

Kelso City Council Agenda

Regular Meeting, 6:00 pm
October 6, 2015
City Hall, Council Chambers
203 South Pacific
Kelso, WA 98626



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

Invocation:

Pastor Mark Schmutz from Northlake Baptist Church

Roll Call to Council Members:

1. Approve Minutes:

1.1. September 15, 2015 – Regular Meeting

2. Proclamation:

2.1. Domestic Violence Awareness Month

3. Presentation:

3.1. Northwest Health Foundation Healthy Beginnings

4. Public Hearing:

4.1. Revenue Sources for the City's 2016 Current Expense Budget

5. Consent Items:

6. Citizen Business:

7. Council Business:

7.1. Agreement – Engineering Services for Minor Rd Reservoir Replacement Project

Kelso City Council Agenda

Regular Meeting, 6:00 pm
October 6, 2015
City Hall, Council Chambers
203 South Pacific
Kelso, WA 98626



8. Action/Motion Items:

8.1. Ordinance, 1st Reading

8.1.1. Nuisance Abatement Code Enforcement Chapter 10.06 Junk Vehicles

8.2. Ordinance, 2nd Reading

8.2.1. Nuisance Abatement Code Enforcement Chapter 1.40 General Penalties

8.3. Ordinance, 2nd Reading

8.3.1. Amendments Code Enforcement Stormwater Management Chapter 13.09 and
Illicit Discharge Chapter 13.11

Other Items:

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

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 Jared Franklin, Gary Archer, Dan Myers, David Futcher, Gary Schimmel, and Rick Roberson. Councilmember Todd McDaniel was absent.

Minutes: Upon motion by Councilmember Roberson, seconded by Councilmember Myers, ‘Approve the Minutes of the 9/1/15 Regular Meeting,’ motion carried, all voting yes.

CONSENT AGENDA:

1. **Appointment – Clifford Rubert to the Kelso Housing Authority**
2. **Auditing of Accounts: \$ 2,244,009.22**

Upon motion by Councilmember Schimmel, seconded by Councilmember Roberson, ‘Approve the Consent Agenda and the Auditing of Accounts in the amount of \$2,244,009.22,’ motion carried, all voting yes.

CITIZEN BUSINESS:

Rick Von Rock, 400 North 7th Avenue, spoke about the strike taken by the Kelso Education Association against the Kelso School District. Councilmember Franklin read an email he received relating to union officials.

COUNCIL BUSINESS:

Agreement Amendment – 911 Communication Center: Upon motion by Councilmember Schimmel, seconded by Councilmember Myers, ‘Approve the amendment to the agreement,’ motion carried, all voting yes.

Agreement Amendment – Gordon Thomas Honeywell Governmental Affairs: Upon motion by Councilmember Schimmel, seconded by Councilmember Myers, ‘Approve the amendment to the agreement,’ motion carried, all voting yes.

MOTION ITEMS:

Ordinance No. 15-3850 – Nuisance Abatement Code Adopting new Chapter 1.50 Code Enforcement: The Deputy Clerk read the proposed ordinance by title only. Upon motion by Councilmember Roberson, seconded by Councilmember Myers, ‘Adopt Ordinance No. 15-3850, ‘AN ORDINANCE OF THE CITY OF KELSO RELATING TO CODE ENFORCEMENT BY ADOPTING A NEW CHAPTER 1.50 CODE ENFORCEMENT TO THE KELSO MUNICIPAL CODE.’ Discussion followed. Motion passed, all voting yes.

Ordinance No. (1st Reading) – Nuisance Abatement Code Enforcement Chapter 1.40

General Penalties: The Deputy Clerk read the proposed ordinance by title only. Upon motion by Councilmember Archer, seconded by Councilmember Myers, ‘Pass on 1st reading, ‘AN ORDINANCE OF THE CITY OF KELSO AMENDING KELSO MUNICIPAL CODE 1.40 GENERAL PENALTY TO PROVIDE GENERAL CRIMINAL PENALTIES AND GENERAL CIVIL PENALTIES FOR VIOLATIONS OF THE KELSO MUNICIPAL CODE,’ motion passed, all voting yes.

Ordinance No. (1st Reading) – Amending Code Enforcement Stormwater

Management Chapter 13.09 and Illicit Discharge Chapter 13.11: The Deputy Clerk read the proposed ordinance by title only. Upon motion by Councilmember Roberson, seconded by Councilmember Schimmel, ‘Pass on 1st reading, ‘AN ORDINANCE OF THE CITY OF KELSO AMENDING KELSO MUNICIPAL CODE CHAPTER 13.09, STORMWATER MANAGEMENT AND CHAPTER 13.11 ILLICIT DISCHARGES—STORMWATER UTILITY TO AMEND THE ENFORCEMENT PROCEDURES TO BE CONSISTENT WITH NEW KMC CHAPTER 1.50 CODE ENFORCEMENT.’ Discussion followed. Councilmembers Archer, Myers, Futch, Schimmel, and Roberson voted yes. Councilmember Franklin voted no. Motion passed, 5 to 1.

MANAGER’S REPORT:

Steve Taylor: 1) Commented that the State of the Cities Address is on Sept. 16. 2) Commented that the AWC Regional meeting is on October 20. He asked the Council to consider how many of them will be attending. 3) Provided an update on the proposed amendments to the water rates ordinance. 4) Spoke about the Three Rivers Waste Water Authority sewer rates affecting the preliminary budget.

COUNCIL REPORTS:

Rick Roberson: No report.

Gary Schimmel: Provided an update on the 911 Council and the 911 Board.

Dan Myers: Commented that, thanks to Jerry Sorrell, a section of the train depot is being painted to make the lettering on the wall more pronounced.

Gary Archer: Provided an update on the ‘Big Idea’ Board meeting.

Jared Franklin: Commented that the Kelso Theatre Pub is showing the Republican debate tomorrow.

David Futch: 1) Provided an update on the Airport Board. 2) Commented that this year’s Highlander Festival was very successful. He expressed his appreciation to all who helped. 3) Commented that he will be visiting Kelso’s sister city, Makinohara,

Japan, this month to attend their 10 Year Anniversary celebration.

STAFF REPORT:

Community Development Director/City Engineer Mike Kardas: 1) Provided an update on the current city projects. 2) Provided an update on the revamping of the development code.

There being no further business, Mayor Fatcher adjourned the meeting at 6:41 p.m.

MAYOR

DEPUTY CLERK

Proclamation

Domestic Violence Awareness Month

October 2015

WHEREAS, domestic violence is a serious, wide-ranging crime that affects people of all races, ages, income levels, sexes, and society as a whole; and

WHEREAS, the crime of domestic violence violates an individual's privacy, dignity, security, and humanity through the systematic use of physical, emotional, sexual, psychological, and economic control and/or abuse; and;

WHEREAS, children who grow up in violent homes are abused and neglected at a rate 1500% higher than the national average; and

WHEREAS, domestic violence costs the nation between \$5 billion and \$10 billion annually in medical expenses, police and court costs, shelters and foster care, sick-leave absenteeism and non-productivity; and

WHEREAS, only a coordinated community effort will put a stop to this heinous crime; and

NOW, THEREFORE, I, David Fatcher, Mayor of the City of Kelso, Washington, do hereby proclaim the month of October 2015 as

“Domestic Violence Awareness Month”

in the City of Kelso. I urge all citizens to actively participate in the scheduled activities and programs sponsored by the Emergency Support Shelter to work toward the elimination of personal and institutional violence against women, and to help shed light on domestic violence by actively reporting their concerns to the proper authorities.

In witness whereof, I have hereunto set my hand and caused the seal of the City of Kelso to be affixed this 6th day of October 2015.

David Fatcher, Mayor

AGENDA SUMMARY SHEET

Business of the City Council City of Kelso, Washington

SUBJECT TITLE: Northwest Health Foundation Healthy Beginnings / Healthy Communities Grant Presentation

Agenda Item: _____

Dept. of Origin: _____ City Council _____

For Agenda of: _____ October 6, 2015 _____

Originator: _____ Steve Taylor _____

PRESENTED BY:

Neighborhood Resource Coordination Council
Project Organizer - Nick Buhler

City Attorney: Janean Parker

City Manager: Steve Taylor

Agenda Item Attachments:

Request for letter of support
Draft proposed letter of support

SUMMARY STATEMENT:

Representatives from the Longview Highlands Neighborhood Association (HNA) have submitted a letter to the Council requesting a letter of support for a grant application to form a Neighborhood Resource Coordination Council (NRCC). The NRCC will be comprised of citizens and representatives from organizations able to bring resources in a variety of forms to support neighborhood revitalization efforts in Cowlitz and Wahkiakum Counties. The Council will include a member of the South Kelso Neighborhood Association and potentially a City Council member.

If the grant application is successful up to \$750,000 in Northwest Health Foundation funding will go to the Council (NRCC), for the support of all neighborhood organization efforts in Cowlitz and Wahkiakum Counties, including the activities of the South Kelso Neighborhood Association.

RECOMMENDED ACTION:

Discuss elements of the request and determine Council's desired level of support.



216 30th Avenue – Longview, WA 98632

September 17, 2015

City of Kelso
Attention: Kelso City Council
Address
Kelso, WA 98626

RE: Northwest Health Foundation Healthy Beginnings / Healthy Communities Grant

Dear Kelso City Council,

In January of this year, Longview Highlands Neighborhood Association (HNA) was one of twenty-five organizations to receive a one year, \$30,000 Healthy Beginnings/Healthy Communities Organizing Grant from the Northwest Health Foundation. The grant's purpose is to develop collaborations to improve outcomes for marginalized children and families. The 25 funded organizations are exclusively invited to apply for a five year, up to \$750,000 implementation grant. About ten of those twenty-five projects will be funded. The funding would be awarded in December and available for use January 1, 2016.

The initial grant plan was to strengthen HNA's board and programs for use as a model to share with neighborhoods in the planning or implementation stages of revitalization projects. In communicating with the funder it has become clear that a modified strategy will increase the likelihood of a successful application.

The new strategy will develop a Neighborhood Resource Coordination Council (NRCC). The council, made up of citizens and representatives from organizations able to bring resources in a variety of forms, will support neighborhood revitalization efforts in Cowlitz and Wahkiakum Counties. Development of the council is already a component of the grant project and is part of the Neighborhood Revitalization Plan created by Melissa Taylor, staff member for the Cowlitz Wahkiakum Council of Governments, in 2007.

The rationale is this: an effective way to help our community's children and families thrive is by improving their living environments.

HNA has committed partners including: Cowlitz County Habitat for Humanity, Millennium Bulk Terminals and the City of Longview's Community Development & Parks and Recreation Departments to form the council. We would like to add South Kelso Neighborhood Association, The City of Kelso, Ethnic Support Council and other Kelso Organizations to the list of cohorts. If the grant application is successful, the up to \$750,000 in NWHF funding will go to the Council (NRCC), for the support of all neighborhood organization efforts in Cowlitz and Wahkiakum Counties.



216 30th Avenue – Longview, WA 98632

September 17, 2015

City of Kelso Council

Page 2 of 2

Here's how you can help; we are requesting that Kelso City Council provide a letter of support. We ask that in the letter you include wording that is supportive of the neighborhood resource coordination council (NRCC) and that the city council agrees to seriously consider NRCC's recommendations when deciding where to commit city controlled funding for neighborhood revitalization efforts. In addition, it would be helpful if one city council member would sit on the NRCC. Your presence would encourage participation by the organizations necessary to make the project a success. The council will meet quarterly and allows for you to send an alternate if necessary.

Thank you for considering our request. We are excited at the possibility of bringing such a significant resource to the neighborhoods of our community.

Respectfully,

Nick Buhler & Elizabeth Haeck

Nick Buhler and Elizabeth Haeck
Neighborhood Resource Coordination Council Project Organizers

NB/EH/md

cc: City of Longview – John Brickey
Cowlitz County Habitat for Humanity – Diane Perron
Millennium Bulk Terminals – Gena Ramey
Parks and Recreation
HNA Board of Directors



City of Kelso
City Council



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

September 15, 2015

RE: Neighborhood Resource Coordination Council (NRCC)

Dear Northwest Health Foundation Grant Review Committee,

The Kelso City Council would like to express our support of the formation of the Cowlitz / Wahkiakum Neighborhood Resource Coordination Council (NRCC). NRCC's mission is to promote a culture of collaboration and resident empowerment by supporting citizen-led neighborhood revitalization projects.

NRCC is tasked with identifying resources in a variety of forms and connecting them with neighborhood revitalization projects. Additionally, NRCC will recommend community organizing and neighborhood improvement projects for funding to local government, business, and foundations. The coalition will help level the playing field by allowing all Cowlitz and Wahkiakum neighborhoods an opportunity to participate and communicate their needs.

NRCC offers the resources and information area neighborhoods need to successfully organize themselves. The collective action will accelerate widespread neighborhood renewal and achieve safe and attractive neighborhoods, where residents look out for one another and where children and families thrive.

NRCC will meet quarterly. Board composition includes but is not limited to delegates from neighborhoods, government, business, housing, schools, law enforcement, services, and funding organizations. A member of our Council will sit on this board and serve as an advocate for the NRCC's recommendations when discussing the City's neighborhood revitalization efforts. Cowlitz County Habitat for Humanity, City of Longview Community Development and Parks and Recreation Departments, Longview Highlands Neighborhood Association, South Kelso Neighborhood Association, City of Kelso, Millennium Bulk Terminals, Ethnic Support Council and Cowlitz County Commissioners are committed to the project.

Together, we will create attractive and safe neighborhoods where our residents thrive.

Respectfully,

David Futcher
Mayor

AGENDA SUMMARY SHEET

Business of the City Council City of Kelso, Washington

SUBJECT TITLE:

Engineering Services Agreement-Minor Road
Reservoir Replacement – S. Kelso Drive Waterman

Agenda Item: _____

Dept. of Origin: Community Development/Eng

For Agenda of: October 6, 2015

PRESENTED BY:

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

Cost of Item: \$628,800

City Manager: Steve Taylor

AGENDA ITEM ATTACHMENTS:

Consultant Scope of Work and Fee Estimate, Professional Services Agreement

SUMMARY STATEMENT:

Kelso's two one-million gallon Minor Road reservoirs were constructed in 1924 and are nearing, if not having already reached, their planned useful life. For the last several years, staff have monitored the facility condition. In 2012 the City commissioned an evaluation of the condition and expected earthquake survivability of the reservoirs. The study concluded the structures are in a state of deterioration that cannot feasibly be repaired. Furthermore, complete structural failure can be expected if they experience a magnitude 6.0 earthquake event. This would create significant damage to the north bound lanes of Interstate 5.

The Minor Road reservoirs account for roughly 40% of the City's water storage. During construction, this storage will not be available. The City plans to construct approximately 4,800 feet of new 16-inch transmission main, identified in the 2015-2020 CIP as the S. Kelso Drive -Haussler to Carrols Rd Ph. 1 project, prior to removing the existing reservoirs from service. Construction of this waterline will help ensure the safe operation of the water system during construction by increasing the availability of water between the northern and southern parts of the water system.

FINANCIAL IMPACT:

Funds for this contract are currently budgeted from the Water Capital Fund. The entire project cost is currently estimated at \$5,900,000. The City has received a State capital grant in the amount of \$1,455,000 towards the replacement of the reservoir. Staff have applied for a \$4.6 million Drinking Water State Revolving Fund loan to fully fund the construction. If the City is unsuccessful in obtaining the loan, staff will discuss with Council the option of a future revenue bond offering.

RECOMMENDED ACTION:

Staff recommends council make a motion to authorize the City Manager to execute a professional service contract with RH2 Engineering, Inc. in the amount of \$628,800.

PROFESSIONAL SERVICES AGREEMENT

This Agreement (“Agreement”) is dated effective this _____ day of _____, 2015. The parties (“Parties”) to this Agreement are the City of Kelso, a Washington municipal corporation (“City”), and RH2 Engineering, Inc. (“Consultant”).

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

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

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

1. SERVICES.

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

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

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

1.4 Performance Standard. All duties by the Consultant or his designees shall be performed in a manner consistent with 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 _____ and shall continue until the completion of the Services, but in any event no later than _____. This Agreement may be extended for additional periods of time upon the mutual written agreement of the City and the Consultant. During any term, this Agreement may be terminated, with or without cause by either Party, by giving ninety (90) days written notice to the other party.

3. COMPENSATION.

3.1 Total Compensation. In consideration of the Consultant performing the Services, the City agrees to pay an amount not to exceed \$628,800.00 per Exhibit B – Estimate of time an.

3.2 Compensation Rates. Compensation for Services shall be based on the attached compensation schedule not to exceed \$628,800.00 per Exhibit C – Schedule of Rates and Charges.

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

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

4. REPRESENTATIONS.

4.1 The Consultant 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.

5. INDEPENDENT CONSULTANT.

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

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

6. INDEMNIFICATION.

6.1 Consultant Indemnification. The Consultant shall defend, indemnify and hold the City, its officers, officials, employees and volunteers harmless from any and all claims, injuries, damages, losses or suits including attorney fees, arising out of or resulting from the acts,

errors, or omissions of the Consultant in the performance of this Agreement, except for injuries and damages caused by the sole negligence of the City.

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

7. INSURANCE.

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

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

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

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

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

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

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

8. EQUAL OPPORTUNITY EMPLOYER.

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

9. INTELLECTUAL PROPERTY-- Warranty of Noninfringement

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

10. CONFIDENTIALITY.

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

11. WORK PRODUCT.

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

12. BOOKS AND RECORDS.

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

13. NON-APPROPRIATION OF FUNDS.

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

14. GENERAL PROVISIONS.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Executed on the dates written below.

CONSULTANT

CITY OF KELSO

By: _____
Printed Name: Geoffrey G. Dillard
Title: Director
Address: 950 Pacific Avenue, Suite 1220
Tacoma, WA 98402

Date: _____

Printed Name: _____
Title: _____
Address: _____

Date: _____

Approved as to form:

City Attorney

City Clerk

EXHIBIT A
Scope of Work
City of Kelso
Minor Road Reservoirs Replacement Project
September 2015

Background

The City of Kelso (City) will construct a new reservoir at its Minor Road site to replace two existing reservoirs which have operational and structural deficiencies. Due to these deficiencies and the absence of functioning isolation valves, both reservoirs must be taken offline simultaneously before replacement. Through previous planning efforts the following aspects of this project have already been decided by the City:

- The proposed reservoir will be located on the City's existing Minor Road site and have the same hydraulic grade line as the existing reservoirs and the new Paxton reservoir.
- The proposed replacement reservoir will be an American Waterworks Association (AWWA) Type 1 prestressed concrete tank with a storage volume of 2.0 million-gallons.
- This project will also include approximately 4,800 linear feet of 16-inch-diameter water main extension along Kelso Drive between the City's Carrolls pump station and the Lower Haussler pump station.

RH2 Engineering, Inc., (RH2) has prepared this Scope of Work and associated Fee Estimate to provide the reservoir design, the water main design, permitting assistance, and services during bidding. RH2 will work with the City on selecting reservoir appurtenances, reservoir elements, such as roof type and backfill options, and on-site access alternatives.

Various levels of conceptual design, predesign reports, geotechnical investigations, and survey work will have already been completed upon commencement of RH2's work. Some of this preexisting information will be relied upon during design and additional information may be gathered as required to complete the project.

The following tasks are included in this Scope of Work:

- General Project Tasks
 - Task 1 – Project Management
 - Task 2 – Topographic Survey
 - Task 3 – Geotechnical Investigation and Report
 - Task 4 – Supplemental Services
- PHASE 1 – Kelso Drive Water Main Extension Design
 - Task 1 – Water Main Design
 - Task 2 – Permitting Assistance
 - Task 3 – Services During Bidding

- PHASE 2 – Minor Road Reservoirs Replacement
 - Task 1 – Reservoir 30-percent Design
 - Task 2 – Stormwater Engineering and Report
 - Task 3 – Permitting Assistance
 - Task 4 – Reservoir 60-percent Design
 - Task 5 – Reservoir 90-percent Design
 - Task 6 – Reservoir Final Construction Contract Documents
 - Task 7 – Services During Bidding

Design Standards and References

The following design standards and references are to be followed where relevant during the development of the project.

- City Standard Details.
- City Standard Special Provisions.
- City Standard Construction Contract and General Conditions.
- Washington State Department of Transportation (WSDOT) Standard Specifications for Road, Bridge, and Municipal Construction.
- American Water Works Association (AWWA) D110-13, *Wire and Strand Wound Circular Prestressed Concrete Water Tanks*.

AutoCAD® is to be used to prepare drawings and AutoCAD® Civil 3D may be used for the site design. Project schedules shall be prepared using Microsoft Project 2007 or newer, spreadsheets in Microsoft Excel 2010 or newer, and text documents in Microsoft Word 2010 or newer.

Plans shall be prepared in accordance with City's standards. Color plans will be used for review purposes. Full-size plan sheets will be provided at 22-inch by 34-inch and half-size sheets at 11-inch by 17-inch. Electronic plans and specifications documents will be used for bidding purposes.

Assumptions

1. *The preparation of two (2) bid sets of plans are as follows:*
 - a. *Kelso Drive Water Main Extension*
 - b. *Minor Road Reservoirs Replacement*
2. *The technical specifications are established as follows:*
 - a. *Kelso Drive Water Main Extension – WSDOT Standard Specifications for Road, Bridge, and Municipal Construction.*
 - b. *Minor Road Reservoirs Replacement – RH2-modified Construction Specifications Institute (CSI) specifications Divisions 1 through 18.*
 - c. *The specification General Conditions, and construction contract sections will follow the City's format.*

3. *All permit fees will be paid directly by the City.*
4. *The sheet layout described in the tasks below is preliminary and generated based on RH2's experience in designing reservoirs. Each reservoir project is unique and the number of sheets required may vary depending on the City's preferences on appurtenances and site detailing.*
5. *Once review comments are ready a meeting with the City will be conducted at the milestone reviews (30-, 60-, and 90-percent) at the RH2's Tacoma office to discuss the comments.*
6. *RH2 will rely on the accuracy and completeness of any data, materials, or information provided by the City or others in relation to the work.*
7. *The City will use Quest CDN to administer the bid documents.*

GENERAL PROJECT TASKS

Task 1 – Project Management

Objective: Manage RH2's project team and maintain frequent client communications, including phone calls and emails, in addition to progress meetings.

Approach:

- 1.1 Provide direction, coordination, and oversight to the RH2 project team. Organize, manage and coordinate technical disciplines as described herein, and implement quality assurance and quality control (QA/QC) to perform this Scope of Work in close coordination with City staff.
- 1.2 Document and retain information generated during execution of the project.
- 1.3 Prepare monthly invoices and budget status summaries.
- 1.4 Prepare for and attend coordination meetings with City staff, as requested. Prepare meeting minutes. *A total of three (3) meetings are assumed for this Scope of Work in addition to the other milestone and review meetings mentioned in this Scope of Work.*
- 1.5 Create, maintain, and update an internal project design schedule. Monitor, modify, and update the project schedule throughout the design phase on a monthly basis to determine potential impacts of proposed changes. Adjust the schedule to reflect the current status of the project and revisions made to this Scope of Work.

RH2 Deliverables:

- Meeting agendas and minutes.
- Monthly invoices.
- Project schedule.

Task 2 – Topographic Survey

Objective: Acquire up-to-date survey data of the project sites for design purposes. Subcontract with Prizm Surveying, Inc., (Prizm) of Tacoma, Washington, to survey the water main extension alignment, and the reservoir site. Evaluate utility locates and survey limits. Coordinate with surveyor for survey standards and CAD format, and review survey.

Approach:

- 2.1 Subcontract and coordinate with Prizm for survey work for the water main extension alignment.
- 2.2 Subcontract and coordinate with Prizm for survey work for the reservoir site.
- 2.3 Attend one (1) site visit to evaluate utility locates and survey limits with City.
- 2.4 Review and revise survey data for the water main and reservoir designs.

Assumptions:

- *Horizontal datum will be NAD83/91 based upon existing City control. Vertical datum will be based on NAVD-88 based upon existing benchmarks set by the surveyor.*
- *Prizm will coordinate the on-site utility locates, and provide stamped topographic survey drawings as well as CAD existing base map files for design.*

RH2 Deliverables:

- One (1) electronic copy of the AutoCAD® survey files (AutoCAD® and PDF) will be provided to the City.
- Attend one (1) site visit.

Task 3 – Geotechnical Investigation and Reporting

Objective: Acquire geotechnical information of the soil and groundwater conditions at the proposed reservoir site, and along the right-of-way for the proposed water main extension alignment. Evaluate geotechnical soil and groundwater conditions to support design and during construction, and prepare recommendations/specifications for shoring, groundwater control, and backfill of the excavations for the reservoir site and water main.

Approach:

- 3.1 Review available geologic, groundwater, and geotechnical information for the reservoir site. Subcontract boring and earthwork contractors to support field investigations and obtain geologic and groundwater information for the reservoir site. Investigate deep soil and groundwater conditions at the reservoir site by drilling up to two (2) small-diameter soil borings and one (1) larger-diameter boring up to 50 feet deep. Complete one (1) or both of the small-diameter borings as monitoring wells, and complete the large diameter boring as a dewatering test well. Investigate shallow soil conditions using a backhoe to excavate two (2) exploration test pits at the reservoir site.

- 3.2 Review available geologic, groundwater, and geotechnical information for the water main. Subcontract earthwork contractors to support field investigations and obtain geologic and groundwater information for the water main extension alignment. Investigate shallow soil conditions using a backhoe to excavate six (6) exploration test pits along the water main extension alignment.
- 3.3 Prepare a geotechnical investigation report for the reservoir site, connecting water mains and drain lines; describe subgrade conditions, bearing capacities and earth pressures, and groundwater conditions describing shoring and dewatering requirements; prepare recommendations for subgrade preparation and backfilling for the reservoir excavation; and other pertinent information required for the design and construction of the proposed below- and above-grade structures.
- 3.4 Prepare a geotechnical memorandum with information on geological and groundwater conditions along the proposed water main extension alignment. Prepare recommendations for subgrade preparation and backfilling for the water main excavation
- 3.5 Conduct an 8- to 12-hour pumping test at the dewatering test well to refine the estimate of dewatering requirements and costs, if requested by the City (optional).

RH2 Deliverables:

- Geotechnical investigation reports for the water main extension alignment and reservoir site.

Task 4 – Refine Reservoir Site and Water Main Constructability

Objective: Refine construction site staging design and water main constructability.

Approach:

- 4.1 Refine the reservoir construction staging access and balance the cut and fill around the reservoir backfill to minimize the import / export of material from the reservoir site.
- 4.2 Refine the water main constructability based on the regional geotechnical findings along the area.

PHASE 1 – KELSO DRIVE WATER MAIN DESIGN

Task 1 – Water Main Design

Objective: Design extension of 16-inch water main along Kelso Drive between the Carrolls pump station and the Lower Haussler pump station to loop the system on the east side of Interstate-5.

Approach:

- 1.1 Format base map received from surveyor, create base layout sheets. Walk alignment to review visible structures such as water meters, valves and other utility facilities. *Review is limited only to visible surface features.*
- 1.2 Prepare preliminary water main layout. Visit site to review placement of proposed water mains.
- 1.3 Meet with City to review preliminary layout.
- 1.4 Prepare 90-percent design of the water mains and appurtenances.
- 1.5 Prepare details for connection to the existing water mains.

- 1.6 Prepare traffic control plan along Kelso Drive.
- 1.7 Meet with City to review 90-percent layout.
- 1.8 Perform in-house QA/QC review of plans.
- 1.9 Prepare technical specification.
- 1.10 Create standard detail sheets using City's standard details.
- 1.11 Prepare a construction cost estimate.
- 1.12 Finalize plans and specifications based on City and in-house QA/QC review comments.

RH2 Deliverables:

- Review sets: four (4) full-size plans, four (4) half-size plans, specifications in Microsoft Word format, and electronic copy (PDF) of preliminary plans.

Task 2 – Permitting Assistance

Objective: Assist the City with preparation of development permits for the water main construction.

Approach:

- 2.1 Prepare Master Land Use Application to accompany the State Environmental Policy Act (SEPA) checklist for processing by the City's Planning Department.
- 2.2 Prepare the SEPA checklist. Coordinate with City to process the SEPA and publish a determination of project effect.
- 2.3 Prepare Grading Permit application. Coordinate with the City to review and issue the Grading Permit for the project.

Assumptions:

- *Environmental Review via a SEPA checklist will be required.*
- *The project will involve grading within the right-of-way, which will trigger a Grading permit; however, the amount of disturbance will be less than one (1) acre, excluding the project from the need to obtain a Construction Stormwater General permit (CSGP).*
- *The project will not be constructed within critical areas and will not need to cross any water features, thus a Critical Areas permit and/or Hydraulic Project Approval are not expected to be required.*
- *The project is expected to be exempt from the need to obtain a Right-of-Way (ROW) permit per Kelso Municipal Code 12.14.*
- *The water main portion of the project will not receive State Revolving Fund (SRF) monies.*

RH2 Deliverables:

- Two (2) hard copies of the permit applications and one (1) electronic copy (PDF) for the City.

