

**Piedmont City Council  
Audit Sub-Committee Report on the  
Piedmont Hills Underground Assessment District Project**

**Committee Members:**  
Dean E. Barbieri, Mayor  
John Chiang, Vice Mayor  
Judge Ken Kawaichi (Ret.)

July 14, 2011

**Introduction:**

The Audit Sub-Committee of the Piedmont City Council was formed on March 1, 2010, with the appointment of its members, for the purpose of investigating the Piedmont Hills Underground Assessment District (PHUAD) project and the cost overrun, which necessitated the expenditure of over \$2 million from the City of Piedmont's general fund. As part of the City Council's effort to understand the financial and construction related problems of the PHUAD, an Audit Sub-Committee was formed and is comprised of Mayor Dean Barbieri, Vice Mayor John Chiang, and the interim appointment of Judge Ken Kawaichi (Ret.). The Audit Sub-Committee was charged with conducting an investigation of the bidding, contracting and construction management of the PHUAD.

The City of Piedmont has initiated litigation against various parties associated with the construction of the District, and that litigation is currently pending. As a result of that pending litigation, and under the advice and direction of Piedmont's legal counsel, the Sub-Committee has been restricted in discussing certain topics during the open meeting sessions already conducted, and is restricted in this and other reports from discussing those topics so as not to violate the applicable attorney client and attorney work product privileges. It is acknowledged that the City of Piedmont is aggressively pursuing the parties that it feels contributed to the construction problems associated with the District, and that the Sub-Committee must not take steps that would compromise the legal case of the City of Piedmont against those adverse parties.

Several residents and groups of residents of Piedmont have presented ideas, concerns and questions to the committee. Again, some of these questions, while raising valid areas of inquiry, were on topics which could not be discussed by committee members outside public hearings or were on topics covered by litigation or investigations and involved the attorney-client privilege or the work product doctrine.

Because of the restrictions and requirements of the Brown Act, the Audit Sub-Committee members could not discuss any conclusions or conduct any deliberations except in open public meetings.

The Brown Act also prohibited the members of the Sub-Committee from jointly compiling their final report. Therefore, this task was assigned to Interim City Clerk John

O. Tulloch, who merged the three reports. No substantive changes to any finding or recommendation were intended. Duplicate and/or redundant text was omitted and minor clerical and grammatical changes were made. As the Brown Act prohibits the use of, "...personal intermediaries, or technological devices that is employed by a majority of the members of the legislative body to develop a collective concurrence as to action to be taken on an item by the members of the legislative body," (G.C. § 5495.2(b)), none of the members of the Sub-Committee have had any input on the compilation of the final report.

#### Meetings:

There have been a total of six public meetings held-to-date, as follows:

March 31, 2010

May 13, 2010

July 8, 2010

July 21, 2010

January 26, 2011 (review of preliminary draft report with findings, recommendations)

March 15, 2011 (discussion on public comments received on the Draft Report sections)

#### Scope of Evaluation Process:

During the first meeting on March 31, 2010, the scope of work for the Sub-Committee's evaluation process was discussed and established (the "Scope of Work"). The proposed Scope of Work was based upon input received from the Mayor, Vice-Mayor and members of the general public.

The following evaluation scope was discussed and approved at the Audit Sub-Committee's March 31, 2010 meeting (the assignments, subsequently made, are noted).

1. Review of existing City Council policy for underground utility assessment districts (20B projects)
  - a. Steering Committee functions & obligations (**Kawaichi**)
  - b. Piedmont staff role (**Barbieri**)
  - c. Engineer of Work - Development of plans, bid specifications and cost estimates (**Kawaichi**)
    - (1) Rock clause and standard provisions
    - (2) How is the engineer's work validated or verified?
  - d. Legal obligations of the city and financial exposure under current law (**Kawaichi**)
  - e. Construction – coordination, inspection and change orders and the role of the City Engineer (**Chiang**)
  - f. Payments and commitments upon issuance of bonds (**Chiang**)
  - g. Past experience with undergrounding projects (**Barbieri**)
2. Application of City policy to the Piedmont Hills Underground Assessment District
  - a. Explanation of the engineering process for the district (why were multiple firms involved)? (**Kawaichi**)
  - b. Timeline of expenditures including the development of "rock" issue (**Chiang**)

- c. Available alternatives at the time rock was discovered – using hindsight and realistically, could the City have done anything differently? (*Chiang*)
  - d. When did the city seek legal counsel? Did the city receive advice regarding the use of General Fund monies? (notification of the City Council and notification of the public) (*Barbieri*)
3. Recommendations for the future
- a. How to limit financial exposure of the City from beginning stages through construction
  - b. What should be done in-house and what should be contracted?
  - c. Process of early identification of problems and the reporting obligations
  - d. Frequency and distribution of progress reports
  - e. Applicability of these recommendations to other capital projects

**Background: Utility Undergrounding Assessment Districts**

Before discussing the Audit Sub-Committee’s observations and findings, it will be beneficial for the reader to understand how utility undergrounding districts are formed as background information for this report. The following has been summarized from FAQ’s and undergrounding utilities formation guides from various city websites (e.g., Tiburon, Newport Beach, Solana Beach, Sausalito, San Rafael, Belvedere).

*What is utility undergrounding?*

Existing overhead utilities (phone, cable TV, internet and electric) are replaced by a system that is essentially underground. Wires for these utilities are run through conduits in streets, lanes and easements, and utility poles are eliminated. Service wires from homes and businesses in an underground district must also be placed underground.

*Who pays for utility undergrounding?*

The short answer is most of the costs are borne by the property owners in an undergrounding district. PG&E provides some funding, but it is very minor.

*What is an undergrounding district?*

Utility undergrounding generally involves several contiguous properties that share in the cost. An official boundary is established for each district.

*How is a district created?*

Undergrounding districts can be created by the City or by property owners. There are three types of underground districts:

Rule 20A – These are initiated by a city or county. Costs are paid from funds provided by PG&E or utility company. The utility companies typically will not pay for undergrounding utilities in a completely residential neighborhood. The California Public

Utilities Commission (CPUC) Rule 20A provides limited funds to each community through the ratepayers to underground electrical and telephone facilities. Rule 20A allocations accrue slowly and are not sufficient to fund residential undergrounding projects. Piedmont's annual allocation since 2007 has been approximately \$87,500 (per the PG&E Rule 20A Program Liaison). Cities have generally used Rule 20A funds for projects with heavy concentration of overhead facilities, heavily traveled areas, major arterial or collector roads in a general plan, or within or passing through a civic, recreational, or scenic area. The undergrounding of the utilities on the Piedmont portion of Grand Avenue is an example of a Rule 20A project, which was completed in the 1980s.

Rule 20B – Projects that fall under CPUC Rule 20B allow property owners to elect to form an underground utility assessment district when Rule 20A does not apply. Rule 20B allows for property owners to underground utilities at their expense. Rule 20B projects are not funded by the utility companies, and have been the most common way for many cities in Marin County to effect the undergrounding of utilities and it has been no different with Piedmont. Cost sharing is based upon special benefits received. Piedmont, as well as many cities in Marin County, has published guidelines for the formation of utility underground assessment districts. At the discretion of the Town or City Council, available Rule 20A funds have or could be used as seed money to assist in some of the initial costs (in Piedmont's case, the initial engineering costs charged by PG&E). However, in the event that the formation of the assessment district fails, the Rule 20A funds advanced are not recovered, thus reducing the available amount of Rule 20A funds for future Rule 20A projects. The Rule 20B approach does yield cost benefits to the property owners, resulting from credits for overhead materials and exclusion from CIAC (Contributions In Aid of Construction) taxes. Rule 20B projects require the approval of the Town or City Council.

Once the City Council has approved the formation of an underground utility assessment district, the City would sell bonds for the value of the project costs and the bonds would be paid by the homeowners within the district as part of their individual property tax bill as an additional assessment, typically over 20 to 30 years at the prevailing public bonding interest rate. The homeowners within the district have the option of paying all or a portion of the assessment, rather than over time with interest.

Rule 20C – Projects that fall under CPUC Rule 20C enables property owners to privately fund undergrounding the overhead facilities if neither Rules 20A nor 20B apply. The property owners within the "private" district share the costs on a mutually agreed basis. Rule 20C projects do not require a petition process or the approval of the Town or City Council, but does require the coordination with the City for the issuance of the proper building permits. The property owners will work directly with the contractors and utilities in implementing the undergrounding.

**Background: Formation of Private Utility Undergrounding Assessment Districts – Preliminary Research of Other Cities Policies and Approaches**

Preliminary research as to how other cities have handled the formation of private utility undergrounding assessment districts by using the Rule 20B approach has been undertaken. The following information has been extracted from searching the internet.

#### City of Sausalito-

One of the more successful cities with undergrounding utility projects has been the City of Sausalito. Their approach is atypical, where only a small group of homeowners (e.g., 10 homes) are involved. There is a construction contract executed with each homeowner and the City charges 15% to manage the project. There are no bonds issued and each is privately funded. The homeowners do take advantage of the credits available from the utility company for overhead materials and exclusion from CIAC taxes. Bond financing may be used for a main trench and utilizing 20A funds. The investment range is \$50,000 to \$100,000, with a typical range of \$40,000 to \$50,000.

The first petition submitted for a proposed district must be signed by property owners representing at least 60% of the land area in the proposed district. After the development of firm bids, property owners representing at least 60% of the land area in the proposed district must sign the second petition. The City Council will schedule a public hearing and at the conclusion, the City Council will make a decision regarding the formation of the district. The Council's decision will be final and conclusive.

#### Town of Tiburon-

They have the same process as adopted by Piedmont. However, the District is formed by a majority vote of the District membership with majority approval by the Town Council. It should be noted that the City of Tiburon has incurred significant litigation expenses in defending litigation involving the method of assessments, the benefits received, and other related matters (Bondander I and II cases).

#### City of Solana Beach-

Rule 20A funds may be used to "seed" or "front" preliminary engineering costs for Rule 20B projects, and reimbursed upon successful completion of a Rule 20B district. Initially, the City Council requires a 70% showing of support of property owners benefiting from the assessment district before any "seed" or "front" money will be appropriated.

Once the preliminary costs are determined, the Neighborhood Coordinator will circulate a second petition within the proposed district, and at least 60% of the property owners must be in favor. If the 60% is achieved, staff will require a \$20,000 deposit to retain an assessment engineer. The City Council conducts a public hearing at which the City Council considers objections, if any, to the proposed assessment. The Assessment ballots are weighted on the basis of the dollar amount assessed to each parcel for which the ballot is submitted. If a majority of the weighted assessments ballots returned are in favor, the City Council, in its discretion, may adopt a resolution to approve the district.

### City of Belvedere-

The City of Belvedere follows a similar process as Piedmont. An undergrounding assessment district will have an “Engineer of Record” who decides how much each property is assessed. The City of Belvedere does not charge the property owners in an assessment district for administrative and professional services related to management of the project. This will typically amount to a 15 – 20% cost savings. In other communities these costs are typically borne by the property owners.

The average assessment for districts completed over the past 6 years has ranged from \$20,000 to \$36,000. Property owners are also responsible for the cost of undergrounding their utilities from their homes to the street. The cost range has been from \$2,000 to \$15,000. A formal petition from at least 60% of the property owners in a proposed district must be presented to the Council for their consideration.

### City of San Rafael-

If 60% of a neighborhood wants undergrounding wiring, the city will design and implement it. The city forms an assessment district and the neighbors in effect hire the city as their agent. Properties are assessed by the benefit each parcel receives, not by parcel area or assessed value, and is determined by the engineer of record. Once everyone has a clear idea of the cost, at least 60% of the group needs to sign a formal petition drawn up by the engineer that is submitted to the City Council. If approved by a majority of the City Council, the neighborhood group takes a final vote as to whether or not to go forward – the motion needs to pass a simple majority. Once passed, all owners within the district must participate, whether they voted for it or not. The project is then turned over to the city engineer, and the city proceeds to bond itself to pay for it.

### **Background: Piedmont Hills Underground Assessment District**

The Piedmont Hills Underground Assessment District (PHUAD), as with two other underground assessment districts, was established as a CPUC Rule 20B project. For many of the 20B projects in Marin County, the city was the contracting party with the construction company, as was the case with the PHUAD. However, for the 20B projects in the City of Sausalito, the homeowners (generally a small group of homeowners of approximately 10 homes) each executed their own contract with the construction contractor.

As can be seen from the financial documents which are on-line, rock was encountered in July, 2009, just one month after the construction contract was executed. It appears that by September, 2009, the contingency fund was nearly exhausted. Yet the first documented report that the project was costing more than anticipated was not until October, 2009 and the City Council was given a report of significant cost overruns in December, 2009. When made aware of the potential liability, the City Council

authorized “bail-out” payments totaling approximately \$2,300,000 (which includes a trench washout which is asserted by some to have resulted from the project).

*The impact of cost overruns* - In the case of the PHUAD project, there was a substantial cost overrun (primarily attributable to rock excavation and inaccurate measurements), even after exhausting the project’s contingency reserves, which put the City in a very difficult situation financially. The City of Piedmont was “between a rock and a hard place”. Being the contracting party, the City was forced into the completing the project, since stopping or delaying the project completion would subject the City to liabilities far greater than completing the project using the City’s general funds, and the City did not have the legal means of forcing the homeowners in the district to provide additional funds nor impose an additional assessment to cover the unanticipated cost overruns. The cost overruns and the financial impacts of alternatives are discussed in greater detail in subsequent sections of this report.

### **Item 1.a Steering Committee Functions and Obligations**

According to the history provided by the Piedmont Hills Underground Assessment Project steering committee, the project had its inception when several neighbors believed that safety of the residents of the area required that something be done to assure that utilities be placed underground. To that end, a meeting was requested of the City to gather more information and take necessary steps to develop the concept. The documents given to the committee as well as documents developed by the committee are available on-line for examination.

As stated by the chair of the steering committee, the City recommended that the same process be used as had been used in the past, such as, Dudley/Blair district, Wildwood Crocker, and Central Piedmont. No other suggestions, such as the use of a 20(C) model, or a citywide model, were set forth.

As the process developed, the steering committee felt that communications regarding the project dropped to a lower level. It was a surprise to the committee that rock had been encountered and, while a request was made for additional voluntary funding, no specific amount was set forth. The committee did raise additional funds to help defray additional expenses.

### **Items 1.b and 1.g Other Underground Assessment Districts in Piedmont and the roll of City Staff**

The Scope of Work outline sets forth two separate items, 1. b. and 1. g. relating to the “role of Piedmont staff” and the “past experience with undergrounding projects”, respectively. As these two topics are interconnected they have been combined for discussion herein.

The roles of City staff in 20B underground utility assessment districts have varied from district to district, starting with the Dudley Blair district. In the Dudley Blair district, the

roles of City staff were overall far less than the roles of City staff in the Wildwood Crocker, Central Piedmont, Hampton Sea View and Piedmont Hills districts. Districts and projects before the Dudley Blair district, including King Avenue and Richardson Way, were not reviewed.

In the Dudley Blair district the entire project was organized as if it were a private project. The City staff only got involved after the district progressed toward the final legally required approval process. This included consultation with outside bond counsel, Sam Sperry, and preparation of the necessary resolutions and contracts. The residents of the district, and in particular the main proponent of the district, Mr. Mason Willrich, oversaw the formation of the district and fundraising. The City staff oversaw the construction of the project. The Director of Public Works, Larry Rosenberg, was in charge of the construction. Except for regular and usual City business related to all construction projects, and the administration/disbursement of bond proceeds, very little specific work was performed on this district by any other City staff including City Administrator Geoff Grote, City Clerk Ann Swift, Finance Director Mark Bischel, City Attorney George Peyton, or any other senior level or mid level management personnel of the City.

The past experience with this district was good. The construction was completed without encountering any significant geologically related financial issues. Some significant construction issues did arise, and it was necessary that private funds be raised and deposited with the City as a contingency. In particular, the light poles needed replacement, as they were not correctly specified. Otherwise this was a very successful undergrounding district. No City general funds were used.

In the Wildwood Crocker district the City staff role developed as the district developed. The role of the City Clerk, Ann Swift, increased as the district evolved. City Council resolutions were passed through the process and those resolutions set forth the different aspects of the district that would be the responsibility of the City Clerk and other City staff. Once formed, the oversight of the construction phase was the responsibility of the Director of Public Works. The Finance Director had little day-to-day involvement. The City Administrator supervised the senior management but had little day-to-day involvement with the project, and the City Attorney reviewed the legal process and documentation and worked with bond counsel throughout the period.

As with the Dudley Blair district, the experience with the Wildwood Crocker district was very good. The construction was completed timely and within budget. Although some rock was encountered during the trenching phase, the contingency funds were more than sufficient to cover those extra expenses, and no Piedmont general funds were used for this project except for those that related to City owned land within the district.

In the Central Piedmont district, at City Council direction the City staff became even more involved as a result of many factors including, but not limited to, the size of the district and the number of households involved, the rising costs of construction, the need for multiple ballots and the divided resident support for this district as compared to either the Dudley Blair or Wildwood Crocker districts. The role and workload of the City Clerk

on this district increased due to the fact that there was a resident vote to approve the district before an actual construction bid was obtained. The vote was based upon a cost estimate rather than an actual bid. Given the construction industry bidding climate at the time, by the time the first vote approving the district occurred and the project was sent out for an actual bid, the construction costs for the district increased dramatically over the projected estimate resulting in a need to conduct a second vote by the residents. Given the large difference in construction costs between the estimate and the actual bid, the second vote resulted in far less resident support for the district, and the City Council voted not to approve the district. No construction ever occurred within this district and no City general funds were expended on construction within this district.

In the Piedmont Hills district, the City staff and the residents of the district learned from the experiences of the Central Piedmont district, and did not vote on the project until actual construction bids were obtained. As had been the case with previous districts, the City Clerk worked with the steering committee and other residents within the district to assist them in the early stages of formation and throughout the balloting process. The main difference that occurred with the Piedmont Hills district as compared with the prior districts was the City Clerk's level of interaction during the bidding and construction phase of this district. In the prior districts above described, the construction phase was handled almost exclusively by the Director of Public Works, and others in his department. In the Piedmont Hills district, more direct contact occurred between the City Clerk and the construction entities, including the engineers and contractors, and there was more of a blurring of lines between the roles of the Director of Public Works and the City Clerk until January 2010. In January 2010, the City Administrator assigned responsibility for the construction aspects of the district to Chester Nakahara, and assigned responsibility for the financial aspects of the district to Mark Bischel.

In essence, the district encountered significant cost overruns due to certain factors that are the subject of the above-described litigation. The two primary causes of those cost overruns are the costs associated with the substantial rock discovery that resulted in greater time, energy and expense being expended during the trenching phase. Another cause of the cost overrun was the linear feet miscalculations, which were present in the bid documents, prepared by the engineers hired to prepare the specifications. Those significant miscalculations resulted in the construction bid being much below what it otherwise would have been had the contractor been bidding on correct calculations. It was not until well into the completion of the project that the contractor and the City realized that the engineer specifications were wrong and that the linear foot specifications needed to be re-calculated.

Please see Exhibit F which summarizes certain statistical and financial information for the two other underground assessment district projects in the City of Piedmont, for which both were successfully completed without any cost overruns.

**Item 1.e. Construction – coordination, inspection, change orders, and the role of the City Engineer-**

The following summarizes discussions with the following individuals as to the roles and responsibilities of individuals involved with the PHUAD construction project.

- Ann Swift, City Clerk
- Larry Rosenberg, Director of Public Works
- Geoff Grote, City Administrator
- John Wanger, City Engineer (Coastland)

The following parties were involved with the project:

- Harris & Associates (Harris) – City Engineer prior to July 1, 2009
  - Robert Gray Associates (Robert Gray) – “Engineer of Work” (bid specs and field inspection contracts)
    - Larry Fisher – subcontractor – field inspector (last day was February 12, 2010)
  - Coastland Civil Engineering (Coastland) – City Engineer from July 1, 2009
    - John Wanger, Russ Harland, Marcus Freeman
    - Russ was the Project Manager and field inspection services were provided by Marcus Freeman of Coastland, starting February 15, 2010, upon the departure of Larry Fisher
  - Valley Utility Services (Valley) – Construction Contractor
  - Ann Swift, City Clerk
  - Larry Rosenberg, Director of Public Works
  - Geoff Grote, City Administrator
  - George Peyton, City Attorney
  - Mark Bischel, Finance Director
  - Sam Sperry, Bond Counsel
1. Robert Gray Associates did the composite design and bid documents for the PHUAD project.
  2. The construction contract with Valley Utility Services was dated June 15, 2009.
  3. The project inspection services contract with Robert Gray Associates was dated June 15, 2009.
  4. The start date of the construction was July 13, 2009, which included the mobilization of equipment.

