

SAN DIEGO UNIFIED PORT DISTRICT

ORDINANCE 2904

ORDINANCE GRANTING AMENDMENT NO. 1 TO CONDITIONAL AGREEMENT WITH MITSUBISHI CEMENT CORPORATION TO EXTEND THE TERM OF THE CONDITIONAL AGREEMENT AND UPDATE CERTAIN BUSINESS TERMS 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 currently owns or controls roughly 30% of the Southern California concrete ready-mix market; and

WHEREAS, MCC has a strong track record of vertical integration, including owning and operating a domestic cement production plant in California, a cement import terminal at the Port of Long Beach, and Robertson's Ready Mix in Southern California; 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 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 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, the District and MCC have been negotiating Amendment No. 1 to the Conditional Agreement (Amendment) to extend the term of the Conditional Agreement to allow time for processing an Environmental Impact Report (EIR) in accordance with the California Environmental Quality Act (CEQA) and to update the business terms to allow MCC to increase the size of the leased premises from three warehouse bays to a potential of four warehouse bays so that MCC may either import a second type of bulk construction material (slag or fly ash) or import larger volumes of cement; and

WHEREAS, the term extension is warranted given that MCC was unable to commence preparation of the EIR until the TAMT Redevelopment Plan and Demolition and Initial Rail Component Program EIR (TAMT EIR) was completed, since the MCC project will "tier-off" the TAMT EIR in the form of a Subsequent EIR (SEIR), additionally, by providing MCC the ability to expand the leased premises, MCC may be able to increase its throughput; diversify its product mix; and optimize its position in recapturing the rebound in the construction industry; and

WHEREAS, should MCC expand the leased premises to include the additional warehouse bay, revenue to the District would increase by a minimum of \$312,233 per year, when compared to the current terms (three bays); and

WHEREAS, the proposed Amendment 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 with a strong anchor tenant within the dry bulk cargo node, with a vertically integrated business model and capability to perform; and

WHEREAS, the Amendment requires that at least eighty percent (80%) of MCC's total annual metric tonnage be imported by waterborne vessel; and

WHEREAS, the proposed Amendment would only update business terms associated with the potential for MCC to increase the leased premises and would not extend the term of the Lease, which has an initial 5-year term, with two, 5-year options for lease term extension; and

WHEREAS, the Amendment maintains the same two triggers requiring MCC to submit an application for a longer term project and contribute up to \$250,000 towards the environmental review for the future Consolidated Dry Bulk Facility (CDBF) as contemplated by the TAMT Redevelopment; and

WHEREAS, the two triggers for submitting an application for a long term project in the CDBF are the earlier of the exercise of the second, 5-year option or when the Southern California cement market sales reach 8,274,000 metric tons annually; and

WHEREAS, staff recommends adopting an ordinance granting Amendment No. 1 to the Conditional Agreement with MCC to extend the term of the Conditional Agreement to allow time for environmental processing pursuant to CEQA and updating the business terms to provide MCC the ability to expand the leased premises from three bays to four bays.

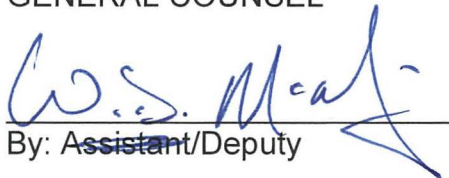
NOW THEREFORE, the Board of Port Commissioners of the San Diego Unified Port District does ordain as follows:

Section 1. The Amendment No. 1 to the Conditional Agreement with MCC 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. 1 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 12th day of September 2017, by the following vote:

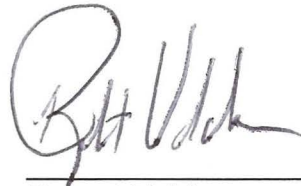
AYES: Bonelli, Castellanos, Malcolm, Merrifield, Valderrama, and Zucchet

NAYS: None.

EXCUSED: Moore

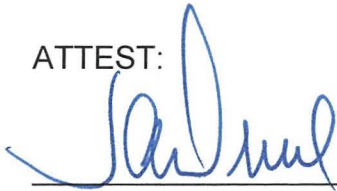
ABSENT: None.

ABSTAIN: None.

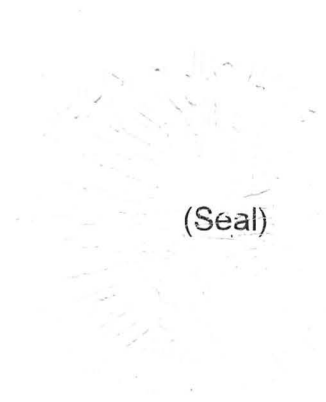


Robert Valderrama, Chair
Board of Port Commissioners

ATTEST:



Timothy A. Deuel
District Clerk



(Seal)