



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 14, 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 AUGUST 27, 2017,
AND
SECOND REQUEST:
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:

The District has received your letter dated August 27, 2017, in response to the District’s separate August 4, 2017, requests for deliverables, documents and records pursuant to each of the five contracts described above.

Hilaria Bauer, Ph.D., Superintendent

Board of Trustees: Esau Ruiz Herrera, President · Andrés Quintero, Vice-President
Dolores Márquez-Frausto, Clerk · Khanh Tran, Member · Karen Martinez, Member

Re:
Page 2 of 5
September 27, 2017

As stated in each of the District's August 4 letters, the letters and requests for documents were authorized by the District's Board of Trustees as part of the District's Board-approved response to the FCMAT Extraordinary Audit.

The District has reviewed your August 27 response. As of this date and since August 4, Del Terra has not provided any documents requested by the District in response to any of the District's August 4 letters.

The 2013 and 2016 Measure "J" Program Management Agreement (section 1.3.2) provides that Del Terra "serves as District's agent and fiduciary in performing services under" that agreement. The agreements further provide that Del Terra would implement a document control and master file archives system. Those agreements further require that Del Terra will maintain all Bond Program records which shall at all times remain the property of the District, and that Del Terra implement and develop a records and document control management system to ensure that all documents are properly handled and all records are properly maintained. The agreements further require that all of Del Terra's project books and records be maintained in accordance with generally accepted accounting principles and that all such books and records be "clearly identified and readily accessible."

The 2013 and 2016 Measure "J" Construction Management Agreement and the 2016 Measure "I" Program Management and Construction Management Agreement provide that as to each project, Del Terra shall maintain a copy of all contracts, drawings, specifications, addenda, change orders, and other modifications, and all other documents which arise out of the projects and that Del Terra shall make available to the District all records and deliver them to the District upon project completion. Those agreements further provide that all construction management services project documents shall be organized in sufficient detail to permit the District to thoroughly evaluate the nature and scope, cost and value of all expenditures, costs and expenses incurred in connection with each project.

The District is in possession of the attached "Measure J Expenditures Report as of April 30, 2017" which was previously provided by Del Terra to the District. That report details over \$18,000,000 in Measure J bond program expenditures in seventy-seven (77) different projects including roofing projects, restroom repairs/improvements, exterior painting, HVAC, multi-purpose school community centers, multi-purpose building renovation projects and "other school improvement projects". As specified in the report, all but five of the projects are noted as completed ("Completed"). Thus, according to the information contained in the report, seventy-two (72) of the projects are completed. Moreover, the report states that in sixty-two (62) of the projects Del Terra's "role" was as program manager and construction manager ("PM/CM" notation in far right column), in three (3)

Hilaria Bauer, Ph.D., Superintendent

Board of Trustees: Esau Ruiz Herrera, President • Andrés Quintero, Vice-President
Dolores Márquez-Frausto, Clerk • Khanh Tran, Member • Karen Martinez, Member

Re:
Page 3 of 5
September 27, 2017

projects Del Terra's role was solely as construction manager ("CM" notation), in eleven (11) projects Del Terra's role is designated solely as program manager ("PM" notation), and in one (1) project Del Terra's role is noted as "N/A". Sixty (60) of the projects notated as "Completed" were projects for which, according to the report, Del Terra provided construction management services and for which, pursuant to the construction management agreements, Del Terra was required to provide and deliver to the District all project documents upon project completion. Thus, as to all projects notated as completed, Del Terra must provide the District with all project documents and records as required by both the applicable program management and construction management agreements.

Also, in a September 13, 2016, letter the District requested Del Terra to provide all documents specified and required by the 2013 Construction Management Agreement, which the District still has not yet received. Therefore, insofar as the 2013 Construction Management Agreement is concerned, Del Terra has had well more than 60 days to provide the requested information. Based on all of the above information and the agreements' terms, Del Terra's assertion that the District's requests for records and deliverables is "unreasonable and not consistent with industry standards" is not supported by the language in the agreements themselves. The District is requesting that Del Terra simply perform what is specified in the contracts.

Del Terra proposes that it "confer" with the District's Director of Facilities, Bonds and Leases and the District's Business Department personnel "to identify the documentation which already exists within the District and then allow [the District] to evaluate the level of remaining documentation required." That approach is not consistent with the contracts between the District and Del Terra and is not consistent with the Board's direction in the approved response to the FCMAT Report.

Your letter states that you and your attorney have "clearly stated the evidence of Del Terra's services and contracts have existed within the District's possession", that the "extensive volume and existence of documentation that is available and how project documentation has been in the District's possession for the past several years", and that there "is also existing PM and CM documentation that also exists within the District Facilities, Bond and Leases office". What your August 27 letter does not include, however, is an affirmative statement and representation that Del Terra has ever provided to the District all program and project documents required by each of the several program management and construction management agreements. Please confirm in writing whether it is Del Terra's position that all program and project documents required under the several agreements have been provided to the District and are in the District's possession. To the extent that is Del Terra's position, please identify where, specifically, all such documents are located (by project and program) since, as noted above, Del Terra's responsibilities under the agreements require Del Terra to have implemented a

Hilaria Bauer, Ph.D., Superintendent

Board of Trustees: Esau Ruiz Herrera, President • Andrés Quintero, Vice-President
Dolores Márquez-Frausto, Clerk • Khanh Tran, Member • Karen Martinez, Member

Re:
Page 4 of 5
September 27, 2017

document control and master file archives system and to maintain all project records in an organized manner.

Your letter also states that “what is needed is to inventory the plans, specifications, and other PM/CM documentation that exists with the District and then reconcile what other documentation the District would continue to request from Del Terra.” As specified in the agreements and as noted above, the agreements already require Del Terra to have implemented a document control and master file archives system and to maintain all project records in an organized manner and to provide all such documents and records to the District. Since the agreements already specify what records and documents Del Terra is required to maintain, and require Del Terra to maintain such documents in an organized fashion, it is not reasonable to expect the District to “reconcile what other documentation the District would continue to request from Del Terra.” Del Terra should provide all program and project documents, records and files as is required by the agreements.

Finally, in the August 27 letter you state that “it has been proven that FCMAT reported erroneous and false information regarding both the district and Del Terra.” While the Board-approved response includes some responses to items included in the FCMAT report specific to the District, the District has not made any determination as to the correctness or truthfulness of information about Del Terra in the FCMAT report. As noted above and in the August 4 letters, the District’s requests are based on the terms of the agreements and the parties’ rights and obligations under the agreements.

Please confirm immediately that Del Terra will provide all requested information and documents as specified in the August 4 letters and as required by the contracts.

Sincerely,



Kolvira Chheng
Assistant Superintendent, Business Services

cc: Hilaria Bauer, Ph.D., Superintendent

Kevin Collins, Esq.
Alston + Bird, LLP
333 South Hope Street, 16th Floor
Los Angeles, CA 90071

Hilaria Bauer, Ph.D., Superintendent

Board of Trustees: Esau Ruiz Herrera, President • Andrés Quintero, Vice-President
Dolores Márquez-Frausto, Clerk • Khanh Tran, Member • Karen Martinez, Member