

City of Piedmont  
COUNCIL AGENDA REPORT

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DATE: May 2, 2005  
FROM: Ann Swift, City Clerk  
SUBJECT: **Piedmont Hills Underground Assessment District**

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**RECOMMENDATION**

By motion, adopt and approve the following items:

1. Revised Boundary Map
2. Preliminary Expense Agreement
2. Agreement with Harris & Associates as Engineer of Work
3. Resolution of Intention to form the Piedmont Hills Underground Assessment District
4. Agreement for legal services with Orrick, Herrington & Sutcliffe

**BACKGROUND**

Property owners in the Piedmont Hills Underground Assessment District provided valid petitions to form a utility undergrounding district and have provided the city with a preliminary boundary map which was approved on November 3, 2003.

The next steps in the process of developing this undergrounding assessment district include:

1. Approval of a Revised Boundary Map based on decisions made April 4, 2005
2. Approval of a Preliminary Expense Agreement for funds raised by the proponents which will pay for engineering costs prior to issuance of bonds
3. Approval of an agreement between the city and Harris & Associates as Engineer of Work
4. Approval of a Resolution of Intention to engage in the process of forming the district.
5. Approval of an agreement with Orrick, Herrington & Sutcliffe as legal counsel.

It is the city council's policy that preliminary engineering expenses for underground assessment districts should not be a cost to the General Fund and that proponents must place on deposit with the city sufficient monies to cover such expenses. It is understood by the proponents that such funds are "at risk" if for any reason the district is not formed and bonds not issued to repay the preliminary deposits.

The breakdown of preliminary costs for Piedmont Hills Underground Assessment District is:

Harris & Associates	\$226,165
SBC	\$ 16,876
Arborist Expense	\$ 2,500
Contingency	<u>\$ 4,867</u>
Total	\$250,408

The \$25,000 cost for preliminary engineering by P.G. E. will be deducted from the city's Rule 20A funds as previously approved by the city council. The Piedmont Hills Underground Assessment District proponents have raised \$250,408 which they are willing to advance to the city for payment of these costs. Council will need to approve the attached Preliminary Expense Agreement in order to accept these funds.

Attached is a resolution which would appoint Harris & Associates as the "Engineer of Work" for the Piedmont Hills Underground Assessment District and which would approve an agreement for services in the amount of \$226,165. This agreement includes both "pre-ballot" costs of \$123,480 and costs for creation of bid documents and other services totaling \$102,685.

Council must also pass a Resolution of Intention which is attached. This resolution provides the legal basis for the Engineer of Work to consult with P.G. & E. and SBC regarding construction details and paves the way for the formulation of individual assessment costs. When the engineering and design are completed, the Engineer of Work will return to the city council for a public meeting to present their formula for individual assessments. It is likely that the engineering period will take from three to six months. No information regarding individual assessments will be available until that time.

Also attached for council consideration is an agreement with Orrick, Herrington & Sutcliffe as bond counsel for the district. As has been the case in the past, the services of Mr. Sam Sperry are essential to the smooth processing of district legal matters.

It should be noted that **all of the actions scheduled at this meeting are preliminary** and do not commit the council to the creation of this project. Further steps to consider and approve individual assessments, schedule a ballot by the residents of the proposed district and, finally, to hold a public hearing to create the district and levy assessments will all occur in the future.

RESOLUTION NO.

RESOLUTION APPROVING REVISED BOUNDARY MAP

Proposed Piedmont Hills Underground Assessment District

WHEREAS, on November 3, 2003, there was filed with the Alameda County Recorder a boundary map entitled “Proposed Boundaries of the Piedmont Hills Underground Assessment District, City of Piedmont, County of Alameda, State of California” (the “Proposed Assessment District”), which map shows the area to be assessed in the Proposed Assessment District; and

WHEREAS, based on public comments at regular meetings of the Piedmont City Council on January 18, 2005, April 4, 2005, and May 2, 2005, where no objections were filed relating to the amended boundaries of the district, the City Council wishes to revise said map as the map of the proposed boundaries (the “Boundary Map”) of the Proposed Assessment District and has prepared a Revised Boundary Map of the Piedmont Hills Underground Assessment District;

NOW, THEREFORE, THE CITY COUNCIL HEREBY FINDS, DETERMINES AND RESOLVES as follows:

1. This City Council approves the Revised Boundary Map and adopts the boundaries shown on the Revised Boundary Map as describing the extent of the territory included in a proposed assessment district to be known as the Piedmont Hills Underground Assessment District, City of Piedmont, County of Alameda, State of California.

2. This City Council finds and determines that the Revised Boundary Map contains the matters and is in the form prescribed by Section 3110 of the California Streets and Highways Code.

3. This City Council directs the City Clerk to certify the adoption of this resolution on the face of the Revised Boundary Map and to file a copy of the Revised Boundary Map with the Alameda County Recorder for placement in the Book of Maps of Assessment and Community Facilities Districts

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## **PRELIMINARY EXPENSE AGREEMENT**

### **City of Piedmont Piedmont Hills Underground Assessment District**

#### **Recitals**

- A. The parties to this Preliminary Expense Agreement (“this Agreement”) are the City of Piedmont, a California charter city (the “City”), and the undersigned Proponents of the Piedmont Hills Underground Assessment District (“the Proponents”) who are residents of the proposed district, working with other residents of the streets to be undergrounded in connection with the Piedmont Hills Underground Assessment District.
- B. The Piedmont City Council has or is expected to approve a resolution of intent to form the Proposed District.
- C. Certain of the residents of the Proposed District have executed written commitments to deposit funds or have already contributed funds toward the Preliminary Expenses for the Proposed District, which Preliminary Expenses include the preliminary engineering work to be performed by the Engineer of Work, Harris and Associates, in the amount of \$226,165; engineering fees by SBC in the amount of \$16,876; and one-half (1/2) of the estimated \$5,000 cost of an arborist to evaluate potential tree damage caused by trenching work on the Proposed District as required by city code or \$2,500; and a 5% contingency in the amount of \$4,867. It is agreed that the total estimated Preliminary Expenses for the Proposed District will be \$250,408.
- D. Various residents owning parcels within the Proposed District have advanced, or will advance, the total sum of \$250,408, to fund the Preliminary Expenses incurred prior to the issuance of bonds to provide funding for the Proposed District. The total of \$250,408 shall be deposited into a special fund established and maintained by the City known as the Central Piedmont Underground Assessment District Preliminary Expense Fund (“the Preliminary Expense Fund”). If and when the sum of \$250,408 is fully deposited into the Preliminary Expense Fund by the residents, the City shall then commit the amount of \$25,000.00 from its allocated 20A funds to apply to the engineering expenses of Pacific Gas & Electric for the Proposed District. These funds are to be used by the City to pay the duly submitted invoices of the Engineer of Work, Harris and Associates, Inc., and SBC, for engineering work that must be undertaken prior to the formation and funding of the Proposed District, as well as one-half (1/2) of the cost of an arborist.
- E. Harris and Associates has notified the City that its engineering fees that will be invoiced to the City prior to balloting shall not exceed \$123,480 and that total costs prior to the formation and funding of the Proposed District will not exceed the sum of \$102,685.
- F. Pacific Gas & Electric has notified the City that its engineering fees for the Proposed District will be \$25,000.00 and SBC has notified the City that its engineering fees for the Proposed District will be \$16,876.00.
- G. The purpose of this Agreement is to provide for payment of any expenses that are incurred prior to the formation and funding of the Proposed District by creation of the Preliminary Expense Fund.

In consideration of the mutual undertakings stated herein, the parties agree as follows:

### **Agreement**

1. The foregoing recitals are true and correct, and the parties expressly so acknowledge.
2. The Proponents shall deposit into the Preliminary Expense Fund with the City for any expenses that are necessarily incurred and paid by the City prior to the formation and funding of the Proposed District the sum of \$250,408, which is agreed between the Proponents and the City to be an amount reasonably expected to cover the anticipated Preliminary Expenses, except for the engineering fees of Pacific Gas & Electric.
3. At such time as the full amount of \$250,408 has been deposited in the Preliminary Expense Fund by the Proponents, the City shall commit the amount of \$25,000.00 from its allocated 20A funds to apply to the engineering expenses of Pacific Gas & Electric for the Proposed District.
4. City shall be responsible for making payment of the Preliminary Expenses based on reasonably detailed bills submitted to the City out of the Preliminary Expense Fund, provided that such bills shall be approved by the City Clerk, Public Works Director and two or more representatives appointed by the Steering Committee of the district.
5. If for any reason all of the monies in the Preliminary Expense Fund are expended, and there are still additional Preliminary Expenses anticipated (“the Anticipated Overage”) that are necessary to proceed further prior to the funding of the Proposed District by a bond issue, the Proponents and the City shall meet, review all of the facts then available, determine exactly how much shall be reasonably required to cover the Anticipated Overage, and Proponents shall be required to raise the additional monies necessary to cover the Anticipated Overage before any further work proceeds or any further monetary obligations are incurred relating to the Proposed District, which additional monies shall be deposited in the Preliminary Expense Fund.
6. If Proponents are unsuccessful in raising sufficient funds to cover the Anticipated Overage, all actions relating to the Proposed District shall cease.
7. If the Proposed District fails for any reason to be approved by the Piedmont City Council, any monies remaining in the Preliminary Expense Fund shall first be repaid to the City of Piedmont for preliminary engineering costs by P.G. & E. in the amount of \$25,000, then be refunded by City to the Proponents, and Proponents will reimburse those persons who originally contributed such monies pro rata based on the following: (a) First each person whose contribution exceeded \$2,000 shall be repaid such excess amount; and (b) any remaining reimbursement funds shall be allocated to persons based on

