

**AGREEMENT  
BETWEEN KING COUNTY AND FORTERRA  
FOR CONSERVATION FUTURES-FUNDED  
OPEN SPACE ACQUISITION PROJECTS**

THIS AGREEMENT is a grant agreement entered into between the NONPROFIT ORGANIZATION FORTERRA (“Nonprofit”) and KING COUNTY (“County”), (collectively “parties”).

Article I. Recitals

On February 27, 1989, the King County Council passed Ordinance 8867, which established a process to allocate the proceeds of the Conservation Futures Fund.

On September 21, 1989, the King County Council passed Ordinance 9128, which established a Conservation Futures Levy Fund to provide for the receipt and disbursement of Conservation Futures tax levy proceeds and established conditions for use of the Fund, including conditions covering allowable costs and expenses.

On July 21, 2003, the King County Council passed Ordinance 14714, authorizing funding allocation procedures for King County Conservation Futures tax levy collections and amending Ordinance 8867, Section 2, as amended.

The Conservation Futures Advisory Committee has recommended an allocation of Conservation Futures proceeds to specific projects from the Conservation Futures Levy Fund, all pursuant to Ordinance 8867, as amended by Ordinance 14714.

The parties agree to the following:

Article II. Definitions

1. Open Space

The term “open space” or “open space land” means: (a) any land area so designated by an official comprehensive land use plan adopted by any city or county and zoned accordingly; or (b) any land area, the preservation of which in its present use would (i) conserve and enhance natural or scenic resources, or (ii) protect streams or water supply, or (iii) promote conservation of soils, wetlands, beaches or tidal marshes, or (iv) enhance the value to the public of abutting or neighboring parks, forests, wildlife reserves, natural reservations or sanctuaries, or other open space, or (v) enhance recreational activities, or (vi) preserve historic sites, or (vii) preserve visual quality along highway, road, and street corridors or scenic vistas, or (viii) retain in its natural state tracts of land of not less than one acre situated in an urban area and open to public use on such conditions as may be reasonably required by the legislative body granting the open space classification, or (c) any land meeting the definition of “farm and agricultural land” conservation under subsection (8) of RCW 84.34.020. As a condition of granting open space classification, the legislative body may not require public access on land classified under (b) (iii) of this subsection for the purpose of promoting conservation of wetlands.

2. Project

The term “Project” means the specific projects described in Exhibit A or added by follow-on amendments to disburse proceeds pursuant to Section 8.2 of this agreement.

3. Conservation Futures

The term “Conservation Futures” means developmental rights which may be acquired by purchase, gift, grant, bequest, devise, lease or otherwise, except by eminent domain, and may consist of fee simple or any lesser interest, development right,

easement, covenant, or other contractual right necessary to protect, preserve, maintain, improve restore, limit future use of, or otherwise conserve open space land, all in accordance with chapter 84.34 RCW and K.C.C. chapter 26.12.

Article III. Purpose of the Agreement

The purpose of this agreement is to create a cooperative arrangement between the parties relating to the Project and to define the terms and conditions governing both parties' obligations created by this agreement.

Article IV. Term of Agreement

This agreement shall be continued in full force and effect and binding upon the parties hereto upon execution of the agreement by both parties. The terms of the agreement shall be indefinite. The agreement will be terminated if the Nonprofit is: 1) unable or unwilling to expend the proceeds provided through this agreement; 2) unable or unwilling to satisfy the matching requirements contained in this agreement; and 3) upon reimbursement by the Nonprofit to the County of all unexpended proceeds provided by the County pursuant to this agreement in the manner and amounts described below and payment of all amounts due pursuant to Section 8.1.

Article V. Conditions of Agreement

Section 5.1 – Project Descriptions. Proceeds available pursuant to this agreement may be used only for the Projects listed in Exhibit A, such substituted Projects as may be approved by the County as set forth below, or Projects added by follow-on amendments to disburse proceeds pursuant to Section 8.2 of this agreement. All County funded Projects must meet open space criteria as described in chapter 84.34 RCW and K.C.C. chapter 26.12.

Section 5.2 – Use of Proceeds. Proceeds provided to the Nonprofit pursuant to this agreement as well as moneys provided by the Nonprofit as match pursuant to this agreement may be used only to pay for costs and expenditures permitted under K.C.C 26.12.003-.100. Those costs include appraisals, title searches, negotiations, administrative overhead, and the cost of actual acquisition or purchase options, and all other costs meeting the requirements of K.C.C. 26.12.003-.100. The Nonprofit shall have the property valued by an appraisal performed by an independent state-certified real estate appraiser with a current general real estate appraiser license, and reviewed by an independent state-certified general real estate appraiser. In requesting reimbursement of proceeds for the Project, the Nonprofit shall demonstrate to the County compliance with this Section 5.2.

Section 5.3 – Completion/Substitution/Deletion of Projects. The Nonprofit shall complete the Project described in Section 5.1 of this Agreement within a two-year period from the effective date of the County ordinance appropriating funding for the Project. If the Nonprofit does not meet this two year requirement, unless the Nonprofit demonstrates to the Advisory Committee a compelling reason for continuance of CFT funding for the Project beyond the two-year limit and conditional upon the appropriation by the King County Council of sufficient funds to support the Project or a reprogramming request is timely approved as provided for below, the County shall be released from any obligation to fund the Project, and the County in its sole discretion may reallocate such proceeds for other projects in other jurisdictions. The Nonprofit may submit specific requests for project reprogramming to the County for its approval within the two-year period. All projects proposed for reprogramming must meet open space criteria as described in

chapter 84.34 RCW and K.C.C. chapter 26.12, be submitted for recommendation by the County's Advisory Committee or its successor, and be approved by action of the King County Council. All reprogramming requests shall be submitted to the County's Department of Natural Resources and Parks, Open Space Acquisitions Unit, or its successor.

Article VI. Responsibilities of the Nonprofit

Section 6.1 – Matching Requirements. Except for acquisitions of property interests in opportunity areas, as defined by K.C.C. 26.12.003, any Project funded by Conservation Futures Levy proceeds shall be supported by the Nonprofit with a matching contribution, which is no less than the amount of Conservation Futures Levy proceeds allocated to the Project. This contribution may be in the form of cash, land match with a valuation verified by an appraisal by an independent state-certified real estate appraiser with a current general real estate appraiser license, or the cash value, excluding King County conservation futures contributions, of other open spaces acquired within the previous two years from the date of submittal of the application by the Nonprofit. The appraisal of the proposed land match, to be reviewed, shall have been performed within two years of the application deadline set for the annual allocation of conservation futures tax levy proceeds under which the Property received funding. Properties considered as land match or cash value of other open space acquisitions should be directly linked to the property under application. Any Nonprofit match, other than cash, shall require County approval. County approval and County acceptance of the Nonprofit's match will be transmitted in writing to the Nonprofit by the County's Designated Representative.

Section 6.2 – Reporting. All proceeds received pursuant to this agreement and accrued interest therefrom will be accounted for separately from all other Nonprofit moneys, accounts and moneys. Until the property described in the Project is acquired and all proceeds provided pursuant to this agreement have been expended, the Nonprofit shall provide the reports required by K.C.C. 26.12.035.

Section 6.3 – Disposition of Remaining Proceeds. If the Nonprofit does not expend all proceeds obligated to be provided through this agreement and no substitute project is requested or approved as to the excess proceeds, such proceeds, if held by the Nonprofit, shall be refunded to the County. For purposes of this section, "proceeds" shall include all moneys obligated to be provided by the County plus interest accrued by the Nonprofit on such moneys. Any proceeds in excess of those required to be provided by the County for the actual costs of the Project shall remain with the County for use in its sole discretion.

Section 6.4 – Maintenance in Perpetuity. Except as provided in this Section 6.4, the Nonprofit, and any successor in interest, agree to maintain properties acquired with proceeds provided pursuant to this agreement as open space in perpetuity and to include in the real property records notice of this restriction as required by King County pursuant to K.C.C. 26.12.010.F.2. Projects carried out by the Nonprofit in whole or in part with funds provided for under the terms of this agreement shall not be transferred or conveyed except by agreement with an agency or nonprofit organization as defined in K.C.C. 26.12.003, as amended, which shall provide that the land or interest in land shall be continued to be used for the purposes of K.C.C. chapter 26.12, and in strict conformance with the uses authorized under chapter 84.34 RCW.

The Nonprofit shall not change the status or use of properties acquired with proceeds provided pursuant to this agreement unless the Nonprofit provides equivalent lands or cash in exchange for the land to be changed to a different use. The land shall be valued in its changed status or use, and not based upon its value as open space, and the replacement land or payment amount must be approved by the County. If requested by the County, at its own cost, the Nonprofit will provide the County an appraisal performed within the previous year by an independent state-certified real estate appraiser with a current general real estate appraiser license. The value established by the appraisal will not be binding on the County. If the County approves replacement land, the Nonprofit shall complete the replacement within one year of approval. If the County approves cash reimbursement, the Nonprofit shall pay the County within 90 days of approval.

If at any time it becomes impossible for Grantor to ensure compliance with this agreement, or if Grantor shall cease to exist, then the rights and duties hereunder shall become vested in and fall upon the County, and Grantor's property interest in the Property shall be transferred to the County. If such transfer becomes necessary, the County agrees to ensure the Property's restrictions are maintained, in perpetuity, and that the Property is not used for purposes other than those consistent with this agreement. Upon written approval by the County, Grantor may choose another entity to which the Grantor's property interest in the Property shall be transferred, with purposes similar to Grantor, constituting a governmental agency or nonprofit organization as defined in K.C.C. 26.12.003. In the event of a transfer to an organization other than King County, the County will enter into an agreement with the organization.

If such vesting in the entities named above is deemed to be void under the Rule Against Perpetuities, the rights and obligations under this agreement shall vest in such organization as a court of competent jurisdiction shall direct, pursuant to applicable Washington law, as the same may be amended, and with due regard to the purposes of this agreement.

Section 6.5 – Tax Covenants. The Nonprofit acknowledges that proceeds provided by the County for a Project may be proceeds of tax-exempt bonds (the “Bonds”) subject to certain requirements of the Internal Revenue Code of 1986, as amended (the “Tax Code”), including any implementing regulations and any administrative or judicial interpretations. The Nonprofit will comply with Tax Code requirements, including those set forth in Exhibit B, which is incorporated herein, applicable to Bond-financed Projects identified in Exhibit A, which is incorporated herein, as well as Bond-financed Projects identified in subsequent amendments to this agreement.

Article VII. Responsibilities of the County

Subject to the terms of this agreement, the County will provide Conservation Futures Tax Levy proceeds in the amounts and for the Projects identified in Exhibit A as well as in those amounts and for those Projects identified in subsequent amendments to this agreement. The Nonprofit may request additional proceeds; however, the County has no obligation to provide proceeds to the Nonprofit in excess of the amount shown in Exhibit A. The County assumes no obligation for future support of the Project described herein except as expressly set forth in this agreement.

Article VIII. Other Provisions

Section 8.1 – Hold Harmless and Indemnification.



A. The County assumes no responsibility for the payment of any compensation, fees, wages, benefits or taxes to or on behalf of the Nonprofit, its employees, contractors or others by reason of this agreement. The Nonprofit shall protect, indemnify, and save harmless the County, its officers, agents and employees from any and all claims, cost and whatsoever occurring or resulting from: 1) the Nonprofit's failure to pay any compensation, fees, wages, benefits or taxes; and 2) the supplying to the Nonprofit of works services, materials or supplies by the Nonprofit's employees, agents, other contractors, or suppliers in connection with or in support of performance of this agreement.

B. The Nonprofit further agrees that it is financially responsible for and will repay the County all indicated amounts following an audit exception, which occurs due to the negligent or intentional acts of this agreement by the Nonprofit, its officer, employees, agents, or representatives arising out of the performance of the terms of this agreement.

C. The Nonprofit shall protect, indemnify, and save harmless the County from any and all costs, claims, judgments, or awards of damages, arising out of or in any way resulting from the negligent acts or omissions of the Nonprofit, its officers, employees, or agents in the performance of its obligations under the terms of this agreement. For the purposes of this agreement only, the Nonprofit agrees to waive the immunity granted it for industrial insurance claims pursuant to Title 51 RCW to the extent necessary to extend its obligations under this paragraph to any claim, demand, or cause of action brought by or on behalf of any employee, including judgments, awards and costs arising therefrom including attorney's fees.

D. To the extent permitted by law, and except to the extent caused by the sole negligence of the County, the Nonprofit agrees, at its expense, to pay, and to indemnify and hold the County, its officers, employees or agents harmless of, from and against, any and all claims, damages, demands, losses, liens, liabilities, penalties, fines, taxes, lawsuits, and other proceedings and costs and expenses (including attorneys' fees) of every conceivable kind, character or nature whatsoever, arising directly or indirectly from or out of, or in any way connected with any examination or audit of any Bond issued to finance or refinance costs of any Bond-financed Project identified in Exhibit A as well as Bond-financed Projects identified in subsequent amendments to this agreement by the Internal Revenue Service, or any determination by the Internal Revenue Service or a court of competent jurisdiction that the interest on any such Bond is or should be subject to federal income taxation; provided, however, that the Nonprofit shall not be liable for any payment made by the County with respect to any settlement of any such examination or audit, or of any other proceeding related thereto, entered into without the consent of the Nonprofit.

