

000005

DOCKET SUPPORTING INFORMATION
CITY OF SAN DIEGO

DATE:

50
02/03

EQUAL OPPORTUNITY CONTRACTING PROGRAM EVALUATION

December 5, 2008

SUBJECT: First Amendment to the Agreement with Boyle Engineering Corporation for Otay Second Pipeline Improvements- North Encanto Replacement

GENERAL CONSULTANT INFORMATION

Recommended Contractor: Boyle Engineering Corporation

Amount of this Action: \$ 0.00

Funding Source: City

SUBCONSULTANT PARTICIPATION

There is no subconsultant participation associated with this action.

EQUAL EMPLOYMENT OPPORTUNITY COMPLIANCE

Equal Opportunity: Required

Boyle Engineering Corporation submitted a Work Force Report for their San Diego employees dated, July 2, 2008 indicating 22 employees in their Administrative Work Force.

The Administrative Work Force indicates under representation in the following categories:

- Black and Asian in Technical
- Hispanic in Administrative Support
- Filipino in A&E, Science, Computer and Technical
- Female in Management & Financial and Technical

Although Boyle Engineering Corporation has minor under-representations in various categories, they have submitted an approved EO Plan dated March 31, 2006. Staff continues to closely monitor their Workforce Reports and outreach efforts in an effort to obtain better representation in these minimally under-represented categories.

This agreement is subject to the City's Equal Opportunity Contracting (San Diego Ordinance No. 18173, Section 22.2701 through 22.2702) and Non-Discrimination in Contracting Ordinance (San Diego Municipal Code Sections 22.3501 through 22.3517)

ADDITIONAL COMMENTS

This action requests authorization to execute a no-cost, one-year, time extension to the Agreement with Boyle Engineering Corporation for continued consultant construction services for the Otay Second Pipeline Improvements- North Encanto Replacement Project.


RLL

Goals reflect statistical labor force availability for the following: 2000 CLFA San Diego, CA

City of San Diego/Equal Opportunity Contracting
WORK FORCE ANALYSIS REPORT

FOR

Company: Boyle Engineering Corporation

000007

I. TOTAL WORK FORCE:

	Black		Hispanic		Asian		American Indian		Filipino		White		Other								
	Goals	M	F	Goals	M	F	Goals	M	F	Goals	M	F	Goals	M	F						
Mgmt & Financial	3.3%	0	0	11.9%	0	0	6.2%	1	0	0.4%	0	0	6.2%	2	0	0	0	0			
Professional	4.0%	0	0	12.6%	0	0	6.5%	0	0	0.5%	0	0	6.5%	0	0	0	0	0			
A&E, Science, Computer	2.8%	1	0	7.3%	-1	1	16.2%	1	3	0.3%	0	0	16.2%	0	0	18	5	0			
Technical	6.6%	0	0	14.8%	3	0	17.2%	0	0	0.4%	0	0	17.2%	1	0	11	2	0			
Sales	3.6%	0	0	19.5%	0	0	6.8%	0	0	0.6%	0	0	6.8%	0	0	0	0	0			
Administrative Support	7.0%	0	0	20.8%	0	0	8.8%	0	0	0.6%	0	0	8.8%	0	0	1	5	0			
Services	5.5%	0	0	36.9%	0	0	9.7%	0	0	0.6%	0	0	9.7%	0	0	0	0	0			
Crafts	4.5%	0	0	25.8%	0	0	9.1%	0	0	0.7%	0	0	9.1%	0	0	0	0	0			
Operative Workers	4.3%	0	0	38.8%	0	0	20.8%	0	0	0.3%	0	0	20.8%	0	0	0	0	0			
Transportation	8.1%	0	0	32.1%	0	0	4.5%	0	0	0.5%	0	0	4.5%	0	0	0	0	0			
Laborers	4.4%	0	0	54.0%	0	0	4.1%	0	0	0.5%	0	0	4.1%	0	0	0	0	0			
TOTAL		1	0		4	1		2	3		0	0		1	0		32	14		0	0

HOW TO READ TOTAL WORK FORCE SECTION:

The information blocks in Section 1 (Total Work Force) identify the absolute number of the firm's employees. Each employee is listed in their respective ethnic/gender and employment category. The percentages listed under the heading of "CLFA Goals" are the County Labor Force Availability goals for each employment and ethnic/gender category.

Mgmt & Financial
Professional
A&E, Science, Computer
Technical
Sales
Administrative Support
Services
Crafts
Operative Workers
Transportation
Laborers

TOTAL EMPLOYEES		
ALL	M	F
3	3	0
2	0	2
30	21	9
17	15	2
0	0	0
6	1	5
0	0	0
0	0	0
0	0	0
0	0	0
0	0	0
0	0	0
TOTAL	58	18

Female Goals
39.8%
59.5%
22.3%
49.0%
49.4%
73.2%
62.3%
8.6%
36.7%
15.2%
11.1%

HOW TO READ EMPLOYMENT ANALYSIS SECTION:

The percentages listed in the goals column are calculated by multiplying the CLFA goals by the number of employees in that job category. The number in that column represents the percentage of each protected group that should be employed by the firm to meet the CLFA goal. A negative number will be shown in the discrepancy column for each underrepresented goal of at least 1.00 position.

II. EMPLOYMENT ANALYSIS

	Black			Hispanic			Asian			American Indian			Filipino			Female		
	Goals	Actual	Discrepancy	Goals	Actual	Discrepancy	Goals	Actual	Discrepancy	Goals	Actual	Discrepancy	Goals	Actual	Discrepancy	Goals	Actual	Discrepancy
Mgmt & Financial	0.10	0	N/A	0.36	0	N/A	0.19	1	N/A	0.01	0	N/A	0.19	0	N/A	1.19	0	(1.19)
Professional	0.08	0	N/A	0.25	0	N/A	0.13	0	N/A	0.01	0	N/A	0.13	0	N/A	1.19	2	N/A
A&E, Science, Computer	0.84	1	N/A	2.19	2	N/A	4.86	4	N/A	0.09	0	N/A	4.86	0	(4.86)	6.69	9	2.31
Technical	1.12	0	(1.12)	2.52	3	N/A	2.92	0	(2.92)	0.07	0	N/A	2.92	1	(1.92)	8.33	2	(6.33)
Sales	0.00	0	0.00	0.00	0	0.00	0.00	0	0.00	0.00	0	0.00	0.00	0	0.00	0.00	0	0.00
Administrative Support	0.42	0	N/A	1.25	0	(1.25)	0.53	0	N/A	0.04	0	N/A	0.53	0	N/A	4.39	5	N/A
Services	0.00	0	0.00	0.00	0	0.00	0.00	0	0.00	0.00	0	0.00	0.00	0	0.00	0.00	0	0.00
Crafts	0.00	0	0.00	0.00	0	0.00	0.00	0	0.00	0.00	0	0.00	0.00	0	0.00	0.00	0	0.00
Operative Workers	0.00	0	0.00	0.00	0	0.00	0.00	0	0.00	0.00	0	0.00	0.00	0	0.00	0.00	0	0.00
Transportation	0.00	0	0.00	0.00	0	0.00	0.00	0	0.00	0.00	0	0.00	0.00	0	0.00	0.00	0	0.00
Laborers	0.00	0	0.00	0.00	0	0.00	0.00	0	0.00	0.00	0	0.00	0.00	0	0.00	0.00	0	0.00

Goals are set by job categories for each protected group. An underrepresentation is indicated by a negative number, but if the DISCREPANCY is less than -1.00 position, a N/A will be displayed to show there is no underrepresentation.



City of San Diego

EQUAL OPPORTUNITY CONTRACTING (EOC)

1200 Third Avenue • Suite 200 • San Diego, CA 92101

Phone: (619) 236-6000 • Fax: (619) 236-5904

WORK FORCE REPORT

000009

ADMINISTRATIVE

The objective of the *Equal Employment Opportunity Outreach Program*, San Diego Municipal Code Sections 22.3501 through 22.3517, is to ensure that contractors doing business with the City, or receiving funds from the City, do not engage in unlawful discriminatory employment practices prohibited by State and Federal law. Such employment practices include, but are not limited to unlawful discrimination in the following: employment, promotion or upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rate of pay or other forms of compensation, and selection for training, including apprenticeship. Contractors are required to provide a completed *Work Force Report (WFR)*.

CONTRACTOR IDENTIFICATION

Type of Contractor: Construction Vendor/Supplier Financial Institution Lessee/Lessor
 Consultant Grant Recipient Insurance Company Other

Name of Company: Boyle Engineering Corporation

AKA/DBA: _____

Address (Corporate Headquarters, where applicable): 1501 Quail Street

City Newport Beach County San Diego State CA Zip 92660

Telephone Number: (949) 476-3300 FAX Number: (949) 721-7141 Name of Company CEO: Phillip V. Petrocelli

Address (es), phone and fax number(s) of company facilities located in San Diego County (if different from above):

Address: 7807 Convoy Ct, Suite 200

City San Diego County San Diego State CA Zip 92111

Telephone Number: (858) 268-8080 FAX Number: (858) 292-7432

Type of Business: Civil Engineering Type of License: N/A

The Company has appointed: Clark Fernon, PE

as its Equal Employment Opportunity Officer (EEOO). The EEOO has been given authority to establish, disseminate, and enforce equal employment and affirmative action policies of this company. The EEOO may be contacted at:

Address: 7807 Convoy Court, Suite 200, San Diego, CA 92111

Telephone Number: (858) 268-8080 FAX Number: (858) 292-7432

- One San Diego County (or Most Local County) Work Force - Mandatory
- Branch Work Force *
- Managing Office Work Force

Check the box above that applies to this WFR.

**Submit a separate Work Force Report for all participating branches. Combine WFRs if more than one branch per county.*

I, the undersigned representative of Boyle Engineering Corporation

(Firm Name)

San Diego, California hereby certify that information, provided
(County) (State)

herein, is true and correct. This document was executed on this 2nd day of July 2008.

