

City of Brisbane Agenda Report

TO: Honorable Mayor and City Council

FROM: Director of Public Works/City Engineer via City Manager

SUBJECT: Cooperative Shelter Agreement with Brisbane School District

DATE: September 13, 2010

City Council Goals:

To provide public service that assures the safety of property and citizens residing, working, or visiting in Brisbane.

To promote intergovernmental opportunities that enhances services and/or reduces cost of operations and services to city residents.

Purpose:

To approve a proposed agreement that provides emergency shelter and alternate care sites; this item is consistent with the community's safety value of ensuring that assistance is available in the event of a disaster.

Recommendation:

Approve the Cooperative Agreement, and authorize the Director of Public Works/City Engineer (Director of the Office of Emergency Services) to sign the document on the city's behalf.

Background:

The city has identified both Brisbane Elementary School and Lipman Middle School as potential shelter sites in its disaster response plans. In recent years the city has extended its planning and exercises to include the school district. During mutual planning efforts, it was discovered that no formal agreement exists to support this plan.

The proposed agreement memorializes three primary considerations for the provision of emergency mass care shelters and alternate care sites for emergency medical treatment, inoculations and so forth:

1. After the school district has met its responsibilities to its students and staff, their facilities will be available for the city's use.
2. If the school facilities are so damaged that they are unusable for students and staff, the city will provide space in Mission Blue Center for pupils and staff.
3. District staff may, upon request from the city, assist in staffing the shelters/alternate care sites.

Discussion:

Without such an agreement in place, the city has no legal right to assume that school facilities will be available for its citizens post-disaster. Putting an agreement into place as part of prudent disaster planning was the only course considered during consideration of this item.

The City Attorney and District Counsel have both reviewed and approved the proposed agreement. The District is scheduled to consider this item at their September 22, 2010 meeting.

Fiscal Impact:

There is no direct cost anticipated for approving this agreement.

Measure of Success

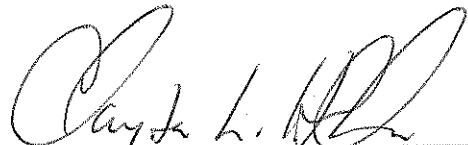
Approval of an agreement that memorializes the terms under which public facilities might be used in disaster response.

Attachments:

Cooperative Agreement for Provision of Emergency Shelter and Alternate Care Sites



Director of Public Works/City Engineer



City Manager

**COOPERATIVE AGREEMENT FOR PROVISION OF EMERGENCY
SHELTER AND ALTERNATE CARE SITES**

THIS AGREEMENT, effective as of _____, 2010 by and between THE CITY OF BRISBANE ("City"), and THE BRISBANE SCHOOL DISTRICT ("District") is made with reference to the following facts:

A. The parties desire to provide emergency shelters for use as temporary mass care shelters for the victims of disasters or for emergency staff and responders, and to provide alternate care sites for emergency medical treatment and inoculations, and food service and logistics staging areas.

B. District owns and operates the BRISBANE ELEMENTARY SCHOOL at 700 San Bruno Avenue and LIPMAN MIDDLE SCHOOL at 1 Solano Avenue (collectively, "School Facilities") in Brisbane.

C. City owns and operates the MISSION BLUE CENTER ("MBC") at 475 Mission Blue Drive in Brisbane.

NOW, THEREFORE, the parties agree as follows:

1. District Responsibilities

(a.) After meeting its own emergency responsibilities to pupils and staff, District will permit, to the extent of its ability and upon request from City, the use of School Facilities as emergency shelters and alternate care sites.

(b) Prior to permitting use of School Facilities by City, District will evaluate the facility, and to the extent possible, secure any valuable property not required for shelter operations.

(c) District will periodically, and upon request from City, update facility and contact information as provided for in Addendum #1 to this Agreement.

(d) District may, upon request from City, provide District personnel to assist staffing the emergency shelter and/or alternate care site as Disaster Service Workers pursuant to California Government Code 3100 et. seq., provided that the parties agree on the terms of financial reimbursement for personnel costs prior to their assignment.

2. City Responsibilities

(a) City will, when normal communications methods are possible, contact District staff listed in Addendum #1 to this Agreement to initiate use of School Facilities.

(b) City will exercise reasonable care in the conduct of its activities in School Facilities and make every reasonable effort to leave the facilities in the condition in which they were received, and will reimburse District when provided with documented cost information of damage to the facilities as a result of its use as an emergency shelter or alternate care site, and/or documented cost information of District consumables used during such activities.

City staff shall take photographs of the School Facilities prior to commencing emergency shelter operations. Damage or loss to District facilities and equipment shall be presumed to have occurred during the use of the School Facilities as an emergency shelter if the photographs depicting the condition of the facilities and equipment prior to their use for emergency purposes do not include evidence of damage that is existing at the conclusion of the use of the School Facilities for emergency purposes.

(c) City will periodically, and upon request from District, update facility and contact information as provided for in Addendum #1 to this Agreement.

(d) City will provide mass care and shelter operations training to District staff upon District's request.

(e) In the event that School Facilities are so severely damaged during a disaster that District is unable to provide temporary shelter to pupils and staff, City will provide space in MBC for District pupils and staff.

3. Joint Responsibilities

(a) The parties agree that it is impossible to predict the magnitude of a future disaster and the ensuing response and recovery period. The term of City's use of School Facilities is anticipated to be no more than forty-eight (48) hours for events/incidents when a disaster is not declared. If a disaster has been declared, the parties agree that City's use of the facilities could extend beyond twelve (12) days. Upon reaching the tenth day of continuous use, City, District and representatives of other stakeholder agencies (i.e., the American Red Cross) will meet weekly to evaluate the necessity for continued use of the facilities, the availability of alternative sites, the expected recovery period, potential co-use of the facilities, and other matters deemed necessary to establish a date for termination of City's use.