Section 8.2 – Amendment. The parties reserve the right to amend or modify this agreement. Amendments or modifications to disburse proceeds approved by the County Council must be by written instrument signed by the parties substantially in the form of Exhibit C.

Section 8.3 – Contract Waiver. No waiver by either party of any term or condition of this agreement shall be deemed or construed to be a waiver of any other term or condition, nor shall a waiver of any breach be deemed to constitute a waiver of any

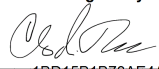
subsequent breach whether of the same or different provision of this agreement. No waiver shall be effective unless made in writing.


Section 8.4 – Entirety. This agreement is the complete expression of the terms hereto and any oral representations or understandings not incorporated are excluded. This agreement merges and supersedes all prior negotiations, representations and agreements between the parties relating to the Project and constitutes the entire agreement between the parties. The parties recognize that time is of the essence in the performance of the provisions of this agreement.

IN WITNESS WHEREOF, authorized representatives of the parties hereto have signed their names in the spaces set forth below:

KING COUNTY

FORTERRA

DocuSigned by:  
  
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DocuSigned by:  
  
B63BE6C6071A4E7...

Dow Constantine  
King County Executive


Michelle Connor  
President and CEO

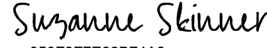
Date: 3/18/2021

Date: 3/4/2021

Approved as to form:

Approved as to form:

DocuSigned by:  
  
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DocuSigned by:  
  
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Dan Satterberg  
King County Prosecuting Attorney

Suzanne Skinner  
Corporate Counsel

**EXHIBIT A****2019, 2020, 2021 CONSERVATION FUTURES LEVY  
FORTERRA ALLOCATIONS**

Nonprofit	Project	Allocation
Forterra	East Hylebos Watershed Conservation (2019/2020)	\$1,000,000
Forterra	Windy Ridge (2020)	\$175,000
Forterra	Arrowhead (2021)	\$2,000,000
Forterra	Kilworth Environmental Education Preserve/Camp Kilworth (2021)	\$1,000,000
<b>TOTAL</b>		<b>\$4,175,000</b>

**Project Descriptions:****1136833 Forterra – East Hylebos Watershed Conservation (\$1,000,000)**

The City of Federal Way and Forterra are working on a regionally significant project to protect open space on the former Weyerhaeuser campus. The project targets 54 acres of Category 1 wetland, wetland buffer, lakefront, and associated forests along North Lake in the headwaters of the East Hylebos Watershed. This award is comprised of \$500,000 in 2019 funding that was originally awarded to Federal Way but transferred to Forterra upon request of the city, and \$500,000 in new 2020 funding. Project funding was authorized in King County Ordinance 19021.

**Is this a Bond-financed Project? No**

**1134923/Award #1136985 Forterra – Windy Ridge (\$175,000)**

Forterra's Windy Ridge project protects 640 acres of private forestland within the Skykomish watershed. This includes approximately 355 acres of high quality, old-growth forest that provides critical habitat for federal and state-listed endangered and threatened wildlife species, and high elevation alpine meadows. Project funding was authorized in King County Ordinance 19021.

**Is this a Bond-financed Project? Yes**

**1138968 Forterra – Arrowhead (\$2,000,000)**

Forterra’s Arrowhead project will conserve 6.46 acres of the last unprotected portions of forest and undeveloped shoreline on northeastern Lake Washington. The mature forest provides critical habitat and wildlife corridors along the lakeshore which is potentially important for Lake Washington salmonids. Acquisition prevents sale and subdivision for up to 25 building lots based on current zoning. The project is a partnership with State Parks. Project funding was authorized in King County Ordinance 19210.

**Is this a Bond-financed Project? No**

**1138967 Forterra – Kilworth Environmental Education Preserve/Camp Kilworth (\$1,000,0000)**

This project seeks to preserve 29-acre Camp Kilworth in Federal Way, as a partnership between Forterra, the local advocacy group KEEP (Kilworth Environmental Education Preserve), and the Greater Seattle YMCA. The regionally significant site contains mature forest that offers wildlife habitat to native bird and plant species. Acquisition would also protect undeveloped saltwater shoreline near the feeder banks for Dumas Bay which is critical habitat for ocean-going salmon. Project funding was authorized in King County Ordinance 19210.

