean Harbors Environmental Services				PSC Environmental				CCS, a Division of PNE Corp			
		Quan	Unit	Price	Amount	Quan	Unit	Price	Amount	Quan	Unit	Price	Amount	Quan	Unit	Price	Amount
1	Mobilization	1	L.S.	\$ 15,000.00	\$ 15,000.00	1	L.S.	\$ 15,400.00	\$ 15,400.00	1	L.S.	\$ 13,450.60	\$ 13,450.60	1	L.S.	\$ 9,995.00	\$ 9,995.00
2	Temporary Erosion & Sediment Control	1	L.S.	\$ 2,000.00	\$ 2,000.00	1	L.S.	\$ 10,700.00	\$ 10,700.00	1	L.S.	\$ 2,470.00	\$ 2,470.00	1	L.S.	\$ 8,175.00	\$ 8,175.00
3	Site Access Control Fencing	1	L.S.	\$ 5,500.00	\$ 5,500.00	1	L.S.	\$ 2,650.00	\$ 2,650.00	1	L.S.	\$ 1,555.28	\$ 1,555.28	1	L.S.	\$ 1,950.00	\$ 1,950.00
4	Decommission Monitoring Well	3	EA	\$ 1,000.00	\$ 3,000.00	3	EA	\$ 904.00	\$ 2,712.00	3	EA	\$ 1,500.00	\$ 4,500.00	3	EA	\$ 670.00	\$ 2,010.00
5	Remove Asphalt Paving	560	S.F	\$ 1.00	\$ 560.00	560	S.F	\$ 5.60	\$ 3,136.00	560	S.F	\$ 0.78	\$ 436.80	560	S.F	\$ 0.50	\$ 280.00
6	Tree Removal	1	L.S.	\$ 1,500.00	\$ 1,500.00	1	L.S.	\$ 4,000.00	\$ 4,000.00	1	L.S.	\$ 1,815.00	\$ 1,815.00	1	L.S.	\$ 3,600.00	\$ 3,600.00
7	Excavate Soil to Stockpile	3,275	Tons	\$ 6.50	\$ 21,287.50	3,275	Tons	\$ 5.00	\$ 16,375.00	3,275	Tons	\$ 9.80	\$ 32,095.00	3,275	Tons	\$ 5.50	\$ 18,012.50
8	Stockpile Management	1	L.S.	\$ 2,000.00	\$ 2,000.00	1	L.S.	\$ 17,000.00	\$ 17,000.00	1	L.S.	\$ 955.00	\$ 955.00	1	L.S.	\$ 6,790.00	\$ 6,790.00
9	Load, Transport, and Dispose Soil at Subtitle C Landfill	522	Tons	\$ 222.00	\$ 115,884.00	522	Tons	\$ 238.80	\$ 124,653.60	522	Tons	\$ 190.00	\$ 99,180.00	522	Tons	\$ 210.85	\$ 110,063.70
10	Load, Transport, and Dispose Soil at Subtitle D Landfill	2,753	Tons	\$ 48.00	\$ 132,144.00	2,753	Tons	\$ 59.00	\$ 162,427.00	2,753	Tons	\$ 45.50	\$ 125,261.50	2,753	Tons	\$ 43.25	\$ 119,067.25
11	Backfill Purchase and Import	3,275	Tons	\$ 15.00	\$ 49,125.00	3,275	Tons	\$ 10.15	\$ 33,241.25	3,275	Tons	\$ 8.30	\$ 27,182.50	3,275	Tons	\$ 10.80	\$ 35,370.00
12	Backfill and Compaction	3275	Tons	\$ 6.50	\$ 21,287.50	3275	Tons	\$ 4.10	\$ 13,427.50	3275	Tons	\$ 3.95	\$ 12,936.25	3275	Tons	\$ 6.00	\$ 19,650.00
13	Demolish and Replace Existing Fence	1	L.S.	\$ 12,375.00	\$ 12,375.00	1	L.S.	\$ 13,600.00	\$ 13,600.00	1	L.S.	\$ 11,455.00	\$ 11,455.00	1	L.S.	\$ 10,900.00	\$ 10,900.00
14	Grade and Hydroseed Final Surface	3,200	S.Y.	\$ 0.73	\$ 2,336.00	3,200	S.Y.	\$ 2.10	\$ 6,720.00	3,200	S.Y.	\$ 1.90	\$ 6,080.00	3,200	S.Y.	\$ 3.03	\$ 9,696.00
	Sub Total				\$383,999.00				\$426,042.35				\$339,372.93				\$355,559.45
	8% Sales Tax				\$30,719.92				\$34,083.39				\$27,149.83				\$28,444.76
	Contract Amount				\$414,718.92			<b>Total Base</b>	\$460,125.74			<b>Total Base</b>	\$366,522.76			<b>Total Base</b>	\$384,004.21
	<b>Alternate 1 - Lead Contamination Soil Treatment</b>																
15	Stablize / Treat Soil					522	Tons	\$ 78.50	\$ 40,977.00	522	Tons	\$ 88.00	\$ 45,936.00	522	Tons	\$ 68.75	\$ 35,887.50
								8% Sales Tax	\$ 3,278.16			8% Sales Tax	\$ 3,674.88			8% Sales Tax	\$ 2,871.00
								<b>Total Alt A</b>	\$ 44,255.16			<b>Total Alt A</b>	\$ 49,610.88			<b>Total Alt A</b>	\$ 38,758.50
	<b>Alternate 2 - Standby</b>																
16	Standby					60	Hrs	\$ 351.00	\$ 21,060.00	60	Hrs	\$ 115.00	\$ 6,900.00	60	Hrs	\$ 287.50	\$ 17,250.00
								8% Sales Tax	\$ 1,684.80			8% Sales Tax	\$ 552.00			8% Sales Tax	\$ 1,380.00
								<b>Total Alt B</b>	\$ 22,744.80			<b>Total Alt B</b>	\$ 7,452.00			<b>Total Alt B</b>	\$ 18,630.00

**Total Bid \$527,125.70**

**Total Bid \$423,585.64**

**Total Bid \$441,392.71**

3 Kings Environmental, Inc.				Anderson Environmental Contracting				Green Earthworks Construction, Inc.				
Quan	Unit	Price	Amount	Quan	Unit	Price	Amount	Quan	Unit	Price	Amount	
1	L.S.	\$ 14,266.00	\$ 14,266.00	1	L.S.	\$ 10,077.20	\$ 10,077.20	1	L.S.	\$ 52,923.80	\$ 52,923.80	
1	L.S.	\$ 4,500.00	\$ 4,500.00	1	L.S.	\$ 6,241.52	\$ 6,241.52	1	L.S.	\$ 15,121.51	\$ 15,121.51	
1	L.S.	\$ 3,000.00	\$ 3,000.00	1	L.S.	\$ 2,216.76	\$ 2,216.76	1	L.S.	\$ 1,861.45	\$ 1,861.45	
3	EA	\$ 500.00	\$ 1,500.00	3	EA	\$ 585.45	\$ 1,756.35	3	EA	\$ 925.58	\$ 2,776.74	
560	S.F	\$ 0.50	\$ 280.00	560	S.F	\$ 1.76	\$ 985.60	560	S.F	\$ 1.47	\$ 823.20	
1	L.S.	\$ 200.00	\$ 200.00	1	L.S.	\$ 3,102.43	\$ 3,102.43	1	L.S.	\$ 2,651.06	\$ 2,651.06	
3,275	Tons	\$ 3.60	\$ 11,790.00	3,275	Tons	\$ 2.45	\$ 8,023.75	3,275	Tons	\$ 7.77	\$ 25,446.75	
1	L.S.	\$ 3,000.00	\$ 3,000.00	1	L.S.	\$ 3,622.66	\$ 3,622.66	1	L.S.	\$ 3,691.37	\$ 3,691.37	
522	Tons	\$ 192.00	\$ 100,224.00	522	Tons	\$ 198.64	\$ 103,690.08	522	Tons	\$ 228.49	\$ 119,271.78	
2,753	Tons	\$ 45.00	\$ 123,885.00	2,753	Tons	\$ 36.28	\$ 99,878.84	2,753	Tons	\$ 43.78	\$ 120,526.34	
3,275	Tons	\$ 13.00	\$ 42,575.00	3,275	Tons	\$ 8.55	\$ 28,001.25	3,275	Tons	\$ 11.25	\$ 36,843.75	
3275	Tons	\$ 4.50	\$ 14,737.50	3275	Tons	\$ 4.88	\$ 15,982.00	3275	Tons	\$ 6.14	\$ 20,108.50	
1	L.S.	\$ 5,500.00	\$ 5,500.00	1	L.S.	\$ 12,797.30	\$ 12,797.30	1	L.S.	\$ 7,793.19	\$ 7,793.19	
3,200	S.Y.	\$ 1.35	\$ 4,320.00	3,200	S.Y.	\$ 1.00	\$ 3,200.00	3,200	S.Y.	\$ 4.19	\$ 13,408.00	
			\$329,777.50				\$299,575.74				\$423,247.44	
			\$26,382.20				\$23,966.06				\$33,859.80	
			<b>Total Base</b>	\$356,159.70			<b>Total Base</b>	\$323,541.80			<b>Total Base</b>	\$457,107.24
522	Tons	\$ 90.00	\$ 46,980.00	522	Tons	\$ 78.05	\$ 40,742.10	522	Tons	\$ 77.01	\$ 40,199.22	
			8% Sales Tax	\$ 3,758.40			8% Sales Tax	\$ 3,259.37			8% Sales Tax	\$ 3,215.94
			<b>Total Alt A</b>	\$ 50,738.40			<b>Total Alt A</b>	\$ 44,001.47			<b>Total Alt A</b>	\$ 43,415.16
60	Hrs	\$ 150.00	\$ 9,000.00	60	Hrs	\$ 151.86	\$ 9,111.60	60	Hrs	\$ 320.85	\$ 19,251.00	
			8% Sales Tax	\$ 720.00			8% Sales Tax	\$ 728.93			8% Sales Tax	\$ 1,540.08
			<b>Total Alt B</b>	\$ 9,720.00			<b>Total Alt B</b>	\$ 9,840.53			<b>Total Alt B</b>	\$ 20,791.08

**Total Bid \$416,618.10**

**Total Bid \$377,383.80**

**Total Bid \$521,313.47**

# AGENDA SUMMARY SHEET

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

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**SUBJECT TITLE:**

Agreement: DNR transfer land Wetland Mitigation  
lease proposal

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

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

**For Agenda of:** August 20, 2013

**PRESENTED BY:**

David M. Sypher, P.E.  
Public Works Director

**Cost of Item:** N/A

**City Manager:** Steve Taylor

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**AGENDA ITEM ATTACHMENTS:**

Proposed lease agreement w/exhibit C  
Vicinity map (exhibit B)

**SUMMARY STATEMENT:**

The City owns certain real property Transferred in early 2002 from DNR to the City which is located along the Coweeman River, including what is locally known as Harts Lake, and extending southerly up the hill to the Aldercrest area. The City has been working for the past two years to prepare potential land for the Airport Wetland mitigation needs. While in this process the City was contacted by Habitat Bank LLC (HB) inquiring about the availability of this same land for Wetland Banking. HB is in the business of developing land into wetland mitigation projects, consolidated mitigation projects, and mitigation banks, and has developed, among other things, significant technical expertise, connections with regulatory agencies, and relationships with potential customers to further this enterprise. HB is making a proposal to the city for a long term lease as per the attached agreement.

HB and City believe that the property may be suitable for a consolidated wetland and stream mitigation project and/or as a mitigation bank ("Mitigation Project"). It is intended that the primary purpose of a Mitigation Project would be to develop and sell wetland and stream mitigation and/or credits for permitted impacts ("Mitigation") We want to establish a framework for a relationship in developing and operating the Mitigation Project, including, but not limited to, provisions pertaining to the City's airport mitigation needs and other future City or private developer projects that have requirements for Mitigation from the Mitigation Project. This area use meets the City existing Open space plan with passive recreational and trails which would not change with this proposal.

The basic concept is to grant a lease which would allow HB to design and construct high quality wetland improvements that generate wetland credit to sell on the open market. This is the preferred option for dealing with wetland impacts now and would allows local development to move more quickly and eliminate otherwise lengthy environmental delays. The contractor must financially guarantee a successful wetland project for a ten year period after the "bank" is approved. When bank credits are sold the developer must also set aside money for an endowment to fund long term stewardship of the site. The land will remain accessible to the public for passive recreational use but must remain perpetually as a protected wetland area.

The attached proposal would grant, convey, and warrants to HB the exclusive right to develop a Mitigation Project, as further defined and described in Exhibit C, which is attached hereto and incorporated herein by this reference, on the Property and to otherwise exclusively use and occupy the Property in association with the Mitigation Project as provided in the proposal. The configuration and boundaries of the Property are to be determined as provided in Section 2 which will result in an Exhibit "A".

Specifically, the Property shall be comprised of approximately 60 acres of Coweeman River floodplain and up to 80 acres of adjacent upland buffer, all of which shall be contiguous acres and as generally shown in Exhibit "B," which is attached. If approved The Parties shall determine the boundaries and configuration of the Property at a later date and in association with the Mitigation Project process. If during the mitigation determination process, the City feels that the return on given acreage is too low for the benefit received, those sections would be omitted from the final boundary limits. Upon such determination, the Parties would amend this Agreement to reflect such determination.

Some parts of the land provide higher wetland value and use than others and therefore variable costs and remuneration to the city. The City estimates net consideration over the 10 year period to be between \$400,000.00 and \$1,000,000.00.

Staff has consulted with our current property consultant and we believe this use of the land will provide the best result in highest intended use, preservation and consideration to the City.

#### **FINANCIAL SUMMARY:**

The proposed lease will provide income to the city as listed in the attached contract.

#### **RECOMMENDED ACTION:**

Staff recommends council make a motion approving the attached lease agreement for Wetland mitigation lease with Habitat Bank, LLC. and to allow the City Manager to sign said agreement.

WHEN RECORDED RETURN TO:

Name: Thomas F. Haensly

Address: 144 Railroad Avenue, Suite 217

City, State, Zip: Edmonds, Washington 98020

## **AGREEMENT FOR USE OF PROPERTY**

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Grantor: City of Kelso

Grantee: Habitat Bank, LLC

Abbreviated legal description: \_\_\_\_\_

Additional legal description is on page: Exhibit A, p. 5

Assessor's Tax Parcel Number(s): \_\_\_\_\_

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

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THIS AGREEMENT FOR USE OF PROPERTY ("Agreement") is entered into between the CITY OF KELSO ("City" & "Grantor") and HABITAT BANK, LLC ("HB" & "Grantee") (collectively known as "the Parties").

### **RECITALS**

WHEREAS, City is the sole owner of that certain real property located in Cowlitz County, Washington, located along the Coweeman River, including what is locally known as Harts Lake, which real property is more specifically described in Exhibit "A," which is attached hereto and incorporated herein by this reference; and

WHEREAS, the City and HB intend this Agreement to apply to a portion of the City-owned property described in the foregoing recital, which portion shall be in the floodplain of the Coweeman River and include Harts Lake (such portion hereinafter being the "Property"), which is to be determined as provided in Section 2 below; and

WHEREAS, HB is in the business of developing land into wetland mitigation projects, consolidated mitigation projects, and mitigation banks, and has developed, among other things, significant technical expertise, connections with regulatory agencies, and relationships with potential customers to further this enterprise; and

WHEREAS, HB and City believe that the Property may be suitable for a consolidated wetland and stream mitigation project and/or as a mitigation bank ("Mitigation Project"). The Parties intend that the primary purpose of the Mitigation Project will be to develop and sell wetland and stream mitigation and/or credits for permitted impacts ("Mitigation"); and

WHEREAS, the Mitigation Project will include land other than the Property, and HB intends to utilize all of such real property as an integrated unit in the development and operation of the Mitigation Project; and

WHEREAS, HB and City want to establish a framework for the Parties' relationship in developing and operating the Mitigation Project, including, but not limited to, provisions pertaining to the City's purchase of Mitigation from the Mitigation Project:

## **AGREEMENT**

NOW, THEREFORE, in consideration of the foregoing recitals and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, HB and City agree as follows:

1. Rights Granted. The City hereby grants, conveys, and warrants to HB the exclusive right to develop a Mitigation Project, as further defined and described in Exhibit C, which is attached hereto and incorporated herein by this reference, on the Property and to otherwise exclusively use and occupy the Property in association with the Mitigation Project as further provided herein. The configuration and boundaries of the Property are to be determined as provided in Section 2.

2. Property. The Property shall be comprised of approximately 60 acres of Coweeman River floodplain and up to 80 acres of adjacent upland buffer, all of which shall be contiguous acres and as generally shown in Exhibit "B," which is attached hereto and incorporated herein by this reference. The Parties shall determine the boundaries and configuration of the Property at a later date and in association with the Mitigation Project process. Upon such determination, the Parties shall amend this Agreement and Exhibit A to reflect such determination.

3. Restrictions on Use. Subject to any existing deed restrictions and encumbrances, including without limitation any restrictions by the Department of Natural Resources or other state or federal agencies, the City shall make the Property available solely to HB for the development and operation of a Mitigation Project and shall not, without HB's written approval (which shall be in HB's reasonable discretion), engage in any use or activity (or permit a third party to do the same) with respect to the Property that will, or might, preclude or impair HB's ability to develop and sell Mitigation from the Mitigation Project or establish the Mitigation Project. City hereby grants and conveys to HB, and HB's managers, employees, agents, and contractors, access to the Property. At such time as it is requested by HB, City shall also grant a conservation easement or deed restriction over the Property (or a series of conservation easements or deed restrictions as the case may be), which City acknowledges will in the case of conservation easements, among other things, convey to a governmental agency or nonprofit conservation organization ("Holder") a perpetual real property interest in the Property, or in the case of deed restrictions, limit the future use of the Property in perpetuity. Any such conservation easement(s) or deed restriction(s) shall preclude City from engaging in, or permitting others to engage in, uses and activities on the Property that are contrary to the development and operation of the Mitigation Project and the conservation values of the Property

and grant to the Holder a right to enforce such prohibitions. Any such conservation easement(s) or deed restriction(s) shall allow passive, dispersed recreational use of the Property. Such recreational use may include uses such as hiking and bird watching, but shall not include any motorized recreational use, field sports, or any activity that may adversely impact the Mitigation Project or the conservation values of the Property.

4. Title Report. At least \_\_\_\_ days before \_\_\_\_, HB shall have a preliminary title commitment prepared showing the condition of the title to the Property including all exceptions set forth in Schedule B thereof. If HB has any objection to matters disclosed in the preliminary title commitment ("Objectionable Conditions"), HB shall give written notice of its objection to the City within thirty (30) days after receiving the preliminary title commitment. If HB fails to provide notice of such objection within such thirty (30) day period, HB will be deemed to have accepted any and all such conditions without objection. The City shall have thirty (30) days from delivery of HB's notice to notify HB in writing whether the City is able and willing to remove such Objectionable Conditions. If the City notifies HB in writing that it is not willing or able to remove any of the Objectionable Conditions, then HB shall have thirty (30) days thereafter within which to waive in writing the removal of such Objectionable Conditions or terminate this Agreement.

5. Term. The term of this Agreement shall be either ten (10) years from the date of execution, or until any monitoring and/or maintenance obligations required by permits for which Mitigation has been sold and pertaining to such Mitigation have been satisfied, whichever is later. The Term may be extended by agreement of both parties. This Agreement may also be terminated as provided in Paragraphs 4 and 6.

6. Termination.

(a) In the event HB is unable to obtain necessary permits and approvals by April 25, 2016, then this Agreement will terminate.

(b) Either party hereto may terminate this Agreement without cause by giving written notice of intent to terminate to the other party in accordance with Paragraph 12 hereof and at least one hundred eighty (180) days prior to the intended effective date of such termination. If the City terminates this Agreement pursuant to this Paragraph 6(b), reimbursement under Paragraph 8 shall be required.

(c) If a party hereto does not fulfill any of its obligations under this Agreement in a timely and proper manner, or if either party violates any of the terms and conditions of the Agreement, the aggrieved party may give the other party (hereafter "responsible party") written notice of such failure or violation. If the responsible party fails to correct the failure or violation within ten days after receipt of such notice (or if the failure or violation requires longer than ten days, the responsible party fails to start curing within ten days and/or fails to continue diligently curing until such failure or violation is cured), the aggrieved party may thereupon terminate this Agreement. If the City terminates this Agreement pursuant to this Paragraph 6(c) reimbursement under Paragraph 8 shall not be required.

7. Mitigation Project.

(a) The Property shall be developed by HB as a Mitigation Project (as more completely defined and described in Exhibit C, which is attached hereto and incorporated herein by this reference). HB shall use the Property only for the Mitigation Project.

(b) HB accepts the Property in its present condition and will complete at its own costs and expense improvements deemed necessary by HB and applicable permitting agencies to make the Property usable for the Mitigation Project.

(c) The City may approve and provide input to HB and/or to the regulatory agencies with authority over the Mitigation Project as to the scope and design of that portion of the Mitigation Project that includes the Property, provided, however, that such approval shall be made prior to when HB proposes a final design for approval by the agencies regulating the Mitigation Project. HB will make reasonable efforts to keep the City informed as to the timing of the regulatory process so as to facilitate the City's opportunity to provide such approval.

8. Reimbursement. In the event the City terminates this Agreement pursuant to Paragraph 6(b), the City shall reimburse HB for all HB's costs incurred to the date of such termination and associated with the development of the Property as part of the Mitigation Project, including, but not limited to: engineering, design, planning, and permitting, as well as any construction on and/or improvements made to the Property, less any sums received by HB from the sale of Mitigation from the Property. In the event of termination of the Agreement by the City pursuant to Paragraph 6(c), the City shall not be required to reimburse HB for such costs.

9. Maintenance. HB shall maintain and keep the Property in good condition and repair during the term hereof. HB will adhere to all local, state and federal laws applicable to the development of the Property as a Mitigation Project.

10. Indemnification. HB shall indemnify, defend, and hold harmless the City against any and all claims or liability for damage to any person or property and costs incidental thereto arising with respect to HB's use and occupancy of the Property, or the use and occupancy of any person using the Property under the control and authority of HB. The City shall indemnify, defend, and hold harmless HB for any and all claims or liability for damage to any person or property and costs incidental thereto arising with respect to City-sponsored or controlled activities on the Property, where such damage is attributable to some act or omission of the City, and where such damage is attributable to public use of the Property.

11. Insurance. HB agrees to maintain during the Term of this Agreement the following minimum insurance coverage:

- i) Commercial General Liability covering the risks of bodily injury (including death), property damage and personal injury, including coverage for contractual liability, with a limit of not less than \$2 million per occurrence/\$4 million general aggregate;
- ii) Business Automobile Liability (owned, hired, or non-owned) covering the risks of bodily injury (including death) and property damage, including coverage for contractual liability, with a limit of not less than \$1 million per accident;

The City shall be named as an additional insured on HB's Commercial General Liability Policy and on the Commercial General Liability Policy of any contractor of HB performing work on the Property.

12. Notices. Any written notice given by either party to the other under the provisions of, or with respect to, this Agreement, shall be delivered in person, or by certified or registered mail to the following address:

City: Steven Taylor  
City Manager  
203 South Pacific Avenue  
Kelso, Washington 98632

HB: Habitat Bank, LLC  
PO Box 354  
Kirkland, WA 98033

or to such other address(es) as each party hereto may notify the other.

13. Entire Agreement. The Parties agree that this Agreement sets forth completely the terms of the Parties' agreement and understanding regarding the Property and the Mitigation Project, that this Agreement supersedes any and all prior agreements or understandings, both oral and written, and that this Agreement cannot be modified without the express written consent of all Parties hereto.

14. Counterparts. This Agreement may be signed in counterpart originals.

15. Benefit of Agreement. It is not intended by this Agreement to, and nothing contained in this Agreement shall, create any partnership, joint venture, or other arrangement between City and HB, except to the extent otherwise expressly provided for herein. No term or provision of this Agreement is intended to be, or shall be, for the benefit of any person, firm, organization, or company not a party to this Agreement, and no such other person, firm, organization, or company shall have any right or cause of action hereunder, except as otherwise expressly provided for herein.

16. Runs with the Land. This Agreement shall run with the land.

Dated this \_\_\_\_ day of \_\_\_\_\_, 2013

HABITAT BANK, LLC

By: \_\_\_\_\_  
Name/Title: \_\_\_\_\_

CITY OF KELSO

By the direction of the Kelso City Council taken \_\_\_\_\_, 2013

By: \_\_\_\_\_  
\_\_\_\_\_, City Manager

APPROVED AS TO FORM this  
\_\_\_\_ day of, \_\_\_\_\_ 2013

By: \_\_\_\_\_

City Attorney  
City of Kelso

ATTEST:

By: \_\_\_\_\_  
City Clerk  
City of Kelso

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

On this \_\_\_\_ day of \_\_\_\_\_ 2013, before me personally appeared \_\_\_\_\_, to me known to be the CITY MANAGER of the CITY OF KELSO, a 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 was authorized to execute said instrument on behalf of said municipality.

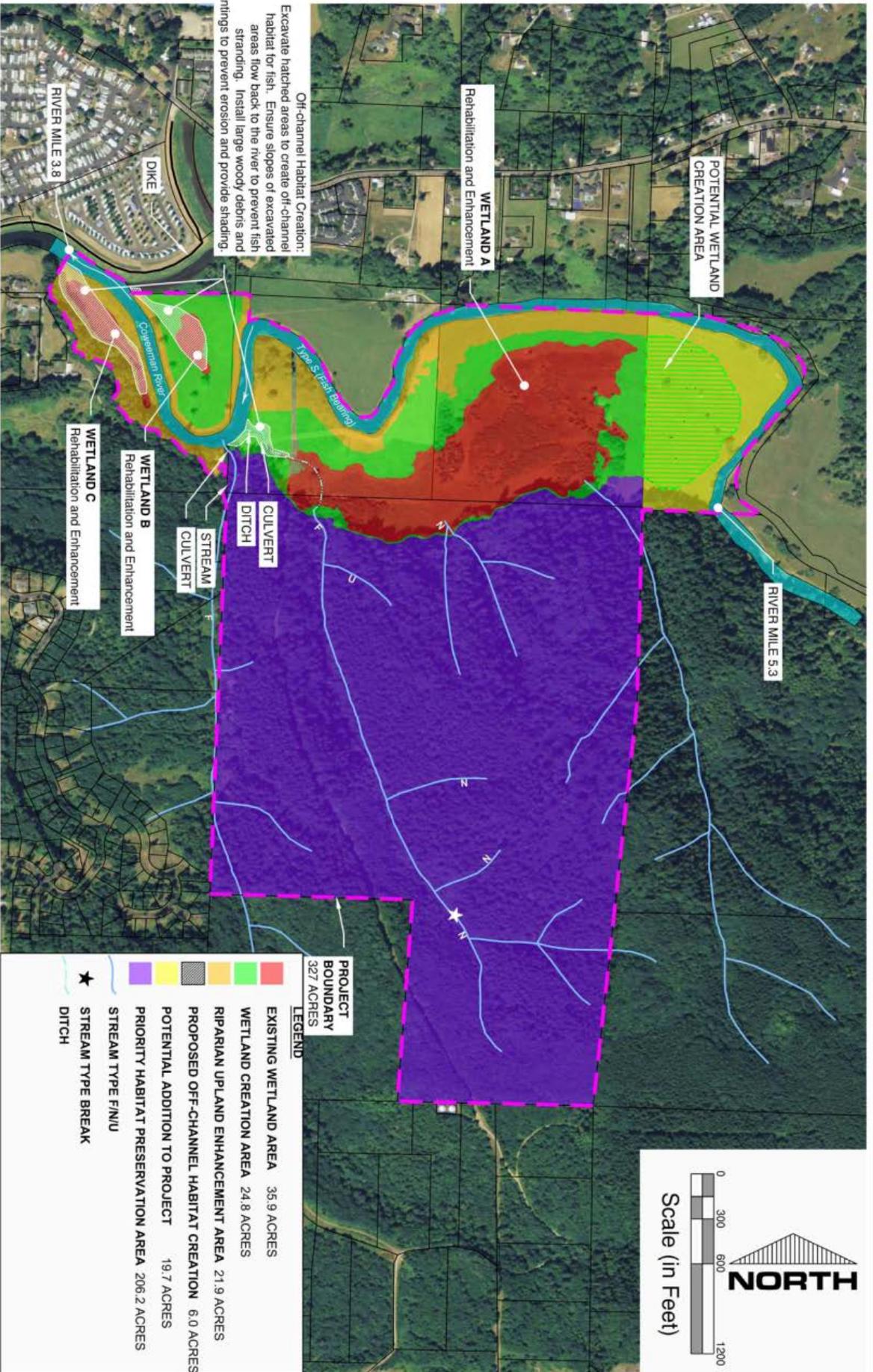
IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year last above written

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



**EXHIBIT A**  
**Legal Description of City of Kelso Property**

To be determined at a later date.



## EXHIBIT C

1. Development & Operation of Project. HB shall begin, and diligently continue until completed, planning, permitting, constructing, developing, and establishing the Mitigation Project for the purpose of developing and selling Mitigation to sponsors of permitted projects with need for mitigation of impacts. The Mitigation Project is defined to mean all planning, permitting, construction, maintenance, and monitoring of upland, stream, wetland, and shoreline mitigation work required by city, state or federal agencies, including enhancement, restoration and creation of wetlands, streams, and riparian uplands along the Coweeman River and including the Property or land adjacent to the Property. HB shall diligently continue operating the Mitigation Project until all Mitigation has been sold. HB agrees to be responsible for all maintenance associated with the Mitigation Project for the duration of this Agreement. HB shall make reasonable efforts in the design, development, and operation of the Mitigation Project so as to avoid to the greatest extent practicable any material, adverse, and unauthorized impacts to real property that is not included in the Mitigation Project.

2. Costs & Expenses. HB shall be solely responsible for the costs and expenses of its performance in furtherance of this Agreement.

3. Ownership. The Parties acknowledge and agree that City shall remain the fee owner of the Property during the Term of this Agreement and thereafter, except as may be otherwise provided herein. Notwithstanding any other provision of this Agreement, the Parties agree that HB shall own all rights to Mitigation until such Mitigation is sold to an end user.

4. Allocation of Mitigation Sales Revenue. The mitigation project will occur on multiple landowner's property. The Mitigation Project permitting documentation will detail what percentage of the overall mitigation derives from each landowner's property over the life of the project. The City will receive a payment for mitigation sold which is prorated to their percentage of the total credits generated by the project. 5. Allocation of Gross Revenue. Beginning on the date of execution of this Agreement and continuing until the last point in time at which revenue is received from the sale of Mitigation, except as provided in Section 5 below; on a quarterly basis the total gross proceeds from the sale of Mitigation generated from the City property shall be allocated, divided, and paid as follows:

(a) such amount as is required under the permits issued for the Mitigation Project for funding a long-term stewardship plan endowment, shall be subtracted from the total gross proceeds and allocated to HB's account; and

(b) the amount of total gross proceeds remaining after subtraction and allocation of the amounts set forth in Paragraphs 4(a) and (b) above shall be divided and paid as follows:

- 1.) one-fifth (1/5) thereof to City;
- 2.) four-fifths (4/5) thereof to HB.

5. City's Purchase of Mitigation.

(a) The City shall have the right, which shall not expire, to sufficient mitigation credit from the project to mitigate for up to ½ acre of wetland impact at the Regional Airport facility for runway extension at no cost., HB may delay the City's exercise of the foregoing right until any projects funded by federal stimulus dollars that require mitigation from the site to be approved, have purchased the necessary available credit.

(b) The City may also purchase Mitigation on such terms and conditions as are available to other purchasers, provided that such Mitigation is for the City's own use and not for resale, the payment for which shall be included in the total gross revenue and subject to the provisions of Section 4 above (*the result being that the City can purchase such Mitigation at a 20% discount*).

6. Execution of Project Instrument. The City will fully cooperate with HB in the development and operation of the Mitigation Project and shall consent to and execute all permits for the Mitigation Project that are required to be executed by the owner of the Property.

# AGENDA SUMMARY SHEET

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

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**SUBJECT TITLE:** Teamster Collective  
Bargaining Agreement

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

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

**For Agenda of:** August 20, 2013 \_\_\_\_\_

**Originator:** \_\_\_\_\_

**PRESENTED BY:**

Steve Taylor

**City Attorney:** Janean Parker

**City Manager:** Steve Taylor

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**Agenda Item Attachments:**

The Collective Bargaining Agreement between the City of Kelso and the Teamsters Union will be provided at the Council meeting.

**SUMMARY STATEMENT:**

Negotiations began between the City and the Teamsters Union representatives on June 24, 2013 and after several cooperative meetings an agreement was been reached between the City and the Union. The agreement was approved on August 14 by the Teamsters Collective Bargaining Unit and is being presented for Council's approval.

**OPTIONS:**

- 1) Move to Approve the Collective Bargaining Agreement between the City and the Teamsters Union.
- 2) Do not approve the agreement and provide instructions to the negotiating team for amendments.

**RECOMMENDED ACTION:**

Approve the Collective Bargaining Agreement between the City and the Teamsters Union.

# **AGENDA SUMMARY SHEET**

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

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**SUBJECT TITLE:** An Ordinance of the City of Kelso repealing Ordinance 3205 codified at KMC 2.26 Public Records Disclosure and adopting a new KMC 2.26 Public Records Disclosure to replace the repealed chapter.

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

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

**For Agenda of:** August 20, 2013 \_\_\_\_\_

**Originator:** \_\_\_\_\_

**PRESENTED BY:**

Steve Taylor

**City Attorney:** Janean Parker

**City Manager:** Steve Taylor

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**Agenda Item Attachments:**

Proposed Ordinance

Exhibit A – Updated Chapter 2.26 Public Records Disclosure

Exhibit B – Current Chapter 2.26 Public Records Disclosure

**SUMMARY STATEMENT:**

In 1993, Ordinance 3205 was adopted to address the disclosure of public records. Since that time, there have been several judicial interpretations and amendments to the state law, including a complete recodification of the statutes at RCW 42.56 and the adoption of state model rules. The proposed code changes are intended to update the City's municipal code to reflect the current state of the law and current best practices in order to better serve the purposes of the Public Records Act. Some of the proposed changes include: providing up to ten, standard, black and white copies, at no charge and requiring a 10% deposit on requests estimated to exceed \$25.00.

**RECOMMENDED ACTION:**

Make a motion to approve Ordinance repealing the current KMC 2.26 and adopting a new KMC 2.26.

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

**AN ORDINANCE OF THE CITY OF KELSO REPEALING  
ORDINANCE 3205 CODIFIED AT KMC 2.26 PUBLIC RECORDS  
DISCLOSURE AND ADOPTING A NEW KMC 2.26 PUBLIC RECORDS  
DISCLOSURE TO REPLACE THE REPEALED CHAPTER**

WHEREAS, Ordinance 3205 was adopted in 1993 to address the disclosure of public records; and

WHEREAS, there have been several judicial interpretations and amendments to the state law, including a complete recodification of the statutes at RCW 42.56 and the adoption of state model rules; and

WHEREAS, the City Council wishes to update the City’s municipal code to reflect the current state of the law and current best practices in order to better serve the purposes of the Public Records Act which are to provide full access to public records, protect records from damage or disorganization, prevent excessive interference with other essential functions of the City and provide the “fullest assistance” to the requestors and the most timely possible action on public records requests;

NOW, THEREFORE,

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

**SECTION 1. REPEALER.** That Ordinance No. 3205, codified at Kelso Municipal Code Chapter 2.26 Public Records Disclosure is hereby repealed in its entirety and replaced as set forth herein.

**SECTION 2. NEW CHAPTER 2.26 KMC.** That a new Kelso Municipal Code Chapter 2.26—Public Records Disclosure—is hereby adopted as set forth in Exhibit A attached hereto and incorporated by this reference.

**SECTION 3. SAVINGS CLAUSE.** That Ordinance No. 3205 that is repealed by this Ordinance shall remain in full force and effect until the effective date of this Ordinance.

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

**ADOPTED** by the City Council and **SIGNED** by the Mayor this \_\_\_\_ day of \_\_\_\_\_, 2013.

ATTEST/AUTHENTICATION:

\_\_\_\_\_  
MAYOR

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

APPROVED AS TO FORM:

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

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

## **Exhibit A.**

### **Chapter 2.26 PUBLIC RECORDS DISCLOSURE**

#### **2.26.010. Purpose.**

A. The Washington Public Records Act at 42.56 RCW requires public agencies to make available for inspection and copying nonexempt public records in accordance with published rules. The purpose of this Public Records Act is to provide the public with full access to information concerning the conduct of government, mindful of individuals' privacy rights and the desirability of the efficient administration of government. In carrying out its responsibilities under the Public Records Act, the City of Kelso will be guided by the provisions of the Act describing its purposes and interpretation.

B. The purpose of this Chapter is to establish the policies and procedures by which City staff will review and respond to requests for public records within the framework of the Public Records Act.

#### **2.26.020. Municipal Services and Central Office.**

The City of Kelso is a Washington municipal corporation that provides a full range of traditional municipal services to its various departments. The central office is located at

Kelso City Hall  
203 South Pacific  
Kelso, WA 98626.

Several field offices exist throughout the City. The most current City organizational chart is located in the City Clerk's Office.

#### **2.26.030. Definitions.**

“Public Record” shall mean any writing containing information relating to the conduct of government or the performance of any governmental or proprietary function prepared, owned, used, or retained by the City of Kelso.

“Public Records Act” shall mean RCW 42.56 as now enacted or hereafter amended.

“Writing” shall mean “handwriting, typewriting, printing, photostating, photographing, and every other means of recording any form of communication or representation including, but not limited to, letters, words, pictures, sounds, or symbols, or combination thereof, and all papers, maps, magnetic or paper tapes, photographic films and prints, motion picture, film and video recordings, magnetic or punched cards, discs, drums, diskettes, sound recordings, and other documents including existing data compilations from which information may be obtained or translated.

“Public Records Officer” shall mean the City Clerk of the City of Kelso or his or her designee or such other person as may be designated by the City Manager as the Public Records Officer

**2.26.040. Public Records Officer.**

- A. The Public Records Officer will oversee compliance with this Chapter and the Public Records Act.
- B. The Public Records Officer may designate other city staff to assist in processing any request. The Public Records Officer may delegate the responsibilities of processing requests to other Departments which in turn may designate a records coordinator to facilitate access to public records within that department. Each such coordinator shall be identified to and coordinate any response through the Public Records Officer.
- C. Any person wishing to request access to public records of the City of Kelso or seeking assistance in making such a request should contact the Public Records Officer:

Public Records Officer  
City of Kelso, Clerk’s Office  
203 South Pacific Avenue, Suite 102  
P.O. Box 819  
Kelso, WA 98626  
360-423-0900 (telephone)  
360-425-9807 (fax)  
publicdisclosure@kelso.gov (e-mail)

Records for public records from the Police Department shall be made to:

Kelso Police Department  
Attn: Public Records Section  
City of Kelso  
201 South Pacific Avenue,  
P.O. Box 935  
Kelso, WA 98626  
360-423-1271 (telephone)  
360-423-0577(fax)  
publicdisclosure@kelso.gov (e-mail)

Information and public records request forms are also available at the City’s website at [www.kelso.gov](http://www.kelso.gov).

- D. The Public Records Officer is authorized to adopt such policies and procedures as may be necessary for the implementation of this Chapter and the Public Records Act for the review of and response to public records requests.

**2.26.050. Availability of public records.**

- A. The City of Kelso hereby finds that maintaining a central index of all City records is unduly burdensome and would interfere with City operations for the following reasons:

1. The City is small in staff size with limited resources.
2. There are multiple departments with subdivisions thereof, which maintain separate database or record keeping systems for the indexing of records and information.
3. The City has a large number of diverse records stored in multiple locations and in multiple computer and filing systems.
4. It is unduly burdensome to maintain a central index of records.

B. The City Clerk maintains and shall make available to the public, indexes of ordinances, resolutions, and policies adopted by the City Council, minutes of regular meetings of the City Council and any amendments, revisions and repeals thereof. These and any other indexes maintained for City use will be made available for review by the public upon request to the Public Records Officer unless exempted by state law.

C. The City shall maintain its records in a reasonably organized manner and take reasonable steps to protect records from damage and disorganization.

D. Public Records are generally available for inspection and copying during normal business hours of Monday through Friday, 9 am to 5 pm, excluding legal holidays. Records must be inspected at the offices of the City. Requestors shall not be permitted to remove any records from the City without permission of the Public Records Officer.

#### **2.26.060. Making a request for records.**

All requests to inspect and copy public records shall be in writing, on forms prescribed by the Public Records Officer, and shall identify the records sought for inspection and copying. The request should include the following information:

1. Name of the requestor
2. Address of the requestor
3. Date of the request
4. Telephone, email, or other contact information of the requestor
5. Identification of the public records sought, adequate for the Public Records Officer to locate the records
6. Whether the requestor intends to inspect the records or obtain a photocopy of the records at the costs set forth by separate resolution.

#### **2.26.070. Processing of records requests.**

A. The Public Records Officer will process requests in the order allowing the most requests to be processed in the most efficient manner.

B. Within five business days of receipt of the request, the Public Records Officer will do one or more of the following:

1. Make the records available for inspection or copying; or
2. Identify an internet location where the record can be accessed. Requestors who cannot access the internet may be provided hard copies or access to a City computer terminal to access the record; or
3. If copies are requested and payment of a deposit for the copies, if any, is made or terms of payment are agreed upon, send the copies to the requestor; or
4. Provide a reasonable estimate of when records will be available; or

5. If the request is unclear or does not sufficiently identify the requested records, request clarification from the requestor. Such clarification may be requested and provided by telephone. The Public Records Officer may revise the estimate of when records will be available; or
  6. Deny the request.
- C. If the City does not respond in writing within five business days of receipt of the request for disclosure, the requestor should consider contacting the Public Records Officer to determine the reason for the failure to respond.
- D. In the event that the requested records contain information that may affect rights of others and/or may be exempt from disclosure, the Public Records Officer may, prior to providing the records, give notice to those persons. Such notice should be given to make it possible for those receiving the notice to seek an order from a court to prevent or limit the disclosure. The notice to the affected persons will typically include a copy of the request.
- E. Some records are exempt from disclosure, in whole or in part. If the City believes that a record or portion of a record is exempt from disclosure and should be withheld, the Public Records Officer will state the specific exemption and provide a brief explanation of why the record or a portion of the record is being withheld.

#### **2.26.080. Inspection and Copying of Records.**

- A. The City will provide a space for persons to inspect public records. No member of the public may remove a document from the viewing area or disassemble or alter any document. The requestor shall indicate which documents he or she wishes the City to copy.
- B. Parties wishing to inspect electronic records may be provided copies of the records on a CD or other storage device, may be directed to an internet address where the records can be accessed, or may receive records by email. If a requestor cannot access records in these ways, the City may provide hard copies or allow a requestor to view copies on a City computer.
- C. The requestor must make arrangements to claim or review the assembled records within thirty days of notification that the records are available for inspection or copying. If the requestor fails to claim or review the records within the thirty-day period or make other arrangements, the City may close the request and re-file the assembled records.
- D. After inspection is complete, the Public Records Officer shall make the requested copies or arrange for copying. The requestor shall pay any applicable deposit prior to copies being made. Full payment for copies must be received prior to delivery of the requested copies.
- E. When the request is for a large number of records or when a portion of responsive records is more readily available than others, the Public Records Officer may provide access for inspection and copying in installments if he or she reasonably determines that it would be practical to provide the records in that way.
- F. If, within thirty days, the requestor fails to inspect the available installments, the Public Records Officer may discontinue the search for the remaining records and close the request.

#### **2.26.090. Completion and Closing of Requests.**

- A. When the search for requested records is complete and all requested records are provided for inspection, the Public Records Officer will indicate that the City has completed a reasonable search for the requested records and made any located, nonexempt records available for inspection and copying.

B. When the requestor (1) withdraws the request, (2) fails to fulfill his or her obligation to timely inspect the records or (3) fails to pay the required amount due for requested copies, the Public Records Officer will close the request and indicate to the requestor that the City has closed the request.

C. When the requestor has inspected the records, or when the City has notified the requestor that copies of all the requested records are available for payment and delivery or pick up, or that no responsive records exist, a request shall be deemed completed.

D. If, after the City has informed the requestor that it has provided responsive records, the City becomes aware of additional responsive documents existing at the time of the request, it will promptly inform the requestor of the additional documents and provide them as soon as possible. However, a public records request is not continuing in nature. If a requestor desires additional records created or obtained by the City after the date of the original request, the requestor must submit a new request.

#### **2.26.100. No Duty to Create New Records.**

The City is not obligated to create new records to satisfy a records request; however, the City may, at its discretion, create such new records to fulfill the request where the City deems that method of response more expedient.

#### **2.26.110. Electronic Records.**

A. The process for requesting electronic records is the same as for requesting public records in hard copy.

B. When a requestor seeks records in an electronic format, the Public Records Officer will provide the nonexempt records or portions of such records that are reasonably locatable in an electronic format that is used by the City and is generally commercially available, or in a format that is reasonably translatable from the format in which the City keeps the record.

C. With the consent of the requestor, the City may provide customized access if the record is not reasonably translatable into the format requested.

#### **2.26.120. Exemptions.**

A. Public records described in RCW 42.56.210 through RCW 42.56.480, as now effective or as subsequently revised, and any other public records exempt from public inspection and copying by the laws of the State of Washington shall not be available for public inspection and copying; provided, however, that when exempt portions of public records can be redacted, the remainder thereof shall be open to public inspection and copying.

B. The Public Records Officer shall, for informational purposes only, publish and maintain a list of current laws outside the Public Records Act that exempts or prohibits disclosure of records or information of the City. The failure to list an exemption shall not affect the efficacy of any exemption.

C. The City is prohibited by statute from disclosing lists of individuals for commercial purposes.

#### **2.26.130. Cost of providing copies.**

- A. The City Council shall, by separate resolution, establish and amend as needed a schedule of fees for copying or otherwise providing a requestor with public records.
- B. There shall be no fee for inspecting public records.
- C. A requestor may obtain up to ten (10) pages of standard black and white 8.5 x 11 photocopies at no charge.
- D. In the event that the City determines that materials need to be copied by an outside vendor due to the volume of the request, the workload of City staff, the size or type of record requested, or for any other reason, the requestor will be charged the actual amount invoiced to the City by the copying vendor.
- E. The requestor will be charged for the actual costs of envelopes, packaging, postage, and electronic storage devices or materials necessary for producing the records.
- F. In the event a request is estimated to exceed fifty dollars (\$50.00), the City may require the requestor to deposit an amount not to exceed 10% of the estimated cost of copying prior to the duplication of the records.
- G. Payment in full for the cost of copying records requested shall be made prior to the City providing the copies to the requestor.

#### **2.26.140 Review of Denials of Public Records.**

- A. Any person who objects to the initial denial or partial denial of a records request may petition in writing to the Public Records Officer for a review of that decision. The petition must include a copy of or shall reasonably identify the written statement by the Public Records Officer denying the request.
- B. The Public Records Officer will promptly provide the petition and any relevant information to the City Manager. The City Manager will consider the petition and either affirm or reverse the denial within two business days following the Public Records Officer's receipt of the petition, or within such time as the City and the requestor mutually agree.
- C. Any person may obtain court review of denials of public records requests pursuant to RCW 42.56.550 at the conclusion of two business days after the initial denial, regardless of any internal administrative appeal.

**Exhibit B**  
**Chapter 2.26**  
**PUBLIC RECORDS DISCLOSURE**

Sections:

- [2.26.010](#) City clerk—Duties.
- [2.26.020](#) Request for records.
- [2.26.030](#) Response to request.
- [2.26.040](#) Information exempt from public inspection.
- [2.26.050](#) Record copy charge.
- [2.26.060](#) Alteration of cost schedule.
- [2.26.070](#) Payment of cost of transcription of verbatim written transcript for court proceedings.
- [2.26.080](#) Disclosure prohibited.
- [2.26.090](#) Other obligations of city clerk.

**2.26.010 City clerk—Duties.**

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The city clerk shall insure that current indexes of the city's public records are available for public inspection as required by law. (Ord. 3205 § 1, 1993)

**2.26.020 Request for records.**

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All persons desiring to make, inspect or receive a copy of any public record of the city must make their request to the city clerk, or his/her designee, on forms specified by the city clerk. (Ord. 3205 § 2, 1993)

**2.26.030 Response to request.**

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A. Responses to requests for records will be made promptly. If the request is for a record maintained or indexed other than in the city clerk's office, the requester will be advised that their request has been forwarded to the appropriate department. Provided, however, request for police documents shall be made to the police department directly. All assistance necessary to help the requester shall be provided either by an employee of the city clerk's office or of the particular department. The giving of such assistance shall not unreasonably disrupt the operation of the city or the other duties of assisting employees. If the written request includes a request for copies, a payment in accordance with the city's fee schedule shall be paid.

B. Whenever a member of the public has requested to inspect an identifiable public record and that request has been denied, such a person may submit a written request and have such denial reviewed by the city attorney. The review of the denial by the city attorney shall be as prompt as possible. (Ord. 3205 § 3, 1993)

#### **2.26.040 Information exempt from public inspection.**

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The following shall be exempt from public inspection and copying:

A. Personal information and any files maintained for prisoners.

B. Personal information and any files maintained for city employees, appointees, or elected officials to the extent the disclosure would violate their right to privacy.

C. Information required of any taxpayer or city license holder in connection with the assessment or collection of any tax or license fee if the disclosure of the information to other persons would violate the taxpayer or licensee's right to privacy or would result in unfair competitive disadvantage to such taxpayer or licensee.

D. Specific intelligence information and specific investigative files compiled by investigative, law enforcement, and penology agencies, and state agencies vested with the responsibility to discipline members of any profession, the nondisclosure of which is essential to effective law enforcement or for the protection of any person's right to privacy.

E. Information revealing the identity of persons who file complaints with investigative, law enforcement, or penology agencies, if disclosure would endanger any person's life, physical safety, or property, or if the complainant has indicated a desire for nondisclosure.

F. Test questions, scoring keys and other examination data used to administer license, employment or civil service examination.

G. Except as provided by RCW Chapter 8.26, the contents of any real estate appraisals made for or by any agency, including the city, relative to the acquisition of property by the city until the project is abandoned or until such time as all of the property has been acquired, but in no event shall disclosure be denied for more than three years after the date of the appraisal.

H. Valuable formulas, designs, drawings and research data obtained or produced by the city, its officers, employees, and agents within five years of any request for disclosure thereof, when disclosure would produce private gain and public loss.

I. Preliminary drafts, notes, recommendations and intra-agency memorandums in which opinions are expressed or policies formulated or recommended, except that a specific record shall not be exempt when publicly cited by an agency in connection with any agency action.

J. Records which are relevant to a controversy to which the city or any of its officers, employees or agents is a party, but which records would not be available to another party under the rules of pretrial discovery for causes pending in the superior courts.

K. Any library record which could disclose the identity of a user of library materials.

L. Lists of individuals requested for commercial purposes.

M. Any public record access which the Cowlitz County Superior Court has found would damage any person or vital government function.

N. Residence address and telephone number of city employees or volunteers.

O. Residence address and telephone number of city utility customers.

P. Applications for employment, including name of applicant, resume, and other related material submitted with respect to an applicant.

The exemptions of this section shall be inapplicable to the extent that information, the disclosure of which would violate personal privacy or vital government interests, can be deleted from the specific records sought. No exemption shall be construed to permit the nondisclosure of statistical information not descriptive of any readily identifiable person or persons. (Ord. 3205 § 4, 1993)

#### **2.26.050 Record copy charge.**

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A. Copies of any disclosable public record (or portions thereof) including, but not limited to, maps, reports, codes, plans, and tape recordings, shall be made and provided by the city upon request and payment of the actual cost incidental to reproducing the same. The city clerk, in consultation with appropriate departments, is directed to prepare and have on file as a public

document a schedule of such costs of reproduction. In determining the cost of reproduction, all costs incident to such reproduction shall be includable factors, including labor and mailing costs.

B. Where the request is for a certified copy, there shall be an additional charge to cover the additional expense and time required for certification.

C. Payment for the cost of reproduction of all public records shall be made at the time the request for public records is submitted to the city clerk. If there is uncertainty as to the amount required, the amount tendered shall be based upon estimates established by the city clerk in the schedule of the cost of reproduction. If the actual amount of the cost of reproduction exceeds the amount tendered, the balance shall be paid upon delivery of the requested copy or copies. In the event the amount tendered exceeds the actual cost, the balance shall be refunded at the time of the delivery of the copy or copies. Except as specifically provided herein, there shall be no refunds. (Ord. 3205 § 5, 1993)

#### **2.26.060 Alteration of cost schedule.**

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When a change in the established cost schedule is required, the city clerk, in consultation with appropriate department(s), shall change the schedule by filing a new schedule. (Ord. 3205 § 6, 1993)

#### **2.26.070 Payment of cost of transcription of verbatim written transcript for court proceedings.**

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A. Whenever the city is required to prepare a verbatim written transcript of any proceeding of the city in response to a writ of review or other action filed in the Superior Court or any other state or federal court, the cost of preparing the same shall be borne by the party filing the action. The party filing such action shall pay to the city clerk the estimated cost of the preparation of the transcript (as established by the city clerk), including copying costs and the city clerk shall thereafter make a provision for the preparation of the transcript.

B. Should the actual cost incurred by the city in preparation of the transcript exceed the amount deposited with the city clerk, the party making such deposit shall be required to reimburse the city for such additional amount within ten days of notification that such amount is due or prior to the time the transcript is required to be filed with the court, whichever occurs first. Should the actual cost incurred by the city be less than the estimated cost deposited, such credit due shall be reimbursed by the city to the party making the deposit. (Ord. 3205 § 7, 1993)

**2.26.080 Disclosure prohibited.**

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The city shall not be required to permit public inspection and/or copying of any record to the extent public disclosure is prohibited, restricted or limited by state or federal laws. (Ord. 3205 § 8, 1993)

**2.26.090 Other obligations of city clerk.**

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The city clerk shall insure that public records are available for inspection and copying during regular business hours of the city and that such public records are protected from abuse or destruction. (Ord. 3205 § 9, 1993)

# **AGENDA SUMMARY SHEET**

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

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**SUBJECT TITLE:** An Ordinance of the City of Kelso repealing Ordinance 3573 codified at KMC 12.24 Parades and adopting a new KMC 12.24 Special Events to replace the repealed chapter.

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

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

**For Agenda of:** August 20, 2013 \_\_\_\_\_

**Originator:** \_\_\_\_\_

**PRESENTED BY:**

Steve Taylor

**City Attorney:** Janean Parker

**City Manager:** Steve Taylor

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**Agenda Item Attachments:**

Ordinance

Exhibit A – New Chapter 12.24 Special Events

Exhibit B – Current Chapter 12.24 Parades

**SUMMARY STATEMENT:**

In 2005, Ordinance 3573 was adopted to address the use of the public right-of-way for special events but was limited to only addressing events that could be classified as a parade. The proposed code changes are intended to expand the scope of the code provisions to address other uses of the right-of-way, clarify and consolidate the permitting process for these events, protect the public's investment in infrastructure and facilities, and mitigate other potential risks associated with the assemblage of large groups.

**RECOMMENDED ACTION:**

Make a motion to approve Ordinance amending KMC Chapter 12.24 on first reading.

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

**AN ORDINANCE OF THE CITY OF KELSO REPEALING ORDINANCE 3573 CODIFIED AT KMC 12.24 PARADES AND ADOPTING A NEW KMC 12.24 SPECIAL EVENTS TO REPLACE THE REPEALED CHAPTER**

WHEREAS, Ordinance 3573 was adopted in 2005 to address the use of the public right-of-way for special events limited to the definition of parade; and

WHEREAS, the City wishes to expand the scope of the code provisions to encompass other uses of the right-of-way; and

WHEREAS, the City wishes to clarify and consolidate the permitting process for the use of the right-of-way for special events; and

WHEREAS, the City Council wishes to update the City's municipal code to better serve the needs of the community, protect the public's investment in infrastructure and facilities, and mitigate potential risks associated with the assemblage of large groups by adopting policies and procedures that address a comprehensive list of special events that may impact any City owned property, including right-of-ways;

NOW, THEREFORE,

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

**SECTION 1. REPEALER.** That Ordinance No. 3753, codified at Kelso Municipal Code Chapter 12.24 Parades is hereby repealed in its entirety and replaced as set forth herein.

**SECTION 2. NEW CHAPTER 12.24 KMC.** That a new Kelso Municipal Code Chapter 12.24—Parades—is hereby adopted as set forth in Exhibit A attached hereto and incorporated by this reference.

**SECTION 3. SAVINGS CLAUSE.** That Ordinance No. 3753 that is repealed by this Ordinance shall remain in full force and effect until the effective date of this Ordinance.

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

**ADOPTED** by the City Council and **SIGNED** by the Mayor this \_\_\_\_ day of \_\_\_\_\_, 2013.

ATTEST/AUTHENTICATION:

\_\_\_\_\_  
MAYOR

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

APPROVED AS TO FORM:

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

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

## Exhibit A

### Chapter 12.24 SPECIAL EVENTS

#### Sections:

- [12.24.010](#) Definitions.
- [12.24.020](#) Permit – Required.
- [12.24.030](#) Permit – Application – Fee.
- [12.24.035](#) Permit – Exceptions.
- [12.24.040](#) Permit – Application – Contents.
- [12.24.050](#) Permit – Application – Filing.
- [12.24.060](#) Bond required.
- [12.24.070](#) Insurance required – Hold harmless/indemnification.
- [12.24.080](#) Permit – Issuance standards.
- [12.24.090](#) Traffic control.
- [12.24.100](#) Appeal procedure.
- [12.24.110](#) Permit revocation or suspension.
- [12.24.120](#) Rules and policy.
- [12.24.130](#) Violation – Penalty.

#### **12.24.010 Definitions.**

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- A. “Applicant” means the person, firm or entity making application for a permit.
- B. “City manager” shall mean the city manager or his/her designee.
- C. “Parade” means any march or procession consisting of people, animals, bicycles, vehicles, or combination thereof, except wedding processions and funeral processions, upon any public street or sidewalk which does not comply with adopted traffic regulations or controls.

D. "Run" means an organized procession or race consisting of people, bicycles, or other vehicular devices or combination thereof upon the public street or sidewalk.

E. "Public property" means a street or other public place (i.e., park) under the control and authority of the City.

F. "Private event" means an event which uses public property for the purpose of monetary or personal gain by any person, partnership, group, organization, company or corporation or which is closed to the general public.

G. "Special event" means:

1. Any activity of a temporary nature on public property which affects the ordinary use of public rights-of-way, public parking lots, public parks, intersections, sidewalks or streets, or which would significantly impact the need for City-provided emergency services such as police, fire or medical aid, for purposes which include, but are not limited to, parades, walks/runs, street dances, fundraisers, sales, auctions, bikeathons, shows or exhibitions, filming/movie events, carnivals, circuses, car shows, horse shows, fairs and block parties, or other activity, demonstration or exhibition; or
2. Any activity, function, or event, which is open to the general public.
3. A private event.

H. "Street" or "streets" means any public roadway, sidewalk, or portions thereof in the City of Kelso dedicated to the public use.

### **12.24.020 Permit – Required.**

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No person shall conduct a special event upon public property unless a permit has been obtained from the community development director.

### **12.24.030 Permit – Application – Fee.**

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The fee for a special event shall be determined by resolution.

A. No fee shall be imposed when prohibited by the First and Fourteenth Amendments to the United States Constitution, or Article I, Section 3, 4, 5 or 11 of the Washington Constitution. Political or religious activity intended primarily for the communication or expression of ideas shall be presumed to be a constitutionally protected event. Factors that may be considered in evaluating whether or not the fee applies include the nature of the event; the extent of commercial activity, such as the sales of food, goods, and services; product advertising or promotion, or other business participation in the event; the use or application of any funds raised; if part of an annual tradition or a series,

previous events in the sequence; and the public perception of the event.

### **12.24.035 Permit – Exceptions.**

---

The following activities are exempt from the requirement to obtain a special events permit, although such activities must still comply with all other applicable laws:

- A. A funeral procession by a licensed mortuary;
- B. Activities conducted by a governmental agency acting within the scope of its authority; and
- C. Lawful picketing on sidewalks.

### **12.24.040 Permit – Application – Contents.**

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The application for a special event permit shall include the following:

- A. The name, address, and telephone number of the applicant and any event organizer, if different than the applicant;
- B. Payment of the applicable special event permit fee
- B. A certification that the applicant will be financially responsible for any City fees or costs that may be imposed for the special event, including the posting of the bond required in KMC 12.24.060, and compliance with the insurance requirements in KMC 12.24.070;
- C. A certification that the applicant will comply with the hold harmless and indemnification provisions in KMC 12.24.070;
- D. If the special event is designed to be held by, on behalf of, or for any organization other than the applicant, the applicant for the special event permit shall file a written communication from such organization:
  - 1. Authorizing the applicant to apply for the special event permit on its behalf;
  - 2. Certifying that the applicant will be financially responsible for any costs or fees that may be imposed for the special event;
  - 3. A copy of the tax exemption letter issued for any applicant claiming to be a tax-exempt nonprofit organization;
- E. A statement of the purpose of the special event;

F. The proposed location for the special event, including both a map and written narrative, which shall include the locations for assembly, production, viewing, disbanding, parking, staging and any other activities related to the special event;

G. Dates and times when the special event and associated activities are to be conducted;

M. Proposed alternate routes, sites or times, where applicable;

N. The approximate number of persons, animals or vehicles that will constitute the special event;

O. The kinds of animals anticipated to be part of the special event;

P. A description of the types of vehicles to be used in the special event;

Q. The number of bands or other musical units and the nature of any equipment to be used to produce sounds or noise;

R. The number and location of portable sanitation facilities;

S. Other equipment or services necessary to conduct the special event with due regard for participant and public health and safety;

T. The number of persons proposed or required to monitor or facilitate the special event and provide spectator or participant control and direction for special events using City streets, sidewalks, or facilities;

U. Provisions for first aid or emergency medical services, or both, based on special event risk factors;

V. Insurance and surety bond information;

W. Any special or unusual requirements that may be imposed or created by virtue of the proposed special event activity; and

X. Any other information required by the community development director

### **12.24.050 Permit – Application – Filing.**

---

A completed application for a special event permit shall be filed with the community development department at least six weeks before the date on which the event will occur. The community development director shall obtain review and approval of the permit from appropriate City departments and other agencies to include police, fire, public works, building and planning, risk management, and others as may be determined necessary by the Director. The Director

shall notify the applicant of approval, conditional approval, or denial within three weeks of submitting a complete application.

#### **12.24.060 Bond required.**

---

The community development director may require a cash deposit or performance bond in an amount determined by the director to be necessary to guarantee that the public property will be cleaned and returned to the condition in which it was found. The community development director shall determine the amount of bond or deposit by considering type of event, projected number of participants and spectators, the sponsor's experience, and other factors related to the condition and use of the City property.

#### **12.24.070 Insurance required – Hold harmless/indemnification.**

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A. The applicant shall provide the City with a certificate of insurance demonstrating proof of liability insurance with a combined single limit of \$1,000,000 per occurrence, and \$2,000,000 in aggregate or such other amounts as may be established by the City's insurance carrier. Evidence of insurance shall be filed with the application and shall name the City of Kelso as an additional insured. Depending upon the nature of the special event and its risk to the public and private individuals, the community development director may increase or reduce the liability limits for a given event after consultation with the City's insurance carrier.

B. The applicant shall defend, indemnify, and hold harmless the City, its officers, officials, employees and volunteers from and against any and all claims, suits, actions, or liabilities for injury or death of any person, or for loss or damage to property, which arises out of the applicant's event, or from any activity, work or thing done, permitted, or suffered by applicant which arises from the applicant's event, except only such injury or damage as shall have been occasioned by the sole negligence of the City.

#### **12.24.080 Permit – Issuance or denial.**

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A. The Director shall approve, conditionally approve, or deny an application based on the recommendations of City departments involved in the review process of the application for a special events permit and the grounds specified in this Chapter. If the application is denied or conditionally approved, the Director shall inform the applicant of the grounds for denial, or the reason for a change in the date, time, route, or location of the event. The applicant shall be notified of any permit conditions at the time the application is approved.

B. The Director may condition the issuance of a special events permit by imposing reasonable requirements concerning time, place, and manner of the event, and such requirements as are necessary to protect the safety and rights of persons and property, and the control of traffic. Such conditions include but are not limited to the following:

1. Alteration of the date, time, hours of operation, route, or location of the event proposed on the event application.
2. Conditions concerning the area of assembly and disbanding of an event along a route.
3. Conditions concerning accommodation of pedestrian or vehicular traffic, including restricting the event to only a portion of a street.
4. Conditions where traffic congestion may be anticipated, encouraging use of transit and carpooling.
5. Requirements for the use of traffic cones or barricades.
6. Requirements for the provision of first aid and sanitary facilities.
7. Requirements for the provision of fire, police, emergency medical protection, and parks and public works crews for maintenance and cleanup, if necessary.
8. Requirements for coordination with the Fire Department and emergency personnel for emergency treatment and evacuation of people who may need immediate care, cardiopulmonary resuscitation, or ambulance service; emergency communication; fire suppression equipment within structures; and maintenance of unobstructed emergency passageways.
9. Requirement for use of personnel to monitor the event and provide notice of permit conditions to event participants.
10. Restrictions on the number and type of vehicles, animals, or structures at an event.
11. Compliance with animal protection ordinances and laws.
12. Requirements for use of garbage containers, cleanup, and restoration of City and private property.
13. Restrictions on the use of amplified sound.
14. Notice to residents and/or businesses regarding any activity that would require a street closure.

C. The following conditions may be grounds for permit denial:

1. The applicant fails to submit a completed application within the required timeline;
2. The time, route, or size of the event will unreasonably disrupt the movement of traffic along streets;
3. The size or nature of the event requires supervision by a significant number of police officers that causes unreasonable expense or diversion of police duties;
4. The applicant has failed to remit all fees, documents, or proof of bonds;
5. The applicant has failed to conduct a previously authorized special event in accordance with law or the terms of a permit, or both;

6. The applicant has failed to provide sufficient safety, health or sanitation equipment services, or facilities;
7. The applicant has not provided sufficient off-site parking or shuttle service, or both, when required to minimize substantial adverse impacts on general parking and traffic circulation caused by the event;
8. The special event will substantially interfere with any other special event for which a permit has already been granted or with the provision of City services in support of other scheduled special events or governmental functions;
9. The special event would block traffic lanes or close streets during peak commuter hours on weekdays between 7:00 a.m. to 9:00 a.m. and 4:00 p.m. to 6:00 p.m. on streets designated as arterials by the City's public works department.

#### **12.24.090 Traffic control.**

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The community development director may require any reasonable and necessary traffic control with the applicant responsible for the expense. The community development director shall notify the applicant of any City-projected traffic control expense and collect this amount before a permit is issued

#### **12.24.100 Appeal procedure.**

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Upon denial of a permit by the community development director, an applicant may appeal to the city council by filing a written notice of the appeal within 10 days from the community development director's decision. Upon such appeal, the city council may reverse, affirm, or modify the community development director's determination.

#### **12.24.110 Permit revocation or suspension.**

---

The special event permit issued under this chapter is temporary and vests no permanent rights in the applicant, and may be immediately revoked or suspended by the community development director if:

- A. The applicant has made a misstatement of material fact in the information supplied;
- B. The applicant has failed to fulfill a term or condition of the permit in a timely manner;
- C. The applicant requests the cancellation of the permit or cancels the event;
- D. The activity endangers or threatens persons or property, or otherwise jeopardizes the health, safety or welfare of persons or property;

E. The activity conducted is in violation of any of the terms or conditions of the special event permit;

F. An emergency or occurrence requires the cancellation or termination of the event in order to protect the public health or safety; or

G. The applicant fails to prepay expenses.

The City shall refund the permit fee in the event of revocation caused by an emergency or supervening occurrence. All other refunds shall be at the discretion of the community development director

### **12.24.120 Rules and policy.**

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To implement the special event permit, the community development director may develop and adopt rules, policies and forms consistent with this chapter. All adopted rules, policies and forms shall be filed with the city clerk.

### **12.24.130 Violation – Penalty.**

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Violation of this chapter is a class 1 civil infraction, punishable by a maximum penalty of two hundred and fifty dollars, plus statutory assessments.

## **Exhibit B**

### **Chapter 12.24 PARADES**

#### Sections:

- [12.24.010](#) Parade defined.
- [12.24.020](#) Permit required.
- [12.24.030](#) Permit—Who may obtain.
- [12.24.040](#) Permit application.
- [12.24.050](#) Application—Initial review by chief of police.
- [12.24.060](#) Secondary review and issuance of permit.
- [12.24.070](#) Conditional permit (upon payment of costs).
- [12.24.080](#) Contents of permit.
- [12.24.090](#) Possession of permit.
- [12.24.100](#) Unauthorized parades.
- [12.24.110](#) Review of denial of permit application.

#### **12.24.010 Parade defined.**

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The term “parade” as used in this chapter shall mean any person, animal, vehicle, machine or wagon, or any group of persons, animals, vehicles, machinery or wagons, which may be assembled in any march, procession or similar display, in or upon any street or public way of the city. “Parade” shall not mean otherwise lawful public gatherings without a procession, such as, but not limited to, one or more persons engaged in political speech or displaying hand-held political signs. (Ord. 3573 § 1, 2005)

#### **12.24.020 Permit required.**

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It shall be unlawful for any parade to be organized, engaged in, aided, formed, started or conducted without a permit having been first obtained therefor. (Ord. 3573 § 1, 2005)

#### **12.24.030 Permit—Who may obtain.**

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All parades shall be sponsored and conducted by an organization or group of persons having sufficient individual members to adequately control the spacing of groups within the parade and to maintain order in the conduct of the parade. All permits herein provided for shall be applied

for and issued to and in the name of such organization and/or group of persons. (Ord. 3573 § 1, 2005)

**12.24.040 Permit application.**

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Any organization or group of persons desiring to organize, form, start or conduct a parade within the city shall, not less than fifteen days prior to the proposed date of such parade, make written application therefor to the city of Kelso at the City Clerk's Office, 203 South Pacific, Kelso, WA, 98626. Such application shall contain the following information:

- A. The name, address and telephone number of the organization or group of persons seeking the permit and the person or persons to be in charge of the proposed parade. If the applicant is a group or organization, a single person responsible for speaking on its behalf shall be listed;
- B. The date upon which the parade is to be conducted;
- C. The hours when such parade will start and terminate;
- D. The route to be traveled, the starting point and the termination point;
- E. The approximate number of persons who, and animals and vehicles which, will constitute such parade; the type of animals and description of the vehicles;
- F. The location, by streets, of any assembly areas for such parades;
- G. The time at which units of the parade will begin to assemble at any such assembly area or areas;
- H. The purpose for which the parade is to be conducted. (Ord. 3573 § 1, 2005)

**12.24.050 Application—Initial review by chief of police.**

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The chief of police or his designee shall examine the applicant's written application for a parade permit and make any changes or alterations deemed necessary in order that traffic control, fire protection and police activities will not be unduly interfered with.

For the purposes of this section, the chief of police or his designee shall have the authority to require such changes or alterations in the applicant's parade plans as may be necessary for such purpose. If changes are necessary, the chief of police or his designee shall contact the applicant

no later than five days prior to the event to explain the changes to the applicant. If the chief of police or his designee deems it necessary, he may require a meeting with the applicant to discuss changes. (Ord. 3573 § 1, 2005)

**12.24.060 Secondary review and issuance of permit.**

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After initial review, but not less than five days prior to the event, the chief of police or his designee, together with the director of public works or his designee and director of community development or his designee, shall conduct a secondary review of the application and shall issue to the applicant a parade permit when, from their consideration of the application and from such other information as may otherwise be obtained, they find:

- A. That the conduct of the parade will not substantially interrupt the safe and orderly movement of other traffic contiguous to its route;
- B. That the conduct of the parade will not require the diversion of so great a number of police officers of the city to properly police the line of movement and the areas contiguous thereto as to prevent normal police protection to the city;
- C. That the concentration of persons, animals and vehicles at assembly points of the parade will not unduly interfere with proper fire and police protection of, or ambulance service to, areas contiguous to such assembly areas;
- D. That the conduct of such parade will not interfere with the movement of fire-fighting equipment en route to a fire;
- E. That the conduct of the parade is not unreasonably likely to cause injury to persons or property, to provide disorderly conduct or create a disturbance;
- F. That the parade is scheduled to move from its point of origin to its point of termination expeditiously and without unreasonable delays en route.
- G. That the parade not cause an undue burden on city of Kelso by necessitating extra staffing of police, emergency personnel, or others that may be deemed necessary to accommodate the crowds. (Ord. 3573 § 1, 2005)

**12.24.070 Conditional permit (upon payment of costs).**

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A. In the event the parade is deemed likely to cause an undue burden on the city of Kelso by necessitating extra staffing of police, emergency personnel, or others that may be necessary to accommodate crowds, an applicant may be required to pay a portion of the estimated cost up to thirty percent and sign a promise to pay the balance within a time designated by the chief of police or his designee. This provision shall not apply to parades sponsored by the city of Kelso.

B. Conditional Permit (Liability Insurance, Hold Harmless, and Indemnification). At the discretion of the director of public works, community development director, and chief of police, proof of adequate liability may be a condition of the permit. Issuance of any permits may be conditioned on proof of adequate liability insurance in favor of the city and an agreement that applicant shall hold the city harmless and indemnify the city against any and all claims arising from the parade. (Ord. 3573 § 1, 2005)

#### **12.24.080 Contents of permit.**

---

Each parade permit shall contain the following information:

A. The starting time of the parade;

B. The route of the parade;

C. The assembly point for units of the parade;

D. Such other information as the chief of police or acting chief of police shall find necessary to the enforcement of this chapter. (Ord. 3573 § 1, 2005)

#### **12.24.090 Possession of permit.**

---

The person or persons responsible for the conduct of any parade for which a permit has been issued shall have such permit in his possession during the conduct of the parade and shall exhibit the same, upon request, to any police officer of the city. (Ord. 3573 § 1, 2005)

#### **12.24.100 Unauthorized parades.**

---

Any parade conducted without a permit, or any parade conducted not in accordance with the terms of a permit issued therefor, may be summarily disbanded by the chief of police or his duly authorized agent if he has probable cause to believe that such unauthorized parade is, or will cause, a disturbance of the peace or a disorderly proceeding or is disruptive of the normal flow of

traffic on the public ways. Any participant in such a parade who shall willfully fail to comply with an order to disband so issued shall be guilty of a misdemeanor. (Ord. 3573 § 1, 2005)

**12.24.110 Review of denial of permit application.**

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Any person, organization, or group of persons whose application for a parade permit as required herein is denied by the chief of police may appeal the denial of such parade permit application to the Kelso city manager or his designee. A hearing on such denial shall be held upon such terms and conditions as the Kelso city manager deems appropriate. (Ord. 3573 § 1, 2005)

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

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**SUBJECT TITLE:**

An ordinance of the City of Kelso, Washington amending chapter 3.40 of the Kelso Municipal Code establishing purchasing procedures.

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

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

**For Agenda of:** August 20, 2013

**Originator:** \_\_\_\_\_

**PRESENTED BY:**

Steve Taylor

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

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

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**Agenda Item Attachments:**

Proposed Ordinance

Exhibit A – New KMC Chapter 3.40 Purchasing Procedures

Exhibit B – Current KMC Chapter 3.40 Purchasing Procedures

**SUMMARY STATEMENT:**

The City is required to make purchases and procure services in accordance with the Revised Code of Washington. The City desires to update the policies and procedures used to adhere to the applicable statutes and provide for the efficient operation of the City government. The proposed code changes are intended to increase efficiency and streamline the City's purchasing process. The revisions also remove elements that are no longer applicable.

**RECOMMENDED ACTION:**

Make a motion to approve Ordinance amending KMC Chapter 3.40 on first reading.

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

**AN ORDINANCE OF THE CITY OF KELSO, WASHINGTON AMENDING  
CHAPTER 3.40 OF THE KELSO MUNICIPAL CODE ESTABLISHING  
PURCHASING PROCEDURES.**

WHEREAS, it is necessary for the City to purchase and acquire materials, equipment, and services to meet the general public service needs of its residents and businesses, and to engage in the construction of public works projects; and

WHEREAS, the City is required to make purchases and procure services in accordance with the Revised Code of Washington, and the City Council desires to update the policies and procedures used to adhere to the applicable statutes and provide for the efficient operation of the City government;

NOW, THEREFORE,

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

**SECTION 1.** That Kelso Municipal Code 3.40 is hereby amended as set forth in Exhibit A, attached hereto and hereby incorporated.

**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 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

\_\_\_\_\_, 2013.

ATTEST/AUTHENTICATION:

\_\_\_\_\_  
MAYOR

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

APPROVED AS TO FORM:

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

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

## **Exhibit A**

### **Chapter 3.40 PURCHASING PROCEDURES**

#### Sections:

3.40.010 Established.

3.40.020 Finance director—Cooperative purchasing authorized when.

3.40.030 Unauthorized purchases.

3.40.040 Responsibility for unauthorized purchases.

3.40.050 Small works roster procedures.

3.40.010 City procurement policies and procedures resolution.

Procurement procedures for all city public works, capital improvements, and other purchases of materials, equipment, supplies, and contractual services, excepting professional services are hereby established in accordance with the Revised Code of Washington and set forth within the most current version of the City's adopted procurement policies and procedures resolution.

3.40.020 Finance director—Cooperative purchasing authorized when.

The finance director, or his or her designee, is authorized to join cooperative purchasing arrangements with other public agencies similarly authorized, when the best interest of the city would be served thereby.

3.40.030 Unauthorized purchases.

Except as provided in the City's procurement policies, no city employee shall purchase or contract for any supplies, materials, equipment or contractual service or make any contract within the purview of these policies other than through the office designated in the policies, and its staff. Any purchase or contract made contrary to the provisions of the procurement policies shall not be approved by any city officer and the city shall not be bound thereby, except as may be required or provided by law.

3.40.040 Responsibility for unauthorized purchases.

Any city employee making a purchase or contract contrary to the provisions of the procurement policies or accepting for delivery to the city any items purchased contrary to the provisions of these policies shall be personally responsible for payment of same. To the extent that the city may be required to pay for same, the city shall be entitled to recover the full amount of such payment from such employee.

3.40.050 Small works roster procedures.

As authorized by RCW 35.23.352, or as hereafter amended, the city may maintain a small works roster comprised of all contractors who have requested to be on the roster and are, where required by law, properly licensed or registered to perform such work in this state. The

procedures established by state law and within the City's procurement policies for the use of such roster shall be strictly complied with.

**Exhibit B**  
**Chapter 3.40**  
**PURCHASING PROCEDURES**

Sections:

- [3.40.010](#) Established.
- [3.40.020](#) Finance director—Powers and responsibilities.
- [3.40.030](#) Finance director—Cooperative purchasing authorized when.
- [3.40.040](#) Competitive bidding required when.
- [3.40.050](#) Open market purchases.
- [3.40.060](#) Award to other than low bidder—Filing of statement required.
- [3.40.070](#) Finance director—Authority to reject bids for open market purchases.
- [3.40.080](#) Noncompetitive and special purchases.
- [3.40.090](#) Emergency purchases authorized when.
- [3.40.100](#) Unauthorized purchases.
- [3.40.110](#) Responsibility for unauthorized purchases.
- [3.40.120](#) Inspection of deliveries and services for contract specifications conformance.
- [3.40.130](#) Contract and purchase order examination—Approval procedure.
- [3.40.140](#) Authority to sign contracts.
- [3.40.150](#) Bids required for public works and improvements when.
- [3.40.160](#) Procedure when bids are required by state law.
- [3.40.170](#) Criteria for determining lowest and best responsible bidder.
- [3.40.180](#) Filing of statements on award to other than low bidder.
- [3.40.190](#) Small works roster procedures.

**3.40.010 Established.**

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There are established procurement procedures for all city public works, capital improvements and other purchases of materials equipment, supplies and contractual services, excepting professional services. (Ord. 3626 § 1, 2006; prior code § 6.02.010)

**3.40.020 Finance director—Powers and responsibilities.**

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A. The finance director shall be responsible for all city government purchasing and shall, subject to the exceptions stated in this chapter, make all purchases of materials, supplies, equipment and

contractual services, except professional services, for all departments, offices, commissions and other agencies of the city government.

B. The duties and responsibilities designated in this chapter to be performed by the finance director or the purchasing manager shall be performed under the direction and control of the city manager. (Ord. 3626 § 1, 2006; prior code § 6.02.020)

**3.40.030 Finance director—Cooperative purchasing authorized when.**

The finance director is authorized to join cooperative purchasing arrangements with other public agencies similarly authorized, when the best interest of the city would be served thereby. (Ord. 3626 § 1, 2006; prior code § 6.02.030)

**3.40.040 Competitive bidding required when.**

Any purchase of supplies, materials, equipment or services, including the printing of supplies, shall be made upon call for bids when such is required by state law. (Ord. 3626 § 1, 2006; prior code § 6.02.040)

**3.40.050 Open market purchases.**

All purchases of materials, supplies, equipment and contractual services for which competition bidding is not required may be made on the open market. All open market purchases shall be based on competitive prices or bids solicited by the department head or finance director by direct mail request to prospective vendors, by personal contact, or by any other appropriate means. The finance director shall award the bid on open market purchases to such bidder as shall be determined to be the lowest and best responsible bidder. (Ord. 3626 § 1, 2006; prior code § 6.02.050)

**3.40.060 Award to other than low bidder—Filing of statement required.**

When the award for purchase on the open market is not given to the lowest bidder in price, a statement of the reasons for placing the order elsewhere shall be prepared and filed with the other papers relating to the transaction and shall be open to public inspection during regular office hours. (Ord. 3626 § 1, 2006; prior code § 6.02.060)

**3.40.070 Finance director—Authority to reject bids for open market purchases.**

The finance director shall have authority to reject all bids, or parts thereof, for any one or more supplies or contractual services when the public interest will be served thereby, and upon rejection of such bid, shall include the reason therefor in the records of the transaction, which shall be open for public inspection. (Ord. 3626 § 1, 2006; prior code § 6.02.070)

#### **3.40.080 Noncompetitive and special purchases.**

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The finance director shall be authorized to make open market purchases when not prohibited by state law without obtaining competitive bids therefor under the following conditions:

A. Items of Special Design. When an item required is of special design, shape or manufacture to match or fit in with an existing installation and competitive bidding is impracticable;

B. Surplus or Distress Sales. When it is possible to procure obvious bargains in surplus or distress material, supplies or equipment;

C. Items for Quick Delivery. When the obtaining of competitive bids will cause delay resulting in an appreciable loss to the city;

D. Small Items Not Stocked—Monthly Purchase Orders. The purchasing manager shall be authorized to establish monthly purchase orders with vendors for the purchase of items costing less than one hundred dollars or perishable items which cannot be stocked by the departments and are available at usual market prices. Such vendors shall be selected on the basis of best overall price policies, breadth and depth of stocks and delivery service. (Ord. 3626 § 1, 2006; prior code § 6.02.080)

#### **3.40.090 Emergency purchases authorized when.**

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The city manager or his designated agent is authorized to make emergency purchases when such purchases are authorized or permitted by state law. (Ord. 3626 § 1, 2006; prior code § 6.02.090)

#### **3.40.100 Unauthorized purchases.**

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Except as provided in this chapter, no city employee shall purchase or contract for any supplies, materials, equipment or contractual service or make any contract within the purview of this chapter other than through the office designated in this chapter, and its staff. Any purchase or contract made contrary to the provisions of this chapter shall not be approved by any city officer

and the city shall not be bound thereby, except as may be required or provided by law. (Ord. 3626 § 1, 2006; prior code § 6.02.100)

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**3.40.110 Responsibility for unauthorized purchases.**

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Any city employee making a purchase or contract contrary to the provisions of this chapter or accepting for delivery to the city any items purchased contrary to the provisions of this chapter shall be personally responsible for payment of same. To the extent that the city may be required to pay for same, the city shall be entitled to recover the full amount of such payment from such employee. (Ord. 3626 § 1, 2006; prior code § 6.02.110)

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**3.40.120 Inspection of deliveries and services for contract specifications conformance.**

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The finance director, or department head when authorized, shall inspect or supervise the inspection of all deliveries of supplies, materials, equipment or contractual services to determine the conformance with the specifications set forth in the order or contract. (Ord. 3626 § 1, 2006; prior code § 6.02.120)

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**3.40.130 Contract and purchase order examination—Approval procedure.**

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The city manager or his designated agent shall examine all contracts, purchase orders and other documents which involve financial obligations against the city and approve the same only upon ascertaining that moneys have been appropriated and that an unexpended and unencumbered balance is available to meet the same. The director of finance is the disbursing officer and is designated the approving authority for the collection and fund disposition of the retainage as provided in RCW 60.28.010. (Ord. 3626 § 1, 2006; prior code § 6.02.130)

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**3.40.140 Authority to sign contracts.**

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All contracts for purchase of supplies, materials, equipment or services required by this chapter shall be executed on behalf of the city by the mayor, city manager or the finance director. (Ord. 3626 § 1, 2006; prior code § 6.02.140)

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**3.40.150 Bids required for public works and improvements when.**

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Except when otherwise authorized by Chapters 39.04 and 39.28 RCW relating to emergency public works, or other applicable general state law as now enacted or as hereafter amended, all public works and improvements shall be done by contract, pursuant to public notice and call for competitive bids whenever the estimate cost of such public work or improvement, including the

cost of materials, supplies and equipment, will exceed the sum fixed by state law. (Ord. 3626 § 1, 2006; prior code § 6.02.150)

#### **3.40.160 Procedure when bids are required by state law.**

When a call for bids is required by state law, the procedures established by state law shall be strictly followed. (Ord. 3626 § 1, 2006; prior code § 6.02.160)

#### **3.40.170 Criteria for determining lowest and best responsible bidder.**

In determining lowest and best responsible bidder, in addition to price, the following may be considered:

- A. The ability, capacity and skill of the bidder to perform the contract;
- B. Whether the bidder can perform the contract promptly, or within the time specified, without delay or interference;
- C. The character, integrity, reputation, judgment, experience and efficiency of the bidder;
- D. The quality of performance of previous contracts by the bidder;
- E. The previous and existing compliance by the bidder with laws and ordinances relating to contracts;
- F. The efficiency of the financial resources and ability of the bidder to perform the contract;
- G. The quality, availability and adaptability of the materials, supplies or equipment to the particular use required;
- H. The ability of the bidder to provide future maintenance and service for the use of the subject of the contract;
- I. The number and scope of conditions attached to the bid. (Ord. 3626 § 1, 2006; prior code § 6.02.170)

#### **3.40.180 Filing of statements on award to other than low bidder.**

When the award is not given to the lowest bidder in price, the reasons for making the award otherwise shall be stated in the city council's minutes. (Ord. 3626 § 1, 2006; prior code § 6.02.180)

**3.40.190 Small works roster procedures.**

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As authorized by RCW 35.23.352, or as hereafter amended, the city may maintain a small works roster comprised of all contractors who have requested to be on the roster and are, where required by law, properly licensed or registered to perform such work in this state. The procedures established by state law for the use of such roster shall be strictly complied with. (Ord. 3626 § 1, 2006; prior code § 6.02.190)

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

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**SUBJECT TITLE:**

An Ordinance of the City of Kelso adding section 2.80.035 relating to general contract execution and amending Kelso Municipal Code sections 2.80.050 and 2.80.055 relating to the approval of minor contracts and administration of change orders.

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

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

**For Agenda of:** August 20, 2013

**Originator:** \_\_\_\_\_

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

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

**PRESENTED BY:**

Steve Taylor

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**Agenda Item Attachments:**

Proposed Ordinance

Exhibit A – Current KMC 2.80.050 and 2.80.055

**SUMMARY STATEMENT:**

The City is required to enter into contracts for the purchase and acquisition of materials, equipment, and services as well as construction of public works projects and procure those materials, equipment, and services in accordance with the Revised Code of Washington. The proposed code amendments are intended to increase the efficiency of the City's contract approval and procurement process while ensuring the lawful execution and administration of these contracts. Elements that are no longer necessary will be removed. These revisions also increase the City Manager's monetary limit for contract and change order approval will be increased from \$20,000 to \$65,000 in accordance with current state law.

**RECOMMENDED ACTION:**

Make a motion to approve Ordinance adding Section 2.80.035 and amending Sections 2.80.050 and 2.80.055 on first reading.

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

**AN ORDINANCE OF THE CITY OF KELSO, WASHINGTON ADDING SECTION 2.80.035 RELATING TO GENERAL CONTRACT EXECUTION AND AMENDING KELSO MUNICIPAL CODE SECTIONS 2.80.050 AND 2.80.055 RELATING TO THE APPROVAL OF MINOR CONTRACTS AND ADMINISTRATION OF CHANGE ORDERS.**

WHEREAS, the City is required to enter into contracts for the purchase and acquisition of materials, equipment, and services to meet the general public service needs of its residents and businesses and engage in the construction of public works projects; and

WHEREAS, the City is required to procure materials, equipment, and services and engage in the construction of public works projects in accordance with the Revised Code of Washington and has adopted policies and procedures to ensure the lawful execution and administration of procurement contracts; and

WHEREAS, the City Council has found it necessary to amend its procedures for the authorization of contracts and administration of change orders relating to public works projects;

NOW, THEREFORE,

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

**SECTION 1.** That Kelso Municipal Code Sections 2.80.035 is hereby adopted as provided below:

**2.80.035 Authority to sign contracts.**

All contracts for purchase of supplies, materials, equipment or services required by this chapter shall be executed on behalf of the city by the mayor, city manager or the finance director.

**SECTION 2.** That Kelso Municipal Code Sections 2.80.050 and 2.80.055 are hereby amended as provided below:

**2.80.050 Minor contracts – Execution authority.**

A. The City Council hereby authorizes the city manager to execute minor personal service, purchasing, public works and other routine contracts without individual approval of each contract by the City Council. The city manager may seek Council authorization to execute any such contract should it be deemed appropriate. In exercising this authority, the city manager shall have discretion to interchange line item appropriations, so long as the total budgeted funds are not exceeded.

B. For the purpose of this section, a “minor contract” is defined to mean a contract having a dollar amount of sixty-five thousand dollars or less.

**2.80.055 Change orders – Authority and limitations.**

In the event it becomes reasonably necessary to make alterations and changes to the scope of work of a contract for the proper completion of the work, such change orders shall be\_

administered in accordance with the most current version of the City's adopted procurement policies and procedures resolution.

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

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

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

\_\_\_\_\_, 2013.

ATTEST/AUTHENTICATION:

\_\_\_\_\_  
MAYOR

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

APPROVED AS TO FORM:

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

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

**Exhibit A**

**Chapter 2.80  
CITY CONTRACTS**

**2.80.050 Minor contracts—Execution authority.**

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A. The city council hereby authorizes the city manager to execute minor personal service, purchasing, public works and other routine contracts without individual approval of each contract by the city council. The city manager may seek council authorization to execute any such contract should it be deemed appropriate. In exercising this authority, the city manager shall have discretion to interchange line item appropriations, so long as the total budgeted funds are not exceeded.

B. For the purposes of this section, a “minor contract” is defined to mean a contract having a dollar amount of twenty thousand dollars or less. (Ord. 3428 § 1, 1999; Ord. 3234 § 5, 1994; Ord. 3137 § 5, 1990)

**2.80.055 Change orders—Authority and limitations.**

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In the event it becomes reasonably necessary to make alterations and changes to the scope of work of a contract for the proper completion of the work, such changes will be set forth in a contract change order which will specify, in addition to the work done in connection with the change, adjustments of contract time, if any, and the basis of compensation for such work. A contract change order will not become effective until approved by the city council or by the city manager as set forth below:

A. The city manager is hereby authorized to approve change orders up to and not to exceed three hundred thousand dollars per change order, subject to the following two limitations:

1. The total amount of all change orders under any one contract not yet ratified by the city council shall not exceed three hundred thousand dollars.
2. The total amount of all change orders not yet ratified by the city council shall not exceed ten percent of the initial contract price or twenty thousand dollars, whichever is greater.

B. After issuing any change order, the city manager shall report such action in writing to the city council not later than at its next regularly scheduled meeting or as soon thereafter as is practical. The city council may ratify the change order and, if so ratified, such change order will not be considered against the limits set forth in subsections A1 and 2 of this section. (Ord. 3708 § 1, 2009; Ord. 3428 § 2, 1999)

## AGENDA SUMMARY SHEET

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AGENDA ITEM: A resolution to cancel  
unclaimed warrants.

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

SUBMITTED BY: Brian Butterfield

\_\_\_\_\_

AGENDA ITEM # \_\_\_\_\_

FOR AGENDA OF: 8/20/2013

ORIGINATING DEPT: Finance

DATE SUBMITTED: 8/14/2013

COST OF ITEM: N/A

AMT. BUDGETED N/A

CITY ATTY. APPROVAL \_\_\_\_\_

CITY MGR. APPROVAL \_\_\_\_\_

### AGENDA ITEM PAPERWORK:

See exhibit A (list of unclaimed warrants)

### SUMMARY STATEMENT/DEPT. RECOMMENDATION:

Cancel unclaimed warrants as required by  
RCW 39.56.040.

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

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF  
KELSO CANCELLING CERTAIN WARRANTS OF THE CITY  
PURSUANT TO RCW 39.56.040.**

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

**SECTION 1.** That those warrants listed on Exhibit A, attached hereto and incorporated herein, which have not been presented for payment within one year of the date of their issue or call as the case may be, be and the same are hereby cancelled pursuant to RCW 39.56.040.

**ADOPTED** by the City Council and **SIGNED** by the Mayor this \_\_\_\_ day of \_\_\_\_\_, 2013.

\_\_\_\_\_  
MAYOR

ATTEST/AUTHENTICATION:

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

APPROVED AS TO FORM:

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

# EXHIBIT A

<u>Warrant #</u>	<u>Vendor/Payee</u>	<u>Date</u>	<u>Amount</u>
155362	Daimon Weaver	8/17/2010	\$ 10.00