

(23)

San Diego Unified Port District

Document No. 56636

Filed JUN 23 2010
Office of the District Clerk**First Amendment to National Pollutant Discharge Elimination System San Diego Regional Stormwater Copermittees Memorandum of Understanding, Dated November 16, 2007**

This First Amendment to National Pollutant Discharge Elimination System San Diego Regional Stormwater Copermittees Memorandum of Understanding (MOU), dated November 16, 2007, is entered into by the County of San Diego (County), the San Diego Unified Port District (Port), the San Diego County Regional Airport Authority (Airport), and the incorporated cities of Carlsbad, Chula Vista, Coronado, Del Mar, El Cajon, Encinitas, Escondido, Imperial Beach, La Mesa, Lemon Grove, National City, Oceanside, Poway, San Diego, Santee, San Marcos, Solana Beach, and Vista (Cities), collectively called Copermittees.

RECITALS

WHEREAS, the MOU sets forth procedures for the management of funds contributed by the Copermittees to fund programs implemented in order to facilitate compliance with San Diego Regional Water Quality Control Board Order No. R9-2007-0001 (Permit); and

WHEREAS, the MOU at Section II.B.3 provides for the carry over of unused contributed funds from one fiscal year to another, but does not otherwise provide any direction regarding the refund of excess funds; and

WHEREAS, Copermittees desire to amend Section II.B.3. of the MOU to authorize the refund of funds that would otherwise only be authorized to be carried over from one fiscal year to another as a credit.

FIRST AMENDMENT

NOW THEREFORE, the Copermittees amend the MOU as follows:

1. Section II.B.3 of the MOU entitled "Management and Payment of Funds" is hereby amended and restated to read as follows:
 - a. For Regional General Programs, the Copermittees shall each pay a yearly assessment into a Regional General Program operations fund for their assigned portion of any Regional Shared Costs Budget approved pursuant to this MOU. The Regional General Program operations fund shall be managed by the Regional Principal Permittee, or any other Permittee on approval of the Copermittees.
 - b. For Watershed General Programs, the Watershed Copermittees for each WMA shall each pay a yearly assessment into a Watershed General Program operations fund for their assigned portion of any Watershed Shared Costs Budget approved pursuant to this MOU. Each Watershed General Program operations fund shall be managed by the Watershed Lead Permittee, or any other Watershed Permittee on approval of the Watershed Copermittees.
 - c. The Copermittee managing each General Program operations fund shall provide Budget Balance and Expenditure Status Reports quarterly and following the end of each fiscal year. This shall include a detailed accounting of all costs and expenses in accordance with the adopted Work Plan and Shared Costs Budget, including those incurred by Copermittees providing Working Body Support, contracting services, in-kind services, or other applicable costs.

First Amendment to National Pollutant Discharge Elimination System San Diego Regional Stormwater Copermittees Memorandum of Understanding, Dated November 16, 2007

d. Each Copermittee shall pay invoices within 60 days of receipt from the Copermittee managing the applicable General Program operations fund.

e. Funds collected and not expended in any fiscal year shall be credited to the Copermittees' share of the next fiscal year's costs in accordance with the Copermittees' defined shared costs.

f. Copermittees providing Working Body Support, Contract Administration, in-kind services, or incurring other budgeted costs on behalf of other Copermittees shall provide documentation of those expenses as requested by the Copermittee managing the applicable General Program operations fund. They shall only receive credit for those expenses if a detailed accounting of all costs and expenses meeting the minimum standards agreed upon by the Copermittees has been provided.

g. Differences in the approved actual cost of expenses from those budgeted shall be either credited or added as appropriate to the amount of the Copermittee's share. In the event that any Copermittees' share of the next fiscal year's costs is less than the amount to be credited, the difference shall be refunded to the Copermittee. This provision shall be retroactive to include credits from FY 2008-09. Refunds shall be provided to Copermittees no later than 90 days after final accounting.

h. At its discretion, a Copermittee managing a General Program operations fund may, prior to the completion of a fiscal year, make payment to any Copermittee providing Working Body Support, Contract Administration, in-kind services, or incurring other budgeted expenditures on behalf of other Copermittees so long as all of the conditions of Section II. B.3.f above have been satisfied and there are sufficient funds available to make a payment without requiring additional contributions or jeopardizing program objectives. If for some reason excess payment is made, the Copermittee receiving the payment agrees to return the additional payment without any recourse against the managing Copermittee.

