

City of Brisbane

Agenda Report

TO: Honorable Mayor and City Council

FROM: Community Development Director via City Manager

SUBJECT: **Building Department Mutual Aid Agreement**

DATE: July 20, 2017

City Council Goals:

To provide public service that assures the safety of property and citizens residing, working, or visiting in Brisbane. (Goal #9)

To promote intergovernmental opportunities that enhances services and/or reduces cost of operations and services to city residents. (Goal#10)

Purpose:

To enter into a mutual aid agreement with the County of San Mateo and other cities within the County for building department services in the event of an emergency.

Recommendation:

Approve Resolution #2017-36 authorizing the execution of a Building Department Mutual Aid Agreement.

Background:

The heavy winter storms of late 2016/early 2017 affected several communities within San Mateo County. During the storm event response, San Mateo County Office of Emergency Services (OES, acting in its capacity as the Operational Area) encountered difficulties in obtaining building-related mutual aid assistance for impacted jurisdictions.

The City of Brisbane was contacted in Spring 2017 and requested to enter into a Building Department Mutual Aid Agreement. The agreement is based upon the Public Works Mutual Aid Agreement that the City of Brisbane entered into in June 2015 via City Council adoption of Resolution #2015-24. This agreement would supersede an existing obsolete Mutual Agreement Aid dating back to 1994. Currently six municipalities and the County have signed onto the agreement, with additional signatories expected by the end of the calendar year.

Discussion:

The purpose of this agreement is to provide an organized means of providing voluntary mutual aid to neighboring entities during the event of a disaster. The attached agreement sets forth clear and defined procedures for administering, requesting, and deploying mutual aid services. Having such a structure and process in place in advance is highly preferable to attempting to make such arrangements on an ad-hoc basis in the aftermath of a major disaster. As noted above, the agreement is similar in form and substance to Public works Mutual Aid Agreement entered into in 2015.

Fiscal Impact:

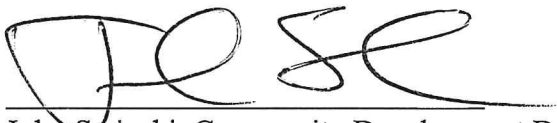
The Agreement requires that the “Requesting Party” reimburse the “Assisting Party” for all of its costs of providing assistance within sixty days. The advantage provided to the “Requesting Party” by the Agreement is that pre-existing arrangements for the provision of services are often necessary to promptly obtain reimbursement from state (i.e., California Disaster Assistance Act) or federal (i.e., Federal Emergency Management Agency) funds.

Measure of Success

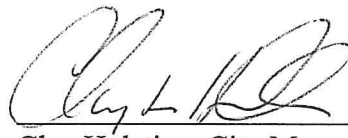
Protecting public safety by proactively establishing the means and procedures to ensure that mutual aid of building services can be provided/requested in an efficient and effective manner in the event of a disaster.

Attachments:

Resolution No. 2017-36 “Building Department Mutual Aid Agreement”
April 29, 2017 County of San Mateo – Building Department Mutual Aid Agreement
Procedures Guide – Building Department Mutual Aid Agreement



John Swiecki, Community Development Director



Clay Holstine, City Manager

RESOLUTION NO. 2017-36

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF
BRISBANE AUTHORIZING THE EXECUTION OF A
BUILDING DEPARTMENT MUTUAL AID AGREEMENT**

WHEREAS, the County of San Mateo and the cities in San Mateo County have expressed a mutual interest in the establishment of a plan to encourage a Building Department mutual aid agreement amongst multiple jurisdictions; and

WHEREAS, the City Council has determined that it would be in the City's best interest to participate in a Building Department Mutual Aid Agreement; and

WHEREAS, Section 8630 et seq. of the State of California Government Code grants local agencies full power to provide mutual aid pursuant to established agreements; and

WHEREAS, a form of agreement for Building Department mutual aid has been presented to this Council and considered;

NOW, THEREFORE, BE IT RESOLVED, by the City Council of the City of Brisbane as follows:

1. Any earlier agreement the city may have entered into relative to the 1994 Building Department Mutual Aid Agreement for San Mateo County is hereby revoked and rescinded, and any such agreement is null and void.
2. The April 29, 2017 County of San Mateo Building Department Mutual Aid Agreement is hereby adopted.

