

## **MEMORANDUM OF UNDERSTANDING**

This agreement entered into this 16<sup>th</sup> day of February 2022, constitutes a Memorandum of Understanding (MOU) between the City of Berkeley (City) and the Berkeley Unified School District (BUSD) regarding the pre-placement of Outdoor Warning System (OWS) equipment to be used during emergencies and for periodic testing.

### **I. BACKGROUND**

As a result of the 1991 East Bay Hills Fire and the 1989 Loma Prieta Earthquake, and the many wildfires that have occurred in California over the recent years, the Berkeley City Council, Disaster and Fire Safety Commission, and Office of Emergency Services have been working to improve evacuation systems and capacity throughout Berkeley. An effective evacuation process includes being able to have multiple ways to notify the public when an evacuation order is issued. Having OWS serving locations throughout Berkeley is a key tool in the City's ability to reach the whole community.

The City has recognized that City-owned facilities are not situated in every neighborhood and that the Berkeley Unified School District facilities are purposefully located throughout the communities of Berkeley.

It has also been recognized that BUSD school buildings, grounds, and equipment may come under the direction of the City for mass care and welfare shelters during disasters and other emergencies affecting public health and welfare. (Educ. § 38132.)

### **II. RECITALS**

- A. City and BUSD agree on the need for the placement of OWS equipment at selected BUSD sites for use in emergencies such as earthquakes or other disasters, as well as periodic testing.
- B. The City will position and maintain OWS equipment including speakers, satellite hardware, solar panels, poles, anchors, battery panel cabinets, and cables on BUSD grounds and select BUSD buildings.
- C. BUSD is not responsible for maintenance or repairs needed for OWS equipment; however, BUSD will provide access to City staff at agreed-upon times that do not interfere with BUSD operations.

### **III. GENERAL PROVISIONS**

- A. **Emergency Defined**

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For purposes of this MOU, an emergency shall mean the actual or threatened existence of conditions threatening the safety of persons within Berkeley, caused by such conditions as air pollution, fire, flood, storm, epidemic or earthquake, or other conditions.

**B. Purchase of Equipment**

City will purchase all of the needed equipment for the OWS, to include:

1. Speakers
2. Poles
3. Anchors
4. Satellite hardware
5. Solar Panels
6. Cables
7. Back-up batteries

**C. Ownership of Outdoor Warning System Contents**

OWS equipment sited on BUSD grounds/facilities is owned by the City, shall remain the property of the City, and shall be controlled by the City except as otherwise stated.

**D. Placement of Outdoor Warning System Equipment**

1. OWS shall be placed on BUSD grounds and buildings. Potential OWS sites are specified in Attachment A.
2. The City and BUSD, in collaboration with Genasys, Inc., shall mutually agree upon sites to host OWS equipment.
3. Should the City in its discretion identify a better use of the OWS equipment, the City may remove OWS equipment and relocate it to an alternate location.
4. Except in an emergency, the City shall provide BUSD with one-month notice of intent to relocate OWS equipment.

**E. Activation of Outdoor Warning System**

1. The OWS shall only be activated for:
  - a. Life-threatening emergencies, and
  - b. Periodic equipment testing (see Section III-A).
2. The City will determine whether circumstances constitute an emergency. If the City deems it appropriate, the City will remotely activate the OWS.
3. The City shall coordinate with BUSD to schedule periodic system testing.
4. The City will notify BUSD prior to activating the OWS as long as that notification does not create a delay that could endanger lives.

**F. Purchase of Outdoor Warning Systems**

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City is responsible for the purchase and replacement of OWS equipment. Nothing in this agreement shall mandate additional expenditures by City or BUSD other than those specified in this MOU.

**G. Maintenance of Outdoor Warning System**

City shall maintain the OWS, in order to prolong its use as an outdoor alerting system. Both parties recognize that any built structure has a useful life. Nothing in this agreement shall mandate additional expenditures other than those specified in this MOU.

**H. Inspection of Outdoor Warning System**

The City shall inspect the OWS at least once per year, preferably in the summer while schools are not in session. Inspections shall be scheduled through the BUSD Superintendent's office. The City shall use a checklist to identify any missing, expired, or damaged equipment. Following the inspection, the City will generate a letter of inspection stating any deficiencies or any other issues related to the OWS and equipment. This report shall be included in the annual Superintendent's Safety Report. It is City's responsibility to address deficiencies and to plan for replacement within a reasonable period of time.

**I. Access to Warning System**

1. The City shall hold keys for the OWS containers.
2. Access keys to each BUSD site shall be held in the Knox boxes at each BUSD site.
3. Backup keys for each BUSD site will be held by designated Berkeley Fire Department Officials in the Office of Emergency Services.
4. In non-emergency circumstances, Fire Department personnel will coordinate with BUSD Administration before using keys to access a BUSD site.
5. Under emergency circumstances, City personnel will notify BUSD Administration that the BUSD site was accessed as soon as is practicable.

**J. Indemnification**

City and BUSD, individually and for their heirs, successors and assigns, agrees to release, defend, indemnify and hold harmless each other, and their respective officers, agents, volunteers, and employees, from and against any and all claims, demands, liability, damages, lawsuits or other actions, including, but not limited to, personal injury or death or property damage arising out of or in any way connected with their own operations under this MOU, or with the performance of this MOU by their respective officers, employees, partners, directors, subcontractors or agents.

**K. Insurance**

BUSD and City shall maintain at all times during the performance of this MOU evidence of self-insurance to cover any claims arising out of BUSD's and City's respective performance of services under this MOU.

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**L.     Entire Agreement**

The terms and conditions of this MOU, all exhibits attached, and any documents expressly incorporated by reference represent the entire MOU between the parties with respect to the subject matter of this MOU. This MOU shall supersede any and all prior agreements, oral or written, regarding the subject matter between City and BUSD. No other contract, statement, or promise relating to the subject matter of this MOU shall be valid or binding except by a written amendment to this MOU.

**M.     Severability**

If any part of this MOU or the application thereof is declared invalid for any reason, such invalidity shall not affect the other provisions of this MOU which can be given effect without the invalid provision or application, and to this end the provisions of this MOU are declared to be severable.

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**N. Amendments**

The terms and conditions of this MOU shall not be altered or otherwise modified except by a written amendment to this MOU executed by City and BUSD.

**IN WITNESS WHEREOF**, BUSD and COB have executed this MOU as of the date written in the first paragraph of this Agreement.

BERKELEY UNIFIED  
SCHOOL DISTRICT

CITY OF BERKELEY

By: \_\_\_\_\_  
Superintendent

By: \_\_\_\_\_  
City Manager

Approved as to Form

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

Registered by:

\_\_\_\_\_  
City Auditor

Attest:

\_\_\_\_\_  
City Clerk