

FILE COPY

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

THIS AGREEMENT, made and entered this 2nd of May, 2005, by and between the CITY OF PIEDMONT, a political subdivision of the State of California, hereinafter called "City," and HARRIS & ASSOCIATES, INC., hereinafter referred to as "Engineer,"

RECITALS

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

AGREEMENT

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

3. Engineer as Independent Contractor; Indemnity.

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

4. Audit of Books and Records.

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

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

- A. Comprehensive General Liability: Combined single limit of \$1,000,000 for each single occurrence for bodily injury, personal injury and property damages; umbrella policy raising the limit to \$2,000,000.
- B. Comprehensive Automobile Liability: Combined single limit of \$1,000,000 for each single occurrence for bodily injury, personal injury and property damages; umbrella policy raising the limit to \$2,000,000.
- C. Engineers Professional Liability: Combined single limit of \$1,000,000 for each single occurrence for protection against claims alleging negligent acts, errors and omissions.
- D. Workers' Compensation Coverage: As required by the laws of the State of California.
- E. The insurance required under paragraphs A and B, above, shall be endorsed with language covering the City, its officials, officers, employees, agents and volunteers. Such coverage shall be primarily insurance to the City, its officials, officers, employees, agents and volunteers and shall act as though a separate policy had been written for each. Any failure to comply with the reporting requirements of the policies shall not affect coverage provided to the City, its officials, officers, employees, agents and volunteers.

- F. The insurance required by this Paragraph shall not be suspended, voided, canceled or reduced in coverage or in limits except after the City has received thirty days written notice.
- G. Evidence of compliance with the insurance and endorsement requirements of this Paragraph shall be subject to the approval of the City.

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

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

7. Interest of Engineer.

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

8. Licenses.

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

9. Termination of Contract.

This Agreement may be terminated immediately by City for cause or by either party without cause upon 10 days written notice of termination to the other party. In the event of termination, Engineer shall deliver to the City copies of all finished and unfinished

surveys, studies, documents, computer disks, and/or reports pertaining to the Services. Engineer shall be entitled to receive just and equitable compensation for any satisfactory work completed as determined by the City.

10. Stop Work Order.

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

11. Discrimination.

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

12. Mediation.

The parties will make a good faith attempt to resolve any disputes arising from this Agreement through mediation prior to initiating litigation. The parties shall mutually agree upon a mediator and shall share the costs of mediation equally. If the parties are unable to agree upon a mediator, the dispute shall be submitted to the JAMS/ENDISPUTE ("JAMS") or its successor in interest. JAMS shall provide the parties with the names of five qualified mediators. Each party shall have the option to strike two of the five mediators selected by JAMS and the mediator thereafter remaining shall hear the dispute.

13. Miscellaneous.

- A. Other Contract Provisions. Other contract provisions are set forth in Exhibit 1. To the extent that there are any inconsistencies with such Exhibit and the other portions of this Agreement, the latter shall prevail.
- B. Governing Law. This Agreement shall be governed by the laws of the State of California.

- C. Severability. If any provision of this Agreement is found to be invalid or unenforceable, the validity and enforceability of the remaining portions shall not be affected unless the effect thereof would materially change the economic burden on either party.
- D. Successors in Interest; Assignment. This Agreement shall be binding on the assigns and successors in interest to both parties. Neither party may assign their obligations under this Agreement without the written consent of the other party.
- E. Entire Agreement; Amendment. This Agreement represents the entire Agreement between the parties. This Agreement may only be amending in writing.

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

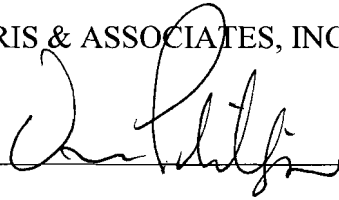
Exhibit 1 Scope of Work

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

HARRIS & ASSOCIATES, INC.

CITY OF PIEDMONT

By: _____



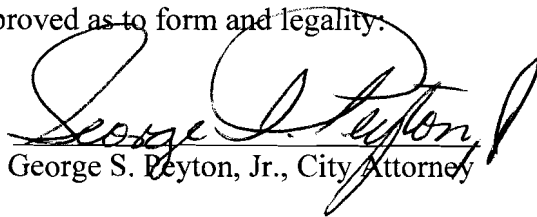
By: _____



Michael Bruck, Mayor

Approved as to form and legality:

By: _____



George S. Peyton, Jr., City Attorney

Attest: _____



Ann Swift, City Clerk

EXHIBIT 1

Piedmont Hills Underground Utility District
Scope of Work

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

1. District Definition and Assessment Engineering shall be performed pursuant to the "Proposal to Provide District Engineering Services" dated October 11, 2002, Items 1.1 through 1.7 which is attached hereto and incorporated herein by reference. These tasks include:
 - a. Attendance of kickoff meeting
 - b. Field review, research, and data collection
 - c. Preparation of a district methodology report to be reviewed with residents in the district prior to presentation to the City Council.
 - d. Development of Base Mapping Sheets
 - e. Development of Assessment Database
 - f. Finalization of Methodology including preparation of a Benefit Analysis and Method of Assessment Spread showing the total cost of proposed improvements and the per parcel assessments
 - g. Preparation of an Assessment Diagram and two mylar Boundary Maps

2. Design Development shall be performed pursuant to the "Proposal to Provide District Engineering Services" dated October 11, 2002, Items 2.1, 2.3 through 2.6, and 2.8 but specifically excluding Items 2.2 and 2.7 regarding preparation of bid documents, which is attached hereto and incorporated herein by reference. These tasks include:
 - a. Utility company design
 - b. Engineer's opinion of probable cost
 - c. Preparation of draft Preliminary Engineer's Report
 - d. Attend up to three property owner meetings to present the assessment methodology and provide telephone consultation with City staff members, bidders, utility agency representatives and property owners to answer engineering questions about the assessment proceedings.

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

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

C. **Other Provisions**

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