



CSIS California School Improvement System

Santa Clara County Office of Education

Extraordinary Audit of the Alum Rock Union Elementary School District

June 9, 2017

Joel D. Montero
Chief Executive Officer







CSIS California School Information Services

June 9, 2017

Jon Gundry, Superintendent
Santa Clara County Office of Education
1290 Ridder Park Drive
MC 201
San Jose, CA 95131

Dear Superintendent Gundry:

In December 2016, the Santa Clara County Office of Education and the Fiscal Crisis and Management Assistance Team (FCMAT) entered an agreement to conduct an AB 139 Extraordinary Audit of the Alum Rock Union Elementary School District in accordance with Education Code Section 1241.5 (b). The county superintendent received anonymous allegations regarding the district and has reason to believe that fraud, misappropriation of funds or other illegal practices may have occurred.

The county office requested that FCMAT review the policies, procedures, and internal controls for purchasing and contractual commitments at the district. Testing for the review period was originally scheduled to be from July 1, 2013 through November 30, 2016 and based on random sampling. However, because of areas of concern identified by FCMAT during its fieldwork, the review period was extended to March 31, 2017 and the sample size was expanded to include 100% of related transactions. The review results are intended to provide reasonable, but not absolute assurance regarding the accuracy of the district's financial transactions. Specifically, the agreement states that FCMAT will perform the following:

1. Evaluate policies, procedures and internal controls for purchasing, contractual commitments, and vendor payments. Sample selections will include, but not be limited to, documents related to bond program and construction management contracts.
2. Review sample selections of vendor payments and supporting documentation and verify compliance with established policy, procedures and applicable laws.

Specific audit objectives are outlined in the study agreement in Appendix C, which is attached to this report.

FCMAT

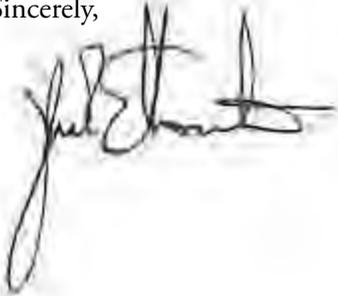
Joel D. Montero, Chief Executive Officer

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Administrative Agent: Mary C. Barlow - Office of Kern County Superintendent of Schools

This report contains the study team's findings and recommendations.

FCMAT appreciates the opportunity to serve you and extends thanks to all the staff of the Santa Clara County Office of Education and Alum Rock Union Elementary School District for their cooperation and assistance during fieldwork.

Sincerely,

A handwritten signature in black ink, appearing to read "Joel D. Montero". The signature is fluid and cursive, with a large initial "J" and "M".

Joel D. Montero

Chief Executive Officer

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About FCMAT

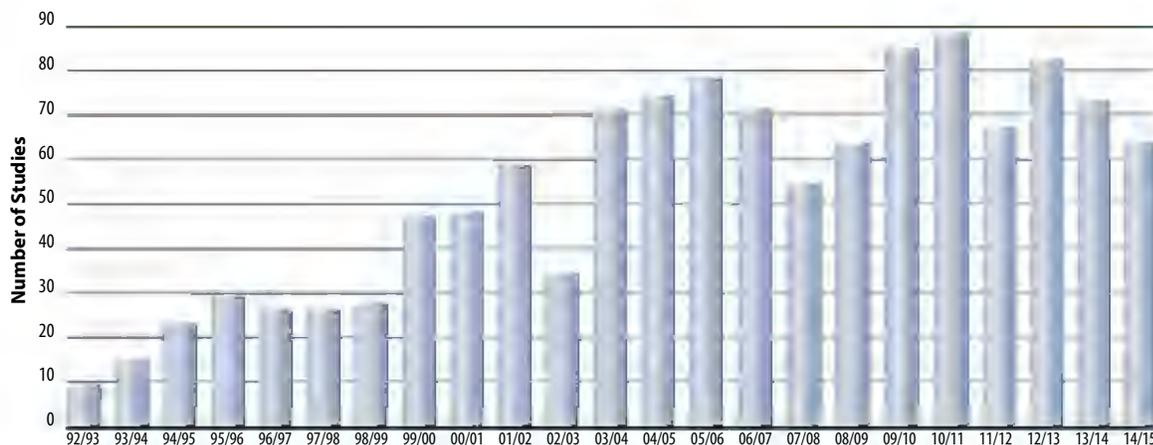
FCMAT's primary mission is to assist California's local K-14 educational agencies to identify, prevent, and resolve financial, human resources and data management challenges. FCMAT provides fiscal and data management assistance, professional development training, product development and other related school business and data services. FCMAT's fiscal and management assistance services are used not just to help avert fiscal crisis, but to promote sound financial practices, support the training and development of chief business officials and help to create efficient organizational operations. FCMAT's data management services are used to help local educational agencies (LEAs) meet state reporting responsibilities, improve data quality, and inform instructional program decisions.

FCMAT may be requested to provide fiscal crisis or management assistance by a school district, charter school, community college, county office of education, the state Superintendent of Public Instruction, or the Legislature.

When a request or assignment is received, FCMAT assembles a study team that works closely with the LEA to define the scope of work, conduct on-site fieldwork and provide a written report with findings and recommendations to help resolve issues, overcome challenges and plan for the future.

FCMAT has continued to make adjustments in the types of support provided based on the changing dynamics of K-14 LEAs and the implementation of major educational reforms.

Studies by Fiscal Year



FCMAT also develops and provides numerous publications, software tools, workshops and professional development opportunities to help LEAs operate more effectively and fulfill their fiscal oversight and data management responsibilities. The California School Information Services (CSIS) division of FCMAT assists the California Department of Education with the implementation of the California Longitudinal Pupil Achievement Data System (CALPADS). CSIS also hosts and maintains the Ed-Data website (www.ed-data.org) and provides technical expertise to the Ed-Data partnership: the California Department of Education, EdSource and FCMAT.

FCMAT was created by Assembly Bill (AB) 1200 in 1992 to assist LEAs to meet and sustain their financial obligations. AB 107 in 1997 charged FCMAT with responsibility for CSIS and its state-wide data management work. AB 1115 in 1999 codified CSIS' mission.

AB 1200 is also a statewide plan for county offices of education and school districts to work together locally to improve fiscal procedures and accountability standards. AB 2756 (2004) provides specific responsibilities to FCMAT with regard to districts that have received emergency state loans.

In January 2006, Senate Bill 430 (charter schools) and AB 1366 (community colleges) became law and expanded FCMAT's services to those types of LEAs.

Since 1992, FCMAT has been engaged to perform more than 1,000 reviews for LEAs, including school districts, county offices of education, charter schools and community colleges. The Kern County Superintendent of Schools is the administrative agent for FCMAT. The team is led by Joel D. Montero, Chief Executive Officer, with funding derived through appropriations in the state budget and a modest fee schedule for charges to requesting agencies.

Introduction

Background

The Alum Rock Union Elementary School District is in East San Jose near the foothills of the Santa Clara Valley and serves approximately 11,000 students in grades K-8. The community has historically supported the district facility needs through the passage of facility bonds, including Measure G in June 2008, Measure J in November 2012 and Measure I in 2016. Each of these bond measures was passed under Proposition 39, which requires a minimum 55% voter approval. The following language included in each of the adopted board resolutions identifies the primary purposes of the bond measures:

To improve neighborhood schools, fix leaky, deteriorated roofs, improve fire safety, repair and upgrade classrooms, improve student safety and security, renovate outdated restrooms, upgrade heating/ventilation/electrical systems for energy efficiency, and computer technology, shall Alum Rock Union Elementary School District issue (\$179 million for Measure G, \$125 million for Measure J and \$140 million for Measure I) millions of bonds at legal rates to renovate, acquire, construct, repair and equip schools, sites and facilities with required independent financial audits, citizen's oversight and no money for administrators' salaries

The Santa Clara County Office of Education received anonymous allegations that DelTerra Real Estate Services, Inc., DBA Del Terra Group fraudulently billed the district for construction and program management services. The focus of the allegations includes the following:

Allegation one is that DelTerra double-billed the district by submitting fees totaling 4% of the total construction costs for project management and an additional 6% for construction management and subsequently assigned the same individual to both contracts.

Allegation two is that DelTerra has invoiced the district approximately \$330,000 for construction management services for projects that have not yet begun. The claim is that DelTerra has knowingly submitted fraudulent invoices in violation of Government Code 12651(a)(1) and 12651(a)(2).

In October 2016, the county office requested that FCMAT assist the county office by conducting an Assembly Bill (AB) 139 extraordinary audit to determine if fraud, misappropriation of funds or other illegal activities may have occurred at the Alum Rock Union Elementary School District.

Over recent years, the district has experienced continual changes in administrative leadership at all levels including the superintendent, assistant superintendent of business services and facility management staff positions. Three different superintendents have led the district over the last decade, the newest of whom has held the position for approximately three years.

The lack of institutional memory and operational experience in key administrative leadership positions, specifically in the areas of business and facilities management, has contributed to the inconsistent financial reporting for bond and construction related projects. The former interim chief business official (CBO), as well as other current and former staff members, expressed concerns regarding the district's use of the Del Terra Group to perform contracted services for project and construction management. The issues include Del Terra Group's alleged practices of circumventing contractual reporting requirements and the cost of services.

Other issues concerning the management of the district's bond program include the inability of the district's financial system software (SunGuard) to track projects by specific resource, site or project coding. This lack of financial reporting has caused staff to manually reconstruct and reconcile individual project costs, which include the services provided by the Del Terra Group.

As part of the review, FCMAT evaluated the district's policies, procedures and internal controls for purchasing, contractual commitments and vendor payments. In most school districts in California, payroll and vendor warrants are subject to oversight criteria and periodic review by the county office of education. However, since 1992 the district has operated under Education Code Section 42647, which established a process for a district to become fiscally independent of the county office for paying salary and vendor warrants. Once a district is granted fiscal independence, the county office is not responsible for producing reports, statements or other data relating to or based on payments of the district's expenses. Fiscally independent districts operate their own financial accounting system. They are also responsible for designating an employee as the district auditor or disbursing officer to examine, allow and pay warrants ordered by the governing board.

The proper internal controls and segregation of duties regarding vendor payments has been further compromised because of the district's inability to obtain a permanent chief business official and the lack of an internal auditor/disbursement officer. The internal auditor/disbursing officer position has been vacant for the past five years. Internal auditors function as an additional level of control to help improve the district's overall control environment and are essential in a fiscally independent district.

Internal auditors also can play a valuable role conducting performance audits, special investigations and studies and help management maintain a comprehensive framework of internal controls. As a rule, a formal internal audit function is particularly valuable for activities involving a high degree of risk (e.g., complex accounting systems, contracts with independent contractors and a rapidly changing work environment).

FCMAT's interviews validated assertions that some staff members felt intimidated and at times threatened by the governing board regarding the use of Del Terra Group. Numerous reports indicated a climate of fear, frustration and discontent among the district's staff and that the district is beset with a negative operating environment that includes continued, pervasive pressure to conduct business in disregard of established policies.

The FCMAT study team made multiple attempts to meet with Del Terra Group representatives but encountered a lack of cooperation from the contractor, which resulted in a protracted time frame to complete the necessary interviews and document collection. Requests for documents from Del Terra Group have also gone unanswered. This lack of cooperation regarding requests for interviews and lack of documents both violate the program services agreement approved by the board of trustees in May 2013 and the most recently-approved program management and construction management services agreement for Measure I bond funds approved in November 2016.

The purpose of this audit is to identify whether any potential fraud may have occurred and to help the district improve its internal control processes to avoid potential fraud or other illegal activities in the future. Therefore, starting to produce reports after the fact is beneficial. However, any post-audit report development or response to findings should not be considered as grounds to eliminate or nullify the findings of this AB 139 Extraordinary Audit report.

In January 2016, the attorney general released Opinion No. 13-304 in response to questions posed by the California state treasurer regarding campaign contributions for local bond campaigns. In general, the inquiry was related to the legality of school and community college districts entering into agreements with municipal underwriting firms that provide the district with pre-election services in return for guaranteeing the firm an exclusive contract to provide post-election services.

Education Code Section 7054(a) prohibits school district or community college district funds, services, supplies or equipment from being used to advocate or influence the outcome of an election if the pre-election services contracted with a person or entity for services may be characterized as campaign activities. Issues of concern also include use of public funds to pass bond measures, significant political contributions to campaigns from interests likely to benefit from construction, involvement of foundations as intermediaries for campaign contributions and conflicts of interest for alleged pay-to-play contracts.

In 2013 and 2014, the Del Terra Group was selected to perform program and construction management services through a request for proposal process for Measure J construction projects. In June 2016, the district passed Measure I, and Del Terra Real Estate Services donated \$30,000 during the pre-election process. Campaign donations from several architectural firms that were utilized in the previous Measure J bond fund construction project totaled \$55,000, and these firms were also awarded subsequent contracts for Measure I bond funds by the Del Terra Group

In addition, the Del Terra Group made campaign donations to multiple board members for their respective board elections. The school board's blatant disregard for any of the nonperformance issues identified by staff, failure to follow specific board policies on the bidding process or any formal process demonstrated by past practice to select program and construction management services, should be of great concern and provoke potential questions of influence regarding the bidding process.

While this area of law may be considered gray when determining whether an activity or agreement with a firm is a violation, it is important for the district to take reasonable steps to ensure that contingent compensation agreements, or those that have the appearance of influence, follow the law and the state attorney general's opinion.

Study Guidelines (AB 139 Audit Authority)

Education Code Section 1241.5(b) permits a county superintendent of schools to review or audit the expenditures and internal controls of any county school district if he or she has reason to believe that fraud, misappropriation of funds, or other illegal fiscal practices have occurred that merit examination. On completion of the investigation, if evidence exists that fraud or misappropriation of funds may have occurred, Education Code Section 42638 (b) states, “. . . the county superintendent shall notify the governing board of the school district, the State Controller, the Superintendent of Public Instruction, and the local district attorney.” The purpose of this review is to determine if sufficient documentation exists to further investigate the findings, or if there is evidence of possible fraud, misappropriation of funds or other illegal fiscal practices that should be reported to the local district attorney's office for further investigation by law enforcement.

The investigation and scope of work is designed to prevent further loss or exposure to risk if any, establish and secure evidence necessary for potential criminal or disciplinary action, minimize and recover losses, strengthen internal controls and promote an anti-fraud culture that may require the local entity to take the appropriate legal or disciplinary action.

Based on the allegations and information provided, the county office asked FCMAT to provide for the assignment of professionals to conduct an AB 139 extraordinary audit under the provisions of Education Code Section 1241.5(b). FCMAT and the county office entered into a contract for this extraordinary audit on December 2, 2016. As part of the audit, FCMAT interviewed past and present district management, staff and board members, and reviewed documents to determine if instances of fraud, misappropriation of funds or other illegal fiscal practices may have occurred that would warrant further investigation by the local district attorney's office.

FCMAT conducted the AB 139 audit using the Statement of Auditing Standards No. 99, Consideration of Fraud in a Financial Statement Audit, to establish standards in fulfilling the responsibility to plan and perform the audit and to obtain reasonable assurance about whether fraud, misappropriation of funds or other illegal activities may have occurred in accordance with generally accepted auditing standards (GAAS).

In writing its reports, FCMAT uses the Associated Press Stylebook, a comprehensive guide to usage and accepted style that emphasizes conciseness and clarity. In addition, this guide emphasizes plain language, discourages the use of jargon and capitalizes relatively few terms.

Study Team

The study team was composed of the following individuals:

Eric D. Smith, MPA
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Leonel Martínez
FCMAT Technical Writer
Bakersfield, CA

Leigh Coop
FCMAT Consultant
Sacramento, CA

Each team member reviewed the draft report to confirm its accuracy and to achieve consensus on the final recommendations.

Audit Procedures

Fraud investigations consist of gathering information and documentation pertaining to specific allegations; establishing an audit plan and performing various audit procedures to determine whether fraud may have occurred; evaluating the loss associated with the fraud; and determining who was involved and how it may have occurred.

The two types of misstatements relevant to FCMAT's consideration of fraud are those generated by fraudulent financial reporting and those from misappropriation of assets. Misstatements from fraudulent financial reporting are intentional misstatements, omissions of amounts or disclosures in financial statements designed to intentionally deceive the district. Misstatements arising from misappropriation of assets involve the theft of the district's assets where the financial impact causes the financial statements not to be presented in all material respects and in conformity with Generally Accepted Accounting Principles (GAAP).

Misappropriation of assets can be accomplished in various ways, including embezzling receipts, stealing assets, or causing an entity to pay for goods or services that have not been received. The allegations received by the county office suggest theft by an independent contractor who knowingly submitted fraudulent invoices in violation of Government Code 12651(a)(1) and 12651(a)(2). Misappropriation of assets may be accompanied by false or misleading records or documents, possibly created by circumventing controls.

Based on the allegations presented, FCMAT evaluated the district's internal control system. Internal controls include the processes for planning, organizing, directing and controlling program operations, including systems for measuring, reporting and monitoring performance. To address the allegations, specific audit objectives included evaluating the district's policies, procedures and internal controls and transactions.

The AB 139 Extraordinary Audit follows recommended practices for fieldwork in accordance with Statements on Auditing Standards (SAS No. 99), "Consideration of Fraud in a Financial Statement Audit" and at times, the report may be critical about specific district practices. However, because of the potential for fraud, this audit approach purposefully uses professional skepticism that includes a questioning mindset and a critical assessment of audit evidence. FCMAT conducted the audit recognizing that a material misstatement or misappropriation of assets because of fraud, or error could be present, regardless of any experience with the district and/or the business ethics or views expressed during interviews by district staff, former employees or independent contractors and vendors.

Transaction Sampling Analysis

To accomplish the objectives of this audit, several audit test procedures were developed to provide an analysis and understanding of the allegations and potential outcomes. The district's detailed general ledger, warrant register and other reports that provided transaction data were obtained directly from the district's SunGard financial system.

The district's business office exported data for the 2013-14, 2014-15, 2015-16 and (through December 2016) for the 2016-17 fiscal years. However, because of areas of concern identified by FCMAT during its fieldwork, the review period was extended to March 31, 2017 and the sample size was expanded to include 100% of related transactions. FCMAT did not review payroll transactions.

Transactions selected were analyzed and evaluated for compliance with the district's board policy, administrative regulations, operational procedures, and industry-standard or best practice procedures based on the team's judgment and technical expertise in school district accounting. Testing procedures and noted exceptions are detailed in the substantive testing section of this report. FCMAT's findings and recommendations are the result of the above audit procedures and interviews with current and former district staff and board members.

Sample testing and examination results are intended to provide reasonable but not absolute assurance regarding the accuracy of the transactions and financial activity. Some degree of uncertainty is implicit in the concept of "a reasonable basis for an opinion." The justification for accepting some uncertainty is derived from the relationship between such factors as the cost and time required to examine all data and the adverse consequences of possible erroneous decisions based on the conclusions resulting from examining only a sample of the data. The basic concept of sampling transactions is well established in auditing practice.

Interviews and Document Collection

FCMAT visited the Santa Clara County Office of Education, Santa Clara County District Attorney's Office and the Alum Rock Union Elementary School District in January and February 2017, including five separate visits to conduct interviews, collect data and review documents. During interviews of staff, administrators, board members and other individuals, FCMAT study team members asked questions pertaining to the allegations; policies and procedures; transactions and activities; authorization levels; job duties, responsibilities and training; and the internal control structure, lines of authority, and oversight.

Definitions of Fraud, Occupational Fraud, Internal Control, Gift of Public Funds

Fraud

Fraud can include an array of irregularities and illegal acts characterized by intentional deception and misrepresentations of material facts. Fraud may occur when an employee or organization deliberately deceives others to gain an unauthorized benefit. A material weakness is a deficiency in the internal control process that could cause errors or fraud to occur or could be a violation of specific law or regulation. Because of the weakness, employees in the normal course of business may not detect errors in time to correct them.

Although all employees have some degree of responsibility for internal controls, the governing board, district superintendent and senior management are ultimately responsible for the controls that employees under their supervision are expected to follow.

Occupational Fraud

Occupational fraud occurs when an organization's owners, executives, managers or employees use their occupation to deliberately misuse or misapply the employer's resources or assets for personal benefit. The three main types of occupational fraud are asset misappropriation, corruption, and financial statement fraud.

Asset misappropriation includes cash skimming, falsifying expense reports and/or forging company checks. Corruption involves an employee using his or her influence in business transactions to obtain a personal benefit that violates that employee's duty to the employer or the organization. Financial statement fraud includes the intentional misstatement or omission of material information in financial reports.

Occupational fraud is one of the most difficult types of fraud and abuse to detect; however, tips help prevent this type of fraud from occurring three times as often as any other detection method.

According to the "2016 Report to the Nations on Occupational Fraud and Abuse" conducted and published by the Association of Certified Fraud Examiners, corruption schemes accounted for 35.4% of the 2,410 cases reported, with a median loss of \$200,000. There is a direct correlation between the perpetrator's position and authority in an organization and the amount of losses incurred. Losses from fraud by owners and executives are four times higher than those from fraud by managers and seven times higher than losses incurred because of fraud by employees. Proper monitoring and effective oversight are also highly effective at preventing fraud.

Internal Control

The accounting industry has defined the term “internal control” as it applies to organizations, including school agencies. Internal control is a combination of integrated processes, put in place and affected by people, designed to provide management with reasonable assurance regarding the achievement of an entity’s objectives in its mission or vision. Part of establishing such controls includes setting goals, objectives, budgets and performance expectations.

Several factors influence the effectiveness of internal controls, including the social environment and how it affects employees’ behavior; the availability and quality of information used to monitor the organization’s operation; and the policies and procedures that guide the organization. Internal controls help an organization obtain timely feedback on its progress in meeting operational goals and guiding principles, produce reliable financial reports, and ensure compliance with applicable laws and regulations. Internal controls are the principal mechanism for preventing and/or deterring fraud or illegal acts. Illegal acts, misappropriation of assets or other fraudulent activities can include an assortment of irregularities characterized by intentional deception and misrepresentation of material facts. Effective internal controls provide reasonable assurance that operations are effective and efficient, that the financial information produced is reliable, and that the organization complies with all applicable laws and regulations.

All educational agencies should establish internal control procedures to accomplish the following:

1. Prevent management from overriding internal controls.
2. Ensure ongoing state and federal compliance.
3. Assure the governing board that the internal control system is sound.
4. Help identify and correct inefficient processes.
5. Ensure that employees are aware of the expectation that proper internal controls will be used.

Internal controls provide the framework for an effective fraud prevention program. An effective internal control structure includes the policies and procedures used by staff, adequate accounting and information systems, the work environment, and the professionalism of employees. The five interrelated elements of an effective internal control structure and their definitions are included in the table below:

Internal Control Component	Definition
Control Environment	Commonly referred to as the moral tone of the organization, the control environment includes a code of ethical conduct; policies and guidelines for ethics, hiring and promotion; proper assignment of authority and responsibility; oversight by management, the board or an audit committee; investigation of reported concerns; and effective disciplinary action for violations.
Risk Assessment	Identification and assessment of risks to achieving the organization’s objectives and developing strategies to manage those risks.
Control Activities	The development of policies and procedures to enforce the governing board’s directives. These include actions by management to prevent and identify misuse of the district’s assets, including preventing employees from overriding controls in the system.
Information and Communication	Establishes effective communication to prevent and deter fraud. Ensures that employees receive information regarding policies and opportunities to discuss ethical dilemmas. Establishes clear means of communication within an organization to report suspected violations.
Monitoring Activities	Ongoing monitoring that includes periodic performance assessments to help deter fraud by managers and employees.

A strong system of internal controls that includes all five of the above elements can provide reasonable but not absolute assurance that the organization will achieve its goals and objectives.

Control Environment

The internal control environment establishes the moral tone of the organization. Although intangible, it begins with the leadership and consists of employees' perception of the ethical conduct displayed by the governing board and executive management.

The control environment is a prerequisite that enables other components of internal control to be effective in preventing and/or deterring fraud or illegal acts. It sets the tone for the organization, provides discipline and control, and includes factors such as the integrity, ethical values and competence of employees. The control environment can be weakened significantly by a lack of experience in financial management and internal controls.

Control Activities

Control activities are a fundamental element of internal controls, and are a direct result of policies and procedures designed to prevent and identify misuse of a district's assets, including preventing any employee from overriding controls in the system. Control activities include the following:

1. Performance reviews, which compare actual data with expectations. In accounting and business offices, these occur most often when budgeted amounts are compared with actual expenditures to identify variances, and are followed by budget transfers to prevent overspending.
2. Information processing, which includes the approvals, authorizations, verifications and reconciliations needed to ensure that transactions are valid, complete and accurate.
3. Physical controls, which are the processes and procedures designed to safeguard and secure assets and records.
4. Segregation of duties, which consists of processes and procedures that ensure that no employee or group can commit and conceal errors or fraud in the normal course of duties. In general, segregation of duties includes ensuring separate employees are responsible for the custody of assets, the authorization or approval of transactions affecting those assets, the recording or reporting of related transactions, and the execution of the transactions. Adequate segregation of duties reduces the likelihood that errors will remain undetected by providing for separate processing by different individuals at various stages of a transaction, and for independent review of the work.

Independent auditors' reports on internal control over financial reporting are based on an audit of financial statements performed in accordance with government auditing standards. When conducting independent financial audits, auditors consider internal control over financial reporting to determine audit procedures that are appropriate in the circumstances so they may express their opinion on the financial statements. However, they will not express an opinion on the effectiveness of an organization's internal control because the auditors' consideration of

internal control is not designed to identify all deficiencies in internal control that might be a material weakness or significant deficiency. This means that an organization may have material weaknesses or significant deficiencies that were not discovered during the audit.

A deficiency in internal control exists when the design or operation of a control does not allow management or employees, in the normal course of performing their assigned functions, to prevent, detect and/or correct misstatements in a timely manner. A material weakness is a deficiency or combination of deficiencies in internal control, such that there is a reasonable possibility that a material misstatement of the entity's financial statements will not be prevented, or not be detected and corrected in a timely manner.

A significant deficiency is an internal-control deficiency or combination of deficiencies that is less severe than a material weakness yet important enough to merit attention from those charged with governance.

The following is a partial list of deficiencies and omissions that can cause internal control failures:

1. Failure to adequately segregate duties and responsibilities related to authorization.
2. Failure to limit access to assets or sensitive data (e.g., cash, fixed assets, personnel records).
3. Failure to record transactions, which can result in lack of accountability and the possibility of theft.
4. Failure to reconcile assets with the correct records.
5. Unauthorized transactions, which can be an indicator of skimming, embezzlement or larceny.
6. Lack of monitoring or implementation of internal controls by the governing board and management, or because personnel are not qualified.
7. Collusion among employees where little or no supervision exists.

A system of internal controls consists of policies and procedures designed to provide the governing board and management with reasonable assurance that the organization is achieving its goals and objectives. Traditionally referred to as hard controls, these include segregation of duties; limiting access to cash; management review and approval; and reconciliations. Other types of internal controls, typically referred to as soft controls, include management tone, performance evaluations, training programs, and maintaining established policies, procedures and standards of conduct.

Findings

Government Code False Claims

Background Government Code Section 12651

The Santa Clara County Office of Education received anonymous allegations that Del Terra Real Estate Services, Inc., DBA Del Terra Group fraudulently billed the Alum Rock Union Elementary School District for construction and program management services. The focus of the allegations includes the following:

The first allegation is that the Del Terra Group double-billed the district by submitting fees totaling 4% of the total construction costs for program management and an additional 6% for construction management and subsequently assigned the same individual to both contracts.

The second allegation is that DelTerra has invoiced the district approximately \$330,000 for construction management services for projects that have not yet begun. The claim is that DelTerra has knowingly submitted fraudulent invoices in violation of Government Code 12651(a)(1) and 12651(a)(2), which says the following:

(a) Any person who commits any of the following enumerated acts in this subdivision shall have violated this article and shall be liable to the state or to the political subdivision for three times the amount of damages that the state or political subdivision sustains because of the act of that person. A person who commits any of the following enumerated acts shall also be liable to the state or to the political subdivision for the costs of a civil action brought to recover any of those penalties or damages, and shall be liable to the state or political subdivision for a civil penalty of not less than five thousand five hundred dollars (\$5,500) and not more than eleven thousand dollars (\$11,000) for each violation:

(1) Knowingly presents or causes to be presented a false or fraudulent claim for payment or approval.

(2) Knowingly makes, uses, or causes to be made or used a false record or statement material to a false or fraudulent claim.

The Alum Rock Union Elementary School community has historically supported the district's facility needs through the passage of facility school bond measures. This support has been demonstrated through the passage of Measure G (\$179 million) in June 2008, Measure J (\$125 million) in November 2012 and Measure I (\$140 million) in 2016. Each of these bond measures was passed under Proposition 39, which requires a minimum 55% voter approval.

The following language included in each of the adopted board resolutions identifies the primary purposes of the bond measures:

To improve neighborhood schools, fix leaky, deteriorated roofs, improve fire safety, repair and upgrade classrooms, improve student safety and security, renovate outdated restrooms, upgrade heating/ventilation/electrical systems for energy efficiency, and computer technology, shall issue millions of bonds at legal rates to renovate, acquire, construct, repair and equip schools, sites and facilities with required independent financial audits, citizen's oversight and no money for administrators' salaries.

General Obligation Bond Issuances

The focus of the AB 139 Extraordinary Audit report is to review the project and construction management contracts for facilities projects funded by Measure J and Measure I general obligation bonds managed by the Del Terra Group. A chronology of the bond issuances is provided in accordance with the following:

General Obligation Bond	Date Voters Approved	Amount	Issuance	Date of Issuance	Amount of Issuance
Measure J	November 6,, 2012	\$125 Million	Series A	July 31, 2013	\$32,400,000
			Series B	August 29, 2013	\$3,600,000
			Series C	January 14, 2016	\$17,500,000
Measure I	June 7, 2016	\$139,999,671.60 (re-issue Measure G 2008 G.O. bond, cancel same amount of Measure G bonds)	None as of March 2017		
Total Issuances					\$53,500,000

Del Terra Group Contracts

Program Management, Construction Management and Other Services

In 2013, the district hired Del Terra Group using a request for proposal/request for qualifications (RFP/RFQ) to provide program management services. Four firms were interviewed in an open board of trustees meeting in March 2013, and action was taken to approve the hiring of Del Terra for program management services.

Since the original 2013 selection process for program management services related to bond funds, the district has not held another selection process for these types of services. The only exception is the selection of services for the Proposition 39 energy program, which had irregularities and public concerns over how it was conducted.

The following is a summary of all fees paid to the Del Terra Group from July 2013 through March 2017. Del Terra has been paid \$3.282 million in the 3¾ -year period.

Period (July-June, Fiscal Year)	2013/14	2014/15	2015/16	2016-March 2017	Grand Total
Program Management Fees					
Quickstart PM Fee	\$32,286.00				\$32,286.00
Measure J -- Series A	\$507,555.00	\$490,918.00			\$998,473.00
Measure J -- Series A Amendment i.e. Fee Extension		\$68,273.00	\$330,000.00	\$100,000.00	\$498,273.00
Measure J -- Series C			\$99,000.00	\$123,750.00	\$222,750.00
Measure I					\$0.00
DSA Closeout Certification Services	\$58,200.00	\$87,300.00			\$145,500.00
Total per Fiscal Year	\$598,041.00	\$646,491.00	\$429,000.00	\$223,750.00	\$1,897,282.00
Construction Management Fees					
Summer 2013 Roofing Projects	\$78,293.00	\$2,421.00			\$80,714.00
Fall/Winter 2013 -- Roofing Projects	\$15,407.00				\$15,407.00
Summer 2014 Exterior Painting	\$8,874.00	\$35,497.00			\$44,371.00
Summer 2014 -- Roofing Projects	\$40,374.00	\$94,205.00			\$134,579.00
Summer 2014 Painting at District Office Bldg. 200 & 300		\$2,814.00			\$2,814.00
Winter 2014 - Restroom Projects		\$5,646.06			\$5,646.06
Meyer ES Modernization Project		\$38,577.60			\$38,577.60
Winter 2014 -- Asphalt Projects		\$21,064.92			\$21,064.92
Winter 2014 -- Roofing Projects		\$11,610.92			\$11,610.92
Restroom Refurbishment Project Bid Pkg A		\$14,625.00	\$43,875.00		\$58,500.00
Restroom Refurbishment Project Bid Pkg B		\$15,808.52	\$47,425.48		\$63,234.00
Restroom Refurbishment Project Bid Pkg C		\$15,644.00	\$46,924.00		\$62,568.00
Restroom Refurbishment Project Bid Pkg D		\$19,876.00	\$59,624.00		\$79,500.00
Fischer Multi-Purpose Building			\$213,992.00		\$213,992.00
George Multi-Purpose Building			\$75,250.00		\$75,250.00
George MS Interior Painting - Shower and Locker Bldg.			\$2,655.00		\$2,655.00
Winter 2015 -- Re-roofing Projects			\$40,062.32	\$2,121.93	\$42,184.25
Dorsa ES -- HVAC Project			\$24,939.00		\$24,939.00
Lucha ES -- HVAC Project			\$14,964.00		\$14,964.00
Restroom Modernization (DSA)				\$194,418.40	\$194,418.40
Summer 2016 Re-Roofing Projects				\$15,946.65	\$15,946.65
Landscaping Mathson PDC				\$8,720.35	\$8,720.35
Temp Housing Hubbard ES				\$36,006.90	\$36,006.90
Total Per Fiscal Year	\$142,948.00	\$277,790.02	\$569,710.80	\$257,214.23	\$1,247,663.05
Period (July-June, Fiscal Year)	2013/14	2014/15	2015/16	2016-March 2017	Grand Total
Program Management Fees (Non-Bond Projects)					
Prop. 39 Energy Audit/Survey, Planning & Implementation	\$26,333.00	\$48,717.00			\$75,050.00
Kidango Projects: Kindergarten Upgrades/ Refurbish.		\$7,171.40			\$7,171.40
Sheppard Lockers			\$1,305.04		\$1,305.04
Chavez Concrete			\$632.00		\$632.00
Mathson Library/Lab			\$1,510.00		\$1,510.00

GOVERNMENT CODE FALSE CLAIMS

Chavez Library/Parent University			\$2,602.33		\$2,602.33
Roof Repairs -- Group A			\$2,699.07		\$2,699.07
Roof Repairs -- Group B			\$5,125.24		\$5,125.24
Roof Repairs -- Group C			\$2,822.94		\$2,822.94
Total Per Fiscal Year	\$26,333.00	\$55,888.40	\$16,696.62	\$0.00	\$98,918.02
Construction Management Fee (Non-Bond Projects)					
Kidango Projects: Kinder. Upgrades & Refurbish		\$10,757.10			\$10,757.10
Sheppard Lockers			\$1,957.56		\$1,957.56
Chavez Concrete			\$948.00		\$948.00
Mathson Library/Lab			\$2,265.00		\$2,265.00
Chavez Library/Parent University			\$3,903.50		\$3,903.50
Roof Repairs -- Group A			\$4,048.61		\$4,048.61
Roof Repairs -- Group B			\$7,687.87		\$7,687.87
Roof Repairs -- Group C			\$4,234.41		\$4,234.41
Total Per Fiscal Year	\$0.00	\$10,757.10	\$25,044.95	\$0.00	\$35,802.05
Reimbursables -- all were invoiced in October 2016					
Jan-December 2014				\$1,999.87	\$1,999.87
Jan-December 2015				\$596.81	\$596.81
Jan-December 2016				\$338.20	\$338.20
April-June 2016				\$52.29	\$52.29
Total Per Fiscal Year	\$0.00	\$0.00	\$0.00	\$2,987.17	\$2,987.17
Grand Total Per Fiscal Year	\$767,322.00	\$990,926.52	\$1,040,452.37	\$483,951.40	\$3,282,652.29

The Del Terra Group has had numerous contracts and purchase orders for program management and construction management services for Measure J, Measure I and various nonbond-funded modernization, renovation and new construction projects. It also has had a contract for Division of State Architect closeout services and Proposition 39 energy audit/survey, planning and implementation services. The following is a chronology of Del Terra contracts, purchase orders, request forms for services by the district and fee extensions and increases.

Chronology for Del Terra Contracts, Purchase Orders and Extensions

Contract or Purchase Order Type	Contract or Purchase Order Number	Master/Basic Additional Services	Date of Board Approval	Date of Contract or P.O.	Term	Amount	Projects or Bond Measure	Comments
PROGRAM MANAGEMENT, DSA CLOSEOUT SERVICES, PROP 39 ENERGY SERVICES								
Program Managements (PM) Contract	C1314127	Master PM Agreement	5/9/13	5/9/13	5/9/13-5/8/2018 or Completion of Projects	No Amount	Measure J, other previous bond measure, other facilities funding, matching funds	Open-ended, no Not-To-Exceed Amount; no list of projects; a Fee structure projected "Burn rate" runs through December 2015
Purchase Order	C1314127 (1 handwritten)	Master	5/9/13	5/9/13		\$300,000	Measure J	
DSA Close-Out Services	Contract C1314127; P.O. C1314284 and P.O. 1415109	Add'l Services Agreement (ASA) under PM Contract	Not Board-approved	ASA Not Dated. District Request form signed 5/16/14. Exhibit A of ASA dated 2/20/2013.	11/1/2013 - 6/30/2015	\$145,500	Listed a total of 97 legacy projects, but unclear on how many projects needed to be closed out.	Appears that as of March 2017, DTG has closed out 7 projects, leaving another 46 not certified. Has been paid total contract.
PM Services purchase order	C1314127 - (2 handwritten)	1st revision of original	5/9/13	8/29/13	See master	\$376,679	This is an increase of \$76,679, uses same P.O. number as previous.	This add'l purchase order totals \$376,679; is a correction, but should only be for the additional \$76,679.
PM Services purchase order	C1314127 - (3 handwritten)	2nd revision of original	5/9/13	8/29/13 but request is dated 1/27/2014 so this is backdated.	See master	Total \$676,679	This is an increase of \$300,000 of the two other same-numbered P.O.'s.	Appears to add \$300,000, should be a separate P.O. for \$300,000.
PM Services purchase order	P.O. C1415102; Rollover P.O. of C1314127 (4 - handwritten)	Rollover	N/A	8/15/14	See master	\$379,416	P.O. of unspent balance; would mean \$297,263 of first P.O. was spent	Rollover should end the previous P.O.
PM Services purchase order	P.O. C1415102 Contract Adjustment (handwritten 5)	Basic	N/A	8/15/14	See master	Total \$490,917	Increase of \$111,501 to "cover 2015 invoices"; brings P.O. amount to \$788,180	Appears to add \$490,917, but should only be for the add'l \$111,501
PM Fee Extension labelled Series A Amendment	Cites original PM contract C1314127; P.O. C1415387	Add'l Fee	5/14/15	6/2/15	5/14/2015-June 2017	\$638,273	Measure J Bond Program, other	Original contract spent total funds by May, 2015 -- seven months earlier than projected.
Proposition 39 Energy Services	Agreement not numbered; P.O. C1415060	Basic	5/8/14	P.O. Dated 7/8/2014; Contract not dated in top paragraph or at signature page	Report due 12 weeks after kick-off meeting; final invoice was more than a year later -- August 31, 2015; 95%	\$52,667	Prop 39 Audit/Survey Phase I only	Contract included also % planning and 7.5% projects, but CEC letter approves DTG only for Audit/Survey without selection process.
Proposition 39 Energy Services	Agreement not numbered; P.O. C1516118	Basic-- remaining balance	5/8/14	P.O. dated 9/4/2015 Contract not dated in top paragraph or at signature page	Report due 12 weeks after kick-off meeting; final invoice was more than a year later -- August 31, 2015; 95%	\$26,334	Prop 39 Audit/Survey Phase I only	Contract included also % planning and 7.5% projects, but CEC letter approves DTG only for Audit/Survey without selection process.
PM/CM Services Contract for Measure I 2016	not numbered; no purchase order seen	Basic -- new G.O. bond	11/10/16	No P.O.	November, 2016 through completion of projects	No Amount	Measure I	Contract percentage fee of 4% PM and 6% CM, same as previous 2013 and 2014 contracts
PM Contract for Measure J	not numbered; no purchase order seen	Basic -- Measure J	11/10/16	No P.O.	Through completion of projects or June 30, 2019.	No Amount	Measure J	4% of Project Costs (available funding for projects)

Chronology for Del Terra Contracts, Purchase Orders and Extensions

Contract or Purchase Order Type	Contract or Purchase Order Number	Master/Basic Additional Services	Date of Board Approval	Date of Contract or P.O.	Term	Amount	Projects or Bond Measure	Comments
CONSTRUCTION MANAGEMENT SERVICES								
Construction Management (CM) Services for Summer 2013 Roofing Projects	ASA #1 under PM Contract signed 9/6/2013; P.O. C1314221-1	Add'l Services Agreement (ASA) under PM Contract	5/9/2013 PM	P.O. 1/30/2014 is after the Summer 2013 Roofing projects	P.O. states 8/19/2013 -- unknown reference.	\$80,714	Summer 2013 Roofing Projects	ASA#1 and P.O. are dated after services provided; First invoice is dated 3 days after ASA#1 signed.
CM Services for Fall/Winter 2013 Projects	ASA #2 signed 12/4/2013	Additional Services under PM contract	5/9/2013 PM	P.O. 1/30/2014 is after the Fall/Winter 2013 projects	Request signed 1/29/2014	\$15,407	Fall/Winter 2013 Projects	ASA #2 and P.O. are dated after services provided. First invoice is dated 1/3/2014 for Dec. 2013 services.
Construction Management (CM) Services Contract	Contract C1314285 on Request form	Basic	5/8/2014 --no selection process.	Effective Date on Contract 10/1/2013 -- retroactive	Two different terms on contract -- For one year expiring 9/30/2015 (but that is two years; and also in next paragraph, states 5 years duration.	\$0.00	Various projects -- Not listed	Effective date is 7 months prior to board approval, but invoices through March 2014 are under ASA #2 for 7.5%. Why backdate effective date of CM contract?
Each project has a separate P.O. for CM services 2014 - 2016.	Various P.O.'s for each project - the Purchase Order is called a "Contract."							
CM Services for Fischer MS MP Building New Construction Project	P.O. C1516164-1	Basic	Per CM Contract approved 5/8/2014	10/19/15	P.O. references 9/1/2015-9/11/2017 on request form	\$618,000	Fischer MS MP Building NC Project	Not in construction. Dec. 1 2016 Board update states that DSA approval of plans is expected January 2017. Have billed \$213,992. Board approved 35% for Pre-con or \$216,300.
CM Services for George MS MP Building NC Project	P.O. C1516174	Basic	Per CM Contract approved 5/8/2014	11/4/15	Request states 10/1/2015 - 9/11/2017.	\$420,000	George MS MP Building NC Project	Not in construction. Dec. 1 2016 Board update states that this project is finishing schematic design and budget went up from \$7 million and now is \$10 million. Have billed \$75,250, which is 17.9% of total CM fee.
CM Services for Dorsa HVAC Project	P.O. C1516317	Basic	Per CM Contract approved 5/8/2014	5/5/2016. Request signed 4/27/16.	Services 2/1/2016 - 4/30/2017. Invoices start with services February 1, 2016.	\$75,000	Dorsa HVAC Project	Not in construction. Dec. 2016 Board update states DSA approval expected 12/7/2016. Billings in March and April 2016. Invoices paid on \$24,939 which is 33% of CM contract.
CM Services for Lucha HVAC Project	P.O. C1516316	Basic	Per CM Contract approved 5/8/2014	5/5/2016. Request signed 5/2/2016.	Services 2/1/2016 - 4/30/2017. Invoices start with services February 1, 2016.	\$45,000	Lucha HVAC Project	Not in construction. Dec. 2016 Board update states DSA approval expected 12/7/2016. Billings in March and April 2016. Invoices paid on \$14,964 which is 33% of CM contract.
Various Non-Bond Projects CM Services	All of these are billed using same base for both PM and CM contract saying "Construction Cost."	PM Services are supposed to be billed at Project Cost, which would normally be higher. Does not follow contract.						
CM Contract for Measure J	not numbered; no purchase order seen	Basic -- Measure J	11/10/16	No P.O.	Expires Oct. 31, 2018.	No Amount	Measure J	6% of Construction Costs

Program Management Services

The following deficiencies below are related to the program management contracts and services awarded to the Del Terra Group.

Procurement & Bidding

The program management services original contract was awarded using an RFQ/RFP selection process in 2013. In October 2016, the board took action to authorize staff to prepare and negotiate a new program management contract with Del Terra Group without conducting a selection process for the new bond measure, Measure I, which voters approved in June 2016. The interim chief business official identified issues concerning performance and pay in a September 2, 2016 letter to the superintendent and board, but some board members indicated that they had not opened their mail. The letter summarized potential issues of fraud and claims against the Del Terra Group. The allegations are serious and should have merited discussion by the board before awarding a subsequent contract for Measure I bond funds to the Del Terra Group.

During deliberations on the appointment of a project manager (who probably should more correctly be “program” manager) and construction manager at the October 13, 2016 regular board meeting, the minutes show that the superintendent stated that this item was not recommended for approval by staff or the superintendent. Because of the inconsistencies in past performance and payment issues, staff recommended that the district proceed with a RFQ process for the services related to Measure I. However, the board directed staff to bring the item back for a vote on the November board meeting for action.

Six days later at a special board meeting on October 19 (not the regular November board meeting as directed on October 13), the board voted that management “be authorized, directed, and be moved forward subject to that contract being drafted and created by Legal Counsel and be brought back to the Board for final approval.” The motion was amended to include both Measures J and I. Three contracts were brought back and approved at the November 10, 2016 board meeting, which included the program management for the 2012 Measure J, construction management services for the 2012 Measure J and combined services for the new 2016 Measure I bond funds.

At that meeting, the district’s legal counsel also stated that the contract (presumably for construction management) had expired on September 30, 2015. However, Del Terra had been billing for services and the district paid for construction management work without a contract for more than one year. (More detail on the construction management is included in the next section of this report.)

Administration reported to FCMAT certain board members had a sense of urgency to approve Del Terra for the new contracts. However, no bonds had been issued under Measure I, and the urgency was premature without a formal selection process in accordance with the district’s board policies.

Recommendations

The district should:

1. Follow industry best practices by using a RFQ/RFP process for procuring program management and construction management services.

- Hire legal counsel to review the three board-approved contracts for program management and contract 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.

Payment/Fee Schedule

Because the allegations are related to the payment process, it is important to provide details on the payment provisions included in the contract and how the district implemented them.

The following terms are included on Page 39 of the 2013 program management services contract.

Task	Fee
Program management: Quick start projects	3% of overall quick start project costs
Program management: Modernization and new construction bond projects	4% of issued Measure J bond and matching funds for modernization and new construction available for capital projects
Additional services	Hourly basis, See Exhibit B above for schedule

Payment Deficiencies

- Neither Quickstart nor the modernization and new construction bond projects are listed or defined, making it difficult to determine which projects are to be billed at 3% and which at 4%.
- The definition of the basis for the fees are not standard to the industry and are confusing to interpret, leading to a possible inflation of Del Terra's fee (detailed below).
- The fee is a monthly lump sum, instead of a hourly fee based on actual hours worked, leading to a possible inflation of Del Terra's fee (detailed below).
- Invoices and payment schedules are confusing and difficult to interpret. Definitions used are not industry standard and are not consistent across documents. Invoices are mislabeled, which makes it difficult to clearly see the fee increases.
- Del Terra was awarded a fee increase of \$638,273 with no clear basis or reason for the increase.

The contract defines project costs as all costs of the project, specifically as follows:

The total of all Design Costs, Construction Costs, Specialty Consultant Costs, **costs and fees of Manager** (FCMAT emphasis) and other related costs (such as, but not limited to, personnel relocation and temporary facilities costs, fixtures, furniture and equipment (if required for a Campus Project or collection of Campus Project, excluding (I) land acquisition costs; (ii) finance costs; (iii) District's Administrative costs; or (iv) legal fees and court costs.

Including the “costs and fees of manager” within the formula to obtain the same “costs and fees of manager” has the effect of making it a circular formula, and may inappropriately inflate increasing the fee.

A careful review and strengthening of the language of the contract by the district and its legal counsel before board approval would likely have avoided this type of error and would help avoid misinterpretations of the contract during its implementation.

The program management services are based on the “remainder of issued Measure J bond funds and matching funds for modernization and new construction available for capital projects.” These funds do not include E-rate nonrelated funds; bond funds used to pay principal and interest on outstanding certificates of participation and other debt instruments; underwriter, financing costs; purchase of technology equipment; and bond funds used to pay for charter school facilities projects.

A September 3, 2013 letter to then-Superintendent Stephen Fiss from Del Terra states in its opening sentence, “At the June 20, 2013 Board meeting, the total Bond Funds Available were \$26,038,000.” No financial report was made available to FCMAT that documented this amount of available funds, so it is difficult to determine whether this is an accurate figure. It is unclear whether any district staff members verified this figure either.

Because no reports detail available funds and specific usage, it is difficult to determine if the Del Terra Group has based its fee structure on \$26,038,000 including E-rate and technology funds or exactly how this number is determined. A review of district payment history files found that a large amount of funds was used for technology, especially in 2013-14 and 2014-15. However, because of the lack of program budget or expenditure reports, it is difficult to discern whether Del Terra inappropriately included these funds in its basis for payment.

A November 14, 2013 board update by the Del Terra Group then stated that \$25,571,200 in estimated project budgets was approved, with \$466,800 remaining unallocated to projects. Because no line-item budgets are provided, it is unclear what makes up those project budgets, i.e. hard vs. soft costs. Soft costs may include those related to program management. Including program management in project budgets is not standard practice because these services run across all projects and theoretically cannot be allocated to individual projects. However, it is impossible to determine in this case whether that has occurred because of the lack of detailed financial reporting. Because of this, the basis of Del Terra’s fee may be inflated.

It is important to differentiate between project costs and the project budget. The contract uses terms and definitions that are not standard for the industry. For example, the contract states that the project budget is the district’s written statement of funds available to pay for project costs of a campus project or collection of campus projects. However, this is actually the definition of “available funds.” Typically, “available funds” includes all funds, while a “project budget” is usually a smaller number within the total available funds.

Because of this confusion, board members, staff and administration cannot accurately state the true fee structure. FCMAT asked board members individually if they knew what the total cost of Del Terra’s contract would be to the district, and none could identify this amount. Without clarifying the basis for the Del Terra Group’s fee structure, it is difficult or impossible to provide adequate oversight of payments to Del Terra. The contract language should be written with clearer definitions that follow industry standards.

The fee schedule states 4% of “issued Measure J bond and matching funds for modernization and new construction available for capital projects.” Therefore, the basis of the 4% is on all available

funds (exclusions are defined at the bottom of the fee schedule). Again, this actually represents all available funds, which probably is a much higher number than project costs. However, there is no way for the district staff to know this because of the following:

- No project tracking has been performed.
- No project accounting has been completed to determine the actual costs per project.
- No program actual costs have been reported.

One of the payment deficiencies or issues came as a question that arose during interviews with staff. The question was whether the district approved the monthly lump sum payment schedule as required by the contract. FCMAT was provided with an 8½ X 14-inch spreadsheet labeled “ARUESD Bond Measure J – Del Terra PM Services – Payment Schedule that uses the term “Project Budget,” but actually shows available bond funds. District staff did not sign or initial the original 2013 Payment Schedule. This is a violation of the contract, which states that Del Terra and the district are required to approve the payment in writing; however, administrative staff was likely aware of the lump sum payments and approved the subsequent monthly invoices by signing or initialing.

The fee amount in the contract is based on a percentage of the “project budget.” Although the industry sometimes uses percentage fee schedules, this is not advisable because this method does not allow the district staff to evaluate and verify the work performed, number of hours worked, and specific personnel that provided the services. The lack of accountability over the contractor has partly prompted the allegations of fraud and erodes public trust in the district’s ability to spend public funds prudently and legally.

Two revised payment schedules, one in 2015 for a time extension and one in 2016 for the Series C bond issuance, were also provided to FCMAT. Staff signed only the 2015 payment schedule, but again, since administrative staff approved subsequent monthly invoices, it is unlikely that they were unaware of the lump sum arrangement.

The Del Terra Group’s invoices are one-page documents, with an overall “Estimated Project Budget.” It is unclear whether this is considered adequate for payment without backup documentation or hours worked provided.

Neither Del Terra nor the CBO date or sign/initial the 2013 8 ½ X 14-inch payment schedule; therefore, this document does not meet the minimal requirements stated below in Article 5, Payments. A signed copy may exist, but neither the district nor Del Terra has provided FCMAT with the document.

5.1.1 Monthly Payment Applications.... The Parties shall mutually agree in writing, which shall become and (sic) addendum to the Agreement, on the format and additional required content of Payment Applications sufficient to identify and verify adequate progress in support of each Payment Application and the billing hereunder. Within thirty (30) days of the full execution of this Agreement, Manager shall provide a proposal payment schedule to District for District’s review and approval, which approval shall not be unreasonably withheld.

Because the 8½ X 14-inch payment schedule is also undated, it is unclear whether it was provided within 30 days. However, it provides the payment as a monthly lump sum and rate at which the payments will be completely paid also known as a “burn rate.” In the original 2013 payment schedule this rate shows that the payments were estimated to run through December 2015 when the final payment would be made.

Another deficiency or issue relates to the fee extension given to Del Terra. The payment schedule shows monthly payments from May 2013 through December 2015, and totals as follows:

Budget	Estimated Project Budget	PM Fee: Quick Strt 3%/ Other 4%	Type of Service Provided
\$26,038,000			
Quick Start	\$1,076,191	\$32,286	Program Management
Other	\$24,961,809	\$998,472	Program Management
Total	\$26,038,000	\$1,030,758	Total Monthly Invoice

Using this estimated payment schedule developed in 2013, the Del Terra Group's billings would have been as follows:

2013 Estimated Payment Schedule PM Contract

Services Period	Monthly Invoice Amount	Total Invoice
May 2013 through Sept. 2013	\$26,427	5 months = \$132,135
Oct 2013 through Dec 2014	\$46,595	15 months = \$698,925
Jan. 2015 through Dec 2015	\$16,641	12 months = \$199,692
Total 2 years and 8 months		\$1,030,752 (with rounding differences). Del Terra billed \$1,030,758.
Estimated Series C based on \$17,350,000 issuance	\$24,750	9 months = \$222,750
Total Series A and Series C Estimated		\$1,253,502

Actual invoices and burn rate differed from the estimate. This is not atypical and can occur for various reasons, such as acceleration of the program, causing a higher amount of work to be needed every month.

In this case, the actual invoices and burn rate are as follows for the original program contract:

Actual Invoices for Program Management Services Contract

Services Period	Monthly Invoice Amount	Total Invoice
May 2013 through Sept. 2013	\$26,427	5 months = \$132,135
Oct 2013	\$34,947	1 month = \$34,947
Nov 2013 – April 2015	\$46,595	18 months = \$838,710
Total 2 years		\$1,005,792 (Del Terra showed \$1,005,790). Remaining balance per Del Terra is \$24,968.
Fee Extension Approved May, 2015 by Board for \$638,273		
May 2015	\$24,968 "Final Payment" for original contract, plus another \$33,273 first payment of the Fee Extension	\$24,968 plus \$33,273
June 2015 through Feb 2016 Fee Extension	\$35,000	9 months = \$315,000 Fee Extension
Mar 2016 through April 2016 Mislabelled as "Original Program Issuance" – should have continued with Fee Extension	\$5,000 for Fee Extension plus \$24,750 for January 2016 Series C bond issuance	2 months = \$10,000 for the Fee Extension (Del Terra calls this a Client Credit) – billing \$5,000 per month for 2 months instead of \$20,000 per month 2 months = \$49,500 for January 2016 Series C
May 2016 through Nov 2016	\$20,000 for Fee Extension plus \$24,750 Series C Issuance	7 months = \$140,000 for Fee Extension, plus 7 months = \$173,250 for Series C
Total Series A		\$1,030,760
Total Fee Extension (Series A Amendment)		\$498,273
Total Series C		\$222,750
Total PM Fees for Series A, Fee Extension and Series C		\$1,751,783

The table shows that the Del Terra Group billed the district at an accelerated rate over two years instead of the estimated two years and eight months.

The Del Terra Group was awarded a fee extension of \$638,273, which the Board of Trustees approved on May 14, 2015. The agenda item provided to "continue with the scope of services, confirm timeline of management services and amend the payment provisions" in the bond program. No reason was given for awarding an additional \$638,273 nor is this amount based on the agreed-upon 4% fee.

The CBO signed a revised 8 ½ X 14-inch spreadsheet called "Del Terra PM Services – Revised Burn Rate" on April 16, 2015. This revision shows the total payment of \$1,030,758 being billing by May 2015. That spreadsheet does not include the fee extension of \$638,273 as part of the total fee that would be billed to the District

A separate spreadsheet with the title "Del Terra PM Services – Revised Fee Schedule, Time Extension June 2017" was date stamped April 15, 2015. This document shows a payment schedule of \$33,273 in May 2015, \$35,000 monthly estimated payments through December 2015 and \$20,000 monthly payments January 2016 through June 2017 for a total fee extension payment of \$638,273.

Estimated fees were originally \$1,253,502, but actual fees were \$1,751,783, an increase of \$498,281. The basis for this additional fee was unclear, because the contract language had not

been revised. In other words, the estimated project budget remained at \$26,038,000, but the fee extension would increase the total project manager payments to \$1,669,031 if fully paid. This amounts to 6.4% of the estimated project budget instead of the 4% included in the contract.

This fee extension does not qualify as “additional services.” Additional services are defined in the contract as follows:

...services not included in Manager’s Basic Services and include: (a) services directed to be performed by District, (b) services for projects other than the Campus Projects as initially identified by the District under Section 2.1.

On the one hand, if these were basic services with no additional scope, their estimated fee rate of 6.4% is higher than the 4% agreed on in the contract. On the other hand, if the fee extension was for additional services, billing was supposed to have been at an hourly rate, with adequate backup for district staff to be able to verify whether work was done, which Del Terra personnel did it and the hourly rate. However, Del Terra invoiced the district on a lump sum monthly basis as it had done previously.

In January 2016, the district issued Series C for \$17,500,000. The district approved a purchase order for \$693,000 or 4% of \$17,325,000 but without board approval. Services began in January 2016 with the first bill dated in March 2016 as “January 2016 issuance.”

The fee extension does not appear to have been enacted to “front-load” the funding expected from the January 2016 Series C issuance. As shown above, the Del Terra Group billed for the fee extension and the Series C issuance after January 2016, (starting with March 2016 services invoice) at the same time, and there was no credit back to the district for the Series C 4% billings.

The Del Terra Group billed under both the “Fee Extension” and Series C January 2016 issuance of Measure J for nine months, from March 2016 through November 2016.

As of March 2017, Del Terra has been paid \$498,273 from the total approved \$638,273 fee extension. Totaling both the Series A and Series A Amendment, Del Terra has been paid \$1,529,032 from July 2013 through March 2017 from program management services. This is 5.87% of the estimated project budget and an additional 48% of the original fee.

Starting with the services of May 2015 (June 3, 2015 invoice), the invoice includes the term “Fee Extension” with the total amount of \$638,273; however, the label changes to “Original Program Issuance” for \$638,273. It is unclear why this mislabeling occurred, but it obscured the fact that a significant fee increase occurred.

The district did not pay invoice #47100-35 in April 2016. The invoices return back to the fee extension only (misabeled as “Original Program Issuance”). The bills at this point include a line item called “1st of 2 Client Credits,” but staff did not know the meaning of this term. This line is also not any kind of credit, but is a reduced payment of the fee extension (decreased on the bill from \$20,000 to \$5,000).

Starting in March 2016, the Del Terra Group sent two separate invoices for program management services, one for the fee extension (again mislabeled “Original Issuance”) and one invoice for the Series C January 2016 Measure J issuance. It is unknown if the district requested these two fees to be separated, but the result is that the two separate invoices and the two separate “burn rate” spreadsheets make it difficult to see a comprehensive amount of program management fees that were occurring.

The Del Terra Group has not billed the district for program or contract services since the last invoice for November 2016 services (same time as the FCMAT study commenced). It is unclear whether this occurred because the firm has stopped providing services under the Series A amendment and Series C issuance or for another reason. The district should discuss this issue with Del Terra to keep up to date on billings and expenditure tracking.

Recommendations

The district should:

1. 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.

DSA Closeout Services Contract and Payment Issues

In May 2014, the district approved an additional services agreement for the Del Terra Group to perform Division of the State Architect (DSA) closeout services. The contract was for a fee of \$145,000 with a term from November 1, 2013 to June 30, 2015.

DSA closeout services pertain to old construction/modernization projects, often called legacy projects, that may have paperwork to complete, forms to submit by architect, inspector and others, and possible change orders to approve, among several other issues. It is similar to a private residential or commercial building permit that is not finalized. School districts around the state have these projects that are “closed out without certification.” Architects and other professionals often assist districts in obtaining certification from DSA for these legacy projects, some of them as old as 30 years.

DSA certification is important because DSA will not approve the plans for new projects on a school site if there are old uncertified projects at that school site.

The contract’s Exhibit C was a list of 97 district projects, but it was unclear whether these are all noncertified or just the total of all projects completed by the district through the DSA plan approval process.

The Del Terra Group billed for these services according to a monthly fee allocation (like the payment schedule but with another name). The invoice amounts were estimated at \$7,275 per month. Del Terra began billing for services in November 2013 and billed monthly through exhaustion of the contract fee amount for services in June 2015, a total of 20 months.

FCMAT requested a DSA certification status list from district staff and was supplied with one that had the most recent update in March 2017.

The status update list received from staff was divided into two parts: Pre-tracker (older projects) and tracker (newer projects). The projects were color-coded but the coding was unclear, so addi-

tional clarification was requested from district facilities staff but never received. FCMAT did not verify the certification status on the DSA website, as this information should already have been compiled, updated and presented to the board monthly, according to the contract requirements. FCMAT found no evidence of monthly reports in district files or presented to the district or board during the entire contract duration.

Below is a table summarizing the DSA project status update.

DSA Certification Project Status List

As of March 2017

List/Status	Pre-Tracker List	Tracker List	Total Both Lists
Already Certified Prior to 2013	18 or 50%	0 or 0%	18 or 20.5 %
Certified by Del Terra	1 or 3%	7 or 17%	8 or 9%
Project was Not Built or Cancelled –confirmed by Del Terra	1 or 3%	5 or 12%	6 or 7%
In Process by Del Terra	7 or 19 %	21 or 50%	28 or 32%
Remaining Uncertified and No Progress is listed	9 or 25%	9 or 21%	18 or 20.5 %
Total Projects	36	42	78 or 100%

The table shows that even though the Del Terra Group was paid in full by June 2015, it had only certified or closed out 14 projects or 16% of the total. Another 28 or almost one-third of the projects were listed as still in progress by March 2017, and another 18 or 21% of the projects were uncertified, with no progress being made by Del Terra.

There was no reporting presented to FCMAT that provided this summary project status information to the district. According to the contract, the Del Terra Group was required to provide monthly reports that outlined the status of each project and significant issues. If such a list existed, district staff was unaware and had no records of it.

It appears that the Del Terra Group was paid in full for work that was not completed. It is not clear if they continue to do work on DSA closeouts without current payment requests or if they no longer do the work.

Recommendations

The district should:

1. 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.
2. Require the spreadsheet to include the following information:
 - The original projects that need to be certified (not all district projects ever completed, which causes confusion).
 - The status of each project and whether the Del Terra Group obtained the certification and date of certification.

- An indication of the project certification work in progress and any significant issues.
 - A bottom-line total of projects still uncertified.
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.
 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.

Program Management Performance and Scope of Work Issues

The contract for program management services, attached as Appendix A to this report, includes the planning, programming and construction of modernization projects involving existing school facilities and designated new construction projects related to the district's bond program known as Measure J, other previous bond measures, facility funding and any match funding (campus projects). The program management services are provided during the planning, preconstruction, bidding and award of contracts, construction and post construction of each campus project. The contract includes management, oversight, and coordination of all contractors, subconsultants, vendors and suppliers work. In addition, the contract requires that the contractor coordinate, develop and maintain all bond-related records with district staff to establish an overall bond program financial management system for the following:

- A. Accounting
- B. Auditing
- C. Cost estimating and budgeting
- D. Contract payments
- E. Cash flow forecasting and analysis
- F. Financial reporting

The program management contract includes monthly progress reporting in writing and in electronic format developed collaboratively by the district and contractor. The summary report requirements must include the following:

- A. Program status reports for each project including updates or accomplishments since the previous report
- B. Project schedules for each project including an update of actual performance against the approved baseline schedule
- C. Budget, actual, forecast to complete and available budget balances (quarterly reporting)

Numerous issues relate to the apparent lack of performance and contract compliance with the program management services contract.

