

Underground Utility District Formation
Draft Policies and Procedures
Adopted November 14, 2019

Policy & Procedures for the Utility Undergrounding of Residential Neighborhoods

1. Background and General Overview

Over the past few years, residents have asked the Town of Ross (Town) about the possibility of undergrounding existing utility poles and lines. In addition, the Town's General Plan (2007-25) sets a goal of pursuing undergrounding of utilities: "Undertake a program to underground utilities in Town neighborhoods if an investigation shows resident financial support for such action or if alternative viable funding mechanisms can be developed." (General Plan, p. 18)

The Town supports undergrounding overhead utility wires and poles. Undergrounding improves public safety for fire, earthquake and high wind conditions; reduces utility company maintenance costs for tree trimming; and improves aesthetics of our Town.

Utility poles can be independently owned or jointly owned by electric, telephone and/or cable TV companies. The majority of poles located in Town are owned by Pacific Gas and Electric (PG&E) and usually carry other utilities including phone and cable television.

At a general level, these policies outline basic considerations and actions to form an assessment district to finance costs associated with undergrounding utility lines. The policies are provided to guide property owners in achieving and paying for undergrounding utilities in their neighborhoods, and to assist Town Council, Staff and consultants in such efforts. Given the general nature of the policies and the unique characteristics of different undergrounding utility districts, specific issues not specifically addressed in this document will need to be addressed and determined by Town staff and Council as various districts proceed.

The most common financing method for property owners to finance utility undergrounding is through the creation of an assessment district established by the Town under California state law. These districts impose a special assessment on properties benefitted by undergrounding. Unless contributions are available from sources other than the Town's general fund, property owners must assume that 100% of the costs of the special benefit provided to property owners by undergrounding project would be assessed to the properties in the district. Additionally, to the extent that there is a general benefit as defined by California state law, the Town is willing to contribute up to \$25,000 for that cost, and any other costs shall be reimbursed by the Property Owners.

If any provision contained in this policy is in conflict with, or inconsistent with, any provision in Ross Municipal Code, the provision contained in the Municipal Code shall govern and control.

Formation of an assessment district also provides a means to:

- Identify parcels specially or generally benefitted;
- Provide for design and implementation of the project within public right of ways;
- Provide for sharing a portion of the total cost by imposing assessments;
- Provide for bond financing of the project for those who wish to pay over time.

Once the petition is approved by the Town staff, the entire undergrounding process is estimated to take between two to seven years (assuming no legal actions/challenges) depending on the size and complexity of the project. The duration of the process will be affected by factors such as utility company responsiveness and financial condition, complexity and size of the project, Town staffing priorities, and how responsive and cooperative residents are to reestablishing utility services.

Although these policies and procedures have been developed to assist homeowners, it may still be more timely for a group of individual property owners to work directly with utility companies instead of involving the Town to underground a small number of utility lines in their neighborhoods. For example, neighbors particularly in small areas with unanimous neighbor support could work together to remove some power poles and lines in their neighborhood by directly working with an engineer, PG&E and any other utilities, a qualified contractor, and cash finance the facilities (no bond financing is used or district required). In this case, the Town's role is to regulate the construction in the right-of-way.

There are five phases for undergrounding utilities in a neighborhood:

- I. Exploratory Phase**
- II. Petition Phase**
- III. Engineering and Legal Services Cost Proposals Phase**
- IV. Assessment District Formation and Formal Votes (Weighted & Parcel) Phase**
- V. Construction Phase**

These procedures outline the steps required to complete each phase.

2. Procedures

I. Exploratory Phase

- 2.1 Step 1: Obtain Packet of Information - Obtain a copy of the Utility Undergrounding Policies and Procedures from the Town.
- 2.2 Step 2: Form A Neighborhood Committee - Property owners should form a local committee of interested residents (Neighborhood Committee) to assist with the project. A Neighborhood Committee of three to five residents is probably sufficient. The Neighborhood Committee is responsible for organizing neighborhood meetings, gathering support, and distributing information about the project. They should

provide the Town with the name of the individual who is their single point of contact.

