

League of Women Voters  
Task Force to Investigate and Report on Piedmont Hills Undergrounding District  
**Summary of Preliminary Findings**  
**Updated March 15, 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:

<b><u>Date</u></b>	<b><u>Event</u></b>
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
11/2009	First notice to Council of significant cost overruns; closed session held
12/2009	Council has first open meeting regarding 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 ( $\$2.6 \text{ million rock overrun} \div 2.5 = \$1 \text{ million, less } \$600,000 \text{ project contingency}$ ).

### **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.