OTAY WATER DISTRICT
ENGINEERING, OPERATIONS & WATER RESOURCES COMMITTEE MEETING
and
SPECIAL MEETING OF THE BOARD OF DIRECTORS

2554 SWEETWATER SPRINGS BOULEVARD
SPRING VALLEY, CALIFORNIA
Board Room

Thursday
August 20, 2009
11:30 A.M.

This is a District Committee meeting. This meeting is being posted as a special meeting in order to comply with the Brown Act (Government Code Section §54954.2) in the event that a quorum of the Board is present. Items will be deliberated, however, no formal board actions will be taken at this meeting. The committee makes recommendations to the full board for its consideration and formal action.

AGENDA

1. ROLL CALL

2. PUBLIC PARTICIPATION – OPPORTUNITY FOR MEMBERS OF THE PUBLIC TO SPEAK TO THE BOARD ON ANY SUBJECT MATTER WITHIN THE BOARD'S JURISDICTION BUT NOT AN ITEM ON TODAY'S AGENDA

INFORMATION / ACTION ITEMS

3. APPROVE A TWELVE MONTH EXTENSION OF THE AGREEMENT WITH BOYLE ENGINEERING CORPORATION (NOW AECOM USA, INC.) FOR AS-NEEDED OFF-SITE POTABLE AND OFF-SITE RECYCLED WATER PLAN CHECKING SERVICES FOR DEVELOPER PROJECTS FOR AN AMOUNT NOT-TO-EXCEED $150,000 (CHARLES) [5 minutes]

4. ADOPT RESOLUTION NO. 4145 TO IMPLEMENT BOARD OF DIRECTORS POLICY 52, ADMINISTRATION OF RECYCLED WATER RETROFIT PROGRAM (CHARLES) [10 minutes]

5. APPROVE AN AGREEMENT BETWEEN THE CITY OF CHULA VISTA AND OTAY WATER DISTRICT FOR JOINT PARTICIPATION TO PREPARE A WASTEWATER RECLAMATION FACILITY FEASIBILITY STUDY AND WHEREIN THE DISTRICT WILL PROVIDE THE CITY REIMBURSEMENT OF AN AMOUNT NOT-TO-EXCEED $150,000 FOR THE COST OF THE STUDY (PEASLEY) [10 minutes]

6. ADJOURNMENT

BOARD MEMBERS ATTENDING:
Gary Croucher, Chair
Larry Breitfelder

All items appearing on this agenda, whether or not expressly listed for action, may be deliberated and may be subject to action by the Board.

The Agenda, and any attachments containing written information, are available at the District's website at www.otaywater.gov. Written changes to any items to be considered at the open meeting, or to any attachments, will be posted on the District's website. Copies of the Agenda and all attachments are also available through the District Secretary by contacting her at (619) 670-2280.

If you have any disability that would require accommodation in order to enable you to participate in this meeting, please call the District Secretary at 670-2280 at least 24 hours prior to the meeting.

Certification of Posting

I certify that on August 14, 2009 I posted a copy of the foregoing agenda near the regular meeting place of the Board of Directors of Otay Water District, said time being at least 24 hours in advance of the meeting of the Board of Directors (Government Code Section §54954.2).

Executed at Spring Valley, California on August 14, 2009.

Susan Cruz, District Secretary

AGENDA ITEM 3

STAFF REPORT

TYPE MEETING:	Regular Board	MEETING DATE:	September 2, 2009
SUBMITTED BY:	David Charles Public Services Manager	PROJECT NO./ SUB-PROJECT:	DIV. NO. ALL Various
APPROVED BY: (Chief)	Rod Posada Chief, Engineering		
APPROVED BY: (Asst. GM):	Manny Magaña Assistant General Manager, Engineering and Operations		
SUBJECT:	Time extension for the As-Needed Professional Services Contract issued to formerly Boyle Engineering Corporation (now known as AECOM USA, Inc.)		

GENERAL MANAGER'S RECOMMENDATION:

That the Otay Water District (District) Board approve a twelve (12) month extension of the agreement time for the Boyle Engineering Corporation (Boyle) (now AECOM USA, Inc.) As-Needed Off-Site Potable and Off-Site Recycled Water Plan Checking Services for Developer Projects.

COMMITTEE ACTION: _____

Please see Attachment A.

PURPOSE:

To obtain Board approval authorizing the General Manager to extend the original agreement (see Attachment B) with Boyle (now AECOM) for an additional twelve (12) month time period.

ANALYSIS:

At the November 7, 2007 Board Meeting, the Board awarded an As-Needed Potable and Off-Site Recycled Water Plan Checking Services Contract for developer projects to Boyle (AECOM) to provide support for the District's various developer projects. At the time of the award, it was contemplated that the services would be completed within a year and would not exceed $150,000. Due to the economy, the volume of plan submittals has decreased. Thus, at present, only approximately

$50,000 of the budget has been spent. Notwithstanding the slowdown, staff continues to require plan checking assistance for certain District programs. Staff is requesting the Board to approve an extension of twelve (12) months. The original contract amount of $150,000 will be sufficient, but a limited amendment to the Contract will be required to incorporate an agreed upon expiration date.

Despite the economic slowdown and decline of real estate market sales, Developers continue to submit development plans at a steady rate. To allow the Engineering technicians to focus primarily on design and assist Civil Engineers in design and construction of CIP Projects, the District requires the services of a consulting firm to provide professional services to assist the Public Services Division in performing plan check review and approvals of Developer and CIP off-site potable and off-site recycled water projects. "Off-site" refers to District-maintained facilities (i.e., pipelines and appurtenances) located within public right-of-way and District easements, outside of privately-owned development areas.

The performance of Boyle (AECOM) has been satisfactory.

FISCAL IMPACT:

Plan Check services are an on-going effort funded by developer deposits and does not affect the operating budget.

STRATEGIC GOAL:

This project supports the District's Mission Statement, "To provide safe, reliable water, recycled water, and wastewater services to our community in an innovative, cost efficient water-wise and environmentally responsible manner," and the District's Strategic Goal, "To satisfy current and future water needs for potable, recycled, and wastewater services."

LEGAL IMPACT:

None.

General Manager

P:\Public-s\Staff Reports\2009\BD 09-02-09, Staff Report, Time Extension for Professional Services Contract issued to Boyle (AECOM), (DC-RP).doc

DC/RP:jf

Attachments: Attachment A
Attachment B

ATTACHMENT A

SUBJECT/PROJECT:	Time extension for the As-Needed Professional Services Contract issued to formerly Boyle Engineering Corporation (now known as AECOM USA, Inc.)
VARIOUS	

COMMITTEE ACTION:

- The Engineering, Operations, and Water Resources Committee reviewed this item at a meeting held on August 20, 2009. The Committee supported Staff's recommendation.

NOTE:

The "Committee Action" is written in anticipation of the Committee moving the item forward for Board approval. This report will be sent to the Board as a Committee approved item, or modified to reflect any discussion or changes as directed from the Committee prior to presentation to the full Board.

ATTACHMENT B

AGREEMENT FOR PROFESSIONAL SERVICES BETWEEN

OTAY WATER DISTRICT

AND

BOYLE ENGINEERING CORPORATION

FOR

AS-NEEDED POTABLE & OFF-SITE RECYCLED WATER PLAN CHECK SERVICES FOR DEVELOPER PROJECTS

(Project No. 1438-010000)

This Agreement (Agreement) is made and entered into this 13 day of NOVEMBER, 2007 by and between the OTAY WATER DISTRICT, a municipal water district, formed and existing pursuant to California Municipal Water District Act of 1911, as amended, hereinafter referred to as "DISTRICT," and BOYLE ENGINEERING CORPORATION, hereinafter referred to as "CONSULTANT."

