



ALUM ROCK UNION ELEMENTARY SCHOOL DISTRICT

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July 28, 2017

Jon Gundry, Superintendent
Santa Clara County Office of Education
1290 Ridder Park Drive
San Jose, CA 95131-2304

Re: **FCMAT Extraordinary Audit of the Alum Rock Union Elementary School District dated June 9, 2017**

Dear Superintendent Gundry:

Thank you for your July 13, 2017, presentation to Alum Rock Union Elementary School District Governing Board and community regarding the FCMAT Extraordinary Audit dated June 9, 2017 (the "FCMAT Report"). Pursuant to the requirements of Education Code section 1241.5, this letter shall constitute the required notification to the county superintendent of the Board's proposed actions on the county superintendent's recommendations.

The FCMAT Report includes 55 separate recommendations (with subparts) for response within 5 primary subject areas of comment, findings and recommendations:

1. Government Code False Claims;
2. Internal Control Deficiencies;
3. Conflicts of Interest;
4. Reporting Requirements for Nonvoter Approved Debt; and
5. Fiscal Independence.

This letter addresses the Board's responses to the recommendations in subject areas 1-4 above. The recommendations in Item #5 above (Fiscal Independence) are directed exclusively to the County Office of Education.

Hilaria Bauer, Ph.D., Superintendent

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

The Board understands that the concerns and allegations which prompted the audit are serious. The Board appreciates the efforts of FCMAT to review the concerns and allegations and, as demonstrated by the responses below, the Board and the District are committed to addressing all of the recommendations; the Board is, however, concerned by the tone and breadth of many of the statements in the report. A summary of some of the key concerns is as follows:

1. With regard to the District's fiscal independence, the FCMAT Report includes 3 separate recommendations to the SCCOE including to "meet with the district to discuss rescinding the district's fiscal independence status" and to examine the fiscal impact to the District of revoking the District's fiscal independence status, including, but not limited to, the need to transfer from the District's financial accounting system to the COE's financial system. The FCMAT Report further noted that Education Code section 42647 infers that the Santa Clara County of Education would regularly monitor the internal controls of fiscally independent districts, including ARUESD. The FCMAT Report was issued on June 9 and, notwithstanding the recommendations and statements in the report, on June 21, 2017, you recommended to Tom Torlakson, State Superintendent of Public Instruction (SPI), that the District's fiscal independence be revoked:
 - a. without any prior notice to the District or effort by the COE to meet with the District or allow the District to provide even a preliminary response to the report;
 - b. without disclosing in your letter that no efforts had been made to meet with the District as recommended by FCMAT;
 - c. without any disclosure to the SPI of what specific efforts had been made by the COE in the past to regularly monitor the District's internal controls.

In addition, your June 21 request was made to the SPI just 12 days after the release of the FCMAT Report and well before your July 13 presentation of the report and recommendations to the Board and Alum Rock community.

Exactly one week later, on June 28, 2017, the SPI granted your request to revoke the District's fiscal independence without any consideration of the fiscal impact to the District and its community, or any consideration of possible alternatives and necessary remedial or corrective measures.

2. The FCMAT Report makes broad and sweeping allegations about the District's contracting practices and internal controls relating almost exclusively to the District's bond program. While the Board understands the gravity of the concerns in the report, the Board also notes that the report has some shortcomings. For example, the FCMAT Report fails to recognize that the Board

and that District have consistently implemented the numerous independent reviews of the District's bond practices through constitutionally required independent audits and the reports of the District's Citizen's Oversight Committee ("COC"). In this regard the Board notes that:

- a. Since 2014 (the inception of Measure J expenditures) the District has procured, and the Board has received and approved in open session, all required independent financial and performance audits of the Measure J bond program.
 - b. The methodology in both the 2014 and 2015 independent performance audit reports specifically included:
 - i. Interviewing District management to determine that controls over planning, bidding, contracting, expenditure of bond funds and financial reporting have been put in place and are working as documented;
 - ii. Documenting District procedures and controls over planning, bidding, contracting, expenditure of bond funds and financial reporting;
 - iii. Performing tests to determine that the District controls over planning, bidding, contracting, expenditure of bond funds and financial reporting have been put in place and are working as documented; and
 - iv. Reconciliation of total bond expenditures.
 - c. Each of the 2014, 2015 and 2016 independent performance audit reports were issued without any audit exceptions or negative findings. No findings or warnings were issued, and the District was not advised, that any procedures or controls over planning, bidding, contracting, expenditure of bond funds and financial reporting were insufficient in any way or missing, or were not working as documented, or that the District lacked the capacity or ability to effectively track bond expenditures.
 - d. The Chair of the District's independent Citizens Oversight Committee ("COC") for Measure J presented its annual report on Measure J in open session at the Board's May 12, 2016 meeting. That report by the COC included the following:

"[T]his committee is pleased to report that careful management by the School District's bond team and the project management of Luis Rojas and his team at Del Terra brought the projects in within the budget and on time."
3. The FCMAT report concludes that "there is sufficient evidence to demonstrate that fraud, misappropriation of funds and/or assets, or other illegal activities *may* have occurred in the specific areas reviewed". FCMAT's finding that fraud may have occurred appears to be based

primarily on the fact that FCMAT could not get access to documents it needed to investigate the allegations of fraud, misappropriation of funds and/or assets, or other illegal activities that may have occurred in the specific areas reviewed.

FCMAT failed to cite any direct evidence of that conclusion in the 69 page written report, and failed entirely to include any documentary evidence of that conclusion anywhere in the more than 70 pages of exhibits attached to the report. The Board believes it is significant that FCMAT makes no finding that fraud of any kind has **actually** occurred. Moreover, FCMAT made no effort in the report to reconcile the “clean” performance audits (including but not limited to the audit findings that District controls over planning, bidding, contracting, expenditure of bond funds and financial reporting had been put in place and were working as documented) and findings with its sweeping conclusion that fraud misappropriation of funds and/or assets, or other illegal activities *may* have occurred.

4. In Section 4 of the report (Reporting Requirements for Nonvoter Approved Debt), FCMAT states that it has serious reservations about the district’s ability to repay Certificates Of Participation (“COPs”) “without affecting the District’s unrestricted general fund and that the debt service payments pose a serious threat to the District’s ongoing fiscal solvency.” FCMAT recommends that the District “develop a long term-strategy to budget for debt service payments on the COPs after state aid for the San Antonio Elementary School project is exhausted.” The FCMAT Report fails to include that during the course of the FCMAT review the District did, in fact, present to FCMAT its plan to repay the COPs using restricted capital funds and without affecting the District’s general fund. When presented with the plan and information the FCMAT team presented no objection to, or concern about, the District’s plan. The Board voices its concerns about, and objections to, FCMAT’s selected reporting of information on such matters of vital community interest.

The Board readily acknowledges there is room for improvement in the District’s facilities bond program and has been, and continues to be, committed to making that improvement and, to that extent, appreciates both FCMAT and the County Superintendent's effort to recommend areas of improvement in the bond program. However, in light of the above points and other omissions in the FCMAT Report, the Board is concerned by the accusations in the report suggesting board member conflicts of interest or misconduct, vendor fraud and false claims, and in some instances, staff misconduct or illegal conduct or impropriety, without providing clear documentation in the report to support those serious allegations. Those shortcomings in the report have, in effect, fueled a public perception of wrongdoing before the Board and the District had any meaningful opportunity to respond to the FCMAT report.

Notwithstanding the Board’s concerns noted above, the District takes each of the recommendations and all of the “findings” very seriously. The Board notes that the District’s and the Board’s review of the FCMAT Report is on-going; whereas FCMAT notes that it conducted its review and compiled its report

over a period of 7 months, the District has had just a few weeks to review, analyze and assess the information and to begin the process of responding to the issues and concerns raised. This letter is intended to meet the Board's requirement to respond to each and all of the recommendations in the FCMAT report. Since the District's review and implementation of appropriate corrective measures is still under consideration, this response is not intended to address the numerous "findings" and factual allegations in the report and, on that basis, nothing herein should be construed as an admission or acknowledgement of fault or wrong-doing by any individual Board member or the Board as a collective body, or by the District.

Based on the above issues and concerns and understandings, the Board responds below to each of the recommendations made in the FCMAT Report, many of which the District agrees with and is already implementing. As stated below, the Board proposes to, and will, update you and the District community on an on-going basis regarding the District's review status and implementation of necessary corrective measures.

RESPONSE TO FCMAT RECOMMENDATIONS

A. GOVERNMENT CODE FALSE CLAIMS

a. Program Management Services – Procurement & Bidding

The District's Administrative Regulation 7140 provides that contractors "for any architectural, landscape architectural, engineering, environmental, land surveying or construction project management services shall be selected, at fair and reasonable prices, on the basis of demonstrated competence and professional qualifications necessary for the satisfactory performance of the services required." As acknowledged in the FCMAT Report, the District utilized an RFQ/RFP for the procurement of program management services in 2013. In April 2014, the District's then-Administration recommended to the Board that, "[based on Del Terra Group's proven expertise and experience as the District's program manager", the Board approve a construction management services agreement with Del Terra to provide construction management services "for various district assigned projects."

District Response to FCMAT Recommendations

FCMAT Recommendation #1

The District should follow industry best practices by using a RFQ/RFP process for procuring program management and construction management services.

District Response to FCMAT Recommendation #1

The District acknowledges that school district recommended practices for the procurement of program management and construction management services include use of an RFQ or RFP process. The District implemented such a practice in 2013 at the time of procurement of program management services with the vendor qualifications reviews and interviews taking place in an open and public meeting. However, there does not appear to be universal agreement on the specific contents or requirements for such RFQ/RFP processes including, for example, how frequently such processes should be used. Moreover, there is no universal agreement on the “best” practice for incorporating program management or construction management services into a bond program. Some districts retain in-house staff to perform such services, some districts retain only program manager services, some districts have implemented a qualified pool of construction managers, and other districts in the past have retained vendors to provide combined program management and construction management services. The District further acknowledges the need for some flexibility in the procurement process for program management and construction management services. For example, state law (Government Code §4529) provides that a local agency may make a determination that the construction management services needed are more of a technical nature and involve little professional judgment and that *requiring bids would be in the public interest*. In such instances, an RFQ/RFP would not be advisable. The District will implement such practices in accordance with the requirements and guidelines provided by law as well as based on the District’s program needs.

Proposed Timeline for Further Action/Response by District: To be implemented effective immediately in connection with any future procurement of program management and construction management services.

FCMAT Recommendation #2

The District should hire legal counsel to review the three board-approved contracts for program management and construction management services to provide district administration and staff with recommended changes and corrections in the contracts for future possible renegotiation and/or new contracts. Legal counsel should be familiar with providing school districts with strong and defensible language that provides legal protection and adequate enforcement of requirements for the vendor.

District Response to FCMAT Recommendation #2

Acknowledged.

Proposed Timeline for Further Action/Response by District: To be completed by District no later than October 31, 2017.

b. Program Management Services: Payment/Fee schedule and Payment Deficiencies.

District voters passed the Measure J bond ballot measure on November 12, 2012, authorizing the issuance of up to \$125,000,000 in general obligation bonds to perform the projects specified in the ballot measure project list. The District did not have, and does not have, the personnel to manage the amount and complexity of construction projects for the Measure J bond program. Accordingly, at the Governing Board's December 13, 2012, Regular Board Meeting, the Board (upon the recommendation of the then-Superintendent) unanimously approved a Request for Qualifications/Request for Proposals ("RFQP") process for program management services for the Measure J bond program, with the intention that the Board would take an action in a subsequent open session Board meeting (following the qualifications and proposal review process) to award the contract for program management services.

The District issued its RFQP on December 21, 2012. At the time of the issuance of the RFQP, and except for the Measure J ballot measure project list, the District had not yet developed a specific project list, or a list of project priorities, and had not yet determined which delivery method would be used during the preconstruction and/or construction phases of the Measure J bond program. In fact, the RFQ/RFP specified in the scope of services that the selected program manager's duties would include assisting the District in preparing and establishing the list and a timeline for implementation.

At a special Board meeting held on March 5, 2013, the Board publicly interviewed four (4) firms as part of the selection process. After considering the 4 candidates and their respective qualifications, the Board selected Del Terra Real Estate Services, Inc. ("Del Terra") subject to negotiation of a program management agreement to be approved by the Board. The records relating to the negotiation process indicate that the District had proposed a fee structure based on an hourly basis for actual work performed according to an agreed-upon hourly rate schedule by job classification. Records also reflect that Del Terra payment applications to the District would be required to include detailed and specific billing information including the Campus Project for which the billing was submitted, the description of the work task performed, the identity of the Del Terra personnel performing the task, the amount of time taken to perform the task (in 1/10th of an hour increments), and the corresponding hourly rate and charge for such task. The District proposals had also included a fee cap of "Not-to-exceed 3% of overall Quick Start Project Costs" and "Not-to-exceed 4% of remainder of available issued Measure J and Matching Bond Funds for Modernization and New Construction." Per the agreement, the program manager would, with the input of the District, develop the list and scope of all Campus Projects including the list of "Quick Start" projects and the remainder of all other bond projects to be included in the bond program, with the District to provide the program manager with a "Priority List" of Campus Projects to the program manager within 60 days after the agreement was executed between the District and Del Terra.

Also, pursuant to the agreement, the District and Del Terra were to agree upon a schedule of costs and fees for each project.

During the course of negotiations the District Administration determined to pursue different fee and payment terms and provisions with Del Terra based on a percentage basis, and not on an hourly basis. At the May 9, 2013, Board meeting the then-Superintendent recommended that the Board approve the Del Terra contract on the terms and conditions presented and as reflected in the 2013 program management agreement.

To date, the District cannot locate any records showing that, following the execution of the 2013 agreement, the District Administration and Del Terra prepared or agreed upon the list of Campus Projects including those projects to be "Quick Start" projects or the payment schedules specified in the agreement for each project.

On June 7, 2016, the District voters passed Measure "I" authorizing the issuance of up to approximately \$140,000,000 in general obligation bonds to perform the projects specified in the ballot measure project list.

At the November 10, 2016, Regular Board Meeting the Board approved a Program Management Agreement with Del Terra for the continuation of program management services for Measure J. The 2013 Measure J Program Management Agreement and the 2016 Measure Program Management Agreement are substantially identical in all materials respects, including the fee payment provisions. Section 10.9 of the 2016 Measure J Program Management Agreement provides, in part, that it "represents the entire Agreement between the District and Manager for furnishing of Campus Program management services and supersedes all prior negotiations, representations or agreements, either written or oral, except as otherwise expressly provided."

Also, Recital "E" of the Board-approved 2016 Measure J Program Management Agreement provides that the District and Del Terra would "make their best efforts" to amend the Agreement within ninety (90) days of execution of the agreement to "provide remaining program and project schedules for Measure J funds not yet expended" as of November 10, 2016.

At the November 10, 2016, Regular Board Meeting the Board further approved a Program And Construction Management Agreement with Del Terra for program management and construction management services for the Measure I bond program (the "2016 Measure I PM/CM Agreement").

At the time of the November 2016 contract approvals the Board had received (as noted above) favorable performance audits of the District's Measure J bond program and a positive annual report from the District's Citizens Oversight Committee that included complimentary remarks regarding the District's bond program and Del Terra.

At its January 2017 Regular Meeting, the Governing Board approved a list of projects for both Measure J and Measure I.

On May 9, 2017, in connection with the Board-approved 2016 Measure J Program Management Agreement and the 2016 Measure I PM/CM Agreement, the District and Del Terra agreed upon a form of work authorization for Measure J and Measure I program management services under the 2016 agreements specifying the bond projects and estimated construction costs.

On June 27, 2017, the District and Del Terra agreed to a Detail Fee Schedule for Measure J program management services and a separate schedule for Measure I program management services detailing the amount and schedule of program management fees for the Board-approved projects.

District Response to FCMAT Recommendation

FCMAT Recommendation

The District should renegotiate all Del Terra contracts to include the following:

- a. A list of projects subject to the contract.
- b. A not-to-exceed amount of the contracts for both Measures J and I.
- c. A change to the fee structure to an hourly basis for actual work performed, with adequate documentation, including timesheets, to accompany each monthly invoice.
- d. A requirement for all changes regarding fee structure, payments, fee extensions and increases to be in written format and board-approved before the work is performed and the fees paid.

District Response to FCMAT Recommendation

The Board will consider the implementation of the foregoing recommendations in a manner that works best for the District. There are multiple alternatives and approaches for program management service fees including not just hourly rates, but also cost plus fixed fee, salary times multiplier, plus direct expenses. The District acknowledges that, based on FCMAT's analysis and recommendations, renegotiation of the program management contracts is appropriate and the District will renegotiate terms that are fair, clear, and transparent and in the District's best interests. All renegotiated terms will be discussed and explained in an open session Board meeting before approval by the Board. Also, as noted above, the Governing Board approved a list of Measure J and Measure I bond projects, and the District recently agreed as to the scope of projects subject to the 2016 agreements. The Board will consider the appropriate means for renegotiating the 2016 Measure J and Measure I program managements agreements.

Proposed Timeline for Further Action/Response by District: To be completed by October 31, 2017.

c. DSA Closeout Services Contract and Payment Issues

In May 2014, the District entered into an “Agreement for Additional Services; DSA Close Out Certification Services” with Del Terra for a fixed lump sum of \$145,500.00. Pursuant to the Agreement, Del Terra was to provide closeout certification services through the Division of State Architect (DSA) for various District projects that remained uncertified and open by DSA. The agreement was for the period November 1, 2013 to June 30, 2015. The District has paid to Del terra all fees under the agreement. The latest status update spreadsheet report is dated March 23, 2017. The coding and information on the March 23 status update spreadsheet report is unclear. Based on the report it appears that at least thirty (30) District projects remain open and not closed out with the Division of State Architect.

District Response to FCMAT Recommendations

FCMAT Recommendation #1

The District should require the Del Terra Group to comply with all contract provisions and immediately provide all deliverables to the District, including a dated status sheet of all projects from the beginning of the DSA closeout services contract.

District Response to FCMAT Recommendation #1

Acknowledged. No later than August 4, 2017, the District will notify Del Terra in writing to provide all deliverables, documents and work product in connection with Del Terra’s performance of the services specified in the Agreement, as well as a spreadsheet detailing the status of all projects specified in the Agreement. Del Terra will be notified to provide all documents no later than Friday, August 25, 2017.

Proposed Timeline for Further Action/Response by District: The District will review and analyze the information and documentation to be provided by Del Terra. The District will report on the status of the projects at an open session Regular Board meeting at least every 90 days until all projects are closed out and/or certified.

FCMAT Recommendation #2

The District should require the spreadsheet to include the following information: (i) the original projects that need to be certified (not all district projects ever completed, which causes confusion); (ii) the status of each project and whether the Del Terra Group obtained the certification and date of certification; (iii) an indication of the project certification work in progress and any significant issues; and (iv) a bottom-line total of projects still uncertified.

District Response to FCMAT Recommendation #2

Acknowledged. No later than August 4, 2017, the District will notify Del Terra to provide such information no later than August 25, 2017.

Proposed Timeline for Further Action/Response by District: The District will review and analyze the information and documentation to be provided by Del Terra. The District will report on the status of the projects at an open session Regular Board meeting every 90 days until all projects are closed out and/or certified.

FCMAT Recommendation #3

If a new contract is requested by the Del Terra Group, require DSA closeout services to be procured using an RFQ/RFP selection process, and exclude Del Terra from consideration because of lack of performance.

District Response to FCMAT Recommendation #3

The District does not anticipate requiring any additional close-out services, but any additional necessary close-out services will be procured using an RFQ/RFP selection process.

Proposed Timeline for Further Action/Response by District: No further action necessary. Not applicable.

FCMAT Recommendation #4

Require any new contract to include a not-to-exceed maximum amount and an hourly basis for actual work performed, not a lump sum monthly payment.

District Response to FCMAT Recommendation #4

The District does not anticipate requiring any additional close-out services, but any additional necessary contracted close-out services will not be on a lump sum payment basis before all services are complete.

Proposed Timeline for Further Action/Response by District: No further action required.

d. Program Management Performance and Scope of Work Issues

FCMAT Recommendation #1

The District should require all project files and documents to be immediately turned over to the district in an organized fashion. As per the program management contract, the Del Terra Group should also assist the district in organizing the filing system and plan room.

District Response to FCMAT Recommendation #1

Acknowledged. No later than August 4, 2017, the District will notify Del Terra to provide all project files and documents per the contract terms and requirements.

Proposed Timeline for Further Action/Response by District: The Board will provide an update on this action and receipt of the requested documents at a Regular Board Meeting no later than October 31, 2017.

FCMAT Recommendation #2

The District should in its renegotiation of the program management contracts, include new language (in this contract and the subsequent Measure I contract from 2016), that requires the Del Terra Group to provide full copies of all project and program files to the district for all past and current projects, and to assist in setting up an adequate filing system, including training for district staff. This should occur in real time for all current projects.

District Response to FCMAT Recommendation #2

Acknowledged. No later than August 4, 2017, the District will notify Del Terra to provide all project files and documents per the contract terms and requirements.

Proposed Timeline for Further Action/Response by District: The Board will provide an update on this action and receipt of the requested documents at a Regular Board Meeting no later than October 31, 2017.

FCMAT Recommendation #3

The District should enforce all aspects of the contract scope of work, including all program and project reports using standard templates for budget and expenditure reports, reporting all program funds, encumbered, expended and remaining balance. On real-time project budget and expenditure reports, information should include original budget, revised budget, encumbrance, expenditure and available balance for each line item of typical construction categories.

District Response to FCMAT Recommendation #3

Acknowledged. No later than August 4, 2017, the District will notify Del Terra to provide all reports, project files and documents per the contract terms and requirements. The District will develop standard templates for budget and expenditure reports and will notify Del Terra to provide to report all program funds, encumbered, expended and remaining balance using the template form of reports, and that on real-time project budget and expenditure reports, information should include original budget, revised budget, encumbrance, expenditure and available balance for each line item of typical construction categories.

Proposed Timeline for Further Action/Response by District: The Board will provide an update on this action and receipt of the requested documents at a Regular Board Meeting no later than October 31, 2017.

FCMAT Recommendation #4

The District should enforce (or require) contract language to provide program and project budget and expenditure reports deliverables to be submitted monthly.

District Response to FCMAT Recommendation #4

Acknowledged. No later than August 4, 2017, the District will notify Del Terra to provide monthly program and project budget and expenditure reports per the contract terms and requirements.

Proposed Timeline for Further Action/Response by District: The Board will provide an update on this action and receipt of the requested documents at a Regular Board Meeting no later than October 31, 2017.

FCMAT Recommendation #5

The District should enforce the contract language that requires submittal and explanation of monthly schedule reports: "Project Schedules for each project including an update of actual performance against the approved baseline schedule."

District Response to FCMAT Recommendation #5

Acknowledged. No later than August 4, 2017, the District will notify Del Terra to provide the monthly schedule reports as required by the agreements.

Proposed Timeline for Further Action/Response by District: The Board will provide an update on this action and receipt of the requested documents at a Regular Board Meeting no later than October 31, 2017.

FCMAT Recommendation #6

The District should enforce the contract language requiring Del Terra to "develop and maintain with district staff to establish an overall bond program financial management system in the area of accounting." This should be a project tracking accounting system appropriate to multiyear, multifund projects.

District Response to FCMAT Recommendation #6

Acknowledged. No later than August 4, 2017, the District will notify Del Terra to develop and maintain with district staff an overall bond program financial management system in the area of accounting.

Proposed Timeline for Further Action/Response by District: The Board will provide an update on this action and receipt of the requested documents at a Regular Board Meeting no later than October 31, 2017.

FCMAT Recommendation #7

The District should enforce contract language stating that Del Terra assists with citizens' oversight committee meetings. This should include submittal and discussion at every meeting of all program-level and project-specific budget and expenditure reports, including an explanation of exception sheets showing the changes since the last meeting.

District Response to FCMAT Recommendation #7

This recommendation implies that Del Terra's hiring had some impact on the citizens' oversight committee's meeting schedule and alleged failure to provide oversight and further suggests that the District either colluded with Del Terra or was complicit in the contractor's attempts to reach a desired result. Those suggestions are not supported by the law or the agreement. The program management agreements require Del Terra to assist the District in supporting the Citizens Oversight Committee ("COC") and to attend COC meetings. Under the Education Code the primary responsibility for supporting the COC rests with the District. Pursuant to the Education Code, the COC shall issue at least one report each year to report on the COC's activities.

The FCMAT Report also states incorrectly that since the hiring of Del Terra as the District's program manager in 2013 the COC has failed to meet quarterly. As an independent body, the COC is not subject to the control of Del Terra. The District website includes a webpage (<http://www.arusd.org/domain/23>) which has been updated recently with all available meeting agenda and minutes. Those materials indicate that since May 2013 (the time of Del Terra's original contract award) the COC has met at least 10 times including June 24, 2013, November 12, 2013, October 27, 2014, January 26, 2015, February 26, 2015, April 30, 2015, September 17, 2015, December 9, 2015, February 4, 2016 and March 17, 2016. The District webpage also includes agendas (but no minutes or other documents) for COC meetings on March 11, 2014, May 13, 2014, September 29, 2014, January 18, 2017, May 3, 2017, and June 16, 2017.

In addition, the webpage also includes links to copies of the COC Bylaws, as well as to the COC annual reports for 2016 and 2017, and the COC 2014 "Statement of Progress".

The District acknowledges that the Education Code requires that all COC minutes, documents and reports shall be posted on the District's website.

In light of the above, the District will enlist (within the terms of the current contracts) greater assistance from Del Terra in support of the COC including submittal and discussion at every meeting of all program-level and project-specific budget and expenditure reports, including an explanation of exception sheets showing the changes since the last meeting. To ensure greater communication and transparency the District will post and continuously update all COC minutes, reports and meeting documents on the COC webpage on the District website.

Proposed Timeline for Further Action/Response by District: The Board will provide an update on this action and receipt of the requested documents at a Regular Board Meeting no later than October 31, 2017.

FCMAT Recommendation #8

The District should hold quarterly citizens' oversight committee meetings, and include detailed financial and schedule information.

District Response to FCMAT Recommendation #8

Pursuant to the Education Code and the California Constitution, the COC is an "independent oversight committee" for which the District provides assistance but that is not subject to the control of the Board. As an independent committee, the COC establishes its own meeting schedule and agendas and which are not subject to the approval of the Board, the District administration or Del Terra. The District will assist the COC in holding quarterly meetings if the COC determines to hold quarterly meetings and will provide such information requested by the COC within a reasonable period of time.

Proposed Timeline for Further Action/Response by District: No further action or response by Board or District required.

FCMAT Recommendation #9

The District should make renewed efforts to obtain full oversight committee membership with a minimum of seven people and all required categories filled. Even without full membership, quarterly committee meetings should be held.

District Response to FCMAT Recommendation #9

The COC is fully constituted as required by the Education Code and the membership of the COC meets the membership and representation requirements of the Education Code. With respect to quarterly meetings, please see the previous response.

Proposed Timeline for Further Action/Response by District: Not applicable.

FCMAT Recommendation #10

The District should have the committee present an annual report to the board at a regular meeting, with presentations by the committee officers, not the program manager.

District Response to FCMAT Recommendation #10

Acknowledged. Pursuant to the Education Code and the California Constitution, the COC is an “independent oversight committee” for which the District provides assistance but that is not subject to the control of the Board. The Education Code provides that the COC shall issue at least one report per year on the COC’s activities. The District shall provide reminders to the COC of its obligation to complete its reports and to have its designated spokesperson(s) make appropriate reports and presentations to the Board.

Proposed Timeline for Further Action/Response by District: Not applicable.

FCMAT Recommendation 11#

The District should consider completing a more detailed annual performance audit using a new audit firm selected by an RFQ/RFP process.

District Response to FCMAT Recommendation #11

The California Constitution requires that the District conduct an annual, independent performance audit to ensure that the funds have been expended only on the specific projects listed, and an annual, independent financial audit of the proceeds from the sale of the bonds until all of those proceeds have been expended for the school facilities projects. The District has procured all financial audits and performance audits for Measure J and copies of the audit reports are available on the COC webpage on the District website (<http://www.arusd.org/domain/23>).

District staff is already engaged in a review and examination of the benefits of expanded and detailed annual performance audits for the District’s bond programs, including cost and pricing and scope of work.

Proposed Timeline for Further Action/Response by District: The Board will provide an update on this action and receipt of the requested documents at a Regular Board Meeting no later than October 31, 2017.

FCMAT Recommendation #12

The District should request and review all information regarding compliance with CEQA, and develop a process for retroactive and proactive compliance.

District Response to FCMAT Recommendation #12

The recommendation is unclear about who any request for information should be made to. Nevertheless, District staff will review past District projects to determine which, if any, past projects were subject to CEQA and, if so, determine whether any applicable CEQA requirements were or were not met.

Proposed Timeline for Further Action/Response by District: The Board will provide an update on this action and receipt of the requested documents at a Regular Board Meeting no later than October 31, 2017.

FCMAT Recommendation #13

The District should require all documents and records regarding Del Terra's performance on the CUPCCAA process to be turned over to the district.

District Response to FCMAT Recommendation #13

Although this recommendation is vague regarding "Del Terra's performance on the CUPCCAA process", the Board agrees that no later than August 4, 2017, the District will notify Del Terra to provide any and all documents regarding the District's CUPCCAA contracting practices.

Proposed Timeline for Further Action/Response by District: The Board will provide an update on this action and receipt of the requested documents at a Regular Board Meeting no later than October 31, 2017.

FCMAT Recommendation #14

The District should develop a process and set of procedures for CUPCCAA compliance and management of the program by staff, implemented by Del Terra, if appropriate. This should include updated status sheets and a discussion between staff and Del Terra on CUPCCAA compliance for current and future years.

District Response to FCMAT Recommendation #14

FCMAT notes that the District uses the California Uniform Public Construction Cost Accounting Act (CUPCCAA) which requires annual updating and notification. Because the FCMAT Report does not specify in any detail how the District's use of the CUPCCAA contracting process might be deficient, and

without any additional information, the District is unable to meaningfully respond to this recommendation. However, as indicated above, the District will notify Del Terra to provide any and all documents regarding the District's CUPCAA contracting practices. The District will further evaluate this recommendation upon the receipt of documents from Del Terra or more specific facts and information on this issue from FCMAT.

Proposed Timeline for Further Action/Response by District: The Board will provide an update on this action and receipt of the requested documents at a Regular Board Meeting no later than October 31, 2017.

e. Contract Administration by District and Del Terra

FCMAT Recommendation #1

The District should select a new tracking system from an outside vendor using an RFQ/RFP selection process. Del Terra should not manager [sic] this system.

District Response to FCMAT Recommendation #1

The District Administration will review its contracting and purchase order tracking systems and recommend changes as appropriate to facilitate greater and easier tracking of contracts and fees including, if appropriate, a new tracking system within the District's budgetary constraints and limitations.

Proposed Timeline for Further Action/Response by District: The Board will provide an update on this action and receipt of the requested documents at a Regular Board Meeting no later than October 31, 2017.

FCMAT Recommendation #2

The District should develop and implement a new system for numbering and identifying contracts vs. purchase orders.

District Response to FCMAT Recommendation #2

The District Administration will review its contracting and purchase order tracking systems and recommend changes as appropriate to facilitate greater and easier tracking of contracts and fees including, if appropriate, a new tracking system within the District's budgetary constraints.

Proposed Timeline for Further Action/Response by District: The Board will provide an update on this action and receipt of the requested documents at a Regular Board Meeting no later than October 31, 2017.

FCMAT Recommendation #3

The District should train all accounting, business and purchasing staff and management on this new system, with training manuals at all desks.

District Response to FCMAT Recommendation #3

Acknowledged.

Proposed Timeline for Further Action/Response by District: The Board will provide an update on this item upon implementation of a new tracking system.

FCMAT Recommendation #4

The District should require Del Terra to provide a retroactive list (back to 2013) as well as a current list, of all key personnel and all personnel in program management and construction management contracts. If some personnel perform work in both areas, this should include the percentage of time spent in each. The contract should also include the definition of “key personnel.”

District Response to FCMAT Recommendation #4

No later than August 4, 2017, the District will make a written request to Del Terra for all such information.

Proposed Timeline for Further Action/Response by District: The Board will provide an update on this item no later than October 31, 2017.

f. Construction Management Services Contracts

The FCMAT Report addresses concerns, issues and recommendations regarding the Districts construction management services contracts in the following five subject areas: (1) Procurement Issues, (2) Payment Issues, (3) Contract Language Issues, (4) Performance Issues, and (5) Substantive Testing. Below, the District responds to the FCMAT recommendations in each of those areas.

1. Construction Management Services Contracts – Procurement Issues

The FCMAT Report notes that in May 2013 the District hired Del Terra for program management services only, and that it is unclear how the district intended to provide construction management services. The Report states that the District first contracted with Del Terra for construction management services in May 2014 without a selection process or RFQ/RFP process, and that it is not a best practice to have the same firm perform both program management and construction management services since program management would basically oversee itself.