* * * *

PASSED AND ADOPTED at a regular meeting of the City Council of the City of Brisbane held on the ___ day of _____, 2017, by the following vote:

AYES:
NOES:
ABSENT:
ABSTAIN:

Lori S. Liu, Mayor

ATTEST:

Ingrid Padilla, City Clerk

County of San' Mateo
Building Department Mutual Aid
Agreement

This Building Department Mutual Aid Agreement (“Agreement” or “Mutual Aid Agreement”) is made and entered into this 29th day of April, 2017, by and between the parties signatory below (hereinafter individually referred to as “Party” or collectively referred to as the “Parties” to this Agreement).

WHEREAS, it is desirable and necessary for the protection of life, property and the environment that each of the parties hereto voluntarily aid and assist each other by the interchange of building department services and resources in the event of an emergency; and

WHEREAS, County of San Mateo’s Building Department and all twenty (20) cities within the County of San Mateo (“County”) have expressed an interest in the establishment of a plan to facilitate and encourage Building Department Mutual Aid Agreements throughout the County of San Mateo; and

WHEREAS, the Parties have determined that it would be in their best interests to enter into a Mutual Aid Agreement that implements a plan and sets forth procedures and responsibilities of the Parties whenever emergency personnel, equipment, and facility assistance is provided from another Party’s building department to the other; and

WHEREAS, no Party should be in a position of unreasonably depleting its own resources, facilities, or services providing such mutual aid; and

WHEREAS, such an agreement is in accord with the California Emergency Services Act (“Act”) set forth in Title 2, Division 1, Chapter 7 (Section 8550 et. seq.) of the Government Code and specifically with Article 17 (Section 8630 et seq.) of the Act; and

WHEREAS, all Parties must use protocols established in the Standardized Emergency Management System and the National Incident Management System to be eligible for possible state or federal reimbursement of response-related personnel and resource costs.

In consideration of the conditions and covenants contained herein, the Parties agree as follows:

1. Definitions. For this Agreement, the following terms shall be ascribed the following meanings:
 - a. “Assisting Coordinator” shall mean the Coordinator of a Party providing building department mutual aid.

- b. “Assisting Party” shall mean the Party to this Agreement providing building department mutual aid to another Party.
- c. “Coordinator” shall mean the person designated by each Party to act on behalf of that Party on all matters relative to building department mutual aid, to include but not be limited to requests, responses, and reimbursement. This term shall also include the following distinct Coordinators:
 - a. Operational Area Coordinator is the individual who arranges and coordinates distribution of building department mutual aid countywide.
 - b. Zone Coordinator is the individual who coordinates distribution of building department mutual aid from resources assigned by the operational area to local jurisdictions within a geographic zone.
 - c. Local Coordinator is the individual who fulfills the functionality equivalent role of a city or town Building Department Branch Director.
- d. “Local Emergency” shall mean the actual or threatened existence of conditions of disaster or extreme peril to the safety of persons or property within the territorial limits of one of the Parties caused by human or natural conditions such as air pollution, fire, flood, storm, wind, earthquake, explosion, transportation accident, hazardous material problem, tsunami, sudden or severe energy shortage, epidemic, riot or other occurrences, other than conditions resulting from a labor controversy, which occurrences, or the immediate threat thereof, are likely to be beyond the control of the personnel, equipment, or facilities of that Party to this Agreement and which personnel, equipment or facilities of the other Party are therefore desired to combat.
- e. An “Operational Area” for the coordination of Building Department Mutual Aid will be San Mateo County and all the jurisdictions within the County that are Parties to this Agreement. Consistent with the Standardized Emergency Management System, the Operational Area is an intermediate level of the state emergency services organization, which serves as a link in the systems of communications and coordination between the political subdivisions comprising the Operational Area and the Regional or State Emergency Operations Center (s).
- f. “Requesting Coordinator” shall mean the Coordinator of a Party requesting building department mutual aid.
- g. “Requesting Party” shall mean the Party to this Agreement requesting building department mutual aid.