Task 3 – Services During Bidding

Objective: Assist the City during the project bidding and contracting phase. *It is assumed that RH2 will prepare the bid advertisement and coordinate bidding but that the City will pay advertising fees. The City will post the documents electronically to a plan center for bidding. Hard copies will not be generated for bidders.*

Approach:

- 3.1 Prepare advertisement for bids and coordinate dates of advertisement. Contact potentially interested bidders by email or telephone.
- 3.2 Create electronic construction contract documents for posting to plan center.
- 3.3 Respond to technical questions from bidders.
- 3.4 Prepare and transmit up to two (2) addenda via online bidding service.
- 3.5 Conduct the bid opening and collect bids for review.
- 3.6 Review bids and compile and check the bid tab. Attend one (1) meeting with the City to review the bid tab and bidders' qualifications.
- 3.7 Check references of apparent low bidder. Prepare a letter recommending contract award to the lowest qualified bidder.

RH2 Deliverables:

- Advertisement for bids
- Contract construction documents posted to plan center.
- Two (2) addenda (if necessary).
- Five (5) half-size plans and PDF files of the plans and specifications.

PHASE 2 – MINOR ROAD RESERVOIRS REPLACEMENT

Task 1 – Reservoir Preliminary Design (30-percent complete)

Objective: Prepare preliminary construction plans and a construction cost estimate for review by the City. *Specifications will not be provided as part of this task. The design criteria developed during pre-design will be further expanded based on the City's preferences established as part of project pre-design. Results of the geotechnical investigation are to be incorporated into the design criteria.*

Approach:

- 1.1 Summarize criteria, standards, guidance, and/or codes governing the design. Develop a checklist for presenting design choices to the City. Maintain the checklist during design and submit to the City when revisions are made. Establish structural design criteria using geology and location to identify seismic design parameters per U.S. Geological Survey (USGS) data, and to design snow and wind loads, soil loads, live loads, unbalanced load criteria, and load combinations.

- 1.2 Prepare for and attend a kick-off meeting with City operation and maintenance staff to identify the City's preferences for site layout and access, roof options, appurtenances, site security, and general operational configuration. Prepare and distribute the design criteria checklist. Update the checklist after the review meeting.
- 1.3 Analyze up to three (3) reservoir geometry alternatives (height and diameter) to fine-tune site grading for construction access and the proposed access road. Prepare conceptual-level cost estimates, pros, and cons for each alternative. Meet with the City to discuss alternatives to determine the City's preference.
- 1.4 Prepare cover sheet, existing site plan, and demolition plan.
- 1.5 Prepare preliminary construction and finished grading plans and details.
- 1.6 Prepare preliminary site and utility plans and details. *Profile views will be generated to check for conflicts with known utilities.* Establish planting zones and areas with special planting considerations such as screening.
- 1.7 Prepare reservoir plan and elevation views to illustrate the reservoir shape, size, elevations, geometry, and the location of the proposed reservoir and its appurtenances.
- 1.8 Prepare mechanical plans detailing reservoir piping and mechanical components. Review up to three (3) types of water quality mixing systems and present to City for selection.
- 1.9 Prepare preliminary design of main structural elements. Determine the general configuration of the tank walls and floor, foundation, roof shape, and support system. Prepare schematic structural drawings of the tank structure including reservoir elevations, foundation and floor plan, and roof plan. Develop schematic structural details of the tank structure to convey the City's preferences, including accessory/appurtenance preferences.
- 1.10 Identify electrical, control, and monitoring features and appurtenances for the proposed water reservoir for review and discussion with City. Provide a list of features and appurtenances that would be typical for water reservoirs.
- 1.11 Contact Cowlitz Public Utility District (PUD) to start preliminary discussions related to the availability of power to the reservoir site. Fill out power application for signature and submittal by the City.
- 1.12 Prepare a 30-percent level probable construction cost estimate.
- 1.13 Perform in-house review of preliminary design.
- 1.14 Prepare for and attend a 30-percent review meeting with the City. Prepare and distribute meeting minutes.

Assumptions:

- *The existing transmission mains to the site are of adequate size and will not require redesign.*
- *The existing booster pump station will remain in place and not be modified except to incorporate telemetry controls.*
- *Both existing reservoirs will be demolished at the start of construction.*

- *The existing storm ditch/system will be used for transport of overflow and storm runoff. If Cowlitz County (County) or the City will not allow this method, an additional design fee may be required.*

RH2 Deliverables:

- 30-percent construction cost estimate.
- Plans to include:
 - Cover sheet/vicinity map/drawing index.
 - Legend and general notes.
 - Existing site plan and temporary erosion and sedimentation control (TESC).
 - Demolition plan.
 - Grading plan.
 - Proposed utility plans.
 - Proposed site plan.
 - Reservoir elevation and oblique plan.
 - Reservoir mechanical plan.
 - List of electrical, control, and monitoring features.
- The following number and size of copies of the plans to be provided:
 - Four (4) half-size color, bound, 30-percent construction plans.
 - One (1) electronic copy of the files in PDF format.
 - Design criteria checklist.
 - City review meeting minutes.

Task 2 – Stormwater Engineering and Report

Objective: Conduct stormwater analyses and prepare documentation for compliance with the Stormwater Management Manual for Western Washington (SWMMWW). Prepare stormwater design improvements for integrating the stormwater system with the overflow requirements for the reservoir.

It is anticipated the proposed project will exceed the thresholds identified in the SWMMWW for triggering conformance with Minimum Requirements No. 1 through No. 8.

Approach:

- 2.1 Develop an onsite stormwater management system to convey, infiltrate, disperse, and retain stormwater runoff on-site. *This system will include conveyance, runoff treatment, and flow control Best Management Practices (BMPs), as required by the SWMMWW.*
- 2.2 Develop a Stormwater Site Plan (SSP) conforming to the SWMMWW, including assessment of both temporary and permanent stormwater and drainage impacts.
- 2.3 Prepare a Stormwater Pollution Prevention Plan (SWPPP) meant to control erosion and prevent sediment and other pollutants from leaving the site during the construction phase of a project.

- 2.4 Develop an operations and maintenance (O&M) manual for the proposed stormwater facilities and BMPs.
- 2.5 Perform and document a qualitative off-site analysis that assesses the potential off-site impacts of stormwater discharge. If an off-site quantitative analyses and/or mitigation are determined to be required after performing the qualitative off-site analysis, then a modification to this Scope of Work will be required.
- 2.6 Submit copies of the SSP and associated plans for review by the City. Prepare revisions to the SSP and plans based on the City's review. Prepare the final SSP for delivery to the City for permit submittal.

Assumptions:

- *Runoff treatment will not be required for this project since the reservoir roof will be constructed of non-leachable material and since the infrequently-used maintenance access roads will not be considered pollution-generating surfaces by definition.*
- *The infiltration potential of the silty native soil is low, and the capacity for on-site infiltration is minimal.*
- *The project will exceed the thresholds for requiring flow control, thereby creating the need to develop a flow control facility for stormwater discharges in accordance with the SWMMWW requirements.*
- *The proposed project will not discharge directly or indirectly into a wetland.*
- *The Fee Estimate reflects that both stormwater and overflow water will be discharged to the storm system in Minors Road. If the County or the City does not allow this route, additional fee may be required.*

RH2 Deliverables:

- One (1) hard copy of the stormwater report, SSP, and SWPPP for final permit submittal as part of the 90-percent plans, specifications, and estimate (PS&E) submittal.
- One (1) electronic copy (PDF) each of the final SSP and SWPPP.
- One (1) electronic copy (PDF) of the O&M manual.

Task 3 – Permitting Assistance and Public Meeting

Objective: Assist the City with the preparation of development permits and design review coordination for the reservoir replacement project. Provide the City with information and project plans to conduct a public meeting. Attend public meeting and present technical information about the project, as requested.

Approach:

- 3.1 Provide the City with information to convey the scope of this project to the neighboring property owners that may be affected and to acquire property and easements. *RH2 may provide supportive drawings and simple conceptual plans. The City will take the lead in acquiring any additional easements and property if necessary.*
- 3.2 RH2 and City staff will perform door-to-door neighborhood site visits to inform the neighborhood about the project. *It is assumed that this task will be completed in one (1) day and will be performed by one (1) engineer.*

- 3.3 Prepare a neighborhood flyer and provide a PDF copy for the City to reproduce. Attend one (1) public meeting open house, and present information about the reservoirs replacement project.
- 3.4 Prepare a Master Land Use application to accompany the SEPA checklist for processing by the City's Planning Department.
- 3.5 Prepare the SEPA checklist. Coordinate with City to process the SEPA and publish a determination of project effect.
- 3.6 Prepare a State Environmental Review Process (SERP) compliance for the project, which is anticipated to be required if the project receives SRF monies. *RH2 will prepare the SEPA Checklist to address applicable state and federal cross-cutting statutes for the project per SERP compliance, and will coordinate with the City's Planning Department and Washington State Department of Health (DOH) to process the SEPA/SERP and publish determinations, as needed.*
- 3.7 Prepare Administrative Use Permit application and exhibits. Attend one (1) hearing, if needed.
- 3.8 Prepare Grading Permit application. Coordinate with the City to review and issue the Grading Permit for the project.
- 3.9 Prepare Building Permit application and supporting documentation as requested by the City. Edit and resubmit one (1) time based on the Building Department comments. Respond to City and public comments on criteria aspects of the permit application. *Note: preparation of structural calculations (to be attached to permit application) is included as part of 60-percent design.*
- 3.10 Using documentation established in Phase 2 - Task 2, prepare materials to support stormwater management and drainage compliance through the City.
- 3.11 Prepare a project report based on applicable Washington Administrative Code (WAC) report requirements. Document the background of the project and objectives, storage sizing, and reservoir design criteria.
- 3.12 Prepare construction documents for DOH review based on 90-percent review plans and technical specifications as required by WAC 246-290-120. Respond to DOH comments. Provide one (1) resubmittal if required.
- 3.13 Prepare cultural and historic resources documentation for compliance with Governor's Executive Order 05-05 (GEO 05-05) and/or Section 106 of the National Historic Preservation Act (NHPA), which is anticipated to be required if the project receives SRF monies. *RH2 will prepare the EZ-1 forms to define the project's Area of Potential Effect (APE) and coordinate review with the Washington Department of Archaeology and Historic Preservation (DAHP) and affected Tribes. RH2's subconsultant, Cultural Resource Consultants (CRC), will prepare a Cultural Resources Survey to assess potential project impacts, which will also be provided to DAHP and the Tribes for review/comment.*

Assumptions:

- *The City will submit local permit applications for the project.*
- *The City will reproduce and distribute neighborhood flyers for the public meeting. The public meeting location will be provided for and arranged by the City with City staff also present.*
- *The project is anticipated to fall within a Type II Use, requiring Site Plan Review and Public Comment through the City's Planning Department.*

- *The project will disturb less than one (1) acre of land, and thus is exempt from a CSGP.*
- *The project will not be constructed within, adjacent to, or indirectly affect critical areas. A Critical Areas Permit or report will not be required. Similarly, this Scope of Work does not include any local, state, or federal permits for impacts to streams, wetlands, or other regulated water features.*
- *The reservoir replacement portion of the project will receive SRF monies, requiring compliance with a number of state and federal statutes under the National Environmental Policy Act, including the SERP and cultural/historic reviews. If the project does not receive SRF monies, RH2 will not expend the fee detailed in subtasks 3.6 and 3.13.*

RH2 Deliverables:

- Attendance by two (2) RH2 staff at the public meeting.
- Two (2) hard copies (comb-bound) for permit submittals, one (1) hard copy for the City, and one (1) hard copy for the RH2 library for each permit application. One (1) electronic copy (PDF) of each application.

Task 4 – 60-percent Design

Objective: Prepare 60-percent construction plans and an updated construction cost estimate for review by the City. *Technical specifications will be provided with this submittal. The comments developed during the 30-percent review process will be addressed. It is anticipated that 60-percent review comments will be constrained to details that were developed subsequent to the 30-percent review submittal, or that were revised or unresolved during the 30-percent review process. The 60-percent plans shall include approximately 90 percent of all construction plan sheets.*

Approach:

- 4.1 Prepare structural calculations for the reservoir, including lateral analysis, roof, shell, and reservoir foundation. Provide QA/QC review of structural calculations. Make recommended updates and additions to calculations per review comments. Prepare and format calculations, with supporting documentation, for the building permit application.
- 4.2 Design demolition and construction phasing plans.
- 4.3 Prepare site and utility plans to show the major utility appurtenances such as isolation valves, manholes, catch basins, and light poles. *Landscaping plans will show the layout of specific plant material with a suggested plant palette for the City's permitting process review. Irrigation plans will also be generated.*
- 4.4 Provide detailed design of the reservoir foundation, walls, and roof. Develop plans showing the geometry, joint geometry, seismic cables, and reinforcing steel.
- 4.5 Further detail the configuration of the reservoir piping, and mechanical components and size piping systems for reservoir inlet, outlet, overflow, drain, and the foundation under the drain. *Plans will include equipment selection, pipe sizes and materials, thrust restraint, vault sizing, selection, and drainage.*
- 4.6 Prepare plans that show reservoir appurtenances, including access hatches, vents, exterior and interior ladders or stairs, exterior roof access, roof platform, and safety cages, as requested or required.

- 4.7 Prepare electrical, control, and monitoring design, including the following:
- Develop design of electrical systems for operating appurtenances at the reservoir. *Work is to include designing the lighting system, sizing raceways and conductors, and preparing design details.*
 - Develop design of control and monitoring sensors to be installed at the reservoir including construction details. *Equipment will be selected per City standards.*
 - Determine power supply requirements and meet with the PUD to discuss the design criteria, review the power supply design, and present the PUD with design criteria. Develop power service plan. Perform a site visit if deemed necessary to help determine location and routing of PUD equipment.
 - Prepare a one-line diagram and electrical plan, including branch circuit panel detail, and other detail typical to this work.
 - Develop criteria and performance requirements for telemetry system. *The prepared documentation will be provided to the City's telemetry integrator for estimating, designing and installing a proposed telemetry system at the proposed reservoir.*
- 4.8 Develop technical specifications (Divisions 1 through 18) specific to this project for equipment, materials, and construction tasks. *Specification requirements will be based on design criteria determined during the preliminary design phase, current building codes, and subsequent discussions with the City. Technical specifications will use RH2's facility specifications in a modified CSI format.*
- 4.9 Prepare a 60-percent level probable construction cost estimate. *The 60-percent estimate shall reflect the pay items and quantities as developed at the 60-percent stage of the project.*
- 4.10 Provide in-house QA/QC review of 60-percent plans and specifications.
- 4.11 Prepare for and attend a 60-percent review meeting with the City. Prepare and distribute meeting minutes.

RH2 Deliverables:

- Electronic version (PDF) of the 60-percent construction cost estimate.
- One (1) electronic version (Microsoft Word) and one (1) hard copy of the 60-percent technical specifications.
- Four (4) half-size color, bound 60-percent construction plans.
- One (1) electronic copy of the AutoCAD files in PDF format.

Task 5 – 90-percent Design

Objective: Prepare 90-percent construction plans and an updated construction cost estimate for review by the City. *The comments developed during the 60-percent review process will be addressed. It is anticipated that 90-percent review comments will be constrained to details that were developed subsequent to the 60-percent review submittal, or that were revised or unresolved during the 60-percent review process. The 90-percent plans shall include 100-percent of the construction plan sheets. At the end of the 90-percent project design task, the details shall be included in the plans and specifications.*

Approach:

- 5.1 Incorporate City comments into plans. Site (including landscaping and irrigation), structural, mechanical, and electrical plans will be revised. *Preliminary details will be revised and outstanding minor details will be developed. At this point of the design, the submittal is to include all of the plans in the construction contract documents to be ready for permitting.*
- 5.2 Perform 90-percent in-house QA/QC review of plans and specifications.
- 5.3 Prepare front-end specifications. Coordinate with the City regarding advertising dates, and bid opening date and time.
- 5.4 Update technical specifications to include additions and revisions per previous review and comments.
- 5.5 Prepare 90-percent level probable construction cost estimate based on information supplied by material vendors and similar projects adjusted for anticipated bidding conditions.
- 5.6 Prepare for and attend a 90-percent review meeting with the City. Prepare and distribute meeting minutes.

RH2 Deliverables:

- Electronic versions (PDF) of the 90-percent construction cost estimate.
- One (1) electronic version (Microsoft Word with tracked changes) of the 90-percent specifications.
- One (1) unbound version (printed on double-sided sheets with tracked changes) of the 90-percent specifications with appendices.
- Three (3) half-size color, bound, and one (1) full-size color, bound, 90-percent construction plans.
- One (1) electronic copy of the AutoCAD files in PDF.

Task 6 – Final Construction Contract Documents

Objective: Incorporate the comments from the 90-percent review into the plans and specifications. *A final in-house QA/QC review will be performed. By the end of this task, the plans and specifications will be ready for reproduction for bidding purposes.*

Approach:

- 6.1 Update structural calculations with additions or revisions requested in the permit review.
- 6.2 Incorporate permit review comments and City comments into plans. *Site (including landscaping and irrigation), structural, mechanical, and electrical plans will be finalized. Preliminary details will be finalized, and outstanding minor details will be developed and finalized.*
- 6.3 Address comments on the 90-percent specifications and finalize the construction contract documents accordingly. *The construction contract and specifications will be ready to use during bid advertisement.*
- 6.4 Review completed edits.

- 6.5 Prepare a final engineer's estimate of probable construction cost, formatted for bidding, and provide a range of probable construction cost in bid documents for the purpose of establishing bid bond value.

RH2 Deliverables:

- Three (3) bound, hard copies and one (1) electronic copy (PDF) of the final construction contract documents and specifications.
- Three (3) half-size color, three (3) full-size color hard copies, and one (1) electronic copy (PDF or DWF) of the final drawings.

Task 7 – Services During Bidding

Objective: Assist the City during the project bidding and contracting phases. *It is assumed that RH2 will prepare the bid advertisement and coordinate bidding but that the City will pay advertising fees. The City will post the documents electronically to a plan center for bidding. Hard copies will not be generated for bidders.*

Approach:

- 7.1 Prepare advertisement for bids and coordinate dates of advertisement. Contact potentially interested bidders by email or telephone.
- 7.2 Create electronic construction contract documents for posting to plan center.
- 7.3 Respond to technical questions from bidders.
- 7.4 Prepare and transmit up to two (2) addenda via online bidding service.
- 7.5 Conduct the bid opening and collect bids for review.
- 7.6 Review bids and compile and check the bid tab. Attend one (1) meeting with the City to review the bid tab and bidders' qualifications.
- 7.7 Check references of apparent low bidder. Prepare a letter recommending contract award to the lowest qualified bidder.

RH2 Deliverables:

- Advertisement for bids
- Construction contract documents posted to plan center.
- Two (2) addenda (if necessary).
- Five (5) half-size plans and PDF files of the plans and specifications

PHASE 3 – MANAGEMENT RESERVE

Task 1 – Management Reserve

Objective: Provide additional services as requested by the City.

Approach:

- 1.1. Provide additional services for the project as requested and authorized by the City. RH2 shall submit a budget estimate for supplemental services as requested by the City. The City shall provide written authorization to proceed with any supplemental services.

RH2 Deliverables:

- Budget estimate for supplemental services.
- Other deliverables as requested by the City under the authorization for any supplemental services.

Services During Construction – Future Phase

RH2 can provide a range of technical support and construction contract administration services during the construction phase for the project. The scope of this effort can be better determined between RH2 and the City after several of the tasks described above have been completed.

EXHIBIT B

City of Kelso

Minor Road Reservoirs Replacement Project

Estimate of Time and Expense

Description	Total Hours	Total Labor	Total Subconsultant	Total Expense	Total Cost
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Task 1 Project Management						
1.1	Provide direction, coordination, and oversight to the RH2 project team	36	\$ 7,308	\$ -	\$ 220	\$ 7,528
1.2	Document and retain information	22	\$ 3,830	\$ -	\$ 141	\$ 3,971
1.3	Prepare monthly invoices and budget status summaries	24	\$ 4,740	\$ -	\$ 140	\$ 4,880
1.4	Prepare for and attend 3 coordination meetings with City staff	54	\$ 10,446	\$ -	\$ 1,015	\$ 11,461
1.5	Create, maintain, and update an internal project design schedule	10	\$ 1,942	\$ -	\$ 98	\$ 2,040
Subtotal		146	\$ 28,266	\$ -	\$ 1,614	\$ 29,880

Task 2 Topographic Survey						
2.1	Subcontract and coordinate with Prizm for survey of water main	4	\$ 685	\$ 20,010	\$ 25	\$ 20,720
2.2	Subcontract and coordinate with Prizm for survey of reservoir site	4	\$ 685	\$ 18,055	\$ 23	\$ 18,763
2.3	Attend 1 site visit with City	12	\$ 2,264	\$ -	\$ 404	\$ 2,668
2.4	Review survey data for the water main and reservoir designs	24	\$ 3,768	\$ -	\$ 952	\$ 4,720
Subtotal		44	\$ 7,402	\$ 38,065	\$ 1,403	\$ 46,870

Task 3 Geotechnical Investigation and Reporting						
3.1	Investigate field reservoir site	28	\$ 5,699	\$ 15,525	\$ 616	\$ 21,840
3.2	Investigate field water main alignment	8	\$ 1,579	\$ 2,875	\$ 504	\$ 4,958
3.3	Prepare geotechnical investigation report	43	\$ 8,574	\$ -	\$ 660	\$ 9,234
3.4	Prepare geotechnical memorandum	6	\$ 1,167	\$ -	\$ 178	\$ 1,345
3.5	Conduct short-term pumping test (optional)	18	\$ 3,638	\$ -	\$ 215	\$ 3,853
Subtotal		103	\$ 20,657	\$ 18,400	\$ 2,173	\$ 41,230

Task 4 Refine Reservoir Site and Water Main Constructability						
4.1	Refine reservoir site construction staging access	58	\$ 10,428	\$ -	\$ 962	\$ 11,390
4.2	Refine water main constructability based on geotechnical findings	20	\$ 3,464	\$ -	\$ 146	\$ 3,610
Subtotal		78	\$ 13,892	\$ -	\$ 1,108	\$ 15,000

Subtotal General Project Tasks	371	\$ 70,217	\$ 56,465	\$ 6,298	\$ 132,980
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Phase 1 - Kelso Drive Watermain

Task 1 Water Main Design						
1.1	Format base map	14	\$ 2,226	\$ -	\$ 448	\$ 2,674
1.2	Prepare preliminary water main layout	52	\$ 8,516	\$ -	\$ 1,048	\$ 9,564
1.3	Meet with City to review preliminary layout	14	\$ 2,540	\$ -	\$ 292	\$ 2,832
1.4	Prepare 90% design of the water mains and appurtenances	138	\$ 22,178	\$ -	\$ 2,624	\$ 24,802
1.5	Prepare details for connection to existing water mains	22	\$ 3,720	\$ -	\$ 311	\$ 4,031
1.6	Prepare traffic control plan along Kelso Drive	20	\$ 3,296	\$ -	\$ 355	\$ 3,651
1.7	Meet with City to review 90% layout	10	\$ 1,836	\$ -	\$ 473	\$ 2,309
1.8	Perform in-house QA/QC review of plans	16	\$ 3,160	\$ -	\$ 279	\$ 3,439
1.9	Prepare technical specification	78	\$ 12,062	\$ -	\$ 347	\$ 12,409
1.10	Create standard detail sheets using the City's standard details	6	\$ 942	\$ -	\$ 131	\$ 1,073
1.11	Prepare a construction cost estimate	30	\$ 4,920	\$ -	\$ 124	\$ 5,044
1.12	Finalize plans and specifications based on review comments	48	\$ 7,704	\$ -	\$ 1,078	\$ 8,782
Subtotal		448	\$ 73,100	\$ -	\$ 7,510	\$ 80,610

Task 2 Permitting Assistance						
2.1	Prepare Master Land Use application to accompany SEPA checklist	6	\$ 942	\$ -	\$ 28	\$ 970
2.2	Prepare SEPA checklist	22	\$ 3,689	\$ -	\$ 319	\$ 4,008
2.3	Prepare Grading Permit application	12	\$ 1,978	\$ -	\$ 264	\$ 2,242
Subtotal		40	\$ 6,609	\$ -	\$ 611	\$ 7,220

Task 3 Services During Bidding						
3.1	Prepare advertisement for bid	4	\$ 652	\$ -	\$ 18	\$ 670
3.2	Create electronic construction contract documents for posting	9	\$ 1,297	\$ -	\$ 115	\$ 1,412
3.3	Respond to technical questions from bidders	20	\$ 3,292	\$ -	\$ 275	\$ 3,567
3.4	Prepare and transmit up to 2 addenda	18	\$ 2,762	\$ -	\$ 243	\$ 3,005
3.5	Conduct the bid opening and collect bids for review	12	\$ 2,370	\$ -	\$ 61	\$ 2,431
3.6	Review bids and compile and check the bid tab	8	\$ 1,304	\$ -	\$ 62	\$ 1,366
3.7	Check references of apparent low bidder	4	\$ 684	\$ -	\$ 46	\$ 730
Subtotal		75	\$ 12,361	\$ -	\$ 819	\$ 13,180

