

## City Of Piedmont Council Agenda Report

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DATE: December 7, 2009

FROM: Lawrence A. Rosenberg, Director of Public Works  
Ann Swift, City Clerk

SUBJECT: **Consideration of an Appropriation of \$1,004,832 from the General Fund for Projected Construction Costs to Complete the Piedmont Hills Underground Utility District**

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### RECOMMENDATION:

By motion, approve the attached resolution appropriating \$1,004,832 from the General Fund Reserve for projected construction costs required to complete the Piedmont Hills Underground Utility District.

### BACKGROUND:

On June 15, 2009, the city entered into an agreement with Valley Utility for construction of the Piedmont Hills Underground Utility District for a cost of \$1,515,295. Bids for the project ranged from \$1,515,295 (from Valley Utility) to \$2,594,979. Analysis of the bidding pattern indicated that although Valley Utility's bid was more than \$1 million less than the high bidder, there were sufficient bids in the same range (within 15% or \$200,000) to indicate that Valley Utility had provided a responsive bid.

Construction on the project began the week of July 13, 2009. Within the first week, the city was notified by Valley Utility that they had encountered unexpected rock at the entrance to Sotelo Avenue which would require extraordinary measures beyond the normal obligations of the city's contract. Although no indication of encountering major portions of rock on the job was mentioned specifically on the improvement plans or was shown in the estimate of cost from the design engineer, page 18 of the Technical Specifications, page 18 of the city's bid document did include the following provision in case rock was encountered on the project: "*Rock excavation shall be paid by the cubic yard, which price shall include full compensation shall include all labor, materials and incidentals required to perform all work described under Rock Excavation. This unit price will be paid in excess of normal excavation paid under various other items in the Bid Schedule required for the project*".

A meeting was held that week with John and Patrick Benedict of Valley Utility, City Engineer John Wanger and other staff. We discussed the ramifications of utilizing the "rock clause" in Valley Utility's bid which was \$2,190 per cubic yard of material. The city's position was that utilizing the rock clause would prove to be very expensive and use up the \$547,000 contingency for the project at a very rapid rate. As an option, Valley Utility offered to proceed with rock work on a force account basis (time and materials plus 15%). Using Valley's option, the city would be billed for all force account work, but would then receive a credit equal to the as-bid amount for each trench section

completed under force account. All parties believed at that point that if the rock problem was isolated to Sotelo Avenue, the contract contingency would be sufficient to complete the project.

Since the beginning of the project, Coastland Engineers have reviewed and approved all payments to Valley Utility. In addition to the city's on-site inspector who monitors daily activities on the project and verifies the use of materials and manpower, the city has relied on Coastland's expertise to ensure that timesheets, change orders and payment requests are calculated correctly. Computing the net cost to the city for trench segments (which are either constructed per contract, constructed with boring equipment or constructed under force account due to rock), analyzing other types of change orders and documenting payments has required substantial time on the part of the city engineer. Such costs are paid through the city engineering account and considered as a staff function in the same manner as the services of the Public Works Director and the City Clerk.

Unfortunately, to date over 4,500 linear feet of rock has been encountered on portions of St. James, Crest, LaSalle, and Somerset Avenues and Calvert Court. At the present time, the city has approved nine (9) change orders and is in the process of processing one additional change order for rock. The total gross cost of all of these change orders is \$1,480,384. Taking into account credits received (\$ 423,025) from not having to do the standard open trench cut work for certain trenches as shown in the original contract, brings the overall net additional cost for rock work to approximately \$1,057,359.

However, there are approximately 2,300 linear feet of joint trench which remain unfinished. Attached (Exhibit B) are maps of the Piedmont Hills district showing street segments completed per original contract (green) and street segments completed per force account due to rock (red). In calculating the cost for the remaining work, staff and Valley Utility have presumed that the majority of the incomplete sections are rock. This is based on fact that trench boring equipment at both ends of the street sections "refused" or was stopped by rock. The estimated force account cost to complete this work is \$680,000 (\$800,000 less contract credit). Any sections of trench which can be completed without force account change orders, will be billed according to the original contract and would be a savings.

The total projected cost to finish the Piedmont Hills Underground Utility District is the sum of the completed rock work (\$1,057,359) and the remaining rock work (\$680,000) or \$1,737,359. Of that amount, \$543,527 can be covered by the project contingency fund.

Additional savings of approximately \$85,000 in other line items of the project budget can also be applied to this deficit including Assessment engineering (\$24,000), Easement allowance (\$20,000), Project inspection (\$20,000) and Incidental expenses (\$21,000). These savings can also be applied to the total cost overrun.

The steering committee of the Piedmont Hills District has begun a fund raising effort to raise at least \$100,000 to help reduce the overall deficit for this project. Individual letters were sent to all homeowners requesting financial assistance, either through cash contributions or through the gift of funds deposited previously to pay for preliminary development costs. As of December 3, the committee has raised \$30,000.

## Financial Summary

Completed rock work	\$1,057,359
Needed rock work	<u>\$ 680,000</u>
Subtotal	\$1,737,359
Contingency fund	\$ 547,527
Other project savings	\$ 85,000
Homeowner contributions	<u>\$ 100,000</u>
Subtotal	\$ 732,527
Total Appropriation	\$1,004,832

The City Administrator Geoff Grote and City Attorney George Peyton recommend that it is in the best interest of the city to complete the Piedmont Hills construction. If the council concurs, staff is requesting a General Fund appropriation in the amount of \$1,004,832. Although staff and Valley Utility have made their best efforts to calculate the amount needed, council should note that all parties are working from good faith estimates. The estimates are based on experience with actual work performed to date and a street by street analysis of what remains to be done. To the extent that unforeseen unusual circumstances are encountered, the figures could rise. To the extent that additional contributions are received from residents of the district (above \$100,000) or actual construction costs are less than projected, the total expenditure of city funds will be reduced.

Finance Director Mark Bichsel recommends that the appropriation of \$1,004,832 come from the General Fund Reserve, thereby reducing the reserves from approximately \$3,080,000 to \$2,075,168. An option available for FY 09-10 is to reduce the general fund transfer to the workers' compensation and liability insurance funds by approximately \$500,000. This strategy will increase general fund reserves from \$2,075,168 to \$2,575,168 and reduce insurance reserves from \$1,055,402 to \$555,402.

Please note that, if this strategy is adopted, the newly reduced insurance reserves of \$555,402 are supplemented by an additional mandatory reserve of \$674,012. This additional mandatory reserve of \$674,012 was established by actuary reports for ultimate cost of claims either reported or unreported at 6-30-09. It is shown as a liability in the FY 08-09 audited financial statements, but represents additional insurance reserves.

If funding is approved at this meeting, Valley Utility will finish 90% of their work on the project by the end of December. PG&E, AT&T and Comcast will begin to pull wire and complete their portion of the project work beginning January 15, 2010 (unless winter storms interfere). It is anticipated that the project will be completed and wires down by June 2010.

Attached (Exhibit A) for council consideration is a draft resolution prepared by City Attorney George Peyton, setting forth various findings regarding the appropriation of funding for the Piedmont Hills project.

Resolution No.

Resolution Authorizing Expenditure of City Funds  
To Complete Work On Piedmont Hills Underground Utility District

Whereas, the City has entered into a Contract with Valley Utility for construction work relating to the Piedmont Hills Underground Utility District (“District”); and

Whereas, unanticipated additional costs relating to such construction work have arisen, including costs relating to excavation of rock; and

Whereas, City has or will shortly have used all of the monies raised through the issuance of bonds for such construction work; and

Whereas, City has attempted to locate additional sources of funds to cover such additional construction costs, including donations from homeowners within the District; and

Whereas, it has become clear that in order to complete the construction work so that the overhead utility lines can be finally removed and transferred underground and the supporting poles removed, it will be necessary for the City Council to appropriate City funds to pay for the construction work pursuant to its Contract with Valley Utility; and

Whereas, the City Council recognizes that there is a clear and important public purpose in completing the construction work in the District to allow the undergrounding of utility lines as originally planned; and

Whereas, there is a specific and important public purpose in providing additional safety to the residents of Piedmont by removing the danger of having overhead live utility lines and poles falling across and blocking the public streets and sidewalks during a major earthquake, firestorm, major rainstorms and flooding or other calamitous events, which blockage of public streets and sidewalks can endanger human lives by preventing or impeding the ability of people to escape those dangerous circumstances; and

Whereas, there is an important public purpose in improving the beauty and appearance of the City by removal of unsightly utility poles and lines; and

Whereas, the City Council has previously determined and now confirms that there is an important public purpose in promoting underground utility districts within the City, and failure to complete construction work on the District would definitely discourage future underground utility districts from being formed in the City and defeat that public purpose; and

Whereas, while it is recognized that the completion of such construction work will benefit the individual homeowners in the District, this in no way diminishes the public purpose of the benefits that completion of such construction work will provide to all residents of Piedmont, most particularly the public safety benefits that will be provided.

**RESOLVED:** That the Piedmont City Council finds that for the reasons set forth heretofore that the appropriation and expenditure of City funds for completion of the construction work on the Piedmont Hills Underground Utility District serves an important public purpose;

**RESOLVED FURTHER:** That the City Council hereby appropriates from the General Fund Reserve of the City and authorizes the expenditure of up to \$898,000 for completion of construction related to the Piedmont Hills Underground Utility District.

**Electronic Correspondence – Piedmont Hills Appropriation 12-07-09**

Dear Mayor Friedman, Vice-Mayor Barbieri, Councilmembers Chaing, Keating and Fujioka,

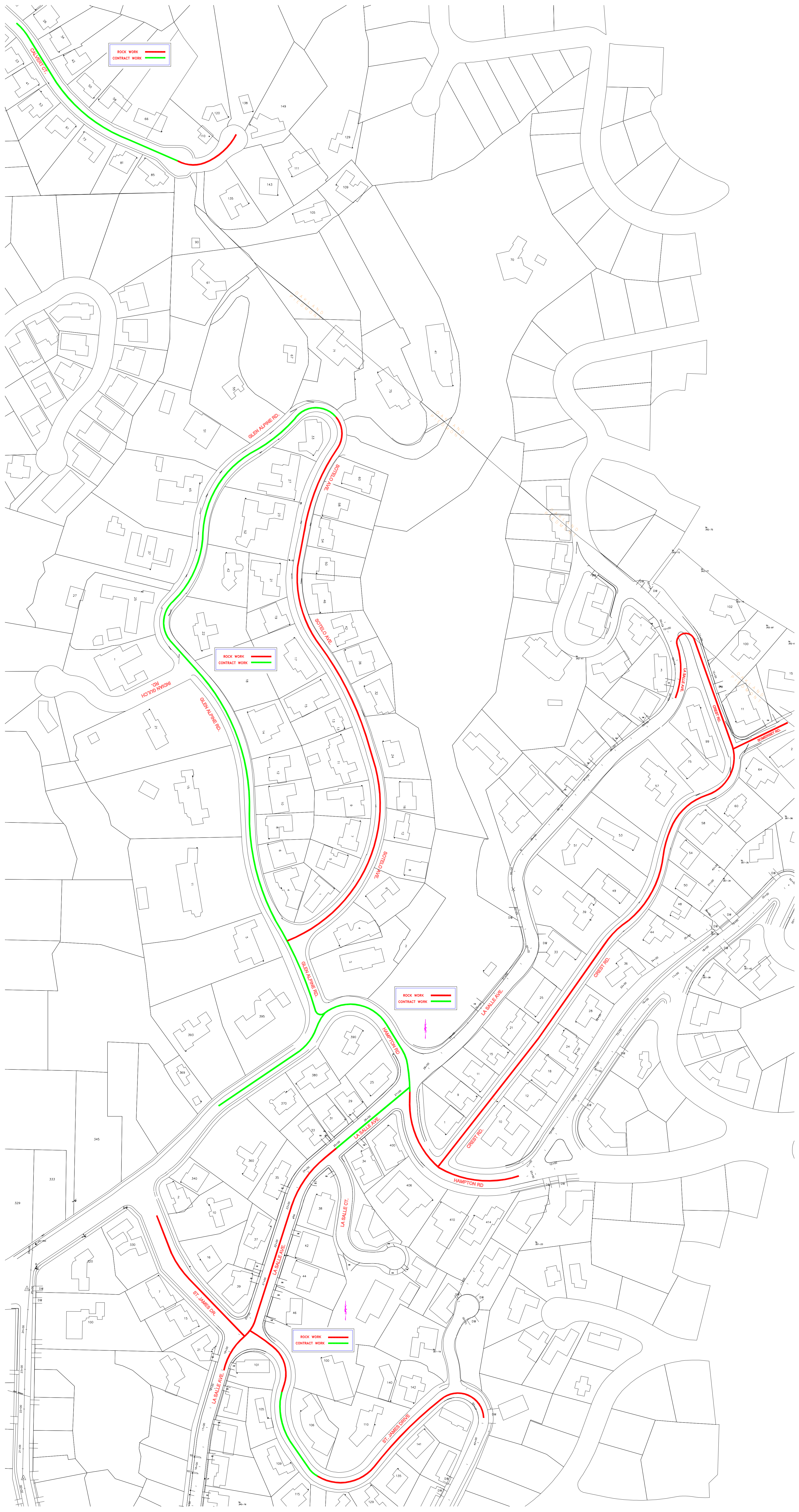
On behalf of the steering committee of the Piedmont Hills Utility Undergrounding District I want to thank each of you for your assistance in appropriating \$296,000.00 to repair the damage to the Crest trench caused by the storm of October 13 and 14. As you concluded, this was not an undergrounding project that you were directly supporting, but rather repair of damage to City streets caused by an historic storm of unusual intensity that just happened to damage an undergrounding project in progress. You correctly recognized that this was the City's responsibility, and you appropriated funds from the budget line item normally used for storm damage, for which we thank you.

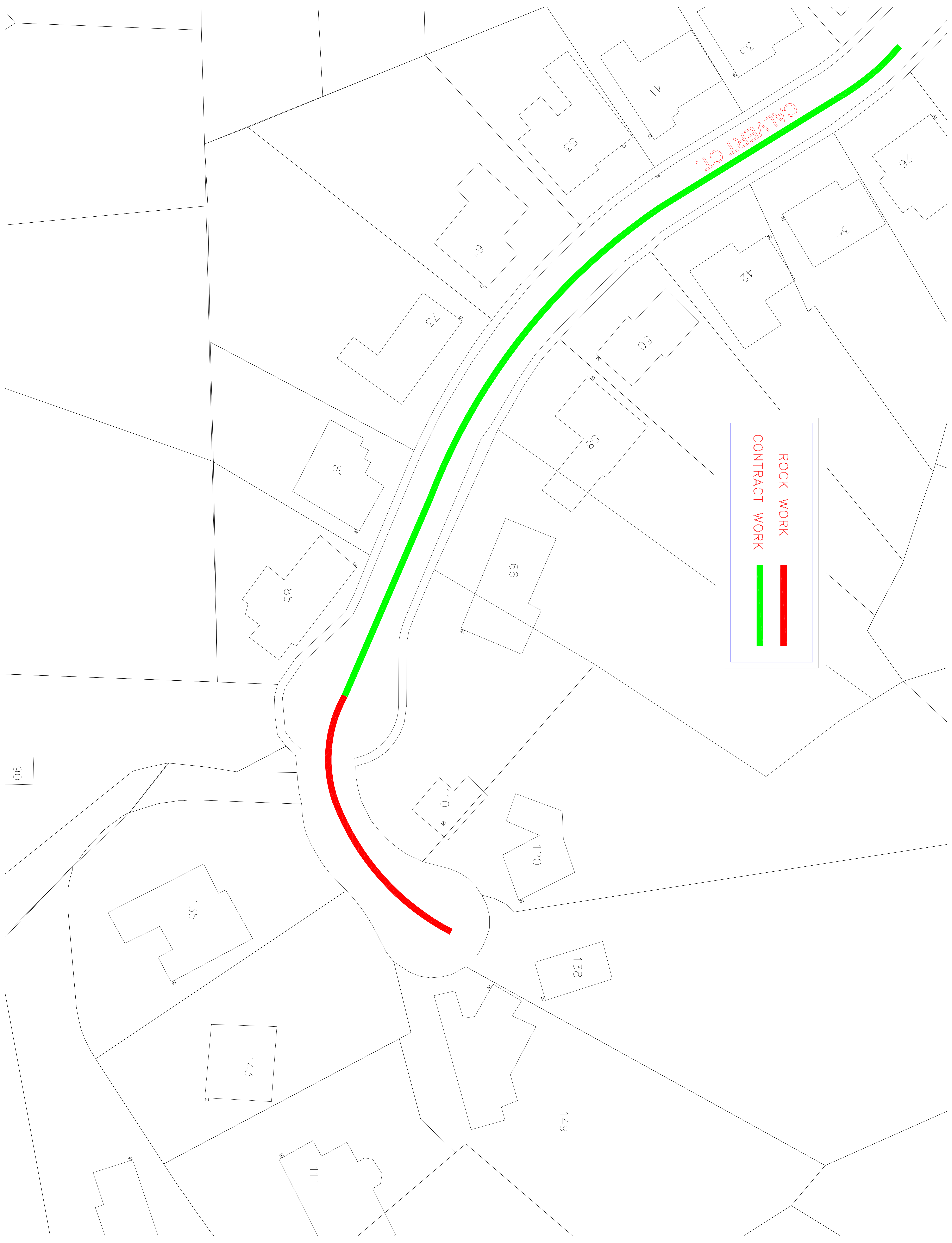
Now, we face an even bigger problem--how to pay for the overruns of the project due to rock. We seek your assistance in appropriating General Fund monies to complete this project. We homeowners in the District have voted to assess ourselves in excess of \$4 million, and we do not believe that abandonment of this project is a viable option. Although the City will also benefit from completion of the project, we recognize that the members of the District will be the chief beneficiaries and, as such, share the responsibility for seeing it completed. Dedicated to doing our part in partnership with the City to avert a catastrophe, two weeks ago the steering committee unanimously concluded as follows: "That we pledge to use our best efforts to raise \$100,000.00 from homeowners in the District to contribute to the City to assist in completing our utility undergrounding project."

Last week we embarked upon this campaign. A letter was crafted for delivery by this week to every homeowner in the District seeking contributions. Hopefully, by December 7th, when you vote upon this issue, we will be able to announce positive results from our efforts. We hope you will consider this campaign as a recognition of our responsibility as good citizens, and that you will consider it justification for you to appropriate the remaining necessary funds to complete construction. We have been at this for over 7 1/2 years now, have voted to assess ourselves \$4.3 million, and a supermajority of us in 2005 contributed over one quarter of a million dollars to the Preliminary Engineering Fund, which money was at risk to each contributor. Through no fault of ours, completion of the project is now at risk. We respectfully urge you to join with us in solving the problem.

Carl Anderson,

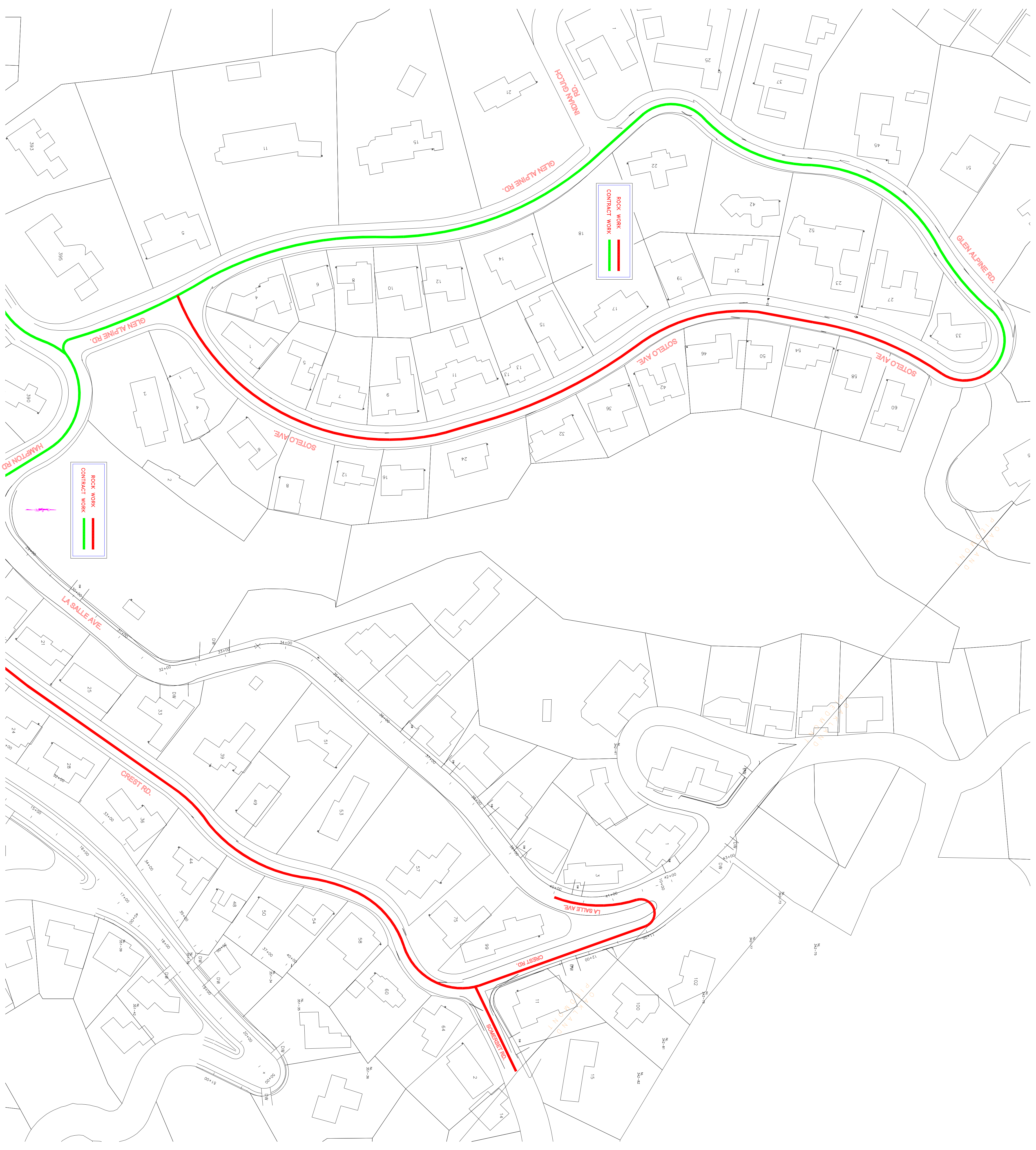
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December 4, 2009

City Council  
City of Piedmont  
Piedmont, CA  
Via email

Re: Piedmont Hills undergrounding Appropriation of \$1,004,832

Dear Council Members:

I read with interest the staff report for the December 7, 2009 meeting and am shocked that you would even consider spending 1/3 of the city general fund reserves for the special benefit of a small group of homeowners. I think there are a number of issues relating to this that need extensive public exposure and debate, to wit:

1. **Due process and disclosure** is not being properly maintained. During the budget process there are multiple public hearings over a period of months and there is debate on issues as small as \$10,000-20,000. In this instance, the staff report was issued on Friday for a meeting three days later wherein you are asked to spend over \$1,000,000 of the residents' money, on top of the \$290,000 that you spent at that last council meeting. This is probably one of the largest individual general fund expenditures that the city is encumbering for this fiscal year and yet it has very little exposure to either you or the public. Although you have probably met the legal standard for publication, you owe it to the residents of Piedmont to publicize an expenditure of this magnitude much wider and with more than three days notice. We have two newspapers that publish in Piedmont and that most residents read. This should at least be published in one or both of them so that you could have a real public debate rather than a debate of only those few that follow council actions very closely. **I urge you to delay this vote until the issue is more publicly debated.**
2. **The magnitude and effect on city finances** of spending over \$1,000,000 of unbudgeted funds is catastrophic. **This type of expenditure could lead Piedmont to bankruptcy** like Vallejo. We are already in bad economic times and the city budget has already been cut and slashed. From the finance report at the last council meeting, it appears that a mid-year budget correction will already be necessary because actual revenues appear much lower than projected revenues for the fiscal year. Just think how we could better spend these funds for the benefit of the entire city:
  - a. More and better parks
  - b. Better city maintenance
  - c. Payment for a new police chief for 4-5 years
  - d. Better communication to residents
  - e. Reducing the city parcel tax next time around
  - f. Let your imagination be your guide on lots of other areas
3. **Overall staff oversight and accountability** must be better maintained. The staff report indicates that overruns started in July 2009 within five days of the beginning of the contract. Why and how could they execute change orders which

December 4, 2009

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City of Piedmont  
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Via email

Re: Piedmont Hills undergrounding Appropriation of \$1,004,832

- double the cost of the Valley contract without anyone knowing, caring, reporting, or being responsible? Council's job is to oversee the activities of the city. Insignificant items are not the purview of council, but 1/3 of the general fund balance is far from immaterial. After the major rainstorm I spoke to Larry Rosenberg who was aware of the rock issue, but wouldn't comment upon the magnitude or that the city might be responsible. At the last council meeting at which I spoke, I chided council for not properly supervising staff and thus allowing staff to mislead both council and residents by acts of omission rather than actual false statements. This is prime number one example of staff not reporting important information to the city and apparently acting without the proper level of competence in executing the original contract and monitoring its progress. **The Valley contract, if approved, will be more than double the originally approved amount. That is fiscally irresponsible.** It is your responsibility to hold staff accountable for their actions or inactions. Do your jobs!
4. **The question of who should pay** for these costs is very important. The Piedmont Hills Undergrounding (PHU) district was formed to pay for 100% of the costs, through assessment of its residents, for the **special benefit** of having **their** utilities under grounded. This expenditure (along with the \$290,000 for Crest road sewer remediation) should be assessed to those residents and it may very well be illegal to have the entire city population pay for a cost that benefits only 100 residents.
  5. **You should close down the project** until such time as a payment source from the PHU residents can be identified and confirmed. Fill in the holes and tell the PHU residents that it is their responsibility to pay for the extras. If they choose to do so, issue another million or so bonds and continue, if they choose not to raise the funds, then keep the utility poles in place. You have that responsibility to the rest of the city residents.
  6. **You have no guarantee that the \$1,004,832** will even complete the job. The staff report indicates multiple variables that could increase the cost even more: a) the areas not yet dug up could cost more than estimated and 2) the PHU residents might not agree to put up \$100,000 and 3) the work won't be completed until June 2010, after the rest of the rainy season, which could cause more damage and therefore more cost
  7. **Management of the contract in this manner** is only an invitation for Valley to find more extras to add to the contract. Staff's comment (top of page 2 of the report) that our on-site inspector and our external engineering consultant (Coastland) are monitoring the contract is ridiculous. These are the same people that got us into this problem. They have been "monitoring" all throughout the contract and presumably through the contract negotiations and signing as well.
  8. **Execution of the original contract was derelict** by the city staff and council. The residents of both HSV and PHU were told that the contracts with Valley were "fixed price" contracts and that there was no way there would/could be extras and that the work would be completed within the contract and the contingency within

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Re: Piedmont Hills undergrounding Appropriation of \$1,004,832

the district. Anyone who has been in Piedmont for any period of time knows that this area is built upon bedrock. Valley probably knew that also which is why the “rock” clause was so important. They could afford to low ball the contract because now they are earning a 15% profit on over \$1,500,000 of extras (\$225,000 of extra profit). A local underground contractor that I spoke to before the vote indicated that Valley was going to lose their shirt because Valley was used to working in areas of sandy or soft clay soil and didn’t understand the bedrock formations under Piedmont. Why didn’t our staff have that same understanding or concern considering the very wide range of contract bids. When something is too good (cheap) to be true, it usually isn’t true.

I urge you to do the following on Monday evening:

1. Vote no to this egregious and potentially illegal use of city funds
2. Tell the PHU steering group that this is a PHU problem not a city problem
3. Investigate staff competency and do the job that you were elected to do: Supervise staff, exercise proper oversight, manage the city’s fiscal issues responsibly.

**The entire city owes a debt of gratitude** and thanks to Mr. and Mrs. Kurtin for putting the brakes on the Hampton Sea View district. Had their lawsuit not stopped the district from executing a contract with Valley in June, the city would probably be looking at another \$1,000,000 “rock” overrun which would leave the general funds surplus at \$1,000,000.

Thank you for your dedication to Piedmont and consideration of my thoughts.

Very truly yours

Joseph Hurwich