

**SAN DIEGO UNIFIED PORT DISTRICT**

**ORDINANCE 2822**

**ORDINANCE GRANTING A CONDITIONAL AGREEMENT WITH A TERM SHEET, TO MITSUBISHI CEMENT CORPORATION FOR A PERIOD OF 24 MONTHS, COMMENCING JULY 1, 2015 AND TERMINATING ON JUNE 30, 2017, LOCATED 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**, Mitsubishi Cement Corporation (MCC) desires to construct, lease, and operate a cement import terminal at Warehouse C in the Tenth Avenue Marine Terminal (TAMT) in the City of San Diego (Premises) to import cement and cementitious material to serve the San Diego regions' delta between available domestic supply and regional demand for cement (Project); and

**WHEREAS**, MCC is seeking to enter into a Conditional Agreement with a Term Sheet (Agreement) with the District, to facilitate the Project and potentially enter into a lease for the Premises with the District; and

**WHEREAS**, the terms of the Agreement are more particularly described in the Agreement and are summarized on Attachment A of this Ordinance; and

**WHEREAS**, the term of the Agreement is for 24 months, from July 1, 2015 through June 30, 2017, and may be extended up to twelve (12) months in the event the Board has not considered the California Environmental Quality Act (CEQA) review for the Project by June 30, 2016; and

**WHEREAS**, the Agreement would not be in effect until 30 days after this Ordinance is passes and therefore, the July 1, 2015 start of the term would be retroactive; and

**WHEREAS**, as consideration for the Agreement, MCC shall pay to the District a one-time payment of \$122,901, contribute \$25,000 to conduct a market feasibility study for a future and independent Consolidated Dry Bulk Facility

(CDBF) at TAMT and furnish information required for the CDBF CEQA analysis; and

**WHEREAS**, as more particularly described in the Agreement, the Agreement includes strict conditions precedent for MCC to be issued a lease by the District, including, but not limited to: (a) payment by MCC to hire a third-party consultant to prepare a CEQA analysis and a potential Coastal Development Permit (CDP) for the Project; (b) review and approval/adoption by the Board, in its sole and absolute discretion, of the CEQA analysis for the Project, including, but not limited to, all feasible mitigation measures, alternatives to the Project, including the no project alternative, and a statement of overriding consideration, if applicable, a CDP and other project permits or entitlements issued by the District for the Project; (c) submittal of applications for District issued permits, entitlements and other approvals for the Project by no later than September 1, 2015; (d) review and approval of schematic plans, preliminary plans, and working drawings, as those terms are defined in the Agreement, in accordance with the timelines delineated in the Agreement; (e) submittal of equity commitment and project financing requirements; and (f) obtainment of all required development permits no later than sixty (60) days prior to expiration of the Agreement; and

**WHEREAS**, if all the conditions precedent are met by MCC within the timeframes provided for in the Agreement, the District and MCC may enter into a lease based on the Term Sheet attached to the Agreement, which is summarized in Attachment B of this Ordinance; and

**WHEREAS**, the lease would be in substantial conformance with the then existing District form lease in all material respects except for the environmental clauses, as more particularly described in the Term Sheet of the Agreement; provided, however, said for lease shall be commercially reasonable for MCC's proposed use of the Premises; and

**WHEREAS**, MCC proposes to make at least \$7 million of capital improvements on the Premises and pursuant to Board of Port Commissioners Policy No. 355, said investment would qualify MCC for a lease term of an initial 5-year term, and two, 5-year options to extend the term; and

**WHEREAS**, the Term Sheet anticipates that the District would receive construction rent of \$20,484 per month, flat rent revenue of approximately \$491,604 per year, in accordance with the space occupancy rates in the District's current Tariff, which shall be adjusted by the Consumer Price Index annually during the term of the lease (with a minimum increase of 2% and a maximum increase of 4%) and a minimum annual guarantee of wharfage in accordance with the District's Tariff, which shall ramp up over the first three (3) years of the lease, leveling off at 400,000 metric tons annually for the remaining term of the lease; and

**WHEREAS**, upon commencement of a lease, MCC shall contribute to the District, 50% share of the costs, up to \$250,000, for conducting CEQA review, and obtain any potential development permits for the independent and separate CDBF project at TAMT; and

**WHEREAS**, all amendments to the Agreement must be in writing and unless expressly provided otherwise in the Agreement, approved by the Board; and

**WHEREAS**, the approval of the Agreement is not an approval of a project under the definitions set forth in the CEQA Guidelines Sections 15387 and 15352 because based on the totality of the circumstances and the entire record, including the Agreement itself, the approval does not commit the District to a definite course of action, including, but not limited to, approval or commencement of MCC's lease, operation or improvements at TAMT prior to CEQA review being conducted; rather, the Agreement sets forth the parties' intent to further explore, design, and evaluate MCC's proposal for TAMT.

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

Section 1. The Board of Port Commissioners hereby approves and grants to Mitsubishi Cement Corporation the Conditional Agreement by and between the San Diego Unified Port District, a public corporation, and Mitsubishi Cement Corporation, a Delaware corporation for up to three bays within Warehouse C, a structure within the San Diego Unified Port District's jurisdiction and ownership located at the Tenth Avenue Marine Terminal in San Diego, California (Premises), for a period of 24-months, commencing on July 1, 2015 and terminating on June 30, 2017, unless extended pursuant to the terms of the Conditional Agreement.

