

Correspondence for City Council Audit Subcommittee Meeting of 03/15/11
Received by 12:00 Noon on Friday, March 11, 2011

Dear Council Member Chiang,

Thank you for your excellent, informative report on issues relating to undergrounding, as well as your thoughtful recommendations.

I would propose these minor additions for inclusion in the final joint report. I address this to you because, aside from the proposed chart, they all seem to relate to your report.

Thank you (and all the members of the Audit Subcommittee) for your time and energy in serving on this committee. It is appreciated by our entire community.

Elizbeth Schultz

1. Highlight the report's finding that the City is forced into the position of "ultimate insurer" for the completion of every 20(B) project.

The draft emphasizes that general revenues are not legally available to satisfy bondholders debt. In addition, the report must emphasize that, despite this legality, every 20(B) undergrounding district cost over-run which exceeds contingency funds, no matter what the cause (negligence, Act of God, etc.), necessarily forces the City into the position of "voluntarily" providing the district homeowners with a bail-out – in order to avoid even worse outcomes.

This catch-22 exists for every 20(B) district because:

- a) stopping the project will subject the City to massive potential liabilities far greater than completing the project with general funds, and
- b) the City has no means of forcing homeowners to provide additional funds for unanticipated cost over-runs or Acts of God following the initial assessment.

This, a critical and clear finding of your report, needs to be stated upfront and center: highlighted, rather than referred to in passing or by implication.

(Note: Some may offer that the City could avoid its default position of "ultimate insurer" by transferring all risk from cost over-runs to the contractor or the homeowners. But this option does not exist. Why would a contractor or a homeowner be willing to assume million dollar risks which a municipality, with all its financial resources, is unwilling to bear?)

2. Identify the option of undergrounding with 20(C) districts.

It seems incomplete to undertake a “review city undergrounding policy” without mentioning the existence of this option. The uses, advantages and disadvantages of 20(C) must be noted, just as the various models for 20(B) districts have been noted.

3. If the report will be pointing out a 20(B) model similar to Piedmont's is used by the City of Tiburon, it seems fair to disclose that the Tiburon model has resulted in massive litigation expenses of over \$1 million.

Tiburon’s legal expenses doubled, from \$180,000 to \$372,000, and then escalated for a period of 4 years to a jaw-dropping \$1 million, before decreasing, finally, back down to \$335,000 in 2010-11.

\$147,000	2003-4	
\$180,000	2004-5	
\$372,000	2005-6	
\$531,000	2006-7	(after \$376,000 proposed, \$530,000 adopted)
\$600,000	2007-8	(after \$412,000 proposed, \$412,000 adopted)
\$515,000	2008-9*	(after \$310,000 adopted)
\$1 million	2009-10	(estimated)
\$335,000	2010-11	(proposed)

[See Tiburon budgets.](#)

These legal costs resulted from the [Bonander I and II cases](#) against the City of Tiburon: litigation resulting from the attempt to create an unpopular supplemental assessment district for undergrounding. The supplement was intended to reimburse the City (in advance) for cost over-runs encountered in what was, initially, a strongly supported private undergrounding district.

The litigation associated with Tiburon’s model seems worth noting, so appropriate lessons may be learned from it: 20(B) districts create an unavoidable risk of litigation and approving districts without strong consensual support of homeowners increases the risk of litigation.

(Note: It might also be recommended that the Bonander case be read by anyone who may be considering the use of 20(B) districts as a potentially viable mechanism for future undergrounding: the case illustrates that every 20(B) district places the city one lawyer away from a \$500,000 lawsuit, even when a "constitutional formula" is used.)

4. The city's current policy of using 20(A) funds to facilitate the formation of 20(B) districts should be noted.

20(A) funds have been designated since 1985 for undergrounding Moraga and Oakland Avenues (see Resolution 84-85). Yet the funds have been utilized and lost in the service of private undergrounding districts. More importantly, they give the City a financial stake in approving every district – they move the City from “neutral evaluator” of districts, to standing "shoulder to shoulder with proponents” of undergrounding districts.

This financial stake, more than any principled rationale, may explain the gradual devolution of Council standards for approval of districts from “strong support”, defined initially as 70%, to “anything over 50%”. A devolution which, in turn, has had unintended consequences: districts set in motion with less seed money, less consensus among homeowners, vitriolic dissension among neighbors, litigation, abandonment of districts, etc.

Disclosure and comment on this aspect of current undergrounding policy would be appropriate.

5. Review of the "Act of God" occurring during Piedmont Hills construction would be appropriate.

The impact of an "Act of God" during construction should be addressed in terms of the impact on its City, on the homeowners, the contractor liability (or lack thereof), insurance coverage, transfer of risk to homeowners vs City, etc. A review of the settlement reached in the Piedmont Hills incident with Crest Road may be appropriate. For instance, should "heavy" rains in October be considered foreseeable and, if not, should undergrounding work be scheduled for March?

6. A chart quantifying the experience of past districts would be useful.

Ideally, a simple excel chart would include the data below for Dudley, Wildwood, Central Piedmont, Piedmont Hills, Sea View. If someone is a fancy techie type, color bar graphs comparing \$ data for each district would be great, too. (It appears this basic information has already been gathered by one or more committee members and would just need to be placed in a chart.)

district name
number of homes
number of properties contributing seed money + amount for each
construction bid amount
average upfront cost to homeowner (assessment + lateral)
interest rate on bonds
average financed cost to homeowner (includes all fees, interest + lateral costs, if possible to finance them)

total district costs (include all direct costs: bid + legal + laterals + ??; exclude indirect costs)
telephone poles removed
total cost per telephone pole removed

\$ contributed by City in excess of original assessment (for any reason or purpose)
\$ contributed by homeowners in excess of original assessment (including seed money)

percentage of homeowners signing petition
pre - bid vote percentage (if any):
post - bid vote percentage:
outcome (completed or abandoned)

(Interestingly, Tiburon's 2009-10 budget also provided "no increases to salaries or benefits for non-represented staff for the fiscal year and that in adopting its management and mid-management compensation resolutions, the Town Council would be agreeing to create a two-tier system for employees hired after July 1, 2009, who would no longer be eligible for health benefits upon retirement." [See p. 7](#). Presumably excessive legal expenses, as well as the economy, may have contributed to this outcome.)*

Piedmont Audit-Subcommittee, PHUUD

An independent investigation is now required.

