

DRAFT

SAN DIEGO UNIFIED PORT DISTRICT

ORDINANCE XXXX

**ORDINANCE GRANTING AMENDMENT NO. 5 TO
CONDITIONAL AGREEMENT WITH MITSUBISHI
CEMENT CORPORATION TO EXTEND THE TERM
OF THE CONDITIONAL AGREEMENT TO ALLOW
ADDITIONAL TIME TO DEVELOP A ZERO
EMISSION VEHICLE STRATEGY FOR THE
PROPOSED CEMENT IMPORT TERMINAL IN
WAREHOUSE C AT THE TENTH AVENUE MARINE
TERMINAL, IN SAN DIEGO**

WHEREAS, the San Diego Unified Port District (District) is a public corporation created by the Legislature in 1962 pursuant to Harbors and Navigation Code Appendix I (Port Act); and

WHEREAS, Section 87(b) of the Port Act grants authority to the District to lease the tidelands or submerged lands, or parts thereof, for limited periods, not exceeding 66 years, for purposes consistent with the trusts upon which those lands are held, by the State of California; and

WHEREAS, Section 21(e) requires that all grants, franchises, leases, permits, rights, or privileges for more than five years shall be made by ordinance; and

WHEREAS, Mitsubishi Cement Corporation (MCC) is majority owned by Mitsubishi Materials, the second largest producer of cement in Japan, and is a vertically integrated cement manufacturer; and

WHEREAS, MCC desires to construct, own and operate a cement import terminal at the District's Tenth Avenue Marine Terminal (TAMT) to supply the San Diego market (Project); and

WHEREAS, on June 11, 2015, the Board of Port Commissioners (BPC) adopted an ordinance granting a Conditional Agreement to MCC to construct and operate a cement import terminal in up to three bays in Warehouse C at TAMT; and

WHEREAS, the original term of the Conditional Agreement was to expire on June 30, 2018; and

WHEREAS, on September 12, 2017, the BPC adopted an ordinance granting Amendment No. 1 to the Conditional Agreement (Amendment No. 1) to

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extend the term of the Conditional Agreement and update the business terms to allow MCC to increase the size of the leased premises from three bays (150,000 square feet) to a potential of four bays (200,000 square feet) so that MCC may either import a second type of product (slag or fly ash) or import larger volumes of cement; and

WHEREAS, Amendment No. 1 extended the term of the Conditional Agreement through December 31, 2018 and included one, six-month option to extend the term through June 30, 2019; and

WHEREAS, Amendment No. 2 to the Conditional Agreement was administratively executed on September 6, 2018 pursuant to the BPC Policy No. 355 to clarify the terms by which MCC would be allowed to exercise their six-month option to extend through June 30, 2019; and

WHEREAS, on February 25, 2019, the BPC adopted an ordinance granting Amendment No. 3 to the Conditional Agreement to extend the term by one year, through June 30, 2020 to allow time to process the Environmental Impact Report (EIR) in accordance with the California Environmental Quality Act (CEQA); and

WHEREAS, on February 11, 2020, the BPC adopted an ordinance granting Amendment No. 4 to the Conditional Agreement to extend the term by one year, through June 30, 2021, by providing MCC two, six-month options to allow time to process the EIR in accordance with CEQA; and

WHEREAS, staff and MCC have been working diligently to complete the SEIR for the MCC project that “tiers-off” the Tenth Avenue Marine Terminal Redevelopment Plan and Demolition and Initial Rail Component Program EIR (TAMT EIR); and

WHEREAS, the Draft SEIR was available for a 57-day public review period which ended on February 14, 2020; and

WHEREAS, on December 8, 2020, the BPC considered the certification of the Final SEIR, issuance of a Non-Appealable Coastal Development Permit (CDP), and resolution granting concept approval for the project and other related items (Agenda File 2020-0255); and

WHEREAS, the BPC continued the item with direction to staff to work with MCC on a zero-emission truck plan (ZE Truck Plan) that would require a specific percentage of trucks that call on the MCC facility at TAMT to be zero emission by specific dates and increase their usage through the lease term and may include well defined “off-ramps” should the inclusion of zero emission trucks be found infeasible; and

WHEREAS, the proposed Amendment No. 5 to the Conditional Agreement

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(Amendment No. 5) would extend the term of the Conditional Agreement by twelve months through June 30, 2022 to allow additional time to develop a ZE Truck Plan to be incorporated into future MCC operations, complete the EIR process, and fulfill the remaining conditions precedent; and

WHEREAS, Amendment No. 5 would also provide the Executive Director the ability to extend the Conditional Agreement in his sole discretion by an additional six months (until December 31, 2022) if the SEIR has not been certified by the BPC by December 31, 2021, to allow additional time to develop the ZE Truck Plan given the complexity of incorporating zero emission trucks into MCC customer's operations and the rapidly changing zero emission market and technology; and

WHEREAS, the proposed ordinance granting Amendment No. 5 would only extend the term of the Conditional Agreement because the Final SEIR, CDP, and project conceptual approval would still need to be considered and ultimately granted by the BPC at a future public BPC meeting in order for the project to move forward and operations to begin; and

WHEREAS, the Conditional Agreement and the proposed Amendment No. 5 are consistent with the TAMT Redevelopment Plan, which focusses on the development of three distinct cargo nodes within the terminal: refrigerated cargo, dry bulk cargo and ro-ro (roll on–roll off)/project cargo; and

WHEREAS, MCC's potential tenancy at TAMT would provide the District a strong anchor tenant within the dry bulk cargo node, with a vertically integrated business model that puts it in a strong position to capture the rebound in the construction industry; and

WHEREAS, staff recommends adopting an ordinance granting Amendment No. 5 to the Conditional Agreement.

NOW THEREFORE, the Board of Port Commissioners of the San Diego Unified Port District does ordain as follows:

Section 1. The Amendment No. 5 to the Conditional Agreement with Mitsubishi Cement Corporation to extend the term of the Conditional Agreement to allow additional time to develop a zero emission vehicle strategy for the Proposed Cement Import Terminal in Warehouse C at the Tenth Avenue Marine Terminal in San Diego is hereby accepted and approved.

Section 2. The Executive Director or his designated representative is hereby authorized to execute said Amendment No. 5 to the Conditional Agreement.

Section 3. This Ordinance shall take effect on the 31st day from its

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passage by the Board of Port Commissioners.

APPROVED AS TO FORM AND LEGALITY:
GENERAL COUNSEL

By: Assistant/Deputy

PASSED AND ADOPTED by the Board of Port Commissioners of the San Diego Unified Port District, this 11th day of February 2021, by the following vote: