

RESOLUTION NO. 46-2019

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF PACIFICA
APPROVING A COUNTY OF SAN MATEO 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 building department mutual aid agreements; and

WHEREAS, the Pacifica 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 PACIFICA AS FOLLOWS:

1. The County of San Mateo Building Department Mutual Aid Agreement (Exhibit 1) is hereby approved; and
2. The City Council authorizes the City Manager to sign the County of San Mateo Building Department Mutual Aid Agreement in the form attached to this resolution as Exhibit 1, with minor revisions that may be approved by the City Manager and the City Attorney, and to execute any other necessary documents to effectuate the terms of the Agreement.

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PASSED AND ADOPTED at a regular meeting of the City Council of the City of Pacifica, California, held on the 12th day of November 2019, by the following vote:

AYES, Councilmembers: Vaterlaus, Martin, O'Neill, Beckmeyer, Bier.

NOES, Councilmembers: None.

ABSENT, Councilmembers: None.

ABSTAIN, Councilmembers: None.


Sue Vaterlaus, Mayor

APPROVED AS TO FORM:

Michelle Marchetta Kenyon, City Attorney

ATTEST:

Sarah Coffey, City Clerk

EXHIBIT 1

**SAN MATEO COUNTY OPERATIONAL AREA
BUILDING SAFETY INSPECTION PROGRAM MUTUAL AID AGREEMENT**

This Building Safety Inspection Program Mutual Aid Agreement (“Agreement” or “Mutual Aid Agreement”) is made and entered into as of the Effective Date by and between the parties set forth 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 safety inspection services and resources in the event of an emergency; and

WHEREAS, many building officials in San Mateo County have expressed an interest in the establishment of a plan to facilitate and encourage mutual aid agreements among building officials throughout San Mateo County; 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 one Party’s building official to the other; and

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

WHEREAS, such an agreement is in accord with the California Emergency Services Act (“Act”) (California Government Code Section 8550 *et seq.*) and specifically Section 8631 of the Act; and

WHEREAS, all Parties must use protocols established in the Standardized Emergency Management System (“SEMS”) and the National Incident Management System (“NIMS”) 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:

SECTION 1 - DEFINITIONS

For this Agreement, the following terms shall be ascribed the following meanings:

- A. “Assisting Party” shall mean the Party to this Agreement that is providing mutual aid.
- B. “Coordinator” shall mean the Coordinator of a Party (the local jurisdiction) providing mutual aid. This will typically be the Local Building Official. The Coordinator for each Party is responsible for all matters relative to building safety inspection mutual aid, to include but not be limited to requests, responses, and reimbursement.

- C. "Local Building Official" shall mean the individual or designee who fulfills the functionally equivalent role of a city or town Building Official.
- 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. "Operational Area" shall mean San Mateo County and all the jurisdictions within the County that are Parties to this Agreement. Consistent with SEMS and NIMS, 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. "Operational Area Coordinator" shall mean the San Mateo County Office of Emergency Services ("OES") Director or their designee, who shall coordinate the Local Building Officials for the Safety Assessment Program ("SAP").
- G. "Requesting Coordinator" shall mean the Coordinator of a Party requesting mutual aid.
- H. "Requesting Party" shall mean the Party to this Agreement that is requesting mutual aid.
- I. "Safety Assessment Program" or "SAP" shall mean the California OES program that provides professional engineers and architects and certified building inspectors to assist local governments in safety evaluation of their built environment in the aftermath of disaster.

SECTION 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. If the designated coordinator changes, the Parties shall notify the Operational Area Coordinator as soon as practical after the appointment has been made.

SECTION 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 accordance with the Procedures Guide attached as Exhibit A to this Agreement. In situations where extreme

imminent threat to life, property, or the environment exists, the San Mateo County Manager or the President of the San Mateo County Board of Supervisors may waive the requirement for a proclamation before providing assistance upon request from a City Manager of the affected jurisdiction and under the presumption that such a proclamation will be made in accordance with all local and State regulations as promptly as reasonably possible.

SECTION 4 – TERM

The term of this Agreement is for ten years, from November 1, 2019 to November 1, 2029.

SECTION 5 – AVAILABILITY

The Parties agree that the mutual aid extended under this Agreement is to be available and furnished in all cases of Local 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 a request for assistance is received, the Coordinator offering assistance will promptly advise of the extent of their response, and 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.

SECTION 6 – RETURN OF RESOURCES

When the Assisting Party's personnel, equipment, or facilities are no longer required, or when the Assisting Party advises that the resources are required within their own jurisdiction, the Requesting Coordinator shall immediately arrange for the return of those resources.

SECTION 7 – 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 Requesting Party may include a request for the provision of supervisory personnel to take direct charge of the resources provided by the Assisting Party, 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 Coordinator providing the assistance agrees that these arrangements are not necessary or are to be provided by the Assisting Party.

