

Board of Trustees Agenda Item

Board Meeting Date: February 7, 2011

Title of Item:

Agreement for Inspector of Record Services for Physical Sciences & Engineering Center at Foothill College

Background and Analysis:

The Division of the State Architect (DSA) requires the District to employ a DSA-approved Inspector of Record for inspection services during construction of the Physical Sciences & Engineering Center (PSEC).

On May 3, 2010 the Board established a pool of inspectors qualified to provide services to the District for a variety of projects. Members of that pool were invited to provide additional information specific to the PSEC project. Clark Inspection Group was deemed most qualified to meet the needs of the District based upon applicable experience, qualifications and availability of individual inspectors, references and comparative cost.

This agreement authorizes Clarke Inspection Group, Inc. to provide inspection services for the duration of that project on an hourly basis for a fee not to exceed \$545,000.

The funding for this agreement is within the project budget.

Recommendation:

Charles Allen, Executive Director of Facilities, Operations and Construction Management recommends that the Board approve the proposed Agreement for Services with Clark Inspection Group, Inc. in the amount of \$545,000.

Submitted by:	Charles Allen, Executive Director, Facilities and Operations 6150
Additional contact names:	Art Heinrich, Foothill Bond Director 6295
Is backup provided?	Yes

Foothill-DeAnza Community College District

AGREEMENT FOR SERVICES

This Agreement entered this 10th day of January, 2011, by and between the Foothill-De Anza Community College District, a community college district of the State of California, hereinafter called "District" and Clarke Inspection Group, Inc. hereinafter called "Contractor."

WITNESSETH

WHEREAS, pursuant to Foothill-DeAnza Community College District Board Policy 3140 and Board of Trustees Resolutions, specified District employees have the duty to engage independent contractors to perform sundry services for the District, with or without the furnishing of material; and

WHEREAS, it is necessary and desirable that Contractor be engaged by District for the purpose of performing services hereinafter described:

NOW, THEREFORE, IT IS HEREBY AGREED by the parties as follows:

1. Services to be performed by Contractor. In consideration of the payments hereinafter set forth, Contractor shall perform services for District in accordance with the terms, conditions and specifications set forth herein and in Exhibit "A" attached hereto and by this reference made a part hereof. Contractor shall perform all the services described in Exhibit A for the sum not to exceed \$ 545,000.00.
2. Payments. In consideration of the services rendered in accordance with all terms, conditions and specifications set forth herein and in Exhibit "A", District shall make payment to contractor in the manner specified in Exhibit "A".
3. Relationship of the Parties. It is understood that this is an Agreement by and between Independent Contractor(s) and is not intended to, and shall not be construed to, create the relationship of agent, servant, employee, partnership, joint venture or association, or any other relationship whatsoever other than that of Independent Contractor.
4. Non-Assignability. Contractor shall not assign this Agreement or any portion thereof to a third party without the prior written consent of District, and any attempted assignment without such prior written consent in violation of this Section automatically shall terminate this Agreement.
5. Contract Term. This Agreement shall be in effect from 1/10/2011 through 12/31/2011 as specified in Exhibit "A". The District may terminate this contract at any time for any reason by providing 30 days notice to Contractor. Termination to be effective on the date specified in the notice. In the event of termination under this paragraph, Contractor shall be paid for all work provided to the date of termination.
6. Hold Harmless and Indemnification: To the fullest extent permitted by law, the contractor shall indemnify and save harmless the District, its officers, agents, employees and servants from all claims, suits or actions of every name, kind and description, brought for, or on account of (A) injuries to or death of any person, including Contractor, or (B) damage to any property of any kind whatsoever and to whomsoever belonging, or (C) by reason of any failure to withhold and/or pay to the government income and/or employment taxes from earnings under this contract as made necessary by Section 530 of the Revenue Act of 1978, including but not limited to the concurrent active or passive negligence of the District, its officers, agents, employees or servants, resulting from the

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performance of any work required of contractor or payments made pursuant to this Agreement, provided that this shall not apply to injuries or damage for which the District has been found in a court of competent jurisdiction to be solely liable by reason of its own negligence or willful misconduct.

The duty of the contractor to indemnify and save harmless, as set forth herein, shall include the duty to defend as set forth in Section 2778.4 of the California Civil Code.

Contractor's duty to defend shall be triggered by notice to contractor that District has been served with a summons or complaint which alleges facts falling within the scope of contractor's indemnity obligations.

7. **Insurance.** If applicable, insurance requirements are attached as Exhibit "I."

8. **Non-Discrimination.**

A. General. No person shall, on the grounds of race, color, national or ethnic origin, religious affiliation or non-affiliation, gender, marital status, sexual orientation, age, physical or mental disability, or political affiliation, be excluded from participation in, be denied the benefits, or be subjected to discrimination under this Agreement.

B. Employment. Contractor shall insure equal employment opportunity based on objective standards of recruitment, selection, promotion, classification, compensation, performance evaluations, and management relations, for all employees under this Agreement. Contractor's personnel policies shall be made available to District upon request.

9. **Substitutions:** If particular people are identified in Exhibit "A" as working on this contract the Contractor will not assign others to work in their place without written permission from the District Purchasing Agent. Any substitution shall be with a person of commensurate experience and knowledge.

10. **Sole Property of the District:** Any system or documents developed, produced or provided under this contract shall become the sole property of the District. Notwithstanding any other provision herein, any intellectual property discovered or developed by contractor in the course of performing or otherwise as a result of its work hereunder shall be the sole property of the District.

11. **Contract Renewal.** This Agreement may be renewed for additional time periods as long as the original contract term plus the renewal periods does not exceed five years and provided that both parties sign the renewal, insurance coverage pursuant to paragraph 7 is the same as then customary in similar District Agreements, and the cost of the terms combined will not exceed (a) \$14,999.00 for public project services such as construction, reconstruction, erection, alteration, renovation, improvement, demolition, or repair work, including painting, repainting, or data cabling or (b) \$76,700.00 for routine maintenance, or other services not described in (a).

12. **Expenditure Of Public Funds.** Contractor agrees to comply with Government Code Section 8546.7 which provides that the contracting parties for any contract involving expenditure of public funds in excess of \$10,000.00 shall be subject to examination and audit by the State Auditor for a period of three (3) years after final payment under the contract.

13. **Confidentiality.** In performing its duties hereunder the Contractor may from time to time gain incidental access to confidential information and records including student record information as defined by 20 USC section 1232g. The parties agree that such incidental access is not a provision or conveyance or disclosure to contractor of student record information in violation of section 1232g or of any similar state law. Contractor agrees that if in the performance of its duties it does obtain such access it shall refrain from any removal, use or disclosure to any third

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person of such information and records and shall take any and all necessary affirmative steps to maintain the confidentiality, and avoid such removal, use or disclosure, whether intentional or inadvertent, of such records and information.

14. Merger Clause. This Agreement, including Exhibit "A" attached hereto and incorporated herein by reference, constitutes the sole agreement of parties hereto and correctly states the rights, duties and obligations of each party as of the document's date. Any prior agreement, promises, negotiations or representations between the parties not expressly stated in this document are not binding. All subsequent modifications shall be in writing and signed by the District Purchasing Agent. In the event of a conflict between the terms, conditions or specifications set forth herein and those in Exhibit "A" attached hereto, the terms, conditions or specifications set forth herein shall prevail.

M. Clarke
Authorized Contractor Signature
12.01.2010
Date
CLARKE INSPECTION GROUP INC.
Contractor's Company Name
20-1371315
Contractor's Tax I.D. Number

FOOTHILL-DE ANZA COMMUNITY COLLEGE DISTRICT

By _____
Authorized signature and Date

Title

Address

Date Approved By Board of Trustees
(Approval is required prior to commencement of services if total cost exceeds \$20,000.00 for professional services or the applicable bid threshold stated in Public Contract Code 20651 for other services.)

