

ADDENDUM # 3



CONTRA COSTA COMMUNITY COLLEGE DISTRICT

Project: ENGINEERING TECHNOLOGY BUILDING RENOVATION PROJECT DESIGN-BUILD SERVICES RFP
Campus/Location: Diablo Valley College, Pleasant Hill, CA

Date: **12/20/2023**

You are hereby notified of the following changes, clarifications and/or modifications to the original Request for Proposals (RFP), and/or previous Addenda. This Addendum forms a part of the Request for Proposals package and modifies the original RFP documents dated 10/18/2023. This Addendum shall supersede the original RFP and previous Addenda wherein it contradicts the same and shall take precedence over anything to the contrary therein. All other conditions remain unchanged.

Acknowledge receipt of this Addendum in your RFP cover letter. Failure to acknowledge may subject proposers to disqualification.

A. Additions, Deletions, Replacements, Revisions, Clarifications: the following sections of the Design-Build contract forms have been updated by District's legal team as standard updates.

1. Updates to Appendix C – Design-Build Form of Agreement:

a. Article 1 - Definitions

i. Add the following Definitions:

1. Allowance(s): The Allowance Item(s) identified in the Guaranteed Maximum Price approved by District. Any unused portion of the Allowance will revert to District documented by a deductive Change Order. Design/Builder hereby authorizes District to execute a unilateral deductive Change Order at or near the end of the Project for all or any portion of the Allowance not allocated.
2. Allowance Expenditure Directive: Written authorization for expenditure of an Allowance, if any. Design/Builder shall not bill for or be due any portion of an Allowance unless District has identified specific work, Design/Builder has submitted a price for that work or District has proposed a price for that work, District has accepted the cost for that work, and District has executed an Allowance Expenditure Directive incorporating that work.
3. Claim: A Design/Builder Claim within the meaning of Public Contract Code sections 9204 and/or 20104 et seq.
4. Contract Documents
 - a. Add:

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- i. Non-Collusion Declaration
 - ii. Iran Contracting Act Certification
 - iii. Design-Build Agreement and all Exhibits/Appendices
 5. Qualified SWPPP Practitioner (“QSP”). Certified personnel that attended a State Water Resources Control Board sponsored or approved training class and passed the qualifying exam.
- b. Article 2.2 – Status of Design/Builder
 - i. **Replace Article 2.2.1 with the following:**
 1. Design/Builder represents and warrants that Design/Builder is an independent contractor or business entity that is: (i) free from the control and direction of District in connection with the performance of the Services, (ii) performing Services that are outside the usual course of District’s business, and (iii) customarily engaged in an independently established trade, occupation, or business of the same nature as that involved in the Services performed, District being interested only in the results obtained. Design/Builder understands and agrees that it and all of its employees and its Subcontractors shall not be considered officers, employees, agents, partner, or joint venture of District, and are not entitled to benefits of any kind or nature normally provided employees of District and/or to which District’s employees are normally entitled, including, but not limited to, State Unemployment Compensation or Worker’s Compensation. Design/Builder shall assume full responsibility for payment of all federal, state, and local taxes or contributions, including unemployment insurance, social security, and income taxes with respect to Consultant’s employees. Design/Builder is and shall at all times be wholly responsible for the manner in which it, its agents, and its Subcontractors perform the services required of it by the Contract Documents. Nothing herein contained shall be construed as creating the relationship of employer and employee, or principal and agent, between District, or any of District’s employees or agents, and Design/Builder or any of Design/Builder’s Subcontractors, agents or employees. District shall be permitted to monitor Design/Builder’s activities to determine compliance with the terms of this Contract.
 - ii. **Add new Article under existing Article 2.2:**
 1. Design/Builder represents that Design/Builder and all Subcontractors shall not be presently debarred, suspended, proposed for disbarment, declared ineligible or excluded pursuant to either Labor Code section 1777.1 or Labor Code section 1777.7.
 - iii. **Add new Article under existing Article 2.2:**
 1. If Design/Builder intends to make any change in the name or legal nature of the Design/Builder’s entity, Design/Builder must first

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notify the District in writing prior to making any contemplated change. The District shall determine in writing if Design/Builder's intended change is permissible while performing this Contract.

c. **Article 4.5 – Permit, Fees and Notices**

i. **Add the following new Articles under existing Article 4.5:**

1. General Permit for Storm Water Discharges Associated With Construction and Land Disturbance Activities.

- a. Design/Builder acknowledges that all California community college districts are obligated to develop and implement the following requirements for the discharge of storm water to surface waters from its construction and land disturbance activities pursuant to the Clean Water Act and Porter Cologne Water Quality Act. District has determined that the construction of this Project requires enrollment in the Construction Storm Water Permit. District has filed certain submittals referred to as Permit Registration Documents (“PRDS”) with the Regional Water Control Board (“Storm Water Pollution Prevention Plan” or “SWPPP”).
- b. Design/Builder shall comply with any District SWPPP that is approved by the District and applicable to the Project, at no additional cost to the District. Design/Builder shall pay any fees and any penalties that may imposed by a regulatory agency for its non-compliance with the SWPPP during the course of Work.
- c. Design/Builder shall provide a Qualified Storm Water Practitioner (“QSP”) at no additional cost to the District, who shall perform on-site inspections and implement and monitor any and all SWPPP requirements applicable to the Project, including required visual observations, sampling, analysis, reporting and record keeping, including of Total Maximum Daily Loads (“TMDL”) of pollutants and construction dewatering and discharge, and Best Management Practices (“BMP”).

d. **Add new Article 4.25 – No Relief from Obligations Based on Review by Other Persons**

- i. Design/Builder shall not be relieved of obligations to perform the Work in accordance with the Contract Documents by act or omission of District, Criteria Architect, Construction Manager, Project Inspector, or DSA or other entities having jurisdiction including, but not limited to, administration of the Contract, review of submittals, or by tests, observation, inspection, or permit/interconnection approvals.

e. **Article 7.6.1.2.2 - Update chart in Article 7.6.1.2.2:**

- i. Remove the word “Excluded” from “Excluded Occupations”

f. **Article 8.3 – Compensation for Construction Phase Services**

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i. **Replace Article 8.3 with the following:**

1. Design/Builder shall prepare and submit to District a GMP proposal, with all backup and subject to an open book policy. The GMP shall be established by the Parties at the completion of the negotiation and acceptance of the Design/Builder's GMP proposal. The GMP shall not exceed the NTE Amount. Following District's issuance of the Notice to Proceed with Construction, District shall pay Design/Builder up to the GMP less the Design Fee for all construction phase services contemplated under the Contract Documents, in accordance with the payment procedures set forth herein.

g. **Article 8.8.1.4 – Allowances**

i. **Add the following new Articles under existing Article 8.8.1.4:**

1. If there is an Allowance, then Design/Builder shall not bill for or be due any portion of an Allowance unless District has identified specific work, Design/Builder has submitted a price for that work or District has proposed a price for that work, District has accepted the cost for that work, and District has executed an Allowance Expenditure Directive incorporating that work. Allowance Expenditure Directives shall be based on Design/Builder's costs, without overhead and profit, for products, delivery, installation, labor, insurance, payroll, taxes, bonding and equipment rental will be included in Allowance Expenditure Directive authorizing expenditure of funds from the Allowance. No overhead and profit shall be added to the Allowance Expenditure Directive.
2. Any unused portion of the Allowance will revert to District documented by a deductive Change Order. Design/Builder authorizes District to execute a unilateral deductive Change Order at or near the end of the Project for all or any portion of the Allowance not allocated.

h. **Article 8.14 – Withholding of Payment**

i. **Add the following new Article under existing Article 8.14.1:**

1. Written notice to withhold payment from Design/Builder by payment and/or performance bond surety(ies);

i. **Article 10 – Extensions of Time – Liquidated Damages**

- i. **Revise Article 10** to read "Extensions of Time – Liquidated Damages; Excusable Delays"

j. **Article 10.2 – Excusable Delay**

i. **Replace Article 10.2.1 with the following:**

1. Design/Builder shall not be charged for liquidated damages because of any delays in completion of Work which are not the fault of Design/Builder or its Subcontractors, including adverse weather delays, strikes, acts of God as defined in Public Contract Code section 7105, acts of enemy, epidemics, and quarantine

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restrictions. Design/Builder shall, within five (5) calendar days of beginning of any delay, including a Force Majeure event, notify District in writing of causes of delay including documentation and facts explaining the delay and the direct correlation between the cause and effect ("Notice of Delay"). If Design/Builder fails to provide its written Notice of Delay within this timeframe, Design/Builder waives, releases, and discharges any right to assert or claim any entitlement to an adjustment to the GMP and/or the Contract Time based on circumstances giving rise to the asserted delay. District shall review the facts and extent of any delay and shall grant extension(s) of time for completing Work when, in its judgment, the findings of fact justify an extension. Extension(s) of time shall apply only to that portion of Work affected by delay, and shall not apply to other portions of Work not so affected. An extension of time may only be granted if Design/Builder has timely submitted the Baseline Schedule as required herein.

ii. **Replace Article 10.2.2 with the following:**

1. Design/Builder's Notice of Delay and request for a time extension pursuant to Article 10.2 is a condition precedent to Design/Builder's submittal of and/or entitlement to a claim pursuant to Article 13. Design/Builder shall notify the District pursuant to the claims provisions in this Contract of any anticipated delay and its cause. Following submission of a claim, the District may determine whether the delay is to be considered avoidable or unavoidable, how long it continues, and to what extent the prosecution and completion of the Work might be delayed thereby.

iii. **Replace Article 10.2.3 with the following:**

1. In the event the Design/Builder requests an extension of Contract Time for unavoidable delay, such request shall be submitted in accordance with the provisions in the Contract Documents governing changes in Work. When requesting time, requests must be submitted with full justification and documentation, including both a written narrative and a schedule diagram depicting how the changed Work affects other schedule activities. The schedule diagram shall show how the Design/Builder proposes to incorporate the changed Work in the schedule and how it impacts the current schedule-update critical path. If the Design/Builder fails to submit justification, it waives its right to a time extension at a later date. Such justification must be based on the official Baseline Schedule as updated at the time of occurrence of the delay or execution of Work related to any changes to the Scope of Work. Any claim for delay must include the following information as support, without limitation:

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iv. **Replace Article 10.2.3.2 with the following:**

1. Specific logical ties to the Baseline Schedule for the proposed changes and/or delay showing the activity/activities in the Baseline Schedule that are affected by the change and/or delay. In particular, Design/Builder must show an actual impact to the schedule, after making a good faith effort to mitigate the delay by rescheduling the work, by providing an analysis of the schedule ("Time Impact Analysis"). Such Time Impact Analysis shall describe in detail the cause and effect of the delay and the impact on the critical dates in the Project schedule and main sequence of schedule activities to enable District to evaluate the impact of changed Work to the scheduled critical path. (This information must be provided for any portion of any delay of seven (7) days or more.) Design/Builder shall be responsible for all costs associated with the preparation of Time Impact Analyses.

v. **Replace Article 10.2.3.3 with the following:**

1. A recovery schedule must be submitted within twenty (20) calendar days of written notification to the District of causes of delay to recover the lost time. As part of this submittal, Design/Builder shall provide a written narrative for each revision made to recapture the lost time. If the revisions include sequence changes, Design/Builder shall provide a schedule diagram comparing the original sequence to the revised sequence of work. The revisions shall not be incorporated into any schedule update until the revisions have been reviewed by District. At District's discretion, Design/Builder can be required to provide Subcontractor certifications for revisions affecting said Subcontractors.

vi. **Add new Article 10.2.4:**

1. Design/Builder must comply with requirements in Article 10.2 for a Notice of Delay and supporting justification notwithstanding if Design/Builder contends the specific delay period is unknown and continuing. When submitting a Notice of Delay and supporting justification, Design/Builder must provide an estimated delay duration to critical path activities at the time the Notice of Delay and supporting justification is required to be submitted. Failure of the Design/Builder to perform in accordance with the current schedule update shall not be excused by submittal of a Notice of Delay. If Design/Builder contends the delaying event(s) are continuing, Design/Builder must update monthly the estimated delay period with supporting justification.

vii. **Add new Article 10.2.5:**

1. Design/Builder's failure to timely submit a written Notice of Delay and/or provide the justification required Article 10.2 shall constitute Design/Builder's waiver of any right to later submit a Proposed

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Change Order or pursue a Claim on the circumstances giving rise to the request, or to later pursue any additional money or time extensions in any manner related to that issue, regardless of the merits because the Design/Builder will not have satisfied a condition precedent or exhausted administrative remedies required to show entitlement to a Contract Time adjustment. Design/Builder acknowledges that these written notices and justification requirements are critically important to District's Work, Project management, and evaluating potential options and alternatives to implement mitigation efforts to reduce or eliminate additional Project costs and delays.

k. **Article 10.3 – No Additional Compensation for Delays within Design/Builder's Control**

i. **Add the following new Article under existing Article 10.3:**

1. Where an event for which District is responsible impacts the projected Completion Date, the Design/Builder shall provide a written mitigation plan, including a schedule diagram, which explains how (e.g., increase crew size, overtime, etc.) the impact can be mitigated. Design/Builder shall also include a detailed cost breakdown of the labor, equipment, and material Design/Builder would expend to mitigate District-caused time impact. Design/Builder shall submit its mitigation plan to District within fourteen (14) calendar days from the date of discovery of the impact. Design/Builder is responsible for the cost to prepare the mitigation plan.

