

COOPERATIVE AGREEMENT
BETWEEN
CITY OF UNION CITY
AND
ALAMEDA COUNTY WATER DISTRICT

THIS COOPERATIVE AGREEMENT is made as of the 24th day of April, 1997, by and between the CITY OF UNION CITY ("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 Fremont (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 Environmental Programs Manager 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 Union City:

City of Union City
34009 Alvarado-Niles Road
Union City, CA 94587-4497
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

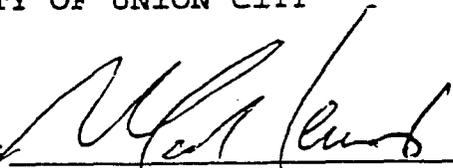
Attachments One and Two are incorporated herein by this reference.

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 UNION CITY

By: 

Mark Lewis
City Manager

Approved by City
Council Resolution
No. 4108-97 dated
August 12, 1997

ALAMEDA COUNTY WATER DISTRICT

By: 

James D. Beard
General Manager

Approved by Board of
Directors Motion 4.3
dated April 24, 1997

ATTACHMENT TWO

PROCEDURES FOR OVERSIGHT OF INVESTIGATION AND REMEDIATION OF LEAKING UNDERGROUND FUEL TANK ("LUFT") SITES AND SPILLS, LEAKS, INVESTIGATION, AND CLEANUP ("SLIC") SITES

1. IDENTIFICATION OF RELEASE; RESPONSIBLE PARTIES

The Water District is not required to undertake investigatory activities to identify releases. Rather, the Water District is normally notified of a release by one of the Tri-Cities, by the Regional Board or by other persons, including Responsible Parties.

The Water District will attempt to identify a Responsible Party ("RP"), if necessary, by conducting a review of land title records available from the County Recorder to identify the most recent owner of record. Questions of a legal nature as to the identity of a RP will be referred to the Regional Board for decision. In addition, the Water District will report to the Regional Board whenever it determines that a release site falls into one of the following categories: (1) no RP can be identified or located, (2) the apparent RP is insolvent, (3) the apparent RP refuses to take appropriate action to remedy the site, or (4) Water District is a RP or where a conflict of interest may exist for some other reason.

When the Water District is notified of a release, and is able to identify a RP, it will notify the RP of the investigation and remediation requirements.

2. PRELIMINARY SITE ASSESSMENT

The Water District shall oversee a preliminary site assessment conducted by the RP. The purpose of the preliminary site assessment is to determine the extent of existing soil contamination and whether groundwater has been affected. A preliminary site assessment includes initial site investigation, initial abatement actions, and initial site characterization and any interim remedial actions. A preliminary site assessment includes overseeing the following work:

1. Visual inspection of any tank excavation pit or ground surface;
2. Excavation and disposal or on-site treatment of contaminated backfill and contaminated native soil;
3. Removal of any pollutants floating on groundwater discovered during tank removal and soil excavation;
4. Drilling of borings or installation of groundwater monitoring wells as necessary;
5. Development of a sampling protocol which includes sample collection and preservation methods and analyses of soil and groundwater samples for the appropriate constituents.

During preliminary site assessment, the Water District shall follow procedures established by the Regional Board to verify and document information submitted by the RP.

Based on data collected and analyzed during the preliminary site assessment, the Water District, with consultation from the Regional Board as necessary, shall make a determination as to whether:

1. The LUFT or SLIC site requires emergency investigation and/or cleanup actions due to a serious impact to present beneficial uses of waters of the State.
2. The LUFT or SLIC site requires more extensive investigation and/or cleanup action due to an impact or potential impact to beneficial uses of waters of the State.
3. The LUFT or SLIC site poses a minor threat to water quality.
4. The LUFT or SLIC site has been adequately cleaned up by the RP through initial removal or remedial actions carried out during the preliminary site assessment.

Upon making this determination, the Water District shall take one of the following actions:

1. If immediate or interim remediation is warranted, provide the RP with emergency or interim remediation oversight.
2. If additional site investigation and cleanup is indicated, inform the RP and proceed with site remedial investigation and remediation oversight.
3. If pollution is to be left in place, levels of pollutants must be acceptable to the Regional Board, and the Water District shall establish a monitoring schedule.
4. If the pollution at the site has been satisfactorily abated, certify that fact and provide the Regional Board, the RP, and the appropriate City with documentation to that effect.
5. If there is no impact or potential impact to the waters of the State, recommend no further action to the RP and, if appropriate, close the case.

3. **OVERSEE REMEDIAL INVESTIGATION, REVIEW FEASIBILITY STUDY AND APPROVE CORRECTIVE ACTION PLAN**

The Water District shall oversee the remedial investigation of the site to verify the RP's determination of the hydrogeological characteristics of the site; the lateral and vertical extent of soil and/or water pollution; the sensitivity of the site, and potential threat of adverse water quality

impacts. The results of the investigation shall provide data and information to adequately characterize the pollution on and off-site, and to allow the RP to prepare a feasibility study of applicable and appropriate remedial alternatives.

A. Soil and Water Investigation

In cases where groundwater has been impacted, monitoring wells shall be properly installed and used to obtain samples to:

1. Detect any free product;
2. Define the plume of free product and dissolved constituents;
3. Monitor concentrations of pollutants dissolved in water. In cases where groundwater is impacted, the RP should be directed by the Water District to determine:
 - a. Distance to nearest surface water,
 - b. Depth to groundwater,
 - c. Direction and rate of groundwater flow,
 - d. Composition and characteristics of the subsurface soils,
 - e. Current and potential beneficial uses of underlying and contiguous surface and groundwater,
 - f. Historic, current or planned use of domestic, public and private wells and other potential vertical conduits within 1/2 mile of the site.