the percentage of their contribution to the total amount collected excluding the excess contributions in (a) above.

8. If the Proposed District proceeds successfully to the issuance of bonds to finance such Proposed District, the Proponents and residents making contributions shall be reimbursed for their contributions out of the bond proceeds.

CITY OF PIEDMONT

By \_\_\_\_\_  
Michael Bruck  
Mayor

Attest:

By \_\_\_\_\_  
Ann Swift,  
City Clerk

PROPONENTS:

_____	_____
_____	_____
_____	_____

5/2/05

RESOLUTION NO. \_\_\_\_

RESOLUTION OF INTENTION

Proposed Piedmont Hills Underground Assessment District

WHEREAS, under the authority of the Municipal Improvement Act of 1913 (Sections 10000 and following, California Streets and Highways Code; hereafter the “1913 Act”), this City Council intends to order public improvements consisting generally of the conversion of existing overhead and above-ground utility facilities to underground facilities, together with appurtenant work and improvements (the “Undergrounding Project”) within or immediately adjacent to the proposed boundaries of an assessment district to be known as the “Piedmont Hills Underground Assessment District, City of Piedmont, County of Alameda, State of California” (the “Proposed Assessment District”); and

WHEREAS, this City Council finds that the land specially benefited by the Undergrounding Project is the land shown within the proposed boundaries shown on the Revised Boundary Map approved by this City Council and on file with the City Clerk (the “Revised Boundary Map”); and

NOW, THEREFORE, THE CITY COUNCIL HEREBY FINDS, DETERMINES AND RESOLVES as follows:

1. As authorized by the 1913 Act, including the provisions of Sections 5896.1 through 5896.17, inclusive, of the Streets and Highways Code, as incorporated into the 1913 Act by



Section 10102.1 thereof, and Section 53753 of the California Government Code (“Section 53753”), this City Council intends to levy a special assessment upon designated portions of the land within the Proposed Assessment District in accordance with the special benefit to be received by each parcel of land, respectively, from the Undergrounding Project.

2. Where any disparity occurs in level or size between the work and improvements of the Undergrounding Project and private property, this City Council determines that it is in the public interest and more economical to eliminate the disparity by doing work on the private property instead of adjusting the work on public property. Accordingly, work may be done on private property for this purpose with the written consent of the landowner. Without limiting the generality of the foregoing sentence, this City Council intends to include within the authorized Undergrounding Project the work of installing underground on the private property of each requesting landowner the facilities to connect the residential improvements of such landowner to the newly-undergrounded utility improvements, on the conditions that (a) the estimated cost and expense of such parcel-specific work will be added to the assessment levied against that specific parcel and (b) the owner or owners of the specific parcel will consent thereto.

3. This City Council intends, pursuant to subparagraph (f) of Section 10204 of the 1913 Act, to provide for an annual assessment upon each of the parcels of land in the proposed assessment district to pay various costs and expenses incurred from time to time by the City of Piedmont (the “City”) and not otherwise reimbursed to the City which result from the administration and collection of assessment installments or from the administration or registration

of the improvement bonds and the various funds and accounts pertaining thereto, subject to the limitation on the amount of such annual assessment as shall be prescribed in the engineer's report to be prepared and considered by this City Council as prescribed by the 1913 Act and Section 53753.

4. Bonds representing unpaid assessments, and bearing interest at a rate not to exceed twelve percent (12%) per annum, will be issued in the manner provided by the Improvement Bond Act of 1915 (Division 10, Streets and Highways Code; hereafter the "1915 Act"), and the last installment of the bonds shall mature not to exceed twenty-four (24) years from the second day of September next succeeding twelve (12) months from their date.

5. The procedure for the collection of assessments and advance retirement of bonds shall be as provided in Part 11.1 of the 1915 Act.