2. Effect of Amendment

2.1 This Amendment to National Pollutant Discharge Elimination System, San Diego Regional Stormwater Copermittees, Memorandum of Understanding shall be effective and binding on all parties hereto commencing upon the date the last party executes the First Amendment to MOU.

2.2 This First Amendment to MOU may be executed in counterparts and the signed counterparts shall constitute a single instrument.

First Amendment to National Pollutant Discharge Elimination System San Diego Regional Stormwater Copermittees Memorandum of Understanding, Dated November 16, 2007

2.3 Except as hereinabove amended, the National Pollutant Discharge Elimination System, San Diego Regional Stormwater Copermittees, Memorandum of Understanding shall remain in full force and effect. In the event of a conflict between the provisions of the MOU and those of this Amendment, this Amendment shall control.


IN WITNESS Thereof, this First Amendment to MOU is executed as follows:

COUNTY OF SAN DIEGO

Dated: _____

4/6/2010

By: _____


JOHN L. SNYDER, Director
Department of Public Works

First Amendment to National Pollutant Discharge Elimination System San Diego Regional Stormwater Copermittees Memorandum of Understanding, Dated November 16, 2007

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IN WITNESS Thereof, this First Amendment to MOU is executed as follows:

SAN DIEGO UNIFIED PORT DISTRICT

Dated: June 11, 2010

By: 

E. David Merk, Director
Environmental Services Department



First Amendment to National Pollutant Discharge Elimination System San Diego Regional Stormwater Copermittees Memorandum of Understanding, Dated November 16, 2007

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IN WITNESS Thereof, this First Amendment to MOU is executed as follows:

Dated:

30 June 2010

By:

Thella F. Bowens

Thella F. Bowens
President/CEO

San Diego County Regional Airport Authority, Copermittee

APPROVED AS TO FORM:

MAY 25, 2010

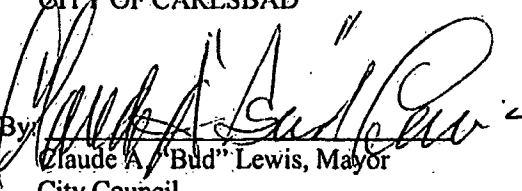
Amy S. Gonzalez
Amy S. Gonzalez, Director/Counsel Services

First Amendment to National Pollutant Discharge Elimination System San Diego Regional Stormwater Copermittees Memorandum of Understanding, Dated November 16, 2007

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IN WITNESS Thereof, this First Amendment to MOU is executed as follows:

Dated: May 11, 2010

CITY OF CARLSBAD
By: 
Claude A. "Bud" Lewis, Mayor
City Council

Approved as to form:


Deputy City Attorney

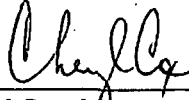
First Amendment to National Pollutant Discharge Elimination System San Diego Regional Stormwater Copermittees Memorandum of Understanding, Dated November 16, 2007

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IN WITNESS Thereof, this First Amendment to MOU is executed as follows:

CITY OF CHULA VISTA

Dated: 3/25/10

By: 
Cheryl Cox, Mayor


First Amendment to National Pollutant Discharge Elimination System San Diego Regional Stormwater Copermittees Memorandum of Understanding, Dated November 16, 2007

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IN WITNESS Thereof, this First Amendment to MOU is executed as follows:

CITY OF CORONADO

Dated: April 20, 2010

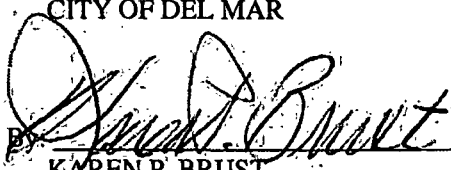
By: 
Scott W. Huth, Director
Department of Public Services