The District's original intention was, following appointment of a program manager, to solicit qualifications to develop a pool of qualified construction managers for the various Measure J projects and on an as-needed basis. The 2012 Measure J RFQP issued by the District Administration specified that the appointed program manager would not be eligible to also provide construction management services. (The 2013 Board-approved Measure J Program Management Agreement specified that the duties of the program manager include the oversight of the District construction managers on district projects.) Nevertheless, at the May 8, 2014, Board meeting, District Administration submitted to the Board that "[b]ased on Del Terra Group's proven expertise and experience as the District's program manager, the District would like [sic] engaging Del Terra Group as the District's construction manager". Accordingly, the then -Superintendent recommended approval of the agreement by the Board. Based on the Board memo submitted with the agenda item, the Board could reasonably assume that the staff's recommendation was based on an appropriate qualifications process.

As noted above, school districts and other agencies employ different approaches for the use of program management and construction management services depending on the needs of the district and the size or complexity of the bond program. The Construction Management Association of America notes that qualified construction managers who also possess program management experience should also be considered for selection as program managers. (An Owner's Guide to Construction And Program Management (2011).)

FCMAT Recommendation

The District should consider terminating the construction management services contract and selecting an outside firm that is not associated with the program manager to provide adequate program accountability.

District Response

In connection with the other actions and reviews and analyses to be undertaken by the District in connection with the FCMAT Report and the District's on-going review into the matters raised in the FCMAT report and as provided in this response, the Board will reconsider the construction management relationship between the District and Del Terra including, if appropriate, termination of the construction management services contracts.

Proposed Timeline for Further Action/Response by District: To be considered by the Board no later than October 31, 2017.

2. Construction Management Services Contracts – Payment Issues

All invoices from Del Terra to the District for preconstruction services in connection with the Fischer Middle School, George Middle School, Dorsa HVAC and LUCHA HVAC projects were submitted by Del Terra for services performed prior to November 2016. Therefore, the operative construction

management agreement for the services would have been the 2014 Measure J Construction Management Agreement. As noted in the FCMAT Report, all such services performed prior to the letting of the contracts should have been billed by Del Terra on an hourly basis according to the hourly rates specified in the agreement. No later than August 4, 2017, the District will make a written request to Del Terra for supporting documentation relating to all such invoices including personnel names and positions, actual hours worked, and applicable hourly rate.

FCMAT Recommendation #1

The District should recalculate construction management fees for the four current projects using the hourly basis structure according to the contract. This will require timesheets and adequate backup documentation from Del Terra to verify the work performed and hours to be billed.

District Response to FCMAT Recommendation #1

Acknowledged. No later than August 4, 2017, the District will make a written request to Del Terra for supporting documentation relating to all such invoices including personnel names and positions, actual hours worked, and applicable hourly rate. Upon receipt of such information and documentation the District will recalculate the construction management fees for the four projects using the hourly basis structure according to the contract.

Proposed Timeline for Further Action/Response by District: The District will review and evaluate all information provided and report on the status of these payments at a Regular Board Meeting no later than October 31, 2017.

FCMAT Recommendation #2

The District should reconcile the fees paid to fees that should have been paid and require correct invoicing.

District Response to FCMAT Recommendation #2

Acknowledged. No later than August 4, 2017, the District will make a written request to Del Terra for supporting documentation relating to all such invoices including personnel names and positions, actual hours worked, and applicable hourly rate. Upon receipt of such information and documentation the District will recalculate the construction management fees for the four projects using the hourly basis structure according to the contract.

Proposed Timeline for Further Action/Response by District: The District will evaluate all information provided and report on the status of these payments at a Regular Board Meeting no later than October 31, 2017.

3. Construction Management Services Contracts – Contract Language Issues

The Board acknowledges that the 2014 Measure J Construction Management Agreement contains conflicting dates, including a “October 1, 2013” effective date, even though the agreement was not presented to or approved by the Board until May 2014. Board Policy 3312 provides that to be valid or to constitute an enforceable obligation against the district, all contracts must be approved and/or ratified by the Board.

Section 19 of the Measure J Construction Management Agreement approved by the Board in November 2016 provides that the agreement “constitutes the entire Agreement between the parties and supersedes all prior negotiations, representations, or agreements, either written or oral.” In May 2017, the District issued its revised Work Authorization for construction management services for the Fischer Middle School, George Middle School, Dorsa HVAC and LUCHA HVAC projects under the November 2016 Board-approved Measure J Construction Management Agreement.

FCMAT Recommendation #1

The District should hire a new legal counsel to review the construction management contracts and recommend changes and corrections, including getting rid of confusing and inconsistent terms and definitions and changing the 6% lump sum percentage fee to an hourly fee for actual hours worked with adequate backup with all invoices.

District Response to FCMAT Recommendation #1

Acknowledged. The review will take place in coordination with all other review and analysis activities as specified in this response.

Proposed Timeline for Further Action/Response by District: To be completed by District no later than October 31, 2017.

FCMAT Recommendation #2

The District should renegotiate the November 2016 Measure J program management and construction [sic] contracts to include the approved scope of work that is in the new Measure I contract.

District Response to FCMAT Recommendation #2

To the extent this recommendation refers to construction management contracts, the District notes this recommendation is inconsistent with the earlier recommendation that the District consider terminating the construction management services contract and selecting an outside firm that is not associated with the program manager to provide adequate program accountability. The District will consider the renegotiation of terms of those contracts within the parameters of the existing contracts and in coordination with all other review and analysis activities as specified in this response.

Proposed Timeline for Further Action/Response by District: To be completed by District no later than October 31, 2017.

FCMAT Recommendation #3

The District should include a not-to-exceed maximum fee in a renegotiated contract.

District Response to FCMAT Recommendation #3

Acknowledged. The renegotiation of terms will take place within the parameters of the existing contracts and in coordination with all other review and analysis activities as specified in this response.

Proposed Timeline for Further Action/Response by District: To be completed by District no later than October 31, 2017.

FCMAT Recommendation #4

The District should include a list of projects in the contracts.

District Response to FCMAT Recommendation #4

Acknowledged. At its January 2017 Regular Meeting, the Governing Board approved a list of projects for both Measure J and Measure I. The renegotiation of terms to include the list of projects will take place within the parameters of the existing contracts and in coordination with all other review and analysis activities as specified in this response.

Proposed Timeline for Further Action/Response by District: To be completed by District no later than October 31, 2017.

4. Construction Management Services Contracts – Performance Issues

FCMAT Recommendation #1

The District should require the submittal of monthly schedule reports according to the contract.

District Response to FCMAT Recommendation #1

Acknowledged. No later than August 4, 2017, the District will make a written request to Del Terra for all monthly schedule reports required by the contracts with a response return date of no later than August 25, 2017.

Proposed Timeline for Further Action/Response by District: The Board will provide an update on this action and receipt of the requested documents at a Regular Board Meeting no later than October 31, 2017.

FCMAT Recommendation #2

The District should require Del Terra to forward all documents and plans to the district upon completion of all projects, including past projects.

District Response to FCMAT Recommendation #2

Acknowledged. No later than August 4, 2017, the District will make a written request to Del Terra for all monthly schedule reports required by the contracts with a response return date of no later than October 31, 2017.

Proposed Timeline for Further Action/Response by District: The Board will provide an update on this action and receipt of the requested documents at a Regular Board Meeting no later than September 30, 2017.

5. Construction Management Services Contracts – Substantive Testing

FCMAT Recommendation #1

The District should require that all invoices submitted for payment include the project reference or name and job code prior to making payments.

District Response to FCMAT Recommendation #1

The District has already implemented this recommendation .

Proposed Timeline for Further Action/Response by District: No further action necessary; the Board will report on the status of this item at a Regular Board Meeting no later than October 31, 2017.

FCMAT Recommendation #2

The District should ensure that all purchase orders or contracts are approved in advance of any work that is performed.

District Response to FCMAT Recommendation #2

Acknowledged, as to those purchase orders and contracts in excess of the Superintendent's contracting authority, and consistent with Board Policies including but not limited to Board Policy 3312 (to be a valid or enforceable obligation against the district, all contracts must be approved and/or ratified by the Board). The Superintendent will be directed to issue a reminder bulletin and advisory to staff regarding such requirements.

Proposed Timeline for Further Action/Response by District: The Board will report on the status of this item at a Regular Board Meeting no later than October 31, 2017.

B. INTERNAL CONTROL DEFICIENCIES

FCMAT Recommendation #1

The District should establish a culture of trust in the district. The tone at the top is essential to fostering a culture of ethical behavior. Governing board members and administrators should demonstrate a high moral and ethical example by gaining a thorough understanding of established policies and operational procedures and adhering strictly to them. The duties and responsibilities of staff members in each department should be segregated as well as those of supporting employees who are responsible for enforcing established policies.

Response to FCMAT Recommendation #1

The Board is committed to maintaining and fostering a culture of trust and ethical behavior at all levels of the District's operations. Board Bylaws 9000 (Role of the Board) and 9005 (Governance Standards) adopted by the Board provide guidance on how to fulfill the Board's major responsibilities, including that Board members are expected to govern responsibly and hold themselves to the highest standards of ethical conduct. The annual Board retreat will include training and updates on Board Bylaws including the role of Board members. Training will also be provided to District staff at all appropriate levels.

Proposed Timeline for Further Action/Response by District: The training and updates will be provided at a Board retreat to be scheduled by the Board.

FCMAT Recommendation #2

The District should regularly review and update board policies and administrative regulations to ensure they remain relevant and reflect the latest statutory requirements and district objectives.

Response to FCMAT Recommendation #2

Board Bylaw 9310 provides the framework for the development and adoption of Board policies. The District will follow the framework within Bylaw 9310 and, beginning immediately, review and update all policies to reflect changes in the law since last adoption.

Proposed Timeline for Further Action/Response by District: On-going.

FCMAT Recommendation #3

The District should ensure employees are aware of board policies and that policies remain accessible for public and staff reference.

Response to FCMAT Recommendation #3

The District's policies and administrative regulations are posted and have been available on the District's website. (<http://www.arusd.org/Page/25>) District staff will be notified and reminded of the importance and need to review and abide by District policies and administrative regulations and will be provided with necessary trainings.

Proposed Timeline for Further Action/Response by District: No further action necessary.

FCMAT Recommendation #4

The District should establish regular training on the identification and prevention of fraudulent activity for all staff.

Response to FCMAT Recommendation #4

The District will research available trainings and training providers and will provide staff with appropriate trainings during the 2017/2018 school year.

Proposed Timeline for Further Action/Response by District: Training to be implemented in the 2017/2018 fiscal year.

FCMAT Recommendation #5

The District should, before any payment of contractors from bond funds, secure all bid documents or contracts that were prepared by the Del Terra Group and ensure that the proper bid documents are on file at the district.

Response to FCMAT Recommendation #5

No later than August 4, 2017, the District will make a written request to Del Terra for all project files and documents per the contract terms and requirements.

Proposed Timeline for Further Action/Response by District: The Board will report on the status of this item at a Regular Board Meeting no later than October 31, 2017.