1. Mayor Barbieri and Vice-Mayor Chiang both Barbieri and Chiang voted on three separate occasion to allocate public money to the Piedmont Hills Undergrounding Utility District ("PHUUD"): (1) The \$296,000 paid out of the City Sewer Tax account for the Crest Road washout in October 2009. Had there been no undergrounding, there would have been no washout. (2) The first one million dollar taxpayer funded bailout in December 2009. (3) The second one million dollar taxpayer funded bailout in February of 2010.

Those who voted for the over \$2.3M of taxpayer money are now auditing their own actions, and the actions of the Piedmont Staff that recommended these payouts. The matter speaks for itself, an independent examination is needed. This has been asked of the Audit Committee and the Piedmont City Council ("CC") on numerous occasions. There been no comment for the Audit Committee, City Council or Staff on this request. That they will not even respond is further substantiation that the public officials who voted for the PHUUD bailouts cannot objectively examine themselves.

2. The third member of the Committee, Judge Ken Kawaichi, expressed frustration that so little information is forthcoming, and specifically from Piedmont Staff, as litigation is

pending. Judge Kawaichi would like to see subpoena power as a means to get substantive information.

I suggest the AC should have an option of the City getting out of the undergrounding business entirely. In the future homeowners wishing to underground their utilities would only do so under a 20C type of district. This removes liability and possibility of cost overruns from the city.

I find the draft report deficient as follows, by no means is this list complete.

1. The report did not address or examine who looked at the line item bids for irregular items (see my 10/26/2010 letter and Neil Teixeira's letter on the same subject). There are discrepancies between City Administrator Grote's public statements that Staff was not responsible for the bid and Mr. Grote stated staff did not look at the bids. The Harris & Ass., Russ Moore to Larry Rosenberg email, attached to my 10/26/2010 letter, directly contradicts Mr. Grote's statement. The AC entirely ignored my letter and this discrepancy.

2. Staff, and specifically Mr. Grote, have been involved in line item bids as an integral on-going aspect of City Business. Mr. Grote has acknowledged publicly that line item bids have been discarded in the past because of irregular items. Yet in the PHUUD investigation, Mr. Grote claims that no one on staff is responsible for reviewing the bids. He asserts that only Harris and Associates has the responsibility of recommending the winning bid, although he and other City officials will be the ones ultimately accepting the bid and assuming the liability for the City. The AC has not looked at the apparent discrepancy in this policy as it relates to past bid rejections.

3. The AC has not examined the practice of Senior Staff to relegate such a fundamental aspect of their responsibility to others, the reviewing of line item bids. Once the individuals components are tabulated into a table, and as all contractors are bidding on the same items and quantities line by line, the review process is fast. literally minutes. The line item bid allows any anomalies to be quickly determined, such as Valley Utility's 500% + greater bid for the bedrock over the next lowest overall bidder.

4. I have asked for an examination of former City Attorney George Peyton's role. Mr. Peyton was responsible for reviewing the contracts for form and content that allowed unlimited liability to be transferred to the City of Piedmont. Allowing contracts to transfer unlimited liability to the City and taxpayers was exactly opposite his job description as the City Attorney charged with protecting the City. I have also asked why Mr. Peyton's insurance coverage and/or the City's Errors and Omissions coverage was not used to cover some of the cost overruns. There has been no response from Council, Staff or the AC.

5. The AC not address the culture at City Hall that allowed this. By all accounts City Administrator Grote runs a "tight ship" and is fully aware of the goings on in Piedmont and certainly at City Hall.

6. The AC did not address the culture of tacit approval and encouragement of undergrounding in Piedmont at City Hall.

7. Mr. Grote stated that he and staff only knew shortly before Dec. 6, 2009 that \$1M would be needed. Mr. Chiang's own analysis, and mine, shows that substantial money

beyond even the contingency had been spent minimally by mid-September, nearly three months before the Dec. 6, 2009 Council meeting. Why did Mr. Grote allow this to continue?

8. As early as the end of July there is a change work order for \$250,000 for Sotelo Avenue. The \$250,000 is nearly half the entire project contingency of \$560,000. This is apparently not a warning sign to staff that this undergrounding project, within a few weeks of its construction start, will be radically different than previous districts. Larry Rosenberg in a late July email states “as long as we didn’t hit more rock we’ll be ok.” There is nothing to base this speculation on. Staff apparently never looked at scores of in-house geotechnical reports. This process would have involved looking in the proper file at city hall.

9. Before this project commenced staff did not take the few minutes necessary to examine the scores of geotechnical reports immediately available to them. Massive amounts of bedrock are and were common knowledge in the area, as shown by years of the geotechnical reports on file. Surely the Building Department had dealt with construction that involved bedrock on numerous occasions. Much of this falls to the level of “common sense” rather than farming everything out to an expert.

10. The Valley Bid was most likely unbalanced; the AC does not examine this aspect.

11. Why was there never the option presented that PHUUD should pay for the Crest Rd. repair? After all, no PHUUD construction, no washout, no \$296,000 taxpayer expense.

12. There is no mention of Ann Swift and her report on Feb. 1, a day before the municipal election, that there was only a small deficit on the project. Known at least a month before that was that the project would require a second million dollars.

Rick Schiller

Dear Members of the Special Audit Subcommittee and Piedmont City Council:

In your process of reviewing the Piedmont Hills Underground Assessment District, the following suggestions are offered for your consideration. As you are aware, there is considerable interest in learning more about the risk the City assumed and the financial implications thereafter to Piedmont property owners.

We will continue to follow your progress and await your recommendations.

Thank you for your consideration.

Sincerely,

Piedmont Civic Association

Note: The following article with functioning links to source material can be found on the Piedmont Civic Association website at www.piedmontcivic.org.

