

**CITY OF LOS ANGELES HARBOR DEPARTMENT
Port of Los Angeles**

SUBSTITUTE PREMISES APPLICATION AND AGREEMENT

APPLICATION

Chief Wharfinger
Port of Los Angeles
PO Box 151
San Pedro, CA 90733-0151

Application is hereby made for Substitute Premises described as follows:

Dates Requested - Commencing on: _____, 20____ and Expiring on: _____, 20____
(month and day) (year) (month and day) (year)

Applicant: _____

Physical Address: _____

Billing Address: _____

Existing Agreement: _____
(Specify existing Order, Permit or Revocable Permit by No.)

Substitute Berth No. / Areas Desired [attach map]: _____

State areas Assignee currently has the right to use [attach map]: _____

State why the areas Assignee currently has the right to use are temporarily unavailable:

State the period of time the areas Assignee currently has the right to use will be unavailable:

Notes:

1. Substitute Premises grants the use of other premises when terminal areas granted for an Assignee's use under an Existing Agreement may become temporarily unavailable through causes beyond the control of the Port or Assignee including, but not limited to, construction within the Port, accidents, and heavy vessel traffic.
2. The attached Agreement will be processed by the Harbor Department upon receipt of the Application only if the Application is accepted and approved by the Executive Director.

AGREEMENT

Substitute Premises Assignment No. _____

Existing Agreement: _____

(Specify existing Order, Permit or Revocable Permit by No.)

The Executive Director of the Harbor Department ("Executive Director") of the City of Los Angeles ("City") hereby assigns to: _____
whose address is: _____

("Assignee") to occupy and use the Premises designated below, within the Harbor District owned or under the control of City acting through its Board of Harbor Commissioners ("Board"). This Substitute Premises Assignment (also "Agreement") shall be nonexclusive and shall be subject to the Charter of the City; the Port of Los Angeles Tariff No. 4 including all changes, additions, amendments and supplements thereto, or any subsequent and superseding Tariff ("Tariff"); all ordinances of the City; all orders, rules and regulations of the Board; and the following terms, covenants and conditions:

1. Premises. Assignee is permitted to use the areas described as: _____

as delineated and more particularly described on Exhibit A ("Premises"), as Substitute Premises.

3. Permitted Use. The Premises shall be used for purposes relating to the operation of the Assignee's existing premises granted under the Existing Agreement ("Permitted Use"); provided, however, that the rights hereby granted to use the Premises for said purposes shall not be exclusive, and whenever the Premises, or any part thereof, are not required in whole or in part for the use of Assignee for the stated purposes, the Executive Director shall have the right to and may make other assignments to any other person, firm or corporation to use such Premises, or any part thereof, as provided in the Tariff. Assignee shall not use the Premises in any manner, even if the use is a Permitted Use, that will cause cancellation of any insurance policy covering the Premises or adjacent premises; provided, however, Assignee may, in City's sole discretion, remain if it pays the increase in City's insurance costs caused by its operations. No offensive or refuse matter, or any substance constituting any unnecessary, unreasonable or unlawful fire hazard, or material detrimental to the public health, shall ever be permitted by Assignee to be or remain, on the Premises, and Assignee shall prevent any such material or matter from being or accumulating upon the Premises. Assignee further agrees not to keep on the Premises, or permit to be kept, used, or sold thereon, anything prohibited by any policy of fire insurance covering the Premises or any structure erected thereon.

4. Effective and Termination Dates. This Substitute Premises Assignment shall commence and become effective on:

Date: _____, 20____ ("Effective Date")
and shall terminate on:

Date: _____, 20____ ("Termination Date")

Termination Date shall also mean the date of termination by revocation as set forth in Section 5; by forfeiture as set forth in Section 6; by termination as set forth in the Existing Agreement; or by operation of law or any other reason.

5. Assignment Revocable. This Substitute Premises Assignment shall be revocable at any time prior to the Termination Date by Executive Director, at his or her sole option, upon the giving of written notice to the Assignee stating the date upon which this Substitute Premises Assignment shall terminate. If Assignee has used the Premises for fourteen (14) calendar days or longer, this Substitute Premises Assignment shall be revocable by the Executive Director upon forty eight (48) hours' written notice. If Assignee has used the Premises for less than fourteen (14) calendar days, this Substitute Premises Assignment shall be revocable by the Executive Director upon twenty four (24) hours' written notice. The right of Executive Director to revoke this Substitute Premises Assignment is and shall remain unconditional. Neither City, nor any Board member, officer or employee thereof, shall be liable in any manner to Assignee because of such revocation.

6. Forfeiture. Upon the neglect, failure or refusal by Assignee to comply with any of the terms or conditions of this Substitute Premises Assignment or the Existing Agreement as determined by the Executive Director in his or her sole discretion, the Executive Director may, by written notice to Assignee, declare this assignment immediately forfeited, and may thereupon exclude Assignee and all other persons, firms or corporations from any further use of the Premises under this assignment.

7. Premises Subject to Tariff and Existing Agreement. Assignee accepts the Premises and shall undertake the Permitted Use set forth in Section 3 subject to each and every of the terms and conditions provided herein, and to each of the terms and conditions of the Tariff, as applicable to Premises and/or the Permitted Use. Assignee represents and warrants that it has received, read and understands the terms and conditions of the Tariff and covenants that, at all times during the term of this Substitute Premises Assignment, it shall maintain a complete and current copy of the Tariff at the address set forth in Section 12 below. Except as otherwise set forth in this Substitute Premises Assignment, Assignee is contractually bound by all Tariff terms and conditions as if the same were set forth in full herein. Except as otherwise set forth in this Substitute Premises Assignment, Assignee's use of the Premises is further subject to all terms and conditions of the Existing Agreement referenced above as if the Premises covered by this Substitute Premises Assignment were included in the premises covered by the Existing Agreement. The Executive Director in his or her sole and absolute discretion shall determine if a conflict exists between a provision of this Substitute Premises Assignment, the Tariff and/or the Existing Agreement. In the event of such conflict, this Substitute Premises Assignment shall at all times prevail.

8. Insurance. Assignee shall procure and maintain at its expense, and keep in force at all times during the term of this Substitute Premises Assignment, the same policies of insurance covering the Premises as required for the premises covered under the Existing Agreement. Assignee shall comply with the requirements for submitting the appropriate proof of insurance in the manner provided under the Existing Agreement prior to first occupying the Premises granted under this Substitute Premises Assignment.

9. Compensation. Assignee shall pay to City compensation for the use of the Premises as if the Premises were within Assignee's existing premises granted under the Existing Agreement. Use of the Premises for purposes not expressly permitted in the Existing Agreement, whether approved in writing by Executive Director or not, may result in additional charges, including charges required by the Tariff. Tenant agrees to pay such additional charges. If the Existing Agreement allows the Assignee to share revenues with the Port for use of the premises granted under the Existing Agreement, such provisions shall apply during Assignee's use of the Premises so long as the Premises are used for purposes expressly permitted in the Existing Agreement.

10. Records and Reports. Assignee shall keep full and accurate books, records and accounts relating to its operations on the Premises. City shall have the right and privilege, through its representatives, at all reasonable times and on reasonable notice, to inspect such books, records and accounts in order to verify the accuracy of the sums due, owing and paid to City hereunder. Assignee agrees that such books, records and accounts shall be made available to City at a location within the City of Los Angeles. City shall protect, to the extent permitted by law, the confidentiality of any such books, records and/or accounts so inspected. Assignee shall preserve all such books, records and accounts for the entire term of this Agreement and for a minimum of five (5) years beyond its termination.

11. Termination for Misrepresentations. This Substitute Premises Assignment is granted pursuant to the accompanying Application incorporated herein. If the Application or any of the attachments thereto contain any misstatement of fact which, in the judgment of Executive Director, affected his or her decision to grant said Substitute Premises Assignment, Executive Director may immediately terminate this Substitute Premises Assignment by giving written notice thereof.