FCMAT Recommendation #6

The District should ensure that any changes to the terms and conditions of contracts, purchase orders or other documents approving payments are completed in writing with the appropriate notifications to staff and departments.

Response to FCMAT Recommendation #6

District Administration will issue an administrative bulletin staff to notify and remind staff that any changes to the terms and conditions of contracts, purchase orders or other documents approving payments are completed in writing with the appropriate notifications to staff and departments.

Proposed Timeline for Further Action/Response by District: Administrative bulletin to be issued no later than August 18, 2017.

FCMAT Recommendation #7

The District should hold an orientation meeting between incoming and outgoing business positions including but not limited to the assistant superintendent and director of facilities positions to ensure continuity in the transition.

Response to FCMAT Recommendation #7

Acknowledged.

Proposed Timeline for Further Action/Response by District: No further action required at this time.

FCMAT Recommendation #8

The District should retain the appropriate records as required by law. Documents containing information relating to property, activities, financial condition or transactions are defined as Class 1 - Permanent Records in accordance with Title 5, California Code of Regulations, Section 16023. The original or one exact copy, unless microfilmed, of these records is required to be retained indefinitely.

Response to FCMAT Recommendation #8

The District has been implementing a document imaging program as part of its document retention and filing system. The District will comply with all document retention legal requirements pertaining to the District's bond program records.

Proposed Timeline for Further Action/Response by District: No further action required.

C. CONFLICTS OF INTEREST

FCMAT Recommendation #1

The District should develop a process to evaluate consultants or independent contractors and whether they should be required to file a Form 700. Obtain Form 700 from designated consultants or independent contractors within 30 days of their hire date or contract termination, and on an annual basis as applicable.

District Response to FCMAT Recommendation #1

Acknowledged. The District will develop a process for such evaluation of consultants and independent contractors and present such recommended process to the Board.

Proposed Timeline for Further Action/Response by District: The Board will provide an update on this item no later than October 31, 2017.

FCMAT Recommendation #2

The District should exercise its authority to question designated employees and members of the board regarding outside activities or financial interests included in Government Code Sections 1090 and 1126.

District Response to FCMAT Recommendation #2

The District's Conflict of Interest Code is contained in Board Bylaw 9270 to which all Board members and designated employees and consultants are required to adhere. The District will exercise its authority to "question" designated employees and members of the board regarding outside activities or financial interests within the limits prescribed by the law.

Proposed Timeline for Further Action/Response by District: No further action or response required.

FCMAT Recommendation #3

The District should ensure that all new employees, consultants and elected or appointed board members who are in the designated classifications that require them to complete form 700 do so and submit the form within 30 days of taking\leaving office or employment, and on an annual basis as applicable.

District Response to FCMAT Recommendation #3

The District's Conflict of Interest Code is contained in Board Bylaw 9270. Bylaw 9270 provides that all new employees, consultants and elected or appointed board members who are in the designated classifications are required to file Form 700 statements. Bylaw 9270 provides that:

“Board members and designated employees shall annually file a Statement of Economic Interest/Form 700 in accordance with the disclosure categories specified in the district's conflict of interest code. A Board member who leaves office or a designated employee who leaves district employment shall, within 30 days, file a revised statement covering the period of time between the closing date of the last statement and the date of leaving office or district employment.”

Bylaw 9270E provides that “Governing Board members and designated employees shall file statements of economic interests/Form 700 in accordance with the disclosure categories listed in the Appendix” and that “statements of economic interests shall be filed with the district's filing official.” The Board's Bylaw 9270 was last amended and updated in November 2016. District staff typically receives alerts from the County regarding missing Form 700 statements. The District will implement a notification and reminder system to ensure the timely filing of form 700s for all new employees, consultants and elected or appointed board members.

Proposed Timeline for Further Action/Response by District: Effective immediately.

FCMAT Recommendation #4

The District should ensure that the district's elected officials, administration and designated employees complete ethics training regarding the roles and responsibilities of public officials in relation to conflicts of interest and the Fair Political Practices Act.

District Response to FCMAT Recommendation #4

Pursuant to AB 1234, cities, counties and special districts in California are required by law to provide ethics training to their local elected officials; but the law does not apply to school district officials. On-line ethics training modules and resources are available through the Fair Political Practices Commission and other sources, although they are not directed specifically at school districts. The Board will consider adopting mandatory ethics training for the district's elected officials, administration and designated employees every two years.

Proposed Timeline for Further Action/Response by District: The Board will consider implementing mandatory training no later than December 31, 2017.

D. REPORTING REQUIREMENTS FOR NONVOTER-APPROVED DEBT

In June 2010, the District issued \$25,000,000 in Certificates of Participation to fund the modernization, equipping, furnishing and improvement of the San Antonio Elementary School facilities. The San Antonio school serves and enrollment of approximately 422 students. One hundred percent of the interest on the COPs (\$16,179,500) was supposed to be covered by the Federal Qualified School Construction Bonds (QSCBs) subsidy. (QSCBs are low-to-no interest bonds that school districts can obtain and utilize the proceeds for building renovations, repairs and construction of district facilities.) However, due to sequestration at the Federal level which result in 8.7% decrease in federal subsidy starting in fiscal year 2012-13, the District had to burden \$1,179,255 in interest cost over the life of the debt.

Since QSCB's are low-to-no interest, districts can then redirect interest savings on such QSCB's towards the district's education program and professional development of teachers instead of having to spend general fund monies towards interest costs.

In its Audit Report, FCMAT finds that the District did not prepare and submit to the SCCOE the COPs disclosures required under Education 17150.1. The District disputes this finding. District and COE records contain evidence that the COPs disclosures were provided to the COE in 2009, and that the District engaged in on-going discussions with the COE regarding the COPs from October 2009 through May 2010. Moreover, in connection with the COPs transaction the District received all required written legal opinions of its bond/transaction counsel that the transaction Trust Agreement and other specified issuance documents were "duly and validly authorized, executed and delivered by the District" and that other transaction documents and agreements."

FCMAT also notes that it "has serious concerns about the District's ability to repay the COPs without affecting the District's unrestricted general fund" and, FCMAT states, "the debt service payments pose a serious threat to the district's ongoing fiscal solvency." That finding ignores material information provided by the District to FCMAT, and other publicly available information, that the District has a sound plan to repay the COPs without any threat to the District's general fund.

Based on the information below, the District asserts that the remainder of the FCMAT findings in this section are based on inaccurate and/or incomplete information and are unfounded.

1. In connection with the FCMAT fieldwork, the District presented to FCMAT auditors and consultants a Repayment Plan for repayment of the COPs, including sources of funds. A copy of the materials provided to the FCMAT representatives is attached as Appendix 1. The Repayment Plan identifies the District's Fund 21 as the source of repayment funds for the period 2016/2017 – 2022/2023, Funds 21 and 35 as the source of funds for repayment for the 2023/2024 fiscal year, and Fund 35 as the source of repayment for fiscal years 2024/2025 and 2025/2026. Funds

21 and 35 are restricted capital accounts, and thus the repayment plan presented by the District showed that repayment would occur without impact or threat to the District's general fund.

2. The FCMAT Report (at page 64) understates the projected remaining COPs principal balance as of June 2020 by more than \$1.4 million. According to the District's calculations, the District's remaining obligation for the COPS repayment from June 1, 2020 through 2026 would be \$18,326,227, not \$17,665.884 (i.e., FCMAT's calculation was lower than the actual remaining debt obligation).
3. In the District's Board-approved 2017-18 Budget (which is posted on the District's website), the ending balance for Fund 21 on June 30, 2018 is projected to be \$26,981,964 (see District's approved 2017-2018 Budget, July 1 Budget Building Fund, Expenditures by Function (Form 21) (Budget page 103 of 233 (<http://www.arusd.org/cms/lib7/CA01001158/Centricity/Domain/14/2017-18%20Budget%202016-17%20Estimated%20Actuals.pdf>)), and for Fund 35 is \$7,377,138 (see 2017-2018 Budget, July 1 Budget Building Fund, Expenditures by Function (Form 35) (at page 124 of 233)). Thus, the total projected combined ending balances for Funds 21 and 35 is \$34,359,102, which is substantially more than the estimated COPS repayment of \$23,314,393.
4. The District's Funds 21 and 35 are restricted capital facilities funds. Based on this information, the District's repayment plan is sound and the repayment can and will be accomplished without impacting the District's unrestricted General Fund.
5. The proceeds from the COPs have not been used for the District's general operating purposes of the district, and FCMAT has not presented any information that such uses has ever occurred.
6. The District disputes FCMAT's statements that it has "serious reservations about the district's ability to repay the COPS without affecting the unrestricted general fund" and that "[a]s a result, the debt service payments pose a serious threat to the district's ongoing fiscal solvency." (FCMAT Report at p. 64.) As demonstrated above and in the supporting attachments, the District's approved 2017-18 Budget provides for repayment from Funds 21 and 35, both of which are restricted capital facilities accounts and whose combined balances substantially exceed the COPs obligation. The District has presented a sound repayment plan with no impact on the unrestricted General Fund and, therefore, there is no identifiable threat to the district's fiscal solvency from the COPs repayment.

FCMAT Recommendation #1

The District should complete the project closeout process for the San Antonio Elementary School project with the OPSC to ensure the first three years of debt service payments on the COPs can be made with the state aid received as a reimbursement for this project

District Response to FCMAT Recommendation #1

On April 4, 2017, the District received written notification from the Office of Public School Construction (OPSC) that the project “is considered closed” and OPSC has issued its final report on the project. A copy of the OPSC notification is included as Appendix 2. In addition, the Department of General Services/DSA website specifies that the San Antonio school project was closed and certified by DSA on January 9, 2012. A copy of the webpage specifying the project certification is attached as Appendix 3.

Proposed Timeline for Further Action/Response by District: No further action is necessary.

FCMAT Recommendation #2

The District should develop a long term-strategy to budget for debt service payments on the COPs after state aid for the San Antonio Elementary School project is exhausted.

District Response to FCMAT Recommendation #2

The District has developed a long-term strategy to budget for debt service payments on the COPs after state aid for the San Antonio Elementary School project is exhausted. As demonstrated above, the District’s strategy is pay such long term debt service from the District’s Fund 21 and Fund 35, both of which are restricted capital facilities accounts.

Proposed Timeline for Further Action/Response by District: No further action necessary.

FCMAT Recommendation #3

The District should adopt a comprehensive written debt management policy and administrative regulation that conforms to the requirements of both SB 1029 and the Government Finance Officers Association’s published best practices.

District Response to FCMAT Recommendation #3

On May 11, 2017, the District’s Governing Board approved Resolution #2016/2017 – 17 Approving a Debt Issuance and Management Policy in Accordance with SB 1029. A copy of Resolution #2016/2017 – 17 and the approved policy is attached as Appendix 4.

Proposed Timeline for Further Action/Response by District: No further action necessary.

FCMAT Recommendation #4

The District should review existing policies in the 3000, 7000 and 9000 series for existing references to debt or bonds that might be removed in light of adoption of a single comprehensive policy.

District Response to FCMAT Recommendation #4

Acknowledged. A review of the policies is underway by staff.