W I T N E S S E T H

WHEREAS, the DISTRICT requires the services of a consulting engineer to render certain technical and professional services described below; and

WHEREAS, the CONSULTANT has available, and offers to provide, personnel and facilities necessary to accomplish the work within the required time.

NOW, THEREFORE, DISTRICT AND CONSULTANT agree as follows:

I. Scope of Services

The CONSULTANT agrees to perform those services described in the scope of work set forth in Exhibit 'A' attached hereto and incorporated herein by this reference. The scope of consulting services shall include meetings with District staff and review of previous technical documentation.

II. Authorization

General authorization to proceed with the work described in Exhibit 'A' is hereby granted upon full execution of the Agreement. However, CONSULTANT shall not proceed with any work described in Exhibit 'A' until the receipt of a request for specific services or "task order" from the District's Designated Agent. Upon receipt of such a request for specific services, CONSULTANT shall provide the the District's Designated Agent with an estimated budget for the requested services and an estimated time for completion. The District's Designated Agent shall then provide the CONSULTANT with authorization to proceed. No work shall be commenced until the CONSULTANT receives the authorization to proceed.

III. Compensation

In return for providing the services described in Exhibit 'A', which are to be performed by the CONSULTANT, the DISTRICT agrees to pay, and the CONSULTANT agrees to accept, compensation for all executed service requests up to an amount not-to-exceed ONE HUNDRED FIFTY THOUSAND DOLLARS ($150,000.00), payable as agreed to by the parties per service request. Total compensation for all Professional Services provided under this agreement shall not exceed ONE HUNDRED FIFTY THOUSAND DOLLARS ($150,000.00) during the term of this agreement without prior written authorization from the DISTRICT.

The CONSULTANT shall invoice the DISTRICT on a monthly schedule in the format shown in Exhibits 'C' and 'D'. The CONSULTANT shall not invoice the DISTRICT for work that has not been completed at the time the invoice is prepared. The DISTRICT shall have forty-five (45) days from the date of receipt of error-free invoices prepared in accordance with Exhibits 'B' and 'C' to make payment without incurring interest and/or penalty charges.

IV. Standard of Care

The CONSULTANT is employed to render engineering services only, and any payment made to the CONSULTANT is compensation solely for such services as the CONSULTANT may render and recommendations the CONSULTANT may make. The CONSULTANT'S services shall be furnished in accordance with generally accepted professional engineering principles and practices.

V. Documents

All original drawings, spreadsheets and documents, including digital photographs and files developed for the project, shall, upon payment in full for the services described in this Agreement, be furnished to and become the property of the DISTRICT, except as otherwise provided in Section VIII: Termination or Abandonment.

The CONSULTANT shall provide final documents on high-density media such as ZIP® disk 100/250 MB or compact disk (CD). Final drawings and details shall be in AutoCAD® 2000 format or more recent. Final Contract Specifications, reports, and spreadsheets shall be in Microsoft® Office 2000 format or more recent. Any other electronic format documents provided to the DISTRICT must be formatted to the same software version or release as that of the DISTRICT.

VI. Performance and Schedule

The CONSULTANT agrees to coordinate project work to ensure its timely completion and shall promptly notify the DISTRICT of any anticipated delays, which may affect the work schedule. In the event the time for completing the scope of work is exceeded due to circumstances beyond the control of the CONSULTANT, the CONSULTANT shall have an additional amount of time to be agreed upon in writing between the parties in which to complete the work.

VII. Change in Scope of Work

Work under this agreement is to be performed on a task order basis and shall be pre-approved by the DISTRICT. Each task order shall specify the services requested, the time for performance and an estimated cost for such services. If the services requested require a change, addition or modification, such change, addition or modification shall require prior approval of the DISTRICT. In the event that the services requested are outside of the Scope of Services specified in Exhibit 'A', CONSULTANT shall bring it to the attention of the DISTRICT immediately, and no such work shall be done prior to obtaining written approval from the DISTRICT.

If the DISTRICT changes the Scope of Work, or if changes in regulations after execution of this Agreement necessitate changes in the Scope of Work, or if the CONSULTANT is requested to perform services not detailed in the Scope of Work, the parties shall execute an amendment to Exhibit 'A', Scope of Work.

All work performed without proper authorization shall be considered part of this Agreement for no additional compensation.

VIII. Termination or Abandonment

Ten (10) calendar days from the date of a written notice to terminate, the DISTRICT has the right to terminate or abandon all or any portion of a work order. The District is under no obligation to require all the services described under the Scope of Work and shall be able to select only those services needed from time to time, as provided in each work order. In the event that the District abandons or terminates any services requested as provided hereunder, the DISTRICT will have the right to take possession and shall own immediately all original specifications, drawings, and other documents developed for that portion of the work completed and/or being abandoned. The DISTRICT will pay the CONSULTANT for services for any portion of the work being terminated which were rendered prior to termination. If said termination occurs prior to completion of any task of the project for which a payment request has not been received, the fee for service performed during such task shall be based on an amount mutually agreed to by the DISTRICT and the CONSULTANT for the portion of such task completed but not paid prior to said termination. The DISTRICT will not be liable for any costs other than the fees or portions thereof, which are specified herein. If all work is abandoned as herein provided, this Agreement shall automatically terminate on the 10th day from the date of notice.

IX. Indemnification

A. CONSULTANT agrees to the following:

1. *Indemnification for Professional Services.* CONSULTANT will save harmless and indemnify and, at DISTRICT's request, defend DISTRICT and all its officers, volunteers, employees, and representatives from and against suits, actions, or claims brought for, or on account of, injuries or damages sustained by any person or property directly resulting from a negligent or wrongful act, error or omission by CONSULTANT or any of CONSULTANT's officers, agents, employees, or representatives, in the performance of this Agreement.

2. *Indemnification for other Damages.* CONSULTANT indemnifies and holds DISTRICT harmless from and against a claim, action, damages, costs (including reasonable attorney's fees), injuries, or liability, directly resulting from this Agreement, for its negligent performance. Should DISTRICT be named in a suit, or should a claim be brought against it by suit or otherwise, directly resulting out of this Agreement, for the CONSULTANT's negligent performance, CONSULTANT will defend DISTRICT (at DISTRICT's request and with counsel satisfactory to DISTRICT) and will indemnify DISTRICT for any judgment rendered against it or any sums paid out in settlement or otherwise.

B. For purpose of this section "DISTRICT" includes DISTRICT's officers, officials, employees, agents, representatives, and certified volunteers.

C. It is expressly understood and agreed that the foregoing provisions will survive termination of this Agreement.

D. The requirements as to the types and limits of insurance coverage to be maintained by CONSULTANT as required by this Agreement and any approval of said insurance by DISTRICT, are not intended to and will not in any manner limit or qualify the liabilities and obligations otherwise assumed by CONSULTANT pursuant to this Agreement, including, without limitation, to the provisions concerning indemnification.

X. *Insurance Requirements*

A. Before commencing performance under this Agreement, and at all other times this Agreement is effective, CONSULTANT will procure and maintain the following types of insurance with coverage limits complying, at a minimum, with the limits set forth below:

Type of Insurance	**Limits (combined single)**
Commercial general liability	$1,000,000
Professional liability	$1,000,000
Business automobile liability	$1,000,000
Workers compensation	Statutory requirement

B. Commercial general liability insurance will meet or exceed the requirements of ISO-CGL Form No. CG 12 10 11 97. The amount of insurance set forth above will be a combined single limit per occurrence for bodily injury, personal injury, and property damage for the policy coverage. Liability policies will be endorsed to name DISTRICT, its officials, and employees as "additional insureds" under said insurance coverage and to state that such insurance will be deemed "primary" such that any other insurance that may be carried by DISTRICT will be excess thereto. Such insurance will be on an "occurrence" basis, except professional liability shall be on a "claims made" basis, and will not be cancelable or subject to reduction except upon a thirty- (30) day prior written notice to DISTRICT.

