

**City Of Piedmont  
Council Agenda Report**

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DATE: December 12, 2009

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

SUBJECT: **Consideration of an Appropriation for Projected Construction Costs to Complete the Piedmont Hills Underground Utility District**

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On Monday, December 7, the city council considered an appropriation to complete construction of the Piedmont Hills Underground Utility District. **In order to provide more citizen input, council scheduled a further meeting for Saturday, December 12 at 2:00 p.m. in the Council Chambers of City Hall.** This meeting will be televised for those who cannot attend.

Council also requested that staff develop resource materials which would help the public understand the various options. Attached are three documents intended to assist in that process.

- Exhibit A. FAQ sheet regarding questions which were raised either at the council meeting or in emails received by the city council.
- Exhibit B. A series of four financial options which the city council will consider on Saturday.
- Exhibit C. A memo from the finance director regarding the city's current financial position and three options for funding the construction costs.

**FAQ's**  
**Piedmont Hills Underground Utility District**

**1. How much is the current cost overrun on the project?**

Estimates are currently \$1,004,000. This amount was calculated based on the number of unfinished trench sections multiplied by a daily cost factor for removal of rock. The cost factor used is approximately 70% of the highest daily cost to date for rock removal. To the extent that actual daily costs are lower, the total will be reduced. If the actual daily costs meet or exceed the highest daily cost to date, the total will be increased.

**2. Why is the city responsible for this contract work?**

The city is the “owner” of the project and signed the agreement with Valley Utility. The homeowners raised private money to pay for development costs including engineering for the improvement plans and assessment engineering. However, the city engaged in a public bidding process and awarded the contract to Valley Utility. The work being done by Valley Utility is in public streets owned by the city.

**3. Can't the city negotiate a “not to exceed” for the remaining work?**

The city has already negotiated a reduction from the contractual cost for rock work. Utilizing a time and materials + 15% basis for rock related removal has saved the city almost \$3 million versus the “rock clause” contained in the bid specifications. Additional negotiations have resulted in a “not to exceed” option for the remaining work. Details are shown in Exhibit B, Option 3, attached.

**4. Why didn't the city know that there was rock in almost all of the streets in the project?**

The engineers who designed the improvement plans and created the bid specifications specifically excluded geological testing. Two previous undergrounding projects (one of which was located in the eastern hills of the city) have been completed in the past 10 years. Neither of those previous projects included geological testing and there was only minor rock work required to complete the work. City sewer projects in the area were done by “pipe bursting” which merely replaces pipe in the same space. Street resurfacing projects have not been impacted by rock. In the past 20 years, there have been no public works projects which required specialized trenching equipment or which have been impacted by rock on these public streets.

**5. Are the engineers responsible for the problem?**

The city has hired outside trial counsel to pursue this matter.

**6. Can't the city just charge the homeowners in the district for the cost overruns?**

The assessments levied by the city council in May were the maximum amount possible. It is not legal to add to those assessments. The city could pursue an additional assessment against the homeowners. That would require a new bid for the unfinished work, a new assessment report from an engineer and reballoting of the homeowners which could take up to six months. The city would bear all of these up front costs which had previously been paid by the homeowners. If there was a majority protest at the balloting phase, the additional assessment could not be levied and the city would have lost the funds spent on the additional assessment effort.

**7. Has the city asked the homeowners in the district for help in paying these costs?**

Yes. City staff met with the steering committee of the district to explain the problem. The committee has begun a fund raising campaign with the goal of contributing \$100,000. To date, more than \$50,000 have been raised. The city council would like to see even larger contributions and has asked the homeowners in the district to commit to paying a larger share of the deficit.

**8. Why not just stop the project until someone comes up with the money?**

The city's contract allows it to stop work with 10 days notice. However, there would be costs due to the contractor for work already completed and additional costs to make sure that trenches are closed and streets passable.

