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March 12, 2020

VIA E-MAIL

Mr. John E. Gartman
john@playoutsidedelmar.org

Re: Unconditional Brown Act Commitment pursuant to Government Code section 54960.2, subdivision (c)

Dear Mr. Gartman:

The Governing Board of Trustees ("Board") of the Del Mar Union School District ("District") has received your correspondence dated February 15, 2020, ("February Letter") and your correspondence dated March 3, 2020, ("March Letter") alleging that certain past actions of the Board violates the Ralph M. Brown Act (Gov. Code § 54950 *et seq.*) ("Brown Act"). Your February Letter alleges the following:

- On December 10, 2019, the Board improperly held a closed session for anticipated litigation under Government Code section 54956.9, subdivisions (d)(2) and (e)(4) "without proof of any statement threatening litigation made in an open and public meeting."
- On December 10, 2019, the Board improperly held a closed session for anticipated litigation under Government Code section 54956.9, subdivisions (d)(2) and (e)(5) "absent a record, made available for public inspection before the closed session, of a statement threatening litigation made outside an open and public meeting."
- On December 10, 2019, the Board improperly held a closed session for anticipated litigation under Government Code section 54956.9, subdivisions (d)(2) "to discuss theoretical legal exposure by the district on the Del Mar Heights Elementary Rebuild, based upon a possible future site design."

Your March Letter alleges the following:

- On February 26, 2020, the Board violated Government Code section 54957.5 by not providing you and/or the public with "all writings that were distributed to the [B]oard visually or orally at the same time they were made available to the [B]oard."
- On February 26, 2020, the Board violated Government Code section 54957.5 by not providing copies of a presentation made by the District's Superintendent at the February 26, 2020, Board meeting to the public.

The Board strongly disputes your claims of what occurred on December 10, 2019, what occurred on February 26, 2020, and other statements you made in your February Letter and March Letter. Notwithstanding our concerns, in accordance with Government Code section 54960.2, in order to avoid unnecessary litigation, and without admitting any violation of the Brown Act, the Board hereby unconditionally commits that it will cease, desist from, and not repeat the challenged past actions described above.

In other words, the Board hereby makes an unconditional commitment that, should the Board desire to meet in a future closed session under Government Code section 54956.9, subdivisions (d)(2), (e)(4), and/or (e)(5), the Board will: (i) obtain proof of a statement threatening litigation having been made at an open, public meeting; (ii) make the record demonstrating a threat of litigation made outside an open, public meeting available for inspection per Government Code section 54957.5; and (iii) not discuss theoretical legal exposure involving public works projects, based upon possible future site designs. Moreover, the Board hereby makes an unconditional commitment that the District and Board will make available to the public all writings related to agenda items at the same time they are distributed to all or a majority of all of the Board consistent with Government Code section 54957.5.

The Board may rescind these commitments only by a majority vote of its membership taken in open session at a regular meeting and noticed on its posted agenda as "Rescission of Brown Act Commitment." You will be provided with written notice, sent by any means or media you provide in response to this message, to whatever address or addresses you specify, of any intention to consider rescinding this commitment at least 30 days before any such regular meeting. In the event that this commitment is rescinded, you will have the right to commence legal action pursuant to subdivision (a) of Section 54960 of the Government Code. That notice will be delivered to you by the same means as this commitment, or may be mailed to an address that you have designated in writing.

Very truly yours,

DEL MAR UNION SCHOOL DISTRICT



Erica Halpern, President of the
Governing Board of Trustees
of the Del Mar Union School District