Piedmont Civic Association Commentary on Initial Undergrounding Reports of the Special Audit Subcommittee and the League of Women Voters' Undergrounding Task Force:

To date, the efforts of the Special Audit Subcommittee and the League of Women Voters' Task Force (LWV) have emphasized contract administration analysis. Information and analysis of undergrounding concerns provides a valuable shared knowledge base to the Council and residents in their upcoming efforts to undertake substantial revisions to City undergrounding policy. It is hoped both the Audit Subcommittee and LWV Task Force will continue their much appreciated efforts, providing analysis and recommendations to the Council and the community on:

- [The use of public funding to facilitate the creation of private undergrounding districts](#)
- [The loss of 20A public funds](#)
- [The City's financial stake in approving Districts](#)
- [The potential or perceived impact of a financial stake on the decision-making process](#)
- [The magnitude of 20B projects in comparison to City revenues and reserves](#)
- [Other undergrounding options: 20C Districts and city-wide undergrounding](#)
- [Chiang analysis: Does the City become the “ultimate insurer” of every 20B undergrounding project?](#)
- [Will immediate knowledge and reporting of cost overruns improve the City's options?](#)
- [Shifting cost risk from the City to private districts](#)
- [Preventing misunderstandings by Staff and/or Council of the nature of City contracts](#)
- [The extent and appropriate use of informal meetings, without formal public notice, between homeowners and city staff](#)
- [Review of additional aspects of past experience](#)
- [Optimum threshold level of support - review, comparison and a specific recommendation](#)
- [Grounding the report upon the Piedmont City Charter](#)

The use of public funding to facilitate the creation of private undergrounding districts

Current undergrounding policy prohibits the use of “general funds” for pre-formation expenses. However, this policy has been interpreted to refer only to the City's General

Fund, and to allow the use of 20A public funds (a separate account containing monies received from PG&E for undergrounding major arterial streets) for the benefit private 20B districts. Use of these public funds has been authorized as follows:

- [\\$25,000 for Central Piedmont](#) (due to seed money shortage - [see p. 15](#))
- [\\$128,000 for Central Piedmont](#) (to satisfy remaining district debt when it failed to be approved)
- [\\$150,000 for Piedmont Hills](#)
- \$150,000 for Hampton Sea-View ([p. 5](#))

The loss of 20A public funds

City 20A public funds have been lost by private undergrounding districts. See [Details](#). Whether the City should continue to place 20A public funds at risk on behalf of 20B private districts is an issue worthy of consideration in reviewing City undergrounding policy.

20A funds received from PG&E are intended for the undergrounding of major arterial streets, generally. In Piedmont, an extensive study was conducted prioritizing streets for purposes of 20A funds, with Moraga and Oakland Avenues ranking highest. (See Resolution 85-85, [p.1](#), [p.2](#), [p.3](#).) The 2007 \$460,000 balance in 20A funding (prior to commitments to 20B districts) represented 30% of the estimated Moraga Avenue undergrounding cost and 20% of Oakland's and accumulates at the rate of \$80,000 per year. (See [staff reports p. 1](#); see [staff report p.5](#).) And public funding might be supplemented with a small amount of private funding from Moraga/Oakland residents, if homeowners desired to underground sooner. The equities of facilitating private undergrounding of Hampton, Sea View, Glen Alpine and similar infrequently used streets at the expense of undergrounding major arterial avenues where safety issues are present could be revisited by the Audit Subcommittee.

The City's financial stake in approving Districts

Utilizing public 20A funds for private undergrounding may result in unintended consequences other than the mere loss of the funds. First, the City's well-intentioned effort to reduce initial seed money requirements from private districts by \$150,000 (50% of pre-formation cost), may be reducing levels of initial support to inappropriate levels, as the money is not coming from homeowners.

Second, this well-intentioned effort to assist the initiation of private districts results in the City acquiring a financial stake in the success of a district. If a district is not approved, or bonds not issued, the City loses its public 20A funds. The City becomes, for all practical purposes, a partner in the formation of the district. This partnership may, in turn, impact its decision-making process – both initially in determining whether a district should be approved, and later in determining how far litigation should be pursued. The ramifications of having a possible conflict of interest could be explored.

The potential or perceived impact of a financial stake on the decision-making process

The City's acquisition of a financial stake in the success of 20B private districts has, perhaps coincidentally, coincided with a decline in its threshold for approval. The expected (or effective) standard for property owner approval has trended from "[70%](#)" to "[approximately 70%](#)" to "[two-thirds](#)" (per LWV report) to "[60-70%](#)" to "[no threshold](#)", with one public official eventually suggesting no threshold had ever existed above the legal 50% minimum - residents were merely confused. The perception of a shift in the City Council's stance - from neutral evaluator of Districts to partner standing shoulder-to-shoulder with District proponents - is a concern of residents which may intensify the discord surrounding current undergrounding projects. This concern could be addressed by the Audit Subcommittee as part of its review of past experience.

The magnitude of 20B projects in comparison to City revenues and reserves

For a larger city with a population of 50,000 (San Rafael) or 100,000 (Lafayette) or more, \$3 million in total cost overruns and litigation expenses may be de minimus compared to revenues and reserves. For Piedmont, it is not. The overrun represented over half of its general fund reserve and almost 17% of its annual revenues. Moreover, Piedmont's general fund reserve has now been depleted. It is well short of the 2007 Tax Review Committee Report recommended amount of 25%, or \$5 million. Piedmont's general reserve may conceivably fall below \$1 million by the end of this fiscal year, depending on the impact of unbudgeted overtime and pool costs. The appropriate magnitude of 20B projects and risk in light of the current level of City reserve funds could be addressed by the Audit Subcommittee.

Other undergrounding options - - 20C Districts and city-wide undergrounding

One alternative undergrounding option is using 20C private districts. 20C Districts may allow small groups of homeowners to underground privately through PG&E, without City involvement or risk. Further information would be helpful to ensure residents and Council Members are aware of the full spectrum of undergrounding options. This would also include an assessment of City-wide undergrounding options, which the Council requested on March 19, 2007. [p. 6](#).

The Chiang analysis: does the City become the "ultimate insurer" of every 20B undergrounding project?

The City's costs with Valley were **not capped**, due to the rock clause. The City's agreement with PHUAD homeowners, on the other hand, was "**not to exceed**" the assessment amount and the City could not unilaterally assess homeowners for cost overruns, Acts of God, or any other reason if it ran out of funds. See [staff report](#). At the same time, the Chiang report points out the City was unable to terminate the project virtually from Day 1 of groundbreaking: it was financially infeasible. (At [p. 6 and 13](#).)

This combination of circumstances left the City responsible for cost overruns once Piedmont Hill's contingency fund was exhausted. The City unwillingly and unwittingly became the "ultimate insurer" of project completion.

If the Chiang analysis is true of 20B districts generally, then the City is forced into the position of "ultimate insurer" – and the City's general fund placed at risk - with every 20B project. This risk to general funds would be undertaken without a general election or vote by the residents of Piedmont. Whether the City may be forced into the role of ultimate insurer in every 20B construction project could be clarified by the Audit Subcommittee.

Will immediate knowledge and reporting of cost overruns improve options?