6. Pursuant to Section 8769 of the 1915 Act, the City will not obligate itself to advance available funds from the City treasury to cure any deficiency which may occur in the bond redemption fund. A determination not to obligate itself shall not prevent the City from, in its sole discretion, so advancing funds.

7. This City Council appoints Harris & Associates as Engineer of Work for this project, and directs the preparation of the report containing the matters required by Section 10204 of the 1913 Act, as supplemented by Section 53753.

8. In the opinion of this City Council, the public interest will not be served by allowing owners of assessable lands to enter into a contract for the Undergrounding Project as otherwise permitted in Section 20485 of the Public Contract Code.

9. The amount of any surplus remaining in the improvement fund after completion of the Undergrounding Project and payment of all claims shall be distributed in accordance with the provisions of Section 10427.1 of the Streets and Highways Code.

\* \* \*

## AGREEMENT FOR LEGAL SERVICES

### **CITY OF PIEDMONT PIEDMONT HILLS UNDERGROUND ASSESSMENT DISTRICT**

This agreement for legal services (this “**Agreement**”) is by and between the City of Piedmont, hereinafter the “**City**”, and Orrick, Herrington & Sutcliffe LLP, Attorneys at Law, San Francisco, California, hereinafter “**Bond Counsel**”.

1. The City retains Bond Counsel as special counsel to perform the following legal services relating to the City’s proposed undergrounding assessment district which is preliminarily expected to encompass prescribed portions of Sotelo Avenue, Glen Alpine Road, Pacific Avenue, Sierra Avenue, Sheridan Avenue and Calvert Court, together with a small number of homes situated within the corporate limits of the City of Oakland (the “assessment district”), pertaining to special assessment proceedings and improvement bonds as follows:

(a) preparation of all forms of resolutions, notices, affidavits, and other documents required by the Municipal Improvement Act of 1913 and by Section 4 of Article XIID of the California Constitution, including the legal format of the engineer’s report required by Section 10204 of the Streets and Highways Code;

(b) coordination of proceedings with the City of Oakland (“**Oakland**”) to request consent pursuant to Section 10103 of the Streets and Highways Code with respect to the levy of assessments on those parcels within the assessment district which are situated within Oakland and performance of that portion of the undergrounding project work also situated within Oakland;

(c) preparation of written instructions to the City Clerk and other staff members concerning the performance of legally required duties

(d) review of documents prepared by the City’s consulting engineers, including boundary map, Engineer’s Report, assessment diagram, and assessment roll;

- (e) attendance at the public hearings on the engineer's report (including continuances of the hearings, if any);
- (f) attendance at all other public meetings of the City at which matters relating to the assessment district are considered, except routine matters;
- (g) attendance at staff meetings or meetings of property owners, upon the request of the City, after reasonable notice;
- (h) telephone consultation with staff members and property owners to answer legal questions about the assessment proceedings;
- (i) if requested, review of the notice inviting construction bids and the construction contract, if required, and review of contract bonds and insurance documents;
- (j) arrangements for the preparation of limited obligation improvement bonds to represent unpaid assessments;
- (k) coordination with the City's Underwriter on arrangements for the sale of improvement bonds;
- (l) preparation of bond delivery documents;
- (m) rendition of a legal opinion on the validity of the improvement bonds and the proceedings leading to their issuance; and
- (n) preparation of a transcript of the legal proceedings in loose-leaf form for the use of the City.

2. The services of Bond Counsel under this Agreement shall not include the following:

- (a) legal services in connection with the acquisition of interests in real property, either through negotiation or through exercise of the power of eminent domain;
- (b) legal services in connection with litigation;
- (c) legal services related to the utility undergrounding improvement project, including but not limited to (1) compliance with the California Environmental Quality Act, (2) preparation of plans, specifications, or bid documents, (3) procedures for solicitation of bids for the project or the preparation, award or administration of the contract or contracts for performance of the project work;

(d) legal services related to preparation of disclosure documents respecting the limited obligation improvement bonds, related to arbitrage rebate tracking and reporting, or related to compliance with the City's obligations, if any, respecting continuing disclosure under SEC Rule 15c(2)-12; or

(e) legal or other services related to the recording of the boundary map, the assessment diagram or the notice of assessment.

The performance by Bond Counsel of any service excluded by this paragraph, if required by the City, shall be under separate written agreement.