2. Designation of Coordinator. Coordinators shall be designated by each Party; the Title, Name, Address, and Phone Number of the Coordinator shall be provided to the Operational Area Coordinator designated in Paragraph 20 hereinafter. If said designation changes, the Parties shall notify the Operational Area Coordinator as soon as practical after the

appointment has been made.

3. Mutual Aid. When a local emergency has been proclaimed by a Party's governing body or authorized official, the Requesting Coordinator may request assistance from the Parties. In situations where extreme imminent threat to life, property, or the environment exists, the requirement for a proclamation before providing assistance may be waived under the presumption that such a proclamation will be made in accordance with all local and state regulations as promptly as reasonably possible.
4. Availability. The Parties agree that the mutual aid extended under this Agreement and the operational plans implementing this agreement are to be available and furnished in all cases of emergencies regardless of type, provided that such mutual aid does not compromise any Party's ability or capacity to respond to calls for service within its own jurisdiction. When request for assistance is received, the Assisting Coordinator will promptly advise of the extent of response, provide whatever personnel, equipment, and facilities are available without jeopardizing the safety of persons or property within their jurisdiction. No Party receiving a request for assistance shall be under any obligation to provide assistance or incur any liability for not complying with the request.
5. Return of Resources. When the Assisting Party's personnel, equipment, or facilities are no longer required, or when the Assisting Coordinator advises that the resources are required within their own jurisdiction, the Requesting Coordinator shall immediately arrange for the return of those resources.
6. Safekeeping of Resources. The Requesting Party shall be responsible for the safekeeping of the resources provided by the Assisting Party. The Requesting Coordinator shall remain in charge of the incident or occurrence and shall maintain control and direction of the resources provided by the Assisting Party. The request may include the provision of supervisory personnel to take direct charge of the resources under the general direction of the Requesting Coordinator. The Requesting Party shall make arrangements for feeding and/or assisting personnel, and for fueling, servicing, and repair of equipment unless the Assisting Coordinator agrees that these arrangements are not necessary or are to be provided by the Assisting Party.
7. Employment Status. The Assisting Party's personnel shall not be deemed employees of Requesting Party and vice versa.
8. Insurance. Each Party shall be responsible to provide, in its own discretion, at its sole expense, sufficient insurance for its personnel and entity.

9. Worker's Compensation. Each Party shall provide, at its sole expense, the required worker's compensation insurance coverage necessary for its own employees. It is recognized that at such times as one Party provides aid to another Party under the terms of this Agreement, the employees of the Assisting Party may claim to have become special employees on a temporary basis of the Requesting Party. Should any such claim result in any worker's compensation claim being asserted, it is hereby agreed that each such claim shall be the responsibility and liability of the Assisting Party as general employer to process, defend, and pay, if necessary.
10. Mutual Aid Costs. The Requesting Party agrees to pay all reasonable direct, indirect, administrative and contracted costs of the Assisting Party incurred as a result of providing assistance under this Agreement, based upon standard rates applicable to Assisting Party's internal operations. Payment shall be made within sixty (60) days after receipt of a detailed invoice. Payment may be delayed if agreed upon by both Parties. Requesting Party shall not assume any liability for the direct payment of any salary or wages to any officer or employee of the Assisting Party.
11. Defense and Indemnification.

11.1 Claims Arising from Sole Acts or Omissions of a Party. Each Party to this Agreement hereby agrees to defend and indemnify the other Parties to this Agreement, their agents, officers and employees, from any claim, action or proceeding against another Party, arising solely out of its own acts or omissions in the performance of this Agreement. At each Party's sole discretion, each Party may participate at its own expense in the defense of any claim, action or proceeding, but such participation shall not relieve any Party of any obligation imposed by this Agreement. Parties shall notify each other promptly of any claim, action or proceeding and cooperate fully in the defense.

11.2 Claims Arising from Concurrent Acts or Omissions. The Parties hereby agree to defend themselves from any claim, action, or proceeding arising out of the concurrent acts or omissions of the Parties. In such cases, Parties agree to retain their own legal counsel, bear their own defense costs, and waive their right to seek reimbursement of such costs, except as provided in paragraph 11.3 below.

11.3 Joint Defense. Notwithstanding paragraph 11.2 above, in cases where Parties agree in writing to a joint defense, Parties may appoint joint defense counsel to defend the claim, action, or proceeding arising out of the concurrent acts or omissions of Parties. Joint defense counsel shall be selected by mutual agreement of said Parties. Parties agree to share the costs of such joint defense and any agreed settlement in equal amounts, except as provided in paragraph 11.4 below. Parties further agree that no Party may bind the others to a settlement agreement without the written consent of the others.

11.4 Reimbursement and/or Reallocation. Where a trial verdict or arbitration award allocates or determines the comparative fault of the Parties, those Parties may seek reimbursement and/or reallocation of defense costs, settlement payments, judgments and awards, consistent with such comparative fault. The Parties expressly waive pro rata allocation of liability under Government Code Section 895.6.

12. No Waiver. This agreement shall in no way abrogate or waive any of the immunities available under Federal, State, and local law and regulations, including but not limited to the California Emergency Services Act, Government Code sections 8655 et seq.
13. Records. When mutual aid is provided, the Requesting and Assisting Parties will keep account records of the personnel, equipment, mileage, and materials provided as required by Federal and State law, the California Disaster Assistance Act, and FEMA guidelines to maximize the possibility of Federal and State disaster reimbursement. Each Party shall have access to another Party's records for this purpose.
14. Effective Date. This agreement shall take effect immediately upon its execution and shall remain in effect until terminated.
15. Withdrawal. Any Party may withdraw from this agreement, with or without cause, upon delivery of one-hundred twenty (120) days prior written notice to the Operational Area Coordinator designated in Paragraph 20 below.
16. Prior Agreements. To the extent that they are inconsistent with this agreement, all prior agreements for Building Department Mutual Aid between the Parties are hereby null and void. This agreement expressly supersedes the June 14, 1994 "Building Department Mutual Aid Agreement" entered into by the County of San Mateo and the cities in San Mateo County. This process does not preclude any routine or shared services for which the Parties may provide, may already have contracted, or may contract in the future.
17. Multiple Requests. Requests for building department mutual aid under this agreement when more than one city is impacted by an emergency will be channeled through the Operational Area Coordinator, whether or not that individual is activated as part of a Department Operations Center or as part of the San Mateo County Operational Area Emergency Operation Center, to ensure maximum effectiveness in allocating resources to the highest priority needs.
18. Dispute Resolution. Any controversy or claim arising out of or relating to this Agreement, or the breach thereof, shall be settled by arbitration in accordance with the rules of the American Arbitration Association and judgment on the award rendered by the arbitrator(s) may be entered in any court having jurisdiction thereof.

19. Tort Claims Act. This agreement in no way acts to abrogate or waive any immunity available under the Tort Claims Act.

20. Operational Area Coordinator. The County of San Mateo Department of Building Department shall act as the initial Operational Area Coordinator of this program for the purpose of:

- a. Receipt of new members to the agreement.
- b. Maintaining a current list of signatory Parties and Coordinators.
- c. Establishing and maintaining a list of Local Coordinators who have volunteered to serve as a Zone Coordinator.
- d. Circulating annually a list of all Parties and Coordinators to all signatory parties.
- e. Arranging for amendments to the Agreement as may be necessary.

21. Execution. All Parties agree that any other qualified public agency or quasi-public agency may become a Party to this Agreement by executing a duplicate copy of this Agreement and sending same to the Operational Area Coordinator, initially the County of San Mateo Department of Building Department, addressed as follows:

Building Department Director
County of San Mateo
555 County Center, 5th Floor
Redwood City, CA 94063-1665

22. Third Party Beneficiaries. Nothing set forth in this Agreement shall create, nor is it intended to create, third party beneficiaries with rights to enforce any clause, condition or term of this Agreement, or assert a claim or cause of action for breach of this Agreement.