SECTION 8 – EMPLOYMENT STATUS

The Assisting Party's personnel who participate in the response shall not be deemed employees of the Requesting Party, nor shall any personnel of the Requesting Party be deemed employees of the Assisting Party. However, while acting under this Agreement, and solely for the purposes of indemnification and immunity, the Assisting Party's personnel shall be considered special employees on a temporary basis and authorized agents of the Requesting Party.

SECTION 9 – WORKER'S COMPENSATION

Each Party shall provide, at its sole expense, the required worker's compensation insurance coverage necessary for its own employees. In the event that any employee or employees of an Assisting Party alleges in a worker's compensation claim that they are special employees on a temporary basis of the Requesting Party, the Assisting Party agrees to indemnify, defend (with counsel acceptable to Requesting Party), and hold harmless the Requesting Party against the claims, and all expenses, losses, damages, costs, and judgments (including attorneys' fees) relating to or arising out of the alleged special employee status. Nothing herein requires the Assisting Party to indemnify, defend, or hold harmless the Requesting Party against any worker's compensation claim or portion of the claim unrelated to the alleged special employee status.

SECTION 10 – INSURANCE

Each Party shall maintain during the term of this Agreement such bodily injury liability and property damage liability insurance as shall protect Party and all of its employees/officers/agents while providing aid pursuant to this Agreement from any and all claims for damages for bodily injury, including accidental death, as well as any and all claims for property damage which may arise from Party's actions under this Agreement, whether such actions be by the Party, any subcontractor, anyone directly or indirectly employed by either of them, or an agent of either of them. Such insurance shall be combined single limit bodily injury and property damage for each occurrence and shall not be less than the amounts specified below. Self-insurance shall be acceptable to meet this requirement.

- Comprehensive General Liability: \$2,000,000
- Automobile Liability: \$1,000,000

All Parties agree to furnish verification of coverage with original certificates and applicable endorsements or copies of applicable policy language upon request by any Party.

SECTION 11 – MUTUAL AID COSTS

The Requesting Party agrees to pay all reasonable direct, indirect, administrative, and contracted costs incurred by the Assisting Party as a result of providing assistance under this Agreement,

based upon the standard rates applicable to the Assisting Party's internal operations. Any Assisting Party must obtain approval from the Requesting Party prior to purchase of any goods or equipment in order to be eligible for reimbursement. The Requesting Party shall pay such costs as soon as reasonable after receipt of a detailed invoice. Payment shall occur within six (6) months but may be delayed if agreed upon by both Parties. The Requesting Party shall not assume any liability for the direct payment of any salary or wages to any officer, employee, or agent of the Assisting Party.

SECTION 12 – DEFENSE AND INDEMNIFICATION

12.1 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, to the extent arising 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.

12.2 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, the Parties agree to retain their own legal counsel, if necessary, bear their own defense costs, and waive their right to seek reimbursement of such costs, except as provided in Subsection 12.3 and/or Subsection 12.4, below.

12.3 Joint Defense. Notwithstanding Subsection 12.2 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 Subsection 12.4 below. Parties further agree that no Party may bind the others to a settlement agreement without the written consent of the others.

12.4 Reimbursement and/or Reallocation. Where a trial verdict 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 off liability under Government Code Section 895.6.

SECTION 13 – 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 Section 8655 *et seq.*, and the California Government Claims Act, Government Code Section 810 *et seq.*

SECTION 14 – 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 Federal Emergency Management Agency (“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 upon reasonable request.

SECTION 15 – EFFECTIVE DATE

This Agreement shall take effect immediately upon its execution by the President of the County of San Mateo Board of Supervisors and one or more other Parties.

SECTION 16 – 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.

SECTION 17 – 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 does not preclude any routine or shared services which the Parties may provide, may already have contracted for, or may contract for in the future.

SECTION 18 – MULTIPLE REQUESTS

When more than one city is impacted by an emergency, requests for building safety inspection mutual aid under this Agreement will be channeled through the Operational Area Coordinator to ensure maximum effectiveness in allocating resources to the Party with the highest priority needs.

SECTION 19 – MEDIATION

Should any dispute arise out of this Agreement, any Party may request that it be submitted to mediation. The Parties involved in the dispute shall meet in mediation within 30 days of a

request. The mediator shall be agreed to by the mediating Parties; in the absence of an agreement, the Parties shall each submit one name from mediators listed by either the American Arbitration Association, the State Mediation and Conciliation Service, or other agreed-upon service. The mediator shall be selected by a blind draw.

SECTION 20 – OPERATIONAL AREA COORDINATOR

The Operational Area Coordinator shall be responsible for:

- A. Receipt of new members to the Agreement.
- B. Maintaining a current list of signatory Parties.
- C. Establishing and maintaining a list of Coordinators.
- 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.
- F. Allocating resources in the event of multiple requests as provided in Section 18.

SECTION 21 – EXECUTION

All Parties agree that any other qualified 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, addressed as follows:

San Mateo County Office of Emergency Services
400 County Center
Redwood City, CA 94063-1665

SECTION 22 – AUTHORITY TO ENTER INTO AGREEMENT

Each Party warrants that the individuals who have signed this Agreement have the legal power, right, and authority to make this Agreement and to bind each respective Party.