First Amendment to National Pollutant Discharge Elimination System San Diego Regional Stormwater Copermittees Memorandum of Understanding, Dated November 16, 2007

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IN WITNESS Thereof, this First Amendment to MOU is executed as follows:

Dated: 4/22/10

CITY OF DEL MAR

BY KAREN P. BRUST
City Manager

First Amendment to National Pollutant Discharge Elimination System San Diego Regional Stormwater Copermittees Memorandum of Understanding, Dated November 16, 2007

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IN WITNESS Thereof, this First Amendment to MOU is executed as follows:

CITY OF EL CAJON

Dated: 5.5.10

By: Kathi Henry
Kathi Henry, City Manager


First Amendment to National Pollutant Discharge Elimination System San Diego Regional Stormwater Copermittees Memorandum of Understanding, Dated November 16, 2007

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IN WITNESS Thereof, this First Amendment to MOU is executed as follows:

CITY OF ENCINITAS

Dated: 5-24-10

By: 
Phil Cotton, City Manager

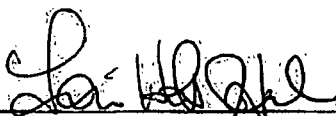
First Amendment to National Pollutant Discharge Elimination System San Diego Regional Stormwater Copermittees Memorandum of Understanding, Dated November 16, 2007

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IN WITNESS Thereof, this First Amendment to MOU is executed as follows:

CITY OF ESCONDIDO

Dated: 5-25-10

By: 
Lori Holt Pfeller, Mayor

Dated: 5-25-10

By: 
Marsha Whalen, City Clerk

56636

First Amendment to National Pollutant Discharge Elimination System San Diego Regional Stormwater Copermittees Memorandum of Understanding, Dated November 16, 2007

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IN WITNESS Thereof, this First Amendment to MOU is executed as follows:

CITY OF IMPERIAL BEACH

Dated: 5/6/11

By: Nary Brown, City Manager
[Name, Title]
[Department]

First Amendment to National Pollutant Discharge Elimination System San Diego Regional Stormwater Copermittees Memorandum of Understanding, Dated November 16, 2007

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IN WITNESS Thereof, this First Amendment to MOU is executed as follows:

Dated: 5/3/10

By: Art Madrid

City Of La Mesa, Copermittee

First Amendment to National Pollutant Discharge Elimination System San Diego Regional Stormwater Copermittees Memorandum of Understanding, Dated November 16, 2007

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IN WITNESS Thereof, this First Amendment to MOU is executed as follows:

CITY OF LEMON GROVE

Dated: May 11, 2010

By: 
Graham Mitchell, City Manager

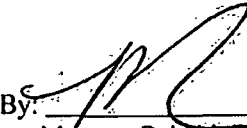
First Amendment to National Pollutant Discharge Elimination System San Diego Regional Stormwater Copermittees Memorandum of Understanding, Dated November 16, 2007

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IN WITNESS Thereof, this First Amendment to MOU is executed as follows:

CITY OF NATIONAL CITY

Dated: 6-7-10

By: 
Maryam Babaki, Director of Development
Services/City Engineer

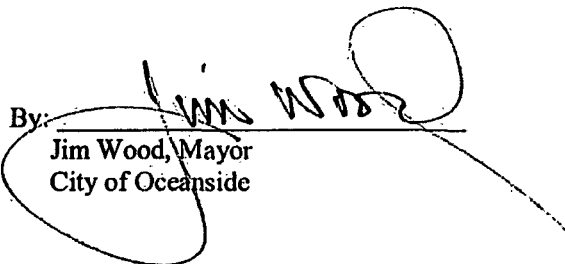
First Amendment to National Pollutant Discharge Elimination System San Diego Regional Stormwater Copermittees Memorandum of Understanding, Dated November 16, 2007


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IN WITNESS Thereof, this First Amendment to MOU is executed as follows:

CITY OF OCEANSIDE

Dated: _____

By: 
Jim Wood, Mayor
City of Oceanside

APPROVED AS TO FORM
OCEANSIDE CITY ATTORNEY

BARBARA L. HAMILTON
Assistant City Attorney

First Amendment to National Pollutant Discharge Elimination System San Diego Regional Stormwater Copermittees Memorandum of Understanding, Dated November 16, 2007