3. To enable Bond Counsel to perform the services enumerated in paragraph 1, the City will be required to provide, either directly or through the City's consulting engineer, the following:

(a) identification of the parcels to be assessed and the names and addresses of the owners of such parcels;

(b) mailing labels with the name and address of the owner of each parcel proposed to be assessed, cross-referenced to the assessment number assigned to such parcel on the assessment diagram;

(c) labels to be affixed to the notice of hearing and the notice of assessment to be mailed to the property owners, setting forth the amount of the proposed assessment, cross-referenced by assessment number;

(d) envelopes with a return address to the City or City Clerk for mailing notices to property owners, and first class postage on all such envelopes;

(e) a verbal description of the improvement project (typically from consulting engineer or Public Works);

(f) the assessment roll (sometimes referred to as the assessment spread), setting forth the name of the parcel owner and the amount of the assessment, cross-referenced by assessment number;

(g) the boundary map and the assessment diagram, conforming to the requirements of Sections 3110 and following, Streets and Highways Code, and in a form

acceptable to the Alameda County Recorder for map recording purposes, together with the services required to cause the recording of the same, together with a Notice of Assessment;

(h) the Engineer's Report, with contents specified by Section 10204 of the Streets and Highways Code and by Section 4 of Article XIID of the California Constitution, prepared by the assessment engineer who shall be a registered professional engineer licensed by the State of California; and

(i) the list of cash payments and unpaid assessments to be prepared (typically by the City finance officer) following the 30-day property owner cash payment period.

The City agrees to provide or cause to be provided each of the above in a timely manner to enable Bond Counsel to provide its services as prescribed in paragraph 1 of this Agreement.

4. In consideration of the services set forth in paragraph 1, the City shall pay to Bond Counsel, on account of legal fees and reimbursement of expenses, a flat amount of \$35,000.00. Payment of said amount shall be entirely contingent upon receipt by the City of either (a) proceeds of sale of the improvement bonds or (b) cash payments of assessments from property owners, and said amount shall be payable forthwith following such receipt upon presentation of an invoice by Bond Counsel.

Additional expenses for services arranged by Bond Counsel, such as publication costs and necessary printing, at the request of the City, shall be incurred directly for the account of, and shall be paid directly by, the City.

5. Bond Counsel certifies that it has no interest, either direct or contingent, in any property or contract arising from or affected by the assessment district, except as Bond Counsel under this Agreement; nor does Bond Counsel represent any owner of property within the proposed

boundaries of this assessment district, and has not received a fee from any source for services connected with the project.

Further, Bond Counsel regularly performs legal services for many private and public entities in connection with a wide variety of matters. Some of these clients may have some direct or indirect relationship with the City, as, for example, insurers, suppliers, lenders, investment bankers, consultants, pension plan trustees, landlords, donors, bondholders or competitors. With varied client representation, there is always the possibility of other transactions between clients and of disputes among them.

Bond Counsel has also served as bond counsel in financing by governmental entities that include states, counties, municipalities, special districts and other political subdivisions, as well as departments and agencies of the foregoing. Bond Counsel is now providing services for these clients and expects to continue to do so in the future. The City is aware of Bond Counsel's ongoing relationships with such entities and the other public and private entities described above. No conflict is currently perceived to exist from such representations. To the extent any actual conflict is perceived to arise from such relationships,

Bond Counsel will apprise the City of such conflict and, after reasonable review and consideration, the City will inform Bond Counsel whether it will waive such conflict.

Dated: July 7, 2003

**CITY OF PIEDMONT**

By \_\_\_\_\_



Michael Bruck  
Mayor

**ORRICK, HERRINGTON &  
SUTCLIFFE LLP**

By \_\_\_\_\_  
Samuel A. Sperry

**AGREEMENT  
REGARDING ENGINEERING SERVICES FOR THE  
PIEDMONT HILLS UTILITY UNDERGROUND ASSESSMENT DISTRICT**

THIS AGREEMENT, made and entered this \_\_\_ of \_\_\_\_\_, 2005, by and between the CITY OF PIEDMONT, a political subdivision of the State of California, hereinafter called "City," and HARRIS & ASSOCIATES, INC., hereinafter referred to as "Engineer,"

**RECITALS**

- A. The City has need of a Civil Engineer to provide services in connection with the formation and administration of a benefit assessment district and desires to satisfy that requirement by retaining a qualified independent contractor.
- B. Engineer has the skill, experience, ability, background, certification, and knowledge to serve as the District Engineer.
- C. The parties wish to contract for the Engineer to provide engineering services to the City as provided herein.