Subtotal Phase 1 - Kelso Drive Watermain Tasks	563	\$ 92,070	\$ -	\$ 8,940	\$ 101,010
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	Description	Total Hours	Total Labor	Total Subconsultant	Total Expense	Total Cost
Phase 2 - Minor Road Reservoirs Replacement						
Task 1	Reservoir Preliminary Design (30% complete)					
1.1	Summarize criteria and develop design criteria checklist	18	\$ 3,242	\$ -	\$ 86	\$ 3,328
1.2	Prepare for and attend a kickoff meeting with City staff	32	\$ 6,048	\$ -	\$ 156	\$ 6,204
1.3	Analyze up to 3 reservoir geometry to fine-tune site grading	68	\$ 11,548	\$ -	\$ 1,044	\$ 12,592
1.4	Prepare cover sheet, existing site plan, and demolition plan	38	\$ 6,120	\$ -	\$ 798	\$ 6,918
1.5	Prepare preliminary construction and grading plans and details	52	\$ 8,640	\$ -	\$ 916	\$ 9,556
1.6	Prepare preliminary site and utility plans and details	52	\$ 8,640	\$ -	\$ 916	\$ 9,556
1.7	Prepare reservoir plan and elevation views	42	\$ 6,784	\$ -	\$ 815	\$ 7,599
1.8	Prepare mechanical plans	30	\$ 4,860	\$ -	\$ 602	\$ 5,462
1.9	Prepare preliminary design of main structural elements	60	\$ 9,582	\$ -	\$ 1,132	\$ 10,714
1.10	Identify electrical, control, and appurtenances for the reservoir	24	\$ 3,710	\$ -	\$ 415	\$ 4,125
1.11	Contact Cowlitz PUD to discuss related to power for the site	6	\$ 932	\$ -	\$ 23	\$ 955
1.12	Prepare 30-percent level probable construction cost estimate	36	\$ 6,060	\$ -	\$ 456	\$ 6,516
1.13	Perform in-house QA/QC review of preliminary design	22	\$ 4,428	\$ -	\$ 211	\$ 4,639
1.14	Prepare for and attend a 30% review meeting with City staff	12	\$ 2,264	\$ -	\$ 384	\$ 2,648
	Subtotal	492	\$ 82,858	\$ -	\$ 7,952	\$ 90,810
Task 2	Stormwater Engineering and Report					
2.1	Develop an on-site stormwater management system	26	\$ 4,320	\$ -	\$ 138	\$ 4,458
2.2	Develop a Stormwater Site Plan (SSP)	26	\$ 4,320	\$ -	\$ 413	\$ 4,733
2.3	Prepare a Stormwater Pollution Prevention Plan (SWPPP)	30	\$ 4,920	\$ -	\$ 510	\$ 5,430
2.4	Develop an O&M manual for the proposed stormwater facilities	16	\$ 2,736	\$ -	\$ 210	\$ 2,946
2.5	Perform off-site analysis that assesses the potential impacts	26	\$ 4,320	\$ -	\$ 384	\$ 4,704
2.6	Submit SSP and associated plans for review to the City	4	\$ 704	\$ -	\$ 86	\$ 790
	Subtotal	128	\$ 21,320	\$ -	\$ 1,740	\$ 23,060
Task 3	Permitting Assistance and Public Meeting					
3.1	Provide the City with information for property owners	18	\$ 3,036	\$ -	\$ 245	\$ 3,281
3.2	RH2 and City staff will perform door-to-door visits to neighbors	8	\$ 1,448	\$ -	\$ 266	\$ 1,714
3.3	Prepare neighborhood flyer	15	\$ 2,460	\$ -	\$ 317	\$ 2,777
3.4	Prepare Master Land Use application	6	\$ 942	\$ -	\$ 111	\$ 1,053
3.5	Prepare SEPA checklist	25	\$ 4,160	\$ -	\$ 384	\$ 4,544
3.6	Prepare SERP compliance	30	\$ 5,068	\$ -	\$ 461	\$ 5,529
3.7	Prepare Administrative Use Permit application and Exhibits	20	\$ 3,263	\$ -	\$ 534	\$ 3,797
3.8	Prepare Grading Permit application	12	\$ 1,978	\$ -	\$ 191	\$ 2,169
3.9	Prepare Building Permit application and supporting documents	40	\$ 6,298	\$ -	\$ 606	\$ 6,904
3.10	Prepare materials for stormwater management compliance	30	\$ 5,006	\$ -	\$ 405	\$ 5,411
3.11	Prepare a project report based on applicable WAC requirements	57	\$ 9,737	\$ -	\$ 663	\$ 10,400
3.12	Prepare construction documents for DOH review	20	\$ 3,325	\$ -	\$ 515	\$ 3,840
3.13	Prepare cultural/historic documentation for GEO 05-05/NHPA	16	\$ 2,620	\$ 4,025	\$ 205	\$ 6,850
	Subtotal	297	\$ 49,341	\$ 4,025	\$ 4,904	\$ 58,270
Task 4	60-percent Design					
4.1	Prepare structural calculation for the reservoir	68	\$ 11,240	\$ -	\$ 300	\$ 11,540
4.2	Design demolition and construction phasing plans	48	\$ 8,296	\$ -	\$ 642	\$ 8,938
4.3	Prepare site and utility plans	76	\$ 12,408	\$ -	\$ 1,268	\$ 13,676
4.4	Provide detailed design of reservoir foundation, walls, and roof	88	\$ 13,224	\$ -	\$ 1,888	\$ 15,112
4.5	Detail reservoir piping and mechanical components	24	\$ 3,958	\$ -	\$ 424	\$ 4,382
4.6	Prepare plans that show reservoir appurtenances	38	\$ 5,508	\$ -	\$ 912	\$ 6,420
4.7	Prepare electrical, control, and monitoring design	60	\$ 9,320	\$ -	\$ 1,195	\$ 10,515
4.8	Develop technical specifications (Divisions 1 through 18)	64	\$ 10,300	\$ -	\$ 309	\$ 10,609
4.9	Prepare 60% level probable construction cost estimate	38	\$ 6,526	\$ -	\$ 444	\$ 6,970
4.10	Provide in-house QA/QC review of 60-percent plans and specifications	34	\$ 7,260	\$ -	\$ 482	\$ 7,742
4.11	Prepare for and attend a 60-percent review meeting with the City	12	\$ 2,264	\$ -	\$ 384	\$ 2,648
	Subtotal	550	\$ 90,304	\$ -	\$ 8,246	\$ 98,550
Task 5	90% Design					
5.1	Incorporate City comments into plans	94	\$ 14,852	\$ -	\$ 1,718	\$ 16,570
5.2	Perform 90-percent in-house QA/QC review of plans and specifications	48	\$ 9,724	\$ -	\$ 904	\$ 10,628
5.3	Prepare front-end specifications	52	\$ 8,136	\$ -	\$ 224	\$ 8,360
5.4	Update technical specifications per review comments	32	\$ 5,376	\$ -	\$ 234	\$ 5,610
5.5	Prepare 90-percent-level probable construction cost estimate	24	\$ 4,001	\$ -	\$ 352	\$ 4,353
5.6	Prepare for and attend a 90-percent review meeting with the City	12	\$ 2,264	\$ -	\$ 684	\$ 2,948
	Subtotal	262	\$ 44,353	\$ -	\$ 4,117	\$ 48,470
Task 6	Final Construction Contract Documents					
6.1	Update structural calculations per permit review	8	\$ 1,372	\$ -	\$ 98	\$ 1,470
6.2	Incorporate review comments and City comments into plans	68	\$ 10,790	\$ -	\$ 1,350	\$ 12,140
6.3	Address comments on the 90% specifications and finalize	30	\$ 4,958	\$ -	\$ 806	\$ 5,764
6.4	Review edits and prepare documents for bidding	20	\$ 4,016	\$ -	\$ 301	\$ 4,317
6.5	Prepare a final engineer's estimate of probable construction cost	14	\$ 2,436	\$ -	\$ 172	\$ 2,608
	Subtotal	140	\$ 23,572	\$ -	\$ 2,728	\$ 26,300

	Description	Total Hours	Total Labor	Total Subconsultant	Total Expense	Total Cost
Task 7	Services During Bidding					
7.1	Prepare advertisement for bid	4	\$ 652	\$ -	\$ 18	\$ 670
7.2	Create electronic construction contract documents for posting to plan center	13	\$ 1,849	\$ -	\$ 211	\$ 2,060
7.3	Respond to technical questions from bidders	32	\$ 5,288	\$ -	\$ 537	\$ 5,825
7.4	Prepare and transmit up to 2 addenda	34	\$ 5,442	\$ -	\$ 443	\$ 5,885
7.5	Conduct the bid opening and collect bids for review	12	\$ 2,370	\$ -	\$ 70	\$ 2,440
7.6	Review bids and compile and check the bid tab	10	\$ 1,666	\$ -	\$ 74	\$ 1,740
7.7	Check references of apparent low bidder	4	\$ 684	\$ -	\$ 46	\$ 730
	Subtotal	109	\$ 17,951	\$ -	\$ 1,399	\$ 19,350

Subtotal Phase 2 - Minor Road Reservoirs Replacement Tasks	1978	\$ 329,699	\$ 4,025	\$ 31,086	\$ 364,810
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Phase 3 - Management Reserve

Task 1	Management Reserve					
1.1	Provide additional services as requested by City	156	\$ 27,784	\$ -	\$ 2,216	\$ 30,000
	Subtotal	156	\$ 27,784	\$ -	\$ 2,216	\$ 30,000

Subtotal Phase 3 - Management Reserve Tasks	156	\$ 27,784	\$ -	\$ 2,216	\$ 30,000
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PROJECT TOTAL	3068	\$ 519,770	\$ 60,490	\$ 48,540	\$ 628,800
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EXHIBIT C
RH2 ENGINEERING, INC.
SCHEDULE OF RATES AND CHARGES

2015 HOURLY RATES

CLASSIFICATION		RATE	CLASSIFICATION		RATE
Professional	IX	\$214.00	Technician	IV	\$138.00
Professional	VIII	\$214.00	Technician	III	\$130.00
Professional	VII	\$206.00	Technician	II	\$97.00
			Technician	I	\$92.00
Professional	VI	\$190.00			
Professional	V	\$181.00	Administrative	V	\$129.00
Professional	IV	\$171.00	Administrative	IV	\$108.00
			Administrative	III	\$93.00
Professional	III	\$161.00	Administrative	II	\$77.00
Professional	II	\$150.00	Administrative	I	\$65.00
Professional	I	\$138.00			

IN-HOUSE SERVICES

In-house copies (each)	8.5" X 11"	\$0.09	CAD Plots	Large	\$25.00
In-house copies (each)	8.5" X 14"	\$0.14	CAD Plots	Full Size	\$10.00
In-house copies (each)	11" X 17"	\$0.20	CAD Plots	Half Size	\$2.50
In-house copies (color) (each)	8.5" X 11"	\$0.90	CAD System	Per Hour	\$27.50
In-house copies (color) (each)	8.5" X 14"	\$1.20	GIS System	Per Hour	\$27.50
In-house copies (color) (each)	11 X 17"	\$2.00	Technology Charge		2.5% of Direct Labor
			Mileage		Current IRS Rate

OUTSIDE SERVICES

Outside direct costs for permit fees, reports, maps, data, reprographics, couriers, postage, and non-mileage related travel expenses that are necessary for the execution of the project and are not specifically identified elsewhere in the contract will be invoiced at cost.

All Subconsultant services are billed at cost plus 15%.

CHANGES IN RATES

Rates listed here are adjusted annually. The current schedule of rates and charges is used for billing purposes. Payment for work accomplished shall be based on the hourly rates and expenses in effect at the time of billing as stated in this Exhibit.

AGENDA SUMMARY SHEET

Business of the City Council City of Kelso, Washington

SUBJECT TITLE: AN ORDINANCE OF THE CITY OF KELSO AMENDING KELSO MUNICIPAL CODE CHAPTER 10.06 RELATING TO THE ABATMENT AND REMOVAL OF JUNK VEHICLES

Agenda Item: _____

Dept. of Origin: Community Development

For Agenda of: October 6, 2015

Originator: Steve Taylor

City Attorney: **Janean Parker**

City Manager: **Steve Taylor**

PRESENTED BY:

Steve Taylor

Agenda Item Attachments:

Ordinance

Exhibit A – Proposed Chapter 10.06 Junk Vehicles and Automobile Hulks

Current Chapter 10.06

SUMMARY STATEMENT:

As part of the update to the City's code enforcement/nuisance abatement program staff reviewed the process for handling junk vehicles and found portions of the code in need of updating. This KMC chapter was last updated in 1992 and the state law governing junk vehicles has changed since that time. The proposed amendments updates the definitions, removal process, authority section, and brings the language into full compliance with state law. It also creates consistency with the newly adopted KMC Chapter 1.50 Code Enforcement.

RECOMMENDED ACTION:

Move to approve on first reading an ordinance amending Chapter 10.06 Junk Vehicles and Automobile Hulks of the Kelso Municipal Code.

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF KELSO AMENDING KELSO MUNICIPAL CODE CHAPTER 10.06 RELATING TO THE ABATEMENT AND REMOVAL OF JUNK VEHICLES

WHEREAS, State law authorizing the impoundment and abatement of junk vehicles from public and private property has been amended since the City last amended its junk vehicle code in 1992; and

WHEREAS, the City Council has considered and adopted changes to the Kelso Municipal Code to create a new Chapter 1.50 Code Enforcement to establish updated and consistent enforcement procedures for code violations and establish a hearing examiner appeal procedure; and

Whereas, the City Council wishes to update its junk vehicle enforcement regulations at KMC 10.06 to reflect this new State law and City codes;

NOW, THEREFORE,

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

SECTION 1. Kelso Municipal Code Chapter 10.06 Amended. That Kelso Municipal Code Chapter 10.06 Junk Vehicles and Automobile Hulks is hereby amended as set forth in Exhibit “A” attached hereto and incorporated fully by this reference.

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 on December 1, 2015 upon its passage and publication of summary as required by law.

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

ATTEST/AUTHENTICATION:

MAYOR

CITY CLERK

APPROVED AS TO FORM:

CITY ATTORNEY

PUBLISHED:_____

**Chapter 10.06
JUNK VEHICLES AND
AUTOMOBILE HULKS**

Sections:

10.06.010 Purpose and intent.

10.06.020 Definitions.

10.06.030 Nuisance.

10.06.040 Enforcement authority.

10.06.050 Summary removal procedures.

10.06.060 Exceptions.

10.06.070 General duty.

10.06.080 Certain provisions superseded.

10.06.010 Purpose and intent.

The purpose and intent of this chapter is to provide for and implement the greatest powers possible for facilitating the abatement and removal of abandoned and junk vehicles and parts thereof, from public and private property as authorized in RCW 46.55.230 and 240 as adopted or hereafter amended.

10.06.020 Definitions.

The following words and terms used in this chapter shall have the following meanings except where otherwise defined in this chapter, and unless where used the context thereof clearly indicates to the contrary:

“Junk vehicle” means any vehicle certified under RCW 46.55.230 and meeting at least three of the following criteria:

1. Is three years old or older;
2. Is extensively damaged, such damage including, but not limited to, any of the following: A broken window or windshield or missing wheels, tires, motor or transmission;
3. Is apparently inoperable;
4. Has an approximate fair market value equal only to the approximate value of the scrap in it.

10.06.030 Nuisance.

Exhibit A

The storing or keeping of junk vehicles or parts thereof on public or private property is declared to be a public nuisance, except as provided for in Section 10.06.060. Such public nuisance may be abated as provided for in Sections 10.06.050.

10.06.040. Enforcement authority.

The Kelso police department shall enforce this chapter and shall be responsible for the abatement and removal of any junk vehicle or part thereof as a public nuisance.

10.06.050. Summary removal procedures.

A. Any Kelso police officer may inspect and certify that a vehicle meets the requirements of a junk vehicle. The officer making the certification shall record the make and vehicle identification number or license number of the vehicle if available, and shall also describe in detail the damage or missing equipment to verify that the value of the vehicle is equivalent only to the value of scrap in it.

B. If the officer determines that a vehicle is a junk vehicle, the officer shall provide notice to the last registered owner of record of the vehicle shown on the records of the Washington State Department of Licensing and the property owner of record of the property upon which the vehicle is located, by certified mail, with a five-day return receipt requested. The notice shall provide the following information:

1. that the City has investigated and determined that the vehicle is a junk vehicle;
2. that the property owner and/or the owner of the vehicle shall have 15 days from the date of the notice to remove the vehicle from the property;
3. that if the vehicle is not removed, the City intends to dispose of the vehicle and assess the costs of removal to the registered owner of the vehicle or to the owner of the property where the vehicle is stored;
4. that a hearing on the abatement of the junk vehicle as a public nuisance may be requested in writing within 15 days of the date of the mailing of the notice; and
5. that if no hearing is requested within 15 days of the date of the mailing of the notice, the junk vehicle or part thereof will be removed.

C. If a written request for a hearing is received within 15 days, the City shall provide notice of the hearing to the owner of the land as shown on the last equalized assessment roll and the last registered and legal owner of record unless a vehicle is in such condition that identification number are not available to determine ownership. The notice shall give the time, location, and date of the hearing on the question of abatement and removal of the vehicle or part thereof as a public nuisance. The notice shall be sent by certified mail, with a five-day return receipt requested.

D. The hearing shall be conducted before a duly appointed Kelso hearing examiner within 30 days of the mailing the notice of hearing.

Exhibit A

E. The owner of the property on which the vehicle is located may appear in person at the hearing or present a written statement in time for consideration at the hearing, and deny responsibility for the presence of the vehicle on the land, with his or her reasons for the denial. If it is determined at the hearing that the vehicle was placed on the land without the consent of the landowner and that he or she has not subsequently acquiesced in its presence, the cost of administration or removal of the vehicle shall not be assessed against the property upon which the vehicle is located, nor can the costs be collected from the property owner.

F. After the expiration of the fifteen days provided for in the notice to the registered owner and landowner of the city's intent to abate, remove, or dispose of the vehicle, and after a hearing, if requested, has been held affirming the City's determination, the vehicle or part thereof shall be removed at the request of the Kelso police department and disposed of by a licensed vehicle wrecker, hulk hauler, or scrap processor with notice to the Washington State Patrol and the Washington State Department of Licensing that the vehicle has been wrecked.

G. The cost of abatement and removal of the vehicle or part thereof under this chapter including the costs of administration and hearing shall be assessed against the last registered owner of the vehicle if the identity of the owner can be determined, unless the owner in the transfer of ownership of the vehicle had complied with RCW Chapter 46.12, or the cost may be assessed against the owner of the property on which the vehicle is stored, unless it has been determined the property owner is not responsible as set forth in RMC 10.06.050(E) above.

10.06.060 Exceptions.

The provisions of this chapter shall not apply under the following conditions:

A. If a junk vehicle, parts thereof, or automobile hulk is completely enclosed within a building in a lawful manner and is not visible from the street or other public or private property; or

B. If a junk vehicle, parts thereof, or automobile hulk is stored or parked in a lawful manner on private property in connection with the business of a licensed dismantler or licensed vehicle dealer and is fenced according to RCW [46.80.130](#) as now enacted or hereafter emended.

10.06.070 General duty.

None of the provisions of this chapter are intended to create a cause of action or provide the basis for a claim against the city, its officials, or employees for the performance or failure to perform a duty or obligation running to a specific individual or specific individuals. Any duty or obligation created herein is intended to be a general duty or obligation running in favor of the general public.

10.06.080 Certain provisions superseded.

With respect to the types of vehicles described herein, the procedures set forth in this chapter shall supersede those described in Chapter 1.50 of the Kelso Municipal Code.

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF KELSO AMENDING KELSO MUNICIPAL CODE CHAPTER 13.09, STORMWATER MANAGEMENT AND CHAPTER 13.11 ILLICIT DISCHARGES—STORMWATER UTILITY TO AMEND THE ENFORCEMENT PROCEDURES TO BE CONSISTENT WITH NEW KMC CHAPTER 1.50 CODE ENFORCEMENT

WHEREAS, the City Council adopted new stormwater regulations in 2009 and 2010 by Kelso Municipal Code Chapters 13.09 and 13.11 to comply with new state stormwater laws, including provisions for the enforcement of violation of such stormwater regulations; and

WHEREAS, the City Council has considered and adopted changes to the Kelso Municipal Code to create a new Chapter 1.50 Civil Penalties in order to establish civil penalties for certain violations of the Kelso Municipal Code and to establish updated consistent enforcement procedures for code violations; and

WHEREAS, the City Council wishes to update its stormwater enforcement regulations at Kelso Municipal Code 13.09 and 13.11 to be consistent with the new civil penalty provisions;

NOW, THEREFORE,

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

SECTION 1. KMC CHAPTER 13.09 AMENDED. That Kelso Municipal Code Chapter 13.09 is hereby amended as set forth in Exhibit A, attached hereto and incorporated fully by this reference.

SECTION 2. KMC CHAPTER 13.11 AMENDED. That Kelso Municipal Code Chapter 13.11 is hereby amended as set forth in Exhibit B, attached hereto and incorporated fully by this reference.

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 _____, 2015.

ATTEST/AUTHENTICATION:

MAYOR

CITY CLERK

APPROVED AS TO FORM:

CITY ATTORNEY

PUBLISHED: _____

Chapter 13.09

STORMWATER MANAGEMENT

Sections:

13.09.010	Purpose/intent.
13.09.020	Definitions.
13.09.030	General provisions.
13.09.035	Stormwater management program adopted.
13.09.040	Applicability and exemptions.
13.09.050	General requirements.
13.09.060	Standards for development.
13.09.070	Construction inspection for permanent stormwater BMPs.
13.09.080	Easements, deeds and education.
13.09.090	Maintenance agreement and plan.
13.09.100	Stormwater performance bond.
13.09.110	As-built plans.
13.09.120	Dedication of stormwater BMPs.
13.09.130	Ongoing maintenance for stormwater BMPs.
13.09.140	Maintenance escrow requirement.
13.09.150	Maintenance and inspection.
13.09.160	Administration.
13.09.170	Adjustments, exceptions, and appeals.
13.09.180	Severability.
13.09.190	Compatibility with other permit and ordinance requirements.
13.09.200	Legal authority.
13.09.210	Liability.
13.09.220	Designation of public works – Powers and duties.

13.09.010 Purpose/intent.

The purpose of this chapter is to provide for the health, safety, and general welfare of the citizens of the city through the regulation of runoff from construction, development, and redevelopment. This chapter establishes methods for controlling the introduction of runoff and pollutants into the stormwater drainage system in order to comply with requirements of the Western Washington Phase II Municipal Stormwater Permit (Permit) process.

The objectives of this chapter are to:

- A. Minimize water quality degradation in streams, ponds, lakes, wetlands, and other water bodies;
- B. Minimize the degradation of habitat and habitat forming processes in streams, ponds, lakes, wetlands, and other water bodies;
- C. Minimize the impact of increased volume and runoff rates, flooding, increases in stream temperature, erosion and sedimentation caused by land development and maintenance practices;
- D. Promote site planning and construction practices that are consistent with natural geological, topographical, vegetational, and hydrological conditions;
- E. Maintain and protect the city's stormwater management infrastructure and those downstream;
- F. Minimize disruption of hydrologic functions, patterns, and processes;
- G. Regulate the contribution of pollutants to the stormwater drainage system by stormwater dischargers from development and redevelopment;
- H. Provide long-term responsibility for and maintenance of stormwater BMPs;

I. Establish legal authority to carry out all the inspection and monitoring procedures necessary;

J. Meet the minimum requirements as established in Chapter 173-218 WAC and the Permit.

The intent of this chapter is to place the obligation of complying with its requirements upon the owner and/or contractor. Neither the city nor any officer, agent, or employee thereof shall incur or be held as assuming any liability by reason or in consequence of any permission, inspection or approval authorized herein, or issued as provided herein, or by reason or consequence of anything done or act performed pursuant to the provisions of this chapter. (Ord. 3727 § 1, 2010)

13.09.020 Definitions.

For the purposes of this chapter, the following definitions shall mean:

1. "Amenity" means a pleasant and/or engaging feature that increases attractiveness, value, and/or understanding of stormwater.
2. "Best management practices (BMPs)" means the schedules of activities, prohibitions of practices, general good housekeeping practices, pollution prevention and educational practices, maintenance procedures, and other structural or managerial practices that, when used singly or in combination, prevent or reduce the release of pollutants and other adverse impacts to waters of Washington State or the stormwater drainage system.
 - a. "Source control BMP" means a BMP that is intended to prevent pollution from entering stormwater.
 - b. "Treatment BMP" means a BMP that is intended to remove pollution from stormwater.
 - c. "Flow control BMP" means a BMP that is intended to mitigate the impacts of increased surface and stormwater runoff rates generated by development.
 - d. "Low impact development BMP" means a stormwater management and land development strategy applied at the parcel and subdivision scale that emphasizes conservation and use of on-site natural features integrated with engineered, small-scale hydrologic controls to more closely mimic predevelopment hydrologic functions.
 - e. "Experimental BMP" means any treatment or methodology proposed for treatment or management of stormwater that is not in a current stormwater manual approved by the Washington State Department of Ecology (Ecology).
3. "Bioretention" means an integrated stormwater management practice that uses the chemical, biological, and physical property of plants, microbes, and soils to remove or retain pollutants from stormwater runoff. Bioretention facilities are depressions that can be isolated detention cells, swales for conveyance as well as treatment, or a connected-cell hybrid of the two. Bioretention facilities include compost amended soils, landscape plantings selected for tolerance to a range of conditions and a mulch layer.
4. "City" means the city of Kelso.
5. "Clean Water Act (CWA)" means the federal Water Pollution Control Act (33 U.S.C. Section 1251 et seq.), and any subsequent amendments thereto.
6. "Clearing" means the destruction and removal of vegetation by manual, mechanical, chemical or other such method.
7. "Common plan of development or sale" means a site where multiple separate and distinct construction activities may be taking place at different times on different schedules, but still under a single plan. Examples include: phased projects and projects with multiple filings or lots, even if the separate phases or filings/lots will be constructed under separate contract or by separate owners (e.g., a development where lots are sold to separate builders); a development plan that may be phased over multiple years, but is still under a consistent plan for long-term development; and projects in a contiguous area that may be unrelated but still under the same contract, such as construction of a building extension and a new parking lot at the same facility. If the

project is part of a common plan of development or sale, the disturbed area of the entire plan shall be used in determining permit requirements.

8. "Critical areas" means areas defined in Chapter 18.20, with a critical recharging effect on aquifers used for potable water, fish and wildlife habitat conservation areas, frequently flooded areas, geologically hazardous areas, including unstable slopes, and associated areas and ecosystems.

9. "Detention" means temporary storage of stormwater to facilitate the release of stormwater runoff from the site at a slower rate than it is collected by the stormwater facility system.

10. "Development" means new development, redevelopment, or both, including a combination thereof.

11. "Director" means the city of Kelso public works director or his/her designee.

12. "Ecology" means the Washington State Department of Ecology.

13. "Stormwater Manual" means the "Stormwater Management Manual for Western Washington" by Ecology as currently adopted or hereafter modified.

14. "Erosion" means the wearing away of the land surface by running water, wind, ice, or other geological agents, including such processes as gravitational creep.

15. "Excavation" means the mechanical removal of earth material.

16. "Fill" means a deposit of earth material placed by artificial means.

17. "Forest practice" means any activity conducted on or directly pertaining to forest land and relating to growing, harvesting, or processing timber, including but not limited to road and trail construction; harvesting, final and intermediate; precommercial thinning; reforestation; fertilization; prevention and suppression of diseases and insects; salvage of trees; brush control, or slash burning.

18. "Highly contaminated runoff" means runoff containing toxicants which would violate any water quality standard, including toxicant standards, sediment criteria, and dilution zone criteria.

19. "Highway" means a main public road connecting towns and cities.

20. "Illicit discharge (IDDE)" means any direct or indirect discharge to the stormwater drainage system that is not composed entirely of stormwater.

21. "Impervious surface" means a hard surface area that either prevents or retards the entry of water into the soil mantle as under natural conditions prior to development. A hard surface area which causes water to run off the surface in greater quantities or at an increased rate of flow from the flow present under natural conditions prior to development. Common impervious surfaces include but are not limited to rooftops, walkways, patios, driveways, parking lots or storage areas, concrete or asphalt paving, packed gravel surfaces, packed earthen materials, and macadam or other surfaces which similarly impede the natural infiltration of stormwater. Open, uncovered retention/detention facilities shall not be considered as impervious surfaces for purposes of determining whether the thresholds for application of minimum requirements are exceeded. Open, uncovered retention/detention facilities shall be considered impervious surfaces for purposes of runoff modeling. Impervious surfaces that meet the criteria for full dispersion or that are fully infiltrated in compliance with the Stormwater Manual shall be excluded in the determination of thresholds for compliance with this chapter.

22. "Kelso Engineering Design Manual (KEDM)" means a manual that sets forth certain standards of design and specifications for public works projects in the city and for projects subject to approval by the director. The manual is adopted at Section 13.09.050 and within this chapter for compliance with stormwater requirements for development.

23. "Land-disturbing activity" means any activity that results in movement of earth, or a change in the existing soil cover (both vegetative and nonvegetative) and/or the existing soil topography. Land-disturbing activities

include, but are not limited to, clearing, grading, filling, and excavation. Compaction that is associated with stabilization of structures and road construction shall also be considered a land-disturbing activity. Vegetation maintenance practices or gardening are not generally considered land-disturbing activities.

24. “LID Guidance Manual” means the January 2005 Low Impact Development Technical Guidance Manual for Puget Sound, prepared by the Puget Sound Action Team and the Washington State University Pierce County Extension as now or hereafter amended.

25. “Low impact development (LID)” means a stormwater management and land development strategy applied at the parcel and subdivision scale that emphasizes conservation and use of on-site natural features integrated with engineered, small-scale hydrologic controls to more closely mimic predevelopment hydrologic functions.

26. Maintenance. Maintenance and repair includes activities conducted on currently serviceable structures, facilities, and equipment that involve no expansion or use beyond that previously existing use. Maintenance includes those usual activities taken to prevent a decline, lapse, or cessation in the use of structures and systems. Those usual activities may include removal and replacement of nonfunctional or poorly functioning facilities, including cases where environmental permits require replacing an existing structure with a different type structure, as long as the functioning characteristics of the original structure are not changed. By way of example is the replacement of a collapsed, fish blocking, round culvert with a new box culvert under the same span, or width, of roadway.

27. “MR” means Ecology’s Minimum Technical Requirement(s) or “Minimum Requirements” for New Development and Redevelopment for land disturbances of one acre or more or that are part of a larger common plan of development or sale.

28. “Municipal separate storm sewer system (MS4)” means a conveyance, or system of conveyances (including roads with drainage systems, municipal streets, catch basins, curbs, gutters, ditches, manmade channels, or storm drains):

- a. Owned or operated by a state, city, town, borough, county, parish, district, association, or other public body (created by or pursuant to state law) having jurisdiction over disposal of wastes, stormwater, or other wastes, including special districts under state law such as a sewer district, flood control district or drainage district, or similar entity, or an Indian tribe or an authorized Indian tribal organization, or a designated and approved management agency under Section 208 of the Clean Water Act that discharges to waters of the United States;
- b. Designed or used for collecting or conveying stormwater;
- c. Which is not a combined sewer; and
- d. Which is not part of a publicly owned treatment works as defined at 40 CFR 122.2.

29. “National Pollutant Discharge Elimination System (NPDES)” means the national program for issuing, modifying, revoking, and reissuing, terminating, monitoring and enforcing permits, and imposing and enforcing pretreatment requirements, under Sections 307, 402, 318, and 405 of the federal Clean Water Act, for the discharge of pollutants to surface waters of the state from point sources. These permits are referred to as NPDES permits and, in Washington State, are administered by Ecology under authority delegated pursuant to 33 U.S.C. Section 1342(b).

30. “Native vegetation” means vegetation comprised of plant species, other than noxious weeds, that are indigenous to the coastal region of the Pacific Northwest and which reasonably could have been expected to naturally occur on the site. Examples include trees such as Douglas fir, western hemlock, western red cedar, alder, big-leaf maple, and vine maple; shrubs such as willow, elderberry, salmonberry, and salal; and herbaceous plants such as sword fern, foam flower, and fireweed.