B. Feasibility Study

The Water District shall oversee the preparation of a feasibility study report which identifies and evaluates feasible alternatives for cleaning up the site. Cleanup options may include but are not limited to the following:

1. Leave soil pollutants in place;
2. Excavation of polluted soils;
3. Enhanced in-situ or ex-situ soil bioremediation;
4. Soil vapor extraction;
5. Air sparging in combination with soil vapor extraction;

6. Free product removal;
7. Passive or active groundwater bioremediation;
8. Groundwater extraction and treatment technologies (e.g., air stripping or granulated activated carbon adsorption).

In addition to the above cleanup options, the feasibility and necessity of the following actions should be addressed at an early stage:

1. Wellhead treatment or treatment at individual water supply hookup;
2. Replacement of water supply.

C. Corrective Action Plan

The Water District shall oversee the preparation of and approval of a correction action plan that identifies the selected remedial action alternative and establishes an implementation schedule with the details for implementation. The Water District will approve the corrective action plan after determining that implementation of the proposed cleanup will adequately contain or clean up pollutants and after consultation with the Regional Board staff, if necessary.

4. CORRECTIVE ACTION PLAN IMPLEMENTATION

The Water District shall oversee implementation of the corrective action plan. The Water District shall establish or approve a schedule for the RP to monitor, evaluate, and report the results of implementing the cleanup and ensure that copies are sent to the Regional Board and/or appropriate city. Water District will provide information to RP on securing necessary building permits from the appropriate city and discharge permits from the Regional Board or the Union Sanitary District.

5. VERIFICATION MONITORING

The Water District shall oversee periodic groundwater, post cleanup verification, or other monitoring of the site, as necessary, following remedial action (e.g., dissolved product left in place). The Water District shall conduct periodic site inspections and document all observations on the implementation of the investigation and cleanup.

6. PUBLIC PARTICIPATION

Water District will inform the public of the proposed activities in a Corrective Action Plan, and upon completion of the corrective action, as required by 23 CCR Section 2728.

7. CASE CLOSURE

A. "No Confirmed Release" Sites

For UST sites which have completed preliminary investigations during UST removal and where no evidence has been found that leakage has ever occurred (soil and/or groundwater samples are all below appropriate detection limits; no visual signs of pollution, etc.), the Water District may issue a "no further action" letter for these sites provided:

1. the USTs have been properly closed/removed as determined by the appropriate city;
2. the preliminary investigation has been completed in accordance with the Tri-Regional Board Staff Recommendations; and
3. there is no evidence that releases from USTs, associated piping and dispensers had ever occurred.

The no further action letter should state that tank closure activities have been completed, that the available information indicates no release has occurred and that no further action related to the UST is required. Copies of these letters should not be submitted to the Regional Board and the sites should not be included in the Water District's Quarterly Reports since there was no evidence of leakage at these sites and the sites will not be listed on the State's database.

B. Contaminated Soils Sites

When evaluating a closure request from the RP for LUFT and SLIC sites with confirmed release(s), the Water District may issue case closure letters where appropriate for the following situations:

1. Sites where residential or farm heating oil tanks have been properly closed and groundwater has not been impaired; or
2. Sites which fit the "Case #2 - No Further Action Required" conditions outlined in the Tri-Regional Board Staff Recommendations; or
3. Sites with limited soil contamination only and where groundwater has not been impacted (i.e., non-detectable concentrations in the groundwater).

The case closure letter will state that site investigation and soil remediation has been completed and that no further action related to the UST(s) or spill is required. A copy of this letter will be submitted to the Regional Board along with a case closure summary.

C. Contaminated Groundwater Sites

For all other LUFT and SLIC sites with confirmed groundwater pollution (i.e., a site where the groundwater has been impacted by the release), when the Water District has determined that a case closure is appropriate, the Water District shall provide a case closure recommendation letter to the Regional Board. A brief summary of the following information shall be included in the recommendation letter.

1. Site Information
2. Background History
3. Investigative Methods
4. Extent of Soil and Groundwater Contamination
5. Hydrogeology
6. Beneficial Uses
7. Remediation Activities and Effectiveness
8. Conclusions and Recommendations

The Regional Board shall determine if case closure is appropriate. If the Water District's recommendation is accepted, the Regional Board shall issue a closure letter to the RP with a copy to the Water District and the appropriate city stating that no further action is required at the site. If the site has been approved by the State Water Resources Control Board's Cleanup Fund Program for cost reimbursement, a copy of the closure letter should be sent to the Cleanup Fund Program Manager.

8. ENFORCEMENT

The Water District may, at any time it deems appropriate, submit a recommendation to the Regional Board that a cleanup and abatement order be issued pursuant to Water Code Section 13304, or other appropriate enforcement action be taken by the Regional Board. Such recommendations shall include a chronology of actions at the site, the Water District's evaluation of the site and other relevant information. The Regional Board will promptly and carefully consider the Water District recommendation and will take appropriate actions.

The Water District may also refer cases to the Alameda County District Attorney for enforcement. A copy of any such referral letters shall be sent to the Regional Board.