

**AGREEMENT FOR AMENDMENT OF CONDITIONAL AGREEMENT
AMENDMENT NO. 5**

THIS AGREEMENT FOR AMENDMENT OF CONDITIONAL AGREEMENT AMENDMENT NO. 5 ("Amendment No. 5"), made and entered into this ____ day of _____, 20____, 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 11th 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 17th 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 6th 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 29th 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 26th 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, 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 the environmental review in accordance with CEQA and to address ZEV truck usage for the Project, but additional time is required to complete the environmental review process, create a proposed ZEV truck solution 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 a plan for 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 2.5 "TERM EXTENSION FIVE" TO READ AS FOLLOWS:

MCC shall have the right to extend the Term of this Agreement by twelve (12) months from July 1, 2021 through June 30, 2022 ("Term Extension Five") provided that the following condition has been met: (i) on or before 5:00 PM on

March 31, 2021, MCC shall provide written notification to the District of its intent to exercise Term Extension Five. Notwithstanding anything in this Agreement to the contrary, the Executive Director of the District or his/her designee in his/her sole and absolute discretion may extend the Term of this Agreement for an additional six (6) months if the CEQA analysis has not been certified by the Board by December 31, 2021 ("Second CEQA Term Extension"). The Second CEQA Term Extension shall not be effective unless it is in writing and distributed to MCC in accordance with Paragraph 8 of this Agreement.

IN WITNESS WHEREOF, the Parties hereto have executed this Amendment No. 5 as of the day and the year first above written.


APPROVED AS TO FORM AND LEGALITY
GENERAL COUNSEL

SAN DIEGO UNIFIED PORT DISTRICT

By: _____
Assistant/Deputy

By: _____
Tony Gordon
Director, Real Estate

MITSUBISHI CEMENT CORPORATION,
a Delaware corporation

By: 
Signature

PRINT NAME: MICHAEL W. JASBERG

PRINT TITLE: PRESIDENT & COO

SDUPD D2 No. 1616982