First, according to district staff, Del Terra has physical possession of all project and program records and files, related to the Facilities Department. FCMAT requested to interview Del Terra and to obtain their records, but Del Terra declined.

FCMAT also requested to see facilities project records and files from Facilities staff. Neither Del Terra nor the Facilities Department provided the records requested (with the exception of one DSA closeout report discussed in the previous section). Therefore, some statements given in interviews could not be verified.

FCMAT cannot determine if the list of responsibilities in the scope of work for the Del Terra Group has been performed or completed according to the contract because little information is available to district staff, the board or public. This is in direct violation of the standard of care and professional performance of this type of program management services contract.

The contract language is weak, stating that “(u)pon earlier of termination of this Agreement or completion of performance of this Agreement, Manager and its subconsultants, of every tier, shall, if requested by the District, deliver all of the originals of such electronic documents and/or files prepared by District...” This language does not explicitly state that the district is entitled to facilities program and project files and records in real time, while the program and projects are occurring.

The language is similar in the construction management contract (detailed later in this audit report). This contract indicates the construction manager is to “...forward all of its documents and plans to the District upon completion of the Project and ensure all such plans and documents are well-organized for any appropriate audit or review of the Project(s).”

This is highly unusual in a program of this kind, and does not allow for the adequate oversight and accountability of the contractor to the district and for the use of public funds.

All project files and documents should immediately be turned over to the district in an organized manner. The contract states that the project manager should assist the district in organizing the filing system and plan room. Because of the confusing wording, it is unclear what a “filing system” means without the district having the actual files to put into this system. FCMAT heard comments about a plan room being organized, but saw no evidence of it.

In renegotiating program management contracts, the district should 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 for all past and current projects, and to assist in setting up an adequate filing system, including training for district staff. This should also occur in real time for all current projects.

The contract also requires the Del Terra Group to “develop and maintain with district staff to establish an overall bond program financial management system in the area of accounting.” There was no evidence of the district using a multiyear, multifund project tracking program. Accounting staff maintained binders of contracts, purchase orders and invoices, but FCMAT did not observe any electronic project tracking system set up alongside the district’s accounting system. A large bond program typically develops and maintains a separate project tracking system that can provide readily-accessible project budgets and expenditures across fiscal years. Because this was lacking, it is difficult for staff to provide information on bond revenues and expenditures.

The scope of services in the Del Terra Group’s program management services contract includes a requirement that Del Terra provide monthly reports. Specifically, Section 2.1.1.1. Reports, states that: “Project Schedules for each project including an update of actual performance against the approved baseline schedule.” There is no evidence that the district was provided with any reports including that information.

The program management contract also requires a report on “Budget, Actual, Forecast to Complete, Budget Available Balances (this portion of the report shall be provided quarterly).” FCMAT found no indication of quarterly reporting to the district.

Adequate management of school district bond programs requires the development of monthly or bimonthly (at the most infrequent) budget and expenditure reports at the program and project levels.

While FCMAT observed evidence of cash flow projections, conceptual budgets and estimated project budgets (i.e. available funding), these consisted of future projections and summaries of monies spent after project completion (and only in a summary format), and not project-specific in real time comparing budgeted to actual expenditures.

FCMAT requested that district staff and the Del Terra Group provide evidence of program-level and project-level budget/expenditure reports showing actual expenditures in every category with comparison to original budget and any revised budget. However, this evidence was not received despite the fact that this information is generally required of all program managers for school district bond programs such as this.

Monthly or bimonthly reports should be required, so that staff, the project team, the board of trustees, the citizens’ oversight committee and the public can determine if the overall program and each individual project are within budget or are over budget. At this point, there is no way to know the status of the program or projects and therefore no way to evaluate the Del Terra Group’s performance in budget and expenditures.

The columns for such reports should consist of the following:

1. The original budget
2. The revised budget
3. Encumbered (contracted) amount
4. Actual expended amount
5. Remaining Balance

Board presentations were lacking in detailed information. The presentations often include many photos and few spreadsheets or a narrative with detailed financial information

For example, a typical board presentation slide from 2015 stated the following regarding a number of restrooms upgrade projects:

The new revised budget for remaining DSA upgrade projects (is) approximately \$3,000,000.

This is inadequate for accountability because it does not include line-item or schedule status detail.

FCMAT could find only one presentation with any semblance of a detailed budget and expenditure report. It appeared to be a sample of a report, but FCMAT was not provided with any other reports for any other project. The October 8, 2015 board update included an example of a project expenditure report for Fischer MS Restroom Refurbish Project (non-DSA). It included expenditures to date, with invoice number, budget code, vendor, invoice date and amount, sorted by construction project category, such as architect/engineer fees, DSA fees, bid advertisement

and construction. However, it did not include the original budget, revised budget or comparison/difference between the budget figures on each line and the actual expenditure.

The board of trustees typically receives a PowerPoint presentation that includes one to three pages of narrative with no detailed financial information and 25 to 40 pages of photographs of project construction. A photographic presentation can be effective at the board level; however, the citizens' oversight committee, facilities staff and business staff, as well as the superintendent when requested, should receive the monthly or bimonthly program and project budget and expenditure reports with line-item accounting.

The district website shows that before the 2013 hiring of the Del Terra Group, the citizens' oversight committee met quarterly. This is a Brown Act committee, requiring the posting of all agendas, along with other accountability measures. Before 2013, all agendas and minutes were posted. However, after Del Terra was hired, quarterly meetings were rarely held, agendas lacked detail, minutes were not posted, and the agendas indicate about 25 to 30 minutes are allotted to each meeting. This would require extremely short reports with no ability to provide details and answer questions from the public or the citizens' oversight committee.

California Education Code sections 15278-15282 describe the requirements of a citizens' oversight committee for Proposition 39 general obligation bonds. Those sections state that the committee shall issue regular reports on the results of its activities. A report shall be issued at least once a year. Minutes of the proceedings of the citizens' oversight committee and all documents received and reports issued shall be a matter of public record and be made available on an internet website

The district website shows only the agendas for three meetings: one in 2016 and two in 2017. No minutes have been posted. Bond presentations are provided, but it is unclear to which body (the committee, board of trustees, or other committee) they were presented. No other documents have been posted.

Without detailed budget and expenditure reports, the committee cannot provide adequate financial oversight for the facilities program, as required in state law.

The committee should report to the board annually to describe how effective it has been in holding the district accountable for properly expending funds. This report should describe how many meetings were held that year, the members of the committee, any issues encountered, a summary of the required financial audit of Fund 21 and the performance audit.

The committee should request a detailed performance audit to provide more accountability for the contractor and district staff. The district should consult with other districts to obtain examples of performance audits and should select a performance auditor using an RFQ/RFP selection process.

As stated previously, the Del Terra Group did not respond to FCMAT's request for interviews or for documents and files. This is in violation of the program management contract, Article 6, Manager's Records and Files.

Section 6.1.1 of the contract requires the manager to maintain complete and accurate books and records to verify scope or charges for any services provided under the contract. Contract language also requires these documents to be maintained in sufficient detail to permit the district, district's independent auditors or their designee to thoroughly evaluate and verify the nature, scope, value and charges for services performed under the contract.

Section 6.1.2 of the contract states that the district, district's auditors or designee has the right upon reasonable notice to examine and to audit books, records, documents and other evidence sufficient to reflect properly all costs and expenses claimed to have been incurred by the manager. The Del Terra Group has not complied with this section, in violation of the contract.

FCMAT saw no evidence of compliance with the California Environmental Quality Act (CEQA); however, because of the lack of reports and records from the district, it is unknown if compliance occurred. FCMAT did not see evidence of board actions such as approvals of categorical exemptions, negative declarations or environmental impact reports, all required by state law for most school construction and renovation projects.

Because of the high turnover of business and facilities staff as well as limited experience, knowledge and capacity in the Facilities Department, FCMAT found that the staff provided little due diligence and oversight of Del Terra Group, and therefore would be unable to protect the district if fraudulent activities occurred. In addition, staff seems to be unable or unwilling to ask detailed questions or request additional information from Del Terra beyond reports to the board and the superintendent that largely consist of "before" and "after" photographs (some of which may be repeated in several reports).

The Del Terra Group representatives and board members reportedly told administrative staff members not to ask questions and continue with the program.

Article 1, Section 1.3 Performance Standards, of the program management contract states the following:

Manager's services shall ... follow the standards of care and performance in a manner consistent with the standard of care and performance of its profession in a manner consistent with the standard of care in California applicable to those who specialize in providing services of the type, scope and complexity of a program manager for a similar building and modernization program....

Section 1.3.2 states that the Del Terra Group is to act as the district's fiduciary agent, meaning it works in the district's best interests. The lack of files and lack of meaningful financial project and program reporting indicate this provision has been violated since the district has no means to determine whether Del Terra has operated the program efficiently, cost-effectively and legally.

California Uniform Public Construction Cost Accounting Act (CUPCCAA) is a process allowing school districts (and other public agencies) to award certain types of construction project contracts without the formal bidding process typically required of all construction projects over \$15,000. The district uses the CUPCCAA process, and the Del Terra Group is in charge of operating the program. Continuous and annual updating and notifications are required in order for districts to comply with the law. Staff members reported that because Del Terra is in possession of all files, they were unsure about whether Del Terra adequately followed all laws regarding this process. In particular, they stated that they asked the Del Terra Group for the current CUPCCAA approved contractor list, but it had not been updated as required.

Staff was also concerned that the Del Terra Group was selecting a disproportionate amount of contractors from Southern California instead of the local area. The Del Terra Group handled all aspects of the program, including soliciting quotes from contractors and selecting them, and district staff did not have the information it needed to adequately oversee this program.

Because the Del Terra Group is in possession of all files and records and did not respond to FCMAT requests for interviews and documents, the team could not verify whether Del Terra ensures the district complies with all CUPCCAA requirements. FCMAT could also not determine whether the Del Terra Group disproportionately selects Southern California contractors.

Recommendations

The district should:

1. 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.
2. 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.
3. 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.
4. Enforce (or require) contract language to provide program and project budget and expenditure reports deliverables to be submitted monthly.
5. 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."
6. 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.
7. 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.
8. Hold quarterly citizens' oversight committee meetings, and include detailed financial and schedule information.

9. 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.
10. Have the committee present an annual report to the board at a regular meeting, with presentations by the committee officers, not the program manager.
11. Consider completing a more detailed annual performance audit using a new audit firm selected by an RFQ/RFP process.
12. Request and review all information regarding compliance with CEQA, and develop a process for retroactive and proactive compliance.
13. Require all documents and records regarding Del Terra's performance on the CUPCCAA process to be turned over to the district.
14. 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.

Contract Administration by District and Del Terra

The district has not maintained comprehensive multiyear tracking of Del Terra service contracts and fees, nor had it reported these program management and construction management fees and costs to the citizens' oversight committee or board of trustees. Board members stated that they did not know the amount of total payments made to Del Terra. The closest thing available was a binder from the Business Department for each contract that includes purchase orders and invoices, but had no summary report. In response to questions, the CBO asked in summer/fall 2016, business staff recently developed a spreadsheet, but this document relies on project budget and available bond funding amounts provided by Del Terra and not independently verified by staff.

Another tracking problem is the district's system of numbering contracts and purchase orders. Contract identification numbers appear to be a "C-xxxxx," but a purchase order is identified with the same number instead of a separate purchase order number. As a result, the term "contracts" is actually used for purchase orders and vice-versa. This is the case throughout the records, invoices, purchase orders and contracts, making identification and tracking difficult to maintain.

Although some purchase orders were revised and amounts increased, the purchase order number stayed the same as the original. An adequate purchase order system would typically require that any additional encumbrance be completed using a separate and subsequent purchase order, not the same number. There were indications of rollover purchase orders with separate numbers for starting a new fiscal year with a remaining unspent balance. However, reference is made to contracts and purchase orders interchangeably, which can cause difficulty in tracking.

The district uses a request for contracted services form to request a purchase order for professional services. This form has no separate numbering system and instead includes a contract number.

The term “key personnel” is included in sections of the Measure J and Measure I program management contracts, but with no definition of the term. The district should define the term “key personnel” in the definition list.

The contract states that the district is to approve any changes to key personnel. The district should require Del Terra to provide a list of the key personnel for both project and construction management contracts and include a clear statement indicating which Del Terra staff are program management and which are construction management or both as well as the percentage of time spent on both activities. The district should require Del Terra to provide this information retroactively to 2013 to provide full accountability to the public.

Recommendations

The district should:

1. Select a new tracking system from an outside vendor using an RFQ/RFP selection process. Del Terra should not manager this system.
2. Develop and implement a new system for numbering and identifying contracts vs. purchase orders.
3. Train all accounting, business and purchasing staff and management on this new system, with training manuals at all desks.
4. 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.”

Construction Management Services Contracts

Procurement Issues

In May 2013, the district hired Del Terra for program management services only. It is unclear how the district intended to provide construction management services.

By the summer of 2013, Del Terra was providing construction management services under additional services agreements #1 and #2 under the program management contract, for summer and fall/winter 2013 projects. These services were negotiated at 7.5% of construction costs.

In January 2014, email from the district’s legal counsel indicate a concern about how to procure construction services in the future, particularly regarding procurement without a selection process.

The email states the following:

Section 4.3 of the Program Management Agreement covers Additional Services at a specified hourly rate or as otherwise provided therein. For those services that have already been provided (the summer 2013 projects –FCMAT) because they were necessary, my recommendation is to simply pay them under the Add Services provision in Section 4.3 of the Program Management Agreement. There is no amendment or modification to the PM agreement necessary to do that. The District issues a P.O. for the work as an Add Service, he submits an invoice, and then it goes to the Board for approval. That is not the best method of doing this since it does not guarantee the district the best price or service, but since the work is done, it really is the best approach at this point.

The larger question will remain: what do about CM services on a going-forward basis? At this point, to simply amend the contract and to continue to award him (Del Terra) CM services contracts without an RFP/RFQ is contrary to the terms of the PM agreement, puts the District at a disadvantage from a pricing standpoint, and will put the district at risk of serious criticism from the public, potentially auditors and other stakeholders groups for questionable contracting practices.

Despite this warning, the district in May 2014 moved forward with a construction management contract awarded to Del Terra without a selection process with RFP/RFQ. The board agenda item states that based on Del Terra's experience and expertise, the recommendation was to award the firm the construction management services contract.

It is not a best practice to have the same firm perform both types of work since program management would basically oversee itself, providing opportunity for lack of accountability.

Recommendation

The district should:

1. 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.

Payment Issues

The construction management services contract includes a 6% fee based on construction costs.

The program management contract and the construction management contract define "construction costs" differently. In Section 1.1.20 under General Provisions, the Program Management contract defines Construction Costs as the following:

The total cost of constructing a campus project, excluding the following:

- The cost of professional or other services... (such as architects and other design professionals)
- Land acquisition costs
- Finance costs
- District's administrative costs
- Legal fees and related legal costs.

However the construction management contract defines construction costs as the following:

...the Board-approved amount of the Construction Contract awarded to the Contractor on the Project. Construction costs shall include an increase for changed orders unless the change order is the fault of the Construction Manager.

The two contracts by Del Terra should include consistent definitions, especially definitions that determine the contract fee amount.

The contract states that, prior to letting the construction contract, work done by the construction manager, such as planning and coordination of design team professionals, and typically called preconstruction work, the manager "shall bill the District on an hourly basis for work actually

performed as set forth in Exhibit B (“Pre-Construction Compensation).” However, FCMAT could not find any language referred to as “Pre-Construction Compensation” in Exhibit B of the contract.]

The preconstruction work accomplished includes four current projects, the Fischer Middle School and George Middle School Multi-Purpose Buildings and heating, ventilation and air-conditioning (HVAC) at Dorsa and Lucha Elementary Schools. For these, Del Terra has billed the district on a 6% basis for following amounts:

Project Description	Number of Invoices	Total Cost
Fischer Middle School	10	\$213,992
George Middle School	4	\$75,250
Dorsa HVAC Project	2	\$24,939
LUCHA HVAC Project	2	\$14,964
Total of Invoices		\$329,145

According to the construction management contract, these should have been billed hourly since the construction contracts have not been let. The invoices should be accompanied by supporting documentation showing the actual hours worked and by whom.

The construction management fee allocation approved by district administration provides for 35% of the fee to be billed for preconstruction, 60% to be billed during construction and the remaining 5% to be billed for closeout/post-construction. Therefore, the fact that Del Terra billed for construction management services before construction contracts were awarded, complies with the contract language.

Recommendations

The district should:

1. 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.
2. Reconcile the fees paid to fees that should have been paid and require correct invoicing.

Contract Language Issues

The contract does not list a not-to-exceed amount. This number is the maximum cost for any fee extensions above those of the original contract, and anything higher must be submitted to the board for approval. This is a first step in providing accountability for this contract and the bond program to the taxpaying public. Because of the open-ended nature of the contract, the district should renegotiate the terms to include a not-to-exceed amount.

The construction management contract appears to have been hastily drafted and is incomplete, as it does not include a list of terms and definitions.

The construction management contract's terms of services and effective dates conflict with one another, and the effective date of October 1, 2013 is before board approval on May 8, 2014. The agreement states that it is in effect for one year commencing on the effective date and expiring September 30, 2015, but that is actually two years.

In the following paragraph, the contract states that it is in effect from October 1, 2013 through final completion of projects or five years from execution of the agreement, contradicting the term language above. The district's legal counsel said at the October 19, 2016 special board meeting, board meeting that the construction management contract has been expired since September 30, 2015.

Another problem regarding confusion about the scope of work for the program management versus the construction management contracts was reported by staff and administration. This issue is involved in the allegation of double-billing by the same person for both types of work. The program management contract includes preconstruction activities that are also included in the construction management work such as budget development, schedule development, bid package development, prebid conferences, evaluation and recommendations for bid awards.

In November 2016, the board approved a new combined contract for the newly-passed Measure I. The scopes of work have been greatly improved and clarified from the language in the Measure J contracts. However, the Measure J program management and construction management contracts still contain unclear language. The district should the Measure J contracts so that they can be corrected and improved.

Recommendations

The district should:

1. 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..
2. Renegotiate the November 2016 Measure J program management and construction contracts to include the approved scope of work that is in the new Measure I contract.
3. Include a not-to-exceed maximum fee in a renegotiated contract.
4. Include a list of projects in the contracts.

Performance Issues

Monthly schedule reports comparing actual progress with scheduled progress for the design and construction phases of the project required by the contract were not in evidence. The performance of the construction manager is unknown because there are no records or files in possession by the district nor provided by Del Terra to FCMAT, so evaluation of performance cannot be done. This in itself means that the standard of care in performance has not been met with this contract.

The construction manager is required to forward all documents and plans to the district upon completion of the project and ensure that all such plans and documents are well organized for any appropriate audit or review by the district. FCMAT was provided no evidence of this being done.

Recommendations

The district should:

1. Require the submittal of monthly schedule reports according to the contract.
2. Require Del Terra to forward all documents and plans to the district upon completion of all projects, including past projects.

Substantive Testing

FCMAT obtained from the district's financial system reports for the 2013-14, 2014-15, 2015-16 and 2016-17 (through March 31, 2017) fiscal years and performed the following procedures:

- Analyzed data in the vendor history reports and selected individual transactions for review.
- Requested from the district all supporting documentation for each selected transaction
- Reviewed documentation for each transaction to determine the following:
 1. Whether authorization was obtained and documented in advance of the expenditure
 2. If the expenditure was appropriate, in accordance with district policy, and allowable by law
 3. Whether goods or services were received and an obligation was incurred
 4. If transactions were processed accurately and in a timely manner, and properly recorded

FCMAT reviewed all warrants issued to the Del Terra Group from July 1, 2013 through March 31, 2017, many of which contained multiple individual transactions. All transactions included in each warrant or invoice were reviewed as described in the procedures above. None of them included the supporting documentation required in the contracts and as a matter of the standard of care for this type of work.

Issues regarding inadequate supporting documentation have been explained above based on percentage basis, lump sum payment schedule and lack of budget and expenditure reports.

Current and former district staff stated that board members applied pervasive pressure, including use of a threatening tone and/or manner, to persuade them to process transactions that lacked appropriate supporting documentation or were contrary to established policies and procedures.

Significant deficiencies FCMAT noted during the review of transactions include the following:

1. Multiple invoices were submitted with no reference to project data.
2. Purchase orders were prepared after goods and/or services were received and sometimes prior to board approval.

3. Invoices were assigned incorrect object codes and did not conform with the California School Accounting Manual (CSAM) or Office of Public School Construction (OPSC) guidelines due to deficiencies of the district's financial system.

Recommendations

The district should:

1. Require that all invoices submitted for payment include the project reference or name and job code prior to making payments.
2. Ensure that all purchase orders or contracts are approved in advance of any work that is performed.

Internal Control Deficiencies

Background

Weaknesses in or the lack of many internal control elements, including the control environment, monitoring and control activities, has led to an environment with considerable risk for fraud, misappropriation of funds and misuse of district assets in the management and oversight of the district's multimillion-dollar bond program. FCMAT identified material weaknesses in multiple areas of internal control because of ineffective procedures in several elements of the internal control structure. These weaken the district's ability to provide the proper segregation of duties regarding the contracts for project and construction management awarded to the Del Terra Group. Among these weaknesses were improper segregation of duties because of high employee turnover and lack of institutional memory in business and facilities management, improper application and/or enforcement of governing board policy, weak management and oversight of business activities, and management or board that overrides established procedures and internal controls. In addition, employees widely perceived the ethical conduct of the district's board as questionable, which has compromised the organization's moral tone.

Leadership

Well-defined roles between the superintendent, administration and the board are critical to the development of a strong working relationship. Organizational relationships may be influenced by internal and external factors that affect school leaders during times of fiscal crisis, demands to improve student academics or increased community pressure to enhance facilities. During interviews, staff expressed dismay at some board members' tendency to micromanage operational issues while board members voiced some concerns regarding the lack of communication and conflict over roles and responsibilities.

Information obtained during interviews and a review of transactions support that board members have used their influence over business transactions to deliberately override management's recommendations and board policies on the project and construction management of bond funds. Normally, the board's role is to assume leadership in the formulation of policy, while the superintendent or his/her designees is responsible for implementing and following specific board policies. However, during FCMAT's audit of the district, the team identified multiple internal control deficiencies and noncompliance with industry-standard practices on the project and construction management contracts. A lack of proper segregation of duties was identified in functional areas that included board policies or governance, purchasing and accounts payable.

District staff reported that they were subject to retribution by the board when they questioned the contract with the Del Terra Group. The board directed staff to process transactions without documentation and bypass established internal control procedures on bidding and processing invoices for the project and construction management contracts. Current and former staff reported problems that arose from changes in the CBO and facilities management positions over the last three years and indicated that these have resulted in a weakness in business and administrative leadership.

The superintendent or board members should address the perception of unethical behavior by board members. On or about September 5, 2016, the superintendent and district legal counsel received a written request from the previous interim CBO to address billing and contract performance issues by the Del Terra Group. The interim CBO addressed concerns that Del Terra had invoiced the district approximately \$329,145 for construction management services for projects that had not yet begun and did not comply with the payment terms and conditions of the

contract. There were also concerns that Del Terra was staffing both the project and construction management responsibilities with the same employee. After meeting with Del Terra's program management representative working on site and the president/CEO in separate meetings, the interim CBO documented conflicting statements on the status of the projects in question and invoices that appeared to violate the California False Claims Act (CFCA). Subsequent letters and emails documented that the Del Terra Group did not provide the requested backup information for the 18 invoices questioned. Del Terra Group claims there was a previous change in the billing process that allowed the contractor to bill for construction management services on equal monthly installments instead of when the work was performed.

As the district's most visible employee, the superintendent's behavior and actions are constantly scrutinized by staff and the community. To request clarification, the superintendent and interim CBO discussed the matter with the board in closed session on or about October 13, 2016 because of the imminent threat of legal action for nonpayment. A majority of the board reportedly disregarded the billing and nonperformance issues and directed staff to pay the invoices.

At the same meeting, the board approved a subsequent contract with the Del Terra Group for projects related to Measure I, which violates the district's board policy and administrative regulations on bidding. Once the board convened in open session, one board member openly stated that he could not be a part of the decision on Del Terra's contract and left the meeting. After several board members verbally berated the staff, superintendent and legal counsel, this same board member made a written request to the superintendent for a legal opinion regarding the seriousness of the allegations in the report dated September 5 submitted to the board by the interim CBO in closed session. This is one example of the district's fractious school board, which has created a difficult working relationship for administrative staff. The allegations should have prompted the board to pause and perform additional due diligence since there was no urgency to approve a contract for Measure I bond funds.

In October 2016, the district solicited RFPs to select a contractor to implement the requirements of Proposition 39 projects related to the California Clean Energy Jobs Act. District staff and community members serving on the district's selection committee reviewed and analyzed all proposals, with a recommendation to hire an energy consulting firm.

When the administration attempted to present the results of the RFP process to the board, staff was instructed to provide another RFP and allow the Del Terra Group to compete for the work. The board did not conduct any due diligence necessary or inquire about whether the Del Terra Group had the necessary experience to meet the proposed service requirements.

In December 2016, the interim CBO attempted to present the board with an RFP for architectural services related to Measure I projects. Since the architect working with Del Terra was not included in the process, staff was directed to cancel the RFPs and conduct a new process.

The board's involvement in the bidding and contract management of the Del Terra contracts does not provide the necessary segregation of duties and responsibilities normally delegated to district staff. The board's role is to promote transparent vendor relationships and fiscal responsibility through consistent oversight. The district's Board Policy 3311 states the following:

To ensure transparency and the prudent expenditure of public funds, the Board of Trustees shall award contracts in an objective manner and in accordance with law. District equipment, supplies, and services shall be purchased using competitive bidding when required by law or if the Board determines that it is in the best interest of the district to do so.

In assessing current contracts, the board did not adhere to the necessary review process to conduct a risk assessment, provide due diligence in the vendor selection process, document the vendor relationship or monitor performance issues to award a contract for Measure I bond projects. During interviews, the board had no concept of the total fees, process for changing the scope of work, ownership of any work product, process for ongoing monitoring and/or dispute resolution.

Board Policies

The board's bylaws, policies and administrative regulations should be reviewed as often as necessary and be continually updated to remain consistent with the best practices in K-12 education. Board policies and administrative regulations are based on laws and regulations in numerous documents, including the California Constitution, Education Code, Code of Regulations, Government Code, federal regulations, case law, and industry practice. Board policies and regulations provide guidelines and directives for district operation and are a key component of internal controls. It is important to ensure that board policies are updated to reflect changes in legislation. In designing board policies and administrative regulations, management is responsible for designing and implementing a system of internal controls over financial reporting.

This system should provide reasonable assurance that misstatements and/or noncompliance affecting the financial statements are prevented or detected and corrected through normal operating procedures. When adopting board policy, the district should carefully consider the specific guidelines that promote behavior that secures district assets from misuse or fraud. As a part of this study, FCMAT requested copies of the district's board policies and administrative regulations, which the district provided through its online link to California School Boards Association's (CSBA) Gamut Online program.

FCMAT's review of those policies and their adoption dates show they were adopted and updated by section, but most have remained unmodified since July 2, 2013. Further comparison of the district's adoption dates to those of the CSBA Gamut master policy manual found policies in each section that have undergone revisions because of changes in law since the district's adoption dates.

The district's board policies and administrative regulations meet the industry standards except for continually updating the policies on a monthly, quarterly or annual basis to match changes in legislation or law. As referenced in other sections of the report, one of the responsibilities of the district's disbursement officer or internal auditor would be to conduct a policy audit and/or conduct internal reviews of departments or transactions and determine whether the policies are used and enforced. The district should have policy and regulation enforcement mechanisms for all board members and employees.

One of the most important policies is the management of district assets/accounts to ensure necessary safeguards of the district's funds. Board Policy (BP) 3400 has been adopted for internal controls and fraud prevention and is a clear reminder that employees should report any indication of fraud, financial impropriety, or other illegal act in their area of responsibility.

Purchasing

The district's policies set the tone and provide the foundation for purchasing controls. For school districts the process of purchasing supplies, equipment and services is dictated by statute, local board policy, and district procedures and practices. Sections of the Education Code, Public Contract Code, Government Code, and California Code of Regulations provide the legal basis and parameters within which a school district must conduct its purchasing functions. Board

policies, administrative regulations, procedures and guidelines add controls that are designed to protect the district by meeting various purchasing and contract needs efficiently while considering lowest cost and highest value.

General guidelines and best practices for purchasing include the following:

1. Board policies and administrative regulations to provide the foundation and expectation that purchasing follows legal requirements, provides strong internal controls and meets procurement objectives.
2. Designation of staff member(s) responsibilities and authority throughout the purchasing process.
3. Standardized procedures for vendor selection, requisition generation, and issuance of purchase orders. These procedures should also establish competitive bidding processes to ensure prudent and optimal use of funds and appropriate minimum standards and compatibility requirements for supplies and services.

The district recognizes its fiduciary responsibility to oversee prudent expenditures of district facility and bond funds. Board Policy (BP) 3300 (updated 2013) delegates spending authority to the superintendent or designee in accordance with the Public Contract Code Section 20111 and other statutes including Education Code Section 17605. District purchasing policies include budget, management of assets and accounts, financial reports and accountability, conflict of interest and expending authority.

Additional board policies related to purchasing that were reviewed by FCMAT include the following:

BP 3311 (2013) Bids: To ensure transparency and prudent expenditure of public funds, the board shall award contracts in an objective manner and in accordance with law.

BP 3312 (2013) Contracts: The power to contract may be delegated to the superintendent or designee. To be valid or to constitute an enforceable obligation against the district, all contracts must be approved and/or ratified by the board.

BP 3314 (2013) Payments for goods and services: The board recognizes the importance of developing a system of internal control procedures. To facilitate warrant processing, the purchasing, receiving, and payment functions are to be kept separate. The superintendent or designee shall sign all warrants and ensure there is appropriate documentary support verifying receipt of goods and services.

BP 3314.2 (2013) Revolving fund: A revolving fund may be used to pay for goods, services, and other charges as determined by the board. A vital step in the purchasing process is the approval process for making the purchase of goods or services.

BP 3400 (2013) Internal controls/fraud prevention: The District expects board members, employees, consultants, vendors, contractors and other parties maintaining a business relationship with the district to act with integrity and due diligence in dealings involving district assets and fiscal resources. Internal controls shall be developed to aid in the prevention and detection of fraud, financial impropriety, or irregularity. These internal controls may include segregating employee duties; providing job descriptions explaining the segregation of duties; adopting an integrated financial system;

conducting background checks on business office employees; and requiring training for business office staff on the importance of fraud prevention. All employees shall be alert for any indication of fraud, financial impropriety, or irregularity within their area of responsibility. Any employee who suspects fraud, impropriety, or irregularity shall immediately report those suspicions to his/her immediate supervisor and/or the Superintendent or designee.

The district's purchasing policies have been updated within the last four years. Its purchasing practices meet or exceed best practices for the purchase of goods and services except for the construction related contracts awarded to the Del Terra Group. In reviewing the procurement process, the audit team reviewed, compared, and contrasted the terms and conditions of the project and construction management agreements and the resulting transactions.

Interviews with the Purchasing Department found all bidding of professional services for bond related projects including but not limited to contractors, architects, engineers, and inspectors, are delegated to the Del Terra Group. A review of the district's bidding policies and processes found its materials, services and supply acquisition and public works construction bidding procedures comply with the law except for work conducted by Del Terra.

Public Contract Code (PCC) 20111 requires school districts to publicly bid certain purchases for equipment, materials, supplies or services that are subject to a variety of bid thresholds and criteria. In reviewing the district's records, all bid documents for the bidding or contracts for professional services related to construction projects from bond funds, official budget for each project, inspector's records, construction progress and other construction accounting records including budget to actual records by project were not on site at the district. Due to the lack of bid documents to inspect on site, the team could not identify the process, evaluation criteria for award, number of bids, type of bid, request for quotation or request for proposal documents. Staff stated that they have requested the required documents but the Del Terra Group has not provided them.

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. These records are specified and include, but are not limited to, items such as all J-Forms, most payroll records and the summary of expenditure and construction progress.

Vendor Payments

The district has inconsistent accounts payable practices, and record-keeping, particularly among transactions requiring formal bidding. As a result, determining the propriety of transactions was sometimes difficult. Many invoices lacked descriptions of the facility projects billed. Although the team could extract data from the district's financial system, it is disconcerting that the district did not require this detail before paying the invoices. Specific board members were less concerned about these transactions, indicating that the Del Terra Group has worked for the district for the past three years and would not overcharge for construction related services. However, the cost of managing the bond projects over the last three years was approximately \$3 million. Therefore, the audit team was concerned with the informality of the transactions and the board's reaction to any concerns, questions or inconsistencies in the payment or bidding processes for the Del Terra Group's contracts related to the expenditure of bond funds.

The anonymous allegations submitted to the county office that provided the impetus for this study were specifically related to items associated with the project and construction management contracts to the Del Terra Group. These specifically included large numbers of warrants paid to the contractor with incomplete invoices. To accomplish testing, in-depth analysis and an understanding of these transactions, FCMAT developed testing procedures and was provided with the district's summary of general ledger expenditure transactions from July 1, 2013 through March of 2017:

The summary total of all fees paid to the Del Terra Group from June 2013 through March 2017 equals \$3.246 million over the 3.5 year period.

- Review of the detailed general ledger records from July 1, 2013 through March 31, 2017 31, 2016.
- Review of proper authorization and available supporting documentation.
- Review of bidding documents and contracts.
- Analysis of supporting documentation for payment transactions.
- Review of fiscal policies and procedures.
- Review of governing board meeting agendas and minutes.
- Review of internal control process and procedures to determine possible weaknesses in the prevention and detection of fraud, misappropriation and/or criminal activity.

FCMAT previewed all the general ledger transactions related to payments coded to multiple funds and included resource and object codes 1000-97000. The transactions considered for review excluded those related to payroll. Previewing transactions means that all were reviewed in total and individually to determine if any should be examined in further detail by examining the detailed supporting documentation and making inquiries regarding the status and type.

In summary, the team contacted the former district CBO (who worked prior to the interim CBO being hired in August 2016) regarding the allegations submitted to the Santa Clara County Office. The allegations claimed that Del Terra had invoiced the district approximately \$329,145 for construction management services for projects that had not yet begun. The claim is that Del Terra had knowingly submitted fraudulent invoices in violation of Government Code 12651(a) (1) and 12651(a)(2) regarding the following invoices:

Project Description	Number of Invoices	Total Cost
Fischer Middle School	10	\$213,992
George Middle School	4	\$75,250
Dorsa HVAC Project	2	\$24,939
LUCHA HVAC Project	2	\$14,964
Total of Invoices		\$329,145

The assertion that Del Terra Group billed in advance of work performed would appear valid since invoices were received by the district prior to work being started on either the Fisher or George middle school project, and invoices were received by the district for the two HVAC projects that were still awaiting Division of State Architect approval.

No written documentation exists in the district's files regarding either verbal or written changes to the billing and payment process agreed to by the previous interim CBO. Additionally, no

evidence of this agreement exists in the district's accounts payable department. Any time terms and conditions of a board-approved contract are made, or modified, written documentation should be transmitted to all parties involved, including CBO, accounts payable department and the director of facilities, bonds and leases.

Recommendations

The district should:

1. 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.
2. Regularly review and update board policies and administrative regulations to ensure they remain relevant and reflect the latest statutory requirements and district objectives.
3. Ensure employees are aware of board policies and that policies remain accessible for public and staff reference.
4. Establish regular training on the identification and prevention of fraudulent activity for all staff.
5. 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.
6. 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.
7. 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.
8. 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.

Conflicts of Interest

Background

When faced with questions potentially involving conflicts of interest of a public official such as a school board member, administrator or consultant, it is important to consider the legal and ethical standards and to review any applicable board policies that may be even more restrictive than the statutory mandates. The board and management should demonstrate financial integrity in an era of compliance, and regulation is extremely important. Corruption does not have to involve two or more parties; a single employee in a position of trust can exercise authority for his or her own personal gain. Every conflict of interest issue requires one party to be in a position of trust, and every instance of corruption requires both a conflict of interest and a breach of that trust. FCMAT reviewed the district's board bylaws (BP) 9270, Conflict of Interest; BP 9323, Meeting Conduct; BP 9012, Electronic Communications; and BP 9200, Limits of Board Member Authority, to evaluate board members, staff and consultants regarding conflict of interest issues.

Statutes that govern conflicts of interest include the Political Reform Act, Government Code 1090, Government Code 87100, 87302, 87306, 87500, Corporations Code Section 5233 for nonprofit organizations and Education Code Section 35107(e). Government Code Section 1090 is an absolute prohibition against financial interests by board members, officers or employees in contracts "made by them in their official capacity, or by any body or board of which they are members." (GC 1090(a)) If an employee prepares or negotiates a contract or recommends its approval, this prohibition applies to him or her. The prohibition is absolute and the contract is voidable and has no legal effect. It is not legally possible to abstain from a contract that violates 1090 unless the contract fits the criteria of a "remote interest" under 1091 or a "non-interest" under 1091.5.

Political Reform Act – Disclosure, Conflicts of Interest and Enforcement

The Political Reform Act (PRA) was enacted by Proposition 9 in June 1974 and revised in 2015 resulting in several significant changes to the conflict of interest rules that became effective November 17, 2016. The stated intent of the act was to establish a process for most state and local officials as well as certain designated employees to publicly disclose their personal income and assets as follows:

[a]ssets and income of public officials which may be materially affected by their official actions...[are] disqualified from action in order that conflicts of interest may be avoided.

The PRA provisions are enforced by the Fair Political Practices Commission (FPPC) and supported by Government Code, requiring every state and local governmental agency to adopt a conflict of interest code. The commission is the state agency responsible for interpreting the provisions of the law and issuing California Form 700 – Statement of Economic Interests.

Because school governing board members are considered "public officials" and governing boards are considered "legislative bodies," board members and certain designated individuals must file Form 700 annually, or when they take office or begin in a position, and upon leaving office. Usually, Form 700 must be filed by April 1 for the calendar year, and within 30 days of assuming or leaving office or their position unless an exception applies. Additionally, a consultant to the organization "who makes, participates in making, or acts in a staff capacity for making governmental decisions" may be required to complete a Form 700.

Amended PRA regulations in California Code of Regulations, Title 2, Section 18700 (d) provides a four-step versus an eight-step process to determine whether a public official has a prohibited conflict of interest code under the Act. In accordance with the revised section 18700 (a) Basic Rule:

A public official at any level of state or local government has a prohibited conflict of interest and may not make, participate in making, or in any way use or attempt to use his or her official position to influence a governmental decision when he or she knows or has reason to know he or she has a disqualifying financial interest. A public official has a disqualifying financial interest if the decision will have a reasonably foreseeable material financial effect, distinguishable from the effect on the public generally, directly on the official, or his or her immediate family, or on any financial interest described in subdivision (c)(6)(A-F) herein. (Sections 87100, 87101, & 87103.)”

The following represents the four-step FPPC process (<http://www.fppc.ca.gov>):

Step One: Is it reasonably foreseeable that the governmental decision will have a financial effect on any of the public official’s financial interests?

- (a) **Financial Interest Explicitly Involved:** A financial effect on a financial interest is presumed to be reasonably foreseeable if the financial interest is a named party in, or the subject of, a governmental decision before the official or the official’s agency. A financial interest is the subject of a proceeding if the decision involves the issuance, renewal, approval, denial or revocation of any license, permit, or other entitlement to, or contract with, the financial interest, and includes any governmental decision affecting a real property financial interest as described in Regulation 18702.2(a)(1)-(6).
- (b) **Financial Interest Not Explicitly Involved in Decision:** A financial effect need not be likely to be considered reasonably foreseeable. In general, if the financial effect can be recognized as a realistic possibility and more than hypothetical or theoretical, it is reasonably foreseeable. If the financial result cannot be expected absent extraordinary circumstances not subject to the public official’s control, it is not reasonably foreseeable. In determining whether a governmental decision will have a reasonably foreseeable financial effect on a financial interest other than an interest described in subdivision, the following factors should be considered.

These factors are not intended to be an exclusive list of all the relevant facts that may be considered in determining whether a financial effect is reasonably foreseeable, but are included as general guidelines.

- (1) The extent to which the occurrence of the financial effect is contingent upon intervening events, not including future governmental decisions by the official’s agency, or any other agency appointed by or subject to the budgetary control of the official’s agency.
- (2) Whether the public official should anticipate a financial effect on his or her financial interest as a potential outcome under normal circumstances when using appropriate due diligence and care.

- (3) Whether the public official has a financial interest that is of the type that would typically be affected by the terms of the governmental decision or whether the governmental decision is of the type that would be expected to have a financial effect on businesses and individuals similarly situated to those businesses and individuals in which the public official has a financial interest.
- (4) Whether a reasonable inference can be made that the financial effects of the governmental decision on the public official's financial interest might compromise a public official's ability to act in a manner consistent with his or her duty to act in the best interests of the public.
- (5) Whether the governmental decision will provide or deny an opportunity, or create an advantage or disadvantage for one of the official's financial interests, including whether the financial interest may be entitled to compete or be eligible for a benefit resulting from the decision.
- (6) Whether the public official has the type of financial interest that would cause a similarly situated person to weigh the advantages and disadvantages of the governmental decision on his or her financial interest in formulating a position.

Step Two: Will the reasonably foreseeable financial effect be material? To ascertain materiality, a determination utilizing Regulation 18702 – Materiality Standards is applied:

- (a) In order to determine if a governmental decision's reasonably foreseeable financial effect on a financial interest is material, for a governmental decision that affects:
 - (1) A financial interest in a business entity, - apply Regulation 18702.1;
 - (2) A financial interest in real property, - apply Regulation 18702.2;
 - (3) A financial interest in a source of income, - apply Regulation 18702.3;
 - (4) A financial interest in a source of gifts, - apply Regulation 18702.4;
 - (5) The public official's personal finances, or those of a member of his or her immediate family, - apply Regulation 18702.5;
- (b) Notwithstanding Regulations 18702.1 through 18702.5, the financial effect of a governmental decision is not material if it is nominal, inconsequential, or insignificant.

Step Three: Can the public official demonstrate that the material financial effect on the public official's financial interest is indistinguishable from its effect on the public generally?

- (a) General Rule. A governmental decision's financial effect on a public official's financial interest is indistinguishable from its effect on the public generally if the official establishes that a significant segment of the public is affected and the effect on his or her financial interest is not unique compared to the effect on the significant segment.
- (b) A significant segment of the public is at least 25 percent of:

- (1) All businesses or non-profit entities within the official's jurisdiction;
 - (2) All real property, commercial real property, or residential real property within the official's jurisdiction; or
 - (3) All individuals within the official's jurisdiction.
- (c) A unique effect on a public official's financial interest includes a disproportionate effect on:
- (1) The development potential or use of the official's real property or on the income producing potential of the official's real property or business entity.
 - (2) An official's business entity or real property resulting from the proximity of a project that is the subject of a decision.
 - (3) An official's interests in business entities or real properties resulting from the cumulative effect of the official's multiple interests in similar entities or properties that is substantially greater than the effect on a single interest.
 - (4) An official's interest in a business entity or real property resulting from the official's substantially greater business volume or larger real property size when a decision affects all interests by the same or similar rate or percentage.
 - (5) A person's income, investments, assets or liabilities, or real property if the person is a source of income or gifts to the official.
 - (6) An official's personal finances or those of his or her immediate family.
- (d) "Jurisdiction" means the jurisdiction of the state or local government agency as defined in Section 82035, or the designated geographical area the official was elected to represent, or the area to which the official's authority and duties are limited if not elected.
- (e) Specific Rules for Special Circumstances. The financial effect on a public official's financial interest is deemed indistinguishable from that of the public generally if the official establishes:
- (1) Public Services and Utilities. The decision establishes or adjusts assessments, taxes, fees, or rates for water, utility, or other broadly provided public services or facilities that are applied equally, proportionally, or by the same percentage to the official's interest and other businesses, properties, or individuals subject to the assessment, tax, fee, or rate.
 - (2) General Use or Licensing Fees. The decision affects the official's personal finances as a result of an increase or decrease to a general fee or charge, such as parking rates, permits, license fees,

application fees, or any general fee that applies to the entire jurisdiction.

- (3) Limited Neighborhood Effects. The decision affects residential real property limited to a specific location, and the decision establishes, amends, or eliminates ordinances that restrict on-street parking, impose traffic controls, deter vagrancy, reduce nuisance or improve public safety, provided the body making the decision gathers sufficient evidence to support the need for the action at the specific location.
- (4) Rental Properties. The decision affects all renters of residential property within the official's jurisdiction and only interests resulting from the official's leasehold interest in his or her residence are affected.
- (5) Required Representative Interest. The decision is made by a board or commission and the law that establishes the board or commission requires certain appointees have a representative interest in a particular industry, trade, or profession or other identified interest, and the public official is an appointed member representing that interest. This provision applies only if the effect is on the industry, trade, or profession or other identified interest represented and there is no unique effect on the official's interest.
- (6) State of Emergency. The decision is made pursuant to an official proclamation of a state of emergency when required to mitigate against the effects directly arising out of the emergency and there is no unique effect on the official's interest.
- (7) Governmental Entities. The decision affects a federal, state, or local governmental entity in which the official has an interest and there is no unique effect on the official's interest.

Step Four: If after applying the three-step analysis and determining the public official has a conflict of interest, absent an exception, he or she may not make, participate in making, or in any way attempt to use his or her official position to influence the governmental decision.

- (a) Making a Decision. A public official makes a governmental decision if the official authorizes or directs any action, votes, appoints a person, obligates or commits his or her agency to any course of action, or enters into any contractual agreement on behalf of his or her agency.
- (b) Participating in a Decision. A public official participates in a governmental decision if the official provides information, an opinion, or a recommendation for the purpose of affecting the decision without significant intervening substantive review.

- (c) **Using Official Position to Attempt to Influence a Decision.** A public official uses his or her official position to influence a governmental decision if he or she:
- (1) Contacts or appears before any official in his or her agency or in an agency subject to the authority or budgetary control of his or her agency for the purpose of affecting a decision; or
 - (2) Contacts or appears before any official in any other government agency for the purpose of affecting a decision, and the public official acts or purports to act within his or her authority or on behalf of his or her agency in making the contact.
- (d) **Exceptions.** Making, participating in, or influencing a governmental decision does not include:
- (1) **Ministerial.** Actions by a public official that are solely ministerial, secretarial, or clerical.
 - (2) **Appearances as a Member of the General Public.** An appearance by a public official as a member of the general public before an agency in the course of its prescribed governmental function if the official is appearing on matters related solely to the his or her personal interests, including interests in:
 - (A) Real property owned entirely by the official, members of his or her immediate family, or the official and members of his or her immediate family;
 - (B) A business entity owned entirely by the official, members of his or her immediate family, or the official and members of his or her immediate family; or
 - (C) A business entity over which the official, members of his or her immediate family, or the official and members of his or her immediate family solely or jointly exercise full direction and control.
 - (3) **Terms of Employment.** Actions by a public official relating to his or her compensation or the terms or conditions of his or her employment or consulting contract. However, an official may not make a decision to appoint, hire, fire, promote, demote, or suspend without pay or take disciplinary action with financial sanction against the official or his or her immediate family, or set a salary for the official or his or her immediate family different from salaries paid to other employees of the government agency in the same job classification or position.
 - (4) **Public Speaking.** Communications by a public official to the general public or media.

(5) Academic Decisions.

- (A) Teaching decisions, including an instructor's selection of books or other educational materials at his or her own school or institution, or other similar decisions incidental to teaching; or
- (B) Decisions by a public official who has teaching or research responsibilities at an institution of higher education relating to his or her professional responsibilities, including applying for funds, allocating resources, and all decisions relating to the manner or methodology with which his or her academic study or research will be conducted. This exception does not apply to a public official who has institution-wide administrative responsibilities as to the approval or review of academic study or research at the institution unrelated to his or her own work.

(6) Architectural and Engineering Documents.

- (A) Drawings or submissions of an architectural, engineering, or similar nature prepared by a public official for a client to submit in a proceeding before the official's agency if:
 - (i) The work is performed pursuant to the official's profession; and
 - (ii) The official does not make any contact with the agency other than contact with agency staff concerning the process or evaluation of the documents prepared by the official.
- (B) An official's appearance before a design or architectural review committee or similar body of which the official is a member to present drawings or submissions of an architectural, engineering, or similar nature prepared for a client if:
 - (i) The review committee's sole function is to review architectural designs or engineering plans and to make recommendations to a planning commission or other agency;
 - (ii) The review committee is required by law to include architects, engineers or persons in related professions, and the official was appointed to the body to fulfill this requirement; and
 - (iii) The official is a sole practitioner.

- (7) Additional Consulting Services: Recommendations by a consultant regarding additional services for which the consultant or consultant's employer would receive additional income if the agency has already contracted with the consultant, for an agreed upon price, to make recommendations concerning services of the type offered by the consultant or consultant's employer and the consultant does not have any other economic interest, other than in the firm, that would be foreseeably and materially affected by the decision.

The district's governing board adopted Board Bylaw contained in 9270, on June 16, 2004 and it was most recently amended on November 13, 2014. The bylaw includes a comprehensive conflict of interest code that adopts the PRA of 1974 and California Government Code Section 87100 and following, and designates by board resolution #15-14/15 positions that must report conflicts of interest on Form 700. The conflicts of interest code also states the following:

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. Members of the Governing Board of the Alum Rock Union Elementary School District and designated positions shall file their Statements of Economic Interest (Form 700s) with the district's filing official or through the County of Santa Clara's Form 700 e-filing system. 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 between the closing date of the last statement and the date of leaving office or district employment. (Government Code 87302, 87500)

Position required to disclose pursuant to Government Code 87200 must disclose the following:

1. Interests in real property located entirely or partly within district boundaries, or within two miles of district boundaries, or of any land owned or used by the district; and
2. Investments, business positions, and sources of income, including gifts, loans, and travel payments.

Designated Positions

Designated Position Disclosure Category

Governing Board Member 1

Superintendent 1

Academic Services Director 2

Administrator 2

Administrator - Fiscal Services 2

Administrator - Student Information Systems 2

Assistant Principal 2
Assistant Superintendent 1
Bond Accounts Manager 2
Chief Academic Services Officer 1
Chief Human Resources Officer 1
Chief School Transformation and Support Officer 1
Chief Student/Special Services Officer 1
Chief Technology Officer 1
Child Nutrition Services Coordinator 2
Child Nutrition Services Program Supervisor 2
Coordinator 2
Coordinator - Student Information Systems 2
Coordinator - Student Services 2
Director 2
Director - Fiscal Services 2
Director of Child Nutrition Services 2
Director - State & Federal 2
Manager 2
Manager Maintenance and Transportation 2
Maintenance Operations and Transportation Director 2
Operations Manager 2
Payroll Manager 2
Principal 2
Principal on Special Assignment 2
Program Coordinator 2
Project Specialist 2
Purchasing Manager 2
State & Federal Coordinator 2
Supervisor 2
Warehouse Supervisor 2

Consultant 3

Newly Created Position *

*Newly Created Positions

A newly created position that makes or participates in the making of decisions that may foreseeably have a material effect on any financial interest of the position-holder, and which specific position title is not yet listed in a district's conflict of interest code is included in the list of designated positions and shall disclose pursuant to the broadest disclosure category unless it is determined by the Superintendent or his/her designee that it is not required. The district's determination is a public record and shall be retained for public inspection in the same manner and location as this conflict-of-interest code. (Government Code 81008.)

The conflict of interest code disclosure categories is referenced per the level of decision-making authority and positions with broad decision-making authority may be required to disclose more interests than those with limited discretion.

All three disclosure categories are specific about reporting interests in real property, investments, business positions, or manufacture or sale incomes, but do not prohibit the hiring of family members in the school district.

Disclosure Categories

1. Category 1: A position designated shall disclose:
 - a. Interests in real property located entirely or partly within district boundaries, or within two miles of district boundaries, or of any land owned or used by the district; and
 - b. Investments in, business positions in, and income (including gifts, loans, and travel payments) from sources that are engaged in the acquisition or disposal of real property within the district, are contractors or subcontractors that are or have been within the past two years engaged in work or services of the type used by the district, or manufacture or sell supplies, books, machinery, or equipment of the type used by the district.
2. Category 2: A position designated shall disclose:
 - a. Investments in, business positions in, and income (including gifts, loans, and travel payments) from sources that are contractors or subcontractors engaged in work or services of the type used by the department that the designated person manages or directs; and
 - b. Investments in, business positions in, and income (including gifts, loans, and travel payments) from sources that manufacture or sell supplies, books, machinery, or equipment of the type used by the department that the designated person manages or directs. For the purposes of this category, a principal's department is his/her entire school.

3. Category 3: Disclosures for Consultants

Consultants, as defined for purposes of the Political Reform Act, shall disclose pursuant to the broadest disclosure category in the district's conflict of interest code subject to the following limitation: The Superintendent or designee may determine in writing that a particular consultant, although a "designated position," is hired to perform a range of duties that are limited in scope and thus is not required to comply fully with the disclosure requirements of the broadest disclosure category, but instead must comply with more tailored disclosure requirements specific to that consultant. Such a determination shall include a description of the consultant's duties and a statement of the extent of disclosure requirements based upon that description. All such determinations are public records and shall be retained for public inspection in the same manner and location as this conflict of interest code.

A consultant is an individual who, pursuant to a contract with the district, makes a governmental decision whether to: (2 CCR 18701)

1. Approve a rate, rule, or regulation
2. Adopt or enforce a law
3. Issue, deny, suspend, or revoke a permit, license, application, certificate, approval, order, or similar authorization or entitlement
4. Authorize the district to enter, modify, or renew a contract that requires district approval
5. Grant district approval to a contract that requires district approval and in which the district is a party, or to the specifications for such a contract
6. Grant district approval to a plan, design, report, study, or similar item
7. Adopt or grant district approval of district policies, standards, or guidelines

A consultant is also an individual who, pursuant to a contract with the district, serves in a staff capacity with the district and in that capacity participates in making a governmental decision as defined in 2 CCR 18702.2 or performs the same or substantially all the same duties for the district that would otherwise be performed by an individual holding a position specified in the district's conflict of interest code. (2 CCR 18701)

In January 2016, the attorney general released Opinion No. 13-304 in response to questions posed by the California state treasurer regarding campaign contributions for local bond campaigns. In general, the inquiry was related to the legality of school and community college districts entering into agreements with firms that provide the district with pre-election services in return for guaranteeing the firm an exclusive contract to provide post-election services.

Under Education Code Section 7054(a), no school district or community college district funds, services, supplies or equipment are to be used to advocate or influence the outcome of an election. Issues of concern include use of public funds to pass bond measures, significant political contributions to campaigns from interests likely to benefit from construction, involvement of foundations as intermediaries for campaign contributions and conflicts of interest for alleged pay-to-play contracts.

In 2013 and 2014, the Del Terra Group was selected to perform program and construction management services. In June 2016 the district passed Measure I and during the pre-election process, Del Terra Real Estate Services donated \$30,000. Campaign donations were also made

from several architectural firms totaling \$55,000, and these were the same firms that were utilized in the previous Measure J bond fund construction projects.

In addition, multiple board members received campaign donations from the Del Terra Group for their respective board elections. Of great concern is the school board's blatant disregard for any of the nonperformance issues identified by staff and failure to follow specific board policies governing the bidding process or any formal process demonstrated by past practice in selecting program and construction management services. These issues raise potential questions of influence or conflicts of interest in the bidding process.

It is important for the district to take reasonable steps to ensure that contingent compensation agreements or those that have the appearance of influence follow current law and the state attorney general's opinion.

Findings

FCMAT reviewed all Form 700, Statement of Economic Interest submittals for calendar years, 2013, 2014 and 2015. The reporting period for calendar year 2016 was not complete at the time of this review, with all designated positions required to file by April 1, 2017. No form 700 documents were provided for employees who left designated positions during the 2016 calendar year. Government Code 87302 and Board Bylaw 9270 require employees in designated positions who leave district employment midyear to file a revised Form 700 within 30 days of the end of their employment.

1. Based on the documents provided, the director of facilities, bonds and leases who was a former employee of the Del Terra Group when hired by the district in 2015 did not file a form 700 for the 2015 calendar year. During interviews, the director confirmed that he had received a form 700 to be filed, but did not understand the significance of the reporting requirement and failed to file. This position provides oversight and management responsibilities for the district's new construction and modernization facilities program. The district has passed three general obligation bond measures under Proposition 39 including Measure G (\$179 million), Measure J (\$125 million) and Measure I (\$140 million) and this position has significant decision making authority with contractors, architects, inspectors and supply vendors and is designated as a reporting position for categories 1 and 2 under the current board policy.
2. The previous interim chief business official was hired in August 2016 as an independent contractor/consultant and was not required by the district to file a Form 700. The interim CBO serves in a staff capacity with the district and in that capacity participates in making governmental decisions as defined in 2 CCR 18702.2 and performs the same or substantially all the same duties for the district that would otherwise be performed by an individual holding a position specified in the district's conflict of interest code. (2 CCR 18701)

In accordance with the district's board bylaw 9270, Consultants, as defined for purposes of the Political Reform Act, shall disclose pursuant to the broadest disclosure category in the district's conflict of interest code subject to the following limitation:

The Superintendent or designee may determine in writing that a particular consultant, although a "designated position," is hired to

perform a range of duties that are limited in scope and thus is not required to comply fully with the disclosure requirements of the broadest disclosure category, but instead must comply with more tailored disclosure requirements specific to that consultant.

3. FCMAT's review of warrants for July 1, 2013 through December 31, 2016 did not find evidence that any district administrator or governing board member was paid as both an employee and independent contractor or consultant. Education Code Section 35120 provides the basis for compensating governing board members. Three portions of that law apply to Alum Rock Union Board members and are cited below:
 - Section 35120(a)(5): "In any school district in which the average daily attendance for the prior school year was 10,000 or less but more than 1,000, each member of the city board of education or the governing board of the district who actually attends all meetings held may receive as compensation for his or her services a sum not to exceed two hundred forty dollars (\$240) in any month.
 - Section 35120(e): "On an annual basis, the governing board may increase the compensation of individual board members beyond the limits delineated in this section, in an amount not to exceed 5 percent based on the present monthly rate of compensation. Any increase made pursuant to this section shall be effective upon approval by the governing board."
 - Section 35120(a)(8): "Any member who does not attend all meetings held in any month may receive, as compensation for his or her services, an amount not greater than the maximum amount allowed by this subdivision divided by the number of meetings held and multiplied by the number of meetings actually attended."
4. On May 9, 2013, the district awarded a contract to the Del Terra Group for program management services for its Measure J Bond Program. Subsequently in May 2014, the district awarded a second contract to Del Terra Group for construction management services for its Measure J Bond Program. The FPPC's rules on conflict of interest codes state that a consultant to an organization "who makes, participates in making, or acts in a staff capacity for making governmental decisions" may be required to complete Form 700 if this provision is included in the organization's conflict of interest code.

According to the district's Board 9270 and Board Resolution #15-14/15, consultants, as defined for purposes of the Political Reform Act, are required to disclose pursuant to the broadest disclosure category in the district's conflict-of-interest code subject to the following limitation:

The superintendent or designee may determine in writing that a particular consultant, although a "designated position," is hired to perform a range of duties that are limited in scope and thus is not required to comply fully with the disclosure requirements of the broadest disclosure category, but instead must comply with more tailored disclosure requirements specific to that consultant.

The contractor must exercise fiduciary responsibility for the prudent expenditure of bond funds and has oversight responsibility to manage the district's multimillion-dollar bond program including but not limited to selecting and paying contractors, architects, engineers, inspectors and other professional services that are required to complete facility-related projects.

Two of the five seats on the board were up for at-large general election on November 8, 2016. During interviews of staff and governing board members, some indicated that the Del Terra Group made financial contributions to the 2016 election campaigns of two board members. One board member had campaign contributions of \$18,522 from various sources, and one board member filed a 470 Exemption Form that no more than \$2,000 would be received by the campaign. Both board members reported receiving campaign donations from the Del Terra Group. Because of the filing of this form, no additional campaign reports were required.

FCMAT also heard anecdotal information that Del Terra offered one board member up to \$8,000. Subsequent attempts by FCMAT to validate the veracity of this information were unsuccessful. Information provided to FCMAT during interviews of current governing board members and employees repeatedly referenced the hiring of contractors and employees, and the purchases of goods and services, from parties with close personal connections to board members.

5. The Fair Political Practices Commission (FPPC) is the state agency responsible for interpreting and enforcing California's campaign finance rules under the Political Reform Act. The FPPC investigates hundreds of complaints each year alleging violations of the Act. The team reviewed enforcement decisions presented and approved by the Fair Political Practices Commission on May 19, 2016 and the following is provided:
 - A. In the Matter of Board Member for School Board 2014; FPPC No. 15/1386. Staff: Commission Counsel reported that Board Member was a successful candidate for the Alum Rock Union Elementary School District governing board in the November 4, 2014 General Election. Board Member for School Board 2014 was his candidate-controlled committee. Board Member and his committee failed to file one semi-annual report and one late contribution report, in violation of Government Code Sections 84200 (1 count) and 84203 (1 count). In addition, Board Member and his committee failed to pay the 2014 and 2015 \$50 annual fee to the Secretary of State's Office, in violation of Government Code Section 84101.5 (2 counts). Total Proposed Penalty: \$847.
 - B. California Code of Regulations, Title 2, Division 6, Chapter 7, Article 2, Provisions of Conflict of Interest Codes, includes the following
 - (9) Section 9. Disqualification.

No designated employee shall make, participate in making, or in any way attempt to use his or her official position to influence the making of any governmental decision which he or she knows or has reason to know will have a reasonably foreseeable

material financial effect, distinguishable from its effect on the public generally, on the official or a member of his or her immediate family .

In addition, the district's Conflict of Interest code, Board Bylaw 9270, states the following:

Board members, employees, or district consultants shall not be financially interested in any contract made by the Board on behalf of the district, including in the development, preliminary discussions, negotiations, compromises, planning, reasoning, and specifications and solicitations for bid . . .

Recommendations

The district should:

1. 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.
2. 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.
3. 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.
4. 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.

Reporting Requirements for Nonvoter-Approved Debt

Education Code Section 17150 requires school districts to notify the county superintendent of schools and the county auditor when the school district's governing board approves the issuance of nonvoter-approved debt. Included is the requirement that the school district superintendent provide the repayment schedules for the debt obligation and evidence of the school district's ability to repay the obligation to the county superintendent of schools, the county auditor and the public. The law permits the county superintendent of schools and the county auditor to comment publicly to the governing board of the school district within 15 days of receiving this information regarding the school district's capability to repay that debt obligation.

Assembly Bill (AB) 2197 (Chapter 128/2008), effective January 1, 2009, changed the reporting requirements for issuing nonvoter-approved debt, for both school districts and county offices of education. In addition, the bill added other kinds of nonvoter-approved debt instruments secured by real property to the list of what must be disclosed, including the following:

- Certificates of participation (COPs)
- Lease purchases secured by real property
- Qualified zone academy bonds secured by real property
- Revenue bonds
- Any other debt instrument secured by real property and not subject to voter approval

Assembly Bill (AB) 2197 (Chapter 128/2008) also amends Education Code Section 42133.5 to prohibit the proceeds from COPs and other nonvoter approved debt secured by real property from being used for a district's general operations, regardless of the district's budget certification. Long-term debt financing mechanisms should not be used to finance current operations or to capitalize expenses. Current law already requires LEAs to use solely for capital outlay purposes any proceeds obtained through the sale or lease of LEA property (lease-leaseback). The provisions of AB 2197 clarify that the proceeds of COPs are similarly restricted.

Since this legislation has been enacted, several districts have encountered financial difficulty because of overreliance on debt instruments such as COPs. In some situations, districts issued large COPs, and the projected level of developer fees and other repayment sources did not materialize to service the debt service requirements over multiple fiscal years. The Senate Floor Analysis states, "By the time county and state entities are notified, the decision to issue COPS or other nonvoter approved debt would have been made with no ability to repay the debt."

