



CITY COUNCIL AGENDA REPORT

Meeting Date: 6/3/2021

From: Noreen Leek, Parks & Recreation Director

Subject: Update to the Cooperative Agreement between the City of Brisbane and the Brisbane School District

Community Goal/Result

Community Building, Fiscally Prudent

Purpose

Allow for the shared use of public facilities and programs by students attending the District schools, persons participating in recreation programs sponsored by City or District, and members of the general public.

Recommendation

Approve an amended and restated cooperative agreement between the City of Brisbane and the Brisbane Elementary School District for the shared use of public facilities and programs.

Background

The cooperative agreement for the shared use of public facilities and programs between the City of Brisbane and the Brisbane Elementary School District was established in 2000 with the first amendment in 2010, and the most recent iteration signed in 2017. The agreement is subject to review at each five (5) year anniversary of the initial effective date. The agreement encompasses use of classrooms and spaces within school buildings, athletic fields, the swimming pool, tennis courts, and the BES lower field restroom.

The City of Brisbane and the Brisbane School District have remained collaborative partners to ensure adequate service delivery to residents and students. The cooperative agreement has allowed for shared infrastructure and operating costs of recreational facilities and programs to meet the needs of the community. As recreational and educational needs and trends shift (and maintenance costs increase over time) it is essential for both parties to reconvene to ensure the agreement remains current.

Discussion

The 2x2 Committee met earlier this year to review the cooperative agreement for the shared use of public facilities and programs. The 2x2 Committee, along with City and District staff proposed amendments and discussed continuation of the agreement into the future. Modifications to the agreement include minor revisions, an updated cost contribution schedule, and a more accurate reflection of the current use of facilities by both parties. The full scope of

proposed edits can be viewed in Attachment 1, however, noteworthy revisions include the following:


1. Updating the name of the Lipman multipurpose room to the Ray Conti Gymnasium.
2. Inclusion of a provision for maintenance of the tennis courts and fields to state:
 - a. When maintenance of the courts is deemed excessive, beyond general routine maintenance, City and District shall convene to determine appropriate course of action. (2.02 (c)).
 - b. When maintenance of a field is deemed excessive, beyond general routine maintenance, City and District shall convene to determine appropriate course of action. (2.03 (b)).
3. Removal of 2.06 (d) since the new modular has restrooms and the City's childcare programs no longer require daily use of the indoor school restrooms.
4. New childcare modular on BES campus (2.07 (a)). The purchase of the former modular was split evenly between the City and the District and, historically, the City made an annual contribution to the District for the cost of maintenance and utilities. However, the City absorbed all project costs of the new modular, including installation of a new fire alarm system and campus improvements such as a new ADA compliant ramp/gate at the corner of San Bruno and Glen Park, and a new basketball court on the upper yard. The City also now absorbs the cost of utilities, contractual maintenance, and custodial service. As the property owner, the District will be billed annually for the Fire Alarm monitoring contract in the amount noted on the cost contribution schedule. City shall reimburse the District annually for said cost. Adjustments to the agreement highlight these changes and the cost contribution schedule has been updated accordingly.
5. Lipman Homework Center reclassified as the Club Lipman Afterschool Program.
6. Adjustments to the cost contribution schedule to reflect restructured amounts.

Fiscal Impact

Although changes have been proposed to the cost contribution schedule, they result in a no net increase nor require a budgetary adjustment for either party. The City contributes \$50,000 annually to the Lipman Afterschool program, and \$33,756 annually for the remaining items outlined in the cost contribution schedule.

Attachments

1. Cooperative Agreement between the City of Brisbane and the Brisbane School District *(with proposed edits)*



Noreen Leek, Parks & Recreation Director



Clay Holstine, City Manager

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

THIS AGREEMENT, effective as of **April 19, 2010** **DATE** ("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"). The Agreement was further amended dated May 5, 2017.

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) The restroom facility at the BES Lower Field.
 - (6) The outdoor basketball courts at BES.
 - (7) The playgrounds at BES.
- (b) *Indoor Facilities:*
- (1) The multi-purpose room at Lipman School (the "~~Lipman Multi-Purpose Room~~", Ray Conti Gymnasium)
 - (2) Restrooms and other facilities at Lipman and BES.
 - (3) The modular building on the BES campus.
 - (4) The cafeteria at BES ~~for use of the afterschool program.~~
- (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").
 - (3) The afterschool teen enrichment program at Lipman School.
- (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:

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(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.