Chiang points out it was the better option, at all times, to complete PHUAD construction work than to halt it – even on Day 1 of construction. If this is equally true for future districts, then early discovery of cost overruns – even on Day 2 - will not improve the City's options: it will still have to complete the project. It would, therefore, be important to determine whether or not the Chiang analysis applies to 20B projects generally.

Shifting cost risk from the City to private districts

Whether the City can legally shift risk of cost overruns and/or Acts of God to homeowners when undertaking 20B Districts is an unanswered question. Whether homeowners should knowingly assume these risks is another unanswered question. For PHUAD, the cost overruns would have amounted to an additional \$14, 583 per homeowner, on top of the homeowner's initial \$10-20, 000 assessment. The Act of God (collapse of Crest Road) represented another \$2,000 per homeowner. These are sizable risks. Do 20C districts place this risk on PG&E rather than homeowners or the City? Providing information on these questions would give both the Council and residents the knowledge they need to craft a fair, workable undergrounding policy for the future.

Preventing misunderstandings by Staff and/or Council of the nature of City contracts

Staff has repeatedly represented to Council that undergrounding bids are "firm bids". (See [minutes p.6](#); [minutes p. 4](#)) The Piedmont Hills contract was not attached to the staff report for the Council's review prior to approval. Since that date, Council Member Margaret Fujioka has requested that all contracts be attached to staff reports when submitted to the Council for approval. However, in addition, the Audit Subcommittee could further clarify, delineate or role of the City Attorney in contract administration, as well as best practices for identifying contingencies, their magnitude, and how they will be addressed, should they occur. (This issue may have arisen in the reverse in the Piedmont Pool lease recently: the City insisted on a \$1 million hazards insurance policy requiring a \$10,000 premium for an allegedly minimal risk from 1 gallon jugs of chlorine.) formalize the

The extent and appropriate use of informal meetings, without formal public notice, between homeowners and city staff

Increased staff activity in district formation after the Dudley project was noted in the Barbieri report, but not delineated. This activity presumably includes staff participation in multiple informal, private meetings with individuals and select groups of homeowners prior to any noticed public hearings. This practice was raised as a concern by non-participating homeowners who later discovered they had not been notified of, or missed, these important early discussions with City staff. Similar governance concerns have arisen in the Moraga Canyon Sports Facilities project where staff reports have referenced numerous meetings between staff and select groups of residents prior to the first noticed public hearing on the project. The Audit Subcommittee could address this recurring issue.

Review of additional aspects of past experience

Other important aspects of past experience could be addressed for all prior undergrounding districts, such as:

- Level of homeowner support
- 20A public funds provided, the reason, and the outcome
- Threshold stated compared to the threshold applied to each district
- Level of staff participation
- Magnitude of project compared to City reserves
- Amount of contingency fund

Optimum threshold level of support - review, comparison and a specific recommendation

City ordinance provides a street may not be closed for a few hours if more than 30% of property owners object. Yet, if those same 30% of residents object to paying a \$10-20,000 assessment for undergrounding, the Council may ignore them. A comparison of these threshold levels for various actions would be helpful. Given the extensive time and effort the Audit Subcommittee has invested in reviewing undergrounding administration, history, comparable cities, and options, a specific recommendation to the Council on the optimum threshold level of support for undergrounding may be appropriate, as well.

Grounding the report upon the Piedmont City Charter

The Piedmont City Charter is the governing law of Piedmont and has been in place since Piedmont became a Charter City in 1907. The [Charter, as amended 2008](#), can be found on the City website. It is the law and provides the framework for policies and actions of the City Council.

Review and discussion of relevant portions of the City Charter and how they may prescribe the roles, authority and limit the actions of City officials would be helpful.

Pertinent sections may include:

*Section 2.04 **GENERAL POWERS AND DUTIES** "All powers of the City shall be vested in the **City Council** as the legislative body, except as provided by law or this Charter. **The Council shall provide for the exercise of these powers and for the performance of all duties and obligations imposed on the City by law.**" (Emphasis added).*

*"Section 2.08 **MAYOR**" "The mayor shall preside at meetings of the Council, shall be recognized as head of the City government for all ceremonial purposes and by the Governor for the purposes of military law, but **shall have no administrative duties.**" (Emphasis added).*

*"Section 3.03 **CITY ADMINISTRATOR** - "(4) Shall see that **all laws, provisions of this Charter and acts of the Council, subject to enforcement by him/her or by officers subject to his/her supervision, are faithfully executed.**" . . ." (8) **Shall keep the Council fully advised as to the financial condition** and future needs of the City and make recommendations to the Council concerning the affairs of the City." (Emphasis added).*

*"Section 3.05 **CITY CLERK** "- "The City Council shall appoint an officer of the City who shall have the title of city clerk. The city clerk shall give notice of Council meetings to its members and the public, keep the minutes of its proceedings and perform such other duties are assigned by this Charter or by **the Council.**" (Emphasis added).*

*Section 3.06 **CITY ATTORNEY** "(1) Represent and advise the Council and all City officers in all matters of law pertaining to their offices: (4) **Approve the form of all contracts made by and all bonds given to the City, endorsing approval thereon in writing;**" . . . " **The Council shall have control of all legal business and proceedings and may employ other attorneys to take charge of any litigation or matter or to assist the city attorney therein.**" (Emphasis added).*

*'Section 3.10 **DEPARTMENT OF PUBLIC WORKS** "There shall be a department of public works headed by a **director of public works.** This department shall have charge of the maintenance and repair of all City streets, sewers and storm sewers, and any other related activities as assigned by the **City Council.**" (Emphasis added).*

*"Section 3.11 **CITY ENGINEER** - There shall be a city engineer who shall have supervision over all matters of an engineering character as required by State law, or as assigned by the City Council. At the time of appointment, this officer shall have been a practicing civil engineer for a period of at least five (5) years, and licensed in the State of California."*

*Section 4.11 **CONTRACT WORK** "All contracts shall be drawn under the supervision of the city attorney." (Emphasis added).*

*Section 4.14 **BOND DEBT LIMIT** "No bonded indebtedness which shall constitute a general obligation of the City may be created unless authorized by the affirmative votes of a majority of the electors voting on such proposition at any election at which the question is submitted to the electors and unless in full compliance with the provisions of the State Constitution, other State laws and this Charter."*

*Section 9.06 **CHARTER ENFORCEMENT** - "The provisions of the Charter shall be enforced, with violations punishable in the manner provided by State law and by City Ordinance."*