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IN WITNESS Thereof, this First Amendment to MOU is executed as follows:

CITY OF POWAY

Dated: 4/12/10

By:


Robert J. Manis
Director of Development Services

First Amendment to National Pollutant Discharge Elimination System San Diego Regional Stormwater Copermittees Memorandum of Understanding, Dated November 16, 2007

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IN WITNESS Thereof, this First Amendment to MOU is executed as follows:

CITY OF SAN DIEGO

Dated: 6/15/10

By: Hildred Pepper Jr.
Hildred Pepper Jr.
Purchasing & Contracting
Director

First Amendment to National Pollutant Discharge Elimination System San Diego Regional Stormwater Copermittees Memorandum of Understanding, Dated November 16, 2007

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IN WITNESS Thereof, this First Amendment to MOU is executed as follows:

CITY OF SANTEE

Dated: 5/3/10

By: 

[Name, Title]

[Department]

Keith Till
City Manager
City Manager's Office

First Amendment to National Pollutant Discharge Elimination System San Diego Regional Stormwater Copermittees Memorandum of Understanding, Dated November 16, 2007

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IN WITNESS Thereof, this First Amendment to MOU is executed as follows:

CITY OF SAN MARCOS

Dated: _____

4/7/10

By: _____



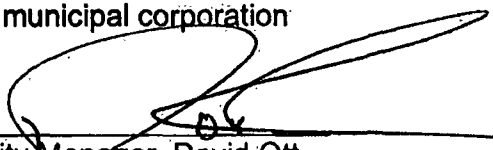
Paul Malone, City Manager

First Amendment to National Pollutant Discharge Elimination System San Diego Regional Stormwater Copermittees Memorandum of Understanding, Dated November 16, 2007

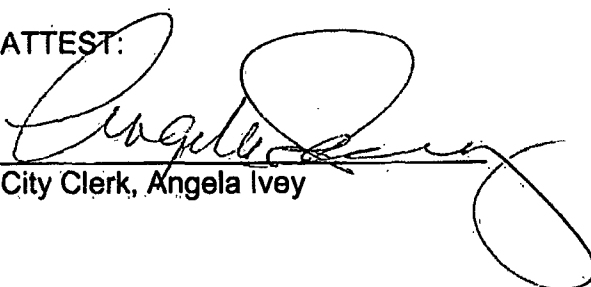
2.3 Except as hereinabove amended, the National Pollutant Discharge Elimination System, San Diego Regional Stormwater Copermittees, Memorandum of Understanding shall remain in full force and effect. In the event of a conflict between the provisions of the MOU and those of this Amendment, this Amendment shall control.

IN WITNESS Thereof, this First Amendment to MOU is executed as follows:

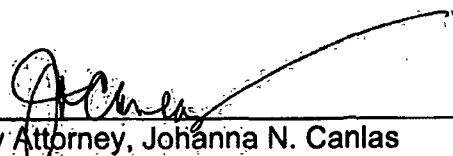
CITY of SOLANA BEACH,
a municipal corporation


City Manager, David Ott

ATTEST:


City Clerk, Angela Ivey

APPROVED AS TO FORM:


City Attorney, Johanna N. Canlas

First Amendment to National Pollutant Discharge Elimination System San Diego Regional Stormwater Copermittees Memorandum of Understanding, Dated November 16, 2007

2.3 Except as hereinabove amended, the National Pollutant Discharge Elimination System, San Diego Regional Stormwater Copermittees, Memorandum of Understanding shall remain in full force and effect. In the event of a conflict between the provisions of the MOU and those of this Amendment, this Amendment shall control.