C. Automobile coverage will be written on ISO Business Auto Coverage Form CA 00 01 10 01, including symbol 1 (Any Auto).

D. CONSULTANT will furnish to DISTRICT duly authenticated Certificates of Insurance and Endorsements evidencing maintenance of the insurance required under this Agreement and such other evidence of insurance as may be reasonably required by DISTRICT from time to time. Insurance must be placed with insurers with a current A.M. Best Company Rating equivalent to at least a Rating of "A:VII." Originals of the duly authenticated Certificates of Insurance and Endorsements shall be included with this Agreement as Exhibit D.

XI. Successors and Assigns

This Agreement and all of the terms, conditions, and provisions hereof shall inure to the benefit of and be binding upon the parties hereto, and their respective successors and assigns; provided, however, that no assignment of this Agreement shall be made without written consent of the parties to this Agreement. Any attempt by the CONSULTANT to assign or otherwise transfer any interest in this Agreement without the prior written consent of the DISTRICT shall be void. Since the primary consideration of the DISTRICT in entering this agreement is the qualifications of the CONSULTANT, as opposed to a low bid, the DISTRICT will refuse to consent to assignments if it considers the assignee to have lesser qualifications. Any notice or instrument required to be given or delivered by this Agreement may be given or delivered by depositing the same in any United States Post Office, registered or certified, postage prepaid, addressed to:

DISTRICT:

Otay Water District
2554 Sweetwater Springs Boulevard
Spring Valley, California 91978-2004
Attention: Mark Watton

CONSULTANT:

Boyle Engineering Corporation
7807 Convoy Court, Suite 200
San Diego, CA 92111
Attention: F.R. Clark Fernon, P.E.

and shall be effective upon date of mailing.

XII. Project Organization

The CONSULTANT proposes to assign Alex Bucher, as the Project Manager. The Project Manager shall not be removed from the project or reassigned without prior approval of the DISTRICT, which approval shall not be unreasonably withheld. No subcontracting of significant portions of the contracted services shall be made without prior approval of the DISTRICT.

XIII. Integration

This Agreement and the attached Exhibits represent the entire understanding by and between the DISTRICT and the CONSULTANT as to those matters contained herein. No prior oral or written understanding shall be of any force or effect with respect to those matters covered hereunder. This Agreement may not be modified or altered except in writing signed by both parties hereto.

XIV. Execution

OTAY WATER DISTRICT

Mark Watton, General Manager

BOYLE ENGINEERING CORPORATION

F.R. Clark Fernon, PE, Managing Engineer

APPROVED AS TO FORM

District Counsel

COPIES: ☐ FILE (Orig.), ☐ CONSULTANT, ☐ PROJECT MANAGER., ☐ ACCOUNTS PAYABLE

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EXHIBIT A

SCOPE OF SERVICES

Scope of As-Needed Off-Site Potable & Recycled Water Plan Check Services for Developer Projects

The Otay Water District (District) requires the services of a consulting firm (Consultant) to provide professional services to assist the Engineering Public Services Department in performing plan check review for off-site potable and recycled water developer projects. "Off-site" refers to District-maintained facilities (i.e., pipelines and appurtenances) located within public right-of-way and District easements, outside of privately owned development areas.

Task 1.0 – Project Management and Administration

The Consultant shall:

- Meet with District staff, developers, and developer engineers as needed to confirm that all aspects of the project are performed according to the requirements and objectives of the District.

Task 2.0 – Plan Checking

The Consultant shall:

- Provide the services of a Senior Civil Engineer (Project Manager) familiar with the District's procedures. The Project Manager will provide quality control for all plan reviews.
- A Plan Check Engineer will provide approximately thirty (30) hours per week on average of plan review service. The Plan Check Engineer will be under the general supervision of the Project Manager, and should be available at least eight (8) hours per week at the District office to answer questions on plan check activities. The general range of tasks that the Plan Check Engineer may perform is as follows:

    a. Perform plan check activities necessary to evaluate general compliance with District standards for each plan received. Review plans to determine if they comply with Water Agency Standards (WAS) and Sub-Area Master Plans (SAMPs). If plans are not in general compliance, annotate the plans and provide correspondence to the developer and/or its agents identifying the necessary changes.

    b. Determine the Consultant's anticipated Plan Check Cost Estimate per each plan check, and provide the estimate to the District project manager. The estimated average time frame for the total review of the 1st, 2nd, and 3rd plan check submittals is approximately twenty (20) hours.

c. Coordinate review with District Engineering staff, District Operations Department, and developers.

d. Review the revised plans for general conformance with the District Standards for changes made which were not illustrated on the original plan review submittal. Return directly to the developer any plans not in general compliance, annotated as necessary.

e. Meet with the District as needed to discuss any changes to the scope of services.

f. Prepare and issue correspondence relating to additional general tasks.

g. Consultant will be required to review the Engineer's Estimate of Construction Cost prepared by the Developer's engineering consultant to determine if it conforms to the District's prevailing unit cost factors.

h. Consultant will be required to send out and coordinate with the Developer or its agents, all drawings after approval by the District.

i. Consultant will maintain a log of plan check activities and fees, and provide a copy of the same status to the District at the end of each week.

j. Consultant performing these tasks shall be experienced with the Water Agency Standards (WAS), the District's Water Resources Master Plan (WRMP) and other pertinent standards, and have knowledge of and be familiar with the District's Sub-Area Master Plans.

k. Roles & responsibilities of between the Consultant and District staff are as follows:

- The Consultant shall be responsible for routing plans to the Developer's engineering consultant. The Consultant shall notify the District Project Manager of all routing activities.

- Easement reviews shall be performed by the District's Surveying Division. The Consultant shall notify the District's Project Manager of the need for such reviews, as required.

- Constructability reviews shall be performed by the District's Inspection/Construction Division and Operations Department. The Consultant shall notify the District's Project Manager of the need for such reviews, as required.

- Bond Packages shall be prepared by the District's Public Services Staff. The Consultant shall notify the District's Project Manager and Public Services Staff after he/she has reviewed and checked the Engineer's Construction Cost Estimate (prepared by the Developer's engineering consultant).

- The Consultant shall coordinate with the District's Project Manager to assist with the resolution of all construction change orders, as required.

- The Public Services Manager shall provide a letter indicating anticipated District inspection costs to the Consultant.

COMPENSATION

The services will be performed on a time and materials basis in accordance with the rate schedule presented in Exhibit B for a not-to-exceed amount of $150,000.

DISTRICT FURNISHED SERVICES

1. Provide existing reports and related materials to the Consultant.

2. Coordinate with the Consultant on the Project during all phases of the Consultant's work.

3. The District shall advise Consultant of its job site and office rules and regulations, and safety procedures as may be applicable.

NOTES

1. Consistent with the professional standard of care and unless specifically provided herein, Consultant shall be entitled to rely upon the accuracy of data and information provided by District, Developers or others without independent review or evaluation.

2. Right-of-way engineering services associated with plan review are not included in the current scope of services but may be added if required by the District.

