



ALUM ROCK UNION ELEMENTARY SCHOOL DISTRICT

2930 Gay Avenue, San José, CA 95127 · Phone: 408-928-6800 · Fax: 408-928-6416 · www.arusd.org

September 29, 2017

VIA U.S. MAIL AND E-MAIL

Luis Rojas
Del Terra Group
13181 Crossroads Pkwy. North, Suite 540
City of Industry, CA 91746
(E-mail: luis@delterra.com)

**Re: RESPONSE TO YOUR LETTER DATED SEPTEMBER 21, 2017,
Re: ARUESD's Request for Deliverables, Documents and Records
pursuant to:**

- (1) Program Management Agreement (Measure "J") dated May 9, 2013;**
- (2) Construction Management Agreement (Measure "J") dated October 1, 2013;**
- (3) Construction Management Agreement (Measure "J") dated November 2016;**
- (4) Program Management Agreement (Measure "J") dated November 10, 2016;**
- (5) Program and Construction Management Agreement (Measure "I") dated November 10, 2016**

Dear Mr. Rojas:

Thank you for your letter dated September 21 and confirming that Del terra will provide all documents and records required under the above agreements. This letter is to clarify and respond to certain issues raised in your letter.

Based on our discussion and your September 21 letter, it appears that as of this date Del Terra has not developed or implemented any document control, document management or master file archives system for all bond program and project documents. Also, I have met with the District staff and no such document control or archives system of Measure J and Measure I bond program and project related documents exists at the District or has ever been developed or implemented by Del Terra at the District offices.

Hilaria Bauer, Ph.D., Superintendent

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The 2013 and 2016 Measure J program management agreements and the 2016 Measure I program management agreement all require that Del Terra shall develop and implement such a document control or master file archives system as part of the services under those agreements. You are correct that I agree that a “mass production” of program and project documents on the District would not be helpful if they are not delivered in an organized manner consistent with the requirements under the agreements. Also, since Del Terra has the obligation to maintain the documents in an organized manner, the District cannot reasonably determine what documents might be “missing.”

With respect to the document control and master file archives system, your letter states that the District “simply did not have the basic document control resources to permit Del Terra to help develop such a system” and that Del Terra “is not responsible for the lack of such a system at the District.” The agreements specify that Del Terra was to develop and implement such a document control and master file archives, not that Del Terra was to *assist* the District in that activity. I am not aware of any record of communications between the District and Del Terra whereby the District released Del Terra from that performance obligation under the agreements. If you have such records or communications, please provide them to me. Otherwise, this is to request Del Terra’s written assurance to the District that it will develop and implement the document control and master file archives as specified in the agreements and that all documents will be delivered in an organized fashion.

Your September 21 letter also states that since “many” of the documents requested by the District have been previously provided, Del Terra “reserves its right to seek compensation for additional services based upon the duplication of effort that it is required by the District’s request.” As noted above and in previous letters on this subject, the agreements obligate Del Terra to have developed and implemented a document control management system for all Measure J and Measure I bond program and project documents and records, and to maintain such records and documents in an organized fashion, as part of the “Basic Services” under those agreements. Pursuant to each of the above program management agreements, “Additional Services are services not included in Manager’s Basic Services” As noted above, the development and implementation of the records and document control management system are specifically included as part of the “Basic Services” under the agreements. Therefore, it does not appear that is an “additional service” for which the District would be obligated to pay additional compensation over what has already been paid under the agreements.

As of this date, no records or document control management system has been developed or implemented by Del Terra. The provision of that basic service is not an “additional service” for which the District must pay additional compensation to Del Terra. Please advise immediately if Del Terra believes that such performance by Del Terra

Hilaria Bauer, Ph.D., Superintendent

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constitutes “additional services” under the agreements for which it is entitled to additional compensation.

Finally, pursuant to the Board-approved response to the FCMAT report, the District has made several requests for documents supporting Del Terra’s billings for construction management services for the Fischer Middle School, George Middle School, Dorsa HVAC and LUCHA HVAC projects, including all supporting documentation relating to all Del Terra invoices including personnel names and positions, timesheets, actual hours worked, and applicable hourly rate. The District first requested this information in September 2016. The applicable construction management agreements provide that pre-construction services would be billed “on an hourly basis for work actually performed.” As of this date, the District has not received the requested invoice information or back-up documentation. Please confirm you will provide that information and documentation to the District as to the above four projects no later than Friday, October 6, 2017.

Again, the District’s expectation is that Del Terra will provide the records and documentation in an organized fashion and as part of master archives and records system implemented by Del Terra as specified in the agreements.

As a result of the District’s conditional budget approval status, the District is required to update the Board, the County Superintendent and the public on October 12, 2017, during the regular Board meeting as to the status of the receipt of all documents and records in accordance with the contract terms and as to the implementation of the Board-approved responses to the FCMAT recommendations. The District administration needs to prepare its update and therefore Del Terra’s timely responses are critical to that process.

Thank you for your cooperation.

Sincerely,



Kolvira Chheng
Assistant Superintendent of Business Services

cc: Hilaria Bauer, Ph.D., Superintendent
Kevin Collins, Esq.
Alston + Bird, LLP
333 South Hope Street, 16th Floor
Los Angeles, CA 90071

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