

## **CARRIER ACCESS AND ASPHALT PRODUCT LOADING AGREEMENT FOR THE MARSHALL AVENUE FACILITY**

This Carrier Access and Asphalt Product Loading Agreement for the Marshall Avenue Facility (the "Agreement") is hereby made by and between U.S. Oil & Refining Co., a Delaware Corporation, ("U.S. Oil") on one hand, and \_\_\_\_\_, a carrier of petroleum products, ("Carrier") on the other hand.

### **RECITALS**

U.S. Oil operates an asphalt product loading facility at 3001 Marshall Ave., in Tacoma, WA with an automatic weigh scale. Collectively, the loading facility and the automated weigh scale shall be referred to as the "ALS". The ALS permits authorized carriers to participate in the loading of and to remove from the facility various asphalt products and molten sulphur for the account of U.S. Oil's customers ("Customers") as a "Customer Carrier", for the account of U.S. Oil as a "U.S. Oil Carrier" or for its own account as a "Self Carrier". Carrier has requested that U.S. Oil allow Carrier, its employees and agents ("Carrier Personnel") to use the ALS to perform this service at U.S. Oil's facility.

In consideration of the mutual benefits to be derived hereunder, the parties agree as follows:

### **AGREEMENTS**

1. **Operation of ALS:** Upon the signing of this Agreement by Carrier and, (a) if Carrier is acting as a Customer Carrier, upon authorization from a Customer by Proper Notice (as defined in Section 9. of this Agreement) or, (b) if Carrier is acting as a U.S. Oil Carrier, upon authorization by U.S. Oil, and subject to compliance with other provisions of this Agreement, U.S. Oil shall allow Carrier to participate in the loading of various asphalt products and molten sulfur sold by U.S. Oil using the ALS and to remove the products from the facility. Carrier shall provide to U.S. Oil Proper Notice for each driver the Carrier wishes to use the ALS and subject to compliance with other provisions of this Agreement, U.S. Oil agrees to assign to each individual driver so authorized by Carrier ("Driver") a unique driver number ("Driver Number"). Each Driver will select a personal identification number ("PIN") upon first use by the Driver of the ALS. These two numbers ("Driver Identification Numbers") will give the Driver access to, and the ability to operate, the ALS. These Driver Identification Numbers are intended to permit only the Driver to physically access the ALS.
2. **Non-liability of U.S. Oil:** U.S. Oil shall not be liable to Carrier, directly or indirectly, for:
  - (a) Any demurrage or Carrier's inability to load or delay in loading which may occur at the ALS as the result of any cause whatsoever, including, without limitations, any denial of loading on account of Customer credit situations, any facility closing

or equipment failure, or the suspension or termination of the right of Carrier or any Carrier Personnel to use the ALS;

- (b) Any damage, loss or injury to any person or the property of Carrier or for any liability, damages, costs, and other expenses, including attorney's fees, which may be imposed upon, incurred by or asserted against Carrier in connection with or as a result of any claim alleging damage, loss or injury to person or property caused by or related in any way, directly or indirectly, to Carrier's presence at or use of the ALS; or
- (c) Any failure of U.S. Oil to assist in or supervise the use of the ALS.

In no event shall U.S. Oil be liable or responsible for any special, incidental or consequential damages under any theory of liability. The provisions of Section 2 Paragraph (b) shall not apply to the extent any damage, loss or injury is caused by the negligence or intentional acts or omissions of U.S. Oil.

3. Indemnification of U.S. Oil: Carrier agrees that it is responsible for and agrees to indemnify U.S. Oil and all of their respective officers, directors, employees, contractors and agents ("Indemnified Persons") for and hold all Indemnified Persons harmless from:

- (a) All liability, damages, costs or other expenses, including attorney's fees of counsel approved by U.S. Oil, which may be claimed against, imposed upon or incurred by any Indemnified Persons in connection with or as the result of any claim asserted by any third party, including Carrier Personnel, for loss, damage or injury to person or property caused by, resulting from or related in any way to a breach of this Agreement by Carrier and/or Carrier's presence at or use of the ALS and/or transportation of petroleum products (including, but not limited to, loading at or use of the facility or the operation, condition or maintenance of any transport vehicle); and
- (b) All loss, injury or damage to property of U.S. Oil and Carrier's property in the care, custody or control of U.S. Oil which, directly or indirectly, is caused by, results from or is related in any way to a breach of this Agreement by Carrier or to the negligence or intentional acts or omissions of Carrier or any Carrier Personnel.

Carrier's duty to indemnify U.S. Oil shall not apply to liability for damages arising out of bodily injury to persons or damages to property to the extent caused by or resulting from the negligence or intentional acts or omissions of U.S. Oil.

Carrier specifically and expressly waives any immunity that may be granted to it by or under the Washington State Industrial Insurance Act, RCW Title 51, (the "Act") or any comparable law. Further, the indemnification obligations of Carrier under this Agreement shall not be limited in any way by any limitation on benefits payable to or

for any third party under the Act or any comparable law. **By their signatures immediately below this paragraph, the parties confirm that they have mutually negotiated the foregoing waiver.**

U.S. Oil & Refining Co.

Carrier: \_\_\_\_\_

By: \_\_\_\_\_

By: \_\_\_\_\_

Andrew J. Troske

Title: General Manager

Title: \_\_\_\_\_

4. Obligations of Carrier: Carrier agrees with and warrants to U.S. Oil as follows:

- (a) Carrier acknowledges that previous users may have left the ALS in an unsafe condition. It shall be the responsibility of Carrier and its Carrier Personnel to observe apparent or reasonably discoverable safety hazards and either correct them or immediately report them to U.S. Oil and refrain from using the ALS until such safety hazard is removed or remedied.
- (b) If Carrier is acting as a Customer Carrier, Carrier shall obtain, and provide to U.S. Oil, Proper Notice from Customer to allow Carrier to participate in the loading of and to remove from the facility various asphalt products and molten sulphur for the account of Customer.
- (c) At the time of each loading, if Carrier is acting as a Customer Carrier, Carrier acknowledges that Driver is solely responsible for selecting the correct Customer on the ALS data screen who has engaged Carrier to load and transport the petroleum products loaded. If Carrier is acting as a U.S. Oil Carrier, Carrier acknowledges that Carrier's Driver is solely responsible for selecting the correct Customer on the ALS data screen for whom U.S. Oil has engaged Carrier to load and transport the petroleum products loaded. If Carrier is acting as a Self-Carrier, Carrier acknowledges that Carrier's Driver is solely responsible for selecting the Carrier's name as the customer on the ALS data screen.
- (d) Carrier acknowledges that each PIN has been selected by its Driver and not by U.S. Oil and that each Driver is solely responsible for the selection, use, and protection of the security of such PIN. Carrier assumes full responsibility for assuring that each of its Drivers uses the Driver Identification Numbers and obtains petroleum products only for the account of a Customer who has agreed with U.S. Oil to pay for such products or for the Carrier itself. Carrier assumes full responsibility for, and shall pay U.S. Oil's posted market price plus applicable taxes for, all petroleum products obtained through the use of Driver Identification Numbers of Carrier Personnel, which have not been authorized and purchased by a Customer or authorized by U.S. Oil, including any fraudulent loadings or any unintended loadings, provided, however, that Carrier shall not be liable to U.S. Oil for unauthorized use of any Driver Identification Numbers which may occur

after a reasonable period of time following U.S. Oil's receipt of Proper Notice from Carrier of Carrier's withdrawal of authorization of an individual Driver to access the ALS. Carrier agrees to require that, when any Carrier's Driver knows or suspects that the confidentiality of his or her PIN has been violated, the Driver will immediately contact U.S. Oil to have his or her PIN changed.