**Is this a Bond-financed Project? No**

## EXHIBIT B

### Tax Covenants

The Nonprofit acknowledges that proceeds provided by the County for the Project may be proceeds of Bonds subject to certain requirements of the Tax Code. The Nonprofit will take all actions with respect to the Project, and proceeds received for the Project, necessary to assure the exclusion of interest on the Bonds from the gross income of the owners of the Bonds, including but not limited to the following:

(a) Expenditure of Proceeds. The Nonprofit will expend proceeds of the Bonds received from the County for capital expenditures for federal income tax purposes within the meaning of Section 1.150-1(b) of the Tax Code. Bond proceeds may be expended to pay, or reimburse the Nonprofit for, Project capital expenditures or to repay interim indebtedness incurred for capital expenditures of the Project.

(b) Notice. The Nonprofit will provide notice of action taken or planned to issue any tax-exempt indebtedness, including bonds, bank loans, or other tax-exempt indebtedness, to finance Project costs.

(c) Treatment as Grant.

- (1) The Nonprofit is a 501(c)(3) corporation that is not a related party to the County. The County and the Nonprofit are not members of the same controlled group.
- (2) The Nonprofit is not acting as an agent of the County.
- (3) The grant of proceeds for the Project does not impose any obligation or condition to directly or indirectly repay any amount to the County (excluding obligations or conditions intended solely to assure expenditure of the transferred moneys in accordance with the governmental purpose of the transfer).
- (4) The grant is required to be used for open space as required under Article II but does not impose any conditions relating to the use of the Project or other property of the Nonprofit by the County or any of its agencies or authorities.
- (5) This agreement is a grant agreement.

(d) Limitations on Disposition of Project. The Nonprofit will not sell or otherwise dispose of any components of the Project without prior approval by the County and compliance with timeframes for completion of land replacement or cash reimbursement as provided in Section 6.4.

(e) Record Retention. The Nonprofit will retain its records of all accounting and monitoring it carries out with respect to the Bond proceeds received and with respect to the

Project for at least three years after the Bonds mature or are redeemed as provided in the amendment granting such Bond proceeds to the Nonprofit.

(f) Cooperation. The Nonprofit will cooperate with the County in providing tax certifications if and when requested by the County or County's bond counsel in order to establish or maintain the tax-exempt status of the Bonds. The Nonprofit will cooperate in any audit of the Bonds by the Internal Revenue Service, including disclosure of any record, contracts and other materials relating to the Bond proceeds received by the Nonprofit and the Project.

**EXHIBIT C**

**AMENDMENT TO THE CONSERVATION FUTURES  
AGREEMENT BETWEEN KING COUNTY AND [NONPROFIT NAME]  
FOR OPEN SPACE ACQUISITION PROJECTS**

**Preamble**

The King County Council, through Ordinance 9128, has established a Conservation Futures Levy Fund and appropriated proceeds to King County and certain awardees. This amendment is entered into to provide for the allocation of additional proceeds made available for open space acquisition.

THIS AMENDMENT is entered into between [NONPROFIT NAME] and KING COUNTY, and amends and attaches to and is part thereof of the existing Agreement entered into between the parties on the \_\_\_\_ day of (Month), (Year), as previously amended.

The parties agree to the following amendment:

The Agreement is hereby amended by adding Exhibit 1, attached hereto.

In all other respects, the terms, conditions, duties and obligations of both parties shall remain the same as agreed to in the Agreement as previously amended.

Once fully executed, this Amendment shall be incorporated into the existing Agreement as if fully set forth, and shall become Amendment \_\_.

IN WITNESS WHEREOF, authorized representatives of the parties hereto have signed their names in the spaces set forth below:

KING COUNTY

[NONPROFIT NAME]

\_\_\_\_\_  
Dow Constantine  
King County Executive

\_\_\_\_\_  
[Name]  
[Title]

Date: \_\_\_\_\_

Date: \_\_\_\_\_

Approved as to form:

Approved as to form:

\_\_\_\_\_  
Dan Satterberg  
King County Prosecuting Attorney

\_\_\_\_\_  
[Name]  
[Title]



**EXHIBIT 1**

**[YEAR] CONSERVATION FUTURES LEVY PROCEEDS  
[NONPROFIT NAME] ALLOCATION**

Jurisdiction	Project Name (Project Number)	Allocation
[Nonprofit Name]	[Project Name] ([Project Number])	\$
TOTAL		\$

**Project Description:**

[Project Number] [Nonprofit Name] – [Project Name]  
[Project Description used in legislation approving proceeds]

**Is this a Bond-financed Project?**