- 2.3 Step 3: Kick-Off Meeting – The Neighborhood Committee contacts the Town Engineer at Town Hall, 31 Sir Francis Drake, to schedule a kick-off meeting. The purpose of the meeting will be to review the undergrounding policies and procedures, select initial project boundaries, and answer questions.
- 2.4 Step 4: Obtain Preliminary Estimates for Project Cost - The Neighborhood Committee then hires a Civil Engineer to provide rough estimates for the project based on the boundaries selected during the kickoff meeting. (Acquiring pertinent cost information from PG&E and other utilities (as applicable) could take several months.) The rough estimates should include a conservative contingency amount to address potential unforeseen costs during construction.

The California Public Utilities Commission (CPUC) regulates PG&E, communications providers (*e.g.*, AT&T), as well as other utility providers in the state. For PG&E, the CPUC requires that the minimum size residential block to be included in an underground assessment district includes contiguous parcels on both sides of a street for at least one block or 600-feet long, whichever is shorter. AT&T has a similar minimum requirement. In addition, since assessment districts require assessment engineering, public hearings, legal review and bond costs, it may not be financially beneficial for residents to participate in smaller undergrounding projects.

- 2.5 Step 5: Neighborhood Meeting to Gauge Support for Project - Based on the estimates provided by the affected utilities, an approximate average cost per parcel estimate can be made. At this point, the Neighborhood Committee holds a neighborhood meeting to gauge support for the project. The Town will provide the Neighborhood Committee with a listing of all property owners for the project area (Property Owners). Property Owners, not renters, must be contacted. (Renters do not have the right to cast a ballot on the creation of the assessment district.)
- 2.6 Based on the consensus of the Neighborhood Committee and the neighbors, the project will either move forward or terminate at this time.

II. Petition Phase

- 2.7 Step 1: Informal Boundary Map - As part of the Petition process, the Neighborhood Committee prepares an informal boundary map showing the area proposed to be included in the district. The Town will review this map and may suggest changes, as required to satisfy utility companies' requirements and potentially requests of adjacent property owners who wish to "opt out". "Opt out" requests are limited to end parcels only and shall be resolved by the Neighborhood Committee prior to the Council adopting the Resolution of Intention.

- 2.8 Step 2: Circulate Petitions of Interest - Assuming there is support for the project, a formal written Petition of Interest shall be circulated to all of the Property Owners within the proposed district boundary with the Neighborhood Committee certifying in writing to the Town staff that it was provided to all Property Owners. The form of the Petition of Interest is included in Attachment A (which may be circulated in counterparts). The Neighborhood Committee must provide Property Owners in the proposed district the approximate costs of undergrounding (excluding the service lateral hook-up cost, which is each individual Property Owner's responsibility) as well as the area proposed for undergrounding. The Petition of Interest must be supported by at least sixty five percent (65%) of all Property Owners in the prospective district. Signing the Petition of Interest is not a vote, nor does it commit the Town to the initial estimate given. (Later in the process, all Property Owners will receive a more precise estimate, and then will have the opportunity to officially vote for or against the project on a weighted basis as well as on a parcel basis.)
- 2.9 Step 3: Submit the Petition of Interest - Once the Committee has contacted Property Owners and received at least 65% in support of the project, the Neighborhood Committee submits the Petition of Interest to the Town to be verified.
- 2.10 Step 4: Town Verifies Signatures - The Town will verify that at least 65% of the signatures on the petition are valid Property Owners in the proposed district, as shown on the last County's assessors roll. In the event that the Neighborhood Committee fails to meet the 65% requirement, it will have to decide whether to continue the project by seeking additional support or modifying the project boundaries, if possible, or terminate the project.