Proposed Timeline for Further Action/Response by District: To be completed by District no later than October 31, 2017.

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On behalf of the District, the Board looks forward to resolving these issues for the benefit of the entire District community.

Sincerely,



Khanh Tran

Board President

On behalf of the Governing Board of the
Alum Rock Union Elementary School District

cc: Tom Torlakson, Superintendent of Public Instruction
Governing Board Members
Hilaria Bauer, Ph.D., Superintendent

Hilaria Bauer, Ph.D., Superintendent

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

APPENDIX 1

**Alum Rock Union Elementary School District
Taxable Certificates of Participation**

	2010 COP
	Series A
Original Note	\$ 25,000,000
Net of Issuance Cost	20,885,500
Issued Date	June 2010
Maturity Date	<u>June 1, 2026</u>

Principal Repayments

2016-17	2,270,000
2017-18	2,270,000
2018-19	2,270,000
2019-20	2,270,000
2020-21	2,270,000
2021-22	2,275,000
2022-23	2,275,000
2023-24	2,275,000
2024-25	2,275,000
2025-26	<u>4,550,000</u>
Total Principal	25,000,000

Interest Payments

2016-17	1,367,500
2017-18	1,243,331
2018-19	1,119,162
2019-20	994,993
2020-21	870,824
2021-22	746,655
2022-23	622,213
2023-24	497,770
2024-25	373,328
2025-26	<u>248,885</u>
Total Interest	8,084,660

NOTE A

<u>118,973</u>
108,170
97,367
86,564
75,762
64,959
54,132
43,306
32,479
<u>21,653</u>

Total Amount	Sources of Funds
2,388,973	Fund 21
2,378,170	Fund 21
2,367,367	Fund 21
2,356,564	Fund 21
2,345,762	Fund 21
2,339,959	Fund 21
2,329,132	Fund 21
2,318,306	Fund 21 and Fund 35
2,307,479	Fund 35
<u>4,571,653</u>	Fund 35
25,703,365	

<p>NOTE A: 8.7% decrease in federal subsidy. See US Bank letter dated</p>
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APPENDIX 2

April 4, 2017

Application No.: 50/69369-00-008
School: Alum Rock Union Elementary
County of Santa Clara

Dr. Hilaria Bauer
District Representative
Alum Rock Union Elementary School District
2930 Gay Avenue
San Jose, CA 95127

Dear Ms. Harrington:

The Office of Public School Construction (OPSC) has completed its review of San Antonio Elementary, OPSC application number 50/69369-00-008. Review of the District's project financing, expenditures, and certifications to ensure compliance pursuant to Education Code Sections 17072.35, 17074.25, and 17076.10 and School Facility Program (SFP) Regulation Section 1859.106 was conducted. In addition, the review examined the District's compliance with applicable SFP Regulations in effect when the funding application was received by OPSC, dated October 30, 2009.

The project is a non-financial hardship, new construction project that was funded on a 50 percent State and 50 percent District basis. The project has expended funds beyond the SFP grant and is considered overspent.

OPSC has received the signed *Summary of Project Financing and Expenditures* dated March 13, 2017 from the District. As the District has concurred with the review findings in the *Summary of Project Financing and Expenditures*, the project is considered closed. Enclosed is the final report.

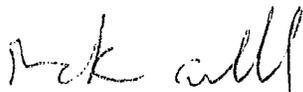
This final report includes the:

1. Summary of Project Financing and Expenditures and Supporting Schedules
2. State Allocation Board Apportionment Approval
3. Division of the State Architect Plan Approval
4. California Department of Education Final Plan Approval

In order to promote School Facility Program transparency, this report will be posted to our website.

Thank you for your assistance and cooperation during the review process. Should you have any questions concerning this report, you may call the Fiscal Services Unit at (916) 376-1771.

Sincerely,



RICK ASBELL, Chief, Fiscal Services
Office of Public School Construction

Enclosure

cc: Kolvira Chheng; Assistant Superintendent of Business Services
Santa Clara County Office of Education
Project file

Summary of Project Financing and Expenditures

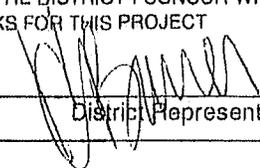
District Name: Alum Rock Union Elem
 School: San Antonio Elem
 County: Santa Clara
 SFP Application Number: 50/69369-00-008
 LPP Application Number: _____
 Date: March 3, 2017

Line			
1	LPP State Apportionment	1	\$ -
2	SFP State Apportionment	2	\$ 7,217,949
3	Financial Hardship Apportionment	3	\$ -
4	District Contribution	4	\$ 7,217,949
5	Interest	5	\$ 85,434
6	Total Project Funding	6	\$ 14,521,332
7	Reported Expenditures	7	\$ 19,527,063
8	Reported Savings/Overspent	8	\$ 5,005,731
9	Grant Adjustments	9	\$ -
10	Total Review Adjustments	10	\$ 366,383
11	Revised Expenditures	11	\$ 19,160,680
12	Net Overspent	12	\$ 4,639,348
13	Interest Due	13	\$ -
14	Total to be Returned to the State	14	\$

Explanations:

These are the final authorized amounts needed to bring the District's accounting records into compliance. Amounts shown supersede all authorized amounts shown on the Office of Public School Construction Fund Release documents.

ON BEHALF OF THE DISTRICT I CONCUR WITH THIS ANALYSIS AND REQUEST THAT THE OFFICE OF PUBLIC SCHOOL CONSTRUCTION CLOSE ITS BOOKS FOR THIS PROJECT


3/13/17

 District Representative Date

**Schedule
Review Adjustments**

District Name: Alum Rock Union Sch
 School: San Antonio Elem
 County: Santa Clara
 SFP Application Number: 50/69369-00-008
 LPP Application Number: _____
 Date: March 3, 2017

	A	B	C	D
Line	Reported Amount	Verified Amount	Difference (A-B)	Comments
1	\$ 290,700	\$ -	\$ 290,700	Architect Fees
2	\$ 1,134	\$ -	\$ 1,134	Architect Fees
3	\$ 300	\$ -	\$ 300	Site Other Fees
4	\$ 300	\$ -	\$ 300	Site Other Fees
5	\$ 300	\$ -	\$ 300	Site Other Fees
6	\$ 289,242	\$ 215,593	\$ 73,649	CM Fees
7	Total Audit Adjustments: \$			366,383

Explanations:

Line 1 & 2

The District reported \$290,700 and \$1,134 in architect fees paid to NTD architect. District could not provide detail or supporting documentation for the expenditure. Per School Facility Program (SFP) Regulation Section 1859.106, "Districts shall be required to maintain all appropriate records that support all district certifications and expenditures for all costs associated with SFP projects ... for a period of not less than four years from the date the notice of completion is filed for the project in order to allow other agencies, including without limitation, the Bureau of State Audits and the State Controller to perform their audit responsibilities." Expenditures are ineligible.

Line 3- 5

The District reported a total of 3 expenditures totaling \$900 paid to Old Republic Title Company for title report. Expenditures cannot be verified for the project. Per SFP Regulation Section 1859.106, The project will be audited to assure that the expenditures incurred by the district were made in accordance with the provision of Education Code Section 17072.35 for new construction projects. Expenditures are ineligible.

Line 6

The District reported \$289,242 in construction management fees. The District could not provide final billing. Per School Facility Program (SFP) Regulation Section 1859.106, "Districts shall be required to maintain all appropriate records that support all district certifications and expenditures for all costs associated with SFP projects ... for a period of not less than four years from the date the notice of completion is filed for the project in order to allow other agencies, including without limitation, the Bureau of State Audits and the State Controller to perform their audit responsibilities." The auditor was able to verify \$215,592.69 in CM fees. The difference of \$73,648.90 is ineligible.



State of California • Arnold Schwarzenegger, Governor
State and Consumer Services Agency

DGS DEPARTMENT OF GENERAL SERVICES

Division of the State Architect - Oakland Office

10/29/2009 - APPROVAL OF PLAN(S)

MR. Jose L. Manzo
ALUM ROCK UNION ELEMENTARY SCHOOL DISTRICT
2930 GAY AVENUE
SAN JOSE 95127-2398

Project: SAN ANTONIO ES
Total Scope of Project: Construction of 1-Classroom Building, 1-Multi-purpose Building, 1-Administration Building, 1-Kindergarten Building
Increment #: 0
Application #: 01-110885
File #: 43-4

Drawings and specifications for the subject project have been examined and stamped by the Division of the State Architect (DSA) for identification on 10/29/2009. This letter constitutes the "written approval of the plans as to safety of design and construction" required before letting any contract for construction, and applies only to the work shown on these drawings and specifications. The date of this letter is the DSA approval date.

Approval is limited to the particular location shown on the drawings and is conditioned on construction starting within one year from the stamped date. The inspector must be approved and the contract information, including the construction start date, must be given to DSA prior to start of construction.

DSA does not review drawings and specifications for compliance with Parts 3 (California Electrical Code), 4 (California Mechanical Code), and 5 (California Plumbing Code) of Title 24. It is the responsibility of the professional consultants named on the application to verify this compliance.

Please refer only to the boxes checked below which indicate applicable conditions specific to this project:

- Buildings constructed in accordance with approved drawings and specifications will meet minimum required standard given in Title 24, California Code of Regulations, for structural, and fire and life safety.
- Due to the nature of the building(s), certain precautions considered necessary to assure long service have not been required. In the condition as built, the building(s) will meet minimum required standards for structural, and fire and life safety. The owner must observe and correct deterioration in the building in order to maintain it in a safe condition.
- Your attention is drawn to the fact that this application was submitted under the provisions of Sections 39140/81130 of the Education Code which permit repairs or replacement of a fire damaged building to be made in accordance with the drawings and specifications previously approved by this office. The drawings and specifications approved for the reconstruction of this building conform to the drawings and specifications approved under application # _____.
- These drawings and specifications meet the rules, regulations, and building standards in effect at the time of the original approval and do not necessarily comply with rules, regulations, or building standards currently in effect.
- Due to the nature of the poles, certain precautions considered necessary to assure long service have not been insisted upon. In their condition as built, they will meet minimum required safety standards; however, your attention is directed to the comparatively short life of wood poles. It will be the responsibility of the owner to maintain them in a safe condition.

Application #: 01-110885

File #: 43-4

- Bleachers or grandstands constructed in accordance with approved drawings and specifications will meet minimum required standards for structural, and fire and life safety. The owner should provide for and require periodic safety inspections throughout the period of use to ensure framing and other parts have not been damaged or removed. On bleachers or grandstands having bolts, locking or safety devices, the owner shall require that all such components be properly tightened or locked prior to each use.
- This approval is for the part shown only since the drawings and specifications for the proposed work include only the portion of the building to be partially constructed on the subject site. It is understood that a separate application will be subsequently filed, together with drawings and specifications showing a plot plan and details of work necessary for completion. A contract for completion shall not be let before the written approval of such drawings has been obtained from the Department of General Services.
- The building(s) was designed to support a snow load of _____ pounds per square foot of roof area. Snow removal must be considered if the amount of snow exceeds that for which the building(s) was designed.
- This constitutes the written approval certifying that the drawings and specifications are in compliance with State regulations for the accommodation of the disabled which are required before letting any contract for construction. (See Section 4454, Government Code.)
- Your application for the construction of a relocatable building submitted under the provisions of Section 17293 of the Education Code is hereby approved. This approval certifies that the drawings and specifications are in compliance with state regulations for accommodation of the disabled, structural safety, and fire and life safety. This approval applies only to the drawings and specifications for the foundation system, anchorage of the overhead nonstructural elements, and site work related to this project. Documentation has been received indicating that the building was constructed after December 19, 1979, and bears a commercial coach insignia of approval from the Department of Housing and Community Development (HCD). Confirmation that the construction of the HCD building conforms to the appropriate state regulations is done by others. (See Section 17307, Education Code and Section 4454, Government Code.)
- Deferred Approval(s) Items:
Skylights, Automatic Fire Sprinkler Systems, Elevator Guide Rails and Support Bracket Anchorage, Basket ball backstop.

This Project has been classified as **CLASS 1**. An Inspector who is certified by DSA to inspect this class of project must be approved by DSA prior to start of construction.

Please refer to the above application number in all correspondence, reports, etc., in connection with this project.

Sincerely,



Digitally signed by NAT CHAUHAN
DN: st=CA, l=OAKLAND, o=California Department of
General Services, ou=Division of the State Architect,
ou=www.verisign.com/registry/CPS Incorp. by Ref.,
LIAB.LTD(c)99, ou=Registered Engineer License
Number - S1744, title=DSA OAKLAND REGIONAL
MANAGER, cn=NAT CHAUHAN, email=nat.
chauhan@dgs.ca.gov
Date: 2009.10.29 11:30:07 -0700

for David F. Thorman, AIA
State Architect

cc:
Architect



CALIFORNIA
DEPARTMENT OF
EDUCATION

JACK O'CONNELL
STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

October 27, 2009

Alum Rock Union Elementary
2930 Gay Ave.
San Jose, CA 95127

Project Tracking No: 69369-44
Re: San Antonio Elementary School, Phase I
County: Santa Clara
Square Feet: 40,528
Grade Level: K - 6

Dear Superintendent:

Subject: Final Plan Approval - New Buildings

The California Department of Education approves the plans with the title sheet date of August 18, 2009, for the above referenced project. The plans were received on October 1, 2009. The plans meet the California Department of Education's standards for educational adequacy (California Code of Regulations, Title 5, et seq. and Education Code 17251(c) and (d)).

It is the responsibility of the school district to meet all requirements concerning toilet facilities, drinking water supply, sewage disposal, food service facilities and other plan elements having primary health and safety implications. The plans should be reviewed by the local health agency having jurisdiction and a written approval should be secured and filed in the school district's records. If the approved project involves work on an existing school building, it is the responsibility of the school district to meet all Federal, State and local requirements relating to the identification, remediation and/or removal of hazardous levels of lead and asbestos containing materials before or during construction. It is the responsibility of the district to complete all of the mitigation measures identified in the documents submitted to the California Department of Education for review.

The school site for this project is 5.36 usable acres. This represents 54.14% of the California Department of Education's recommended site size of 9.9 acres, as contained in the California Department of Education's "Guide to School Site Analysis and Development(2000)," for the current CBEDS enrollment of the site and the student capacity added by this project as calculated pursuant to SAB Regulation 1859.83(d).

The California Department of Education's recommended acres for the master plan capacity of the site is 14.7 acres, to be used for purposes of requesting funding from the State Allocation Board pursuant to SAB Regulations 1859.73, related to multi-story construction, and 1859.76(a)11, related to parking structures. This site is 36.46% of the California Department of Education's recommended master plan site size.

The project as approved consists of:

<u>TEACHING STATIONS</u>	<u>GRADE LEVEL</u>	<u>ROOMS</u>	<u>STUDENTS</u>
Classrooms	1 - 6	19	475
Kindergartens	Kindergarten	2	50
Non-severe Special Education	Special Education Non-Severe	1	13

22

Based on the standards specified in Education Code 17071.25 and the number of teaching stations in the project, the student capacity of this project is 538.

CORE FACILITIES:

Administration Multi-Purpose Storage
Toilets

The district has certified that this project is either exempt from, or has completed, the California Environmental Quality Act (CEQA) process.

The district has indicated to the California Department of Education that this is a minor addition project that is eligible for a statutory or categorical exemption under the CEQA. The completion of a Phase I Environmental Site Assessment (ESA) and/or Preliminary Endangerment Assessment and review by the Department of Toxic Substances Control is not required for this project per Education Code 17268(c).

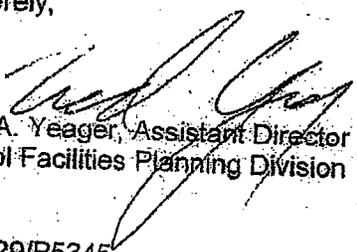
For projects to be funded under the Leroy F. Greene School Facility Act of 1998, funding requests to the State Allocation Board must be submitted within two (2) years of the date of this letter. If the district is not seeking financial assistance from the State Allocation Board, the project must commence construction within two (2) years of the date of this letter. Regardless of the funding source, if, prior to construction, changes are made to the plans that would affect or alter the California Department of Education's original approval (including but not limited to changes in surrounding land uses, the master plan capacity of the project, changes in code and/or regulation, or a subsequent CEQA determination), the plan may be subject to reevaluation using the most recent standards.

Alum Rock Union Elementary
October 27, 2009
Page 3

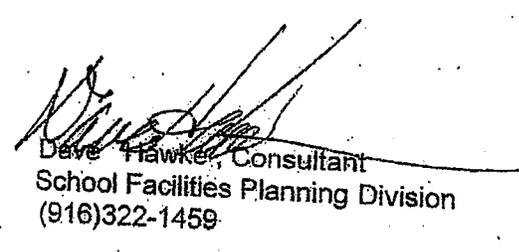
PTN: 69369-44
San Antonio Elementary School, Phase I

Please contact the consultant identified below if you have questions regarding this letter.

Sincerely,



Fred A. Yeager, Assistant Director
School Facilities Planning Division



Dave Hawke, Consultant
School Facilities Planning Division
(916)322-1459

DP6129/P5345
cc: Architect

APPENDIX 3



Project Certification Status

Office ID:01

Application #:110885

File #:43-4

Project Name:San Antonio Es

Project Scope: Construction of 1-Classroom Building, 1-Multi-purpose Building, 1-Administration Building, 1-Kindergarten Building

Field Engineer:

Engineer
Recomm. Date:

Void/Canceled
Date:

90 Day Letter
Date:

90 Day Exp. Date:

90 Day Ext. Date:

Ext. 90 Day Exp.
Date:

60 Day Letter
Date:

60 Day Exp. Date:

60 Day Ext. Date:

Ext. 60 Day Exp.
Date:

Last Certification
Date:

Last Certification
Letter Type:

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APPENDIX 4

10.04

Office of Superintendent of Schools

ITEM REQUIRING ATTENTION - BOARD OF TRUSTEES

To the Board of Trustees:

Date: May 1, 2017

Subject: Resolution No. 54-16/17
A Resolution of the Board of Trustees of the Alum Rock Union Elementary School District Approving a Debt Issuance and Management Policy in Accordance with S.B. 1029

Staff Analysis:

Existing California law requires public agencies to provide information to the California Debt and Investment Advisory Commission ("CDIAC") no later than 30 days prior to the sale of the debt. Senate Bill 1029 ("S.B. 1029"), signed into law by Governor Brown on September 12, 2016, amends this law to place additional reporting obligations on issuers of debt. In part, S.B. 1029 requires that an issuer certify that it has adopted local debt policies concerning the use of debt and that the proposed debt issuance is consistent with the local debt policies. S.B. 1029 lists certain topics to be covered in the local debt policies.

The District expects to execute and deliver its Measure I bonds in 2017, and therefore must adopt a debt issuance and management policy in compliance with S.B. 1029. Bond counsel has assisted the District with preparing a debt issuance and management policy that is in compliance with S.B. 1029.

ACTION

Resolution No. 54/16/17 approves a debt issuance and management policy of the District that addresses the topics required to be covered pursuant to S.B. 1029.

Recommendation: Staff recommends approval of Resolution No. 54-16/17, a Resolution of the Board of Trustees of the Alum Rock Union Elementary School District Approving a Debt Issuance and Management Policy in accordance with S.B. 1029.

Approved by: Kolvira Chheng Title: Assistant Superintendent, Business Services

To the Board of Trustees: Meeting: May 11, 2017
Regular Board Meeting
Recommend Approval
10.04
Agenda Placement
Hilaria Bauer, Ph.D., Superintendent
ARUESD Board Approved 5/11/17

DISPOSITION BY BOARD OF TRUSTEES
Motion by: Esau Herrera Seconded by: Khank Tran
Approved: 3 Not Approved: 2 absent Tabled: Dolores Marquez
Karen Martin

RESOLUTION NO. 54-16/17

RESOLUTION OF THE BOARD OF TRUSTEES OF THE ALUM ROCK UNION ELEMENTARY SCHOOL DISTRICT APPROVING A DEBT ISSUANCE AND MANAGEMENT POLICY IN ACCORDANCE WITH S.B. 1029

WHEREAS, the State legislature has recently enacted Senate Bill 1029 (“S.B. 1029”), which bill amends Government Code Section 8855 to require that all public agencies certify, 30 days prior to the issuance of any debt, that it has adopted local debt policies addressing the topics set forth in Government Code Section 8855(i); and

WHEREAS, the Board of Trustees (the “Board”) of the Alum Rock Union Elementary School District (the “District”) expects to issue debt in the form of general obligation bonds pursuant to its Measure I authorization; and

WHEREAS, from time-to-time the District shall have the opportunity to consider other forms of debt issuance; and

WHEREAS, the Board desires to adopt a Debt Issuance and Management Policy in compliance with Government Code Section 8855;

NOW, THEREFORE, THE BOARD OF TRUSTEES OF THE ALUM ROCK UNION ELEMENTARY SCHOOL DISTRICT DOES HEREBY FIND, DETERMINE AND CERTIFY AS FOLLOWS:

Section 1. The Board finds and determines that the foregoing recitals are true and correct.

Section 2. The Board approves the Debt Issuance and Management Policy attached hereto.

Section 3. Officers of the Board are hereby authorized and directed, jointly and severally, to do any and all things and to execute and deliver any and all documents which they may deem necessary or advisable in order to give effect to and comply with the terms and intent of this Resolution. Such actions heretofore taken by such officers, officials and staff are hereby ratified, confirmed and approved.

ADOPTED, SIGNED AND APPROVED this 11th day of May, 2017.

