

# Kelso City Council Agenda

Regular Meeting, 6:00 pm  
February 2, 2016  
City Hall, Council Chambers  
203 South Pacific  
Kelso, WA 98626



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

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

## **Invocation:**

Pastor Marv Kasemeier, New Song Worship Center

## **1. Approve Minutes:**

1.1. January 19, 2016 – Regular Meeting

## **2. Presentation:**

- 2.1. West Main Streetscape Update - Otak
- 2.2. Kelso Police Department Annual Report

## **3. Consent Items:**

## **4. Citizen Business:**

## **5. Council Business:**

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

- 6.1. Ordinance, 1<sup>st</sup> Reading
  - 6.1.1. Conservation Easement

## **7. Workshop:**

- 7.1. Open Government Training

## **Other Items:**

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

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

**Minutes:** Upon motion by Councilmember Lefebvre, seconded by Councilmember Alexander, 'Approve the Minutes of the 1/5/16 Regular Meeting.' Councilmember Roberson commented that the two Council assignments for the TRRWA Governing Board were not in the correct position. Mayor Futcher commented that the minutes would be confirmed and corrected if needed. With the correction noted by Councilmember Roberson, motion passed, all voting yes.

**PRESENTATION:**

**West Kelso Subarea Plan:** BERK Consulting Project Manager Jeff Arango presented the full draft plan. The Planning Commission joined the meeting for the presentation. Board members in attendance were Rick Von Rock, Daniel Graves, Charles Hendrickson, and Clark Hislop. Board Member James Webb was absent.

**CONSENT AGENDA:**

1. **Auditing of Accounts:** \$ 1,404,554.12

Upon motion by Councilmember McDaniel, seconded by Councilmember Hill, 'Approve the Consent Agenda and the Auditing of Accounts in the amount of \$ 1,404,554.12,' motion carried, all voting yes.

**CITIZEN BUSINESS:**

**Rick Von Rock**, 400 North 7<sup>th</sup> Avenue, spoke about changing the name of the Commons Park. He spoke about considering an ordinance establishing a provision to prohibit plastic carryout shopping bags in the city. He distributed a draft ordinance to the Council.

**Gregory Donges**, 606 North 23<sup>rd</sup> Avenue, spoke about installing streetlights on his street. He presented a picture of his street to the Council.

**COUNCIL BUSINESS:**

**Real Estate Services Discussion (previously tabled at the January 5, 2016 Council Meeting):** Upon motion by Councilmember McDaniel, seconded by Councilmember Roberson, 'Authorize the City Manager to sign the contract with Woodford Commercial Real Estate,' motion carried, all voting yes.

**Introduction of new employee:** Community Development Director/City Engineer Mike Kardas introduced Tim Shell as a new Senior Engineer with the City.

**MOTION ITEM:**

**Ordinance No. (1<sup>st</sup> Reading) – Amending Nuisance Abatement relating to Shopping Carts Regulations:** The Deputy Clerk read the proposed ordinance by title only. Upon motion by Councilmember Roberson, seconded by Councilmember McDaniel, ‘Pass on 1<sup>st</sup> reading, ‘AN ORDINANCE OF THE CITY OF KELSO RELATING TO SHOPPING CART THEFT AND REGULATION AMENDING 9A.56.270 AND ADDING A NEW CHAPTER 9.62 SHOPPING CART CONTROL TO THE KELSO MUNICIPAL CODE.’ City Manager Taylor provided an overview of the proposed amendments and new chapter to the ordinance. Discussion followed. Motion passed, all voting yes.

**MANAGER’S REPORT:**

**Steve Taylor:** 1) Proposed scheduling a Goal and Action Work Plan Discussion for the February 2<sup>nd</sup> Council Meeting. Councilmember McDaniel commented that he would be absent that meeting. Mayor Fitcher suggested scheduling the Goal and Action Work Plan Discussion so that all of the councilmembers would be able to attend. **With the consensus of the Council, the Goal and Action Work Plan Discussion was placed on the agenda for the February 16<sup>th</sup> Council Meeting.** 2) He asked that the Councilmembers interested in attending the AWC Conference on January 27<sup>th</sup> & 28<sup>th</sup> need to contact Jessica. 3) He brought forward a proposed amendment to the agreement with Gregg Dohrn and Associates. Discussion followed. **Upon motion by Councilmember Roberson, Seconded by Councilmember Lefebvre ‘Amend the agreement with Gregg Dohrn and Associates to \$125, 000 maximum,’ motion passed, all voting yes.** 4) Commented that the Open Public Meeting (OPM) Training requirement for newly elected officials needed to be scheduled. **With consensus of the Council, the OPM training session was scheduled to begin at 5:30 pm. on the night of the Feb. 2<sup>nd</sup> Regular Council Meeting.** 5) Provided an update on the Airport Manager position. 6) He provided an update on the transitioning positions in the Community Development and Engineering Departments and updates on positions in the Water/Sewer, and Police Departments.

**COUNCIL REPORTS:**

**Todd McDaniel:** Encouraged the Council to consider an ordinance regarding prohibiting plastic bags.

**Jim Hill:** Spoke in favor of a plastic bag ordinance.

**Nancy Malone:** No report.

**Rick Roberson:** 1) Spoke in favor of a plastic bag ordinance. 2) Encouraged people to sign up for the 2016 Citizens' Police Academy.

**Larry Alexander:** No report.

**Kim Lefebvre:** Spoke in favor of a plastic bag ordinance.

**David Futcher:** No report.

**EXECUTIVE SESSION:**

At 7:46 p.m., Mayor Futcher announced that the Council would convene into executive session to discuss potential litigation. The executive session was expected to last approximately 5 minutes and no action would be taken. The city attorney was present.

At 7:51 p.m., Mayor Futcher announced that executive session would be extended by 5 more minutes.

The Council reconvened into regular session at 7:59 p.m.

There being no further business, Mayor Futcher adjourned the meeting at 7:59 p.m.

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**MAYOR**

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**CITY CLERK**

# **AGENDA SUMMARY SHEET**

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

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**SUBJECT TITLE:**

Presentation - West Main Revitalization Project

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

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

For Agenda of: \_\_\_\_\_ February 2, 2016 \_\_\_\_\_

**PRESENTED BY:**

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

Cost of Item: \$ \_\_\_\_\_

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

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**AGENDA ITEM ATTACHMENTS:**

Street and Landscape Designs

**SUMMARY STATEMENT:**

Otak, Inc. will provide an update on the West Main Revitalization project.

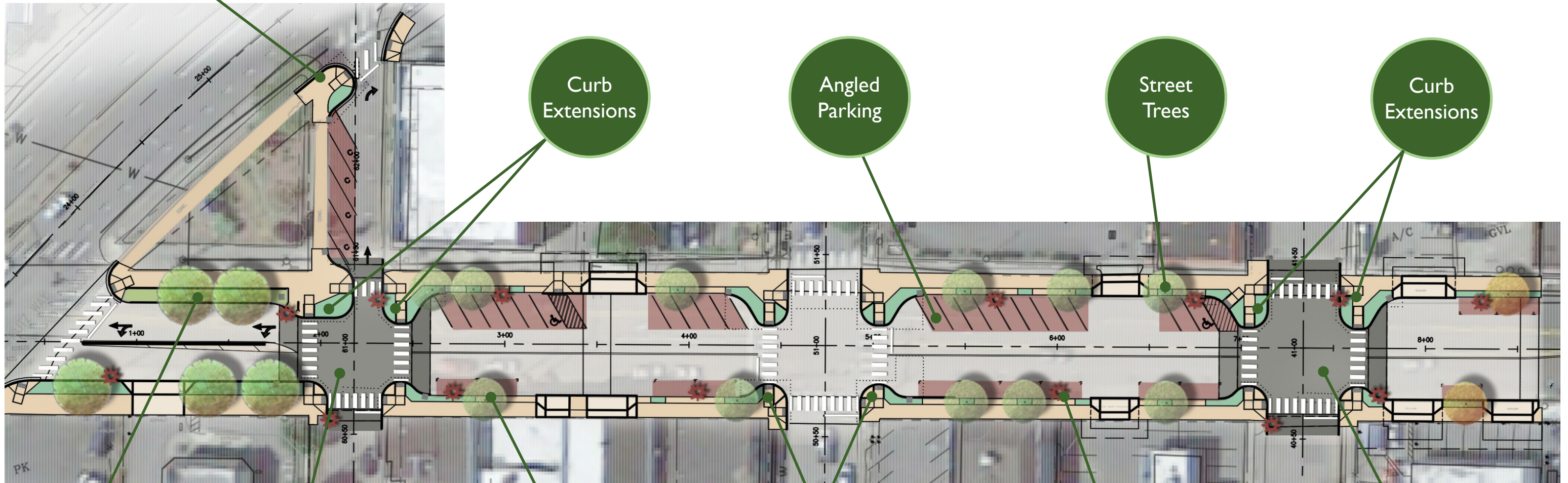
**FINANCIAL SUMMARY:**

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**RECOMMENDED ACTION:**

# WEST MAIN STREET REVITALIZATION PLAN

Curb Extension and Right Only at 6th and Cowlitz



Curb Extensions

Angled Parking

Street Trees

Curb Extensions

Stormwater Treatment

Raised Intersection

Street Trees

Curb Extensions

Parallel Parking

Raised Intersection

GOALS: CALM TRAFFIC AND IMPROVE PEDESTRIAN SAFETY

## Street Design

Curb Extensions to narrow the roadway width.

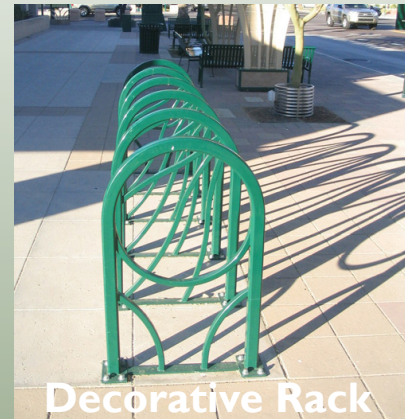
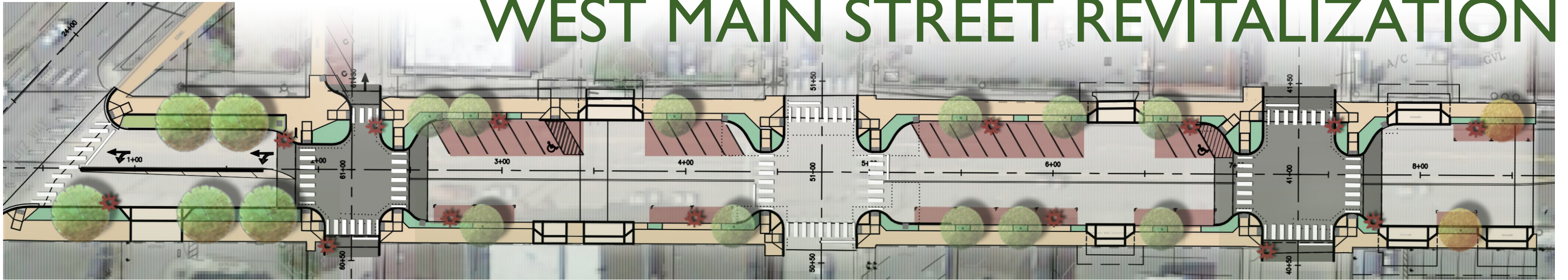
Raised Intersections to slow down traffic.

Street Trees to create vertical edges along the street.

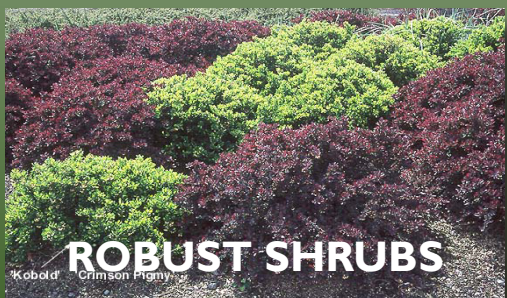
Parallel and Angled Parking.



# WEST MAIN STREET REVITALIZATION



## FURNISHINGS



# Landscape Design



# AGENDA SUMMARY SHEET

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

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**SUBJECT TITLE: Ordinance Amendment (1<sup>st</sup> Reading)** Granting a conservation and access easement over the Hart's Lake property (parcels WI36-01-001 and 24125) to Forterra NW

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

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

**For Agenda of:** \_\_\_\_\_ February 2, 2016 \_\_\_\_\_

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

**PRESENTED BY:**

Steve Taylor, City Manager

**City Attorney:** Janean Parker

**City Manager:** Steve Taylor

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**Agenda Item Attachments:**

Ordinance  
Conservation and Access Easement to Forterra NW

**SUMMARY STATEMENT:**

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

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

**OPTIONS:**

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

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

**RECOMMENDED ACTION:**

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

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

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

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

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

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

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

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

NOW, THEREFORE,

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

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

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

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



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

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

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

ATTEST/AUTHENTICATION:

\_\_\_\_\_  
MAYOR

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

APPROVED AS TO FORM:

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

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

When recorded return to:

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

## **CONSERVATION EASEMENT AND ACCESS EASEMENT**

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Grantor: City of Kelso

Grantee: Forterra NW

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

Legal Description: Exhibit A, p.18

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

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

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

### **1. RECITALS**

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

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

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

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

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

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

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

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

## **2. CONVEYANCE AND CONSIDERATION**

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

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

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

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



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

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

### **3. PURPOSE**

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

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

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

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

**4.2. Access.**

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

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

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

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

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

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

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

**4.6. Baseline Documentation.**

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

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

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

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

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

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

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

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

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

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



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

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

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

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

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

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

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

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

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

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

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

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

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

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

## 7. NOTICE AND APPROVAL

### 7.1. Notice.

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

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

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

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

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

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

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

## 8. ALTERNATIVE DISPUTE RESOLUTION

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



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

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

## 9. JUDICIAL RESOLUTION

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

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

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

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

**9.3. Action.**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

## **12. AMENDMENT**

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

## **13. ASSIGNMENT AND SUCCESSION**

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

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



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

## 14. RECORDATION

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

## 15. GENERAL PROVISIONS

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**16. SCHEDULE OF EXHIBITS**

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

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

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

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

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

City of Kelso, Grantor

By \_\_\_\_\_

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

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

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

Forterra NW, Grantee

By \_\_\_\_\_

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

STATE OF WASHINGTON        )  
  ) ss.  
COUNTY OF COWLITZ        )

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

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

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

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

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

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

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

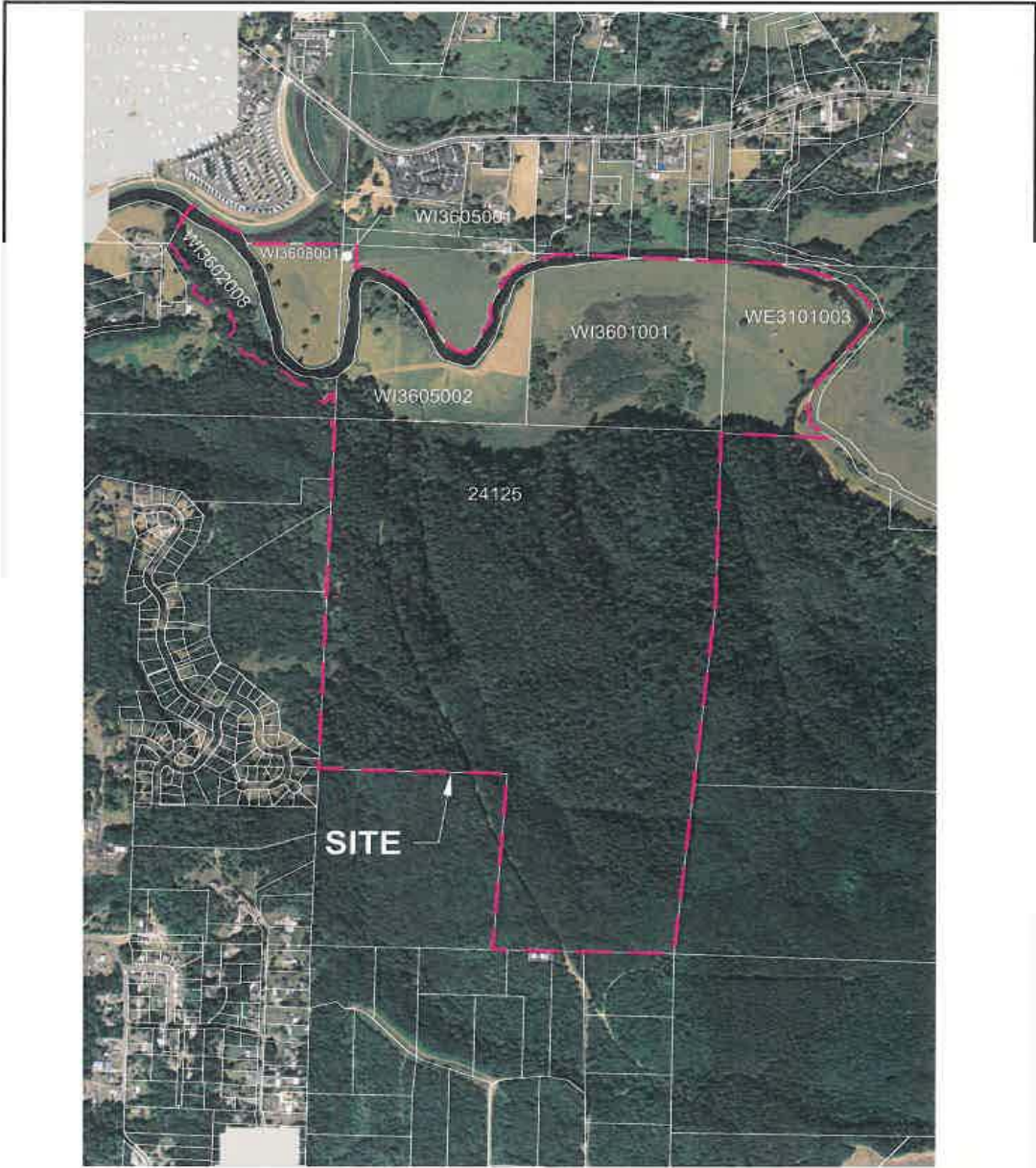
**EXHIBIT A OF CONSERVATION EASEMENT**  
**Legal Description of Property Subject to Conservation Easement**