31. “New development” means land-disturbing activities, including Class IV – general forest practices that are conversions from timber land to other uses; structural development, including construction or installation of a

building or other structure; creation of impervious surfaces; and subdivision, short subdivision and binding site plans, as defined and applied in Chapter 58.17 RCW. Projects meeting the definition of “redevelopment” shall not be considered new development.

32. “Nonstormwater discharge” means any discharge to the storm drainage system that is not composed entirely of stormwater. Examples may include but are not limited to sanitary wastewater, laundry wastewater, noncontact cooling water, vehicle wash wastewater, radiator flushing wastewater, spills from roadway accidents, and improperly disposed motor oil, solvents, lubricants, and paints.

33. “Permit” (the “Western Washington Phase II Municipal Stormwater Permit”) means a permit issued by Ecology under Sections 307, 402, 318, and 405 of the federal Clean Water Act that authorizes the discharge of pollutants to surface waters of the state. Also known as an NPDES permit.

34. “Pollutant” means anything which causes or contributes to pollution. Pollutants may include, but are not limited to: paints, varnishes, and solvents; oil and other automotive fluids; nonhazardous liquid and solid wastes and yard wastes; refuse, rubbish, garbage, litter, or other discarded or abandoned objects and accumulations, so that same may cause or contribute to pollution; floatables; pesticides, herbicides, and fertilizers; hazardous substances and wastes; sewage, fecal coliform and pathogens; dissolved and particulate metals; animal wastes; wastes and residues that result from constructing a building or structure; and noxious or offensive matter of any kind.

35. “Pollution” means contamination or other alteration of the physical, chemical, or biological properties of waters of the state, including change in temperature, taste, color, turbidity, or odor of the waters, or such discharge of any liquid, gaseous, solid, radioactive or other substance into any waters of the state as will or is likely to create a nuisance or render such waters harmful, detrimental or injurious to the public health, safety or welfare, or to domestic, commercial, industrial, agricultural, recreational, or other legitimate beneficial uses, or to livestock, wild animals, birds, fish or other aquatic life.

36. Predeveloped Condition. For areas that drain directly or indirectly to a river or stream, “predeveloped condition” shall mean the native vegetation and soils that existed at a site prior to the influence of Euro-American settlement. The predeveloped condition shall be assumed to be a forested land cover unless reasonable historic information is provided that indicates the site was prairie prior to settlement.

37. “Project site” means that portion of a property, properties, or right-of-way subject to land-disturbing activities, new impervious surfaces, or replaced impervious surfaces. The total projected area of new, replaced or new plus replaced impervious surfaces for subdivisions shall constitute a project site.

38. “RCW” means the Revised Code of Washington.

39. “Receiving waters” means bodies of water or surface water systems to which surface runoff is discharged via a point source of stormwater or via sheet flow.

40. “Redevelopment” means, on a site that is already substantially developed (which means thirty-five percent or more of existing impervious surface coverage), the creation or addition of impervious surfaces; the expansion of a building footprint or addition or replacement of a structure; structural development including construction, installation or expansion of a building or other structure; replacement of impervious surface that is not part of a routine maintenance activity; and land-disturbing activities, or other projects where any other city construction permit is required.

41. “Replaced impervious surface” means, for structures, the removal and replacement of any exterior impervious surfaces or foundation. For other impervious surfaces, the removal down to bare soil or base course and replacement.

42. “Routine maintenance” means preventative or cyclical (weekly, monthly, etc.) maintenance that is an essential part of the on-going care and upkeep of a system or facility against normal wear and tear.

43. "Site" means the area defined by the legal boundaries of one or more parcels of land that is (are) subject to new development or redevelopment. For road projects, the length of the project site and the right-of-way boundaries define the site.
44. "Soil" means the unconsolidated mineral and organic material on the immediate surface of the earth that serves as a natural medium for the growth of land plants.
45. "Stormwater" means runoff during and following precipitation and snowmelt events, including surface runoff and drainage.
46. "Stormwater drainage plan" means the comprehensive report containing all of the technical information and analysis necessary for a regulatory agency to evaluate a proposed new development or redevelopment project for compliance with stormwater requirements.
47. Stormwater Drainage System. See "municipal separate storm sewer system (MS4)."
48. "Stormwater facility (facility)" means a constructed component of a stormwater drainage system designed or constructed to perform a particular function, or multiple functions. Stormwater facilities include but are not limited to pipes, swales, ditches, culverts, street gutters, detention ponds, retention ponds, constructed wetlands, infiltration devices, catch basins, oil/water separators, and biofiltration swales.
49. "Stormwater Manual" means the "Stormwater Management Manual for Western Washington," February 2005, as prepared by Ecology. This manual contains BMPs to prevent, control or treat pollution in stormwater and reduce other stormwater-related impacts to waters of the state. The Stormwater Manual is intended to serve as a reference and supplement to this chapter to control the quantity and quality of stormwater runoff from new development and redevelopment.
50. "Stormwater master plan" means documents illustrating the location, facility types and connections of the city's stormwater drainage system. These documents include the current editions of the Kelso Stormwater Master Plan and are created and maintained for the comprehensive management of stormwater for the city of Kelso urban areas and suburban fringe areas.
51. "Stormwater pollution prevention plan (SWPPP)" means a written plan to implement BMPs to identify, prevent, and control the contamination of stormwater discharges to stormwater, stormwater drainage systems and/or receiving waters to the maximum extent practicable.
52. "WAC" means the Washington Administrative Code.
53. "Wastewater" means any water or other liquid, other than uncontaminated stormwater, discharged from a facility.
54. "Waterbody" means lakes, rivers, ponds, streams, inland waters, sloughs, ditches, and all other surface waters and watercourses within the jurisdiction of the state of Washington.
55. "Wetlands" means those areas that are inundated or saturated by surface or ground water at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs, and similar areas. Wetlands do not include those artificial wetlands intentionally created from nonwetland sites, including, but not limited to, irrigation and drainage ditches, grass-lined swales, canals, detention facilities, wastewater treatment facilities, farm ponds, and landscape amenities, or those wetlands created after July 1, 1990, that were unintentionally created as a result of the construction of a road, street, or highway. Wetlands may include those artificial wetlands intentionally created from nonwetland areas to mitigate the conversion of wetlands.
56. "Vegetation" means organic plant life growing on the surface of the earth. (Ord. 3727 § 1, 2010)

13.09.030 General provisions.

A. Abrogation and Greater Restrictions. It is not intended that this chapter repeal, abrogate, or impair any existing regulations, easements, covenants, or deed restrictions. However, where this chapter imposes greater restrictions, the provisions of this chapter shall prevail.

B. Interpretation. The provisions of this chapter shall be held to be minimum requirements in their interpretation and application and shall be liberally construed to serve the purposes of this chapter. (Ord. 3727 § 1, 2010)

13.09.035 Stormwater management program adopted.

The city of Kelso's stormwater management program, as now or hereafter modified, is hereby adopted by reference and is hereinafter referred to as "the program." The program contains information assembled for the purposes of identifying existing and projected problems, analyzing alternatives leading to recommendations, and preparing a program to implement recommendations. The city expresses no guarantee of the accuracy of the information, although updates will be made as necessary to reflect best available information. The use of information should be accompanied by adequate checks for accuracy along with good engineering practice and judgment.

The director shall be authorized to modify the program, in accordance with the city's adopted policies and procedures, to reflect newly developed technical data, models, and other updated information. (Ord. 3727 § 1, 2010)

13.09.040 Applicability and exemptions.

A. Applicability. This chapter shall apply to all:

1. Water or pollutants directly or indirectly entering the storm drain system generated on any developed or undeveloped lands; and
2. New development, redevelopment, and construction site activities, unless explicitly exempted herein.

B. Exemptions. The following development activities are exempt from certain provisions of this chapter:

1. Projects disturbing less than five acres that meet the requirements delineated in the KEDM may apply for an "erosivity waiver" to be exempt from Section 13.09.060H2, the requirement to submit a stormwater pollution prevention plan (SWPPP).
2. Commercial agriculture and forest practices regulated under WAC Title 222, except for Class IV – general forest practices that are conversions from timber land to other uses; are exempt from all technical and administrative requirements established in this chapter.
3. Road Maintenance. The following road maintenance activities are exempt from the additional nine Minimum Requirements required for projects that disturb one acre or more of land or that are part of a larger common plan of development or sale:
 - a. Pothole and square cut patching, overlaying existing asphalt or concrete pavement with asphalt or concrete without expanding the area of coverage, shoulder grading, reshaping/regrading drainage systems, crack sealing, resurfacing with in-kind material without expanding the road prism, and vegetation maintenance.
 - b. Removing and replacing a paved surface to base course or lower, or repairing the roadway base are considered redevelopment subject to MRs No. 1 through 5, if impervious surfaces are not expanded. However, in most cases, only MR No. 2, Construction Stormwater Pollution Prevention, will be germane.
 - c. The following examples of redevelopment are considered new impervious surfaces and have no exemption: resurfacing by upgrading from dirt to gravel, asphalt, or concrete; upgrading from gravel to asphalt, or concrete (for example by extending the pavement edge without increasing the size of the road prism, or paving graveled shoulders); or upgrading from a bituminous surface treatment ("chip seal") to asphalt or concrete.

4. Underground utility projects that replace the ground surface with in-kind material or materials with similar runoff characteristics are only subject to Minimum Requirement No. 2, Construction Stormwater Pollution Prevention.

5. Normal landscape activities and gardening. (Ord. 3727 § 1, 2010)

13.09.050 General requirements.

A. City of Kelso Engineering Design Manual. The KEDM, as now or hereafter modified, is hereby adopted by reference for use in implementation of this chapter. The KEDM contains requirements and technical details for stormwater modeling, facility design, pollution and flow control, and application of these methods. The director shall be authorized to modify the KEDM, in accordance with the city's adopted policies and procedures, to reflect newly updated technical data, models, and other information.

B. Stormwater Best Management Practices (BMPs).

1. General. BMPs shall be used to minimize stormwater pollution and control stormwater flow. BMPs described and/or referenced in the KEDM shall be used to comply with the standards in this chapter.

2. Low Impact Development (LID). Low impact development BMPs shall be preferentially used as practicable in all activities subject to regulation in this chapter. Approved LID BMPs include those methods described in the Low Impact Development Guidance Manual or the Stormwater Manual.

3. Experimental BMPs. Experimental BMPs are encouraged as a means of solving problems in a manner not addressed by the Manual in an effort to improve stormwater quality technology. Experimental BMPs must be approved prior to implementation by the director, in accordance with the variance criteria outlined in Section 13.09.170.

C. Illicit Discharges. Illicit discharges to stormwater drainage systems are prohibited.

D. Surface Water Quality Standards. All activities subject to the requirements of this chapter are expected to comply with the numerical water quality standards established in Chapter 173-201A WAC. The point of compliance is considered the first point of discharge from the development or redevelopment activity to a municipal stormwater drainage facility or to waters of the state. (Ord. 3727 § 1, 2010)

13.09.060 Standards for development.

Development projects within the city shall provide the erosion and stormwater controls in accordance with the thresholds and standards described herein.

A. General Applicability.

1. All projects shall protect the public right-of-way, the stormwater drainage system, receiving waters, and adjoining properties from the deposition of materials, discharge of sediments and other pollutants, and damage from increased surface and subsurface flow rates caused by the project.

2. All projects shall comply with the city's general design and construction criteria for stormwater drainage systems contained in the KEDM.

B. Erosion and Sediment Control. Additionally, projects disturbing five thousand square feet or more of land are required to:

1. Obtain a local excavation and grading permit for the project prior to the land disturbance (this permit may be waived if a right-of-way, building, or public improvement permit for the same project has been issued); and

2. Submit a site erosion and sediment control plan, and, if necessary, any supplemental information such as narratives, specifications, and/or calculations.

3. Provide and install adequate runoff controls per an approved plan prior to land-disturbing activity.

C. Basic Stormwater Control. Additionally, projects creating five thousand square feet or more of new impervious surfaces (cumulative over conditions existing in 1999) are required to:

1. Submit a stormwater drainage plan and supporting information (e.g., design calculations, geotechnical report, details, specifications, and maintenance requirements);
2. Satisfy water quality, quantity, and amenity criteria as outlined in the KEDM.

D. Source Control.

1. Additionally, any new development or redevelopment, regardless of size, that is identified by the city to have the potential to generate highly contaminated runoff shall design and implement a level of treatment commensurate with the risk.
2. Additionally, all projects requiring city approval that are changing the intended use of a parcel to one identified in the KEDM as needing oil/water separation shall provide such treatment.

E. Redevelopment. Additionally, projects that create and/or replace five thousand square feet or more of impervious surface that are not otherwise required in subsections C and G of this section to provide stormwater controls shall select among and comply with at least one of a reduced and flexible set of controls, as described in Chapter 4 – Storm Drainage of the KEDM.

F. Ecology's Construction Stormwater NPDES Permit. Additionally, projects that disturb one acre or more of land or that are part of a larger common plan of development or sale must obtain the state Construction NPDES Permit if required by Ecology.

G. Ecology's Nine Minimum Requirements for Development and Redevelopment. Additionally, new development, redevelopment, and construction site activities that result in land disturbance of one acre or more, including projects less than one acre that are part of a larger common plan of development or sale, must satisfy one or more of the Minimum Requirements required by Ecology and delineated in the KEDM. The Minimum Requirements are:

1. Site Plan;
2. Construction SWPPP;
3. Source Control;
4. Preserve Natural Drainage;
5. On-Site Runoff Management;
6. Runoff Treatment;
7. Flow Control;
8. Wetlands Protection; and/or
9. Operations and Maintenance.

They are subject to the site planning and BMP selection and design criteria of Ecology's Stormwater Management Manual for Western Washington, or other equivalent manual approved by Ecology.

H. This subsection identifies thresholds that determine the applicability of these nine Minimum Requirements (MR) to projects (that disturb at least one acre, or that are part of a larger common plan of development or sale that disturbs at least one acre).

1. Development.

- a. All new development shall be required to comply with MR No. 2.

b. The following new development shall comply with MRs No. 1 through 5 for the new and replaced impervious surfaces and the land disturbed:

- i. Creates or adds two thousand square feet, or greater, of new, replaced, or new plus replaced impervious surface area; or
- ii. Has land-disturbing activity of seven thousand square feet or greater.

c. The following new development shall comply with MRs No. 1 through 9 for the new impervious surfaces and the converted pervious surfaces:

- i. Creates or adds five thousand square feet, or more, of new impervious surface area; or
- ii. Converts three-fourths acre, or more, of native vegetation to lawn or landscaped areas; or
- iii. Converts two and one-half acres, or more, of native vegetation to pasture.

2. Redevelopment.

a. All redevelopment shall be required to comply with MR No. 2. In addition, all redevelopment that exceeds certain thresholds shall be required to comply with additional MRs as follows.

b. The following redevelopment shall comply with Minimum Requirements No. 1 through 5 for the new and replaced impervious surfaces and the land disturbed:

- i. The new, replaced, or total of new plus replaced impervious surfaces is two thousand square feet or more; or
- ii. Seven thousand square feet or more of land-disturbing activities.

c. The following redevelopment shall comply with MRs No. 1 through 9 for the new impervious surfaces and converted pervious areas:

- i. Adds five thousand square feet or more of new impervious surfaces; or
- ii. Converts three-fourths acre, or more, of native vegetation to lawn or landscaped areas; or
- iii. Converts two and one-half acres, or more, of native vegetation to pasture.

d. If the runoff from the new impervious surfaces and converted pervious surfaces is not separated from runoff from other surfaces on the project site, the stormwater treatment facilities must be sized for the entire flow that is directed to them.

e. An equivalent (flow and pollution characteristics) area within the same site can be used to meet the MRs. For public roads projects, the equivalent area does not have to be within the project limits, but must drain to the same receiving water.

3. Additional Requirements for Redevelopment Project Sites.

a. For road-related projects, runoff from the replaced and new impervious surfaces (including pavement, shoulders, curbs, and sidewalks) shall meet all the MRs (No. 1 through 9) if the new impervious surfaces total five thousand square feet or more and total fifty percent or more of the existing impervious surfaces within the project limits. The project limits shall be defined by the length of the project and the width of the right-of-way.

b. Other types of redevelopment projects shall comply with all the MRs (No. 1 through 9) for the new and replaced impervious surfaces if the total of new plus replaced impervious surfaces is five thousand square

feet or more, and the valuation of proposed improvements – including interior improvements – exceeds fifty percent of the assessed value of the existing site improvements.

c. The city may adopt a plan and schedule, in accordance with the adjustment, exception/variance, and/or basin planning provisions of this chapter, to provide regional treatment, flow control, and/or wetlands protection to the replaced impervious surfaces of redevelopment projects.

d. The city may grant a variance/exception to the application of the flow control requirements to replaced impervious surfaces if such application imposes a severe economic hardship per Section 13.09.170.

4. Basin/Watershed Planning. The city may allow alternative or regional approaches to treatment, flow control, and wetlands protection per the basin planning provisions of the Permit.

I. Financial Liability/Public Nuisance Declared. In addition to other remedies, vandalism of or failure to install and/or maintain water courses or stormwater facilities as required in this chapter and applicable permits is hereby declared to be a public nuisance, subject to abatement as provided by applicable laws of the city or the state of Washington. The property owner and all persons engaged in development or land-disturbing activity shall be liable, jointly and severally, for all costs incurred by the city in any public nuisance action taken hereunder, or on account of damage or threatened damage to city property or facilities or water bodies, or associated with remedial actions necessitated by the failure to install and/or maintain required stormwater facilities. (Ord. 3727 § 1, 2010)

13.09.070 Construction inspection for permanent stormwater BMPs.

A. Notice of Construction Commencement. The applicant must notify public works before the commencement of construction. Public works may, at its discretion, issue verbal or written authorization to proceed with critical construction components, such as installation of permanent stormwater BMPs based on stabilization of the drainage area and other factors.

B. Construction Inspections by Public Works or its Representatives. Public works or its representatives shall conduct periodic inspections of the stormwater BMPs shown on the approved stormwater management design plan, and especially during critical installation and stabilization steps. All inspections shall be documented in writing. The inspection shall document any variations or discrepancies from the approved plan, and the resolution of such issues. Additional information regarding inspections can be found in the KEDM. A final inspection by the stormwater authority is required before any performance bond or portion thereof shall be released. (Ord. 3727 § 1, 2010)

13.09.080 Easements, deeds and education.

A. Easements. Storm drainage easements shall be required where the conveyance, storage, or treatment of stormwater is identified on the stormwater management design plan, and where access is needed to structural or nonstructural stormwater measures.

The following conditions shall apply to all easements:

1. Dimensions. Easements shall be of a width and location specified in the KEDM.
2. Easements Approved Before Plat Approval. Easements shall be approved by public works and shall be recorded with Cowlitz County and on all property deeds.
3. With the exception of managed properties, such as apartment complexes, all residential stormwater facilities shall be placed in the public right-of-way, or a full easement shall be granted to the city for inspection and maintenance.

B. Deeds and Covenants for LID. Private home owner deed restrictions and homeowners'/building covenants shall be required for all properties with on-site LID BMPs to ensure that the stormwater management applications continue to function as designed. The deed restrictions or covenants shall specifically address and/or append the requirements and responsibilities for long-term management and maintenance of any LID BMPs.

C. Education. Education measures (e.g., fact sheet or brochure) describing the functions of conservation areas and LID BMPs shall be developed and distributed during the initial and all successive sales of properties using LID BMPs. (Ord. 3727 § 1, 2010)

13.09.090 Maintenance agreement and plan.

A. Responsible Party. The owner shall be responsible for the operation and maintenance of stormwater facilities and shall pass such responsibility to any successor owner, unless such responsibility is transferred to the city or to another governmental entity in Section 13.09.120.

B. Requirement for Maintenance Agreement and Plan. If a stormwater management design plan requires structural or nonstructural measures, the owner shall execute a stormwater maintenance agreement prior to public works granting final approval for the plan, or any plan of development or other development for which a permit is required under this chapter. The agreement shall be recorded in the office of the clerk of the circuit court for Cowlitz County and shall run with the land.

C. Required Elements for Maintenance Agreement and Plan. The stormwater maintenance agreement shall be in a form approved by the city, and shall, at a minimum:

1. Designate Responsible Party. Designate the owner or other legally established entity (responsible party) which shall be permanently responsible for maintenance of the structural or nonstructural measures required by the plan.
2. Pass Responsibility to Successors. Pass the responsibility for such maintenance to successors in title.
3. Right of Entry for Stormwater Authority. Grant public works and its representatives the right of entry at reasonable times and in a reasonable manner for the purposes of inspecting all stormwater BMPs. This includes the right to enter a property when public works has a reasonable basis to believe that a violation of this chapter is occurring or has occurred and to enter when necessary for abatement of a public nuisance or correction of a violation of this chapter.
4. Maintenance Plan. Ensure the continued performance of the maintenance obligations required by the plan and this chapter through a maintenance plan (which may be an attachment to the actual maintenance agreement). The plan shall include a list of inspection and maintenance tasks, a schedule for routine inspection and maintenance, actions to be taken when maintenance is required, and other items listed in the KEDM. (Ord. 3727 § 1, 2010)

13.09.100 Stormwater performance bond.

A. Stormwater Performance Bond. At the discretion of public works, the applicant seeking to build a stormwater facility may be required to furnish a stormwater facility performance bond, or equivalent guarantee in a form acceptable to the city, in an amount sufficient to cover all costs associated with the construction of the facility. This bond is to secure the installation and performance of the stormwater facilities identified in the approved stormwater management design plan. The applicant shall be responsible for any costs incurred by the city to secure performance of the stormwater facilities that are in excess of the amount of the bond.

B. Term of Performance Bond. The stormwater performance bond furnished pursuant to this section, or the unexpended or unobligated portion thereof, shall be released to the applicant within sixty days of issuance by public works of the final acceptance of the permanent stormwater BMP by the public works department. A final inspection by public works is required before any performance bond will be released.

C. Term Extended for Initial Maintenance. At the discretion of public works, the stormwater performance bond may be extended beyond the time period specified above to cover a reasonable period of time for testing the BMPs during storm events and for initial maintenance activities. For the purposes of this section, the time shall not exceed two years beyond final acceptance of the construction of the BMP, unless the director determines that an extension is necessary to ensure that the facility satisfies the maintenance and performance requirements identified in the KEDM and the approved stormwater maintenance plan.

D. Partial Release of Bond. The public works shall have the sole discretion to adopt provisions for a partial pro rata release of the performance bond on the completion of various stages or phases of development.

E. Bond Estimation. The applicant shall be responsible for determining bond value and submitting the estimation to public works for approval. If the director disagrees with the applicant's estimate, the director shall determine a

reasonable estimate. The bond value for public and private facilities is to be one hundred twenty-five percent of the estimated cost for the city to construct the stormwater features and achieve final stabilization. The director may allow an equivalent financial guarantee in a form acceptable to the city in lieu of a bond. (Ord. 3727 § 1, 2010)

13.09.110 As-built plans.

All applicants are required to submit as-built plans for any permanent stormwater management facilities located on site after final construction is completed. The plans must show the final design specifications for all stormwater management facilities, meet the criteria for as-built plans in the KEDM, and be sealed by a registered professional engineer. (Ord. 3727 § 1, 2010)

13.09.120 Dedication of stormwater BMPs.

The owner of a stormwater facility required by this chapter may offer to the city for dedication any such stormwater facility, together with such easements and appurtenances as may be reasonably necessary, as provided herein:

A. Preliminary Determination by Public Works. Upon receipt of such offer of dedication by the city, public works shall make a preliminary determination that the dedication of the facility is appropriate to protect the public health, safety and general welfare, and furthers the goals of the city's stormwater management program and/or associated watershed plans. Public works shall forward its determination to the city council. Prior to making its determination, public works shall inspect the facility to determine whether it has been properly maintained and is in good repair.

B. Acceptance by City Council. The city council may accept the offer of dedication by adoption of a resolution. The document dedicating the stormwater BMP shall be recorded in the office of the clerk of the circuit court for Cowlitz County.

C. Owner to Provide Documentation. The owner, at his sole expense, shall provide any document or information requested by public works or the city council in order for a decision to be reached on accepting the facility. (Ord. 3727 § 1, 2010)

13.09.130 Ongoing maintenance for stormwater BMPs.

A. Maintenance Responsibility. The responsible party named in the recorded stormwater maintenance agreement shall maintain in good condition and promptly repair and restore all structural and nonstructural stormwater BMPs and all necessary access routes and appurtenances (grade surfaces, walls, drains, dams and structures, vegetation, erosion and sedimentation controls, and other protective devices). Such repairs or restoration and maintenance shall be in accordance with the approved stormwater management design plan, the stormwater maintenance agreement, and the stormwater maintenance plan.

B. Maintenance Inspection by Public Works or its Representatives. Public works or its representatives shall conduct periodic inspections for all stormwater facilities following project completion. All inspections shall be documented in writing. The inspection shall document any maintenance and repair needs and any discrepancies from the stormwater maintenance agreement and stormwater maintenance plans.

C. Records of Maintenance Activities. The responsible party shall make records of the installation and of all maintenance and repairs, and shall retain the records for at least five years. These records shall be made available to public works during inspection of the BMP(s) and at other reasonable times upon request.

D. Failure to Provide Adequate Maintenance. In the event that the stormwater BMP has not been maintained and/or becomes a danger to public safety or public health, public works shall notify the responsible party by registered or certified mail. The notice shall specify the measures needed to comply with the maintenance agreement and the maintenance plan and shall specify that the responsible party has thirty days or other time frame mutually agreed to between public works and the responsible party, within which such measures shall be completed. If such measures are not completed, then public works shall pursue enforcement procedures pursuant to Section 13.09.150.

If a responsible person fails or refuses to meet the requirements of an inspection report, maintenance agreement, or maintenance plan, the city, after thirty days' written notice (except, that in the event the violation constitutes an immediate danger to public health or public safety, twenty-four hours' notice shall be sufficient), may correct a violation of the design standards or maintenance requirements by performing the necessary work to place the BMP in proper working condition. The city may assess the responsible party for the cost of repair work which shall be a

lien on the property, or prorated against the beneficial users of the property, and may be placed on the tax bill and collected as ordinary taxes by the city. (Ord. 3727 § 1, 2010)

13.09.140 Maintenance escrow requirement.

At the discretion of the director, the property owner will be required to post a cash escrow, letter of credit, or other acceptable form of performance security in an amount that would cover costs associated with maintenance or repair in the event of BMP failure in the event the director determines that such security is necessary to ensure the facility satisfies the maintenance and performance requirements identified in the KEDM and the approved stormwater maintenance plan. This instrument is required to be posted prior to completion of construction and release of the stormwater performance bond and remain in place for a minimum of two years. (Ord. 3727 § 1, 2010)

13.09.150 Maintenance and inspection.

A. General Requirements.

1. Maintenance Required. All stormwater facilities shall be maintained in accordance with this chapter and the KEDM. Systematic, routine preventive maintenance is preferred.

2. Compliance. Property owners are responsible for the maintenance, operation and repair of stormwater drainage systems and BMPs on their properties unless the city has accepted maintenance responsibility in writing and a written easement exists granting the city an adequate and sufficient right, at the city's discretion, to enter the property and conduct these activities. Property owners shall maintain, operate and repair the facilities in compliance with the requirements of this chapter and the KEDM.

B. Administration. The director shall develop and administer an inspection program for stormwater facilities in Kelso.

C. Inspection Program.

1. Authorization. Whenever implementing the provisions of the inspection program or whenever there is cause to believe that a violation of this chapter has been or is being committed, the inspector is authorized to inspect stormwater drainage systems within Kelso to determine compliance with the provisions of this chapter.

2. Development Inspection. All new development shall provide for and install adequate runoff controls per an approved stormwater drainage plan and SWPPP. Failure to provide such required runoff controls prior to or simultaneously with the commencement of land-disturbing activities shall result in an order to stop all work upon the site for a minimum of three working days. After the stop-work period, the director may allow work on site to recommence; provided, that such work is necessary to bring the site into compliance with this chapter, permits, or an approved stormwater drainage plan or SWPPP. Once the site is found to be in compliance, land-disturbing activities shall be allowed to continue.

13.09.160 Administration.

A. Director. The director shall administer this chapter and shall have the authority to develop and implement administrative procedures to implement and enforce this chapter. Enforcement shall be addressed pursuant to KMC Chapter 1.50.

B. Review and Approval. The director may approve, conditionally approve or deny an application for activities regulated by this chapter. (Ord. 3727 § 1, 2010)

13.09.170 Adjustments, exceptions, and appeals.

A. Authority. The director may grant an adjustment or exception from the requirements of this chapter. In so granting, the director may prescribe conditions that are deemed necessary or desirable for the public interest.

B. Adjustments. Adjustments to the requirements of this chapter may be granted; provided, that a written finding of fact is prepared that addresses the following:

1. The adjustment provides substantially equivalent environmental protection.

2. Based on sound engineering practices, the objectives of safety, function, environmental protection and facility maintenance are met.

