

DRAFT

SAN DIEGO UNIFIED PORT DISTRICT

ORDINANCE XXXX

**ORDINANCE GRANTING AMENDMENT NO. 6 TO
THE CONDITIONAL AGREEMENT WITH
MITSUBISHI CEMENT CORPORATION TO EXTEND
THE TERM OF THE CONDITIONAL AGREEMENT
FOR THE PROPOSED CEMENT IMPORT
TERMINAL IN WAREHOUSE C AT THE TENTH
AVENUE MARINE TERMINAL, IN SAN DIEGO FOR
AN ADDITIONAL 12 MONTHS TO DECEMBER 31,
2023**

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, MCC's ability to source, ship, receive and distribute cement through its own entities would make MCC a strong maritime anchor tenant at TAMT and aligns with the District's long-term vision of terminal operation; 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

20xx-xxx

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 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, the Conditional Agreement was subsequently amended by Amendment No. 2, Amendment No. 3, Amendment No. 4 and Amendment No. 5 to extend the term of the Conditional Agreement to allow time to process the Subsequent Environmental Impact Report (SEIR) in accordance with the California Environmental Quality Act (CEQA) and allow MCC to complete the remaining conditions precedent; 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, on December 19, 2019, the District released for public review the Draft SEIR, “Mitsubishi Cement Corporation at Warehouse C: Bulk Cement Warehouse and Loading Facility,” which 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), 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.

WHEREAS, the ZE Truck Plan may include well defined “off-ramps” should the inclusion of zero emission trucks be found infeasible; and

WHEREAS, Amendment No. 6 to the Conditional Agreement (Amendment No. 6) would extend the term of the Conditional Agreement by twelve months through December 31, 2023 to allow additional time to develop an emissions reduction plan that would include a commitment to incorporate zero emission trucks into operations, complete the EIR process, and fulfill the remaining conditions precedent; and

20xx-xxx

WHEREAS, the proposed BPC action granting Amendment No. 6 would only extend the term of the Conditional Agreement; and

WHEREAS, the Final SEIR, CDP, and project conceptual approval would still need to be considered and ultimately granted by the BPC at a future public meeting in order for the project to move forward and operations to begin; and

WHEREAS, the Conditional Agreement and the proposed Amendment No. 6 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 breakbulk/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. 6 to the Conditional Agreement.

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

Section 1. Amendment No. 6 to the Conditional Agreement with Mitsubishi Cement Corporation to Extend the Term of the Conditional Agreement for the Proposed Cement Import Terminal in Warehouse C at the Tenth Avenue Marine Terminal, in San Diego for an Additional 12 Months to December 31, 2023 is hereby accepted and approved.

Section 2. The Executive Director or his designated representative is hereby directed to execute said Amendment No. 6 to the Conditional Agreement.

Section 3. This Ordinance shall take effect on the 31st day from its 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 9th day of August 2022, by the following vote: