TO: Members of the Board of Trustees  
FROM: Dr. Francisco Rodriguez, Chancellor  
DATE: September 28, 2016  
SUBJECT: BOARD LETTER FOR OCTOBER 5, 2016 MEETING

Board Meeting Location
Next week’s Board meeting will be held at Los Angeles Pierce College. The meeting times and locations are as follows:

Parking
Please refer to the college campus map for the designated Parking Lot. A campus map has been included for your convenience.

<table>
<thead>
<tr>
<th>Meetings</th>
<th>Time</th>
<th>Location</th>
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<tbody>
<tr>
<td>Convene for Public Session</td>
<td>3:00 p.m.</td>
<td>Student Community Center – Great Hall, Building 1900</td>
</tr>
<tr>
<td>Convene for Closed Session</td>
<td>3:05 p.m. – 4:00 p.m.</td>
<td>College Services Conference Room, Building 2100</td>
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<tr>
<td>Reconvne for Public Session</td>
<td>4:00 p.m. – 6:00 p.m.</td>
<td>Student Community Center – Great Hall, Building 1900</td>
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Included in this letter is explanatory information related to an agenda Item:

Enclosed for your information is a memo from John Dacey, Lead Construction Counsel, regarding FPD3: Los Angeles Trade-Technical College Arts & Culinary Arts Campus Improvement Projects, which will be presented for Board approval at the October 5th Board meeting. (Refer to Attachment A)

Confidential Matters
The attached correspondence is confidential and should not be shared with other persons.

- Office of General Counsel
  - Enclosed for your review is the Bond-related litigation report.  
    (Refer to Attachment B)
  - Enclosed for your review is the District-related litigation report.  
    (Refer to Attachment C)
Enclosed for your review is background information regarding the Monika Avetisyan v. LACCD Litigation. *(Refer to Attachment D)*

Enclosed for your review is an update report pertaining to complaints of discrimination/harassment. *(Refer to Attachment E)*

Enclosed for your review is an update report pertaining to the status on personnel actions. *(Refer to Attachment F)*

- **Human Resources** – Enclosed for your review is information pertaining to disciplinary matters. Note that due to the size of the document, it will be sent to you via U.S. Mail. *(Refer to Attachment G)*

Let me know should you have any questions regarding next week’s meeting.
Parking for Guests
Guests may park in any parking lot not marked for “staff.” There will be no charge for parking.

Parking Area for Board of Trustees and BOT Staff:
After entering the College from Winnetka Ave., stay on Brahma Drive to the 2nd STOP sign. Make a right onto Pierce Lane and go to the end, behind Building 1900.

Board of Trustees Public Session
Student Community Center/Great Hall
Building 1900

Board of Trustees Closed Session
College Services Conference Room
Building 2100

Parking Area for Presidents and LACCD Staff:
After entering the College from Winnetka Ave., make a right at the 1st STOP sign and drive to the gate where Sheriff’s personnel will direct you to a reserved area in the staff parking lot.
To: Board of Trustees  
   Francisco C. Rodriguez, Chancellor  

From: John P. Dacey, Lead Construction Counsel  

cc: James D. O’Reilly, Chief Facilities Executive  
   Tom Hall, Director, Facilities Planning and Development  

Date: September 29, 2016  

Re: Los Angeles Trade Technical College Arts & Culinary Arts Campus Improvement Projects October 5, 2016 Com. No. FPD3

I. ACTION ITEM ON OCTOBER 5, 2016 BOARD DATE REGARDING CULINARY ARTS CAMPUS IMPROVEMENT PROJECTS.

There is an item on the October 5, 2016 Board Agenda regarding the Arts & Culinary Arts Campus Improvement Projects at Los Angeles Trade Technical College (“Projects”).

The item asks the Board to adopt a resolution for the Projects that:

1. Ratifies implementation of the Design-Build system of project delivery;  
2. Ratifies the Request for Qualifications and Proposals process (Procurement Number CS-11-16-T) conducted by Staff;  
3. Authorizes the award of four Design-Build Agreements to a single Design-Build Entity (“DBE”); and  
4. Authorizes District Staff, specifically the Chancellor and/or the Chief Facilities Executive, and/or the Director, Facilities Planning and Development to enter into four Design-Build Agreements for the Projects.

II. PURPOSE OF THIS MEMORANDUM

The main purpose of this Memorandum is to set forth Staff’s and the PMO’s findings regarding why the Design-Build delivery method, as authorized by Education Code sections 81700, et seq., should be used for the Project.

III. APPLICABLE LAW FOR DESIGN-BUILD CONTRACTS

Education Code sections 81700 et seq. specifically authorize community college districts to utilize the Design-Build delivery method as a safe and cost efficient alternative to competitive
bidding because the Legislature has determined that it can produce accelerated completion of projects, provide for cost containment, reduce construction complexity, and reduce exposure to risk for community college districts. The Legislature has also determined that the cost-effective benefits to community college districts are achieved by shifting the liability and risk for cost containment and project completion to the design-build entity.

The foregoing Code sections also require that governing boards of community college districts shall make written findings that use of the design-build process will accomplish one of the following objectives: (1) reduce comparable project costs; (2) expedite the project's completion, or (3) provide features not achievable through the traditional design-bid-build method.

IV. STAFF’S, PMO’S AND LCC’S FINDINGS OF FACT

District Staff, the PMO, and Lead Construction Counsel (“LCC”) have reviewed these statutory objectives and concluded that the design-build delivery method should be used for the Project because: (1) it will reduce comparable Project costs (2) it will expedite the Project’s completion; and/or (3) it provides features not achievable through the traditional design-bid-build method, including cost containment and shifting the risk of loss for design deficiencies to the Design-Build Entity, the following reasons:

1. “Reduced Comparable Project costs”

The Legislature has recognized that “the cost-effective benefits” to a community college district under the Design-Build delivery method are achieved by shifting the liability and risk for cost containment and Project completion to the design-build entity”.

