

City of Piedmont
COUNCIL AGENDA REPORT

DATE: February 22, 2022

TO: Mayor and Council

FROM: Sara Lillevand, City Administrator

SUBJECT: Consideration of Agreements with East Bay Municipal Utility District (EBMUD) for Cost Sharing Associated with Paving on Manor Drive and Portions of Wildwood Avenue and Sylvan Way

RECOMMENDATION

Approve the attached resolution authorizing the City Administrator to sign agreements with EBMUD regarding cost sharing for additional City-requested paving associated with EBMUD's Excavation Permits EX21-00082 and EX21-00117 for replacement of water lines in the Manor Drive and portions of Wildwood Avenue and Sylvan Way.

BACKGROUND

The City has recently issued two Excavation Permits to EBMUD for replacement of water mains in Manor Drive and portions of Wildwood Avenue and Sylvan Way. More specifically, EBMUD's work impacts Manor Drive between Arroyo Avenue and Cambridge Way, Wildwood Avenue between Grand Avenue and Sylvan Way, and Sylvan Way between Wildwood Avenue and 40 Sylvan Way. The excavation permits include specific conditions which require paving for portions of the streets impacted by installation of new water mains. Typically, when utility trenches impact longer lengths of roadway, the impacted portions of the street require paving the half of the street impacted by the trench associated with the new water main.

During the conditioning of the excavation permits, Staff reviewed the pavement condition on all of the streets associated with the permits and determined it would be in the best interest of the City and residents living in the area to include full street width paving on streets impacted by EBMUD's project. Inclusion of the additional paving outside of those areas impacted by the excavation permit work by EBMUD must be paid for by the City.

In discussions with EBMUD, City Staff has determined that adding Manor Drive and portions of Wildwood Avenue and Sylvan Way to the City's upcoming paving project would be beneficial. It should be noted that a portion of Wildwood Avenue (from Grand Avenue to the landscape triangle) was already scheduled to be included in the City's paving project. As the City will take the lead on the overall paving project, City Staff and EBMUD have come to an agreement on the estimated contribution that EBMUD will need to make to the City for their fair share of the paving. Copies of the agreements have been reviewed by the City Attorney's office and are

attached.

The City will be responsible for the overall paving contract and EBMUD will be responsible to reimburse the City once all work is completed.

FISCAL CONSIDERATIONS

Based on the agreements, EBMUD will be responsible to pay the City \$3.38 per square foot of paving for the area that is EBMUD's responsibility. The final amount of reimbursement will be determined once the EBMUD projects are completed, and the paving areas are finalized. The City's share of the paving project will come from Measure B and BB Local Streets and Roads funds.

SCHEDULE OF CONSTRUCTION

EBMUD plans to have both projects completed by April 2022. EBMUD will be responsible to provide adequate trench paving and keep all trenches in good condition until the City's paving project begins. The City advertised the paving project for bidding in early February. Bids for the paving project will open in March. Construction on the paving project should begin in mid to late April.

CITY ATTORNEY REVIEW

The City Attorney has reviewed and approved the resolution and agreements as to form and legality.

By: Daniel Gonzales, Public Works Director
John Wanger, City Engineer

ATTACHMENTS:

- A: Resolution
- B: Agreement for Manor Drive
- C: Agreement for Wildwood Avenue and Sylvan Way

RESOLUTION _____**RESOLUTION AUTHORIZING THE CITY ADMINISTRATOR TO SIGN AGREEMENTS WITH EAST BAY MUNICIPAL UTILITY DISTRICT FOR REIMBURSEMENT OF ADDITIONAL CITY-REQUESTED PAVING WORK ASSOCIATED WITH EXCAVATION PERMITS EX21-00082 AND EX21-00117**

WHEREAS, the City of Piedmont issued Excavation Permits EX21-00082 and EX21-00117 to East Bay Municipal Utility District (EBMUD) for replacement of water mains in Manor Drive and portions of Wildwood Avenue and Sylvan Way of the City (hereinafter referred to as “Project”); and

WHEREAS, whereas the Excavation Permits specified paving limits on the various impacted streets associated with EBMUD’s project; and

WHEREAS, the City determined that it would be in the best interest of the City and the residents living within the impacted streets to include additional paving such that all streets were treated to their entire widths; and

WHEREAS, EBMUD will be financially responsible for all paving associated with the excavation permits; however, the City will be including the overall street paving within the City’s annual pavement rehabilitation project, necessitating the need for a reimbursement agreements for EBMUD to reimburse the City for their portion of the paving work; and

WHEREAS, EMBUD has provided agreements to the City to clarify the financial responsibility of the EBMUD for the work; and

WHEREAS, the agreements have been reviewed by both Staff and the City Attorney’s office and has been found to be accurate and acceptable.

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Piedmont does hereby resolve, declare, determine, and order as follows:

1. The above recitals are true and correct and are hereby incorporated into this Resolution as findings of the City Council of the City of Piedmont.
2. The City Administrator is hereby authorized and directed to execute the agreements with EBMUD for EBMUD’s reimbursement to the City for their portion of the paving work as required by the City associated with Excavation Permits EX21-00082 and EX21-00117.
3. All portions of this resolution are severable. Should any individual component of this Resolution be adjudged to be invalid and unenforceable by a body of competent jurisdiction, then the remaining resolution portions shall be and continue in full force and effect, except as to those resolution portions that have been adjudged invalid. The City Council of the City of Piedmont hereby declares that it would have adopted this Resolution and each section, subsection, clause, sentence, phrase and other portion

thereof, irrespective of the fact that one or more section subsection, clause sentence, phrase or other portion may be held invalid or unconstitutional.