C. Exceptions and Variances. Exceptions to the requirements of this chapter may be granted; provided, that a written finding of fact is prepared that documents the city's determination to grant an exception and:

1. The exception will not increase risk to the public health and welfare, nor be injurious to other properties in the vicinity and/or downstream, and to the quality of waters of the state; and
2. The exception is the least possible exception that could be granted to comply with the intent of the Minimum Requirements.

Additionally, exceptions to Section 13.09.060H may be granted only if such an application imposes a severe and unexpected economic hardship, according to the criteria provided in the KEDM, and:

1. Prior legal public notice is provided of an application for an exception; and
2. Legal public notice of the city's decision on the application is published; and
3. Ecology approval is required for any jurisdiction-wide exception; and
4. The city keeps records, including the written findings of fact, of all exceptions to the MRs.

D. Prior Approval. Any variance shall be approved prior to permit approval and construction.

E. Duration of Variance. Variances granted shall be valid for two years, unless granted for a shorter period.

F. Right of Appeal. Except as otherwise provided in this chapter, all actions of the director in the administration and enforcement of this chapter shall be final and conclusive unless, within thirty days of receipt of the director's action, the original applicant or an aggrieved party files a notice of appeal with the hearing examiner for review of the action. The decision of the hearing examiner shall be final and conclusive unless, within ten days after receipt of the decision of the hearing examiner, an aggrieved party appeals the same to Cowlitz County superior court. (Ord. 3727 § 1, 2010)

13.09.200 Severability.

The provisions of this chapter are hereby declared to be severable. If any provision, clause, sentence, or paragraph of this chapter 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 chapter.

If this chapter is in conflict with any other section of the Kelso Municipal Code, this chapter shall control. (Ord. 3727 § 1, 2010)

13.09.210 Compatibility with other permit and ordinance requirements.

This chapter is not intended to interfere with, abrogate, or annul any other ordinance, rule or regulation, statute, or other provision of law. The requirements of this chapter should be considered minimum requirements, and where any provision of this chapter imposes restrictions different from those imposed by any other ordinance, rule or regulation, or other provision of law, whichever provisions are more restrictive or impose higher protective standards for human health or the environment shall be considered to take precedence. (Ord. 3727 § 1, 2010)

13.09.220 Legal authority.

The ordinance codified in this chapter is adopted pursuant to authority conferred by and in accordance with the Permit. (Ord. 3727 § 1, 2010)

13.09.230 Liability.

Any person who undertakes or causes to be undertaken any land disturbance shall ensure that soil erosion, sedimentation, increased pollutant loads and changed water flow characteristics resulting from the activity are controlled so as to minimize pollution of receiving waters. The requirements of this chapter are minimum standards

and a person's compliance with the same shall not relieve such person from the duty of enacting all measures necessary to minimize pollution of receiving waters. (Ord. 3727 § 1, 2010)

13.09.240 Designation of public works – Powers and duties.

Public works shall administer and enforce this chapter, and may furnish additional policy, criteria and information including specifications and standards, for the proper implementation of the requirements of this chapter. (Ord. 3727 § 1, 2010)

Chapter 13.11

ILLICIT DISCHARGE—STORMWATER UTILITY

Sections:

- 13.11.010 Purpose—Intent.
- 13.11.020 Definitions.
- 13.11.030 Applicability.
- 13.11.040 Responsibility of administration.
- 13.11.050 Discharge prohibitions.
- 13.11.060 Industrial or construction activity discharges.
- 13.11.070 Inspection and sampling.
- 13.11.080 Requirement to prevent, control, and reduce stormwater pollutants by the use of best management practices.
- 13.11.090 Protection of facilities and watercourses.
- 13.11.100 Notification of spills.
- 13.11.110 Enforcement.
- 13.11.120 Severability.

13.11.010 Purpose—Intent.

The purpose of this chapter is to provide for the health, safety, and general welfare of the citizens of the city of Kelso, and provide protection for wildlife and the environment, through the regulation of illicit discharges to the storm drainage system to the maximum extent practicable as required by federal and state law. This chapter establishes methods for controlling the introduction of pollutants into the municipal separate storm sewer system (storm drainage system) in order to comply with requirements of the Western Washington Phase II Municipal Stormwater Permit process. The objectives of this chapter are:

- A. To regulate the contribution of pollutants to the stormwater drainage system by stormwater discharges;
- B. To prohibit illicit connections and discharges to the stormwater drainage system;
- C. To establish legal authority to carry out all inspection, surveillance and monitoring procedures necessary to ensure compliance with this chapter. (Ord. 3713 § 1, 2009)

13.11.020 Definitions.

For the purposes of this chapter, the following definitions shall mean:

“Best management practices (BMPs)” means the schedules of activities, prohibitions of practices, general good housekeeping practices, pollution prevention and educational practices, maintenance procedures, and other structural or managerial practices that, when used singly or in combination, prevent or reduce the release of pollutants and other adverse impacts to waters of Washington State or the stormwater drainage system. BMPs also include treatment practices, operating procedures, and practices to control site runoff, spillage or leaks, sludge or water disposal, or drainage from raw materials storage.

“CFR” means Code of Federal Regulations.

“City” means the city of Kelso.

“Clean Water Act (CWA)” means the federal Water Pollution Control Act (33 U.S.C. Section 1251 et seq.), and any subsequent amendments thereto.

“Construction activity” means activities subject to NPDES construction permits. These include construction projects resulting in land disturbance of one acre or more. Such activities include but are not limited to clearing and grubbing, grading, excavating, and demolition.

“Director” means the director of the city of Kelso public works department or his/her designee.

“Hazardous materials” means any material, including any substance, waste, or combination thereof, which because of its quantity, concentration, or physical, chemical, or infectious characteristics may cause, or significantly contribute to, a substantial present or potential hazard to human health, safety, property, or the environment when improperly treated, stored, transported, disposed of, or otherwise managed.

“Hyperchlorinated water” means the water that contains more than ten milligrams per liter chlorine.

“Illicit connections” means any manmade conveyance that is connected to the storm drainage system without a permit. Examples include sanitary sewer connections, floor drains, channels, pipelines, conduits, inlets, or outlets that are connected directly to the stormwater drainage system.

“Illicit discharge” means any direct or indirect discharge to the stormwater drainage system that is not composed entirely of stormwater except discharges expressly exempted in Section 13.11.050.

“Industrial activity” means the activities subject to NPDES Industrial Permits as defined in 40 CFR 122.26(b)(14).

“KMC” means the Kelso Municipal Code.

Maximum Extent Practicable (MEP). MEP refers to paragraph 402(p)(3)(B)(iii) of the federal Clean Water Act which reads as follows: Permits for discharges from municipal storm sewers shall require controls to reduce the discharge of pollutants to the maximum extent practicable, including management practices, control techniques, and system, design, and engineering methods, and other such provisions as the administrator or the state determines appropriate for the control of such pollutants.

“Municipal separate storm sewer system (MS4)” means a conveyance or system of conveyances (including roads with drainage systems, municipal streets, catch basins, curbs, gutters, ditches, manmade channels, or storm drains):

1. Owned or operated by a state, city, town, borough, county, parish, district, association, or other public body (created by or pursuant to state law) having jurisdiction over disposal of wastes, stormwater, or other wastes, including special districts under state law such as a sewer district, flood control district or drainage district, or similar entity, or an Indian tribe or an authorized Indian tribal organization, or a designated and approved management agency under Section 208 of the CWA that discharges to waters of the United States;
2. Designed or used for collecting or conveying stormwater;
3. Which is not a combined sewer; and
4. Which is not part of a “publicly owned treatment works” as defined at 40 CFR 122.2.

“National Pollutant Discharge Elimination System (NPDES)” means the national program for issuing, modifying, revoking, and reissuing, terminating, monitoring and enforcing permits, and imposing and enforcing pretreatment requirements, under Sections 307, 402, 318, and 405 of the federal Clean Water Act, for the discharge of pollutants to surface waters of the state from point sources. These permits are referred to as NPDES permits and, in Washington State, are administered by the Washington Department of Ecology.

“Nonstormwater discharge” means any discharge to the storm drainage system that is not stormwater. Examples may include but are not limited to sanitary wastewater, laundry wastewater, noncontact cooling water, vehicle wash wastewater, radiator flushing wastewater, spills from roadway accidents, and improperly disposed motor oil, solvents, lubricants, and paints.

“Owner” means any individual, association, organization, partnership, firm, corporation or other entity recognized by law who is (1) the owner of the premises or the owner’s agent, or (2) in control of the premises, or (3) the owner of any facility causing the illicit discharge, or the owner’s agent, or (4) in control of any facility causing the illicit discharge.

“Pollutant” means anything which causes or contributes to pollution. Pollutants may include, but are not limited to: paints, varnishes, and solvents; oil and other automotive fluids; yard wastes, refuse, garbage, litter, or other discarded or abandoned objects and accumulations; pesticides, herbicides, and fertilizers; hazardous substances and

wastes; sewage, fecal coliform, animal wastes and pathogens; dissolved and particulate metals; and noxious or offensive matter of any kind.

“Premises” means any building, lot, parcel of land, or portion of land whether improved or unimproved including adjacent sidewalks and parking strips.

“RCW” means the Revised Code of Washington.

Stormwater Drainage System. See the definition for “Municipal separate storm sewer system (MS4).”

“Stormwater” means runoff during and following precipitation and snowmelt events, including surface runoff and drainage.

“Stormwater facility (facility)” means a constructed component of a stormwater drainage system designed or constructed to perform a particular function, or multiple functions. Stormwater facilities include but are not limited to pipes, swales, ditches, culverts, street gutters, detention ponds, retention ponds, constructed wetlands, infiltration devices, catch basins, oil/water separators, and biofiltration swales.

“Stormwater pollution prevention plan (SWPPP)” means a written plan to implement best management practices to identify, prevent, and control the contamination of stormwater discharges to stormwater, stormwater drainage systems and/or receiving waters to the maximum extent practicable.

“Water body” means lakes, rivers, ponds, streams, inland waters, sloughs, ditches, and all other surface waters and watercourses within the jurisdiction of the state of Washington.

“Western Washington Phase II Municipal Stormwater Permit (permit)” means a permit issued by the Washington Department of Ecology under Sections 307, 402, 318, and 405 of the federal Clean Water Act that authorizes the discharge of pollutants to surface waters of the state. Also known as an NPDES permit.

Any term not defined herein shall be given its normal definition subject to guidance by definitions in the NPDES Phase II Permit, as well as federal, state and local codes. (Ord. 3713 § 1, 2009)

13.11.030 Applicability.

This chapter shall apply to all owners responsible for and/or otherwise causing water directly or indirectly entering the storm drain stormwater drainage system generated on any developed and undeveloped lands unless explicitly exempted herein. (Ord. 3713 § 1, 2009)

13.11.040 Responsibility for administration.

The director shall administer, implement, and enforce the provisions of this chapter. (Ord. 3713 § 1, 2009)

13.11.050 Discharge prohibitions.

A. Prohibition of Illicit Discharges. No owner or individual shall throw, drain, or otherwise discharge, cause or allow others under its control to throw, drain, or discharge into the storm drain system and/or surface or groundwaters any material other than stormwater or allowable nonstormwater discharges. All illicit discharges, as defined in this chapter, constitute a violation of this chapter.

1. Exempt Nonstormwater Discharges. The following categories of nonstormwater discharges are allowed, unless they are identified as a significant source of pollution:

- a. Diverted stream flows.
- b. Rising groundwaters.
- c. Uncontaminated groundwater infiltration (as defined at 40 CFR 35.2005(20)).
- d. Uncontaminated pumped groundwater.
- e. Foundation drains.

- f. Air conditioning condensation.
- g. Irrigation water from agricultural sources that is commingled with urban stormwater.
- h. Springs.
- i. Water from crawl space pumps.
- j. Footing drains.
- k. Flows from riparian habitats and wetlands.
- l. Nonstormwater discharges covered by another NPDES permit.
- m. Discharges from emergency fire-fighting activities.

2. Conditional Discharges. The following categories of nonstormwater discharges are allowed if the conditions stated in this section are met unless they are identified by the city as a significant source of pollution. Failure to comply with the conditions shall constitute a violation of this chapter.

- a. Discharges from potable water sources, including water line flushing, hyperchlorinated water line flushing, fire hydrant system flushing, and pipeline hydrostatic test water. Planned discharges shall be dechlorinated to a concentration of one-tenth ppm or less, pH-adjusted if necessary, and volumetrically and velocity controlled to prevent re-suspension of sediments in the stormwater drainage system.
- b. Discharges from swimming pools, hot tubs and similar discharges. These discharges shall be dechlorinated to a concentration of one-tenth ppm or less, pH-adjusted and reoxygenized if necessary, volumetrically and velocity controlled to prevent re-suspension of sediments in the stormwater drainage system. Swimming pool cleaning wastewater and filter backwash shall not be discharged to the stormwater drainage system.
- c. Nonstormwater discharges covered by another NPDES permit; provided, that the discharger is in compliance with that permit, waiver, or order and other applicable laws and regulations; and granted that written approval has been granted for discharge to the stormwater drainage system.
- d. Other nonstormwater discharges. The discharges shall be in compliance with the requirements of a stormwater pollution prevention plan (SWPPP) reviewed by the city, which addresses control of such discharge by applying all known and reasonable methods of prevention control and treatment (AKART) to prevent contaminants from entering surface and groundwater.
- e. Discharges specified in writing by the director as being necessary to protect public health and safety.
- f. Dye testing is an allowable discharge, but requires a verbal notification to the director prior to the time of the test.

3. Other Conditional Discharges. The following shall be addressed through public education and water conservation efforts to prevent illicit discharge:

- a. Discharges from lawn watering and other irrigation runoff are permitted but shall be minimized.
- b. Street and sidewalk wash water, water used to control dust, and routine external building wash down that does not use detergents are permitted if the amount of water used is minimized. At active construction sites, street sweeping must be performed prior to washing the street.

B. Prohibition of Illicit Connections. The construction, use, maintenance or continued existence of illicit connections to the stormwater drainage system, including but not limited to any sewage connection, is prohibited and constitutes a violation of this chapter. This prohibition expressly includes, without limitation, illicit connections made in the

past, regardless of whether the connection was permissible under law or practices applicable or prevailing at the time of connection. (Ord. 3713 § 1, 2009)

13.11.060 Industrial or construction activity discharges.

A. Any owner subject to an industrial or construction activity NPDES stormwater discharge permit shall comply with all provisions of such permit. Proof of compliance with said permit may be required in a form acceptable to the city prior to the allowing of discharges to the stormwater drainage system.

B. Access to Facilities.

1. If an owner has security measures in force which require proper identification and clearance before entry into its premises, the discharger shall make the necessary arrangements to allow access to representatives of the city.

2. Owners shall allow the city ready access to all parts of the premises for the purposes of inspection, sampling, examination and copying of records that must be kept under the conditions of an NPDES permit to discharge stormwater, and the performance of any additional duties as defined by local, state and/or federal law.

3. The city shall have the right to set up on any facility such devices as are necessary in the opinion of the city to conduct monitoring and/or sampling of the facility's stormwater discharge.

4. The city has the right to require the discharger to install monitoring equipment as necessary. The facility's sampling and monitoring equipment shall be maintained at all times in a safe and proper operating condition by the discharger at their own expense. All devices used to measure stormwater flow and quality shall be calibrated to ensure their accuracy.

5. Any temporary or permanent obstruction to safe and easy access to the facility to be inspected and/or sampled shall be promptly removed by the operator at the written or oral request of the city and shall not be replaced. The costs of clearing such access shall be borne by the operator.

Any unreasonable delays in allowing the city access to a facility is a violation of this chapter. (Ord. 3713 § 1, 2009)

13.11.070 Inspection and sampling.

A. The director is authorized to develop inspection procedures and requirements for all stormwater drainage systems in the city.

B. Inspection Procedure. Prior to entry of the premises for the purpose of making any inspections, sampling, or records examination, the city shall obtain permission to enter the premises as follows:

1. The director shall present identification credentials, state the reason for the inspection and request entry of the owner, if available.

2. Unoccupied Building. If the premises or any building or structure on the premises is unoccupied, the director shall make reasonable efforts to locate the owner and request entry. In the event of an imminent hazard to persons or property as set forth in subsection (B)(3) of this section, such reasonable efforts shall be satisfied by attempting to contact the owner on site and by telephone at the last known number.

3. Imminent Hazard. If, after reasonable efforts, the director is unable to locate the owner, and has reason to believe the condition of the premises or of the private stormwater drainage system creates an imminent hazard to persons or property, the director may enter to abate the danger.

C. Inspection Parameters. Inspections for compliance with the provisions of this chapter shall be allowed as follows:

1. Construction and Development Inspection. A city representative or authorized designee shall have the right of entry to access any premises for which a permit requiring erosion controls or a stormwater facility has been issued, during regular business hours, or when reasonable under the circumstances for the purpose of review of erosion control practices and private stormwater drainage systems, and to ensure compliance with the terms of

such permit. Applicants for any such permit shall agree in writing, as a condition of permit issuance, that such access shall be permitted for such purposes. Inspection procedures shall be as outlined in this section.

2. Inspection for Cause. Whenever the city has cause to believe that a violation of any provision of this chapter has been or is being committed, the director, following procedures prescribed in this section, is authorized to enter the premises to inspect the premises during regular business hours, or when reasonable in the circumstances to ensure compliance with this chapter and Chapter 13.09.* Level of cause includes, but is not limited to, a citizen notification or an observation by a city employee.

3. Inspection for Maintenance and Source Control Best Management Practices. The director, following procedures prescribed in this section, is authorized to enter the premises to inspect private stormwater drainage systems during regular business hours, or at any other time reasonable under the circumstances, in order to ensure continued functioning of the facilities for the purposes for which they were constructed, and to ensure that maintenance is being performed in accordance with the standards of this chapter, Chapter 13.09,* and any maintenance schedule adopted during the plan review process for the premises. The director also may enter the premises for the purposes of observing source control BMPs.

D. Water Sampling and Analysis. Water sampling and analysis for determination of compliance with this chapter shall be allowed as follows:

1. Sample Collection. When the city has reason to believe that a violation exists or is occurring on a premises, the director is authorized to enter the property to set up on the premises such devices as are necessary to conduct sampling, inspection, compliance monitoring, or flow measuring operations.

2. Sample Analysis. Analysis of samples collected during investigation of potential violations shall be analyzed by a laboratory certified by the Department of Ecology as competent to perform the required analysis using standard practices and procedures.

3. Cost of Sample Collection and Analysis. If it is determined that a violation of this chapter exists on the premises, the owner shall pay the city's actual costs for collecting samples and for laboratory analysis of those samples. If it is found that a violation does not exist, the city will pay such charges.

E. If the city has been refused access to any part of the premises from which stormwater is discharged, and he/she is able to demonstrate probable cause to believe that there may be a violation of this chapter, or that there is a need to inspect and/or sample as part of a routine inspection and sampling program designed to verify compliance with this chapter or any order issued hereunder, or to protect the overall public health, safety, and welfare of the community, then the city may seek issuance of a search warrant from any court of competent jurisdiction. (Ord. 3713 § 1, 2009)

*Code reviser's note: Chapter 13.09 will be adopted in February 2010.

13.11.080 Requirement to prevent, control, and reduce stormwater pollutants by the use of best management practices.

The owner or operator of a commercial or industrial establishment shall provide, at their own expense, reasonable protection from spill or loss of prohibited materials or other wastes into the stormwater drainage system or watercourses through the use of structural and nonstructural BMPs. The design and selection of BMPs shall be from the 2005 Western Washington Stormwater Management Manual or BMPs with city approval. Further, any owner responsible for a premises, which is, or may be, the source of an illicit discharge, may be required to implement, at said owner's expense, additional structural and nonstructural BMPs to prevent the further discharge of pollutants to the stormwater drainage system. Compliance with all terms and conditions of a valid NPDES permit authorizing the discharge of stormwater associated with industrial activity, to the maximum extent practicable, shall be deemed in compliance with the provisions of this section. These BMPs shall be part of a stormwater pollution prevention plan (SWPPP) as necessary for compliance with requirements of the NPDES permit. (Ord. 3713 § 1, 2009)

13.11.090 Protection of facilities and watercourses.

A. Protection. It is a violation for any owner to break, block, damage, destroy, uncover, deface or tamper with any watercourse, stormwater facility, or erosion control system.

B. Responsibility. Every owner upon whose property exists a water body shall keep and maintain that part of the water body within the property free of trash, debris, and other obstacles that would pollute, contaminate, or significantly retard the flow of water into or through the water body. In addition, the owner or lessee shall maintain existing privately owned structures within or adjacent to a water body, so that such structures will not become a hazard to the use, function, or physical integrity of the water body. (Ord. 3713 § 1, 2009)

13.11.100 Notification of spills.

A. Reporting. Notwithstanding other requirements of law, as soon as any owner who has information of any known or suspected spill, deposition, discharge, or other loss of materials which are resulting or may result in illicit discharges or pollutants discharging to stormwater shall notify the city.

B. Response. Notwithstanding other requirements of law, as soon as any owner responsible for a premises or operation, or responsible for emergency response for a premises or operation, shall immediately take all necessary steps to ensure the discovery, containment, and full cleanup of water pollutants or potential pollutants is performed and to the satisfaction of the city and/or Ecology. In the event of such a release of hazardous materials, said owner shall immediately notify emergency response agencies of the occurrence via emergency dispatch services. If the discharge of prohibited materials emanates from a commercial or industrial establishment, the owner or operator of such establishment shall also retain an on-site written record of the discharge and the actions taken to prevent its recurrence. Such records shall be retained for at least five years. (Ord. 3713 § 1, 2009)

13.11.110 Enforcement.

A. Order of Enforcement. The order of escalating enforcement procedures and actions will begin with education and technical assistance. Further non-compliance or first time violators of intentional acts or gross negligence will be enforced pursuant to KMC Chapter 1.50.

13.11.120 Severability.

A. The provisions of this chapter are hereby declared to be severable. If any provision, clause, sentence, or paragraph of this chapter or the application thereof to any owner, establishment, or circumstances shall be held invalid, such invalidity shall not affect the other provisions or application of this chapter.

B. If this chapter is in conflict with any other section of the Kelso Municipal Code, this section shall control. (Ord. 3713 § 1, 2009)

Chapter 13.09

STORMWATER MANAGEMENT

Sections:

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13.09.010 Purpose/intent.

The purpose of this chapter is to provide for the health, safety, and general welfare of the citizens of the city through the regulation of runoff from construction, development, and redevelopment. This chapter establishes methods for controlling the introduction of runoff and pollutants into the stormwater drainage system in order to comply with requirements of the Western Washington Phase II Municipal Stormwater Permit (Permit) process.

The objectives of this chapter are to:

- A. Minimize water quality degradation in streams, ponds, lakes, wetlands, and other water bodies;
- B. Minimize the degradation of habitat and habitat forming processes in streams, ponds, lakes, wetlands, and other water bodies;
- C. Minimize the impact of increased volume and runoff rates, flooding, increases in stream temperature, erosion and sedimentation caused by land development and maintenance practices;
- D. Promote site planning and construction practices that are consistent with natural geological, topographical, vegetational, and hydrological conditions;
- E. Maintain and protect the city's stormwater management infrastructure and those downstream;
- F. Minimize disruption of hydrologic functions, patterns, and processes;
- G. Regulate the contribution of pollutants to the stormwater drainage system by stormwater dischargers from development and redevelopment;

- H. Provide long-term responsibility for and maintenance of stormwater BMPs;
- I. Establish legal authority to carry out all the inspection and monitoring procedures necessary;
- J. Meet the minimum requirements as established in Chapter 173-218 WAC and the Permit.

The intent of this chapter is to place the obligation of complying with its requirements upon the owner and/or contractor. Neither the city nor any officer, agent, or employee thereof shall incur or be held as assuming any liability by reason or in consequence of any permission, inspection or approval authorized herein, or issued as provided herein, or by reason or consequence of any thing done or act performed pursuant to the provisions of this chapter. (Ord. 3727 § 1, 2010)

13.09.020 Definitions.

For the purposes of this chapter, the following definitions shall mean:

1. "Amenity" means a pleasant and/or engaging feature that increases attractiveness, value, and/or understanding of stormwater.
2. "Best management practices (BMPs)" means the schedules of activities, prohibitions of practices, general good housekeeping practices, pollution prevention and educational practices, maintenance procedures, and other structural or managerial practices that, when used singly or in combination, prevent or reduce the release of pollutants and other adverse impacts to waters of Washington State or the stormwater drainage system.
 - a. "Source control BMP" means a BMP that is intended to prevent pollution from entering stormwater.
 - b. "Treatment BMP" means a BMP that is intended to remove pollution from stormwater.
 - c. "Flow control BMP" means a BMP that is intended to mitigate the impacts of increased surface and stormwater runoff rates generated by development.
 - d. "Low impact development BMP" means a stormwater management and land development strategy applied at the parcel and subdivision scale that emphasizes conservation and use of on-site natural features integrated with engineered, small-scale hydrologic controls to more closely mimic predevelopment hydrologic functions.
 - e. "Experimental BMP" means any treatment or methodology proposed for treatment or management of stormwater that is not in a current stormwater manual approved by the Washington State Department of Ecology (Ecology).
3. "Bioretention" means an integrated stormwater management practice that uses the chemical, biological, and physical property of plants, microbes, and soils to remove or retain pollutants from stormwater runoff. Bioretention facilities are depressions that can be isolated detention cells, swales for conveyance as well as treatment, or a connected-cell hybrid of the two. Bioretention facilities include compost amended soils, landscape plantings selected for tolerance to a range of conditions and a mulch layer.
4. "City" means the city of Kelso.
5. "Clean Water Act (CWA)" means the federal Water Pollution Control Act (33 U.S.C. Section 1251 et seq.), and any subsequent amendments thereto.
6. "Clearing" means the destruction and removal of vegetation by manual, mechanical, chemical or other such method.
7. "Common plan of development or sale" means a site where multiple separate and distinct construction activities may be taking place at different times on different schedules, but still under a single plan. Examples include: phased projects and projects with multiple filings or lots, even if the separate phases or filings/lots will be constructed under separate contract or by separate owners (e.g., a development where lots are sold to separate builders); a development plan that may be phased over multiple years, but is still under a consistent

plan for long-term development; and projects in a contiguous area that may be unrelated but still under the same contract, such as construction of a building extension and a new parking lot at the same facility. If the project is part of a common plan of development or sale, the disturbed area of the entire plan shall be used in determining permit requirements.

8. "Critical areas" means areas defined in Chapter 18.20, with a critical recharging effect on aquifers used for potable water, fish and wildlife habitat conservation areas, frequently flooded areas, geologically hazardous areas, including unstable slopes, and associated areas and ecosystems.

9. "Detention" means temporary storage of stormwater to facilitate the release of stormwater runoff from the site at a slower rate than it is collected by the stormwater facility system.

10. "Development" means new development, redevelopment, or both, including a combination thereof.

11. "Director" means the city of Kelso public works director or his/her designee.

12. "Ecology" means the Washington State Department of Ecology.

13. "Stormwater Manual" means the "Stormwater Management Manual for Western Washington" by Ecology as currently adopted or hereafter modified.

14. "Erosion" means the wearing away of the land surface by running water, wind, ice, or other geological agents, including such processes as gravitational creep.

15. "Excavation" means the mechanical removal of earth material.

16. "Fill" means a deposit of earth material placed by artificial means.

17. "Forest practice" means any activity conducted on or directly pertaining to forest land and relating to growing, harvesting, or processing timber, including but not limited to road and trail construction; harvesting, final and intermediate; precommercial thinning; reforestation; fertilization; prevention and suppression of diseases and insects; salvage of trees; brush control, or slash burning.

18. "Highly contaminated runoff" means runoff containing toxicants which would violate any water quality standard, including toxicant standards, sediment criteria, and dilution zone criteria.

19. "Highway" means a main public road connecting towns and cities.

20. "Illicit discharge (IDDE)" means any direct or indirect discharge to the stormwater drainage system that is not composed entirely of stormwater.

21. "Impervious surface" means a hard surface area that either prevents or retards the entry of water into the soil mantle as under natural conditions prior to development. A hard surface area which causes water to run off the surface in greater quantities or at an increased rate of flow from the flow present under natural conditions prior to development. Common impervious surfaces include but are not limited to rooftops, walkways, patios, driveways, parking lots or storage areas, concrete or asphalt paving, packed gravel surfaces, packed earthen materials, and macadam or other surfaces which similarly impede the natural infiltration of stormwater. Open, uncovered retention/detention facilities shall not be considered as impervious surfaces for purposes of determining whether the thresholds for application of minimum requirements are exceeded. Open, uncovered retention/detention facilities shall be considered impervious surfaces for purposes of runoff modeling. Impervious surfaces that meet the criteria for full dispersion or that are fully infiltrated in compliance with the Stormwater Manual shall be excluded in the determination of thresholds for compliance with this chapter.