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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 1st and June 1st, and at least six (6) weeks in the Fall, beginning September 10th, unless the parties mutually agree in writing to modify this schedule. 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. 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. When maintenance of the courts is deemed excessive, beyond general routine maintenance, City and District shall convene to determine appropriate course of action.

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's use of District's athletic fields should be coordinated through the District office.

(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 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. When maintenance of a field is deemed excessive, beyond general routine maintenance, City and District shall convene to determine appropriate course of action.

(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) **Ownership.** The restroom facility is and shall remain a City-owned facility, and City shall be responsible for maintenance and repairs at City's 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.~~ Ray Conti Gymnasium

(a) **Shared Use.** During times of the day which do not constitute regular school hours, the ~~Lipman Multi-Purpose Room~~ Ray Conti Gymnasium 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~~ Ray Conti Gymnasium 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~~ Ray Conti Gymnasium, as set forth in the Cost Contribution Schedule attached hereto.

2.06. Indoor Restrooms 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. Modular Space at BES.

~~(a) Ownership and Maintenance of Modular. The modular unit on the BES Campus was paid for and installed by the City. It shall remain a City-owned facility, and City shall be responsible for the performance of all maintenance and repairs on the modular at City's own expense. As the property owner, the District is billed annually for the Fire Alarm monitoring contract in the amount noted on the Cost Contribution Schedule. City shall reimburse the District annually for said cost.~~

~~(a) 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.~~

~~(b) **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 1st 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 operates 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) may send students to the Center on 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~~ Club Lipman Afterschool Program.

~~(a) **Operation of Program.** City and District shall conduct a jointly sponsored program for operation of operates the ~~Lipman Homework Center~~ Club Lipman Afterschool Program. 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~~ Club Lipman Afterschool Program, 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~~ Club Lipman Afterschool Program, 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~~Club Lipman Afterschool Program, 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~~Club Lipman Afterschool Program 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. 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. Dispute Resolution.

(a)

(a) **Dispute Resolution.** In the event of any disagreement between the parties, the matter will be referred to the City Manager 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.

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 Place
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. 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.

3.08. Periodic Review; Termination of Agreement.

(a) This Agreement shall be subject to review at each five (5) year anniversary of the initial Effective Date (the "Anniversary Date"). The parties shall meet and confer at least 120 days prior to each Anniversary Date to review the status and implementation of this Agreement and determine whether any amendments are appropriate. The review shall be deemed completed upon either: (i) a determination by the parties that no amendments are required and the then existing agreement should be continued without change; or (ii) the adoption by both parties of such amendments to the agreement as mutually agreed upon.

(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) Modular building and cafeteria space at BES: 180 days
- (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) Afterschool teen enrichment program at Lipman School: Notice by February 15 of any year; termination to be effective as of June 30 of that year.
- (11) 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.

3.09. 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, 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

Approved as to form:

, Michael Roush
City Attorney

By: _____
~~, Clifford R. Lentz~~, Mayor

Attest: _____
Ingrid Padilla ,
City Clerk

**THE BRISBANE ELEMENTARY
SCHOOL DISTRICT**

Approved as to form:

District Counsel

By: _____
_____,
Board President

Attest: _____
, Ronan Collver
Superintendent

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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, ~~2008-2021~~ through June 30, ~~2009~~2022, such contributions shall be as follows:

<u>Contributions by District:</u>	<u>Amount:</u>
Athletic Fields - Section 2.03(b):	\$ 6,131.59 <u>10,070.00</u>
<u>Contributions by City:</u>	<u>Amount:</u>
Lipman Ray Conti Gymnasium <u>Multi Purpose Room</u> - Section 2.05(b):	\$ 3,876.21 <u>15,000.00</u>
BES Restroom - Section 2.06(d):	\$ 918.47
Modular Space at BES - Section 2.07(b):	\$ 10,631.98
BES Modular - Fire Alarm System Monitoring	\$8,826.00
BES Homework Center - Section 2.08(b):	\$ 19,863.83 <u>20,000.00</u>
Lipman Homework Center - Section 2.09(b):	\$ 4,596.96
<u>Club</u> Lipman Afterschool Program	\$50,000.00

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 1st, as compared with the CPI for the same date of the preceding year.

On or before April 1st 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 30th.

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EXHIBIT "A"
Access Easement
Granted by District to City

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EXHIBIT "B"
License For Restroom Facility
Granted by District to City

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