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6 Attorneys for Plaintiff
7 CITY OF PIEDMONT

8 [EXEMPT FROM FILING FEES UNDER
9 GOVERNMENT CODE §6103]

10 SUPERIOR COURT OF THE STATE OF CALIFORNIA
11 COUNTY OF CONTRA COSTA

12 CITY OF PIEDMONT,

13 Plaintiff,

14 v.

15 ROBERT GRAY & ASSOCIATES,
16 HARRIS & ASSOCIATES, INC., AND
17 DOES 1-50,

18 Defendants.

Case No. C11-00762

COMPLAINT

BY FAX

19 Plaintiff City of Piedmont alleges as follows:

20 GENERAL ALLEGATIONS

21 1. The true names or capacities, whether individual, corporate, associate or otherwise of
22 defendants DOES 1 through 50, inclusive, are unknown to plaintiff at this time and plaintiff
23 therefore sues said defendants by such fictitious names. Plaintiff is informed and believes and
24 therefore alleges that each of said defendants is negligently or otherwise legally responsible in
25 some manner for the events and happenings hereinafter referred to and plaintiff prays leave to
26 insert the true names of said defendants when they are ascertained. Plaintiff is informed and
27
28

00990-39358 MML 595479.1

COMPLAINT

FILED

2011 APR -1 A 9:45

SUMMONS ISSUED

K. TORRE, CLERK OF THE SUPERIOR COURT
COUNTY OF CONTRA COSTA
BY A. NUESTRO
Deputy Clerk

PER LOCAL RULES 5 THIS
CASE IS ASSIGNED TO
DEPT. 9

1 believes that at all times herein mentioned each of said fictitiously named defendants was the
2 agent, servant or employee of each of the other defendants, and was acting within the scope of his
3 or her agency or employment.

4 2. At all times herein mentioned plaintiff was a municipal corporation organized and
5 existing under the laws of the State of California, with its principal place of business located at
6 120 Vista Avenue, Piedmont, County of Alameda, State of California.

7 3. At all times herein mentioned defendant ROBERT GRAY & ASSOCIATES
8 (hereinafter "RGA") was, and now is, a partnership organized and existing under the laws of the
9 State of California with its principal place of business in Pleasanton, Alameda County, California.

10 4. At all times herein mentioned defendant HARRIS & ASSOCIATES, INC. (hereinafter
11 "HARRIS") was, and now is, a corporation organized and existing under the laws of the State of
12 California with its principal place of business in Concord, Contra Costa County, California.

13 5. By Resolution of Intention of the City of Piedmont dated May 2, 2005, the Piedmont
14 Hills Underground Assessment District was created for the purpose of undergrounding existing
15 overhead and ground-level utility facilities, under the authority of the Municipal Improvement
16 Act of 1913 [Streets and Highways Code Division 12].

17 6. Pursuant to the above-referenced resolution, a Final Engineer's Report dated May 4,
18 2009, was commissioned by the City of Piedmont and recorded in the office of the Director of
19 Public Works, and an Ordinance of Issuance was passed and adopted by the City on June 15,
20 2009, and modified on July 6, 2009, calling for the execution and issuance of bonds to finance the
21 Piedmont Hills Underground Assessment District project.

22 7. In furtherance of the Piedmont Hills Underground Assessment District project, on May
23 2, 2005, the City of Piedmont entered into a professional services agreement with HARRIS. A
24 true and correct copy of the contract, and amendments thereto, is attached hereto as Exhibit A. In
25 addition to the contract attached as Exhibit A, the City of Piedmont entered into a professional
26 services agreement with HARRIS dated March 1, 2007. A true and correct copy of the contract is
27 attached hereto as Exhibit B.

28

1 8. In furtherance of the Piedmont Hills Underground Assessment District project, on
2 November 3, 2008, the City of Piedmont entered into a professional services agreement with
3 RGA, a true and correct copy of which is attached hereto as Exhibit C.

4 9. HARRIS and RGA, jointly and severally, created the plans and specifications for the
5 construction of the public improvements for the Piedmont Hills Underground Assessment District
6 project, and those plans and specifications became the basis for an invitation to competitive
7 bidders which triggered a bid opening on March 2, 2009.

8 10. In furtherance of the Piedmont Hills Underground Assessment District project, on
9 June 15, 2009, the City of Piedmont entered into a construction agreement with the lowest
10 competitive bidder, Valley Utility, and on July 21, 2009, the City of Piedmont issued a Notice to
11 Proceed to Valley Utility for the construction of the public improvements which were called for
12 in the plans and specifications developed and reviewed by both HARRIS and RGA.

13 11. Since the commencement of construction, the Piedmont Hills Underground
14 Assessment District project faced serious incidents, delays, problems, and difficulties that have
15 resulted in considerable cost overruns as set forth in more detail below.