**AGREEMENT**

- 1. Scope of Work. Engineer shall provide those Services described in Exhibit 1.
- 2. Compensation for Services.
  - A. Compensation for Services through balloting and approval of a Resolution Ordering Assessments shall be for the not-to-exceed price of \$123,480, as more specifically set forth in the November 11, 2003 estimate of current costs prepared by Harris & Associates which is attached hereto and incorporated herein by reference.. In the event that the Engineer proposes extra work beyond the scope of work contained in this agreement, he shall make written application in the form of a change order prior to performing any work. Change orders shall require the approval of the Public Works Director and two or more representatives of the district.
  - B. Total Compensation for Services including preparation of bid documents and construction of the project shall be for the not-to-exceed price of \$226,165, as more specifically set forth in the November 11, 2003 estimate of current costs prepared by Harris & Associates which is attached hereto and incorporated herein by reference. In the event that the Engineer proposes extra work beyond the scope of work contained in this agreement, he shall make written application in

the form of a change order prior to performing any work. Change orders shall require the approval of the Public Works Director and two or more representatives of the district.

3. Engineer as Independent Contractor; Indemnity.

Engineer (including its agents and employees) is not an agent or employee of the City but is an independent contractor not subject to the direction and control of the City. Without limiting the foregoing, Engineer shall maintain complete control of its operations and personnel and shall be solely liable and responsible to pay all required salaries, wages, expenses, taxes and other obligations, including, but not limited to, withholding and Social Security. Engineer shall indemnify, defend and hold the City harmless from any such liability that it may incur to the Federal or State Governments as a consequence of this contract.

4. Audit of Books and Records.

City may, in its sole discretion, undertake an independent audit and/or evaluation of the Engineer's records and accounts of expenditures and activities of Engineer's performance under this Agreement of City's own expense. All such records shall be maintained for period of at least three years after the termination of this Agreement. Engineer shall furnish all items necessary in the City's discretion to complete said audit and/or evaluation subject to restrictions on confidentiality limited to expenditure or receipt of program funds, and program quality.

5. Insurance. Engineer shall maintain insurance as set forth below. City shall be added as an additional insured to all required insurance policies:

- A. Comprehensive General Liability: Combined single limit of \$1,000,000 for each single occurrence for bodily injury, personal injury and property damages; umbrella policy raising the limit to \$2,000,000.
- B. Comprehensive Automobile Liability: Combined single limit of \$1,000,000 for each single occurrence for bodily injury, personal injury and property damages; umbrella policy raising the limit to \$2,000,000.
- C. Engineers Professional Liability: Combined single limit of \$1,000,000 for each single occurrence for protection against claims alleging negligent acts, errors and omissions.
- D. Workers' Compensation Coverage: As required by the laws of the State of California.

- E. The insurance required under paragraphs A and B, above, shall be endorsed with language covering the City, its officials, officers, employees, agents and volunteers. Such coverage shall be primarily insurance to the City, its officials, officers, employees, agents and volunteers and shall act as though a separate policy had been written for each. Any failure to comply with the reporting requirements of the policies shall not affect coverage provided to the City, its officials, officers, employees, agents and volunteers.
- F. The insurance required by this Paragraph shall not be suspended, voided, canceled or reduced in coverage or in limits except after the City has received thirty days written notice.
- G. Evidence of compliance with the insurance and endorsement requirements of this Paragraph shall be subject to the approval of the City.

6. Ownership of Documents; Re-Use; Indemnity.

All plans, studies, documents and other writings prepared for and by Engineer, his officers, employees and agents and subcontractors in the course of performing the Services shall be the property of City and City shall have the sole right to use such materials in its discretion without further compensation to Engineer or to any other party. Engineer shall, upon request, provide such materials to City. Engineer may keep copies of all materials submitted to City. City acknowledges that the documents prepared pursuant to this Agreement are intended for use only in connection with the project described herein. Engineer makes no representation that said documents are suitable for re-use on any other project or any expansion of the original project. Any such re-use by City without specific written approval by Engineer shall be at City's sole risk. City shall indemnify and hold Engineer harmless from all claims, losses, damages and expenses, including attorneys fees that may arise from City's unauthorized re-use of said documents for another project or for any expansion of the Project.

7. Interest of Engineer.

Engineer covenants and represents that it does not have any economic interest, direct or indirect, in the area covered by this Agreement that would be affected in any manner or degree by the performance of the Services. Engineer further covenants and represents that in the performance of its duties, no person having any such interest shall perform any services under this Agreement. Engineer will comply with the City's Conflict of Interest Code.

