

City of Piedmont  
COUNCIL AGENDA REPORT

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DATE: January 21, 2003

FROM: George Peyton, Larry Rosenberg & Ann Swift

SUBJECT: **Procedures for Establishing an Underground Utility District**

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RECOMMENDATION

Consider the attached policy which establishes procedures for the formation of underground utility districts in the City of Piedmont. If council concurs with staff's recommendations, approve the attached Underground Utility Formation Policy effective immediately and schedule consideration of pending underground utility districts for the council meeting of February 3.

BACKGROUND

Two years ago the city approved an application to form an underground utility district in the Dudley/Blair/Mountain/Pacific area, the first such request in more than 25 years. Proponents were led by a Piedmonter who had extensive knowledge of the process and the district formation proceeded without incident. Since the creation of the Dudley/Blair district, at least nine (9) other steering committees have been formed for the purpose of pursuing underground utility districts and the Wildwood Avenue District has been given approval to proceed. Opponents of the undergrounding process have raised several concerns regarding favoritism, bias and conflict of interest because city staff has met with various steering committees to educate them about the undergrounding process. In reality city staff, especially the city clerk and public works director, have also met with and educated opponents of the district process.

However, we believe it would be beneficial to develop an information packet which could be provided to any resident interested in this issue, whether pro or con. The most important part of the packet would be a policy approved by the city council which outlines the city's requirements for the formation of an underground utility district (a draft of which is contained as Exhibit A). The packet would also contain a cover memo (Exhibit B), sample petition (Exhibit C), sample reimbursement agreements (Exhibits D & E), and a sample map (Exhibit F). The attached policy can be used to guide both steering committees and opponents through the formation process.

### Form of Petition

Your staff and consultants recommend that property owners indicate their desire to form a district by signing and submitting a petition in the form attached as Exhibit C. This form was prepared by bond counsel Sam Sperry and contains a number of legal citations to the California Streets and Highways Code which streamline the formation process. The form also makes reference to the proposed district map and the estimated cost of construction as required under state law. The cost information will vary based on the size of the district and the location or topography of the assessed parcels. Petitions would be reviewed by the city clerk who would present a report regarding sufficiency to the city council.

Recognizing that some property owner groups have circulated petitions in a form different than Exhibit C and which may not satisfy the legal requirements under Section 2804 of the Streets and Highways Code, bond counsel has offered to review those petitions and create a table in the official engineer's report which will determine if the cost of proposed assessment district is less than ½ of the aggregate value of all properties in the proposed district, as allowed under the 1931 Act. This approach may be criticized because there have been numerous maps and various boundaries created over a period of time and cost estimates specific to the district have not been verified by an engineer. Staff suggests that these potential projects (for which petitions have been received) be reviewed on a case by case basis at the council meeting of February 3.

### District Map

Under state law a district map must be attached to all petitions. This map allows homeowners to understand the scope of the project and is the map on which the estimated costs are based. The district map may not be identical to the official boundary map which the city council finally approves, since the council has broad latitude to order changes in the district map to correct or improve it.

The process of creating a district map often entails conflicting or competing interests, such as:

1. Which properties (or blocks) are most likely to support a district?
2. Which properties are visually aligned and aesthetically should be included in the district?
3. Which properties are served by the same P.G. & E. circuits or poles and should be included in the district due to engineering concerns?
4. Which properties contain physical elements which would increase the construction costs for the district?

It is critical that these concerns be addressed prior to the creation or circulation of a district map. Failure to do so can lead to the proliferation of a series of maps as refinements are made by proponents over a period of time. In the case of one current district, petitions have been received which show at least three different maps. Homeowners, staff and council will find it difficult to rely on petitions which contain maps with conflicting information since the cost estimates for the project are directly tied to the district map.

