

City of Piedmont  
CITY COUNCIL AGENDA REPORT

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DATE: September 5, 2017

TO: Mayor and Council

FROM: Paul Benoit, City Administrator

SUBJECT: Consideration of an Agreement with Fairbanks, Maslin, Maullin, Metz, & Associates for Community Input Gathering Regarding the Aquatics Center in an Amount Not to Exceed \$31,000 and an Appropriation from the Unappropriated General Fund Balance to Cover the Expense

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RECOMMENDATION

Approve an agreement with Fairbanks, Maslin, Maullin, Metz, & Associates for an opinion survey and related services concerning City resident opinions regarding the possible construction of a new aquatic facility as proposed in the adopted Aquatics Master Plan Conceptual Design and an appropriation from the unappropriated general fund balance to cover the expense.

BACKGROUND

At its meeting of July 3, 2017, the City Council established an ad hoc subcommittee from its membership, consisting of Councilmember Teddy King and Vice Mayor Bob McBain, to work with staff and subject-matter experts to make further progress on advancing a proposal for development of a new aquatics facility to replace the aging Piedmont Community Pool. The Council directed the sub-committee to develop comprehensive and thorough proposals, for how best to undertake the following agreed upon next-steps:

1. Complete a Comprehensive Examination of Potential Funding Mechanisms;
2. Develop Strategies for Public Outreach and Communication to Ensure a Thorough Understanding of the Proposal and it's Financial Implications on the Piedmont Community; and
3. Explore Options to Effectively Evaluate Community Interest and Support for a New Aquatics Facility (Polling).

On July 26, 2017, the subcommittee, along with Recreation Commission Chair Betsy Andersen and City Administrator Paul Benoit met with representatives of two public opinion, research and strategy firms: Fairbanks, Maslin, Maullin, Metz, & Associates (FM3) and Terris/Barnes/Walters. The meeting focused on how best to engage the community to understand the level of support there might be for constructing a new aquatic facility as proposed in the adopted Aquatics Master Plan Conceptual Design. A variety of approaches were discussed and,

at the meeting's conclusion, FM3 was invited to submit a scope and proposal for undertaking a research project to survey the Piedmont community.

As noted in the proposal accompanying the attached contract, FM3 would work in concert with the City to develop a questionnaire of approximately 40 individual questions that would be used to survey 300 to 400 Piedmont voters. In the sub-committee's meeting, Dan Metz, a principal with FM3, made a compelling case for conducting the survey prior to making public outreach efforts. Mr. Metz stated that it would be beneficial to understand how voters feel about issues on the basis of what they already know, and depending on survey results, to use the knowledge gained to guide the content and approach to any public education initiative.

Depending on the length of the survey and the number of individuals to be surveyed, costs for the recommended polling would range from \$26,000 to \$31,000. Staff recommends that Council approve the proposed contract with FM3 for an amount not to exceed \$31,000. Costs would be covered through an appropriation from the unassigned balance of the General Fund. If the contract is approved, FM3 could begin work as early as next week.

By: Sara Lillevand, Recreation Director

## CONTRACT

This Contract ("Contract") made **September 5, 2017** ("Effective Date"), between the City of Piedmont, California, a municipal corporation, 120 Vista Avenue, Piedmont, California 94611, ("City") and Fairbank, Maslin, Maullin, Metz & Associates ("Independent Contractor").

1. City is a municipal corporation which needs certain services performed as more specifically set forth hereafter.
2. Independent Contractor agrees to perform these services for the City under the terms and conditions set forth in this Contract.

3. Services

Independent Contractor shall provide the services as set forth in Exhibit A attached hereto and incorporated herein. Independent Contractor will perform 400 interviews of City residents, approximately 20 minutes each, prepare a comprehensive report of its findings, and prepare and present those findings to the City.

4. Compensation

City will pay the Independent Contractor an amount not to exceed Thirty-One Thousand Dollars (\$31,000) for the services described in Section 3 above. Upon the satisfactory completion of the services provided pursuant to this Contract, Independent Contractor shall submit an invoice to the City and the City shall issue payment within 30 days of its receipt of the invoice.

5. Term

This Contract shall begin on the Effective Date. Unless otherwise terminated as provided in this Contract, this Contract shall terminate one year from the Effective Date.

6. Contractual Relationship

The parties intend that an independent contractor-employer relationship will be created by this Contract. City is interested only in the results to be achieved, and the conduct and control of the work will lie solely with Independent Contractor. Independent Contractor is not to be considered an agent or employee of City for any purpose, and neither Independent Contractor nor any employees of Independent Contractor are entitled to any of the benefits that City provides for City's employees. It is understood that City does not agree to use Independent Contractor exclusively. It is further understood that Independent Contractor is free to contract for similar services to be performed for other cities, persons or entities during the term of the Contract. Independent Contractor shall be fully responsible for all income, social security or other taxes or deductions, including but not limited to worker's compensation and unemployment deductions, relating to the services it performs for City.

7. Indemnity and Hold Harmless

To the fullest extent permitted by law, Independent Contractor shall defend (with legal counsel reasonably acceptable to City), indemnify, and hold harmless City and its officers, elected officials, employees, agents, and volunteers (collectively “Indemnitees”) from and against any and all claims, loss, cost, damage, injury (including, without limitation, injury to or death of an employee of Independent Contractor or its subconsultants), expense and liability of every kind, nature and description (including, without limitation, fines, penalties, incidental and consequential damages, reasonable court costs and attorneys fees, litigation expenses and fees of expert consultants or expert witnesses incurred in connection therewith, and costs of investigation), where the same arise out of, are a consequence of, or are in any way attributable to, in whole or in part, the performance of this Contact by Independent Contractor or by any individual or entity for whom Independent Contractor is legally liable, including but not limited to, officers, agents, employees, subcontractors or consultants of Independent Contractor. Neither termination of this Contract nor completion of the services shall release Independent Contractor from its obligations under this Section 7, as long as the event giving rise to the claim, loss, cost, damage, injury, expense or liability occurred prior to the effective date of any such termination or completion.

8. Insurance

The following minimum levels of insurance coverage shall be provided during the term of this Contract. Prior to the execution of the Contract, Independent Contractor shall provide proof of insurance required. Independent Contractor shall provide City thirty (30) days prior written notice of termination or material change in coverage and ten (10) days prior written notice of cancellation for non-payment.

The City of Piedmont, its Council Members, directors, officers, agents and employees shall be named as additional insureds. Independent Contractor shall provide City with an additional insured certificate for each such insurance coverage.

A.	<u>Professional Liability Insurance</u>	\$2,000,000
B.	<u>Worker’s Compensation Insurance</u>	Statutory Limits
C.	<u>Automobile Insurance</u>	\$1,000,000
D.	<u>Commercial General Liability Insurance</u>	\$2,000,000 (single limit per occurrence)

Independent Contractor shall notify City within one (1) business day after it has been served or notified of any claim or legal action that in any way involves Independent Contractor, and the City of Piedmont, even if the City is not named in the claim or as a defendant in any legal action, if such notification comes to Independent Contractor from

any source other than the City. Independent Contractor shall also promptly provide City, within the same time period set forth in the prior sentence, with copies of any document or information it has regarding such claim or legal action.

9. Assignability

Independent Contractor shall not assign, delegate, or transfer any interest in this agreement nor the performance of any Independent Contractor's obligations hereunder, without the prior written consent of the City.

10. Miscellaneous

As used in this Contract, the masculine, feminine or neuter gender, and the singular or plural number, shall each be deemed to include the others whenever the context so indicates.

11. Notices

Any notices to be sent pursuant to this Contract shall be given in writing by prepaid U.S. certified or registered postage addressed to City at 120 Vista Avenue, Piedmont, California 94611, and to Independent Contractor at 1999 Harrison Street, Suite 2020 Oakland, CA 94612, or at such other address as each party shall give the other in writing from time to time, and notices shall be deemed received at the time of personal delivery or three (3) working days after being placed in the United States Mail, postage prepaid, certified mail, return receipt requested.

