

Good Neighbor Agreement

This Good Neighbor Agreement (**Agreement**) is entered effective April 12, 2016 (**Effective Date**) by and between Vigor Industrial (**Vigor**) and Neighbors for Clean Air (**NCA**), and the University Park Neighborhood Association (**UPNA**) (collectively referred to as the **Neighbor Groups**). Vigor and the Neighbor Groups are collectively referred to as the **Parties**.

RECITALS

- A. Vigor owns and operates a shipbuilding and repair facility located at 5555 N. Channel Ave., on Swan Island in Portland, Oregon (the **Facility**).
- B. Vigor holds a Title V permit (the **Title V Permit**) issued by the Oregon Department of Environmental Quality (**DEQ**) that covers operation of the stationary sources at the Facility.
- C. The Neighbor Groups have expressed concerns about the impact of emissions from stationary and mobile sources at the Facility on people living, working and going to school in University Park and at the University of Portland.

The Parties

- D. The Parties desire to continue to work cooperatively to improve livability and safety in the areas around Swan Island.
- E. The goals of this agreement are:
- To effectuate emission reductions from permitted stationary sources and from non-permitted mobile sources
 - To specify monitoring, recordkeeping, and reporting requirements sufficient to provide the Parties with accurate information about emission reductions under this agreement and to memorialize Vigor's promises to reduce emissions as specified in this Agreement
 - To facilitate the renewal of the Title V Permit (**Renewal Permit**) consistent with the terms of this agreement
 - To improve neighborhood safety and livability
 - To encourage open communications and understanding between Vigor and the Neighbor Groups.

TERMS OF AGREEMENT

NOW, THEREFORE, in consideration of the mutual covenants and promises contained herein, the Parties mutually agree as follows:

1. *Meteorological Monitoring.* Vigor shall continue to maintain one meteorological data station located on Pier C at the Facility, or other suitable location, so long as it is reasonably necessary to understand how emissions from the Facility are impacted by local meteorological conditions. If Vigor believes that continued operation of the meteorological monitoring is no longer reasonably necessary, it shall provide written notification to the NAC. Meteorological monitoring may be discontinued by approval of the NAC. Approval of the discontinuance of the meteorological monitoring shall not be unreasonably withheld by the NAC. Vigor shall also donate two existing meteorological data stations to the University of Portland for continued monitoring.

2. *Emission Reduction Conditions.* Vigor shall agree to emission reduction conditions described in **Attachment A**. The Parties will request that DEQ incorporate into the renewal of Vigor's Title V Permit (the Renewed Permit) the reduction conditions set forth on Attachment A.

3. *Neighborhood Advisory Committee.* The Parties shall establish a Neighborhood Advisory Committee (NAC) to promote continuous improvement in neighborhood safety and livability around Swan Island as impacted by Vigor's operations, and to facilitate communications between Vigor and its neighbors.

3.1 *NAC Principals.* Vigor, NCA and UPNA shall be NAC Principals.

3.2 *NAC Representatives.* Each NAC Principal shall designate representatives ("**Representative**") authorized by it to participate in the NAC. The NAC shall consist of seven Representatives distributed as follows:

3.2.1 Vigor shall designate two Representatives who shall include an environmental manager responsible for the Facility, or his or her subordinate, and an officer or employee of Vigor authorized to speak for the company.

3.2.2 UPNA may designate up to two Representatives.

3.2.3 NCA may designate up to three Representatives.

3.2.4 Any NAC Principal may designate an alternate for each of its Representatives and may change its Representatives at any time by giving notice to the Parties.

3.3 *NAC Meetings.* The NAC shall meet at least quarterly, unless an alternate schedule is approved by the NAC. Each NAC meeting shall be open to public observation, and provide interested members of the public with a reasonable

opportunity to provide oral comments to the NAC. By January 1 each year, the NAC will establish its schedule of regular meetings for that year. Special meetings may be scheduled by any NAC Principal by giving at least 30 days advance notice to the other NAC Principals together with an explanation of the need for the special meeting. Vigor will notify the NAC Principals and Representatives of the meeting date, time and place at least 15 days in advance of each regular or special meeting. Emergency meetings may be scheduled by any NAC Principal 72 hours' notice given to each NAC Principal and Representative, which notice shall state the nature of the emergency and the meeting date, time and place. If any NAC Principal is unable to send at least one Representative or alternate to meet on an emergency basis, the emergency meeting shall be rescheduled according to the special meeting process described above.

3.3.1 Simple majority vote. The NAC shall make decisions using a simple majority vote of the NAC Representatives present at any NAC meeting at which a quorum of NAC Representatives is present. One half of the NAC Representatives shall constitute a quorum. An Alternate shall be counted in place of one Representative who is not present at the meeting to determine whether a quorum is present. Only voting Representatives and Alternatives properly designated pursuant to paragraph 3.2 shall vote at NAC meetings.

3.3.2 NAC sub-committees. The NAC may establish by simple majority vote sub-committees to accomplish its mission. Members of NAC sub-committees shall be nominated by a NAC Representative and confirmed by simple majority vote. Any person may serve upon a sub-committee.

3.3.3 Community input and technical support. The NAC may call upon the assistance of local residents and any person with particular experience or knowledge to provide input and technical support to the NAC as needed.

3.3.4 Agendas and work plan. Each NAC Representative and each Vigor Representative shall have input into the agenda of each NAC meeting.

3.4 Administrative support. Vigor shall provide administrative support to the NAC, including maintaining a current list of NAC Representatives, sending meeting notices, preparing draft meeting agendas, minutes and summaries and managing timely approval of minutes by the NAC.

3.5 Required communications.

3.5.1 Upsets. Vigor shall notify NAC Representatives and Alternates of any upset conditions contained in its Title V Permit that require notification of any emergency service or governmental authority.

3.5.2 Annual Report. At least once each year, Vigor shall provide the complaint and response log called for in Attachment A for NAC review, and

present an annual report at a regular NAC meeting. The annual report shall include:

- (a) General summary of the state of Vigor's business, including a qualitative assessment of its success and challenges as an on-going business.
- (b) Report on air emissions, monitoring activity, and excess emissions events during the preceding year. This will include as assessment of the success of the emission reduction conditions including but not limited to, the percentage or number of vessels not utilizing ship-to-shore power and the reason for the exemption from the requirement, and the progress on retrofitting or replacing diesel engines at the Facility.
- (c) Summary of complaints received and how complaints were resolved pursuant to the relevant emission reduction condition in Attachment A.
- (d) Summary of any air permit inspections or enforcement actions by DEQ or EPA during the preceding year and Vigor's corrective action as needed.
- (e) The annual report shall be made available to the public on the NAC webpage described in paragraph 3.6.

3.6 *NAC Website.* Vigor shall maintain a page on its website for the NAC. This page will include a list of NAC Principals, Representatives and alternates. This page will include a calendar of upcoming NAC meetings and copies of minutes or summaries from prior meeting Actions approved by the NAC. This page will be accessible to the public, and will provide a mechanism to take comments from the public and send them directly to all NAC Representatives.

4. *Covenants.*

4.1 The Parties may participate freely in the public process for issuance, renewal or modification of any permit issued to Vigor with respect to any issues not addressed in this Agreement, provided that the Neighbor Groups may not propose or advocate for new or expanded requirements to be imposed on Vigor through the Permits or any renewal thereof for items included within this Agreement or Attachment A.

4.2 Except with respect to any noncompliance by Vigor of the Title V Permit or breach of this Agreement, each of the Neighbor Groups covenants not to sue, or bring any other form of action against, Vigor alleging that Vigor is liable for creating a

nuisance (public or private) or for trespass, or otherwise alleging damages or any other cause of action arising out of emissions to the atmosphere from the Facility.

4.2 During the term of this Agreement, the Neighbor Groups shall not apply to a court to enforce the Permits or the federal Clean Air Act or Oregon air quality laws if Oregon or the United States has commenced and is diligently prosecuting a civil or criminal action in a federal or state court, or has issued an administrative order requiring compliance with the Permits and assessing a monetary penalty with respect to the alleged violation. With respect to requirements of the Clean Air Act or Oregon air quality laws that are addressed by the Permits or are identified in the Permits as not applicable to the Facility, Vigor's compliance with the Permits shall be deemed compliance with the Clean Air Act and Oregon air quality laws as in effect as of the date of the Permits.

4.3 The obligations of the Parties under this Section 4 include the obligation not to materially aid or assist others in the pursuit of any of the prohibited acts.

5. *Facility Changes.* If Vigor intends to make changes to the Facility or their operations that require modification to Vigor's Title V permit, Vigor will provide the Neighbor Groups copies of its application made to DEQ for such modifications simultaneously with submitting the application to DEQ. Nothing in this Agreement restricts the Neighbor Groups' rights to object to a proposed modification of the Permits, or to contest a modification finally issued by DEQ.

6. *Dispute Resolution.* Subject to this paragraph 6, any Party to this Agreement may apply to a court of competent jurisdiction for declaratory and injunctive relief necessary to construe or enforce this Agreement. The Parties will endeavor to resolve any dispute amicably pursuant to paragraphs 6.1 through 6.3.

6.1 *Duty to meet and confer.* At least 30 days prior to applying to a court for relief, the Parties agree to meet and confer to attempt to resolve any dispute through informal negotiations. With notice pursuant to paragraph 8.1, any Party can request to meet and confer (in person if requested) within five business days of receipt of the request. Representatives of each Party with appropriate authority will negotiate in good faith to resolve the dispute.

6.2 *Mediation.* If informal discussions pursuant to paragraph 6.1 do not resolve the dispute, either Party may require that the dispute be submitted to mediation before Peter H. Koehler of Koehler ADR LLC. Following the meeting described in paragraph 6.1, either Party may commence the mediation process by providing notice to the other Party and following the procedures prescribed by the mediation service.

6.3 *Judicial enforcement.* If the mediation described in paragraph 6.2 does not resolve the dispute, any Party may seek to enforce this Agreement through a court of competent jurisdiction.

7. *Term.* This Agreement shall commence on the Effective Date set forth above and shall remain in effect for the term of the Renewed Permit and any period during which the Renewed Permit is administratively extended and shall expire on the date that the Renewed Permit is again renewed or is terminated by DEQ.

8. *General Terms.*

8.1 *Notice.* All notices of breach of violation of this Agreement shall be in writing and personally delivered or sent by certified first-class mail, postage prepaid, return receipt requested to the other Parties at the addresses set forth below. All other notices may be sent by e-mail. Notices shall be deemed given when received and shall be deemed received when personally delivered, 48 hours after they are postmarked, if sent by mail, or upon confirmation of receipt if delivered by e-mail. Notices shall be sent to the following addresses, which a Party may change by giving notice to the other Parties:

If to Vigor:

Alan Sprott
5555 N. Channel Ave.
Portland, OR 97217
Alan.Sprott@vigor.net

If to NCA:

Mary Peveto
Neighbors for Clean Air
P.O. Box 10544
Portland, OR 97296

With a copy to:

Vigor General Counsel
5555 N. Channel Ave.
Portland, OR 97217
Vicki.Ballou@vigor.net

If to UPNA:

8.2 *Binding Effect.* This Agreement shall be binding upon the Parties and their respective successors and assignees. If in any judicial proceeding a court shall refuse to enforce all the provisions of this Agreement, the scope of any unenforceable provision shall be deemed modified and diminished to the extent necessary to render such provision valid and enforceable. In any event, the validity or enforceability of any such provision shall not affect any other provision of this Agreement, and this Agreement shall be construed and enforced as if such provision had not been included.

8.3 *Entire Agreement.* This Agreement and any referenced attachment, exhibits or schedules are the entire agreement between the Parties and supersede all previous agreements or understandings between them.

8.4 *Amendment.* This Agreement may not be amended, except in writing and signed by authorized representatives of both Parties.

8.5 *Understanding.* Each Party has carefully read this Agreement. Each Party acknowledges that it is familiar with the contents of this Agreement, and that they fully understand and voluntarily accept its terms and conditions.

8.6 *Trade Secrets.* Nothing in this Agreement shall be construed to require Vigor to disclose its trade secrets or confidential business information and Vigor may redact such trade secrets or confidential business information from documents provided under this Agreement. Neighbor Groups understand and agree that Neighbor Groups or its members may need to sign one or more confidentiality agreements to protect Vigor's trade secrets and confidential business information potentially observed during site visits.

8.7 *Waiver.* Any Party may waive rights, powers or privileges under this Agreement, provided that any waiver must be in writing and further provided that no such waiver in one instance shall constitute a waiver of the same right, power or privilege in any other instance unless specifically stated in writing.


8.8 *Force Majeure.* If Vigor is prevented from carrying out any of its obligations under this Agreement by circumstances beyond its reasonable control, including, without limitation, legislation or lawful regulations of any governmental body, acts of the public enemy, riots, strikes or labor disputes, labor or material shortages, fires, explosions, floods, severe weather conditions, embargoes, or other similar causes, then Vigor shall be excused from performance hereunder during the period of such delay. Vigor shall promptly notify the other Parties when it learns of the existence of a force majeure condition and shall indicate the nature and probable duration of such force majeure. Vigor shall promptly notify the other Parties when the force majeure condition has terminated. Vigor shall minimize the effect of such force majeure to the extent reasonably possible. Notwithstanding anything in this Agreement to the contrary, the term "force majeure" does not include, and Vigor shall not be excused from performance under this Agreement for increased costs of fuel, labor, insurance, or other expenses of performing the obligations hereunder.