Exhibit "A" to Agreement for Services

SCOPE OF SERVICES & PAYMENT

I. General

- 1.1 The Clarke Inspection Services, Inc. shall hereinafter be referred to as the Inspector.
- 1.2 Acting as an independent contractor, the Inspector shall provide the District with inspection services for the Physical Sciences & Engineering Center at Foothill College (Project).
- 1.3 The Inspector and its assistant inspectors shall be qualified building inspectors licensed by the California Division of the State Architect (DSA) at the classification level required by DSA, capable of providing competent, adequate inspections of the Project.
- 1.4 This agreement assumes that the Clarke Inspection Services, Inc. will assign Michael Clarke (DSA Class # 1 Number 2843) as Lead Inspector of Record and he will be assisted by Matthew Kelley (DSA Class #1 Number 4265). The District reserves the right to approve or disapprove any substitutions or addition of inspectors assigned to the Project.
- 1.5 The District reserves the right to employ other consultants in connection with the Project, or to perform work related to the Project with District's own forces. The Inspector shall notify the District if any such independent action will in any way compromises the Inspector's responsibilities under this Agreement.
- 1.6 The Architect for the Project is: Ratcliff.
- 1.7 The Contractor is: Hathaway Dinwiddie
- 1.8 Construction Manager is: Gilbane Maas
- 1.9 The District will provide the Inspector with office space at or near the Project site adequate for the performance of its work, including provision of furniture, telephone and data connection.

II. Inspector's Responsibilities

- 2.1 The Inspector's services shall include, but not be limited to, providing Division of the State Architect (DSA) quality assurance inspection services, as requested by the District on a continuous full-time or non-continuous basis, for the Project to ensure that the work is in compliance with DSA-approved project plans and specification as well as codes, regulations and quality control required of public schools in the State of California. The Inspector shall:

- 2.1.1 Perform the duties required of the DSA Project Inspector as required by Title 24, Part 1 as summarized in DSA IR-8.
- 2.1.2 Issue correction and stop work notices and notify the Architect, the District and its Construction Manager in writing if work does not conform to contract documents, including plans and specifications. If the Contractor fails to immediately correct the deviation, send copies of such notices to DSA.
- 2.1.3 Inspect and verify that Contractor's As-Built record documents are updated monthly prior to processing of Contractor's monthly and final payment requests.
- 2.1.4 Maintain liaison with District, Architect, Construction Manager, Testing Lab, Asbestos & Lead-Based Paint Abatement Monitor as well as regulatory agencies and governing bodies as necessary to maintain project continuity.
- 2.1.5 Keep a file of approved contract documents on the Project site at all times, including all reports of test and inspections required by the construction documents.
- 2.1.6 Maintain immediate access to codes and regulations referred to in the construction documents.
- 2.1.7 Organize and maintain a complete system of construction records including, but not limited to:
 1. Log book and/or inspection reports
 2. Correspondence file
 3. Change order file
 4. Shop drawing and sample submittal file
 5. Test and inspection file
 6. DSA reports
 7. Daily Reports
 8. Monthly Reports
- 2.1.8 Submit, on a daily basis, an activity report to the Architect, District and Construction Manager, including the following information:
 1. Activities performed by the Contractors, and areas where work is performed.
 2. Manpower assigned to each Contractor and Subcontractor.

3. Weather conditions.
 4. Equipment and materials delivered to the site.
 5. Construction equipment and vehicles utilized.
 6. Nature and location of the work being performed.
 7. Inspection by representatives of regulatory agencies.
 8. Visitors to the site, titles, and reasons for visit.
 9. Occurrences or conditions that might affect Contract Sum or Contract Time.
 10. Verbal communication and clarifications of the work given to the Contractor.
 11. Telephone calls made or received, and a substantial outline of the nature of such calls, including statements or commitments made during the call. Identify the parties calling.
 12. Any work or material in place that does not correspond with the codes, drawings or specifications, as well as resulting action taken. List any other problems or abnormal occurrences that arise during each day, including notations of any particular lack of activity on the part of the Contractor. Note corrective actions taken.
 13. Start and completion dates for various portions of the work as well as substantial and final completions of the work.
- 2.1.9 Notwithstanding anything express or implied to the contrary, comply with all federal, state, county, and local government requirements.
- 2.1.10 Review and monitor Contractor's construction methods and procedures during all construction activities.
- 2.1.11 Attend all meetings as required by contract documents and/or requested by District and/or its Architect, and/or its Construction Manager, including but not limited to: pre-construction, pre-installation, specification review, schedule review, coordination, weekly progress, payment review, substantial completion, punch list preparation, and final inspection walk-throughs.
- 2.1.12 Schedule all special Inspections and testing as required by the contract documents and also maintain all necessary backup information for processing invoice billings related to special inspections and tests of the project. Observe and record dates and times of all test procedures and results.

- 2.1.13 Maintain a record of all observed construction and of all inspections and tests, in a format acceptable to the Architect, District and to DSA. All records shall be kept on site until completion of the project, and then shall be transmitted to the appropriate parties.
- 2.1.14 Inspect, verify, and document Contractor's delivered equipment and materials to insure that they meet submittal and specification requirements. Such inspection must occur immediately and within 24 hours of Contractor's delivery to the job site.
- 2.1.15 Submit to the Architect and Construction Manager, in a timely manner, a detailed report or request for a clarification whenever any corrective change is necessary in the field for construction that will result in a variance from the drawings or specifications as originally issued.
- 2.1.16 Send copies of inspection and observation results to the District's Bond Director, the Construction Manager, the Architect, and to DSA as required by that agency. Copies may be required by other authorities having jurisdiction, such as the local fire department or environmental control districts.
- 2.1.17 Send copies of reports sent to DSA to the District, the Construction Manager, the Contractor and the Architect.
- 2.1.18 Work with the District, Construction Manager, general contractor, subcontractors, and manufacturer's representatives as part of a Commissioning Team, according to all sections of the specifications that require testing, documentation and acceptance of all installed and working equipment.
- 2.1.19 Review and approve the Contractor's Payment Requests at payment review meetings.
- 2.1.20 When the Contractor's work or a designated portion thereof is substantially complete, prepare for the District a list of incomplete or unsatisfactory items via a "punch list" and submit to the Construction Manager.
- 2.1.21 Conduct final inspections, in coordination with the Construction Manager and the Architect to determine the time of substantial completion and final completion of the project.
- 2.1.22 At completion of project, deliver a copy of all inspection records and project correspondence to the District.
- 2.1.23 Prior to commencement of work, review the approved construction documents and provide the Architect and Construction Manager with a list of anticipated inspections required by applicable codes
- 2.1.24 Submit final verified reports to DSA in compliance with State law, which reports shall be based upon actual personal knowledge obtained through personal inspection of the construction work in all stages of its progress at the site.

2.1.25 The Inspector shall NOT:

1. Perform duties prohibited by DSA IR A-8
2. Authorize deviation from the construction documents.
3. Interfere with the work of the Contractor or the Construction Manager.
4. Issue directions relative to any aspect of construction means, methods, techniques, sequences or procedures.
5. Coordinate activities of the District, Construction Manager, College or Contractor.

2.1.26 The Inspector shall not be responsible or liable for construction means, methods, techniques, sequences or procedures, or for safety precautions and programs in connection with the work of the Project.

III. Payment

3.1 Payment will be made to the Inspector for actual hours spent in providing the services of this Agreement.

3.2 Payment will be made monthly for services provided during the previous month, upon receipt of an itemized invoice.

3.3 The District will pay the Inspector for services at the following rates (See Exhibit B) :

Class 1 Inspector: \$75.00/hour

3.4 The total fee for the services of this Agreement shall not exceed: \$545,000.00 (See Exhibit B)

3.5 Remit payment applications to:

Susan Moore
Gilbane/MAAS
c/o Foothill College
12345 El Monte Road
Los Altos Hills, CA 94022

IV. Contract Term

- 4.1 Construction of the Project requiring on-site inspection services is anticipated to be 620 calendar days after a notice to proceed is given to the Contractor.
- 4.2 The length of this Agreement shall be 721 calendar days to allow for completion of DSA closeout and for administrative closure of the Agreement; all invoices from the Contractor must be submitted for payment 45 days before termination of the Agreement.