ii. **Replace the last paragraph of Article 10.3.2 with the following:**

1. Design/Builder shall comply with all required procedures, documentation and time requirements in the Contract Documents. Design/Builder may not seek or recover such costs using formulas (e.g., Eichleay, labor factors). No time will be granted under this Contract for cumulative effect of changes.

l. **Add Article 10.4 – Force Majeure:**

- i. "Force Majeure" means any event or circumstance unknown at the time of contracting that is beyond the Parties' control and makes performance of the Contract impractical or impossible. The Party seeking to have its performance obligation(s) excused must demonstrate that there was such an insuperable interference occurring without the Party's intervention as could not have been prevented by the exercise of prudence, diligence, and care, by providing prompt notice to the other Party, including full particulars of such event, of its inability to perform its obligations due to such event, following commencement of the claiming Party's inability to so perform its obligations. To the extent satisfying these conditions, Force Majeure events include the following: acts of God, war, civil unrest, epidemic, fire, smoke, volcanic eruption, earthquake, strike, unusually severe weather, flood, or shortage of transportation facilities, lock out, or

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commandeering of materials, product, plant, or facilities by the government. Force Majeure shall not be based on a Party's financial inability to perform under this Agreement unless there exists extreme and unreasonable difficulty, expense, injury, or loss involved. A Force Majeure event does not include an act of negligence or intentional wrongdoing by a Party. Any Party claiming a Force Majeure event shall use reasonable diligence to remove the condition that prevents performance and shall not be entitled to suspend performance of its obligations in any greater scope or for any longer duration than is required by the Force Majeure event. Each Party shall use its best efforts to mitigate the effects of such Force Majeure event, remedy its inability to perform, and resume full performance of its obligations hereunder. No obligation that arose before the Force Majeure event that could and should have been fully performed before such Force Majeure event is excused as a result of such Force Majeure event.

m. **Article 11 – Changes In The Work**

i. **Add the following new Articles under existing Article 11:**

1. Proposed Change Order

- a. Time to Submit. Design/Builder shall submit its PCO, using District's Proposed Change Order Form, within five (5) working days of the date Design/Builder discovers, or reasonably should have discovered, the circumstances giving rise to the PCO, unless additional time to submit a PCO is granted in writing by District. Time is of the essence in Design/Builder's submission of PCOs so that District can promptly investigate the basis for the PCO. Accordingly, if Design/Builder fails to submit its PCO within this timeframe, Design/Builder waives, releases, and discharges any right to assert or claim any entitlement to an adjustment of the GMP and/or Time based on circumstances giving rise to the PCO.
- b. Mandatory Use of Forms. Design/Builder shall only submit PCOs by completing District's Proposed Change Order Form. Design/Builder acknowledges and agrees that use of this specific and consistent format is essential to District's evaluation of PCOs. Accordingly, Design/Builder waives, releases, and discharges any right to assert or claim any entitlement to an adjustment of the GMP and/or Time for any purported PCO that does not comply with District's Proposed Change Order Form.
- c. Unknown and/or Unforeseen Conditions. Separate from what is provided in the Allowance, if Design/Builder requests an increase in GMP and/or Contract Time that is based at least partially on Design/Builder's assertion that Design/Builder has encountered unknown and/or

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unforeseen condition(s) on the Project, then design/Builder shall base the PCO on provable information that, beyond a reasonable doubt and to District's satisfaction, demonstrates that the unknown and/or unforeseen condition(s) were actually unknown and/or unforeseen and that the condition(s) were reasonably unknown and/or unforeseen. If not, District shall deny the PCO as unsubstantiated, and Design/Builder shall complete the Project without any increase in GMP and/or Contract Time based on that PCO.

ii. **Replace Article 11.2.3.1 "Labor" with the following:**

1. Design/Builder shall be compensated for the costs of labor actually and directly utilized in the performance of the Work. Such labor costs shall be limited to field labor for which there is a prevailing wage rate classification the actual cost, not to exceed prevailing wage rates established by the bid advertisement date or when the Contract was awarded, whichever is applicable, in the locality of the Site and shall be in the labor classification(s) necessary for the performance of the Work, plus employer payments of payroll taxes and insurance, health and welfare, pension, vacation, apprenticeship funds, and other direct costs resulting from Federal, State, or local laws. Wage rates for labor shall not exceed the prevailing wage rates in the locality of the Site and shall be in the labor classification(s) necessary for the performance of the Work. Labor costs shall exclude costs incurred by the Design/Builder in preparing estimate(s) of the costs of the change in the Work, in the maintenance of records relating to the costs of the change in the Work, coordination and assembly of materials and information relating to the change in the Work or performance thereof, or the supervision and other overhead and general conditions costs associated with the change in the Work or performance thereof, including but not limited to the cost for the job superintendent. If applicable, District will pay Design/Builder the reasonable costs for room and board, supported with appropriate backup documentation, without markup for profit or overhead as provided by U.S. General Services Administration per diem rates for California lodging, meals and incidentals, <https://www.gsa.gov/travel/plan-book/per-diem-rates/per-diem-rates-lookup>.