8. Licenses.

Engineer represents and warrants to City that it has all licenses, permits, qualifications, insurance and approvals of whatsoever nature that are legally required of Engineer to practice his profession. Engineer represents and warrants to City that it shall, at its sole cost and expense, keep in effect or obtain at all times during the term of this Agreement, any licenses, permits, insurance and approvals that are legally required of Engineer to practice his profession.

9. Termination of Contract.

This Agreement may be terminated immediately by City for cause or by either party without cause upon 10 days written notice of termination to the other party. In the event of termination, Engineer shall deliver to the City copies of all finished and unfinished surveys, studies, documents, computer disks, and/or reports pertaining to the Services. Engineer shall be entitled to receive just and equitable compensation for any satisfactory work completed as determined by the City.

10. Stop Work Order.

City may at any time, by written notice to Engineer (“Stop Work Order”), require Engineer to stop or suspend performance of the Services, in whole or in part, for a period of up to ninety days after such notice is delivered to Engineer. Upon receipt of the Stop Work Order, Engineer shall immediately comply therewith and take all reasonable steps to minimize the incurrence of costs allocable to the Services covered by the Stop Work Order during the period of work stoppage. Within ninety days of the delivery of the Stop Work Order, or such later time as may be agreed to by the parties, City shall either cancel the Stop Work Order or terminate this Agreement as provided in Paragraph 9. Engineer shall resume work upon the cancellation of the Stop Work Order. To the extent that the Stop Work Order results in a documentable increase in the cost of performing the Services or the time required for such performance, Engineer shall receive an equitable adjustment in compensation.

11. Discrimination.

In the performance of the terms of this Agreement, Engineer shall not engage in nor permit others he may employ to engage in discrimination in the employment of such persons based on race, color, religion, sex, sexual preference, age, or handicapped conditions.

12. Mediation.

The parties will make a good faith attempt to resolve any disputes arising from this Agreement through mediation prior to initiating litigation. The parties shall mutually agree upon a mediator and shall share the costs of mediation equally. If the parties are

unable to agree upon a mediator, the dispute shall be submitted to the JAMS/ENDISPUTE (“JAMS”) or its successor in interest. JAMS shall provide the parties with the names of five qualified mediators. Each party shall have the option to strike two of the five mediators selected by JAMS and the mediator thereafter remaining shall hear the dispute.

13. Miscellaneous.

- A. Other Contract Provisions. Other contract provisions are set forth in Exhibit 1. To the extent that there are any inconsistencies with such Exhibit and the other portions of this Agreement, the latter shall prevail.
- B. Governing Law. This Agreement shall be governed by the laws of the State of California.
- C. Severability. If any provision of this Agreement is found to be invalid or unenforceable, the validity and enforceability of the remaining portions shall not be affected unless the effect thereof would materially change the economic burden on either party.
- D. Successors in Interest; Assignment. This Agreement shall be binding on the assigns and successors in interest to both parties. Neither party may assign their obligations under this Agreement without the written consent of the other party.
- E. Entire Agreement; Amendment. This Agreement represents the entire Agreement between the parties. This Agreement may only be amended in writing.

This Agreement includes the following Exhibits, which are attached hereto and incorporated herein by reference:

Exhibit 1      Scope of Work

IN WITNESS WHEREOF the parties hereto have caused their duly authorized representatives to execute this Agreement the day and year above written.

HARRIS & ASSOCIATES, INC.

CITY OF PIEDMONT

By: \_\_\_\_\_

By: \_\_\_\_\_  
Michael Bruck, Mayor

Approved as to form and legality:

By: \_\_\_\_\_  
George S. Peyton, Jr., City Attorney

Attest: \_\_\_\_\_  
Ann Swift, City Clerk

## EXHIBIT 1

### Piedmont Hills Underground Utility District Scope of Work

A. **Scope of Services Through Balloting** as set forth in Paragraph 2A of this agreement shall include:

1. District Definition and Assessment Engineering shall be performed pursuant to the “Proposal to Provide District Engineering Services” dated October 11, 2002, Items 1.1 through 1.7 which is attached hereto and incorporated herein by reference. These tasks include:
  - a. Attendance of kickoff meeting
  - b. Field review, research, and data collection
  - c. Preparation of a district methodology report to be reviewed with residents in the district prior to presentation to the City Council.
  - d. Development of Base Mapping Sheets
  - e. Development of Assessment Database
  - f. Finalization of Methodology including preparation of a Benefit Analysis and Method of Assessment Spread showing the total cost of proposed improvements and the per parcel assessments
  - g. Preparation of an Assessment Diagram and two mylar Boundary Maps
  