[END OF RESOLUTION]

**AGREEMENT BY AND BETWEEN THE CITY OF PIEDMONT AND THE EAST
BAY MUNICIPAL UTILITY DISTRICT FOR PAVEMENT REHABILITATION
OF PORTIONS OF MANOR DRIVE, PIEDMONT**

This Agreement for Pavement Restoration of the Manor Drive Pipeline Project in the City of Piedmont ("Agreement") is made and entered upon final signed date, by and between the EAST BAY MUNICIPAL UTILITY DISTRICT ("EBMUD"), a municipal utility district organized and existing under the laws of the State of California and the CITY OF PIEDMONT ("City"), a municipal corporation. EBMUD and the City are referred to collectively as the "Parties" herein.

RECITALS

WHEREAS, EBMUD plans to construct an underground pipeline project within the City along 1,445 linear feet of City street on Manor Drive between Arroyo Avenue and Cambridge Way as shown in Exhibit A ("Project"); and

WHEREAS, the construction of the Project necessitates restoration of the existing pavement in the area of trenching for the Project to be in compliance with the excavation restoration requirements of the City's municipal code; and

WHEREAS, the City desires to implement a complete rehabilitation of the pavement on Manor Drive within 12 months of EBMUD's project completion; and

WHEREAS, the City and EBMUD agrees for this Project that in lieu of EBMUD providing pavement restoration on Manor Drive as would be required in the absence of this Agreement, EBMUD will pay the City a pavement restoration fee based on the rate of \$3.38 per square foot for a pavement restoration area to be determined and agreed as provided in this Agreement, which fee the City will put towards its own planned paving rehabilitation of Manor Drive in 2021-2022; and

WHEREAS, the Project is expected to result in a pavement restoration area of approximately 19,000 square feet based on a 13-foot width along the Project pipeline trenches and a depth not to exceed two inches, although the exact surface area of required restoration shall be determined as provided in this Agreement; and

WHEREAS, EBMUD and the City see a public benefit in coordinating EBMUD's asphalt pavement restoration for the Project and the City's planned pavement rehabilitation; and

WHEREAS, City agrees to release EBMUD from any legal or permit-related obligations to perform restoration of pavement it is legally required to perform in the absence of this Agreement within the Project area in exchange for EBMUD making the agreed-upon payment to the City as set forth in this Agreement; and

WHEREAS, EBMUD and the City have delineated the location and extent of the areas to be rehabilitated, as shown in Exhibit A; and

WHEREAS, the City has issued excavation permit conditions under Permit Number EX21-

00082 ("Excavation Permit Conditions") in connection with the work to be done under this Agreement;

AGREEMENT

NOW, THEREFORE, in consideration of the mutual covenants hereinafter set forth, City and EBMUD mutually agree as follows:

1. Definitions

- a. "Project" means EBMUD's installation of pipeline, services, and hydrants within the City along 1,445 linear feet of City street on Manor Drive between Arroyo Avenue and Cambridge Way, as shown in Exhibit A.
- b. "Temporary Pavement" means the installation of 2-inch hot mix asphalt (HMA) temporary paving patch flush with existing pavement over the Project pipeline trenches, in compliance with Type 3 Patch Pavement Replacement, as shown in Exhibit B.
- c. "Pavement Restoration" means all final asphalt pavement installation, repair, and rehabilitation other than Temporary Pavement, including saw cutting, removal, materials, labor, traffic control, and renewal of road striping and dots, performed following the completion of the Project.
- d. "Interim Pavement Maintenance" means all necessary temporary pavement mitigation measures required to maintain the Temporary Pavement in sufficient condition to allow vehicle access within the Project area, during the time stated in paragraph 3.b.
- e. "Actual Pavement Restoration Area" means both of the following: (1) the actual field cut length of the Project trench for the mainline and a 13-foot width, and (2) service lateral, and hydrant trenches. This area will be field-measured and agreed upon in the manner provided in Section 2.a after Project pipeline installation is completed.

2. Payment of EBMUD Restoration Fee

- a. No later than 14 days after completion of the Project pipeline installation, EBMUD shall notify City of the status of the Project. Upon the City's acknowledgement and receipt of such written notification, City shall provide EBMUD the proposed Actual Pavement Restoration Area, expressed in square feet, which shall serve as the basis for calculating EBMUD's restoration fee at the rate of \$3.38 per square foot. EBMUD's agreement to the City's proposed figures shall not be unreasonably withheld, and the finally agreed-upon figures shall be memorialized in a written agreement. Upon reaching such written agreement, (i) EBMUD shall become obligated to pay the restoration fee to the City for the agreed square foot area at the above-specified rate, and (ii) each party shall become obligated to perform its respective obligations in Section 3 of this Agreement.
- b. Other than the payment of the fee described in Section 2.a of this Agreement,

EBMUD shall owe no other amounts associated with Pavement Restoration, notwithstanding any contrary requirement of any ordinance, permit, inspection, or other provision which would apply to EBMUD in the absence of this Agreement.

- c. EBMUD shall not be liable for costs associated with City inspection for Final Pavement Restoration by City's contractor.

3. Scope of Each Party's Pavement Work

- a. EBMUD shall install Temporary Pavement within the Project trenches after pipeline installation is complete within the Project area and the restoration fee has been agreed as provided in Section 2.a.
- b. EBMUD will be solely responsible for Interim Pavement Maintenance of Project trench. EBMUD's responsibility for the Interim Pavement Maintenance will commence with installation of Temporary Pavement and shall end at the earliest of either 1) completion of the Pavement Restoration by the City, or 2) up to 180 days from completion of EBMUD's Project pipeline installation, whichever occurs first.
- c. Except as to the extent required pursuant to the Excavation Permit, and as described in Section 3.b., EBMUD is not responsible for maintaining the condition of any pavement. However, in the event EBMUD has caused any damage or disturbance of any areas outside EBMUD's Project trench, the Excavation Permit Conditions would control, and EBMUD shall address any such damage or disturbance as required by the City.
- d. Upon EBMUD's completion of Temporary Pavement to the City's satisfaction, the City shall be solely responsible for installing and maintaining any and all Pavement Restoration within the roadway, including the area in which EBMUD will install Temporary Pavement, notwithstanding any contrary requirement of any ordinance, permit, inspection, or other provision which would apply to EBMUD in the absence of this Agreement.

- 4. Warranty. EBMUD agrees to provide the guarantee described in section 14 of the Excavation Permit Conditions with respect to work performed by EBMUD under this Agreement. However, EBMUD provides no warranty for any Pavement Restoration Work conducted by the City.

- 5. Payments. The City will issue an invoice to EBMUD after completion of Section 2.a in the agreed amount. Invoices shall be paid within 30 days of the date of the invoice. No interest shall accrue on any amounts owed.

- 6. Release. In consideration of EBMUD's agreement to pay the restoration fee in the amount and manner set forth in this Agreement, the City hereby releases EBMUD from any obligation it may otherwise have under any permit or specification, or under the City's municipal code or any other provision of law, to repair, restore, and/or maintain pavement with respect to the Project. The City agrees not to enforce any such obligation against EBMUD or its employees, officers, directors, agents, successors or assigns.

7. Indemnification.

- a. It is understood and agreed that neither EBMUD nor any officer or employee thereof is responsible for any damage or liability occurring by reason of anything done or omitted to be done by City in the performance of its obligations under this Agreement. It is understood and agreed that, pursuant to Government Code Section 895.4, City shall defend, indemnify and save harmless EBMUD, and all EBMUD directors, officers, employees, and agents from all claims, suits or actions of every name, kind and description brought for or on account of injuries to or death of any person or damage to property resulting from anything done or omitted to be done by City in its performance of this Agreement.
- b. It is understood and agreed that neither City nor any officer or employee thereof is responsible for any damage or liability occurring by reason of anything done or omitted to be done by EBMUD in the performance of its obligations under this Agreement. It is understood and agreed that, pursuant to Government Code Section 895.4, EBMUD shall defend, indemnify and save harmless City, and all City officers, employees and agents from all claims, suits or actions of every name, kind and description brought for or on account of injuries to or death of any person or damage to property resulting from anything done or omitted to be done by EBMUD in its performance of this Agreement.

8. Coordination Efforts. City and EBMUD agree that the successful execution of the Pavement Restoration is dependent upon full and complete cooperation of the Parties and their representatives. Therefore, each party agrees to use its best and diligent good faith efforts to perform its obligations in a timely manner

9. Notices. City and EBMUD shall each designate a representative to be responsible for receiving and delivering notices of any kind, obtaining information, and stating the position of the respective party on any decision required by a party. All notices and correspondence to be delivered under this Agreement shall be delivered personally or mailed via first class US mail, postage prepaid to the addresses set forth below, or as may be otherwise be required by notice from one party to the other. Notices personally delivered shall be deemed delivered on the date of personal delivery, notices mailed shall be deemed delivered five days after deposit in the U.S. mail.

CITY

EBMUD

Daniel Gonzales
City of Piedmont
120 Vista Avenue
Piedmont, CA 94611

Jimmy Rangel
East Bay Municipal Utility District
P.O. Box 24055, MS #61
Oakland, CA 94623

Phone: (510) 406-8553

Phone: (510) 287-0891

Notwithstanding the foregoing, the Parties may reach the agreement specified in Section 2.a and carry out other routine Project-related communications via email.

