

**AGREEMENT BY AND BETWEEN THE CITY OF OAKLAND AND
EAST BAY MUNICIPAL UTILITY DISTRICT FOR THE PLACEMENT OF
630 TONS OF HOT-MIX ASPHALT IN THE DESIGNATED AREAS
OF LEIMERT BLVD.**

This agreement for the placement of 630 tons of hot-mix asphalt in the designated areas of Leimert Blvd. ("Agreement") is made and entered into 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 OAKLAND ("City") a municipal corporation, (collectively, "the Parties"), and shall become effective upon the date of the last required signature.

RECITALS

WHEREAS, EBMUD has constructed various underground pipeline projects in the Leimert Blvd. area on Leimert Boulevard, Bridgeview Drive, Hoover Avenue, Arden Place and Edge Drive in the City of Oakland (the EBMUD Project);

WHEREAS, the construction of the EBMUD Project necessitates restoration to the existing pavement in the area of trenching for the EBMUD Project in compliance with the Oakland Municipal Code Excavation Requirements Section 12.12 , to be completed at the expense of EBMUD;

WHEREAS, the Parties agree that EBMUD would use approximately 630 tons of asphalt in restoration of the pavement necessitated by the EBMUD Project;

WHEREAS, the City plans to complete rehabilitation of the pavement in the Leimert Blvd. area on Leimert Boulevard, Bridgeview Drive, Hoover Avenue, Arden Place and Edge Drive (the City's Rehabilitation Project);

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

WHEREAS, EBMUD has agreed to perform, and the City has agreed to accept the placement of 630 tons of hot-mix asphalt on City designated sections of Leimert Boulevard, Bridgeview Drive, and Edge Drive in complete mitigation of EBMUD's obligation for pavement restoration work necessitated by the EBMUD Project (Mitigation Paving); and

AGREEMENT

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

1. The Parties incorporate the Recitals and facts set forth above into this Agreement.

2. In complete satisfaction of EBMUD's restoration obligations as set forth in Oakland Municipal Code Section 12.12, and necessitated by the EBMUD Project, the Parties agree that EBMUD will place 630 tons of hot-mix asphalt in the areas of Leimert Blvd. designated by the City. Upon completion of placement of the 630 tons of hot-mix asphalt as contemplated by this Agreement, the City shall close all permits associated with the EBMUD Project.
3. The Parties agree the designation of the location for asphalt placement under this agreement is approximate in nature. Specific site conditions may vary from what is anticipated by the Parties and may cause more or less asphalt to be placed at any one location. The Parties agree that EBMUD's paving restoration obligation necessitated by the EBMUD Project is satisfied upon the placement of 630 tons of hot-mix asphalt and is not linked to any specific linear footage.
4. EBMUD shall perform the agreed Mitigation Paving work in a manner that conforms to the requirements of Section 12.12 of Oakland Municipal Code.
5. City shall provide a construction inspector, at City's expense, who will work with the EBMUD Paving Foreman to tabulate the tonnage of hot-mix asphalt applied pursuant to this Agreement. If City cannot timely provide an inspector, the tonnage of hot-mix asphalt applied tabulated by the EBMUD Paving Foreman will be deemed acceptable by City.
6. EBMUD will be responsible for maintenance of its Mitigation Paving work during the duration of the work. Upon completion of the Mitigation Paving, EBMUD's responsibility for maintenance of the Mitigation Paving will cease and the City will assume all maintenance obligations going forward.
7. The City shall be responsible for any pavement work in the Leimert Blvd. area that is outside of EBMUD's Mitigation Paving area, and the City shall defend and hold EBMUD harmless for any claims, cost, or causes of action that arise as a result of paving of lack of paving in the Leimert Blvd. area that is outside of EBMUD's Mitigation Paving work even if the area is within the EBMUD Project.
8. No warranty from EBMUD is required for the EBMUD Project or the Mitigation Paving work.
9. General 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.
10. 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

Si Lau, PE
City of Oakland
250 Frank H. Ogawa Plaza, Suite 4314
Oakland, CA 94612
Phone: (510) 238-3303

EBMUD

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

11. This Agreement shall be effective upon execution by the Parties
12. This Agreement may only be amended by the mutual, written agreement of both parties.
13. This Agreement contains the entire agreement between the parties with respect to the subject matter thereof and supersedes all prior understandings or agreements regarding the subject matter of this Agreement.
14. This Agreement and each of its provisions are the product of negotiations between the Parties and their respective attorneys. The Parties expressly acknowledge and agree 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.
15. 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.

16. In the performance of this Agreement, time is of the essence.

By signature below the Parties hereby agree to the terms of this Agreement.

EAST BAY MUNICIPAL UTILITY DISTRICT:

Alexander R. Coate
General Manager

Date: _____

Approved as to form

Attorney

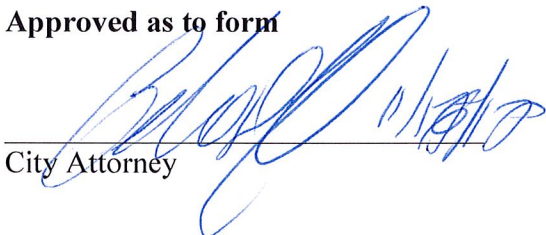
CITY OF OAKLAND:



City Administrator or Designee

Date: 11/14/2017

Approved as to form



City Attorney

Attachments:

Exhibit A: Calculation of Estimated Total Pavement Restoration Area

Reso# 86602 C.M.S.
filed 2017 Feb 2

EXHIBIT A

East Bay Municipal Utility District

CALCULATION OF THE ESTIMATED RESTORATION COST

The Estimated Project Pavement Restoration Area, the Estimated Total Pavement Restoration Area.

Estimated Project Pavement Restoration Area

Length (feet)	Width (feet)	Area (square feet, 2" depth)
3,625	13	47,125
Various	Various	3,270
Total		50,395

Estimated Total EBMUD Mitigation Paving Area

Length (feet)	Width (feet)	Area (square feet, 2" depth)
2,016	25 (average)	50,400

Assumptions:

50,400 square feet x 2 inch depth = 100,800 square inch feet asphalt = 630 tons