8.9 *Severability.* If for any reason a court of competent jurisdiction finds any provision of this Agreement to be unenforceable under existing law, or as a result of new statutes or regulations, that provision of the Agreement will be reformed consistent with such law and the intent of the parties, and the remainder of this Agreement will continue in full force and effect.


9. *No Third Party Beneficiaries.* There are no third party beneficiaries of this Agreement.

10. *Execution.* The individuals executing this Agreement below represent that they are authorized to execute this Agreement on behalf of the respective Party. This Agreement may be executed simultaneously by all the parties or individually in counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same Agreement.

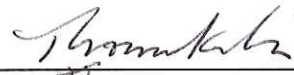
VIGOR INDUSTRIAL

By: 
Name: T. Aquino Spavitt
Title: Vice President

NEIGHBORS FOR CLEAN AIR

By: 
Name: Mary Pevero
Title: President

UNIVERSITY PARK NEIGHBORHOOD ASSOCIATION

By: 
Name: Thomas Kwak
Title: Vice Chair

Attachment A

The Parties agree that they will request that DEQ incorporate the following terms into Vigor's Renewal Permit:

- All vessels docked at the shipyard must shut down their engines and use electric power from the shore (cold ironing) within 36 hours of docking and may only restart their engines 72 hours prior to departure, unless:
 - o There is insufficient electrical power supply available
 - o The vessels cannot reasonably connect to shore power
- The dual-fired boilers located at the Facility will be constrained to only use natural gas except in the case of an ordered natural gas curtailment
- Vigor will use its waste water treatment facility to treat only waste water generated from Vigor's work, except that if Vigor complies with each of the following obligations, Vigor may agree to treat waste water generated from the dredging of sediments in the Willamette River ("Treatment Services"):

A. Nuisance Odors

1. Vigor will: (a) notify the NAC in advance of the Treatment Services, and (b) provide to the NAC: (i) the name of the customer; (ii) the dates the Treatment Services are to occur; (iii) the source(s) of the waste water to be treated; and (iv) all laboratory data provided by the customer for that waste water;
2. Vigor will post the information described in Section A.1 on the NAC website referenced in Section 3.6 of this Agreement;
3. Vigor will, at its expense, engage the University of Portland Department of Environmental Sciences, or another entity agreeable to both Vigor and NAC, (the "Monitor") to: (a) create a baseline odor survey; and (b) monitor any odor generated from the Treatment Services during the period Vigor is providing Treatment Services unless the NAC agrees to monitoring for a shorter period of time.
4. Baseline monitoring will be conducted for a minimum of two days prior to the receipt of the first shipment of waste water and will continue for the duration of the Treatment Services unless a shorter period is established. A notable increase in the intensity or character of odors during monitoring will indicate the potential for nuisance odors associated with the Treatment Services. Vigor will use its best efforts to mitigate nuisance odors that the Monitor classifies as minor in intensity or frequency relative to the baseline. Vigor will suspend any Treatment Services that the Monitor classifies as moderate in intensity or frequency relative to the baseline unless and until such a time as Vigor is able to provide those Treatment Services without generating odors classified as moderate.

B. Toxic Materials

1. At the beginning of the Treatment Services, Vigor will collect representative air samples from emissions generated by the Treatment Services for chemical analysis of any toxic materials and will report the results of those tests to the NAC.
 2. If those tests demonstrate that the Treatment Services are harmful to human health based on then current published generally accepted screening criteria, Vigor will cease the Treatment Services until they can be provided without harm to human health.
- Outdoor sandblasting, using slag media, shall employ measures to reduce particulate emissions from the work site. The efficiency of control measures shall be at least 90 percent. Limited use of dry abrasive (less than 5 tons in a 24 hour period) is permitted for spot blasting vessel areas where control measures are not practicable.
 - Vigor will work with the NAC to develop an odor response protocol. This will include at least:
 - o A direct number and email for local residents to send odor complaints directly to Vigor for analysis and response
 - o A formal process for Vigor to analyze the potential that they are responsible for any odor complaints, including analyzing local meteorological conditions and operations on the shipyard in the time leading up to the complaint.
 - Vigor will develop a schedule to retrofit diesel powered rolling stock with particulate filters.