10. Term of Agreement. This Agreement shall be effective upon execution by both Parties and shall be terminated upon the completion of the Parties' respective obligations hereunder.
11. Right to Cancel. Either the City or EBMUD may cancel this Agreement, with or without cause, at any time before the City and EBMUD have entered into the written agreement described into Section 2.a of this Agreement. In the event of such cancellation, neither party shall have any further obligations under this Agreement, and EBMUD shall undertake Pavement Restoration at its expense in the manner the City ordinarily requires for an excavation similar to that made for the Project, as if the Parties had never entered into this Agreement.
12. Jurisdiction. This Agreement and all matters relating to it shall be governed by and enforced in accordance with the laws of the State of California.
13. Modifications. This Agreement may only be modified, amended, or extended, by the mutual, written agreement of both Parties.
14. Assignment; Successors. This Agreement is not assignable and shall be binding upon and inure to the benefit of the successors and assigns of the Parties.
15. Integration. This Agreement contains the entire agreement between the Parties with respect to the subject matter thereof and supersedes all prior understandings or agreements, oral or written, regarding the subject matter of this Agreement.
16. Interpretation. The Parties to this Agreement acknowledge that they have had the benefit of counsel prior to entering into this Agreement and have relied upon the legal advice of counsel. Each party further represents that the terms and conditions of this Agreement have been completely explained and that the terms and conditions were voluntarily accepted and agreed to by each party. The Parties further acknowledge that they have entered into this Agreement voluntarily, without coercion, based on their own judgment, and not in reliance on any representation or promise made by the other party other than those contained herein.
17. Negotiated Agreement. This Agreement and each of the provisions hereof, is the product of negotiations between the Parties and their respective attorneys. Each of the Parties hereto expressly acknowledges and agrees that this Agreement shall not be deemed to have been prepared by or drafted by any particular party hereto. The rule of construction

to the effect that any ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of this Agreement.

18. Severability. Should any part of this Agreement be declared by a final decision by a court or tribunal of competent jurisdiction to be unconstitutional, invalid or beyond the authority of either party to enter into or carry out, such decision shall not affect the validity of the remainder of this Agreement, which shall continue in full force and effect, provided that the remainder of this Agreement can be interpreted to give effect to the intentions of the Parties.

19. No Third-Party Beneficiaries. The Parties understand and agree that this Agreement creates rights and obligations solely between the Parties and is not intended to benefit any other person or entity. No provision of this Agreement shall in any way inure to the benefit of any person or entity not a party to this Agreement so as to make such person or entity a third-party beneficiary of this Agreement or any of its terms.

20. Time is of the Essence. In the performance of this Agreement, time is of the essence.

21. Recitals and Exhibits. The Exhibits and recitals set forth in this Agreement are hereby incorporated into this Agreement by reference.

22. Opinions and Determinations. Where the terms of this Agreement provide for actions to be based on the opinion or determination of either Party, those terms will not be construed as permitting such action to be predicated on arbitrary, capricious, or unreasonable opinions or determination.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement on the day and year first set forth above.

EAST BAY MUNICIPAL UTILITY DISTRICT:

Clifford C. Chan
General Manager

Date:

Approved as to form and legality for EBMUD:

Jonathan D. Salmon
Assistant General Counsel

Date:

CITY OF PIEDMONT:

Sara Lillevand
City Administrator

Date:

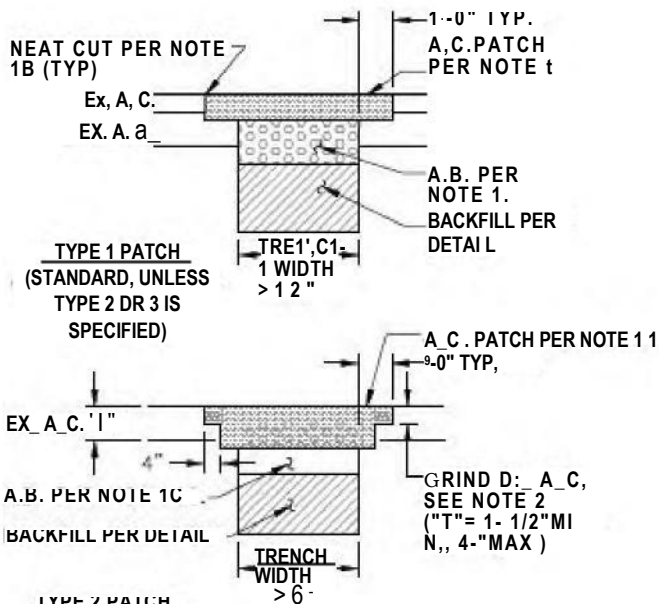
Attachments:

Exhibit A: EBMUD Drawing W-10887-1

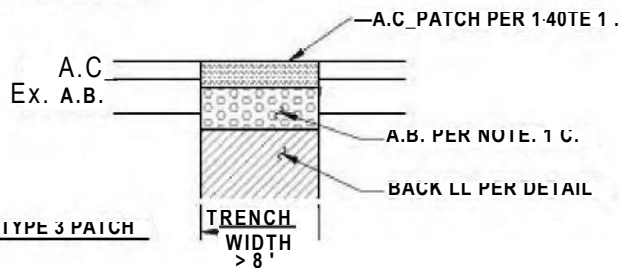
Exhibit B: City of Piedmont — Final Backfill & Trench Structural Section Requirements -
STD Detail 502



FINAL BACKFILL & TRENCH STRUCTURAL SECTION REQUIREMENTS



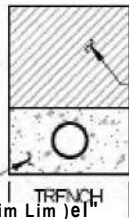
TYPE 2 PATCH



PAVEMENT REPLACEMENT

BACKFILL!