23. Severability. Should any term or provision of this Agreement be determined to be illegal or in conflict with any law, the validity of the remaining portions or provisions shall not be affected thereby. Each term or provision of this Agreement shall be valid and enforced as written to the fullest extent permitted by law.

In witness of and in agreement with this Agreement's terms, the parties, by their duly authorized representatives, affix their respective signatures:

COUNTY OF SAN MATEO

By:
President, Board of Supervisors, San Mateo County

Date:

ATTEST:

By:
Clerk of Said Board

Resolution # 074124

IN WITNESS WHEREOF, each Party has caused this Agreement to be executed and attested by its proper officers thereunto duly authorized, as follows:

Signatories	Resolution/Action Number	Date of Adoption
Atherton		
Belmont		
Brisbane		
Burlingame		
Colma		
Daly City		
East Palo Alto		
Foster City		
Half Moon Bay		
Hillsborough		
Menlo Park		
Millbrae		
Pacifica		
Portola Valley		
Redwood City		
San Bruno		
San Carlos		
San Mateo		
South San Francisco		
Woodside		
County of San Mateo		

County of San Mateo
Building Department Mutual Aid
Agreement
Procedures Guide

I. PURPOSE

The purpose of this Procedures Guide is to provide Parties to the Building Department Mutual Aid Agreement with a practical set of guidelines on how to effectively provide and receive building department assistance. The terms of the Agreement shall govern in the event there is any actual or apparent conflict between this procedure guide and the Agreement. The following provisions are suggested guidelines only and not binding on any agency. These provisions should be modified and expanded as necessary to meet the unique needs, emergency organizational structure, and working relationships of each operational and regional area.

II. TENETS OF OPERATIONAL AREA BUILDING DEPARTMENT MUTUAL AID

1. The most effective means of providing timely assistance to a jurisdiction impacted by a disaster is to have agreements in place in advance of the disaster.
2. Assistance is voluntary.
3. Assistance provided shall be reimbursed by the requesting jurisdiction.
4. Jurisdictions should reasonably commit their own resources before requesting mutual aid.
5. A Proclamation of a Local Emergency is necessary to activate the agreement, unless waived by the Parties per paragraph 3 of the Agreement.
6. Cooperative planning and training are desirable to enhance the effectiveness of providing mutual aid when needed.

III. PROCEDURES FOR BUILDING DEPARTMENT MUTUAL AID

1. Designated Building Department Coordinator

The Agreement specifies that the “Coordinator” shall mean the person designated by each party to act on behalf of that party on all matters relative to building department mutual aid, including but not limited to requests, responses and reimbursement.

It is suggested that the Coordinator be a person who during a disaster would be authorized to request building department resources and bind their agency for the cost of these resources. The Coordinator should also be in a position to authorize the providing agency to release personnel and equipment to the agency impacted by the disaster.

It is suggested that alternate coordinators be designated in case the primary coordinator is unavailable during the disaster.

2. WebEOC Communication

To obtain Building Department assistance, a planned method of communicating requests is essential. This includes using WebEOC as the primary means to process the request and maintain lines of communication. It is recommended that WebEOC be used to request assistance using the Resource Task (ICS-213RR). Communication via telephone, radio, microwave, etc. may be necessary in the early phases of an incident to ensure requests are being received and processed in a timely manner, and may also be used as secondary communication channels.

3. Operational Area Concept

The Agreement notes that an Operational Area, normally a County and all the jurisdictions within the County, will be the basic unit for coordinating building department mutual aid. Additionally, the coordination and assistance provided will generally mirror the zone concept of mutual aid under development by the San Mateo County Office of Emergency Services. Additionally, parties to the Agreement are expected to work cooperatively to pre-plan standardized response “packages” of resources to be provided to the varying levels of incident complexity identified in the National Incident Management System (NIMS).

4. California Office of Emergency Services (Cal OES) Role

Cal OES is expected to support building department mutual aid assistance under the agreement by offering assistance to the Regional and Operational Building Department Coordinator, and act as Statewide Coordinator for seeking mutual aid resources if required from beyond the impacted region.