End of Exhibit A

EXHIBIT B

Date(s)	Inspector(s)	Hours	Hourly Rate	Task	Monthly Rate
Jan, 2011	Mike	186.7	\$75.00	Plan Review/Submittals	\$14,000.00
Feb, 2011	Mike	186.7	\$75.00	Submittals/Construction	\$14,000.00
Mar, 2011	Mike/Matt	166.7	\$150.00	Construction Inspection	\$25,000.00
Apr, 2011	Mike/Matt	166.7	\$150.00	Construction Inspection	\$25,000.00
May, 2011	Mike/Matt	166.7	\$150.00	Construction Inspection	\$25,000.00
Jun, 2011	Mike/Matt	166.7	\$150.00	Construction Inspection	\$25,000.00
Jul, 2011	Mike/Matt	166.7	\$150.00	Construction Inspection	\$25,000.00
Aug, 2011	Mike/Matt	166.7	\$150.00	Construction Inspection	\$25,000.00
Sep, 2011	Mike/Matt	166.7	\$150.00	Construction Inspection	\$25,000.00
Oct, 2011	Mike/Matt	166.7	\$150.00	Construction Inspection	\$25,000.00
Nov, 2011	Mike/Matt	166.7	\$150.00	Construction Inspection	\$25,000.00
Dec, 2011	Mike/Matt	166.7	\$150.00	Construction Inspection	\$25,000.00
Jan, 2012	Mike/Matt	166.7	\$150.00	Construction Inspection	\$25,000.00
Feb, 2012	Mike/Matt	166.7	\$150.00	Construction Inspection	\$25,000.00
Mar, 2012	Mike/Matt	166.7	\$150.00	Construction Inspection	\$25,000.00
Apr, 2012	Mike/Matt	166.7	\$150.00	Construction Inspection	\$25,000.00
May, 2012	Mike/Matt	166.7	\$150.00	Construction Inspection	\$25,000.00
Jun, 2012	Mike/Matt	166.7	\$150.00	Construction Inspection	\$25,000.00
Jul, 2012	Mike/Matt	166.7	\$150.00	Construction Inspection	\$25,000.00
Aug, 2012	Mike/Matt	166.7	\$150.00	Construction Inspection	\$25,000.00
Sep, 2012	Mike/Matt	166.7	\$150.00	Construction Inspection	\$25,000.00
Oct, 2012	Mike	186.7	\$75.00	Punchlist	\$14,000.00
Nov, 2012	Mike	186.7	\$75.00	Punchlist Cleanup	\$14,000.00
Dec, 2012	Mike	186.7	\$75.00	Contingency	14000.00

Hourly Inspector Rate:

DSA Class #1 \$75.00/Hr

Normal working hours (does not include overtime or off hours)

Foothill-DeAnza Community College District

Exhibit "T" Insurance Requirements

Contractor shall not commence work under this Agreement until required insurance has been approved in writing by District. Certificates of insurance, in form and with insurers acceptable to District (A M Best rating of A-VII or better or otherwise approved by District Risk Manager) shall be submitted to District Risk Management Department. Such certificate shall evidence all coverages and limits required by District in this Agreement and shall specify that insurers will give District thirty (30) days prior written notice of non-renewal or cancellation.

Contractor shall maintain in force, throughout the term of this Agreement, insurance as follows:

1. Workers' Compensation (statutory limits) and Employers' Liability insurance with limits not less than \$1,000,000 each accident, \$1,000,000 employee and \$1,000,000 each disease, provided that contractor has employees as defined by the California Labor Code;
2. Commercial General Liability insurance, with limits not less than \$1,000,000 each occurrence for Bodily Injury and Property Damage, including coverages for contractual liability, personal injury, broadform property damage, independent contractors, products and completed operations;
3. Personal Automobile Liability insurance with limits not less than \$500,000 each occurrence for Bodily Injury and Property Damage shall be maintained on any personal vehicles throughout the course of the project;
4. Professional Liability insurance, with limits not less than \$1,000,000 each claim/annual aggregate, with respect to coverage for errors and omissions arising from professional services rendered under this Agreement, and with any deductible not to exceed \$25,000 each claim. Required only if the following blank is checked ____.

If any of the required insurance is written on a claims-made coverage form, such insurance shall be maintained for a period of three years following termination of this agreement. General and Automobile liability policies shall include as Additional Insureds, the District, its officers, agents, employees and servants, shall be primary to any other insurance or self-insurance available to the Additional Insureds and shall apply separately to each, except the inclusion of Additional Insureds shall not operate to increase the required limits of such insurance.

Maintenance of the required insurance is a material condition of this Agreement and failure to maintain such insurance may, at the District's option, result in a declaration of material breach and suspension of Contractor's further work under this Agreement.