BOARD OF TRUSTEES OF THE ALUM ROCK
UNION ELEMENTARY SCHOOL DISTRICT



President

ATTEST:



Secretary

STATE OF CALIFORNIA)
)ss
SANTA CLARA COUNTY)

I, _____, do hereby certify that the foregoing Resolution No. 54 was duly adopted by the Board of Trustees of the Alum Rock Union Elementary School District at a meeting thereof held on May 11, 2017 and that it was so adopted by the following vote:

AYES: 3

NOES: 0

ABSENT: 2 KAREN MADER & DOLORES MARQUEZ

ABSTENTIONS: 0

By: _____
 B. Bauer
 Secretary

ALUM ROCK UNION ELEMENTARY SCHOOL DISTRICT

DEBT ISSUANCE AND MANAGEMENT POLICY

This Debt Management Policy (the “Policy”) provides written guidelines for the issuance of indebtedness by the Alum Rock Union Elementary School District (the “District”) in satisfaction of the requirements of S.B. 1029, codified as part of Government Code Section 8855.

Article I

Purpose and Goals

This Policy provides a framework for debt management and capital planning by the District.

This Policy has been developed to meet the following goals:

- (1) Identifying the purposes for which the debt proceeds may be used.
- (2) Identifying the types of debt that may be issued.
- (3) Describing the relationship of the debt to, and integration with, the District’s capital improvement program or budget.
- (4) Establishing policy goals related to the District’s planning goals and objectives.
- (5) Implementing internal control procedures to ensure that the proceeds of the proposed debt issuance will be directed to the intended use upon completion of the issuance.

Article II

Purposes for Which Debt Proceeds May be Used

Section 2.01. Authority and Purposes of the Issuance of Debt

The laws of the State of California (the “State”) authorize the District to incur debt to make lease payments, contract debt, and issue bonds for school improvement projects. The District is authorized to contract debt to acquire, construct, reconstruct, rehabilitate, replace, improve, extend, enlarge, and equip such projects; to refund existing debt; or to provide for cash flow needs.

Section 2.02. State Law

Section 18 of Article XVI of the State Constitution contains the “debt limitation” formula applicable to the District.

There are a number of State laws that govern the issuance of general obligation bonds (“GO Bonds”) by school districts. Sections 1(b)(2) (Proposition 46) and 1(b)(3) of Article XIII A (Proposition 39) of the State Constitution allow the District to issue GO Bonds. The statutory authority for issuing GO Bonds is contained in Education Code Section 15000 *et seq.* Additional provisions applicable

only to Proposition 39 GO Bonds are contained in Education Code Section 15264 *et seq.* An alternative procedure for issuing GO Bonds is also available in Government Code Section 53506 *et seq.*

The statutory authority for issuing Tax and Revenue Anticipation Notes (“TRANS”) is contained in Government Code Section 53850 *et seq.* Authority for lease financings is found in Education Code Section 17455 *et seq.* and additional authority is contained in Education Code Sections 17400 *et seq.*, 17430 *et seq.* and 17450 *et seq.*, and Government Code Section 4217.10 *et seq.* The District may also issue Mello-Roos bonds pursuant to Government Code Section 53311 *et seq.*

Section 2.03. Debt Issued to Finance Operating Costs

The District may deem it necessary to finance cash flow requirements under certain conditions. Such cash flow borrowing must be payable from taxes, income, revenue, cash receipts and other moneys attributable to the fiscal year in which the debt is issued.

General operating costs include, but are not limited to, those items normally funded in the District’s annual operating budget.

The District’s Superintendent or Assistant Superintendent, Business Services, will review potential financing methods to determine which method is most prudent for the District. Potential financing sources include but are not limited to tax and revenue anticipation notes, temporary borrowing from the Santa Clara County Director of Finance, and temporary interfund borrowing.

Article III

Types of Debt That May be Issued

Section 3.01. Types of Debt Authorized to be Issued

A. Short-Term: The District may issue fixed-rate and/or variable rate short-term debt, which may include TRANS, when such instruments allow the District to meet its cash flow requirements. The District may also issue bond anticipation notes (“BANs”) to provide interim financing for bond projects that will ultimately be paid from GO Bonds.

B. Long-Term: Debt issues may be used to finance essential capital facilities, projects and certain equipment where it is appropriate to spread the cost of the projects over more than one budget year. Long-term debt should not be used to fund District operations.

Long term debt in the form of GO Bonds may be issued under Article XIII A of the State Constitution, either under Proposition 46, which requires approval by at least a two-thirds (66.67%) majority of voters, or Proposition 39, which requires approval by at least 55% of voters, subject to certain accountability requirements and additional restrictions.

The District may also enter into long-term leases and/or participate in the sale of certificates of participation or lease revenue bonds for public facilities, property, and equipment.

C. Lease/Equipment Financing: Lease-purchase obligations or appropriation leases are a routine and appropriate means of financing capital equipment and certain capital facilities. However, lease obligations may impact on budget flexibility.

D. Use of General Obligation Bonds: A significant portion of the District's capital projects are projected to be funded by GO Bond proceeds. Projects financed by the GO Bonds will be determined by the constraints of applicable law and the project list approved by voters.

Article IV

Relationship of Debt to and Integration with District's Capital Improvement Program or Budget

Section 4.01. Impact on Operating Budget and District Debt Burden

In evaluating financing options for capital projects, both short and long-term debt amortization will be evaluated when considering a debt issuance, along with the potential impact of debt service, and additional costs associated with new projects on the operating budget of the District. The cost of debt issued for major capital repairs or replacements may be judged against the potential cost of delaying such repairs.

Section 4.02. Capital Improvement Program

The Assistant Superintendent, Business Services and the facilities staff have responsibility for the planning and management of the District's capital improvement program subject to review and approval by the Board of Trustees. Staff will, as appropriate, supplement and revise any applicable facilities master plan in keeping with the District's current needs for the acquisition, development and/or improvement of District's real estate and facilities. Such plans may include a summary of the estimated cost of each project, schedules for the projects, the expected quarterly cash requirements, and annual appropriations, in order for the projects to be completed.

Section 4.03. Refunding and Restructuring Policy

A. Considerations for Refunding.

1. District's Best Interest. Whenever deemed to be in the best interest of the District, the District shall consider refunding or restructuring outstanding debt if it will be financially advantageous or beneficial for debt repayment and/or structuring flexibility.

2. Net Present Value Analysis. The District shall review a net present value analysis of any proposed refunding in order to make a determination regarding the cost-effectiveness of the proposed refunding.

3. Maximize Expected Net Savings. The District shall time the refinancing of debt to maximize the District's expected net savings over the life of the debt.

4. Comply with Existing Legal Requirements. The refunding of any existing debt shall comply with all applicable State and Federal laws governing such issuance.

Article V

Policy Goals Related to District's Planning Goals and Objectives

In following this Policy, the District shall pursue the following goals:

1. The District shall strive to fund capital improvements from voter-approved GO Bond issues to preserve the availability of its General Fund for District operating purposes and other purposes that cannot be funded by such bond issues.

2. To the extent applicable, the District shall endeavor to attain the best possible credit rating for each debt issue in order to reduce interest costs, within the context of preserving financial flexibility and meeting capital funding requirements.

3. The District shall take all practical precautions and proactive measures to avoid any financial decision that will negatively impact current credit ratings on existing or future debt issues.

4. The District shall, with respect to GO Bonds, remain mindful of its statutory debt limit in relation to assessed value growth within the school district and the tax burden needed to meet long-term capital requirements.

5. The District shall consider market conditions and District cash flows when timing the issuance of debt.

6. The District shall determine the amortization (maturity) schedule which will fit best within the overall debt structure of the District at the time the new debt is issued.

7. The District shall match the term of the issue to the useful lives of assets funded by that issue whenever practicable and economical, while considering repair and replacement costs of those assets to be incurred in future.

8. The District shall, when issuing debt, assess financial alternatives to include new and innovative financing approaches, including whenever feasible, categorical grants, revolving loans or other State/federal aid, so as to minimize the encroachment on the District's General Fund.

9. The District shall, when planning for the sizing and timing of debt issuance, consider its ability to expend the funds obtained in a timely, efficient and economical manner.

Article VI

Internal Control Procedures for Issuance of Debt to Ensure Intended Use of Proceeds

Section 6.01. Structure of Debt Issues

A. Maturity of Debt: The duration of a debt issue shall be consistent, to the extent possible, with the economic or useful life of the improvement or asset that the issue is financing. In addition, the average life of tax-exempt financing shall not exceed 120% of the average life of the assets being financed. The District shall also consider the overall impact of the current and future debt burden of the financing when determining the duration of the debt issue.

B. Debt Structure:

1. GO Bonds:

a. *New Money Bond Issuances*: For tax-exempt new money bond issuances, the District shall size the bond issuance consistent with the “spend-down” requirements of the Internal Revenue Code and, for all new money bond issuance, within any limits approved by the District’s voters. To the extent possible, the District will also consider credit issues, market factors (e.g. bank qualification) and tax law when sizing the District’s bond issuance.

b. *Refunding Bond Issuances*: The sizing of refunding bonds will be determined by the amount of money that will be required to cover the principal of, accrued interest (if any) on, and redemption premium for the bonds to be defeased on the call date and to cover appropriate financing costs.

c. *Maximum Maturity*: All bonds issued by the District shall mature within the limits set forth in applicable provisions of the Education Code or the Government Code. The final maturity of tax-exempt bonds will also be limited to the average useful life of the assets financed or as otherwise required by tax law.

d. *Taxable Bonds*: Taxable bonds shall be considered for funding projects which do not satisfy the “spend-down” requirements of the Internal Revenue Code.

2. Lease-Purchase Obligations: The final maturity of equipment or real property lease obligations will be limited to the useful life of the assets to be financed.

C. Debt Service Structure: The District shall design the financing schedule and repayment of debt so as to take best advantage of market conditions, provide flexibility, and, as practical, to recapture or maximize its debt capacity for future use.

Section 6.02. Use of Proceeds

The District shall be vigilant in using bond proceeds in accordance with the stated purposes at the time such debt was incurred. In furtherance of the policy, and in connection with the issuance of all GO Bonds:

1. As required by Government Code Section 53410, the District shall only use GO Bond proceeds for the purposes approved by the District’s voters; and

2. The Assistant Superintendent, Business Services shall have the responsibility, no less often than annually, to provide to the District’s Board of Trustees a written report which shall contain at least the following information:

(i) The amount of the debt proceeds received and expended during the applicable reporting period; and

(ii) The status of the acquisition, construction or financing of the school facility projects, as identified in any applicable bond measure, with the proceeds of the debt.

These reports may be combined with other periodic reports which include the same information, including but not limited to, periodic reports made to the California Debt and Investment Advisory Commission, or continuing disclosure reports or other reports made in connection with the debt. These requirements shall apply only until the earliest of the following: (i) all the debt is redeemed or defeased, but if the debt is refunded, such provisions shall apply until all such refunding bonds are redeemed or defeased, or (ii) all proceeds of the debt, or any investment earnings thereon, are fully expended.

3. The District shall post on the District website the Annual Report of the District’s Independent Bond Oversight Committee which has been given the responsibility to review the expenditure of GO Bond proceeds to assure the community that all GO Bond funds have been used for the construction, renovation, repair, furnishing and equipping of school facilities, and not used for teacher or administrator salaries or other operating expenses.

4. The District shall hire an independent auditor to perform an annual independent financial and performance audit of the expenditure of GO Bond proceeds, and to post such audits on the District website.

Alum Rock Union Elementary School District
Debt Issuance and Management Policy
Adopted on 5/11, 2017