#### Composite Design and Bid Specs-

Harris prepared the base maps which were used by Robert Gray. Harris asserts that the base maps were not to be relied upon by Robert Gray. Robert Gray used the bid specs from the Central Piedmont Underground Utility District (this district did not receive final approval by the City Council for formation) that were done by Harris, including the specs book. It is uncertain as to whether Harris did or did not review Robert Gray’s work before it was finalized. The RFP and bid specs calling for unit pricing is the norm for utility undergrounding and similar types of projects in right of ways. Questions have been raised by members of the public as to whether it was appropriate for the bid specs

prepared by the City Engineer to not have any quantities for the rock excavation line item, which arguably could result in an unbalanced bid, and in not selecting and recommending the lowest responsible bidder by the City Engineer.

#### Construction, Field Inspections, Progress Billings, Meetings-

The field inspections were done Larry Fisher, as a subcontractor for Robert Gray. Larry Fisher was out in the field each construction day to observe and verify the work that was done by Valley, in addition to dealing with homeowner issues.

Russ Harlan, from Coastland – in the capacity as City Engineer, was serving as the Project Manager. Normally, the firm providing the Project Management services also does the field inspection work. Coastland worked with this hybrid arrangement as directed by Larry Rosenberg and Ann Swift.

As the City of Piedmont received the Pay Estimates or progress billings (generally bi-weekly) from Valley, Russ Harlan as the Project Manager would review the backup documentation, which included time sheets for all the labor and line item summaries (following the bid specifications details) which included the materials purchased for the job. Russ Harlan would verbally verify the work being billed with Larry Fisher, the field inspector. Larry Fisher did not do or provide written documentation of his daily inspections. When Coastland took over the field inspection services, upon Larry Fisher's departure, their field inspector (Marcus Freeman) did complete daily reports and logs of his observations, which was very helpful in reconciling to the progress billings from Valley.

Each progress billing from Valley included the original contract amount plus any approved change orders to date, reduced by retentions. Once Russ Harlan verified and was satisfied with the progress billing and its accuracy, John Wanger would sign-off, in addition to Larry Rosenberg, as the Director of Public Works, before it was submitted to Mark Bischel, Finance Director, for processing the request for the release of funds from Union Bank for the payment of the progress billing.

There were typically daily morning meetings by Larry Fisher with Ann Swift and Larry Rosenberg as to construction and homeowner issues.

There were weekly or at least bi-weekly meetings comprised of the following participants:

- Russ Harlan, Project Manager
- John Wanger, as necessary
- Ann Swift, City Clerk
- Larry Rosenberg, Director of Public Works
- Larry Fisher, Field Inspector
- Patrick Benedict, Valley

- PG&E, Comcast, AT&T representatives, as necessary (the utility company representatives were primarily concerned about scheduling and timing)

Ann Swift, Russ Harlan, Larry Fisher, and Patrick Benedict were at all the meetings, and Larry Rosenberg was at many of the meetings. Ann was handling many of the administrative functions, including communications with the homeowners, the District steering committee members; Larry Fisher as to any homeowner and PG&E issues and scheduling matters, billing questions between Russ Harlan and Valley, etc. Many of these administrative functions were handled by Larry Rosenberg in prior underground utility assessment districts. The lines of responsibility and who was doing what was somewhat blurred with this undergrounding utility project. The physical construction issues, such as the wash-out on Crest Road, were handled by Larry Rosenberg. There should have been one person, with clear lines of responsibility, designated as the responsible project manager, who would also have kept the City Administrator well informed of the construction issues or major project developments on a timely basis. In retrospect, the management oversight of this major construction project was weak.

It should be noted that the day-to-day construction interface and financial aspects of the PHUAD project were re-assigned in January 2010, by the City Administrator, Geoff Grote, to Chester Nakahara and Mark Bischel, from Ann Swift and Larry Rosenberg. Also, Larry Rosenberg was out on medical leave in the December 2009/January 2010 timeframe.

For all major capital or construction projects, there should be one in-house active Project Manager or Team Leader responsible for overseeing all the aspects of the major project, including the construction, financial and administrative aspects, after the contractors were chosen and the field work started. The Project Manager would also coordinate with other appropriate department managers (e.g., the Finance Director), as necessary, to fulfill their project responsibilities.

#### Change Orders, Forced Account Work, including Rock

Change order numbers 1 to 25 (through the end of January 2010) were reviewed and summarized by category (see attached Exhibit A), along with a cumulative revised total contract amount. The change orders fell into one of three categories – Rock excavation and installation of conduits, installing conduits by Bore method, and utility company changes. The totals by category are as follows:

Rock	\$2,228,091
Boring	\$ 225,783
Other	\$ 116,055

Early on, Valley asked if they could use the boring method, which is more efficient and where they could, rather than trench digging and repaving, since the cost is also slightly less per linear feet, for which the City was in agreement. The trench sections which were

bored were handled as change orders with credits issued against the base contract amount.

Valley first hit rock the week of July 21<sup>st</sup> when installing splice boxes at Sotelo Avenue. Valley suggested to the City that the cost per cubic yard pricing of \$2,190 would be cost prohibitive and suggested using the forced account provision which has a pricing of time and materials plus 15%. The City agreed. All the trench sections where there was rock excavation work and installation of conduits were handled as change orders. Valley also agreed to issue credits against the base contract amount for these trench sections to avoid a double billing (although technically Valley could per the provisions of the bid documents). John Wanger did a computation of comparing the cost savings of using the Forced Account approach versus the charge per cubic yard for the trench sections with rock, which is significant, and is summarized further in this report (from \$2,190 per cubic yard to \$987 per cubic yard).

The “Other” change orders were primarily changes made by the utility companies as to materials or design and requirements changes, for which they are responsible for payment.

The change orders were discussed during field work and were produced after the work was done (particularly those dealing with rock excavation) and when the progress billings were produced. Russ Harlan also prepared change order summaries for new and cumulative to date change orders, revised contract totals, known or estimated credits, and the estimated amount of remaining contingency reserve dollars.

The City Engineer, John Wanger of Coastland, was becoming increasingly concerned with the continuous amount of rock work, which wasn't subsiding, and was continuing to reduce the contingency reserve during the month of August 2009. John Wanger had expressed major concerns during the first half of October 2009.

There were rock free trench sections after the initial discovery of rock when installing the splice boxes during the week of July 13<sup>th</sup>. However, rock was later encountered again in later trench sections in August on Sotelo and Crest Roads. By mid-September 2009, most of the contingency reserves were exhausted (see Exhibit A), and there were efforts made to look at each of the major line items to rebalance and determine where there were favorable cost under-runs and other potential savings to replenish the contingency reserve balance. In the September/October 2009 timeframe, City management thought that there was approximately \$350,000 of cost savings that could be used to supplement the contingency reserve amount. There was also the challenge of trying to determine and calculate any remaining credits or offsets that have yet to be applied in future progress billings. Certainly in the November 2009 timeframe, it was clear that the estimated \$350,000 in cost savings were not enough and there were additional change orders on a persistent rock problem. It should also be noted that the City spent approximately \$300,000 in costs associated with the trench wash-out on Crest Road (due to a major storm during the construction period) with funds from the City's Sewer Fund.

Questions have been raised as to whether the project should have been stopped, delayed, postponed, whether geotechnical borings should have been obtained and re-evaluate the situation, etc. There was certainly much more rock than was anticipated. Management was dealing with the rock issue day-by-day and week-by-week in moving the project along, since no one knew the amount of rock. There are many ramifications and moving parts impacted with any delays. There are also many contractual obligations and liabilities with delays. Also, no one anticipated that the quantities or linear footage in the bid specs were materially underestimated (off by more than 15%), which was not discovered until January 2010 when Valley ran out of conduit. As it turned out, the late January 2010 “Not to Exceed” agreed upon amount with Valley to complete the project was the best way to proceed with a cap on the costs.

Certainly, City Management could and should have brought forth the project financial problems earlier to evaluate the options. A financial analysis has been completed of the various options and alternatives, including the what-if assumptions if the problems were brought forth to the City Council as early as in the August 2009 timeframe (see Exhibit E). However, it’s the opinion of Bond Counsel that once the project was started, the least costly alternative to the City is to finish the project. This is also an important factor, impacting the City’s litigation, in that the City is mitigating the potential higher costs associated with not timely completing the project.

**Item 1.f. Payments and commitments upon issuance of bonds**

The term sheet and sources and uses of the bond proceeds are summarized in the attached Exhibit B for the following two bond series.

Series 2009-A	\$3,200,000
Series 2009-B	\$ 205,000

**Issuer:**

The Series 2009-A and 2009-B bonds were issued by the City of Piedmont pursuant to the provisions of the Improvement Bond Act of 1915 (Division 10 of the California Streets and Highway Code) for the purpose of financing the undergrounding of utility lines and appurtenances within the City’s Piedmont Hills Underground Assessment District.

**Interest:**

Interest on the Bonds is payable March 2, 2010, and thereafter semiannually on March 2 and September 2 of each year.

**Assessments:**

The Bonds are issued upon and equally secured by the unpaid Assessments against the properties in the PHUAD, together with interest thereon, and the unpaid assessments,

together with interest thereon, constitute a trust fund for the redemption and payment of the principal of the Bonds and the interest thereon. The Bonds are further secured by the monies in the Redemption Fund and the Reserve Fund created pursuant to the Fiscal Agent Agreement. Principal and interest, and redemption premiums, if any, on the Bonds are payable exclusively out of the Redemption Fund.

The security and source of payment for the Series 2009-A 2009-B bonds are the same, without any priority as to either series.

The Assessments and each installment thereof, and any interest and penalties thereon, constitute a lien against the parcels of land on which the Assessments are levied until the same are paid. Such lien is subordinate to all fixed special assessments liens previously imposed upon the same property, but has priority over all existing and future private liens and over all fixed special assessment liens which may thereafter be created against the property. Such lien is co-equal to and independent of the lien for general property taxes.

The following wording is extracted from the offering memorandum materials:

**“The Bonds are not payable from or secured by the general fund of the City. The Bonds are not secured by the general taxing power of the City, the County, or the State or any political subdivision of the State, and neither the City, the County, the State nor any political subdivision of the State has pledged its full faith and credit for the payment thereof.**

**The City’s legal responsibilities with respect to delinquent installments are limited to advancing the amount thereof solely from any available moneys in the Reserve Fund and to undertaking judicial foreclosure proceedings to recover such delinquencies. This duty of the City to advance funds continues during the period of delinquency only to the extent of funds available from the Reserve Fund, until reinstatement, redemption, or sale of the delinquent property. In accordance with Section 8769(b) of the 1915 Act, the City has determined that it will not be obligated to advance funds from its treasury to cure any deficiency in the Redemption Fund.”**

Although the unpaid assessments constitute fixed liens on the parcels assessed, they do not constitute the personal indebtedness of the owners of the parcels. Furthermore, there can be no assurance as to the ability or the willingness of the owners to pay the unpaid Assessments. In addition, there can be no assurance that the present owners will continue to own their parcel in the District.

#### Reserve Fund

The City will direct the Fiscal Agent to establish a Reserve Fund in the amount of \$131,361.25 (representing ½ of the maximum annual debt service of the Bonds) from Bond proceeds, which amount will be transferred to the Redemption Fund in the event of such delinquencies. The Reserve Fund will be maintained from available Assessment payments, in an amount equal to the Reserve Requirement. If there are additional

delinquencies after depletion of funds in the Reserve Fund, the City is not obligated to transfer into the Assessment Fund the amount of such delinquencies out of any other available monies of the City.

#### Property subject to the Assessment

Property in the District subject to unpaid Assessments is comprised of 108 single family home properties owned by various homeowners. This does not include parcels in the District which elected to prepay assessments prior to the issuance of the bonds. The District was formed at the request of certain owners of property in the District to finance the undergrounding of existing overhead utility facilities.

#### Redemptions:

The Bonds are subject to optional and mandatory redemptions. Transfers of property ownership and other similar circumstances could result in prepayment of all or part of the assessments. Such prepayments would result in redemption of a portion of the Bonds prior to their stated maturities.

The following wording is clearly spelled out in the offering memorandum or official statement:

“THE BONDS ARE LIMITED OBLIGATION IMPROVEMENT BONDS AND ARE SECURED SOLELY BY THE SPECIAL ASSESSMENTS AND THE AMOUNTS IN THE REDEMPTION FUND AND THE RESERVE FUND. THE BONDS ARE NOT SECURED BY THE GENERAL TAXING POWER OF THE CITY OF PIEDMONT, THE COUNTY OF ALAMEDA (THE “COUNTY”), OR THE STATE OF CALIFORNIA (THE “STATE”) OR ANY POLITICAL SUBDIVISION OF THE STATE. NEITHER THE FAITH AND CREDIT NOR THE TAXING POWER OF THE CITY, THE COUNTY, THE STATE OR ANY POLITICAL SUBDIVISION THEREOF IS PLEDGED TO THE PAYMENT OF THE BONDS. THE INFORMATION SET FORTH IN THIS OFFICIAL STATEMENT, INCLUDING INFORMATION UNDER THE HEADING “SPECIAL RISK FACTORS” SHOULD BE READ IN ITS ENTIRETY.”

#### Covenant to Commence Superior Court Foreclosure

The City covenants for the benefit of the owners of the Bonds that it will determine or cause to be determined, no later than September 1<sup>st</sup> of each year, whether or not any owners of property within the Assessment District are delinquent in the payment of an installment on account of an Unpaid Assessment and, if such delinquencies exist, the City will order and cause to be commenced no later than November 1<sup>st</sup> of that same year and thereafter diligently prosecute or cause to be prosecuted, an action in the superior court to foreclose on the lien of any Assessments or installment thereof not paid when due.

However, the City shall not be required to order the commencement of foreclosure proceedings if (i) the total Assessment delinquency in the Assessment District of such Fiscal Year is less than 5% of the total amount of installments billed in such Fiscal Year on account of Unpaid Assessments, and (ii) the Reserve Fund remains at the Reserve Requirement. Notwithstanding the foregoing, if the City determines that any single property owner in the Assessment District is delinquent in excess of \$5,000 in the payment of installments on account of Unpaid Assessments, then it will diligently institute, prosecute and pursue foreclosure proceedings against all parcels then owned by the property owner which are delinquent.

#### Enforceability of Remedies

The remedies available to the Fiscal Agent, the City, or the Owners of the Bonds upon any nonpayment of assessment installments are in many respects dependent upon judicial actions, which are often subject to discretion and delay. Under existing constitutional and statutory law and judicial decisions, including specifically Title 11 of the United States Code (the federal bankruptcy code) and relevant banking and insurance law, the remedies provided in the 1915 Act and the 1913 Act may not be readily available or may be limited.

#### Limited Obligation of the City Upon Delinquency

If a delinquency occurs in the payment of any assessment installment, the City has a duty only to cause the transfer into the Redemption Fund of the amount of the delinquency out of the Reserve Fund and to undertake judicial foreclosure proceedings to recover such delinquencies. This duty of the City is continuing during the period of delinquency, until reinstatement, redemption, or sale of the delinquent property. There is no assurance that funds will be available for this purpose and if, during the period of delinquency, there are insufficient funds in the Reserve Fund, a delay may occur in payments to the owners of the Bonds. If there are additional delinquencies after exhaustion of funds in the Reserve Fund, the City is not obligated to transfer into the applicable Redemption Fund the amount of such delinquency out of any other available moneys of the City.

#### Practical matters as to when the City might be liable for actions that it may take:

(Per discussion with Sam Sperry of Meyers Nave Riback Silver & Wilson)

If the City of Piedmont had taken adverse action of stopping and not completing the project, the City would be subject to the following legal exposures:

1. The Bondholders could file a class action suit against the City of Piedmont for taking adverse actions and negatively impacting the security of the Bondholders and a diminution of value of the bonds. The Bondholders could also claim a breach of contract and sue for damages.

2. The homeowners who did not prepay their special assessments would have legitimate reasons for not paying the special assessment portion of their property tax bill because they did not receive a finished project.
3. The City would likely fail in seeking judicial foreclosure approval because it did not deliver a finished project to the homeowners in return for the special assessments.
4. The homeowners in the Special Assessment District who have prepaid could also file an action against the City of Piedmont for not delivering a finished project – i.e., paying for something that they did not receive, and seek a refund of their prepayment amounts.
5. The ultimate costs and expense of the litigation could easily exceed the costs to complete the project with using the City’s general and other reserve funds or monies.

**Item 2.b. Timeline of expenditures including the development of “rock” issue**

As previously discussed, a completed a timeline and analysis of the expenditures and payments through change order #025, by reviewing the billings and description of the work done (see attached Exhibit A). As noted earlier, rock was first discovered during the last half of July 2009 with the installation of splice boxes. Valley brought this to the attention of the Public Works Director and both parties agreed to use the In-Force Account provision of the construction contract, rather than the \$2,190 per cubic yard pricing provided in the accepted bid, which would have been far more expensive, plus offering a credit as an offset for the work that otherwise would have been done under the base bid (for non-rock trenching).

John Wanger of Coastland also pointed out that Valley was fair with offering the offsetting credit since under the contract, they did not have to offer the credit. The contract language specifically states the following, regarding Rock Excavation:

“Rock Excavation shall be paid by the cubic yard, which price shall include full compensation shall include all labor, materials and incidentals required to perform all work described under Rock Excavation. This unit price will be paid in excess of normal excavation paid under various other items in the Bid Schedule required for the project. This bid item is revocable if no rock excavation is required, or if Rock Excavation is anticipated and is defined as being paid for under other items.”

Please refer to attached Exhibit C, which provides a cash flow analysis of the expenditures through the end of January 2010, by vendor. Aside from Valley’s contract, the next largest cash outlay was made on August 7, 2009 of \$1,627,744 to PG&E as an upfront payment for their contract for the undergrounding project. This payment is required by PG&E before it approves the final plans in order for construction to begin. As of January 31, 2010, approximately \$5.132 million had been spent, for which the largest components were the payments to PG&E of \$1.627 million and \$3.195 million to Valley.

The following is a summary of the billings for rock work, as change orders, before any base contract credits, to understand the timing of the rock work:

Change Order #	Period of work	Billing Amount	Construction Mgr Signoff Date	Public Works Director Approval Date
002	7/13/09 to 7/16/09	53,527	7/24/2009	7/30/2009
004	7/20/09 to 7/30/09	158,690	8/10/2009	8/11/2009
006	8/3/09 to 8/14/09	229,475	8/27/2009	8/28/2009
008	8/17/09 to 8/28/09	251,135	9/8/2009	9/14/2009
011	8/31/09 to 9/11/09	219,640	9/22/2009	9/25/2009
013	9/14/09 to 9/25/09	192,035	10/6/2009	10/7/2009

Regarding the in-force account and costs associated with the rock work, Coastland went through the as-built plans and records, and has determined that there was a total of approximately 2,690.8 cubic yards of rock removed on the project (see Exhibit D). The total amount paid for rock work on a forced account basis (based on the rock work shown in the change orders for the job) totaled \$2,655,828.68. If Valley would have used the \$2,190 per cubic yard pricing as indicated in the bid contract documents, the City would have ended up paying \$5,892,852, or 2.22 times more. The equivalent pricing, based on the actual billing for the rock excavation, is \$987 per cubic yard.

The total as-built trenching was 15,770 linear feet (which is comprised of 13,706 per the original plans plus 2,064 in additional linear footage that were not included in the bid specs). The linear footage of trench that required rock excavation was 9,539, representing 60.5% of the total linear footage, far exceeding any reasonable expectation. The 2,064 of additional linear footage is 15.1% of the total linear footage.

Since there was no quantity in the bid specs for rock excavation, I did a sensitivity analysis of trying to determine an approximate break-point of where Valley would not have been the low bid, by using varying quantities of rock excavation. The break-point is at approximately 400 cubic yards for the bids between Valley and Tenneyson Electric to be equivalent (see Exhibit D).

The total paid to Valley, after the base bid credits, was approximately \$3.454 million, which includes the 2,064 of additional linear footage not in the bid specs. It would be time consuming, with estimated assumptions, as to what the other original bids would have been with the additional linear footage, to compare against Valley's actual total.

**Item 2.c Available alternatives at the time rock was discovered – using hindsight and realistically, could the City have done anything differently?**

In order to do an analysis as to available alternatives, using hindsight, I used three timeframes: July 31, 2009, November 30, 2009, and January 31, 2010.

The above timeframes were selected for the following reasons:

- July 31, 2009 – earliest discovery of rock
- November 30, 2009 – contingency reserves exhausted and discussion of litigation
- January 31, 2010 – timing of the need for a second appropriation due to plan errors and more rock

I did an analysis of the estimated costs to terminate the project at each of the above stages, in addition to suspending the project in an attempt to obtain additional sources of funding. I considered the following factors:

1. Cash balances, adjusted for unpaid bills
2. Estimated retention payments due
3. Total of the Series A and B bonds
4. Prepayment penalty – assuming a 102 call price
5. Return of homeowner prepayments
6. Return of private lateral prepayments
7. Legal defense costs – bondholders, homeowners, contractors
8. Balance owed contractors for unbilled services
9. Costs of de-mobilization
10. Refunds from PG&E of the contract amount, net of engineering, inspections, and other services already provided

For the suspension scenarios, I included the costs of de-mobilization and anticipated higher re-bid amount from PG&E due to plan errors. The estimate and net appropriation approved in January 2010 was \$1,060,000. This compares favorably to the termination or suspension scenarios, requiring estimated appropriations. Please note that my analysis is based on my interpretations and estimates, and that there may be more ways to quantify the impact of the various scenarios.

Please refer to Exhibit E for my analysis. The results are summarized as follows:

July 31, 2009 - terminate	\$1,629,440
November 30, 2009 – terminate	\$4,650,495
January 31, 2010 – terminate	\$5,100,989

Suspension - incremental      \$1,841,424 costs over completing the project

Suspension raises a number of hard to quantify issues:

1. Homeowners are not obligated nor can they be forced to pay more.
2. Getting an after the fact geotechnical inspection and report would delay the project.
3. Even with a geotechnical report, the City couldn't simply push Valley aside without incurring extra costs.

4. Re-bidding would most likely require a new RFP since the conditions have changed (can't simply choose from original bidders).
5. PG&E cost estimates for their bid was low for both engineering and construction, giving them an opportunity to re-bid.
6. If there was a re-ballot to try to get homeowners to pay an additional assessment, the outcome is uncertain.
7. Legal exposures – bondholders, homeowners who have prepaid, and contractor for lost profits, delays and penalties

**Item 2.d When did the city seek legal counsel? Did the city receive advice regarding the use of General Fund monies? (notification of the City Council and notification of the public)**

Once it became apparent that there were significant problems with the Piedmont Hills district, and that there was potential for legal causes of action and liability by and among different parties, the City Administrator Geoff Grote notified Mayor Abe Friedman in October 2009. The City Administrator then immediately contacted the law firm of Lombardi, Loper & Conant to discuss all aspects of the matter relating to the engineering and construction phase of the district. Of course, given the pending litigation and the need to preserve the attorney client and attorney work product privileges, the specifics of those discussions cannot be detailed in this report.

Following the initial consultation with Lombardi, Loper & Conant, the City Council was briefed during the closed session portion of the first meeting in November 2009, on November 2, 2009. A representative of Lombardi, Loper & Conant was present and discussed the potential rights, liabilities and remedies facing the City. Lombardi, Loper & Conant has been representing the City on all aspects of this legal matter since, and litigation has been initiated. By contract, a mediation had to be conducted to attempt a resolution of the matter without further litigation and to date one mediation session has occurred and another mediation session is planned.

In addition to the consultation and advice being provided by the litigation counsel, Lombardi, Loper & Conant, regarding the matters associated with the engineering and construction aspects of the district, the City also consulted with Sam Sperry, the City's bond counsel for the district. Mr. Sperry appeared before the City Council in closed session on November 16, 2009 to discuss the options the City had with regard to completion of the construction project, including whether to continue or terminate the daily construction. Included in Mr. Sperry's discussion were impacts on the bond obligations facing the City, continuing liability under the contracts entered into by the City with the contractors among others, and the potential liability related to unfinished trenches throughout the district.

In conclusion, City Administrator Grote followed City policy and procedures and sought the advice of legal counsel as soon as it became evident that there was a need for legal representation for the City both on the litigation aspects of the matter, as well as on the potential obligations under the bonds that were issued in connection with the district.

## Responses to Questions Presented

During the existence of the audit sub-committee, a number of questions were asked of the committee. These were reformatted, since several were compound and complex and are posted on the website.

Attached are four soils reports which were available on request from the City. This type of report is apparently required to be maintained and reported to the State as part of the seismic information system. The reports relate to the following properties and dates:

- 393 Hampton Road – January 31, 2007
- 430 Hampton Road – September 24, 2002
- 25 Glen Alpine Road – August 12, 2005
- 61 Glen Alpine Road – June 20, 2008

Separately filed with the City is a group of documents which represent the information given to the Steering Committee as the project progressed.

Because of restrictions on subcommittee actions because of attorney/client privilege and work product, these answers to questions rely on materials and information which are public knowledge and as recommended below, do not constitute definitive answers to the questions asked.

1. **Q:** Does the City have a conflicts of interest policy regarding the City Engineer and the Outside Engineering Firm retained to perform design services?  
**A:** No, not at any time relevant to this project. In one of the contracts, there is a provision that the Engineer nor any relative within the third degree hold any interest in any property which is the subject of the project.
2. **Q:** Does the City have a policy regarding the use of General fund monies for undergrounding districts which applies after formation?  
**A:** No. The prohibition of use of general funds is for pre-formation expenses.
- 2a. **Q:** How does the City define “direct” and “indirect” costs?  
**A:** There are general accepted definitions which the City adopts. However, specific cases may raise questions which may be addressed on an ad hoc basis. Most of the “indirect costs” which were paid by the City involved, for example, time spent on the project by various individuals for legal and clerical matters.
- 2b. **Q:** Did the City pay direct or indirect costs associated with the Piedmont Hills district and not charge them to the district?  
**A:** The amounts paid by the City were governed by the Preliminary Expense Agreement between the City and the Committee of Homeowners.
3. **Q:** What were the specific roles and responsibilities of City Staff?  
**A:** In general, see the City Charter and the Personnel Manual definitions (on line).
- 3a. **Q:** City Clerk?  
**A:** See on line
- 3b. **Q:** Public Works?

**A:** See on line.. There are two job descriptions, one for Public Works Director and one for Public Works Supervisor.

3c. **Q:** City Engineer?

**A:** There is no job description for this position. The position is established by the City Charter. The duties of the position are set forth in the contract.

**Q:** Does a document summarize?

**A:** Only the contract between the engineer and the City;

**Q:** Did the roles and responsibilities change over time?

**A:** In the specific case of the PHUUD project, the City Engineer was the same as the Engineer of Work at the outset. However, notice was subsequently given to the City by Harris indicating that the work could not be done as agreed. Therefore Robert Gray Associates took over as Engineer of Work prior to July 1, 2009. In addition, Coastline was retained to serve in a consulting capacity on July 1, 2009. Unfortunately, Robert Gray Associates was given and adopted the data from Harris & Associates in continuing the work.

**Q:** Did the Council inquire about such roles and responsibilities?

**A:** The Council was aware of the notice from Harris and the agreement with Robert Gray Associates. It is not clear whether the specific role of Robert Gray Associates was the subject of Council inquiries in any detail.

**Q:** Who verified and audited the PHUDD overruns and when was it done?

**A:** The Council and Staff relied on periodic reports from the City Engineer. The reports were filed with the construction committee and passed-along to the City. There was no outside audit. The reports were not independently verified until Acting Director of Public Works, Chester Nakahara, working with Coastline and RGA required regular, verified documentation.

4. **Q:** What were the factors used to determine the contingency for the project?

**A:** The first draft of the Engineers' Report used a higher figure for contingency hold-back (30%). However, the final report intended to use a lower figure (15%) because that was the figure used in the Wildwood-Crocker and Central Piedmont projects. It is not known how or why the figure was reduced below 15%.(14.25%). I found no document which records the change or any reason for it.

5. **Q:** What process was used to determine what should be included in the documents?

**A:** Without reference to specific documents, it is difficult to respond to this question. For the engineering documents, for example, Harris & Associates designated the appropriate document and provided them. For the bond documents, bond counsel followed various statutory and regulatory procedures and drafted or obtained the appropriate documents. .

6. **Q:** Who decided to put "zero" for the quantity of rock?

**A:** Harris & Associates initially and then RGA. Note that there are public seismic reports which are available.

7. **Q:** Who reviewed and approved the bid documents?

**A:** The City Engineer (Harris & Associates)

8. **Q:** What was the evaluation process for reviewing the bids?

**A:** The City Engineer reviewed the bids and made recommendations to the Council.

9. **Q:** Did anyone raise the issue that the hard rock bids were significantly unbalanced?  
**A:** Nobody addressed the issue. Harris & Associates were responsible for reviewing the bids and making a recommendation as to which entity would be awarded the project.
10. **Q:** Was the City Engineer or any other department asked to review the bid results?  
**A:** Only the City Engineer.
11. **Q:** Was there a policy or practice for the City Engineer or other staff member to notify the Council of potential bid irregularities?  
**A:** Yes. The City Engineer had that responsibility.
12. **Q:** Should the Council consider adopting a policy that would require informing residents what percentage of favorable votes would be required to proceed with the project?  
**A:** This is an issue for the Council. See Recommendations, below.
15. **Q:** If the bidders followed the State-approved bidding format, is it true that the Valley Utility bid, although the lowest in base bid, was not the overall best value or most advantageous?  
**A:** There does not appear to be a “State-approved bidding format for this type of bid. However, depending on the circumstances, clearly the lowest base bid may not always be the most advantageous.
16. **Q:** Did the Administrator, City Attorney and PHUUD steering committee violate the State Public bidding laws by using an unknown firm with an irregular low bid coupled with unbalanced unit numbers?  
**A:** I could find no clear violation of any criminal statute in regard to the bid. However, there may be possible causes of action for failure to meet the applicable standard of practice in the profession.
17. **Q:** Why was the Valley bid chosen when it appears to be irregular, particularly in the Line 38 rock clause?  
**A:** The selection was on the recommendation of the City Engineer (Harris & Associates). There are issues of fact regarding what was known and who knew it at the time.
18. **Q:** Was the PHUUD Steering Committee aware of substantial bedrock in their district?  
**A:** The Committee chair denies that bedrock was ever mentioned by any resident during the course of discussions. On the other hand, from the soils reports set forth above, there had been work on at least four properties in the district which disclosed potential rock problems.
19. **Q:** Was the Valley bid an unbalanced bid?  
**A:** In hindsight it appears unbalanced. The facts that were known or knowable, however, must be taken into account. The Valley bid was within the range of other bids at the time.
20. **Q:** Why was geotechnical work not required by staff, once substantial bedrock was found in the first week of work?  
**A:** Past experience had been that the presence of bedrock was sporadic and irregular. In this case, there was normal progress after the first week. Then more rock.
21. **Q:** Why wasn't Tennyson Electric brought in to replace Valley early on, or another contractor, such as Rander Pipeline who had extensive experience with blue granite?

- A:** The City was trying to perform under its contract with Valley at the time and avoid expensive disputes. The extent of the blue granite was unknown at the time.
22. **Q:** Why wasn't a competitive price in line with the other bids negotiated with Valley once substantial bedrock was found?
- A:** In spite of having a 10-day notice to terminate right, it was thought to be not feasible in economic terms given the circumstances. See John Chiang's analysis.
23. **Q:** Why was the 30% contingency in the January 10, 2007 Harris Engineer Preliminary Draft report reduced to 14.25%?
- A:** The reduction was based on similar reductions for the Contingency in the Wildwood-Crocker and Central Piedmont projects. The reduction was intended to be to 15% only. There does not appear to be any apparent reason for the reduction below 15% to 14.25%.
24. **Q:** Why didn't the City staff inform the Council members immediately in July?
- A:** In July, there was still substantial uncertainty about the Geological situation. There does not appear to be a good reason not to share the uncertainty with the Council. City staff indicate they were aware.

### **Recommendations**

**(Compiler's Note:** The following are the recommendations put forth by the member of the sub-committee on their draft reports. Similar recommendations have been grouped together and each recommendation has been identified by the member who suggested it (DB=Dean Barbieri, JC=John Chiang, KK=Ken Kawaichi). The sub-committee will choose which recommendations to include and which wording to use.)

1. **DB-** If necessary and appropriate a dedicated project manager should be named to oversee any such project, and in particular all of the technical construction phases.  
**DB-** If necessary, the City should hire such a dedicated project manager, who must have experience in the type of project undertaken to assess the implications of issues that are identified at early stages, as opposed to just using City staff.  
**JC-** An outside experienced Project Manager should be hired for complex construction projects, for which there is no internal expertise.  
**KK -** In any project for which the budget is over an amount to be determined by the City Council, the City Council should, as a matter of policy, designate or retain a project manager to oversee progress of the project as well as ascertain and make regular reports on progress, cost and any matters which the council directs should be reported.  
**KK-** If a project manager is not appointed or assigned for a particular project, an independent monitor should be assigned to monitor a city project and report regularly to the council.
  
2. **KK-** As a policy, oversight and management of projects should be assigned to qualified personnel who will be accountable for keeping the Council informed on such matters as cost overruns, unanticipated performance problems and any matter which could involve substantial expenditures of City funds. City oversight should be

continuous from initial proposal through completion and should, to the extent possible, follow guidelines promulgated by the City Council and Staff.

**DB-** To avoid similar problems for any future City significant construction projects, the roles of the City staff must be certain and established at the outset of such projects. The responsibilities for the financial, administrative and supervisory aspects of the project must be known and accepted by all of the staff involved. The responsibilities must be assigned based on knowledge and time availability.

3. **DB-** The financial oversight must be accurate and reviewed daily if necessary, and the City Administrator and City Council must be informed immediately of any unexpected significant circumstance that could impact the City and its resources.
4. **JC-** The Finance Director should work with the Public Works Director, or assigned Project Manager, to be involved with the financial aspects of all capital projects, including status reports.
5. **JC-** The roles and responsibilities for management of capital projects should rest with one person, which should be the Director of Public Works or whomever the City Administrator designates, and not a management by committee approach.
6. **KK-** If any member of the Staff team assigned to assist or monitor any city project becomes ill or unable to perform that person's duties for any reason, another qualified staff member or a qualified person specifically engaged to fill the position vacated should be substituted immediately.
7. **JC-** The City Administrator should work more closely with his direct reports, and especially when it relates to significant construction projects, so that he is informed of major issues that should be brought to the attention of the City Council.
8. **KK-** The City Engineer should not be permitted to bid directly on city projects.  
**KK-** The City should adopt a policy which prohibits the same individual or entity from making a bid on a project, evaluating the bids submitted for that project, and recommending the acceptance of their own bid. The City Engineer should be independent and prohibited from making bids on projects.  
**JC-** The City should consider establishing a review process, when multiple professional services are being provided by the same vendor, as to potential consequences.
9. **JC-** The City Management should consider implementing an Enterprise Risk Management (ERM) program or risk-based approach to managing the City. The risk management process involves identifying and proactively addressing risks and opportunities, assessing them in terms of the likelihood and magnitude of impact, and determining a responsive strategy and monitoring progress. This concept can be applied not only to major construction projects, but also the ongoing operations of the City.

10. **JC-** The private undergrounding utility assessment district structure needs to be redesigned to not put the City financially at risk (e.g., for cost overruns, acts of God, litigation, etc.).
11. **JC-** Consideration should be given in revisiting the City's policy of using Rule 20A funds, or the advancing of them, as seed money for Rule 20B private underground utility assessment districts.
12. **KK-** A reasonable contingency should be set at the inception of every undergrounding project and reviewed periodically. That contingency should be maintained at the established level unless the Council, upon recommendation by Staff, finds that a different contingency is appropriate and necessary.
13. **JC-** The City should consider the establishment of a minimum approval percentage threshold for the second ballot (e.g., 60% has used by several cities who have established private underground utility assessment districts, while others have used a simple majority threshold), with either preliminary estimates or final bids, before the final vote is taken by the City Council as to whether the district should be formed.
14. **JC-** Consideration should be given to the establishment of a dollar threshold for major capital projects as to the frequency of status reports to the City Council, to include billings to date, estimates to complete, percentage completion and any anticipated cost overruns.
15. **KK-** Because it appears that once a utilities undergrounding project is undertaken, the adverse monetary consequences are so great that it is difficult to stop or even pause, policies should be implemented which will allow homeowners to vote knowledgeably as to whether to proceed with the project:
  - a. All possible alternatives should be presented to the homeowners, including various methods of funding, private or public nature of the project, and other possible choices such as using 20C or city-wide approaches.
  - b. The thresholds for the vote should be clear. State law mandates that if more than fifty percent of the voting group vote against the project, the council must reject the project. However, there is uncertainty regarding the specific number of homeowners who must vote favorably in order to have the Council support the project. That number should be clear from the outset. If for some reason the Council does not desire to set a specific percentage, that fact should be published to the committee and homeowners prior to the vote.
  - c. The Council should determine a policy regarding post-approval direct and indirect expenses and the extent the city will pay those expenses or pass them through to the homeowners.
  - d. The Council should determine whether it will determine a policy to keep the homeowners informed of the financial and construction progress to keep everyone alert to potential difficulties.

16. **KK-** The City system of requests for proposals and bid solicitation should be examined regularly and adjusted to prevent abuses and errors. The City policy should focus on the inception and pre-inception stages because once a project has begun, the potential economic consequences of delay or stoppage appear to rise steeply
17. **KK-** For any future utilities undergrounding projects, part of the bidding process should include examination of existing reports, inclusion, where appropriate, of geological reports and reasonable provisions for unforeseen problems, such as bedrock, springs, and other matters as well as a physical “walking” of the area to be served. For example in the PHUUD case, the “Instructions to Bidders” on page one state that, “(3) all other data and matters requisite to the fulfillment of the work and on its own knowledge of existing facilities on and in the vicinity of the site of the work to be constructed under the contract, (4) the conditions to be encountered...”. At various times before and during the project, at least four soils reports, referred to above, were available to the bidders. Items 138 and 144 of the Bid Proposal form specifically name two of the addresses, while item 133 appears to be adjacent to another.
- KK-** The Council should consider a policy that requires a preliminary geophysical report on all future utilities undergrounding projects in the City of Piedmont.
18. **KK-** A city website containing all relevant legal and policy documents for undergrounding of utilities should be established and updated at least annually or when any change in law or policy occurs which affects the project.
- KK-** Whether in electronic or hard-copy form, all policies relating to undergrounding of utilities should be available to any interested party. They should be kept together, updated regularly and indexed for easy access.
19. **KK-** When the Council changes or modifies policy while projects are underway, those changes or modifications should state on their face whether they are intended to apply to the projects which are already underway or only to future projects.
20. **KK-** As a guiding principle, the City of Piedmont should have a set of policies and guidelines which are clear, understandable, up to date, and as easy to follow as possible. Forms for implementation should be developed to encourage uniformity and transparency of the process.
21. **KK-** As a matter of policy, the Council should consider whether any sub-committee with the purpose of audit or reporting on projects can adequately perform the task if there is litigation pending or impending or if other formal investigative or administrative proceedings are pending.
22. **KK-** As a matter of policy, the City Council should consider the product of this sub-committee is preliminary, subject to revision after the litigation and investigation are complete when a final report can be made.
- KK-** The report and recommendations presented by this subcommittee should be subject to revision after the litigation and investigation are complete.

23. **KK-** this report serve as a preliminary report and that a final report issue after resolution of current legal actions and investigations. Further, the subcommittee should determine whether it has subpoena powers and whether witnesses can be called to testify under oath.

**Piedmont City Policy:** Applicable statutes, including the City Charter, minutes of City Council meetings, and correspondence all will be found on the City of Piedmont website. There are many other materials, most of which have been presented in public hearings, which bear on the work of the subcommittee. It has been asserted by the Piedmont Civic Association that the report should be grounded upon the Piedmont City Charter. That is a reasonable position, but as can be seen by the citations to other state and general statutes, other legislative acts impact the project, the individuals and groups involved and the rights and duties of various parties and entities.

### **Summary**

The Piedmont Hills Utilities Undergrounding District project has placed in focus a number potential weaknesses in policies, procedures, management and oversight. Even this auditing process is flawed because it is much less effective due to constraints of pending investigations and litigation. In my view, this audit process has revealed no violations of criminal law. There is little credible evidence that any participant knowingly or intentionally violated a regulation or statute. A number of weaknesses came together with a number of bad circumstances with the result that the residents of Piedmont have had to contribute approximately \$2,064,000.00 (again, it is too early to be specific) to the PHUUD project. The lack of apparent criminal conduct, however, does not mean that there was no negligent or performance below the applicable standard of care.