III. Engineering and Legal Services Cost Proposals Phase

- 2.11 Assessment Engineer: After the petition threshold is met, the Town will contact and request a cost proposal from an experienced Assessment Engineer (Engineer-of-Work). In general, the scope of work will cover the preparation of cost estimates, plans and specifications, assessment engineer's report, notice and ballots, and other documents necessary to form the assessment district.
- 2.12 Legal and Other Professional Services: The Town will contact and request a cost proposal for legal assessment advisory services. These services are required to help advise the Town on the size, structure, procedures and transaction requirements of the assessment bond. The Town will contact and request other professional services as required and/or needed.
- 2.13 Property Owners or a subset of Property Owners Must Pay for Engineering and Legal Services Costs in Advance: In addition, the Property Owners or a subset of Property Owners must pay the Town in advance for the Engineering and Legal Services Cost Proposals. In addition, PG&E, AT&T and possibly the cable TV companies may

require their design costs to be paid in advance by the Property Owners or a subset of Property Owners to prepare construction plans and specifications.

It should be understood by all Property Owners in the district that these pre-assessment formation costs are estimates only, and actual costs will depend on the size of the district, complexity of the project and the market costs for the preliminary services required to form the district.

- 2.14 Deposit and Release Agreement Required from Property Owners (or a Subset) for Engineering and Legal Services Costs - The Property Owners must raise funds for the assessment engineering, legal advisory services, Town non-staff costs, utility company design costs and any preliminary and incidental costs determined by the Town to be necessary and appropriate (“Contributors”). The Contributors making any such deposits may be all of the Property Owners or a subset of the Property Owners. The full amount for these services must be deposited by the Contributors with the Town prior to Town staff bringing the project to the Town Council for consideration. (Please note that these costs may be significant and could be in the hundreds-of-thousands of dollars.) Upon receipt of a satisfactory petition, deposit and informal boundary map, the Town will begin the process of preparing the necessary reports and documents to present to Council for consideration of the Resolution of Intention. Should the deposited funds from the Contributors not cover the necessary costs during the course of the assessment formation, the Town will notify the Contributors of the need to supplement the deposit. Once supplemented, the Town will continue processing the formation of the proposed assessment district. Please note that if for any reason the district is not formed and/or fails to issue the bonds, the Contributors will receive back only the amount of their contributions that have not been spent, if any, as calculated in proportion to the full Deposit for the Proposed District, as determined by the Town in its sole discretion. If the district is formed, these costs can be credited against the Contributor’s assessment, or refunded to the Contributors and added to the total assessment costs. Every Contributor must also execute the Underground Assessment District Deposit and Release Agreement protecting the Town for the costs of these services in a form attached as Attachment B to this policy. Additionally, the Town expects the Contributors to indemnify the Town should there be any lawsuit challenging the formation of the Proposed District.
- 2.15 Town Staff, Attorney and Consultant Costs - Some Town Staff time will be needed to assist property owners with forming an underground assessment district (e.g., from Public Works, Finance, and the Administrative departments). The Town will track staff costs including all overhead from the outset. If a district is formed, these costs will be added into the assessment. If for any reason a district is not formed, the Town will absorb these costs. However, all costs associated with the Town Attorney’s time and all consultants hired by the Town for this project must be paid for in advance by the Property Owners or a subset of Property Owners which, like

other costs, can be added to the cost of the assessment and reimbursed if a district is formed.

2.16 First Town Council Meeting - Resolution of Intention and, Approval of Consultant Contracts

Once the appropriate funds have been deposited by the Property Owners or a subset of Property Owners for the engineering and legal services, Town staff will prepare a request to the Town Council to consider the approval the proposed district boundary map and the consultant contracts for the preparation of an Engineer's Report and preliminary assessment process. All residents and Property Owners within the proposed assessment district will be notified in writing by the Town about the proposed undergrounding project as well as the date and time for the first Town Council meeting.

The Engineer-of-Work prepares an Engineer's Report for the district, as required by law, which includes the estimates of costs, the proposed assessment for each parcel in the district, the formal maps of the district, and the plans and specifications for the construction work. In addition, the Report explains the method for distributing the cost of the project among the Property Owners. Also, at this point, the Town would formally request that the utilities prepare detailed plans and specifications for the project. Property Owners or a subset of Property Owners may be required to pay for all costs associated with utility company design in advance.