3. All correspondence will be issued on the Consultant letterheads.

EXHIBIT B - STANDARD RATE SCHEDULE
Boyle Engineering Corporation
Effective until December 31, 2008

Professional Staff Description	Hourly Rate
Engineers, Planners, and Architects:	
Assistant Engineer I	$ 98.00
Assistant Engineer II	$ 116.00
Associate Engineer (Registered)	$ 125.00
Senior Planner I	$ 130.00
Senior Transportation Designer	$ 146.00
Senior Program Manager	$ 146.00
Senior Engineer I (Registered)	$ 153.00
Senior Engineer II (Registered)	$ 165.00
Principal Engineer (Registered)	$ 199.00
Technical Support Staff:	
Student Engineer	$ 55.00
Drafter/Assistant CADD Operator	$ 70.00
CADD Operator	$ 88.00
Designer/Design CADD Operator	$ 105.00
Sr Designer/Sr Design CADD Operator	$ 118.00
Design CADD Supervisor	$ 139.00
Designer Supervisor	$ 153.00
Surveying Staff* (Including Equipment):	
Survey Technician/Assistant Surveyor I	$ 81.00
Survey Technician/Assistant Surveyor II	$ 107.00
Associate Land Surveyor (Registered)	$ 118.00
Senior Land Surveyor (Registered)	$ 146.00

Professional Staff Description	Hourly Rate
Administrative Support Staff:	
Administrative Secretary	$ 70.00
Accounting Specialist	$90.00
Administrative Specialist	$ 93.00
Information Technology Specialist	$ 98.00

Direct Project Expenses	Rate
Subconsultants:	
Services Provided by Subconsultants	Cost + 10%
Resource Charges* (per direct labor hour):	
Service Center Charge (computers, reproduction & communication)	$ 4.60/hour
Other:	
Travel – Automobile/Truck	Federal Mileage Rate
Travel – Other Than Automobile/Truck	Cost + 10%
Other Direct Charges (e.g., vendors, outside reprographic services, cell phones for field staff, submittal binders, courier, etc.)	Cost + 10%

* Resource charges are in addition to the standard hourly labor rates. Service Center Charge covers the cost of computers (i.e., computers, programs, special purpose software and extra equipment such as printers and plotters), reproduction (i.e., incidental in-house copying, printing and plotting) and communication (i.e., phone, fax and internet). Outside reprographic services will be billed separately.

If authorized by the client, an overtime premium multiplier of 1.5 will be applied to the billing rate of hourly personnel who work overtime in order to meet a deadline which cannot be met during normal hours. Rates are for San Diego based personnel. Special rates will be negotiated for non-San Diego based staff. Corporate officers, Managing Engineers, and Consulting Engineers will be billed at 1.2 times the stated rate for Principal. Applicable sales taxes, if any, will be added to these rates.

Invoices will be rendered monthly. Payment is due upon presentation. A late payment finance charge of 1.5% per month (but not exceeding the maximum rate allowable by law) will be applied to any unpaid balance commencing 30 days after the date of the original invoice.

EXHIBIT C

BOYLE ENGINEERING CORPORATION
7807 Convoy Court, Suite 200
San Diego, CA 92111

INVOICE SUBMITTED TO:

Accounts Payable

Otay Water District
2554 Sweetwater Springs Boulevard
Spring Valley, CA 91978-2004

DATE OF INVOICE:

INVOICE NO.:

Otay INVOICE NO.:

JOB DESCRIPTION:

PROJECT NAME: As-Needed Engineering Design Services Contract

Otay Project Manager: Meryll Gonzalez

Capital Improvement Project No: P1438-010000

AUTHORIZATION:

Purchase Order Number:

Work Order Number:

Consultant Project Number:

DESCRIPTION OF SERVICES RELATED TO INVOICE: 11/1/07 to 12/1/07

Perform plan check services and attend meetings.

AUTHORIZED AND INVOICED FEE:

Original Fee Amount Authorized	$150,000.00
Change Order No. 2 Amount Authorized	$ 0.00
Total Fee Amount Authorized	$150,000.00
Amount of This Invoice	**$ 0.00**
Amount Previously Invoiced	$0.00
Total Amount Invoiced to Date	$0.00
Amount Previously Paid	$0.00
Authorized Fee Amount Remaining	$ 0.00
Percent Complete	0%

CONTRACTED DATE OF PROJECT COMPLETION: November 30, 2008

Invoice has been reviewed and found correct.

_____
[Name], Project Manager

EXHIBIT D
INVOICE DETAIL

Otay Water District As-Needed Potable & Off-site Recycled Water Plan Check Services

MM/DD/YY WO XXXX / CIP 1438-010000

DESCRIPTION		THIS INVOICE HRS/ $'s	RATE	AMOUNT	INVOICED TO DATE	CONTRACT AMOUNT	TOTAL % BILLED	TOTAL % COMPLETE
PROJECT TOTAL				$5,763.35	$20,884.30	$46,500.00	45%	37%
TASK 1 – Project Management and Administration				$3,955.25	$15,420.90	$20,600.00	75%	88%
Sub-Task 1.1	Data Acquisition			$951.00	$2,944.00	$3,000.00	98%	100%
Project Manager	Smith	16.0 hr	41.00 $/hr	$656.00				
Drafter	Williams	5.0 hr	35.00 $/hr	$175.00				
Secretary	Allred	6.0 hr	20.00 $/hr	$120.00				
Sub-Task 1.2	Report Preparation			$931.50	$8,865.00	$13,000.00	68%	75%
Principle	James	2.5 hr	95.00 $/hr	$237.50				
Project Manager	Smith	4.0 hr	41.00 $/hr	$164.00				
Drafter	Williams	14.0 hr	35.00 $/hr	$490.00				
Secretary	Allred	2.0 hr	20.00 $/hr	$40.00				
Direct Expenses				$1,884.50	$2,431.00	$3,000.00	81%	81%
Reproduction		$17.50	10%	$19.25				
Subconsultant #1	B&K	$610.00	5%	$640.50				
Subconsultant #2	CEW	$1000.00	5%	$1,050.00				
TASK 2 – Review Existing Documentation & Related Proj. Info.				$1,808.10	$5,463.40	$15,700.00	35%	22%
Sub-Task 2.1				$951.00	$2,944.00	$12,000.00	25%	22%
Project Manager	Smith	16.0 hr	41.00 $/hr	$656.00				
Drafter	Williams	5.0 hr	35.00 $/hr	$175.00				
Secretary	Allred	6.0 hr	20.00 $/hr	$120.00				
Direct Expenses				$762.00	$2,225.00	$2,500.00	89%	89%
Reproduction		$120.00	10%	$132.00				
Subconsultant #2	CEW	$600.00	5%	$630.00				

Note: 1) Consultant to edit, update, and add lines as necessary.
2) Rates shown above are to remain in effect throughout the life of the contract

AGENDA ITEM 4

STAFF REPORT

TYPE MEETING:	Regular Board	MEETING DATE:	September 2, 2009
SUBMITTED BY:	David Charles Public Services Manager	PROJECT/ SUBPROJECT:	R2094-001101 DIV. NO. 1, 2 and 3
APPROVED BY: (Chief)	Rod Posada Chief, Engineering		
APPROVED BY: (Asst. GM):	Manny Magaña Assistant General Manager, Engineering and Operations		
SUBJECT:	Adopt Resolution No. 4145 - District Administration of Recycled Water Retrofit Program		

GENERAL MANAGER'S RECOMMENDATION:

That the Otay Water District (District) Board of Directors (Board) adopt Resolution No. 4145, for the Board of Directors Policy No. 52 for the District Administration of Recycled Water Retrofit Program.

COMMITTEE ACTION:

Please see Attachment A.

PURPOSE:

To adopt Resolution No. 4145 (see Attachment B) by the Board to adopt Board of Directors Policy No. 52 (see Attachment C) to implement a methodology for the District Administration of Recycled Water Retrofit Program.

ANALYSIS:

As part of the Fiscal Year 2010 Capital Improvement Program (CIP), a project entitled Potable Irrigation Meters to Recycled Water Conversions was developed (i.e., CIP Project Number R2094). By converting relatively high use potable irrigation accounts to use recycled water, conservatively 300 acre-feet of potable water a year is expected to be saved.

Staff has identified a number of multi-family dwellings and educational institutions located in the central area of the District that are irrigating their internal open spaces and landscapes with potable water (see Exhibit A). As the current water supply issues in the region become more severe, the District is actively looking at

ways to conserve potable water. Using recycled water to irrigate landscaping is the appropriate choice for the District and the ratepayers. In addition, Section 26 of the District's Code of Ordinances states, "It is the policy of the District that recycled water shall be used within the jurisdiction wherever its use is financially and technically feasible, and consistent with legal requirements, preservation of public health, safety and welfare, and the environment."

Staff has recently been in contact with multiple agencies in Southern California including the City of San Diego, Irvine Ranch Municipal Water District, Inland Empire Utility District, Eastern Municipal Water District and San Dieguito Water District. All of these agencies have sponsored recycled water retrofit programs. The methodology of reimbursement varies greatly between agencies. Staff proposes adopting Board of Directors Policy No. 52 to provide guidelines for the operation of this program. Staff will develop the program either using in-house personnel or by hiring a consultant for design of new pipelines extensions and/or project administration.

Staff has formulated a grant program to assist users with the cost of retrofitting existing potable irrigation systems to recycled irrigation systems. As proposed, the District will cover 50% of the conversion costs and the other party will cover the remaining 50%.

Converting to recycled water provides benefits to the end user and to the District. As an example, the end user will save 15% off his/her potable water bill, and will not be required to pay associated sewer fees. An added benefit to ratepayers who participate in the conversion program, is that they are exempted from restricted watering conditions if the current drought level increases. The benefit to the District and its ratepayers is the decrease in potable water use by maximizing the use of recycled water. Furthermore, the District is evaluating the viability of banking the water savings towards the offset program.

Staff will open the grant application period for a limited time to solicit qualified applicants into the program. Any multi-family dwelling and/or educational institute within the District and the City of Chula Vista will be eligible to apply. The District will market this program by mailing letters and applications to Homeowners Associations, property management firms, and school districts owning properties that could conceivably be served by recycled water. The application and associated materials will also be available on the District's website.

Staff proposes an initial pilot program consisting of the multi-family dwelling projects that front recycled water mains. Recently, an opportunity arose to include the extension of the recycled water main on Otay Lakes Road from Telegraph Canyon Road to East "H" Street

for future service of multi-family dwelling, the Southwestern College and the Bonita Vista High School. Staff plans to incorporate this extension as a part of the program. The District will cover 100% of the design and construction of this extension. The expectation is to enter into an agreement with the above Homeowners Associations and educational institutions within this year. The pilot program (see Exhibit "A") will be completed within one year. Staff will then present to the Board an evaluation of the pilot program, and if successful, will ask for approval to roll-out the program.

FISCAL IMPACT: RWB

The total budget for CIP Project No. R2094, Potable Irrigation Meters to Recycled Water Conversions, as part of the approved FY 2010-2015 budget, is $2,000,000, with an expenditure projection of $500,000 in FY 2010. There are no expenditures to-date. It is anticipated that total expenditures, plus outstanding commitments and estimated staff time, will total $2,000,000. Based on a review of the budget, the Project Manager has determined the budget to be sufficient to support the project.

Finance has determined that 100% of the funding is available from the Expansion Fund.

STRATEGIC GOAL:

Adoption of Board of Directors Policy No. 52, supports the District's Mission Statement, "To provide the best quality of water and wastewater service to the customers of the Otay Water District, in a professional, effective, and efficient manner," and the Otay strategic goal, "in planning for infrastructure and supply to meet current and future potable water demands."

LEGAL IMPACT: _____

None.

Mark Watton

General Manager

P:\Public-s\RECYCLED WATER OPTIMIZATION\Retrofit Methodology\Staff Report, 9-2-09

DC/RP:mlc

Attachments: Attachment A
Attachment B
Exhibit A

ATTACHMENT A

SUBJECT/PROJECT: R2094-001101	Adopt Resolution No. 4145 - District Administration of Recycled Water Retrofit Program

COMMITTEE ACTION:

The Engineering, Operations, and Water Resources Committee reviewed this item at a meeting held on August 20, 2009. The Committee supported Staff's recommendation.

NOTE:

The "Committee Action" is written in anticipation of the Committee moving the item forward for board approval. This report will be sent to the Board as a Committee approved item, or modified to reflect any discussion or changes as directed from the Committee prior to presentation to the full Board.

ATTACHMENT B

RESOLUTION NO. 4145

A RESOLUTION OF THE BOARD OF DIRECTORS
OF OTAY WATER DISTRICT IMPLEMENTING BOARD OF DIRECTORS
POLICY NO. 52, DISTRICT ADMINISTRATION OF RECYCLED WATER
RETROFIT PROGRAM

WHEREAS, Otay Water District, a public agency duly organized and existing under and by virtue of the laws of the State of California, has determined that it is in the best interest and to the advantage of the District and its ratepayers to implement a policy for the administration of a Recycled Water Retrofit Program; and

WHEREAS, the current water supply issues in the region have become more severe and the District is actively seeking ways to conserve potable water; and

WHEREAS, a number of multi-family dwellings and educational institutions located in the central area of the District are irrigating their internal open spaces and landscapes with potable water; and

WHEREAS, Section 26 of the District's Code of Ordinances states, "It is the policy of the District that recycled water shall be used within the jurisdiction wherever its use is financially and technically feasible, and consistent with the legal requirements, preservation of public health, safety and welfare, and the environment"; and

WHEREAS, utilizing recycled water to irrigate landscaping is the appropriate choice for the District and its ratepayers; and

WHEREAS, the Board wishes to include the policy within the District's Code of Ordinances;

NOW, THEREFORE, BE IT RESOLVED by the Board of Directors of the Otay Water District that the attached "District Administration of Recycled Water Retrofit Program" shall be designated "Policy 52" within the District's Code of Ordinances; and

BE IT FURTHER RESOLVED THAT the policy shall become effective immediately upon adoption.

PASSED, APPROVED AND ADOPTED by the Board of Directors of Otay Water District at a regular meeting held this 2nd day of September, 2009.

Ayes:
Noes:
Abstain:
Absent:

_____
President

ATTEST:

_____
District Secretary

ATTACHMENT C

OTAY WATER DISTRICT **BOARD OF DIRECTORS POLICY**			
Subject	Policy Number	Date Adopted	Date Revised
DISTRICT ADMINISTRATION OF RECYCLED WATER RETROFIT PROGRAM	52	9/2/09	

PURPOSE

This policy establishes guidelines for how the District will administer The Recycled Water Retrofit Program. It also describes when and how the District will reimburse the participants in the cost of such facilities.

BACKGROUND

Policy 52 establishes guidelines on the administration of the Recycled Water Retrofit Program. The District, in an effort to conserve potable water and encourage the use of recycled water where practical, will assist qualified applicants in the form of a grant.

POLICY

A. For projects accepted into the Recycled Water Retrofit Program, the District may reimburse the applicant for construction and design costs if the project meets the following guidelines:

1. The project shall be in an area with an existing recycled water main or where an installation of an extension is economically feasible to the District.

2. The interested party submits and the General Manager or designee approves the application for participation in the program.

3. The applicant shall enter into an Agreement with the District for Retrofit of Existing Irrigation Systems.

4. The applicant obtains three (3) bids from qualified contractors and provides copies of the bids to the District. The applicant is responsible for selecting the lowest responsive responsible bidder. The applicant will be reimbursed for the recycled water retrofit portions of the project based on the unit prices submitted with the lowest responsive responsible bid.

5. Design and engineering costs are covered by the applicant, and plan checking and inspection costs are covered by the District.

6. The reimbursement amount will be 50 percent of on-site construction costs of the conversion, as approved by the District.

7. Funds for reimbursement shall be carried as a CIP project until the reimbursement is made.

8. All reimbursement agreements will require approval by the Board. A Staff Report will be prepared and reviewed with the Finance Department prior to presentation to the Board for approval.

9. This reimbursement agreement terminates upon acceptance of the General Manager. The reimbursement agreement may be terminated prior to acceptance by the General Manager upon a determination that the applicant has failed to comply with its obligations under the reimbursement agreement

10. If the applicant defaults, and the District terminates the agreement, the applicant will be required to reimburse the District any and all costs incurred by the District up to the date of termination, and the District will no longer have an obligation under the agreement.

EXHIBIT A

PROPOSED RECYCLED CONVERSION PROJECTS PILOT PROGRAM
2009

Projects that front existing Recycled Water mains:

Project Name	Potable Water Consumption 2008 in Ac Ft.	Potential for Recycled Water Consumption in Ac Ft.	Total Cost of Conversion
Agave & Seguaro	72.91	27.74	$40,000.00
Tapestry & Mosaic	5.99	2.34	$60,000.00
Belleza	64.71	64.71	$45,000.00
TOTALS	**143.61**	**94.79**	**$145,000.00**

Otay Lakes Recycled Water Main Extension:

Project Name	Potable Water Consumption 2008 in Ac Ft.	Potential for Recycled Water Consumption in Ac Ft.	Total Cost of Conversion
Bonita Vista HS	49.43	22.14	TBD
Southwestern College	31.97	11.29	TBD
Apache Dr Condos	56.36	56.36	TBD
TOTALS	**137.76**	**89.79**	**TBD**

Otay Lakes Pipeline Extension: 4,000 L.F. - Cost $650,000

AGENDA ITEM 5

STAFF REPORT

TYPE MEETING:	Regular Board	MEETING DATE:	September 2, 2009
SUBMITTED BY:	James F. Peasley Engineering Manager	PROJECT/ SUBPROJECTS:	R2093-001000 DIV. NO. n/a
APPROVED BY: (Chief)	Rod Posada Chief, Engineering		
APPROVED BY: (Asst. GM):	Manny Magaña Assistant General Manager, Engineering and Operations		
SUBJECT:	Authorization to Execute an Agreement Between the City of Chula Vista and Otay Water District for Joint Participation to Prepare a Wastewater Reclamation Facility Feasibility Study		

GENERAL MANAGER'S RECOMMENDATION:

That the Otay Water District (District) Board of Directors (Board) authorizes the General Manager to execute an Agreement between the City of Chula Vista and Otay Water District for Joint Participation to Prepare a Wastewater Reclamation Facility Feasibility Study (Agreement).

COMMITTEE ACTION:

Please see Attachment A.

PURPOSE:

To obtain Board authorization for the General Manager to execute an Agreement (Attachment B) with the City of Chula Vista (City) for joint participation to prepare a Wastewater Reclamation Facility Feasibility Study (Study). The Agreement provides that the District will reimburse the City for up to $150,000.

ANALYSIS:

The City, as the lead agency, will solicit proposals to prepare the Study. The City and the District will work jointly and cooperatively towards the completion of the Study. Additional information regarding the purpose, goals, and objectives of the Study are provided in Attachment C.

The total budget for the Study is currently established at $300,000 and the City and the District intend to obligate funds per terms of the Agreement as follows:

1. The City and the District shall each contribute up to $150,000 for the professional engineering consultant services required to complete the Study.

2. Should the consultant fee submitted with the proposals received for the Study be in excess of $300,000, the City may agree to be solely responsible for the additional costs. In this case, the District contribution would remain at $150,000. If the City chooses not to contribute additional funds above $150,000, then the City will work with the District to either reduce the proposed scope of work in a manner such that the consultant could complete the Study within the $300,000 amount or agree to increase the total amount accordingly with costs equally shared.

3. Should the City and the District agree to request the consultant to complete any or all of the Optional Tasks described within the scope of work, each party will equally share the cost of the Optional Task(s).

4. Should either the City or the District without the consent of the other party request the consultant to complete any or all of the Optional Tasks described within the scope of work, the party making the request shall be obligated to solely pay for the performance of the requested Optional Task(s).

5. The City and the District agree to amend the Agreement as may be necessary to address any changes or additions to the scope of work, any increases in contributions above $150,000 by either party, or adding any or all of the Optional Tasks for the Study that may arise.

6. City and District staff expenses, for implementation and management of the Study, shall be paid for by each party and not shared by or between the parties and shall not be included or considered in each parties computation of its participation toward costs of the Study.

The proposed City wastewater reclamation facility is planned to be phased in three increments relative to the City's sewage disposal capacity needs with a total capacity of 6 million gallons per day yielding about 6,720 acre-feet per year of recycled water. If constructed, the facility would increase the availability of local recycled water supply.

The City staff plans to present the Agreement to their City Council in September 2009. The City's current schedule to award a consultant contract for the Study is December 2009 with Study completion projected for February 2011.

FISCAL IMPACT:

The total budget for CIP R2093 for the next six years is $5,000,000. Expenditures to date are $11,969.86. Total expenditures, plus outstanding commitments and forecast to date, are $161,969.86. Based on a review of the budget, the Project Manager has determined the budget is deemed sufficient to support the Study (see Attachment D).

Finance has determined that 100% of the funding is available from the Expansion Fund.

STRATEGIC GOAL:

Preparation of a Wastewater Reclamation Facility Feasibility Study supports the District's Mission Statement, "To provide the best quality of water and wastewater service to the customers of the Otay Water District, in a professional, effective, efficient, and sensitive manner, in all aspects of operation, so that public health, environment, and quality of life are enhanced," and the Otay strategic goal, in planning for infrastructure and supply to meet current and future potable water demands.

LEGAL IMPACT:

The District's General Counsel and the City's City Attorney have reviewed and accepted the Agreement as to form and legality.

General Manager

P:\jpeasley\Wastewater Reclamation Facility Study, CCV&Otay\Staff Report, (JP-RP).doc

JFP/RP:mlc

Attachments: Attachment A
Attachment B
Attachment C
Attachment D

ATTACHMENT A

SUBJECT/PROJECT: R2093-001000	Authorization to Execute an Agreement Between the City of Chula Vista and Otay Water District for Joint Participation to Prepare a Wastewater Reclamation Facility Feasibility Study

COMMITTEE ACTION:

The Engineering, Operations, and Water Resources Committee reviewed this item at a meeting held on August 20, 2009. The Committee supported Staff's recommendation.

NOTE:

The "Committee Action" is written in anticipation of the Committee moving the item forward for Board approval. This report will be sent to the Board as a Committee approved item, or modified to reflect any discussion or changes as directed from the Committee prior to presentation to the full Board.

ATTACHMENT B

AGREEMENT BETWEEN THE CITY OF CHULA VISTA AND OTAY WATER DISTRICT FOR JOINT PARTICIPATION TO PREPARE A WASTEWATER RECLAMATION FACILITY FEASIBILITY STUDY

This Agreement is entered into on_____, 2009, by and between the City of Chula Vista (hereinafter referred to as Chula Vista) a Municipal Corporation, and the Otay Water District (hereinafter referred to as Otay), a water district organized under the Municipal Water District Law of 1911. Chula Vista and Otay are collectively referred to hereinafter as the Parties and singularly, Party. Chula Vista and Otay, in consideration of their mutual covenants, and for other valuable considerations, agree as follows:

RECITALS

A. The economy, employment, and quality of life within the San Diego County region is dependent on a reliable and affordable water supply, which requires cooperation among local water and sewer service agencies through the pursuit of goals that are of mutual and regional benefit.

B. In 2005 Chula Vista completed a Wastewater Master Plan, concurrent with the update of the City of Chula Vista's General Plan, which identified a shortage of wastewater collection disposal capacity prior to the City of Chula Vista's ultimate build out.

C. Additional wastewater collection disposal capacity can be obtained by Chula Vista through the construction of a wastewater reclamation facility within the City of Chula Vista or by acquiring additional sewage disposal capacity from the City of San Diego or from other participating agencies within the Metropolitan Sewerage System, per terms of the Regional Wastewater Disposal Agreement.

D. The current Otay long-term projected recycled water demand established the need for increased recycled water supply to satisfy the market demand.

E. The Parties intend to work jointly and cooperatively towards the completion of a feasibility study analyzing the potential construction of a wastewater reclamation facility within the City of Chula Vista, which includes recycled water production for increased local supply.

F. Chula Vista, in coordination with Sweetwater Authority and Otay, have completed two studies analyzing the feasibility of constructing a wastewater reclamation facility within the City of Chula Vista utilizing Membrane Bioreactor (MBR) technology capable of producing recycled water meeting Title 22 requirements. The MBR technology was found to be technically feasible.

G. The Parties wish to further analyze the feasibility of a wastewater reclamation facility through the acquisition of professional engineering consulting services to provide additional analyses regarding costs and physical improvements required to permit and construct a wastewater reclamation facility.

H. The Parties each have determined that it is in their respective best interest and in the interest of their customers and constituents to enter into this Agreement.

NOW, THEREFORE, THE PARTIES AGREE AS FOLLOWS:

1. All exhibits attached to this Agreement constitute an integral part of this Agreement and are incorporated into the terms hereof.

2. The wastewater reclamation facility feasibility study is hereafter referred to as the Project.

3. The Parties agree that neither this Agreement nor the completion of the Project, as herein contemplated, is a project subject to CEQA.

4. Chula Vista and Otay staff expenses, for implementation and management of the Project efforts, shall be paid for by each Party and not shared by or between the Parties and shall not be included or considered in each Parties computation of its participation toward costs of the Project.

5. Chula Vista shall act as the lead agency with respect to professional engineering consultant acquisition and contracting, project management, and financing of the Project, and will therefore be responsible for such tasks as scheduling consultant interviews, project team meetings, and payment of consultant invoices. Chula Vista will also serve as the primary point of contact with the consultant. No additional consideration shall be granted to Chula Vista as a result of these responsibilities. In all other respects, the Parties will jointly and equally participate in any and all other efforts of the Project such as in making comments and providing direction in the interview of potential consultants, reviewing the feasibility study, and overseeing the performance of the scope of work to be accomplished by a professional engineering consulting firm. This provision shall in no way affect the obligations of each Party under the terms of this Agreement.

6. The Parties agree that the scope of work for the Project as provided in Exhibit A, attached to this Agreement, shall be used in the Chula Vista request for proposal for acquisition of professional engineering consulting services for the Project.

7. The budget for the Project is currently set at $300,000 and each Party agrees to obligate funds to the Project as follows:

   a. Otay shall budget and contribute an amount not to exceed $150,000 for the professional engineering consultant services required to complete the Project.

b. Chula Vista shall budget and contribute an amount not to exceed $150,000 for the professional engineering consultant services required to complete the Project.

c. Should the consultant fee submitted with the proposals received for the Project from consultants be in excess of $300,000, Chula Vista may agree to be solely responsible for the excess costs. In this case, the Otay contribution would remain at the not to exceed $150,000 amount. If Chula Vista chooses not to contribute additional funds above its not to exceed $150,000 budget amount for the Project, then Chula Vista will work with Otay to either reduce the proposed scope of work as provided in Exhibit A in a manner such that the consultant could complete the study within the $300,000 total budget or agree to increase the total budget accordingly with costs shared at 50-50 between the Parties.

d. Should the Parties to this Agreement agree to request the consultant to whom the contract is awarded to complete any or all of the Optional Tasks described within the Exhibit A scope of work, each of the Parties will pay 50% of the cost of the performance of each agreed upon Optional Task.

e. Should either Party to this Agreement without the consent of the other Party request the consultant to whom the contract is awarded to complete any or all of the Optional Tasks described within the Exhibit A scope of work, the Party making the request shall be obligated to solely pay for the performance of the requested Optional Task(s).

8. The Parties agree to amend this Agreement as may be necessary to address any changes or additions to the Exhibit A scope of work for the Project, to address any increases in contributions above $150,000 by either Party, or to address adding any or all of the Optional Tasks described within Exhibit A for the Study that may arise. The Parties agree to negotiate, approve, and execute any required amendments to this Agreement in a timely fashion.

9. The Parties shall seek, in good faith and within a reasonable time, to resolve any disputes regarding this Agreement first by meeting and conferring among two designated staff representatives, one each from Chula Vista and Otay. Any dispute that cannot be resolved by the staff representatives may be referred by either Party to the Chula Vista City Manager and to the Otay General Manager for resolution. Neither Party will resort to litigation until there is an impasse between the Chula Vista City Manager and the Otay General Manager.

10. The current projected schedule for the Project is as follow:

- Award professional engineering consultant services contract: December 2009.
- Complete Project: February 2011.

11. Chula Vista shall invoice Otay monthly per the terms of this Agreement and any of its amendments for Otay's portion of the invoiced amounts Chula Vista approves for payment to the consultant for the Project. As long as Otay's budget, as established under paragraph 7.a., above or later agreed to by Otay in writing, is not exceeded, Otay shall be obligated to remit payment in full within sixty (60) calendar days from the Chula Vista invoice date. If Chula Vista approves for payment any amounts in excess of the budget established in paragraph 7 herein without the prior written consent of Otay, Chula Vista shall bear sole responsibility for the amounts that exceed budget unless Otay, in its sole discretion, agrees to pay any portion of the excess costs. Invoices shall be sent to Otay at the address of 2554 Sweetwater Springs Boulevard, Spring Valley, CA 91978-2096, Attention: James Peasley.

12. In the event Otay fails to pay any amount when due, interest thereon shall accrue at the rate of ten percent per annum from the date when due until payment is received by Chula Vista.

13. All work products resulting from the professional engineering consultant services provided for the Project shall be the joint property of Chula Vista and Otay.

14. The term of this Agreement shall be from the date first above indicated and shall continue until when the Project is 100 % complete and all invoices have been paid unless this Agreement is earlier terminated by mutual agreement of the Parties.

15. Each Party agrees to indemnify, defend at its expense, including attorneys' fees, and hold the other harmless from and against all claims, costs, demands, losses, and liability of any nature whatsoever, including but not limited to liability for bodily injury, sickness, disease or death, property damage (including loss of use), or violation of law, caused by or arising out of any error, omission, negligent act, or willful misconduct of that Party, its officers, directors, employees, agents, volunteers, or any other person acting pursuant to its control in performing under this Agreement.

16. The indemnification provisions of this Agreement shall survive termination of this Agreement.

17. This Agreement, and any and all exhibits attached to it, represent the entire understanding of the Parties as to those matters contained in it, and supersedes and cancels any prior oral or written understandings, promises, or representations with respect to those matters covered in it.

18. All exhibits and Recitals contained herein are incorporated into this Agreement by this reference.

19. This Agreement will be interpreted in accordance with the laws of the State of California. If any action is brought to interpret or enforce any term of this Agreement, the action shall be brought in a state or federal court in the County of San Diego, State of California; provided that the dispute resolution procedure outlined in paragraph 21, below, has been completed. California law shall apply, without regard to any conflict of laws to the interpretation of any provision of this Agreement.

20. This Agreement may be modified only by a subsequent written amendment executed by the Parties. Either Party may give notice that it wishes to amend this Agreement at any time with written notice. Any amendments will have to be mutually agreed upon by both Chula Vista and Otay, in writing.

21. If a dispute arises out of, or relates to this Agreement, or the breach thereof, which cannot be resolved by the Parties, the Parties will first submit to mandatory mediation under the Rules of the American Arbitration Association or any other neutral organization agreed upon before having recourse in a court of law. Any agreements resulting from mediation shall be documented in writing by all Parties. Mediation shall be confidential in accordance with the provisions of California law. All mediation results shall be "non-binding" and inadmissible for any purpose in any legal proceeding, unless all Parties otherwise agree upon such admission in writing.