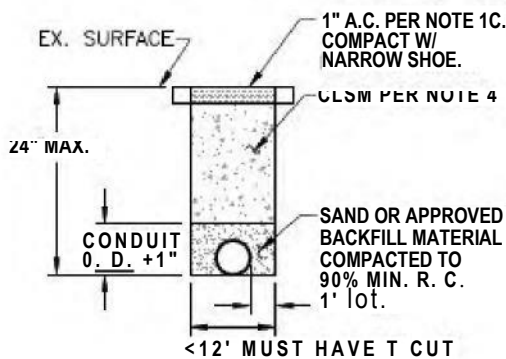
- A. OUTSIDE OF PAVED AREAS OR UNDEVELOPED AREAS.. NAT NE MATERIAL AT 15% R.C.
B. IN THIN PAVED AREAS OR PUBLIC RIGHT-OF-WAY: CLASS II AGGREGATE BASE AT 5% R. C. OR CLSM



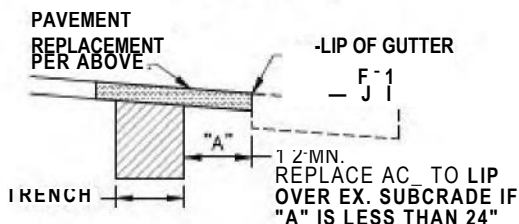
BACK-FILL

PIPE EMBEDMENT AND TRENCH
IN MAL BACKFILL PER STD Tim Lim)el
PLAN 501

BACKFILL DETAIL



3" & SMALLER CONDUIT (WHEEL CUT TRENCH)



ADJACENT TO GUTTER SPECIAL CASIES

NOTES:

1. TYPE 1 PATCH:
 - A) TOTAL AC THICKNESS TO MATCH EXISTING PLUS 1", 3' MINIMUM APPLIED IN TWO LIFTS_
 - EI) DROP HAMMER OR OTHER ROUGH CUT ALLOWED FOR INMAL CUT ALONG TRENCH WALL FINAL AC EDGE SHALL BE SAWCUT AND TACK COATED PRIOR TO NEW AC PLACEMENT_
 - C) AB THICKNESS PER PLANS. AB MAY BE REPLACED BY ADDITIONAL AC (50% OF REG' D AB THICKNESS).
2. TYPE 2 PATCH OPTIONAL, EXCEPT WHEN REQUIRED BY THE CITY. GRIND DEPTH "T" SHALL BE ADJUSTED TO MATCH EXISTING OVERLAY THICKNESS.
3. TYPE 3 PATCH TO BE USED WHEN SHOWN ON THE PLAN'S OR AS APPROVED BY THE ENGINEER, GENERALLY ON STREETS TO BE OVERLAYED
4. CONTROLLED LOW STRENGTH MATERIAL (CLS1V1) MAY BE USED FOR BACKFILL WITH THE PRIOR APPROVAL OF THE ENGINEER, CLSM SHALL BE IN ACCORDANCE WITH CALTRANS STANDARD SPECIFICATIONS SECTION 1 9-3. 02F.

Drew OLD	NO.	Date	Revision.	Appr.
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1141 2017				

Approved By:

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**AGREEMENT BY AND BETWEEN THE CITY OF PIEDMONT AND THE EAST
BAY MUNICIPAL UTILITY DISTRICT FOR PAVEMENT REHABILITATION
OF PORTIONS OF WILDWOOD AVENUE AND SYLVAN WAY, PIEDMONT**

This Agreement for Pavement Restoration of the Wildwood Avenue Pipeline Project in the City of Piedmont ("Agreement") is made and entered upon final signed date, by and between the EAST BAY MUNICIPAL UTILITY DISTRICT ("EBMUD"), a municipal utility district organized and existing under the laws of the State of California and the CITY OF PIEDMONT ("City"), a municipal corporation. EBMUD and the City are referred to collectively as the "Parties" herein.

RECITALS

WHEREAS, EBMUD plans to construct an underground pipeline project within the City along 825 linear feet of City street on Wildwood Avenue and Sylvan Way between 60 Wildwood Avenue and 40 Sylvan Way as shown in Exhibit A ("Project"); and

WHEREAS, the construction of the Project necessitates restoration of the existing pavement in the area of trenching for the Project to be in compliance with the excavation restoration requirements of the City's municipal code; and

WHEREAS, the City desires to implement a complete rehabilitation of the pavement on the Project within 12 months of EBMUD's project completion; and

WHEREAS, the City and EBMUD agrees for this Project that in lieu of EBMUD providing pavement restoration on Wildwood Avenue and Sylvan Way as would be required in the absence of this Agreement, EBMUD will pay the City a pavement restoration fee based on the rate of \$3.38 per square foot for a pavement restoration area to be determined and agreed as provided in this Agreement, which fee the City will put towards its own planned paving rehabilitation of Wildwood Avenue and Sylvan Way in 2021-2022; and

WHEREAS, the Project is expected to result in a pavement restoration area of approximately 12,225 square feet based on a 13-foot width along the Project pipeline trench on Wildwood Ave and a 16-foot width along the Project pipeline trench on Sylvan Way, and a depth not to exceed two inches, although the exact surface area of required restoration shall be determined as provided in this Agreement; and

WHEREAS, EBMUD and the City see a public benefit in coordinating EBMUD's asphalt pavement restoration for the Project and the City's planned pavement rehabilitation; and

WHEREAS, City agrees to release EBMUD from any legal or permit-related obligations to perform restoration of pavement it is legally required to perform in the absence of this Agreement within the Project area in exchange for EBMUD making the agreed-upon payment to the City as set forth in this Agreement; and

WHEREAS, EBMUD and the City have delineated the location and extent of the areas to be rehabilitated, as shown in Exhibit A; and