Staff believes that consultation with an engineer, representatives of P.G.& E., PacBell, A.T.& T. Broadband and the city should take place before a district map is created and that changes to the map should not be allowed after the circulation process has begun, unless the proponents wish to begin again with a new petition. Staff will assist in the preparation of a map through the use of the city's GIS system and will post all maps which are being circulated on the city's website to allow broad access to information regarding new districts which may be forming.

### Selection of an Engineer

Many steps in the initial formation process require the services of a civil engineer. The cost for such work is borne by some or all of the property owners in the proposed district and the city cannot mandate the selection of a specific firm. However, this process can lead to the appearance of impropriety since proponents of a district are selecting and working with an engineer who must, among other things, develop estimated assessment costs for each property.

Staff recommends that the city, as a neutral third party, provide steering committees with a list of engineering firms which have adequate experience to perform such work. As stated above, the engineer must be present at planning meetings prior to the creation of a boundary map and the circulation of a petition.

### Reimbursement Agreement

Before considering authorization to proceed with the creation of an underground utility district, council needs to receive adequate assurance that the initial costs for the district, including the engineer of work and the bond counsel, will be paid for by members of the district. Staff is proposing that steering committees receive a copy of the attached Reimbursement Agreement Forms (Exhibits D & E), to use for such a purpose. Exhibit D would be used by a group of homeowners to guarantee cost reimbursement and Exhibit E would be used by an individual for the same purpose. Both forms were prepared by city attorney George Peyton. It is proposed that underground utility district supporters be required to provide sufficient signed reimbursement agreements to cover the preliminary costs for formation of the district.

The preliminary costs can be determined either by detailed estimate prepared by a civil engineer or by using a percentage of the total assessment value. A conservative percentage of costs would be 30% of the total assessment, however, given the large quantity of variables in the process (such as P.G.& E. engineering costs, topography, etc.) staff recommends that the civil engineer prepare a Preliminary Cost Analysis to be used for this purpose.

Mr. Peyton has advised that the city could consider using Rule 20A funds from P.G. & E. to pay for the P.G. & E. engineering costs on private underground utility districts (Rule 20B projects). Such funds would be advanced or loaned to a proposed district as a lien against the city's 20A account at P.G. & E. and such lien would be removed when the district is formed and bonds issued. If the district is formed, the city's monies are restored for use at a later date. However, if the district fails, the city has lost the money it advanced. Use of the city's Rule 20A funds for private projects also reduces the amount available to the city to fund its own projects, including publicly owned street frontage contained in any private undergrounding project. Obviously, this is a major policy issue which is cannot be decided in the context of the proposed Underground Utility Policy and it will be schedule for council consideration at a later date.

#### Current Petitions

The city has received petitions for several proposed districts including Pacific/Dormidera, Sierra, and Sotelo/Glen Alpine. At your next council meeting, you will be provided a report regarding the status of the petitions and maps for each of these districts and will be requested to make a decision to allow the formation of these districts or require that the proponents re-submit material based on the Underground Utility Policy.

#### Future Petitions

There are several groups now forming to explore undergrounding of utilities. It is staff's recommendation that the attached policy be effective immediately and that all new petitions conform to the Underground Utility Policy.

**Exhibit A**

**City of Piedmont  
UNDERGROUND UTILITY FORMATION POLICY**

**Policy**

Neighborhood groups wishing to form an Underground Utility District must prepare documents which conform to the State Streets and Highways Code and to the city's procedures.

**Procedure**

1. Groups interested in forming an Underground Utility District shall contact the Director of Public Works who will provide them with a packet of information describing the formation process including a list of qualified engineers who satisfy the city's requirements as Engineer of Work.
2. When a Steering Committee has been formed and a survey conducted by the committee regarding the general scope of the district, the Public Works Director shall arrange a meeting between city staff, the engineer, and representatives of both P.G. & E. and PacBell to create a "district map". The map shall be prepared by the City Clerk on the Geographic Information System and shall be posted on the city's web site to inform the public regarding the scope of the proposed district.
3. The engineer selected by the Steering Committee shall prepare an estimate of costs for use in the formal district petition.
4. The City Clerk will prepare a formal Underground Utility Petition for circulation, attach the map prepared in 2 above and insert the engineer's estimate of costs as prepared in 3 above.
5. The Steering Committee shall be responsible for convening a meeting to which all homeowners in the proposed district are invited and at which time the official petition is made available for circulation. The committee may continue to circulate the petition until persons representing a minimum of 70% of the homes in a proposed district have signed and the petition has qualified for council consideration.
6. The Steering Committee shall prepare a Reimbursement Agreement in a form acceptable to the city, including the city attorney, and shall provide proof of commitments sufficient to pay for initial engineering and bond counsel costs. Reimbursable costs shall be determined based on a Preliminary Cost Estimate prepared by a civil engineer.
7. The Steering Committee shall present all signed petitions and reimbursement forms to the City Clerk who shall verify signatures and schedule council consideration on the matter within 30 days of receipt.

**Exhibit B**

City of Piedmont  
**Resource Materials for Utility Undergrounding Assessment Districts**

The city understands that you and some of your neighbors are interested in exploring the possibility of forming a utility undergrounding assessment district. The City of Piedmont has a policy adopted by the city council which you will need to follow in order to move forward with your plan. That policy and other materials are contained in this packet. Please feel free to copy and distribute any of the items which are of interest. They consist of the following:

City Council Policy on Underground Assessment District Formation  
Sample Petition  
Sample Reimbursement Form  
Sample Map

If, after reviewing these materials, you and your neighbors are still interested, you will need to make a preliminary determination about the area you believe should be included in an assessment district. When you have done that, please contact the Director of Public Works and request a meeting to discuss (a) a preliminary estimate of the cost and expense of your project and the related bond financing, (b) a legal petition to circulate in your neighborhood; and (c) an exhibit map to be attached to the petition showing the proposed boundary of the assessment district. You will also need to discuss making a cash deposit with the city for the estimated preliminary expenses.

Once the map is completed and your petition prepared, the city's policy requires that all of the homeowners within the proposed district map be invited to an informational meeting. At that meeting the proposed project, boundary, costs and assessment district procedures will be presented and petitions will be made available. Following this kick-off meeting, proponents can work further to gather the signature of the 70% of homeowners required for consideration before the city council.

Please feel free to contact Larry Rosenberg, Director of Public Works, at 420-3050 or Ann Swift, City Clerk, at 420-3041 for further assistance.

**Exhibit C**

**CITY OF PIEDMONT**  
*(fill in the name of the proposed district)*  
**UNDERGROUNDING ASSESSMENT DISTRICT**  
**PETITION FOR SPECIAL ASSESSMENT PROCEEDINGS**

TO THE CITY COUNCIL OF THE CITY OF PIEDMONT:

1. We, the undersigned, are the owners of one or more of the parcels of property located within the boundary shown on the exhibit map attached hereto as Exhibit A, all of which property is situated within the City of Piedmont (the “City”).

2. This petition is submitted to you pursuant to Section 2804 of the California Streets and Highways Code to request that you initiate and conduct special assessment proceedings pursuant to the Municipal Improvement Act of 1913 (Sections 10000 and following, Streets and Highways Code) (the “1913 Act”) to establish an assessment district, to be known as the “Wildwood Avenue Undergrounding Assessment District” (the “Assessment District”), for the purpose of financing a project for the undergrounding of existing overhead utility facilities within the Assessment District (the “Project”), as follows:

a. relocation of existing electricity, telephone and cable television facilities from their present above-ground locations to locations underground, including the removal of existing utility poles and overhead wires;

b. installation of a new street lighting system to replace the existing street lights which are located on the utility poles; and

c. for those property owners within the Assessment District who execute and file with the City such authorizing documentation as the City shall reasonably require, installation of underground utility service connections from the undergrounded facilities within the public rights-of-way or easements into the dwelling unit situated on such owners’ property, it being expressly understood that the cost and expense of such individual parcel connection work will be added to the assessment of the parcel in question.

3. We have been advised that the present best estimate of the cost of the Project and therefore the total amount to be assessed to the parcels in this Assessment District is approximately \$(*fill in the amount*). We are aware that this amount is subject to modification (increase or decrease) during the course of the legal proceedings. We are also aware that these costs do NOT include the costs of connecting the structures on our property to the newly undergrounded facilities, which costs will vary from parcel to parcel and will be an additional cost to each property owner, whether paid directly by the property owner or added to the owner’s assessment in accordance with the foregoing paragraph 2(c).

4. We acknowledge each of the following:

a. THAT the cost of the Project will be charged to the parcels in the Assessment District in proportion to benefit, as determined by you following a public hearing;

b. THAT a report will be prepared and filed on the Project and the Assessment District, including a detailed cost estimate and a proposed allocation of the costs among the parcels of land on the basis of proportionality to the estimated benefit to each parcel, and that you will conduct a public hearing on the report and conduct the assessment ballot procedure required by Article XIID of the California Constitution;

c. THAT the cost of engineering, legal and other incidental and financing costs will be included in the amounts being assessed against the property in the Assessment District, and that the cost of connecting our dwelling to the newly undergrounded facilities will be included in the assessment on our individual parcel or parcels only if we authorize in writing that such connection work be performed by the contractor selected by the City for the Project and authorize that the costs be included in the assessment;

d. THAT, assuming assessments are levied and recorded as requested by this petition, we will have 30 days following the recording of assessments to pay our assessment in cash, at a discount and without interest; that, upon expiration of the 30-day cash payment period, you will take the required steps to authorize and sell limited obligation improvement bonds under the Improvement Bond Act of 1915 (Section 8500 and following, Streets and Highways Code) in the amount of the unpaid assessments; that if we do not pre-pay our assessment in cash, it will become payable over a period of years, with interest and annual administrative costs added; and that the determination respecting the period of years and the interest rate or rates to be established by the bond sale;

e. THAT, if we do not pre-pay our assessments, annual installments of principal, interest and administrative costs will be collected on the property tax roll; that such installments will be subject to the same late charges and penalties as for property taxes if we do not pay such installments by the annual December 10 and April 10 deadlines; and that our parcel is subject to foreclosure (no notice of delinquency or grace period) if we do not pay by said annual deadlines; and

f. THAT, pursuant to provisions of Article XIID of the California Constitution, protests to the proceedings will be counted solely upon the amount proposed to be assessed to the property for which a protest assessment ballot is submitted.

5. We waive investigation proceedings and all other provisions of Division 4, Streets and Highways Code, as provided in Section 2804 of that Code.

*(Address and Signature Required)*

**Exhibit D**

**PRELIMINARY EXPENSE DEPOSIT  
AND INDIVIDUAL REIMBURSEMENT AGREEMENT**

**Recitals**

- A. The parties to this agreement are the City of Piedmont, a California charter city (the “City”), and (the “Proponents”).
- B. The effective date of this agreement shall be July 17, 2000, or on approval by the City Council of the City (the “City Council”) of the Petition referred to in Paragraph C hereafter, whichever occurs later.
- C. The Proponents have coordinated the effort which has led to obtaining signatures on a petition (the “Petition”), counterparts of which have been filed with the City Clerk of the City, requesting that the City undertake special assessment proceedings to provide for the undergrounding of certain existing overhead utility facilities and the related relocation of street lights located on utility poles which will be removed as part of the undergrounding project (the “Project”).
- D. The Petition requests the City to implement land-secured financing proceedings under the Municipal Improvement Act of 1913 (the “1913 Act”), and to issue and sell limited obligation bonds of the City under the Improvement Bond Act of 1915 (the “1915 Act Bonds”) upon the security of the unpaid assessments levied and recorded against certain residential real property located within the boundary of an area to be known as the proposed Dudley/Blair/Mountain/Pacific/Hagar and Vicinity Undergrounding Assessment District (the “Proposed Assessment District”).
- E. In the event the City is able to complete the 1913 Act assessment proceedings and to thereafter accomplish sale and delivery of the 1915 Act Bonds, the City intends to utilize a prescribed portion of the proceeds of sale thereof, pursuant to the 1913 Act in general and the Engineer’s Report (the “Engineer’s Report”) approved by the City Council of the City as a part of the 1913 Act proceedings and pursuant to the terms and conditions of this agreement to (1) reimburse the Proponents for the deposit or deposits made pursuant to this agreement and (2) finance the implementation of the Project, all in accordance with and subject to the terms and conditions of the 1913 Act, the Engineer’s Report and this agreement.
- F. In consideration for the mutual undertakings of the parties stated herein, the parties agree as follows.

### Agreement

1. The foregoing recitals are true and correct, and the parties expressly so acknowledge.

2. Forthwith upon approval of this agreement by the City Council and execution hereof by the authorized representatives of the parties, the Proponents will deposit with the City \$1,000.00 into a special fund to be established and maintained by the City and to be known as the “Dudley/Blair/Mountain/Pacific/Hagar and Vicinity Undergrounding Assessment District Preliminary Expense Fund” (the “Preliminary Expense Fund”), which initial deposit shall remain in the Preliminary Expense Fund, unless otherwise needed, until the final invoice from the Engineer of Work has been submitted to the City. The City is authorized to disburse amounts from the Preliminary Expense Fund, from time to time, to pay invoices submitted to the City by I.L. Schwartz Associates, Inc., as Engineer of Work for the Proposed Assessment District proceedings (the “Engineer of Work”), for services provided by the Engineer of Work in connection with the Proposed Assessment District proceedings pursuant to a written agreement between the City and the Engineer of Work pertaining to such services, which written agreement is being approved by resolution of the City Council and executed by the parties.

a. In addition to the foregoing, the Proponents shall deposit with the City sufficient funds to pay the exact amount shown in each separate invoice within ten (10) calendar days after the date of the invoice from the Engineer of Work or of the date of the cover letter sent with the invoice by the Engineer of Work, whichever is later. Any such check or cash deposit shall be made to the attention of the City Clerk, and shall be physically received in the Office of the City Clerk, Piedmont City Hall, 120 Vista Avenue, Piedmont, CA 94611, no later than 5 p.m. on the date due.

b. The maximum aggregate amount that the Proponents shall be required to deposit with the City under this Agreement shall be \$124,900.00, which amount may be reduced if the invoices to the City from the Engineer of Work are less than that maximum amount. Any amount overpaid by the Proponents based on the terms of this Agreement shall be repaid to the Proponents by City within thirty (30) days after the amount of the overpayment has been finally determined based on the final invoice received from the Engineer of Work.

c. The obligations of the Proponents set forth in this Paragraph 2 are joint and several, and shall be fully enforceable in a court of law.

3. The City agrees to proceed with all due diligence in conducting and completing the legal proceedings, leading to recording of the assessments levied upon the various parcels of land within the Proposed Assessment District. The Engineer of Work for said legal proceedings shall be instructed to include in the incidental expenses listed in the cost estimate in the Engineer’s Report an amount estimated to be sufficient to reimburse the Proponents for the full amount of the deposit or deposits made by the Proponents pursuant to this agreement, and in addition, for the full amount of reasonable project development costs incurred and paid by the Proponents prior to this Agreement.