It is important to note that should the assessment district be approved, both the cost for preparing the Engineer's Report and the cost of preparing the plans and specifications can be added to the total cost of the assessment. However, if the assessment district is not approved, the Town's staff costs will not be recovered; but Property Owners or a subset of Property Owners must cover all legal services and consultant fees related to the proposed district.

Also, at the first Council meeting, the Council shall consider adopting the Resolution of Intention to make acquisitions and improvements, which formally begins the assessment process.

With the Resolution of Intention, the Town will enter into professional consulting contracts with a Bond Counsel and Engineer-of-Work. Bond Counsel directs all legal proceedings to establish the district, including Council resolutions, notices, forms of documents and instructions, including the levy of the assessments and issuance of bonds. Except for advisory services to Property Owners, Bond Counsel is paid only if the bonds are actually issued except for any preliminary work done, which the Property Owners or a subset of Property Owners must cover.

IV. Assessment District Formation and Formal Votes (Weighted & Parcel) Phase

The Town will seek to fund utility undergrounding on residential streets by establishing a traditional assessment district, as provided by state law in the Municipal Improvement Act of 1913, which provides for assessments to raise money for public improvements, subject to the requirement of Proposition 218 that such an assessment will not be imposed if a majority (50% of the total amount assessed to all parcels returning ballots, plus \$1.00 or a different threshold as established by the Town) of those returning ballots oppose the assessment or it fails to pass the Town Policy voting threshold stated later in this document. At the Property Owners' or a subset of Property Owners cost, the Town will be responsible for contracting with the appropriate professionals and contractors to provide services from initial assessment formation through final construction.

The procedures, events and steps described are governed by state law and guidelines of the CPUC (regulating PG&E and other utilities) about the physical and financial requirements for utility undergrounding projects. The Town must comply with these laws and regulations then in effect, while taking appropriate actions to coordinate the project from its inception to its completion.

Assessment districts help residents finance the cost of this work on an annual basis through their property tax bill, typically over a 20 to 30-year period. This process requires the Town to manage the design and construction of the utility undergrounding with some or all of these costs eligible for repayment to the Town through the annual assessment. The Town is also obligated to administer the district and levy the property assessment on an annual basis. These costs are eligible for repayment to the Town through the annual assessment.

The Town will retain the Assessment Engineer or Engineer-of-Work for the assessment district, along with Bond Counsel and the bond Underwriter. The Engineer-of-Work will prepare an estimate of all costs of the project. Those costs will include construction cost estimates (based on information from the utilities) including a prudent and conservative contingency to allow for unforeseen costs during construction, and an allowance for the Town's administrative costs calculated to reimburse the Town for Town staff work on the project and bond issuance costs.

That net cost will be apportioned, or "assessed," to each of the parcels in the district based on how each parcel is specially benefited from the undergrounding work. Under Proposition 218, the Engineer-of-Work is responsible for defining the special benefit each parcel receives, and may also consider a variety of factors in defining that benefit. The method of allocating the special benefit may vary from district to district depending on the conditions of and the improvement for each such district.

Under state law, the Town Council must hold a public hearing and conduct an assessment ballot to seek approval of the assessment part of the district.

Ballot Protest Threshold: The Town approval level required to move forward with the district is set at no more ballot protest than 50% of the weighted assessments returning a ballot on the assessment.

Majority of Parcels Approving: In addition, the Town Council also requires that a majority of parcels returning a ballot approve the assessment.

If no more than 50% of the weighted votes object and more than 50% of the parcels approve, then the Town may proceed with the assessment and the district. The assessment may then be paid either in cash up front by each Property Owner, or allowed to "go to bond" to be financed at tax-exempt municipal bond rates for up to 30 years. Bonded assessments are collected on the Marin County tax bill. The assessment is not a personal obligation of the Property Owner and it passes with title of the property assessed, like regular property taxes. Bond Counsel and the bond underwriter will prepare documents needed for the bonds.