The Piedmont Civic Association website www.piedmontcivic.org includes links and access to all of the following:

[Highlights of the 3 Audit Subcommittee Reports](#)

[Piedmont League of Women Voters' Report](#)

Link: [Kawaichi complete draft report - 11 pages](#)

Link: [Chiang complete draft report - 21 pages](#)

Link: [Barbieri complete draft report - 5 pages](#)

Prior Related Article: [Piedmont's Flawed Construction Bid Process](#)

Prior Related Article: [The ABCs of Undergrounding](#)

Prior Related Article: [The History of Public 20A Fund Losses in Piedmont](#)

To: Subcommittee of the Audit Committee, Piedmont City Council
Via email to jtulloch@ci.piedmont.ca.us

March 2, 2011

Dear Members of the Audit Subcommittee:

The League of Women Voters Task Force to Investigate and Report on Piedmont Hills Undergrounding District is pleased to submit attached its Summary of Preliminary Findings to the Subcommittee of the Audit Committee of the Piedmont City Council. The preliminary report by the Task Force identifies what it believes to be some of the significant problems that led to the unprecedented cost overruns and identifies city policies that it believes need to be addressed.

The Audit Subcommittee has requested public comment in response to the three individual preliminary reports that its members have prepared regarding cost overruns on the Piedmont Hills Undergrounding District. We offer the following comments that specifically address the three individual reports.

General

We wish to thank the Subcommittee for its work in this connection. The reports of members Chiang and Kawaichi in particular demonstrate hours of work in reviewing and analyzing documents and other data.

We endorse Judge Kawaichi's comments that the auditing process has been hampered due to constraints of pending investigations and litigation. Likewise, we endorse his recommendations that, after the litigation is concluded, the Subcommittee 1) reopen its investigation, and 2) proceed with a public hearing at which witnesses can be subpoenaed and testify under oath.

Additionally, we ask that the final report more clearly address the conflict of interest between the City Engineer and Harris' other role and explain how and why this presented a problem. Our report does so.

Process

When the Subcommittee was originally appointed, the Task Force expressed concerns that there could not be a completely independent and impartial review if there were two City Council members on the Subcommittee. Despite the addition of Judge Kawaichi, the Subcommittee remains dominated by Council members. Moreover, the Subcommittee apparently has not seen the need to retain any experts or experienced construction professionals to assist with its work. For instance, the Subcommittee appears to have reached a conclusion that the City had no alternatives once managers became aware in late fall that the contingency had been exhausted, without addressing the issue that the presence of extensive rock was well known on the project level months before. In contrast, the Task Force has members with experience in construction, and has reached the conclusion that it was the delay in the recognition and reporting of the extensive rock that precluded the City from taking effective steps to minimize its exposure.

Additionally, the Subcommittee did not address whether it believed Valley's reduced charges for rock excavation, which were still almost 250% over the average bid unit price, were proper. Finally, we would have expected the Subcommittee to consult one or more legal and construction experts to learn of specific, concrete ways by which the City could avoid liability in undergrounding and other construction projects. We would expect the Subcommittee to outline possible means of achieving this goal.

Timing of Reporting

The individual reports are unclear on the timeline when City personnel became aware of the serious problem with cost overruns in the District. One basic problem the Subcommittee fails to address is the lag time between when events occur in the field – which was when the City first had knowledge of the problem – and the lag time before payment was eventually made to the contractor which was many weeks thereafter. A related issue involves the concept of trending – when no rock excavation quantities are specified, but on the average two-thirds of the project involves rock from the very beginning– it should have been apparent to any reasonably competent manager to project that the contingency reserve would be depleted in less than two months. There does not seem to be any rational explanation for responsible staff to have waited for the inevitable to occur before notifying anyone.

The reports make it appear that the City did not become aware that the contingency reserves were exhausted until 11/30/2009, but this is not the case. The first rock was encountered in July 2009 and most of the contingency reserves were exhausted in mid-September 2009. Moreover, the reports do not specify whether the City Administrator notified the Mayor of the problem in early, late or mid-October. The Subcommittee's report should clearly state when the Mayor knew about the problem, so that it becomes clear how long he waited to inform the Council. If the Subcommittee's report accurately reflects the timeline, any management and oversight deficiencies may become more apparent.

Amount of Overrun

The reports understate the total amount of the project cost overrun by overlooking the cost to repair the trench washout. Notwithstanding the fact that the accident did not involve sewers, approximately \$300,000 was transferred from the sewer fund to cover the cost from the trench wash-out, which should fairly be treated as a direct cost of the District and be reflected in the final tally of the project cost overrun.

Management of Project and Accountability

The Subcommittee reports indicate that the City Clerk assumed increased responsibility for managing the project, and also state that there was management by committee and blurring of responsibility. The reports, however, do not address how or why this was allowed to occur on the project. The reports also reflect that a number of City staff had relatively early knowledge of the problems with the District: the Director of Public Works, the City Engineer, the Finance Director, the City Clerk, and possibly the City Attorney. The reports fail to address why no one involved notified the City Council of the problem until months after the problem was apparent on the project level. It would seem that the City Administrator had an obligation to ensure that

responsibility for project management was delegated to a qualified person, ensure that there were clear lines of responsibility, and keep informed of major developments in the project. This he did not do. The final report should address these shortcomings.

There are conflicts among the three individual reports regarding management's handling of the project. We believe that the conflicts among the individual reports should be resolved in favor of concluding that there were weaknesses in management and oversight.

Other Recommendations

We find the three reports to be focused on substantiating what happened, rather than recommending appropriate policies and procedures for avoiding such losses on future projects. We endorse Council Member Chiang's recommendation that the City use a system of enterprise risk management, so that all major project risks are identified in a timely manner, particularly those involving construction projects, and are considered. Though not emphasized by the individual reports, the City administration seemed to assume that the Hills project would proceed the same way as past projects, and did not even consider risks that might be unique to the Hills district (even though there were soils reports for properties in the District that indicated the presence of extensive rock). We also endorse the individual Subcommittee report recommendations that the management of projects be assigned to a qualified person who is accountable for keeping the Council informed, and if necessary this should mean that the City hires an experienced project manager. We also strongly recommend that the Council amend its policies to make clear that post-formation, no City funds are to be used for the direct costs of undergrounding districts, and to define what constitutes a direct cost. The amended policies should also address the handling of indirect undergrounding costs in a way that will not discourage the hiring of an outside project manager if needed. Finally, we recommend that the City specify the percentage vote to proceed with a district, at the same time that homeowners are asked to express preliminary interest in forming a district,

Conclusion

It is our hope that the Subcommittee will issue one unified report as soon as possible, so that the Council may quickly consider policy and procedure changes that would apply to all major construction projects. While further proceedings will be appropriate when the litigation is concluded, the Subcommittee has enough information to suggest immediate changes in City policies and procedure, particularly since multimillion dollar projects will likely come before the City Council prior to resolution of the undergrounding litigation.