WHEREAS, the City has issued excavation permit conditions under Permit Number EX21-00117 ("Excavation Permit Conditions") in connection with the work to be done under this Agreement;

AGREEMENT

NOW, THEREFORE, in consideration of the mutual covenants hereinafter set forth, City and EBMUD mutually agree as follows:

1. Definitions

- a. "Project" means EBMUD's installation of pipeline, services, and hydrants within the City along 825 linear feet of City street on Wildwood Avenue and Sylvan Way between 60 Wildwood Avenue and 40 Sylvan Way, as shown in Exhibit A.
- b. "Temporary Pavement" means the installation of 2-inch hot mix asphalt (HMA) temporary paving patch flush with existing pavement over the Project pipeline trenches, in compliance with Type 3 Patch Pavement Replacement, as shown in Exhibit B.
- c. "Pavement Restoration" means all final asphalt pavement installation, repair, and rehabilitation other than Temporary Pavement, including saw cutting, removal, materials, labor, traffic control, and renewal of road striping and dots, performed following the completion of the Project.
- d. "Interim Pavement Maintenance" means all necessary temporary pavement mitigation measures required to maintain the Temporary Pavement in sufficient condition to allow vehicle access within the Project area, during the time stated in paragraph 3.b.
- e. "Actual Pavement Restoration Area" means both of the following: (1) the actual field cut length of the Project trench for the mainline and a 13-foot width, and (2) service lateral, and hydrant trenches. This area will be field-measured and agreed upon in the manner provided in Section 2.a after Project pipeline installation is completed.

2. Payment of EBMUD Restoration Fee

- a. No later than 14 days after completion of the Project pipeline installation, EBMUD shall notify City of the status of the Project. Upon the City's acknowledgement and receipt of such written notification, City shall provide EBMUD the proposed Actual Pavement Restoration Area, expressed in square feet, which shall serve as the basis for calculating EBMUD's restoration fee at the rate of \$3.38 per square foot. EBMUD's agreement to the City's proposed figures shall not be unreasonably withheld, and the finally agreed-upon figures shall be memorialized in a written agreement. Upon reaching such written agreement, (i) EBMUD shall become obligated to pay the restoration fee to the City for the agreed square foot area at the above-specified rate, and (ii) each party shall become obligated to perform its respective obligations in Section 3 of this Agreement.

- b. Other than the payment of the fee described in Section 2.a of this Agreement, EBMUD shall owe no other amounts associated with Pavement Restoration, notwithstanding any contrary requirement of any ordinance, permit, inspection, or other provision which would apply to EBMUD in the absence of this Agreement.
- c. EBMUD shall not be liable for costs associated with City inspection for Final Pavement Restoration by City's contractor.

3. Scope of Each Party's Pavement Work

- a. EBMUD shall install Temporary Pavement within the Project trenches after pipeline installation is complete within the Project area and the restoration fee has been agreed as provided in Section 2.a.
- b. EBMUD will be solely responsible for Interim Pavement Maintenance of the Project trench. EBMUD's responsibility for the Interim Pavement Maintenance will commence with installation of Temporary Pavement and shall end at the earliest of either 1) completion of the Pavement Restoration by the City, or 2) up to 180 days from completion of EBMUD's Project pipeline installation, whichever occurs first.
- c. EBMUD is not responsible for maintaining the condition of the pavement outside of EBMUD's Project trench throughout the duration of the Project and all times thereafter, unless EBMUD has caused any damage or disturbance of such areas.
- d. Upon EBMUD's completion of Temporary Pavement to the City's satisfaction, the City shall be solely responsible for installing and maintaining any and all Pavement Restoration within the roadway, including the area in which EBMUD will install Temporary Pavement, notwithstanding any contrary requirement of any ordinance, permit, inspection, or other provision which would apply to EBMUD in the absence of this Agreement.

4. Warranty. EBMUD agrees to provide the guarantee described in section 13 of the Excavation Permit Conditions with respect to work performed by EBMUD under this Agreement. However, EBMUD provides no warranty for any Pavement Restoration Work conducted by the City.

5. Payments. The City will issue an invoice to EBMUD after completion of Section 2.a in the agreed amount. Invoices shall be paid within 30 days of the date of the invoice. No interest shall accrue on any amounts owed.

6. Release. In consideration of EBMUD's agreement to pay the restoration fee in the amount and manner set forth in this Agreement, the City hereby releases EBMUD from any obligation it may otherwise have under any permit or specification, or under the City's municipal code or any other provision of law, to repair, restore, and/or maintain pavement with respect to the Project. The City agrees not to enforce any such obligation against EBMUD or its employees, officers, directors, agents, successors or assigns.