Findings

In June 2010, the district funded multiple construction projects that were ultimately to be funded by Measure G and J bond funds by securing a bridge loan using COPs. The district issued \$25,000,000 in COPs for financing the modernization, equipping, furnishing and/or improving of certain capital facilities. One hundred percent of the interest on the COPs is covered by the federal Qualified School Construction Bonds (QSCB) subsidy. Nevertheless, the district did not prepare and submit to the county office the COPs disclosure required under Education Code Section 17150. The debt service payments for these COPs are included in the table below:

2010 Certificates of Participation Repayment

June 1 Principal Payments Available State Aid Funds* Remaining Unpaid

2017	\$2,270,000	\$7,313,236	\$22,730,000
2018	\$2,270,000	\$5,055,844	\$20,460,000
2019	\$2,270,000	\$2,792,809	\$18,190,000
2020	\$2,270,000	\$ 524,116	\$17,665,884
2021	\$2,270,000		
2022	\$2,275,000		
2023	\$2,275,000		
2024	\$2,275,000		
2025	\$2,275,000		
2026	\$4,550,000		
	\$25,000,000		

- (1) In March 2012, the district received \$7,217,949 in state aid for the San Antonio Elementary School project. Those funds are held in the county pool and are designated for repayment of the 2010 COPs when these become payable.
- (2) The COPs are structured so that 100% of the interest is covered by the federal QSCB subsidy. The principal is the responsibility of the district; principal payments begin on June 1, 2017, and they should be paid with state aid funds. However, at the time of FCMAT's fieldwork, the Office of Public School Construction (OPSC) had not completed the closeout of the San Antonio Elementary School project, so the use of these funds is not guaranteed.
- (3) If funds are received for the San Antonio Elementary School project, they are projected to grow to \$7,313,236 by June 1, 2017.
- (4) The table above shows that, after the state aid is depleted, the remaining obligation, on June 1, 2020 would be \$17,665,884.

The lack of disclosure notwithstanding, FCMAT has serious reservations about the district's ability to repay the COPs without affecting the unrestricted general fund. As a result, the debt service payments pose a serious threat to the district's ongoing fiscal solvency.

Effective January 1, 2017 (per Senate Bill 1029 approved September 12, 2016), the Report of Proposed Debt Issuance requires certification that the issuer has adopted a local policy regarding the use of debt and that the proposed debt issuance is consistent with the policy. The local debt policy must include the following five items:

- The purposes for which the debt proceeds may be used.
- The types of debt that may be issued.
- The debt's relationship to and integration with the issuer's capital improvement program or budget, if applicable.
- Policy goals related to the issuer's planning goals and objectives.

- The internal control procedures that the issuer has implemented or will implement to ensure that the proceeds of the proposed debt issuance will be directed to the intended use.

In addition, Senate Bill (SB) 1029 states the following:

The Legislature hereby finds and declares all of the following:

State and local agencies should adopt comprehensive written debt management policies pursuant to the recommendation of the Government Finance Officers Association, a professional organization of over 18,000 public officials united to enhance and promote the professional management of governmental financial resources. These policies should reflect local, state, and federal laws and regulations.

FCMAT has updated its Sample Debt Management Policy to conform to the requirements of both SB 1029 and the Government Finance Officers Association's published best practice on debt management policy (see <http://www.gfoa.org/debt-management-policy>). The sample debt management policy is attached as Appendix B to this report.

Considering this new legislation, the district should review existing policies in the 3000, 7000 and 9000 series for existing references to debt or bonds that might be removed considering adoption of a single comprehensive policy.

Recommendations

The district should:

1. 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.
2. 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.
3. 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.
4. 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.

Fiscal Independence

Background

With the approval of the superintendent of public instruction, the governing board of a unified school district, or a district with an ADA of more than 10,000, may cause to be drawn all warrants against all district funds in the county treasury, except debt service, to pay the district's expenses. This is the primary distinction between a fiscally independent district, and a dependent district, in which the county office of education provides these services on the district's behalf. The district has been fiscally independent since fiscal year 1992-93.

To obtain the approval of the SPI, a unified school district, or district with more than 10,000 ADA is required to file a written application with the county superintendent. Upon receipt of an application from the district, the county superintendent is required to have the district's accounting controls surveyed by an independent certified public accountant or public accountant according to the standards prescribed by the controller. The certified public accountant or public accountant then reports his or her findings and recommendations to the county superintendent, county auditor, and to the applicant district.

The county superintendent forwards the district's application and his or her other recommendations and those of the county auditor and a report of the survey, to the SPI for approval or disapproval of the application. The SPI will approve the application only if he or she finds that the accounting controls of the district are adequate. If the SPI determines that these controls are inadequate, he or she will disapprove the application. However, if the county superintendent determines that the accounting controls have become inadequate, he or she may recommend to the SPI that the approval be revoked, to be effective on the first day of the following fiscal year. Education Code Section 42652 also allows the SPI to revoke or suspend a district's fiscal independence status if the district has a qualified or negative certification according to Section 42131.

Once a district is approved as being fiscally independent by the SPI it is authorized to issue all its warrants independent of the county office of education. Once a district is granted fiscal independence, the county office is not responsible for producing reports, statements or other data relating to or based on payments of the district's expenses. For these reasons, fiscally independent districts operate their own financial accounting systems.

In fiscally independent districts, warrants must be issued by a person designated as the district auditor or the district disbursing officer for the school district against funds in the county treasury in payment of all claims chargeable against the district. The claims must have been legally examined, allowed and ordered by the governing board and the district disbursing officer must issue warrants against funds in the county treasurer for all debts and demands against the district.

Findings

The district has operated as fiscally independent in accordance with Education Code Section 42647 since 1992. As a condition of being declared fiscally independent, the district is required to have a disbursing officer (often referred to as an internal auditor). However, the district's internal auditor position has been vacant since May 2012.

Internal auditors function as an additional level of control and assist to improve the district's overall control environment. Internal auditors also can play a valuable role conducting performance audits, special investigations and studies and help management maintain a comprehensive framework of internal controls. As a rule, a formal internal audit function is particularly valuable

for activities involving a high degree of risk (e.g., complex accounting systems, contracts with independent contractors, a rapidly changing work environment).

The district's fiscal independence status is further compromised by the inability of its financial system software (SunGuard) to track projects by specific resource, site or project coding, resulting in staff having to manually reconstruct and reconcile individual project costs, including the services provided by the Del Terra Group. As a result, the district lacks the basic infrastructure necessary to make "real time" operational decisions regarding their school facilities planning and construction program. Having a financial system that can track projects by project is essential to monitoring costs associated with the district's facilities planning and constructions program.

Lastly, Education Code Section 42647 infers that the county office of education will regularly monitor the internal controls of fiscally independent districts within their counties and, if at any time, determines that the accounting controls of the district have become inadequate, recommend to the SPI that the district's fiscal independence status be rescinded on the first day of the following year. FCMAT's review of the district's internal controls found no evidence that the county office has consistently monitored the district's internal controls since the district was declared fiscally independent.

Recommendations

The county office should:

1. Review the information contained in this report with regard to the district's lack of internal controls.
2. Meet with the district to discuss rescinding the district's fiscal independence status.
3. Examine the fiscal impact 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 county office of education's financial system.

Conclusion

Potential for Fraud

Based on the findings in this report, 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.

Deficiencies and exceptions noted during FCMAT's review of the financial records and deficiencies in the district's internal control environment increase the probability of fraud, mismanagement and/or misappropriation. These findings should be of great concern to the Alum Rock Union Elementary School District and the Santa Clara County Office of Education and require immediate intervention to limit the risk of fraud, mismanagement and/or misappropriation of assets, or other illegal activities in the future.

Judgments Regarding Guilt or Innocence

The existence of fraud is solely the purview of the courts and juries, and FCMAT will not make statements that could be construed as a conclusion that fraud has occurred. Fraud is a broad legal concept and auditors do not make legal determinations of whether fraud has occurred. The primary factor that distinguishes fraud from error is whether the underlying action is intentional or unintentional. In accordance with Education Code Section 42638(b), action by the county superintendent shall include the following:

If the county superintendent determines that there is sufficient evidence that fraud or misappropriation of funds may have occurred, the county superintendent shall notify the governing board of the school district, the state controller, the superintendent of public instruction, and the local district attorney.

In accordance with Education Code Section 1241.5(b), the county superintendent shall report the findings and recommendations to the governing board of the district at a regularly scheduled board meeting within 45 days of completing the audit. The governing board of the district shall notify the county superintendent within 15 days after receipt of the report of its proposed actions regarding the county superintendent's recommendations.

Recommendation

The county superintendent should:

1. Notify the governing board of the Alum Rock Union Elementary School District, the state controller, the superintendent of public instruction and the local district attorney that sufficient evidence exists to indicate that fraud or misappropriation of district funds and/or assets or other illegal activities *may* have occurred.

Appendices

A: Program Management Services Contract

B: Sample Debt Management Policy

C: Study Agreement

Appendix A – Program Management Services Contract

ALLUM ROCK UNION ELEMENTARY SCHOOL DISTRICT
2930 Gay Avenue, San Jose, CA 95127

10.1

Office of Superintendent of Schools

ITEM REQUIRING ATTENTION - BOARD OF EDUCATION

Board of Trustees:

Date: May 2, 2013

Subject: Program Manag
Request Approval of Proposed Contract with DelTerra

The proposed contract will be available before the Board Meeting under separate cover.

Recommendation:

Staff recommends approval of the proposed contract as presented.

Submitted by: Stephen A. Fiss Title: Superintendent

To the Board of Trustees: Meeting: May 9, 2013
Regular Board Meeting

Recommend Approval

10.1
Agenda Placement

Stephen A. Fiss
Stephen A. Fiss, Superintendent

DISPOSITION BY BOARD OF TRUSTEES

Motion by: Antonio Gumbro Seconded by: Karen Martinez
Approved: S Not Approved: Ø Tabled: _____



ALUM ROCK

UNION ELEMENTARY SCHOOL DISTRICT

2930 Gay Avenue, San José, CA 95127 Phone: 408-928-6845 Fax: 408-928-6440 www.arusd.org

Dear Vendor,

We are pleased to inform you that the Board of Trustees for Alum Rock Union Elementary School District took action to approve your enclosed contract at their last board meeting.

Please keep the enclosed documents for your records. The purchase order will reflect the Board approval date and contract number on the top right hand corner beginning with the letter "C". The contract will reflect the vendor information, contract term (effective dates), contractor obligations, and compensation terms.

If you need to contact the Purchasing Department with questions/concerns please refer to the contract number.

Please also reference to the contract number when invoicing the Accounts Payable Department.

We're delighted to have you on board as a vendor. If at anytime you need to contact the Purchasing Department we can be reached at (408) 928-6845.

Best wishes,

Maria Martinez

Maria Martinez
Purchasing Supervisor

Stephen A. Piss, Superintendent

Board of Trustees • Dolores Marquez, President • Andrea Quintana, Vice President
• Karen Martinez, Clerk • Frank Chavez, Member • Andrea Flores, Shelton, Member

C1314127

PROGRAM MANAGEMENT AGREEMENT

This PROGRAM MANAGEMENT AGREEMENT ("Agreement") is entered into on this 6th day of May, 2013, between the ALAMO ROCK UNION ELEMENTARY SCHOOL DISTRICT ("District") and DELTERRA REAL ESTATE SERVICES, Inc., dba DEL TERRA GROUP ("Manager") for program management services. The District and Manager shall be referred to herein individually as a "Party" and collectively as the "Parties."

RECITALS

- A. The District is a K-8 school district that operates in the County of Santa Clara, California.
- B. The Manager represents and warrants it is a corporation licensed to do business in California. The Manager represents and warrants it has the background, knowledge, experience, licenses and expertise necessary to provide the services set forth in this Agreement.
- C. The District and Manager desire to enter into an agreement for the Manager to provide the District with professional services consisting of program management services in connection with the planning, programming and construction of modernization projects involving existing school facilities, and designated new construction projects related to the District's Bond Program, known as Measure J, other previous Bond Measures, Facility Funding and any match funding (Campus Projects).
- D. It is the intention of the Parties that the Manager provide comprehensive program management services under the supervision of the District's Superintendent or designee that will enable the Campus Projects to be completed and constructed in accordance with the program and project schedules to be agreed to by the Parties.

NOW, THEREFORE, it is mutually agreed by and between the undersigned Parties as follows.

ARTICLE I GENERAL PROVISIONS

1.1 DEFINITIONS

- 1.1.1 **Acceptance.** The point after Final Completion when Contractor has fully performed all of the requirements of the Contract Documents and the Work of a Campus Project is as complete and accepted by the District in writing.
- 1.1.2 **Addendum, Addenda.** Written or graphic information (including, without limitation, Drawings or Specifications) prepared and issued by the District prior to the receipt of the Contractor's Bid for a Campus Project, which modify or interpret the Bid Documents by additions, deletions, clarifications or corrections to said Bid Documents.

- 1.1.3 Additional Services.** Services requested and approved by District in writing that do not arise, in whole or in part, from or in connection with the fault, negligence or breach of this Agreement by Manager and which: (i) are not included within the scope of Basic Services described in Article 2; or (ii) except as otherwise provided in Paragraph 4.4.2 of this Agreement, are performed after the expiration of the Basic Term. Such Additional Services shall be compensated on an Hourly Rate Basis set forth in Exhibit B or other mutually agreed upon written fee arrangement.
- 1.1.4 Applicable Laws.** All federal, state and municipal laws, statutes, building codes, ordinances and regulations of governmental authorities having jurisdiction over the Campus Projects, Work, Site, District, or Manager, including ordinances, rules, policies, bylaws and regulations enacted by the District and its Governing Board and Administration. The District will notify and provide Manager with newly adopted policies, bylaws and Administrative Regulations.
- 1.1.5 Application for Payment.** An itemized application for payment prepared and submitted by Manager for review and approval by District, with supporting documentation required by this Agreement.
- 1.1.6 Architect.** The Architect of Record for a Campus Project.
- 1.1.7 As-Built.** The documents prepared by Contractor, and reviewed and approved by Architect, showing the condition of the Work of a Campus Project as actually built, including, without limitation, the locations of mechanical, electrical, plumbing, HVAC or similar portions of the Work that are shown in the Contractor Documents' diagrams. This term does not apply to existing District as-built documents that reflect the conditions existing prior to the commencement of Work on any Campus Project under this Agreement.
- 1.1.8 As-Planned progress.** The planned progress of the work by a Contractor pursuant to its as-planned construction schedule for a Campus Project.
- 1.1.9** Intentionally blank.
- 1.1.10 Basic Services.** All Program Management services specified in Article 2 and EXHIBIT A of this Agreement.
- 1.1.11 Basic Term.** The term of this Agreement as defined in Section 4.4 of this Agreement.
- 1.1.12 Bid.** A Contractor's written bid proposal submitted to the District for a Campus Project in response to District's Notice Inviting Bids.
- 1.1.13 Bid Documents.** The following collection of documents prepared and issued for the purpose of soliciting Bids for construction of Work including but not necessarily limited to the following: (i) Notice Inviting Bids; (ii) Instructions to Bidders; (iii) Blank Bid Form; (iv) Construction Contract between the District and

the Contractor; (v) General Conditions; (vi) Specifications; (vii) Plans and Drawings; (viii) Addenda; and (ix) reports, addenda, supplements, attachments, modifications and exhibits attached to the documents listed in Clauses (i) through (viii), above.

- 1.1.14 Board of Trustees.** The governing board of the District.
- 1.1.15 Campus Projects.** The individual works of improvement, modernization or new construction which, collectively, comprise but not limited to, the District's Measure J Bond Program, previous Bond Measures, other facility funding or marsh funding, that are to be separately designed, bid and constructed under contracts between District and Design Consultants or Contractors and identified by the District pursuant to Section 1.2.1.
- 1.1.16 Change Order.** A written instrument, in a form and format prescribed by and/or approved by District, signed by District, Manager, Architect and Contractor, setting forth an agreed adjustment in a Contract Sum or Construction Contract schedule, or both, pertaining to a deletion, addition or change to the Contractor's scope of Work.
- 1.1.17 Claim.** A written demand or assertion by District, Manager or any other member of the Project Team (e.g. Design Consultants, Contractors, etc.) seeking as a matter of right, an interpretation of contract, payment of money, recovery of damages, or other relief. A Claim does not include the following: (i) penalties or forfeitures prescribed by statute or regulation imposed by a governmental agency; (ii) tort claims for personal injury or death; (iii) false claims liability under California Government Code Section 12650, et seq.; (iv) defects in the Work first discovered by District after Final Payment by District to Contractor; (v) stop notices; (vi) the right of District to specific performance or injunctive relief to compel performance.
- 1.1.18 Claims Dispute Resolution Process.** The process of resolution of Claims as set forth in Article 9 of this Agreement.
- 1.1.19 Construction Contract.** A written contract executed between District and a Contractor for construction of a portion or all of the Work of one or more Campus Project(s).
- 1.1.20 Construction Costs.** The total cost of constructing a Campus Project, excluding the following: (i) the cost of professional or other services to be rendered by Design Consultants, Specialty Consultants, Subconsultants or Manager; (ii) land acquisition costs; (iii) finance costs; (iv) District's administrative costs; and (v) legal fees and related legal costs.
- 1.1.21 Contract Documents.** Without limitation, the following collection of documents that are anticipated to be designated as the Contract Documents governing a Contractor's performance of the Work of a Campus Project: (i) The Notice Inviting Pre-Qualification Statements (if applicable), Pre-Qualification Statement,

and Pre-Qualification Checklist (if applicable); (ii) executed Construction Contract between District and Contractor; (iii) Notice Inviting Bids; (iv) Instructions to Bidders; (v) Bid Addenda; (vi) Contractor's Bid; (vii) General Conditions; (viii) Specifications; (ix) Performance and Payment Bonds; (x) insurance forms; (xi) Plans and Drawings; (xii) Modifications; (xiii) reports listed in the Bid Documents; (xiv) Change Orders; (xv) Field Directives and (xvi) supplements, attachments and exhibits attached to the items listed in Clauses (i) through (xv), above.

- 1.1.22 Contract Sum.** The total amount of compensation stated in a Construction Contract that is payable to a Contractor.
- 1.1.23 Contract Time.** The total number of Days set forth in a Construction Contract within which Final Completion of the Work of a Campus Project must be achieved by Contractor, including approved extensions of time permitted under the terms of the governing Contract Documents.
- 1.1.24 Contractor.** An individual or firm under contract with District to perform any Work on one or more Campus Project(s).
- 1.1.25 Day.** Whether capitalized or not, unless otherwise specifically provided, a calendar day, including weekend days and legal holidays.
- 1.1.26 Defective Work.** Work that does not fulfill the requirements of the Contract Documents or Construction Contract.
- 1.1.27 Deliverables.** The written work product, consisting of reports, summaries, projections, budgets, schedules, plans, programs, procedures and minutes required to be prepared and submitted by Manager to the District under the terms of this Agreement.
- 1.1.28 Deliverables Schedule.** The schedule setting forth the applicable contractual time periods and deadlines at which Manager is required to perform its Basic Services, including, without limitation, the production of its Deliverables.
- 1.1.29 Design Consultant.** An individual or firm under contract with District to provide design, architectural, engineering and/or design administration services for a Campus Project.
- 1.1.30 Design Costs.** The costs to District for conceptual, schematic, design development, construction documents and construction administration services required for completed design, engineering, administration and management of a Campus Project by Design Consultants and Specialty Consultants.
- 1.1.31 Design Documents.** All design-related plans, drawings, tracings, specifications, programs, reports, calculations, models and other material containing designs, specifications or engineering information prepared by Design Consultants and

Specialty Consultants including, without limitation, computer aided design materials, electronic data files, files and paper copies.

1.1.32 District Representative. The Superintendent or his/her designee, or as designated by the Board of Trustees.

1.1.33 Drawings. The graphic and pictorial portions of the Contract Documents prepared by a Design Consultant and other Specialty Consultants showing the design, location and dimensions of the Work, generally including plans, elevations, subparagraphs, details, schedules and diagrams. The term "Drawings" may be used interchangeably with "Plans."

1.1.34 Environmental Law. Any applicable federal, state or local laws, ordinances or regulations relating to the environment, health and safety, Hazardous Substances (including, without limitation, the use, handling, transportation, production, disposal, discharge or storage thereof) or to industrial hygiene or the environmental conditions on, under or about the Site, including soil, groundwater and indoor and ambient air conditions, and the following: Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended (42 U.S.C. §§ 9601-9675), the Resource Conservation and Recovery Act, as amended (42 U.S.C. §§ 6901-6992k), the Hazardous Materials Transportation Act, as amended (49 U.S.C. § 1801 et seq.), the Federal Water Pollution Control Act, as amended (33 U.S.C. §§ 1251-1307), the Clean Air Act, as amended (42 U.S.C. §§ 7401-7671 et seq.), the Toxic Substances Control Act, as amended (15 U.S.C. §§ 2601-2692), the Residential Lead-Based Paint Hazard Reduction Act of 1992 (Title X), 15 U.S.C. §§ 2681-2692 and also 42 U.S.C. §§ 4851-4856, the Lead Based Paint Poisoning Prevention Act, 42 U.S.C. §§ 4821-4846, the Indoor Radon Abatement Act, 15 U.S.C. §§ 2661-2671, and the Safe Drinking Water Act Amendments of 1996, Pub. L. No. 104-182, 110 Stat. 1613 (1996) and all similar federal, state and local statutes and regulations.

1.1.35 Field Directive. A written instrument signed by Manager and District that requests performance of Work by Contractor in one of the following categories: (i) over which there is a dispute as to whether the Work is or is not extra work; or (ii) involving extra work which Manager and the District request be performed without a unilateral Change Order adjustment to the Contract Sum or Contract Time and before agreement on all terms of a Change Order to the Construction Contract.

1.1.36 Final Completion. With respect to the Work under a single Construction Contract, the point at which all conditions set forth in the Contract Documents for Final Completion of the Work have been, and continue to be, fully satisfied.

1.1.37 Force Majeure Circumstances. Unavoidable circumstances beyond the reasonable control of Manager, including but not limited to Acts of God, strikes, lockouts, labor disputes, inability to obtain labor or materials or reasonable substitutes therefor, emergency governmental restrictions, regulations and

controls, judicial orders, enemy or hostile governmental action, civil commotion, fire or other casualty, that interfere with Manager's ability to complete its services utilizing the resources authorized by the Staffing Plan or that prevent Manager from satisfying the requirements of the Deliverables Schedule or complying with its other obligations under this Agreement.

- 1.1.38 General Conditions.** That portion of the Contract Documents between District and a Contractor titled "General Conditions."
- 1.1.39 Hazardous Substance.** Any chemical, material or other substance defined as or included within the definition of "hazardous substances," "hazardous wastes," "extremely hazardous substances," "toxic substances," "toxic material," "restricted hazardous waste," "special waste" or words of similar import under any Environmental Law, including but not limited to the following: petroleum (including crude oil or any fraction thereof), asbestos, asbestos-containing materials, polychlorinated biphenyls ("PCBs") and PCB-containing materials, whether or not occurring naturally.
- 1.1.40 Hourly Rates for Services.** The hourly rates set forth in Exhibit "B" to this Agreement.
- 1.1.41 Interest Rate.** The lesser of: (i) the "prime rate" reported in the Wall Street Journal from time to time; or (ii) the maximum rate permitted under California law for prejudgment interest.
- 1.1.42** Intentionally blank.
- 1.1.43 Loss, Losses.** Any and all losses, costs, liabilities, claims, damages, actions, judgments, settlements, expenses, fines and penalties.
- 1.1.44 Master Program Schedule.** The schedule which identifies all of the 1) major Deliverables to be provided by the Manager to the District, 2) Campus Projects to be planned, designed and constructed pursuant to the Measure J Bond and Matching Funds for Modernization and New Construction, and 3) the major milestones for each of said Campus Projects including but not limited to their respective start dates, and completion dates.
- 1.1.45 Plans.** See "Drawings."
- 1.1.46 Project Budget.** The District's written statement of funds available to pay for Project Costs of a Campus Project, or collection of Campus Projects.
- 1.1.47 Project Construction Budget.** That portion of the Project Budget that sets forth the District's budget for Construction Costs for a Campus Project or collection of Campus Projects.
- 1.1.48 Project Costs.** The total of all Design Costs, Construction Costs, Specialty Consultants Costs, costs, and fees of Manager and other related costs (such as, but

not limited to, personal relocation and temporary facilities costs, fixtures, furniture and equipment (if required) for a Campus Project or collection of Campus Projects, excluding: (i) land acquisition costs; (ii) finance costs; (iii) District administrative costs; or (iv) legal fees and court costs.

- 1.1.49 Manager Representative.** Manager or his/her representative, identified to act on behalf of Manager with the authority set forth in Paragraph 1.4 of this Agreement.
- 1.1.50 Project Team.** District Representative, Manager Representative, Key Personnel as needed, Specialty Consultant(s), Design Consultant(s), Contractor(s), Subconsultant(s), Sub-subconsultant(s), and other firms or individuals retained by District or others with District approval participating in the planning, programming, design or construction of a Campus Project.
- 1.1.51 Reimbursable Expense.** Any expense that is reimbursable to Manager under Section 4.2 of this Agreement.
- 1.1.52** Intentionally blank.
- 1.1.53 Site.** The term "Site" refers to: (i) the District school sites and such additional parcels as may be purchased or leased by District during the Basic Term on which Work is required to be performed under the Contract Documents; (ii) all areas adjacent to such parcels that may be used by Contractor or its Subconsultants for staging, storage, parking or temporary offices; and (iii) all land areas, both private and public, adjacent to such parcels on which Work is required to be performed under the Contract Documents. Applicable Laws or permits relating to the Project.
- 1.1.54 Specialty Consultant.** The professionals, other than Manager, of any Tier, retained by a Design Consultant or District to provide professional services for any Campus Project, including master planners, programming consultants, soils and geotechnical engineers, environmental consultants, Hazardous Substance consultants, infrastructure consultants, or landscape designers.
- 1.1.55 Specifications.** The portion of the Contract Documents consisting of the written requirements for materials, equipment, standards and workmanship for the Work, and performance of related services.
- 1.1.56** Intentionally blank.
- 1.1.57 Statement of Dispute.** A written description of a dispute regarding a Claim required to be submitted as part of the Claims Dispute Resolution Process.
- 1.1.58 Subconsultant.** A person or firm that has a contract with Manager to perform a portion of the services covered by this Agreement.

- 1.1.59 Subcontractor.** A person or firm that has a contract with a Contractor to perform a portion of the Work, including without limitation, subcontractors, sub-subcontractors, and suppliers and vendors, of every Tier.
- 1.1.60 Submittals.** Shop drawings, samples, exemplars, models, product data and other similar submittals required to be submitted by Contractor under the Contract Documents.
- 1.1.61 Tier.** The contractual level of a Subconsultant with respect to Manager, a Consultant with respect to the Design Consultant retaining such Consultant or a Subcontractor with respect to a Contractor. For example, a "first-tier" Subcontractor is under contract with the Contractor. A sub-subcontractor under contract with a first-tier Subcontractor is in the "second tier," and so on.
- 1.1.62 Work.** All labor, materials, equipment, services, permits, licenses and taxes and all other things necessary for Contractor to perform its obligations and complete a Campus Project (or a collection of Campus Projects under a single Construction Contract to a single Contractor), including any changes, additions or deletions approved by District, in accordance with the Contract Documents and all Applicable Laws.

1.2 SCOPE OF SERVICES

- 1.2.1 Campus Projects.** Manager shall, with input from District, develop ~~the list and scope of all Campus Projects to be defined "Quick Start" projects and remainder of Bond Projects~~ to be included in the Bond Program. District shall furnish its 'Priority List', if any, of Campus Projects to Manager not later than ninety (90) days after this Agreement has been fully executed by the Parties.
- 1.2.2 Scope of Services.** Manager shall provide ~~Program Management~~ services as specified in ~~Article 2 and Exhibit A~~ for the Campus Projects, in accordance with the terms of this Agreement and in accordance with the ~~schedule of costs and fees for each project~~. Manager shall perform and complete, within the time frame agreed to between the Manager and the District, the program management services for the Bond Program and the Campus Projects covered by this Agreement. The Manager shall coordinate and monitor and oversee all phases of the Bond Program and the Campus Projects as described in this Agreement. The District and Manager have endeavored to delineate the scope of the services to be provided and performed by Manager in this Agreement. Program management services include but are not limited to preparation, coordination, management and implementation (after approval of the Board of Trustees) of the District's Measure J Bond Program and oversight and coordination of all of the District's consultants, including architects, construction managers, contractors, subcontractors, vendors, and suppliers of work or services rendered, in connection with, and in the performance of, the delivery of the Bond Program and the Campus Projects and such additional services as may hereafter be agreed by the District and Manager.

1.3 PERFORMANCE STANDARDS

1.3.1 Standard of Care. Manager's services shall be performed in a manner that is consistent with professional skill and care and the orderly progress of the services described herein. Manager represents that in performing the services as defined herein it will follow the standards of care and performance of its profession in a manner consistent with the standard of care in California applicable to those who specialize in providing services of the type, scope and complexity of a program manager for a similar building and modernization program as undertaken by District in its Bond Program.

1.3.2 Relationship. Manager serves as District's agent and fiduciary in performing services under this Agreement. Manager shall, in this capacity, maintain confidences and provide professional services in a manner consistent with District's economic, educational and governmental best interests.

1.4 AUTHORITY OF THE MANAGER

Manager's authority to act on behalf of District is limited to the scope of authority set forth in this Agreement and as directed in writing by the District. Notwithstanding anything else stated in this Agreement or any Contract Documents relating to any Campus Project, Manager does not have the express or implied authority to obligate the District to any expenditure of money or extension of contractual time periods, including without limitation, any adjustment to the price or time of performance of any contract between the District and its contractors, consultants or architects and other design consultants. Without limiting the generality of the foregoing, Manager shall not take action with respect to the following matters, under any District contract, unless and until it receives written evidence of the District's determination with respect to same, which determination: (i) shall be made in the District's sole discretion and (ii) shall be made by the District without any assumption by the District of any responsibility for planning, design and construction of the Bond Program or any Campus Project:

- Change Orders.
- Form and substance of payment and performance bonds.
- Commencement of Construction.
- Determination of Unavoidable Delay.
- Acceptance of the work, or applications for payment.
- Substitution of subcontractors.
- Stop work orders; or
- Termination or amendment of applicable agreement or any portion of the work or settlement or ratification of outstanding liabilities and claims with respect to same.

Notwithstanding anything else stated in this Agreement or any Contract Documents, Manager does not have the express or implied authority to obligate District to any other expenditure of money or extension of contractual time periods, or to any other adjustment in the price or time of performance of any contract between District and its Contractors, Specialty Consultants or Design Consultants.

1.5 KEY PERSONNEL

1.5.1 Additions, Removals, Replacements.

1.5.1.1 Additions. It is contemplated that from time to time individuals will be added to the list of Key Personnel as necessary and appropriate to the stage of planning, programming, designing and constructing of the Campus Projects. Manager shall make staffing additions at its discretion and shall notify the District of such changes in writing within seven (7) days of such addition. Manager's staffing additions shall not serve to replace or substitute for services provided by existing Key Personnel.

1.5.1.2 Removals. If the District, in good faith, is dissatisfied with the services rendered by any Key Personnel, Manager, within a reasonable time after receipt of written demand from the District setting forth the basis of its dissatisfaction and request for replacement, shall promptly provide a substitute person acceptable to the District as discussed below.

1.5.1.3 Replacements. If any Key Personnel ceases employment with Manager or is requested to be removed by District pursuant to Paragraph 1.5.1.2 above, then Manager shall promptly notify District of a proposed substitute person of at least equal qualifications to perform the same functions who is approved by District, which approval may be granted or withheld in its reasonable discretion. Manager shall bear, at its own expense and without reimbursement by District, all costs associated with replacing, for any reason, any Key Personnel.

1.5.2 Manager Representative. The Manager Representative has the authority to act on behalf of the Manager in respect to all matters that are the subject of this Agreement, including the power and authority to enter into agreements or modifications to agreements that contractually bind Manager.

1.5.3 Manager's Responsibility for Manager's Employees. All persons employed and contracted by Manager shall be the employees and/or contractors of Manager and not of District. Manager shall be solely responsible for any and all workers' compensation obligations, withholding taxes, unemployment insurance and any other employer obligations with respect to all employees and/or contractors working or performing services for Manager.