While the project was stopped, most of the homeowners in the district would continue to pay annual installments on the \$3.2 million in bonded indebtedness owed by the city. If some or all of the homeowners protested the state of the project by refusing to pay their annual installments, the city would be required by agreement to protect the bondholders by pursuing foreclosure against each of the homeowners who refused to make payments. Meanwhile, any shortfall in the \$200-260,000 annual assessment revenue would have to be covered by the city to ensure payments to bond holders. If the city chose not to make such payments to the bond holders, they would very likely bring an action against the city. It is also possible that the homeowners might try to litigate the abandonment of the project, creating yet another layer of litigation and possibly preventing the city from receiving any payment from those homeowners..

Due to the series of issues and number of parties involved if the project is stopped, Bond Counsel Sam Sperry believes that this is potentially the most costly option open to the city.

**9. But isn't it illegal for the city to use taxpayer money to solve the problem of a few homeowners?**

City Attorney George Peyton has given the city council an analysis of this matter. First, it has been held by the California Supreme court that the prohibition of the "gift of public funds" contained in Article XVI, Section 6 of the California

Constitution does not apply to charter cities such as Piedmont. Piedmont's charter does not have a prohibition of such gifts.

However, presuming that the city council wishes to follow the general law regarding such matters, a number of California court cases have made clear that "*expenditures which involve a benefit to private persons are not gifts within the meaning of the constitutional prohibition if those funds are expended for a public purpose*" Schettler v. County of Santa Clara, 74 Cal. App. 3d.990 (1977)..

Because the city council has previously determined that the undergrounding of utilities serves a public purpose, it can make a determination that additional public funds should be appropriated to finish the project as a public purpose even though such an appropriation would also benefit the homeowners in the district.

**10 Why can't we take more time for public discussion on this issue?**

The city council met on Monday, December 7 to consider this matter, having given full legal notice as required by law and having provided background materials via the city's web site. **To encourage further public input, they have agreed to a continuance of the discussion until Saturday, December 12 at 2:00 p.m.**

Unfortunately, any additional continuances would substantially jeopardize the completion schedule for the project. At the present time, P.G. & E. is scheduled to begin the next phase of the project on January 15, 2010. If Valley Utility does not complete the joint trench work before that date, the city will lose its scheduled window for utility work and likely be delayed by at least six months.

**11. What's the impact of the \$1,004,000 appropriation on the city's finances?**

If the city council accepts the staff recommendation, one-half of the overrun will be funded through the General Fund Reserve and the other half through Insurance Reserves. The city currently has approximately \$7 million in various funds. However, each fund is a savings account with a specific purpose. The Equipment Replacement Fund holds money needed for periodic replacement of fire engines, police cars, etc. The Capital Improvement Fund holds money for previously approved public projects. Staff is proposing a variety of options for funding which are included as Exhibit C to the staff report.

Piedmont Hills Underground Utility District

Option 1  
Stop Construction & Terminate the Project

Payment to Valley Utility for completed rock work not yet paid		\$1,057,359
Funding required for paving, concrete and other work to safely stop the project		\$ 275,000
	Subtotal	\$1,332,359
Contingency fund		\$ 547,527
Other project savings		<u>\$ 85,000</u>
	Subtotal	\$ 632,527
	<b>Total Required Appropriation</b>	<b>\$ 699,832</b>

Pros

1. The total cost to the city is reduced by \$304,168.

Cons

1. The city may be subject to legal action by homeowners for an unfinished project. A recent homeowner initiated lawsuit is expected to generate costs of approximately \$300,000.
2. If homeowners fail to pay annual assessments, the city is required to initiate foreclosure proceedings. The cost to initiate the proceedings (and defend the likely challenges from homeowners) could be \$200,000 or more.
3. If assessment revenue is reduced due to non-payment, the city may be liable for some or all of the \$200-260,000 in annual bond holder payments.
4. If the city does not meet debt service obligations, it would be subject to legal action by bondholders and associated costs which, again, could be in the \$200,000 range.