- (e) Carrier warrants that the Drivers it has authorized to access the ALS have, and will continue to have, valid commercial drivers' licenses appropriate for the type of transport vehicles that the Drivers operate in the U.S. Oil facility. Carrier further warrants that its Drivers have received, and will in the future be provided with, copies of and are familiar with U.S. Oil ALS regulations and procedures, are able to read the warning and instructional signage posted at the U.S. Oil facility and are sufficiently fluent in English to verbally communicate in English with U.S. Oil employees. Carrier further warrants that its Drivers and any other Carrier Personnel have completed training and demonstrated competence in the use and operation of the ALS, including training required by WAC 173-180C.
- (f) Carrier warrants that all transport equipment used by Drivers or other Carrier Personnel in connection with the ALS system will be free from any material defects, will comply with all federal, state and local laws, regulations and rules applicable to such equipment and the operation thereof and will be suitable in all respects for loading and transportation of the product(s) loaded at the ALS.
- (g) Carrier shall abide by and follow, and ensure that all Carrier Personnel abide by and follow, all current operating and safety procedures ("Procedures") that are contained in U.S. Oil's training materials for drivers. Carrier acknowledges its Drivers have been trained in these Procedures. U.S. Oil may amend or supplement such Procedures from time to time and will post notice of such changes at locations readily visible to Drivers. Revisions to the Procedures shall be effective upon such posting. U.S. Oil shall notify Carrier of such changes, when appropriate, by mail or such other means agreed to jointly by U.S. Oil and Carrier.
- (h) In its discretion, U.S. Oil may decline to give approval for, or may withdraw its approval of, the use of the ALS by any Carrier or Carrier Personnel at any time. In such a case and when practical, U.S. Oil will advise Carrier of such action first by telephone at the telephone number listed below for Carrier on page 7 and then in accordance with the provision of Section 9.
- (i) Carrier certifies and warrants to U.S. Oil that Carrier, its agents and subcontractors are and shall be in compliance with and shall satisfy all security plan requirements specified under USDOT and/or Coast Guard regulations, including all requirements for background checks, verification of personal information, restriction of access and en route security under 49 CFR 172. User acknowledges that each individual entering a terminal on behalf of Carrier may be required to obtain a Transportation Workers Identification Credential (TWIC

card) or similar credential required by law. Carrier shall be responsible for obtaining any such required credentials for its employees, agents or subcontractors and shall pay any application or processing fee charged by the regulatory agency administering the credentialing program.

5. Insurance of Carrier: For the duration of this Agreement, Carrier agrees to maintain, and to require any agent or contractor of Carrier using the ALS on behalf of Carrier to maintain, at its own expense:
- (a) Workers' Compensation Insurance (including Employer's Liability if provided) complying with all requirements of applicable Federal or State Law; and
  - (b) Public Liability Insurances, provided by insurers satisfactory to U. S. Oil, consisting of:
    - (i) Commercial General Liability including (A) Personal Injury; (B) Contractual Liability; (C) Owner's & Contractor's Protective; (D) Broad Form Property Damage; (E) Products & Completed Operations; and (F) Washington Stop Gap;
    - (ii) Commercial Automobile Liability insuring all vehicles owned, leased, hired or used by Carrier or any agent or contractor of Carrier and including, where applicable, Endorsement Form MCS-90;
    - (iii) Such Excess (or Umbrella) insurance as will, in combination with (b)(i) and (b)(ii) above, provide a total limit of liability of \$2,000,000 any one accident or occurrence in respect of bodily injury or death, personal injury and/or damage to property, and \$2,000,000 aggregate in respect of any coverage having an Aggregate Limit of Liability.

Each such Public Liability Insurance shall:

- (xi) Name U.S. Oil as additional insureds with respect to activities of the Carrier or its agent or contractor (Evidence of additional insured must be provided via copies of actual policy endorsements); and
- (xii) provide that such insurance is primary (not subject to Other Insurance provisions) with respect to U. S. Oil.

All policies shall provide that such insurance may not be non-renewed, cancelled or materially changed without first having given U. S. Oil thirty (30) days' prior written notice of such non-renewal, cancellation or material change (Evidence of the cancellation language must be provided via copies of actual policy endorsements for all lines of coverage).

Carrier, for the duration of this Agreement, shall provide to U. S. Oil certificates of insurance evidencing the Public Liability Insurances specified in Section 5. Paragraph (b) Subparagraphs (i) and (ii), the endorsement of such policies to name U.S. Oil as additional insureds and that such insurances comply with the provisions of the preceding two paragraphs (a) and (b).

All insurance certificates furnished pursuant to the provisions of this Section 5 must (i) show U.S. Oil as additional insureds with respect to the general liability and automobile coverage, as their interests may appear, and (ii) include clauses waiving subrogation under the workmen's compensation coverage. The insurance required under this Section 5 must be maintained by User and its agents or subcontractors, at their sole expense, at all times.