4. The City shall proceed with all due diligence to accomplish issuance and sale of the 1915 Act Bonds to accomplish the authorized purposes of the Proposed Assessment District, including but not limited to reimbursement to the Proponents for their deposit or deposits pursuant to this agreement and to implement the Project. Notwithstanding any other provision hereof, the City shall be under no obligation to reimburse any amounts to the Proponents hereunder except from the proceeds of the 1915 Act Bonds issued for the Proposed Assessment District when, as and if issued. Proponents acknowledge that the City Council retains complete discretion over the issuance of the 1915 Act Bonds and that if for any reason the bonds are not issued, Proponents will have no right to recover any amounts deposited hereunder. If the City Council determines to abandon the proceedings for the Proposed Assessment District and the 1915 Act Bonds, any amounts deposited by the Proponents hereunder which have not been spent and which are not held to cover future payments to the Engineer of Work for which the City is obligated will be returned to the Proponents.

5. It is understood and agreed that nothing in this Agreement requires the City Council or the City to finally approve the Proposed Assessment District, which decision cannot be made by the City Council until due deliberation by the Council after the public hearing and receipt of the report on the results of the assessment ballot procedures.

IN WITNESS WHEREOF, the parties hereto have caused this agreement to be executed by their authorized representatives as of the effective date stated above.

CITY OF PIEDMONT

By \_\_\_\_\_  
City Administrator

Attest:

By \_\_\_\_\_  
City Clerk

PROPONENTS

**Exhibit E**

**PRELIMINARY EXPENSE DEPOSIT  
AND JOINT REIMBURSEMENT AGREEMENT**

**Recitals**

G. The parties to this Agreement are the City of Piedmont, a California charter city (the “City”), and the undersigned, who are among the residents of Piedmont, California executing separate counterparts of this Agreement (“the Proponents”).

H. The effective date of this Agreement shall be, the date of approval by the City Council of the City (the “City Council”) of the Petition referred to in Paragraph C hereafter, whichever occurs later.

I. The Proponents have coordinated or supported the effort which has led to obtaining signatures on a petition (the “Petition”), counterparts of which have been filed with the City Clerk of the City, requesting that the City undertake special assessment proceedings to provide for the undergrounding of certain existing overhead utility facilities and the related relocation of street lights located on utility poles which will be removed as part of the undergrounding project (the “Project”).

J. The Petition requests the City to implement land-secured financing proceedings under the Municipal Improvement Act of 1913 (the “1913 Act”), and to issue and sell limited obligation bonds of the City under the Improvement Bond Act of 1915 (the “1915 Act Bonds”) upon the security of the unpaid assessments levied and recorded against certain residential real property located within the boundary of an area to be known as the proposed Wildwood Avenue Undergrounding Assessment District (the “Proposed Assessment District”).

K. In the event the City is able to complete the 1913 Act assessment proceedings and thereafter to accomplish sale and delivery of the 1915 Act Bonds, the City intends to utilize a prescribed portion of the proceeds of sale thereof, pursuant to the 1913 Act in general and the Engineer’s Report (the “Engineer’s Report”) approved by the City Council of the City as a part of the 1913 Act proceedings and pursuant to the terms and conditions of this Agreement to (1) reimburse the Proponents for the deposit or deposits made pursuant to this Agreement or in certain cases for direct payments made by the Proponents relating to expenditures, involving the Proposed Assessment District, and (2) finance the implementation of the Project, all in accordance with and subject to the terms and conditions of the 1913 Act, the Engineer’s Report and this Agreement.

L. In consideration for the mutual undertakings of the parties stated herein, the parties agree as follows.

### Agreement

1. The foregoing recitals are true and correct, and the parties expressly so acknowledge.

2. Forthwith upon execution of this Agreement by the City and execution hereof by the authorized representatives of the parties, the Proponents will mutually deposit with the City their agreed share of \$18,000.00 into a special fund to be established and maintained by the City and to be known as the "Wildwood Avenue Undergrounding Assessment District Preliminary Expense Fund" (the "Preliminary Expense Fund"), which initial deposit shall remain in the Preliminary Expense Fund, unless otherwise needed, until the final invoice from the Engineer of Work has been submitted to the City. The City is authorized to disburse amounts from the Preliminary Expense Fund, from time to time, to pay invoices submitted to the City by I.L. Schwartz Associates, Inc., as Engineer of Work for the Proposed Assessment District proceedings (the "Engineer of Work"), for services provided by the Engineer of Work in connection with the Proposed Assessment District proceedings pursuant to a written agreement between the City and the Engineer of Work pertaining to such services, which written agreement is being approved by resolution of the City Council and executed by the parties. The City is not authorized to disburse from the Preliminary Expense Fund amounts required by Pacific Gas & Electric, AT&T Broadband, Pacific Bell or other utilities and as part of providing initial information, estimates and engineering work relating to the Proposed Assessment District, but Proponents agree that they will be responsible for paying such amounts in equal shares on a timely-basis after each such utility notifies the City of the amount required, and in such case the Proponents shall make such payments within thirty (30) days after receiving notice of the amount required from City; provided the parties hereto understand that the City shall have no legal responsibility for paying any such utilities.

a. The maximum aggregate amount that the Proponents shall be required to deposit with the City under this Agreement shall be \$26,778.00, all based upon the the information which is attached hereto and incorporated herein. Any amount overpaid by the Proponents based on the terms of this Agreement shall be repaid to the Proponents by the City within thirty (30) days after the amount of the overpayment has been finally determined based on the final invoice received from the Engineer of Work.

b. The obligations of the Proponents set forth in this Paragraph 2 are joint and several among the Proponents, and shall be fully enforceable in a court of law.

c. When the initial deposit of \$18,000.00 has been exhausted, or when such amount has declined below \$1,500.00 City shall give written notice to the Proponents, and Proponents shall within thirty (30) days of receipt of such notice deposit the remaining \$8,778.00 in equal shares with the City to allow for ongoing payments to the Engineer of Work.

3. The City agrees to proceed with all due diligence in conducting and completing the legal proceedings, leading to recording of the assessments levied upon the various parcels of land within the Proposed Assessment District. The Engineer of Work for said legal proceedings shall be instructed to include in the incidental expenses listed in the cost estimate in the Engineer's Report an amount estimated to be sufficient to reimburse the Proponents for the full amount of the deposit or deposits made by the Proponents pursuant to this agreement, and in addition, for the full amount of reasonable project development costs incurred and paid by the Proponents prior to this Agreement.

4. The City shall proceed with all due diligence to accomplish issuance and sale of the 1915 Act Bonds to accomplish the authorized purposes of the Proposed Assessment District, including but not limited to reimbursement to the Proponents for their deposit or deposits pursuant to this agreement and to implement the Project. Notwithstanding any other provision hereof, the City shall be under no obligation to reimburse any amounts to the Proponents hereunder except from the proceeds of the 1915 Act Bonds issued for the Proposed Assessment District when, as and if issued. Proponents acknowledge that the City Council retains complete discretion over the issuance of the 1915 Act Bonds and that if for any reason the bonds are not issued, Proponents will have no right to recover any amounts deposited hereunder. If the City Council determines to abandon the proceedings for the Proposed Assessment District and the 1915 Act Bonds, any amounts deposited by the Proponents hereunder which have not been spent and which are not held to cover future payments to the Engineer of Work for which the City is obligated will be returned to the Proponents.

5. It is understood and agreed that nothing in this Agreement requires the City Council or the City to finally approve the Proposed Assessment District, which decision cannot be made by the City Council until due deliberation by the Council after the public hearing and receipt of the report on the results of the assessment ballot procedures.

IN WITNESS WHEREOF, the parties hereto have caused this agreement to be executed by their authorized representatives as of the effective date stated above.

**CITY OF PIEDMONT**

By \_\_\_\_\_  
City Administrator

**Attest:**

By \_\_\_\_\_  
City Clerk