(b) The parties agree that co-use of the School Facilities may be necessary to the extent that they are able to function safely and effectively as a school.

(c) If City and District representatives are unable to establish a mutually agreed upon termination date of City's use of School Facilities, this date will be selected by Dispute Resolution as described in paragraph 4 of this Agreement.

4. Dispute Resolution.

(a) Resolution by the Parties. In the event of any disagreement between the parties, the matter will be referred to the City Manger of City and the Superintendent of District, who shall meet and attempt to resolve the dispute. If they are unable to agree,

the City Council shall appoint two of its members and the District Board of Trustees shall appoint two of its members and these representatives shall meet as a 2x2 Committee for the purpose of considering the matter(s) in controversy. The decision by the 2x2 Committee shall be final and binding on both parties.

(b) Resolution Through Mediation. If, and only if, the 2x2 Committee is unable to arrive at a final decision, they shall retain the services of an independent mediator who shall thereafter preside over the Committee meetings and attempt to facilitate a settlement of the disputed matter. The cost of the mediator shall be divided equally between the parties. It is agreed that neither party shall initiate any claim or lawsuit for breach or default under this Agreement alleged to have been committed by the other party without the matter having first been submitted to mediation and all efforts toward arriving at a negotiated settlement as described hereunder have been exhausted.

5. **Indemnification.**

(a) Indemnification of District. In accordance with Government Code Section 895.4, City shall fully indemnify, defend, and hold District, and its officers, officials, agents, employees and volunteers harmless from all claims, suits or actions of every name, kind and description, including but not limited to reasonable attorney's fees and other costs of defense, resulting from the City's use of property belonging to District.

(b) Indemnification of City. In accordance with Government Code Section 895.4, District shall fully indemnify, defend, and hold City, and its officers, officials, agents, employees and volunteers harmless from all claims, suits or actions of every name, kind and description, including but not limited to reasonable attorney's fees and other costs of defense, resulting from the negligent acts or omissions of District, its officers, agents, employees or invitees who are acting as District employees during co-use of the Facilities. This defense and indemnification obligation does not extend to District officers, officials, agents, employees and volunteers who are serving as Emergency Service Workers under the direction and control of the City and/or another aid agency (e.g., the American Red Cross) or who are recipients of aid at the emergency shelter..

(b) Concurrent Negligence. In the event of concurrent negligence of District, its officers, officials, agents or employees, and City, its officers, officials, agents or employees, then the liability for any and all claims, suits or actions of every name, kind and description arising out of this Agreement shall be apportioned between the parties under the established California rules of comparative negligence with each party bearing its own attorney's fees and costs.

6. **Notices.**

Any notices required or permitted to be given to the other party under this Agreement shall be in writing and shall be either personally delivered to the other party or sent by certified mail, return receipt requested, addressed to the other party as follows:

TO CITY: Randy Breault
Director of Office of Emergency Services
City of Brisbane
50 Park Place
Brisbane, CA 94005

TO DISTRICT: Toni Presta, Superintendent
Brisbane Elementary School District
1 Solano Street
Brisbane, CA 94005

Either party may change its address by providing notice to the other party as set forth above.

7. Excuse of Performance.

Notwithstanding any other provision of this Agreement to the contrary, any failure by City or District to perform any duty or obligation set forth in this Agreement shall not be deemed a breach of or default in the performance of this Agreement if such failure to perform is caused by fire, earthquake, flood, hurricane, the elements, acts of God or the public enemy; actions, restrictions, limitations or interference of other governmental authorities or their agents; enforcement of applicable provisions of federal, state or local law; war; invasion; insurrection; rebellion; riots; strikes or lockouts; or inability to perform which is beyond the reasonable control of City or District.

8. Miscellaneous Provisions.

(a) Authorization and Amendment. Each party represents and warrants to the other that the persons signing this Agreement have been duly authorized to do so by the party's governing body. This Agreement can only be amended by a written amendment duly executed by each of the parties pursuant to further authorization conferred by the governing body of each party.

(b) Entire Agreement. This Agreement represents the entire agreement between the parties concerning the subject matter hereof and supersedes and cancels all prior agreements and understandings, whether written or verbal.

(c) Waiver. The failure of either party to enforce any provision of this Agreement shall not be deemed a waiver of that provision, section, or any portion thereof unless such party acknowledges in writing that it is waiving that provision, section, or any portion thereof under this Agreement.

(d) Severability. In the event any provision of this Agreement is deemed unenforceable, it may be severed from the Agreement and the remainder of the Agreement shall be deemed fully enforceable and binding upon the parties.

(e) Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original and, taken together, shall constitute a single agreement.

(f) Termination. In the event that either party wishes for any reason to terminate this Agreement and its obligations hereunder, it may do so by providing one (1) year's prior written notice of intent to terminate to the other party.

IN WITNESS WHEREOF, the parties have executed this Agreement to be effective as of the day and year first above written.

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THE CITY OF BRISBANE

By: _____
RANDY BREault,
Director of Public Works/City Engineer

Approved as to form:

Harold S. Toppel, City Attorney

THE BRISBANE SCHOOL DISTRICT

By: _____
TONI PRESTA,
Superintendent

Approved as to form:

District Counsel

Addendum 1 Contact Information

Brisbane School District

Name	Home Address	Home Phone	Cell Phone	Office Phone

Brisbane Elementary School

Name	Home Address	Home Phone	Cell Phone	Office Phone

Lipman Middle School

Name	Home Address	Home Phone	Cell Phone	Office Phone

City of Brisbane

Name	Home Address	Home Phone	Cell Phone	Office Phone