

**Agreement of Support
Between King County and the City of North Bend
for the
Provision of Sandbag Supplies for Enhanced Flood Protection**

This Agreement of Support (“Agreement”) is made by and between King County, as represented by its Water and Land Resources Division (“WLRD”) of the King County Department of Natural Resources and Parks, and the City of North Bend (“City”) (collectively the “Parties”, or in the singular “Party”).

I. Purpose

This Agreement provides support to the City in order to enhance and expand sandbag distribution efforts to include all King County residents who request sandbags in order to protect their homes from flood damage.

On March 17, 2009, the King County Council, in response to severe flooding in early 2009, passed Ordinance 16379. This ordinance directed WLRD to increase the availability of sandbags to residents in flood prone areas by creating stockpiles of materials for sandbags to be made available at multiple locations in each major watershed in King County free of charge during the flood season. WLRD was also directed to communicate this availability to the public. WLRD has determined that an efficient and effective way of meeting this directive is to augment efforts by cities with existing sandbag distribution programs by providing additional sand and sandbags to those programs so that the programs can be available to all King County residents, rather than to City residents only. The City has expressed its willingness to accept additional sandbag supplies from King County and distribute them, as long as supplies last, to all King County residents who request them.

II. Project Management and Administration

- A. The City and WLRD will each appoint a representative to administer the terms of this Agreement.
- B. In the event that a dispute arises under this Agreement, it shall be referred for

resolution to the Division Director of WLRD, or other representative as designated by WLRD, and a representative as designated by the City. This provision shall not be construed as prohibiting either Party from seeking enforcement of the terms of this Agreement, or relief or remedy from a breach of the terms of this Agreement, in law or in equity.

III. Responsibilities

WLRD:

- A. By October 1 of each calendar year, beginning in 2019, WLRD will provide the City with 3,000 sandbags and 30 yards of sand or the cash equivalent. If the City wishes the cash equivalent instead of sandbags and sand in any given year, it will notify WLRD by September 1 of that year and WLRD will provide the funds by October 1 of that year.
- B. WLRD will provide additional supplies upon request by the City, subject to availability and funding, and the provisions of Section IV.F. below.
- C. WLRD will publicize the location of the sandbag distribution site operated by the City.

The City:

- A. Upon execution of this Agreement, the City will designate a location for delivery of supplies by WLRD and, if different, the location of the distribution site where residents may pick up sandbag supplies.
- B. Subject to availability and funding, the City agrees to distribute sandbag supplies while they last to the residents of incorporated and unincorporated King County who request them, during the times the City operates its sandbag distribution program.
- C. By July 1 of each calendar year beginning in 2020, the City will provide a summary of quantities of sand and sandbag materials used by the public during the previous flood season and remaining materials that are available for use in the following flood season.
- D. The City will comply with all applicable regulations governing its sandbag distribution program.

E. The City agrees to acknowledge the King County Flood Control District (“District”) as a source of funding for the sandbag distribution program on all literature, signage and press releases related to the distribution of sand and sandbags supplied or funded under this agreement.

IV. Effectiveness and Duration

- A. This Agreement is effective upon signature by both Parties and shall remain in effect until July 30, 2024, unless terminated by either Party pursuant to Section V. below.
- B. This Agreement may be amended, altered, clarified, or extended only by the written agreement of the Parties hereto.
- C. This Agreement is not assignable by either Party, either in whole or in part.
- D. This Agreement is a complete expression of the intent of the Parties and any oral or written representations or understandings not incorporated herein are excluded. The parties recognize that time is of the essence in the performance of the provisions of this Agreement. Waiver of any default shall not be deemed to be waiver of any subsequent default. Waiver of breach of any provision of this Agreement shall not be deemed to be a waiver of any other or subsequent breach and shall not be construed to be a modification of the terms of the Agreement unless stated to be such through written approval by the parties which shall be attached to the original Agreement.
- E. WLRD’s provision of funds or materials to the City is and will be construed by the Parties as a disbursement to the City to provide for measures that support WLRD’s flood control and flood protection activities as service provider to the District, and as consistent with the purposes and mission of the District. Neither Party is acting as the agent of the other under the terms of this Agreement. The employees or agents of each Party who are engaged in the performance of this Agreement shall continue to be employees or agents of that Party and shall not be considered for any purpose to be employees or agents of the other Party.
- F. The Parties recognize that WLRD is entering into similar kinds of agreements with a number of municipalities, and WLRD’s resources to provide materials and funding in this sandbag protection program are limited. In the event that the requests from municipalities participating in this sandbag protection program, as provided for in Section III.B. above, exceed the resources available to WLRD, the Parties recognize that WLRD

will use best professional judgment in dispensing remaining materials or funds to the municipalities involved in this program.

V. Termination

A. This Agreement may be terminated by either Party upon 30 days written notice.

VI. Indemnification

The City shall protect, defend, indemnify, and save harmless WLRD, its officers, officials, employees, and agents, while acting within the scope of their employment, from any and all costs, claims, judgments, penalties, and/or awards of damages, arising out of or in any way resulting from North Bend's own negligent acts or omissions in connection with activities conducted under the terms of this Agreement. WLRD shall protect, defend, indemnify, and save harmless North Bend, its officers, officials, employees, and agents, while acting within the scope of their employment, from any and all costs, claims, judgments, penalties, and/or awards of damages, arising out of or in any way resulting from WLRD's own negligent acts or omissions in connection with activities conducted under the terms of this Agreement. Each Party agrees that its obligations under this subparagraph extend to any claim, demand, and/or cause of action brought by, or on behalf of, any of its employees or agents. For this purpose, each Party, by mutual negotiation, hereby waives, with respect to the other Party only, any immunity that would otherwise be available against such claims under the Industrial Insurance provisions of Title 51 RCW. In the event that a Party incurs any judgment, award, and/or cost arising therefrom, including attorneys' fees, to enforce the provisions of this Article, all such fees, expenses, and costs shall be recoverable from the responsible Party to the extent of that Party's culpability. The indemnification provided for in this Article V. shall survive the termination of this Agreement.

VI. Counterparts

This Agreement may be executed in counterparts.

Approved as to Form

By: J. A.

Title: Deputy Prosecuting Attorney

for King County

Date: _____

King County:

By: Tom Brown

Title: Director,
Water and Land Resources Division

Date: 6.6.19

By: E. M. K.F.

Title: City Attorney

Date: May 15, 2019

City of North Bend:

By: Tom K.

Title: Mayor

Date: May 15, 2019