



## Legislation Text

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**File #:** 2019-0047, **Version:** 1

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**DATE:** February 25, 2019

**SUBJECT:**

**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**

**EXECUTIVE SUMMARY:**

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. 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. 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.

On June 11, 2015, the Board adopted an ordinance granting a Conditional Agreement<sup>1</sup> to MCC to construct and operate a cement import terminal in up to three bays in Warehouse C at TAMT. The original term of the Conditional Agreement was to expire on June 30, 2018. On September 12, 2017, the Board 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. Additionally, 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. Subsequently, Amendment No. 2 to the Conditional Agreement was administratively executed on September 6, 2018 pursuant to the Board of Port Commissioners Policy No. 355 (BPC 355) to clarify the terms by which MCC would be allowed to exercise their six-month option to extend through June 30, 2019.

Amendment No. 3 to the Conditional Agreement (Amendment No. 3) would extend the term of the Agreement for one year to allow time to process the Environmental Impact Report (EIR) in accordance with the California Environmental Quality Act (CEQA). Although staff and MCC have been working diligently to complete the EIR, significant delays have been encountered preparing the analysis and additional time is needed. 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. For clarity purposes, the proposed Amendment No. 3 would only amend the term for the Conditional Agreement, and no changes to the future lease terms are proposed.

Staff recommends adopting an ordinance granting Amendment No. 3 to the Conditional Agreement to extend the term to provide additional time to complete the EIR pursuant to CEQA.

### **RECOMMENDATION:**

Adopt an Ordinance Granting Amendment No. 3 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.

### **FISCAL IMPACT:**

The proposed Amendment No. 3 to the Conditional Agreement 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. Additionally, should all of the conditions in the Conditional Agreement be met, and a lease entered into, lease revenue would immediately include flat rent payments for two warehouse bays and a Minimum Annual Guarantee (MAG). Once the MAG has ramped up in year three of the Lease, the minimum annual revenue to the District would be \$990,464. Consistent with other maritime industrial leases, the proposed lease will provide for an annual Consumer Price Index (CPI) adjustment to the flat rent, with a minimum increase of 2% and a maximum increase of 4%. Additionally, if the lease is entered into, MCC would contribute up to \$250,000 to offset District costs associated with CEQA review for the separate and independent Consolidated Dry Bulk Facility that may be implemented in the future.

### **COMPASS STRATEGIC GOALS:**

This agenda item supports the following Strategic Goal(s).

- A thriving and modern maritime seaport.
- A financially sustainable Port that drives job creation and regional economic vitality.

### **DISCUSSION:**

#### ***Background:***

MCC is a vertically integrated cement manufacturer and supplier of concrete. MCC desires to construct, own and operate a cement import terminal at TAMT to supply its San Diego market. 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. Currently, MCC transports cement to the San Diego area via truck from its domestic production plant in Lucerne Valley. The import terminal at TAMT would serve the San Diego Region's delta between available domestic supply and regional demand for cement. Should MCC be able to import cement into TAMT, the project would remove truck trips and truck miles off the regional highway system.

On June 11, 2015, the Board 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 (Attachment A - Location Map). The original term of the Conditional Agreement was to expire on

June 30, 2018. On September 12, 2017, the Board adopted an ordinance granting Amendment No. 1 to the Conditional Agreement 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. Additionally, 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. Subsequently, Amendment No. 2 to the Conditional Agreement was administratively executed on September 6, 2018 pursuant to the BPC 355 which clarified the terms by which MCC would be allowed to exercise their six-month option to extend through June 30, 2019.

### ***Conditional Agreement Term Extension:***

As a condition precedent to the Conditional Agreement, MCC is required 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 (TAMT EIR). Staff and MCC have been working diligently to prepare the EIR for the proposed project but have encountered delays preparing the document. Given that the EIR for the MCC project would be the first document to tier-off the TAMT EIR, it is important that the analysis included in MCC’s EIR be thorough and well thought out since future projects that tier-off the TAMT EIR would likely undergo a similar analysis and approach.

Amendment No. 3 would extend the term of the Conditional Agreement for one year from July 1, 2019 through June 30, 2020 (Attachment B - Amendment No. 3 to Conditional Agreement). The additional time would provide MCC the necessary time to complete the EIR and fulfill the remaining conditions precedent. As consideration for granting the term extension, MCC would provide the District with a one-time payment in the amount of \$30,725. The proposed Amendment No. 3 would only amend the term for the Conditional Agreement, and no changes to the future lease terms are proposed.

### ***Consistency with TAMT Redevelopment Plan:***

The proposed Amendment No. 3 is 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/project cargo. 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.

Staff recommends adopting an ordinance granting Amendment No. 3 to extend the term of the Conditional Agreement to allow time for environmental processing pursuant to CEQA.

### **General Counsel’s Comments:**

The Office of the General Counsel has reviewed Amendment No. 3 to Conditional Agreement with Mitsubishi Cement Corporation and approves as to form and legality.

### **Environmental Review:**

The authorization of Amendment No.3 to the Conditional Agreement by the BPC does not constitute an “approval” of a project under the definitions set forth in the California Environmental Quality Act (CEQA) Guidelines Sections 15387 and 15352 and is therefore, not subject to CEQA. Amendment No. 3 to the Conditional Agreement extends the term of the Conditional Agreement for Mitsubishi Cement Corporation’s proposed cement import terminal in Warehouse C at the Tenth Avenue Marine Terminal. The CEQA and CDP requirements originally identified in the Conditional Agreement (BPC 2015-1389) for the project remain in effect with the authorization of Amendment No.3. CEQA review for the potential lease, permits, MCC’s operation, and any improvements on the premises, must be conducted prior to issuance of the lease and any permits or entitlements necessary to operate and improve the premises.

Additionally, the Conditional Agreement states that the BPC reserves its discretion to adopt any and all feasible mitigation measures, alternatives to the project, including a no project alternative, a statement of overriding consideration, if applicable, and approve or disapprove the project and any permits or entitlements necessary for the same. Those decisions may be exercised in the sole and absolute discretion of the BPC. Based on the totality of the circumstances and the entire record, including Amendment No. 3 and the Conditional Agreement itself, the BPC’s action does not commit the District to a definite course of action, including, but not limited to, approval or commencement of a lease with MCC, operation or improvements by MCC at TAMT prior to CEQA review being conducted. Rather, Amendment No.3 and the Conditional Agreement set forth the parties intent to further explore, design, and evaluate MCC’s proposal for TAMT. No further action under CEQA is required for this item.

The authorization of Amendment No. 3 to the Conditional Agreement by the BPC does not allow for “development” as defined in Section 30106 of the California Coastal Act, or “new development,” pursuant to Section 1.a. of the District’s CDP Regulations. Therefore, issuance of a CDP or exclusion is not required; provided, however, issuance of a CDP is a condition precedent to MCC executing a lease, operating at the premises or constructing improvements thereon. The Conditional Agreement states that issuance of the CDP is vested with the BPC, in its sole and absolute discretion. No further action is required at this time.

### **Equal Opportunity Program:**

Not applicable.

### **PREPARED BY:**

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### **Attachment(s):**

Attachment A: Location Map

Attachment B: Amendment No. 3 to Conditional Agreement

<sup>1</sup>Conditional Agreement between San Diego Unified Port District and Mitsubishi Cement Corporation dated June 11, 2015 and bearing District Clerk Document No. 63721