Second Town Council Meeting - The Engineer-of-Work prepares and files the following items with the Town Clerk:

- Engineer's Report
- Map of Proposed Boundaries and Assessment Diagram for the district.
- Plans & Specifications for Project.

All necessary resolutions will be prepared for the Town Council in compliance with state law including environmental review consistent with CEQA. If the Town Council accepts the Engineer's Report and approves the Resolutions, the Town will call for bids for the sale of bonds and for the construction of the project.

At this time, the Town Council, in its sole and absolute discretion, may adopt a Resolution Preliminarily Approving the Engineer's Report, the District Formation/Boundary Map, and Approving Plans and Specifications and Calling for Bids for Construction.

If adopted, and immediately following the Second Council Meeting, the Town Clerk, in coordination with the Engineer-of-Work and Legal Bond Counsel, takes the following actions:

- Town Clerk mails Notices of Proposed Assessments and Ballots to Property Owners at least 45 days prior to the Public Hearing.
- Town Clerk records Map of Proposed Boundaries of the District.
- Town Clerk coordinates publication of call for bids for construction (if appropriate).

Informational Workshop, Mailed Ballots - In the 45-day period after the Second Town Council meeting, Town Staff and the consultants hold a Workshop with Property Owners concerning the project and proposed financing. At this point, a more accurate, but not final, cost estimate will have been completed. At the Workshop, Town staff will provide the cost estimates and explain the remaining steps in the process.

Town Opens Construction Bids - The Town will solicit and open construction bids. The Engineer-of-Work and Town Staff receive and analyze construction bids approximately two weeks prior to the date set for the public hearing so that adjustments may be made to assessment amounts. The Town will notify Property Owners of bid results.

The Town will mail the official ballots to the Property Owners. The Property Owners will have a specified period of time to review the updated costs and return their ballots either in favor or against the project. In compliance with state law, the ballots will be weighted according to the level of benefit each Property Owner receives by the project. In other words, properties having a higher District assessment will have a higher weighted ballot. Additionally, ballots will be tabulated to determine if a majority of Property Owners returning the ballot support the District formation.

Prior to, or as a part of the Third Town Council Meeting, The Council will hear any requests for special exemptions to allow a private service pole to be constructed and the overhead service lateral to remain, on such terms as the Council may deem appropriate. Exemption requests will only be considered in cases of unusual circumstances as specified in RMC 15.28.050.

Third Town Council Meeting - Public Hearing and Ballot Count - At a Council meeting held at least 45 days following mailing of the Notice of Proposed Assessments, the Town Council conducts the following proceedings:

- Hold a public hearing
- Hear any comments for or against the assessment
- Close the public hearing
- Open and count the ballots

The Town Clerk opens and counts the ballots. Only valid ballots actually received by the end of the hearing are counted. Unsigned, unreadable or unmarked ballots are not valid. If the ballots received are either (i) more than 50% weighted against forming the District, or (ii) less than a majority of Parcels voting approve the District, then the assessment proceedings will be abandoned. This would then formally end the process.

If the Property Owners' votes do not end in abandonment based on these percentages, then the Town Council will consider adopting the requisite resolution to form the district. If the Town Council does adopt the requisite resolution to form the district, Council will order the assessment diagram and notice of assessment to be recorded with the County Recorder by adopting the Resolution Adopting Engineer's Report, Confirming Assessments and Directing Actions with Respect Thereto. This resolution levies the assessment, directs recordings and filings for the assessment lien, and directs the cash payment period.

Immediately After the Third Town Council Meeting, If Approved - The Town Clerk, Engineer-of-Work and Bond Counsel will take the following actions:

- File and Record Assessments, Notices of Assessment and Assessment Diagram

- Publish Notice to Pay Assessments
- Mail Notices to Pay Assessment to each Property Owner

Property Owners have 30 Days to pay the assessment, or have a lien recorded - An official notice from the Town will be mailed to each Property Owner informing them of the creation of the assessment district and the amount due. The Property Owners will then have 30 days if they wish to pay for the assessment up front. Alternatively, any unpaid assessments will be recorded as a lien on the property and will be paid over a period not to exceed 30 years. The Town will provide the County Auditor with a list of all of the unpaid assessments. The unpaid portion will be added to the Auditor's tax roll and will be billed on the property tax bill. This will also be the time when Senior citizens or other qualified individuals can seek to have the assessment deferred until the transfer or sale of their home (as available).

Fourth Town Council Meeting: Town Council Awards Construction and Bond Sale Contracts - The Council will award contracts for the construction work and the authorization for the issuance of bonds. The proceeds from the bond sale will be used to pay for the cost of the project. The bonds will be repaid through the payment of the assessment.

An Underwriter will be hired by the Town to issue the assessment bonds. The Underwriter is responsible for helping to estimate the costs of the bonds and in pricing, selling and delivering the bonds to the bond market. The Underwriter is paid only from the bond issue and only if bonds are issued.

Following Town Council action, the Town's Finance Director and Underwriter will price the bond issue, and the Town will execute the Bond Purchase Agreement (sells bonds) and Preliminary Official Statement (describes bonds for market). Approximately two weeks later, the bonds are delivered to the Underwriter in exchange for the purchase price under the Bond Purchase Agreement. This provides the funds to pay for the underground project and its related costs.

V. Construction Phase

Construction Begins - The Neighborhood Committee will organize a meeting with the Town Engineer and the Contractor to discuss construction details and timelines. In addition, information will be provided to Property Owners regarding hooking-up to the underground system ("laterals") once construction is complete.

Every effort will be made to minimize the disruption caused by the construction. However, there will be times when heavy equipment will be on neighborhood streets, there may be delays in accessing streets, there will be construction noise and dust, and vegetation may be damaged or destroyed. In order to get the wires underground, trenches will be dug so the utility conduits can be placed. The Town Engineer will be available to answer questions and concerns throughout the construction phase of the project.

Official Notice to Connect to the Underground System - Once construction of undergrounding the utilities in the right-of-way is complete, an official notice from the Town will be mailed to Property Owners explaining that they are now required to hook-up to the underground system (install “laterals”).

The costs of individual service connections to the underground facilities are borne by each Property Owner and are not included in the assessment.

Property Owners Hook-up to the System – The Property Owners shall comply with the procedures set forth in Ross Municipal Code section 15.28 to connect their house utility service lines to the new underground system. The most cost-effective approach to providing underground lines on private property and reconnecting utility services is for Property Owners to use the services of one contractor, which may be the same contractor(s) as the ones installing the new underground lines in the streets. The Town will help facilitate this effort, which will require Property Owners to provide written consent for contractors to enter their private property to make the necessary connections and underground facilities.

Utilities remove poles, wires, and work completed - After 100% of the properties within the district have connected to the underground system, the utility companies will switch the system from overhead to underground and then remove the poles and wires from the area.

From the bond proceeds, the Town will pay the final bills and costs, including any remaining legal and administrative costs incurred by the Town for the project. If there is any surplus remaining from the bond amount, the Town Council may take action to provide any further improvements needed to complete the project and/or distribute any surplus as provided by law.

ATTACHMENT A

Utility Undergrounding Neighborhood Project Petition of Interest Form

Town Council
Town of Ross, California

We the undersigned, owners of more than 65% of the parcels shown on attached Map No.____, which are subject to assessment for the proposed improvement requested hereby if the District is formed and approved by property owner ballot, do respectfully petition the Town Council to institute the necessary proceedings for the improvement of undergrounding of existing aerial utility facilities, including electrical, telephone, and cable television. Improvements consist of construction of necessary substructures (trenching, conduit, manholes, and vaults) with associated engineering and administrative services and all appurtenant work thereto. There are _____ Parcels within the proposed District.

The owners understand that if an assessment district is formed as we have petitioned, all associated costs will be assessed against those properties that will receive special benefit from the undergrounding of the utilities, and that the final annual assessment is still to be determined. The petitioner’s preliminary estimates, the total rough estimated cost of the assessment district work is \$_____. The cost of converting our private property so that we can connect our residences to the underground utilities is not included in this figure and will not be financed through the assessment district, but will instead be funded by each individual property owner

In submitting this petition we are not waiving our right (a) to object to or protest the levy of the assessments if we do not agree with the amount of the assessment proposed to be levied on our property or (b) to submit an assessment ballot in opposition to the levy of the proposed assessment on our property if we do not agree with the amount of such proposed assessment. We are aware that we can access the Town’s Undergrounding District Formation Policy and Frequently Asked Question information documents on the Town website.

It is requested that the proceedings for this improvement be instituted under the combined proceedings of the "Improvement Act of 1913" being Division 12 of the Streets and Highways Code of the State of California and Article XIID of the State Constitution (Prop 218).

Property Address	Owner Last Name (Print)	Owner First Name (Print)	Owner Mailing Address	Owner Signature	Date

ATTACHMENT B

UNDERGROUND ASSESSMENT DISTRICT DEPOSIT AND RELEASE AGREEMENT

This Underground Assessment District Agreement (“Agreement”) is entered into effective as of _____, 2019 (the “Effective Date”) by and between the Town of Ross, a California Municipal Corporation (“Town”) and _____ (“Contributor”). Town and Contributor are referred to collectively herein as the “Parties” and each individually as a “Party.”

RECITALS

- A. The Town supports the undergrounding of overhead utility wires and poles and has adopted policies and procedures for the formation of utility undergrounding assessment districts (“Town Policy”) to assist and guide property owners in achieving undergrounding of utilities in their neighborhoods; and
- B. Under the Town Policy, property owner proponents may seek to form a special assessment district to finance the undergrounding of utilities that service their properties by submitting a written petition to the Town showing the support by the owners in the prospective district. Along with the petition, the proponents must submit an informal boundary map showing the parcels proposed to be included in the assessment district and a deposit to cover the estimated costs of district formation; and
- C. The deposit for district formation costs (“Deposit”) is used to cover design, engineering and construction cost estimates and legal advisory services that must be completed before a special assessment district may be formed. If an assessment district is formed and bonds are issued to fund the district, then the Town refunds or credits the funds that made up the Deposit to the property owner proponents in proportion to their contribution; and
- D. Property owners have proposed the formation of a special assessment district for the undergrounding of utilities in the _____ area of the Town (“Proposed District”). Should a petition to form the Proposed District be submitted to the Town, a Deposit for preliminary formation costs must be submitted following signature verification by the Town, but prior to the Town Council approving any consultant contracts; and
- E. If the Proposed District is approved and formed pursuant to all applicable laws and the Town Policy, the Parties expect that the Proposed District will be funded through the issuance of bonds to pay for the proposed utility undergrounding work (“Proposed District Bonds”); and
- F. Contributor is an owner of a parcel of real property located within the Town and located within the Proposed District; and

- G. Contributor would like to contribute to the Deposit necessary to fund the district formation costs for the Proposed District.

AGREEMENT

In consideration of the foregoing recitals and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties hereby agree as follows:

1. Contributor Submission of Deposit. Contributor hereby submits funds in the amount of \$_____ as part of the Deposit for the Proposed District (“Contributor Deposit”). The Contributor Deposit will be used by the Town for planning, design, engineering, and advisory activities relating to the formation of the Proposed District in the same manner and for the same purposes as the other deposits submitted by other property Contributors for the Proposed District and in accordance with the Town Policy.
2. Reimbursement Obligation. The Contributor’s Deposit will be refunded to Contributor in accordance with the Town Policy. If the Proposed District is formed, the Proposed District Bonds are issued, and the Town receives funding from the Proposed District Bonds, upon election of the Contributor, the Town will either refund the Contributor Deposit to Contributor in full, or credit the funds that made up the Deposit towards the Contributor’s assessment. However, if the Proposed District is not formed or if the Proposed District Bonds are not issued and paid to the Town, then Contributor will receive only the unspent amount of the Contributor Deposit, as calculated in proportion to the full Deposit for the Proposed District, as determined by the Town in its sole discretion.
3. Town Retains Full Discretion. Nothing in this Agreement shall be construed as a commitment by Town to grant or issue any approvals, or permissions for or in connection with the Proposed District. Nothing in this Agreement limits Town’s discretion, in any manner, with respect to any aspect of the Proposed District.
4. Release. Except as otherwise expressly set forth in this Agreement, the Contributor hereby agrees to hold harmless and to release and forever discharge the Town, together with its Town Council, agents, representatives, trustees, employees, officers, directors, partners, attorneys, successors, assigns, heirs, personal representatives and executors, and all persons, firms, associations, co-partners, co-venturers, insurers, contractors, engineers, subcontractors, subsidiaries, parents, affiliates, or corporations connected therewith, from any and all claims, debts, liabilities, demands, obligations, costs, expenses, attorneys' fees, actions, and causes of actions of every nature, character, and description whether known or unknown, relating to and/or arising out of the formation of the Proposed District.