2. Design Development shall be performed pursuant to the “Proposal to Provide District Engineering Services” dated October 11, 2002, Items 2.1, 2.3 through 2.6, and 2.8 but specifically excluding Items 2.2 and 2.7 regarding preparation of bid documents, which is attached hereto and incorporated herein by reference. These tasks include:
  - a. Utility company design
  - b. Engineer’s opinion of probable cost
  - c. Preparation of draft Preliminary Engineer’s Report

- d. Attend up to three property owner meetings to present the assessment methodology and provide telephone consultation with City staff members, bidders, utility agency representatives and property owners to engineering questions about the assessment proceedings.

answer



B. **Scope of Services Through End of Contract** as set forth in Paragraph 2B of this Agreement shall include the following items performed pursuant to the “Proposal to Provide District Engineering Services” dated October 11, 2002, which is attached hereto and incorporated herein by reference :

1. Preparation of Bid Documents (Section 2.2), plans and contract documents for construction of the underground system including specific provisions for the use of “directional drilling” for installation of lateral conduits to households where hardscape, walls, tree roots or established landscaping may be damaged by open trenching techniques.
2. Finalization of Plans, Specifications and Estimates (Section 2.7),
3. Call for Construction Bids (Section 3.1),
4. Public Hearing (Section 3.4)
5. Final Engineer’s Report and Recordings (Section 4.1)

C. **Other Provisions**

1. The Engineer and the City Public Works Director shall confer with a “Residents’ Street Light Committee” for the selection of the street lights, their location and the specifics of illumination.

**Estimate of Project Costs**  
**City of Piedmont**

Rev 11/11/03

**Piedmont Hills Utility Underground District**

TASK	Project Manager	Financial Engineer	Project Engineer	Project Engineer	Project Engineer	Project Engineer	Project Engineer	Project Engineer	TOTAL HOURS	District-Side Costs	TOTAL DOLLARS
	\$180 Hrs	\$170 Hrs	\$105 Hrs	\$85 Hrs	\$80 Hrs	\$70 Hrs					
<b>Task 1 - District Definition</b>											
1.1 Project Setup											\$15,500
1.2 Kickoff Meeting	4	4							8		\$1,400
1.3 Field Review, Research and Data Collection	10		40						50		\$6,000
1.4 District Methodology Report	2	8		4					14		\$2,060
1.5 Develop Base Mapping Sheets	20		120		120				260	\$ 15,350.00	\$41,150
1.6 Develop Assessment Database		4		10					14		\$1,530
1.7 Finalize Methodology		4		4					8		\$1,020
1.8 Prepare and Record Boundary Map	8	4	20	4	20				56		\$6,160
<b>Task 2 -Design Development</b>											
2.1 Utility Company Design Period	40		40						80		\$11,400
2.2 Prepare Composite Joint Trench Plans and Bid Documents	80		200		200	20			500		\$52,800
2.3 Prepare Engineer's Opinion of Probable Costs	8		40		20	16			84		\$8,360
2.4 Prepare Draft Preliminary Engineer's Report & Diagram		20		4	20				44		\$5,340
2.5 Property Owner Meetings	40	20							60		\$10,600
2.6 Utility Company Review	26		40						66		\$8,880
2.7 Finalize Plans Specifications & Estimates	28		120		120	6			274		\$27,660
2.8 Finalize Preliminary Engineer's Report & Diagram		20		8					28		\$4,080
<b>Task 3 District Formation</b>											
3.1 Misc City Council and Staff Mtg	60	20									\$14,200
3.2 Call for Construction Bids	4								4		\$720
3.3 Resolution of Intention		4							4		\$680
3.4 45 Day Notice and Ballot Period		4		4					8		\$1,020
3.5 Public Hearing (includes ballot tabulation)	4	4		4					12		\$1,740
<b>Totals up to Assessment Confirmation and Bond Sale</b>									1,574		\$222,300
<b>Task 4 - Services After Public Hearing</b>											
4.1 Final Engineer's Report & Recordings		4		8					12		\$1,360
4.2 30 Day Cash Collection Period/Service Option Period		4		4					8	\$125	\$1,145
4.3 Bond Sale Assistance and First Year Levy		4		8					12		\$1,360
<b>Totals for Project</b>									1,606		\$226,165

**Design Assumptions**

- Existing City aerial will be used as background for plans with supplemental topo based on field survey. Plans to be at 1" =20'
- Fee is based on the following project limits as shown on the attached Prelim Bdry Map  
 District includes 9441LF of streets and 186 parcels.
- Fee includes preparation of individual schematic lot plot plans to be used by property owners for service conversions