

COOPERATIVE AGREEMENT
BETWEEN
CITY OF FREMONT
AND
ALAMEDA COUNTY WATER DISTRICT

THIS COOPERATIVE AGREEMENT is made as of the 25th day of March, 1997, by and between the CITY OF FREMONT ("City") and the ALAMEDA COUNTY WATER DISTRICT ("Water District").

This Agreement is entered into in light of the following facts and circumstances:

1. The City has authority and responsibility under the California Health & Safety Code to regulate the generation, storage, transport, treatment and cleanup of hazardous waste and hazardous materials, including the construction and operation of underground storage tanks ("USTs").
2. The Water District is responsible for supplying water for domestic, industrial, commercial, institutional and agricultural purposes to over 285,000 residents and thousands of businesses in its service area, which includes the City and the cities of Newark and Union City (collectively, the "Tri-Cities"). The Water District overlies the Alameda Creek (Niles Cone) Groundwater Basin, a portion of DWR Basin No. 2-9.01, and obtains approximately thirty to sixty percent of its supply from water stored in this basin, depending upon seasonal and annual demand requirements.
3. The City's permitting, inspection, and monitoring activities in connection with its hazardous waste/hazardous materials regulatory programs have led to the identification of the release of such materials from leaking underground fuel tanks

("LUFT" sites) or other unauthorized releases that pollute or threaten to pollute groundwater (Spills, Leaks, Investigation, and Cleanup or "SLIC" sites). Unauthorized releases may include subsurface leaks from pipelines, sumps, etc., and surface spills from chemical handling, transfer and storage as well as from illegal waste disposal.

4. The City, the Water District and the California Regional Water Quality Control Board-San Francisco Bay Region ("Regional Board") have worked cooperatively since 1988, when the Water District expanded its groundwater protection program to include overseeing the investigation and remediation of LUFT sites and specific SLIC sites which have the potential to pollute groundwater or surface water.

5. The Regional Board has requested the Water District to continue its active involvement in groundwater protection and has entered into a Cooperative Agreement with the Water District, dated as of June 27, 1996, memorializing the terms of such continued involvement.

6. A similar agreement between the Water District and each of the Tri-Cities would further strengthen the interagency coordination and cost-effective implementation of groundwater protection within the Tri-Cities.

NOW, THEREFORE, THE PARTIES AGREE AS FOLLOWS:

1. CONTINUATION OF GROUNDWATER PROTECTION ACTIVITIES

City requests that Water District continue its oversight of the investigation and remediation of LUFT sites and SLIC sites within the City, and Water District agrees to do so, in accordance with this Cooperative Agreement.

2. SCOPE OF OVERSIGHT PROGRAM; STANDARDS AND GUIDELINES

A. Scope. The Water District shall oversee the investigation and remediation of the following sites within the boundaries of the City:

(1) all existing and future sites at which the pollution is attributable to leaks from underground fuel tanks ("LUFT sites");

(2) all existing and future sites at which the pollution is attributable to spills or leaks from structures other than underground fuel tanks when the Water District, Regional Board or City determines that groundwater quality is threatened ("SLIC sites").

A list of sites in each category within the City at which investigation and/or remediation is currently underway subject to the Water District's oversight is attached as Attachment One. The City requests and authorizes the Water District to continue its oversight activities at all sites identified on Attachment One.

City shall continue to give Water District advance notification of the scheduled removal of USTs and shall notify Water District as soon as practicable when a SLIC site has been identified where the contaminants released threaten to pollute,

or have polluted, surface water or groundwater. Water District shall notify City as soon as practicable when the results of a property assessment indicate soil and/or groundwater contamination.

B. Standards/Guidelines. The investigation and remediation of both LUFT sites and SLIC sites shall be conducted in accordance with the following authoritative statements of policy, procedure and standards, as applicable:

1. State Water Resources Control Board, State Underground Storage Tank Regulations, Corrective Action Requirements, codified at Title 23 California Code of Regulations Section 2720-2728. For purposes of this Agreement, the term "regulatory agency" in these regulations shall include the Water District.

2. State Water Resources Control Board, Resolution No. 92-49, Policies and Procedures for Investigation and Cleanup and Abatement of Discharges Under Water Code Section 13304, adopted June 18, 1992.

3. Regional Water Quality Control Board, San Francisco Bay Region, Water Quality Control Plan-San Francisco Bay Basin (Region 2), June 21, 1995, as approved by State Water Resources Control Board on June 20, 1995, particularly "Groundwater Protection and Management" at pages 4-52 through 4-65 and accompanying tables.

4. Regional Water Quality Control Board, San Francisco Bay Region, Tri-Regional Board Staff Recommendations

for Preliminary Evaluations and Investigation of Underground Tank Sites, August 10, 1990.

5. Alameda County Water District and the Cities of Fremont, Newark and Union City, Guidelines for Potential Spills, Leaks, Investigation, and Cleanup (SLIC) Sites, August 14, 1996.

The specific procedures to be followed in overseeing investigation/remediation at particular sites are contained in Attachment Two, which is intended to be consistent with each of the five documents referred to above and which is also incorporated into the Agreement between the Regional Board and the Water District. If any of the five referenced documents are subsequently modified or supplemented, the references to them in this Agreement will be deemed to include such modifications or supplements and Attachment Two will be amended as necessary to remain consistent with them.

