



# ALUM ROCK UNION ELEMENTARY SCHOOL DISTRICT

2930 Gay Avenue, San José, CA 95127 · Phone: 408-928-6800 · Fax: 408-928-6416 · [www.arusd.org](http://www.arusd.org)

August 4, 2017

## **VIA CERTIFIED U.S. MAIL AND E-MAIL**

Luis Rojas (E-mail: [luis@delterra.com](mailto:luis@delterra.com))  
Del Terra Real Estate Services, Inc., dba Del Terra Group  
13181 Crossroads Parkway North Suite 540  
City of Industry, CA 91746

Re: **Alum Rock Union Elementary School District - Agreement for Additional Services; DSA Close Out Certification Services**

Dear Mr. Rojas:

Reference is made to that certain Agreement for Additional Services; DSA Close Out Certification Services" between the District and Del Terra Real Estate Services, Inc. ("Del Terra") dated May 8, 2014 (the "Agreement").

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. Pursuant to the Agreement, Del Terra covenanted to "provide its best skill and judgment in furthering the interests of District in the resolution of 'Open' and 'Closed without Certification' projects with DSA", and "to perform in a manner consistent with the interests of the District" (Agreement, Art. 1).

Pursuant to the Agreement the close-out services were to be performed from November 1, 2013 to June 30, 2015. (Agreement, Art. 1.1.) The District agreed to pay Del Terra \$7,275.00 per month during that time period (20 months) to perform the services. The District has made and paid all such amounts to Del Terra pursuant to the contract (totaling \$145,500.00). Article 4.2 of the Agreement provides that, "[u]nless extended by mutual written agreement, the services to be provided under this Agreement shall be completed no later than June 30, 2015."

Article 11 of the Agreement ("Ownership of Documents") provides:

"All work products, including without limitation, plans, drawings, specifications, estimates, reports, meeting minutes, general Product documentation and electronic files, prepared pursuant thereto shall be and remain the sole and exclusive property of the District."

Exhibit A, Section 2 of the Agreement ("Services to Be Performed") further provides, in part, that Del Terra would provide the following services:

- Work with District Administration and Staff, existing District design consultants and project inspectors to confirm the current status of each open DSA project. In addition,

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Hilaria Bauer, Ph.D., Superintendent

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Del Terra may utilize consultant services on a limited basis to control costs and mitigate redundancies.

- Assist and coordinate with architect(s) to close open District projects with DSA, ensure that contractor, consultants, testing and inspection laboratories provide verified reports, laboratory testing and special inspection documents, contract information DSA 102, DSA 6 forms, notice of completion, change order documentation final responses to Field Trip Notes (FTNs) from the DSA field engineer and any other additional documentation required to close these projects with DSA certification.
- Prepare a schedule of proposed actions to achieve DSA closeout certification and a tracking matrix that highlights the status of each project.
- Consult with DSA and review District documents, including project deviation and correction notices and change order files.
- Provide all administration, coordination, scheduling, tracking, budgeting, invoicing, attendance at meetings (District or otherwise), as needed to complete the provision of DSA Closeout Certification Services to the District.

Exhibit A, Section 2 further includes that Del Terra would provide “monthly reports that outline the status of each project and significant issues.”

The District has reviewed the March 23, 2017, “DSA Certification Status – Tracker” and “DSA Certification – Pre Tracker” reports prepared by Del Terra. The projects listed on the reports are color-coded, but the purpose and meaning of the color-coding is unclear. Nevertheless, the Tracker report notes on page 3 that “51 projects are Closed without Certification”.

The District has paid to Del Terra all fees specified in the Agreement. Pursuant to Article 11 and Exhibit “A” of the Agreement, this is to request that all work products, including without limitation, plans, drawings, specifications, estimates, reports, meeting minutes, general Product documentation and electronic files, prepared pursuant thereto in connection with the Agreement and the performance of services thereunder be delivered immediately to the District, along with all monthly reports, schedules of proposed actions and all tracking matrices prepared by Del Terra (including both draft and final schedules and matrixes) in connection with the Agreement. These materials must include all communications and submittals to DSA in connection with your performance of the services under the Agreement.

The District is the subject of a recent Extraordinary Audit dated June 9, 2017, by the Fiscal Crisis & Management Assistance Team (FCMAT). With regard to the Agreement, FCMAT recommended that the District require Del Terra 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, and require that the status 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 Del Terra 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. At a special meeting held on July 27, 2017, the District’s Governing Board acknowledged the FCMAT recommendations and the Board took an action to inform and respond to County Superintendent Jon Gundry that the District would notify Del Terra no later than August 4, 2017, to provide all deliverables, documents and work product in connection with Del Terra’s performance of the services specified in the Agreement, as

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Re: Alum Rock Union Elementary School District - Agreement for Additional Services; DSA Close Out Certification Services

Page 3 of 3

August 4, 2017

well as a spreadsheet detailing the status of all projects specified in the Agreement 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.

Consistent and in accordance with the Board's action, please provide the above- requested information and documents no later than August 18, 2017.

Finally, the District has received a letter from your attorney, G. Christian Roux, dated July 27, 2017, which includes some information regarding the Agreement. In the letter your attorney states that, with respect to the performance of the work under the Agreement, "the District acknowledged that it was unreasonable to expect Del Terra to continue to pursue close out without additional payment and agreed that Del Terra is no longer responsible to pursue this effort." Please provide us with all communications and writings showing the District's acknowledgement and the District's agreement to release Del Terra from its obligations under the Agreement.

Thank you for your cooperation and assistance. We look forward to working with Del terra on the orderly transfer of documents and information. Please feel free to contact me if you have any questions.

Sincerely,



Kolvira Chheng  
Assistant Superintendent of Business Services

cc: Hilaria Bauer, Ph.D., Superintendent

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

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