Respectfully submitted,
Alex Gunst
Mary Heller
Rob Hendrickson
Al Peters
Kathleen Quenneville

League of Women Voters
Task Force to Investigate and Report on Piedmont Hills Undergrounding District
Summary of Preliminary Findings
February 22, 2011

Executive Summary

The Piedmont Hills Undergrounding District (the “District”) project (the “Project”) incurred significant construction cost overruns, of which over \$2 million was paid by the City out of its general funds in early 2010. The City Council thereafter appointed a three-person Audit Subcommittee to investigate how and why the overruns had occurred, and now approximately one year later, it has just recently released its members’ preliminary draft reports. The League of Women Voters (“League”) felt that the events and circumstances raised issues of civic importance to all City voters, and created a volunteer Task Force with the goal of providing an independent investigation and report. This preliminary report by the Task Force identifies what it believes to be some of the significant problems that led to the unprecedented cost overruns. Within the next month, the Task Force anticipates providing the Audit Subcommittee with comments on its members’ preliminary draft reports and anticipates participating in the public comment process. The Task Force may issue a further report if the Audit Subcommittee’s final report has material changes.

Formation and Composition of Task Force

The Task Force was formed by the League in early 2010. The magnitude of the cost overruns raised issues regarding the City’s ability to manage and administer major contracts. Potential members for the Task Force were interviewed by the League, and the following long-time Piedmont residents were selected: Alex Gunst, Mary Heller, Rob Hendrickson, Al Peters, and Kathleen Quenneville. Task Force members’ backgrounds include construction project management, accounting, city governance, and legal.

Scope of Investigation

Task Force members have attended all of the City of Piedmont Audit Subcommittee meetings, have reviewed all Project-related documents posted by the City on-line, have informally interviewed City Council members and some Project participants, have reviewed all of the documents produced in the formal claim being currently prosecuted by the City against the Project’s design engineers, and have met on numerous occasions to discuss their investigation.

While the City has made Project documents available and cooperated in connection with the Task Force’s investigation, the Task Force has encountered the following impediments to its full investigation of the cause of cost overruns:

- 1) The City has pending claims against the design engineers, which - in order to preserve the City’s attorney/client privilege - has restricted the Task Force’s ability to interview City personnel;
- 2) To the extent that there may be City internal personnel issues, legal requirements may preclude such information from being shared with third parties;

3) The City’s Audit Subcommittee was structured to include two Council members and is therefore subject to the Brown Act. This means that its workings – even the exchange of draft reports - must be conducted only through public meetings;

4) The Audit Subcommittee has met infrequently over the past year, without any observable sense of urgency; and

5) Key City personnel who were directly involved in the Project retired shortly after the events at issue.

Despite these impediments, the Task Force believes that it has developed sufficient information to report the following preliminary findings and conclusions.

District Chronology

For the purposes of this preliminary report, the following are some of the key events:

<u>Date</u>	<u>Event</u>
2003-2005	District formed
05/2005	Outside design engineer (Harris Associates) for Project appointed
02/2007	Harris Associates employee named to replace City Engineer
11/2008	Robert Gray replaces Harris Associates as design engineer
01/2009	Bids opened
	Council reduced voter % approval for District from 2/3 to 50%
06/2009	Construction contract issued
07/2009	First rock began to appear almost immediately
09/2009	Contingency budget virtually exhausted early in project
10/2009	First apparent “official” report of potential overruns to City Administrator
12/2009	First notice to Council of significant cost overruns

Preliminary Findings

The formation of the District from 2003-2005 was managed by the City Clerk, and appears to have proceeded in normal course.

After the District was formed, there was no clear designation from the City Administrator (or the City Council) as to whom or which department should be responsible for managing the Project through design and construction. Rather than the Director of the Department of Public Works, who in past experiences had taken the leading role, the City Clerk assumed increasing management responsibility notwithstanding the City Clerk’s lack of design or construction expertise or experience. Neither the City Administrator nor the Council exercised oversight in this regard.

Two additional significant events occurred in the 2007 - 2008 timeframe: first, the City’s part-time City Engineer position was filled by a seconded employee from Harris & Associates, the Project’s initial outside design engineer, thereby creating at a minimum the appearance of a conflict of interest (in that the City Engineer would be asked for potentially critical comments regarding the work of his employer, the design engineer); and second, Harris & Associates later reported to the City that they were running out of budget to complete the Project design, and

were replaced as engineer of record for the Project by the firm of Robert Gray, which agreed to do the work for approximately one-third of what Harris had requested.

Perhaps the greatest identifiable errors leading to cost overruns occurred in the late 2008/early 2009 timeframe, with the finalizing of the design drawings, which contained critical errors and omissions as to physical quantities (such as length of trench, etc.), as well as the City's use of a faulty bid form, which allowed bidders to take advantage of the omissions in the design that had failed to identify the presence of extensive, observable rock.

The design documents had three types of errors or omissions:

1) It appears that no responsible City project manager, engineer or designer ever reviewed existing soils reports from the Project area or walked the Project during the design or before bid, and so no one involved in the design process was apparently aware of the extensive, observable rock or thought it was sufficiently important to investigate that possibility. This resulted in more than \$2 million in extra costs.

2) There were extensive errors in the estimated quantities provided in the contract documents (lineal feet of trench, etc.), which resulted in approximately \$300,000 in extra costs.

3) The City's bid documents asked for a unit price for rock excavation, but listed the quantity of rock to be "0", thereby allowing bidders to bid – and committing the City to pay – an overstated unit price for rock excavation. Had a reasonable estimate of quantity been specified, the bidders would have been under competitive pressure to bid a reasonable unit price. The average bid unit price for rock excavation was approximately \$400 per cubic yard ("cy") while the successful bidder's unit price was \$2150/cy, more than five times higher than the average rock bid. Nonetheless, the erroneous bid form precluded the City from considering this disparity when evaluating bids.

The contractor encountered extensive rock almost immediately after commencing work. In recognition of the inflated contract unit price for rock excavation, the contractor proposed working on a Force Account or Time & Materials ("T&M") basis, charging its actual costs instead of its unit price, to which the City agreed. While the actual costs that ended up being \$987/cy were less than the contract's \$2,150/cy unit price, the actual cost paid by the City was still 250% more than the average bid unit price (\$400/cy). Had a reasonable unit price been used, the City's overrun would have been less than \$500,000 (\$2.6 million rock overrun ÷ 2.5 = \$1 million, less \$600,000 project contingency).

Preliminary Conclusions

I. City Administration of Project

A. It appears that there was no meaningful management or administration of the Project by the City post-District formation.

1. There was no clear assignment of responsibility for Project management during the design or construction process. The City Administrator apparently allowed de-facto management of the Project during design and

construction to be assumed by an employee who had no design or construction expertise or experience.

2. Neither the City Administrator, nor the City Council, appears to have ever asked for or considered any basic information regarding the City's potential financial risk exposure in connection with proceeding with the Project.
3. There was no apparent independent or meaningful substantive review or input called for by any City representative regarding the design or bid documents.

B. The design and bid documents were replete with errors and omissions.

1. All responsible City personnel involved appear to have simply assumed that the Project would proceed as past undergrounding projects had, and therefore no one appears to have substantively reviewed the design or bid documents as to the conditions in the District.
2. Perhaps the single most costly error was including a line item in the bid form for the unit price for rock excavation, but then including a "0" quantity, which allowed bidders to submit unbalanced bids. This error was or should have been obvious to anyone with construction experience, and it is difficult to understand how or why it was not caught by anyone involved with the Project. This error alone appears to have cost the City at least \$1 million.

C. Construction Management

1. The failure to timely assess and report on the impact of the discovery of extensive rock prejudiced the City's ability to mitigate damages. Had the City timely assessed and reported on the issue, the City may have had the option of terminating the contract immediately due to the discovery of "unforeseen" subsurface conditions, rebidding the work using estimated quantities of rock excavation, and seeking new unit prices. This could have saved the City at least \$1.5 million.
2. The City's early decision during construction to alter the rock excavation price to reduce the initial contract unit price of \$2,150/cy down to T&M actual costs, which resulted in a cost reduction down to the average cost of \$987/cy, was still over 250% of the average bid unit price of \$400/cy, and ended up costing the City probably \$1.5 million.

II. City Policies That Need to Be Addressed

- A. There do not appear to be any City policies or procedures regarding assessing basic concepts of risk management and financial exposure in the City's decision-

making process. Evaluations and decisions on future projects, particularly those involving construction, must include both of these assessment factors.

- B. There do not appear to be any City policies ensuring proper and clear delegation of Project responsibility to qualified and experienced personnel.
- C. There do not appear to be any City policies regarding conflicts of interest involving non-full-time City staff positions such as City Engineer. We encourage the Council to adopt conflict of interest policies that avoid even the appearance of a conflict, for all employees or equivalent positions involved in the City's decision-making process.
- D. There do not appear to be any City policies regarding the City subsidizing design and construction costs for underground districts after district formation. In this connection, we encourage the Council to investigate alternative ways to proceed with undergrounding or other major construction projects that will not expose the City to potential financial liability.
- E. There do not appear to be any City policies that preclude use of the City's general funds, such as for sewer maintenance, to be utilized for District-specific costs. In the case of the Project, this accounting transfer allowed the actual total Project cost overrun (including trench wash-out) to be understated by at least \$300,000.
- F. There do not appear to be any City policies encouraging prompt and accurate reporting by City project manager(s) to City management with, at a minimum, "exception reporting" recognizing significant changes in the status of projects.
- G. There do not appear to be any City policies requiring prompt, accurate and timely reporting by City management to the City Council regarding exception reporting.
- H. While not directly related to the cost overruns in the District, an issue that has arisen in this connection is that the Council changed the percentage vote required to proceed with the District, after residents expressed preliminary interest in forming an undergrounding district. Material changes in voter approval requirements by later Councils in the middle of projects create a perception of unfairness and should be avoided.

III. Closing Comments

The purpose of this preliminary report is to identify for Piedmont citizens and the City Council perceived deficiencies in the City's basic decision-making processes that became apparent in connection with the Piedmont Hills Undergrounding District Project. While the focus of this report has been the Piedmont Hills Undergrounding District, the issues we raise have general application to all major construction projects (for instance, constructing new play fields or swimming facilities). We urge the City Council and our fellow Piedmont citizens to consider our comments in that broader context.

Correspondence for City Council Audit Subcommittee Meeting of 03/15/11
Received by 2:00 PM on Tuesday, March 15, 2011

To: Piedmont City Council Members & PHUUD Audit Committee. 2-25-2011
Re: March 15-Audit Committee Final Draft Reports

Dear Mayor Barbieri, Vice Mayor Chiang & Judge Kawaichi,

It appears that the audit committee is forging-ahead to craft a final document on the PHUUD debacle before the "key cause" is resolved. I believe, the year long-unresolved legal dispute with Harris & Assc supports my point. That Administrator Geoffery Grote had the primary responsibility to identify any irregular bidders and properly award the PHUUD construction contract to the "lowest responsible bidder". Harris & Assc unyielding legal posture, confirms my analysis of Administrator Grote's acts:

As a result of your inquiry of the two million dollar taxpayer bailout of the Piedmont Hills Underground Utility District (PHUUD), a critical issue remains unresolved. Either City Administrator Geoff Grote or City Engineer/Harris & Assc failed to abide by the Cal-Trans bidding guidelines, California Public Bidding Laws and section 25.0 (Rejection of Bids) of the PHUUD bidding documents. Valley Utility's irregular line 38 bid unit price of \$ 2190.00 per cubic yard for the removal of rock went unnoticed and unaddressed by both Administrator Geoff Grote and Harris Assc. This blatant collapse of basic (boilerplate) public bid analysis resulted in the mis-award of the PHUUD construction contract to Valley Utility by Administrator Grote. This significant executive error is in violation of the Piedmont City Charter section 4.11, California Business & Professional code section 20415 and California Public Contract code sections (20161 & 20162), etc. There are over 100 more competitive bidding statues in California. All these statues are laws that are intended to protect the public and bidders by eliminating favoritism, fraud and corruption in the awarding of public contracts.

Both judicial case law and existing statues mandate that all public work projects must be awarded to the "lowest responsible bidder". Valley Utility's unit bid (line 38 rock) was glaringly irregular, thus their bid was non-responsive, based on State public bidding laws. Valley Utility's lower base bid amount was irrelevant and subordinate in relationship, to a "lower responsible bidder". Tennyson Electric was the "lowest responsible bidder" at the \$425.00 per cubic yard unit (line 38) for the rock removal and \$ 1,830,000.00 on their base bid element.

At the July 8th Audit Committee meeting Administrator Grote agreed. He stated that nobody on his senior staff, including himself had knowledge of any irregular unit numbers. That it was Harris Assc, that failed to recognize the irregular bid submitted by Valley Utility and it was Harris Assc contractual analysis that blinded Mr. Grote's judgment. I believe, based on Mr. Grotes 22 year pattern of awarding public contracts and Harris Assc March 3 email to Larry Rosenberg, that it was Administrator Geoffery Grote's sole administrative duty to screen-out/disqualify any bidders proposals with

irregular or unbalanced unit numbers and to validate the contract award to the legitimate bidder. The seven analyzed items specified in Harris Assc Mar. 3rd email, do not include screening for irregular unit bid items.

The City of Piedmont and Harris & Assc are currently in litigation/mediation to resolve the law violations that occurred. If Mr. Grote claims are correct, then Harris Assc will be found culpable for failing to identify the irregular/non-responsive bid unit rock prices of Valley Utility and Piedmonters will be made-whole, with a financial settlement from Harris & Assc in the amount of 1.3 million dollars. **If not?**

The PHUUD Audit Committee and Piedmont City Council Members fiduciary duty is to all the Citizenry of Piedmont to hold those responsible, accountable for their actions.

Neil Teixeira

I have the following questions/observations relating to the Draft Sub-Audit Committee Report:

- Why did it take over a year to issue the Report? Did the Committee not believe that the matter deserved more urgent attention?
- The Council under former Mayor Friedman, as well as the City Manager, honorably accepted responsibility for the serious errors made. Surely, the current Council and Manager are not rescinding their acceptances?
- The current Council repeatedly refused to conduct an outside, independent audit, choosing instead to investigate its own actions. Does this sound like responsible public policy?
- The City Manager and City Attorney report, I believe, to the Council. Yet, the Report rather rapidly exonerates the City Manager, completely ignores the responsibility (and liability) of the City Attorney, and never confirms its own responsibility. Recently, a local resident wrote that one current Councilmember, an attorney, bears responsibility for failing to confirm that the relevant contracts adequately protected the City. Well, firstly, there was more than one attorney then on the Council and other members claimed expertise in financial, scientific and other matters as well. And secondly, where was the City Attorney who had responsibility to protect the City, including the review of contracts which obviously subjected Piedmont to huge losses?
- Finally, I would ask each Council member to consider this: Each of you is an accomplished professional. 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

Dear Mayor Barbieri and City Council members,

Although the draft audit reports prepared by Messrs. Barbieri, Chiang and Kawaichi shed some new light on the history of the Piedmont Hills Underground Utility District project and the way it was managed, these drafts seem to be at best preliminary and incomplete.

Above all, these draft reports fail to provide a coherent or comprehensive explanation of the fundamental “how, why, what, when and where” of the project. Thus, for example, we are still left without a clear idea of how the city entered into a contract with the type of rock contingency provision in the Valley Utility Service agreement, how it came to pass that the City paid above-market rates for that removal or, perhaps most critically, how change orders could be approved by anyone on behalf of the city when there *were no funds* (or quickly diminishing funds) available.

In addition, it remains unclear how the problems remained hidden from public scrutiny (or the attention of the council) for so long. Even according to the draft reports, the initial rock was discovered during the week of July 21st, 2009; hundreds of thousands of public monies were spent in the next two-and-a-half months to remove that rock; and yet somehow the matter was reportedly not brought to the attention of then-Mayor Friedman until some undisclosed time in October. Indeed, based on other sources, the council was apparently not informed of any problems until a closed session in the beginning of November and there is no adequate explanation in the drafts as to why the matter was not brought to the attention of the public until December, 2010, when a last-minute notice identified that an (unprecedented) appropriation issue would be addressed at Council meeting a few days later.

Instead, the draft report contains several conclusory statements such as “...City Administrator Grote followed City policy and procedures and sought the advice of legal counsel as soon as...” required; “[i]n my view, this audit process has revealed no violations of criminal law”; and “[t]here is little credible evidence that any participant knowingly or intentionally violated a regulation or statute.” Even if these statements ultimately prove to be accurate, they are premature (if not entirely inappropriate) at this stage.

The pending litigation most certainly complicates the preparation of this audit report but it does not excuse the lack of factual detail, or the interjection of what appear to be exculpatory conclusions, in place of a fulsome, balanced and neutral audit report. Until there is a more comprehensive accounting of this project, the PHUUD will undoubtedly continue to be a matter of grave concern to the citizens of Piedmont and undermine their faith in those entrusted with leadership positions in the City.

Thank you for your continued attention to these issues.

Leon M. Bloomfield

Dear Mayor Barbieri, Vice Mayor Chiang, and Honorable Judge Kawaichi,

I have read your draft reports and would like to share my views.

- 1) I’m opposed to the use of 20B district funds unless the risk to the citizens’ public funds is eliminated. For example, the “valley rock” clause in the Piedmont Hills Utility District and Hampton-Sea View Districts has the potential to bankrupt the City—which I find to be an unacceptable risk.

- 2) I'm opposed to the loan of the citizens' 20A funds to private districts. I find it inappropriate for the City to have a financial stake in such ventures. My understanding is that no 20A funds have been repaid to the City so far, which is another reason why I oppose the loaning of 20A funds.
- 3) I urge that before 20B districts are used in the future the following should be required:
 - a. A vote is held only after a firm/binding bid is presented to the voters (i.e. The voters have accurate and binding cost information.)
 - b. 70% or more of the ballots cast must be in favor of the 20B district.
 - c. Homeowners are notified by registered mail that the city can automatically impose a supplemental assessment on them for any cost over-runs (even Acts of God).

Thank you for your time and consideration.

Respectfully yours,

Dai Meagher

Dai Meagher, CPA

cc: James F. Meagher, Sr. James F. Meagher, Jr. Thomas J. Meagher, Esq.
JohnTulloch, Interim City Clerk