IN WITNESS Thereof, this First Amendment to MOU is executed as follows:

CITY OF VISTA

Dated:

May 5, 2010

By:

Rita Geldert

Rita Geldert
City Manager

Re Authorization to Enter Into]
]
First Amendment to Memorandum]
]
of Understanding With Respect to]
]
Compliance with National Pollutant]
]
Discharge Elimination System]
]
Stormwater Permit Regulations]
_____]

RESOLUTION 2010-91

WHEREAS, pursuant to Resolution 2007-205, adopted 11 December 2007, the Executive Director of the District or his authorized representative was authorized and directed to enter into a Memorandum of Understanding (MOU), on behalf of the District, by and between the County of San Diego, the San Diego County Regional Airport Authority, and the Cities of San Diego, Carlsbad, Chula Vista, Coronado, Escondido, Imperial Beach, La Mesa, San Marcos, Del Mar, El Cajon, Encinitas, Lemon Grove, National City, Oceanside, Poway, Santee, Solana Beach and Vista, (Copermittees) to permit the District to act as a Copermittee and cooperate in the implementation of various Urban Runoff Management Plans, said MOU is on file in the office of the District Clerk as Document No. 52689; and

WHEREAS, said MOU sets forth procedures for the management of funds contributed by the Copermittees to fund programs implemented in order to facilitate compliance with San Diego Regional Water Quality Control Board Order No. R9-2007-0001; and

WHEREAS, said MOU, at Section II.B.3, provides for the carry over of unused contributed funds from one fiscal year to another, but does not otherwise provide any direction regarding the refund of excess funds; and

2010-91

WHEREAS, Copermittees desire to amend said Section II.B.3 of said MOU to authorize the refund of funds that would otherwise only be authorized to be carried over from one fiscal year to another as a credit; NOW, THEREFORE,

BE IT RESOLVED by the Board of Port Commissioners of the San Diego Unified Port District, as follows:

1. That the Executive Director of the District or his authorized representative is hereby authorized and directed to enter into a First Amendment to National Pollutant Discharge Elimination System San Diego Regional Stormwater Copermittees Memorandum of Understanding, on behalf of the District, by and between the County of San Diego, the San Diego County Regional Airport Authority, and the Cities of San Diego, Carlsbad, Chula Vista, Coronado, El Cajon, Escondido, Imperial Beach, La Mesa, San Marcos, Del Mar, Encinitas, Lemon Grove, National City, Oceanside, Poway, Santee, Solana Beach and Vista, to provide for the amendment of said Section II.B.3 entitled "Management and Payment of Funds", said MOU shall be placed on file in the office of the District Clerk.

2. That said First Amendment to MOU shall be effective and binding on all parties thereto commencing upon the date the last party executes said First Amendment.

ADOPTED this 8th day of June, 2010.

sw
6/8/10

AGENDA ITEM 17**SAN DIEGO UNIFIED PORT DISTRICT** **Reference Copy**
Document No. 56636

DATE: June 8, 2010

SUBJECT: RESOLUTION AUTHORIZING AN AMENDMENT TO THE MEMORANDUM OF UNDERSTANDING BETWEEN THE SAN DIEGO REGIONAL CO-PERMITTEES TO PROVIDE THE ABILITY TO REFUND COSTS FOR DEVELOPING REGIONAL ACTIVITIES REQUIRED UNDER THE MUNICIPAL STORMWATER PERMIT

EXECUTIVE SUMMARY:

On January 24, 2007, the Regional Water Quality Control Board (RWQCB) reissued the San Diego County Municipal Storm Water Permit and adopted Order No. R9-2007-0001 (NPDES No. CAS0108758). The Permit required the 21 Copermittees in the County to cooperate and coordinate on several Permit-required regional programs and execute a Memorandum of Understanding (MOU). The MOU is required to ensure Copermittees are in compliance with the Permit and it establishes the responsibilities of each Copermittee.

The MOU has a cost-share formula that identifies each Copermittee's share of regional costs for monitoring, education, and other required collaborative efforts. As lead Copermittee, the County of San Diego (County) assumes the responsibility for managing the MOU and regional Copermittee budget and invoicing all Copermittees. The District's portion of the regional shared-cost is 0.8% of the total Copermittee cost or approximately \$25,000 annually. The Board of Port Commissioners authorized this MOU at the December 11, 2007, Board Meeting.

