

EXHIBIT A
Agreement of Support
Between King County and the City of North Bend
for 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”) and the City of North Bend (“City”) (collectively the “Parties,” or in the singular “Party”).

I. Purpose

This Agreement provides the mechanism whereby WLRD will provide support to the City in order to enhance and expand its sandbag distribution efforts to allow as potential recipients of sandbags all citizens residing in King County who request sandbags in order to protect their homes from flood damage.

II. Background

In times of flooding the City distributes sand and sandbags to citizens on a first come first served basis in order to assist those citizens in protecting homes and property from flood damage. To date, the City's sandbag distribution program has been available only to residents residing within the municipal boundaries of the City. On March 17, 2009, the King County Council, in response to severe flooding in early 2009, adopted ordinance 16379. This ordinance directed WLRD to increase the availability of sandbags to citizens in flood prone areas by creating stockpiles of materials for sandbags that would 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 these directives 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 citizens in King County, rather than to City residents only. Cities, including the City, have expressed their willingness to accept additional sandbag supplies from King County and distribute them, as long as supplies last, to all citizens residing in King County who request them.

III. Project Management and Administration

- A. The City and the 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.

IV. Responsibilities

A. WLRD:

- 1. By October 1 of each calendar year beginning in 2014, WLRD will provide the City with 3,000 sandbags and 30 yards of sand or \$1,500 at the City's discretion.
- 2. In a given calendar year, WLRD will provide additional supplies upon request by the City, subject to availability and funding, and the provisions of V.G. below.
- 3. WLRD will publicize the location of the sandbag distribution site operated by the City.

B. The City:

- 1. Upon execution of this Agreement, the City will designate a location for delivery supplies by WLRD and, if different, the location where citizens may pick up sandbag supplies.
- 2. Subject to availability and funding, the City agrees to distribute sandbag supplies while they last to the citizens residing within incorporated and unincorporated King County who request them, during the times the City operates its sandbag distribution program.
- 3. The City agrees to comply with all applicable regulations governing its sandbag distribution program.
- 4. The City agrees to acknowledge the King County Flood Control 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 by King County.

V. Effectiveness and Duration

A. This Agreement is effective upon signature by both Parties and shall remain in effect until May 31, 2019, unless terminated by either Party. Either Party may terminate this Agreement upon 60 days prior written notification to the other Party.

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. To the extent that compliance with the terms of this Agreement requires future appropriations beyond current appropriation authority, each of the Parties' obligations are contingent upon the appropriation of sufficient funds by that Party's legislative authority to complete the activities described herein. If no such appropriation is made for either Party, this Agreement will terminate at the close of the appropriation year for which the last appropriation that funds these activities was made.

E. 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.

F. WLRD's provision of funds or material to the City is and will be construed by the Parties as a disbursement to the City to provide for measures that support King County's flood control and flood protection activities as Service Provider to the King County Flood Control Zone District ("District"), and as consistent with the purposes and mission of the District. This Agreement is not and will not be construed to be a contract for services between the City and WLRD. 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.

G. The Parties recognize that the County is entering into similar kinds of agreements with a number of municipalities, and the County'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 IV.A.2 above, exceed the capacity of the resources available to WLRD, the Parties recognize that WLRD will use best professional judgment in dispensing remaining materials and funds to the municipalities involved in this program.

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 the City'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 the City, 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 VI shall survive the termination of this Agreement.

VII. Counterparts

This Agreement may be executed in counterparts.

Approved as to Form

King County

**Approved as to form by the King County
Prosecuting Attorney's Office
as of May 28, 2014**

By: _____
Title: Director, King County Department
of Natural Resources and Parks

Date: _____

Date: _____

City of North Bend

By: _____

By: _____

Title: _____

Title: _____

Date: _____

Date: _____