1.6 SUBCONSULTANTS

Manager may, with prior written approval by District, which District may grant or deny in its sole discretion, enter into written contracts with Subconsultants to perform portions of the services provided for in this Agreement. Manager's request for hiring of a Subconsultant shall be submitted in a writing that describes the scope of work to be contracted and the name of the proposed Subconsultant. Subconsultants' services shall not be considered Additional Services unless they satisfy the requirements under Section 4.3. Manager shall not separately invoice fees for services rendered by Subconsultants.

However, if a Subconsultant performs Additional Services, fees for such Additional Services shall be separately identified in Manager's invoices. Only the District's approval of the Subconsultant in writing shall be effective to convey the District's approval. District shall use its best efforts to approve or disapprove proposed Subconsultants within thirty (30) Days of Manager's request. Manager shall remain responsible to District for the quality and performance of all Subconsultants' services. Manager may, upon advance written notice to District, terminate and replace the services of any Subconsultant. Every subcontract or agreement of any kind entered into between Manager and Subconsultant (or between any Subconsultant and other independent contractor consultants) shall contain appropriate language whereby Subconsultant, without creating any contractual obligation on the part of the District to the Subconsultant or anyone working under contract to Subconsultant, accepts and agrees to be bound by all applicable provisions of this Agreement, including minimum insurance requirements and indemnity obligations and fingerprinting requirements (if applicable), and agrees to include in its contracts with its Subconsultants a contingent assignment of the contract to District, or its designee, effective only upon written acceptance by District or its designee.

1.7 OWNERSHIP OF DOCUMENTS

All Documents and all documents that are prepared, reproduced or caused to be prepared by Manager or its Subconsultants, of any Tier, in furtherance of their obligations under this Agreement or any Subconsultant Agreement shall be and remain the sole property of District. Without limitation to the foregoing, District shall hold, and Manager shall be deemed to have irrevocably assigned to District, in perpetuity with no reserved or retained rights in any other persons or entities, all copyrights to such documents. The District hereby grants to Manager and its Subconsultants a license, revocable at will of District, to use and copy such documents during the term of this Agreement for the sole purpose of performing the Work required under this Agreement. Upon the earlier of termination of this Agreement or completion of performance of this Agreement, Manager and its Subconsultants, of every Tier, shall, if requested by District, deliver all of the originals of such electronic documents and/or files prepared in the course of their performance of this Agreement or any Subconsultant Agreement to District. Manager shall retain a copy of such electronic documents and/or files for its records for a period of at least three (3) years following the earlier of termination of this Agreement or completion of performance of this Agreement.

ARTICLE 2 BASIC SERVICES

2.1 GENERAL SUMMARY OF MANAGER'S BASIC SERVICES

The Basic Services to be performed under this Agreement by Manager are described below on a summary level by scope category, and more specifically by phase of delivery of services in Sections 2.2 to 2.5, and are intended to include the following within their overall scope:

- Advise the District on phasing, grouping of projects and other potential cost-saving approaches to construction.
- Develop scopes of work for Bond Program Campus Projects.
- Assist and advise the District in prioritizing Campus Projects and activities; advise the District about phasing of projects and contracting strategy for the purpose of avoidance of cost overruns, and avoidance of duplication of effort.
- Verify and update the cost estimates in the District's most current facilities master plan.
- Develop final bond program Measure J comprehensive master implementation plan to manage all of the facets of the Bond Program. The implementation plan process will include evaluation of current needs, evaluate the current budgets and then produce a comprehensive plan that will be used to manage all of the scope, budgets and schedules for the overall bond program.
- Develop master project communication plan, incorporating project participants, District administration, site personnel, community, parents and website.
- Establish an overall program budget and schedule for District approval and provide an integrated budget/cost and schedule management system designed to meet the objectives of the Bond Program and keep the District informed of program status.
- Work with District to develop scope, sequencing, scheduling, budgets and communication for all projects
- Coordinate with District staff in establishing an overall Bond Program financial management system for:
 - a. Accounting
 - b. Auditing
 - c. Cost estimating and budgeting
 - d. Contract payment
 - e. Cash flow forecasting and analysis
 - f. Financial reporting
- Develop and maintain reporting systems for each of those components (schedule and cost management systems) and update them throughout the program life-cycle.
- Prepare Requests for Qualifications and Requests for Proposals for construction management services, design and technical services and other professional services; assist and help facilitate the selection process, which will include District representatives.
- Work with the Division of State Architect (DSA) to facilitate obtaining plan checks and approvals; assist with DSA closeout.
- Review, organize, inventory, and catalogue District preexisting and new "as built" drawings and obtain missing drawings from appropriate sources.
- Overall management of Bond Program bid and award process for selecting construction contractors, awarding contracts, and execution of purchase orders.
- Maintain Bond Program records (all records, correspondence, contracts, technical studies, and other related documents shall at all times remain the property of the

- District) and prepare and present an annual report on Bond Program and project progress, cost analysis, and future cash flow requirements.
- Develop and implement a records and document control management system for all Bond Program participants, which will ensure all documents are properly handled and all records are properly maintained.
- Develop and oversee implementation of District's Labor Compliance Program and oversee the implementation of the District's Project Labor Agreement.
- Report to the District on program and Campus Project status on a regular basis through the course of the projects.
- Advise on and coordinate work of Subconsultants.
- Assist in supporting the District's Measure J Citizens' Oversight Committee.
- Participate in planning workshops, attend meetings with site committees and the District Measure J Citizens' Oversight Committee.
- Advise on an ongoing basis regarding communications with state and other agencies involved in construction process, including DSA, CDE, OPSC and assist, as requested, with CEQA compliance and applications and eligibility for state funding and matching funding.
- Work directly with District staff, including the accounting, administration, facilities, maintenance and operations departments to provide continuity in all aspects of the projects, including preparation of district and site specific design standards that define the quality, standard and aesthetic character.
- Assist with the detailed definition of project scope, budget and schedule as needed.
- Coordinate design consultant activities and delivery schedules as needed.
- Work closely with and support architect(s) in all related designing and programming tasks.
- Review design documents for constructability, scheduling, phasing, clarity, consistency and coordination.
- Perform analysis of the design documents and prepare report(s) with recommendations to the District to maintain established budgets.
- Facilitate all closeout activities and manage the architects to expedite DSA closeout of each Campus Project.

2.1.1 Program Management; Reduction of Manager's Scope. Provide program management services during all phases (i.e. planning, pre-construction, bidding and award of contracts, construction, post-construction) of each Campus Project. Program management services will include management, oversight, and coordination of all Contractors, Subconsultants, vendors, and suppliers' Work, in connection with, and in the performance of, the delivery of the Campus Projects. The District reserves the right to issue deductive change orders to Manager reducing Manager's scope of work under this Agreement, at District's sole discretion, subject to the provision of 60 days notice by the District to Manager, without penalty or further compensation to Manager.

2.1.1.1 Reports. Program management services shall include progress reporting at monthly intervals, in the format described as follows: Prepare reports (to be provided in writing and electronically) to the District, according to an approved format developed collaboratively by the District and the Manager. This summary report must include:

- a) Program Status Reports for each project, including highlights/accomplishments since the previous Status Report;
- b) Project Schedules for each project including an update of actual performance against the approved baseline schedule;
- c) Budget, Actual, Forecast To Complete, Budget Available Balances (this portion of the report shall be provided quarterly);

2.1.1.2 Coordination. Program management services shall include coordination of all Work and services hereunder with campus personnel (including affected District Site staff where necessary), District facilities staff, public agencies and utilities that are necessarily involved in the planning and execution of the Campus Projects. These services do not include the coordination of services that are not included within Basic Services or the performance or provision of legal services on behalf of the District.

2.1.2 Status Meetings. Meet weekly with District staff and other necessary individuals to coordinate all phases of the Campus Projects. Chair meetings, prepare meeting minutes (if meeting is Program Management-related meeting with District, Manager shall prepare meeting minutes; For all meetings with Contractors, the Architect or Construction Manager shall prepare and distribute the meeting minutes), and distribute meeting minutes to attendees. Meet monthly (or as otherwise directed by the District) with District Representative to provide a written summary of the status of progress on Campus Projects. Present a monthly status update to the Board of Trustees at a regularly scheduled public meeting of the Board. Such presentations shall contain material from the reports described in Section 2.1.1.1, including but not limited to highlights/accomplishments, and potential and actual cost savings. Attend meetings of and provide support to the Citizens' Oversight Committee and provide monthly progress report or interim progress reports as requested by District. The contents and details contained within such reports shall be defined and agreed upon by Manager and the District.

2.1.3 Schedule Creation and Management. Develop, review, and maintain a Master Program Schedule listing each Campus Project independently, and provide a Master Summary Schedule for the Campus Projects for the Bond program and to be reviewed and approved for implementation by the Board of Trustees. Prepare a proposed "baseline" schedule for each of the Campus Projects for review and approval by District. Report progress against the approved baseline schedule for coordination, tracking, reporting, and recording purposes.

- 2.1.4 Budget Management.** Develop, review, and maintain Campus Project and Bond Program level budgets (Program Budget) for each Campus Project. The Program Budgets shall be based on information provided by the District on all of the work required for the Bond Program and information provided by the Manager as required by this Agreement and on such other information reasonably required to be obtained by Manager in preparing and maintaining such budgets. The Manager shall review the Program Budget with the District and shall submit the Program Budget to the District for review and acceptance. The Program Budget shall be revised as directed by the District.
- 2.1.5 Inspection Services.** Monitor the status of the inspection of the Work and the maintenance of appropriate inspection reports and inspection logs relating to the Work. Manager, in conjunction with the District, shall select any necessary independent inspectors, including Division of State Architect inspectors. Monitor the submittal of all required inspection certifications (e.g., Form DSA-6) by all inspectors of Record. Manager shall have no obligation to personally inspect the Work. To the extent that Manager becomes or is made aware of any Work that does not conform to the Specifications or Drawings, communicate said defective conditions to District and the appropriate independent inspectors retained by District to perform inspections on the Campus Project. Manager shall not have responsibility or liability for the quality or completeness of the inspections, inspection reports and/or inspection logs.
- 2.1.6 Document Control.** Implement a document control and master file archives system, provided that Manager shall not be responsible for the accuracy or completeness of records and/or files generated prior to the date of this Agreement. Manager shall acquire advance approval by District for the purchase of any and all such equipment and/or supplies for this purpose.
- 2.1.7 Cost Estimating.** Monitor the cost estimating services provided by consultants/general contractors, and provide recommendations where applicable for the reduction of costs of design, construction and maintenance. If the Manager is requested to provide among other things, feasibility analysis, and use of alternative approaches to building systems, project delivery and procurement of these services are deemed Additional Services.
- 2.1.8 Schedules.** Within one hundred eighty (180) days after full execution of this Agreement Manager shall prepare and submit to the District for the District's approval a proposed Master Program Schedule. Manager shall manage a process for (i) evaluation of Contractor's schedules and schedule updates, including the preparation of independent critical path schedules and short-term ("look ahead") schedules, (ii) receiving and evaluating requests for time extensions and claims for compensation for delay, and (iii) evaluating As-Planned to As-Built progress to assure that the District is fully advised on issues that could affect timely completion of a Campus Project. Construction schedules shall be provided to District by Manager monthly and shall be considered General Services.

PRE-CONSTRUCTION

- 2.2.1 Project Prioritization.** Assist District in identifying and prioritizing Campus Projects, including determining which tasks may be performed through single or multiple Contractors, based on availability of funds and District and campus areas of need.
- 2.2.2 Campus Project Cost Estimates, Budget.** In conjunction with the District and the District's Architect, develop and review Initial Budget of the Construction Cost for each Campus Project developed by the Campus Project Architect. Review and evaluate the detailed cost estimate for each Campus Project developed by the Campus Project Architect. Review and update current project budgets for each Campus Project based on the Architect's approved detailed cost estimate.
- 2.2.3 Screening of Design Consultants and Specialty Consultants.** Chair, manage, and participate in the prescreening and interview of Design Consultants and Specialty Consultants. Provide written recommendations concerning selection of Design Consultants and Specialty Consultants. This task may and will be subject to the requirement and acceptance of the transfer of design responsibility of original design from the original Architect to the new Architect.
- 2.2.4 Design, Constructability, and Value Engineering Review.** Perform a general evaluation of Design Documents for accuracy and completeness and advise District on Design Costs, cost-effective design alternatives, materials, building systems, equipment and methods of delivery. In performing these services the Manager does not assume responsibility for the adequacy of the design of a Campus Project.
- 2.2.5 Communications.** Maintain and track communications among Campus Project participants.

2.3 BIDDING AND AWARD OF CONTRACTS

The following section shall apply only to NEW projects commenced by the Manager.

For each Campus Project, Manager shall perform the following services as deemed necessary by Manager, through the award of Construction Contract(s)

- 2.3.1 Pre-qualification of Prime Contractors.** As specifically requested by the District, provide pre-qualification requirements, contractor outreach, surveys and assessments, assist with reference checks, report on bidders' acceptability, and prepare written evaluations and recommendations.
- 2.3.2 Bid Preparation.** Review Drawings and Specifications and work with District staff, including Design Consultant(s) as necessary, to prepare Bid Documents. Recommend bundling of Bids where appropriate. Assist District staff in properly

advertising request for Bids and complying with bidding requirements. Provide information uniformly to bidders, organize and conduct pre-bid conference and pre-bid job walks. Monitor Campus Project Architect's responses to bidder questions and issuance of Addenda and assist in the preparation of Addenda as necessary.

- 2.3.3 Bid Review.** Review Bids for price proposals, conformance to requirements, adequacy of bid bonds, accuracy of quantities, rates and unit prices, and time and schedule impacts. Make recommendations for awards and evaluate bid protests.
- 2.3.4 Awards.** Review performance and material/labor bonds for compliance with District requirements and Applicable Law. Arrange pre-award conference, as appropriate. Coordinate preparation and execution of Contract Documents.

ARTICLE 3

DISTRICT RIGHTS AND RESPONSIBILITIES

3.1 PROJECT BUILDING PROGRAMS, BUDGETS, SCHEDULES

District shall provide all financial information, including but not limited to budget goals, objectives and constraints, that is necessary for Manager to develop Project Budgets for the Campus Projects. District reserves the right to modify the Project Budgets, Master Schedule, Project Schedules or other requirements or designs for the Campus Projects, for any reason, by written notice to Manager. Manager shall at all times perform its obligations under this Agreement in a manner that is consistent with the Project Building Programs, Project Budgets, Master Program Schedule, Project Schedules and other Project requirements, as modified from time to time by District. Except at the time of a modification or change in Bond Program direction, the District and Manager shall determine the nature of the modification or change which may result in a Additional Service or an adjustment in resources and Manager's fees, to achieve modified requirements subject to District's written approval.

3.2 PROJECT INFORMATION

District shall furnish available information concerning the Campus Project, including surveys, soil reports, subsurface investigations, existing improvements, descriptions of legal limitations, utility plans, existing as-builts and other information. All such information shall be furnished at the District's expense. District does not warrant, where available, expressly or impliedly, the accuracy, suitability or completeness of such information or of any data, opinions or recommendations contained therein. However, in performing the Basic Services set forth in this Agreement, Manager shall be entitled to rely on such information provided to Manager by the District until such time as Manager has determined that such information is inaccurate, at which time Manager shall inform District of its determination.

3.3 DISTRICT REPRESENTATIVE

District's Representative shall promptly render upon written request by Manager its decisions or approvals required under this Agreement. No failure by District to render any decision or approval shall excuse Manager from fully and timely performing under this Agreement unless Manager has notified District in writing before such decision or approval is required, stating:

- a) a description of the decision or approval required;
- b) the date by which such decision or approval is required so as to not delay the Master Program Schedule; and
- c) a statement that the Master Program Schedule will or may be delayed if the decision or approval is not received by the stated date.

District shall coordinate the services of any Campus Project team members for whom Manager has no responsibility with the services provided by Manager.

To facilitate coordination between Manager and District staff, District shall communicate to its staff involved with the Campus Projects the Manager's scope of work, including the Manager's rights and obligations under this Agreement.

District hereby delegates responsibility to Manager to act as the District's agent to oversee Construction Manager's Work on Campus Projects. District shall include Manager in any communications or meetings with Construction Manager, Contractor or Consultants relating to performance on or relating to Campus Projects.

ARTICLE 4 COMPENSATION, TIME OF PERFORMANCE

4.1 BASIC SERVICES COMPENSATION

4.1.1 Basis of Compensation. In exchange for the full, timely and complete performance of all of the requirements of this Agreement, the District shall pay Manager in accordance with this Agreement. Manager's fee for Program Management services for the Campus Projects included in the Bond Program shall be as set forth in Exhibit C to this Agreement. In addition, District shall reimburse Manager for eligible expenses described in section 4.2.1.

4.2 REIMBURSABLE EXPENSES

4.2.1 Reimbursement by District.

The District shall provide adequate office space, office furniture and access for Manager to execute its work for District.

District shall reimburse Manager for the out-of-pocket expenses listed in this Section that are incurred and paid for by Manager in furtherance of performance of its obligations under this Agreement, but only to the extent that such expenses are generated in connection with the operations of the Bond Program:

- a) Out-of-town travel (including transportation, lodging and meals) as approved in advance in writing by District;
- b) Other equipment or software necessary for performance of this Agreement if and to the extent approved in advance by District, which approval may be granted or withheld in the reasonable discretion of District, and which shall be owned by the District at all times, including after services have been provided by Manager;
- c) Fees paid for securing approval of authorities having jurisdiction over the Campus Projects;
- d) Postage, courier services and overnight delivery costs necessarily and reasonably incurred performing the services provided hereunder; and
- e) Non-routine and extraordinary reproduction and copying costs and charges necessarily and reasonably incurred performing the services provided hereunder, provided that Manager shall use reasonable efforts at all times to use the District's in-house reprographics and copying services.

4.2.2 Exclusive List. The Reimbursable Expenses set forth in Section 4.2.1 are the sole Reimbursable Expenses for which Manager is entitled to reimbursement, unless otherwise agreed in writing by the District.

4.2.3 Property of District. All materials or equipment, other than consumables, purchased for the Project and reimbursed by District as a Reimbursable Expense shall become property of the District, be labeled as property of District and delivered to District upon termination of this Agreement.

4.2.4 Records. Manager shall maintain accurate and detailed records of Reimbursable Expenses pertaining to the Project on the basis of generally accepted accounting practices. Manager shall maintain and make these records available at District's request for inspection, auditing and/or copying by District and its representatives pursuant to Section 6.1.2.

4.2.5 Payment. Payment for undisputed Reimbursable Expenses shall be made monthly, on the basis of the Manager's submittal of appropriate invoices and accompanying documentation (if any) Reimbursable Expenses shall be invoiced separately from the Basic or Additional Services.

4.3 ADDITIONAL SERVICES

- 4.3.1 **Additional Services.** Manager shall be entitled to compensation for Additional Services. Additional Services are services not included in Manager's Basic Services and include: (a) services directed to be performed by District; (b) services for projects other than the Campus Projects as initially identified by the District under Section 1.2.1.
- 4.3.2 **Compensation.** Manager's compensation for Additional Services shall be at the Hourly Rates for Services set forth in Exhibit B hereto or other rates as may be agreed to by the Parties in writing.
- 4.3.3 **Notice.** Manager shall notify District in writing within seven (7) days after it receives any direction or request that Manager believes constitutes a request for the performance of Additional Services. The District shall promptly respond to Manager's request for performance of Additional Services. Manager shall not perform any services it believes to be Additional Services until either it has received confirmation from the District that such services are Additional Services, or until the District has directed it to perform such services.
- 4.3.4 **Disputes.** If a dispute arises as to whether any service required constitutes an Additional Service or a Basic Service, Manager will nevertheless promptly perform such services, if directed to do so by District in writing. Neither District's request, Manager's performance, nor the acceptance of such disputed services by District will constitute or be deemed to be a waiver on the part of District or Manager of their respective rights concerning the appropriate classification of the services rendered.

4.4 TERM

- 4.4.1 **Basic Term.** When this Agreement has been fully executed by the Parties, the Term shall commence on the date first set forth above and shall end when the District has issued notices of completion for all Campus Projects or upon the termination of this Agreement as set forth in Article 7, or the end of the 5th year anniversary of this Agreement's commencement, whichever occurs earlier, subject to the District's right to renew annually thereafter in its sole and absolute discretion by action of the Board of Trustees. Subject to Education Code section 17596, Manager's obligations under this Agreement shall survive and continue uninterrupted after expiration of the Basic Term to the extent necessary to achieve complete and satisfactory performance of its obligations under this Agreement, as requested by the District, and subject to Manager's right to payment for Additional Services.
- 4.4.2 **Additional Services.** Except as otherwise provided in section 1.1.3 herein, Manager shall be entitled to compensation for all services performed after the Basic Term as Additional Services, subject to prior written approval by the District.

ARTICLE 5 PAYMENTS

5.1 APPLICATIONS FOR PAYMENT

5.1.1 Monthly Payment Applications. Manager shall submit a monthly Application for Payment to the District on or before the fifteenth Day of the month, setting forth in detail:

- a) the amount invoiced for Program Management services in accordance with the approved payment schedule;
- b) the Campus Project;
- c) the amount invoiced for authorized Additional Services rendered; and
- d) authorized Reimbursable Expenses incurred during the previous month.

The Parties shall mutually agree in writing, which shall become an addendum to this Agreement, on the format and additional required content of Payment Applications sufficient to identify and verify adequate progress in support of each Payment Application and the billings hereunder. Within thirty (30) days of the full execution of this Agreement Manager shall provide a proposed payment schedule to District for District's review and approval, which approval shall not be unreasonably withheld.

*- Amount about based on milestone
& completion*

5.2 PAYMENT BY DISTRICT

Payments of undisputed sums invoiced by Manager shall be made by District monthly within thirty (30) days after receipt by the District of a proper and timely Application for Payment.

5.3 PAYMENT DISPUTES

In the event of any good faith dispute as to whether a particular payment or a portion of a particular payment is owed or not owed by District to Manager under this Agreement, the District may withhold the disputed portion of such payment but shall timely pay all undisputed portions.

Should District withhold any amount invoiced by Manager, District shall so notify Manager in writing of the reasons therefor. Within ten days of receipt of such notice from District, Manager shall submit to District an explanation or justification of the amounts in dispute. District shall, within ten days of receipt of Manager's explanation or justification, either pay the disputed amounts or provide Manager a written explanation of its continuing objection. The District and Manager will resolve all such disputes in a reasonable time not to exceed sixty (60) days from the date the amount invoiced by Manager would have been due but for the dispute. If District continues to object, the amount in dispute shall be treated by Manager as a Claim and resolved in accordance with Article 9.

Upon the resolution of any dispute, District shall within 30 calendar days pay any amounts found to be owed to Manager.

ARTICLE 6 MANAGER'S RECORDS AND FILES

6.1 RECORDS

- 6.1.1 Maintenance of Project Books and Records.** Manager shall maintain complete and accurate books and records with respect to services, costs, expenses, receipts and other information required by District to verify the scope or charges for any services provided under this Agreement and any Payment Application submitted by Manager to the District. Manager shall maintain such records in sufficient detail to permit District, District's independent auditors, or their designee to thoroughly evaluate and verify the nature, scope, value and charges for services performed under this Agreement. All such books and records shall be maintained in accordance with generally accepted accounting principles and shall be clearly identified and readily accessible.
- 6.1.2 Audit of Records.** District, District's independent auditors, or their designee, upon reasonable notice shall have the right to examine and to audit books, records, documents, and other evidence sufficient to reflect properly all costs and expenses claimed to have been incurred in Manager's performance of this Agreement. Such right to audit shall include inspection at all reasonable times at Manager's offices or facilities. In addition, Manager shall furnish facilities and cooperate fully with the audit. Upon request, Manager shall provide reproducible copies of books, records and other documents that are applicable to this Agreement for reproduction by the District or its designee at the District's cost. All records and documents are to be maintained by Manager for at least 3 years after the completion of all Campus Projects and may be maintained in electronic format provided originals have previously been delivered to the District.
- 6.1.3 Privileged Communications.** Manager acknowledges that any communication between Manager and District's attorneys, or work which is received from or performed at the request of District's attorneys, are work product and communications shall be protected by the attorney-client and attorney work product privileges and shall be maintained in confidence by Manager except as authorized in writing by District's counsel, or its authorized designee.

ARTICLE 7 EARLY TERMINATION OF AGREEMENT

7.1 TERMINATION BY DISTRICT

- 7.1.1 For Cause.** If District determines that Manager has failed to perform in accordance with the terms and conditions of this Agreement, District may terminate all or part of the Agreement for cause. This termination shall be effective if Manager does not cure its failure to perform within thirty (30) days or

If the failure to perform cannot be cured within thirty days, if Manager does not commence to cure within thirty days, after receipt of a written notice of intention to terminate from District specifying the failure in performance. If a termination for cause does occur, District will have the right to withhold contested monies otherwise payable to Manager until Final Completion of all Campus Projects. If District incurs additional costs, expenses or other damages due to the failure of Manager to properly perform pursuant to this Agreement, those costs, expenses or other damages shall be deducted from the amounts withheld. Should the amounts withheld exceed the amounts deducted, the balance will be paid to Manager upon Final Completion of all Campus Projects.

- 7.1.2 For Convenience.** District may terminate or suspend performance of this Agreement for convenience and without cause at any time upon sixty (60) Days written notice to Manager, in which case District will pay Manager for all Services and authorized Additional Services actually performed, and all authorized Reimbursable Expenses incurred and paid, under and in accordance with this Agreement up to and including the date of termination. District shall not be required by this Section to pay disputed sums before Manager has invoked its remedies under Article 9 judgment.

TERMINATION BY MANAGER

- 7.2.1 For Cause.** Manager may terminate this Agreement under any of the following conditions:
- a) If District fails to make any undisputed payment to Manager when due in accordance with this Agreement and such failure remains uncured for thirty (30) Days after written notice to District of such default and of Manager's intent to terminate;
 - b) If the District unreasonably fails to enforce its obligation to require District staff to cooperate with and support the Manager in the performance of its obligations under this Agreement; or
 - c) If the Bond Program is suspended for more than one hundred eighty consecutive (180) Days due to lack of funds or adverse bond market conditions, upon thirty (30) Days' notice to District, provided District does not reactivate the Project within such thirty Day period. If the Project is reactivated and this Agreement is still in full force and effect, District shall equitably adjust Manager's compensation to provide for reasonable expenses incurred by Manager which are directly attributable to the interruption and resumption of service.
- 7.2.2 Payment for Services.** In the event of a termination of this Agreement by Manager in accordance with Section 7.2, District shall pay Manager an amount for its Services, Additional Services and Reimbursable Expenses calculated in accordance with Section 7.1.2.

7.3 FORCE MAJEURE

Any prevention, delay or stoppage due to Force Majeure Circumstances shall excuse the performance by either party for a period equal to any such prevention, delay or stoppage, except the obligations imposed pursuant to this Agreement with regard to payment by District (unless expressly excused). If the Force Majeure Circumstances persist for more than one hundred consecutive Days, District may at its option terminate the Agreement upon written notice to Manager, effective thirty (30) days thereafter.

ARTICLE 8 INDEMNIFICATION AND INSURANCE

8.1 INDEMNIFICATION

8.1.1 Manager Indemnification. To the fullest extent permitted by law, Manager agrees to indemnify, defend and hold harmless, District, Board of Trustees, and each of their members, officers, employees, agents, insurers and volunteers ("Indemnitee(s)"), through legal counsel selected by the District, from any and all Losses, to the extent arising out of or relating to any of the following:

- a) Negligent performance or nonperformance of this Agreement by Manager or its Subconsultants;
- b) Negligent activities of Manager and its employees, officers, Subconsultants, contractors, vendors, and invitees on or around any District Site or on other District properties;
- c) The payment or nonpayment by Manager of anyone with whom Manager has entered into a contract or agreement of any kind to furnish Work or provide services or work for a Campus Project or in connection with the District's Bond Program; or
- d) Any personal injury or property damage to third persons arising from negligent acts or omissions or misconduct by Manager or its Subconsultants.

Nothing contained herein shall be construed as obligating Manager to indemnify any Indemnitee for Losses resulting from the Indemnitee's sole or active negligence or willful misconduct. Nothing in the Contract Documents shall be construed to give rise to any expressed or implied right in favor of Manager for indemnity or contribution from District.

8.1.2 District Indemnification. To the fullest extent permitted by law, District agrees to indemnify, defend and hold harmless, Manager, its officers, employees, agents, insurers and volunteers ("Indemnitee(s)"), through legal counsel selected by District, from any and all Losses, to the extent arising out of or relating to any of the following:

- a) The District's negligent performance or nonperformance of this Agreement or willful misconduct;
- b) Any personal injury or property damage to third persons arising from the sole negligent acts or omissions or willful misconduct by District.

Nothing contained herein shall be construed as obligating District to indemnify Manager for Losses resulting from the Manager's sole or active negligence or willful misconduct. Nothing in the Contract Documents shall be construed to give rise to any expressed or implied right in favor of District for indemnity or contribution from Manager.

8.2 INSURANCE

8.2.1 Basic Insurance Requirements. Prior to commencing Work, Manager and each of its Subconsultants shall procure and maintain insurance at Manager's own cost and expense for the duration of the Basic Term against Losses or claims for injuries to persons or damages to property which may arise from or in connection with the performance of the Work or services hereunder by Manager, its agents, representatives, employees, or Subcontractors.

8.2.1.1 Without affecting the indemnity provided in Section 8.1, Manager shall secure before commencement of the Work and maintain throughout the Basic Term the types and amounts of insurance specified in Section 8.2. Other provisions of this Agreement may require Manager to maintain a policy or type of insurance coverage beyond the end of the Basic Term.

8.2.1.2 Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A:6, unless otherwise approved by District.

8.2.1.3 Each insurance policy required by Section 8.2 shall be endorsed to state that coverage shall not be canceled except after thirty days prior written notice by certified mail, return receipt requested, has been given to District in accordance with the notice provisions of this Agreement.

8.2.2 Minimum Limits of Insurance. Manager and each of its Subconsultants shall obtain insurance of the types and in the amounts described below:

8.2.2.1 Commercial General Liability Insurance (CGL) with a limit of not less than two million dollars per occurrence/two million dollars in the annual aggregate.

8.2.2.2 Business Automobile Liability Insurance with a limit of not less than two million dollars per accident.

8.2.2.3 Professional Liability (Errors and Omissions) Insurance with a limit not less than two million dollars per occurrence/one million dollars in the annual aggregate.

8.2.2.4 Workers' Compensation Insurance as required by the State of California.

8.2.2.5 Employer's Liability Insurance in the amount of one million dollars per accident for bodily injury or disease.

8.2.3 Minimum Scope of Insurance.

8.2.3.1 CGL insurance shall be written and shall cover liability arising from premises, operations, independent contractors, products-completed operations, personal injury and advertising injury liability assumed under an insured contract (including the tort liability of another assumed in a business contract), and explosion, collapse and underground hazards.

8.2.3.2 Business Automobile Insurance shall cover liability arising out of any automobiles (including owned, hired and non-owned automobiles).

8.2.3.3 If the Professional Liability Insurance policy is written on a claims made basis, it shall be maintained continuously for a period of no less than three years after Final Completion of the final Campus Project. The 'retro date' must be shown and must be before the date of this Agreement.

8.2.4 Deductibles and Self-Insured Retentions. Any self-insured retentions in excess of fifty thousand dollars must be declared to and approved by District in writing.

8.2.4 Other Insurance Provisions. The Commercial General Liability and Business Automobile Liability policies required by this Agreement are to contain, or be endorsed to contain, the following provisions:

8.2.4.1 District, its officers, officials, employees, and volunteers are to be covered as additional insureds with respect to liability arising out of automobiles owned, leased, hired or borrowed by or on behalf of the insured, and with respect to liability arising out of services or operations performed by or on behalf of Manager including but not limited to materials, parts or equipment furnished in connection with such Work or operations, under the CGL policy. District and other additional insureds mentioned in the Paragraph shall not, by reason of their inclusion as additional insured, become liable for any payment of premiums to carriers for such coverage.

8.2.4.2 For any claims related to any Campus Project, insurance coverage shall be primary as respects the District, its officers, officials, employees and volunteers. Any insurance or self-insurance maintained by District, its officers, officials, employees or volunteers shall be in excess of insurance required by this Agreement and shall not contribute with it.

8.2.4.3 Coverage shall not extend to any indemnity coverage for the active negligence of the additional insured in any case where an agreement to indemnify the additional insured would be invalid under Subdivision (b) of Section 2782 of the Civil Code.

