

**RESOLUTION NO 1820**

**A RESOLUTION OF THE CITY OF LAKE FOREST PARK,  
WASHINGTON, AUTHORIZING THE PURCHASE AND SALE  
AGREEMENT BETWEEN THE CITY AND FORTERRA NW FOR THE  
CITY'S PURCHASE OF TWO LAKE FRONT PARCELS FOR PARK  
PURPOSES**

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**WHEREAS**, the City Council approved a Memorandum of Agreement ("MOA") with Forterra Northwest ("Forterra") on December 12, 2019, for the future purchase of real property located at 17345 and 17347 Beach Drive NE (the "Lake Front Property") for park purposes; and

**WHEREAS**, the MOA gave the City two years to close the purchase upon the terms detailed in the MOA including price and an interim lease by the City; and

**WHEREAS**, the City has now obtained all the funding for the purchase of Lake Front Property from the City's Strategic Opportunity Fund, State grants, King County levy funds, and King County conservation futures funding;

**NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF LAKE FOREST PARK, WASHINGTON, AS FOLLOWS:**

Section 1. Authorization. The City Council of the City of Lake Forest Park authorizes the Mayor to execute the Purchase and Sale Agreement with Forterra NW for the Lake Front Property attached as Exhibit A, along with any other necessary and required documentation to close the sale, and expend the funds necessary to close the sale.

Section 2. Effective Date. This Resolution shall take effect immediately upon passage.

Section 3. CORRECTIONS. The City Clerk is authorized to make necessary corrections to this resolution, including, but not limited to, the correction of scrivener/clerical errors, references, resolution numbering, section/subsection numbers and any reference thereto.

**PASSED BY A MAJORITY VOTE** of the members of the Lake Forest Park City Council this 4<sup>th</sup> day of November, 2021.

APPROVED:

  
\_\_\_\_\_  
Jeff Johnson  
Mayor

ATTEST/AUTHENTICATED:



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Evelyn Jahed  
City Clerk

FILED WITH THE CITY CLERK: October 29, 2021  
PASSED BY THE CITY COUNCIL: November 4, 2021  
RESOLUTION NO.: 1820

**EXHIBIT A**  
**(to Resolution 1820)**  
**PURCHASE AND SALE AGREEMENT**

This PURCHASE AND SALE AGREEMENT ("Agreement"), dated as of the 1<sup>st</sup> day of November, 2021, is entered into by and between FORTERRA NW, a Washington nonprofit corporation ("Seller"), and the CITY OF LAKE FOREST PARK, a municipal corporation and political subdivision of the State of Washington ("Buyer"). Buyer and Seller are hereafter referred to individually as "Party" and collectively as the "Parties."

**RECITALS**

**A.** Seller and Buyer entered into that certain Memorandum of Agreement for Acquisition of Property, effective December 12, 2019, the terms of which are incorporated herein by this reference (the "MOA"), relating to certain real property in the City of Lake Forest Park, King County, Washington, more particularly described on Exhibit A, attached hereto (the "Land"), which was purchased by Seller on January 23, 2020.

**B.** Seller and Buyer entered into that certain Lease Agreement with respect to the Land pursuant to which Buyer has been leasing the Land since it was acquired by Seller, the terms of which are incorporated herein by this reference (the "Lease"). The Lease shall terminate effective upon Closing (as defined below).

**C.** Seller desires to sell the Property (as defined below) to Buyer, and Buyer desires to purchase the Property from Seller, all subject to the terms and conditions set forth in the MOA and this Agreement.

**AGREEMENT**

**NOW, THEREFORE**, intending to be legally bound, for good and valuable consideration, including the mutual covenants and promises of the Parties, the adequacy and receipt of which are hereby acknowledged, the Parties agree as follows:

**1. PROPERTY.** The "Property" subject to this Agreement includes the Land together with:

**a.** All rights, privileges and easements appurtenant to the Land, including without limitation: all minerals, oil, gas and other hydrocarbon substances on or under the Land; all development rights, air rights, and water rights relating to the Land; any and all easements, rights-of-way, rights of ingress or egress or other interest in, on, or to, any land, highway, street, road, or avenue, open or proposed, in, on, or across, in front of, abutting or adjoining the Land; all rights to utilities serving the Land; and all other appurtenances used in connection with the beneficial use and enjoyment of the Land;

**b.** All buildings upon and other improvements appurtenant to the Land;  
and

**c.** All of Seller's rights, titles and interests in and to any tangible personal property located on and/or used in connection with the operation of the Land.