12. Notice. In all cases where written notice including the service of legal pleadings is to be given under this Substitute Premises Assignment, service shall be deemed sufficient if said notice is deposited in the United States mail, postage prepaid, or delivered to the Substitute Premises Assignment Premises. When given by mail, such notice shall be effective from the date of mailing. Unless changed by notice in writing from the respective parties, notice to the parties shall be as follows:

To the City: Los Angeles Harbor Department
P.O. Box 151
San Pedro, California 90733-0151
Attention: Executive Director
Attention: Director of Real Estate

with a copy to: Office of City Attorney—Harbor Department
425 S. Palos Verdes Street
San Pedro, California 90731
Attention: General Counsel

To the Assignee: _____

Nothing herein contained shall preclude or render inoperative service of such notice in the manner provided by law. All notice periods under this Substitute Premises Assignment refer to calendar days unless otherwise specifically stated.

13. Construction of Agreement. This Substitute Premises Assignment shall not be construed against the party preparing it and shall be construed without regard to the identity of the person who drafted this Substitute Premises Assignment.

14. No Waiver. No waiver by either party at any time of any terms or conditions of this Substitute Premises Assignment shall be a waiver at any subsequent time of the same or any other term or condition. The acceptance of compensation by City shall not be deemed a waiver of any other breach by Assignee of any term or condition of this Substitute Premises Assignment other than the failure of Assignee to timely make the particular payment so accepted. No breach of a covenant, term or condition of this Substitute Premises Assignment will be deemed to have been waived by City unless the waiver is in writing and executed by City.

15. State Tidelands Act. This Agreement, the Premises and Assignee's use and occupancy thereof shall at all times be subject to the limitations, conditions, restrictions and reservations contained in and prescribed by the Act of the Legislature of the State of California entitled "An Act Granting to the City of Los Angeles the Tidelands and Submerged Lands of the State Within the Boundaries of Said City," approved June 3, 1929, (Stats. 1929, Ch. 651), as amended, and Article VI of the Charter of the City of Los Angeles relating to such lands. Assignee shall not undertake any use of the Premises, even a Permitted Use, which is or will be inconsistent with such limitations, conditions, restrictions and reservations.

16. Attorneys' Fees. If either party brings an action or proceeding to enforce, protect or establish any right or remedy arising out of or based upon this Substitute Premises Assignment, including but not limited to the recovery of damages for its breach, the prevailing party in said action or proceeding shall be entitled to the recovery of its costs and reasonable attorneys' fees including the reasonable value of the services rendered by the Office of the City Attorney or in-house counsel of Assignee, if any.

17. Amendments. No provision of this Substitute Premises Assignment may be amended except by an agreement in writing signed by City and Assignee. Any such modifications are subject to all applicable approval processes set forth in City's Charter, City's Administrative Code, or other applicable law.

18. Governing Law and Venue. This Substitute Premises Assignment is made and entered into in the State of California and shall in all respects be construed, interpreted, enforced and governed under the laws of the State of California without reference to choice of law rules. Any action or proceeding arising out of or related to this Substitute Premises Assignment shall be filed and litigated in the state or federal courts located in the County of Los Angeles, State of California.

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DATED: _____

CITY OF LOS ANGELES
HARBOR DEPARTMENT

By: _____
Executive Director

The undersigned Assignee hereby accepts the foregoing Substitute Premises Assignment and agrees to abide and be bound by and to observe each and every of the terms, covenants and conditions thereof, including those set forth in the addendum, if any, and excluding those marked as being deleted, if any.

ASSIGNEE

DATED: _____

By: _____
Name and Title of Officer

Attest: _____
Name and Title of Officer

APPROVED AS TO FORM AND LEGALITY

_____, 20__
MICHAEL N. FEUER, City Attorney
Janna B. Sidley, General Counsel

By: _____
_____, Deputy/Assistant