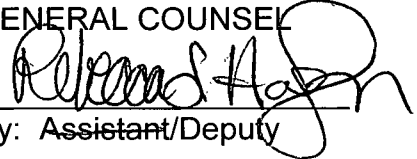
Section 2. That the Executive Director or his designated representative is hereby directed to execute said Conditional Agreement.

Section 3. Upon performance of all the conditions in the Conditional Agreement within the timeframes specified, which shall be strictly construed, the Executive Director or his designated representative is hereby directed to execute a lease with Mitsubishi Cement Corporation, the form of which shall be in substantial conformance with the then existing San Diego Unified Port District form lease in all material respects except for the environmental clauses, which is more particularly described in the term sheet of the Conditional Agreement; provided, however, said for lease shall be commercially reasonable for MCC's proposed use of the Premises and if the lease is not in substantial conformance with the then-existing form lease, said lease shall require Board approval.

Section 4. In the event that Mitsubishi Cement Corporation fails to satisfy the conditions set forth in the Conditional Agreement, said Conditional Agreement shall be null and void and of no further force or effect.

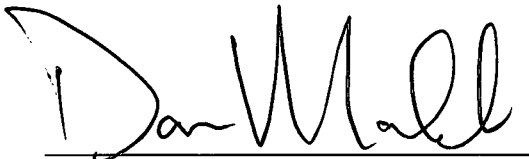
Section 5. That this Ordinance shall take effect on the 31<sup>st</sup> day from its passage by the Board of Port Commissioners and until that date, the Conditional Agreement shall have no effect.

APPROVED AS TO FORM AND LEGALITY:  
GENERAL COUNSEL

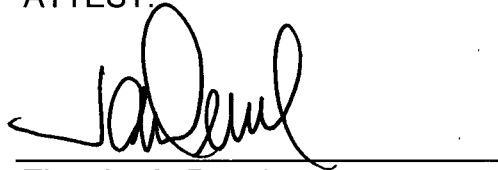
  
By: Assistant/Deputy

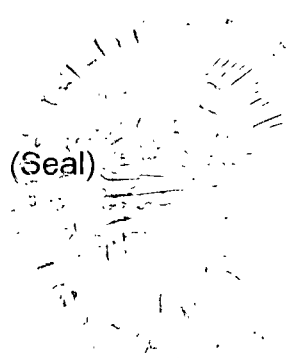
PASSED AND ADOPTED by the Board of Port Commissioners of the San Diego Unified Port District, this 11<sup>th</sup> day of June 2015, by the following vote:

- AYES: Bonelli, Castellanos, Malcolm, Merrifield, and Valderrama.
- NAYS: None.
- EXCUSED: Moore and Nelson.
- ABSENT: None.
- ABSTAIN: None.

  
Dan Malcolm, Chairman  
Board of Port Commissioners

ATTEST:

  
Timothy A. Deuel  
District Clerk



# Attachment A to Ordinance 2822

## PROPOSED CONDITIONAL AGREEMENT INFORMATION SUMMARY

Parties:	Mitsubishi Cement Corporation and San Diego Unified Port District
Location:	Three bays within Warehouse C, at Tenth Avenue Marine Terminal
Use:	Only and exclusively for the importation, exportation, handling, distribution and storage of bulk cement, cementitious materials, cement-related bulk products and concrete aggregate and for no other purposes whatsoever. Office, parking and other related purposes.
Term:	Term to be (24) months (07/01/15 through 06/30/17).
Consideration:	<ul style="list-style-type: none"> <li>- \$122,901</li> <li>- \$25,000 for a market feasibility study to determine when a CDBF may be economically feasible</li> <li>- Furnish information required for the CEQA analysis for the CDBF</li> </ul>
Conditions Precedent to Exercise Rights:	<ol style="list-style-type: none"> <li>1. CEQA Review and Approval – MCC will be responsible for cost reimbursement for District's CEQA consultant if required.</li> <li>2. Tenant Project Submittal and Review Process</li> <li>3. Equity / Financial Assurance – Balance Sheet Value - \$21 Million</li> <li>4. Development Permits</li> <li>5. Lease Security Deposit in accordance with BPC 355</li> <li>6. Capital Investment of \$7.0 million</li> </ol>
MCC Use Of Proprietary Documents:	<p>In the event that the MCC's rights under the CA are terminated and/or no lease is entered into, all proprietary (as determined by MCC) documents, drawings, studies and other materials provided to the District by MCC shall be returned to MCC and shall not be used by the District or provided to any third parties for their use. District shall obtain in all cases written consent prior to release.</p> <p>Any proprietary information of MCC business model's and operations provided to the District, marked clearly that it is proprietary and confidential, shall remain confidential and not be shared with any other party without expressed written permission from MCC, as permitted by law.</p>
CEQA Term Extension:	If CEQA analysis has not been presented to the Board by 06/30/16, allows for administrative term extension, in writing, for no more than 12 months.