22. "Kelso Engineering Design Manual (KEDM)" means a manual that sets forth certain standards of design and specifications for public works projects in the city and for projects subject to approval by the director. The manual is adopted at Section 13.09.050 and within this chapter for compliance with stormwater requirements for development.

23. “Land-disturbing activity” means any activity that results in movement of earth, or a change in the existing soil cover (both vegetative and nonvegetative) and/or the existing soil topography. Land-disturbing activities include, but are not limited to, clearing, grading, filling, and excavation. Compaction that is associated with stabilization of structures and road construction shall also be considered a land-disturbing activity. Vegetation maintenance practices or gardening are not generally considered land-disturbing activities.

24. “LID Guidance Manual” means the January 2005 Low Impact Development Technical Guidance Manual for Puget Sound, prepared by the Puget Sound Action Team and the Washington State University Pierce County Extension as now or hereafter amended.

25. “Low impact development (LID)” means a stormwater management and land development strategy applied at the parcel and subdivision scale that emphasizes conservation and use of on-site natural features integrated with engineered, small-scale hydrologic controls to more closely mimic predevelopment hydrologic functions.

26. Maintenance. Maintenance and repair includes activities conducted on currently serviceable structures, facilities, and equipment that involve no expansion or use beyond that previously existing use. Maintenance includes those usual activities taken to prevent a decline, lapse, or cessation in the use of structures and systems. Those usual activities may include removal and replacement of nonfunctional or poorly functioning facilities, including cases where environmental permits require replacing an existing structure with a different type structure, as long as the functioning characteristics of the original structure are not changed. By way of example is the replacement of a collapsed, fish blocking, round culvert with a new box culvert under the same span, or width, of roadway.

27. “MR” means Ecology’s Minimum Technical Requirement(s) or “Minimum Requirements” for New Development and Redevelopment for land disturbances of one acre or more or that are part of a larger common plan of development or sale.

28. “Municipal separate storm sewer system (MS4)” means a conveyance, or system of conveyances (including roads with drainage systems, municipal streets, catch basins, curbs, gutters, ditches, manmade channels, or storm drains):

- a. Owned or operated by a state, city, town, borough, county, parish, district, association, or other public body (created by or pursuant to state law) having jurisdiction over disposal of wastes, stormwater, or other wastes, including special districts under state law such as a sewer district, flood control district or drainage district, or similar entity, or an Indian tribe or an authorized Indian tribal organization, or a designated and approved management agency under Section 208 of the Clean Water Act that discharges to waters of the United States;
- b. Designed or used for collecting or conveying stormwater;
- c. Which is not a combined sewer; and
- d. Which is not part of a publicly owned treatment works as defined at 40 CFR 122.2.

29. “National Pollutant Discharge Elimination System (NPDES)” means the national program for issuing, modifying, revoking, and reissuing, terminating, monitoring and enforcing permits, and imposing and enforcing pretreatment requirements, under Sections 307, 402, 318, and 405 of the federal Clean Water Act, for the discharge of pollutants to surface waters of the state from point sources. These permits are referred to as NPDES permits and, in Washington State, are administered by Ecology under authority delegated pursuant to 33 U.S.C. Section 1342(b).

30. “Native vegetation” means vegetation comprised of plant species, other than noxious weeds, that are indigenous to the coastal region of the Pacific Northwest and which reasonably could have been expected to naturally occur on the site. Examples include trees such as Douglas fir, western hemlock, western red cedar, alder, big-leaf maple, and vine maple; shrubs such as willow, elderberry, salmonberry, and salal; and herbaceous plants such as sword fern, foam flower, and fireweed.

31. “New development” means land-disturbing activities, including Class IV – general forest practices that are conversions from timber land to other uses; structural development, including construction or installation of a building or other structure; creation of impervious surfaces; and subdivision, short subdivision and binding site plans, as defined and applied in Chapter 58.17 RCW. Projects meeting the definition of “redevelopment” shall not be considered new development.

32. “Nonstormwater discharge” means any discharge to the storm drainage system that is not composed entirely of stormwater. Examples may include but are not limited to sanitary wastewater, laundry wastewater, noncontact cooling water, vehicle wash wastewater, radiator flushing wastewater, spills from roadway accidents, and improperly disposed motor oil, solvents, lubricants, and paints.

33. “Permit” (the “Western Washington Phase II Municipal Stormwater Permit”) means a permit issued by Ecology under Sections 307, 402, 318, and 405 of the federal Clean Water Act that authorizes the discharge of pollutants to surface waters of the state. Also known as an NPDES permit.

34. “Pollutant” means anything which causes or contributes to pollution. Pollutants may include, but are not limited to: paints, varnishes, and solvents; oil and other automotive fluids; nonhazardous liquid and solid wastes and yard wastes; refuse, rubbish, garbage, litter, or other discarded or abandoned objects and accumulations, so that same may cause or contribute to pollution; floatables; pesticides, herbicides, and fertilizers; hazardous substances and wastes; sewage, fecal coliform and pathogens; dissolved and particulate metals; animal wastes; wastes and residues that result from constructing a building or structure; and noxious or offensive matter of any kind.

35. “Pollution” means contamination or other alteration of the physical, chemical, or biological properties of waters of the state, including change in temperature, taste, color, turbidity, or odor of the waters, or such discharge of any liquid, gaseous, solid, radioactive or other substance into any waters of the state as will or is likely to create a nuisance or render such waters harmful, detrimental or injurious to the public health, safety or welfare, or to domestic, commercial, industrial, agricultural, recreational, or other legitimate beneficial uses, or to livestock, wild animals, birds, fish or other aquatic life.

36. Predeveloped Condition. For areas that drain directly or indirectly to a river or stream, “predeveloped condition” shall mean the native vegetation and soils that existed at a site prior to the influence of Euro-American settlement. The predeveloped condition shall be assumed to be a forested land cover unless reasonable historic information is provided that indicates the site was prairie prior to settlement.

37. “Project site” means that portion of a property, properties, or right-of-way subject to land-disturbing activities, new impervious surfaces, or replaced impervious surfaces. The total projected area of new, replaced or new plus replaced impervious surfaces for subdivisions shall constitute a project site.

38. “RCW” means the Revised Code of Washington.

39. “Receiving waters” means bodies of water or surface water systems to which surface runoff is discharged via a point source of stormwater or via sheet flow.

40. “Redevelopment” means, on a site that is already substantially developed (which means thirty-five percent or more of existing impervious surface coverage), the creation or addition of impervious surfaces; the expansion of a building footprint or addition or replacement of a structure; structural development including construction, installation or expansion of a building or other structure; replacement of impervious surface that is not part of a routine maintenance activity; and land-disturbing activities, or other projects where any other city construction permit is required.

41. “Replaced impervious surface” means, for structures, the removal and replacement of any exterior impervious surfaces or foundation. For other impervious surfaces, the removal down to bare soil or base course and replacement.

42. “Routine maintenance” means preventative or cyclical (weekly, monthly, etc.) maintenance that is an essential part of the on-going care and upkeep of a system or facility against normal wear and tear.

43. "Site" means the area defined by the legal boundaries of one or more parcels of land that is (are) subject to new development or redevelopment. For road projects, the length of the project site and the right-of-way boundaries define the site.
44. "Soil" means the unconsolidated mineral and organic material on the immediate surface of the earth that serves as a natural medium for the growth of land plants.
45. "Stormwater" means runoff during and following precipitation and snowmelt events, including surface runoff and drainage.
46. "Stormwater drainage plan" means the comprehensive report containing all of the technical information and analysis necessary for a regulatory agency to evaluate a proposed new development or redevelopment project for compliance with stormwater requirements.
47. Stormwater Drainage System. See "municipal separate storm sewer system (MS4)."
48. "Stormwater facility (facility)" means a constructed component of a stormwater drainage system designed or constructed to perform a particular function, or multiple functions. Stormwater facilities include but are not limited to pipes, swales, ditches, culverts, street gutters, detention ponds, retention ponds, constructed wetlands, infiltration devices, catch basins, oil/water separators, and biofiltration swales.
49. "Stormwater Manual" means the "Stormwater Management Manual for Western Washington," February 2005, as prepared by Ecology. This manual contains BMPs to prevent, control or treat pollution in stormwater and reduce other stormwater-related impacts to waters of the state. The Stormwater Manual is intended to serve as a reference and supplement to this chapter to control the quantity and quality of stormwater runoff from new development and redevelopment.
50. "Stormwater master plan" means documents illustrating the location, facility types and connections of the city's stormwater drainage system. These documents include the current editions of the Kelso Stormwater Master Plan and are created and maintained for the comprehensive management of stormwater for the city of Kelso urban areas and suburban fringe areas.
51. "Stormwater pollution prevention plan (SWPPP)" means a written plan to implement BMPs to identify, prevent, and control the contamination of stormwater discharges to stormwater, stormwater drainage systems and/or receiving waters to the maximum extent practicable.
52. "WAC" means the Washington Administrative Code.
53. "Wastewater" means any water or other liquid, other than uncontaminated stormwater, discharged from a facility.
54. "Waterbody" means lakes, rivers, ponds, streams, inland waters, sloughs, ditches, and all other surface waters and watercourses within the jurisdiction of the state of Washington.
55. "Wetlands" means those areas that are inundated or saturated by surface or ground water at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs, and similar areas. Wetlands do not include those artificial wetlands intentionally created from nonwetland sites, including, but not limited to, irrigation and drainage ditches, grass-lined swales, canals, detention facilities, wastewater treatment facilities, farm ponds, and landscape amenities, or those wetlands created after July 1, 1990, that were unintentionally created as a result of the construction of a road, street, or highway. Wetlands may include those artificial wetlands intentionally created from nonwetland areas to mitigate the conversion of wetlands.
56. "Vegetation" means organic plant life growing on the surface of the earth. (Ord. 3727 § 1, 2010)

13.09.030 General provisions.

A. Abrogation and Greater Restrictions. It is not intended that this chapter repeal, abrogate, or impair any existing regulations, easements, covenants, or deed restrictions. However, where this chapter imposes greater restrictions, the provisions of this chapter shall prevail.

B. Interpretation. The provisions of this chapter shall be held to be minimum requirements in their interpretation and application and shall be liberally construed to serve the purposes of this chapter. (Ord. 3727 § 1, 2010)

13.09.035 Stormwater management program adopted.

The city of Kelso's stormwater management program, as now or hereafter modified, is hereby adopted by reference and is hereinafter referred to as "the program." The program contains information assembled for the purposes of identifying existing and projected problems, analyzing alternatives leading to recommendations, and preparing a program to implement recommendations. The city expresses no guarantee of the accuracy of the information, although updates will be made as necessary to reflect best available information. The use of information should be accompanied by adequate checks for accuracy along with good engineering practice and judgment.

The director shall be authorized to modify the program, in accordance with the city's adopted policies and procedures, to reflect newly developed technical data, models, and other updated information. (Ord. 3727 § 1, 2010)

13.09.040 Applicability and exemptions.

A. Applicability. This chapter shall apply to all:

1. Water or pollutants directly or indirectly entering the storm drain system generated on any developed or undeveloped lands; and
2. New development, redevelopment, and construction site activities, unless explicitly exempted herein.

B. Exemptions. The following development activities are exempt from certain provisions of this chapter:

1. Projects disturbing less than five acres that meet the requirements delineated in the KEDM may apply for an "erosivity waiver" to be exempt from Section 13.09.060H2, the requirement to submit a stormwater pollution prevention plan (SWPPP).
2. Commercial agriculture and forest practices regulated under WAC Title 222, except for Class IV – general forest practices that are conversions from timber land to other uses; are exempt from all technical and administrative requirements established in this chapter.
3. Road Maintenance. The following road maintenance activities are exempt from the additional nine Minimum Requirements required for projects that disturb one acre or more of land or that are part of a larger common plan of development or sale:
 - a. Pothole and square cut patching, overlaying existing asphalt or concrete pavement with asphalt or concrete without expanding the area of coverage, shoulder grading, reshaping/regrading drainage systems, crack sealing, resurfacing with in-kind material without expanding the road prism, and vegetation maintenance.
 - b. Removing and replacing a paved surface to base course or lower, or repairing the roadway base are considered redevelopment subject to MRs No. 1 through 5, if impervious surfaces are not expanded. However, in most cases, only MR No. 2, Construction Stormwater Pollution Prevention, will be germane.
 - c. The following examples of redevelopment are considered new impervious surfaces and have no exemption: resurfacing by upgrading from dirt to gravel, asphalt, or concrete; upgrading from gravel to asphalt, or concrete (for example by extending the pavement edge without increasing the size of the road prism, or paving graveled shoulders); or upgrading from a bituminous surface treatment ("chip seal") to asphalt or concrete.

4. Underground utility projects that replace the ground surface with in-kind material or materials with similar runoff characteristics are only subject to Minimum Requirement No. 2, Construction Stormwater Pollution Prevention.

5. Normal landscape activities and gardening. (Ord. 3727 § 1, 2010)

13.09.050 General requirements.

A. City of Kelso Engineering Design Manual. The KEDM, as now or hereafter modified, is hereby adopted by reference for use in implementation of this chapter. The KEDM contains requirements and technical details for stormwater modeling, facility design, pollution and flow control, and application of these methods. The director shall be authorized to modify the KEDM, in accordance with the city's adopted policies and procedures, to reflect newly updated technical data, models, and other information.

B. Stormwater Best Management Practices (BMPs).

1. General. BMPs shall be used to minimize stormwater pollution and control stormwater flow. BMPs described and/or referenced in the KEDM shall be used to comply with the standards in this chapter.

2. Low Impact Development (LID). Low impact development BMPs shall be preferentially used as practicable in all activities subject to regulation in this chapter. Approved LID BMPs include those methods described in the Low Impact Development Guidance Manual or the Stormwater Manual.

3. Experimental BMPs. Experimental BMPs are encouraged as a means of solving problems in a manner not addressed by the Manual in an effort to improve stormwater quality technology. Experimental BMPs must be approved prior to implementation by the director, in accordance with the variance criteria outlined in Section 13.09.170.

C. Illicit Discharges. Illicit discharges to stormwater drainage systems are prohibited.

D. Surface Water Quality Standards. All activities subject to the requirements of this chapter are expected to comply with the numerical water quality standards established in Chapter 173-201A WAC. The point of compliance is considered the first point of discharge from the development or redevelopment activity to a municipal stormwater drainage facility or to waters of the state. (Ord. 3727 § 1, 2010)

13.09.060 Standards for development.

Development projects within the city shall provide the erosion and stormwater controls in accordance with the thresholds and standards described herein.

A. General Applicability.

1. All projects shall protect the public right-of-way, the stormwater drainage system, receiving waters, and adjoining properties from the deposition of materials, discharge of sediments and other pollutants, and damage from increased surface and subsurface flow rates caused by the project.

2. All projects shall comply with the city's general design and construction criteria for stormwater drainage systems contained in the KEDM.

B. Erosion and Sediment Control. Additionally, projects disturbing five thousand square feet or more of land are required to:

1. Obtain a local excavation and grading permit for the project prior to the land disturbance (this permit may be waived if a right-of-way, building, or public improvement permit for the same project has been issued); and

2. Submit a site erosion and sediment control plan, and, if necessary, any supplemental information such as narratives, specifications, and/or calculations.

3. Provide and install adequate runoff controls per an approved plan prior to land-disturbing activity.

C. Basic Stormwater Control. Additionally, projects creating five thousand square feet or more of new impervious surfaces (cumulative over conditions existing in 1999) are required to:

1. Submit a stormwater drainage plan and supporting information (e.g., design calculations, geotechnical report, details, specifications, and maintenance requirements);
2. Satisfy water quality, quantity, and amenity criteria as outlined in the KEDM.

D. Source Control.

1. Additionally, any new development or redevelopment, regardless of size, that is identified by the city to have the potential to generate highly contaminated runoff shall design and implement a level of treatment commensurate with the risk.
2. Additionally, all projects requiring city approval that are changing the intended use of a parcel to one identified in the KEDM as needing oil/water separation shall provide such treatment.

E. Redevelopment. Additionally, projects that create and/or replace five thousand square feet or more of impervious surface that are not otherwise required in subsections C and G of this section to provide stormwater controls shall select among and comply with at least one of a reduced and flexible set of controls, as described in Chapter 4 – Storm Drainage of the KEDM.

F. Ecology's Construction Stormwater NPDES Permit. Additionally, projects that disturb one acre or more of land or that are part of a larger common plan of development or sale must obtain the state Construction NPDES Permit if required by Ecology.

G. Ecology's Nine Minimum Requirements for Development and Redevelopment. Additionally, new development, redevelopment, and construction site activities that result in land disturbance of one acre or more, including projects less than one acre that are part of a larger common plan of development or sale, must satisfy one or more of the Minimum Requirements required by Ecology and delineated in the KEDM. The Minimum Requirements are:

1. Site Plan;
2. Construction SWPPP;
3. Source Control;
4. Preserve Natural Drainage;
5. On-Site Runoff Management;
6. Runoff Treatment;
7. Flow Control;
8. Wetlands Protection; and/or
9. Operations and Maintenance.

They are subject to the site planning and BMP selection and design criteria of Ecology's Stormwater Management Manual for Western Washington, or other equivalent manual approved by Ecology.

H. This subsection identifies thresholds that determine the applicability of these nine Minimum Requirements (MR) to projects (that disturb at least one acre, or that are part of a larger common plan of development or sale that disturbs at least one acre).

1. Development.

- a. All new development shall be required to comply with MR No. 2.

b. The following new development shall comply with MRs No. 1 through 5 for the new and replaced impervious surfaces and the land disturbed:

- i. Creates or adds two thousand square feet, or greater, of new, replaced, or new plus replaced impervious surface area; or
- ii. Has land-disturbing activity of seven thousand square feet or greater.

c. The following new development shall comply with MRs No. 1 through 9 for the new impervious surfaces and the converted pervious surfaces:

- i. Creates or adds five thousand square feet, or more, of new impervious surface area; or
- ii. Converts three-fourths acre, or more, of native vegetation to lawn or landscaped areas; or
- iii. Converts two and one-half acres, or more, of native vegetation to pasture.

2. Redevelopment.

a. All redevelopment shall be required to comply with MR No. 2. In addition, all redevelopment that exceeds certain thresholds shall be required to comply with additional MRs as follows.

b. The following redevelopment shall comply with Minimum Requirements No. 1 through 5 for the new and replaced impervious surfaces and the land disturbed:

- i. The new, replaced, or total of new plus replaced impervious surfaces is two thousand square feet or more; or
- ii. Seven thousand square feet or more of land-disturbing activities.

c. The following redevelopment shall comply with MRs No. 1 through 9 for the new impervious surfaces and converted pervious areas:

- i. Adds five thousand square feet or more of new impervious surfaces; or
- ii. Converts three-fourths acre, or more, of native vegetation to lawn or landscaped areas; or
- iii. Converts two and one-half acres, or more, of native vegetation to pasture.

d. If the runoff from the new impervious surfaces and converted pervious surfaces is not separated from runoff from other surfaces on the project site, the stormwater treatment facilities must be sized for the entire flow that is directed to them.

e. An equivalent (flow and pollution characteristics) area within the same site can be used to meet the MRs. For public roads projects, the equivalent area does not have to be within the project limits, but must drain to the same receiving water.

3. Additional Requirements for Redevelopment Project Sites.

a. For road-related projects, runoff from the replaced and new impervious surfaces (including pavement, shoulders, curbs, and sidewalks) shall meet all the MRs (No. 1 through 9) if the new impervious surfaces total five thousand square feet or more and total fifty percent or more of the existing impervious surfaces within the project limits. The project limits shall be defined by the length of the project and the width of the right-of-way.

b. Other types of redevelopment projects shall comply with all the MRs (No. 1 through 9) for the new and replaced impervious surfaces if the total of new plus replaced impervious surfaces is five thousand square

feet or more, and the valuation of proposed improvements – including interior improvements – exceeds fifty percent of the assessed value of the existing site improvements.

c. The city may adopt a plan and schedule, in accordance with the adjustment, exception/variance, and/or basin planning provisions of this chapter, to provide regional treatment, flow control, and/or wetlands protection to the replaced impervious surfaces of redevelopment projects.

d. The city may grant a variance/exception to the application of the flow control requirements to replaced impervious surfaces if such application imposes a severe economic hardship per Section 13.09.170.

4. Basin/Watershed Planning. The city may allow alternative or regional approaches to treatment, flow control, and wetlands protection per the basin planning provisions of the Permit.

I. Financial Liability/Public Nuisance Declared. In addition to other remedies, vandalism of or failure to install and/or maintain water courses or stormwater facilities as required in this chapter and applicable permits is hereby declared to be a public nuisance, subject to abatement as provided by applicable laws of the city or the state of Washington. The property owner and all persons engaged in development or land-disturbing activity shall be liable, jointly and severally, for all costs incurred by the city in any public nuisance action taken hereunder, or on account of damage or threatened damage to city property or facilities or water bodies, or associated with remedial actions necessitated by the failure to install and/or maintain required stormwater facilities. (Ord. 3727 § 1, 2010)

13.09.070 Construction inspection for permanent stormwater BMPs.

A. Notice of Construction Commencement. The applicant must notify public works before the commencement of construction. Public works may, at its discretion, issue verbal or written authorization to proceed with critical construction components, such as installation of permanent stormwater BMPs based on stabilization of the drainage area and other factors.

B. Construction Inspections by Public Works or its Representatives. Public works or its representatives shall conduct periodic inspections of the stormwater BMPs shown on the approved stormwater management design plan, and especially during critical installation and stabilization steps. All inspections shall be documented in writing. The inspection shall document any variations or discrepancies from the approved plan, and the resolution of such issues. Additional information regarding inspections can be found in the KEDM. A final inspection by the stormwater authority is required before any performance bond or portion thereof shall be released. (Ord. 3727 § 1, 2010)

13.09.080 Easements, deeds and education.

A. Easements. Storm drainage easements shall be required where the conveyance, storage, or treatment of stormwater is identified on the stormwater management design plan, and where access is needed to structural or nonstructural stormwater measures.

The following conditions shall apply to all easements:

1. Dimensions. Easements shall be of a width and location specified in the KEDM.
2. Easements Approved Before Plat Approval. Easements shall be approved by public works and shall be recorded with Cowlitz County and on all property deeds.
3. With the exception of managed properties, such as apartment complexes, all residential stormwater facilities shall be placed in the public right-of-way, or a full easement shall be granted to the city for inspection and maintenance.

B. Deeds and Covenants for LID. Private home owner deed restrictions and homeowners'/building covenants shall be required for all properties with on-site LID BMPs to ensure that the stormwater management applications continue to function as designed. The deed restrictions or covenants shall specifically address and/or append the requirements and responsibilities for long-term management and maintenance of any LID BMPs.

C. Education. Education measures (e.g., fact sheet or brochure) describing the functions of conservation areas and LID BMPs shall be developed and distributed during the initial and all successive sales of properties using LID BMPs. (Ord. 3727 § 1, 2010)

13.09.090 Maintenance agreement and plan.

A. Responsible Party. The owner shall be responsible for the operation and maintenance of stormwater facilities and shall pass such responsibility to any successor owner, unless such responsibility is transferred to the city or to another governmental entity in Section 13.09.120.

B. Requirement for Maintenance Agreement and Plan. If a stormwater management design plan requires structural or nonstructural measures, the owner shall execute a stormwater maintenance agreement prior to public works granting final approval for the plan, or any plan of development or other development for which a permit is required under this chapter. The agreement shall be recorded in the office of the clerk of the circuit court for Cowlitz County and shall run with the land.

C. Required Elements for Maintenance Agreement and Plan. The stormwater maintenance agreement shall be in a form approved by the city, and shall, at a minimum:

1. Designate Responsible Party. Designate the owner or other legally established entity (responsible party) which shall be permanently responsible for maintenance of the structural or nonstructural measures required by the plan.
2. Pass Responsibility to Successors. Pass the responsibility for such maintenance to successors in title.
3. Right of Entry for Stormwater Authority. Grant public works and its representatives the right of entry at reasonable times and in a reasonable manner for the purposes of inspecting all stormwater BMPs. This includes the right to enter a property when public works has a reasonable basis to believe that a violation of this chapter is occurring or has occurred and to enter when necessary for abatement of a public nuisance or correction of a violation of this chapter.
4. Maintenance Plan. Ensure the continued performance of the maintenance obligations required by the plan and this chapter through a maintenance plan (which may be an attachment to the actual maintenance agreement). The plan shall include a list of inspection and maintenance tasks, a schedule for routine inspection and maintenance, actions to be taken when maintenance is required, and other items listed in the KEDM. (Ord. 3727 § 1, 2010)

13.09.100 Stormwater performance bond.

A. Stormwater Performance Bond. At the discretion of public works, the applicant seeking to build a stormwater facility may be required to furnish a stormwater facility performance bond, or equivalent guarantee in a form acceptable to the city, in an amount sufficient to cover all costs associated with the construction of the facility. This bond is to secure the installation and performance of the stormwater facilities identified in the approved stormwater management design plan. The applicant shall be responsible for any costs incurred by the city to secure performance of the stormwater facilities that are in excess of the amount of the bond.

B. Term of Performance Bond. The stormwater performance bond furnished pursuant to this section, or the unexpended or unobligated portion thereof, shall be released to the applicant within sixty days of issuance by public works of the final acceptance of the permanent stormwater BMP by the public works department. A final inspection by public works is required before any performance bond will be released.

C. Term Extended for Initial Maintenance. At the discretion of public works, the stormwater performance bond may be extended beyond the time period specified above to cover a reasonable period of time for testing the BMPs during storm events and for initial maintenance activities. For the purposes of this section, the time shall not exceed two years beyond final acceptance of the construction of the BMP, unless the director determines that an extension is necessary to ensure that the facility satisfies the maintenance and performance requirements identified in the KEDM and the approved stormwater maintenance plan.

D. Partial Release of Bond. The public works shall have the sole discretion to adopt provisions for a partial pro rata release of the performance bond on the completion of various stages or phases of development.

E. Bond Estimation. The applicant shall be responsible for determining bond value and submitting the estimation to public works for approval. If the director disagrees with the applicant's estimate, the director shall determine a

reasonable estimate. The bond value for public and private facilities is to be one hundred twenty-five percent of the estimated cost for the city to construct the stormwater features and achieve final stabilization. The director may allow an equivalent financial guarantee in a form acceptable to the city in lieu of a bond. (Ord. 3727 § 1, 2010)

13.09.110 As-built plans.

All applicants are required to submit as-built plans for any permanent stormwater management facilities located on site after final construction is completed. The plans must show the final design specifications for all stormwater management facilities, meet the criteria for as-built plans in the KEDM, and be sealed by a registered professional engineer. (Ord. 3727 § 1, 2010)

13.09.120 Dedication of stormwater BMPs.

The owner of a stormwater facility required by this chapter may offer to the city for dedication any such stormwater facility, together with such easements and appurtenances as may be reasonably necessary, as provided herein:

A. Preliminary Determination by Public Works. Upon receipt of such offer of dedication by the city, public works shall make a preliminary determination that the dedication of the facility is appropriate to protect the public health, safety and general welfare, and furthers the goals of the city's stormwater management program and/or associated watershed plans. Public works shall forward its determination to the city council. Prior to making its determination, public works shall inspect the facility to determine whether it has been properly maintained and is in good repair.

B. Acceptance by City Council. The city council may accept the offer of dedication by adoption of a resolution. The document dedicating the stormwater BMP shall be recorded in the office of the clerk of the circuit court for Cowlitz County.

C. Owner to Provide Documentation. The owner, at his sole expense, shall provide any document or information requested by public works or the city council in order for a decision to be reached on accepting the facility. (Ord. 3727 § 1, 2010)

13.09.130 Ongoing maintenance for stormwater BMPs.

A. Maintenance Responsibility. The responsible party named in the recorded stormwater maintenance agreement shall maintain in good condition and promptly repair and restore all structural and nonstructural stormwater BMPs and all necessary access routes and appurtenances (grade surfaces, walls, drains, dams and structures, vegetation, erosion and sedimentation controls, and other protective devices). Such repairs or restoration and maintenance shall be in accordance with the approved stormwater management design plan, the stormwater maintenance agreement, and the stormwater maintenance plan.

B. Maintenance Inspection by Public Works or its Representatives. Public works or its representatives shall conduct periodic inspections for all stormwater facilities following project completion. All inspections shall be documented in writing. The inspection shall document any maintenance and repair needs and any discrepancies from the stormwater maintenance agreement and stormwater maintenance plans.

C. Records of Maintenance Activities. The responsible party shall make records of the installation and of all maintenance and repairs, and shall retain the records for at least five years. These records shall be made available to public works during inspection of the BMP(s) and at other reasonable times upon request.