7. Indemnification.

- a. It is understood and agreed that neither EBMUD nor any officer or employee thereof is responsible for any damage or liability occurring by reason of anything done or omitted to be done by City in the performance of its obligations under this Agreement. It is understood and agreed that, pursuant to Government Code Section 895.4, City shall defend, indemnify and save harmless EBMUD, and all EBMUD directors, officers, employees, and agents from all claims, suits or actions of every name, kind and description brought for or on account of injuries to or death of any person or damage to property resulting from anything done or omitted to be done by City in its performance of this Agreement.
 - b. It is understood and agreed that neither City nor any officer or employee thereof is responsible for any damage or liability occurring by reason of anything done or omitted to be done by EBMUD in the performance of its obligations under this Agreement. It is understood and agreed that, pursuant to Government Code Section 895.4, EBMUD shall defend, indemnify and save harmless City, and all City officers, employees and agents from all claims, suits or actions of every name, kind and description brought for or on account of injuries to or death of any person or damage to property resulting from anything done or omitted to be done by EBMUD in its performance of this Agreement.
8. Coordination Efforts. City and EBMUD agree that the successful execution of the Pavement Restoration is dependent upon full and complete cooperation of the Parties and their representatives. Therefore, each party agrees to use its best and diligent good faith efforts to perform its obligations in a timely manner
9. Notices. City and EBMUD shall each designate a representative to be responsible for receiving and delivering notices of any kind, obtaining information, and stating the position of the respective party on any decision required by a party. All notices and correspondence to be delivered under this Agreement shall be delivered personally or mailed via first class US mail, postage prepaid to the addresses set forth below, or as may be otherwise be required by notice from one party to the other. Notices personally delivered shall be deemed delivered on the date of personal delivery, notices mailed shall be deemed delivered five days after deposit in the U.S. mail.

CITY

Daniel Gonzales
 City of Piedmont
 120 Vista Avenue
 Piedmont, CA 94611
 Phone: (510) 406-8553

EBMUD

Jimmy Rangel
 East Bay Municipal Utility District
 P.O. Box 24055, MS #61
 Oakland, CA 94623
 Phone: (510) 287-0891

Notwithstanding the foregoing, the Parties may reach the agreement specified in Section 2.a and carry out other routine Project-related communications via email.

10. Term of Agreement. This Agreement shall be effective upon execution by both Parties and shall be terminated upon the completion of the Parties' respective obligations hereunder.

11. Right to Cancel. Either the City or EBMUD may cancel this Agreement, with or without cause, at any time before the City and EBMUD have entered into the written agreement described into Section 2.a of this Agreement. In the event of such cancellation, neither party shall have any further obligations under this Agreement, and EBMUD shall undertake Pavement Restoration at its expense in the manner the City ordinarily requires for an excavation similar to that made for the Project, as if the Parties had never entered into this Agreement.
12. Jurisdiction. This Agreement and all matters relating to it shall be governed by and enforced in accordance with the laws of the State of California.
13. Modifications. This Agreement may only be modified, amended, or extended, by the mutual, written agreement of both Parties.
14. Assignment; Successors. This Agreement is not assignable and shall be binding upon and inure to the benefit of the successors and assigns of the Parties.
15. Integration. This Agreement contains the entire agreement between the Parties with respect to the subject matter thereof and supersedes all prior understandings or agreements, oral or written, regarding the subject matter of this Agreement.
16. Interpretation. The Parties to this Agreement acknowledge that they have had the benefit of counsel prior to entering into this Agreement and have relied upon the legal advice of counsel. Each party further represents that the terms and conditions of this Agreement have been completely explained and that the terms and conditions were voluntarily accepted and agreed to by each party. The Parties further acknowledge that they have entered into this Agreement voluntarily, without coercion, based on their own judgment, and not in reliance on any representation or promise made by the other party other than those contained herein.
17. Negotiated Agreement. This Agreement and each of the provisions hereof, is the product of negotiations between the Parties and their respective attorneys. Each of the Parties hereto expressly acknowledges and agrees that this Agreement shall not be deemed to have been prepared by or drafted by any particular party hereto. The rule of construction to the effect that any ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of this Agreement.
18. Severability. Should any part of this Agreement be declared by a final decision by a court or tribunal of competent jurisdiction to be unconstitutional, invalid or beyond the authority of either party to enter into or carry out, such decision shall not affect the validity of the remainder of this Agreement, which shall continue in full force and effect, provided that the remainder of this Agreement can be interpreted to give effect to the intentions of the Parties.
19. No Third-Party Beneficiaries. The Parties understand and agree that this Agreement creates rights and obligations solely between the Parties and is not intended to benefit any other person or entity. No provision of this Agreement shall in any way inure to the benefit of any person or entity not a party to this Agreement so as to make such person or

entity a third-party beneficiary of this Agreement or any of its terms.

20. Time is of the Essence. In the performance of this Agreement, time is of the essence.

21. Recitals and Exhibits. The Exhibits and recitals set forth in this Agreement are hereby incorporated into this Agreement by reference.

22. Opinions and Determinations. Where the terms of this Agreement provide for actions to be based on the opinion or determination of either Party, those terms will not be construed as permitting such action to be predicated on arbitrary, capricious, or unreasonable opinions or determination.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement on the day and year first set forth above. The Parties agree to use electronic signatures to execute this Agreement.

EAST BAY MUNICIPAL UTILITY DISTRICT:

Clifford C. Chan
General Manager

Date:

Approved as to form and legality for EBMUD:

Jonathan D. Salmon
Assistant General Counsel

Date:

CITY OF PIEDMONT:

Sara Lillevand
City Administrator

Date:

Attachments:

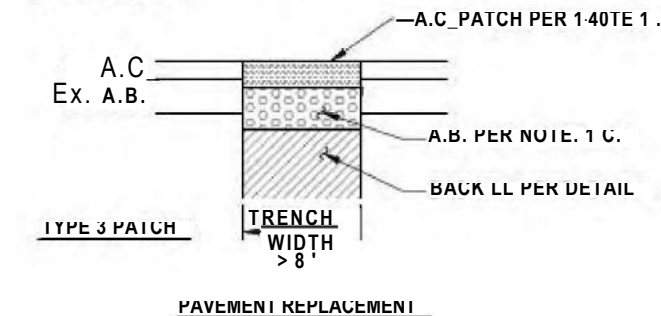
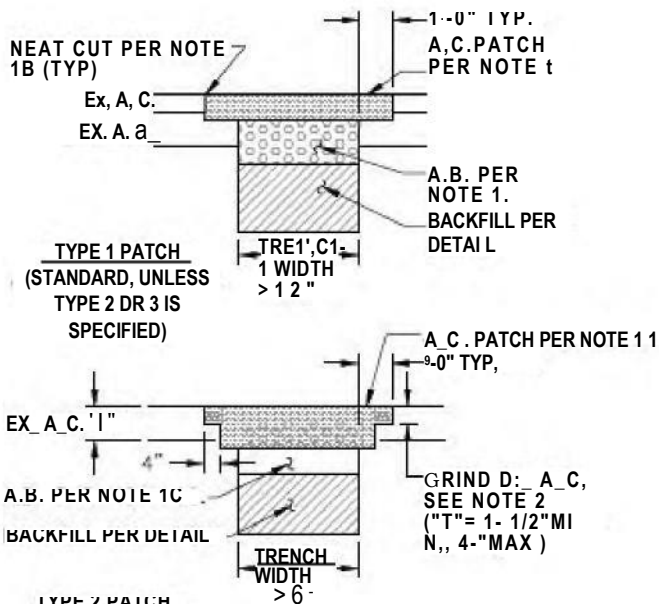
Exhibit A: EBMUD Drawing W-10958-1

Exhibit B: City of Piedmont — Final Backfill & Trench Structural Section Requirements -
STD Detail 502





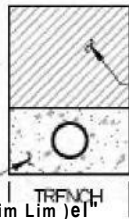
FINAL BACKFILL & TRENCH STRUCTURAL SECTION REQUIREMENTS

**NOTES:**

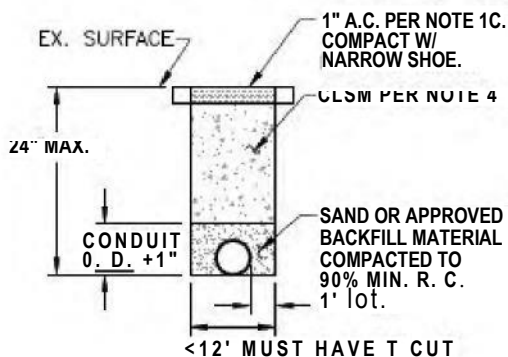
1. TYPE 1 PATCH:
 - A) TOTAL AC THICKNESS TO MATCH EXISTING PLUS 1", 3' MINIMUM APPLIED IN TWO LIFTS
 - E) DROP HAMMER OR OTHER ROUGH CUT ALLOWED FOR INMAL CUT ALONG TRENCH WALL FINAL AC EDGE SHALL BE SAWCUT AND TACK COATED PRIOR TO NEW AC PLACEMENT
 - C) AB THICKNESS PER PLANS. AB MAY BE REPLACED BY ADDITIONAL AC (50% OF REG'D AB THICKNESS).
2. TYPE 2 PATCH OPTIONAL, EXCEPT WHEN REQUIRED BY THE CITY. GRIND DEPTH "T" SHALL BE ADJUSTED TO MATCH EXISTING OVERLAY THICKNESS.
3. TYPE 3 PATCH TO BE USED WHEN SHOWN ON THE PLAN'S OR AS APPROVED BY THE ENGINEER, GENERALLY ON STREETS TO BE OVERLAYED
4. CONTROLLED LOW STRENGTH MATERIAL (CLS1V1) MAY BE USED FOR BACKFILL WITH THE PRIOR APPROVAL OF THE ENGINEER, CLSM SHALL BE IN ACCORDANCE WITH CALTRANS STANDARD SPECIFICATIONS SECTION 1 9-3. 02F.

BACKFILL

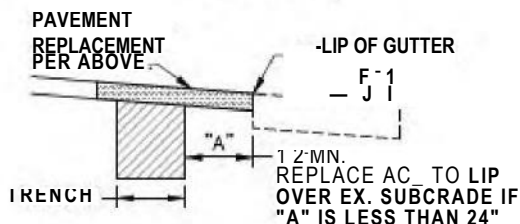
- A. OUTSIDE OF PAVED AREAS OR UN DEVELOPED AREAS.. NAT NE MATERIAL AT 15% R.C.
- B. IN THIN PAVED AREAS OR PUBLIC RIGHT-OF-WAY: CLASS II AGGREGATE BASE AT S57G R. G. OR CLSM



PIPE EMBEDMENT AND IN MAL BACKFILL PER STD Tim Lim jel PLAN 501

BACKFILL DETAIL

3" & SMALLER CONDUIT (WHEEL CUT TRENCH)

**ADJACENT TO GUTTER
SPECIAL CASIES**

Drew	NO.	Date	Revision	Appr.
OLD				
Chk: MNO				
11/11/2017				

Approved By:

Chester N. Clonara
Proctor Di Futik Wash

out: 1/17/17

STDRETA.IL
502