

## Attachment B to Agenda File No. 2022-0198

**AGREEMENT FOR AMENDMENT OF CONDITIONAL AGREEMENT  
AMENDMENT NO. 6**

THIS AGREEMENT FOR AMENDMENT OF CONDITIONAL AGREEMENT AMENDMENT NO. 6 ("Amendment No. 6"), made and entered into this \_\_\_\_ day of September, 2022, by and between the SAN DIEGO UNIFIED PORT DISTRICT, a public corporation, ("District,"), and MITSUBISHI CEMENT CORPORATION, a Delaware corporation, ("MCC"), District and MCC are herein collectively referred to as "Parties" or at times, individually referred to as "Party."

**WITNESSETH:**

WHEREAS, the Parties, on the 11<sup>th</sup> day of June, 2015, entered into a Conditional Agreement ("Agreement") for the potential leasing of three bays within Warehouse C, a structure within District jurisdiction located on the Tenth Avenue Marine Terminal on certain tidelands in the city of San Diego, California, which Agreement is on file in the Office of the Clerk of Lessor bearing Document No. 63721; and

WHEREAS, the Parties, on the 17<sup>th</sup> day of October, 2017, entered into Agreement for Amendment of Conditional Agreement, Amendment No. 1 ("Amendment No.1"), to extend the term of the Agreement and to include the potential to lease an additional bay within Warehouse C bringing the total potential bay count to four bays, which Amendment No. 1 is on file in the Office of the District Clerk bearing Document No. 67407; and

WHEREAS, the Parties, on the 6<sup>th</sup> day of September, 2018, entered into Agreement for Amendment of Conditional Agreement, Amendment No. 2 ("Amendment No. 2"), to clarify the terms by which MCC may exercise Term Extension One, which Amendment No. 2 is on file in the Office of the District Clerk bearing Document No. 68890; and

WHEREAS, MCC exercised Term Extension One to extend the Term by six months from January 1, 2019 through June 30, 2019; and

WHEREAS, the Parties, on the 29<sup>th</sup> day of March, 2019, entered into Agreement for Amendment of Conditional Agreement, Amendment No. 3 (Amendment No. 3), to extend the term of the Agreement by one year through June 30, 2020, which Amendment No. 3 is on file in the Office of the District Clerk bearing Document No. 69782; and

WHEREAS, MCC exercised Term Extension Two to extend the term by one year from July 1, 2019 through June 30, 2020; and

WHEREAS, the Parties, on the 26<sup>th</sup> day of March, 2020 entered into Agreement for Amendment of Conditional Agreement, Amendment No. 4 (Amendment No. 4) to extend the term of the Agreement by one year, through June 30, 2021, which Amendment No. 4 is on file in the Office of the District Clerk bearing Document No. 71073; and

WHEREAS, MCC exercised Term Extension Three to extend the term by six months from July 1, 2020 to December 31, 2020; and

WHEREAS, MCC exercised Term Extension Four to extend the term by six months from January 1, 2021 through June 30, 2021; and

WHEREAS, the Parties, on the 30<sup>th</sup> day of March, 2021 entered into Agreement for Amendment of Conditional Agreement, Amendment No. 5 (Amendment No. 5) to extend the term of the Agreement by up to eighteen months, through December 31, 2022, which Amendment No. 5 is on file in the Office of the District Clerk bearing Document No. 72395; and

WHEREAS, MCC exercised Term Extension Five to extend the term by one year from July 1, 2021 through June 30, 2022; and

WHEREAS, the District extended the Term of the Agreement for an additional six months through December 31, 2022; and

WHEREAS, MCC has submitted an application with the District for a development project ("Project") as contemplated in the Agreement and the District has started the environmental review in accordance with the California Environmental Quality Act ("CEQA") for the Project; and

WHEREAS, at the December 8, 2020 Board of Port Commissioners ("Board") meeting, the Board considered the Project, continued the item and in general, gave feedback that the use of zero-emission ("ZEV") trucks should be required for the project with "off-ramps"; and

WHEREAS, District and MCC have worked diligently to complete environmental review in accordance with CEQA and to address ZEV truck usage and emissions reductions for the Project, but additional time is required to complete the environmental review process, create an emissions reduction plan and certify the Final Subsequent Environmental Impact Report; and

WHEREAS, District and MCC desire to extend the Agreement in order to allow time for the parties to develop an emissions reduction plan that includes the phased implementation of zero emission trucks into MCC's operations at Tenth Avenue Marine Terminal ("TAMT"); and

WHEREAS, the Parties are mutually desirous of further amending said Agreement;

NOW THEREFORE, for valuable consideration, said Agreement is hereby amended in the following respects and no others, and except as expressly amended, all terms, covenants and conditions of said Agreement shall remain in full force and effect:

A. SAID AGREEMENT IS HEREBY AMENDED BY ADDING PARAGRAPH 2.6 "TERM EXTENSION SIX" TO READ AS FOLLOWS:

MCC shall have the right to extend the Term of this Agreement by twelve (12) months from January 1, 2023 through December 31, 2023 ("Term Extension Six") provided that the following conditions have been met: (i) on or before 5:00 PM on September 30, 2022, MCC shall provide written notification to the District of its intent to exercise Term Extension Six.

**IN WITNESS WHEREOF**, the Parties hereto have executed this Amendment No. 6 as of the day and the year first above written.

APPROVED AS TO FORM AND LEGALITY  
GENERAL COUNSEL

By: Rebecca Harrington  
Assistant/Deputy

**SAN DIEGO UNIFIED PORT DISTRICT**

By: \_\_\_\_\_  
Anthony Gordon  
Director, Real Estate

**MITSUBISHI CEMENT CORPORATION,  
a Delaware corporation**

By: Austin Marshall  
Signature

PRINT NAME: Austin Marshall

PRINT TITLE: President/COO