5. Waiver of California Civil Code Section 1542. The Contributor hereby acknowledges that it is aware of the provisions of Civil Code section 1542, which provides as follows:

A general release does not extend to claims that the creditor or releasing party does not know or suspect to exist in his or her favor at the time of executing the release, and that if known by him or her would have materially affected his or her settlement with the debtor or released party.

Having been so informed, the Contributor hereby elects to and does waive the provisions and benefits of Civil Code section 1542 with respect to any unknown claims referenced in Section 5 above, effective upon the execution of this Agreement.

Contributor's Initials

6. Entire Agreement. This Agreement constitutes the entire agreement of the Parties with respect to the matters set forth herein. Any amendments, modifications, or changes to this Agreement shall be in writing and signed by both Parties. This Agreement may not be assigned without the express written consent of the Town, which consent shall not be unreasonably withheld.
7. Authorization to Execute. Each party represents that the individual signing this Agreement is authorized to bind the party on whose behalf he or she signs.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date and year first written above.

CONTRIBUTOR:

By:

Contributor (Name)

Its:

TOWN:

Town of Ross, a California municipal corporation

By:

Town Manager

APPROVED AS TO FORM AND CONTENT

By: _____
Benjamin L. Stock, Esq.
Town Attorney

Dated: _____

ATTACHMENT C

GLOSSARY OF TERMS

Assessment Diagram	The official map submitted to the County Recorder identifying all of the effected parcels and subdivisions.
Assessment District	The parcels of land specified in the Assessment Diagram that are required to pay for the undergrounding project.
Assessment Spread	The method by which the total costs are divided amongst the parcels identified in the Assessment Diagram.
Assessor's Parcel Number	The County's official identification of a parcel of land.
Boundary Map	See Assessment Diagram.
Certificate of Sufficiency	The Town of Ross requires that at least 65% of the affected property owners sign a petition supporting the formation of an assessment district. The Engineer of Work will certify that at least 65% of the affected property owners have signed the petition.
Engineer of Work	A duly registered Professional Engineer directed to prepare the Engineer's Report.
Engineer's Report	The official report provided to the Town Council and available to each affected property owner detailing the estimated cost of the project, the method of calculating the assessment, and a detailed assessment diagram.
Municipal Improvement Act of 1913	The legal authority under which assessments for improvements can be made. Division 12 of the California Streets and Highways Code.
Proposition 218	Approved by California voters in 1996, added Article XIID to the State Constitution (Prop. 218) requires, among other things, that owners of property proposed for any new or increased special assessment receive a ballot for casting approval or disapproval.
Resident Petition	The official Town petition that must be signed by at least 65% of the property owners within the proposed district.
Resolution of Intention	A Resolution of the Town Council formalizing its intention to create an Assessment District after receiving petitions.
Utility Undergrounding	The process of placing existing overhead utility wires and facilities underground.
Weighted Ballot	Under Prop. 218, each property owner in a proposed assessment district receive a weighted ballot proportional to the benefit received from the assessment. Meaning the higher the benefit, the greater the weight of the ballot.