12. Governing Law

This Contract shall be governed by the laws of the State of California. Jurisdiction and venue of litigation arising from this Agreement shall be in the County of Alameda, State of California.

13. Modification

Any modification of this Contract will be effective only if it is in writing signed by all parties to this Contract.

14. Time is of the Essence

Time is of the essence in the performance of this Contract.

15. Termination

The following provisions shall govern termination under this Contract:

- a. Either party may terminate this Contract for cause as follows:

- (1) The party electing to terminate shall give the other party written notice of termination at least five (5) days prior to the termination date, setting forth very specifically the grounds for termination, the specific provisions of the Contract that has been violated, and a full statement of the facts surrounding the violations(s).
  - (2) If the terminated party so elects, the parties shall meet promptly and make good faith efforts to resolve the violation(s) in a mutually agreeable way.
  - (3) If any such violation cannot be resolved by the parties at such meeting, or at any mutually agreed extension(s) of such meeting, the termination shall proceed.
  - (4) If the violation(s) have not been resolved, the terminating party may proceed with termination, and with retaining other person(s) or entities to provide services, if the terminating party is the City.
- b. Either party may terminate the Contract at any time without cause upon at least sixty (60) days prior written notice to the other party. In the event of any such termination by City, Independent Contractor shall be paid for services actually performed through the date of termination, and Independent Contractor's work shall be immediately discontinued as of that date, except that City may elect, at City's option, to have Independent Contractor complete one or more projects or specific activities which are then in progress, in which case Independent Contractor shall be paid for such services until completion. If terminated by Independent Contractor, any assignment accepted by Independent Contractor prior to the notice of termination shall be completed if desired by City.

16. Equal Opportunity

Independent Contractor shall insure that its policies and practices provide equal opportunity to all applicants and employees without regard to race, color, creed, gender, age, religion, national origin, sexual preference, gender identity, marital status, disability, Acquired Immune Deficiency Syndrome (AIDS), AIDS-Related Complex (ARC) and in addition, Independent Contractor must comply with the Americans with Disabilities Act.

17. Compliance with Laws

Independent Contractor shall use the standard of care in its profession to comply with all applicable federal, state, and local laws, codes, ordinances, and regulations. Independent Contractor represents and warrants to City that it has and shall, at its sole cost and expense, keep in effect or obtain at all times during the term of this Contract any licenses, permits, insurance and approvals which are legally required for Independent Contractor to practice its profession.

18. Entire Agreement

This Contract constitutes the entire agreement of the parties with respect to the matters set forth herein. Any amendments, modifications, or changes to this Agreement shall be in writing and signed by both parties. In the event of a conflict between the terms set forth in this Contract and the terms set forth in any exhibit to this Contract, the terms of this Contract shall govern over the terms of any exhibit.

19. Ownership of Documents

All plans, studies, documents and other writings, including working notes and internal documents, prepared by and for Independent Contractor, its officers, employees and agents and subcontractors in the course of implementing this Agreement, shall become the property of City upon payment to Independent Contractor for such work, and City shall have the sole right to use such materials in its discretion without further compensation to Independent Contractor or to any other party. Independent Contractor shall, at Independent Contractor's expense, provide such reports, plans, studies, documents and other writings to City upon written request. All documents prepared by Independent Contractor are confidential and shall be maintained to preserve their confidential nature. Release of any such documents to third parties shall only be made upon written consent of City.

20. Licenses

Independent Contractor represents and warrants that it has all licenses, permits, qualifications, insurance and approvals of whatsoever nature which are legally required of Independent Contractor to practice its profession. Independent Contractor represents and warrants to City that Independent Contractor 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 which are legally required of Independent Contractor to practice its profession.

21. Waiver

Waiver of a breach or default under this Agreement shall not constitute a continuing waiver of a subsequent breach of the same or any other provision under this Agreement.

IN WITNESS WHEREOF, the parties have executed this Contract at Piedmont, California, the day and year first above written.

CITY OF PIEDMONT:

FAIRBANK, MASLIN, MAULLIN, METZ  
& ASSOCIATES:

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

By: \_\_\_\_\_  
David Metz

Attest:

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John O. Tulloch, City Clerk

Approved as to form and legality:

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Michelle Marchetta Kenyon, City Attorney  
Chad Herrington, Assistant City Attorney



*Fairbank,  
Maslin,  
Maullin,  
Metz &  
Associates*

**FM3**

*Public Opinion Research  
& Strategy*

TO: Paul Benoit  
City of Piedmont

FROM: David Metz and Lucia Del Puppo  
Fairbank, Maslin, Maullin, Metz & Associates

RE: Proposed Scope of Work for Piedmont Recreation Facility Funding Survey

DATE: July 27, 2017

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Fairbank, Maslin, Maullin, Metz & Associates (FM3) is pleased to submit a scope of work for polling to evaluate Piedmont voters' perceptions of the Piedmont Community Pool and other local recreation facilities; their support for a potential ballot measure to finance improvements to the Pool and other local infrastructure; and general resident satisfaction on an array of City services. This memo contains some background information on our firm, as well as our proposed approach to the research.

## **I. Firm Background**

Fairbank, Maslin, Maullin, Metz & Associates (FM3) is one of the nation's leading providers of public opinion research and strategic consulting. On an annual basis, FM3 conducts as many as 300 surveys and 160 focus groups, in addition to providing ongoing strategic consulting for our clients. FM3's 23-person staff works in multi-disciplinary teams to assure the completion of quality opinion analysis in a timely manner. All key FM3 staff members have advanced degrees in public policy, research methods, and/or extensive experience working in state and local government. FM3 also has on-staff Spanish language capability that it applies to all research projects involving populations with significant Spanish-speaking segments. In addition, FM3's data collection and sampling subcontractors are closely supervised and pre-qualified by FM3 to render immediate, high-quality service.

As a medium-sized research firm with offices in Los Angeles and Oakland, California, FM3 is able to provide its clients with a level of personalized attention and service from firm partners that is typical of a much smaller organization – while simultaneously providing the range of services,

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*1999 Harrison Street, Suite 2020  
Oakland, CA 94612  
Phone: (510) 451-9521  
Fax: (510) 451-0384*

expedited timelines and strict quality control that is characteristic of much larger research firms. FM3's in-house Data Processing and Graphics Departments allow us to meet the inherent demands of even the most heated political campaign, and further, to provide a wider variety of additional services – such as performing advanced statistical analysis to glean the greatest amount of insight from your data.

Our specific qualifications include the following:

- ✓ **FM3 specializes in developing strategies to pass local revenue measures; we have helped facilitate the approval of such measures in over 140 California cities.** Our research identifies the feasibility of a potential ballot measure; the most appropriate tax rate; the most broadly-supported revenue mechanism (sales tax, transient occupancy tax, utility users tax, bond measure, etc.); preferences for how additional revenue should be used, and reactions to key elements of public education on the issue.

Our clients represent a diverse cross-section of large and small cities; urban, suburban and rural communities; and we work with cities in San Mateo County and throughout the Bay Area and Northern California, the Central Coast, the Central Valley, Southern California, and the Inland Empire. We make it a priority to work closely with each city and local stakeholder to design the research because we know every community is different and requires an approach that addresses its own unique characteristics and needs.

The following **97 California cities** have engaged FM3's research and consulting services since 2008 to successfully pass ballot measures to fund city services and programs (24 Bay Area cities are underlined): **Alameda, Arvin, Bellflower, Benicia, Berkeley, Capitola, Carson, Carpinteria, Canyon Lake, Cathedral City, Clearlake, Cloverdale, Commerce, Compton, Culver City, Delano, Desert Hot Springs, Dinuba, Downey, East Palo Alto, Fountain Valley, Galt, Gardena, Gilroy, Grover Beach, Healdsburg, Hemet, Hercules, Hollister, Huntington Beach, Indio, Inglewood, Kingsburg, Lakeport, Lakewood, Laguna Beach, La Mesa, La Habra, Lathrop, Larkspur, Long Beach, Los Angeles, Los Banos, La Quinta, Lynwood, Marina, Martinez, Menifee, Monterey, Moreno Valley, National City, Norwalk, Oakland, Orinda, Oxnard, Palo Alto, Palm Desert, Paramount, Pasadena, Pittsburg, Redondo Beach, Reedley, Riverside, Rohnert Park, Sacramento, San Anselmo, San Bernardino, San Francisco, San José, San Luis Obispo, Sanger, Santa Ana, Santa Clara, Santa Cruz, Santa Fe Springs, San Juan Capistrano, Santa Monica, Santa Paula, Santa Rosa, Sausalito, Seal Beach, Seaside, Selma, South El Monte, South Gate, South Pasadena, Stanton, Stockton, St. Helena, Sunnyvale, Temecula, Vallejo, Ventura, Visalia, Wasco, Westminster and Wildomar.**

Most recently, in the November 2016 general election, FM3's research helped 34 California cities, including **Alameda, Clearlake, Culver City, Delano, Downey, East Palo Alto, Fountain Valley, Hemet, Hollister, Indio, Laguna Beach, Lakeport, La Quinta, Long Beach, Lynwood, Marina, Menifee, Moreno Valley, Oakland, Palm Desert, Riverside, San Francisco, San José, Sanger, Santa Paula, Santa Rosa, Sunnyvale, St. Helena,**

**Temecula, Vallejo, Ventura, Visalia, Wasco, and Westminster** pass ballot measures to provide funding for local public services.

In addition to determining overall support for a proposed ballot measure, our survey research tests voter preferences for the funds raised. This research enables our clients to better understand the public's priorities, allowing each city to craft its measure armed with knowledge of their residents' specific preferences and particular needs in order to ensure the greatest level of support. We have adapted our experience in this field to the needs of local governments that seek voter approval for both capital and operational budget increments.

- ✓ **FM3 has a long history of providing highly accurate research on the opinions of voters and residents throughout Alameda County.** Headquartered in Oakland, FM3 has extensive experience conducting research in all nine Bay Area counties and in all of California's largest cities. Alameda County and Oakland have been a particular focus for our research. For example, this past January FM3 conducted an extensive survey for the **City of Oakland** assessing residents' perceptions of life in the City, views on City services, and impressions of the City's budget and spending priorities. This research was a follow-up to four similar surveys FM3 has conducted for the City dating back to the late 1990s.

FM3's experience in Alameda County also includes conducting research on behalf of the **Oakland Zoo, the Oakland Unified School District, the Bay Area Rapid Transit District (BART), the California Endowment, California Executives Alliance, StopWaste.Org, the Zone 7 Water Agency, the East Bay Regional Park District,** and the cities of **Alameda, Dublin, Fremont, Piedmont and Pleasanton,** as well as **Chabot-Las Positas Community College District, the Ohlone Community College District, the Berkeley Unified School District, the Livermore Valley Joint Unified School District, the Hayward Unified School District** and the **New Haven Unified School District,** among many other clients. The firm's political clients include former **State Senators Loni Hancock** and **Johan Klehs,** former Oakland Mayors **Jerry Brown** and **Lionel Wilson,** former Assembly member **Joan Buchanan,** and former Congresswoman **Ellen Tauscher,** among others.

## **II. Recommended Approach to the Research**

We propose a citywide voter survey with the following characteristics:

**Questionnaire:** 15- or 20-minute questionnaire (approximately 40 individual questions, including demographics) conducted both online and also over landline and wireless telephones. While the final content of the questionnaire will be developed in concert with the City, we envision it will include questions in the following areas:

- Overall satisfaction with quality of life in the City
- Satisfaction with the performance of City government, both overall and in specific service areas

- Evaluation of the seriousness of major issues facing the community
- Reactions to draft ballot language for a local pool and infrastructure bond measure
- Sensitivity to the tax impact of various bond amounts
- Evaluations of the importance of a range of specific projects that could be funded by bond proceeds
- Reactions to a variety of potential public education messages
- Evaluation of the impact of public education messages on support for a potential measure
- Reactions to a variety of concerns that may be raised by opponents of a measure
- Evaluation of the impact of opposition messages on support for a potential measure
- Comprehensive demographic questions

**Sample:**

300-400 interviews among residents of the City of Piedmont drawn from voter rolls. FM3 will match phone numbers and e-mails to the voter list using a list provided by the City and/or a commercial database.

**Methodology:**

We propose adopting a “dual-mode” methodology, which divides the research into two phases; in the first phase interviews are conducted online and in the second they are conducted via telephone. While the traditional methodology of conducting random-sample telephone surveys continues to provide highly accurate data on public sentiments in a cost-effective manner, the rise of call-screening behavior presents growing challenges for survey projects attempting to achieve generalizable results within relatively small populations, such as those the size of the City of Piedmont. While many respondents are willing to offer their opinion through a telephone survey, there are several identifiable segments of the sample that would be more likely to respond to an online version of the survey. Combining the telephone and online data will result in an all-inclusive, representative sample of the City’s voters.

Under this methodology, FM3 will begin by matching the voter registration database for the City of Piedmont with available public and commercial e-mail databases. Likely voters will then be e-mailed an invitation to participate in the survey, with a unique URL that can be used only once by the identified voter. FM3 may follow up with reminder e-mails as necessary to boost participation. Once a substantial number of responses have been received, FM3 will compare the demographic profile of survey respondents to available data on the characteristics of likely voters in Piedmont. Telephone interviews will then be targeted to gain additional responses from under-represented segments of the local electorate.

**Margin of error:** +/- 5.7% at the 95 percent confidence interval for n=300  
 +/- 4.9% at the 95 percent confidence interval for n=400

**Cost:** The table below provides a range of costs for the proposed survey, depending on sample size and survey length. These prices are all-inclusive, and include all costs for questionnaire design; sample acquisition; telephone interviewing; online programming and hosting; data entry; cross-tabulation; analysis; and reporting of survey results.

<b>Length</b>	<b>n=300</b>	<b>n=400</b>
15 minutes	\$26,000	\$28,250
20 minutes	\$28,500	\$31,000

**Timing:** We recommend conducting the survey prior to making major investments in public education, for two reasons. First, we want to use the survey to understand how voters feel about the issues given the information they already know, and then use the survey to understand the impact public education might subsequently have on those opinions. Second, the survey will provide valuable data to guide the content of public education efforts and ensure they are as effective as possible.

Below is a table containing our team’s proposed timeline. Other than waiting to conduct the interviews until after the summer months when parents of school-aged children may be unavailable, our experience suggests that the time of year in which they survey is conducted is unlikely to impact the results. We are happy to modify the timeline to meet the City’s needs,

<b>Date</b>	<b>Tasks</b>
<i>September 11 – 13</i>	Develop initial survey draft Circulate draft for comment
<i>September 14 - 19</i>	Meet with City project team Incorporate team feedback into survey draft
<i>September 20-22</i>	Circulate draft for comment Incorporate revisions Finalize questionnaire
<i>September 21-29</i>	Program surveys Conduct interviews
<i>October 2 – 4</i>	Produce topline results Produce survey cross-tabulation reports
<i>October 5 – 12</i>	Conduct advanced statistical analysis Create PowerPoint presentation of findings
<i>TBD</i>	Present findings

Following the completion of the survey, we will provide:

- A questionnaire with the top-line results of the survey for easy reference
- Two copies of a complete set of crosstabs in an easy-to-read, comprehensive format
- Verbatim responses to open-ended questions
- A 2-3 page executive summary (suitable for public release)
- A complete analysis of survey results in PowerPoint
- A presentation of the survey via webinar or in-person
- Ongoing availability for consultation

If you have any questions or would like more information, please do not hesitate to contact us. You may reach me in our Oakland office as follows:

David Metz  
Fairbank, Maslin, Maullin, Metz & Associates  
1999 Harrison Street, Suite 2020  
Oakland, CA 94612

(510) 451-9521 (Office)  
(510) 682-7340 (Mobile)  
(510) 451-0384 (Fax)  
[dave@fm3research.com](mailto:dave@fm3research.com)

We would welcome the opportunity to work with you on this research. Thank you for your consideration, and please let us know if there is any further information we can provide.