(Authorized Signature)

E.R. Clark Fernon
(Print Authorized Signature)

INSTRUCTIONS: For each occupational category, indicate number of males and females in every ethnic group. Total columns in row provided. Sum of all totals should be equal to your total work force. Include all those employed by your company on either a full or part-time basis. The following groups are to be included in ethnic categories listed in columns below:

- (1) Black, African-American
- (2) Hispanic, Latino, Mexican-American, Puerto Rican
- (3) Asian, Pacific Islander
- (4) American Indian, Eskimo
- (5) Filipino
- (6) White, Caucasian
- (7) Other ethnicity; not falling into other groups

OCCUPATIONAL CATEGORY	(1) Black		(2) Hispanic		(3) Asian		(4) American Indian		(5) Filipino		(6) White		(7) Other Ethnicities	
	(M)	(F)	(M)	(F)	(M)	(F)	(M)	(F)	(M)	(F)	(M)	(F)	(M)	(F)
Management & Financial					1						2			
Professional												2		
A&E, Science, Computer	1		1	1	1	3					18	5		
Technical			3						1		11	2		
Sales														
Administrative Support											1	5		
Services														
Crafts														
Operative Workers														
Transportation														
Laborers*														

*Construction laborers and other field employees are not to be included on this page

Totals Each Column	1		4	1	2	3			1		32	14		
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Grand Total All Employees 58

Non-Profit Organizations Only:

Board of Directors														
Volunteers														
Artists														

000011 REQUEST FOR COUNCIL ACTION CITY OF SAN DIEGO		1. CERTIFICATE NUMBER (FOR AUDITOR'S USE) 50 N/A 02/03					
TO: CITY ATTORNEY	2. FROM (ORIGINATING DEPARTMENT): ENGINEERING & CAPITAL PROJECTS	3. DATE: October 14, 2008					
4. SUBJECT: FIRST AMENDMENT TO THE AGREEMENT WITH BOYLE ENGINEERING CORPORATION FOR OTAY SECOND PIPELINE IMPROVEMENTS- NORTH ENCANTO REPLACEMENT							
5. PRIMARY CONTACT (NAME, PHONE & MAIL STA.): Darren Greenhalgh, (619) 533-6600 MS 908A		6. SECONDARY CONTACT (NAME, PHONE & MAIL STA.): Hossein Azar, (619) 533-4102 MS 908A					
7. CHECK BOX IF REPORT TO COUNCIL IS ATTACHED <input type="checkbox"/>							
8. COMPLETE FOR ACCOUNTING PURPOSES							
FUND	41500	9. ADDITIONAL INFORMATION / ESTIMATED COST: Agreement with Boyle Engineering Original Agreement \$520,935.00 1 st Amendment \$0.00 Total This Request \$0.00 TOTAL CONTRACT COST \$520,935.00					
DEPT.	760						
ORGANIZATION	391020						
OBJECT ACCOUNT	4118						
JOB ORDER	186990						
C.I.P. NUMBER	73-286.0 / 73-286.8						
AMOUNT	\$0.00						
10. ROUTING AND APPROVALS							
ROUTE (#)	APPROVING AUTHORITY	APPROVAL SIGNATURE	DATE SIGNED	ROUTE (#)	APPROVING AUTHORITY	APPROVAL SIGNATURE	DATE SIGNED
1	ENGINEERING & CAPITAL PROJECTS	<i>[Signature]</i>	11/24/08	9	COO	- Not required -	1/9/09
2	WATER DEPARTMENT	APPROVAL SIGNATURES		10	CITY ATTORNEY	<i>[Signature]</i>	1/10/09
3	EAS	ON FILE		11	PURCHASING	<i>[Signature]</i>	1/15/09
4	EOC			12	ORIGINATING DEPARTMENT	<i>[Signature]</i>	1/29/09
5	LIAISON OFFICE		12/8/08				
6	CIP/FM	<i>[Signature]</i>	1/7/09				
7	COMPTROLLER	<i>[Signature]</i>	1/8/09	✓			
8	DEPUTY CHIEF	<i>[Signature]</i>	1/9/09				
		DOCKET COORD: _____				COUNCIL LIAISON: <i>[Signature]</i> 1/22/09	
		COUNCIL PRESIDENT <input type="checkbox"/> SPOB <input type="checkbox"/> <input checked="" type="checkbox"/> CONSENT <input type="checkbox"/> ADOPTION				COUNCIL DATE: 2-3-09	
		<i>[Signature]</i> <input type="checkbox"/> REFER TO: _____					
11. PREPARATION OF: <input type="checkbox"/> RESOLUTION(S) <input checked="" type="checkbox"/> ORDINANCE(S) <input type="checkbox"/> AGREEMENT(S) <input type="checkbox"/> DEED(S)							
1. Authorize the Mayor or his designee to execute a First Amendment to the Agreement with Boyle Engineering Corporation for the purpose of extending a construction consultant contract for an additional year with no increase in cost in CIP 73-286.0, Otay Second Pipeline – North Encanto Replacement, Fund 41500, Water.							
11A. STAFF RECOMMENDATIONS: Adopt the Ordinance							
12. SPECIAL CONDITIONS:							
<u>COUNCIL DISTRICT(S):</u>		4(YOUNG)					
<u>COMMUNITY AREA(S):</u>		NORTH ENCANTO					
<u>CITY CLERK INSTRUCTIONS:</u>		Upon execution of the agreement, please return a copy of the 1472 and ordinances to Joanne Ferrer, (619) 533-6672, MS 908A. This item requires 6 votes for approval.					
<u>ENVIRONMENTAL IMPACT:</u>		" This activity is statutorily exempt from CEQA pursuant to State CEQA Guidelines, Section §15262. This activity is covered under the Otay II Pipeline Improvements Project (LDR 42-0955) Environmental Impact Report. This activity is adequately addressed in the environmental document and there is no change in circumstance, additional information, or project changes to warrant additional environmental review."					
<u>CHARTER REQUIREMENTS:</u>		In accordance with Charter Section 99, this ordinance must be adopted by a 2/3 majority vote by Council after holding a public hearing which will be noticed in the newspaper at least 10 days in advance.					
<u>ATTACHMENTS:</u>		(4) Original signed Agreement, Amendment No.1 Agreement, Project Cost Estimate					

