

DRAFT**SAN DIEGO UNIFIED PORT DISTRICT****ORDINANCE XXXX****ORDINANCE GRANTING AMENDMENT NO. 3 TO
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**

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 supplier of concrete; and

WHEREAS, MCC desires to construct, own and operate a cement import terminal at the District's Tenth Avenue Marine Terminal (TAMT) to supply its San Diego market; 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 operations; 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 Conditional Agreement outlines the framework necessary for MCC to obtain the appropriate entitlements for operation of a cement import

20xx-xxx

terminal and expires on June 30, 2018; and

WHEREAS, if MCC meets the conditions set forth in the Conditional Agreement, a lease would be granted to MCC; 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, Amendment No. 1 extended the term of the Conditional Agreement through December 31, 2018 and included one (1), six (6)-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, staff is now recommending adopting an ordinance granting Amendment No. 3 to the Conditional Agreement (Amendment No. 3) to extend the term of the Agreement for one year from July 1, 2019 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, a condition precedent to the Conditional Agreement requires MCC to pay for the preparation of the appropriate CEQA document, which for this project has been determined to be a Subsequent EIR that “tiers-off” the Tenth Avenue Marine Terminal Redevelopment Plan and Demolition and Initial Rail Component Program EIR; and

WHEREAS, staff and MCC have been working diligently to prepare the EIR for the proposed project but have encountered delays preparing the document; and

WHEREAS, the proposed Amendment No. 3 would allow MCC the necessary time to complete the EIR and fulfill the remaining conditions precedent in the Conditional Agreement; and

WHEREAS, the proposed Amendment No. 3 would only amend the term for the Conditional Agreement by extending it for one year, and no changes to the future lease terms are proposed; and

WHEREAS, the proposed Amendment No. 3 to the Conditional Agreement

20xx-xxx

would result in a one-time payment to the District in the amount of \$30,725 as consideration for the extension of the Conditional Agreement; and

WHEREAS, staff recommends adopting an ordinance granting Amendment No. 3 to the Conditional Agreement with MCC to extend the term of the Conditional Agreement to allow time for environmental processing pursuant to CEQA.

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

Section 1. The Amendment No. 3 to the Conditional Agreement with Mitsubishi Cement Corporation to extend the term of the Conditional Agreement is hereby accepted.

Section 2. The Executive Director or her designated representative is hereby directed to execute said Amendment No. 3 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 26th day of February 2019, by the following vote: