

# *CITY OF BRISBANE*

## Agenda Report

TO: HONORABLE MAYOR & CITY COUNCIL MEMBERS

FROM: Parks & Recreation Director Via City Manager

SUBJECT: Cooperative Agreement with Brisbane Elementary School District

DATE: Meeting of April 19, 2010

**CITY COUNCIL GOALS:** To provide effective and efficient delivery of City services (#1); To develop recreational facilities and promote recreation, educational and cultural programs and passive uses related to parks (#6); To promote intergovernmental opportunities that enhances services and/or reduces cost of operations and services to city residents (#10); To preserve and enhance livability and diversity of neighborhoods (#14);

**PURPOSE:** To update the expired Cooperative Agreement between the City of Brisbane (City) and the Brisbane Elementary School District (District).

### **SUMMARY RECOMMENDATION**

City Council approve the Amended and Restated Cooperative Agreement between the City and the District and related license agreement.(Attachment A).

### **BACKGROUND & DISCUSSION**

In 2000, the City and the District entered into a written agreement for the first time, which identified responsibilities and legal authorities for a cooperative working relationship (Attachment B). Over the past ten years, this agreement has been the foundation for the cooperative use of facilities and programs. It has served both entities very well.

The revised agreement updates the current agreement, eliminating no longer applicable sections such as the lot line adjustment for the construction of the pool, City use of office space at B.E.S., and adding sections such as the potential addition of a permanent restroom facility on the lower B.E.S. athletic field.

Other changes include drafting preferences, such as combining the agreement for the maintenance and use of both Lipman and B.E.S. athletic fields into one section. We have also combined all of the terms and fees exchanged into their own sections in a summary fashion. Finally, we added a five-year review period for the overall agreement, which must commence no later than 120 days prior. This will ensure that both parties periodically conduct a joint evaluation of this agreement so that it continues to meet the needs of both.

**BACKGROUND & DISCUSSION (CONT.)**

Both the City Attorney and the County Counsel representing the District have participated and reviewed the drafting of the proposed amendment.

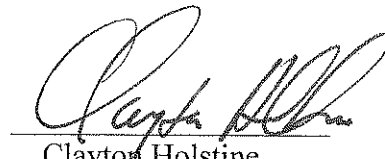
**FISCAL IMPACT**

There are no new financial implications included in this agreement. However, we have organized the various terms and agreements into a separate summary sheet (Attachment C) that identifies City and District financial contributions, terms of all facilities and programs, and maintenance responsibilities.

**MEASURE OF SUCCESS**

•Make full advantage of public facilities in a cooperative manner, resulting in increased recreational and educational facilities and programs for all users.

  
\_\_\_\_\_  
Jim Skeels  
Parks & Recreation Director

  
\_\_\_\_\_  
Clayton Holstine  
City Manager

Attachment A – Proposed Amended and Restated Agreement

Attachment B – Current Cooperative Agreement, approved July 1, 2000

Attachment C – Agreement Summary

**AMENDED AND RESTATED  
COOPERATIVE AGREEMENT FOR THE SHARED  
USE OF PUBLIC FACILITIES AND PROGRAMS**

**THIS AGREEMENT**, effective as of \_\_\_\_\_, 2009 ("Effective Date"), by and between THE CITY OF BRISBANE ("City"), and THE BRISBANE ELEMENTARY SCHOOL DISTRICT ("District") is made with reference to the following facts:

A. City and District entered into a certain Cooperative Agreement for the Shared Use of Public Facilities, effective as of July 1, 2000 (the "Cooperative Agreement") providing for the shared use of various public facilities owned and operated by City and District, for the allocation between the parties of responsibility for maintenance and repair of such facilities and payment of various expenses pertaining thereto, and for the shared cost of operating certain programs jointly sponsored by City and District.

B. The Cooperative Agreement was amended by a First Amendment dated November 13, 2001 (the "First Amendment").

C. The parties desire to further modify the terms and provisions of the Cooperative Agreement by the execution of this agreement. This Amended and Restated Agreement, referred to herein as "this Agreement," is intended as a complete amendment and restatement of all terms and provisions of the Cooperative Agreement and the First Amendment thereto, and the provisions of this Agreement shall supersede and cancel the Cooperative Agreement and the First Amendment in all respects.

**NOW, THEREFORE, it is agreed as follows:**

**ARTICLE I  
DESCRIPTON OF FACILITIES AND PROGRAMS**

**1.01. Facilities and Programs to be Shared.**

City and District each own various public facilities which they desire to make available for shared use by students attending the District schools, persons participating in recreation programs sponsored by City or District, City's recreation department staff, and members of the general public. City and District also jointly sponsor certain programs conducted for the benefit of District's students. These facilities and programs include the following:

(a) *Outdoor Facilities:*

- (1) The City-owned swimming pool and related facilities located adjacent to Lipman School.

- (2) The tennis courts at Lipman School.
  - (3) The playing field at Lipman School (the "Lipman Field")
  - (4) The upper playing field at Brisbane Elementary School (the "BES Upper Field") and the lower playing field at Brisbane Elementary School (the "BES Lower Field").
  - (5) Restroom facility to be constructed and operated by City on a portion of the BES Lower Field, pursuant to a license agreement between District and City.
- (b) *Indoor Facilities:*
- (1) The multi-purpose room at Lipman School (the "Lipman Multi-Purpose Room").
  - (2) Restroom and other facilities at Lipman and BES.
  - (3) Office space at BES for City's recreation department staff.
- (c) *Programs:*
- (1) The after-school homework center at Brisbane Elementary School (the "BES Homework Center").
  - (2) The after-school homework center at Lipman School (the "Lipman Homework Center").
- (d) *Heavy Equipment* either party may borrow from the other for temporary use, such as maintenance equipment, specified vehicles and assorted tools.

## 1.02. Definitions.

For the purposes of this Agreement, the following terms shall have the meanings respectively ascribed to them by this Section:

(a) *Regular school hours.* The term "regular school hours" means the period of time during a weekday when school classes are in normal session during the regular school year and does not include extracurricular activities that may occur either before or after the conduct of regularly scheduled classes.

(b) *CPI.* The term "CPI" means the Consumer Price Index for the San Francisco-Oakland Metropolitan Area, all items, as published by the United States Department of Labor, Bureau of Labor Statistics.

**ARTICLE II**  
**SHARED USE, OPERATION AND MAINTENANCE**

**2.01. Swimming Pool.**

(a) **Ownership and Maintenance of Swimming Pool.** The swimming pool is, and shall remain a City-owned facility, and City shall be responsible for the performance of all maintenance and repairs on the pool and related facilities at City's own expense.

(b) **Access Easement Granted to City.** District has granted to City a non-exclusive access easement over a strip of land as shown on Exhibit "A" attached hereto, on which City has constructed a paved roadway. City shall be responsible for all maintenance and repair of such roadway. The easement shall be used by City solely for the purpose of access to the maintenance building for the pool facility. City shall make reasonable efforts to limit vehicular traffic on this roadway while students are arriving or leaving Lipman School and when students are using Lipman Field.

(c) **Use of Pool Facilities by District Students.** City will encourage District's use of the pool by making the facility, including lockers and other pool-related amenities, available for use by District, at no cost to District or its students, during regular school hours for at least six (6) weeks in the Spring between April 1<sup>st</sup> and June 1<sup>st</sup>, and at least six (6) weeks in the Fall, beginning September 10<sup>th</sup>, unless the parties mutually agree in writing to modify this schedule. District shall be solely responsible for providing, at its own expense, supervision, instruction, and water safety personnel during the periods of pool use by the District's students; provided, however, that nothing herein shall prevent the City and District from entering into a separate contract for City to provide aquatic staff, lifeguard services, swim instruction, and supervision for District's aquatic program. District acknowledges that use of the pool by District will not be exclusive and other persons may be using the pool at the same time.

**2.02. Tennis Courts.**

(a) **Ownership.** The tennis courts at Lipman School are and shall remain a District-owned facility.

(b) **Use by City and General Public.** District shall have preferential use of the tennis courts during regular school hours. Members of the general public shall also be allowed to use the tennis courts during regular school hours if the courts are not then being used by District. During times of the day which do not constitute regular school hours, District will allow the tennis courts to be used by City for park and recreation activities and for general use by the public if the courts are not otherwise needed for scheduled after-school programs. City and District will meet and confer prior to the start of each school semester to review their schedule of activities and assess their respective needs for the tennis courts. During non-regular school hours, scheduling of the tennis courts shall be coordinated and supervised by the City; provided, however, it is understood that the City shall not schedule any instruction or other activity on the tennis courts that conflicts with District's scheduled use.

(c) **Maintenance.** The tennis courts shall be maintained by City, at its sole expense. City shall use its best efforts to schedule its maintenance work to minimize interference with use of the tennis courts by District. By executing this Agreement, District grants to City a right of entry upon the tennis courts and the surrounding area to the extent required for the proper performance of its maintenance responsibilities hereunder.

### **2.03. Athletic Fields.**

(a) **Use by District, City and General Public.** District shall have exclusive use of the Lipman Field (including use of the parking area), the BES Upper Field, and the BES Lower Field (collectively, the "Athletic Fields") during regular school hours. During times of the day which do not constitute regular school hours, District shall have preferential, non-exclusive use of the Athletic Fields but District shall use its best efforts to accommodate City's use of these facilities. City will coordinate with District City's scheduled use of the Athletic Fields during non-regular school hours, consistent with City's Facility Use Guidelines. Good faith efforts will be made by City to schedule all uses of the athletic fields at the beginning of the school year, and at least one month prior to any activity. A field scheduling meeting between City and District will be held in September of each year for this purpose. A calendar of the scheduled use will be maintained by the City Parks & Recreation Department office and made available to District and members of the public via a computerized schedule accessible on City's web site.

(b) **Maintenance of Athletic Fields.** City will be responsible for maintenance of the Lipman Field (including the bleachers), the BES Upper Field, and the BES Lower Field. Maintenance work will be performed to the same standard established by City for maintenance of playing fields at public parks and will be scheduled to minimize interference with regular use of the Athletic Fields by District. District and City shall hold a meeting in May of each year to review the quality and level of maintenance performed by City in the previous year and shall agree upon a maintenance plan and schedule for the following year that will ensure that the City performs to the same standard of maintenance as established for fields at public parks. District shall make an annual cash contribution to City toward the cost of maintenance work for the Athletic Fields, as set forth in the Cost Contribution Schedule attached hereto. District shall have responsibility for maintenance of the hillside above Lipman Field, at its own expense.

(c) **Alterations.** City shall not make any changes to the design features of the Athletic Fields, or construct any capital improvements thereon, without the prior written consent of District.

### **2.04. Restroom at BES Lower Field.**

(a) Concurrently herewith, District has granted to City a license covering a portion of land located within the BES Lower Field, a copy of which is attached hereto as Exhibit "B" and made a part hereof. City intends to construct a permanent restroom facility upon the license area. Such improvements shall be constructed entirely at City's expense, in accordance with plans and specifications approved by District, which approval shall not be unreasonably withheld or delayed. Following completion of construction, the restroom facility shall be owned, maintained and repaired by City at its own expense.

(b) The restroom facility may be used by District during regular school hours and during after-school activities conducted by District.

(c) In the event the restroom facility located upon the license area is removed by City, the license shall automatically terminate.

### **2.05. Lipman Multi-Purpose Room.**

(a) **Shared Use.** During times of the day which do not constitute regular school hours, the Lipman Multi-Purpose Room shall be used for volleyball, basketball and other team sports that are jointly sponsored by District and City. It is expressly understood by City that District may continue to sponsor such team sports on its own if City should suspend its sponsorship of such team sports for whatever reason. District will also allow the Lipman Multi-Purpose Room to be used by City's Recreation Department during non-regular school hours for compatible activities if the room is not otherwise needed for District activities; provided, however, that City shall reimburse District within forty-five (45) days after receipt of an invoice for repairs of any damage to the multi-purpose room that occurs during City's non-jointly sponsored activities or for excessive cleaning required after a City activity.

(b) **Cost Contribution.** City shall make an annual cash contribution to District toward the cost of maintaining the Lipman Multi-Purpose Room, as set forth in the Cost Contribution Schedule attached hereto.

### **2.06. Indoor Restroom and Other Facilities at Lipman and BES.**

In the event City desires to open either Brisbane Elementary School or Lipman School to allow use of the restrooms during activities which are not co-sponsored by District, or City desires to use any room(s) within the school building for the conduct of a public meeting or other public purpose, District agrees to make the facilities available to City for such use pursuant to the District's Civic Center Act policy, *provided* the activity does not conflict with District's own use of the same facilities, and *provided* further that City shall perform all of the following responsibilities:

(a) City shall notify the school principal in advance, indicating the nature of the activity and the time when availability of the restrooms or other area is desired;

(b) City shall provide supervision for the area used;

(c) If the use involves a public meeting, City shall set up chairs and otherwise arrange and equip the room as may be needed for conduct of the meeting and shall replace all items at the end of the meeting in their proper place;

(d) City shall make an annual cash payment to District, as set forth in the Cost Contribution Schedule attached hereto, as a contribution to offset any additional routine cleaning costs District may incur as a result of City's use; provided, however, that City shall be responsible for any damage to said premises or the extra costs of cleaning up unusual

messes. City shall not serve food or drink at events unless prior arrangements have been made with District to address cleaning issues; and

(e) City shall secure the building and reset the alarm when finished. In the event District is charged for false alarms or emergency calls resulting from City's failure to properly secure the building, City shall reimburse District for such charges within forty-five (45) days receipt of an invoice showing such charges.

## **2.07. Office Space and Modular Space at BES.**

(a) **Office Space at BES.** City will continue to have shared use of the existing office area at Brisbane Elementary School occupied by City's Recreation Department staff, at no charge to City.

(b) **Modular Space.** City and District have agreed and hereby reaffirm that each paid one-half of the purchase price and the cost of installation of the modular unit which is located at Brisbane Elementary School. District is the owner of the modular unit. In recognition of City's contribution towards the purchase price and cost of installation of the modular building, City shall not be charged rent for City's use and occupancy of the modular building. However, City shall make an annual cash payment to District, as set forth in the Cost Contribution Schedule attached hereto, as a contribution toward the cost of maintenance and utilities for the modular building. The City will be responsible for repairing damage to the unit caused by its use.

(c) **Changes in Space Needs.** The parties understand that their space needs may change over time. If City no longer needs the use of office or modular space as set forth herein, City shall provide written notice to District by April 1<sup>st</sup> that it will vacate the premises during the subsequent school year. If the District requires space to meet students needs, District shall provide prior written notice to City as soon as possible after such determination is made and will use its best efforts to provide alternate space, or at least shared space, to the City.

## **2.08. BES Homework Center.**

(a) **Operation of Program.** City and District shall conduct a jointly-sponsored program for operation of the BES Homework Center. The Center will be staffed by certificated teachers selected by District and will operate on Mondays through Fridays between the hours of 2:30 p.m. and 5:00 p.m. District and City shall hold a meeting in May of each year to review and establish hours of operation for the following year. The City's Parks and Recreation Department will assign no more than thirty (30) students to the Center in any day. Furthermore, it is expressly understood by the parties that teachers may assign some students to the Center directly.

(b) **Cost Sharing.** City shall make an annual cash contribution to District toward the cost of the BES Homework Center, as set forth in the Cash Contribution Schedule attached hereto. District shall contribute the balance of costs required for payment of teachers' salaries, and any costs pertaining to the facility, such as custodial, utilities and room maintenance.



## **2.09. Lipman Homework Center.**

(a) **Operation of Program.** City and District shall conduct a jointly-sponsored program for operation of the Lipman Homework Center. The Center will be staffed by one staff member to be selected by District. The Center will operate as may be agreed upon by the parties from time to time; provided, however, that District and City shall hold a meeting at least once each year in May to review and establish hours of operation for the following school year.

(b) **Cost Sharing.** City shall reimburse District for one-half (½) of the actual direct cost of providing one staff member for the Lipman Homework Center, not to exceed a maximum annual cost as set forth in the Cost Contribution Schedule attached hereto. District shall furnish a statement to City showing the cost incurred by District for providing one staff member for the Lipman Homework Center during the preceding fiscal year and City shall pay either the amount shown on such statement or the maximum annual cost, whichever is less. All other costs pertaining to the operation of the Lipman Homework Center, including equipment maintenance and upgrade, custodial, utilities, and room maintenance, shall be paid by District. If the District receives third-party funding by grant to support the Lipman Homework Center, it will meet with the City to review the terms, conditions and amount(s) of said grant(s) with the intent that the District and City share the remaining costs of operating the Lipman Homework Center equally.

## **2.10. Heavy Equipment.**

From time to time, either party may loan heavy mechanical equipment, vehicles or tools ("Equipment") to the other party for such other party's temporary use. It is agreed that any borrowing of Equipment by one party from the other shall be subject to the following conditions:

(a) Requests to borrow Equipment shall be made at least 24 hours in advance of needing the Equipment, except in the case of emergency. The Equipment owner shall have no obligation to loan any item.

(b) The Equipment shall only be used by the authorized representatives of the borrowing party and shall not be given to any other person or agency except for the purpose of making necessary repairs, in which event, such repair work shall be performed by a person who is qualified to do so.

(c) It shall be the responsibility of the borrowing party to inspect the Equipment prior to any use to determine whether it is in proper working condition. All Equipment shall be loaned in "as is" condition and the lending party shall not be deemed to have made any representations or warranties to the borrowing party concerning the nature or condition of the Equipment or its suitability for the borrower's intended use. The borrower expressly assumes all risk of loss, damage, or injury resulting from the borrower's use of the Equipment.

(d) The borrowing party shall indemnify, defend and hold harmless the lending party, and its officers, officials, employees and volunteers, from all claims, demands, costs,

expenses, or liabilities, arising during and from the use of the Equipment by the borrowing party or any of its officers, officials, employees, or volunteers.

(e) The borrowing party shall promptly repair any damage to the Equipment resulting from such party's use. Ordinary maintenance shall be the responsibility of the Equipment owner, subject to 2.09(c) above.

### **ARTICLE III GENERAL PROVISIONS**

#### **3.01. General Priority for Children's Programs.**

The parties agree that in making and coordinating their respective schedules, the activities for children on District property will be given priority over programs for adults.

#### **3.02. Prohibited Activities on District Property.**

(a) **Prohibitions.** No alcohol, smoking, or dogs shall be permitted upon or within any of the District facilities covered by this Agreement while the same are being used by City, or during the course of any activities or programs sponsored by City. City shall also make reasonable efforts, including the posting of signs, to have these prohibitions observed by members of the general public and will, at the request of District, adopt suitable ordinances if such action is deemed necessary and appropriate for enforcement purposes. All District property shall remain drug free zones during periods of City use and will be posted as such in the manner provided by law.

(b) **Excessive Use.** City will limit or restrict the activities under its own control in order to avoid undue stress or damage to the Athletic Fields (e.g., golf) or other facilities owned by District and maintained by City (e.g., golf balls hitting windows).

#### **3.03. Consultation and Dispute Resolution.**

(a) **Semi-Annual Coordination Meetings.** Staff representatives of District and City shall meet at least twice a year to coordinate the scheduled activities planned by each of parties, to review the status of current programs and maintenance issues, and to resolve any conflicts or problems that may have arisen in connection with the implementation of this Agreement. In adopting schedules for shared use of facilities, the parties acknowledge that the activities of organized team sports need to be planned in advance and require both consistency and reliability with regard to the use of playing fields for games and practices. The parties will make every reasonable effort to accommodate both school programs conducted by District and team sports sponsored by City's Recreation Department. In addition, the City will not schedule any events on any of the facilities that conflict with major evening activities at the school. District shall provide a list of such major evening activities for the ensuing semester to City at each semi-annual coordination meeting.

(b) **Dispute Resolution.** 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. 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.

### **3.04. Mutual Indemnification.**

(a) **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 in the performance of this Agreement, or any breach by District of its obligations under this Agreement.

(b) **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 negligent acts or omissions of City, its officers, agents, employees or invitees in the performance of this Agreement, or any breach by City of its obligations under this Agreement.

(c) **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.

### **3.05. Insurance.**

City and District shall each maintain comprehensive general liability insurance or self insurance, generally at levels currently in effect for each agency, insuring against all liability of City and District and their authorized representatives arising out of and in connection with City's and District's use of the facilities under this Agreement.



(b) This Agreement may be terminated, in whole or in part, at any time by mutual agreement of the parties, and may be terminated, in whole or in part, by either party upon giving written notice of termination to the other party. In the event of a termination by either party, the following prior written notice shall be required, depending upon the nature of such termination:

- (1) Entire Agreement: 360 days.
- (2) Swimming Pool: 180 days.
- (3) Tennis Courts: 180 days
- (4) Athletic Fields: 180 days.
- (5) Lipman Multi-Purpose Room: 180 days.
- (6) Indoor Restroom and Other Facilities at Lipman and BES: 180 days.
- (7) Office Space: See Subsection 2.08(c).
- (8) BES Homework Center: Notice by February 15 of any year; termination to be effective as of June 30 of that year.
- (9) Lipman Homework Center: Notice by February 15 of any year; termination to be effective as of June 30 of that year.
- (10) Heavy Equipment: 30 days.

In the event of termination relating to a facility for which City or District has made an annual contribution toward the cost of operating such facility, the contribution shall be prorated as of the effective date of termination and any unearned portion shall be refunded to the contributing party.

### **3.10. 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; provided, however, that any amendment that requires an expenditure of less than \$5,000 may be entered into by the City Manager and the Superintendent and is so authorized by each party's governing body by entering into this Agreement.

(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, including the original Cooperative Agreement and the First and Second Amendments thereto.

(c) **Effective Date.** This Agreement shall become effective as of the date when the governing body of each party has approved the form and content of this Agreement and authorized its representatives to execute this document on its behalf. Such date shall thereupon be inserted at the beginning of this Agreement.

(d) **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.

(e) **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.

(f) **Additional Actions.** The parties acknowledge that it is impractical in a transaction of the nature of this Agreement to provide for, or anticipate, every action by City or District that may be required to fully implement the Agreement. Therefore, City and District agree to cooperate in good faith, and to take any such additional actions that may be necessary to fully implement the Agreement.

(g) **Counterparts.** This Agreement may be executed in counterparts, each of which shall be deemed an original.

(h) **Time of the Essence.** Time is of the essence in the performance of the terms and conditions of this Agreement.

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

THE CITY OF BRISBANE

THE BRISBANE ELEMENTARY SCHOOL DISTRICT

By: \_\_\_\_\_  
W. Clarke Conway,  
Mayor

By: \_\_\_\_\_  
Board President

Attest: \_\_\_\_\_  
Sheri Marie Spediacci,  
City Clerk

Attest: \_\_\_\_\_  
Toni Presta,  
Superintendent

Approved as to form:

Approved as to form:

\_\_\_\_\_  
City Attorney

\_\_\_\_\_  
District Counsel

## COST CONTRIBUTION SCHEDULE

District shall make annual cash contributions to City and City shall make annual cash contributions to District for the cost of maintaining facilities used by one party which are owned by the other. For the fiscal year of July 1, 2008 through June 30, 2009, such contributions shall be as follows:

<u>Contributions by District:</u>	<u>Amount:</u>
Athletic Fields - Section 2.03(b):	\$5,334.00
<u>Contributions by City:</u>	<u>Amount:</u>
Lipman Multi-Purpose Room – Section 2.05(b):	\$3,372.00
Indoor facilities at Lipman & BES – Section 2.06(d):	\$799.00
Office and Modular Space at BES – Section 2.07(b):	\$9,249.00
BES Homework Center – Section 2.08(b):	\$17,280.00
Lipman Homework Center – Section 2.09(b):	\$3,999.00, or actual cost, whichever is less

The respective cost contributions to be made by each of the parties, as set forth above, shall be adjusted annually based upon the percentage increase, if any, in the CPI published on the nearest date prior to July 1<sup>st</sup>, as compared with the CPI for the same date of the preceding year.

On or before April 1<sup>st</sup> of each year, District shall furnish to City an Invoice showing the respective contributions to be made by each of the parties for the next fiscal year, as adjusted for any CPI increase. City shall pay the net amount owed to District, as shown by such Invoice, not later than June 30<sup>th</sup>.

**EXHIBIT "A"**  
**Access Easement**  
**Granted by District to City**





EXHIBIT "A"

PROPOSED PUBLIC ACCESS AND UTILITY EASEMENT LYING OVER A  
PORTION OF THE LANDS OF THE BRISBANE ELEMENTARY SCHOOL  
DISTRICT AS DESCRIBED WITHIN THAT CERTAIN GRANT DEED RECORDED  
IN VOLUME 2077 AT PAGE 431, SAN MATEO COUNTY RECORDS

A non-exclusive easement for public access and utility purposes situate in the City of Brisbane, County of San Mateo, State of California lying in , on, over and along a portion of the Lands of the Brisbane Elementary School District as said lands are described within that certain Grant Deed recorded in Volume 2077 at page 431, San Mateo County Records; said easement being more particularly described as follows :

BEGINNING at the most westerly corner of the Lands of the City of Brisbane, as said lands are described within that certain Grant Deed recorded in Reel 7713 at pages 825 and 826, San Mateo County Records ;

THENCE along the southerly line of said lands of the Brisbane Elementary School District North 89° 09' 12" West a distance of 94.48 feet ( said grant deed to the Brisbane Elementary School District indicates North 89° 35' 50" East) ;

THENCE leaving said southerly line of said land of the Brisbane Elementary School District in a northeasterly direction North 51° 52' 58" East a distance of 100.91 feet to the True Point of Beginning ;

THENCE North 38° 07' 02" West a distance of 14.00 feet ;

THENCE North 51°52'58" East a distance of 256.46 feet ;

THENCE North 28°59' 58" East a distance of 55.06 feet ;

THENCE South 61°00' 02" East a distance of 20.00 feet ;

THENCE South 28° 59' 58" West a distance of 59.11 feet;



2020-086867  
07/17 2000 02 30P  
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PLAT  
 PROPOSED PUBLIC ACCESS AND UTILITY EASEMENT OVER A PORTION  
 OF THE LANDS OF BRISBANE ELEMENTARY SCHOOL DISTRICT  
 TO BE GRANTED TO THE CITY OF BRISBANE  
 COUNTY OF SAN MATEO STATE OF CALIFORNIA

SCALE 1" = 100'

CITY OF BRISBANE  
 (CITY OF VIETNAM)  
 (S MAPS 35)

LANDS OF THE BRISBANE ELEMENTARY  
 SCHOOL DISTRICT (2077 O.R. 43')

P.O.B.

T.P.O.B.

PROPOSED PUBLIC ACCESS  
 AND UTILITY EASEMENT  
 TO BE GRANTED TO  
 THE CITY OF BRISBANE  
 BY THIS PLAT

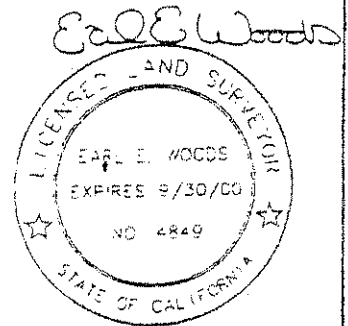
LINE TABLE	
1	30°44'10" S 107°41'00" W
2	125°07'22" W 55.00'
3	128°59'55" E 55.00'
4	88°10'00" E 20.00'
5	33°45'55" W 59.00'

LANDS OF THE CITY  
 OF BRISBANE  
 (7773 03 325)

PANEL A  
 [32 PM 35]

SOLANO STREET

SAN FRANCISCO  
 AVENUE



PANEL A  
 [32 PM 35]

PREPARED BY

E.E. WOODS LAND SURVEYORS, INC.  
 1355 BROADWAY, SUITE 218  
 REDWOOD CITY, CA 94063  
 (650) 363-7113 FAX 366-8903

AUGUST 28, 1999

EEWLSI JUN 1414B

SHEET 1 OF 1

2000-086867  
 17-2003-02-30P  
 ES Page 4 of 6

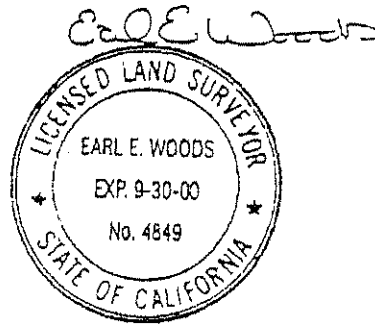


PROPOS. PUBLIC ACCESS & UTILITY EASEM.  
 TO BE GRANTED TO THE CITY  
 OF BRISBANE

1	N38-07-02W	20.00	1	8000.000000	5000.000000	0.000	POE
2	N51-52-58E	256.46	2	8015.734990	4987.654552	0.000	
3	N28-59-58E	55.06	3	8174.040667	5189.424333	0.000	
4	S61-00-02E	20.00	4	8222.197487	5216.117484	0.000	
5	S28-59-58W	59.11	5	8212.501464	5233.609972	0.000	
6	S51-52-58W	260.50	6	8160.802415	5204.953376	0.000	
			7	8000.002958	5000.005138	0.000	

AREA = 5322 SQUARE FEET OR 0.14489 ACRES

1. 111369 PRECISION  
 S60-01-09W 0.01 CLOSING LINE



2000-088867  
 07/17/2000 02:30P  
 EF Page 5 of 5

PREPARED BY :

E. E. WOODS LAND SURVEYORS, INC.  
 1155 BROADWAY, SUITE 218  
 REDWOOD CITY, CA 94063

AUGUST 28, 1999

EEWLSI JN 1414-B

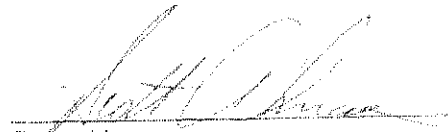
## CERTIFICATE OF ACCEPTANCE

This is to certify that the interest in real property conveyed by the Grant Deed dated July 13, 2000 from Brisbane Elementary District, a public school district and political subdivision of the State of California, to the City of Brisbane, a municipal corporation, is hereby accepted by the undersigned officer on behalf of the City of Brisbane pursuant to the authority conferred by Resolution No. 77-56 adopted on June 27, 1977, and the grantee consents to recordation thereof by its duly authorized officer.



2000-086867  
07-17/2000 02:30P  
ES Page 6 of 6

Dated this 13th day of July, 2000.

  
\_\_\_\_\_  
Scott Alman  
Director of Public Works

## EXHIBIT "B"

### LICENSE AGREEMENT

THIS LICENSE AGREEMENT, effective as of \_\_\_\_\_, 2009, by and between THE CITY OF BRISBANE ("City"), and THE BRISBANE ELEMENTARY SCHOOL DISTRICT ("District") is made with reference to the following facts:

A. City and District have entered into an Amended And Restated Cooperative Agreement For The Shared Use of Public Facilities and Programs, of even date herewith (the "Cooperative Agreement").

B. Section 2.04 of the Cooperative Agreement provides for the granting of a License by District to City covering a portion of land located with the Brisbane Elementary School lower field for the construction thereon by City of a restroom facility.

#### **NOW, THEREFORE, the parties agree as follows:**

1. District hereby grants a License to City to occupy and use that portion of the District's Brisbane Elementary School lower field, as shown on the drawing attached hereto as Exhibit "A" and made a part hereof (the "License Area"). No rent or other compensation shall be payable by City to District for use of the License Area.

2. City shall be entitled to improve the License Area by the construction thereon of a permanent restroom facility (the "Restroom Facility"), in accordance with plans and specifications approved by District. The Restroom Facility shall be constructed, owned, maintained, and operated by City at its own expense, and jointly used by City and District pursuant to the terms of the Cooperative Agreement.

3. The rights of granted by this License are intended solely for the benefit of City and such rights may not be assigned or transferred by City, or its successors and assigns, for the benefit of any other party without the prior written approval of District.

4. The License granted herein shall be used by City for the purposes described in the Cooperative Agreement and shall not be used for any other purpose without the prior written consent of District.

5. City shall repair any damage to the License Area arising from use of the License by City or any of its employees, agents, or invitees. City shall not be liable for repair of damage to the License Area or the Restroom Facility constructed thereon, which is caused by District or any of its employees, agents, students, or invitees.

6. City shall indemnify, defend, and hold District harmless from and against any claims, demands, causes of action, liabilities, costs or expenses, including attorneys' fees, for loss or damage arising from or in any manner related to any negligent act or omission or willful misconduct committed by City or any of its employees, agents, or invitees in connection with their use of the License Area or the Restroom Facility constructed thereon.

7. District shall indemnify, defend, and hold City harmless from and against any claims, demands, causes of action, liabilities, costs or expenses, including attorneys' fees, for loss or damage arising from or in any manner related to any negligent act or omission or willful misconduct committed by District or any of its employees, agents, or invitees in connection with their use of the License Area or the Restroom Facility constructed thereon.

8. This License shall automatically terminate upon removal by City of the Restroom Facility constructed by City within the License Area.

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

**THE CITY OF BRISBANE**

Approved as to form:

By: \_\_\_\_\_  
W. Clarke Conway, Mayor

\_\_\_\_\_  
Harold S. Toppel,  
City Attorney

Attest: \_\_\_\_\_  
Sheri Marie Spediacci,  
City Clerk

**THE BRISBANE ELEMENTARY  
SCHOOL DISTRICT**

Approved as to form:

By: \_\_\_\_\_  
\_\_\_\_\_  
Board President

\_\_\_\_\_  
District Counsel

Attest: \_\_\_\_\_  
Toni Presta,  
Superintendent

PLAT  
 PROPOSED PUBLIC ACCESS AND UTILITY EASEMENT OVER A PORTION  
 OF THE LANDS OF BRISBANE ELEMENTARY SCHOOL DISTRICT  
 TO BE GRANTED TO THE CITY OF BRISBANE  
 COUNTY OF SAN MATEO STATE OF CALIFORNIA

SCALE 1" = 100'

CITY OF BRISBANE  
 (CITY OF VISITATION)  
 (S MAPS 35)

LANDS OF THE BRISBANE ELEMENTARY  
 SCHOOL DISTRICT (2077 O.R. 43')

P.O.B.

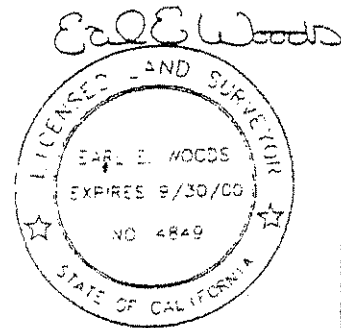
T.P.O.B.

PROPOSED PUBLIC ACCESS  
 AND UTILITY EASEMENT  
 TO BE GRANTED TO  
 THE CITY OF BRISBANE  
 E.E. WOODS JUN 14 1999

LINE TABLE	
BEARING	DISTANCE
N89°09'12"W	94.48
N12°22'45"E	100.00
S23°02'38"E	250.00
S81°00'00"E	50.00
S02°59'58"E	59.11

LANDS OF THE CITY  
 OF BRISBANE  
 (7778 US 526)

PANEL A  
 [42 PM 35]



SOLANO STREET

SAN FRANCISCO  
 AVENUE

PANEL A  
 [42 PM 35]

PREPARED BY

E.E. WOODS LAND SURVEYORS, INC.  
 1355 BROADWAY, SUITE 218  
 REDWOOD CITY, CA 94063  
 (650) 363-7113 FAX 366-8903

AUGUST 28, 1999

EEWLSI JUN 1414B

SHEET 1 OF 1

2000-086867  
 17/2000 02:30P  
 55 Page: 4 of 6





**COOPERATIVE AGREEMENT  
FOR THE SHARED USE OF PUBLIC FACILITIES**

**THIS AGREEMENT**, effective as of July 1, 2000, by and between THE CITY OF BRISBANE ("City"), and THE BRISBANE ELEMENTARY SCHOOL DISTRICT ("District"), is made with reference to the following facts:

A. City and District each own various public facilities which they desire to make available for shared use by students attending the District schools, persons participating in recreation programs sponsored by City or District, City's recreation department staff, and members of the general public. These facilities include the following:

*Outdoor Facilities:*

The swimming pool and related facilities to be constructed by City on property adjacent to Lipman School.

The tennis courts at Lipman School.

The playing field at Lipman School (the "Lipman Field") and the lower playing field at Brisbane Elementary School (the "BES Lower Field").

*Indoor Facilities:*

The after-school homework center at Brisbane Elementary School (the "BES Homework Center").

The after-school homework center at Lipman School (the "Lipman Homework Center").

The multi-purpose room at Lipman School (the "Lipman Multi-Purpose Room").

Restroom and other facilities at Lipman and BES.

Office space at BES for City's recreation department staff.

B. The parties desire to establish an arrangement for shared use of the facilities described above and the allocation between the parties of responsibility for maintenance and repair of such facilities and payment of various expenses pertaining thereto, as hereinafter set forth.

NOW, THEREFORE, it is agreed as follows:

ARTICLE I  
OUTDOOR FACILITIES

1.01            Definitions.

For the purposes of this Agreement, the following terms shall have the meanings respectively ascribed to them by this Section:

(a)    *Regular school hours.* The term "regular school hours" means the period of time during a weekday when school classes are in normal session during the regular school year and does not include extracurricular activities that may occur either before or after the conduct of regularly scheduled classes.

(b)    *CPI.* The term "CPI" means the Consumer Price Index for the San Francisco-Oakland Metropolitan Area, all items, as published by the United States Department of Labor, Bureau of Labor Statistics.

1.02            Swimming Pool.

(a)    *Lot Line Adjustment:* In order to eliminate an encroachment of the proposed swimming pool improvements into the adjacent District property, District shall convey to City the strip of land shown and described on Exhibit "A" attached hereto and made a part hereof (the "Conveyed Land"). Such conveyance shall be accomplished by Quitclaim Deed wherein District shall convey its entire legal ownership interest in the Conveyed Land to City "as is" without providing assurances of any kind or nature regarding the nature and extent of such legal ownership interest. Said Quitclaim Deed shall be in form and substance satisfactory to the City Attorney and the District's Attorney, and shall be completed within thirty (30) days after the execution of this Agreement.

(b)    *Access Easements:* District shall grant to City a non-exclusive access easement over the strip of land, approximately twelve (12) feet in width, as shown and described in Exhibit "B" attached hereto and made a part hereof. Such grant shall be in form and substance satisfactory to the City Attorney and the District's legal counsel, and shall be completed within thirty (30) days after the execution of this Agreement. City shall construct a paved roadway over the access easement and shall be responsible for all maintenance and repair of such roadway. The easement shall be used by City solely for the purpose of access to the maintenance building for the pool facility. City shall make reasonable efforts to limit vehicular traffic on this roadway while students are arriving or leaving Lipman School and when students are using Lipman Field. Concurrent with the granting of the access easement by District to City as described herein, City shall grant a non-exclusive access easement to District for use of the roadway access to Lipman School. Such easement shall be in form and substance satisfactory to the District's legal counsel and the City Attorney.

(c)    *Maintenance of Swimming Pool:* The swimming pool is, and shall remain, a City-owned facility, and City shall be responsible for the performance of all maintenance and repairs on the pool and related facilities at City's own expense.

(d) *Use of Pool Facilities by District Students:* City will encourage District's use of the pool by making the facility, including lockers and other pool-related amenities, available for use by District, at no cost to District or its students, during regular school hours for at least six (6) weeks in the Spring between April 1<sup>st</sup> and June 1<sup>st</sup>, and at least six (6) weeks in the Fall, beginning September 10<sup>th</sup>, unless the parties mutually agree in writing to modify this schedule. District shall be solely responsible for providing, at its own expense, supervision, instruction, and water safety personnel during the periods of pool use by the District's students; provided, however, that nothing herein shall prevent the City and District from entering into a separate contract for City to provide aquatic staff, lifeguard services, swim instruction, and/or supervision for District's aquatic program. If the City extends the length of time during which the pool is open in any year, the parties shall meet to review and, if appropriate, modify the schedule listed above.

(e) *Preferential Use During Regular School Hours:* The District shall have preferential use of the pool during regular school hours. District acknowledges that such use will not be exclusive and other persons may be using the pool at the same time.

(f) *Term.* This Agreement shall remain in effect with regard to the swimming pool for as long as the City operates the swimming pool facility.

1.03 **Lipman Field and BES Lower Field.**

(a) *Use by District, City and General Public.* The District shall have exclusive use of the Lipman Field (including use of the parking area) and the BES Lower Field during regular school hours. During times of the day which do not constitute regular school hours and prior to the initial Automatic Extension (defined below), City shall have preferential, non-exclusive use of these facilities, but City shall use its best efforts to accommodate the District's use of said facilities during non-regular school hours. After the initial Automatic Extension, District shall have preferential, non-exclusive use of these facilities during non-regular school hours, but District shall use its best efforts to accommodate the City's use of said facilities during these hours.

(b) *Maintenance.* City will be responsible for the maintenance of Lipman Field (including the bleachers) and BES Lower Field. Maintenance work will be performed to the same standard established by City in its manual for maintenance of fields at public parks attached hereto as Exhibit "C" and will be scheduled to minimize interference with use of the fields by District. District and City shall hold a meeting in May of each year to review the quality and level of maintenance performed by City in the previous year and shall agree upon a maintenance plan and schedule for the following year that will ensure that the City performs to the same standard of maintenance as established in its manual for fields at public parks. On or before August 31<sup>st</sup> of each year during the term of this Agreement with respect to the Lipman Field and the BES Lower Field, District shall make a cash payment to City as a contribution toward the cost of maintenance work for said fields. Commencing as of July 1, 1999, such payment shall be in the amount of Four Thousand Dollars (\$4,000.00) and shall be adjusted annually thereafter based upon the percentage increase, if any, in the CPI published on the

nearest date prior to July 1<sup>st</sup>, as compared with the CPI for same date of the preceding year. District shall have responsibility for maintenance of the hillside above Lipman Field, at its own expense.

(c) *Alterations.* City shall not make any changes to the design features of Lipman Field or BES Lower Field without the prior written consent of District. By entering into this Agreement, District hereby acknowledges that it has given consent to the installation of an equipment shed directly behind the backstop at Lipman Field and the backstop at BES Lower Field.

(d) *Term.* In recognition of the additional work required to be performed by City to restore the playing fields to an acceptable condition, District agrees that City's use of the Lipman Field and the BES Lower Field as described in subsection (a) above shall not be revoked or curtailed for a period of three (3) years from the effective date of this Agreement. Thereafter, this Agreement shall automatically be extended with respect to the Lipman Field and BES Lower Field for successive periods of ten (10) years (the "Automatic Extensions"), unless either party provides at least ninety (90) days written notice that it desires to terminate this Agreement prior to any such Automatic Extension. At any time during any Automatic Extension, either party may terminate the provisions of this Agreement with respect to the Lipman Field and/or the BES Lower Field by giving at least one hundred eighty (180) days written notice to the other party. If this Agreement is terminated with respect to only one field, the City and District shall negotiate appropriate adjustments to their respective obligations hereunder for maintenance of the fields and contribution for payment of maintenance costs.

(e) *BES Upper Field.* Within one year after the execution of this Agreement, City and District shall meet and consider the possible shared use of the upper playing field at the Brisbane Elementary School. It is understood that such field is not covered by this Agreement and City has neither a right to use nor an obligation to maintain such field.

#### 1.04 Tennis Courts.

(a) *Use by City and General Public.* The District shall have preferential use of the tennis courts during regular school hours. Members of the general public shall also be allowed to use the tennis courts during regular school hours if the courts are not then being used by the District. During times of the day which do not constitute regular school hours, District will allow the tennis courts to be used by City for park and recreation activities and for general use by the public if the courts are not otherwise needed for scheduled after-school programs. City and District will meet and confer prior to the start of each school semester to review their schedule of activities and assess their respective needs for the tennis courts. During non-regular school hours, scheduling of the tennis courts shall be coordinated and supervised by the City; provided, however, that it is expressly understood that the City shall not schedule any instruction or other activity on the tennis courts without first checking for availability with the District and receiving written assurance that the tennis courts will be available for such instruction or activity. At the present time, there is no plan to lock the tennis courts at night; however, the parties will reconsider this decision if a need to do so should arise in the future.

(b) *Maintenance.* The tennis courts shall be maintained by City, at its sole expense. City shall use its best efforts to schedule its maintenance work to minimize interference with use of the tennis courts by District. By executing this Agreement, District grants to City a right of entry upon the tennis courts and the surrounding area to the extent required for the proper performance of its maintenance responsibilities hereunder. Such right of entry shall replace the existing easement granted by District to City for the tennis courts on District's property and City agrees to release and terminate the existing easement.

(c) *Future Improvements.* Within six (6) months after the execution of this Agreement, City and District shall meet and investigate the feasibility of developing a fenced-in area for tennis instruction, to be located adjacent to the tennis courts.

(d) *Term.* This Agreement shall remain in effect with regard to the tennis courts for a term of twenty (20) years, and thereafter shall automatically be extended for an additional term of twenty (20) years, unless, during the extension, either party gives the other at least one hundred eighty (180) days prior written notice of termination.

## ARTICLE II INDOOR FACILITIES

### 2.01 BES Homework Center.

(a) *Operation of Program.* City and District shall conduct a jointly-sponsored program for operation of the BES Homework Center. The Center will be staffed by certificated teachers selected by District and will operate on Mondays through Fridays between the hours of 2:30 p.m. and 5:00 p.m. District and City shall hold a meeting in May of each year to review and establish hours of operation for the following year. The City's Park and Recreation Department will assign no more than thirty (30) students to the Center in any day. Furthermore, it is expressly understood by the parties that teachers may assign some students to the Center directly.

(b) *Cost Sharing.* City has contributed Ten Thousand Nine Hundred Fifty-One Dollars (\$10,951.00) for the 1998-99 school year and will contribute Eleven Thousand One Hundred Four Dollars (\$11,104) for the 1999-2000 school year toward the cost of the BES Homework Center. The amount contributed by City for future school years shall be subject to annual adjustment as of July 1st each year, beginning as of July 1, 2000, based upon the percentage increase, if any, in the CPI published on the nearest date prior to July 1st, as compared with the CPI for the same date of the preceding year. City's cash contribution shall be paid to District by August 31<sup>st</sup> of each year. District shall contribute the balance of costs required for payment of teachers' salaries, and any costs pertaining to the facility, such as custodial, utilities and room maintenance.

(c) *Student User Fees.* Students will not be charged student fees, per se, for use of the BES Homework Center. The City retains the right, however, to charge student fees for registering each day for the after-school park and recreation program at BES. The City may assign children to any of its activities, including the BES Homework Center, for part or all of a

day. City will provide District with funds equivalent to the fees collected from children who the City sends to the BES Homework Center each day, or, at its discretion, City may provide a contribution of \$5,000 per year to the District, adjusted annually as of July 1<sup>st</sup> of each year, beginning July 1, 2000, based upon the percentage increase, if any, in the CPI published on the nearest date prior to July 1<sup>st</sup>, as compared with the CPI for the same date of the preceding year. The District agrees that any such funds received will be used to maintain and upgrade the computer equipment in the BES Homework Center.

(d) *Term.* This Agreement shall remain in effect with regard to the BES Homework Center through June 30, 2000, and thereafter shall automatically be extended for additional terms of one (1) year; provided, however, that either party may terminate this Agreement with respect to the BES Homework Center as of June 30 of any year by giving the other party written notice of termination by February 15 of that year.

## 2.02 Lipman Homework Center.

(a) *Operation of Program.* City and District shall conduct a jointly-sponsored program for operation of the Lipman Homework Center. The Center will be staffed by one staff member to be selected by District. The Center will operate as may be agreed upon by the parties from time to time; provided, however, that District and City shall hold a meeting at least once each year in May to review and establish hours of operation for the following school year.

(b) *Cost Sharing.* City shall reimburse District for one-half (½) of the actual direct cost of providing one staff member for the Lipman Homework Center, not to exceed a maximum annual cost of Three Thousand Dollars (\$3,000.00) adjusted annually as of July 1<sup>st</sup> of each year, beginning July 1, 2000, based upon the percentage increase, if any, in the CPI published on the nearest date prior to July 1<sup>st</sup>, as compared with the CPI for the same date of the preceding year. District shall furnish a statement to City showing the cost incurred by District for providing one staff member for the Lipman Homework Center during the preceding fiscal year and, within thirty (30) days after receipt, City shall pay either the amount shown on such statement or the maximum annual cost set forth above, whichever is less. All other costs pertaining to the operation of the Lipman Homework Center, including equipment maintenance and upgrade, custodial, utilities, and room maintenance, shall be paid by District. If the District receives third-party funding by grant to support the Lipman Homework Center, it will meet with the City to review the terms, conditions and amount(s) of said grant(s) with the intent that the District and City share the remaining costs of operating the Lipman Homework Center equally.

(c) *Student User Fees.* District shall have the sole authority to determine whether any fees should be charged to students utilizing the Lipman Homework Center, and if so, the amount of such fees, the classifications of students to be charged, the time of payment, and the manner in which any funds collected will be utilized by District. If the District decides to charge a student user fee, then District will be solely responsible for the collection of said fee. Any such fees will be used to maintain and upgrade computer equipment. At the time of this Agreement, the District does not intend to charge student user fees.

(d) *Term.* This Agreement shall remain in effect with regard to the Lipman

Homework Center through June 30, 2000, and thereafter shall automatically be extended for additional terms of one (1) year; provided, however, that either party may terminate this Agreement with respect to the Lipman Homework Center as of June 30 of any year by giving the other party written notice of termination by February 15 of that year.

2.03                    **Lipman Multi-Purpose Room.**

(a)    *Shared Use.* During times of the day which do not constitute regular school hours, the Lipman Multi-Purpose Room shall be used for volleyball, basketball and other team sports that are jointly sponsored by the District and City. It is expressly understood by the City that the District may continue to sponsor such team sports on its own if City should suspend its sponsorship of such team sports for whatever reason. District will also allow the Lipman Multi-Purpose Room to be used by the City's Recreation Department during non-regular school hours for compatible activities if the room is not otherwise needed for District activities; provided, however, that City shall reimburse the District within forty-five (45) days after receipt of an invoice for repairs of any damage to the multi-purpose room that occurs during the City's non-jointly sponsored activities or for excessive cleaning required after a City activity.

(b)    *Cost Contribution.* City shall make an annual cash contribution to District in the amount of One Thousand Six Hundred Dollars (\$1,600.00) toward the cost of maintaining the Lipman Multi-Purpose Room, payable on or before August 31<sup>st</sup> each year. Said contribution shall be adjusted annually as of July 1<sup>st</sup> of each year, beginning July 1, 2000, based upon the percentage increase, if any, in the CPI published on the nearest date prior to July 1<sup>st</sup>, as compared with the CPI for the same date of the preceding year.

(c)    *Term.* This Agreement shall remain in effect with regard to the Lipman Multi-Purpose Room for a term of two (2) years, and thereafter shall automatically be extended for an additional term of two (2) years, unless, during the extension, either party gives the other at least ninety (90) days prior written notice of termination.

2.04                    **Restroom and Other Facilities.**

In the event City desires to open either Brisbane Elementary School or Lipman School to allow use of the restrooms during activities which are not co-sponsored by District, or City desires to use any room(s) within the school building for the conduct of a public meeting or other public purpose, District agrees to make the facilities available to City for such use pursuant to the District's Civic Center Act policy, *provided* the activity does not conflict with District's own use of the same facilities, and *provided* further that City shall perform all of the following responsibilities:

- (a)    City shall notify the school principal in advance, indicating the nature of the activity and the time when availability of the restrooms or other area is desired;
- (b)    City shall provide supervision for the area used;
- (c)    If the use involves a public meeting, City shall set up chairs and otherwise arrange

and equip the room as may be needed for conduct of the meeting and shall replace all items at the end of the meeting in their proper place;

- (d) City shall pay to District the sum of Fifty Dollars (\$50.00) per month to offset any additional routine cleaning costs District may incur as a result of City's use; provided, however, that City shall be responsible for any damage to said premises or the extra costs of cleaning up unusual messes. City shall reimburse District for such charges within forty-five (45) days after receipt of an invoice setting forth such charges. City shall not serve food or drink at events unless prior arrangements have been made with the District to address cleaning issues; and
- (e) City shall secure the building and reset the alarm when finished. In the event District is charged for false alarms or emergency calls resulting from City's failure to properly secure the building, City shall reimburse District for such charges within forty-five (45) days receipt of an invoice showing such charges.

2.05            **Office Space & Program Space at BES.**

(a)    *Office Space at BES.* City will continue to have exclusive use of the existing office area at Brisbane Elementary School occupied by City's Recreation Department staff through June 30, 2000. City and District shall enter into the District's form lease agreement for said premises as approved by the District's legal counsel and the City's Attorney at the current rental rate of \$538 per month.

(b)    *Program Space.* The City and District have agreed and hereby reaffirm that each paid one-half of the purchase price and the cost of installation of the modular unit which is located at Brisbane Elementary School. District is the owner of the modular unit. City and District shall enter into the District's form lease agreement as approved by the District's legal counsel and the City's Attorney with respect to the modular building. In recognition of City's contribution towards the purchase price and cost of installation of the modular building, the lease agreement shall specify that the premises will be leased rent free to the City through November 1, 2000; provided, however, that City shall pay for maintenance and utilities of the modular building during this period. Thereafter, City shall pay rent at the rate computed by the County Office of Education for rental of a room at BES (currently \$660 per month at the time this Agreement was executed). The lease agreement shall have a term of two (2) years, subject to extension as set forth in the lease agreement. The City will be responsible for repairing damage to the unit caused by its use.

