



Berkeley Unified School District

2020 Bonar Street, Berkeley, CA 94702

(510) 644-6206 Fax: (510) 540.5358

www.berkeleyschools.net

Donald Evans, Superintendent

December 4, 2015

**Re: 2211 Harold Way; Additional Project Applicant Concessions**

Dear Mr. Rhoades:

The purpose of this letter is to confirm the agreement between the Berkeley Unified School District ("BUSD") and HSR Berkeley Investments, LLC ("HSR") (collectively, the "Parties") regarding the development of the 2211 Harold Way Project (the "Project") in the City of Berkeley. The Parties wish to document and establish HSR's agreement to incorporate and implement additional concessions and conditions beyond those established in the Zoning Adjustments Board's ("ZAB") approval of the Project on September 30, 2015, in consideration for the BUSD's withdrawal of its appeal of the ZAB's decision to approve the Project. This Letter Agreement is made with reference to the following:

A. On September 30, 2015, the City of Berkeley Zoning Adjustments Board approved certain zoning permits, including various use permit and administrative use permits to allow the construction of the Project as proposed by Rhoades Planning Group, on behalf of HSR (the "Project Applicant"). The Conditions of Approval for Use Permit #13-10000010 dated September 30, 2015 ("Conditions of Approval") and adopted Mitigation Monitoring and Reporting Program dated July 2015, incorporate numerous mitigation measures designed to address anticipated Project impacts on BUSD. Nonetheless, BUSD continues to have concerns relating to construction impacts as well as its ability to have direct contact with both the City staff who will oversee building construction and the Project's construction project representatives, during the entire period of construction.

B. By letter dated October 27, 2015, BUSD, through its attorneys at Dannis Woliver Kelley, appealed the ZAB's decision to approval the Project based on its belief that the Project will have potentially significant impacts on the health, welfare and safety of BUSD students, teachers and facilities that remain unstudied or unmitigated ("Appeal Letter"). BUSD requests in its Appeal Letter that the City Council remand the matter back to the ZAB for reconsideration or set a public hearing before the City Council on the appeal. Exhibit E to the Appeal Letter lists specific mitigation measures proposed by BUSD to offset the Project impacts, particularly on Berkeley High School students and teachers.

C. On November 20, 2015, representatives of the Project Applicant met with representatives of BUSD to discuss a possible resolution of the concerns described in the Appeal Letter. As a result of the meeting, the Parties developed a list of "Additional Project Applicant Concessions" that the Project Applicant agrees to incorporate in developing the Project. In exchange for the Project Applicant's agreement to incorporate such additional concessions, BUSD agrees to withdraw its Appeal Letter.

This Letter Agreement documents the Project Applicant's agreement to the "Additional Project Applicant Concessions," in accordance with the terms set forth below.

1. Requests to the City. HSR shall submit a formal request to the City no later than December 7, 2015, that each of the Additional Project Applicant Concessions set forth in this Letter Agreement be incorporated and imposed as enforceable Conditions of Project Approval. If the City declines to include any or all of the Additional Project Applicant Concessions as Conditions of Approval for the Project, HSR nonetheless agrees to incorporate and implement each of them by virtue of this Letter Agreement. BUSD shall submit a request to the City to withdraw its Appeal Letter no later than 12:00 p.m. (Noon), December 8, 2015. HSR and BUSD shall provide each other with copies of their respective requests to the City.

2. Additional Project Applicant Concessions. The Parties hereby agree to the Additional Project Applicant Concessions as set forth below:

(a) The Project Applicant shall amend Project Condition of Approval No. 13 to add to the list of Quiet Days Berkeley High School semester final examination week days and other testing days for up to nine days per academic year as reasonably requested by the BUSD in writing at least sixty (60) days prior to the test dates.

(b) Upon request by BUSD, the Project Applicant shall provide noise blankets for the portions of Buildings D and E (the two buildings closest to the proposed construction) that are in a direct line of sound travel from the construction site.

(c) Condition of Approval No. 35 requires on-site early phase pre-construction meetings with project, City, and BUSD representatives concerning compliance with noise, construction traffic and staging, and air quality mitigation measures or conditions of approval. The Project Applicant agrees to amend Condition of Approval No. 35 to require regular site meetings on dates and at times to be mutually agreed upon by the Parties throughout the entirety of construction to ensure that, throughout construction, BUSD has a means to meet and confer regularly or as requested by BUSD to discuss documented concerns and/or violations and achieve compliance as issues may arise.

(d) To achieve further noise reduction, the Project Applicant agrees to modify the noise reduction program required by Condition of Approval No. 13, to allow and facilitate direct and immediate communication from Berkeley High School or BUSD representatives to the City's Construction Liaison and/or the City's Building Official, the latter of whom does possess authority to suspend construction work based on the failure to comply with Project Conditions of Approval or applicable Mitigation Measures.