- 8.2.6 Waiver of Subrogation.** For Commercial General Liability, Workers' Compensation, and Employer's Liability insurance, the insurer shall agree, in writing, to waive all rights of subrogation against District, its officers, officials, employees, and volunteers for Losses arising from activities and operations of insured in the performance of services under this Agreement.
- 8.2.7 Lapse in Coverage.** If Manager or any Subconsultant, for any reason, fails to maintain insurance coverage which is required pursuant to this Agreement, the same shall be deemed a material breach of this Agreement. District, at its sole option, may terminate this Agreement and obtain damages from Manager resulting from said breach. Alternatively, District may purchase such coverage (but has no obligation to do so), and without further notice to Manager, District may deduct from sums due to Manager any premium costs advanced by District for such insurance.
- 8.2.8 Verification of Insurance.** Manager shall furnish District with original certificates and amendatory endorsements effecting coverage required by Section 8.2. The certificates and endorsements for each policy are to be signed by a person authorized by the insurer to bind coverage on its behalf. The certificates and endorsements shall be on the District's forms. All certificates and endorsements are to be received and approved by District before Work commences and before Manager commences any services under this Agreement. District reserves the right to review complete original or certified copies of all required insurance policies at any time, including endorsements affecting the coverage required by these specifications.
- 8.2.9 Subconsultants.** Manager shall include all Subconsultants as insureds under all policies or shall furnish separate certificates and endorsements for each Subconsultant. All coverages for Subconsultants shall be subject to all of the requirements stated in Section 8.2.

ARTICLE 9 DISPUTE RESOLUTION

9.1 RESOLUTION OF CLAIMS

Disputes between Manager and District regarding any Claim shall be resolved using the dispute resolution process identified below:

9.1.1 The Party initiating the dispute resolution process shall prepare and send to the other Party a notice of dispute that shall include the following information: (1) the name, addresses and phone numbers of designated representatives of the Party; (2) a statement of the facts of the Claim, including information regarding the Parties' attempts to resolve the dispute; (3) the specific sections of the Agreement that are in dispute or which allegedly have been violated and documents in support of the Claim; and (4) the specific resolution sought by the Party. Within five days from receipt of the notice of

dispute the representatives of Manager shall meet with representatives from the District in an informal setting to try to resolve the dispute.

9.1.2 If the informal meeting fails to resolve the dispute the Party initiating the dispute resolution process shall notify the other party (the responding party) in writing that it intends to proceed to mediation of the dispute and shall request ADR Services, Inc., Silicon Valley Office (or, if no longer in business, shall request the appointment of a mediator with at least five (5) years' of public contract construction law experience through the Santa Clara County Superior Court) to appoint a mediator within seven days to assist the Parties in resolving the dispute. The initiating Party shall request appointment of a mediator who is available to meet as soon as possible but not later than 30 days after receipt of the request for appointment. The Party initiating the dispute shall forward a copy of the notice of the dispute to the appointed mediator. The responding Party shall file a written response with the mediator and serve a copy on the initiating Party within seven days of the first scheduled mediation. The mediation procedure shall be entirely informal in nature; however, copies of exhibits upon which either Party bases its case shall be shared with the other Party in advance of the mediation. The relevant facts should be elicited in a narrative fashion to the extent possible, rather than through examination and cross examination of witnesses. The rules of evidence will not apply and no record of the proceedings will be made. If an agreement is reached, the agreement shall be reduced to writing and shall be signed by the District and Manager. The mediation shall be conducted at a District office or otherwise in Santa Clara County. The costs of mediation shall be shared equally by both Parties. The mediator shall provide an independent assessment on the merits of the dispute and recommendations for resolution. All discussions that occur during the mediation and all documents prepared solely for the purpose of the mediation shall be confidential and privileged pursuant to California Evidence Code Sections 1119 and 1152.

9.1.3 Either Party may seek equitable relief prior to the mediation to preserve the status quo pending the completion of the above-referenced process. Except for such an action to obtain equitable relief, neither Party may commence a civil action with respect to the matters submitted to mediation until after the completion of the initial mediation session, or 45 days after the date of filing the written request for mediation, whichever occurs first. Mediation may continue after the commencement of a civil action, if the parties so desire.

9.1.4 In the event of a dispute between the Parties as to performance of the services set forth in this Agreement or the interpretation of this Agreement, or payment or nonpayment for services and work performed or not performed, the Parties shall attempt to resolve the dispute. Pending resolution of this dispute, the Manager agrees to continue provide all services and work hereunder diligently to completion. If the dispute is not resolved, the Manager agrees it will neither rescind the Agreement nor stop the progress of the work or services or performance under this Agreement. The District shall pay all undisputed progress payments to the Manager.

9.2 RESOLUTION OF OTHER DISPUTES

Disputes between District and Manager that do not constitute Claims shall be resolved by way of an action filed in the Superior Court of the State of California, County of Santa Clara, and shall not be subject to the Claims Dispute Resolution Process.

9.5 NON-WAIVER

Participation in the Claims Dispute Resolution Process shall not constitute a waiver, release or compromise of any defense of either party, including but not limited to any defense based on the assertion that the rights of Manager that are the basis of a Claim were previously waived by Manager due to failure to comply with the Agreement, including, without limitation, Manager's failure to comply with any time periods for providing notice of requests for adjustments of the Staffing Plan or Deliverables Schedule or for submission of Claims or supporting documentation of Claims.

ARTICLE 10 GENERAL CONDITIONS

10.1 NON-DISCRIMINATION IN EMPLOYMENT

10.1.1 Manager will not discriminate against any employee or applicant for employment because of race, color, religion, national origin, ancestry, sex, age, sexual orientation, marital status, or disability in accordance with requirements of Applicable Laws. Manager shall ensure that qualified applicants are employed, and that employees are treated during employment without regard to race, color, religion, national origin, ancestry, sex, age, sexual orientation, marital status, or disability, in accordance with requirements of Applicable Laws. Such shall include, but not be limited to, the following:

- a) Employment, upgrading, demotion, transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation,
- b) Selection for training, including apprenticeship.

10.1.2 Manager agrees to post in conspicuous places in each of Manager's facilities providing services hereunder, available and open to employees and applicants for employment, notices setting forth the provisions of Section 10.1 and any other notice required by Applicable Laws.

10.1.3 Manager shall, in all solicitations or advertisements for employees placed by or on behalf of Manager, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, national origin, ancestry, sex, age, sexual orientation, marital status, or disability, in accordance with requirements of Applicable Laws.

- 10.1.4** Manager shall send to each labor union or representative co-workers with which it has a collective bargaining agreement or other contract or understanding a notice advising the labor union or workers' representative of Manager's commitments under Section 10.1.
- 10.1.5** Manager certifies and agrees that it will deal with its Subconsultants, bidders, or vendors without regard to race, color, religion, national origin, ancestry, sex, age, sexual orientation, marital status, or disability in accordance with the requirements of Applicable Laws.
- 10.1.6** In accordance with Applicable Laws, Manager shall allow duly authorized representatives of the County, State, and Federal government access to its employment records during regular business hours in order to verify compliance with the provisions of Section 10.1. Manager shall provide such other information and records as such representatives may require in order to verify compliance with the provisions of Section 10.1.
- 10.1.7** If the District finds that any of the provisions of this Section have been violated, such violation shall constitute a material breach of this Agreement upon which District may cancel, terminate or suspend this Agreement. While District reserves the right to determine independently that the anti-discrimination provisions of this Agreement have been violated, in addition, a determination by the California Fair Employment and Housing Commission or the Federal Equal Employment Opportunity Commission that Manager has violated State or Federal anti-discrimination laws shall constitute a finding by District that Manager has violated the provisions of this Section.

10.2 NOTICES

All notices, demands, or requests to be given under this Agreement shall be given in writing and conclusively shall be deemed received when received in any of the following ways:

- a) on the date delivered if delivered personally;
- b) on the third business day after the deposit thereof in the United States mail by certified or registered mail, postage prepaid, and addressed as hereinafter provided; and
- c) on the date sent if sent by facsimile transmission; and

10.2.1 Notice Recipients. All notices, demands or requests shall include the Project name and the number of this Agreement and be addressed to the parties as follows:

To District at:
 Alum Rock Union Elementary School District
 Attn: Superintendent

1930 Gay Avenue
San Jose, CA 95127

FOR IMMEDIATE ATTENTION

With an additional copy to:

Alum Rock Union Elementary School District
Attn: Assistant Superintendent of Business Services

2930 Gay Avenue
San Jose, CA 95127

FOR IMMEDIATE ATTENTION

To Manager at
Luis Rojas
Del Terra Group
13181 Crossroads Parkway North,
Suite 540
City of Industry, CA 91746

With an additional copy to:

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

10.3 HAZARDOUS SUBSTANCES

If Manager becomes aware that a Hazardous Substance is on Site, or on campus related to the Project, the Manager shall immediately notify the District in writing and upon approval of the District direct the responsible Contractor to take the appropriate action to mitigate the unsafe condition. Further, the Manager will document such actions in accordance with the Safety Program.

10.4 CONFLICTS OF INTEREST

Manager shall not accept any employment or representation during the Basic Term of this Agreement which will or may likely make Manager "financially interested" (as provided in California Government Code Sections 1090 and 87100) in any decision made by the District on any matter in connection with which Manager has been retained pursuant to this Agreement. Manager represents that it does not know of any facts that constitute a violation of said sections in relation to this Agreement. Manager represents that it has completely disclosed and will disclose to the District any and all facts bearing upon any possible interests, direct or indirect, which Manager believes any Subconsultant, member of the Board of Trustees

of the District, or other officer, agent or employee of the District has, or will have, in the Agreement, or in the performance thereof. Willful failure to make such disclosure, if any, shall constitute ground for termination of this Agreement by the District. Manager agrees to comply with all conflict of interest codes and regulations adopted by the District and its reporting requirements.

Manager shall execute the District's *Conflict of Interest Statement* at the time of execution of this Agreement.

10.5 PERMITS AND LICENSES

Manager, at its sole expense, shall obtain and maintain during the term of this Agreement, all business and professional permits, licenses and certificates which are required for its performance of its services on the Project.

10.6 FEDERAL GRANTS

In the event of a federal grant or other federal financing participation in the funding of this Project, Manager shall permit access to and grant the right to examine its books covering its services performed and expenses incurred under this Agreement. Manager shall comply with all applicable federal agency requirements including those pertaining to work hours, overtime compensation, non-discrimination, contingent fees, etc.

10.7 WAIVER

Provisions of this Agreement may be waived by District or Manager only in writing signed by the Superintendent (with Board of Trustee approval or ratification) or Manager's President stating expressly that it is intended as a waiver of specified provisions of the Agreement. A waiver by either party to this Agreement of any breach of any term, covenant, or condition contained herein shall not be deemed to be a waiver of any subsequent breach of the same or any other term, covenant, or condition contained herein whether of the same or a different character.

10.8 THIRD PARTIES

10.8.1 Nothing contained in this Agreement is intended to make any person or entity who is not a signatory to this Agreement a third party beneficiary of any right created by this Agreement or by operation of law.

10.8.2 If District receives any claim relating to this Agreement or Work performed under this Agreement by any person other than Manager, District shall notify Manager of such claim within ten (10) Days. Project Manager shall reimburse District for any reasonable costs incurred by District to provide such notice.

10.9 EXTENT OF AGREEMENT

This Agreement represents the entire Agreement between 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. This Agreement may be amended only by written instrument signed by authorized representatives of both District and Manager, which has no force or effect until it has been formally approved or ratified by the Board of Education.

10.10 SEVERABILITY

In case any provision of this Agreement is held to be invalid, illegal or unenforceable, the validity, legality and enforceability of all remaining provisions shall not be affected.

10.11 SUCCESSORS AND ASSIGNS

This Agreement shall be binding upon District and Manager and their respective successors and assigns. Neither the performance of this Agreement nor any part thereof, nor any monies due or to become due hereunder, nor any Claim hereunder, may be assigned by Manager without the prior written consent and approval of District, which may be granted or withheld in District's sole discretion.

10.12 CONFIDENTIALITY

Manager shall treat all information and data furnished to it by District or any other Project Team member or otherwise obtained or prepared by Manager concerning the Project, as strictly confidential and shall not disclose any of the same to any other person or entity unless required to do so in connection with Manager's performance of this Agreement or any governmental filings or applications. Manager's obligations of confidentiality shall not apply to:

- a) Information which was in or subsequently enters the public domain through no fault of Manager;
- b) Information that was in the possession of Manager prior to disclosure by the District; or
- c) Information that is disclosed to Manager by a third party under no obligation of confidentiality to the District.

Manager shall not engage in or permit any public references or statements to any Campus Project, District or Manager's services hereunder, including referring to the same in advertising or promotional brochures or materials or granting interviews to broadcast, print or other media, without the prior written consent of District, which may be granted or withheld at the District's discretion. Manager shall instruct all of its employees of this obligation and shall use its best efforts to ensure full compliance with this Section. The provisions of this Section shall survive termination of this Agreement, in perpetuity.

10.13 ENDORSEMENT

Nothing in this Agreement shall be construed as conferring on any party the right to use the other party's name as an endorsement of any product or service to advertise, promote,

or otherwise market any product or service without the prior written consent of the other party. Nothing in this Agreement shall be construed as an endorsement of any commercial product or service by District, its officers, or employees.

10.14 NUISANCE

Manager shall not maintain, commit or permit the maintenance or commission of any nuisance in connection with the performance of services under this Agreement.

10.15 INDEPENDENT CONTRACTOR

Manager is and shall at all times remain as to the District a wholly independent contractor. Neither the District nor any of its agents shall have control over the conduct of Manager or any of Manager's officers, agents or employees, except as herein set forth. Manager shall not, at any time, or in any manner, represent that it or any of its agents or employees are in any manner agents or employees of the District.

10.16 COMPLIANCE WITH APPLICABLE LAWS

Manager shall, at all times in its performance of its obligations under this Agreement, comply with all Applicable Laws.

10.17 TIME OF ESSENCE

All time limits set forth in this Agreement pertaining to Manager's performance of any obligation to District or for the benefit of a Campus Project are of the essence to this Agreement.

10.18 ASSIGNMENT OF CLAIMS

In entering into this Agreement, Manager offers and agrees to assign to District all rights, title, and interest in and to all causes of action it may have under Section 4 of the Clayton Act (15 U.S.C. Section 15) or under the Cartwright Act (Chapter 2 (commencing with Section 16700) of Part 2 of Division 7 of the Business and Professions Code), arising from purchases of goods, services, or materials pursuant to this Agreement. This assignment shall be made and become effective at the time that District renders final payment to Manager, without further acknowledgment by the parties.

10.19 GOVERNING LAW AND VENUE

This Agreement shall be governed by the laws of the State of California. For all purposes, the parties shall be considered to have performed their respective obligations under this Agreement in the County of Santa Clara. The parties understand and agree that the appropriate venue for any and all legal action is the federal or state court having jurisdiction within the County of Santa Clara, California.

10.20 PLURAL, SINGULAR

Definitions of terms that are placed in the singular shall be deemed to include the plural, and vice versa, when appropriate to the circumstances.

10.21 FINGERPRINTING

Manager shall comply with the fingerprinting provisions and requirements of the Education Code as to all of its officers, employees, agents and subcontractants it reasonably expect to come into contact with students at the District's school sites during school hours. Manager shall maintain at all times a complete record of all fingerprint certifications collected by Manager for its own personnel and subcontractants. Such records shall be made available to the District upon request and copies provided to the District upon termination of this Agreement. At the commencement of this Agreement and upon Manager's hiring of any new employee or subcontractant to perform any on-site services in connection with this Agreement and where such person will have contact with any District student at any District site during school hours, Manager shall make the following certification signed by an authorized representative of Manager and in writing to District before such person shall be allowed on any such District site:

"Manager hereby certifies that it has completed the criminal background check requirements of Education Code section 45125.1 and that none of its employees or subcontractors that may come in contact with District pupils have been convicted of a violent felony listed in Penal Code section 667.5(c) or a serious felony listed in Penal Code section 1192.7(e)."

01314127

IN WITNESS WHEREOF, the parties hereto have made and executed this Agreement on the day and year first above written.

ALUM ROCK UNION ELEMENTARY SCHOOL DISTRICT

By: [Signature]
Title: _____

APPROVED AS TO FORM:

ATTEST:

DELTERRA REAL ESTATE SERVICES, INC., A CALIFORNIA CORPORATION

By: [Signature]
Title: President/CEO

EXHIBIT C

UNIVERSITY SCOPE OF SERVICE

PROGRAM MANAGEMENT SERVICES

- Design Management
- Prepare Project Cost Estimates
- Development and Implementation of Project Controls and Systems
- Manage Program and Project Level Accounting and Reconciliation Activities
- Create Monitor, Track and Update Program & Project Level Schedules
- Develop Monitor, Track and Update Program and Project Level Budgets
- Pre-Construction & Planning
 - Development of Division 0 & 1 (Boiler Plate)
 - Project Needs Assessment/Site Evaluation
 - A/E Coordination
 - Design Management (limited to New projects, not Existing projects)
 - USA Coordination
 - Constructability Reviews & Value Engineering (limited to New projects, not Existing projects)
 - Schedule Development and Management
 - Budget Development, Management and Cost Control
- Bid and Award Services
 - Front-End Document Development
 - Bidding Strategies & Bid Package Development
 - Project Controls, Communication & Document Management
 - Pre-Bid Conferences
 - Proposal Analysis
 - Contract award services
- Close-out Coordination of New Projects

EXHIBIT B
FEE FOR PROGRAM MANAGEMENT SERVICES
HOURLY RATE SCHEDULE

Principal-in-charge	\$180.00
Program Executive	\$165.00
Program Manager	\$160.00
Senior Project Manager	\$155.00
Project Manager	\$140.00
Construction Manager	\$125.00
Design Manager	\$125.00
Estimator	\$120.00
Scheduler	\$110.00
Project Engineer	\$ 95.00
Project Coordinator	\$ 70.00

EXHIBIT C

GENERAL SCOPE OF SERVICES

Task	Fee
Program Management: Quick Start Projects	3% of overall Quick Start Project Costs
Program Management: Modernization and New Construction Bond Projects	4% of remainder of issued Measure J Bond and Matching Funds for Modernization and New Construction available for capital projects*
Additional Services	Hourly Basis, See Exhibit B above for schedule

*"Measure J Bond and Matching Funds for Modernization and New Construction available for capital projects" upon which Manager's fee shall be based shall include only those bond proceeds actually received by the District and shall not include: (i) Bond funds allocated by District as E-rate grant matching funds and not otherwise used in connection with Measure J capital facilities projects; (ii) Bond funds used to pay, in part or in full, principal and interest on outstanding Certificates of Participation and other debt instruments; (iii) underwriter fees, bond counsel fees and other costs of issuance; (iv) Bond funds allocated by the District for the purchase of technology equipment; and (v) Bond funds allocated by the District to charter school facilities not involving capital projects otherwise within the scope of Campus Projects within this Agreement.

05/19/14 PM 8:17 PURCH

ALUM ROCK UNION ELEMENTARY SCHOOL DISTRICT
Request for Contracted Services

TO BUSINESS OFFICE Contract No. 1314127 Vendor No. 17403

Business Office (School/Dept.) and the Alum Rock Union Elementary School District (ARUESD), whose address is 2930 Gay Avenue, San Jose, CA 95127, and the following named Contractor wishes to enter into a

MOU (Negotiated Agreement)
 EOMN/B & C (Fingerprinting and TB Test)

MASTER CONTRACT PARTICIPATION
 Scope of Work/Proposal

Note: All Contracts over \$5,000 require pre-approval.

* Use Independent Contractor Agreement form B-252 for unincorporated individuals or in the absence of negotiated agreement.

Name of Individual/Company Del Terra
Address 13181 Crossroads Pkwy North, Ste 540 City City of Industry ST CA Zip 91746
Telephone _____ Fax # _____
SSN _____ Fed. I.D.# _____

CONTRACT TERM: effective dates 05/09/13 to Completion

CONTRACTOR'S OBLIGATION:

Description of services to be provided. Please attach proposals and other documentation if necessary.

Provide Program Management Services, Measure J Bond, Board Approved May 9, 2013 (reference contract C1314127).

OSA closeout certification services - November 1, 2013 - June 30, 2015.

COMPENSATION: In consideration of Contractor's provision of services as described above, and subject to the payment provisions expressed herein, ARUESD shall pay Contractor, upon Contractor's submission of a properly documented demand for payment (Form B-210) which shall be submitted not later than 30 days from the end of the month in which the contract services were rendered, and upon approval of such demand by ARUESD as follows: (Check either a or b)

a. Fee Rate: 3 per _____ Not To Exceed \$145,500.00 of services.

b. Other: 3
Describe rate agreement or other costs: _____

BUDGET CODE: 2145085030-5815 HW 5/16/14

APPROVALS

Alum Rock Union Elementary School District:

Site/Department Administrator: [Signature] Date 5/16/14

Director of Fiscal Services: [Signature] Date 5/16/14

Asst. Supl. of Business Services: [Signature] Date 5/16/14

Superintendent: _____ Date _____

ARUESD Board Approval: _____ Date _____

B-252A

AGREEMENT FOR ADDITIONAL SERVICES DSA CLOSE OUT CERTIFICATION SERVICES

This Additional Services Agreement to provide DSA Close Out Certification Services Agreement ("ASA") is made and entered into this ___ day of May, 2014 by and between the ALUM ROCK UNION ELEMENTARY SCHOOL DISTRICT (hereinafter referred to as "District") and Del Terra Real Estate Services, Inc., dba Del Terra Group, a California Corporation, (hereinafter referred to as "Consultant") for services relating to Division of the State Architect (DSA) Close Out Certification of various DSA Open and Closed without Certification projects (hereinafter referred to as "Project").

This Additional Services Agreement (ASA) is issued pursuant to section 4.3 of the May 9, 2013 Contract entered into between the District and Consultant. This ASA will include materials and labor. This ASA is solely for Consultant to provide DSA Close Out Certification Services for the District's various Open and Closed Without Certification projects.

ARTICLE 1 CONSULTANT'S SERVICES AND RESPONSIBILITIES

Consultant represents that it has the capabilities and skills in the analysis and examination of specific DSA project files for documents required to be submitted before, during and after construction, and to determine if outstanding issues have been resolved with DSA. Consultant covenants to provide its best skill and judgment in furthering the interests of District in the resolution of 'Open' and 'Closed without Certification' projects with the DSA. Consultant agrees to furnish efficient business administration and management services and to perform in a manner consistent with the interests of District. The Consultant's services for the Project shall be as follows and as enumerated within Exhibits "A" and "B" to this Agreement.

Basic Services (as defined herein) to be provided by the Consultant are those enumerated in the Basic Services section of this Agreement (including Exhibit "A" attached hereto).

1.1 BASIC SERVICES

- 1.1.1 Consultant's "Basic Services" consist of those services performed by Consultant and Consultant's employees and consultants to provide the services listed in this section entitled "Basic Services" and within Exhibit "A", from November 1, 2013 to June 30, 2015.

1.1.2 Project is defined for the Open DSA files, see Exhibit "C".

1.1.3 Any additional Projects or open DSA files added to the list of Projects shall result in an increase in Consultant's fee.

1.2 ADDITIONAL SERVICES

1.2.1 Additional Services are defined, for the purpose of this Agreement, as any services performed in the interest of the Project, at the request of the District, which are outside the scope of this Agreement

1.2.2 If, through no fault of the Consultant, the duration of the Project, which is the subject of this Agreement, extends beyond the completion date referenced in paragraph 4.2.1, any continuation of services on the part of the Consultant beyond such point shall constitute "Additional Services". For such extension of Project Services the basis of compensation shall be equitably adjusted based on the Hourly Rate Schedule in Exhibit "B" or by written agreement between District and Consultant.

1.2.3 If, during the planned duration of the Project, District requests that additional personnel or other resources be provided, such additional personnel and resources shall be provided by written amendment between District and Consultant which amendment shall provide for equitable adjustment of Consultant's compensation based on the Hourly Rate Schedule in Exhibit "B" or by written agreement between District and Consultant.

Wanda Kozak

ARTICLE 2 DISTRICT RESPONSIBILITIES

2.1 PROJECT INFORMATION

2.1.1 The District shall provide full and complete information regarding the requirements of the Project, which shall set forth the District's objectives, constraints and criteria.

2.2 DISTRICT'S REPRESENTATIVE

2.2.1 The District shall designate a representative ("District's Representative") to act on the District's behalf with respect to the Project. The authorized Representative shall render decisions promptly to avoid unreasonable delay in the progress of the Consultant's services, deliverables and shall expeditiously

process Consultant's payment applications and shall make all required payments in a timely manner.

2.2.2 In addition, District shall promptly and properly file DSA Notices or Documents upon written recommendation by Consultant, Architect, and Inspector of Record for the Project or designated portion(s) thereof.

2.3 TESTS, INSPECTION, CONSTRUCTION AND REPORTS

2.3.1 The District shall contract with independent testing, inspection and construction consultants to furnish tests, inspections, any additional construction work required to comply with DSA's requirements and reports as required for the completion of the Projects.

2.4 DISTRICT'S EXPENSE

2.4.1 The services, information and reports required by Articles 2.1 through 2.3, inclusive, shall be furnished at District's expense.

2.5 NONCONFORMING WORK

2.5.1 If the District observes or otherwise becomes aware of any fault or defect in the Project, or nonconformance with the contract documents, the District shall give prompt notice thereof to the Consultant who will take steps necessary to remedy the work in accordance with the provisions of the construction contract and to cause the work to be in conformance with the contract documents. Such services are to be considered Additional Services to the Consultant.

2.6 DISTRICT'S RIGHT TO PERFORM WORK

2.6.1 The District reserves the right to perform work related to the Project with the District's own forces, and to award contracts in connection with the Project which are not part of the Consultant's responsibilities under this Agreement.

2.6.2 The Consultant shall notify the District if any such independent action will in any way compromise the Consultant's ability to meet the Consultant's responsibilities under this Agreement or will impact the cost or schedule of the Project's construction.

2.6.3 If the Consultant is requested or required to manage or coordinate work performed by District or other contracted parties, the Consultant shall be compensated for such as Additional Services.

ARTICLE 3 CONSULTANT'S COMPENSATION

As per section 4.3.2 of the May 9, 2013 Program Management Agreement, the District and Consultant mutually agree that Consultant's shall be:

3.1 BASIC FEE

3.1.1 District agrees to pay the Consultant for performance of all DSA Close Out Certification Services contemplated under the terms of this Agreement and Exhibit "A", a fee for services in the amount of not to exceed One Hundred Forty Five Thousand Five Hundred Dollars (\$145,500).

Fee is to be paid monthly over the twenty (20) months of this Contract Period.

3.2 COMPENSATION FOR ADDITIONAL SERVICES

3.2.1 Compensation for any Additional Services authorized by the District during the duration of services shall be made on the basis of;

(a) **Personnel Services:** The hourly cost rates contained in Exhibit "B" Rate Schedule per Hour. These rates represent all compensation to the Consultant for wages, fringe benefits, payroll taxes, workers compensation insurance, cell phone costs, computers, computer software, main office overhead costs and profit.

(b) **Materials and/or Outside Services:** Reimbursement at cost as pre-approved by District.

(c) **Miscellaneous Reimbursable Expenses:** Reimbursement at cost, as pre-approved by District.

3.3 REIMBURSABLE EXPENSES

3.3.1 "Reimbursable Expenses" include any authorized expenses pre-approved by the District incurred by the Consultant and Consultant's employees and consultants in the interest of the Project which is outside the scope of Consultant's Basic Services, as identified within Exhibit "A" but not by way of limitation;

3.3.1.1 Expense of transportation in connection with execution of the work comprising the Project, which shall not include normal daily travel to the District's District Office, nor travel between the District's District Office and Consultant's home office;

3.3.1.2 Expenses in connection with authorized out of town travel if prior approval is received from District;

3.3.1.3 Fees paid for securing approval of authorities having jurisdiction over the Project.

3.3.1.4 Expense of reproductions related to submittals and shop drawings and handling of drawings, specifications and other documents specifically related to the Project.

3.3.2 Payment for Reimbursable Expenses shall be made monthly, on the basis of Consultant's submittal of an appropriate invoice with accompanying cost documentation. Reimbursable expenses shall be invoiced separately from Basic or Additional Services.

ARTICLE 4 PAYMENT SCHEDULE

4.1 THE FEE FOR BASIC SERVICES AND GENERAL CONDITIONS

The fee for Basic Services set forth in Article 3 shall be paid monthly, in arrears, as follows:

4.1.1 Payment for Basic Services unless otherwise agreed to herein, shall be made in equal monthly payment amounts of Seven Thousand Two Hundred Seventy Five Dollars (\$7,275) for twenty (20) months.

4.1.2 Payment for Reimbursable Expenses, unless otherwise agreed to in writing, shall be made monthly in an amount equal to the total of all documented costs incurred by the Consultant for the items identified in paragraph 3.3.

4.1.3 Payment for authorized Additional Services shall be made monthly, on such basis as shall be specified within the agreement authorizing such services.

4.1.4 All payments called for within Articles 4.1.1 through 4.1.3, above, shall be made to Consultant within thirty (30) days of Consultant's submittal of a properly prepared invoice or Application for Payment.

4.1.5 If District reduces any invoice or Application for Payment submitted by Consultant, District shall, within thirty (30) days of District's receipt of the invoice or Application for Payment, inform Consultant, in writing, of the amount and reason for such reduction. Within ten (10) days of receipt of such notice,

Consultant shall prepare and submit, to District, any requested explanation or justification of the amounts in dispute. District shall, within thirty (30) days of District's receipt of Consultant's explanation or justification, either pay the disputed amount or provide Consultant with a written explanation of District's continuing objection. Consultant and District agree to seek, in good faith, a timely and equitable resolution of any disputed amounts.

4.1.6 So long as District is not in default in making payment of undisputed funds to Consultant, notwithstanding any claim, dispute or other disagreement between the Consultant and the District arising out of the Project or this Agreement, pending resolution of the same in accordance with the Agreement, the Consultant shall continue to diligently provide and perform hereunder pending a subsequent resolution of such claims, dispute, or other disagreement.

4.2 SCHEDULE OF SERVICES

4.2.1 Time Schedule. Unless extended by mutual written agreement, the services to be provided under this Agreement shall be completed no later than June 30, 2015;

4.2.3 If the Consultant is delayed at any time in the progress of the Project by any act, error, omission or neglect of the District or the Architect or by any employee of either, or by any separate Contractor employed by the District, or by changes ordered in the Project, or by labor disputes, fire, unavoidable casualties or any causes beyond the Consultant's control, or by any delay authorized or caused by the District, the above time schedules shall be extended by Change Order for a reasonable length of time as mutually agreed to by the parties as set forth in Article 1.2.3.

ARTICLE 5 TERMINATION, ABANDONMENT OR SUSPENSION OF WORK

5.1 TERMINATION OF CONSULTANT SERVICES

5.1.1 The District may suspend or terminate the Consultant's services under this Agreement following thirty (30) days written notice to the Consultant because of the failure of the Consultant to satisfactorily perform under this Agreement or if the Consultant fails to complete its services or otherwise comply with the terms of this Agreement.

5.1.2 District shall also have the right in its absolute discretion to terminate this Agreement in the event the District without cause following thirty (30) days prior written notice from District received by Consultant.

5.2 ABANDONMENT OF PROJECT

5.2.1 The District may suspend or abandon all or any portion of the work on the Project upon thirty (30) days written notice to the Consultant. Upon notice of suspension or abandonment, Consultant shall as soon as practicable discontinue any further action on the Project or portion thereof but in any event no later than fourteen (14) days from the date of receipt of such written notice of suspension or abandonment.

5.2.2 If the entire work to be performed on the Project is abandoned, the parties shall each be relieved of the remaining executory obligations of the Agreement, as it relates to the Project, but shall not be relieved of any obligations arising prior to said abandonment.

5.3 COMPENSATION IN THE EVENT OF TERMINATION, ABANDONMENT OR SUSPENSION

5.3.1 In the event of termination, which is not the fault of the Consultant, including termination for convenience, abandonment or suspension, the Consultant shall be compensated for all services performed to the termination date together with all reasonable Termination Expenses. Termination Expenses shall be compensated as set forth in Article 5.3.2.