iii. **After Article 11.2.3.4 Overhead and Profit add the following Article:**

1. Mandatory Use of Forms.
 - a. Design/Builder shall only submit Change Orders by completing District's Change Order Form. Design/Builder acknowledges and agrees that use of this specific and consistent format is essential to District's processing of

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Change Orders. Accordingly, Design/Builder waives, releases, and discharges any right to assert or claim any entitlement to an adjustment of the GMP and/or Contract Time for any change that does not comply with District's Change Order Form.

iv. Replace Article 11.3 – Acceptance of Change orders with the following:

1. The Design/Builder's written acceptance of a Change Order shall constitute final and binding agreement to the provisions of it and a waiver of all claims in connection with it, whether direct, indirect, or consequential in nature. The District's form shall control, and no annotations or handwritten notes by Design/Builder shall be effective upon its execution.
2. A Change Order will become effective when approved by the Board, notwithstanding that Design/Builder has not signed it, provided that District indicates it as a "Unilateral Change Order". Any dispute as to the adjustment in the GMP or Contract Time, if any, of the Unilateral Change Order shall be resolved pursuant to the Payment and Claims and Disputes provisions herein.

v. Replace Article 11.6.1 with the following:

1. The Design/Builder shall promptly correct work rejected by the District or failing to conform to the requirements of the Contract Documents, whether or not fabricated, installed, or completed. The Design/Builder shall bear the costs of correcting such rejected work, including additional testing and inspections required and compensation for the District's services and expenses made necessary thereby. Schedule delays resulting from unauthorized, noncompliant, or defective work shall be Design/Builder's responsibility.

n. Article 12.2.2 – Notification of Termination

i. Add the following Articles under existing Article 12.2.2:

1. 12.2.2.5 - In the alternative, the District shall have the right (but shall have no obligation) to assume and/or assign to a general contractor or construction manager or other third party who is qualified and has sufficient resources to complete the Work, the rights of the Design/Builder under its subcontracts with any or all Subcontractors. In the event of an assumption or assignment by the District, no Subcontractor shall have any claim against the District or third party for Work performed by Subcontractor or other matters arising prior to termination of the Contract and/or the Design/Builder's right to perform the work of the Contract. The District or any third party, as the case may be, shall be liable only for obligations to the Subcontractor arising after assumption or assignment. Should the District so elect, the Design/Builder shall execute and deliver all documents and take all steps, including the legal assignment of its contractual rights, as the District may

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require, for the purpose of fully vesting in the District the rights and benefits of its Subcontractor under Subcontracts or other obligations or commitments. All payments due the Design/Builder hereunder shall be subject to a right of offset by the District for expenses and damages suffered by the District as a result of any default, acts, or omissions of the Design/Builder. Design/Builder must include this assignment provision in all of its contracts with its Subcontractors.

2. 12.2.2.6 - In the event of a termination for cause, if the expense to the District to finish the Work exceeds the unpaid GMP, Design/Builder and Surety shall pay difference to District within twenty-one (21) days of District's request.
3. 12.2.2.7 - In the event a termination for cause is later determined to have been made wrongfully or without cause, then the termination shall be treated as a termination for convenience, effective as of the same date as the purported termination for cause, and the Design/Builder shall have no greater rights than it would have had following a termination for convenience. Any Design/Builder claim arising out of a termination for cause shall be made in accord with Article 13 herein. No other loss, cost, damage, expense or liability may be claimed, requested or recovered by the Design/Builder.

o. Article 12.4 – Effect of Termination

i. Delete Article 12.4.3:

1. In the event termination for cause is determined to have not been for cause, the termination shall be deemed to have been a termination for convenience effective as of the same date as the purported termination for cause

ii. Delete Article 12.4.5:

1. If the expense to the District to finish the Work exceeds the unpaid GMP, Design/Builder and Surety shall pay difference to District within twenty-one (21) days of District's request

iii. Delete Article 12.4.6:

1. The District shall have the right (but shall have no obligation) to assume and/or assign to a general contractor or project manager or other third party who is qualified and has sufficient resources to complete the Work, the rights of the Design/Builder under its subcontracts with any or all Subcontractors. In the event of an assumption or assignment by the District, no Subcontractor shall have any claim against the District or third party for Work performed by Subcontractor or other matters arising prior to termination of the Contract. The District or any third party, as the case may be, shall be liable only for obligations to the Subcontractor arising after assumption or assignment. Should the District so elect, the Design/Builder shall execute and deliver all

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documents and take all steps, including the legal assignment of its contractual rights, as the District may require, for the purpose of fully vesting in the District the rights and benefits of its Subcontractor under Subcontracts or other obligations or commitments. All payments due the Design/Builder hereunder shall be subject to a right of offset by the District for expenses and damages suffered by the District as a result of any default, acts, or omissions of the Design/Builder. Design/Builder must include this assignment provision in all of its contracts with its Subcontractors.