### **Additional Recommendations Suggested by Piedmont Groups and Residents**

1. The Report should make findings that:
  - a. Stopping the project subjects the City to massive potential liabilities far in excess of completing the project with general funds; and
  - b. The City has no way to force homeowners to provide additional funds for unanticipated cost overruns or Acts of God following the initial assessment [Suggested by Elizabeth Schultz]
2. The option of using 20(C) districts should be set forth, including advantages and disadvantages. [Elizabeth Schultz]
3. The negative experiences of use of the 20(B) model, such as the City of Tiburon, should be set forth. [Elizabeth Schultz]
4. There should be disclosure and comment on the use of 20(A) funds should be included in the Report. [Elizabeth Schultz]

5. The impact of “Acts of God” on construction should be noted and questions raised as to the nature and extent of such risks and whether scheduling during the dry season would ameliorate adverse consequences. [Elizabeth Schultz]
6. A summary of past experiences in chart or spreadsheet form would be useful in providing a context for the Report. [Elizabeth Schultz]
7. The audit should be conducted by an outside, independent group. [Rick Schiller]
8. An option should be presented to get the City out of the undergrounding business altogether. [Rick Schiller]
9. The Report should address responsibility for examining the bids for irregular items. [Rick Schiller]
10. Although Mr. Grote has eliminated irregular line items in bids in the past, he denies any direct responsibility for examining the bids in the PHUUD situation, which should raise issues of accountability. [Rick Schiller]
11. The role of Mr. George Peyton, City Attorney at the time, has not been explored. [Rick Schiller]
12. The practice of delegating responsibility for reviewing bids should be reviewed, along with the culture at City Hall which affected oversight of this process. [Rick Schiller]
13. The Report should address whether the culture of tacit approval and encouragement of undergrounding utilities in Piedmont is appropriate. [Rick Schiller]
14. The process of oversight and communication of the extent of overspending should be addressed by the Report. An example is the change order of \$250,000 for Sotelo Ave. which occurred in July but was thought to be only an unusual event which would not affect the rest of the project. [Rick Schiller]
15. The Valley Bid which was the most unbalanced was not mentioned in the Report. [Rick Schiller]
16. Why was the PHUUD not asked to pay for the Crest Road washout? [Rick Schiller]
17. Ann Swift’s report on Feb.1, 2010 reported a small deficit the day prior to the municipal election, but the true deficit was going to require another \$1M expenditure. [Rick Schiller]
18. A recommendation is needed on the use of public funding to facilitate the creation of private undergrounding districts. [Piedmont Civic Association, hereafter, “PCA”]
19. A recommendation concerning the loss of 20(A) public funds. [PCA]
20. A recommendation regarding the City’s financial stake in approving private districts. [PCA]
21. A recommendation concerning the impact of having a financial stake on decision-making by City officials and the City Council. [PCA]
22. An analysis of 20(B) projects and risk in light of the current level of City reserve funds. [PCA]
23. A recommendation concerning other undergrounding options, 20(C) districts and city-wide undergrounding. [PCA]

24. A recommendation regarding the role of the City as “ultimate insurer” of every 20(B) undergrounding project. [PCA]
25. A discussion of whether immediate knowledge and reporting will impact cost overrun options. [PCA]
26. A recommendation concerning whether cost risk can be shifted from the City to private districts. [PCA]
27. A recommendation concerning the role of the Council and City staff, such as the City Attorney, in contract procurement and administration. [PCA]
28. A recommendation regarding the extent and appropriate use of informal meetings, without formal public notice, between homeowners and City staff. [PCA]
29. A review of past experience with City projects. [PCA]
30. A specific recommendation regarding the optimum threshold level of support for undergrounding. [PCA]
31. The Piedmont Charter should provide the framework for policies and acts of the City Council. [PCA]
32. A recommendation regarding City administration of projects, including clear assignment for project management. [Piedmont League of Women Voters, hereafter, “LWV”]
33. A recommendation regarding the level of potential city financial risk associated with a project as well as the level of financial exposure. [LWV]
34. A recommendation regarding the examination of each project, its bids and documents, on its own merits without assumptions based on past projects which may or may not apply. [LWV]
35. A recommendation concerning the examination of bids, particularly where, for example, a “0” was set forth as the anticipated quantity of rock excavation. [LWV]
36. A recommendation regarding timely assessment and reporting of the impact of extensive rock. [LWV]
37. An examination of the early decision during construction to alter the rock excavation price. [LWV]
38. A recommendation for City policies ensuring proper and clear delegation of project responsibility to qualified and experienced personnel. [LWV]
39. A recommendation regarding conflicts of interest involving City staff and City decision-making. [LWV]
40. A recommendation regarding City subsidizing of design and construction costs for undergrounding after district formation. City financial liability should be examined. [LWV]
41. A recommendation regarding the use of City general funds for district specific costs. [LWV]
42. A recommendation regarding the prompt and accurate reporting by City project managers to City staff and Council of significant changes in the status of projects. [LWV]
43. A recommendation regarding “exception reporting”. [LWV]
44. A recommendation regarding changes in voter approval requirements by the Council in the middle projects. [LWV]

45. A recommendation or finding of fact concerning the responsibility of the City Administrator for the bidding process. [Neil Teixeira]
46. A recommendation regarding the duties and accountability of the City Administrator in this case for the cost overruns. [Neil Teixeira]
47. A finding regarding the length of time the subcommittee has taken to issue its preliminary report. [A. Salloway]
48. A finding regarding the acceptance of responsibility by the current City Administrator and City Council. [A. Salloway]
49. A recommendation regarding the failure to use an independent outside auditor. [A. Salloway]
50. A finding regarding the role of various attorneys, staff and Council members, in protecting the contract rights of the City. [A. Salloway]
51. A response to the rhetorical question, "...if, in your professional life, you encountered the same level of performance by your peers or subordinates as exhibited by the Council and Staff in these matters, and if your employer suffered the same relative level of damages, what would you have done?" [A.Salloway]
52. A coherent or comprehensive explanation of the fundamental, "how, why what, when and where" of the project. [Leon M. Blomfield]
53. An explanation of why the problems were not reported earlier. [Leon M. Bloomfield]
54. The report should not suffer from lack of factual detail or the interjection of what appear to be exculpatory conclusions in place of a fulsome, balanced and neutral audit report. [Leon M Bloomfield]
55. A recommendation regarding any further use of 20(B) district funds unless the risk to citizens' public funds is eliminated. [Dai Meagher]
56. A recommendation regarding the use and loss of 20(A) funds to private districts. [Dai Meagher]
57. A recommendation regarding future requirements for 20(B) districts, including,
  - a. Firm/binding bids prior to any voting;
  - b. A requirement that at least 70% of ballots cast be in favor of the 20(B) district;
  - c. Homeowners be notified by registered mail that the city will automatically impose a supplemental assessment on them for any cost over-runs (even Acts of God)



**City of Piedmont  
Piedmont Hills Undergrounding Assessment District  
Bond Issuance**

**Exhibit B**

Sale and Closing

Authorization:

6/8/09 cutoff for prepays with 7% discount

Authorization amount: \$3,452,586.75

Maximum interest rate: 8%

Maximum term: 2034 (25 years)

Fiscal Agent: Union Bank

Per Final Engineer's Report (filed 5/4/09):

Total costs	3,814,212.00
15% contingency	543,527.00
PG&E contribution	(306,589.00)
Comcast contribution	<u>(171,435.00)</u>
	3,879,715.00
Total incidentals	<u>105,335.00</u>
	3,985,050.00
Financing costs	<u>299,950.00</u>
	<u><u>4,285,000.00</u></u>

	Gross Amt	Net Amt
Series 2009-A	3,200,000.00	3,132,498.75
Series 2009-B	<u>205,000.00</u>	<u>201,822.60</u>
	<u><u>3,405,000.00</u></u>	<u><u>3,334,321.35</u></u>

Improvement Fund	3,107,197.55
Costs of Issuance	95,262.55
Bond Reserves - A	123,979.58
Bond Reserves - B	<u>7,881.67</u>
	<u><u>3,334,321.35</u></u>

Actual Sale Date: 07/01/09

City of Piedmont  
Piedmont Hills Undergrounding Assessment District  
Cash Flow Analysis  
21-Jul-10

Exhibit C

Cash Inflow:			Seed money	Homeowner Contrib	Valley	Robt Gray	AT&T	PG&E	Robt Gray or Coastland	Other	
		Seed money from homeowners	250,671.00	250,671.00							
07/09/09		Bond proceeds	3,107,197.55								
		Prepayments from homeowners	1,243,059.45								
		Dividend income	108.43								
12/12/09		City of Piedmont appropriation	1,004,832.00								
02/06/10		City of Piedmont appropriation	1,060,000.00								
		Comcast	246,522.00								
		Contributions from homeowners	101,000.00	101,000.00							
			<u>7,013,390.43</u>	<u>250,671.00</u>							
Cash Outflow:											
		Design and Engineering Costs	229,093.18	229,093.18							
<u>Inv Date</u>	<u>Pymt Dte</u>	<u>Req#</u>									
07/20/09	07/30/09	1 Valley Utility Services	200,734.16		200,734.16						
07/27/09	08/03/09	2 Robert Gray Associates	9,144.69			9,144.69					
05/04/09	08/07/09	3 AT&T	12,924.00				12,924.00				
06/15/09	08/07/09	4 PG&E	1,627,774.00					1,627,774.00			
08/03/09	08/11/09	5 Valley Utility Services	255,240.97		255,240.97						
08/26/09	08/28/09	6 Robert Gray Associates	9,144.69			9,144.69					
09/03/09	08/28/09	7 Valley Utility Services	349,151.38		349,151.38						
09/04/09	09/15/09	8 Valley Utility Services	300,634.92		300,634.92						
09/11/09	09/25/09	9 Valley Utility Services	229,364.12		229,364.12						
08/26/09	09/25/09	10 Robert Gray Associates	1,086.66			1,086.66					
09/28/09	10/05/09	11 Robert Gray Associates	12,894.50			12,894.50					
09/25/09	10/07/09	12 Valley Utility Services	254,329.17		254,329.17						
10/12/09	10/14/09	13 Valley Utility Services	205,563.54		205,563.54						
10/12/09	10/22/09	14 Valley Utility Services	191,164.50		191,164.50						
09/30/09	10/22/09	15 ILS Associates Inc	5,027.48							5,027.48	
10/27/09	11/05/09	16 Robert Gray Associates	9,643.75			9,643.75					
10/29/09	11/05/09	17 Valley Utility Services	29,754.00		29,754.00						
10/24/09	11/05/09	18 Valley Utility Services	49,239.75		49,239.75						
11/08/09	11/18/09	19 Valley Utility Services	108,573.22		108,573.22						
11/22/09	12/17/09	20 Valley Utility Services	100,862.13		100,862.13						
11/25/09	12/21/09	21 Robert Gray Associates	5,105.15			5,105.15					
12/06/09	12/23/09	22 Valley Utility Services	186,939.67		186,939.67						
11/10/09	12/23/09	23 Valley Utility Services	123,886.80		123,886.80						
12/28/09	12/28/09	24 Robert Gray Associates	7,098.40			7,098.40					
01/08/10	01/11/10	25 Valley Utility Services	7,897.50		7,897.50						
12/20/09	01/11/10	26 Valley Utility Services	206,278.96		206,278.96						
01/03/10	01/21/10	27 Valley Utility Services	103,588.98		103,588.98						
	to be paid	28 Valley Utility Services	252,610.45		252,610.45						
	to be paid	29 Valley Utility Services	28,611.00		28,611.00						
	to be paid	30 Robert Gray Associates	7,946.50			7,946.50					
	to be paid	31 Valley Utility Services	11,095.00		11,095.00						
		Repymt of seed money	250,671.00	250,671.00							
		Est retention payment	388,749.00		388,749.00						
		Est remaining inspection costs	46,053.00						46,053.00		
		Est contingency	18,501.00							18,501.00	
		Individual service connections	50,000.00		50,000.00						
		Est remaining costs - Valley	1,127,013.25		1,127,013.25						
		Rounding difference	(0.04)								
			<u>7,013,390.43</u>	<u>229,093.18</u>	<u>250,671.00</u>	<u>4,761,282.47</u>	<u>62,064.34</u>	<u>12,924.00</u>	<u>1,627,774.00</u>	<u>46,053.00</u>	<u>23,528.48</u>
Net			-	21,577.82	(149,671.00)						