Using the Design-Build delivery method on the Project will achieve this goal/factor, that cannot be achieved using the design-bid-build (hard/low bid) method because: (1) responsibility for errors, omissions, and other deficiencies in the design and construction documents obtained by the District under the design-bid-build (hard/low bid) method from an architect hired by the District are, vis a vis the contractor, the responsibility of the District. Under design-bid-build, a district hires an architect to design a project. The errors, omissions, and other deficiencies in the design and construction documents are usually a predominant cause of additional project costs over and above the original contract award amount because under design-bid-build the contractor has no responsibility for such errors, omissions and/or deficiencies. These errors, omissions and deficiencies translate to increased costs to the District during construction in the following ways: (1) delay damages; (2) extra work/change order claims by the contractor; and (3) in-fighting between the public entity owner and the architect/engineering team hired by the public entity owner. All of the foregoing also translates into additional time, claims, construction manager time, attorney fees, expert fees, and other significant costs.

Conversely, under the Design-Build delivery method, the contractor, known as the Design Build Entity, must “design and construct” the project. As such, those responsibilities and resultant costs just mentioned as being the District’s responsibility all shift to the Design-Build
Entity and have to be borne by the Design-Build Entity. This greatly reduces costs compared to a project procured under the design-bid-build delivery method and achieves the risk shifting benefits contemplated by the statutes. As such, the use of Design-Build for the Project will achieve these cost savings and risk shifting benefits. For these reasons alone, the Design-Build delivery method should be used for the Project.

2. **“Expediting the Project’s completion”**

Using the Design-Build delivery method will save time and expedite the Project’s completion when compared to the time it will take to design and build the Project using the design-bid-build delivery method (also referred to as hard/low bid contracting).

Based on Staff’s, the PMO’s, and LCC’s experience, if the Project were to be developed and constructed using the design-bid-build delivery method, it would be necessary to use three steps for each Project that would take at least 43 months for Project #1; 23 months for Project #2; 11 months for Project #3; and 11 months for Project #4. These three steps include: (1) hire Architect and Engineer to design the project and prepare 100% Construction Documents and obtain Division of the State Architect (“DSA”) approval thereon; (2) then pre-qualify contractors to ensure all participants are well-qualified to construct the project; and (3) then advertise for and award a construction contract under the design-bid-build delivery method and have construction start and complete. Each of the three steps would also require Board action adding more time to the overall procurement before construction could begin.

Conversely, using the Design-Build project delivery method provides integration of these procedural steps into one overall procurement step, including ensuring only well qualified contractors will design and build the Project. Based on the PMO’s evaluation, using the Design-Build delivery method, the anticipated total amount of time to design and complete construction of the Projects will be reduced to 40 months for Project #1; 21 months for Project #2; 10 months for Project #3; and 10 months for Project #4. Staff and LCC concur.

Therefore, the proposed use of Design-Build is anticipated to meet the requirement of “expediting the project’s completion” because it will take 3 months less for Project #1; 2 months less for Project #2, and one month less for Project #3; and 1 month less for Project #4, to achieve completion of the Project using the Design-Build method versus using the design-bid-build project delivery method. For this reason alone, the Design-Build delivery method should be used for the Project.

3. **“Provide features not achievable through the traditional design-bid-build method”**

The applicable law expressly recognizes by the language in and the purpose behind the statutes that using the Design-Build delivery method will simplify construction and reduce its complexity when compared to using the low/hard bid delivery method. These are features that are not achievable through the design-bid-build delivery method.
Generally speaking, most “construction complexity” on public works projects comes from incomplete, conflicting, uncoordinated, and/or construction documents that contain errors, omissions, ambiguities, conflicts and other deficiencies. This then creates polarizing positions between the public entity owner and architect, on the one hand, and the contractor and the public entity owner, on the other hand. As these situations are encountered, arguments ensue as to whether the construction documents are or are not incomplete, conflicting, uncoordinated, and/or contain errors, omissions, deficiencies, etc. (all of which posits liability on the public entity) and/or whether or not the contractor knew or should have known (which may shift liability away from the public entity owner and onto the contractor). Such polarizing positions are greatly heightened in projects where a contractor’s expertise could be of great assistance in the design, but which is prohibited by law if the design-bid-build (hard/low bid) method of procurement is used. This increases risk to the public entity on such projects where the design-bid-build (hard/low bid) method of procurement is used.

Conversely, in the experience of District Staff, the PMO and the LCC, where a contractor’s expertise can be used to design and construct such projects as part of a design-build team, construction complexity is significantly reduced as the entity that must build the project also designs it pursuant to performance/project criteria established by the public entity owner. This is what is being done on the Project at Los Angeles Trade Technical College. The Design-Build Entity has to design and build the Project; it is in its own best interests to ensure that there are no incomplete, conflicting, uncoordinated, errors, omissions, deficiencies, etc. in the design and construction documents. If there are any found during construction, the Design-Build Entity has to bear the risk of loss and cost to overcome same. These are all features that are not achievable under the design-bid-build delivery method. For this reason alone, the Design-Build delivery method should be used for the Project.

V. CONCLUSIONS

As mentioned above, the Design-Build statutes require that the governing board of a community college district make written findings that use of the design-build process will accomplish one of the following objectives: (1) reduce comparable Project costs; (2) expedite the Project’s completion, or (3) provide features not achievable through the traditional design-bid-build method.

The foregoing findings by District Staff, the PMO and LCC demonstrate that not only one, but all three of the requirements to use the Design-Build delivery method are present for the Project and warrant use of the Design-Build method for the Project.