- p. **Add Article 12.7 – Non-Compliance with Agreement Requirements:**
 - i. In the event Design/Builder, after receiving written notice from District of non-compliance with any requirement of the Contract, fails to initiate promptly such action as may be appropriate to comply with the specified requirement within a reasonable period of time, District shall have the right to order Design/Builder to stop all Work in the area affected until Design/Builder has complied with or has initiated such action as may be appropriate to comply within a reasonable period of time. Design/Builder will not be entitled to any extension of Contract Time or GMP for any costs incurred as a result of being ordered to stop Work for such cause.
- q. **Article 13 – Disputes and Claims**
 - i. **Add the following Articles under existing article 13:**
 - 1. **Obligation to File Claims for Disputes**
 - a. Should Design/Builder otherwise seek extra time or compensation for any reason whatsoever, then Design/Builder shall first follow procedures set forth in the Contract Documents, all of which are conditions precedent to submitting a Claim pursuant to Article 13. A Notice of Delay or Proposed Change Order are less formal procedures that proceed the formal claim and do not constitute a Claim. A Claim also does not include correspondence, RFIs, vouchers, invoices, progress payment applications, or other routine or authorized form of requests for progress payments in compliance with the Contract. If a dispute remains, then Design/Builder shall give written notice to District that expressly invokes this Article 13 within the time limits set forth herein.
 - b. Design/Builder's sole and exclusive remedy for a Dispute is to file a written claim setting forth Design/Builder's position as required herein within the time limits set forth herein.
- r. **Article 14 – Revise title from "Projection of Persons and Property" to "Protection of Persons and Property"**
- s. **Article 15.1.2 – Commercial General Liability and Automobile Liability Insurance**
 - i. **Replace Article 15.1.2.1 with the following:**

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1. Design/Builder shall procure and maintain, during the life of the Project, Commercial General Liability Insurance and Automobile Liability Insurance in a form at least as broad as Insurance Services (ISO) Form CG 00 01 that shall protect Design/Builder, District, its Board Members, employees, agents, Construction Manager(s), Project Inspector(s), and Criteria Architect(s) from all claims for products and completed operations, property damage, bodily injury and personal injury, death, advertising injury, and medical payments arising from, or in connection with, performance of the Work of the Project within the Contract Documents at the required limits, or Design/Builder shall procure and maintain these coverages separately. Design/Builder shall procure and maintain Automobile Liability Insurance in a form at least as broad as ISO Form CA 0001 covering Code 1 (any auto) at the required limits, or Design/Builder shall procure and maintain these coverages separately.
- t. **Article 15.1.3 – Excess Liability Insurance**
- i. **Replace Article 15.1.3.1 with the following:**
 1. If Design/Builder’s underlying policy limits are less than required, subject to the District’s sole discretion, Design/Builder may procure and maintain, during the life of the Project, an Excess Liability Insurance Policy to meet the policy limit requirements of the required policies in order to satisfy, in the aggregate with its underlying policy, the insurance requirements herein including, but not limited to, primary and non-contributory, additional insured, Self-Insured Retentions (SIRs), indemnity, and defense requirements. The Excess Liability Insurance Policy shall be provided on a true “following form” or broader coverage basis, with coverage at least as broad as provided on the underlying Commercial General Liability insurance. No insurance policies maintained by the Additional Insureds, whether primary or excess, and which also apply to a loss covered hereunder, shall be called upon to contribute to a loss until Design/Builder’s primary and excess liability policies are exhausted.
- u. **Article 15.1.4 – Subcontractor**
- i. **Replace Article 15.1.4.1 with the following:**
 1. Design/Builder shall require its Subcontractor(s), if any, to procure and maintain Commercial General Liability Insurance, Automobile Liability Insurance, and Excess Liability Insurance (if Subcontractor elects to satisfy, in part, the insurance required herein by procuring and maintaining an Excess Liability Insurance Policy) with minimum limits at least equal to the amount required of the Design/Builder except where smaller minimum limits are permitted as set forth below. For Commercial General Liability