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

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

*[see attached following this cover page]*





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

**3. EASEMENT AND THE TERMS AND CONDITIONS THEREOF:**  
**IN FAVOR OF: UNITED STATES OF AMERICA**  
**BY DECLARATION OF TAKING IN CAUSE NO. 257 IN UNITED STATES DISTRICT COURT FOR**  
**THE WESTERN DISTRICT OF WASHINGTON, SOUTHERN DIVISION**  
**CERTIFIED COPY RECORDED AUGUST 12, 1941 UNDER AUDITOR'S FILE NO. 216066 IN VOL.**  
**272, PAGE 313**  
**PURPOSE: PERPETUAL EASEMENT AND RIGHT OF WAY AND THE RIGHT IN PERPETUITY TO**  
**CONSTRUCT, OPERATE AND MAINTAIN ONE OR MORE ELECTRIC TRANSMISSION LINES AND**  
**NECESSARY COMMUNICATION LINES.**

**4. EASEMENT AND THE TERMS AND CONDITIONS THEREOF:**  
**GRANTEE: OLYMPIC PIPE LINE COMPANY**  
**PURPOSE: RIGHT OF WAY FOR PIPE LINE CONSTRUCTION, OPERATION AND**  
**MAINTENANCE PURPOSES**  
**DATED: AUGUST 9, 1965**  
**RECORDED: AUGUST 25, 1965**  
**AUDITOR'S NO.: 613065 VOLUME: 720 PAGE: 1429**  
**AREA AFFECTED: SAID PROPERTY**

**5. UNDERGROUND UTILITY EASEMENT AND THE TERMS AND CONDITIONS THEREOF:**  
**GRANTEE: PUBLIC UTILITY DISTRICT NO.1 OF COWLITZ COUNTY,**  
**WASHINGTON**  
**PURPOSE: RIGHT OF WAY EASEMENT FOR POWER UNDERGROUND**  
**DATED: JANUARY 22, 2003**  
**RECORDED: JANUARY 23, 2003**  
**AUDITOR'S NO.: 3172215**  
**AREA AFFECTED: SAID PROPERTY**

**CONTAINS COVENANT PROHIBITING STRUCTURES OVER SAID EASEMENT OR OTHER**  
**ACTIVITY WHICH MIGHT ENDANGER THE UNDERGROUND SYSTEM.**

**6. EASEMENT AND THE TERMS AND CONDITIONS THEREOF:**  
**GRANTEE: MITCH WHARTON**  
**PURPOSE: CONSTRUCT AND MAINTAIN AN ACCESS ROADWAY SUITABLE**  
**FOR A SINGLE-FAMILY RESIDENCE**  
**DATED: JANUARY 21, 2003**  
**RECORDED: JANUARY 23, 2003**  
**AUDITOR'S NO.: 3172216**  
**AREA AFFECTED: SAID PROPERTY**

**7. RESERVATION CONTAINED IN DEED FROM THE STATE OF WASHINGTON RECORDED**  
**UNDER AUDITOR'S FILE NO. 3144623 RESERVING TO THE GRANTOR ALL OIL, GASES,**  
**COAL, ORES, MINERALS, FOSSILS, ETC., AND THE RIGHT OF ENTRY FOR OPENING,**  
**DEVELOPING AND WORKING THE SAME, AND PROVIDING THAT SUCH RIGHTS SHALL NOT**  
**BE EXERCISED UNTIL PROVISION HAS BEEN MADE FOR FULL PAYMENT OF ALL DAMAGES**  
**SUSTAINED BY REASON OF SUCH ENTRY.**

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

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

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

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

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

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

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