000013

EXECUTIVE SUMMARY SHEET
CITY OF SAN DIEGO

DATE ISSUED: October 14, 2008 REPORT NO: N/A
ATTENTION: Council President and City Council
ORIGINATING DEPARTMENT: Engineering & Capital Projects Department, Architectural
Engineering & Park Division
SUBJECT: First Amendment to the Agreement with Boyle Engineering
Corporation for Otay Second Pipeline Improvements – North
Encanto Replacement
COUNCIL DISTRICT(S): 4 (Young)
CONTACT/PHONE NUMBER: Darren Greenhalgh - (619) 533-5019
Hossein Azar – (619) 533-4102
John Stohr – (619) 533-6626

REQUESTED ACTION:

Authorize to execute a no cost, one year, time extension to the Agreement with Boyle Engineering Corporation for continued consultant construction services for the Otay Second Pipeline Improvements- North Encanto Replacement Project.

STAFF RECOMMENDATION:

Adopt the Ordinance

EXECUTIVE SUMMARY:

The City's financial issues in recent years caused a 2 to 3 year delay in the construction of many projects including this one. While the Consultant Agreement for Design & Construction Services was for five years, the time has now expired. A one year time extension and continued use of the original design consultant is the most cost effective way to complete the remaining months of construction and prepare record drawings.

The Otay II Pipeline constructed in 1929, conveys water 19 miles between the Otay Water Treatment Plant and University Heights Reservoir. One Environmental Impact Report (EIR) covered the 19 mile long, 36 inch diameter water transmission pipeline. The EIR identified 8 projects to complete a variety of deficiencies found in the 79 year old pipeline. The North Encanto Replacement Project is one of the eight projects and will realign one mile of the existing 36 inch pipe. The new 42 inch welded steel pipe is being constructed in the public street right-of-way.

The Otay II Pipeline is a critical backbone for the water transmission system and has the capacity to convey 20 million gallons of water per day north or south between the Alvarado and Otay Water Treatment Plants service areas. This project also includes installation of curb ramps, and asphalt pavement overlay or slurry seal of Brooklyn, Otay and 60th Streets. The continued participation by Boyle Engineering Corporation during the remainder of the construction phase is essential to the overall project success.

000014

FISCAL CONSIDERATIONS:

The total cost of \$520,935.00 for construction consultant services with Boyle Engineering Corporation will not increase with this amendment.

PREVIOUS COUNCIL and/or COMMITTEE ACTION:

City Council Resolution R298463, dated September 29, 2003, approved the Consultant Agreement with Boyle Engineering Corporation.

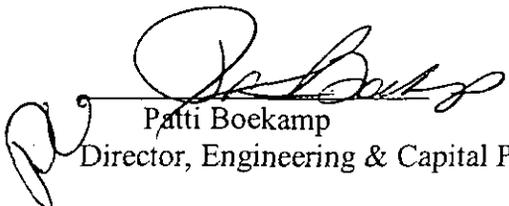
Council Resolution R303310, dated January 18, 2008, provided authorization for the projects advertisement, bid and award. T. C. Construction Inc., located in Lakeside is the responsive and responsible low bid contractor.

COMMUNITY PARTICIPATION AND PUBLIC OUTREACH EFFORTS:

Community outreach occurred during the design and start of construction phases. The CIP hotline is regularly maintained to answer any questions and provide information to the public. Door hangers, fact sheets, and updates to the City of San Diego Web site are also included in the plan for community outreach.

KEY STAKEHOLDERS AND PROJECTED IMPACTS:

Key stakeholders are rate payers who receive water from the Otay II Pipeline, design consultant Boyle Engineering, and construction contractor TC Construction Company.


Patti Boekamp
Director, Engineering & Capital Projects


David Jarrell
Deputy Chief of Public Works

000015

PROJECT COST ESTIMATE

First Amendment to the Agreement
with Boyle Engineering Corporation
for Otay 2nd Pipeline Improvement -
North Encanto Replacement
(Project Title)

Agreement X
Advertise _____
Award _____

Prepared by: James Xiaowu Chen
Date: October 3, 2008
W.O. No. 186990

ACTIVITY	CIP NO. OR OTHER SOURCE OF FUNDS			TOTALS	% OF E
	FY08 Phase 1	FY09 Phase 2	TOTALS		
A. Engineering					
4114 Pre-Engineering	\$283,123.45		\$283,123.45		
4115 Outside Engineering - Tasks	\$125,000.00		\$125,000.00		
4116 Construction Engineering	\$294,635.55	\$244,261.00	\$538,896.55		
4118 Engineering Design	\$520,935.00		\$520,935.00		
4151 Professional Services			\$0.00		
4222 Misc Contractual Services	\$75,000.00		\$75,000.00		
4240 Reimbursement Agreements			\$0.00		
TOTAL ENGINEERING	\$1,298,694.00	\$244,261.00	\$1,542,955.00	\$1,542,955.00	24.4%
B. Construction					
4150 Safety			\$0.00		
4220 Construction Contract	\$3,252,000.00	\$1,449,358.00	\$4,701,358.00		
42201 Construction Contract #2			\$0.00		
42220 JOC			\$0.00		
4226 City Forces Work	\$40,000.00	\$40,000.00	\$80,000.00		
4811 SDDPC Support			\$0.00		
TOTAL CONSTRUCTION	\$3,292,000.00	\$1,489,358.00	\$4,781,358.00	\$4,781,358.00	75.6%
C. Equipments & Furnishings					
3298 Unclassified M&S Purchases					
4922 Construction Related				\$0.00	0.0%
TOTAL ENGINEERING				\$0.00	0.0%
D. Contingencies					
4905 Contingencies	\$162,600.00	\$230,900.00	\$393,500.00	\$393,500.00	
4909 Pooled Contingencies	(\$162,600.00)	(\$230,900.00)	(\$393,500.00)	(\$393,500.00)	
TOTAL CONTINGENCIES	\$0.00	\$0.00	\$0.00	\$0.00	0.0%
E. Subtotal	\$4,590,694.00 #	\$1,733,619.00 #	\$6,324,313.00	\$6,324,313.00	100.0%
F. Equipment & Furnishings					
4922 By Benefiting Dept.					
G. Other Funding					
4279 Other Non-Personnel					
H. TOTAL PROJECT COST	\$4,590,694.00	\$1,733,619.00	\$6,324,313.00	\$6,324,313.00	

(When Applicable) SAVINGS BY USE OF CITY FORCES	
City Forces	Contract
Labor	
Material	
Equip.	
Profit	
TOTAL	

Prev. Auth. Res. #	R-298463	\$717,512.00
Prev. Auth. Res. #	R-303310	\$9,255,864.00
Prev. Auth. Res. #		
Prev. Auth. Res. #		
Total Previous Authorized		\$9,973,376.00 *
TOTAL EXCESS AUTHORIZED		\$3,649,063.00

FUNDING:	<u>41500</u>
CIP NO. [73-286.0]	<u>73-286.0/73-286.8</u>
Programmed	_____
Uncom. Balance	_____

COMMENTS: This First Amendment is a no cost time extension to the agreement with Boyle Engineering Corporation for design & construction services related to the Otay Second Pipeline Improvements- North Encanto Replacement project. ****Note: Pooled contingency of \$393,500.00 is not included in the total project cost and the total excess authorized is \$3,255,563.00.**

000017

ORDINANCE NUMBER O-_____ (NEW SERIES)

DATE OF FINAL PASSAGE _____

AN ORDINANCE OF THE COUNCIL OF THE CITY OF SAN DIEGO APPROVING THE FIRST AMENDMENT TO THE AGREEMENT WITH BOYLE ENGINEERING CORPORATION FOR OTAY SECOND PIPELINE IMPROVEMENTS – NORTH ENCANTO REPLACEMENT PROJECT.

WHEREAS, authorizing to execute a no cost, a one year, time extension to the Agreement with Boyle Engineering Corporation for continued consultant construction services for the Otay Second Pipeline Improvements – North Encanto Replacement Project; and

WHEREAS, the City approved the Consultant Agreement with Boyle Engineering Corporation, dated September 29, 2003, City Council Resolution No. R-298463; and

WHEREAS, the City’s financial issues in recent years caused a two to three year delay in the construction of many projects, including this project; and

WHEREAS, while the Consultant Agreement for Design and Construction Services were for five years, the time has now expired; and

WHEREAS, a one year time extension and continued use of the original design consultant is needed to complete the remaining months of construction and prepare record drawings; NOW, THEREFORE,

BE IT ORDAINED, by the Council of the City of San Diego, as follows:

Section 1. That the Mayor, be and he is hereby authorized and empowered to execute, for and on behalf of said City, to execute a first amendment to the Agreement with Boyle Engineering Corporation for construction support services of Otay Second Pipeline

000018

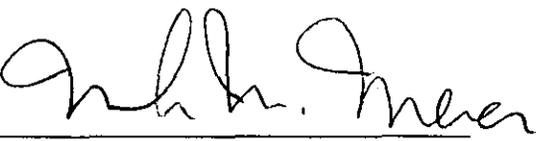
Improvements – North Encanto Replacement Project under the terms and conditions set forth in the Agreement on file in the office of the City Clerk as Document No. OO- _____.

Section 2. That this activity is not subject to the California Environmental Quality Act [CEQA] pursuant to State CEQA Guidelines, section 15378(c). This activity is subsequent discretionary approval covered under the Otay II Pipeline Improvements Project LDR No. 42-0955, Environmental Impact Report [EIR]. This activity is adequately addressed in the environmental document and there is no change in circumstance, additional information, or project changes to warrant additional environmental review pursuant to CEQA Guidelines section 15177.

Section 3. That a full reading of this ordinance is dispensed with prior to its final passage, a written or printed copy having been available to the City Council and the public a day prior to its final passage.

Section 4. That this ordinance shall take effect and be in force on the thirtieth day from and after its final passage.

APPROVED: JAN I. GOLDSMITH, City Attorney

By 
Mark M. Mercer
Deputy City Attorney

MMM:nda
12/09/08
Or.Dept:E&CP
O-2009-85

I hereby certify that the foregoing Ordinance was passed by the Council of the City of San Diego, at this meeting of _____.

