

**DEVELOPMENT MITIGATION AGREEMENT  
BETWEEN THE CITY OF TACOMA AND  
U.S. OIL & REFINING CO.**

THIS DEVELOPMENT MITIGATION AGREEMENT (“Agreement”) is dated this \_\_\_\_ day of \_\_\_\_\_, 2018 (the “Effective Date”), between the **City of Tacoma** (the “City”), a Washington municipal corporation, and **U.S. Oil & Refining Co.**, (the “Developer”) (hereinafter collectively referred to as “Parties”), and is made pursuant to the following recitals and the terms and conditions herein.

**RECITALS**

- A. Developer is adding one additional unit train per week to its refinery facility in the Port of Tacoma and as a result installing three new product transfer lines from their marine terminal on the Blair Waterway to the refinery (the “Project”).
- B. The SEPA analysis for the Project, dated **March 16, 2018**, resulted in a Mitigated Determination of Non-Significance (“MDNS”) which specified a number of mitigation measures to be taken by the Developer.
- C. Among the required mitigation measures, there are two related to traffic impacts on City streets & intersections, listed in the MDNS.
- D. State law allows the Developer and the City to enter into a voluntary agreement under which the Developer will pay the City to implement the necessary mitigation.
- E. The Developer and the City concur that this agreement is the most efficient way to implement the traffic-related mitigation measures outlined in the MDNS.

**AGREEMENT**

NOW, THEREFORE, in consideration of the mutual undertaking and promises contained herein, and the benefits to be realized by each party and in future consideration of the benefit to the general public by the implementation of the mitigation, and other valuable consideration, the adequacy of which is hereby acknowledged, the Parties agree as follows:

1. Recitals. Each of the recitals set forth above is incorporated into this Agreement as though fully set forth herein.
2. Scope of Agreement. This Agreement addresses only traffic-related mitigation measures the Developer’s obligation to mitigate any additional impacts identified in the MDNS, or by City code are unaffected by this Agreement.

3. Mitigation.
  - 3.1 The processing of additional railcars and the associated train crossing movements across Lincoln Avenue and Thorne Road will block driveway access to/from abutting properties. To reasonably mitigate this impact, the Developer will be required at or before the time of Development Permit Issuance (to include Site Development, Work Order, and/or Building permits, whichever is earliest), to enter into an agreement to fully fund a City-led effort to implement the improvements described immediately below in Item “a.” The Developer has submitted a cost estimate of \$16,500 to complete the work; the City agrees that this is sufficient to fund the improvements.
    - a. Design and implement signing and roadway markings to effectively manage traffic queues during train crossing events at fourteen (14) driveway locations identified within the transportation impact study with a projected probability of being blocked 50 percent or more for a given train crossing/roadway blockage.
  - 3.2 The delays to the traveling public and emergency response vehicles caused by the processing of additional railcars and the associated train crossing movements across Lincoln Avenue and Thorne Road will create traffic routing impacts that can be addressed through advance notice provided to drivers approaching the area. To reasonably mitigate this impact, and without the benefit of an overall intelligent transportation system (ITS) infrastructure in the area, the Developer will be required at or before the time of Development Permit Issuance (to include Site Development, Work Order, and/or Building Permits, whichever is earliest), to Enter into an agreement to fully fund a City-led effort to implement the improvements described immediately below in Item “a.” The Developer has submitted a cost estimate of \$175,000 to complete the work; the City agrees that this is sufficient to fund the improvements.
    - a. Design and implement ITS components and associated infrastructure to detect when train activity is blocking Lincoln Avenue, Thorne Road, or both, and automatically alert drivers approaching the area(s) that the respective roadway(s) is (are) blocked. The envisioned devices to convey the alerts are automatically activated blank-out traffic signs that are linked to the rail crossing/roadway blockage detection and integrated with traffic signal operations at the Lincoln Avenue intersections with Port of Tacoma Road and Thorne Road.

4. Payment. The Developer will make the mitigation payments described herein within 30 days of full execution of this Agreement. Payment shall be by check made payable to 'City of Tacoma' and mailed to:

**City of Tacoma  
Public Works Traffic Engineering  
Attn: Nadine Daly  
747 Market St., Rm. 644  
Tacoma, WA 98402**

5. Mitigation Implementation. Upon payment to the City of the sums identified in this Agreement, Developer shall have no further responsibility or liability for the traffic-related impacts identified in MDNS mitigation measures. The City shall have full responsibility and liability for implementing the necessary mitigation.