SECTION 23 – 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.

SECTION 24 – 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.

* * *

This Agreement may be executed in one or more counterparts, each of which shall be deemed to be an original, but all of which together shall constitute one and the same instrument.

IN WITNESS WHEREOF, and in agreement with this Agreement’s terms, the Parties, by their duly authorized representatives, affix their respective signatures:

Jurisdiction	Signature	Print Name and Title	Date
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			

EXHIBIT A
SAN MATEO COUNTY OPERATIONAL AREA
BUILDING SAFETY INSPECTION PROGRAM MUTUAL AID AGREEMENT
PROCEDURES GUIDE

I. PURPOSE

The purpose of this Procedures Guide is to provide Parties to the San Mateo County Operational Area Building Safety Inspection Program Mutual Aid Agreement with a practical set of guidelines on how to effectively provide and receive building safety inspection assistance. The terms of the Agreement shall govern in the event there is any actual or apparent conflict between this Procedures Guide and the Agreement. The following provisions are suggested guidelines only and not binding on any agency, except to the extent an agency wishes to request assistance pursuant to this Agreement, in which case these guidelines shall be followed. These provisions should be modified and expanded as necessary by an Amendment to the Agreement to meet the unique needs, emergency organizational structure, and working relationships of each operational and regional area.

II. TENETS OF OPERATIONAL AREA BUILDING SAFETY INSPECTION 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 per Section 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 SAFETY INSPECTION MUTUAL AID

1. Designated Building Official 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 safety inspection mutual aid, including but not limited to requests, responses, and reimbursement.

The Coordinator should be a person who during a disaster would be authorized to request Safety Assessment Program (“SAP”) 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.

Alternate coordinators should be designated in case the primary coordinator is unavailable during the disaster. Each Party should submit the name and contact information of the Coordinator and alternate to the Operational Area Coordinator, and keep that information up-to-date.

2. WebEOC Communication

To obtain building safety inspection 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. WebEOC should 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. Resource Lists and Contacts

It is strongly recommended that lists of building safety inspector resources (including quantity and type of personnel, equipment, and materials) be developed for each participating agency in the Operational Area. Each Coordinator should upload their resource list to WebEOC, and provide a copy to the Operational Area Coordinator. The Operational Area Coordinator will populate the list in the resources section of the County WebEOC. Coordinators should regularly review and update their lists and provide updated information to the Operational Area Coordinator. Such lists are essential for the Operational Area Coordinator to quickly identify which agencies have the particular types of resources needed by the requesting agency.

SMCAAlert will be used to notify all Building Officials/designated Coordinators in the Operational Area of a resource request.

4. 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.

5. 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 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 Party’s ability to receive reimbursement for costs expended to receive mutual aid.

6. Proclamation of Emergency

The Agreement requires that a Local Emergency be proclaimed by an authorized official or the governing body of the impacted jurisdiction prior to requesting resources, unless the requirement

is waived pursuant to Section 3 of the Agreement. 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 Party should include in their emergency plan a provision to seek 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 Coordinator for any incident that might have Countywide implication is important in obtaining external resources.

7. Agency in Charge

The Agreement provides that the Requesting Coordinator shall remain in charge of the incident and provide direction to and control of the resources provided by the Assisting Party. The Requesting Party may also request that the Assisting Party provide supervisory personnel to take direct charge of the resources provided under the overall direction of the Requesting Coordinator. The Assisting Party should 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.

8. 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 safety inspection 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 those individuals.

Exhibit A-1 (San Mateo County Operational Area Building Safety Inspection Program Checklist for Mutual Aid Assistance) is a sample checklist.

EXHIBIT A-1

SAN MATEO COUNTY BUILDING SAFETY INSPECTION PROGRAM CHECKLIST FOR MUTUAL AID ASSISTANCE

I. Pre-Event

Develop procedures at the Operational Area to carry out mutual aid including checklists of actions, resource lists, etc.

II. Post Event

1. Agency experiencing event 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 request a proclamation of Local Emergency.
3. Upon a proclamation of Local Emergency (or waiver under Section 3 of the Agreement), request mutual aid assistance via WebEOC from the Operational Area 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 resources may be needed, and type of work to be performed.

Once an Assisting Party is located to satisfy the resource request, the Operational Area Coordinator will determine how quickly these resources can be made available and notify the Requesting Party.

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 for each specific damage site according to State and Federal procedures for eligible reimbursement. Carefully record the names of assisting personnel and equipment at each site, hours worked, and mileage. Parties should ensure that expenses and activities are documented on the required forms, which include:
 - a. ICS Form 214 Unit Log
 - b. FEMA 90127 Force Account Labor Summary
 - c. FEMA 90128 Force Account Equipment Summary

7. The Requesting Party should return the Assisting Party's resources as soon as possible.