D. Failure to Provide Adequate Maintenance. In the event that the stormwater BMP has not been maintained and/or becomes a danger to public safety or public health, public works shall notify the responsible party by registered or certified mail. The notice shall specify the measures needed to comply with the maintenance agreement and the maintenance plan and shall specify that the responsible party has thirty days or other time frame mutually agreed to between public works and the responsible party, within which such measures shall be completed. If such measures are not completed, then public works shall pursue enforcement procedures pursuant to Section 13.09.150.

If a responsible person fails or refuses to meet the requirements of an inspection report, maintenance agreement, or maintenance plan, the city, after thirty days' written notice (except, that in the event the violation constitutes an immediate danger to public health or public safety, twenty-four hours' notice shall be sufficient), may correct a violation of the design standards or maintenance requirements by performing the necessary work to place the BMP in proper working condition. The city may assess the responsible party for the cost of repair work which shall be a

lien on the property, or prorated against the beneficial users of the property, and may be placed on the tax bill and collected as ordinary taxes by the city. (Ord. 3727 § 1, 2010)

13.09.140 Maintenance escrow requirement.

At the discretion of the director, the property owner will be required to post a cash escrow, letter of credit, or other acceptable form of performance security in an amount that would cover costs associated with maintenance or repair in the event of BMP failure in the event the director determines that such security is necessary to ensure the facility satisfies the maintenance and performance requirements identified in the KEDM and the approved stormwater maintenance plan. This instrument is required to be posted prior to completion of construction and release of the stormwater performance bond and remain in place for a minimum of two years. (Ord. 3727 § 1, 2010)

13.09.150 Maintenance, ~~and inspection and enforcement.~~

A. General Requirements.

1. Maintenance Required. All stormwater facilities shall be maintained in accordance with this chapter and the KEDM. Systematic, routine preventive maintenance is preferred.

2. Compliance. Property owners are responsible for the maintenance, operation and repair of stormwater drainage systems and BMPs on their properties unless the city has accepted maintenance responsibility in writing and a written easement exists granting the city an adequate and sufficient right, at the city's discretion, to enter the property and conduct these activities. Property owners shall maintain, operate and repair the facilities in compliance with the requirements of this chapter and the KEDM.

B. Administration. The director shall develop and administer an inspection program for stormwater facilities in Kelso.

C. Inspection Program.

1. Authorization. Whenever implementing the provisions of the inspection program or whenever there is cause to believe that a violation of this chapter has been or is being committed, the inspector is authorized to inspect stormwater drainage systems within Kelso to determine compliance with the provisions of this chapter.

2. Development Inspection. All new development shall provide for and install adequate runoff controls per an approved stormwater drainage plan and SWPPP. Failure to provide such required runoff controls prior to or simultaneously with the commencement of land-disturbing activities shall result in an order to stop all work upon the site for a minimum of three working days. After the stop-work period, the director may allow work on site to recommence; provided, that such work is necessary to bring the site into compliance with this chapter, permits, or an approved stormwater drainage plan or SWPPP. Once the site is found to be in compliance, land-disturbing activities shall be allowed to continue.

~~D. Enforcement.~~

~~1. Orders. The director shall have the authority to issue to an owner or person an order to install, maintain or repair a component of a stormwater facility or BMP to bring it in compliance with this chapter, the Stormwater Manual, and/or city regulations. The order shall include:~~

~~a. A description of the specific nature, extent and time of the violation and the damage or potential damage that reasonably might occur;~~

~~b. A notice that the violation or the potential violation cease and desist and, in appropriate cases, the specific corrective actions to be taken; and~~

~~c. A reasonable time to comply, depending on the circumstances.~~

~~2. Civil Penalty. In addition to any other remedy or sanction available, a person who fails to comply with an order issued by the director or the Kelso city council pursuant to this chapter, or who fails to conform to the terms of an approval issued, shall be subject to a civil penalty.~~

~~a. Amount of Penalty. Violation of any of the provisions of this chapter shall constitute a civil infraction and upon appropriate finding, the violator shall be assessed a civil penalty as established by the court, not to exceed five hundred dollars, or as hereinafter amended. Each day of violation shall constitute a separate and distinct infraction.~~

~~b. Aiding or Abetting. Any person who, through an act of commission or omission, aids or abets in the violation shall be considered to have committed a violation for the purposes of the civil penalty.~~

~~c. Notice of Penalty. A civil penalty shall be imposed by the director, by a notice in writing, which shall be served either by certified mail with return receipt requested or by personal service, to the person incurring the same. The notice shall describe the violation, the date(s) of violation, and shall order the acts constituting the violation to cease and desist, and, in appropriate cases, require necessary corrective action within a specified time.~~

~~d. Application for Remission or Mitigation. Any person incurring a penalty may apply in writing within ten days of receipt of the notice of penalty to the director for remission or mitigation of such penalty. Upon receipt of the application, the director may remit or mitigate the penalty only upon a demonstration of extraordinary circumstances, such as the presence of information or factors not considered in setting the original penalty. The director's decision may be appealed to the hearing examiner within ten days of the decision.~~

~~e. Appeal of Civil Penalty. Persons incurring a penalty imposed by the director may appeal in writing within ten days of the receipt of the notice of penalty to the hearing examiner. The hearing examiner shall hold a de novo hearing to consider the appeal and may affirm, modify or reverse the penalty. The decision of the hearing examiner may be appealed to superior court within ten days of the receipt of the hearing examiner's decision. A fee to appeal the civil penalty shall be one thousand five hundred dollars and shall be paid to the city along with the appeal.~~

~~3. Penalties Due. Penalties imposed under this section shall become due and payable ten days after notice of the penalty is mailed or delivered, whichever occurs first, unless application for remission or mitigation is made or an appeal is filed. Whenever an application for remission or mitigation is made or an appeal to the hearing examiner is filed (including payment of all applicable hearing examiner fees), penalties shall become due and payable ten days after the date of the decision regarding the remission or payable after all review proceedings and a final decision has been issued confirming all or part of the penalty. If the amount of a penalty owed is not paid within the time specified in this section, the city may take actions necessary to recover such penalty.~~

~~4. Penalty Recovered. Penalties recovered shall be paid to the stormwater utility.~~

~~E. City Action. In addition to any other remedies the city may have under this chapter or at law or in equity, nothing in this chapter or elsewhere within this code shall prevent the city from effecting repairs or maintenance to stormwater facilities if the director determines that imminent danger to public safety, health or welfare, or public or private property, or critical areas or habitat is likely as a result of the action or inaction of the property owner(s). If the city effects repairs or maintenance, the cost will be charged to the property owner(s) together with any penalties incurred under this chapter and any costs of collection (including attorneys' fees), all of which shall be considered a lien against the subject property and also collectable as an in personam debt against the property owner(s). (Ord. 3727 § 1, 2010)~~

13.09.160 Administration.

A. Director. The director shall administer this chapter and shall have the authority to develop and implement administrative procedures to implement and enforce this chapter. Enforcement shall be addressed pursuant to KMC Chapter 1.50.

B. Review and Approval. The director may approve, conditionally approve or deny an application for activities regulated by this chapter. (Ord. 3727 § 1, 2010)

13.09.170 Adjustments, exceptions, and appeals.

A. Authority. The director may grant an adjustment or exception from the requirements of this chapter. In so granting, the director may prescribe conditions that are deemed necessary or desirable for the public interest.

B. Adjustments. Adjustments to the requirements of this chapter may be granted; provided, that a written finding of fact is prepared that addresses the following:

1. The adjustment provides substantially equivalent environmental protection.
2. Based on sound engineering practices, the objectives of safety, function, environmental protection and facility maintenance are met.

C. Exceptions and Variances. Exceptions to the requirements of this chapter may be granted; provided, that a written finding of fact is prepared that documents the city's determination to grant an exception and:

1. The exception will not increase risk to the public health and welfare, nor be injurious to other properties in the vicinity and/or downstream, and to the quality of waters of the state; and
2. The exception is the least possible exception that could be granted to comply with the intent of the Minimum Requirements.

Additionally, exceptions to Section 13.09.060H may be granted only if such an application imposes a severe and unexpected economic hardship, according to the criteria provided in the KEDM, and:

1. Prior legal public notice is provided of an application for an exception; and
2. Legal public notice of the city's decision on the application is published; and
3. Ecology approval is required for any jurisdiction-wide exception; and
4. The city keeps records, including the written findings of fact, of all exceptions to the MRs.

D. Prior Approval. Any variance shall be approved prior to permit approval and construction.

E. Duration of Variance. Variances granted shall be valid for two years, unless granted for a shorter period.

F. Right of Appeal. Except as otherwise provided in this chapter, all actions of the director in the administration and enforcement of this chapter shall be final and conclusive unless, within thirty days of receipt of the director's action, the original applicant or an aggrieved party files a notice of appeal with the hearing examiner for review of the action. The decision of the hearing examiner shall be final and conclusive unless, within ten days after receipt of the decision of the hearing examiner, an aggrieved party appeals the same to Cowlitz County superior court. (Ord. 3727 § 1, 2010)

~~**13.09.180—Infractions—Penalty.—**~~

~~A violation of any provision of this chapter, other than as set forth in Section 13.09.150, shall be considered an infraction punishable by a fine not to exceed five hundred dollars, or as hereinafter amended. This penalty shall be in addition to any other remedy or sanction provided in this chapter or by other law or in equity.—~~

~~The court may order, in addition to any fine imposed, that a person found to have committed an infraction shall make restitution to any person damaged by the violation. (Ord. 3727 § 1, 2010)~~

~~**13.09.190—Misdemeanors—Penalty.**~~

~~Any violation of this chapter which results in damage to public or private property, other than the property of the violator, in an amount greater than two hundred fifty dollars, or as hereinafter amended, or which results in any physical injury to a person shall be a misdemeanor. For purposes of this section "damage" shall include cost to restore as well as loss of value.~~

~~Each second or subsequent violation of this chapter by any person within a period of three years shall be a misdemeanor.~~

~~Each misdemeanor shall be punishable by a fine not to exceed one thousand nine hundred dollars or ninety days in jail, or as hereinafter amended, or both. This penalty shall be in addition to any other remedy or sanction provided in this chapter or by other law or in equity.~~

~~The court may order, in addition to any fine imposed, that a person found to have committed a misdemeanor shall make restitution to any person damaged by the violation. (Ord. 3727 § 1, 2010)~~

13.09.200 Severability.

The provisions of this chapter are hereby declared to be severable. If any provision, clause, sentence, or paragraph of this chapter 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 chapter.

If this chapter is in conflict with any other section of the Kelso Municipal Code, this chapter shall control. (Ord. 3727 § 1, 2010)

13.09.210 Compatibility with other permit and ordinance requirements.

This chapter is not intended to interfere with, abrogate, or annul any other ordinance, rule or regulation, statute, or other provision of law. The requirements of this chapter should be considered minimum requirements, and where any provision of this chapter imposes restrictions different from those imposed by any other ordinance, rule or regulation, or other provision of law, whichever provisions are more restrictive or impose higher protective standards for human health or the environment shall be considered to take precedence. (Ord. 3727 § 1, 2010)

13.09.220 Legal authority.

The ordinance codified in this chapter is adopted pursuant to authority conferred by and in accordance with the Permit. (Ord. 3727 § 1, 2010)

13.09.230 Liability.

Any person who undertakes or causes to be undertaken any land disturbance shall ensure that soil erosion, sedimentation, increased pollutant loads and changed water flow characteristics resulting from the activity are controlled so as to minimize pollution of receiving waters. The requirements of this chapter are minimum standards and a person's compliance with the same shall not relieve such person from the duty of enacting all measures necessary to minimize pollution of receiving waters. (Ord. 3727 § 1, 2010)

13.09.240 Designation of public works – Powers and duties.

Public works shall administer and enforce this chapter, and may furnish additional policy, criteria and information including specifications and standards, for the proper implementation of the requirements of this chapter. (Ord. 3727 § 1, 2010)

Chapter 13.11

ILLCIT DISCHARGE—STORMWATER UTILITY

Sections:

- 13.11.010 Purpose—Intent.
- 13.11.020 Definitions.
- 13.11.030 Applicability.
- 13.11.040 Responsibility of administration.
- 13.11.050 Discharge prohibitions.
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- 13.11.070 Inspection and sampling.
- 13.11.080 Requirement to prevent, control, and reduce stormwater pollutants by the use of best management practices.
- 13.11.090 Protection of facilities and watercourses.
- 13.11.100 Notification of spills.
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- ~~13.11.200 Criminal prosecution.~~
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13.11.010 Purpose—Intent.

The purpose of this chapter is to provide for the health, safety, and general welfare of the citizens of the city of Kelso, and provide protection for wildlife and the environment, through the regulation of illicit discharges to the storm drainage system to the maximum extent practicable as required by federal and state law. This chapter establishes methods for controlling the introduction of pollutants into the municipal separate storm sewer system (storm drainage system) in order to comply with requirements of the Western Washington Phase II Municipal Stormwater Permit process. The objectives of this chapter are:

- A. To regulate the contribution of pollutants to the stormwater drainage system by stormwater discharges;
- B. To prohibit illicit connections and discharges to the stormwater drainage system;
- C. To establish legal authority to carry out all inspection, surveillance and monitoring procedures necessary to ensure compliance with this chapter. (Ord. 3713 § 1, 2009)

13.11.020 Definitions.

For the purposes of this chapter, the following definitions shall mean:

“Best management practices (BMPs)” means the schedules of activities, prohibitions of practices, general good housekeeping practices, pollution prevention and educational practices, maintenance procedures, and other structural or managerial practices that, when used singly or in combination, prevent or reduce the release of pollutants and other adverse impacts to waters of Washington State or the stormwater drainage system. BMPs also include treatment practices, operating procedures, and practices to control site runoff, spillage or leaks, sludge or water disposal, or drainage from raw materials storage.

“CFR” means Code of Federal Regulations.

“City” means the city of Kelso.

“Clean Water Act (CWA)” means the federal Water Pollution Control Act (33 U.S.C. Section 1251 et seq.), and any subsequent amendments thereto.

“Construction activity” means activities subject to NPDES construction permits. These include construction projects resulting in land disturbance of one acre or more. Such activities include but are not limited to clearing and grubbing, grading, excavating, and demolition.

“Director” means the director of the city of Kelso public works department or his/her designee.

“Hazardous materials” means any material, including any substance, waste, or combination thereof, which because of its quantity, concentration, or physical, chemical, or infectious characteristics may cause, or significantly contribute to, a substantial present or potential hazard to human health, safety, property, or the environment when improperly treated, stored, transported, disposed of, or otherwise managed.

“Hyperchlorinated water” means the water that contains more than ten milligrams per liter chlorine.

“Illicit connections” means any manmade conveyance that is connected to the storm drainage system without a permit. Examples include sanitary sewer connections, floor drains, channels, pipelines, conduits, inlets, or outlets that are connected directly to the stormwater drainage system.

“Illicit discharge” means any direct or indirect discharge to the stormwater drainage system that is not composed entirely of stormwater except discharges expressly exempted in Section 13.11.050.

“Industrial activity” means the activities subject to NPDES Industrial Permits as defined in 40 CFR 122.26(b)(14).

“KMC” means the Kelso Municipal Code.

Maximum Extent Practicable (MEP). MEP refers to paragraph 402(p)(3)(B)(iii) of the federal Clean Water Act which reads as follows: Permits for discharges from municipal storm sewers shall require controls to reduce the discharge of pollutants to the maximum extent practicable, including management practices, control techniques, and system, design, and engineering methods, and other such provisions as the administrator or the state determines appropriate for the control of such pollutants.

“Municipal separate storm sewer system (MS4)” means a conveyance or system of conveyances (including roads with drainage systems, municipal streets, catch basins, curbs, gutters, ditches, manmade channels, or storm drains):

1. Owned or operated by a state, city, town, borough, county, parish, district, association, or other public body (created by or pursuant to state law) having jurisdiction over disposal of wastes, stormwater, or other wastes, including special districts under state law such as a sewer district, flood control district or drainage district, or similar entity, or an Indian tribe or an authorized Indian tribal organization, or a designated and approved management agency under Section 208 of the CWA that discharges to waters of the United States;
2. Designed or used for collecting or conveying stormwater;
3. Which is not a combined sewer; and
4. Which is not part of a “publicly owned treatment works” as defined at 40 CFR 122.2.

“National Pollutant Discharge Elimination System (NPDES)” means the national program for issuing, modifying, revoking, and reissuing, terminating, monitoring and enforcing permits, and imposing and enforcing pretreatment requirements, under Sections 307, 402, 318, and 405 of the federal Clean Water Act, for the discharge of pollutants to surface waters of the state from point sources. These permits are referred to as NPDES permits and, in Washington State, are administered by the Washington Department of Ecology.

“Nonstormwater discharge” means any discharge to the storm drainage system that is not stormwater. Examples may include but are not limited to sanitary wastewater, laundry wastewater, noncontact cooling water, vehicle wash

wastewater, radiator flushing wastewater, spills from roadway accidents, and improperly disposed motor oil, solvents, lubricants, and paints.

“Owner” means any individual, association, organization, partnership, firm, corporation or other entity recognized by law who is (1) the owner of the premises or the owner’s agent, or (2) in control of the premises, or (3) the owner of any facility causing the illicit discharge, or the owner’s agent, or (4) in control of any facility causing the illicit discharge.

“Pollutant” means anything which causes or contributes to pollution. Pollutants may include, but are not limited to: paints, varnishes, and solvents; oil and other automotive fluids; yard wastes, refuse, garbage, litter, or other discarded or abandoned objects and accumulations; pesticides, herbicides, and fertilizers; hazardous substances and wastes; sewage, fecal coliform, animal wastes and pathogens; dissolved and particulate metals; and noxious or offensive matter of any kind.

“Premises” means any building, lot, parcel of land, or portion of land whether improved or unimproved including adjacent sidewalks and parking strips.

“RCW” means the Revised Code of Washington.

Stormwater Drainage System. See the definition for “Municipal separate storm sewer system (MS4).”

“Stormwater” means runoff during and following precipitation and snowmelt events, including surface runoff and drainage.

“Stormwater facility (facility)” means a constructed component of a stormwater drainage system designed or constructed to perform a particular function, or multiple functions. Stormwater facilities include but are not limited to pipes, swales, ditches, culverts, street gutters, detention ponds, retention ponds, constructed wetlands, infiltration devices, catch basins, oil/water separators, and biofiltration swales.

“Stormwater pollution prevention plan (SWPPP)” means a written plan to implement best management practices to identify, prevent, and control the contamination of stormwater discharges to stormwater, stormwater drainage systems and/or receiving waters to the maximum extent practicable.

“Water body” means lakes, rivers, ponds, streams, inland waters, sloughs, ditches, and all other surface waters and watercourses within the jurisdiction of the state of Washington.

“Western Washington Phase II Municipal Stormwater Permit (permit)” means a permit issued by the Washington Department of Ecology under Sections 307, 402, 318, and 405 of the federal Clean Water Act that authorizes the discharge of pollutants to surface waters of the state. Also known as an NPDES permit.

Any term not defined herein shall be given its normal definition subject to guidance by definitions in the NPDES Phase II Permit, as well as federal, state and local codes. (Ord. 3713 § 1, 2009)

13.11.030 Applicability.

This chapter shall apply to all owners responsible for and/or otherwise causing water directly or indirectly entering the storm drain stormwater drainage system generated on any developed and undeveloped lands unless explicitly exempted herein. (Ord. 3713 § 1, 2009)

13.11.040 Responsibility for administration.

The director shall administer, implement, and enforce the provisions of this chapter. (Ord. 3713 § 1, 2009)

13.11.050 Discharge prohibitions.

A. Prohibition of Illicit Discharges. No owner or individual shall throw, drain, or otherwise discharge, cause or allow others under its control to throw, drain, or discharge into the storm drain system and/or surface or groundwaters any material other than stormwater or allowable nonstormwater discharges. All illicit discharges, as defined in this chapter, constitute a violation of this chapter.

1. Exempt Nonstormwater Discharges. The following categories of nonstormwater discharges are allowed, unless they are identified as a significant source of pollution:

- a. Diverted stream flows.
- b. Rising groundwaters.
- c. Uncontaminated groundwater infiltration (as defined at 40 CFR 35.2005(20)).
- d. Uncontaminated pumped groundwater.
- e. Foundation drains.
- f. Air conditioning condensation.
- g. Irrigation water from agricultural sources that is commingled with urban stormwater.
- h. Springs.
- i. Water from crawl space pumps.
- j. Footing drains.
- k. Flows from riparian habitats and wetlands.
- l. Nonstormwater discharges covered by another NPDES permit.
- m. Discharges from emergency fire-fighting activities.

2. Conditional Discharges. The following categories of nonstormwater discharges are allowed if the conditions stated in this section are met unless they are identified by the city as a significant source of pollution. Failure to comply with the conditions shall constitute a violation of this chapter.

- a. Discharges from potable water sources, including water line flushing, hyperchlorinated water line flushing, fire hydrant system flushing, and pipeline hydrostatic test water. Planned discharges shall be dechlorinated to a concentration of one-tenth ppm or less, pH-adjusted if necessary, and volumetrically and velocity controlled to prevent re-suspension of sediments in the stormwater drainage system.
- b. Discharges from swimming pools, hot tubs and similar discharges. These discharges shall be dechlorinated to a concentration of one-tenth ppm or less, pH-adjusted and reoxygenized if necessary, volumetrically and velocity controlled to prevent re-suspension of sediments in the stormwater drainage system. Swimming pool cleaning wastewater and filter backwash shall not be discharged to the stormwater drainage system.
- c. Nonstormwater discharges covered by another NPDES permit; provided, that the discharger is in compliance with that permit, waiver, or order and other applicable laws and regulations; and granted that written approval has been granted for discharge to the stormwater drainage system.
- d. Other nonstormwater discharges. The discharges shall be in compliance with the requirements of a stormwater pollution prevention plan (SWPPP) reviewed by the city, which addresses control of such discharge by applying all known and reasonable methods of prevention control and treatment (AKART) to prevent contaminants from entering surface and groundwater.
- e. Discharges specified in writing by the director as being necessary to protect public health and safety.
- f. Dye testing is an allowable discharge, but requires a verbal notification to the director prior to the time of the test.

3. Other Conditional Discharges. The following shall be addressed through public education and water conservation efforts to prevent illicit discharge:

- a. Discharges from lawn watering and other irrigation runoff are permitted but shall be minimized.
- b. Street and sidewalk wash water, water used to control dust, and routine external building wash down that does not use detergents are permitted if the amount of water used is minimized. At active construction sites, street sweeping must be performed prior to washing the street.

B. Prohibition of Illicit Connections. The construction, use, maintenance or continued existence of illicit connections to the stormwater drainage system, including but not limited to any sewage connection, is prohibited and constitutes a violation of this chapter. This prohibition expressly includes, without limitation, illicit connections made in the past, regardless of whether the connection was permissible under law or practices applicable or prevailing at the time of connection. (Ord. 3713 § 1, 2009)

13.11.060 Industrial or construction activity discharges.

A. Any owner subject to an industrial or construction activity NPDES stormwater discharge permit shall comply with all provisions of such permit. Proof of compliance with said permit may be required in a form acceptable to the city prior to the allowing of discharges to the stormwater drainage system.

B. Access to Facilities.

1. If an owner has security measures in force which require proper identification and clearance before entry into its premises, the discharger shall make the necessary arrangements to allow access to representatives of the city.
2. Owners shall allow the city ready access to all parts of the premises for the purposes of inspection, sampling, examination and copying of records that must be kept under the conditions of an NPDES permit to discharge stormwater, and the performance of any additional duties as defined by local, state and/or federal law.
3. The city shall have the right to set up on any facility such devices as are necessary in the opinion of the city to conduct monitoring and/or sampling of the facility's stormwater discharge.
4. The city has the right to require the discharger to install monitoring equipment as necessary. The facility's sampling and monitoring equipment shall be maintained at all times in a safe and proper operating condition by the discharger at their own expense. All devices used to measure stormwater flow and quality shall be calibrated to ensure their accuracy.
5. Any temporary or permanent obstruction to safe and easy access to the facility to be inspected and/or sampled shall be promptly removed by the operator at the written or oral request of the city and shall not be replaced. The costs of clearing such access shall be borne by the operator.

Any unreasonable delays in allowing the city access to a facility is a violation of this chapter. (Ord. 3713 § 1, 2009)

13.11.070 Inspection and sampling.

A. The director is authorized to develop inspection procedures and requirements for all stormwater drainage systems in the city.

B. Inspection Procedure. Prior to entry of the premises for the purpose of making any inspections, sampling, or records examination, the city shall obtain permission to enter the premises as follows:

1. The director shall present identification credentials, state the reason for the inspection and request entry of the owner, if available.
2. Unoccupied Building. If the premises or any building or structure on the premises is unoccupied, the director shall make reasonable efforts to locate the owner and request entry. In the event of an imminent hazard to persons or property as set forth in subsection (B)(3) of this section, such reasonable efforts shall be satisfied by attempting to contact the owner on site and by telephone at the last known number.

3. Imminent Hazard. If, after reasonable efforts, the director is unable to locate the owner, and has reason to believe the condition of the premises or of the private stormwater drainage system creates an imminent hazard to persons or property, the director may enter to abate the danger.

C. Inspection Parameters. Inspections for compliance with the provisions of this chapter shall be allowed as follows:

1. Construction and Development Inspection. A city representative or authorized designee shall have the right of entry to access any premises for which a permit requiring erosion controls or a stormwater facility has been issued, during regular business hours, or when reasonable under the circumstances for the purpose of review of erosion control practices and private stormwater drainage systems, and to ensure compliance with the terms of such permit. Applicants for any such permit shall agree in writing, as a condition of permit issuance, that such access shall be permitted for such purposes. Inspection procedures shall be as outlined in this section.

2. Inspection for Cause. Whenever the city has cause to believe that a violation of any provision of this chapter has been or is being committed, the director, following procedures prescribed in this section, is authorized to enter the premises to inspect the premises during regular business hours, or when reasonable in the circumstances to ensure compliance with this chapter and Chapter 13.09.* Level of cause includes, but is not limited to, a citizen notification or an observation by a city employee.

3. Inspection for Maintenance and Source Control Best Management Practices. The director, following procedures prescribed in this section, is authorized to enter the premises to inspect private stormwater drainage systems during regular business hours, or at any other time reasonable under the circumstances, in order to ensure continued functioning of the facilities for the purposes for which they were constructed, and to ensure that maintenance is being performed in accordance with the standards of this chapter, Chapter 13.09,* and any maintenance schedule adopted during the plan review process for the premises. The director also may enter the premises for the purposes of observing source control BMPs.

D. Water Sampling and Analysis. Water sampling and analysis for determination of compliance with this chapter shall be allowed as follows:

1. Sample Collection. When the city has reason to believe that a violation exists or is occurring on a premises, the director is authorized to enter the property to set up on the premises such devices as are necessary to conduct sampling, inspection, compliance monitoring, or flow measuring operations.

2. Sample Analysis. Analysis of samples collected during investigation of potential violations shall be analyzed by a laboratory certified by the Department of Ecology as competent to perform the required analysis using standard practices and procedures.

3. Cost of Sample Collection and Analysis. If it is determined that a violation of this chapter exists on the premises, the owner shall pay the city's actual costs for collecting samples and for laboratory analysis of those samples. If it is found that a violation does not exist, the city will pay such charges.

E. If the city has been refused access to any part of the premises from which stormwater is discharged, and he/she is able to demonstrate probable cause to believe that there may be a violation of this chapter, or that there is a need to inspect and/or sample as part of a routine inspection and sampling program designed to verify compliance with this chapter or any order issued hereunder, or to protect the overall public health, safety, and welfare of the community, then the city may seek issuance of a search warrant from any court of competent jurisdiction. (Ord. 3713 § 1, 2009)

*Code reviser's note: Chapter 13.09 will be adopted in February 2010.

13.11.080 Requirement to prevent, control, and reduce stormwater pollutants by the use of best management practices.

The owner or operator of a commercial or industrial establishment shall provide, at their own expense, reasonable protection from spill or loss of prohibited materials or other wastes into the stormwater drainage system or watercourses through the use of structural and nonstructural BMPs. The design and selection of BMPs shall be from the 2005 Western Washington Stormwater Management Manual or BMPs with city approval. Further, any owner responsible for a premises, which is, or may be, the source of an illicit discharge, may be required to implement, at

said owner's expense, additional structural and nonstructural BMPs to prevent the further discharge of pollutants to the stormwater drainage system. Compliance with all terms and conditions of a valid NPDES permit authorizing the discharge of stormwater associated with industrial activity, to the maximum extent practicable, shall be deemed in compliance with the provisions of this section. These BMPs shall be part of a stormwater pollution prevention plan (SWPPP) as necessary for compliance with requirements of the NPDES permit. (Ord. 3713 § 1, 2009)

13.11.090 Protection of facilities and watercourses.

A. Protection. It is a violation for any owner to break, block, damage, destroy, uncover, deface or tamper with any watercourse, stormwater facility, or erosion control system.