Piedmont Hills Underground Utility District

Option 2  
Stop Construction & Initiate Additional Assessment Proceedings

Payment to Valley Utility for completed rock work not yet paid	\$1,057,359
Funding required for paving, concrete and other work to safely stop the project	\$ 275,000
Assessment engineering	\$ 45,000
Improvement plans (including geotechnical investigation) and new bid specifications	\$ 100,000
Utility engineering costs **	<u>\$Unknown</u>
Subtotal	\$1,477,359
Contingency fund	\$ 547,527
Other project savings	<u>\$ 85,000</u>
Subtotal	\$ 632,527
<b>Partial Appropriation Required</b>	<b>\$ 844,832</b>

Pros

1. The total cost to the city is reduced by at least \$159,168 and further savings of \$145,000 might be achieved if there was no majority protest and additional assessments could be levied.
2. If additional assessments are levied, homeowners pay for the completion of the project.

Cons

1. The city might spend an additional \$145,000 for plans and assessment engineering and be unable to recoup those costs due to a majority protest at balloting.
2. According to the city engineer, it is likely that bid results would be in the \$1.2-1.3 million range. Combined with assessment engineering, improvement plans, financing costs and bond issuance costs (including funded interest), the total amount to be assessed could exceed \$2,000,000. \*\*This does not include any additional costs which might be demanded from utilities for their design/engineering work required on the new plans.

3. If the city were to terminate the contract with Valley Utility and then approve a new contract for the same project with another contractor, Valley might pursue legal action.
4. The project would be delayed 6-12 months for completion of design, assessment engineering and balloting.
5. To the extent that homeowners object to this option, items 1-4 of Option 1 may also apply.

Piedmont Hills Underground Utility District

Option 3  
 Complete the Construction with “Not to Exceed”

Payment to Valley Utility for completed rock work not yet paid	\$1,057,359
Remaining rock work (calculated at \$22,000 per day)	<u>\$1,010,000</u>
Subtotal	\$2,067,359
Contingency fund	\$ 547,527
Other project savings	\$ 85,000
Homeowner contributions	<u>\$ 100,000</u>
Subtotal	\$ 732,527
<b>Total Required Appropriation</b>	<b>\$1,334,832</b>

Pros

1. The project is completed and bond holders are made whole.
2. The district homeowners will contribute to the cost overruns, reducing the cost to the city.
3. The project is not delayed.

Cons

1. The “not to exceed” figure of \$1,010,000 is \$330,000 higher than staff’s analysis of the real cost to complete the project and with which Valley Utility agrees.
2. The city may be subject to legal action by homeowners outside the district.

Piedmont Hills Underground Utility District

Option 4  
Complete the Construction

Payment to Valley Utility for completed rock work not yet paid	\$1,057,359
Remaining 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
<b>Total Required Appropriation</b>	<b>\$1,004,832</b>

Pros

1. The project is completed and bond holders are made whole.
2. The district homeowners will contribute to the cost overruns, reducing the cost to the city.
3. The project is not delayed.

Cons

1. The city may be subject to legal action by homeowners outside the district.

City of Piedmont  
 COUNCIL AGENDA REPORT

DATE: December 12, 2009  
 FROM: Mark Bichsel, Finance Director  
 SUBJECT: **Status Report: FY 09-10 Budget**

At the December 7, 2009 City Council meeting, it was requested that an overview of city wide reserves and an update regarding the FY 09-10 budget be prepared for a special city council meeting to be held on December 12, 2009.

City of Piedmont Reserves:

Reserves as of July 1, 2009	
General Fund	2,715,526
Insurance (liability and workers' comp)	1,055,402
Capital Improvement (second tier)	1,908,102
Equipment replacement	2,213,505
Total	7,892,535

- The reserves in the insurance fund are reserves in excess of the required reserves established by actuary and accounting standards. The City of Piedmont has additional reserves in the worker's compensation fund and liability insurance fund of \$674,012 at 6-30-09. This additional reserve is 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 audited financial statements; it is also fully funded.
- The City of Piedmont has reserves of \$1,606,038 in the PERS Medical Fund. Actuarial and accounting standards also limit access to this reserve.
- The reserves in the capital project fund are detailed on page 3 of this report.
- The reserves in the equipment replacement are funds that are earmarked for a variety of future equipment needs in the police, fire, public works, recreation and administration departments.