22. No suit or arbitration shall be brought arising out of this agreement against the City unless a claim has first been presented in writing and filed with the City and acted upon by the City in accordance with the procedures set forth in Chapter 1.34 of the Chula Vista Municipal Code, as same may from time to time be amended, the provisions of which are incorporated by this reference as if fully set forth herein, and such policies and procedures used by the City in the implementation of same. Upon request by City, Otay shall meet and confer in good faith with City for the purpose of resolving any dispute over the terms of this Agreement.

23. No failure of a Party to insist upon the strict performance by the other of any covenant, term, or condition of this Agreement, nor any failure to exercise any right or remedy consequent upon a breach of any covenant, term, or condition of this Agreement, shall constitute a waiver of any such breach or of such covenant, term, or condition. No waiver of any breach shall affect or alter this Agreement, and each and every covenant, condition, and term hereof shall continue in full force and effect to any existing or subsequent breach.

24. None of the Parties shall assign its respective obligations under this Agreement without the prior written approval of the other Party. Any assignment in violation of this paragraph shall constitute a default by the Party attempting the assignment and is grounds for immediate termination of this Agreement or for the enforcement of any available equitable remedies, at the discretion of the other Party. In no event shall any putative assignment create a contractual relationship between the other Party and any putative assignee.

25. This Agreement and all rights and obligations contained herein shall be in effect whether or not any or all Parties to this Agreement have been succeeded by another entity, and all rights and obligations of the Parties shall be vested and binding on their successors-in-interest.

26. If the performance of any act required of the Parties is directly prevented or delayed by reason of strikes, lockouts, labor disputes, vandalism, terrorism or other criminal act, unusual governmental delays, acts of God, fire, floods, epidemics, freight embargoes, or other causes beyond the reasonable control of the Party required to perform an act, that Party

shall be excused from performing that act for the period of time equal to the period of time of the prevention or delay. In the event the Party claims the existence of such a delay, the Party claiming the delay shall notify the other Party in writing of that fact within 14 calendar days after the beginning of any such claimed delay.

27. The Parties agree that they have the right to be advised by counsel with respect to the negotiations, terms, and conditions of this Agreement, and the decision whether to seek advice of counsel with respect to this Agreement is the sole responsibility of each of the Parties. This Agreement shall not be construed in favor of or against any Party by reason of the extent to which each Party participated in the drafting of this Agreement.

28. In the event any one of the provisions of this Agreement shall for any reason be held invalid, illegal, or unenforceable, the remaining provisions of this Agreement shall be unimpaired, and the invalid, illegal, or unenforceable provision(s) shall be replaced by a mutually acceptable provision, which being valid, legal, and enforceable, comes closest to the intention of the Parties underlying the invalid, illegal, or unenforceable provision.

29. For purposes of this Agreement, the relationship of the Parties is that of independent entities and not as agents of each other or as joint ventures or partners. The Parties shall maintain sole and exclusive control over their personnel, agents, consultants, and operations.

30. Nothing in the provisions of this Agreement is intended to create duties or obligations to or rights in third parties or affect the legal liability of the Parties to this Agreement to third parties.

31. This Agreement may be executed in multiple counterparts, which when taken together shall constitute a single signed original as though all Parties had executed the same page.

32. If any part of this Agreement is abandoned or indefinitely delayed, due to circumstances beyond the control of the Parties, this Agreement may be terminated by the either Party.

33. Any notice or instrument required to be given or delivered by this Agreement may be given or delivered by depositing the same in any United States Post Office, certified mail, and return receipt requested, postage prepaid, addressed to:

Otay Water District
General Manager
2554 Sweetwater Springs Blvd.
Spring Valley, CA 91978-2096

City of Chula Vista
Director of Public Works
276 Fourth Avenue
Chula Vista, CA 91910

and shall be effective upon receipt thereof.

34. This Agreement shall not be deemed to have been accepted and shall not be binding upon either Party until duly authorized officers of both Parties have executed this Agreement.

35. Chula Vista and Otay execute this Agreement, thereby indicating that they have read and understood same, and indicate their full and complete consent to its terms and conditions.

36. The individuals executing this agreement represent and warrant that they have the legal capacity and authority to do so on behalf of their respective legal entities.

37. This Agreement shall be deemed executed and effective as of the date first written above on this Agreement.

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the date first written above.

City of Chula Vista

By: _____
James D. Sandoval
City Manager

Approved as to form and legality:

Bart Miesfeld
City Attorney

_____

Otay Water District

By: _____
Mark Watton
General Manager

Otay Water District
General Counsel

_____

Attachments: Exhibit A

ATTACHMENT C

PURPOSE, GOALS, AND OBJECTIVES OF THE WASTEWATER RECLAMATION FACILITY FEASIBILITY STUDY

In 2005 the City completed a Wastewater Master Plan, concurrent with the update of the City of Chula Vista's General Plan, which identified a shortage of wastewater collection disposal capacity prior to the City's ultimate build out.

Additional wastewater collection disposal capacity can be obtained by the City through the construction of a wastewater reclamation facility or by acquiring additional sewage disposal capacity from the City of San Diego or from other participating agencies within the Metropolitan Sewerage System, per terms of the Regional Wastewater Disposal Agreement.

The current District long-term projected recycled water demand established the need for increased recycled water supply to satisfy market demand.

The City, in coordination with Sweetwater Authority and the District, have completed two studies analyzing the feasibility of constructing a wastewater reclamation facility within the City of Chula Vista utilizing Membrane Bioreactor (MBR) technology capable of producing recycled water meeting Title 22 requirements. The MBR technology was found to be technically feasible.

The City and the District desire to further analyze the feasibility of a wastewater reclamation facility through the acquisition of professional engineering consulting services to provide costs and physical improvements required to permit and construct a wastewater reclamation facility.

The objectives of the Study are as follows:

1. Provide reliable, cost-effective wastewater disposal service to accommodate both the City's near-term and long-term growth projections in a manner that protects, or even benefits, the local environment.

2. Ensure the City has adequate authority and control to meet City wastewater needs to build out.

3. Gain approval of our long-term service plan from the public, elected officials, and regulatory agencies.

4. Develop increased local recycled water supply for the District.

5. Provide the City with information regarding an option to acquiring additional Metropolitan Sewerage System disposal capacity from another agency or agencies allowing the City to meet disposal capacity to build out.

6. Provide the City information regarding a realistic preliminary plan and associated cost estimates to develop a cost effective wastewater reclamation facility, such as an MBR plant, for the City to meet disposal capacity to build out.

7. Provide the City with information regarding a wastewater reclamation facility that would increase the District supply of recycled water and the impacts on such a facility resulting from decreased recycled water demand during the winter months.

The City and the District have drafted a scope of work that intends to satisfy the established goals and objectives.

ATTACHMENT D

Otay Water District

Date Updated: August 14, 2009

R2093 - Wastewate Reclamation Facility Feasibility Study

	Budget	*Committed*	*Expenditures to Date*	*Outstanding & Forecast*	*Projected Final Cost*	*Vendor / Comments*
	$ 5,000,000.00					
Planning						
Studies					$ -	
Labor		$ 11,969.86	$ 11,969.86		$ 11,969.86	
Joint Participation Agreement		$ 150,000.00		$ 150,000.00	$ 150,000.00	City of Chula Vista
Total Planning					$ 161,969.86	
Design						
Consultant					$ -	
In House/Labor					$ -	
Advertise & Award					$ -	
Total Design					$ -	
Construction						
In House/Labor					$ -	
Construction Contracts					$ -	
Construction Manager					$ -	
Accpt/close-out					$ -	
Total Construction		$ -	$ -	$ -	$ -	
Grand Total		**$ -**	**$ -**	**$ -**	**$ 161,969.86**	

GA/GC JRF