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coverage, Subcontractors shall provide coverage with a form at least as broad as CG 20 38 04 13.

v. **Article 15.1.5 – Workers’ Compensation and Employers’ Liability Insurance**

i. **Add new Article 15.1.5.3:**

1. The Workers’ Compensation policy shall be endorsed with a waiver of subrogation in favor of District for all work performed by Design/Builder, its employees, agents and Subcontractors

w. **Article 15.1.6 – Builder’s Risk Insurance: Builder’s Risk “All Risk” Insurance**

i. **Replace Article 15.1.6.1** with the following:

1. Design/Builder shall procure and maintain, during the life of this Contract, Builder’s Risk (Course of Construction) insurance utilizing an “All Risk” (Special Perils) coverage form, with limits equal to the completed value of the Project and no coinsurance penalty provisions. The cost value basis shall be consistent with the total replacement cost of all insurable Work of the Project included within the Contract Documents. Coverage is to insure against all risks of accidental physical loss and shall include without limitation the perils of vandalism and/or malicious mischief (both without any limitation regarding vacancy or occupancy), sprinkler leakage, civil authority, theft, sonic disturbance, earthquake (including earthquakes in excess of a magnitude of 3.5 on the Richter Scale and tidal waves, as defined as an “Act of God”, in accordance with Public Contract Code section 7105), flood, collapse, wind, rain, dust, fire, war, terrorism, lightning, smoke, and rioting. Coverage shall include debris removal, demolition, increased costs due to enforcement of all applicable ordinances and/or laws in the repair and replacement of damaged and undamaged portions of the property, and reasonable costs for the Criteria Architect’s and engineering services and expenses required as a result of any insured loss upon the Work and Project, including completed Work and Work in progress, to the full insurable value thereof. Design/Builder will pay all deductibles in connection with the loss or claim against the Builder’s Risk insurance unless Design/Builder can prove that the insured event was not caused by a negligent act, error, or omission of any member of Design/Builder.

x. **Article 15.1.7 – Pollution Liability Insurance**

i. **Replace Article 15.1.7.1** with the following:

1. Design/Builder shall procure and maintain Pollution Liability Insurance in a form at least as broad as ISO Form CG 2415 that shall protect Design/Builder, District, Project and Construction Manager(s), Project Inspector(s), and Criteria Architect(s) from all claims for bodily injury, property damage, including natural resource damage, cleanup costs, removal, storage, disposal, and/or use of the pollutant arising from operations under this

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Contract, and defense, including costs and expenses incurred in the investigation, defense, or settlement of claims, or Design/Builder Shall procure and maintain these coverages separately. Coverage shall apply to sudden and/or gradual pollution conditions resulting from the escape or release of smoke, vapors, fumes, acids, alkalis, toxic chemicals, liquids, or gases, natural gas, waste materials, or other irritants, contaminants, or pollutants, including asbestos.

ii. **Add new Article under existing Article 15.1.7**

1. If the services involve lead-based paint or asbestos identification/remediation, Design/Builder's Pollution Liability policy shall not contain lead-based paint or asbestos exclusions. If the services involve mold identification/remediation, Design/Builder's Pollution Liability policy shall not contain a mold exclusion, and the definition of Pollution shall include microbial matter, including mold.

y. **Article 15.1.8 - Proof of Insurance and Other Requirements: Endorsements and Certificates**

i. **Replace Article 15.1.8.3 with the following:**

1. All endorsements, certificates and insurance policies shall state that District, its Board Members, employees and agents, Construction Manager(s), Project Inspector(s) and Criteria Architect(s) are named additional insureds under all policies except Workers' Compensation Insurance and Employers' Liability Insurance. General liability coverage can be provided in the form of an endorsement to the Design/Builder's insurance (at least as broad as ISO Form CG 20 10, CG 11 85 or both CG 20 10, CG 20 26, CG 20 33, or CG 20 38; and CG 20 37 forms if later revisions used).

ii. **Replace Article 15.1.8.5 with the following:**

1. Design/Builder's and Subcontractors' insurance coverage at least as broad as ISO CG 20 01 04 13 shall be primary and non-contributory to any insurance or self-insurance maintained by District, its trustees, employees and/or agents, the State of California, Construction Manager(s), Project Inspector(s), and/or Architect(s). This requirement shall also apply to any Excess Liability policies.

iii. **Replace Article 15.1.8.8 with the following:**

1. Insurance written on a "claims made" basis shall be retroactive to a date that coincides with or precedes Design/Builder's commencement of Work, including subsequent policies purchased as renewals or replacements. Said policy is to be renewed by the Design/Builder and all Subcontractors for a period of five (5) years following completion of the Work or termination of this Contract. Such insurance must have the same coverage and limits as the

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policy that was in effect during the term of this Contract, and will cover the Design/Builder and all Subcontractors for all claims made. If coverage is cancelled or non-renewed, and not replaced with another claims-made policy from with a retroactive date prior to the effective date of this Agreement, or the start of Work date, the Design/Builder must purchase extended reporting period coverage for a minimum of five (5) years after completion of contract work. A copy of the claims reporting requirements must be submitted to the District for review.

iv. Add the following new Article under Article 15.1.8:

1. Design/Builder's and Subcontractors' insurance policy(s) shall be primary and non-contributory to any insurance or self-insurance maintained by District, its Board Members, employees and/or agents, the State of California, Construction Manager(s), Project Manager(s), Inspector(s), and/or Criteria Architect(s).

z. Article 15.1.9 – Insurance Policy Limits

- i. Update the following table for the Design/Builders Insurance Policy Limits:
 1. Employer's Liability - Replace "\$5,000,000" with "\$5,000,000 per accident for bodily injury or disease"
 2. Builder's Risk – Replace "Replacement Cost" with "Full Replacement value for scope of work"
- ii. Update the following table for the subcontractors Insurance Policy Limits:
 1. Employer's Liability – Replace "\$1,000,000" with "\$1,000,000 per accident for bodily injury or disease"

aa. Article 15.2 – Indemnification

i. Replace Article 15.2.3 with the following:

1. To the furthest extent permitted by California law, Design/Builder shall also defend, at its own expense, Indemnitees against any and all Claims(s) caused by, arising out of, resulting from, or incidental to, the performance of the Work, including design professional services, under this Contract by Design/Builder, its Subcontractors, vendors, or suppliers, except to the extent caused by the active negligence, or willful misconduct of the Indemnitees, as found by a court or arbitrator of competent jurisdiction, in which case, without impacting Design/Builder's obligation to provide an immediate and ongoing defense of Indemnitees, the Design/Builder's defense obligation shall be retroactively reduced by the proportion of the Indemnitees' liability. The District shall have the right to accept or reject any legal representation that Design/Builder proposes to defend the Indemnitees. If a conflict-of-interest bars joint representation of Design/Builder and Indemnitees, District shall have the right to select its own counsel, subject to Design/Builder's reasonable right of rejection. If any of the Indemnitees provide their own defense due to failure to timely respond to tender of defense, rejection of tender of defense, or

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conflict of interest of proposed counsel, Design/Builder shall reimburse such Indemnitee(s) for any expenditures, including reasonable attorney's fees and costs. Even if the Design/Builder assumes the defense of the District with acceptable counsel, the District, at its sole option, may participate in the defense, at its own expense, with counsel of its own choice without relieving the Design/Builder of any of its obligations hereunder. This defense obligation includes, but is not limited to, any failure or alleged failure by Design/Builder to comply with any provision of law, any failure or alleged failure to timely and properly fulfill all of its obligations under the Contract Documents in strict accordance with their terms, and without limitation, any failure or alleged failure of Design/Builder's obligations regarding any stop payment notice actions or liens, including Civil Wage and Penalty Assessments and/or Orders by the California Department of Industrial Relations. This agreement and obligation of the Design/Builder shall not be construed to negate, abridge, or otherwise reduce any right or obligation of defense that would otherwise exist as to any Indemnity or other person described herein.

bb. Article 17 – Miscellaneous

i. Add new Article – Tax Benefits

1. Design/Builder shall issue a credit to District as an offset to the Design Fee equal to fifty percent (50%) of the amount of any tax deduction and/or credit Design/Builder and/or any member of Design/Builder receives for the Project at any time under the Commercial Buildings Energy-Efficiency Tax Deduction, 26 U.S. Code § 179D (“Section 179D”).
2. Design/Builder shall provide District with all necessary documentation to enable District to verify the amounts of the Section 179D tax deduction and the resulting credit owed to District. Design/Builder shall notify District in writing of the Section 179D tax deduction within 30 days of when Design/Builder and/or any member of Design/Builder receives IRS notice of the Section 179D tax deduction or receives the Section 179D tax refund, whichever occurs first.

B. Design-Build Entities may submit comments to the updated sections of the Form of Agreement with the RFP proposal submission on January 4, 2023. Please submit any comments within the Appendix section of the RFP submission.

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C. If you have any questions regarding this Addendum, please contact:

Ben M. Cayabyab, Contracts Manager
Contra Costa Community College District
500 Court St., Martinez, CA 94553
Email: bcayabyab@4cd.edu

All other terms and conditions of RFP are to remain the same.

END OF ADDENDUM # 3