ELIZABETH S. MALAND
City Clerk

By _____
Deputy City Clerk

Approved: _____
(date)

JERRY SANDERS, Mayor

Vetoed: _____
(date)

JERRY SANDERS, Mayor

**FIRST AMENDMENT TO CONSULTANT AGREEMENT WITH BOYLE
ENGINEERING CORPORATION FOR OTAY SECOND PIPELINE IMPROVEMENTS
– NORTH ENCANTO REPLACEMENT**

This First Amendment to the *Consultant Agreement with Boyle Engineering Corporation for Otay Second Pipeline Improvements – North Encanto Replacement* dated *October 13, 2003* [Agreement], is hereby entered into by and between the City of San Diego [City], a municipal corporation, and *Boyle Engineering Corporation* [Consultant].

RECITALS

A. The City and Consultant [collectively referenced herein as the “Parties”] entered into the Agreement, which is on file in the Office of the City Clerk as Document No. RR-298463, to provide *design and construction support service* for *Otay Second Pipeline Improvements – North Encanto Replacement* [Project].

B. The City desires to execute a First Amendment to the Agreement for the Consultant to provide additional time to perform the Agreement, as indicated in the amended Time Schedule [Exhibit D-1]. No additional compensation will be provided with this Amendment.

C. Consultant desires to provide the services required under this First Amendment.

NOW, THEREFORE, in consideration of the Recitals stated above and incorporated herein by this reference and the mutual obligations of the Parties expressed herein, the Parties agree to modify the Agreement, which is incorporated herein by reference, as follows:

1. That Section 1.1 be deleted in its entirety and replaced with the following:

“The Consultant shall perform Professional Services as set forth in the written Scope of Services [Exhibit A] at the direction of the City on a fixed fee basis as specifically enumerated in the Compensation Schedule [Exhibit B] and Fee Schedule [Exhibit C], and in accordance to the Time Schedule [Exhibit D-1].”

2. That Section 2.1 be deleted in its entirety and replaced with the following:

2.1 Term of Agreement. This Agreement shall be effective on the date it is executed by the last Party to sign the Agreement, and approved by the City Attorney in accordance with San Diego Charter Section 40. Unless otherwise terminated, it shall be effective until completion of the Scope of Services or **October 22, 2009** whichever is the earliest.

3. That Section 4.3 be deleted in its entirety and replaced with the following:

4.3 Insurance. The Design Professional shall not begin the Professional Services under this Agreement until it has: (a) obtained, and provided to the City, insurance certificates and endorsements reflecting evidence of all insurance required in Article IV, Section 4.3.1; however, the City reserves the right to request, and the Design Professional shall submit, copies of any policy upon reasonable request by the City; (b) obtained City approval of each company or companies as required by Article IV, Section 4.3.3; and (c) confirmed that all policies contain the specific provisions required in Article IV, Section 4.3.4. Design Professional's liabilities, including but not limited to Design Professional's indemnity obligations, under this Agreement, shall not be deemed limited in any way to the insurance coverage required herein. Except as provided for under California law, all policies of insurance required hereunder must provide that the City is entitled to thirty (30) days prior written notice (10 days for cancellation due to non-payment of premium) of cancellation or non-renewal of the policy or policies. Maintenance of specified insurance coverage is a material element of this Agreement and Design Professional's failure to maintain or renew coverage or to provide evidence of renewal during the term of this Agreement may be treated as a material breach of contract by the City.

Further, the Design Professional shall not modify any policy or endorsement thereto which increases the City's exposure to loss for the duration of this Agreement.

4.3.1 Types of Insurance. At all times during the term of this Agreement, the Design Professional shall maintain insurance coverage as follows:

4.3.1.1 Commercial General Liability. Commercial General Liability (CGL) Insurance written on an ISO Occurrence form CG 00 01 07 98 or an equivalent form providing coverage at least as broad which shall cover liability arising from any and all personal injury or property damage in the amount of \$1 million per occurrence and subject to an annual aggregate of \$2 million. There shall be no endorsement or modification of the CGL limiting the scope of coverage for either insured vs. insured claims or contractual liability. All defense costs shall be outside the limits of the policy.

4.3.1.2 Commercial Automobile Liability. For all of the Design Professional's automobiles including owned, hired and non-owned automobiles, the Design

Professional shall keep in full force and effect, automobile insurance written on an ISO form CA 00 01 12 90 or a later version of this form or an equivalent form providing coverage at least as broad for bodily injury and property damage for a combined single limit of \$1 million per occurrence. Insurance certificate shall reflect coverage for any automobile (any auto).

4.3.1.3 Workers' Compensation. For all of the Design Professional's employees who are subject to this Agreement and to the extent required by the applicable state or federal law, the Design Professional shall keep in full force and effect, a Workers' Compensation policy. That policy shall provide a minimum of \$1 million of employers' liability coverage, and the Design Professional shall provide an endorsement that the insurer waives the right of subrogation against the City and its respective elected officials, officers, employees, agents and representatives.

4.3.1.4 Architects & Engineers Professional Liability. For all of the Design Professional's employees who are subject to this Agreement, the Design Professional shall keep in full force and effect, Professional Liability coverage for professional liability with a limit of \$1 million per claim and \$2 million annual aggregate. The Design Professional shall ensure both that: (1) the policy retroactive date is on or before the date of commencement of the Project; and (2) the policy will be maintained in force for a period of three years after substantial completion of the Project or termination of this Agreement whichever occurs last. The Design Professional agrees that for the time period defined above, there will be no changes or endorsements to the policy that increase the City's exposure to loss.