(e) The Project Applicant agrees to locate all construction staging on the northeast side of the 2000 block of Kittredge Street, at least four hundred (400) feet away from Berkeley High School, as measured from the façade of the high school building to the nearest point of construction staging. If the staging contractor deems it necessary to stage the Project at a distance within four hundred (400) feet of Berkeley High School, the Project Applicant will seek approval from BUSD to do so. The Project Applicant may not stage the Project within four hundred (400) feet of Berkeley High School without the express approval of BUSD.

(f) The Project Applicant agrees to adhere to basic construction mitigation measures established by the Bay Area Air Quality Management District ("BAAQMD"), subject to verification by either BAAQMD or the City as part of the already required Mitigation Monitoring program for

construction air quality. Pursuant to subsection (d) above, BUSD staff will have immediate, direct access to the Construction Liaison who will meet with BUSD representatives within 24 hours. If the issues are not able to be resolved at that meeting, the project's Construction Liaison and BUSD representatives will immediately request a meeting with the City of Berkeley Planning and Development Director, Land Use Planning Manager, and/or the City's Building Official in the event of any concerns regarding compliance with these measures.

(g) Condition of Approval No. 38 requires the applicant to provide flag persons at the intersection of Allston Way with Harold Way and the intersection of Kittredge Street with Harold Way on school days. The Project Applicant agrees to amend Condition of Approval No. 38 to extend the time during which flag persons must be provided to include: (1) the morning between the start of construction traffic until one-half hour after the start of the Berkeley High School first period; (2) fifteen (15) minutes before the start of Berkeley High School's main lunch period until fifteen (15) minutes after the main lunch period ends; and (3) from one-half hour before the main school dismissal time until one hour after the main dismissal time.

(h) The Project Applicant shall provide to Berkeley High School a copy of the approved Transportation Construction Plan described in Condition of Approval No. 37 at least sixty (60) days before start of construction.

(i) The Project Applicant agrees to meet and confer with BUSD and appropriate City representatives, to discuss BUSD's request that no sewer line for the Project utilize any of the sewer lines used by Berkeley's High School, and to discuss sewer service line plans and capacity during the construction phase of the Project.

(j) Condition of Approval No. 37 currently "restricts" all project construction-related truck and equipment traffic and staging from using the segments of the four streets adjacent to the school (Milvia Street, Allston Way, Martin Luther King Jr. Way, and Channing Way) at all times. The Project Applicant agrees to amend Condition of Approval No. 37 to limit off-site construction parking of construction-related vehicles to locations east of Harold Way. In order to provide further clarity and assurance to BUSD, the Project Applicant also agrees to amend Condition of Approval No. 37 to "prohibit" all project construction-related truck and equipment traffic and staging from using the segments of the four streets adjacent to the school (Milvia Street, Allston Way, Martin Luther King Jr. Way, and Channing Way) at all times.

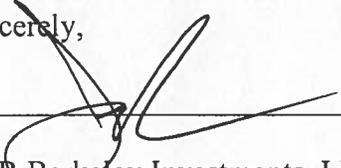
(k) The Parties agree to meet and confer within five (5) days of the Project Applicant receiving written notice from BUSD of its concern that Project mitigation measures related to construction noise, air quality, or traffic fail to adequately address the impacts on the learning environment of BUSD students and teachers.

3. Authority and Governing Law. By signing below the Parties accept the terms of this Letter Agreement and agree to be bound by the terms hereof. In the event that the City declines to approve one or more of the "Additional Project Applicant Concessions" as enforceable Project Conditions of Approval, the Project Applicant nonetheless agrees to be bound by these terms in consideration for BUSD's withdrawal of its Appeal Letter in accordance with the terms set forth herein. The Parties to this Letter Agreement each represent and warrant that the person executing this Letter Agreement has full right, power and authority to execute for and to bind each such Party. There are no other Parties required to execute this Agreement to make it fully enforceable and effective except those persons executing it. This Agreement shall be governed by the laws of the State of California applicable to contracts executed and wholly performed therein.

Please indicate BUSD's agreement to the foregoing terms by countersigning an original of this letter and returning a copy to me.

Please do not hesitate to contact me should you have any questions.

Sincerely,

  
\_\_\_\_\_  
HSR Berkeley Investments, LLC

ACCEPTED AND AGREED:

BUSD

Berkeley Unified School District

By: \_\_\_\_\_  
Donald Evans, Superintendent

Date: \_\_\_\_\_

By: \_\_\_\_\_  
Judy Appel, Board President

Date: \_\_\_\_\_