Notwithstanding the foregoing, in no event shall the Property include any real or personal property other than what was acquired by Seller pursuant to the Residential Real Estate Purchase and Sale Agreement included as Exhibit A to the MOA.

**2. PURCHASE; CONDITION OF PROPERTY.** Seller shall sell and convey the Property to Buyer, and Buyer shall purchase the Property from Seller, on the terms, covenants and conditions set forth in this Agreement. Buyer acknowledges that prior to Closing (as defined below), Buyer shall have inspected the Property and furthermore shall have been occupying the Property pursuant to the Lease and therefore is more knowledgeable than Seller as to the Property. Buyer will be purchasing the Property in its present condition, "AS IS AND WITH ALL FAULTS." As of the date of this Agreement and as of Closing, Buyer agrees that Seller has made and will have made no representations or warranties or agreements of any kind or nature whatsoever regarding any aspect of the Property, except as provided in this Agreement and in the Deed (as defined below).

**3. PURCHASE PRICE AND ADDITIONAL AMOUNTS.**

**3.1. Amount.** The purchase price ("Purchase Price") for the Property shall be Five Million Dollars (\$5,000,000). In addition to the Purchase Price, Buyer shall pay Seller the amounts provided for in Section 4(b) of the MOA (the "Additional Amount"). Seller acknowledges that Buyer has previously paid Seller the Conservation Fee provided for in Section 4(b)(iv), a portion of the interest accrued on Seller's Financing costs in Section 4(b)(ii), and property taxes in Section 4(b)(iii). Seller shall provide Buyer with an itemization of the Additional Amount at least five (5) days prior to Closing.

**3.2. Payment.** The Purchase Price and Additional Amount shall be paid in immediately available funds (i.e., available on the Closing Date).

**3.3 Earnest Money.** No Earnest Money is being required of Buyer.

**4. TITLE.** Title to the Property shall be insurable by a 2006 ALTA Owner's Standard Coverage Policy in the amount of the Purchase Price (the "Title Policy") to be issued by First American Title Insurance Company or Chicago Title Insurance Company (the "Title Company" or "Escrow Holder"), subject only to the Permitted Exceptions (as defined below). The "Permitted Exceptions" means the Exceptions from Coverage specified in the title insurance policy issued by the Title Company to Seller at the time Seller acquired the Property, Policy Number 5011453-3340848, the terms of which are incorporated herein by this reference, excluding the Deed of Trust/Mortgage referred to in Paragraph 15 of Part Two thereof, and updated to reflect current General taxes and assessments. It shall be a condition of Closing that all requirements for issuance of the Title Policy shall have been satisfied or waived by the Title Company and the Title Company shall be prepared to issue the Title Policy, on the standard form in use in the State of Washington, in the full amount of the Purchase Price, dated as of the Closing Date, insuring Buyer's fee simple title to the Property subject only to Permitted Exceptions and others approved by Buyer in writing.

**5. DELIVERIES TO ESCROW HOLDER.**

**5.1. By Seller.** Seller shall deliver or cause to be delivered to Escrow Holder on or prior to the Closing Date the following items, the delivery of each of which shall be a condition to the performance by Buyer of its obligations under this Agreement:

a. **Deed.** A Bargain and Sale Deed warranting only against persons claiming by, through or under Seller and subject only to the Permitted Exceptions, but otherwise in form and substance reasonably satisfactory to Buyer and the Title Company, duly executed and acknowledged by Seller (the "Deed").

b. **FIRPTA Affidavit.** A certificate duly executed by Seller evidencing that Seller is exempt from the withholding requirements of Section 1445 of the Internal Revenue Code.

c. **Certificates of Authority.** Such certificates as are necessary or reasonably required by Buyer or the Title Company to evidence the authority of Seller and its signatories to execute the instruments to be executed by Seller in connection with this Agreement, and evidence that the execution of such instruments is the official act and deed of Seller.

d. **Excise Tax Affidavit.** A real estate excise tax affidavit signed by Seller or its agent reasonably satisfactory to the Title Company (the "Tax Affidavit").

**5.2. By Buyer.** Buyer shall deliver or cause to be delivered to Escrow Holder on or before the Closing Date, the delivery of each of which shall be a condition to the performance by Seller of its obligations under this Agreement:

a. **Closing Funds.** Cash by federal funds, wire transfer or cashier's check in the amount necessary to pay the Purchase Price, Additional Amount and Buyer's share of Closing costs.

b. **Excise Tax Affidavit.** The Tax Affidavit signed by Buyer or its agent.

c. **Certificates of Authority.** Such certificates as are necessary or reasonably required by Seller or the Title Company to evidence the authority of Buyer and its signatories to execute the instruments to be executed by Buyer in connection with this Agreement, and evidence that the execution of such instruments is the official act and deed of Buyer.

## **6. CLOSE OF ESCROW.**

**6.1. Time.** The close of escrow (the "Closing") shall occur at the offices of Escrow Holder on a date on or before December 31, 2021 that is agreed to by Buyer and Seller (the "Closing Date").

**6.2. Procedure.** Escrow Holder shall proceed with Closing as follows:

a. Obtain the release of the Property from any liens that are not included in the Permitted Exceptions.

b. Pay applicable real estate transfer excise taxes, record the Deed, and complete the prorations.

c. Issue and deliver the Title Policy to Buyer.

d. Deliver to Buyer any other documents deposited by Seller into Escrow that are intended for Buyer.

e. Deliver the Purchase Price and Additional Amount less amounts applied as provided in Section 6.2(a) above, to Seller.

f. Forward to Buyer and Seller, in duplicate, a separate accounting of all funds received and disbursed for each Party and copies of all executed and recorded or filed documents deposited into escrow, with such recording and filing date endorsed thereon.

**6.3. Incorporation of Escrow Instructions.** This Agreement shall serve as escrow instructions. The Parties shall execute additional escrow instructions if required by Escrow Holder provided that such additional escrow instructions shall not change the terms of this Agreement without mutual agreement of the Parties.

**6.4. Closing Costs and Prorations.**

a. **Closing Costs.** Buyer agrees to pay all Closing costs including, without limitation: (A) all state, county and local documentary transfer taxes, including any Washington state real estate excise tax, (B) the premium for the Title Policy; (C) recording fees; and (D) any escrow fee.

b. **Property Taxes.** The Property has been determined exempt from property taxes.

**6.5. Possession.** Buyer presently has possession of the Property pursuant to the Lease and will remain in possession at and after Closing.

**7. BROKERAGE.** Each Party represents and warrants to the other Party that it has not retained any firm or broker and further that no broker and no finder can properly claim a right to a commission or finder's fee based upon contacts between the claimant and that Party with respect to the other Party or the Property. Each Party shall indemnify, defend and hold the other Party harmless from and against any loss, cost or expense, including, but not limited to, attorneys' fees and court costs, resulting from any claim for a fee or commission by any broker or finder in connection with the Property and this Agreement resulting from the indemnifying Party's actions. The obligations of the Parties under this Section shall survive the termination of this Agreement.

**8. CASUALTY.** The rights and obligations of the Parties shall not be changed as a consequence of any casualty to the Property prior to Closing. If and only if Closing shall occur, any insurance proceeds realized from any casualty shall be paid to Buyer.

**9. REPRESENTATIONS, WARRANTIES AND COVENANTS.**

**9.1. Seller's Representations, Warranties and Covenants.** Seller, as of the date of this Agreement and as of the Closing Date, makes the following representations, warranties and covenants:

a. **Agreements to Transfer or Encumber.** Seller has neither committed nor obligated itself in any manner whatsoever to sell, lease or encumber the Property or any interest therein to any person or entity other than Buyer.



**b. Bankruptcy, Etc.** Seller has not filed any petition seeking or acquiescing in any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under any law relating to bankruptcy or insolvency, nor, to Seller's knowledge, has any such petition been filed against Seller; no general assignment of Seller's property has been made for the benefit of creditors, and no receiver, master, liquidator or trustee has been appointed for Seller or any of its Property.

**c. Litigation.** Seller has received no notice of, and there is not pending or to Seller's actual knowledge threatened, any actions, suits, proceedings, orders, administrative proceedings or investigations pending or to Seller's knowledge threatened against or affecting Seller or the Property, which might materially and adversely affect Seller's ability to execute or perform its obligations under this Agreement.

**d. FIRPTA.** Seller is not a "foreign person" within the meaning of Section 1445(f)(3) of the Internal Revenue Code.

**e. Good Standing and Due Authority.** Seller has all requisite power and authority to execute and deliver this Agreement and to carry out its obligations hereunder and the transactions contemplated hereby. This Agreement has been, and the documents contemplated hereby will be, duly executed and delivered by Seller and constitute the Seller's legal, valid and binding obligations enforceable against Seller in accordance with their terms. The consummation by Seller of the sale of the Property is not in violation of or in conflict with nor does it constitute a default under any term or provision of any agreement or instrument to which Seller is or may be bound, or of any provision of any applicable law, ordinance, rule or regulation of any governmental authority or of any provision of any applicable order, judgment or decree of any court, arbitrator or governmental authority to which Seller is subject.

**9.2 Buyer's Representation.** Buyer, as of the date of this Agreement and as of the Closing Date, makes the following representations, warranties and covenants:

**a. Good Standing.** Buyer is a Washington municipal corporation duly organized, validly existing and in good standing under the laws of the State of Washington.

**b. Due Authority.** Buyer has all requisite power and authority to execute and deliver this Agreement and to carry out its obligation under this Agreement and the transactions contemplated by this Agreement. This Agreement has been, and the documents contemplated hereby will be, duly executed and delivered by Buyer and constitute the Buyer's legal, valid and binding obligations enforceable against Buyer in accordance with their terms. The consummation by Buyer of the purchase of the Property is not in violation of or in conflict with nor does it constitute a default under any term or provision of any agreement or instrument to which Buyer is or may be bound, or of any provision of any applicable law, ordinance, rule or regulation of any governmental authority or of any provision of any applicable order, judgment or decree of any court, arbitrator or governmental authority to which Buyer is subject.

**10. SURVIVAL.** The covenants, agreements, representations, warranties made in this Agreement, and the remedies and indemnities provided for in this Agreement, shall survive the Closing unimpaired and shall not merge into the Deed and the recordation thereof.

**11. ENTIRE AGREEMENT.** This Agreement contains the entire integrated agreement of the Parties, including all of the covenants and conditions between the Parties with respect to the subject matter of this Agreement, and supersedes all prior correspondence, agreements and understandings, both verbal and written. No addition or modification of any term or provision of this Agreement shall be effective unless set forth in writing and signed by Seller and Buyer. The Parties do not intend to confer any benefit under this Agreement to any person, firm or corporation other than the Parties.

**12. DEFAULT; REMEDIES.**

**12.1. Buyer's Remedies.** This Agreement pertains to the conveyance of real property, the unique nature of which is hereby acknowledged by the Parties. Consequently, if Seller breaches or defaults under this Agreement, Buyer shall have, as its exclusive remedy, the right either to: (i) require specific performance of this Agreement; or (ii) terminate this Agreement..

**12.2. Seller's Remedies.** If Buyer fails, without legal excuse, to complete the purchase of the Property for any reason except failure by Seller to perform its obligations hereunder, then Seller, as its sole and exclusive remedy, may terminate this Agreement.

**12.3 Impact of Termination.** The termination of this Agreement shall be without prejudice to the rights and obligations of the Parties under the MOA and Lease or the rights and obligations of the Parties under Sections 7 and 12.4. Otherwise, upon termination of this Agreement, neither Party shall have any further rights or obligations hereunder.

**12.4 Attorneys' Fees.** If either Party brings an action or other proceeding against the other Party to enforce any of the terms, covenants or conditions hereof or any instrument executed pursuant to this Agreement, or by reason of any breach or default hereunder or thereunder, the Party prevailing in any such action or proceeding shall be paid all costs and reasonable attorneys' fees by the other Party, and in the event any judgment is obtained by the prevailing Party all such costs and attorneys' fees shall be included in the judgment.

**13. NOTICES.** All notices required to be given pursuant to the terms hereof are required to be in writing and shall be either delivered personally, deposited in the United States mail, certified mail, return receipt requested, postage prepaid, sent by facsimile so long as receipt is confirmed, sent by email so long as receipt is confirmed, and addressed to the addresses listed below with copies to the Parties listed after such address:

**BUYER**

City of Lake Forest Park  
17425 Ballinger Way NE  
Lake Forest Park, WA 98158  
Attn: City Administrator  
phill@ci.lake-forest-park.wa.us

**SELLER**

Forterra NW  
PO Box 4189  
Seattle, WA 98194  
Attn: Joe Sambatero



jsambatero@forterra.org

The foregoing addresses may be changed by notice to the other Party as provided herein. Mailed notice properly given shall be deemed received four (4) days after deposit in the mail. Facsimile transmission of any signed original document or notice, and retransmission of any signed facsimile transmission, shall be the same as delivery of an original. At the request of either Party or the Escrow Holder, the Parties will confirm facsimile transmitted signatures by signing an original document.