4.3.2 Deductibles. All deductibles on any policy shall be the responsibility of the Design Professional and shall be disclosed to the City at the time the evidence of insurance is provided.

4.3.3 Acceptability of Insurers.

4.3.3.1 Except for the State Compensation Insurance Fund, all insurance required by this Contract or in the Special General Conditions shall only be carried by insurance companies with a rating of at least "A-, VI" by A.M. Best Company, that are authorized by the California Insurance Commissioner to do business in the State of California, and that have been approved by the City.

4.3.3.2 The City will accept insurance provided by non-admitted, "surplus lines" carriers only if the carrier is authorized to do business in the State of California and is included on the List of Eligible Surplus Lines Insurers (LESLI list). All policies of insurance carried by non-admitted carriers are subject to all of the requirements for policies of insurance provided by admitted carriers described herein.

4.3.4 Required Endorsements.

The following endorsements to the policies of insurance are required to be provided to the City before any work is initiated under this Agreement.

4.3.4.1 Commercial General Liability Insurance Endorsements.

ADDITIONAL INSURED. To the fullest extent allowed by law including but not limited to California Insurance Code Section 11580.04, the policy or policies must be endorsed to include as an Insured the City of San Diego and its respective elected officials, officers, employees, agents and representatives with respect to liability arising out of (a) ongoing operations performed by you or on your behalf, (b) your products, (c) your work, including but not limited to your completed operations performed by you or on your behalf, or (d) premises owned, leased, controlled or used by you.

PRIMARY AND NON-CONTRIBUTORY COVERAGE. The policy or policies must be endorsed to provide that the insurance afforded by the Commercial General Liability policy or policies is primary to any insurance or self-insurance of the City of San Diego and its elected officials, officers, employees, agents and representatives as respects operations of the Named Insured. Any insurance maintained by the City of San Diego and its elected officials, officers, employees, agents and representatives shall be in excess of Design Professional's insurance and shall not contribute to it.

4.3.4.2 Automobile Liability Insurance Endorsements

ADDITIONAL INSURED. To the fullest extent allowed by law including but not limited to California Insurance Code Section 11580.04, the policy or policies must be endorsed to include as an Insured the City of San Diego and its respective elected officials, officers, employees, agents and representatives with respect to liability arising out of automobiles owned, leased, hired or borrowed by or on behalf of the Design Professional.

4.3.4.3 Worker's Compensation and Employer's Liability Insurance Endorsements.

WAIVER OF SUBROGATION. The Worker's Compensation policy or policies must be endorsed to provide that the insurer will waive all rights of subrogation against the City and its respective elected officials, officers, employees, agents and representatives for losses paid under the terms of this policy or these policies which arise from work performed by the Named Insured for the City.

4.3.5 Reservation of Rights. The City reserves the right, from time to time, to review the Design Professional's insurance coverage, limits, deductible and self-insured retentions to determine if they are acceptable to the City. The City will reimburse the Design Professional for the cost of the additional premium for any coverage requested by the City in excess of that required by this Agreement without overhead, profit, or any other markup.

4.3.6 Additional Insurance. The Design Professional may obtain additional insurance not required by this Agreement.

4.3.7 Excess Insurance. All policies providing excess coverage to the City shall

follow the form of the primary policy or policies including but not limited to all endorsements.”

4. That Section 4.6 be deleted in its entirety and replace with the following:

“4.6 Non-Discrimination Requirements.

4.6.1 Compliance with the City's Equal Opportunity Contracting Program.

The Design Professional shall comply with the City's Equal Opportunity Contracting Program Design Professional Requirements (Exhibit D). The Design Professional shall not discriminate against any employee or applicant for employment on any basis prohibited by law. The Design Professional shall provide equal opportunity in all employment practices. The Design Professional shall ensure that its Subcontractors comply with the City's Equal Opportunity Contracting Program Design Professional Requirements. Nothing in this Section shall be interpreted to hold the Design Professional liable for any discriminatory practice of its Subcontractors.

4.6.2 Non-Discrimination Ordinance. The Design Professional shall not discriminate on the basis of race, gender, religion, national origin, ethnicity, sexual orientation, age, or disability in the solicitation, selection, hiring or treatment of Subcontractors, vendors or suppliers. The Design Professional shall provide equal opportunity for Subcontractors to participate in subcontracting opportunities. The Design Professional understands and agrees that violation of this clause shall be considered a material breach of the contract and may result in contract termination, debarment, or other sanctions. This language shall be in contracts between the Design Professional and any Subcontractors, vendors and suppliers.

4.6.3 Compliance Investigations. Upon the City's request, the Design Professional agrees to provide to the City, within sixty calendar days, a truthful and complete list of the names of all Subcontractors, vendors, and suppliers that the Design Professional has used in the past five years on any of its contracts that were undertaken within San Diego County, including the total dollar amount paid by the Design Professional for each subcontract or supply contract. The Design Professional further agrees to fully cooperate in any investigation conducted by the City pursuant to the City's Nondiscrimination in Contracting Ordinance (San Diego Municipal Code sections 22.3501-22.3517) The Design Professional understands and agrees that violation of this clause shall be considered a material breach of the contract and may result in remedies being ordered against the Design Professional up to and including contract termination, debarment, and other sanctions for violation of the provisions of the Nondiscrimination in Contracting Ordinance. The Design Professional further understands and agrees that the procedures, remedies and sanctions provided for in the Nondiscrimination Ordinance apply only to violations of said Nondiscrimination Ordinance.”