5.3.2 "Termination Expenses." In the event the District terminates, abandons, or suspends the work on the Project, there shall be due and payable within thirty (30) days following such termination, abandonment or suspension a sum of money to compensate the Consultant for all reasonable and verifiable hours expended to the date of termination in accordance with the Rate Schedule per Hour in Exhibit "B".

5.4 DELIVERY OF DOCUMENTS

5.4.1 Upon termination, abandonment or suspension, Consultant shall deliver to District all documents and matters completed by Consultant to which District would have been entitled at the completion of Consultant's services.

ARTICLE 6 INDEMNIFICATION

6.1 DUTY TO INDEMNIFY AND HOLD HARMLESS

6.1.1 To the fullest extent permitted by law, and subject to the limitations of Civil Code section 2782, Consultant agrees to indemnify, defend and hold District, its board members, employees, and officers harmless from liability arising out of:

(a) Any and all claims under Workers' Compensation acts and other employee benefit acts with respect to Consultant's employees or Consultant's subcontractor's employees arising out of Consultant's work under this Agreement;

(b) Liability for damages for: (1) death or bodily injury to person; (2) injury to, loss or theft of property; (3) any failure to comply with any provision of law; or (4) any other loss, damage or expense arising under either (1), (2), or (3) above, sustained by the Consultant or any person, firm or corporation employed by the Consultant upon or in connection with the Project, except for liability resulting from the sole or active negligence, or willful misconduct of the District, its board members, officers, employees, agents or independent Consultants who are directly employed by the District; and

(c) Any loss, injury to or death of persons or damage to property caused by any act, neglect, default, error or omission of the Consultant, or any person, firm or corporation employed by the Consultant, either directly or by independent contract.

ARTICLE 7 APPLICABLE LAW

This Agreement shall be governed by the laws of the State of California and any policies/regulations adopted there under ("Applicable Law"). To the extent that there is any inconsistency between this Agreement and the Applicable Law, or this Agreement omits any requirement of the Applicable Law, the language of the Applicable Law, in effect on the date of the execution of this Agreement, shall prevail.

**ARTICLE 8
CONSULTANT NOT OFFICER OR EMPLOYEE OF DISTRICT**

While engaged in carrying out and complying with the terms and conditions of this Agreement, the Consultant is an independent contractor and not an officer, employee or agent of the District.

**ARTICLE 9
INSURANCE**

9.1 INSURANCE PROVIDED BY CONSULTANT

The Consultant shall procure and maintain insurance at Manager's own cost and expense for the duration of the Basic Term against Losses or claims for injuries to persons or damages to property which may arise from or in connection with the performance of the Work or services hereunder by Manager, its agents, representatives, employees, or Subcontractors.

**ARTICLE 10
ENTIRE AGREEMENT**

10.1 This Agreement and the attached Exhibits "A" and "B" represent the entire Agreement and understanding of the parties concerning the subject matter hereof; this Agreement replaces and supersedes prior negotiations or Agreements between the parties concerning the subject matter hereof.

10.2 This Agreement may be amended or modified only by a written instrument duly executed by the parties.

**ARTICLE 11
OWNERSHIP OF DOCUMENTS**

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

The parties, through their authorized representatives, have executed this Agreement as of the day and year first written above

"DISTRICT"

ALUM ROCK UNION ELEMENTARY SCHOOL DISTRICT

By: _____

Name: _____

Title: _____

ADDRESS FOR NOTICE:

Attn: _____

Alum Rock Union Elementary School District
2930 Gay Ave.
San Jose, California 95127

"CONSULTANT"

DEL TERRA REAL ESTATE SERVICES, Inc., dba Del Terra Group

By: _____

Name: Luis D. Rojas

Title: President & CEO

ADDRESS FOR NOTICE:

Mr. Luis Rojas
Del Terra Group
13181 Crossroads Pkwy, No. Ste 540
City of Industry, CA 91745

EXHIBIT "A"
CONSULTANT'S SERVICES

To be Provided Under

DSA CLOSE OUT CERTIFICATION CONSULTANT SERVICES AGREEMENT

Between

A

ALUM ROCK UNION ELEMENTARY SCHOOL DISTRICT

and

Del Terra Real Estate Services, Inc., dba Del Terra Group

Dated: February 20, 2013

The Consultant shall provide all of the services set forth herein relating to the Project. The entire scope of the services in this Exhibit "A" and the scope of services set forth in the Consultant's Agreement shall be described as the "Consultant's Services."

1. BASIC SERVICES

Consultant will provide the following services as "Basic Services" pursuant to this Agreement:

1.1 Consultant shall provide sufficient home office organization and support, personnel and management to carry out the requirements of this Agreement in an expeditious and economical manner consistent with the interests of the District.

1.2 Consultant shall examine District's Project files and consult with the District, Program Manager, Inspector of Record and Architect to determine if documents for Projects required to be submitted before, during and after construction, and if outstanding issues have been resolved.

2. SERVICES TO BE PERFORMED

2.1 Manage and administer related services as required to coordinate the Del Terra will 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, 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.

This scope of services and deliverables are contingent upon currently known project information. The ability for Del Terra to obtain DSA approvals of existing open 'A' Numbers will be based upon the capacity to gather comprehensive and accurate information from previously prepared construction documents, existing project records and District's previous consultants (architects, engineers and IORs) to accurately complete their contractual duties. Del Terra will need to verify the level of compliance of the plans (construction documents) to actual construction and DSA inspection reports.

If there is a lack of available information and cooperation from various District consultants and available staff and there is a need for additional work hours by Del Terra, additional work orders will be requested.

At this time, we are unable to determine the duration to achieve final Close-Out and Certification until a further review of existing documents and records. Del Terra will provide monthly reports that outline the status of each project and significant issues.

EXHIBIT "B"
RATE SCHEDULE PER HOUR

Principal-in-charge	No Charge
Program Manager	\$160.00
Senior Project Manager	\$155.00
Project Manager	\$140.00
Construction Manager	\$125.00
Design Manager	\$125.00
Estimator	\$120.00
Scheduler	\$110.00
Project Engineer	\$ 95.00
Project Coordinator	\$ 70.00

EXHIBIT "C" PROJECT LIST

#	PROJECT SITES	DSA NUMBER	SCOPE OF WORK
1	MACCOLLAM ELEM. SCHOOL	01-100577	Construction Of: Placement of 1 Relocatable Classroom Building
2	SLOMAKER SCHOOL	01-100578	Construction Of: Placement of 1 Relocatable Classroom Building
3	RYAN SCHOOL	01-100579	Construction Of: Placement of 1 Relocatable Classroom Buildings
4	SHIELDS SCHOOL	01-100580	Construction Of: Placement of 1 Relocatable Classroom Buildings
5	SAN ANTONIO ELEMENTARY SCHOOL	01-100673	
6	LINDA VISTA ELEMENTARY SCHOOL	01-100674	
7	CASSELL SCHOOL	01-100677	
8	ARBUCKLE SCHOOL	01-100678	
9	MEYER ELEMENTARY SCHOOL	01-100679	
10	PAINTER ELEMENTARY SCHOOL	01-100680	
11	DORSA LEARNING RESOURCES CENTER	01-100842	Construction of (1) 16x40 Relocatable Learning Center
12	RYAN SCHOOL COMMUNITY CENTER	01-100957	Construction Of: Placement of 1 (40 x 72) Relocatable Classroom Bldg.
13	Liberty Elementary	01-100997	Alterations to five classrooms (air condition), one kindergarten and the administrative offices, provide new electric services, telephone/intercams, fax alarm and limited plumbing
14	GRANDIE MIDDLE SCHOOL	01-101120	Alterations To: Relocatable Classroom
15	WILLIAM SHEPPARD MIDDLE SCHOOL	01-101185	
16	BEN PAINTER ELEMENTARY SCHOOL	01-101188	
17	DONALD MEYER ELEMENTARY SCHOOL	01-101307	Construction of Alterations To: Buildings A, B, C, D, E, F, and G.
18	JOSEPH GEORGE MIDDLE SCHOOL	01-101401	Construction Of: One 72 x 40 Relocatable Community Ctr. Bldg.
19	GROSS SCHOOL	01-101497	
20	SLOMAKER ELEMENTARY SCHOOL	01-101498	Construction of Construction Of: Modernization
21	O. S. HUBBARD SCHOOL	01-101501	
22	HARRY SLOMAKER ELEM. SCHOOL	01-101593	Construction of Double Modular Daycare Building
23	VARIOUS SITES @ CASSELL, MILLER, & SAN ANTONIO ELEMENTARY SCHOOLS	01-101678	Alterations To: Classrooms, Multi-Use, Library, Restrooms, & Administration
24	BEN PAINTER	01-101712	Construction (1) 24x40 Relocatable Classroom Building
25	LESTER SHIELDS ELEM. SCHOOL	01-101713	
26	SAN ANTONIO ELEMENTARY SCHOOL	01-101714	Construction Of: Relocatable Classroom
27	WILLIAMS ROGERS ELEM. SCHOOL	01-101715	Construction of (2) Relocatable Classroom Buildings

EXHIBIT "C"
PROJECT LIST, continued

IP	PROJECT SITES	PSA NUMBER	SCOPE OF WORK
28	VARIOUS SITES	01-101742	Construction of: Ocaso Middle School A, B, C, D, E, F, G & H, George Middle School A, B, C, D, E, & Admin., Rogers Elementary School: A, B, C, D, J, E.
29	WILLIAM ROGERS ELEM. SCHOOL	01-102074	
30	WILLIAM ROGERS ELEM. SCHOOL	01-102075	
31	MILDRED GOSS ELEMENTARY SCHOOL	01-102076	Construction of Relocatable Classrooms.
32	LESTER SHIELDS ELEMENTARY	01-102077	Construction of (5) Relocatable Classrooms.
33	WILLARD MCCOLLAM ELEM. SCHOOL	01-102119	Construction of (3) Relocatable Buildings.
34	ARBUCKLE ELEMENTARY SCHOOL	01-102120	Construction of (2) Relocatable Building (CSA)
35	LYNDALE ELEMENTARY SCHOOL	01-102199	
36	LINDA VISTA ELEMENTARY SCHOOL	01-102180	
37	SLOMAKER ELEMENTARY SCHOOL	01-102212	Relocation of (3) Relocatable Buildings (CSA, G3)
38	ANTHONY J. BORSA ELEMENTARY SCHOOL COMMUNITY CENTER	02-102137	
39	MILLER (GRANDIN) ELEMENTARY SCHOOL	01-102387	Relocatable of (10) Stockpiled Classroom Buildings.
40	CASSELL (SYLVIA) ELEMENTARY SCHOOL	01-102388	Construction of (5) Stockpiled Classroom Buildings.
41	CASSELL ELEMENTARY SCHOOL	01-102993	
42	CLYDE L. FISCHER MIDDLE SCHOOL	01-103113	
43	OCALA MIDDLE SCHOOL	01-103272	Two CONSTRUCTION OF: MISC. SITE WORK; ALTERATIONS TO: FIRE ALARM SYSTEM FOR BUILDING 1.
44	LINDA VISTA ELEMENTARY SCHOOL	01-103288	Relocation of (1) 24'x40' Relocatable Bldg. from Stockpile
45	SAN ANTONIO ES	01-103449	Construction of a New 3 Story Bldg. Gym, Multi-Purpose Bldg. Etc.
46	MCCOLLAM SCHOOL	01-103451	
47	MCCOLLAM SCHOOL	01-103451	Relocatable Classroom Bldg. A 20x40 CR. Bldg. - Stock Pile
48	PALA YOUTH CENTER	01-104078	Construction of Gym. / Multi-Purpose / Classroom Bldg.
49	OCALA MIDDLE SCHOOL	01-104151	Relocation of Relocatable classroom bldg's 1 & 2
50	ANTHONY J. BORSA ELEM. SCHOOL	01-104152	Relocation of Relocatable classroom bldg's 1 & 2
51	PALA MIDDLE SCHOOL	01-104238	
52	OCALA MIDDLE SCHOOL	01-104460	Alt. to admin. (A), multi-pump (N), PhysEd (P), 4 CR bldgs (B, C, D, E) & 4 port CR bldgs.
53	WILLIAM R. ROGERS ELEMENTARY SCHOOL	01-104461	Alt. to admin. / CR (D), Multi-Pump / LB / CR (E), 3 CR bldgs (A, B, C) & 3 port bldgs (P1-P3).
54	JOSEPH GEORGE MIDDLE SCHOOL	01-104462	Alt. to admin. (F), multi-pump (N), PhysEd (G), 5 CR bldgs (B, C, D, E & J) Bus/CR (A) & port (J).
55	JOSEPH GEORGE MIDDLE SCHOOL	01-104506	Construction of a Concrete Sign
56	SAN ANTONIO ELEMENTARY SCHOOL	01-105891	Relocation of (5) Relocatable Classroom Buildings; Alteration to Existing Restrooms (Building C)
57	LESTER SHIELDS ELEMENTARY SCHOOL	01-105912	Construction of (1) Shade Structure (Using PC 03-108802)

EXHIBIT "C"
PROJECT LIST, continued

#	PROJECT SITES	ESR NUMBER	SCOPE OF WORK
58	DCOLEA MIDDLE SCHOOL	01-105813	
	ANTHONY DORSA ELEMENTARY SCHOOL	01-105912	Relocation of one relocatable CR Bldg.
59	MILDRED GOSS ELEMENTARY SCHOOL	01-106003	Relocation of two relocatable CR Bldg.
60	SAN ANTONIO ELEM. SCHOOL	02-106279	Alteration to San Antonio E.S. - Fire Alarm Upgrades
	CHILD CARE FACILITY @ CASSELL ELEMENTARY SCHOOL	03-106959	
61	PAINTER ELEMENTARY SCHOOL	01-108533	Relocation of (2) Relocatable CR Bldg.
62	SAN ANTONIO E.S. - 2 Portables	01-107285	
63	ARBUCKLE ELEMENTARY SCHOOL	01-107435	
64	Various Sites	01-107762	
65	MILLER ELEMENTARY SCHOOL - (Kuchel/Kip) Modernization	01-108293	
66	KIPP HEARTWOOD ACADEMY	01-108823	Relocation of (4) Relocatable CR Bldg.
67	Rogers ES & Adelante Dual Language Academy	01-108850	
68	Ten Locations - (Electronic Signs (Admin Rock USD)	01-109006	
69	Stonaker Elementary School	01-109173	
70	FISHER MIDDLE SCHOOL	01-109405	
71	Fischer Middle School (Allum Rock Union ESD)	02-109437	
72	RUSSO/MCENTER ELEMENTARY SCHOOL - ALLUM ROCK UNION S.D.	01-109754	
73	SHEPPARD ELEMENTARY SCHOOL - ALLUM ROCK S.D.	01-109739	
74	Mathson Middle School	01-110537	
75	CLYDE ARBUCKLE ELEMENTARY SCHOOL - ALLUM ROCK UNION E.S.D.	01-110459	
76	CEAR CHAVEZ ELEMENTARY SCHOOL - ALLUM ROCK UNION ELEM. S.D.	01-110470	
77	INDRACE CURETON ELEMENTARY SCHOOL - ALLUM ROCK UNION ELEM. S.D.	01-110471	
78	ANTHONY DORSA ELEMENTARY SCHOOL - ALLUM ROCK UNION ELEM. S.D.	01-110472	
79	O.S. HUBBARD ELEMENTARY SCHOOL - ALLUM ROCK UNION ELEM. S.D.	01-110473	
80	LEE MATHSON MIDDLE SCHOOL - ALLUM ROCK UNION ELEM. S.D.	01-110474	
81	FISHER MIDDLE SCHOOL	01-110642	
82	ROGERS ELEMENTARY SCHOOL	01-110643	
83	UNION VISTA ELEMENTARY SCHOOL - ALLUM ROCK U.S.D.	01-110647	
84	ALLUM ROCK BOND BUILDING - ALLUM ROCK UNION S.D.	01-110668	
85	San Antonio ES	01-110685	

EXHIBIT "C"
PROJECT LIST, continued

#	PROJECT SITES	DSA NUMBER	SCOPE OF WORK
88	O.S. Hubbard Elementary School	01-110935	
89	Lyndale Elementary School	01-111071	
90	Meyer Elementary School	01-111072	Alterations to (8) campuswide HVAC, Fire Alarm, ada upgrade
91	LINDA VISTA ELEMENTARY SCHOOL	01-111190	Alterations to 3-campus wide hvac and ADA upgrades, Construction of 1-Toilet Building, 1-site work
92	Hubbard Elementary School	01-111343	
93	MEXICAN HERITAGE PLAZA	01-111520	Interim Housing
94	Joseph George Middle School	01-111960	
95	Adeante Dual Language Academy@Rodgers E.S.-Alum Rock USD	01-112043	
96	Sheppard Middle School-Alum Rock Union ESD	01-112147	Alterations to 1-Athletic Field; Construction of 4-Light Poles, 1-Toilet Building (Relocatable)
97	ACE Charter School-Alum Rock USD	01-112184	Construction of 1-Administration Building relocatable, 2-Toilet Buildings (Relocatable), 10-Classroom Buildings (Relocatable)

Appendix B – Sample Debt Management Policy

Sample Debt Management Policy

BP 3461 Business and Noninstructional Operations

Debt Management Policy

Purpose

The district recognizes that the foundation of a well-managed debt program is a comprehensive debt policy that guides the issuance of debt, management of the debt portfolio, and adherence to relevant laws and regulations.

The purpose of this policy is to improve the quality of decisions, articulate policy goals, provide guidelines for the structure of debt issuance, and demonstrate a commitment to long-term capital and financial planning.

This debt policy sets forth comprehensive guidelines for financing capital expenditures, as well as for addressing short-term cash flow needs. The objectives of this policy are that:

1. The district obtain financing only when necessary.
2. The district use any type of debt financing allowed by California law (e.g., general obligation bonds, revenue bonds, special tax bonds, certificates of participation, lease-purchase financings, tax and revenue anticipation notes, temporary transfers from the county treasury or county superintendent of schools, bond anticipation notes), so long as the financing meets the standards for appropriateness and efficiency described below.
3. The district use a process for identifying the most appropriate and efficient timing, amount and structure of debt.

Factors to consider when determining the appropriateness of debt are to include the following:

- . Why debt rather than cash expenditure is appropriate.
- . Annual debt service and debt administration costs.
- . The district's financial condition.
- . The district's tax base.
- . Repayment source, including the amount available and its reliability.
- . Legal constraints resulting from the debt (e.g., prepayment terms, reporting requirements).
- . Additional future capital needs.
- . Type of debt instrument.

Factors to consider when determining efficiency are to include the following:

- . Up-front cost plus long-term costs.
 - . Future flexibility.
1. The district operate with extreme caution, and thoroughly investigate all possible conflicts of interest.
 2. The district ensure that any required initial and periodic reporting to investors, credit rating agencies, trustees, federal and state agencies, and the county superintendent of schools is timely and

The governing board will review this policy at least annually and update it as needed. Such a review will include a review of the then-current Government Finance Officers Association's (GFOA's) best practices on debt management policy.

Short-Term Operating Debt Policy

The expenditures associated with the district's day-to-day operations will be covered by current revenues. However, the district may experience temporary cash shortages because it does not receive its revenues in equal installments each month, yet the largest operating expenditures occur regularly in equal amounts. To finance these temporary cash shortfalls, the district may incur short-term operating debt, typically in the form of temporary transfers from the county treasury or county superintendent of schools, or tax and revenue anticipation notes (TRANS). The district will base the amount of the short-term operating debt on cash flow projections for the fiscal year and will comply with applicable

The district will minimize the cost of the short-term borrowing to the greatest extent possible. As allowed by Education Code Section 42603, the district should first consider using interfund transfers before pursuing external borrowing.

Long-Term Capital Debt Policy

The following will apply to the issuance of long-term debt:

1. The district will not use long-term obligations for operating purposes.
2. The term of the long-term obligations will not exceed the useful life of the projects financed.
3. The district will strive to minimize increases in debt service from year to year.
4. When any long-term debt is issued, the governing board will make findings as to the repayment source(s) and the sufficiency of the repayment source(s) until the debt is fully repaid.

Internal Interim Financing

When sufficient funds are available, per Education Code section 42603, the district will consider appropriating them to provide interim financing until long-term financing can be completed, usually within the fiscal year. When the long-term debt obligation is subsequently issued, the funds will be repaid. Use of this strategy requires specific advance notification to the governing board.

Responsibilities of the Chief Business Official

The chief business official will have the primary responsibility for developing financing recommendations and ensuring implementation of the debt policy.

1. The chief business official will review the operating cash flow monthly to determine the need for internal borrowing to maintain progress on the capital improvement program.
2. The chief business official will review the district's capital improvement program at least annually, including the need for financing to maintain the progress on the capital improvement program. This review will be presented to the school board annually. Best practice is to do so in documented form either as part of the adopted budget or in the district's *Management, Discussion and Analysis* prepared for the annual audit report.
3. Because issuing debt is a periodic endeavor and the capital markets constantly change, at least 30 days prior to consideration of any financing the chief business official will review all current GFOA best practices, advisories and guidance documents (found at GFOA.org) and identify to the governing board those relevant to the current capital improvement program and/or operating cash flow needs. This will be done before any governing board action item on the topic of financing.
 1. The chief business official will supervise all details of financing endeavors, including a careful review of the documents (e.g., contracts, resolutions, agreements, financial tables).
 2. The chief business official will administer the investment of debt proceeds, with the advice of the county treasurer.
 3. The chief business official will oversee the expenditure of the debt proceeds and ensure that the debt payments are made on time.
 4. The chief business official will ensure that any initial and periodic reporting needed — such as to investors, credit rating agencies, trustees, federal (e.g., the Internal Revenue Service, the Securities and Exchange Commission) and state agencies (e.g., the California Debt and Investment Advisory Commission), and the county superintendent of schools — is timely and accurate.
 5. Before any financing is submitted to the governing board for approval, the chief business official will take into consideration the district's internal control procedures, and consult with the district's external auditor regarding fiscal controls needed to ensure that the proceeds of the proposed debt issuance will be directed to the intended use.

Engagement of Professionals

This policy recognizes that public finance professionals (e.g., financial advisors, bond counsels, brokers/dealers, and other consultants) market their services extensively. Furthermore, per Public Contract Codes 20110– 20118.4, such services are usually exempt from public bidding. To ensure that the district receives appropriate services at a fair price.

and to avoid the appearance of conflict of interest, extra caution will be taken when engaging the services of public finance professionals.

Before seeking or considering contracts with public finance professionals, the chief business official will review the then-current GFOA best practices on the following topics:

- . Selecting and Managing Municipal Advisors
- . Selecting and Managing the Method of Sale of Municipal Bonds
- . Selecting Bond Counsel
- . Selecting and Managing Underwriters for Negotiated Bond Sales
- . Issuer's Role in Selection of Bond Counsel

The chief business official (and the district's purchasing agent) will report to the governing board on a recommended process for determining which professionals are needed, how they will be identified (e.g., request for proposal, or bid), and how their contracts will be developed before being submitted to the governing board for approval. Emphasis will be placed on competition, openness, clarity, and avoiding conflicts of interest. The process recommended may be for a period of time, or for a particular financing or set of financings.

All engagement letters, contracts, disclosures and opinions will be provided to the governing board promptly, and district staff will not sign any such documents without prior notification to the governing board.

References *California Codes:* Education Codes 15140–15150 — Issuance and Sale of Bonds Education Codes 41000–41003.3 — Moneys Received by School Districts Education Codes 41010–41023 — Accounting Regulations, Budget Controls and Audits Senate Bill 1029 — approved by the governor on September 12, 2016; amends Government Code 8855 Government Codes 16430–16495.5 — Investments Government Codes 53600–53610 — Investment of Surplus Probate Codes 16045–16054 — Uniform Prudent Investor Act Public Contracts Code 20110–20118.4 — School Districts *Other:* GFOA best practice — Debt Management Policy, dated October 2012 (<http://www.gfoa.org/debt-management-policy>) GFOA debt management documents and resources at <http://www.gfoa.org/topic-areas/debt-management>

Appendix C – Study Agreement



CSIS California School Information Services

FISCAL CRISIS & MANAGEMENT ASSISTANCE TEAM AB139 STUDY AGREEMENT December 8, 2016

The Fiscal Crisis and Management Assistance Team (FCMAT), hereinafter referred to as the team, and the County Superintendent of Schools for Santa Clara County Office of Education, hereinafter referred to as the COE, mutually agree as follows:

1. BASIS OF AGREEMENT

The team provides a variety of services to local educational agencies (LEAs). Pursuant to the provisions of Education Code (EC) Section 1241.5(b), a county superintendent of schools may review or audit the expenditures and internal controls of any school in his or her county if he or she has reason to believe that fraud, misappropriation of funds, or other illegal fiscal practices have occurred that merit examination. The extraordinary audits conducted by the county superintendent shall be focused on the alleged fraud, misappropriation of funds, or other illegal fiscal practices and shall be conducted in a timely and efficient manner.

The COE has requested that the team assign professionals to conduct an extraordinary audit on behalf of the Alum Rock Elementary School District. Per Education Code Section 1241.5(b), the county superintendent has reason to believe that fraud, misappropriation of funds, or other illegal practices may have occurred and shall conduct an audit.

All work shall be performed in accordance with the terms and conditions of this agreement.

2. SCOPE OF THE WORK

A. The COE is requesting that FCMAT review the policies, procedures and internal controls for purchasing and contractual commitments at Alum Rock Elementary School District.

Testing for this review will be based on sample selections; it will not include all transactions and records for the sample period. The sample period will be from July 1, 2013 through November 30, 2016. Sample testing and review results are intended to provide reasonable but not absolute assurance regarding the accuracy and legitimacy of the district's financial transactions relative to contractual commitments.

The team will:

1. Evaluate policies, procedures and internal controls for purchasing, contractual commitments, and vendor payments. Sample selections will include, but not be limited to, documents related to the bond program and construction management contracts.
2. Review sample selections of vendor payments and supporting documentation and verify compliance with established policy, procedures and applicable laws.

H. Services and Products to be Provided

1. Orientation Meeting – The team will conduct an orientation session at the district to brief management and supervisory personnel on the team's procedures and the purpose and schedule of the study.
2. On-site Review – The team will conduct an on-site review at the district office and at school sites if necessary, and will continue to review pertinent documents off site.
3. Progress Reports – The team will inform the COE of material issues as the review is performed.
4. Exit Meeting – The team will hold an exit meeting at the conclusion of the on-site review to inform the COE of any significant findings to that point.
5. Draft Report – When appropriate, electronic copies of a preliminary draft report will be delivered to the COE's administration for review and comment on a schedule determined by the team.
6. Final Report – Electronic copies of the final report will be delivered to the COE following completion of the review. Printed copies are available from the FCMAF office upon request.
7. Follow-Up Support – If requested, the team will meet with the COE and/or district to discuss the findings and recommendations of the report.

I. PROJECT PERSONNEL

The FCMAF study team may also include:

- | | | |
|-----------|--------------------------------|--------------------------------|
| A. | <i>To Be Determined</i> | <i>FCMAF Staff</i> |
| B. | <i>To Be Determined</i> | <i>FCMAF Consultant</i> |
| C. | <i>To Be Determined</i> | <i>FCMAF Consultant</i> |

Other equally qualified staff or consultants will be substituted in the event one of the above individuals is unable to participate in the study.

4. PROJECT COSTS

The cost for studies requested pursuant to EC 42127.8 (d) (1) shall be:

- A. \$800 per day for each staff team member while on site, conducting fieldwork at other locations, presenting reports, or participating in meetings. The cost of independent FCMAT consultants will be billed at their actual daily rate for all work performed.

- B. Administrative fee

Based on the elements noted in Section 2A, the total estimated cost of the study will be \$38,000.

- C. Any change to the scope will affect the estimate of total cost.

Payments for FCMAT services may be reimbursed from funds pursuant to EC 1241.5 and aside for this purpose. Other payments, when deemed necessary, are payable to Kern County Superintendent of Schools - Administrative Agent located at 1300 17th Street, CITY CENTRE, Bakersfield, CA 93301.

5. RESPONSIBILITIES OF THE COE AND/OR DISTRICT

- A. The district will provide office and conference room space during on-site reviews.

- B. The district will provide the following if requested:

1. Policies, regulations and prior reports addressing the study request
2. Current or proposed organizational charts
3. Current and two (2) prior years' audit reports
4. Any documents requested on a supplemental list. Documents requested on the supplemental list should be provided to FCMAT only in electronic format; if only hard copies are available, they should be scanned by the district and sent to FCMAT in an electronic format.
5. Documents should be provided in advance of fieldwork; any delay in the receipt of the requested documents may affect the start date and/or completion date of the project. Upon approval of the signed study agreement, access will be provided to FCMAT's online SharePoint document repository where the district shall upload all requested documents.

- C. The COE and/or district's administration will review a preliminary draft copy of the study. Any comments regarding the accuracy of the data presented in the report or the practicability of the recommendations will be reviewed with the team prior to completion of the final report.

Pursuant to EC 45125.1(c), representatives of FCMAT will have limited contact with pupils. The district shall take appropriate steps to comply with EC 45125.1(c).

6. **PROJECT SCHEDULE**

The following schedule outlines the planned completion dates for different phases of the study and will be established upon the receipt of a signed study agreement:

<i>Orientation:</i>	<i>To be determined</i>
<i>Staff Interviews:</i>	<i>To be determined</i>
<i>Exit Meeting:</i>	<i>To be determined</i>
<i>Preliminary Report Submitted</i>	<i>To be determined</i>
<i>Final Report Submitted</i>	<i>To be determined</i>

7. **COMMENCEMENT, TERMINATION AND COMPLETION OF WORK**

FCMAT will begin work as soon as it has assembled an available and appropriate study team consisting of FCMAT staff and independent consultants, taking into consideration other jobs FCMAT has previously undertaken and assignments from the state. The team will work expeditiously to complete its work and deliver its report, subject to the cooperation of the district and any other parties from which, in the team's judgment, it must obtain information. Once the team has completed its fieldwork, it will proceed to prepare a preliminary draft report and a final report. Prior to completion of fieldwork, the COE may terminate its request for service and will be responsible for all costs incurred by FCMAT to the date of termination under Section 4 (Project Costs). If the COE does not provide written notice of termination prior to completion of fieldwork, the team will complete its work and deliver its report and the COE will be responsible for the full costs. The COE understands and agrees that FCMAT is a state agency and all FCMAT reports are published on the FCMAT website and made available to interested parties in state government. In the absence of extraordinary circumstances, FCMAT will not withhold preparation, publication and distribution of a report once fieldwork has been completed, and the COE shall not request that it do so.

8. **INDEPENDENT CONTRACTOR**

FCMAT is an independent contractor and is not an employee or engaged in any manner with the COE. The manner in which FCMAT's services are rendered shall be within its sole control and discretion. FCMAT representatives are not authorized to speak for, represent, or obligate the COE in any manner without prior express written authorization from an officer of the COE.

9. **INSURANCE**

During the term of this agreement, FCMAT shall maintain liability insurance of not less than \$1 million unless otherwise agreed upon in writing by the COE, automobile liability insurance in the amount required under California state law, and workers compensation as required under California state law. FCMAT shall provide certificates of insurance, with XXX named as additional insured, indicating applicable insurance coverages upon request.

10. **HOLD HARMLESS**

To the fullest extent permitted by law and only in proportion to each party's respective liability, each party (Indemnitor) shall defend, indemnify, and hold harmless the other party (Indemnitee) and the Indemnitee's governing body, officers, employees and agents from and against any claims, lawsuits, actions, and/or liability relating to this Agreement and arising out of any act or omission of or caused by Indemnitor and/or the Indemnitor's governing body, officers, employees, or agents. The parties intend by the provisions in this Section and hereby agree that where the parties are jointly liable, each party's obligation under this Section to the other party shall only be in proportion to its liability. Each party is solely liable for any claims, lawsuits, actions, and/or liability arising out of the sole act or omission of, or caused solely by, that party and/or its governing body, officers, employees, or agents.

II. CONTACT PERSON

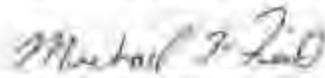
Contact: Jon R. Gundry
 Telephone: (408) 453-6511
 E-mail Address: Jon.gundry@sccoe.edu



 Jon R. Gundry, Superintendent
 Santa Clara County Office of Education



 Date



 Michael H. Fine
 Chief Administrative Officer
 Fiscal Crisis & Management Assistance Team

December 8, 2010

 Date