**14. PARTIAL INVALIDITY.** If any term or provision of this Agreement or the application thereof to any person or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this Agreement, or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby; and each such term and provision of this Agreement shall be valid and be enforced to the fullest extent permitted by law.

**15. WAIVERS.** No waiver of any breach of any covenant or provision in this Agreement shall be deemed a waiver of any preceding or succeeding breach thereof, or of any other covenant or provision in this Agreement. No extension of time for performance of any obligation or act shall be deemed an extension of the time for performance of any other obligation or act.

**16. CONSTRUCTION.** Captions are solely for the convenience of the Parties and are not a part of this Agreement. This Agreement shall not be construed as if it had been prepared by one of the Parties, but rather as if both Parties had prepared it. If the date on which Buyer or Seller is required to take any action under the terms of this Agreement is not a Business day, the action shall be taken on the next succeeding Business day.

**17. TIME.** Time is of the essence for every provision of this Agreement. As used in this Agreement, the term "Business Days" refers to Monday – Friday other than legal holidays in the State of Washington.

**18. FORCE MAJEURE.** Performance by Seller or Buyer of their obligations under this Agreement shall be extended by the period of delay caused by force majeure. Force majeure is war, natural catastrophe, strikes, walkouts or other labor industrial disturbance, order of any government, court or regulatory body having jurisdiction, shortages, blockade, embargo, riot, civil disorder, or any similar cause beyond the reasonable control of the Party who is obligated to render performance (but excluding financial inability to perform, however caused). A Party desiring to assert force majeure is required to promptly notify the other Party of the event upon which the assertion will be based and thereafter provide the other Party with such information regarding the event and its duration as the other Party may reasonably request.

**19. SUCCESSORS.** Neither Party may assign this Agreement without the prior written consent of the other Party. The terms, conditions and covenants contained in this Agreement shall be binding upon and shall inure to the benefit of the successors and permitted assigns of the Parties hereto.

**20. APPLICABLE LAW.** This Agreement shall be governed by the laws of the State of Washington.

**21. RECITALS AND EXHIBITS.** The Recitals and Exhibits are incorporated into this Agreement by this reference.

**22. COUNTERPARTS.** This Agreement may be signed in counterparts, any of which shall be deemed an original. A facsimile or electronic mail transmission shall be binding on the party or parties whose signatures appear thereon. If so executed, each counterpart is to be deemed an original for all purposes, and all counterparts shall, collectively, constitute one agreement, but in making proof of this Agreement, it shall not be necessary to produce or account for more than one counterpart.

**SELLER:**

FORTERRA NW

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

Name: Michelle Connor

Title: President

Date: \_\_\_\_\_, 2021

**BUYER:**

CITY OF LAKE FOREST PARK

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

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_, 2020

**EXHIBIT LIST**

**A** Legal Description

**EXHIBIT A**

**LEGAL DESCRIPTION**

**PARCEL A:**

THE NORTH 59.45 FEET OF THE SOUTH 239.45 FEET OF LOT 1 IN BLOCK 2, AS MEASURED ALONG THE SOUTHEASTERLY LINE OF SAID BLOCK 2, LAKE FOREST WATERFRONT ADDITION, ACCORDING TO THE PLAT RECORDED IN VOLUME 22 OF PLATS, PAGE 39, IN KING COUNTY, WASHINGTON;

TOGETHER WITH THAT PORTION OF THE SECOND CLASS SHORELANDS AS SHOWN IN SAID PLAT, ADJACENT THEREOF.

**PARCEL B:**

THE NORTHEASTERLY 80 FEET OF THE SOUTHWESTERLY 180 FEET OF LOT 1, AS MEASURED ALONG THE SOUTHEASTERLY LINE OF BEACH DRIVE, IN BLOCK 2, LAKE FOREST WATERFRONT ADDITION, ACCORDING TO THE PLAT THEREOF RECORDED IN VOLUME 22 OF PLATS, PAGE 39, IN KING COUNTY, WASHINGTON;

TOGETHER WITH SECOND CLASS SHORELANDS ADJOINING.

APN: 403010-0035-03 and 403010-0040