5. That Section 4.8 be deleted in its entirety and replaced with the following:

4.8 Title 24/Americans with Disabilities Act Requirements. Design Professional has sole responsibility for ensuring that all Project plans and other design services comply with all accessibility requirements under Title 24 of the California Code of Regulations, known as the California Building Code (Title 24), and under the Americans with Disabilities Act

Accessibility Guidelines (ADAAG) in effect at the time the designs are submitted to the City for review. When a conflict exists between Title 24 and ADAAG, the most restrictive requirement shall be followed by Design Professional (i.e., that which provides the most access). Design Professional warrants and certifies that any and all plans and specifications prepared for the City in accordance with this agreement shall meet all requirements under Title 24 and ADAAG. Design Professional understands that while the City will be reviewing Design Professional's designs for compliance in specific and certain areas under Title 24 and ADAAG prior to acceptance of Design Professional's designs, Design Professional understands and agrees that the City's access review process and its acceptance of Design Professional's designs in no way limits the Design Professional's obligations under this agreement to prepare designs that comply with all requirements under Title 24 and ADAAG."

6. That a new Section 4.18; ADA Certification, be added as follows:

4.18 ADA Certification. The Consultant hereby certifies that it agrees to comply with the City's Americans With Disabilities Act Compliance/City Contracts requirements set forth in Council Policy 100-04, adopted by San Diego Resolution R-282153 and incorporated into this Agreement by this reference.

7. That Article VI be deleted in its entirety and replaced with the following:

6.1 Indemnification. Other than in the performance of design professional services which shall be solely as addressed in Section 6.2 below, to the fullest extent permitted by law, Design Professional shall defend (with legal counsel reasonably acceptable to the City), indemnify and hold harmless the City and its officers, agents, departments, officials, and employees [Indemnified Parties] from and against all claims, losses, costs, damages, injuries (including, without limitation, injury to or death of an employee of Design Professional or its Subcontractors), expense and liability of every kind, nature and description (including, without limitation, incidental and consequential damages, court costs, attorney's fees, litigation expenses and fees of expert consultants or expert witnesses incurred in connection therewith and costs of investigation) that arise out of, pertain to, or relate to, directly or indirectly, in whole or in part, any services performed under this Agreement by the Design Professional, any Subcontractor, anyone directly or indirectly employed by them, or anyone that they control. The Design Professional's duty to defend, indemnify, protect and hold harmless shall not include any claims or liabilities arising from the active negligence, sole negligence or willful misconduct of the *Indemnified Parties*.

- 6.2 Design Professional Services Indemnification and Defense.**

6.2.1 Design Professional Services Indemnification. To the fullest extent permitted by law (including, without limitation, California Civil Code Section 2782.8), with respect to the performance of design professional services, Design Professional shall indemnify and hold harmless the City, its officers, or employees, from all claims, demands or liability that arise out of, pertain to or relate to the negligence, recklessness, or willful misconduct of Design Professional or Design Professional's officers or employees.

6.2.2 Design Professional Services Defense. Parties will work in good faith to procure applicable insurance coverage for the cost of any defense arising from all claims, demands or liability that arise out of, pertain to or relate to the negligence, recklessness, or willful misconduct of Design Professional or Design Professional's officers or employees.

6.3 Insurance. The provisions of this Article are not limited by the requirements of Section 4.3 related to insurance.

6.4 Enforcement Costs. The Design Professional agrees to pay any and all costs the City incurs enforcing the indemnity and defense provisions set forth in this Article."

8. That a new Section 8.20, San Diego's Strong Mayor Form of Governance, be added as follows:

8.20 San Diego's Strong Mayor Form of Governance. All references to 'City Manager' in this Agreement and all subsequent amendments thereto shall be deemed to refer to 'Mayor.' This section becomes effective on January 1, 2006 and shall remain in effect for the duration the City operates under the mayor-council (commonly referred to as 'strong mayor') form of governance pursuant to article XV of the City of San Diego City Charter.

9. The following attachment is incorporated herein by reference as follows: Exhibit D-1 (Time Schedule).

10. The Parties agree that this First Amendment to the Agreement represents the entire understanding of the Consultant and the City and affects only those paragraphs referred to, and all other terms and conditions of the Agreement remain in full force and effect.

IN WITNESS WHEREOF, this First Amendment to the *Consultant Agreement with Boyle Engineering Corporation for Otay Second Pipeline Improvements – North Encanto Replacement* is executed by the City of San Diego acting by and through its Mayor, or his designee, pursuant to Ordinance No. _____, authorizing such execution, and by Consultant.

THE CITY OF SAN DIEGO
Mayor or Designee

By: _____
Downs Prior
Principal Contract Specialist
Purchasing & Contracting Department

Boyle Engineering Corporation

By: *F.R. Clark Fernon*
Name: F.R. CLARK FERNON
Title: MANAGING ENGINEER
Date: 11/3/08

I HEREBY APPROVE the form and legality of the foregoing Amendment on this _____ day of _____, 2008.

Jan I. Goldsmith, City Attorney

By: _____
Mark M. Mercer
Deputy City Attorney

000029

EXHIBIT D-1

TIME SCHEDULE

Duration of the agreement is extended Twelve (12) months for a total of 6 years and expires October 22, 2009.