5. Resource Lists and Contacts

It is strongly recommended that lists of building department resources be developed for each participating agency in the Operational Area. This list should be populated in the resources section of WebEOC and regularly reviewed and updated. Such lists are essential for the Operational Area Coordinator to quickly identify which agencies have the particular types of resources needed by the requesting impacted agency.

The designated Local Coordinator for each jurisdiction should develop a detailed list of resources for their agency by quantity, type of personnel equipment, materials, and a contact number to check on its availability when needed. It is suggested that the coordinator then provide a brief summary of that information to the operational area coordinator.

It is suggested that each party develops common standardized terminologies for resources to facilitate categorizing and compiling these inventory lists. However, the development of the standardized terminology should not impede the development of these resource lists.

6. Arrange Care for Assisting Forces

The Agreement requires that the Requesting Party be responsible for the safekeeping of the resources provided by the Assisting Party.

7. Documentation for Reimbursement

In accordance with the Agreement, each requesting and assisting party is required to keep accounting records of the personnel, equipment, and materials provided under the Mutual Aid Agreement as required by the Federal Stafford Act administered by the Federal Emergency Management Administration (FEMA) and State guidelines. This requirement is to maximize the requesting agencies reimbursement of costs expended to receive mutual aid.

8. Proclamation of Emergency

The Agreement required that a Proclamation of Local Emergency must be approved by an authorized official of the impacted jurisdiction. A State of Emergency should also be requested through the Operational Area for approval by the Governor to authorize State reimbursement and, if warranted, a request for a Presidential Proclamation of Emergency to authorize federal reimbursement. Each Agency should include in their emergency plan a provision to seek such a proclamation from the authorized official in their jurisdiction as soon as they can reasonably determine that the disaster will be beyond the scope of mutual aid assistance. Because cumulative estimates of damage across the county may be combined to establish a basis for reimbursement from the state and a gubernatorial declaration of emergency, the collection and provision of damage estimates to the Operational Area for any incident that might have countywide implication is important in obtaining external resources.

9. Agency in Charge

The Agreement provides that the Requesting Coordinator shall remain in charge of the incident and provide direction and control to the resources provided by the assisting party. The request may also include having the Assisting Party providing supervisory personnel to take direct charge of their forces under the overall direction of the Requesting Coordinator. The intent is that the Assisting Party will comply with all reasonable directions from the Requesting Coordinator. However, the Assisting Party should not be obligated to perform any work that it reasonably believes would unduly jeopardize the safety of its employees.

10. Checklists for Requesting Mutual Aid

Each Party to the Agreement is encouraged to develop checklists for their Coordinator to use in assuring that all required steps are followed to properly and effectively seek and provide Building Department Mutual Aid for the benefit of the impacted area and protection of the assisting party. These checklists should establish who is to carry out each essential function both internally to the agency and externally, and contact numbers and means for reaching them.

Attachment A (San Mateo County Operational Area Building Department Checklist for Mutual Aid Assistance) is a sample checklist.

San Mateo County Building Department Checklist for Mutual Aid Assistance

I. Pre-Event

Develop procedures at the local operational area to carry out mutual aid including checklists of actions, resource lists, etc.

II. Post Event

1. Local Agency quickly assesses estimated extent of damage and availability of local resources to respond.
2. If it is apparent that outside resources will be needed to effectively deal with the emergency, promptly authorize local official to request Proclamation of Local Emergency and, if warranted, request State of Emergency Proclamation through the Operational Area Emergency Operation Center.
3. Upon proclamation of local emergency, request mutual aid assistance from Operational Area Building Department Mutual Aid Coordinator according to pre-established procedures in WebEOC.
4. Ensure request is specific as to type and quantity of resources needed, when to report, who to report to, how long needed, type of work to be performed.

Once a providing party can be located to satisfy the resource request, the coordinator will determine how quickly these resources can be made available and notify the requesting party of that fact.

5. The requesting party will make all necessary arrangements to care for the assisting party's personnel and equipment if needed.
6. The requesting party will carefully document all costs by specific damage site according to State and Federal procedures to maximize reimbursement for costs. Carefully record the names of assisting personnel and equipment at each site, hours worked, and mileage.
7. The requesting party should return the assisting party's resources as soon as possible.