On page 2 of this report is an overview update of the FY 09-10 budget

**FY 09-10 Budget Overview**

<b>General Fund</b>	<b>Budget FY 09/10</b>
Beginning Balance	\$ 2,715,530
Estimated Revenues	18,998,803
Estimated Expenditures	(18,642,076)
Operating transfers in	1,617,500
Operating transfers out	(1,410,677)
Capital transfer out	<u>(200,000)</u>
Net Income	363,550
Estimated Ending Fund Balance	3,079,080
Projected adjustments to budget	
Appropriation for undergrounding	(1,000,000)
Revenue shortfall	(500,000)
Overtime overruns in Fire Department	(300,000)
Legal cost overrun for undergrounding	<u>(250,000)</u>
Total Adjustments	(2,050,000)
<b>Revised Fund Balance (Option 1)</b>	<b>\$1,029,080</b>
Utilization of insurance reserves	<u>500,000</u>
<b>Revised Fund Balance (Option 2)</b>	<b>\$1,529,080</b>
Utilization of CIP reserves (801 Magnolia and Basement renovation)	<u>470,920</u>
<b>Revised Fund Balance (Option 3)</b>	<b>\$2,000,000</b>

**Defer Column represents second tier reserves**

<b>CAPITAL IMPROVEMENT PROJECTS</b>				
<b>FY 09/10 Approved Budget</b>				
<b>PROJECTS</b>		<b>Total</b>		
		<b>FY 09/10 Budget</b>	<b>Spend</b>	<b>Defer</b>
<b>Street/Traffic/Public Safety</b>				
1	Fire Hydrant Replacement	\$34,393	\$34,393	\$0
2	Moraga Canyon (Blair Park) Study	\$146,306	\$146,306	\$0
3	GEO TECH ET AL	\$146,212	\$146,212	\$0
4	Tree Removals	\$15,000	\$15,000	\$0
5	Community Pool	\$600,000		\$600,000
6	Survey Monuments	\$7,227		\$7,227
7	Pedestrian Path Signage	\$10,000		\$10,000
8	Ronada Ramon intersection	\$50,000		\$50,000
<b>Sub-Total: Street/Traffic/Public Safety</b>		<b>\$1,009,138</b>	<b>\$341,911</b>	<b>\$667,227</b>
<b>Buildings &amp; Grounds</b>				
9	801 Magnolia Building Repairs	\$331,491		\$331,491
10	City Hall Fuel Tank Rehabilitation	\$15,163		\$15,163
11	Community Hall Painting	\$4,401		\$4,401
12	City Hall Basement Renovations	\$297,740		\$297,740
13	Crocker Park Garage	\$25,779		\$25,779
<b>Sub-Total: Buildings &amp; Grounds</b>		<b>\$674,574</b>	<b>\$0</b>	<b>\$674,574</b>
<b>Parks/Landscaped Area/Median</b>				
14	Hampton Renovation Plan	\$353,405		\$353,405
15	Grand / Rose Median Landscape	\$14,411	\$14,411	\$0
16	Beach Access / Landscape Plan	\$30,000		\$30,000
17	Coaches Field Improvement	\$654,958	\$654,958	\$0
18	St. James Entry Pillar Renov	\$7,500		\$7,500
19	Dracena Drainage and Turf Replacement	\$70,000		\$70,000
20	Coaches/Blair EIR	\$77,041		\$77,041
21	Havens athlectic field	\$650,000	\$650,000	\$0
22	Ricardo/York Stairway	\$23,355		\$23,355
23	Rose/Kingston	\$5,000		\$5,000
<b>Sub-Total: Parks/Landscaped Area/Median</b>		<b>\$1,885,670</b>	<b>\$1,319,369</b>	<b>\$566,301</b>
<b>Grand Total</b>		<b>\$3,569,382</b>	<b>\$1,661,280</b>	<b>\$1,908,102</b>