16 12. Early in the course of the project, bedrock was encountered during excavation
17 activities, requiring the use of specialized excavation equipment, resulting in a trenching cost
18 overrun of approximately \$2,000,000. Despite defendants' lengthy relationship with the City,
19 and the open and obvious rock outcroppings in the area, bedrock was not accounted for in the
20 plans and specifications in a meaningful way. There was no pre-project subsurface or
21 geotechnical investigation undertaken in connection with the project. Additionally, existing and
22 publicly available geotechnical reports were not requested or reviewed. The plans and
23 specifications prepared by defendants are silent on this issue. The review of the resulting bids did
24 not identify this issue. Ultimately over seventy percent of the trenching was performed in rock.
25 Plaintiff is informed and believes that defendants knew that the plans and specifications were to
26 be the basis for assessment district cost projections and budgeting. The inclusion of a "rock
27 excavation" line item in the project plans and specifications, without quantification, exposed the
28 City to an unreasonable risk of cost overruns, particularly when there was no pre-project

1 subsurface or geotechnical investigation recommended by the design professional defendants.

2 13. If pre-project soils testing had been undertaken, or if existing and available
3 geotechnical reports were reviewed, the condition would have been identified, and the contractor
4 bids would have explicitly addressed this condition, allowing for more accurate budget
5 projections for assessment district purposes.

6 14. The project was delayed by events occurring on October 13-14, 2009, when a
7 rainstorm undermined the joint trench and junction boxes on Crest Road, requiring emergency
8 repairs for stabilization of the joint trench and public roadway.

9 15. On February 19, 2009, Addendum No. 1 to the plans and specifications was issued,
10 which, among other things, required trench dams to be installed at 25' maximum intervals
11 wherever the street grade running parallel to the trench is 20% or greater. Despite this provision,
12 and despite that the grade of Crest Road was in excess of 20%, no trench dams were installed in
13 Crest Road. This resulted in water intrusion in the trench; storm water percolated into the joint
14 trench and washed out the sand bedding. Notwithstanding defendant RGA's project inspection
15 obligations, the lack of trench dams in Crest Road went undetected. Ultimately, repair and
16 replacement of the damaged Crest Road utilities were completed at a cost to the City in excess of
17 \$280,000.

18 16. The total trench quantities set forth in the plans and specifications were incorrect.
19 Specifically, the plans and specifications indicated the total trench length was approximately 13,
20 700 feet, when in reality it exceeded 15,700 feet. The price for material, including conduit and
21 asphalt, were bid on the shorter lengths, which ultimately resulted in the bids being understated
22 and incorrect. As a result, the contractor sought and received change orders for the acquisition
23 and purchase of additional material, which resulted in additional cost overruns to the City of
24 Piedmont in the amount of approximately \$200,000.

25 17. Once construction began, it became apparent that certain portions of the project were
26 not constructible as reflected in the plans. For example, in some areas the plans called for a
27 utility box to be located in a landscaped area, thereby requiring a relatively inexpensive
28 "landscape grade" utility box. However, in multiple instances, the actual location of the box was

1 in the middle of a public street, resulting in the installation of a much more expensive "traffic-
2 rated" box. In other cases, due to topography not accounted for in the plans, the utility boxes
3 simply could not be placed where the plans required. The field conditions were not accurately
4 reflected in or accounted for in the plans, triggering change orders totaling approximately
5 \$32,000.

6 **FIRST CAUSE OF ACTION**
7 **(Breach of Contract as to RGA)**

8 18. Plaintiff incorporates by reference the allegations contained in paragraphs 1 through
9 17, above.

10 19. Defendant RGA has breached the contract referred to in paragraph 8 [Exhibit C] by,
11 among other things, preparing inadequate and incomplete plans and specifications, by failing to
12 recommend or review a pre-project soils investigation, and/or by failing to perform value
13 engineering, as alleged in more detail above.

14 20. As a result of defendant RGA's breach of contract, the City of Piedmont has been
15 damaged in an amount to be shown according to proof.

16 **SECOND CAUSE OF ACTION**
17 **(Breach of Contract as to Harris & Associates)**

18 21. Plaintiff incorporates by reference the allegations contained in paragraphs 1 through
19 20, above.

20 22. Defendant HARRIS has breached the contracts referred to in paragraph 7 [Exhibits A
21 and B] by, among other things, preparing inadequate and incomplete plans and specifications, by
22 failing to recommend or review a pre-project soils investigation, by failing to review and
23 supervise the maintenance of records and plans, by failing to review, approve and/or process
24 tentative and final maps, and/or by failing to adequately review bid proposals, as alleged in more
25 detail above.

26 23. As a result of defendant HARRIS' breach of the contracts, the City of Piedmont has
27 been damaged in an amount to be shown according to proof.
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**THIRD CAUSE OF ACTION
(Negligence as to all Defendants)**

24. Plaintiff incorporates by reference the allegations contained in paragraphs 1 through 23, above.

25. The professional services of HARRIS and RGA, and each of them, fell below the applicable standard of care for professional engineers practicing in their respective disciplines, and as a result of the negligence of defendants, and each of them, plaintiff has been damaged in an amount to be shown according to proof.

PRAYER FOR RELIEF

WHEREFORE plaintiff prays judgment against defendants, and each of them, as follows:

1. For damages according to proof;
2. For costs of suit incurred herein;
3. For reasonable attorneys' fees;
4. For prejudgment interest; and
5. For such other and further relief as to the court seems proper.

DATED: March 28, 2011

LOMBARDI, LOPER & CONANT LLP

By Matthew S. Conant
MATTHEW S. CONANT