(c)    *Changes in Program Space.* The parties understand that their program space needs may change over time. If City no longer needs the use of program space as set forth herein, City shall provide written notice to District by April 1<sup>st</sup> that it will vacate the premises during the subsequent school year. If the District requires program space to meet students needs, District shall provide prior written notice to City as soon as possible after such determination is made and will use its best efforts to provide alternate program space, or at least shared program space, to the City.



ARTICLE III  
GENERAL PROVISIONS

3.01           General Priority for Children's Programs

The parties agree that in making and coordinating their respective schedules, the activities for children on District property will be given priority over programs for adults.

3.02           Prohibited Activities on District Property.

(a)    *Prohibitions.* No alcohol, smoking, or dogs shall be permitted upon or within any of the District facilities covered by this Agreement while the same are being used by City, or during the course of any activities or programs sponsored by City. City shall also make reasonable efforts, including the posting of signs, to have these prohibitions observed by members of the general public and will, at the request of District, adopt suitable ordinances if such action is deemed necessary and appropriate for enforcement purposes. All District property shall remain drug free zones during periods of City use and will be posted as such in the manner provided by law.

(b)    *Excessive Use.* City will limit or restrict the activities under its own control in order to avoid undue stress or damage to the playing fields (e.g., golf) or other facilities owned by District and maintained by City (e.g., golf balls hitting windows).

3.03           Consultation and Dispute Resolution.

(a)    *Semi-Annual Coordination Meetings.* Staff representatives of District and City shall meet at least twice a year to coordinate the scheduled activities planned by each of parties, to review the status of current programs and maintenance issues, and to resolve any conflicts or problems that may have arisen in connection with the implementation of this Agreement. In adopting schedules for shared use of facilities, the parties acknowledge that the activities of organized team sports need to be planned in advance and require both consistency and reliability with regard to the use of playing fields for games and practices. The parties will make every reasonable effort to accommodate both school programs conducted by District and team sports sponsored by City's Recreation Department. In addition, the City will not schedule any events on any of the facilities that conflict with major evening activities at the school. District shall provide a list of such major evening activities for the ensuing semester to City at each semi-annual coordination meeting.

(b)    *Formal Review.* During the fourth year of this Agreement, the City Manager shall submit to the City Council and the District Superintendent shall submit to the District Board of Trustees a status report describing the current activities being conducted by the parties pursuant to this Agreement, past accomplishments, problems resolved or still existing, and recommendations for future activities. The governing bodies of each party may decide to schedule a joint meeting of both agencies for direct discussion of these matters.

(c)    *Dispute Resolution.* 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. 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.

3.04            **Mutual Indemnification.**

(a)    *Indemnification of City.* In accordance with Government Code Section 895.4, District shall fully indemnify, defend, and hold City, and its officers, officials, agents and employees 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 of District, its officers, agents, employees or invitees in the performance of this Agreement.

(b)    *Indemnification of District.* In accordance with Government Code Section 895.4, City shall fully indemnify, defend, and hold District, and its officers, officials, agents and employees 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 of City, its officers, agents, employees or invitees in the performance of this Agreement.

(c)    *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.

3.05            **Insurance.**

City and District shall each maintain public liability insurance or self insurance, generally at levels currently in effect for each agency, insuring against all liability of City and District and their authorized representatives arising out of and in connection with City's and District's use of the facilities under this Agreement.

3.06            **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: City of Brisbane  
Attention: City Manager  
50 Park Lane  
Brisbane, CA 94005

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

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

3.07 **Entire Agreement.**

This Agreement constitutes the sole agreement of the parties hereto with respect to the use of public facilities herein mentioned and correctly states the rights, duties, and obligations of each party as of this Agreement's date. Any prior agreement, promises, negotiations, or representations between the parties, whether written or oral, not expressly stated in this document are not binding, including but not limited to any oral commitment made by the District Board of Trustees to the City in or about 1991 to provide land for use by the City for a swimming pool in exchange for agreement related to the Northeast Ridge and student use of the swimming pool.

3.08 **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

3.09 **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; provided, however, that any amendment that requires an expenditure of less than \$5,000 may be entered into by the City Manager and the Superintendent and is so authorized by each party's governing body by entering into this Agreement.

(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) *Effective Date.* This Agreement shall become effective as of the date when the governing body of each party has approved the form and content of this Agreement and authorized its representatives to execute this document on its behalf. Such date shall thereupon be inserted at the beginning of this Agreement.

(d) *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.

(e) *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.

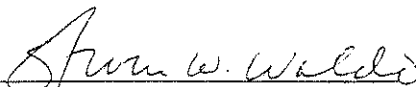
(f) *Additional Actions.* The parties acknowledge that it is impractical in a transaction of the nature of this Agreement to provide for, or anticipate, every action by City or District that may be required to fully implement the Agreement. Therefore, City and District agree to cooperate in good faith, and to take any such additional actions that may be necessary to fully implement the Agreement.

(g) *Counterparts.* This Agreement may be executed in counterparts, each of which shall be deemed an original.


(h) *Time of the Essence.* Time is of the essence in the performance of the terms and conditions of this Agreement.

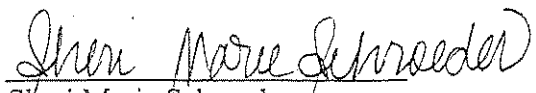
IN WITNESS WHEREOF, the parties have executed this Agreement effective as of the day and year first above written.

THE CITY OF BRISBANE

By:   
Steven W. Waldo, Mayor

Approved as to form:

  
Harold S. Toppel,  
City Attorney

Attest:   
Sheri Marie Schroeder,  
City Clerk

THE BRISBANE ELEMENTARY  
SCHOOL DISTRICT

Approved as to form:

Miguel Marquez  
Miguel Marquez,  
Deputy County Counsel

By: Alex Renu  
Board President

Attest: Stephen J. Waterman  
Stephen J. Waterman,  
Superintendent.



FACILITY	CITY CONTRIBUTION	DISTRICT CONTRIBUTION	USAGE	TERMS	MAINTENANCE	COMMENTS
Community Pool	Construction costs & annual subsidization	Direct cost of instructors, supervision, water safety during regular school hours. No cost to District or students for usage.	District has non-exclusive use (6) weeks Spring & Fall.	Term of Agreement	City maintains	Remain in agreement
Lipman Tennis Courts	Routine maintenance; Capital Projects; Practice Backboard; Porta Pottie	None known	District has preferential use during school hours.	Term of Agreement	City maintains	Remain in agreement
Lipman Field, BES Lower Field, BES Upper Field	Routine maintenance; Capital Projects (w/District approval) Permanent Restroom (proposed) BES Lower Field	\$5,334 (08/09)	District has exclusive use during school hours. City has preferential, non-exclusive use during non-school hours.	Term of Agreement	City maintains	Remain in agreement. City to maintain on-line schedule of each field's non-school hours use.
BES Homework Center	\$17,280 (08/09)	\$20,000 Teacher Salaries	Both District & City may assign children to Center.	Term of Agreement	District maintains	Remain in agreement. City & District to meet each May to review & establish hours.
Lipman Homework Center	\$3,999 (08/09)	Unknown	Unknown	Term of Agreement	District maintains	Remain in agreement
Lipman Multipurpose Room	\$3,372	Maintenance upkeep of facility.	Shared use by District & City for jointly sponsored activities after regular school hours.	Term of Agreement	District maintains	Remain in agreement. City will pay for damage & additional maintenance during non-jointly sponsored activities.
Restroom/Facilities at Lipman & BES	\$799 / year	Maintenance of facility.	Non-jointly sponsored use facilities must not conflict with District's use.	Term of Agreement	District maintains	City will pay for damage & additional maintenance and charge to reset fire alarm.
BES Office Space	None	None known of at this time.	Shared use by City & District	Term of Agreement	District maintains	Currently rare usage by City.
BES Program Space	\$9,249 / year	1/2 cost of modular installation and ongoing maintenance. *District owns modular	Exclusive City use	Term of Agreement	District maintains	City will pay for damages incurred.