6. Term of Agreement and Modification.

6.1 This Agreement shall become effective as of the date it is fully executed. This Agreement shall be recorded and run with the land. This Agreement shall remain in effect until full payment is made to the City.

6.2 No modification of this Agreement is valid unless evidenced in writing and signed by both Parties. No oral agreement may supersede, replace or amend this Agreement.

7. Default. In the event of a default in compliance with terms of this agreement by either Party, this Agreement shall terminate, the Parties' rights and obligations under the MDNS traffic-related mitigation measures shall recur and be unaffected by the termination of this Agreement.

8. Severability. Each provision of this Agreement shall be considered severable, and if for any reason any provision that is not essential to the effectuation of the basic purposes of the Agreement is determined to be invalid and contrary to any existing or future law, such invalidity shall not impair the operation of or affect those provisions of this Agreement that are valid.

9. Relationship of Parties. Developer and the City shall not be construed as having a joint venture or partnership, and neither shall have the power to bind or obligate the other party except as set forth in this Agreement. Developer shall have no right or authority, express or implied, to commit or otherwise obligate the City in any manner whatsoever except to the extent specifically provided herein or specifically authorized in writing by the City.

10. No Third Party Rights. The provisions of this Agreement are intended solely for the benefit of, and may only be enforced by, the Parties hereto and their respective successors and permitted assigns.

11. Notices. Any notices or other communications required or permitted by this Agreement or by law to be served on, given to, or delivered to either party hereto by the other party, shall be in writing and shall be deemed duly served, given, or delivered when personally delivered to the party to whom it is addressed or in lieu of such personal service, three (3) days after it is deposited in the United States mail, first-class postage prepaid, certified or registered, return receipt requested, addressed as follows, or sent via email transmission to the email address set forth below, with machine confirmation of receipt followed by a “hard copy” mailed regular mail, within one (1) business day to the addresses listed as follows:

**City:** City of Tacoma  
Public Works Engineering  
747 Market Street, Rm. 644  
Tacoma, WA 98402

Attention: Josh Diekmann  
Email: [jdiekmann@cityoftacoma.org](mailto:jdiekmann@cityoftacoma.org)

**Developer:** U.S. Oil & Refining Co.  
3001 Marshall Avenue  
Tacoma, WA 98421

Attention: Keith Wade  
Email: [keith.wade@usor.com](mailto:keith.wade@usor.com)

Either party may change its address for the purposes of this Section by giving written notice of such change to the other party in the manner provided in this Section.

12. Non Waiver of Governmental Rights. Nothing contained in this Agreement shall require the City to take any discretionary action relating to development of the Project, including, but not limited to, zoning and land use decisions, permitting, or any other governmental approvals.

13. Counterparts. This Agreement may be executed in any number of counterparts, and each such counterpart hereof shall be deemed to be an original instrument, but all such counterparts together shall constitute but one agreement.

14. Authority. Each of the persons signing below represents and warrants that they have the requisite authority to bind the party on whose behalf they are signing.

15. Attorneys' Fees. Each party shall be responsible for payment of the legal fees and costs of its own counsel in the event of any litigation, arbitration or other proceeding brought to enforce or interpret or otherwise arising out of this Agreement.

16. Non-Liability of City, Officials, Employees, and Agents. No member, official, employee or agent of the City shall be personally liable to the Developer, or any successor in interest, in the event of any default or breach by the City or for any amount which may become due to the Developer or successor or on any obligation under the terms of this Agreement.

17. Applicable Law. This Agreement shall be construed and enforced in accordance with the laws of the State of Washington, without regard to principles of conflicts of laws, and venue of any action brought to enforce this Agreement shall lie exclusively in Pierce County, Washington. Jurisdiction shall lie with the Superior Court of the State of Washington. The Parties hereto consent to the jurisdiction of the Pierce County Superior Court and waive the right to file suit elsewhere.

IN WITNESS WHEREOF, the Parties have executed this Agreement effective as of the date first above written.

<b>CITY OF TACOMA</b>	<b>U.S. Oil &amp; Refining Co.</b>
_____ Kurtis D. Kingsolver, P.E. Public Works Director/City Engineer	By: _____
APPROVED AS TO FORM:	Name: _____
_____ Steve Victor Deputy City Attorney	Title: _____