**In the event any other agreement between U.S. Oil and Carrier requires Carrier to maintain insurance providing additional coverage and/or higher minimum coverage limits than provided above, such coverage requirements and limits shall apply in lieu of the coverage and limits provided herein.**

6. Term: This Agreement shall continue in effect until terminated by one of the parties hereto. Any party may terminate this Agreement and Carrier's use of the ALS by delivery of Proper Notice of termination to the other parties. Such termination shall be effective as of the date the Proper Notice is received and shall not in any respect release or discharge Carrier from, nor impair or affect, any obligations, indebtedness or liabilities of Carrier to U.S. Oil arising under or existing pursuant to this Agreement prior to such termination.
7. Relationship: Nothing in this Agreement shall be deemed to create the relationship of principal and agent, employer and employee, lessor and lessee, partnership, joint venture or any other relationship between U.S. Oil and Carrier, except as specified in this Agreement. Carrier and its employees, contractors, and agents shall in no respect be deemed to be the agents, employees or servants of U.S. Oil on account of Carrier's service as a Carrier.
8. Arbitration: Any controversy or dispute arising under or in relation to this Agreement between the parties hereto which cannot be resolved by the parties themselves shall be settled by arbitration in Tacoma, Washington in accordance with the Commercial Arbitration Rules of the American Arbitration Association. The prevailing party in such proceeding shall be entitled to recover all of its costs and expenses incurred in connection therewith, including its reasonable attorney's fees.
9. Form of Notices: Whenever under this Agreement a provision is made for notice by Carrier or Customer to U.S. Oil, such notice shall first be by telephone to U.S. Oil's Scalehouse at (253) 383-1651. Carrier shall promptly confirm such verbal notice by facsimile at (253) 383-6010 and by registered or certified mail (return receipt requested), addressed to the attention of the Asphalt/Lt. Products Shipping Manager at the address below for U.S. Oil on page 7. Alternatively, Carrier or Customer may

send an e-mail message to "autoload@parpacific.com" provided that Carrier or Customer receives acknowledgement from U.S. Oil that the e-mail message was received. For any notice by U.S. Oil to Carrier and, except as provided for in Section 4. Paragraph (g), such notice shall be by registered or certified mail (return receipt requested) addressed to the address printed below Carrier's signature on page 7 or to such other address as may be hereafter furnished by written notice to U.S. Oil. Notice provided as described in this Section 9. shall be referred to as "Proper Notice."

10. Miscellaneous: This Agreement and each of the terms and conditions hereof shall be binding upon and inure to the benefit of the parties hereto and their respective successors, assigns and legal representatives. This Agreement shall be governed by and construed under Washington law, and constitutes the entire agreement between the parties with regard to the use of the ALS and may be altered or amended only by duly executed written agreement of the parties. The signatories to this Agreement warrant that they have the authority to bind the parties to this Agreement. Carrier warrants that it has expressly delegated the authority to convey Proper Notice to all Carrier Personnel conveying the required notices to U.S. Oil on behalf of Carrier.
11. Counterparts and Facsimile: This Agreement may be executed in any number of counterparts, each of which will be deemed an original, but all of which together will constitute one and the same instrument. Any facsimile, pdf or other similar electronic copies hereof or signature hereon shall, for all purposes, be deemed originals.

IN WITNESS WHEREOF, this Agreement has been executed by U.S. Oil and Carrier this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

U.S. Oil & Refining Co.

Carrier: \_\_\_\_\_

EIN: \_\_\_\_\_

By: \_\_\_\_\_

By: \_\_\_\_\_

Andrew J. Troske

Title: \_\_\_\_\_  
General Manager

Title: \_\_\_\_\_

Carrier Address:

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

\_\_\_\_\_  
\_\_\_\_\_

**NOTE:** Parties must also sign this Agreement on page 3.



U.S. OIL & REFINING CO.

**Department of Transportation, 49 CFR Part 172**

**Hazardous Materials: Security Requirements for Offerors and Transporters of Hazardous Materials; Final Rule**

**Compliance Statement**

Company Name: \_\_\_\_\_

Address: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

I, the Carrier have a security plan in place in accordance with the Department of Transportation, 49 CFR Part 172, Hazardous Materials: Security Requirements for Offerors and Transporters of Hazardous Materials; Final Rule.

I, the Carrier do not transport hazardous materials to or from USOR facility and therefore are not required to have a security plan in accordance with the Department of Transportation, 49 CFR Part 172, Hazardous Materials: Security Requirements for Offerors and Transporters of Hazardous Materials; Final Rule.

Signature: \_\_\_\_\_ Date: \_\_\_\_\_

Print Name: \_\_\_\_\_

Title: \_\_\_\_\_

Please return completed form to: [Autoload@parpacific.com](mailto:Autoload@parpacific.com)