The MOU sets forth procedures for the management of Copermittee funds to facilitate compliance with the Permit, but does not otherwise provide any direction regarding the refund of excess funds. The purpose of this MOU Amendment is to allow Copermittees to be reimbursed directly for expenditures incurred on behalf of regional program development. Approval of the MOU Amendment will enable the District to be credited \$25,385 for its annual regional cost and also receive \$25,337 as a refund for expenditures above its Copermittee contribution during FY 2008-2009.

RECOMMENDATION:

Resolution authorizing an amendment to the Memorandum of Understanding between the San Diego Regional Copermittees to share costs and program responsibilities for activities required under the Municipal Stormwater Permit.

FISCAL IMPACT:

It is estimated that the District's contribution to the Copermittee regional costs is \$25,000 annually. This accounts for 0.8% of the total Copermittee regional cost. Funds are allocated in Environmental Services' annual budgets for these costs (660170).

This MOU amendment will enable the District to be credited for costs associated with regional expenditures up to its annual contribution and also be refunded for expenses that exceed the annual contributions. As such, there could be a reduction of District expenditures (i.e. cost savings) for conducting portions of the Copermittee regional work.

For 2008-2009, the District will be credited \$25,385 for its annual regional cost and also receive \$25,337 as a refund for expenditures above its Copermittee contribution. In the future, the actual amount of annual cost savings will be directly related to the amount of District effort expended on regional Copermittee programs.

COMPASS STRATEGIC GOALS:

The proposed Amendment is consistent with our environmental stewardship goals as storm water management will help protect and improve environmental conditions in the bay. It also assists in continuing to be a high performance organization by enabling the Port to participate in the development of regional stormwater efforts. Therefore, this agenda item supports the following Strategic Goal(s).

- ☐ Promote the Port's maritime industries to stimulate regional economic vitality.
- ☐ Enhance and sustain a dynamic and diverse waterfront.
- ☒ Protect and improve the environmental conditions of San Diego Bay and the Tidelands.
- ☐ Ensure a safe and secure environment for people, property and cargo.
- ☐ Develop and maintain a high level of public understanding that builds confidence and trust in the Port.
- ☒ Develop a high-performing organization through alignment of people, process and systems.
- ☐ Strengthen the Port's financial performance.
- ☐ Not applicable.

DISCUSSION:

The MOU, approved by the District at the December 11, 2007, BPC meeting, allows the County to invoice the District for its share of annual joint storm water program costs based upon an agreed upon cost-share formula. The joint costs include the annual Permit fee, the annual wet weather monitoring program, the regional education program, and the development of regional workgroups and regional deliverables.

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Based on the cost allocation criteria in the MOU, the District is responsible for providing approximately 0.8% of the total annual shared costs, estimated to be \$25,000 to \$30,000 annually.

The MOU requires that each Copermittee take a leadership role in a least one of multiple regional workgroups and/or activities. It also acknowledges that, as regional work products are developed, those Copermittees expending costs or staff efforts to develop such products be credited costs for their efforts. During 2008-2009, District staff led, or assisting in leading two regional efforts that resulted in staff time and consultant expenditures totaling \$50,722.

As initially written and approved, the MOU provided for the carry over of unused contributed funds from one fiscal year to another, but did not otherwise provide any direction regarding the refund of excess funds. In the case of the District, the funds expended exceeded what it could be credited. As such, the County recognized the need to amend Section II.B.3. of the MOU to authorize the refund of funds that would otherwise only be authorized to be carried over from one fiscal year to another as a credit.

This MOU amendment enables the District to be credited for its full regional Copermittee cost share (\$25,385) and also receive a \$25,337 refund of funds to cover the remaining portion of costs allocated toward 2008-2009 regional efforts. It will also enable future refund of funds if District work toward its regional commitment exceeds its annual contribution.

District staff is recommending that the Board authorize the MOU Amendment to enable \$25,337 to be refunded to the District for this FY and to allow for future reimbursements when necessary.

Port Attorney's Comments:

The Port Attorney has reviewed and approved the requested document for form and legality.

Environmental Review:

This proposed Board action is not a "project" and, therefore, is not subject to the California Environmental Quality Act (CEQA).

Equal Opportunity Program:

Not applicable.

PREPARED BY: Karen Holman, Senior Environmental Specialist
Environmental Services Department