In addition to the procedures in Attachment Two, the Water District will do the following:

- Before approving the remediation or corrective action plan for any site within the City, Water District shall require the responsible party to consult with the City's Hazardous Materials Coordinator to determine whether any additional approvals or conditions are required by the City's Fire, Building or Planning Departments.
- Before recommending a case closure to the Regional Board, or issuing a "no further action" letter for a site, Water District shall consult with the City to determine that the

closure or removal of USTs at the site was conducted in compliance with State UST regulations and the City's hazardous materials ordinances. (Consultation will not be required if the City has already issued a compliance letter to the responsible party and a copy of such letter has been sent to the Water District by City.)

3. RECORDS AND REPORTS

The Water District shall maintain the list of LUFT and SLIC sites (Attachment One) up to date by adding new sites and indicating which sites have been closed. The Water District shall also maintain a site activity/status tracking system comparable to the tracking system used by the Regional Board.

The Water District shall submit Quarterly Reports to the City summarizing the status of all LUFT and SLIC sites in the City and containing the following information for each site: name; location; lead agency; program contamination type; maximum concentrations in soil and groundwater; depth to groundwater and corrective actions taken. The Quarterly Report shall be submitted within twenty one (21) days after each calendar quarter (e.g., the report covering January 1 through March 31 shall be submitted by April 21).

The Regional Board files shall serve as the public access library for information on SLIC sites. Therefore, the Water District shall provide the Regional Board, and the City, with copies of all letters, reports and other relevant documents prepared by the Water District regarding SLIC cases in the City. It shall also require the responsible party to submit copies of

all letters and reports prepared by or for it relevant to SLIC cases to the Regional Board and the City, and the City will provide a copy of all letters and reports which it issues to the Regional Board and to the Water District.

The Water District files and those of the City shall serve as the public access libraries for information on LUFT cases. Therefore, the Water District and City shall provide each other with copies of all letters, reports and other relevant documents which they issue. The Water District shall also require the responsible party to submit copies of all letters and reports prepared by it or for it relevant to LUFT cases to the City.

4. CONSULTATION, TRAINING AND TECHNICAL ASSISTANCE

The Water District and City shall, whenever requested by the other party, consult with each other on any procedural or technical questions which may arise in the implementation of this Agreement.

The Water District and City shall make their technical resources (e.g., libraries, scientific and engineering staff) available to each other without charge for purposes of implementing this Agreement, upon request.

The Water District will notify City of training and educational programs conducted by the Regional Board relevant to soil and groundwater investigation and remediation. Specialized technical training sessions shall be provided subject to the availability of Water District staff, upon request.

Requests under this section may be made orally or in writing.

5. TERM

The term of this Agreement shall be indefinite. Either party may terminate the Agreement by delivering a written notice of election to terminate at least ninety (90) days in advance of the termination date to the other party.

6. NOTICE

Any notice required under this Agreement shall be in writing and shall be given by personal delivery or deposit in the United States mail addressed as follows:

If to the City of Fremont:

City of Fremont
39100 Liberty Street
P.O. Box 5006
Fremont, CA 94537-5006
Attn: City Manager

If to the Water District:

Alameda County Water District
43885 South Grimmer Boulevard
P.O. Box 5110
Fremont, CA 94537-5110
Attn: General Manager

7. AGREEMENT NOT A LIMITATION

Nothing in this Agreement is intended to limit the Water District's authority under Water Code Sections 31048 or 31082 or under Section 3, Section 4(c) and Section 4(g) of the Replenishment Assessment Act. Nor is anything in this Agreement intended to limit the City's authority under Chapter 6.5 et seq. of the California Health & Safety Code or Title 24, Part 9 of the

California Code of Regulations, as amended and adopted by the City.

8. ACTIVITIES ARE DISCRETIONARY

The activities contemplated herein to be taken by the City and the Water District are discretionary in that they involve the exercise of judgment and discretion, rather than merely ministerial.

9. ATTACHMENTS

Attachments One and Two are incorporated herein by this reference.

10. AMENDMENTS

This Agreement may be amended only by a writing signed by both parties.

IN WITNESS WHEREOF, the parties hereto have executed this Cooperative Agreement as of the day and year first above written by their duly authorized officers.

CITY OF FREMONT

By:

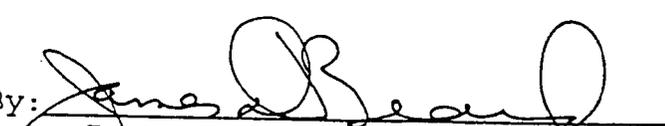


Jan Perkins
City Manager

Approved by City
Council Resolution
No. 72 dated
_____, 1997

ALAMEDA COUNTY WATER DISTRICT

By:



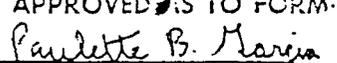
James D. Beard
General Manager

Approved by Board of
Directors Resolution
No. 97-014 dated
February 27, 1997

ATTEST:



DEPUTY CITY CLERK

APPROVED AS TO FORM

Paulette B. Garcia
Deputy City Attorney II