**Piedmont Hills Undergrounding Utility District**  
**Analysis of Impact of Rock Excavation - Comparison of Bids**  
**Per Final As-Built Plans**  
**As of July 21, 2010**

**Exhibit D**  
Page 1 of 2

	Base Bid	Rock - CY	\$ Per CY	Rock Excavation Cost	Total, Including Rock Excavation	Base Bid Credits	Total Net
Valley Utility	1,515,394.50	2,690.80	2,190.00	5,892,852.00	7,408,246.50		
Valley Utility - with Inforce	1,515,394.50			2,655,828.68	4,171,223.18	(716,810.10)	3,454,413.08
Ranger Pipelines	1,945,179.00	2,690.80	250.00	672,700.00	2,617,879.00		
Synergy Project	1,896,112.42	2,690.80	150.00	403,620.00	2,299,732.42		
Smith Denison	2,011,724.00	2,690.80	350.00	941,780.00	2,953,504.00		
St. Francis Electric	2,594,979.00	2,690.80	1,000.00	2,690,800.00	5,285,779.00		
Underground Construction	2,344,514.00	2,690.80	275.00	739,970.00	3,084,484.00		
Tenneyson Electric	1,735,789.00	2,690.80	425.00	1,143,590.00	2,879,379.00		

Valley Utility - original bid	5,892,852.00
Valley Utility - with Inforce	2,655,828.68
Favorable differential	<u>3,237,023.32</u>

Differential factor 2.22

Valley Utility - equivalent \$ Per CY using Inforce \$ 987.00

Notes:

1. The above billed amounts for Valley Utility includes the additional linear footage (2,064 LF) that were not included in the bid specs.
2. The other bidders amounts were not adjusted for the increased quantities of trench digging and conduit, requiring significant work.
3. It's not practical or too many assumptions would be necessary to back out the add'l linear footage and subtract rock work in add'l LF.

	As Built	Plan	Trench-Plan	% LF Shortage
Trench	15,770.00	13,706.00	2,064.00	15.1%
Rock	9,539.00			
% Rock	60.5%			

**Piedmont Hills Undergrounding Utility District**  
**Analysis of Impact of Rock Excavation - Comparison of Bids**  
**Per Final As-Built Plans**  
**As of July 21, 2010**

**Exhibit D**  
Page 2 of 2

	Base Bid	Rock - CY	\$ Per CY	Rock Excavation Cost	Total, Including Rock Excavation		
<b>Valley Utility</b>	1,515,394.50	15.00	2,190.00	32,850.00	1,548,244.50		
<b>Ranger Pipelines</b>	1,945,179.00	15.00	250.00	3,750.00	1,948,929.00		
<b>Synergy Project</b>	1,896,112.42	15.00	150.00	2,250.00	1,898,362.42		
<b>Smith Denison</b>	2,011,724.00	15.00	350.00	5,250.00	2,016,974.00		
<b>St. Francis Electric</b>	2,594,979.00	15.00	1,000.00	15,000.00	2,609,979.00		
<b>Underground Construction</b>	2,344,514.00	15.00	275.00	4,125.00	2,348,639.00		
<b>Tenneyson Electric</b>	1,735,789.00	15.00	425.00	6,375.00	1,742,164.00		
<b>Valley Utility</b>	1,515,394.50	100.00	2,190.00	219,000.00	1,734,394.50		
<b>Ranger Pipelines</b>	1,945,179.00	100.00	250.00	25,000.00	1,970,179.00		
<b>Synergy Project</b>	1,896,112.42	100.00	150.00	15,000.00	1,911,112.42		
<b>Smith Denison</b>	2,011,724.00	100.00	350.00	35,000.00	2,046,724.00		
<b>St. Francis Electric</b>	2,594,979.00	100.00	1,000.00	100,000.00	2,694,979.00		
<b>Underground Construction</b>	2,344,514.00	100.00	275.00	27,500.00	2,372,014.00		
<b>Tenneyson Electric</b>	1,735,789.00	100.00	425.00	42,500.00	1,778,289.00		
<b>Valley Utility</b>	1,515,394.50	200.00	2,190.00	438,000.00	1,953,394.50		
<b>Ranger Pipelines</b>	1,945,179.00	200.00	250.00	50,000.00	1,995,179.00		
<b>Synergy Project</b>	1,896,112.42	200.00	150.00	30,000.00	1,926,112.42		
<b>Smith Denison</b>	2,011,724.00	200.00	350.00	70,000.00	2,081,724.00		
<b>St. Francis Electric</b>	2,594,979.00	200.00	1,000.00	200,000.00	2,794,979.00		
<b>Underground Construction</b>	2,344,514.00	200.00	275.00	55,000.00	2,399,514.00		
<b>Tenneyson Electric</b>	1,735,789.00	200.00	425.00	85,000.00	1,820,789.00		
<b>Valley Utility</b>	1,515,394.50	400.00	2,190.00	876,000.00	2,391,394.50	987.00	1,910,194.50
<b>Ranger Pipelines</b>	1,945,179.00	400.00	250.00	100,000.00	2,045,179.00		
<b>Synergy Project</b>	1,896,112.42	400.00	150.00	60,000.00	1,956,112.42		
<b>Smith Denison</b>	2,011,724.00	400.00	350.00	140,000.00	2,151,724.00		
<b>St. Francis Electric</b>	2,594,979.00	400.00	1,000.00	400,000.00	2,994,979.00		
<b>Underground Construction</b>	2,344,514.00	400.00	275.00	110,000.00	2,454,514.00		
<b>Tenneyson Electric</b>	1,735,789.00	400.00	425.00	170,000.00	1,905,789.00		

**City of Piedmont**  
**Piedmont Hills Undergrounding Utility District**  
**Alternatives/Options Related to Rock**  
**21-Jul-10**

**Exhibit E**

	Terminate			Complete a/o 1/31/10	Suspend (1)		
	a/o 7/31/09	a/o 11/30/09	a/o 1/31/10		a/o 7/31/09	a/o 11/30/09	a/o 1/31/10
Cash Balance, adj for unpaid bills	4,161,955.97	255,690.48	222,794.21	222,794.21			
Contributions from homeowners				101,000.00			
Comcast receipt				246,522.00			
Est retention payment	(22,303.80)	(248,959.22)	(388,749.00)	(388,749.00)			
Est remaining inspec costs				(46,053.00)			
Est contingency				(18,501.00)			
Indiv service connec remaining				(50,000.00)			
Valley remaining costs				(1,127,013.21)			
<b>Total for Bonds</b>							
Series A	(3,200,000.00)	(3,200,000.00)	(3,200,000.00)				
Series B	(205,000.00)	(205,000.00)	(205,000.00)				
Prepymt penalty - assume 102 call price	(68,100.00)	(68,100.00)	(68,100.00)				
Interest expense	?	?	?				
Prepymts from homeowners	(1,243,059.45)	(1,243,059.45)	(1,243,059.45)				
Private lateral payments	-	(175,000.00)	(350,000.00)				
Legal defense							
Bondholders	(250,000.00)	(250,000.00)	(250,000.00)				
Homeowners	(250,000.00)	(250,000.00)	(250,000.00)				
Balance owed - unbilled							
Valley Utility	(283,601.07)	(207,710.75)	(246,518.00)				
Robert Gray			(14,000.00)				
PG&E	(1,627,774.00)						
AT&T	(12,924.00)						
Valley - Lost profits/penalty							
Valley - penalty for delays							
De-mobilization	(62,997.00)	(442,720.00)	(442,720.00)		(641,424.00)	(641,424.00)	(641,424.00)
Legal defense - Valley	(250,000.00)	(250,000.00)	(250,000.00)				
Refunds from:							
PG&E	1,627,774.00	1,627,774.00	1,627,774.00	-			
PG&E - engineering, inspec	(250,000.00)	(300,000.00)	(350,000.00)				
PG&E - applicant facil contrib	306,589.00	306,589.00	306,589.00				
PG&E - potential re-bid							
					(1,200,000.00)	(1,200,000.00)	(1,200,000.00)
					(1,841,424.00)	(1,841,424.00)	(1,841,424.00)
					Incremental costs over completing the project		
<b>Net appropriation needed</b>	<u>(1,629,440.35)</u>	<u>(4,650,495.94)</u>	<u>(5,100,989.24)</u>	<u>(1,060,000.00)</u>			

Notes:

1. Suspension raises a number of hard to quantify issues:
  - Homeowners are not obligated nor can they be forced to pay more.
  - Getting an after the fact geotech inspection and report would delay the project by 1 to 2 weeks
  - Even with the geotech report, we couldn't simply push Valley aside without incurring extra costs
  - Re-bidding would most likely require a new RFP since the conditions have changed (i.e., can't choose from orig bidders).
  - PG&E cost estimates for their bid was low for both the engineering and the construction by \$1.2 million - an exposure
  - If there was a re-ballot to try to get homeowners to pay an additional assessment, uncertain as to outcome
  - Legal exposures:
    1. Bondholders
    2. Homeowners who have prepaid
    3. Homeowners who have already completed laterals by their own contractors
    4. Valley - lost of profits, delays, penalties