B. Responsibility. Every owner upon whose property exists a water body shall keep and maintain that part of the water body within the property free of trash, debris, and other obstacles that would pollute, contaminate, or significantly retard the flow of water into or through the water body. In addition, the owner or lessee shall maintain existing privately owned structures within or adjacent to a water body, so that such structures will not become a hazard to the use, function, or physical integrity of the water body. (Ord. 3713 § 1, 2009)

13.11.100 Notification of spills.

A. Reporting. Notwithstanding other requirements of law, as soon as any owner who has information of any known or suspected spill, deposition, discharge, or other loss of materials which are resulting or may result in illicit discharges or pollutants discharging to stormwater shall notify the city.

B. Response. Notwithstanding other requirements of law, as soon as any owner responsible for a premises or operation, or responsible for emergency response for a premises or operation, shall immediately take all necessary steps to ensure the discovery, containment, and full cleanup of water pollutants or potential pollutants is performed and to the satisfaction of the city and/or Ecology. In the event of such a release of hazardous materials, said owner shall immediately notify emergency response agencies of the occurrence via emergency dispatch services. If the discharge of prohibited materials emanates from a commercial or industrial establishment, the owner or operator of such establishment shall also retain an on-site written record of the discharge and the actions taken to prevent its recurrence. Such records shall be retained for at least five years. (Ord. 3713 § 1, 2009)

13.11.110 Enforcement.

A. Order of Enforcement. The order of escalating enforcement procedures and actions will begin with education and technical assistance. ~~to issuance of a notice and order of compliance for civil penalties and then to criminal prosecution. Criminal prosecution for first time violators will be limited to incidents of intentional acts or gross negligence where the acts or negligence has caused significant damage or risk to the public health or water quality. Further non-compliance or first time violators of intentional acts or gross negligence will be enforced pursuant to KMC Chapter 1.50.~~

~~B. Notice and Order of Compliance. Whenever the city finds that an owner has violated a prohibition or failed to meet a requirement of this chapter, the director may issue a notice and order of compliance to correct the violation and take such action as may be necessary to assure compliance with this chapter. The order shall specify the actions to be taken and the time for compliance. The order may be appealed in accordance with the provisions of Section 13.11.120.~~

~~C. Form of Notice and Order of Compliance.~~

~~1. The written notice and order of compliance to the owner shall contain:~~

~~a. The street address or legal description sufficient for identification of the premises upon which the illicit discharge is located.~~

~~b. A brief and concise description or picture of the violation, together with a citation to the ordinance provision which the illicit discharge violates.~~

~~c. A demand that the illicit discharge be abated or restored in accordance with the local, state, and federal laws.~~

~~d. A statement advising the party issued the citation that they may appeal the order to the city's hearings examiner upon payment of the appropriate appeal fee and that such an appeal shall be served upon the public works department.~~

~~e. If abatement of a violation and/or restoration of affected property is required, the notice shall set forth a deadline within which such remediation or restoration must be completed. Said notice shall further advise that, should the owner fail to remediate or restore within the established deadline, the work may be done by the city or an authorized agent, and the expense thereof shall be charged to the owner.~~

~~2. Such notice and order of compliance may require without limitation:~~

~~a. The elimination of illicit discharges or practices, or operations that violate this chapter;~~

~~b. The elimination of illicit connections or discharges;~~

~~c. The abatement or remediation of stormwater pollution or contamination hazards and the restoration of any affected property;~~

~~d. The performance of monitoring, analyses, and reporting of stormwater facilities or nonstormwater discharges;~~

~~e. Payment of a fine to cover administrative and remediation costs;~~

~~f. Payment of penalties in an amount not to exceed five hundred dollars per day per violation; and~~

~~g. The implementation of source control or treatment BMPs.~~

~~3. Service of Notice and Order of Compliance. The notice and order of compliance shall be served upon the last known address of the owner of the property where the illicit discharge exists.~~

~~4. Method of Service. Service of the notice and order of compliance shall be made upon all owners entitled thereto pursuant to civil court rules and Chapter 4.28 RCW. Service by mail shall be deemed effective on the date of mailing.~~

~~5. Proof of Service. Proof of service of the notice and order of compliance shall be certified to at the time of service by a written declaration under the penalty of perjury as authorized by the laws of the state of Washington, or by a showing of mailing via certified mail.~~

~~D. Suspension of Stormwater Drainage System Access.~~

~~1. Suspension Due to Illicit Discharges in Emergency Situations. The city may, without prior notice, issue a suspension order to suspend all access to the stormwater drainage system to an owner when such suspension is necessary to stop an actual or threatened discharge which presents or may present imminent and substantial danger to the environment, or to the health or welfare of persons, or to the stormwater drainage system or waters of the state. It shall be unlawful for any owner to fail to comply with an emergency suspension order. If any owner fails to immediately comply with a suspension order issued in an emergency, the city may take such steps as deemed necessary to prevent or minimize danger and damage to the environment, public safety, the stormwater drainage system or waters of the state. The owner who has failed to comply with the order shall be responsible for all costs incurred by the city in abating the conditions which caused the issuance of the order.~~

~~2. Suspension Due to the Detection of Illicit Discharge. The city may, upon written notice, issue a suspension order to suspend all access to the stormwater drainage system to an owner discharging to the stormwater drainage system in violation of this chapter if such termination would abate or reduce an illicit discharge. The director will notify a violator of the proposed termination of its stormwater drainage system access.~~

~~3. Reinstatement of Access. The reinstatement of a connection which has been terminated pursuant to this section without the prior approval of the director shall constitute a violation of this chapter.~~

~~4. A suspension order issued under this section may be appealed to the city's hearings examiner in accordance with Section 13.11.120. An appeal shall not relieve any owner of the obligation to comply with an emergency suspension order.~~

~~E. Residential and Charity Car Washing. The city will take a public education approach to compliance for individual residential and charity car washing. These discharges shall be minimized through, at a minimum, water conservation efforts and public education activities that encourage use of commercial car washes, redirection of wash waters to a sanitary sewer or to pervious surfaces such as grass or gravel, and the use of phosphate-free soap. (Ord. 3713 § 1, 2009)~~

~~13.11.120 — Appeal of notice and order of compliance or suspension order.~~

~~A. Any owner receiving a notice and order of compliance or suspension order may appeal the determination of the city to the city's hearings examiner. The notice of appeal must be received within ten days from receipt of the notice and order of compliance or suspension order. A copy of the appeal must be served on the public works department. Hearing on the appeal shall take place within thirty days from the date of receipt of the notice of appeal. The decision of the hearings examiner shall be the final decision of the city. Any appeal shall be processed in accordance with the provisions of this chapter, Chapter 2.14, and the appeal provisions of Chapter 8.24. In the event of a conflict, the provisions of this chapter shall govern.~~

~~B. The notice of appeal shall include the following:~~

- ~~1. The heading in the words of "Before the Hearings Examiner of the City of Kelso."~~
- ~~2. A caption reading "Appeal of the Illicit Discharge at (address or legal description)."~~
- ~~3. A brief statement setting forth the legal interest of each of the appellants in the building or the land involved in the notice.~~
- ~~4. A brief statement in ordinary and concise language of the relief sought and the reasons why it is claimed the protested order or action should be reversed.~~
- ~~5. The signatures of all appellants named, together with their addresses and telephone numbers. Signatures affixed to this appeal document shall constitute a verification that the appeal is made in good faith and not merely an effort to delay, harass, or annoy in any way that is frivolous or without merit.~~

~~C. The notice of appeal shall be accompanied by the payment of an appeal fee in an amount set by the city council by separate ordinance. (Ord. 3713 § 1, 2009)~~

~~13.11.130 — Failure to appeal.~~

~~Failure of any owner to file an appeal in accordance with the provisions herein shall constitute a waiver of the right to an administrative hearing and adjudication of the notice and order or any portion thereof; said failure shall not be deemed an exhaustion of administrative remedies. (Ord. 3713 § 1, 2009)~~

~~13.11.140 — Method and form of appeal decision.~~

~~A. Form of Appeal Decision. The decision shall be in writing and shall contain findings of fact, a determination of the issues presented, and the requirements for compliance therewith. A copy of the decision shall be delivered to the appellant personally or sent by certified mail, postage prepaid, return receipt requested. The decision shall be a matter of public record.~~

~~B. Effective Date of Decision. The effective date of the decision shall be as stated therein. (Ord. 3713 § 1, 2009)~~

~~13.11.150 — Enforcement measures after appeal.~~

~~If the violation has not been corrected pursuant to the requirements set forth in the notice and order of compliance, or in the event of an appeal, within twenty one days of the decision of the hearings examiner, then the city may enter the premises and are authorized to take any and all measures necessary to abate the violation and/or restore the premises. Right of entry shall be obtained in the manner set forth for inspection procedures at Section 13.11.070. (Ord. 3713 § 1, 2009)~~

~~13.11.160~~—Cost of abatement of the violation.

~~Upon the city's abatement of the violation, the city will notify the owner of the cost of abatement, including administrative costs. The owner may file a written protest objecting to the amount of the assessment within fifteen days. If the amount due is not paid within a timely manner as determined by the city, the charges shall become a special assessment against the premises and shall be grounds for the city to file a lien on the premises for the amount of the assessment. (Ord. 3713 § 1, 2009)~~

~~13.11.170~~—Injunctive relief.

~~It shall be unlawful for any owner to violate any provision or fail to comply with any of the requirements of this chapter. If an owner has violated or continues to violate the provisions of this chapter, the city may petition for a preliminary or permanent injunction restraining the owner from activities which would create further violations or compelling the owner to perform abatement or remediation of the violation. (Ord. 3713 § 1, 2009)~~

~~13.11.180~~—Compensatory action.

~~In lieu of enforcement proceedings, penalties, and remedies authorized by this chapter, the city may impose upon a violator alternative compensatory actions. Examples of these activities include, but are not limited to, attendance at compliance or training workshops, river, stream, or creek cleanup activities, or other community service activities. (Ord. 3713 § 1, 2009)~~

~~13.11.190~~—Violations deemed a public nuisance.

~~In addition to the enforcement processes and penalties provided, any condition caused or permitted to exist in violation of any of the provisions of this chapter that is a threat to public health, safety, and welfare, and is declared and deemed a nuisance may be subject to abatement as provided by applicable laws of the city or the state of Washington. (Ord. 3713 § 1, 2009)~~

~~13.11.200~~—Criminal prosecution.

~~Any owner that has violated or continues to violate this chapter shall be liable to criminal prosecution to the fullest extent of the law, and shall be subject to a misdemeanor criminal penalty of one thousand nine hundred dollars per violation per day and/or imprisonment for a period of time not to exceed ninety days, or as hereinafter amended. (Ord. 3713 § 1, 2009)~~

~~13.11.210~~—Remedies not exclusive.

~~The remedies listed in this chapter are not exclusive of any other remedies available under any applicable federal, state or local law. (Ord. 3713 § 1, 2009)~~

~~13.11.220~~120 Severability.

A. The provisions of this chapter are hereby declared to be severable. If any provision, clause, sentence, or paragraph of this chapter or the application thereof to any owner, establishment, or circumstances shall be held invalid, such invalidity shall not affect the other provisions or application of this chapter.

B. If this chapter is in conflict with any other section of the Kelso Municipal Code, this section shall control. (Ord. 3713 § 1, 2009)

Chapter 10.06
JUNK VEHICLES AND
AUTOMOBILE HULKS

Sections:

- 10.06.010 Purpose and intent.
- 10.06.020 Definitions.
- 10.06.030 Nuisance.
- 10.06.040 Summary removal procedures.
- 10.06.050 Nuisance abatement procedures.
- 10.06.060 Exceptions.
- 10.06.070 General duty.
- 10.06.080 Severability.
- 10.06.100 Certain provisions superseded.

10.06.010 Purpose and intent.

The purpose and intent of this chapter is to provide for and implement the greatest powers possible for facilitating the removal of junk vehicles, parts thereof, and automobile hulks from public and private property as authorized in accordance with any amendments that may hereafter be made. (Ord. 3185 § 1, 1992)

10.06.020 Definitions.

The following words and terms used in this chapter shall have the following meanings except where otherwise defined in this chapter, and unless where used the context thereof clearly indicates to the contrary:

“Automobile hulk” means an automobile hulk, whether abandoned or not and further as defined in RCW 46.79.010(2) as now enacted or hereafter amended.

“Junk vehicle” means a junk vehicle as defined in RCW 46.55.010(4) as now enacted or hereafter amended.

“Landowner” means a landowner as now defined in RCW 46.55.230(7) as now enacted or hereafter amended. (Ord. 3185 § 2, 1992)

10.06.030 Nuisance.

The storing or keeping of junk vehicles, parts thereof, or automobile hulks on public or private property is declared to be a public nuisance, except as provided for in Section 10.06.060. Such public nuisance may be abated as provided for in Sections 10.06.040 and 10.06.050. (Ord. 3185 § 3, 1992)

10.06.040 Summary removal procedures.

A. The department of buildings and codes and/or the police department (administrative authority) is empowered to inspect and investigate complaints about the storing or keeping of junk vehicles, parts thereof, and automobile hulks on public and private property. Upon discovery of an alleged junk vehicle, parts thereof, or automobile hulk, the administrative authority may contact the landowner of the property where the junk vehicle, parts thereof, or automobile hulk is located, and determine if the landowner claims any ownership interest in or bailment responsibility for the junk vehicle, parts thereof, or automobile hulk. If the landowner claims no ownership interest or bailment responsibility the administrative authority shall request the landowner to execute a statement to that effect under penalty of perjury.

B. If the landowner claims an ownership interest or bailment responsibility for the junk vehicle, parts thereof, or automobile hulk located on his or her property, and the landowner does not within fifteen days after notification by the administrative authority voluntarily abate the nuisance either by removing it from the property or enclosing it as provided for in Section 10.06.060A, the administration authority may proceed to deal with the junk vehicle, parts thereof, or automobile hulk as provided for in Section 10.06.050.

C. Upon execution by the landowner of the statement of no ownership interest in or bailment responsibility for the junk vehicle, parts thereof, or automobile hulk, the administrative authority shall cause a junk vehicle notification form to be mailed to the vehicle's registered legal owner of record by certified mail, return receipt requested. Additionally, this notification shall inform the owner of the city's intent to dispose of the junk vehicle, parts thereof, or automobile hulk. If the junk vehicle, parts thereof, or automobile hulk remains unclaimed for more than fifteen days after the junk vehicle notification form has been received, the administrative authority may have the junk vehicle, parts thereof, or automobile hulk removed with notice to the Washington State Patrol and the Department of Licensing that the junk vehicle has been wrecked.

D. If no information identifying the owner of the junk vehicle, parts thereof, or automobile hulk is available after the landowner has executed the statement of no ownership interest or bailment responsibility, the administrative authority may place a legal notice of custody and sale in the official newspaper of the city. This notice shall comply with the provision of RCW 46.55.230 (5), as now enacted or hereafter amended, and shall additionally inform the owner of the city's intent to dispose of the junk vehicle, parts thereof, or automobile hulk. If the junk vehicle, parts thereof, or automobile hulk remains unclaimed more than twenty days after publication of the notice, the administrative authority may have the junk vehicle, parts thereof, or automobile hulk removed with notice to the Washington State Patrol and Department of Licensing that the junk vehicle has been wrecked. (Ord. 3185 § 4, 1992)

10.06.050 Nuisance abatement procedures.

A. If the landowner claims an ownership interest in or bailment responsibility for a junk vehicle, parts thereof, or automobile hulk located on his property upon contact by the administrative authority as provided for in Section 10.06.040 (B), then the matter shall be referred to the nuisance and housing enforcement officer for possible further action.

B. After referral to the nuisance and housing enforcement officer as provided for in subsection (A) of this section, the nuisance and housing enforcement officer may give notice to any landowner storing or keeping a junk vehicle, parts thereof, or automobile hulk within any zone in the city that such junk vehicle, parts thereof, or automobile hulk is a public nuisance which must be abated by the landowner within fifteen days or the city will proceed to abate the nuisance by removal of the junk vehicle, parts thereof, or automobile hulk from the landowner's property; and, that the costs of such removal, including administrative costs, shall be assessed against the registered owner of the junk vehicle, parts thereof, or automobile hulk if the identity of the owner can be determined, unless the owner in the transfer of ownership of the vehicle or automobile hulk has complied with RCW 46.12.101, or the costs may be assessed against the owner of the property on which the junk vehicle, parts thereof, or automobile hulk is stored. This notice shall also inform the registered owner and the landowner of the right to request a hearing to contest the city's proposed removal of the junk vehicle, parts thereof, or automobile hulk. This notice shall be delivered to the last registered owner of the junk vehicle, parts thereof, or automobile hulk and to the landowner and the property owner of record if different from the landowner by certified mail, return receipt requested.

C. Notice. The notice required by subsection (B) of this section shall be substantially the following form:

“JUNK VEHICLE, PARTS THEREOF, OR
AUTOMOBILE HULK REMOVAL NOTICE”

A junk vehicle(s), parts thereof, or automobile hulk(s) described as:

has been discovered by the City of Kelso located at
_____ (Street Address), described as _____
_____ (legal) within the City of Kelso which is shown by
public record to be the real property of _____
the last registered owner of such junk vehicle(s), parts thereof, or automobile hulk is listed of
record as: _____
_____.

All of you are informed that such junk vehicle, parts thereof, or automobile hulk(s) (is)
(are) a public nuisance and unless such nuisance is abated within fifteen days of your receipt
of this notice by removal from the property hereinbefore described or enclosed on said

property as set forth in Kelso City Code 10.06.060 (A), the City of Kelso will proceed to abate such public nuisance by removal of the listed junk vehicle(s), parts thereof, or automobile hulk(s) fifteen days after you or your representative receives this notice as shown on the return receipt for this certified mail. The costs of removal, including administrative costs, will be assessed against the registered owner, unless the owner can demonstrate compliance with RCW 46.12.101 at the time of transfer of ownership, and/or against the landowner.

You may request a hearing before the Kelso Municipal Court to contest: the City's determination that the abovedescribed junk vehicle(s), parts thereof, or automobile hulk(s) (is) (are) a public nuisance, the abatement thereof, or that you are legally responsible for these junk vehicle(s), parts thereof, or automobile hulk(s). To request this hearing, one of you must notify the undersigned in writing at the address below within ten days of the date you or your representative received this notice as shown on the return receipt for this certified mail. If you do not request a hearing, the junk vehicle(s), parts thereof, or automobile hulk(s) will be removed by the City of Kelso and the costs thereof, including towing, storage, and other administrative costs, shall be assessed against all or any one of you.

DATED this _____ day of _____, 19__.

NUISANCE AND HOUSING

ENFORCEMENT OFFICER

Department of Buildings and Codes

City of Kelso

Drawer A

Kelso, Washington 98626

(206) 423-0900

D. After the expiration of the fifteen days provided for in the notice to the registered owner and landowner if no hearing has been requested; or, after a hearing if requested and such action is authorized by the court, the enforcement officer may proceed to have the junk vehicle, parts thereof, or automobile hulk removed and the costs of such removal, including administrative costs, shall be taxed against the registered owner and/or landowner jointly and severally; and notice shall be given to the Washington State Patrol and the Department of Licensing that the junk vehicle, parts thereof, or automobile hulk has been wrecked.

E. If either the last known registered owner of the junk vehicle, parts thereof, or automobile hulk, or the landowner requests a hearing before the Kelso Municipal Court to contest either (a) the city's determination that the junk vehicle, parts thereof, or automobile hulk constitutes a public nuisance, or (b) the abatement thereof, or (c) the legal responsibility of either or both the registered owner and/or landowner for the junk vehicle, parts thereof, or automobile hulk, the hearing shall be conducted after a written notice of the date, time, and place of such hearing is mailed, by certified mail, with a five day return receipt requested, to the owner of the land as shown on the last equalized assessment roll and to the last registered and legal owner of record, unless the vehicle is in such condition that identification numbers are not available to determine ownership. The hearing shall be held within thirty days of receipt of a written request for a hearing. No action shall be taken to remove the junk vehicle, parts thereof, or automobile hulk during the pendency of a hearing, except pursuant to court order.

The landowner may appear in person at said hearing or present a written statement in time for consideration at the hearing, and deny responsibility for the presence of the junk vehicle, parts thereof, or automobile hulk on the real property, with his reasons for the denial. If it is determined at the hearing that the junk vehicle, parts thereof, or automobile hulk was or were placed on the land without the consent of the landowner and the landowner has not

subsequently acquiesced in its presence, then the court shall not assess costs of administration or removal of the junk vehicle, parts thereof, or automobile hulk against the property upon which the junk vehicle, parts thereof, or automobile hulk is located or otherwise attempt to collect the costs from the owner. (Ord. 3185 § 5, 1992)

10.06.060 Exceptions.

The provisions of this chapter shall not apply under the following conditions:

- A. If a junk vehicle, parts thereof, or automobile hulk is completely enclosed within a building in a lawful manner and is not visible from the street or other public or private property; or
- B. If a junk vehicle, parts thereof, or automobile hulk is stored or parked in a lawful manner on private property in connection with the business of a licensed dismantler or licensed vehicle dealer and is fenced according to RCW 46.80.130 as now enacted or hereafter emended. (Ord. 3185 § 6, 1992)

10.06.070 General duty.

None of the provisions of this chapter are intended to create a cause of action or provide the basis for a claim against the city, its officials, or employees for the performance or failure to perform a duty or obligation running to a specific individual or specific individuals. Any duty or obligation created herein is intended to be a general duty or obligation running in favor of the general public. (Ord. 3185 § 7, 1992)

10.06.080 Severability.

The provisions of this chapter are declared severable. If any section, subsection, sentence, clause or phrase of this chapter or its application to any person or circumstance is for any reason held to be invalid or unconstitutional, the remainder of this chapter shall not as a result of said section, subsection, sentence, clause, or phrase be held unconstitutional or invalid. (Ord. 3185 § 8, 1992)

10.06.100 Certain provisions superseded.

With respect to the types of vehicles described herein, the procedures set forth in this chapter shall supersede those described in Chapter 8.24 of the Kelso Municipal Code. (Ord. 3185 § 10, 1992)

AGENDA SUMMARY SHEET

Business of the City Council City of Kelso, Washington

SUBJECT TITLE: AN ORDINANCE OF THE CITY OF KELSO AMENDING KELSO MUNICIPAL CODE 1.40 GENERAL PENALTY TO PROVIDE GENERAL CRIMINAL PENALTIES AND GENERAL CIVIL PENALTIES

Agenda Item: _____

Dept. of Origin: Community Development

For Agenda of: October 6, 2015

Originator: Steve Taylor

City Attorney: **Janean Parker**

City Manager: **Steve Taylor**

PRESENTED BY:

Steve Taylor

Agenda Item Attachments:

Ordinance
Exhibit A - Chapter 1.40

SUMMARY STATEMENT:

As part of the update to the City's code enforcement/nuisance abatement program changes were made to the process and penalties associated with violations of the Kelso Municipal Code. The proposed ordinance will add additional enforcement mechanisms to our general penalty provision. These changes include changing the general criminal penalty from a gross misdemeanor to a misdemeanor, the establishment of a general civil penalty, and a general civil infraction.

RECOMMENDED ACTION:

Move to approve on second reading an ordinance amending Chapter 1.40 General Penalty of the Kelso Municipal Code.

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF KELSO AMENDING KELSO MUNICIPAL CODE 1.40 GENERAL PENALTY TO PROVIDE GENERAL CRIMINAL PENALTIES AND GENERAL CIVIL PENALTIES FOR VIOLATIONS THE KELSO MUNICIPAL CODE

WHEREAS, the City Council has considered and adopted changes to the Kelso Municipal Code to create a new Chapter 1.50 Code Enforcement in order to establish civil penalties and a process for the enforcement of violations of the Kelso Municipal Code and to establish updated consistent enforcement procedures for code violations; and

WHEREAS, the City Council wishes to update its general penalty provisions at Kelso Municipal Code 1.40 to be consistent with the new civil penalty provisions; and

WHEREAS, the City Council wishes to change the general criminal penalty from a gross misdemeanor to a misdemeanor; which penalty shall be the general penalty for criminal violations unless otherwise specified.

NOW, THEREFORE,

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

SECTION 1. KMC CHAPTER 1.40 AMENDED. That Kelso Municipal Code Chapter 1.40 is hereby amended as set forth in Exhibit A, attached hereto and incorporated fully by this reference.

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 _____, 2015.

ATTEST/AUTHENTICATION:

MAYOR

CITY CLERK

APPROVED AS TO FORM:

CITY ATTORNEY

PUBLISHED: _____

Exhibit A

**Chapter 1.40
GENERAL PENALTY**

~~1.40.010 Punishment established.~~

~~Notwithstanding the provisions of any other ordinance of the city, every person convicted by the municipal court of the city of a violation of the provisions of any criminal ordinance of the city shall be punished by a fine not to exceed five thousand dollars and imprisonment for up to one year in jail for each separate offense. Any violation which is by nature a continuing violation, including but not limited to violations of the Uniform Building Code, the Uniform Mechanical Code, Uniform Fire Code, the Uniform Plumbing Code, the Uniform Building Code Standards, all licensing and taxing ordinances, the animal control ordinance, zoning ordinance and public health ordinances, shall be deemed a separate offense for each and every day or portion thereof during which any violation is committed, continued or permitted.~~

1.40.010 General penalties.

Unless otherwise specified by City ordinance, any person who violates the provisions of any City of Kelso ordinance regulating, forbidding or prohibiting conduct shall be punished pursuant to the general penalty provisions set forth in this section.

A. General Criminal Penalty. Unless otherwise provided, the minimum criminal penalty is classified as a misdemeanor. Any person convicted of a misdemeanor shall be punished by a fine not to exceed \$1,000 or by imprisonment not to exceed 90 days, or by both such fine and imprisonment.

B. General Civil Penalty. Unless otherwise provided, the violation of a city ordinance is punishable by a fine as set forth in KMC 1.50.230. In any court or administrative hearing to determine whether a violation has occurred, the City shall have the burden of proving by a preponderance of the evidence that a violation occurred. This section does not preempt the specific penalties set forth in ordinances of the City setting forth other penalties for violations of those ordinances.

B. Civil Infraction Penalty. A violation of an ordinance which is designated a civil infraction shall be deemed a civil infraction pursuant to Chapter 7.80 RCW. Unless otherwise provided, any such person shall be assessed a monetary penalty not to exceed a class 1 civil infraction or \$250.00, whichever is greater.

1.10.020 Separate offense.

Every person violating any of the provisions of any ordinance of the City is guilty of a separate offense for each and every day during any portion of which the violation is committed, continued or permitted by any such person.

1.10.030 Nuisance.

In addition to the penalties set forth in KMC 1.50.230, all remedies available by law for the prevention and abatement of nuisances shall apply regardless of any other remedy.

1.10.040 Adoption of civil infraction system.

Pursuant to RCW 35A.11.020 and 35A.12.140, the City adopts Chapter 7.80 RCW, entitled "Civil Infractions" as the procedure and system for adjudicating civil infractions that occur within the City of Kelso.

1.10.050 Prosecution.

Any violation of a City ordinance may be prosecuted by the city attorney or designee in the name of the City to include demands for fines and forfeitures paid to the City or may be adjudicated by civil action, or both.

AGENDA SUMMARY SHEET

Business of the City Council City of Kelso, Washington

SUBJECT TITLE: AN ORDINANCE OF THE CITY OF KELSO AMENDING KELSO MUNICIPAL CODE CHAPTER 13.09, STORMWATER MANAGEMENT AND CHAPTER 13.11 ILLICIT DISCHARGES—STORMWATER UTILITY TO AMEND THE ENFORCEMENT PROCEDURES TO BE CONSISTENT WITH NEW KMC CHAPTER 1.50 CODE ENFORCEMENT

Agenda Item:_____

Dept. of Origin: Community Development_____

For Agenda of: October 6, 2015

Originator: Steve Taylor

City Attorney: **Janean Parker**

City Manager: **Steve Taylor**

PRESENTED BY:

Steve Taylor

Agenda Item Attachments:

Ordinance

Exhibit A - Chapter 13.09 Clean

Exhibit B - Chapter 13.11 Clean

Chapter 13.09 Stormwater Management - Redline

Chapter 13.11 Illicit Discharge – Redline

SUMMARY STATEMENT:

As part of the update to the City's code enforcement/nuisance abatement program a new chapter 1.50 Code Enforcement was drafted to create a process for certain violations of the Kelso Municipal Code. Our Engineering department recommended that violations to the City's Stormwater and Illicit Discharge chapters should be enforced using the mechanisms outlines in the new chapter 1.50; this ordinance makes those changes to the enforcement provisions of Chapters 13.09 and 13.11.

RECOMMENDED ACTION:

Move to approve on second reading an ordinance amending Chapters 13.09 Stormwater Management and 13.11 Illicit Discharge of the Kelso Municipal Code.